STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
	SUPERIOR COURT DIVISION
COUNTY OF WAKE	CASE NO. 21-CVS-534

BEAU ZANCA; ERIC KROHM; A.J., by and through his Guardian CHRIS JONES; Z.K., by and through his Guardian SEAN KINNEY; M.M., by and through his Guardian DAVID MINCES; L.M., by and through his Guardian CHAD MOYER, individually and on behalf of all others similarly situated,	)
Plaintiffs,	)
v.	)
EPIC GAMES, INC.,	)
Defendant.	)

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASS, APPROVAL OF CLASS NOTICE, AND SCHEDULING OF FINAL APPROVAL HEARING

Plaintiffs Beau Zanca; Eric Krohm; A.J, by and through his guardian Chris Johnson; Z.K., by and through his guardian Sean Kinney; M.M., by and through his guardian David Minces; and L.M., by and through his guardian Chad Moyer ("Plaintiffs"), individually and on behalf of all others similarly situated, have reached a settlement with Defendant Epic Games, Inc. ("Defendant" or "Epic Games") (Plaintiffs and Defendant are collectively referred to herein as the "Parties"). Plaintiffs are moving, without objection and with consent from Defendant, for (1) preliminary approval of a proposed class action settlement (the "Settlement"), (2) certification of the Settlement Class for purposes of the proposed settlement, (3) appointment of Whitfield Bryson LLP; McGuire Law, P.C.; Devlin Law Firm, LLC; and McMorrow Law, P.C. as Class Counsel, (4) an order directing that notice of the proposed settlement be sent to the Settlement Class, and (5) the scheduling of a final approval hearing on the proposed settlement.[1]

I. INTRODUCTION

The Settlement reached by the Parties warrants preliminary approval because the Settlement is fair, reasonable and adequate based on a good-faith assessment of the strengths and weaknesses of Plaintiffs' claims, was negotiated at arms-length with the assistance of a former federal judge well-known nationally as a respected mediator, and provides substantial relief to millions of Settlement Class Members. Specifically, the Settlement provides tens of millions of dollars in value to Settlement Class Members – players of Defendant's popular *Fortnite* and *Rocket League* video games – including millions of dollars in cash benefits, as well as the direct provision of 1,000 units of highly-used and valued in-game "currency" to each of over nine million

[1] A copy of the Settlement Agreement ("Agreement") is attached hereto as Exhibit 1. Unless otherwise defined herein, capitalized terms used herein have the same meaning given to them as in the Settlement Agreement.

Settlement Class Members that retails for approximately $7.99 to $9.99 when purchased from Epic Games or other sources as in-game virtual currency. The Settlement requires Epic Games to *automatically* distribute 1,000 *Fortnite* V-Bucks (currently sold for $7.99), the virtual currency used within *Fortnite*, to each of the approximately 6.5 million *Fortnite: Save the World* accounts used to acquire a "Loot Llama" random-item loot box; and 1,000 *Rocket League* Credits (currently sold for $9.98) to each of the approximately 2.9 million *Rocket League* accounts used to acquire a "Crate" random-item loot box.

Separate from this benefit, which these Settlement Class Members will receive automatically without needing to file claims, the Settlement provides Settlement Class Members with the opportunity to claim benefits of up to $50 in cash (or, if Settlement Class Members prefer, in-game virtual currency that would cost up to $100 to purchase from Defendant at current prices) for asserted damages incurred as a result of any in-game purchases made through their *Fortnite* or *Rocket League* account. In addition, Settlement Class Members who were legal minors at the time they made a real-money purchase associated with their *Fortnite* or *Rocket League* account may recover substantial cash benefits pursuant to a right of contractual disaffirmation.

At this preliminary approval stage, the Settlement is unopposed and filed with consent from Defendant. In determining whether to grant preliminary approval, the Court need only decide whether the Settlement appears to fall within a range of reasonableness such that Settlement Class Members should receive notice of the proposed Settlement so that they may evaluate their rights under and comment on the Settlement at the Final Approval Hearing. As discussed in further detail below, the Settlement far exceeds this standard. Accordingly, preliminary approval should be granted and notice of the Settlement and Final Approval Hearing should be disseminated to the Settlement Class Members.

II. SUMMARY OF THE LITIGATION

This Settlement resolves years of consumer class action litigation against Epic Games in numerous state and federal courts across the United States regarding the consumer protection claims now consolidated in the Complaint. The claims asserted against Epic Games in prior lawsuits have focused on myriad topics from allegations related to its sale of random-item "lootboxes," to alleged failure to honor statutory rights available to minor children, to an allegation related to purported security events. Epic Games has steadfastly denied and aggressively fought all of these claims.

Despite years of such litigation, no plaintiff has obtained a judgment against Epic Games or even progressed much past the pleadings, and no class of *Fortnite* or *Rocket League* players seeking damages against Epic Games has been certified, due in large part to its strong contractual defenses. *See, e.g. Heidbreder v. Epic Games, Inc.*, 438 F. Supp. 3d 591, 598 (E.D.N.C. 2020) (compelling arbitration of plaintiff's claims arising from alleged fraudulent purchases); *R.A. v. Epic Games, Inc.*, No. 5:19-CV-325-BO, 2020 WL 865420, at *2 (E.D.N.C. Feb. 20, 2020) (dismissing minor's consumer protection claims centered on Epic Games' lootbox sales because the minor disaffirmed his contractual relationship with Epic Games to avoid arbitration); *see also Sweeney v. Life on Air, Inc. et al.*, No. 20-cv-00742, Dkt. 15 (S.D. Cal. Aug. 4, 2020) (compelling arbitration of plaintiff's privacy claims against Epic Games).

As an illustration, over two years ago, Plaintiff Eric Krohm filed one of the first putative class actions against Epic Games in the Circuit Court of Cook County, Illinois, asserting claims for breach of contract, breach of implied contract, negligence, and violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, due to his provision of payment information to Epic Games and an alleged security vulnerability in its *Fortnite* software. On April

8, 2019, Defendant removed that lawsuit to the U.S. District Court for the Northern District of Illinois and, citing forum selection provisions in its terms of use, subsequently obtained a transfer to the U.S. District Court for the Eastern District of North Carolina.

Once in the Eastern District of North Carolina, Defendant moved to dismiss Plaintiff Krohm's case for failure to state a claim, or in the alternative to compel arbitration. On October 1, 2019, the district court dismissed the lawsuit without prejudice, finding that Plaintiff Krohm's alleged injuries were insufficient to confer Article III standing. Plaintiff Krohm appealed the dismissal to the U.S. Court of Appeals for the Fourth Circuit, contending the case should have been remanded to Illinois state court rather than dismissed for lack of federal standing. Epic Games cross-appealed, arguing that the district court should have resolved its motion to dismiss and dismissed Plaintiff Krohm's claims with prejudice.

Thereafter, while the appeal was fully briefed but still pending, Plaintiff's counsel informed Epic Games of their intention to assert claims (including, if necessary, arbitration) on behalf of numerous other persons who played *Fortnite* as well as Defendant's *Rocket League* games. After initial discussions about potentially resolving in a global nationwide settlement both the claims pleaded in Plaintiff Krohm's lawsuit as well as the claims Plaintiff's counsel intended to assert on behalf of other plaintiffs, the Parties agreed to participate in mediation with a respected mediator, the Honorable Wayne R. Andersen (Ret.) of JAMS, former United States District Court Judge for the Northern District of Illinois. Thereafter, the Parties participated in multiple arms-length, highly-contentious mediation sessions with Judge Andersen over several days in November and December 2020. With Judge Andersen's assistance, the Parties ultimately agreed to the terms of this Settlement for which they now seek preliminary approval. Following additional weeks of negotiation and execution of the Settlement Agreement, Plaintiff Krohm's appeal pending before

the Fourth Circuit was dismissed, and Plaintiffs filed this case (the "Action") on January 12, 2021 with the intent to resolve the Action pursuant to the terms Parties' Settlement Agreement.

The terms of the proposed Settlement are fair, adequate, and reasonable. As a result of years of litigation involving counsel for both Plaintiffs and Epic Games, the Parties have conducted a thorough examination of the facts and law relating to the asserted and potential claims and defenses in the Action, including multiple rounds of discovery and confirmatory discovery, and reached the Settlement only after engaging in extensive, arm's length negotiations assisted by a respected mediator.

Furthermore, and as discussed in more detail below, the proposed class meets all requirements for certification for purposes of settlement, and the proposed notice provides the best practicable notice and comports with due process. Accordingly, Plaintiffs request that the Court enter the proposed Preliminary Approval Order, which: (1) grants preliminary approval of the proposed Settlement; (2) certifies the Settlement Class contemplated by the Settlement Agreement; (3) appoints Whitfield Bryson LLP; McGuire Law, P.C.; Devlin Law Firm, LLC; and McMorrow Law, P.C. as Class Counsel; (4) orders the proposed Notice be sent to the Settlement Class; and (5) schedules a final approval hearing to consider final approval of the proposed Settlement Agreement as well as approval of attorneys' fees, costs, and an Incentive Award to the Class Representatives.

III. TERMS OF THE PROPOSED SETTLEMENT

The Settlement's key terms are as follows:

A. Certification of Settlement Class

The Settlement provides considerable benefits to *Fortnite* and *Rocket League* players in the United States who spent money on in-game virtual currency or other in-game items. Pursuant

to the Settlement, the Parties seek certification of a Settlement Class defined as follows: "All persons in the United States who, at any time between July 1, 2015, and the present, had a *Fortnite* or *Rocket League* account that they used to play either game on any device and in any mode, and (a) exchanged in-game virtual currency for any in-game benefit, or (b) made a purchase of virtual currency or other in-game benefit for use within *Fortnite* or *Rocket League*." (Agreement, ¶ 1.26).

B. Settlement Benefits to the Settlement Class

As part of the Settlement, within ninety (90) days after the date of Preliminary Approval, Epic Games will automatically add 1,000 *Fortnite* V-Bucks to each of the approximately 6.5 million *Fortnite* accounts in the United States used to acquire a random-item "Loot Llama" loot box in *Fortnite: Save the World* and 1,000 *Rocket League* Credits to each of the approximately 2.9 million *Rocket League* accounts used to acquire a random-item "Crate" loot box. These benefits will be automatically provided to Settlement Class Members who acquired these random-item loot boxes *without the need to take any other action.*

In addition to this automatic virtual currency benefit, Epic Games has agreed to make available up to $26,500,000.00 in cash compensation, after payment of administrative costs, attorneys' fees and expenses, and Class Representative incentive awards, for Settlement Class Members who made a purchase in connection with their *Fortnite* or *Rocket League* account. First, any Settlement Class Member who made a real-money purchase and who contends that any aspect of the purchase gives rise to a claim for damages (*e.g.*, breach of contract, consumer fraud, etc.) will be able to submit a Claim Form for cash compensation proportionate to the amount of their purchase. Each Settlement Class Member who timely submits a valid Claim Form is eligible, depending on the value of their real-money purchase(s), to receive up to $50 (if they elect to receive cash) or, if they so choose, up to 13,500 *Fortnite* V-Bucks or 13,000 *Rocket League* Credits. For

convenience, Settlement Class Members opting to receive cash may choose to receive their payment by check or via a digital payment.

Second, any Settlement Class Members who (i) were legal minors at the time they purchased V-Bucks or Credits or made any other real-money purchase from Epic Games or a third party, and (ii) made these real money purchases with their own money and without permission from a parent or guardian, are eligible to claim benefits for those purchases pursuant to a statutory right of contractual disaffirmation. Minors may receive a benefit of the lesser of one-third (1/3) of their total purchase amounts or $50.00. The value of any checks sent to the Settlement Class Members remaining uncashed beyond 90 days of their issuance will be distributed to a *cy pres* recipient approved by the Court. The Parties propose, subject to the Court's approval, that such *cy pres* recipient should be a non-profit promoting the general welfare of teenagers. (Epic Games' terms of service prohibit those under 13 years of age from creating player accounts.)

C. Appointment of Class Representative and Class Counsel

As discussed below, Plaintiffs and their counsel are adequate under Rule 23 of the North Carolina Rules of Civil Procedure. There are no conflicts between their interests and the interests of the proposed Settlement Class. The Parties agree that Plaintiffs should be appointed Class Representatives. The Parties have further agreed that Whitfield Bryson LLP; McGuire Law, P.C.; Devlin Law Firm, LLC; and McMorrow Law, P.C. (collectively, "Proposed Class Counsel") should be appointed as Class Counsel.

D. Administration of Notice and Claims

Epiq Systems, Inc. ("Settlement Administrator")[2] will act as the Settlement Administrator. All reimbursable notice and administration expenses incurred will be paid by Epic Games pursuant

[2] Epiq Systems, Inc and Epic Games are not related to and have no affiliation with each other.

to the Settlement Agreement. As set forth in the Settlement Agreement, Epic Games will facilitate the Settlement Administrator's provision of notice by email to addresses associated with Settlement Class Member's *Fortnite* and *Rocket League* accounts. Within thirty-five (35) days after preliminary approval, the Settlement Administrator will use this information to effect direct notice of the settlement by email and will also initiate an online media campaign specifically targeted to the Settlement Class Members, including issuing a Press Release disclosing the URL of the settlement website, which will featuring all pertinent cases documents, including the Settlement Agreement and the detailed Long Form Notice, and which will permit Class Members to submit Claim Forms online.

E. Attorneys' Fees and Incentive Award

Subject to the approval of the Court, Proposed Class Counsel will seek an award of attorneys' fees, costs, and expenses as a percentage of the relief made available to the Class by the Settlement. Proposed Class Counsel have agreed, with no consideration from Epic Games, to limit their fee request to no more than $11,300,000.00, inclusive of costs and expenses. In addition, Proposed Class Counsel will apply to the Court for Incentive Awards not to exceed a collective total of $75,000.00, to be distributed among the Class Representatives for their efforts on behalf of the Settlement Class. The Parties did not discuss the issue of attorneys' fees and expenses or service awards until after reaching agreement on the relief to the Settlement Class, and then did so only through the mediator. (*See* Affidavit of Daniel K. Bryson, attached hereto as Exhibit 2, ¶ 18). Plaintiffs will file a separate motion for approval of attorneys' fees and costs in accordance with the proposed schedule discussed *infra*, and the fee petition will be published on the settlement website in advance of the Settlement Class objection and exclusion deadline.

F. Release

Upon reaching the Effective Date, each Settlement Class member who has not timely opted out shall be deemed to have released Epic Games from all claims relating to the claims asserted in Plaintiffs' Complaint or relating to the purchase or sale of virtual currency or other in-game items in *Fortnite* or *Rocket League*.

IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT.

Under Rule 23(c) of the North Carolina Rules of Civil Procedure, a court considering a proposed settlement under Rule 23, or its federal law counterpart, typically engages in a three-step process. First, the Court determines whether the proposed settlement merits preliminary approval. Second, the Court directs that notice of the proposed settlement be distributed to the settlement class, thereby providing class members with the opportunity to object to the settlement. Third, the Court evaluates whether final approval of the settlement is warranted and, if so, grants final approval. *See* Manual for Complex Litigation, Fourth Ed. ("MCL 4th") § 21.632; N.C. Gen. Stat. § 1A-1, Rule 23(c); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 622 (1997).

A. The Settlement Merits Preliminary Approval.

1. Legal Standard for Preliminary Approval

The preliminary approval process is the Court's initial assessment of the proposed settlement, the purpose of which is to determine (1) whether the proposed settlement is within the range of reasonableness; (2) whether it is worthwhile to provide notice to the class of the terms and conditions of the settlement; and (3) whether to schedule a final approval hearing. 4 Alba Conte & Herbert Newberg, Newberg on Class Actions §11.25 (4th ed. 2002). The question at the preliminary approval stage is thus whether the settlement appears to be within the range of possible approval and was "[t]he result of good-faith bargaining at arm's length, without collusion." *In re*

Jiffy Lube Sec. Litig., 927 F.2d 155, 159 (4th Cir. 1991); *see also Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975). This standard has been adopted in North Carolina. *See Ehrenhaus v. Baker*, 216 N.C. App. 59, 73, 717 S.E.2d 9, 19 (2011) (stating that the purpose of preliminary approval is "to determine whether the proposed settlement is within the range of possible approval or, in other words, whether there is probable cause to notify the class of the proposed settlement"), *citing Horton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 827 (E.D.N.C. 1994) (internal quotation omitted).

2. The Proposed Settlement Meets the Standard for Preliminary Approval.

In granting preliminary approval, a court may consider a number of factors, none of which is determinative. The relevant factors include: (1) whether the settlement has no obvious deficiencies and otherwise falls within the range of possible approval, (2) whether it unreasonably grants preferential treatment to the plaintiff or segments of the class, and (3) whether it appears to be the product of serious, informed and non-collusive negotiations. MCL 4th § 21.631. If the settlement survives scrutiny under these criteria, the Court should direct that notice of a final approval hearing be given to class members, at which time arguments and evidence may be presented in support of and (to the extent there are any objectors) in opposition to the settlement. *Id.*, §§ 21.632, 21.633.

i. *The Settlement has no obvious deficiencies and is within the range of reasonableness.*

The public interest favors settling litigation. *See Hardin v. KCS Int'l, Inc.*, 682 S.E.2d 726, 737–38 (N.C. Ct. App. 2009). Not only do settlements conserve judicial resources, but they are the preferred method of resolving legal disputes because they reflect the collective judgment of the litigants, who are in the best position to evaluate the strengths and weaknesses of their legal positions. *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982) (quotation omitted). Indeed,

most courts recognize that the opinion of experienced counsel supporting the settlement is entitled to considerable weight. *See, e.g.*, *Reed v. GMC*, 703 F.2d 170, 175 (5th Cir. 1983) ("In reviewing proposed class settlements, a trial judge is dependent upon a match of adversary talent because he cannot obtain the ultimate answers without trying the case."). Against this backdrop, preliminary approval of a settlement is warranted when there is "probable cause" to believe that the settlement is fair, reasonable and adequate, and that the class should be notified. *Ehrenhaus*, 216 N.C. App. at 73, 717 S.E.2d at 19.

Here, the Settlement resolves the Parties' legal dispute in a reasonable manner. First, the Settlement provides Settlement Class Members with tens of millions of dollars of valuable relief. Each of the over nine million Settlement Class Members who acquired a random-item loot box in *Rocket League* or *Fortnite: Save the World* will *automatically* receive 1,000 *Fortnite* V-Bucks or 1,000 *Rocket League* Credits—virtual currency that is desired by the Class Members and that would otherwise cumulatively cost each *Fortnite* class member receiving the benefit $7.99 and each *Rocket League* class member receiving the benefit $9.99. Additionally, the Settlement also makes millions of dollars in cash benefits available: all Settlement Class Members who timely submit a valid claim form for asserted damages can receive their choice of either up to a $50.00 cash award or additional virtual currency in the form of V-Bucks/Credits. Finally, Settlement Class Members who were legal minors at the time they purchased V-Bucks or Credits from Epic Games or a third party, or made other real money purchases from Epic Games in connection with their play of *Fortnite* or *Rocket League*; who made these real money purchases with their own money and did so without permission from a parent or guardian; and who wish to claim benefits for those real money purchases pursuant to an asserted statutory right of contractual disaffirmation, may receive awards for one-third of their total purchase amounts at issue or $50.00, whichever is less.

These amounts are reasonable, considering the relatively small value of individual purchases within *Fortnite* and *Rocket League*. The significant relief being provided by the Settlement should also be considered reasonable because the relief was the subject of contentious negotiations occurring against the backdrop of Epic Games' significant success in defeating class claims for damages through litigation, including, here, where Defendant has expressed a firm denial of the material allegations and the intent to raise several defenses, any of which would likely result in Plaintiffs and the majority of the proposed Settlement Class Members having to individually arbitrate their claims and receiving no relief whatsoever.

Moreover, the Settlement permits Settlement Class Members to obtain their benefits relatively quickly, rather than waiting several more years to see whether this litigation, if not settled, would provide any relief. As discussed herein, the Settlement reflects Proposed Class Counsel's assessment of the strengths and weaknesses of the Class's position, as well as the amount of damages class members could expect to receive from a favorable verdict. Therefore, the Settlement is within the range of reasonableness.

ii. *The Settlement does not unreasonably treat segments of the Class differently.*

As discussed above, the Settlement provides reasonable benefits to the Settlement Class Members. *All* Settlement Class Members have the opportunity to seek recovery of any damages incurred as a result of their *Fortnite* or *Rocket League* purchases. While a portion of the Settlement Class will not receive an automatic benefit of V-Bucks or Credits because they did not acquire a random-item loot box, that automatic benefit does not impact their ability to claim benefits for the real-money purchases they did make. If, for example, a Settlement Class Member requests a cash award that does not exceed twenty-five dollars ($25.00), the Settlement Class Member will be completely reimbursed, while those that exceed twenty-five dollars ($25.00) may be awarded

twenty-five dollars ($25.00), plus fifty percent of the amount exceeding twenty-five dollars ($25.00), up to a maximum of fifty dollars ($50). If a Settlement Class Member would like to choose a V-Bucks or Credit benefit, and if the Settlement Class Member's claim does not exceed the amount for which Epic Games sells codes that can be used to add 13,500 V-Bucks or 13,000 Credits—an amount of virtual currency that Epic Games currently sells for up to $100—the Settlement Administrator may provide a V-Bucks or Credit benefit proportionate to the full amount claimed. This reimbursement procedure is uniform for *all* Settlement Class Members. Likewise, *all* Class Members who were minors at the time they made purchases using their own money may make a claim for benefits subject to minor disaffirmation. The fact that Settlement Class Members who elect to exercise minor disaffirmation rights are entitled to a smaller proportion of their real-money purchases is reasonable both because of Epic Games' significant defenses to those claims and the fact that those Settlement Class Members have the choice to not exercise their minor disaffirmation rights and instead complete the damages claim procedure available to *all* Settlement Class Members.

In short, benefits provided by the Settlement are reasonable, and the Settlement does not unreasonably grant preferential treatment to Plaintiffs or segments of the Class.

iii. *The Settlement is the product of non-collusive negotiations.*

The Settlement was unquestionably "the result of good-faith bargaining at arm's length, without collusion." *Jiffy Lube*, 927 F.2d at 159. Plaintiffs' counsel have extensive experience in litigating claims similar to those asserted in this case, including claims against Epic Games. (*See* Bryson Affidavit, ¶ 6, 9).

Prior to reaching an agreement, each side was able to independently assess and weigh the costs and risks of proceeding to trial on the claims asserted in the Action, as well as the relative

strengths and weaknesses of their respective claims and defenses. The negotiations occurred against the backdrop of years of litigation against Epic Games, including litigation involving counsel for Plaintiffs. At each step of the Action the Parties' relationship has always been adversarial. The Settlement itself was the product of negotiations through mediation overseen by an independent and highly-experienced mediator, Judge Andersen. Considering Proposed Class Counsel's vigorous pursuit of claims against Epic Games for years, as well as the involvement of a well-respected and neutral mediator, the proposed Settlement is clearly the product of non-collusive negotiations.

V. THE COURT SHOULD PRELIMINARILY CERTIFY THE SETTLEMENT CLASS.

In order to certify a class under Rule 23 of the North Carolina Rules of Civil Procedure, Plaintiff must establish: (1) the existence of a class (i.e. that shared issues of law or fact predominate over individual issues); (2) the named representatives are adequate representatives (i.e. they will fairly and adequately represent the class, there is no conflict of interest between the named representatives and the class, and the named parties have a genuine personal interest in the outcome of the case); (3) class members are so numerous to make joinder impractical; (4) adequate notice can be given to the class; and (5) a class action is superior to individual actions. *Crow*, 319 N.C. at 282, 354 S.E.2d at 465; *see also Faulkenbury*, 345 N.C. at 697, 483 S.E.2d at 431. These class certification requirements should be considered when determining whether to certify a class for settlement purposes. *See, e.g.*, *Nakatsukasa v. Furiex Pharms., Inc.*, 2015 NCBC 68, at ¶¶ 10-15 (N.C. Super Ct. July 1, 2015); *In re Newbridge Bancorp S'holder Litig.*, 2016 NCBC 87, at ¶ 37 (N.C. Super Ct. Nov. 22, 2016).

Plaintiffs' proposed Settlement Class satisfies all requirements under Rule 23. The Settlement Class Members all share the same fact pattern: they are all *Fortnite* or *Rocket League*

players who exchanged in-game virtual currency for in-game *Fortnite* or *Rocket League* items or made real-money purchases of virtual currency and exchanged that virtual currency for in-game benefits or otherwise directly purchased in-game benefits with real money. Settlement Class Members also share common legal issues: whether Epic Games violated their rights under state consumer protection laws, violated their minor contractual disaffirmation rights, or otherwise misrepresented the value of its in-game items.

Plaintiffs are adequate class representatives for the Settlement Class. Plaintiffs all either exchanged virtual currency for an in-game benefit or made a cash purchase of virtual currency or other in-game benefit within *Fortnite* or *Rocket League*. As such, they have a genuine personal interest in the outcome of the case. Plaintiffs participated in Proposed Class Counsel's pre-suit investigation and/or prior litigation against Epic Games, and remained in contact throughout the mediation and settlement process. As such, Plaintiffs have demonstrated their devotion to the prosecution of this case and to the Settlement Class.

With an estimated 25 million *Fortnite* and *Rocket League* accounts falling within the Settlement Class definition (the number of actual Class Members is certainly less because of duplicative accounts), Settlement Class Members are far too numerous to make joinder possible. For that reason and due to the low value of individual Settlement Class Members' purchases in *Fortnite* and *Rocket League*, a class action is clearly superior to individual litigation in this context. Given their low actual damages, it is unlikely that, absent a class action, these claims would be pursued by the Settlement Class Members as individual cases. This is particularly true given the existence of arbitration agreements and class action waivers governing Class Members' Epic Games accounts, which Epic Games has had significant success in enforcing.

Accordingly, considering the breadth of the Settlement Class, adequacy of the Class Representatives, commonality of the legal claims at issue and the low damages with respect to each individual Settlement Class Member, the Court should find that the Settlement Class satisfies Rule 23's requirements and certify Settlement Class.

VI. THE COURT SHOULD APPROVE THE NOTICE PLAN.

A. The Notice Plan Will Provide the Best Practicable Notice to Settlement Class Members.

Under Rule 23(c) of the North Carolina Rules of Civil Procedure, notice of a proposed settlement "shall be given to all members of the class in such a manner as the judge directs." The rule does not set forth the contents of the notice, which are "dictated by 'fundamental fairness and due process.'" *Frost v. Mazda Motor of Am., Inc.*, 353 N.C. 188, 197, 540 S.E.2d 324, 330 (2000) (quoting *Crow*, 319 N.C. at 283, 354 S.E.2d at 463). "The trial court should require that the best notice practicable under the circumstances be given to class members. Such notice should include individual notice to all members who can be identified through reasonable efforts, but it need not comply with the formalities of service of process." *Crow*, 319 N.C. at 283-84, 354 S.E.2d at 466.

Under the proposed notice plan here, Settlement Class Members will receive the best notice practicable because all Settlement Class Members who provided Epic Games with an email address when creating an account—which is nearly all of the *Fortnite* players who are Settlement Class Members—will *directly* receive notice of the Settlement. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175 (1974) ("the express language and intent of [Federal Rule of Civil Procedure] 23 (c)(2) leave no doubt that individual notice must be provided to those class members who are identifiable through reasonable effort."). In addition, the Settlement Administrator has designed and is prepared to implement a targeted online media campaign to provide notice of the settlement to those few Settlement Class Members who may not receive direct notice by email.

The Settlement Notice and Claim Form will adequately inform Settlement Class Members of the Settlement and provide the means for them to consider their various options under the Settlement. The Settlement Notice sets forth a summary of the settlement terms; an explanation of the persons and claims being released under the Settlement; a description of the Settlement Class; the date, time, and location of the Final Approval Hearing; a statement of Settlement Class Members' rights to appear and object and the procedures that must be followed to be heard; a statement that Class Counsel intends to petition for a payment of attorneys' fees and expenses; and whom to contact for more information about the Settlement. The Claim Form is written in a clear manner that can be easily followed, as reflected in Exhibit A to the Settlement Agreement. The Notice will be in a substantially similar form as those attached as Exhibits C-E to the Settlement Agreement.

In addition to the direct notice and publication notice protocols discussed above, the Settlement Administrator has created a settlement website which provides key information about the Settlement and permits Settlement Class Members to submit claims electronically. Class Members will be able to use the settlement website to access the detailed Long-Form Notice and the Claim Form, as well as the Settlement Agreement and other relevant documents. The notice plan's blend of direct email notice, an online media campaign, and the establishment of a settlement website will achieve the best notice practicable to Settlement Class Members, as required by Rule 23 of the North Carolina Rules of Civil Procedure.

B. A Final Approval Hearing Should be Scheduled.

This Court should schedule a Final Approval Hearing because the Settlement is within the range of reasonableness and the notice plan provides the best practicable notice to Settlement Class

Members. The Parties propose that a Final Approval Hearing occur on or after May 6, 2021. Plaintiffs propose the following schedule of events leading to the final approval hearing:

Item	Deadline
Dissemination of Notice to Class Members (Notice Date):	The date of entry of the Preliminary Approval Order.
Deadline to File Motion of Award of Attorneys' Fees	Within Thirty-One (31) days after the Notice Date (*i.e.*, at least fourteen (14) days prior to the Objection/Exclusion Deadline).
Deadline for Settlement Class Members to Opt-Out of or Object to the Settlement	Forty-five (45) days after the Notice Date.
Deadline to File Motions for Final Approval:	Five (5) days before the Final Approval Hearing.
Deadline for Class Members to submit Claim Forms:	Sixty (60) days after the Notice Date.
Final Approval Hearing:	No earlier than seventy-three (73) days after entry of the Preliminary Approval Order.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court to enter an order: (1) preliminarily approving the Parties' proposed Settlement; (2) preliminarily certifying the Settlement Class described above; (3) approving the form and manner of notice set forth herein, and (4) setting a hearing date for final approval of the proposed Settlement and corresponding interim deadlines for dissemination of notice and for objections by Settlement Class Members; and to grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 18th day of February 2021.

WHITFIELD BRYSON LLP

/s/ Daniel K. Bryson
DANIEL K. BRYSON
N.C. State Bar No. 15781
PATRICK M. WALLACE
N.C. State Bar No. 48138
900 W. Morgan Street
Raleigh, North Carolina 27603
Telephone: (616) 600-5000
Facsimile: (616) 600-5035
dan@whitfieldbryson.com
pat@whitfieldbryson.com

MYLES MCGUIRE
Pro Hac Vice *pending*
EVAN M. MEYERS
Pro Hac Vice *pending*
TIMOTHY P. KINGSBURY
Pro Hac Vice *pending*
COLIN BUSCARINI
Pro Hac Vice *pending*
MCGUIRE LAW, P.C.
55 West Wacker Drive, 9th Fl.
Chicago, Illinois 60601
Telephone: (312) 893-7002
Facsimile: (312) 275-7895
mmcguire@mcgpc.com
emeyers@mcgpc.com
tkingsbury@mcgpc.com
cbuscarini@mcgpc.com

TIMOTHY DEVLIN
Pro Hac Vice
DEVLIN LAW FIRM, LLC
1526 Gilpin Ave.
Wilmington, Delaware 19806
Telephone: (302) 449-9010
Facsimile: (302) 353-4251
tdevlin@devlinlawfirm.com

DEEPALI BRAHMBHATT
Pro Hac Vice
DEVLIN LAW FIRM, LLC
3120 Scott Blvd. #13
Santa Clara, CA 95054

Telephone: (650) 254-9805
Facsimile: (302) 353-4251
dbrahmbhatt@devlinlawfirm.com

MICHAEL J. MCMORROW
Pro Hac Vice *pending*
MCMORROW LAW, P.C.
6348 N. Milwaukee Ave.
Chicago, Illinois 60646
Telephone: (312) 265-0708
mike@mjmcmorrow.com

Attorneys for Plaintiffs and Proposed Class Counsel

CERTIFICATE OF SERVICE

The undersigned counsel for Plaintiff hereby certifies that he has this day caused a copy of the foregoing **Plaintiffs' Memorandum of Law in Support of Their Unopposed Motion For Preliminary Approval of Settlement, Certification of Settlement Class, Approval of Class Notice, and Scheduling of Final Approval Hearing** to be emailed to the counsel of record listed below:

Faegre Drinker Biddle & Realth LLP
Jeffrey S. Jacobson
1177 Avenue of the Americas, 41st Floor
New York, NY 10036
Jeffrey.jacobson@fagredrinker.com

Williams Mullen
Robert C. Van Arnam
301 Fayetteville Street, Suite 1700
Raleigh, NC 27601
rvanarnam@williamsmullen.com

Dated: February 18, 2021

WHITFIELD BRYSON LLP

/s/ Daniel K. Bryson
DANIEL K. BRYSON
N.C. State Bar No. 15781
PATRICK M. WALLACE
N.C. State Bar No. 48138
900 W. Morgan Street
Raleigh, North Carolina 27603
Telephone: (616) 600-5000
Facsimile: (616) 600-5035
dan@whitfieldbryson.com
pat@whitfieldbryson.com