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9 Attorneys for Plaintiff,
10 JAMES FALLS

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 JAMES FALLS, individually and on)
14 behalf of other persons similarly)
15 situated,)

16 Plaintiffs,)

17 vs.)

18 SOULBOUND STUDIOS, LLC;)
19 SOULBOUND STUDIOS (USA);)
20 XSOLLA (USA), Inc.; and DOES 1)
21 through 50)

22 Defendants.)

) CASE NO.

) **CLASS ACTION**

) **COMPLAINT**

) **1. BREACH OF CONTRACT**

) **2. VIOLATION OF**
) **CONSUMERS LEGAL**
) **REMEDIES ACT (Cal. Civil**
) **Code §§1750 *et seq.*)**

) **3. UNFAIR COMPETITION**
) **(Cal. Bus. & Prof Code.**
) **§§17200 *et seq.*)**

) **4. DECLARATORY RELIEF**

) **DEMAND FOR JURY TRIAL**

23)
24)
25)
26 Plaintiff, JAMES FALLS (“Plaintiff”) on behalf of himself, and all others
27 similarly situated, complains and alleges as follows:
28

1 6. Plaintiff is informed and believes that Defendants, Xsolla (USA), Inc.;

2 and DOES 11 through 20 (hereinafter “Xsolla”) are payment processing companies

3 that work in conjunction with video game developers to collect purchases made by

4 consumers.

5

6 7. Plaintiff is informed and believes that DOES 1 through 50 are

7 corporations, individuals, limited liability partnerships, limited liability companies,

8 general partnerships, sole proprietorships or are other business entities or

9 organizations of a nature not currently known to Plaintiff.

10

11

12 8. Plaintiff is unaware of the true names of Defendants DOES 1 through

13 50. Plaintiff sues said Defendants by said fictitious name, and will amend this

14 complaint when the true names and capacities are ascertained or when such facts

15 pertaining to liability are ascertained, or as permitted by law or by the Court.

16 Plaintiff is informed and believe that each of the fictitiously named Defendants is in

17 some manner responsible for the events and allegations set forth in this Complaint.

18

19

20 9. Plaintiff is informed and believes, and based thereon alleges that at all

21 relevant times, each Defendant was an employer, was the principal, agent, partner,

22 joint venture, officer, director, controlling shareholder, subsidiary affiliate, parent

23 corporation, successor in interest and/or predecessor in interest of some or all of the

24 other Defendants, and was engaged with some or all of the other Defendants in a joint

25 enterprise for profit and bore such other relationships to some or all of the other

26 Defendants so as to be liable for their conduct with respect to the matters alleged in

27

28

1 related to CoE.

2 13. SBS was in pre-production for several years. SBS began development of
3 CoE in November 2016.
4

5 14. SBS had a goal through Kickstarter to raise \$900,000. Through
6 Kickstarter, SBS raised \$1,361,435 to develop CoE. SBS made approximately
7 \$8,000,000 in total sales for CoE (\$1,361,435 from Kickstarter and approximately
8 \$6,638,565 in sales via SBS's online store).
9

10 15. The "sales" referenced herein mean items were purchased from SBS
11 through Xsolla with the expectation of receiving those items and using them in CoE.
12

13 16. In or around July 2017, SBS released a detailed announcement which
14 advised of SBS's timeline, its systems, and its progress regarding CoE development.
15 Within this update, SBS showcased a video with game play footage. Nowhere did
16 this video say or have any disclaimer which stated that what was being shown was
17 not actual gameplay footage of CoE. Instead, Plaintiff later found out the footage
18 SBS offered as game play footage of CoE was actually cinematics. Generally, when
19 game play footage is shown it boosts the confidence of the community to further
20 support the developer because it lets consumers know what the game currently looks
21 like. This delineation is important because if it was game play footage that means
22 SBS had taken actual game development to show its consumers development
23 progress as opposed to cinematics which can be made in a studio to simply post
24 online and is not taken from the actual development of the game.
25
26
27
28

1 17. SBS announced the launch date of CoE could be within a window of
2 time from July 2019 to December 2019. As of the date of this filing, CoE has still
3
4 not come to fruition. In fact, in March 2020, Jeremy Walsh, CEO of SBS, announced
5 that SBS had stopped production of CoE.

6 **B. Plaintiff and Those Similarly Situated**

7
8 18. Plaintiff purchased approximately \$20,000 in downloadable content for
9 CoE.

10 19. To effectuate these purchases, Plaintiff went to the CoE website run by
11 SBS. Plaintiff found what he wanted to purchase and was required to register for an
12 account with CoE. During registration SBS placed a checkbox that Plaintiff was
13 required to check to agree to the terms. The SBS Terms of Use stated, in pertinent
14 part,
15

16 “Section 5. Any portion of funds raised for the provision of the
17 Services shall be non-refundable, unless such funds shall be deemed
18 refundable under terms of services of the third-party service through
19 which those funds for the provision of Services were procured and in
20 effect at the time of provision of those funds.”

21 20. The CoE site took Plaintiff to Xsolla’s website to process payment of the
22 items. When using Xsolla’s checkout process, there is a small clickable link in the
23 bottom right of the web page with the word “terms”. When you click on the “terms”
24 link it shows Xsolla’s refund policy. The policy states, in pertinent part,
25

26 “The terms of this Refund policy govern the relationship between you
27 (purchaser of the Software) and one of the companies of the Xsolla
28 group (hereinafter “Xsolla” or “us” or “we”) regarding your purchase

1 of the Software.”

2
3 “We DO honor requests for the refund upon your request on the
4 following reasons . . . Pre-orders where no content has been delivered
5 yet.”

6 21. Plaintiff is informed and believes and thereon alleges that SBS is one of
7 the companies of the Xsolla Group regarding purchases of software as referenced in
8 Xsolla’s refund policy through an end-user license agreement (EULA). As such,
9 based on SBS’s refund policy wherein its “third-party” service provider allows for
10 such refunds, Xsolla’s refund policy is recognized by SBS, since the purchases were
11 made through Xsolla.
12

13
14 22. Plaintiff, and those similarly situated, have requested a refund and have
15 not been provided any refund.
16

17 23. As a result of this conduct, Defendants have profited from retaining the
18 money it is required to refund to every person who, like Plaintiff, requested for a
19 refund and did not receive it.
20

21 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

22 24. Plaintiff brings this action on behalf of himself and on behalf of all other
23 similarly situated persons as a class action pursuant to Fed. R. Civ. P. Rule 23. The
24 members of the Class are defined as follows:
25

26 **All persons in the world who purchased downloadable content for**
27 **Chronicles of Elyria from Soulbound Studios and Xsolla within the**
28 **last four (4) years, requested a refund where no game content had**
been delivered, and did not receive a refund.

1 25. This action has been brought and may be properly maintained as a class
2 action pursuant to the provisions of Fed. R. Civ. P. Rule 23 and other applicable law.

3
4 26. **Numerosity of the Classes:** Members of the Classes are so numerous
5 that their individual joinder is impracticable. Plaintiff estimate that there are no less
6 than 1,000 persons in the identified classes. The precise number of Class members
7 and their addresses are unknown to Plaintiff. However, Plaintiff is informed and
8 believes and thereon alleges that the number can be obtained through SBS and Xsolla
9 records of purchase for downloadable content for CoE. Class members may be
10 notified of the pendency of this action by conventional mail, electronic mail, the
11 Internet, or published notice.
12

13
14 27. **Existence of Predominance of Common Questions of Fact and Law:**
15 Common questions of law and fact exist as to all members of the Classes. These
16 questions predominate over any questions effecting only individual members of the
17 classes. These common factual and legal questions include:
18

19 (a) Whether SBS breached its refund policy;
20 (b) Whether Xsolla breached its refund policy;
21 (c) Whether Plaintiff and those similarly situated were consumers
22 pursuant to Cal. Civil Code §§1750 *et seq.*
23

24 (d) Whether Defendants' conduct as alleged herein violated Cal. Civil
25 Code §§1750 *et seq.*
26

27 (e) Whether Defendants' conduct as alleged herein resulted in a
28

1 windfall of profits that Defendants were not entitled;

2 (f) Whether Defendants' committed unlawful business practices or
3 acts within the meaning of Business & Professions Code §§17200 *et seq.*;

4 (g) Whether Defendants raise any affirmative defenses that are
5 universal in application.
6

7
8 28. **Typicality**: Plaintiff's claims are typical of the claims of the members
9 of the Class because Plaintiff purchased downloadable content from Defendants for
10 use on CoE, requested a refund and did not receive any refund. Plaintiff sustained
11 the same types of injuries and damages that the Classes members sustained. Plaintiff
12 is subject to the same affirmative defenses as the members of the classes.

13
14 29. **Adequacy**: Plaintiff will adequately and fairly protect the interests of
15 the members each of the Class. Plaintiff has no interest adverse to the interests of
16 absent Class members. Plaintiff is represented by legal counsel who has substantial
17 class action experience in civil litigation.
18

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20 30. **Superiority**: A class action is superior to other available means for fair
21 and efficient adjudication of the claims of the Class and would be beneficial for the
22 parties and the court. Class action treatment will allow a large number of similarly
23 situated persons to prosecute their common claims in a single forum, simultaneously,
24 efficiently, and without the unnecessary duplication of effort and expense that
25 numerous individual actions would require. The monetary amounts due to many
26 individual class members are likely to be relatively small, and the burden and
27
28

1 expense of individual litigation would make it difficult or impossible for individual
2 members of each Class to seek and obtain relief. A class action will serve an
3 important public interest by permitting such individuals to effectively pursue
4 recovery of the sums owed to them. Further, class litigation prevents the potential for
5 inconsistent or contradictory judgments raised by individual litigation.
6

7
8 **FIRST CAUSE OF ACTION**
9 **BREACH OF CONTRACT**
10 **(By Plaintiff and the Class against all Defendants)**

11 31. Plaintiff incorporates paragraphs 1 through 30 of this complaint as
12 though fully alleged herein.

13 32. Plaintiff, and those similarly situated, entered into a written contract
14 (with implied provisions) with SBS and Xsolla. The terms of the contract was that
15 SBS would refund Plaintiff and the putative class's money for downloadable content,
16 upon request, where no game content had been delivered. Attached hereto and
17 incorporated herein as **Exhibit 1** is a true and correct copy of the contract.
18

19 33. As more fully set forth in the paragraphs incorporated herein,
20 Defendants breached the contract by failing to refund Plaintiff and the putative
21 class's money after they made a request for refund where SBS failed to deliver game
22 content.
23

24 34. Plaintiff and the putative class has performed all covenants and
25 conditions required under the contract or have been excused from doing so due to
26 Defendants' breach.
27
28

1 1. That this action be certified as a class action pursuant to Fed. R. Civ. P.
2 Rule 23;

3
4 2. That pursuant to Cal. Business & Professions Code §17204, Defendants,
5 its officers, directors, principals, assignees, successors, agents, representatives,
6 employees, subsidiaries, affiliates, and all persons, corporations and other
7 entities acting by, through, under, or on behalf of said defendant, or acting in
8 concert or participation with it, be permanently enjoined from directly or
9 indirectly committing any violations of Cal. Business and Professions Code
10 §§17200 *et seq.*, including, but not limited to, the violations alleged in this
11 complaint;
12

13
14 3. Ordering the disgorgement of all sums unjustly withheld from Plaintiff,
15 the members of the Class and the public;
16

17 4. Ordering Defendant to make restitution to Plaintiff, the members of the
18 Class and the public if it is found the practice is illegal;
19

20 5. An order granting the declaratory relief sought in the fourth cause of
21 action for Plaintiff and each member of the Class;
22

23 6. Awarding prejudgment and post-judgment interest at the maximum legal
24 rate;

25 7. Awarding attorneys' fees according to proof;

26 8. Awarding costs of suit herein; and
27

28 ///

1 9. All such other and further relief as the Court deems just.
2
3

4 Date: February 1, 2021

McCATHERN LLP

5
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8 CHRISTINE ZAOUK
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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for himself and the Class on all claims so triable.

Date: February 1, 2021

McCATHERN LLP

By: *Evan Selik*
EVAN SELIK
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Attorneys for Plaintiff,
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