

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

JOHNATHAN ERLER, GRANT SHINDO, CYNTHIA MOREN, RYAN JAQUES, THOMAS BELLO, JORDAN POLLACK, MICHAEL APPERSON, AARON PINKHAM, ANDREW SCHWEIG, ALDEN RANDALL, MICHAEL RANTON, BRANDON PETTIT, THOMAS RODRIGUEZ, BILAL AWADALLAH, IZAAK KEMP, THOMAS COX, MARK LAROCHE, TRAVIS HENLEY, IAN NYTES, MITCHELL LEVY, ULISES MORENO-ORTEGA, JAMES LEA, CHARLES DECELLES, CAMERON BURGER, NATHAN KUJACZNSKI, MICHAEL LEE, JARED LIEBOWITZ, and AARON SMITH, Individually, and on Behalf of a Class of Similarly Situated Persons,

Plaintiffs,

v.

HASBRO, INC. and WIZARDS OF THE COAST LLC,

Defendants.

CIVIL ACTION NO. \_\_\_\_\_

**DEFENDANTS' NOTICE OF REMOVAL OF CIVIL ACTION TO  
FEDERAL COURT**

Defendants Hasbro, Inc. ("Hasbro") and Wizards of the Coast LLC

(“WOTC”) (collectively, the “Removing Parties” or “Defendants”) reserving any and all defenses and exceptions, remove this action from the State Court of Gwinnett County, Georgia to the United States District Court for the Northern District of Georgia pursuant to 28 U.S.C. §§ 1332 (as amended by the Class Action Fairness Act 2005, Pub. L. 109-2, section 4(a) (the “CAFA”)), 1441(a) and (b), and 1446. In support of removal, the Removing Parties state as follows:

## **I. INTRODUCTION**

1. This case is hereby removed from state court to federal court pursuant to 28 U.S.C. § 1332 because at the time the state court complaint was filed, and at this time: (1) diversity of citizenship exists between the parties; and (2) as alleged by Plaintiffs in the First Amended Class Action Complaint (“Amended Complaint”), the amount in controversy arising from the claims of plaintiffs Jonathan Erler, Grant Shindo, Cynthia Moren, Ryan Jaques, Thomas Bello, Jordan Pollack, Michael Apperson, Aaron Pinkham, Andrew Schweig, Alden Randall, Michael Ranton, Brandon Pettit, Thomas Rodriguez, Bilal Awadallah, Izaak Kemp, Thomas Cox, Mark Laroche, Travis Henley, Ian Nytes, Mitchell Levy, Ulises Moreno-Ortega, James Lea, Charles Decelles, Cameron Burger, Nathan Kujacznski, Michael Lee, Jared Liebowitz, and Aaron Smith (“Plaintiffs”) and the

putative class exceeds the sum or value of \$5,000,000. Therefore, this Court has original jurisdiction under 28 U.S.C. § 1332(d).

## **II. THE STATE COURT ACTION**

2. On May 8, 2019, Plaintiff Jonathan Erler initiated this case on behalf of himself and a proposed class by filing a lawsuit captioned, *Jonathan Erler, individually and on behalf of a class of similarly situated persons v. Hasbro, Inc. and Wizards of the Coast, LLC*, in the State Court of Gwinnett County, State of Georgia, Civil Action No. 19-C-03355-S4 (“Complaint”). The initial Complaint sought recovery of monetary damages and other relief against Defendants in connection with the following purported three causes of action: (1) breach of contract; (2) breach of the duty of good faith and fair dealing; and (3) negligence. A true and correct copy of the Complaint is attached hereto as Exhibit A. Defendants were served with the Complaint on May 16, 2019.

3. On May 23, 2019, Plaintiffs filed the First Amended Class Action Complaint (“Amended Complaint”). The Amended Complaint added 27 named plaintiffs. A true and correct copy of the Amended Complaint is attached hereto as Exhibit B. Defendant Hasbro was served with the Amended Complaint on May 31, 2019. Defendant WOTC was served with the Amended Complaint on June 5,

2019. A true and correct copy of the Summons and Complaint Served on Defendant WOTC is attached hereto as Exhibit C.

### **III. COMPLIANCE WITH STATUTORY REQUIREMENTS**

4. Copies of all process, pleadings and orders served upon the Removing Parties as of June 5, 2019 are attached and incorporated by reference as Exhibits A-C.

5. This Notice of Removal is timely under 28 U.S.C.A. §§ 1446(b), 1453(b). This Notice of Removal has been filed in this Court within thirty days of May 16, 2019, the date on which Hasbro, Inc., the first-served defendant, was served with the Complaint.

6. Defendant is filing a written Notice of Removal to the Clerk of the State Court of Gwinnett County, Georgia, the court in which the action is currently pending pursuant to 28 U.S.C. § 1446(d). Copies of this Notice of Removal are being served on Plaintiffs' counsel pursuant to 28 U.S.C. § 1446(d).

### **IV. VENUE**

7. The geographic scope of the United States District Court for Northern District of Georgia encompasses the State Court of Gwinnett County, State of Georgia where the action is currently pending, and thus this Court is a proper

venue for this action.

**V. JURISDICTION PURSUANT TO THE CLASS ACTION FAIRNESS ACT**

8. Pursuant to CAFA, “[t]he district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). CAFA’s intent “is to strongly favor the exercise of federal diversity jurisdiction over class actions with interstate ramifications” and “its provisions should be read broadly, with a strong preference that interstate class actions should be heard in federal court if properly removed by any defendant,” considering that such class actions usually have “significant implications for interstate commerce and national policy.” S. Rep. 109-14.

9. In addition, CAFA provides for jurisdiction in the district courts where the proposed class involves 100 or more members, or where the primary defendants are not states, state officials, or other governmental entities. 28 U.S.C. § 1332(d)(5). Thus, as set forth below, this is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332(d) because it is a civil action filed

as a class action involving more than 100 putative class members; the amount in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs, based on the allegations that Plaintiffs set forth in the Amended Complaint; nearly all Plaintiffs are from different states than Defendants; and no Defendant is a state, state official, or government entity.

**A. Numerosity.**

10. CAFA provides that the district courts shall not have jurisdiction over actions “where the number of members of all proposed plaintiff classes in the aggregate is less than 100.” 28 U.S.C. § 1332(d)(5). Plaintiffs’ proposed putative classes include “[a]ll residents of the United States that had a confirmed purchase of WSME from Defendants’ eBay store and who then subsequently had their purchase canceled by, or at the request of. Defendants,” as well as 25 subclasses from various states (the “Putative Classes”). (Amended Complaint ¶ 42.) According to the pleadings, Plaintiffs allege that “there are more than one hundred persons in each of the proposed classes.” (Amended Complaint ¶ 44.)

**B. Diversity of Citizenship.**

11. CAFA’s diversity requirement is satisfied when any member of a class of plaintiffs is a citizen of a state different from any defendant. 28 U.S.C. §

1332(d)(2).

12. According to the allegations of the Amended Complaint, Plaintiffs are citizens of the States of Georgia, Hawaii, California, Colorado, Florida, Illinois, Kentucky, Massachusetts, Minnesota, Missouri, Nevada, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Wisconsin, Maryland, Utah, Texas, Arizona, Virginia, Michigan, and Washington. (Amended Complaint ¶¶ 1-28.)

13. A corporation is a citizen of any state where it is incorporated and of the state where it has its principal place of business. 28 U.S.C. § 1332(c). Defendants' citizenship is as follows:

a. **Hasbro, Inc.**

According to the Amended Complaint, Plaintiffs allege that Defendant Hasbro is a non-resident defendant registered to do business in Georgia. (Amended Complaint ¶ 29.) Hasbro is a corporation formed under the laws of the state of Rhode Island with its principal place of business in Pawtucket, Rhode Island. *See* Declaration of Robert Turner ¶ 2; 28 U.S.C. § 1332(c), attached hereto as Exhibit D.

**b. Wizards of the Coast LLC**

According to the allegations of the Complaint, Defendant WOTC is a citizen of Delaware. (Amended Complaint ¶ 30.)

14. All but one of the Plaintiffs, a resident of Rhode Island, are citizens of different states from Defendants. Therefore, CAFA's diversity requirement is easily met here.

**C. The Amount in Controversy Exceeds \$5,000,000.**

15. CAFA authorizes the removal of class action cases in which, among other factors mentioned above, the amount in controversy for all class members exceeds \$5,000,000. 28 U.S.C. § 1332(d)(2). “[A] defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554, 190 L. Ed. 2d 495 (2014). Plaintiffs do not specifically allege an amount of damages and/or recoverable penalties in the Amended Complaint, nor do they allege that the aggregate amount in controversy is less than \$5,000,000.

16. In determining whether the amount in controversy exceeds \$5,000,000, the Court “is precluded from inquiring into the amount a party is likely to receive on the merits” and must consider only what is at issue in the litigation.



*McDaniel v. Fifth Third Bank*, 568 F. App'x 729, 731 (11th Cir. 2014). Here, Defendants deny the merit of each of Plaintiffs' claims, including the theories upon which they seek recovery. However, for purposes of determining whether jurisdiction exists pursuant to CAFA, the amount in controversy for all class members exceeds \$5,000,000, exclusive of interest, and costs. *See Dart Cherokee Basin Operating Co.*, 135 S. Ct. at 551.

17. Plaintiffs seek “[a]ll compensatory damages on all applicable claims in an amount to be proven at trial and allowed by law” and “[a]ll other and further relief that the Court deems appropriate and just under the circumstances.” (Amended Complaint ¶ 92.)

18. In determining the amount in controversy, the Court may consider “facts alleged in the notice of removal, judicial admissions made by the plaintiffs, non-sworn letters submitted to the court, or other summary judgment type evidence that may reveal that the amount in controversy requirement is satisfied.” *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 754 (11th Cir. 2010) (citation omitted). According to Amended Complaint, Plaintiffs allege that there are “more than one hundred persons in each of the [26] proposed classes.” (Amended Complaint ¶ 44.) Although Defendants do not concede that certification is appropriate here,

more than 30,000 orders were processed by non-party eBay, Inc. in excess of the 12,000 units offered by Hasbro through non-party eBay, Inc. *See* Declaration of Nicholas Mitchell ¶ 3.

19. Plaintiffs allege that, after their orders were cancelled, their “only option is to purchase units of WSME at its substantially higher fair market price from third-party sellers” and that they are “entitled to recover damages in an amount equal to the fair market value of their purchase.” (Amended Complaint ¶¶ 40, 66, 85, 90.) Plaintiffs allege, therefore, that they are entitled to the difference between the \$249.99 purchase price and the current resale value of the product for each putative class member. (Amended Complaint ¶ 55.) Defendants do not acknowledge the presence of any damages here or allegations of damages based on a secondary market set by unauthorized third-parties. To the extent alleged by Plaintiffs and relevant to the removal sought here, however, the War of the Spark Mythic Edition has been offered for resale by unauthorized third-parties on non-party eBay, Inc. for more than twice the original \$249.99 sales price. *See* Declaration of Nicholas Mitchell ¶ 5.

20. Presuming, as it must for purposes of determining jurisdiction under CAFA, that Plaintiffs will prevail on even a subset of the claims asserted in the

Amended Complaint, the data set forth above demonstrates that the amount in controversy in this action exceeds \$5,000,000. Therefore, the aggregate claimed damages by Plaintiffs on behalf of themselves and all members of the Putative Class, exclusive of interest and costs, exceed the jurisdictional minimum amount in controversy.

WHEREFORE, Defendants request that this Notice of Removal be deemed sufficient and that this matter be removed to this Court.

Dated: June 11, 2019

*Signature on following page*

**MILLER & MARTIN PLLC**

*Attorneys for Defendants Hasbro, Inc.  
and Wizards of the Coast LLC*

/s/ Shelby R. Grubbs

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**OF COUNSEL**

WINSTON & STRAWN LLP

Thomas P. Lane (*pro hac vice application to follow*)

Matthew A. Stark (*pro hac vice application to follow*)

Cesie Alvarez (*pro hac vice application to follow*)

200 Park Avenue.

New York, NY 10166-4193

Telephone: (212) 294-6700

Facsimile: (212) 294-4700

**CERTIFICATE OF SERVICE**

I hereby certify that on June 11, 2019, the foregoing **DEFENDANTS' NOTICE OF REMOVAL OF CIVIL ACTION TO FEDERAL COURT** was filed and served electronically by the Court's CM/ECF system upon all registered users and by email to:

Matthew Q. Wetherington  
matt@wernerlaw.com  
Robert N. Friedman  
robert@wernerlaw.com  
2860 Piedmont Road NE  
Atlanta, Georgia 30305

/s/ Shelby R. Grubbs  
Shelby R. Grubbs  
Georgia Bar No. 314500  
Shelby.grubbs@millermartin.com  
1180 West Peachtree St., NE  
Suite 2100  
Atlanta, GA 30309-3407  
Telephone: (404) 962-6100  
Facsimile: (404) 962-6300

# **Exhibit A**



**Service of Process  
Transmittal**

05/16/2019

CT Log Number 535490002

**TO:** Tarrant Sibley  
Hasbro, Inc.  
1027 Newport Ave  
Pawtucket, RI 02861-2500

**RE: Process Served in Georgia**

**FOR:** Hasbro, Inc. (Domestic State: RI)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** JOHNATHAN ERLER, ETC., PLTF. vs. HASBRO, INC. AND WIZARDS OF THE COAST, LLC, DFTS.

**DOCUMENT(S) SERVED:** .

**COURT/AGENCY:** .  
Case # 19C0335554

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Lawrenceville, GA

**DATE AND HOUR OF SERVICE:** By Process Server on 05/16/2019 at 15:10

**JURISDICTION SERVED :** Georgia

**APPEARANCE OR ANSWER DUE:** within 30 days after service of this summons upon you, exclusive of the day of service

**ATTORNEY(S) / SENDER(S):** .  
.  
. . .

**ACTION ITEMS:** SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780112870488  
Image SOP  
Email Notification, Christine Meehan cmeehan@hasbro.com  
Email Notification, Tarrant Sibley Tarrant.Sibley@hasbro.com  
Email Notification, Robert Turner Robert.Turner@Hasbro.com

**SIGNED:** C T Corporation System  
**ADDRESS:** 289 S Culver St.  
Lawrenceville, GA 30046-4805  
**TELEPHONE:** 214-932-3601

E-FILED IN OFFICE - JM  
CLERK OF STATE COURT  
GWINNETT COUNTY, GEORGIA  
19-C-03355-S4  
5/8/2019 12:16 PM

IN THE STATE COURT OF GWINNETT COUNTY

STATE OF GEORGIA

*Richard T. Alexander, Jr.*  
CLERK OF STATE COURT

**JOHNATHAN ERLER,**  
**Individually, and on behalf of**  
**a Class of Similarly Situated Persons,**

CIVIL ACTION 19-C-03355-S4  
NUMBER: \_\_\_\_\_

PLAINTIFF

VS.

**HASBRO, INC., and**  
**WIZARDS OF THE COAST, LLC,**

DEFENDANT

**SUMMONS**

TO THE ABOVE NAMED DEFENDANT: HASBRO, INC.

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

Matthew Q. Wetherington, Esq. and Robert N. Friedman, Esq.  
Werner Wetherington PC  
2860 Piedmont Rd NE  
Atlanta, GA 30305

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 8TH day of MAY, 2019.

Richard T. Alexander, Jr.,  
Clerk of State Court

By *Richard T. Alexander, Jr.*  
Deputy Clerk

INSTRUCTIONS: Attach addendum sheet for additional parties if needed, make notation on this sheet if addendum sheet is used.



IN THE STATE COURT OF GWINNETT COUNTY  
STATE OF GEORGIA

  
CLERK OF STATE COURT

JOHNATHAN ERLER, Individually, and on  
Behalf of a Class of Similarly Situated Persons,

Plaintiff,

v.

HASBRO, INC., and  
WIZARDS OF THE COAST, LLC,

Defendants.

CIVIL ACTION NO.

19-C-03355-S4

**CLASS ACTION COMPLAINT**

Hasbro, Inc. ("Hasbro"), a toy and board game company, acting in concert with its subsidiary Wizards of the Coast, LLC ("Wizards"), listed for purchase one of its collectable card-game products, Magic the Gathering, War of the Spark Mythic Edition ("WSME"), on Hasbro's eBay store. Plaintiff and the proposed class members entered into a binding contract to purchase WSME on Hasbro's eBay store and received written confirmation of their purchase. Defendants then unilaterally cancelled the sales contract of Plaintiff, and other similarly situated persons, without legal authority. Plaintiff and the proposed class members were thus denied the benefit of their purchase. Because WSME was a limited-edition product that is now sold out, Plaintiff and the proposed class members can now only obtain WSME at its substantially higher fair market value.

**I. PARTIES**

1. Plaintiff is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff is a citizen and resident of Gwinnett County, Georgia. By bringing this action, Plaintiff avails himself of the jurisdiction of this Court.
2. Hasbro is a corporation registered to do business in Georgia that is subject to the

jurisdiction of this Court. Hasbro may be served through its registered agent, C T Corporation System, at 289 S Culver St, Lawrenceville, GA, 30046. Venue is proper as to Hasbro because its registered office is located in Gwinnett County. Hasbro is further subject to the jurisdiction of the Court for, among others, the following reasons:

- 2.1 A nonresident defendant is subject to personal jurisdiction under the Georgia long-arm statute by virtue of doing business in Georgia, by contracting with Georgia residents pursuant to contracts to be performed in part in Georgia, and/or by committing torts where one or more elements of the tort occurred in Georgia. Hasbro has engaged in such business in Georgia.
- 2.2 It knowingly, intentionally, and deliberately placed WSME into the stream of commerce under circumstances such that Hasbro should reasonably anticipate being haled into court in Georgia to answer claims about the sale of its product in Georgia.
- 2.3 It regularly does business in Georgia, solicits business in Georgia, derives substantial revenue from goods or services in Georgia, derives substantial revenue from Georgia residents via internet sales, has agents or representatives or officers or employees in Georgia, maintains an office in Georgia, and has subsidiaries or business affiliates in Georgia.
- 2.4 It places its products into the stream of commerce by targeting Georgia consumers through approved distributors in the State.
- 2.5 It has come into the courts of Georgia, without ever claiming a lack of jurisdiction, to answer claims about its products in Georgia.

- 2.6 It has been a party seeking relief or review in cases where it has purposefully availed itself of the jurisdiction of the courts of Georgia.
- 2.7 It has a regular plan for the distribution of its products in Georgia with the goal of achieving a commercial benefit from the sale of products in Georgia.
- 2.8 It engages in national marketing of its products that intentionally pervade into the Georgia market.
- 2.9 It targets marketing specific to Georgia.
- 2.10 It oversees aspects of its products from within Georgia.
- 2.11 It holds patents and trademarks which it demands must be honored in Georgia.
- 2.12 It has contractual agreements with Georgia companies to use its trademarks in Georgia, specifically including Magic the Gathering and WSME.
- 2.13 It has purposefully availed itself of the privilege and benefits of conducting business in Georgia.
- 2.14 Its negligent acts both inside and outside Georgia caused injury within Georgia.
- 2.15 The claims in this action are connected with and/or relate to its extensive contacts with Georgia.
- 2.16 Georgia has an interest in adjudicating this dispute which occurred, at least in part, in Georgia, and which involved actions that caused harm to Georgia residents.

2.17 Allowing Hasbro to escape jurisdiction would improperly allow Hasbro to wield the Due Process Clause as a territorial shield to avoid interstate obligations that Hasbro has voluntarily assumed.

3. Wizards is a limited liability company incorporated in Delaware. Wizards may be served through its registered agent The Corporation Trust Company at 1209 Orange St, Wilmington, DE 19801. Venue is proper as to Wizards because it is a joint tortfeasor with one or more Defendants that reside in Gwinnett County. Wizards is further subject to the jurisdiction of the Court for, among others, the following reasons:

3.1 A nonresident defendant is subject to personal jurisdiction under the Georgia long-arm statute by virtue of doing business in Georgia, by contracting with Georgia residents pursuant to contracts to be performed in part in Georgia, and/or by committing torts where one or more elements of the tort occurred in Georgia. Wizards has engaged in such business in Georgia.

3.2 It knowingly, intentionally, and deliberately placed WSME into the stream of commerce under circumstances such that Wizards should reasonably anticipate being haled into court in Georgia to answer claims about the sale of its product in Georgia.

3.3 It regularly does business in Georgia, solicits business in Georgia, derives substantial revenue from goods or services in Georgia, derives substantial revenue from Georgia residents via internet sales, has agents or representatives or officers or employees in Georgia, maintains an office in Georgia, and has subsidiaries or business affiliates in Georgia.

- 3.4 It places its products into the stream of commerce by targeting Georgia consumers through approved distributors in the State.
- 3.5 It has a regular plan for the distribution of its products in Georgia with the goal of achieving a commercial benefit from the sale of products in Georgia.
- 3.6 It engages in national marketing of its products that intentionally pervade into the Georgia market.
- 3.7 It targets marketing specific to Georgia.
- 3.8 It oversees aspects of its products from within Georgia.
- 3.9 It holds patents and trademarks which it demands must be honored in Georgia.
- 3.10 It has contractual agreements with Georgia companies to use its trademarks in Georgia, specifically including Magic the Gathering and WSME.
- 3.11 It has purposefully availed itself of the privilege and benefits of conducting business in Georgia.
- 3.12 Its negligent acts both inside and outside Georgia caused injury within Georgia.
- 3.13 The claims in this action are connected with and/or relate to its extensive contacts with Georgia.
- 3.14 Georgia has an interest in adjudicating this dispute which occurred, at least in part, in Georgia, and which involved actions that caused harm to Georgia residents.

3.15 Allowing Wizards to escape jurisdiction would improperly allow Wizards to wield the Due Process Clause as a territorial shield to avoid interstate obligations that Wizards has voluntarily assumed.

II. STATEMENT OF FACTS

4. On or about April 18, 2019, Hasbro and Wizards announced the sale of WSME on its website. According to the announcement, WSME is limited to 12,000 units and would be sold exclusively on “Hasbro's eBay store starting Wednesday, May 1 at 3 p.m. ET (noon PT/8 p.m. GMT). Limit 2 per person. There will be no reprints of War of the Spark Mythic Edition—once it's gone, it's gone.”<sup>1</sup>

5. On May 1, 2019, Plaintiff purchased two (2) units of WSME from Defendants using Defendants' eBay store.

6. On May 1, 2019, Plaintiff received written confirmation of his purchase of two (2) units of WSME from Defendants' eBay store. (Exhibit 1).

7. On May 1, 2019, Plaintiff transferred payment to Defendants for two (2) units of WSME at the listed price.

8. On May 1, 2019, Plaintiff received written confirmation that his payment for two (2) units of WSME at the listed price was accepted by Defendants. (Exhibit 2).

9. Plaintiff had a valid contract with Defendants for the purchase of WSME at the listed price.

10. On May 2, 2019, at 10:46 p.m., Plaintiff received notification that Defendants had breached their contract with Plaintiff and unilaterally canceled his purchase of two (2) units of WSME without his consent.

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<sup>1</sup> <https://magic.wizards.com/en/articles/archive/news/war-spark-mythic-edition-2019-04-18>

11. When Plaintiff received notice that Defendants had breached his sales contract, the fair market value of WSME had increased substantially.
12. Due to Defendants' actions, Plaintiff was denied the benefit of his purchase.
13. Due to Defendants' actions, Plaintiff's only option is to purchase units of WSME at its substantially higher fair market price from third-party sellers.

**III. CLASS ACTION ALLEGATIONS**

14. Plaintiff brings this action as a class action pursuant to O.C.G.A. § 9-11-23, on behalf of himself and the following classes:

1. All residents of the United States that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants; and
2. A subclass of all residents of Georgia that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants.

15. Excluded from the class are Defendants, as well as Defendants' employees, affiliates, officers, and directors, and the Judge presiding over this case. Plaintiff reserves the right to amend the definition of the class if discovery and/or further investigation reveals that the class definition should be expanded or otherwise modified.

16. **Numerosity / Impracticality of Joinder:** The members of the class are so numerous that joinder of all members would be impractical. The members of the class are easily and readily identifiable from information and records in Defendants' possession, control, or custody. Plaintiff does not know the number of persons in the

United States who purchased WSME but reasonably believes there are more than one hundred persons in each of the proposed classes.

**17. Commonality and Predominance:** There is a well-defined community of interest and common questions of law and fact that predominate over any questions affecting the individual members of the class. These common legal and factual questions, which exist without regard to the individual circumstances of any class member, include, but are not limited to, the following:

- a. Whether Defendants breached a contractual agreement to provide units of WSME at the listed price;
- b. Whether Defendants breached their duty of good faith and fair dealing by canceling a contractual agreement to provide units of WSME at the listed price;
- c. Whether Defendants breached their duties of ordinary care by failing to appropriately manage its sale of WSME on their eBay store;
- d. Whether Defendants breached their duties of ordinary care by failing to appropriately monitor its sale of WSME on their eBay store; and
- e. Whether Defendants breached their duties of ordinary care by failing to promptly notify individuals that purchased WSME of problems with their purchase.

**18. Typicality:** Plaintiff's claims are typical of the class claims in that Plaintiff and the class members were all denied the benefit of their purchase when Defendants



canceled their sales contract without their consent. As such, Plaintiff's claims arise from the same practices and course of conduct that give rise to the class claims, and Plaintiff's claims are based upon the same legal theories as the class claims.

19. **Adequacy:** Plaintiff will fully and adequately protect the interests of the members of the class and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither the Plaintiff nor his counsel have interests which are contrary to, or conflicting with, those interests of the class.

20. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because it is economically impracticable for members of the classes to prosecute individual actions; prosecution as a class action will eliminate the possibility of repetitious and redundant litigation; and a class action will enable claims to be handled in an orderly and expeditious manner.

#### **COUNT 1: BREACH OF CONTRACT**

21. By listing WSME on their eBay store with a "buy it now" price, Defendants made an offer to sell WSME to individuals at the listed price.

22. eBay's terms of service specifically state that, when an offer for an item is accepted, it creates a legally binding contract:

- You enter into a legally binding contract to purchase an item when you commit to buy an item, your offer for an item is accepted, or if you have the winning bid (or your bid is otherwise accepted),

23. Defendants agreed to eBay's terms of service when they agreed to sell WSME on their eBay store.

24. All parties agreed to abide by eBay's user agreement before using eBay's services.

25. Defendants made an offer by listing WSME with the “Buy It Now” option and invited anyone who clicked the “Buy It Now” button to enter into a contract.

26. Plaintiff, and all those similarly situated, accepted Defendants’ invitation by clicking the “Buy It Now” button, thereby entering into a “legally binding contract” pursuant to eBay’s user agreement.

27. Defendants’ eBay listing contained all of the agreement’s terms and the consideration, namely, that Plaintiff, and all those similarly situated, would receive WSME and Defendants would receive \$249.99, minus a commission from eBay.

28. Plaintiff, and all those similarly situated, received written confirmation of their purchase of units of WSME from Defendants.

29. Plaintiff, and all those similarly situated, received written confirmation that their offer to purchase units of WSME was accepted by Defendants.

30. Plaintiff, and all those similarly situated, received written confirmation that their payment to Defendants for units of WSME was accepted by Defendants.

31. Under these circumstances, Plaintiff, and all those similarly situated, entered into a legally binding contract with Defendants for the sale of units of WSME at the listed price.

32. Because Plaintiff, and all those similarly situated, had a legally binding contract for the purchase of units of WSME at the listed price, Defendants were not permitted to unilaterally cancel these confirmed purchases.

33. Defendants’ decision to cancel Plaintiff’s purchase of two (2) units of WSME was a breach of the legally binding contract between Defendants and Plaintiff for the sale of units of WSME at the listed price.

34. Due to Defendants' actions, Plaintiff, and all those similarly situated, were denied the benefit of their bargain.

35. Due to Defendants' actions, Plaintiff, and all those similarly situated, can now only obtain units of WSME at its substantially higher fair market value.

36. As a direct and proximate result of Defendants' actions, Plaintiff, and all those similarly situated, incurred damages, and, as such, Plaintiff, and all those similarly situated, are entitled to recover damages in an amount equal to the fair market value of their purchase.

## **COUNT 2: BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

37. By listing WSME on their eBay store with a "buy it now" price, Defendants made an offer to sell WSME to individuals at the listed price.

38. eBay's terms of service specifically state that, when an offer for an item is accepted, it creates a legally binding contract:

- You enter into a legally binding contract to purchase an item when you commit to buy an item, your offer for an item is accepted, or if you have the winning bid (or your bid is otherwise accepted),

39. Defendants agreed to eBay's terms of service when they agreed to sell WSME on their eBay store.

40. All parties agreed to abide by eBay's user agreement before using eBay's services.

41. Defendants made an offer by listing WSME with the "Buy It Now" option and invited anyone who clicked the "Buy It Now" button to enter into a contract.

42. Plaintiff, and all those similarly situated, accepted Defendants' invitation by clicking the "Buy It Now" button, thereby entering into a "legally binding contract" pursuant to eBay's user agreement.

43. Defendants' eBay listing contained all the agreement's terms and the consideration, namely, that Plaintiff, and all those similarly situated, would receive WSME and Defendants would receive \$249.99, minus a commission from eBay.
44. Plaintiff, and all those similarly situated, received written confirmation of their purchase of units of WSME from Defendants
45. Plaintiff, and all those similarly situated, received written confirmation that their offer to purchase units of WSME was accepted by Defendants.
46. Plaintiff, and all those similarly situated, received written confirmation that their payment to Defendants for units of WSME was accepted by Defendants.
47. Under these circumstances, Plaintiff, and all those similarly situated, entered into a legally binding contract with Defendants for the sale of units of WSME at the listed price.
48. Every contract imposes an obligation of good faith and fair dealing in its performance and enforcement.
49. Because Plaintiff, and all those similarly situated, had a legally binding contract for the purchase of units of WSME at the listed price, Defendants were not permitted to unilaterally cancel these confirmed purchases.
50. Defendants' decision to cancel Plaintiff's purchase of two (2) units of WSME was a breach of Defendants' duty of good faith and fair dealing that was implied in its contract with Plaintiff for the sale of units of WSME at the listed price.
51. Due to Defendants' actions, Plaintiff, and all those similarly situated, were denied the benefit of their bargain.

52. Due to Defendants' actions, Plaintiff, and all those similarly situated, can now only obtain units of WSME at its substantially higher fair market value.

53. As a direct and proximate result of Defendants' actions, Plaintiffs, and all those similarly situated, incurred damages, and, as such, Plaintiffs, and all those similarly situated, are entitled to recover damages in an amount equal to the fair market value of their purchase.

### **COUNT 3: NEGLIGENCE**

54. Defendants had a duty of ordinary care to ensure that: (1) its eBay store was managed properly; (2) its listing for the sale of WSME was setup properly; (3) its sale of WSME was properly monitored; and (4) purchasers of WSME were promptly notified of any problems with their purchase.

55. Defendants breached their duty of ordinary care by:

- (1) Failing to properly manage its eBay store during the sale of WSME;
  - (2) Failing to properly list the sale of WSME on its eBay store;
  - (3) Failing to properly monitor the sale of WSME on its eBay store;
- and
- (4) Failing to promptly notify purchasers of WSME of problems with their purchase.

56. Due to Defendants' actions, Plaintiff, and all those similarly situated, were denied the benefit of their bargain.

57. Due to Defendants' actions, Plaintiff, and all those similarly situated, can now only obtain units of WSME at its substantially higher fair market value.

58. As a direct and proximate result of Defendants' actions, Plaintiffs, and all those similarly situated, incurred damages, and, as such, Plaintiffs, and all those similarly situated, are entitled to recover damages in an amount to equal to the fair market value of their purchase.

IV. JURY DEMAND

59. Plaintiff demands a trial by jury for all claims.

V. DAMAGES AND PRAYER FOR RELIEF

60. Plaintiff prays for the following relief:

- a. An order certifying this action as a class action, appointing Plaintiff as class representative, and appointing Plaintiff's counsel as lead class counsel;
- b. All compensatory damages on all applicable claims in an amount to be proven at trial and allowed by law; and
- c. All other and further relief that the Court deems appropriate and just under the circumstances.

This 8th day of May 2019.

**WERNER WETHERINGTON, P.C.**

/s/ Matthew Q. Wetherington

**MATTHEW Q. WETHERINGTON**

Georgia Bar No. 339639

**ROBERT N. FRIEDMAN**

Georgia Bar No. 945494

2860 Piedmont Rd., NE  
Atlanta, GA 30305  
770-VERDICT  
matt@wernerlaw.com  
robert@wernerlaw.com

# EXHIBIT 1

**Fw:**  **ORDER CONFIRMED: Magic: The Gathering...**

1 message

Sent from Yahoo Mail on Android

Sent: Wed, May 1, 2019 at 3:24 PM

Subject:  **ORDER CONFIRMED: Magic: The Gathering...**



**Thanks for your first purchase John! Your order is confirmed.**

We'll let you know when it's on the way. In the meantime, if you have questions about your order or how returns work, check out our Help Center.

[View order details](#)

[Visit Help Center](#)

### Order summary



Magic: The Gathering War of the Spark: Mythic Edition

Total: \$529.98

**To complement your purchase**





Magic MTG War Of The Spark Fa...

\$98.85  
Free Shipping



Havic the bothering starter d...

\$4,499.99  
Free Shipping



Magic the Gathering Playmat

\$9.95



Magic MTG War Of The Spark Fa...

\$56.67  
Free Shipping

## Order details



**Estimated delivery:**  
Mon, May 06 - Wed, May 08



**Your order will ship to:**



**Seller:** [hasbro-toy-shop \(128004\)](#)  
99.7% positive feedback

[More from this seller](#) →



<b>Order total:</b>	
Price (2 x \$249.99)	\$499.98
Shipping	Free
Sales tax	\$30.00
<b>Total charged to PayPal</b>	<b>\$529.98</b>

**Your seller [hasbro-toy-shop](#) has left you a message:**

\*Please note that once the order is placed you will not be able to edit your shipping address.  
\*At this time gift receipt options are not available and all invoices will contain pricing within them.

## Explore other deals you might like



OBSESSION by Calvin Klein Per...



Tracfone 30 Day 200 Minutes,...



New HTC U Ultra 5.7 In...



Costway Adjustable Folding Si...

# EXHIBIT 2



**Fw: Receipt for your PayPal payment to HasbroToyShop**



Sent from Yahoo Mail on Android



**Subject: Receipt for your PayPal payment to HasbroToyShop**



May 1, 2019 12:24:20 PDT

Transaction ID:



**You sent a payment of \$529.98 USD to HasbroToyShop**

Thanks for using PayPal. To see all the transaction details, log in to your PayPal account.

It may take a few moments for this transaction to appear in your account.

**Seller**  
HasbroToyShop

**Note to seller**  
You haven't included a note.

**Shipping address - confirmed**



**Shipping details**  
The seller hasn't provided any shipping details yet.

Description	Unit price	Qty	Amount
Magic: The Gathering War of the Spark: Mythic Edition 	\$249.99 USD	2	\$499.98 USD



Shipping and handling \$0.00 USD  
Insurance - not offered

Tax	\$30.00 USD
Total	\$529.98 USD
Payment	\$529.98 USD

**Payment Method (Total):**

**\$529.98 USD**

**Issues with this transaction?**

You have 180 days from the date of the transaction to open a dispute in the Resolution Center.

Need to contact the seller? Log in to your eBay account or click on the link in your purchase email from eBay to see your order details. For more help visit the eBay Resolution Centre.

**?** Questions? Go to the Help Center at: [www.paypal.com/help](http://www.paypal.com/help).

Please do not reply to this email. This mailbox is not monitored and you will not receive a response. For assistance, log in to your PayPal account and click Help in the top right corner of any PayPal page or please contact us toll free at 1-888-221-1161. You can receive plain text emails instead of HTML emails. To change your Notifications preferences, log in to your account, go to your Profile, and click My settings.

Copyright © 1999-2019 PayPal, Inc. All rights reserved. PayPal is located at 2211 N. First St., San Jose, CA 95131.

PayPal PPX000608:1.1:20661ae2a1f9e



# **Exhibit B**



**Service of Process  
Transmittal**

05/31/2019

CT Log Number 535582534

**TO:** Tarrant Sibley  
Hasbro, Inc.  
1027 Newport Ave  
Pawtucket, RI 02861-2500

**RE: Process Served in Georgia**

**FOR:** Hasbro, Inc. (Domestic State: RI)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Johnathan Erler, et al., Pltf. vs. Hasbro, Inc. and Wizards of the Coast, LLC, Dfts.  
**DOCUMENT(S) SERVED:** Summons, Complaint, Attachment(s)  
**COURT/AGENCY:** Gwinnett County State Court, GA  
Case # 19C0335554  
**NATURE OF ACTION:** Plaintiffs demand a trial by jury for all claims.  
**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Lawrenceville, GA  
**DATE AND HOUR OF SERVICE:** By Process Server on 05/31/2019 at 10:52  
**JURISDICTION SERVED :** Georgia  
**APPEARANCE OR ANSWER DUE:** Within 30 days after service, exclusive of the day of service  
**ATTORNEY(S) / SENDER(S):** Matthew Q. Wetherington  
Werner Wetherington, P.C.  
2860 Piedmont Rd., NE  
Atlanta, GA 30305  
**ACTION ITEMS:** SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780129608785  
Image SOP  
Email Notification, Christine Meehan cmeehan@hasbro.com  
Email Notification, Tarrant Sibley Tarrant.Sibley@hasbro.com  
Email Notification, Robert Turner Robert.Turner@Hasbro.com  
**SIGNED:** C T Corporation System  
**ADDRESS:** 289 S Culver St.  
Lawrenceville, GA 30046-4805  
**TELEPHONE:** 214-932-3601



**Service of Process  
Transmittal**

05/31/2019

CT Log Number 535582534

**TO:** Tarrant Sibley  
Hasbro, Inc.  
1027 Newport Ave  
Pawtucket, RI 02861-2500

**RE: Process Served in Georgia**

**FOR:** Hasbro, Inc. (Domestic State: RI)

**DOCKET HISTORY:**

<b>DOCUMENT(S) SERVED:</b>	<b>DATE AND HOUR OF SERVICE:</b>	<b>TO:</b>	<b>CT LOG NUMBER:</b>
.	By Process Server on 05/16/2019 at 15:10	Tarrant Sibley Hasbro, Inc.	535490002



E-FILED IN OFFICE - JM  
CLERK OF STATE COURT  
GWINNETT COUNTY, GEORGIA  
19-C-03355-S4  
5/8/2019 12:16 PM

IN THE STATE COURT OF GWINNETT COUNTY

STATE OF GEORGIA

*Richard T. Alexander, Jr.*  
CLERK OF STATE COURT

**JOHNATHAN ERLER,**  
**Individually, and on behalf of**  
**a Class of Similarly Situated Persons,**

CIVIL ACTION **19-C-03355-S4**  
NUMBER: \_\_\_\_\_

PLAINTIFF

VS.

**HASBRO, INC., and**  
**WIZARDS OF THE COAST, LLC,**

DEFENDANT

**SUMMONS**

TO THE ABOVE NAMED DEFENDANT: HASBRO, INC.

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

Matthew Q. Wetherington, Esq. and Robert N. Friedman, Esq.  
Werner Wetherington PC  
2860 Piedmont Rd NE  
Atlanta, GA 30305

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 8TH day of MAY, 2019.


Richard T. Alexander, Jr.,  
Clerk of State Court

By *Richard T. Alexander, Jr.*  
Deputy Clerk

INSTRUCTIONS: Attach addendum sheet for additional parties if needed, make notation on this sheet if addendum sheet is used.

E-FILED IN OFFICE - JM  
CLERK OF STATE COURT  
GWINNETT COUNTY, GEORGIA  
**19-C-03355-S4**  
**5/23/2019 2:48 PM**

**IN THE STATE COURT OF GWINNETT COUNTY  
STATE OF GEORGIA**

  
CLERK OF STATE COURT

JOHNATHAN ERLER, GRANT SHINDO,  
CYNTHIA MOREN, RYAN JAQUES, THOMAS  
BELLO, JORDAN POLLACK, MICHAEL  
APPERSON, AARON PINKHAM, ANDREW  
SCHWEIG, ALDEN RANDALL, MICHAEL  
RANTON, BRANDON PETTIT, THOMAS  
RODRIGUEZ, BILAL AWADALLAH, IZAAK  
KEMP, THOMAS COX, MARK LAROCHE,  
TRAVIS HENLEY, IAN NYTES, MITCHELL  
LEVY, ULISES MORENO-ORTEGA, JAMES  
LEA, CHARLES DECELLES, CAMERON  
BURGER, NATHAN KUJACZNSKI, MICHAEL  
LEE, JARED LIEBOWITZ, and AARON SMITH,  
Individually, and on Behalf of a Class of Similarly  
Situated Persons,

Plaintiffs,

v.

HASBRO, INC., and  
WIZARDS OF THE COAST, LLC,

Defendants.

CIVIL ACTION NO.

19-C-03355-S4

**FIRST AMENDED CLASS ACTION COMPLAINT**

Hasbro, Inc. ("Hasbro"), a toy and board game company, acting in concert with its subsidiary, Wizards of the Coast, LLC ("Wizards"), listed for purchase one of its collectable card-game products, Magic the Gathering, War of the Spark Mythic Edition ("WSME"), on Hasbro's eBay store. Plaintiffs and the proposed class members entered into a binding contract to purchase WSME on Hasbro's eBay store and received written confirmation of their purchase. Defendants then unilaterally cancelled the sales contract of Plaintiffs, and other similarly situated persons, without legal authority. Plaintiffs and the proposed class members were thus denied the benefit of their purchase. Because WSME was a limited-edition product that is now sold out,

Plaintiffs and the proposed class members can now only obtain WSME at its substantially higher fair market value.

I. PARTIES

1. Plaintiff Johnathan Erler is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Johnathan Erler is a citizen and resident of Gwinnett County, Georgia. By bringing this action, Plaintiff Johnathan Erler avails himself of the jurisdiction of this Court.

2. Plaintiff Grant Shindo is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Grant Shindo is a citizen and resident of Hawaii. By bringing this action, Plaintiff Grant Shindo avails himself of the jurisdiction of this Court.

3. Plaintiff Cynthia Moren is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Cynthia Moren is a citizen and resident of California. By bringing this action, Plaintiff Cynthia Moren avails herself of the jurisdiction of this Court.

4. Plaintiff Ryan Jaques is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Ryan Jaques is a citizen and resident of Colorado. By bringing this action, Plaintiff Ryan Jaques avails himself of the jurisdiction of this Court.

5. Plaintiff Thomas Bello is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Thomas Bello is a citizen and resident of Florida. By bringing this action, Plaintiff Thomas Bello avails himself of the jurisdiction of this Court.

6. Plaintiff Jordan Pollack is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Jordan Pollack is a citizen and resident of Illinois. By bringing this action, Plaintiff Jordan Pollack avails himself of the jurisdiction of this Court.

7. Plaintiff Michael Apperson is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Michael Apperson is a citizen and resident of Kentucky. By bringing this action, Plaintiff Michael Apperson avails himself of the jurisdiction of this Court.

8. Plaintiff Aaron Pinkham is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Aaron Pinkham is a citizen and resident of Massachusetts. By bringing this action, Plaintiff Aaron Pinkham avails himself of the jurisdiction of this Court.

9. Plaintiff Andrew Schweig is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Andrew Schweig is a citizen and resident of Massachusetts. By bringing this action, Plaintiff Andrew Schweig avails himself of the jurisdiction of this Court.

10. Plaintiff Alden Randall is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Alden Randall is a citizen and resident of Minnesota. By bringing this action, Plaintiff Alden Randall avails himself of the jurisdiction of this Court.

11. Plaintiff Michael Ranton is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Michael Ranton is a citizen and resident of Missouri. By bringing this action, Plaintiff Michael Ranton avails

himself of the jurisdiction of this Court.

12. Plaintiff Brandon Pettit is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Brandon Pettit is a citizen and resident of Nevada. By bringing this action, Plaintiff Brandon Pettit avails himself of the jurisdiction of this Court.

13. Plaintiff Thomas Rodriguez is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Thomas Rodriguez is a citizen and resident of New Jersey. By bringing this action, Plaintiff Thomas Rodriguez avails himself of the jurisdiction of this Court.

14. Plaintiff Bilal Awadallah is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Bilal Awadallah is a citizen and resident of New York. By bringing this action, Plaintiff Bilal Awadallah avails himself of the jurisdiction of this Court.

15. Plaintiff Izaak Kemp is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Izaak Kemp is a citizen and resident of Ohio. By bringing this action, Plaintiff Izaak Kemp avails himself of the jurisdiction of this Court.

16. Plaintiff Thomas Cox is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Thomas Cox is a citizen and resident of Pennsylvania. By bringing this action, Plaintiff Thomas Cox avails himself of the jurisdiction of this Court.

17. Plaintiff Mark Laroche is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Mark Laroche is a citizen

and resident of Rhode Island. By bringing this action, Plaintiff Mark Laroche avails himself of the jurisdiction of this Court.

18. Plaintiff Travis Henley is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Travis Henley is a citizen and resident of South Carolina. By bringing this action, Plaintiff Travis Henley avails himself of the jurisdiction of this Court.

19. Plaintiff Ian Nytes is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Ian Nytes is a citizen and resident of Wisconsin. By bringing this action, Plaintiff Ian Nytes avails himself of the jurisdiction of this Court.

20. Plaintiff Mitchell Levy is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Mitchell Levy is a citizen and resident of Maryland. By bringing this action, Plaintiff Mitchell Levy avails himself of the jurisdiction of this Court.

21. Plaintiff Ulises Moreno-Ortega is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Ulises Moreno-Ortega is a citizen and resident of Utah. By bringing this action, Plaintiff Ulises Moreno-Ortega avails himself of the jurisdiction of this Court.

22. Plaintiff James Lea is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff James Lea is a citizen and resident of Texas. By bringing this action, Plaintiff James Lea avails himself of the jurisdiction of this Court.

23. Plaintiff Charles DeCelles is a confirmed purchaser of WSME that had his sales

contract canceled by Defendants without his consent. Plaintiff Charles DeCelles is a citizen and resident of Arizona. By bringing this action, Plaintiff Charles DeCelles avails himself of the jurisdiction of this Court.

24. Plaintiff Cameron Burger is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Cameron Burger is a citizen and resident of Virginia. By bringing this action, Plaintiff Cameron Burger avails himself of the jurisdiction of this Court.

25. Plaintiff Nathan Kujacznski is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Nathan Kujacznski is a citizen and resident of Michigan. By bringing this action, Plaintiff Nathan Kujacznski avails himself of the jurisdiction of this Court.

26. Plaintiff Michael Lee is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Michael Lee is a citizen and resident of Virginia. By bringing this action, Plaintiff Michael Lee avails himself of the jurisdiction of this Court.

27. Plaintiff Jared Liebowitz is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Jared Liebowitz is a citizen and resident of Pennsylvania. By bringing this action, Plaintiff Jared Liebowitz avails himself of the jurisdiction of this Court.

28. Plaintiff Aaron Smith a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Aaron Smith is a citizen and resident of Washington. By bringing this action, Plaintiff Aaron Smith avails himself of the jurisdiction of this Court.

29. Hasbro is a corporation registered to do business in Georgia that is subject to the jurisdiction of this Court. Hasbro may be served through its registered agent, C T Corporation System, at 289 S Culver St, Lawrenceville, GA, 30046. Venue is proper as to Hasbro because it maintains a registered office in Gwinnett County. Hasbro is further subject to the jurisdiction of the Court for, among others, the following reasons:

- 29.1 A nonresident defendant is subject to personal jurisdiction under the Georgia long-arm statute by virtue of doing business in Georgia, by contracting with Georgia residents pursuant to contracts to be performed in part in Georgia, and/or by committing torts where one or more elements of the tort occurred in Georgia. Hasbro has engaged in such business in Georgia.
- 29.2 It knowingly, intentionally, and deliberately placed WSME into the stream of commerce under circumstances such that Hasbro should reasonably anticipate being haled into court in Georgia to answer claims about the sale of its product in Georgia.
- 29.3 It regularly does business in Georgia, solicits business in Georgia, derives substantial revenue from goods or services in Georgia, derives substantial revenue from Georgia residents via internet sales, has agents or representatives or officers or employees in Georgia, maintains an office in Georgia, and has subsidiaries or business affiliates in Georgia.
- 29.4 It places its products into the stream of commerce by targeting Georgia consumers through approved distributors in the State.



- 29.5 It has come into the courts of Georgia, without ever claiming a lack of jurisdiction, to answer claims about its products in Georgia.
- 29.6 It has been a party seeking relief or review in cases where it has purposefully availed itself of the jurisdiction of the courts of Georgia.
- 29.7 It has a regular plan for the distribution of its products in Georgia with the goal of achieving a commercial benefit from the sale of products in Georgia.
- 29.8 It engages in national marketing of its products that intentionally pervade into the Georgia market.
- 29.9 It targets marketing specific to Georgia.
- 29.10 It oversees aspects of its products from within Georgia.
- 29.11 It holds patents and trademarks which it demands must be honored in Georgia.
- 29.12 It has contractual agreements with Georgia companies to use its trademarks in Georgia, specifically including Magic the Gathering and WSME.
- 29.13 It has purposefully availed itself of the privilege and benefits of conducting business in Georgia.
- 29.14 Its negligent acts both inside and outside Georgia caused injury within Georgia.
- 29.15 The claims in this action are connected with and/or relate to its extensive contacts with Georgia.

29.16 Georgia has an interest in adjudicating this dispute which occurred, at least in part, in Georgia, and which involved actions that caused harm to Georgia residents.

29.17 Allowing Hasbro to escape jurisdiction would improperly allow Hasbro to wield the Due Process Clause as a territorial shield to avoid interstate obligations that Hasbro has voluntarily assumed.

30. Wizards is a limited liability company incorporated in Delaware. Wizards may be served through its registered agent The Corporation Trust Company at 1209 Orange St, Wilmington, DE 19801. Venue is proper as to Wizards because it is a joint tortfeasor with one or more Defendants that reside in Gwinnett County. Wizards is further subject to the jurisdiction of the Court for, among others, the following reasons:

30.1 A nonresident defendant is subject to personal jurisdiction under the Georgia long-arm statute by virtue of doing business in Georgia, by contracting with Georgia residents pursuant to contracts to be performed in part in Georgia, and/or by committing torts where one or more elements of the tort occurred in Georgia. Wizards has engaged in such business in Georgia.

30.2 It knowingly, intentionally, and deliberately placed WSME into the stream of commerce under circumstances such that Wizards should reasonably anticipate being haled into court in Georgia to answer claims about the sale of its product in Georgia.

30.3 It regularly does business in Georgia, solicits business in Georgia, derives substantial revenue from goods or services in Georgia, derives substantial

revenue from Georgia residents via internet sales, has agents or representatives or officers or employees in Georgia, maintains an office in Georgia, and has subsidiaries or business affiliates in Georgia.

- 30.4 It places its products into the stream of commerce by targeting Georgia consumers through approved distributors in the State.
- 30.5 It has a regular plan for the distribution of its products in Georgia with the goal of achieving a commercial benefit from the sale of products in Georgia.
- 30.6 It engages in national marketing of its products that intentionally pervade into the Georgia market.
- 30.7 It targets marketing specific to Georgia.
- 30.8 It oversees aspects of its products from within Georgia.
- 30.9 It holds patents and trademarks which it demands must be honored in Georgia.
- 30.10 It has contractual agreements with Georgia companies to use its trademarks in Georgia, specifically including Magic the Gathering and WSME.
- 30.11 It has purposefully availed itself of the privilege and benefits of conducting business in Georgia.
- 30.12 Its negligent acts both inside and outside Georgia caused injury within Georgia.
- 30.13 The claims in this action are connected with and/or relate to its extensive contacts with Georgia.

30.14 Georgia has an interest in adjudicating this dispute which occurred, at least in part, in Georgia, and which involved actions that caused harm to Georgia residents.

30.15 Allowing Wizards to escape jurisdiction would improperly allow Wizards to wield the Due Process Clause as a territorial shield to avoid interstate obligations that Wizards has voluntarily assumed.

## II. STATEMENT OF FACTS

31. On or about April 18, 2019, Hasbro and Wizards announced the sale of WSME on its website. According to the announcement, WSME is limited to 12,000 units and would be sold exclusively on “Hasbro's eBay store starting Wednesday, May 1 at 3 p.m. ET (noon PT/8 p.m. GMT). Limit 2 per person. There will be no reprints of War of the Spark Mythic Edition—once it's gone, it's gone.”<sup>1</sup>

32. On May 1, 2019, each Plaintiff purchased one or more units of WSME from Defendants using Defendants' eBay store.

33. On or about May 1, 2019, each Plaintiff received written confirmation of their purchase of units of WSME from Defendants' eBay store. (Representative copy attached as Exhibit 1).

34. On May 1, 2019, each Plaintiff transferred payment to Defendants for units of WSME at the listed price.

35. On or about May 1, 2019, each Plaintiff received written confirmation that their payment for units of WSME at the listed price was accepted by Defendants. (Representative copy attached as Exhibit 2).

---

<sup>1</sup> <https://magic.wizards.com/en/articles/archive/news/war-spark-mythic-edition-2019-04-18>

36. Each Plaintiff had a valid contract with Defendants for the purchase of WSME at the listed price.

37. Each Plaintiff later received notification that Defendants had breached their contract with Plaintiffs and unilaterally canceled their purchase of units of WSME without their consent.

38. When Plaintiffs received notice that Defendants had breached their sales contract, the fair market value of WSME had increased substantially.

39. Due to Defendants' actions, Plaintiffs were denied the benefit of their purchase.

40. Due to Defendants' actions, Plaintiffs' only option is to purchase units of WSME at its substantially higher fair market price from third-party sellers.

41. Defendants have not refunded some or all of the Plaintiffs' purchase money as of May 10, 2019.

### III. CLASS ACTION ALLEGATIONS

42. Plaintiffs bring this action as a class action pursuant to O.C.G.A. § 9-11-23, Individually, and on behalf of the following classes:

1. All residents of the United States that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants;
2. A subclass of all residents of Georgia that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Erler subclass);
3. A subclass of all residents of Hawaii that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their

- purchase canceled by, or at the request of, Defendants (Shindo subclass);
4. A subclass of all residents of California that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Moren subclass);
  5. A subclass of all residents of Colorado that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Jaques subclass);
  6. A subclass of all residents of Florida that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Bello subclass);
  7. A subclass of all residents of Illinois that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Pollack subclass);
  8. A subclass of all residents of Kentucky that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Apperson subclass);
  9. A subclass of all residents of Massachusetts that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Pinkham-Schweig subclass);
  10. A subclass of all residents of Minnesota that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had

- their purchase canceled by, or at the request of, Defendants (Randall subclass);
11. A subclass of all residents of Missouri that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Ranton subclass);
  12. A subclass of all residents of Nevada that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Pettit subclass);
  13. A subclass of all residents of New Jersey that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Rodriguez subclass);
  14. A subclass of all residents of New York that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Awadallah subclass);
  15. A subclass of all residents of Ohio that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Kemp subclass);
  16. A subclass of all residents of Pennsylvania that had a confirmed purchase

of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Cox-Liebowitz subclass);

17. A subclass of all residents of Rhode Island that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Laroche subclass);

18. A subclass of all residents of South Carolina that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Henley subclass);

19. A subclass of all residents of Wisconsin that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Nytes subclass);

20. A subclass of all residents of Maryland that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Levy subclass);

21. A subclass of all residents of Utah that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Moreno-Ortega subclass);



22. A subclass of all residents of Texas that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Lea subclass);
  23. A subclass of all residents of Arizona that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (DeCelles subclass);
  24. A subclass of all residents of Virginia that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Burger subclass);
  25. A subclass of all residents of Michigan that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Kujacznski subclass); and
  26. A subclass of all residents of Washington that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Smith subclass).
43. Excluded from the class are Defendants, as well as Defendants' employees, affiliates, officers, and directors, and the Judge presiding over this case. Plaintiffs reserve the right to amend the definition of the class if discovery and/or further investigation reveals that the class definition should be expanded or otherwise modified.
44. **Numerosity / Impracticality of Joinder:** The members of the class are so numerous that joinder of all members would be impractical. The members of the class

are easily and readily identifiable from information and records in Defendants' possession, control, or custody. Plaintiffs do not know the number of persons in the United States who purchased WSME but reasonably believe that there are more than one hundred persons in each of the proposed classes.

45. **Commonality and Predominance:** There is a well-defined community of interest and common questions of law and fact that predominate over any questions affecting the individual members of the class. These common legal and factual questions, which exist without regard to the individual circumstances of any class member, include, but are not limited to, the following:

- a. Whether Defendants breached a contractual agreement to provide units of WSME at the listed price;
- b. Whether Defendants breached their duty of good faith and fair dealing by canceling a contractual agreement to provide units of WSME at the listed price;
- c. Whether Defendants breached their duties of ordinary care by failing to appropriately manage its sale of WSME on their eBay store;
- d. Whether Defendants breached their duties of ordinary care by failing to appropriately monitor its sale of WSME on their eBay store; and
- e. Whether Defendants breached their duties of ordinary care by failing to promptly notify individuals that purchased WSME of problems with their purchase.

46. **Typicality:** Plaintiffs' claims are typical of the class claims in that Plaintiffs and the class members were all denied the benefit of their purchase when Defendants canceled their sales contract without their consent. As such, Plaintiffs' claims arise from the same practices and course of conduct that give rise to the class claims, and Plaintiffs' claims are based upon the same legal theories as the class claims.

47. **Adequacy:** Plaintiffs will fully and adequately protect the interests of the members of the class and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither the Plaintiffs nor their counsel have interests which are contrary to, or conflicting with, those interests of the class.

48. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because it is economically impracticable for members of the classes to prosecute individual actions; prosecution as a class action will eliminate the possibility of repetitious and redundant litigation; and a class action will enable claims to be handled in an orderly and expeditious manner.

#### **COUNT 1: BREACH OF CONTRACT**

49. By listing WSME on their eBay store with a "buy it now" price, Defendants made an offer to sell WSME to individuals at the listed price.

50. eBay's terms of service specifically state that, when an offer for an item is accepted, it creates a legally binding contract:

- You enter into a legally binding contract to purchase an item when you commit to buy an item, your offer for an item is accepted, or if you have the winning bid (or your bid is otherwise accepted),

51. Defendants agreed to eBay's terms of service when they agreed to sell WSME on

their eBay store.

52. All parties agreed to abide by eBay's user agreement before using eBay's services.

53. Defendants made an offer by listing WSME with the "Buy It Now" option and invited anyone who clicked the "Buy It Now" button to enter into a contract.

54. Plaintiffs, and all those similarly situated, accepted Defendants' invitation by clicking the "Buy It Now" button, thereby entering into a "legally binding contract" pursuant to eBay's user agreement.

55. Defendants' eBay listing contained all of the agreement's terms and the consideration, namely, that Plaintiffs, and all those similarly situated, would receive WSME and Defendants would receive \$249.99, minus a commission from eBay.

56. Plaintiffs, and all those similarly situated, received written confirmation of their purchase of units of WSME from Defendants.

57. Plaintiffs, and all those similarly situated, received written confirmation that their offer to purchase units of WSME was accepted by Defendants.

58. Plaintiffs and all those similarly situated, received written confirmation that their payment to Defendants for units of WSME was accepted by Defendants.

59. Under these circumstances, Plaintiffs, and all those similarly situated, entered into a legally binding contract with Defendants for the sale of units of WSME at the listed price.

60. Under eBay's Terms of Service, cancellation is authorized if both parties to the contract consent to the cancellation. Under such circumstances, neither party will be charged for the transaction.

61. Plaintiffs did not consent to cancelling the contract.

62. Because Plaintiffs, and all those similarly situated, had a legally binding contract for the purchase of units of WSME at the listed price, Defendants were not permitted to unilaterally cancel these confirmed purchases.

63. Defendants' decision to cancel Plaintiffs' purchase of units of WSME was a breach of the legally binding contract between Defendants and Plaintiffs for the sale of units of WSME at the listed price.

64. Due to Defendants' actions, Plaintiffs, and all those similarly situated, were denied the benefit of their bargain.

65. Due to Defendants' actions, Plaintiffs, and all those similarly situated, can now only obtain units of WSME at its substantially higher fair market value.

66. As a direct and proximate result of Defendants' actions, Plaintiffs, and all those similarly situated, incurred damages, and, as such, Plaintiffs, and all those similarly situated, are entitled to recover damages in an amount equal to the fair market value of their purchase.

## **COUNT 2: BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

67. By listing WSME on their eBay store with a "buy it now" price, Defendants made an offer to sell WSME to individuals at the listed price.

68. eBay's terms of service specifically state that, when an offer for an item is accepted, it creates a legally binding contract:

- You enter into a legally binding contract to purchase an item when you commit to buy an item, your offer for an item is accepted, or if you have the winning bid (or your bid is otherwise accepted),

69. Defendants agreed to eBay's terms of service when they agreed to sell WSME on their eBay store.

70. All parties agreed to abide by eBay's user agreement before using eBay's services.

71. Defendants made an offer by listing WSME with the "Buy It Now" option and invited anyone who clicked the "Buy It Now" button to enter into a contract.

72. Plaintiffs, and all those similarly situated, accepted Defendants' invitation by clicking the "Buy It Now" button, thereby entering into a "legally binding contract" pursuant to eBay's user agreement.

73. Defendants' eBay listing contained all the agreement's terms and the consideration, namely, that Plaintiffs, and all those similarly situated, would receive WSME and Defendants would receive \$249.99, minus a commission from eBay.

74. Plaintiffs, and all those similarly situated, received written confirmation of their purchase of units of WSME from Defendants

75. Plaintiffs, and all those similarly situated, received written confirmation that their offer to purchase units of WSME was accepted by Defendants.

76. Plaintiffs, and all those similarly situated, received written confirmation that their payment to Defendants for units of WSME was accepted by Defendants.

77. Under these circumstances, Plaintiffs, and all those similarly situated, entered into a legally binding contract with Defendants for the sale of units of WSME at the listed price.

78. Under eBay's Terms of Service, cancellation is authorized if both parties to the contract consent to the cancellation. Under such circumstances, neither party will be charged for the transaction.

79. Plaintiffs did not consent to cancelling the contract.

80. Every contract imposes an obligation of good faith and fair dealing in its

performance and enforcement.

81. Because Plaintiffs, and all those similarly situated, had a legally binding contract for the purchase of units of WSME at the listed price, Defendants were not permitted to unilaterally cancel these confirmed purchases.

82. Defendants' decision to cancel Plaintiffs' s purchase of units of WSME was a breach of Defendants' duty of good faith and fair dealing that was implied in its contract with Plaintiffs for the sale of units of WSME at the listed price.

83. Due to Defendants' actions, Plaintiffs, and all those similarly situated, were denied the benefit of their bargain.

84. Due to Defendants' actions, Plaintiffs, and all those similarly situated, can now only obtain units of WSME at its substantially higher fair market value.

85. As a direct and proximate result of Defendants' actions, Plaintiffs, and all those similarly situated, incurred damages, and, as such, Plaintiffs, and all those similarly situated, are entitled to recover damages in an amount equal to the fair market value of their purchase.

### **COUNT 3: NEGLIGENCE**

86. Defendants had a duty of ordinary care to ensure that: (1) its eBay store was managed properly; (2) its listing for the sale of WSME was setup properly; (3) its sale of WSME was properly monitored; and (4) purchasers of WSME were promptly notified of any problems with their purchase.

87. Defendants breached their duty of ordinary care by:

- (1) Failing to properly manage its eBay store during the sale of WSME;
- (2) Failing to properly list the sale of WSME on its eBay store;

- (3) Failing to properly monitor the sale of WSME on its eBay store;  
and
- (4) Failing to promptly notify purchasers of WSME of problems with  
their purchase.

88. Due to Defendants' actions, Plaintiffs, and all those similarly situated, were denied the benefit of their bargain.

89. Due to Defendants' actions, Plaintiffs, and all those similarly situated, can now only obtain units of WSME at its substantially higher fair market value.

90. As a direct and proximate result of Defendants' actions, Plaintiffs, and all those similarly situated, incurred damages, and, as such, Plaintiffs, and all those similarly situated, are entitled to recover damages in an amount to equal to the fair market value of their purchase.

IV. JURY DEMAND

91. Plaintiffs demand a trial by jury for all claims.

V. DAMAGES AND PRAYER FOR RELIEF

92. Plaintiffs pray for the following relief:

- a. An order certifying this action as a class action, appointing Plaintiffs as class representative, and appointing Plaintiffs' counsel as lead class counsel;
- b. All compensatory damages on all applicable claims in an amount to be proven at trial and allowed by law; and
- c. All other and further relief that the Court deems appropriate and just under the circumstances.



This 10th day of May 2019.

**WERNER WETHERINGTON, P.C.**

/s/ Matthew Q. Wetherington  
**MATTHEW Q. WETHERINGTON**  
Georgia Bar No. 339639  
**ROBERT N. FRIEDMAN**  
Georgia Bar No. 945494

2860 Piedmont Rd., NE  
Atlanta, GA 30305  
770-VERDICT  
matt@wernerlaw.com  
robert@wernerlaw.com



# Exhibit C



**Service of Process  
Transmittal**

06/05/2019

CT Log Number 535616017

**TO:** Tarrant Sibley  
Hasbro, Inc.  
1027 Newport Ave  
Pawtucket, RI 02861-2500

**RE: Process Served in Delaware**

**FOR:** Wizards of the Coast LLC (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** JOHNATHAN ERLER, et al., Pltfs. vs. HASBRO, INC and WIZARDS OF THE COAST, LLC, Dfts.

**DOCUMENT(S) SERVED:** SUMMONS, CLASS ACTION COMPLAINT

**COURT/AGENCY:** GWINNETT COUNTY - STATE COURT, GA  
Case # 19C03355S4

**NATURE OF ACTION:** Defendants breached their duty of ordinary care

**ON WHOM PROCESS WAS SERVED:** The Corporation Trust Company, Wilmington, DE

**DATE AND HOUR OF SERVICE:** By Process Server on 06/05/2019 at 10:58

**JURISDICTION SERVED :** Delaware

**APPEARANCE OR ANSWER DUE:** Within 30 days after service of this summons upon you, exclusive of the day of service

**ATTORNEY(S) / SENDER(S):** Matthew Q. Wetherington  
Werner Wetherington, P.C.  
2860 Piedmont Rd., NE  
Atlanta, GA 30305

**ACTION ITEMS:** SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780120321574  
Image SOP  
Email Notification, Christine Meehan cmeehan@hasbro.com  
Email Notification, Tarrant Sibley Tarrant.Sibley@hasbro.com  
Email Notification, Robert Turner Robert.Turner@Hasbro.com

**SIGNED:** The Corporation Trust Company  
**ADDRESS:** 1209 N Orange St  
Wilmington, DE 19801-1120  
**TELEPHONE:** 302-658-7581

IN THE STATE COURT OF GWINNETT COUNTY

STATE OF GEORGIA

*Richard T. Alexander, Jr.*  
CLERK OF STATE COURT

**JOHNATHAN ERLER,**  
**Individually, and on behalf of**

**a Class of Similarly Situated Persons,**

PLAINTIFF

CIVIL ACTION **19-C-03355-S4**  
NUMBER: \_\_\_\_\_

VS.

**HASBRO, INC., and**  
**WIZARDS OF THE COAST, LLC,**

DEFENDANT

2019 JUN -4 AM 9:14  
SHERIFF'S HANDS  
NEW CASTLE COUNTY

**SUMMONS**

TO THE ABOVE NAMED DEFENDANT: WIZARDS OF THE COAST, LLC

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

Matthew Q. Wetherington, Esq. and Robert N. Friedman, Esq.  
Werner Wetherington PC  
2860 Piedmont Rd NE  
Atlanta, GA 30305

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 8TH day of MAY, 2019.

Richard T. Alexander, Jr.,  
Clerk of State Court

By *Richard T. Alexander, Jr.*  
Deputy Clerk

INSTRUCTIONS: Attach addendum sheet for additional parties if needed, make notation on this sheet if addendum sheet is used.

General Civil and Domestic Relations Case Filing Information Form

Superior or  State Court of GWINNETT County

*Robert J. Alumbaugh*  
CLERK OF STATE COURT

<b>For Clerk Use Only</b>	
Date Filed _____ MM-DD-YYYY	Case Number <u>19-C-03355-S4</u>

**Plaintiff(s)**

JOHNATHAN ERLER, Individually, and on Behalf of a

Last	First	Middle I.	Suffix	Prefix
Class of Similarly Situated Persons				

Last	First	Middle I.	Suffix	Prefix

Last	First	Middle I.	Suffix	Prefix

Last	First	Middle I.	Suffix	Prefix

**Defendant(s)**

HASBRO, INC.

Last	First	Middle I.	Suffix	Prefix
WIZARDS OF THE COAST, LLC				

Last	First	Middle I.	Suffix	Prefix

Last	First	Middle I.	Suffix	Prefix

Last	First	Middle I.	Suffix	Prefix

Plaintiff's Attorney Matthew Q. Wetherington, Esq.

Bar Number 339639

Self-Represented

Check One Case Type in One Box

<b>General Civil Cases</b>	
<input type="checkbox"/>	Automobile Tort
<input type="checkbox"/>	Civil Appeal
<input type="checkbox"/>	Contract
<input type="checkbox"/>	Garnishment
<input type="checkbox"/>	General Tort
<input type="checkbox"/>	Habeas Corpus
<input type="checkbox"/>	Injunction/Mandamus/Other Writ
<input type="checkbox"/>	Landlord/Tenant
<input type="checkbox"/>	Medical Malpractice Tort
<input type="checkbox"/>	Product Liability Tort
<input type="checkbox"/>	Real Property
<input type="checkbox"/>	Restraining Petition
<input checked="" type="checkbox"/>	Other General Civil

<b>Domestic Relations Cases</b>	
<input type="checkbox"/>	Adoption
<input type="checkbox"/>	Dissolution/Divorce/Separate Maintenance
<input type="checkbox"/>	Family Violence Petition
<input type="checkbox"/>	Paternity/Legitimation
<input type="checkbox"/>	Support - IV-D
<input type="checkbox"/>	Support - Private (non-IV-D)
<input type="checkbox"/>	Other Domestic Relations

<b>Post-Judgment - Check One Case Type</b>	
<input type="checkbox"/>	Contempt
<input type="checkbox"/>	Non-payment of child support, medical support, or alimony
<input type="checkbox"/>	Modification
<input type="checkbox"/>	Other/Administrative

2019 JUN -4 AM 9:14  
IN SHERIFF'S HANDS  
NEW CASTLE COUNTY

Check if the action is related to another action(s) pending or previously pending in this court involving some or all of the same parties, subject matter, or factual issues. If so, provide a case number for each.

\_\_\_\_\_ Case Number

\_\_\_\_\_ Case Number

I hereby certify that the documents in this filing, including attachments and exhibits, satisfy the requirements for redaction of personal or confidential information in O.C.G.A. § 9-11-7.1.

Is an interpreter needed in this case? If so, provide the language(s) required. \_\_\_\_\_  
Language(s) Required

Do you or your client need any disability accommodations? If so, please describe the accommodation request.  
\_\_\_\_\_  
\_\_\_\_\_

**IN THE STATE COURT OF GWINNETT COUNTY  
STATE OF GEORGIA**

*Robert J. Alumbaugh*  
CLERK OF STATE COURT

JOHNATHAN ERLER, GRANT SHINDO,  
CYNTHIA MOREN, RYAN JAQUES, THOMAS  
BELLO, JORDAN POLLACK, MICHAEL  
APPERSON, AARON PINKHAM, ANDREW  
SCHWEIG, ALDEN RANDALL, MICHAEL  
RANTON, BRANDON PETTIT, THOMAS  
RODRIGUEZ, BILAL AWADALLAH, IZAAK  
KEMP, THOMAS COX, MARK LAROCHE,  
TRAVIS HENLEY, IAN NYTES, MITCHELL  
LEVY, ULISES MORENO-ORTEGA, JAMES  
LEA, CHARLES DECELLES, CAMERON  
BURGER, NATHAN KUJACZNSKI, MICHAEL  
LEE, JARED LIEBOWITZ, and AARON SMITH,  
Individually, and on Behalf of a Class of Similarly  
Situated Persons,

Plaintiffs,

v.

HASBRO, INC., and  
WIZARDS OF THE COAST, LLC,

Defendants.

CIVIL ACTION NO.

19-C-03355-S4

2019 JUN -4 AM 9:14  
IN SHERIFF'S HANDS  
W/CASTLE COUNTY

**FIRST AMENDED CLASS ACTION COMPLAINT**

Hasbro, Inc. ("Hasbro"), a toy and board game company, acting in concert with its subsidiary, Wizards of the Coast, LLC ("Wizards"), listed for purchase one of its collectable card-game products, Magic the Gathering, War of the Spark Mythic Edition ("WSME"), on Hasbro's eBay store. Plaintiffs and the proposed class members entered into a binding contract to purchase WSME on Hasbro's eBay store and received written confirmation of their purchase. Defendants then unilaterally cancelled the sales contract of Plaintiffs, and other similarly situated persons, without legal authority. Plaintiffs and the proposed class members were thus denied the benefit of their purchase. Because WSME was a limited-edition product that is now sold out,

Plaintiffs and the proposed class members can now only obtain WSME at its substantially higher fair market value.

I. PARTIES

1. Plaintiff Johnathan Erler is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Johnathan Erler is a citizen and resident of Gwinnett County, Georgia. By bringing this action, Plaintiff Johnathan Erler avails himself of the jurisdiction of this Court.

2. Plaintiff Grant Shindo is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Grant Shindo is a citizen and resident of Hawaii. By bringing this action, Plaintiff Grant Shindo avails himself of the jurisdiction of this Court.

3. Plaintiff Cynthia Moren is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Cynthia Moren is a citizen and resident of California. By bringing this action, Plaintiff Cynthia Moren avails herself of the jurisdiction of this Court.

4. Plaintiff Ryan Jaques is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Ryan Jaques is a citizen and resident of Colorado. By bringing this action, Plaintiff Ryan Jaques avails himself of the jurisdiction of this Court.

5. Plaintiff Thomas Bello is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Thomas Bello is a citizen and resident of Florida. By bringing this action, Plaintiff Thomas Bello avails himself of the jurisdiction of this Court.



6. Plaintiff Jordan Pollack is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Jordan Pollack is a citizen and resident of Illinois. By bringing this action, Plaintiff Jordan Pollack avails himself of the jurisdiction of this Court.

7. Plaintiff Michael Apperson is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Michael Apperson is a citizen and resident of Kentucky. By bringing this action, Plaintiff Michael Apperson avails himself of the jurisdiction of this Court.

8. Plaintiff Aaron Pinkham is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Aaron Pinkham is a citizen and resident of Massachusetts. By bringing this action, Plaintiff Aaron Pinkham avails himself of the jurisdiction of this Court.

9. Plaintiff Andrew Schweig is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Andrew Schweig is a citizen and resident of Massachusetts. By bringing this action, Plaintiff Andrew Schweig avails himself of the jurisdiction of this Court.

10. Plaintiff Alden Randall is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Alden Randall is a citizen and resident of Minnesota. By bringing this action, Plaintiff Alden Randall avails himself of the jurisdiction of this Court.

11. Plaintiff Michael Ranton is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Michael Ranton is a citizen and resident of Missouri. By bringing this action, Plaintiff Michael Ranton avails

himself of the jurisdiction of this Court.

12. Plaintiff Brandon Pettit is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Brandon Pettit is a citizen and resident of Nevada. By bringing this action, Plaintiff Brandon Pettit avails himself of the jurisdiction of this Court.

13. Plaintiff Thomas Rodriguez is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Thomas Rodriguez is a citizen and resident of New Jersey. By bringing this action, Plaintiff Thomas Rodriguez avails himself of the jurisdiction of this Court.

14. Plaintiff Bilal Awadallah is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Bilal Awadallah is a citizen and resident of New York. By bringing this action, Plaintiff Bilal Awadallah avails himself of the jurisdiction of this Court.

15. Plaintiff Izaak Kemp is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Izaak Kemp is a citizen and resident of Ohio. By bringing this action, Plaintiff Izaak Kemp avails himself of the jurisdiction of this Court.

16. Plaintiff Thomas Cox is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Thomas Cox is a citizen and resident of Pennsylvania. By bringing this action, Plaintiff Thomas Cox avails himself of the jurisdiction of this Court.

17. Plaintiff Mark Laroche is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Mark Laroche is a citizen

and resident of Rhode Island. By bringing this action, Plaintiff Mark Laroche avails himself of the jurisdiction of this Court.

18. Plaintiff Travis Henley is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Travis Henley is a citizen and resident of South Carolina. By bringing this action, Plaintiff Travis Henley avails himself of the jurisdiction of this Court.

19. Plaintiff Ian Nytes is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Ian Nytes is a citizen and resident of Wisconsin. By bringing this action, Plaintiff Ian Nytes avails himself of the jurisdiction of this Court.

20. Plaintiff Mitchell Levy is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Mitchell Levy is a citizen and resident of Maryland. By bringing this action, Plaintiff Mitchell Levy avails himself of the jurisdiction of this Court.

21. Plaintiff Ulises Moreno-Ortega is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Ulises Moreno-Ortega is a citizen and resident of Utah. By bringing this action, Plaintiff Ulises Moreno-Ortega avails himself of the jurisdiction of this Court.

22. Plaintiff James Lea is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff James Lea is a citizen and resident of Texas. By bringing this action, Plaintiff James Lea avails himself of the jurisdiction of this Court.

23. Plaintiff Charles DeCelles is a confirmed purchaser of WSME that had his sales

contract canceled by Defendants without his consent. Plaintiff Charles DeCelles is a citizen and resident of Arizona. By bringing this action, Plaintiff Charles DeCelles avails himself of the jurisdiction of this Court.

24. Plaintiff Cameron Burger is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Cameron Burger is a citizen and resident of Virginia. By bringing this action, Plaintiff Cameron Burger avails himself of the jurisdiction of this Court.

25. Plaintiff Nathan Kujacznski is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Nathan Kujacznski is a citizen and resident of Michigan. By bringing this action, Plaintiff Nathan Kujacznski avails himself of the jurisdiction of this Court.

26. Plaintiff Michael Lee is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Michael Lee is a citizen and resident of Virginia. By bringing this action, Plaintiff Michael Lee avails himself of the jurisdiction of this Court.

27. Plaintiff Jared Liebowitz is a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Jared Liebowitz is a citizen and resident of Pennsylvania. By bringing this action, Plaintiff Jared Liebowitz avails himself of the jurisdiction of this Court.

28. Plaintiff Aaron Smith a confirmed purchaser of WSME that had his sales contract canceled by Defendants without his consent. Plaintiff Aaron Smith is a citizen and resident of Washington. By bringing this action, Plaintiff Aaron Smith avails himself of the jurisdiction of this Court.

29. Hasbro is a corporation registered to do business in Georgia that is subject to the jurisdiction of this Court. Hasbro may be served through its registered agent, C T Corporation System, at 289 S Culver St, Lawrenceville, GA, 30046. Venue is proper as to Hasbro because it maintains a registered office in Gwinnett County. Hasbro is further subject to the jurisdiction of the Court for, among others, the following reasons:

- 29.1 A nonresident defendant is subject to personal jurisdiction under the Georgia long-arm statute by virtue of doing business in Georgia, by contracting with Georgia residents pursuant to contracts to be performed in part in Georgia, and/or by committing torts where one or more elements of the tort occurred in Georgia. Hasbro has engaged in such business in Georgia.
- 29.2 It knowingly, intentionally, and deliberately placed WSME into the stream of commerce under circumstances such that Hasbro should reasonably anticipate being haled into court in Georgia to answer claims about the sale of its product in Georgia.
- 29.3 It regularly does business in Georgia, solicits business in Georgia, derives substantial revenue from goods or services in Georgia, derives substantial revenue from Georgia residents via internet sales, has agents or representatives or officers or employees in Georgia, maintains an office in Georgia, and has subsidiaries or business affiliates in Georgia.
- 29.4 It places its products into the stream of commerce by targeting Georgia consumers through approved distributors in the State.

- 29.5 It has come into the courts of Georgia, without ever claiming a lack of jurisdiction, to answer claims about its products in Georgia.
- 29.6 It has been a party seeking relief or review in cases where it has purposefully availed itself of the jurisdiction of the courts of Georgia.
- 29.7 It has a regular plan for the distribution of its products in Georgia with the goal of achieving a commercial benefit from the sale of products in Georgia.
- 29.8 It engages in national marketing of its products that intentionally pervade into the Georgia market.
- 29.9 It targets marketing specific to Georgia.
- 29.10 It oversees aspects of its products from within Georgia.
- 29.11 It holds patents and trademarks which it demands must be honored in Georgia.
- 29.12 It has contractual agreements with Georgia companies to use its trademarks in Georgia, specifically including Magic the Gathering and WSME.
- 29.13 It has purposefully availed itself of the privilege and benefits of conducting business in Georgia.
- 29.14 Its negligent acts both inside and outside Georgia caused injury within Georgia.
- 29.15 The claims in this action are connected with and/or relate to its extensive contacts with Georgia.

29.16 Georgia has an interest in adjudicating this dispute which occurred, at least in part, in Georgia, and which involved actions that caused harm to Georgia residents.

29.17 Allowing Hasbro to escape jurisdiction would improperly allow Hasbro to wield the Due Process Clause as a territorial shield to avoid interstate obligations that Hasbro has voluntarily assumed.

30. Wizards is a limited liability company incorporated in Delaware. Wizards may be served through its registered agent The Corporation Trust Company at 1209 Orange St, Wilmington, DE 19801. Venue is proper as to Wizards because it is a joint tortfeasor with one or more Defendants that reside in Gwinnett County. Wizards is further subject to the jurisdiction of the Court for, among others, the following reasons:

30.1 A nonresident defendant is subject to personal jurisdiction under the Georgia long-arm statute by virtue of doing business in Georgia, by contracting with Georgia residents pursuant to contracts to be performed in part in Georgia, and/or by committing torts where one or more elements of the tort occurred in Georgia. Wizards has engaged in such business in Georgia.

30.2 It knowingly, intentionally, and deliberately placed WSME into the stream of commerce under circumstances such that Wizards should reasonably anticipate being haled into court in Georgia to answer claims about the sale of its product in Georgia.

30.3 It regularly does business in Georgia, solicits business in Georgia, derives substantial revenue from goods or services in Georgia, derives substantial

revenue from Georgia residents via internet sales, has agents or representatives or officers or employees in Georgia, maintains an office in Georgia, and has subsidiaries or business affiliates in Georgia.

- 30.4 It places its products into the stream of commerce by targeting Georgia consumers through approved distributors in the State.
- 30.5 It has a regular plan for the distribution of its products in Georgia with the goal of achieving a commercial benefit from the sale of products in Georgia.
- 30.6 It engages in national marketing of its products that intentionally pervade into the Georgia market.
- 30.7 It targets marketing specific to Georgia.
- 30.8 It oversees aspects of its products from within Georgia.
- 30.9 It holds patents and trademarks which it demands must be honored in Georgia.
- 30.10 It has contractual agreements with Georgia companies to use its trademarks in Georgia, specifically including Magic the Gathering and WSME.
- 30.11 It has purposefully availed itself of the privilege and benefits of conducting business in Georgia.
- 30.12 Its negligent acts both inside and outside Georgia caused injury within Georgia.
- 30.13 The claims in this action are connected with and/or relate to its extensive contacts with Georgia.



30.14 Georgia has an interest in adjudicating this dispute which occurred, at least in part, in Georgia, and which involved actions that caused harm to Georgia residents.

30.15 Allowing Wizards to escape jurisdiction would improperly allow Wizards to wield the Due Process Clause as a territorial shield to avoid interstate obligations that Wizards has voluntarily assumed.

## II. STATEMENT OF FACTS

31. On or about April 18, 2019, Hasbro and Wizards announced the sale of WSME on its website. According to the announcement, WSME is limited to 12,000 units and would be sold exclusively on “Hasbro's eBay store starting Wednesday, May 1 at 3 p.m. ET (noon PT/8 p.m. GMT). Limit 2 per person. There will be no reprints of War of the Spark Mythic Edition—once it's gone, it's gone.”<sup>1</sup>

32. On May 1, 2019, each Plaintiff purchased one or more units of WSME from Defendants using Defendants' eBay store.

33. On or about May 1, 2019, each Plaintiff received written confirmation of their purchase of units of WSME from Defendants' eBay store. (Representative copy attached as Exhibit 1).

34. On May 1, 2019, each Plaintiff transferred payment to Defendants for units of WSME at the listed price.

35. On or about May 1, 2019, each Plaintiff received written confirmation that their payment for units of WSME at the listed price was accepted by Defendants. (Representative copy attached as Exhibit 2).

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<sup>1</sup> <https://magic.wizards.com/en/articles/archive/news/war-spark-mythic-edition-2019-04-18>

36. Each Plaintiff had a valid contract with Defendants for the purchase of WSME at the listed price.

37. Each Plaintiff later received notification that Defendants had breached their contract with Plaintiffs and unilaterally canceled their purchase of units of WSME without their consent.

38. When Plaintiffs received notice that Defendants had breached their sales contract, the fair market value of WSME had increased substantially.

39. Due to Defendants' actions, Plaintiffs were denied the benefit of their purchase.

40. Due to Defendants' actions, Plaintiffs' only option is to purchase units of WSME at its substantially higher fair market price from third-party sellers.

41. Defendants have not refunded some or all of the Plaintiffs' purchase money as of May 10, 2019.

### III. CLASS ACTION ALLEGATIONS

42. Plaintiffs bring this action as a class action pursuant to O.C.G.A. § 9-11-23, Individually, and on behalf of the following classes:

1. All residents of the United States that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants;
2. A subclass of all residents of Georgia that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Erler subclass);
3. A subclass of all residents of Hawaii that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their

- purchase canceled by, or at the request of, Defendants (Shindo subclass);
4. A subclass of all residents of California that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Moren subclass);
  5. A subclass of all residents of Colorado that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Jaques subclass);
  6. A subclass of all residents of Florida that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Bello subclass);
  7. A subclass of all residents of Illinois that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Pollack subclass);
  8. A subclass of all residents of Kentucky that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Apperson subclass);
  9. A subclass of all residents of Massachusetts that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Pinkham-Schweig subclass);
  10. A subclass of all residents of Minnesota that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had

their purchase canceled by, or at the request of, Defendants (Randall subclass);

11. A subclass of all residents of Missouri that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Ranton subclass);

12. A subclass of all residents of Nevada that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Pettit subclass);

13. A subclass of all residents of New Jersey that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Rodriguez subclass);

14. A subclass of all residents of New York that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Awadallah subclass);

15. A subclass of all residents of Ohio that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Kemp subclass);

16. A subclass of all residents of Pennsylvania that had a confirmed purchase

of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Cox-Liebowitz subclass);

17. A subclass of all residents of Rhode Island that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Laroche subclass);
18. A subclass of all residents of South Carolina that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Henley subclass);
19. A subclass of all residents of Wisconsin that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Nytes subclass);
20. A subclass of all residents of Maryland that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Levy subclass);
21. A subclass of all residents of Utah that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Moreno-Ortega subclass);

22. A subclass of all residents of Texas that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Lea subclass);
  23. A subclass of all residents of Arizona that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (DeCelles subclass);
  24. A subclass of all residents of Virginia that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Burger subclass);
  25. A subclass of all residents of Michigan that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Kujacznski subclass); and
  26. A subclass of all residents of Washington that had a confirmed purchase of WSME from Defendants' eBay store and who then subsequently had their purchase canceled by, or at the request of, Defendants (Smith subclass).
43. Excluded from the class are Defendants, as well as Defendants' employees, affiliates, officers, and directors, and the Judge presiding over this case. Plaintiffs reserve the right to amend the definition of the class if discovery and/or further investigation reveals that the class definition should be expanded or otherwise modified.
44. **Numerosity / Impracticality of Joinder:** The members of the class are so numerous that joinder of all members would be impractical. The members of the class

are easily and readily identifiable from information and records in Defendants' possession, control, or custody. Plaintiffs do not know the number of persons in the United States who purchased WSME but reasonably believe that there are more than one hundred persons in each of the proposed classes.

45. **Commonality and Predominance:** There is a well-defined community of interest and common questions of law and fact that predominate over any questions affecting the individual members of the class. These common legal and factual questions, which exist without regard to the individual circumstances of any class member, include, but are not limited to, the following:

- a. Whether Defendants breached a contractual agreement to provide units of WSME at the listed price;
- b. Whether Defendants breached their duty of good faith and fair dealing by canceling a contractual agreement to provide units of WSME at the listed price;
- c. Whether Defendants breached their duties of ordinary care by failing to appropriately manage its sale of WSME on their eBay store;
- d. Whether Defendants breached their duties of ordinary care by failing to appropriately monitor its sale of WSME on their eBay store; and
- e. Whether Defendants breached their duties of ordinary care by failing to promptly notify individuals that purchased WSME of problems with their purchase.

46. **Typicality:** Plaintiffs' claims are typical of the class claims in that Plaintiffs and the class members were all denied the benefit of their purchase when Defendants canceled their sales contract without their consent. As such, Plaintiffs' claims arise from the same practices and course of conduct that give rise to the class claims, and Plaintiffs' claims are based upon the same legal theories as the class claims.

47. **Adequacy:** Plaintiffs will fully and adequately protect the interests of the members of the class and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither the Plaintiffs nor their counsel have interests which are contrary to, or conflicting with, those interests of the class.

48. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because it is economically impracticable for members of the classes to prosecute individual actions; prosecution as a class action will eliminate the possibility of repetitious and redundant litigation; and a class action will enable claims to be handled in an orderly and expeditious manner.

#### **COUNT 1: BREACH OF CONTRACT**

49. By listing WSME on their eBay store with a "buy it now" price, Defendants made an offer to sell WSME to individuals at the listed price.

50. EBay's terms of service specifically state that, when an offer for an item is accepted, it creates a legally binding contract:

- You enter into a legally binding contract to purchase an item when you commit to buy an item, your offer for an item is accepted, or if you have the winning bid (or your bid is otherwise accepted),

51. Defendants agreed to eBay's terms of service when they agreed to sell WSME on



their eBay store.

52. All parties agreed to abide by eBay's user agreement before using eBay's services.

53. Defendants made an offer by listing WSME with the "Buy It Now" option and invited anyone who clicked the "Buy It Now" button to enter into a contract.

54. Plaintiffs, and all those similarly situated, accepted Defendants' invitation by clicking the "Buy It Now" button, thereby entering into a "legally binding contract" pursuant to eBay's user agreement.

55. Defendants' eBay listing contained all of the agreement's terms and the consideration, namely, that Plaintiffs, and all those similarly situated, would receive WSME and Defendants would receive \$249.99, minus a commission from eBay.

56. Plaintiffs, and all those similarly situated, received written confirmation of their purchase of units of WSME from Defendants.

57. Plaintiffs, and all those similarly situated, received written confirmation that their offer to purchase units of WSME was accepted by Defendants.

58. Plaintiffs and all those similarly situated, received written confirmation that their payment to Defendants for units of WSME was accepted by Defendants.

59. Under these circumstances, Plaintiffs, and all those similarly situated, entered into a legally binding contract with Defendants for the sale of units of WSME at the listed price.

60. Under eBay's Terms of Service, cancellation is authorized if both parties to the contract consent to the cancellation. Under such circumstances, neither party will be charged for the transaction.

61. Plaintiffs did not consent to cancelling the contract.

62. Because Plaintiffs, and all those similarly situated, had a legally binding contract for the purchase of units of WSME at the listed price, Defendants were not permitted to unilaterally cancel these confirmed purchases.

63. Defendants' decision to cancel Plaintiffs' purchase of units of WSME was a breach of the legally binding contract between Defendants and Plaintiffs for the sale of units of WSME at the listed price.

64. Due to Defendants' actions, Plaintiffs, and all those similarly situated, were denied the benefit of their bargain.

65. Due to Defendants' actions, Plaintiffs, and all those similarly situated, can now only obtain units of WSME at its substantially higher fair market value.

66. As a direct and proximate result of Defendants' actions, Plaintiffs, and all those similarly situated, incurred damages, and, as such, Plaintiffs, and all those similarly situated, are entitled to recover damages in an amount equal to the fair market value of their purchase.

## **COUNT 2: BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

67. By listing WSME on their eBay store with a "buy it now" price, Defendants made an offer to sell WSME to individuals at the listed price.

68. eBay's terms of service specifically state that, when an offer for an item is accepted, it creates a legally binding contract:

- You enter into a legally binding contract to purchase an item when you commit to buy an item, your offer for an item is accepted, or if you have the winning bid (or your bid is otherwise accepted),

69. Defendants agreed to eBay's terms of service when they agreed to sell WSME on their eBay store.

70. All parties agreed to abide by eBay's user agreement before using eBay's services.

71. Defendants made an offer by listing WSME with the "Buy It Now" option and invited anyone who clicked the "Buy It Now" button to enter into a contract.

72. Plaintiffs, and all those similarly situated, accepted Defendants' invitation by clicking the "Buy It Now" button, thereby entering into a "legally binding contract" pursuant to eBay's user agreement.

73. Defendants' eBay listing contained all the agreement's terms and the consideration, namely, that Plaintiffs, and all those similarly situated, would receive WSME and Defendants would receive \$249.99, minus a commission from eBay.

74. Plaintiffs, and all those similarly situated, received written confirmation of their purchase of units of WSME from Defendants

75. Plaintiffs, and all those similarly situated, received written confirmation that their offer to purchase units of WSME was accepted by Defendants.

76. Plaintiffs, and all those similarly situated, received written confirmation that their payment to Defendants for units of WSME was accepted by Defendants.

77. Under these circumstances, Plaintiffs, and all those similarly situated, entered into a legally binding contract with Defendants for the sale of units of WSME at the listed price.

78. Under eBay's Terms of Service, cancellation is authorized if both parties to the contract consent to the cancellation. Under such circumstances, neither party will be charged for the transaction.

79. Plaintiffs did not consent to cancelling the contract.

80. Every contract imposes an obligation of good faith and fair dealing in its

performance and enforcement.

81. Because Plaintiffs, and all those similarly situated, had a legally binding contract for the purchase of units of WSME at the listed price, Defendants were not permitted to unilaterally cancel these confirmed purchases.

82. Defendants' decision to cancel Plaintiffs' purchase of units of WSME was a breach of Defendants' duty of good faith and fair dealing that was implied in its contract with Plaintiffs for the sale of units of WSME at the listed price.

83. Due to Defendants' actions, Plaintiffs, and all those similarly situated, were denied the benefit of their bargain.

84. Due to Defendants' actions, Plaintiffs, and all those similarly situated, can now only obtain units of WSME at its substantially higher fair market value.

85. As a direct and proximate result of Defendants' actions, Plaintiffs, and all those similarly situated, incurred damages, and, as such, Plaintiffs, and all those similarly situated, are entitled to recover damages in an amount equal to the fair market value of their purchase.

### **COUNT 3: NEGLIGENCE**

86. Defendants had a duty of ordinary care to ensure that: (1) its eBay store was managed properly; (2) its listing for the sale of WSME was setup properly; (3) its sale of WSME was properly monitored; and (4) purchasers of WSME were promptly notified of any problems with their purchase.

87. Defendants breached their duty of ordinary care by:

- (1) Failing to properly manage its eBay store during the sale of WSME;
- (2) Failing to properly list the sale of WSME on its eBay store;

- (3) Failing to properly monitor the sale of WSME on its eBay store;  
and
- (4) Failing to promptly notify purchasers of WSME of problems with  
their purchase.

88. Due to Defendants' actions, Plaintiffs, and all those similarly situated, were denied the benefit of their bargain.

89. Due to Defendants' actions, Plaintiffs, and all those similarly situated, can now only obtain units of WSME at its substantially higher fair market value.

90. As a direct and proximate result of Defendants' actions, Plaintiffs, and all those similarly situated, incurred damages, and, as such, Plaintiffs, and all those similarly situated, are entitled to recover damages in an amount to equal to the fair market value of their purchase.

IV. JURY DEMAND

91. Plaintiffs demand a trial by jury for all claims.

V. DAMAGES AND PRAYER FOR RELIEF

92. Plaintiffs pray for the following relief:

- a. An order certifying this action as a class action, appointing Plaintiffs as class representative, and appointing Plaintiffs' counsel as lead class counsel;
- b. All compensatory damages on all applicable claims in an amount to be proven at trial and allowed by law; and
- c. All other and further relief that the Court deems appropriate and just under the circumstances.

This 10th day of May 2019.

**WERNER WETHERINGTON, P.C.**

/s/ Matthew Q. Wetherington  
MATTHEW Q. WETHERINGTON  
Georgia Bar No. 339639  
ROBERT N. FRIEDMAN  
Georgia Bar No. 945494

2860 Piedmont Rd., NE  
Atlanta, GA 30305  
770-VERDICT  
matt@wernerlaw.com  
robert@wernerlaw.com

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

JOHNATHAN ERLER, GRANT SHINDO, CYNTHIA MOREN, RYAN JAQUES, THOMAS BELLO, JORDAN POLLACK, MICHAEL APPERSON, AARON PINKHAM, ANDREW SCHWEIG, ALDEN RANDALL, MICHAEL RANTON, BRANDON PETTIT, THOMAS RODRIGUEZ, BILAL AWADALLAH, IZAAK KEMP, THOMAS COX, MARK LAROCHE, TRAVIS HENLEY, IAN NYTES, MITCHELL LEVY, ULISES MORENO-ORTEGA, JAMES LEA, CHARLES DECELLES, CAMERON BURGER, NATHAN KUJACZNSKI, MICHAEL LEE, JARED LIEBOWITZ, and AARON SMITH, Individually, and on Behalf of a Class of Similarly Situated Persons,

Plaintiffs,

v.

HASBRO, INC. and WIZARDS OF THE COAST LLC,

Defendants.

CIVIL ACTION NO. \_\_\_\_\_

**DECLARATION OF ROBERT TURNER IN SUPPORT OF DEFENDANTS'  
NOTICE OF REMOVAL OF CIVIL ACTION TO FEDERAL COURT**

I, Robert Turner, hereby declare:

1. I am Senior Attorney, Litigation for Hasbro, Inc. ("Hasbro"),

Defendant in the above-captioned case. I have personal knowledge of all facts stated in this declaration, and if called upon as a witness, I could and would competently testify thereto.

2. Hasbro is a corporation formed under the laws of the state of Rhode Island with its principal place of business in Pawtucket, Rhode Island.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 11th day of June, 2019 in Pawtucket, Rhode Island.

  
Robert Turner



**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

JOHNATHAN ERLER, GRANT SHINDO, CYNTHIA MOREN, RYAN JAQUES, THOMAS BELLO, JORDAN POLLACK, MICHAEL APPERSON, AARON PINKHAM, ANDREW SCHWEIG, ALDEN RANDALL, MICHAEL RANTON, BRANDON PETTIT, THOMAS RODRIGUEZ, BILAL AWADALLAH, IZAAK KEMP, THOMAS COX, MARK LAROCHE, TRAVIS HENLEY, IAN NYTES, MITCHELL LEVY, ULISES MORENO-ORTEGA, JAMES LEA, CHARLES DECELLES, CAMERON BURGER, NATHAN KUJACZNSKI, MICHAEL LEE, JARED LIEBOWITZ, and AARON SMITH, Individually, and on Behalf of a Class of Similarly Situated Persons,

Plaintiffs,

v.

HASBRO, INC. and WIZARDS OF THE COAST LLC,

Defendants.

CIVIL ACTION NO. \_\_\_\_\_

**DECLARATION OF NICHOLAS MITCHELL IN SUPPORT OF  
DEFENDANTS' NOTICE OF REMOVAL OF CIVIL ACTION TO  
FEDERAL COURT**

I, Nicholas Mitchell, hereby declare:

1. I am the Managing Attorney for Wizards of the Coast LLC, Defendant in the above-captioned case. I have personal knowledge of all facts stated in this declaration, and if called upon as a witness, I could and would competently testify thereto.

2. Pursuant to a Listing Agreement between Wizards of the Coast LLC, Hasbro, Inc., and eBay, Inc. (“eBay”), eBay agreed to list and thereby sell a maximum of 12,000 individual units of a set of War of the Spark Mythic Edition cards from the card game Magic: The Gathering to purchasers. The item was listed at \$249.99 plus applicable taxes and shipping costs. Only 12,000 units were manufactured, and Defendants advertised the limited availability of this item.

3. Demand for this product was unprecedented for eBay and was sold out in a manner of minutes. Due to technical failures between eBay and a third-party inventory control service provider, which were wholly outside of Hasbro’s control, more than 30,000 orders were processed by eBay in excess of the 12,000 units offered by Hasbro through eBay. As a result of lack of inventory, those excess orders were canceled.

4. Plaintiffs are seeking damages “substantially higher” than the \$249.99 list price of the War of the Spark Mythic Edition for each putative class member

based on eBay **listings** by unauthorized third-party sellers. *See* First Amended Class Action Complaint ¶¶ 38, 40, 65, 84, 89.

5. Defendants do not acknowledge the presence of any damages here or allegations of damages based on a secondary market set by unauthorized third parties. To the extent alleged by Plaintiffs and relevant to the removal sought here, however, the War of the Spark Mythic Edition has been offered for resale by unauthorized third parties through eBay for more than twice the original \$249.99 sales price.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 11th day of June, 2019 in Seattle, Washington.

  
Nicholas Mitchell

JS44 (Rev. 6/2017 NDGA)

**CIVIL COVER SHEET**

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

**I. (a) PLAINTIFF(S)**

Johnathan Erler, Grant Shindo, Cynthia Moren, Ryan Jaques, Thomas Bello, Jordan Pollack, Michael Apperson, Aaron Pinkham, Andrew Schweig, Alden Randall, Michael Ranton, Brandon Pettit, Thomas Rodriguez, Bilal Awadallah, Izaak Kemp, Thomas Cox, Mark Laroche, Travis Henley, Ian Nytes, Mitchell Levy, Ulises Moreno-Ortega, James Lea, Charles Decelles, Cameron Burger, Nathan Kujacznski, Michael Lee, Jared Liebowitz, and Aaron Smith, Individually, and on Behalf

**DEFENDANT(S)**

Hasbro, Inc. and Wizards of the Coast LLC

**(b) COUNTY OF RESIDENCE OF FIRST LISTED**

PLAINTIFF Gwinnett  
(EXCEPT IN U.S. PLAINTIFF CASES)

**COUNTY OF RESIDENCE OF FIRST LISTED**

DEFENDANT Providence County, RI  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

**(c) ATTORNEYS** (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

Matthew Q. Wetherington (matt@wernerlaw.com)  
Robert N. Friedman (robert@wernerlaw.com)  
Werner Wetherington PC  
2860 Piedmont Rd. NE  
Atlanta, GA 30305 (770)837-3428

**ATTORNEYS** (IF KNOWN)

Shelby R. Grubbs (shelby.grubbs@millermartin.com)  
Kimberly B. Reeves (kimberly.reeves@millermartin.com)  
Miller & Martin PLLC  
1180 West Peachtree St. NW, Suite 2100  
Atlanta, GA 30309 (404)962-6100

**II. BASIS OF JURISDICTION**

(PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF
- 2 U.S. GOVERNMENT DEFENDANT
- 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
- 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)  
(FOR DIVERSITY CASES ONLY)

- |                                       |                            |   |                            |                                       |   |
|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|---|
| PLF                                   | DEF                        |   | PLF                        | DEF                                   |   |
| <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | CITIZEN OF THIS STATE                   | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            | INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE     |
| <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | CITIZEN OF ANOTHER STATE                | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 | INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE |
| <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | CITIZEN OR SUBJECT OF A FOREIGN COUNTRY | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            | FOREIGN NATION  |

**IV. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING
- 2 REMOVED FROM STATE COURT
- 3 REMANDED FROM APPELLATE COURT
- 4 REINSTATED OR REOPENED
- 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
- 6 MULTIDISTRICT LITIGATION - TRANSFER
- 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT
- 8 MULTIDISTRICT LITIGATION - DIRECT FILE

**V. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

This is a class-action lawsuit in which there is a diversity of citizenship and which falls under The Class Action Fairness Act of 2005

**(IF COMPLEX, CHECK REASON BELOW)**

- 1. Unusually large number of parties.
- 2. Unusually large number of claims or defenses.
- 3. Factual issues are exceptionally complex
- 4. Greater than normal volume of evidence.
- 5. Extended discovery period is needed.
- 6. Problems locating or preserving evidence
- 7. Pending parallel investigations or actions by government.
- 8. Multiple use of experts.
- 9. Need for discovery outside United States boundaries.
- 10. Existence of highly technical issues and proof.

**CONTINUED ON REVERSE**

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ MAG. JUDGE (IFP) \_\_\_\_\_  
 JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_ NATURE OF SUIT \_\_\_\_\_ CAUSE OF ACTION \_\_\_\_\_  
 (Referral)



**VI. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 440 OTHER CIVIL RIGHTS
- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT
- 835 PATENT-ABBREVIATED NEW DRUG APPLICATIONS (ANDA) - a/k/a Hatch-Waxman cases

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395ff)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 376 Qui Tam 31 USC 3729(a)
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTI TRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

**\* PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

**VII. REQUESTED IN COMPLAINT:**

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ 5,000,000.00

JURY DEMAND  YES  NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

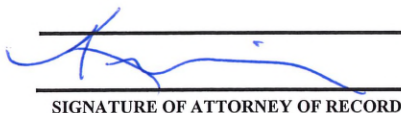
**VIII. RELATED/REFILED CASE(S) IF ANY**

JUDGE \_\_\_\_\_ DOCKET NO. \_\_\_\_\_

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. \_\_\_\_\_, WHICH WAS DISMISSED. This case  IS  IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

  
SIGNATURE OF ATTORNEY OF RECORD

6/11/2019  
DATE

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Over Canceled Magic: The Gathering 'War of the Spark Mythic Edition' Sales Bumped to Georgia Federal Court](#)

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