

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Gene Williams (SBN 211390)  
GWilliams@InitiativeLegal.com  
Mark P. Pifko (SBN 228412)  
MPifko@InitiativeLegal.com  
Jennifer S. Grock (SBN 245671)  
JGrock@InitiativeLegal.com  
Initiative Legal Group APC  
1800 Century Park East, 2nd Floor  
Los Angeles, California 90067  
Telephone: (310) 556-5637  
Facsimile: (310) 861-9051

Attorneys for Plaintiff James Collins

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**TEH**

FILED  
2010 MAR 23 P 2:30  
RICHARD W. WILKINS  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FILED BY FAX

INITIATIVE LEGAL GROUP APC  
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

JAMES COLLINS, individually, and  
on behalf of other members of the  
general public similarly situated,

Plaintiff,

vs.

GAMESTOP CORP, a Delaware  
corporation; GAMESTOP.COM,  
INC., a Delaware Corporation; B&N  
GAMESTOP HOLDING CORP., a  
Delaware corporation; and BARNES  
AND NOBLE, INC., a Delaware  
Corporation,

Defendants.

Case No: **10 1210**

**CLASS ACTION COMPLAINT FOR:**

- (1) Violation of the Consumers Legal Remedies Act (Cal. Civil Code §§ 1750 *et seq.*)
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*); and
- (3) Fraud and/or Intentional Deceit

**Jury Trial Demanded**

1 Plaintiff JAMES COLLINS ("Plaintiff"), individually and on behalf of all  
2 other members of the public similarly situated, alleges as follows:

3 NATURE OF THE ACTION

4 1. This is a consumer class action regarding GameStop's unfair,  
5 unlawful, deceptive and misleading practices conducted in violation of  
6 California state law and common law.

7 2. This class action involves certain used video games that are sold in  
8 GameStop retail stores and GameStop.com. With respect to these used video  
9 games, GameStop fraudulently, unfairly, unlawfully, and deceptively misleads  
10 consumers at the time of their purchase to believe that the game comes with free  
11 downloadable content, when in fact, it does not. Several games—including, but  
12 not limited to, the video game titles "Dragon Age Origins," "Mass Effect 2,"  
13 "Battlefield: Bad Company 2," "Gears of War 2: Game of the Year Edition,"  
14 "NBA Live '09," "Rock Band 2," and "AC / DC Live: Rock Band Track  
15 Pack"—are packaged with downloadable content, such as characters, levels,  
16 weapons and songs. The downloadable content is available to players after they  
17 enter a "use code" that comes with the game.

18 3. The availability of this additional content is prominently advertised  
19 on the packaging of these games. The problem arises when GameStop sells used  
20 copies of these games. Despite the representations on the packaging that the  
21 game comes with a free use code, unbeknownst to consumers who purchase a  
22 used copy of one of these games, upon attempting to download the content  
23 identified on the game's packaging, consumers are unable to do so unless they  
24 pay an additional fee. This occurs because the use codes have already been used  
25 by the individual who purchased the game as new. In short, as a result of  
26 GameStop's deceptive and misleading practices, consumers who purchase used  
27 games from GameStop unknowingly find that they must pay an additional fee to  
28 access the full game they thought they purchased.



1 (collectively "GameStop" or "Defendants") are Delaware corporations who are  
2 authorized to do and, are in fact, doing business in the State of California.

3 10. Whenever, in this Complaint, reference is made to any act, deed or  
4 conduct of Defendants, the allegation means that Defendants engaged in the act,  
5 deed or conduct by or through one or more of their officers, directors, agents,  
6 employees or representatives who was actively engaged in the management,  
7 direction, control or transaction of the ordinary business and affairs of one or  
8 more of Defendants.

9 11. Plaintiff is informed and believes, and based thereon alleges, that at  
10 all material times herein, each of the Defendants was the agent, servant and/or  
11 employee of the other Defendants, acted within the purpose, scope and course of  
12 said agency, service and/or employment and with the express and/or implied  
13 knowledge, permission and consent of the other Defendants, and ratified and  
14 approved the acts of the other Defendants.

#### 15 **FACTUAL BACKGROUND**

16 12. Defendants own and operate over 6,200 video game stores  
17 worldwide, over 4,300 of which are in the United States. GameStop carries a  
18 large assortment of popular used and new video game hardware, software,  
19 accessories and related products.

20 13. What sets GameStop apart from other video game retailers is its  
21 virtual lock on the sale of used games. Consumers can trade in old games for  
22 cash or credit which can be used towards the purchase of new or used games.  
23 GameStop then sells these used games to other consumers for only \$5 to \$10  
24 below the price of a new game.

25 14. GameStop buys used games for approximately half the price that it  
26 will later sell the game for. Accordingly, GameStop's profits from the sale of  
27 used games are higher than they are from the sale of new games. GameStop's  
28 gross profit margin from the sale of used products is approximately 50%. In

1 contrast, the gross profit margin for the sale of new games is usually between 7%  
2 and 20%. Moreover, more than 40% of GameStop's gross profits come from the  
3 sale of used products. Even in today's slow economy, the total annual revenue  
4 from sales of used games has grown to nearly \$2 billion. Indeed, to quote the  
5 *Wall Street Journal*, "[a]mid a devastating period for most retailers, videogame  
6 seller GameStop Corp. has posted big sales gains, in part by aggressively  
7 marketing used products to cash-strapped consumers."<sup>1</sup>

8 15. However, with big profits constantly looming overhead, GameStop  
9 is doing more than "aggressively marketing" the used product it sells, the  
10 company's practices are consistently defrauding and deceiving consumers. In  
11 addition to the deceptive, fraudulent and misleading practices at issue here, in  
12 2003, GameStop settled a class action lawsuit in which GameStop was accused  
13 of selling used games as new. Unfortunately for consumers, GameStop's  
14 compliance with this settlement has recently been called into question, with  
15 allegations that employees are playing video games that GameStop then  
16 repackages and sells as new.

17 16. Over the past few years, video game publishers, perhaps in an effort  
18 to reduce this secondary market from which they do not profit, have begun to  
19 include additional downloadable content with the purchase of their games. This  
20 content can be unlocked and downloaded by entering a use code that is included  
21 with the purchase of the video game. The availability of this feature is  
22 prominently displayed on the video game boxes.

23 17. The use code allows the original purchaser of the video game to  
24 access the full content of the game as advertised. However, subsequent users,  
25 such as individuals who buy a used copy of a game at GameStop must pay an  
26 additional fee to access all of the features advertised on the video game box.

27  
28 <sup>1</sup> Yukaru Iwatani Kane & Miguel Bustillo, *Used Games Score Big for GameStop*, WALL ST. J., Jan. 21, 2009 at B1.

1 18. Despite the fact that many used games do not contain all of the  
2 game's advertised content unless consumers pay an additional fee to the game  
3 publisher, GameStop advertises its used or pre-owned games on its website by  
4 stating, "This pre-owned product is guaranteed to work and includes a box and  
5 instructional manual."<sup>2</sup>

6 19. Titles that use this use code system include: "Dragon Age Origins,"  
7 "Mass Effect 2," "Battlefield: Bad Company 2," "Gears of War 2," "NBA Live  
8 '09," "Rock Band 2," and "AC / DC Live: Rock Band Track Pack," all of which  
9 are sold at GameStop.

10 20. Advertisements for the special features are usually located on the  
11 back of the video game box. For example, the back of the "Dragon Age Origins"  
12 box states in large print:

13 INCLUDES:  
14 Downloadable  
15 character and quest  
16 A \$15 VALUE

17 Below this language, in small print, is the language: "One-time use code  
18 available with full retail purchase. Expires April 30, 2010."

19 This text appears on the video game box as follows:

20 ///  
21 ///  
22 ///

23  
24  
25  
26  
27 <sup>2</sup> GameStop, <http://www.gamestop.com/browse/search.aspx?N=80> (last  
28 visited Mar. 12, 2010)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



21. Similar text appears on the back cover of “Gears of War 2: Game of the Year Edition.” The text on that box states prominently at the top:

“INCLUDES: 19 EXTRA MAPS and an ADDITIONAL CAMPAIGN CHAPTER”

Similarly, in microscopic small print, on the bottom half of the box is the text:

“Download card Included.”

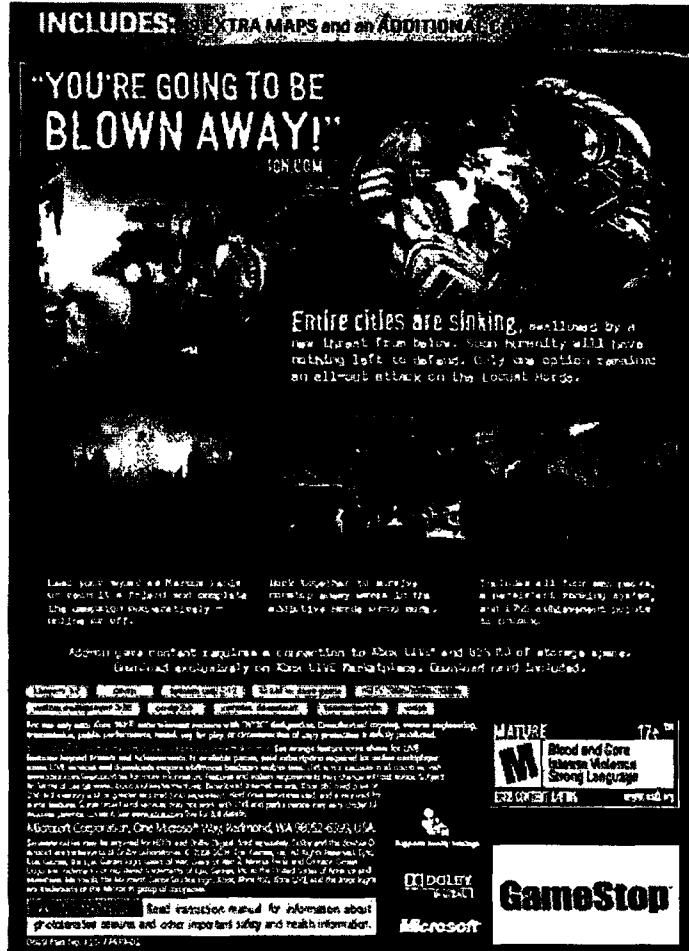
The text appears on the back of the box as follows:

///

///

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



22. In both games, the box clearly represents to customers that purchasing this game will give the buyer access to features which will enhance his or her gaming experience. Consumers rely on these representations, and their belief that the content is part of the game leads them to purchase the game. The small print does not in any way tell customers who are purchasing used copies of the game that they would not get access to these features. In the case of "Dragon Age Origins," the text states that you would get the use code with a "retail purchase" of the game. However, consumers who purchase the used game at a full retail store like GameStop, instead of from an online marketplace such as eBay.com, or from an individual, do not get these additional features. Similarly, GameStop's consumers are not aware that the "Download card" which is said to



1 be included cannot be used, or is not included, with used games.

2 23. By not informing consumers that they will not receive all the  
3 advertised features of the game, GameStop misrepresented and concealed  
4 material facts regarding its used games. This situation is analogous to selling a  
5 used book to customers without telling them that there are chapters missing.

6 24. In order to receive all of the game's advertised features, consumers  
7 who purchase the used game must pay an additional fee that will often make the  
8 total cost of the used game more expensive for the consumer than a new copy of  
9 the same game.

10 25. GameStop was and is aware that these games do not include the use  
11 code required to obtain the additional features of the game. GameStop checks all  
12 used games prior to selling them to other consumers. GameStop's website  
13 proudly advertises this fact, comparing GameStop's check to the one "some pre-  
14 owned car dealers put their vehicles through."<sup>3</sup> Thus, like a car dealer selling a  
15 certified used car, GameStop assures consumers that the used game they are  
16 purchasing is fully functioning, with all the features that a new game has.  
17 Accordingly, when GameStop's used game consumers find out that they did not  
18 get what they thought they paid for, many of them, including Plaintiff, have  
19 voiced complaints about their inability to download a game's downloadable  
20 content. Nevertheless, knowing this, GameStop continues to mislead consumers  
21 by concealing the true nature of the used games it sells.

22 26. Because of GameStop's concealment, consumers justifiably relied  
23 on the text contained on the video game's box.

24 27. GameStop's failure to disclose the truth to consumers is  
25 compounded by the company's return policy on used games. GameStop's return

26  
27 \_\_\_\_\_  
28 <sup>3</sup> GameStop, <http://www.gamestop.com/preowned> (last visited Mar. 12, 2010).

1 policy states, "Used (pre-owned) merchandise and opened new accessories may  
2 be returned for a full refund within 7 days of purchase or exchanged for the  
3 identical item within 30 days of purchase."<sup>4</sup> This means that consumers have  
4 only seven days to discover that they would not receive all of the characters,  
5 levels, songs and/or other features that are advertised on the game's box, and  
6 return the game to the store. In many cases, a consumer does not use the  
7 downloadable content until after finishing most or all of the other features. For  
8 example, before one would download and play the downloadable quest of  
9 Dragon Age Origins, one would likely play all of the basic quests included on  
10 the disc. These basic quests can take weeks or even months to complete,  
11 depending on the skill level of the player and the number of hours the game is  
12 played each day.

13 28. The reason for GameStop's concealment is clear; it is done to  
14 induce the company's customers to buy the used version of the game instead of  
15 the new version because GameStop makes more profit on the sale of used games.  
16 As a result, Defendants maintain inflated revenues and an unfair competitive  
17 advantage.

### 18 PLAINTIFF'S CLAIMS AGAINST GAMESTOP

19 29. Plaintiff is a resident of San Mateo, California. He occasionally  
20 purchases video games from GameStop for his personal use.

21 30. On January 6, 2010, Plaintiff purchased a used version of the video  
22 game "Dragon Age Origins" from the GameStop retail store located at  
23 1 Southland Mall in Hayward, California. Plaintiff paid \$54.99 plus taxes for the  
24 game, which is approximately \$5 less than a new copy of the game.

25 31. Plaintiff purchased the game from GameStop's retail store, in part,

26 \_\_\_\_\_  
27 <sup>4</sup>GameStop, [http://www.gamestop.com/gs/help/Store%20Return%20](http://www.gamestop.com/gs/help/Store%20Return%20Policy.pdf)  
28 Policy.pdf (last visited Mar. 12, 2010).

1 because of the box cover, which advertised that an additional character and quest  
2 could be downloaded for free upon the retail purchase of "Dragon Age Origins."

3 32. A couple weeks later, Plaintiff discovered that he would not have  
4 access to the full features of the game, such as the downloadable character and  
5 quest that was featured on the back of the game's box. Plaintiff had relied on the  
6 representations on the back of the box and believed that when he purchased the  
7 game, he would have access to these features without paying an additional fee.  
8 In fact, the availability of the downloadable character and quest was a reason  
9 why he chose to purchase the game.

10 33. On or around Tuesday, January 19, 2010, Plaintiff complained to the  
11 GameStop manager and attempted to return the game at the retail location.  
12 Plaintiff explained that he purchased the game believing that he would be able to  
13 download the additional character and quest as advertised on the back of the  
14 game's box. The manager of the GameStop informed Plaintiff that because the  
15 seven-day return period had expired, he could no longer return the game.

16 34. As a result of GameStop's deceptive, unfair and unlawful practices,  
17 Plaintiff was forced to pay an additional \$15 to obtain the downloadable features  
18 because these features were an important part of his gaming experience, and a  
19 reason why he purchased "Dragon Age Origins."

20 35. As a result of GameStop's concealment, Plaintiff ultimately paid  
21 \$10 more to purchase a used game than he would have had he purchased a brand  
22 new copy of the exact same game.

### 23 CLASS ACTION ALLEGATIONS

24 36. Plaintiff brings this action, on behalf of himself and all others  
25 similarly situated, as a class action pursuant to Rule 23 of the Federal Rules of  
26 Civil Procedure.

27  
28

1           37. The classes Plaintiff seeks to represent (the "Class") are defined as  
2 follows:

3                   All residents of the United States of America who  
4 purchased a video game from GameStop and were not  
5 able to access certain content without paying an  
6 additional fee because the game was used.

7                   All residents of California who purchased a video game  
8 from GameStop and were not able to access certain  
9 content without paying an additional fee because the  
10 game was used.

11           38. Plaintiff reserves the right to amend the Class definitions if  
12 discovery and further investigation reveals that the Class should be expanded or  
13 otherwise modified.

14           39. Plaintiff reserves the right to establish sub-classes as appropriate.

15           40. This action is brought and properly may be maintained as a class  
16 action pursuant to the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4)  
17 and 23(b)(1), (b)(2) or (b)(3) and satisfies the requirements thereof. As used  
18 herein, the term "Class Members" shall mean and refer to the members of the  
19 Class.

20           41. Community of Interests: There is a well-defined community of  
21 interest among Class Members, and the disposition of the claims of these Class  
22 Members in a single action will provide substantial benefits to all parties and to  
23 the Court.

24           42. Numerosity: While the exact number of members of the Class is  
25 unknown to the Plaintiff at this time and can only be determined by appropriate  
26 discovery, membership in the Class is ascertainable based upon the records  
27 maintained by Defendants. At this time, Plaintiff is informed and believes that  
28 the Class includes thousands of members. Therefore, the Class is sufficiently  
numerous that joinder of all members of the Class in a single action is  
impracticable under Federal Rule of Civil Procedure Rule 23(a)(1), and the  
resolution of their claims through the procedure of a class action will be of

1 benefit to the parties and the Court.

2 43. Ascertainability: Names and addresses of members of the Class are  
3 available from Defendants' records. Notice can be provided to the members of  
4 the Class through direct mailing, publication, or otherwise using techniques and  
5 a form of notice similar to those customarily used in consumer class actions  
6 arising under California state law and federal law.

7 44. Typicality: Plaintiff's claims are typical of the claims of the other  
8 members of the Class which he seeks to represent under Federal Rule of Civil  
9 Procedure 23(a)(3) because Plaintiff and each member of the Class have been  
10 subjected to the same deceptive and improper practices and have been damaged  
11 in the same manner thereby.

12 45. Adequacy: Plaintiff will fairly and adequately represent and protect  
13 the interests of the Class as required by Federal Rule of Civil Procedure Rule  
14 23(a)(4). Plaintiff is an adequate representative of the Class, because he has no  
15 interests which are adverse to the interests of the members of the Class. Plaintiff  
16 is committed to the vigorous prosecution of this action and, to that end, Plaintiff  
17 has retained counsel who are competent and experienced in handling class action  
18 litigation on behalf of consumers.

19 46. Superiority: A class action is superior to all other available methods  
20 of the fair and efficient adjudication of the claims asserted in this action under  
21 Federal Rule of Civil Procedure 23(b)(3) because:

22 (a) The expense and burden of individual litigation make it  
23 economically unfeasible for Class Members to seek to redress  
24 their "negative value" claims other than through the procedure  
25 of a class action.

26 (b) If separate actions were brought by individual Class  
27 Members, the resulting duplicity of lawsuits would cause  
28 members to seek to redress their "negative value" claims

1 other than through the procedure of a class action; and  
2 (c) Absent a class action, Defendants likely would retain the  
3 benefits of their wrongdoing, and there would be a failure of  
4 justice.

5 47. Common questions of law and fact exist as to the members of the  
6 Class, as required by Federal Rule of Civil Procedure 23(a)(2), and predominate  
7 over any questions which affect individual members of the Class within the  
8 meaning of Federal Rule of Civil Procedure 23(b)(3).

9 48. The common questions of fact include, but are not limited to, the  
10 following:

- 11 (d) Whether Defendants' practice of misleading consumers who  
12 purchase used video games violates one or more provisions of  
13 the CLRA;
- 14 (e) Whether Defendants engaged in unlawful, unfair, misleading  
15 or deceptive business acts or practices;
- 16 (f) Whether Defendants engaged in consumer fraud, deceptive  
17 trade practices, or other unlawful acts;
- 18 (g) Whether Defendants' used video games allows purchasers to  
19 obtain all of the features advertised on the game box;
- 20 (h) Whether Defendants' practice of selling used video games  
21 advertising features are not available without an additional fee  
22 resulted in Class Members having to pay additional money for  
23 promised content;
- 24 (i) Whether Defendants knew or should have known that the  
25 downloadable content was not available on used copies of  
26 video games;
- 27 (j) Whether Defendants failed to notify consumers that  
28 purchasing a used copy of the video game could mean that

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

they would not receive all of the advertised features of the game;

- (k) Whether Plaintiff and Class Members justifiably relied on the fact that they would receive all the features advertised on the video game box;
- (l) Whether Defendants' conduct was willful or reckless;
- (m) Whether Plaintiff and Class Members are entitled to an award of reasonable attorneys' fees, pre-judgment interest and costs of this suit;
- (n) Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code sections 17200 *et seq.*

49. In the alternative, this action is certifiable under the provisions of Federal Rule of Civil Procedure 23(b)(1) and/or 23(b)(2) because:

- (a) The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members which would establish incompatible standards of conduct for Defendants.
- (b) The prosecution of separate actions by individual Class Members would create a risk of adjudications as to them which would, as a practical matter, be dispositive of the interests of the other Class Members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and
- (c) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with

1                    respect to the Class as a whole and necessitating that any such  
2                    relief be extended to Class Members on a mandatory, class  
3                    wide basis.

4                    50. Plaintiff is not aware of any difficulty which will be encountered in  
5                    the management of this litigation which should preclude its maintenance as a  
6                    class action.

7                    **FIRST CAUSE OF ACTION**

8                    **Violation of the Consumers Legal Remedies Act**

9                    **(Cal. Civil Code § 1750 *et seq.*)**

10                  51. Plaintiff hereby incorporates by reference the allegations contained  
11                  in the preceding paragraphs of this Complaint.

12                  52. Plaintiff brings this cause of action on behalf of himself and the  
13                  members of the Class.

14                  53. This cause of action is brought pursuant to the Consumers Legal  
15                  Remedies Act, California Civil Code §§ 1750 *et seq.* ("CLRA"). Plaintiff and  
16                  Class Members are consumers as defined by California Civil Code § 1761(d).  
17                  The Products are goods within the meaning of California Civil Code § 1761(a).

18                  54. Defendants violated and continue to violate the CLRA by engaging  
19                  in the following practices proscribed by California Civil Code § 1770(a) in  
20                  transactions with Plaintiff and the Class which were intended to result in, and did  
21                  result in, the sale of the Products:

22                    (5) Representing that [the Product have]...  
23                    characteristics...uses...which they do not have....

24                    (7) Representing that [the Product] are of a particular  
25                    standard...if they are of another.

26                    (9) Advertising goods...with intent not to sell them  
27                    as advertised.

28                    (13) Making false or misleading statements of fact  
                      concerning reasons for...price reductions.

                      (16) Representing that the subject of a transaction has





1           61. Plaintiff brings this cause of action on behalf of himself and the  
2 members of the Class.

3           62. California Business and Professions Code § 17200 prohibits “any  
4 unlawful, unfair or fraudulent business act or practice.” For the reasons  
5 described above Defendants have engaged in unlawful, unfair and/or fraudulent  
6 business acts or practices in violation of California Business and Professions  
7 Code §17200.

8           63. Defendants’ misrepresentations and omission of material facts, as  
9 set forth herein, constitute an unlawful practice because it violates California  
10 Civil Code §§ 1572, 1573, 1709, 1710, 1711, 1770, California Business and  
11 Professions Code §§ 17200 *et seq.*, and the common law.

12           64. Defendants’ misrepresentations and omission of material facts, as  
13 set forth herein, also constitutes “unfair” business acts and practices within the  
14 meaning of California Business and Professions Code §§ 17200 *et seq.*, in that  
15 their conduct was injurious to consumers, offended public policy, and was  
16 unethical and unscrupulous. Plaintiff also asserts a violation of public policy by  
17 withholding material facts from consumers. Defendants’ violation of consumer  
18 protection and unfair competition laws in California and other states resulted in  
19 harm to consumers.

20           65. There were reasonable alternatives available to Defendants to  
21 further Defendants’ legitimate business interests, other than the conduct  
22 described herein.

23           66. California Business and Professions Code § 17200 also prohibits  
24 any “fraudulent business act or practice.”

25           67. Defendants’ concealment of material facts, as set forth above, were  
26 false, misleading and/or likely to deceive the public within the meaning of  
27 California Business and Professions Code § 17200.

28           68. Defendants’ concealment was made with knowledge its effect, and

1 was done to induce Plaintiff and Class Members to purchase used video games.  
2 Plaintiff and Class members justifiable relied on Defendants' misrepresentations  
3 when purchasing these used video games.

4 69. Defendants' conduct caused and continues to cause injury to  
5 Plaintiff and the other Class Members. Plaintiff and Class Members have  
6 suffered injury in fact and have lost money as a result of Defendants' fraudulent  
7 conduct.

8 70. Defendants have thus engaged in unlawful, unfair and fraudulent  
9 business acts entitling Plaintiff and Class Members to judgment and equitable  
10 relief against Defendants, as set forth in the Prayer for Relief.

11 71. Additionally, pursuant to Business and Professions Code § 17203,  
12 Plaintiff and Class Members seek an order requiring Defendants to immediately  
13 cease such acts of unlawful, unfair, and fraudulent business practices and require  
14 Defendants to correct its actions.

15 **THIRD CAUSE OF ACTION**

16 **Fraud and/or Intentional Deceit**

17 72. Plaintiff hereby incorporates by reference the allegations contained  
18 in the preceding paragraphs of this Complaint.

19 73. Plaintiff brings this cause of action on behalf of himself and the  
20 members of the Class.

21 74. Defendants have made misrepresentations consisting of concealment  
22 and/or suppression of a material fact, namely the fact that used games do not  
23 include all of the advertised content and features.

24 75. Defendants knew about the problem with used video games  
25 described above as a result of the checks made on all used games and from  
26 complaints voiced by Plaintiff and other Class Members.

27 76. The additional characters, quests, levels and/or songs that are  
28 available by entering use codes are a material and important game feature.

1 Plaintiff and other Class Members would not have purchased a used copy of  
2 these video game had they known that doing so would only give access to part  
3 the game's features.

4 77. Defendants made the misrepresentations stated above with  
5 knowledge of the effect of concealing of these material facts. Defendants knew  
6 that by not informing consumers about the missing features in used games, they  
7 would sell more used games which would result in a higher profit margin.

8 78. By concealing material information about used video games  
9 Defendants intended to induce Plaintiff and Class Members to purchasing used  
10 video games that did not include all of the advertised content.

11 79. Plaintiff and Class Members justifiably relied on the representations  
12 made on the video game boxes because Defendants failed to notify them that  
13 certain content is not available on used copies of some games.

14 80. Defendants acted with malice, oppression and/or fraud.

15 81. As a direct and proximate result of Defendants' misrepresentations,  
16 Plaintiff and each Class Member have been damaged in an amount according to  
17 proof at trial.

### 18 PRAYER FOR RELIEF

19 Plaintiff, and on behalf of all others similarly situated, requests the Court  
20 enter judgment against Defendant, as follows:

- 21 1. Certifying the Class as requested herein;
- 22 2. Ordering Defendant is financially responsible for notifying all Call  
23 Members of the alleged misrepresentation discussed herein;
- 24 3. Awarding Plaintiff and the proposed Class Members compensatory  
25 damages in an amount according to proof at trial;
- 26 4. Awarding restitution and disgorgement of Defendants' revenues to  
27 Plaintiff and the proposed Class Members;
- 28 5. Awarding declaratory and injunctive relief as permitted by law or

1 equity, including: enjoining Defendants from continuing the unlawful practices  
2 as set forth herein, and directing Defendants to identify, with Court supervision,  
3 victims of its conduct and pay them restitution and disgorgement of all monies  
4 acquired by Defendants by means of any act or practice declared by this Court to  
5 be wrongful;

6 6. Awarding Plaintiff and the Class punitive damages;

7 7. Ordering Defendants to engage in corrective advertising;

8 8. Awarding interest on the monies wrongfully obtained from the date  
9 of collection through the date of entry of judgment in this action;

10 9. Awarding attorneys' fees, expenses and recoverable costs  
11 reasonably incurred in connection with the commencement and prosecution of  
12 this action; and

13 10. For such other and further relief as the Court deems just and proper.  
14  
15

16 Dated: March 23, 2010

Respectfully submitted,

Initiative Legal Group APC

17  
18  
19 By: 

Gene Williams  
Mark P. Pifko  
Jennifer S. Grock

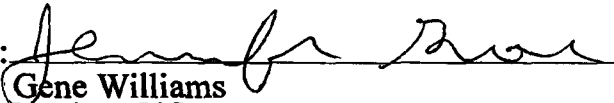
20  
21 Attorneys for Plaintiff James Collins  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiff requests a trial by jury on all issues so triable.

Dated: March 23, 2010

Respectfully submitted,  
Initiative Legal Group APC

By:   
Gene Williams  
Mark P. Pifko  
Jennifer S. Grock

Attorneys for Plaintiff James Collins

INITIATIVE LEGAL GROUP APC  
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28