

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLORADO

LANDIS EDWARDS, individually and  
on behalf of all others similarly  
situated

Plaintiff,

v.

Civil Action No.

ZENIMAX MEDIA INC., a Delaware  
Corporation, and BETHESDA SOFTWARES LLC,  
a Delaware Limited Liability Company

Defendants.

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**DEFENDANTS' NOTICE OF REMOVAL AND INCORPORATED MEMORANDUM OF LAW**

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PLEASE TAKE NOTICE that Defendants ZeniMax Media Inc. ("ZeniMax") and Bethesda Softworks LLC ("Bethesda" and collectively, "Defendants"), through their counsel and pursuant to 28 U.S.C. § 1332, 28 U.S.C. § 1441 and 28 U.S.C. § 1446, hereby submit their Notice of Removal. As grounds for removal, Defendants state as follows:

1. On January 5, 2012, Plaintiff Landis Edwards ("Plaintiff"), individually and allegedly on behalf of all persons similarly situated within the State of Colorado, filed a Complaint and Jury Demand entitled *Edwards v. ZeniMax Media Inc., et al.*, in the State of Colorado Denver County District Court ("Complaint").

2. The summons and Complaint were served on Defendants on January 25, 2012. This removal is timely pursuant to 28 U.S.C. § 1446(b). In accordance with 28 U.S.C. § 1446(a), a true and correct copy of Plaintiff's summons, civil case cover sheet and Complaint

served on Defendant ZeniMax Media Inc. is attached hereto as Exhibit A and a true and correct copy of Plaintiff's summons, civil case cover sheet and Complaint served on Defendant Bethesda Softworks LLC is attached hereto as Exhibit B.

3. Plaintiff's Complaint alleges a class action, as defined in 28 U.S.C. § 1332(d)(1)(B), under Colorado state law "on behalf of himself and a Class of similarly situated individuals[.]" (Compl. at ¶ 52.) This Court has original subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d) because: (i) at least one member of the putative class is a citizen of a state different from any defendant; (ii) the amount in controversy exceeds \$5,000,000, exclusive of interest and costs; and (iii) none of the exceptions under that subsection apply to the instant action.

4. Plaintiff is a citizen of the State of Colorado. (Compl. at ¶ 3.) ZeniMax is a Delaware corporation with a principal place of business in Rockville, Maryland. (Compl. at ¶ 4.) Bethesda is a Delaware limited liability corporation with a principal place of business in Rockville, Maryland. (Compl. ¶ 5.) Defendants are not citizens of Colorado and the parties are diverse. 28 U.S.C. § 1332(c)(1) (for purposes of diversity, "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business").

5. The amount in controversy exceeds \$5 million, exclusive of interest and costs. Plaintiff alleges that "the Class consists of millions of members[.]" each of whom allegedly "purchased any version" of the video game *The Elder Scrolls IV: Oblivion*®. (Compl. at ¶¶ 52-53 (emphasis added).) Plaintiff, on behalf of the alleged "millions" of members of the alleged class, seeks recovery of "damages in the form of **monies paid to purchase** the *Oblivion* video

game,” *inter alia*. (See Compl. at ¶¶ 67, 73, 81 (emphasis added).) The calculation of “monies paid to purchase the *Oblivion* video game,” made by multiplying the price at which the game was purchased by the alleged “millions” of purchasers (Compl. at ¶ 53), establishes that the amount in controversy exceeds \$5 million.

6. With regard to price, Plaintiff alleges that he purchased *The Elder Scrolls IV: Oblivion® Game of the Year Edition* for the PlayStation 3 video game console at a GameStop retail store in February 2010. (Compl. at ¶ 42.) *The Elder Scrolls IV: Oblivion® Game of the Year Edition* for the PlayStation 3 video game console is sold at GameStop retail stores for \$19.99 for a new version and \$17.99 for a pre-owned version. (See Exhibit C, Declaration of Jason H. Nash in Support of Defendants’ Notice of Removal (“Nash Decl.”) at ¶ 3, Ex. 1, website printout from GameStop.com dated February 9, 2012 offering *The Elder Scrolls IV: Oblivion® Game of the Year Edition* for sale.)

7. The alleged class definition includes all purchasers of all versions *The Elder Scrolls IV: Oblivion®* on all platforms and does not distinguish between purchasers that bought the game new and purchasers that bought a pre-owned game. Notwithstanding, based on merely one million purchasers (*see* Compl. at ¶ 53) at the lowest available retail purchase price of \$17.99 for a pre-owned version of the game, the alleged class in the Complaint claims damages in the form of “monies paid to purchase the *Oblivion* video game” in an amount that would total a minimum of \$17,990,000.

8. Plaintiff further seeks recovery of “complete disgorgement of **all revenue** derived from sales of the *Oblivion* video game and each of its editions.” (See Compl. at Prayer for Relief

¶ 5 (emphasis added).) The calculation of “all revenue,” made by multiplying the retail price by the number of units sold, further establishes that the amount in controversy exceeds \$5 million.

9. When *Oblivion* was released on March 20, 2006, the initial retail price for the standard edition of the game was \$59.99. (See Nash Decl. at ¶ 4, Ex. 2, joystiq.com article dated March 2, 2006 entitled “Oblivion release imminent – March 20 (it’s official)” announcing the list price of \$59.99 for the standard edition of *Oblivion*.)

10. Over 1.7 million units of *Oblivion* were shipped within the first month of the game’s release. (See Nash Decl. at ¶ 5, Ex. 3, press release of Take-Two Interactive Software, Inc. dated April 10, 2006, announcing that shipments of *The Elder Scrolls IV: Oblivion*® video game for the PC and Xbox 360 platforms exceeded 1.7 million units as of even April 10, 2006.)

11. Based on 1.7 million units sold into retail in the first month of the game’s release alone at the initial retail price of \$59.99, the alleged class in the Complaint claims damages in the form of “all revenues” in an amount that would total \$101,983,000.00 from March 20, 2006 to April 10, 2006 alone.

12. Because diversity exists, the amount in controversy exceeds \$5 million (both as described above), and no exception applies to this Court’s jurisdiction over the above-captioned class action under 28 U.S.C. § 1332(d), this Court has jurisdiction over this matter under the Class Action Fairness Act of 2005.

13. Pursuant to 28 U.S.C. § 1446(d), Defendants promptly will provide written notice of removal of the action to Plaintiff and promptly will file a copy of this Notice of Removal with the Clerk of the District Court, City and County of Denver, Colorado.

WHEREFORE, the above-entitled action is hereby removed from the State of Colorado Denver County District Court to the United States District Court for the District of Colorado.

Dated: February 15, 2012

Respectfully submitted,

s/ John T. Williams  
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*Attorneys For Defendants ZeniMax Media Inc.  
and Bethesda Softworks LLC*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Defendants' Notice of Removal and Incorporated Memorandum of Law was served upon the following counsel of record by U.S. Mail, postage prepaid, on February 15, 2012.

Steven L. Woodrow  
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*Attorney for Plaintiff*

s/ George H. Parker  
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*Attorneys For Defendants ZeniMax Media Inc.  
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| District Court <u>Denver</u> County, Colorado<br>Court Address:<br>1437 Bannock St # 256<br>Denver, CO 80202   | <b>FILED Document</b><br><b>CO Denver County District Court 2nd JD</b><br><b>Filing Date: Jan 13 2012 9:48AM MST</b><br><b>Filing ID: 41877107</b><br><b>Review Clerk: Sean McGowan</b>  |
| Plaintiff(s): LANDIS EDWARDS, individually and on behalf of all others similarly situated<br><br>v.<br><br>Defendant(s): ZENIMAX MEDIA, INC., a DE Corp., and BETHESDA SOFTWARES, LLC, a DE LLC  | <div style="text-align: center;">  <b>COURT USE ONLY</b>  </div> |
| Attorney or Party Without Attorney (Name and Address):<br><br>Steven L. Woodrow<br>999 W. 18th Street, Suite 3000<br>Denver, CO 80202<br><br>Phone Number: 303-357-4876 E-mail: swoodrow@edelson.com<br>FAX Number: 312-264-0351 Atty. Reg. #: 43140 | Case Number: 2012CV45<br><br><br>Division 424 Courtroom  |
| <b>DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT</b>  |  |

1. **This cover sheet shall be filed with each pleading containing an initial claim for relief in every district court civil (CV) case, and shall be served on all parties along with the pleading.** It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

2. **Check one of the following:**

This case is governed by Chief Justice Directive ("CJD") 11-02 and the "Colorado Civil Access Pilot Project Rules Applicable to Business Actions in District Court" because:

- The case is filed within the period of January 1, 2012 through December 31, 2013; *AND*
- The case is filed in a Pilot Project participating jurisdiction (Adams County, Arapahoe County, Denver County, Gilpin County, or Jefferson County); *AND*
- The case is a "Business Action" as defined in CJD 11-02, Amended Appendix A for inclusion in the Pilot Project.

This case is not governed by the Colorado Civil Access Pilot Project Rules.

**NOTE: Cases subject to the Colorado Civil Access Pilot Project must be governed by the Rules in CJD 11-02** (available at [http://www.courts.state.co.us/Courts/Supreme\\_Court/Directives/Index.cfm](http://www.courts.state.co.us/Courts/Supreme_Court/Directives/Index.cfm)). The presiding judge will review Item 2 for accuracy. The designation on this initial Cover Sheet will control unless the Court orders otherwise.

3. **If this case is not governed by the Colorado Civil Access Pilot Project Rules as indicated in Item 2, check the following:**

This case is governed by C.R.C.P. 16.1 because:

- The case is not a class action, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding; *AND*
- A monetary judgment over \$100,000 is not sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.

This case is not governed by C.R.C.P. 16.1 because (check ALL boxes that apply):

The case is a class action, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding.

A monetary judgment over \$100,000 is sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.

*NOTE: In any case to which C.R.C.P. 16.1 does not apply, the parties may elect to use the simplified procedure by separately filing a Stipulation to be governed by the rule within 35 days of the at-issue date. See C.R.C.P. 16.1(b)(1) (re: case type) and C.R.C.P. 16.1(e) (re: amount in controversy). In any case to which C.R.C.P. 16.1 applies, the parties may opt out of the rule by separately filing a Notice to Elect Exclusion (JDF 602) within 45 days of the at-issue date. See C.R.C.P. 16.1(d).*

A Stipulation or Notice with respect to C.R.C.P. 16.1 has been separately filed with the Court, indicating:

C.R.C.P. 16.1 applies to this case.

C.R.C.P. 16.1 does not apply to this case.

4.  This party makes a **Jury Demand** at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

Date: January 13, 2012

/s/ Steven L. Woodrow  
Signature of Party or Attorney for Party

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| DISTRICT COURT, DENVER COUNTY COLORADO<br><br>Court Address:<br>1437 Bannock St # 256<br>Denver, CO 80202  | <b>EFILED Document</b><br><b>CO Denver County District Court 2nd JD</b><br><b>Filing Date: Jan 5 2012 4:01PM MST</b><br><b>Filing ID: 41716252</b><br><b>Review Clerk: Matthew Palmer</b> |
| Plaintiff: LANDIS EDWARDS, individually and on behalf of all others similarly situated<br><br>v.<br><br>Defendants: ZENIMAX MEDIA, INC., a Delaware Corporation, and BETHESDA SOFTWARES, LLC, a Delaware Limited Liability Company | ▲ COURT USE ONLY ▲<br><br><br>Case Number:  |
| Name: Steven L. Woodrow #43140<br>Address: 999 W. 18th Street, Suite 3000<br>Denver, CO 80202<br>Phone Number: 303/357-4878<br>email: swoodrow@edelson.com   | Div: Ctrm.:   |
| <b>COMPLAINT AND JURY DEMAND</b>   |   |

Plaintiff Landis Edwards, on behalf of himself and all others similarly situated, hereby files his Class Action Complaint and Jury Demand against Defendants Zenimax Media, Inc. (“Zenimax”) and Bethesda Softworks, LLC (“Bethesda”) (collectively, “Defendants”) and alleges as follows:

**JURISDICTION AND VENUE**

1. This is an action seeking damages and injunctive relief based on Defendants’ deceptive and unlawful conduct in designing, manufacturing, marketing, distributing and selling a defectively designed video game to consumers in Colorado and throughout the nation. Jurisdiction is proper in this District Court, as it is a court of general jurisdiction.

2. Venue is proper in Denver County, Colorado, as Plaintiff resides in Denver County, Plaintiff purchased his copy of Defendants’ defective video game in Denver County, and many of the operative facts giving rise to Plaintiff’s complaint occurred within Denver County.

## PARTIES

3. Plaintiff Landis Edwards is a natural person and citizen of the State of Colorado.

4. Defendant ZeniMax Media, Inc. is a corporation incorporated and existing under the laws of the state of Delaware with its principal place of business located in Rockville, Maryland.

5. Defendant Bethesda Softworks LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business located in Rockville, Maryland. Defendant transacts business in Florida and throughout the country. Bethesda is a wholly owned subsidiary of Defendant ZeniMax.

## GENERAL ALLEGATIONS

### **The Elder Scrolls Franchise**

6. Bethesda is an American video game developer and publisher. Bethesda has developed a broad range of games, including *The Elder Scrolls* franchise, a single-player role-playing video game series.

7. Games within *The Elder Scrolls* series are available on multiple gaming platforms, including the PlayStation 3 and Xbox 360 consoles, as well as Windows-based personal computers. In an *Elder Scrolls* game, a player typically controls and develops a single in-game character (often referred to as an “avatar”) through a series of “quests” in a fantasy gaming world.

8. *The Elder Scrolls IV: Oblivion* is the fourth full installment of *The Elder Scrolls* series. Defendants originally released *Oblivion* on March 20, 2006 for Windows PCs and the Xbox 360 gaming console. Defendants released the game for the PlayStation 3 console on March 20, 2007.

9. In Autumn, 2007, Defendants released *The Elder Scrolls IV: Oblivion Game of the Year Edition* for all three platforms. The *Game of the Year Edition* featured the original *Oblivion* video game, as well as two previously-released “expansion packs” that allegedly offered numerous hours of additional gameplay.

### **Defendants’ Representations Regarding the Gameplay of *Elder Scrolls IV: Oblivion***

10. The *Oblivion* video game purports to offer open-ended or “sandbox” gameplay, allowing players to freely roam the gaming world and perform various tasks, develop individual characters, or simply explore. While *Oblivion* features a linear main quest, Defendants encourage players to postpone or ignore the quest for as long as the player wishes to explore the entirety of the gaming world.

11. At all relevant times, Defendants engaged in an extensive advertising and marketing campaign in support of the *Oblivion* video game. One of the primary features emphasized by Defendants in their advertisements was the longevity of the *Oblivion* video game and the sheer size of the virtual gaming world. Bethesda prominently advertised that the game offered an expansive, “free-form” world, with “open-ended” gameplay that allowed the player to explore with little limitation.

12. For example, Defendants described the *Oblivion* video game in an online advertisement, which appeared (and still appears) on numerous websites such as Amazon.com and video game retailer Gamestop.com, as featuring:

Open-ended game play and short challenges: The enormous world of *Oblivion* is open, allowing players to explore at their own pace. Players will encounter shorter challenges such as fighting bandits, mixing potions, and creating magic along the way to unraveling the main quest.

13. Similarly, in the product description for the *Elder Scrolls: Oblivion Game of the Year Edition* appearing on Amazon.com, Defendants state that:

Oblivion features a powerful combination of free-form gameplay, unprecedented graphics, cutting edge AI, character voices by acting legends Patrick Stewart, Sean Bean, Terrance Stamp, and Lynda Carter, and an award-winning soundtrack. Gamers can choose to unravel *Oblivion*’s epic narrative at their own pace or explore the vast world in search of their own unique challenges.

14. The instruction manual for each version of the *Oblivion Game of the Year Edition* describes the gameplay as follows:

With the Elder Scrolls, our goal has always been to create a game that offers unlimited possibilities. A game where you could be whoever you wanted and to do whatever you wanted. Live another life, in another world has been our motto, and we want you to do just that.

So if you like wandering and exploring, that’s what you should do. If you simply want to complete the main quest and feel like you “finished” the game, then you can do just that. Most folks will find themselves somewhere in between, and fortunately there’s a lot of wandering and exploring involved in finishing the main quest.

15. The terms “free-form,” “open-ended,” and “open-world,” gameplay have a distinct and tangible meaning in the video gaming community, including to Plaintiff and members of the Class. Gamers generally understand that such terms describe a game

environment that allows players to play creatively, free of artificial structural constraints, and with there being “no right way” to play the game. Because only a small number of games offer this type of gameplay, many gamers are particularly attracted to true open-world, “sandbox” games, and game developers such as Bethesda use these descriptors to induce gamers to purchase their video games.

16. In addition, character development is a primary element of the *Oblivion* video game. At the beginning of the game, the player selects a character from one of many different “races” and customizes their character’s appearance. The player then creates one or more “save files” that allow the user to save his or her character’s progress throughout the game on their console’s hard drive.

17. One of the player’s perpetual objectives in the game is to improve their character’s skills, which are numerical representations of the character’s ability in certain areas. The game rewards players with “perks” when their character reaches certain numerical levels in each skill.

18. Because a player can best develop his or her character by performing tasks and missions outside of *Oblivion*’s main quest, the focus on character development encourages players to spend substantial amounts of time exploring the gaming world to improve their character’s skill levels.

19. Defendants encourage consumers to spend substantial amounts of time developing individual characters. Indeed, on its official blog, Bethesda sponsored an “Oblivion Iron Man” contest that offered a prize to the player with the longest single-character gameplay time, which Defendants presumed would exceed 1000 hours.

20. As a result of Defendants’ advertisements and marketing efforts, consumers purchased the *Oblivion* video game with the expectation that it would offer expansive, open-ended gameplay with “unlimited opportunities” for exploration and character development.

### **The Animation Defect**

21. Contrary to the representations and advertisements of Defendants, the length, scope, and functionality of the *Oblivion* video game is severely limited by an inherent design defect that, to the player, unexpectedly occurs during gameplay and effectively shuts down a player’s existing game once manifested. Despite its knowledge of the problem, Defendants have taken no actions to correct the defect for existing players, and continue to sell the *Oblivion* video game without notifying future purchasers of the defects inherent in the game.

22. Soon after its initial release, consumers began to experience and contact Defendants about major technical issues affecting the performance of the *Oblivion* video game. These “glitches” ranged in severity, from general slowing of gameplay, to screen “freezes” that

forced players to reset their consoles or computers, to more serious problems that permanently shut down the game and prevented players from progressing further.

23. Most seriously, the game suffers from a universal animation defect (the “Animation Defect”) – commonly referred to in the gaming community as the “abomb” or “a-bomb” – that, once manifested, effectively ends the player’s game and forces him or her to restart *Oblivion* from scratch with an entirely new character. The Animation Defect occurs suddenly, without warning, sometimes after as little as 200 hours of gameplay.

24. The Animation Defect causes all “secondary” animations to freeze, including spell effects, doorways, gateways, bridges, and traps, among other things. While the lack of animation in these elements may seem purely aesthetic, the actual result is crippling to a player’s quest, general gameplay, and overall use of the game.

25. As a result of the Animation Defect, players are unable to open doors or gates, drop bridges, move elevators, or perform basic character animations that are essential to progressing in the game. Because nearly every “quest” – including *Oblivion*’s main quest – requires that the player open doorways, gates, and effectively cast spells, the player cannot progress in the game following the onset of the Animation Defect. Accordingly, the player’s only option is to restart the game with an entirely new character.

26. The Animation Defect is particularly damaging to *Oblivion* game players because it often manifests after players have invested significant amounts of time and effort building their personal characters, a primary goal in the *Oblivion* video game.

27. Every version of the *Oblivion* video game suffers from the Animation Defect. For the vast majority of consumers, including all users of the *Oblivion* video game for the PlayStation 3 and Xbox 360 and, there is no remedy for the defect for any version of the *Oblivion* video game.

28. Several *Oblivion* game players have identified the suspected cause of the Animation Defect on Bethesda’s official forums. Based on these consumer investigations, it is commonly understood that each *Oblivion* “save file” contains a four byte number sequence that continuously increases during gameplay. When the number reaches a certain value, the Animation Defect is suddenly triggered, and values beyond the trigger value increase the severity of the defect.

29. Said differently, as a user continues to play the *Oblivion* video game, each animation that occurs in the game adds to an internal “counter.” When the counter reaches its maximum level – an inevitable occurrence with continued gameplay – the Animation Defect suddenly occurs and the user’s game is effectively ended.

30. Players are thus forced to play *Oblivion* “under the gun” – they must rush to finish the game’s main quest before the Animation Defect occurs, a far cry from the open-ended gameplay, “enormous world,” and “unlimited possibilities” promised by Defendants.

31. Defendants have offered no way to fix the Animation Defect on any version of the *Oblivion* video game without forfeiting all progress in the game. Once the Animation Defect has occurred, the *Oblivion* game will not function properly, and the player is forced to begin a new game from scratch. Even then, the Animation Defect will inevitably reoccur after the player creates and develops a new character and quest.

32. Defendants have long been aware of the Animation Defect and its crippling effect on gameplay. Despite their knowledge of the defect, Defendants have refused to provide a patch, replacement product, or any other remedy.

33. For example, in or around March, 2007, a Bethesda employee posted the following comment on Bethesda's official forums, forums.bethsoft.com, in response to consumer complaints about the Animation Defect:

So here's the deal

Our team is well aware of this issue, but it is one we have not been able to resolve because of the nature of the problem and any fixes related to it. We are continuing to look into it and will let folks know if/when we are able to address it in the future.

34. Soon thereafter, a member of Bethesda's technical support staff provided the following response to a consumer's question about the Animation Defect, which was then posted on Bethesda's official forum, forums.bethsoft.com:

Hello,

This issue will not be fixed.

There is no official patch or fix to correct this issue from within the game. We are aware of the issue, but it is one we have not been able to resolve because of the nature of the problem and any fixes related to it. We are continuing to look into it and will let folks know if/when we are able to address it in the future.

...

Best Regards,

James H. at Bethesda Softworks Technical Support  
Support04@bethsoft.com

35. While Defendants admitted their knowledge of the Animation Defect on Bethesda's forums in response to complaints from current *Oblivion* players, Defendants intentionally did not further publicize or otherwise disclose the existence of the defect to a wider audience of potential purchasers. Accordingly, consumers were not made aware of the Animation Defect prior to purchasing the *Oblivion* video game.

36. Defendants have not remedied the Animation Defect for any purchaser of the *Oblivion* video game. Nor have Defendants undertaken any actions to notify past or future purchasers of the inherent defects in the *Oblivion* game. Rather, consumers are led to believe that they will experience expansive, unlimited gameplay, only to unexpectedly experience the Animation Defect after developing a unique character and quest.

37. Defendants have continued to release new versions of *Oblivion* with full knowledge of – and without fixing – the Animation Defect, including *Oblivion: Game of the Year Edition* and the recently released *Oblivion: 5th Anniversary Edition*, which Defendants released on July 12, 2011.

38. Defendants continue to market the longevity and “free-form” nature of the *Oblivion* video game despite their knowledge of the Animation Defect, an inherent defect that Defendants know will shut down the game after only moderate levels of gameplay.

#### **Damages Suffered by Purchasers of the *Oblivion* video game**

39. The existence of the Animation Defect significantly decreases the value of the *Oblivion* video game to consumers. As described above, games that provide true open-ended, expansive gameplay are highly valued by gamers and are worth more to consumers than games limited by inherent gameplay defects.

40. Based on Defendants’ advertisements and representations, consumers purchased the *Oblivion* video game with the expectation that it would offer open-ended, free form, expansive gameplay that could be experienced at the player’s own pace. However, the Animation Defect severely limits *Oblivion*’s gameplay after moderate use, resulting in consumers receiving a less valuable product than they initially paid for and expected. Had consumers known of the inherent defects in the *Oblivion* video game prior to purchase, they would not have purchased *Oblivion* or would have paid less money to purchase the game.

41. Consumers are further harmed because the Animation Defect diminishes the resale value of the *Oblivion* video game on the secondary market. Traditionally, the secondary market for video game sales is strong, allowing consumers to sell used video games to traditional retailers and directly to other consumers through online transactions. However, the existence of the Animation Defect makes it more difficult to resell the *Oblivion* video game, and potentially exposes the seller to liability to other consumers if the seller does not disclose the Animation Defect prior to resale. Sellers are thus left with the unenviable choice of similarly deceiving buyers and promoting the *Oblivion* video game like Defendants, or disclosing the Animation Defect and suffering from the resulting decrease in value on the secondary market.

#### **FACTS RELATING TO PLAINTIFF EDWARDS**

42. Plaintiff Landis Edwards purchased *Oblivion: Game of the Year Edition* for the PlayStation 3 video game console in or around February, 2010 from a GameStop retail store.

43. Prior to purchasing the *Oblivion* video game, Plaintiff viewed Defendants' online and print advertisements and representations regarding the scope, longevity and nature of the gameplay purportedly featured in the *Oblivion* video game. The purportedly open-ended gameplay of *Oblivion* was the primary reason that Plaintiff purchased the game.

44. Prior to purchasing *Oblivion*, Plaintiff was not aware that every copy of the *Oblivion* video game, including *Oblivion: Game of the Year Edition* for the PlayStation 3 console, suffered from numerous bugs and defects, including the Animation Defect, nor did Plaintiff have any reasons to know of the existence of the Animation Defect.

45. Had Plaintiff known about the Animation Defect and its effect on *Oblivion's* gameplay, he would not have purchased the *Oblivion* video game, would have paid less money for the game, or would have attempted to return or exchange the game within the appropriate time period.

46. Plaintiff began playing his copy of *Oblivion* in or around February, 2010. As encouraged by Defendants, Plaintiff created and began to develop a unique character within the game.

47. Plaintiff experienced numerous technical problems while playing the *Oblivion* video game. Among other things, Plaintiff's copy of *Oblivion* continuously "froze" after only short periods of gameplay, the framerate of Plaintiff's game dropped to less than one frame per second, non-playable characters repeatedly failed to function and prevented Plaintiff from beginning or completing certain quests, items repeatedly and permanently disappeared from Plaintiff's in game inventory, and Plaintiff experienced graphical stuttering, pixilation, strobing, and eventual freezing. As a result of these numerous technical defects, Plaintiff was forced to frequently restart his PlayStation 3 console and forfeit progress in the game, and eventually had to perform a "hard reset" of the PlayStation 3 console which caused Plaintiff to lose data and save files on his PlayStation 3 hard drive.

48. Plaintiff first started experiencing serious technical defects with the *Oblivion* video game after approximately 125-150 hours of gameplay. After approximately 200 hours of gameplay, Plaintiff suddenly experienced the Animation Defect on his copy of the *Oblivion* video game. After the Animation Defect occurred, Plaintiff was unable to trigger numerous animations within the game, and was prevented from opening doors and gates that would allow him to progress further in the game.

49. Plaintiff restarted his PlayStation 3 console and re-loaded his saved game. Almost immediately after Plaintiff's game loaded, the Animation Defect occurred again and prevented Plaintiff from progressing in the *Oblivion* game. Plaintiff repeated this process several times, and each time the Animation Defect occurred and continued to prevent further progress in the game.

50. As a result of the Animation Defect, Plaintiff was forced to abandon his saved game and forfeit his original character and progress in the game. Plaintiff was unable to recover any data relating to his initial *Oblivion* save file.

51. Because Plaintiff is now aware of the existence of the Animation Defect and the fact that it will suddenly occur and ruin any subsequent character and saved game file that Plaintiff creates, Plaintiff no longer plays the *Oblivion* video game solely because of the Animation Defect and other glitches that Plaintiff has experienced.

### CLASS ALLEGATIONS

52. Plaintiff Landis Edwards brings this action pursuant to Colo. R. Civ. P. 23(b)(2) and (b)(3) on behalf of himself and a Class of similarly situated individuals, defined as follows:

All persons or entities residing in the State of Colorado who purchased any version of the *Elder Scrolls IV: Oblivion* video game.

The following persons are excluded from the Class: 1) any Judge or Magistrate presiding over this action and members of their families; 2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and their current or former employees, officers and directors; 3) Defendants' Counsel; 4) persons who properly execute and file a timely request for exclusion from the Class; 5) Plaintiff's counsel; (6) any person who has had their claims fully and finally adjudicated or otherwise released; and (7) the legal representatives, successors or assigns of any such excluded persons.

53. Upon information and belief, the Class consists of millions of members such that joinder of all members is impracticable.

54. Plaintiff's claims are typical of the claims of all of the other members of the class. Plaintiff and each Class member were affected in substantially the same way by Defendants' fraudulent, misleading, and unlawful marketing and shipment of a defective product.

55. Defendants have acted and failed to act on grounds generally applicable to Plaintiff and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward members of the Class.

56. The factual and legal bases of Defendants' liability to Plaintiff and to the other members of the Class are the same, resulting in injury to Plaintiff and all of the other members of the Class. Plaintiff and the other members of the Class have all suffered harm and damages as a result of Defendants' wrongful conduct.

57. Common questions of law and fact exist as to all members of the Class and such questions predominate over any questions affecting Plaintiff or individual members. Common questions for the Class include but are not limited to:

- a. Whether the *Oblivion* video game fails to conform to Defendants' advertised product specifications;
- b. whether Defendants made false or misleading statements about the scope or capabilities of the *Oblivion* video game;
- c. whether Defendants knowingly concealed the defective design of the *Oblivion* video game;
- d. whether Defendants refused to remedy or patch the Animation Defect, despite knowing of its existence;
- e. whether the Animation Defect led to a diminution in the value of the *Oblivion* video game;
- f. whether Defendants made representations that the *Oblivion* video game had characteristics, uses, benefits, or qualities which it did not have;
- g. whether Defendants' conduct as described herein violated the Colorado Consumer Protection Act, C.R.S. § 6-1-101 *et seq.*;
- h. whether Defendants' conduct as described herein constituted fraud in the inducement;
- i. whether Defendants' conduct described herein resulted in unjust enrichment to Defendants.

58. Plaintiff will fairly and adequately protect the interests of the other members of the Class, his claims are typical of the other members of the Class, and he has retained counsel competent and experienced in similar class action litigation. Neither Plaintiff nor his counsel have any interest adverse to those of the other members of the Class.

59. Absent a class action, most members of the Class would find the cost of litigating their claims to be prohibitive and will have no effective remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and litigants, and promotes consistency and efficiency of adjudication.

**FIRST CLAIM FOR RELIEF**  
**Violation of C.R.S. § 6-1-101 *et seq.***

60. Plaintiff hereby incorporates all previous allegations contained in this Complaint as though fully set forth herein.

61. The Colorado Consumer Protection Act (“CCPA”), C.R.S. § 6-1-101 *et seq.*, prohibits any “person” from engaging in a deceptive trade practice in the course of such person’s business, vocation or occupation.

62. As “persons” under CCPA § 6-1-102(6), Defendants are prohibited from engaging in any deceptive trade practices in the course of their business dealings.

63. As described herein, Defendants engaged in deceptive and unfair practices as defined by C.R.S. § 6-1-101 *et seq.*, to the detriment of Plaintiff and the Class.

64. By representing that the *Oblivion* video game offered open-ended, free-form gameplay, “unlimited opportunities,” and gameplay that can be experienced at the player’s own pace, and by failing to disclose the existence of the Animation Defect and its effect on gameplay, Defendants have violated the CCPA in at least the following respects:

- a. In violation of section 6-1-105(1)(e), Defendants have knowingly made a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of the *Oblivion* video game;
- b. In violation of section 6-1-105(1)(g); Defendants have represented that the *Oblivion* video game is of a particular standard, quality, or grade while Defendants know that it is of another;
- c. In violation of section 6-1-105(1)(i), Defendants have advertised the *Oblivion* video game with the intent not to sell it as advertised; and
- d. In violation of section 6-1-105(1)(u), Defendants have failed to disclose material information concerning the *Oblivion* video game despite the fact that the information was known at the time of the advertisement and sale of *Oblivion* to Plaintiff and the Class.

65. Defendants’ unlawful and deceptive practices significantly impacts the public as actual and/or potential consumers of Defendants’ good and services, and affects such consumers in a uniform way.

66. Defendants concealed material facts regarding the *Oblivion* video game from Plaintiff and the members of the Class, including the fact that the Animation Defect prevented players from experiencing the expansive, open-ended, unlimited gameplay in accordance with Defendants’ advertised performance specifications. This type of information is relied upon by consumers in making purchase decisions, and is material to the decision to purchase a costly video game. Had Defendants disclosed such information, it would have been made known to Plaintiff and members of the Class through the marketing and advertising presented by Defendants, and Plaintiff and the members of the Class would not have purchased the *Oblivion* video game, would have paid less money for the game, or would have attempted to return or exchange the game within the appropriate time period.

67. As a direct and proximate result of Defendants' misrepresentations and omissions, Plaintiff and members of the Class suffered damages in the form of monies paid to purchase the *Oblivion* video game, and/or the difference in value between an *Oblivion* video game with and without the Animation Defect.

68. Plaintiff, on behalf of himself and each member of the Class, seeks damages, injunctive relief, and any other relief allowed under the CCPA.

**SECOND CLAIM FOR RELIEF**  
**Breach of Implied Warranty of Merchantability**

69. Plaintiff hereby incorporates all previous allegations contained in this Complaint as though fully set forth herein.

70. Under C.R.S. 4-2-314, a warranty of merchantability is implied in the sale of goods by a merchant who deals in goods of that kind. In particular, goods must be fit for the ordinary purposes for which such goods are used.

71. At the time Defendants designed, manufactured, and sold the *Oblivion* video game for use by Plaintiff and the Class, Defendants knew of the uses for which the *Oblivion* video game was intended, and impliedly warranted it would be of merchantable quality and fit for its intended use.

72. Defendants' implied warranty included that the *Oblivion* video game would offer free-form, open-ended, expansive gameplay, and be free of inherent defects that prevented such gameplay. In actuality, the *Oblivion* video game suffered from the Animation Defect, such that the *Oblivion* video game was not of merchantable quality or fit for its intended use.

73. As a direct and proximate result of Defendants' misconduct, Plaintiff and the Class have suffered damages, including the loss of monies paid to purchase the *Oblivion* video game, and/or the difference in value between an *Oblivion* video game with and without the Animation Defect.

**THIRD CLAIM FOR RELIEF**  
**Fraud by Omission**

74. Plaintiff hereby incorporates all previous allegations contained in this Complaint as though fully set forth herein.

75. Defendants represented and Plaintiff and the Class reasonably expected that the *Oblivion* video game would provide open-ended, free-form, extended gameplay, and Defendants further represented, and Plaintiff and the Class reasonably expected that the *Oblivion* video game would be released without major undisclosed defects and glitches. This is a reasonable and objective consumer expectation for the *Oblivion* video game given Defendants' representations.

76. Defendants knew that they were unable or unwilling to provide the *Oblivion* video game as represented to consumers, and further knew that they were unable or unwilling to provide the *Oblivion* video game to consumers without the Animation Defect.

77. Defendant concealed from and failed to disclose to Plaintiff and the Class the existence of the Animation Defect, and their inability or unwillingness to remedy the Animation Defect once consumers purchased the *Oblivion* video game.

78. Defendants were under a duty to Plaintiff and the Class to disclose the existence of the Animation Defect, or its unwillingness or inability to remedy the Animation Defect after consumers purchased the *Oblivion* video game, because:

- a. Defendants were in a superior position to know the true state of facts about the Animation Defect and its impact on the gameplay of the *Oblivion* video game;
- b. Plaintiff and the Class Members could not reasonably have been expected to learn or discover the existence of the Animation Defect or its crippling effect on the gameplay of the *Oblivion* video game prior to purchase; and
- c. Defendants knew that Plaintiff and the Class Members could not reasonably have been expected to learn or discover the existence of the Animation Defect or its impact on the gameplay of the *Oblivion* video game.

79. The facts concealed or not disclosed by defendants to Plaintiff and the Class are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase the *Oblivion* video game or pay a lesser price for it. Had Plaintiff and the Class known of the existence of the Animation Defect and Defendants' inability or unwillingness to remedy the Animation Defect, they would not have purchased the *Oblivion* video game or would have paid less for it.

80. Defendants concealed or failed to disclose the true nature of the *Oblivion* video game and the Animation Defect in order to induce Plaintiff and the Class to purchase the *Oblivion* video game. Plaintiff and the Class justifiably relied on the omission to their detriment. This detriment is evident from Plaintiff and Class Members' purchase of the *Oblivion* video game.

81. As a direct and proximate result of Defendants' misconduct, Plaintiff and the Class have suffered and will continue to suffer actual damages in the form of monies paid to purchase the *Oblivion* video game and the difference in value between the *Oblivion* video game with and without the Animation Defect.

**FOURTH CLAIM FOR RELIEF**  
**Restitution/Unjust Enrichment**

82. Plaintiff hereby incorporates all previous allegations contained in this Complaint as though fully set forth herein.

83. Plaintiff and the Class have conferred a benefit upon Defendants. Defendants have received and retained money belonging to Plaintiff and the Class as a result of their unlawful and deceptive practices.

84. Defendants appreciate or have knowledge of said benefit.

85. Under principles of equity and good conscience, Defendants should not be permitted to retain money belonging to Plaintiff and the Class that they unjustly received as a result of their actions.

86. Plaintiff and the Class have suffered financial loss as a direct result of Defendants' conduct.

87. Plaintiff, on his own behalf and on behalf of the Class, seeks the imposition of a constructive trust on and restitution of the proceeds Defendants received as a result of their conduct described herein, as well as attorneys' fees and costs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Landis Edwards, individually and on behalf of the Class, prays for the following relief:

1. An order certifying this case as a class action on behalf of the Class defined above, appointing Landis Edwards as the representative of the Class, and appointing his counsel and class counsel;
2. Declare that Defendants' actions, as set out above, violate C.R.S. § 6-1-101 *et seq.*, and constitute breach of implied warranty of merchantability, fraud by omission, and unjust enrichment entitling Plaintiff and the Class to restitution.
3. Entry of judgment against Defendants ZeniMax and Bethesda for all monetary, actual, consequential, and compensatory damages caused by their unlawful conduct;
4. An injunction requiring Defendant to cease all fraudulent and misleading advertising regarding the *Oblivion* video game, and otherwise protecting the interests of Plaintiff and the Class;

5. Award Plaintiff and the Class restitution in the form of complete disgorgement of all revenue derived from sales of the *Oblivion* video game and each of its editions;
6. An award of reasonable attorneys' fees and costs; and
7. Such further and other relief the Court deems reasonable and just.

Dated this 5th day of January, 2012

Respectfully submitted,

/s/ Steven L. Woodrow

Steven L. Woodrow #43140  
EDELSON MCGUIRE LLC

ATTORNEY FOR PLAINTIFF

|   |   |
|---|---|
| <b>Denver District Court</b><br><b>Denver County, Colorado</b><br><b>Court Address: 1437 Bannock St., Rm. 256, Denver, CO 80202</b> |   |
| <b>EDWARDS, LANDIS</b><br><b>Plaintiff(s)</b><br>v.<br><br><b>ZENIMAX MEDIA INC et al</b><br><b>Defendant(s)</b>                    | <p style="text-align: center;"><b>FILED Document</b><br/> <b>CO Denver County District Court 2nd JD</b><br/> <b>Filing Date: Jan 9 2012 8:04AM MST</b><br/> <b>Filing ID: 1748415</b></p> <p style="text-align: center;">▲ <b>COURT USE ONLY</b> ▲<br/> Review Clerk: Matthew Palmer</p> <p><b>Case Number: 12CV45</b><br/> <b>Courtroom: 424</b></p> |
| <p><b><u>DELAY REDUCTION ORDER</u></b></p>  |   |

All civil courtrooms are on a delay reduction docket. To determine if your case is within the Colorado Civil Access Pilot Project ("CAPP") for Business Actions, refer to Appendix A of Chief Justice Directive 11-02, available at [http://www.courts.state.co.us/Courts/Civil\\_Rules.cfm](http://www.courts.state.co.us/Courts/Civil_Rules.cfm). All civil cases not within the CAPP for Business Actions are governed by **Part I** of this Delay Reduction Order. All civil cases that are within the CAPP for Business Actions are governed by **Part II** of this Delay Reduction Order.

#### **PART I**

- A. For all civil actions that are not within the CAPP for Business Actions the following deadlines must be met:
1. Service of Process: Returns of Service on all defendants shall be filed within 60 days after the date of the filing of the complaint.
  2. Default Judgment: Application for default judgment shall be filed within 30 days after default has occurred.
  3. Trial Setting: Plaintiff shall serve a Notice to Set the case for trial and shall complete the setting of the trial within 30 days from the date the case becomes at issue. A case shall be deemed "at issue" when all parties have been served and have filed all pleadings permitted by C.R.C.P. 7, or defaults or dismissals have been entered against all non-appearing parties, or at such other time as the court shall direct.
- B. The court will consider extending these time periods upon timely filing of a motion showing good cause.

#### **PART II**

- A. Cases that come within the CAPP for Business Actions are governed by the Pilot Project Rules ("PPR"), available at: [http://www.courts.state.co.us/Courts/Civil\\_Rules.cfm](http://www.courts.state.co.us/Courts/Civil_Rules.cfm). A timetable is available on this same website for your reference.
- B. General Overview of the Pilot Project Rules
1. The rules shall be construed and administered to secure the just, timely, efficient, and cost-effective determination of this action.
  2. This action shall be addressed in ways designed to assure that the process and the costs are proportionate to the needs of the case
  3. The intent of the rules is to utilize pleadings to identify and narrow the disputed issues at the earliest stages of litigation and thereby focus discovery. Adherence to the rules, with their emphasis on early complete disclosures and frequent case management conferences, should continually inform the parties and the Court of the issues, claims, and defenses in the case, and obviate the need for ongoing amendments of the pleadings.

4. The material facts pleaded should provide the “who, what, when, where, and how” of each element of a claim or defense. This pleading standard applies equally to affirmative defenses.
5. It is the purpose of the rules to replace the broad discovery currently allowed with proportionate discovery. All facts are not necessarily subject to discovery. The proportionality factors as stated in the rules will thus shape the process for the case.

C. Deadlines that must be met by Plaintiff(s) are:

1. Service of Process: Returns of Service on all defendants shall be filed within 35 days after the date of filing of the complaint.
2. Initial Disclosures: Plaintiff(s) shall file PPR 3.1 initial disclosures concerning the claim(s) for relief with the Court no later than 21 days after service of the complaint.
3. Default Judgment: Application for default judgment shall be filed within 35 days after default has occurred.
4. Initial Case Management Conference: Plaintiff(s) shall serve a Notice to Set the initial case management conference within 7 days after the last answer is filed. This conference shall be held within 49 days after the last answer is filed (see PPR 7.1).
5. Trial Setting: The trial shall be set at the Initial Case Management Conference.

**PART III**

The following provisions apply to all civil cases– those within and those not within the CAPP for Business Actions:

- A. IF AN ATTORNEY OR PRO SE PARTY FAILS TO COMPLY WITH THIS ORDER, THE COURT MAY DISMISS THE CASE WITHOUT PREJUDICE. THIS ORDER SHALL BE THE INITIAL NOTICE REQUIRED BY RULE 121, SECTION 1-10, AND RULE 41(B)(2).
- B. Setting times for civil divisions in Denver District Court are Tuesday, Wednesday, and Thursday, from 10:00 am – 12:00 pm.
- C. Plaintiff shall send a copy of this order to all other parties who enter an appearance.
- D. Any attorney entering an appearance in this case who is aware of a related case is ordered to complete and file in this case an Information Regarding Related Case(s) form available at [http://www.courts.state.co.us/Courts/District/Index.cfm?District\\_ID=2](http://www.courts.state.co.us/Courts/District/Index.cfm?District_ID=2) or in Room 256 of the City and County Building.

Date: January 9, 2012

BY THE COURT:

/s/Sheila A. Rappaport  
District Court Judge  
Denver District Court

cc: Plaintiff(s) or Plaintiff(s) Counsel

|  |   |   |
|--|---|---|
| District Court, <u>Denver</u> County, Colorado                         |   | <b>FILED Document</b><br><b>CO Denver County District Court 2nd JD</b><br><b>Filing Date: Jan 5 2012 4:01PM MST</b><br><b>Filing ID: 41716252</b><br><b>Review Clerk: Matthew Palmer</b><br>▲ <b>COURT USE ONLY</b> ▲ |
| Court Address: <u>1437 Bannock St # 256</u><br><u>Denver, CO 80202</u> |   |   |
| Plaintiff  | <u>LANDIS EDWARDS, individually and on behalf of all others</u><br><u>similarly situated</u>  |   |
| v.   |   |   |
| Defendant  | <u>ZENIMAX MEDIA, INC., a Delaware Corporation, and</u><br><u>BETHESDA SOFTWARES, LLC, a Delaware Limited Liability</u><br><u>Company</u> | Case Number:  |
|  |   | Division:                      Courtroom:   |
| <b>DISTRICT COURT CIVIL SUMMONS</b>                                    |   |   |

TO THE ABOVE NAMED DEFENDANT: BETHESDA SOFTWARES, LLC

**YOU ARE HEREBY SUMMONED** and required to file with the Clerk of this Court an answer or other response to the attached Complaint. If service of the Summons and Complaint was made upon you within the State of Colorado, you are required to file your answer or other response within 20 days after such service upon you. If service of the Summons and Complaint was made upon you outside of the State of Colorado, you are required to file your answer or other response within 30 days after such service upon you. Your answer or counterclaim must be accompanied with the applicable filing fee.

If you fail to file your answer or other response to the Complaint in writing within the applicable time period, the Court may enter judgment by default against you for the relief demanded in the Complaint without further notice.

Dated: 1/5/12

\_\_\_\_\_  
Clerk of Court/Clerk

  
\_\_\_\_\_  
Signature of Plaintiff

999 W. 18th Street, Suite 3000  
\_\_\_\_\_  
Address of Plaintiff

Denver, CO 80202  
\_\_\_\_\_

303/357-4878  
\_\_\_\_\_  
Plaintiff's Phone Number

**This Summons is issued pursuant to Rule 4, C.R.C.P., as amended. A copy of the Complaint must be served with this Summons. This form should not be used where service by publication is desired.**

|  |  |
|--|--|
| District Court, <u>Denver</u> County, Colorado<br>Court Address: <u>1437 Bannock St # 256</u><br><u>Denver, CO 80202</u>   | <p style="color: red; font-weight: bold; margin: 0;">                     FILED Document<br/>                     CO Denver County District Court 2nd JD<br/>                     Filing Date: Jan 5 2012 4:01PM MST<br/>                     Filing ID: 41716252<br/>                     Review Clerk: Matthew Palmer                 </p> |
| Plaintiff <u>LANDIS EDWARDS, individually and on behalf of all other</u><br><u>similarly situated</u><br>v.<br>Defendant <u>ZENIMAX MEDIA, INC., a Delaware Corporation, and</u><br><u>BETHESDA SOFTWARES, LLC, a Delaware Limited Liability</u><br><u>Company</u> | <p style="font-weight: bold; margin: 0;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: _____<br>Division: _____ Courtroom: _____   |
| <p style="font-weight: bold; margin: 0;">DISTRICT COURT CIVIL SUMMONS</p>  |  |

TO THE ABOVE NAMED DEFENDANT: Zenimax Media, Inc.

**YOU ARE HEREBY SUMMONED** and required to file with the Clerk of this Court an answer or other response to the attached Complaint. If service of the Summons and Complaint was made upon you within the State of Colorado, you are required to file your answer or other response within 20 days after such service upon you. If service of the Summons and Complaint was made upon you outside of the State of Colorado, you are required to file your answer or other response within 30 days after such service upon you. Your answer or counterclaim must be accompanied with the applicable filing fee.

If you fail to file your answer or other response to the Complaint in writing within the applicable time period, the Court may enter judgment by default against you for the relief demanded in the Complaint without further notice.

Dated: 1/5/12

\_\_\_\_\_  
 Clerk of Court/Clerk

  
 \_\_\_\_\_  
 Signature of Plaintiff

999 W. 18th Street, Suite 3000

Address of Plaintiff

Denver, CO 80202

303/357-4878

Plaintiff's Phone Number

**This Summons is issued pursuant to Rule 4, C.R.C.P., as amended. A copy of the Complaint must be served with this Summons. This form should not be used where service by publication is desired.**

JS 44 (Rev. 12/11)

District of Colorado Form

**CIVIL COVER SHEET**

The JS 44 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, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

**LANAIS EDWARDS**

(b) County of Residence of First Listed Plaintiff **DENVER**  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
**STEVEN WOSAROW, 999 W. 18<sup>th</sup> STREET,  
STE. 3000, DENVER, CO 80202**

**DEFENDANTS**

**ZENIMAX MEDIA, INC.**

County of Residence of First Listed Defendant **Rockville, MARYLAND**  
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)  
**GEORGE H. PARKER**

**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)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

| CONTRACT  | TORTS   | FORFEITURE/PENALTY   | BANKRUPTCY   | OTHER STATUTES  |  |
|---|---|--|--|---|--|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input checked="" type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Med. Malpractice | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Mgmt. Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act<br><br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition)<br><input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 840 Trademark<br><br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |
| <b>REAL PROPERTY</b><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property  | <b>CIVIL RIGHTS</b><br><input type="checkbox"/> 440 Other Civil Rights<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 448 Education  | <b>PRISONER PETITIONS</b><br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><b>Habeas Corpus:</b><br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition<br><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement  |  |   |  |

**V. 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)
  - 6 Multidistrict Litigation
  - Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

**28 U.S.C. § 1332**

Brief description of cause: **Allegation of Deceptive Trade RE: SALE OF VIDEO GAMES**

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ **Unknown**

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

DATE: **2/15/2012** SIGNATURE OF ATTORNEY OF RECORD: **George H. Parker**

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**SUPPLEMENTAL CIVIL COVER SHEET FOR  
NOTICES OF REMOVAL**

**Appendix B**

The removing party shall complete the SUPPLEMENTAL CIVIL COVER SHEET FOR NOTICES OF REMOVAL and follow D.C.COLO.LCivR 81.1. and 28 U.S.C. § 1446(a).

**Section A - Plaintiffs**

**Section B - Defendants**

Plaintiffs remaining in action at the time of filing the notice of removal.

Defendants remaining in action at the time of filing the notice of removal.

|                          |
|--------------------------|
| 1. <u>KANDIS EDWARDS</u> |
| 2.                       |
| 3.                       |
| 4.                       |
| 5.                       |
| 6.                       |

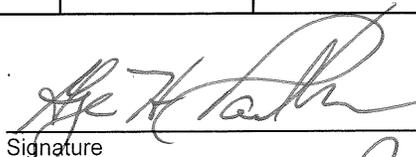
|                                   |
|-----------------------------------|
| 1. <u>ZENIMAX MEDIA, INC.</u>     |
| 2. <u>BETHESDA SOFTWARES, LLC</u> |
| 3.                                |
| 4.                                |
| 5.                                |
| 6.                                |

**Section C - Pending State Court Motions  
As of Date of Removal**

| Title of State Court Motion | Date Motion Filed |
|-----------------------------|-------------------|
| 1. <u>NONE.</u>             | <u>N/A</u>        |
| 2.                          |                   |
| 3.                          |                   |
| 4.                          |                   |
| 5.                          |                   |
| 6.                          |                   |
| 7.                          |                   |

**Section D - Scheduled State Court Hearings  
As of Date of Removal**

| Title of State Court Scheduled Hearing | Date of Hearing | Time of Hearing | Assigned State Judge |
|--|-----------------|-----------------|----------------------|
| 1. <u>NONE.</u>                        | <u>N/A</u>      | <u>N/A</u>      | <u>N/A</u>           |
| 2.                                     |                 |                 |                      |
| 3.                                     |                 |                 |                      |
| 4.                                     |                 |                 |                      |

  
Signature

GEORGE H. PARKER  
Printed Name

Telephone Number: 303-291-7904

Date: 2/15/2012

State Court Case Number: 2012-CV-45

(DENVER DIST. COURT)

