

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case No. \_\_\_\_\_

State Case No. 14-27358 CA 40

JOHN LARKIN, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

GAMESTOP, INC.

Defendant.

\_\_\_\_\_ /

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that, pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332(d), 1441, 1446 and 1453, Defendant GameStop, Inc. (“GameStop”) hereby removes this action to the United States District Court for the Southern District of Florida from the Circuit Court of the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida where this action is now pending. The grounds for removal are as follows:

1. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d) because the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which a member of the purported class of plaintiffs is a citizen of a state different from the defendant.

2. On or about October 24, 2014, Plaintiff John Larkin (“Plaintiff”), a resident of Miami-Dade County, Florida, filed a putative class action Complaint in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, entitled *John Larkin, individually and on behalf of all others similarly situated v. GameStop, Inc.*, Case No. 14-27358 CA 40 (the “Complaint”). The Complaint, which is brought on behalf of Plaintiff and a putative class of those who purchased pre-owned video games from GameStop stores in Florida, asserts claims under the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), § 501.201 Fla. Stat. *et seq.*, for money damages and injunctive relief. Copies of the Summons and Complaint and all other papers that have been served on GameStop to date are attached hereto as Composite Exhibit 1.

3. Defendant GameStop, Inc. was served with a copy of the Complaint on November 5, 2014.

4. The Complaint is on behalf of a class of individuals to whom GameStop allegedly sold a used video game from a GameStop store in Florida in the past four years which game did not allow access to full content and/or functionality that was depicted on the video game box. (Compl., ¶ 34). The Complaint alleges that the packaging of the used video games depicts the availability of certain “content and functionality that must be downloaded, such as characters, levels, weapons, songs, the ability to play multiplayer and the ability to play online,” which content and functionality “are available to the customer after they enter a [one-time] ‘use code’ that comes with the game.” (Compl., ¶ 11.) Despite the alleged representations on the game packaging, however, the Complaint alleges that the used games “either do not include the use code, or the [one-time] use code ... has already been used and no longer works.” (Compl., ¶ 12.) As a result, the Complaint alleges that the plaintiff and other class members could not access all

of the advertised content and/or functionality for the used games without an additional purchase. (Compl., ¶ 46.) The Complaint alleges that GameStop's conduct in failing to disclose that certain content or functionality may not be available on used video games violated the FDUTPA.

5. The Complaint defines the class as, "Everyone who purchased a video game from a GameStop store in Florida in the past 4 years which game did not allow access to full content and/or functionality that was depicted on the video game box because the game was used." (Compl., ¶ 34.)

6. The Complaint alleges that GameStop operates over 50 stores in Florida. (Compl. ¶ 9). The Complaint further alleges that the purported class includes "thousands of members" and is "sufficiently numerous that joinder of all members of the Class in a single action is impracticable." (Compl. ¶ 35.)

7. As of December 4, 2014, other than the original Summons and Complaint, and other papers attached as Exhibit 1, there have been no additional pleadings or papers filed with the Circuit Court of the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida.

8. This Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1332(d). Specifically, a member of the class of plaintiffs is a citizen of a State different from any defendant:

- a. Plaintiff resides in Miami-Dade County, Florida. (Compl. ¶ 1.)
- b. The Complaint alleges that GameStop is either a Delaware or Texas corporation with its principal place of business in Grapevine, Texas. (Compl. ¶ 3.) In fact, GameStop is a Minnesota corporation, with its principal place of business in Grapevine, Texas. (Declaration of Jon Haes ["Haes Dec."] ¶ 2.)

9. Furthermore, the amount in controversy for a class action under CAFA is satisfied here because the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of

interest and costs. *See Pretka v. Kolter City Plaza*, 608 F.3d 744, 751 (11th Cir. 2010). While the Complaint merely alleges that “the amount in controversy exceeds \$150,000, exclusive of interest, costs and attorneys’ fees” (Compl. ¶ 7), this allegation is not controlling. *See Pretka*, 608 F.3d at 754.

10. The Complaint is on behalf of a class of individuals to whom GameStop allegedly sold a video game from a GameStop store in Florida in the past 4 years which game did not allow access to full content and/or functionality that was depicted on the video game box because the game was used. The Complaint contends that GameStop engaged in deceptive conduct because it failed to disclose that used video games do not contain all content and/or functionality represented on the video game packaging.

11. On behalf of this putative class, Plaintiff seeks in Count One of the Complaint damages and attorneys’ fees for GameStop’s alleged violation of FDUTPA. Plaintiff also seeks in Count Two injunctive relief requiring GameStop to provide notice in its Florida stores that used video games may not contain content and functionality represented on the game packaging without the payment of additional money and, further, that some content and functionality may never be accessible.

12. Plaintiff’s Complaint does not specify the nature of the damages sought. However, the \$5 million jurisdictional threshold is easily met whether Plaintiff is seeking a refund of the full purchase price of the used games purchased or whether he is seeking the cost to purchase the additional game content that allegedly was not included with the used games.

13. GameStop’s net sales of pre-owned video games that had downloadable content (“DLC”) with new versions of the game that may not be available in the pre-owned version and sold in Florida stores between October 24, 2010, and October 24, 2014, is in excess of \$50

million, reflecting the sale of more than 2.5 million units. (Haes Dec. ¶ 4.) These numbers do not include sales on the Internet to Florida residents. (*Id.* at ¶ 5.) Thus, the amount in controversy is in excess of the \$5,000,000 threshold for diversity jurisdiction under CAFA, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d).

14. Plaintiff has not alleged how much it cost him to purchase the additional game content and/or functionality for the used games he purchased. (Compl. ¶¶ 20, 25-26, 31-32.) The cost to purchase DLC separately for a pre-owned game where the DLC was included in the new game, but is no longer available with the pre-owned game, can vary from as low as \$5 to as high as \$50, depending on the game and the type of DLC being purchased. For the majority of games, however, the cost to purchase DLC separately typically ranges from \$10 to \$15. (Haes Dec. ¶ 6.) Even assuming the unlikely scenario that it would cost only \$5 to purchase DLC for each of the approximately 2.5 million pre-owned games referred to above, that amount would be \$12,500,000. Given the more likely case that many of those 2.5 million games had DLC available for \$10 to \$15, using the \$10 price, the amount in controversy would be closer to \$25 million.

15. Furthermore, in actions seeking injunctive relief as does the Complaint in Count Two, the amount in controversy is measured by the value of the object of the litigation. *See Ericsson GE Mobile Commc'ns. v. Motorola Commc'ns. & Elecs.*, 120 F.3d 216, 218 (11th Cir. 1997). Here, through this action, Plaintiff is seeking injunctive relief requiring GameStop to “provide notice to its customers that the used video games it sells may not contain content and functionality represented on the video game box without the payment of additional money and, further, that some content and functionality may never be accessible.” (Compl. ¶ 51.) While the costs associated with posting warnings on copies of all of GameStop’s pre-owned games are not

alleged in the Complaint and are unknown at this time, this additional claim for injunctive relief further raise the amount in controversy well above the \$5,000,000 CAFA threshold.

16. The Complaint alleges the claims arise exclusively under Florida law. (Compl. ¶ 8.) This allegation appears to be an effort to fall within the local controversy exception to CAFA. That exception does not apply here where the defendant is not a citizen of the state in which the action is filed. *See* 28 U.S.C. § 1332(d)(4).

17. Accordingly, in light of the amount in controversy and the fact that a member of the putative class of plaintiffs is a citizen of a State different from any defendant, this Court has diversity jurisdiction of this action pursuant to CAFA, *see* 28 U.S.C. § 1332(d), and this action may be properly removed to this Court pursuant to 28 U.S.C. §§ 1441, 1446 and 1453.

18. This Notice of Removal is being timely filed and served pursuant to 28 U.S.C. § 1446(b), as GameStop, Inc. received a copy of the Complaint on November 5, 2014. Copies of all process and pleadings that have been filed in the action in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, are appended to this Notice of Removal.

19. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on Plaintiff by service upon his attorney of record, and will be filed with the Clerk of the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida.

20. By filing this notice, Defendant GameStop, Inc. does not waive and expressly reserves its right to raise any and all defenses and objections which may be available to it.

WHEREFORE, Defendant GameStop, Inc. removes the above-captioned action pending against them in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida to the United States District Court for the Southern District of Florida.

Dated: December 4, 2014

**SHOOK, HARDY & BACON**  
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(Motion for *Pro Hac Vice* admission forthcoming)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 4th day of December 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and a true and correct copy of the foregoing was served on all counsel or parties of record on the Service List below by the method indicated.

/s/ Eric S. Boos

Eric S. Boos

**SERVICE LIST**

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(Motion for *Pro Hac Vice* admission  
forthcoming)  
(Service via CM/ECF)



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.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

DEFENDANTS

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

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 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)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF 1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
PTF DEF 4 4
5 5
6 6

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment
8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

a) Re-filed Case YES NO b) Related Cases YES NO

JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

**VI. Related/Refiled Cases.** This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

**VII. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VIII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# **Composite Exhibit 1**

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 14-27358 CA 40

JOHN LARKIN, individually  
and on behalf of all others similarly situated,

Plaintiff,

vs.

GAMESTOP, INC.

Defendant.

*DN*  
*SP5773*  
*11/05/14*  
*2:10 PM*

**SUMMONS**  
**GAMESTOP, INC.**

THE STATE OF FLORIDA  
To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the Complaint or  
Petition in this action on:

**GAMESTOP, INC.**  
By serving its: Registered Agent  
CT Corporation System  
1200 South Pine Island Road  
Plantation, FL 33324

Each defendant is required to serve written defenses to the Complaint or Petition on  
plaintiff's attorney, whose address and other pertinent contact information are as follows:

Plaintiff's Attorneys:  
MASE LARA, P.A.  
2601 South Bayshore Drive  
Suite 800  
Miami, Florida 33133  
Telephone: (305) 377-3770  
Facsimile: (305) 377-0080  
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WILLIAM R. SEITZ  
Florida Bar No.: 73928  
wseitz@maselara.com  
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within 20 days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the Complaint or Petition:

DATED:                     NOV 03 2014                    

HARVEY RUVIN  
As Clerk of the Court

BY:                     BEATRIZ PEREZ                      
As Deputy Clerk

Filing # 19784511 Electronically Filed 10/24/2014 01:09:24 PM

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 14-27358 CA 40

JOHN LARKIN, individually  
and on behalf of all others similarly situated,

Plaintiff,

vs.

CLASS ACTION

GAMESTOP, INC.,

Defendant.

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**COMPLAINT**

Plaintiff, John Larkin, individually and on behalf of all others similarly situated, sues defendant, Gamestop, Inc., and alleges as follows:

**GENERAL ALLEGATIONS**

**A. Parties, Jurisdiction, Venue and Complex Business Division**

1. John Larkin ("Larkin") is a resident of Miami-Dade County, Florida.
2. GameStop, Inc. ("GameStop") has registered the fictitious name "GameStop" in Florida.
3. GameStop is believed to be a Delaware or Texas corporation, and its principal place of business is located in Grapevine, Texas.
4. The holding company that owns and/or controls GameStop is GameStop Corp., a Delaware corporation.

*Larkin v. GameStop  
Complaint*

5. GameStop is authorized to do business in Florida, and it operates, conducts, engages in and/or carries on a business venture in Florida, including but not limited to operating stores in Miami-Dade County, Florida, that sell video games.

6. The events which form the basis of this action occurred in Miami-Dade County, Florida.

7. The amount in controversy exceeds \$150,000, exclusive of interest, costs and attorneys' fees.

8. This is a consumer class action pursuant to the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") based on GameStop's unfair and deceptive acts and practices with respect to its conduct of trade and commerce in Florida.

**B. Factual Background**

9. GameStop owns and operates over 50 stores in the state of Florida.

10. GameStop sells used video games, including video games for popular gaming consoles such as Playstation and Xbox.

11. This class action involves used video games that are sold by GameStop in its retail stores in Florida. With respect to the used video games, GameStop unfairly and deceptively misleads customers at the time of their purchase of used video games to believe that those video games come with all of the content and functionality that is depicted on the video game box, when in fact, they do not. Many of the used video games GameStop sells – including but not limited to, the video games Battlefield 3: Limited Edition, Assassin's Creed III, Assassin's Creed: Revelations, Dragon Age Origins, Mass Effect 2, Battlefield: Bad Company 2, Gears of War 2: Game of the Year Edition, NBA Live '09, Rock Band 2, AC/DC Live: Rock Band Track Pack and Resident Evil 5: Gold Edition (collectively, the "Video Games") – are

*Larkin v. GameStop  
Complaint*

packaged with content and functionality that must be downloaded, such as characters, levels, weapons, songs, the ability to play multiplayer and the ability to play online. That content and/or functionality are available to the customer after they enter a “use code” that comes with the game.

12. The availability of this additional content is prominently depicted on the packaging of used video games sold by GameStop. Despite the representation on the packaging that the video games come with a use code or otherwise come with all of the depicted content and functionality included, the content and full functionality has to be paid for after the purchase unless the one-time use code is included. The used video games either do not include the use code, or the use code can only be used one time and it has already been used and no longer works.

13. GameStop’s Florida stores do not display any signs or other form of notice advising customers that the use code may not be contained in the box of the used video game, or the use code may have already been redeemed by the customer who previously owned the game.

14. The Video Games use the aforementioned use code system.

15. On November 6, 2013, Larkin purchased the Video Games from a GameStop store located at 18479 SW Dixie Highway, Cutler Bay, FL 33157.

**Assassin’s Creed III: Gamestop Edition**

16. The front of the video game box for Assassin’s Creed III: GameStop Edition represents on the banner at the top of the game that the video game includes: “**GameStop Edition – Free Mission and Weapon.**”



*Larkin v. GameStop  
Complaint*

17. The video game box for Assassin's Creed III: GameStop Edition also represents that it contains a use code for **"instant access to all multiplayer modes and unlock the exclusive character The Silent Shadow."**

18. Nowhere in the GameStop store is it demonstrated that the free mission and weapon and/or The Silent Shadow are not included with the purchase of a used version of Assassin's Creed III: GameStop Edition.

19. Larkin purchased a copy of Assassin's Creed III: Gamestop Edition that included a use code that had already been used. Accordingly, Larkin did not get all of the functionality and content the video game box represented came with the video game.

20. Larkin had to purchase functionality of Assassin's Creed III: Gamestop Edition online at an additional cost.

21. Furthermore, Larkin was never able to obtain the free mission, weapon and character for Assassin's Creed III: GameStop Edition. Even after Larkin spent additional money online to obtain certain functionality, he was unable to access those "free" items because use code for sale online does not unlock that special edition content. There is no way for a customer of a used version of Assassin's Creed III: Gamestop Edition to access that content.

*Assassin's Creed Revelations*

22. The back of the video game box for Assassin's Creed Revelations sets forth in a large blue box that it is "Uplay enabled" and includes a "Passport" to **"get instant access to Assassin's Creed Revelations Multiplayer and exclusive content."** The Uplay Passport is required to access multiplayer functionality and certain single player functionality as well, including the referenced "exclusive content." In other words, an Uplay Passport is required to play the video game.

*Larkin v. GameStop  
Complaint*

23. Nowhere in the GameStop store does it set forth that the unique key is not included with the purchase of a used copy of Assassin's Creed Revelations.

24. Larkin purchased a used version of Assassin's Creed Revelations that included an Uplay Passport code (use code) that had been used. Accordingly, Larkin did not get the functionality and content the video game box represented came with the video game.

25. Larkin had to purchase the functionality of Assassin's Creed Revelations online at an additional cost.

26. Larkin had to purchase the content of Assassin's Creed Revelations online at an additional cost.

**Battlefield 3: Limited Edition**

27. The front of the video game box for Battlefield 3: Limited Edition sets forth in bold red that it **"includes access to Battlefield 3™: Back to Karkand Expansion Pack."** The back of that box sets forth in bold red and black letters that it **"includes access to Battlefield 3™: Back to Karkand Expansion Pack, featuring 4 classic maps, 3 new vehicles, and new weapons."**

28. The video game box for Battlefield 3: Limited Edition sets forth that a use-code is included that allows access to content and functionality. The content and functionality includes, but is not necessarily limited to the back to Karkand Expansion Pack.

29. Larkin purchased Battlefield 3: Limited Edition at GameStop.

30. Larkin purchased Battlefield 3: Limited Edition that included use code that had already been used. Accordingly, Larkin did not get the functionality and content the video game box represented came with the video game.

*Larkin v. GameStop  
Complaint*

31. Larkin had to purchase the functionality of Battlefield 3: Limited Edition online at an additional cost.

32. Larkin had to purchase the content of Battlefield 3: Limited Edition online at an additional cost.

**C. Class Action Allegations**

33. Larkin brings this action on behalf of himself and all others similarly situated as a class action pursuant to Fla. R. Civ. P. 1.220. This action is brought and properly may be maintained as a class action pursuant to the provisions of Fla. R. Civ. P. 1.220 and satisfies the requirements thereof. As used herein, the term "Class Members" shall mean and refer to the members of the Class (defined below).

34. The "Class" is defined as follows:

Everyone who purchased a video game from a GameStop store in Florida in the past 4 years which game did not allow access to full content and/or functionality that was depicted on the video game box because the game was used.

35. **Numerosity**. While the exact number of Class Members is unknown at this time and can only be determined by appropriate discovery, membership in the Class is ascertainable based on the records maintained by GameStop. At this time, it is believed that the Class includes thousands of members. Accordingly, the Class is sufficiently numerous that joinder of all members of the Class in a single action is impracticable, and the resolution of their claims through the procedure of a class action will be of benefit to the parties and the Court.

36. **Commonality**. There are common issues of fact and law among Larkin and the other Class Members, including:

*Larkin v. GameStop  
Complaint*

- a. Whether GameStop's practices described herein are deceptive and/or unfair to consumers;
- b. The proper measure of the Class Members' damages; and
- c. Whether Larkin and the Class Members are entitled to attorneys' fees pursuant to § 501.204 and 501.2105, Fla. Stat. 2014.

37. **Typicality**. Larkin's claims are typical of the other Class Members because Larkin and the other Class Members have been subjected to the same unfair and deceptive practices and/or conduct.

38. **Fair and Adequate Representation**. Larkin will fairly and adequately represent and protect the interests of the Class. Larkin has common interests with the other Class Members and those interests are not antagonistic. For example, Larkin, like his fellow Class Members, wants to stop GameStop's unfair and deceptive conduct concerning the sale of used video games. Larkin is committed to the vigorous prosecution of this action and, to that end, Larkin has retained counsel who are competent and experienced in handling class action litigation on behalf of consumers. Additionally, Larkin's counsel from Mase Lara, P.A. designated below has prosecuted and defended FDUTPA class action claims in Florida state and federal courts.

39. **Rule 1.220(b)(3)**. The questions of law or fact common to the claims of Larkin, and the defenses thereto, predominate over any question of law or fact affecting only the individual member of the class, and the class representation is superior to other available methods for the fair and efficient adjudication of this controversy. If each of the Class Members' claims were prosecuted as separate actions there would be a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible

*Larkin v. GameStop*  
*Complaint*

standards of conduct for GameStop. If each of the Class Members' claims were prosecuted as separate actions there would be a risk of adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications. The relatively small amount of each Class Members' claim would substantially impair or impede their ability to protect their interests by bringing individual claims. The issue of whether GameStop's conduct is unfair and deceptive predominates over individual inquiries. The Class Members' interest in individually controlling the prosecution of their claims is minimal. A class action is also a desirable means of bringing the claims of the Class Members because small recoveries would not provide the incentive for any individual claimant to bring a solo action to prosecute their rights. The difficulties in maintaining this class action are small. The names, addresses and video games purchased by the Class Members are easily ascertainable from GameStop's records.

**COUNT I**  
**(Damages)**

40. Larkin incorporates the allegations set forth in paragraphs 1 through 39 as though set forth fully herein.

41. This action is brought pursuant to FDUTPA.

42. All conditions precedent to this action have been performed, satisfied and/or waived.

43. GameStop's conduct is unfair because it is unscrupulous and substantially injurious to consumers. GameStop sells used video games that do not all contain the content and/or functionality represented on the boxes of those video games. GameStop does not disclose that fact to its customers.

*Larkin v. GameStop  
Complaint*

44. Additionally, such conduct is deceptive because it constitutes a representation, omission and practice that has a tendency to mislead, is likely to mislead and/or misleads the consumer to his/her detriment. The lack of notice or other form of clarification by GameStop that the video games it sells do not contain all of the content and/or functionality represented on the video game boxes is likely to mislead a reasonable customer.

45. Other courts held such conduct to be unfair and deceptive. For example, the District Court for the Northern District of California (*James Collins v. GameStop, Corp.*; case no. 10-cv-01210-TEH) approved a class action settlement (the scope of the class was limited to California) based on similar factual circumstances. Despite that settlement in the California class action, GameStop has not changed its unfair trade practices in Florida. GameStop in Florida continues to sell used video games without making any disclosure that they do not contain functionality and content.

46. As a result of GameStop's deceptive and unfair trade practices, Larkin, and those similarly situated, have been aggrieved and suffered actual damages. For example, Larkin had to pay additional money to obtain certain content and functionality with respect to the Video Games. Additionally, Larkin was never able to obtain certain content and functionality with respect to the Video Games contrary to the representation on the boxes of the Video Games.

47. Pursuant to §501.2105, Fla. Stat. (2014), counsel for Larkin, and those similarly situated, are entitled to reasonable attorneys' fees and costs.

WHEREFORE, Plaintiff, John Larkin, and all people and entities similarly situated, demand judgment against GameStop, for damages and all other relief the court deems just and proper.

**COUNT II**  
**(Injunctive Relief)**

48. Larkin incorporates the allegations set forth in paragraphs 1 through 39 as though set forth fully herein.

49. This action is brought pursuant to FDUTPA. This action is for permanent injunctive relief against GameStop.

50. All conditions precedent to this action have been performed, satisfied and/or waived.

51. Injunctive relief should be entered requiring GameStop's Florida locations to provide notice to its customers that the used video games it sells may not contain content and functionality represented on the video game box without the payment of additional money and, further, that some content and functionality may never be accessible.

52. GameStop's conduct caused, and will continue to cause, irreparable harm. The harm is irreparable because the magnitude of the harm that will be caused by GameStop's conduct in the future is speculative and difficult to estimate. It is impossible to estimate how much longer GameStop will continue to unfairly and deceptively sell used video games that do not include the functionality and content represented on the video game box. Likewise, it is impossible to estimate with particularity how many more customers GameStop will continue to unfairly and deceptively sell used video games to.

53. The apprehension of further injury is well grounded given that GameStop has continued such conduct in Florida and elsewhere despite consumers having alleged in other jurisdictions that such conduct is deceptive, which for example, the District Court for the

*Larkin v. GameStop  
Complaint*

Northern District of California agreed with (*James Collins v. GameStop, Corp.*; case no. 10-cv-01210-TEH).

54. Larkin, and all people and entities similarly situated, have a clear legal right to the injunction. They have been subject to the deceptive and unfair practices of GameStop concerning the sale of used video games.

55. The granting of the injunction would prevent a multiplicity of suits. For example, GameStop continues to engage in the deceptive and unfair conduct set forth in this suit, which will only lead to more lawsuits if it is not stopped.

56. The remedy at law is inadequate. An award of damages alone will not provide an adequate remedy to Larkin, and all people similarly situated, and the class members because GameStop's deceptive and unfair conduct has been continuous, and will continue unless the court enters an injunction prohibiting the conduct in Florida in the future.

57. An injunction will serve the public interest because it will prevent continued deceptive and unfair conduct from occurring.

WHEREFORE, Plaintiff, John Larkin, and all people and entities similarly situated, demand judgment against GameStop for permanent injunctive relief; in particular, requiring GameStop's Florida locations to cease the conduct described herein, and all other injunction relief deemed necessary and proper by the court to prevent GameStop's continued unfair and deceptive trade practices.

**JURY TRIAL DEMAND**

Larkin demands a trial by jury on all issues so triable.

Date: October 24, 2014.



*Larkin v. GameStop  
Complaint*

Respectfully submitted,

MASE LARA, P.A.  
*Co-counsel for Plaintiff*  
2601 S. Bayshore Drive  
Suite 800  
Miami, Florida 33133  
Telephone: (305) 377-3770  
Facsimile: (305) 377-0080

By: /s/ Curtis Mase  
CURTIS J. MASE  
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[cmase@maselara.com](mailto:cmase@maselara.com)  
RICHARD LARA  
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CHRISTOPHER G. LYONS  
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-and-

THE PERAZZO LAW FIRM, P.A.  
*Co-counsel for Plaintiff*  
9325 N. Bayshore Drive  
Miami Shores, FL 33181  
Telephone: (786) 529-7411  
Facsimile: (305) 206-4352

By: /s/ Jonathan Perazzo  
JONATHAN PERAZZO  
Florida Bar No.: 93624  
[JP@Perazzolaw.com](mailto:JP@Perazzolaw.com)

18630/#21

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 14-27358 CA 40

JOHN LARKIN, individually  
and on behalf of all others similarly situated,

Plaintiff,

vs.

CLASS ACTION

GAMESTOP, INC.,

Defendant.

---

**PLAINTIFF'S CERTIFICATE OF SERVING  
HIS FIRST INTERROGATORIES TO DEFENDANT**

Plaintiff, John Larkin, pursuant to Fla. R. Civ. P. 1.340(e), certifies that on the date indicated below he served interrogatories on the Defendant which consist of 15 interrogatories.

MASE LARA, P.A.  
*Co-counsel for Plaintiff*  
2601 S. Bayshore Drive  
Suite 800  
Miami, Florida 33133  
Telephone: (305) 377-3770  
Facsimile: (305) 377-0080

By: /s/ William Seitz  
CURTIS J. MASE  
Florida Bar No.: 478083  
[cmase@maselara.com](mailto:cmase@maselara.com)  
WILLIAM R. SEITZ  
Florida Bar No.: 73928  
[wseitz@maselara.com](mailto:wseitz@maselara.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 31, 2014, a true and correct copy of the foregoing was given to a private process server to serve on GameStop, Inc., c/o its Registered Agent, CT Corporation System, 1200 South Pine Island Road, Plantation, FL 33324.

/s/ William Seitz  
WILLIAM R. SEITZ

18630/#48

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 14-27358 CA 40

JOHN LARKIN, individually  
and on behalf of all others similarly situated,

Plaintiff,

vs.

CLASS ACTION

GAMESTOP, INC.,

Defendant.

---

**PLAINTIFF'S FIRST REQUEST FOR PRODUCTION TO DEFENDANT**

Plaintiff, John Larkin, pursuant to Fla. R. Civ. P. 1.350, requests defendant, GameStop, Inc., respond to each of the requests set forth below and produce the items designated in the requests in accordance with the applicable Florida Rules of Civil Procedure and the definitions and instructions set forth herein.

MASE LARA, P.A.  
*Co-counsel for Plaintiff*  
2601 S. Bayshore Drive  
Suite 800  
Miami, Florida 33133  
Telephone: (305) 377-3770  
Facsimile: (305) 377-0080

By: /s/ William Seitz  
CURTIS J. MASE  
Florida Bar No.: 478083  
[cmase@maselara.com](mailto:cmase@maselara.com)  
WILLIAM R. SEITZ  
Florida Bar No.: 73928  
[wseitz@maselara.com](mailto:wseitz@maselara.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 31, 2014, a true and correct copy of the foregoing was given to a private process server to serve on GameStop, Inc., c/o its Registered Agent, CT Corporation System, 1200 South Pine Island Road, Plantation, FL 33324.

/s/ William Seitz  
WILLIAM R. SEITZ

**PLAINTIFF'S REQUEST FOR PRODUCTION TO DEFENDANT**

**DEFINITIONS**

For purposes of this Request for Production the following definitions apply:

1. **"Complaint"** shall mean and refer to the current operative complaint in this action.
2. **"Demonstrate"** shall mean and include the following: to reflect, substantiate, support, evidence, reveal, regard, attest to, mention, treat, analyze, discuss, comment upon, show, demonstrate, depict, relate to, concern and disclose, and **"demonstrating"** shall mean and refer to reflecting, substantiating, supporting, evidencing, revealing, regarding, attesting to, mentioning, treating, concerning, analyzing, discussing, commenting upon, showing, demonstrating, depicting, relating to and disclosing.
3. **"Document"** shall be deemed to include every record of every type, including, without limitation, information stored electronically, any written, printed, typed, recorded, stored, or graphic matter, however produced, reproduced, or existing in the possession, custody, or control of Spares or any agent, employee, or attorney of Spares or all of them, and all drafts, notes or preparatory material concerned with said document, and every additional copy of such record or document where such copy contains any commentary, notation, or other change whatsoever that does not appear on the original or other copy of the document produced. "Document" shall be deemed also to include any summary of a document or documents called for hereafter.
4. **"Florida GameStop Stores"** shall mean and refer to all GameStop stores located in Florida.
5. **"Person"** shall be deemed to include natural persons, partnerships, firms, and corporations, and all of their subsidiaries or divisions, and, in the case of partnerships, firms, and corporations, the individual member(s) or agent(s) thereof.
6. **"You"** and **"your"** shall mean and refer to the entity(ies) and person(s) to whom this request is directed, including all of its/their agents, representatives, attorneys, accountants and any other person acting, retained to act or delegated to act on behalf of them.

**INSTRUCTIONS**

A. If any documents requested are withheld on a claim of privilege, identify each such document by providing the date of its preparation; the name of the persons preparing and receiving it, and the identity of each person to whom a copy of such document has been delivered, or to whom disclosure of the document was made, either orally or in writing, and finally, the specific privilege relied upon as authority to withhold the document. The same shall apply to those tangible items withheld under a claim of privilege.

B. Documents produced shall be segregated and marked according to the request(s) in response to which they are produced.

C. **If the cost of production exceeds \$250.00, please contact the undersigned counsel for approval prior to incurring such excess cost.**

**\*\*\*TIME PERIOD\*\*\***

Unless otherwise indicated, this request for production and inspection of Documents refers to the period from **July 1, 2010 to the date of full compliance herewith.**

**ITEMS TO BE PRODUCED**

**\*\*\*Please note that certain terms are defined above.\*\*\***

You are requested to produce all of the following Documents:

1. Those Demonstrating all used video games your Florida GameStop Stores have sold, including Demonstrating the title of those video games, the amount you paid for those used video games, and the amount the customer paid you to purchase those used video games.
2. Those Demonstrating all customers (including names and addresses) that purchased used video games at your Florida GameStop Stores.
3. Those Demonstrating your gross profit from the sale of used video games in your Florida GameStop Stores.
4. Those Demonstrating the amount you pay to purchase each used video game you sell at your Florida GameStop Stores.
5. Those Demonstrating what portion of your revenue from your sales in your Florida GameStop Stores is derived from the sale of used video games.
6. Those Demonstrating notice you gave and/or give your customers in your Florida GameStop Stores that content that is represented on a used video game box may not be included with the purchase of a video game.
7. Photographs of displays in your Florida GameStop Stores and signs that are (or have been) concerning the sale of used video games in your Florida GameStop Stores.
8. Those Demonstrating notice you give (or gave) your customers in your Florida GameStop Stores that functionality that is represented on a used video game box may not be included with the purchase of a video game.

9. Those Demonstrating all complaints and/or correspondence between you and anyone regarding used video games sold at your Florida GameStop Stores concerning not being able to use the full functionality of used video games.

10. Those Demonstrating all complaints and/or correspondence between you and anyone regarding used video games sold at your Florida GameStop Stores concerning not being able to access content of used video games.

11. Those Demonstrating use codes, Passports, and other passwords/codes you distributed and/or distribute to customers to access content and/or functionality for used video games sold at your Florida GameStop Stores.

12. Those Demonstrating your policies and procedures relating to use codes, Passports, and other passwords/codes relating to used video games sold at your Florida GameStop Stores.

13. Those Demonstrating your policies and procedures relating to:

- a. Checking the functionality and content of used video games you purchase,
- b. Checking the functionality and content of used video games you sell,
- c. What to do if a used video games does not include full functionality,
- d. What to do if a used video game does not include full content,
- e. What to do if a customer raises an issue regarding the (a)-(d), and
- f. Your sales and pricing plan/strategy relating to the sale of used video games.

14. Those Demonstrating your pricing practices for the sale of used video games. If there is a distinct practice for the sale of used video games in only Florida, than those Demonstrating your pricing practices for the sale of used video games in Florida.

15. Those Demonstrating all of your changes to your policies and procedures since the first complaint (whether that be the California class action or some earlier complaint) was made against you relating to your practice of selling used video games that do not contain full functionality and/or content.

16. Those Demonstrating all injunctive orders entered in relation to you.

17. Those Demonstrating that you have knowledge that used video games you sell in your Florida GameStop Stores do not contain full functionality and/or content.

18. Copies of all of your print media disseminated/displayed in Florida or on the internet related to used video games.

19. All correspondence, memoranda, guidelines, Documents, and instruction booklets, manuals, guidelines and procedures relating to your Florida GameStop Stores not



otherwise encompassed in request number 7 set forth herein, including but not limited to those that instruct employees about the sale of used video games and use codes.

20. Those Demonstrating your marketing plan(s), marketing materials, commercials, internet ads and other advertisements concerning used video games and your Florida GameStop Stores.

21. Those Demonstrating your marketing plan(s), marketing materials, commercials, internet ads and other advertisements concerning new video games and your Florida GameStop Stores.

22. Those Demonstrating the information you give to people when the sell or trade-in a used video game at your GameStop Florida Stores.

23. Those Demonstrating the information you give a customer when they purchase a used video game at your GameStop Florida Stores.

24. Those Demonstrating what you give customers in your Florida GameStop stores if they complain about the lack of functionality and/or content that comes with a used video game they purchase at your Florida GameStop stores.

25. Interrogatory answers, affidavits and documents you have served, filed and/or produced in other actions anywhere in the United States in which you are a party relating to functionality and/or content of used video games you sell, including but not limited to the California and New Jersey actions against you.

26. Those Demonstration the number and location of all of your Florida GameStop Stores.

27. Those Demonstrating any insurance coverage you may have for the claims asserted in this action.

###

18630/#40

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 14-27358 CA 40

JOHN LARKIN, individually  
and on behalf of all others similarly situated,

Plaintiff,

vs.

CLASS ACTION

GAMESTOP, INC.,

Defendant.

---

**PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT**

Plaintiff, John Larkin, pursuant to Fla. R. Civ. P. 1.340, requests defendant, GameStop, Inc., answer the following interrogatories in writing, under oath, in accordance with the applicable Florida Rules of Civil Procedure and the definitions and instructions attached hereto.

MASE LARA, P.A.  
*Co-counsel for Plaintiff*  
2601 S. Bayshore Drive  
Suite 800  
Miami, Florida 33133  
Telephone: (305) 377-3770  
Facsimile: (305) 377-0080

By: /s/ William Seitz  
CURTIS J. MASE  
Florida Bar No.: 478083  
[cmase@maselara.com](mailto:cmase@maselara.com)  
WILLIAM R. SEITZ  
Florida Bar No.: 73928  
[wseitz@maselara.com](mailto:wseitz@maselara.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 31, 2014, a true and correct copy of the foregoing was given to a private process server to serve on GameStop, Inc., c/o its Registered Agent, CT Corporation System, 1200 South Pine Island Road, Plantation, FL 33324.

/s/ William Seitz  
WILLIAM R. SEITZ

**PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT**

**DEFINITIONS**

Whenever the following words or phrases are used in these Interrogatories, they shall be deemed to include and require the following:

1. **“Complaint”** shall mean and refer to the current operative complaint in this action.

2. **“Defendant(s)”** shall mean and refer to the defendant(s) named in this action.

3. **“Describe”** shall mean to describe and state the basis, evidence, place and date of, and **“Identify”** the **“Persons”** involved in, and **“Identify”** the **“Documents”** involved where relevant, transactions, communications, events, circumstances and occurrences in question, and state the nature of the facts, transactions, communications, events, circumstances or occurrences in question, including identifying all witnesses and evidence supporting same.

4. **“Florida GameStop Stores”** shall mean and refer to all GameStop stores located in Florida.

5. **“Identify”** when used with reference to individuals means to state the full name, addresses, e-mail addresses, and telephone numbers (home, work and cell phone) of the individual.

6. **“Identify”** when used with reference to partnerships, firms, or corporations means to state the full name of the legal entity, its address, and telephone number.

7. **“Identify”** when used with reference to documents or other writings means to describe the documents, setting forth their dates, a general description of the contents or the subject matter, the name(s) of the person(s) preparing, if known, and any signatories, and the name(s) and address(es) of the person(s) who has (have) custody or control of the document or writing.

8. **“Person”** shall be deemed to include natural persons, partnerships, firms, and corporations, and all of their subsidiaries or divisions and, in the case of partnerships, firms and corporations, the individual member(s) or agent(s) thereof with knowledge of the requested information.

9. **“Plaintiff(s)”** shall mean and refer to the plaintiff(s) named in this action.

10. **“Document”** shall be deemed to include every record of every type, including, but not limited to, information stored on any electromagnetic storage device, any written, printed, typed, recorded, or graphic matter, however produced or reproduced or stores, in the possession, custody, or control of the Plaintiff or any agent, employee, or attorney of the Plaintiff, and all drafts, notes, or preparatory material concerned with said document, and every additional copy of such record or document where such copy contains any commentary, notation,

or other change whatsoever that does not appear on the original or other copy of the document produced. "Document" shall be deemed also to include any summary of a document or documents called for hereafter.

11. "You" and "your" shall mean and refer to the entity(ies) and person(s) to whom the interrogatories are directed, including all of its/their agents, representatives, attorneys, accountants and any other person acting, retained to act or delegated to act on behalf of them.

### INSTRUCTIONS

A. Whenever a full and complete answer to any interrogatory contained here or subpart thereof is contained in a document or documents, such documents or group of documents, appropriately identified as answering a specific, numbered interrogatory or subpart thereof, may be supplied in lieu of a written answer. In such even, your answer shall be in sufficient detail to permit location and identification, as readily as you can, of the records from which the answer may be derived or ascertained, or you shall identify a person or persons to represent you who will be able to assist in locating and identifying the records at the time they are produced.

B. Whenever in these interrogatories information is requested which was previously furnished in answer to another interrogatory, such information need not be restated, and it will be sufficient to identify the specific interrogatory and subpart of such previous answer containing the information requested.

C. Whenever an interrogatory calls for information which is not available to you in the form requested, but is available in another form, or can be obtained at least in part from other data in your possession, so state and either supply the information requested in the form in which is available, or supply the date from which the information requested can be obtained.

D. If any interrogatory is not answered on the basis of a claim of privilege, please provide sufficient information on the attorney-client or other relationship on which such claim is based to permit its presentation to the court via motion to compel discovery.

E. **Time Frame: The interrogatories are inquiring about information from July 1, 2010 to the date of the response hereto.**

**INTERROGATORIES DIRECTED TO PRODUCTION RESOURCE GROUP, LLC**

1. Identify every person with whom you consulted, or upon whom you relied, or who otherwise constituted a source of information for you in connection with the preparation of your answers to these interrogatories.

2. Identify all lawsuits to which you are a party that concern your sale of used video games.

3. Describe the notice (and your policies and procedures relating to same) that you give customers in your Florida GameStop Stores, if any, that used video games do not contain all of the functionality and/or content described on the video game box.

4. Identify and Describe the people responsible for creating and implementing the policies and procedures, if any, described in interrogatory number 3.

5. Describe and Identify how many stores you have in Florida, including the location of all of your Florida GameStop Stores.

6. Describe and Identify who owns and operates the stores identified in interrogatory number 3.

7. Describe and Identify the name and amount (in number of units) of all used video games you have sold at your Florida GameStop stores.

8. Describe and Identify the annual gross profit generated from the sale of used video games at your Florida GameStop Stores.

9. Describe and Identify all customers who have purchased a used video game at your Florida GameStop Stores.

10. Describe and Identify your policies relating to your Florida GameStop Stores concerning the following:

- a. Use codes, Passports, and other passwords/codes relating to used video games sold at your Florida GameStop Stores,
- b. Checking the functionality and content of used video games you purchase,
- c. Checking the functionality and content of used video games you sell,
- d. What to do if a used video games does not include full functionality,
- e. What to do if a used video game does not include full content,
- f. What to do if a customer raises an issue regarding the (a)-(d), and
- g. Your sales and pricing plan/strategy relating to the sale of used video games.

11. Describe and Identify the notice you gave and/or give your customers in your Florida GameStop Stores that (a) content that is represented on a used video game box may not be included with the purchase of a video game, and/or (b) that functionality that is represented on a used video game box may not be included with the purchase of a video game.



12. Describe and Identify all changes you have made to your polices and/or sales practices related to your sale of used video games after the commencement of the case against GameStop, Corp. in the District Court for the Northern District of California (*James Collins v. GameStop, Corp.*; case no. 10-cv-01210-TEH).

13. Describe and Identify your relationship and business structure with respect to GameStop, Corp.

14. Describe and Identify all of your marketing plans and materials (including signs, displays, pamphlets and internet) disseminated in Florida for the time period set forth above.

15. Describe and Identify all policies of insurance which you contend cover or may cover you for the allegations set forth in the Complaint, detailing as to such policies the name of the insurer, the number of the policy, the effective dates of the policy, the available limits of liability, and the name and address of the custodian of the policy.

THIS CONCLUDES MY ANSWER.

\_\_\_\_\_  
PRODUCTION RESOURCE GROUP, LLC,  
By: \_\_\_\_\_  
As its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
\_\_\_\_\_ COUNTY )

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the affiant \_\_\_\_\_, as the \_\_\_\_\_ of GameStop, Inc., who  produced identification \_\_\_\_\_ (type and number) or  is personally known to me.

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

Notary Stamp:

18630/#41

## RETURN OF SERVICE

State of Florida

County of Miami-Dade

CIRCUIT Court

Case Number: 14-27358 CA 40

Plaintiff:

**JOHN LARKIN, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED**

vs.

Defendant:

**GAMESTOP, INC.**

For:

Curtis Mase  
MASE LARA EVERSOLE, P.A.  
2601 South Bayshore Drive  
Suite 800  
Coconut Grove, FL 33133

Received by Gissen & Zawyer Process Service, Inc. on the 3rd day of November, 2014 at 11:08 am to be served on **GAMESTOP, INC. C/O R/A CT CORPORATION SYSTEM, 1200 SOUTH PINE ISLAND ROAD, PLANTATION, FL 33324.**

I, DOUGLAS NELSON (FTL), do hereby affirm that on the **5th day of November, 2014 at 2:10 pm, I:**

served a **CORPORATION** by delivering a true copy of the **SUMMONS, COMPLAINT, CERTIFICATE OF SERVICE FIRST INTERROGATORIES, FIRST INTERROGATORIES, FIRST REQUEST FOR PRODUCTION** with the date and hour of service endorsed thereon by me, to: **DONNA MOCH** as **AUTHORIZED AGENT FOR R/A C/T CORPORATION SYSTEM** for **GAMESTOP, INC.**, at the address of: **1200 SOUTH PINE ISLAND ROAD, PLANTATION, FL 33324**, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server or an Appointed Process Server in good standing in the judicial circuit in which the process was served. Under Penalty of Perjury I declare that I have read the foregoing Return of Service and that the facts stated in it are true and correct. Notary not required pursuant to F.S. 92.525.



**DOUGLAS NELSON (FTL)**  
Process Server #773 (Broward)

**Gissen & Zawyer Process Service, Inc.**  
3155 NW 82nd Avenue  
Suite 101  
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Our Job Serial Number: ZPS-2014040116



IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CASE NO. 14-27358 CA 40

JOHN LARKIN, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

GAMESTOP, INC.

Defendant.

\_\_\_\_\_ /

**NOTICE OF REMOVAL TO FEDERAL COURT**

TO THE CLERK AND TO COUNSEL FOR PLAINTIFF:

PLEASE TAKE NOTICE that on December 4, 2014, Defendant GameStop, Inc. filed in the United States District Court, for the Southern District of Florida, Miami Division, a Notice of Removal of the above-captioned action. A copy is attached as Exhibit A.

PLEASE TAKE FURTHER NOTICE that pursuant to 28 U.S.C. § 1446(d), the filing of the Notice of Removal effectuates the removal of this action and this Court may proceed no further unless and until the case is remanded.

**[signature on next page]**

**SHOOK, HARDY & BACON**

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By: s/ Eric S. Boos

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of December 2014, I caused a copy of the within Notice of Removal to Federal Court to be served through the Florida Court's E-Filing Portal upon the following counsel of record for plaintiff:

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s/ Eric S. Boos  
Eric S. Boos

Dated: December 4, 2014

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case No. \_\_\_\_\_

State Case No. 14-27358 CA 40

JOHN LARKIN, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

GAMESTOP, INC.

Defendant.

\_\_\_\_\_ /

**DECLARATION OF JON HAES**

JON HAES, of full age, declares as follows:

1. I am the Senior Director of Pre-Owned games, Used Merchandizing for Defendant GameStop, Inc. ("GameStop"). As such, I have firsthand knowledge of all facts set forth in this Declaration. I submit this Declaration in support of GameStop's removal of the Class Action Complaint.

2. GameStop is a Minnesota corporation, with its principal place of business in Grapevine, Texas.

3. GameStop sells new and used video games throughout the United States, including Florida, through retail stores and online at [www.gamestop.com](http://www.gamestop.com).

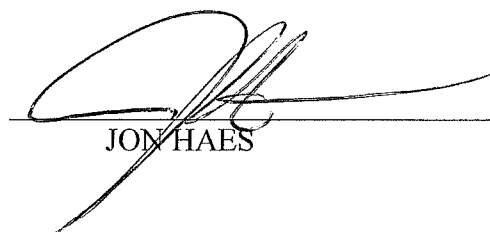
4. Based on a review of GameStop's records, I have determined that between October 24, 2010 and October 23, 2014, GameStop's total net sales of pre-owned games that had downloadable content ("DLC") with new versions of the game that may not be available in the pre-owned version and sold at its Florida stores is in excess of \$50,000,000 reflecting the sale of more than 2,500,000 units.

5. This net sales number eliminates returns and does not include sales to customers living in Florida who made their purchases on the Internet.

6. The cost to purchase DLC separately for a pre-owned game where the DLC was included in the new game, but is no longer available with the pre-owned game, can vary from as low as \$5 to as high as \$50, depending on the game and the type of DLC being purchased. For the majority of games, however, the cost to purchase DLC separately typically ranges from \$10 to \$15.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on December 4, 2014.



JON HAES