

Rex Sofonio, Esq. (SBN: 190671)
rex@sofoniolaw.com
SOFONIO & ASSOCIATES APLC
2030 Main Street, Suite 1300
Irvine, CA 92618
TEL: (949) 260-9191
FAX: (949) 260-9192

James R. Hawkins, Esq. (SBN: 192925)
james@jameshawkinsaplc.com
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
TEL: (949) 387-7200
FAX: (949) 387-6676

Jeffrey R. Lawrence, Esq. (SBN: 190643)
jeff@jefflawrencelaw.com
LAW OFFICES OF JEFFREY R. LAWRENCE
255 N. D Street, Suite 303
San Bernardino, CA 92401
TEL: (909) 963-0143
FAX: (909) 963-0144

Attorneys for Plaintiffs, BRUCE McMAHON and CHRISTOPHER BENGTON,
on behalf of themselves and all others similarly situated

**IN THE UNITED STATES DISTRICT COURT,
STATE OF CALIFORNIA, CENTRAL DIVISION**

BRUCE McMAHON, on behalf of himself;
CHRISTOPHER BENGTON, on behalf of
himself; and all others similarly situated,

Plaintiffs,

vs.

TAKE-TWO INTERACTIVE SOFTWARE,
INC.; and TAKE TWO INTERACTIVE
SOFTWARE, INC., DBA ROCKSTAR, and
DOES 1 through 100, inclusive,

Defendants.

Case No. 5:13-cv-02032-VAP-SP

ASSIGNED FOR INITIAL PURPOSES TO
JUDGE: Virginia A. Phillips
DEPT: 780

**FIRST AMENDED CLASS ACTION
COMPLAINT**

- 1) Violations of California's False Advertising
Laws, Cal.Bus. & Prof.Code §§ 17500, et seq
- 2) California's Unfair Competition Law, Cal.Bus.
& Prof. Code §§ 17200, et seq.
- 3) Breach of Express Warranty;
- 4) Breach of Warranty of Merchantability and
Fitness;
- 5) Breach of Song-Beverly Consumer Warranty
Act;
- 6) Negligence

JURY TRIAL DEMANDED

1 Plaintiff BRUCE McMAHON ("McMahon or "Plaintiff") on behalf of himself and
2 Plaintiff CHRISTOPHER BENGSTON ("Bengston" or "Plaintiff") on behalf of himself, and
3 all others similarly situated in the state of California ("Plaintiffs"), based on information and
4 belief, the investigation of their counsel, and their personal experiences, allege as follows:

5 **NATURE OF THE ACTION**

6 1. This action is brought on behalf of the Plaintiffs individually, as representatives
7 of the common or general interest and as class representatives for all others similarly situated
8 in the state of California, USA, against TAKE-TWO INTERACTIVE SOFTWARE, INC. and
9 TAKE TWO INTERACTIVE SOFTWARE, INC., DBA ROCKSTAR ("Defendants") to
10 redress Defendants' violations of California's False Advertising Laws [Cal.Bus. & Prof.Code
11 §§ 17500, et seq], California's Unfair Competition Law [Cal.Bus. & Prof. Code §§ 17200, et
12 seq.], breach of Express Warranty, breach of Warranty of Merchantability and Fitness, breach
13 of the Song-Beverly Consumer Warranty Act, and Negligence.

14 2. Defendants are software companies that produce videogames and distribute
15 these videogames for sale in California, USA through various third party retailers, such as
16 Target, Walmart, and GameStop.

17 3. Defendants develop, manufacture, and market videogames that are playable on
18 both the Microsoft XBOX videogame systems and the Sony PlayStation videogame systems,
19 including the very popular "Grand Theft Auto" ["GTA"] series of videogames.

20 4. Defendants strive to retain customers loyal to the GTA brand as well as to
21 obtain new customers by constantly innovating the software that they use for the release of
22 each subsequent edition in the GTA videogame series.

23 5. In 1998, Defendants released the first installment of the GTA videogame series,
24 known simply as "Grand Theft Auto," for the Sony PlayStation 1 videogame system, and it did
25 not contain any multiplayer or cooperative online game play features, nor were any indicated
26 on the packaging. (Ex. C.)

27 6. In 1999, Defendants released the second major installment of the GTA
28

1 videogame series titled "Grand Theft Auto 2" for the Sony PlayStation 1 videogame system,
2 with major graphical improvements, but it too did not contain any multiplayer or cooperative
3 online game play features, nor were any indicated on the packaging. (Ex. D.)

4 7. In 2001, Defendants released the third major installment of the GTA series titled
5 "Grand Theft Auto III" for the Sony PlayStation 2 videogame system and in 2003 for the
6 Microsoft XBOX videogame system, and it still did not contain any multiplayer or cooperative
7 online game play features, nor were any indicated on the packaging. (Ex. E and F.) GTA III
8 introduced a new 3D graphical interface and an open world style of game play that made it
9 highly popular, allowing for expansion to the XBOX platform, and it is still the earmark of the
10 series today. However, you could only play alone in that world, not with others online.

11 8. In 2002, Defendants released the fourth major installment of the GTA series
12 titled "Grand Theft Auto: Vice City" for the Sony PlayStation 2 videogame system and in 2003
13 for the Microsoft XBOX videogame system, which introduced a new creative storyline for the
14 GTA III world, but it did not contain any multiplayer or cooperative online game play features,
15 nor were any indicated on the packaging. (Ex. G and H.)

16 9. In 2004, Defendants released the fifth major installment of the GTA series titled
17 "Grand Theft Auto: San Andreas" for the Sony PlayStation 3 videogame system, and in 2005,
18 they released it for the Microsoft XBOX videogame system, and again in 2008 for the
19 Microsoft XBOX 360 videogame systems and it still did not contain any multiplayer or
20 cooperative online game play features. (Ex. I and J.)

21 10. In 2008, Defendants released the sixth major installment of the GTA videogame
22 series titled "Grand Theft Auto IV" for the Sony PlayStation 3 and the Microsoft XBOX 360
23 videogame systems, and for the first time, the game contained significant multiplayer online
24 game play features that were included in the software and available to play immediately upon
25 purchase of the game, as was indicated on the packaging by the highlighting of checking of
26 those features in the standard list of features chart included on all games for these systems. (Ex.
27 K and L.) However, GTA IV still did not contain the highly desirable online cooperative game
28

1 play feature that was now becoming the new standard for entertainment, as established by their
2 main videogame sales competitor, the Call of Duty series of videogames.

3 11. On September 17, 2013, defendants released the videogame “Grand Theft Auto
4 V ” (“GTA V”) for both the Sony PlayStation 3 and the Microsoft XBOX 360 videogame
5 systems, and now, in addition to multiplayer online features, this game finally promised that it
6 had cooperative online game play for the first time in the history of the GTA franchise and the
7 newly designed packaging clearly indicated that it would be immediately playable upon
8 purchase of the GTA V software. (Ex. A and B.)

9 12. On September 17, 2013, Plaintiffs, McMahon and Bengtson, each individually
10 and separately bought a GTA V videogame produced by Defendants for the XBOX 360
11 videogame system for the premium price of \$59.99, exclusive of tax, in the state of California.

12 13. Each Plaintiff had a valid subscription to the XBOX Live network service,
13 which is required to play all games online with an XBOX 360 videogame console.

14 14. Plaintiffs believed that their premium price GTA V purchase included
15 immediate access to GTA Online, an included cooperative online game play feature of the
16 GTA V software they were buying.

17 15. On the rear packaging of GTA V, it was indicated that the GTA Online feature
18 would be immediately playable by the consumer upon purchase, but as it turned out, no
19 consumers were actually able to play GTA Online at least until October 1, 2013, because the
20 Defendants did not yet have the means to support online game play available to them.(Ex. A
21 and B.)

22 16. Defendants had planned at least two weeks of unavailability of the GTA Online
23 feature, which was not indicated anywhere on the GTA V packaging, during which time they
24 still charged Plaintiffs and numerous other consumers a premium price for the product.

25 17. The Plaintiffs allege that Defendants purposely deceived them into paying a
26 premium price for GTA V, thereby committing violations of California's false advertising and
27 unfair competition laws, breach of express warranty, breach of warranty of merchantability and
28

1 fitness, as well as breaching the Song-Beverly Warranty Act; because the packaging for GTA
2 V did not contain any warnings to the consumer that the GTA Online cooperative game play
3 feature would not be immediately available for use by them upon purchasing the game and
4 obtaining online access to either the XBOX Live network or the PlayStation Network, which
5 were stated to be necessary steps to playing it cooperatively online.

6 18. On information and belief, Plaintiffs alleges that the Defendants intended and
7 knew that the new GTA Online cooperative online game play feature of GTA V was the
8 primary reason consumers would purchase their new product.

9 19. As evidence of this, Defendants made certain to highlight the new featured
10 cooperative online game play on their GTA V packaging by prominently displaying it on both
11 the Sony PlayStation 3 version and the XBOX 360 packaging as follows: a) there is a thick
12 white band in the center of the rear packaging that extends horizontally all the way across; 2)
13 they used black print that was significantly larger than any other print used anywhere else on
14 the rear packaging; 3)they used all capital letters when describing it with the words:
15 "FEATURING GRAND THEFT AUTO ONLINE."; and 4)The rest of the print on the
16 packaging is set in significantly smaller white type against a dark background.(Ex. A, B.)

17 20. The inclusion of the thick white center stripe with the phrase in large, all capital
18 black letters stating, "FEATURING GRAND THEFT AUTO ONLINE," sets it apart from any
19 other style of packaging that the Defendants have used in any of the prior versions of GTA in
20 Exhibits C-L.

21 21. Additionally, on the packaging for the PlayStation 3 version of GTA V, the
22 standardized videogame feature boxes used by the videogame packaging industry indicate by
23 highlighting that GTA V will work online immediately so long as consumers belong to Sony's
24 online network: "Network Players 2-16 co-op; 2-16 multiplayer. " (Ex. A.)

25 22. Additionally, on the packaging for the XBOX 360 version of GTA V, the
26 standardized videogame features boxes indicate that GTA V will be playable online
27 immediately on XBOX Live (the online network for this system) for "online multiplayer 2-16"

28

1 and "co-op 2-16." (Ex. B.)

2 23. Unknown to the Plaintiffs at the time they made their purchase of GTA V for
3 the premium price on September 17, 2013, Defendants did not plan any consumer access to the
4 GTA Online feature of the GTA V game at least until October 1, 2013, two weeks after the
5 game was released, but there was absolutely no indication on the packaging of the GTA V
6 videogames that this was the case.

7 24. Instead the GTA V packaging for both game systems prominently displayed the
8 phrase, "FEATURING GRAND THEFT AUTO ONLINE" together with the standardized
9 features boxes on the GTA V packaging for both videogame systems, which clearly indicated
10 to the Plaintiffs, and other consumers similarly situated, that both online multiplayer and online
11 cooperative game play would be immediately available to the consumers who bought the game
12 before October 1, 2013, so long as they subscribed to the correct corresponding online
13 networks operated by Sony and Microsoft.

14 25. Defendants thereby knowingly and intentionally placed unfair, unlawful, and
15 fraudulent advertising claims on the packaging of both the XBOX 360 and the PlayStation 3
16 versions of the GTA V videogame regarding the playability of the featured GRAND THEFT
17 AUTO ONLINE feature of the GTA V videogame product.

18 26. On information and belief, in June of 2013, fearing that the pending sales of
19 GTA V would be severely diminished the closer that the game was released to the long awaited
20 pending releases of the two new prominent videogame systems, (PlayStation 4 was to be
21 released on November 15, 2013 and XBOX ONE was to be released on November 22, 2013),
22 because neither of these would run the older systems version of GTA V, the Defendants
23 conspired to move up the release date of GTA V to September 17, 2013, knowing all along that
24 the long awaited GTA V Online game would not be functional at least until October 1, 2013.

25 27. On information and belief, the Defendants intentionally failed to indicate on the
26 GTA V packaging, when they released it on September 17, 2013, that the key improvement to
27 this edition, the GTA V Online feature, would not be available to any purchaser of the game at
28

1 least until October 1, 2013.

2 28. On information and belief, as a result of their intentional deception and two
3 week earlier release, the Defendants were able to sell several more units of the GTA V
4 videogame at the premium price, in a very short time period to consumers, who would have
5 otherwise opted to spend their money on other videogame purchases or waited until GTA V
6 went on sale for a lower price, as it did on November 29, 2013. Had these early consumers
7 been aware that GRAND THEFT AUTO ONLINE feature was not immediately playable, they
8 would not have paid a premium price for GTA V or perhaps not purchased the game at all, due
9 to the impending release of the new XBOX One and PlayStation 4 systems in November.

10 29. On information and belief, knowing full well that just as the timing of the
11 release date for a new Hollywood movie can impact its success at the box office, so too can the
12 timing of the release of a new videogame affect its ability to achieve maximum profits in the
13 market place, the Defendants intentionally released a knowingly defective product to the
14 market two weeks prematurely, in order to maximize their profits.

15 30. Even after the planned release date of October 1, 2013 for the GTA Online
16 feature of GTA V, thousands and thousands of early purchasers of GTA V, including Plaintiffs,
17 were still unable to play the GTA Online feature for at least another ten days, due to the
18 defendants' negligence in failing to provide sufficient servers to handle all of the online traffic
19 to support this new feature.

20 31. Plaintiffs both read the representations on the GTA V packaging noted above in
21 paragraphs 20-23 before making their purchase of GTA V at the premium price, and they both
22 bought the GTA V videogame specifically in order to utilize its multiplayer and cooperative
23 online game play features, starting on the date of their purchase, September 17, 2013.

24 32. Plaintiffs relied on the representations on the packaging noted above in
25 paragraphs 20-23, which indicated that GTA V was capable of immediately providing online
26 multiplayer and cooperative game play, when they bought it on September 17, 2013.

27 33. Plaintiffs purchased GTA V on September 17, 2013, only with the intent,
28

1 purpose, and desire to play the game online using the mutliplayer and cooperative online game
2 play features with other videogame players via their internet connections and active Microsoft
3 XBOX live memberships, but they were unable to do so because the Defendants failed to
4 provide them with access to the GTA Online feature of GTA V.

5 34. On information and belief, similarly situated consumers of GTA V for the Sony
6 PlayStation 3 could not play GTA V online either for the same reasons.

7 35. Plaintiffs and other consumers would not have purchased GTA V for the
8 premium price had they known that the multiplayer and cooperative online gameplay features
9 were not immediately playable to anyone who purchased the game between September 17,
10 2013 and September 30, 2013.

11 36. On information and belief, GTA V was not available for online game play as
12 advertised to anyone who purchased the game before October 1, 2013, because the servers
13 were not even online. GTA V could only be played in single player mode without the ability to
14 interact with any other videogame players until after October 1, 2013. Plaintiffs were not
15 interested in playing the single player mode and wanted a refund.

16 37. On information and belief, the Defendants knew that GTA V Online was not
17 planned to be available until October 1, 2013, well in advance of the time that it was released
18 on September 17, 2013, but they failed to warn every consumer on the packaging that this
19 would be the case, so that they could make an informed decision about whether or not to pay a
20 premium price for the product.

21 38. On information and belief, Defendants anticipated having the online game play
22 available by October 1, 2013, but it still was not available to the vast majority of the purchasers
23 of GTA V, due to many complications caused by their lack of preparation, because they rushed
24 the product to market. As such, neither Plaintiff was able to play online until ten days after
25 October 1, 2013.

26 39. The retailer, GameStop, would not agree to refund either Plaintiff their money
27 for their GTA V purchases, nor would they offer any other remedy, other than to replace the
28

1 game with the same exact game, which would not alleviate the problem of not be able to access
2 the GRA Online feature of GTA V.

3 40. On information and belief, Plaintiffs allege that the return policy experienced by
4 Plaintiff's, noted in paragraph 40 above, is representative of the standard policy of all retail
5 chains that sold Defendant's GTA V product, such that no consumer would be able to receive a
6 refund for their purchase of GTA V.

7 41. On information and belief, Plaintiffs allege that Defendants intentionally
8 released GTA V on September 17, 2013 to consumers in California and across the United
9 States, knowing full well that the game's advertised online game play capabilities would not be
10 available to any consumer who purchased it for at least an additional two weeks after this
11 scheduled release date, and in reality, it ended up being at least another ten more days beyond
12 October 1, 2013, before all of the advertised GTA Online features were fully functional for all
13 consumers.

14 42. The Defendants' motive for pushing up the release date of GTA V before its
15 online features were fully functional and not prominently announcing it on their packaging,
16 was due to the upcoming release of the long awaited, but very expensive, PlayStation 4 and
17 XBOX ONE games consoles, which were highly publicized as being available to the public on
18 November 15, 2013 and November 22, 2103, respectively.

19 43. Defendants knew that each day longer that they waited to release the GTA V
20 product to the public as the mid-November dates approached, meant a huge multi-million
21 dollar loss in their anticipated profit margins for the game, which was already boasting the
22 largest budget ever for a videogame, at over \$265 million dollars.

23 44. Because the GTA V videogames produced by Defendants were not compatible
24 with either PlayStation 4 or XBOX ONE, every day closer to their release that they waited to
25 release GTA V, meant more and more consumers, including Plaintiffs, would have chosen to
26 wait to spend their \$59.99 on the expensive hardware for the new videogame system of their
27 choice that they had been waiting for over a decade for, rather than purchase the Defendants
28

1 GTA V product, defective or not, as it would soon be obsolete.

2 45. Accordingly, Plaintiffs seek damages to compensate themselves and the Class
3 for payment of the \$59.99 premium price that they paid for GTA V, when access to the
4 advertised included GTA Online feature, was not immediately available upon purchase of the
5 product as the packaging falsely indicated to millions of unfortunate consumers.

6 **VENUE AND PARTIES**

7 46. This class action is brought pursuant to *California Code of Civil Procedure*
8 §382. Venue as to Defendants is proper in this judicial district pursuant to 28 U.S.C. 1391(c)
9 in connection with the removal of this matter. TAKE-TWO INTERACTIVE SOFTWARE,
10 INC. is a Delaware Corporation. And ROCKSTAR GAMES, INC. is a business entity
11 unknown.

12 47. Defendant is engaged in the sales and distribution of GTA V throughout the
13 state of California. This Court has jurisdiction over Defendant because, among other things, it
14 engaged in illegal schemes and acts directed at and that had the intended effect of causing
15 injury to persons residing in, located in, or doing business in this Judicial District and
16 throughout the state of California. The unlawful acts alleged herein have a direct effect on
17 Plaintiff and those similarly situated within the State of California. Defendant is within the
18 jurisdiction of this Court for service of process purposes.

19 **A. Plaintiffs**

20 48. Plaintiff BRUCE McMAHON is a resident of the County of Riverside,
21 California. On September 17, 2013, Plaintiff purchased his GTA V videogame from a Game
22 Stop store located in the state of California, County of Riverside. He paid the premium price
23 of \$59.99 for the game not including California sales tax.

24 49. Plaintiff CHRISTOPHER BENGTON is a resident of California. On
25 September 17, 2013, Plaintiff purchased his GTA V videogame from a game stop store located
26 in the state of California. He paid the premium price of \$59.99 for the game not including
27 California sales tax.

1 50. Plaintiffs, and the Class they seek to represent, were all required to pay a
2 premium price for the videogame at any of multiple distribution locations throughout
3 California beginning sales on September 17, 2013 and continuing through present.

4 51. The GTA V product was advertised as a state-of-the-art game that would
5 provide without reservation “Online Multiplayer 2-16” and “co-op 2-16”. GTA V featured
6 access to a cooperative online campaign component known as GTA Online, which was
7 prominently featured on the packaging. The game advertised and displayed on its product that
8 the purchaser would experience on-line interaction with others that also play the same game on
9 the same type of system. The game was to immediately provide a great online experience for
10 those videogame players and other persons who needed, and were willing to pay a premium for
11 it.

12 **B. Defendants**

13 52. TAKE TWO INTERACTIVE SOFTWARE, INC., AND TAKE TWO
14 INTERACTIVE SOFTWARE, INC., DBA ROCKSTAR is a Delaware Corporation engaged
15 in worldwide distribution of videogame software and more specifically, throughout the state of
16 California at numerous distribution locations.

17 53. The true names and capacities of Defendants, whether individual, corporate,
18 associate, or otherwise, sued herein as DOES 1 through 100, inclusive, are currently unknown
19 to Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil
20 Procedure section 474. Plaintiffs are informed and believe, and based thereon allege that each
21 of the Defendants designated herein as a DOE is legally responsible in some manner for the
22 unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to
23 reflect the true names and capacities of the Defendants designated hereinafter as DOES when
24 such identities become known.

25 54. Plaintiffs are informed and believe, and based thereon allege, that Defendants
26 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
27 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
28

1 Defendant are legally attributable to the other Defendants.

2 **SUBSTANTIVE ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

3 55. TAKE-TWO INTERACTIVE SOFTWARE, INC.; and TAKE TWO
4 INTERACTIVE SOFTWARE, INC., DBA ROCKSTAR is a Delaware Corporation that
5 produces videogame software. On September 17, 2013 TAKE-TWO INTERACTIVE
6 SOFTWARE, INC., and/or ROCKSTAR GAMES, INC. introduced Grand Theft Auto
7 V("GTA V") for distribution at numerous locations throughout the state of California.

8 56. The GTA V product was advertised as a state-of-the-art game that would
9 provide without reservation immediate access to multiplayer and cooperative online game play.
10 It specifically featured access to a new cooperative online game play feature, known as GTA
11 Online. The game advertised and displayed on its product that the purchaser would experience
12 online interaction with others that also play the same game on the same type of system, as
13 specifically detailed in paragraphs 20-23 above. Upon purchase, the game was to immediately
14 provide a great online experience for those videogame consumers who were willing to pay a
15 premium for it.

16 57. Defendants charged/charges a \$59.99 premium price to purchase the GTA V
17 game when it was released on September 17, 2013, up until November of 2013, when it was
18 first offered at a reduced price.

19 58. Defendants knew that the GTA V product would not be available for
20 multiplayer or cooperative online game play at the time the game was released on September
21 17, 2013, and it was not planning to make it available until at least October 1, 2013.

22 59. Defendants did not provide any type of notice to any of the GTA V purchasers
23 at the time of purchase that the game did not currently include the online game play features
24 that were clearly advertised on the packaging of its product.

25 60. By advertising the GTA V videogame as having online interaction and/or play,
26 Defendants knew or should have known that consumers expected the game to perform as it was
27 advertised to do on the product. Defendants failed to disclose on the packaging that
28

1 multiplayer and cooperative online game play features were not planned to be available until
2 October 1, 2013.

3 61. Like other purchasers of GTA V, Plaintiffs were deceived by Defendant's
4 misrepresentations concerning the videogames available features. Before purchasing GTA V
5 Plaintiffs read the product packaging of GTA V.

6 62. Plaintiffs purchased GTA V on September 17, 2013. Based on advertisements
7 and guarantees made on the Defendants' product regarding multiplayer and cooperative online
8 game play features, Plaintiffs anticipated immediately being able to play the game online.
9 When Plaintiffs attempted to play GTA V online, they were unable to connect to online
10 features. The game simply stated that online interaction was not available.

11 63. Defendants failed to provide any notice and/or warning to consumers that the
12 online features of the GTA V videogame were not available.

13 64. Plaintiffs purchased the GTA V videogame with the intention of being able to
14 immediately play it online with their friends and others whom also owned their same
15 videogame system and had also just purchased the GTA V videogame.

16 65. Plaintiffs would not have purchased the GTA V videogame on September 17,
17 2013 at a premium price had they been informed that the online features of the game were not
18 available.

19 66. Every consumer that purchased the GTA V prior to October 1, 2013 was unable
20 to access the features of the GTA V videogame product..

21 67. Accordingly, Plaintiffs bring this case as a class action and seek equitable relief
22 for themselves and members of the proposed Class.

23 **CLASS ACTION ALLEGATIONS**

24 68. Plaintiffs bring this class action on behalf of themselves and all other members
25 of a proposed plaintiff Class ("Class") initially defined as:

26 **"All persons who purchased the GTA V videogame in the State of California prior**
27 **to October 1, 2013."**
28

69. This action has been properly brought and may properly be maintained as a class action under California Code of Civil Procedure and case law there under.

Numerosity of Class

70. Class members are so numerous that their individual joinder is impractical. Plaintiffs estimate that the Class comprises millions of members. The precise number of Class members and their addresses are unknown to Plaintiffs at this time, but can be ascertained by notifying GTA V purchasers that a claim has been made on behalf of all Class members that purchased GTA V. Class members may be notified directly by their email address that is associated with their on-line account. The GTA V game requires "logging on" to the server in order to play the single player portion. Therefore it is easily ascertainable to notify only the specific plaintiff class members that logged on to the GTA V server between the dates of September 17, 2013 and October 1, 2013. Class members may be notified of the pendency of this action by published notice.

Predominance of Common Questions of Fact and Law

71. Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions affecting only individual Class members. The common legal and factual question include:

(a) Whether Defendants represented that the GTA V was a state-of-the-art game that would provide without reservation multiplayer and cooperative online game play upon purchase of the product before October 1, 2013, providing consumers had the necessary access to their respective videogame system's online networks.

(b) Whether Defendants failed to disclose or adequately disclose material information to consumers on their packaging of the GTA V videogame, namely, that the featured online interactive play features were not available at the time of purchases made before October 1, 2013;

(c) Whether Defendants online interactive server was defective and/or unavailable at the time of purchase;

(d) Whether Defendants knew or should have known that the GTA V's online features were defective and/or unavailable;

(e) Whether Defendants' conduct as alleged herein violates the False Advertising Law;

(f) Whether Defendants' conduct as alleged herein violates the Unfair Competition Law;

(g) Whether Defendants' breached their express warranty;

(h) Whether Defendants' breached the warranty of merchantability and fitness;

(i) Whether Defendants' conduct as alleged herein breaches the Song-Beverly Consumer Warranty Act;

(j) Whether Defendants' conduct as alleged herein was negligent;

(k) The nature of the relief, including equitable relief, to which Plaintiffs and Class members are entitled.

Typicality of Claims

72. Plaintiffs' claims are typical of the claims of the Class because Plaintiffs, like all other Class members, bought a GTA V videogame that promised an online interactive game play features that were not available at the time of the purchase.

Adequacy of Representation

73. Plaintiffs are adequate representatives of the Class, because their interests do not conflict with the interests of the members of the Class and they have retained counsel, competent and experienced in complex class action.

74. The interests of the Class members will be fairly and adequately protected by Plaintiffs and their counsel.

Superiority of a Class Action

75. A class action is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff and Class members. The damages suffered by each individual Class member, while significant, are small given the burden and expense of

individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. Further, it would be virtually impossible for the members of the Class individually to redress effectively the wrongs done to them. And, even if the members of the Class themselves could afford such individual litigation, the court system could not, given the many cases that would need to be filed.

76. Individualized litigation would also present a potential for inconsistent or contradictory judgments. Individualized litigation would increase the delay and expense to all parties and the court system, given the complex legal and factual issues involved. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

FIRST CAUSE OF ACTION

(For Violations of California's False Advertising Laws, Cal.Bus. & Prof.Code §§ 17500, et seq.)

77. Plaintiffs incorporate by reference and re-allege all paragraphs previously alleged as if fully set forth herein and further allege as follows.

78. The conduct and actions of Defendants complained of herein constitute false advertising in violation of the False Advertising Law ("FAL"). *Cal.Bus. & Prof.Code §§ 17500, et seq.*

79. Among other things, Defendants made representations and failed to disclose or adequately disclose material information regarding its GTA V videogame that it knew, or should have known, were deceptive and likely to cause reasonable consumers to buy it in reliance upon said representation. Defendant intended for Plaintiffs and Class members to rely on these representations and Plaintiffs and Class members did rely on Defendants' representations.

80. Defendants committed such violations of the FAL with actual knowledge or knowledge fairly implied on the basis of objective circumstances.

81. As a result of Defendants' wrongful conduct, Plaintiffs suffered injury in fact

1 and lost money or property.

2 82. Accordingly, Plaintiffs, on behalf of themselves and all others similarly situated,
3 seek equitable relief in the form of an order requiring Defendants to refund Plaintiff and Class
4 members monies paid for the defective and inactive videogame and/or to compensate them for
5 the time consumer's reasonable expectations were violated.

6 **SECOND CAUSE OF ACTION**

7 **(For Violations of the California's Unfair Competition Law, Cal. Bus. & Prof. Code §§**
8 **17200, et seq.)**

9 83. Plaintiffs incorporate by reference and re-allege all paragraphs previously
10 alleged as if fully set forth herein and further alleges as follows.

11 84. The conduct and actions of Defendants complained of herein constitute
12 unlawful, unfair and/or fraudulent actions in violations of the Unfair Competition Law
13 ("UCL"). Cal. Bus. & Prof. Code §§ 17200, et seq.

14 85. Defendants' practices constitute "unlawful" business practices in violation of
15 the UCL because, among other things, they violate the CLRA and the FAL.

16 86. Defendants' actions and practices constitute "unfair" business practices in
17 violation of the UCL, because, among other things, they are immoral, unethical, oppressive,
18 unscrupulous or substantially injurious to consumers, and/or any utility of such practices is
19 outweighed by the harm caused consumers. Defendants' actions violate the legislative policy
20 of protecting consumers and preventing persons from advertising defective products and not
21 adequately disclosing those defects. Defendants' practices caused substantial injury to
22 Plaintiffs and Class members, are not outweighed by any benefits, and Plaintiffs and Class
23 members could not have reasonably avoided this injury.

24 87. Defendants' actions and practices constitute "fraudulent" business practices in
25 violation of the UCL because, among other things, they have a capacity and tendency to
26 deceive members of the public. Defendants intended for Plaintiffs and Class members to rely
27 on its representation and Plaintiffs did rely on Defendants' representations.

1 88. Defendants' affirmative representations as alleged herein imposed on
2 Defendants the duty to disclose the defect, an inactivity of the GTA V videogame, because
3 consumers were likely to be deceived regarding the actual capabilities of the videogame at time
4 of purchase.

5 89. As a result of Defendants' wrongful conduct as alleged herein, Plaintiffs have
6 suffered injury in fact and has lost money or property. Plaintiffs and Class members were all
7 induced to pay a premium price for a videogame that did not perform as represented.

8 90. Accordingly, Plaintiffs, on behalf of themselves and all others similarly situated,
9 seek equitable relief in the form of an order requiring Defendants to refund Plaintiffs and Class
10 members monies paid for the defective and inactive "on-line" play of the videogame and/or to
11 compensate them for the time consumer's reasonable expectations were violated.

12 **THIRD CAUSE OF ACTION**

13 **(BREACH OF EXPRESS WARRANTY – COMM'L C. §2313)**

14 91. Plaintiffs incorporate by reference and re-allege all paragraphs previously
15 alleged as if fully set forth herein and further alleges as follows.

16 92. The GTA V videogame does not conform to its promises concerning its abilities
17 and performance.

18 93. Plaintiffs purchased the GTA V videogame on September 17, 2013 for a
19 premium price.

20 94. On the packaging of GTA V the Defendants describe, promise and affirm that
21 online interaction and play is immediately available.

22 95. The online portion of the GTA V videogame was not available until some-time
23 after October 1, 2013.

24 96. As a result of Defendants' wrongful conduct as alleged herein, Plaintiffs have
25 suffered injury in fact and has lost money or property. Plaintiffs and Class members were all
26 induced to pay a premium price for a videogame that did not perform as represented.

27 97. Accordingly, Plaintiffs, on behalf of themselves and all others similarly situated,
28

1 seek equitable relief in the form of an order requiring Defendants to refund Plaintiffs and Class
 2 members monies paid for the defective and inactive “on-line” play of the videogame and/or to
 3 compensate them for the time consumer’s reasonable expectations were violated.

4 **FOURTH CAUSE OF ACTION**

5 **(BREACH OF WARRANTY OF MERCHANTABILITY AND FITNESS – COMM’L C.**
 6 **§2314 and §2315)**

7 98. Plaintiffs incorporate by reference and re-allege all paragraphs previously
 8 alleged as if fully set forth herein and further alleges as follows.

9 99. The GTA V videogame does not conform to its promises concerning its abilities
 10 and performance.

11 100. Plaintiffs purchased the GTA V videogame on September 17, 2013 for a
 12 premium price.

13 101. On the packaging of GTA V the Defendants describe, promise and affirm that
 14 online interaction and play is immediately available.

15 102. The online portion of the GTA V videogame was not available until some-time
 16 after October 1, 2013.

17 103. At the time of their purchase the GTA V videogame did not perform as it was
 18 advertised, promised and affirmed on the packaging of the product. The defect is below the
 19 minimum level of quality anticipated by the consumer. The product did not perform as stated
 20 or promised nor did it meet the quality of the description on the product.

21 104. Defendants further breached their warranty by failing to issue adequate
 22 warnings regarding its products inability to play online until some-time after October 1, 2013.

23 105. As a result of Defendants’ wrongful conduct as alleged herein, Plaintiffs have
 24 suffered injury in fact and has lost money or property. Plaintiffs and Class members were all
 25 induced to pay a premium price for a videogame that did not perform as represented.

26 106. Accordingly, Plaintiffs, on behalf of themselves and all others similarly situated,
 27 seek equitable relief in the form of an order requiring Defendants to refund Plaintiffs and Class
 28

1 members monies paid for the defective and inactive “on-line” play of the videogame and/or to
2 compensate them for the time consumer’s reasonable expectations were violated.

3 **FIFTH CAUSE OF ACTION**

4 **(BREACH OF SONG-BEVERLY ACT)**

5 107. Plaintiffs incorporate by reference and re-allege all paragraphs previously
6 alleged as if fully set forth herein and further alleges as follows.

7 108. Plaintiffs assert the Fifth Cause of Action individually, on behalf of the Class
8 and on behalf of the common or general interest for breach of implied warranty under the
9 Song-Beverly Act, Civ. Code §1790, *et seq.*

10 109. The GTA V videogames are “consumer goods” within the meaning of Civ.
11 Code §1791(a).

12 110. As set forth more fully above, Defendants have failed to comply with their
13 obligations under the implied warranty of merchantability.

14 111. Plaintiff and the Class have suffered damages as a result of Defendant’s failure
15 to comply with its warranty obligations.

16 112. Plaintiff and the Class are entitled to recover such damages under the Song-
17 Beverly Act, including damages pursuant to Civ. Code §§1791.1(d) and 1974.

18 113. Defendant’s breaches of warranty, as set forth above, were willful.

19 **SIXTH CAUSE OF ACTION**

20 **(NEGLECT)**

21 114. Plaintiffs incorporate by reference and re-allege all paragraphs previously
22 alleged as if fully set forth herein and further alleges as follows.

23 115. Plaintiffs assert the Sixth Cause of Action individually, on behalf of the Class
24 and on behalf of the common or general interest.

25 116. Plaintiffs have suffered injury in fact and lost money or property as a result of
26 such negligence.

27 117. Defendants owed a duty of care to Plaintiffs, individually and to the Class.
28

118. Defendants owed a duty to Plaintiff and the Class they represent to use reasonable care in its express description regarding the abilities of the GTA V videogame.

119. Defendants breached their duty to Plaintiffs and the Class by failing to either correct and/or notify Plaintiff and the Class that the express abilities of GTA V as displayed on its packaging were wrong and erroneous.

120. Had the Defendants exercised reasonable care and skill in disclosing the true abilities of the GTA V videogame Plaintiff and the Class members would not have been deceived by Defendants' express promises.

121. Plaintiff and the Class have suffered damages, including, but not limited to, economic damages.

PRAYER

WHEREFORE, Plaintiffs, on behalf of themselves and Class members, pray for relief as follows:

- That the Court determine this action may be maintained as a class action, that Plaintiffs be appointed Class representative, and that Plaintiffs' counsel be appointed as counsel for the Class;
- For an order requiring Defendants to refund Plaintiffs and Class members monies paid for the defective and inactive "on-line" play of the videogame and/or to compensate them for the time consumer's reasonable expectations were violated.
- For an order prohibiting Defendants from engaging in the alleged misconduct described herein;

For damages according to proof;

- Actual damages for injuries suffered by Plaintiff and the Class.
- Compensatory money damages according to proof.
- Statutory damages according to proof.

- Attorneys' fees and costs.
- For an award of the costs of suit incurred herein, including expert witness fees.
- For an award of interest, including prejudgment interest, at the legal rate.
- Punitive damages;
- and
- For such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

1. Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

Dated: October 24, 2016

**LAW OFFICES OF JEFFERY R. LAWRENCE
SOFONIO & ASSOCIATES, APLC
JAMES HAWKINS, APLC**

Jeffrey R. Lawrence, Esq.
Rex P. Sofonio, Esq.
James R. Hawkins, Esq.

EXHIBIT A

Electronic Template: PS3 Cover Sheet

Doc: A0228.02

FLAT: 10.75" x 5.8594"

FINISHED: 5.094" x 0.563" x 5.8594"

11/19/07

Version 2010-2

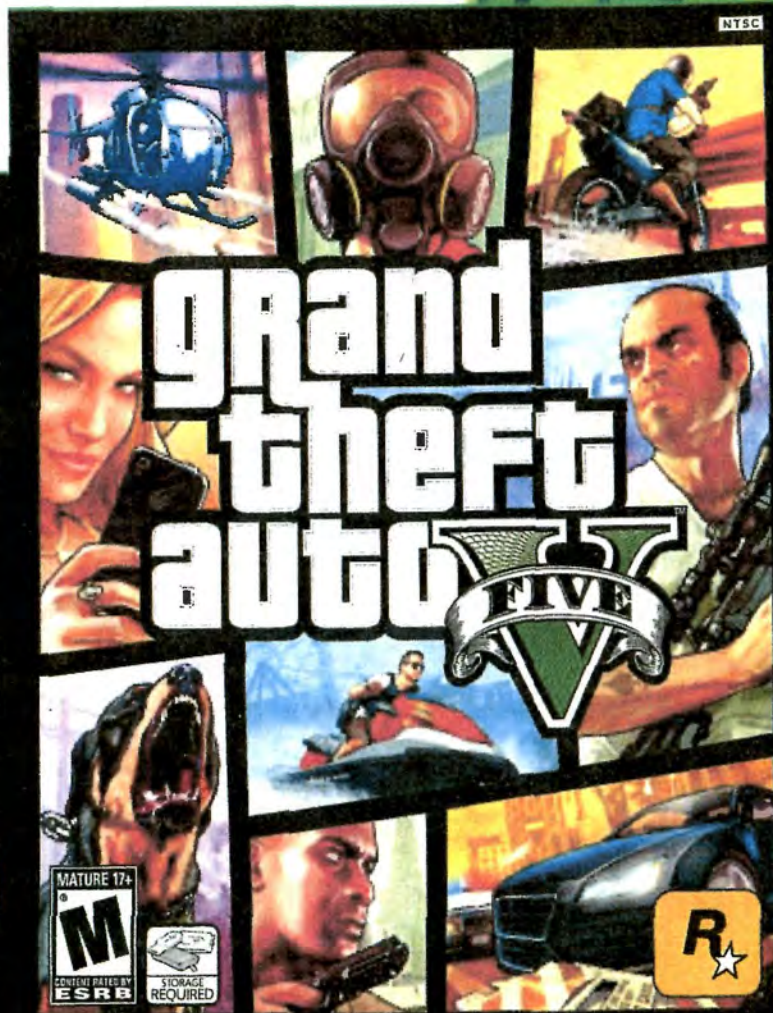
TPCOVERPS3_3D_10-2.eps

Revised: 8/30/10

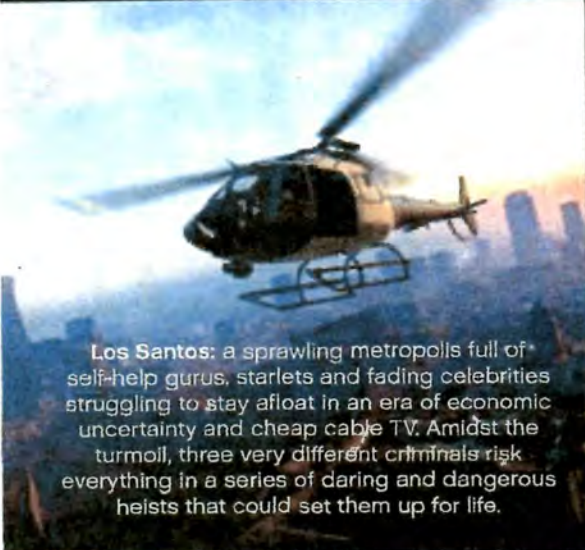
☐ 1/8" BLEED ZONE☐ 1/16" SAFETY ZONE☐ PRINT/TEXT ZONESThird Party templates are located at
<https://www.sceapubsupport.com>

EXHIBIT B, PAGE 5




EXHIBIT B



ROCKSTAR GAMES PRESENTS
A ROCKSTAR NORTH PRODUCTION



Los Santos: a sprawling metropolis full of self-help gurus, starlets and fading celebrities struggling to stay afloat in an era of economic uncertainty and cheap cable TV. Amidst the turmoil, three very different criminals risk everything in a series of daring and dangerous heists that could set them up for life.

FEATURING GRAND THEFT AUTO ONLINE

XBOX LIVE The online service for Xbox 360

XBOX 360 players 1 8 GB required to play game* 650 KB to save game HDTV 720p/1080i/1080p in-game Dolby® Digital

XBOX LIVE

*Additional system requirements: Minimum 1.5 GB free hard drive space required for Xbox 360 or Xbox 360 Hard Drive with 8 GB free space required for play. Hard drive sold separately for Xbox 360 4GB and original Xbox 360 Arcade. Game updates. See rockstargames.com/storage for additional details.

For use only with Xbox 360 - entertainment systems with "NTSC" designation. Xbox 360 requires up to 256 MB for system updates and additional storage for some game features. Storage requirements subject to change. Unauthorized copying, reverse engineering, transmission, public performance, rental, pay for play, or circumvention of copy protection is strictly prohibited.

Xbox Live® System Requirements: In available games, paid subscription required for online multiplayer; some features and downloads require additional storage, hardware, and/or fees. Xbox Live is not available in all countries; see www.xbox.com/live/countries. Broadband internet service and 256 KB or greater required. A valid internet IP required for some features. Host, play and system requirements may change without notice. Subject to terms of Use at www.xbox.com/live/terms_of_use. Under 13 requires parental consent. See www.xbox.com/live for full details.

Rockstar Games, 622 Broadway, New York, NY 10012 • Take-Two Interactive.

Software license terminates and you agree to return the software to the publisher upon completion of the game. Non-transferable access to special features such as exclusive, unlockable, downloadable or online content, services, or functions may require single-use serial code, additional fee and/or online account registration (13+). Violation of EULA, Code of Conduct, or other policies may result in restriction or termination of access to game or online account. Access to special features may require internet connection, may not be available to all users, and may, upon 30 days notice, be terminated, modified, or offered under different terms.

Separate codes may be required for HDTV and Dolby Digital. Sold separately. Unlicensed/unauthorized work. © 1999-2004 Dolby Laboratories. All rights reserved. Dolby and the double-D logo are trademarks of Dolby Laboratories. © 2003-2004 Rockstar Games, Inc. Rockstar Games, Grand Theft Auto, Grand Theft Auto: San Andreas, and the R* marks and logos are trademarks and/or registered trademarks of Take-Two Interactive Software, Inc. in the U.S.A. and/or other jurisdictions. Use Best Video Copying © 1997-2004 by R2D Games Inc. All rights reserved. Online network provided by NetworkMotion. eXplicit code is a trademark of NetworkMotion. eXplicit and the NetworkMotion logo are trademarks of NetworkMotion. All rights reserved. Used under license. The eXplicit logo is a trademark of the NetworkMotion Software Association. All other marks and trademarks are properties of their respective owners. All rights reserved.

The content of this magazine is purely fictional and is not intended to be taken as a guide to real life. No person, place, or thing is intended to be defamed. The names and publishers of the video game do not imply endorsement, conduct or endorsement in any conduct depicted in this video game. ESRB-3

MATURE 17+
Intense Violence
Blood and Gore
Nudity
Mature Humor
Strong Language
Strong Sexual Content
Use of Drugs and Alcohol

ESRB CONTENT RATING www.esrb.org
Online Interactions Not Rated by the ESRB

7 10425 49124 5
PRINTED IN USA
PROOF OF PURCHASE

euphoria GTE ROCKSTAR GAMES
WARNING Read instruction manual for information about photosensitive seizures and other important safety and health information.

DOLBY DIGITAL
Microsoft

EXHIBIT A, PAGE 3

EXHIBIT C



EXHIBIT D



EXHIBIT E

EXHIBIT F

grand theft auto III

LIBERTY CITY, USA.

YOU'VE BEEN BETRAYED AND LEFT FOR DEAD. NOW YOU'RE TAKING REVENGE, UNLESS THE CITY SAYS YOU FIRST. MOB BOSSSES NEED A FAVOR, BROOKED COPS NEED HELP AND STREET GANGS WANT YOU DEAD. YOU'LL HAVE TO ROB, STEAL AND KILL JUST TO STAY OUT OF SERIOUS TROUBLE.

ANYTHING CAN HAPPEN OUT THERE.

"GRAND THEFT AUTO 3 EXPANDS THE VERY IDEA OF WHAT A GAME HAS TRADITIONALLY BEEN"

- IGN.COM

"A MASTERPIECE" - MAXIM

grand theft auto III

XBOX

www.rockstargames.com/grandtheftauto

Microsoft

17+

Blood and Gore
Intense Violence
Strong Language
Strong Sexual Content
Use of Drugs

ESRB CONTENT RATING

www.esrb.org

NOT FOR INDIVIDUAL SALE

Rockstar Games is a registered trademark of Take-Two Interactive Software Inc. "Grand Theft Auto" is a registered trademark of Rockstar Games Inc. All other marks and trademarks are the property of their respective owners. All Rights Reserved. The rating with a registered trademark of the Entertainment Software Rating Board (ESRB) is shown in the bottom right corner of the cover art.

Microsoft, the Microsoft logo and other registered trademarks or trademarks of Microsoft Corporation are the property of Microsoft Corporation. All Rights Reserved. The rating with a registered trademark of the Entertainment Software Rating Board (ESRB) is shown in the bottom right corner of the cover art.

Rockstar Games

Microsoft

17+

Blood and Gore
Intense Violence
Strong Language
Strong Sexual Content
Use of Drugs

ESRB CONTENT RATING

www.esrb.org

NOT FOR INDIVIDUAL SALE

Rockstar Games

Microsoft

17+

Blood and Gore
Intense Violence
Strong Language
Strong Sexual Content
Use of Drugs

ESRB CONTENT RATING

www.esrb.org

NOT FOR INDIVIDUAL SALE

EXHIBIT G



EXHIBIT H




grand theft auto

vice city



grand theft auto

vice city






7 10425 27145 8

Welcome to the 1980's

Welcome to Vice City, a huge urban sprawl stretching from the beach to the swamps and the glitz to the grime, a town pulsing with delights and degradation.

grand theft auto

vice city

Nothing felt more at home in the streets of Liberty City after a long stretch in the South. Tommy Vercetti is sent to Vice City by his old boss, Sonny Wortzik. But all he does not go smoothly upon his arrival in the glamorous, hedonistic, mid-1980s of Vice City. Tommy is set up and loses everything. Sunny wants his money back, but the local gangs, Cuban gangsters, and corrupt politicians stand in his way. Most of Vice City seems to want Tommy dead. His only answer is to fight back and take over the city himself.

"The beginning of a new era" - Game Informer



Microsoft

DOUBLY SURROUND

For use with Xbox video game consoles with "HDCP" designation. Unauthorised copying, reverse engineering, or any other prohibited acts may void the warranty and/or void the right to use the product.

Rockstar Games 575 Broadway New York, NY 10012

Dolby and the double-D symbol are trademarks of Dolby Laboratories. High Definition Audio is a registered trademark of Dolby Laboratories Licensing Corporation. All rights reserved. The radio icon is a registered trademark of the International Music Association. Microsoft, Xbox, Xbox Live, the Xbox Live logo, and the Xbox logo are either registered trademarks or trademarks of Microsoft Corporation in the United States and/or other countries.

ESRB

MATURE

Blood and Gore, Violence, Strong Language, Strong Sexual Content

ESRB CONTENT RATING

www.esrb.org

EXHIBIT I



EXHIBIT J

ROCKSTAR GAMES PRESENTS
A ROCKSTAR NORTH GAME

7 "10425" 29695 6
PROOF OF PURCHASE

grand theft auto *San Andreas*

RCK 29695
NEEA

grand theft auto
San Andreas

FIVE YEARS AGO CARL JOHNSON ESCAPED FROM THE PRESSURES OF LIFE IN LOS SANTOS, SAN ANDREAS, A CITY TEARING ITSELF APART WITH GANG TROUBLE, DRUGS AND CORRUPTION. WHERE FILMSTARS AND MILLIONAIRES DO THEIR BEST TO AVOID THE DEALERS AND GANGBANGERS.

NOW, IT'S THE EARLY 90s. CARL'S GOT TO GO HOME. HIS MOTHER HAS BEEN MURDERED, HIS FAMILY HAS FALLEN APART AND HIS CHILDHOOD FRIENDS ARE ALL HEADING TOWARDS DISASTERS. ON HIS RETURN TO THE NEIGHBORHOOD, A COUPLE OF CORRUPT COPS FRAME HIM FOR MURDER. CARL IS FORCED ON A JOURNEY THAT TAKES HIM ACROSS THE ENTIRE STATE OF SAN ANDREAS, TO SAVE HIS FAMILY AND TO TAKE CONTROL OF THE STREETS.

WWW.ROCKSTARGAMES.COM/SANANDREAS

SOUNDTRACK AVAILABLE ON INTERSCOPE RECORDS

Microsoft

3X+ features supported by this game

IMPORTANT! Read Instruction Manual for important safety and health information.

For use only with Xbox video game consoles with "XISZ" designation. Unlicensed copying, reverse engineering, transmission, public performance, rental, play for play, or circumvention of copy protection is strictly prohibited.

© 2005 Rockstar Games, Inc. Rockstar Games, Rockstar North, the R* logo, Grand Theft Auto and the Grand Theft Auto logo are registered trademarks or trademarks of Rockstar Games, Inc. in the U.S., Canada, Mexico, and other countries. Grand Theft Auto and the Grand Theft Auto logo are registered trademarks or trademarks of Microsoft Corporation in the U.S. and/or in other countries.

ESRB CONTENT RATING WWW.ESRB.ORG

MATURE 17+

Blood and Gore
Intense Violence
Strong Language
Strong Sexual Content
Use of Drugs

EXHIBIT K

[illegible]

EXHIBIT L

