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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: 8A

**SECOND 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

JURY TRIAL DEMANDED

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

6 **NATURE OF THE ACTION**

7 1. This action is brought on behalf of the Plaintiffs individually, as
 8 representatives of the common or general interest and as class representatives for
 9 all others similarly situated in the state of California, USA, against TAKE-TWO
 10 INTERACTIVE SOFTWARE, INC. and TAKE TWO INTERACTIVE
 11 SOFTWARE, INC., DBA ROCKSTAR ("Defendants") to redress Defendants'
 12 violations of California's False Advertising Laws [Cal. Bus. & Prof. Code
 13 §§17500, et seq.], California's Unfair Competition Law [Cal. Bus. & Prof. Code
 14 §§ 17200, et seq.], breach of Express Warranty, breach of Warranty of
 15 Merchantability and Fitness, and breach of the Song-Beverly Consumer Warranty
 16 Act.

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

20 3. Defendants develop, manufacture, and market video games that are
 21 playable on both the Microsoft XBOX videogame systems and the Sony
 22 PlayStation videogame systems, including their most popular series of
 23 videogames known as the "Grand Theft Auto" ["GTA"] series of videogames.

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

27 5. In 1998, Defendants released the first installment of the GTA
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1 videogame series, known simply as "Grand Theft Auto," for the Sony PlayStation
2 1 videogame system (released on 12-3-1994), and it did not contain any
3 multiplayer or cooperative online game play features, nor were any indicated on
4 the packaging. (Ex. C.)

5 6. In 1999, Defendants released the second major installment of the
6 GTA videogame series titled "Grand Theft Auto 2" again for the Sony
7 PlayStation 1 videogame system, with major graphical improvements, but it too
8 did not contain any multiplayer or cooperative online game play features, nor
9 were any indicated on the packaging. (Ex. D.)

10 7. In 2001, Defendants released the third major installment of the GTA
11 series titled "Grand Theft Auto III" for the Sony PlayStation 2 (released on 3-4-
12 2000) and in 2003 for the Microsoft XBOX (released on 11-15-2001) videogame
13 systems, and it still did not contain any multiplayer or cooperative online game
14 play features, nor were any indicated on the packaging. (Ex. E and F.) GTA III
15 introduced a new 3D graphical interface and a new open world style of gameplay
16 that made it highly popular, allowing for expansion to the XBOX platform, and it
17 is still the earmark of the series today. However, gamers could only play alone in
18 this 3D world, and not with others online.

19 8. In 2002, Defendants released the fourth major installment of the
20 GTA series titled "Grand Theft Auto: Vice City" for the Sony PlayStation 2
21 videogame system and in 2003, for the Microsoft XBOX videogame system. This
22 installment introduced a new storyline for the GTA III world, but it still did not
23 contain any multiplayer or online cooperative gameplay features, nor were any
24 indicated on the packaging. (Ex. G and H.)

25 9. In 2004, Defendants released the fifth major installment of the GTA
26 series titled "Grand Theft Auto: San Andreas" for the Sony PlayStation 2
27 videogame system, and in 2005, they released it for the Microsoft XBOX
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1 videogame system, and it still did not contain any multiplayer or online
2 cooperative gameplay features, nor were any indicated on the packaging. (Ex. I
3 and J.)

4 10. In 2008, Defendants released the sixth major installment of the GTA
5 videogame series titled "Grand Theft Auto IV" for the Sony PlayStation 3
6 (released on 11-11-2006) and the Microsoft XBOX 360 (released on 11-22-05)
7 videogame systems, and for the first time, the game contained significant
8 multiplayer online gameplay features that were included in the software and
9 available to play immediately upon purchase of the game, as was indicated on the
10 packaging by checking off of those features in the standard list of features chart
11 included on the rear packaging of all games produced for these systems,
12 regardless of the manufacturer. (Ex. K and L.) However, GTA IV still did not
13 contain the highly desirable online cooperative gameplay feature that was now
14 becoming the new standard for videogame entertainment.

15 11. Starting in late 2005 with the release of the Microsoft XBOX 360
16 videogame system, online gaming became increasingly popular, such that the
17 sales of videogames released after that time without this feature would suffer
18 significantly. In fact, consumers were disappointed that the GTA IV videogame
19 did not support cooperative online gameplay when it was released in 2008.

20 12. On September 17, 2013, defendants released the videogame "Grand
21 Theft Auto V" ("GTA V") for both the Sony PlayStation 3 and the Microsoft
22 XBOX 360 videogame systems, and now, in addition to multiplayer online
23 features, this game finally promised that it had a cooperative online gameplay
24 mode (known as GTA Online) for the first time in the history of the GTA
25 franchise and the Defendants' newly designed packaging for this product clearly
26 indicated that it would be immediately playable upon purchase of the GTA V
27 software. (Ex. A and B.)

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1 13. On September 17, 2013, Plaintiffs, McMahon and Bengston, each
2 individually and separately bought a GTA V videogame produced by Defendants
3 for the Microsoft XBOX 360 videogame system for the price of \$59.99,
4 exclusive of tax, in the state of California, USA.

5 14. On November 15, 2013, the new Sony Playstation 4 was scheduled
6 to be released for a retail price of \$399, and Sony Playstation 3 games will not be
7 backwards compatible, i.e. the Defendants' GTA V videogame for Sony
8 Playstation 3 would not work on the new system and Defendants had no
9 intentions of releasing a version of GTA V for Sony Playstation 4 at this time,
10 because it was too costly to produce another version of the game.

11 15. On November 22, 2013, the new Microsoft XBOX One was
12 scheduled to be released for a retail price of \$499, and Microsoft XBOX 360
13 games will not be backwards compatible, i.e. the Defendants GTA V game for
14 Microsoft XBOX 360 would not work on the new system and Defendants had no
15 intentions of releasing a version of GTA V for Microsoft XBOX One at this time,
16 because it was too costly to produce another version of the game. No games
17 were included with the new systems, so consumers would have to spend
18 additional money, usually \$59.99 each, to purchase new videogames.

19 16. Plaintiffs and millions of other videogame consumers targeted by the
20 Defendants for the sale of GTA V were planning on purchasing at least one of
21 these two highly anticipated new videogame systems on the release date, as it had
22 now been 7 years since the release of Sony Playstation 3 (released on 11-11-
23 2006) and 8 years since the release of the Microsoft XBOX 360 (released on 11-
24 22-2005.) These systems were long overdue for an update.

25 17. Due to their limited incomes, Plaintiffs, like millions of other
26 consumers, had to choose between getting the new GTA V videogame for a very
27 soon to be obsolete videogame system, or investing the same money in one of the
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1 new videogame systems and software for it.

2 18. Plaintiffs believed that the \$59.99 price that they paid for their GTA
3 V videogame purchase included immediate access to GTA Online, a separate
4 name that the Defendants gave to the included cooperative online gameplay
5 mode, featured in the GTA V software they were buying for their Microsoft
6 XBOX 360s.

7 19. On the rear packaging of GTA V, it was indicated that the GTA
8 Online cooperative gameplay mode would be immediately playable by the
9 consumer upon purchase, but as it turned out, no consumers were actually able to
10 play GTA Online at least until October 1, 2013, because the Defendants did not
11 yet have the means to support online gameplay available to them. (Ex. A and B.)

12 20. In fact, unbeknownst to the Plaintiffs at the time of their purchase of
13 GTA V, the Defendants had actually planned for at least the first two weeks after
14 GTA V was released that the GTA Online mode, the selling point of the game,
15 would not be available to anyone, and yet, this was not indicated anywhere on the
16 GTA V packaging. Defendants neglected to even put a simple sticker on the
17 GTA V packaging to warn consumers about the unavailability of the GTA Online
18 gameplay mode if they purchased it prior to October 1, 2013.

19 21. The Plaintiffs allege that Defendants purposely deceived them into
20 paying \$59.99 for GTA V, thereby committing violations of California's false
21 advertising and unfair competition laws, breach of express warranty, breach of
22 warranty of merchantability and fitness, as well as breaching the Song-Beverly
23 Warranty Act, because the packaging for GTA V did not contain any warnings to
24 the consumer that the GTA Online cooperative gameplay mode would not be
25 immediately available for use by them upon purchasing the game prior to
26 October 1, 2013, and obtaining online access to either the XBOX Live network or
27 the PlayStation Network, which were stated to be the only other requirements to
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1 playing it cooperatively online.

2 22. Each Plaintiff had a valid subscription to the XBOX Live network
3 service, which is required to play all games online with a Microsoft XBOX 360
4 videogame console.

5 23. On information and belief, Plaintiffs allege that the Defendants
6 intended and knew that the new GTA Online cooperative gameplay mode
7 featured in GTA V was the primary reason consumers would purchase their new
8 product, because the popularity of the online modes of their competitors' games,
9 such as the *Call of Duty* series, had now far surpassed that of the single player
10 mode.

11 24. In fact, when online gameplay first became available in the early
12 2000s, it was usually an afterthought of most videogames, as single player
13 gaming was still far more popular than multiplayer online gameplay, but by 2013,
14 the Defendants knew that the online gameplay modes of videogames were now
15 not only essential, but it was far more important than the single player modes,
16 which is why they spent millions of dollars developing the GTA Online
17 cooperative gameplay mode for GTA V.

18 25. By 2013, online gaming was now the preferred method of
19 consumers when playing their videogames, and single play gaming was now far
20 less popular.

21 26. As evidence of this, Defendants made certain to highlight the new
22 featured cooperative online gameplay mode on their GTA V packaging by
23 prominently displaying it on both the Sony PlayStation 3 version and the
24 Microsoft XBOX 360 packaging as follows: a) there is a thick white band in the
25 center of the rear packaging that extends horizontally all the way across; 2) they
26 used black print that was significantly larger than any other print used anywhere
27 else on the rear packaging; 3) they used all capital letters when describing it with
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1 the words: "FEATURING GRAND THEFT AUTO ONLINE."; and 4) the rest
2 of the print on the packaging is set in significantly smaller white type font against
3 a dark background. (Ex. A, B.)

4 27. The inclusion of the thick white center stripe with the phrase in
5 large, all capital black letters stating, "FEATURING GRAND THEFT AUTO
6 ONLINE," sets it apart from any other style of packaging that the Defendants
7 have used in any of the prior versions of GTA that were released, as
8 demonstrated by Exhibits C-L.

9 28. Additionally, on the rear packaging for the Sony PlayStation 3
10 version of GTA V, the standardized videogame features boxes used universally
11 by the videogame packaging industry, indicate by highlighting the following
12 phrases that GTA V will be playable online immediately upon purchase, so long
13 as consumers belong to Sony's online network: "Network Players 2-16 co-op; 2-
14 16 multiplayer. " (Ex. A.)

15 29. Additionally, on the rear packaging for the Microsoft XBOX 360
16 version of GTA V, the standardized videogame features boxes used universally
17 by the videogame packaging industry, indicate by highlighting the following
18 phrases that GTA V will be playable online immediately upon purchase, so long
19 as consumers belong to Microsoft's XBOX Live network: "Network Players 2-16
20 co-op; 2-16 multiplayer. " (Ex. B.)

21 30. Unknown to the Plaintiffs at the time they made their purchase of
22 GTA V for the price of \$59.99 on September 17, 2013, Defendants did not plan
23 to allow any consumer access to the GTA Online mode of the GTA V game at
24 least until October 1, 2013, two weeks after the game was released, and there was
25 absolutely no indication on the packaging of any of the GTA V videogames that
26 this was the case.

27 31. Instead the GTA V packaging for both game systems prominently
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1 displayed the phrase, "FEATURING GRAND THEFT AUTO ONLINE"
2 together with highlighting the standardized online gameplay features boxes on
3 the GTA V packaging for both videogame systems, which clearly indicated to the
4 Plaintiffs, and all other consumers, that both the online multiplayer and online
5 cooperative gameplay modes of GTA V would be immediately available to the
6 consumers who bought the game before October 1, 2013, so long as they
7 subscribed to the correct corresponding online networks operated by Sony and
8 Microsoft.

9 32. Defendants thereby knowingly and intentionally placed unfair,
10 unlawful, and fraudulent advertising claims on the packaging of both the XBOX
11 360 and the PlayStation 3 versions of the GTA V videogame regarding the
12 playability of the featured GRAND THEFT AUTO ONLINE mode of the GTA
13 V videogame product.

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

23 34. On information and belief, the Defendants intentionally failed to
24 indicate on the GTA V packaging or by any other means in all of the locations
25 where the game was sold when they released it on September 17, 2013, that the
26 key improvement to this edition, the GTA V Online cooperative gameplay mode,
27 would not be available to any purchaser of the game at least until October 1,
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1 2013.

2 35. On information and belief, as a result of their intentional deception
3 and two week earlier release, the Defendants were able to sell several million
4 more units of the GTA V videogame, in a very short time period to Plaintiffs and
5 millions of other consumers, who would have otherwise opted to not purchase the
6 game.

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

13 37. Even after the planned release date of October 1, 2013 for the GTA
14 Online feature of GTA V, hundreds of thousands of early purchasers of GTA V,
15 including Plaintiffs, were still unable to play the GTA Online mode for at least
16 another ten days, due to the defendants' negligence in failing to provide sufficient
17 servers to handle all of the online traffic to support this new feature, also
18 demonstrating that the GTA V product was rushed to market.

19 38. Plaintiffs read the representations on the GTA V packaging noted
20 above in paragraphs 26-31 before making their purchase of GTA V, and they
21 bought the GTA V videogame specifically in order to utilize its multiplayer and
22 cooperative online gameplay modes, starting on the date of their purchase,
23 September 17, 2013.

24 39. Plaintiffs relied on the representations on the packaging noted above
25 in paragraphs 26-31 which indicated that GTA V was capable of immediately
26 providing online multiplayer and cooperative gameplay modes, when they bought
27 it on September 17, 2013.

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1 40. Plaintiffs purchased GTA V on September 17, 2013, only with the
2 intent, purpose, and desire to play the game online using the mutliplayer and
3 cooperative online gameplay modes with other videogame players via their
4 internet connections and active Microsoft XBOX live memberships, but they
5 were unable to do so because the Defendants failed to provide them with access
6 to the GTA Online gameplay mode of their GTA V videogame.

7 41. On information and belief, similarly situated consumers of GTA V
8 for the Sony PlayStation 3 and the Microsoft XBOX 360 could not play GTA V
9 online either for the same reasons.

10 42. Plaintiffs and other consumers would not have purchased GTA V
11 had they known that the multiplayer and cooperative online gameplay features
12 were not immediately playable to anyone who purchased the game between
13 September 17, 2013 and September 30, 2013.

14 43. On information and belief, GTA V was not available for online
15 gameplay as advertised to anyone who purchased the game before October 1,
16 2013, because the servers were not even online. GTA V could only be played in
17 single player mode without the ability to interact with any other videogame
18 players until after October 1, 2013. Plaintiffs were not interested in playing the
19 single player mode and wanted a refund of their \$59.99.

20 44. On information and belief, the Defendants knew that GTA Online
21 gameplay mode was planned to be unavailable until October 1, 2013, well in
22 advance of the time that it was released on September 17, 2013, but they still
23 knowingly failed to warn every consumer on the packaging that this would be the
24 case, so that they could maximize their profit and the consumers would be unable
25 make an informed decision about whether or not to purchase the game.

26 45. On information and belief, Defendants anticipated having the online
27 gameplay mode available by October 1, 2013, but it still was not available to the
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1 vast majority of the purchasers of GTA V, due to many complications caused by
2 their lack of preparation, because they rushed the product to market. As such,
3 Plaintiffs and millions of other purchasers of GTA V were actually able to play
4 the GTA V Online mode until ten days after October 1, 2013.

5 46. The retailer, GameStop, would not agree to refund either Plaintiff
6 any of their money for their GTA V purchases, nor would they offer any other
7 remedy, other than to replace the game with the same exact game, which would
8 not alleviate the problem of not being able to access the GTA Online gameplay
9 mode of GTA V.

10 47. On information and belief, Plaintiffs allege that the return policy
11 experienced by Plaintiff's, noted in paragraph 46 above, is representative of the
12 standard policy of all retail chains that sold Defendant's GTA V product, such
13 that no consumer was able to receive a refund for their purchase of GTA V for
14 not being able to play GTA Online prior to October 1, 2013.

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

23 49. Defendants knew that each day longer that they waited to release the
24 GTA V product to the public as the mid-November release dates of the two new
25 systems that could not play GTA V approached, meant less sales of their product,
26 and thus a huge multi-million dollar loss in their anticipated profit margins for the
27 GTA V game, which already had the largest budget ever for a videogame, at over
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1 \$265 million dollars.

2 50. Defendants maliciously deceived consumers for economic gain.

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

8 **VENUE AND PARTIES**

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

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

22 **A. Plaintiffs**

23 54. Plaintiff BRUCE McMAHON is a resident of the County of
24 Riverside, California. On September 17, 2013, Plaintiff purchased his GTA V
25 videogame from a GameStop store located in the state of California, County of
26 Riverside. He paid the price of \$59.99 for the game not including California
27 sales tax, and he was unable to obtain a refund from GameStop.

1 55. Plaintiff CHRISTOPHER BENGTON is a resident of California.
 2 On September 17, 2013, Plaintiff purchased his GTA V videogame from a Game
 3 Stop store located in the state of California. He paid the price of \$59.99 for the
 4 game not including California sales tax, and he was unable to obtain a refund
 5 from GameStop.

6 56. Plaintiffs, and the Class they seek to represent, were all required to
 7 pay \$59.99 for the Defendants' GTA V videogame at any of multiple distribution
 8 locations throughout California, beginning with sales on September 17, 2013 and
 9 continuing through present.

10 57. The GTA V product was advertised as a videogame that would
 11 provide without reservation online multiplayer and cooperative gameplay as
 12 described in paragraphs 26-31 above. GTA V promised consumers access to a
 13 new cooperative online gameplay mode, known as "GTA Online," which was
 14 prominently featured on the packaging. The game advertised and displayed on its
 15 product that the purchaser would experience on-line interaction with others that
 16 also played the same game on the same brand of videogame system. The game
 17 was to immediately provide a great online experience for those videogame
 18 players who purchased it on or after September 17, 2013.

19 **B. Defendants**

20 58. TAKE TWO INTERACTIVE SOFTWARE, INC., AND TAKE
 21 TWO INTERACTIVE SOFTWARE, INC., DBA ROCKSTAR is a Delaware
 22 Corporation engaged in worldwide distribution of videogame software and more
 23 specifically, throughout the state of California at numerous distribution locations.

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

6 60. Plaintiffs are informed and believe, and based thereon allege, that
7 Defendants acted in all respects pertinent to this action as the agent of the other
8 Defendants, carried out a joint scheme, business plan, or policy in all respects
9 pertinent hereto, and the acts of each Defendant are legally attributable to the
10 other Defendants.

11 **SUBSTANTIVE ALLEGATIONS COMMON TO ALL CAUSES OF**
12 **ACTION**

13 61. TAKE-TWO INTERACTIVE SOFTWARE, INC.; and TAKE TWO
14 INTERACTIVE SOFTWARE, INC., DBA ROCKSTAR is a Delaware
15 Corporation that produces videogame software. On September 17, 2013 TAKE-
16 TWO INTERACTIVE SOFTWARE, INC., and/or ROCKSTAR GAMES, INC.
17 introduced Grand Theft Auto V("GTA V") for distribution at numerous locations
18 throughout the state of California.

19 62. The GTA V product was advertised as a videogame that would
20 provide without reservation online multiplayer and cooperative gameplay as
21 described in paragraphs 26-31 above. GTA V promised consumers access to a
22 new cooperative online gameplay mode, known as "GTA Online," which was
23 prominently featured on the packaging. The game advertised and displayed on its
24 product that the purchaser would experience on-line interaction with others that
25 also played the same game on the same brand of videogame system. The game
26 was to immediately provide a great online experience for those videogame
27 players who purchased it on or after September 17, 2013.

1 63. Defendants charged \$59.99 to purchase the GTA V game when it
2 was released on September 17, 2013.

3 64. Defendants knew that the GTA Online gameplay mode would not be
4 available for multiplayer or cooperative online gameplay to consumers at the time
5 the game was released on September 17, 2013, and it was not planning to make it
6 available until at least October 1, 2013.

7 65. Defendants did not provide any type of notice to any of the GTA V
8 purchasers at the time of purchase that the game did not currently include the
9 online gameplay features that were clearly advertised on the packaging of its
10 product as described in paragraphs 26-31 above.

11 66. By advertising the GTA V videogame as having online interaction
12 and/or play, Defendants knew or should have known that consumers expected the
13 game to perform as it was advertised to do on the product. Defendants failed to
14 disclose on the packaging that multiplayer and cooperative online game play
15 features were not planned to be available until October 1, 2013.

16 67. Like other purchasers of GTA V, Plaintiffs were deceived by
17 Defendant's misrepresentations in the advertising on the product's packaging
18 concerning the availability of the videogame's online multiplayer and cooperative
19 gameplay modes.

20 68. Before purchasing GTA V, Plaintiffs read the product packaging of
21 GTA V.

22 69. Plaintiffs purchased GTA V on September 17, 2013. Based on
23 advertisements and guarantees made on the Defendants' product regarding
24 multiplayer and cooperative online game play features, Plaintiffs anticipated
25 immediately being able to play the game online. When Plaintiffs attempted to
26 play GTA V online, they were unable to utilize any of the online features. The
27 game simply stated that online interaction was not available to any users at this
28

1 time.

2 70. Defendants failed to provide any notice and/or warning to
3 consumers that the online features of the GTA V videogame were not available.

4 71. Plaintiffs purchased the GTA V videogame with the intention of
5 being able to immediately play it online with their friends and others whom also
6 owned their same videogame system and had also just purchased the GTA V
7 videogame.

8 72. Plaintiffs would not have purchased the GTA V videogame on
9 September 17, 2013 had they been informed that the online features of the game
10 were not available.

11 73. Every consumer that purchased the GTA V prior to October 1, 2013
12 was unable to access the GTA Online gameplay mode featured in the GTA V
13 videogame product. Many consumers were still not able to consistently access it
14 until October 15, 2013.

15 74. Accordingly, Plaintiffs bring this case as a class action and seek
16 equitable relief for themselves and members of the proposed Class.

17 **CLASS ACTION ALLEGATIONS**

18 75. Plaintiffs bring this class action on behalf of themselves and all other
19 members of a proposed plaintiff Class (“Class”) initially defined as:

20 **“All persons who purchased the GTA V videogame in the State of**
21 **California prior to October 1, 2013.”**

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

25 **Numerosity of Class**

26 77. Class members are so numerous that their individual joinder is
27 impractical. Plaintiffs estimate that the Class comprises millions of members.
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1 The precise number of Class members and their addresses are unknown to
2 Plaintiffs at this time, but they can be ascertained by notifying GTA V purchasers
3 that a claim has been made on behalf of all Class members that purchased GTA
4 V. Class members may be notified directly by their email addresses that are
5 associated with their online accounts to the Sony Playstation Network and/or the
6 XBOX live network. The GTA V game requires “logging on” to the server even
7 in order to play just the single player portion of the game. Therefore it is easily
8 ascertainable whom it will be necessary to notify by contacting the specific
9 plaintiff class members that logged on to the GTA V server between the dates of
10 September 17, 2013 and October 1, 2013. Class members may be notified of the
11 pendency of this action by published notice.

12 **Predominance of Common Questions of Fact and Law**

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

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

21 (b) Whether Defendants failed to disclose or adequately disclose
22 material information to consumers on their packaging of the GTA V videogame,
23 namely, that the featured online gameplay mode were not available to any
24 consumers at the time of purchases made before October 1, 2013;

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

27 (d) Whether Defendants knew or should have known that the GTA V's
28

1 online features were defective and/or unavailable;

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

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

6 (g) Whether Defendants' breached their express warranty;

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

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

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

13 **Typicality of Claims**

14 79. Plaintiffs' claims are typical of the claims of the Class because
15 Plaintiffs, like all other Class members, bought a GTA V videogame that
16 promised immediate access to online gameplay modes which were not available
17 to any consumers at the time of their purchase.

18 **Adequacy of Representation**

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

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

24 **Superiority of a Class Action**

25 82. A class action is superior to other available means for the fair and
26 efficient adjudication of the claims of Plaintiff and Class members. The damages
27 suffered by each individual Class member, while significant, are small given the
28

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.

83. 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.)

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

85. 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.*

86. Among other things, Defendants made representations and failed to disclose or adequately disclose material information regarding its GTA V videogame that it knew 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 when purchasing GTA V.

87. Defendants committed such violations of the FAL with actual

1 knowledge or knowledge fairly implied on the basis of objective circumstances.

2 88. As a result of Defendants' wrongful conduct, Plaintiffs suffered
3 injury in fact and lost money.

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

9 **SECOND CAUSE OF ACTION**

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

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

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

17 92. Defendants' practices constitute "unlawful" business practices in
18 violation of the UCL because, among other things, they violate the CLRA and the
19 FAL.

20 93. Defendants' actions and practices constitute "unfair" business
21 practices in violation of the UCL, because, among other things, they are immoral,
22 unethical, oppressive, unscrupulous or substantially injurious to consumers,
23 and/or any utility of such practices is outweighed by the harm caused to
24 consumers. Defendants' actions violate the legislative policy of protecting
25 consumers and preventing persons from advertising defective products and not
26 adequately disclosing those defects. Defendants' practices caused substantial
27 injury to Plaintiffs and Class members, are not outweighed by any benefits, and
28

1 Plaintiffs and Class members could not have reasonably avoided this injury.

2 94. Defendants' actions and practices constitute "fraudulent" business
3 practices in violation of the UCL because, among other things, they have a
4 capacity and tendency to deceive members of the public. Defendants intended
5 for Plaintiffs and Class members to rely on its representation and Plaintiffs did
6 rely on Defendants' representations.

7 95. Defendants' affirmative representations as alleged herein imposed
8 on Defendants the duty to disclose the defect, an unavailability and an inactivity
9 of the GTA V online gameplay mode known as GTA Online, because consumers
10 were likely to be deceived regarding the actual capabilities of the videogame at
11 time of purchase.

12 96. As a result of Defendants' wrongful conduct as alleged herein,
13 Plaintiffs have suffered injury in fact and has lost money. Plaintiffs and Class
14 members were all induced to pay \$59.99 for a videogame that did not perform as
15 represented.

16 97. Accordingly, Plaintiffs, on behalf of themselves and all others
17 similarly situated, seek equitable relief in the form of an order requiring
18 Defendants to refund Plaintiffs and Class members monies paid for the defective
19 and inactive online gamplay mode of the videogame and/or to compensate them
20 for the time consumer's reasonable expectations that were violated.

21 **THIRD CAUSE OF ACTION**

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

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

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

27 93. Plaintiffs purchased the GTA V videogame on September 17, 2013
28

1 for \$59.99.

2 94. On the packaging of GTA V, the Defendants describe, promise and
3 affirm that the featured online gameplay mode is immediately available upon
4 purchase.

5 95. The online gameplay modes of the GTA V videogame was not
6 available to any consumers until sometime after October 1, 2013.

7 96. As a result of Defendants' wrongful conduct as alleged herein,
8 Plaintiffs have suffered injury in fact and has lost money. Plaintiffs and Class
9 members paid \$59.99 for a videogame that did not perform as represented.

10 97. Accordingly, Plaintiffs, on behalf of themselves and all others
11 similarly situated, seek equitable relief in the form of an order requiring
12 Defendants to refund Plaintiffs and Class members monies paid for the defective
13 and inactive online gameplay mode of the videogame and/or to compensate them
14 for the time consumer's reasonable expectations were violated.

15 **FOURTH CAUSE OF ACTION**

16 **(BREACH OF WARRANTY OF MERCHANTABILITY AND FITNESS –**
17 **COMM'L C. §2314 and §2315)**

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

20 99. The GTA V videogame does not conform to its promises concerning
21 it abilities and performance.

22 100. Plaintiffs purchased the GTA V videogame on September 17, 2013
23 for \$59.99.

24 101. On the packaging of GTA V the Defendants describe, promise and
25 affirm that the featured online gameplay mode is immediately available upon
26 purchase.

27 102. The online portion of the GTA V videogame was not available until
28

1 sometime after October 1, 2013.

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

7 104. Defendants further breached their warranty by failing to issue
8 adequate consumer warnings regarding its product's inability to play online until
9 sometime after October 1, 2013.

10 105. As a result of Defendants' wrongful conduct as alleged herein,
11 Plaintiffs have suffered injury in fact and has lost money. Plaintiffs and Class
12 members were all induced to pay \$59.99 for a videogame that did not perform as
13 represented.

14 106. Accordingly, Plaintiffs, on behalf of themselves and all others
15 similarly situated, seek equitable relief in the form of an order requiring
16 Defendants to refund Plaintiffs and Class members monies paid for the defective
17 and inactive online gameplay mode of the videogame and/or to compensate them
18 for the time consumer's reasonable expectations were violated.

19 **FIFTH CAUSE OF ACTION**

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

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

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

26 109. The GTA V videogames are "consumer goods" within the meaning
27 of Civ. Code §1791(a).
28

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

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

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

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

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 online gameplay mode of the Defendants' 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: May 8, 2017

**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 ZONES

Third Party templates are located at
<https://www.sceapubsupport.com>



5.094"

0.563"

10.75"

EXHIBIT B, PAGE 5

EXHIBIT B



-30-

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 | [Xbox Live Help & Support](#) | [Xbox Live System Requirements](#) | [Xbox Live Account](#) | [Xbox Live Privacy](#)

*Additional system requirements: Minimum 1.5 GB USB 2.0 flash drive (sold separately) for Xbox 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/updates](#) 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/regions](#). Broadband internet service and 200 KB or greater required. A valid device may be required for some features. Hardware and system requirements may change without notice. Subject to terms of Use at [www.xbox.com/en/termsofuse](#). Under 13 requires parental consent. See [www.xbox.com/live](#) for full details.

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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

WARNING Read instruction manual for information about photosensitive seizures and other important safety and health information.

Microsoft

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EXHIBIT C

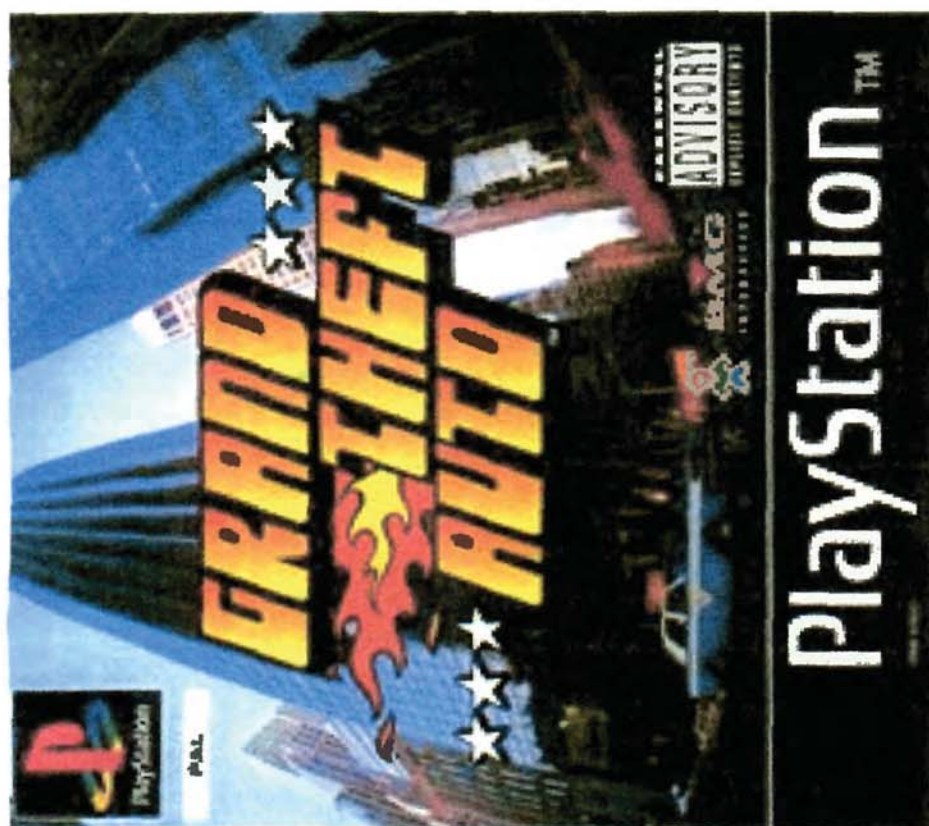


EXHIBIT D



EXHIBIT E

ROCKSTAR PRESENTS
A DMA DESIGN GAME

grand theft auto III



LIBERTY CITY, USA.
THE WORST PLACE IN AMERICA.

YOU'VE BEEN BETRAYED AND LEFT FOR DEAD. NOW YOU'RE TAKING REVENGE, UNLESS THE CITY GETS YOU FIRST. MOB BOSSES NEED A FAVOR, CROOKED 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.

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"A MAFIOSO MASTERPIECE" - MAXIM



grand theft auto III

PlayStation 2

PlayStation 2

grand theft auto III

MATURE
ESRB

SILUS
2003

NTSC U/C

www.rockstargames.com/grandtheftauto3

1 Player Memory Card for PS2 - 500kb

Version: Final Cut

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EXHIBIT F



EXHIBIT G



EXHIBIT H



EXHIBIT I



EXHIBIT J

ROCKSTAR GAMES PRESENTS
A ROCKSTAR NORTH GAME



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grand theft auto *San Andreas*

XBOX

grand theft auto *San Andreas*

RCK 29695 NTSC



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.



grand theft auto *San Andreas*

CASINO

NEW, IT'S THE EARLY 90s. CARL'S SET TO GO HOME. HIS MOTHER HAS BEEN MURDERED, HIS FAMILY HAS FALLEN APART AND HIS CHILDHOOD FRIENDS ARE ALL HEADING TOWARDS DISASTER. ON HIS RETURN TO THE NEIGHBORHOOD, A COUPLE OF CORRUPT COPS FRAME HIM FOR HOMICIDE. CJ 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

Microsoft

Microsoft Load Instructions Manual for important safety and health information.

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EXHIBIT K



EXHIBIT L

