

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARY L. JOHNSON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

MGM HOLDINGS INC.; METRO-
GOLDWYN-MAYER STUDIOS INC.;
TWENTIETH CENTURY FOX HOME
ENTERTAINMENT LLC; and TWENTY
FIRST CENTURY FOX, INC., DOES 1-10,
inclusive,

Defendants.

No. 2:17-cv-00541

**NOTICE OF REMOVAL TO
FEDERAL COURT**

I. INTRODUCTION

Defendants MGM Holdings Inc., Metro-Goldwyn-Mayer Studios Inc., Twentieth Century Fox Home Entertainment LLC, and Twenty-First Century Fox, Inc. (“Defendants”), respectfully give notice of the removal of this action to the United States District Court for the Western District of Washington pursuant to 28 U.S.C. §§ 1332 and 1441. Removal to this Court is proper because this Court has original jurisdiction over this putative class action pursuant to the Class Action Fairness Act (“CAFA”). 28 U.S.C. § 1332(d).

II. JURISDICTION

1. Plaintiff Mary L. Johnson (“Plaintiff”) filed this putative class action suit against Defendants on or about March 6, 2017, under King County Superior Court Case No. 17-2-05206-0 SEA (“State Court Action”).

NOTICE OF REMOVAL TO FEDERAL COURT - 1
CASE NO. 2:17-CV-00541

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2. Under CAFA, district courts have original jurisdiction over putative class actions in which the matter in controversy exceeds \$5,000,000, at least one plaintiff is not a citizen of the same state as any defendant, and none of the exceptions to asserting jurisdiction apply. 28 U.S.C. § 1332(d). Removal under CAFA is appropriate when the jurisdictional prerequisites are met. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014) (“no antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court”). To remove a case a defendant must only file a notice of removal “containing a short and plain statement of the grounds for removal.” 28 U.S.C. § 1446(a). Such a short and plain statement “need not contain evidentiary submissions.” *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015).

3. Based on the allegations in Plaintiff’s Complaint and facts known to Defendants, this Court has subject matter jurisdiction under CAFA because: (i) the matter in controversy exceeds \$5,000,000, 28 U.S.C. § 1332(d)(2); (ii) it is a putative class action as that term is defined in § 1332(d)(1)(B); (iii) Plaintiff is a citizen of a state different from any Defendant, § 1332(d)(2)(A); (iv) no defendant is a citizen of Washington, the state in which the Action was originally filed, § 1332(d)(3)-(4); and (v) the jurisdictional exceptions contained in §§ 1332(d)(5) and (9) do not apply.

A. The Amount in Controversy Exceeds \$5,000,000

4. Plaintiff’s Complaint alleges that she purchased a box set of films on Blu-Ray called “the James Bond Collection.” Compl. ¶¶ 27-28, 49-54. The set contained 23 films, which were accurately listed by name on the box packaging. *Id.* ¶¶ 27, 32-33. Not among those 23 films were the 1967 spoof entitled *Casino Royale* and the 1983 film entitled *Never Say Never Again*, which are not part of the iconic James Bond canon of films produced by Eon Productions. *Id.* ¶ 22. These films were not included in the list clearly printed on the box set packaging. Nevertheless, Plaintiff claims that she would not have purchased the box set had she realized that *Casino Royale* and *Never Say Never Again* were not among the films it

1 contained. *Id.* ¶¶ 53-54.

2 5. Plaintiff seeks to represent a putative nationwide class of persons who, since
3 March 6, 2013, purchased the “James Bond Collection” set or one of two other sets: the
4 “James Bond 50” and the “Ultimate James Bond Collection.” Compl. ¶ 66. The packaging of
5 these two other box sets also clearly stated the number and titles of the films they included
6 and did not state that they included *Casino Royale* or *Never Say Never Again*. Compl. ¶¶ 30-
7 33.

8 6. Plaintiff alleges that she purchased the James Bond Collection box set for
9 \$106.44 and that purchasing *Casino Royale* and *Never Say Never Again* separately would cost
10 her \$69.37. Compl. ¶¶ 49, 59. Defendants’ records show that, since March 6, 2013, they
11 have sold more than 72,078 copies of the three sets listed in Plaintiff’s Complaint. Thus,
12 using even the lesser of these two amounts as the measure of damages for each putative class
13 member, the amount in controversy in this case exceeds \$5,000,000 (72,078 units multiplied
14 by \$69.37 equals \$5,000,050.86). 28 U.S.C. § 1332(d)(6) (“In any class action, the claims of
15 the individual class members shall be aggregated to determine whether the matter in
16 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.”).

17 **B. The Remaining CAFA Jurisdiction Requirements Are Met**

18 7. Plaintiff purports to bring a putative “class action” as that term is defined by
19 28 U.S.C. § 1332(d)(1)(B). It was filed under Washington Superior Court Rule 23 (titled
20 “Class Actions”) which is “similar” to rule 23 of the Federal Rules of Civil Procedure and
21 “authoriz[es] an action to be brought by 1 or more representative persons as a class action.”
22 *Id.*

23 8. Plaintiff is a citizen of Washington State. Compl. ¶ 2. Defendants are
24 Delaware Corporations whose headquarters and principal places of business are in New York
25 and California. Compl. ¶¶ 3-10.¹ Therefore, this case satisfies the citizenship requirement for

26 ¹ Though it is not relevant to this motion, Defendants note that Twenty-First Century Fox,
27 Inc. has its principal place of business in the same location as its headquarters, New York, and
not in California, as Plaintiffs allege. Compl. ¶ 8.

1 CAFA jurisdiction contained in 28 U.S.C. § 1332(d)(2)(A).

2 9. No Defendant is a citizen of Washington State. The discretionary and
3 mandatory exceptions to CAFA jurisdiction contained in 28 U.S.C. § 1332(d)(3) and (4)
4 therefore do not apply.

5 10. Finally, the jurisdictional exceptions contained in 28 U.S.C. § 1332(d)(5) do
6 not apply because there are more than 100 persons in the putative class and no Defendants
7 “are States, State officials, or other governmental entities against whom the district court may
8 be foreclosed from ordering relief.” *Id.* Nor do the exceptions in § 1332(d)(9) apply because
9 this is not an action involving “a covered security as defined under 16(f)(3) of the Securities
10 Act of 1933 (15 U.S.C. 78p(f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of
11 1934 (15 U.S.C. 78bb(f)(5)(E)),” a case “that relates to the internal affairs or governance of a
12 corporation or other form of business enterprise and that arises under or by virtue of the laws
13 of the State in which such corporation or business enterprise is incorporated or organized,” or
14 one “that relates to the rights, duties (including fiduciary duties), and obligations relating to or
15 created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act
16 of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder.”

17 **III. REMOVAL IS PROCEDURALLY APPROPRIATE**

18 11. **Timeliness.** This removal is timely pursuant to 28 U.S.C. § 1446(b)(3), which
19 permits removal within 30 days after service of a complaint. *See Murphy Bros. v. Michetti*
20 *Pipe Stringing*, 526 U.S. 344, 354-55 (1999) (defendant’s deadline for removal under 28
21 U.S.C. 1446(b) does not begin to run until formal service is effectuated).

22 12. On March 8, 2017, Plaintiff served Defendants Metro-Goldwyn-Mayer Studios
23 Inc., Twentieth Century Fox Home Entertainment LLC and Twenty-First Century Fox, Inc.
24 with a summons, copy of Plaintiff’s Complaint, and state court scheduling order.

25 13. On March 17, 2017, Plaintiff served Defendant MGM Holdings Inc. with a
26 summons, copy of Plaintiff’s Complaint, and state court scheduling order.

27 14. This Notice of Removal is timely filed within 30 days after Defendants were
NOTICE OF REMOVAL TO FEDERAL COURT - 4
CASE NO. 2:17-CV-00541

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1 served with the Summons and Complaint.

2 15. **Venue.** Venue is proper under 28 U.S.C. §§ 1441(a) and 1446(a) because the
3 Western District of Washington is the district and division within which this action is
4 pending.

5 16. **Intradistrict Assignment (Local Civil Rule 101(e)).** This case is removed
6 from King County Superior Court and so assignment to the Seattle Division is appropriate.
7 LCR 3(d)(1).

8 17. **Consent.** All named Defendants consent to removal of this matter to federal
9 court.

10 18. **State Court Pleadings.** As required by 28 U.S.C. § 1446, a true and correct
11 copy of all state court process, pleadings, or orders served on the removing party to date are
12 attached to the Declaration of John S. Devlin as Exhibits 1-7.

13 19. **Notice.** Pursuant to 28 U.S.C. § 1446(d), upon filing this Notice of Removal
14 Defendants shall give written notice to Plaintiff's counsel and shall file a copy of this Notice
15 with the clerk of the Superior Court for the County of King.

16 20. **Signature.** Pursuant to 28 U.S.C. § 1446(a), this Notice of Removal is signed
17 subject to Rule 11.

18 **IV. CONCLUSION**

19 21. Based on the foregoing, Defendants hereby remove this action from the
20 Superior Court of the State of Washington for the County of King to the United States District
21 Court for the Western District of Washington.

22 DATED: April 7, 2017.

LANE POWELL PC

By s/John S. Devlin

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Attorneys for Defendants MGM Holdings Inc.,
Metro-Goldwyn-Mayer Studios Inc., Twentieth
Century Fox Home Entertainment LLC, and
Twenty-First Century Fox, Inc.

CERTIFICATE OF SERVICE

I certify that on the date indicated below I caused a copy of the foregoing document to be filed with the Clerk of the Court via the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the attorneys of record.

I affirm under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct to the best of my knowledge.

SIGNED April 7, 2017, at Seattle, Washington.

s/ Leah Burrus

Leah Burrus

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

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

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

DEFENDANTS

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

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

Attorneys (If Known)

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

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

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

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

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

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

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

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

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

8

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

FILED

17 MAR 06 PM 2:38

KING COUNTY
SUPERIOR COURT CLERK
E-FILED

CASE NUMBER: 17-2-05206-0 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KINGMARY L. JOHNSON, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

MGM HOLDINGS, INC.; METRO-
GOLDWYN-MAYER STUDIOS INC.;
TWENTIETH CENTURY FOX HOME
ENTERTAINMENT, LLC; and TWENTY
FIRST CENTURY FOX, INC., DOES 1 – 10,
inclusive,

Defendants.

NO.

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF WASHINGTON'S
CONSUMER PROTECTION ACT;
2. BREACH OF EXPRESS WARRANTIES;
AND
3. BREACH OF THE IMPLIED
WARRANTY OF MERCHANTABILITY

DEMAND FOR JURY TRIAL

Plaintiff Mary L. Johnson ("**Plaintiff**"), on behalf of herself and all others similarly situated, by and through her undersigned counsel, hereby files her class action complaint against Defendants MGM Holdings, Inc. ("**MGM Holdings**"), Metro-Goldwyn-Mayer Studios Inc. ("**MGM**"), Twenty First Century Fox, Inc. ("**21st Century Fox**"), and Twentieth Century Fox Home Entertainment LLC ("**20th Century Fox**"). MGM Holdings, MGM, 21st Century Fox, and 20th Century Fox are each individually a "**Defendant**" and may be collectively referred to hereinafter as the "**Defendants**".

INTRODUCTION

"Bond, James Bond." It is one of the iconic and universally known fictional secret agent's very first lines in *Dr. No*, the first James Bond film. When Bond creator Ian Fleming published his first James Bond novel, *Casino Royale*, in 1953, little did he know that the

1 astounding stunts, twisty plots, improbable villains, sexy girls, and his magnetically attractive yet
 2 detached hero, British secret agent James Bond, would become one of the most successful movie
 3 franchises in the world. It has been reported that the James Bond 007 brand is worth close to \$20
 4 billion (\$20,000,000,000). Of the \$20 billion generated by the brand, close to \$3 billion
 5 (\$3,000,000,000) has come from the sales of DVDs and the equivalent.

6 In order to capitalize on the success of the James Bond franchise, beginning in 2012, the
 7 Defendants released a series of boxed sets of James Bond films on DVD and represented on the
 8 packaging of these sets that each set contains “[a]ll the Bond films gathered together for the first
 9 time in this one-of-a kind boxed set – every gorgeous girl, nefarious villain and charismatic star
 10 from Sean Connery, the legendary actor who started it all, to Daniel Craig.” However, none of
 11 these sets contains “all” of the James Bond films or “every” gorgeous girl, nefarious villain, and
 12 charismatic star featured therein. The sets only contain the films produced by Eon Productions, a
 13 British-based production company that ultimately sold its video rights to the James Bond movies
 14 it produced to MGM. Two additional James Bond films that were not produced by Eon
 15 Productions, *Casino Royale* (1967) (in which actor David Niven, Ian Fleming’s first choice to
 16 play the role of James Bond, plays Bond) and *Never Say Never Again* (1983) (the last of seven
 17 (7) James Bond films in which the actor Sean Connery plays James Bond), are not included in
 18 the sets — even though MGM acquired the rights to these two films in 1997, some twenty (20)
 19 years ago.

20 Plaintiff Mary Johnson has enjoyed James Bond films since the release of *Dr. No* in
 21 1962. Plaintiff purchased one of the James Bond box sets and relied to her detriment on the
 22 Defendants’ representations regarding the contents of the set. As a result, Plaintiff did not
 23 receive the product she was led to believe she purchased. The representations that Defendants
 24 make on the James Bond sets are false, mislead consumers (and Plaintiff in particular), and
 25 constitute unfair and deceptive business practices in violation of applicable law.

26 This class action seeks redress on behalf of a nationwide class of consumers, or,

1 alternatively, a class of consumers from a variety of states, who were misled into purchasing
 2 what was represented to be the complete collection of James Bond movies when in fact, it was an
 3 incomplete collection.

4 JURISDICTION AND VENUE

5 1. This Court has subject matter jurisdiction over Plaintiff's claims and venue in
 6 King County, Washington is proper because the amount in controversy exceeds this Court's
 7 jurisdictional minimum, the Defendants do business in King County, Washington, and Plaintiff's
 8 claims arise from Washington law.

9 PARTIES

10 2. Plaintiff Mary L. Johnson is a citizen of the state of Washington and a resident of
 11 Pierce County, Washington.

12 3. Defendant MGM Holdings is a Delaware corporation with its principal place of
 13 business located at 245 N. Beverly Drive, Beverly Hills CA 90210.

14 4. Defendant MGM Holdings is the parent company of Defendant MGM.

15 5. Defendant MGM is a Delaware corporation with its principal place of business
 16 located at 245 N. Beverly Drive, Beverly Hills CA 90210.

17 6. Defendant MGM is a media company, involved primarily in the production and
 18 global distribution of feature films and television content across all platforms.

19 7. Defendant MGM produces and distributes the MGM James Bond DVD box sets.

20 8. Defendant 21st Century Fox is a Delaware corporation headquartered at 1211
 21 Avenue of the Americas, New York, NY 10036, with a principal place of business located at
 22 10201 W. Pico Blvd., Los Angeles, CA 90064.

23 9. Defendant 21st Century Fox is a diversified global media and entertainment
 24 company, whose numerous activities include the production and acquisition of live-action and
 25 animated motion pictures for distribution and licensing in all formats in all entertainment media
 26 worldwide.

10. Defendant 20th Century Fox is a Delaware limited liability company with its principal place of business located at 10201 West Pico Blvd. Bldg. 100, Suite 3220. Los Angeles, CA 90035.

11. Defendant 20th Century Fox distributes motion pictures and other programming in the United States, Canada, and international markets in all home media formats, including the sale and rental of DVDs and Blu-rays.

FACTUAL ALLEGATIONS

12. MGM Holdings is a leading entertainment company focused on the global production and distribution of film and television content. It has one of the most well-known brands in the industry, with globally recognized film franchises and television content, a broad collection of valuable intellectual property, and commercially successful and critically acclaimed content. Its operations include the development, production, and financing of feature films and television content and the worldwide distribution of entertainment content primarily through television and digital distribution.¹

13. MGM Holdings is the parent corporation of MGM. According to MGM Holdings, it controls one of the deepest libraries of premium films and television content. Its film content library includes the James Bond franchises.²

14. MGM owns the distribution rights to the James Bond movies.

15. 21st Century Fox is the parent corporation of 20th Century Fox. According to 21st Century Fox, a Delaware corporation, it is a diversified global media and entertainment company with operations in the various segments including cable network programming, television, and filmed entertainment. The activities of Twenty-First Century Fox, Inc. are conducted principally in the United States, the United Kingdom, Continental Europe, Asia, and Latin America.

16. 20th Century Fox distributes motion pictures and other programming in the United States, Canada, and other international markets in all home media formats, including the sale and

¹ See <https://www.linkedin.com/company/mgm> (last visited Nov. 10, 2016).

² *Id.*

1 rental of DVDs and Blu-rays.

2 17. Upon information and belief, since 1999, MGM and 20th Century Fox have had a
3 worldwide home video distribution arrangement pursuant to which 20th Century Fox handles
4 marketing and distribution services for all or certain of MGM's Blu-ray and DVD products and
5 manages the operation and marketing of Digital JD and transactional VOPD for MGM's film
6 library. The James Bond movies are included in this agreement.

7 18. Upon information and belief, in 2013, 20th Century Fox continued its worldwide
8 home video distribution arrangement with MGM, releasing approximately 583 MGM home
9 entertainment theatrical, catalog, and television programs domestically and 611 internationally.

10 19. EON Productions is a United Kingdom based production company which
11 produces James Bond films.

12 20. Upon information and belief, the James Bond franchise is the longest running
13 franchise in film history with twenty-six films produced and released in the theaters from 1962 to
14 date. The first James Bond movie released in the theaters, *Dr. No*, was released in 1962, and the
15 last James Bond movie released in the theaters was *Spectre*, which was released in 2015.

16 21. Upon information and belief, MGM is the sole distributor of the James Bond films
17 series produced by EON Productions.

18 22. Even though MGM later acquired the rights to distribute them, two James Bond
19 movies, *Casino Royale* (1967) and *Never Say Never Again* (1983) were not produced by EON
20 Productions.

21 23. On or about September 2012, to mark the fiftieth (50th) anniversary of the
22 beginning of the James Bond film franchise, Defendants released their first DVD box set called
23 *Bond 50, Celebrating Five Decades of Bond 007*, which set features and includes 22 original
24 Bond adventures, from *Dr. No* – the movie that started it all – to 2008's *Quantum of Solace* (the
25 "**Bond 50 Set**").

26 24. The back side of the box of the Bond 50 Set contains the following

1 representations: “All the Bond films are gathered together for the first time in this one-of-a kind
 2 boxed set – every gorgeous girl, nefarious villain and charismatic star from Sean Connery, the
 3 legendary actor who started it all, to Daniel Craig.” The back side of the box of the Bond 50 Set
 4 also contains the following representations: “A fitting tribute to the most iconic and enduring
 5 secret agent in movie history, BOND 50 is the greatest collection ever assembled.”

6 “BOXED SET CONTENTS: 22 films on DVD from *Dr. No* to *Quantum of Solace*[.]”

7 25. A true, correct, and unaltered photograph of the back side of the Bond 50 Set is as
 8 follows:



23 26. On or about July 15, 2015, Defendants released *The Ultimate James Bond*
 24 *Collection* (the “**Ultimate James Bond Collection**”).

25 27. The back side of the box of the Ultimate James Bond Collection contains the
 26 following representations: “All the Bond films are gathered together in this one-of-a kind boxed

1 set – every gorgeous girl, nefarious villain and charismatic star from Sean Connery to Daniel
 2 Craig.” The back side of the box of the Ultimate James Bond Collection also contains the
 3 following representations: “BOXED SET CONTENTS: 23 films on Blu-ray, from *Dr. No* to
 4 *Skyfall*[.]”

5 28. A true, correct, and unaltered photograph of the back side of the box of the
 6 Ultimate James Bond Collection set is as follows:



21
 22
 23
 24
 25
 26 29. On or about January 1, 2016, Defendants released *The James Bond Collection* [Blu-ray] (the “James Bond Collection”).

30. The back side of the box of the James Bond Collection contains the following representations: “All the Bond films are gathered together in this one-of-a-kind boxed set – every gorgeous girl, nefarious villain and charismatic star from Sean Connery to Daniel Craig.” The back side of the box of the James Bond Collection also contains the following representations: “BOXED SET CONTENTS: 23 films on Blu-ray, from *Dr. No* to *Skyfall*[.]”

31. A true, correct, and unaltered photograph of the back side of the box of the James Bond Collection is as follows:



32. The Bond 50 Set, the James Bond Collection, and the Ultimate James Bond Collection are collectively referred to hereinafter from time to time as the “Sets.” The list of the movies contained in each of the Sets is printed at the bottom of each of the Sets’ boxes in very

small print.

33. A true, correct, and unaltered photograph of the bottom of each of the Sets' boxes is as follows:



CLASS ACTION COMPLAINT - 9

18016-1/ASK/754516

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34. The list of the movies that appear on the bottom of the Sets is in very small print. On information and belief, it is very difficult if not impossible for a person with ordinary, normal vision to read and fully understand this very small print.

35. Despite representing that the Sets contain **ALL** the James Bond films, all of the Sets are missing the two James Bond movies not produced by Eon Productions, namely *Casino Royale* (1967) and *Never Say Never Again* (1983).

36. Despite representing that the Sets contain **EVERY** gorgeous girl and nefarious villain, Orson Welles, the villain in *Casino Royale* (1967), Joanna Pettet, a “gorgeous girl” in *Casino Royale* (1967), Kim Bassinger, a “gorgeous girl” in *Never Say Never Again*, Barbara Carrera, another “gorgeous girl” in *Never Say Never Again*, and Klaus Maria Brandauer, the villain in *Never Say Never Again*, are not included in the Sets.

37. Despite representing that the Sets contain **EVERY** charismatic star, David Niven, the “charismatic star” of *Casino Royale* (1967) is missing from the Sets. David Niven was James Bond creator Ian Fleming’s first choice to play James Bond in the James Bond movies. Moreover, the Sets also do not contain **EVERY** charismatic star because Sean Connery, who was the actor and “charismatic star” who played James Bond in the movies entitled *Dr. No*, *From Russia With Love*, *Goldfinger*, *Thunderball*, *You Only Live Twice*, *Diamonds are Forever*, and *Never Say Never Again* is missing from the Sets given that Mr. Connery’s starring role as James Bond in *Never Say Never Again* is not a part of the Sets.

38. The distribution rights to the James Bond movies that MGM owns includes the distribution rights to *Casino Royale* (1967) and *Never Say Never Again*.

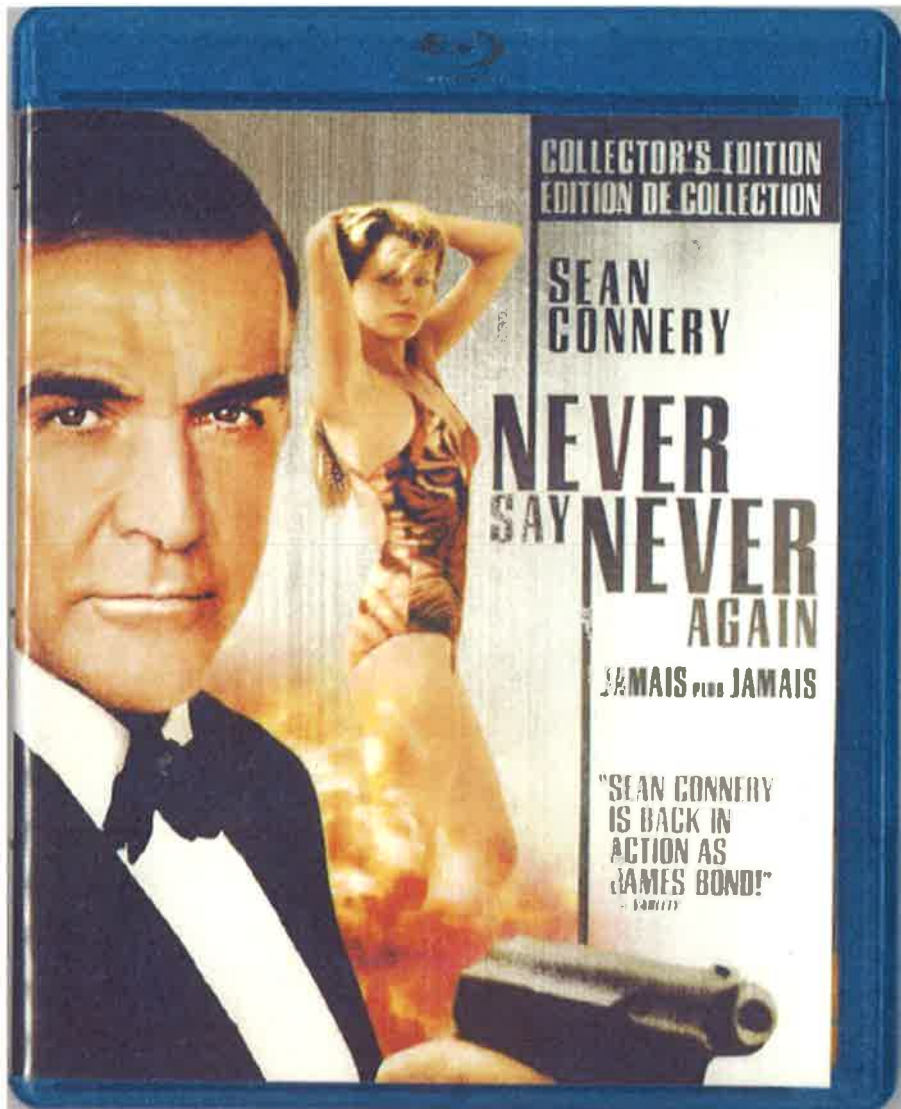
39. The Defendants produce, promote, and sell *Casino Royale* (1967) and *Never Say Never Again* as individual DVDs and Blu-ray movies.

40. Thus, despite MGM owning the distribution rights of *Casino Royale* and *Never say Never Again*, and despite Defendants producing, promoting and selling *Casino Royale* and *Never say Never Again*, Defendants distribute, produce, promote and sell the Sets without

including those two films.

41. The front side of the *Never Say Never Again* Blu-ray Collector's Edition features a photograph of the actor Sean Connery in a tuxedo and bow tie holding a pistol and contains the statement "SEAN CONNERY IS BACK IN ACTION AS JAMES BOND!"

42. A true, correct, and unaltered photograph of the front side and back side of the *Never Say Never Again* Blu-ray Collector's Edition is as follows:



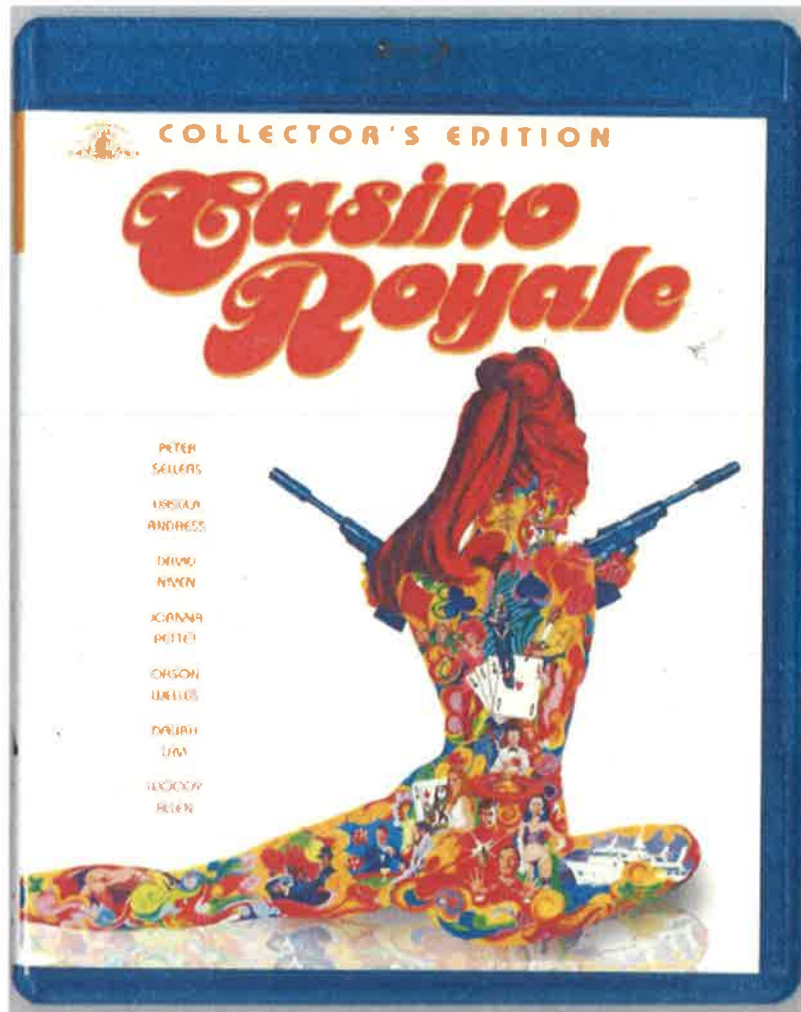


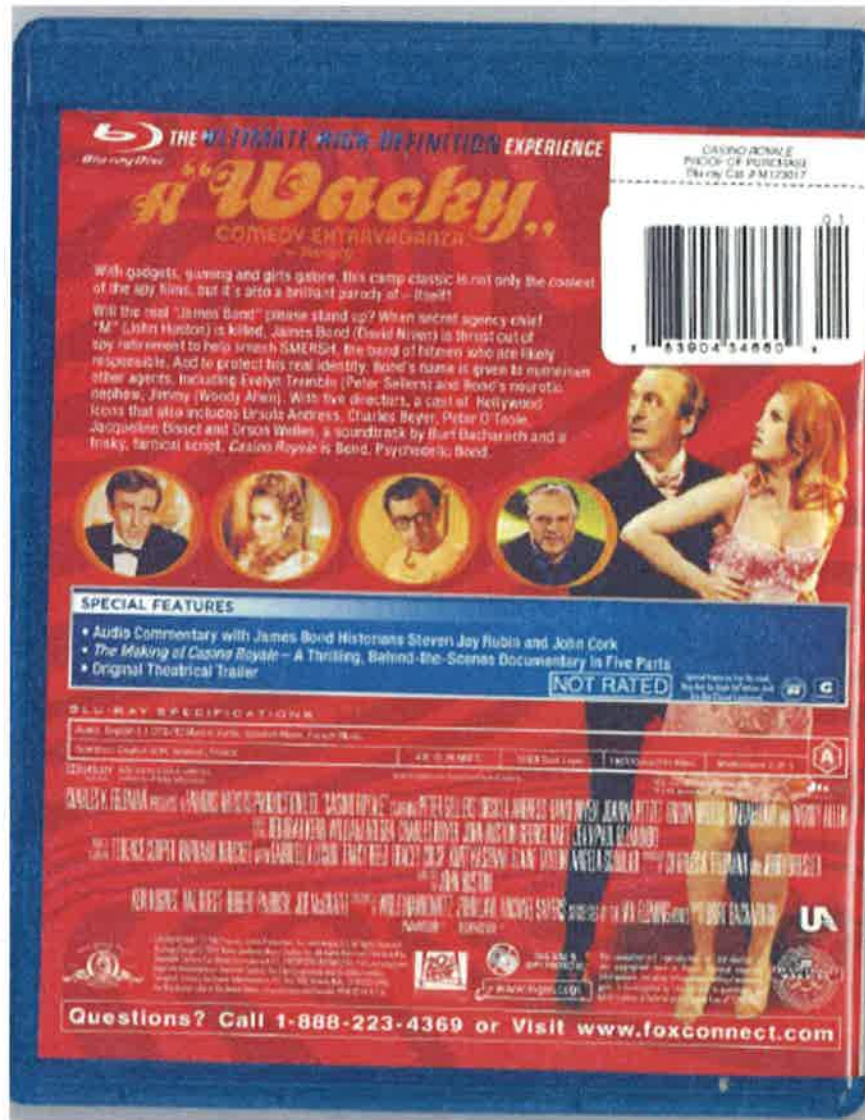
43. The back side of the *Never Say Never Again* Blu-ray Collector's Edition states, among other things, "Sean Connery is back for his final performance as agent James Bond ..." and "Agent 007 is hurled into a pulse-pounding race to save the world from armageddon when two atomic warheads are hijacked by the evil SPECTRE organization[.]" The back side of the *Never Say Never Again* Blu-ray Collector's Edition also reflects it contains special features that include commentary with "James Bond Historian Steven Jay Rubin" and a "Sean is Back Featurette[.]" The back side of the *Never Say Never Again* Blu-ray Collector's Edition also

contains the logo and/or trademark of 20th Century Fox.

44. The front side of the *Casino Royale* (1967) Collector's Edition features, among other things, the likeness of a young nude woman holding two pistols with silencers attached thereto and the likeness of a dark-haired man wearing a dark suit and bow tie while dropping from a parachute and holding a pistol with a silencer attached thereto. The MGM trademark also appears on the front side of the *Casino Royale* (1967) Collector's Edition.

45. A true, correct, and unaltered photograph of the front side and back side of the *Casino Royale* (1967) Collector's Edition is as follows:





46. The back side of the *Casino Royale* (1967) Collector's Edition states, among other things, "Will the real 'James Bond' please stand up? When secret agency chief 'M' (John Huston) is killed, James Bond (David Niven) is thrust out of spy retirement to help smash SMERSH, the band of hitmen who are likely responsible. And to protect his real identity, Bond's name is given to numerous other agents[.]". The back side of the *Casino Royale* (1967) Collector's Edition also states "*Casino Royale* is Bond. Psychedelic Bond." The back side of the *Casino Royale* (1967) Collector's Edition also contains the MGM trademark and the logo or trademark of 20th Century Fox.

1 47. Thus, despite producing, promoting and selling *Casino Royale* and *Never Say*
 2 *Never Again* as individual DVS's and Blu-ray movies, Defendants represents that the Sets
 3 contain **ALL** the James Bond ever made. These representations are false, misleading, and likely
 4 to deceive reasonable consumers.

5 48. All Defendants are headquartered or have their principal place of business in
 6 California. The false and misleading representations are conceived, reviewed, approved and
 7 otherwise controlled by Defendants from Defendants' headquarters and/or principal place of
 8 business out of Beverley Hills and Los Angeles in California.

9 49. On or about February 9, 2016, Plaintiff Mary L. Johnson purchased the James
 10 Bond Collection via the Internet from the Amazon.com website for approximately One Hundred
 11 Six United States Dollars and Forty-Four Cents (\$106.44).

12 50. Amazon, the world largest online retailer, sells a variety of consumer products,
 13 including DVD's and Blurays. It served as intermediary in the transaction between Plaintiff and
 14 Defendants.

15 51. On its website, Amazon reproduces Defendants' false and misleading
 16 representations that the Sets contain "all" of the James Bond movies.

17 52. Before making her purchasing decision concerning the James Bond Collection
 18 with Amazon, Plaintiff physically handled and inspected the James Bond Collection in person at
 19 a "brick and mortar" store or stores that carried the James Bond Collection. While handling the
 20 James Bond Collection in person, Plaintiff read the representations on the back of the box of the
 21 James Bond Collection.

22 53. Ultimately, Plaintiff read and relied upon the deceptive representations on the box
 23 of the James Bond Collection, and repeated on Amazon, to the effect that the James Bond
 24 Collection contained **ALL** of the James Bond movies ever made. Among the representations
 25 Plaintiff read and relied upon was the representation that "All the Bond films are gathered
 26 together in this one-of-a-kind boxed set – every gorgeous girl, nefarious villain and charismatic

1 star from Sean Connery to Daniel Craig.”

2 54. Plaintiff believed that the James Bond Collection contained **ALL** the James Bond
3 films as represented on the box, which films would include *Casino Royale* (1967) and *Never Say*
4 *Never Again* if complete. Plaintiff would not have purchased the James Bond Collection at the
5 price she paid absent the false, misleading and deceptive representations on the box of the James
6 Bond Collection as set forth above.

7 55. Instead of purchasing what she thought was a boxed set containing **ALL** of the
8 James Bond films, Plaintiff purchased a set containing **ALL** of the James Bond films **MINUS**
9 two (2) such films, namely *Casino Royale* (1967) and *Never Say Never Again*.

10 56. Plaintiff lost money as a result of Defendants’ unfair and deceptive claims in that
11 she did not receive what she paid for.

12 57. *Casino Royale* (1967) and *Never Say Never Again* can be purchased individually
13 on the Amazon website and, on information and belief, in traditional brick and mortar stores
14 and/or their related websites. In addition, MGM, on its own website, offers for sale through
15 Amazon *Never Say Never Again*.³

16 58. On information and belief, *Casino Royale* (1967) can be purchased for \$ 29.99
17 and *Never Say Never Again* can be purchased for \$39.38 on the Amazon website.

18 59. Accordingly, in order to have **ALL** the Bond films as represented on the Sets,
19 Plaintiff would have to spend approximately \$29.99 plus tax for *Casino Royale* (1967) and
20 \$39.38 plus tax for *Never Say Never Again* for a total of \$69.37 plus tax. Potential additional
21 shipping and handling charges might also apply if these two missing movies are purchased on
22 Amazon or other websites.

23 60. Plaintiff was misled by Defendants’ false, unfair, and deceptive representations.
24 Plaintiff and Class members paid more money than they should have as a result of the
25 Defendants’ false, unfair, and deceptive misrepresentations to the extent that the monies they
26

³ <http://www.mgm.com/#!/results/james+bond> (last visited Jan. 30, 2017).

1 paid for the Set exceeded the value of the Set they received.

2 61. Plaintiff and Class members have conferred substantial benefits on Defendants by
3 purchasing their James Bond DVD and/or Blu-ray Sets, and Defendants have consciously and
4 willingly accepted and enjoyed these benefits.

5 62. Defendants knew or should have known that consumers' payments for their James
6 Bond DVD and/or Blu-ray Sets were given with the expectation that the Sets would include "all"
7 of the James Bond movies as represented.

8 63. Because of the false, unfair, and deceptive misrepresentations as described herein,
9 Defendants have been unjustly enriched by their wrongful receipt of Plaintiff's and Class
10 members' monies.

11 64. Defendants should be required to account for and disgorge all monies, profits and
12 gains which they have obtained or will unjustly obtain in the future at the expense of consumers.

13 CLASS ALLEGATIONS

14 65. Plaintiff realleges and incorporates by reference as if fully rewritten the previous
15 paragraphs of the Complaint.

16 66. Plaintiff brings this action as a class action pursuant to Washington Superior Court
17 Rule 23. Plaintiff seeks certification of Plaintiff's claims and certain issues in this action on
18 behalf two alternative Classes (hereinafter referred to as the "**Plaintiff Class**" or "**Class**")
19 consisting of:

20 All persons who purchased, since March 6, 2013, one or more DVD/Blu-ray box
21 sets entitled Bond 50: Celebrating Five Decades of Bond 007, The James Bond Collection,
22 and/or The Ultimate James Bond Collection, in the United States, for their own or household use
23 rather than for resale or distribution.

24 Alternatively, all persons who purchased, since March 6, 2013, one or more
25 DVD/Blu-ray box sets entitled Bond 50: Celebrating Five Decades of Bond 007, The James
26 Bond Collection, and/or The Ultimate James Bond Collection, in the states of California, Florida,

1 Illinois, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, and
2 Washington,⁴ for their own or household use rather than for resale or distribution.

3 Specifically excluded from the Class are Defendants, officers, directors and
4 employees of any of the Defendants and members of their immediate families, and any Judge
5 who may preside over this case and his or her immediate family.

6 67. Plaintiff reserves her right to amend or modify the Class description with greater
7 specificity or further division into subclasses or limitations to particular issues.

8 68. This action has been brought and may properly be maintained as a class action
9 pursuant to Washington Superior Court Rule 23, in that there is a well-defined community of
10 interest, the Class is so numerous as to make it impracticable to bring all of its members before
11 the Court, the adjudication of this action as a class action is a superior method of resolving this
12 controversy, and substantial benefits will accrue to members of the Class.

13 69. The precise number of Class members is as yet unknown to Plaintiff. However,
14 based on the sales of all Sets throughout the United States, upon information and belief, Plaintiff
15 alleges the number of Class members to be in the hundreds of thousands. It is therefore
16 impracticable to bring all members of the Class before this Court and disposition of the Class
17 members' claims in a class action is in the best interests of the parties and judicial economy.

18 70. There is a community of interest in that (a) common questions of law and fact in
19 this action predominate over individual questions, (b) the claims of the Class representatives are
20 typical of the claims of other members of the Class, and (c) the Class representatives will
21 adequately represent the interests of the Class.

22 71. **COMMONALITY:** Common questions of law and fact exist as to all members of
23

24 ⁴ The states in the Multi-State Class are limited to those states with similar consumer fraud laws
25 under the facts of this case: California (Cal. Bus. & Prof. Code § 17200, *et seq.*; Cal. Civ. Code §
26 1770 *et seq.*; and Cal. Bus. & Prof. Code § 17500 *et seq.*); Florida (Fla. Stat. § 501.201, *et seq.*);
Illinois (815 Ill. Comp. Stat. 505/1, *et seq.*); Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq.*);
Michigan (Mich. Comp. Laws § 445.901, *et seq.*); Minnesota (Minn. Stat. § 325F.67, *et seq.*);
Missouri (Mo. Rev. Stat. § 407.010, *et seq.*); New Jersey (N.J. Stat. § 56:8-1, *et seq.*); New York
(N.Y. Gen. Bus. Law § 349, *et seq.*); and Washington (Wash. Rev. Code § 19.86.010, *et seq.*).

the Class and predominate over any questions which affect individual members of the Class in that Defendants have engaged in a common course of conduct in dealings with the Class and acted in a manner generally applicable to the entire Class. These common questions of law and fact include without limitation:

(a) Whether Defendants distributed and marketed, sold or otherwise placed the Sets in the stream of commerce in the United States and/or certain states within the United States;

(b) Whether the representations made by Defendants on the Sets are false;

(c) Whether the representations made by Defendants on the Sets are likely to deceive a reasonable consumer;

(d) Whether the representations made by Defendants on the Sets are unfair or deceptive;

(e) Whether Plaintiff and Class members directly and proximately suffered injury to their business or property by purchasing the Sets;

(f) Whether the representations on the outside of the box Sets constitute express warranties the Defendants breached and whether said representations also give rise to claims for breach of the implied warranty of merchantability for which the Defendants are liable to Plaintiff and the Class; and

(g) Whether Plaintiff and Class members are entitled to punitive damages under the Washington Consumer Protection Act.

72. **TYPICALITY:** The claims of Plaintiff are typical of the claims of the other Class members in that the Plaintiff, like other Class members, purchased one of the Sets distributed and/or marketed by Defendants which contained the false, untrue, deceptive, and misleading representations, and Plaintiff, like the other members of the Class, have been damaged by Defendants' false, untrue, deceptive, and misleading representations in that they purchased a Set that did not contain ALL of the James Bond films as represented. Furthermore, the factual basis

1 of Defendants' misconduct is common to all Class members and represents a common thread of
 2 misconduct resulting in injury to all Class members. Lastly, the relief sought is common.

3 73. **ADEQUATE REPRESENTATION:** Plaintiff is a member of the Class and will
 4 fairly and adequately represent and protect the interests of the Class. Plaintiff has retained
 5 counsel who are experienced in prosecuting consumer class actions. Plaintiff has no interests that
 6 conflict with those of the Class. Plaintiff and her counsel are committed to vigorously
 7 prosecuting this action on behalf of the Class.

8 74. **SUPERIORITY:** Defendants' conduct applied uniformly to Plaintiff and all
 9 Class members so that Plaintiff and all Class members were uniformly deceived. A class action is
 10 superior to all other available methods for the fair and efficient adjudication of this controversy.
 11 Plaintiff and Class members have suffered economic harm as a result of Defendants' unlawful
 12 and wrongful conduct which was directed towards Class members and the public as a whole
 13 rather than specifically and uniquely against any individual Class members.

14 75. Defendants have acted in a uniform manner with respect to Plaintiff and Class
 15 members. Absent a class action, most Class members would likely find the costs of litigating
 16 their claims prohibitively high and would therefore have no effective remedy at law. Because of
 17 the relatively small size of any individual Class member's claims, it is likely that only a few
 18 could afford to seek legal redress for Defendants' misconduct. Absent a class action, Class
 19 members will continue to incur damages and Defendants' wrongful conduct will continue with
 20 no effective remedy.

21 76. Class treatment in this Court will conserve the resources of the courts and the
 22 litigants and will promote consistency and efficiency of adjudication by providing common
 23 answers to the common questions of knowledge, conduct, duty, and breach that predominate in
 24 this action.

25 77. Plaintiff knows of no difficulty that will be encountered in the management of this
 26 litigation that would preclude its maintenance as a class action.

COUNT I - VIOLATION OF WASHINGTON'S CONSUMER PROTECTION ACT,
RCW 19.86

78. Plaintiff realleges and incorporates by reference as if fully rewritten the previous paragraphs of the Complaint.

79. The Defendants' marketing and sale of the Sets as described herein by way of statements or advertisements on the Sets' packaging that are false constitute unfair or deceptive acts or practices in trade or commerce that affects the public interest that has caused injury to Plaintiff's business or property and the Class's business or property.

80. As a direct and proximate result of the Defendants' violation of the Washington Consumer Protection Act, Plaintiff and Class members have been damaged in an amount to be proven at trial. The Court should enter a judgment for actual damages in favor of Plaintiff and the Class and increase the award of damages up to an amount not to exceed three times the actual damages sustained pursuant to RCW 19.86.090.

COUNT II – BREACH OF EXPRESS WARRANTIES

81. Plaintiff realleges and incorporates by reference as if fully rewritten the previous paragraphs of the Complaint.

82. Beginning on or about September 15, 2012, which is at least since four years prior to the filing date of this action, and as set forth hereinabove, Defendants made representations to the public, including Plaintiff, on their packaging and other means that the Sets included "all" of the Bond films and 'every gorgeous girl, nefarious villain and charismatic star from Sean Connery to Daniel Craig.'" These and related promises became part of the basis of the bargain between the parties and thus constituted express warranties.

83. Thereon, Defendants, through their distributors and agents, sold the Sets to Plaintiff and Class members, who bought the Sets from Defendants' distributors and agents.

84. However, Defendants breached the express warranties they made by virtue of the representations they generated and printed on the outside of the Sets in that the Sets were missing two Bond films and in fact did not include "all" of the Bond films and 'every gorgeous girl,

1 nefarious villain and charismatic star from Sean Connery to Daniel Craig.” As a result of this
 2 breach, Plaintiff and Class members in fact did not receive goods as warranted by Defendants.

3 85. As a direct and proximate result of this breach of warranty by Defendants,
 4 Plaintiff and Class members have been damaged in an amount to be determined at trial.

5 **COUNT III – BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

6 86. Plaintiff realleges and incorporates by reference as if fully rewritten the previous
 7 paragraphs of the Complaint.

8 87. Beginning on or about September 15, 2012, which is at least since four years prior
 9 to the filing date of this action, and as set forth hereinabove, Defendants made representations to
 10 consumers, including Plaintiffs, on their packaging and other means that the Sets included “all”
 11 of the Bond films and ‘every gorgeous girl, nefarious villain and charismatic star from Sean
 12 Connery to Daniel Craig.” Plaintiff and other consumers bought the Sets from Defendants’
 13 distributors and agents.

14 88. An implied warranty of merchantability guarantees that consumer goods meet
 15 each and every one of the following: (1) Pass without objection in the trade under the contract
 16 description; (2) Are fit for the ordinary purposes for which such goods are used; and (3) run,
 17 within the variations permitted by the agreement, of even kind, quality and quantity within each
 18 unit and among all units involved; (4) Are adequately contained, packaged, and labeled as the
 19 agreement may require; and (5) Conform to the promises or affirmations of fact made on the
 20 container or label if any. RCW 62A.2-314.

21 89. Defendants were merchants with respect to goods of this kind which were sold to
 22 Plaintiff and other consumers, and there was in the sale to Plaintiff and Class members an
 23 implied warranty that those goods were merchantable.

24 90. However, Defendants breached that warranty implied in the contract for the sale
 25 of goods, in that the Sets were missing two Bond films and in fact did not include “all” of the
 26 Bond films and ‘every gorgeous girl, nefarious villain and charismatic star from Sean Connery to

1 Daniel Craig” as set forth in detail hereinabove.

2 91. As a result of Defendants’ conduct, Plaintiff and Class members did not receive
3 goods as impliedly warranted by Defendants to be merchantable.

4 92. As a direct and proximate result of this breach of warranty by Defendants,
5 Plaintiff and other Class members have been damaged in an amount to be determined at trial.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff, on behalf of herself and Class members prays for:

8 1. An Order certifying the Class, and appointing Plaintiff as representative of the
9 Class, and appointing counsel of record for Plaintiff as Class counsel;

10 2. The entry of judgment on the claims set forth in this Complaint in favor of
11 Plaintiff and the Class and against the Defendants in an amount to be proven at trial;

12 3. Actual damages to Plaintiff and all Class members;

13 4. Punitive or exemplary damages under the Washington Consumer Protection Act
14 to Plaintiff and all Class members;

15 5. An award of attorneys’ fees;

16 6. An award of costs;

17 7. An award of interest, including both pre and post-judgment interest, at the highest
18 rate allowable by law; and

19 8. Such other and further relief as the Court may allow.

20 DATED this 6 day of March, 2017.

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