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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES COLLINS, et al.,
Plaintiffs,
v.
GAMESTOP CORP., et al.,
Defendants.

NO. C10-1210 TEH

ORDER GRANTING MOTION
FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

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This matter comes before the Court on Plaintiffs' motion for preliminary approval of the class action settlement agreement ("Agreement") filed with the Court on February 24, 2012, as Exhibit 1 to the Declaration of Mark Pifko. No oppositions were filed to the motion, and this Court vacated the hearing date and requested joint supplemental briefing on March 23, 2012. Because the parties failed to answer one of the Court's questions, the Court ordered them to file a further joint supplemental brief on April 2, 2012. The Court has now reviewed all of the papers and GRANTS preliminary approval to the proposed settlement. With good cause appearing, IT IS HEREBY ORDERED that:

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1. Capitalized terms used in this order shall have the same meaning as set forth in the Agreement.

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2. For settlement purposes only, pursuant to Federal Rule of Civil Procedure 23, the Court hereby conditionally certifies the following class ("Settlement Class"): All California residents who purchased a used video game from GameStop from March 23, 2006, through April 9, 2012, that offered free downloadable content to purchasers of a new copy of the game and such downloadable content was not available to used game purchasers without additional payment.

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3. Having considered the factors set forth in Federal Rule of Civil Procedure 23(g), the Court appoints Roland Tellis and Mark Pifko of Baron & Budd, P.C., and Gene

1 Williams and Arnab Banerjee of Initiative Legal Group APC as counsel for the Settlement
2 Class.

3 4. The Court preliminarily approves the Agreement as fair, reasonable, adequate,
4 and within the range of possible approval, subject to further consideration at the final
5 approval hearing as set forth below in paragraph 7. It appears that the Agreement was
6 negotiated at arm's length, with the assistance of two independent mediators, and is not the
7 product of collusion.

8 5. The Court approves, as to form and content, the Claim Form, Claims
9 Administration Protocol, and Class Notice attached as Exhibits A, B, and C to the
10 Agreement. The Court finds that the dissemination of the Class Notice, as directed by this
11 order, constitutes the best notice practicable under the circumstances. The Court authorizes
12 the parties to make minor revisions to the Class Notice as they may jointly deem necessary or
13 appropriate, and also to insert dates and deadlines consistent with this order, without
14 necessity of further Court action or approval.

15 6. Gilardi & Co. LLC is hereby appointed as Claims Administrator.

16 7. A final approval hearing shall be held by this Court on **September 17, 2012, at**
17 **10:00 AM.** At that hearing, the Court will determine whether to grant final approval to the
18 proposed settlement, including payment of service awards to the named class representatives,
19 and whether to grant Plaintiffs' counsel's motion for attorneys' fees and costs. The Court
20 may adjourn or continue the date of the final approval hearing without further notice to the
21 Settlement Class.

22 8. Any member of the Settlement Class who does not request exclusion and who
23 objects to approval of the proposed settlement in compliance with the requirements of the
24 Agreement may appear at the final approval hearing in person, or through counsel, to show
25 cause why the proposed settlement should not be approved as fair, reasonable, and adequate.
26 No person other than representatives of the named parties may be heard at the final approval
27 hearing, or file papers or briefs, unless on or before the date set forth below, such person
28 delivers or mails to the Claims Administrator a timely written objection and notice to appear,

1 in accordance with the procedures specified in the Class Notice and the Agreement. Any
2 member of the Settlement Class who does not make his or her objection to the settlement, in
3 the manner provided in the Agreement and in compliance with applicable laws, shall be
4 deemed to have waived such objection for purposes of appeal, collateral attack, or otherwise.

5 9. Any member of the Settlement Class who desires exclusion therefrom must
6 mail, by the date set forth below, the information required in the Class Notice to the
7 addresses set forth in the Class Notice. All persons who properly submit a completed Class
8 Notice requesting exclusion shall not be Settlement Class members and shall have no rights
9 with respect to the settlement.

10 10. All discovery, pretrial deadlines, and other pretrial proceedings in this Action
11 are stayed and suspended until further order of this Court, except as otherwise agreed to by
12 the parties or as may be necessary to implement the Agreement or this order.

13 11. If the proposed settlement as provided in the Agreement is not approved by the
14 Court, or entry of a Final Judgment and Order of Dismissal as provided in the Agreement
15 does not occur for any reason, then the Agreement, all drafts, negotiations, discussions, and
16 documentation relating thereto, and all orders entered by the Court in connection therewith
17 shall become null and void. The Agreement and all negotiations and proceedings relating
18 thereto shall be withdrawn without prejudice to the rights of any and all parties thereto, who
19 shall be restored to their respective positions as of the date of the execution of the
20 Agreement.

21 12. The Agreement is not a concession or admission and shall not be used or
22 construed against Plaintiffs, Defendant, or any of the Released Parties as an admission or
23 indication with respect to any claim of any fault or omission by Plaintiffs, Defendant, or any
24 of the Released Parties. No act performed or document executed pursuant to or in
25 furtherance of the settlement is, or may be deemed to be, an admission or any evidence of: (i)
26 the validity of any Released Claim or of any wrongdoing or liability of Defendant or (ii) any
27 fault or omission of Defendant in any civil, criminal, or administrative proceeding in any
28 court, administrative agency, or other tribunal. Nothing in this order shall be relied upon,

1 cited as, constitute evidence of, or constitute an admission that class or collective action
2 certification is or may be appropriate in any other action.

3 13. The dates of performance of this order are as follows:

4 a. Dissemination of the Class Notice shall be completed by **April 30,**
5 **2012**, and in accordance with the provisions of Sections II.C.2(a) and (b) of the Agreement.

6 b. Requests for exclusion must be received by **June 1, 2012.**

7 c. The parties shall prepare and file with the Court a joint list of class
8 members who have filed timely requests for exclusion by **June 6, 2012.**

9 d. Plaintiffs' counsel's motion for attorneys' fees and costs shall be filed
10 on or before **June 13, 2012.**

11 e. Objections to the settlement, requests for intervention, and notices of
12 intention to appear at the final approval hearing shall be deemed timely only if delivered or
13 mailed to the Claims Administrator by **July 16, 2012.**

14 f. Plaintiffs' counsel shall file and serve papers in support of final approval
15 of settlement, responding to any objections or motion to intervene, and responding to any
16 objections to its request for attorneys' fees and costs by **August 20, 2012.**

17 g. Defendant shall file papers, if any, in support of final approval of the
18 settlement and responding to any objections or motions to intervene by **August 30, 2012.**

19 14. The Court retains jurisdiction to consider all further applications arising out of
20 the proposed settlement.

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22 **IT IS SO ORDERED.**

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24 Dated: 04/09/12



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26 THELTON E. HENDERSON, JUDGE
27 UNITED STATES DISTRICT COURT
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