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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 DENYING WITHOUT  
PREJUDICE DEFENDANTS'  
MOTION FOR LEAVE TO  
SUBMIT EVIDENCE FROM  
MEDIATION PROCEEDINGS

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This matter comes before the Court on Defendants' motion to submit evidence from mediation in future proceedings. After carefully reviewing the parties' written submissions, the Court finds oral argument to be unnecessary and now VACATES the hearing scheduled for August 29, 2011.

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The parties participated in a one-day mediation with the Honorable Edward A. Infante of JAMS on March 3, 2011. Defendants contend that the matter settled as to all issues except for attorneys' fees. Plaintiffs contend that no settlement was reached. Defendants have now filed a motion for leave to file with the Court evidence from the mediation in any of four possible future proceedings: opposing a motion for class certification; discovery proceedings; opposing a motion for attorneys' fees; and a motion to enforce a settlement.

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The Court finds Defendants' motion to be premature and therefore DENIES the motion without prejudice. Both parties agree that they should return to Judge Infante for a final opinion on whether a settlement was reached through mediation, and the Court now orders them to do so as soon as Judge Infante's schedule will allow. If Judge Infante agrees with Defendants, then Plaintiffs have agreed to abide by that decision. Plaintiffs state that they would then proceed before this Court on a motion for attorneys' fees, but the Court reminds the parties of their obligation to meet and confer in good faith before filing any such motion. If they cannot resolve their disputes informally, then they shall also attempt

1 settlement with the assigned magistrate judge, Chief Magistrate Judge Maria-Elena James,  
2 before any motion is filed.


3 If Judge Infante agrees with Plaintiffs, then the parties, of course, remain free to  
4 attempt further mediation with Judge Infante. The parties have also both agreed to advance  
5 the settlement conference date before Judge James, which will provide another opportunity to  
6 resolve this case without litigation.

7 If further motion practice becomes necessary, Defendants may renew their motion for  
8 leave to submit evidence from the mediation proceedings. However, they shall request such  
9 leave only as to a specific motion that they will file with certainty or as to an opposition to a  
10 specific motion that has been filed by Plaintiffs.

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**IT IS SO ORDERED.**

Dated: 08/18/11

  
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THELTON E. HENDERSON, JUDGE  
UNITED STATES DISTRICT COURT