

1 The Motion to Dismiss Complaint and Motion to Strike filed by defendants Harmonix
2 Music Systems, Inc., Viacom International Inc. and Electronic Arts Inc. (collectively,
3 “Defendants”) came on for hearing before the Court on June 17, 2009. After considering the
4 papers submitted in support of and in opposition to the motion, arguments of counsel, and all other
5 matters presented to the court,

6 IT IS HEREBY ORDERED AS FOLLOWS:

7 Defendants’ Motion is GRANTED:

- 8 • The portion of paragraph 43 of the First Amended Complaint with the following
9 language defining the putative class as “[a]ll persons and entities who purchased a
10 Rock Band drum kit, either separately or as part of a bundled peripheral package”
11 (Page 12, Lines 26-27) is STRICKEN.
- 12 • The portion of paragraph 64 of the First Amended Complaint with the following
13 language, “plaintiff class members ... are thus ‘consumers’ within the meaning of Cal.
14 Civ. Code § 1761(d)” (Page 15, Lines 20-22) is STRICKEN.
- 15 • The First Cause of Action of the First Amended Complaint of plaintiffs Monte Morgan
16 and F. Jason Vasquez (“Plaintiffs”) against the Defendants, for breach of the implied
17 warranty of merchantability is DISMISSED WITHOUT LEAVE TO AMEND.
- 18 • The Second Cause of Action of Plaintiffs’ First Amended Complaint, for breach of the
19 implied warranty of fitness for a particular purpose is DISMISSED WITHOUT
20 LEAVE TO AMEND.
- 21 • The Third Cause of Action of Plaintiff s First Amended Complaint, for violations of
22 the Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*, is DISMISSED
23 WITHOUT LEAVE TO AMEND.

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- The Fourth Cause of Action of the Complaint, for violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, is DISMISSED WITHOUT LEAVE TO AMEND.

IT IS SO ORDERED.

Dated: _____

Honorable Bernard Zimmerman
Magistrate Judge, United States District Court

Respectfully Submitted,

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By: /s/ Richard B. Kendall
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Harmonix Music Systems, Inc.
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