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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CA. SAN JOSE

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ADR

Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

C/PVT

C09 05485

ERIK ESTAVILLO,

Plaintiff,

vs.

MICROSOFT CORPORATION and,
NINTENDO OF AMERICA, INCORPORATED

Defendant.

Complaint

Date: November 18, 2009

PVT

1. **Jurisdiction.** The counts in this complaint involve the U.S. Constitution, its laws, or treaties of the United States (28 U.S.C § 1331). More specifically, the Seventh Amendment and United States Declaration of Independence.
2. **Venue.** Venue is appropriate in this court because the disabled plaintiff resides in San Jose, California and is unable to physically travel or afford to travel to Redmond, Washington where both defendants reside.
3. **Intradistrict Assignment.** This lawsuit should be assigned to the San Jose Division of this Court because it was in San Jose that these events and violations to the disabled plaintiff occurred.

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1. In this first count, the plaintiff, Erik Estavillo, woke up today to find his Xbox 360 had the infamous "red ring of death" when he turned it on. Which in laymen terms, means his Xbox 360, which is only one of two ways in which he relies on to socialize, is now broken and cannot be fixed without professional help. To fix it would cost the disabled plaintiff well over \$100, not to mention the time waiting for it to be fixed by Microsoft, which has been known to take up to one month.
2. While the plaintiff did nothing to receive the 'red ring of death', as will be proven when the plaintiff submits his Xbox 360 as evidence to show there was no tampering with the device; the plaintiff will also provide the serial number for the Xbox in question to prove that the broken Xbox 360 will lead back to the plaintiff.
3. Since the disabled plaintiff can't afford to buy or fix his Xbox 360, we feel that Microsoft should have to bear the burden that is now put on the shoulders of this disabled plaintiff who suffers from a number of debilitating diseases already, such as Major Depression, Obsessive-Compulsive Disorder, Panic Disorder, Agoraphobia, and Crohn's Disease. Of which all conditions can be proven via his convincing medical records.
4. Given this history, the plaintiff simply seeks that the Seventh Amendment be invoked, which states that there shall be a trial by jury, [particularly] in suits where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...
5. As for the count against Nintendo of America, they have recently sent an update via the Nintendo Wii console, in which this update deleted, blocked, or otherwise prohibited the use of third-party software that is only created to help the gamer "beat" or "surpass" the required thresholds of certain video games to unlock "extras" which can be viewed as extra characters or levels for a particular video game.
6. The update which is referred to as "Update 4.3" by Nintendo has disabled the plaintiff's homebrew channel, in which he only used to pass certain Mario Kart Wii levels and get "gold trophies" to unlock new characters. Without what is called the "Homebrew Channel" and its Ocarina third party device, there is no way to unlock the hidden characters in Mario Kart Wii unless you buy Super Mario Galaxy which will unlock one character only.
7. So in essence, Nintendo is forcing customers to buy another game to unlock one character in a different game; despite the different game having a lot more than just one character to unlock. To stay on example, "Mario Kart Wii's" unlockable characters cannot be unlocked unless you have the Homebrew Channel and Ocarina software, which Nintendo will no longer allow.
8. In federal terms, the plaintiff who relies heavily on video games for happiness, would like the federal court to decide if Nintendo is interfering with certain

players pursuit of happiness which is stated in the United States Declaration of Independence; where Benjamin Franklin was in agreement with Thomas Jefferson in downplaying protection of "property" as a goal of government, replacing the idea with "happiness." The United States Declaration of Independence, which was primarily written by Jefferson, was adopted by the Second Continental Congress on July 4, 1776. The text of the second section of the Declaration of Independence reads; We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty and the pursuit of Happiness.

9. **Prayer for Relief:** The plaintiff is seeking \$75,000 from Microsoft in pain and suffering damages since the loss of the plaintiff's Xbox 360 is causing undue stress since it's one of only two ways the plaintiff truly socializes since he has Agoraphobia. Also, the amount is in relation to the stress put on the plaintiff having to find a way to acquire a new Xbox 360 system and the sadness he will have in the mean time of finding one he can afford. Not to mention all of the lost data that is unrecoverable such as game saves and downloadable content.
10. The plaintiff is also seeking \$5,000 dollars from Nintendo of America for interfering in games right to the pursuit of happiness. Also, if possible, the plaintiff seeks that an injunction be imposed against Nintendo from deleting, blocking, or prohibiting just the Homebrew Channel and Ocarina applications only.
11. The plaintiff demands a jury on all issues.