

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>Gibson Guitar Corporation,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>NO. 3:08-00279</b>
<b>v.</b>	)	
	)	<b>JURY DEMAND</b>
<b>Wal-Mart Stores, Inc., Target Corporation,</b>	)	
<b>Kmart Corporation, Sears, Roebuck &amp; Co.,</b>	)	<b>Judge Wiseman</b>
<b>Amazon.com, Inc., GameStop Corporation,</b>	)	
<b>Toys-R-Us, Inc., Harmonix Music Systems,</b>	)	<b>Magistrate Judge Griffin</b>
<b>Inc., MTV (a division of Viacom</b>	)	
<b>International, Inc.), and Electronic Arts,</b>	)	
<b>Inc.</b>	)	
	)	
<b>Defendants.</b>	)	

**MOTION FOR LEAVE TO FILE UNDER SEAL**

Defendants Wal-Mart Stores, Inc., Target Corporation, Kmart Corporation, Sears, Roebuck & Co., Amazon.com, Inc., GameStop Corporation, and Toys-R-Us, Inc. (collectively, the “Retailer Defendants”) jointly and respectfully request leave from the Court to file under seal the following documents, each of which is being filed contemporaneously herewith as a “Sealed Document” pursuant to Administrative Order No. 167, Section 5.07:

- 1) The Retailer Defendants’ Joint Motion to Dismiss or, in the Alternative, to Stay This Action in Favor of a First-Filed Action in the Central District of California (“Joint Motion to Dismiss or Stay”);
- 2) The Retailer Defendants’ Memorandum of Law In Support Of Their Joint Motion to Dismiss or Stay;

- 3) The Declaration Of James M. Glass In Support Of The Retailer Defendants' Joint Motion to Dismiss or Stay and;
- 4) The Declaration Of Mary A. Tuck In Support Of The Retailer Defendants' Joint Motion to Dismiss or Stay;
- 5) The Declaration Of Gregory Deutsch In Support Of The Retailer Defendants' Joint Motion to Dismiss or Stay; and
- 6) The Declaration Of Kai Huang In Support Of The Retailer Defendants' Joint Motion to Dismiss or Stay.

Because of the confidential nature of these papers, all of the Defendants have agreed to accept service of non-confidential, redacted versions of the above-identified materials. None of the Defendants (including the Retailer Defendants, the "Viacom" Defendants, or Counsel for the Viacom Defendants) have seen unredacted versions of the filings for which the Retailer Defendants seek leave to file under seal. The Retailer Defendants are also prepared to file non-confidential, redacted versions of the above-identified materials for public access via ECF should the Court grant the instant Motion for Leave to File Under Seal.

The Retailer Defendants request that their Joint Motion to Dismiss or Stay (and papers filed in support thereof) be filed under seal for the following reasons:

1. Gibson and Activision entered into an agreement that includes a confidentiality provision ("Agreement"). The Agreement is attached as Exhibit B to the unredacted Declaration of James M. Glass.

2. In a March 25, 2008 letter, Gibson accused Activision of breaching the confidentiality provision of the Agreement. Specifically, Gibson accused Activision of

breaching the confidentiality provision of the Agreement by “disclosing the existence of the Agreement,” and by referencing the Agreement in a press release. (Glass Decl. Ex. K at 2.)

3. The Retailer Defendants’ Joint Motion to Dismiss or Stay is based in part on the Agreement, discusses the terms of the Agreement, and specifically quotes the Agreement. To avoid any dispute with Gibson regarding the confidentiality provision of the Agreement, the Retailer Defendants hereby request leave from the Court to file under seal the unredacted version of their Joint Motion to Dismiss or Stay as well as certain declarations and exhibits in support thereof.

The Retailer Defendants further request that should the Court grant this motion to seal, the Retailer Defendants’ Joint Motion to Dismiss or Stay be deemed filed as of May 1, 2008.

WHEREFORE, Defendants Wal-Mart Stores, Inc., Target Corporation, Kmart Corporation, Sears, Roebuck & Co., Amazon.com, Inc., GameStop Corporation, and Toys-R-Us, Inc. respectfully request that the Court grant this Motion for Leave to File Under Seal. A proposed order granting this motion is submitted herewith.

Respectfully submitted,

s/ Samuel D. Lipshie

Samuel D. Lipshie (No. 9538)  
Thor Y. Urness (No. 13641)  
Jonathan D. Rose (No. 20967)  
BOULT CUMMINGS CONNERS & BERRY, PLC  
1600 Division Street, Suite 700  
P.O. Box 340025  
Nashville, TN 37203  
Telephone: (615) 252-2340  
Facsimile: (615) 252-6380

OF COUNSEL:

Edward J. DeFranco  
James M. Glass  
QUINN EMANUEL URQUHART OLIVER  
& HEDGES, LLP  
51 Madison Avenue, 22nd Floor  
New York, New York 10010  
Telephone: (212) 849-7000  
Facsimile: (212) 443-7100

Harry A. Olivar, Jr.  
QUINN EMANUEL URQUHART OLIVER  
& HEDGES, LLP  
865 Figueroa Street, 10th Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000  
Facsimile: (213) 443-3100

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing is being filed electronically.

Notice of this filing will be sent by operation of the Court's electronic filing system to:

Douglas R. Pierce  
King & Ballow  
315 Union Street, Suite 1100  
Nashville, TN 37210

Matthew W. Siegal  
Richard Eskew  
Jason M. Sobel  
Stroock & Stroock & Lavan LLP  
180 Maden Lane  
New York, NY 10038-4982

William Taylor Ramsey  
Aubrey B. Harwell, III  
Neal & Harwell  
150 Fourth Avenue, North  
2000 First Union Tower  
Nashville, TN 37210-2498

Mark A. Samuels  
Robert M. Schwartz  
William J. Charron  
O'Melveny & Myers LLP  
400 South Hope Street  
Los Angeles, CA 90071-2899

on this the 1<sup>st</sup> day of May, 2008.

s/ Samuel D. Lipshie  
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Samuel D. Lipshie