

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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4  
5 JAMES COLLINS, et al.,  
6 Plaintiffs,  
7 v.  
8 GAMESTOP CORP., et al.,  
9 Defendants.

NO. C10-1210 TEH

ORDER GRANTING MOTION  
FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT

10  
11 This matter comes before the Court on Plaintiffs' motion for preliminary approval of  
12 the class action settlement agreement ("Agreement") filed with the Court on February 24,  
13 2012, as Exhibit 1 to the Declaration of Mark Pifko. No oppositions were filed to the  
14 motion, and this Court vacated the hearing date and requested joint supplemental briefing on  
15 March 23, 2012. Because the parties failed to answer one of the Court's questions, the Court  
16 ordered them to file a further joint supplemental brief on April 2, 2012. The Court has now  
17 reviewed all of the papers and GRANTS preliminary approval to the proposed settlement.

18 With good cause appearing, IT IS HEREBY ORDERED that:

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

21 2. For settlement purposes only, pursuant to Federal Rule of Civil Procedure 23,  
22 the Court hereby conditionally certifies the following class ("Settlement Class"): All  
23 California residents who purchased a used video game from GameStop from March 23,  
24 2006, through April 9, 2012, that offered free downloadable content to purchasers of a new  
25 copy of the game and such downloadable content was not available to used game purchasers  
26 without additional payment.

27 3. Having considered the factors set forth in Federal Rule of Civil Procedure  
28 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.

21  
22 **IT IS SO ORDERED.**

23  
24 Dated: 04/09/12

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