

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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| <i>In re Grand Theft Auto Video Game</i> | : | No 1:06-md-1739 (SWK) (mhd) |
| <i>Consumer Litigation</i> | : | |
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SETTLEMENT AGREEMENT

This Settlement Agreement is made by and among individual and representative Plaintiffs Brenda Stanhouse, Rose Goldfine, Robert Samario, Susan Carlson, Florence Cohen, Cindy Casey and John Robinson (“Plaintiffs”), on behalf of themselves and, on the terms set forth herein, the Settlement Class as defined herein, and Take-Two Interactive Software, Inc. and its wholly-owned subsidiary Rockstar Games, Inc. (“Defendants,” and Plaintiffs and Defendants being collectively referred to herein as the “Parties”), by and through their respective counsel and representatives, as of the 7th day of November 2007, to settle and compromise the claims of Plaintiffs and the Settlement Class asserted in this matter (the “Action”) on the terms and conditions set forth below:

I. CLAIMS OF THE PARTIES

A. Defendants market and indirectly, including through retailers, sell, among other things, the *Grand Theft Auto* series of video game titles. In or about October 2004, Defendants released a game in this series entitled *Grand Theft Auto: San Andreas* for use on the Sony “PlayStation 2”TM video game console. In or about June 2005, Defendants released versions of *Grand Theft Auto: San Andreas* playable on personal computers and on Microsoft XboxTM video game consoles.

B. Plaintiffs contend that the copies of *Grand Theft Auto: San Andreas* manufactured and distributed before July 20, 2005, contained elements that, if modified and combined by a player using third-party modification software and/or hardware, could display the clothed animated male protagonist of the game engaging in simulated sexual intercourse with nude animated women. These scenes have come to be referred to as the “Hot Coffee” scenes.

C. Plaintiffs contend that Defendants defrauded Plaintiffs and violated consumer fraud statutes by misleading consumers of *Grand Theft Auto: San Andreas* as to the game discs’ content by including the Hot Coffee elements on the distributed discs and by marketing the game under an “M” (Mature) rating, when, Plaintiffs allege, the disc should have been rated as “AO” (Adults Only) because of the existence of the Hot Coffee elements on the distributed game discs. Plaintiffs also contend that Defendants were unjustly enriched because Defendants received consumers’ money that would not rightly be Defendants because, had the game disc been rated properly as AO, Defendants would not have been able to sell the game at all through mass retailers, who would not have carried an AO game. Finally, Plaintiffs also contend that Defendants were negligent by including the Hot Coffee elements in the distributed game, rather than removing the Hot Coffee elements entirely.

D. Defendants do not dispute that the elements that were modified and combined to display the Hot Coffee content were present on the *Grand Theft Auto: San Andreas* game discs manufactured before July 20, 2005, but Defendants vigorously deny each and every one of Plaintiffs’ allegations of improper conduct and deny having any

liability to the purported Plaintiff class. The Hot Coffee elements were (a) inaccessible to users until a third-party developed and released software to modify, combine, and display the elements and (b) only accessible to consumers that purposefully took steps to modify their game with third party hardware and/or software. In order to display the Hot Coffee content, a user who possessed the personal computer version of the game (about 1% of total units sold) had to download and install a third-party modification, while a user of one of the two console versions of the game (playable on Microsoft's "Xbox" or Sony's "PlayStation 2" consoles), had to purchase and correctly program a third-party device that attached to their console. (All of these methods of modifying the *Grand Theft auto: San Andreas* game have become known collectively as the "Hot Coffee Mod.") Defendants contend that (i) these "Hot Coffee" elements were not part of the intended game experience; (ii) these elements were unused or had been disabled by programmers in a way that prevented consumers from accessing them during unaltered gameplay of *Grand Theft Auto: San Andreas*; (iii) the elements were discovered, and the Hot Coffee Mod created, by a highly skilled computer programming professional without knowledge of or authorization by Defendants; and (iv) the Hot Coffee elements could not be accessed by any consumer without volitional acts by a consumer to purposefully alter the game with third party software and/or hardware.

E. The individual actions, which were eventually transferred by the Judicial Panel on Multidistrict Litigation to the United States District Court for the Southern District of New York, which consolidated them into the Action, were brought by the following plaintiffs against the Defendants:

1. Florence Cohen, commenced in the U.S. District Court for the Southern District of New York, Case No. 05-cv-6734;
2. Robert Samario, commenced in the U.S. District Court for the Southern District of New York, Case No. 05-cv-6767;
3. Susan Carlson, commenced in the U.S. District Court for the Southern District of New York, Case No. 05-cv-6907;
4. Cindy Casey, commenced in the U.S. District Court for the Eastern District of Pennsylvania, Case No. 05-cv-4268;
5. Brenda Stanhouse, commence in the U.S. District Court for the Southern District of Illinois, Case No. 05-721
6. Rose Goldfine, commenced in the U.S. District Court for the Southern District of New York, Case No. 06-cv-6537; and
7. John Robinson, commenced in the U.S. District Court for the Eastern District of Pennsylvania, Case No. 06-cv-5263.

F. The Parties were assisted in reaching this Settlement Agreement by United States Magistrate Judge Michael H. Dolinger of the United States District Court for the Southern District of New York.

G. Plaintiffs, through their counsel, have conducted an investigation of the facts and analyzed the relevant legal issues. Although Plaintiffs and their counsel believe that the claims asserted in the Complaint have substantial merit, they also have examined the benefits to be obtained under the proposed Settlement, including allowing consumers with pre-July 20, 2005 copies of *Grand Theft Auto: San Andreas*, and who claim to have been offended by the existence of the Hot Coffee elements on their game discs, to exchange their present copies of the game for copies without the Hot Coffee elements and also, under certain circumstances, to obtain cash benefits, and have considered the risks,

costs and delays associated with the continued prosecution of this litigation and the likely appeals of any rulings in favor of either Plaintiffs or Defendants.

H. Defendants have conducted an investigation of the facts and analyzed the relevant legal issues. Defendants deny all liability with respect to any and all facts or claims alleged in the Complaint, and believe that their defenses both to Plaintiffs' pending motion for certification of a nationwide class and to the claims asserted in the Complaint itself have substantial merit. Defendants also have weighed the potential risks, costs and delays associated with continued litigation of the Action against the benefits of the proposed Settlement.

I. Each of the Parties and counsel believes, in consideration of all the circumstances and after substantial arms' length settlement negotiations between counsel, that its interests are best served by entering into the proposed Settlement set forth in this Settlement Agreement, and that this proposed Settlement is fair, reasonable, adequate and in the best interests of the Settlement Class.

NOW, THEREFORE, IT IS HEREBY AGREED by and between the Parties, that:

- (a) the Action be settled and compromised as between Plaintiffs, on behalf of themselves and all Settlement Class Members, and the Defendants, subject to approval of the Court after a hearing (or hearings) as provided for in this Settlement Agreement; and
- (b) upon Court approval of the settlement and compromise of the Action, a Final Order and Judgment, substantially in the form annexed hereto as Exhibit A (the "Judgment") be entered: (1) dismissing the Action with

prejudice; and (2) barring and enjoining the prosecution by Settlement Class Members of all Released Claims, as defined below, against the Defendants with prejudice.

(c) All of the foregoing shall be subject to the following terms and conditions:

II. DEFINITIONS

In addition to the foregoing defined terms, for purposes of the Settlement Agreement and all Exhibits thereto, the following terms shall have the meanings given to them below:

A. “Class Period” means the period from August 1, 2004 through the date on which the Court preliminarily approves this Settlement Agreement and directs Defendants to provide notice of the proposed Settlement to the Settlement Class (the “Preliminary Approval Date”).

B. The “Effective Date” of the Settlement is the date on which the Judgment becomes Final. “Final,” when used in connection with any court order or judgment, means (a) if no appeal is taken from a court order or judgment, the date ten calendar days after the time to appeal therefrom (including any potential extension of time) has expired; or (b) if any appeal is taken from a court order or judgment, the date ten calendar days after all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing *en banc*, and petitions for *certiorari* or any other form of review, have been finally disposed of, such that the time to appeal therefrom (including any potential extension of time) has expired, in a manner resulting in an affirmance of the relevant order or judgment.

C. A “GTA:SA First Edition Disc” is any original copy of *Grand Theft Auto: San Andreas* manufactured before July 20, 2005 that contained the elements for the Hot Coffee content.

D. “Plaintiffs’ Class Counsel” means the firms of Locks Law Firm, PLLC; Bromberg Law Offices, P.C.; Burstein Law Firm, P.C.; Glancy Binkow & Goldberg, LLP; Harke & Clasby LLP; Nestor & Constance; Reinhardt Wendorf & Blanchfield and Williams Cuker & Berezofsky.

E. “Released Parties” means each and all of the Defendants and each and all of the Defendants’ direct and indirect subsidiaries, affiliates, partners, joint ventures, predecessors and successor corporations and business entities, and each and all of their past and present officers, directors, servants, licensees, joint ventures, sureties, attorneys, agents, consultants, advisors, contractors, employees, controlling or principal shareholders, general or limited partners or partnerships, divisions, insurers, designated management companies, and each and all of their successors or predecessors in interest, assigns, or legal representatives, and any persons or entities that have designed, manufactured, supplied, advertised, and marketed the *Grand Theft Auto: San Andreas* video game.

F. “Settlement Agreement” refers to this Settlement Agreement and “Settlement” refers to the terms of the settlement described herein.

G. “Settlement Class” means the named Plaintiffs in the Action and all natural persons or entities in the United States who purchased a GTA:SA First Edition Disc, except for authorized resellers of the game, Defendants’ current or former employees, and any persons or entities that have previously executed releases discharging Defendants from

liability concerning or encompassing any or all claims that are the subject of the Complaint, between August 2004 and the date on which the Court preliminarily approves this proposed settlement.

H. “Settlement Class Member” means any person who falls within the definition of the Settlement Class and who does not validly and timely elect exclusion from the Settlement Class under the conditions and procedures for exclusion as determined by the Court and described in any Notice of Pendency and Settlement of Class Action approved by the Court.

I. The “Eligibility Averments” are those that Settlement Class Members must make, under penalty of perjury, in order to obtain benefits under this settlement. Those averments are that the class member (a) bought a GTA:SA First Edition Disc prior to July 20, 2005; (b) was offended and upset by the ability of consumers to use third party software and/or hardware to modify and alter the GTA:SA First Edition Disc to display the Hot Coffee content; (c) would not have bought the GTA:SA First Edition Disc had they known that consumers could so modify and alter the game content; and (d) upon learning the game could be so modified and altered, would have returned it to the place of purchase for a refund if he or she thought this possible.

J. The “Claims Deadline” shall be the date 120 days after which notice is provided to Settlement Class Members, as provided below in Section V.B.

K. “Released Claims” means any and all claims, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, liens, contracts, liabilities, agreements, costs, or expenses, of any nature whatsoever,

ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including Unknown Claims, of any and all Plaintiffs and/or Settlement Class Members arising out of any purchase or use by them of the *Grand Theft Auto: San Andreas* video game, to the extent that such claims: (a) arise out of the Action; (b) relate to any allegations that were asserted in the Action; or (c) which could have been asserted in this Action based upon the operative facts as alleged in the Complaint, or which might in the future be asserted by any Plaintiff or Settlement Class Member against any of the Released Parties, either of which would arise out of, or relate to in any manner, directly or indirectly, any acts, facts, transactions, occurrences, conduct, representations or omissions alleged in the Action. Released Claims also include claims for abuse of process, malicious prosecution or any other claim arising out of, relating to, or in connection with the institution, prosecution, assertion or resolution of the Action.

L. “Unknown Claims” means all claims arising out of facts relating to any matter covered by the Released Claims which all persons or entities providing releases under this Settlement Agreement, including all Settlement Class Members, do not know or suspect to exist in their favor at the time of the release of the Released Parties and which, if known by them, might have affected their decision to settle with Defendants and release the Released Parties or to take any other action including, but not limited to, objecting or not objecting to the Settlement. All persons or entities providing releases under this Settlement Agreement may hereafter discover facts other than or different from those which such persons now know or believe to be true with respect to the subject matter of the Released Claims. Upon the Effective Date, each person or entity providing releases under

this Settlement Agreement, including all Settlement Class Members, shall be deemed to have waived any and all rights that he, she, it or they may have under any statute, regulation, administrative adjudication or common law principle that would otherwise limit the effect of the foregoing releases to those claims actually known or suspected to exist at the time of execution of this Settlement Agreement, including, but not limited to, the provisions of Section 1542 of the California Civil Code, to the extent deemed applicable, which provides as follows:

1542. "GENERAL RELEASE-CLAIMS EXTINGUISHED. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

III. TERMS AND CONDITIONS OF THE SETTLEMENT BENEFITS

A. In exchange for the dismissal of the Action and for entry of the Judgment as provided for in this Settlement Agreement, Defendants shall make available to Settlement Class Members the benefits in this section (the "Settlement Benefits"), in accordance with the procedures set forth below.

B. ***Grand Theft Auto: San Andreas Exchange Program.***

1. Any Settlement Class Member in possession of a copy of GTA:SA First Edition Disc, who provides the Eligibility Avertisments, may return the game disc to Defendants and receive in exchange a copy of the *Grand Theft Auto: San Andreas* game disc without Hot Coffee elements. The program described in this sub-section B shall be referred to hereafter in this Settlement Agreement as the "Exchange Program."

2. Defendants will establish a mechanism by which Settlement Class Members may send in GTA:SA First Edition Discs for exchange, and Defendants will replace them with copies of the *Grand Theft Auto: San Andreas* game discs without Hot Coffee elements, without Settlement Class Members having to incur or forward any postage costs. Defendants may, for example, contract with United Parcel Service or another carrier to print out prepaid mailing labels that Settlement Class Members can use to return their GTA:SA First Edition Discs. (The above example is illustrative only; Defendants may choose other means to accomplish this requirement.) In the event a Settlement Class Member elects to return the game disc by a means other than that established by Defendants, that Settlement Class Member will be responsible for all associated postage and mailing costs for returning his or her GTA:SA First Edition Disc.
3. The exchange contemplated herein is of the game disc only. Settlement Class Members need not return the game packaging or artwork to Defendants. Defendants will not provide game packaging or artwork when fulfilling the exchange and will not return to Settlement Class Members any game packaging or artwork those Settlement Class Members elect to include when returning game discs for exchange.
4. Settlement Class Members will not need to provide any proof of purchase in order to receive this exchange.
5. Defendants will honor every properly-completed claim for an exchange under this Exchange Program.
6. For purposes of calculating Defendants' out-of-pocket costs, as required by Paragraph III.E., below, each fulfillment of a claim under the Exchange Program shall be deemed to cost Defendants Fifteen Dollars (\$15.00).
7. Fulfillments under the Exchange Program shall be made within eight weeks of the Claims Deadline or, if the Claims Deadline occurs before the Settlement becomes Final, then benefits will be provided within eight weeks of the Settlement becoming Final.

C. *Other Benefits*

1. Settlement Class Members, may, if they meet the criteria specified below, be eligible for cash benefits. Such persons will be referred to hereafter as "Benefits-Eligible Settlement Class Members." The

series of benefits described below will be referred to herein as the “Benefit Program.”

2. Any Settlement Class Member who submits a detailed receipt clearly showing the purchase of *Grand Theft Auto: San Andreas* prior to July 20, 2005, and who provides the Eligibility Averments, may receive a cash payment of up to 75% of the purchase price shown on the receipt, or Thirty-Five Dollars (\$35.00), whichever is less. This benefit will be available whether or not the Settlement Class Member also participates in the Exchange Program. *This benefit may be pro-rated to a lesser amount as provided below.*
3. Any Settlement Class Member who does not have a detailed proof of purchase, but who participates in the Exchange Program, submits a copy of a credit card statement or canceled check showing a purchase at a seller of the game before July 20, 2005, provides the Eligibility Averments, and also attests under penalty of perjury that the game was purchased at the seller and on the date shown on the submitted credit card statement or check, may receive a cash payment of up to 35% of the asserted purchase price, or Seventeen Dollars and Fifty Cents (\$17.50), whichever is less. *This benefit may be pro-rated to a lesser amount as provided below.*
4. Any Settlement Class Member who participates in the Exchange Program, who does not have any proof of purchase of the game, but who provides the Eligibility Averments, and also attests under penalty of perjury to the place and approximate date of his or her purchase, may receive a benefit of \$10.00. *This benefit may be pro-rated to a lesser amount as provided below.*
5. Any Settlement Class Member who does not have any proof of purchase of the game, or the game itself, but provides the Eligibility Averments, and also attests under penalty of perjury to (a) the place and approximate date of his or her purchase and (b) the approximate date on which he or she discarded the disc, may receive a benefit of \$5.00. *This benefit may be pro-rated to a lesser amount as provided below.* Defendants may request that the claims process for this benefit include a requirement that claimants state the manner by which they discarded the disc. If they do so, plaintiffs will consider that request but need not accept it.
6. Plaintiffs will request that the Court authorize incentive payments of no more than Five Thousand Dollars (\$5,000) to each of the four (4) individual plaintiffs in this matter, Brenda Stanhouse, Rose

Goldfine, Robert Samario and Susan Carlson. Plaintiffs will request that the Court authorize incentive payments of no more than One Thousand Five Hundred Dollars (\$1,500) to each of the other individual class action plaintiffs in this matter, Florence Cohen, Cindy Casey and John Robinson. These payments to the named plaintiffs, if the Court directs Defendants to make them, will be considered part of Defendants' costs under the Benefit Program.

7. Payments under the Benefit Program will be made within eight weeks of the Claims Deadline or, if the Claims Deadline occurs before the Settlement becomes Final, then benefits will be provided within eight weeks of the Settlement becoming Final.

D. A Settlement Class Member may claim only one of the above benefits under the Benefit Program. Only one application for benefits under the Benefit Program and/or the Exchange Program will be honored per person, household or address.

E. Defendants' total out-of-pocket costs in fulfilling claims under the Exchange Program and the Benefit Program, as those terms are defined below, shall not exceed Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000.00), excluding the Defendants' costs of: (a) providing notice to Settlement Class Members; (b) paying administrative/managerial fees to a professional settlement administration firm to administer the Exchange Program and the Cash Benefit Program; and (c) paying an attorneys' fee and costs to counsel for the Settlement Class, should such payments be ordered by the Court (together referred to herein as the "Defendants' Costs").

F. In the event that the costs of claims filed by the Claims Deadline under the Exchange Program (valued at \$15.00 each) and the cash requested in claims under the Benefit Program collectively total more than Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000.00), the benefits actually paid to Benefits Eligible Settlement Class Members under the Benefit Program will be reduced pro rata, such that the total amount of

the Exchange Program and the Benefit Program shall be exactly Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000.00). However, in the event that Class Members submit more than 183,333 claims under the Exchange Program (such that the costs of fulfilling all Exchange Program claims themselves exceed Two Million Seven Hundred Fifty Thousand Dollars), the total benefits actually paid to Benefits Eligible Settlement Class Members under the Benefit Program will be the lesser of Five Hundred Thousand Dollars (\$500,000) or the amount actually claimed by those Benefits Eligible Settlement Class Members. For avoidance of doubt, this provision, combined with the requirement that Defendants fulfill all claims under the Exchange Program, means that Defendants' out-of-pocket costs may exceed Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000.00). Should that occur, however, the total amount of cash compensation Defendants shall pay to Benefits-Eligible Settlement Class Members will not exceed Five Hundred Thousand Dollars (\$500,000).

G. If it becomes necessary for benefits to be reduced as required above in Paragraph III.E., the cash payments will be reduced pro rata weighted by the aggregate claims received for each tier of Cash Benefits.

H. In the event that the value of claims under the Exchange Program and the Benefit Program filed on or before the Claims Deadline collectively have a cost to Defendants of less than One Million Twenty Five Thousand Dollars (\$1,025,000) (excluding the Defendants' Costs, but including any amounts defendants have distributed to charitable organizations pursuant to the settlement of any case or controversy that was or has been consolidated or coordinated with this action by the Judicial Panel on Multidistrict

Litigation, then Defendants shall pay the difference between the collective value of claims filed on or before the Claims Deadline and One Million Twenty Five Thousand Dollars (\$1,025,000) to a charitable entity or entities to be agreed upon by the parties and subject to court approval once the value of the charitable contribution has been determined. Plaintiffs contend that this payment constitutes a *cy pres* remedy; Defendants do not necessarily agree with that characterization.

IV. CERTIFICATION OF SETTLEMENT CLASS

A. For settlement purposes only, the Parties will jointly request, as part of the Settlement Notice and Hearing Order, that the Court make preliminary findings and enter an Order granting conditional certification of the Settlement Class subject to final findings and ratification in the Judgment, and appointing Plaintiffs and Plaintiffs' Class Counsel as representatives of the Settlement Class.

B. Defendants do not consent to certification of the Settlement Class for any purpose other than to effectuate the settlement of the Action. If this Settlement Agreement is terminated pursuant to its terms, or if the Effective Date for any reason does not occur, the order certifying the Settlement Class and all preliminary and/or final findings regarding the Court's provisional class certification order shall be automatically vacated upon notice to the Court of the termination of the Settlement Agreement or the failure of the Effective Date to occur, and the Action shall proceed as though the Settlement Class had never been certified and such findings had never been made, without prejudice to the ability of any Party thereafter to request, oppose or seek the granting of or denial of class certification on any basis.

V. ENTRY OF SETTLEMENT NOTICE AND HEARING ORDER AND NOTICES TO THE SETTLEMENT CLASS

A. Promptly upon execution of the Settlement Agreement, the Plaintiffs in the Action shall apply to the Court for entry of an Order, substantially in the form annexed hereto as Exhibit B:

1. Finding that the requirements for conditional certification of the Settlement Class have been satisfied, appointing Brenda Stanhouse, Rose Goldfine, Robert Samario and Susan Carlson and Plaintiffs' Class Counsel as representatives of the Settlement Class, and preliminarily approving the Settlement as being within the range of reasonableness such that notice thereof should be given to members of the Settlement Class;
2. Approving the Notice of Pendency and Settlement of Class Action (the "Full Settlement Notice"), substantially in the form of Exhibit C annexed hereto, which will contain instructions for Settlement Class Members to obtain the Settlement Benefits, and a summary form of that Settlement Notice, substantially in the form of Exhibit D, annexed hereto (the "Summary Settlement Notice"); and ordering that the Full Settlement Notice and Summary Settlement Notice be disseminated in the manner set forth below and in the Hearing Order;
3. Providing that all members of the Settlement Class who do not, in accordance with the terms of the Settlement Notice, file valid and timely requests for exclusion from the Settlement Class be bound by the Judgment dismissing the Action on the merits and with prejudice;
4. Finding that the form and method of notice to be given in accordance with the terms of this Settlement Agreement and the Hearing Order constitute the best notice practicable under the circumstances and constitute valid, due and sufficient notice to the members of the Settlement Class, satisfying the requirements of the Federal Rules of Civil Procedure, the Constitution of the United States, and any other applicable law;
5. Providing that, pending final determination of whether the Settlement should be approved, neither the Plaintiffs nor any member of the Settlement Class, either directly, representatively or

in any other capacity, shall commence or prosecute any action or proceeding in any court or tribunal asserting any of the Released Claims against Defendants or any other of the Released Parties;

6. Scheduling a hearing or hearings (collectively, the “Fairness Hearing”) to be held by the Court to consider and determine whether the requirements for certification of the Settlement Class have been met and whether the proposed settlement of the Action in accordance with the terms set forth in this Settlement Agreement should be approved as fair, reasonable and adequate, and whether the Judgment approving the Settlement and dismissing the Action on the merits and with prejudice against Plaintiffs and Settlement Class Members should be entered;
7. Providing that the Fairness Hearing may, from time to time and without further notice to the Settlement Class (except those Settlement Class Members who file timely and valid objections), be continued or adjourned by order of the Court;
8. Providing a procedure for members of the Settlement Class to request exclusion from the Settlement Class and to file papers in support of the Settlement with the Court;
9. Establishing the Claims Deadline as the date by which, if a Settlement Class Member has not sought to receive one or more of the Settlement Benefits available under this Settlement Agreement, that Settlement Class Member shall forever be barred from participating or receiving the Settlement Benefits set forth herein, but shall in all other respects be subject to the provisions of this Settlement Agreement, the releases contained in Section VIII, and the Judgment;
10. Providing that any objections by any Settlement Class Member to: (i) the certification of the Settlement Class and the proposed Settlement, as described in the Full Settlement Notice, (ii) any request by Plaintiffs’ Class Counsel for an award of attorneys’ fees and reimbursement of expenses, and/or (iii) entry of the Judgment, shall be heard and any papers submitted in support of said objections shall be considered by the Court at the Fairness Hearing only if, on or before a date (or dates) to be specified in the Hearing Order, such objector files with the Court a notice of the objector’s intention to appear, submits documentary proof that the objector is a Settlement Class Member, states in writing the basis for such objections, and serves copies of the foregoing and all other papers in support of such

objections upon counsel for the Parties identified in the Full Settlement Notice so that such papers are actually received by the date set by the Court;

11. Requiring notice to be provided to the authorities that are required to be notified of prospective class action settlements under the Class Action Fairness Act of 2005, as set forth in Section X.D; and
12. Establishing a date (or dates) by which the Parties shall file and serve all papers in support of the application for final approval of the Settlement and/or in response to any valid and timely objections received by the designated counsel for the Parties identified in the Full Settlement Notice.

B. The Settlement Class shall be given notice of the proposed Settlement (collectively, the “Notice”) as set forth below, subject to the approval of the Court:

1. Within five business days after the date on which the Court grants preliminary approval to this Settlement Agreement (the “Preliminary Approval Date”), Defendants shall cause the Full Settlement Notice to be sent by electronic mail, on or before a date to be set forth in the Hearing Order, to individuals on Rockstar’s email mailing list.
2. Within five business days after the Preliminary Approval Date, Defendants shall post a link to the Full Settlement Notice on the www.take2games.com website and the settlement website. The Full Settlement Notice will remain posted on these websites until the Claims Deadline or until this Settlement Agreement is terminated by its terms.
3. Defendants shall cause the Summary Settlement Notice to be published, on or before a date to be set forth in the Hearing Order in the publications, websites and, newswire, and in the frequency and sizes set forth in the spreadsheet, attached hereto as Exhibit E.
4. Plaintiffs’ Class Counsel may continuously post the Summary Settlement Notice and the Full Settlement Notice on their firm websites, beginning two business days after the Preliminary Approval Date and ending on the date of the Claims Deadline or the date of the Fairness Hearing, whichever is later. Any costs associated with this notice item shall be borne by Plaintiffs’ Class Counsel and will not be reimbursed by Defendants.

C. The publications specified above in Paragraph V.B.3. were recommended by Judge Dolinger after hearing presentations from Plaintiffs and Defendants, and reflect Judge Dolinger's determination that publication in these periodicals, combined with the other forms of notice set forth in this Section, constitute the best notice practicable under the circumstances. Should the Court order this plan of Notice, Defendants will provide the Notice as directed by the Court, and will pay all costs associated with the provision of notice. The design and placement of advertisements under this program of Notice will be handled by Rust Consulting, Inc. (hereafter the "Claims Administrator"), and its sister firm, Kinsella/Novak Communications, LLC.

D. The Parties agree that if, for any reason, Notice is not or cannot be provided within the dates specified in this Settlement Agreement or in the Hearing Order, the Parties will confer in good faith and recommend to the Court that the Claims Deadline be extended correspondingly.

VI. COSTS OF NOTICE AND ADMINISTRATION

A. Defendants agree to effectuate the dissemination of the Full Settlement Notice and publication of the Summary Settlement Notice, and to pay all costs of doing so, in accordance with the terms of this Settlement Agreement. In the event this Settlement Agreement does not become final or the Effective Date does not occur for any reason, Plaintiffs shall have no obligation to reimburse Defendants for any costs or expenses paid, incurred or obligated for notice of this Settlement to the Settlement Class. In the event the Settlement Agreement does not become final or the Effective Date does not occur as the result of the Claims Administrator having failed to take some action required by this

Settlement Agreement or by an Order of the Court promulgated pursuant to it, or having taken an action precluded by this Settlement Agreement or such Order, Plaintiffs' Class Counsel shall have the right to review any correspondence between Defendants' counsel and the Claims Administrator relating to that action by the Claims Administrator.

B. Defendants agree to be responsible for paying all costs incurred in connection with providing the Settlement Benefits and otherwise complying with the procedures set forth in the Judgment and this Settlement Agreement. All procedures followed to provide the Notice to the Settlement Class shall be subject to approval by Plaintiffs' Class Counsel and subject to review for completeness and compliance by Plaintiffs' Class Counsel.

C. Plaintiffs' Class Counsel will have the right to monitor the actions of the Claims Administrator, including the fulfillment and payment of Settlement Benefits to Settlement Class Members, and to receive copies of all correspondence between the Claims Administrator and Settlement Class Members. Pursuant to the terms and conditions included in this Settlement Agreement, Plaintiffs' Class Counsel may act on behalf of Settlement Class Members to assist in their receipt of the Settlement Benefits. Defendants shall cooperate in such effort consistent with the provisions of this Settlement Agreement.

D. Defendants shall have the responsibility to prepare and provide the notices required by the Class Action Fairness Act of 2005, Pub. L. 109-2 (2005), including, but not limited to, the notices to the United States Department of Justice and to the Attorneys General of all states in which Settlement Class Members reside, as specified in 28 U.S.C.

§ 1715. Plaintiffs' Class Counsel will cooperate in the drafting of such notices and shall provide Defendants with any and all information in its possession necessary for the preparation of these notices.

VII. THE JUDGMENT

If, at or after the Fairness Hearing, the Settlement Agreement is approved by the Court, Plaintiffs shall promptly submit to the Court the Judgment:

1. Ratifying the certification of the Settlement Class and approving the Settlement, judging its terms to be fair, reasonable, adequate and in the best interests of the Settlement Class Members, directing its consummation in accordance with its terms, and reserving continuing jurisdiction to implement, enforce, administer, effectuate, interpret, monitor and ensure compliance with the provisions of this Settlement Agreement and the Judgment;
2. Dismissing the Action on the merits, with prejudice and without costs (except as otherwise provided herein), and releasing the Released Claims; and
3. Permanently barring and enjoining Plaintiffs and Settlement Class Members from asserting, commencing, prosecuting or continuing any of the Released Claims.

VIII. RELEASES

A. In accordance with the provisions of the Judgment, for good and sufficient consideration, the receipt of which is hereby acknowledged, on the Effective Date, each Plaintiff and each Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged each and all of the Released Claims against each and all of the Released Parties, in the manner(s) set forth above.

B. In accordance with the provisions of the Judgment, for good and sufficient consideration, the receipt of which is hereby acknowledged, on the Effective Date, the Defendants shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged all of the Plaintiffs, Plaintiffs' Class Counsel and all agents of and expert witnesses retained by Plaintiffs' Class Counsel from any claims (including Unknown Claims) for abuse of process, malicious prosecution or any other claim arising out of, relating to, or in connection with the institution, prosecution, assertion or resolution of the Action.

IX. PLAINTIFFS' CLASS COUNSEL'S ATTORNEYS' FEES

A. Defendants and counsel for the Settlement Class have agreed that Class Counsel is entitled to an amount for attorneys' fees and costs; however, the parties have not reached agreement on an amount that Defendants would pay to Plaintiffs' Class Counsel in respect of attorneys' fees and costs, if ordered to do so by the Court. The Summary Settlement Notice and Full Settlement Notice will reflect the intent of Plaintiffs' Class Counsel to seek a fee and reimbursement of expenses for a specified amount, and that Defendants intend to seek a substantial reduction in Plaintiff's Class Counsel's request. Defendants reserve all rights in this regard, including rights, if any, under Federal Rule of Civil Procedure 68.

B. Both Plaintiffs' Class Counsel and Defendants also expressly reserve their respective rights of appeal from any decision on fees that the Court may render. It is understood between the Parties that if an appeal is filed by any of the Parties that challenges only the amount of fees or costs awarded to Plaintiffs' Class Counsel, the

Parties will not contend that the pendency of such an appeal prevents the Settlement from becoming Final.

X. OTHER PROVISIONS

A. Upon execution of this Settlement Agreement, the Parties agree to cooperate and use all reasonable efforts to achieve approval of the Settlement in accordance with the terms of this Settlement Agreement, and to implement the Settlement and comply with, confirm the bases for and effectuate the terms of this Settlement Agreement. All Parties agree that they will not take any action to encourage any individual, institution or governmental entity to object or seek modifications to this Settlement Agreement or to opt out of the Settlement Class.

B. Whether the Effective Date does or does not occur, this Settlement Agreement, all negotiations and papers related to it, and any proceedings in connection with the Settlement: (1) are not and shall not be construed as evidence of an admission or concession of wrongdoing or liability by Defendants or any other Released Party as to any claim or allegation asserted in the Action; and (2) are not and shall not be construed as evidence or an admission or concession by Plaintiffs that claims or allegations asserted in the Action against Defendants lack merit.

C. Plaintiffs and Defendants agree that the terms of this Settlement Agreement were not based solely on the amount of consideration to be paid, but were based on (1) vigorous arm's-length negotiations between counsel for the Parties; (2) the assessment of Plaintiffs' Class Counsel and Defendants' counsel of the strengths and weaknesses of the various claims asserted in the Action against Defendants, based on the various claims

asserted or which could be asserted; and (3) the expense and risks of ongoing litigation. Moreover, the amount of damages that Plaintiffs could prove is a matter of serious and genuine dispute, and the terms of the Settlement do not constitute a finding, admission or concession with respect to the measure of damages that could be proved at trial. The Parties further acknowledge that no determination has been made by the Court as to the amount, if any, of damages suffered by members of the Settlement Class or of the proper measure of any such damages, and that the determination of damages, like the determination of liability, is a complicated and uncertain process, typically involving conflicting expert opinions.

D. At all times during the course of this litigation, Defendants have denied and continue to deny any liability to Plaintiffs and Settlement Class Members, and have denied and continue to deny that Plaintiffs or any Settlement Class Members were damaged by any alleged wrongful conduct, or that, even if damaged, any compensable damages could be measured or recovered.

E. Within five (5) business days after the deadline established by the Court in the Hearing Order for members of the Settlement Class to request exclusion from the Settlement Class, Plaintiffs' Class Counsel shall furnish to Defendants' counsel a complete list of all timely and valid requests for exclusion they have received (the "Opt-Out List").

F. Defendants shall have the option to withdraw from this Settlement Agreement if the number of timely and valid requests for exclusion exceeds the amount specified in the "Opt-Out Agreement" the parties have negotiated.

G. This Settlement Agreement is conditioned upon the Judgment in the Action becoming Final. If the Judgment is reversed or vacated, or if the Effective Date does not occur for any other reason, the Defendants shall have the right to terminate this Settlement Agreement. If the Judgment is modified in any manner that limits the scope of releases given to the Released Parties as provided in Section VIII of this Settlement Agreement, or if the Hearing Order imposes obligations on Defendants substantially different from those stated above in Sections III-V, each of Plaintiffs and Defendants shall separately have the right either to affirm this Settlement Agreement as modified, or to terminate this Settlement Agreement by filing and serving a Withdrawal Notice.

H. The signatories to this Settlement Agreement agree to assist Defendants in seeking and obtaining the dismissal of all other actions alleging Released Claims.

I. If the Effective Date does not occur or this Settlement Agreement is otherwise terminated in accordance with its provisions, the Parties shall be restored to their respective positions as of November 1, 2007, except that any extensions of time granted since that date by one Party to the other shall continue to have force and effect, and neither Party shall seek an order of default against any other Party for actions not taken while approval of the Settlement was pending. The terms and provisions of the Settlement Agreement shall at that time have no further force and effect with respect to the Parties and, to the extent permitted by law, shall not be used in any action or proceeding for any purpose. Any Judgment entered in accordance with the terms of the Settlement Agreement shall be treated as vacated, nunc pro tunc.

J. The Parties agree that, to the fullest extent permitted by law, neither the Settlement Agreement nor the fact of the Settlement, nor any act performed nor document executed pursuant to or in furtherance of the Settlement Agreement or the Settlement, is or may be deemed to be or may be used as an admission of, or evidence of: (1) the validity of any claim of any Settlement Class Member, or (2) any wrongdoing, fault, omission, or liability of the Defendants in any proceeding in any court, administrative agency or other tribunal. Nothing in this paragraph shall preclude any Party from using the Settlement Agreement, the Judgment, or any act performed or document executed pursuant thereto in a proceeding to consummate, monitor or enforce the Settlement Agreement, the terms of the Settlement or the Judgment.

K. All of the Exhibits to this Settlement Agreement are material and integral parts hereof.

L. The undersigned signatories represent that they are fully authorized to execute and enter into the terms and conditions of this Settlement Agreement on behalf of the respective persons or entities for whom they have signed this Settlement Agreement.

M. This Settlement Agreement contains the entire agreement among the Parties hereto and supersedes any prior agreements or understandings between them. All terms of this Settlement Agreement are contractual and not mere recitals and shall be construed as if drafted by all Parties. All provisions of this Settlement Agreement are and shall be binding upon each of the Parties hereto, their agents, attorneys, employees, successors and assigns, and upon all other persons claiming any interest in the subject matter hereto through any of

the Parties hereto, including Plaintiffs and any Settlement Class Member who does not validly opt out of membership in the Settlement Class.

N. The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties hereto or their successors-in-interest.


O. The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Parties to the Settlement Agreement shall exchange among themselves copies of the original signed counterparts, and a complete set of original signed counterparts shall be filed with the Court.

P. The Parties agree that the Court shall have exclusive and continuing jurisdiction over the Parties for all purposes relating to the implementation, effectuation, interpretation, administration, monitoring and enforcement of this Settlement Agreement and all provisions thereof with respect to all Parties hereto and all beneficiaries hereof, including all Plaintiffs, Plaintiffs' Class Counsel, Defendants, Settlement Class Members and Released Parties. Any and all disputes, requests or petitions regarding or arising out of the enforcement, construction, administration or interpretation of the Settlement Agreement, any provisions of the Settlement Agreement or the Judgment, must be made, if at all, to this Court by motion to the Court.

Q. The terms and conditions of this Settlement Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of New York, without regard to any applicable choice of law or conflicts rules.

DATED: November 7, 2007

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Case 1:06-md-01739-SWK Document 96-2 Filed 11/19/2007 Page 28 of 29

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