

PUBLIC VERSION

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18 *Bethesda Softworks LLC*

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

21 ALEX MEYER, individually and on behalf of all
22 others similarly situated,

23 Plaintiff,

24 v.

25 BETHESDA SOFTWARES LLC D/B/A
26 BETHESDA GAME STUDIOS, a Delaware
27 corporation

28 Defendant.

CASE NO: 4:19cv00820

NOTICE OF REMOVAL
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Trial Date: None Set

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1 PLEASE TAKE NOTICE that defendant Bethesda Softworks LLC (“Bethesda”) removes the
2 above-captioned action from the Superior Court of California for the County of Alameda, where the
3 action captioned *Meyer v. Bethesda Softworks LLC*, RG 19002237 is now pending, to the United
4 States District Court for the Northern District of California, Oakland Division. This civil action is
5 removed on the basis of diversity jurisdiction pursuant to 28 U.S.C. §§ 1332, 1441, and 1453. For
6 the reasons set forth below, this Court has subject matter jurisdiction under the Class Action Fairness
7 Act of 2005 (“CAFA”), codified in part at 28 U.S.C. §§ 1332 and 1453.

8 **I. INTRODUCTION**

9 1. Plaintiff Alex Meyer commenced this action by filing a complaint in the Superior
10 Court of California for the County of Alameda.

11 2. Service of the complaint occurred on January 14, 2019.

12 3. On February 5, 2019, Meyer filed and served on Bethesda’s counsel his First
13 Amended Complaint. True and correct copies of the Complaint, First Amended Complaint (“FAC”),
14 all pleadings, and state court orders are attached as Exhibit A.

15 4. Promptly upon filing this notice, Bethesda will give notice of removal to Meyer
16 through his counsel of record and the Clerk of the Alameda Superior Court, as required by 28 U.S.C.
17 § 1446(d).

18 5. No admission of liability, fact, or law is made by this notice of removal. Bethesda
19 reserves all of its defenses, arguments, and objections. Bethesda does not waive, and expressly
20 reserves, all rights to challenge class allegations and class certification.

21 **II. THE NOTICE OF REMOVAL IS TIMELY**

22 6. Bethesda timely filed this notice of removal within 30 days of the service of the
23 original complaint, which occurred on January 14, 2019. 28 U.S.C. § 1446(b)(1).

24 **III. THIS COURT HAS JURISDICTION UNDER CAFA**

25 7. This action is styled as a putative class action. See FAC ¶¶ 26-28.

26 8. This Court has original jurisdiction over this action under CAFA. 28 U.S.C.
27 § 1332(d). CAFA grants federal district courts original jurisdiction over class action cases filed
28 under federal or state law where any member of the alleged class of plaintiffs is a citizen of a state

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1 different from any defendant and the amount in controversy for the putative class exceeds
2 \$5,000,000, exclusive of interests and costs. *Id.* As discussed below, this action meets all the
3 requirements for removal under CAFA.

4 **A. Minimal Diversity Exists**

5 9. Minimal diversity exists under CAFA where any plaintiff, or a prospective class-
6 member, is diverse from any defendant. 28 U.S.C. § 1332(d)(A).

7 10. The FAC alleges that Meyer is a “California resident who resides in Cameron Park,
8 California.” FAC ¶ 11.

9 11. Bethesda is a Delaware corporation with its primary place of business at 1370 Piccard
10 Drive, Rockville, Maryland 20850.

11 12. The FAC seeks to represent a “nationwide class of individuals who purchased
12 [Bethesda’s] Power Armor Edition” product. FAC ¶ 1.

13 13. The FAC also seeks to represent a “proposed Sub-Class comprised of all other
14 similarly situated individuals in California who purchased the Power Armor Edition.” FAC ¶ 2.

15 14. Because at least one plaintiff is a citizen of a state different from Bethesda, the
16 minimal diversity requirement under CAFA is met.

17 **B. The Putative Class Includes at Least 100 Members**

18 15. CAFA requires at least 100 members in the putative class. 28 U.S.C. § 1332(d)(5).

19 16. Here, the FAC alleges that “potential members of the Classes as defined are so
20 numerous and so diversely located that joinder of all members of the Classes is impracticable.” FAC
21 ¶ 28.

22 17. More than 100 individuals have purchased the Power Armor Edition during the
23 alleged class period (June 10, 2018-November 29, 2018).

24 18. The CAFA requirements for a prospective class of over 100 members are thus met.

25 **C. The Amount in Controversy Exceeds \$ 5,000,000**

26 19. CAFA allows for removal of class actions where the aggregate amount in controversy
27 for all potential class members exceeds \$ 5 million.

28 20. Meyer failed to allege the total amount in controversy in his original complaint.

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1 21. Once notified by Bethesda’s counsel that Bethesda plans to seek removal of the case
2 to this Court, Meyer filed his FAC with a conclusory allegation that “[t]he amount in controversy for
3 Plaintiff, individual Class Members, and individual California Sub-Class Members, in the aggregate,
4 is less than \$5,000,000.” FAC ¶ 9.

5 22. Plaintiff’s attempted stipulation (to avoid removal under CAFA), although “tie[s]”
6 Meyer’s hands with respect to the damages sought, does not resolve the amount-in-controversy
7 question because Meyer cannot bind the rest of the alleged class. *Standard Fire Ins. Co. v. Knowles*,
8 568 U.S. 588, 593, 596 (2013) (rejecting stipulation in the complaint that “Plaintiff and Class
9 stipulate they will seek to recover total aggregate damages of less than five million dollars”;
10 “Because his precertification stipulation does not bind anyone but himself, Knowles has not reduced
11 the value of the putative class members’ claims”).

12 23. “[A] defendant’s notice of removal need include only a plausible allegation that the
13 amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v.*
14 *Owens*, 135 S. Ct. 547, 554 (2014).

15 24. Here, Bethesda denies any liability, wrongdoing, or that any monetary or other
16 recovery is proper. That said, the total potential exposure for damages, other monetary recovery,
17 and attorneys’ fees, on an aggregate, class-wide basis, meets the jurisdictional minimum of \$5
18 million.

19 25. The case centers on Bethesda’s FALLOUT® 76 Power Armor Collector’s Edition
20 product which included an access code to the premium Tricentennial Edition of the video game; a
21 wearable T-51b Power Armor Helmet with an operational headlamp, voice modulator, and a storage
22 bag; a glow-in-the-dark FALLOUT® 76 map; and twenty-four physical game pieces. There were
23 also other enticements to purchase the Power Armor Edition, including the possibility to participate
24 in the B.E.T.A. early access period and 500 in-game Atoms (a form of in-game virtual currency).
25 The Power Armor Edition product retails for around \$200.

26 26. The class members, Meyer claims, “were deceived and induced into purchasing the
27 Power Armor Edition” and allegedly paid a “premium for the Power Armor Edition because, at least
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1 in part,” Bethesda allegedly advertised the Power Armor Edition to include a canvas storage bag for
2 the helmet but provided a nylon storage bag. FAC ¶¶ 23, 32.

3 27. During the June 10, 2018-November 29, 2018 alleged class period, Bethesda sold
4 around [REDACTED]
5 [REDACTED] units of the Power Armor Edition
6 in the U.S. Total gross sales for the Power Armor Edition product have thus totaled over [REDACTED]
7 [REDACTED]
8 [REDACTED].

9 28. Meyer seeks “damages” for the alleged class members “in the amount of their actual
10 losses” and “all monies paid by [the alleged class members] attributable to the difference in value
11 between the advertised canvas duffel bag and the supplied nylon bag” in the Power Armor Edition
12 product. FAC ¶¶ 43, Prayer for Relief (C).

13 29. Meyer further alleges that “Plaintiff and Class members would not have purchased
14 the Power Armor Edition and/or would not have paid a price premium therefore, if the true facts had
15 been known to them regarding the falsity of the Canvas Duffel Bag representation.” FAC ¶ 34.

16 30. Meyer also seeks to “disgorge *all profits* and gains [Bethesda] has reaped through its
17 [allegedly] unlawful, unfair, and/or fraudulent acts and practices and restore such profits and gains to
18 Plaintiff and California Sub-Class Members.” FAC ¶ 50 (emphasis added).

19 31. Separately, Meyer seeks “restitution to Plaintiff and each member of the California
20 Sub-Class ... of *all sums* [allegedly] unlawfully collected by Defendant from the Plaintiff and other
21 members of the California Sub-Class.” FAC, Prayer for Relief (E) (emphasis added).

22 32. Although Bethesda believes the type of material for a helmet storage bag creates “no
23 difference in value” for a reasonable consumer of the Power Armor Edition product, Meyer’s
24 complaint alleges that “Plaintiff and Class members would not have purchased the Power Armor
25 Edition” (i.e., would not have paid \$200 at all) had they known they would receive a nylon storage
26 bag. Moreover, the alleged unquantified “value” may differ from consumer to consumer. Further
27 still, Meyer seeks to “disgorge all profits” (not expressly limited to the profits in connection with the
28 bag) for the Power Armor Edition product. Accordingly, at this stage, the appropriate measure for

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1 the amount in controversy (not including attorneys' fees and/or any other relief Meyer may seek) are
2 the overall sales for the Power Armor Edition Product, which exceed the \$5 million jurisdictional
3 minimum.

4 33. Indeed, there is an earlier-filed putative class action titled *Spasovski v. Bethesda*
5 *Softworks LLC*, 8:18-cv-03955-GJH, which is currently pending before the U.S. District Court for
6 the District of Maryland and involves substantially identical claims, i.e., that "Bethesda's marketing
7 and advertisement of the Power Armor Package (depicting a canvas carrying bag and expressly
8 stating that the carrying bag was canvas) deceived Plaintiff and the other members of the Class and
9 induced them into purchasing a product they otherwise would not have" and "caused Plaintiff and
10 members of the Class (defined below) to pay more for the Power Armor package than they otherwise
11 would have." See Exhibit B, Complaint ¶¶ 1, 13.

12 34. In the *Spasovski* putative class action case, the plaintiff asserts that the U.S. District
13 Court for the District of Maryland "has subject matter jurisdiction pursuant to 28 U.S.C. §
14 1332(d)(2) because the matter in controversy, upon information and belief, exceeds \$5,000,000,
15 exclusive of interest and costs." *Id.* at ¶ 4.

16 35. Because all of the CAFA requirements are met, removal to this Court is proper.

17 **IV. CONCLUSION**

18 WHEREFORE, having provided notice as required by law, this action should be removed
19 from the Superior Court of California for the County of Alameda to this Court.

20
21 Dated: February 14, 2019

KENDALL BRILL & KELLY LLP

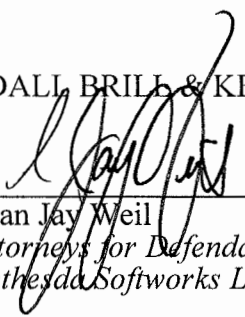
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23 By: 
24 Alan Jay Weil
25 Attorneys for Defendant
26 Bethesda Softworks LLC
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EXHIBIT A

02/5/2019

10:16 AM PST

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Attorneys for Plaintiff

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ALEX MEYER, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

BETHESDA SOFTWARES, LLC D/B/A
BETHESDA GAME STUDIOS, a
Delaware corporation;

Defendant.

FILED BY FAX

ALAMEDA COUNTY

February 05, 2019

CLERK OF
THE SUPERIOR COURT
By Shabra Iyamu, Deputy

CASE NUMBER:

RG19002237

CASE NO. RG19002237

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR**

- (1) NEGLIGENT MISREPRESENTATION;**
- (2) FAL VIOLATIONS (CAL. BUS. & PROF. CODE §§ 17500 ET SEQ.); AND**
- (3) UCL VIOLATIONS (CAL. BUS. PROF. CODE §§ 17200 ET SEQ.)**

DEMAND FOR JURY TRIAL

1 Plaintiff Alex Meyer (“Plaintiff”), on behalf of himself and all others similarly situated,
2 complains and alleges as follows:

3 **OVERVIEW OF CLAIMS**

4 1. This is as a class action under California Code of Civil Procedure § 382, seeking
5 damages, including restitution and reasonable attorneys’ fees and costs, caused by negligent
6 misrepresentations of Bethesda Softworks LLC, d/b/a Bethesda Game Studios, a subsidiary of
7 ZeniMax Media Inc. (hereinafter “Bethesda” or “Defendant”) in connection with the marketing
8 of the Power Armor Edition of Fallout 76 (hereinafter “Power Armor Edition”) to Plaintiff and a
9 proposed nationwide class of individuals who purchased the Power Armor Edition in reasonable
10 reliance on Bethesda’s representations and whose reliance on Bethesda’s misrepresentations was
11 a substantial factor in causing them harm (hereinafter “Class Members”).

12 2. Plaintiff also seeks restitution and reasonable attorneys’ fees and costs under Cal.
13 Bus. Prof. Code §§ 17500 *et seq.*, (“False Advertising Law” or “FAL”), California Business and
14 Professions Code (hereinafter “Cal. Bus. & Prof. Code”) §§ 17200 *et seq.*, (“Unfair Competition
15 Law” or “UCL”), and California Civil Code (hereinafter “Cal. Civ. Code”) § 1021.5 *et seq.*, on
16 behalf of himself and a proposed Sub-Class comprised of all other similarly situated individuals
17 in California who purchased the Power Armor Edition of Fallout 76 (hereinafter “California Sub-
18 Class Members”).

19 3. The “Class Period” is defined as the period of time between June 10, 2018 and
20 November 29, 2018.

21 4. During the Class Period, Bethesda manufactured, packaged, marketed, advertised,
22 sold, and distributed the Power Armor Edition online through various retail channels throughout
23 the United States, including but not limited to Amazon, Wal-Mart, and Target.

24 5. During the Class Period, Defendant made false, deceptive and misleading claims
25 regarding the materials used for the West Tek Duffel Bag that was marketed as one of the items
26 included for sale in the Power Armor Edition. Defendant created and/or authorized the false,
27 misleading, and deceptive marketing materials for the Power Armor Edition that falsely claimed
28

1 that the West Tek Duffel Bag was made of canvas, when it in fact was made out of nylon, a
2 cheaper material of lower quality (“Canvas Duffel Bag Representation”).

3 **JURISDICTION**

4 6. This Court has jurisdictions over Plaintiff and Class Members’ claim for damages
5 arising from Defendant’s negligent misrepresentations under Code of Civil Procedure § 410.10.

6 7. This Court has jurisdiction over Plaintiff and California Sub-Class Members’
7 claims for restitution arising from Defendant’ unlawful business practices under Cal. Bus. Prof.
8 Code §§ 17203, 17204, and 17535.

9 8. This Court has specific jurisdiction over Defendant for Class Members’ claims
10 because Power Armor Edition was initially announced in California, Defendant’s nationwide
11 marketing efforts for Power Armor Edition explicitly referenced its participation in an event in
12 California, and because Defendant made Power Armor Edition available for purchase in
13 connection with its presentation at an event in California, as well as other reasons as set forth
14 herein.

15 9. The amount in controversy for Plaintiff, individual Class Members, and individual
16 California Sub-Class Members, in the aggregate, is less than \$5,000,000.

17 **VENUE**

18 10. Venue is proper in the County of Alameda pursuant to California Code of Civil
19 Procedure §§ 395(a) and 395.5. Defendant is a Delaware corporation that has not designated and
20 does not maintain a principal place of business in California. Venue is therefore proper in
21 Alameda County.

22 **THE PARTIES**

23 11. Plaintiff Alex Meyer (“Plaintiff Meyer”) is a California resident who resides in
24 Cameron Park, California. During the Class Period, Plaintiff Meyer purchased the Power Armor
25 Edition.

26 12. Defendant Bethesda Softworks LLC d/b/a Bethesda Game Studios is a subsidiary
27 of ZeniMax Media Inc., a Delaware Corporation with its principal place of business at 1370
28 Piccard Drive, Rockville, Maryland 20850. Throughout the Class Period, Bethesda has

1 transacted business in California, including launching the initial advertising campaign for the
2 Power Armor Edition in California.

3 **FACTUAL BACKGROUND**

4 13. Bethesda is a prominent videogame development studio responsible for, among
5 other titles, the “Fallout” series.

6 14. On June 10, 2018, Bethesda held a press conference in Los Angeles to announce
7 the upcoming release of several versions of the videogame Fallout 76. Included in this
8 announcement was the release of the Tri-Centennial version of the Fallout 76 game with a retail
9 price of \$79.99.

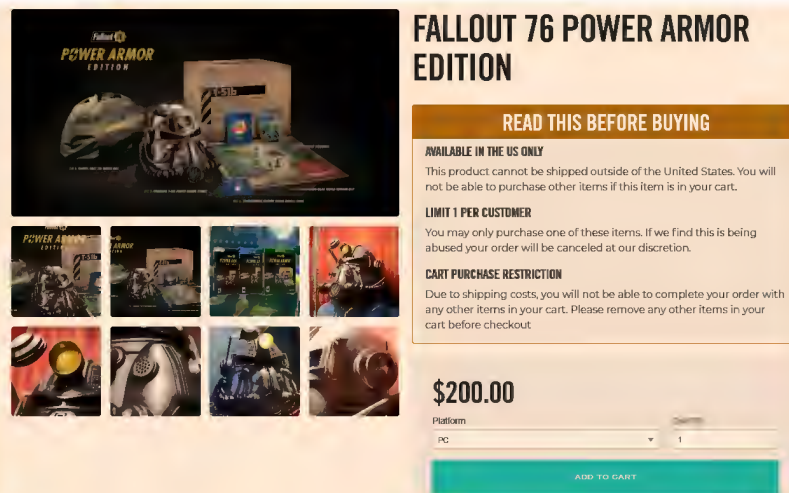
10 15. At the same time, Defendant marketed and advertised the Power Armor Edition
11 with the Tri-Centennial version of the Fallout 76 game and other physical products including a
12 West Tek Canvas Duffel Bag, Full-Scale Wearable T-51 Power Armor Helmet, and Glow-in the
13 Dark World Terrain Map. Upon information and belief, the retail price of the Power Armor
14 Edition was approximately \$200.

15 16. The marketing materials were unambiguous about the material from which the
16 West Tek Duffel Bag would be made, as can be seen below:



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About the product

- Full-Scale Wearable T-51 Power Armor Helmet with West Tek Canvas Carrying Bag: This wearable helmet faithfully replicates the in-game model and comes complete with voice modulator speaker, functioning LED head lamp, and custom V.A.T.S. sound feature.
- Glow-in-the-Dark World Terrain Map: This physical, fully-colored 21"x 21" glow in the dark vintage map showcases the six distinct regions of West Virginia complete with irradiated landmarks, towns, and wildlife.
- The title rated as mature 17 plus blood and gore, drug reference, strong language, Intense violence

17. Upon information and belief, all distribution channels utilized product images and descriptions supplied by Defendant.

18. Plaintiff purchased the Power Armor Edition and were willing to pay a premium price for the Power Armor Edition because of the Canvas Duffel Bag Representation.

19. However, the Canvas Duffel Bag Representation was false, misleading and deceptive, because the West Tek Canvas Duffel Bag was made of nylon, and not canvas.

20. Defendant was solely responsible for the approval of the design and materials for the bag included with Power Edition and the decision to supply a nylon bag rather than the advertised canvas bag was made during the Class Period.

21. Defendant therefore had no reasonable grounds for believing the Canvas Duffel Bag Representation was true during the Class Period.

22. Defendant intended for consumers to rely on its marketing materials, including the Canvas Duffel Bag Representation, when deciding whether or not to purchase Power Armor Edition.

1 23. Plaintiff reasonably relied on Defendant's Canvas Duffel Bag Representation and
2 paid a premium for the Power Armor Edition because, at least in part, Defendant promised to
3 deliver a Canvas Duffel Bag.

4 24. Plaintiff would not have paid the premium price that he did pay had he known
5 that Defendant's Canvas Duffel Bag Representation was false.

6 25. Plaintiff was therefore harmed by his reasonable reliance on the Canvas Duffel
7 Bag Representation.

8 **CLASS ACTION ALLEGATIONS**

9 26. Plaintiff brings this action on behalf of himself and similarly situated Class
10 Members as a class action under California Code of Civil Procedure § 382.

11 27. Plaintiff seeks to represent the following Class and Sub-Class:

12 All persons residing in the United States who purchased a Power Armor Edition in
13 reasonable reliance on the Canvas Duffel Bag Representation and were harmed thereby
14 between June 10, 2018 and November 29, 2018 (the "Class"); and

15 All persons in California who purchased a Power Armor Edition between June 10, 2018
16 and November 29, 2018 (the "California Sub-Class").

17 28. This action has been brought and maintained as a class action under California
18 Code of Civil Procedure § 382 because there is a well-defined community of interest in the
19 litigation, the proposed class is ascertainable, and the Plaintiff is a proper representative of the
20 Class.

21 a. Numerosity: The potential members of the Classes as defined are so numerous
22 and so diversely located that joinder of all members of the Classes is impracticable.

23 b. Commonality: There are questions of law and fact common to the Plaintiff and
24 the Class that predominate over any questions affecting only individual members of the Class.

25 These common questions of law and fact include, without limitation, the following:

26 i. Whether Defendant negligently misrepresented that the Canvas Duffel bag
27 was made out of canvas;

28 ii. Whether Defendant's conduct was an unfair, unlawful, or fraudulent
business act or practice within the meaning of the UCL;

1 iii. Whether Defendant’s marketing and advertising of the Power Armor
2 Edition was untrue or misleading within the meaning of the FAL;

3 iv. Whether Defendant made false and misleading representations in the
4 marketing and advertising of the Power Armor Edition;

5 v. Whether Plaintiff and California Sub-Class Members are entitled to
6 restitution under the UCL;

7 vi. Whether Plaintiff and California Sub-Class Members are entitled to
8 restitution under Cal. Bus. Prof. Code § 17535; and

9 vii. The proper formula(s) for calculating damages and/or restitution owed to
10 California Sub-Class Members.

11 c. Typicality: Plaintiff’s claims are typical of the claims of the Class and Sub-class,
12 and Plaintiff will fairly and adequately represent and protect the interests of the Class and Sub-
13 class.

14 d. Adequacy of Representation: Plaintiff is a member of the Class and Sub-class and
15 will fairly and adequately represent and protect the interests of the Members of the Class and
16 Sub-class. Plaintiff’s interests do not conflict with those of Members of the Class and Sub-class.
17 Counsel who represent Plaintiff are competent and experienced in litigating large class actions,
18 and will devote sufficient time and resources to the case and otherwise adequately represent the
19 Class.

20 e. Superiority of Class Action: A class action is superior to other available means
21 for the fair and efficient adjudication of this controversy. Individual joinder of all Members of
22 the Class is not practicable, and questions of law and fact common to the Class predominate over
23 any questions affecting only individual members of the Class and Sub-class. Plaintiff and Class
24 Members have suffered injury in fact and have lost money as a result of Defendant’s false
25 representations. Certification of this case as a class action will allow those similarly situated
26 persons to litigate their claims in the manner that is most efficient and economical for the parties
27 and the judicial system. Certifying this case as a class action is superior because it allows for
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1 efficient and full restitution to Members of the Class, and will thereby effectuate California's
2 strong public policy of protecting the public from violations of its laws. If this action is not
3 certified as a Class Action, it will be impossible as a practical matter for many or most Members
4 of the Class to bring individual actions to recover monies due from Defendant, due to the
5 relatively small amounts of such individual recoveries relative to the costs and burdens of
6 litigation.

7
8 **FIRST CAUSE OF ACTION**
Negligent Misrepresentation
(On behalf of the Class)

9 29. Plaintiff re-alleges and incorporates by reference each and every allegation set
10 forth in the preceding paragraphs

11 30. Defendant misrepresented the nature and quality of the contents of the Power
12 Armor Edition. Defendant had a duty to disclose this information.

13 31. At the time Defendant made the false Canvas Duffel Bag representation and
14 representations, Defendant knew or should have known that these representations were false or
15 made them without knowledge of their truth or veracity.

16 32. Defendant negligently misrepresented and omitted material facts about the Power
17 Armor Edition, in that canvas duffel bag delivered was not made of canvas, rather was made of
18 nylon. Plaintiff and Class Members relied upon the negligent statements or omissions and were
19 deceived and induced into purchasing the Power Armor Edition.

20 33. The negligent misrepresentations and/or omissions made by Defendant, upon
21 which Plaintiff and the Class members reasonably and justifiably relied, were intended to induce
22 and actually induced Plaintiff and the Proposed Class members to purchase the Power Armor
23 Edition.
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1 34. Plaintiff and Class members would not have purchased the Power Armor Edition
2 and/or would not have paid a price premium therefore, if the true facts had been known to them
3 regarding the falsity of the Canvas Duffel Bag representation.

4 35. The negligent actions of Defendant caused damage to Plaintiff and the Class
5 members, who are entitled to damages and other legal and equitable relief as a result.
6

7 **SECOND CAUSE OF ACTION**

8 **FAL Violations**

9 ***Cal. Bus. & Prof. Code §§ 17500 et seq.***
10 **(On Behalf of the California Sub-Class)**

11 36. Plaintiff re-alleges and incorporates by reference each and every allegation set
12 forth in the preceding paragraphs.

13 37. The FAL makes it is unlawful to “make or disseminate or cause to be made or
14 disseminated before the public [a statement] which is untrue or misleading, and which is known,
15 or which by the exercise of reasonable care should be known, to be untrue or misleading” with
16 the intent to “induce the public to enter into any obligation relating thereto.” Such statements
17 include statements made through “any advertising device,” including “over the Internet.” Cal.
18 Bus. & Prof. Code § 17500.

19 38. Defendant committed acts of false advertising as defined by §17500, by making
20 the Canvas Duffel Bag representation regarding the Power Armor Edition because those claims
21 were false and misleading.

22 39. Defendant knew or should have known through the exercise of reasonable care
23 that the Canvas Duffel Bag representation was false, untrue and misleading as to the Plaintiff and
24 California Sub-Class Members.

25 40. Defendant’ actions in violation of § 17500 were false and misleading such that the
26 Plaintiff and the California Sub-Class Members were likely to be deceived.

27 41. Plaintiff and the Proposed Sub-Class lost money or property as a result of
28 Defendant’ false advertising violations, because they would not have purchased or paid a
premium for the Power Armor Edition if they had not been deceived by the false Canvas Duffel
Bag representation.

1 42. Plaintiff and the California Sub-Class Members paid a premium for the Power
2 Armor Edition due to their reliance on the Canvas Duffel Bag representation and on the
3 Defendant' good faith and reputation.

4 43. Plaintiff and similarly situated California Sub-Class Members are entitled to
5 restitution pursuant to Cal. Bus. & Prof. Code § 17535 for all monies paid by them attributable to
6 the difference in value between the advertised canvas duffel bag and the supplied nylon bag.

7 44. Defendant should be required to restore to Plaintiff and California Sub-Class
8 Members all monies which Defendant acquired by means of the unlawful practices described
9 herein.

10 **THIRD CAUSE OF ACTION**

11 ***UCL Violations***

12 ***Cal. Bus. & Prof. Code §§ 17200, et seq.***
13 ***(On Behalf of the California Sub-Class)***

14 45. Plaintiff re-alleges and incorporates by by reference each and every allegation set
15 forth in the preceding paragraphs.

16 46. The UCL prohibits unfair competition in the form of any unlawful, unfair, or
17 fraudulent business act or practice. Cal. Bus. & Prof. Code § 17204 allows “any person who has
18 suffered injury in fact and has lost money or property” to prosecute a civil action for violation of
19 the UCL. Such a person may bring such an action on behalf of himself and others similarly
20 situated who are affected by the unlawful, unfair, or fraudulent business practice.

21 47. During the Class Period, Defendant committed unlawful, unfair, and/or fraudulent
22 business practices as defined by the UCL by engaging in deceptive, false, untrue, and/or
23 misleading marketing and advertising of the Power Armor Edition in violation of the UCL.

24 48. Defendant has committed unlawful, unfair, and/or fraudulent business acts and
25 practices as defined by the UCL, by violating FAL.

26 49. As a direct and proximate result of Defendant's unlawful, unfair, and/or
27 fraudulent acts and practices described herein, Defendant has received and continues to hold
28 unlawfully obtained property belonging to Plaintiff and California Sub-Class Members in the
amount of the portion of the sales price for Power Armor Edition attributable to the difference in
value of the advertised canvas duffel bag that is in excess of the value provided by the nylon bag

1 actually included. Defendant has profited from its unlawful, unfair, and/or fraudulent acts and
2 practices in the amount of that monetary value and the interest accrued thereon.

3 50. Plaintiff and similarly situated California Sub-Class Members are entitled to
4 restitution pursuant to Cal. Bus. Prof. Code §§ 17203 and 17208 for all monies paid by
5 California Sub-Class Members attributable to the difference in value between the advertised
6 canvas duffel bag and the supplied nylon bag. Defendant should be required to disgorge all
7 profits and gains it has reaped through its unlawful, unfair, and/or fraudulent acts and practices
8 and restore such profits and gains to Plaintiff and California Sub-Class Members, from whom
9 they were unlawfully taken.

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff, on behalf of himself and the members of the Class and Sub-class,
12 prays for judgment against Defendant as follows:

13 A. That the Court order that this action may proceed and be maintained as a class
14 action under § 382 of the Code of Civil Procedure; and that the Court define the Class and Sub-
15 class as specified above;

16 B. That the Court appoint Plaintiff as the Representative of the Class and Sub-class
17 and his attorneys as Counsel for the Class and Sub-class;

18 C. That the Court award to Plaintiff and Class Members damages pursuant to their
19 claims for negligent misrepresentation in the amount of their actual losses together with pre-
20 judgment interest;

21 D. That the Court find that Defendant's conduct alleged herein constitutes, a
22 violation of the UCL and the FAL;

23 E. That the Court award restitution to Plaintiff and each member of the California
24 Sub-Class, as his or her interest may appear, of all sums unlawfully collected by Defendant from
25 the Plaintiff and other members of the California Sub-Class during the Class Period;

26 F. That Defendant disgorge California Sub-Class Members' money obtained by
27 Defendant as a result of its unfair business practices;

1 G. That Plaintiff and the Members of the Classes be awarded attorneys' fees and
2 costs pursuant to Code of Civil Procedure § 1021.5 and/or other applicable law; and

3 H. An award for such other relief as the nature of this case may require or as this
4 Court deems proper.

5 **VIII. JURY DEMAND**

6 Plaintiff, on behalf of himself and the members of the Class, hereby demand trial by jury
7 of the Negligent Misrepresentation claim against Defendant alleged herein.

8
9 Dated: February 5, 2019

Respectfully submitted,

10
11
12 JULIAN HAMMOND
HAMMONDLAW, P.C.

13
14 
Attorneys for Plaintiff and Putative Class
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**Service of Process
Transmittal**

01/18/2019
CT Log Number 534762736

TO: J. Griffin Leshner
ZeniMax Media, Inc.
1370 Piccard Dr Ste 120
Rockville, MD 20850-4304

RE: Process Served in California

FOR: Bethesda Softworks LLC (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Alex Meyer, etc., Pltf. vs. Bethesda Softworks, LLC, etc., Dft. *Name discrepancy noted.*

DOCUMENT(S) SERVED: Proof(s), Notice

COURT/AGENCY: Alameda County - Superior Court - Oakland, CA
Case # RG19002237

NATURE OF ACTION: Notice of hearing has been schedule din this matter

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Courier on 01/18/2019

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: 03/05/2019 at 03:00 p.m. (Document(s) may contain additional answer dates)

ATTORNEY(S) / SENDER(S): Julian Hammond
1829 Reisterstown Rd
Suite 410
Baltimore, MD 21208
310-601-6766

ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780126734822

SIGNED: C T Corporation System
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

DOCKET HISTORY:

DOCUMENT(S) SERVED:	DATE AND HOUR OF SERVICE:	TO:	CT LOG NUMBER:
Summons, Complaint, Cover Sheet(s), Attachment(s)	By Process Server on 01/14/2019	J. Griffin Leshner ZeniMax Media, Inc.	534732765

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

*Rec'd
1/23/19
JL*

ORIGIN ID: ZFEA (310) 801-6766
JULIAN HAMMOND
1829 REISTERSTOWN RD
SUITE 410
BALTIMORE, MD 21208
UNITED STATES US

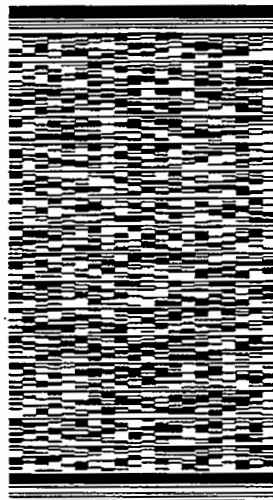
SHIP DATE: 16JAN19
ACTING: 1251B
CAD: 107494423ANET4040
BILL SENDER

TO C/O CT CORPORATION
BETHESDA SOFTWARES LLC
818 W 7TH ST
#930

LOS ANGELES CA 90017

REF: (213) 627-8252
PO: DEPT:

552J2D74CIDCA5



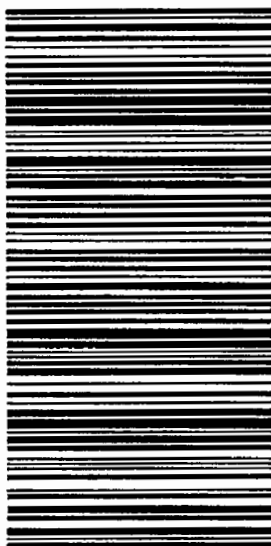
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HAMMONDLAW, P.C.
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Telephone: (310) 601-6766
Facsimile: (310) 295-2385

Attorneys for Plaintiff

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ALEX MEYER, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

**BETHESDA SOFTWARES, LLC D/B/A
BETHESDA GAME STUDIOS**, a
Delaware corporation;

Defendant.

CASE NO. RG19002237

PROOF OF SERVICE

PROOF OF SERVICE

Case Name: *Meyer v. Bethesda Softworks, LLC.*
Case No.: RG19002237

STATE OF MARYLAND)
) SS
COUNTY OF BALTIMORE)

I have an office in the county aforesaid. I am over the age of eighteen years and not a party to the entitled action. My business address is 1829 Reisterstown Rd., Suite 410, Baltimore, Maryland, 21208.

I declare that on the date hereof I served a copy of the following:

1. NOTICE OF HEARING

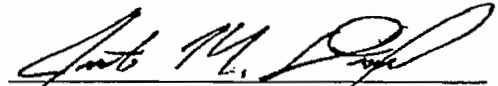
By Federal Express: I enclosed the document in a FedEx Express sealed envelope with postage fully pre-paid, addressed to the persons listed below, and placed the envelope for collection and delivery with FedEx.

c/o CT Corporation
Bethesda Softworks, LLC
818 W. 7th St
#930
Los Angeles, CA 90017

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at Baltimore, Maryland on January 16, 2019.

Justin M. Daniel
Printed Name


Signature

Hammond Law PC
Attn: Hammond, Julian
1829 Reisterstown Rd, Ste 410
Baltimore, MD 21208

Bethesda Softworks, LLC

**Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse**

Meyer

Plaintiff/Petitioner(s)

VS.

Bethesda Softworks, LLC

Defendant/Respondent(s)

(Abbreviated Title)

No. RG19002237

NOTICE OF HEARING

To each party or to the attorney(s) of record for each party herein:
Notice is hereby given that the above-entitled action has been set for:
Complex Determination Hearing
Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

Complex Determination Hearing:

DATE: 03/05/2019 TIME: 03:00 PM DEPARTMENT: 23
LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Case Management Conference:

DATE: 04/09/2019 TIME: 03:00 PM DEPARTMENT: 23
LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 3.250 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 23 issues tentative rulings on DomainWeb (www.alameda.courts.ca.gov/domainweb). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 267-6939. Please consult Rule 3.30(c) of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 23.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions. Case Management Statements may be filed by E-Delivery, by submitting directly to the E-Delivery Fax Number (510) 267-5732. No fee is charged for this service. For

<http://apps.alameda.courts.ca.gov/domainweb>.


All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 23.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 23 by e-mail at Dept.23@alameda.courts.ca.gov or by phone at (510) 267-6939.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 01/14/2019

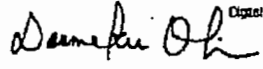
Chad Finke Executive Officer / Clerk of the Superior Court

By  ^{Digital}
Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hercon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 01/15/2019.

By  ^{Digital}
Deputy Clerk



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Julian Hammond (SBN. 268489)
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Telephone: (310) 601-6766
Facsimile: (310) 295-2385

Attorneys for Plaintiff

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ALEX MEYER, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

**BETHESDA SOFTWARES, LLC D/B/A
BETHESDA GAME STUDIOS**, a
Delaware corporation;

Defendant.

FILED
ALAMEDA COUNTY
JAN 11 2019

aSRK Of THE SUPERIOR COURT

By Sue Kesko

R G 19002237

CASE NO. _____

- CLASS ACTION COMPLAINT FOR**
- (1) NEGLIGENT MISREPRESENTATION;**
 - (2) FAL VIOLATIONS (CAL. BUS. & PROF. CODE §§ 17500 ETSEQ.); AND**
 - (3) UCL VIOLATIONS (CAL. BUS. PROF. CODE §§ 17200 ETSEQ.)**

DEMAND FOR JURY TRIAL

**BY
FAX**

1 Plaintiff Alex Meyer (“Plaintiff”), on behalf of himself and all others similarly situated,
2 complains and alleges as follows:

3 **OVERVIEW OF CLAIMS**

4 1. This is as a class action under California Code of Civil Procedure § 382, seeking
5 damages, including restitution and reasonable attorneys’ fees and costs, caused by negligent
6 misrepresentations of Bethesda Softworks LLC, d/b/a Bethesda Game Studios, a subsidiary of
7 ZeniMax Media Inc. (hereinafter “Bethesda” or “Defendant”) in connection with the marketing
8 of the Power Armor Edition of Fallout 76 (hereinafter “Power Armor Edition”) to Plaintiff and a
9 proposed nationwide class of individuals who purchased the Power Armor Edition in reasonable
10 reliance on Bethesda’s representations and whose reliance on Bethesda’s misrepresentations was
11 a substantial factor in causing them harm (hereinafter “Class Members”).

12 2. Plaintiff also seeks restitution and reasonable attorneys’ fees and costs under Cal.
13 Bus. Prof. Code §§ 17500 *et seq.*, (“False Advertising Law” or “FAL”), California Business and
14 Professions Code (hereinafter “Cal. Bus. & Prof. Code”) §§ 17200 *et seq.*, (“Unfair Competition
15 Law” or “UCL”), and California Civil Code (hereinafter “Cal. Civ. Code”) § 1021.5 *et seq.*, on
16 behalf of himself and a proposed Sub-Class comprised of all other similarly situated individuals
17 in California who purchased the Power Armor Edition of Fallout 76 (hereinafter “California Sub-
18 Class Members”).

19 3. The “Class Period” is defined as the period of time between June 10, 2018 and
20 November 29, 2018.

21 4. During the Class Period, Bethesda manufactured, packaged, marketed, advertised,
22 sold, and distributed the Power Armor Edition online through various retail channels throughout
23 the United States, including but not limited to Amazon, Wal-Mart, and Target.

24 5. During the Class Period, Defendant made false, deceptive and misleading claims
25 regarding the materials used for the West Tek Duffel Bag that was marketers one of the items
26 included for sale in the Power Armor Edition. Defendant created and/or authorized the false,
27 misleading, and deceptive marketing materials for the Power Armor Edition that falsely claimed
28

1 that the West Tek Duffel Bag was made of canvas, when it in fact was made out of nylon, a
2 cheaper material of lower quality (“Canvas Duffel Bag Representation”).

3 JURISDICTION

4 6. This Court has jurisdictions over Plaintiff and Class Members’ claim for damages
5 arising from Defendant’s negligent misrepresentations under Code of Civil Procedure § 410.10.

6 7. This Court has jurisdiction over Plaintiff and California Sub-Class Members’
7 claims for restitution arising from Defendant’ unlawful business practices under Cal. Bus. Prof.
8 Code §§ 17203, 17204, and 17535.

9 8. This Court has specific jurisdiction over Defendant for Class Members’ claims
10 because Power Armor Edition was initially announced in California, Defendant’s nationwide
11 marketing efforts for Power Armor Edition explicitly referenced its participation in an event in
12 California, and because Defendant made Power Armor Edition available for purchase in
13 connection with its presentation at an event in California, as well as other reasons as set forth
14 herein.

15 VENUE

16 9. Venue is proper in the County of Alameda pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5. Defendant is a Delaware corporation that has not designated and
18 does not maintain a principal place of business in California. Venue is therefore proper in
19 Alameda County.

20 THE PARTIES

21 10. Plaintiff Alex Meyer (“Plaintiff Meyer”) is a California resident who resides in
22 Cameron Park, California. During the Class Period, Plaintiff Meyer purchased the Power Armor
23 Edition.

24 11. Defendant Bethesda Softworks LLC d/b/a Bethesda Game Studios is a subsidiary
25 of ZeniMax Media Inc., a Delaware Corporation with its principal place of business at 1370
26 Piccard Drive, Rockville, Maryland 20850. Throughout the Class Period, Bethesda has
27 transacted business in California, including launching the initial advertising campaign for the
28 Power Armor Edition in California.

FACTUAL BACKGROUND

12. Bethesda is a prominent videogame development studio responsible for, among other titles, the “Fallout” series.

13. On June 10, 2018, Bethesda held a press conference in Los Angeles to announce the upcoming release of several versions of the videogame Fallout 76. Included in this announcement was the release of the Tri-Centennial version of the Fallout 76 game with a retail price of \$79.99.

14. At the same time, Defendant marketed and advertised the Power Armor Edition with the Tri-Centennial version of the Fallout 76 game and other physical products including a West Tek Canvas Duffel Bag, Full-Scale Wearable T-51 Power Armor Helmet, and Glow-in the Dark World Terrain Map. Upon information and belief, the retail price of the Power Armor Edition was approximately \$200.

15. The marketing materials were unambiguous about the material from which the West Tek Duffel Bag would be made, as can be seen below:

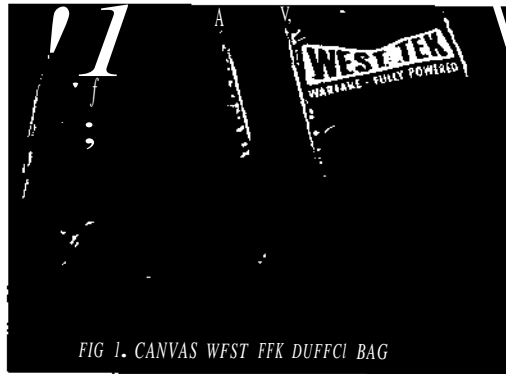


FIG 1. CANVAS WEST TEK DUFFEL BAG

FALLOUT 76 POWER ARMOR EDITION

READ THIS BEFORE BUYING

AVAILABLE IN THE US ONLY
 This product cannot be shipped outside of the United States. You will not be able to purchase other items if this item is in your cart.

LIMIT 1 PER CUSTOMER
 You may only purchase one of these items. If we find this is being abused your order will be canceled at our discretion.

CART PURCHASE RESTRICTION
 Due to shipping costs, you may not be able to complete your order with any other items in your cart. Please remove any other items in your cart before checkout.

\$200.00

From: Quantity:

ADD TO CART

1
2 **About the product**

- 3
- 4 • Full-Scale Wearable T-51 Power Armor Helmet with West Tek Canvas Carrying Bag: This wearable helmet faithfully replicates the Infame model and comes complete with voice modulator speaker, functioning LED head lamp, and custom V.A.T.S. sound feature.
 - 5 • Glow-in-the Dark Wodd Terrain Map: This physical, fully-colored 21" x 21" glow in the dark vintage map showcases the six distinct regions of West Virginia complete with irradiated landmarks, towns, and wildlife.
 - 6 • The title rated as mature 17 plus blood and gore, drug reference, strong language, intense violence

7 16. Upon information and belief, all distribution channels utilized product images and descriptions supplied by Defendant.

8 17. Plaintiff purchased the Power Armor Edition and were willing to pay a premium price for the Power Armor Edition because of the Canvas Duffel Bag Representation.

9 18. However, the Canvas Duffel Bag Representation was false, misleading and deceptive, because the West Tek Canvas Duffel Bag was made of nylon, and not canvas.

10 19. Defendant was solely responsible for the approval of the design and materials for the bag included with Power Edition and the decision to supply a nylon bag rather than the advertised canvas bag was made during the Class Period.

11 20. Defendant therefore had no reasonable grounds for believing the Canvas Duffel Bag Representation was true during the Class Period.

12 21. Defendant intended for consumers to rely on its marketing materials, including the Canvas Duffel Bag Representation, when deciding whether or not to purchase Power Armor Edition.

13 22. Plaintiff reasonably relied on Defendant's Canvas Duffel Bag Representation and paid a premium for the Power Armor Edition because, at least in part, Defendant promised to deliver a Canvas Duffel Bag.

14 23. Plaintiff would not have paid the premium price that he did pay had he known that Defendant's Canvas Duffel Bag Representation was false.

15 24. Plaintiff was therefore harmed by his reasonable reliance on the Canvas Duffel Bag Representation.

CLASS ACTION ALLEGATIONS

1
2 25. Plaintiff brings this action on behalf of himself and similarly situated Class
3 Members as a class action under California Code of Civil Procedure § 382.

4 26. Plaintiff seeks to represent the following Class and Sub-Class:

5 All persons residing in the United States who purchased a Power Armor Edition in
6 reasonable reliance on the Canvas Duffel Bag Representation and were harmed thereby
7 between June 10, 2018 and November 29, 2018 (the “Class”); and

8 All persons in California who purchased a Power Armor Edition between June 10, 2018
9 and November 29, 2018 (the “California Sub-Class”).

10 27. This action has been brought and maintained as a class action under California
11 Code of Civil Procedure § 382 because there is a well-defined community of interest in the
12 litigation, the proposed class is ascertainable, and the Plaintiff is a proper representative of the
13 Class.

14 a. Numerosity: The potential members of the Classes as defined are so numerous
15 and so diversely located that joinder of all members of the Classes is impracticable.

16 b. Commonality: There are questions of law and fact common to the Plaintiff and
17 the Class that predominate over any questions affecting only individual members of the Class.

18 These common questions of law and fact include, without limitation, the following:

19 i. Whether Defendant negligently misrepresented that the Canvas Duffel bag
20 was made out of canvas;

21 ii. Whether Defendant’s conduct was an unfair, unlawful, or fraudulent
22 business act or practice within the meaning of the UCL;

23 iii. Whether Defendant’s marketing and advertising of the Power Armor
24 Edition was untrue or misleading within the meaning of the FAL;

25 iv. Whether Defendant made false and misleading representations in the
26 marketing and advertising of the Power Armor Edition;

27 v. Whether Plaintiff and California Sub-Class Members are entitled to
28 restitution under the UCL;

1 vi. Whether Plaintiff and California Sub-Class Members are entitled to
2 restitution under Cal. Bus. Prof. Code § 17535; and

3 vii. The proper formula(s) for calculating damages and/or restitution owed to
4 California Sub-Class Members.

5 c. Typicality: Plaintiffs claims are typical of the claims of the Class and Sub-class,
6 and Plaintiff will fairly and adequately represent and protect the interests of the Class and Sub-
7 class.

8 d. Adequacy of Representation: Plaintiff is a member of the Class and Sub-class and
9 will fairly and adequately represent and protect the interests of the Members of the Class and
10 Sub-class. Plaintiffs interests do not conflict with those of Members of the Class and Sub-class.
11 Counsel who represent Plaintiff are competent and experienced in litigating large class actions,
12 and will devote sufficient time and resources to the case and otherwise adequately represent the
13 Class.

14 e. Superiority of Class Action: A class action is superior to other available means
15 for the fair and efficient adjudication of this controversy. Individual joinder of all Members of
16 the Class is not practicable, and questions of law and fact common to the Class predominate over
17 any questions affecting only individual members of the Class and Sub-class. Plaintiff and Class
18 Members have suffered injury in fact and have lost money as a result of Defendant's false
19 representations. Certification of this case as a class action will allow those similarly situated
20 persons to litigate their claims in the manner that is most efficient and economical for the parties
21 and the judicial system. Certifying this case as a class action is superior because it allows for
22 efficient and full restitution to Members of the Class, and will thereby effectuate California's
23 strong public policy of protecting the public from violations of its laws. If this action is not
24 certified as a Class Action, it will be impossible as a practical matter for many or most Members
25 of the Class to bring individual actions to recover monies due from Defendant, due to the
26 relatively small amounts of such individual recoveries relative to the costs and burdens of
27 litigation.
28

FIRST CAUSE OF ACTION

Negligent Misrepresentation

(On behalf of the Class)

1
2
3 28. Plaintiff re-alleges and incorporates by reference each and every allegation set
4 forth in the preceding paragraphs

5 29. Defendant misrepresented the nature and quality of the contents of the Power
6 Armor Edition. Defendant had a duty to disclose this information.
7

8 30. At the time Defendant made the false Canvas Duffel Bag representation and
9 representations, Defendant knew or should have known that these representations were false or
10 made them without knowledge of their truth or veracity.

11 31. Defendant negligently misrepresented and omitted material facts about the Power
12 Armor Edition, in that canvas duffel bag delivered was not made of canvas, rather was made of
13 nylon. Plaintiff and Class Members relied upon the negligent statements or omissions and were
14 deceived and induced into purchasing the Power Armor Edition.
15

16 32. The negligent misrepresentations and/or omissions made by Defendant, upon
17 which Plaintiff and the Class members reasonably and justifiably relied, were intended to induce
18 and actually induced Plaintiff and the Proposed Class members to purchase the Power Armor
19 Edition.
20

21 33. Plaintiff and Class members would not have purchased the Power Armor Edition
22 and/or would not have paid a price premium therefore, if the true facts had been known to them
23 regarding the falsity of the Canvas Duffel Bag representation.
24

25 34. The negligent actions of Defendant caused damage to Plaintiff and the Class
26 members, who are entitled to damages and other legal and equitable relief as a result.
27
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SECOND CAUSE OF ACTION

FAL Violations

Cal. Bus. & Prof. Code §§ 17500 et seq.
(On Behalf of the California Sub-Class)

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35. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

36. The FAL makes it is unlawful to “make or disseminate or cause to be made or disseminated before the public [a statement] which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading” with the intent to “induce the public to enter into any obligation relating thereto.” Such statements include statements made through “any advertising device,” including “over the Internet.” Cal. Bus. & Prof. Code § 17500.

37. Defendant committed acts of false advertising as defined by §17500, by making the Canvas Duffel Bag representation regarding the Power Armor Edition because those claims were false and misleading.

38. Defendant knew or should have known through the exercise of reasonable care that the Canvas Duffel Bag representation was false, untrue and misleading as to the Plaintiff and California Sub-Class Members.

39. Defendant’ actions in violation of § 17500 were false and misleading such that the Plaintiff and the California Sub-Class Members were likely to be deceived.

40. Plaintiff and the Proposed Sub-Class lost money or property as a result of Defendant’ false advertising violations, because they would not have purchased or paid a premium for the Power Armor Edition if they had not been deceived by the false Canvas Duffel Bag representation.

41. Plaintiff and the California Sub-Class Members paid a premium for the Power Armor Edition due to their reliance on the Canvas Duffel Bag representation and on the Defendant’ good faith and reputation.

42. Plaintiff and similarly situated California Sub-Class Members are entitled to restitution pursuant to Cal. Bus. & Prof. Code § 17535 for all monies paid by them attributable to the difference in value between the advertised canvas duffel bag and the supplied nylon bag.

1 43. Defendant should be required to restore to Plaintiff and California Sub-Class
2 Members all monies which Defendant acquired by means of the unlawful practices described
3 herein.

4 **THIRD CAUSE OF ACTION**
5 ***UCL Violations***
6 ***Cal. Bus. & Prof. Code §§ 17200, et seq.***
7 **(On Behalf of the California Sub-Class)**

8 44. Plaintiff re-alleges and incorporates by by reference each and every allegation set
9 forth in the preceding paragraphs.

10 45. The UCL prohibits unfair competition in the form of any unlawful, unfair, or
11 fraudulent business act or practice. Cal. Bus. & Prof. Code § 17204 allows “any person who has
12 suffered injury in fact and has lost money or property” to prosecute a civil action for violation of
13 the UCL. Such a person may bring such an action on behalf of himself and others similarly
14 situated who are affected by the unlawful, unfair, or fraudulent business practice.

15 46. During the Class Period, Defendant committed unlawful, unfair, and/or fraudulent
16 business practices as defined by the UCL by engaging in deceptive, false, untrue, and/or
17 misleading marketing and advertising of the Power Armor Edition in violation of the UCL.

18 47. Defendant has committed unlawful, unfair, and/or fraudulent business acts and
19 practices as defined by the UCL, by violating FAL.

20 48. As a direct and proximate result of Defendant’s unlawful, unfair, and/or
21 fraudulent acts and practices described herein, Defendant has received and continues to hold
22 unlawfully obtained property belonging to Plaintiff and California Sub-Class Members in the
23 amount of the portion of the sales price for Power Armor Edition attributable to the difference in
24 value of the advertised canvas duffel bag that is in excess of the value provided by the nylon bag
25 actually included. Defendant has profited from its unlawful, unfair, and/or fraudulent acts and
26 practices in the amount of that monetary value and the interest accrued thereon.

27 49. Plaintiff and similarly situated California Sub-Class Members are entitled to
28 restitution pursuant to Cal. Bus. Prof. Code §§ 17203 and 17208 for all monies paid by
California Sub-Class Members attributable to the difference in value between the advertised
canvas duffel bag and the supplied nylon bag. Defendant should be required to disgorge all

1 profits and gains it has reaped through its unlawful, unfair, and/or fraudulent acts and practices
2 and restore such profits and gains to Plaintiff and California Sub-Class Members, from whom
3 they were unlawfully taken.

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff, on behalf of himself and the members of the Class and Sub-class,
6 prays for judgment against Defendant as follows:

7 A. That the Court order that this action may proceed and be maintained as a class
8 action under § 382 of the Code of Civil Procedure; and that the Court define the Class and Sub-
9 class as specified above;

10 B. That the Court appoint Plaintiff as the Representative of the Class and Sub-class
11 and his attorneys as Counsel for the Class and Sub-class;

12 C. That the Court award to Plaintiff and Class Members damages pursuant to their
13 claims for negligent misrepresentation in the amount of their actual losses together with pre-
14 judgment interest;

15 D. That the Court find that Defendant's conduct alleged herein constitutes, a
16 violation of the UCL and the FAL;

17 E. That the Court award restitution to Plaintiff and each member of the California
18 Sub-Class, as his or her interest may appear, of all sums unlawfully collected by Defendant from
19 the Plaintiff and other members of the California Sub-Class during the Class Period;

20 F. That Defendant disgorge California Sub-Class Members' money obtained by
21 Defendant as a result of its unfair business practices;

22 G. That Plaintiff and the Members of the Classes be awarded attorneys' fees and
23 costs pursuant to Code of Civil Procedure § 1021.5 and/or other applicable law; and

24 H. An award for such other relief as the nature of this case may require or as this
25 Court deems proper.

vm. JURY DEMAND

Plaintiff, on behalf of himself and the members of the Class, hereby demand trial by jury of the Negligent Misrepresentation claim against Defendant alleged herein.

Dated: January 10, 2019

Respectfully submitted,



JULIAN HAMMOND
HAMMONDLAW, P.C.

Attorneys for Plaintiff and Putative Class

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21109540

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): HammondLaw PC; Julian Hammond (SBN 268489) 1829 Reisterstown Rd Suite 410 Baltimore MD 21208 TELEPHONE NO.: 310-601-6766 FAX NO: 310-295-2385 ATTORNEY FOR (Name): Alex Meyer	FOR COURT USE ONLY FILED ALAMEDA COUNTY JAN 11 2019 CLERK OF THE SUPERIOR COURT <i>[Signature]</i>			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: MAILING ADDRESS: 1225 Falloll St CITY AND ZIP CODE: Oakland 94612 BRANCH NAME: Rene C Davidson	CASE NAME: Meyer v. Bethesda Softworks			
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; padding: 5px;"> CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> ED Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> EU Limited (Amount demanded is \$25,000 or less) </td> <td style="width:33%; padding: 5px;"> Complex Case Designation <input type="checkbox"/> Counter <input checked="" type="checkbox"/> EZI Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) </td> <td style="width:33%; padding: 5px;"> TEKii22\$? JUDGE: DEPT: </td> </tr> </table>	CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> ED Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> EU Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input checked="" type="checkbox"/> EZI Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	TEKii22\$? JUDGE: DEPT:	
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Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input checked="" type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **Negligent Misrepresentation; UCL claims; FAL claims**
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 10, 2019
 Julian Hammond

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

BY FAX



**Service of Process
Transmittal**

01/14/2019
CT Log Number 534732765

TO: J. Griffin Leshar
ZeniMax Media, Inc.
1370 Piccard Dr Ste 120
Rockville, MD 20850-4304

RE: Process Served in California

FOR: Bethesda Softworks LLC (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Alex Meyer, etc., Pltf. vs. Bethesda Softworks, LLC, etc., Dft.
Name discrepancy noted.

DOCUMENT(S) SERVED: Summons, Complaint, Cover Sheet(s), Attachment(s)

COURT/AGENCY: Alameda County - Superior Court - Oakland, CA
Case # RG19002237

NATURE OF ACTION: Negligent Misrepresentation

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 01/14/2019 at 15:31

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: Within 30 days after service

ATTORNEY(S) / SENDER(S): Julian Hammond
1829 Reisterstown Rd
Suite 410
Baltimore, MD 21208
310-601-6766

ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780135476148

SIGNED: C T Corporation System
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

*Rec'd UPS
1/17/2019
JHL*

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

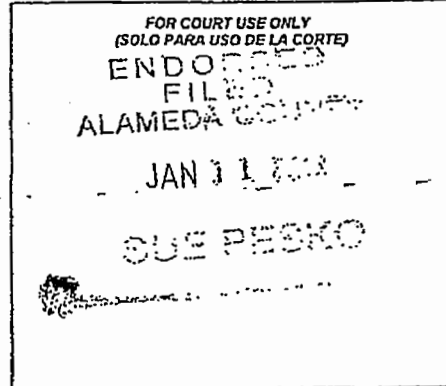
**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

BETHESDA SOFTWARES, LLC D/B/A BETHESDA GAME STUDIOS, a Delaware corporation

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ALEX MEYER, individually and on behalf of all others similarly situated



NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

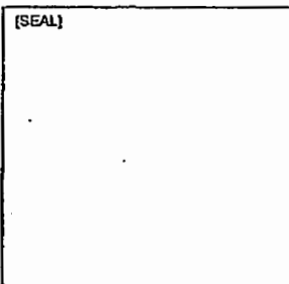
The name and address of the court is:
(El nombre y dirección de la corte es): Alameda County Superior Court
1225 Fallon St, Oakland, CA 94612

CASE NUMBER (Número del Caso): 19019002237

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Julian Hammond, 1829 Reisterstown Rd, Suite 410, Baltimore, MD 21208; 310-601-6766

DATE: (Fecha) JAN 11 2019 Clerk, by (Secretario) CHAD FINKE SUE PESKO Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): BETHESDA SOFTWARES, LLC D/B/A BETHESDA GAME STUDIOS, a Delaware corporation

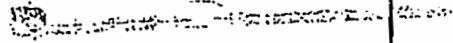
- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

- 4. by personal delivery on (date):

ENDORSED
FILED
ALAMEDA COUNTY

JAN 11 2019

SUE PESNO



1 Julian Hammond (SBN. 268489)
2 jhammond@hammondlawpc.com
3 Polina Brandler (SBN 269086)
4 pbrandler@hammondlawpc.com
5 Ari Cherniak (SBN 290071)
6 acherniak@hammondlawpc.com
7 HammondLaw, P.C.
8 1829 Reisterstown Rd, Suite 410
9 Baltimore, MD 21208
10 Telephone: (310) 601-6766
11 Facsimile: (310) 295-2385

Attorneys for Plaintiff

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

RG19002237

ALEX MEYER, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

BETHESDA SOFTWARES, LLC D/B/A
BETHESDA GAME STUDIOS, a
Delaware corporation;

Defendant.

CASE NO. _____

CLASS ACTION COMPLAINT FOR
(1) NEGLIGENT MISREPRESENTATION;
(2) FAL VIOLATIONS (CAL. BUS. &
PROF. CODE §§ 17500 ET SEQ.); AND
(3) UCL VIOLATIONS (CAL. BUS. PROF.
CODE §§ 17200 ET SEQ.)

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff Alex Meyer ("Plaintiff"), on behalf of himself and all others similarly situated,
2 complains and alleges as follows:

3 **OVERVIEW OF CLAIMS**

4 1. This is as a class action under California Code of Civil Procedure § 382, seeking
5 damages, including restitution and reasonable attorneys' fees and costs, caused by negligent
6 misrepresentations of Bethesda Softworks LLC, d/b/a Bethesda Game Studios, a subsidiary of
7 ZeniMax Media Inc. (hereinafter "Bethesda" or "Defendant") in connection with the marketing
8 of the Power Armor Edition of Fallout 76 (hereinafter "Power Armor Edition") to Plaintiff and a
9 proposed nationwide class of individuals who purchased the Power Armor Edition in reasonable
10 reliance on Bethesda's representations and whose reliance on Bethesda's misrepresentations was
11 a substantial factor in causing them harm (hereinafter "Class Members").

12 2. Plaintiff also seeks restitution and reasonable attorneys' fees and costs under Cal.
13 Bus. Prof. Code §§ 17500 *et seq.*, ("False Advertising Law" or "FAL"), California Business and
14 Professions Code (hereinafter "Cal. Bus. & Prof. Code") §§ 17200 *et seq.*, ("Unfair Competition
15 Law" or "UCL"), and California Civil Code (hereinafter "Cal. Civ. Code") § 1021.5 *et seq.*, on
16 behalf of himself and a proposed Sub-Class comprised of all other similarly situated individuals
17 in California who purchased the Power Armor Edition of Fallout 76 (hereinafter "California Sub-
18 Class Members").

19 3. The "Class Period" is defined as the period of time between June 10, 2018 and
20 November 29, 2018.

21 4. During the Class Period, Bethesda manufactured, packaged, marketed, advertised,
22 sold, and distributed the Power Armor Edition online through various retail channels throughout
23 the United States, including but not limited to Amazon, Wal-Mart, and Target.

24 5. During the Class Period, Defendant made false, deceptive and misleading claims
25 regarding the materials used for the West Tek Duffel Bag that was marketed as one of the items
26 included for sale in the Power Armor Edition. Defendant created and/or authorized the false,
27 misleading, and deceptive marketing materials for the Power Armor Edition that falsely claimed
28

1 that the West Tek Duffel Bag was made of canvas, when it in fact was made out of nylon, a
2 cheaper material of lower quality (“Canvas Duffel Bag Representation”).

3 **JURISDICTION**

4 6. This Court has jurisdictions over Plaintiff and Class Members’ claim for damages
5 arising from Defendant’s negligent misrepresentations under Code of Civil Procedure § 410.10.

6 7. This Court has jurisdiction over Plaintiff and California Sub-Class Members’
7 claims for restitution arising from Defendant’ unlawful business practices under Cal. Bus. Prof.
8 Code §§ 17203, 17204, and 17535.

9 8. This Court has specific jurisdiction over Defendant for Class Members’ claims
10 because Power Armor Edition was initially announced in California, Defendant’s nationwide
11 marketing efforts for Power Armor Edition explicitly referenced its participation in an event in
12 California, and because Defendant made Power Armor Edition available for purchase in
13 connection with its presentation at an event in California, as well as other reasons as set forth
14 herein.

15 **VENUE**

16 9. Venue is proper in the County of Alameda pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5. Defendant is a Delaware corporation that has not designated and
18 does not maintain a principal place of business in California. Venue is therefore proper in
19 Alameda County.

20 **THE PARTIES**

21 10. Plaintiff Alex Meyer (“Plaintiff Meyer”) is a California resident who resides in
22 Cameron Park, California. During the Class Period, Plaintiff Meyer purchased the Power Armor
23 Edition.

24 11. Defendant Bethesda Softworks LLC d/b/a Bethesda Game Studios is a subsidiary
25 of ZeniMax Media Inc., a Delaware Corporation with its principal place of business at 1370
26 Piccard Drive, Rockville, Maryland 20850. Throughout the Class Period, Bethesda has
27 transacted business in California, including launching the initial advertising campaign for the
28 Power Armor Edition in California.

FACTUAL BACKGROUND

12. Bethesda is a prominent videogame development studio responsible for, among other titles, the "Fallout" series.

13. On June 10, 2018, Bethesda held a press conference in Los Angeles to announce the upcoming release of several versions of the videogame Fallout 76. Included in this announcement was the release of the Tri-Centennial version of the Fallout 76 game with a retail price of \$79.99.

14. At the same time, Defendant marketed and advertised the Power Armor Edition with the Tri-Centennial version of the Fallout 76 game and other physical products including a West Tek Canvas Duffel Bag, Full-Scale Wearable T-51 Power Armor Helmet, and Glow-in the Dark World Terrain Map. Upon information and belief, the retail price of the Power Armor Edition was approximately \$200.

15. The marketing materials were unambiguous about the material from which the West Tek Duffel Bag would be made, as can be seen below:

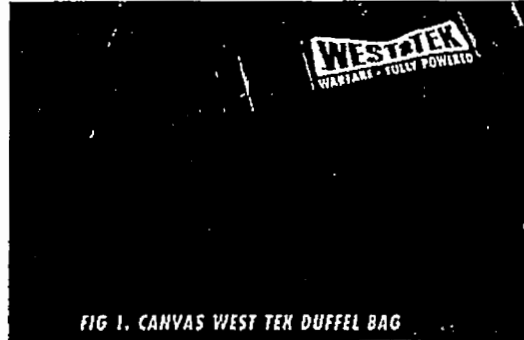


FIG 1. CANVAS WEST TEK DUFFEL BAG

FALLOUT 76 POWER ARMOR EDITION

READ THIS BEFORE BUYING

AVAILABLE IN THE US ONLY
This product cannot be shipped outside of the United States. You will not be able to purchase other items if this item is in your cart.

LIMIT 1 PER CUSTOMER
You may only purchase one of these items, if we find this being abused your order will be canceled at our discretion.

CART PURCHASE RESTRICTION
Due to shipping costs, you will not be able to complete your order with any other items in your cart. Please remove any other items in your cart before checkout.

\$200.00

Quantity: 1

1 **About the product**

- 2
 - 3 • Full-Scale Wearable T-51 Power Armor Helmet with West Tek Canvas Carrying Bag: This wearable helmet faithfully replicates the in-game model and comes complete with voice modulator speaker, functioning LED head lamp, and custom V.A.T.S. sound feature.
 - 4 • Glow-in-the-Dark World Terrain Map: This physical, fully-colored 21" x 21" glow in the dark vintage map showcases the six distinct regions of West Virginia complete with irradiated landmarks, towns, and wildlife.
 - 5 • The title rated as mature 17 plus blood and gore, drug reference, strong language, intense violence

6 16. Upon information and belief, all distribution channels utilized product images and
7 descriptions supplied by Defendant.

8 17. Plaintiff purchased the Power Armor Edition and were willing to pay a premium
9 price for the Power Armor Edition because of the Canvas Duffel Bag Representation.

10 18. However, the Canvas Duffel Bag Representation was false, misleading and
11 deceptive, because the West Tek Canvas Duffel Bag was made of nylon, and not canvas.

12 19. Defendant was solely responsible for the approval of the design and materials for
13 the bag included with Power Edition and the decision to supply a nylon bag rather than the
14 advertised canvas bag was made during the Class Period.

15 20. Defendant therefore had no reasonable grounds for believing the Canvas Duffel
16 Bag Representation was true during the Class Period.

17 21. Defendant intended for consumers to rely on its marketing materials, including
18 the Canvas Duffel Bag Representation, when deciding whether or not to purchase Power Armor
19 Edition.

20 22. Plaintiff reasonably relied on Defendant's Canvas Duffel Bag Representation and
21 paid a premium for the Power Armor Edition because, at least in part, Defendant promised to
22 deliver a Canvas Duffel Bag.

23 23. Plaintiff would not have paid the premium price that he did pay had he known
24 that Defendant's Canvas Duffel Bag Representation was false.

25 24. Plaintiff was therefore harmed by his reasonable reliance on the Canvas Duffel
26 Bag Representation.

CLASS ACTION ALLEGATIONS

25. Plaintiff brings this action on behalf of himself and similarly situated Class Members as a class action under California Code of Civil Procedure § 382.

26. Plaintiff seeks to represent the following Class and Sub-Class:

All persons residing in the United States who purchased a Power Armor Edition in reasonable reliance on the Canvas Duffel Bag Representation and were harmed thereby between June 10, 2018 and November 29, 2018 (the "Class"); and

All persons in California who purchased a Power Armor Edition between June 10, 2018 and November 29, 2018 (the "California Sub-Class").

27. This action has been brought and maintained as a class action under California Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation, the proposed class is ascertainable, and the Plaintiff is a proper representative of the Class.

a. Numerosity: The potential members of the Classes as defined are so numerous and so diversely located that joinder of all members of the Classes is impracticable.

b. Commonality: There are questions of law and fact common to the Plaintiff and the Class that predominate over any questions affecting only individual members of the Class.

These common questions of law and fact include, without limitation, the following:

i. Whether Defendant negligently misrepresented that the Canvas Duffel bag was made out of canvas;

ii. Whether Defendant's conduct was an unfair, unlawful, or fraudulent business act or practice within the meaning of the UCL;

iii. Whether Defendant's marketing and advertising of the Power Armor Edition was untrue or misleading within the meaning of the FAL;

iv. Whether Defendant made false and misleading representations in the marketing and advertising of the Power Armor Edition;

v. Whether Plaintiff and California Sub-Class Members are entitled to restitution under the UCL;

1 vi. Whether Plaintiff and California Sub-Class Members are entitled to
2 restitution under Cal. Bus. Prof. Code § 17535; and

3 vii. The proper formula(s) for calculating damages and/or restitution owed to
4 California Sub-Class Members.

5 c. Typicality: Plaintiff's claims are typical of the claims of the Class and Sub-class,
6 and Plaintiff will fairly and adequately represent and protect the interests of the Class and Sub-
7 class.

8 d. Adequacy of Representation: Plaintiff is a member of the Class and Sub-class and
9 will fairly and adequately represent and protect the interests of the Members of the Class and
10 Sub-class. Plaintiff's interests do not conflict with those of Members of the Class and Sub-class.
11 Counsel who represent Plaintiff are competent and experienced in litigating large class actions,
12 and will devote sufficient time and resources to the case and otherwise adequately represent the
13 Class.

14 e. Superiority of Class Action: A class action is superior to other available means
15 for the fair and efficient adjudication of this controversy. Individual joinder of all Members of
16 the Class is not practicable, and questions of law and fact common to the Class predominate over
17 any questions affecting only individual members of the Class and Sub-class. Plaintiff and Class
18 Members have suffered injury in fact and have lost money as a result of Defendant's false
19 representations. Certification of this case as a class action will allow those similarly situated
20 persons to litigate their claims in the manner that is most efficient and economical for the parties
21 and the judicial system. Certifying this case as a class action is superior because it allows for
22 efficient and full restitution to Members of the Class, and will thereby effectuate California's
23 strong public policy of protecting the public from violations of its laws. If this action is not
24 certified as a Class Action, it will be impossible as a practical matter for many or most Members
25 of the Class to bring individual actions to recover monies due from Defendant, due to the
26 relatively small amounts of such individual recoveries relative to the costs and burdens of
27 litigation.
28

FIRST CAUSE OF ACTION

Negligent Misrepresentation

(On behalf of the Class)

1
2
3 28. Plaintiff re-alleges and incorporates by reference each and every allegation set
4 forth in the preceding paragraphs

5 29. Defendant misrepresented the nature and quality of the contents of the Power
6 Armor Edition. Defendant had a duty to disclose this information.

7
8 30. At the time Defendant made the false Canvas Duffel Bag representation and
9 representations, Defendant knew or should have known that these representations were false or
10 made them without knowledge of their truth or veracity.

11 31. Defendant negligently misrepresented and omitted material facts about the Power
12 Armor Edition, in that canvas duffel bag delivered was not made of canvas, rather was made of
13 nylon. Plaintiff and Class Members relied upon the negligent statements or omissions and were
14 deceived and induced into purchasing the Power Armor Edition.

15
16 32. The negligent misrepresentations and/or omissions made by Defendant, upon
17 which Plaintiff and the Class members reasonably and justifiably relied, were intended to induce
18 and actually induced Plaintiff and the Proposed Class members to purchase the Power Armor
19 Edition.
20

21 33. Plaintiff and Class members would not have purchased the Power Armor Edition
22 and/or would not have paid a price premium therefore, if the true facts had been known to them
23 regarding the falsity of the Canvas Duffel Bag representation.

24
25 34. The negligent actions of Defendant caused damage to Plaintiff and the Class
26 members, who are entitled to damages and other legal and equitable relief as a result.
27
28

SECOND CAUSE OF ACTION

FAL Violations

Cal. Bus. & Prof. Code §§ 17500 et seq.
(On Behalf of the California Sub-Class)

1
2
3 35. Plaintiff re-alleges and incorporates by reference each and every allegation set
4 forth in the preceding paragraphs.

5 36. The FAL makes it is unlawful to “make or disseminate or cause to be made or
6 disseminated before the public [a statement] which is untrue or misleading, and which is known,
7 or which by the exercise of reasonable care should be known, to be untrue or misleading” with
8 the intent to “induce the public to enter into any obligation relating thereto.” Such statements
9 include statements made through “any advertising device,” including “over the Internet.” Cal.
10 Bus. & Prof. Code § 17500.

11 37. Defendant committed acts of false advertising as defined by §17500, by making
12 the Canvas Duffel Bag representation regarding the Power Armor Edition because those claims
13 were false and misleading.

14 38. Defendant knew or should have known through the exercise of reasonable care
15 that the Canvas Duffel Bag representation was false, untrue and misleading as to the Plaintiff and
16 California Sub-Class Members.

17 39. Defendant’ actions in violation of § 17500 were false and misleading such that the
18 Plaintiff and the California Sub-Class Members were likely to be deceived.

19 40. Plaintiff and the Proposed Sub-Class lost money or property as a result of
20 Defendant’ false advertising violations, because they would not have purchased or paid a
21 premium for the Power Armor Edition if they had not been deceived by the false Canvas Duffel
22 Bag representation.

23 41. Plaintiff and the California Sub-Class Members paid a premium for the Power
24 Armor Edition due to their reliance on the Canvas Duffel Bag representation and on the
25 Defendant’ good faith and reputation.

26 42. Plaintiff and similarly situated California Sub-Class Members are entitled to
27 restitution pursuant to Cal. Bus. & Prof. Code § 17535 for all monies paid by them attributable to
28 the difference in value between the advertised canvas duffel bag and the supplied nylon bag.

1 43. Defendant should be required to restore to Plaintiff and California Sub-Class
2 Members all monies which Defendant acquired by means of the unlawful practices described
3 herein.

4 **THIRD CAUSE OF ACTION**

5 ***UCL Violations***

6 ***Cal. Bus. & Prof. Code §§ 17200, et seq.***

7 **(On Behalf of the California Sub-Class)**

8 44. Plaintiff re-alleges and incorporates by by reference each and every allegation set
9 forth in the preceding paragraphs.

10 45. The UCL prohibits unfair competition in the form of any unlawful, unfair, or
11 fraudulent business act or practice. Cal. Bus. & Prof. Code § 17204 allows “any person who has
12 suffered injury in fact and has lost money or property” to prosecute a civil action for violation of
13 the UCL. Such a person may bring such an action on behalf of himself and others similarly
14 situated who are affected by the unlawful, unfair, or fraudulent business practice.

15 46. During the Class Period, Defendant committed unlawful, unfair, and/or fraudulent
16 business practices as defined by the UCL by engaging in deceptive, false, untrue, and/or
17 misleading marketing and advertising of the Power Armor Edition in violation of the UCL.

18 47. Defendant has committed unlawful, unfair, and/or fraudulent business acts and
19 practices as defined by the UCL, by violating FAL.

20 48. As a direct and proximate result of Defendant’s unlawful, unfair, and/or
21 fraudulent acts and practices described herein, Defendant has received and continues to hold
22 unlawfully obtained property belonging to Plaintiff and California Sub-Class Members in the
23 amount of the portion of the sales price for Power Armor Edition attributable to the difference in
24 value of the advertised canvas duffel bag that is in excess of the value provided by the nylon bag
25 actually included. Defendant has profited from its unlawful, unfair, and/or fraudulent acts and
26 practices in the amount of that monetary value and the interest accrued thereon.

27 49. Plaintiff and similarly situated California Sub-Class Members are entitled to
28 restitution pursuant to Cal. Bus. Prof. Code §§ 17203 and 17208 for all monies paid by
California Sub-Class Members attributable to the difference in value between the advertised
canvas duffel bag and the supplied nylon bag. Defendant should be required to disgorge all

1 profits and gains it has reaped through its unlawful, unfair, and/or fraudulent acts and practices
2 and restore such profits and gains to Plaintiff and California Sub-Class Members, from whom
3 they were unlawfully taken.

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff, on behalf of himself and the members of the Class and Sub-class,
6 prays for judgment against Defendant as follows:

7 A. That the Court order that this action may proceed and be maintained as a class
8 action under § 382 of the Code of Civil Procedure; and that the Court define the Class and Sub-
9 class as specified above;

10 B. That the Court appoint Plaintiff as the Representative of the Class and Sub-class
11 and his attorneys as Counsel for the Class and Sub-class;

12 C. That the Court award to Plaintiff and Class Members damages pursuant to their
13 claims for negligent misrepresentation in the amount of their actual losses together with pre-
14 judgment interest;

15 D. That the Court find that Defendant's conduct alleged herein constitutes, a
16 violation of the UCL and the FAL;

17 E. That the Court award restitution to Plaintiff and each member of the California
18 Sub-Class, as his or her interest may appear, of all sums unlawfully collected by Defendant from
19 the Plaintiff and other members of the California Sub-Class during the Class Period;

20 F. That Defendant disgorge California Sub-Class Members' money obtained by
21 Defendant as a result of its unfair business practices;

22 G. That Plaintiff and the Members of the Classes be awarded attorneys' fees and
23 costs pursuant to Code of Civil Procedure § 1021.5 and/or other applicable law; and

24 H. An award for such other relief as the nature of this case may require or as this
25 Court deems proper.

VIII. JURY DEMAND

Plaintiff, on behalf of himself and the members of the Class, hereby demand trial by jury of the Negligent Misrepresentation claim against Defendant alleged herein.

Dated: January 10, 2019

Respectfully submitted,



JULIAN HAMMOND
HAMMONDLAW, P.C.

Attorneys for Plaintiff and Putative Class

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): HammondLaw PC; Julian Hammond (SBN 268489) 1829 Reisterstown Rd Suite 410 Baltimore MD 21208		FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY JAN 11 2019 SUB PERSO
TELEPHONE NO.: 310-601-6766 FAX NO.: 310-295-2385	ATTORNEY FOR (Name): Alex Meyer	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: MAILING ADDRESS: 1225 Fallon St CITY AND ZIP CODE: Oakland 94612 BRANCH NAME: Rene C Davidson		
CASE NAME: Meyer v. Bethesda Softworks		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: RG19002257 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **Negligent Misrepresentation; UCL claims; FAL claims**
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 10, 2019
 Julian Hammond

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

Form Adopted for Mandatory Use
 Judicial Council of California
 01/10/19 (revised 07/07)

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;
 Cal. Standards of Judicial Administration, std. 3.10
 www.courtinfo.ca.gov

BY FAX

F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title: Meyer v. Bethesda Softworks	Case Number:
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CIVIL CASE COVER SHEET ADDENDUM

**THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Hayward Hall of Justice (447)

Oakland, Rene C. Davidson Alameda County Courthouse (446)

Pleasanton, Gale-Schenone Hall of Justice (448)

Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)
Auto Tort	Auto tort (22)	<input type="checkbox"/> 34 Auto tort (G) Is this an uninsured motorist case? <input type="checkbox"/> yes <input type="checkbox"/> no
Other PI /PD / WD Tort	Asbestos (04) Product liability (24) Medical malpractice (45) Other PI/PD/WD tort (23)	<input type="checkbox"/> 75 Asbestos (D) <input type="checkbox"/> 89 Product liability (not asbestos or toxic tort/environmental) (G) <input type="checkbox"/> 97 Medical malpractice (G) <input type="checkbox"/> 33 Other PI/PD/WD tort (G)
Non - PI /PD / WD Tort	Bus tort / unfair bus. practice (07) Civil rights (08) Defamation (13) Fraud (16) Intellectual property (19) Professional negligence (25) Other non-PI/PD/WD tort (35)	<input checked="" type="checkbox"/> 79 Bus tort / unfair bus. practice (G) <input type="checkbox"/> 80 Civil rights (G) <input type="checkbox"/> 84 Defamation (G) <input type="checkbox"/> 24 Fraud (G) <input type="checkbox"/> 87 Intellectual property (G) <input type="checkbox"/> 59 Professional negligence - non-medical (G) <input type="checkbox"/> 03 Other non-PI/PD/WD tort (G)
Employment	Wrongful termination (36) Other employment (15)	<input type="checkbox"/> 38 Wrongful termination (G) <input type="checkbox"/> 85 Other employment (G) <input type="checkbox"/> 53 Labor comm award confirmation <input type="checkbox"/> 54 Notice of appeal - L.C.A.
Contract	Breach contract / Wmty (06) Collections (09) Insurance coverage (18) Other contract (37)	<input type="checkbox"/> 04 Breach contract / Wmty (G) <input type="checkbox"/> 81 Collections (G) <input type="checkbox"/> 86 Ins. coverage - non-complex (G) <input type="checkbox"/> 98 Other contract (G)
Real Property	Eminent domain / Inv Cdm (14) Wrongful eviction (33) Other real property (26)	<input type="checkbox"/> 18 Eminent domain / Inv Cdm (G) <input type="checkbox"/> 17 Wrongful eviction (G) <input type="checkbox"/> 36 Other real property (G)
Unlawful Detainer	Commercial (31) Residential (32) Drugs (38)	<input type="checkbox"/> 94 Unlawful Detainer - commercial <input type="checkbox"/> 47 Unlawful Detainer - residential <input type="checkbox"/> 21 Unlawful detainer - drugs Is the deft. in possession of the property? <input type="checkbox"/> Yes <input type="checkbox"/> No
Judicial Review	Asset forfeiture (05) Petition re: arbitration award (11) Writ of Mandate (02) Other judicial review (39)	<input type="checkbox"/> 41 Asset forfeiture <input type="checkbox"/> 62 Pet. re: arbitration award <input type="checkbox"/> 49 Writ of mandate Is this a CEQA action (Publ.Res.Code section 21000 et seq) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> 64 Other judicial review
Provisionally Complex	Antitrust / Trade regulation (03) Construction defect (10) Claims involving mass tort (40) Securities litigation (28) Toxic tort / Environmental (30) Ins covrg from cmplx case type (41)	<input type="checkbox"/> 77 Antitrust / Trade regulation <input type="checkbox"/> 82 Construction defect <input type="checkbox"/> 78 Claims involving mass tort <input type="checkbox"/> 91 Securities litigation <input type="checkbox"/> 93 Toxic tort / Environmental <input type="checkbox"/> 95 Ins covrg from complex case type
Enforcement of Judgment	Enforcement of judgment (20)	<input type="checkbox"/> 19 Enforcement of judgment <input type="checkbox"/> 08 Confession of judgment
Misc Complaint	RICO (27) Partnership / Corp. governance (21) Other complaint (42)	<input type="checkbox"/> 90 RICO (G) <input type="checkbox"/> 88 Partnership / Corp. governance (G) <input type="checkbox"/> 68 All other complaints (G)
Misc. Civil Petition	Other petition (43)	<input type="checkbox"/> 06 Change of name <input type="checkbox"/> 69 Other petition



Superior Court of California, County of Alameda Alternative Dispute Resolution (ADR) Information Packet

The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross complainants must serve the ADR Information Packet on any new parties named to the action.

The Court *strongly encourages* the parties to use some form of ADR before proceeding to trial. You may choose ADR by:

- Indicating your preference on Case Management Form CM-110;
- Filing the Stipulation to ADR and Delay Initial Case Management Conference for 90 Days (a local form included with the information packet); or
- Agree to ADR at your Initial Case Management Conference.

QUESTIONS? Call (510) 891-6055. Email adrprogram@alameda.courts.ca.gov
Or visit the court's website at <http://www.alameda.courts.ca.gov/adr>

What Are The Advantages Of Using ADR?

- *Faster* – Litigation can take years to complete but ADR usually takes weeks or months.
- *Cheaper* – Parties can save on attorneys' fees and litigation costs.
- *More control and flexibility* – Parties choose the ADR process appropriate for their case.
- *Cooperative and less stressful* – In mediation, parties cooperate to find a mutually agreeable resolution.
- *Preserve Relationships* – A mediator can help you effectively communicate your interests and point of view to the other side. This is an important benefit when you want to preserve a relationship.

What Is The Disadvantage Of Using ADR?

- *You may go to court anyway* – If you cannot resolve your dispute using ADR, you may still have to spend time and money resolving your lawsuit through the courts.

What ADR Options Are Available?

- *Mediation* – A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options, and agree on a solution that is acceptable to all sides.
 - **Court Mediation Program:** Mediators do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediator's regular fees.

Some mediators ask for a deposit before mediation starts which is subject to a refund for unused time.

- **Private Mediation:** This is mediation where the parties pay the mediator's regular fees and may choose a mediator outside the court's panel.
- **Arbitration** – A neutral person (arbitrator) hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial and the rules of evidence are often relaxed. Arbitration is effective when the parties want someone other than themselves to decide the outcome.
 - **Judicial Arbitration Program (non-binding):** The judge can refer a case or the parties can agree to use judicial arbitration. The parties select an arbitrator from a list provided by the court. If the parties cannot agree on an arbitrator, one will be assigned by the court. There is no fee for the arbitrator. The arbitrator must send the decision (award of the arbitrator) to the court. The parties have the right to reject the award and proceed to trial.
 - **Private Arbitration (binding and non-binding)** occurs when parties involved in a dispute either agree or are contractually obligated. This option takes place outside of the courts and is normally binding meaning the arbitrator's decision is final.

Mediation Service Programs In Alameda County

Low cost mediation services are available through non-profit community organizations. Trained volunteer mediators provide these services. Contact the following organizations for more information:

SEEDS Community Resolution Center

1968 San Pablo Avenue, Berkeley, CA 94702-1612

Telephone: (510) 548-2377 Website: www.seedscrc.org

Their mission is to provide mediation, facilitation, training and education programs in our diverse communities – Services that Encourage Effective Dialogue and Solution-making.

Center for Community Dispute Settlement

291 McLeod Street, Livermore, CA 94550

Telephone: (925) 373-1035 Website: www.trivalleymediation.com

CCDS provides services in the Tri-Valley area for all of Alameda County.

For Victim/Offender Restorative Justice Services

Catholic Charities of the East Bay: Oakland

433 Jefferson Street, Oakland, CA 94607

Telephone: (510) 768-3100 Website: www.cceb.org

Mediation sessions involve the youth, victim, and family members work toward a mutually agreeable restitution agreement.

ALA ADR-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
STIPULATION TO ATTEND ALTERNATIVE DISPUTE RESOLUTION (ADR) AND DELAY INITIAL CASE MANAGEMENT CONFERENCE FOR 90 DAYS	CASE NUMBER: _____

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

This stipulation is effective when:

- All parties have signed and filed this stipulation with the Case Management Conference Statement at least 15 days before the initial case management conference.
- A copy of this stipulation has been received by the ADR Program Administrator, 1225 Fallon Street, Oakland, CA 94612.

1. Date complaint filed: _____ An Initial Case Management Conference is scheduled for:

Date: _____ Time: _____ Department: _____

2. Counsel and all parties certify they have met and conferred and have selected the following ADR process (check one):


- Court mediation Judicial arbitration
 Private mediation Private arbitration

3. All parties agree to complete ADR within 90 days and certify that:


- a. No party to the case has requested a complex civil litigation determination hearing;
- b. All parties have been served and intend to submit to the jurisdiction of the court;
- c. All parties have agreed to a specific plan for sufficient discovery to make the ADR process meaningful;
- d. Copies of this stipulation and self-addressed stamped envelopes are provided for returning endorsed filed stamped copies to counsel and all parties;
- e. Case management statements are submitted with this stipulation;
- f. All parties will attend ADR conferences; and
- g. The court will not allow more than 90 days to complete ADR.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____  _____
 (TYPE OR PRINT NAME) (SIGNATURE OF PLAINTIFF)

Date:

_____  _____
 (TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY FOR PLAINTIFF)

ALA ADR-001

PLAINTIFF/PETITIONER:	CASE NUMBER.:
DEFENDANT/RESPONDENT:	

Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF DEFENDANT)

Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF ATTORNEY FOR DEFENDANT)

**STIPULATION TO ATTEND ALTERNATIVE DISPUTE RESOLUTION (ADR)
AND DELAY INITIAL CASE MANAGEMENT CONFERENCE FOR 90 DAYS**

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(SOUTHERN DIVISION)

DIMITAR SPASOVSKI,)	
On Behalf of Himself and)	
All Others Similarly Situated,)	
)	Case No.
Plaintiff,)	
)	
v.)	
)	
BETHESDA SOFTWORKS, LLC,)	JURY TRIAL DEMANDED
)	
Defendant.)	

CLASS ACTION COMPLAINT

Plaintiff, Dimitar Spasovski (“Plaintiff”), by and through his undersigned counsel, brings this Class Action Complaint (“Complaint”) on behalf of himself and all others similarly situated against Defendant, Bethesda Softworks, LLC (“Defendant” or “Bethesda”).

1. This action seeks redress for Plaintiff and hundreds of thousands of similarly situated customers who purchased the Power Armor collectors’ edition of the *Fallout 76* video game (“Power Armor Package”), created, marketed, advertised, and sold by Bethesda. Bethesda marketed and advertised that the Power Armor Package would include a special steel-encased edition of the *Fallout 76* video game which included several exclusive in-game features and upgrades; a wearable replica of the main character’s helmet equipped with a voice modulator, LED headlamp, and sound effects; a full glow-in-the-dark map; twenty-four (“24”) collectible figurines; and a canvas bag which purchasers could use to store the helmet. Purportedly due to the higher cost of manufacturing carrying bags made of sturdy canvas material, Bethesda made a conscious business decision to, without notice, send purchasers of the Power Armor Package a cheap nylon substitute version of the bag that was materially different than the advertised bag, for which

consumers paid a substantial sum. By replacing the advertised canvas bag with a cheaper nylon alternative, Bethesda caused Plaintiff and members of the Class (defined below) to pay more for the Power Armor package than they otherwise would have.

THE PARTIES

2. Plaintiff is, and has been at all relevant times, a resident and citizen of the State of Illinois, and he pre-ordered the Power Armor Package for *Fallout 76* on or around October 1, 2018.

3. Defendant is a limited liability company organized under the laws of the State of Delaware with its principal place of business in Rockville, Maryland. Bethesda is, thus, a citizen of both Delaware and Maryland. Upon information and belief, Bethesda is a wholly-owned subsidiary of Zenimax Media, a holding company which is, likewise, incorporated under the laws of the State of Delaware with its headquarters in Rockville, Maryland.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy, upon information and belief, exceeds \$5,000,000, exclusive of interest and costs, and this is a class action in which certain members of the Class and Defendant are citizens of different states.

5. This Court has personal jurisdiction over Bethesda because it is authorized to do business in Maryland, conducts significant business in Maryland, and maintains its principal place of business in Maryland.

6. Venue is proper in the United States District Court for the District of Maryland (Southern Division), pursuant to 28 U.S.C. § 1391, because Bethesda maintains its principal place of business in this judicial district, otherwise engages in substantial business throughout this

district, and many of the acts complained of herein emanated from and/or took place within this district.

FACTUAL ALLEGATIONS

7. Bethesda is a video game publishing company established in 1986 and is credited with creating *Gridiron*, one of the first sports games based on real-life physics movements. Presently, Bethesda is best-known among video game consumers as the creator of very popular fantasy-based action role-playing games (“RPG”), which are set on massive open maps and allow players to customize their experience by pursuing various storylines. Specifically, Bethesda has created two separate RPG series, the *Elder Scrolls* series and the *Fallout* series, both of which have featured numerous games over the years. The several *Elder Scrolls* games take place in a medieval fantasy universe, while the games in the *Fallout* series are set in a post-apocalyptic dystopian wasteland. Games in both series are extremely popular among gamers, have sold very well, and have earned numerous industry accolades.

8. At issue in this case is Bethesda’s marketing and sale of the newest game in the *Fallout* series, *Fallout 76*. The events of the game take place in 2102, prior to the events of the other games in the *Fallout* series. Players navigate a large open world called “Appalachia.” As part of *Fallout 76*, players can chart their own path and customize their experience by deciding to join certain cliques, complete various missions, and essentially, build their own virtual reality.

9. In connection with the marketing and sale of *Fallout 76*, Bethesda offered the Power Armor Package at issue in this Complaint. On or about November 14, 2018, Bethesda officially made *Fallout 76* available for play. However, Bethesda allowed customers to pre-order the Power Armor Package for several months prior to its actual release. Bethesda made and

continues to make the Power Armor Package available for users on several platforms, including PlayStation 4, Xbox One, and Microsoft Windows (PC).

10. Bethesda has marketed and sold the Power Armor Package through various brick and mortar and online retailers, including, but not limited to, Amazon, Best Buy, Gamestop, Target, Wal-Mart, and others. The standard retail price for the Power Armor Package is \$199.99. An integral aspect and cost component of the Power Armor Package was the canvas carrying bag.

11. Indeed, Bethesda's advertising and marketing materials clearly indicated that the Power Armor Package featured a canvas carrying bag:





12. Despite the fact that Bethesda advertised the Power Armor Package to include a canvas carrying bag, when Plaintiff and Class members purchased the Power Armor Package, they did not receive the canvas bag promised, but instead received a flimsy nylon bag, as shown below:



13. Bethesda's marketing and advertisement of the Power Armor Package (depicting a canvas carrying bag and expressly stating that the carrying bag was canvas) deceived Plaintiff and

the other members of the Class and induced them into purchasing a product they otherwise would not have. Bethesda did not provide any notice to Plaintiff and similarly situated purchasers that the Power Armor Package would instead include a substitute nylon bag.

14. Bethesda has admitted publicly that there is a substantial cost difference between the canvas carrying bags promised and the nylon carrying bags received, by noting, upon receiving myriad complaints from consumers, that the canvas carrying bag proved too expensive to manufacture. This admission, itself, demonstrates that Plaintiff and other Class members have been damaged by Bethesda's misrepresentations:

Bethesda Customer Support response on 11/21/2018 03:31 PM

Greetings!

Thank you for contacting Bethesda Customer Support. My name is Nicholas and I'd be happy to help you today!

Due to unavailability of materials, we had to switch to a nylon carrying case in the Fallout 76: Power Armor Edition. We hope this doesn't prevent anyone from enjoying what we feel is one of our best collector's editions.

Warm Regards,
Nicholas
Bethesda Customer Support

(Bethesda Gear Helpdesk)

Hello,

We are sorry that you aren't happy with the bag. The bag shown in the media was a prototype and was too expensive to make.

We aren't planning on doing anything about it.

Bethesda Gear Store Support - North America
<https://gear.bethesda.net/>

15. Plaintiff, an avid gamer, pre-ordered the Power Armor Package on or about October 1, 2018 from the online retailer, Amazon.com. Prior to making the \$199.99 purchase (exclusive

of taxes), he viewed Bethesda's advertising regarding the various items that were to be included in the Power Armor Package. In viewing those representations, Plaintiff understood that one of the items to be included in the Power Armor Package was the canvas carrying bag. The inclusion of the canvas carrying bag was material to Plaintiff and he relied on that representation in connection with purchasing the Power Armor Package. Upon receipt of the Power Armor Package with a cheap nylon carrying bag, Plaintiff immediately understood that he had not received the value of the Power Armor Package which was represented and which he purchased.

16. Plaintiff's experience is similar to that of other consumers who purchased the Power Armor Package. The internet contains numerous complaints from purchasers who, like Plaintiff, expected the Power Armor Package to include the advertised canvas carrying bag. The following is a sample of complaints from purchasers who bought the Power Armor Package through Amazon.com:

False Advertising

1. You do not get a canvas bag.
2. The helmet smells of chemicals. You would probably pass out from wearing it too long.
3. They didnt even bother covering up the circuit board in my helmet.
4. The game is a atrocious. Bugs are everywhere.

If you bought this as a christmas gift for someone, do them a favor and return it so they dont have to go through the hassle. If you need a reason, state the advertised CANVAS bag was switched to a NYLON bag without notification or product update.

Posted by Matt, a purchaser, on November 28, 2018 on

https://www.amazon.com/gp/customer-reviews/R1865H23TE63C0/ref=cm_cr_othr_d_rvw_ttl?ie=UTF8&ASIN=B07DN58MX2 (last visited Dec. 18, 2018).

NOT a canvas bag!

Cool set. But false advertisement. The bag is NOT canvas. It's made of such a cheap material I'm afraid to use it for anything.

Posted by an anonymous purchaser, on November 14, 2018 on

https://www.amazon.com/gp/customer-reviews/R11S7DO5U47VTF/ref=cm_cr_othr_d_rvw_ttl?ie=UTF8&ASIN=B07DN58MX2 (last visited Dec. 18, 2018).

Good game – West Tek bag is not canvas

Good Collector's edition, I like the helmet, map, steelbook, and army men. However, the West Tek bag was something I really looked forward to. It's advertised as canvas, but it is definitely not. It's a very wrinkly tent material.

Posted by Thomas Bates, a purchaser, on November 14, 2018 on

https://www.amazon.com/gp/customer-reviews/R1WVW7K0I7FZDK/ref=cm_cr_arp_d_rvw_ttl?ie=UTF8&ASIN=B07DN58MX2 (last visited Dec. 18, 2018).

False advertising

The picture clearly shows and describes a *canvas* bag of good quality. Unfortunately, what is included is a cheap nylon bag that feels about as strong as the cheap dollar store rain ponchos. This bag will never protect your power armor helmet, which definitely needs protecting since it's made of as cheap of plastic as possible too

Posted by Lightmaster, a purchaser, on November 29, 2018 on

https://www.amazon.com/gp/customer-reviews/R28P4ITPE7Q87S/ref=cm_cr_othr_d_rvw_ttl?ie=UTF8&ASIN=B07DNBWR87 (last visited Dec. 18, 2018).

Falsely Advertised Canvas Bag; Delivered Nylon Instead

Bethesda advertised a canvas bag being included. Turns out the bag is just made from nylon. False advertisement. The helmet is quite basic and feels cheap when holding, pretty sure a drop from your lap would result in broken parts. The bag of figurines are very very cheap and feel like a pile of useless plastic. Only good things in this are the Steel Book Case for the game and the game itself (even though that has its own problems).

Posted by Edwin, a purchaser, on November 28, 2018 on

https://www.amazon.com/gp/customer-reviews/R1YS79B0KSQIKG/ref=cm_cr_othr_d_rvw_ttl?ie=UTF8&ASIN=B07DNBWR87 (last visited Dec. 18, 2018).

Not what I saw in original order

Garbage, collector and came with cheap vinyl bag instead of the canvas.

Posted by Scott Richardson, a purchaser, on December 6, 2018 on

https://www.amazon.com/Fallout-76-Power-Armor-Xbox-One/product-reviews/B07DNBWR87/ref=cm_cr_arp_d_paging_btm_2?ie=UTF8&filterByKeyword=canvas+bag&pageNumber=2 (last visited Dec. 18, 2018).

I want to rate it higher

Like the title says I really don't want to give it one star but the product description says canvas bag, not nylon bag and I don't like the Bait n Switch of it all

Posted by Michael Flaherty, on November 27, 2018, on https://www.amazon.com/gp/customer-reviews/R3MIBGY1O7VL8/ref=cm_cr_arp_d_rvw_ttl?ie=UTF8&ASIN=B07DNBWR87 (last visited Dec. 18, 2018).

17. As a result of Bethesda's conduct, Plaintiff and members of the Class have been damaged and demand that they receive the complete benefit of their purchase. Moreover, the Power Armor Package is still widely being advertised as including a canvas bag.

18. Plaintiff continues to desire to purchase and use the Power Armor Package and additional products from Bethesda. Plaintiff's desire is based on his continued interests in Bethesda's RPG Series. Plaintiff is continually presented with Bethesda's representations but has no way of determining whether the representations about the Power Armor Package or any products are in fact true.

19. Defendant, despite having knowledge that its representations are misleading to Plaintiff and the class, continues to market and advertise the Power Armor Package in a deceptive manner. Plaintiff and the class are at risk of suffering further injury if the relief sought is not granted.

Maryland Contacts

20. Defendant maintains its headquarters in Maryland, located at 1370 Piccard Drive, Rockville, Maryland 20850.

21. Defendant does substantial business in Maryland, with a significant portion of the proposed nationwide class located in Maryland.

22. Maryland is the epicenter of Defendant's operations, including creative development, production, sales and service offices, and financial service offices, among others.

23. In addition, the conduct that forms the basis for each and every Class member's claims against Defendant emanated from Defendant's headquarters in Maryland and is consistent with directives of Defendant's personnel in Maryland.

24. Defendant's marketing and advertising personnel are located at its Maryland headquarters, and the advertising and marketing schemes detailing the contents of the Power Armor Package were made and implemented from there.

25. Defendant's Maryland personnel implemented its deceptive advertising scheme and made the conscious business decision to save money and include a cheap nylon carrying bag instead of the promised canvas bag, thereby preventing Plaintiff and Class members from receiving the full benefit of their bargain.

26. Defendant has significant contacts with the State of Maryland, such that nationwide application of Maryland law is appropriate. Further, the conduct at issue herein emanated from Maryland such that application of Maryland law nationwide is appropriate.

27. As a result of Defendant's conduct, Plaintiff and members of the Class have suffered injury in fact and have otherwise suffered damages and been harmed and will continue to be harmed in the future unless Defendant is held accountable through this litigation.

28. Plaintiff seeks actual damages, disgorgement of profits, statutory damages, attorneys' fees, costs, and all other relief available to the class, as defined herein.

CLASS ACTION ALLEGATIONS

29. The experiences of Plaintiff are similar to those of the other consumers who purchased the Power Armor Package expecting to receive a canvas bag, not a cheap nylon substitute.

30. Plaintiff requests the Court certify this lawsuit as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

31. In the first instance, Plaintiff seeks certification of a nationwide Class under Maryland law, including certification of claims for violations of the Maryland Consumer Protection Act (“Maryland CPA”) (First Cause of Action), breach of contract (Second Cause of Action) and unjust enrichment (Third Cause of Action). Thus, Plaintiff seeks to certify the following nationwide Class pursuant to Rule 23:

All purchasers of Bethesda’s *Fallout 76* Power Armor Package who received a nylon carrying bag instead of the advertised canvas carrying bag (the “Class”).

32. In the alternative, should the Court decide not to certify a nationwide class under Maryland law, Plaintiff seeks certification of an Illinois Sub-Class, including certification of claims for violations of the Illinois Consumer Fraud and Deceptive Business Practices Act (“Illinois CFA”) (Fourth Cause of Action), violations of the Illinois Uniform Deceptive Trade Practices Act (“Illinois UDTPA”) (Fifth Cause of Action), and breach of express warranty (Sixth Cause of Action). Thus, in the alternative, Plaintiff seeks to certify the following Illinois Sub-Class pursuant to Rule 23:

All purchasers of Bethesda’s *Fallout 76* Power Armor Package in Illinois who received a nylon carrying bag instead of the advertised canvas carrying bag (“Illinois Sub-Class”).

33. This action is brought and may be properly maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

34. **Numerosity/Impracticability of Joinder**: The members of the Class number in at least the tens of thousands. As a result, the Class is so numerous that joinder of all members in a single action is impracticable. The members of the Class should be readily identifiable from the

business records of Bethesda. The disposition of these claims will provide substantial benefits to the Class.

35. **Commonality and Predominance**: There is a well-defined community of interest and common questions of law and fact which predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which will generate common answers which are apt to drive the resolution of the litigation, do not vary between members of the Class. These common questions may be determined without reference to individual circumstances and will provide common answers. The following represents a non-exhaustive list of common questions:

- a. whether Bethesda's marketing, advertising, and promotion of the Power Armor Package was false and misleading;
- b. whether Bethesda concealed facts from Plaintiff and members of the Class about the contents of the Power Armor Package;
- c. whether Bethesda knew, or should have known, that its representations were false, or that its representations omitted material information;
- d. whether Bethesda's conduct was a violation of the Maryland CPA;
- e. whether Bethesda's conduct was a violation of the Illinois CFA;
- f. whether Bethesda's conduct was a violation of the Illinois UDTPA;
- g. whether Bethesda has breached its contracts with the Class;
- h. whether Bethesda's conduct was a breach of express warranty pursuant to Illinois law, as alleged herein;
- i. whether Bethesda has been unjustly enriched by its conduct, as alleged herein;
- j. whether Bethesda's conduct as alleged herein violates public policy; and
- k. whether Plaintiff and the members of the Class are entitled to damages, restitution, equitable relief and/or other damages and other relief, and, if so, the amount and nature of such relief.

36. **Typicality and Adequacy**: Plaintiff's claims are typical of the claims of the proposed Class, and Plaintiff will fairly and adequately represent and protect the interests of the proposed Class. Plaintiff does not have any interests antagonistic to those of the Class. Plaintiff's counsel are experienced in the prosecution of this type of litigation. The questions of law and fact common to the members of the Class, some of which are set out above, predominate over any questions affecting only individual members of the Class.

37. **Superiority and Manageability**: A class action is superior to all other available methods of adjudication of this lawsuit. Because individual litigation of the claims of Class members is economically infeasible and judicially impracticable, the class action device is the only way to facilitate adjudication of Plaintiff's and the Class' claims. Although the aggregate damages sustained by the Class is in the millions of dollars, the individual damages incurred by each member resulting from Bethesda's wrongful conduct is not significant enough for experienced counsel to handle on an individual basis. Even assuming individual Class members could afford it, the likelihood of individual claims being pursued by the Class members is remote. Even then, the burden on the judicial system would be unjustifiable in light of the class action device. Individual members of the Class do not have significant interest in individually controlling the prosecution of separate actions and individualized litigation could result in varying, inconsistent or contradictory judgments. Plaintiff knows of no reason that this litigation should not proceed as a class action.

FIRST CAUSE OF ACTION
Violation of Maryland Consumer Protection Act ("Maryland CPA") –
Md. Code Com. Ann. Law § 13-101, *et seq.*
On Behalf of the Nationwide Class

38. Plaintiff realleges and incorporates the preceding allegations by reference as if set forth fully herein.

39. This cause of action is brought pursuant to the Maryland CPA, Md. Code Ann. Com. Law § 13-101, *et seq.*

40. Plaintiff, Class members, and Defendant are “person[s]” as defined in Md. Code Ann. Com. Law § 13-101(h).

41. Defendant violated and continues to violate the Maryland CPA by engaging in the following deceptive practices prohibited by the Md. Code Ann. Com. Law § 13-301 in connection with the sale of consumer goods intended to result in, and that did result in, the sale of the Power Armor Package to Plaintiff and members of the Class in violation of, *inter alia*, the following provisions:

- a. Representing that goods are of a particular standard, quality, grade, style, or model, which they are not (Md. Code Ann. Com. Law § 13-301(2)(iv));
- b. Failing to state a material fact if the failure deceives or tends to deceive (Md. Code Ann. Com. Law § 13-301(3));
- c. Advertising and offering goods without intent to sell them as advertised or offered (Md. Code Ann. Com. Law § 13-301(5)(i)); and
- d. Employing deception, fraud, false pretense, misrepresentation, and knowing concealment, suppression, and omission of material fact with the intent that a consumer rely on the same in connection with the promotion and sale of consumer goods (Md. Code Ann. Com. Law § 13-301(9)(i)).

42. Plaintiff and other Class members, in purchasing the Power Armor Package, did reasonably act in response to Bethesda’s above representations and marketing and/or would have considered the omitted facts set forth herein material to their purchasing decision. Plaintiff and the Class have suffered concrete identifiable loss due to their reliance on Bethesda’s misrepresentations about the canvas bag that was supposed to be included in the Power Armor Package.

43. The representations regarding the inclusion of the canvas bag in the Power Armor Package were material to Plaintiff and Class members. Bethesda intended that Plaintiff and Class members would rely on its representations and they did, in fact, rely on these representations. As a direct and proximate result of Bethesda's unfair and deceptive practices and acts, Plaintiff and the Class have suffered actual damages. Had the Plaintiff and Class been aware of the misrepresentations and omissions, they would not have purchased the Power Armor Package or would have paid substantially less for it.

44. Pursuant to Md. Code, Com. Law § 13-408, Plaintiff, on behalf of himself and Class members, seeks actual damages, attorneys' fees, and any other just and proper relief available that this Court deems appropriate under the Maryland CPA.

SECOND CAUSE OF ACTION
Breach of Contract pursuant to Maryland Law
On Behalf of the Nationwide Class

45. Plaintiff realleges and incorporates the preceding allegations by reference as if set forth fully herein.

46. Plaintiff brings this cause of action on behalf of the nationwide Class under Maryland common law. Bethesda has systematically refused to maintain its obligations and has prevented Plaintiff and Class members from receiving the benefit of their bargain.

47. Plaintiff and each member of the Class contracted with Bethesda to receive the Power Armor Package equipped with a canvas bag in exchange for a substantial sum of money. Implied in each and every contract was a covenant of good faith and fair dealing.

48. As part of the contract, Bethesda promised, *inter alia*, that, in connection with providing the Power Armor Package, it would include a canvas carrying bag as represented in its advertising materials. Rather than meet its obligation to provide Plaintiff and Class members with

the canvas bag, Bethesda has instead, knowingly and intentionally, chosen to save money, provided purchasers with a cheap nylon alternative, and indicated that it has no interest in refunding Plaintiff and Class members.

49. Plaintiff and other Class members, in purchasing the Power Armor Package, did reasonably act in response to Bethesda's above representations and/or marketing materials and would have considered the omitted facts set forth herein material to their purchasing decision.

50. Plaintiff and each member of the Class provided significant value to Bethesda in exchange for the Power Armor Package with a canvas carrying bag, as represented.

51. Plaintiff and each member of the Class complied with their obligations under the contract and paid the full price, as offered by Bethesda, in exchange for the Power Armor Package.

52. The breach of contract on the part of Bethesda has resulted in Plaintiff and similarly situated customers purchasing the Power Armor Package with the substitute nylon bag, when they otherwise would not have.

53. Despite its knowing and intentional breach of its obligations, Bethesda has retained the money paid by Plaintiff and similarly situated Class members, and has further indicated that it has no plans of providing a refund or otherwise making Plaintiff and the Class members whole.

54. Bethesda has breached its contractual obligations to Plaintiff and members of the Class by creating a scheme whereby it has failed to honor the covenant of good faith and fair dealing implied in every contract. Bethesda has engaged in unreasonable conduct that was entirely inconsistent with the reasonable expectations of Plaintiff and each member of the Class. Bethesda's breach has caused damage to Plaintiff and each member of the Class.

THIRD CAUSE OF ACTION
Maryland Common Law Unjust Enrichment

On Behalf of the Nationwide Class

55. Plaintiff realleges and incorporates the preceding allegations in Paragraphs 1-36, by reference as if set forth fully herein.

56. Plaintiff brings this cause of action on behalf of the nationwide Class under Maryland common law. Bethesda has engaged in unjust conduct, to the detriment of Plaintiff and each member of the Class.

57. Plaintiff and each member of the Class provided significant value to Bethesda by purchasing the Power Armor Package of *Fallout 76*.

58. Bethesda appreciated or had knowledge of the benefit received by retaining the money paid by Plaintiff and each member of the Class.

59. Although Bethesda accepted purchasers' payments and retained and received the benefit therefrom, it did not provide customers the product that was promised in connection with the payments. On the contrary, Bethesda deliberately overcharged Plaintiff and similarly situated purchasers to increase its own profit margin even though Bethesda had no intention of providing the promised canvas carrying bag. Bethesda intentionally and knowingly advertised the Power Armor Package to contain a canvas bag, but instead, purposefully provided purchasers of the Power Armor Package with an alternative nylon alternative bag.

60. This unjust conduct on the part of Bethesda has resulted in Plaintiff and Class members paying significantly more for the Power Armor Package than they otherwise would have had they known it contained a flimsy nylon substitute bag.

61. Despite its inequitable conduct, Bethesda has retained the payments made by purchasers of the Power Armor Package, and it has not taken any steps to refund or otherwise make whole Plaintiff and Class members.

62. As a result, Bethesda has been unjustly enriched, to the detriment of Plaintiff and the members of the Class.

FOURTH CAUSE OF ACTION

Violation of Illinois Consumer Fraud and Deceptive Business Practices Act (“Illinois CFA”), 815 Ill. Comp. Stat. 505/1., *et seq.*

In the Alternative, On Behalf of the Illinois Sub-Class

63. Plaintiff realleges and incorporates the preceding allegations by reference as if set forth fully herein.

64. This claim is brought by Plaintiff pursuant to the Illinois CFA, 815 Ill. Comp. Stat. 505/1, *et seq.*

65. Plaintiff, Illinois Sub-Class members, and Defendant are “person[s]” as defined in 815 Ill. Comp. Stat. 505/1(c).

66. Plaintiff and members of the Illinois Sub-Class are “consumer[s]” as defined in 815 Ill. Comp. Stat. 505/1(e).

67. Defendant’s illicit conduct constitutes “trade” or “commerce” as defined in 815 Ill. Comp. Stat. 505/1(f).

68. The Illinois CFA makes it unlawful to employ:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deceptive fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of such material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act,” approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damage thereby.

815 Ill. Comp. Stat. 505/2.

69. As detailed in this Complaint, Bethesda, in the course of trade or commerce, misrepresented that the Power Armor Package would come with a canvas bag, when, in fact, it included a cheap nylon substitute bag. This is in direct contravention to the marketing and advertising materials indicating and illustrating that the Power Armor Package would include a carrying bag made of sturdy canvas material.

70. Bethesda violated Section 505/2 of the Illinois CFA by misrepresenting the contents of the Power Armor Package. Bethesda made the misrepresentations described in this Complaint with the intent that Plaintiff and the Illinois Sub-Class rely on them and purchase the Power Armor Package. Bethesda's misrepresentations about the inclusion of the canvas carrying bag were extremely deceptive and caused Plaintiff and Illinois Sub-Class members direct financial harm by inducing them to make a purchase they otherwise would not have.

71. Bethesda's deceptive advertising was the proximate cause of the financial damage incurred by Plaintiff and each member of the Illinois Sub-Class.

72. Plaintiff, on behalf of himself and members of the Illinois Sub-Class, seeks monetary damages and reasonable attorneys' fees and costs pursuant to 815 Ill. Comp. Stat. 505/10a due to Defendant's violations of the statute. Pursuant to this provision of the Illinois CFA, Plaintiff also seeks punitive damages because Defendant acted with fraudulent intentions and/or was grossly negligent in its completely deceptive representations.

FIFTH CAUSE OF ACTION
Violation of the Illinois Uniform Deceptive Trade Practices Act ("Illinois UDTPA")
815 Ill. Comp. Stat. 510/1, et seq.
In the Alternative, On Behalf of the Illinois Sub-Class

73. Plaintiff realleges and incorporates the preceding allegations by reference as if set forth fully herein.

74. This claim is brought by Plaintiff pursuant to the Illinois UDTPA, 815 Ill. Comp. Stat. 510/1, *et seq.*

75. Plaintiff, Illinois Sub-Class members, and Defendant are all “person[s]” as defined in Ill. Comp. Stat. 510/1(5).

76. The Illinois UDTPA makes it unlawful to:

- e. “[R]epresent[] that goods or services are of a particular standard, quality, or grade or that goods are of a particular style or model if they are of another,” 815 Ill. Comp. Stat. 510/2(a)(7);
- f. “[A]dvertise[] goods or services with intent not to sell them as advertised,” 815 Ill. Comp. Stat. 510/2(a)(9); and
- g. “[E]ngage[] in any other conduct which similarly creates a likelihood of confusion or misunderstanding,” 815 Ill. Comp. Stat. 510/2(a)(12).

77. A plaintiff, “[i]n order to prevail in an action under this Act . . . need not prove competition between the parties or actual confusion or misunderstanding.” 815 Ill. Comp. Stat. 510/2(b).

78. As detailed in this Complaint, Bethesda misrepresented that the Power Armor Package would come with a canvas bag, when, in fact, it instead included a cheap nylon bag. This is in direct contravention to the marketing and advertising materials indicating and illustrating that the Power Armor Package would include a carrying bag made of canvas material.

79. Bethesda violated Section 510/2 of the Illinois UDTPA by misrepresenting the contents of the Power Armor Package. Bethesda’s misrepresentations, as described and illustrated in this Complaint, created a likelihood of confusion on the part of consumers regarding the actual contents of the Power Armor Package. Defendant’s marketing and advertising materials indicated that the Power Armor Package contained a canvas bag with the other special edition materials, but it instead contained a nylon bag, which was much cheaper to manufacture.

80. Plaintiff and the Illinois Sub-Class were damaged by Bethesda's violation and their subsequent purchase of the Power Armor Package. Plaintiff and the members of the Illinois Sub-Class would not have purchased the Power Armor Package, or would not have paid the price they did, if the actual contents of the Power Armor Package had been known.

81. Plaintiff, on behalf of himself and Illinois Sub-Class members, seeks damages and injunctive relief under the Illinois UDTPB and because Defendant willfully engaged in deceptive trade practices, Plaintiff seeks costs and attorneys' fees.

SIXTH CAUSE OF ACTION
Breach of Express Warranty
In the Alternative, On Behalf of the Illinois Sub-Class

82. Plaintiff realleges and incorporates the preceding allegations by reference as if set forth fully herein.

83. As an express warrantor, manufacturer, and merchant, Bethesda had certain obligations pursuant to its warranty that the Power Armor Package included a canvas bag.

84. In its advertising and sales material, Bethesda made a definite and positive assertion that the Power Armor Package contained a carrying bag made with a canvas material in order to induce Plaintiff and members of the Illinois Sub-Class to purchase the Power Armor Package. However, Bethesda has sold and continues to sell the Power Armor Package with knowledge that it does not contain a canvas bag but, instead, a lower-quality nylon bag.

85. Bethesda's warranty was such that Plaintiff and Illinois Sub-Class members would rely on it. Moreover, because Bethesda explicitly writes and illustrates that the Power Armor Package contains a canvas carrying bag, any reasonably prudent person would rely on this advertisement as a legitimate reflection of what the person is purchasing, and Plaintiff and members of the Illinois Sub-Class did, in fact, rely on Bethesda's representations.

86. Accordingly, Plaintiff and Illinois Sub-Class members have suffered damages caused by Defendant's breach of the warranty and are entitled to recover damages as set forth herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and members of the proposed Class and Illinois Sub-Class, prays for judgment as follows:

- a) Certification of the Class under Federal Rule of Civil Procedure 23 and appointment of Plaintiff as representative of the Class and his counsel as Class counsel;
- b) Compensatory and other damages for economic and non-economic damages;
- c) Awarding restitution and disgorgement of Defendant's revenues or profits to Plaintiff and the members of the proposed Class;
- d) An Order requiring Defendant to cease and desist from engaging in the alleged wrongful conduct and to engage in a corrective advertising campaign;
- e) Statutory pre-judgment and post-judgment interest on any amounts;
- f) Payment of reasonable attorneys' fees and recoverable litigation expenses as may be allowable under applicable law; and
- g) Such other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: December 21, 2018

Respectfully Submitted,

JOSEPH, GREENWALD & LAAKE, P.A.

/s/ Timothy F. Maloney

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**Admission Pro Hac Vice Anticipated*

*Counsel for Plaintiff Dimitar Spasovski
and the Proposed Class*

JS-CAND 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Meyer, Alex</p> <p>(b) County of Residence of First Listed Plaintiff El Dorado County, CA <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Hammond Law, PC 1829 Reisterstown Rd. Suite 410, Baltimore, MD 21208 (310) 601-6766</p>	<p>DEFENDANTS Bethesda Softworks LLC D/B/A/ Bethesda Game Studios</p> <p>County of Residence of First Listed Defendant <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i> Finnegan, Henderson, Farabow, Garrett & Dunner LLP 3300 Hillview Avenue, 2nd Floor, Palo Alto, CA 94304-1203 (650) 849-6600</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment of Veteran's Benefits 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/Accommodations 445 Amer. w/Disabilities-Employment 446 Amer. w/Disabilities-Other 448 Education PERSONAL INJURY 365 Personal Injury - Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability PRISONER PETITIONS HABEAS CORPUS 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty OTHER 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee-Conditions of Confinement	625 Drug Related Seizure of Property 21 USC § 881 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions	422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 835 Patent-Abbreviated New Drug Application 840 Trademark SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS-Third Party 26 USC § 7609	375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced & Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

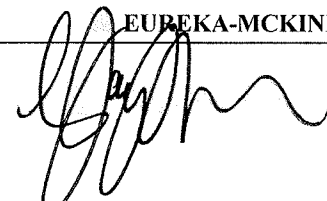
1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
 28 USC 1332
 Brief description of cause:
 Negligent Misrepresentation, False Advertising, and Unfair Competition and Fraudulent Business Practices

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. **DEMAND \$** CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

VIII. RELATED CASE(S), IF ANY *(See instructions):* JUDGE The Honorable George J. Hazel DOCKET NUMBER 8:18-cv-03955-GJH

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 02/14/2019 SIGNATURE OF ATTORNEY OF RECORD 

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Power Armor Edition 'Fallout 76'-Series West Tek Duffel Bag Falsely Advertised as Canvas](#)
