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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JAKE WEBER, individually and on behalf of all others similarly situated,

Case No.

Plaintiff,

## CLASS ACTION COMPLAINT

V.

## JURY TRIAL REMANDED

## GAMESTOP, INC.,

Defendant.

1 Plaintiff Jake Weber (“Plaintiff”), by and through his attorneys, brings this action on behalf  
 2 of himself and all others similarly situated. Plaintiff makes the following allegations pursuant to  
 3 the investigation of his counsel and based upon information and belief, except as to allegations  
 4 specifically pertaining to himself and his counsel, which are based on personal knowledge.

5 **NATURE OF THIS ACTION**

6 1. This is a class action suit brought against GameStop, Inc. (“Defendant”) for  
 7 violating the California Digital Property Rights Transparency Law, California Business &  
 8 Professions Code § 17500.6. GameStop, Inc., (“Defendant” or “GameStop”) is “the world’s  
 9 biggest game retailer,”<sup>1</sup> and sells a variety of its video games through both its brick-and-mortar  
 10 stores, as well as its website, <https://www.gamestop.com/>. On its website, Defendant tells  
 11 consumers the option to “buy” or “purchase” digital copies of the many of the same video games  
 12 they can purchase physical copies of. But when consumers “buy” digital versions of video games  
 13 through GameStop’s website, they don’t receive the same property rights they would have, had  
 14 they purchased physical copies of the games through its brick-and-mortar stores. Instead, in many  
 15 cases, they receive “a non-exclusive, non-transferable, revocable license,” to access the game,  
 16 which is maintained the video game manufacturer’s sole discretion.<sup>2</sup>

17 2. California law prohibits this kind of bait and switch. The California legislature  
 18 recently enacted digital property rights transparency law that became effective on January 1, 2025.  
 19 Cal. Bus. & Prof. Code § 17500.6. The law declares that “it shall be unlawful for a seller of a  
 20 digital good to advertise or offer for sale a digital good to a purchaser with the terms ‘buy,’  
 21 ‘purchase,’ or any other term which a reasonable person would understand to ***confer an***  
 22 ***unrestricted ownership interest in the digital good...*** unless” one of two conditions is met. Cal.  
 23 Bus. & Prof. Code § 17500.6(b)(1)(emphasis added). The seller needs to either (A) obtain “***an***  
 24 ***affirmative acknowledgment from the purchaser*** indicating... [t]hat the purchaser is receiving a

25 <sup>1</sup> Ben Gilbert, *The world’s biggest video game retailer, GameStop, is dying: Here’s what led to the*  
 26 *retail giant’s slow demise*, BUS. INSIDER (Jan. 23, 2020),  
<https://www.businessinsider.com/gamestop-worlds-biggest-video-game-retailer-decline-explained-2019-7>.

27 <sup>2</sup> Nintendo, United States Nintendo Account User Agreement,  
<https://accounts.nintendo.com/term/eula/US?lang=en-US>.

license to access the digital good [and that]... ***access to the digital good may be unilaterally revoked by the seller,***” or (B), give the consumers “a clear and conspicuous statement that ... [s]tates in plain language that ‘buying’ or ‘purchasing’ the digital good is a license.” Cal. Bus. & Prof. Code § 17500.6(b)(1)(A)-(B)(emphasis added). Defendant violated this law by advertising to consumers that they could “buy,” “purchase,” and “Add to Cart,” video games on its website without satisfying either of these two conditions.

3. Accordingly, Plaintiff brings claims against Defendant individually and on behalf of a class of all others similarly situated for a (1) violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; (2) violation of California's False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*

## THE PARTIES

4. Plaintiff is a citizen of California, residing in Lincoln, California. Plaintiff purchased a digital copy of *Elden Ring—Nightreign* on Defendant's website on June 23, 2025. Before this purchase, he encountered a purchase flow substantially similar to the one depicted in this complaint.

5. Defendant GameStop, Inc. (“GameStop” or “Defendant”) is a Minnesota corporation with its principal place of business at 625 Westport Parkway, Grapevine, Texas 76051. Defendant develops, owns, and operates gamestop.com, which is used throughout California and the United States.

## **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A), as amended by the Class Action Fairness Act of 2005 (“CAFA”), because this case is a class action where the aggregate claims for all members of the proposed class are in excess of \$5,000,000.00, exclusive of interests and costs, there are over 100 members of the putative class, and at least one class member is a citizen of a state different from Defendant.

7. This Court has personal jurisdiction over the parties because Plaintiff resides in California, is a citizen of California, and submits to the jurisdiction of the Court, and because Defendant has, at all times relevant hereto, systematically and continually conducted, and

1 continues to conduct, business in California, including within this District. Defendant therefore has  
2 sufficient minimum contacts with this state, including within this District and/or intentionally  
3 availed itself of the benefits and privileges of the California consumer market through the  
4 promotion, marketing, and sale of its products and/or services to residents within this District and  
5 throughout California.

6 8. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because  
7 a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this  
8 District. Also, Plaintiff resides in this District and purchased Defendant's digital goods in this  
9 District. Moreover, Defendant systematically conducts business in this District and throughout the  
10 State of California, and it distributed, advertised, and sold its digital goods to Plaintiff and Class  
11 Members in this State and District.

12 **FACTUAL BACKGROUND**

13 **California's Digital Property Rights Transparency Law**

14 10. In the old days, when consumers "bought" something, they could reasonably  
15 assume they would obtain the full 'bundle of sticks' we commonly know as property ownership.<sup>3</sup>  
16 In other words, if a consumer walked into a brick-and-mortar video store and "bought" a physical  
17 VHS tape, they knew it was theirs to keep. Consumers could rest reasonably assured that they  
18 could place the VHS tape on their shelf and they could retrieve it whenever they wanted. If after a  
19 few years, they wanted to watch an old movie they purchased, they could place the tape in the VHS  
20 player, and it would play.

21 11. However, nowadays, with digital goods, that is no longer a given. Many digital  
22 good providers that "sell" digital goods do not actually transfer full 'bundle of sticks.' Instead, they  
23 only grant ***licenses*** to access the digital content, which may or may not be revoked.

24  
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27 3 "The 'bundle of sticks' metaphor [is] often is used to describe property, with each stick  
28 representing a right, privilege, power or immunity." *Pac. Gas & Elec. Co. v. Hart High-Voltage  
Apparatus Repair & Testing Co.*, 18 Cal. App. 5th 415, 427 (2017).

1       12. This misunderstanding came to a fore in late 2023 and early 2024, when millions of  
 2 gamers discovered that their game *The Crew* had been shut down.<sup>4</sup> Ubisoft, a French video game  
 3 publisher, delisted (removed from digital storefronts) and subsequently shut down the servers  
 4 (intentionally stopped the operation of the computer systems that host online services or  
 5 applications, effectively making them unavailable) of *The Crew*.<sup>5</sup> Upset by the news of the video  
 6 game's server being shut down, consumers and users of the game to start a movement named "Stop  
 7 Killing Games," in an effort to "protect buyers against having products destroyed by the company  
 8 that sold them."<sup>6</sup> This caught the attention of the California legislature, which was concerned about  
 9 "consumers losing access to content."<sup>7</sup>

10      13. The State of California addressed this exact concern by passing the Digital Property  
 11 Rights Transparency Law, which ensures that "consumers clearly know and understand the nature  
 12 of their transactions...includ[ing] the reality that they may not have genuine ownership of their  
 13 purchase." California Bill Comments, A.B. 2426 Assem., 8/23/2024.

14      14. In an effort to protect consumers and require companies to inform consumers that  
 15 they are purchasing a license, not the digital good itself on online storefronts, the California  
 16 legislature recently passed a law "requiring sellers of digital goods to provide an explicit disclosure  
 17 for each purchase of a digital good informing the consumer of the true nature of their purchase,  
 18 ensuring that consumers have a full understanding of exactly what they have bought." California  
 19 Bill Analysis, A.B. 2426 Assem., 8/23/2024.

20      15. The California legislature recognized that "[a]s retailers continue to pivot away  
 21 from selling physical media, the need for additional consumer protections on the purchase of

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22      <sup>4</sup> Kotaku, *New Law Will Force Companies to Admit You Don't Actually Own Digital Games*, Zack  
 23 Zwiezen (Sept. 27, 2024), <https://kotaku.com/california-ab-2426-digital-games-the-crew-new-law-psn-1851659641>.

24      <sup>5</sup> <https://www.eurogamer.net/ubisoft-delists-the-crew-with-servers-shutting-next-year>

25      <sup>6</sup> <https://www.eurogamer.net/stop-killing-games-aims-to-mount-political-and-legal-challenges-to-games-going-offline>

26      <sup>7</sup> The Game File, *New Law Will Change How Digital Games Are Sold, At Least In California*, Stephen Totilo (Sept. 26, 2024), [https://www.gamefile.news/p/california-ab2426-crew-call-of-duty?utm\\_source=post-email-title&publication\\_id=66124&post\\_id=149460139&utm\\_campaign=email-post-title&isFreemail=true&r=1rwba&triedRedirect=true&utm\\_medium=email](https://www.gamefile.news/p/california-ab2426-crew-call-of-duty?utm_source=post-email-title&publication_id=66124&post_id=149460139&utm_campaign=email-post-title&isFreemail=true&r=1rwba&triedRedirect=true&utm_medium=email).

1 digital goods becomes more important.” *Id.* “When a consumer purchases an online digital good  
2 like a movie or TV show, they receive the ability to view the media at their leisure. *Id.* Often times,  
3 the consumer believes that their purchase has given them permanent ownership of that digital good,  
4 similar to how the purchase of movie on a DVD or a paperback book provides access in perpetuity.  
5 *Id.* In reality though, the consumer has only purchased a license, which, according to the seller’s  
6 terms and conditions, the seller can revoke at any point.” *Id.*

7 16. The Law provides that:

8 (1) It shall be unlawful for a seller of a digital good to advertise or offer  
9 for sale a digital good to a purchaser with the terms “buy,” “purchase,”  
10 or any other term which a reasonable person would understand to  
11 confer an unrestricted ownership interest in the digital good, or  
12 alongside an option for a time-limited rental, unless either of the  
13 following occur:

14 (A) The seller receives at the time of each transaction an affirmative  
15 acknowledgment from the purchaser indicating all of the following:

16 (i) That the purchaser is receiving a license to access the digital  
17 good.

18 (ii) A complete list of restrictions and conditions of the license.

19 (iii) That access to the digital good may be unilaterally revoked  
20 by the seller if they no longer hold a right to the digital good,  
21 if applicable.

22 (B) The seller provides to the consumer before executing each  
23 transaction a clear and conspicuous statement that does both of the  
24 following:

25 (i) States in plain language that “buying” or “purchasing” the  
26 digital good is a license.

27 (ii) Includes a hyperlink, QR code, or similar method to access  
28 the terms and conditions that provide full details on the license.

Cal. Bus. & Prof. Code § 17500.6(b)(1).

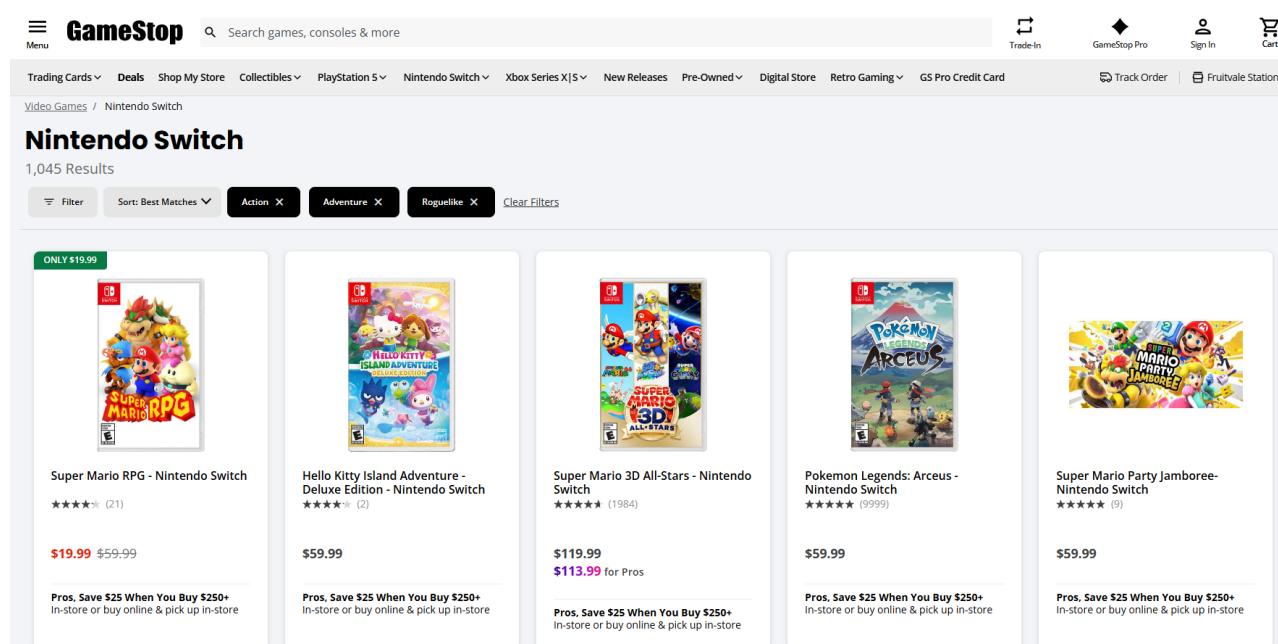
17. Under this law, “‘digital good’ means a digital audiovisual work, digital audio work,  
18 digital book, digital code, or digital application or game, whether electronically or digitally  
19 delivered or accessed.” Cal. Bus. & Prof. Code § 17500.6 (a)(7).

1       18.     “These digital goods are often sold at almost the same price points to the physical  
 2 copies of a digital good, like a DVD or a paperback book that has given them permanent ownership  
 3 of that digital good.” California Bill Comments, A.B. 2426 Assem., 8/23/2024. The reality is, “the  
 4 consumer has only purchased a license, which, according to the seller’s terms and conditions, the  
 5 seller can revoke at any point.” *Id.*

6       19.     This law expands on the restrictions set forth in California’s False Advertisement  
 7 Laws that make it unlawful for any person doing business in California to make false or misleading  
 8 advertising claims. It makes it unlawful to “to advertise or offer for sale a digital good that a  
 9 reasonable person would understand to cover an unrestricted ownership in the digital good.” *Id.*

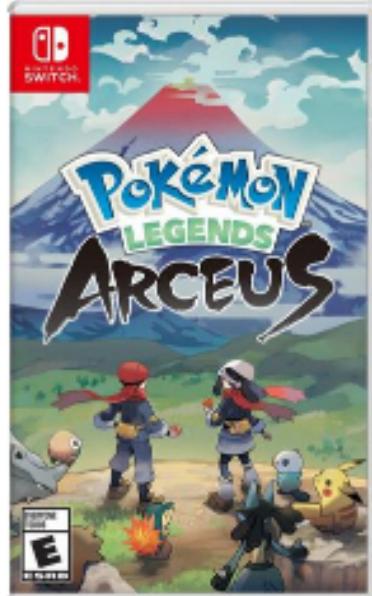
10      **GameStop Misrepresents the Nature of the Consumer’s Ownership Rights of Digital Goods  
 11 During The Purchase Process**

12      20.     Defendant’s website, GameStop.com, is a digital storefront that gives consumers the  
 13 option to purchase physical copies of video games or download their digital copies. GameStop  
 14 advertises a variety of video games on its website and tells consumers they can “buy online.” See  
 15 Figure 1 below.



27      **Figure 1**  
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1 21. For each video game listed on GameStop's website, it tells consumers they can  
2 buy online," and "Pros, Save \$25 When You Buy \$250+." See Figure 2, below.  
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15 **Pokemon Legends: Arceus -**  
16 **Nintendo Switch**

17 ★★★★★ (9999)

18  
19 **\$59.99**  
20

21  
22 **Pros, Save \$25 When You Buy \$250+**  
23 In-store or buy online & pick up in-store  
24  
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26 **Figure 2**  
27  
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1           22. If a consumer clicks on a particular game's listing, such as Figure 2, he is taken to  
 2 the game's listing page, which continues to say consumers can "Buy" and "buy online." See Figure  
 3 3A and 3B, next page. Nowhere on this page does Defendant indicate that a digital version of the  
 4 game is fundamentally different than the physical copy. Instead, the listing page states that the  
 5 game can be purchased in various Conditions: Digital, New, and Pre-Owned. *See id.* The New and  
 6 Pre-Owned conditions refer to physical, tangible copies of the game, where consumers obtain the  
 7 full bundle of sticks associated with the property ownership once they purchase the game.

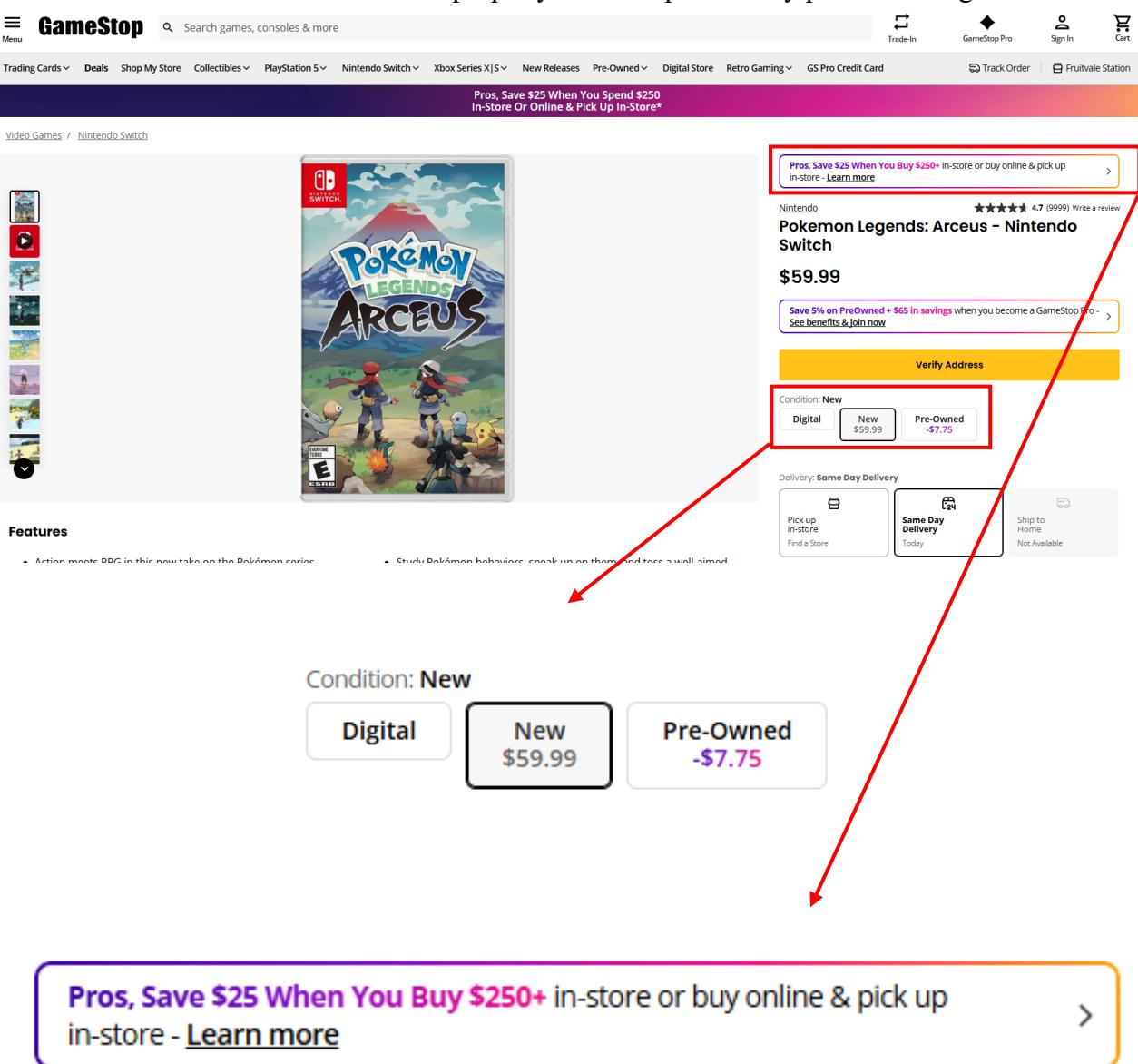
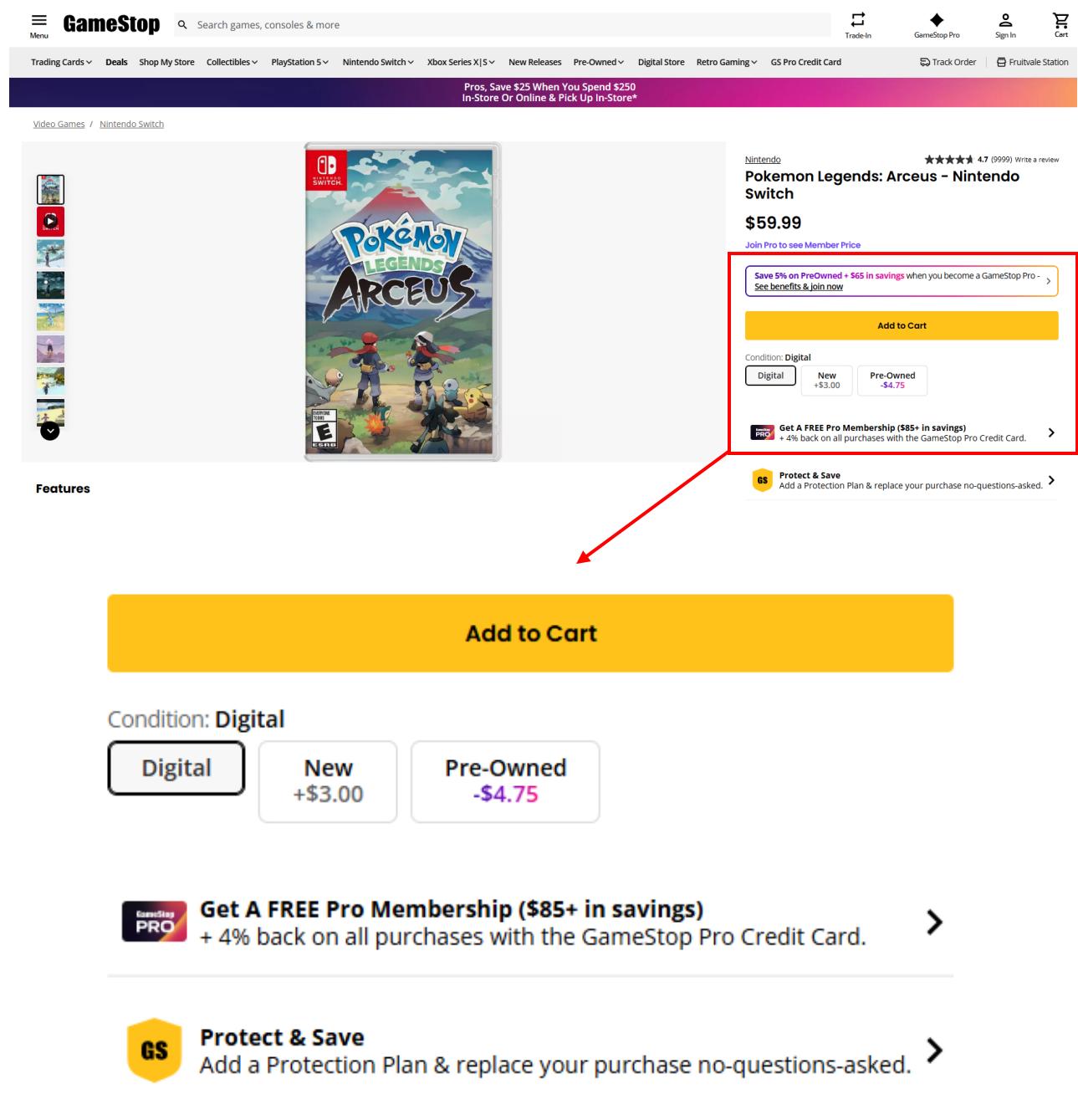


Figure 3A

1           23. If a consumer clicks the “Digital” version of the game on the game listing page, the  
 2 screen then populates an advertisement right below the “Digital” button stating that the consumer  
 3 will receive “+4% back on all purchases,” and that, if he or she adds a protection plan, the plan can  
 4 “replace your purchase.” See Figure 3B. The page also continues to misleadingly represent that  
 5 purchasing the Digital version of the game is like the physical copy by using an “Add to Cart”  
 6 button.

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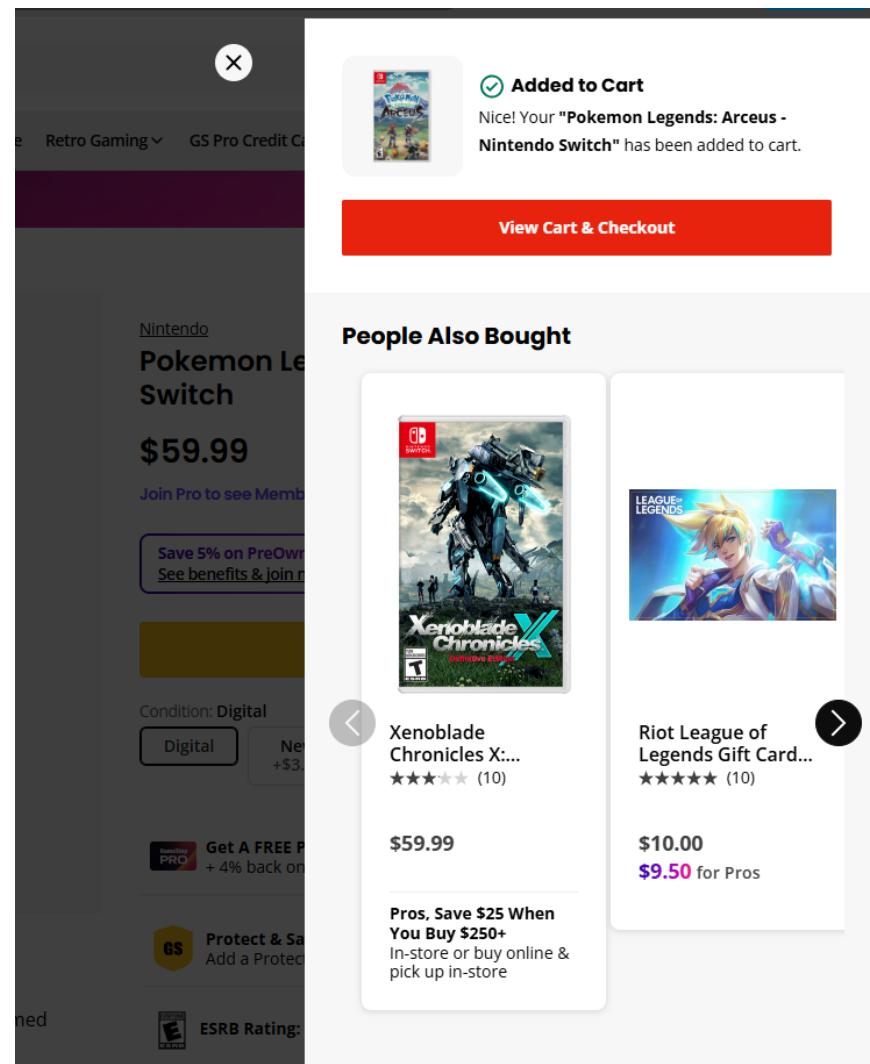
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Figure 3B

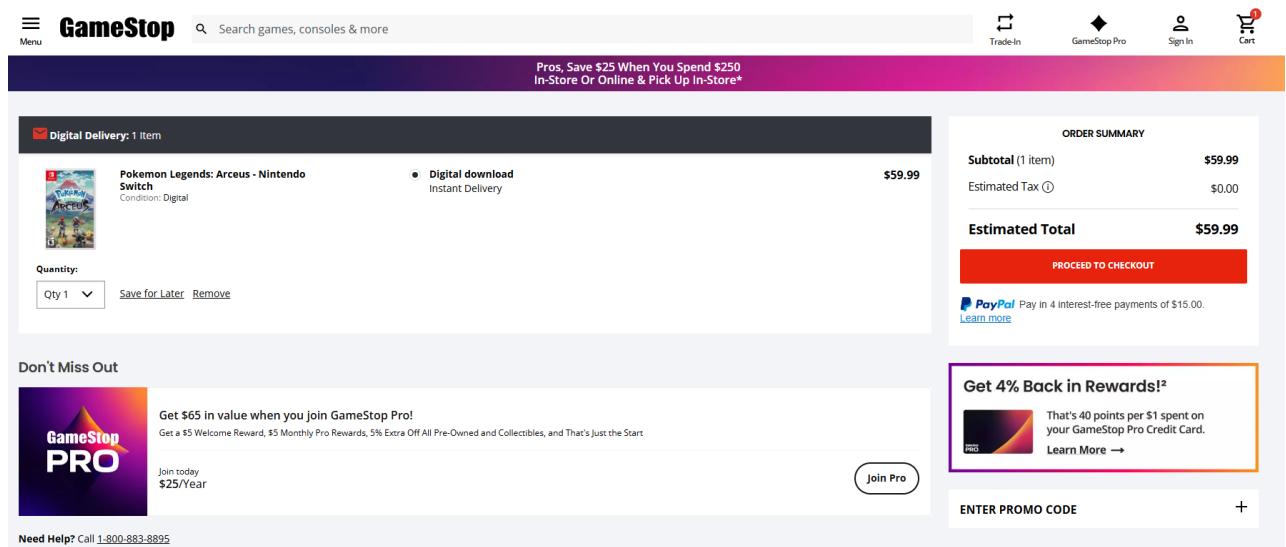
1           24. Nowhere on this pre-payment page is there an affirmative acknowledgement that the  
 2 consumer understands that he or she is receiving a license, or a clear and conspicuous notice that  
 3 the thing they are purchasing is a revocable license to access the digital good.

4           25. If a consumer clicks on the Add to Cart button, a side bar appears on the page that  
 5 states “**People Also Bought**” other similar games. See Figure 4. Again, nowhere on this pre-  
 6 payment side bar is there an affirmative acknowledgement that the consumer understands that he or  
 7 she is receiving a license, or a clear and conspicuous notice that the thing they are purchasing is a  
 8 revocable license to access the digital good. *See Figure 4.*



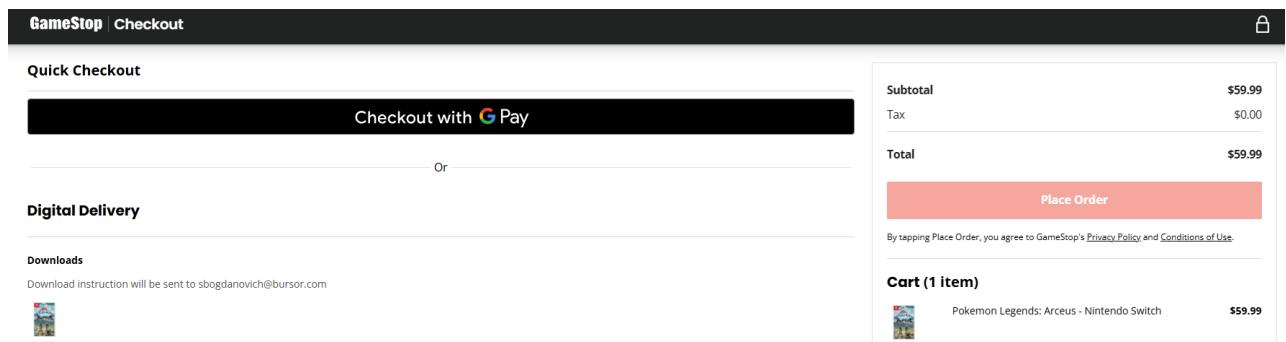
25           Figure 4  
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1           26. If a consumer clicks the “View Cart & Checkout” button, they are taken to the  
 2           checkout page. Nowhere on this pre-payment page is there an affirmative acknowledgement that  
 3           the consumer understands that he or she is receiving a license, or a clear and conspicuous notice  
 4           that the thing they are purchasing is a revocable license to access the digital good. *See Figure 5.*



14           **Figure 5**

15           27. If a consumer clicks on the “Proceed to Checkout” button, they are prompted to  
 16           create an account or sign in. Once completed, they are taken to a final page, where consumers can  
 17           either click “Google Pay” or “Place Order” to complete their purchase of a revocable license.  
 18           Nowhere on this page is there an affirmative acknowledgement that the consumer understands that  
 19           he or she is receiving a license, or a clear and conspicuous notice that the thing they are purchasing  
 20           is a revocable license to access the digital good. *See Figure 6.*



27           **Figure 6**

1       28. The digital product's ephemeral nature is confirmed by the video game publisher's  
2 user agreement. The example in the Figures above included a copy of the *Pokémon Arceus* video  
3 game, which is published by Nintendo. Nintendo's User Agreement confirms that its "video  
4 games" are a "Nintendo Account Service" and that "[s]ubject to the terms of this Agreement,  
5 Nintendo grants you a non-exclusive, non-transferable, **revocable license to use the Nintendo**  
6 **Account Service.**"<sup>8</sup> And whereas if consumer purchased a physical copy of the game, he could lend  
7 it to someone else to play, with a digital copy of the game, the consumer is "not allowed to lease  
8 [or] rent" the game.<sup>9</sup>

9       29. In other words, at no point prior to the purchase is the consumer ever put on notice,  
10 in plain language, that the video game he is buying is just a license that can be revoked at any time.  
11 Nor is the consumer ever required to provide an affirmative acknowledgment that he or she knows  
12 the limited property rights he or she is receiving with the purchase of the digital video game.

13       30. In contrast, many of GameStop's competitors comply with the law. For example, if  
14 a consumer purchases a digital video game through Steam, it provides "a clear and conspicuous  
15 statement that ... [s]tates in plain language that 'buying' or 'purchasing' the digital good is a  
16 license." Cal. Bus. & Prof. Code § 17500.6(b)(1)(B). *See Figure 7, next page.*

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27       <sup>8</sup> Nintendo, United States Nintendo Account User Agreement,  
28       <https://accounts.nintendo.com/term/eula/US?lang=en-US>.

<sup>9</sup> *Id.*

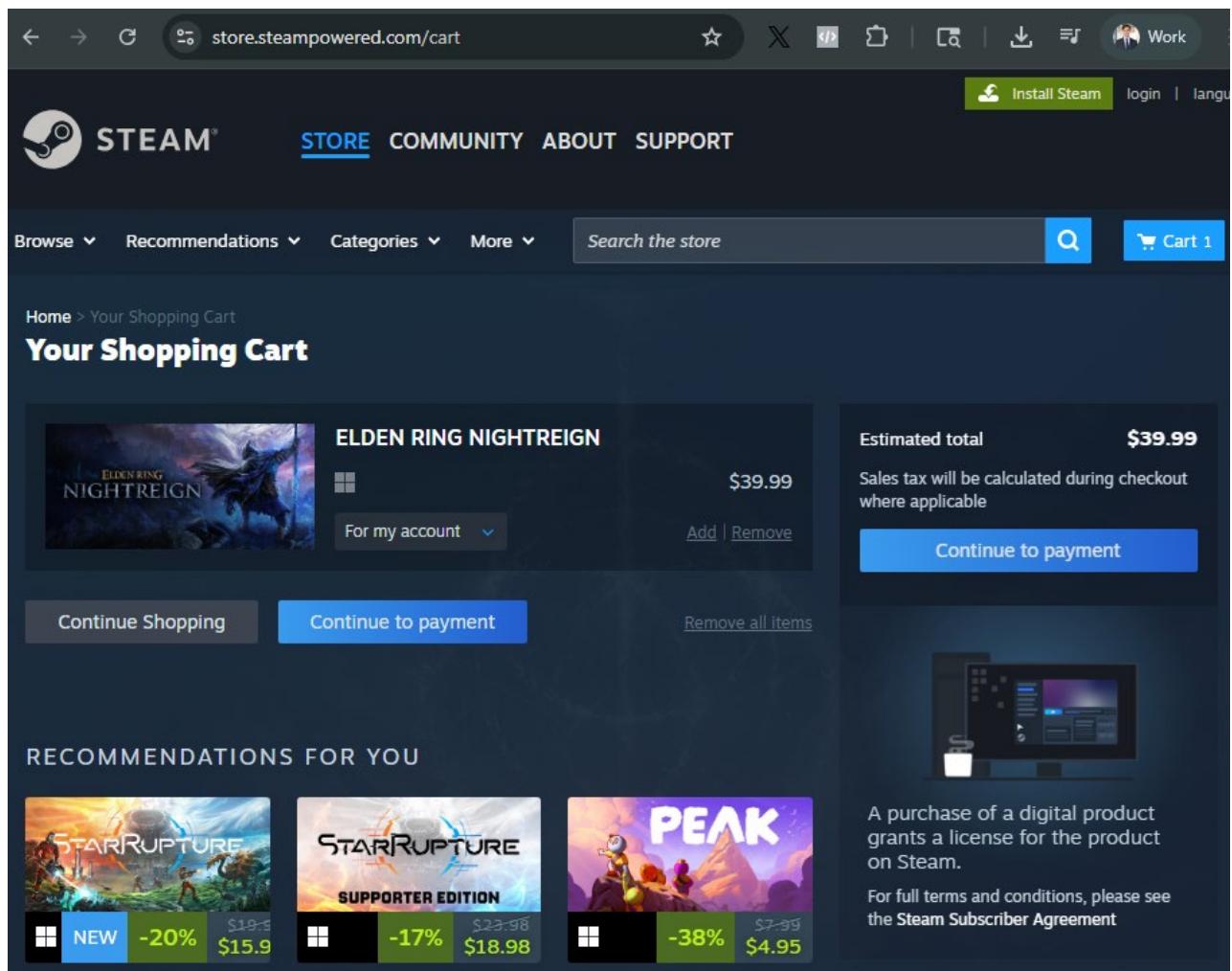


Figure 7

### CLASS ALLEGATIONS

31. **Class Definition:** Plaintiff seeks to represent a class of similarly situated individuals defined as all persons in California who have purchased a digital video game from GameStop.

32. Subject to additional information obtained through further investigation and discovery, the above-described Class may be modified or narrowed as appropriate, including through the use of multi-state subclasses.

33. **Numerosity (Fed. R. Civ. P. 23(a)(1)):** At this time, Plaintiff does not know the exact number of members of the aforementioned Class. However, given the popularity of

1 Defendant's website, the number of persons within the Class is believed to be so numerous that  
2 joinder of all members is impractical.

3       **34. Commonality and Predominance (Fed. R. Civ. P. 23(a)(2), 23(b)(3)):** There is a  
4 well-defined community of interest in the questions of law and fact involved in this case.  
5 Questions of law and fact common to the members of the Class that predominate over questions  
6 that may affect individual members of the Class include:

- 7       a. Whether Defendant used terms such as "buy," "purchase," or "add to cart" in  
8           connection with the sale of its digital video games;
- 9       b. Whether Defendant received an affirmative acknowledgment from class  
10           members compliant with Cal. Bus. & Prof. Code § 17500.6(b)(1)(A); and
- 11       c. Whether Defendant provided clear and conspicuous notice to class members  
12           with Cal. Bus. & Prof. Code § 17500.6(b)(1)(B).

13       **35. Typicality (Fed. R. Civ. P. 23(a)(3)):** Plaintiff's claims are typical of those of the  
14 Class because Plaintiff, like all members of the Class, purchased digital video games from  
15 GameStop without an express warning that they were receiving a license.

16       **36. Adequacy (Fed. R. Civ. P. 23(a)(4)):** Plaintiff has retained and is represented by  
17 qualified and competent counsel who are highly experienced in complex consumer class action  
18 litigation. Plaintiff and his counsel are committed to vigorously prosecuting this class action.  
19 Moreover, Plaintiff is able to fairly and adequately represent and protect the interests of the Class.  
20 Neither Plaintiff nor his counsel have any interest adverse to, or in conflict with, the interests of the  
21 absent members of the Class. Plaintiff has raised viable claims or the type reasonably expected to  
22 be raised by members of the Class, and will vigorously pursue those claims. If necessary, Plaintiff  
23 may seek leave of this Court to amend this Class Action Complaint to include additional  
24 representatives to represent the Class, additional claims as may be appropriate, or to amend the  
definition of the Class to address any steps that Defendant took.

25       **37. Superiority (Fed. R. Civ. P. 23(b)(3)):** A class action is superior to other available  
26 methods for the fair and efficient adjudication of this controversy because individual litigation of  
27 the claims of all members of the Class is impracticable. Even if every member of the Class could  
28 afford to pursue individual litigation, the court system could not. It would be unduly burdensome

1 to the courts in which individual litigation of numerous cases would proceed. Individualized  
2 litigation would also present the potential for varying, inconsistent, or contradictory judgments, and  
3 would magnify the delay and expense to all parties and to the court system resulting from multiple  
4 trials of the same factual issues. By contrast, the maintenance of this action as a class action, with  
5 respect to some or all of the issues presented herein, presents few management difficulties,  
6 conserves the resources of the parties and of the court system and protects the rights of each  
7 member of the Class. Plaintiff anticipates no difficulty in the management of this action as a class  
8 action.

9

**COUNT I**  
**Violations of the California Unfair Competition Law**  
**Bus. & Prof. Code §§ 17200 et seq.**

10 11 38. Plaintiff incorporates by reference all of the foregoing paragraphs.

12 39. Plaintiff brings this claim individually and on behalf of the Class.

13 40. California Business and Professions Code § 17200 prohibits “any unlawful, unfair,  
14 or fraudulent business act or practice.” The UCL allows “a person who has suffered injury in fact  
15 and has lost money or property” to prosecute a civil action for violation of the UCL. Cal. Bus. &  
16 Prof. Code § 17204. Such a person may bring an action on behalf of herself or himself and others  
17 similarly situated who are affected by the unlawful and/or unfair business practice or act.

18 41. By committing the acts and practices alleged herein, Defendant has violated  
19 California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200–17210 by  
20 engaging in unlawful, unfair, and fraudulent conduct. Specifically, Defendant violated the UCL’s  
21 proscription against engaging in **Unlawful Business Practices** by violating California Bus. & Prof.  
22 Code §§ 17500.6(b)(1).

23 42. California Business & Professional Code § 17500.6(b)(1) prohibits “a seller of a  
24 digital good to advertise or offer for sale a digital good to a purchaser with the terms “buy,”  
25 “purchase,” or any other term which a reasonable person would understand to confer an  
26 unrestricted ownership interest in the digital good.”

1           43. Defendant is a seller of digital goods because it sells digital video games on its  
 2 website.

3           44. Defendant's digital video games are digital goods under the statute. A "digital  
 4 good" is defined as including a "digital code, or digital application or game, whether electronically  
 5 or digitally delivered or accessed." Cal. Bus. & Prof. Code § 17500.6(a)(7). Defendant's digital  
 6 video games can be downloaded by entering the code provided by Defendant after purchase into a  
 7 game publisher like Xbox, Nintendo, PlayStation, Steam, Apple, Google Play, or others, which  
 8 thereby allows the digital game to be downloaded.<sup>10</sup>

9           45. Defendant advertises and offers for sale its digital games in a manner that conveys  
 10 an unrestricted ownership interest in the digital good. Defendant offers its digital video games for  
 11 sale using the terms "Buy," "buy online," "purchase," and "Add to Cart," as depicted in Figures 1  
 12 through 6 of this Complaint. Additionally, Defendant offers digital video games for sale by listing  
 13 the game's digital status as a "Condition," on Figures 3A and 3B of this Complaint, such that by  
 14 doing so, a consumer would think it held the same property rights as physical copies of the game.  
 15 Plaintiff, and members of the Class, as a reasonable person viewing the website in order to make a  
 16 purchase, would understand that the digital good offered and advertised by Defendant was being  
 17 offered to consumers with an unrestricted ownership interest.

18           46. California Business & Professional Code § 17500.6(b)(1) has two exceptions to this  
 19 general prohibition of offering digital goods for sale using the terms like "buy" or "purchase."  
 20 However, Defendant cannot fall into either of these exceptions. Defendant never received "an  
 21 affirmative acknowledgment from the purchaser indicating: (i) that the purchaser is receiving a  
 22 license to access the digital good; (ii) a complete list of restrictions and conditions of the license;  
 23 (iii) That access to the digital good may be unilaterally revoked by the seller if they no longer hold  
 24 a right to the digital good, if applicable." Cal. Bus. & Prof. Code § 17500.6(b)(1)(A). And  
 25 Defendant never provided "a clear and conspicuous statement that does both of the following: (i)  
 26 States in plain language that "buying" or "purchasing" the digital good is a license; (ii) includes a

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<sup>10</sup> GameStop, *Frequently Asked Questions: Downloadable Content and Gift Cards*,  
 28 <https://www.gamestop.com/faq/>.

1 hyperlink, QR code, or similar method to access the terms and conditions that provide full details  
2 on the license.” Cal. Bus. & Prof. Code § 17500.6(b)(1)(B).

3 47. Defendant’s acts and omissions as alleged herein violate obligations imposed by  
4 statute, are substantially injurious to consumers, offend public policy, and are immoral, unethical,  
5 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits  
6 attributable to such conduct.

7 48. There were reasonably available alternatives to further Defendant’s legitimate  
8 business interests, other than the conduct described herein.

9 49. Defendant’s acts, omissions, nondisclosures, and misleading statements as alleged  
10 herein were and are false, misleading, and/or likely to deceive the consuming public.

11 50. Plaintiff and the members of the Class have suffered an economic injury that flowed  
12 from Defendant’s violation of the law. Defendant’s acts caused Plaintiff and Class members to  
13 overpay for video games under the belief that they owned them outright. Had Defendant properly  
14 disclosed the true nature of the limited property rights it was conveying, it could not charge as  
15 much as it did for them, and it would need to reduce its prices to compete with other competitors,  
16 like Steam, who did disclose the true nature of the limited property rights they convey when they  
17 sold video games. Thus, Plaintiff and members of the Class were damaged and have suffered  
18 economic injuries as a direct and proximate result of Defendant’s unlawful and/or unfair business  
19 practices.

20 51. Plaintiff and the members of the Class have suffered a substantial injury in fact and  
21 lost money by virtue of Defendant’s acts of unfair competition, which caused them to overpay for  
22 videos under the belief that they owned them outright. Had Plaintiff and class members known  
23 they were only obtaining revocable licenses to videos, they would have paid substantially less for  
24 those licenses. Thus, Plaintiff and members of the Class were damaged and have suffered  
25 economic injuries as a direct and proximate result of Defendant’s unlawful and/or unfair business  
26 practices.

27 52. Defendant’s violations have continuing and adverse effects because Defendant’s  
28 unlawful conduct is continuing, with no indication that Defendant intends to cease this unlawful

1 course of conduct. The public and the Class are subject to ongoing harm because the unlawful  
2 and/or unfair business practices.

3 53. Plaintiff and the Class seek restitution pursuant to Cal. Bus. & Prof. Code § 17203  
4 of all amounts that Defendant charged or caused to be charged to Plaintiff's and the Class's  
5 accounts in connection with the videos purchased, or at a minimum, the price premium they paid.  
6 Defendant should be required to disgorge all the profits and gains they have reaped and restore  
7 such profits and gains to Plaintiff and the Class, from whom they were unlawfully taken.

8 54. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff and members of the Class  
9 seek a court order enjoining Defendant from such future misconduct, and any other such orders that  
10 may be necessary to rectify the unlawful business practices of Defendant.

11 55. Plaintiff brings this action as private attorneys general and to vindicate and enforce  
12 an important right affecting the public interest. Plaintiff and the Class are therefore entitled to an  
13 award of attorneys' fees under Code of Civil Proc. § 1021.5 for bringing this action.

14 56. Plaintiff has no adequate remedy at law for this claim. There is no commensurate  
15 legal remedy for Plaintiff's requested relief under this count. Alternatively, legal remedies  
16 available to Plaintiff are inadequate because they are not "equally prompt and certain and in other  
17 ways efficient" as equitable relief. *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214 (1937);  
18 *see also U.S. v. Bluitt*, 815 F. Supp. 1314, 1317 (N.D. Cal. Oct. 6, 1992) ("the 'mere existence' of a  
19 possible legal remedy is not sufficient to warrant denial of equitable relief"); *Quist v. Empire Water  
Co.*, 2014 Cal. 646, 643 (1928) ("The mere fact that there may be a remedy at law does not oust the  
21 jurisdiction of a court of equity. To have this effect, the remedy must also be speedy, adequate, and  
22 efficacious to the end in view ... It must reach the whole mischief and secure the whole right of the  
23 party in a perfect manner at the present time and not in the future"). Furthermore:

24 a) To the extent damages are available here, damages are not equally certain as  
25 restitution because the standard that governs ordering restitution is different than the  
26 standard that governs damages. Hence, the Court may award restitution even if it  
27 determines that Plaintiff fails to sufficiently adduce evidence to support an award of  
28 damages.

b) Damages and restitution are not necessarily the same amount. Unlike damages, restitution is not limited to the amount of money defendant wrongfully acquired plus the legal rate of interest. Equitable relief, including restitution, entitles the Plaintiff to recover all profits from the wrongdoing, even where the original funds taken have grown far greater than the legal rate of interest would recognize. Plaintiff seeks such relief here.

c) Legal claims for damages are not equally certain as restitution because claims under the UCL and unjust enrichment entail few elements.

57. Plaintiff also lacks an adequate remedy at law to prevent future harm.

## COUNT II

## Violations of California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, *et seq.*

58. Plaintiff re-alleges and incorporates by reference every allegation set forth in the preceding paragraphs as though alleged in this Count.

59. Plaintiff brings this claim individually and on behalf of the members of the proposed Class and Subclass against Defendant.

60. California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*, makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, ...in any advertising device ... or in any other manner or means whatever, including over the Internet, any statement, concerning ... personal property or services, professional or otherwise, or performance or disposition thereof, 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."

61. Defendant committed acts of false advertising, as defined by § 17500, by intentionally making and disseminating statements to consumers in California and the general public concerning Defendant's digital video games, as well as circumstances and facts connected to such products, which are untrue and misleading on their face and by omission, and which are known (or which by the exercise of reasonable care should be known) by Defendant to be untrue or

1 misleading. Defendant has also intentionally made or disseminated such untrue or misleading  
2 statements and material omissions to consumers in California and to the public as part of a plan or  
3 scheme with intent not to sell those digital goods as advertised.

4 62. Defendant's statements include but are not limited to representations and omissions  
5 that made consumers reasonably believe the digital video games Defendant's offered on sale  
6 carried with them an unrestricted property interest. In particular, Defendant offers its digital video  
7 games for sale using the terms "Buy," "buy online," "purchase," and "Add to Cart," as depicted in  
8 Figures 1 through 6 of this Complaint. Additionally, Defendant offers digital video games for sale  
9 by listing the game's digital status as a "Condition," on Figures 3A and 3B of this Complaint, such  
10 that a consumer would think it held the same property rights as physical copies of the game.

11 63. Defendant's actions in violation of § 17500, as described herein, were false and  
12 misleading such that the general public is and was likely to be deceived.

13 64. Plaintiff and the members of the Class were deceived by Defendant's statements and  
14 omissions made online when they paid for their digital goods, and there is a strong probability that  
15 other California consumers and members of the public were also or are likely to be deceived as  
16 well. Any reasonable consumer would be misled by Defendant's false and misleading statements  
17 and material omissions. Plaintiff and other members of the Class did not learn about the true  
18 limited nature of the property interests they received until after they had already paid for  
19 Defendant's digital goods. They relied on Defendant's statements and omissions to their  
20 detriment.

21 65. Plaintiff and the Class lost money or property as a result of Defendant's FAL  
22 violations because they would not have purchased the digital goods on the same terms if the true  
23 facts were known about the product and the digital goods do not have the characteristics as  
24 promised by Defendant.

25 66. Plaintiff, individually and on behalf of all similarly situated California consumers,  
26 seeks individual, representative, and public injunctive relief and any other necessary orders or  
27 judgments that will prevent Defendant from continuing with its false and deceptive advertisements  
28 and omissions; restitution that will restore the full amount of their money or property;

1 disgorgement of Defendant's relevant profits and proceeds; and an award of costs and reasonable  
2 attorneys' fees.

3 67. Plaintiff also seeks equitable relief, including restitution, with respect to their FAL  
4 claims. Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiff makes the following  
5 allegations in this paragraph as an alternative to any contrary allegations in their other causes of  
6 action, in the event that such causes of action will not succeed. Plaintiff and the California  
7 Subclass may be unable to obtain monetary, declaratory and/or injunctive relief directly under  
8 other causes of action and will lack an adequate remedy at law, if the Court requires them to show  
9 classwide reliance and materiality beyond the objective reasonable consumer standard applied  
10 under the FAL, because Plaintiff may not be able to establish each California Subclass member's  
11 individualized understanding of Defendant's misleading representations as described in this  
12 Complaint, but the FAL does not require individualized proof of deception or injury by absent class  
13 members. *See, e.g., Ries v. Ariz. Bevs. USA LLC*, 287 F.R.D. 523, 537 (N.D. Cal. 2012)  
14 (“restitutionary relief under the UCL and FAL ‘is available without individualized proof of  
15 deception, reliance, and injury.’”). In addition, Plaintiff and the California Subclass may be unable  
16 to obtain such relief under other causes of action and will lack an adequate remedy at law, if  
17 Plaintiff is unable to demonstrate the requisite *mens rea* (intent, reckless, and/or negligence),  
18 because the FAL imposes no such *mens rea* requirement and liability exists even if Defendant  
19 acted in good faith. Restitution and/or injunctive relief may also be more certain, prompt, and  
20 efficient than other legal remedies requested herein. The return of the full premium price, and an  
21 injunction requiring the return of the full premium price, and an injunction requiring adequate  
22 disclosure ownership rights conveyed to consumers prior to the execution of purchase will ensure  
23 that Plaintiff and the California Subclass Members are in the same place they would have been in  
24 had Defendant's wrongful conduct not occurred, *i.e.*, the position to make an informed decision  
25 about the purchase of the digital goods absent omissions and misrepresentations with the full  
26 purchase price at their disposal.

27 68. Plaintiff seeks, on behalf of himself and those similarly situated, an injunction to  
28 prohibit Defendant from continuing to engage in the false, misleading and deceptive advertising

1 and marketing practices complained of herein. Such misconduct by Defendant, unless and until  
 2 enjoined and restrained by order of this Court, will continue to cause injury in fact to the general  
 3 public and the loss of money and property in that Defendant will continue to violate the laws of  
 4 California, unless specifically ordered to comply with the same. This expectation of future  
 5 violations will require current and future consumers to seek legal redress repeatedly and  
 6 continuously in order to recover monies paid to Defendant to which they are not entitled. Plaintiff,  
 7 those similarly situated and/or other consumers nationwide have no other adequate remedy at law  
 8 to ensure future compliance with the California Business and Professions Code alleged to have  
 9 been violated herein.

10 **COUNT III**  
 11 **Violation of California Consumer Legal Remedies Act**  
 12 **Cal. Civil Code § 1750 *et seq.***

13 69. Plaintiff re-alleges and incorporates by reference every allegation set forth in the  
 preceding paragraphs as though alleged in this Count.

14 70. Plaintiff brings this claim individually and on behalf of the members of the  
 proposed Class and Subclass against Defendant.

15 71. At the time Plaintiff and members of the Class and Subclasses purchased their  
 16 videos from APV, Defendant did not fully disclose the limited property interest it was conveying in  
 17 the videos.

18 72. This cause of action is brought pursuant to California's Consumers Legal Remedies  
 19 Act, Cal. Civ. Code §§ 1750-1785 (the "CLRA").

20 73. Plaintiff and members of the Class are consumers who purchased Defendant's  
 21 digital audiovisual works. Accordingly, Plaintiff and members of the Class are "consumers," as  
 22 the term is defined by Cal. Civ. Code § 1761(d).

23 74. At all relevant times, Defendant's digital audiovisual works constituted "goods," as  
 24 that term is defined in Cal. Civ. Code § 1761(a). Defendant's *Elden Ring—Nightreign* game can  
 25 either be purchased in a digital version, or in a physical disc version for Playstation 5 or Xbox  
 26 Series X through defendant's website. *See* <https://www.gamestop.com/pc-gaming/pc->  
 27

1 games/products/elden-ring-nightreign---pc-steam/424117.html. In the alternative, Defendant's  
2 digital audiovisual works constitute a service as that term is defined in Cal. Civ. Code § 1761(b)  
3 because the games provide an interactive entertainment service that allows users to play the game  
4 by themselves or with other players.

5 75. At all relevant times, Defendant was a "person," as that term is defined in Cal. Civ.  
6 Code § 1761(c) because it is a corporation.

7 76. At all relevant times, Plaintiff's purchases of Defendant's digital audiovisual works,  
8 and the purchases of other Class members, constituted "transactions," as that term is defined in Cal.  
9 Civ. Code § 1761(e).

10 77. The conduct alleged in this Complaint constitutes unfair methods of competition  
11 and unfair and deceptive acts and practices for the purposes of the CLRA, and the conduct was  
12 undertaken by Defendant in transactions intended to result in, and which did result in, the sale of  
13 goods to consumers.

14 78. The policies, acts, and practices described in this Complaint were intended to and  
15 did result in the sale of Defendant's Products to Plaintiff and the Class. Defendant's practices,  
16 acts, policies, and course of conduct violated the CLRA § 1750 *et seq.*, as described above.

17 79. Defendant advertised goods or services with intent not to sell them as advertised in  
18 violation of California Civil Code § 1770(a)(9).

19 80. Defendant also represented that transaction involving its digital audiovisual works  
20 conferred legal rights, remedies, or obligations that it does not have in violation of California Civil  
21 Code § 1770(a)(14).

22 81. Plaintiff and members of the Class suffered injuries caused by Defendant's  
23 misrepresentations because (a) Plaintiff and members of the Class would not have purchased the  
24 digital audiovisual works on the same terms if they had known the true facts; (b) Plaintiff and  
25 members of the Class paid a price premium for the videos believing they owned them outright.

26 82. Wherefore, Plaintiff seeks injunctive relief for this violation of the CLRA.

27 83. On January 7, 2026, a CLRA demand letter was sent to Defendant's address via  
28 certified mail (return receipt requested), that provided notice of Defendant's violations of the

1 CLRA and demanded that Defendant correct the unlawful, unfair, false and/or deceptive practices  
2 alleged here. The letter expressly stated that it was sent on behalf of Plaintiff and “all other persons  
3 similarly situated.”

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff seeks a judgment against Defendant, on behalf of herself and all  
6 others similarly situated, as follows:

7 (a) For an order certifying the Classes pursuant Fed. R. Civ. P. 23,  
8 naming Plaintiff as representative of the Classes, and naming  
9 Plaintiff's attorneys as Class Counsel to represent the Classes;

10 (b) For an order declaring that Defendant's conduct violates the  
11 statutes referenced herein;

12 (c) For an order finding in favor of Plaintiff and the Classes on all  
13 counts asserted herein;

14 (d) For an award of damages to the extent available;

15 (e) For an award of restitution and disgorgement of profits in an  
16 amount to be determined at trial;

17 (f) For punitive damages, as warranted, in an amount to be  
18 determined at trial;

19 (g) For prejudgment interest on all amounts awarded; and

20 (h) For an order awarding Plaintiff and the Classes their  
21 reasonable attorneys' fees and expenses and costs of suit.

22 **JURY TRIAL DEMAND**

23 Plaintiff demands a trial by jury of any and all issues so triable.

24 Dated: January 8, 2026

25 Respectfully submitted,

26 **BURSOR & FISHER, P.A.**

27 By: /s/ Stefan Bogdanovich

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