1 H. Tim Hoffman (SBN 049141) Arthur W. Lazear (SBN 083603) 2 Chad A. Saunders (SBN 257810) **HOFFMAN & LAZEAR** E-filing 3 180 Grand Avenue, Suite 1550 NORTHERN DISTRICT OF CALIFORNIA Oakland, California 94612 OAKLAND 4 Tel:(510)763-5700 Fax:(510)835-1311 5 Email: cas@hoffmanandlazear.com 6 Newman Strawbridge, SBN 171360 LAW OFFICE OF NEWMAN STRAWBRIDGE 7 719 Orchard Street Santa Rosa, CA 95404 8 Telephone: (707) 523-3377 9 Attorneys for Plaintiff 10 UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA 11 12 **.[1**.1-00843 MELISSA ARECHIGA, individually and 13 on behalf of all others similarly situated, CLASS ACTION COMPLAINT 14 Plaintiffs, [JURY TRIAL DEMANDED] 15 16 VS. GAMESTOP CORP., a Delaware 17 corporation, and GAMESTOP, INC., a Delaware corporation, 18 19 Defendants. 20 21 I. INTRODUCTION 22 California Civil Code section 1747.08 generally states that when a merchant is engaged in 1. 23 a retail transaction with a customer, the merchant may neither (1) request personal identification 24 information from a customer paying for goods with a credit card, and then record that personal 25 identification information upon the credit card transaction form or otherwise; nor (2) require the 26 cardholder, as a condition to accepting the credit card as payment, to provide the customer's 27 personal identification information, which the retailer then causes to be written, or otherwise 28 Class Action Complaint 1

records it upon the credit card transaction form or elsewhere.

- 2. Defendants operate retail stores throughout the United States, including California.

 Defendants are utilizing a policy whereby Defendants' cashiers both request and record credit card numbers and personal identification information ("PII") from customers using credit cards at the point-of-sale in Defendants' retail establishments, in violation of California Civil Code section 1747.08. Defendants' acts and practices as described herein were at all times intentional.
- 3. Plaintiff is informed and believes, and thereon alleges, that Defendants use PII obtained from the cardholder to acquire additional personal information, including the cardholder's physical residential address, by pairing the PII with the cardholder's name obtained from the credit card. Such conduct is performed intentionally and without the knowledge or consent of the cardholder, and is of potentially great benefit to the Defendants.
- 4. Plaintiff does not seek any relief greater than or different from the relief sought for the Class of which Plaintiff is a member. If successful, this action will enforce an important right affecting the public interest and will confer significant benefits, both pecuniary and non-pecuniary, on a large class of persons. Private enforcement is necessary and places a disproportionate financial burden on Plaintiff in relation to Plaintiff's stake in the matter.

II. JURISDICTION AND VENUE

- 5. This Court has original jurisdiction over all the state claims under the Class Action Fairness Act, 28 U.S.C. §1332(d), because, Plaintiff is informed and believes, and thereon alleges, that the combined claims of proposed class members exceed \$5,000,000 exclusive of interest and costs, and the parties are citizens of diverse jurisdictions.
- 6. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendants conduct business in the district, are subject to personal jurisdiction in the district, and a substantial part of the events giving rise to the claims occurred in the district.

7. Pursuant to Civil L.R. 3-2 (c) and (d), this action is properly assigned to the San Francisco or Oakland Division, because a substantial portion of the events giving rise to this dispute occurred in Contra Costa County, California.

III. THE PARTIES

A. Plaintiff

- 8. Plaintiff MELISSA ARECHIGA (herein referred to as "Plaintiff) is a resident of Alameda County California, and entered into a retail transaction with Defendants at one of Defendants' California stores.
- 9. Plaintiff brings this class action against Defendants, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of the class of persons hereinafter defined (herein referred to as the "Class").

B. Defendants

10. Defendant GAMESTOP CORP. is a Delaware corporation. Plaintiff is informed and believes, and thereon alleges, that Gamestop Corp.'s principal place of business is in Texas. Defendant GAMESTOP, INC. is a Delaware corporation. Plaintiff is informed and believes, and thereon alleges, that Gamestop, Inc.'s principal place of business is in Texas. Defendants Gamestop Corp. and Gamestop, Inc. are hereinafter collectively referred to as "Defendants." Defendants operate retail stores throughout California, including stores in Contra Costa County.

C. Agency/Aiding And Abetting

11. At all times herein mentioned, Defendants, and each of them, were the agents or joint venturers of each of the other Defendants, and in doing the acts alleged herein, were acting within the course and scope of such agency. Each Defendant had actual and/or constructive knowledge of the acts of each of the other Defendants, and ratified, approved, joined in, acquiesced and/or authorized the wrongful acts of each co-Defendant, and/or retained the benefits of said wrongful

acts.

12. Defendants, and each of them, aided and abetted, encouraged and rendered substantial assistance to the other Defendants in breaching their obligations to Plaintiff and the class, as alleged herein. In taking action, as particularized herein, to aid and abet and substantially assist the commissions of these wrongful acts and other wrongdoings complained of, each of the Defendants acted with an awareness of his/its primary wrongdoing and realized that his/her/its conduct would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

IV. CONDUCT GIVING RISE TO VIOLATIONS OF THE LAW

A. Plaintiff's Contact with Defendants

- 13. Within the last 12 months, Plaintiff went to Defendants' retail store located in Contra Costa County, California.
- 14. Plaintiff entered Defendants' store and proceeded to select a product that Plaintiff intended to purchase from the store.
- 15. After selecting an item, Plaintiff proceeded to the cashiers' section of Defendants' store to pay for the item selected through the use of a credit card.
- 16. Defendants' employee saw that Plaintiff had selected products that Plaintiff wished to purchase from Defendants and, as part of Defendants' uniform policy, then requested personal identification information from Plaintiff, without informing Plaintiff of the consequences if Plaintiff did not provide Defendants' employee with Plaintiff's personal identification information.
- 17. Plaintiff, believing that she was required to provide her personal identification information to complete the transaction, told Defendants' employee Plaintiff's personal identification information.

- 18. Defendants' employee then typed and recorded Plaintiff's personal identification information into an electronic cash register at the checkout counter adjacent to both the employee and Plaintiff.
- 19. Defendants' employee informed Plaintiff of the amounts due to Defendants for the products Plaintiff had selected. Plaintiff then utilized a credit card to complete the transaction. At this point in the transaction, Defendants had Plaintiff's credit card number, name and personal identification information recorded in its databases.
- 20. Defendants' employee made no attempt to erase, strikeout, eliminate, or otherwise delete Plaintiff's personal identification information from the electronic cash register after Plaintiff's credit card number was recorded.
- 21. Defendants' employee and Plaintiff completed the transaction and Plaintiff left Defendants' store with her purchased items.

V. PLAINTIFF'S CLASS ACTION ALLEGATIONS

- 22. The proposed Class is defined as: all persons in California from whom Defendants requested and recorded personal identification information in conjunction with a credit card transaction within one (1) year of the filing of this case, or any other case in which Plaintiff is a member of a proposed class (the "Class"). Excluded from the Class are Defendants, its corporate parents, subsidiaries and affiliates, officers and directors, any entity in which Defendants have a controlling interest, and the legal representatives, successors or assigns of any such excluded persons or entities.
- 23. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, such information can be ascertained through appropriate discovery, from records maintained by Defendants and its agents.

- 24. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impracticable, the likelihood of individual Class members prosecuting separate claims is remote, and individual Class members do not have a significant interest in individually controlling the prosecution of separate actions. Prosecuting hundreds of identical, individual lawsuits statewide does not promote judicial efficiency or equity and consistency in judicial results. Relief concerning Plaintiff's rights under the law alleged herein and with respect to the Class as a whole would be appropriate. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.
- 25. There is a well-defined community of interest among the members of the Class because common questions of law and fact predominate, Plaintiff's claims are typical of the members of the Class, and Plaintiff can fairly and adequately represent the interests of the Class.
- 26. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:
 - a. whether each Class member engaged in a credit card transaction with Defendants;
- b. whether Defendants requested the cardholder to provide personal identification information and recorded the personal identification of the cardholder, during credit card transactions with Class members;
- c. whether Defendants' conduct of requesting the cardholder to provide personal identification information during credit card transactions and recording the personal identification information of the cardholder constitutes violations of California Civil Code section 1747.08;
 - d. whether Plaintiff and the Class are entitled to injunctive relief; and
 - e. whether Plaintiff and the Class have sustained damages, and the proper measure of

damages.

- 27. Plaintiff's claims are typical of those of the other Class members because Plaintiff and every other Class member was exposed to virtually identical conduct, and each is entitled to civil penalties in amounts of up to one thousand dollars (\$1,000) per violation pursuant to California Civil Code section 1747.08(e).
- 28. Plaintiff can fairly and adequately represent the interests of the Class; she has no conflicts of interest with other Class members, and she has retained counsel competent and experienced in class action and civil litigation.

FIRST CAUSE OF ACTION: VIOLATIONS OF CALIFORNIA CIVIL CODE § 1747.08 [SONG-BEVERLY CREDIT CARD ACT OF 1971]

- 29. Plaintiff refers to and incorporates by reference as though set forth fully herein paragraphs 1 through 28 of this Complaint.
- 30. California Civil Code section 1747.08 prohibits any corporation that accepts credit cards for the transaction of business from requesting the cardholder to provide personal identification information, which the corporation then records in conjunction with a credit card transaction.
- 31. Defendants are corporations that accept credit cards for the transaction of business.
- 32. During credit card transactions entered into at Defendants' stores on each and every day during the one-year period preceding the filing of this Class Action Complaint through the present, Defendants utilized, and continues to utilize, a policy whereby Defendants' cashiers both request and record personal identification information and credit card numbers from customers using credit cards at the point-of-sale in Defendants' retail establishments.
- 33. It is and was Defendants' routine business practice to intentionally engage in the conduct described in this cause of action with respect to every person who, while using a credit card, purchases any product from any of Defendants' stores in the State of California.
- 34. Due to Defendants' violations as set forth herein, Plaintiff and the Class are entitled to Class Action Complaint 7

1 civil penalties in amounts of up to one thousand dollars (\$1,000) per violation pursuant to 2 California Civil Code section 1747.08(e). 3 PRAYER FOR RELIEF 4 WHEREFORE PLAINTIFF AND THE CLASS PRAY for judgment against Defendants 5 as follows: 6 For an award to Plaintiff and to each member of the Class of the civil penalty to which he 1. 7 or she is entitled under California Civil Code section 1747.08(e); 8 9 2. That the Court preliminarily and permanently enjoin Defendants from utilizing a policy 10 whereby Defendants' cashiers both request and record personal identification information and 11 credit card numbers from customers using credit cards at the point-of-sale in Defendants's retail 12 establishments; 13 3. That the Court certifies this action as a class action; 14 For an award of attorneys' fees as authorized by statute including, but not limited to, the 4. 15 provisions of California Code of Civil Procedure § 1021.5, and as authorized under the "common 16 17 fund" doctrine, and as authorized by the "substantial benefit" doctrine; 18 5. For costs of the suit; 19 6. For prejudgment interest at the legal rate; and 20 For such other relief as the Court may deem just and proper. 7. 21 22 Dated: February 23,2011 HOFFMAN & LAZEAR 23 24 By 25 Attorney for Plaintiff 26 27 28 Class Action Complaint 8

S JS 44 (Rev. 12/07) (CAND Rev 1/10)

CIVIL COVER SHEET

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS	DEFENDANTS										
MELISSA ARECHIGA				GAMESTOP CORP., a Delaware corporation, and GAMESTOP, INC., a Minnesota corporation							
(b) County of Residence of First Listed Plaintiff ALAMEDA (EXCEPT IN U.S. PLAINTIFF CASES)				County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.							
(c) Attorney's (Firm Name, Address, and Telephone Number)				Attorneys (If Known)							
HOFFMAN & LAZEAR, 180 Grand Avenue, Suite 1550, Oakland, CA											
94612, 510-763-5700											
II. BASIS OF JURISDIC	TIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff (For Diversity Cases Only) and One Box for Defendant)										
1 U.S. Government 3 Federal Question (U.S. Government Not a Party)			Cit	tizen of This State	PTF X 1	DEF 1	Incorporated or Princip of Business In Thi		PTF 4	DEF 4	
U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)			Cit	itizen of Another State 2 2 Incorporated and Principal Place 5 X of Business In Another State						X 5	
	izen or Subject of a Foreign Country	 3	3	Foreign Nation		6	□ 6 ———				
IV. NATURE OF SUIT (FORFEITURE/P	ENALTY	B	ANKRUPTCY	ОТЕ	IER STAT	UTES				
110 Insurance	PERSONAL INJURY	PERSONAL INJURY		610 Agriculture		422 Appeal 28 USC 158		400 State Reapportionment 410 Antitrust 430 Banks and Banking			
120 Marine 130 Miller Act	310 Airplane 315 Airplane Product	ne Product Med. Malpr		625 Drug Related	☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure		Withdrawai 28 USC 157				
140 Negotiable Instrument 150 Recovery of Overpayment	Liability 320 Assault, Libel &	365 Personal Inju Product Liab	ility	630 Liquor Laws			PERTY RIGHTS		450 Commerce 460 Deportation		
& Enforcement of Judgment 151 Medicare Act	Slander 330 Federal Employers'	368 Asbestos Per Injury Produ		640 R.R. & Truck 650 Airline Regs.		820 Copyrights			470 Racketeer Influenced and Corrupt Organizations		
152 Recovery of Defaulted Liability		Liability		660 Occupational Safety/Health					480 Consumer Credit		
(Excl Veterans)	340 Marine 345 Marine Product	PERSONAL PRO	PERTY	# 690 Other				810 Sel	490 Cable/Sat TV 810 Selective Service		
153 Recovery of Overpayment of Veteran's Benefits	Liability 350 Motor Vehicle	371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability PRISONER		LABOR		SOCIAL SECURITY			50 Securities/Commodities/ Exchange		
160 Stockholders' Suits 190 Other Contract	355 Motor Vehicle Product Liability			710 Fair Labor St	andards		HIA (1395ff) Black Lung (923)	875 Customer Challenge 12 USC 3410			
195 Contract Product Liability	360 Other Personal Injury			720 Labor/Mgmt.	720 Labor/Mgmt. Relations		DIWC/DIWW (405(g))	890 Other Statutory Actions			
REAL PROPERTY	CIVIL RIGHTS			730 Labor/Mgmt.Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation			SSID Title XVI RSI (405(g))	■ 892 Ec	891 Agricultural Acts 892 Economic Stabilization Act		
210 Land Condemnation	441 Voting	PETITIONS 510 Motions to Vacate							893 Environmental Matters 894 Energy Allocation Act		
220 Foreclosure	442 Employment	Sentence	ļ	791 Empl. Ret. Inc. Security Act		FEDE	RAL TAX SUITS		895 Freedom of Information Act		
240 Torts to Land	443 Housing/ Accommodations	Habeas Corpus:		Deciany rec			Taxes (U.S. Plaintiff	900Appeal of Fee			
245 Tort Product Liability 290 All Other Real Property	444 Welfare 445 Amer. w/Disabilities -	535 Death Penalt		IMMIGRAT	ION	or Defendant) 871 IRS—Third Party		Under Equal Access			
	Employment 446 Amer. w/Disabilities -	550 Civil Rights	ition	462 Naturalization A	hpp lication	1 2	26 USC 7609	to Justice 950 Constitutionality of			
	Other 440 Other Civil Rights			□ 463 Habeas Corpus – Alien Detainee □ 465 Other Immigration Actions				State Statutes			
V. ORIGIN (Place an "X"	in One Box Only)	•		Tran	sferred fro	om			Appeal to D	istrict	
■ 1 Original □ 2 Removed from □ 3 Remanded from □ 4 Reinstated or □ 5 another district □ 6 Multidistrict □ 7 Judge from Proceeding State Court Appellate Court Reopened (specify) Litigation Magistrate Judgment											
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictions							utes unless diversity	y):			
VI. CAUSE OF ACTION											
VII DEQUECTED IN	violation of Califo										
VII. REQUESTED IN CHECK IF THIS IS A CLASS ACTION DEMAND \$ more than \$5 million UNDER F.R.C.P. 23 UNDER F.R.C.P. 23									•		
VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".											
IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA											
DATE 2/23/2011		SIGNATURE OF	TTOR	NEY OF RECORD						_	
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