

JUDGE REED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

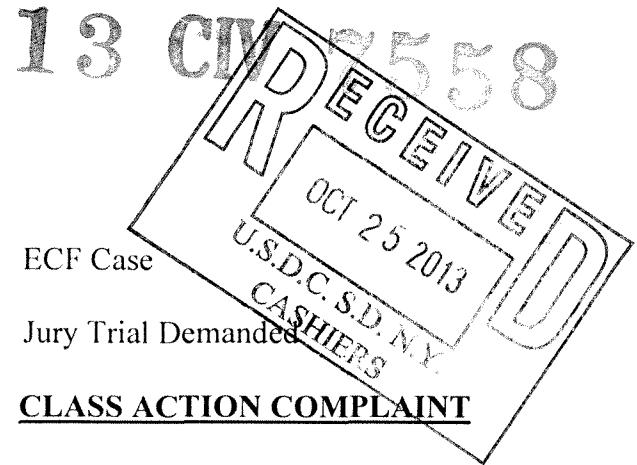
C. STUART BROWN, on behalf of himself and those similarly situated,

Plaintiff,

- against -

SEGA AMUSEMENTS, U.S.A., INC., PLAY IT!
AMUSEMENTS, INC., SEGA HOLDINGS U.S.A.,
INC., SEGA CORPORATION, SEGA SAMMY
HOLDINGS INC., AND JOHN DOES 1-10, Inclusive,

Defendants.



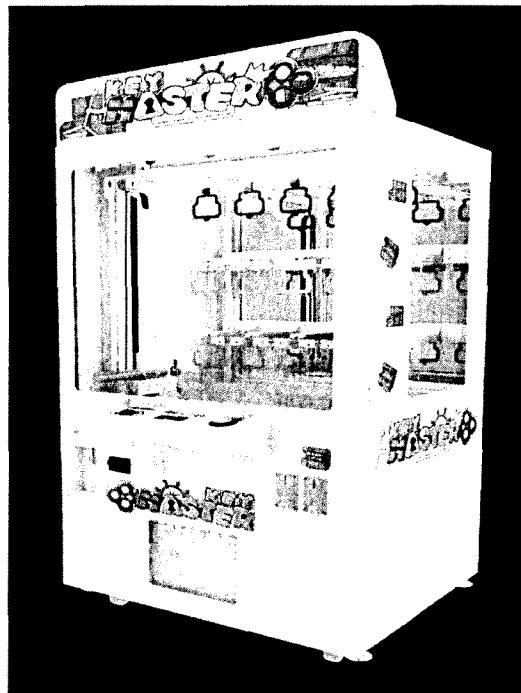
Case No.:

Plaintiff, by and through his undersigned attorneys, alleges upon knowledge as to himself and his own acts, and as to all other matters upon information and belief, and brings this Complaint against the above-named defendants, and in support thereof alleges the following:

PRELIMINARY STATEMENT

1. This class action seeks relief for defendants' violation of New York General Business Law § 349 ("GBL § 349"). Defendants, Sega Amusements, U.S.A, Inc., Play It! Amusements, Inc., Sega Holdings U.S.A., Inc., Sega Corporation, Sega Sammy Holdings Inc., and John Does 1 through 10, inclusive (collectively "Defendants"), manufacture, market, sell, and distribute a variety of amusement devices, including the player-operated amusement device, "Key Master" (shown below) to owner-operators for use by consumers without disclosing that the game is set to only distribute a prize after a certain amount of money has been put into the machine, regardless of whether the player is successful at the object of, and therefore "wins," the game according to the pictorial instructions on the machine. Because the game's pictorial instructions indicate that a prize will drop if the player successfully fits the key into the hole,

which is confirmed by the format of the machine, and there is no indication whatsoever on the machine that this is not the case, it is reasonable for a prospective player to believe that if the player successfully maneuvers the key into the hole corresponding with a given prize, the machine will dispense that prize by releasing it. However, a prize is highly unlikely to be dispensed because the machine is specifically pre-programmed by Defendants to not dispense a prize to every player who successfully fits the key into the slot. As Defendants are fully aware, the incidents of payouts on Key Master machines can be, and are in fact, pre-programmed (and can be set at any time) to prevent players from winning a prize even if they have followed the instructions on the game to effectively fit the key in the lock and “win” the game.



2. Plaintiff asserts that Defendants' activities related to the marketing and sale of the Key Master game for use by consumers without proper disclosure that “winning” the game does not guarantee winning a prize, but rather, Key Master machines are pre-set to only pay out at pre-determined intervals, are prohibited by GBL § 349. In short, if Plaintiff and other members of the proposed class were told the material fact that they would have to successfully fit the key

in the hole possibly tens or hundreds of times before a prize would be awarded because the game was pre-set at a certain pay-out rate other than 1:1, they would not have played Key Master, or would not have paid the price they paid to play the game.

3. Defendants market and sell Key Master throughout the state of New York and take advantage of consumers' reasonable expectation created by Defendants that "winning" the game according to its pictorial directions by fitting the key into the hole results in the award of the corresponding displayed prize. In fact, Defendants fail to disclose that the pre-determined settings on the machine prevent (and can be and are set to prevent) a prize from dropping until a certain amount of money is collected from players. This suit seeks redress on behalf of all consumers in New York who paid to play Key Master from its release in November of 2010 to the present, during which time Defendants failed to disclose that the chances of winning a displayed prize are not connected to "winning" the game according to its directions, but rather they are controlled by pre-determined settings on the machine.

JURISDICTION

4. Diversity subject matter jurisdiction exists over this class action pursuant to the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (2005), amending 28 U.S.C. § 1332, at new subsection (d), conferring federal jurisdiction over class actions involving: (a) 100 or more members in the proposed Class; (b) where at least some members of the proposed class have different citizenship from some Defendants; and (c) where the claims of the proposed class members exceed the sum or value of five million dollars (\$5,000,000) in the aggregate. 28 U.S.C. §§ 1332(d)(2) and (6).

5. Venue in this District is proper pursuant to 28 U.S.C. § 1391 in that the Defendants transact business here and the conduct complained of occurred in this judicial

district, and because Defendants have marketed, sold, and distributed the product at issue in this action within this judicial district and have done business within this judicial district.

PARTIES

6. Plaintiff, C. Stuart Brown, is a natural person residing in Westchester County, State of New York.

7. Defendant Sega Sammy Holdings, Inc. ("Sega Sammy") is incorporated or organized under the laws of Japan and has its principal place of business at Shiodome Sumitomo Building 21F, 1-9-2 Higashi Shimbashi, Minato-ku, Tokyo, 105-0021, Japan. Sega Sammy's registered agent is c/o National Corporate Research, Ltd., located at 10 E. 40th Street, 10th Floor, New York, New York 10016. At all times relevant herein, Sega Sammy is and was the ultimate parent company of a number of subsidiaries that together form the Japanese conglomerate defendant Sega Corporation, a comprehensive entertainment company with operations located in various parts of the world that act as a single enterprise offering consumers a wide variety of gaming and entertainment products, including player-operated amusement arcade machine devices such as Key Master. All of Sega Sammy's products and merchandise are marketed, distributed, and sold under the brand SEGA® exclusively and directly through the operations of its subsidiary, defendant Sega Corporation.

8. Defendant Sega Corporation ("Sega"), a wholly-owned subsidiary of defendant Sega Sammy, is a Japanese-domiciled corporation organized and existing under the laws of Japan, with its principal place of business located at 1-39-9, Higashi-Sinagawa, Shinagawa-ku in the Canal Side Building, Tokyo, Japan 140-8583. Sega divides its SEGA® brand furnished products and merchandising operations into four segments, with the relevant one here being Amusement Arcade Machine Devices, which handles the development, marketing, distribution,

and sales of amusement arcade machines such as Key Master, in Japan, Europe, and the United States.

9. Defendant Sega is the parent company of defendants Sega Holdings U.S.A., Inc., Sega Amusements U.S.A., Inc., and on information and belief, Play It! Amusements, Inc. At all material times herein, Sega has owned and operated such subsidiaries as part and parcel of Sega's operations related to amusement arcade machine devices such as Key Master in the continental United States.

10. Defendant Sega Holdings U.S.A., Inc., ("Sega Holdings") upon information and belief, was a California corporation that voluntarily dissolved in April 2013, and at times relevant herein was the wholly-owned subsidiary of defendants Sega and Sega Sammy responsible for and charged with overseeing all SEGA® brand-based operations in the United States, including the sales and marketing of amusement arcade machine devices such as Key Master. As such, Sega Holdings was the ultimate domestic parent of all SEGA® brand-based operations located in the United States, including defendant Sega Amusements U.S.A., Inc. The principal place of business of defendant Sega Holdings during the relevant time period was located at 350 Rhode Island Street, Suite 400, San Francisco, CA 94103, and its registered agent is c/o John Cheng, 350 Rhode Island Street, Suite 400, San Francisco, CA 94103.

11. Defendant Sega Amusements U.S.A., Inc., ("Sega Amusements USA") was a California corporation that voluntarily dissolved in April 2013, and was a wholly-owned subsidiary of defendant Sega Holdings. Sega Amusements USA was responsible for the development, manufacture, and sales of SEGA® amusement arcade machines and player-operated amusement devices in the United States. Specifically, Sega Amusements USA was exclusively responsible for all U.S.-based sales, marketing, servicing, distributing, and the like,

of the SEGA® player-operated amusement device “Key Master,” approximately from its release into the stream of U.S. commerce sometime after its debut at the International Association of Amusement Parks Association annual convention in the fall of 2010 until approximately June 2011.

12. Upon information and belief, Sega Amusements USA voluntarily dissolved its California corporation status in June 2011, at which time defendant Play It! Amusements Inc., an Illinois corporation, was formed to assume Sega Amusements USA’s operations. The basis for this alleged affiliation is that almost all, if not all, of Play It! Amusements Inc.’s current corporate officers and employees are former long-time employees of Sega Amusements USA and that it and they perform substantially the same essential duties and functions. These include, among other things, the promotion, advertisement, marketing, and distribution of Sega products, as well as the ability to issue authorized statements to vendors and the press on behalf of Sega Corporation. Sega Amusements USA maintained its principal place of business at 800 Arthur Ave., Elk Grove Village, IL 60007-5215. Sega Amusements USA’s registered agent is c/o Illinois Corporations Service, Inc., 801 Adlai Stevenson Drive, Springfield, Illinois 62703.

13. Defendant Play It! Amusements, Inc., (“Play It”) is an Illinois corporation with a principal place of business located at 8817 Oriole Avenue, Morton Grove, Illinois 60053. Play It’s registered agent is Hiram Gonzalez, the President of Play It, and former director of Finance of defendant Sega Amusements USA. Plaintiff is informed and believes, and upon that basis alleges, that prior to and/or coextensive with the dissolution of Sega Amusements USA, defendant Play It was established in June 2011 to handle U.S.-based sales, distributions, spare part purchase orders, service repairs, marketing, warranty, and support for all past, current and future SEGA® amusement machines, including Key Master. Plaintiff is further informed and

believes, and upon that basis alleges, that defendant Sega is the parent corporation for defendant Play It.

14. The true names and capacities of defendants sued herein under New York Code of Civil Procedure section 1024 as Does 1 through 10, inclusive, are presently unknown to Plaintiff, who therefore complains against these defendants by such fictitious names. Plaintiff will seek to amend this Complaint and include these Doe defendants' true names and capacities when they are ascertained and become known to Plaintiff. Each of the fictitiously named defendants is jointly and severally liable and/or substantially responsible for the conduct alleged herein and for the injuries sustained by Plaintiff and the Class.

15. Upon information and belief, each of the Defendants is and was, at all times relevant herein, soliciting business, transacting business, and doing business within the State of New York and throughout the United States, and is and was designing, manufacturing, advertising, promoting, marketing, selling and distributing the Key Master player-operated amusement device designed for use by consumers, either directly or indirectly, by and through its known and unknown subsidiaries, agents, representatives, employees, vendors, contractors, and Does 1-10, inclusive.

FACTUAL ALLEGATIONS

16. The play of amusement games in America is on the rise. According to Sega Sammy's annual report for the fiscal year ended March 2011, "the amusement arcade machine market grew for the first time in three years" and "manufacturers are developing machines targeting casual players...." According to the industry publication Vending Times' annual "Census of the Industry" for 2011, the total dollar volume of prize merchandisers in America was \$944 million. Vending Times 2011 Census of the Industry (2011) at p. 15, *available at*

<http://www.vendingtimes.com/Media/MediaManager/VTcensus11.pdf> (last visited October 24, 2013).

17. Within the U.S. amusement arcade machine market, Defendants launched Key Master as a new prize vending game to much success. Key Master was described in May of 2011 by Sega Amusement USA's then President and COO, Paul Williams, as "the type of street piece operators have been asking Sega to make for years...producing some amazing results." *See Key Master – Your Key to High Earnings!, available at <http://www.segaarcade.com/newsitem/367>*, last visited October 24, 2013. Williams further stated that "[t]he earnings have been nothing short of spectacular," and the press release noted that "[t]est locations are realizing incredibly fast ROI's [returns on investment]." *Id.* As noted by Sega Amusement USA Regional Sales Manager Vince Moreno in the same press release, "Key Master has been the #1 game in our test locations week after week...beating every other prize vending game on location and the ROI's have been fantastic with some games paying back as quick as 15 weeks." *Id.*

18. Indeed, as a Sega sales manager commented in April of 2013, "[t]he popularity of Key Master cannot be overstated." *See <http://www.segaarcade.com/newsitem/1557>*, last visited October 24, 2013. As a result, Key Master won the 2012 Operators' Choice Award based on its "high quality and earning power." *Id.*

19. As alleged herein, the return on investment (or game pay back) of Key Master is so high due to Defendants' material omission that, contrary to the pictorial directions on the machine, the machine can be and is set to ensure a prize will not be awarded every time the player succeeds in fitting the key in the slot.

20. Key Master is manufactured by a Korean company (Korean Amusement Inc. or Komuse©) and distributed solely by Sega under the SEGA® registered trademark, and Defendants market and sell Key Master for use by consumers in, *inter alia*, movie theaters, pizza parlors, restaurants, cruise ships and arcades. Key Master is a game whereby the player pays between one and two dollars for a “play” where he or she attempts to navigate a “key” into a hole to “unlock” a particular prize via the controls.

21. To do so, a player of Key Master must maneuver a remotely controlled arm carrying a key into just the right place such that the machine will then insert the key into one of a number of vertical lock-shaped cutouts. According to the pictorial instructions on the Key Master machine, if a player’s aim is true, the key rotates to snag the “lock” and pull it forward, dropping the prize into a bin for retrieval. A standard joystick controls horizontal movement, while a large button actuates vertical travel. There are three prize levels: minor, medium and major, with prizes like iPads typically hung as the “major” prize. Prizes hang on horizontal rods behind the “locks,” for fast and easy restocking.

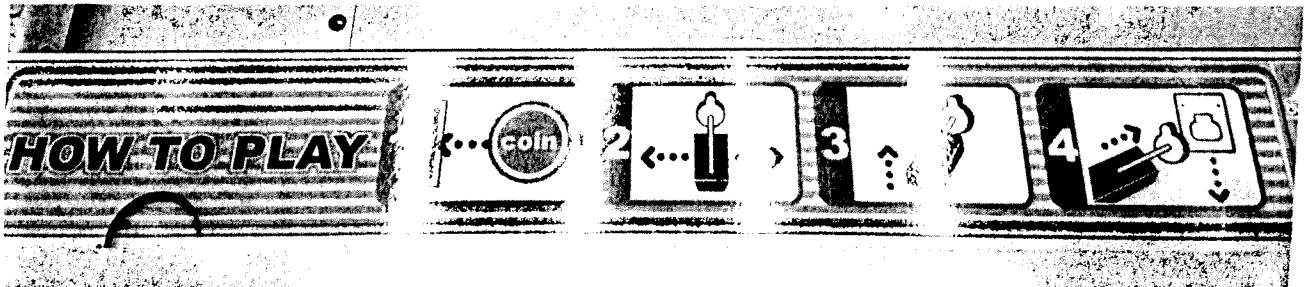
22. According to Defendants’ pictorial directions on the machine, by successfully guiding the key into the lock, the player wins and the corresponding prize is then dispensed. Indeed, there is nothing posted on the machine to make the player think otherwise or any other indication whatsoever to suggest to the average objective person that he or she will not win the prize if he or she succeeds in inserting the key into the slot.

23. According to Sega employee Pete Gustafson, “[t]he player really has a level of control not available in other games,” because Key Master “has X, Y and Z axes too, but where it differs is that it allows left-to-right control with the joystick, to precisely line up the key. Our competitors’ games allow you just one push of the button. There’s greater suspense built up,

because they can move that key mechanism left and right for a period of time.” See Prize Vending: Sega Credits User-Friendly Design For Key Master’s Ongoing Success, *available at* <http://www.vendingtimes.com/ME2/dirmod.asp?sid=&nm=Article+Archives&type=Publishing&mod=Publications%3A%3AArticle&mid=8F3A7027421841978F18BE895F87F791&tier=4&id=387E197CC9AF46D2BDDFEFE7A31C2B84>, last visited October 24, 2013. Gustafson added that the prizes also are presented well, hanging in a way that displays them in their best light. *Id.*

24. Key Master is also marketed by Defendants as “easy to understand,” “fun to play” and “the perfect prize vending game for all ages.” Commenting on Key Master’s appeal to players in 2012, Sega employee Gustafson emphasized that “new players make an immediate connection to Key Master’s ‘intuitive play’ that shortens the learning curve, while experienced players appreciate the added control.” See Prize Vending: Sega Credits User-Friendly Design For Key Master’s Ongoing Success, *available at* <http://www.vendingtimes.com/ME2/dirmod.asp?sid=&nm=Article+Archives&type=Publishing&mod=Publications%3A%3AArticle&mid=8F3A7027421841978F18BE895F87F791&tier=4&id=387E197CC9AF46D2BDDFEFE7A31C2B84>, last visited October 24, 2013.

25. The only directions provided to consumers playing Key Master (without any disclosure that the incidents of pay out by the machine are pre-programmed to only dispense a prize to certain winners after a certain amount of plays) are the pictorials shown below numbered 1-4:



26. Such directions (“How To Play”) lead the average, reasonable person to believe that if the player is able to insert the key into the slot, as described by the instructions, the player will “unlock” and thereby win that corresponding prize. The format of the machine leads to the same conclusion.

27. However, the very reason why Key Master provides such an incredible return on investment to its owner-operators (and enables them to stock it with attractive high-end prizes such as iPads and smartphones) and therefore is such a fantastic money maker for Defendants, is that it is set by Defendants to only pay out its prizes at certain intervals, so that even if a consumer succeeds per the machine’s instructions by fitting the key into the slot and unlocking a certain prize, the machine does not dispense that prize each time. In fact, according to the owner’s manual distributed by Defendants to owner/operators with the machine, each machine has a pre-programmed “Payout Rate” with a unique value for each line of prizes such that only at certain intervals will the machine actually dispense a prize to a valid “winner.” As such, even if the player controls movement of the key and stops the key in “just” the right spot, the machine’s motorized mechanism will only process to extend the key into the key hole to pull a prize pin forward and drop the prize reward to the player if that player happens to play the game at the same time as the machine is pre-programmed to actually distribute a prize to a “winner.”

28. Therefore, Defendants' directions on Key Master game machines are false and misleading because they indicate that success in fitting the key in the slot will result in the machine dispensing the corresponding unlocked prize each time but omit to state that, in fact, rather than dispensing a prize to each winner, to the contrary, the machine's settings can be and are set to ensure that success at the objective of the game, or winning, is no guarantee of receiving a prize because a player could effectively "win" at the game tens to hundreds of times prior to receiving a prize.

29. Defendants thus market and sell Key Master for use by consumers without disclosing that the machine is unlikely to dispense prizes even to "winners" who are successful at the game's challenge. Consumers should be told that succeeding at the game does not guarantee winning a prize.

Plaintiff Plays Key Master

30. On or about January 13, 2013, Plaintiff played Key Master while at Bounce U in Elmsford, New York in Westchester County.

31. Plaintiff spent approximately ten (10) dollars to play the Key Master game at the price of one dollar per game. Plaintiff played Key Master because he believed, based principally upon the directions on the machine, that if he could fit the key into the slot associated with a particular prize, he would win the corresponding prize. His belief was reasonable because the machine provides no disclosure that the machine is set not to dispense a prize to each and every winner. Plaintiff ultimately twice "unlocked" two major prizes, however, the prizes did not release.

32. In fact, Defendants' Key Master machine failed to display that the machine is not guaranteed to dispense a prize even if the player has been successful at the game because the

machine is set to only dispense prizes to certain winners based on the number of accumulated plays on the machine. The fact that winning the game does not guarantee winning a prize was entirely omitted from its instructions and there was nothing posted on the machine to so indicate. Instead, the game's pictorial instructions and format lead an objective and reasonable person to believe that a prize will drop if a player is successful in getting a given key into the slot, particularly since there is no disclosure to the contrary on the machine.

33. Therefore, Plaintiff was injured because he paid to play the game based on Defendants' omission that led him to believe that the machine would dispense a prize if the player was able to fit the key into the slot and unlock that prize. Plaintiff would not have played Key Master, or would not have done so at the price he paid, had he known the odds of the machine dispensing one of the displayed prizes depended on the number of times the machine had been played, even if he successfully "unlocked" that very prize.

CLASS ALLEGATIONS

34. Plaintiff brings this action as a class action on behalf of himself and all others similarly situated for the purpose of asserting the claims alleged in this Complaint on a common basis. Plaintiff's proposed class (hereinafter the "Class") is defined under Federal Rules of Civil Procedure ("Fed. R. Civ. P.") 23(a) and 23(b)(3), and he proposes to act as a representative of the following Class comprised of:

All persons, exclusive of the Defendants and their employees, who paid to play Key Master in the state of New York from the release of Key Master in November of 2010 through the present.

35. The exact number of members of the Class is not known, but given published reports regarding the successful sales of Key Master by Defendants and its return on investment

by owners, it is reasonable to presume that the Class is so numerous that joinder of individual members is impracticable.

36. All members of the Class have been subject to and affected by the same conduct and omissions.

37. The claims are based on the same violations of GBL § 349 by Defendants and Defendants' unjust enrichment at the expense of Plaintiff and the Class.

38. There are questions of law and fact that are common to the Class and predominate over any questions affecting only individual members of the Class. These questions include, but are not limited to, the following:

- a) Whether Defendants failed to disclose that even if a player is successful at the game by fitting the key in the slot as per the game's directions, the game can be and is pre-set not to dispense a prize each time;
- b) Whether Defendants' conduct described herein constitutes a deceptive act or practice in violation of GBL § 349;
- c) Whether Defendants' conduct has resulted in their unjust enrichment at the expense of Plaintiff and the Class; and
- d) Whether Plaintiff and the other members of the Class have been harmed by Defendants' acts alleged herein and, if so, what measure of damages is proper.

39. The claims of the individual named Plaintiff are typical of the claims of the Class and do not conflict with the interests of any other members of the Class in that both Plaintiff and the other members of the Class were subjected to the same conduct. The claims of all Class members depend upon a showing of the acts and omissions of Defendants as described herein, giving rise to the right of Plaintiff and the proposed Class to the relief sought.

40. The individual named Plaintiff will fairly and adequately represent the interests of the Class. He is committed to the vigorous prosecution of the Class' claims and has retained attorneys who are qualified to pursue this litigation and have experience in class actions – in particular, consumer protection actions.

41. A class action is superior to other methods for the fast and efficient adjudication of this controversy, for at least the following reasons:

- a) Absent a class action, Class members as a practical matter will be unable to obtain redress, Defendants' violations of their legal obligations will continue without remedy, additional consumers will be harmed, and Defendants will continue to retain their ill-gotten gains;
- b) It would be a substantial hardship for most individual members of the Class if they were forced to prosecute individual actions;
- c) When the liability of Defendants has been adjudicated, the Court will be able to determine the claims of all members of the Class;
- d) A class action will permit an orderly and expeditious administration of Class claims and foster economies of time, effort, and expense;
- e) A class action regarding the issues in this case does not create any problems of manageability; and
- f) Defendants have acted on grounds generally applicable to Class members, making class-wide monetary and injunctive relief appropriate.

42. Notice to the putative Class may be accomplished through publication, signs or placards at the point-of-sale, or other forms of distribution, if necessary.

COUNT I
(VIOLATION OF GBL § 349)
(against all Defendants)

43. Plaintiff, on behalf of himself and all others similarly situated, restates and reiterates each and every allegation contained in all previous paragraphs as if fully set forth herein.

44. GBL § 349 prohibits deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in New York State.

45. The conduct of Defendants alleged herein violates GBL § 349 in that Defendants' directions on the game, as well as the format of the game, lead players to believe that success at fitting the key into the hole will cause a prize to drop each time but Defendants fail to disclose that success at the game's objective of fitting the key into the slot does not guarantee the dispensing of a prize because the odds of getting a prize can be and are pre-set so that the machine does not dispense a prize each such time. Such conduct is inherently and materially deceptive and misleading in a material respect which was known, or by the exercise of reasonable care, should have been known, to be untrue, deceptive or misleading by Defendants.

46. The materially misleading conduct of Defendants alleged herein was directed at the public at large.

47. Defendants' acts and practices described above are likely to mislead a reasonable consumer acting reasonably under the circumstances.

48. Defendants have willfully and knowingly violated GBL §349 because, in order to increase their own profits, they intentionally set Key Master to not pay out a prize each time a player succeeds at the game despite knowing that the omission of this fact is likely to mislead players like Plaintiff and the other members of the Class who are unaware of it and are led to believe otherwise, as alleged hereinabove, given the game's pictorial instructions and format.

49. As a result of Defendants' deceptive and misleading acts, Plaintiff and other New York State consumers have been injured because they played Key Master without knowing that their chances to receive a prize could be and were previously fixed on the machine to prevent the

machine from dispensing a prize to successful players, as described herein above, other than at certain pre-set times.

50. As a result of Defendants' conduct in violation of GBL § 349, Plaintiff and members of the Class have been injured as alleged herein in amounts to be proven at trial because they played the game without full disclosure of its settings as to the dispensing of the game's prizes. Plaintiff and members of the Class would not have played Key Master, or would not have done so at the price they paid, had they known the odds of the machine dispensing one of the displayed prizes depended on the number of times the machine had been played, even if they successfully "unlocked" that very prize.

51. As a result, pursuant to GBL § 349, Plaintiff and the other members of the Class are entitled to maintain an action against Defendants for actual or statutory damages to be determined at trial, but not less than fifty (50) dollars per Class member, such damages to be trebled, plus attorneys' fees, costs, and injunctive relief requiring Defendants to adequately disclose that a player of Key Master will not necessarily win a prize every time he or she plays the game successfully.

COUNT II
(UNJUST ENRICHMENT)
(against all Defendants)

52. Plaintiff restates and reiterates herein all previous paragraphs.

53. By marketing and selling the Key Master game and entirely omitting from its display and instructions that the odds of the machine dispensing prizes to successful players are fixed at pre-programmed rates, Defendants have unjustly enriched themselves at the expense of Plaintiff and the Class, and it would be against equity and good conscience to permit Defendants to retain their ill-gotten gains.

54. By reason of the foregoing, Defendants are liable to Plaintiff and the other members of the Class for the amount by which Defendants have been unjustly enriched as a result of their actions, such amount to be determined at trial, plus attorneys' fees.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against the Defendants, jointly or individually, as follows:

- a. Permanently enjoining Defendants from marketing or selling Key Master game machines without disclosing that the chances of the machine dispensing a prize do not correspond with a player's success at the game;
- b. Ordering Defendants to adequately disclose that the chances to win a prize are previously set at particular odds on each Key Master machine;
- c. Ordering Defendants to return their unjustly received gains;
- d. Awarding Plaintiff and each member of the Class actual damages but not less than fifty (50) dollars, whichever is greater, and three times the actual damages up to one thousand dollars for injuries caused by Defendants' willful and knowing deceptive acts and practices in violation of GBL § 349;
- e. Awarding Plaintiff and the Class reasonable attorneys' fees and costs; and
- f. Granting such other and further relief as the Court may deem just and proper.

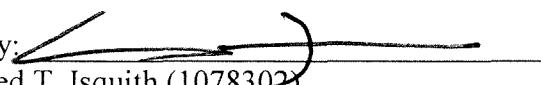
DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury.

Dated: New York, New York
October 26, 2013

Respectfully submitted,

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

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