

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**WALGREEN CO.,** )  
 )  
 Plaintiff, )  
 ) Case No.  
 v. )  
 ) **JURY DEMANDED**  
 )  
**ATGAMES HOLDINGS, INC.,** )  
 )  
 )  
 Defendant. )

## COMPLAINT

Walgreen Co. (“Walgreens”), by and through its undersigned attorneys, hereby files this Complaint for breach of contract against AtGames Holdings, Inc. (“AtGames”), alleging as follows:

## I. NATURE OF THE CASE

1. This is an action for breach of contract or, alternatively, unjust enrichment. It arises from AtGames’ breach of its promises and obligations pursuant to the parties’ contracts and agreements. Specifically, AtGames sold video games products, including game consoles and portable games (“Video Game Products”), to Walgreens on a guaranteed-sale basis. AtGames specifically agreed to refund Walgreens to the extent that Video Game Products did not meet agreed-to benchmarks and unsold units of Video Game Products were ultimately returned to AtGames. In this regard, AtGames has failed to live up to its agreements with Walgreens.

2. As a direct and proximate result of AtGames' breaches of contract, Walgreens has suffered damages in an amount to be proven at trial, but not less than \$1,618,816.68. This amount accounts for offsets that Walgreens has applied to AtGames' account with Walgreens, as

the parties agreed that Walgreens could do. Walgreens files this lawsuit to recover those damages.

## **II. THE PARTIES**

3. Walgreens is an Illinois corporation with its principal place of business at 200 Wilmot Road, Deerfield, Illinois, 60015. Walgreens is in the business of providing consumer goods and services, as well as pharmacy, health and wellness services, through thousands of retail drugstores throughout the United States.

4. AtGames is an active, Delaware corporation engaged primarily in the distribution of video game products. AtGames' principal place of business is located at 2228 E. Maple Avenue, El Segundo, California, 90245.

## **III. JURISDICTION AND VENUE**

5. This Court has jurisdiction over this dispute pursuant to 28 U.S.C. § 1332 because the citizenship of Walgreens and AtGames is diverse and the amount in controversy is in excess of \$75,000.

6. Venue is proper in the Northern District of Illinois pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims made in this lawsuit occurred within the Northern District of Illinois. Moreover, in the written agreement between them (discussed further below), the parties "consent[ed] to the exclusive jurisdiction of the courts of the State of Illinois or Federal District Court of the Northern District of Illinois and agree[d] to waive all objections as to venue and *forum non conveniens*."

## **IV. FACTUAL ALLEGATIONS**

### **A. The Parties' Agreements**

7. In 2011, Walgreens and AtGames agreed that Walgreens would buy Video Game Products from AtGames and stock Video Game Products at its stores for resale to consumers.

Walgreens and AtGames agreed that these purchases by Walgreens would be pursuant to certain written agreements.

8. The written agreement through which all purchases by Walgreens from AtGames were made was the Walgreen Co. General Trade and Electronic Data Interchange Agreement (the “GTA”). AtGames, through its authorized representative Richard Horowitz signed the GTA with an effective date of November 28, 2011. A copy of the GTA is attached hereto as **Exhibit A**.

9. The GTA stated in its preamble that: “The terms and conditions contained herein shall apply to all merchandise . . . sold by Vendor [AtGames], directly or indirectly through its distributors, to Walgreen[s].” Ex. A, GTA Preamble.

10. The GTA further provided in Section C(1) that: “[AtGames]’s performance shall be in accordance with these terms, dating and conditions. Any other terms in [AtGames]’s acceptance are rejected unless agreed to in writing and signed by Walgreen’s authorized representative.” *Id.* § C(1). Further clarifying that the GTA controlled the parties’ relationship, it provided that: “In the event of a conflict between these terms or any purchase order issued by Walgreen[s], and any document issued by [AtGames], the terms of this Agreement shall control.” *Id.* § D(8). The GTA further provided that: “No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party.” *Id.* § F(2).

11. The parties never signed any written modification of the GTA that contradicted or modified any of its terms.

12. Section C(2) of the GTA states that “if a purchase order is designated as ‘Guaranteed Sale,’ . . . Walgreen[s] shall not be obligated to pay for any merchandise until after it is sold by Walgreen[s] in accordance with terms agreed upon by the parties.” *Id.* § C(2).

13. Consistent with the GTA, all purchases by Walgreens from AtGames were on a “Guaranteed Sale” basis such that Walgreens was not obligated to pay for the merchandise until it was sold pursuant to agreed-upon terms. Moreover, by the terms of the GTA, if Walgreens’ sales expectations were not met, Walgreens had a right to return the merchandise to AtGames (with no payment obligation having arisen), which would provide a corresponding refund to Walgreens for the Video Game Products and costs incurred by Walgreens when it returned the unsold units of Video Game Products to AtGames, including the agreed-to upcharge fee of up to 6% and applicable freight expenses.

14. On December 21, 2016 AtGames provided a Return Authorization for the Video Game Products that Walgreens returned to AtGames’ Compton, California (“Return Authorization”).

15. Section C(2) of the GTA further states that “. . . Walgreen[s] shall have the unrestricted right to rescind its purchase of the merchandise from [AtGames] both before and after acceptance of such merchandise by Walgreen[s].” Ex. A, GTA § C(2).

**B. AtGames Breaches its Agreements with Walgreens**

16. Walgreens ordered Video Game Products from AtGames at prices ranging from \$15 to \$38 per unit, paid for the items and placed them for sale in its stores. However, the units of Video Game Products did not all sell and some units were returned or never delivered to Walgreens.

17. Consistent with the terms of the GTA and Return Authorization from AtGames’, Walgreens returned at least 66,548 units of Video Game Products to AtGames between October 2016 and March 2019. Each unit of Video Game Products that Walgreens returned to AtGames was authorized by the parties’ agreements either because Video Game Products did not meet agreed-to benchmarks or because it was sold to Walgreens on a guaranteed sale basis. AtGames

accepted those returned items, for which Walgreens had paid AtGames approximately \$1,611,014.70.

18. Walgreens incurred costs when it returned unsold Video Game Products to AtGames. Consistent with Walgreens' right to rescind in the GTA and the terms of the Unsaleables Policy, AtGames is responsible to Walgreens for those costs, including the agreed-to upcharge fee and freight expenses, totaling approximately \$7,801.98.

19. As a result of the returns referenced in Paragraphs 17 and 18 above, AtGames now owes Walgreens at least \$1,618,816.68 for the units of Video Game Products that Walgreens returned to AtGames. Walgreens demanded this payment from AtGames, but in breach of the parties' agreements, AtGames has refused to pay this amount.

## **V. CAUSES OF ACTION**

### **COUNT I: BREACH OF CONTRACT**

20. Walgreens re-alleges as Paragraph 20 of Count I paragraphs 1-19 above.

21. Walgreens and AtGames contracted for Walgreens to buy Video Game Products from AtGames on a "Guaranteed Sale" basis. Walgreens agreed to, and did pay \$15 - \$38 per unit of Video Game Products.

22. Walgreens and AtGames also contracted that any unsold units of Video Game Products could and would be returned to AtGames. AtGames agreed to refund Walgreens the amounts Walgreens had paid for those units of Video Game Products, and that AtGames would be responsible for paying freight costs and an upcharge fee for all returned units of Video Game Products.

23. The GTA, including its incorporated policies, is a valid and enforceable contract.

24. Walgreens fully complied with its obligations pursuant to these contracts.

25. AtGames, however, breached the terms of the parties' agreements, by accepting the return of unsold Video Game Products, but refusing to refund the amounts already paid by Walgreens and by refusing to reimburse for the incurred freight costs and related administrative fees.

26. AtGames' breaches proximately caused Walgreens' damages, in the amount of \$1,618,816.68.

**WHEREFORE**, Walgreens prays that judgment be entered in its favor and against AtGames for damages in an amount to be determined by the Court, but not less than \$1,618,816.68, plus pre-judgment interest, and for such other relief as the Court deems just and proper.

**COUNT II: UNJUST ENRICHMENT, PLED IN THE ALTERNATIVE**

27. Walgreens re-alleges as Paragraph 27 of Count II the foregoing allegations, except those relating to its breach-of-contract claim, as if fully set forth herein.

28. By accepting return of the approximately 66,548 units of Video Game Products from Walgreens, but refusing to refund amounts already paid by Walgreens for those goods, and benefitting by the cost to Walgreens incurred making those returns, AtGames has unjustly received a benefit from Walgreens.

29. AtGames' benefit was received to Walgreens' detriment, as Walgreens paid for the units of Video Game Products that AtGames now has and may re-sell. Additionally, Walgreens incurred the costs associated with returning those units of Video Game Products to AtGames.

30. Allowing AtGames to retain the benefits of its own wrongdoing, as alleged herein, would violate fundamental principles of justice, equity and good conscience, including by affording AtGames the opportunity to sell the returned items twice.

31. **WHEREFORE**, Walgreens hereby requests that this Court enter Judgment in its favor and against AtGames, awarding damages in an amount to be determined by the Court, but not less than \$1,618,816.68, plus pre-judgment interest, and such other relief as the Court deems just and proper.

**VI. JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38, Walgreen Co. hereby demands trial by jury in this case.

Respectfully submitted,

**WALGREEN CO.**

By: s/ Robert M. Andalman  
One of its Attorneys

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