

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this 29th day of March, 1991, by and between the State of New York, by Robert Abrams, Attorney General and the State of Maryland, by J. Joseph Curran, Jr., Attorney General ("the Attorneys General") and Nintendo of America Inc. (hereinafter referred to as "Nintendo"), a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place of business located at 4820 150th Avenue, N.E., Redmond, Washington 98052. Nintendo is a wholly-owned subsidiary of Nintendo Co., Ltd., with its principal place of business in Kyoto, Japan. The terms of this Agreement shall be available to all States and the District of Columbia as provided under the terms of section IX herein.

WHEREAS, the Attorneys General will file a Complaint against Nintendo for damages and injunctive relief, on their own behalf and as parens patriae on behalf of natural person citizens of New York State and Maryland, alleging an unlawful agreement to fix, maintain or stabilize resale prices of Nintendo Entertainment System 8-bit video game consoles during the period March 1, 1987 - December 31, 1990, in violation of federal and state antitrust laws;

WHEREAS, Nintendo denies the allegations set forth in the Attorneys Generals' Complaints; and

WHEREAS, the parties have determined it to be in their best interests to resolve this dispute and enter into this Settlement Agreement:

NOW, THEREFORE, WITNESSETH:

I. DEFINITIONS

As used herein:

A. "Administration Account" means an interest-bearing account established by Plaintiffs' Lead Counsel and Defendant, and administered by a trustee appointed pursuant to section IV(C) of this Agreement, for the purpose of paying administrative costs. The principal of the Administration Account shall be funded as described in section IV(A) below;

B. "Dealer" means any person, corporation or firm not owned by Nintendo that in the course of its business sells any Nintendo Product. The term "dealer" does not include licensees of Nintendo which do not act as agents, representatives or distributors of Nintendo;

C. "Lead Counsel" means the Attorneys General of the States of Maryland and New York;

D. "Defendant" or "Nintendo" means Nintendo of America Inc. and its affiliates, subsidiaries, divisions and other organizational units of any kind, which sold Nintendo Products as defined herein, their successors and assigns, and their officers, directors, employees, agents, representatives and other persons acting on their behalf;

E. "Nintendo Administration Costs" means those costs to be paid by Nintendo in connection with the administration of this Settlement, as set forth in section IV(D) below;

F. "Nintendo Data Base" means all computerized records maintained by Nintendo which identify persons who, between June 1,

1988 to and including December 31, 1990, became members of the Nintendo Fun Club, subscribed to the Nintendo Power magazine, called the Nintendo consumer service representatives or filed warranty cards indicating that they purchased Nintendo Hardware. Nintendo has represented to Lead Counsel that it believes that the Nintendo Data Base identifies approximately 4.7 million natural persons. Every individual identified in the Nintendo Data Base is deemed to be a Qualified Purchaser;

G. "Nintendo Hardware" means all Nintendo Entertainment System 8-bit video game consoles which were offered for sale or sold by Nintendo to dealers between June 1, 1988 to and including December 31, 1990;

H. "Nintendo Products" means any home video game hardware, software, accessories or items related thereto which are offered for sale or sold by Nintendo to dealers;

I. "Nintendo Software" means all 8-bit video game cartridges which are sold by Nintendo to its licensees and dealers for sale to ultimate consumers;

J. "Qualified Purchaser" means:

1. every individual identified in the Nintendo Data Base, and

2. a natural person other than an individual identified on the Nintendo Data Base who purchased one or more items of Nintendo Hardware between June 1, 1988 to and including December 31, 1990, resided within the States of Maryland, New York or other state or the District of Columbia participating in this Agreement

at the time of such purchase or purchases, and submits a valid request for coupon under section VII of this Agreement;

K. "Plaintiffs" or "Plaintiff States" means the States of New York and Maryland, and any other States and the District of Columbia which opt to enter into the terms of this Agreement as provided in section IX hereof, in their sovereign capacity and as parens patriae on behalf of all natural person citizens of such states who have purchased Nintendo Products during the period of the alleged conspiracy (March 1, 1987 to and including December 31, 1990);

L. "Resale Price" means any price, price floor, price ceiling, price range, or any mark-up formula, or margin of profit used by any dealer for pricing any Nintendo Product. Such term includes, but is not limited to, any suggested, established or customary resale price, as well as the retail price advertised, promoted or offered for sale by any Dealer;

M. "State Administration Costs" means those costs to be paid from the Administration Account in connection with the administration of this Settlement, including notice by publication, all administrative tasks listed in section IV(A) of this Agreement, attorney's and expert witness fees and investigative costs.

II. AGREEMENT

Subject to the approval of the Court, the parties agree to compromise, settle and resolve fully and finally, any and all claims, actions and causes of action arising under any federal or

state antitrust laws with respect to resale price maintenance of Nintendo Products sold during the period March 1, 1987 - December 31, 1990, which Plaintiffs have, now have or may have against Defendant as of the date of this Agreement. However, this Agreement specifically does not include any claims which Plaintiffs may have under Section 2 of the Sherman Act, 15 U.S.C. §2, or analogous state antitrust laws.

III. INJUNCTION

A. Nintendo, its successors and assigns, and its officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, sale or distribution of any Nintendo Product, agree that it shall forthwith cease and desist from:

1. Fixing, controlling or maintaining, directly or indirectly, the resale price at which any dealer may advertise, promote, offer for sale or sell any Nintendo Product;

2. Requiring, coercing or otherwise pressuring any dealer, directly or indirectly, to maintain, adopt or adhere to any resale price;

3. Securing or attempting to secure, directly or indirectly, any commitment or assurance from any dealer concerning the resale price at which the dealer may advertise, promote, offer for sale or sell any Nintendo Product;

4. Reducing the supply of Nintendo Products to any

dealer or imposing different credit terms in whole or in part due to the dealer's resale price of any Nintendo Product;

5. Requesting dealers, directly or indirectly, to report the identity of other dealers who advertise, promote, offer for sale or sell any Nintendo Product below any resale price, and;

6. For a period of five (5) years from the date the Court enters the Final Judgment and Consent Decree in this matter, terminating any dealer due in whole or in part to the dealer's resale price of any Nintendo Product. Provided, however, that the Defendant retains the right to terminate unilaterally any dealer for lawful business reasons, unrelated to resale prices, that are not inconsistent with this paragraph or any other paragraph of this Agreement.

B. For a period of five (5) years commencing fifteen (15) days from the date the Court enters the Final Judgment and Consent Decree in this matter, Defendant shall clearly and conspicuously state the following on any list, advertising, book, catalogue or promotional material where Defendant has suggested any resale price to any dealer:

ALTHOUGH NINTENDO OF AMERICA INC. MAY SUGGEST RESALE PRICES FOR PRODUCTS, DEALER IS FREE TO DETERMINE ON ITS OWN THE PRICES AT WHICH IT WILL SELL THE PRODUCTS.

C. During the period during which coupons issued under this Settlement are redeemable, Nintendo shall not raise the suggested retail price or the wholesale prices of Nintendo Software charged to any of its dealers and licensees.

D. Within thirty (30) days after the Court enters the Final Judgment and Consent Decree in this matter, Defendant will mail by first class mail the letter attached as Attachment A, together with a copy of the Final Judgment, to all of Defendant's present personnel, dealers, distributors, agents or representatives having sales or policy responsibilities with respect to Nintendo's products. Defendant shall not be required to perform under this section if it has previously mailed a substantially identical letter to identical persons pursuant to an Order of the Federal Trade Commission.

E. Nintendo shall notify the Lead Counsel at least thirty (30) days prior to any proposed change in the corporate Defendant such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the respective corporation which may affect compliance obligations arising out of this Agreement.

F. Within sixty (60) days after the Court enters the Final Judgment and Consent Decree, and at such other times as the Lead Counsel shall request, Nintendo will file with both Lead Counsel a verified written report setting forth in detail the manner and form in which Defendant Nintendo has complied and is complying with the injunctive provisions of this Agreement.

G. Nintendo consents to an injunction issued by the Court requiring it to comply with the provisions of this Agreement.

IV. ADMINISTRATION ACCOUNT

A. Nintendo shall pay a total of one million seven hundred and fifty thousand dollars (\$1.75 million) for payment of the State Administration Costs as follows:

1. Within thirty (30) days after this Agreement, Nintendo shall deposit \$125,000 into the Administration Account for the purpose of enabling the Lead Counsel to pay for miscellaneous start-up expenses of the State Administration Costs;

2. Within ten (10) days after the Court orders preliminary approval of this Agreement, Nintendo shall pay into the Administration Account the sum of one million six hundred and twenty-five thousand dollars (\$1.625 million) which will be used for the purpose of enabling the Lead Counsel to pay the State Administration Costs, investigative costs and attorney's fees. Such sum shall be used for certain administrative tasks, including but not limited to:

a. Payment of the costs of providing fair and adequate notice by publication to consumers who are members of the parens patriae group. The terms of the notice by publication agreed upon by the parties, and subject to court approval, are provided in section VII of this Agreement;

b. Payment of expert witness fees incurred in connection with seeking final approval of this Settlement Agreement;

c. Coordination by the Lead Counsel of the settlement agreements and motion papers to be filed by the Plaintiff States participating in this Agreement;

d. Payment of the costs and fees of the Trustee appointed pursuant to section IV(C) of this Agreement; and

e. Printing the letter from the Attorney General of each Plaintiff State describing this settlement, the text of which is contained in Attachment B, which shall be mailed by Nintendo to each Qualified Purchaser of such Plaintiff State along with the Consumer Coupon.

3. The one million seven hundred and fifty thousand dollars (\$1.75 million) paid by Nintendo for State Administration Costs shall be reduced proportionately by the percentage of the national population, based on the most recent available population figures from the United States Census Bureau, attributable to the states and the District of Columbia that do not exercise their option to enter into this Agreement under the procedures set forth in section IX. However, Nintendo shall pay a minimum of one million dollars (\$1 million) for State Administration Costs if the States of California, Connecticut, Illinois, Pennsylvania and Texas join this action as Plaintiffs and enter into the terms of this Agreement under the procedures described in section IX. Any residual remaining in the Administration Account after the payment of all administrative expenses shall be divided among the Plaintiff States in accordance with section V of this Agreement.

B. Each Plaintiff State shall be entitled to reimbursement of two thousand dollars (\$2,000) out of the Administration Account for its investigative costs and attorney's fees; except that the Lead Counsel states of New York and Maryland shall each be entitled

to one hundred thousand dollars (\$100,000) in investigative costs, attorney's fees and costs of coordinating this action; and the state of Texas and the Commonwealth of Pennsylvania each shall be entitled to twelve thousand dollars (\$12,000) respectively for its investigative expenses and attorney's fees if it enters into the terms of this Agreement.

C. The Administration Account shall be managed by a Trustee jointly appointed by the Lead Counsel and the Defendant. The Trustee shall be responsible for investing, maintaining, administering and distributing the monies of the Administration Account, pursuant to the terms of this Agreement and any additional instructions made in writing by the Lead Counsel and the Defendant. The Trustee shall invest the Administration Account in obligations of, or guaranteed by, the United States of America or any of its departments or agencies, to obtain the highest available return on investment. Subject to the approval of the Lead Counsel and Defendant, the Trustee may make other investments offering a higher return with similar security. The Trustee shall not act in a manner contrary to the terms of this Agreement.

D. Nintendo shall exercise its best efforts in the performance of the following administrative tasks, and shall pay all related costs associated with them:

1. Printing Consumer Coupons in the form of Attachment C hereto for each Qualified Purchaser;

2. Maintaining sufficient toll free telephone lines throughout the sixty (60) day Notice and Request for Coupon Period,

as described in section VII of this Agreement, to receive calls from consumers regarding this Settlement. The telephone operators shall provide information to consumers, verify whether such consumer is listed on the Nintendo Data Base and is thereby deemed to be a Qualified Purchaser, accept consumers' requests for coupons by telephone if such consumer can provide all required information, and send, by first class mail, a request for coupon to consumers who can not provide the required information by telephone and wish to file a written request for coupon;

3. Receiving and reviewing requests for coupons;

4. Mailing, by first class mail, a Consumer Coupon and the attached letter from the consumer's respective Attorney General to each Qualified Purchaser;

5. Paying all costs and expenses associated with redeeming the Consumer Coupons;

6. Reporting to the Lead Counsel every thirty (30) days during the Notice and Request for Coupon Period on the number of consumer calls received, requests for coupons received, requests approved and requests rejected; and

7. Providing a quarterly and final audit on mailed coupons and coupons cashed.

V. RESTITUTION, CONSUMER COUPONS AND PAYMENT

A. No later than ten (10) days after the Court's final approval of this Settlement, Nintendo shall pay to the Plaintiff States the total sum of three million dollars (\$3 million) to be

used for a public purpose as described in section V(B) below (the Public Purpose Funds). Nintendo shall distribute the Public Purpose Funds proportionately to each Plaintiff State by its percentage of the national population based upon the most recent available population figures from the United States Census Bureau. The total Public Purpose Funds payable by Nintendo shall be reduced by the percentage of the national population attributable to any states and the District of Columbia which do not exercise their option to enter into this Agreement under the procedures set forth in section IX herein.

B. Each Plaintiff State Attorney General shall determine the use and disposition of its share of the Public Purpose Funds. The funds may be used by each Plaintiff State solely for one or more of the following five (5) purposes, as determined by the Attorney General of each Plaintiff State, at her or his exclusive option:

1. Antitrust enforcement by the Attorney General of such State;
2. Payment into a state antitrust revolving fund;
3. Payment into a fund exclusively dedicated to assisting State Attorneys General defray the costs of experts, economists and consultants in multistate antitrust investigations and litigation;
4. a cy pres use to benefit those unidentified consumers for whose benefit the settlement was entered into, i.e. purchasers and users of Nintendo Products, and/or;
5. Payment into the treasury of such State.

C. Defendant is making all payments described in this Agreement solely as compensatory damages. Plaintiffs have not sought the imposition of criminal or civil fines or penalties (or payments in lieu thereof) as part of this Settlement. Payments hereunder do not constitute, nor shall they be construed as or treated as, payments in lieu of treble damages, fines, penalties, punitive recoveries or forfeitures.

D. Nintendo will reimburse its dealers up to twenty-five million dollars (\$25 million) for Consumer Coupons redeemed by Qualified Purchasers ("Total Payment"). If fewer than five million dollars (\$5 million) in Consumer Coupons are redeemed by Qualified Purchasers, Nintendo will, three (3) months after the last date for coupon redemption, directly pay the difference up to five million dollars (\$5 million) proportionately by population to each Plaintiff State for use in the same manner as the Public Purpose Funds, as described in section V(B) ("Minimum Payment"). The Total Payment, the Minimum Payment and the number of Consumer Coupons issued shall be reduced by the percentage of the national population attributable to any states (and the District of Columbia) which do not exercise their option to enter into this Agreement.

E. Within thirty (30) days after final approval of this Settlement Agreement and entry of a Final Judgment and Consent Decree by the Court, Nintendo shall send a Consumer Coupon by first class mail to every Qualified Purchaser. The Consumer Coupons shall be valid for at least four (4) months from the date they are

mailed. Each Consumer Coupon shall be in the amount of five dollars (\$5) and may be used for the purchase of any Nintendo Software. In the event that there are more than five (5) million Qualified Purchasers, the value of each coupon will be reduced so that the total value of coupons mailed will not exceed twenty-five million dollars (\$25 million).

VI. COUPON DISTRIBUTION PROCEDURE FOR CONSUMERS DEEMED TO BE QUALIFIED PURCHASERS

A. Within thirty (30) days after the date of this Agreement, Nintendo shall identify by all reasonable and legal means all natural persons who shall be deemed to be Qualified Purchasers by searching all records it maintains or controls including, but not limited to, computerized lists of warranty cards and other documents that identify retail purchasers of Nintendo Hardware; and the computerized Nintendo Data Base between June 1, 1988 through and including December 31, 1990, including records kept by Nintendo of members of the Nintendo Fun Club, subscribers to the Nintendo Power magazine and callers to the Nintendo consumer service representatives. Nintendo shall contemporaneously produce to Lead Counsel documents sufficient to identify all such Qualified Purchasers.

B. Nintendo has represented that it has records, including names and addresses, of approximately 4.7 million natural persons described in section VI(A) above in its computerized Nintendo Data Base. Such consumers shall be deemed to be Qualified Purchasers. Such Qualified Purchasers shall not be required to file a request

for coupon or take any further action in order to receive a Consumer Coupon.

C. Within thirty (30) days after final Court approval of this Settlement and entry of a Final Judgment, Nintendo shall send, by first class mail, a Consumer Coupon along with the attached letter from the respective Attorneys General concerning the Settlement to all Qualified Purchasers identified pursuant to this section. The text of the letter from each Attorney General shall be identical to the text of Attachment B.

VII. NOTICE AND REQUESTS FOR COUPONS

A. Within the time period described below, Plaintiffs will give notice by publication of this Settlement, in a form agreed to by the parties in Attachment D hereto and approved by the Court.

B. Potential Qualified Purchasers not already on the Nintendo Data Base who wish to receive coupons must properly make Requests for Coupons within the time schedule and by the procedure agreed to by the parties and approved by the Court, as set forth in section VII(H).

C. Subject to Court approval, the Notice and Request for Coupon Period shall commence thirty (30) days after preliminary Court approval of the settlement and shall extend for sixty (60) days. During this period, notice of this settlement shall be made to persons not already identified and deemed to be Qualified Purchasers pursuant to section VI who may be entitled to a coupon under the terms of this Agreement by the publication of notices in

newspapers and magazines circulated in each Plaintiff State. The size of the newspaper notices shall be up to 3 columns by 10 1\2 inches (1\4 page) of display advertising. The notice shall appear once in the Sunday edition of each newspaper agreed upon by the parties. Where no Sunday edition is published, the notice shall appear in a weekday edition or, at the option of the Plaintiff State, in a Saturday edition. The notice shall appear once during the period in each magazine agreed upon by the parties.

D. The dates on which notices shall be published, within the Notice and Request for Coupon Period, shall be within the discretion of each Plaintiff State but in any event shall be published within thirty (30) days of the commencement of the Notice and Request for Coupon Period described in section VII(C) above.

E. Notice of this Settlement shall be published in newspapers in each Plaintiff State which the Attorney General, in his or her exclusive discretion, concludes are sufficient to reach potential Qualified Purchasers.

F. In addition, one notice of the agreed-upon size shall be published in USA Today.

G. In addition, a notice shall also be placed in the following magazines:

TV Guide

Game and video publications to be chosen by the Lead Counsel but not to include Nintendo Power magazine.

The dates on which these additional notices shall be published, within the sixty (60) day Notice and Request for Coupon Period set

by the Court, shall be entirely within the discretion of the Lead Counsel.

H. Subject to Court approval, the publication notice shall be in the language of Attachment D hereto. The notice shall instruct potential Qualified Purchasers that, if they are not listed on the Nintendo Data Base, in order to receive a coupon, they must call the toll free number or send a letter to the P.O. Box by a specified date, and state their purchase information, including the consumer's name and address, the serial number, and the date and place of purchase of the Nintendo Hardware. The published notice shall also inform consumers of their right to opt out of the Settlement Agreement by writing to a separate address listed. Consumers who request information shall be sent, by first class mail, a legal notice describing their rights to object to this Agreement and/or opt out of the parens patriae group.

I. To qualify to receive a Consumer Coupon pursuant to the settlement, the claim of any potential Qualified Purchaser not listed on the Nintendo Data Base must be postmarked or otherwise received by Nintendo within the sixty (60) day Notice and Request for Coupon Period.

J. The following schedule and procedure shall be followed to receive, review, approve or reject, notify and reconsider the requests for coupons submitted by potential Qualified Purchasers:

1. On or before fifteen (15) days after the last date of the Notice and Request for Coupon Period ("the Coupon Request Deadline"), the parties will determine the qualification of each

request for coupon submitted pursuant to paragraph (I) above. A request for coupon objected to by either party on reasonable grounds as being unqualified shall be deemed to be rejected.

2. On or before twenty (20) days after the Coupon Request Deadline, Nintendo shall notify, by first class mail, any person whose request for coupon has been rejected by either party. The notification will state the reasons for the rejection, such person's right to reconsideration and appeal and shall include a copy of the legal notice.

3. On or before thirty-five (35) days after the Coupon Request Deadline, any person whose request for coupon has been rejected may request reconsideration and may present further evidence to support the request. The parties will notify such persons of the results of the reconsideration promptly.

4. On or before fifty-five (55) days after the Coupon Request Deadline, any person whose request for coupon remains rejected may petition the Court for a final determination of the validity of the request.

K. Within thirty (30) days after final Court approval of this Settlement and entry of a Final Judgment, and at the same time as provided for in section VI(C), Nintendo shall send, by first class mail, a Consumer Coupon and the letter from their respective Attorneys General (Attachment B) to each person who submits a valid request for coupon.

VIII. COOPERATION AND IMPLEMENTATION

A. The parties shall apply to the Court for preliminary and

final approval of this Settlement Agreement as soon as practicable after the execution of this Agreement. Parties to this Agreement shall have the obligation to defend vigorously this Settlement Agreement against any and all objections or challenges.

B. The parties agree to cooperate fully to implement the terms and conditions of this Agreement, and specifically to make every reasonable cooperative effort to identify Qualified Purchasers entitled to benefits pursuant to this Agreement.

C. Defendant agrees not to oppose any petition by any Plaintiff State for costs and attorney's fees in the amounts stated in section IV(B) above for each Plaintiff State, which Plaintiff States may use for any purposes. Such attorney's fees and costs shall be considered as Administration Costs to be paid out of the Administration Account and any interest accrued thereon.

D. The parties agree that a Final Judgment and Consent Decree, in a form substantially similar to that attached hereto as Attachment E, may be entered by the Court following final approval of this Settlement in accordance with 15 U.S.C. §15c.

E. Upon final approval of this Settlement and entry of the Final Judgment and Consent Decree by the Court, the Plaintiff States will dismiss their claims against Defendant Nintendo and the John Doe defendants with prejudice, and will not sue any Nintendo sales representative not named as a defendant, or any Nintendo Dealer not named as a defendant which cooperates in accepting and redeeming the Consumer Coupons distributed pursuant to this Agreement, under any federal or state antitrust laws with respect

to resale price maintenance of Nintendo Products sold during the period March 1, 1987 - December 31, 1990

F. Within ten (10) days after entry of the Final Judgment and Consent Decree by the Court and the expiration of the time for any appeals, the Plaintiff States shall execute a Release of all claims against Nintendo in the form attached hereto as Attachment F.

G. This Settlement Agreement shall not be used or construed by any person as an admission of liability by the Defendant to any party or person.

H. If for any reason this Settlement Agreement is not approved by the Court, the principal in the Administration Account, and any interest accrued thereon, shall be refunded to Defendant, reduced by the amount of out-of-pocket costs and expenses incurred in the administration of this Settlement to the date of Court disapproval. In such event, Plaintiff States shall retain full rights to assert any and all causes of action against Nintendo and all dealers and distributors of Nintendo Products.

IX. BENEFIT AND BINDING EFFECT

A. The terms of this Agreement shall be binding on, and shall inure to the benefit of, the parties and their successors. The parties expressly disclaim any intention to create rights under this Agreement which may be enforced by any other person under any circumstances whatsoever, except as specified by section IX(B) herein.

B. The terms of this Agreement may be entered into by the Attorney General of any State, including the Corporation Counsel of the District of Columbia, who takes the following action within seventy-five (75) days of the date of this Agreement (the "Settling Attorneys General"):

1. Signs a Settlement Agreement, substantially in the form of this Agreement, and

2. Files the executed Settlement Agreement and a Complaint against Nintendo, substantially in the form of the Complaint filed by the Lead Counsel, alleging an unlawful agreement to fix, maintain or stabilize resale prices of Nintendo Entertainment System 8-bit video game consoles during the period March 1, 1987 - December 31, 1990, in violation of federal and state antitrust laws, in the United States District Court for the Southern District of New York as a related case hereto, or

3. Designates the Attorney General of the State of New York to represent such State pursuant to §4G of the Clayton Act, 15 U.S.C. § 15g, and to file a Complaint and/or sign a Settlement Agreement on behalf of such State; and serves notice by first class mail upon Defendant Nintendo and the Lead Counsel expressly notifying them of its intent to participate in the terms of this Agreement.

C. Nintendo shall sign each Settlement Agreement with a Settling Attorney General in the form of this Agreement within five business days after receipt.

X. TERM

This Agreement shall become effective as of the day and year first written above, and shall terminate five (5) years after the date hereof or the date of the last payment of a valid claim of a Qualified Purchaser, whichever is later.

XI. MISCELLANEOUS

This Settlement Agreement and the Attachments contain the entire agreement and understanding of the parties. There are no additional promises or terms of the Agreement other than those contained herein. This Agreement shall not be modified except in writing signed by Lead Counsel and Nintendo or by their authorized representatives.

AGREED AND CONSENTED TO:

DATED:
Redmond, Washington
March 27, 1991

Nintendo of America Inc.

By: 

DATED:
New York, New York
March 29, 1991

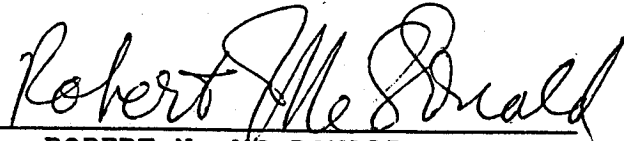
ROBERT ABRAMS
ATTORNEY GENERAL
OF THE STATE OF NEW YORK

By: 

GEORGE SAMPSON
ASSISTANT ATTORNEY GENERAL
CHIEF, ANTITRUST BUREAU

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL OF THE
STATE OF MARYLAND

By:

A handwritten signature in dark ink, reading "Robert N. Mc Donald". The signature is written in a cursive style with a horizontal line underneath it.

ROBERT N. MC DONALD
ASSISTANT ATTORNEY GENERAL
CHIEF, ANTITRUST DIVISION

SO ORDERED: _____
(Preliminary Approval)

SO ORDERED: _____
(Final Approval)

Dear Retailer;

Nintendo of America Inc. has agreed, without admitting any violation of the law, to the entry of a Final Judgment and Consent Decree by the States of New York and Maryland prohibiting certain practices relating to resale prices. A copy of the Final Judgment and Consent Decree is enclosed. This letter and the accompanying document have been sent to all of our dealers, sales personnel and representatives.

The Final Judgment and Consent Decree spells out our obligations in greater detail, but we want you to know and understand the following:

1. You can advertise and sell our products at any price you choose.
2. We will not take any adverse action against you because of the price at which you advertise or sell our products.
3. While we may send materials to you which may contain our suggested retail prices, you are completely free to disregard these suggestions.

Sincerely yours,

President
Nintendo of America Inc.

ATTACHMENT A

September 1, 1991

Dear Fellow New Yorkers:

I am very pleased to send you the enclosed \$5.00 Instant Redemption Certificate as part of the settlement of State of New York v. Nintendo of America Inc., an antitrust lawsuit recently filed by my office on behalf of New York State Nintendo Console Purchasers.

This certificate represents the court-approved mechanism for affording relief to those consumers whom, we claim, were overcharged for Nintendo Entertainment System consoles at retail stores as a result of Nintendo's resale pricing policies. Nintendo denies this claim. The company has cooperated fully with our office in bringing about this settlement which avoids costly and time-consuming litigation for the parties involved.

We believe that this recovery represents a swift and successful settlement of what would have been a complex lawsuit. In approving the settlement, the Federal Court concluded that the settlement is fair and that it provides sufficient monetary relief to qualified purchasers. The lawsuit and its prompt settlement also demonstrate how the antitrust laws help to protect the consumers of our nation and state.

You can present this certificate at any retail store which carries Nintendo products to obtain a \$5.00 discount towards the purchase of any Nintendo or Nintendo licensee 8-bit video game cartridge. Please note that the certificate expires on _____.

Thank you for your attention and consideration in this matter.

Sincerely,

ROBERT ABRAMS

Attachment B

\$5

Nintendo INSTANT REDEMPTION CERTIFICATE

PAY TO THE
ORDER OF:

ANY RETAILER SELLING OFFICIAL NINTENDO® PRODUCTS

FIVE AND 00/100 DOLLARS

EXPIRATION
DATE:

\$5.00

GOOD ONLY
FOR 8-BIT
NINTENDO
ENTERTAINMENT
SYSTEM®
GAMES

CONSUMER: Present this coupon when you purchase any Nintendo Entertainment System® 8 bit game pak carrying the Nintendo® Quality Seal and receive an immediate \$5.00 discount off the retail price. Consumer is responsible for the payment of applicable tax in connection with the purchase.

NOTICE TO RETAILER: This coupon should be accepted from your customer and its printed face value is to be deducted from your retail selling price only at the time of purchase of the designated product. This is a special coupon issued by Nintendo of America Inc. that can only be accepted by retailers selling Official Nintendo® and/or Nintendo licensed 8 bit game paks that carry the Nintendo® Quality Seal. Nintendo of America Inc. reserves the right to refuse payment if the coupon has been tampered, reproduced, altered, or stolen. Limit one coupon per 8 bit game pak purchased. Any other use constitutes fraud. This coupon must be submitted by you no later than _____.

on the purchase of any
Nintendo Entertainment
System® 8-bit game pak
carrying the Nintendo®
Quality Seal.

(Officer Signature)

YOUNG AMERICA STATE BANK, YOUNG AMERICA, MN
*® Trademarks of Nintendo ©1991 Nintendo

XX XXX
XXX

\$5

+ ⑈124 :55576700 988 52755 0001:

ATTACHMENT C

ATTENTION <NINTENDO>^R CONSOLE OWNERS

DID YOU BUY A NINTENDO ENTERTAINMENT SYSTEM^R GAME CONSOLE (NES CONSOLE) BETWEEN JUNE 1, 1988 AND DECEMBER 31, 1990? IF SO, YOU ARE ENTITLED TO A \$5 COUPON.

[STATE] Attorney General [NAME] and the Attorneys General of _____ States brought lawsuits against Nintendo of America Inc., claiming that in some instances consumers were overcharged for the NES console at retail stores. Under a proposed voluntary settlement in these cases, you are entitled to a \$5 coupon redeemable at any retailer on any NES 8-bit game marketed either by Nintendo of America Inc. or a Nintendo licensee company that can be played on your NES 8-bit video game console.

This is your legal notice of the settlement. Please read it carefully.

You will automatically receive a \$5 coupon if, between June 1, 1988 and December 31, 1990, you mailed in your warranty card, subscribed to Nintendo Power magazine or your name was otherwise entered on the Nintendo consumer list.

If you are not on the list to automatically receive a coupon, you must request a coupon and show that you bought a NES console between June 1, 1988 and December 31, 1990. To request a coupon or verify your eligibility, you must do either of the following by XXXXXX (60 days):

1. Call toll free 1-800 xxx-xxxx, from 4:00 a.m. - midnight, Pacific time, Mon. thru Sat., or Sunday 8:00 a.m. - 5:00 p.m. Pacific time. Be ready to tell the operator your name & address, the approximate date you bought your game console, where you bought it & the serial number (located on the bottom of the control deck),
or

2. Write in, giving your name, address, approximately when you bought your game console, where you bought it & the serial number. Send your information to:

Nintendo Settlement Fund
P.O. Box XXX
New York, New York

THE SETTLEMENT

These cases were brought by the Attorneys General of _____ States after an investigation into whether Nintendo and unnamed dealers agreed to sell NES consoles at or above certain minimum prices in violation of the antitrust laws.

No trial has been held on the merits of these allegations, and Nintendo denies them. After extensive negotiations, the parties

ATTACHMENT D

to the lawsuits agreed to a proposed settlement agreement to avoid long and costly litigation. The States have concluded that the settlement gives significant relief to buyers of Nintendo products during the period of the alleged conspiracy (March 1, 1987 - December 31, 1990). Nintendo has agreed to settle but without admitting wrongdoing or liability. The proposed settlement must be finally approved by the Court, which has preliminarily approved the settlement. This notice does not express any opinion of the Court as to the merits of the claims or defenses asserted by either side in the lawsuits.

In summary, the terms of the settlement are as follows:

Nintendo will mail up to \$25 million in coupons to consumers who bought NES consoles between June 1, 1988 and December 31, 1990;

If fewer than \$5 million in coupons are redeemed by consumers, Nintendo will pay the difference up to \$5 million to the States to use for antitrust enforcement, a public purpose to benefit consumers, or to deposit in the state treasury. In addition, Nintendo will pay the States \$3 million for these purposes.

Nintendo will also agree to an injunction prohibiting future violations of the antitrust laws and will notify its dealers that they are free to price Nintendo products independently at whatever level they choose.

The Attorneys General will release Nintendo from any further liability resulting from the alleged agreements between Nintendo and dealers, between March 1, 1987 and December 31, 1990, regarding the price at which any Nintendo products would be sold.

The legal rights of all buyers of Nintendo products between March 1, 1987 & December 31, 1990; including game consoles, game cartridges, accessories or related items; will be affected by this settlement. If you bought any of these products within this period and you do not want to be bound by the settlement, you must expressly exclude yourself. To opt out of the settlement or for more information, write to: Nintendo, P.O. Box YYY, New York, N.Y. [to be clarified if not all states and the District of Columbia participate in the Agreement]

By Order of Judge _____, U.S. Dist. Ct., S.D.N.Y.

nintendo.ad

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
STATES OF NEW YORK
and MARYLAND,

Plaintiffs,

v.

NINTENDO OF AMERICA INC., et al.

Defendants.
-----X

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:

:

:

Civil Action No.

FINAL JUDGMENT AND CONSENT DECREE

The States of New York and Maryland have filed a Complaint for damages and injunctive relief in their sovereign capacities and as parens patriae on behalf of natural person citizens of New York State and Maryland who purchased Nintendo Products, as defined in the Complaint herein, during the period of the alleged conspiracy, against Nintendo of America Inc. ("Nintendo") alleging violation of federal and state antitrust laws. Nintendo denies the allegations stated therein.

The States of New York and Maryland and Nintendo desire to resolve any and all disputes arising from the Complaint. These parties have entered into a Settlement Agreement. In full and final settlement of the claims set forth in the Complaint, Nintendo has agreed to issue consumer coupons to Qualified Purchasers and to pay additional compensatory damages and Administration Costs as set forth in the Settlement Agreement executed on March __, 1991, in this action. Nintendo has also agreed to entry of this Final Judgment and Consent Decree.

ATTACHMENT E

Notice of the Settlement was given pursuant to Court Order in accordance with 15 U.S.C. § 15c. The Court reviewed the terms of the Settlement, the submissions of the parties in support of it, and the comments received in response to the notice. After a hearing held on _____, the Court approved the Settlement Agreement on _____.

NOW THEREFORE, without trial or adjudication of any issue of law or fact, before the taking of any testimony at trial, without the admission of liability or wrongdoing by Nintendo and upon the consent of the parties hereto,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I

JURISDICTION

This Court has jurisdiction over the subject matter of this action and the parties hereto. The Complaint raises claims against Nintendo under Section 1 of the Sherman Act (15 U.S.C. §1), Section 4 of the Clayton Act (15 U.S.C. §15), Section 4C of the Clayton Act (15 U.S.C. §15c), and Section 16 of the Clayton Act (15 U.S.C. §26). Jurisdiction lies in this Court pursuant to 28 U.S.C. § 1337 and 15 U.S.C. §15. The Complaint also raises pendent claims for equitable and other relief under the Donnelly Act, N.Y. General Business Law § 340 et seq. and Section 11-209(a) of the Maryland Antitrust Act.

II

DEFINITIONS

As used in this Final Judgment and Consent Decree:

A. "Dealer" means any person, corporation or firm not owned by Nintendo that in the course of its business sells any Nintendo Product. The term "dealer" does not include licensees of Nintendo which do not act as agents, representatives or distributors of Nintendo;

B. "Defendant" or "Nintendo" means Nintendo of America Inc. and its affiliates,, subsidiaries, divisions and other organizational units of any kind, which sold Nintendo Products as defined herein, their successors and assigns, and their officers, directors, employees, agents, representatives and other persons acting on their behalf;

C. "Nintendo Data Base" means all computerized records maintained by Nintendo which identify persons who, between June 1, 1988 to and including December 31, 1990, became members of the Nintendo Fun Club, subscribed to the Nintendo Power Magazine, called Nintendo consumer service representatives or filed warranty cards indicating that they purchased Nintendo Hardware. Every individual identified in the Nintendo Data Base is deemed to be a Qualified Purchaser;

D. "Nintendo Hardware" means all Nintendo Entertainment System 8-bit video game consoles which were offered for sale or sold by Nintendo to dealers between June 1, 1988 to and including December 31, 1990;

E. "Nintendo Products" means any home video game hardware, software, accessories or items related thereto which are offered for sale or sold by Nintendo to dealers;

F. "Nintendo Software" means all 8-bit video game cartridges which are sold by Nintendo to its licensees and dealers for sale to ultimate consumers for use on Nintendo Hardware;

G. "Plaintiffs" or "Plaintiff States" means the States of New York and Maryland in their sovereign capacity and as parens patriae on behalf of all natural person citizens of such states who have purchased Nintendo Products during the period of the alleged conspiracy;

H. "Qualified Purchaser" means:

1. every individual identified in the Nintendo Data Base; and

2. a natural person other than an individual identified on the Nintendo Data Base who purchased one or more items of Nintendo Hardware between June 1, 1988 to and including December 31, 1990, resided within the States of New York or Maryland at the time of such purchase or purchases, and files a valid request for coupon under section VII of the Settlement Agreement;

I. "Resale Price" means any price, price floor, price ceiling, price range, or any mark-up formula, or margin of profit used by any dealer for pricing any Nintendo Product. Such term includes, but is not limited to, any suggested, established or customary resale price, as well as the retail price advertised, promoted or offered for sale by any dealer.

III

APPLICABILITY

This Final Judgment and Consent Decree shall apply to

Defendant Nintendo.

IV

INJUNCTION

A. Nintendo, its successors and assigns, and its officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, sale or distribution of any Nintendo Product, agree that it shall forthwith cease and desist from:

1. Fixing, controlling or maintaining, directly or indirectly, the resale price at which any dealer may advertise, promote, offer for sale or sell any Nintendo Product;

2. Requiring, coercing or otherwise pressuring any dealer, directly, or indirectly, to maintain, adopt or adhere to any resale price;

3. Securing or attempting to secure, directly or indirectly, any commitment or assurance from any dealer concerning the resale price at which the dealer may advertise, promote, offer for sale or sell any Nintendo Product;

4. Reducing the supply of Nintendo Products to any dealer or imposing different credit terms in whole or in part due to the dealer's resale price of any Nintendo Product;

5. Requesting dealers, directly or indirectly, to report the identity of other dealers who advertise, promote, offer for sale or sell any Nintendo Product below any resale price; and

6. For a period of five (5) years from the date on

which the Court enters the Final Judgment and Consent Decree, terminating any dealer due in whole or in part to the dealer's resale price of any Nintendo Product. Provided, however, that the Defendant retains the right to terminate unilaterally any dealer for lawful business reasons, unrelated to resale prices, that are not inconsistent with this paragraph or any other paragraph of the Settlement Agreement.

B. For a period of five (5) years commencing fifteen (15) days from the date on which the Court enters the Final Judgment and Consent Decree, Defendant shall clearly and conspicuously state the following on any list, advertising, book, catalogue or promotional material where Defendant has suggested any resale price to any dealer:

ALTHOUGH NINTENDO OF AMERICA INC. MAY SUGGEST RESALE PRICES FOR PRODUCTS, DEALER IS FREE TO DETERMINE ON ITS OWN THE PRICES AT WHICH IT WILL SELL THE PRODUCTS.

C. During the period during which coupons issued under this Settlement are redeemable, Nintendo shall not raise the suggested retail price or the wholesale prices of Nintendo Software charged to any of its dealers and licensees.

D. Within thirty (30) days after the Court enters the Final Judgment and Consent Decree in this matter, Defendant will mail by first class mail the letter attached as Attachment A, together with a copy of the Final Judgment, to all of Defendant's personnel, present dealers, distributors, agents or representatives having sales or policy responsibilities with respect to Nintendo's

products. Defendant shall not be required to perform under this section if it has previously mailed a substantially identical letter to identical persons pursuant to an order of the Federal Trade Commission.

E. Nintendo shall notify the Plaintiffs at least thirty (30) days prior to any proposed change in the corporate Defendant such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the respective corporation which may affect compliance obligations.

F. Within Sixty (60) days after from the date of Final Judgment and at such other times as the Plaintiff shall request, Nintendo will file with Plaintiffs verified written report setting forth in detail the manner and form in which Defendant Nintendo has complied and is complying with these injunctive provisions.

V

COMPLIANCE

For purposes of determining and securing compliance with this Final Judgment and Consent Decree, duly authorized representatives of the States shall be permitted upon thirty (30) days prior written notice:

(a) access during normal office hours to any and all relevant and non-privileged books, documents, correspondence, memoranda and all other records and documents in the possession, custody or control of Nintendo which relate to any of the matters contained herein or in the Settlement Agreement; and

(b) subject to the reasonable convenience of Nintendo, to interview any of the directors, officers, employees, agents, and any other persons acting on their behalf, each of whom may have counsel present, relating to any matter contained herein or in the Settlement Agreement.

Provided, however, that Nintendo retains the right to object to any such request within ten (10) days after its receipt on the grounds that the request is not relevant to the matters contained herein or in the Settlement Agreement, or otherwise is not in accordance with law. Any such objection shall be directed to this Court for a ruling, with service by mail of the objection upon the States of New York and Maryland.

VI

JURISDICTION RETAINED

Jurisdiction shall be retained by this Court for the purpose of enabling any party hereto to apply for such further orders and directions as may be necessary or appropriate for the construction or enforcement of this Final Judgment and Consent Decree, the ruling upon any objection made pursuant to Section V, the modification of any of the provisions hereof to the extent such modification is permitted, and the punishment of a violation of any of the provisions contained herein.

This Court shall have the authority to specifically enforce the provisions of this Final Judgment and Consent Decree.

VII

On the fifth anniversary date of this Final Judgment and

Consent Decree, said document shall automatically terminate without any action by either party or the Court.

UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
STATES OF NEW YORK and MARYLAND,

Plaintiffs,

v.

Civil Action No.

NINTENDO OF AMERICA INC.

et al.,

Defendants
-----X

RELEASE

KNOW ALL MEN BY THESE PRESENTS that Plaintiffs, the States of New York and Maryland in their sovereign capacity and as parens patriae on behalf of natural person citizens of New York State and Maryland who purchased Nintendo Products, as defined in the Complaint herein, during the period of the alleged conspiracy, for and in consideration of the promises and covenants set forth in the Settlement Agreement between Plaintiffs and Nintendo in the above-captioned litigation, to which this Release is attached as Attachment F, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, do hereby release, acquit, exonerate and forever discharge Nintendo, its affiliates, subsidiaries, divisions, and other organizational units of any kind which sold Nintendo Products, and their directors, officers, employees, agents, representatives and other persons acting on their behalf, successors and assigns, of and from any and all claims, actions or causes of action arising under any federal

ATTACHMENT F

or state antitrust laws with respect to resale price maintenance of Nintendo Products sold during the period March 1, 1987 through December 31, 1990, including, but not limited to, all claims which are alleged in the Complaint in this case pending in the United States District Court for the Southern District of New York, which Plaintiffs had, now have, or may have against any of them as of the date of the Settlement Agreement.

In witness whereof, George Sampson, on behalf of the Office of the Attorney General of the State of New York, and Robert M. McDonald on behalf of the Office of the Attorney General of the State of Maryland have hereunto set their hands this _____ day of _____, 1991.

WITNESS;

STATE OF NEW YORK:

to wit:

CITY OF NEW YORK:

I HEREBY CERTIFY that on this _____ day of _____, 1991 before me, the subscriber, a Notary Public of the State of New York, in and for the City of New York, personally appeared George Sampson and Robert M. McDonald, who made oaths in due form of law that they executed this Release as their free act and deed, and that the matters and facts set forth therein are true and correct.

AS WITNESS by hand and Notarial Seal.

NOTARY PUBLIC

MY COMMISSION EXPIRES: