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8 *Counsel for Plaintiff*

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11 \_\_\_\_\_, Individually and on behalf  
12 of all others similarly situated,

13 Plaintiff,

14 v.

15 CD PROJEKT S.A., ADAM MICHAL  
16 KICINSKI, PIOTR MARCIN  
17 NIELUBOWICZ, and MICHAŁ  
18 NOWAKOWSKI,

19 Defendants.

Case No.

CLASS ACTION COMPLAINT FOR  
VIOLATION OF THE FEDERAL  
SECURITIES LAWS

JURY TRIAL DEMANDED

20  
21 Plaintiff \_\_\_\_\_ (“Plaintiff”), individually and on behalf of all other  
22 persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s  
23 complaint against Defendants (defined below), alleges the following based upon  
24 personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and  
25 belief as to all other matters, based upon, *inter alia*, the investigation conducted by  
26 and through his attorneys, which included, among other things, a review of the  
27

1 Defendants' public documents, conference calls and announcements made by  
2 Defendants, public filings, wire and press releases published by and regarding CD  
3 Projekt S.A. ("CD Projekt" or the "Company"), and information readily obtainable  
4 on the Internet. Plaintiff believes that substantial evidentiary support will exist for  
5 the allegations set forth herein after a reasonable opportunity for discovery.

6 **NATURE OF THE ACTION**

7 1. This is a class action on behalf of persons or entities who purchased or  
8 otherwise acquired publicly traded CD Projekt securities between January 16, 2020  
9 and December 17, 2020, inclusive (the "Class Period"). Plaintiff seeks to recover  
10 compensable damages caused by Defendants' violations of the federal securities  
11 laws under the Securities Exchange Act of 1934 (the "Exchange Act.

12 **JURISDICTION AND VENUE**

13 2. The claims asserted herein arise under and pursuant to §§10(b) and  
14 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and §78t(a)) and Rule 10b-5  
15 promulgated thereunder by the SEC (17 C.F.R. §240.10b-5).

16 3. This Court has jurisdiction over the subject matter of this action under  
17 28 U.S.C. §1331 and §27 of the Exchange Act.

18 4. Venue is proper in this judicial district pursuant to §27 of the Exchange  
19 Act (15 U.S.C. §78aa) and 28 U.S.C. §1391(b) as the alleged misstatements entered  
20 and the subsequent damages took place in this judicial district.

21 5. In connection with the acts, conduct and other wrongs alleged in this  
22 Complaint, Defendants (defined below), directly or indirectly, used the means and  
23 instrumentalities of interstate commerce, including but not limited to, the United  
24 States mail, interstate telephone communications and the facilities of the national  
25 securities exchange.  
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1 **PARTIES**

2 6. Plaintiff, as set forth in the accompanying Certification, purchased the  
3 Company's securities at artificially inflated prices during the Class Period and was  
4 damaged upon the revelation of the alleged corrective disclosure.

5 7. Defendant CD Projekt, through its subsidiaries, engages in the  
6 development and digital distribution of videogames worldwide. It operates through  
7 two segments, CD PROJEKT RED and GOG.com. The Company's product portfolio  
8 includes The Witcher; The Witcher 2: Assassins of Kings; The Witcher 3: Wild  
9 Hunt, Hearts of Stone games, and Blood and Wine; Thronebreaker: The Witcher  
10 Tales; Gwent: The Witcher Card game; and Cyberpunk 2077, as well as online  
11 multiplayer games.

12 8. CD Projekt is incorporated in Delaware and its head office is located at  
13 Building E, ul. Jagiellonska 74, Warsaw 03-301, Poland. CD Projekt's American  
14 Depository Receipts ("ADRs") trade on the OTC Pink under the ticker symbol  
15 "OTGLY", and its ordinary shares trade on the OTC Pink under the ticker symbol  
16 "OTGLF."

17 9. Defendant Adam Michal Kicinski ("Kicinski") has served as the  
18 Company's Joint Executive Officer ("CEO") and as President of the Management  
19 Board throughout the Class Period.

20 10. Defendant Piotr Marcin Nielubowicz ("Nielubowicz") has served as the  
21 Company's Chief Financial Officer ("CFO") and Vice-President of the Management  
22 Board throughout the Class Period.

23 11. Defendant Michał Nowakowski ("Nowakowski") has served as the vice  
24 president of business development and member of the Management Board  
25 throughout the Class Period.  
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1 conference call to discuss its results. There, Defendant Kicinski stated the following  
2 concerning Cyberpunk 2077's release:

3 So –yes, we are confirming and, well, actually today we started  
4 preparing for the final certification, so we're very close. Of course we'll  
5 work on the title till the very end; that's kind of normal. It's a huge  
6 game, but as we said –everything is on track and we're planning to  
launch it on 19 November.

7 \* \* \*

8 [T]he current version, which will be released in November, will be  
9 playable from the beginning when next-gen consoles are released; you  
10 will be able to play the current-gen version on next-gen from day 1.

11 21. On October 28, 2020, CD Projekt held a conference call. There,  
12 Defendant Kicinski announced that the release date for Cyberpunk 2077 would be  
13 delayed by three weeks to fix issues with the Current-Generation Console versions,  
14 stating that “even though the game has been certified on the current gens by both  
15 Sony and Microsoft, some very final optimization processes for such a massive and  
16 complex game require a bit of additional time.” He elaborated that “the game is  
17 releasable on the 19th and having those 3 more weeks just gives us more changes to  
18 fix this and that –so we feel secure.”

19 22. During the call, when asked about problems with the Current-  
20 Generation Console versions, Defendant Nowakowski stated:

21 I wouldn't say there is a “problem” because there's nothing wrong with  
22 Xbox or PS4 versions –there is optimization to be handled, also because  
23 of how we were approaching things from the get-go in terms of  
24 development; so –there is no problem with Xbox or PlayStation 4, to  
25 be honest.

26 23. On November 25, 2020, CD Projekt published their financial results for  
27 the third quarter of 2020 via press release. With respect to Cyberpunk 2077, the press

1 release stated that “[p]ositive impressions on the part of journalists, and in particular  
2 their remarks which underscore the complexity and amazing ambience of Night City  
3 make us very happy and confirm the remarkable potential of Cyberpunk.”

4 24. The Company held a conference call to discuss their quarterly results  
5 that same day. During the call, Defendant Kicinski, when asked about the state of  
6 the Cyberpunk 2077, stated “we believe that the game is performing great on every  
7 platform.” He elaborated the following concerning Cyberpunk 2077’s release:

8 The game will be launched on PC, Xbox One, PlayStation 4 and Stadia.  
9 Just days ago, next-gen consoles were released and our title will run  
10 great on Xbox Series X and S, as well as PlayStation 5 from the very  
11 beginning, thanks to their backward compatibility. We are excited to be  
12 able to bring our game to more players than ever before.

13 \* \* \*

14 In the past few days, we released two trailers presenting gameplay on  
15 current and next-gen consoles. The extra time gained by postponing the  
16 release is being used to further optimize the game, and we feel that it  
17 was the right decision.

18 \* \* \*

19 We still QA the game. We boasted -- but we do it both internally and  
20 externally. We used to tour three, I'm not sure, external teams. So, we  
21 cooperate with some companies and the game will be tested by the  
22 launch date and that's natural part of the process.

23 25. During the call, when asked about potential bugs, Defendant Kicinski  
24 stated that:

25 “So, in terms of bugs, we are all aware of them. Of course, such a big  
26 game can't be just bug free. That's the kind of obvious, but we believe  
27 that the level will be as low as to let gamers not see them. And  
28 fortunately, some bugs extended previous were caused by some general  
-- I would say general features and many of them are already fixed. So,

1 what gamers will get will be different from what -- and what we viewers  
2 will get in this final review is it's better than what previewers, got.

3 26. The statements contained in ¶¶17-26 were materially false and/or  
4 misleading because they misrepresented and failed to disclose the following adverse  
5 facts pertaining to the Company's business, operations and prospects, which were  
6 known to Defendants or recklessly disregarded by them. Specifically, Defendants  
7 made false and/or misleading statements and/or failed to disclose that: (1)  
8 Cyberpunk 2077 was virtually unplayable on the current-generation Xbox or  
9 Playstation systems due to an enormous amount of bugs; (2) as a result, Sony would  
10 remove Cyberpunk 2077 from the Playstation store, and Sony, Microsoft and the  
11 Company would be forced to offer full refunds for the game; (3) consequently, the  
12 Company would suffer reputational and pecuniary harm; and (4) as a result,  
13 Defendants' statements about its business, operations, and prospects, were  
14 materially false and misleading and/or lacked a reasonable basis at all relevant times.  
15

### 16 **The Truth Emerges**

17 27. The Company launched Cyberpunk 2077 on December 10, 2020.  
18 Consumers soon discovered that the Current-Generation Console versions of  
19 Cyberpunk 2077 were error-laden and difficult to play. *IGN* published a scathing  
20 review, stating that the Console versions "fail[] to hit even the lowest bar of technical  
21 quality one should expect even when playing on lower-end hardware. [Cyberpunk  
22 2077] performs so poorly that it makes combat, driving, and what is otherwise a  
23 master craft of storytelling legitimately difficult to look at."

24 28. On December 14, 2020, facing criticisms for delivering an unplayable,  
25 bug-ridden product on the Consoles, the Company held a conference call. During  
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1 the call, Defendant Kicinski called the Current-Generation Console versions “way  
2 below our expectations,” and stated the following:

3 After 3 delays, we as the Management Board were too focused on  
4 releasing the game. *We underestimated the scale and complexity of*  
5 *the issues, we ignored the signals about the need for additional time*  
6 *to refine the game on the base last-gen consoles.* It was the wrong  
7 approach and against our business philosophy. On top of that, during  
the campaign, we showed the game mostly on PCs.

8 29. During that same call, Defendant Nielubowicz stated “we definitely did  
9 not spend enough time looking at that,” when referring to issues with the Current-  
10 Generation Console versions.

11 30. Following the release, the Company’s ADRs fell from its close of  
12 \$27.68 on December 9, 2020 to close at \$20.75 on December 14, 2020, a drop of  
13 \$6.93 or 25% over 3 trading days, damaging investors. Over that same period, CD  
14 Projekt’s common share (OTGLF) price fell \$21.65 per share, or 20.1%, to close at  
15 \$86.00 on December 14, 2020, damaging investors..

16 31. Then, on December 18, 2020, Sony issued a statement via the  
17 Playstation website that it would “offer a full refund for all gamers who have  
18 purchased Cyberpunk 2077 via PlayStation Store” and “be removing Cyberpunk  
19 2077 from PlayStation Store until further notice.” Microsoft also announced that it  
20 would offer refunds for the game.

21 32. That same day, the Company stated that Sony’s decision to  
22 “temporarily suspend” sales of the game came after a discussion with the Company.  
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24 33. On this news, CD Projekt’s ADR (OTGLY) price fell \$3.44 per share,  
25 or 15.8%, to close at \$18.50 per ADR on December 18, 2020, damaging investors.  
26 CD Projekt’s common share (OTGLF) price fell \$9.20 per share, or 10.45%, to close  
27 at \$78.80 on December 18, 2020, damaging investors.

1           34. As a result of Defendants’ wrongful acts and omissions, and the decline  
2 in the market value of the Company’s securities, Plaintiff and other Class members  
3 have suffered significant losses and damages.

4                           **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

5           35. Plaintiff brings this action as a class action pursuant to Federal Rule of  
6 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who  
7 purchased or otherwise acquired the publicly traded securities of CD Projekt during  
8 the Class Period (the “Class”) and were damaged upon the revelation of the alleged  
9 corrective disclosure. Excluded from the Class are Defendants herein, the officers  
10 and directors of the Company, at all relevant times, members of their immediate  
11 families and their legal representatives, heirs, successors or assigns and any entity  
12 in which Defendants have or had a controlling interest.

13           36. The members of the Class are so numerous that joinder of all members  
14 is impracticable. Throughout the Class Period, the Company’s securities were  
15 actively traded on OTC. While the exact number of Class members is unknown to  
16 Plaintiff at this time and can be ascertained only through appropriate discovery,  
17 Plaintiff believes that there are hundreds or thousands of members in the proposed  
18 Class. Record owners and other members of the Class may be identified from  
19 records maintained by the Company or its transfer agent and may be notified of the  
20 pendency of this action by mail, using the form of notice similar to that customarily  
21 used in securities class actions.

22           37. Plaintiff’s claims are typical of the claims of the members of the Class  
23 as all members of the Class are similarly affected by Defendants’ wrongful conduct  
24 in violation of federal law that is complained of herein.  
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1           38. Plaintiff will fairly and adequately protect the interests of the members  
2 of the Class and has retained counsel competent and experienced in class and  
3 securities litigation. Plaintiff has no interests antagonistic to or in conflict with those  
4 of the Class.

5           39. Common questions of law and fact exist as to all members of the Class  
6 and predominate over any questions solely affecting individual members of the  
7 Class. Among the questions of law and fact common to the Class are:

- 8           (a) whether Defendants' acts as alleged violated the federal securities  
9 laws;
- 10           (b) whether Defendants' statements to the investing public during the  
11 Class Period misrepresented material facts about the financial  
12 condition, business, operations, and management of the Company;
- 13           (c) whether Defendants' statements to the investing public during the  
14 Class Period omitted material facts necessary to make the statements  
15 made, in light of the circumstances under which they were made, not  
16 misleading;
- 17           (d) whether the Individual Defendants caused the Company to issue false  
18 and misleading filings and public statements during the Class Period;
- 19           (e) whether Defendants acted knowingly or recklessly in issuing false and  
20 misleading filings and public statements during the Class Period;
- 21           (f) whether the prices of the Company's securities during the Class Period  
22 were artificially inflated because of the Defendants' conduct  
23 complained of herein; and
- 24           (g) whether the members of the Class have sustained damages and, if so,  
25 what is the proper measure of damages.  
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1           40. A class action is superior to all other available methods for the fair and  
2 efficient adjudication of this controversy since joinder of all members is  
3 impracticable. Furthermore, as the damages suffered by individual Class members  
4 may be relatively small, the expense and burden of individual litigation make it  
5 impossible for members of the Class to individually redress the wrongs done to  
6 them. There will be no difficulty in the management of this action as a class action.

7           41. Plaintiff will rely, in part, upon the presumption of reliance established  
8 by the fraud-on-the-market doctrine in that:

- 9           (a) Defendants made public misrepresentations or failed to disclose  
10 material facts during the Class Period;  
11           (b) the omissions and misrepresentations were material;  
12           (c) the Company's securities are traded in efficient markets;  
13           (d) the Company's securities were liquid and traded with moderate to  
14 heavy volume during the Class Period;  
15           (e) the Company traded on OTC, and was covered by multiple analysts;  
16           (f) the misrepresentations and omissions alleged would tend to induce a  
17 reasonable investor to misjudge the value of the Company's securities;  
18 Plaintiff and members of the Class purchased and/or sold the  
19 Company's securities between the time the Defendants failed to  
20 disclose or misrepresented material facts and the time the true facts  
21 were disclosed, without knowledge of the omitted or misrepresented  
22 facts; and  
23           (g) Unexpected material news about the Company was rapidly reflected  
24 in and incorporated into the Company's stock price during the Class  
25 Period.  
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1 which they were made, not misleading; and/or engaged in acts, practices and a  
2 course of business that operated as a fraud or deceit upon plaintiff and others  
3 similarly situated in connection with their purchases of the Company's securities  
4 during the Class Period.

5 48. The Company and the Individual Defendants acted with scienter in that  
6 they knew that the public documents and statements issued or disseminated in the  
7 name of the Company were materially false and misleading; knew that such  
8 statements or documents would be issued or disseminated to the investing public;  
9 and knowingly and substantially participated, or acquiesced in the issuance or  
10 dissemination of such statements or documents as primary violations of the  
11 securities laws. These defendants by virtue of their receipt of information reflecting  
12 the true facts of the Company, their control over, and/or receipt and/or modification  
13 of the Company's allegedly materially misleading statements, and/or their  
14 associations with the Company which made them privy to confidential proprietary  
15 information concerning the Company, participated in the fraudulent scheme alleged  
16 herein.

17  
18 49. Individual Defendants, who are the senior officers and/or directors of  
19 the Company, had actual knowledge of the material omissions and/or the falsity of  
20 the material statements set forth above, and intended to deceive Plaintiff and the  
21 other members of the Class, or, in the alternative, acted with reckless disregard for  
22 the truth when they failed to ascertain and disclose the true facts in the statements  
23 made by them or other personnel of the Company to members of the investing  
24 public, including Plaintiff and the Class.

25 50. As a result of the foregoing, the market price of the Company's  
26 securities was artificially inflated during the Class Period. In ignorance of the falsity  
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1 of the Company's and the Individual Defendants' statements, Plaintiff and the other  
2 members of the Class relied on the statements described above and/or the integrity  
3 of the market price of the Company's securities during the Class Period in  
4 purchasing the Company's securities at prices that were artificially inflated as a  
5 result of the Company's and the Individual Defendants' false and misleading  
6 statements.

7  
8 51. Had Plaintiff and the other members of the Class been aware that the  
9 market price of the Company's securities had been artificially and falsely inflated  
10 by the Company's and the Individual Defendants' misleading statements and by the  
11 material adverse information which the Company's and the Individual Defendants  
12 did not disclose, they would not have purchased the Company's securities at the  
13 artificially inflated prices that they did, or at all.

14 52. As a result of the wrongful conduct alleged herein, Plaintiff and other  
15 members of the Class have suffered damages in an amount to be established at trial.

16 53. By reason of the foregoing, the Company and the Individual  
17 Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5  
18 promulgated thereunder and are liable to the Plaintiff and the other members of the  
19 Class for substantial damages which they suffered in connection with their  
20 purchases of the Company's securities during the Class Period.

21 **COUNT II**

22 **Violation of Section 20(a) of The Exchange Act**

23 **Against The Individual Defendants**

24 54. Plaintiff repeats and realleges each and every allegation contained in  
25 the foregoing paragraphs as if fully set forth herein.  
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1 possessed the power to control the specific activities which comprise the primary  
2 violations about which Plaintiff and the other members of the Class complain.

3 59. By reason of the above conduct, the Individual Defendants are liable  
4 pursuant to Section 20(a) of the Exchange Act for the violations committed by the  
5 Company.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

8 A. Determining that the instant action may be maintained as a class action  
9 under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as  
10 the Class representative;

11 B. Requiring Defendants to pay damages sustained by Plaintiff and the  
12 Class by reason of the acts and transactions alleged herein;

13 C. Awarding Plaintiff and the other members of the Class prejudgment  
14 and post-judgment interest, as well as their reasonable attorneys' fees, expert fees  
15 and other costs; and

16 D. Awarding such other and further relief as this Court may deem just and  
17 proper.  
18

19 **DEMAND FOR TRIAL BY JURY**

20 Plaintiff hereby demands a trial by jury.  
21

22 Respectfully submitted,

23 **THE ROSEN LAW FIRM, P.A.**

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