

1 Laurence M. Rosen, Esq. (SBN 219683)
2 **THE ROSEN LAW FIRM, P.A.**
3 355 South Grand Avenue, Suite 2450
4 Los Angeles, CA 90071
5 Telephone: (213) 785-2610
6 Facsimile: (213) 226-4684
7 Email: lrosen@rosenlegal.com

8 *Counsel for Plaintiff*

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 ANDREW TRAMPE, Individually and
12 on behalf 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

21 Plaintiff Andrew Trampe (“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.
26

1 12. Defendants Kicinski, Nielubowicz, and Nowakowski are sometimes
2 referred to herein as the “Individual Defendants.”

3 13. Each of the Individual Defendants:

4 (a) directly participated in the management of the Company;

5 (b) was directly involved in the day-to-day operations of the Company at
6 the highest levels;

7 (c) was privy to confidential proprietary information concerning the
8 Company and its business and operations;

9 (d) was directly or indirectly involved in drafting, producing, reviewing
10 and/or disseminating the false and misleading statements and
11 information alleged herein;

12 (e) was directly or indirectly involved in the oversight or implementation
13 of the Company’s internal controls;

14 (f) was aware of or recklessly disregarded the fact that the false and
15 misleading statements were being issued concerning the Company;
16 and/or

17 (g) approved or ratified these statements in violation of the federal
18 securities laws.
19

20 14. The Company is liable for the acts of the Individual Defendants and its
21 employees under the doctrine of *respondeat superior* and common law principles
22 of agency because all of the wrongful acts complained of herein were carried out
23 within the scope of their employment.

24 15. The scienter of the Individual Defendants and other employees and
25 agents of the Company is similarly imputed to the Company under *respondeat*
26 *superior* and agency principles.
27

1 16. The Company and the Individual Defendants are referred to herein,
2 collectively, as the “Defendants.”

3 **SUBSTANTIVE ALLEGATIONS**

4 **Background**

5 17. For several years, the Company had been devoting substantially all its
6 resources to the development of Cyberpunk 2077, which the Company described as
7 a “open world, narrative-driven role-playing game.” The game was to be released
8 on various platforms, including Sony’s Playstation 5 and Microsoft’s Xbox X and
9 Xbox (“Next-Generation Consoles”), Microsoft’s Xbox Series One and Sony’s
10 Playstation 4 (the “Current-Generation Consoles”), Windows, and Google’s Stadia.
11 The original release date of the game was slated for April 17, 2020.

12 **Materially False and Misleading Statements**

13 18. On January 16, 2020, CD Projekt released a statement announcing that
14 though Cyberpunk 2077 was “complete and playable”, the game’s release date
15 would be delayed until September 7, 2020, as the Company “needed more time to
16 finish playtesting, fixing and polishing.”

17 19. On April 8, 2020, the Company published its Annual Report for fiscal
18 year 2019. Accompanying the Annual Report was a Management Board Report,
19 which stated the following concerning Cyberpunk 2077:

20
21 After the close of the reporting period, on 16 January 2020, the
22 Management Board announced that the release date of Cyberpunk 2077
23 would be pushed back to 17 September 2020. The Board justified this
24 decision by pointing out the need for additional time to fully playtest,
25 bugfix and polish the game, thus ensuring that customers receive a top-
quality product.

26 20. On September 4, 2020 CD Projekt published their financial results for
27 the first half of 2020 via press release. That same day, the Company held a

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
7 launch it on 19 November.

8 * * *

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

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

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

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

27 23. On November 25, 2020, CD Projekt published their financial results for
28 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 ¶¶18-25 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 number 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.

23 33. On this news, CD Projekt’s ADR (OTGLY) price fell \$3.44 per share,
24 or 15.8%, to close at \$18.50 per ADR on December 18, 2020, damaging investors.
25 CD Projekt’s common share (OTGLF) price fell \$9.20 per share, or 10.45%, to close
26 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 42. Based upon the foregoing, Plaintiff and the members of the Class are
2 entitled to a presumption of reliance upon the integrity of the market.

3 43. Alternatively, Plaintiff and the members of the Class are entitled to the
4 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens*
5 *of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as
6 Defendants omitted material information in their Class Period statements in
7 violation of a duty to disclose such information, as detailed above.

8 **COUNT I**

9 **Violation of Section 10(b) of The Exchange Act and Rule 10b-5**

10 **Against All Defendants**

11 44. Plaintiff repeats and realleges each and every allegation contained
12 above as if fully set forth herein.

13 45. This Count is asserted against the Company and the Individual
14 Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. §
15 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

16 46. During the Class Period, the Company and the Individual Defendants,
17 individually and in concert, directly or indirectly, disseminated or approved the
18 false statements specified above, which they knew or deliberately disregarded were
19 misleading in that they contained misrepresentations and failed to disclose material
20 facts necessary in order to make the statements made, in light of the circumstances
21 under which they were made, not misleading.

22 47. The Company and the Individual Defendants violated §10(b) of the
23 1934 Act and Rule 10b-5 in that they: employed devices, schemes and artifices to
24 defraud; made untrue statements of material facts or omitted to state material facts
25 necessary in order to make the statements made, in light of the circumstances under
26

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
27

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 **DEMAND FOR TRIAL BY JURY**

19 Plaintiff hereby demands a trial by jury.

20 Dated: December 24, 2020

21 Respectfully submitted,

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

23 */s/ Laurence M. Rosen*

24 Laurence M. Rosen, Esq. (SBN 219683)

25 355 S. Grand Avenue, Suite 2450

26 Los Angeles, CA 90071

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Telephone: (213) 785-2610
Facsimile: (213) 226-4684
Email: lrosen@rosenlegal.com

Counsel for Plaintiff