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SUPERIOR COURT**

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13 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
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15 In re ACTIVISION SHAREHOLDER
 16 DERIVATIVE LITIGATION

Master File No. SC090343



17 **SECOND AMENDED**
CONSOLIDATED SHAREHOLDER
DERIVATIVE COMPLAINT

19
 20 This Document Relates To: ALL ACTIONS

JURY TRIAL DEMANDED

21 Action Filed: July 12, 2006
 Trial Date: None Set

INTRODUCTION AND SUMMARY OF THE ACTION

1
2 1. This is a shareholders' derivative action brought by Co-Lead Plaintiffs
3 Amalgamated Bank As Trustee Of The LongView 400 Index Fund For Retirement Trusts
4 ("Amalgamated Bank") and Ryan Vazquez (collectively "Co-Lead Plaintiffs") for the benefit of
5 Nominal Defendant Activision, Inc. ("Activision" or the "Company") against its Board of
6 Directors (the "Board") and certain current and former executive officers and directors of
7 Activision (the "Defendants"¹). This action arises from the Defendants obtaining, approving, or
8 acquiescing to the unlawful issuance of stock option grants to and for the benefit of Activision's
9 executive officers, in violation of their fiduciary duties and other laws, and causing damage to
10 Activision.

11 2. A stock option is a right to purchase a stock for a specified period of time at a
12 fixed price, called the "exercise price" or "strike price." The shares that are subject to the option
13 grant are assets of the company and are generally issued from the company's treasury. Stock
14 options are typically granted as part of employee compensation packages as a means to create
15 incentives to boost profitability and stock value. The exercise price is generally fixed to the
16 market price of the stock on the closing date of the grant. When a stock's market price exceeds
17 its exercise price, the option holder may purchase any vested option from the company at the
18 exercise price and resell it at the higher market price, pocketing the difference.

19 3. When the grant date of an option is manipulated to an earlier date on which the
20 stock closed at a lower price, or when the grant date is manipulated to precede the release of
21 favorable company news, the grantee pays less for the stock and the company, the counterparty
22 to the option grant, receives less when the option is exercised. Thus, the practice of backdating
23 option grants to lower prices represents a direct and continuing waste of valuable corporate
24 assets.

25 _____
26 ¹ The "Defendants" include John T. Baker, IV, Harold A. Brown, William J. Chardavoyne,
27 Ronald Doornink, Lawrence Goldberg, Robert J. Dewar, Kenneth L. Henderson, Barbara S.
28 Isgur, Brian G. Kelly, Robert A. Kotick, Mitchell H. Lasky, Howard E. Marks, Steven T. Mayer,
Robert J. Morgado, Barry J. Plaga, Michael J. Rowe, Richard A. Steele, Kathy Vrabeck, and
Robert J. Corti (collectively "Individual Defendants" and/or "Defendants").

1 4. Manipulating the timing of option grants undermines the incentive that is
2 supposed to justify stock option compensation in the first place. Stock option compensation is
3 intended to align the interests of managers with those of shareholders by encouraging managers
4 to maximize shareholder value. In contrast, backdating option grants to correspond to low points
5 in the stock price allows managers to benefit from declines in the price of the stock, and
6 therefore creates an incentive for managers to engineer dips or volatile swings in stock price.

7 5. The practice of backdating grants of stock options raises the specter of false or
8 misleading financial reporting under Generally Accepted Accounting Principles (“GAAP”). The
9 difference between exercise price and market price on the day of exercise is a compensation
10 expense that negatively impacts a company’s earnings. Backdating option grants therefore
11 creates a substantial risk that earnings data have been, and will continue to be, misreported.
12 Option backdating also masks the true level of executive compensation, and thereby further
13 misleads investors.

14 6. From at least fiscal year 1997 through fiscal year 2003,² Defendants Robert A.
15 Kotick and Brian G. Kelly, Activision’s Chief Executive Officer (“CEO”) and Co-Chairman,
16 respectively, received a total of 11 stock option grants. In a striking pattern that could only result
17 from backdating, 10 out of these 11 grants have an exercise price that was *the lowest price for*
18 *the 20-day period after the grant date*. The additional grant had an exercise price that was the
19 second lowest price for the 20-day period. Further, all 11 of the stock option grants were granted
20 during these six years at different times of the year, with the only consistency being that the grant
21 was at or near the lowest closing price of a given year, quarter, and/or month in which the
22 options were granted. The top 7 of these 11 grants had 20-day returns ranging from 22.37% to
23 50.32%.

24 7. From at least fiscal year 1998 through fiscal year 2004, Activision issued five
25 grants to various executives (other than Defendants Kotick and Kelly), including Defendants
26 Baker, Goldberg, Plaga, Lasky, Dewar, Chardavoyne, Rowe, Steele, and Doornink. These grants
27

28 ² Activision’s fiscal year ends on March 31.

1 continued the striking pattern that can only be explained by backdating. All five grants have an
2 exercise price that was *the lowest price for the 20-day period after the grant date*. Further, all
3 five of the stock option grants were granted during these six years at different times of the year,
4 with the only consistency being that the grant was at or near a periodic low or preceding a run-up
5 in the share price.

6 8. In addition to authorizing the issuance of backdated stock options, from at least
7 fiscal year 1996 through fiscal year 2004, Defendants committed *ultra vires* acts by issuing stock
8 options with exercise prices not set consistently with the express terms of the operative stock
9 option plans in effect at the time of the grant issuance. In many instances, the Defendants set the
10 stock options exercise prices at the lowest trading price for the day of the stock option grant (or
11 the day proceeding the option grant date), in violation of the powers afforded by the shareholder
12 approved stock option plans.

13 9. From at least fiscal year 1996 through June 2006, Activision, with knowledge,
14 approval, and participation of each of the Defendants, disseminated false financial statements.
15 By engaging in this scheme, Defendants effectively concealed that Activision was not recording
16 material compensation expenses and was materially overstating the Company's publicly reported
17 net income and earnings.

18 10. Since 2001, certain Defendants engaged in unlawful insider selling of Activision
19 securities. While in possession of material nonpublic information concerning Activision's
20 backdating scheme, Defendants sold over 14.5 million shares of Activision common stock,
21 realizing unlawful insider trading proceeds of over \$357 million, no less than \$31 million of
22 which was realized through the exercise and subsequent sale of illegally backdated option grants.
23 By contrast, Activision has suffered, and will continue to suffer, significant financial and non-
24 monetary damages as a result of the improper backdating and *ultra vires* issuance of stock
25 options.

26 11. On July 12, 2006, Co-Lead Plaintiffs initiated this shareholder derivative action.
27 In response, on July 28, 2006, Activision announced the formation of a "Special Sub-
28 Committee" of the Board charged with investigating Co-Lead Plaintiffs' claims. To date,

1 Activision has not publicly revealed the identities of the persons serving on the Special Sub-
2 Committee. Co-Lead Plaintiffs are informed and believe that Defendant Robert J. Corti and
3 director Richard Sarnoff are the only two members of the Special Sub-Committee. As a named
4 Defendant in this action and as explained in detail herein, Defendant Corti is unable to serve
5 independently on the Special Sub-Committee. Further, this Sub-Committee is ineffective
6 because it ultimately reports to the conflicted and interested Board of Activision.

7 12. On March 8, 2007, Activision publicly announced that the Special Sub-
8 Committee of the Board charged with investigating Co-Lead Plaintiffs' claims had "substantially
9 completed its investigation and reported its principal findings and recommendations to the full
10 Board." The Special Sub-Committee found "inaccuracies in the determination and reporting of
11 measurement dates for certain stock options granted by the [C]ompany during the period
12 between 1994 and 2006." This conclusion confirms Co-Lead Plaintiffs' claims as alleged herein
13 that the Defendants colluded in a covert scheme to grant undisclosed, "in-the-money" stock
14 options to themselves and others by, among other things, backdating stock option grants to
15 coincide with historically and relatively low closing prices of Activision's common stock.

16 13. In short, as alleged in detail herein, in gross breach of their fiduciary duties as
17 officers and/or directors of Activision, Defendants colluded with one another to:

- 18 (a) improperly backdate stock option grants, in violation of the
19 Company's shareholder approved stock option plans;
- 20 (b) improperly issue stock options at below fair market price as
21 required by Activision's shareholder approved stock option plans,
22 amounting to *ultra vires* acts beyond the scope of the authorized
23 and legitimate powers of the Company;
- 24 (c) improperly record and account for the backdated stock options, in
25 violation of GAAP;
- 26 (d) improperly take tax deductions based on the backdated stock
27 options, in violation of Section 162(m) of the Internal Revenue
28 Code, 26 U.S.C. § 162(m); and
- (e) produce and disseminate to Activision shareholders and the market
false financial statements and other false U.S. Securities and
Exchange Commission ("SEC") filings that improperly recorded
and accounted for the backdated option grants and concealed the
improper backdating of stock options.

1 **PARTIES**

2 20. Co-Lead Plaintiff Amalgamated Bank As Trustee Of The LongView 400 Index
3 Fund For Retirement Trusts ("Amalgamated Bank") is an investment fund based in the state of
4 New York and currently owns approximately 99,100 shares of Activision common stock.
5 Amalgamated Bank was founded in 1923 and is the only fully union-owned U.S. Bank still in
6 operation, with total assets over \$4.0 billion.

7 21. Co-Lead Plaintiff Ryan Vazquez is a citizen of Norman, Oklahoma and currently
8 owns approximately 248 shares of Activision common stock.

9 22. Nominal Defendant Activision, Inc. is a Delaware corporation with its principal
10 executive offices and place of business located at 3100 Ocean Park Boulevard, Santa Monica,
11 California 90405. At all relevant times hereto, Activision has had more than 500 shareholders of
12 record.

13 23. Activision purports to be a leading publisher of entertainment software products,
14 such as video games that operate on various hand-held devices and computer platforms
15 including: the Sony Playstation 2 and 3 computer entertainment system consoles; the Microsoft
16 Xbox and Xbox 360 video game systems; and the Nintendo Wii, GameCube and Game Boy
17 Advance systems.

18 **Officer Defendants And Management Director Defendants**

19 24. (a) Defendant **Robert A. Kotick** ("Kotick") is the CEO and Chairman of the
20 Board of Directors of Activision. Kotick has been a director of the Company since February
21 1991 and has served as CEO and Chairman since that time.

22 (b) From at least fiscal year 1996 through fiscal year 2004, the bulk of
23 Defendant Kotick's compensation came from stock option grants. During this time period,
24 Defendant Kotick's *average* annual potential realizable value in stock option compensation was
25 \$7,491,694, or 2,216% greater than his *average* total cash compensation of \$338,077. Indeed,
26 Defendant Kotick was granted a total of at least 3,355,974 stock options between fiscal year
27 1997 and fiscal year 2003. During this same time period, Defendant Kotick earned in cash salary
28 a maximum of \$495,000 annually.

1 (c) As an executive and member of the Board of Directors, Defendant Kotick
2 authorized, approved and received backdated stock option grants at issue in this case.

3 25. (a) Defendant **Brian G. Kelly** ("Kelly") is the Co-Chairman of Activision and
4 has been a director of the Company since July 1995. Kelly has served as Co-Chairman since
5 October 1998. Kelly has also held the following positions with the Company: (i) President (July
6 1997-October 1998); (ii) Chief Operating Officer ("COO") (July 1995-October 1998); (iii) Chief
7 Financial Officer ("CFO") (February 1991-July 1997); and (iv) Secretary (May 1991-October
8 1997). Defendant Kelly is a certified public accountant.

9 (b) From at least fiscal year 1996 through fiscal year 2004, the bulk of
10 Defendant Kelly's compensation came from stock option grants. During this time period,
11 Defendant Kelly's *average* annual potential realizable value in stock option compensation was
12 \$8,364,197, or 2,500% greater than his *average* total cash compensation of \$334,584. Indeed,
13 Defendant Kelly was granted a total of at least 3,867,974 stock options between fiscal year 1997
14 and fiscal year 2003. During this same time period, Defendant Kelly earned in cash salary a
15 maximum of \$495,000 annually.

16 (c) As an executive and member of the Board of Directors, Defendant Kelly
17 authorized, approved and received backdated stock option grants at issue in this case.

18 26. (a) Defendant **Ronald Doornink** ("Doornink") is Senior Advisor of the
19 Company and has served as a director since April 2003. Doornink has also held the following
20 positions with the Company: (i) President and COO (October 1998-June 2005); (ii) Chairman of
21 Activision Publishing, Inc., the Company's only direct operating subsidiary and the holding
22 company for all other Activision subsidiaries (June 15, 2005-present); and (iii) President and
23 CEO of Activision Publishing, Inc. (March 28, 2002-June 14, 2005).

24 (b) From at least fiscal year 1999 through fiscal year 2004, the bulk of
25 Defendant Doornink's compensation came from stock option grants. During this time period,
26 Defendant Doornink's *average* annual potential realizable value in stock option compensation
27 was \$8,248,001, or 1,742% greater than his *average* total cash compensation of \$473,358.
28 Indeed, Defendant Doornink was granted a total of at least 1,435,481 stock options between

1 fiscal year 2000 and fiscal year 2004. During this same time period, Defendant Doornink earned
2 in cash salary a maximum of \$467,500 annually and received annual cash bonuses no larger than
3 \$385,056.

4 (c) As an executive and member of the Board of Directors, Defendant
5 Doornink authorized, approved and received backdated stock option grants at issue in this case.

6 27. (a) Defendant **Michael J. Rowe** ("Rowe") served as the Executive Vice
7 President of Human Resources from August 1999 until March 31, 2007.

8 (b) From at least fiscal year 2003 through fiscal year 2004, the bulk of
9 Defendant Rowe's compensation came from stock option grants. During this time period,
10 Defendant Rowe's *average* annual potential realizable value in stock option compensation was
11 \$713,672, or 156% greater than his *average* total cash compensation of \$473,358. Indeed,
12 Defendant Rowe was granted a total of at least 156,730 stock options between fiscal year 2003
13 and fiscal year 2004. During this same time period, Defendant Rowe earned in cash salary a
14 maximum of \$305,000 annually and received annual cash bonuses no larger than \$190,061.

15 (c) As alleged herein, Defendant Rowe received backdated stock option
16 grants at issue in this case.

17 28. (a) Defendant **William J. Chardavoyne** ("Chardavoyne") was Executive
18 Vice President and CFO from January 2000 to December 2005. Defendant Chardavoyne is a
19 certified public accountant.

20 (b) From at least fiscal year 2002 through fiscal year 2004, the bulk of
21 Defendant Chardavoyne's compensation came from stock option grants. During this time
22 period, Defendant Chardavoyne's *average* annual potential realizable value in stock option
23 compensation was \$2,364,630, or 477% greater than his *average* total cash compensation of
24 \$495,346. Indeed, Defendant Chardavoyne was granted a total of at least 185,983 stock options
25 between fiscal year 2000 and fiscal year 2004. During this same time period, Defendant
26 Chardavoyne earned in cash salary a maximum of \$345,000 annually and received annual cash
27 bonuses no larger than \$226,372.

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1 (c) As alleged herein, Defendant Chardavoyne received backdated stock
2 option grants at issue in this case.

3 29. (a) Defendant **Richard A. Steele** ("Steele") was an officer of Activision,
4 serving as President of Activision Distribution from March 2002 until at least 2005. Defendant
5 Steele also held the following positions with the Company: (i) Executive Vice President of
6 International Distribution (June 1999-at least 2005); and (ii) Managing Director of Activision's
7 European Distribution Operations (November 1997-June 1999).

8 (b) From at least fiscal year 2002 through fiscal year 2004, the bulk of
9 Defendant Steele's compensation came from stock option grants. For example, in fiscal year
10 2002, Defendant Steele's annual potential realizable value in stock option compensation was
11 \$5,366,879, or 1,010% greater than his total cash compensation \$531,500. Indeed, Defendant
12 Steele was granted a total of at least 280,359 stock options between fiscal year 2002 and fiscal
13 year 2004. During this same time period, Defendant Steele earned in cash salary a maximum of
14 \$330,727 annually and received annual cash bonuses no larger than \$439,750.

15 (c) As alleged herein, Defendant Steele received backdated stock option
16 grants at issue in this case.

17 30. (a) Defendant **Kathy Vrabeck** ("Vrabeck") was an officer of Activision,
18 serving as President of the Activision Publishing division from November 2003 until at least
19 2005. Defendant Vrabeck has also held the following positions with the Company: (i) Executive
20 Vice President of Global Publishing and Brand Management (September 2000-November 2003);
21 and (ii) Executive Vice President of Global Brand Management (August 1999-August 2000).

22 (b) From at least fiscal year 2001 through fiscal year 2004, the bulk of
23 Defendant Vrabeck's compensation came from stock option grants. During this time period,
24 Defendant Vrabeck's *average* annual potential realizable value in stock option compensation
25 was \$4,432,079, or 899% greater than her *average* total cash compensation of \$493,220. Indeed,
26 Defendant Vrabeck was granted a total of at least 260,231 stock options between fiscal year 2001
27 and fiscal year 2004. During this same time period, Defendant Vrabeck earned in cash salary a
28 maximum of \$420,833 annually and received annual cash bonuses no larger than \$376,700.

1 (c) As alleged herein, Defendant Vrabeck received backdated stock option
2 grants at issue in this case.

3 31. (a) Defendant **Lawrence Goldberg** ("Goldberg") was an officer of
4 Activision, serving as Executive Vice President of Worldwide Studios from October 2000
5 through March 2004. Defendant Goldberg also held the following positions at the Company: (i)
6 General Counsel (August 1994-March 2000); (ii) Secretary (October 1997-April 2000); (iii)
7 Senior Vice President of Business Affairs (July 1997-June 1999); and (iv) Vice President of
8 Business Affairs (August 1994-July 1997).

9 (b) From at least fiscal year 1998 through fiscal year 2004, the bulk of
10 Defendant Goldberg's compensation came from stock option grants. During fiscal year 1998
11 through fiscal year 1999, Defendant Goldberg's *average* annual potential realizable value in
12 stock option compensation was \$1,273,778, or 670% greater than his *average* total cash
13 compensation of \$190,243. During fiscal year 2001 through fiscal year 2004, Defendant
14 Goldberg's *average* potential realizable value in stock option compensation was \$3,196,306, or
15 714% greater than his *average* total cash compensation of \$447,488. (Defendant Goldberg's
16 potential realizable value in stock option compensation was not reported in fiscal year 2000.)
17 Indeed, Defendant Goldberg was granted a total of at least 572,044 stock options between fiscal
18 year 1998 and fiscal year 2004. During this same time period, Defendant Goldberg earned in
19 cash salary a maximum of \$400,000 annually and received annual cash bonuses of no more than
20 \$180,000.

21 (c) As alleged herein, Defendant Goldberg received backdated stock option
22 grants at issue in this case.

23 32. (a) Defendant **Robert J. Dewar** ("Dewar") was an officer of Activision,
24 serving as Executive Vice President of International Publishing from June 1999 through May
25 2000. Defendant Dewar also held the following positions with the Company: (i) Senior Vice
26 President of International Publishing (July 1997-June 1999); and (ii) Managing Director of the
27 Company's European Operations (October 1996-July 1997).

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1 (b) From at least fiscal year 1998 through fiscal year 2000, the bulk of
2 Defendant Dewar's compensation came from stock option grants. In fiscal year 2000, Defendant
3 Dewar's potential realizable value in stock option compensation was \$2,306,974, or 923%
4 greater than his total cash compensation of \$250,000. Indeed, Defendant Dewar was granted a
5 total of at least 117,428 stock option grants during fiscal year 2000. Defendant Dewar earned in
6 cash salary a maximum of \$250,000 annually.

7 (c) As alleged herein, Defendant Dewar received backdated stock option
8 grants at issue in this case.

9 33. (a) Defendant **Mitchell H. Lasky** ("Lasky") was an officer of Activision,
10 serving as Executive Vice President of Worldwide Studios from June 1999 through June 2000.
11 Defendant Lasky also held the following positions with the Company: (i) Senior Vice President
12 of Studios (July 1997-June 1999); and (ii) Vice President of Business Development (April 1996-
13 July 1997).

14 (b) From at least fiscal year 1998 through fiscal year 2000, the bulk of
15 Defendant Lasky's compensation came from stock option grants. In fiscal year 2000, Defendant
16 Lasky's annual potential realizable value in stock option compensation was \$3,198,000, or
17 1,230% greater than his total cash compensation of \$260,000. Indeed, Defendant Lasky was
18 granted a total of at least 459,968 stock options during fiscal year 2000. Defendant Lasky earned
19 in cash salary a maximum of \$260,000 annually.

20 (c) As alleged herein, Defendant Lasky received backdated stock option
21 grants at issue in this case.

22 34. (a) Defendant **Barry J. Plaga** ("Plaga") was an officer of Activision, serving
23 as Executive Vice-President from June 1999 to December 1999. Defendant Plaga also held the
24 following positions with the Company: (i) CFO (July 1997-December 1999); (ii) Senior Vice
25 President (July 1997-June 1999); and (iii) Vice President of Finance (February 1991-July 1997).
26 Defendant Plaga is a certified public accountant.

27 (b) From at least fiscal year 1996 through fiscal year 1999, the bulk of
28 Defendant Plaga's compensation came from stock option grants. During this time period,

1 Defendant Plaga's *average* annual potential realizable value in stock option compensation was
2 \$653,427, or 442% greater than his *average* total cash compensation of \$147,926. Indeed,
3 Defendant Plaga was granted a total of at least 150,282 stock options between fiscal year 1996
4 and fiscal year 1999. During this same time period, Defendant Plaga earned in cash salary a
5 maximum of \$185,000 annually and received annual cash bonuses no larger than \$15,000.

6 (c) As alleged herein, Defendant Plaga received backdated stock option grants
7 at issue in this case.

8 35. (a) Defendant **John T. Baker, IV** ("Baker") was an officer of Activision,
9 serving as the Senior Vice President of Corporate Development from July 1997 through March
10 1999. Defendant Baker previously served as Vice President of Operations, Administration, and
11 Planning from October 1995 to July 1997.

12 (b) From at least fiscal year 1998 through fiscal year 1999, the bulk of
13 Defendant Baker's compensation came from stock option grants. During this time period,
14 Defendant Baker's *average* annual potential realizable value in stock option compensation was
15 \$1,116,165, or 602% greater than his *average* total cash compensation of \$185,369. Indeed,
16 Defendant Baker was granted a total of at least 141,062 stock options between fiscal year 1998
17 and fiscal year 1999. During this same time period, Defendant Baker earned in cash salary a
18 maximum of \$195,246 annually and received annual cash bonuses of no more than \$15,000.

19 (c) As alleged herein, Defendant Baker received backdated stock option
20 grants at issue in this case.

21 36. (a) Defendant **Howard E. Marks** ("Marks") was an officer of Activision,
22 serving as Executive Vice President of the Company from July 1993 to July 1997. Defendant
23 Marks also held the following positions with the Company: (i) Executive Vice President of
24 Activision Studios (the development and production division) (July 1993-July 1997); (ii)
25 Director of the Company (February 1991-July 1997); and (iii) Senior Vice President-Managing
26 Director of the Company's European Operations (February 1991-July 1993).
27

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1 (b) From at least fiscal year 1996 through fiscal year 1997, the bulk of
2 Defendant Marks' compensation came from stock option grants. During this time period,
3 Defendant Marks' *average* annual potential realizable value in stock option compensation was
4 \$1,050,247, or 624% greater than his *average* total cash compensation of \$168,238. Indeed,
5 Defendant Marks was granted a total of at least 79,021 stock options between fiscal year 1996
6 and fiscal year 1997. During this same time period, Defendant Marks earned in cash salary a
7 maximum of \$176,475 annually.

8 (c) As an executive and member of the Board of Directors, Defendant Marks
9 authorized, approved and received backdated stock option grants at issue in this case.

10 37. Defendants Kotick, Kelly, Doornink, Rowe, Chardavoyne, Steele, Vrabeck,
11 Goldberg, Dewar, Lasky, Plaga, Baker, and Marks are collectively referred to in this Second
12 Amended Consolidated Shareholder Derivative Complaint ("Complaint") as the "Officer
13 Defendants." Defendants Kotick, Kelly, Doornink, and Marks, along with the Non-Management
14 Director Defendants below, are also referred to as "Director Defendants."

15 **Non-Management Director Defendants**

16 ***Current Non-Management Director Defendants***

17 38. Defendant **Barbara S. Isgur** ("Isgur") has been a director of Activision since
18 February 1991. Isgur is currently a member of the Audit and Compensation Committees. Isgur
19 has been a member of the Audit Committee and the Compensation Committee since at least
20 fiscal year 1995. As a member of the Board of Directors and the Compensation Committee,
21 Defendant Isgur authorized and approved the backdated stock option grants at issue in this case.

22 39. Defendant **Robert J. Morgado** ("Morgado") has been a director of the Company
23 since February 1997 and serves as Chairman of the Compensation Committee and the
24 Nominating and Corporate Governance Committee, and as a member of the Audit Committee.
25 Morgado has been a member of the Compensation Committee since June 1998, a member of the
26 Nominating and Corporate Governance Committee since July 2002, and a member of the Audit
27 Committee since June 2004. As a member of the Board of Directors and the Compensation

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1 Committee, Defendant Morgado authorized and approved the backdated stock option grants at
2 issue in this case.

3 40. Defendant **Robert J. Corti** ("Corti") has served as a director of Activision and as
4 Chairperson of the Audit Committee since December 2003. Defendant Corti is a certified public
5 accountant.

6 *Former Non-Management Director Defendants*

7 41. Defendant **Steven T. Mayer** ("Mayer") served as a director of the Company from
8 February 1991 to December 2003. Mayer was a member of both the Audit and Compensation
9 Committees from at least fiscal year 1995 to December 2003. As a member of the Board of
10 Directors and the Compensation Committee, Defendant Mayer authorized and approved the
11 backdated stock option grants at issue in this case.

12 42. Defendant **Harold A. Brown** ("Brown") was a director of Activision from
13 November 1996 to July 2001. From June 1998 to July 2001, Defendant Brown was a member of
14 the Audit Committee. As a member of the Board of Directors, Defendant Brown authorized and
15 approved the backdated stock option grants at issue in this case.

16 43. Defendant **Kenneth L. Henderson** ("Henderson") served as director of the
17 Company from July 2001 to September 2005. Henderson served as a member of the Audit
18 Committee from July 2001 to June 2004. Henderson was a member of the Nominating and
19 Corporate Governance Committee from July 2002 to September 2005. As a member of the
20 Board of Directors, Defendant Henderson authorized and approved the backdated stock option
21 grants at issue in this case.

22 44. Defendants Isgur, Morgado, Mayer, Brown, Corti, and Henderson are collectively
23 referred to in this Complaint as the "Non-Management Director Defendants." The Non-
24 Management Director Defendants, along with Kotick, Kelly, Doornink, and Marks are
25 collectively referred to as "Director Defendants."

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- 1 (1) make and keep books, records, and accounts, which, in reasonable detail,
2 accurately and fairly reflect the transactions and dispositions of the assets
3 of the issuer; and
- 4 (2) devise and maintain a system of internal accounting controls sufficient to
5 provide reasonable assurances that:
- 6 (a) transactions are executed in accordance with management's
7 general or specific authorization; and
- 8 (b) transactions are recorded as necessary to permit preparation of
9 financial statements in conformity with GAAP.

10 Activision's Audit Committee Charter provides that the Audit Committee shall, among
11 other things:

- 12 (1) monitor the Company's financial reporting process and internal control
13 system;
- 14 (2) review and approve all related party transactions involving the Company
15 and any director, executive officer or family member; and
- 16 (3) review the financial statements and any reports contained in the annual
17 report or other financial information submitted to any governmental body,
18 or the public, including the Company's quarterly reports on Form 10-Q,
19 with management and the independent auditors to determine whether the
20 independent auditors are satisfied with the disclosure and content of such
21 documents, and participate in quarterly and annual review and certification
22 of periodic reports.

23 FACTUAL ALLEGATIONS

24 49. The Officer Defendants received grants of stock options from the Company on
25 unusually favorable dates from at least fiscal year 1997 through fiscal year 2004. These stock
26 option grants preceded favorable news, were at or near periodic lows, or were before a
27 substantial dip in the stock price followed by a substantial run-up. Analysis of this pattern of
28 stock option grants reveals that the pattern could not have resulted innocently. Rather, the most

1 likely explanation is that the dates of these stock option grants were, in fact, manipulated to
2 allow the options' recipients to enjoy the largest possible returns at the expense of Activision.

3 50. But for the extreme gross negligence, recklessness, or knowing complicity of the
4 Director Defendants, and in particular the members of the Compensation and Audit Committees,
5 the backdating of stock option grants to the Officer Defendants could not, and would not have
6 occurred. Only the abdication of their duties can explain the directors' year-after-year approval
7 of backdated stock options to executives on highly disadvantageous terms for the Company.

8 Backdating Revealed At Activision

9 51. Option grants to Activision executives in the mid-1990s and the early part of this
10 decade were granted at or near temporary lows, or preceded a run-up in share price. As such, the
11 grants were made at different points throughout the year. These facts, among others set forth
12 below, indicate that the executives obtained their grants either through backdating or other
13 improper means.

14 52. According to a Janco Partners, Inc. research report entitled "ATVI Potential Risk:
15 Backdating Options" (the "Janco Report"), a statistical analysis of Activision's history of stock
16 option grants could be "viewed as suspiciously opportunistic by regulatory authorities," given
17 that "several grants to executives were fully vested on the date of issue at the lowest share bid
18 price providing some immediate and significant financial upside" to the executives. For
19 example:

20 [O]n May 19th, 1997 . . . Robert Kotick and Brian Kelly were each granted
21 125,000 options at the low share bid price of \$9.88 (stock closed the day at
22 \$10.25). Seven days prior to the May 19th option grant the shares had closed at
23 \$14.13 . . . and seven days after the \$9.88 low bid strike price the shares closed at
24 \$13.50 . . . Mr. Kelly received an addition [sic] 512,000 options on May 19th
priced equal to the low bid share price of \$9.88 and were vested in full on such
date. The low bid strike price of \$9.88 marked the lowest share trading price for
. . . 1997.

25 53. As of the end of the Company's 2006 fiscal year (ended March 31, 2006),
26 Activision executives amassed over \$193.9 million in compensation from unexercised Activision
27 stock options. Tellingly, executive stock option based compensation at Activision dwarfs cash
28 salary and bonus compensation, pointing to an incentive to backdate options. For example, in

1 2005, Defendant Kotick, the Company's CEO and Chairman of its Board of Directors, received
2 \$501,912 in total cash compensation. *But, when profits from exercising stock options are*
3 *added, Defendant Kotick's 2005 income balloons to \$48.8 million.*

4 54. On July 18, 2006, Activision announced the commencement of this derivative
5 lawsuit by Co-Lead Plaintiff Ryan Vazquez. Activision stated that it expects that defense
6 expenses associated with the matter will be covered by its directors' and officers' insurance,
7 subject to the terms and conditions of the applicable policies.

8 55. On July 28, 2006, Activision announced it received a letter of informal inquiry
9 from the SEC requesting certain documents and information relating to the Company's stock
10 option grant practices. Activision claimed it intended to cooperate fully and respond to the
11 SEC's inquiry. Activision further announced that its Board appointed a Special Sub-Committee
12 of allegedly independent directors of the Board to conduct an internal review, assisted by outside
13 legal counsel, of historical stock option grant practices. Activision, however, has yet to publicly
14 disclose the identities of the members of this Sub-Committee, which has conducted its purported
15 investigation in secret. The Sub-Committee has ignored Co-Lead Plaintiffs' request to meet and
16 Activision has refused to produce copies of documents allegedly reviewed by the Sub-
17 Committee as part of its investigation.

18 56. On September 14, 2006, the Company announced that its Board had approved
19 amendments to the Company's: (1) 1991 Stock Option and Stock Award Plan; (2) 1998
20 Incentive Plan; (3) 1999 Incentive Plan; (4) 2001 Incentive Plan; (5) 2002 Incentive Plan; (6)
21 2002 Executive Incentive Plan; (7) 2002 Studio Employee Retention Incentive Plan; (8) Third
22 Amended and Restated 2002 Employee Stock Purchase Plan; and (9) Amended and Restated
23 2003 Incentive Plan, (collectively the "Plans"). Activision claimed that the amendments were
24 designed to remove the potential for certain corporate transactions to be characterized as
25 modifications of equity awards, requiring the Company to record incremental compensation
26 expense.

27 57. On October 25, 2006, Activision announced that, "in the course of furnishing
28 information to the sub-committee, the company determined that it appears likely that actual

1 measurement dates for certain historical stock option grants will be found to differ from the
2 recorded grant dates for such awards. As a result, it is possible that Activision will be required to
3 record additional non-cash stock-based compensation expense related to stock option grants.”

4 58. The Company also announced on October 25, 2006 that, “[b]ased on the current
5 status of the sub-committee’s review, Activision does not expect that it will be in a position to
6 file its Quarterly Report on Form 10-Q for the quarter ended September 30, 2006 in a timely
7 manner. In that event, the company would not be in compliance with the requirements of the
8 Nasdaq Global Select Market for continued listing of its shares on the Nasdaq Global Select
9 Market.” Activision also stated that it believed the increase in its third quarter and full year net
10 revenue outlook would be offset, in part, by higher legal expenses relating primarily to its
11 internal review of historical stock option practices, including expenses relating to the previously
12 announced informal SEC inquiry and derivative litigation.

13 59. On November 14, 2006, Activision received a Nasdaq Staff Determination Letter
14 indicating that, as a result of the Company’s inability to timely file the Form 10-Q for the quarter
15 ended September 30, 2006, the Company is not in compliance with the filing requirements for
16 continued listing of the Company’s securities set forth in Nasdaq Marketplace Rule 4310(c)(14),
17 and that the Company’s common stock is therefore subject to delisting from the Nasdaq Global
18 Select Market.

19 60. On December 29, 2006, Activision announced, “[a]lthough the sub-committee’s
20 review is not complete, the Company has determined that it appears that actual measurement
21 dates for certain historical stock option grants will be found to differ from the recorded grant
22 dates for such awards. While such options had an exercise price that was equal to the fair market
23 value of the Company’s stock on the originally used grant date, the exercise price may be less
24 than the fair market value of the stock on the redetermined measurement date.”

25 61. On January 23, 2007, Activision announced,

26 On January 23, 2007, the Subcommittee, with the assistance of its counsel,
27 reported to the Board on the status of its review of the Company’s historical stock
28 option grants over a fifteen year period from the Company’s 1992 fiscal year until
its 2006 fiscal year. *The Subcommittee reported that it has identified a number
of instances in which the actual measurement dates for certain stock option*

1 ***grants made during that period differ from the recorded grant dates for such***
2 ***awards.***

3 Based on the information provided by the Subcommittee, the Company believes it
4 will have to record additional non-cash stock-based compensation expense over
5 the period from the Company's 1992 fiscal year through its current fiscal year.
6 Until the Subcommittee's review has been finalized, the Company cannot
7 determine the aggregate amount of the additional non-cash compensation expense
8 it will be required to record or the additional expense to be recorded in any
particular fiscal period during that period of time. Until the amount of such
adjustments has been determined, the Company cannot ascertain the resulting tax
and accounting impacts. However, the Company believes that it is more likely
than not that the amount of such additional expense relating to one or more fiscal
periods from the period of review will be material and, therefore, the Company
expects to restate previously issued financial statements relating to such periods.

9 Accordingly, on January 23, 2007, ***the audit committee of the Board, after***
10 ***consultation with the Company's management, determined that the Company's***
11 ***financial statements for those periods, as well as earnings releases and similar***
12 ***communications, relating to fiscal periods commencing with the first period***
13 ***under review by the Subcommittee should no longer be relied upon.*** (Emphasis
14 added.)

15 62. On February 9, 2007, Activision announced that, "the Company is delaying the
16 filing of the Form 10-Q until the Subcommittee has completed its review and the Company can
17 conclude what impact its historical stock option grant practices will have on the Company's
18 financial statements for the quarter ended December 31, 2006 and what impact the result of the
19 review of such practices will have on the Company's internal controls over financial reporting or
20 management's evaluation of the Company's disclosure controls and procedures."

21 63. On March 8, 2007, Activision announced that the Special Sub-Committee had
22 substantially completed its investigation and reported its findings to the full Board which
23 included, "[t]he special sub-committee found inaccuracies in the determination and reporting of
24 measurement dates for certain stock options granted by the company during the period between
25 1994 and 2006." Activision further admitted:

26 (a) Activision employees, including certain officers, "bore significant
27 responsibility, in varying degrees, with respect to the measurement date
28 inaccuracies" identified by the Board's Special Sub-Committee;

(b) "The Special Sub-Committee recommended that ten current and
former officers and directors should relinquish the economic benefits resulting
from the misdating and mispricing of stock options;"

(c) Activision is considering whether to "enhance its corporate
governance practices by establishing the position of principal compliance officer"

1 and "reconfigure the compensation committee of the Board" as part of its
2 corporate governance reforms; and

3 (d) Activision is continuing to review and analyze the "potential tax
4 implications and any impact" of the matters identified by the Special Sub-
5 Committee.

6 64. On May 3, 2007, Activision announced that it was continuing to work toward the
7 final completion of its review of historical stock option grants and the associated restatement of
8 past financial statements. The Company stated that **"it expects to record additional non-cash
9 charges for stock-based compensation expenses in prior periods totaling approximately
10 \$67 million before taxes from stock option grants over a 13 fiscal year period from 1994 –
11 2006."** (Emphasis added.)

12 65. On May 25, 2007, the Company amended its Form 10-K for fiscal year ended
13 March 31, 2006, which was filed with the SEC on June 9, 2006, to restate the Company's
14 financial statements as of and for the fiscal years ended March 31, 2006, 2005 and 2004 and the
15 related disclosures (the "Amendment"). The Amendment also included the restatement of the
16 Company's selected financial data as of and for the fiscal years ended March 31, 2006, 2005,
17 2004, 2003 and 2002. The restatement adjustments extend to periods from the fiscal year ended
18 March 31, 1994 through the fiscal quarter ended June 30, 2006.

19 66. According to the Amendment:

20 The restatement reflects the findings of a special subcommittee of
21 independent members of our Board of Directors, which was established in
22 July 2006 to review our historical stock option granting practices (the
23 "Special Subcommittee"). The Special Subcommittee conducted its
24 investigation with the assistance of Munger Tolles & Olson LLP as its
25 independent counsel and Deloitte & Touche USA LLP ("Deloitte") as
26 forensic accounting experts retained by counsel. ***The Special
27 Subcommittee found that 3,450 of the option grants reviewed, covering
28 148,747,202 shares, required measurement date corrections.*** As a result,
we recorded approximately \$66.7 million in additional pre-tax (\$45.4
million after-tax) non-cash stock-based compensation expense over the
thirteen year period from April 1, 1993 through March 31, 2006 in
accordance with Accounting Principles Board Opinion No. 25,
"Accounting for Stock Issued to Employees" ("APB No. 25"), and \$0.6
million in additional pre-tax non-cash stock-based compensation expense

1 during the quarter ended June 30, 2006 in accordance with Statement of
2 Financial Accounting Standards ("SFAS") No. 123(R), "Share-Based
3 Payment". More than 80%, or \$55.4 million of the \$66.7 million, relates
4 to periods through March 31, 2003 and 4% or \$2.6 million of the non-cash
5 pre-tax expense relates to the most recent fiscal year covered by this
6 report. Separately, the restatement reflects an additional \$1.7 million pre-
7 tax charge (\$1.1 million after-tax) related to recently identified insufficient
8 payroll tax withholdings in fiscal 2005. (Emphasis added.)

6 67. Of the 4,849 option grants covering 204,230,604 shares reviewed, the Special
7 Subcommittee found that 3,450 grants covering 148,747,202 shares required measurement date
8 corrections. Further, the Special Subcommittee found:

9 A majority of the grants requiring measurement date corrections
10 (measured by number of shares) occurred on 16 dates over the 15-year
11 period. The need for these measurement date corrections arose from
12 failure to understand and apply the correct accounting rules, failure to
13 establish and maintain adequate procedures and controls, failure on certain
14 occasions to appreciate the implications of available information, and
15 insufficient finality and documentation. *As a result, the exercise prices
16 for certain options were affected by selection of grant dates with
17 hindsight, which led to errors in the determination of measurement
18 dates, and we did not correctly account for modifications and repricings
19 after initial grant dates.*

16 The Special Subcommittee found that four individuals – former heads of
17 human resources, finance and legal, and a senior partner of our former
18 outside corporate law firm who sat on and acted as secretary to our Board
19 - bore significant responsibility, in varying degrees, for measurement date
20 inaccuracies by virtue of their positions and/or involvement in the option
21 granting process at varying times. (Emphasis added.)

20 68. On June 14, 2007, the Company announced in its Form 10-K that the SEC's
21 formal investigation is still pending. Specifically, the Company announced:

22 Although the special subcommittee of independent members of our Board
23 of Directors established in July 2006 to review our historical stock option
24 granting practices (the "Special Subcommittee") has completed its review
25 of those practices and our stock option grants made in the period between
26 1992 and 2006, a formal investigation by the SEC relating to our stock
27 option granting practices remains pending, as does derivative litigation
28 against us and certain of our current and former directors and officers.
Although we believe that we have taken appropriate action by restating
our financial statements for the fiscal year ended March 31, 2006, as filed
in our Amended Annual Report on Form 10-K/A on May 25, 2007, and
made appropriate disclosures for matters relating to stock options, the SEC

1 (or the court in the derivative actions) may disagree with the findings of
2 the Special Subcommittee or with the manner in which we have accounted
3 for and reported, or not reported, the financial impact of past option grant
4 measurement date errors. *If so, we may need to further restate our prior
5 financial statements, further amend our filings with the SEC, or take
6 other actions not currently contemplated.* In addition, these proceedings
7 are likely to result in additional legal expense that may affect our results in
8 future periods, and may also result in diversion of management attention
9 and other resources, as well as fines, penalties, damages and other
10 sanctions. These eventualities could materially and adversely affect our
11 business and results of operations. We cannot currently predict the
12 ultimate outcome of these proceedings. (Emphasis added.)

8 The Stock Option Plans

9 The 1991 Plan

10 69. All stock option grants to the Officer Defendants during the Company's 1996,
11 1997, and 1998 fiscal years were issued pursuant to Activision's 1991 Stock Option and Stock
12 Award Plan, as periodically amended (the "1991 Plan"). According to the 1991 Plan, all final
13 decisions regarding the grant of options pursuant to the 1991 Plan were supposed to be made by
14 the Compensation Committee of the Board of Directors.

15 70. Under the 1991 Plan, the Compensation Committee determined the recipients, the
16 amount, and the exercise price of the options granted. The express terms of the 1991 Plan
17 provided that the exercise price could not be less than 100% of the fair market value of the stock
18 on the grant date. The 1991 Plan defines "fair market value" as the closing price of one share of
19 Activision stock on the trading day immediately preceding the date on which the grant was
20 made. In 2002, the amended 1991 Plan defined the "Fair Market Value" of "a share of Stock as
21 of a specified date shall be determined in good faith by the Committee in its sole discretion. In
22 no case shall Fair Market Value be less than the par value of a share of Stock."

23 The 1998 Plan

24 71. On June 1, 1998, Activision's Board of Directors adopted the 1998 Incentive
25 Plan, as amended (the "1998 Plan"). As with the 1991 Plan, all final decisions regarding the
26 grant of options pursuant to the 1998 Plan were supposed to be made by the Compensation
27 Committee, which was supposed to determine the recipients, the amount, and the exercise price
28 of the options granted. The exercise price was to be determined in the same manner as in the

1 1991 Plan.

2 72. In fiscal year 1999 (ended March 31, 1999), the Compensation Committee was
3 comprised of Defendants Isgur, Mayer, and Morgado.

4 73. Under the 1998 Plan, non-employee directors, including Defendants Isgur, Mayer,
5 and Morgado, became eligible to receive stock option grants and other "incentive awards,"
6 subject to Board approval. Previously, under the 1991 Plan, non-employee directors were
7 excluded from receiving stock option grants. The 1998 Plan also authorized new types of
8 incentive awards, including "reload options" (allowing the grantee to potentially double an
9 option grant at the time of exercise) and "share purchase awards" (authorizing the Company to
10 make no-interest loans to enable grantees to purchase shares, which loans could be subsequently
11 forgiven in the Compensation Committee's sole discretion).

12 74. Under the 1998 Plan, the Compensation Committee was supposed to determine
13 the recipients, the amount, and the exercise price of the options granted. According to the the
14 express terms of the 1998 Plan, the exercise price could not be less than 100% of the fair market
15 value of the stock on the grant date. The 1998 Plan defines "fair market value" as the closing
16 price of one share of Activision stock on the trading day immediately preceding the date on
17 which the grant was made.

18 **The 1999, 2001, And 2002 Plans**

19 75. Between 1999 and 2003, as relevant here, the Company adopted the 1999
20 Incentive Plan, as amended (the "1999 Plan"); the 2001 Incentive Plan, as amended (the "2001
21 Plan"); the 2002 Executive Incentive Plan, as amended (the "2002 Plan"); and the 2002
22 Employee Stock Purchase Plan (the "2002 ESP Plan"). The Board's Compensation Committee
23 is supposed to be responsible for administering each Plan.

24 76. Under the 1999 Plan, the exercise price could not be less than 100% of the fair
25 market value of the stock on the grant date. The 1999 Plan defines "fair market value" as the
26 closing price of one share of Activision stock on the trading day immediately preceding the date
27 on which the grant was made.

28 77. Under the 2001 Plan, the exercise price could not be less than 100% of the "fair

1 market value,” which was defined as the average of the high and low price of the shares for the
2 trading day preceding the date of the grant.

3 78. Under the 2002 Plan, the exercise price was supposed to be determined in “good
4 faith” by the Compensation Committee at “fair market value,” which could not be less than the
5 par value of a share when granted. The 2002 Plan modified the aforementioned practice in
6 stating, “[a]n option shall be considered granted on the date the Committee acts to grant the
7 option or such later date as the Committee shall specify.”

8 **THE STOCK OPTION GRANTS**

9 79. As demonstrated herein, year after year, stock options were granted at different
10 times of the year. From at least fiscal year 1997 through fiscal year 2004, however, options were
11 consistently granted on dates at a periodic low, or when there was a temporary dip in the price.
12 Additionally, the mere pricing of many of the options, regardless of the purported grant date,
13 violated the governing Plans.

14 80. The multi-year pattern of stock option grants on dates with highly favorable
15 exercise prices—at a periodic low, or preceding a run-up in the share price—indicates that the
16 purported grant dates of the stock options were not the actual dates on which the option grants
17 were made. Rather, the pattern indicates that the purported grant dates were repeatedly
18 manipulated and backdated to dates with exceedingly low stock prices.

19 81. Only by backdating the stock option grants—reviewing the share price in
20 hindsight and retrospectively identifying the low points—could the Individual Defendants have
21 achieved the highly suspicious pattern of grants.

22 82. Indeed, most of the exercise prices of the grants to the Officer Defendants were
23 below the weighted average closing price of Activision stock in the given fiscal year. In
24 addition, a large number of grants vested on the date of issue providing immediate and
25 substantial gain for the Officer Defendants.

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1 Empirical Analysis

2 83. The stock option grants detailed herein were not merely fortuitous grants or the
3 result of coincidence, but were instead the result of the improper backdating, as demonstrated by
4 the large difference between the annualized stock price returns for the 20 day period subsequent
5 to the option pricing to Defendants in comparison to the public investor's stock price returns for
6 the calendar year in which the options were granted.

7 84. On May 22, 2006, Merrill Lynch released a report titled "Options Pricing –
8 Hindsight is 20/20" which analyzed the option grant timing for the semiconductor and
9 semiconductor equipment companies that comprise the Philadelphia Semiconductor Index
10 (SOX) finding that the timing of options pricing had been "very advantageous for the executives
11 that received options." This analysis is referred to as the "Merrill Lynch Analysis." The Merrill
12 Lynch Analysis measured the twenty day performance of each option grant reported in a
13 company's proxy statements during the relevant backdating period. The analysis also calculates
14 the annualized return of the option grants at twenty days after the grant and compares that
15 annualized return with the company's overall annual return.³ Activision's stock was not
16 analyzed in the Merrill Lynch report.

17 85. Accordingly, counsel for Co-Lead Plaintiffs analyzed the stock option grants at
18 Activision using the same analysis as Merrill Lynch for the purported grants on January 17,
19 1996, April 1, 1996, July 16, 1996, July 17, 1996, December 20, 1996, April 1, 1997, May 15,
20 1997, May 19, 1997, March 24, 1998, June 5, 1998, September 14, 1998, October 2, 1998,
21 October 26, 1998, March 4, 1999, March 24, 1999, April 30, 1999, October 18, 1999, April 18,
22 2000, May 22, 2000, August 1, 2000, August 3, 2000, January 2, 2001, April 4, 2001, October
23 1, 2001, February 20, 2002, April 8, 2002, June 24, 2002, July 22, 2002, October 2, 2002,
24 February 27, 2003, March 20, 2003, March 31, 2003, April 11, 2003 and November 6, 2003.
25 The Merrill Lynch Analysis supports the conclusion that the grants at issue herein were
26 backdated.

27
28 ³ Analysis results are rounded off to the nearest whole decimal.

1 86. Application of the Merrill Lynch Analysis results in the following: annualized
2 investor returns were 17% for calendar year ended December 31, 1996, 39% for calendar year
3 ended December 31, 1997, *negative* 38% for calendar year ended December 31, 1998, 38% for
4 calendar year ended December 31, 1999, *negative* 1% for calendar year ended December 31,
5 2000, 158% for calendar year ended December 31, 2001, *negative* 44% for calendar year ended
6 December 31, 2002 and 87% for calendar year ended December 31, 2003.

7 87. Next, a comparison of the twenty day and annualized returns to management on
8 the subject grants was undertaken.

9 88. Applying the Merrill Lynch Analysis for the option grants in calendar year 1996
10 (1/17/96, 4/1/96, 7/16/96, 7/17/96, 12/20/96), the average twenty day return is 24%, or 424%
11 annualized, as compared to 17% annualized return to investors in 1996. **This is a difference of**
12 **407%.**

13 89. For the option grants in calendar year 1997 (4/1/97, 5/15/97, 5/19/97), the average
14 twenty day return is 26%, or 475% annualized, as compared to 39% annualized return to
15 investors in 1997. **This is a difference of 436%.**

16 90. For the option grants in calendar year 1998 (3/24/98, 6/5/98, 9/14/98, 10/2/98,
17 10/26/98), the average twenty day return is 13%, or 227% annualized, as compared to negative
18 38% annualized return to investors in 1998. **This is a difference of 265%.**

19 91. For the option grants in calendar year 1999 (3/4/99, 3/24/99, 4/30/99, 10/18/99),
20 the average twenty day return is 16%, or 284% annualized, as compared to 38% annualized
21 return to investors in 1999. **This is a difference of 246%.**

22 92. For the option grants in calendar year 2000 (4/18/00, 5/22/00, 8/1/00, 8/3/00), the
23 average twenty day return is 35%, or 636% annualized, as compared to negative 1% annualized
24 return to investors in 2000. **This is a difference of 637%.**

25 93. For the option grants in calendar year 2001 (1/2/01, 4/4/01, 10/1/01), the average
26 twenty day return is 39%, or 704% annualized, as compared to 158% annualized return to
27 investors in 2001. **This is a difference of 546%.**

1 94. For the option grants in calendar year 2002 (2/20/02, 4/8/02, 6/24/02, 7/22/02,
2 10/2/02), the average twenty day return is 3%, or 53% annualized, as compared to negative 44%
3 annualized return to investors in 2002. **This is a difference of 97%.**

4 95. For the option grants in calendar year 2003 (2/27/03, 3/20/03, 3/31/03, 4/11/03,
5 11/6/03), the average twenty day return is 8%, or 151% annualized, as compared to 87%
6 annualized return to investors in 2003. **This is a difference of 64%.**

7 96. The average annualized return to management on the option grants identified in
8 the relevant proxy statements for calendar years 1996 to 2003 is 369%, as compared to 32%
9 average annualized return to investors. **This is a difference of 337%.**

10 97. As readily seen by the vast discrepancies between the annualized management
11 and annualized investors returns, improper backdating is the only explanation.

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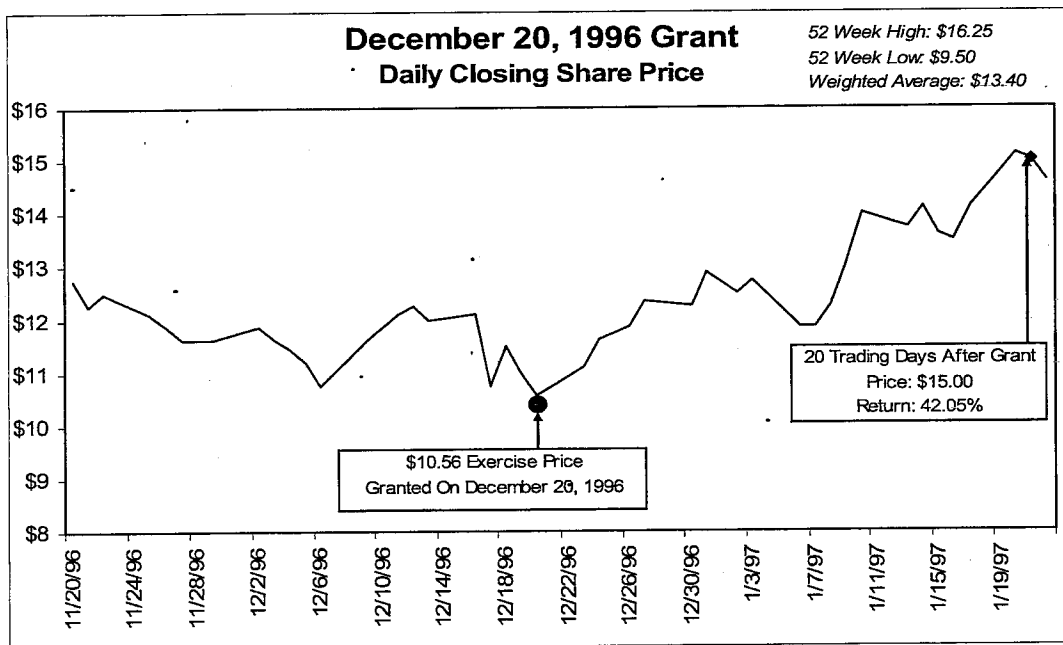
Striking Pattern Of Backdating Grants To Defendants Kotick and Kelly

98. The two most senior executives of Activision, Defendants Kotick and Kelly, benefited the most from the improper backdating practices. Defendant Kotick has served as CEO and Chairman of the Board of Activision since 1991, and Defendant Kelly has served as the Co-Chairman of Activision since 1998. Of the thousands of grants purportedly reviewed by the Special Sub-Committee, which included numerous grants to rank and file employees, Defendants Kotick and Kelly each received *only 11* stock option grants between fiscal year 1997 and fiscal year 2003.

99. As demonstrated below, in a striking pattern that could only be the result of backdating, *10 out of these 11 grants* had an exercise price that was *the lowest price for the 20-day period after the grant date*. The additional grant had an exercise price that was the second lowest price for the 20-day period. Further, all 11 of the stock option grants were granted during these six years at different times of the year, with the only consistency being that the grant was at or near a periodic low or preceding a run-up in the share price.

Purported Date Of Grant	Exercise Price	Stock Price 20 Trading Days After Purported Grant Date	% Rise In Stock Price 20 Trading Days After Purported Grant Date
December 20, 1996	\$10.56	\$15.00	42.05%
May 19, 1997	\$9.88	\$14.00	41.70%
June 5, 1998	\$9.44	\$11.63	23.15%
	\$9.50		22.37%
March 24, 1999	\$10.50	\$11.31	7.71%
April 30, 1999	\$10.25	\$13.38	30.49%
	\$10.56		26.66%
April 18, 2000	\$6.00	\$7.00	16.67%
May 22, 2000	\$6.13	\$6.13	0%
April 4, 2001	\$20.88	\$27.03	29.45%
October 1, 2001	\$25.00	\$37.58	50.32%
April 8, 2002	\$27.61	\$31.35	13.55%
July 22, 2002	\$22.94	\$30.09	31.20%

1 100. On December 20, 1996, the Director Defendants purportedly granted stock
 2 options to Defendants Kelly, Kotick, Marks, Plaga, and Lasky with an exercise price of \$10.56
 3 per share - *the lowest price for the 20-day period after the grant date*. Activision's stock price
 4 20 trading days after the grant was \$15.00, for a 20-day cumulative return of 42.05%. The
 5 exercise price was more than \$2.00 below the weighted average closing price for the fiscal year.
 6 The grant vested immediately allowing Defendants Kelly, Kotick, Marks, Plaga, and Lasky to
 7 instantly reap gains from the backdating of the stock options.

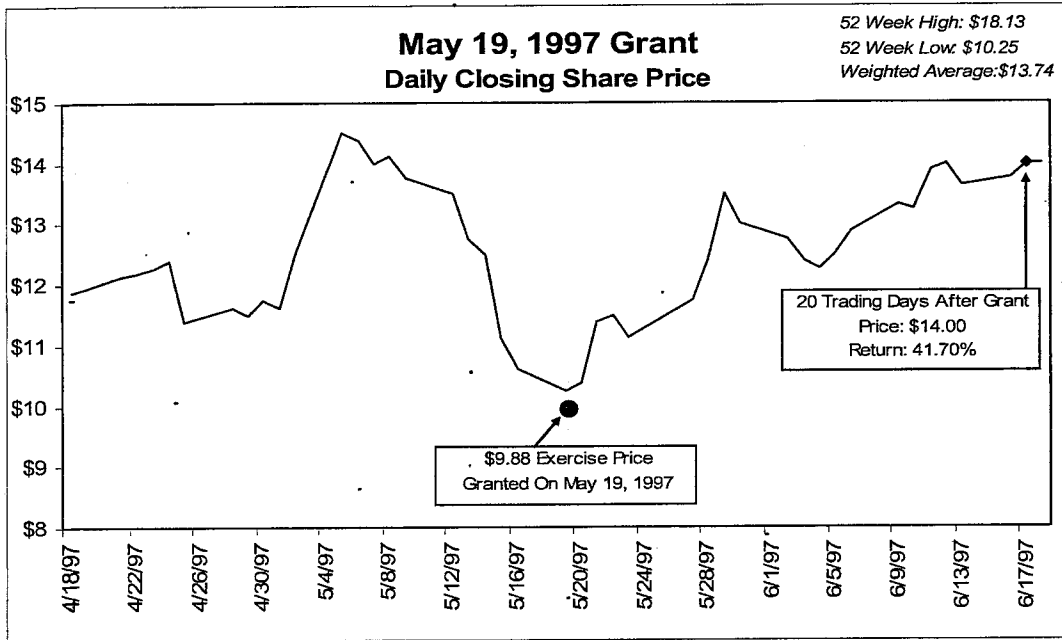


Date	Executive	No. Of Securities Options Granted	Exercise Price Per Share	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
12/20/1996	Brian G. Kelly	15,000	\$10.56	\$158,400	\$225,000
12/20/1996	Robert A. Kotick	15,000	\$10.56	\$158,400	\$225,000
12/20/1996	Howard E. Marks	15,000	\$10.56	\$158,400	\$225,000
12/20/1996	Barry J. Plaga	15,000	\$10.56	\$158,400	\$225,000
12/20/1996	Mitchell H. Lasky	5,000	\$10.56	\$52,800	\$75,000

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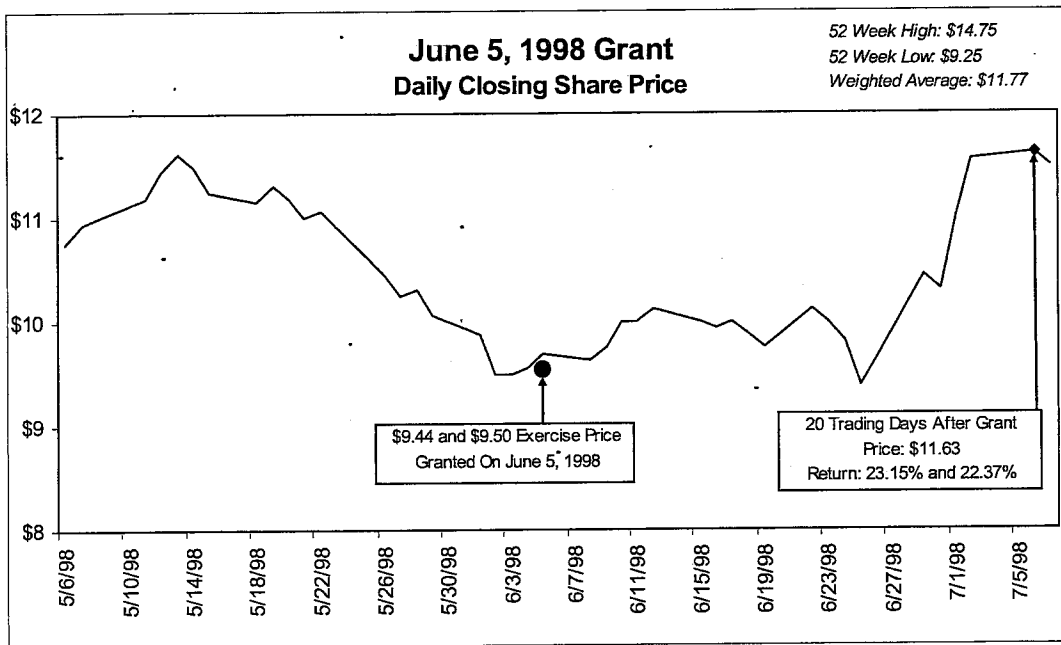
1 101. On May 19, 1997, the Director Defendants purportedly granted stock options to
 2 Defendants Kelly and Kotick with an exercise price of \$9.88 per share - *the lowest price for the*
 3 *20-day period after the grant date.* Activision's stock price 20 trading days after the grant was
 4 \$14.00, for a 20-day cumulative return of 41.70%. The exercise price was more than \$3.00
 5 below the weighted average closing price for the fiscal year.



Date	Executive	No. Of Securities Options Granted	Exercise Price Per Share	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
05/19/1997	Brian G. Kelly	637,000	\$9.88	\$6,293,560	\$8,918,000
05/19/1997	Robert A. Kotick	125,000	\$9.88	\$1,235,000	\$1,750,000

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1 102. On June 5, 1998 the Director Defendants purportedly granted stock options to
 2 Defendants Kelly and Kotick with exercise prices of \$9.44 and \$9.50. The \$9.44 exercise price
 3 was the second lowest price for the 20-day period after the grant date. Activision's stock price
 4 20 trading days after the grant was \$11.63, for a 20-day cumulative return of 23.15% and
 5 22.37%, respectively. The exercise price was more than \$2.00 below the weighted average
 6 closing price for the fiscal year. The \$9.50 grant vested immediately allowing Defendants Kelly
 7 and Kotick to instantly reap gains from the backdating of the stock options.

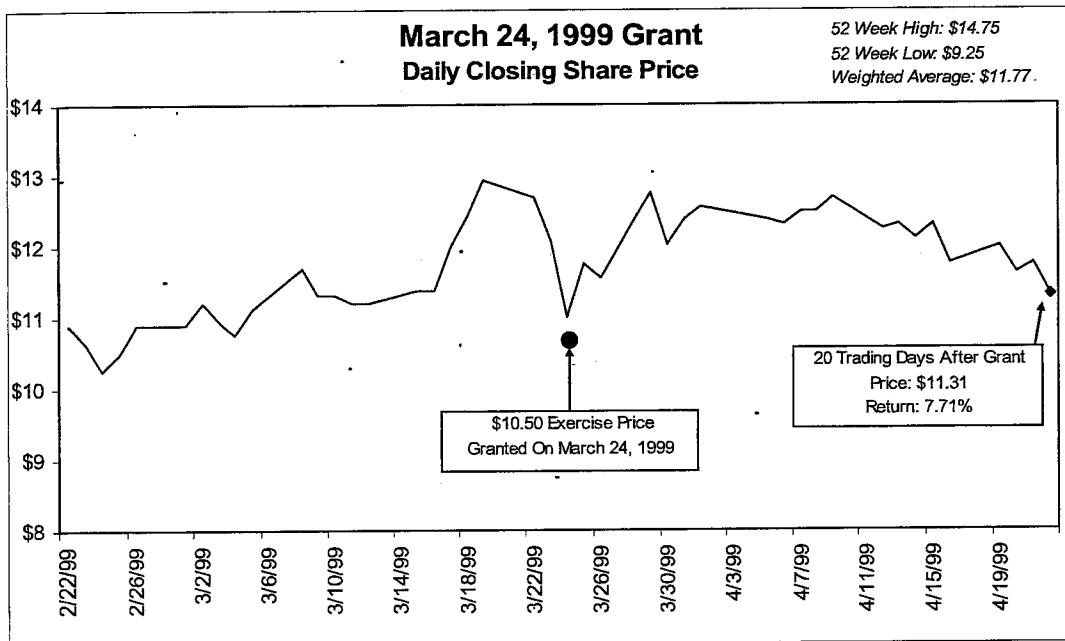


Date	Executive	No. Of Securities Options Granted	Exercise Price Per Share	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
06/05/1998	Brian G. Kelly	150,000	\$9.44	\$1,416,000	\$1,744,500
		108,951	\$9.50	\$1,035,034.50	\$1,267,100.10
06/05/1998	Robert A. Kotick	150,000	\$9.44	\$1,416,000	\$1,744,500
		108,951	\$9.50	\$1,035,034.50	\$1,267,100.10

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1 103. On **March 24, 1999**, the Director Defendants purportedly granted stock options to
 2 Defendants Kelly and Kotick with an exercise price of \$10.50 per share - *the lowest price for the*
 3 *20-day period after the grant date.* Activision's stock price 20 trading days after the grant was
 4 \$11.31, for a 20-day cumulative return of 7.71%. The exercise price was more than \$1.00 below
 5 the weighted average closing price for the fiscal year. Some of the options vested immediately
 6 allowing Defendants Kelly and Kotick to instantly reap gains from the backdating of the stock
 7 options.



Date	Executive	No. Of Securities Options Granted	Exercise Price Per Share	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
03/24/1999	Brian G. Kelly	1,000,000	\$10.50	\$10,500,000	\$11,310,000
03/24/1999	Robert A. Kotick	1,000,000	\$10.50	\$10,500,000	\$11,310,000

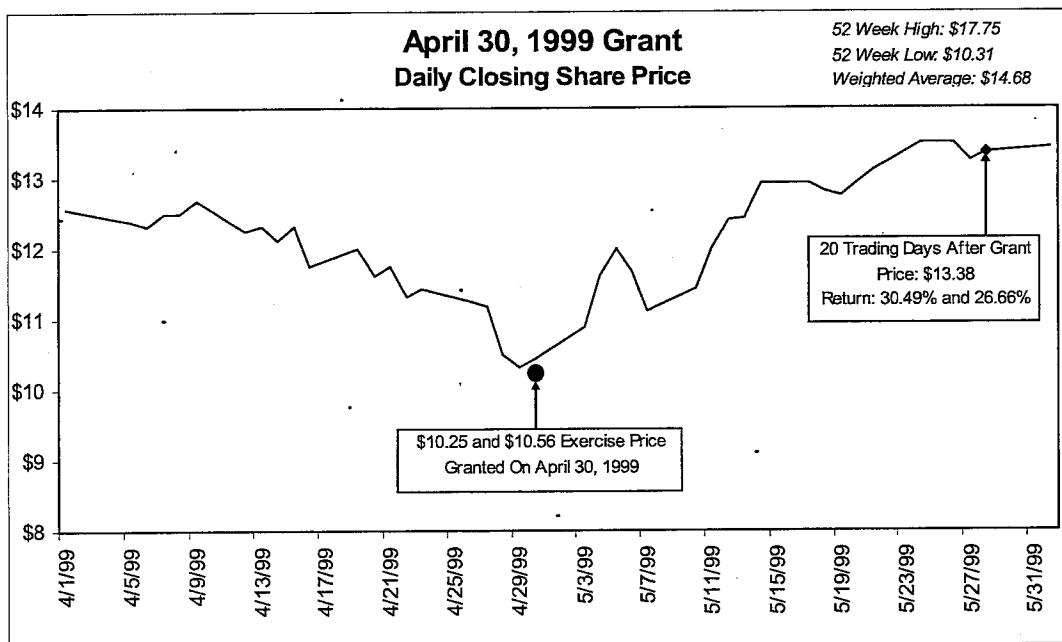
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1 104. On **April 30, 1999**, the Director Defendants purportedly granted stock options to
 2 Defendants Kelly, Kotick, Dewar, Doornink, Lasky, and Steele with exercise prices of \$10.25
 3 and \$10.56 per share. The \$10.25 exercise price was *the lowest price for the 20-day period after*
 4 *the grant date*. Activision's stock price 20 trading days after the grant was \$13.38, for a 20-day
 5 cumulative return of 30.49% and 26.66% respectively. The \$10.25 exercise price is \$0.06 *below*
 6 the lowest closing price for the fiscal year and the \$10.56 price is only \$0.25 above it. The
 7 option grant with the \$10.25 exercise price vested immediately.



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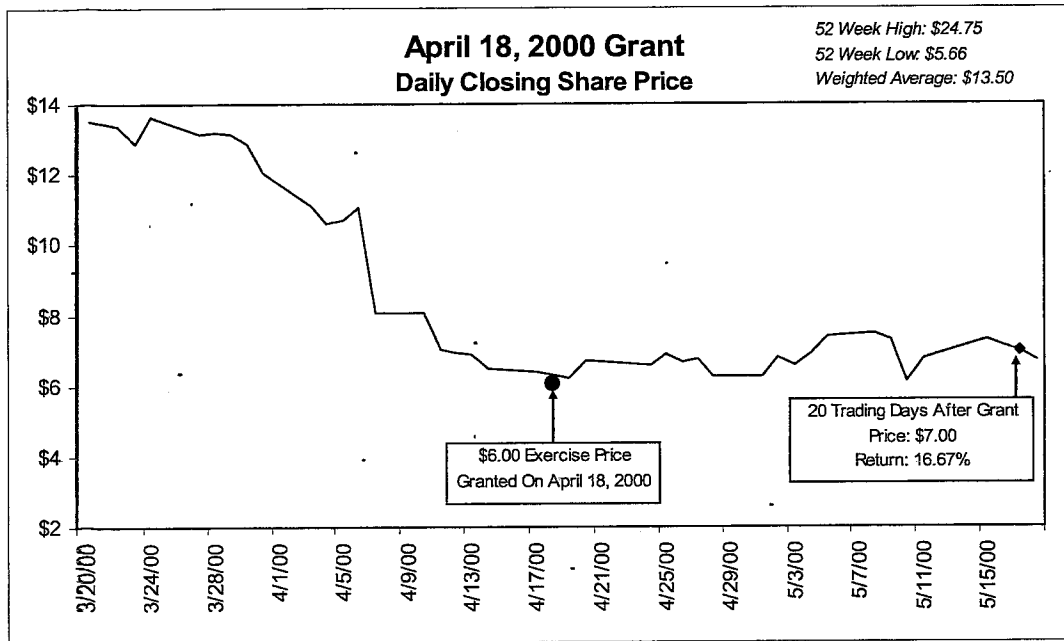
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Date	Executive	No. Of Securities Options Granted	Exercise Price Per Share	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
04/30/1999	Brian G. Kelly	159,509	\$10.25	\$1,634,967.20	\$2,134,230.40
04/30/1999	Robert A. Kotick	159,509	\$10.25	\$1,634,967.20	\$2,134,230.40
04/30/1999	Robert J. Dewar	12,428	\$10.25	\$127,387	\$166,286.64
		30,000	\$10.56	\$316,800	\$401,400
04/30/1999	Robert Doornink	31,706	\$10.25	\$324,986.50	\$424,226.28
		300,000	\$10.56	\$3,168,000	\$4,014,000
04/30/1999	Mitchell H. Lasky	23,303	\$10.25	\$238,855.75	\$311,794.14
		30,000	\$10.56	\$316,800	\$401,400
04/30/1999	Richard A. Steele	57,432	\$10.25	\$588,678	\$768,440.16

1 105. On April 18, 2000, the Director Defendants purportedly granted stock options to
 2 Defendants Kelly, Kotick, Doornink, Goldberg, Lasky, Rowe, Steele, and Vrabeck with an
 3 exercise price of \$6.00 – *the lowest price for the 20-day period after the grant date.*
 4 Activision's stock price 20 trading days after the grant was \$7.00, for a 20-day cumulative return
 5 of 16.67%. Some of the option grants vested immediately allowing these Defendants to instantly
 6 reap gains from the backdating of the stock options.



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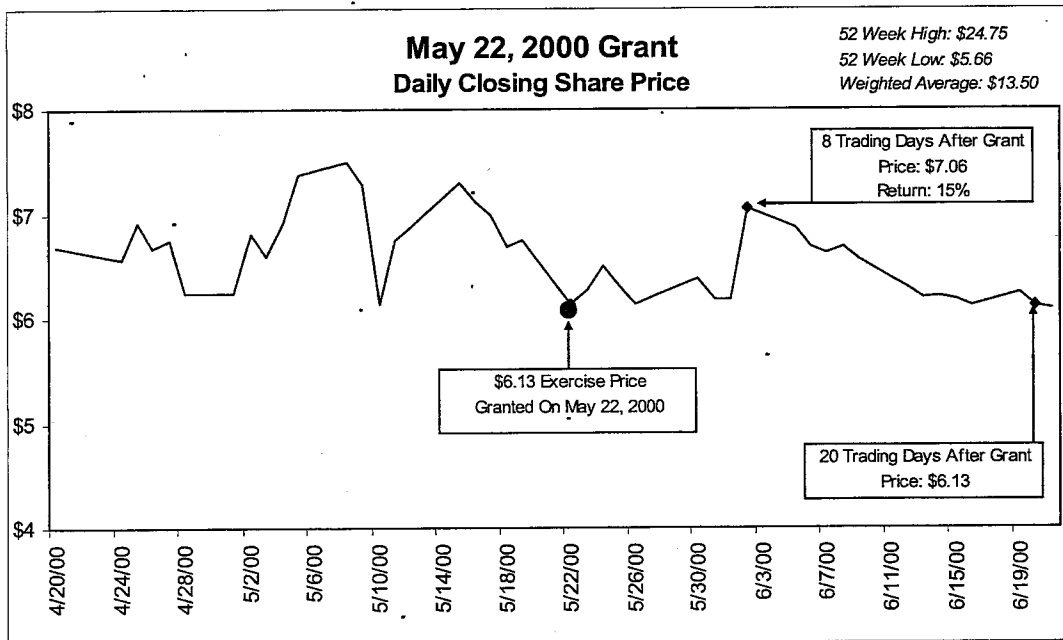
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Date	Executive	No. Of Securities Options Granted	Exercise Price Per Share	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
04/18/2000	Brian G. Kelly	184,004	\$6.00	\$1,104,024	\$1,288,028
04/18/2000	Robert A. Kotick	184,004	\$6.00	\$1,104,024	\$1,288,028
04/18/2000	Ronald Doornink	142,854	\$6.00	\$857,124	\$999,978
04/18/2000	Lawrence Goldberg	156,016	\$6.00	\$936,096	\$1,092,112
04/18/2000	Mitchell H. Lasky	75,965	\$6.00	\$455,790	\$531,755
04/18/2000	Michael J. Rowe	57,971	\$6.00	\$347,826	\$405,797
04/18/2000	Richard A. Steele	62,313	\$6.00	\$373,878	\$436,191
04/18/2000	Kathy Vrabeck	63,866	\$6.00	\$383,196	\$447,062

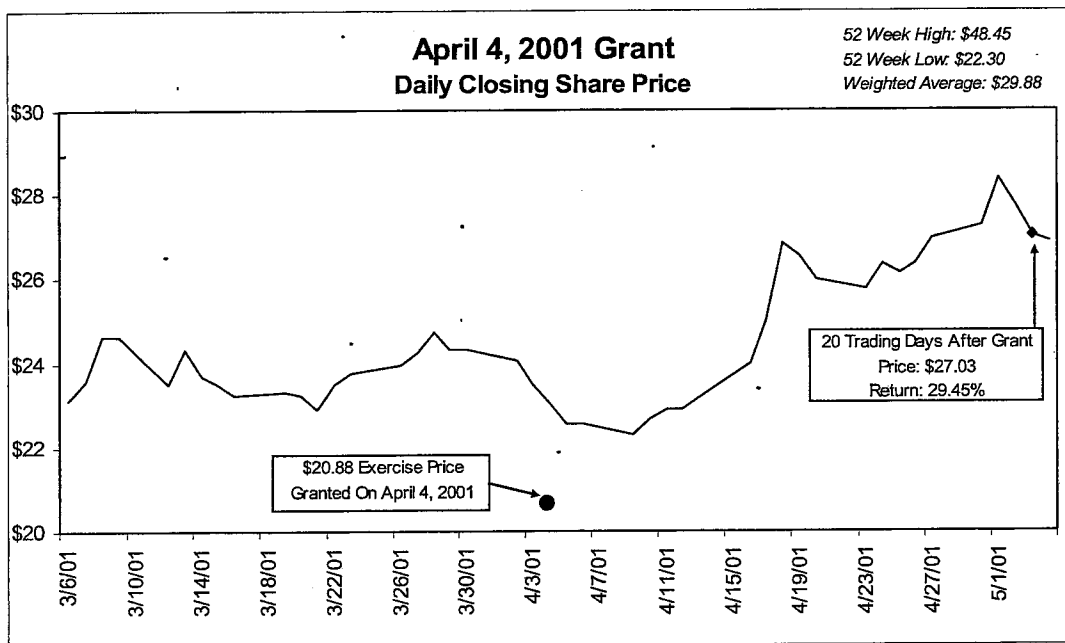
1 106. On May 22, 2000, the Director Defendants purportedly granted stock options to
 2 Defendants Kelly and Kotick with an exercise price of \$6.13— *the lowest price for the 20-day*
 3 *period after the grant date*. The exercise price was more than \$7.00 below the weighted average
 4 closing price for the fiscal year and only \$0.47 above the lowest closing price for the fiscal year.
 5 Although the price twenty days after the grant was \$6.13, just eight days after the grant, the price
 6 of the stock increased to \$7.06 for a 15% change. Some of the option grants vested immediately
 7 allowing Defendants Kelly and Kotick to instantly reap gains from the backdating of the stock
 8 options.



Date	Executive	No. Of Securities Options Granted	Exercise Price Per Share	Total Grant Value At Date Of Grant	Total Grant Value Eight Trading Days After Grant
05/22/2000	Brian G. Kelly	1,000,000	\$6.13	\$6,130,000	\$7,060,000
05/22/2000	Robert A. Kotick	1,000,000	\$6.13	\$6,130,000	\$7,060,000

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1 107. On April 4, 2001, the Director Defendants purportedly granted stock options to
 2 Defendants Kelly, Kotick, Chardavoyne, Doornink, Goldberg, Steele, Vrabeck, and Rowe with
 3 an exercise price of \$20.88 per share - *the lowest price for the 20-day period after the grant*
 4 *date*. Activision's stock price 20 trading days after the grant was \$27.03, for a 20-day
 5 cumulative return of 29.45%. The exercise price was \$9.00 below the weighted average closing
 6 price for the fiscal year and \$1.42 *below* the lowest split-adjusted closing price for the year.
 7 Some of the options vested immediately allowing these Defendants to instantly reap gains from
 8 the backdating of the stock options.

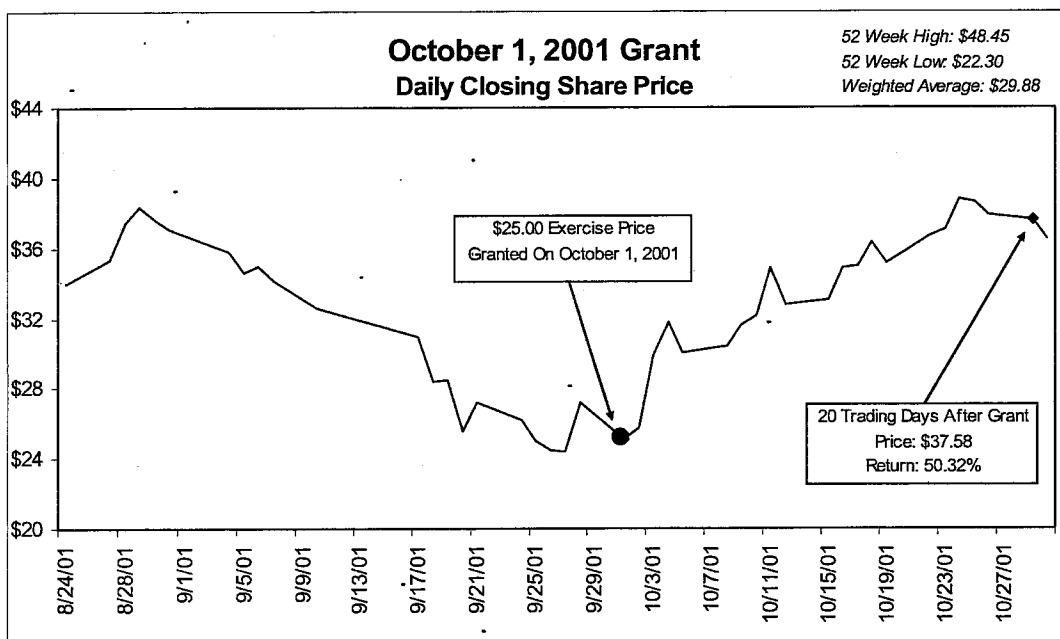


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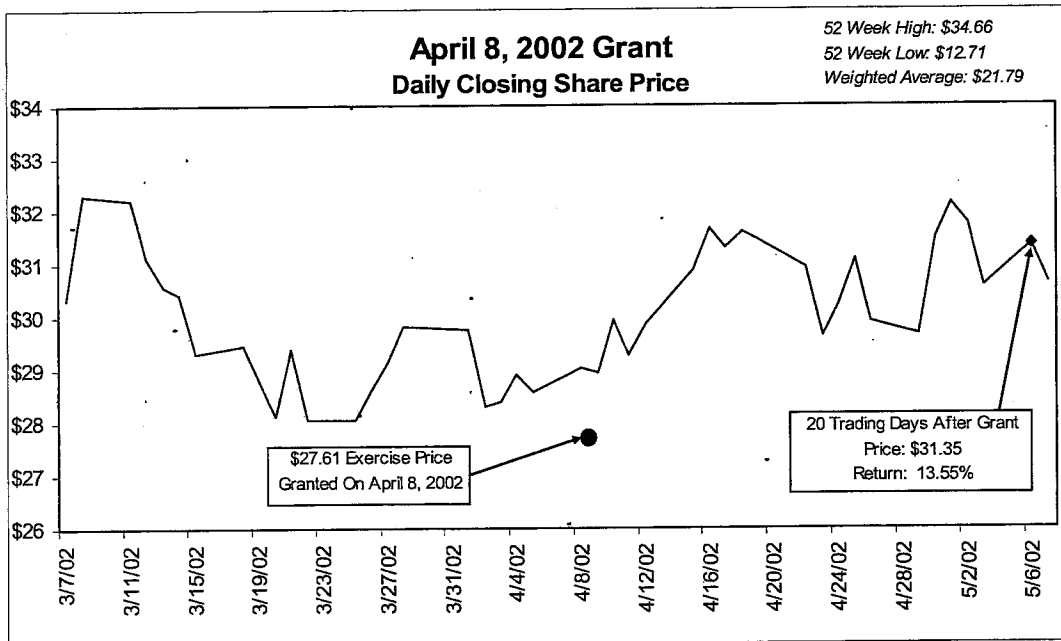
Date	Executive	No. Of Securities Options Granted	Exercise Price Per Share	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
04/04/2001	Brian G. Kelly	145,898	\$20.88	\$3,046,350.20	\$3,943,622.90
04/04/2001	Robert A. Kotick	145,898	\$20.88	\$3,046,350.20	\$3,943,622.90
04/04/2001	William Chardavoyne	51,015	\$20.88	\$1,065,193.20	\$1,378,935.40
04/04/2001	Ronald Doornink	92,371	\$20.88	\$1,928,706.40	\$2,496,788.10
04/04/2001	Lawrence Goldberg	54,820	\$20.88	\$1,144,641.60	\$1,481,784.60
04/04/2001	Richard A. Steele	38,614	\$20.88	\$806,260.32	\$1,043,736.40
04/04/2001	Kathy Vrabeck	69,485	\$20.88	\$1,450,846.80	\$1,878,179.50
04/04/2001	Michael J. Rowe	45,682	\$20.88	\$953,840.16	\$1,234,784.40

1 108. On **October 1, 2001**, the Director Defendants purportedly granted stock options
 2 to Defendants Kelly, Kotick, Chardavoyne, Doornink, Goldberg, Vrabeck, and Rowe with an
 3 exercise price of \$25.00 per share - *the lowest price for the 20-day period after the grant date.*
 4 Activision's stock price 20 trading days after the grant was \$37.58, for a 20-day cumulative
 5 return of 50.32%. The exercise price was almost \$5.00 below the weighted average closing price
 6 for the fiscal year. All of the options vested immediately allowing these Defendants to instantly
 7 reap gains from the backdating of the stock options. Only two days after the grants, on October
 8 3, 2001, Activision announced its acquisition of Treyarch Invention, LLC. This announcement
 9 led to a \$6.19 increase in Activision's stock price from October 2, 2001 to October 4, 2001.



Date	Executive	No. Of Securities Options Granted	Exercise Price Per Share	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
10/01/2001	Brian G. Kelly	29,700	\$25.00	\$742,500	\$1,116,126
10/01/2001	Robert A. Kotick	29,700	\$25.00	\$742,500	\$1,116,126
10/01/2001	William Chardavoyne	10,980	\$25.00	\$274,500	\$412,628.40
10/01/2001	Ronald Doornink	17,550	\$25.00	\$438,750	\$659,529
10/01/2001	Lawrence Goldberg	11,880	\$25.00	\$297,000	\$446,450.40
10/01/2001	Kathy Vrabeck	11,880	\$25.00	\$297,000	\$446,450.40
10/01/2001	Michael J. Rowe	9,360	\$25.00	\$234,000	\$351,748.80

1 109. On **April 8, 2002**, the Director Defendants purportedly granted stock options to
 2 Defendants Kelly, Kotick, Chardavoyne, Doornink, Goldberg, Vrabeck, and Rowe with an
 3 exercise price of \$27.61 per share - *the lowest price for the 20-day period after the grant date.*
 4 Activision's stock price 20 trading days after the grant was \$31.35, for a 20-day cumulative
 5 return of 13.55%. Some of the options vested immediately allowing these Defendants to
 6 instantly reap gains from the backdating of the stock options.



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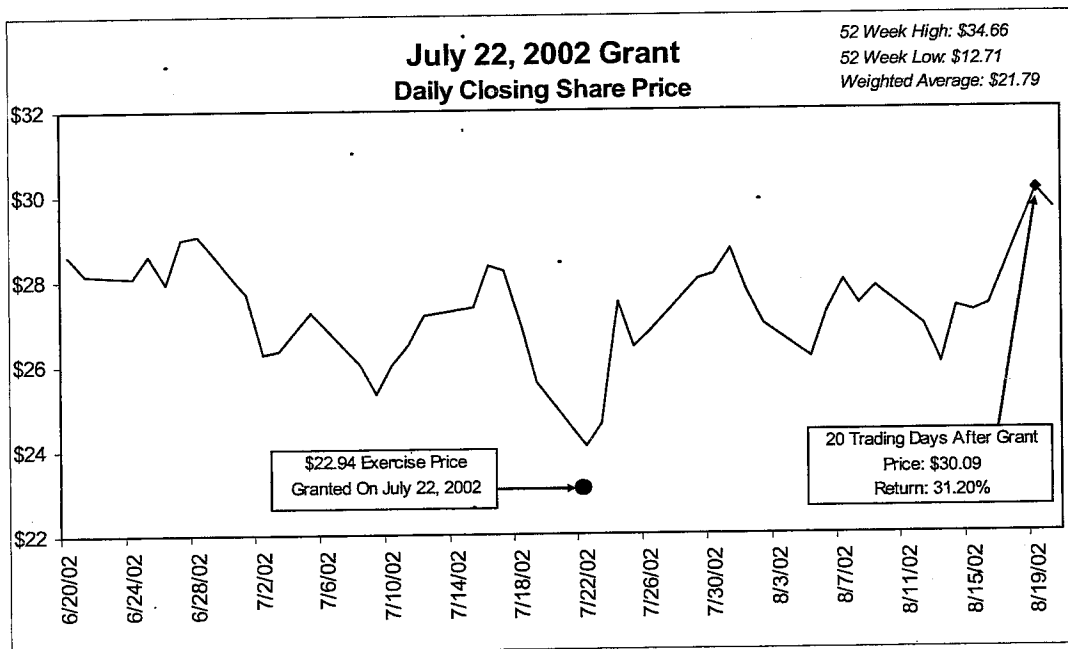
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Date	Executive	No. Of Securities Options Granted	Exercise Price Per Share	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
04/08/2002	Brian G. Kelly	87,912	\$27.61	\$2,427,250.30	\$2,756,041.20
04/08/2002	Robert A. Kotick	87,912	\$27.61	\$2,427,250.30	\$2,756,041.20
04/08/2002	William Chardavoyne	100,000	\$27.61	\$2,761,000	\$3,135,000
04/08/2002	Ronald Doornink	60,000	\$27.61	\$1,656,600	\$1,881,000
04/08/2002	Lawrence Goldberg	40,000	\$27.61	\$1,104,400	\$1,254,000
04/08/2002	Michael J. Rowe	20,000	\$27.61	\$552,200	\$627,000
04/08/2002	Kathy Vrabeck	40,000	\$27.61	\$1,104,400	\$1,254,000

1 110. On July 22, 2002, the Director Defendants purportedly granted stock options to
 2 Defendants Kelly, Kotick, and Doornink with an exercise price of \$22.94 per share - *the lowest*
 3 *price for the 20-day period after the grant date.* Activision's stock price 20 trading days after
 4 the grant was \$30.09, for a 20-day cumulative return of 31.20%. The next day, Activision
 5 announced that the Company extended its partnership with skateboarder Tony Hawk "through an
 6 exclusive multi-year gaming licensing agreement that expires in 2015." Activision also
 7 announced record financial results for the first fiscal quarter on July 23. Just a few days later on
 8 July 30, Activision announced that the Company acquired "the publishing and distribution rights
 9 to Gungrave™ for the PlayStation(R)2 computer entertainment system in Europe and
 10 Australia/New Zealand." The Company's stock price increased from \$24.07 on July 22 to
 11 \$28.72 on July 31 as a result of the favorable news.



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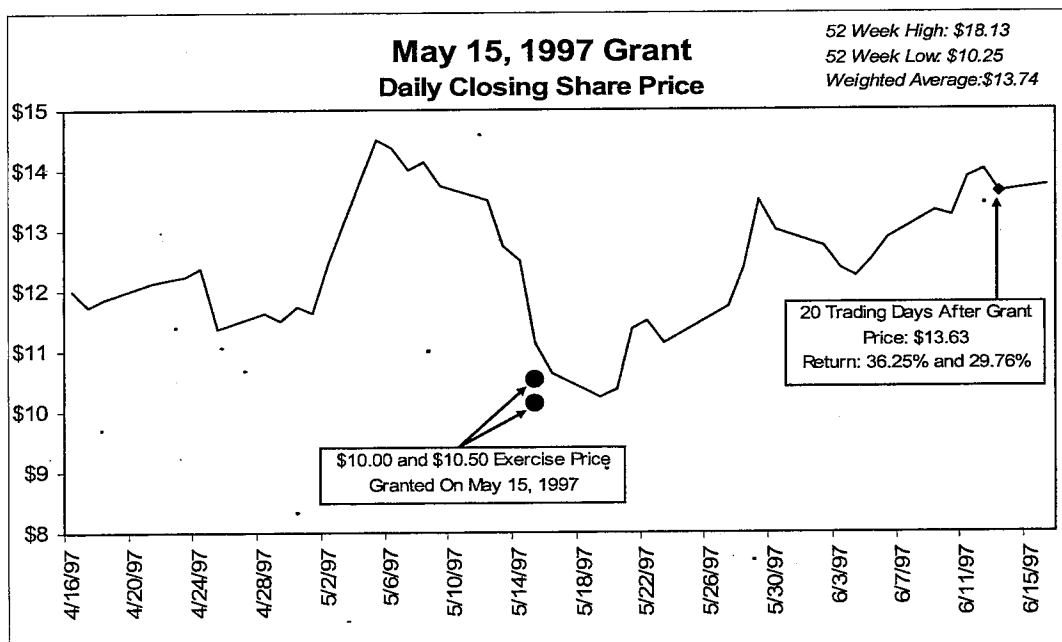
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Date	Executive	No. Of Securities Options Granted	Exercise Price Per Share	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
07/22/2002	Ronald Doornink	725,000	\$22.94	\$16,631,500	\$21,815,250
07/22/2002	Brian G. Kelly	350,000	\$22.94	\$8,029,000	\$10,531,500
07/22/2002	Robert A. Kotick	350,000	\$22.94	\$8,029,000	\$10,531,500

Striking Pattern Of Backdating To Other Executives

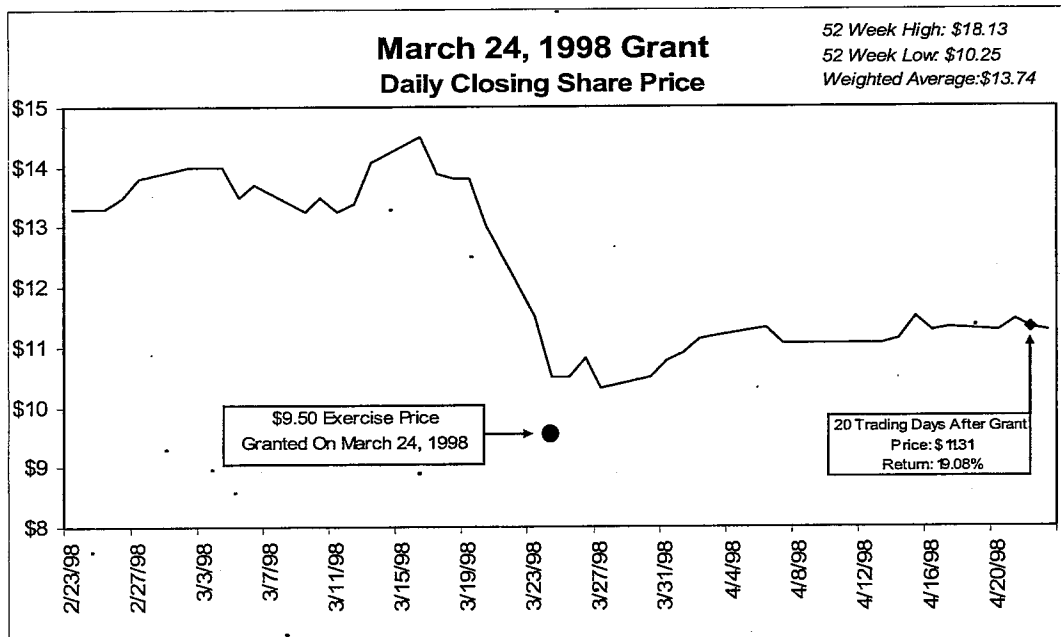
111. From at least fiscal year 1998 through fiscal year 2004, Activision issued five grants to various executives (other than Defendants Kotick and Kelly), including Defendants Baker, Goldberg, Plaga, Lasky, Dewar, Chardavoynne, Rowe, Steele, and Doornink. These grants continued the striking pattern that can only be explained by backdating. All five grants have an exercise price that was *the lowest price for the 20-day period after the grant date*. These grants include the stock option grants dated May 15, 1997, March 24, 1998, March 4, 1999, October 18, 1999 and April 11, 2003. All five of the stock option grants were granted during these six years at different times of the year, with the only consistency being that the grant was at or near a periodic low or preceding a run-up in the share price.

112. On **May 15, 1997**, the Director Defendants purportedly granted stock options to Defendants Baker, Goldberg, Plaga, and Lasky with exercise prices of \$10.00 and \$10.50. The \$10.00 exercise price was *the lowest price for the 20-day period after the grant date*. Activision's stock price 20 trading days after the grant was \$13.63, for a 20-day cumulative return of 36.25% and 29.76% respectively. Some of the options vested immediately allowing Defendants Baker, Goldberg, Plaga, and Lasky to instantly reap enormous gains from the backdating of the stock options.



Date	Executive	No. Of Securities Options Granted	Exercise Price Per Share	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
05/15/1997	John T. Baker, IV	62,786	\$10.50	\$659,253	\$855,773.18
05/15/1997	Lawrence Goldberg	35,656	\$10.50	\$374,388	\$485,991.28
05/15/1997	Barry J. Plaga	5,600	\$10.00	\$56,000	\$76,328
05/15/1997	Mitchell H. Lasky	10,400	\$10.00	\$104,000	\$141,752
		70,000	\$10.50	\$735,000	\$954,100

113. On March 24, 1998, the Director Defendants purportedly granted stock options to Defendants Baker, Goldberg, Plaga, and Lasky with an exercise price of \$9.50 - *the lowest price for the 20-day period after the grant date*. Activision's stock price 20 trading days after the grant was \$11.31, for a 20-day cumulative return of 19.08%. The exercise price was \$1.00 below the lowest closing price and more than \$4.00 below the weighted average closing price for the fiscal year. Over half of the options vested immediately allowing Defendants Baker, Goldberg, Plaga, and Lasky to instantly reap gains from the backdating of the stock options.

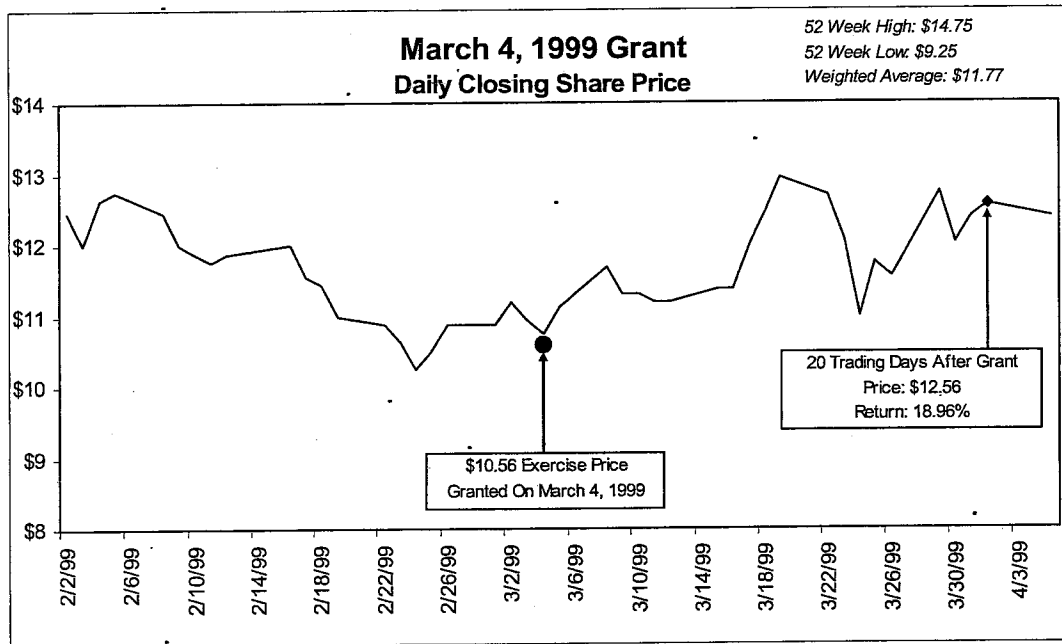


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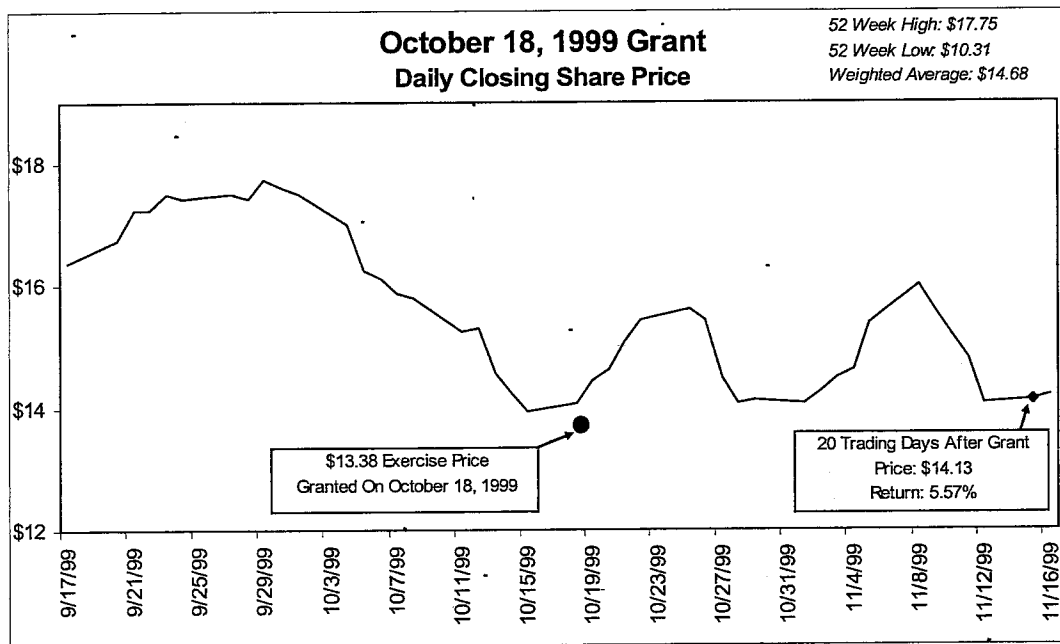
Date	Executive	No. Of Securities Options Granted	Exercise Price Per Share	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
03/24/1998	John T. Baker, IV	56,853	\$9.50	\$540,103.50	\$643,007.43
03/24/1998	Lawrence Goldberg	67,484	\$9.50	\$641,098	\$763,244.04
03/24/1998	Barry J. Plaga	54,862	\$9.50	\$521,189	\$620,489.22
03/24/1998	Mitchell H. Lasky	85,300	\$9.50	\$810,350	\$964,743

114. On March 4, 1999, the Director Defendants purportedly granted stock options to Defendants Goldberg and Plaga with an exercise price of \$10.56 - *the lowest price for the 20-day period after the grant date*. Activision's stock price 20 trading days after the grant was \$12.56, for a 20-day cumulative return of 18.96%. The exercise price was more than \$1.00 below the weighted average closing price for the fiscal year.



Date	Executive	No. Of Securities Options Granted	Exercise Price Per Share	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
03/04/1999	Lawrence Goldberg	33,000	\$10.56	\$348,480	\$414,480
03/04/1999	Barry J. Plaga	33,000	\$10.56	\$348,480	\$414,480

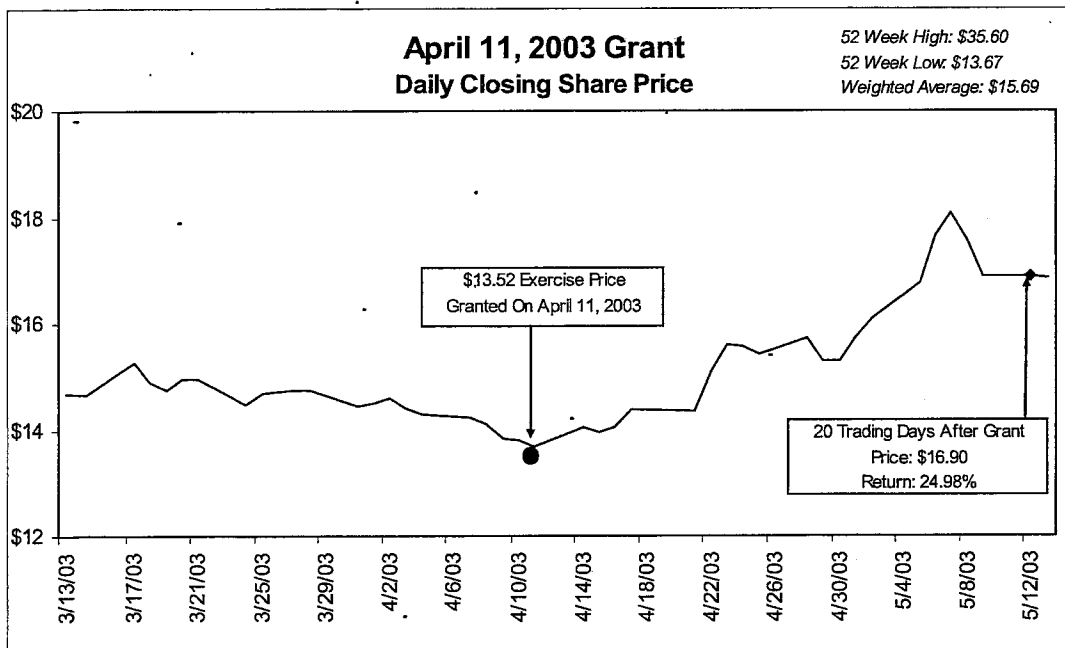
1 115. On **October 18, 1999**, the Director Defendants purportedly granted stock options
 2 to Defendants Dewar, Lasky, and Goldberg with an exercise price of \$13.38 - *the lowest price*
 3 *for the 20-day period after the grant date*. Activision's stock price 20 trading days after the
 4 grant was \$14.13, for a 20-day cumulative return of 5.57%. The exercise price was more than
 5 \$1.00 below the weighted average closing price for the fiscal year. Only two days after the
 6 grant, on October 20, Activision announced its financial results for the fiscal quarter ended
 7 September 30, 1999, including an increase in net revenues. The release of this favorable news
 8 resulted in a \$1.00 increase in the stock price between October 18 and October 21. Five days
 9 after the grant, the price of the stock increased to \$15.62 for a 17% change.



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Date	Executive	No. Of Securities Options Granted	Exercise Price Per Share	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
10/18/1999	Robert J. Dewar	75,000	\$13.38	\$1,003,500	\$1,059,750
10/18/1999	Mitchell H. Lasky	150,000	\$13.38	\$2,007,000	\$2,119,500
10/18/1999	Lawrence Goldberg	75,000	\$13.38	\$1,003,500	\$1,059,750

1 116. On April 11, 2003, the Director Defendants purportedly granted stock options to
 2 Defendants Chardavoyne, Rowe, Steele, and Doornink with an exercise price of \$13.52 - *the*
 3 *lowest price for the 20-day period after the grant date.* Activision's stock price 20 trading days
 4 after the grant was \$16.90, for a 20-day cumulative return of 24.98%. The exercise price was
 5 more than \$2.00 below the weighted average closing price for the fiscal year. Seventeen days
 6 after the grant, the stock price climbed to \$18.07 per share for a 33.65% change. There were no
 7 Form 4s filed within the two day period permitted by the Sarbanes-Oxley Act, or soon thereafter,
 8 further evidencing backdating.



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Date	Executive	No. Of Securities Options Granted	Exercise Price Per Share	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
04/11/2003	William Chardavoyne	22,000	\$13.52	\$297,440	\$371,800
04/11/2003	Michael J. Rowe	22,000	\$13.52	\$297,440	\$371,800
04/11/2003	Richard A. Steele	22,000	\$13.52	\$297,440	\$371,800
04/11/2003	Ronald Doornink	66,000	\$13.52	\$892,320	\$1,115,400

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1 117. In all, the Director Defendants granted the Officer Defendants millions of dollars
2 in unjustified and unlawfully obtained compensation as a result of these backdated stock options.

3 118. The backdating of stock option grants and the issuance of these options in the
4 amounts awarded to the Officer Defendants caused, and continues to cause, substantial harm to
5 Activision. Backdating stock option grants represents a direct and continuing waste of valuable
6 corporate assets. Because Activision is the counterparty to the option contracts, when the Officer
7 Defendants exercise their backdated stock options, money is siphoned, on a dollar for dollar
8 basis, directly from Activision. In effect, the backdated grants give the Officer Defendants an
9 option to purchase Activision shares directly from the Company at an unfair and improperly low
10 price, with the Company making up the difference. The sums involved are enormous. For
11 example, as of March 31, 2004, the unrealized gains on Defendants Kotick, Kelly and
12 Doornink's unexercised stock options alone were worth in excess of \$75 million, \$74 million
13 and \$28 million, respectively. According to limited available public records, Defendant Kelly
14 sold at least 600,000 shares of backdated common stock for a profit of at least \$15,595,029 and
15 Defendant Kotick sold at least 403,500 backdated shares for a profit of at least \$9,106,710.

16 119. Backdating stock options also severely undermines the already grossly excessive
17 incentives that purportedly justify the use of stock options to compensate Activision's
18 management. Stock option compensation is intended to encourage management to maximize the
19 return to shareholders by aligning the interests of management with those of shareholders. In
20 contrast, by permitting the Officer Defendants to receive stock option grants backdated to
21 correspond to low points in the stock price, the Director Defendants created a perverse incentive
22 for management to engineer dips and volatile swings in the stock price. Further, the size and
23 terms of the grants were so excessive that they incentivized management to retire rather than
24 work.

25 120. Issuing backdated stock options is unlawful, *ultra vires* and outside the scope of
26 legitimate and permissible business conduct. The practice is inherently manipulative and
27 involves a substantial likelihood that business records were intentionally falsified. Issuing
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1 backdated stock options is, therefore, not a form of business conduct and is not protected by the
2 business judgment rule.

3 ULTRA VIRES STOCK OPTION GRANTS

4 121. In addition to authorizing the issuance of backdated options as set forth elsewhere
5 herein, between at least fiscal year 1996 and fiscal year 2004, the Director Defendants committed
6 *ultra vires* acts by issuing stock options with exercise prices not set consistently with the express
7 terms of the operative stock option plans in effect at the time of the issuance. In many instances,
8 the Director Defendants set stock options exercise prices at the lowest trading price for the day of
9 the stock option grant (or the day preceding the option grant date) – which is clearly beyond the
10 scope of the powers afforded the Director Defendants pursuant to the stock options plans
11 approved by shareholders. According to the Company's stock option plans, options exercise
12 prices were to be set at the "Fair Market Value" of a share, which is defined as the closing price
13 of a share on the day immediately preceding the date as of the options grant.⁴ By issuing stock
14 options with exercise prices set at the lowest trading price of a share, as opposed to the closing
15 price for the preceding day as required by the Company's stock option plans, Defendants
16 illegally benefited and committed *ultra vires* acts.

17 Fiscal Year Ended March 31, 1996 Ultra Vires Option Grants

18 122. On June 30, 1995, Defendants Kotick, Marks, and Kelly were together
19 purportedly granted 67,000 stock options at an exercise price of \$6.75, which was the lowest
20 price of Activision common stock on both June 29, 1995 and June 30, 1995. Pursuant to the
21 operative stock option plan in effect at the time of these grants, the exercise price should have
22 been set at the closing price of a share on June 29, 1995, which was \$7.00. The Director
23

24 ⁴ The Company's 1991 Stock Option Plan states: "The 'Fair Market Value' of a share of
25 Common Stock as of a specified date shall mean the closing price of a share of stock on the
26 principal securities exchange on which such shares are traded on the day immediately preceding
27 the date as of which Fair Market Value is being determined, or on the next preceding date on
28 which such shares are traded if no shares were traded on such immediately preceding day"
The Company's 1998 Stock Option Plan is substantially identical, stating, "the 'Fair Market
Value' of a Share as of a specified date shall mean the closing price of a share on the day
immediately preceding the date as of which Fair Market Value is being determined"

1 Defendants committed an *ultra vires* act by issuing options to Defendants Kotick, Marks, and
2 Kelly with a strike price \$0.25 less than the Fair Market Value. As a result, Defendants Kotick,
3 Marks, and Kelly received an improper benefit of \$16,750 [67,000 shares x \$0.25].

4 123. On January 17, 1996, Defendant Plaga was purportedly granted 5,000 stock
5 options at an exercise price of \$9.75, which was the lowest price of Activision common stock on
6 January 17, 1996. Pursuant to the operative stock option plan in effect at the time of this grant,
7 the exercise price should have been set at the closing price of a share on January 16, 1996, which
8 was \$10.12. The Director Defendants committed an *ultra vires* act by issuing options to
9 Defendant Plaga with a strike price \$0.37 less than the Fair Market Value. As a result,
10 Defendant Plaga received an improper benefit of \$1,850 [5,000 shares x \$0.37].

11 **Fiscal Year Ended March 31, 1997 Ultra Vires Option Grants**

12 124. On April 1, 1996, Defendants Kotick, Marks, Kelly, and Plaga were together
13 purportedly granted 103,833 stock options at an exercise price of \$13.00, which was the lowest
14 price of Activision common stock on March 29, 1996 – the preceding trading day. (On April 1,
15 1996, Activision stock was never below \$13.12.) Pursuant to the operative stock option plan in
16 effect at the time of these grants, the exercise price should have been set at the closing price of a
17 share on March 29, 1996, which was \$13.12. The Director Defendants committed an *ultra vires*
18 act by issuing options to Defendants Kotick, Marks, Kelly, and Plaga with a strike price \$0.12
19 less than the Fair Market Value. As a result, Defendants Kotick, Marks, Kelly, and Plaga
20 received an improper benefit of \$12,460 [103,833 shares x \$0.12].

21 125. On December 20, 1996, Defendants Kotick, Marks, Kelly, and Plaga were
22 together purportedly granted 60,000 stock options at an exercise price of \$10.56, which was the
23 closing price of Activision common stock on December 20, 1996. Pursuant to the operative
24 stock option plan in effect at the time of these grants, the exercise price should have been set at
25 the closing price of a share on December 19, 1996, which was \$11.00. The Director Defendants
26 committed an *ultra vires* act by issuing options to Defendants Kotick, Marks, Kelly, and Plaga
27 with a strike price \$0.44 less than the Fair Market Value. As a result, Defendants Kotick, Marks,
28 Kelly, and Plaga received an improper benefit of \$26,400 [60,000 shares x \$0.44].

1 **Fiscal Year Ended March 31, 1998 Ultra Vires Option Grants**

2 126. On April 1, 1997, Defendants Baker, Goldberg, and Plaga were together
3 purportedly granted 49,703 stock options at an exercise price of \$10.88, which was the lowest
4 price of Activision common stock on April 1, 1997. Pursuant to the operative stock option plan
5 in effect at the time of these grants, the exercise price should have been set at the closing price of
6 a share on March 31, 1997, which was \$11.25. The Director Defendants committed an *ultra*
7 *vires* act by issuing options to Defendants Baker, Goldberg, and Plaga with a strike price \$0.37
8 less than the Fair Market Value. As a result, Defendants Baker, Goldberg, and Plaga received an
9 improper benefit of \$18,390 [49,703 shares x \$0.37].

10 127. On May 15, 1997, Defendants Baker, Goldberg, and Plaga were together
11 purportedly granted 104,042 stock options at an exercise price of \$10.50. Pursuant to the
12 operative stock option plan in effect at the time of these grants, the exercise price should have
13 been set at the closing price of a share on May 14, 1997, which was \$12.50. The Director
14 Defendants committed an *ultra vires* act by issuing options to Defendants Baker, Goldberg, and
15 Plaga with a strike price \$2.00 less than the Fair Market Value. As a result, Defendants Baker,
16 Goldberg, and Plaga received an improper benefit of \$208,084 [104,042 shares x \$2.00].

17 128. On May 19, 1997, Defendants Kelly and Kotick were together purportedly
18 granted 762,000 stock options at an exercise price of \$9.88, which was the lowest price of
19 Activision common stock on May 19, 1997. Pursuant to the operative stock option plan in effect
20 at the time of these grants, the exercise price should have been set at the closing price of a share
21 on May 16, 1997 (there was no trading on May 17 or May 18), which was \$10.62. The Director
22 Defendants committed an *ultra vires* act by issuing options to Defendants Kelly and Kotick with
23 a strike price \$0.74 less than the Fair Market Value. As a result, Defendants Kelly and Kotick
24 received an improper benefit of \$563,880 [762,000 shares x \$0.74].

25 129. On March 24, 1998, Defendants Baker, Goldberg, and Plaga were together
26 purportedly granted 179,199 stock options at an exercise price of \$9.50, which was the lowest
27 price of Activision common stock on March 24, 1998. Pursuant to the operative stock option
28 plan in effect at the time of these grants, the exercise price should have been set at the closing

1 price of a share on March 23, 1998, which was \$11.50. The Director Defendants committed an
2 *ultra vires* act by issuing options to Defendants Baker, Goldberg, and Plaga with a strike price
3 \$2.00 less than the Fair Market Value. As a result, Defendants Baker, Goldberg, and Plaga
4 received an improper benefit of \$358,398 [179,199 shares x \$2].

5 **Fiscal Year Ended March 31, 1999 Ultra Vires Option Grants**

6 130. On June 5, 1998, Defendants Kelly and Kotick were together purportedly granted
7 300,000 stock options at an exercise price of \$9.44 and 217,902 stock options at an exercise
8 price of \$9.50. Pursuant to the operative stock option plan in effect at the time of these grants,
9 the exercise price should have been set at the closing price of a share on June 4, 1998, which was
10 \$9.56. The Director Defendants committed an *ultra vires* act by issuing options to Defendants
11 Kotick and Kelly with a strike price \$0.12 and \$0.06 less than the Fair Market Value
12 respectively. As a result, Defendants Kotick and Kelly received an improper benefit of \$36,000
13 [300,000 shares x \$0.12] and \$13,074 [217,902 shares x \$0.06].

14 131. On September 14, 1998, Defendant Goldberg was purportedly granted 1,000
15 stock options at an exercise price of \$10.88, which was the lowest price of Activision common
16 stock on September 14, 1998. Pursuant to the operative stock option plan in effect at the time of
17 this grant, the exercise price should have been set at the closing price of a share on September
18 11, 1998 (there was no trading on September 12 or September 13), which was \$11.00. The
19 Director Defendants committed an *ultra vires* act by issuing options to Defendant Goldberg with
20 a strike price \$0.12 less than the Fair Market Value. As a result, Defendant Goldberg received
21 an improper benefit of \$120 [1000 shares x \$0.12].

22 132. On October 2, 1998, Defendant Baker was purportedly granted 500 stock options
23 at an exercise price of \$10.25, which was the lowest price of Activision common stock on
24 October 2, 1998. Pursuant to the operative stock option plan in effect at the time of this grant,
25 the exercise price should have been set at the closing price of a share on October 1, 1998, which
26 was \$10.50. The Director Defendants committed an *ultra vires* act by issuing options to
27 Defendant Baker with a strike price \$0.25 less than the Fair Market Value. As a result,
28 Defendant Baker received an improper benefit of \$250 [500 shares x \$0.25].

1 133. On October 26, 1998, Defendant Doornink was purportedly granted 200,000
2 stock options at an exercise price of \$10.31, which was the lowest price of Activision common
3 stock on October 26, 1998. Pursuant to the operative stock option plan in effect at the time of
4 this grant, the exercise price should have been set at the closing price of a share on October 23,
5 1998, which was \$10.37. The Director Defendants committed an *ultra vires* act by issuing
6 options to Defendant Doornink with a strike price \$0.06 less than the Fair Market Value. As a
7 result, Defendant Doornink received an improper benefit of \$12,000 [200,000 shares x \$0.06].

8 134. On December 11, 1998, Defendant Henderson was purportedly granted 12,000
9 stock options at an exercise price of \$11.50, which was the lowest price of Activision common
10 stock on December 11, 1998. Pursuant to the operative stock option plan in effect at the time of
11 this grant, the exercise price should have been set at the closing price of a share on
12 December 10, 1998, which was \$12.00. The Director Defendants committed an *ultra vires* act
13 by issuing options to Defendant Henderson with a strike price \$0.50 less than the Fair Market
14 Value. As a result, Defendant Henderson received an improper benefit of \$6,000 [12,000 shares
15 x \$0.50].

16 135. On March 4, 1999, Defendants Goldberg and Plaga were together purportedly
17 granted 66,000 stock options at an exercise price of \$10.56, which was the lowest price of
18 Activision common stock on March 4, 1999. Pursuant to the operative stock option plan in
19 effect at the time of these grants, the exercise price should have been set at the closing price of a
20 share on March 3, 1999, which was \$10.94. The Director Defendants committed an *ultra vires*
21 act by issuing options to Defendants Goldberg and Plaga with a strike price \$0.38 less than the
22 Fair Market Value. As a result, Defendants Goldberg and Plaga received an improper benefit of
23 \$25,080 [66,000 shares x \$0.38].

24 136. On March 24, 1999, Defendants Kelly and Kotick were together purportedly
25 granted 2,000,000 stock options at an exercise price of \$10.50, which was the lowest price of
26 Activision common stock on March 24, 1999. Pursuant to the operative stock option plan in
27 effect at the time of these grants, the exercise price should have been set at the closing price of a
28 share on March 23, 1999, which was \$12.06. The Director Defendants committed an *ultra vires*

1 act by issuing options to Defendants Kelly and Kotick with a strike price \$1.56 less than the Fair
2 Market Value. As a result, Defendants Kelly and Kotick received an improper benefit of
3 \$3,120,000 [2,000,000 shares x \$1.56].

4 **Fiscal Year Ended March 31, 2000 Ultra Vires Option Grants**

5 137. On April 30, 1999, Defendants Dewar, Doornink, Kelly, Kotick, Lasky, and
6 Steele were together purportedly granted 417,432 options at an exercise price of \$10.25, which
7 was the lowest price of Activision common stock on April 30, 1999. Pursuant to the operative
8 stock option plan in effect at the time of these grants, the exercise price should have been set at
9 the closing price of a share on April 29, 1999, which was \$10.31. The Director Defendants
10 committed an *ultra vires* act by issuing options to Defendants Dewar, Doornink, Kelly, Kotick,
11 Lasky, and Steele with a strike price \$0.06 less than the Fair Market Value. As a result,
12 Defendants Dewar, Doornink, Kelly, Kotick, Lasky, and Steele received an improper benefit of
13 \$25,046 [417,432 shares x \$0.06].

14 138. On August 5, 1999, Defendants Vrabeck and Rowe were together purportedly
15 granted 125,000 options at an exercise price of \$12.25, which was the lowest price of Activision
16 common stock on August 5, 1999. Pursuant to the operative stock option plan in effect at the
17 time of these grants, the exercise price should have been set at the closing price of a share on
18 August 4, 1999, which was \$12.63. The Director Defendants committed an *ultra vires* act by
19 issuing options to Defendants Vrabeck and Rowe with a strike price \$0.38 less than the Fair
20 Market Value. As a result, Defendants Vrabeck and Rowe received an improper benefit of
21 \$47,500 [125,000 shares x \$0.38].

22 139. On October 18, 1999, Defendants Dewar, Lasky, and Goldberg were together
23 purportedly granted 300,000 options at an exercise price of \$13.38, which was the lowest price
24 of Activision common stock on October 18, 1999. Pursuant to the operative stock option plan in
25 effect at the time of these grants, the exercise price should have been set at the closing price of a
26 share on October 17, 1999, which was \$13.94. The Director Defendants committed an *ultra*
27 *vires* act by issuing options to Defendants Dewar, Lasky, and Goldberg with a strike price \$0.56

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1 less than the Fair Market Value. As a result, Defendants Dewar, Lasky, and Goldberg received
2 an improper benefit of \$168,000 [300,000 shares x \$0.56].

3 **Fiscal Year Ended March 31, 2001 Ultra Vires Option Grants**

4 140. On April 18, 2000, Defendants Kelly, Kotick, Doornink, Goldberg, Lasky, Rowe,
5 Steele, and Vrabeck were together purportedly granted 984,958 options at an exercise price of
6 \$6.00, which was the lowest price of Activision common stock on April 18, 2000. Pursuant to
7 the operative stock option plan in effect at the time of these grants, the exercise price should have
8 been set at the closing price of a share on April 17, 2000, which was \$6.38. The Director
9 Defendants committed an *ultra vires* act by issuing options to Defendants Kelly, Kotick,
10 Doornink, Goldberg, Lasky, Rowe, Steele, and Vrabeck with a strike price \$0.38 less than the
11 Fair Market Value. As a result, Defendants Kelly, Kotick, Doornink, Goldberg, Lasky, Rowe,
12 Steele, and Vrabeck received an improper benefit of \$374,284 [984,958 shares x \$0.38].

13 141. On May 22, 2000, Defendants Kelly and Kotick were together purportedly
14 granted 2,000,000 options at an exercise price of \$6.13, which was the closing price of
15 Activision common stock on May 22, 2000. Pursuant to the operative stock option plan in effect
16 at the time of these grants, the exercise price should have been set at the closing price of a share
17 on May 21, 2000, which was \$6.75. The Director Defendants committed an *ultra vires* act by
18 issuing options to Defendants Kelly and Kotick with a strike price \$0.62 less than the Fair
19 Market Value. As a result, Defendants Kelly and Kotick received an improper benefit of
20 \$1,240,000 [2,000,000 shares x \$0.62].

21 142. On August 1, 2000, Defendant Doornink was purportedly granted 100,000
22 options at an exercise price of \$8.50. Pursuant to the operative stock option plan in effect at the
23 time of this grant, the exercise price should have been set at the closing price of a share on July
24 31, 2000, which was \$8.75. The Director Defendants committed an *ultra vires* act by issuing
25 options to Defendant Doornink with a strike price \$0.25 less than the Fair Market Value. As a
26 result, Defendant Doornink received an improper benefit of \$25,000 [100,000 shares x \$0.25].

27 143. On August 3, 2000, Defendant Vrabeck was granted 75,000 options at an exercise
28 price of \$8.63, which was the lowest price of Activision common stock on August 3, 2000.

1 Pursuant to the operative stock option plan in effect at the time of this grant, the exercise price
2 should have been set at the closing price of a share on August 2, 2000, which was \$8.87. The
3 Director Defendants committed an *ultra vires* act by issuing options to Defendant Vrabeck with a
4 strike price \$0.24 less than the Fair Market Value. As a result, Defendant Vrabeck received an
5 improper benefit of \$18,000 [75,000 shares x \$0.24].

6 144. On January 2, 2001, Defendant Goldberg was purportedly granted 75,000 options
7 at an exercise price of \$13.63, which was the lowest price of Activision common stock on
8 January 2, 2001. Pursuant to the operative stock option plan in effect at the time of this grant,
9 the exercise price should have been set at the closing price of a share on December 29, 2000,
10 which was \$15.12 (there was no trading on December 30, 31, or January 1). The Director
11 Defendants committed an *ultra vires* act by issuing options to Defendant Goldberg with a strike
12 price \$1.49 less than the Fair Market Value. As a result, Defendant Goldberg received an
13 improper benefit of \$111,750 [75,000 shares x \$1.49].

14 **Fiscal Year Ended March 31, 2002 Ultra Vires Option Grants**

15 145. On April 4, 2001, Defendants Kelly, Kotick, Doornink, Goldberg, Lasky, Rowe,
16 Steele, and Vrabeck were together purportedly granted 643,783 options at an exercise price of
17 \$20.88, which was the lowest price of Activision common stock on April 4, 2001. Pursuant to
18 the operative stock option plan in effect at the time of these grants, the exercise price should have
19 been set at the closing price of a share on April 3, 2001, which was \$23.50. The Director
20 Defendants committed an *ultra vires* act by issuing options to Defendants Kelly, Kotick,
21 Doornink, Goldberg, Lasky, Rowe, Steele, and Vrabeck with a strike price \$2.62 less than the
22 Fair Market Value. As a result, Defendants Kelly, Kotick, Doornink, Goldberg, Lasky, Rowe,
23 Steele, and Vrabeck received an improper benefit of \$1,686,711 [643,783 shares x \$2.62].

24 146. On October 1, 2001, Defendants Kelly, Kotick, Doornink, Goldberg, Lasky,
25 Rowe, Steele, and Vrabeck were together purportedly granted 121,050 options at an exercise
26 price of \$25.00, which was the lowest price of Activision common stock on October 1, 2001.
27 Pursuant to stock option plans existing at the time of these option grants, the exercise price
28 should have been set at the Fair Market Value for a share of Activision (as defined variously by

1 Activision's stock option plan then existing). The closing price and fair market value of
2 Activision common stock on September 28, 2001 was \$27.22 (there was no trading on
3 September 30 or September 29). The stock options granted to Defendants Kelly, Kotick,
4 Doornink, Goldberg, Lasky, Rowe, Steele, and Vrabeck on October 1, 2001 were not at Fair
5 Market Value and were inconsistent with the then existing stock option plans. The Director
6 Defendants committed an *ultra vires* act by issuing options to Defendants Kelly, Kotick,
7 Doornink, Goldberg, Lasky, Rowe, Steele, and Vrabeck at less than the Fair Market Value. As a
8 result, Defendants Kelly, Kotick, Doornink, Goldberg, Lasky, Rowe, Steele, and Vrabeck
9 received improper gains resulting from the *ultra vires* stock option grants.

10 147. On February 20, 2002, Defendant Steele was purportedly granted 100,000 options
11 at an exercise price of \$25.61, which was the lowest price of Activision common stock on
12 February 20, 2002. Pursuant to stock option plans existing at the time of this option grant, the
13 exercise price should have been set at the Fair Market Value for a share of Activision (as defined
14 variously by Activision's stock option plans then existing). The closing price and fair market
15 value of Activision common stock on February 19, 2002, was \$25.72. The stock options granted
16 to Defendant Steele on February 20, 2002 were not at Fair Market Value and were inconsistent
17 with the then existing stock option plans. The Director Defendants committed an *ultra vires* act
18 by issuing options to Defendant Steele at less than the Fair Market Value. As a result, Defendant
19 Steele received improper gains resulting from the *ultra vires* stock option grants.

20 **Fiscal Year Ended March 31, 2003 Ultra Vires Option Grants**

21 148. On April 8, 2002, Defendants Kelly, Kotick, Doornink, Goldberg, Lasky, Rowe,
22 Steele, and Vrabeck were together purportedly granted 435,824 options at an exercise price of
23 \$27.61, which was the lowest price of Activision common stock on April 8, 2002. Pursuant to
24 stock option plans existing at the time of these option grants, the exercise price should have been
25 set at the Fair Market Value for a share of Activision (as defined variously by Activision's stock
26 option plans then existing). The closing price and fair market value of Activision common stock
27 on April 5, 2002 was \$28.58 (there was no trading on April 7, 2002 or April 6, 2002). The stock
28 options granted to Defendants Kelly, Kotick, Doornink, Goldberg, Lasky, Rowe, Steele, and

1 Vrabeck on April 8, 2002 were not at Fair Market Value and were inconsistent with the then
2 existing stock option plans. The Director Defendants committed an *ultra vires* act by issuing
3 options to Defendants Kelly, Kotick, Doornink, Goldberg, Lasky, Rowe, Steele, and Vrabeck at
4 less than the Fair Market Value. As a result, Defendants Kelly, Kotick, Doornink, Goldberg,
5 Lasky, Rowe, Steele, and Vrabeck received improper gains resulting from the *ultra vires* stock
6 option grants.

7 149. On July 22, 2002, Defendants Kelly, Kotick, and Doornink were together
8 purportedly granted 1,425,000 options at an exercise price of \$22.94, which was the lowest price
9 of Activision common stock on July 22, 2002. Pursuant to stock option plans existing at the time
10 of these option grants, the exercise price should have been set at the Fair Market Value for a
11 share of Activision (as defined variously by Activision's stock option plans then existing). The
12 closing price and fair market value of Activision common stock on July 19, 2002 was \$25.60
13 (there was no trading on July 21, 2002 or July 20, 2002). The stock options granted to
14 Defendants Kelly, Kotick, and Doornink on July 22, 2002 were not at Fair Market Value and
15 were inconsistent with the then existing stock option plans. The Director Defendants committed
16 an *ultra vires* act by issuing options to Defendants Kelly, Kotick, and Doornink at less than the
17 Fair Market Value. As a result, Defendants Kelly, Kotick, and Doornink received improper
18 gains resulting from the *ultra vires* stock option grants.

19 150. On September 19, 2002, Director Defendants Morgado, Isgur, Henderson, and
20 Mayer were purportedly granted stock options at an exercise price of \$25.36, which was the
21 lowest price of Activision common stock on September 19, 2002. Pursuant to stock option plans
22 existing at the time of these option grants, the exercise price should have been set at the Fair
23 Market Value for a share of Activision (as defined variously by Activision's stock option plans
24 then existing). The closing price and fair market value of Activision common stock on
25 September 18, 2002 was \$27.05. The Director Defendants committed an *ultra vires* act by
26 issuing options to Director Defendants Morgado, Isgur, Henderson, and Mayer at less than the
27 Fair Market Value. As a result, these Defendants received improper gains resulting from the
28 *ultra vires* stock option grants.

1 151. On October 2, 2002, Defendants Vrabeck and Goldberg were purportedly granted
2 stock options at an exercise price of \$21.82, which was the lowest price of Activision common
3 stock on October 2, 2002. Pursuant to stock option plans existing at the time of these option
4 grants, the exercise price should have been set at the Fair Market Value for a share of Activision
5 (as defined variously by Activision's stock option plans then existing). The closing price and
6 fair market value of Activision common stock on October 1, 2002 was \$22.10. The Director
7 Defendants committed an *ultra vires* act by issuing options to Defendants Vrabeck and Goldberg
8 at less than the Fair Market Value. As a result, these Defendants received improper gains
9 resulting from the *ultra vires* stock option grants.

10 152. On February 27, 2003, Defendant Doornink was purportedly granted stock
11 options at an exercise price of \$14.17, which was the lowest price of Activision common stock
12 on February 27, 2003. Pursuant to stock option plans existing at the time of this option grant, the
13 exercise price should have been set at the Fair Market Value for a share of Activision (as defined
14 variously by Activision's stock option plans then existing). The closing price and fair market
15 value of Activision common stock on February 26, 2003 was \$14.34. The Director Defendants
16 committed an *ultra vires* act by issuing options to Defendant Doornink at less than the Fair
17 Market Value. As a result, Defendant Doornink received improper gains resulting from the *ultra*
18 *vires* stock option grants.

19 153. On March 20, 2003, Defendants Goldberg and Vrabeck were purportedly granted
20 stock options at an exercise price of \$14.53, which was the lowest price of Activision common
21 stock on March 20, 2003. Pursuant to stock option plans existing at the time of these option
22 grants, the exercise price should have been set at the Fair Market Value for a share of Activision
23 (as defined variously by Activision's stock option plans then existing). The closing price and
24 fair market value of Activision common stock on March 19, 2003 was \$14.75. The Director
25 Defendants committed an *ultra vires* act by issuing options to Defendants Goldberg and Vrabeck
26 at less than the Fair Market Value. As a result, these Defendants received improper gains
27 resulting from the *ultra vires* stock option grants.

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1 **Fiscal Year Ended March 31, 2004 Ultra Vires Option Grants**

2 154. On April 1, 2003, Defendants Kotick and Kelly were purportedly granted stock
3 options at an exercise price of \$14.17. Pursuant to stock option plans existing at the time of
4 these option grants, the exercise price should have been set at the Fair Market Value for a share
5 of Activision (as defined variously by Activision's stock option plans then existing). The closing
6 price and fair market value of Activision common stock on March 31, 2003 was \$14.45. The
7 Director Defendants committed an *ultra vires* act by issuing options to Defendants Kotick and
8 Kelly at less than the Fair Market Value. As a result, these Defendants received improper gains
9 resulting from the *ultra vires* stock option grants.

10 155. On April 11, 2003, Defendants Chardavoyne, Rowe, and Steele were together
11 purportedly granted 99,000 options at an exercise price of \$13.52, which was the lowest price of
12 Activision common stock on April 11, 2003. Pursuant to stock option plans existing at the time
13 of these option grants, the exercise price should have been set at the Fair Market Value for a
14 share of Activision (as defined variously by Activision's stock option plans then existing). The
15 stock options granted to Defendants Chardavoyne, Rowe, and Steele on April 11, 2003 were not
16 at Fair Market Value and were inconsistent with the then existing stock option plans. The
17 Director Defendants committed an *ultra vires* act by issuing options to Defendants Chardavoyne,
18 Rowe, and Steele at less than the Fair Market Value. As a result, Defendants Chardavoyne,
19 Rowe, and Steele received improper gains resulting from the *ultra vires* stock option grants.

20 156. On September 18, 2003, Director Defendants Morgado, Isgur, Henderson, and
21 Mayer were purportedly granted stock options at an exercise price of \$12.28, which was the
22 lowest price of Activision common stock on September 18, 2003. Pursuant to stock option plans
23 existing at the time of these option grants, the exercise price should have been set at the Fair
24 Market Value for a share of Activision (as defined variously by Activision's stock option plans
25 then existing). The closing price and fair market value of Activision common stock on
26 September 17, 2003 was \$12.80. The Director Defendants committed an *ultra vires* act by
27 issuing options to Director Defendants Morgado, Isgur, Henderson, and Mayer at less than the

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1 Fair Market Value. As a result, Director Defendants Morgado, Isgur, Henderson, and Mayer
2 received improper gains resulting from the *ultra vires* stock option grants.

3 157. On November 6, 2003, Defendant Vrabeck was purportedly granted stock options
4 at an exercise price of \$14.89, which was the lowest price of Activision common stock on
5 November 6, 2003. Pursuant to stock option plans existing at the time of these option grants, the
6 exercise price should have been set at the Fair Market Value for a share of Activision (as defined
7 variously by Activision's stock option plans then existing). The closing price and fair market
8 value of Activision common stock on November 5, 2003 was \$15.13. The Director Defendants
9 committed an *ultra vires* act by issuing options to Defendant Vrabeck at less than the Fair
10 Market Value. As a result, Defendant Vrabeck received improper gains resulting from the *ultra*
11 *vires* stock option grants.

12 DISSEMINATION OF FALSE FINANCIAL STATEMENTS

13 158. The Individual Defendants knew, or were deliberately reckless in not knowing,
14 that they made materially false and misleading statements in the periodic filings they prepared,
15 approved, reviewed and/or signed.

16 159. As a result of the improper backdating of stock options and/or otherwise improper
17 options grants, the Company, with the knowledge, approval, and participation of each of the
18 Individual Defendants,

- 19 a. violated the terms of the Company's shareholder-approved stock option
20 plans;
- 21 b. violated GAAP by failing to recognize compensation expenses incurred
22 when the improperly priced options were granted;
- 23 c. violated Internal Revenue Code Section 162(m) with respect to the
24 contemporaneous tax treatment of stock option grants; and
- 25 d. produced and disseminated to Activision shareholders and the market false
26 financial statements that improperly recorded and accounted for the
27 improperly priced option grants.

26 160. The Company, with the knowledge, approval, and participation of each of the
27 Individual Defendants, disseminated its false financial statements in, inter alia, the following
28 Form 10-K filings:

- 1 a. Form 10-K for the fiscal year ended March 31, 1996, filed with the SEC
2 on July 8, 1996 and signed by Defendants Kotick, Marks, Kelly, Plaga,
3 and Isgur;
- 4 b. Form 10-K405 for the fiscal year ended March 31, 1997, filed with the
5 SEC on June 16, 1997 and signed by Defendants Kotick, Marks, Kelly,
6 Plaga, Morgado, and Isgur;
- 7 c. Form 10-K405 for the fiscal year ended March 31, 1998, filed with the
8 SEC on June 29, 1999 and signed by Defendants Kotick, Kelly, Plaga,
9 Morgado, and Isgur;
- 10 d. Form 10-K for the fiscal year ended March 31, 1999, filed with the SEC
11 on June 29, 1999 and signed by Defendants Kotick, Kelly, Plaga,
12 Morgado, and Isgur;
- 13 e. Form 10-K for the fiscal year ended March 31, 2000, filed with the SEC
14 on June 29, 2000 and signed by Defendants Kotick, Kelly, Chardavoyne,
15 and Isgur;
- 16 f. Form 10-K for the fiscal year ended March 31, 2001, filed with the SEC
17 on June 27, 2001 and signed by Defendants Kotick, Kelly, Chardavoyne,
18 Morgado, and Isgur;
- 19 g. Form 10-K for the fiscal year ended March 31, 2002, filed with the SEC
20 on June 28, 2002 and signed by Defendants Kotick, Kelly, Doornink,
21 Chardavoyne, Morgado, and Isgur;
- 22 h. Form 10-K for the fiscal year ended March 31, 2003, filed with the SEC
23 on June 19, 2003 and signed by Defendants Kotick, Kelly, Doornink,
24 Chardavoyne, Morgado, and Isgur;
- 25 i. Form 10-K/A for the fiscal year ended March 31, 2003, filed with the SEC
26 on July 29, 2003 and signed by Defendants Kotick, Doornink, and
27 Chardavoyne;
- 28 j. Form 10-K for the fiscal year ended March 31, 2004, filed with the SEC
on June 10, 2004 and signed by Defendants Kotick, Kelly, Doornink,
Chardavoyne, Morgado, Isgur, and Corti;
- k. Form 10-K for the fiscal year ended March 31, 2005, filed with the SEC
on June 9, 2005 and signed by Defendants Kotick, Kelly, Doornink,
Chardavoyne, Morgado, Isgur, and Corti; and
- l. Form 10-K for the fiscal year ended March 31, 2006, filed with the SEC
on June 9, 2006 and signed by Defendants Kotick, Kelly, Doornink,
Morgado, Isgur, and Corti.

1 161. The financial statements in the foregoing Form 10-K filings were false because
2 Activision, in violation of GAAP, understated compensation expenses it was required to incur
3 when the improperly priced options were granted, and therefore overstated net income by
4 indeterminate material amounts.

5 **THE INDIVIDUAL DEFENDANTS' CONCEALMENT OF THEIR MISCONDUCT**

6 162. From at least fiscal year 1995, Activision, with the knowledge, approval, and
7 participation of each of the Individual Defendants, for the purpose and with the effect of
8 concealing the improper option backdating:

9 a. disseminated to shareholders and filed with the SEC annual proxy
10 statements that falsely reported the dates of stock option grants to the Officer
11 Defendants; and

12 b. filed with the SEC Form 3, 4, and 5 filings that falsely reported the dates
13 of stock option grants to the Officer Defendants.

14 163. The Individual Defendants caused Activision to send shareholders proxy
15 statements in connection with the Company's annual shareholder meetings. The Individual
16 Defendants approved, prepared and/or reviewed each proxy statement between at least fiscal
17 year 1997 and fiscal year 2004. Moreover, they knew, or were deliberately reckless in not
18 knowing, that proxy statements sent to shareholders during this time period contained materially
19 false and misleading disclosures or omitted information about Activision's stock option
20 practices, as detailed herein.

21 164. Activision, with the knowledge, approval, and participation of each of the
22 Individual Defendants, for the purpose and with the effect of concealing the improper
23 backdating, disseminated to shareholders and filed with the SEC annual proxy statements that
24 falsely reported the dates of stock option grants to the Officer Defendants and falsely stated that
25 options were granted in accordance with the shareholder-approved stock option plans:

26 (a) Activision's Proxy Statement filed with the SEC on July 29, 1997, falsely
27 reported that options granted to Defendants Kelly, Kotick, Marks, and Plaga were granted
28 on December 20, 1996;

1 (b) Activision's Proxy Statement filed with the SEC on July 29, 1998, falsely
2 reported that options granted to Defendants Baker, Goldberg, and Plaga were granted on
3 May 15, 1997; falsely reported that options granted to Defendants Kotick and Kelly were
4 granted on May 19, 1997; and falsely reported that options granted to Defendants Baker,
5 Goldberg, and Plaga were granted on March 24, 1998.

6 (c) Activision's Proxy Statement filed with the SEC on July 29, 1999, falsely
7 reported that options granted to Defendants Kotick and Kelly were granted on June 5,
8 1998; and falsely reported that options granted to Defendants Goldberg and Plaga were
9 granted on March 4, 1999;

10 (d) Activision's Proxy Statement filed with the SEC on July 28, 2000, falsely
11 reported that options granted to Defendants Kotick, Kelly, Doornink, Dewar, and Lasky
12 were granted on April 30, 1999; and falsely reported that options granted to Defendants
13 Dewar and Lasky were granted on October 18, 1999;

14 (e) Activision's Proxy Statement filed with the SEC on July 30, 2001, falsely
15 reported that options granted to Defendants Kotick, Kelly, Doornink, Goldberg, and
16 Vrabeck were granted on April 18, 2000; and falsely reported that options granted to
17 Defendants Kotick and Kelly were granted on May 22, 2000;

18 (f) Activision's Proxy Statement filed with the SEC on July 29, 2002, falsely
19 reported that options granted to Defendants Kotick, Kelly, Doornink, Chardavoynne,
20 Steele, Goldberg, and Vrabeck were granted on April 4, 2001; and falsely reported that
21 options granted to Defendants Kotick, Kelly, Doornink, Chardavoynne, Goldberg and
22 Vrabeck were granted on October 1, 2001;

23 (g) Activision's Proxy Statement filed with the SEC on August 8, 2003,
24 falsely reported that options granted to Defendants Kotick, Kelly, Doornink,
25 Chardavoynne, Rowe, Goldberg, and Vrabeck were granted on April 8, 2002; and falsely
26 reported that options granted to Defendants Kotick, Kelly, and Doornink, were granted
27 on July 22, 2002; and

28 (h) Activision's Proxy Statement filed with the SEC on July 29, 2004, falsely

1 reported that options granted to Defendants Chardavoyne, Rowe, and Steele were granted
2 on April 11, 2003.

3 165. The Company, with the knowledge, approval, and participation of each of the
4 Individual Defendants, for the purpose and with the effect of concealing the improper option
5 backdating, filed with the SEC Form 3, Form 4, and Form 5 filings that falsely reported the dates
6 of the stock option grants to the Individual Defendants, as follows:

7 (a) Chardavoyne's Form 4s filed with the SEC on June 11, 2001 and
8 November 13, 2001 falsely reported that options granted to Chardavoyne had been
9 granted on April 4, 2001;

10 (b) Chardavoyne's Form 4 filed with the SEC on November 13, 2001 falsely
11 reported that options granted to Chardavoyne had been granted on October 1, 2001;

12 (c) Chardavoyne's Form 4 filed with the SEC on May 8, 2003 falsely reported
13 that options granted to Chardavoyne had been granted on April 11, 2003;

14 (d) Dewar's Form 3 filed with the SEC on July 22, 1999 falsely reported that
15 options granted to Dewar had been granted on April 30, 1999;

16 (e) Doornink's Form 4 filed on March 12, 2001 falsely reported that options
17 granted to Doornink had been granted on April 30, 1999;

18 (f) Doornink's Form 4 filed on March 12, 2001 falsely reported that options
19 granted to Doornink had been granted on April 18, 2000;

20 (g) Doornink's Form 4s filed on June 11, 2001 and November 13, 2001
21 falsely reported that options granted to Doornink had been granted on April 4, 2001;

22 (h) Doornink's Form 4 filed on November 13, 2001 falsely reported that
23 options granted to Doornink had been granted on October 1, 2001;

24 (i) Doornink's Form 5 filed on May 21, 2003 falsely reported that options
25 granted to Doornink had been granted on April 8, 2002 and July 22, 2002;

26 (j) Doornink's Form 4 filed on May 14, 2003 falsely reported that options
27 granted to Doornink had been granted on April 11, 2003;

28 (k) Goldberg's Form 4 filed on October 7, 1999 falsely reported that options

1 granted to Goldberg had been granted on March 24, 1998;

2 (l) Goldberg's Form 4 filed on September 8, 2000 falsely reported that
3 options granted to Goldberg had been granted on October 18, 1999 and April 18, 2000;

4 (m) Goldberg's Form 4s filed on June 11, 2001 and November 13, 2001
5 falsely reported that options granted to Goldberg had been granted on April 4, 2001;

6 (n) Goldberg's Form 4 filed on November 13, 2001 falsely reported that
7 options granted to Goldberg had been granted on October 1, 2001;

8 (o) Goldberg's Form 5 filed on May 14, 2003 falsely reported that options
9 granted to Goldberg had been granted on April 8, 2002;

10 (p) Kelly's Form 4 filed on October 8, 1999 falsely reported that options
11 granted to Kelly had been granted on April 30, 1999;

12 (q) Kelly's Form 4 filed on March 12, 2001 falsely reported that options
13 granted to Kelly had been granted on April 18, 2000;

14 (r) Kelly's Form 5 filed on March 10, 2001 falsely reported that options
15 granted to Kelly had been granted on May 22, 2000;

16 (s) Kelly's Form 4 filed on November 13, 2001 falsely reported that options
17 granted to Kelly had been granted on April 4, 2001 and October 1, 2001;

18 (t) Kelly's Form 4 filed on May 14, 2003 falsely reported that options granted
19 to Kelly had been granted on April 8, 2002 and July 22, 2002;

20 (u) Kotick's Form 4 filed on May 2, 2000 falsely reported that options granted
21 to Kotick had been granted on April 30, 1999;

22 (v) Kotick's Form 4 filed on April 10, 2001 falsely reported that options
23 granted to Kotick had been granted on April 18, 2000 and May 22, 2000;

24 (w) Kotick's Form 4 filed on November 13, 2001 falsely reported that options
25 granted to Kotick had been granted on April 4, 2001 and October 1, 2001;

26 (x) Lasky's Form 3 filed on September 3, 1999 falsely reported that options
27 granted to Lasky had been granted on December 20, 1996, May 15, 1997, March 24,
28 1998, and April 30, 1999;

1 (y) Lasky's Form 4 filed on January 13, 2000 falsely reported that options
2 granted to Lasky had been granted on October 18, 1999;

3 (z) Lasky's Form 4 filed on January 4, 2001 falsely reported that options
4 granted to Lasky had been granted on April 18, 2000;

5 (aa) Plaga's Form 4 filed on April 12, 1999 falsely reported that options
6 granted to Plaga had been granted on March 24, 1998;

7 (bb) Rowe's Form 4s filed on September 6, 2000 and March 12, 2001 falsely
8 reported that options granted to Rowe had been granted on April 18, 2000;

9 (cc) Rowe's Form 4s filed on June 11, 2001 and November 13, 2001 falsely
10 reported that options granted to Rowe had been granted on April 4, 2001;

11 (dd) Rowe's Form 4 filed on November 13, 2001 falsely reported that options
12 granted to Rowe had been granted on October 1, 2001;

13 (ee) Rowe's Form 4 filed on May 8, 2003 falsely reported that options granted
14 to Rowe had been granted on April 11, 2003;

15 (ff) Steele's Form 3 filed on July 22, 1999 falsely reported that options
16 granted to Steele had been granted on April 30, 1999;

17 (gg) Steele's Form 4s filed on August 9, 2000 and September 7, 2000 falsely
18 reported that options granted to Steele had been granted on April 18, 2000;

19 (hh) Steele's Form 4s filed on June 11, 2001 and November 13, 2001 falsely
20 reported that options granted to Steele had been granted on April 4, 2001;

21 (ii) Steele's Form 4 filed on May 9, 2003 falsely reported that options granted
22 to Steele had been granted on April 11, 2003;

23 (jj) Vrabeck's Form 4s filed on September 6, 2000 and March 12, 2001 falsely
24 reported that options granted to Vrabeck had been granted on April 18, 2000;

25 (kk) Vrabeck's Form 4s filed on June 11, 2001 and November 13, 2001 falsely
26 reported that options granted to Vrabeck had been granted on April 4, 2001; and

27 (ll) Vrabeck's Form 4 filed on November 13, 2001 falsely reported that
28 options granted to Vrabeck had been granted on October 1, 2001.

1 166. The Individual Defendants continued to conceal their foregoing misconduct until
2 this action was commenced.

3 **ACTIVISION'S FALSE FINANCIAL REPORTING IN VIOLATION OF GAAP**

4 167. As a result of Defendants' improper backdating and mispricing of stock options,
5 Defendants caused Activision to violate GAAP, SEC regulations, and Internal Revenue Service
6 ("IRS") rules and regulations.

7 168. Activision's annual and quarterly financial results for fiscal year 1996 through
8 fiscal year 2006 were included in reports filed with the SEC and in other shareholder reports. In
9 these reports, Defendants represented that Activision's financial results were presented in a fair
10 manner and in accordance with GAAP.

11 169. Defendants' representations were false and misleading as to the financial
12 information reported as such financial information was not prepared in conformity with GAAP,
13 nor was the financial information "a fair presentation" of the Company's financial condition and
14 operations, causing the financial results to be presented in violation of GAAP and SEC rules.

15 170. GAAP consists of those principles recognized by the accounting profession as the
16 conventions, rules, and procedures necessary to define accepted accounting practice at the
17 particular time. Regulation S-X, to which the Company is subject as a registrant under the
18 Exchange Act, 17 C.F.R. § 210.4-01(a)(1), provides that financial statements filed with the SEC,
19 which are not prepared in compliance with GAAP, are presumed to be misleading and
20 inaccurate.

21 **Violations Of GAAP**

22 171. As a result of Defendants' improper pricing and backdating of stock options,
23 Defendants caused Activision to understate its compensation expense by not properly accounting
24 for its stock options under GAAP and thus overstate the Company's net earnings.

25 172. Under well-settled accounting principles, Activision did not need to record an
26 expense for options granted to employees at the current market price ("at the money"). The
27 Company was, however, required to record an expense in its financial statements for any options
28 granted below the current market price ("in the money"). In order to provide Activision

1 executives and employees with far more lucrative “in the money” options, while avoiding having
2 to inform shareholders about millions of dollars incurred by the Company in compensation
3 expenses (and without paying the IRS millions of dollars in employment taxes), Defendants
4 systematically falsified Company records to create the false appearance that options had been
5 granted at the market price on an earlier date.

6 173. Activision has publicly acknowledged that it accounted for stock options using
7 the intrinsic method described in APB No. 25, “Accounting for Stock Issued to Employees.”
8 Under APB No. 25, employers were required to record as an expense on their financial
9 statements the “intrinsic value” of a fixed stock option on its “measurement date.” An option
10 that is in-the-money on the measurement date has intrinsic value, and the difference between its
11 exercise price and the quoted market price must be recorded as compensation expense to be
12 recognized over the vesting period of the option. Options that are at-the-money or out-of-the-
13 money on the measurement date need not be expensed. Excluding non-employee directors, APB
14 No. 25 required employers to record compensation expenses on options granted to non-
15 employees irrespective of whether they were in-the-money or not on the date of grant.

16 **Activision's GAAP Violations Were Material**

17 174. Activision’s false and misleading statements and omissions regarding its
18 accounting were material, particularly in light of SEC guidance on materiality. SEC Staff
19 Accounting Bulletin (“SAB”) Topic IM, Materiality, summarizes GAAP definitions of
20 materiality. Among other items, SAB Topic IM says: “A matter is ‘material’ if there is a
21 substantial likelihood that a reasonable person would consider it important.” It also stresses that
22 materiality requires qualitative, as well as quantitative, considerations. For example, if a known
23 misstatement would cause a significant market reaction, that reaction should be taken into
24 account in determining the materiality of the misstatement.

25 175. SAB Topic 1M further states:

26 Among the considerations that may well render material a
27 quantitatively small misstatement of a financial statement item are

28 * * *

1 whether the misstatement masks a change in earnings or other
2 trends; whether the misstatement hides a failure to meet analysts'
3 consensus expectations for the enterprise;

4 * * *

5 whether the misstatement concerns a segment or other portion of
6 the registrant's business that has been identified as playing a
7 significant role in the registrant's operations or profitability.

8 176. SAB Topic IM also says that an intentional misstatement of even immaterial
9 items may be illegal and constitute fraudulent financial reporting.

10 177. Activision's misstatements, by its own admissions, satisfy these criteria and thus
11 were material from both a quantitative and qualitative perspective.

12 **Activision's Financial Statements Violated Fundamental Concepts Of GAAP**

13 178. Due to these accounting improprieties, Activision presented its financial results
14 and statements in a manner that violated GAAP, which are described by the following
15 statements:

- 16 a. The principle that interim financial reporting should be
17 based upon the same accounting principles and practices
18 used to prepare annual financial statements (APB No. 28,
19 ¶10);
- 20 b. The principle that financial reporting should provide
21 information that is useful to existing and potential investors
22 and creditors and other users in making rational investment,
23 credit and similar decisions (Financial Accounting
24 Standards Board ("FASB") Statement of Concepts No. 1,
25 ¶34);
- 26 c. The principle that financial reporting should provide
27 information about the economic resources of an enterprise,
28 the claims to those resources, and the effects of
transactions, events and circumstances that change
resources and claims to those resources (FASB Statement
of Concepts No. 1, ¶40);
- d. The principle that financial reporting should provide
information about how management of an enterprise has
discharged its stewardship responsibility to stockholders for
the use of enterprise resources entrusted to it. To the extent
that management offers securities of the enterprise to the
public, it voluntarily accepts wider responsibilities for
accountability to prospective investors and to the public in
general (FASB Statement of Concepts No. 1, ¶50);

///

- 1 e. The principle that financial reporting should be reliable in
2 that it represents what it purports to represent (FASB
3 Statement of Concepts No. 2, ¶¶58-59);
4 f. The principle of completeness, which means that nothing is
5 left out of the information that may be necessary to insure
6 that it validly represents underlying events and conditions
7 (FASB Statement of Concepts No. 2, ¶79); and
8 g. The principle that conservatism be used as a prudent
9 reaction to uncertainty to try to ensure that uncertainties
10 and risks inherent in business situations are adequately
11 considered (FASB Statement of Concepts No. 2, ¶¶95, 97).

12 179. Further, the undisclosed adverse information concealed by Defendants is the type
13 of information which, because of SEC regulations, regulations of the national stock exchanges
14 and customary business practice, is expected by investors and securities analysts to be disclosed
15 and is known by corporate officials and their legal and financial advisors to be the type of
16 information which is expected to be and must be disclosed.

17 **ACTIVISION'S FINANCIAL STATEMENTS VIOLATED SEC REGULATIONS**

18 180. As a result of Defendants' improper pricing and backdating of stock options,
19 Defendants caused Activision to violate SEC regulations by failing to disclose that the
20 Company's senior executives had been improperly granted stock options and additional,
21 undisclosed compensation.

22 181. Under SEC Regulations, Item 8 of Form 14-A and Item 11 of Form 10-K, an
23 issuer must furnish information required by Item 402 of Regulation S-K [17 C.F.R. § 229.303].
24 Item 402(b) and (c) require a company to provide both a Summary Compensation Table and an
25 Option/SAR Grants table identifying the compensation of the named executive officers - the
26 Company's CEO and its next four most highly paid executives. Item 402 requires particularized
27 disclosures involving a company's stock option grants in the last fiscal year. In the summary
28 compensation table, the issuer must identify in a column "other annual compensation" received
by the named executives that is not properly categorized as salary or bonus, including any
"[a]bove market or preferential earnings on restricted stock, options, SARs or deferred
compensation" paid to the officer during the period. Item 402(b)(2)(iii)(C)(2). In the option
grant table, the issuer must identify in a column "[t]he per-share exercise or base price of the

1 options If such exercise or base price is less than the market price of the underlying security
2 on the date of grant, a separate, adjoining column shall be added showing market price on the
3 date of grant” Item 402(c)(2)(iv).

4 182. Defendants caused Activision to violate SEC regulations by failing to disclose
5 that the Company's named executive officers had been granted options with exercise prices
6 below the market value on the date the Board or Compensation Committee approved the grant.

7 VIOLATIONS OF IRS RULES AND REGULATIONS

8 183. As a result of Defendants' improper backdating of stock options, Defendants
9 further caused Activision to violate IRS rules and regulations due to its improper accounting for
10 the improperly priced and backdated stock options. As a result, the Company's tax liabilities
11 were understated, exposing Activision to potential amounts owed for back taxes, penalties and
12 interest to the IRS for improperly reporting compensation.

13 184. Defendants caused the Company to violate IRS Code § 162(m), which generally
14 limits a publicly traded company's tax deductions for compensation paid to each of its named
15 executive officers to \$1 million unless the pay is determined to be “performance-based.” In
16 order for compensation to be performance-based; the Compensation Committee must have set
17 pre-established and objective performance goals. The goals must then be approved by the
18 shareholders. Section 162(m) defines stock options as performance-based provided they are
19 issued at an exercise price that is no less than the fair market value of the stock on the date of the
20 grant. Accordingly, properly issued stock options do not have to be taken into account in
21 calculating whether an executive's compensation has exceeded the \$1 million compensation cap.

22 185. Section 162(m), known as the \$1 million rule, was enacted in 1993 in order to tie
23 top executives' soaring pay packages more closely to a company's performance. This change in
24 the tax law turned compensation practices for a company's top executives away from straight
25 salary-based compensation to performance-based compensation, including stock options.
26 According to former SEC Chairman Harvey Pitt: “What [162(m)] did was create incentives to
27 find other forms of compensation so people could get over the \$1 million threshold without
28 running afoul of the code.”

1 186. Defendants caused Activision to violate IRS Code § 162(m) by providing
2 improperly priced and backdated options to the Company's named executive officers, which
3 were granted with exercise prices that were less than the fair market value of the stock on the
4 date of the grant. As a result all of the income resulting from the exercise of the options must be
5 included for purposes of calculating whether the named executive's compensation exceeds the \$1
6 million cap for federal tax purposes.

7 187. Defendants further caused the Company to violate IRS rules and regulations in
8 order to avoid having to withhold income and FICA tax from its executives and employees upon
9 the exercise of Activision's stock options by improperly accounting for its Nonqualified Stock
10 Options ("NSOs") as Incentive Stock Options ("ISOs").

11 188. ISOs are a form of equity compensation that may be provided to a company's
12 employees. ISOs are required to be granted at an exercise price that is no less than the fair
13 market value of the stock on the date of the grant and are entitled to preferential tax treatment as
14 they are not subject to income tax upon exercise of the options but only upon sale of the stock
15 (except for the possible imposition of alternative minimum tax on the option spread at the time of
16 exercise). Stock options that do not qualify as ISOs are considered to be NSOs. NSOs are not
17 entitled to preferential treatment as they are subject to income tax and FICA withholding upon
18 exercise. As a result, a company that fails to withhold income tax and/or FICA upon the exercise
19 of NSOs by its employees would be liable for the amount of the income tax and FICA that the
20 company failed to withhold upon exercise of the options, in addition to interest and penalties.

21 189. By improperly treating its improperly priced and backdated options as ISOs,
22 Defendants failed to provide proper income tax and FICA withholdings upon the exercise of its
23 options by its executives and employees in violation of IRS rules and regulations.

24 190. The chart below illustrates Activision's false and misleading fiscal financial
25 results which materially understated its compensation expenses and thus overstated its earnings:

26 ///

27 ///

28 ///

Fiscal Year	Reported Earnings (Loss) In Thousands	Reported Basic Earnings (Loss) Per Share (\$)
1995	(1,520)	(.11)
1996	5,530	0.37
1997	7,107	0.49
1998	5,827	0.31
1999	12,254	0.69
2000	(34,088)	(1.38)
2001	20,507	0.82
2002	52,238	1.03
2003	66,180	0.69
2004	77,715	0.58
2005	138,335	0.74

INDIVIDUAL DEFENDANTS' INSIDER SELLING

191. Since 2001, certain of the Individual Defendants, while in possession of materially adverse non-public information regarding the backdating of stock options and the false financial statements resulting therefrom, *sold more than \$357 million in Activision stock*, a significant portion of which was obtained through the exercise of improperly priced and backdated stock options, as demonstrated below:

Defendant	Date Of Sales	Shares Sold	Proceeds (\$)
Chardavoyne	10/24/01-6/1/05	628,944	12,605,858.08
Doornink	11/14/01-11/4/05	2,771,636	59,659,587.58
Goldberg	10/24/01-6/8/04	530,575	11,739,057.24
Henderson	12/11/01-8/3/05	85,000	1,833,000.00
Isgur	2/22/02-2/9/05	181,250	4,545,343.65
Kelly	10/24/01-2/9/05	4,280,000	116,080,745.25
Kotick	10/24/01-9/15/05	4,197,569	109,783,325.84
Mayer	1/31/02-1/2/04	96,983	2,175,757.91
Morgado	2/9/05	100,000	2,306,000
Rowe	10/23/01-8/9/06	401,420	9,293,870.04
Steele	12/11/01-8/2/05	415,425	9,298,698.25
Vrabeck	11/6/01-6/1/05	881,197	18,257,625.00
TOTALS	10/23/01-8/9/06	14,569,999	357,578,868.84

192. A significant portion of these proceeds from stock sales were obtained through the exercise of improperly priced and backdated stock options. Defendants exercised certain of their improperly priced and backdated stock options described herein and, on the same date or shortly

1 thereafter, sold those options at the then-market price of Activision's common stock. A
 2 sampling of publicly available records reveals that Defendants Kelly, Kotick, Doornink,
 3 Goldberg, and Chardavoyne have realized at least \$31.7 million by exercising and selling a
 4 portion of their improperly priced and backdated options, as demonstrated below:

Defendant	Sample Of Shares Of Backdated Options Exercised And Sold	Proceeds
Brian G. Kelly	600,000	\$15,595,029
Robert Kotick	403,500	\$9,106,710
Ronald Doornink	189,464	\$3,831,969
Lawrence Goldberg	199,594	\$2,567,159
William Chardavoyne	46,995	\$623,279
TOTAL		\$31,724,147

10 193. At the time of the stock sales set forth above, the Individual Defendants possessed
 11 knowledge of the backdating scheme, which was adverse material non-public information, and
 12 sold Activision common stock on the basis of such information.

13 194. Under California law, the Individual Defendants were not permitted to trade on
 14 this information without first disclosing the backdating scheme to the public.

DERIVATIVE ACTION ALLEGATIONS

16 195. Co-Lead Plaintiffs bring this action derivatively on behalf and for the benefit of
 17 Activision to redress injuries suffered, and yet to be suffered, by the Company as a direct and
 18 proximate result of the breaches of fiduciary duties, unjust enrichment, and other legal violations
 19 alleged herein. Activision continues to be harmed, and has yet to be fully and completely
 20 harmed, by the backdating and improper pricing scheme that occurred. Activision is named as a
 21 nominal defendant solely in a derivative capacity.

22 196. The wrongful acts complained of herein subject, and will persist in subjecting, the
 23 Company to continuing harm because the adverse consequences of the injurious actions are still
 24 in effect.

25 197. Co-Lead Plaintiffs are shareholders of Activision common stock who will
 26 adequately and fairly represent the interests of the Company and its shareholders in enforcing
 27 and prosecuting its rights. Co-Lead Plaintiffs intend to retain shares in Activision throughout the
 28 duration of this litigation.

1 198. Co-Lead Plaintiffs were shareholders at the time of the transactions or any part
2 thereof. Co-Lead Plaintiff Amalgamated Bank has owned Activision stock continuously since
3 March 2002. Co-Lead Plaintiff Ryan Vazquez has owned Activision stock continuously since
4 May 21, 2002.

5 199. In addition, Co-Lead Plaintiffs bring this action on behalf of Activision because:

6 (i) There is a strong prima facie case in favor of the claims asserted on behalf
7 of the corporation;

8 (ii) No other similar action against the same defendants covering the same
9 stock option grants and claims has been or is likely to be instituted;

10 (iii) Co-Lead Plaintiffs acquired the shares before there was disclosure to the
11 public or to Co-Lead Plaintiffs of the wrongdoing of which Co-Lead Plaintiffs complain;

12 (iv) Unless the action can be maintained, the Individual Defendants retain a
13 gain derived from the Individual Defendants' willful breach of fiduciary duties; and

14 (v) The requested relief will not result in unjust enrichment of Activision or
15 any shareholder of Activision.

16 200. The wrongful actions complained of herein were fraudulently concealed from
17 Activision's shareholders. The first public information about Activision's backdating scheme
18 came on June 19, 2006, when Janco Partners raised questions about Activision's option granting
19 practices. A reasonable shareholder would not have discovered the wrongdoing earlier. Co-
20 Lead Plaintiffs purchased shares prior to the disclosure of any wrongdoing.

21 DEMAND EXCUSED ALLEGATIONS

22 201. Co-Lead Plaintiffs have not made a demand on the Activision Board to institute
23 this action against Defendants in connection with the wrongs alleged herein. Such demand
24 would be futile and useless, and is thereby excused, because the Board is incapable of making an
25 independent and disinterested decision to institute and vigorously prosecute this action.

26 202. Backdating options qualifies as an instance in which a transaction is so egregious
27 on its face that Board approval cannot meet the test of business judgment, and a substantial
28 likelihood of director liability therefore exists. The fact that Activision restated its financials on

1 May 25, 2007 further supports director liability. Co-Lead Plaintiffs' claims, as alleged herein,
2 raise a reason to doubt the disinterestedness of the current Board and confirm that they are
3 incapable of impartially considering demand.

4 203. Demand is excused because a majority of the directors are not independent and
5 disinterested with respect to considering the demand. On July 12, 2006, Co-Lead Plaintiffs first
6 commenced this action. At that time, the Activision Board consisted of a total of eight directors.
7 Six of these directors are named herein as Director Defendants and include: Defendants Kotick,
8 Kelly, Doornink, Isgur, Morgado, and Corti. As alleged herein, in gross breach of their fiduciary
9 duties as officers and/or directors of Activision, these six Director Defendants colluded with one
10 another and the Individual Defendants to:

11 (a) improperly backdate stock option grants, in violation of the
12 Company's shareholder approved stock option plans;

13 (b) improperly issue stock options at below fair market price as
14 required by Activision's shareholder approved stock option plans, amounting to
15 *ultra vires* acts beyond the scope of the authorized and legitimate powers of the
16 Company;

17 (c) improperly record and account for the improperly priced and
18 backdated stock options, in violation of GAAP;

19 (d) improperly take tax deductions based on the improperly priced and
20 backdated stock options, in violation of Section 162(m) of the Internal Revenue
21 Code, 26 U.S.C. § 162(m); and

22 (e) produce and disseminate to Activision shareholders and the market
23 false financial statements and other false SEC filings that improperly recorded
24 and accounted for the improperly priced and backdated option grants and
25 concealed the improper backdating of stock options.

26 204. Accordingly, a demand upon these Director Defendants would be futile and
27 useless because they have incentive to conceal, rather than expose, the truth regarding
28 Activision's historical stock option grant practices and policies. In support of the wrongs alleged

1 herein, Co-Lead Plaintiffs' allegations include specific backdated grants, specific language in
2 option plans, specific public disclosures, and supporting empirical analysis to allege knowing
3 and purposeful violations of shareholder plans. These facts, as alleged herein, provide sufficient
4 particularity to establish that making a demand upon Activision's Board to initiate this litigation
5 would have been futile.

6 205. In addition, Defendants Kotick, Kelly, Doornink, Isgur, Morgado, and Corti are
7 incapable of independently and disinterestedly considering a demand to commence and
8 vigorously prosecute this action because:

9 (a) **Defendant Kotick** has been the CEO and Chairman of the Board
10 of Directors of Activision since February 1991. Kotick has owned between 4.6%
11 and 10.8% of Activision's outstanding shares. Defendant Kotick personally
12 received at least 3,355,974 backdated stock options between December 20, 1996
13 and July 22, 2002. Defendant Kotick also received millions of dollars in salary,
14 bonuses, and other forms of compensation, and received loans totaling \$1.2
15 million from the Company, with approval from the Board and its Compensation
16 Committee. The value of Defendant Kotick's exercisable in-the-money options
17 as stated in a recent Activision Proxy Statement was approximately \$81.8 million
18 and the value of his unexercisable in-the-money stock options was approximately
19 \$5.3 million. Publicly available records reveal that Defendant Kotick realized at
20 least \$9,106,710 by exercising and then selling a portion of his backdated options.
21 In addition, Defendant Kotick realized at least \$109,783,325.84 by selling shares
22 of Activision common stock, including shares obtained through the exercise of
23 improperly-priced and backdated stock options, while in possession of materially
24 adverse non-public information.

25 (b) **Defendant Kelly** has been a director since 1995 and Co-Chairman
26 of the Company since 1998. Kelly has previously served as President, COO,
27 CFO, and Secretary of the Company. Defendant Kelly has held between 4.0%
28 and 11.7% of the Company's outstanding shares. Kelly personally received at

1 least 3,867,974 backdated stock options between December 20, 1996 and July 22,
2 2002. Defendant Kelly also received millions of dollars in salary, bonuses, and
3 other forms of compensation, and received Company loans in excess of \$1
4 million, with Board and Compensation Committee approval. The value of
5 Defendant Kelly's exercisable in-the-money options as stated in a recent
6 Activision Proxy Statement was approximately \$76.3 million and the value of his
7 unexercisable in-the-money stock options was approximately \$6.4 million.
8 Publicly available records reveal that Defendant Kelly has realized at least
9 \$15,595,029 by exercising and then selling a portion of his backdated options. In
10 addition, Defendant Kelly realized at least \$116,080,745.25 by selling shares of
11 Activision common stock, including shares obtained through the exercise of
12 improperly priced and backdated stock options, while in possession of materially
13 adverse non-public information.

14 (c) **Defendant Doornink** has been Senior Advisor and director of the
15 Company since April 2003. Doornink has previously held other executive officer
16 positions with the Company since October 1998. Defendant Doornink personally
17 received at least 1,435,481 backdated stock options between April 30, 1999 and
18 April 11, 2003. Defendant Doornink also received millions of dollars in salary,
19 bonuses, and other forms of compensation, and received Company loans in excess
20 of \$420,000, with Board and Compensation Committee approval. The value of
21 Defendant Doornink's exercisable in-the-money options as stated in a recent
22 Activision Proxy Statement was approximately \$10.8 million and the value of his
23 unexercisable in-the-money stock options was approximately \$9.4 million.
24 Publicly available records reveal that Defendant Doornink realized at least
25 \$3,831,969 by exercising and then selling a portion of his backdated options. In
26 addition, Defendant Doornink realized at least \$59,659,587.58 by selling shares of
27 Activision common stock, including shares obtained through the exercise of
28 improperly priced and backdated stock options, while in possession of materially

1 adverse non-public information.

2 (d) **Defendant Isgur** has been a director of the Company since 1991
3 and has served on the Compensation Committee since at least 1995. As a
4 member of the Compensation Committee and a director, Defendant Isgur
5 knowingly approved of the backdated stock option grants and *ultra vires* acts as
6 alleged herein. During fiscal years 1996 through 1998, the Compensation
7 Committee was composed of only two members: Defendants Isgur and Mayer.
8 Defendant Isgur also served on the Board's Audit Committee since at least 1995.
9 Isgur served as the Chair of the Audit Committee in 2002 and 2003. As a
10 member of the Audit Committee and a director, Defendant Isgur knowingly
11 approved of the false and misleading SEC filings and Proxy Statements sent to
12 Activision's shareholders, which concealed the Company's backdating practices.
13 In addition, Defendant Isgur realized at least \$4,545,343.65 by selling shares of
14 Activision common stock while in possession of materially adverse non-public
15 information.

16 (e) **Defendant Morgado** has been a director of the Company since
17 February 1997 and has been a member of the Compensation Committee since
18 June 1998. As a member of the Compensation Committee and a director,
19 Defendant Morgado knowingly approved of the backdated stock option grants and
20 *ultra vires* acts as alleged herein. Defendant Morgado joined the Audit
21 Committee in 2004. As a member of the Audit Committee and a director,
22 Defendant Morgado knowingly approved of false and misleading SEC filings and
23 Proxy Statements sent to Activision's shareholders, which concealed the
24 Company's backdating practices. In addition, Defendant Morgado realized at
25 least \$2,306,000 by selling shares of Activision common stock while in
26 possession of materially adverse non-public information.

27 (f) **Defendant Corti** joined the Board in December of 2003. As
28 Chairman of the Board's Audit Committee, Corti signed the Company's false and

1 misleading 2004 Form 10-K that included the April 11, 2003 backdated option
2 grants. As a member of the Audit Committee and a director, Defendant Corti
3 knowingly approved of false and misleading SEC filings and Proxy Statements
4 sent to Activision's shareholders, which concealed the Company's backdating
5 practices.

6 206. Demand is futile because the granting of backdated stock options is not a valid
7 exercise of business judgment. The stock option grants as alleged herein raise reason to doubt
8 whether the option grants were a valid exercise of business judgment by the Director Defendants.
9 Specifically, the terms of the stock option plans required that the exercise price of each option
10 could not be less than 100% of the fair market value of the stock on the grant date. Accordingly,
11 the Board had no discretion to contravene the terms of the stock option plans. Altering the actual
12 date of the grants so as to affect the exercise prices contravenes the plans. The Board's knowing
13 and intentional decision to exceed the shareholders' grant of express (but limited) authority
14 raises doubt regarding whether such decision is a valid exercise of business judgment and is
15 sufficient to excuse a failure to make demand.

16 207. The backdating of Activision stock options supports demand futility because such
17 conduct is not a valid exercise of business judgment. As alleged herein, 15 option grants over a
18 seven year period were granted at the lowest price for the 20-day period after the grant date. In
19 addition to the highly suspicious timing of these grants, empirical evidence, such as the Janco
20 Report previously discussed, supports Co-Lead Plaintiffs' claims that backdating occurred. The
21 fact that the Board granted options, not at set or designated times, but by a sporadic method as
22 alleged herein, further supports the improper backdating claims. Additionally, Activision's own
23 public statements, as alleged in detail herein, further support the allegations that backdating
24 occurred. Finally, backdating allegations and demand futility are supported by the fact that the
25 Board ignored limitations set out in the Company's stock option plans. The plans do not grant
26 the Board discretion to alter the exercise price by falsifying the date on which options were
27 granted. As alleged herein, the Director Defendants repeatedly violated an express provision of
28 the option plans and exceeded the shareholders' grant of express authority.

1 208. The Director Defendants knew the stock options alleged herein were backdated.
2 The grants were approved by the Board which should have been aware of the date of the options
3 as well as the date on which they actually approved a grant. As directors of a Delaware
4 corporation, the Director Defendants knew or should have known that backdating stock options
5 violated their duty of loyalty because lying to shareholders is inconsistent with loyalty, which
6 necessarily requires good faith.

7 209. The Director Defendants face substantial liability for approving the improperly
8 priced and backdated stock options. The Director Defendants lied to their shareholders regarding
9 their violations of the shareholder approved plans and, therefore, cannot satisfy their duty of
10 loyalty.

11 210. In short, a majority of current Activision directors suffer from irreconcilable
12 conflicts of interest arising from the backdating scheme, including acquiescing to or personally
13 benefiting from the scheme, and as such, cannot adequately assess or review a demand related
14 thereto from the standpoint of the Company's best interests.

15 **Activision's Special Sub-Committee**

16 211. On July 28, 2006, Activision purportedly formed a "Special Sub-Committee" of
17 the Board in response to Co-Lead Plaintiff's complaint filed on July 12, 2006. Activision has not
18 publicly disclosed the identity of the members of the Special Sub-Committee. Co-Lead Plaintiffs
19 are informed and believe that Defendant Corti and non-defendant director Richard Sarnoff are
20 the only members of the two-person Special Sub-Committee. As described above, Defendant
21 Corti is conflicted and unable to independently serve on the Special Sub-Committee
22 investigating the Company's historical stock option grant practices.

23 212. The Special Sub-Committee is ineffective and conflicted because it ultimately
24 answers to the conflicted and interested Board of Activision.

25 213. The purported investigation by the Special Sub-Committee has been a secret
26 process. On February 28, 2007, Co-Lead Plaintiffs sent a request to the law firm of Munger,
27 Tolles & Olson LLP, counsel for the Special Sub-Committee, to meet with the Special Sub-
28 Committee to discuss Co-Lead Plaintiffs' claims. Co-Lead Plaintiffs have not received any

1 response to their request. In addition, Co-Lead Plaintiffs repeatedly requested documents,
2 including those purportedly reviewed by the Special Sub-Committee, from Activision.
3 Defendants have refused to produce any documents to Co-Lead Plaintiffs, despite apparently
4 producing documents to the SEC.

5 214. On March 8, 2007, after nearly eight months since the commencement of this
6 action, Activision announced that the Special Sub-Committee reported "its principal findings and
7 resulting recommendations to the full board." Notably, the Special Sub-Committee reported its
8 findings and recommendations to the full Board, which, as explained above, is not independent
9 and disinterested.

10 215. While the Special Sub-Committee's unpublished report purportedly sets forth
11 various "recommendations" and purported "plans" to change Activision's corporate governance
12 policies, the Special Sub-Committee and the Board have not taken legal action against the
13 Defendants or expressly revealed the specific recommended changes. Based upon the
14 Company's public disclosures, the recommendations do not go far enough to remedy the damage
15 inflicted upon Activision by Defendants.

16 TOLLING OF THE STATUE OF LIMITATIONS

17 216. The Causes of Action alleged herein are timely. Defendants wrongfully
18 concealed their manipulation of the stock option grants as described herein.

19 217. Activision's public investors had no reason to know of the Defendants' breaches
20 of their fiduciary duties until at least June 2006, when Janco Partners, Inc. published its analyst
21 report detailing the option backdating practices of Activision. Further, as set forth herein, the
22 information that was public until that time was false and misleading.

23 218. As fiduciaries of Activision and its public shareholders, the Defendants cannot
24 rely on any limitations defense where they withheld from Activision's public shareholders the
25 facts that give rise to the claims asserted herein.

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1 **FIRST CAUSE OF ACTION**

2 **For Breach Of Fiduciary Duty**

3 **(Against the Individual Defendants)**

4 219. Co-Lead Plaintiffs incorporate by reference and reallege each and every allegation
5 contained above as though fully set forth herein.

6 220. The Individual Defendants, by reason of their positions as fiduciaries of the
7 Company, owed duties of due care, undivided loyalty, honesty, fair play, fair dealing, good faith,
8 and truthful disclosure. Each of the Individual Defendants had a fiduciary duty to refrain from
9 unduly benefiting themselves and other Company insiders at the expense of Activision. The
10 Individual Defendants violated and breached these duties, as alleged in detail herein.

11 221. As alleged herein, the Officer Defendants breached their fiduciary duties by
12 colluding with one another and the Director Defendants to:

13 (a) improperly backdate stock option grants, in violation of the
14 Company's shareholder approved stock option plans;

15 (b) improperly issue stock options at below fair market price as
16 required by Activision's shareholder approved stock option plans, amounting to
17 *ultra vires* acts beyond the scope of the authorized and legitimate powers of the
18 Company;

19 (c) improperly record and account for the improperly priced and
20 backdated stock options, in violation of GAAP;

21 (d) improperly take tax deductions based on the improperly priced and
22 backdated stock options, in violation of Section 162(m) of the Internal Revenue
23 Code, 26 U.S.C. § 162(m); and

24 (e) produce and disseminate to Activision shareholders and the market
25 false financial statements and other false SEC filings that improperly recorded
26 and accounted for the improperly priced and backdated option grants and
27 concealed the improper backdating of stock options.

28 ///

1 222. The Officer Defendants' foregoing misconduct was not, and could not have been,
2 an exercise of good faith business judgment. Rather, it was intended to, and did, unduly benefit
3 themselves at the expense of the Company.

4 223. Each Director Defendant received, approved, ratified or was otherwise
5 responsible for permitting the improperly priced and backdated options to be granted. The
6 Director Defendants, particularly those directors who were members of the Compensation
7 Committee during the period that the improperly priced and backdated options were granted,
8 each abandoned and abdicated their fiduciary responsibilities to the Company. As such, each
9 Director Defendant failed to act (1) in good faith; (2) with the care an ordinarily prudent person
10 in a like position would exercise under similar circumstances; and (3) in accordance with a
11 reasonable belief that their conduct was in the best interest of the Company.

12 224. As alleged herein, the Director Defendants breached their fiduciary duties by
13 colluding with one another and the Officer Defendants to:

14 (a) improperly backdate stock option grants, in violation of the
15 Company's shareholder approved stock option plans;

16 (b) improperly issue stock options at below fair market price as
17 required by Activision's shareholder approved stock option plans, amounting to
18 *ultra vires* acts beyond the scope of the authorized and legitimate powers of the
19 Company;

20 (c) improperly record and account for the improperly priced and
21 backdated stock options, in violation of GAAP;

22 (d) improperly take tax deductions based on the improperly priced
23 and backdated stock options, in violation of Section 162(m) of the Internal
24 Revenue Code, 26 U.S.C. § 162(m); and

25 (e) produce and disseminate to Activision shareholders and the market
26 false financial statements and other false SEC filings that improperly recorded
27 and accounted for the improperly priced and backdated option grants and
28 concealed the improper backdating of stock options.

1 225. The Director Defendants' foregoing misconduct was not, and could not have
2 been, an exercise of good faith business judgment. Rather, it was intended to, and did, unduly
3 benefit the Officer Defendants at the expense of the Company.

4 226. As a direct and proximate result of the Individual Defendants' breach of fiduciary
5 duty and waste of corporate assets, the Company has sustained, and will continue to sustain,
6 substantial harm.

7 227. The Individual Defendants are liable to Activision as a result of the acts alleged
8 herein.

9 **SECOND CAUSE OF ACTION**

10 **For Aiding And Abetting A Breach Of Fiduciary Duty**

11 **(Against the Individual Defendants)**

12 228. Co-Lead Plaintiffs incorporate by reference and reallege each and every allegation
13 contained above as though fully set forth herein.

14 229. By reason of their positions as fiduciaries of the Company, the Individual
15 Defendants owed duties of due care, undivided loyalty, good faith, and truthful disclosure. The
16 Individual Defendants violated and breached these duties.

17 230. By virtue of their role with regard to the backdated stock options and *ultra vires*
18 option grants alleged herein, each Individual Defendant aided and abetted one another in their
19 breach of fiduciary duty.

20 231. As a direct and proximate result of the Individual Defendants' aiding and abetting
21 one another's breach of fiduciary duty, the Company has sustained, and will continue to sustain,
22 substantial harm.

23 232. The Individual Defendants are liable to the Company as a result of the acts
24 alleged herein.

25 **THIRD CAUSE OF ACTION**

26 **For Ultra Vires Acts**

27 **(Against the Individual Defendants)**

28 233. Co-Lead Plaintiffs incorporate by reference and reallege each and every allegation

1 contained above as though fully set forth herein.

2 234. Pursuant to California Corporations Code Sections 207 and 208, the agreements
3 and transactions described above and any other unauthorized agreements and transactions should
4 be declared invalid, void, and rescinded in full as *ultra vires* acts, as they were beyond the scope
5 of the authorized and legitimate powers of the Company, and in violation of Individual
6 Defendants' authority.

7 235. The Individual Defendants should be enjoined from conducting any further
8 activities which are injurious to the Company and should pay all damages and/or losses suffered
9 by the Company as a result of the *ultra vires* transactions and violations of their authority.

10 **FOURTH CAUSE OF ACTION**

11 **For Unjust Enrichment**

12 **(Against the Officer Defendants)**

13 236. Co-Lead Plaintiffs incorporate by reference and reallege each and every allegation
14 contained above as though fully set forth herein.

15 237. As a direct and proximate result of the acts alleged herein, the Officer Defendants
16 wrongfully deprived the Company of substantial wealth and were unjustly enriched thereby.

17 238. The Officer Defendants are liable to the Company as a result and should be
18 required to disgorge their unjust gains and return them to the Company.

19 **FIFTH CAUSE OF ACTION**

20 **For Waste**

21 **(Against the Director Defendants)**

22 239. Co-Lead Plaintiffs incorporate by reference and reallege each and every allegation
23 contained above as though fully set forth herein.

24 240. As a result of their conduct as alleged above, and by failing to properly consider
25 the interests of Activision and its shareholders, the Director Defendants have caused Activision
26 to waste valuable corporate assets by backdating options, making *ultra vires* option grants, and
27 by incurring potentially millions of dollars of legal liability and costs to defend their unlawful
28 actions.

1 241. As a result of the waste of corporate assets from their *ultra vires* acts, the Director
2 Defendants are liable to the Company. Further, the unlawful conduct alleged herein constitutes
3 *ultra vires* acts that are not protected under the business judgment rule.

4 242. Co-Lead Plaintiffs, on behalf of Activision, have no adequate remedy at law.

5 **SIXTH CAUSE OF ACTION**

6 **For Rescission**

7 **(Against the Officer Defendants)**

8 243. Co-Lead Plaintiffs incorporate by reference and reallege each and every allegation
9 contained above as though fully set forth herein.

10 244. As a result of the acts alleged herein, all stock option contracts between the
11 Officer Defendants and Activision entered into from at least fiscal year 1996 through fiscal year
12 2006, were obtained through the Officer Defendants' fraud, deceit, and abuse of control.
13 Further, the backdated stock options, the *ultra vires* option grants, and the shares underlying
14 these options were not duly authorized by the Board, as was legally required, because they were
15 not authorized in accordance with the terms of the publicly filed contracts—including the
16 relevant stock option plans and the Officer Defendants' employment agreements—approved by
17 Activision shareholders and filed with the SEC.

18 245. All stock option contracts between the Officer Defendants and Activision entered
19 into during fiscal years 1996 through 2006 should, therefore, be rescinded, with all sums paid
20 under such contracts returned to the Company, and all such executory contracts cancelled and
21 declared void.

22 **SEVENTH CAUSE OF ACTION**

23 **For Insider Trading (Cal. Corp. Code § 25402)**

24 **(Against the Individual Defendants)**

25 246. Co-Lead Plaintiffs incorporate by reference and reallege each and every allegation
26 contained above as though fully set forth herein.

27 247. The Individual Defendants, by reason of their relationship with the Company as
28 officers of the Company, had access, directly or indirectly, to material information about the

1 Company not generally available to the public.

2 248. The Individual Defendants knowingly used material information about the
3 Company, not generally available to the public, to facilitate the backdating of stock options and
4 the making of *ultra vires* stock option grants by the Company in the state of California.

5 249. The Individual Defendants knowingly used their positions at the Company to
6 avail themselves of non-public information to facilitate backdating of Activision securities for
7 their own personal gain in a manner not available to the public.

8 250. The Individual Defendants purchased (through their acquisition and/or exercise of
9 backdated stock options) Activision securities with actual knowledge that the value of these
10 securities was inflated as a result of backdating, in violation of Section 25402 of the California
11 Corporations Code.

12 251. The Individual Defendants are liable to the Company for damages pursuant to
13 Section 25502.5 of the California Corporations Code.

14 WHEREFORE, Co-Lead Plaintiffs demand judgment as follows:

- 15 (i) Awarding to the Company money damages against all Individual
16 Defendants, jointly and severally, for all losses and damages suffered as a
17 result of the acts and transactions complained of herein;
- 18 (ii) Awarding to the Company restitution from each of the Officer Defendants
19 and ordering disgorgement of all profits, benefits, and other compensation
20 obtained by the Officer Defendants as a result of the acts and transactions
21 complained of herein;
- 22 (iii) Rescission of all option contracts granted to the Officer Defendants as a
23 result of the acts and transactions complained of herein and the
24 cancellation, nullification, and declaration as void of any and all current or
25 future obligations of the Company under all executory contracts obtained
26 by the Officer Defendants as a result of the acts and transactions
27 complained of herein;
- 28

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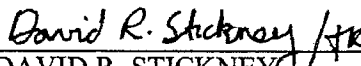
- (iv) Formation of a constructive trust to hold all executory option contracts issued to the Officer Defendants;
- (v) Awarding punitive damages against the Individual Defendants;
- (vi) Awarding damages pursuant to California Corporations Code Sections 25402 and 25502.5;
- (vii) Awarding to Co-Lead Plaintiffs the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and
- (viii) Granting such other relief as the Court may deem just and proper.

JURY DEMAND

Co-Lead Plaintiffs demand a trial by jury on all claims so triable.

Dated: July 13, 2007

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP



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PROOF OF SERVICE

I, the undersigned, declare:

That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested in the within action; that declarant's business address is 12481 High Bluff Drive, Suite 300, San Diego, California 92130.

That on July 13, 2007, declarant caused the foregoing document described as SECOND AMENDED CONSOLIDATED SHAREHOLDER DERIVATIVE COMPLAINT on each party, as stated on the attached Service List.

(BY E-SERVICE) I personally caused each such document to be served by **CASE ANYWHERE LLC** by transmitting a true and correct copy to **CASE ANYWHERE LLC** to serve the parties on the attached Service List by email.

Executed on July 13, 2007, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


DENA L. BIELASZ

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