

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: ACTIVISION BLIZZARD, INC.) Consolidated C.A. No. 8885-VCL
STOCKHOLDER LITIGATION) PUBLIC VERSION
) E-FILED ON: OCTOBER 31, 2014

**VERIFIED FIFTH AMENDED
CLASS AND DERIVATIVE COMPLAINT**

Lead Plaintiff Anthony Pacchia, by his undersigned counsel, brings this stockholder class and derivative action on behalf of Activision Blizzard, Inc. (“Activision” or the “Company”) and on behalf of himself and all other similarly situated public stockholders of Activision (the “Class” as defined below), against certain current and former members of the Company’s Board of Directors (the “Board”), the Company’s former majority stockholder Vivendi S.A. (“Vivendi”), and certain investment vehicles, ASAC II LP (“ASAC”) and ASAC II LLC (“ASAC GP”), created by the Company’s long-time Chief Executive Officer and director, Robert A. Kotick, and the Company’s then-Co-Chairman, Brian G. Kelly, and alleges as follows on information and belief, based on an investigation of counsel that includes a review of documents produced pursuant to 8 *Del. C.* § 220, discovery from defendants and various third parties, and publicly available documents, except as to the allegations pertaining to himself and his own acts, which are alleged upon knowledge:

NATURE OF THE ACTION

1. This is a case about two sets of fiduciaries who each abused their authority and made improper threats in aid of an \$8.2 billion transaction that served their mutual interests but deprived Activision and its stockholders of the valuable opportunity to repurchase control of the Company and obtain wealth that Kotick and Kelly captured for themselves.

2. Kotick and Kelly are long-time business partners who in 1990 were part of a small group of investors that bought a 25% stake in Activision's predecessor when it was on the verge of insolvency. Kotick took the helm as CEO in 1991, led the Company into market leadership, and became one of the highest paid CEOs in the United States. On July 9, 2008, Kotick and Kelly engineered a transaction by which Vivendi acquired a majority interest in the Company, including the great bulk of Kotick's and Kelly's equity. The transaction contemplated that Vivendi would achieve unfettered control over Activision five years hence, on July 9, 2013.

3. In 2012, Vivendi was burdened with debt, needed liquidity, and was exploring ways to monetize its stake in Activision, including a potential sale of the Company. J.P. Morgan advised Activision's outside directors in June 2012 that the only strategic alternatives potentially attractive to both Vivendi's and Activision's

stockholders would be a sale of Activision to a third party or a redemption of Vivendi's stake by Activision. J.P. Morgan further advised Activision's outside directors that a special dividend or the sale of Vivendi's stake to a third party had no attractiveness to Activision's stockholders.

4. By December 2012, Vivendi had failed in its effort to sell Activision or its stake in Activision to third parties. Vivendi advised Kotick that Vivendi was evaluating declaration of an extraordinary debt-financed dividend once Vivendi obtained control of Activision's Board in July 2013. JP Morgan examined ways for the Company to counter that threat. Meanwhile, Kotick and Kelly were secretly developing a plan to raise \$3 billion for their own investment vehicle, ASAC, and buy a 33% stake in a post-Vivendi Company.

5. Kotick and Kelly targeted Activision's strategic partners and largest institutional investors as potential investors. On February 14, 2013, Kotick and Kelly submitted a formal proposal to Vivendi stating that they were highly confident they could obtain binding commitments for \$3 billion in equity investments within a month of a deal being authorized. Kotick requested the creation of a Special Committee of directors to authorize his proposed transaction.

6. The newly created Special Committee sought and obtained broad powers to evaluate alternatives and negotiate a transaction in the best interest of all

Activision stockholders. Vivendi, Kotick and Kelly squelched those ambitions. To enhance its leverage in selling its majority stake, Vivendi made clear that its alternative was to use its power as a controller to implement a debt-financed special dividend. To enhance his leverage as an acquirer of control, Kotick made clear that he would not support marketing efforts for any equity offering or debt offering as part of a repurchase of control by the Company. Kotick even dared the Board to fire him, knowing that if he left the Company's employ its financing opportunities would dissipate, its operational performance would suffer, and Vivendi would have a free hand to lever the Company and declare a special dividend.

7. The Special Committee did not negotiate for a temporary stay of Vivendi's contractual power to assert control on July 9, 2013, or for any power to block a special dividend. The Special Committee did not confront or discipline Kotick. Nor did the Special Committee try to assemble its own investor group. The Special Committee was neutered in its efforts to negotiate an alternative transaction in which Kotick, Kelly and their co-investors did not obtain effective voting control.

8. Vivendi, Kotick and Kelly forced the disbandment of the Special Committee on June 6, 2013, and then proceeded to negotiate the terms of a

mutually acceptable transaction. Only then was the Special Committee reconstituted to approve the transaction – which is how Kotick and Kelly originally had sought to cabin the role of the Special Committee.

9. A term sheet was agreed to by ASAC and Vivendi on July 9, 2013, the transaction was approved by the Board on July 25, 2013, and it closed on October 11, 2013. In one part of the transaction, Activision paid Vivendi approximately \$5.83 billion to purchase an indirect interest in approximately 428 million Activision shares at a price of \$13.60 per share. In a separate component of the same transaction, ASAC paid Vivendi approximately \$2.34 billion to buy a 24.7% block of Activision shares (approximately 172 million shares) for \$13.60 per share. The purchase price of \$13.60 per share represented a 10% discount to the then-market price, which was expected to (and did) rise upon announcement of the transaction by a further 15%.

10. Kotick and Kelly will reap for themselves a disproportionate share of ASAC's gains from the appreciation of Activision's stock price. Though Kotick and Kelly invested only \$100 million through ASAC GP, compared to their co-investors' investment of over \$1.62 billion in ASAC, Kotick and Kelly receive 25% of the total gain on ASAC's \$2.34 billion below-market investment in Activision stock after an IRR threshold of 22% is satisfied. BKBK's bankers

created the following illustration for the outside investors in ASAC: if ASAC is liquidated on the third anniversary of the closing of the transaction and ASAC sells its Activision shares for \$27 per share, Kotick and Kelly would receive a total return of \$586 million, 5.9 times their invested capital for an IRR of 80.3%, while their co-investors in ASAC would receive 2.1 times their invested capital for an IRR of 28.4%.

11. Kotick and Kelly vote ASAC's 24.7% block, and two principal investors in ASAC are affiliated funds of Davis Selected Advisers, L.P. ("Davis") and Fidelity Management & Research Co. ("Fidelity"), which owned a combined 10.5% of Activision stock as of September 30, 2013. Kotick and Kelly and ASAC and its investors and their affiliates thus control the vote of over 35% of Activision's stock, with the potential to increase that percentage over time.

12. The Company's post-closing Board reflects how ASAC and its investors and affiliates constitute a control group. As of October 11, 2013, in connection with the closing of the challenged transaction, the Board consisted of the following seven persons: (i) Kotick; (ii) Kelly; (iii) Peter Nolan, managing partner of ASAC investor and private equity firm Leonard Green & Partners, L.P. ("Leonard Green"); (iv) Elaine Wynn, a longtime close friend of Kotick; and (v-vii) Robert Corti, Robert Morgado and Richard Sarnoff, Special Committee

members who acquiesced to the strong-arm tactics of Vivendi, Kotick and Kelly. Indeed, ASAC breached a standstill provision in its Stockholders Agreement with Activision by acting through Kotick and Kelly and in concert with Corti and Morgado to obtain board representation for Nolan and Wynn.

13. In other words, by getting permission to arrange a transaction in which Activision spent \$5.83 billion and equity investors and a lender well known to Activision contributed an additional \$2.24 billion, the two senior officers of Activision – who were already well compensated under recent employment agreements – obtained control of the Company and stood to make mammoth, preferred, levered returns on a \$100 million investment in the general partner of a special purpose vehicle that was allowed to buy Activision shares at a significant discount to the market price and their intrinsic value.

14. ASAC achieved an immediate paper profit upon closing of approximately \$725 million. Less than one year after the closing of the transaction, on September 19, 2014, ASAC's stock price closed at \$21.82 per share, which implies an unrealized gain for ASAC of \$8.22 per share, or over \$1.4 billion.

15. Absent the coercive threats made by Vivendi and Kotick, self-dealing by Vivendi, Kotick and Kelly, and the acquiescence of outside directors to Kotick

and Kelly's usurpation of the Company's relationships and opportunities, Activision could have negotiated a repurchase of control, rather than a transfer of control, and could have avoided a transfer of wealth to Kotick and Kelly. Activision and its public stockholders are entitled to the full economic benefits and voting power associated with the rare opportunity to buy control from a liquidity-starved majority stockholder eager to sell a control block at a discount to the shares' intrinsic value.

PARTIES

Plaintiff

16. Lead Plaintiff Anthony Pacchia, through his individual retirement account, is a stockholder of Activision and has been continuously at all relevant times.

Nominal Defendant Activision

17. Nominal defendant Activision is a Delaware corporation with its principal executive offices located at 3100 Ocean Park Boulevard, Santa Monica, California. On July 9, 2008, Activision, Inc., Vivendi, and Vivendi Games, Inc. consummated a business combination whereby the Company took its current form and was renamed Activision Blizzard, Inc. Activision is a worldwide online, PC, console, handheld and mobile game publisher with leading market positions across every major category of the rapidly growing interactive entertainment software

industry, and the largest video game publisher in the United States. Activision's portfolio includes best-selling video games such as Call of Duty® as well as Spider-Man™, X-Men™, James Bond™ and TRANSFORMERS™, leading franchises such as Spyro™ and Blizzard Entertainment's® StarCraft®, Diablo®, and Warcraft® franchises including the global #1 subscription-based massively multi-player online role-playing game, World of Warcraft®. Activision Blizzard maintains operations in the U.S., Canada, the United Kingdom, France, Germany, Ireland, Italy, Sweden, Spain, Norway, Denmark, the Netherlands, Australia, India, China, South Korea and the region of Taiwan.

Controlling Stockholder Vivendi

18. Defendant Vivendi is a *société anonyme* organized under the laws of France and has its principal executive offices at 42 Avenue de Friedland, Paris, France. Vivendi is a French multinational mass media and telecommunication company. The company has activities in music, television and film, publishing, telecommunications, the Internet, and video games. Vivendi became Activision's majority stockholder in July 2008. Prior to the challenged transaction, Vivendi was Activision's majority stockholder, owning approximately 61% of the Company's common stock and having six representatives on the eleven-member Board. Immediately following the transaction, Vivendi held approximately 12% of Activision's common stock and its representatives no longer served on the Board.

The ASAC Entities

19. Defendant ASAC is an exempted limited partnership established under the law of the Cayman Islands. Following the transaction, ASAC owns 24.7% of the Company's outstanding common stock. ASAC's investors include ASAC GP (in which Kotick and Kelly invested \$100 million), funds affiliated with Davis (\$350 million), funds affiliated with Fidelity (\$542 million), funds affiliated with Leonard Green (\$300 million), and THL A9 Limited, a subsidiary of China's biggest internet company, Tencent Holdings Limited ("Tencent") (\$435 million). As of September 30, 2013, outside of ASAC, funds affiliated with Davis owned over 21 million shares of Activision's stock, or a roughly 3.1% pro forma stake, and funds affiliated with Fidelity owned approximately 52 million shares, or roughly a 7.4% pro forma stake. As of October 16, 2013, outside of ASAC, Kotick beneficially owned approximately 5.5 million shares of the Company, or roughly a 0.8% pro forma stake, and Kelly beneficially owned approximately 3.3 million shares of the Company, or roughly a 0.5% pro forma stake. Kotick and Kelly are restricted from voting more than 24.9% of the shares they beneficially own (including the ASAC shares). Affiliated funds of Davis and Fidelity were permitted to vote their combined 10.5% of Activision's outstanding stock, meaning that investors in ASAC exercise voting power over a combined 35.4% of the Company's common stock (24.9% + 10.5%).

20. Defendant ASAC GP is a limited liability company organized under the law of Delaware that serves as ASAC's general partner. Kotick and Kelly are the co-managers and co-owners of ASAC GP. Through ASAC GP, Kotick and Kelly are entitled to preferred returns on ASAC's investment in Activision. Kotick and Kelly structured ASAC so that ASAC GP would receive returns akin to the 20% carry received by some private equity managers (with the upside potential of a 25% carry at the highest return threshold) . Unlike managers of a private equity fund who invest in acquisitions in which public stockholders are cashed out at a premium, Kotick and Kelly are senior executives of a public company with lucrative employment contracts who arranged for the acquisition of company shares at a discount from a controlling stockholder who was desperate to sell, while the public stockholders remained in place, received nothing from the transaction, and had no opportunity to buy shares on the same terms.

The ASAC-Affiliated Director Defendants

21. Defendant Robert A. Kotick has been the CEO and a director of Activision since February 1991. He was also the Chairman from February 1991 until July 2008, when he and Kelly led one of the biggest video game mergers in history, the Vivendi business combination, after which Kotick stepped into the role of President. Under his March 15, 2012 employment agreement, his total compensation exceeded \$64 million, including \$56 million in stock rewards

stretched over a five-year period, making Kotick the second-highest-paid CEO for U.S. public companies that year, behind only Oracle's Larry Ellison. Kotick is an investor in ASAC and co-manager and co-owner of ASAC GP with Kelly. Kotick is sometimes referred to in the Special Committee minutes as "BK1."

22. Defendant Brian G. Kelly has been the Company's Co-Chairman since October 1998 (serving with Chairman Kotick from then until July 2008), and has been a director since July 1995. Under his employment agreement, dated as of June 30, 2012, Kelly reported to the Board, assisted the CEO, received restricted stock units and performance shares with a combined grant date value of \$25 million, and stood to receive annual bonuses. Kelly is an investor in ASAC and co-manager and co-owner of ASAC GP with Kotick. Following the closing of the challenged transactions, Kelly was named Chairman of the Board. Kelly is sometimes referred to in the Special Committee minutes as "BK2."

The Vivendi-Affiliated Director Defendants

23. Defendant Philippe G. H. Capron was the Company's Chairman since July 2012, and, until the closing of the challenged transactions, had been a director since July 2008. Capron is also Vivendi's Chief Financial Officer and a member of Vivendi's management board since April 2007. Capron was a Vivendi Executive Vice President from January 2007 to April 2007.

24. Defendant Frédéric R. Crépin was an Activision director from July 2008 until the closing of the challenged transactions. Crépin has also been Vivendi's Executive Vice President General Counsel, and Executive Vice President, and Secretary of Vivendi's management and supervisory boards since July 2012. Crépin was a Vivendi Senior Vice President and head of the legal department from August 2005 to July 2012.

25. Defendant Régis Turrini was an Activision director from June 2009 until the closing of the challenged transactions. Turrini has also been Vivendi's Senior Executive Vice President of Mergers and Acquisitions since January 2013. Turrini was Vivendi's Senior Executive Vice President of Strategy and Development from January 2008 to January 2013, and Executive Vice President of Mergers and Acquisitions from January 2003 to January 2008.

26. Defendant Lucian Grainge was an Activision director from March 2011 until the closing of the challenged transactions. Grainge is also Chairman (since March 2011) and CEO (since January 2011) of Universal Music Group, a subsidiary of Vivendi.

27. Defendant Jean-Yves Charlier was an Activision director from October 2012 until the closing of the challenged transactions. Charlier has also been Vivendi's Senior Executive Vice President of Telecommunications since September 2012.

28. Defendant Jean-Francis Dubos was an Activision director from October 2012 until the closing of the challenged transactions. Dubos has also been Chairman of Vivendi's management board since June 2012.

The Special Committee Director Defendants

29. Defendant Robert J. Corti has been an Activision director since December 2003. Corti is a member of the Company's Audit Committee, was Chairman of the Special Committee, and was a member of the Vivendi Nominating Committee of the Nominating and Corporate Governance Committee that was created as part of the transactions.

30. Defendant Robert J. Morgado has been an Activision director since February 1997. Morgado is a member of the Company's Audit Committee, was a member of the Special Committee, and was a member of the Vivendi Nominating Committee of the Nominating and Corporate Governance Committee that was created as part of the transactions.

31. Defendant Richard Sarnoff has been an Activision director since August 2005. Sarnoff is a member of the Company's Audit Committee and was a member of the Special Committee.

BACKGROUND

Burdened with Debt, Vivendi Proposes an Extraordinary Dividend

32. On July 9, 2008, Vivendi acquired a majority stake in Activision. Under the deal's terms, Activision's Board grew to eleven members: six directors designated by Vivendi, two Activision management directors (Kotick and Kelly), and three independent directors. Activision's governance rules required a majority vote of the independent directors for certain corporate decisions, including: (1) any transaction or agreement between Vivendi and Activision (including any merger, business combination or similar transaction); (2) a waiver of Section 203 of the Delaware General Corporation Law; (3) an increase in Board size and committees; and (4) a dividend distribution resulting in over \$400 million of net debt. These restrictions on the Vivendi-controlled Board were due to expire on the fifth anniversary of the closing date, *i.e.*, July 9, 2013.

33. In 2012, Vivendi was burdened with over \$17 billion in net debt and needed to reduce its indebtedness. Moody's and Fitch warned Vivendi that its rating could be threatened if Vivendi did not reduce its liabilities. Vivendi committed to maintain its rating and embarked on a strategic review of its assets. Activision presented an opportunity to monetize "trapped cash," given Activision's \$3 billion cash balance, much of which was held internationally, and its significant

annual cash flow that was not distributed to stockholders. Vivendi's CEO informed Kotick that Vivendi wanted the Company to explore alternatives with respect to Vivendi's investment, including a potential sale of Vivendi's stake or a sale of the Company. A sale of Activision could immediately reduce Vivendi's net debt by over \$6 billion, but very few strategic players potentially had an interest in Activision and a sale of Vivendi's stake posed challenges.

34. On June 7, 2012, J.P. Morgan prepared a presentation for Activision's independent directors about a range of options for the Company regarding Vivendi's control stake. Among the many alternatives analyzed by J.P. Morgan, only two were deemed to be attractive to both Vivendi and Activision: (i) a sale of all of Activision to a third party or (ii) a redemption of Vivendi's stake by Activision. J.P. Morgan postulated that Activision could retire approximately \$6.7 billion of Vivendi's stake using \$1.4 billion of Activision's available cash in the United States and by raising \$5.5 billion of third party debt (less fees). J.P. Morgan further postulated that the remainder of Vivendi's stake could be monetized through a secondary offering or by selling a minority stake to a financial investor.

35. In the same presentation, J.P. Morgan explained that a pro-rata dividend had no attractiveness to Activision, because it would reduce strategic

flexibility without a reduction of Vivendi's ownership stake and because offshore cash was unavailable without tax leakage. A sale of Vivendi's stake to a third party also had no attractiveness to Activision because it would substitute one controlling stockholder for another, with no premium or proceeds for Activision's public stockholders. An excerpt of the J.P Morgan presentation is attached hereto as Exhibit A.

36. In July 2012, Vivendi announced its intention to sell its interest in Activision. Through the summer of 2012, the Company and Vivendi had preliminary discussions with a number of potential strategic and financial partners but these failed to result in any proposals.

37. In December 2012, Capron informed Kotick that Vivendi planned to recommend at the next Board meeting that the Board declare a potential one-time extraordinary cash dividend of about \$3 billion, to be paid pro rata to all stockholders and funded by cash on hand and new debt. Approximately \$2 billion would be dividended to Vivendi.

Kotick and Kelly Harness the Company's Relationships and Explore a Potential Management Buyout of Control as Part of a Purchase Of Vivendi's Stake

38. As early as the summer of 2012, Kotick and Kelly saw an opportunity to buy control for themselves, reap huge personal gains, and harness the

Company's relationships toward that end. In August 2012, Kotick and Kelly prepared a pitch book for a \$2-3 billion single investment fund that would buy 38-44% of Activision, with Kotick and Kelly investing \$100 million and receiving a 15% "incentive fee" and a fifty basis points annual management fee. Kotick and Kelly presented the pitch book to former Activision director Peter Nolan, managing partner of Leonard Green, and arranged meetings with Activision's two strategic partners in China and with Berkshire Hathaway. Peter Nolan wrote to his colleagues at Leonard Green on August 16, 2012: "Huge deal. The Chinese claim that they will put up between 1-2b. The boys are also meeting with buffett on wed in Omaha. We are the only pe firm. Super confi."

39. In early 2013, after having plotted secretly for months, Kotick and Kelly manipulated Activision's corporate governance processes to seize the opportunity presented by Vivendi's desire to obtain needed liquidity.

40. Representatives of the Company and Vivendi met on January 16, 2013. J.P. Morgan prepared a presentation sharply criticizing a special dividend and advocating for a three-part redemption transaction that did not contemplate any investment by management. An excerpt of that presentation is attached hereto as Exhibit B.

41. J.P. Morgan opined that a large special dividend “will almost certainly destroy significant value to shareholders – and accomplish[] no tangible benefits” in light of “increased investor concerns about potentially diverging interests between [Vivendi] and the Company.” The presentation explained that a special dividend “suffers from many disadvantages,” such as bearish market signaling, dilutive earnings impact, and tax leakage for the public, with the following bottom line:

Substantial pressure on stock price from:

- Potential exodus of growth investors
- Concerns about long-term prospects
- Concerns about [Vivendi] control / diverging interests
- Significant pressure on talent acquisition and retention

42. J.P. Morgan recommended a full redemption of Vivendi’s stake in three parts: (i) a redemption by Activision using cash and debt; (ii) a marketed secondary offering; and (iii) a \$2-3 billion investment by investor(s) “supportive of management team.” J.P. Morgan had “thoroughly analyzed this opportunity,” was “‘highly confident’ in its feasibility” and “J.P. Morgan and [Activision] management believe[d] that a full redemption is the best outcome” and that Activision and Vivendi “should explore such a transaction more carefully.”

43. Anwar Zakkour, then-Vice Chairman of Investment Banking at JP Morgan, testified that the PIPE opportunity had “a lot of characteristics that would be interesting to financial investors,” such as the “significant accretion associated with the redemption portion of the transaction” and the ability to “generate levered returns” by investing in a company with increased debt, as well as a strong management team with a proven track record.

44. Meanwhile, Kotick and Kelly consulted with Allen & Company LLC, retained Sullivan & Cromwell LLP and reached out to firms well known to Activision as potential equity investors and lenders for their proposed special purpose vehicle. The three lead potential equity investors were Leonard Green and Activision’s two rival strategic partners in China. On September 17, 2012, Activision entered into a non-disclosure agreement with Leonard Green. On January 20, 2013, Activision entered into a non-disclosure agreement with Chinese internet portal NetEase, Inc., the exclusive licensee of World of Warcraft® in mainland China. On January 23, 2013, Activision entered into a non-disclosure agreement with Tencent, the exclusive licensee of Call of Duty® in mainland China. Six months earlier, Kotick had touted Activision’s new strategic relationship with Tencent and the tremendous opportunities for gaming in China.

45. The outside directors had not yet retained their own advisors to evaluate the propriety of management's effort to create a buyout group or to evaluate the feasibility of the Company seeking out new investors for a bid for Vivendi's stake or otherwise responding to Vivendi.

46. On January 29, 2013, Kotick and Kelly submitted a proposal to Vivendi (as subsequently modified, the "BKBK Proposal"), under which Vivendi would sell its entire stake in Activision for \$9 billion, at \$13.15 per share (a 15% premium to Activision's January 29 closing price), with some of the stock being sold to the Company (using \$4 to \$5 billion in debt together with cash on hand), and the remaining shares being sold to a group of equity investors that Kotick and Kelly would organize.

47. On February 6, Vivendi requested a more formal proposal from Kotick and Kelly.

48. On February 14, Kotick and Kelly sent a letter to Vivendi further detailing the BKBK Proposal. Under that proposal, the Company would repurchase about \$6 billion of Vivendi's stake at \$13.15 per share, financed using a J.P. Morgan debt facility of \$4.7 billion in debt and \$1.3 billion in cash, and a Kotick and Kelly-led acquisition vehicle would purchase approximately \$3 billion of Vivendi's stake at the same price. Kotick and Kelly wrote to Vivendi that they

were “highly confident” that their acquisition vehicle would be in position to enter into binding commitments with respect to the full \$3 billion purchase price within one month of authorization to proceed by Vivendi and a special committee of Activision directors. Kotick and Kelly submitted to Vivendi a letter from Leonard Green regarding its willingness to invest up to \$1 billion in the acquisition vehicle. Kotick and Kelly also submitted a “highly confident” letter from J.P. Morgan Securities LLC respecting a \$4.7 billion debt facility, which contemplated \$3 billion of new equity investment. Kotick and Kelly’s February 14, 2013 proposal is attached hereto as Exhibit C.

49. A \$3 billion acquisition vehicle translates into the purchase of approximately 33% of the total post-buyout shares outstanding. On its face, the BKBK Proposal contemplated an effective transfer of control from Vivendi to management – even though J.P. Morgan had advised the outside directors in June 2012 that a transfer of control had no attractiveness to Activision’s stockholders.

50. At a Board meeting on February 14, 2013, Kotick told the Board about the BKBK Proposal and requested the formation of a Special Committee “to oversee the process from the Company’s perspective.”

51. J.P. Morgan delivered a presentation to the Board on February 14, 2013, stating that the Company’s standalone (*i.e.*, ignoring the impact of Vivendi’s

ownership) maximum debt capacity to obtain a B+ bond rating was \$5.88 billion.

Activision had no debt outstanding at the time.

The Special Committee Explores an Alternative Transaction and Expresses Concerns About the BKBK Proposal

52. On February 28, the Board formed a three-member Special Committee of directors Corti, Morgado, and Sarnoff to review and evaluate a potential transaction that might involve Vivendi and the Company as well as Kotick and Kelly and their affiliates. The authorizing resolutions provided that the Special Committee was authorized to contact “potential investors” and would remain in place “until such time as the full Board concludes that no Potential Transaction is likely to occur or the existence of the Special Committee is no longer required[.]”

53. In early March, the Special Committee retained investment advisor Centerview Partners, LLC (“Centerview”). The Special Committee insisted that Centerview would only be permitted to receive a transaction fee for transactions in which the Special Committee “plays a meaningful role” and following which the Company would no longer be controlled by Vivendi.

54. The Special Committee sought and obtained amendments to the authorizing resolutions so that it had additional authority and flexibility to carry

out its mandate. In particular, the Special Committee sought the power to explore, initiate and negotiate any alternative transaction.

55. The Special Committee pushed back when presented by Company management with a draft allocation of responsibility for tasks in connection with the BKBK Proposal. Since the Special Committee had not analyzed alternatives, they requested that the proposed allocation of responsibility be formally withdrawn as premature. Management complied with that request.

56. The Special Committee acquiesced to management's desire to raise equity financing for their own vehicle, and the Special Committee did not pursue raising equity financing independently of management, and did not direct management to raise equity financing on behalf of the Company. Centerview's Robert Pruzan testified that an effort by the Special Committee to raise equity financing for Activision "in competition [with BKBK] was not a practically viable scenario." Mr. Pruzan explained:

The special committee determined at various points in time that having the existing management lead the company into the future was important for the success of the company. The special committee worked hard to attempt to influence the form and monitor the fundraising of Mr. Kotick, but Mr. Kotick's team was not particularly interested in having the special committee actively involved in his fundraising process.

57. At a meeting on March 18, the Special Committee instructed Centerview to explore whether Vivendi would be willing to sell less than all of its shareholdings. Regarding the BKBK Proposal, the Special Committee sought more information about it and expressed concerns about its potential negative effects:

The members of the Special Committee expressed their views that it was important for the Special Committee to maintain an active role in the funding process and take care that in pursuing the proposed transaction to eliminate the current control shareholder (*i.e.*, [Vivendi]), it should not create another shareholder or shareholder group with control or elements of control over the Company nor should it put the Company in a position where a new shareholder or shareholder group could exercise excessive influence to the disadvantage of other shareholders.

58. At a meeting on March 21, Centerview reported to the Special Committee that Vivendi did not rule out retaining a small equity interest in the Company and that Vivendi was willing to discuss alternative repurchase transaction structures. At the same meeting, Centerview told invitees Kotick, Kelly and their representatives that the Special Committee insisted on being actively involved and kept fully informed. Kotick and Kelly identified only Leonard Green as a potential investor they had talked to prior to the formation of the Special Committee, even though they had contacted NetEase, Inc. and Tencent and Berkshire Hathaway. The Special Committee discussed internally its need to thoroughly examine and negotiate the funding of a Kotick-Kelly acquisition

vehicle, and that Kotick and Kelly needed to be told about the “guiding principles identified by the Special Committee.”

59. At a meeting on March 29, the Special Committee learned that Vivendi had proposed consideration of an alternative transaction structure involving the Company’s purchase of a majority of Vivendi’s stake and Vivendi disposing of its remaining stake through a secondary market sale to unaffiliated third-parties (the “Secondary Offering Proposal”).

60. At a Special Committee meeting on April 3, Centerview reported that Vivendi’s bankers wanted to pursue the Secondary Offering Proposal on a parallel track with the BKBK Proposal. It was reported at the same meeting that Kotick had expressed a strong interest in pursuing the BKBK Proposal, and that while he did not support the Secondary Offering Proposal (contrary to an earlier report), he “recognized that the Secondary Offering Proposal could be advantageous to the Company.”

61. At the same meeting of April 3, Centerview delivered a presentation expressing the preliminary view that repurchasing Vivendi’s controlling interest was attractive from each of an operational, governance, financial and trading perspective. From an operating perspective, Vivendi’s liquidity needs and its unrelated businesses meant that its interests were not necessarily aligned with those

of Activision; eliminating Vivendi as a controlling stockholder would likely give Activision more strategic and operational flexibility. From a governance perspective, a repurchase would eliminate Vivendi's control over Board decisions. From a financial perspective, a repurchase could be negotiated at a discount to market price with expected meaningful accretion to Activision's earnings. From a trading perspective, there were multiple reasons why Activision's stock price was expected to rise following the elimination of Vivendi's controlling stock. First, public stockholders would have a new potential ability to garner a control premium. Second, a repurchase could eliminate the "overhang" created by speculation of Vivendi selling its stake. Third, Activision could become included in major stock indices.

62. Centerview's presentation observed that the limited examples of buybacks of controlling stockholders in public companies had been executed at low premia or at discounts to market. Centerview observed that if Activision borrowed \$5.9 billion and used its international cash, a full buyout of Vivendi could be effected with only \$0.2 billion of additional capital (excluding the repatriation expense of \$0.7 billion). Centerview observed that the BKBK Proposal ran the risk that "strong minority will have disproportionate influence in Board room and shareholder votes." Centerview believed a secondary sale of

public equity was a “potentially attractive transaction if well structured and executed.” Another “viable alternative” to raising \$3 billion (in addition to using cash and debt of \$6 billion) for buying out the entirety of Vivendi’s stake was raising \$2 billion of unrated convertible securities and simultaneously offering \$1 billion of public equity.

63. The Special Committee asked Centerview to consider potential alternative equity financing sources and directed Centerview to engage Vivendi on the Secondary Offering Proposal and to continue working with Kotick and Kelly about the BKBK Proposal.

64. At a meeting on April 12, Centerview reported to the Special Committee on conversations with Vivendi’s financial advisors (Goldman Sachs and Barclays). Vivendi’s financial advisors were recommending to Vivendi a post-transaction debt load of \$5.7 billion. They believed that a secondary offering of \$2 billion was achievable with a potential to upsize the offering based on market reaction. They further advised that Vivendi was comfortable holding up to 9.9% of Activision’s stock, giving up its governance rights, and negotiating a lockup period during which Vivendi would be restricted from selling its remaining stake.

Centerview also reported that J.P Morgan was of the view that Activision could

maintain a BB- credit rating with a debt load of \$4.7 billion and that \$1.5 to \$2 billion is the appropriate size for a secondary offering.

65. At a meeting on April 19, Centerview presented to the Special Committee about the respective views of Barclays/Goldman Sachs and J.P. Morgan regarding financing capacity and next steps. The Special Committee also discussed how Vivendi had not received due diligence materials from the Company. The Special Committee decided to advise management of the Special Committee's desire that Vivendi have access to the same diligence materials that had been provided to Centerview.

66. At a meeting on April 29, the Special Committee discussed a proposed letter to be sent the next day to Vivendi stating that the Special Committee proposed repurchasing up to \$5.9 billion of the Company's stock at \$13.15 per share, conditioned on an agreed-upon path respecting Vivendi's remaining shares. The three potential paths were (i) a sale of the shares in a public offering, (ii) a sale of the shares to an entity organized by Kotick and Kelly, or (iii) appropriate governance arrangements as to any shares retained by Vivendi. Though Kotick and Kelly requested an opportunity to speak with the Special Committee before the letter to Vivendi was sent, they raised no specific concern with the Special Committee and Centerview sent the letter to Vivendi.

67. At a meeting on May 2, the Special Committee expressed the view respecting negotiations over the BKBK Proposal that “a transaction should not create a new shareholder or shareholder group with control or substantial elements of positive or negative control over the company.” The Special Committee also expressed their need to reserve the right to approve “the identity and concentration of potential third party equity participants in the BKBK Proposal, particularly insofar as such equity participants may ultimately own direct positions in the Company’s equity[.]”

68. Vivendi’s advisors expressed the view to the Special Committee’s advisors that a repurchase with Activision could be structured without Vivendi incurring tax, and further advised that Vivendi could sell \$3 billion of Company stock in the market or to a third party on a tax-free basis.

69. In a meeting with the Special Committee on May 6, a Vivendi designee advised that in the absence of a negotiated deal, Vivendi was considering selling down its position to 51% and causing the Company to issue a large special cash dividend. The Vivendi designee also expressed concern that the BKBK Proposal was more complicated, slower and more susceptible to litigation than either a public offering or the retention by Vivendi of a minority interest.

Kotick Blocks the Secondary Offering Proposal

70. On May 7, Centerview met with Kotick. Kotick talked about the structural and tax advantages of the BKBK Proposal as compared to the other alternatives. Kotick also argued that a secondary market offering would negatively affect the Company's stock price. Centerview responded to Kotick that the financial advisor to the Company (J.P. Morgan) and the financial advisors to Vivendi (Goldman Sachs and Barclays) had all advised to the contrary.

71. In the same conversation, Kotick expressed his opposition to discussing the Company's debt financing capacity with credit agencies, for fear of a leak. Centerview responded that it disagreed with that position.

72. Kotick also told Centerview that the most tax efficient structure for Vivendi was a purchase by the Company of Vivendi's stake from a holding company created by Vivendi, and that ASAC could then purchase \$3 billion of the common stock from the Company. Kotick's statement contradicted Vivendi's statements that it was able to sell \$3 billion of Company stock directly to ASAC or to the public on a tax-free basis.

73. At a meeting on May 14, the Special Committee received reports about how it was being pushed from two directions – mostly from Kotick but also from Vivendi.

74. Kotick had called the Special Committee's legal counsel and voiced his opposition to the Special Committee's governance term sheet, which proposed sterilizing the vote of all ASAC shares in excess of 9.9% of the outstanding shares. (Initially, the Special Committee had proposed that ASAC's shares not vote at all.) In a separate conversation with a member of the Special Committee, Kotick requested that the cutback threshold be raised to 24.9%. As recorded in an email written by the Special Committee's counsel: "BKBK didn't agree that the committee's views on governance (especially voting) were either necessary to protect the public shareholders of [Activision] or feasible with the ASAC investors."

75. A separate communication from Kotick's counsel advised that Kelly had supposedly dropped out of the BKBK Proposal and that Kotick was of the view that a secondary offering of the size contemplated by the Secondary Offering Proposal was not feasible.

76. Meanwhile, Vivendi's legal counsel had advised that Vivendi was anxious to proceed quickly with either the BKBK Proposal or the Secondary Offering Proposal, "or to engage in self-help by causing the Company to borrow additional funds and make a large special cash dividend." Vivendi also advised that it had not heard recently from Kotick and Kelly.

77. The Special Committee discussed how, if Vivendi followed through on its unilateral self-help plan, there was the risk that Kotick might resign as CEO. The Company's financial advisor, J.P. Morgan, told Centerview that J.P. Morgan would not lend to the Company if Kotick resigned. The clear implication was that Kotick had planted with J.P. Morgan the threat of his resignation. J.P. Morgan was working with Kotick on financing ASAC and later became a joint lead arranger and bookrunner to ASAC.

78. Under pressure from Kotick, the Special Committee directed that the proposed cutback threshold be raised to 19.9% for purposes of a potential BKBK Proposal. The message to be delivered to Kotick was that if Kotick could not agree to that threshold and to other governance arrangements, he should withdraw the BKBK Proposal.

79. Negotiations between Kotick and Kelly and Vivendi went forward. Centerview's Robert Pruzan told the Special Committee on May 15, that he believed that Vivendi favored the BKBK Proposal over the Secondary Offering Proposal because Vivendi was concerned that the Secondary Offering Proposal could not be successfully accomplished without Kotick's support.

80. On May 16, Kelly informed representatives of the Special Committee that he and Kotick had dropped out of the transaction process – a transparent negotiating tactic. Meanwhile, Vivendi told Centerview that if no deal was

reached by the end of the week, Vivendi would disband the Special Committee and move forward with its plan to borrow funds and make a large special dividend.

The Special Committee discussed “whether and how they could bring BKBK back into discussions with the Special Committee and [Vivendi].”

81. In the face of Kotick’s opposition to the Secondary Offering Proposal, the Special Committee resorted to asking Vivendi to negotiate a role for Kotick and Kelly. On May 20, Centerview’s Pruzan told Vivendi’s advisors that “given BK1’s necessary role in any marketed offering as contemplated by the Secondary Offering Proposal, it would be helpful to find a way for BKBK to be included in the transaction, either pursuant to the BKBK Proposal or through another structure satisfactory to [Vivendi].”

82. That same day, Kotick rejected an overture from Vivendi that Kotick pay more than \$13.15 per share. Activision’s closing stock price on May 20 was \$15.18 per share.

83. On May 21, Vivendi sent a letter to the Special Committee in which Vivendi “encouraged the Special Committee to engage in dialogue with BKBK to explore structures whereby BKBK participates in the repurchase alongside the Company[.]” Vivendi also reduced its asking price from \$15.00 to \$14.40 per share (on a day when the stock closed at \$15.57 per share).

84. That same day, the Special Committee directed its advisers to relay to Vivendi that “the Special Committee believed that the support and participation of management, specifically BK1 and BK2, would be required in order for any secondary offering to be successful.”

85. On May 25, the Special Committee and its advisors discussed how (i) “BK1 had repeatedly voiced his opposition to a significant equity offering of Company stock,” (ii) “a transaction involving a debt or equity offering would not be actionable without BK1’s support and cooperation,” (iii) “BK1 might [leave the Company] if the Company were to agree to a transaction without BK1’s support,” and (iv) if Kotick did leave the Company, the financing banks would not make a financing commitment. In light of Kotick’s refusal to support an alternative transaction, the Special Committee discussed acceding to his request and allowing ASAC to buy up to 24.9% of the Company’s outstanding shares as part of a best and final proposal to Vivendi.

86. On May 29, the Special Committee learned that Vivendi “preferred the Secondary Offering Proposal over the BKBK Proposal,” because it had the potential to provide greater value to Vivendi on a faster timeline, and due to the concerns that Kotick and Kelly would not obtain the necessary funding and that it would be difficult to deal with them.

87. On May 30, the Special Committee decided to push Vivendi to make a counter-proposal that included Kotick and Kelly. The members of the Special Committee expressed their concerns that Kotick and Kelly's support was needed to successfully obtain financing for the proposed repurchase or to accomplish the Secondary Offering Proposal. The members of the Special Committee also noted that Vivendi would generally have the power to remove them from the Board as of July 9, 2013.

88. Vivendi expressed a willingness to agree to one of three proposals. The first proposal was a transaction in which the Company paid \$13.60 per share for \$5.9 billion in shares and ASAC paid \$14.80 per share for the remaining shares. The second proposal allowed Kotick and Kelly in their individual capacities to purchase up to \$500 million in shares at \$13.60 per share. The third proposal was to disband the Special Committee, borrow additional funds, and make a large special cash dividend.

89. The Special Committee decided to tell Kotick that if he did not agree with Vivendi's proposal, the Special Committee would decide between going forward with a transaction without the participation and support of Kotick and Kelly or disbanding the Special Committee.

90. Kotick advised that he was unwilling to agree to Vivendi's proposal. Kotick insisted on a transaction in which ASAC purchased a 24.9% pro forma

interest at \$13.60 per share (assuming the availability of NOLs), along with certain transfer restrictions on Vivendi's remaining shares. Kotick further stated that he would not cooperate with a debt or equity offering or any other process that involves a result other than the revised BKBK Proposal, and that the Board of Directors could terminate him if they so chose. (Kotick's threatened refusal to perform his job would entitle the Board to terminate him for cause under his employment agreement, in which case Kotick's rights to his significant unvested options would terminate. *See* Kotick March 15, 2012 Employment Agreement ¶ 9(c). Kotick further stated that he believed a special dividend was a better outcome than Vivendi's buyout proposal.

91. On May 31, the Special Committee directed preparation of a response letter to Vivendi stating that the Special Committee believed that Kotick's proposal was the only actionable proposal (given the need for Kotick's support and cooperation), and that it remained the Special Committee's best and final offer.

Vivendi, Kotick and Kelly Force the Disbandment of the Special Committee and Negotiate Directly With Each Other

92. The Special Committee's draft response letter to Vivendi included the concept that the transaction would be subject to a 19.9% cutback on ASAC's voting rights. Kotick deleted that provision in his comments on the response letter. Kotick and Kelly not only opposed the 19.9% cutback on ASAC's voting rights,

they opposed a \$5.6 billion repurchase by the Company (as compared to a \$5.9 billion repurchase). Kotick and Kelly claimed to prefer a Vivendi-imposed special dividend over a \$5.6 billion repurchase by the Company with a 19.9% cutback on ASAC's voting rights. Kotick and Kelly's counsel advised that they were unwilling to participate further in the transaction process.

93. The members of the Special Committee discussed with their advisors their belief that Kotick and Kelly had previously expressed a willingness to agree to both a \$5.6 billion repurchase transaction and a 19.9% cutback on ASAC's voting rights. (In fact, it was clarified days later that those specific terms had not been discussed.) Each member of the Special Committee also stated that he would not be comfortable supporting a \$5.9 billion repurchase transaction or a transaction that did not involve a 19.9% cutback on ASAC's voting rights.

94. In the view of the Special Committee, there was no actionable transaction available to the Company, and the Special Committee was not in a position to propose an alternative. The Special Committee sent a letter to Vivendi and ASAC suggesting that Vivendi negotiate directly with Kotick a transaction that would result in the Company no longer having a controlling stockholder.

95. Translated internal emails among the most senior executives at Vivendi on the night of May 31, 2013, provide some color regarding Kotick's intransigence and insubordination:

Activision Chairman / Vivendi CFO Phillipe Capron:

I just spoke with Ronen [of Vivendi advisor Goldman Sachs] who had Pruzan [of Special Committee advisor Centerview] for a long time. He doesn't know how to relaunch the deal: the board was about to send a new proposal of compromise making some room for BKBK when Bobby lost it and withdrew the support of management on all processes. He never saw anything like that.

Pruzan and the [independent fellows] are very sorry to see a deal fall through that is clearly very favorable to those in the minority and believe that Bobby misused his authority. They hinted to us to fire him or to make the negotiation public. This would seem to be premature or ineffective, but the reaction is significant.

The management changes brought about by the deadline of 5 years are definitely a pressure factor. Bobby would rather lose an arm than become the CEO of Vivendi Games!

Vivendi Executive Vice President and General Counsel Frederic Crepin:

I think Bobby is making the same bet he made three years back and that we wouldn't dare letting him go...

Interesting to see if the [independent fellows] will have the balls to quit.

Capron:

There are two, I believe. (Exhibit D.)

Vivendi Chairman of Management Board Jean-Francois Dubos:

Yes. I really wonder who's going to fire him. You?

Capron:

Myself, happily. Tomorrow if you want. (Exhibit E.)

96. The Vivendi email traffic continued on June 1, 2013.

Capron:

I just spoke with [Vivendi Chairman of Supervisory Board Jean-René Fourtou] who had [Special Committee member] Sarnoff. Message: no deal without the support of management, but SC doesn't like the idea of selling securities to BK under the market price or that too high incentives should be given to management. He believes that our deal without BKBK is good. He will "help" us if we decide to fire Bobby. According to him BK is not really worth it, but his image with respect to the market remains very strong. All that is quite consistent with [Special Committee member] Corti's vision.

[Fourtou] calls BK to tell him that we will not sell to BKBK in any case and that we will separate ourselves from him.

I also talked to Ronen and he also thinks like I do, that we should explain in a report the deal we have proposed to the company and that SC declined it due to lack of consent by management and that all options will be reviewed. Then we fire Bobby and within 6 to 12 months, once the company has recovered, we'll make a new attempt (rather than come out with a dividend right away).

Dubos:

I think it's stupid to report it. It's a good idea to keep in mind. Does that mean that we got screwed by Kotick? That SC didn't support us? That this company is a mess? That we want to quit and can't? only to find ourselves in the same situation as [Maroc Telecom]? That the rate will tumble down without knowing at what price we bail and when? That's ridiculous. I agree to tell him that he's going to be let go

Capron:

We'll put pressure on Bobby, and if he continues to refuse, the market will understand his departure. (Exhibit F.)

97. On June 2, Vivendi sent a letter to the Special Committee setting forth the terms of a revised version of the Secondary Offering Proposal, contemplating Activision's payment of \$5.4 billion to buy shares at \$13.60 per share and allowing BKBK to pay \$500 million to buy shares at \$13.60 per share. Vivendi's letter strongly suggested that the Special Committee and BKBK could not reject this proposal consistent with their fiduciary duties:

Based on the advice we have received from our advisors, which we understand is generally consistent with the advice the Special Committee has received from its advisors, we do not understand how the Special Committee can conclude that there is no actionable transaction available and that the only path forward requires Violet to first convince members of management (who have made a competing proposal) of the merits of the Current Proposal or a similar alternative. While we can understand that management may be disappointed that the terms of the Current Proposal are not as attractive to them as their own proposal, their first responsibility is as fiduciaries to Amber and its shareholders as we struggle to understand how, in their capacities as fiduciaries, they do not see the benefits of a transaction that (i) repurchases control as a material discount to the market price and Amber's intrinsic value, (ii) optimizes Amber's balance sheet, (iii) results in approximately 40% EPS accretion, (iv) offers management an opportunity to further align itself with the public market by acquiring additional shares (at the same discount) and (v) allows for an orderly placement of Violet's remaining shares.

98. Kotick understood that he had tremendous leverage to push the BKBK Proposal, because Vivendi desperately wanted to sell its majority position in Activision, and because the Special Committee wanted management support,

making ASAC the only potential buyer of Vivendi shares that Activision would not buy itself.

99. At a meeting on June 5, the Special Committee discussed how Kotick was opposed to any alternatives, that a debt or equity offering without management support was unlikely to succeed, and that the Company would be harmed if either Kotick or Kelly resigned or were terminated as a result of a disagreement about such a transaction. The Special Committee decided not to respond to Vivendi's letter.

100. At a Board meeting on June 6, Special Committee member Corti proposed the dissolution of the Special Committee. The Vivendi-dominated Board supported the immediate dissolution of the Special Committee.

101. Over the following month, Vivendi negotiated with Kelly a revised version of the BKBK Proposal.

102. On July 9, Vivendi and ASAC sent a term sheet to the Company. That day, the members of the Special Committee met and discussed the formal reconstitution of the Special Committee, despite concerns about the governance provisions relating to ASAC, which were not addressed in the term sheet. The Special Committee discussed its concern that Vivendi could cause the Company to pay a special dividend in lieu of the proposed transaction.

103. Vivendi obtained full control of the Board as of July 9, 2013.

104. On July 11, the Board reconstituted the Special Committee.

105. Barclays and Goldman Sachs prepared presentation materials, dated July 15, 2013, outlining a proposed special dividend of \$4 billion to be financed by a \$2.9 billion debt issuance.

The Special Committee Empowers and Enriches Kotick and Kelly and Conceals Their Own Complicity in Buckling to Kotick's Undisclosed Threats

106. The reconstituted Special Committee abandoned any pretense of exercising the expanded authority it had earlier demanded. The Special Committee's job was to approve the deal that Kotick, Kelly and Vivendi had put together and to negotiate around the edges.

107. The Special Committee no longer pretended to explore alternatives. It dropped its prior insistence on a 19.9% cutback on ASAC's voting rights, much less its earlier proposals of a 0% or 9.9% cutback and its initial insistence that it approve the individual investors in ASAC, even though the Special Committee knew that large stockholders Fidelity and Davis would be ASAC investors. The approved terms of the transaction gave Kotick and Kelly working control over Activision through their status as officers and directors, with Kotick continuing to serve as CEO and Kelly serving as Co-Chairman, and through their control of ASAC and the combined voting power of ASAC and its co-investors, who are indebted to Kotick and Kelly for bringing them into a transaction in which they

have already profited tremendously by virtue of ASAC's purchase of Company stock at a significant discount to both fair value and the Company's stock price.

108. The Stock Purchase Agreement, dated as of July 25, 2013, called for ASAC to purchase approximately 172 million shares of the Company from Vivendi for approximately \$2.34 billion at \$13.60 per share. That purchase by ASAC represents 24.7% of the Company's common stock after the closing of the transaction. The Stock Purchase Agreement also called for Activision to purchase, indirectly, approximately 429 million shares of the Company from Vivendi for approximately \$5.83 billion at \$13.60 per share.

109. On July 25, 2013, the Board adopted resolutions authorizing the transactions, including approval pursuant to Section 203 of the Delaware General Corporation Law such that ASAC would not be deemed an "interested stockholder" of the Company and would not be prohibited from entering into or consummating a "business combination" with the Company as a result of the transactions.

110. Pursuant to a Stockholders Agreement, drafted as to form on July 25, 2013, and to be executed by Activision and ASAC as a condition for consummating the transactions contemplated by the Stock Purchase Agreement, Kotick and Kelly can exercise full voting power over the shares they beneficially own (including the ASAC shares) up to a limit of 24.9%. Moreover, key investors

in ASAC own positions in the Company outside of ASAC. As of September 30, 2013, funds affiliated with Davis owned over 21 million shares of Activision's stock, or a roughly 3.1% pro forma stake, and funds affiliated with Fidelity owned approximately 52 million shares, or roughly a 7.4% pro forma stake. Davis-advised affiliated funds that owned 21,312,361 shares of Activision common stock as of September 30, 2013, invested \$350 million in ASAC. Fidelity affiliates owned 51,839,773 shares of Activision common stock as of September 30, 2013, and invested over \$542 million in ASAC.

111. Davis and Fidelity are each permitted to acquire and to vote additional shares, and even to run a proxy contest, so long as neither does so as part of a "group" within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1934. ASAC investor Tencent is permitted to acquire additional shares of the Company's common stock, subject to certain limitations and subject to the condition that such purchased shares be voted in accordance with the recommendation, if any, of a majority of the directors unaffiliated with ASAC (*i.e.*, the members of the Special Committee).

112. The next largest stockholder after ASAC is Vivendi, which is no rival to ASAC's influence. Vivendi owned 11.9% of the common stock immediately after the closing of the transaction, but was subject to a 9.9% voting rights cutback. Vivendi is also subject to a standstill provision that prohibits it from acquiring

additional shares, engaging in the solicitation of proxies, joining in a “group,” or acting in concert with others to seek representation on the Board or to influence the policies of the Company. Vivendi relinquished all of its Board seats.

113. Section 3.01(a)(iv) of the Stockholders Agreement purported to limit ASAC’s board representation to Kotick and Kelly:

[ASAC] shall not ... directly or indirectly ... (iv) otherwise act, alone or in concert with others, to seek representation on or to control or influence the management, Company Board or policies of the Company or to obtain representation on the Company Board of Directors (other than with respect to the nomination of Mr. Kotick and Mr. Kelly to the Company Board, as determined by the Company Board in the ordinary course)[.]

The Special Committee Defendants allowed Kotick and Kelly to undermine the terms and purpose of Section 3.01(a)(iv) of the Stockholders Agreement, by acting at their behest to appoint two Kotick cronies to the newly reconstituted Board on October 11, 2013, and by subsequently joining Kotick and Kelly in recommending the election of Nolan and Wynn to new terms at the annual meeting of stockholders held on June 5, 2014, and by allowing ASAC to vote its 24.7% block in favor of their election.

114. In September 2013, Kotick scrambled to fill two vacancies on the Activision Board. He looked to two people with whom he had very close relationships, Elaine Wynn and Peter Nolan of ASAC investor Leonard Green, which would give them, himself and Brian Kelley majority control of the Board.

115. Kotick’s close relationship with Elaine Wynn dates back to 1982, when Kotick was a college sophomore trying to launch a computer software company. Kotick pitched his business venture to Elaine Wynn and her then-husband, casino mogul Steve Wynn, at a social event in Dallas. At the Wynns’ invitation, he flew back to the east coast with them on their private plane. Steve Wynn viewed Kotick as a “potential son-in-law” and protégé. Steve Wynn financed Kotick’s startup without signing a contract, and told Kotick “we’re family now.” Kotick’s startup flopped, but his relationship with the Wynns deepened. In a 2008 interview, Kotick stated: “Of all the things that could have happened in my life, meeting the Wynns was probably about the most fortunate. Not just in the way you get a second set of parents—my parents were divorced, so the Wynns came with none of the guilt—but watching what he accomplished.” Steve Wynn backed or supported other Kotick business opportunities and became an early investor in the company that became Activision after Kotick purchased control of it for a pittance and pushed through a prepackaged bankruptcy. Steve Wynn is known as Kotick’s “Uncle Steve” and Kotick has referred to him as “like my dad.” Elaine Wynn has been deeply involved in Steve Wynn’s business affairs (even after their divorce in 2010) and has worked with Kotick on various charitable and non-profit endeavors, such as benefits for the charitable foundation of skateboarder and Activision video-game character Tony Hawk, and their joint service on the

Board of Trustees of The Los Angeles County Museum of Art and as members of the elite International Council Museum Berggruen Berlin. Kotick makes it a practice to buy a Mother's Day gift for her – just as he does for his mother. In March 2013, Kotick and Elaine Wynn attended together a dinner and gala of the Los Angeles County Museum of Art Collectors Committee.

116. On September 5, 2013, Kotick and Elaine Wynn made dinner plans for Saturday night, September 7, which included Kotick's deal lawyer, Alison Ressler of Sullivan & Cromwell. On September 6, Kotick arranged for Wynn's bio to be edited, and he sent it to nominating committee member Robert Morgado on September 8. Morgado formally reached out to Wynn on September 10 regarding an "accelerated process" for nominations. Wynn participated in a video conference on September 16 that was attended by the members of the nominating committee as well as Brian Kelly.

117. On September 9, 2013, Kotick arranged for Peter Nolan to submit his bio. Nolan's colleagues at Leonard Green objected to Nolan joining the Board, because a premise of the deal was to afford Leonard Green unrestricted ability to hedge its investment in ASAC, and because Nolan already had "a great relationship" with Kotick. Fellow managing partner Jonathan Sokoloff observed: "Main reason to even consider is if Bobby/Brian really want it."

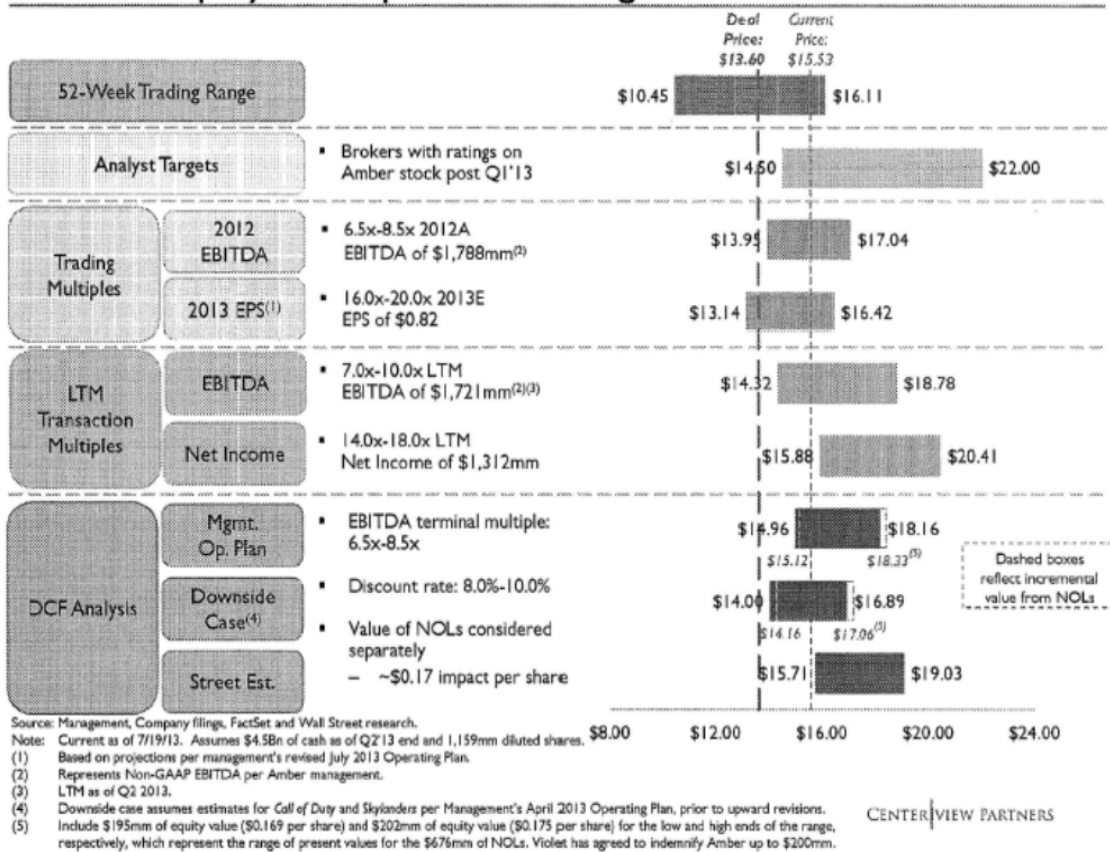
118. On September 19, 2013, the Nominating and Corporate Governance Committee of the Board recommended that a Vivendi Nominating Committee of the Nominating Governance Committee of the Board (the “Vivendi Nominating Committee”), consisting of directors Morgado and Corti, be created upon the closing of the transaction, which committee would be empowered to expand the Board from five to seven and fill the vacancies. By written consent dated as of October 11, 2013, immediately after the closing of the transaction, the Vivendi Nominating Committee resolved to expand the Board from five to seven and to appoint Peter Nolan and Elaine Wynn as new directors.

119. Nolan and Wynn must both be considered representatives of ASAC. When he joined the Board and was nominated for a new term, Nolan was the managing partner of ASAC investor Leonard Green, and he remains a Senior Advisor to Leonard Green. Elaine Wynn lacks independence from Kotick. Kotick’s successful effort to arrange the appointment of two cronies to the Board, in breach of the Stockholders Agreement, symbolizes Kotick and Kelly’s newfound control over Activision and its Board through ASAC and its co-investors and through their offices of Chief Executive Officer and Chairman of the Board.

120. ASAC’s investors should be grateful for the deal negotiated by Kotick and Kelly on their behalf. As detailed in the chart below prepared by Centerview, the \$13.60 per share purchase price represents a material discount to the bottom of

almost every Activision valuation range, including a DCF based on management projections plus the value of Activision’s NOLs (\$15.12 to \$18.33) and a DCF based on Wall Street estimates (\$15.71 to \$19.03):

Amber’s Equity Value per Share Range



121. The \$13.60 per share purchase price was approximately a 10% discount to Activision’s July 25, 2013 closing price.

122. As Centerview and various ASAC investors predicted, the closing of the transaction led to an increase in ASAC’s stock price. The purchase price was approximately a 24% discount to the October 14, 2013 closing price of \$17.83 per

share. ASAC's unrealized gain as of the first day of public trading following the Transaction's close (*i.e.*, October 14) was over \$725 million.

123. The Company benefits from its purchase of Vivendi shares in the Company at a discount to the market price, but not to the extent it could have if Kotick and Kelly had not insisted on ASAC's participation. The Company spent approximately \$5.83 billion to acquire, indirectly, approximately 429 million shares at \$13.60 per share. The Company financed the purchase with approximately \$1.23 billion of cash on hand and \$4.8 billion from a debt financing. At closing, the Company maintained over \$3 billion of cash on hand. The Company could have incurred at least \$500 million of additional debt. The Company also could have availed itself of other equity sources on better terms.

124. Centerview opined that the price Activision paid is fair from a financial point of view to the Company. Centerview did not opine as to the fairness of the overall transaction, in light of the Company's debt capacity or financing capacity or in light of Kotick and Kelly's newfound control and expected returns from ASAC GP.

125. The Special Committee and the rest of the Board concealed from Activision's stockholders how they had acceded to Kotick's threat to resign and thereby prevented implementation of the Secondary Offering Proposal. The Board secretly allowed Kotick and Kelly to reap the financial gain and voting power

associated with the ultimate terms of the BKBK Proposal. On September 30, 2013, Activision filed with the Securities and Exchange Commission a preliminary proxy statement. It listed fourteen factors considered by the Special Committee pertaining to the strategic and financial rationale for the transactions. None of those fourteen reasons make any reference to Kotick's refusal to support or cooperate in any alternative transaction, his threatened departure from the Company, or the threatened loss of bank financing commitments in the event of his departure. Nor does the narrative "Background of the Transactions" make any reference to threats by Kotick. The preliminary proxy statement conceals the true facts by, for example, describing the Special Committee's deliberations on May 25, 2013, as follows: "the Special Committee discussed, among other things, ... the advisability of including ASAC in a potential transaction if possible, given the assessment of the Company's management as to the feasibility and market impact of any disposition by Vivendi of its shares of the Company through market sales."

126. Vivendi, Kotick and Kelly negotiated a transaction in their mutual best interests, without regard for superior alternatives available to the Company. Kotick, Kelly and ASAC have been unjustly enriched and empowered, to the detriment of the Company and the public stockholders, in an amount to be shown at trial. The Special Committee members acceded to Kotick's demands, and by empowering and enriching Kotick, Kelly and ASAC, they also benefitted from a

new control structure that protected their incumbency but deprived the Class of the full benefits of the repurchase of control from Vivendi. Compared to potential alternatives, the transaction makes it more difficult for the Class to receive a future control premium or to participate in a future proxy contest.

DEMAND IS EXCUSED AS FUTILE

127. The facts alleged in the preceding paragraphs show that, at a minimum, reasonable doubt exists as to whether the Board is disinterested and independent, or the challenged transaction was the product of a valid exercise of business judgment.

128. All of Activision's eleven Board members at the time of the approval of the challenged transaction either had a personal material financial interest in the transaction or lacked independence from Vivendi or Kotick and Kelly. Six directors were affiliated with Vivendi, which threatened to exercise its power as a controller to the detriment of Activision and its stockholders in order to satisfy its liquidity needs. Kotick and Kelly negotiated for their own benefit and threatened to leave Activision and its stockholders to the sufferance of Vivendi unless the Board allowed ASAC to reap financial gains and obtain working control. The Special Committee members acquiesced to the demands and threats of Vivendi and Kotick, disloyally allowed Kotick and Kelly to reap undeserved benefits at the expense of the Company and the public stockholders unaffiliated with ASAC, and

disloyally tried to cover up their own complicity with and acquiescence to Vivendi's and Kotick's threats. All of the director defendants face a substantial risk of personal liability.

129. If legally relevant, demand on the currently constituted Board of Directors would also be futile. On October 11, 2013, immediately upon the closing of the transactions, Activision's then-seven-person Board consisted of Kotick, Kelly, former Special Committee members Corti, Morgado and Sarnoff, as well as new directors Peter Nolan and Elaine Wynn, none of whom can be considered disinterested and independent. An eighth director was added in January 2014.

CLASS ACTION ALLEGATIONS

130. Lead Plaintiff Pacchia brings this action pursuant to Court of Chancery Rule 23, on behalf of himself and all other Activision stockholders other than Kotick, Kelly, Vivendi, ASAC, the investors in ASAC, and any other stockholders affiliated with the investors in ASAC (the "Class").

131. This action is properly maintainable as a class action. Joinder of all class members is impracticable. As of October 11, 2013, Activision had approximately 691 million publicly traded shares held by hundreds if not thousands of stockholders.

132. There are common questions of law and fact including, whether the defendants violated their fiduciary duties to the Class, whether the transaction is entirely fair, and whether and to what extent the Class has been injured.

133. Lead Plaintiff is committed to prosecuting this action and he will fairly and adequately protect the interests of the Class. Lead Plaintiff's claims are typical of the Class and there are no material conflicts of interest between the Lead Plaintiff and the Class as a whole. Lead Plaintiff is fully adequate to represent the Class in this matter.

134. The prosecution of separate actions by individual Class members would create an unreasonable risk of inconsistent adjudications. Resulting inefficiencies would unnecessarily burden the parties and the Courts.

FIRST CLAIM FOR RELIEF
**(Breach of Fiduciary Duty Against Kotick
and Kelly on behalf of the Class)**

135. Lead Plaintiff repeats and realleges all previous allegations as if they had been set forth in full herein.

136. As directors of Activision, defendants Kotick and Kelly each owed fiduciary duties to the Company's stockholders, including the obligations of loyalty, care and good faith. Those duties are not diluted by their self-interest or their interest in ASAC.

137. Defendants Kotick and Kelly breached their fiduciary duties by usurping a corporate opportunity, engaging in self-dealing, voting to approve a transaction that is not entirely fair, and favoring their own interests over the interests of the Company and the Class. Kotick and Kelly blocked alternative superior transactions for Activision, exerted improper influence on the members of the Special Committee through threatened violations of their employment agreements, negotiated a deal outside of the Special Committee, and structured a self-dealing transaction in which they paid a discounted price and stood to earn massive preferred and levered returns, obtained working control, obtained control of the Board, and usurped a corporate opportunity.

138. Kotick and Kelly prevented the Company from repurchasing additional shares, pursuing an alternative transaction on better financial terms, or approving a repurchase transaction that returned control to the public stockholders.

139. As a result, Kotick, Kelly, and ASAC benefited themselves and harmed the Class, by foreclosing alternative transactions on better financial terms, by foisting a new control structure on the Class that deprived the Class of the full benefit of the repurchase of control from Vivendi, and by making it more difficult for the Class to receive a future control premium or participate in a future proxy contest.

SECOND CLAIM FOR RELIEF
(Breach of Fiduciary Duty Against the
Vivendi-Affiliated Directors on behalf of the Class)

140. Lead Plaintiff repeats and realleges all previous allegations as if they had been set forth in full herein.

141. As directors of Activision, defendants Capron, Crépin, Turrini, Grainge, Charlier, and Dubos each owed fiduciary duties to the Company's stockholders, including the obligations of loyalty, care and good faith. Those duties were not diluted by their loyalties to Vivendi.

142. Defendants Capron, Crépin, Turrini, Grainge, Charlier, and Dubos breached their fiduciary duties by approving a self-dealing and unfair transaction that favored the interests of Vivendi, Kotick, Kelly and ASAC over the interests of the Company and the Class. Vivendi suffered from a disabling self-interest by virtue of its need for liquidity, as is seen in its willingness to accept a sale of control at a discount to the market price and to fair value. By threatening unilateral action to undertake the inferior transaction of an extraordinary dividend, the Vivendi-affiliated directors also exerted improper influence over the affairs of the Special Committee and the Company. They disbanded the Special Committee and negotiated directly with ASAC without regard for the best interests of the Company and its public stockholders.

143. As a result, the Vivendi-affiliated directors harmed the Class, by foreclosing alternative transactions on better financial terms, by foisting a new control structure on the Class that deprived the Class of the full benefit of the repurchase of control from Vivendi, and by making it more difficult for the Class to receive a future control premium or participate in a future proxy contest.

THIRD CLAIM FOR RELIEF
**(Breach of Fiduciary Duty Against Members of the
Special Committee on behalf of the Class)**

144. Lead Plaintiff repeats and realleges all previous allegations as if they had been set forth in full herein.

145. As directors of Activision, defendants Corti, Morgado, and Sarnoff each owed fiduciary duties to the Company's stockholders, including the obligations of loyalty, care and good faith. In their capacity as Special Committee members, they were charged with protecting the interests of the Company and the Class and preventing overreaching by Vivendi, Kotick and Kelly.

146. Defendants Corti, Morgado, and Sarnoff breached their fiduciary duties by acceding to the pressure exerted by Vivendi, Kotick, and Kelly, proposing the disbandment of the Special Committee, abdicating their responsibilities, backing down from their initial insistence that a repurchase transaction return control to the public stockholders and that the Company maximize the benefits created by Vivendi's willingness to sell control at a discount

to fair value, disseminating a misleading preliminary proxy statement, and by acceding to the appointment, nomination and election of Nolan and Wynn.

147. As a result, the Special Committee Defendants harmed the Class, by not pursuing alternative transactions on better financial terms, by foisting a new control structure on the Class that deprived the Class of the full benefit of the repurchase of control from Vivendi, and by making it more difficult for the Class to receive a future control premium or participate in a future proxy contest.

FOURTH CLAIM FOR RELIEF
(Breach of Fiduciary Duty Against
Vivendi on behalf of the Class)

148. Lead Plaintiff repeats and realleges all previous allegations as if they had been set forth in full herein.

149. As the majority stockholder of Activision, defendant Vivendi owed fiduciary duties to the Company and its public stockholders, including the obligations of loyalty, care and good faith. Those duties could in no way be diluted by its self-interest.

150. Defendant Vivendi breached its fiduciary duties by threatening to use its powers as majority stockholder to undertake an inferior transaction and by exerting improper influence over the affairs of the Special Committee and the Company. Vivendi suffered from a disabling self-interest by virtue of its need for liquidity, as is seen in its willingness to accept a sale of control at a discount to the

market price and to fair value. By threatening unilateral action to undertake the inferior transaction of an extraordinary dividend, Vivendi exerted improper influence over the affairs of the Special Committee and the Company. Through its control of the Board, Vivendi disbanded the Special Committee, negotiated directly with ASAC, and approved a self-dealing and unfair transaction that favored the interests of Vivendi, Kotick, Kelly and ASAC over the interests of the Company and its minority stockholders.

151. As a result, Vivendi harmed the Class, by foreclosing alternative transactions on better financial terms, by foisting a new control structure on the Class that deprived the Class of the full benefit of the repurchase of control from Vivendi, and by making it more difficult for the Class to receive a future control premium or participate in a future proxy contest.

FIFTH CLAIM FOR RELIEF
**(Aiding and Abetting Against ASAC
and ASAC GP on behalf of the Class)**

152. Lead Plaintiff repeats and realleges all previous allegations as if they had been set forth in full herein.

153. Through its principals, Kotick and Kelly, ASAC and ASAC GP knowingly participated in the breaches of the fiduciary duties of care, loyalty, and good faith owed by Kotick, Kelly and the other director defendants. ASAC engaged in self-dealing, by negotiating with Vivendi on terms that allowed ASAC

to purchase control of the Company at a discount to fair value, without regard for the availability of alternative superior transactions that would have allowed the Company to repurchase additional shares or approve a repurchase transaction that returned control of the Company to the public stockholders.

154. As a result, Kotick, Kelly, ASAC, and ASAC GP benefited themselves and harmed the Class, by foreclosing alternative transactions on better financial terms, by foisting a new control structure on the Class that deprived the Class of the full benefit of the repurchase of control from Vivendi, and by making it more difficult for the Class to receive a future control premium or participate in a future proxy contest.

SIXTH CLAIM FOR RELIEF
**(Breach of Fiduciary Duty Against Kotick
and Kelly Derivatively on Behalf of the Company)**

155. Lead Plaintiff repeats and realleges all previous allegations as if they had been set forth in full herein.

156. As directors of Activision, defendants Kotick and Kelly each owed fiduciary duties to the Company's stockholders, including the obligations of loyalty, care and good faith. Those duties are not diluted by their self-interest or their interest in ASAC.

157. Defendants Kotick and Kelly breached their fiduciary duties by usurping a corporate opportunity, engaging in self-dealing, voting to approve a

transaction that is not entirely fair, and favoring their own interests over the interests of the Company. Kotick and Kelly blocked alternative superior transactions for Activision, exerted improper influence on the members of the Special Committee through threatened violations of their employment agreements, negotiated a deal outside of the Special Committee, and structured a self-dealing transaction in which they paid a discounted price, and stood to earn massive preferred and levered returns, obtained working control, obtained control of the Board, and usurped a corporate opportunity.

158. Kotick and Kelly prevented the Company from repurchasing additional shares, pursuing an alternative transaction on better financial terms, or approving a repurchase transaction that returned control to the public stockholders.

SEVENTH CLAIM FOR RELIEF
**(Breach of Fiduciary Duty Against the Vivendi-Affiliated
Directors Derivatively on Behalf of the Company)**

159. Lead Plaintiff repeats and realleges all previous allegations as if they had been set forth in full herein.

160. As directors of Activision, defendants Capron, Crépin, Turrini, Grainge, Charlier, and Dubos each owed fiduciary duties to the Company's stockholders, including the obligations of loyalty, care and good faith. Those duties are not diluted by their loyalties to Vivendi.

161. Defendants Capron, Crépin, Turrini, Grainge, Charlier, and Dubos breached their fiduciary duties by approving a self-dealing and unfair transaction that favored the interests of Vivendi, Kotick, Kelly and ASAC over the interests of the Company and its minority stockholders. Vivendi suffered from a disabling self-interest by virtue of its need for liquidity, as is seen in its willingness to accept a sale of control at a discount to the market price and to fair value. By threatening unilateral action to undertake the inferior transaction of an extraordinary dividend, the Vivendi-affiliated directors also exerted improper influence over the affairs of the Special Committee and the Company. They disbanded the Special Committee and negotiated directly with ASAC without regard for the best interests of the Company.

EIGHTH CLAIM FOR RELIEF
**(Breach of Fiduciary Duty Against Members
of the Special Committee Derivatively on Behalf of the Company)**

162. Lead Plaintiff repeats and realleges all previous allegations as if they had been set forth in full herein.

163. As directors of Activision, defendants Corti, Morgado, and Sarnoff each owed fiduciary duties to the Company's stockholders, including the obligations of loyalty, care and good faith. In their capacity as Special Committee members, they were charged with protecting the interests of the Company and its public stockholders and preventing overreaching by Vivendi, Kotick and Kelly.

164. Defendants Corti, Morgado, and Sarnoff breached their fiduciary duties by acceding to the pressure exerted by Vivendi, Kotick, and Kelly, proposing the disbandment of the Special Committee, abdicating their responsibilities, and backing down from their initial insistence that a repurchase transaction return control to the public stockholders and that the Company maximize the benefit created by Vivendi's willingness to sell at a discount to fair value.

NINTH CLAIM FOR RELIEF
(Breach of Fiduciary Duty Against Vivendi
Derivatively on Behalf of the Company)

165. Lead Plaintiff repeats and realleges all previous allegations as if they had been set forth in full herein.

166. As the majority stockholder of Activision, defendant Vivendi owed fiduciary duties to the Company and its public stockholders, including the obligations of loyalty, care and good faith. Those duties could in no way be diluted by its self-interest.

167. Vivendi suffered from a disabling self-interest by virtue of its need for liquidity, as is seen in its willingness to accept a sale of control at a discount to the market price and to fair value. By threatening unilateral action to undertake the inferior transaction of an extraordinary dividend, Vivendi breached its fiduciary duties and exerted improper influence over the affairs of the Special Committee

and the Company. Through its control of the Board, Vivendi disbanded the Special Committee, negotiated directly with ASAC, and approved a self-dealing and unfair transaction that favored the interests of Vivendi, Kotick, Kelly and ASAC over the interests of the Company and its minority stockholders.

TENTH CLAIM FOR RELIEF
(Aiding and Abetting Against ASAC and ASAC GP
Derivatively on Behalf of the Company)

168. Lead Plaintiff repeats and realleges all previous allegations as if they had been set forth in full herein.

169. Through its principals, Kotick and Kelly, ASAC and ASAC GP knowingly participated in the breaches of the fiduciary duties of care, loyalty, and good faith owed by Kotick, Kelly and the other director defendants. ASAC and ASAC GP engaged in self-dealing, by negotiating with Vivendi on terms that allowed ASAC to purchase control of the Company at a discount to fair value, without regard for the availability of alternative superior transactions that would have allowed the Company to repurchase additional shares, obtain financing on better terms, and approve a repurchase transaction that returned control of the Company to the public stockholders.

ELEVENTH CLAIM FOR RELIEF
(Breach of Contract Against ASAC
Derivatively on Behalf of the Company)

170. Lead Plaintiff repeats and realleges all previous allegations as if they had been set forth in full herein.

171. ASAC, acting through Kotick and Kelly, and acting in concert with director defendants Corti and Morgado – the two members of the Vivendi Nominating Committee of the Nominating and Corporate Governance Committee – breached Section 3.01(a)(iv) of the Stockholders Agreement by causing Peter Nolan and Elaine Wynn to be appointed as new directors immediately after the closing of the challenged transaction and the resignation of the Vivendi designees. ASAC, acting through Kotick and Kelly, further breached Section 3.01(a)(iv) of the Stockholders Agreement by their joining with the other directors in recommending the election of Peter Nolan and Elaine Wynn to new terms as directors and by causing ASAC's shares to be voted in support of their election.

PRAYER FOR RELIEF

WHEREFORE, Lead Plaintiff demands judgment as follows:

a. Certifying a Class consisting of Lead Plaintiff and all other Activision stockholders other than Kotick, Kelly, Vivendi, ASAC, the investors in ASAC, or any other stockholders affiliated with the investors in ASAC, and

certifying plaintiff as the Class representative and certifying his counsel as Class counsel;

b. Declaring that the director defendants and Vivendi breached their fiduciary duties to the Company and its stockholders;

c. Declaring that ASAC and ASAC GP aided and abetted the breaches of fiduciary duty committed by the director defendants and Vivendi;

d. Reforming the Stockholders Agreement so as to deprive Kotick and Kelly of their control over the Company through ASAC;

e. Enforcing the Stockholders Agreement so as to require the removal of Peter Nolan and Elaine Wynn from the Board of Directors;

f. Awarding money damages against all defendants, jointly and severally, for all losses and damages suffered by Activision and the Class as a result of the acts complained of herein, together with pre-judgment interest;

g. Awarding restitution from ASAC, Kotick and Kelly and ordering disgorgement to the Company of all profits they obtained;

h. Awarding to Lead Plaintiff the costs and disbursements of this action, including reasonable attorneys' fees, expert fees, costs, and expenses; and

i. Such other and further relief as the Court deems just and proper.

/s/ Joel Friedlander

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DATED: October 10, 2014

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2014, I caused a copy of the **Public Version of Verified Fifth Amended Class and Derivative Complaint** to be served upon the following counsel by File & ServeXpress:

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