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Activision Publishing, Inc.

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF LOS ANGELES**

17 JASON WEST, etc., et al., ) Case No. SC 107041  
18 ) [Consolidated with Case No. SC 107757]  
Plaintiffs, )  
19 vs. ) **FIRST AMENDED CROSS-COMPLAINT**  
20 ) **FOR:**  
ACTIVISION PUBLISHING, INC., ) (1) **BREACH OF FIDUCIARY**  
21 etc., et al., ) **DUTY/DUTY OF LOYALTY;** (2)  
22 Defendants. ) **BREACH OF CONTRACT-**  
 ) **EMPLOYMENT AGREEMENTS;** (3)  
23 ) **BREACH OF CONTRACT-**  
 ) **MEMORANDUM OF UNDERSTANDING;**  
24 ) **(4) BREACH OF THE IMPLIED**  
ACTIVISION PUBLISHING, INC., ) **COVENANT OF GOOD FAITH AND**  
25 Cross-Complainant, ) **FAIR DEALING (5) DECLARATORY**  
26 vs. ) **RELIEF;** (6) & (7) **INTENTIONAL**  
 ) **INTERFERENCE WITH CONTRACT;** (8)  
27 JASON WEST, an individual; ) **AIDING AND ABETTING BREACH OF**  
 ) **FIDUCIARY DUTY;** (9) **VIOLATION OF**  
28 VINCE ZAMPELLA, an individual; ) **BUS. & PROF. CODE § 17200; AND (10)**  
 ) **INTENTIONAL INTERFERENCE WITH**  
ELECTRONIC ARTS, INC., a Delaware ) **PROSPECTIVE ECONOMIC**  
 ) **ADVANTAGE**

1 corporation; and ROES 1 through 100, )  
 inclusive, )  
 2 )  
 Cross-Defendants. ) Judge: Hon. Linda K. Lefkowitz  
 3 ) Dept.: M  
 )  
 4 ) Complaint filed: March 3, 2010  
 ) Cross-Complaint filed: April 9, 2010  
 5 ) Trial Date: May 23, 2011

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6  
 7 Cross-Complainant Activision Publishing, Inc. (“Activision”) makes the following  
 8 allegations against Cross-Defendants Jason West (“West”), Vince Zampella (“Zampella”),  
 9 Electronic Arts, Inc. (“Electronic Arts” or “EA”), and Roes 1 through 100, inclusive (collectively  
 10 “Cross-Defendants”):

11 **INTRODUCTION**

12 1. In this amended cross-complaint, Activision alleges that Electronic Arts conspired  
 13 with two former senior Activision executives, West and Zampella (the “executives”) to derail  
 14 Activision’s *Call of Duty* franchise, disrupt its Infinity Ward development studio, and inflict  
 15 serious harm on the company. This pleading lays out an intentional and systematic pattern of  
 16 deception by the former executives and Electronic Arts to hijack Activision assets for personal  
 17 greed and corporate gain. This pleading alleges that the executives – who made tens of millions of  
 18 dollars at Activision – breached their contracts and violated their fiduciary duties to the company.  
 19 Now, aided by new facts and other additional information acquired in discovery, Activision also  
 20 alleges that Electronic Arts intentionally interfered with contracts, engaged in unfair competition,  
 21 and aided and abetted breaches of fiduciary duty by the executives.

22 2. This amended cross-complaint explains that starting as early as July 30, 2009,  
 23 Electronic Arts and the former Activision executives – with full knowledge that the executives  
 24 were under contract and legally committed to Activision for more than two additional years –  
 25 conspired to set up an independent company staffed by key Activision employees, including  
 26 designers, programmers, artists, and others from Activision’s Infinity Ward development studio,  
 27 thus draining the studio of talent and potentially delaying future *Call of Duty* games. Laying the  
 28 groundwork for this scheme while still employed as studio heads and Activision fiduciaries, these

1 disloyal executives actively sought to alienate Infinity Ward employees from Activision by,  
2 among other things, refusing to cooperate with the Company in the granting of retention equity to  
3 studio staff. Emboldened by their secret alliance with Electronic Arts, the executives refused to  
4 adhere to even the minimal standards of behavior required of any employee or executive. Under  
5 these circumstances, Activision had good cause to terminate their employment.

6         3.         When Activision first filed its cross-complaint on April 9, 2010, it knew little about  
7 Electronic Arts's complicity in the facts and circumstances explained here. This amended cross-  
8 complaint – based on subsequent discovery – shows that much of West and Zampella's  
9 misconduct was inextricably intertwined with Electronic Arts's interference with their contracts.  
10 The unlawful conduct came from the highest levels at Electronic Arts, including EA Chief  
11 Executive Officer, John Riccitiello, and Chief Operating Officer, John Schappert, with direct  
12 support from the high profile talent agency, Creative Artists Agency, and even a former member  
13 of Activision's Board of Directors and former Activision lawyer.

14         4.         Activision is seeking \$400 million in actual and punitive damages from EA and the  
15 former executives, including profits Activision would have made but for EA's interference, costs  
16 incurred in rebuilding the affected studio, and damages suffered as a result of delays and  
17 disruptions. Activision also seeks a judgment permitting it to recapture compensation previously  
18 awarded to its faithless executives and to prevent Electronic Arts and the former executives from  
19 benefiting from their illegal conduct.

20         5.         Notably, the allegations against Electronic Arts, West, and Zampella set forth  
21 herein are not based on speculation or suspicion. The material allegations in this pleading are  
22 supported by documentary evidence supplied from West's and Zampella's own communications,  
23 from Electronic Arts's own records and from the files of the talent agents and attorneys who  
24 conspired in the scheme to harm Activision. Where it is permitted to do so, Activision has  
25 provided the dates and the substance of those documents in this cross-complaint. In other  
26 instances, Activision is prevented from publicly revealing the evidence because Electronic Arts  
27 and the other entities have sought to conceal this information from the public by designating  
28 documents as "Confidential," "Highly Confidential," or even "Confidential: Attorneys' Eyes

1 Only” under a protective order, when these documents are not truly “confidential,” but merely  
2 embarrassing and damaging to Electronic Arts and its co-conspirators. Activision intends to  
3 vigorously fight to have these documents unsealed.

4 **PARTIES**

5 6. Cross-Complainant Activision is a Delaware corporation, qualified to do and doing  
6 business in California with its principal executive offices in Santa Monica, California.

7 7. Activision is informed and believes and based thereon alleges that Cross-Defendant  
8 West is an individual residing in Los Angeles County.

9 8. Activision is informed and believes and based thereon alleges that Cross-Defendant  
10 Zampella is an individual residing in Los Angeles County.

11 9. Cross-Defendant Electronic Arts is, and at all times mentioned herein was, a  
12 corporation duly organized and existing under the laws of the State of Delaware, with its principal  
13 place of business in Redwood Shores, California, within the County of San Mateo.

14 10. The true names and capacities, whether corporate, associate, individual or  
15 otherwise, of Cross-Defendants Roes 1 through 100, inclusive, are unknown to Activision at this  
16 time. Activision therefore sues these Cross-Defendants, and each of them, by such fictitious  
17 names. Activision will seek leave of court to amend this cross-complaint to show the true names  
18 and capacities of Cross-Defendants named in the Cross-Complaint as Roes when they have been  
19 ascertained. Activision is informed and believes that each of the Cross-Defendants named in the  
20 Cross-Complaint as a Roe is responsible and liable to Activision for the events, happenings and  
21 occurrences set forth herein.

22 11. Activision is informed and believes, and on that basis alleges, that some or all of  
23 the Roe Cross-Defendants named herein are the agents, servants, employees, partners, joint  
24 venturers, representatives or alter egos of other Cross-Defendants in this action, and that the acts  
25 alleged herein were performed during the course and scope of their agency, employment,  
26 partnership, joint venture or representative relationship or under the direction or with the express  
27 knowledge, approval and ratification of their principals, masters, employers, partners and joint  
28 venturers.

1 **FACTUAL BACKGROUND**

2 **A. Activision Acquires Infinity Ward**

3 12. Headquartered in Santa Monica, California, Activision is the world's #1  
4 independent publisher of online and console video games. For the year ended December 31, 2009,  
5 Activision's parent company, Activision Blizzard, Inc., together with its subsidiaries, had net  
6 revenues of over \$4 billion and employed over 7000 talented, capable people worldwide.

7 13. One of Activision's wholly-owned subsidiaries is Infinity Ward, a video game  
8 developer in the business of designing and producing video games. In the spring of 2002, Infinity  
9 Ward was a newly created studio formed by West, Zampella and their associates. Infinity Ward  
10 had not yet created a single game. Although Infinity Ward had talented employees from the  
11 *Medal of Honor: Allied Assault* development team, it had no track record as an independent  
12 developer. Infinity Ward was in dire financial straits and West, Zampella and others needed to  
13 make an immediate choice: fold the company with its members to become employees of EA or  
14 find a publisher to invest in the company and provide desperately needed financial support.  
15 Infinity Ward therefore reached out to Activision and proposed a transaction whereby Activision  
16 would immediately inject desperately-needed cash into Infinity Ward thereby enabling the  
17 company to remain in existence.

18 14. Activision responded quickly to Infinity Ward's desperate plea and preserved the  
19 studio. On May 10, 2002, Activision entered into an agreement with Infinity Ward and its initial  
20 stockholders, including West and Zampella, to invest in Infinity Ward by purchasing 30% of the  
21 common stock of Infinity Ward. Activision also entered into a separate development agreement  
22 with Infinity Ward for the development of multiple products, including a reality-based World War  
23 II game, based on a wholly-owned and copyrighted Activision property called *Call of Duty*.  
24 Concurrently with the stock purchase, Activision entered into an agreement with Infinity Ward  
25 and its initial stockholders that provided Activision with the option to purchase the remaining 70%  
26 of Infinity Ward's common stock for millions of dollars. On October 23, 2003, Activision  
27 exercised that option and thereupon invested millions more dollars in Infinity Ward by purchasing  
28

1 the remaining 70% of Infinity Ward's common stock. As a result of these transactions, in October  
2 2003, Infinity Ward became (and remains) a wholly owned subsidiary of Activision.

3 15. For the better part of a decade, Activision's Infinity Ward studio has developed  
4 entirely with Activision's capital and with the aid and assistance of numerous Activision  
5 resources, including talented people from all across Activision, high-quality, commercially and  
6 critically successful games that are recognized as among the game industry's most successful  
7 products. Shortly after acquiring Infinity Ward, Activision launched its now-famous *Call of Duty*  
8 – a military combat game. In subsequent years, to create even more value for the audiences of the  
9 *Call of Duty* franchise, Activision has alternated between Infinity Ward and another internal  
10 Activision studio, Treyarch, to develop *Call of Duty* games. The efforts of Activision, and its  
11 Infinity Ward and Treyarch studios, have made the *Call of Duty* franchise one of the most  
12 successful videogame franchises enjoyed by tens of millions of gamers.

13 **B. West and Zampella Enter Into Exclusive Employment Agreements With Activision**

14 16. On or about October 23, 2003, to induce Activision to exercise its option to  
15 purchase the remaining 70% of Infinity Ward's common stock referenced above, West and  
16 Zampella each agreed to enter into exclusivity agreements with Activision (the "Exclusivity  
17 Agreements"). Among other things, the Exclusivity Agreements provided that West and Zampella  
18 were required to refrain from soliciting customers or employees of Activision for a period  
19 following the termination of their employment with Activision.

20 17. Thereafter, on or about November 1, 2003, West entered into an executive  
21 Employment Agreement with Activision to serve as Chief Technology Officer of Infinity Ward in  
22 exchange for many millions of dollars of compensation for the period beginning November 1,  
23 2003 and expiring on October 31, 2006 (the "West Employment Agreement"). A true and correct  
24 redacted copy of the West Employment Agreement is attached hereto as Exhibit "A" and  
25 incorporated as though set forth fully herein. On the same date, Zampella entered into an  
26 executive Employment Agreement with Activision to serve as Chief Creative Officer of Infinity  
27 Ward in exchange for many millions of dollars of compensation for the period beginning on  
28 November 1, 2003 and expiring on October 31, 2006 (the "Zampella Employment Agreement").

1 A true and correct redacted copy of the Zampella Employment Agreement is attached hereto as  
2 Exhibit “C” and incorporated as though set forth fully herein.

3 18. Pursuant to their Employment Agreements, West and Zampella each agreed to  
4 “personally and diligently perform, on a full-time and exclusive basis, such services as  
5 [Activision] or any of its related or affiliated entities may reasonably require.” (Exs. A & C, ¶ 4.)  
6 West and Zampella each further agreed to abide by *all* of Activision’s policies, procedures and  
7 regulations. (*See id.*) Finally, West and Zampella each agreed to perform these duties in a “loyal  
8 and conscientious manner” and to the best of his ability. (*See id.*)

9 19. In recognition of the serious damage and harm that disclosure of Activision  
10 confidential information could cause Activision and its shareholders, West and Zampella each also  
11 specifically agreed to numerous written contractual provisions in order to guarantee their loyalty  
12 to Activision both during and after the term of their employment. For example, West and  
13 Zampella each agreed:

14 (a) to refrain from competing *in any manner* with Activision during the term of  
15 his employment;

16 (b) that *all* rights to any and all intellectual or other property “produced, created  
17 or suggested” by West and/or Zampella during the course of their employment related in  
18 any way to their work with Activision would be deemed works for hire and therefore the  
19 sole exclusive property of Activision;

20 (c) to keep confidential any and all confidential and/or proprietary information  
21 he received from Activision; and

22 (d) to refrain from soliciting Activision employees for a period of two years  
23 following the termination of each or their employment with Activision.

24 (*See Exs. A & C, ¶ 8.*)

25 20. The West Employment Agreement provides that Activision may terminate West  
26 pursuant to the Agreement at any time for willful, reckless or gross misconduct, negligent  
27 performance of job responsibilities, and engaging in conduct prohibited by Section 7.2 of the  
28

1 Activision Employee Handbook. (*See* Ex. A, ¶ 9(a).) The Zampella Employment Agreement has  
2 the same provisions. (*See* Ex. C, ¶ 9(a).)

3         21. At the time West and Zampella entered into their respective Employment  
4 Agreements, Section 7.2 of the Activision Employee Handbook set forth many standard  
5 requirements of employment and outlined the general standard of conduct required by Activision  
6 of its employees for the orderly and efficient operation of the company and prohibited certain  
7 disruptive and inappropriate conduct, including but not limited to, “making false, vicious, profane  
8 or malicious statements concerning [Activision] or any of its employees,” “interfering with  
9 [Activision’s] discipline or efficiency,” “violating any Company policy,” and “[i]nsubordination.”  
10 Needless to say, moreover, as high-ranking and highly-compensated executives, West and  
11 Zampella were duty-bound by a very clear rules forbidding them from using Company assets or  
12 personnel for their own personal, financial gain.

13         22. Both the West Employment Agreement and the Zampella Employment Agreement  
14 provided that Activision had the option to extend the initial term of each contract by two  
15 additional successive one-year periods. (*See* Exs. A & C, ¶ 1(b).) With respect to both West and  
16 Zampella, Activision exercised these options, thereby extending the term of the West Employment  
17 Agreement and the Zampella Employment Agreement by two years to October 31, 2008, which  
18 resulted in millions of dollars of compensation for them.

19         23. On or about April 9, 2008, West and Activision entered into an Amendment to the  
20 West Employment Agreement (the “West Amendment”). Pursuant to the West Amendment, West  
21 and Activision extended the term of the West Employment Agreement to October 31, 2011, and  
22 West received many more millions of dollars in compensation beyond what he was entitled to  
23 under the agreement he previously struck. A true and correct redacted copy of the West  
24 Amendment is attached hereto as Exhibit “B” and incorporated as though set forth fully herein.  
25 Likewise, on or about April 9, 2008, Zampella and Activision entered into an Amendment to the  
26 Zampella Employment Agreement (the “Zampella Amendment”). Pursuant to the Zampella  
27 Amendment, Zampella and Activision extended the term of the Zampella Employment Agreement  
28 to October 31, 2011, and Zampella received many millions of dollars in additional compensation



1 beyond what he was entitled to under the agreement he previously struck. A true and correct  
2 redacted copy of the Zampella Amendment is attached hereto as Exhibit "D" and incorporated as  
3 though set forth fully herein.

4 **C. The Call of Duty Franchise**

5 24. On or about October 29, 2003, Activision released the game *Call of Duty*, which  
6 was developed by Infinity Ward, with the support, marketing, promotional, branding, sales, and  
7 operations assistance of many executives and employees from other parts of the Activision  
8 organization. *Call of Duty* is a "first person action" game that allows the user to play the role of a  
9 soldier in simulated World War II combat scenarios.

10 25. As noted, since the release of the original *Call of Duty* game, to establish the *Call*  
11 *of Duty* franchise, Activision has worked with several of its development studios to create games  
12 and has sought to coordinate the efforts of these developers to deliver the very best *Call of Duty*  
13 games for its audiences. To that end, Activision utilized Infinity Ward along with other studios,  
14 including in particular Activision's subsidiary Treyarch (which developed the fastest selling *Call*  
15 *of Duty* blockbuster to-date), to develop a series of games under the *Call of Duty* brand that can be  
16 played on a variety of devices. Under Activision's supervision, Infinity Ward and Treyarch  
17 developed, and Activision published, promoted and distributed, numerous critically acclaimed and  
18 commercially successful *Call of Duty* games, specifically: *Call of Duty* (developed by Infinity  
19 Ward); *Call of Duty: United Offensive* (developed by Grey Matter, which later joined Treyarch);  
20 *Call of Duty 2* (developed by Infinity Ward); *Call of Duty 2: Big Red One* (developed by  
21 Treyarch); *Call of Duty 3* (developed by Treyarch); *Call of Duty 4: Modern Warfare* (developed  
22 by Infinity Ward) ("*Modern Warfare 1*"); *Call of Duty: World at War* (developed by Treyarch);  
23 *Call of Duty: Modern Warfare 2* (developed by Infinity Ward) ("*Modern Warfare 2*"); and *Call of*  
24 *Duty: Black Ops* (developed by Treyarch).

25 26. *Call of Duty* was initially launched as an historical series, with each game set in the  
26 World War II era. The series reached even bigger audiences when the setting was shifted to the  
27 modern battlefield in Infinity Ward's first *Modern Warfare* title. In November 2007, Activision  
28 released *Call of Duty: Modern Warfare* for three platforms: Xbox 360, PlayStation 3 and

1 Microsoft Windows. By January 2008, over 7 million units of *Modern Warfare 1* had been  
2 purchased by and for players, and by June 2008, sales of the game exceeded 10 million units. The  
3 *Modern Warfare 1* “map” pack, released in April 2008 on Xbox Live, sold over 1 million units in  
4 nine days, delighting fans around the world.

5 27. Following the extraordinary success of *Modern Warfare 1*, the gaming world was  
6 eagerly anticipating the release of the next Infinity Ward game in the series, *Call of Duty: Modern*  
7 *Warfare 2*. Activision released *Modern Warfare 2* on November 10, 2009 for the Xbox 360, PS3  
8 and PC platforms. Within 24 hours, over 4.7 million *Modern Warfare 2* units had been purchased  
9 in North America and the United Kingdom alone, generating hundreds of millions in revenue.  
10 This was an unprecedented sum for any property, not only in the video game industry, but in any  
11 entertainment medium including film and television. In June 2010, Activision announced that  
12 more than 20 million copies of *Modern Warfare 2* had been purchased worldwide.

13 28. Activision solely owns and controls the rights to *Call of Duty* and *Modern Warfare*  
14 and continues to oversee the development and production of games under the *Call of Duty* and  
15 *Modern Warfare* brands.

16 **D. West and Zampella Enter Into A Memorandum Of Understanding With Activision**

17 29. Having previously purchased Infinity Ward outright, having brought on its  
18 employees as Activision employees, and in light of the success of *Call of Duty: Modern Warfare*,  
19 and previous *Call of Duty* games developed by Infinity Ward, it was a priority for Activision to  
20 ensure that both West and Zampella remained at Activision, under exclusive contracts, that  
21 ensured Activision would have the benefit of their undivided allegiance and their valuable talents  
22 and services, particularly in managing and guiding Infinity Ward, for years to come. On or about  
23 March 13, 2008, West and Zampella entered into a Memorandum of Understanding with  
24 Activision and Infinity Ward in connection with the development of *Modern Warfare 2* and any  
25 subsequent Infinity Ward projects (the “MOU”).

26 30. Pursuant to the MOU, West and Zampella affirmed their agreement to continue  
27 their employment at Activision and agreed that they and the other employees of Infinity Ward  
28 would develop *Modern Warfare 2* in sufficient time and at the highest level of quality such that

1 the game could be released by November 15, 2009. West and Zampella agreed that Activision  
2 would continue to be responsible for helping to publish and deliver the game, including all  
3 marketing, advertising, branding, packaging, public relations, product pricing and discounts as  
4 well as all financial functions, accounting, distributions and logistics, quality assurance, customer  
5 support and numerous centralized technology functions. In addition, Activision made available  
6 employees and technologies from numerous wholly-owned Activision studios or divisions to assist  
7 in the creation and development of *Modern Warfare 2*.

8         31. The MOU also provided for certain additional and extraordinary compensation,  
9 profit sharing, stock options, and shares for stock for West and Zampella relating to *Modern*  
10 *Warfare 2* and other *Call of Duty* games. In exchange, West and Zampella, inter alia, agreed to  
11 extend the non-solicitation provision in their employment agreements for an additional year, for a  
12 total of three (3) years following their separation from Activision.

13         32. Accordingly, by mid-2009, Activision and Infinity Ward had established an  
14 extraordinary track record as one of the best publisher/development teams in the industry, admired  
15 by the press, valued by gamers, and envied by Activision's competitors. Activision had actively  
16 nurtured and invested in its Infinity Ward studio. Infinity Ward's game developers were rewarded  
17 with the industry's highest levels of compensation that reflected the success of Infinity Ward's  
18 games. Activision approved enormous development budgets and made available personnel,  
19 technologies and numerous other resources as well as large amounts of capital to ensure Infinity  
20 Ward had every resource it needed to develop its games. Activision invested tens of millions to  
21 market those games and it invested tens of millions more to manufacture those games.

22         33. Importantly, Activision made sure that the two highly-compensated executives at  
23 Infinity Ward, West and Zampella, were continuously employed under written exclusive contracts  
24 with Activision. These contracts were extended and enhanced over time in response to demands  
25 by West and Zampella to provide them with extraordinary compensation, huge potential bonuses,  
26 and certain creative freedoms, among other things. In return, West and Zampella promised  
27 Activision that they would be loyal and productive executives who would fulfill their contractual  
28 commitments to Activision, honor their fiduciary duties, and remain devoted solely to producing

1 the highest-quality, commercially-successful games for Activision through Infinity Ward for  
2 several years. Activision also received written promises that during the terms of their employment  
3 contracts, West and Zampella would act in the best interests of Activision and refrain from  
4 competing with Activision in any manner and that for a period of time following the termination  
5 of their employment with Activision, they would refrain from soliciting Activision employees. As  
6 a result of these and other provisions in West's and Zampella's employment agreements, and its  
7 relationship with other Infinity Ward employees, Activision looked forward to years and years of  
8 delighting millions of players with great video games from Infinity Ward, with the attendant  
9 revenues and profits these games generated.

10 **E. The Fall Of Electronic Arts And The Rise Of Activision**

11 34. To find Electronic Arts's desperate motive to conspire to break these legal contracts  
12 ahead of their expiration dates, all one has to do is to look at the company's precipitous decline in  
13 stature with investors and, most importantly, in the eyes of game players who demand innovation  
14 and excitement. For over a decade, Electronic Arts enjoyed a steady presence atop the video game  
15 publishing ranks. By the summer of 2007, however, Activision was on its way to replacing  
16 Electronic Arts as the industry's most profitable and successful third party publisher. Today, by  
17 nearly every metric of quality and success of products – including profit, revenue, cash flow and  
18 share – Activision has surpassed Electronic Arts, most importantly with the quality of its games.

19 35. As Activision succeeded, Electronic Arts failed. EA's biggest titles routinely  
20 underperformed financially and it lost billions of dollars through failed investments. Its own  
21 attempts to merge with other companies such as Take Two Interactive floundered, and it was  
22 wracked by defections of key employees and turnover in its executive suite. In the past two years,  
23 Electronic Arts lost over \$2 billion, and it has not earned a profit since 2007. Not surprisingly,  
24 Electronic Arts has lost over ten billion dollars of its shareholders' value. Electronic Arts has laid  
25 off thousands of employees and has shuttered numerous studios and facilities.

26 36. One particular market segment in which the fortunes of Activision and Electronic  
27 Arts have dramatically diverged is the large and lucrative first person action genre. There,  
28 Electronic Arts has suffered the dramatic decline of its once-dominant franchise, *Medal of Honor*,

1 whose latest incarnation was a critical and commercial failure, while Activision has enjoyed  
2 unprecedented success with a series of blockbuster games in its *Call of Duty* franchise. Electronic  
3 Arts hoped its recent *Battlefield: Bad Company* (“BFBC”) series would be its answer to *Call of*  
4 *Duty*, but its lackluster sales and audience disappointment had little impact on Activision’s success  
5 in the genre. \*\*\*[REDACTED – INFORMATION DESIGNATED AS CONFIDENTIAL BY \*\*  
6 \*\*\*\*\* ELECTRONIC ARTS, CAA, AND/OR GANG TYRE] \*\*\*\*\*  
7 \*\*\*\*\*.

8 **F. Electronic Arts Conspires To Disrupt And Destroy Infinity Ward**

9 37. Unable to compete with Activision and Infinity Ward, and, upon information and  
10 belief, enraged by the recent defection of two Electronic Arts executives to Activision (unlike  
11 West and Zampella, the executives who left Electronic Arts were not under employment  
12 contracts), Electronic Arts was determined to retaliate. Electronic Arts set out to destabilize,  
13 disrupt and to attempt to destroy Infinity Ward. Although the precise dates the scheme was  
14 conceived and initiated remain somewhat unknown to Activision, it was clearly underway no later  
15 than July 30, 2009. On that date, EA’s Chief Operating Officer, John Schappert, covertly  
16 contacted West, urging West and Zampella to meet with him and John Riccitiello, EA’s Chief  
17 Executive Officer. Activision is informed and believes that Electronic Arts knew then that West  
18 and Zampella were contractually obligated to Activision, and soon after were informed by West  
19 and Zampella personally that they had had written employment agreements with Activision that  
20 legally committed them to remain with the company for over two years. In order to ensure secrecy  
21 – which was imperative in this instance since Electronic Arts knew its actions were unlawful –  
22 Schappert instructed West and Zampella to continue discussions with Riccitiello on a “separate  
23 thread” via their personal emails as opposed to their Infinity Ward company email accounts.

24 38. The precise details of what Electronic Arts’s plot cannot be revealed here, because,  
25 as noted above, certain documents have been (wrongly) designated by Electronic Arts as secret  
26 under a protective order to prevent them from being disclosed publicly. But, Activision is  
27 informed and believes (based on other information not designated as “confidential”), and thereon  
28 alleges, that in early August 2009, Electronic Arts further implemented its scheme by plotting

1 raids on Infinity Ward and Activision. \*\*\*\*\*  
2 \*\*\*\*\*[REDACTED – INFORMATION DESIGNATED AS CONFIDENTIAL BY \*\*\*\*\*  
3 \*\*\*\*\* ELECTRONIC ARTS, CAA, AND/OR GANG TYRE]\*\*\*\*\*,  
4 Electronic Arts CEO Riccitiello met with Seamus Blackley of Creative Artists Agency (“CAA”)  
5 to enlist CAA’s assistance in courting West and Zampella, conducting the raids, and interfering  
6 with West’s and Zampella’s contracts with Activision.

7 39. EA’s motivations were clear. If it could successfully interfere with West’s and  
8 Zampella’s contracts with Activision more than two years before they were to expire, it could  
9 accomplish two illicit goals. First, it could threaten the value of a competitor’s top game franchise  
10 by disrupting Infinity Ward’s operations. Second, it could unlawfully pry away from Activision  
11 talented executives and many other Infinity Ward employees with them, thereby giving Electronic  
12 Arts an attempt at restoring its business to higher levels of profit and turning around the investor  
13 and audience perception of Electronic Arts as a failing company.

14 40. CAA’s motives were also easy to discern. At the time, Blackley and other CAA  
15 agents had been attempting to ingratiate themselves as participants in the video game industry, like  
16 others at CAA had established themselves in the movie, television and music businesses. But,  
17 prior to the summer of 2009, Blackley and his colleagues had little to show for their efforts; they  
18 had been unsuccessfully pursuing West and Zampella as potential clients for years, without any  
19 real success. That all changed in August 2009 when CAA joined the conspiracy.

20 41. On August 7, 2009, \*\*\*\*\* , Blackley wrote  
21 to Zampella that he had “an amazing thing to talk to you about”:

22 To: Vince Zampella (vince@infinityward.com)[vince@infinityward.com]  
23 Cc: Lupu, Ophir[olupu@caa.com]  
24 From: Blackley, Seamus  
25 Sent on behalf of: Blackley, Seamus  
26 Sent: Fri 8/7/2009 9:51:45 PM  
27 Subject: Good Afternoon captain CRUNCH.  
28 Categories:  
  
I trust all is well. I'm really, really looking forward to the game so please, please ship on time!  
  
We have an amazing thing to talk to you about. I'm at 424 288 2330 or 310 866 2745.  
  
You will find this entertaining, if nothing else!  
  
S

1 A few days later, he followed up: “I’ll wager a kidney that you’ll be astonished”:

2  
3 ----- Original Message -----  
4 From: "Blackley, Seamus" <SBlackley@caa.com>  
5 To: <vince@infinityward.com>  
6 Sent: Friday, August 14, 2009 8:00 PM  
7 Subject: Usually it takes a girl  
8  
9 > To ignore my email this effectively :)  
10 >  
11 > Seriously, let's have beer or a lunch. I'll wager a kidney that you'll be  
12 > astonished.  
13 >  
14 > S

9 42. Zampella agreed to meet with Blackley the next day, and following that meeting  
10 Blackley wrote to Zampella: “I’m stoked about your options,” and, in an obvious reference to  
11 EA’s John Riccitiello, “*JR cooks a mean BBQ. I think we could accomplish some interesting*  
12 *chaos.*” (Emphasis added to original document.):

13 From: Blackley, Seamus [SBlackley@caa.com]  
14 Sent: Tuesday, August 18, 2009 2:28 PM  
15 To: 'vince@infinityward.com'  
16 Subject: Thanks for driving out.  
17  
18 I'm stoked about your options. JR cooks a mean BBQ. I think we could accomplish some  
19 interesting chaos.  
20 S

19 A few days later, the conversation continued and evidences EA’s use of CAA’s Blackley as a  
20 surreptitious avenue of communication to Zampella. Blackley told Zampella: “*JR is really amped*  
21 *to see you, and is basically agenting me with calls.*” (Emphasis added to original document.):

22 From: "Blackley, Seamus" <SBlackley@caa.com>  
23 To: <vince@infinityward.com>  
24 Sent: Friday, August 21, 2009 8:59 AM  
25 Subject: Annoying Agent?  
26  
27 > JR is really amped to see you, and is basically agenting me with calls.  
28 > Like I said I think its a good time if nothing else.

26 43. In late August 2009, Electronic Arts became even more brazen in its efforts to  
27 interfere with Activision’s contracts with West and Zampella. Momentarily dispensing with CAA  
28 as an intermediary for communications, West and Schappert had a direct exchange in which they

1 acknowledged CAA was “working to set up a meeting” among West, Zampella, Schappert and  
2 Riccitiello. That meeting was specifically designed to further EA’s interference with Activision’s  
3 contractual relationship with West and Zampella. (In the exchange, Schappert also expressed his  
4 delight about having a “super secret way into Jason.”) \*\*\*\*\*

5 \*\*\*\*\*  
6 \*\*\*\*\*  
7 \*\*\*\*\*  
8 \*\*\*\*\*  
9 \*\*\*\*\*  
10 \*\*\*\*\*  
11 \*\*\*\*\*  
12 \*\*\*\*\*

13 \*\*\*\*\* [REDACTED – INFORMATION DESIGNATED AS CONFIDENTIAL BY \*\*\*\*\*  
14 \*\*\*\*\* ELECTRONIC ARTS, CAA, AND/OR GANG TYRE]\*\*\*\*\*  
15 \*\*\*\*\*  
16 \*\*\*\*\*  
17 \*\*\*\*\*  
18 \*\*\*\*\*  
19 \*\*\*\*\*  
20 \*\*\*\*\*  
21 \*\*\*\*\*  
22 \*\*\*\*\*

23 44. On August 28, 2009, Electronic Arts dispatched a private jet to fly West and  
24 Zampella from Southern California to San Francisco where they were picked up and shuttled to a  
25 secret meeting with Electronic Arts at Riccitiello’s home and then flown back to Los Angeles.  
26 West and Zampella later admitted that at this meeting, they told Electronic Arts that they had over  
27 two years left on their exclusive contracts that legally obligated them to work for its primary  
28 competitor, Activision.



1           45.     Shortly after the secret meeting between Electronic Arts, West, and Zampella at the  
2 residence of EA's CEO, CAA arranged for West and Zampella to be represented by Harold Brown  
3 of Gang, Tyre, Ramer & Brown ("Gang Tyre"). Blackley wrote of Brown: "I mentioned to him  
4 that there might be a big developer who'd want someone good to take a look at an agreement,  
5 wink wink, and he was VERY INTERESTED":

6           From:           Blackley, Seamus [SBlackley@caa.com]  
7           Sent:            Wednesday, August 19, 2009 3:42 PM  
8           To:             Vince Zampella  
9           Subject:        Hey

10           Sorry for the frequent emailing...

11           Turns out I had lunch scheduled today with Harold Brown, the attorney I mentioned, who  
12           represents Steven Spielberg etc., and also sat on the Activision board, and also  
13           represented Mikami et. al. on our first "independent finance" deal with EA. He was the  
14           one I mentioned in the context of taking a look at your deal as a sanity check. So I  
15           mentioned to him that there might be a big developer who'd want someone good to take a  
16           look at an agreement, wink wink, and he was VERY INTERESTED. I didn't mention Activision  
17           or anything else. He's the best there is.

18           Let's do dinner :)

19           s

20           46.     Blackley no doubt found Harold Brown uniquely suited to help West and Zampella  
21 extract a deal from Activision as Brown had served as an Activision board member and advisor,  
22 and in that capacity Brown was privy to numerous confidential compensation documents detailing  
23 Activision's confidential compensation and reward practices. In addition, Brown had the benefit  
24 of exposure to numerous confidential financial transactions structured by Activision to incentivize  
25 and reward development talent. Activision is informed and believes, and thereon alleges, that  
26 Brown's and Gang Tyre's representation of West and Zampella was arranged to permit Electronic  
27 Arts, West and Zampella to attempt to cloak the illegal negotiations that ensued among them with  
28 the secrecy they presumed would be provided by the attorney-client privilege. Notably, Brown  
was not only a former Activision board member and former legal counsel to Activision, but was a  
law school classmate of an Electronic Arts executive \*\*\*\*\*.

          47.     The unlawful negotiations between Electronic Arts and West and Zampella, with  
CAA's assistance, continued throughout the fall and winter of 2009. During this time, West and

1 Zampella spoke with CAA agents at least once a week and met with them at least once a month.  
2 Again, documents evidencing the details of these communications have been designated  
3 confidential by Electronic Arts, CAA and Gang Tyre, precluding public disclosure at this time.  
4 But Activision is informed and believes, and thereon alleges, that negotiations between Electronic  
5 Arts and West and Zampella continued to progress. Concurrent with the release of *Modern*  
6 *Warfare 2* in early November 2009, the urgency on the part of Electronic Arts to conclude a deal  
7 increased. \*\*\*\*\*

8 \*\*\*\*\*  
9 \*\*\*\*\*  
10 \*\*\*\*\*  
11 \*\*\*\*\*

12 \*\*\*\*\* [REDACTED – INFORMATION DESIGNATED AS CONFIDENTIAL BY \*\*\*\*\*  
13 \*\*\*\*\* ELECTRONIC ARTS, CAA, AND/OR GANG TYRE]\*\*\*\*\*  
14 \*\*\*\*\*  
15 \*\*\*\*\*  
16 \*\*\*\*\*

17 48. \*\*\*\*\*  
18 \*\*\*\*\*  
19 \*\*\*\*\*  
20 \*\*\*\*\*  
21 \*\*\*\*\*

22 \*\*\*\*\* [REDACTED – INFORMATION DESIGNATED AS CONFIDENTIAL BY \*\*\*\*\*  
23 \*\*\*\*\* ELECTRONIC ARTS, CAA, AND/OR GANG TYRE]\*\*\*\*\*  
24 \*\*\*\*\*  
25 \*\*\*\*\*  
26 \*\*\*\*\*  
27 \*\*\*\*\*  
28 \*\*\*\*\*



1           50.     Activision is informed and believes that, because West and Zampella knew that  
2 their actions were wrong, they took steps to hide them as well as to cover any tracks leading to the  
3 executive suits at Electronic Arts. For example, West and Zampella sent and received the  
4 following messages in an apparent effort to covertly copy certain materials, reading in part:  
5 “Dunno how to scan secretly [sic]. . . . [Infinity Ward Employee’s] computer down. . . .  
6 [Infinity Ward Employee] did it for me last time. . . . Really. No paranoia about it being in  
7 [Infinity Ward employee] user folder? Her comp down anyway now. . . . She had a secret area it  
8 scanned into. . . . Probably better to just photocopy and fedex. . . .”

9 **G.     The Disruption of Activision’s Contractual Relationship With West and Zampella**  
10 **And The Operations Of Infinity Ward**

11           51.     The natural, foreseeable and intended consequences of EA’s unlawful interference  
12 with Activision’s exclusive, long-term employment agreements with West and Zampella was to  
13 induce them to act in a manner that was in breach of their contractual and fiduciary obligations to  
14 Activision. At the same time the secret negotiations with Electronic Arts were ongoing, not only  
15 did West and Zampella continue their insubordinate and self-serving conduct, but Activision  
16 experienced still more problems and complications with them as executives of its Infinity Ward  
17 studio. For example, during that period:

- 18           •     West and Zampella made exceedingly aggressive demands to Activision to enrich  
19 themselves at the expense of Activision’s shareholders, including that they be  
20 permitted to “spin out” from Activision, set up their own independent company and  
21 produce games on terms that were far less favorable to Activision than the terms of  
22 West’s and Zampella’s existing exclusive employment agreements that, as noted  
23 above, had years left to run and for which they received tens of millions of  
24 compensation;
- 25           •     West and Zampella became increasingly uncooperative with Activision’s business  
26 plan calling for a unified approach to the *Call of Duty* franchise focused on  
27 providing players with the very best possible *Call of Duty* games, attempting  
28

1           instead to steal the *Call of Duty* franchise solely for themselves for their own  
2           personal and greater financial benefit;

- 3           • In addition, West and Zampella threatened to hold the development of another  
4           edition of *Call of Duty: Modern Warfare*, or another game based on new  
5           intellectual property that they were developing for Activision, hostage unless their  
6           new, mid-contract term demands were met.

7           52.     Although West and Zampella preferred to portray themselves – both to the public  
8           and within Activision – as game developers often forced to battle with corporate “suits,” the  
9           reality was and is much different. They were small-minded executives almost obsessed by  
10          jealousy of other developers and the thought that another Activision game or studio might share  
11          their spotlight. Motivated by envy and personal greed, West and Zampella went so far as to  
12          deliberately undermine the efforts of other developers within the Activision family and then lied  
13          about their conduct. On the same day that Treyarch released a video trailer promoting a follow-on  
14          product – a “map” pack or “downloadable content” – designed for players of Treyarch’s game  
15          *Call of Duty: World at War*, West and Zampella released a marketing video for *Modern Warfare 2*  
16          with the purpose of hurting Treyarch’s and Activision’s marketing efforts. Far from being  
17          remorseful, West attempted to justify his actions on the ground that Treyarch had insufficiently  
18          coordinated with Infinity Ward by stating: “We released on the same day as you because we had  
19          no clue you were releasing anything. We are not happy about it.” The real truth, however, was  
20          revealed by a series of text messages between West and an Infinity Ward employee  
21          contemporaneous with the video trailers’ release. The employee texted West that “treych  
22          released their mp dlc video.” West responded: “Super nice? We release our video? Crush and  
23          destroy with our video.” The employee answered: “We already did. And . . . we already did.”  
24          West’s following comment: “Nice.” Thus, West’s own words reveal his intentional strategy to  
25          “crush and destroy” his fellow developers at Treyarch.

26          53.     Not only was Activision’s relationship with West and Zampella undermined and  
27          disrupted as a result of the Electronic Arts/West and Zampella conspiracy, so too were the  
28          operations of Infinity Ward. Activision is informed and believes that, \*\*\*\*\*

1 \*\*\*\*\*  
2 \*\*\*\*\* , West and Zampella openly discussed with Infinity Ward  
3 employees their desire to spin out from Activision to enrich themselves and take key Infinity Ward  
4 employees with them. In furtherance of their secret plan and desire to leave Activision and to take  
5 Infinity Ward team members with them, West and Zampella engaged in a campaign to paint  
6 Activision and its management in a negative light in an attempt to induce the employees to remain  
7 loyal to West and Zampella in the event they would spin off.

8         54.       Moreover, West and Zampella took numerous steps to increase the likelihood of  
9 employee defections from Infinity Ward as they were secretly negotiating with Electronic Arts.  
10 For example, West and Zampella resisted Activision’s attempt to reward Infinity Ward employees  
11 for their successful efforts on Activision’s behalf with additional compensation. Activision is  
12 informed and believes and based thereon alleges that West and Zampella were concerned that  
13 Activision would offer Infinity Ward employees significant financial incentives to recognize their  
14 contributions and to retain these valued employees, which would undercut West and Zampella’s  
15 efforts to lure those employees away (in violation of their own employment contracts) when the  
16 time came to spin off. Thus, in order to make it unlikely that these employees of Activision’s  
17 Infinity Ward studio would remain with Activision, West and Zampella attempted to block those  
18 employees from receiving significant equity grants and/or other compensation, suggesting instead  
19 that Activision provide the additional compensation to West and Zampella alone, not to the many  
20 valued employees to whom Activision was offering this extra compensation. West and Zampella  
21 did this in a context in which they were already appropriating for themselves approximately 1/3 of  
22 the total Infinity Ward bonus pool each quarter.

23         55.       The following are examples in which West and Zampella’s self-interest in  
24 executing their secret plan to leave Activision corrupted their judgment so fully that they actually  
25 attempted to damage the very Infinity Ward employees they purported to lead. In July 2009, West  
26 and Zampella were asked by Activision management to provide the names of the Infinity Ward  
27 employees that should receive millions of dollars of Activision stock grants in connection with the  
28 development of a Wii version of *Call of Duty 4: Modern Warfare*. West and Zampella adamantly

1 refused. Again, in October 2009, when Activision planned to include Infinity Ward in its annual  
2 equity grants, West and Zampella refused to provide Activision with a list of the names it needed  
3 of the Infinity Ward employees that deserved awards of valuable stock and options. In responding  
4 to the President and CEO of Activision Publishing concerning the equity grant, West wrote, “You  
5 can give all the options to Vince and I . . . .,” thereby depriving their own Infinity Ward employees  
6 of additional compensation.

7         56. In sum, after entering into agreements that provided West and Zampella with tens  
8 of millions of dollars of additional compensation, West and Zampella openly expressed their  
9 intention to violate their contracts, leave Activision and enter into competition with Activision,  
10 and expressly and covertly did much more than “preparing to compete.” These acts as well as  
11 their repeated acts of rank insubordination are in direct violation of the West and Zampella  
12 Employment Agreements and MOU, constitute breaches of the fiduciary duties owed to their  
13 employer, Activision and its stakeholders, and indicate that West and Zampella’s primary motive  
14 was to maximize their own advantage at the expense and to the detriment of Activision and its  
15 shareholders.

16         57. Despite these breaches and insubordination, Activision was willing to try to find a  
17 way to retain West and Zampella as executives at Infinity Ward for the remaining years on their  
18 employment agreements. However, an essential component of the discussions was West and  
19 Zampella’s commitment to conduct themselves according to the normal standards expected of  
20 company executives and fiduciaries and consistent with the practices of other managers.  
21 Remarkably, they even refused to agree to this. They also rejected any obligation to respond to  
22 Activision’s requests for information, to allow Activision unrestricted access to Infinity Ward  
23 facilities, to use Activision’s intranet and email systems exclusively, to provide Activision with  
24 access to Infinity Ward source code and day-to-day operations, and the like.

25         58. For these and other reasons, Activision was forced to terminate, for cause, West’s  
26 and Zampella’s employment with Activision effective March 1, 2010. Having helped steer the  
27 course of events through its own nefarious actions, Electronic Arts moved immediately to solidify  
28 its plan to hijack Infinity Ward. Specifically, Activision is informed and believes, and thereon

1 alleges, that as soon as West and Zampella were terminated as Activision executives, they set up  
2 their own independent company, Respawn Entertainment, and entered into the agreement with  
3 Electronic Arts that had been under negotiation for many months. As Electronic Arts, West and  
4 Zampella had planned, Respawn was practically a turnkey operation, quickly staffed with dozens  
5 of talented Infinity Ward employees who had been repeatedly encouraged by West and Zampella  
6 to follow them out the doors of Infinity Ward.

7         59. West and Zampella's breaches did not end with the termination of their  
8 employment for cause. West and Zampella continued to possess Activision confidential and  
9 proprietary information. In that regard, upon their departure, West and Zampella refused to sign  
10 standard exit documents representing that they had returned all Activision property, including  
11 computer code, and would honor the confidentiality obligations that they have to Activision.  
12 Specifically, one of the documents that they refused to sign when they exited includes the  
13 following representations:

- 14         • In one or more agreements I entered into with [Activision], I promised to protect  
15         the Proprietary Information both during and after the termination of my  
16         employment relationship. This is to certify that I have complied with and will  
17         continue to comply with all such terms of such agreements, including the Employee  
18         Proprietary Information Agreement. I specifically confirm that, in compliance with  
19         the Employee Proprietary Information Agreement and any other applicable  
20         provisions of other agreements I entered into with [Activision] I will preserve as  
21         confidential the confidential and/or Proprietary Information.
- 22         • This is also to certify that I do not have in my possession, nor have I failed to  
23         return, any files (including electronic), accounts, records, materials, documents  
24         drawings, sketches, designs...compilations of information, programs, computer  
25         code...tools and equipment and all other electronic and/or physical items that are  
26         the property of [Activision] or are otherwise related to my employment with  
27         [Activision], or any other property belonging to [Activision].  
28





1 \*\*\*\*\*  
2 \*\*\*\*\* [REDACTED – INFORMATION DESIGNATED AS CONFIDENTIAL BY \*\*\*\*\*  
3 \*\*\*\*\* ELECTRONIC ARTS, CAA, AND/OR GANG TYRE]\*\*\*\*\*  
4 \*\*\*\*\*  
5 \*\*\*\*\*  
6 \*\*\*\*\*  
7 \*\*\*\*\*  
8 \*\*\*\*\*  
9 \*\*\*\*\*

10 **FIRST CAUSE OF ACTION**

11 **Breach of Fiduciary Duty/Breach of Duty of Loyalty**

12 **[Against West and Zampella]**

13 63. Activision incorporates paragraphs 1 through 62 of this First Amended Cross-  
14 Complaint as though set forth fully herein.

15 64. By virtue of their position as officers of Infinity Ward and employees of Activision,  
16 West and Zampella owe fiduciary duties, including a duty of loyalty to Infinity Ward and  
17 Activision.

18 65. As alleged above, West and Zampella repeatedly engaged in gross misconduct that  
19 violates their fiduciary duties.

20 66. West and Zampella’s bad faith actions in this regard constitute a breach of their  
21 duty of loyalty and fiduciary duty to Activision. Specifically, West and Zampella have breached  
22 their duty of loyalty by, among other things:

23 (a) refusing to abide by Activision procedures and protocols including those  
24 prohibiting the very conduct in which they regularly engaged;

25 (b) attempting to block Infinity Ward employees from receiving equity grants,  
26 and other financial compensation and incentives;

27  
28

1 (c) asking Activision to allow them to keep for themselves millions of dollars  
2 of discretionary compensation that Activision intended to offer to the broader Infinity  
3 Ward team;

4 (d) secretly meeting and negotiating the terms of a deal with Activision's main  
5 competitor and using and disclosing confidential Activision information to that end;

6 (e) holding out the promise of working on *Modern Warfare 3* and delaying pre-  
7 production of the next Infinity Ward game as leverage in their negotiations with  
8 Activision;

9 (f) engaging in a campaign to portray Activision and its management in a  
10 negative light to Infinity Ward employees in an effort to solicit those employees;

11 (g) threatening to stop development of *Modern Warfare 2* if Activision did not  
12 meet their demands;

13 (h) threatening to harm the intellectual property developed by Infinity Ward  
14 and owned by Activision if their demands to be allowed to leave Activision were not met;

15 (i) repeatedly refusing to adhere to the directives of Activision's management;

16 (j) refusing to attend meetings scheduled by Activision's management;

17 (k) openly insulting Activision management to Infinity Ward employees;

18 (l) refusing to cooperate with Activision management regarding the essential  
19 functions of their employment;

20 (m) openly discussing their intention to leave Infinity Ward with Infinity Ward  
21 employees; and

22 (n) arranging meetings with Infinity Ward employees to discuss the willingness  
23 of such employees to leave Infinity Ward and join West and Zampella at a "spin off"  
24 studio.

25 67. As a proximate result of West and Zampella's actions, Activision has suffered, and  
26 will continue to suffer, damages in an amount to be proven at trial. Further, as a result of West  
27 and Zampella's disloyalty, they are no longer entitled to any compensation, neither any due now  
28

1 nor yet to become due, and Activision is entitled to recover all past payments, compensation,  
2 equity and benefits made to West and Zampella during the period of their disloyalty.

3 **SECOND CAUSE OF ACTION**

4 **Breach of Contract – Employment Agreements**

5 **[Against West and Zampella]**

6 68. Activision incorporates paragraphs 1 through 67 of this First Amended Cross-  
7 Complaint as though set forth fully herein.

8 69. On or about November 1, 2003, for good and adequate consideration as set forth  
9 therein, West and Zampella, on the one hand, and Activision, on the other hand, entered into the  
10 West and Zampella Employment Agreements attached hereto as Exhibits A and C respectively.

11 70. Pursuant to the West and Zampella Employment Agreements, West and Zampella  
12 each agreed to serve as officers of Infinity Ward for the period beginning on November 1, 2003  
13 and expiring on October 31, 2006.

14 71. The West and Zampella Employment Agreements provided that Activision had the  
15 option to extend the initial term of the Agreements by two additional successive one-year periods.  
16 (See Exs. A & C, ¶ 1(b).) Activision exercised its option, thereby extending the term of the West  
17 and Zampella Employment Agreements by two years to October 31, 2008.

18 72. On or about April 9, 2008, West and Zampella, on the one hand, and Activision, on  
19 the other hand, entered into Amendments to the West and Zampella Employment Agreements.  
20 Pursuant to the West and Zampella Amendments, West and Zampella, on the one hand, and  
21 Activision, on the other hand, agreed to extend the term of the West and Zampella Employment  
22 Agreements to October 31, 2011. (See Exs. B & D.)

23 73. Activision has performed all conditions, covenants and promises required on its  
24 part to be performed in accordance with the terms and conditions of each of the West and  
25 Zampella Employment Agreements, except those excused by the material breaches of West and  
26 Zampella.

27 74. As alleged above, West and Zampella breached the West and Zampella  
28 Employment Agreements by among other things, their insubordination, failing to cooperate with

1 Activision, discussing the willingness of Infinity Ward team members to leave Activision with  
2 West and Zampella, and entering into negotiations with Activision's direct competitor.

3 75. Specifically, West and Zampella's gross misconduct and insubordination breached  
4 Paragraph 4 of the West and Zampella Employment Agreements which required them to  
5 "personally and diligently perform, on a full-time and exclusive basis, such services as  
6 [Activision] or any of its related or affiliated entities may reasonably require," to abide by all of  
7 Activision's policies, procedures and regulations, and to perform their duties in a "loyal and  
8 conscientious manner." (See Exs. A & C, ¶ 4.)

9 76. Additionally, West and Zampella's gross misconduct as alleged above constitutes a  
10 breach of Paragraph 8 of the West and Zampella Employment Agreements which requires West  
11 and Zampella to refrain from competing in any manner with Activision during the term of their  
12 employment and refrain from soliciting Activision employees for a period of two years following  
13 the termination of their employment with Activision. (See Exs. A & C, ¶ 8.)

14 77. West and Zampella's gross misconduct as alleged above also breached Paragraph 9  
15 of the West and Zampella Employment Agreements which requires them to abide by Activision's  
16 code of conduct which prohibits disruptive and inappropriate conduct, including but not limited to,  
17 "making false, vicious, profane or malicious statements concerning [Activision] or any of its  
18 employees," "interfering with [Activision's] discipline or efficiency," "violating any Company  
19 policy," and "[i]nsubordination." (See Exs. A & C, ¶ 9(a).)

20 78. As a proximate result of West and Zampella's breaches, Activision has suffered,  
21 and will continue to suffer, compensatory damages in an amount to be proven at trial.

### 22 **THIRD CAUSE OF ACTION**

#### 23 **Breach of Contract – Memorandum of Understanding**

#### 24 **[Against West and Zampella]**

25 79. Activision incorporates paragraphs 1 through 78 of this First Amended Cross-  
26 Complaint as though set forth fully herein.

27 80. On or about March 13, 2008, for good consideration as set forth therein, West and  
28 Zampella entered into the MOU with Activision and Infinity Ward in connection with the

1 development of *Modern Warfare 2* and any subsequent Infinity Ward projects. The MOU is  
2 confidential pursuant to terms set forth therein, as a result, the MOU is not attached hereto.  
3 However, Activision pleads the legal effect of the MOU herein, without waiving the confidential  
4 nature of that document.

5 81. Pursuant to the MOU, West and Zampella affirmed their agreement to continue  
6 their employment at Activision and agreed that Infinity Ward would develop *Modern Warfare 2* in  
7 sufficient time such that the game could be released by November 15, 2009. West and Zampella  
8 agreed that Activision would be responsible for publishing the game, including marketing,  
9 advertising, branding, packaging, public relations, product pricing and discounts.

10 82. Activision has performed all conditions, covenants and promises required on its  
11 part to be performed in accordance with the terms and conditions of the MOU, except those  
12 excused by the material breaches of West and Zampella.

13 83. As alleged above, West and Zampella have breached the MOU by interfering with  
14 Activision's ability to publish and market *Modern Warfare 2* by, among other things, failing to  
15 include the Activision logo in the game and refusing Activision's request to remedy that failure.  
16 West and Zampella have further breached the MOU by openly criticizing Activision which  
17 interfered with Activision's ability to market *Modern Warfare 2*.

18 84. Additionally, pursuant to the MOU, West and Zampella agreed to continue their  
19 employment relationship with Activision and have breached that agreement by negotiating with  
20 Activision's competitor, discussing with Infinity Ward team members their willingness to leave  
21 Activision, and engaging in a campaign to paint Activision in a negative light to support their plan  
22 to leave Activision and establish their own company.

23 85. As a proximate result of West and Zampella's breaches, Activision has suffered,  
24 and will continue to suffer, compensatory damages in an amount to be proven at trial.

25 **FOURTH CAUSE OF ACTION**

26 **Breach of the Implied Covenant of Good Faith and Fair Dealing –**

27 **Memorandum of Understanding**

28 **[Against West and Zampella]**



1           91.     An actual controversy has arisen and now exists between Activision, on the one  
2 hand, and West and Zampella, on the other hand, regarding West and Zampella's obligations to  
3 refrain from soliciting Activision employees and to refrain from retaining, disclosing or using any  
4 Activision confidential, commercially valuable information in any manner, including to develop  
5 competing games. Further, a dispute exists regarding West and Zampella's rights to collect further  
6 compensation pursuant to the West and Zampella Employment Agreements and the MOU.  
7 Finally, a dispute exists regarding whether Activision has the right, with respect to both West and  
8 Zampella, pursuant to Section 10.11 of the Activision, Inc. 2002 Incentive Plan, and, with respect  
9 to West, pursuant to Section 7.8 of the Activision Amended and Restated 2003 Incentive Plan, to  
10 recapture certain equity from West and Zampella, and to recover, as a measure of damages, all  
11 compensation and benefits in addition to equity received by them during the period of their  
12 disloyalty.

13           92.     An actual controversy has also arisen and now exists between Activision and  
14 Electronic Arts regarding EA's obligations to refrain from soliciting Activision employees using  
15 any Activision confidential information obtained from West or Zampella, and to refrain from  
16 retaining, disclosing or using any Activision confidential, commercially-valuable information in  
17 any manner, including to develop competing games whether directly or through its relationship  
18 with Respawn.

19           93.     Activision desires a judicial determination of its rights and duties pursuant to the  
20 West and Zampella Employment Agreements, the MOU, the Activision Amended and Restated  
21 2003 Incentive Plan and the Activision, Inc. 2002 Incentive Plan that (1) West and Zampella are  
22 prohibited from soliciting Activision employees pursuant to the terms of the West and Zampella  
23 Employment Agreements and the MOU; (2) West and Zampella are not entitled to any further  
24 compensation from Activision, and must return sums already given to them during the period of  
25 their disloyalty, including equity obtained pursuant to the Activision, Inc. 2002 Incentive Plan,  
26 and, as to West, the Amended and Restated 2003 Incentive Plan; (3) West and Zampella are  
27 prohibited from retaining, disclosing or using any Activision confidential, commercially valuable  
28 information in any manner, including to develop competing games; (4) Electronic Arts is



1 prohibited from soliciting Activision employees using any Activision confidential information  
2 obtained from West or Zampella; and (5) Electronic Arts is prohibited from retaining, disclosing  
3 or using any Activision confidential, commercially-valuable information in any manner, including  
4 to develop competing games whether directly or through its relationship with Respawn.

5 94. A judicial determination is necessary and appropriate at this time under the  
6 circumstances so that Activision may ascertain its rights and duties pursuant to the West and  
7 Zampella Employment Agreements and the MOU, and EA's obligations concerning the use of any  
8 Activision confidential information.

9 95. Activision has no other existing, speedy, accurate or proper remedy other than that  
10 prayed for by which the rights of the parties may be determined.

### 11 **SIXTH CAUSE OF ACTION**

#### 12 **Intentional Interference with Contract –**

#### 13 **West Employment Agreement and MOU**

#### 14 **[Against Electronic Arts]**

15 96. Activision incorporates by reference the allegations in paragraphs 1 through 95 of  
16 this First Amended Cross-Complaint as though set forth fully herein.

17 97. The West Employment Agreement and MOU with Activision were valid contracts  
18 between Activision and West.

19 98. Electronic Arts is and, at all material times, has been aware of the existence of the  
20 West Employment Agreement and/or MOU.

21 99. Electronic Arts engaged in conduct that was calculated to disrupt, and disrupted,  
22 Activision's exercise of its rights under the West Employment Agreement and MOU and  
23 prevented Activision from realizing the benefits of the contractual relationship with West.

24 100. Activision has been damaged as a result of EA's intentional interference with the  
25 West Employment Agreement and MOU in an amount to be proven at trial, but at least 400  
26 million dollars, including, but not limited to, the profits Activision would have made but for EA's  
27 interference, the costs Activision incurred in rebuilding the studio, and the damage suffered as a  
28 result of delays and/or disruptions to Activision's new games being developed by Infinity Ward

1 and/or other Activision studios, all resulting from EA's wrongful actions. EA's conduct was a  
2 substantial factor in causing this harm to Activision.

3 101. EA's acts were undertaken intentionally and in conscious disregard of Activision's  
4 rights. In addition, EA's acts were malicious, oppressive, and/or fraudulent. Therefore, Activision  
5 should be awarded punitive and exemplary damages sufficient to punish EA and to deter similar  
6 conduct in the future.

7 **SEVENTH CAUSE OF ACTION**

8 **Intentional Interference with Contract –**

9 **Zampella Employment Agreement and MOU**

10 **[Against Electronic Arts]**

11 102. Activision incorporates by reference the allegations in paragraphs 1 through 101 of  
12 this First Amended Cross-Complaint as though set forth fully herein.

13 103. The Zampella Employment Agreement and MOU with Activision were valid  
14 contracts between Activision and Zampella.

15 104. Electronic Arts is and, at all material times, has been aware of the existence of the  
16 Zampella Employment Agreement and MOU.

17 105. Electronic Arts engaged in conduct that was calculated to disrupt, and disrupted,  
18 Activision's exercise of its rights under the Zampella Employment Agreement and MOU and  
19 prevented Activision from realizing the benefits of the contractual relationship with Zampella.

20 106. Activision has been damaged by EA's intentional interference with the Zampella  
21 Employment Agreement and MOU in an amount to be proven at trial, but at least 400 million  
22 dollars, including, but not limited to, the profits Activision would have made but for EA's  
23 interference, the costs Activision incurred in rebuilding the studio, and the damage suffered as a  
24 result of delays and/or disruptions to Activision's new games being developed by Infinity Ward  
25 and/or other Activision studios, all resulting from EA's wrongful actions. EA's conduct was a  
26 substantial factor in causing this harm to Activision.

27 107. EA's acts were undertaken intentionally and in conscious disregard of Activision's  
28 rights. In addition, EA's acts were malicious, oppressive, and/or fraudulent. Therefore,

1 Activision should be awarded punitive and exemplary damages sufficient to punish Electronic  
2 Arts and to deter similar conduct in the future.

3 **EIGHTH CAUSE OF ACTION**

4 **Aiding and Abetting Breach of Fiduciary Duty**

5 **[Against Electronic Arts]**

6 108. Activision incorporates by reference the allegations in paragraphs 1 through 107 of  
7 this First Amended Cross-Complaint as though set forth fully herein.

8 109. Electronic Arts gave substantial assistance to West and Zampella in performing the  
9 wrongful conduct that gave rise to West and Zampella's breach of fiduciary duties.

10 110. Electronic Arts was fully aware that West and Zampella, as Activision executives,  
11 owed fiduciary duties, including a duty of loyalty, to Infinity Ward and Activision, and facilitated  
12 West and Zampella's conduct in breaching those duties willfully and maliciously in order to  
13 benefit itself.

14 111. As a direct and proximate result of the breaches of fiduciary duty described herein,  
15 Activision has been and will continue to be damaged in an amount to be proven at trial, but at least  
16 400 hundred million dollars, including, but not limited to, the profits Activision would have made  
17 but for EA's actions, the costs Activision incurred in rebuilding the studio, and the damage  
18 suffered as a result of delays and/or disruptions to Activision's new games being developed by  
19 Infinity Ward and/or other Activision studios, all resulting from EA's wrongful actions.

20 112. EA's acts were undertaken intentionally and in conscious disregard of Activision's  
21 rights. In addition, EA's acts were malicious, oppressive, and/or fraudulent. Therefore, Activision  
22 should be awarded punitive and exemplary damages sufficient to punish Electronic Arts and to  
23 deter similar conduct in the future.

24 **NINTH CAUSE OF ACTION**

25 **Unfair Competition –**

26 **Violation of Bus. & Prof. Code §§ 17200 et seq.**

27 **[Against All Cross-Defendants]**

28



1 Infinity Ward by their sides, West and Zampella's new business would have taken much longer to  
2 launch and make any money for them and for Electronic Arts (if ever).

3 120. Activision's economic relationship with its employees at Infinity Ward was  
4 actually disrupted when those employees terminated their employment at Infinity Ward and then  
5 joined West and Zampella at Respawn.

6 121. Activision was damaged by this disruption in an amount to be proven at trial, but at  
7 least 400 million dollars, including, but not limited to, the profits Activision would have made but  
8 for EA's interference, the costs Activision incurred in rebuilding the studio, and the damage  
9 suffered as a result of delays and/or disruptions to Activision's new games being developed by  
10 Infinity Ward and/or other Activision studios, all resulting from EA's wrongful actions. EA's  
11 wrongful conduct was a substantial factor in causing this harm to Activision.

12 122. EA's acts were undertaken intentionally and in conscious disregard of Activision's  
13 rights. In addition, EA's acts were malicious, oppressive, and/or fraudulent. Therefore,  
14 Activision should be awarded punitive and exemplary damages sufficient to punish Electronic  
15 Arts and to deter similar conduct in the future.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Activision prays for entry of judgment against Cross-Defendants and each  
18 of them as follows:

19 **On the First Cause of Action**

- 20 1. For damages, including exemplary damages, according to proof;

21 **On the Second Cause of Action**

- 22 2. For damages according to proof;

23 **On the Third Cause of Action**

- 24 3. For damages according to proof;

25 **On the Fourth Cause of Action**

- 26 4. For damages according to proof;

27  
28

1 **On the Fifth Cause of Action**

2 5. For a declaration that (1) West and Zampella are prohibited from soliciting  
3 Activision Employees pursuant to the terms of the West and Zampella Employment Agreements  
4 and the MOU; (2) West and Zampella are not entitled to any further compensation from  
5 Activision, and must return sums received by them during the period of their disloyalty, including  
6 certain equity under the Activision, Inc. 2002 Incentive Plan and, as to West, the Activision  
7 Amended and Restated 2003 Incentive Plan; (3) West and Zampella are prohibited from retaining,  
8 disclosing or using any Activision confidential, commercially valuable information in any manner,  
9 including to develop competing games; and for a Preliminary and Permanent Injunction  
10 prohibiting threatened and actual breaches of West and Zampella's post employment contractual  
11 obligations; (4) Electronic Arts is prohibited from soliciting Activision employees using any  
12 Activision confidential information obtained from West or Zampella; and (5) Electronic Arts is  
13 prohibited from retaining, disclosing or using any Activision confidential, commercially-valuable  
14 information in any manner, including to develop competing games whether directly or through its  
15 relationship with Respawn.

16 **On the Sixth Cause of Action**

17 6. For damages, including exemplary damages, according to proof;

18 **On the Seventh Cause of Action**

19 7. For damages, including exemplary damages, according to proof;

20 **On the Eighth Cause of Action**

21 8. For damages, including exemplary damages, according to proof;

22 **On the Ninth Cause of Action**

23 9. For injunctive relief preventing the continuance of EA's unfair and unlawful  
24 business practices described herein, including preventing Electronic Arts from inducing any  
25 Activision employees to breach the terms and conditions of their employment agreements with  
26 Activision, using any Activision confidential information obtained from West or Zampella to  
27 solicit Activision employees, and from retaining, disclosing or using any Activision confidential,  
28 commercially-valuable information in any manner, including to develop competing games

1 whether directly or through its relationship with Respawn; and for disgorgement of any and all  
2 monies and benefits received by West and Zampella from Activision by reason of their unfair and  
3 unlawful business practices as described herein.

4 **On the Tenth Cause of Action**

5 10. For damages, including exemplary damages, according to proof;

6 **On All Causes of Action**

7 11. For attorneys' fees and costs expended in the prosecution of this action to the full  
8 extent permitted by law; and

9 12. For such other and further relief as this Court deems appropriate.

10 DATED: December 21, 2010

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