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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF LOS ANGELES**

17 JASON WEST, etc., et al.,)
18 Plaintiffs,)

19 vs.)
20)
21 ACTIVISION PUBLISHING, INC.,)
etc., et al.,)
22 Defendants.)

24 ACTIVISION PUBLISHING, INC.,)
25 Cross-Complainant,)

26 vs.)
27 JASON WEST, an individual;)
VINCE ZAMPELLA, an individual;)
28 ELECTRONIC ARTS, INC., a Delaware)

Case No. SC 107041
[Consolidated with Case No. SC 107757]
FIRST AMENDED CROSS-COMPLAINT FOR:
(1) BREACH OF FIDUCIARY DUTY/DUTY OF LOYALTY; (2) BREACH OF CONTRACT-EMPLOYMENT AGREEMENTS; (3) BREACH OF CONTRACT-MEMORANDUM OF UNDERSTANDING; (4) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (5) DECLARATORY RELIEF; (6) & (7) INTENTIONAL INTERFERENCE WITH CONTRACT; (8) AIDING AND ABETTING BREACH OF FIDUCIARY DUTY; (9) VIOLATION OF BUS. & PROF. CODE § 17200; AND (10) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JAN 18 2011

John A. Clarke, Executive Officer/Clerk
By A. WILLIAMS
DEPUTY

1 corporation; and ROES 1 through 100,
2 inclusive,

3 Cross-Defendants.

)
)
) Judge: Hon. Linda K. Lefkowitz
) Dept.: M

)
) Complaint filed: March 3, 2010
) Cross-Complaint filed: April 9, 2010
) Trial Date: May 23, 2011

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. Indeed, as set forth below, Activision is informed and believes that to protect its
6 weaker *BFBC* series, EA secretly schemed with West and Zampella to bolster sales of BFBC at
7 the expense of *Call of Duty*.

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. On August 5, 2009, EA personnel circulated within EA a
2 list of Infinity Ward prospects, including Jason West and dozens of other Infinity Ward
3 employees, for an internal discussion "on recruiting from Activision (Infinity Ward)." The day
4 after this meeting, on August 6, 2009, Electronic Arts CEO Riccitiello met with Seamus Blackley
5 of Creative Artists Agency ("CAA") to enlist CAA's assistance in courting West and Zampella,
6 conducting the raids, and interfering 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, the day after he met with Riccitiello, Blackley wrote to
21 Zampella that he had "an amazing thing to talk to you about":

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To:	Vince Zampella (vince@infinityward.com)[vince@infinityward.com]
Cc:	Lupu, Ophir[olupu@caa.com]
From:	Blackley, Seamus
Sent on behalf of:	Blackley, Seamus
Sent:	Fri 8/7/2009 9:51:45 PM
Subject:	Good Afternoon captain CRUNCH.
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 > To ignore my email this effectively :)

9 >

10 > Seriously, let's have beer or a lunch. I'll wager a kidney that you'll be

11 > astonished.

12 >

13 > \$

14
15 42. Zampella agreed to meet with Blackley the next day, and following that meeting
16 Blackley wrote to Zampella: "I'm stoked about your options," and, in an obvious reference to
17 EA's John Riccitiello, "*JR cooks a mean BBQ. I think we could accomplish some interesting*
18 *chaos.*" (Emphasis added to original document.):

19 From: Blackley, Seamus [SBlackley@caa.com]

20 Sent: Tuesday, August 18, 2009 2:28 PM

21 To: 'vince@infinityward.com'

22 Subject: Thanks for driving out.

23 I'm stoked about your options. JR cooks a mean BBQ. I think we could accomplish some
24 interesting chaos.

25 \$

26
27 A few days later, the conversation continued and evidences EA's use of CAA's Blackley as a
28 surreptitious avenue of communication to Zampella. Blackley told Zampella: "*JR is really amped*
29 *to see you, and is basically agenting me with calls.*" (Emphasis added to original document.):

30 From: "Blackley, Seamus" <SBlackley@caa.com>

31 To: <vince@infinityward.com>

32 Sent: Friday, August 21, 2009 8:59 AM

33 Subject: Annoying Agent?

34 > JR is really amped to see you, and is basically agenting me with calls.

35 > Like I said I think its a good time if nothing else.

36
37 43. In late August 2009, Electronic Arts became even more brazen in its efforts to
38 interfere with Activision's contracts with West and Zampella. Momentarily dispensing with CAA
39 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.”) The follow-up emails between Schappert
5 and Riccitiello were clear that this was more than a social call – Schappert and Riccitiello were
6 planning to use all of the “angles” on West and Zampella and to “close” a deal:

7
8 **From:** Riccitiello, John
9 **Sent:** Tuesday, August 25, 2009 5:01 AM
10 **To:** Schappert, John
11 **Subject:** Re: Hello...

12 Yup

13 **From:** Schappert, John
14 **To:** Riccitiello, John
15 **Sent:** Tue Aug 25 04:56:00 2009
16 **Subject:** Re: Hello...

17 Suggest Frank join - let's chat to close...

18 **From:** Riccitiello, John
19 **To:** Schappert, John
20 **Sent:** Tue Aug 25 04:51:20 2009
21 **Subject:** RE: Hello...

22 Excellent. You should meet them separate and join me. More angles is good.

23 **From:** Schappert, John
24 **Sent:** Tuesday, August 25, 2009 4:50 AM
25 **To:** Riccitiello, John
26 **Subject:** Fw: Hello...

27 Fyi though looks like Geamus has it in hand and Vince/Jason are aligned which is good.

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

 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. In the second week of November 2009, an EA executive informed Brown that he was
8 meeting “to discuss deal structures” and would “get with” Brown later in the week. That same
9 week, Blackley advised Riccitiello: “We need to talk about our two friends down here – all is
10 good but its time for a more aggressive approach.”:

11 From: Blackley, Seamus [mailto:SBlackley@caa.com]
12 Sent: Saturday, November 14, 2009 7:41 PM
13 To: Riccitiello, John
14 Subject: Talk Monday

15 Hey.

16 Good week last week.

17 We need to talk about our two friends down here- all is good but its time for a more
18 aggressive approach- REDACTED

19 S.

20 48. Indeed, they reached the point where not only were specific terms of a deal
21 between West and Zampella and Electronic Arts negotiated, but by the end of November 2010,
22 Electronic Arts had a term sheet prepared for a deal with West and Zampella to set up their own
23 company.

24 From: Bain, Sinjin
25 Sent: Monday, November 30, 2009 12:28 PM
26 To: Gibeau, Frank
27 Cc: DeMartini, David; Sherman, Daniel; Rechenmacher, Craig
28 Subject: meeting action items...

Importance: High

Just so we're all on the same page... please let me know if I forgot something.

REDACTED

REDACTED

IW – Dan will send out email to JR with term sheet for JR to approve Joel to forward to Harold Brown.

1 The specific offer and term sheet was approved by Electronic Arts's executives, and
2 communicated to West and Zampella at the beginning of January 2010:

3 From: Linzner, Joel (JLinzner@ea.com)
4 Sent: Monday, January 04, 2010 3:14 PM
5 To: Harold A. Brown
6 Subject: NewCo Terms
7 Attachments: NewCoTermSheet.docx

8 Welcome home and Happy New Year.

9 Attached is a form of term sheet for a proposed dev/pub deal for your clients ('NewCo') to consider assuming they are free of any
10 contractual commitments on their services and the IP which they would develop under the deal. I'm sorry I was not able to send this
11 earlier over the holiday but my laptop elected to fry itself while I was away.

12 I look forward to reviewing this with you and determining if a deal is possible. Let me know when you'd like to chat.

13 Best,

14 #

15 Four days after sending the term sheet, a senior Electronic Arts executive told Riccitiello that it
16 was time to "dial up our efforts on the 'project'," referring to the plot to set up West and Zampella
17 in a competing business aligned with Electronic Arts.

18 49. The illicit communications went in both directions. Not only did Electronic Arts
19 make a lucrative offer to key Activision executives under long-term exclusive contracts with
20 Activision, but Activision is informed and believes, and thereon alleges, that in the course of this
21 scheme, Electronic Arts elicited and received confidential and proprietary Activision information
22 from West and Zampella. Activision is informed and believes that the negotiations between
23 Electronic Arts and West and Zampella were structured with the design and the expectation that
24 West and Zampella would "spin out" from Activision and would take significant numbers of key
25 Infinity Ward employees with them to set up their own independent company so that Electronic
26 Arts could make another run at competing with Activision. Electronic Arts would finance the
27 illicitly-created start-up in exchange for an ownership interest or exclusive distribution rights to
28 the content created by their new company, which would produce video games for Electronic Arts
instead of Activision.

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 “trearch
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, armed with the secret

1 Electronic Arts offer and as part of their plan to steal Infinity Ward for their own personal benefit,
2 West and Zampella openly discussed with Infinity Ward employees their desire to spin out from
3 Activision to enrich themselves and take key Infinity Ward employees with them. In furtherance
4 of their secret plan and desire to leave Activision and to take Infinity Ward team members with
5 them, West and Zampella engaged in a campaign to paint Activision and its management in a
6 negative light in an attempt to induce the employees to remain loyal to West and Zampella in the
7 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 Upon information and belief, West and Zampella continued to possess Activision confidential
2 information long after they left which makes it likely that West and/or Zampella have misused
3 and/or will continue to misuse valuable Activision intellectual property and trade secrets,
4 including computer code, now that they have left Activision.

5 60. Since the evidence of what was occurring among Electronic Arts, CAA and West
6 and Zampella has surfaced, West and Zampella's conduct, seemingly inexplicable at the time, is
7 now comprehensible, though not excusable. Simply put, as a result of the illicit dealings between
8 Electronic Arts and West and Zampella, the latter acted in a way that nobody who would lose the
9 enormous financial value of their contracts with Activision would otherwise do . . . unless they
10 had something else – a “safe harbor” provided by Electronic Arts – available to them. EA's
11 months of unlawful interference with West's and Zampella's employment contracts created a
12 situation where West and Zampella had no “downside” to breaching those contracts and causing
13 their terminations, since they knew there was an even more lucrative deal waiting for them from
14 Electronic Arts.

15 **H. Electronic Arts Concurrently Engages In Corporate Espionage To Derail *Call of Duty***
16 **And Boost Its Competing But Less Successful FPS Franchise**

17 61. On another front, and in conjunction with EA's plan to interfere with Activision's
18 contracts by extricating West and Zampella and gutting Infinity Ward, Electronic Arts worked to
19 subvert the *Call of Duty* franchise from the inside out. Activision is informed and believes that
20 Electronic Arts sought to extract confidential information from West and Zampella, including
21 information about the *Modern Warfare 2* marketing plans and how Electronic Arts could make a
22 “COD Killer,” a game to rival *Call of Duty*. This was a blatant attempt to get an unfair advantage
23 for EA's *Call of Duty* rival, *Battlefield: Bad Company*.

24 62. Although the full details of EA's plans cannot be disclosed in this filing due to
25 documents being designated “confidential” by Electronic Arts, Activision is informed and
26 believes, and thereon alleges that Electronic Arts secretly conspired with Infinity Ward employees
27 to affect the timing of the release of Electronic Arts and Activision products to the benefit of
28 Electronic Arts and detriment of Activision. Activision's belief is based on an internal EA email

1 bragging about how Electronic Arts asked Zampella to hold back the release of an Infinity Ward
2 product until after Electronic Arts launched its game, and how Zampella "was cool with that."

3
4 **From:** Hershberger, Lincoln
5 **Sent:** Tuesday, March 02, 2010 8:50 AM
6 **To:** Karp, Jeff; Decker, Sean; Gibeau, Frank; Soderlund, Patrick
7 **Cc:** Troedsson, Karl Magnus
8 **Subject:** RE: The Fall of IW?

9
10 A couple months ago, I asked Vince to hold back their map pack until after we launched (he
11 owes me one). Given that they've already made a billion, he was cool with that, obviously
12 Kotick took it as being belligerent.

13
14 **FIRST CAUSE OF ACTION**

15 **Breach of Fiduciary Duty/Breach of Duty of Loyalty**

16 **[Against West and Zampella]**

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

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

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

24 66. West and Zampella's bad faith actions in this regard constitute a breach of their
25 duty of loyalty and fiduciary duty to Activision. Specifically, West and Zampella have breached
26 their duty of loyalty by, among other things:

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

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

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]**

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1 113. Activision incorporates by reference the allegations in paragraphs 1 through 112 of
2 this First Amended Cross-Complaint as though set forth fully herein.

3 114. EA's, West's and Zampella's conduct, as described herein, constitute a unfair and
4 unlawful business practices in violation of Sections 17200, et seq. of the California Business and
5 Professions Code.

6 115. Activision is entitled to preliminary and permanent injunctive relief preventing the
7 continuance of EA's, West's and Zampella's unfair and unlawful business practices described
8 herein. Activision is also entitled to disgorgement of any and all monies and benefits received by
9 West and Zampella from Activision by reason of their unfair and unlawful business practices as
10 described herein.

11 **TENTH CAUSE OF ACTION**

12 **Intentional Interference With Prospective Economic Advantage**

13 **[Against Electronic Arts]**

14 116. Activision incorporates by reference the allegations in paragraphs 1 through 115 of
15 this First Amended Cross-Complaint as though set forth fully herein.

16 117. Activision and its employees at the Infinity Ward studio were in an economic
17 relationship that would have resulted in an economic benefit to Activision.

18 118. Electronic Arts knew of the relationship between Activision and its employees at
19 Infinity Ward.

20 119. Electronic Arts intended to disrupt that relationship and engaged in wrongful
21 conduct designed to disrupt that relationship. EA's wrongful conduct included its interference
22 with West's and Zampella's employment contracts, aiding and abetting breach of their fiduciary
23 duties, and unfair competition, described above. Electronic Arts knew that a disruption of
24 Activision's relationship with the employees was substantially certain to result from its conduct.
25 Indeed, an integral part of EA's plan was that with EA's assistance and the wrongful means
26 detailed above, West and Zampella would take key Infinity Ward employees with them when they
27 set up the new business financed by Electronic Arts. Without the core members of their team from
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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;

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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: January 18, 2011

IRELL & MANELLA LLP

Steven A. Marenberg

Elliot Brown

Laura A. Seigle

13 PAUL, HASTINGS, JANOFSKY & WALKER LLP

Paul Grossman

Bradford K. Newman

16 By: 

Steven A. Marenberg

18 Attorneys for Cross-Complainant Activision
19 Publishing, Inc.

EXHIBIT A



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November 1, 2003

Jason West
[REDACTED]

Dear Jason:

This letter confirms the terms of your employment by Activision Publishing, Inc. ("Employer"), on the terms and conditions set forth below.

1. Term

(a) The initial term of your employment under this agreement shall commence on November 1, 2003 and expire on October 31, 2006, unless earlier terminated as provided below (the "initial term").

(b) Employer shall have the option to extend the initial term of this agreement for two (2) additional successive one-year periods. The initial term and the option period, if exercised, shall be referred to as the "term."

(c) Employer may exercise the option granted to it under this agreement by giving written notice to Employee at least sixty (60) days prior to the expiration of the initial term.

2. Salary

(a) In full consideration for all rights and services provided by you under this agreement, you shall receive an annual base salary of [REDACTED]

(b) Base salary payments shall be made in accordance with Employer's then prevailing payroll policy. The base salary referred to in Paragraph 2(a) shall constitute your minimum base salary during the applicable period. On an annual basis, your base salary shall be reviewed to determine if an increase above the minimum is appropriate. Any decision regarding whether to change your base salary shall be made in the sole discretion of management

(c) Employer shall not be required to actually use your services during the term of this agreement. You will not be permitted or authorized to act on behalf of Employer if Employer is not utilizing your services unless specifically authorized in writing to the contrary by Employer. If Employer chooses not to use your services, Employer will continue to pay your base salary, [REDACTED]. Payment of your base salary during the term of your employment under this agreement will discharge Employer's obligations to you hereunder. Your obligations to Employer under this agreement generally, and specifically with regard to Paragraph 8, shall continue throughout the term of this agreement. Moreover, you have an obligation to abide by the terms of the Employee Proprietary Information Act executed by you.

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(d) In addition to your base salary, you shall be eligible to receive a performance based bonus for services provided by you to Employer. All bonus payments will be in compliance with Employer's Internal Project Bonus as in effect from time to time [REDACTED]

(e) You also are being granted, under the Activision Inc. ("company") existing or modified Board-approved stock option plan, a non-qualified stock option ("NQSO") to purchase [REDACTED] of the company's common stock. The option to purchase [REDACTED] referred to above will vest ratably over [REDACTED]. The option will have an exercise price that will be the market low of such common stock on the date that it is issued, and will be governed in all other respects by the company's stock option plan in effect at the time of the grant.

3. Title

You are being employed under this agreement in the position of Chief Technology Officer, Infinity Ward.

4. Duties

You shall personally and diligently perform, on a full-time and exclusive basis, such services as Employer or any of its related or affiliated entities or divisions may reasonably require. You are also required to read, review and observe all of Employer's existing policies, procedures, rules and regulations as well as those adopted by Employer during the term of your employment. You will at all times perform all of the duties and obligations required by you under this agreement in a loyal and conscientious manner and to the best of your ability and experience.

5. Expenses

To the extent you incur necessary and reasonable business expenses in the course of your employment, you shall be reimbursed for such expenses, subject to Employer's then current policies regarding reimbursement of such business expenses.

6. Other Benefits

You shall be entitled to those benefits which are standard for persons in similar positions with Employer, [REDACTED]

[REDACTED] Nothing paid to you under any such plans and arrangements (nor any bonus or stock options which Employer's Board of Directors (or the Compensation Committee of such Board of Directors), in its sole and absolute discretion, shall provide to you)) shall be deemed in lieu, or paid on account, of your base salary. You expressly agree and acknowledge that after the expiration or early termination of the term of your employment under this agreement, you are entitled to no additional benefits, except as specifically provided under the benefit plans referred to above and those benefit plans in which you subsequently may become a participant, and subject in each case to the terms and conditions of each such plan. Notwithstanding anything to the contrary set forth above, you shall be entitled

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to receive those benefits provided by COBRA upon the expiration or earlier termination of this agreement.

7. Vacation and Paid Holidays

(a) You will be entitled to paid vacation days in accordance with the normal vacation policies of Employer in effect from time to time, provided that in no event shall you be entitled to less than [redacted] of paid vacation per year. After [redacted] of employment under this agreement, your vacation days earned but not taken shall be accrued up to a maximum of [redacted]

(b) You shall be entitled to all paid holidays given by Employer to its full-time employees.

8. Protection of Employer's Interests

(a) **Duty of Loyalty.** During the term of your employment, you will not compete in any manner, whether directly or indirectly, as a principal, employee, agent or owner, with Employer, or any affiliate of Employer, except that the foregoing will not prevent you from holding at any time less than five percent (5%) of the outstanding capital stock of any company whose stock is publicly traded.

(b) **Property of Employer.** All rights worldwide with respect to any and all intellectual or other property of any nature produced, created or suggested by you during the term of your employment or resulting from your services which (i) relate in any manner at the time of conception or reduction to practice to the actual or demonstrably anticipated business of Employer, (ii) result from or are suggested by any task assigned to you or any work performed by you on behalf of Employer, or (iii) are based on any property owned or idea conceived by Employer, shall be deemed to be a work made for hire and shall be the sole and exclusive property of Employer. You agree to execute, acknowledge and deliver to Employer, at Employer's request, such further documents, including copyright and patent assignments, as Employer finds appropriate to evidence Employer's rights in such property.

(c) **Confidentiality.** Any confidential and/or proprietary information of Employer or any affiliate of Employer shall not be used by you or disclosed or made available by you to any person except as required in the course of your employment, and upon expiration or earlier termination of the term of your employment, you shall return to Employer all such information which exists in written or other physical form (and all copies thereof) under your control. Without limiting the generality of the foregoing, you acknowledge signing and delivering to Employer the Activision Employee Proprietary Information Agreement and you agree that all terms and conditions contained in such agreement, and all of your obligations and commitments provided for in such agreement, shall be deemed, and hereby are, incorporated into this agreement as if set forth in full herein. The provisions of this paragraph shall survive the expiration or earlier termination of this agreement.

(d) **Covenant Not to Solicit.** After the expiration of the term of this agreement or earlier termination of your employment pursuant to Paragraphs 9(a) or (b) of this agreement for any reason whatsoever, you shall not, either alone or jointly, with or on behalf of others, directly or indirectly, whether as principal, partner, agent, shareholder, director, employee, consultant or otherwise, at any time during a period of two (2) years following such expiration or termination,

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offer employment to, or directly or indirectly solicit the employment or engagement of, or otherwise entice away from the employment of Employer or any affiliated entity, either for your own account or for any other person firm or company, any person who was employed by Employer or any such affiliated entity during the term of your employment, whether or not such person would commit any breach of his or her contract of employment by reason of his or her leaving the service of Employer or any affiliated entity.

9. Termination

(a) **Employer.** At any time during the term of this agreement, Employer may terminate your employment under this agreement for your (i) willful, reckless or gross misconduct, (ii) negligent performance of job responsibilities, (iii) conviction of a felony or crime involving dishonesty or moral turpitude, or (iv) commitment of any prohibited conduct listed in Section 7.2 of Employer's Employee Handbook.

(b) **Employee.** You may terminate your employment under this agreement (and, thereby, forfeit your right to receive any compensation or benefits under this agreement) (i) upon any relocation of the place at which you primarily are performing your services to Employer to a location which is outside Los Angeles County, or (ii) if Employer elects to not actually use your services and continues to pay your base salary pursuant to Paragraph 2(c) above for a period of one hundred twenty (120) consecutive days.

(c) **Death or Disability.** In the event of your death during the term of this agreement, this agreement shall terminate and Employer only shall be obligated to pay your estate or legal representative the salary provided for above to the extent earned by your prior to your death. In the event you are unable to perform the services required of you under this agreement as a result of any disability, and such disability continues for a period of 60 or more consecutive days or an aggregate of 90 or more days during any 12-month period during the term of this agreement, then Employer shall have the right, at its option, to terminate your employment under this agreement. Unless and until so terminated, during any period of disability during which you are unable to perform the services required of you under this agreement, your base salary shall be payable to the extent of, and subject to, Employer's policies and practices then in effect with regard to sick leave and disability benefits.

(d) **Termination of Obligations.** In the event of the termination of your employment under this agreement pursuant to Paragraph 9(a) or 9(b), all obligations of Employer to you under this agreement shall immediately terminate.

10. Use of Employee's Name

Employer shall have the right, but not the obligation, to use your name or likeness for any publicity or advertising purpose.

11. Assignment

Employer may assign this agreement or all or any part of its rights under this agreement to any entity which succeeds to all or substantially all of Employer's assets (whether by merger,

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acquisition, consolidation, reorganization or otherwise) or which Employer may own substantially, and this agreement shall inure to the benefit of such assignee.

12. No Conflict with Prior Agreements

You represent to Employer that neither your commencement of employment under this agreement nor the performance of your duties under this agreement conflicts or will conflict with any contractual commitment on your part to any third party, nor does it or will it violate or interfere with any rights of any third party.

13. Representations and Warranties

Employee represents and warrants that he has provided Employer with complete and accurate information regarding his skills and experience. Employee further represents and warrants that he has the skills and abilities to perform the job responsibilities for which he is being hired (see paragraphs 3 and 4, above) based on his skills and experience. Based on Employee's representations regarding his skills and abilities, Employer has agreed to hire and compensate Employee pursuant to the terms of this agreement.

14. General Provisions

(a) **Entire Agreement.** This agreement supersedes all prior or contemporaneous agreements and statements, whether written or oral, concerning the terms of your employment with Employer or any of its affiliates or subsidiaries, including your employment agreement with Infinity Ward, Inc. dated as of June 1, 2003, and no amendment or modification of this agreement shall be binding against Employer unless it is set forth in a writing signed by both Employer and Employee.

(b) **No Broker.** You have given no indication, representation or commitment of any nature to any broker, finder, agent or other third party to the effect that any fees or commissions of any nature are, or under any circumstances might be, payable by Employer or any affiliate of Employer in connection with your employment under this agreement.

(c) **Waiver.** No waiver by either party of any breach by the other party of any provision or condition of this agreement shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time.

(d) **Prevailing Law.** Nothing contained in this agreement shall be construed so as to require the commission of any act contrary to law and wherever there is any conflict between any provision of this agreement and any present or future statute, law, ordinance or regulation, the latter shall prevail, but in such event the provision of this agreement affected shall be curtailed and limited only to the extent necessary to bring it within legal requirements.

(e) **Expiration.** This agreement does not constitute a commitment of Employer with regard to your employment, express or implied, other than to the extent expressly provided for herein. Upon expiration of the term of this agreement, it is the contemplation of both parties that your employment with Employer shall cease, and that neither Employer nor you shall have any obligation to the other with respect to your continued employment. In the event that your

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employment continues for a period of time following the term unless and until agreed to in a new subscribed written document, such continuation of your employment shall be "at will," and may be terminated without obligation at any time by either party giving notice to the other.

(f) **Choice of Law.** This agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflict of law principles.

(g) **Immigration.** In accordance with the Immigration Reform and Control Act of 1986, employment under this agreement is conditioned upon satisfactory proof of your identity and legal ability to work in the United States.

(h) **Venue and Jurisdiction.** The parties agree that all actions or proceedings initiated by either party hereto arising directly or indirectly out of this agreement shall be litigated in federal or state court in Los Angeles, California. The parties hereto expressly submit and consent in advance to such jurisdiction and agree that service of summons and complaint or other process or papers may be made by registered or certified mail addressed to the relevant party at the address set forth below. The parties hereto waive any claim that a federal or state court in Los Angeles, California, is an inconvenient or an improper forum.

(i) **Severability.** If any provision of this agreement is held to be illegal, invalid or unenforceable under existing or future laws effective during the term of this agreement, such provisions shall be fully severable, the agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this agreement, and the remaining provisions of this agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal and enforceable.

(j) **Legal Counsel.** Employee acknowledges that he has been given the opportunity to consult with legal counsel of his own choosing regarding this agreement. Employee understands and agrees that Activision's General Counsel, or any other attorney or member of management who has discussed any term or condition of this agreement with him, is only acting on behalf of the company and not on behalf of Employee.

(k) **Right to Negotiate.** Employee hereby acknowledges that he has been given the opportunity to participate in the negotiation of the terms of this agreement.

(l) **Services Unique.** You recognize that the services being performed by you under this agreement are of a special, unique, unusual, extraordinary and intellectual character giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated for in damages in the event of a breach of this agreement by you (particularly, but without limitation, with respect to the provisions hereof relating to the exclusivity of your services and the provisions of paragraph 8 of this agreement).

(m) **Injunctive Relief.** In the event of a breach or threatened breach of this agreement, you hereby agree that any remedy at law for any breach or threatened breach of this agreement will be inadequate and, accordingly, each party hereby stipulates that the other is entitled to obtain

injunctive relief for any such breaches or threatened breaches. The injunctive relief provided for in this paragraph is in addition to, and is not in limitation of, any and all other remedies at law or in equity otherwise available to the applicable party. The parties agree to waive the requirement of posting a bond in connection with a court's issuance of an injunction.

(n) **Remedies Cumulative.** The remedies in this paragraph are not exclusive, and the parties shall have the right to pursue any other legal or equitable remedies to enforce the terms of this agreement.

(o) **Attorneys' Fees And Costs.** If either party brings an action to enforce, interpret or apply the terms of this agreement or declare its rights under this agreement, the prevailing party in such action, including all appeals, shall receive all of its or his attorneys' fees, experts' fees, and all of its or his costs, in addition to such other relief as may be granted.

15. Notices

All notices which either party is required or may desire to give the other shall be in writing and given either personally or by depositing the same in the United States mail addressed to the party to be given notice as follows:

To Employer: 3100 Ocean Park Boulevard
Santa Monica, California 90405
Attention: Senior Vice President,
Business Affairs and General Counsel

To Employee: 

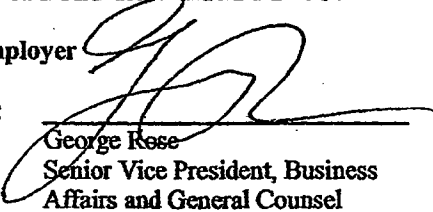
Either party may by written notice designate a different address for giving of notices. The date of mailing of any such notices shall be deemed to be the date on which such notice is given.

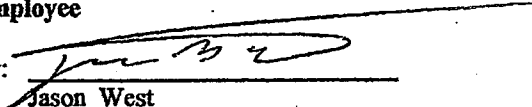
16. Headings

The headings set forth herein are included solely for the purpose of identification and shall not be used for the purpose of construing the meaning of the provisions of this agreement.

If the foregoing accurately reflects our mutual agreement, please sign where indicated.

ACCEPTED AND AGREED TO:

Employer 
By: _____
George Rose
Senior Vice President, Business
Affairs and General Counsel

Employee 
By: _____
Jason West

Date: 10.24.03

Date: Oct 23, 2003

EXHIBIT B



Amendment #1 to Employment Agreement

Jason West

This Amendment #1 to Employment Agreement (this "Amendment #1") is entered into as of April 9, 2008, by and between Jason West ("Employee") and Activision Publishing, Inc. ("Employer").

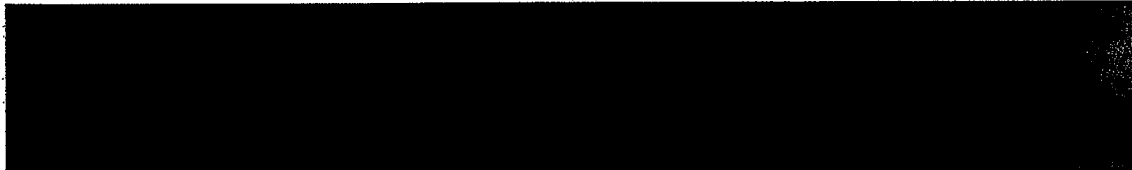
RECITALS:

Employee and Employer entered into an Employment Agreement dated as of November 1, 2003 (the "Employment Agreement").

The initial term of the Employment Agreement was from November 1, 2003 through October 31, 2006 (the "Initial Term").

The Employment Agreement provided Employer with the option to extend the Initial Term for two (2) additional successive one-year periods.

Employer exercised its options to extend the Initial Term for two additional successive one-year periods and therefore the term of the Employment Agreement is now set to expire on October 31, 2008.



AGREEMENT:

The parties hereby agree to amend the terms of the Employment Agreement as follows:

1. The term of the Employment Agreement will be extended to expire on October 31, 2011, unless earlier terminated in accordance with the terms set forth in the Employment Agreement.
2. The parties acknowledge and agree that Employee's current annual base salary is [REDACTED] and such salary shall be subject to annual increases in accordance with Paragraph 2(b) of the Employment Agreement.
3. Paragraph 9(b)(i) of the Employment Agreement is hereby eliminated from the Employment Agreement and the parties hereby agree that Employer shall not be

permitted to relocate the place at which Employee primarily performs his services without Employee's prior written consent.

4. Upon execution of this Amendment #1, Employee shall be entitled to receive a signing bonus in the amount of [REDACTED], as well as such other benefits and/or awards [REDACTED]

5. [REDACTED]

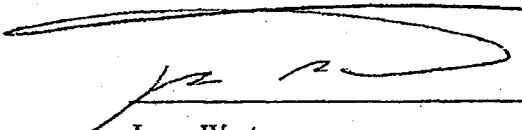
Except as specifically set forth above, the Employment Agreement shall remain unmodified and in full force and effect.

AGREED AND ACCEPTED:

Employee:

Employer:

Activision Publishing, Inc.



Jason West

By: 

Name: MICHAEL GRIFFITH
Title: President and Chief Executive Officer

EXHIBIT C



November 1, 2003

Vince Zampella
[REDACTED]

Dear Vince:

This letter confirms the terms of your employment by Activision Publishing, Inc. ("Employer"), on the terms and conditions set forth below.

1. Term

(a) The initial term of your employment under this agreement shall commence on November 1, 2003 and expire on October 31, 2006, unless earlier terminated as provided below (the "initial term").

(b) Employer shall have the option to extend the initial term of this agreement for two (2) additional successive one-year periods. The initial term and the option period, if exercised, shall be referred to as the "term."

(c) Employer may exercise the option granted to it under this agreement by giving written notice to Employee at least sixty (60) days prior to the expiration of the initial term.

2. Salary

(a) In full consideration for all rights and services provided by you under this agreement, you shall receive an annual base salary of [REDACTED]

(b) Base salary payments shall be made in accordance with Employer's then prevailing payroll policy. The base salary referred to in Paragraph 2(a) shall constitute your minimum base salary during the applicable period. On an annual basis, your base salary shall be reviewed to determine if an increase above the minimum is appropriate. Any decision regarding whether to change your base salary shall be made in the sole discretion of management

(c) Employer shall not be required to actually use your services during the term of this agreement. You will not be permitted or authorized to act on behalf of Employer if Employer is not utilizing your services unless specifically authorized in writing to the contrary by Employer. If Employer chooses not to use your services, Employer will continue to pay your base salary, [REDACTED] Payment of your base salary during the term of your employment under this agreement will discharge Employer's obligations to you hereunder. Your obligations to Employer under this agreement generally, and specifically with regard to Paragraph 8, shall continue throughout the term of this agreement. Moreover, you have an obligation to abide by the terms of the Employee Proprietary Information Act executed by you.

(VZ)

(d) In addition to your base salary, you shall be eligible to receive a performance based bonus for services provided by you to Employer. All bonus payments will be in compliance with Employer's Internal Project Bonus as in effect from time to time [REDACTED]

(e) You also are being granted, under the Activision Inc. ("company") existing or modified Board-approved stock option plan, a non-qualified stock option ("NOSO") to purchase [REDACTED] of the company's common stock. The option to purchase [REDACTED] referred to above will vest ratably over [REDACTED]

[REDACTED] The option will have an exercise price that will be the market low of such common stock on the date that it is issued, and will be governed in all other respects by the company's stock option plan in effect at the time of the grant.

3. Title

You are being employed under this agreement in the position of Chief Creative Officer, Infinity Ward.

4. Duties

You shall personally and diligently perform, on a full-time and exclusive basis, such services as Employer or any of its related or affiliated entities or divisions may reasonably require. You are also required to read, review and observe all of Employer's existing policies, procedures, rules and regulations as well as those adopted by Employer during the term of your employment. You will at all times perform all of the duties and obligations required by you under this agreement in a loyal and conscientious manner and to the best of your ability and experience.

5. Expenses

To the extent you incur necessary and reasonable business expenses in the course of your employment, you shall be reimbursed for such expenses, subject to Employer's then current policies regarding reimbursement of such business expenses.

6. Other Benefits

You shall be entitled to those benefits which are standard for persons in similar positions with Employer, [REDACTED]

[REDACTED] Nothing paid to you under any such plans and arrangements (nor any bonus or stock options which Employer's Board of Directors (or the Compensation Committee of such Board of Directors), in its sole and absolute discretion, shall provide to you)) shall be deemed in lieu, or paid on account, of your base salary. You expressly agree and acknowledge that after the expiration or early termination of the term of your employment under this agreement, you are entitled to no additional benefits, except as specifically provided under the benefit plans referred to above and those benefit plans in which you subsequently may become a participant, and subject in each case to the terms and conditions of each such plan. Notwithstanding anything to the contrary set forth above, you shall be entitled

to receive those benefits provided by COBRA upon the expiration or earlier termination of this agreement.

④

7. Vacation and Paid Holidays

(a) You will be entitled to paid vacation days in accordance with the normal vacation policies of Employer in effect from time to time, provided that in no event shall you be entitled to less than [REDACTED] of paid vacation per year. After [REDACTED] of employment under this agreement, your vacation days earned but not taken shall be accrued up to a maximum of [REDACTED].

(b) You shall be entitled to all paid holidays given by Employer to its full-time employees.

8. Protection of Employer's Interests

(a) **Duty of Loyalty.** During the term of your employment, you will not compete in any manner, whether directly or indirectly, as a principal, employee, agent or owner, with Employer, or any affiliate of Employer, except that the foregoing will not prevent you from holding at any time less than five percent (5%) of the outstanding capital stock of any company whose stock is publicly traded.

(b) **Property of Employer.** All rights worldwide with respect to any and all intellectual or other property of any nature produced, created or suggested by you during the term of your employment or resulting from your services which (i) relate in any manner at the time of conception or reduction to practice to the actual or demonstrably anticipated business of Employer, (ii) result from or are suggested by any task assigned to you or any work performed by you on behalf of Employer, or (iii) are based on any property owned or idea conceived by Employer, shall be deemed to be a work made for hire and shall be the sole and exclusive property of Employer. You agree to execute, acknowledge and deliver to Employer, at Employer's request, such further documents, including copyright and patent assignments, as Employer finds appropriate to evidence Employer's rights in such property.

(c) **Confidentiality.** Any confidential and/or proprietary information of Employer or any affiliate of Employer shall not be used by you or disclosed or made available by you to any person except as required in the course of your employment, and upon expiration or earlier termination of the term of your employment, you shall return to Employer all such information which exists in written or other physical form (and all copies thereof) under your control. Without limiting the generality of the foregoing, you acknowledge signing and delivering to Employer the Activision Employee Proprietary Information Agreement and you agree that all terms and conditions contained in such agreement, and all of your obligations and commitments provided for in such agreement, shall be deemed, and hereby are, incorporated into this agreement as if set forth in full herein. The provisions of this paragraph shall survive the expiration or earlier termination of this agreement.

(d) **Covenant Not to Solicit.** After the expiration of the term of this agreement or earlier termination of your employment pursuant to Paragraphs 9(a) or (b) of this agreement for any reason whatsoever, you shall not, either alone or jointly, with or on behalf of others, directly or indirectly, whether as principal, partner, agent, shareholder, director, employee, consultant or otherwise, at any time during a period of two (2) years following such expiration or termination,

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offer employment to, or directly or indirectly solicit the employment or engagement of, or otherwise entice away from the employment of Employer or any affiliated entity, either for your own account or for any other person firm or company, any person who was employed by Employer or any such affiliated entity during the term of your employment, whether or not such person would commit any breach of his or her contract of employment by reason of his or her leaving the service of Employer or any affiliated entity.

9. Termination

(a) **Employer.** At any time during the term of this agreement, Employer may terminate your employment under this agreement for your (i) willful, reckless or gross misconduct, (ii) negligent performance of job responsibilities, (iii) conviction of a felony or crime involving dishonesty or moral turpitude, or (iv) commitment of any prohibited conduct listed in Section 7.2 of Employer's Employee Handbook.

(b) **Employee.** You may terminate your employment under this agreement (and, thereby, forfeit your right to receive any compensation or benefits under this agreement) (i) upon any relocation of the place at which you primarily are performing your services to Employer to a location which is outside Los Angeles County, or (ii) if Employer elects to not actually use your services and continues to pay your base salary pursuant to Paragraph 2(c) above for a period of one hundred twenty (120) consecutive days.

(c) **Death or Disability.** In the event of your death during the term of this agreement, this agreement shall terminate and Employer only shall be obligated to pay your estate or legal representative the salary provided for above to the extent earned by you prior to your death. In the event you are unable to perform the services required of you under this agreement as a result of any disability, and such disability continues for a period of 60 or more consecutive days or an aggregate of 90 or more days during any 12-month period during the term of this agreement, then Employer shall have the right, at its option, to terminate your employment under this agreement. Unless and until so terminated, during any period of disability during which you are unable to perform the services required of you under this agreement, your base salary shall be payable to the extent of, and subject to, Employer's policies and practices then in effect with regard to sick leave and disability benefits.

(d) **Termination of Obligations.** In the event of the termination of your employment under this agreement pursuant to Paragraph 9(a) or 9(b), all obligations of Employer to you under this agreement shall immediately terminate.

10. Use of Employee's Name

Employer shall have the right, but not the obligation, to use your name or likeness for any publicity or advertising purpose.

11. Assignment

Employer may assign this agreement or all or any part of its rights under this agreement to any entity which succeeds to all or substantially all of Employer's assets (whether by merger,

acquisition, consolidation, reorganization or otherwise) or which Employer may own substantially, and this agreement shall inure to the benefit of such assignee.

12. No Conflict with Prior Agreements

You represent to Employer that neither your commencement of employment under this agreement nor the performance of your duties under this agreement conflicts or will conflict with any contractual commitment on your part to any third party, nor does it or will it violate or interfere with any rights of any third party.

13. Representations and Warranties

Employee represents and warrants that he has provided Employer with complete and accurate information regarding his skills and experience. Employee further represents and warrants that he has the skills and abilities to perform the job responsibilities for which he is being hired (*see* paragraphs 3 and 4, above) based on his skills and experience. Based on Employee's representations regarding his skills and abilities, Employer has agreed to hire and compensate Employee pursuant to the terms of this agreement.

14. General Provisions

(a) **Entire Agreement.** This agreement supersedes all prior or contemporaneous agreements and statements, whether written or oral, concerning the terms of your employment with Employer or any of its affiliates or subsidiaries, including your employment agreement with Infinity Ward, Inc. dated as of June 1, 2003, and no amendment or modification of this agreement shall be binding against Employer unless it is set forth in a writing signed by both Employer and Employee.

(b) **No Broker.** You have given no indication, representation or commitment of any nature to any broker, finder, agent or other third party to the effect that any fees or commissions of any nature are, or under any circumstances might be, payable by Employer or any affiliate of Employer in connection with your employment under this agreement.

(c) **Waiver.** No waiver by either party of any breach by the other party of any provision or condition of this agreement shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time.

(d) **Prevailing Law.** Nothing contained in this agreement shall be construed so as to require the commission of any act contrary to law and wherever there is any conflict between any provision of this agreement and any present or future statute, law, ordinance or regulation, the latter shall prevail, but in such event the provision of this agreement affected shall be curtailed and limited only to the extent necessary to bring it within legal requirements.

(e) **Expiration.** This agreement does not constitute a commitment of Employer with regard to your employment, express or implied, other than to the extent expressly provided for herein. Upon expiration of the term of this agreement, it is the contemplation of both parties that your employment with Employer shall cease, and that neither Employer nor you shall have any obligation to the other with respect to your continued employment. In the event that your

employment continues for a period of time following the term unless and until agreed to in a new subscribed written document, such continuation of your employment shall be "at will," and may be terminated without obligation at any time by either party giving notice to the other.

(f) **Choice of Law.** This agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflict of law principles.

(g) **Immigration.** In accordance with the Immigration Reform and Control Act of 1986, employment under this agreement is conditioned upon satisfactory proof of your identity and legal ability to work in the United States.

(h) **Venue and Jurisdiction.** The parties agree that all actions or proceedings initiated by either party hereto arising directly or indirectly out of this agreement shall be litigated in federal or state court in Los Angeles, California. The parties hereto expressly submit and consent in advance to such jurisdiction and agree that service of summons and complaint or other process or papers may be made by registered or certified mail addressed to the relevant party at the address set forth below. The parties hereto waive any claim that a federal or state court in Los Angeles, California, is an inconvenient or an improper forum.

(i) **Severability.** If any provision of this agreement is held to be illegal, invalid or unenforceable under existing or future laws effective during the term of this agreement, such provisions shall be fully severable, the agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this agreement, and the remaining provisions of this agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal and enforceable.

(j) **Legal Counsel.** Employee acknowledges that he has been given the opportunity to consult with legal counsel of his own choosing regarding this agreement. Employee understands and agrees that Activision's General Counsel, or any other attorney or member of management who has discussed any term or condition of this agreement with him, is only acting on behalf of the company and not on behalf of Employee.

(k) **Right to Negotiate.** Employee hereby acknowledges that he has been given the opportunity to participate in the negotiation of the terms of this agreement.

(l) **Services Unique.** You recognize that the services being performed by you under this agreement are of a special, unique, unusual, extraordinary and intellectual character giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated for in damages in the event of a breach of this agreement by you (particularly, but without limitation, with respect to the provisions hereof relating to the exclusivity of your services and the provisions of paragraph 8 of this agreement).

(m) **Injunctive Relief.** In the event of a breach or threatened breach of this agreement, you hereby agree that any remedy at law for any breach or threatened breach of this agreement will be inadequate and, accordingly, each party hereby stipulates that the other is entitled to obtain

injunctive relief for any such breaches or threatened breaches. The injunctive relief provided for in this paragraph is in addition to, and is not in limitation of, any and all other remedies at law or in equity otherwise available to the applicable party. The parties agree to waive the requirement of posting a bond in connection with a court's issuance of an injunction.

(n) **Remedies Cumulative.** The remedies in this paragraph are not exclusive, and the parties shall have the right to pursue any other legal or equitable remedies to enforce the terms of this agreement.

(o) **Attorneys' Fees And Costs.** If either party brings an action to enforce, interpret or apply the terms of this agreement or declare its rights under this agreement, the prevailing party in such action, including all appeals, shall receive all of its or his attorneys' fees, experts' fees, and all of its or his costs, in addition to such other relief as may be granted.

15. Notices

All notices which either party is required or may desire to give the other shall be in writing and given either personally or by depositing the same in the United States mail addressed to the party to be given notice as follows:

To Employer: 3100 Ocean Park Boulevard
Santa Monica, California 90405
Attention: Senior Vice President,
Business Affairs and General Counsel

To Employee: [REDACTED]

Either party may by written notice designate a different address for giving of notices. The date of mailing of any such notices shall be deemed to be the date on which such notice is given.

16. Headings


The headings set forth herein are included solely for the purpose of identification and shall not be used for the purpose of construing the meaning of the provisions of this agreement.

If the foregoing accurately reflects our mutual agreement, please sign where indicated.

ACCEPTED AND AGREED TO:

Employer

By:


George Rose
Senior Vice President, Business
Affairs and General Counsel

Date:

10-24-03

Employee

By:


Vice Zampella

Date:

10-23-03

EXHIBIT D



Amendment #1 to Employment Agreement

Vince Zampella

This Amendment #1 to Employment Agreement (this "Amendment #1") is entered into as of April 9, 2008, by and between Vince Zampella ("Employee") and Activision Publishing, Inc. ("Employer").

RECITALS:

Employee and Employer entered into an Employment Agreement dated as of November 1, 2003 (the "Employment Agreement").

The initial term of the Employment Agreement was from November 1, 2003 through October 31, 2006 (the "Initial Term").

The Employment Agreement provided Employer with the option to extend the Initial Term for two (2) additional successive one-year periods.

Employer exercised its options to extend the Initial Term for two additional successive one-year periods and therefore the term of the Employment Agreement is now set to expire on October 31, 2008.



AGREEMENT:

The parties hereby agree to amend the terms of the Employment Agreement as follows:

1. The term of the Employment Agreement will be extended to expire on October 31, 2011, unless earlier terminated in accordance with the terms set forth in the Employment Agreement.
2. The parties acknowledge and agree that Employee's current annual base salary is [REDACTED] and such salary shall be subject to annual increases in accordance with Paragraph 2(b) of the Employment Agreement.
3. Paragraph 9(b)(i) of the Employment Agreement is hereby eliminated from the Employment Agreement and the parties hereby agree that Employer shall not be

permitted to relocate the place at which Employee primarily performs his services without Employee's prior written consent.

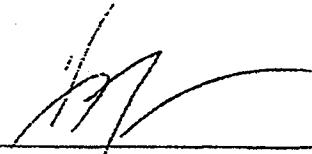
4. Upon execution of this Amendment #1, Employee shall be entitled to receive a signing bonus in the amount of [REDACTED] as well as such other benefits and/or awards.

5. [REDACTED]

Except as specifically set forth above, the Employment Agreement shall remain unmodified and in full force and effect.

AGREED AND ACCEPTED:


Employee:



Vince Zampella

Employer:

Activision Publishing, Inc.

By: 

Name: MICHAEL GRIFFITH
Title: President and Chief Executive Officer