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1 DANIEL M. PETROCELLI (S.B. #097802)
dpetrocelli@omm.com
2 MOLLY M. LENS (S.B. #283867)
mlens@omm.com
3 O'MELVENY & MYERS LLP
1999 Avenue of the Stars, 8th Floor
4 Los Angeles, CA 90067-6035
Telephone: (310) 553-6700
5 Facsimile: (310) 246-6779

6 ERIC AMDURSKY (S.B. #180288)
eamdursky@omm.com
7 O'MELVENY & MYERS LLP
2765 Sand Hill Road
8 Menlo Park, California 94025
Telephone: (650) 473-2600
9 Facsimile: (650) 473-2601

10 Attorneys for Plaintiff
ACTIVISION BLIZZARD, INC.

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES, WEST DISTRICT**

14 ACTIVISION BLIZZARD, INC., a Delaware
15 Corporation,

16 Plaintiff,

17 vs.

18 NETFLIX, INC., a Delaware Corporation, and
19 DOES 1 through 25, inclusive,

20 Defendants.

Case No.

COMPLAINT FOR:

- 21 **(1) Intentional Interference with Contract;**
- 22 **(2) Unfair Competition – Cal. Bus. & Prof. Code §§ Code 17200 et seq.; and**
- 23 **(3) Aiding and Abetting Breach of Fiduciary Duty**

DEMAND FOR JURY TRIAL

1 Plaintiff Activision Blizzard, Inc. (“Plaintiff” or “Activision”), for its complaint against
2 Netflix, Inc. (“Netflix” or “Defendant”), alleges on knowledge as to itself and its own acts, and on
3 information and belief as to all other matters, as follows:

4 **NATURE OF ACTION**

5 1. Netflix unapologetically recruits talent without regard to its ethical and legal
6 obligations. To shape its workforce to its desires, Netflix not only ruthlessly fires its own
7 employees that it deems “adequate,” but is engaged in a years-long campaign of unlawfully
8 poaching executives from Netflix’s competitors regardless of their contractual obligations. In so
9 doing, Netflix intentionally disregards well-established California law, including the California
10 Labor Code itself, which expressly recognizes and permits the enforcement of employment
11 agreements for a fixed term. Cal. Labor Code §§ 2920, *et seq.*

12 2. Activision employed Spencer Neumann as its Chief Financial Officer (“CFO”)—
13 one of the highest-ranking and most sensitive positions in a public company, requiring an
14 extremely high level of trust, integrity, sensitivity, and commitment—pursuant to the terms of a
15 negotiated fixed-term employment agreement. Netflix nevertheless knowingly induced Neumann
16 to breach his employment contract with Activision.

17 3. Making matters worse, Netflix engaged in its tortious conduct when Activision—
18 with Neumann’s assistance—was negotiating *with* Netflix over a commercial partnership to
19 distribute Activision’s linear media content. Netflix then proceeded to induce Neumann to breach
20 his fiduciary obligations to Activision, thereby obtaining yet another an unfair and unethical
21 advantage over Activision, one of Netflix’s competitors.

22 4. Netflix’s unlawful behavior with regards to Neumann is no anomaly. To the
23 contrary, Netflix has a demonstrated pattern of caring only about attracting and employing
24 whoever Netflix wants, regardless of whether it violates the law along the way. In this regard,
25 Netflix is seemingly guided by its own “Culture Memo,” which states that “what is special about
26 Netflix is how much [it] [...] avoid[s] rules.” Not surprisingly then, Netflix’s conduct has resulted
27 in multiple lawsuits against Netflix in addition to this one, including one resulting in a California
28

1 court permanently enjoining Netflix from any continued tortious interference with another one of
2 Netflix's competitor's fixed-term employment contracts.

3 5. Netflix's unlawful conduct is not trailblazing or innovative—it is just reflective of
4 Netflix's contempt for the law of the State of California. Netflix should not be permitted to profit
5 from its unequivocally illegal and tortious behavior. Consequently, Activision seeks, among other
6 things, damages and injunctive relief.

7 **PARTIES**

8 6. Activision is one of the world's most successful standalone interactive entertainment
9 companies. Its portfolio includes some of the strongest franchises in all of entertainment,
10 developed by its three operating segments: Activision, Blizzard Entertainment, and King Digital
11 Entertainment. Activision is, and at all times relevant herein has been, a corporation organized
12 under the laws of the State of Delaware, authorized to do business in California and with its
13 principal place of business at 3100 Ocean Park Boulevard, Santa Monica, California.

14 7. Netflix is an internet-based television and film producer and subscription service.
15 Netflix is a Delaware corporation, with its principal place of business in Los Gatos, California,
16 and it conducts business in Los Angeles, California, with offices located at 5808 Sunset
17 Boulevard, Los Angeles, California 90028.

18 8. Activision is unaware of the true names and capacities of the defendants sued herein
19 under the fictitious names DOES 1 through 25, inclusive. Pursuant to California Code of Civil
20 Procedure Section 474, Activision will amend this Complaint and insert the true names and
21 capacities of said defendants when the same become known to Activision.

22 9. Activision is informed and believes, and based thereon alleges that in doing the acts
23 and things hereinafter alleged, each defendant acted individually for himself or itself, and as the
24 agent, employee, and/or representative of each of the other defendants and, in doing the things
25 hereinafter alleged, each was at all times acting within the course and scope of said agency,
26 representation, or employment relationship with the advance knowledge, acquiescence, or
27 subsequent ratification of each and every other defendant.

1 **JURISDICTION AND VENUE**

2 10. This action arises under the laws of the State of California and is within the subject
3 matter jurisdiction of this Court.

4 11. A substantial part of the events giving rise to Activision’s causes of action as alleged
5 herein occurred in Los Angeles County, California, and has a direct effect on Activision in Los
6 Angeles County, California. The actions causing injury to Activision as alleged herein, even if
7 initiated outside of California, were expressly aimed at California, with knowledge that they
8 would cause harm in California. Further, Netflix is subject to the personal jurisdiction of this
9 Court because it conducts business in Los Angeles, California and/or is a resident of California.

10 12. Pursuant to California Code of Civil Procedure section 395 *et seq.* and L.R.
11 2.3(a)(1)(B), venue is proper in the Superior Court of the State of California in and for the County
12 of Los Angeles, West District, because the contracts at issue were interfered with in the County of
13 Los Angeles, State of California and because Activision was harmed at its principal place of
14 business in the County of Los Angeles, State of California.

15 **GENERAL ALLEGATIONS**

16 **Netflix Increases its Competition with Activision**

17 13. Activision has been an interactive entertainment company for 40 years. The
18 company’s well-known franchises include Activision’s “Call of Duty,” the top-selling video
19 game franchise for 9 out of the last 10 years and the cornerstone of a professional 12-team
20 competitive eSports league; Blizzard Entertainment’s “World of Warcraft,” the largest and most
21 successful subscription-based massively multiplayer online role playing game in the world;
22 “StarCraft”; “Diablo”; “Hearthstone”; “Overwatch,” the basis for a pioneering new professional
23 competitive eSports league with 20 teams around the world; and King’s “Candy Crush Saga,” “Pet
24 Rescue Saga,” and “Farm Heroes Saga.” Activision employs more than 9,000 of the industry’s
25 most talented individuals in various countries around the world and its games have more than
26 twice as many players as Netflix has subscribers.

1 14. Netflix is a subscription-based entertainment content service that offers online
2 streaming of a library of films and television programs, including content produced in-house and
3 interactive content, and which competes with Activision in producing and distributing such
4 content.

5 15. Netflix entered the video game market at least as of 2017, with Netflix’s most senior
6 executives expressing interest in the video game market. For example, Reed Hastings, Netflix’s
7 co-CEO, has stated that the video game industry is “a very interesting area.” Similarly, Hastings
8 has explained that Netflix is focused on franchise building, with Ted Sarandos, Netflix’s other co-
9 CEO, elaborating that “a franchise is the act of successful world-building, and video games
10 obviously have a world-building aspect to them.” As Netflix expands its video game-related
11 products, including bringing video game properties to its streaming service and creating video
12 games based on its shows, Netflix increases its competition with Activision.

13 16. Netflix’s interest in expanding into the video game market was widely known when
14 Netflix pursued Neumann. Since Neumann joined Netflix, Netflix has continued to execute on its
15 plans to further compete in the video game market. For example, in July 2019, Netflix launched
16 “Stranger Things 3: The Game” on the Nintendo Switch, Sony PlayStation 4, and Microsoft Xbox
17 One platforms. In June 2019, Netflix attended the Electronics Entertainment Expo (E3) and
18 hosted a highly publicized and popular panel titled “Bringing Your Favorite Shows to Life:
19 Developing Netflix Originals Into Video Games,” where it announced that it would create another
20 “Stranger Things” game set to launch in 2020. Netflix also launched a game based on the Netflix
21 show “The Dark Crystal: Age of Resistance” in February 2020 on the Nintendo Switch, Sony
22 PlayStation 4, Microsoft Xbox One, Windows, and MacOS platforms.

23 **Activision’s Employment Contract with Neumann**

24 17. As part of Activision’s efforts to establish and maintain its workforce, like many
25 employers in California, Activision negotiates and enters into written employment agreements for
26 a fixed term with certain of its executives. In so doing, Activision obtains the employee’s
27 contractual commitment to provide his or her services to Activision for a specified number of
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1 years in exchange for valuable consideration offered to and received by the employee, in the form
2 of compensation and increased financial and professional security.

3 18. On or about May 30, 2017, Activision hired Neumann to be its CFO pursuant to an
4 employment agreement (the “Neumann Agreement”). Pursuant to the Neumann Agreement,
5 Activision agreed to employ and compensate Neumann for a specified term and Neumann agreed
6 to be employed by Activision for a term of three (3) years ending on April 30, 2020 (the “Initial
7 Term”). Neumann further granted Activision the right to extend the Initial Term for an addition
8 one-year period (i.e., until April 30, 2021). In exchange for his commitment to Activision,
9 Neumann was provided financial security and certainty, with Neumann guaranteed, among other
10 things, substantial compensation and the right to participate in Activision’s many employee
11 benefit plans.

12 19. Neumann was advised and assisted by independent counsel of his choosing prior to
13 executing the Neumann Agreement. Neumann’s counsel actively negotiated the Neumann
14 Agreement with Activision, and Neumann himself was involved in such negotiations.

15 20. In the Neumann Agreement (“Duties”), Neumann agreed that he would: (i) “read,
16 review and observe all of the Activision Blizzard Group’s policies, procedures, rules and
17 regulations in effect from time to time during the Term that apply to employees of the Employer,
18 including, without limitation, the Code of Conduct, as amended from time to time”; (ii) “devote
19 [his] full-time working time to the performance of [his] duties hereunder”; (iii) “faithfully serve
20 the employer”; (iv) “in all respects conform to and comply with the lawful directions and
21 instructions given to [him] by the Chief Executive Officer of the Employer (or such other
22 executive of the Activision Blizzard Group as may be determined from time to time by it in its
23 sole and absolute discretion)”; (v) “use [his] best efforts to promote and serve the interest of the
24 Activision Blizzard Group”; (vi) “at all times place the Employer’s interests above [his] own”;
25 (vii) “not take any actions that would conflict with the Employer’s interests”; (viii) “perform all
26 [his] duties for the Employer with the highest duty of care”; (ix) “not, directly or indirectly, render
27 services of any kind to any other person or organization, whether on [his] own behalf or on behalf
28 of others, without the consent of the Chief Executive Officer of the Employer”; and (x) not

1 “otherwise engage in activities that would interfere with [his] faithful and diligent performance of
2 [his] duties hereunder.”

3 **Netflix’s Tortious Conduct**

4 21. Netflix—in an effort to illegally augment Netflix’s workforce by “cherry-picking”
5 employees from other entertainment companies regardless of the nature of their ongoing
6 contractual obligations to their current employer—became aware of the publicly available
7 Neumann Agreement by no later than the fall of 2018. Notwithstanding its knowledge of the
8 Neumann Agreement, Netflix knowingly pursued Neumann and induced him to breach the
9 Neumann Agreement.

10 22. Defendants engaged in this tortious conduct at a time when Netflix was seeking to
11 increase its gaming content to compete with Activision, and Activision was executing on a long-
12 term strategy to expand its linear media content by negotiating with Netflix for distribution of this
13 content, in which Neumann was deeply involved. Netflix, with actual knowledge of Neumann’s
14 ongoing fiduciary duties to his employer (the other party to the negotiation), induced Neumann to
15 breach his fiduciary obligations to Activision and sought to gain an unfair competitive advantage
16 over an increasingly competitive company.

17 23. Netflix knew and intended that the offer of employment to Neumann, including the
18 compensation that it offered Neumann, would induce Neumann to breach his contractual and
19 fiduciary obligations to Activision and thus injure Activision, Netflix’s competitor.

20 24. Netflix even offered to provide and pay for any legal representation Neumann
21 required—and any legal liability Neumann incurred—as a result of his breach of the Neumann
22 Agreement and breach of fiduciary duties. In so doing, Netflix not only knowingly induced
23 Neumann to breach his contractual and fiduciary obligations but evidenced that Netflix knew that
24 litigation between Activision, on one hand, and Netflix and/or Neumann, on the other hand, was
25 the natural and probable consequence of Netflix’s unlawful and unethical conduct.

26 25. Netflix, with the ratification of various of its officers, directors, and/or managing
27 agents, deliberately and maliciously acted to induce Neumann to breach his contractual and
28 fiduciary obligations. Indeed, Hastings, Netflix’s co-CEO, was personally involved in Neumann’s

1 recruitment and hiring, evidencing that Netflix's tortious and unethical conduct is intentional and a
2 directive "from the top."

3 26. As a result of Netflix's tortious interference, Neumann materially breached the
4 Neumann Agreement. Neumann's material breaches culminated with his final day of employment
5 with Activision on December 31, 2018, even though the Initial Term ran through April 30, 2020.

6 27. On December 31, 2018, a source informed Reuters that "Netflix Inc is expected to
7 announce in the next few days that it has poached media finance veteran Spencer Neumann from
8 Activision Blizzard to be its chief financial officer." And, on January 2, 2019, Netflix officially
9 announced that on December 31, 2018 it had appointed Neumann as its new CFO, effective
10 January 7, 2019.

11 **FIRST CAUSE OF ACTION**

12 **Intentional Interference with Contract**

13 28. Activision re-alleges and incorporates by reference each and every allegation
14 contained in paragraphs 1 through 27, as though fully set forth herein.

15 29. Activision and Neumann entered into the Neumann Agreement effective as of May
16 30, 2017.

17 30. As a material condition of his employment with Activision, Neumann agreed to
18 perform his duties as Activision's CFO through at least April 30, 2020.

19 31. During its solicitation and recruitment of Neumann, Netflix knew about the
20 Neumann Agreement, including that Neumann had agreed to work with Activision for a specified
21 term that had not yet expired.

22 32. Netflix committed intentional acts designed to induce Neumann to breach the
23 Neumann Agreement, including, but not limited to, soliciting and recruiting Neumann, offering
24 Neumann employment, hiring Neumann, and indemnifying Neumann for any claims against him
25 arising from his breach of the Neumann Agreement.

26 33. As a direct result of Netflix's tortious interference, Neumann materially breached
27 the Neumann Agreement by resigning his employment with Activision on December 31, 2018,
28 failing to perform his duties for Activision through the agreed-upon term, and immediately

1 commencing employment with Netflix, where Neumann now provides services that compete with
2 Activision.

3 34. Activision performed all conditions and promises required of it under the Neumann
4 Agreement, apart from those that were excused by reason of Neumann's material breach of such
5 agreement.

6 35. As a direct and proximate result of Netflix's interference, Activision has been
7 damaged in a sum according to proof at trial but well in excess of the minimum jurisdiction of this
8 Court. For example, when it was suddenly forced to replace its CFO, Activision was required to
9 pay Neumann's successor millions more in compensation than it would have been obligated to pay
10 Neumann through the end of the Initial Term of the Neumann Agreement. Moreover, by causing
11 Neumann to breach his fixed-term employment contract with 16 months remaining in the term,
12 Netflix sent a message to Activision's other executives that perhaps they too could disregard their
13 fixed-term employment contracts, especially given that Neumann was Activision's CFO and had
14 responsibility for entering into and administering Activision's fixed-term employment contracts
15 with key executives. To mitigate even greater damage caused by Neumann's departure,
16 Activision paid millions of dollars in additional compensation to certain executives to encourage
17 them to remain at Activision. In addition, Activision has lost revenue, incurred business expenses,
18 and has lost business opportunities. Even further still, Activision was required to incur legal
19 expenses, and suffered necessary loss of time, to protect its interests vis-à-vis Neumann, as a
20 direct result of Netflix's tortious conduct.

21 36. Netflix has been, and will continue to be, unjustly enriched by, among other things,
22 obtaining the benefits associated with the employment of a skilled executive employee as well as
23 the value that would have otherwise been realized by Activision.

24 37. Netflix conducted its interference with fraud, malice, and oppression and in willful
25 and conscious disregard of Activision's rights. Netflix's conduct reflects a years-long brazen
26 practice of inducing breaches of valid fixed-term employment contracts throughout the
27 entertainment industry. Moreover, upon information and belief, Netflix's officers, directors,
28 and/or managing agents acting within the course and scope of their employment, including its co-

1 CEO, Hastings, participated in, authorized, and ratified the foregoing wrongful acts and
2 inducement of the breach of the Neumann Agreement. By reason thereof, Activision is entitled to
3 recover punitive damages from Netflix in an amount to be determined at the time of trial.

4 38. Unless restrained, Netflix will continue to interfere with Activision's fixed-term
5 employment contracts, to Activision's great and irreparable injury, for which damages would not
6 afford adequate relief, in that they would not completely compensate for the loss of Activision's
7 ability to contract for a stable workforce, for the disruption to Activision's corporate planning, and
8 for the injury to Activision's business reputation and goodwill. Indeed, Netflix has a pattern and
9 practice of unlawfully inducing employees of other competitors to breach their fixed-term
10 contracts. This court has already enjoined Netflix from continued tortious interference with a
11 competitor's fixed-term contracts. Netflix not only challenges on appeal the validity of this
12 injunction, but, more importantly here, refuses to change its practices to respect the rights of
13 employees and employers under employment contracts. Activision is entitled to injunctive relief
14 to prevent Netflix's illicit actions.

15 **SECOND CAUSE OF ACTION**

16 **Unfair Competition in Violation of Business and Professions Code §§ 17200 *et. seq.***

17 39. Activision re-alleges and incorporates by reference each and every allegation
18 contained in paragraphs 1 through 38, as though fully set forth herein.

19 40. By the foregoing alleged acts, Defendants have perpetrated business acts and
20 practices that are unlawful and unfair in violation of California's Unfair Competition Law, Cal.
21 Bus. & Prof. Code §§ 17200 *et seq.* because they are prohibited by various state and/or federal
22 laws, and are unscrupulous, unfair, and injurious to Activision.

23 41. Netflix's unlawful intentional interference with the Neumann Agreement is a
24 business act or practice, as is Netflix's aiding and abetting breach of Neumann's fiduciary duties
25 to Activision. Netflix has thus unlawfully competed with Activision.

26 42. Activision is informed and believes and on that basis alleges that Netflix was fully
27 aware of the wrongful nature of the acts alleged herein when said acts were committed.

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1 43. As a direct and proximate result of the aforementioned acts, Activision has suffered
2 injury in fact, including but not limited to the lost value of Neumann's contract, the cost of
3 replacing Neumann, loss of ability to contract for a stable workforce, a disruption to Activision's
4 business planning, and injury to its business reputation and goodwill.

5 44. Netflix's unlawful and unfair business practices present a continuing threat to
6 Activision, which, in the absence of equitable or injunctive relief, will continue to suffer from
7 future illegal raids on its workforce.

8 45. Unless Netflix is restrained by appropriate injunctive relief from continuing to raid
9 Activision's workforce by targeting its executives who have voluntarily entered into enforceable
10 and ongoing fixed-term employment agreements, Activision will continue to suffer irreparable
11 harm, including, but not limited to, losing the value of its valid fixed-term employment
12 agreements, damage to its business reputation, workforce, and business opportunities, while
13 Defendants will continue to be unjustly enriched by their tortious and unjust conduct.

14 46. Netflix has a pattern and practice of unlawfully inducing employees of other
15 competitors to breach their fixed-term contracts. This court has already enjoined Netflix from
16 continued tortious interference with a competitor's fixed-term contracts. Netflix not only
17 challenges on appeal the validity of this injunction, but, more importantly here, refuses to change
18 its practices to respect the rights of employees and employers under employment contracts.

19 47. Activision is therefore entitled to a permanent injunction against Netflix, prohibiting
20 Netflix from soliciting Activision employees with valid fixed-term employment agreements or
21 inducing such employees to breach their valid fixed-term employment agreements.

22 **THIRD CAUSE OF ACTION**

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

24 48. Activision re-alleges and incorporates by reference the preceding paragraphs, as
25 though fully set forth herein.

26 49. During his employment with Activision, Neumann was the CFO of Activision. As
27 such, Neumann owed fiduciary duties to Activision during the time that he was employed by
28 Activision.

1 50. Neumann breached his fiduciary duties to Activision by, among other things, failing
2 to disclose an unambiguous conflict of interest by participating in negotiations with Netflix about
3 breaching his employment agreement with Activision at the same time he and Activision were
4 engaged in negotiations against Netflix for distribution of linear content.

5 51. Netflix had actual knowledge that Neumann was engaged in negotiations with
6 Netflix about breaching his employment agreement with Activision while Activision and
7 Neumann were engaged in negotiations against Netflix for distribution of linear content, and that
8 Neumann breached his fiduciary duties to Activision by, among other things, failing to disclose
9 his conflict of interest and abandoning Activision to join Netflix during the negotiations.

10 52. Netflix intentionally and substantially induced, assisted, and encouraged Neumann
11 to breach his fiduciary duties by recruiting him and offering him employment with Netflix and
12 agreeing to indemnify Neumann for any claims against him arising from his breach of the
13 Neumann Agreement and/or his fiduciary duties.

14 53. Netflix's willingness to indemnify Neumann for any claims against him arising from
15 his breach of the Neumann Agreement and/or his fiduciary duties underscores that Netflix had
16 actual knowledge that Neumann's conduct, including his failure to disclose his conflict of interest
17 and abandonment of Activision to join Netflix during the negotiations between Activision and
18 Netflix, constituted a breach of his fiduciary duties to Activision.

19 54. Netflix specifically intended to facilitate and induce Neumann's breach of his
20 fiduciary duties to Netflix by negotiating to employ Neumann while he participated in
21 negotiations with Netflix on behalf of Activision and by agreeing to indemnify Neumann for any
22 legal liability that Neumann may incur as a result of his breach of fiduciary duties.

23 55. Netflix's conduct was a substantial factor in causing harm to Activision because, as
24 a direct and proximate result of Netflix's inducement and encouragement of Neumann's breach of
25 his fiduciary duties, Activision has suffered injury and harm, including, but not limited to, loss of
26 revenue.

27 56. Upon information and belief, Netflix's officers, directors, and/or managing agents
28 acting within the course and scope of their employment, including its co-CEO, Hastings,

1 participated in, authorized, and ratified the foregoing wrongful acts and inducement and
2 encouragement of Neumann's breach of his fiduciary duties. By reason thereof, Activision is
3 entitled to recover punitive damages from Netflix in an amount to be determined at the time of
4 trial.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Activision prays for judgment against Defendants as follows:

- 7 1. For a permanent injunction enjoining Netflix, including its agents, servants,
8 employees, attorneys, successors and assigns, and all persons, entities, or corporations acting in
9 concert with it, from soliciting Activision's employees who are subject to valid fixed-term
10 agreements or inducing such employees to breach their valid fixed-term employment agreements;
11 2. Compensatory damages in an amount to be proven at trial;
12 3. Consequential damages in an amount to be proven at trial, including but not limited
13 to compensation for the loss of time, attorneys' fees incurred to protect Activision's rights vis-à-
14 vis Neumann, and other expenditures it reasonably and necessarily suffered or incurred as a result
15 of Netflix's tortious conduct;
16 4. Punitive and/or statutory damages; and
17 5. For such other and further relief as the Court deems just and equitable.

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19 Dated: December 4, 2020

Daniel M. Petrocelli
Eric Amdursky
Molly M. Lens
O'MELVENY & MYERS LLP

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23 By: /s/ Daniel M. Petrocelli
Daniel M. Petrocelli

24 Attorneys for Plaintiff
25 ACTIVISION BLIZZARD INC.
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