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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION **Plaintiff,** **v.** **RYAN ASHLEY BRANT,** **Defendant.**	**Civil Action No. 1:07-CV-1075 (DLC)**

COMPLAINT FOR INJUNCTIVE RELIEF, DISGORGEMENT AND CIVIL PENALTIES, FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows against defendant Ryan Ashley Brant:

SUMMARY OF ALLEGATIONS

1. From April 1997 through September 2003, defendant Ryan Ashley Brant ("Brant"), then the Chief Executive Officer and Chairman of the Board of Take-Two Interactive Software, Inc. ("Take-Two" or the "Company"), a video and computer game publisher and distributor, fraudulently enriched himself and others at Take-Two by looking back and picking grant dates for the Company's incentive stock options that coincided with dates of historically low annual

and quarterly closing prices for Take-Two's common stock. Brant, with the knowledge of senior executives and others at Take-Two who participated in the scheme, used the closing price of the Company's common stock on those days as the exercise price of the options that were granted. As a result of the scheme perpetrated by Brant and others at Take-Two, Take-Two made grants of undisclosed "in-the-money" stock options to its officers and employees. Take-Two officers and employees also created, at Brant's direction and/or with his knowledge, Company records that falsely indicated that the grants had occurred on the earlier dates when the Company's stock price had been at a low.

2. Brant granted options to himself and others at Take-Two without complying with Take-Two's stock option plans and, in virtually all instances, without the Board or a committee thereof approving the grant dates and exercise prices. He personally received ten backdated grants of options, representing approximately 2.1 million shares of stock on a split-adjusted basis, and exercised all of those options, thereby obtaining millions of dollars in illicit compensation by backdating Take-Two's option grants. Brant subsequently sold all of these shares.

3. Because of the undisclosed backdating scheme, Take-Two filed with the Commission and disseminated to investors quarterly and annual reports, proxy statements and registration statements that Brant knew, or was reckless in not knowing, contained materially false and misleading statements pertaining to the true grant dates and the proper exercise prices of options, which caused investors to believe, falsely, that the Company granted options in accordance with the terms of the stock option plans. In addition, contrary to Generally Accepted Accounting Principles ("GAAP"), Take-Two did not record or disclose the compensation expenses it incurred as a result of the "in-the-money" portions of the option grants. Consequently,

Take-Two materially understated its compensation expenses and materially overstated its quarterly and annual pretax earnings and earnings per share in its financial statements. Take-Two has announced that it must restate historical financial results for multiple years in order to record additional non-cash charges for option-related compensation expenses.

4. By committing the acts alleged in this Complaint, Brant directly and indirectly engaged in, and unless restrained and enjoined by the Court will continue to engage in, acts, transactions, practices and courses of business that violate Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)], Sections 10(b), 13(b)(5), 14(a) and 16(a) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78j(b), 78m(b)(5), 78n(a), and 78p(a)], and Exchange Act Rules 10b-5, 13b2-1, 14a-9 and 16a-3 [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.14a-9, and 240.16a-3]. Brant aided and abetted Take-Two's violations of Section 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78(m)(b)(2)(A), and 78(m)(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13].

5. The Commission seeks judgment from the Court: (a) enjoining Brant from engaging in future violations of the sections of the federal securities laws that he violated; (b) requiring him to disgorge, with prejudgment interest, ill-gotten gains derived from his violations; (c) requiring him to pay a civil monetary penalty pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act [15 U.S.C. §§ 77t(d) and 78u(d)(3)]; and (d) permanently barring him from acting as an officer or director of a public company pursuant to Section 20(e) of the Securities Act and Section 21(d)(2) of the Exchange Act [15 U.S.C. §§ 77t(e) and 78u(d)(2)].

JURISDICTION AND VENUE

6. The Court has jurisdiction of this civil enforcement action pursuant to Section 22(a) of the Securities Act and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 77v(a), 78u(d), 78(u)(e), and 78aa]. Brant made use of the means or instruments of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the acts, transactions, practices and courses of business alleged in this Complaint.

7. Venue lies in the Southern District of New York pursuant to Section 22(a) of the Securities Act and Section 27 of the Exchange Act [15 U.S.C. §§ 77v(a) and 78aa]. Take-Two published false and misleading quarterly and annual reports, proxy statements and registration statements, which were prepared in and transmitted from this District.

THE PARTIES

8. The plaintiff is the Securities and Exchange Commission, which brings this civil enforcement action pursuant to the authority conferred on it by Section 20(b) of the Securities Act and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 77t(b), 78u(d) and (e)].

9. Defendant Brant, age 35, lives in Bedford Corners, New York. He founded Take-Two in 1993 and was the Chief Executive Officer and Chairman of the Board until February 2001, when he resigned as CEO. He resigned from the Chairmanship in March 2004. While CEO and/or Chairman, Brant reviewed and/or signed periodic reports, registration statements, and proxy statements filed with the Commission and disseminated to investors. In March 2004, he assumed the non-executive position of Director of Software Publishing at a Take-Two subsidiary named 2K Games. Brant was employed most recently in the non-executive position of Vice President of Production at Take-Two until his resignation from the Company on October 16, 2006. He is currently unemployed. On June 13, 2005, this Court entered a Final Judgment

permanently enjoining Brant from violating and/or aiding and abetting violations of the antifraud, reporting, record-keeping, and internal controls provisions of the federal securities laws; barred him from serving as an officer or director of any public company for five years; and ordered him to pay disgorgement, prejudgment interest, and a civil penalty in connection with his alleged role in a financial fraud scheme at Take-Two. SEC v. Take-Two Interactive Software, Inc., et al., Civil Action No. 05-CV-5443 (S.D.N.Y. June 13, 2005).

FACTS

A. Background

10. Take-Two used employee stock options as a form of compensation. Each option gave the grantee the right to buy one share of Take-Two common stock from the Company at a set price, called the "exercise" or "strike" price, on a future date after the option vested. The option was "in-the-money" whenever the trading price of Take-Two's common stock exceeded the option's exercise price. The option was "at-the-money" whenever the trading price of Take-Two's common stock and the exercise price were the same. The option was "underwater" or "out-of-the-money" whenever the trading price of Take-Two's common stock was less than the exercise price.

11. Throughout the relevant time period, Take-Two accounted for stock options using the intrinsic method described in Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25"). Under APB 25, employers were required to record as an expense on their financial statements the "intrinsic value" of a fixed stock option on its "measurement date." The measurement date, as defined by APB 25, is the first date on which the following information is known: (i) the number of options that an individual employee is entitled to receive and (ii) the exercise price. An option that is in-the-money on the measurement

date has intrinsic value, and the difference between its exercise price and the quoted market price must be recorded as compensation expense to be recognized over the vesting period of the option. Options that are at-the-money or out-of-the-money on the measurement date need not be expensed.

B. Take-Two's Option Plans and Disclosures

12. Between 1997 and 2006, Take-Two made, purportedly pursuant to the Company's 1997 Stock Option Plan (the "1997 Plan") and its 2002 Stock Option Plan (the "2002 Plan"), approximately 1,160 grants of stock options. Take-Two adopted the 1997 Plan on January 31, 1997 -- prior to its initial public offering -- by the unanimous written consent of its board of directors. The 1997 Plan was approved and ratified by Brant, who was the holder of a majority of the shares of common stock. In April 1998 -- after the Company went public -- a majority of the shareholders voted to amend the 1997 Plan.

13. The 1997 Plan required that a committee of two board members administer the granting of stock options and vested the committee with the authority to decide grant dates, the number of options to be granted, the individuals who would receive the options, and to determine other terms and conditions "not inconsistent with the requirements of this Plan." The 1997 Plan directed that the exercise price, duration, and vesting schedule of options "be determined by the Committee." The 1997 Plan did not expressly permit the committee to delegate these powers, but granted it "full authority to interpret this Plan." The 1997 Plan prohibited Take-Two from granting incentive options with exercise prices of less than the stock's fair market value on the date of grant.

14. Under the 2002 Plan, approved by Take-Two's shareholders on June 14, 2002, the option grants were to be administered by the board or a committee of at least two members of the

board. The 2002 Plan provided that the exercise price for a grant "shall be determined by the Board . . . or the Committee." The 2002 Plan prohibited Take-Two from granting options with exercise prices of less than the fair market value on the grant date.

15. In its Forms 10-K for fiscal years 1997 and 1998, Take-Two disclosed that it "applies APB No. 25 . . . and related interpretations in accounting for its plans. Accordingly, no compensation cost has been recognized for the stock option plans." In its Forms 10-K for fiscal years 1999 through 2003, the Company disclosed that it applies APB No. 25 and the financial statements reflected that the Company had not recognized compensation cost for the stock option plans.

C. The Backdating Scheme

16. Between April 1997 and September 2003, Brant and others at Take-Two disregarded and contravened the provisions of the 1997 Plan and the 2002 Plan in granting stock options. In virtually all instances, Brant granted options to himself and others at Take-Two without the Board or a committee thereof approving the grant dates and exercise prices. Brant, with the knowledge and participation of others at Take-Two, looked back at Take-Two's historical stock prices, and with the benefit of hindsight, chose grant dates that coincided with the dates of low closing prices for the stock, resulting in "in-the-money" options. Brant and others at Take-Two referred to this practice as "pick-a-date" granting.

17. At Brant's direction and/or with his knowledge, other Take-Two officers and employees prepared documents falsely indicating that the option grants had been made on earlier dates when Take-Two's stock price had closed lower.

18. On 28 occasions between April 1997 and September 2003, Brant caused Take-Two to falsely record in its books and records that option grants occurred on dates when the

Company's stock traded at a low -- often at a low for the quarter or the year. There was no documentation evidencing that these dates were selected on the purported grant dates. Indeed, no corporate action to approve the grants occurred on the backdated dates and the grants were not final on those dates.

19. The option grants purportedly made on February 22, 2002 are illustrative of the backdating scheme. The Company purportedly granted 511,000 options to fifteen employees, including options for 100,000 shares to Brant. On that day, the stock closed at $15.25 per share, which was the lowest price of the fiscal quarter. In reality, Brant, with the knowledge and participation of other Take-Two officers, selected the date for the grant, and Take-Two made the grant, in mid-April 2002, when the stock was trading at more than $20.00 per share.

20. Brant personally received ten backdated grants, for a total of approximately 2.1 million shares of stock on a split-adjusted basis. He exercised all of these options, and sold all of these shares, before resigning from the Company on October 16, 2006.

21. By virtue of Brant's misconduct, Take-Two's books and records falsely and inaccurately reflected, among other things, the dates of option grants, the Company's stock-based compensation expenses, and the Company's financial condition. Additionally, Brant, among other things, failed to ensure that Take-Two maintained a system of internal accounting controls sufficient to provide assurances that stock option grants were recorded as necessary to permit the proper preparation of financial statements in conformity with GAAP.

22. Prior to 2003, Brant failed to timely file all required Commission Forms 3 and 4 disclosing his option-related activity and also filed Forms 3 and 4 that contained false and misleading statements with regard to the true grant dates and exercise prices.

FIRST CLAIM

(Violations of Securities Act Section 17(a))

23. The Commission realleges paragraphs 1 through 22.

24. Brant, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, in connection with the offer or sale of securities, and with knowledge, recklessness, or negligence: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of Take-Two securities.

25. Brant violated Sections 17(a)(1), (2), and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), (2), and (3)].

SECOND CLAIM

(Violations of Exchange Act Section 10(b) and Exchange Act Rule 10b-5)

26. The Commission realleges paragraphs 1 through 25.

27. Brant, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, or of the facility of a national securities exchange, in connection with the purchase or sale of securities, and with knowledge or recklessness: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which

they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

28. Brant violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 [15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5].

THIRD CLAIM

(Violations of Exchange Act 13(b)(5) and Exchange Act Rule 13b2-1)

29. The Commission realleges paragraphs 1 through 28.

30. Brant, directly or indirectly, knowingly circumvented or knowingly failed to implement a system of internal accounting controls at Take-Two, knowingly falsified books, records and accounts at the Company subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] and caused to be falsified, such books, records and accounts.

31. Brant violated Section 13(b)(5) of the Exchange Act and Exchange Act Rule 13b2-1 [15 U.S.C. § 78m(b)(5); 17 C.F.R. § 240.13b2-1].

FOURTH CLAIM

(Violations of Exchange Act Section 14(a) and Exchange Act Rule 14a-9)

32. The Commission realleges paragraphs 1 through 31.

33. Brant, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, or of the facility of a national securities exchange, knowingly, recklessly or negligently solicited proxies by means of a proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing statements which, at the time and

in light of the circumstances under which they were made, were false and misleading with respect to material facts, or which omitted to state material facts which were necessary in order to make the statements made not false or misleading or which were necessary to correct statements in earlier false or misleading communications with respect to the solicitation of proxies for the same meeting or subject matter.

34. Brant violated Section 14(a) of the Exchange Act and Exchange Act Rule 14a-9 [15 U.S.C. § 78n(a); 17 C.F.R. § 240.14a-9].

FIFTH CLAIM

(Violations of Exchange Act Section 16(a) and Exchange Act Rule 16a-3)

35. The Commission realleges paragraphs 1 through 34.

36. Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Exchange Act Rule 16a-3 [17 C.F.R. 240.16a-3] require officers, directors and beneficial owners of more than ten percent of any class of equity securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to file periodic reports disclosing any change of beneficial ownership in those securities.

37. Brant either failed to timely file with the Commission the required Forms 3 and 4 to disclose his exercise of options or subsequent sales of stock, or filed Forms 3 and 4 that contained false or misleading statements pertaining to the options' expiration dates and exercise prices.

38. Brant violated Section 16(a) of the Exchange Act and Exchange Act Rule 16a-3 [15 U.S.C. §78p(a); 17 C.F.R. § 240.16a-3].

SIXTH CLAIM

(Aiding and Abetting the Filing of False and Misleading Periodic Reports)

39. The Commission realleges paragraphs 1 through 38.

40. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Exchange Act Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13], require issuers of registered securities to file with the Commission factually accurate annual and quarterly reports. Exchange Act Rule 12b-20 [17 C.F.R. § 240.12b-20] further provides that, in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they were made not misleading.

41. Take-Two filed with the Commission and disseminated to investors false and misleading quarterly and annual reports in violation of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, and 13a-13 [15 U.S.C. § 78m(a); 17 C.F.R. §§ 12b-20, 240.13a-1, and 240.13a-13]. Brant knowingly or recklessly gave substantial assistance to Take-Two in its violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, and 13a-13 [15 U.S.C. § 78m(a); 17 C.F.R. §§ 12b-20, 240.13a-1, and 240.13a-13].

42. Brant aided and abetted Take-Two's violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, and 13a-13 [15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.12b-20, 240.13a-1, and 13a-13].

SEVENTH CLAIM

(Aiding and Abetting Take-Two's Failure to Maintain Accurate Books and Records and Sufficient Internal Controls)

43. The Commission realleges paragraphs 1 through 42.

44. Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] requires issuers to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of its assets. Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain the accountability of assets.

45. Take-Two violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78(m)(b)(2)(B)]. Brant knowingly or recklessly gave substantial assistance to Take-Two in its failure to make and keep accurate books, records and accounts and its failure to devise and maintain a sufficient system of internal accounting controls.

46. Brant aided and abetted Take-Two's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78(m)(b)(2)(B)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Permanently enjoin Brant from violating Section 17(a) of the Securities Act and Sections 10(b), 13(b)(5), 14(a) and 16(a) of the Exchange Act and Exchange Act Rules 10b-5, 13b2-1,

14a-9 and 16a-3 and aiding and abetting violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1 and 13a-13;

II.

Order Brant to disgorge all ill-gotten gains by virtue of the conduct alleged herein, and to pay prejudgment interest thereon;

III.

Order Brant to pay civil monetary penalties pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act [15 U.S.C. §§ 77t(d) and 78u(d)(3)];

IV.

Permanently bar Brant from serving as an officer or director of a public company pursuant to Section 20(e) of the Securities Act and Section 21(d)(2) of the Exchange Act [15 U.S.C. §§ 77t(e) and 78u(d)(2)].

V.

Grant such equitable relief as may be appropriate or necessary for the benefit of investors pursuant to Section 21(d)(5) of the Exchange Act.

Dated: Washington, D.C.
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