

Act”) Section 20(a) [15 U.S.C. § 78t(a)] during the period that Capitol aided and abetted Take-Two’s fraud.

2. Take-Two shipped Capitol hundreds of thousands of video games at the end of reporting periods and fraudulently recorded those shipments as sales. In fact, Capitol only temporarily warehoused (or “parked”) the games for Take-Two and had no intention of selling them. To make it appear that Take-Two was receiving payments for the games (thereby legitimizing Take-Two’s fraudulent accounting for the transactions as sales), Take-Two provided funds to Capitol or Phillips Land Company (“PLC”), another Phillips-owned entity, which Capitol or PLC used to cover checks they wrote to Take-Two for purported “payments.” Capitol then returned the games to Take-Two almost always in subsequent reporting periods. When Capitol returned the games to Take-Two, it provided Take-Two with invoices falsely describing the returned games as “purchases” by Take-Two of “assorted product” from PLC. Take-Two used those invoices to conceal the fact that the games were complete returns of prior “sales.” Take-Two fraudulently reported in quarterly and annual reports filed with the Commission approximately \$15 million in purported revenue from at least four such parking transactions with Capitol.

3. Unless restrained and enjoined by this Court, Defendant Capitol is likely in the future to commit transactions, acts, practices, and courses of business of a type and object similar to those described herein.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa]. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa].

5. Defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce or of the mails, or the facilities of a national securities exchange in connection with the acts, transactions, practices or courses of business alleged herein.

DEFENDANTS

6. Capitol is a privately-owned video game distributor organized as a limited liability company under the laws of the Commonwealth of Virginia. It was founded by Terry M. Phillips in 1999. During the relevant period, Capitol had approximately ten employees.

7. Terry M. Phillips, age 48, is a resident of Midlothian, Virginia. He is the founder, 20 percent owner and principal operator of Capitol and the founder and 50 percent owner of PLC.

OTHER RELEVANT ENTITIES

8. Take-Two Interactive Software, Inc. is a New York-based publisher and distributor of video and computer games. In June 2005, Take-Two and four of its then current and former senior officers settled a Federal civil action filed by the Commission in the United States District Court for the Southern District of New York, without admitting or denying the allegations of the Complaint, in connection with its fraudulent scheme to inflate revenue through improper sales and accounting practices, including the parking transactions with Capitol alleged herein and similar parking transactions with other distributors.

9. Phillips Land Company is a Virginia company 50 percent owned and principally operated by Terry M. Phillips. It has no employees and, in the ordinary course of business, has no involvement in the purchase, sale, or distribution of video games.

FACTS

Capitol Aided and Abetted Take-Two's Financial and Accounting Fraud and its Reporting Violations

10. From October 31, 2000 through at least July 31, 2001, Capitol knowingly provided substantial assistance to Take-Two's scheme to inflate reported revenue during fiscal years 2000 and 2001. Capitol accepted several hundred thousand video games from Take-Two with the understanding that it would temporarily warehouse or "park" the games until a subsequent Take-Two reporting period, and then return the games to Take-Two. Take-Two improperly recorded and reported approximately \$15 million in revenue associated with these parking transactions. Terry M. Phillips, the founder, 20 percent owner and principal operator of Capitol, controlled Capitol during the period at issue.

11. In furtherance of the scheme, Take-Two provided funds to Capitol or PLC, which were then used to "purchase" the games from Take-Two. Take-Two wired funds to either Capitol or PLC prior to, or within days of, Take-Two receiving from Capitol or PLC funds in approximately the same amounts. Take-Two recorded and reported the funds received from Capitol or PLC as payments for the games.

12. Capitol made no attempt to sell the games. Instead, it warehoused the games for a short time, then returned them to Take-Two with invoices that falsely described the returns as "purchases" of "assorted product" from PLC. Take-Two paid all shipping costs associated with the transactions, including the costs of returning the games.

October 31, 2000 Transaction

13. Capitol and Take-Two began discussing the parking arrangement as early as July 2000. E-mails between two Capitol employees dated July 26, 2000 stated that the games slated

for parking “will come to Capital then [sic] shipped back to Take-Two for distribution,” that “[w]e are buying it from [Take-Two] and then shipping it back to them,” and that “[w]e are just going to park goods.”

14. On October 31, 2000, the last day of Take-Two’s fiscal year, Capitol accepted shipment of 230,000 video games from Take-Two with the understanding that Capitol would park them for a short time and then return the shipment to Take-Two. Take-Two improperly recorded \$5.4 million as revenue from the shipment – the most revenue from a single sale Take-Two had recognized up to that time.

15. The games shipped to Capitol were selected by Take-Two based on Take-Two’s warehouse inventory at the time; Capitol had no input into or choice about the games it accepted.

16. Capitol made no effort to sell the games. Instead, Capitol returned all 230,000 games to Take-Two over the next two reporting periods; each time using invoices purportedly from PLC that Capitol employees created. These invoices falsely described the games as purchases by Take-Two of “assorted product” with no reference to specific titles or descriptions.

17. No funds were transferred between the parties until December 20, 2000, when Take-Two wired \$2,557,239 to PLC. Six days later, PLC sent Take-Two a check for \$2,557,137 as alleged payment for the games associated with the October 31, 2000 transaction.

February 28, 2001 Transaction

18. On February 28, 2001, Capitol accepted a second shipment of approximately 175,000 video games from Take-Two. Take-Two improperly recorded the transaction as a \$4.6 million sale – second in revenue only to the October 31, 2000 transaction in Take-Two’s history up to that time. Again, all 175,000 games were subsequently returned to Take-Two with PLC invoices that falsely described the returned games as a purchase by Take-Two of “assorted

product” from PLC. Capitol again used funds provided by Take-Two to purportedly pay for the games. Take-Two wired Capitol \$4,594,100 on April 26, 2001 and Capitol sent Take-Two a check for the same amount the next day.

April 27, 2001 Transaction

19. On April 27, 2001, three days before the end of Take-Two’s second fiscal quarter, Capitol accepted approximately 55,000 games from Take-Two. Take-Two recorded \$1.76 million as revenue from the purported sale. After the end of the quarter, Capitol returned all these games to Take-Two.

July 31, 2001 Transaction

20. On July 31, 2001, the last day of Take-Two’s third fiscal quarter, Capitol accepted a shipment of more than 85,000 games from Take-Two. Take-Two recorded more than \$3 million as revenue from the purported sale. After the end of the quarter, Capitol returned all these games to Take-Two.

21. By its conduct described above, Capitol knowingly provided substantial assistance in Take-Two’s filing with the Commission financial statements containing material misstatements and omissions in annual and quarterly reports including its: (1) October 31, 2000 Form 10-K; (2) April 30, 2001 Form 10-Q; (3) July 31, 2001 Form 10-Q; and (4) October 31, 2001 Form 10-K.

22. By its conduct described above, Capitol knowingly provided substantial assistance to Take-Two in furtherance of its scheme to falsify its books and records and in its failure for fiscal years 2000 and 2001 to make and keep accurate books, records, and accounts.

FIRST CLAIM

Aiding and Abetting Violations of Exchange Act Section 10(b) and Rule 10b-5 Thereunder (Capitol)

23. The Commission re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 22 above.

24. By reason of the conduct described above, Take-Two and its senior management directly or indirectly, by the use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange in connection with the purchase or sale of securities employed devices, schemes or artifices to defraud; made untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or engaged in acts, practices or courses of business which operated as a fraud or deceit in violation of the antifraud provisions of Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

25. Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)] provides that any person that knowingly provides substantial assistance to another person in violation of a provision of the Exchange Act, or of any rule or regulation issued under the Exchange Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

26. By reason of its conduct described above, Defendant Capitol knowingly provided substantial assistance to Take-Two in violation of Exchange Act Section 10(b) and Rule 10b-5 thereunder.

SECOND CLAIM

Aiding and Abetting Violations of Exchange Act Section 13(a) and Rules 12b-20, 13a-1 and 13a-13 Thereunder (Capitol)

27. The Commission re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 22 above.

28. During and in furtherance of the fraudulent scheme described above, Take-Two filed with the Commission materially false and misleading annual reports on Forms 10-K for the fiscal years ended October 31, 2000 and October 31, 2001 in violation of the financial reporting provisions of the Exchange Act and materially false and misleading quarterly reports on Forms 10-Q for the quarters ended April 30, 2001 and July 31, 2001 in violation of the financial reporting provisions of the Exchange Act, Section 13(a) [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13].

29. By reason of its conduct described above, Defendant Capitol knowingly provided substantial assistance to Take-Two in violation of Exchange Act Section 13(a) and Exchange Act Rules 12b-20, 13a-1 and 13a-13.

THIRD CLAIM

Aiding and Abetting Violations of Exchange Act Section 13(b)(2)(A) (Capitol)

30. The Commission re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 22 above.

31. During and in furtherance of the fraudulent scheme described above, Take-Two failed to make and keep books, records and accounts which accurately and fairly reflected its

transactions and disposition of its assets in violation of the books and records provision of the Exchange Act, Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)].

32. By reason of its conduct described above, Defendant Capitol knowingly provided substantial assistance to Take-Two in violation of Exchange Act Section 13(b)(2)(A).

FOURTH CLAIM

Aiding and Abetting Violations of Exchange Act Rule 13b2-1 (Capitol)

33. The Commission re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 22 above.

34. Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] makes it unlawful for a person to, directly or indirectly, falsify or cause to be falsified any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act. During and in furtherance of the fraudulent scheme described above, Take-Two and its senior management falsified and/or caused to be falsified the company's books, records, and accounts in violation of Rule 13b2-1.

35. By reason of the conduct described above, Defendant Capitol knowingly provided substantial assistance to Take-Two in violation of Exchange Act Rule 13b2-1.

FIFTH CLAIM

Exchange Act Section 20(a) Control Person Liability (Phillips)

36. The Commission re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 22 above.

37. Exchange Act Section 20(a) [15 U.S.C. § 78t(a)] provides that any person who, directly or indirectly, controls any person liable under any provision of the Exchange Act, or of any rule or regulation issued under the Exchange Act, shall also be liable jointly and severally

with and to the same extent as the controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

38. Defendant Phillips was a control person of Capitol within the meaning of Exchange Act Section 20(a). As a control person, Defendant Phillips is liable for Capitol's aiding and abetting Take-Two's violations of Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; Exchange Act Section 13(a) [15 U.S.C. § 78m(a)] 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]; Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)]; and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I.

Permanent Injunctive Relief (Capitol)

A. Enter an Order permanently enjoining Defendant Capitol from violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

B. Enter an Order permanently enjoining Defendant Capitol from aiding and abetting violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1 and 13a-13;

C. Enter an Order permanently enjoining Defendant Capitol from aiding and abetting violations of Section 13(b)(2)(A) of the Exchange Act; and

D. Enter an Order permanently enjoining Defendant Capitol from aiding and abetting violations of Rule 13b2-1 of the Exchange Act.

II.

**Civil Money Penalties
(Phillips)**

Enter an Order directing Defendant Phillips to pay a civil penalty pursuant to Section 21(d) of the Exchange Act.

Dated: May 2, 2007
Washington, DC

Respectfully submitted,

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