'09 CIV 3113

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

TAKE-TWO INTERACTIVE SOFTWARE, INC.,

Defendant.

09 Civ.

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows against defendant Take-Two Interactive Software, Inc.:

SUMMARY OF ALLEGATIONS

1. From April 1997 through at least September 2003, defendant Take-Two Interactive Software, Inc. ("Take-Two" or the "Company"), through its former Chairman of the Board and Chief Executive Officer ("CEO") Ryan Brant ("Brant") and certain other former senior executives at Take-Two, fraudulently enriched officers, directors, and key employees at the Company by granting them backdated, undisclosed "in-the-money" stock options that coincided with dates of historically low annual and quarterly closing prices for Take-Two's common stock. As a result of the backdating scheme, Take-Two's records falsely indicated that the grants had occurred on the earlier dates when the Company's stock price had been at a low.

2. On over 100 occasions between April 1997 and at least September 2003, Take-Two granted backdated options without complying with its own stock option plans and, generally, without the Board or a committee thereof approving the grant dates and exercise prices. In the process, the Company allowed Brant and others to generate millions of dollars in illicit

compensation by exercising backdated "in-the-money" stock options and subsequently selling several million shares of Take-Two common stock.

3. By virtue of the undisclosed backdating scheme, Take-Two filed with the Commission and disseminated to investors current reports on Form 8-K, quarterly and annual reports, proxy statements and registration statements that contained materially false and misleading statements pertaining to the true grant dates and the proper exercise prices of options, which created the false and misleading impression 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.

4. Take-Two has restated its historical financial results for its fiscal years 1997 through 2005 in order to record additional non-cash charges for option-related compensation expenses totaling $42.1 million after tax. By failing to record compensation charges for the "in-the-money" portion of the backdated grants between 1997 and at least 2003, Take-Two materially overstated its net income by 13.2% for 1999, 807.4% for 2000, 19.9% for 2002, 10.7% for 2003, 5.2% for 2004, and 5.4% for 2005. Take-Two also materially understated its losses by 57.5% for 2001.

5. Take-Two violated the anti-fraud, reporting, proxy, books and records, and internal controls provisions of the federal securities laws.

6. The Commission seeks judgment from the Court: (a) enjoining Take-Two from engaging in future violations of the sections of the federal securities laws it violated and

(b) requiring it 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)].

JURISDICTION AND VENUE

7. 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]. Take-Two 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.

8. 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.

9. Take-Two, directly and indirectly, engaged 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(a), 13(b)(2)(A), 13(b)(2)(B) and 14(a) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), 78m(b)(2)(B) and 78n(a)], and Exchange Act Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13 and 14a-9 [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13 and 240.14a-9]. An injunction will ensure that Take-Two will not violate the foregoing provisions of the federal securities laws.

THE PARTIES

10. 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)].

11. Defendant Take-Two is a Delaware corporation headquartered in New York, New York that operates in the United States, Canada, Europe, and other foreign locations. The Company develops, markets, publishes and distributes interactive entertainment software games for video game consoles and personal computers. Take-Two also publishes through its wholly-owned labels Rockstar Games, 2K Games, 2K Sports and 2K Play. Prior to July 31, 2006, Take-Two registered its common stock with the Commission pursuant to Section 12(g) of the Exchange Act and traded on the NASDAQ NMS under the symbol "TTWO." Since July 31, 2006, Take-Two has registered its common stock with the Commission pursuant to Section 12(b) of the Exchange Act and has traded on the NASDAQ Global Market under the same symbol. The Company operates on an October 31 fiscal year.

12. On June 13, 2005, this Court entered a Final Judgment by consent permanently enjoining Take-Two from violating the antifraud, reporting, record-keeping, and internal controls provisions of the federal securities laws, and ordered the Company to pay disgorgement and a civil penalty, in connection with an alleged fraudulent revenue recognition scheme. SEC v. Take-Two Interactive Software, Inc., et al., Civil Action No. 05-CV-5443 (S.D.N.Y. June 13, 2005) [Litigation Release No. 19260].

RELATED PERSONS

13. Brant, age 37, lives in New York, New York. He founded Take-Two in 1993 and was its 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, and then assumed 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 employed at video game publishing label Zoo Games, Inc. in New York, New York in the non-executive position of Content Acquisition Director.

14. On February 16, 2007, this Court entered a Final Judgment by consent permanently enjoining Brant from violating the antifraud provisions, and from aiding and abetting violations of the reporting, record-keeping, and internal controls provisions of the federal securities laws, in connection with his alleged role in the Company's options backdating scheme. The Court ordered Brant to pay disgorgement, prejudgment interest and a civil penalty, and prohibited him from serving as an officer or director of any issuer having a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78(d)]. SEC v. Ryan Ashley Brant, Civil Action No. 07-CV-1075 (S.D.N.Y. Feb. 16, 2007) [Litigation Release No. 20003].

15. On June 13, 2005, this Court entered a Final Judgment by consent 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 fraudulent revenue recognition 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) [Litigation Release No. 19260].

FACTS

A. Background

16. 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.

17. 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

18. Between 1997 and at least September 2003, 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"), grants of stock options to officers, directors, and Company employees including key personnel.. 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.

19. 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 stock options with exercise prices of less than the stock's fair market value on the date of grant.

20. 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.

21. 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

22. Between April 1997 and at least September 2003, Take-Two, through Brant and certain other former senior executives, disregarded and contravened the provisions of the 1997 Plan and the 2002 Plan in granting stock options. Take-Two routinely granted options without the Board or a committee thereof approving the grant dates and exercise prices. Brant 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.

23. At Take-Two, options were backdated through several means. "Pick-a-date" backdating, as it was referred to by Brant and in Company e-mails, generally followed a pattern whereby employees were granted an amount of options at a set exercise price and then, with hindsight, a past grant date was selected when the Company's stock price most closely corresponded to the set exercise price. Take-Two also granted backdated options through pre-priced option pools whereby a senior officer would set aside a number of options at a fixed exercise price for later granting to employees. Not only was the fixed exercise price lower than the stock price on the date the pool was set aside, but it also was lower than the price of the stock when the grant was actually made to the employee. Third, employment agreements were

improperly backdated in order to give Company executives stock options at low prices, including one instance where an executive requested that his employment agreement amendments be backdated in order to capture the best exercise price possible. Finally, on no fewer than 26 occasions, stock options were purportedly granted on dates when Take-Two's stock traded at its lowest prices for the quarter or the year. These "fortuitous" grant dates could not have been selected so consistently without the benefit of hindsight.

24. Take-Two prepared documents falsely indicating that the option grants had been made on earlier dates when Take-Two's stock price had closed lower, including a Master Options List that contained false grant dates, and Compensation Committee minutes.

25. On more than 100 occasions between April 1997 and at least September 2003, Take-Two falsely recorded 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 contemporaneous 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.

26. 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 selected the date for the grant, and Take-Two made the grant, in or around mid-April 2002, when the stock was trading at more than $20.00 per share. Brant, in April, looked back and selected February 22 as the grant date because the stock price on that day was the lowest of the year.

27. Brant, certain former senior officers, members of the Board and certain key employees received options from backdated grants totaling over 10 million shares of stock on a split-adjusted basis, the majority of which were exercised. These individuals received personal profits totaling tens of millions of dollars from improperly backdated Take-Two option grants that they later exercised.

28. As a result of the backdating scheme, 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, Take-Two failed to maintain 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.

29. Take-Two's backdated option grants were priced at an absolute low for a fiscal quarter or fiscal year on at least 26 separate occasions, and the "look-back" period for the Company's option grants was as long as nine months. Take-Two's grants were "in-the-money" by as much as $9.12 per grant, and the discount from backdating was as great as 61%.

D. Take-Two's Reports Filed With The Commission Were Materially False And Misleading

30. Take-Two filed with the Commission annual reports on Forms 10-K and 10-K/A for the fiscal years ended: (1) October 31, 1997 (filed January 29, 1998); (2) October 31, 1998 (filed January 29, 1999); (3) October 31, 1999 (filed January 27, 2000; 10-K/A filed February 28, 2000); (4) October 31, 2000 (filed January 29, 2001; 10-K/A filed February 22, 2001); (5) October 31, 2001 (filed February 12, 2002; 10-K/A filed February 28, 2002; 10-K/A filed April 19, 2002); (6) October 31, 2002 (filed December 23, 2002); (7) October 31, 2003 (filed February 12, 2004; 10-K/A filed March 1, 2004; 10-K/A filed March 2, 2004); (8) October 31,

2004 (filed December 22, 2004; 10-K/A filed February 25, 2005; 10-K/A filed March 4, 2005); and (9) October 31, 2005 (filed January 31, 2006; 10-K/A filed February 28, 2006), which included financial statements that were audited by Take-Two's independent accountants.

31. In its annual reports from 1997 to 2003, Take-Two stated that the Company accounted for its employee stock option plans in accordance with APB 25. As discussed above, under APB 25, employers are required to record as an expense on their financial statements the "intrinsic value" of a fixed stock option on its "measurement date." However, in its financial statements, which were included or incorporated by reference in the Company's filings, Take-Two consistently failed to record compensation expenses for backdated, "in-the-money" grants, falsely asserting that the reason it recognized no compensation expense for its options grants was that it granted all options at exercise prices equal to its stock's fair market value on the date of the grant, in accordance with APB 25.

32. Take-Two's financial statements were materially false or misleading from 1997 through at least 2005. By failing to record compensation charges for the "in-the-money" portion of the option grants between 1997 and at least 2003, Take-Two materially overstated its net income by 13.2% for 1999, 807.4% for 2000, 19.9% for 2002, 10.7% for 2003, 5.2% for 2004, and 5.4% for 2005. The Company also materially understated its losses by 57.5% for 2001. On February 28, 2007, Take-Two restated its historical financial results from 1997 to 2005 to record $42.1 million after tax in additional non-cash charges for compensation expenses related to the backdated "in-the-money" stock option grants.

33. By backdating the stock option grants and failing to record the required compensation expense, Take-Two not only violated the express terms of its own Stock Option Plans, but also created the false impression that the stock options were granted "at-the-money."

As a result, Take-Two's annual reports filed with the Commission contained materially false and misleading disclosures concerning its option grants.

34. Take-Two also filed with the Commission quarterly reports on Forms 10-Q and 10-Q/A between September 15, 1997 and September 8, 2005. The quarterly reports contained financial statements and disclosures that were materially false or misleading because Take-Two failed to record compensation expenses associated with "in-the-money" stock options.

35. In addition, Take-Two filed with the Commission between 1997 and 2005 current reports on Form 8-K announcing the Company's financial results. These current reports contained materially false and misleading financial information because Take-Two failed to record compensation expenses associated with undisclosed grants of "in-the-money" stock options.

36. Take-Two's proxy statements (sent to shareholders and filed with the Commission between April 1998 and May 2005) also made materially false or misleading representations about Take-Two's stock option grants. Specifically, Take-Two's proxy statements contained repeated misstatements as to the claimed grant date price of options awarded to its top executives, as well as other false and misleading statements, including as to the pricing provisions of the stock option plans. As discussed above, Take-Two routinely granted stock options at less than fair market value through backdating in violation of its own Stock Option Plans.

37. Take-Two also sold securities pursuant to offering documents, including registration statements on Forms S-3 and S-3/A, which incorporated Take-Two's false and misleading financial statements. Specifically, Take-Two filed eight Forms S-3 and four Forms S-3/A

between 1998 and 2001, incorporating by reference Take-Two's false and misleading financial statements resulting from the Company's backdating of stock option grants.

FIRST CLAIM

Violations of Securities Act Section 17(a)

38. The Commission realleges paragraphs 1 through 37.

39. Take-Two, 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.

40. By reason of the foregoing, defendant Take-Two, directly or indirectly, 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

41. The Commission realleges paragraphs 1 through 40.

42. Take-Two, 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.

43. By reason of the foregoing, defendant Take-Two, directly or indirectly, 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 Section 13(a) and Exchange Act Rules 12b-20, 13a-1, 13a-11 and 13a-13

44. The Commission realleges paragraphs 1 through 43.

45. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Exchange Act Rules 13a-1, 13a-11 and 13a-13 [17 C.F.R. §§ 240.13a-1, 240.13a-11 and 240.13a-13], require issuers of registered securities to file with the Commission factually accurate annual, current 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.

46. Take-Two filed with the Commission and disseminated to investors false and misleading annual, current and quarterly reports. By reason of the foregoing, defendant Take-Two, directly or indirectly, violated Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11 and 13a-13 [15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13].

FOURTH CLAIM

Violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B)

47. The Commission realleges paragraphs 1 through 46.

48. 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.

49. Take-Two failed: (1) to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of its assets; and (2) 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.

50. By reason of the foregoing, defendant Take-Two, directly or indirectly, violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

FIFTH CLAIM

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

51. The Commission realleges paragraphs 1 through 50.

52. Take-Two, 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.

53. By reason of the foregoing, defendant Take-Two, directly or indirectly, 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].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Permanently enjoin Take-Two from violating Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B) and 14(a) of the Exchange Act and Exchange Act Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13 and 14a-9;

II.

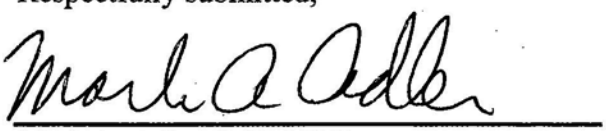
Order Take-Two to pay a civil monetary penalty pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act [15 U.S.C. §§ 77t(d) and 78u(d)(3)]; and

III.

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: March 31, 2009

Respectfully submitted,



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