EFiled: Jan 09 2026 04:59PM EST
Transaction ID 78172252
Case No. 2022-1001-KSJM

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SJUNDE AP-FONDEN, Plaintiff, v. ACTIVISION BLIZZARD, INC., ROBERT KOTICK, BRIAN KELLY, ROBERT MORGADO, ROBERT CORTI, HENDRIK HARTONG III, CASEY WASSERMAN, PETER NOLAN, DAWN OSTROFF, BARRY MEYER, REVETA BOWERS, KERRY CARR, MICROSOFT CORPORATION, and ACTIVISION BLIZZARD, INC., as successor to ANCHORAGE MERGER SUB INC., Defendants.	)	**REDACTED PUBLIC VERSION** **EFILED: January 9, 2026** C.A. No. 2022-1001-KSJM
ROBERT KOTICK, Counterclaim-Plaintiff, v. SJUNDE AP-FONDEN, Counterclaim-Defendant.	)	

ROBERT KOTICK'S ANSWER AND COUNTERCLAIM IN RESPONSE TO SJUNDE AP-FONDEN'S THIRD AMENDED COMPLAINT

Robert Kotick ("Mr. Kotick"), by and through his undersigned counsel, hereby submits his Answer and Counterclaim in response to the Verified Third

Amended Class Action Complaint (the "Complaint") of Sjunde AP-Fonden ("AP7" or "Plaintiff") as follows.

Except as otherwise expressly admitted herein, Mr. Kotick denies each and every allegation contained in the Complaint. Mr. Kotick states that the titles, headings, and footnotes throughout the Complaint do not constitute well-pleaded allegations and thus require no response. To the extent that a response is required, the allegations of the titles, headings, and footnotes in the Complaint are denied. Mr. Kotick's use of any defined terms used in the Complaint is not an admission that Mr. Kotick agrees with AP7's characterization or use of the defined terms.

Unless otherwise stated, Mr. Kotick's responses are based on facts available to him or his counsel as of the date of the Complaint. Mr. Kotick denies the veracity of AP7's claims and denies that AP7 is entitled to any form of relief on any asserted cause of action. Mr. Kotick reserves the right to amend or supplement his Answer to the Complaint (the "Answer"), as well as his Counterclaim as pleaded herein.

PRELIMINARY STATEMENT

1. This case unfairly challenges the decision-making of Activision Blizzard Inc.'s Board of Directors and the actions of its Chief Executive Officer and Chairman of the Board in aggressively negotiating and securing an extraordinary company sale that has been lauded by investors and analysts as one of the greatest transactions in the history of gaming and technology in general—one that delivered

historic results and exceptional financial benefits to stockholders. Microsoft Corporation ("Microsoft") paid the stockholders of Activision Blizzard Inc. ("Activision" or the "Company") $95 per share in cash, or approximately $80 billion dollars, which represented a 45%+ premium over Activision's pre-announcement stock price. The deal was approved by 98% of the votes cast by Activision's stockholders, including some of the world's most highly regarded and diligent institutional investors such as Berkshire Hathaway, Fidelity Investments, and Capital Group. The transaction, which was announced in January 2022 and closed in October 2023, was only possible because of a careful and deliberate process directed by Activision's Board of Directors in assessing and exploring strategic alternatives.

2. Plaintiff AP7's Complaint is predicated on a mountain of falsehoods, and while the Court was required to assume the truth of these falsehoods in deciding the motions to dismiss, it need not credit them any further.

3. Plaintiff's claims will fail because the actual evidence will refute Plaintiff's allegations. The evidence will clearly show that the directors of Activision—including CEO Robert Kotick and Chairman of the Board Brian Kelly—acted at all times in good faith, with rigorous deliberation, and in a manner reasonably calculated to secure the greatest possible value for Activision's stockholders, as the Company had done for three decades. Indeed, the entire premise

of this lawsuit will be exposed as knowingly false.

4. Contrary to Plaintiff's false assertions, Mr. Kotick and Mr. Kelly had no conflicts of interest, prioritized the shareholders' interests, and operated at the direction of the Board. Mr. Kotick owned over 3 million Activision shares, and Mr. Kelly was a non-employee who owned several hundred thousand Activision shares. These significant stockholdings aligned the interests of Mr. Kotick and Mr. Kelly with the interests of stockholders generally when navigating the Company's strategic evaluation. Under the direction of the Board, Mr. Kotick and Mr. Kelly secured an all-cash premium sale and then worked diligently to ensure the transaction was approved over the baseless objections of overzealous regulators who were ultimately defeated repeatedly in court.

5. The record is clear that this transaction—at the time it was negotiated and even more so today—represents an exceptional outcome for shareholders. This transaction was the capstone of thirty years of Mr. Kotick and Mr. Kelly continuously delivering outsized shareholder returns through creation of the world's best games while maintaining a great work environment.

6. Mr. Kotick and Mr. Kelly had capably led the Company for three decades, taking the Company from insolvency to one of the greatest American success stories. This was possible through dedication, focus, and unwavering commitment to excellence and delivering superior shareholder returns—all made

possible through the efforts of thousands of talented and dedicated employees for whom the creation of great games was their passion. Such inspired creativity can only thrive in cultures that uphold strong values. Activision (along with its long tenured leadership) was always regarded as a company that operated with unwavering integrity and values, and a commitment to continuous improvement for the benefit of both shareholders and employees alike.

7. Under Mr. Kotick and Mr. Kelly's stewardship, Activision had been consistently ranked by *Fortune* magazine as one of the world's "100 Best Companies to Work For," including for the years 2015 through 2019. For over three decades, the company was regarded as one of the most inspiring, inclusive entertainment companies in the world. In the latter half of 2021, Activision's Board and Mr. Kotick acted with alacrity to fulfill their unwavering commitment to ensure Activision maintained an exemplary workplace. They did so at a time when Activision was the target of a years-long unionization campaign under which opportunistic union actors sought to exploit the #MeToo and #TimesUp movements for their own benefit.

8. At the conclusion of that campaign, government regulators who conducted extensive investigations into Activision's workplace—spurred on by the union's false narrative—had no choice but to concede that the narrative was wrong. The California Civil Rights Division, after years of regulatory misconduct, conceded

in a court approved consent decree that "***no court or any independent investigation has substantiated any allegations that: there has been systemic or widespread sexual harassment at Activision Blizzard [or] that Activision Blizzard senior executives ignored, condoned, or tolerated a culture of systemic harassment, retaliation, or discrimination.***" They also acknowledged that "***no court or independent investigation had substantiated any allegations that Activision Blizzard's Board of Directors, including its Chief Executive Officer, Robert Kotick, acted improperly with regard to the handling of any instances of workplace misconduct.***" Nonetheless, the union's narrative worked as intended, disrupting the operation of Activision and similarly situated companies through salacious but false allegations.

9. In 2018, the Communications Workers of America (CWA) union—with support from certain employees at the U.S. Equal Employment Opportunity Commission (EEOC) and the California Civil Rights Department (CRD)[1]—launched a multimillion-dollar campaign to unionize the videogame industry. To assist this campaign, unscrupulous government employees began an unwarranted investigation into Activision's workplace—with the goal of destabilizing the

[1] The California Civil Rights Department (CRD) was formerly known as the Department of Fair Employment and Housing (DFEH). Mr. Kotick will refer to this agency as the CRD throughout his Answer.

Company and creating a false impression of systemic issues that would create an opportunity for a Union organizing campaign. At the time the government investigations commenced, the EEOC's own documents clearly showed there were actually ***no workplace misconduct complaints of any kind*** ever filed against Activision or any of its business units nationally, at either the federal or state level. None. Not a single complaint relating to workplace misconduct was listed in the EEOC's entire nationwide database:

> **C. EEOC/DFEH Charges**
>
> A review of the EEOC's Integrated Mission System (IMS) indicates that nationwide, there are no charges filed against Activision Blizzard or any of the five (5) business units. One 2018 ADA inquiry was taken at LADO vs Blizzard Entertainment; however, the inquiry was closed as PCP elected not to file. The limited documentation from this inquiry was reviewed to determine if any relevant information could be utilized for this proposal.

10. Nonetheless, the CWA and its allies had placed Activision squarely in their crosshairs, willing to manufacture false allegations and employ extreme measures to advance their unionization agenda. Notably, Activision was not the only company subjected to these crooked union tactics. The attached documents reflect a similar campaign that this very Plaintiff engaged in with unions and their allies—including government agencies—in an attempt to unionize another company. (*See* Exhibit A.)

11. The CWA's campaign intentionally ignited a firestorm of unwarranted

criticism and public backlash against Activision—exactly the consequence that the Union intended. Yet at the conclusion of numerous years-long investigations into the Company's workplace spurred by the CWA's campaign, no court, agency, attorney, investigator, or anyone else ever made any finding of systemic workplace issues at Activision. No such findings were made because no such issues existed.

12. That is exactly why the EEOC reached a comprehensive settlement agreement with the Company in September 2021 containing no findings of systemic misconduct. And it is what the CRD was similarly forced to acknowledge in a court-approved settlement, which also contained no findings of systemic misconduct at Activision, and no findings that Activision's leadership—including Mr. Kotick in particular—had acted inappropriately with respect to workplace issues.

13. When the union campaign began in 2018, Activision's Board of Directors and executives already knew as much. They understood that Activision had rigorous compliance practices. They also knew that there were no concerns ever expressed by Activision's compliance teams about any systemic problems with respect to workplace conduct. Activision's legal and compliance teams were confident that the Company properly handled the relatively small number of incidents reported each year. This has been confirmed in numerous public filings, including the Company's landmark Transparency Report filed with the SEC—which is a comprehensive review of workplace best practices detailing the Company's

compliance programs and efforts to prevent misconduct, harassment, discrimination, and retaliation. Activision had also prepared and released comprehensive "Pay Equity Reviews" starting in 2020, which showed no gender-based pay disparity disadvantaging women either in the U.S. or globally. Indeed, the data from these reports show that women were paid slightly higher salaries and promoted more frequently and faster than their male counterparts at the Company.

14. Mr. Kotick fully expected that he could quickly address the false, negative publicity about Activision's workplace and that he would remain as CEO for many additional years, with the opportunity to earn the level of performance-based compensation he had historically received in exchange for delivering outsized shareholder returns. At no time was Mr. Kotick concerned for his job or looking for an exit. In the end, Mr. Kotick and the Board were vindicated, with both the EEOC and CRD being unable to find any evidence of systemic and widespread sexual harassment or discrimination at Activision.

15. The EEOC and CRD's findings were also corroborated by independent investigations that Activision's Board of Directors commissioned. For example, Gilbert Casellas (former Chairman of the EEOC) conducted a comprehensive review of Activision's policies, practices, conduct, and data. After conducting this review, Mr. Casellas found that there was no widespread harassment or discrimination at the Company; in fact, he found strong compliance practices and a smaller level of

workplace misconduct than at similarly situated companies.

16. Against this backdrop in which Activision and its Board were recognized as having acted carefully and properly at all times, Plaintiff falsely alleges that Activision rushed the Merger with Microsoft in order to evade accountability for such discredited allegations that the Board knew lacked merit. As described herein, Plaintiff's claims are entirely unfounded, as was the false narrative pushed by the Union.

17. While the Union waged its public relations war, Mr. Kotick and the Board of Directors skillfully navigated the manufactured crisis and adeptly managed the business as they had for three decades. In addition to the Union campaign, at the very same time, the industry was beginning a transition with serious long-term consequences. Mr. Kotick, Mr. Kelly, and the Board compartmentalized the Union distraction and focused on the real challenge: how to navigate the Company's less certain future. Mr. Kotick and the Board understood that Microsoft was also navigating challenges in its gaming business at this time. Specifically, Microsoft was eager to build a subscription gaming service that could be the Netflix of gaming—but Microsoft lacked world class content and a library of intellectual property needed to support such a subscription service.

18. Contrary to Plaintiff's false allegations, the Microsoft deal was anything but a "fire sale." Indeed, Microsoft and Activision informally explored a

variety of strategic possibilities over the course of many years, culminating in a historic transaction that has been labeled by third parties as "the right deal at the right time."[2] Today, given that console sales are at an all-time low and *Call of Duty* sales are off over 60 percent from the prior year, Plaintiff should be expressing extreme gratitude for the foresight Activision leadership demonstrated in consummating this transaction.

19. This deal was a heavily negotiated transaction through which Activision's Board—led by Mr. Kotick and Mr. Kelly—was able to find a once-in-a-lifetime deal. Microsoft was uniquely well positioned and capable of navigating the inevitable regulatory scrutiny, more so than any other possible acquirer. Unlike other companies, Microsoft had the cash on hand for an $80 billion transaction. Microsoft also had the technical capabilities and engineering talent—including in cloud computing, artificial intelligence, and machine learning—that Activision lacked but desperately needed to remain competitive. This technology and engineering talent was becoming increasingly expensive and difficult to acquire when the deal was made, and would have created significant headwinds for Activision had it been forced to build out these capabilities on its own.

20. Activision's management was always recognized for seeing around

[2] *See* Wedbush Securities, *Activision Blizzard (ATVI)*, (Jan. 18, 2022).

corners and anticipating the future, and Mr. Kotick and Mr. Kelly knew that remaining independent and competitive would be difficult. At the time of the deal, the gaming industry was becoming increasingly aware of the challenges that could emerge from increased competition, especially against companies with expertise in AI, machine learning, and cloud computing. New entrants were emerging who—while lacking a history in game development—already possessed talent and capabilities in these fields, along with limitless cash. These new, well-financed competitors included the likes of Apple, Amazon, Meta, Alphabet and Netflix—companies that could afford to invest in gaming without a requirement to generate profits, which would put increasing pressure on Activision's margins and return on capital.

21. While all of this was happening, Microsoft trailed far behind the Japanese and Chinese leaders in gaming, and the combination with Activision would enable the combined company to more effectively compete against Sony, Nintendo, and Tencent. Far from a fire sale, this was a match made in gaming heaven—albeit one where Microsoft was forced to make significant concessions and pay a premium price that would have been unlikely if Activision were operating under duress.

22. Microsoft raised with Mr. Kotick the subject of a potential transaction on November 19, 2021. In all of his interactions with Microsoft, Mr. Kotick was determined to maximize Activision's negotiation position. In advance of the first

Board of Directors meeting devoted to Microsoft's expression of interest, Mr. Kotick consulted with key directors—Chairman of the Board Brian Kelly; Lead Independent Director Robert Morgado; and Audit Committee Chair Robert Corti—as well as expert advisors at Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden Arps") and Allen & Company LLC ("Allen & Co."). Mr. Kotick worked with Mr. Kelly to maximize Activision's negotiation position in communications with Microsoft so that Activision's full Board of Directors would be in the best position possible to make major decisions about how to proceed.

23. Activision summarily ***rejected*** Microsoft's opening all-cash offer of $80 per share on November 26, 2021, which would have resulted in a premium of over 31% for shareholders, based on a stock price of $60.62 at the time. No fiduciary acting under "duress" would turn down an all-cash 31% premium. Yet Activision made clear that such an offer was entirely unacceptable. Instead of accepting an all-cash offer with a 31% premium to shareholders (which would have been a great result on its own), Activision signaled that a much higher premium would be needed, notwithstanding negative publicity about Activision. The Board subsequently directed management to pursue other suitors in an attempt to find a better deal for its shareholders (focusing on suitors who possessed the capital and regulatory capabilities that would enable the transaction to be successfully consummated).

24. At the time that Activision rejected this opening offer of $80 per share,

the Company was also contending with secular declines in the stock prices of ***all*** gaming companies. Stock prices were in decline industry-wide following a share price spike caused by COVID, when consumers were largely stuck at home (spending more time playing video games). As the pandemic eased, stock prices declined. Activision's stock price faced further declines in fall 2021 due to poor sales of its largest cash generator, *Call of Duty: Vanguard* ("*Vanguard*"), and even more significantly, the delays of two highly anticipated video games (*Diablo IV* and *Overwatch 2*) announced on November 2, 2021. The delay of these two titles—which were expected by investors for imminent release—wiped out hundreds of millions of dollars in anticipated near-term revenue.

25. While Activision's stock price continued to decline into December 2021, as investors digested the delay of *Diablo IV* and *Overwatch 2*, Activision's Board rejected yet another large premium, all-cash offer from Microsoft: this time a substantially increased offer of $93 per share on December 16, 2021. Although Activision was unable to find any other buyer willing to match or exceed such an offer, Activision rejected the $93 per share price. Instead, Activision's Board, led by Mr. Kotick and Mr. Kelly, insisted on an even better deal for shareholders.

26. After continued negotiations, Microsoft was pushed by Mr. Kotick and Mr. Kelly to again increase its all-cash offer to $95 per share, a roughly $80 billion purchase price. Mr. Kotick and Mr. Kelly understood from their discussions with

Microsoft's CEO Satya Nadella that $95 was the Microsoft Board's best and final offer. Having successfully negotiated commercial arrangements with Microsoft for decades, Mr. Kotick and Mr. Kelly were well respected by Microsoft executives as firm negotiators. Likewise, Mr. Kotick and Mr. Kelly knew when they had pushed Microsoft to its limit, as they had numerous times over many years. Mr. Kotick and Mr. Kelly's clear takeaway from their discussions with Mr. Nadella was that Microsoft and its Board had reached their limit at $95 per share. Activision's Board accepted this exceptional offer, delivering an over 53% all-cash premium to shareholders based on Activision's stock price of $61.80 on December 20, 2021 (when the parties signed an exclusivity agreement based on the $95 offer). When measured against Activision's stock price of $65.39 on January 17, 2021 (the day before the Microsoft deal was publicly announced), the $95 per share price delivered ***an over 45% premium to shareholders***—which is in the top 5% of premiums for all M&A transactions of large capitalization companies over the last five years—a superb outcome resulting in 98% of voting shareholders approving the merger.

27. On January 18, 2022 (the day the Microsoft deal was announced) Activision's stock price immediately increased. Activision's stock closed at $82.31 per share compared to $65.39 on the previous day—although it was still well short of $95, as it reflected a large discount given significant regulatory uncertainty.

28. Plaintiff falsely alleges that Mr. Kotick somehow rushed the deal to

protect his own financial and reputational interests, and that he would have been terminated for cause absent such a deal. There is absolutely no truth to Plaintiff's allegation, which Plaintiff knew full well when it filed its Complaint. The Activision Board repeatedly expressed its confidence in Mr. Kotick and his leadership, as it communicated in numerous public statements during the relevant period. This included a November 16, 2021 press release, where the Board of Directors stated:

> The Activision Blizzard Board remains committed to the goal of making Activision Blizzard the most welcoming and inclusive company in the industry. Under Bobby Kotick's leadership the Company is already implementing industry leading changes including a zero tolerance harassment policy, a dedication to achieving significant increases to the percentage of women and non-binary people in our workforce and significant internal and external investments to accelerate opportunities for diverse talent. The Board remains confident that Bobby Kotick appropriately addressed workplace issues brought to his attention.
>
> The goals we have set for ourselves are both critical and ambitious. The Board remains confident in Bobby Kotick's leadership, commitment and ability to achieve these goals.

29. On November 22, 2021, the Board created a Workplace Responsibility Committee that met regularly to oversee and track the progress of Activision's workplace-related commitments. The Board extended Mr. Kotick's employment contract to ensure that, if the transaction was not completed, he would remain as Chief Executive Officer.

30. Further, and contrary to Plaintiff's false narrative, the deal was ***not***

negotiated by Mr. Kotick alone. Mr. Kelly was integrally involved, joining Mr. Kotick in nearly every call and meeting throughout the process. As a significant stockholder of Activision, Mr. Kelly was focused on seeking and obtaining an optimal outcome for all shareholders. Both were acting at the direction of the Board of Directors and both have a long history as leaders who place the interests of shareholders first—a fact which is well-recognized by the industry and investors.

31. Although Plaintiff alleges that Activision should have found a better deal, they ignore that no one else offered terms even remotely competitive with Microsoft's offer. And even if a better offer did exist—it did not—Mr. Kotick would have been benefited from such a deal just like the rest of Activision's shareholders. So too, he would have benefitted from any increase of Activision's stock price that could have occurred absent any deal. Despite Plaintiff's false and incendiary allegations, Mr. Kotick and Mr. Kelly's significant stock holdings, along with their three-decade record of championing shareholder interests, demonstrate that their interests were fully aligned with shareholders. Indeed, industry analysts and experts consistently recognized this fact, with Wedbush's well-known equity analyst Michael Pachter observing: "I think the aspect of Bobby's management that appealed most to shareholders is his alignment with shareholders. Bobby's compensation has consistently been tied to the appreciation of Activision shares over a long period of time . . . . Bobby would benefit ONLY if shareholders benefited

from share price appreciation."

32. When the acquisition was completed in October 2023, it was the culmination of a deliberate and well-advised process yielding an extraordinary result for shareholders. Far from accusing them of wrongdoing, Plaintiff should be thanking Mr. Kotick, Mr. Kelly, and the other Directors for improving AP7's own below-benchmark performance for the beneficiaries of its pension fund—which has performed below the S&P 500 and other pension fund benchmarks for years.

33. Indeed, the consensus view of industry analysts, institutional investors, and other experts is that this was an extraordinary deal for both shareholders and the Company. This includes, by way of example, a legendary investor who has been described as "one of the wisest, most influential and most successful investors in media and entertainment of the past several decades." This investor immediately recognized the deal as a monumental success timed at the peak of a historic bull market, calling it **"*a fantastic outcome for your investors*"**:

Sent: Tuesday, January 18, 2022 11:27 PM
To: Kotick, Bobby
Subject:

Bobby,
Congratulations. If this deal passes regulatory scrutiny, they will be writing about this deal in future years as the deal that top ticked an epic 13 year bull market. To get an all cash deal at a great valuation just as the Fed is finally reversing it reckless, more than decade long policy of printing money and repressing interests rates at zero is a fantastic outcome for your investors. Now, with inflation roaring and unemployment at record lows, the Fed is going to have to abruptly take away the punch bowl, and you just left the party. Nice. Hope you are staying safe and healthy.

34. Many other financial experts and analysts recognized the financial windfall to shareholders, with the $95 per share price far exceeding Activision's organic value at the time. For example:

- The research analyst **Clay Griffin** of **MoffettNathanson** remarked in May 2022 that: "should the deal collapse and Activision be forced to go it alone, the stock would probably be valued somewhere in the mid-$60s."

- While **Berkshire Hathaway** was already a large shareholder, after the merger was announced, it increased its position to approximately 9.5% of Activision. **Warren Buffet** stated that the arbitrage bet could backfire if the deal did not close: "But obviously we can lose money on that company, and, you know, fairly large sums of money, depending on what happen[s] if the deal blows up."

- The financial firm **Wedbush** recognized that "Microsoft's planned acquisition of Activision Blizzard makes sense for both companies and their respective shareholder bases, and has the potential to play a meaningful role in the evolution of video game consumption and monetization." Wedbush's **Michael Pachter** added that Mr. Kotick "always behaved in a manner fully aligned with shareholder interests, and I think they appreciate that he manages the company in order to maximize shareholder return." Pachter stated: "I've covered Activision for over 20 years; the stock was around $3 per share and the market cap was under $1 billion when I started, and shares have appreciated 70-fold over that time. Bobby was CEO throughout, and creating value for shareholders was his mantra."

- The investment bank **Oppenheimer** recognized the value that the deal would deliver, noting that they "expect[ed] the deal to . . . receive shareholder approval" given the significant premium over both Activision's stock price and Oppenheimer's future price target of $85.

- The investment bank **Stifel** similarly recognized the outsized value of the deal, updating its future price target from $77 to $95 per share, noting that the "principal risk to our target price on Activision Blizzard is [whether] the transaction with Microsoft is terminated."

- **Mick Hickey**, an analyst at **Benchmark Capital**, stated: "Back in the day Kotick wrote a check and took this business out of bankruptcy, before building a company he just sold to Microsoft for almost $70 billion. ***There's no question he has created huge value for shareholders***."

Countless analysts, investors, and experts reached the same conclusion.

35. The transaction delivered an exceptional outcome to shareholders—one of historical magnitude. The 45% premium over Activision's pre-announcement stock price appears to be the ***largest premium ever achieved*** in an all-cash acquisition of a public gaming company. The 45% premium also exceeds premiums in the overwhelming majority of all-cash acquisitions of technology companies in general, a representative set of which follows:

- **Activision (Jan. 2022)**: 45% premium over pre-announcement stock price
- **Razer (Dec. 2021)**: 44% premium
- **Twitter (April 2022):** 38% premium
- **Zendesk (June 2022):** 34% premium
- **SailPoint (April 2022):** 31.6% premium
- **Splunk (Sept. 2023):** 31% premium
- **Cornerstone (Aug. 2021)**: 31% premium
- **Couchbase (June 2025):** 29% premium
- **CounterPath (Dec. 2020)**: 26.3% premium
- **MeridianLink (Aug. 2025)**: 26% premium
- **Citrix (Jan. 2022)**: 24% premium

- **Nuance Communications (April 2021)**: 23% premium
- **Darktrace (April 2024):** 20% premium
- **CA Technologies (July 2018)**: 20% premium
- **Concur (Sept. 2014):** 20% premium
- **Fitbit (Nov. 2019):** 19% premium

36. The up to $4.5 billion termination fee plus $500 million in royalty offsets that Activision negotiated was also historic—on information and belief, it had ***never*** been surpassed in any transaction other than the termination fees in the $160 billion acquisition of Time Warner by AOL and in Verizon's $130 billion acquisition of Vodafone's stake in Verizon Wireless.

37. The deal came at a time when gaming companies were facing intense industry headwinds as new market entrants were emerging, fueled by the advent of cloud computing, AI, and machine learning. That is why Wedbush called the transaction "The Right Deal at the Right Time." The investment bank Oppenheimer similarly recognized that the deal would position the companies to excel in a "new era of competition" that will be driven by cloud computing and artificial intelligence, stating: "A future-proof video game platform will likely require more non-game development expertise such as cloud infrastructure, AI/ML, and cross-platform reach. Relative to competition, Xbox excels in non-game development expertise but lags in first-party game quality."

38. The Board of Directors was fully informed and exercised good faith decision-making in the best interests of the stockholders during the pendency of the merger. Rather than allow the Agreement to expire on July 18, 2023 and collect a large termination fee from Microsoft, the Board determined—with the benefit of a thorough financial analysis from Allen & Co.—that it was far better for Activision's stockholders to extend the merger agreement, obtain permission to pay stockholders a regular cash dividend of $0.99 per share, and obtain an increased termination fee clause under which Activision could collect up to $4.5 billion. The Board also knew that industry headwinds were increasing and that lack of access to AI and machine learning talent and resources could further decrease operating margins. The continued flooding of the market with free-to-play games, and the even greater expansion of the mobile gaming market with Chinese competitors (the clear mobile gaming leaders), further confirmed that the Board had made an exceptional deal for its shareholders. Indeed, Activision Blizzard's actual operating results in 2024 and 2025, well below the Company's Long Range Plans, demonstrate how prescient the Board was in assessing the industry headwinds and how they could negatively affect the value of the Company. The analysis by Allen & Co. also demonstrated how the $95 merger price continued to compare favorably against contemporaneous equity research stock price targets from April through June 2023:



39. The Complaint wholly ignores both the market context and the commercial value of the transaction. Instead, it knowingly paints a grossly distorted picture, focusing on a set of unsubstantiated, false, and ultimately abandoned claims regarding a purportedly troubled workplace environment at Activision. Based on this false narrative, Plaintiff alleges that the failure of the Activision Board to secure an ***even more historic*** sale price reflected an unlawful effort to escape scrutiny and responsibility for nonexistent misconduct. The false workplace allegations may have caused a modest additional discount to the stock price, but most of the large institutional investors knew management for many years and expressed confidence in management by continuing to own shares or, in the case of Berkshire Hathaway,

buying substantially more shares in the Company.

40. Plaintiff bases its unfounded allegations on the publicity from the aforementioned EEOC and CRD investigations into workplace conditions and pay equity at Activision, but fails to acknowledge that neither of those investigations uncovered ***any*** evidence of systemic misconduct, or that both investigations ended with the withdrawal of systemic misconduct allegations in court-approved consent decrees. Plaintiff also ignores that Activision's Board and management knew at the time the allegations were asserted that the CRD's claims were meritless and that, not only would Mr. Kotick continue to successfully manage the Company, but he would manage to elevate the Company's already strong compliance capabilities into the industry's best compliance program. These compliance capabilities are detailed in Activision's landmark Transparency Report which, to this day, few other S&P 500 companies have matched in its fulsome disclosures or exceptional results. When Mr. Kotick pledged to ensure the very best compliance practices, ***he delivered***, just like he always had done for shareholders over three decades.

41. Plaintiff knew full well, but failed to acknowledge, the sordid origin of the fruitless investigations. The allegations of systemic harassment at Activision were not based in truth. Instead, they were driven by union efforts, primarily from the CWA, which was facing (1) difficulties in growing its ranks at the time and (2) its own internal, substantiated scandals of workplace misconduct—including

because its senior executives failed to discipline or even investigate allegations of sexual harassment. The CWA had a willing accomplice in the CRD, which perversely earns a percentage of any settlement it can extort from California companies (and whose Chief Counsel responsible for filing the false complaint was fired after filing these meritless charges against Activision).

42. On information and belief, the CWA coordinated a campaign by enlisting friendly journalists and regulators to do their bidding, creating a misimpression of systemic issues that they claimed ironically only a union could solve. These journalists (who on information and belief were members of the very same union themselves) and regulators (who pursued career gain, and in the CRD's case, economic benefit) sought to target technology companies like Activision. They did so at an opportune time, exploiting the #MeToo and #TimesUp movements, when the tech industry at large was facing backlash due to perceived cultural issues. Yet after years-long investigations and numerous lawsuits, neither the EEOC nor the CRD was able to muster together any evidence of systemic wrongdoing—which is exactly what they acknowledged in court-approved settlement agreements.

43. Activision was not the only gaming or technology company targeted by these unlawful tactics.

44. One video game company that was *not* targeted, however, was

Embracer Group AB ("Embracer")—a direct competitor of Activision based in Sweden. Notably, Embracer's Head of Sustainability and ESG at the time of this lawsuit's inception was Emma Ihre—***the Vice Chair of <u>Plaintiff AP7's</u> Board of Directors***—calling into question the independence and impartiality of the Plaintiff's Board and its decision to pursue this lawsuit. Indeed, just two days before Plaintiff filed this lawsuit, Ms. Ihre and Embracer launched a new "PR and Communications Team" to address Embracer's own significant workplace issues—issues which somehow evaded the union and regulatory attention that was directed at Activision, Riot Games, and other gaming companies with whom Embracer competed. The relationship between Plaintiff, Embracer, and the activists who pursued false claims against Activision will be detailed throughout discovery in this litigation.

45. Discovery will also show that Plaintiff's entire theory of the case relies on a set of demonstrably false assumptions. These include the false premises that Activision suffered from a systemic "toxic culture"; that the Microsoft deal was a "fire sale"; that Activision had better options on the table; and numerous other falsehoods that infect the entirety of Plaintiff's Complaint.

A. Mr. Kotick and the Activision Directors Will Establish the Invalidity of Plaintiff's Claims and Their Underlying False Assumptions

46. Plaintiff's Complaint—the demonstrably false allegations of which the Court was required to accept as true at the pleading stage—reflects a series of knowingly untrue assertions and faulty assumptions, each of which are easily disproven by numerous public filings (including those filed with the Securities and Exchange Commission ("SEC")) available to Plaintiff prior to filing the Complaint.

47. ***First***, the Complaint assumes that Activision had systemic workplace misconduct. It clearly did not. Activision was a top employer, consistently ranked by *Fortune* magazine as one of the world's "100 Best Companies to Work For"—including for five consecutive years from 2015 to 2019. As with any large company, there were isolated incidents of misconduct which were remediated by Activision's exceptional compliance team. But there were ***no*** systemic issues of the sort Plaintiff alleges—a fact that multiple government agencies acknowledged following years-long investigations into Activision's workplace. Even today, over seven years after the first regulatory investigations were launched, no government agency, court, or other tribunal has found any systemic harassment or discrimination at Activision—because none existed. Indeed, prior to the EEOC's initiation of an investigation in September 2018, the EEOC's own nationwide database showed Activision had ***literally zero complaints*** ever lodged against it for any workplace or compensation

issues. This included ***no*** complaints at either the state or federal level.

48. Notably, when pressed at deposition, the CRD's own expert (David Neumark) was forced to admit that women employees at Activision were actually paid *more* than their male counterparts (after controlling for legitimate factors like experience and tenure) and were promoted slightly faster and at a higher rate than men. As Mr. Neumark testified under oath: "there is no evidence that Activision Blizzard's leveling practices are discriminatory."

49. ***Second***, the Complaint assumes that Mr. Kotick knew about systemic harassment and discrimination, but failed to act or report it to the Board of Directors. False. Under Mr. Kotick's leadership, Activision consistently acted quickly and appropriately to address allegations, including by exiting employees who engaged in substantiated instances of misconduct. Further, Mr. Kotick was always in close communication with the Board and ensured that the Compliance team reported relevant allegations of misconduct to the Audit Committee and, when warranted, the full Board. This is validated not only by the results of years-long investigations by government agencies, but also by independent investigations led by highly respected experts and counsel in the field of workplace governance.

50. ***Third***, the Complaint—with ***no*** substantiation—suggests that Activision's motive in conducting internal investigations was to minimize and cover-up allegations. False. The truth is that Activision was a market leader in its

efforts to foster a safe and equitable work environment, promptly addressing complaints and taking necessary actions, including, where appropriate, the termination of employees who engaged in substantiated misconduct. Indeed, Activision's quarterly and annual regulatory filings with the SEC provided much more information about workplace issues than similarly situated companies provided. Moreover, Mr. Kotick voluntarily took a large pay cut while Activision worked to create the most exemplary standards for workplace compliance, which Activision clearly communicated to the public. Far from seeking to sweep any issues under the rug, Activision squarely and publicly confronted these concerns with transparency and clear plans to maintain an industry leading position for workplace compliance. Activision's landmark publicly filed Transparency Report illustrates this in exhaustive detail.

51. ***Fourth***, the Complaint is premised on the assumption that Activision and its Board expected the regulatory investigations pending in late 2021 to substantiate allegations of systemic harassment and discrimination. False. At all times, the Board was well aware of Activision's positive workplace culture and its proactive efforts to identify and address any instance of harassment or discrimination, and was confident that the government investigations would acknowledge there was no systemic misconduct at Activision. And that is precisely what happened. Both the EEOC and CRD were unable to find any systemic

workplace misconduct at Activision, and both acknowledged that the Company took positive steps to ensure it maintained best practices for workplace compliance.

52. ***Fifth***, the Complaint assumes that, because the EEOC and CRD investigations ended with immaterial financial settlements, the allegations of misconduct implicit in those investigations must have been credible. False. Even though Mr. Kotick and the other Directors were confident Activision would prevail, they believed that the sensible business decision was to avoid costly, distracting, and time-consuming litigation. The plain language of these settlements expressly established that there were no findings of systemic wrongdoing at Activision; nor was there any misconduct by Mr. Kotick and the Directors. Reflecting the cooperative nature of these resolutions, both the EEOC and CRD agreed to unprecedented terms providing that any excess settlement funds would be directed to charities. The EEOC in fact has already delivered excess funds to charitable organizations pursuant to its agreement with the Company. The CRD, tasked with identifying pay and promotions inequities, was unable to do so and thus the resolution contained no finding or admission of any wrongdoing.

53. Plaintiff had in its possession all the relevant public disclosures regarding Activision's workplace, including the government's findings. Yet it filed this Complaint propagating the same discredited allegations, knowing full well that:

- "No court or any independent investigation has substantiated any

allegations that there has been systemic or widespread sexual harassment at Activision Blizzard; that Activision Blizzard senior executives ignored, condoned, or tolerated a culture of systemic harassment, retaliation, or discrimination; or that Activision Blizzard's Board of Directors, including its Chief Executive Officer, Robert Kotick, acted improperly with regard to the handling of any instances of workplace misconduct." (12/20/2023 CRD Consent Decree, § 5.)

- As detailed in the May 31, 2023 Transparency Report filed with the SEC, Activision has maintained positive workplace measures, including the continuous review and improvement of its company practices. This report—published more than a year before Plaintiff filed this Complaint—provides detailed data regarding Activision's efforts to prevent misconduct, harassment, discrimination, and retaliation and clearly shows there was never systemic workplace misconduct.

- Activision published numerous Pay Equity reports dating back to 2020, showing no gender-based pay disparity disadvantaging women globally. The Pay Equity Review for 2020, for example, showed that women employees earned slightly more than men for comparable work. The Global Pay Equity Reviews for 2021 and 2021 similarly showed no gender-based pay disparities worldwide.

- Gilbert Casellas, former Chairman of EEOC, conducted an independent review of Activision's policies, practices, conduct, as well as complaint data, and also concluded there was no widespread harassment or recurring pattern or practice of gender harassment at the Company.

Despite having all of this information at the time it filed this Complaint in June 2024, Plaintiff still peddles the same disproven narrative even today. But for the protection of legal privilege, Plaintiff would be sued for defamation and would have been forced to correct its false narrative, just as all news media have done.

54. ***Sixth***, the Complaint wrongly assumes that the Microsoft transaction undervalued Activision compared to its true prospects and harmed shareholders—

who, along with the Board, purportedly lacked full information to assess the deal. False. The Board was fully informed that Activision would be unable to achieve such a massive premium with any different acquirer and knew that Activision's performance and likely future prospects did not justify an organic value of $95 per share—which is precisely the conclusion that Activision's financial advisor Allen & Co. reached when it presented its comprehensive analyses to the Board. This included the Allen & Co. analysis presented to the Board in January 2022 (when it recommended that the Board approve the Merger Agreement) and again in July 2023 (when it recommended that the Board extend the Merger to October 2023, because extending the deal would maximize shareholders' interests). Future actual performance reconfirms what the Board knew at the time: industry headwinds could significantly affect the Company's performance and derail its aspirational Long Range Plans. This is exactly what happened in the years since the transaction closed.

55. Allen & Co.'s analysis in January 2022 showed how the $95 offer compared favorably to contemporaneous equity research stock price targets and industry comparables, a fact that was recognized by countless investors and analysts:



56. Recognizing the incredible value reflected in Microsoft's offer, shareholders overwhelming approved the transaction. Approximately 68% of the voting power cast votes, with 98% of those votes cast in favor of the transaction. Their vote was fully informed by, *inter alia*, Activision's March 21, 2022 Proxy Statement, which included a Draft Merger Agreement containing all material terms necessary for shareholders to assess the deal. To the extent there were any minor technical defects in these disclosures, those defects were immaterial to any assessment of the proposed transaction.

57. ***Seventh***, the Complaint assumes the existence of a theoretical alternative buyer who would have paid more than $95 per share. False. Out of five potential suitors described in Activision's March 21, 2022 Merger Proxy Statement,

four declined to enter discussions with Activision, and none offered terms that were remotely competitive with Microsoft's bid. All except Microsoft declined to pursue a deal—not due to any concern regarding workplace conditions, but rather due to concerns regarding scrutiny from antitrust regulators or simply an inability to match Microsoft on price and terms. Mr. Kotick and the Directors understood that Microsoft, by contrast, was uniquely situated to acquire the Company and navigate the extremely challenging antitrust regulatory issues presented by the transaction. The transaction also presented unique synergies for both companies. The Directors knew that Microsoft trailed Nintendo and Sony in market share and ownership of much needed intellectual property. It needed proven game franchises for its Game Pass subscription service to compete against subscription service leaders like Apple, Amazon and Netflix. As the Activision Directors understood at the time, all of these were clear reasons why Microsoft was willing to pay such a large premium for Activision.

58. ***Eighth***, the Complaint assumes that, had Activision declined to pursue the Microsoft acquisition, its stock price would have quickly recovered to exceed $95. In fact, the opposite is likely. Like its peers in the videogame industry, Activision had seen a significant decline in its share price coming out of the COVID pandemic. That decline was exacerbated in Activision's case by (1) the muted reaction to its flagship *Call of Duty: Vanguard* game release in November 2021, and

(2) its announcement, on November 2, 2021, that Activision would be delaying its two long awaited Blizzard games *Diablo IV* and *Overwatch 2*, resulting in an unexpected and substantially reduced earnings outlook—an announcement that immediately resulted in a 14% decline in Activision's share price. This was the second largest one-day decline in the Company's history (exceeded only by the stock market crash of November 14, 2008, when Activision's stock dropped by 15.6% in line with the rest of the market), due entirely to the impact on earnings as well as the uncertainty of exactly when these games would in fact be released. While the Company's performance improved in a few quarters after the deal was announced, the Company's subsequent financial performance simply would not justify a $95 stock price. Again, the Board was fully informed of this, including based on the comprehensive financial analysis from Allen & Co. and management's three decades of experience anticipating industry volatility.

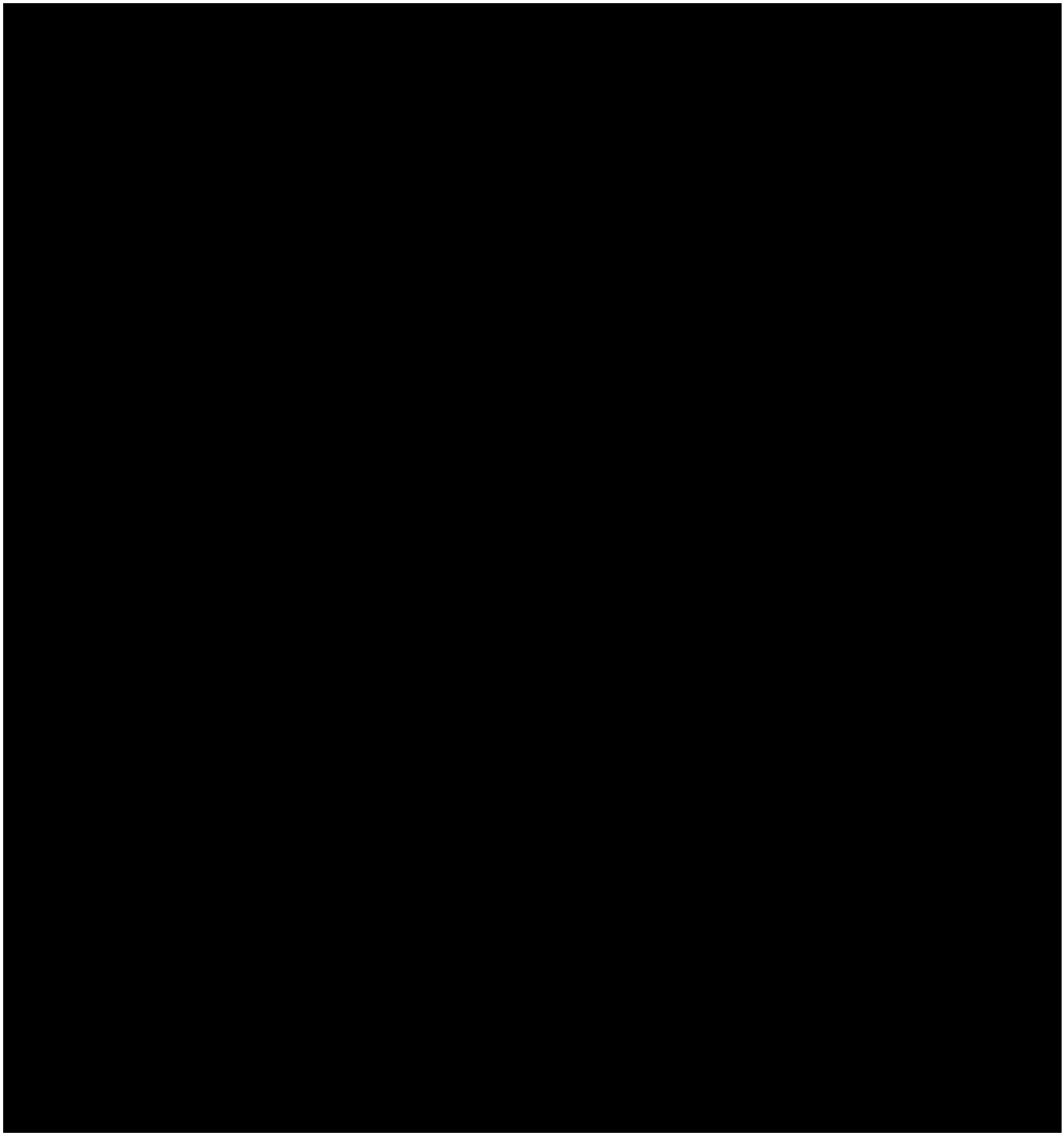
59. The Company's actual performance since January 2022 is telling, uniformly *missing* the Long Range Plans' target metrics—which should come as no surprise, given that the Company historically missed nearly all of the ambitious targets set forth in its Long Range Plans, a fact known well to the Board when the deal was negotiated. All told, had the deal not gone through, this would have likely resulted in a substantially lower stock price, as is easily established by Activision's financial performance post-closing, which has been far below the ambitious targets

contained in the plans. This year alone console sales are at historic lows and *Call of Duty* is on track to perform over 60 percent below last year because of intense competition from titles like *Battlefield*—destroying the FTC's now defeated argument about *Call of Duty*'s purported monopoly and the lack of competition in the first-person action game category.

60. ***Ninth***, the Complaint assumes that Activision revised its long-range business projections to retroactively justify its acceptance of Microsoft's $95 offer. False. In fact, the revised projections reflected reduced estimates for net bookings, operating income, and earnings per share (EPS) following the delays of *Diablo IV* and *Overwatch 2*, which drove an approximately 20% decline in Activision's stock price across November 2021. The delays' impact on Activision's financial position was well recognized and known to industry analysts, investors, and the Board of Directors at the time.

61. The Board minutes [redacted]

62. The Board was informed in January 2022 of how the current management forecast compared to the 2021 Long Range Plan and current consensus Wall Street estimates, as well as Wall Street price targets and other analysis:



63. For example, on November 2, 2021 (the very same day that Activision announced the significant game delays), the financial firm Elazar Advisors stated: "ATVI on their earnings call pushed out both of their big launches, Diablo and Overwatch . . . . I posted sells in our model portfolio on chat as soon as I heard it on their conference call. ***The push outs take our 2022 EPS numbers way down***." The next day, J.P. Morgan wrote that "ATVI shares are down over 10% in after-hours trading following the Company's Q3 earnings report. Investors are undoubtedly focused on the pipeline, and commentary from management that it is planning a later launch than anticipated for Overwatch 2 and Diablo 4." Deutsche Bank also stated that, because the Company "push[ed] out the timing of upcoming Blizzard releases (including Overwatch 2 and Diablo 4) . . . [w]e are taking down our 2022 net bookings and Adj. EPS estimates by 7% and 9%, respectively." Truist Securities noted: "The stock was down >10% after-hours because the company will not launch Overwatch 2 (O2) or Diablo 4 (D4) in 2022, which obviously has material implications." As the share price continued to decline, Trefis recognized on November 15, 2021 that the stock was "down 14% over the last ten days. The recent fall can be attributed to the company announcing a delay in the launch of two much awaited games – Overwatch 2 and Diablo IV, along with a miss on Q4 outlook."

64. All of this was known to the Board when it adopted reduced long-range projections in December 2021. The Board knew that the delays, uncertainty of the

timing for the release of those games, quality concerns for *Overwatch 2*, and overall reduced financial estimates necessitated a reduction in the ambitious targets from the Long Range Plan, which had expressly based plan growth on "the return of Overwatch and Diablo." The Board was also made aware of the continued poor performance of *Vanguard* in December 2021 (a fact that analysts also noted), which similarly undermined the fidelity of the Long Range Plan's ambitious targets.

65. Plaintiff not only disregards the impact of the delays and *Vanguard*'s poor performance, but it also disregards the ambitious nature of Activision's Long Range Plans ("LRPs") and the known risks associated with the achievement of these aspirational plans. Consistent with the LRPs' ambitious design, the Company consistently failed to achieve the financial objectives contained in its LRPs, although the LRPs provided product roadmaps and market assumptions that could be used to improve the fidelity of the far more useful Annual Operating Plans. From 2018 to 2023, for example, Activision missed 22 out of 26 of its company-wide revenue targets from the aspirational LRPs. The four targets that Activision did hit during that period were all in 2020 and 2021—driven by an unprecedented pandemic where people were sheltered at home and videogame sales spiked industry-wide. But even then, Activision failed to achieve all of its targets during the pandemic driven over-performance, missing 5 out of 9 internal revenue targets during those years. For 2018, 2019, 2022 and 2023, ***Activision missed all of its revenue targets*** (17 out of

17). Activision also missed its internal targets for operating income and EPS in those years.

66. Again, the Activision Board knew of the LRPs' ambitious nature and the risks inherent in operating a creative enterprise at all relevant times, and was even presented with an update on December 14, 2021 showing the Company's various misses compared to the LRPs' aggressive targets:



67. These Plans were intentionally ambitious—reflecting the culture of aspiration the Company fostered. Because executives' performance-based compensation was tied in part to these LRPs, the Directors set ambitious goals that made significant awards possible only upon truly exceptional results that delivered

corresponding benefits to shareholders. This was no secret—analysts like Michael Pachter of Wedbush recognized that Activision's executive compensation "has consistently been tied to the appreciation of Activision shares over a long period of time," and that executives "would benefit ONLY if shareholders benefited from share price appreciation."

68. ***Tenth***, the Complaint assumes that Mr. Kotick could or should have been terminated for cause, and that he would have lost substantial financial benefits had Activision not completed the Microsoft deal. False. The Activision Board had full confidence in Mr. Kotick and his leadership. This made complete sense given that Mr. Kotick was the driving force behind Activision's three decades of success, its original acquisition, its turnaround from an entity on the brink of bankruptcy in 1990 to one of gaming's most successful companies, its unusually successful merger and acquisition triumphs, its proven ability to identify risk, and its unwavering focus on delivering shareholder value.

69. Simply put, Mr. Kotick would not have been terminated for cause; nor was there any legitimate reason to consider terminating him for cause. As such, Mr. Kotick would have been able to benefit from any potential transaction with companies other than Microsoft (although, again, no such deals were on the table). So too, Mr. Kotick would have been able to benefit from any recovery of Activision's stock price in the absence of any transaction. In other words, he would

have received these financial benefits regardless of the Microsoft transaction, and his interests were fully aligned with stockholders' interests. And while Activision's future was far from certain, the one thing Mr. Kotick did know is that his tenure with Microsoft would be limited and the future significant compensation he would have earned if the Company remained independent and performed well would be forgone as a result of the transaction.

* * *

70. In short, Plaintiff AP7's Complaint is predicated on a mountain of falsehoods, and while the Court was required by law to assume the truth of these falsehoods in deciding the motions to dismiss, at future stages of this litigation the evidence will control the outcome. Not only did AP7's knowingly false assertions form the basis of its attempt to subject Mr. Kotick and Activision's former directors to personal liability for their roles in arranging the Microsoft deal, they have also contributed to and sustained a false public narrative regarding Activision and its leadership, in a manner that primarily benefitted the Union with which AP7 has colluded against other companies.

71. Mr. Kotick intends to shine a light on the gross misconduct of the activists who invented the false narrative of misconduct at Activision, and to expose the relationship between those activists and AP7. The Court, and the public, should be aware of the abuse of legal process through which AP7, regulators, and union

activists brought false and wholly unsubstantiated claims against Activision and Mr. Kotick. Mr. Kotick's leadership and unwavering commitment to excellence should be commended, not besmirched by false allegations of the sort peddled by AP7 in its own perversion of the justice system. Even the *Wall Street Journal* acknowledged its errors when it published an editorial correcting the false narrative it erroneously perpetuated. At this case's conclusion, AP7 will be forced to acknowledge the same.

B. Mr. Kotick Transformed Activision from a Company on the Brink of Bankruptcy into Gaming's Biggest Success Story

72. Mr. Kotick was Activision's CEO and a director at all relevant times, having also served as Chair of the Board from 1991 to 2008. Facilitated by Mr. Kotick's vision and leadership, Activision was transformed from a business on the brink of bankruptcy in 1990, to one of the world's most successful and influential entertainment companies. Mr. Kotick first acquired a controlling stake in the Company (then known as Mediagenic) in 1990, and became its CEO and a director in February 1991. During his tenure, Activision launched or acquired many of the industry's leading franchises, creating tens of billions of dollars in shareholder value. Mr. Kotick's consistent leadership across more than three decades provided strategic stability and continuity for Activision's management and Board. He remained a director until the Merger closed, and he continued to serve as CEO until December 29, 2023, shortly after Microsoft's acquisition of Activision was completed.

73. Mr. Kotick's tenure as CEO began in February 1991, shortly after he acquired a stake in the Company for $400,000 as part of a transaction that saved the nearly bankrupt company from the brink of collapse. Stewarded by Mr. Kotick and Brian Kelly, the Company was transformed into one of the world's most successful game companies. ***Activision's market capitalization grew by over 600,000% during the tenure of Mr. Kotick and Mr. Kelly, delivering a cumulative total return more than three times that of the S&P 500***. This stands in direct contrast to Plaintiff's portfolio, which has consistently underperformed compared to Activision.

74. Activision's remarkable growth over three decades is attributable in no small part to the culture Mr. Kotick instilled—rooted in core values of integrity, inclusion, character, and unwavering commitment to excellence combined with a system that carefully tied incentives to performance for the benefit of shareholders.

75. Under Mr. Kotick's leadership, Activision was known for decades as a great place to work. Year after year, the Company won numerous awards for its outstanding culture, including being named one of *Fortune* magazine's "100 Best Companies To Work For" for five straight years from 2015 to 2019. *Fortune* also named Activision one of the world's most admired companies in 2020 and 2021.

76. During his more than thirty-year tenure, Mr. Kotick understood that diverse skills and talent fuel innovation, and he believed it was essential to maintain a culture where diverse skills were embraced and celebrated, and employees could

come to work authentically, with passion and enthusiasm, focused and committed to excellence. Mr. Kotick understood that Activision's success depended on its ability to recruit and retain the world's best talent.

77. At Mr. Kotick's behest, Activision continually invested significant time and resources to develop and enforce policies and procedures that promoted a safe, fair, and welcoming workplace in all business units. At Mr. Kotick's insistence, the health and wellbeing of its employees was always a priority. Activision worked diligently to identify, investigate, and redress the small number of substantiated allegations of workplace misconduct that occurred at the Company (no different than any other large company). When such issues were brought to his attention, Mr. Kotick always acted appropriately, committed to fostering a misconduct-free workplace.

78. As evidence of this commitment, Activision was one of the few *Fortune* 500 companies to file with the SEC a comprehensive landmark annual Transparency Report detailing the Company's best practices. Activision was unique in this regard, disclosing much more fulsome information than other companies in many industries.

79. All told, Mr. Kotick helmed Activision for nearly 33 years, making him the longest-tenured CEO of any publicly traded technology company. Under Mr. Kotick's leadership, Activision provided decades of joy and connection to more than 400 million consumers globally. When the Company was facing economic pressure

spurred by poor video game sales and delayed releases in late-2021—and recognizing the impending challenges that would emerge with significantly increased competition, the risks from artificial intelligence, and the continued emergence of business models that emphasized free-to-play games and Netflix-like subscriptions (which would likely devalue Activision's content)—Mr. Kotick and the Board were presented with a solution that would both benefit shareholders and position Activision to excel in the future. They capitalized on that opportunity.

80. Under the Board's direction, Mr. Kotick and Mr. Kelly led the efforts to negotiate a truly extraordinary deal. These efforts resulted in an exceptionally large all-cash premium price and record-setting termination fees in the event the transaction was not completed. Recognizing just how attractive this transaction was, shareholders overwhelmingly voted in favor of the transaction, with 98% of votes cast in approval, including those from distinguished, sophisticated investors such as Berkshire Hathaway, Fidelity, and Capital Group. The result was the largest transaction in video game history and one of the largest all-cash transactions ever—one that delivered extraordinary value to Activision's shareholders.

C. The Union-Driven Campaign to Exploit the #MeToo and #TimesUp Movements Against Tech Companies Like Activision

81. Starting in or about 2018, a group of opportunistic union employees coordinated with paid public relations firms, union proxy organizations that

disguised themselves as independent investors, "shareholder" advisory firms, overzealous regulators, and self-interested union-affiliated reporters to target companies operating in technology industries. The campaign against Activision was part of a broader effort by the Communications Workers of America ("CWA" or "Union") to weaponize the #MeToo and #TimesUp movements—as a last-ditch effort to unionize technology firms whose employees resisted unionization because union representatives failed to demonstrate ***any*** tangible value. This included companies like Activision, which became an industry scapegoat, as well as Riot Games, Tesla, Alphabet, and many more. The Union's goal? To reduce the steady loss of millions of members they had experienced over two decades.

82. The Union, offering no value to companies that paid generous wages and offered extraordinary benefits, needed a reason for employees to consider unionization. Union leaders landed on a clever but unlawful scheme to create the false perception that there were systemic workplace issues at these companies so that it could offer itself as the solution to resolve these fabricated workplace problems. Ironically, it was the Union itself whose values (or lack thereof) fostered a toxic culture, resulting in substantial leadership upheaval as a result of Union leaders attempting cover up their own misconduct.

83. To help organize these union campaigns, the CWA (through proxies) hired the public relations firm BerlinRosen, which then leveraged unscrupulous

"journalists" who, on information and belief, were represented by the CWA's own NewsGuild unit. On information and belief, the CWA also collaborated (directly or indirectly) with certain government employees at the EEOC, CRD, and NLRB.

84. Like other tech companies, Activision was targeted with a destabilization campaign that included meritless investigations, fabricated leaks, and sensationalist media coverage from journalists who failed to conduct basic due diligence and, in some cases, brazenly ignored undisputed facts. But when all was said and done, Activision was vindicated, with numerous investigations—both by the government and independent experts—concluding with no findings of systemic harassment or discrimination at Activision.

1. September 2018: the EEOC and CRD Initiate Investigations

85. On September 26, 2018, the EEOC authorized an investigation into Activision even though it had ***never received a single complaint*** about workplace or compensation issues at the Company. Indeed, in the EEOC's Commissioner Charge Memo, the agency expressly acknowledged that its nationwide database showed "no charges filed against Activision" or any of its five business units, either at the federal or state level. In other words, the EEOC and all state employment agencies (including the CRD) had never received any filed complaints about workplace issues at Activision ***ever***.

86. The only alleged misconduct identified in the EEOC charge memo

[redacted], the Company promptly had independent attorneys investigate the issues raised [redacted] and remediated the few substantiated issues. The EEOC, with no substantiated complaints of any kind, nonetheless initiated a questionable investigation, which lasted nearly three years.

87. The CWA, EEOC, and CRD, with absolutely no basis to do so, set out to make an example out of Activision, the largest American videogame company, regardless of the fact that there were no known systemic workplace issues at the Company—apparently to assist with union organizing opportunities. Making no effort to hide its pretext, the EEOC's Commissioner Charge Memo stated: **"Filing a Commissioner Charge against [the Company] will send a message to the industry as a whole that sexual harassment, #metoo and #timesup are not limited to Hollywood, but often rampant in male-dominated industries including Video Gaming."**

88. Around this same time, the CRD also began a years-long campaign, encouraged by the CWA, to target Activision and Mr. Kotick. Led by its Director Kevin Kish and Chief Counsel Janette Wipper, the CRD was determined to make Activision an industry scapegoat. The CRD campaign launched on October 12,

2018, and was expanded twice to include additional business units at the Company.

89. Like the EEOC's investigation, the CRD's campaign against Activision lasted for a period of years. But in both cases, at the conclusion of these investigations and related litigation, ***the EEOC and CRD each had no choice but to admit that they made no findings of systemic harassment or discrimination at Activision***.

2. June to September 2021: the EEOC Settles Claims and the CRD Files Suit Brought by Conflicted Attorneys

i. *The EEOC Settles Its Claims, After Failing to Find Evidence of Systemic Harassment*

90. On June 15, 2021, the EEOC concluded its investigation. After an incredibly thorough investigation, the EEOC found only a small number of isolated instances of misconduct which are detailed in the Company's landmark Transparency Report. The EEOC did not find ***any*** evidence of widespread or systemic harassment or a toxic workplace—because there was none. Activision then engaged in a statutorily mandated conciliation process with the EEOC.

91. While Mr. Kotick and the Directors were confident Activision would win in litigation against the EEOC, they chose to avoid protracted, expensive litigation with a government agency possessing unlimited resources. The consent decree expressly stated as much: "the Parties recognize that through this Decree the Parties can avoid the expense, distraction and possible litigation associated with such

a dispute and thus the Parties wish to resolve all issues through this Decree." Activision and the EEOC thus reached a court-approved settlement, which did not find any systemic workplace misconduct and provided for no liability against Activision. Far from finding any wrongdoing by Activision or Mr. Kotick, the EEOC publicly stated that they were "encouraged" by Activision's commitment to address workplace issues.

92. On September 27, 2021, the EEOC filed the proposed consent decree, under which Activision agreed to pay $18 million to settle the claims. Importantly, knowing the settlement amount was excessive, the settlement agreement included an unprecedent provision: it allowed unused funds to be provided to charity. Since Mr. Kotick and the Directors were confident that the settlement amounts were substantially greater than any possible claims, they viewed the settlement as a mechanism to end costly litigation while also providing significant funds to charity.[3]

93. After the EEOC conducted its review of claims submitted as part of the settlement, the EEOC determined that less than 0.3% of the total employee

[3] As described further below, ***both the CRD and CWA attempted to derail the settlement***—which Judge Dale Susan Fischer of the Central District of California swiftly disregarded as an obvious attempt to interfere with a fair and reasonable settlement. *See EEOC v. Activision*, No. 2:21-cv-07682, ECF 76 at 1 (C.D. Cal Mar. 22, 2022) (proposed settlement was "fair, reasonable, and adequate"). The Court added that the CRD and CWA's attempt to disrupt the settlement was based on claims that were "***simply inaccurate, based on speculation,*** or otherwise address[ed] issues that [they] should not be concerned with." *Id*. at 3 (emphasis added).

population per year was even eligible for any form of settlement. This left significant funds to be provided to charitable organizations.

ii. *The CRD Violates Its Workshare Agreement with the EEOC and Pursues Baseless Claims Using Unethical Tactics*

94. Given the overlap between the EEOC and the CRD investigations, the agencies entered into a workshare agreement, formalized in 2020, to divide the agencies' respective areas of responsibility. The agreement gave the EEOC ***exclusive*** jurisdiction to investigate claims relating to harassment, and the CRD ***exclusive*** jurisdiction to investigate claims relating to pay equity and promotions.

95. In May 2020, the CRD's Chief Counsel Janette Wipper sent an email to Rosa Viramontes, the head of the EEOC's Los Angeles office, regarding the workshare agreement. Wipper expressly acknowledged that (a) the EEOC was "working on the sexual harassment allegations," and (b) the CRD was working on allegations of gender discrimination in pay equity and promotions.

96. The next month, Wipper again expressly assured the EEOC and Viramontes that the CRD would abide by the workshare agreement and was not investigating any harassment allegations:

> Rosa,
>
> To confirm our discussion, DFEH is not conducting the investigation of the harassment allegations in this matter.
>
> Please let me know if you need further information.
>
> Janette

97. Viramontes subsequently stated in a sworn declaration in federal court that she understood these emails clearly memorialized the specific terms of the agencies' agreement to divide-up the investigation.

98. Apparently, none of this mattered to the CRD. After the EEOC sent its letter of determination to the CRD and invited it to participate in global settlement talks with Activision in 2021, the CRD—in violation of the law and its stated and required practices—ignored the invitation and quickly pivoted to an unwarranted harassment investigation of the sort it specifically agreed not to undertake.

99. On June 23, 2021, the EEOC wrote to Wipper, reiterating the EEOC's understanding that the "purpose of the Interagency Agreement in the Activision investigation was to divide the work by substantive claims (*i.e.*, sexual harassment and pay and promotion claims) rather than dividing by state and federal law claims." The EEOC expressed its concern that the CRD "had begun to investigate sexual harassment to the detriment of the harmed individuals." Wipper ignored the EEOC's June 23, 2021 letter.

100. The EEOC's concerns were proven true. The very next day, on June 24, 2021, Kish issued an unwarranted cause-to-sue letter to Activision, terminating the pre-suit investigation process and dubiously stating that the CRD had found an unspecified "reason to file a civil complaint."

101. In doing so, the CRD abandoned multiple requests for information that

they had previously told Activision were crucial to their investigation, and gave up multiple depositions that were in the process of being scheduled—even though California law required the CRD to collect "all relevant evidence" before closing its investigation. Cal. Code Regs. Tit. 2, § 10026(d).

102. The CRD did so desperate to extort a significant, unjustified financial benefit from any settlement it reached with Activision. Unlike almost any other government agency, the CRD has unique statutory authority to actually pocket a percentage of monies recovered through litigation to "offset the costs of the department." Cal. Gov't Code § 12965(c)(6); Cal. Gov. Code § 12907(c). This so-called "bounty hunter" provision creates backward incentives for the CRD to resort to extortion disguised as litigation against deep-pocketed defendants like Activision, Riot Games, and Tesla simply to fill the agency's coffers, not based on objective assessments of the merits of its claims or whether litigation will advance the public good. In furtherance of this, the CRD completely disregarded its workshare agreement with the EEOC and pursued an investigation into not only gender pay and promotion inequities, but also systemic harassment and discrimination (which the EEOC had already concluded in a court approved consent decree ***did not exist*** at Activision).

103. The CRD and its leadership—recognizing that it was unable to prove any gender pay or promotions inequities—turned to knowingly false accusations of

unaddressed systemic sexual harassment.

104. On July 20, 2021, the CRD sued Activision. The CRD complaint focused heavily on alleged gender-based harassment—even though this had been the EEOC's exclusive purview. The CRD's allegations were a collection of scandalous, threadbare, and knowingly baseless accusations crafted for no purpose other than to damage Activision's—and Mr. Kotick's—reputation, in an effort to extort an unjustified settlement. In the CRD's press release announcing its complaint against Activision, Director Kevin Kish emphasized that it was "especially important" to pursue actions against the "gaming" industry. With that, the CRD launched its scorched-earth campaign against the Company, knowing that it lacked the right or any genuine evidentiary foundation to do so.

105. But the CRD's investigation was worse than baseless and unfounded—it was unethical. The CRD's investigation was staffed with conflicted former EEOC counsel Rumduol Vuong and Sue Noh who, despite having worked as EEOC attorneys in its investigation of Activision, were immediately tasked by Kish with drumming up harassment allegations that they knew lacked a basis in reality. Vuong and Noh had both been closely involved with the EEOC's Activision investigation. In fact, as EEOC attorneys they helped prepare the EEOC's charge document against Activision, which acknowledged ***no*** prior complaints had been filed against the Company. Because of that prior work on the Activision matter on behalf of the

EEOC, Vuong and Noh were ethically and legally required to be walled off from the CRD's investigation and should have never worked on it.

106. Instead, in violation of their ethical obligations and the law, the CRD deliberately assigned Vuong and Noh to the investigation of Activision. The two immediately became key members of Wipper's team. Vuong even signed the CRD's complaint against Activision, and Noh was also listed on the pleading as representing the agency. In other words, despite possessing knowledge that no workplace complaints of any kind had been filed against Activision, Vuong and Noh participated in the preparation and filing of a meritless CRD complaint containing allegations they knew to be false.

107. Vuong and Noh showed little regard for their ethical obligations in other ways too. Emails reveal that they actually discouraged Activision employees from seeking independent legal counsel. In August 2021, Vuong and Noh—impermissibly using company email addresses they obtained, on information and belief, through compelled discovery, which should never have been used for the CRD's own ends—sent the following email directly to Activision employees:

On Aug 10, 2021, at 1:14 PM, Vuong, Rumduol@DFEH <Rumduol.Vuong@dfeh.ca.gov> wrote:

Hi all,

We also wanted to follow up and alert you that you may be contacted by private attorneys seeking to become your attorney for this case. It is unnecessary and may be misleading or confusing. A private attorney would have to file suit in your name or get the court's permission for you to intervene as a named plaintiff in this matter. Please let us know if any attorney attempts to solicit your business for this case.

Rumie Vuong
Associate Chief Counsel
CA Dept of Fair Employment & Housing

108. This unsolicited outreach was unlawful and unethical. *See* Cal. R. Prof. Conduct 4.2(b) ("In the case of a represented corporation . . . this rule prohibits communications with: (1) A current officer, director, partner, or managing agent of the organization . . . ."); *see also* Cal. R. Prof. Conduct 4.3(a). But the CRD was intent on maximizing a windfall settlement from Activision, which meant cutting off the possibility of sharing any eventual settlement award with other attorneys, including private attorneys who would be concerned with safeguarding the rights of the individual employees. Indeed, the EEOC later noted in federal court filings that the CRD advised employees not to retain private counsel because doing so would "'pull energy' away from [the CRD's] state court action."

109. The CRD went even further, attempting to upend the comprehensive settlement that Activision reached with the EEOC in September 2021. The CRD egregiously attempted to prevent the court from approving the settlement by moving to intervene, arguing it had a protectable interest in preventing the settlement's

approval.

110. The CRD's extraordinary intervention attempt drew the EEOC's ire in a remarkable display of public interagency strife. In its opposition briefing, the EEOC castigated what it termed the CRD's "disruptive campaign of interference." And the EEOC repeatedly called out the CRD's "mischaracteriz[ation] of underlying facts to accuse EEOC of collusion" as well as the CRD's other "promoted falsehoods" and "cynical mischaracterizations" meant to "dissuad[e] individuals from seeking valuable relief to which they are entitled." Further, the EEOC expressly criticized the CRD for attempting to "derail rather than supplement EEOC's civil rights efforts in the public interest." As the federal agency put it, the CRD's "true goal" was not to help the purported victims, but rather "to force individuals to recover only through its lawsuit." That would, in turn, help increase the size of the settlement Kish and Wipper intended to extort from Activision, maximizing the financial and reputational benefit to CRD in the process. In further breach of their responsibilities, they used public funds to pay exorbitant legal fees to Outten & Golden for work related to these improper filings and arguments, which they knew would be rejected by the court.

111. In a brazen attempt to support its failing unionization effort against Activision, the CWA also attempted to derail the settlement by filing its own motion in support of the CRD—***another example of the Union unethically abusing the***

legal process to aid its organizing campaign. In fact, the Union appears to have coordinated these efforts with the CRD and Outten & Golden. In late 2021 and early 2022, counsel for the CWA repeatedly forwarded its correspondence with the EEOC to the CRD and its lawyers at Outten & Golden (who also represented the CWA in other matters). Even the EEOC recognized that the CWA's arguments were "strikingly similar to those made several times by [the CRD]."

112. The District Court duly rejected the motions and approved the settlement, noting that the CRD and CWA's arguments were baseless and inaccurate. The District Court expressly called out that "many of the statements in the [CRD's] Objections are simply inaccurate, based on speculation, or otherwise address issues that the [CRD] should not be concerned with."

113. During these proceedings, the District Court was presented with evidence of the severe ethical shortcomings that infected the CRD's investigation. In response, the CRD was forced to engage outside counsel to represent it. Rather than seek representation from the California Attorney General, however, the CRD retained the law firm Outten & Golden—***the same firm that was simultaneously representing the CWA union*** (further underscoring the scope of collaboration between the CRD and Union). Indeed, Outten & Golden had an established history of representing the CWA. The CRD should have either asked the Attorney General's office to step in or identified a wholly impartial, independent law firm, without

conflicts, to step in to the shoes of the State. The CRD failed to do so.

114. Outten & Golden and its client the CWA—who had no momentum in its unionization efforts against Activision—had a great deal to gain by perpetuating a false narrative about systemic workplace misconduct. Ultimately, Outten & Golden obtained millions of dollars in legal fees, and the litigation created far better conditions for the CWA through the media storm created by the knowingly false allegations perpetuated by the CRD.

3. November 2021 to June 2022: The Media Campaign

115. In addition to the lawsuit pursued by conflicted attorneys, Kish and his collaborators at the CRD and the CWA resorted to a coordinated media campaign. They collaborated with a small group of friendly, Union-aligned reporters to publish hit pieces in the *Wall Street Journal* with fabricated and unsubstantiated allegations of misconduct, directed at both Activision and Mr. Kotick.

116. These journalists—*e.g.*, the WSJ's Kristen Grind, Ben Fritz, and Sarah Needleman—colluded to amplify unverified claims of misconduct. Beginning in summer 2021, Kish, Wipper, and others at the CRD used the media to propagate lies about Activision and Mr. Kotick even though the CRD had a stringent "no comment" policy for media inquiries regarding ongoing matters. The CRD offered select reporters special access to information related to the investigation—currying favor and allowing the CRD to shape press coverage from behind the scenes. The CRD

then enlisted these journalists to publish a series of articles supposedly based on the CRD leaks, which were filled with mischaracterizations and even outright lies. The CRD's intent was clear—use the media to muddy the reputations of Mr. Kotick and Activision's directors to create artificial settlement leverage, including by making them the target of widespread hate and disparagement. The CRD did not even attempt to hide this, with Wipper threatening extortion in meetings with the EEOC, stating that "***reputations will be ruined***" if the CRD did not get its desired outcome.

117. Between July 2021 and June 2022, Kish, Wipper, and other CRD personnel frequently had secretive, offline conversations with members of the press who were willing to speak off the record and whom the agency trusted to write articles supportive of their sensationalist campaign against Activision and Mr. Kotick. The CRD's biggest media allies were *The Wall Street Journal*'s Kirsten Grind and Sarah Needleman, who, on information and belief, were both members of the NewsGuild/CWA, the very same labor union attempting to destabilize Activision to create an opportunity to attract new members. These reporters never disclosed the obvious conflict. Misleading information made its way into news reports and resulted in an onslaught of negative press coverage concerning Mr. Kotick's leadership of the Company that had no basis in reality.

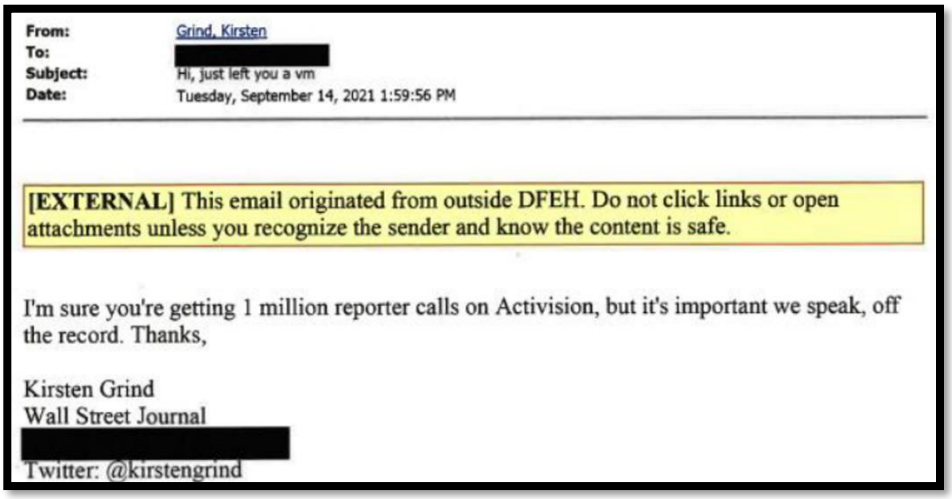
118. The media storm touched ground on November 16, 2021. On that date, the *Wall Street Journal* published a take-down piece (authored by Grind and

Needleman). This article, largely dependent on the false information contained in the CRD's complaint, also cited unnamed "people familiar with the matter" and "documents reviewed by the Journal" as support for unsupported, disproven claims.

119. In the lead up to that article's publication, beginning in September 2021, Grind and Needleman had been routinely in contact with Wipper. On information and belief, Wipper repeatedly shared unsubstantiated and false information including out-of-context information taken from Activision's privileged compliance files.

120. Emails show that Grind contacted Wipper over multiple mediums, writing in an email at one point: "Hi, just left you a vm. I'm sure you're getting 1 million reporter calls on Activision, ***but it's important we speak, off the record***."

121. Wipper evidently understood the wrongful nature of her contact with Grind, given that her name was redacted from the initial version of the email produced to Activision:



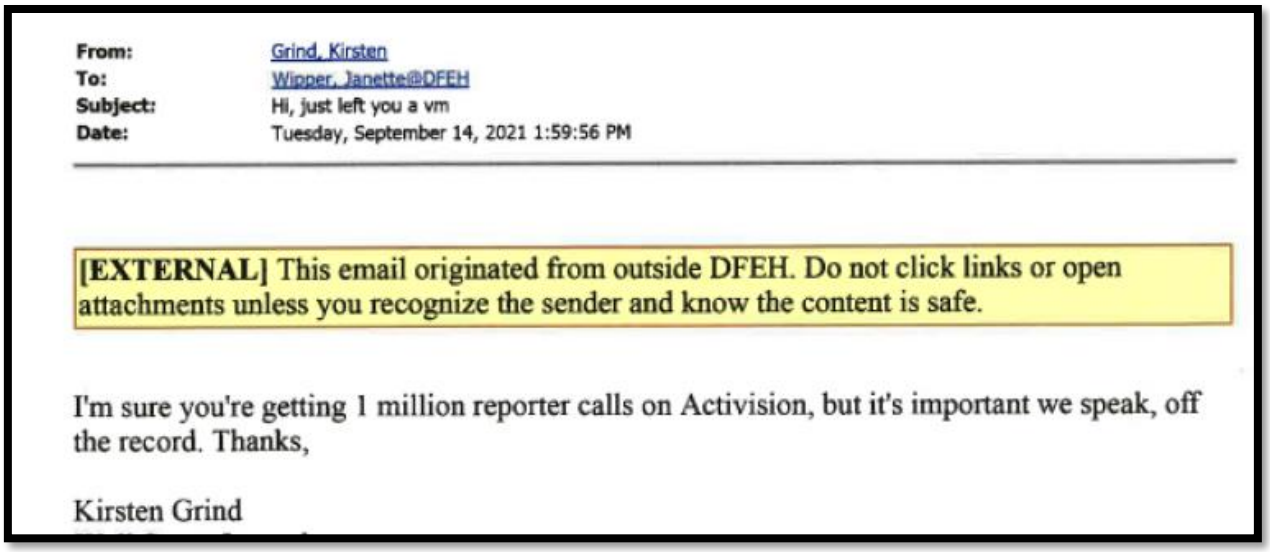
From: Grind, Kirsten
To: [redacted]
Subject: Hi, just left you a vm
Date: Tuesday, September 14, 2021 1:59:56 PM

[EXTERNAL] This email originated from outside DFEH. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I'm sure you're getting 1 million reporter calls on Activision, but it's important we speak, off the record. Thanks,

Kirsten Grind
Wall Street Journal
[redacted]
Twitter: @kirstengrind

122. This initial redaction, later withdrawn after Activision pressed the CRD on the total lack of basis for it, was intended to conceal the fact that the CRD's Chief Counsel was impermissibly speaking with a reporter, in violation of CRD policies, about an ongoing investigation she was overseeing:



From: Grind, Kirsten
To: Wipper, Janette@DFEH
Subject: Hi, just left you a vm
Date: Tuesday, September 14, 2021 1:59:56 PM

[EXTERNAL] This email originated from outside DFEH. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I'm sure you're getting 1 million reporter calls on Activision, but it's important we speak, off the record. Thanks,

Kirsten Grind

123. On information and belief, Wipper spoke on the phone with Grind at least once, but likely more often, prior to publication of the *Journal*'s November 16, CRD-driven attack on Mr. Kotick. And throughout September and October 2021, while Grind and Needleman were working on the November 16 article, Needleman was also in communication with CRD officials, including through multiple emails between Needleman and Wipper in late October regarding Activision.

124. The same day as the *Journal*'s hit piece, on November 16, 2021, the Activision Board issued a statement expressing full confidence in Mr. Kotick and

recognizing with conviction that he "appropriately addressed workplace issues brought to his attention."

125. Despite this statement, the media onslaught had a negative effect on Mr. Kotick and Activision. Mr. Kotick became the target of public disparagement and virulent antisemitism, as well as threats of violence predicated on the utterly inaccurate reporting and the CRD's false narrative. ***This is the very same false narrative that infects the entirety of Plaintiff's Complaint.***

126. Worse, the onslaught of hate was not limited to Activision and Mr. Kotick's professional life—it became personal. The CRD's leaks of false allegations to media allies generated an outpouring of anti-Semitic hate and violent threats against Mr. Kotick. As just one example, in an online forum discussing the November 16 article, one commenter wrote: "who cares he's a fucking goblin jew i hope they pull him apart." Another wrote, "[a]s a kike he is by default a kiddy diddler. Its [sic] part of their religion. As a rapist it comes with the job."

4. <u>January 2022: The Frivolous CRD Director's Complaint Against Mr. Kotick in His Personal Capacity</u>

127. Having already brought a baseless lawsuit against Activision and fomented a covert media smear campaign against Mr. Kotick, the CRD did not stop there. On the contrary, the agency simultaneously ramped up its personal attacks. On January 11, 2022, the CRD filed an egregious, unprecedented "Director's

Complaint" against all members of the Board of Directors (including Mr. Kotick), threatening them with knowingly unenforceable claims of personal liability. The Complaint cited absolutely no facts in support of these spurious allegations.

128. The Complaint was legally dead on arrival, as California law prohibits such individual liability for company directors. When lawyers for the Directors pressed the CRD on these deficiencies, the agency failed to even respond. The CRD then improperly communicated these charges to the media and let the knowingly false charges linger for more than a year without taking further action.

129. After a year of dangling the threat of personal liability over the Directors' heads, the CRD unceremoniously withdrew the Director's Complaint on February 8, 2023, in a two-sentence letter providing no explanation—though of course there could be no legitimate explanation for such unethical conduct.

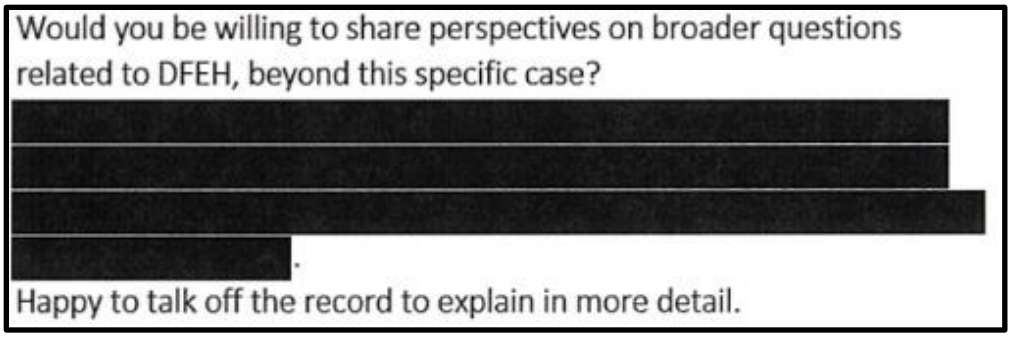
5. December 2022: Activision Files Public Records Lawsuit Against CRD

130. Meanwhile, Kish and the CRD worked overtime to cover up the evidence of their smear campaign. When Activision sought to shed light on the CRD's wrongdoing related to this smear campaign, Kish and Wipper slow walked the agency's responses to Public Records Act ("PRA") requests, taking years to comply with simple requests. The CRD's PRA unit did not maintain an ethical wall to protect the response process from the legal division attorneys who were handling

the agency's case against Activision, allowing Kish and Wipper to directly participate in the process, determining which of their own documents the CRD should release to Activision and in what form.

131. When the CRD did eventually produce some documents, its productions were marred by flawed collection methodologies and attempts to cover up conversations with reporters (often heavily redacted by Kish and Wipper themselves to hide their personal involvement). The aforementioned email from Grind to Wipper seeking an "off the record" call in advance of the *Journal*'s hit piece is one such example. The CRD redacted Wipper's name in a plainly improper attempt to conceal the fact that it was Wipper who was communicating directly with Grind.

132. Likewise, when CRD initially produced the email from reporter Noah Smith that led to an off the record call with Kish, the agency redacted his statement that sources were questioning CRD's motives in suing Activision, as well as his reference to reports that CRD was seeking a staggering $400 million to resolve the CRD's discrimination and harassment claims against another videogame publisher, Riot Games. The original version was redacted as such:


Would you be willing to share perspectives on broader questions related to DFEH, beyond this specific case?
[redacted]
Happy to talk off the record to explain in more detail.

The unredacted email reads:

Would you be willing to share perspectives on broader questions related to DFEH, beyond this specific case?
We have sources who have questioned the motives of this filing -- as well as other statements made by DFEH, such as that plaintiffs in the Riot case could be due $400 million -- and would like to give your office a chance to respond.
Happy to talk off the record to explain in more detail.

133. These redactions were obvious, brazen attempts by Kish, Wipper, and their team to cover up the fact that they had engaged in inappropriate communications with the media.

134. Some of this evidence may never be recovered. After Wipper was fired in March 2022, neither she nor the CRD took any steps to ensure that the data on her government cellphone was preserved. To the contrary, and in violation of the law, the CRD completely erased all the data from Wipper's government cellphone—including all of her text messages and voicemails that would have exposed Wipper's contact with the media, union officials, and the plaintiffs' attorneys who ultimately hired her as a partner. The CRD destroyed this critical repository of evidence

pertaining to its former Chief Counsel's activities despite almost a half dozen Activision PRA requests stretching back to October 2021 seeking information regarding Wipper's communications with the media. Several of those requests explicitly sought, among other things, Wipper's text messages and voicemails. The CRD had also assured Activision that it was preserving evidence. Yet the CRD spoliated Wipper's key phone communications anyway.

135. Activision and Mr. Kotick repeatedly attempted to bring the CRD's misconduct to the State of California's attention, including with a formal complaint to the State Auditor requesting an investigation into the CRD's unlawful activity, and sending a follow-up letter providing even more evidence of the CRD's misconduct to the Auditor. Upon information and belief, Kevin Kish himself intervened to prevent an audit of his own department.

136. The CRD still has not addressed its various ethical and professional failures, and continues to, *e.g.*, refuse producing materials in response to PRA requests.

137. The CRD's PRA-related failures were ultimately the subject of a lawsuit brought by Activision to force the CRD to comply with its disclosure obligations. In that litigation, the CRD resisted discovery in much the same fashion that it resisted the PRA requests, leading the court to ultimately compel the CRD to produce additional information about the documents it withheld and to produce

several employees to sit for depositions covering the CRD's flawed PRA production process, including CRD attorney Adam Romero.

6. July 2023: Independent Investigations Corroborate the EEOC's Findings and Discredit the CRD's Claims

138. Independent experts and outside counsel also investigated the allegations while the CRD's lawsuit was pending. Consistent with the EEOC, they also did not find any evidence of systemic harassment or discrimination at Activision.

139. Gilbert Casellas—former EEOC Chairman and a recognized leader in the fields of workplace and compliance excellence—conducted an impartial review of Activision's workplace data across seven years (from Sept. 2016 to March 2023).

140. Mr. Casellas concluded that there was no evidence of widespread or systemic harassment at Activision, noting that the small number of incidents of misconduct were isolated and not reflective of systemic issues. Mr. Casellas also recognized that much of the public scrutiny Activision had received was a direct result of the CRD's misconduct,[4] and that there was no effort by Activision or its leadership to cover up allegations of harassment or discrimination. Indeed, he found

[4] In Mr. Casellas' own words, "for the past few years, the corporate culture at Activision . . . has faced significant public scrutiny, particularly with respect to allegations relating to workplace conduct. ***Much of this attention stems from false allegations made in 2021 by [the CRD]***." Mr. Casellas characterized the CRD's claims as "baseless and self-serving," and he described the media reports about the CRD lawsuit as "unsupported."

that incident information was ***never*** improperly withheld from the Board by Mr. Kotick or anyone else. Far from brushing the allegations to the side or seeking to cover them up, Mr. Kotick voluntarily took a large pay cut and publicly announced measures to put better guardrails in place to ensure the most exemplary workplace compliance of any Company in the industry—a goal he achieved. Mr. Kotick's conduct was always appropriate, which is exactly what Mr. Casellas and other independent investigators found, as did the EEOC and CRD, after conducting their extensive investigations.

141. In addition to Mr. Casellas, Activision engaged outside counsel to conduct its own independent investigation. After an 18-month investigation led by Skadden Arps, these outside counsel found no evidence of systemic issues. This review also found that Activision's leadership, and Mr. Kotick specifically, had diligently and appropriately addressed workplace issues as they arose.

142. Activision's Form 10-Q filed on July 31, 2023, reported on the Skadden, Arps investigation and Mr. Casellas' review of workplace data, including his conclusions that there was "no evidence of widespread or systemic harassment at Activision Blizzard" and that "incident information was ***never*** improperly withheld from the Company's Board."

143. The data is telling. Since 2017, the number of substantiated cases as a percentage of Activision's employee population has been remarkably low, ranging

between 0.07% and 0.16%. Activision's landmark Transparency Report, publicly released on May 31, 2023, details both the investigation and remediation of instances of workplace misconduct and the thorough, industry leading practices the Company employed. Additionally, Company data shows that, after controlling for tenure and experience, female employees were paid slightly ***more*** than their male counterparts and were promoted faster and at a higher rate than men. This was a fact that a CRD expert was forced to admit under oath at deposition, testifying that "there is no evidence that Activision Blizzard's leveling practices are discriminatory."[5]

144. These data and the findings by independent investigators corroborated what another court already determined. In January 2023, a federal court in California dismissed a shareholder derivative suit that focused on workplace issues. The court noted that Activision had retained independent legal counsel to investigate, had acted on leadership-level misconduct and pay-gap issues, and had both a working oversight system in place as well as programs to combat illegal activity.

7. December 2023: The CRD Withdraws Harassment Claims Against Activision, and Settles Claims Regarding Gender Pay

145. By the end of 2023, the CRD investigation had not uncovered any evidence of systemic harassment or discrimination. Thus, in December 2023, the

[5] Activision conducted annual pay equity analyses every year since 2015 and began publishing these results in annual Transparency Reports to demonstrate its unwavering commitment to equitable compensation for all regardless of race, creed, gender, sexual preference, or ethnicity.

CRD withdrew its all of its harassment claims, and entered into an agreement with Activision expressly stating that it did not find ***any*** systemic harassment or any misconduct by the Board, including Mr. Kotick specifically. This express callout to Mr. Kotick was no accident. The CRD had spent years maliciously smearing Mr. Kotick, and the facts necessitated such an explicit acknowledgment.

146. With the harassment claims fully withdrawn, the CRD's complaint alleged only unsupported gender-based pay and promotion disparities. Although the data proved that women at Activision were paid slightly ***more*** than their male counterparts, the Company settled the unsupported claims to resolve the protracted, costly, and distracting litigation with the CRD—with a specific agreement that all unused funds would be donated to charity.

147. Activision made a business decision to settle with the CRD, not a concession of any wrongdoing.[6] Despite this, in a blatant breach of the settlement agreement, and only four days after it was signed, the CRD's deputy communications director Rishi Khalsa (at Kish's direction) provided an unauthorized, on-the-record statement that—in violation of the settlement agreement—willfully and maliciously mischaracterized the terms of the settlement

[6] The same is true of Activision's decision to settle charges by the SEC alleging a failure to maintain proper disclosure controls and procedures pertaining to its workplace environment—which allegations were based on technical disclosure violations, rather than any systemic misconduct by the Company or its Directors.

and egregiously omitted the fact that the CRD entirely withdrew all of its harassment claims. Khalsa's untrue statement, and the ensuing media fallout, falsely claimed that the CRD continued to allege that Activision (and, by unmistakable implication, Mr. Kotick) allowed and failed to stop systemic sexual harassment at the Company. This included a December 15, 2023 article by the *Wall Street Journal*'s Kristen Grind which reported Khalsa's false statements as if they were true. This reporting stands in direct contrast to a *New York Times* article published at the same time, which correctly reported that the CRD had withdrawn all harassment and discrimination claims against Activision.

148. The *Wall Street Journal*'s Grind had an incentive to print Khalsa's false statements. At the same time that she was purportedly reporting the terms of the settlement, Grind was negotiating with a new employer to leave the *Journal*. Accurately reporting the terms of the settlement—which, as the WSJ's own editorial board acknowledged, completely undermined the CRD's years-long campaign against Activision—would have called Grind's own role in that campaign, and the inaccuracies in her prior reporting, into question, impacting her negotiations with her new employer.

149. After the CRD settlement agreement was made public, the *Wall Street Journal*'s own Editorial Board had no choice but to acknowledge that Khalsa's statements and Grind's December 15, 2023 article were false. The Editorial Board

published an article just five days later, on December 20, 2023, which acknowledged that the CRD's lawsuit made "unsubstantiated accusations" that were "amplified by the press" (including the WSJ itself).[7] The Editorial Board concluded: "***The state [of California] is now finally conceding that its allegations against Activision were unsupported . . . . Activision is essentially paying the state to admit it shouldn't have brought the lawsuit***. This is what passes as legal justice in California. ***Ms. Wipper and the state ought to be relieved that Activision isn't suing them for defamation.***"

8. The CRD and CWA Engaged in Similar Campaigns Against Other Tech Companies

150. Between 2020 and 2022, the CRD, CWA, and other union allies waged similar campaigns against Riot Games, Alphabet, Tesla and their leadership, to name just a few. The State of California's Civil Rights Division followed the same playbook each time: make incendiary claims based on unsubstantiated allegations without first conducting adequate investigations; box out federal regulators and other potential claimants; refuse to turn over records of its wrongdoing; fail to engage in good faith conciliation or mediation; conspire and collude with Union-affiliated members of the media; leak confidential compliance information and false

[7] https://www.wsj.com/opinion/activision-lawsuit-california-eeoc-civil-rights-department-janette-wipper-4844d004.

allegations for the purpose of generating explosive headlines to extract super-sized settlements (along with millions of dollars in "bounties" for the CRD); and aid unionization efforts.

151. ***Plaintiff Sjunde AP-Fonden appears to have been influenced by these campaigns***. For example, Exhibit A (attached hereto) provides evidence that Plaintiff was involved in the union-driven campaign against Tesla—another company that Plaintiff had supposedly invested in—including with some of the very same union-affiliated individuals who conspired in the campaign against Activision. (*See* Exhibit A.)

152. Plaintiff's Board also has ties to a rival video game company, Embracer Group AB ("Embracer"), a Swedish gaming company that directly competes against Activision. The Vice Chair of Plaintiff's board, Emma Ihre, served as an Embracer executive at the time that this lawsuit was filed in November 2022. As far as Mr. Kotick is aware, ***Plaintiff made no effort to address this clear conflict of interest, and neither did Embracer***. On information and belief, Embracer faced similar allegations of sexual harassment and discrimination, and was also the target of relatively mild unionization efforts—yet it never faced the media storm and litigation campaign of the sort that was unleashed against Activision. It is unclear why Embracer was spared such treatment—but it is notable that it did not face such treatment after Ms. Ihre and her fellow board members directed Plaintiff to file this

lawsuit against Activision.

D. Activision's Stock Price Was Driven by Economics—*e.g.*, Video Game Sales and Publicly Reported Financial Metrics—Not Harassment Claims

1. October 2018 to December 2018: Activision Stock Peaks and then Falls Due to Poor Sales of *Call of Duty: Black Ops 4*

153. On October 2, 2018, Activision's stock reached $84.68, a record high at the time. This was driven by the highly anticipated *Call of Duty: Black Ops 4* ("*Blacks Ops 4*") video game, which was set to be released on October 12, 2018.

154. By late October 2018, it became clear that *Black Ops 4* would not be the resounding commercial success that the Company and market had anticipated. After Activision announced lower than expected sales figures, Activision's stock price dropped to $65.22 by October 29, 2018.

155. On November 8, 2018, Activision issued its Q3 financial results and guidance. These results, and Activision's guidance for the upcoming holiday season, were much worse than anticipated. The market responded swiftly, with Activision's stock falling from $65.09 on November 7 to $47.23 by December 7.

2. January 1, 2019 to March 2020: Activision Stock Recovers Modestly Due to Restructuring of the Company

156. On February 12, 2019, Activision announced that it would be restructuring the Company by increasing investment into games for its most popular franchises, while "de-prioritizing initiatives that are not meeting expectations" and

cutting costs "across the business." Around this time, and in connection with the restructuring, Activision made the very difficult but necessary decision to reduce a portion of its workforce for the sake of maximizing shareholder value.

157. The market responded positively to the restructuring. The Company's stock price, which began the year recovering from a low of $47, gradually increased. The stock recovered to $59.42 per share on December 31, 2019. The share price remained in this range into early 2020, closing at $59.04 on March 13, 2020.

3. March 2020 to February 2021: Activision's Stock Soars as Consumers Are Stuck at Home due to COVID 19

158. Like the price of many consumer-facing technology stocks, Activision's stock price recovered during the COVID 19 pandemic, increasing from $52.76 on March 16, 2020 to $92.68 on February 4, 2021. This was driven by unexpected increases in game sales and active users, both of which skyrocketed as people were sheltered at home.

159. On February 4, 2021, Activision released its Q4 and annual results for 2020, which far exceeded expectations. Irrational exuberance set in and, like other gaming companies, Activision's stock soared, increasing from $92.68 on February 4 to $101.61 on February 5, 2021. On February 12, 2021, Activision's stock closed at $103.81, the highest closing price in Activision's entire history. A few days later, on February 16, 2021, the stock price peaked at $104.53, and then investors—

recognizing that stock prices had likely become inflated and wanting to lock in their gains—began selling. By February 22, the stock price dipped to $96.58 and continued to gradually decline—never again approaching $100 per share.

4. March 2021 to January 2022: Activision's Stock Price Drops as the World Re-Opens and Performance Fizzles

160. In line with many other technology companies, Activision's stock price continued to decline in mid-2021 as shelter-in-place restrictions were lifted. This resulted in fewer game sales and players than when COVID peaked in 2020 and early 2021.

161. Despite this, Activision had games in its pipeline that management hoped would deliver value to shareholders in the future. This included the highly anticipated *Call of Duty: Vanguard* ("*Vanguard*"), which was set to be released in November 2021. Based on sales targets for *Vanguard* and other games, Activision's Board approved a Long Range Plan with various projections that included highly aspirational growth scenarios. These projections were prepared over the course of months, including "Key Financial Metrics" taken from a July 2021 Forecast—which projections were set to be "reassess[ed]" after the Long Range Plan was issued, because "Q4.21 Vanguard performance could impact outlook."

162. On October 29, 2021, *Vanguard* was released to users who had pre-ordered the game, with the game being released to the public at large the following

week. These sales figures were far worse than what Activision planned. Activision announced this on November 2, 2021. This same day, Activision also announced, to great investor disappointment, that two of its most highly anticipated games—*Overwatch 2* and *Diablo IV*—would be delayed indefinitely. The delay wiped out investor expectations for hundreds of millions of dollars in near-term operating income. Activision's stock price immediately fell as a result, from $79.35 on November 1 to $66.75 by November 3. The stock price continued to decline into December 2021 (dipping below $60), and then recovered slightly in January 2022. On January 14, 2022—the last business day before the Microsoft deal was announced—Activision's stock closed at $65.39.

163. The fall of Activision's stock price from mid-to-late 2021 was not unusual or out of the ordinary; it was in line with the stock price trajectory for other technology and game companies whose stock prices spiked during a once-in-a-lifetime pandemic like COVID, when much of the world was sheltered in place for the first time ever. Activision's stock price fell from (a) $96.45 on June 1, 2021 to (b) $66.75 on November 3, 2021 (the day after Activision filed an 8-K report and released its Q3 results). This means that ***Activision's stock price declined by approximately 31% from June to November 2021***. Other tech companies whose stock benefited from the circumstances caused by COVID faced similar declines over this same time period, including numerous gaming companies:

- ***Embracer Group's stock fell by a strikingly similar amount—31.6%***—from June to November, falling from (a) 394.08 Swedish krona on June 1 to (b) 269.54 krona on November 17. 2021 (the day Embracer announced quarterly results).

- ***Zynga's stock price fell by 29%***, from (a) $10.75 on June 1 to (b) $7.65 on November 9 (the day after Zynga, another video game company, announced its quarterly results).

- ***Ubisoft's stock price fell by 27%***, from (a) 59.32 euro on June 1 to (b) 43.54 euro on October 28 (the day after Ubisoft, another gaming company, announced quarterly results).

- ***Tencent's stock price fell by 24%***, from (a) 609.54 HKD on June 1 to (b) 463.56 HKD on November 11 (the day after Tencent, owner of Riot Games, announced its quarterly results).

- ***Nintendo's stock price fell by 24%***, from (a) 6,676 yen on June 1 to (b) 5,064 yen on November 5 (the day after Nintendo announced its quarterly results).

- ***Zoom's stock price fell by 36.95%*** over this period, dropping from (a) $327.72 on June 1 to (b) $206.64 November 23 (the day after it announced quarterly results).

- ***Teladoc Health's stock fell 32%***, from (a) $156.36 on June 1 to (b) $106.00 by November 24 (just days after it announced new revenue forecasts to investors).

Other examples abound, but the trend is clear.

164. These results clearly show that Activision's stock followed the same trajectory as many other tech companies over the course of 2021, with stock prices peaking while consumers were stuck at home but then falling during the second half of 2021 as the world began to open. They also clearly show the consequences of investor reactions when games perform below expectations as well as the significant

delays of games that were expected to contribute meaningfully to earnings. When the Company could not confirm release dates for either *Overwatch 2* or *Diablo IV*, that added further uncertainty to future results. Although Plaintiff claims that the (false) harassment allegations are what drove the decline of Activision's stock, this is belied by the industry-wide trend that Plaintiff conveniently omits from its over 300-page complaint. Indeed, Plaintiff ignores that Activision's stock price barely changed in the wake of the salacious *Wall Street Journal* article that highlighted the California CRD's knowingly false and disproven allegations, dropping modestly from a closing price of $66.14 on November 16, 2021 to $64.20 the next day. Though Mr. Kotick suffered, and continues to suffer, extraordinary reputational harm as a result of the smear campaign waged against him, those false allegations did not have a meaningful impact on Activision's financial outlook.

5. January 18, 2022: Activision's Stock Price Recovers After the Microsoft Deal Is Announced

165. On January 18, 2022, Microsoft and Activision issued a joint press release, announcing an agreement for Microsoft to acquire Activision in an all cash transaction for $95 per share. This was a 45.3% premium compared to Activision's closing stock price of $65.39 on the last business day preceding the press release.

166. The market immediately responded, although with caution because of regulatory uncertainty. Activision's stock price reached a high of $86.90 on January

18 in the wake of the announcement.

167. Between January 18, 2022 (when the deal was announced) and October 13, 2023 (when it was ultimately completed), Activision's stock price gradually increased, reaching a high of $94.57 on October 11, 2023. However, at no time following the announcement did the stock ever reach $95, the price that Microsoft agreed to pay.

E. The Microsoft Transaction Was a Heavily Negotiated Deal That Maximized Shareholder Value—It Was Not a Fire Sale

1. November 2021: Microsoft's Nadella Contacts Mr. Kotick to Discuss a Potential Combination

168. Over the course of their more than 20-year business relationship, Microsoft and Activision executives regularly spoke about their commercial dealings and the gaming industry. On November 19, 2021, during one of those conversations, the CEO of Microsoft Gaming Phil Spencer raised that Microsoft was interested in discussing strategic opportunities with Activision. Mr. Spencer asked whether it would be possible to have a call with Microsoft's CEO Satya Nadella the following day, and Mr. Kotick agreed. Following the call with Mr. Spencer, Mr. Kotick promptly reported the discussion with Mr. Spencer to Activision's lead director Robert Morgado and Chairman of the Board Brian Kelly. Messrs. Kotick and Kelly subsequently spoke with Allen & Co.—which had provided strategic financial advice to Activision on prior occasions—about the conversation with

Spencer.

169. In a November 20, 2021 call with Mr. Kotick, Mr. Nadella expressed interest in exploring a strategic combination. Mr. Kotick promptly discussed this call with Messrs. Morgado and Kelly, and then with outside counsel. Over the next two months, Messrs. Kotick and Kelly, directed by the Board of Directors, led the strategic evaluation and negotiations with Microsoft, culminating in the deal that delivered truly extraordinary results to shareholders.

2. November 22 to December 20, 2021: Microsoft and Activision Negotiate While Activision Pursues Other Suitors

170. On November 22, 2021, Messrs. Spencer, Kotick and Kelly held a call in which Spencer communicated that Microsoft would need additional information about Activision's long-range financial plans in order to pursue a transaction. Messrs. Kotick and Kelly responded that, given the companies were competitors, Activision could not prudently share such information without a firm indication of the proposal that Microsoft was prepared to offer.

171. On November 26, 2021, Messrs. Spencer, Kotick and Kelly held another phone call. During this call, Mr. Spencer communicated that Microsoft was considering an all-cash acquisition proposal at $80.00 per share. Activision promptly ***rejected*** this offer of $80 per share (which would have resulted in a premium of over 31% for shareholders, based on a stock price of $60.62 at the time).

172. Thereafter, Messrs. Kotick, Kelly, Corti and Morgado discussed potential ranges at which the full Board should be willing to consider a realistic proposal. Based on the numerous factors detailed in the Merger Proxy Statement, the Board of Directors determined that a range of $90 to $105 would be an aggressive but compelling request. While the Company had ambitious Long Range Plans that indicated with outsized performance the Company might achieve higher stock price performance in the far future, the Board also knew that the Company had almost never achieved its Long Range Plan goals and there was always added market uncertainty that could meaningfully affect stock prices.

173. Plaintiff wrongly takes issue with the large premium range of $90 to $105. The range was carefully determined based on a risk assessment of future business prospects, the fact that the aspirational Long Range Plans had rarely been achieved, and of course the risk of market volatility (recognizing that the S&P 500 was trading at historically high multiples), along with the knowledge that this range would represent an exceptionally large premium for any merger transaction ever.

174. Activision's Board was aware that the Company consistently missed the target goals in its LRPs, underscoring their ambitious nature—including missing 22 out of 26 company-wide revenue targets for 2018 to 2023. The Activision Board knew that the LRPs were designed to be aggressively ambitious and lacked the fidelity of the Annual Operating Plans. The Board was presented with an update in

December 2021 explicitly reminding them of the Company's various misses compared to historic LRPs. The Board recognized that a premium range of $90 to $105 would be a very ambitious ask, and that there were serious regulatory risks to any transaction ever being completed, but they believed Microsoft was genuinely interested and might be willing to pay a large premium for the Company. They were right.

175. On November 28, 2021, Mr. Kotick communicated to Mr. Spencer that Activision would be willing to discuss a potential deal in the $90 to $105 range, an outsized premium range for almost any M&A transaction. The following day, on November 29, Mr. Spencer relayed that Microsoft was willing to negotiate in that range.

176. On December 3, 2021, Activision's Board of Directors convened. Mr. Kotick and Mr. Kelly shared details of Microsoft's proposal to the Board. The Board then instructed Mr. Kotick and Mr. Kelly to formally retain advisors, including Allen & Co., and continue with negotiations.

177. Later that day, Messrs. Kotick and Kelly received an unsolicited email from the CEO of another gaming company, referred to as "Company A" in Activision's March 21, 2022 Proxy Statement ("Proxy"). In that email, Company A expressed interest in exploring a potential deal but provided no details of the same. The Board was very familiar with that Company and knew it could not offer anything

remotely competitive with the Microsoft's proposal. It nevertheless authorized Mr. Kotick to have additional conversations with Company A's CEO.

178. On December 6, 2021, Activision and Microsoft entered into a mutual non-disclosure agreement to facilitate the sharing of confidential information. This same day, Mr. Kotick received an unsolicited email from "Individual B" to discuss a potential acquisition of Blizzard, or a potential take-private transaction.

179. On December 10, 2021, Activision's Board determined that management should not engage with Individual B in light of prior dealings with this individual, no articulated access to capital, and a clear inability for Individual B to ever compete with an offer from Microsoft to acquire the entire Company for an all-cash premium.

180. Later that day, Mr. Spencer indicated that Microsoft would be sending a written non-binding indication of interest to acquire Activision at a price of $90.00 per share in cash. Messrs. Kotick and Kelly expressed disappointment with the proposed price to Mr. Spencer but promptly reported the offer to Activision's Board.

181. On December 12, 2021, Activision's Board met to discuss Microsoft's offer. The Board determined that management should gauge interest from other companies with the means and regulatory capabilities that might also have an interest in acquiring the Company. The Board recognized that the regulatory environment was especially hostile to large mergers and acquisitions. Allen & Co. recommended

that Activision pursue discussions with the companies identified as Companies C, D, and E in Activision's March 21, 2022 Proxy, reasoning that these companies were most likely to have the financial wherewithal to acquire Activision. The Board determined that Activision should contact Companies C, D, and E to gauge interest, ***even though these companies had not solicited Activision or expressed any interest in a transaction***. Mr. Kotick then contacted the CEO of Company C and the Chairperson of Company D, with whom he had good relationships. Both Companies C and D expressed initial possible interest. But by December 15, Company C expressed that it was not in a position to proceed with a transaction that would be remotely competitive to Microsoft's offer.

182. On December 13, 2021, Mr. Kotick spoke with the CEO of Company E, with whom Mr. Kotick also had a good relationship. This CEO expressed interest but was concerned about his ability to execute a transaction. Company E reported a few days later that it was not in a position to pursue a full acquisition of Activision. This left Microsoft, Company A, and Company D as the remaining suitors for a potential transaction.

183. On December 14, Mr. Kotick met with Company A's CEO to discuss a potential deal, but this CEO would not provide any concrete proposals; nor did Company A have the means to compete with Microsoft's offer. Company A ultimately never made any proposal.

184. On December 15, 2021, the Activision Board met again. After being presented with updated long range financial projections, the Board determined that Activision should counter Microsoft's $90 offer with an aggressive offer of $100 per share, recognizing that meeting in the middle would be an outstanding result for shareholders. The Board authorized management to proceed with the discussions so long as Microsoft would increase its proposal to at least $95 per share in cash. Later that evening, Mr. Kotick conveyed the $100 offer to Microsoft. Thus, even though Activision's stock price fell from $62.38 on November 19 (when Microsoft first expressed interest) to a low of $58.33 on December 15, Activision still insisted on ***increasing*** the deal price significantly in order to advance the interests of shareholders. This negotiation clearly demonstrates strength, not duress. Mr. Kotick and Mr. Kelly were well known and highly regarded for their negotiating skills, having successfully acquired many companies over their three decades leading the Company.

185. On December 16, 2021, the Chairperson of Company D called Mr. Kotick, conveying that Company D was interested in exploring an acquisition of Activision. That same day, Microsoft's CEO Mr. Nadella communicated that Microsoft would increase its offer to $93 per share. Activision ***again rejected*** the offer, with Mr. Kotick and Mr. Kelly pushing for a higher price. Mr. Nadella then made a final offer of $95 per share, which was within the acceptable price range

determined by the Activision Board. Mr. Kotick and Mr. Kelly understood that Mr. Nadella was providing a clear admonition, and that the Microsoft Board would not increase its offer again.

186. The following day, on December 17, Activision's Board met. Mr. Kotick conveyed that he had not heard from Company D. The Board then authorized management to finalize the deal with Microsoft at $95 per share. The Board believed this to be an exceptional result for shareholders especially given the Company's below expected performance for *Call of Duty*, the delays and uncertain outcomes from *Diablo IV* and *Overwatch 2*, the significant industry headwinds, and the extremely unfavorable regulatory environment. The Board's decision was confirmed when 98 percent of fully informed voting shareholders approved the transaction.

187. After the Board meeting was completed, the CEO of Company D emailed Mr. Kotick indicating an interest in discussing the transaction. Despite having received the Board's authority to finalize the deal with Microsoft, Mr. Kotick scheduled a video call with Company D's CEO for December 20, 2021.

3. December 20, 2021: Microsoft and Activision Execute Exclusivity Agreement

188. On December 20, 2021, Mr. Kotick met with representatives of Company D. Mr. Kotick relayed that circumstances had changed, and that

Activision would soon not be in a position to engage in additional discussions for some time. Company D was likely to have a far more difficult time with the FTC and other regulatory approvals than Microsoft; however, Mr. Kotick invited Company D to conduct due diligence based on public information. Company D indicated that it could not proceed expeditiously based on public information. Following this, no further discussions were held with Company D. That same evening, following the Board authorization, Activision and Microsoft signed an exclusivity agreement under which the few remaining deal terms would be negotiated.

189. From December 21, 2021 to January 17, 2022, the parties continued to negotiate the relevant terms. On January 14, 2022, Activision delivered to Microsoft an initial complete draft of Activision's confidential disclosure schedules.

190. On January 17, 2022, the Board convened to discuss a draft of the Merger Agreement, which contained the Agreement's material particulars and fully informed the Board as to potential benefits and risks associated with the merger. During this meeting, Allen & Co. presented a comprehensive financial analysis and overview to the Board, which showed, *e.g.*, how the $95 offer compared favorably to contemporaneous equity research stock price targets.

191. Having been presented with this analysis and a full set of information necessary to assess the transaction, the Activision Board (i) determined that the

terms of the Agreement were advisable, fair to, and in the best interests of Activision and its shareholders; (ii) approved execution of the Agreement; (iii) directed that the adoption of the Agreement be submitted to a vote at a meeting of the shareholders of Activision; and (iv) recommended that Activision shareholders adopt the Agreement. The Board then unanimously delegated a remaining dividend issue to an *ad hoc* committee of directors consisting of Messrs. Morgado, Kelly and Corti as it had for prior dividend decisions.

4. January 18, 2022: Microsoft and Activision Announce the Merger Agreement

192. On January 18, 2022, Microsoft and Activision signed the Merger Agreement and issued a joint press release regarding the same. Unusually for a transaction of this size, but as has been the case with all prior Activision mergers, there were ***no*** prior leaks to the media. The press release announced a purchase price of $95 per share, an over 45% premium compared to Activision's stock price of $65.39 on the preceding business day. The 45% premium to Activision's pre-announcement stock price appears to be the ***largest premium ever achieved*** in an all-cash acquisition of a public gaming company.

193. The market immediately responded positively to the deal and its massive premium, based on the proposed merger, merger partner, and purchase price of $95 per share. Analysts subsequently concluded that the $95 purchase price was

an exceptional deal for shareholders. The deal was heralded as another demonstration of the prowess of Messrs. Kotick and Kelly and their unwavering commitment to delivering outsized shareholder returns.

5. February to April 2022: Activision Releases Proxy Statement and Shareholders Overwhelmingly Approve Transaction

194. On February 18, 2022, Activision released a Preliminary Proxy Statement, disclosing the proposed transaction's relevant financial terms.

195. Then, on March 21, 2022, Activision released a Definitive Proxy Statement ("Proxy"). The Proxy disclosed the transaction's material particulars and provided shareholders with over one hundred pages of disclosures, which contained a full set of all the information necessary to properly assess the transaction. The Proxy also incorporated Activision's SEC filings, which provided additional data.[8]

196. On April 28, 2022, a Special Meeting of Activision's shareholders was held, in which shareholders voted on the proposed transaction with Microsoft. Shareholders overwhelmingly approved of the acquisition. Approximately 68% of the voting power cast votes, with ***98% of votes cast in favor.***

[8] Although AP7 asserts that the Proxy Statement was required to contain (1) a company disclosure letter, (2) disclosure schedules, and (3) a survivor's certificate, items (1) and (2) do not appear in section 251(b) of the DGCL whatsoever. Item (3) is a ministerial closing document that would not contain unique material information. And while AP7 claims that Activision should have provided additional disclosures in May 2023—after it sent a made-for-litigation letter to counsel—AP7 does not allege how such information could possibly impact shareholders' decision-making.

197. The consensus view of industry analysts, institutional investors, and other experts is that this was an exceptional deal for both shareholders and the Company. Beyond the obvious financial windfall, industry analysts and experts also recognized the opportunities for synergies that could allow the companies to better compete against industry leaders like Sony, Nintendo and Tencent, providing much needed intellectual property and games for Microsoft's ambitious Game Pass initiative. Professor Habir Singh of the Wharton School also recognized the "truly transformative" and "remarkable" nature of the deal, highlighting the companies' potential to thrive as the industry transitions to AI-enabled cloud gaming (an area where Microsoft was uniquely situated to add value).

198. Given all of the above, it should come as no surprise that analysts and investors overwhelmingly supported the transaction. Plaintiff's contrived narrative notwithstanding, there can be no credible dispute that the deal delivered extraordinary strategic and financial benefits for both the Company and its shareholders.

6. May 2022 to October 2023: The Proposed Merger Withstands Regulatory Scrutiny and is Completed

199. Following approval of the transaction by shareholders, the work was far from over. Activision and Microsoft undertook a years-long process through which they navigated difficult regulatory scrutiny from numerous government

agencies.

200. Plaintiff makes numerous specious claims in support of its purported argument that Activision should have terminated the deal while regulatory review was pending, or otherwise should have taken steps to disrupt the transaction and seek even more additional consideration. None of these claims and allegations has merit, especially considering 98 percent of voting shareholders approved the transaction.

201. Plaintiff contends that Activision should have allowed the merger agreement to expire on July 18, 2023, and instead collected a $3 billion termination fee—an amount Plaintiff calculates at approximately $3.80 per share before taxes. Allen & Co. provided the Board with the information necessary to evaluate the merits of selecting the one-time taxable gain of a breakup fee and the stand-alone value of Activision as compared to the merger price. Moreover, while Activision's stock price rose gradually in 2023, that increase was driven principally by increasing market confidence that the merger would close, not by any independent indication that Activision's stock would have achieved comparable gains absent the transaction.

202. Plaintiff also ignores that, when the parties extended the termination date to October 18, 2023, Activision also extracted an unprecedented increase in the termination fee that Microsoft would owe should the deal fall through. The extension of the termination date and replacement fee schedule struck the right

balance to protect shareholders' interests in the $30 per share windfall that they were set to receive if the deal closed, while also providing up to $1.5 billion in additional compensation if the deal fell through.

203. Even further, when Activision and Microsoft agreed to extend the termination date, Activision extracted a significant benefit for shareholders in the form a relaxed dividend restriction in the Merger Agreement. This permitted Activision to declare one regular cash dividend for fiscal year 2023 in an amount not to exceed $0.99 per share. As a result, Activision paid shareholders approximately $1.2 billion in dividends—which, again, delivered a significant additional benefit to shareholders.

204. Plaintiff also apparently believes that Activision should have terminated the deal to seek a new counterparty or to maintain Activision as a standalone company. Even with the deal expiration looming, no counterparties emerged with any offer. And the regulatory environment became even more hostile for mergers and acquisitions. Further, increasing headwinds from AI, and increased competition from new entrants like Netflix, the Walt Disney Company, and Meta, made the transaction with Microsoft even more attractive.

205. Plaintiff claims that Activision announced exceptional Q4 2022 results on February 6, 2023 that would have supported an increase in Activision's standalone value. Again, Plaintiff ignores the hard facts—Activision's stock price

barely moved as a consequence of the announcement. The stock price started at $76.70 on February 1, *lowered* to $75.60 on February 7, *lowered even more*, to $72.89 on February 8, and then finished at $76.25 on February 28.

206. Throughout the pendency of the merger, until it closed on October 13, 2023, Mr. Kotick was instrumental in obtaining international regulatory clearances. Mr. Kotick fulfilled the mandate of the Board of Directors and devoted himself to helping the merger clear regulatory hurdles, while continuing to successfully operate the Company. Mr. Kotick, as he always had, remained focused on fulfilling his responsibilities to the stockholders, recognizing that it was in the best interest of Activision's stockholders to receive $95 per share. Throughout this entire period, in the absence of a consummated sale to Microsoft the expected alternative for Mr. Kotick was to remain at the helm of an independent Activision where he would likely remain as CEO for many years to come.

207. On October 13, 2023, the UK's Competition and Markets Authority approved the deal. Thus fell the last remaining obstacle to the completion of one of the very best examples of shareholder value creation in decades.

F. Mr. Kotick Would Have Benefitted from Any Alternative Deal or Recovery in Activision's Stock Price; Thus, Mr. Kotick's Interests Were Fully Aligned with Shareholders' Interests

208. Among the most egregious falsehoods in Plaintiff's Complaint is that Mr. Kotick could have or should have been terminated for cause as a result of the

false allegations of systemic misconduct. As an initial matter, there is absolutely no basis to assert Mr. Kotick should have been terminated for cause—because there was literally no conduct by Mr. Kotick, even with the false assertions of the CRD, that was cause for termination. None.

209. The supposed allegations Plaintiff cites as a basis for termination are ***not*** actual reasons for termination. ***The Board knew Mr. Kotick had acted appropriately at all times and the Board knew that the allegations against the Company were false***. Of course the EEOC, CRD, and numerous independent investigators did not find any systemic misconduct at Activision, and demonstrated that Mr. Kotick acted appropriately to address any workplace incidents that were brought to his attention. This alone is sufficient to defeat Plaintiff's claims that Mr. Kotick could have or should have been terminated for cause, as there never was any cause to terminate Mr. Kotick—in fact, quite the opposite. The Board, shareholders, and peers all recognized Mr. Kotick as an exceptional CEO having delivered outsized shareholder returns in a competitive, difficult business for decades.

210. Plaintiff further claims that Mr. Kotick's termination would have resulted in a "huge financial loss" for Mr. Kotick, and that because of his interest in continued employment, his interests differed from those of Activision stockholders. Nothing could be further from the truth. (1) Mr. Kotick was not at risk of being terminated for cause, and (2) he would have continued to benefit from (a) any

alternative deal that Activision could have negotiated with another company (although no better alternative existed), and (b) any increase in Activision's stock price as a standalone company. Indeed, the significant stock holdings held by Mr. Kotick and Mr. Kelly ensured their interests were always aligned with stockholders.

211. Analysts and experts recognized as much, with one concluding that "the aspect of Bobby's management that appealed most to shareholders is his alignment with shareholders. Bobby's compensation has consistently been tied to the appreciation of Activision shares over a long period of time . . . . Bobby would benefit ONLY if shareholders benefited from share price appreciation. He's always behaved in a manner fully aligned with shareholder interests, and I think they appreciate that he manages the company in order to maximize shareholder returns."

212. If anything, Mr. Kotick gave up an annual income of approximately $35 million per year (if the Company met its annual performance targets) by pursuing the Microsoft transaction rather than continuing to operate as a standalone company, which inured to the obvious benefit of shareholders. Plaintiff's contrary narrative—just like the rest of its claims—was built on baseless speculation that has been discredited and is unsupported by any evidence.

VERIFIED COUNTERCLAIM

Mr. Kotick alleges for his Counterclaim against Plaintiff and Counterclaim Defendant Sjunde AP-Fonden ("AP7"), upon personal knowledge as to himself and upon information and belief as to all other matters, as follows:

A. The Parties and Jurisdiction

213. Counterclaim Plaintiff Robert Kotick ("Mr. Kotick") is an individual and the former CEO and Director of Activision. Mr. Kotick resides in California.

214. Counterclaim Defendant Sjunde AP-Fonden ("AP7") is a public pension fund based in Sweden.

215. This Court has personal jurisdiction over AP7 because AP7 purposefully availed itself of the privileges of conducting activities in Delaware by filing a lawsuit in this State challenging a merger involving a Delaware entity and asserting claims under Delaware law, thereby invoking the Court's jurisdiction and protections.

216. Venue is proper because AP7 initiated this action in the Court of Chancery and has already invoked this Court's jurisdiction to adjudicate its claims.

B. AP7 Has Abused the Legal Process in Furtherance of Ulterior Motives

217. It is well established that a plaintiff may not abuse the legal process to achieve ulterior motives. A plaintiff who engages in "misuse of the legal system for

some personal end" commits the tort of abuse of process. *E.g.*, *Stevens v. Indep. Newspapers, Inc.*, 1986 WL 13086, at *1–2 (Del. Super. Nov. 13, 1986). This is true in Delaware and throughout the United States, where the law recognizes that a plaintiff may not use a lawsuit for ulterior purposes such as: (i) harming an opponent's reputation or bolstering their own reputation; (ii) causing business loss; (iii) bolstering another party's business prospects; (iv) suppressing competition or achieving an anticompetitive purpose; (v) effectively extorting or "strong arming" a party into settlement by forcing them into burdensome litigation, including under threat of reputational harm; (vi) coopting legal authorities to gain a tactical advantage on collateral matters; and (vii) any other ulterior purpose that is collateral to the relief sought in a legal proceeding.[9]

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[9] *See*, *e.g.*, *Hanlon v. Mitchell*, 1994 WL 319260, at *1 (Del. Super. May 16, 1994) (defendant prevailed on its abuse of process counterclaim: "Two Seas counterclaimed against Mitchell, alleging that Mitchell's assault resulted in a loss of business and reputation in the community and that Mitchell's lawsuit constituted an abuse of process."); *Toll Bros. v. Gen. Acc. Ins. Co.*, 1999 WL 744426, at *1 (Del. Super. Aug. 4, 1999), *aff'd*, 765 A.2d 953 (Del. 2000) (abuse of process counterclaim succeeded after trial, where claimant alleged that plaintiff's action "was an attempt to strong arm these competitors into submission by forcing them into a complex and burdensome litigation."); *Toll Bros., Inc. v. Gen. Acc. Ins. Co.*, 1999 WL 1442016, at *1 (Del. Super. Dec. 27, 1999), *aff'd*, 765 A.2d 953 (Del. 2000) (the "court awarded the competitors $148,003.34 in compensatory damages on the successful abuse of process claim"); *NTC Grp., Inc. v. W. Point-Pepperell, Inc.*, 1989 WL 157337, at *1 (Del. Ch. Dec. 22, 1989) (abuse of process counterclaim properly "allege[d] that the filing of this suit constituted an abuse of process"); *Stevens*, 1986 WL 13086, at *1–2 (abuse of process counterclaim properly alleged "that plaintiff instituted the pending action against defendants for a purpose wholly collateral to the litigation, viz., to stop or delay further publication by defendants of truthful information

218. "The elements of abuse of process in Delaware have been plainly stated to be: (1) an ulterior purpose, and (2) a willful act in the use of the process not proper in the regular conduct of the proceedings." *Stevens*, 1986 WL 13086, at *1–2. To prevail on an abuse of process claim, the claimant need not wait until it achieves a favorable termination on the merits. *Id*. Indeed, the claimant need not prevail on the merits of the underlying suit at all—a party like AP7 that has abused the legal process should "be held liable even if [they] rightly invoked the process and even if the person against whom it is invoked is in fact liable civilly. The reason for this is that the gist of the tort is misuse of the legal system for some personal end." *Id.*

219. In this case, Mr. Kotick and the Activision parties fully expect to be vindicated on the merits. However, Mr. Kotick is compelled to immediately bring AP7's abuse of process to light.

220. Specifically, AP7 has shown through its conduct that it: (1) harbors ulterior motives and seeks to advance improper collateral goals for which the judicial system is not designed nor intended, and (2) has engaged in numerous willful acts

about plaintiff and to *injure defendants' reputation*") (emphasis added); *Rhinehardt v. Bright*, 2006 WL 2220972, at *4 (Del. Super. July 20, 2006) (abuse of process claim properly alleged that defendant contacted legal authorities to achieve ulterior purpose); *see also Guilfoile v. Shields Pharmacy, LLC*, 2020 WL 291368, at *4 (D. Mass. Jan. 21, 2020) ("Intangible damages, such as damage to one's reputation, are recoverable on a claim for abuse of process.") (citing *Millennium Equity Hldgs, LLC v. Mahlowitz*, 456 Mass. 627, 650 (2010)).

that are not proper in the regular conduct of legal proceedings and which have harmed Mr. Kotick and the Activision parties. This includes, without limitation, the following collateral motives, opportunities, and forms of harm described below.

1. AP7's Close Ties and Financial Interest in Embracer Reveal This Lawsuit Was Brought to Advance Ulterior Motives and Secure Improper Collateral Advantages

221. Embracer Group AB is a video game conglomerate based in Sweden that directly competes against Activision. As described below, AP7 not only had close ties to Embracer at all relevant times, but AP7 was also an investor in Embracer and stood to benefit from any increase in its stock price resulting from this suit.

222. AP7's close ties to Embracer are well established. AP7's Vice Chair Emma Ihre—the second highest ranking individual at AP7—was also a high-ranking Embracer executive at the time she and the other AP7 directors decided to bring this lawsuit and file its amended complaints. In particular, Mr. Ihre was Embracer's Head of Sustainability and ESG from January 2022 to December 2024.[10]

223. AP7 was also an Embracer investor at the time this suit was brought and thereafter. Although AP7 has obscured this fact by listing Embracer's former name "THQ Nordic" in its holdings disclosures, AP7 apparently owned over

[10] *See* https://www.linkedin.com/in/emma-ihre-a9950817/.

640,000 shares in Embracer during this suit's pendency.[11]

224. As further described below, Embracer was facing extreme economic turmoil in fall 2022, and was grasping at ways to reverse the decrease in its stock price that occurred throughout 2022. The lawsuit did just that: ***Embracer's stock price spiked immediately after AP7's complaint was released to the public on November 9, 2022***—by 15% from November 9 to 11, 2022.[12] Indeed, the increase from November 9 to 10 was ***the largest one-day increase in Embracer's stock price for the entire 2022 year.*** This benefitted not only Embracer, but also AP7 and Ms. Ihre (who owned significant shares in Embracer).

225. Notably, this lawsuit was timed to occur just days before Embracer would be announcing disappointing financial results and the delay of its most highly anticipated game *Dead Island 2*. Embracer announced these results and the delay of *Dead Island 2* on November 17, 2022, which Embracer knew would exert downward

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[11] *See* https://www.ap7.se/app/uploads/2022/02/innehav-ap7-aktiefond-31-dec-2021.pdf at 32 (list of AP7's holdings as of December 31 2021, showing AP7's investment in "THQ Nordic AB," the former name of Embracer); https://www.ap7.se/app/uploads/2022/08/halvrsredogrelse-2022-ap7-aktiefond-innehavslista.pdf at 31 (same, AP7's holdings as of August 2022); https://www.ap7.se/app/uploads/2023/08/innehavslista-ap7-aktiefond-20230630.pdf at 27 (same, AP7's holdings as of June 2023); https://embracer.com/releases/renaming-to-embracer-group-and-share-split-to-take-effect-at-nasdaq-first-north-growth-market (name change from THQ Nordic to Embracer was in October 2019).

[12] After AP7 filed the public complaint on November 9, 2022, Embracer's stock increased immediately from (a) 171.76 krona on November 9 to (b) 190.27 krona on November 10, and then to (c) 197.12 krona on November 11. This amounts to a one-day increase of 11% from (a) to (b), and a 15% increase from (a) to (c).

pressure on its stock price. It appears that AP7's complaint—made public on November 9, 2022—was one way to cushion the inevitable fall that Embracer was going to face just one week later, when it would announce these developments.

226. At the same time that Embracer was facing such economic turmoil, Embracer and its billionaire owner Lars Wingefors were targeting Activision's home state of California as a way to boost Embracer's economic position through mergers and acquisitions. As the LA Times put it just one month after this suit was filed: "***Why is a Swedish billionaire buying up California's video gaming empire?***" https://www.latimes.com/world-nation/story/2022-12-27/embracer-lars-wingefors-sweden-video-game-behemoth.[13]

227. Growing a gaming company through M&A centered on California is not a new playbook. It is ***the exact same playbook that Activision developed*** to become one of the world's leading gaming companies. California is where Activision's M&A activity was focused historically, including through its

[13] The LA Times added: "Today, Embracer is a $5.7-billion publicly traded company headquartered here in Karlstad, Sweden — Wingefors' sleepy hometown of 65,000 people, about 160 miles west of Stockholm — and owns more video game studios than any other corporation in the world. A growing number of them are in California, where modern gaming was born in the Bay Area with Atari and 'Pong' in the 1970s before Japan took over the gaming console world with Nintendo, Sega and PlayStation. In the last two decades, the power centers of gaming have become more international, and some of the biggest game makers are once again on the U.S. West Coast. They include Xbox maker Microsoft in Redmond, Wash., and Activision Blizzard, the creators of the current bestselling game series 'Call of Duty,' in Santa Monica." https://www.latimes.com/world-nation/story/2022-12-27/embracer-lars-wingefors-sweden-video-game-behemoth.

acquisitions of the California-based Blizzard (developer of World of Warcraft, Diablo, and Overwatch), Infinity Ward (an original Call of Duty studio), Treyarch (another leading Call of Duty studio), Shaba Games (developer of certain Tony Hawk and Spider Man games), Luxoflux, Z-Axis Games, RedOctane, and more. California is also the center of the technology-industry, and is home to engineering and design talent of the sort that companies like Activision and Embracer must recruit to stay competitive in the gaming industry.

228. AP7 has claimed that it wanted Activision to continue as a standalone entity as opposed to merging with Microsoft. At the same time, AP7 has theorized that the false harassment allegations caused Activision's reputation to suffer and its stock price to decrease. Yet under AP7's own theory—by advancing such sensational allegations—AP7 would have made it more difficult for Activision to (1) grow through M&A (which is how Activision grew historically), and (2) recruit engineering talent of the sort needed to compete against Microsoft and other gaming companies. The reason for such inconsistent allegations is becoming clear: this Delaware lawsuit was apparently aimed to help pave the way for Embracer to increase its foothold in the California market at the expense of Activision, making it more difficult for Activision to recruit talent and expand through M&A activity of

the sort that Activision relied on to grow historically.[14]

229. Embracer's focus on California was not limited to M&A. ***Just two days before AP7 initiated this action,*** on November 1, 2022, Embracer announced that it was kicking off a "new PR and Communications team" based out of Livermore, California. *See* https://www.embracerfreemode.com/post/pr-communications. As head of ESG at Embracer, Emma Ihre would have almost certainly had a role in forming and developing this new PR and communications team.

230. The fact that this PR team was kicked off just two days before this suit was filed does not appear to be a coincidence—bad press for Activision would have made it easier for Embracer in its new "PR and Communications" campaign. By contrast, through its false claims in this suit, AP7 painted Activision as a company with poor corporate citizenship. This constrained Activision's ability to recruit top talent, including female engineers, at the same time bolstering Embracer's relative positioning in terms of recruiting. This also made it more difficult for Mr. Kotick to pursue new opportunities after Activision, including, *e.g.*, charitable organizations and philanthropic endeavors of the sort he has focused on in recent years. All of this

[14] AP7 has also claimed that it wanted Activision to walk away from the Microsoft transaction to pursue a different deal. Yet by advancing sensational allegations, AP7 made it more difficult for Activision to pursue a different deal—assuming one even existed (it did not). It is difficult to credit AP7's assertion that it wanted Activision to pursue a transaction on better terms while, at the same time, AP7 was driving the very narrative that, under its own theory, depressed Activision's perceived value.

is harm that had no legitimate litigation purpose but which has materially disadvantaged Activision and harmed Mr. Kotick's reputation and interests.

231. This collateral attack on Activision also appears to be tied to Embracer's desire to boost sales of its games while leaving Activision hamstrung in the development of its own games that competed against Embracer's titles. Not only were multiple Activision games delayed or cancelled after this lawsuit was brought (including *Odyssey*, *Overwatch 2 Hero Mode*, and *Call of Duty Warzone Mobile*), but Embracer had a number of contemporaneous releases that it knew would compete against Activision's titles. These include, without limitation, the following:

Embracer	Activision
Dead Island 2 – First person action game taking place in Zombie-infested Los Angeles. Was scheduled to be released November 2022, but delayed until April 2023.	**Call of Duty Zombies** – First person action game taking place in various Zombie-infested locations. Various iterations released over time, including from 2021 to 2024 (typically in conjunction with regular Call of Duty releases).
Insurgency – First person military action game, with various releases from 2018 to 2024.	**Call of Duty** – First person military action game, with various releases (including from 2018 to 2024).
Remnant 2 – Action RPG co-op game released July 2023	**Diablo IV** – Action RPG co-op game released June 2023
Warlander – Large scale team-based multiplayer released September 2022	**Overwatch 2** – Large scale team-based multiplayer. Released via early access in October 2022 but full release was delayed to August 2023 with a reduced feature set from the original plans.

232. AP7 (including its Vice Chair Emma Ihre) has apparently brought this suit for ulterior motives, to obtain collateral advantages, and to exert collateral harm on Activision, Mr. Kotick, and the other Directors in a manner that has no proper place in the legitimate legal process. All of this—including AP7's apparent coordination with Embracer—constitutes actionable abuse of process under applicable law.

2. AP7 Has Also Coordinated with Unions and/or Their Affiliates, Apparently for the Purpose of Bolstering AP7's ESG Reputation

233. Embracer is not the only party with whom AP7 coordinated to advance ulterior purposes that have nothing to do with this lawsuit. On information and belief—including based on evidence Mr. Kotick obtained via public records requests before Plaintiff improperly shut the requests down—AP7 and its Vice Chair Emma Ihre have coordinated with unions, union-connected individuals, and select reporters as part of a broader effort to advance their joint agendas. In particular, it appears that AP7 collaborated with these individuals and joined their campaign for the purpose of improving AP7's reputation as an "ESG-minded investor"—a reputation that AP7 has sought to bolster in recent years, as it has blacklisted numerous companies that were targeted by the CWA and other unions in its unionization campaigns.

234. Specifically, around the time that AP7 brought this lawsuit, unions and

their affiliates were seeking to exploit and weaponize the #MeToo and #TimesUp movements. These individuals targeted successful, deep-pocketed tech companies like Activision, Riot Games, Disney, Alphabet, Tesla, T-Mobile and many others. Their main goal was to unionize the workers at these companies, including at Activision, because the unions were facing difficulties in growing their ranks organically. The unions and their affiliates thus needed to create the false perception that systemic issues existed at these companies, so that the unions could offer themselves as the solution to purported issues, and in the case of the Communications Workers of America, deflect scrutiny of its own sexual harassment scandals and associated cover-up.

235. AP7 was influenced by and involved in such campaigns. Not only has AP7 coordinated with individuals who drove the campaigns (as described below), but AP7 also blacklisted companies that were targeted by such union-driven efforts. This includes, for example, Tesla, T-Mobile, Deutsche Telekom, and Walmart[15]—all of which, like Activision, have been directly targeted by the CWA union.

236. On information and belief, AP7 blacklisted these companies and joined the campaign against Activision in order to bolster its reputation as an "ESG-minded

[15] *See* https://www.reuters.com/sustainability/boards-policy-regulation/swedish-pension-fund-ap7-blacklists-tesla-has-sold-entire-stake-2025-06-13/; https://www.ap7.se/app/uploads/2022/12/ap7-blacklist-december-2022.pdf.

investor" and retain pensioners who otherwise could switch to different pension funds, especially given AP7's below benchmark performance. AP7's Vice Chair Emma Ihre—an ESG executive at Embracer and other Sweden-based companies—also stood to receive reputational benefits.

237. But it did not stop with blacklisting companies targeted by unions. Mr. Kotick has obtained evidence through public records requests showing that AP7 was ***actively involved*** in the union-driven campaigns against, *e.g.*, Tesla. Although AP7 shut down any further such requests after Mr. Kotick asked for records about Activision and this lawsuit specifically, the evidence he obtained to date is telling. This evidence shows that AP7 coordinated with union-aligned advocacy groups, financial firms, PR firms, and reporters to drum-up salacious headlines and spurious legal claims that would support the joint agenda of unions and AP7. As one of the PR firms (BerlinRosen) stated to AP7 and its allies regarding the Tesla campaign: "***Thanks for the work on this campaign, and for aligning on strategy this morning. Sending an update and next steps to inform our coordination***." (Exhibit A.)

238. Notably, BerlinRosen is the very same PR firm engaged by CWA union proxies in its campaign against Activision. AP7's other allies in the Tesla campaign included numerous organizations and individuals who were also active in the Activision campaign, such as SOC Investment Group f/k/a Change to Win (a Union proxy organization masquerading as an independent institutional investor), Calvert

Research & Management, Michael Varner, As You Sow, the Office of the New York City Comptroller, and the Office of the New York State Comptroller. All were complicit in the Union organizing campaign against Activision and were clearly colluding with AP7 against Tesla and others.

239. AP7 was not a passive player in such campaigns—as stated in one email, "based on discussion with our internal partners and reflecting on the comments that AP7 and Calvert made in our latest discussions I aimed to put an initial framework together. ***From the discussion with AP7 we had taken away the need to focus on culture and the efficacy of the board***." (Exhibit A.)

240. Nor did AP7 and its cronies hide the fact that they sought to use litigation as a backdoor means of achieving joint goals and tarnishing the reputations of tech companies and their directors, with one individual responding to AP7's comments by stating his firm has "focused [the messaging] a bit and ***added some more litigation/regulator issues***." (Exhibit A.) AP7 responded by asking to have even more involvement in the campaign, offering that AP7 and its allies could proceed on "***parallel work tracks***" (one of which was litigation). (*See id*.)

241. On information and belief, AP7 and its allies are using the same playbook in this lawsuit and with Activision. However, AP7 has attempted to thwart Mr. Kotick's legitimate efforts to obtain public records from AP7 (a public pension fund) as authorized by Swedish law. Although expressly authorized by law, AP7

has threatened to seek relief in this lawsuit against both Mr. Kotick and his litigation counsel unless he agreed to suspend his public records requests. Mr. Kotick has temporarily suspended his efforts under threat that AP7 will use these proceedings to seek sanctions for his legitimate exercise of legal rights. In other words, AP7 has strongarmed Mr. Kotick by threatening him in connection with these proceedings should he continue to exercise his right to issue collateral public records requests authorized by Swedish law. Under such threat, Mr. Kotick has suspended his efforts, but discovery in this action will show the full extent and scope of AP7's abuse of the process and its efforts to achieve ulterior motives.

* * *

242. AP7 has evinced that it (1) harbors motives having nothing to do with the claims in this lawsuit and (2) is willing to engage in willful acts that, while irrelevant to AP7's legal claims, are designed to advance these improper motives, obtain collateral advantages, and cause collateral harm to Mr. Kotick and the Activision parties.

243. Mr. Kotick expressly reserves the right to amend his allegations regarding AP7's abuse of process as more evidence comes to light in discovery.

COUNT I
ABUSE OF PROCESS
(Against Sjunde AP-Fonden)

244. The foregoing paragraphs are hereby incorporated by reference as if

fully set forth herein.

245. This lawsuit constitutes legal process. Plaintiff Sjunde AP-Fonden ("AP7") has improperly used such process for ulterior and illegitimate purposes for which the judicial system is not designed nor intended, causing harm to Mr. Kotick. AP7 has done so in order to gain multiple collateral advantages described herein.

246. As described in the preceding paragraphs, AP7 has initiated and maintained this lawsuit based on improper ulterior motives including, without limitation: (1) bolstering AP7's reputation as an ESG-minded investor; (2) enhancing the value of AP7's investment in Embracer, including by enhancing Embracer's relative positioning in California; (3) causing reputational harm to Activision, Mr. Kotick and the other Directors as to matters which have nothing to do with AP7's legal claims (in a manner that created corresponding benefits for Embracer); (4) discouraging third parties from conducting business with Mr. Kotick and Activision (again, in a manner creating corresponding benefits for Embracer); (5) interfering with Mr. Kotick's existing and prospective business relationships; (6) extorting a settlement from Mr. Kotick and the Activision parties based on allegations having nothing to do with AP7's legal claims; (7) preventing Mr. Kotick from obtaining evidence through public records requests that are expressly authorized by law; (8) advancing the joint interests of AP7 and Embracer, a rival video game company based in Sweden that directly competes against Activision,

where AP7's Vice Chair Emma Ihre was a high-level executive at the time she and the other AP7 board members decided to bring this suit; and (9) advancing the joint goals of AP7 and its union-related allies, including by drumming up salacious allegations, coordinating on a PR smear campaign, and maintaining this action. Mr. Kotick reserves the right to amend this list as discovery in this lawsuit progresses.

247. As described in the preceding paragraphs, AP7 has engaged in numerous willful acts in furtherance of these ulterior purposes, many of which are continuing in nature, thereby obtaining collateral advantages (and/or causing collateral harm) not properly part of the lawsuit. This includes, without limitation, the following such willful acts: (1) on information and belief, coordinating with Embracer to achieve joint goals and bolster the financial interests of AP7 and Embracer, at the expense of Mr. Kotick and the Activision parties; (2) on information and belief, coordinating with unions and union-affiliated individuals to advance the joint goals of AP7 and its union allies, likely in exchange for leniency as to Activision's direct competitor Embracer (which AP7 had invested in); (3) threatening to seek relief against Mr. Kotick based on Mr. Kotick's public records requests, causing him to suspend his public records requests; (4) maintaining allegations of systemic misconduct at Activision which have been proven to lack merit, even reasserting these allegations in the June 2024 Third Amended Complaint—which was months after the government investigations into

Activision's workplace had concluded in 2023 with no such findings of systemic misconduct—all of which harmed Activision's competitive position (and Mr. Kotick's reputation) to the benefit of Embracer and AP7; (5) lodging and maintaining entirely irrelevant allegations that cannot possibly support AP7's claims in this lawsuit, including allegations in paragraph 43 of the Third Amended Complaint (again, to cause improper collateral harm to Mr. Kotick and the Activision parties); and (6) coopting legal authorities to further the aforementioned motives and interests, including by advancing allegations that AP7 knows are predicated on falsehoods. Mr. Kotick reserves the right to amend this list as discovery in this lawsuit progresses.

248. As a direct and proximate result of AP7's abuse of legal process, Mr. Kotick has sustained, and continues to sustain, significant damages, including injury to his business interests, his business reputation, his personal reputation and interests, expenditure of fees, and emotional distress.

249. Mr. Kotick therefore requests that the Court award the relief prayed for at the conclusion of this document.

ANSWER TO AP7'S THIRD AMENDED COMPLAINT

Mr. Kotick denies each and every allegation set forth in the Complaint except for those allegations expressly and specifically admitted below. Mr. Kotick incorporates his preceding statements into each and every response below where

applicable. To the extent any allegation herein was dismissed in the Court's October 2, 2025 Memorandum Opinion, Mr. Kotick denies it. Further, to the extent Mr. Kotick states in his Answer that documents cited in the Complaint "speak for themselves" (or uses similar language), Mr. Kotick respectfully refers the Court to those cited documents for their full, complete, and accurate contents, and denies any allegations or characterizations inconsistent therewith. To the extent the Complaint cites to statutes or other legal authorities, Mr. Kotick respectfully refers the Court to the full text of such authorities for their full, complete, and accurate contents, and denies any allegations or characterizations inconsistent therewith.

1. In 2021, Activision was rocked by public disclosure of a sexual harassment and discrimination scandal (the "Harassment Scandal"). Lawsuits were filed against Activision by the Equal Employment Opportunity Commission ("EEOC") and the California Department of Fair Employment and Housing ("DFEH"). The SEC launched an investigation into Activision. Several derivative suits and a federal securities action were filed in California and eight actions seeking books and records pursuant to 8 *Del. C.* § 220 were filed in Delaware, all concerning the Harassment Scandal. These lawsuits implicated Activision senior officers and managers for participating in, or failing to act in response to, the misconduct, including Activision's CEO Kotick. Employees staged a walkout and signed a petition calling for Kotick's ouster. Investors called on Kotick to resign. Numerous Activision officers and managers, some of whom Kotick had previously protected, and other employees were fired or forced to resign because of the Harassment Scandal. However, the Board allowed Kotick to remain as CEO. Apparently, the buck stopped with everyone except Kotick and the Board.

ANSWER: Denied, except admitted that (1) lawsuits and regulatory proceedings were initiated against Activision fueled by false allegations of systemic misconduct and (2) based on these false allegations, some employees staged a walkout and some

employees and investors called on Mr. Kotick to resign. Denied that Mr. Kotick or any of the Activision Directors engaged in misconduct of any sort. To the contrary, as reflected in the settlement agreements with both the EEOC and DFEH (aka the CRD), there was never any finding of systemic misconduct at Activision or personal misconduct by Mr. Kotick and the other Activision Directors. Denied that Mr. Kotick "protected" any Activision officers or managers from the consequences of engaging in sexual harassment or discrimination. Denied that the Activision Board "allowed" Mr. Kotick to remain as CEO insofar as Plaintiff's use of the word "allowed" implies any improper conduct or acquiescence. Denied that the "buck stopped" with everyone except Mr. Kotick and the Activision Board.

2. In response to the continual bad news from July 2021 through November 2021, Activision's stock, which had traded over $100 per share in February 2021 and closed at $90.14 the day before the DFEH suit was filed in July 2021, dropped to the low $60s by the second half of November and stood at $65.39 on January 14, 2022, the last trading day before the Board purportedly approved the Merger Agreement.

ANSWER: Denied, except admitted that the price of Activision's stock varied during 2021. Denied that the Board "purportedly" approved the Merger Agreement insofar as Plaintiff's use of the word "purportedly" implies that the Activision Board

did not properly approve the Merger Agreement.[16]

3. The scandal intensified in mid-November 2021, after *The Wall Street Journal* published a scathing article on November 16, 2021, reporting that Kotick knew about and was directly involved in the Harassment Scandal. Two of Activision's most important business partners and customers, Microsoft and Sony Group Corporation ("Sony"), severely criticized Activision's toxic environment, and Microsoft's then-Corporate Vice President ("VP") of Gaming Phil Spencer ("Spencer") announced that Microsoft was reconsidering its relationship with Activision. Seeing that Activision and its CEO were weak and wounded, Microsoft—with whom Kotick had developed and maintained a close relationship over the past twenty years, and had the ability and incentive to use Activision's games to be a leader in the gaming industry—used its commercial leverage to buy Activision at a bargain price. When Kotick, in response to Spencer's criticism, spoke to Spencer three days after *Kotick Knew* was published, they decided Microsoft should buy Activision. There had been no Board decision to put Activision up for sale, it was not an opportune time to sell Activision because of the Harassment Scandal and the sales process was conducted by Kotick, not by independent directors.

ANSWER: Denied, except admitted that (1) on November 16, 2021, *The Wall Street Journal* published a defamatory article ("*Kotick Knew*") reporting that Mr. Kotick knew about sexual harassment and discrimination at Activision and (2) it was reported that Microsoft and Sony made statements influenced by the false allegations against Activision and Mr. Kotick. Denied that Mr. Kotick or the other Activision Directors engaged in misconduct of any sort. Denied that the sales process was

[16] To the extent Plaintiff uses the word "purportedly" in other allegations in its Complaint to imply any deficiencies in the Merger Agreement, the Merger, or the conduct of Mr. Kotick and the other Activision Directors, Mr. Kotick denies such implication.

conducted entirely by Mr. Kotick, not by independent directors.

4. Faced with increasing pressure to leave Activision, Kotick hastily negotiated a merger to protect himself, agreeing to sell Activision to Microsoft for $95 per share (the "Merger"). The Activision Board also faced potential criticism and liability for the Harassment Scandal. However, a majority of the directors have relationships with Kotick that dissuaded them from terminating him. Rather than holding Kotick accountable and firing him for cause, the Board approved a draft of the Merger Agreement to protect themselves and Kotick.

ANSWER: Denied, except admitted that the Activision Board "faced potential criticism" for the false sexual harassment and discrimination allegations (although denied that these allegations had a basis in truth). Denied that Mr. Kotick "hastily negotiated a merger to protect himself." Denied that Mr. Kotick could have or should have been terminated for cause, or that he engaged in any wrongdoing that would have subjected him to a for-cause termination. Denied that the Activision Board faced potential liability for the false sexual harassment and discrimination allegations. Denied that a majority of the directors have relationships with Mr. Kotick that dissuaded them from terminating him. Denied that the Activision Board approved a draft of the Merger Agreement to protect themselves and Mr. Kotick.

5. Defendants violated Section 251 because the Director Defendants did not properly adopt the agreement of merger, as required by Section 251(b). In purportedly approving the Merger Agreement, they failed to review and approve the disclosure schedules, the Company Disclosure Letter (the "CDL") and the Certificate of the Surviving Corporation (the "Survivor's Certificate") that are part of the agreement of merger Section 251 requires. They did not even approve the Execution Version of the Merger Agreement. Instead, they approved a draft merger agreement dated January 17, 2022 (the "Draft Merger Agreement") that was marked

"draft," identified Activision as "Denali," included a placeholder date of "January [17]," identified the Merger consideration as "[•]," and omitted the CDL, disclosure schedules and "Exhibit A" (the Survivor's Certificate). It was evident from the face of the Draft Merger Agreement that it was not complete and did not contain required elements. Section 251(b) requires the Board to approve an entire agreement of merger containing six specified elements, not a partial draft that omitted required elements. It also requires the Board to approve a Section 251-compliant agreement of merger. The Board never approved the agreement of merger Section 251 mandates. The Director Defendants also violated Section 251(b) and 8 *Del. C.* § 141(c) by improperly delegating to an *ad hoc* committee of the Board approval of an important financial term of the agreement of merger—the ability of Activision to pay dividends during the lengthy pendency of the Merger, as Microsoft and Activision sought regulatory approval to close the transaction.

ANSWER: Denied, except admitted that: (1) Activision's Board of Directors met on January 17, 2022; (2) the Board adopted resolutions authorizing Activision to enter into the Merger Agreement with Microsoft; (3) the Board delegated to an *ad hoc* committee, consisting of Mr. Corti, Mr. Kelly, and Mr. Morgado, the authority to continue to explore whether Microsoft would agree to enhance the dividend term contained in Section 5.2(e) of the interim operating covenants beyond what the Board had already approved, but those efforts were unsuccessful; and (4) the documents cited in this paragraph speak for themselves. For this and any other paragraph referencing or citing to specific documents, Mr. Kotick respectfully refers the Court to those cited documents for their full, complete, and accurate contents, and denies any allegations or characterizations inconsistent therewith. Plaintiff's allegations that the Activision Directors violated Section 251 and 8 *Del. C.* § 141(c), and that said laws contain certain alleged requirements, are legal conclusions to

which no response is required. To the extent a response is required, those allegations are denied. Mr. Kotick further responds that the Court entered a Stipulation and Order Declaring the Merger of Microsoft Corporation and Activision Blizzard, Inc. Valid Under 8 *Del. C.* § 205 on July 9, 2024 in *In re Activision Blizzard, Inc*. (the "Section 205 Order") and respectfully refers the Court to the Section 205 Order for a complete and accurate description of its contents.

6. The Defendants also violated Section 251(c) by purporting to submit a Section 251-compliant agreement of merger to the Activision stockholders for their approval while providing the Merger Agreement which omitted required elements, such as the CDL, disclosure schedules and Survivor's Certificate. In a further violation of the DGCL, Activision filed a false certificate of merger, which attached a survivor's certificate that was not the same survivor's certificate that was purportedly part of the Merger Agreement (though the Board and stockholders never saw it). The multiple failures to comply with Section 251 also vitiated appraisal rights under 8 *Del. C.* § 262, which requires an agreement of merger and a merger "pursuant to Section 251." Consequently, Plaintiff and the Class are entitled to a quasi-appraisal of the fair value of their shares on the date of the Merger.

ANSWER: Denied, except admitted that: (1) Activision filed a Definitive Proxy Statement on Schedule 14A on March 21, 2022 (the "Proxy"); (2) Activision filed a certificate of merger (the "Merger Certificate") that attached Activision's Fourth Amended and Restated Certificate of Incorporation (the "Survivor Certificate") that included an added officer exculpation provision that reflected then current-Delaware law following the August 1, 2022 amendment of Section 102(b)(7) of the DGCL and increased the number of shares of capital stock Activision had authority to issue; and

(3) the documents cited in this paragraph speak for themselves. Plaintiff's allegations that Activision or its Directors violated Section 251 and vitiated appraisal rights under 8 *Del. C.* § 262, that said laws contain certain alleged requirements, and that Plaintiff and the Class are entitled to a quasi-appraisal of the fair value of their shares on the date of the Merger, are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied. Mr. Kotick further responds that the Court entered the Section 205 Order declaring the Merger valid and respectfully refers the Court to the Section 205 Order for a complete and accurate description of its contents. Mr. Kotick also responds that the allegations related to 8 *Del. C.* § 262 were dismissed by the Court in its Memorandum Opinion, dated October 2, 2025 (Dkt. 277) ("Memorandum Opinion").

7. Because the contents, adoption and approval of the Merger Agreement did not comply with Section 251, the Merger Agreement and the Merger were invalid. Consummation of the Merger constituted the unlawful conversion of the Activision stockholders' shares. In addition, the Merger Agreement's stringent restrictions and prohibitions on fundamental stockholder rights—including the right to vote, to amend the bylaws, to have shares purchased by Activision and to receive dividends—also constituted the unlawful conversion of stockholders' shares because the Merger Agreement was invalid, though it was pending for twenty-one months.

ANSWER: Denied. Plaintiff's allegations that the Merger and Merger Agreement failed to comply with applicable law, and were invalid and constituted unlawful

conversion, are legal conclusions to which no response is required. To the extent a response is required, the allegations are denied. Mr. Kotick further responds that the Court entered the Section 205 Order validating the Merger and that the allegations in the second sentence relate to claims asserted in Count II.B of the Complaint, which the Court dismissed in the Memorandum Opinion.

8. Kotick and Microsoft initiated and timed the Merger discussions largely as a result of the Harassment Scandal. Kotick was not an independent and disinterested negotiator. He was at risk of being forced out of Activision in disgrace. A termination for "Cause" under Kotick's employment agreement (the "Employment Agreement") would cause him a huge loss of financial benefits, including the forfeiture of millions of stock options. In contrast, the Merger Agreement avoided his termination, prevented further damage to his reputation and legacy, and secured for Kotick continuing employment and an over $400 million pay-out when the Merger closed. The parties amended the Merger Agreement to push back the Termination Date, which kept Kotick employed even longer. Kotick even stayed on and continued to get paid after the Merger closed. The Merger Agreement also provided Kotick with materially greater indemnification, advancement and exculpation protection, including from Microsoft, and insulates him from claims arising out of the Harassment Scandal and this Action. The Merger also extinguished derivative claims against Kotick and other Activision directors arising out of the Harassment Scandal.

ANSWER: Denied, except admitted that (1) as an uncontroversial matter of Delaware law, one result of a merger is the extinguishment of derivative claims brought on behalf of the former company and (2) Mr. Kotick remained employed after the Merger closed on October 13, 2023, resigning in December 2023. Any suggestion in this paragraph that either Mr. Kotick or the other Activision Directors (1) engaged in misconduct of any sort, (2) personally engaged in any sexual

harassment or discrimination, or (3) knew about any systemic misconduct (none existed), is denied. To the contrary, as reflected in the settlement agreements with both the EEOC and DFEH (aka the CRD), there was never any finding of systemic misconduct at Activision or personal misconduct by Mr. Kotick or the other Activision Directors. Denied that "[Mr.] Kotick and Microsoft initiated and timed the Merger discussions largely as a result of the Harassment Scandal [and] Kotick was not an independent and disinterested negotiator." Denied that Mr. Kotick could have or should have been terminated for cause, or that he engaged in any wrongdoing that would subject him to a for-cause termination.

9. The Board allowed the conflicted CEO to negotiate the Merger to protect himself. It placed loyalty to Kotick above loyalty to Activision and the Activision stockholders. The Board also did not object to Kotick's chosen financial advisor, Allen & Company ("Allen & Co."), turning their heads to the myriad of conflicts that Allen & Co. faced. The Board approved the Merger Agreement to protect Kotick and themselves from the consequences of the Harassment Scandal that occurred on their watch. Like Kotick, the other directors were the beneficiaries of materially greater liability protections, elimination of derivative claims against them and reduction of further reputational damage in connection with the Harassment Scandal.

ANSWER: Denied. Any suggestion in this paragraph that either Mr. Kotick or the other Activision Directors (1) engaged in misconduct of any sort, (2) personally engaged in any sexual harassment or discrimination, or (3) knew about any systemic misconduct (none existed), is denied. To the contrary, as reflected in the settlement agreements with both the EEOC and DFEH (aka the CRD), there was never any

finding of systemic misconduct at Activision or personal misconduct by Mr. Kotick or the other Activision Directors. Denied that the Board placed loyalty to Mr. Kotick above loyalty to the Company or its shareholders. Denied that Allen & Co. approved the Merger Agreement to protect Mr. Kotick and the other Directors. Any suggestion that Mr. Kotick and the Board approved the Merger Agreement for any improper purpose is denied.

10. The Merger Agreement was ill-timed and a poor deal for the Activision stockholders. The Merger Agreement was hastily negotiated after Activision's stock price had dropped by over 30% in the previous few months based on disclosures concerning the Harassment Scandal, related investigations and suits by regulators, federal securities and derivative actions by stockholders, and employee departures and protests. Without Board authorization, Kotick negotiated with Microsoft for two weeks before a Board meeting was held. The Board did not establish a sale process but just let Kotick negotiate with Microsoft and quickly deflect the few other potential bidders who contacted Activision or Kotick superficially contacted. Two weeks after the Board first learned of Microsoft's interest, it authorized exclusivity for Microsoft at the $95 price it had already negotiated with Kotick.

ANSWER: Denied, except admitted that (1) the Board authorized a transaction at $95 per share, delivering a massive premium to shareholders and (2) the Board authorized an exclusivity agreement with Microsoft. Denied that the Merger Agreement "was ill-timed and a poor deal for the Activision stockholders." To the contrary, it was a transaction that delivered extraordinary value to shareholders—a $95 per share all-cash premium deal, approved by 98% of the votes cast. This transaction delivered an over 45% premium to shareholders compared to

Activision's stock price in the days preceding the announcement of the transaction. This transaction has been heralded as one of the largest and most successful transactions in the history of gaming and the tech industry in general. Denied that Mr. Kotick lacked authorization to negotiate with Microsoft or that he deflected potential bidders.

11. Though the parties knew, and the termination provisions in the Merger Agreement confirmed, that regulatory approval of the Merger was far from certain and likely to take a year or more, the $95 Merger consideration would remain the same without adjustment. The Merger Agreement contained no provision to true-up the Merger price based on any increase in Activision's value during the lengthy pendency of the Merger. As Activision recovered from the effects of the Harassment Scandal and its performance improved, the benefit went to Microsoft, not the Activision stockholders.

ANSWER: Denied, except admitted that the regulatory review process, just like in any other deal of this size, was expected to be lengthy, with no guarantee of approval. Denied that Activision's performance warranted a "true-up" that would have exceeded $95 per share during the period of regulatory review—the stock price never reached $95 during that period, and the only time in the Company's history that the stock price exceeded $95 was in early 2021—driven by a once-in-a-lifetime pandemic that no reasonable person could expect to reoccur. Denied that any benefit in the recovery of Activision's stock price (which was driven by news of the merger) inured to the benefit of Microsoft instead of Activision stockholders.

12. Plaintiff pleaded in its initial complaint (the "Complaint") and amended

complaint (the "Amended Complaint" or "AC"), that the Merger Agreement left stockholders with dividends suspended after the 2022 annual dividend.

ANSWER: Plaintiff's initial complaint and amended complaint speak for themselves. The allegation in this paragraph warrants no response. Mr. Kotick refers the Court to the referenced documents, which contain Plaintiff's allegations. Denied that the allegations in Plaintiff's pleadings are accurate.

13. The defective and incomplete Merger Agreement was signed by Kotick on January 18, 2022 and voted on by shareholders in a hurried, coercive and uninformed vote on April 28, 2022. Microsoft and Activision structured the Merger Agreement to require a hasty, premature stockholder vote. It required a preliminary proxy statement to be filed within twenty business days of the execution of the Merger Agreement. Activision filed its preliminary proxy statement on February 18, 2022. Activision issued the Proxy on March 21, 2022 for a stockholders' meeting to vote on the Merger on April 28, 2022 (the "Special Meeting"). Defendants rushed Activision stockholders to approve the Merger, despite knowing the Merger would be subject to protracted review by antitrust regulators, given the challenging antitrust environment and the size and nature of the Merger. Defendants did not provide the stockholders with a Section 251-compliant agreement or merger or even the complete Merger Agreement. The Proxy and notice of meeting did not include or describe the contents of the CDL and the Survivor's Certificate.

ANSWER: Denied, except admitted that (1) a Special Meeting was held on April 28, 2022, where a fully informed body of shareholders overwhelmingly voted in approval of the Merger; (2) the documents referenced in this paragraph speak for themselves; and (3) Mr. Kotick signed the Merger Agreement on January 18, 2022. Denied that the Merger Agreement was voted on by shareholders "in a hurried, coercive and uninformed vote." Denied that Microsoft and Activision "structured the Merger Agreement to require a hasty, premature stockholder vote." Denied that

Mr. Kotick or the other Directors "rushed Activision stockholders to approve the Merger" or "did not provide the stockholders with a Section 251-compliant agreement or merger or even the complete Merger Agreement." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

14. The Proxy was materially misleading and incomplete in numerous respects. The Proxy provided misleading partial disclosure concerning (i) the role of the Harassment Scandal in bringing about the Merger, (ii) the terms of the Merger Agreement, (iii) Allen & Co.'s conflicts, engagement and analysis and (iv) Microsoft's arrangements with Kotick regarding employment and compensation. Because the Proxy failed to provide or describe the contents of the Company Disclosure Letter and disclosure schedules, the stockholders were deprived of material information necessary for them to cast an informed vote, including that (i) the Merger required antitrust approval from sixteen countries, the identities of those sixteen countries, (ii) the indemnification agreements Activision has which Microsoft will assume, (iii) that Microsoft had the right to veto the settlement of pending and potential future litigation against Kotick and the Director Defendants arising out of the Harassment Scandal and (iv) additional terms in the CDL evidencing that the Merger arose out of the Harassment Scandal, such as references to Activision's sexual harassment settlements, pending claims, employee protests and workplace issues. The Proxy and Merger Agreement did not disclose additional covenants found in the CDL [redacted] The rushed vote forced stockholders to decide whether to seek appraisal long before the Merger would close, essentially denying them meaningful appraisal rights. Moreover, because there was no agreement of merger and merger pursuant to Section 251, there were no valid appraisal rights or legitimate appraisal process.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves. This includes the Proxy, which contained all the material

information necessary for a reasonable stockholder to assess the transaction. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied. Mr. Kotick further denies the allegations regarding statutory appraisal in the last sentence in Paragraph 14 because the Court entered the Section 205 Order validating the Merger and dismissed the claims based on 8 *Del. C.* § 262 and the Memorandum Opinion.

15. Even after Plaintiff filed its Complaint pointing out the statutory defects in the Merger Agreement and Merger, Defendants refused to cure those deficiencies. For nearly a year before the Merger closed, Plaintiff pointed out in its Complaint, Amended Complaint and other papers that (i) the Merger Agreement did not contain elements required by Section 251, (ii) the Board's approval of the incomplete Draft Merger Agreement did not satisfy Section 251 and (iii) the execution and submission to stockholders of the non-Board approved incomplete Merger Agreement was not in compliance with the statute. Defendants were served with the complaints, which quoted the plain statutory language. The Activision directors can read plain English. Plaintiff also pointed out that the Merger's lengthy pendency allowed the Defendants the opportunity to cure the defects before the Merger closed. The Activision Board could approve a Section 251-compliant agreement of merger and submit the executed version to Activision's stockholders at the 2023 annual meeting. It is reasonably conceivable that Defendants intentionally and deliberately refused to cure the statutory defects and closed the Merger in knowing violation of the law.

ANSWER: Denied, except admitted that (1) the Activision Directors can read English; (2) the documents cited in this paragraph speak for themselves; and (3) Plaintiff served the Complaint. Denied that the Merger Agreement and Merger were deficient in any material way. Denied that Mr. Kotick or any of the Directors "intentionally and deliberately refused to cure the statutory defects and closed the

Merger in knowing violation of the law." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

16. Kotick told employees on September 1 and November 8, 2022 that the Merger would not close until June 2023. His prediction proved optimistic. On December 8, 2022, the United States Federal Trade Commission (the "FTC") initiated an antitrust proceeding against the Merger (the "FTC Suit"), with trial starting on August 2, 2023. On April 26, 2023, the United Kingdom's Competition and Markets Authority ("CMA") issued a decision prohibiting the Merger, which Microsoft promptly appealed (the "CMA Appeal") to the United Kingdom's Competition Appeals Tribunal (the "CAT") for an October 23, 2023 evidentiary hearing.

ANSWER: Denied, except admitted that (1) Mr. Kotick informed employees that the Merger would take time to close; (2) the FTC and CMA initiated proceedings to assess the Merger; and (3) the documents cited in this paragraph speak for themselves.

17. The FTC Suit and CMA Appeal meant that the conditions to closing the Merger under Sections 7.1(b) and (d) of the Merger Agreement would not be met, and the Merger therefore could not close, before the July 18, 2023 Termination Date. After that date, Activision could walk away from the Merger and collect a $3 billion termination fee from Microsoft, which amounted to approximately $3.80 per share for the Class.

ANSWER: Denied, except admitted that (1) the Merger Agreement contained a termination provision, including a termination fee, and (2) the documents cited in this paragraph speak for themselves. Mr. Kotick is without knowledge or information as to Plaintiff's basis for asserting a calculation of "approximately $3.80

per share for the Class," and therefore denies it. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

18. As of the July 18, 2023 Termination Date, Activision had rebounded from the multiple effects of the Harassment Scandal, as evidenced by (i) three consecutive quarters of record-breaking financial results, (ii) the timely release of blockbuster new games and (iii) significantly improved employee retention and satisfaction. Kotick admitted that Activision's performance was exceptional, the Company had proved to be among the strongest in its industry and did not need Microsoft. Activision's employees, however, attributed the Company's success to employee-led efforts, not Kotick. Employees were still openly calling for Kotick's resignation. Kotick's job was still at risk. In addition, many lawsuits filed against Kotick and the Director Defendants arising out of the Harassment Scandal were still pending in trial and appellate courts.

ANSWER: Denied, except admitted that (1) Activision's stock price increased into 2023, though it never reached the $95 per share premium value that Microsoft agreed to pay; (2) lawsuits containing false allegations were filed against the Activision Directors during this period; and (3) Mr. Kotick led a group of Activision employees whose efforts resulted in Activision's success over a period of decades, including during the Merger period, although any suggestion that the Company's success during the Merger period cannot at all be attributed to his efforts is denied. Any suggestion in this paragraph that either Mr. Kotick or the other Activision Directors engaged in misconduct of any sort is denied. Any suggestion that Activision's performance in this period warranted a departure from the Merger is denied.

19. Kotick had publicly proclaimed in the months leading up to the Termination Date that he would personally do everything he could to advocate for the Merger, and said that he was only focused on closing the Merger. Instead of walking away from the Merger and having the Company collect a $3 billion termination fee, Kotick decided to extend the Termination Date until October 18, 2023. Kotick, on behalf of Activision, executed the July 18, 2023 Merger Letter Agreement (the "Letter Agreement") with Microsoft memorializing the extension. [redacted]

ANSWER: Denied, except admitted that (1) Mr. Kotick publicly supported the Merger and worked with the other Directors to effectuate the Merger; (2) Mr. Kotick executed the Letter Agreement; and (3) the documents cited in this paragraph speak for themselves. Denied that Mr. Kotick was "only focused on closing the Merger"—he was the CEO of a multi-billion dollar business that released numerous successful video games during the Merger period, and he consistently fulfilled all of his responsibilities. Mr. Kotick was fully devoted and focused on doing everything in his power to help the Company succeed and advance the interests of shareholders.

20. The Letter Agreement (i) stripped Activision of its right to collect a $3 billion termination fee after the July 18, 2023 Termination Date, (ii) narrowed Activision's rights to terminate the Merger Agreement until the new termination date of 11:59 p.m. Pacific Time on October 18, 2023 (the "Amended Termination Date"), (iii) eliminated conditions to closing—including the absence of the FTC Suit—making it easier for the Defendants to close the Merger and (iv) kept in place the forbearance covenants of the Merger Agreement, extending the restrictions and prohibitions on fundamental stockholder rights.

ANSWER: Denied, except admitted that (1) the $3 billion termination fee was replaced with a substantially larger termination fee of up to $4.5 billion, and at the same time Activision agreed to declare a $0.99 per share dividend to shareholders

and (2) the documents cited in this paragraph speak for themselves.

21. The Letter Agreement benefitted Kotick and the Director Defendants. It extended the provisions in the Merger Agreement that protected them and Kotick's employment and preserved Kotick's prospects for a large change-in-control payout. It did not, however, benefit the public stockholders. The Letter Agreement did not provide for increased Merger consideration to adequately compensate the stockholders for the increased value of their Activision shares, their delayed receipt of the Merger consideration and the extension of the forbearance covenants in the Merger Agreement. The Letter Agreement did allow the Board to issue a 2023 annual dividend of $0.99 per share. The dividend mitigated Plaintiff's claims that (i) the invalid Merger Agreement improperly suspended the issuance of the 2023 annual dividend, (ii) the Board's delegation of the dividend term to the *ad hoc* committee violated Section 141(c), breached the Board's fiduciary duty and caused damages to the stockholders and (iii) Kotick breached his fiduciary duty by negotiating the dividend issue and agreeing to the suspension of the 2023 annual dividend when he was not even on the *ad hoc* committee. The $0.99 dividend did not, however, adequately compensate stockholders for the increased value of their Activision stock, the further delay in receipt of the Merger consideration or the conversion of their shares resulting from further extension of the invalid Merger Agreement. In addition, Activision paid the 2023 annual dividend on treasury shares held by a wholly-owned Activision subsidiary. This violated the DGCL, certificate and Delaware law and was a breach of the duty of loyalty and knowing violation of law by the Activision Board, who approved, declared and had Activision pay that dividend, which should have gone to the Activision stockholders.

ANSWER: Denied, except admitted that (1) after the Letter Agreement was executed, Mr. Kotick continued to serve as CEO and continued to possess equity rights, and (2) the documents cited in this paragraph speak for themselves. The Letter Agreement benefitted all parties involved, including Activision shareholders; any implication that the Letter Agreement was designed to benefit Mr. Kotick and the Directors personally is denied. Denied that the Letter Agreement "did not . . .

benefit the public stockholders." Denied that Mr. Kotick or the other Directors engaged in any "knowing violation of law." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required and not already dismissed, the allegations are denied.

22. After executing the Letter Agreement, Microsoft and Activision negotiated a resolution of the CMA Appeal. On October 13, 2023, they purported to close the Merger and seized the Class's shares without fixing the Merger's statutory defects.

ANSWER: Denied, except admitted that (1) the CMA Appeal was resolved and (2) on October 13, 2023, Microsoft and Activision closed the Merger (although denied to the extent Plaintiff's use of the word "purported" suggests that the Merger was invalid). The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

23. The Merger was not fair to Plaintiff or the Class. The $95 Merger price only approximated Activision's trading price before the scandal disclosures. It was far below the $113 to $128 per share value in the long-range plan management presented on October 28, 2021 and the Board approved on November 2, 2021. Moreover, the Merger consideration was never worth $95 per share to the stockholders because the Defendants knew the Merger consideration would not be received for at least twelve to eighteen months after the signing of the Merger Agreement. Further, after executing the Merger Agreement, Activision released highly anticipated and successful games, which contributed to three consecutive quarters of record-breaking earnings. However, the Company's improved performance was not reflected in the Merger price. The Merger put Activision and its stockholders in limbo for twenty-one-months. Stockholders only received $95 per share for their Activision stock in late 2023 after being stuck with Kotick as CEO for nearly two more years. By then, the Harassment Scandal had abated, blockbuster new games had generated record revenues and Activision's financial performance

approached record levels.

ANSWER: Denied, except admitted that (1) Activision, led by Mr. Kotick, released successful video games after the Merger Agreement was executed, and (2) the November 2, 2021 Long Range Plan speaks for itself, although denied that Plaintiff accurately characterizes the Long Range Plan or its purpose. Denied that the Merger was not fair to Plaintiff or the Class. The $95 Merger price was consistent with Activision's historic highs, and in only one period in its entire history did its stock price exceed $100 per share (driven by an unprecedented pandemic), and even then, it peaked at $104. Denied that "the Merger consideration was never worth $95 per share."

24. After the Merger closed, the Defendants settled litigation implicating Kotick and the Director Defendants. The plaintiffs in derivative lawsuits dismissed their suits because the Merger extinguished their standing. On December 29, 2023, Kotick finally left Activision, more than two years after *Kotick Knew*'s publication.

ANSWER: Denied, except admitted that (1) Activision settled litigation after the Merger closed; (2) as an uncontroversial matter of Delaware law, one result of a merger is the extinguishment of derivative claims brought on behalf of the former company; and (3) Mr. Kotick left Activision in December 2023, after over three decades of (a) delivering exceptional results to shareholders that consistently outperformed the S&P 500 and (b) leading the development of many of the world's most popular video games. Denied that the lawsuits referenced in this paragraph

"implicat[ed]" Mr. Kotick and the other Directors, who had not engaged in any misconduct.

25. Microsoft and its Delaware merger subsidiary Anchorage Merger Sub Inc. ("Anchorage" or "Merger Sub") knowingly participated and conspired in the breaches of fiduciary duty by Kotick and the other Director Defendants.

ANSWER: These allegations constitute legal conclusions that warrant no response, but to the extent required (and not already dismissed), they are denied. To the extent this paragraph suggests any wrongdoing or legal violations by Mr. Kotick or the other Directors, any such suggestion is denied. Mr. Kotick further responds that the Memorandum Opinion dismissed the claims against Microsoft.

26. Microsoft knowingly exploited the Harassment Scandal and its commercial leverage over Activision precisely to offer Kotick a way to save his own skin in return for Kotick's support of the Merger at the expense of the Activision stockholders. The CDL it negotiated included disclosures, terms and covenants referencing, and reflected multiple due diligence calls concerning, the Harassment Scandal. Microsoft had full knowledge of the scandal the Merger would help cover up and the facts and CDL provisions that were not disclosed to the Activision stockholders. It conspired with Kotick and the Board to help them evade the personal and professional consequences of that scandal by breaching their fiduciary duties through their negotiation and approval of an ill-timed, unfair and highly risky Merger.

ANSWER: Denied, except admitted that the CDL speaks for itself. These allegations constitute legal conclusions that warrant no response, but to the extent required (and not already dismissed), they are denied. To the extent this paragraph suggests any wrongdoing or legal violations by Mr. Kotick or the other Directors,

any such suggestion is denied.

27. To induce Kotick to support the Merger, Microsoft agreed to keep him on as CEO of Activision during the lengthy period the Merger would be pending as the parties sought regulatory approval, and as an initial officer of Activision after the Merger closed. Kotick continued as CEO for the twenty-one months the Merger was pending, plus an additional two months after the Merger closed. Microsoft and the Board also agreed to improved compensation for Kotick in violation of his agreement to reduce his compensation. They also agreed to provide materially greater rights to indemnification, advancement and insurance for him and the rest of the Board.

ANSWER: Denied, except admitted that Mr. Kotick continued to serve as CEO of Activision during the Merger and until December 2023. Denied that any improved compensation or rights agreed to by Microsoft was in breach of any agreement or law. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required (and not already dismissed), they are denied. To the extent this paragraph suggests any wrongdoing or legal violations by Mr. Kotick or the other Directors, any such suggestion is denied.

28. Microsoft and Kotick orchestrated a hasty sale that effectively precluded alternative bids. They negotiated in secret and pressured the Activision Board into quickly authorizing exclusivity. Microsoft insisted on the rushed vote and reviewed and approved the deliberately misleading disclosures in the Proxy.

ANSWER: Denied. Mr. Kotick and the other Directors considered other offers and even solicited numerous offers on their own regard after Microsoft first reached out about a potential transaction. The transaction was never negotiated in secret, and the Activision Directors were fully informed at all relevant times. Denied that the

shareholder vote was rushed or that the Proxy's disclosures were misleading.

29. Microsoft also insisted on having a veto right over the settlement of litigation against and implicating Kotick and the Director Defendants arising out of the Harassment Scandal. Microsoft anticipated lengthy antitrust review of the Merger. Microsoft knew the veto-right would give it leverage over Kotick and the Director Defendants, if and when needed, during the Merger's lengthy pendency.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required (and not already dismissed), they are denied. To the extent this paragraph suggests any wrongdoing or legal violations by Mr. Kotick or the other Directors, any such suggestion is denied. Denied that there was any litigation which "implicat[ed]" Mr. Kotick and the other Directors, who had not engaged in any misconduct

30. Microsoft also conspired with Kotick and the Board to close the Merger without fixing the statutory defects under Section 251. Plaintiff served Microsoft with its Complaint, Amended Complaint and other filings pointing out the Merger's statutory defects and Defendants' ability to cure those defects before the Merger closed. Microsoft, however, conspired with Activision and the Director Defendants in refusing to fix the Merger's statutory defects, and in delaying disposition of Plaintiff's statutory claims, until after the Merger closed.

ANSWER: Denied, except admitted that Plaintiff served filings in this lawsuit. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required (and not already dismissed), they are denied. To the extent this paragraph suggests any wrongdoing or legal violations by Mr. Kotick or the

other Directors, any such suggestion is denied.

31. Plaintiff was a beneficial owner of Activision common stock and held such stock at all material times alleged in this TAC.

ANSWER: Mr. Kotick lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 and denies them on that basis.

32. Activision is a leading global developer, publisher and distributor of interactive entertainment content and services on video game consoles, personal computers ("PCs"), and mobile devices. Activision's games include high-quality games commonly referred to in the industry as "AAA" games. Activision conducts its business through three subsidiaries, each of which develops and publishes AAA games: (i) Activision Publishing, Inc. ("Activision Publishing"), which houses the AAA marquee franchise *Call of Duty* ("*COD*"), (ii) Blizzard Entertainment, Inc. ("Blizzard"), which houses Activision's popular *Diablo* and *Overwatch* franchises and (iii) King Digital Entertainment ("King"), which houses AAA *Candy Crush*. Activision is known as one of the "Big 4" of the industry's limited top tier of independent AAA publishers. Activision is incorporated in Delaware and headquartered in Santa Monica, California. Before the Merger closed, Activision's common stock was listed on the NASDAQ Global Select Market ("NASDAQ") under the ticker symbol "ATVI."

ANSWER: Admitted.

33. Defendant Kotick was a Company director from February 1991 until the Merger closed, including Chairman of the Board from 1991 to 2008. Kotick was also Activision's CEO from February 1991 until December 29, 2023. Kotick invested in Activision in 1990, acquiring a 25% stake in the Company with his co-defendant Brian Kelly ("Kelly"). Beginning in July 2021, Kotick became the focus of employee protests, Department of Justice ("DOJ") and SEC investigations, shareholder opposition and lawsuits arising out of the Harassment Scandal that put his job, lucrative compensation, reputation and legacy at risk. In connection with the Merger, Kotick received an over $400 million payout for his Company stock and options and remained CEO while the Merger was pending, which prevented him from being terminated for Cause and forfeiting 2,201,878 unvested options,

Performance Stock Units ("PSUs") and other financial gains because of his role in the Harassment Scandal. Since 1993, Kotick earned over $749 million in Company compensation, including base salary, equity awards and options, as one of the highest-paid CEOs nationwide. In 2020 alone, before the Harassment Scandal broke, Kotick made over $154.5 million in total compensation, earning him the title as the second-highest paid CEO in the gaming industry, earning approximately $77,306 an hour. Despite Kotick's October 28, 2021 pledge to only receive $62,500 annually because of the Harassment Scandal, he still received $826,549 in compensation during 2021 (after receiving $154,613,318 of compensation in 2020), and an over $400 million payout in the Merger. Given Kotick's conflicting interests, Kotick was not disinterested and independent when he pressed for and approved the Merger Agreement, executed the Letter Agreement and persisted in closing the Merger without fixing its statutory defects.

ANSWER: Denied, except admitted that Mr. Kotick earned significant compensation, which included equity-based incentives, in connection with his various roles at Activision between 1990 and 2023. Denied that the Merger prevented Mr. Kotick from being terminated for cause, and denied that he was ever at any reasonable risk of being terminated for cause, given that the Board knew he engaged in no wrongdoing and the allegations of systemic misconduct were false. In reality, Section 5.2(g) of the Merger prevented Activision from, "except in consultation with [Microsoft], terminat[ing] any employee at the level of Senior Vice President or above (other than for cause)"—meaning that Mr. Kotick could be terminated for cause by Activision at any time, and that he could be terminated without cause in consultation with Microsoft. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, they are denied.

34. Defendant Reveta Bowers ("Bowers") was a Company director from January 2018 through the Merger. Until the Merger closed, Bowers had served on the Compensation Committee since January 2018 and the Workplace Responsibility Committee ("WRC") since its formation on November 22, 2021. Bowers' relationship with Kotick goes back to 2000, when Kotick's children started attending West Hollywood's Center for Early Education ("CFEE"), an independent primary school where Bowers has worked for many years. Kotick's children attended CFEE from 2000 to 2014, Kotick was a member of the school's board of trustees (the "CFEE Board") from 2008 until at least December 1, 2021, and Kotick donated $100,000 to CFEE's Annual Fund in 2021. The CFEE Board on which Kotick served manages finances and hires the Head of School. Bowers was a teacher and administrator at CFEE from 1972 to 2016 when Kotick's children attended, and CFEE's Interim Head of School from July 1, 2020 until June 30, 2022, when Kotick made a significant donation and served on the CFEE Board that hired and oversaw Bowers in that position.

ANSWER: Denied, except Mr. Kotick admits the allegations in the first and second sentences; that Mr. Kotick has children who attended The Center for Early Education; that Ms. Bowers served as Interim Head of School from July 1, 2020 until June 30, 2022; that Mr. Kotick served as a member of the board of trustees until 2020; and that Mr. Kotick made a $100,000 donation in 2021. Any implication that Ms. Bowers was not an independent or disinterested director is denied.

35. Defendant Kerry Carr ("Carr") was a Company director and member of the Audit committee from June 2022 until the Merger closed. Carr is Senior Vice President at Bacardi Ltd. ("Bacardi"), where she has worked since 2014.

ANSWER: Admitted.

36. Defendant Robert Corti ("Corti"), age 74, was a Company director and Chair of the Audit Committee from December 2003 until the Merger. Corti also served as a member of the Board's Nominating and Corporate Governance Committee in 2021. Corti has been a professional director since retiring in 2006,

including at Bacardi during that time. Because of his nearly twenty-year relationship with Kotick and Activision, Corti was not independent. He was part of the Gang of Four directors described below and a member of the *ad hoc* committee that improperly approved the dividend term.

ANSWER: Denied, except admitted that Mr. Corti was a director at Activision and was Chair of the Audit Committee, and is also a director of Bacardi Ltd. Plaintiff's use of the term "Gang of Four" is pejorative and prejudicial. Denied that a so-called "Gang of Four" existed. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, they are denied. Denied that Mr. Corti "was not independent."

37. Defendant Hendrik Hartong III ("Hartong") was a Company director and member of the Audit Committee from July 2015 until Activision's annual meeting on June 28, 2022. Before that, Hartong worked as Activision Publishing's Vice President of Marketing from 1996 to 1998. As discussed below, it is a fair inference and reasonably conceivable that Hartong tipped his spouse and/or the investment manager of his spouse's trust concerning inside information on Activision and the Merger negotiations. Therefore, he was not independent or disinterested when he approved the Merger Agreement.

ANSWER: Denied, except admitted that Mr. Hartong was a director and member of the Audit Committee from 2015 through 2022, and was Activision's VP of Marketing from 1996 to 1998. The speculative inference that it is "a fair inference and reasonably conceivable" that Mr. Hartong "tipped his spouse and/or the investment manager of his spouse's trust concerning inside information on Activision and the Merger negotiations" is not a well-pled factual allegation that warrants a response, but to the extent required, it is denied. The allegations in this

paragraph contain legal conclusions that warrant no response, but to the extent required, they are denied. Denied that Mr. Hartong "was not independent or disinterested when he approved the Merger Agreement."

38. Defendant Kelly has been business partners and co-investors with Kotick for decades. Kelly ran the Company with Kotick starting when they co-invested in Activision together in 1990. Over the years, Kelly held numerous positions at the Company, including as Chief Financial Officer ("CFO") from 1991 until 1997, Chief Operating Officer ("COO") from 1995 to 1998, President from 1997 to 1998, Co-Chairman of the Board from 1998 until 2012 (with Kotick as Chair from 1998 until 2008), and Chairman from 2012 until the Merger. Thus, Kelly ran the Company alongside Kotick from 1991 until the Merger as CFO, COO, co-Chairman and Chairman. In 2007, Kotick and Kelly were the chief negotiators of Activision's merger with Vivendi Games Inc. ("Vivendi") (the "Vivendi Merger") in a transaction resulting in Vivendi becoming Activision's largest stockholder. In 2009, Kelly and Kotick co-founded the "Call of Duty Endowment," a 501(c)(3) non-profit that Kotick touts in his internet biographies. Kelly's additional co-investments with Kotick over the years include ASAC II LP ("ASAC"), an entity Kelly and Kotick formed in 2012 to hold 172,968,042 Activision shares purchased from Vivendi, then Activision's largest shareholder, when it liquidated most of its position in Activision in a recapitalization (the "ASAC Transaction"). Prior to that recapitalization, Kotick and Kelly's beneficial ownership of Activision had dwindled down to about 1%. Kotick and Kelly personally committed $100 million to ASAC and the co-investors they solicited provided over $1.62 billion. In 2016 and 2017, ASAC distributed its Activision shares to limited partners and members. Kotick and Kelly co-managed, including as of the Merger's close, ASAC's general partner ASAC II, LLC ("ASAC GP"). Because of his long-term relationship with Kotick and Activision, Kelly was not independent. He was part of the Gang of Four and helped Kotick orchestrate the Merger. He was a member of the *ad hoc* committee that improperly approved the dividend term of the Merger Agreement.

ANSWER: Denied, except admitted that (1) Mr. Kelly was a longtime director and/or officer at Activision; (2) he helped negotiate the Vivendi Merger; (3) he co-invested with Mr. Kotick in ASAC; and (4) he was involved in the Merger along

with all of the Activision Directors, and was a member of the dividend committee. Plaintiff's use of the term "Gang of Four" is pejorative and prejudicial. Denied that a so-called "Gang of Four" existed. Denied that Mr. Kelly helped Mr. Kotick "orchestrate" the Merger to the extent the phrase "orchestrate" is designed to suggest any wrongdoing. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, they are denied. Denied that Mr. Kelly "was not independent."

39. Defendant Barry Meyer ("Meyer") was a Company director and member of the Board's Nominating and Corporate Governance Committee from January 2014 until the Merger. Meyer joined the Board upon retiring from Warner Brothers in 2013. Meyer is a longtime Hollywood insider who, as *Bloomberg* noted, has "undoubtedly brushed shoulders with Kotick during his many years in Los Angeles," where Kotick lives. Meyer's daughter Elizabeth Brink ("Brink") is a senior executive at San Francisco-based architecture and design firm Gensler, which the Books and Records indicate Activision has engaged. Brink is Co-Regional Managing Principal of Gensler's Southwest Region, where Kotick lives and Activision is based. This indicates that Brink has been directly involved in Gensler's work with Activision while Kotick ran the Company. Meyer was not an independent director.

ANSWER: Denied, except admitted that Mr. Meyer was a director and that his daughter Ms. Brink works at Gensler, which Activision has previously engaged (although any suggestion of a conflict of interest is denied). The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, they are denied. Denied that Mr. Meyer "was not an independent director."

40. Defendant Robert Morgado ("Morgado"), age 81, was a Company

director from February 1997, and Lead Independent Director from 2018, until the Merger. Morgado also served on the Compensation Committee from June 1998, including as Chairman from 2002, until the Merger. Morgado's Compensation Committee consistently granted Kotick substantial compensation, making Kotick by 2013 among the highest paid CEOs in the gaming industry. By 2020, Morgado's Compensation Committee made Kotick the second-highest paid CEO in the gaming industry. Morgado was also Chair of the Nominating and Corporate Governance Committee from 2006 until the Merger. Morgado survived numerous Board shake-ups over the years. Of Activision's eight-member Board before the Vivendi Merger, Morgado was among four directors, including Kotick and Kelly, that continued as directors after the Vivendi Merger. In addition, in 2013, in connection with the ASAC Transaction, Morgado served on a special committee of Activision directors (the "ASAC Special Committee") that negotiated opposite Kotick and Kelly and rubber-stamped the deal that Kotick and Kelly wanted. In a May 27, 2022 letter to Activision shareholders, an activist investor, after noting that "Activision's Board is comprised of an unusually high number of extremely long-termed executives," wrote:

> The structure of Activision's Board concentrates authority in a highly unusual way: in addition to serving as Lead Independent Director, Mr. Morgado also serves as Chairman of the Compensation Committee and of the Nominating and Corporate Governance Committee. In other words, a single extremely long-tenured director occupies the Board's primary independent leadership position, oversees executive pay, and heads the committee responsible for determining if the Board requires refreshment and identifying suitable director candidates.

Morgado was a member of the Gang of Four that helped Kotick orchestrate the Merger. He served on the *ad hoc* committee that improperly approved the dividend term. He was not an independent director.

ANSWER: Denied, except admitted that (1) Mr. Morgado was a longtime director and the Lead Independent Director; (2) he served on the Compensation Committee; (3) the Compensation Committee granted Mr. Kotick substantial compensation; (4) Mr. Morgado served on the ASAC Special Committee; (5) the May 2022 letter

speaks for itself; and (6) Mr. Morgado was involved in the Merger along with all of the Activision Directors. Plaintiff's use of the term "Gang of Four" is pejorative and prejudicial. Denied that a so-called "Gang of Four" existed. Denied that Mr. Morgado helped Mr. Kotick "orchestrate" the Merger to the extent the phrase "orchestrate" is designed to suggest any wrongdoing. Denied that Mr. Morgado "rubber-stamped" the deal that Mr. Kotick and Mr. Kelly wanted when Mr. Morgado served on the ASAC Special Committee. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, they are denied. Denied that Mr. Morgado "was not an independent director."

41. Defendant Peter Nolan ("Nolan") was an Activision director from 2003 to 2008 and from October 2013 until the Merger. Nolan served on the Audit Committee from 2019 until the Merger. Nolan is a Senior Advisor at Leonard Green & Partners, L.P. ("LGP"), which he joined in 1997. In 2012, when Nolan was LGP's Managing Director, Kotick and Kelly approached him with a pitch for LGP to invest in ASAC as a limited partner and LGP did. Kotick and Kelly subsequently asked Nolan to re-join the Board. Nolan's LGP colleagues had concerns about Nolan joining the Board because it would limit LGP's ability to trade and hedge in Activision stock. Nolan ultimately joined the Board, however, because LGP recognized that it "value[s] its relationship with Kotick and Kelly." As one of Nolan's partners observed, the "[m]ain reason to even consider [joining] is if Bobby/Brian really want it." Because of the long relationship of Nolan and LGP with Activision, Kotick and Kelly, Nolan was not an independent director.

ANSWER: Denied, except admitted that Mr. Nolan was an Activision director and served on the Audit Committee, and is a Director of LGP. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent

required, they are denied. Denied that Mr. Nolan "was not an independent director."

42. Defendant Dawn Ostroff ("Ostroff") was a Company director from June 2020 until the Merger. She served on the Compensation Committee from 2021, and the WRC upon its November 22, 2021 formation, until the Merger. Ostroff has known Kotick for years. Because of her long relationship with Kotick, Ostroff was not an independent director.

ANSWER: Denied, except admitted that Ms. Ostroff was a director, knew Mr. Kotick for a period of years, and served on the WRC. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, they are denied. Denied that Ms. Ostroff "was not an independent director."

43. Defendant Casey Wasserman ("Wasserman") was a Company director and member of the Nominating and Corporate Governance Committee from July 2015 until June 21, 2022. Wasserman lives in Hollywood, California—like Kotick—and has teamed up with Kotick over the years. In 2004, Kotick and Wasserman co-chaired the Tony Hawk Foundation's Stand Up for Skateparks charity event in Studio City. Kotick and Wasserman have been co-Trustees of the Los Angeles County Museum of Art ("LACMA") since 2007. Wasserman has served as a LACMA Trustee since 2004 and Kotick, who is Vice Chair, since 2007. Wasserman and Kotick are also both listed in Jeffrey Epstein's "Little Black Book." Wasserman is also connected to Microsoft. Wasserman is the founder and CEO of "Wasserman" (f/k/a/ Wasserman Media Group), a Los Angeles-headquartered talent agency. Microsoft is one of Wasserman's most important clients and largest sources of revenue. For years, Wasserman has partnered with Microsoft to provide technology to the NFL. Wasserman calls the partnership "Surface on the Sidelines," and has described it as follows:

> In partnership with Microsoft, Wasserman developed custom hardware and software systems to revolutionize professional football game play and drive digital transformation across the NFL . . . Once the product and

> technology passed all the necessary tests, we worked with Microsoft and the NFL to distribute the tablets to teams across the country.

In a 2017 interview with the *Financial Times*, Wasserman explained that clients like Microsoft bring in a bigger proportion of the agency's annual revenue than individual clients, and the agency can more quickly grow and profit from such a relationship. The *Financial Times* quoted Wasserman as explaining:

> "Once an athlete is in a contract the only way to grow [that side of the business] is to add another athlete," he says. The marketing and media part "is more scalable" – meaning it can increase in size without incurring substantial additional costs.

Thus, Microsoft is among Wasserman's largest sources of revenue. Significantly, neither the Proxy nor the Books and Records indicate that the Board was aware of or considered Wasserman's relationship with Microsoft. Because of his relationships with Kotick, Activision and Microsoft, Wasserman was not an independent director.

ANSWER: Denied, except admitted that (1) Mr. Wasserman was an Activision Director; (2) Mr. Kotick and Mr. Wasserman are both active philanthropists who support many charitable causes and non-profit organizations, including serving as co-chairs of the Tony Hawk Foundation's Stand Up for Skateparks charity event and co-Trustees of the Los Angeles County Museum of Art ("LACMA"); and (3) Mr. Kotick and Mr. Wasserman reside in the Los Angeles area. Mr. Kotick lacks knowledge or information sufficient to admit or deny whether Microsoft is among Wasserman Media Group's largest sources of revenue. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, they are denied. Denied that Mr. Wasserman's relationship with Microsoft

created any conflict of interest or lack of independence or that the Board lacked sufficient information to assess his independence. Denied that Mr. Wasserman "was not an independent director."

44. The individual directors described above are referred to herein as the "Director Defendants." The Director Defendants identified at paragraphs 33-34 and 36-43 (all of the Director Defendants, except Carr) served on the Activision Board during events that formed part of the Harassment Scandal, and approved the Draft Merger Agreement on January 17, 2022, at which time they were also named defendants in lawsuits, and/or implicated in investigations, arising out of the Harassment Scandal. Claims relating to the timing, negotiation and approval of the Merger and the Merger Agreement are brought against them. At the time of the negotiation and approval of the Draft Merger Agreement, all of these Director Defendants other than Kotick and Kelly owned approximately 600,000 of Activision's over 775 million shares, less than one-tenth of one percent. Most of those shares were not purchased by them with their own funds, but were given to them for serving on the Activision Board.

ANSWER: Denied, except admitted that (1) the individual directors served on Activision's Board; (2) the Board approved the Merger Agreement on January 17, 2022; (3) Mr. Kotick and the other Directors were named in litigation based on false allegations of systemic misconduct at Activision; and (4) the Directors owned shares in Activision, some of which were awarded to them for serving on the Board. Paragraph 44 describes Plaintiff's naming conventions in the Third Amended Complaint, to which no response is required. The veracity of any harassment allegations referenced in this paragraph is denied.

45. The Director Defendants identified at paragraphs 33-36 and 38-42 above (Carr and all of the Director Defendants, except Hartong and Wasserman)

served on the Activision Board when Activision continued the invalid Merger Agreement beyond July 18, 2023 and failed to fix the statutory defects with respect to the Merger Agreement. At all of these times, all of these Director Defendants were named defendants in lawsuits arising out of the Harassment Scandal and the Merger. Claims related to the continuation of the Merger Agreement beyond the Termination Date, the Letter Agreement and the Board's continued failure to cure the statutory defects in the Merger and the Merger Agreement are brought against them. Between the execution of the Merger Agreement and the Merger's close, all of these Director Defendants, except for Kotick, received 6,206 shares of Activision common stock as director compensation for which they each received $589,570 in the Merger.

ANSWER: Denied, except admitted that (1) the individual directors served on Activision's Board; (2) the documents cited in this paragraph speak for themselves; (3) Mr. Kotick and the other Directors were named in litigation based on false allegations of systemic misconduct at Activision; and (4) the Directors owned shares in Activision, some of which were awarded to them after the Merger Agreement was executed. Denied that the Merger Agreement was "invalid." Paragraph 45 describes Plaintiff's naming conventions in the Third Amended Complaint, to which no response is required. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, they are denied.

46. Defendant Microsoft develops and supports a wide range of software, services, devices and solutions, including cloud-based solutions, operating systems, server applications, business solution applications, games, PCs, tablets, gaming and entertainment consoles, other intelligent devices and related accessories. For over twenty years, Microsoft and its senior executives have developed and maintained an ongoing relationship and regular dialogue with Kotick and Activision. Microsoft was one of Activision's largest customers in 2020-2021. Microsoft is incorporated in Washington and headquartered in Redmond, Washington. Its common stock is listed on the NASDAQ under the ticker symbol "MSFT."

ANSWER: Admitted.

47. Defendant Anchorage was formed by Microsoft on January 13, 2022, as a Delaware corporation and a wholly owned subsidiary of Microsoft for the purpose of effectuating the Merger. Anchorage was a party to the Merger Agreement. In the Merger, Anchorage merged with and into Activision, with Activision surviving the Merger as the successor to Anchorage.

ANSWER: Admitted.

48. Microsoft and Anchorage are collectively referred to as the "Microsoft Defendants." The Director Defendants and Microsoft Defendants are collectively referred to herein as the "Defendants."

ANSWER: Paragraph 48 describes Plaintiff's naming conventions in the Third Amended Complaint, to which no response is required.

49. Activision's toxic culture existed for decades and Kotick and other senior managers were aware of it. *The Wall Street Journal* reported in *Kotick Knew* that Kotick and other senior managers were participants. Indeed, numerous senior managers resigned or were forced out by their participation in, and/or knowledge of, misconduct at Activision. Harassment and discrimination were widely known in the industry and were so prevalent at Activision that it is reasonably conceivable and a fair inference that the Director Defendants were aware for an extended time that harassment and discrimination were occurring at Activision. It is also reasonably conceivable and a fair inference that at least some Director Defendants, particularly long-time Board members, attended one or more parties or events where improper activities occurred. Even after "Gamergate" in 2014 and harassment became a major issue as a result of scandals and the #MeToo movement, Kotick and the Board failed to control harassment and discrimination at Activision. Activision's approach to addressing its toxic workplace has been a combination of denial and window-dressing.

ANSWER: Denied, except admitted that *The Wall Street Journal* published the November 16, 2021 article containing false allegations about Activision and Mr.

Kotick. Denied that any "toxic culture" existed at Activision. The truth is that Activision was a top employer, consistently ranked by *Fortune* magazine as one of the world's "100 Best Companies to Work For"—including for five consecutive years from 2015 to 2019. *Fortune* also recognized Activision as one of the world's most admired companies in 2020 and 2021. No government agency, court, or any other individual ever found that systemic harassment or discrimination existed at Activision. Indeed, prior to the EEOC's initiation of an investigation in September 2018, the EEOC's comprehensive database showed zero complaints ever lodged against Activision for workplace issues at either the state or federal level. Further, when pressed at deposition, a CRD expert was forced to admit that women employees at Activision were actually paid more than their male counterparts (after controlling for legitimate factors like experience and tenure). Footnote 28 is not a properly pleaded allegation that requires a response, but denied that such footnote is accurate or complete.

50. The DFEH and EEOC began their investigations in 2018. Kotick knew about the investigations. So did the Board, as it acknowledged in a June 16, 2022 filing with the SEC. Yet harassment and discrimination continued at Activision and known perpetrators of this misconduct remained employed at Activision.

ANSWER: Denied, except admitted that (1) that DFEH and EEOC began their investigations in 2018; (2) Mr. Kotick knew of those investigations; and (3) Activision filed a Form 8-K with the SEC on June 16, 2022, which speaks for itself.

Any suggestion in this paragraph that either Mr. Kotick or the other Activision Directors engaged in misconduct of any sort, or that they knew about any systemic misconduct (none existed), is denied. To the contrary, as reflected in the settlement agreements with both the EEOC and DFEH (aka the CRD), there was never any finding of systemic misconduct at Activision. Denied that harassment and discrimination continued at Activision or that known perpetrators of this misconduct remained employed at Activision following investigations.

51. After more than two years of investigation, on June 15, 2021, the EEOC issued a letter of determination finding reasonable cause that Activision violated Title VII of the Civil Rights Act of 1964 by subjecting its employees to sexual harassment, discrimination and retaliation. On June 24, 2021, the DFEH issued a cause finding of Company-wide sexual harassment, discrimination and retaliation in violation of the California Fair Employment and Housing Act and the California Equal Pay Act.

ANSWER: Denied, except admitted that the documents referenced in this paragraph speak for themselves (although the veracity of the allegations therein is denied). Any suggestion in this paragraph that either Mr. Kotick or the other Activision Directors engaged in misconduct of any sort, or that they knew about any systemic misconduct (none existed), is denied. To the contrary, as reflected in the settlement agreements with both the EEOC and DFEH (aka the CRD), there was never any finding of systemic misconduct at Activision.

52. Kotick hired senior managers to help contain the fallout from the investigations, including, during the first half of 2021, a Chief Compliance Officer

("CCO"), Frances Townsend ("Townsend"), and an overseer for "Corporate Social Responsibility," Brian Bulatao ("Bulatao"). Meanwhile, managers who had failed to respond to complaints of harassment and discrimination left the Company quietly, including Activision's then-CFO Dennis Durkin ("Durkin"), then-Chief Legal Officer ("CLO") Chris B. Walther ("Walther") and then-Senior Director of Securities and Corporate Governance Jeremy Wilson ("Wilson"), who were not of typical retirement age.

ANSWER: Denied, except admitted that: (1) in March 2021, Townsend joined Activision as Secretary and Chief Operating Officer; (2) Bulatao joined Activision as its Chief Administrative Officer; and (3) Durkin, Walther, and Wilson left Activision in 2021.

53. Kotick, however, remained. On April 29, 2021, Activision disclosed in a Form 8-K that on April 28, 2021 its Compensation Committee (*i.e.*, Morgado (Chair), Bowers and Ostroff) extended Kotick's Employment Agreement from December 31, 2021 to March 23, 2023, citing in the annual proxy statement filed the next day (the "2021 Proxy") Kotick's "leadership, vision, and operational expertise." The Compensation Committee was aware of the EEOC and DFEH investigations when it praised Kotick and awarded him a contract extension.

ANSWER: Admitted, except Mr. Kotick denies that the Compensation Committee extended his Employment Agreement and respectfully refers the Court to the April 28, 2021 Extension Amendment to Employment Agreement, Activision's Form 8-K filed on April 29, 2021, and Activision's Schedule 14A filed on April 29, 2021 for a complete and accurate description of their contents.

54. The slow-motion Harassment Scandal train wreck quickened pace after the DFEH filed suit against Activision on July 20, 2021 (the "DFEH Action"). The DFEH Action triggered derivative suits and a class action against the Company, Kotick, the Director Defendants and officers. It also triggered Company-wide

outrage and walkouts by Activision employees.

ANSWER: Denied, except admitted that (1) the documents referenced in this paragraph speak for themselves (although the veracity of the allegations therein is denied), and (2) some Activision employees staged walkouts fueled by the false allegations—although, notably, they had not "walked out" during the preceding years when they were purportedly being subjected to a "toxic culture." Any suggestion in this paragraph that either Mr. Kotick or the other Activision Directors engaged in misconduct of any sort, or that they knew about any systemic misconduct (none existed), is denied. To the contrary, as reflected in the settlement agreements with both the EEOC and DFEH (aka the CRD), there was never any finding of systemic misconduct at Activision, with the court in the CRD action signing an order stating that "no court or any independent investigation has substantiated any allegations that: there has been systemic or widespread sexual harassment at Activision Blizzard; that Activision Blizzard senior executives ignored, condoned, or tolerated a culture of systemic harassment, retaliation, or discrimination; or that Activision Blizzard's Board of Directors, including its Chief Executive Officer, Robert Kotick, acted improperly with regard to the handling of any instances of workplace misconduct."

55. In a July 27, 2021 letter, Kotick said he "asked the law firm WilmerHale to conduct a review of our practices and procedures to ensure that we have and

maintain the best practices to promote a respectful and inclusive workplace." The selection of WilmerHale generated further opposition by Activision employees, who claimed the firm could not do an independent review and had a record of opposing workers. WilmerHale had performed legal work for Activision for many years, going back to at least 2007. Labor relations experts publicly questioned whether Activision was responding to the scandal in good faith by hiring a law firm two years after the DFEH investigation began.

ANSWER: Denied, except admitted that (1) the July 27, 2021 letter speaks for itself and (2) WilmerHale was engaged regarding Activision's employment practices and has performed legal work for Activision. Denied that Activision's "selection" of WilmerHale generated "further opposition" by Activision employees, although admitted that some employees—who were organized by the CWA union and referred to themselves as the ABK Worker's Alliance—expressed dissatisfaction with the retention of WilmerHale. Denied that WilmerHale could not do an independent review or had a record of opposing workers. Mr. Kotick is without information sufficient to assess Plaintiff's claims as to what "labor relations experts publicly questioned," but denies that Activision failed to act in good faith when hiring WilmerHale.

56. It soon became clear that WilmerHale was not hired to improve Activision's practices and procedures but to defend those responsible for the Harassment Scandal. Between September 7 and November 18, 2021, WilmerHale appeared on behalf of Activision, Kotick, the Director Defendants and other former directors and officers in numerous lawsuits in which they were named defendants.

ANSWER: Denied, except admitted that WilmerHale appeared on behalf of Activision, Mr. Kotick, and the Activision Directors in litigation. Denied that

WilmerHale was not hired to improve Activision's practices and procedures or that it was hired to defend those responsible for the alleged sexual harassment and discrimination issues.

57. In an August 3, 2021 press release, Activision announced that J. Allen Brack ("Brack), president of Blizzard, who was identified in the DFEH complaint as having been aware of and failing to remediate complaints of harassment, discrimination and retaliation, was leaving. Jesse Meschuk ("Meschuk"), a high-level HR executive who was identified as having failed to pursue harassment complaints, also left that week. Blizzard game designers Luis Barriga ("Barriga"), Jesse McCree ("McCree") and Jonathan LeCraft ("LeCraft"), who were photographed in the "Cosby Suite," were let go on August 11, 2021. Jen Oneal ("Oneal") was appointed a co-leader of Blizzard but resigned from her position three months later and left the Company before the end of the year. In a September email, she said she did not think Activision would remedy its toxic workplace, she had been sexually harassed earlier in her Activision career, she had attended a 2007 party with Kotick featuring scantily clad dancers on stripper poles, and she had been "tokenized, marginalized, and discriminated against." [redacted] *Kotick Knew* reported that senior women were leaving the Company because they had no faith in Kotick. Kotick still kept his position.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph speak for themselves (although the veracity of the claims directed at Mr. Kotick and Activision in the cited documents is denied), and (2) the named employees departed from the Company.

58. On September 20, 2021, *The Wall Street Journal* reported that the SEC was investigating Activision, and had subpoenaed the Company, Kotick and others and was asking for minutes of board meetings since 2019 and Kotick's

communications regarding complaints of harassment and discrimination. Kotick claimed in a press release that Activision was cooperating with the SEC's subpoena.

ANSWER: Admitted that the documents cited in this paragraph speak for themselves (although the veracity of the claims directed at Mr. Kotick and Activision in the cited documents is denied).

59. Activision's Chief People Officer ("CPO") Claudine Naughton ("Naughton") left Activision on September 20, 2021 with a Separation Agreement for over $1.3 million in salary and bonus, a cash out of 43,436 options and continued vesting of 21,896 RSUs. Kotick stayed in his job.

ANSWER: Admitted that (1) Ms. Naughton departed from the Company; (2) the Separation Agreement speaks for itself; and (3) Mr. Kotick remained in place as CEO.

60. On September 27, 2021, the EEOC filed its suit against Activision (the "EEOC Action"). The EEOC also filed a [Proposed] Consent Decree it negotiated with Activision to settle the EEOC Action, which, among other provisions, required Activision to pay $18 million to harassment claimants. Kotick offered more hollow promises of reform and kept his job (the "EEOC Consent Decree").

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves (although the veracity of any allegations of systemic misconduct made against Activision is denied). Denied that Mr. Kotick offered "hollow promises of reform" at any time.

61. On July 21, 2021, Activision's stock closed at $90.63. By September 27, 2021, the stock price had declined to $76.64.

ANSWER: Denied that Activision's stock closed at $90.63 on July 21, 2021.

Activision's stock closed at $91.17 on July 21, 2021. Denied that Activision's stock closed at $76.64 on September 27, 2021. Activision's stock closed at $75.08 on September 27, 2021.

62. On Thursday, October 28, 2021, Kotick issued a letter to all employees which was distributed as an Activision press release (the "October Press Release"). He admitted that Activision, on his watch, had failed to put systems, policies, people and guardrails in place to establish a safe and inclusive workplace. He said the EEOC investigation, public discourse and employee reports "helped shine a light" on sexist and discriminatory practices. But Kotick had not been in the dark; he had just turned a blind eye to years of misconduct.

ANSWER: Denied, except admitted that the cited letter and Press Release speaks for itself. Denied that Mr. Kotick had turned a "blind eye to years of misconduct" or that "Kotick had not been in the dark."

63. Kotick also stated in his October 28, 2021 letter that he had asked the Board to reduce his total compensation to $62,500 per year "until the Board had determined that we have achieved the transformational gender-related goals and other commitments" he had announced (the "Pay Cut Agreement"). The press release had its intended effect: it was widely reported that Kotick was taking an almost complete pay cut.

ANSWER: Denied, except admitted that the Letter and Press Release speaks for itself and that Mr. Kotick took a voluntary pay cut. Denied that the Press Release had its "intended effect" insofar as it implies Mr. Kotick was attempting to convey something that was untrue. Denied that the Letter and Press Release constitutes or reflects a "Pay Cut Agreement."

64. On October 28, 2021, the Activision Board met. [redacted] Indeed, all of the Activision directors—not just Kotick—were obligated to address Activision's toxic environment. As the 2021 Proxy acknowledged: (i) the Audit Committee's (Corti, Hartong and Nolan) responsibilities included overseeing risk investigation, overseeing compliance with legal and regulatory requirements, monitoring Activision's ethics and compliance program and regularly receiving reports from senior management with respect to significant risks and controls and investigation plans with respect to those risks; (ii) the Compensation Committee (Morgado, Bowers and Ostroff) was responsible for overseeing Activision's human capital, including diversity, equity and inclusion initiatives; (iii) the Corporate Governance Committee (Morgado, Meyer and Wasserman) was responsible for overseeing social and governance strategies, practices, policies and reporting; and (iv) the Board was responsible for overseeing overall risk management and delegating certain risk management oversight to a standing committee of the Board.

ANSWER: Denied, except admitted that (1) the Activision Board met on October 28, 2021 and (2) the meeting minutes and Proxy speak for themselves. Denied that [redacted] —such inference is speculative, legal argument, and not a well-pled factual allegation.

65. [redacted]

[redacted]

ANSWER: Denied, except admitted that [redacted] Denied that [redacted]

66. Most of the October 28, 2021 Board meeting was spent on presentation and discussion of Activision's eighty-nine-page Long Range Strategic Plan ("LRP"). The Executive Summary of the LRP identifies "leadership changes" as among the biggest risks Activision faces. [redacted] For Blizzard, the LRP identified as Strategic Priorities "rebuild employee culture and trust" and "remove blockers of change - establish who is in and who is out."

ANSWER: Denied, except admitted that the Long Range Plan speaks for itself (although Plaintiff's characterization of the Long Range Plan is inaccurate and/or incomplete and is therefore denied). Denied that [redacted]

[redacted] Denied that [redacted]

67. The LRP contained a Share Buyback Recommendation [redacted], the LRP acknowledged that with a current price of $78.08 Activision's stock was down 19% year to date. The LRP stated that its Preliminary LRP Flatout Case "implies value per share of $128" and its Preliminary LRP Risked Case "implies value per share of $113." Even the LRP's No Growth Scenario "implies $84 value per share." The LRP stated that if Activision's stock was at $70-80 or below it would be opportunistic to buy Activision shares. The Director Defendants executed a unanimous written consent of directors dated November 2, 2021 approving the LRP.

ANSWER: Denied, except admitted that the Long Range Plan speaks for itself—although Plaintiff's characterization of the Long Range Plan is inaccurate and/or incomplete and is therefore denied. For example, Plaintiff has omitted key provisions in the Long Range Plan that qualified the statements cited by Plaintiff.

68. [redacted]

[redacted] The Proxy contains no description of the October 28, 2021 Board meeting.

ANSWER: Denied, except admitted that the October 28, 2021 minutes, [redacted], and Proxy speak for themselves. Plaintiff's assertion that, [redacted] is a legal conclusion resting on hypothetical facts to which no response is required, but to the extent required, it is denied.

69. The reason for and timing of Kotick's announcement of his Pay Cut Agreement became clear when, four days later, Activision announced that it was delaying the release of two key products: Blizzard's *Overwatch 2* and *Diablo IV*. Activision's November 2, 2021 investors presentation acknowledged that *Overwatch 2* and *Diablo IV* were "two of the most eagerly anticipated titles in the industry," and that the delayed releases would in turn delay Activision's anticipated "financial uplift[.]" Activision's stock price tanked, falling 14% from $77.67 to $66.75 in a single day.

ANSWER: Denied, except admitted that (1) Activision announced the delay of *Overwatch 2* and *Diablo IV* on or about November 2, 2021; (2) the games were highly anticipated titles; and (3) Activision's stock price decreased from $77.67 on November 2, 2021 to $66.75 on November 3, 2021. Denied that the reason for and timing of Mr. Kotick's announcement of his voluntary pay cut "became clear" when Activision announced that it was delaying the release of those two games.

70. Activision claimed in its November 2, 2021 investors presentation that the delays were intended to "giv[e] the teams some extra time to complete production and continue growing their creative resources to support the titles after launch[.]" Activision failed to mention, however, that the teams needed "extra time" because of the Harassment Scandal. *Diablo IV* 's lead designers were Barriga and McCree, who left Activision after photos of them in the Cosby Suite were made public. *Overwatch* and *Overwatch 2*'s director and lead game designer Jeff Kaplan ("Kaplan") left in April 2021 after nineteen years. Further, *Overwatch 2*'s producer Tracy Kennedy ("Kennedy") blamed Kotick for these departures, writing to Kotick on Twitter: "almost entire teams [at *Overwatch*] are turning over and citing you as the reason."

ANSWER: Denied, except admitted that (1) the November 2, 2021 investors presentation speaks for itself and (2) Barriga, McCree, and Kaplan left Activision. Denied that the teams for *Overwatch 2* and *Diablo IV* needed "extra time" because of the alleged sexual harassment and discrimination issues. Mr. Kotick notes that Ms. Kennedy's account was apparently suspended by Twitter, and he is therefore without information sufficient to admit or deny what she may have stated.

71. The LRP confirms that the delays in *Diablo IV* and *Overwatch 2* were related to the departure of key leaders as a result of the Harassment Scandal. [redacted]



It is fair inference and reasonably conceivable that the delays in the release of *Overwatch 2* and *Diablo IV* were largely related to the departures and fallout triggered by the Harassment Scandal.

ANSWER: Denied, except admitted that the Long Range Plan speaks for itself (although denied that Plaintiff has accurately characterized the Long Range Plan; for example, Plaintiff has omitted key provisions in the Long Range Plan that qualified the statements cited by Plaintiff). Denied that the Long Range Plan confirms that the delays in *Diablo IV* and *Overwatch 2* were related to the departure of key leaders as a result of the alleged sexual harassment and discrimination issues. Denied that it is fair inference and reasonably conceivable that the delays in the release of *Overwatch 2* and *Diablo IV* were largely related to the departures and fallout triggered by the alleged sexual harassment and discrimination issues—such inference is speculative, legal argument, and not a well-pled factual allegation.

72. Also on November 2, 2021, Activision announced that Oneal was leaving the Company, which analysts noted likely contributed to the 14% fall in Activision's stock price that day. The stock price decline caused by the announcement of the Harassment Scandal related delay in *Diablo IV* and *Overwatch 2* was a further reason why November 2021 was not an appropriate time to be negotiating a sale of Activision.

ANSWER: Denied, except admitted that (1) Activision's stock price declined (although denied that Plaintiff accurately characterizes the reasons for this decline),

and (2) on November 2, 2021, Activision announced that Ms. Oneal was leaving the Company. Mr. Kotick lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence concerning what unidentified analysts purportedly noted.

73. Kotick knew when he announced his Pay Cut Agreement on October 28, 2021 that Activision was about to announce the delayed releases of *Overwatch 2* and *Diablo IV*, as well as Oneal's resignation, and that these announcements would likely have yet another detrimental impact on the Company. Kotick announced his Pay Cut Agreement to soften the fallout he might suffer.

ANSWER: Denied, except admitted that Mr. Kotick was aware that the releases of *Overwatch 2* and *Diablo IV* were at risk of being delayed around November 2021.

74. On November 15, 2021, Activision's stock closed at $70.01. On November 16, 2021, *The Wall Street Journal* published *Kotick Knew*, stating that "Activision CEO Bobby Kotick Knew for Years About Sexual Misconduct Allegations at Videogame Giant." *Kotick Knew* reported that "people with knowledge of the board" said Kotick had not informed the Board of the 2018 rape reports and that he had told directors and other executives he was not aware of many misconduct allegations and had downplayed others. It is a fair inference and reasonably conceivable that "people with knowledge of the board" refers to Activision directors.

ANSWER: Denied, except admitted that the text of the *Kotick Knew* article speaks for itself (although the veracity of the allegations contained therein is denied). Denied that on November 15, 2021, Activision's stock closed at $70.01. Activision's stock closed at $70.43 on this date. Denied that it is a fair inference and reasonably conceivable that "people with knowledge of the board" refers to

Activision directors—such inference is speculative, legal argument, and not a well-pled factual allegation.

75. *Kotick Knew* cited "people familiar with the matter and internal documents," including memos, emails and regulatory requests. Those documents and "interviews with former employees and others familiar with the company" showed Kotick knew about many allegations of employee misconduct but did not fully inform the Board even after regulators began investigating the incidents in 2018. *Kotick Knew* reported:

> The board of directors was blindsided by the California lawsuit's allegations … according to people familiar with the board. Directors questioned Mr. Kotick about what he knew and why they hadn't been better informed. He has told them any cultural issues were centered at the company's Blizzard Entertainment unit, which he said he had resolved years earlier, these people said.

ANSWER: Denied, except admitted that the text of the *Kotick Knew* article speaks for itself (although the veracity of the allegations contained therein is denied). Denied that this paragraph correctly quotes the cited portion of the article. Denied that Mr. Kotick knew about "many allegations of employee misconduct but did not fully inform the Activision Board even after regulators began investigating the incidents in 2018."

76. It is a fair inference and reasonably conceivable the "people familiar with the board" refers to Activision directors. The California lawsuit's allegations had been known since July 2021, so if the Board had been "blindsided" it was as of July 2021. The DFEH investigation included the directors' knowledge and handling of the sexual harassment and discrimination allegations and how the directors worked with Activision's senior executives. DFEH subpoenaed Activision's directors. By November 16, 2021, the Board knew full well about the Harassment

Scandal. The article does not say when the directors questioned Kotick "about what he knew and why they hadn't been better informed." But certainly, they had that opportunity nearly three weeks earlier at the October 28, 2021 Board meeting.

ANSWER: Denied, except admitted that (1) by November 16, 2021, the Board knew about the false allegations of sexual harassment and discrimination; (2) the DFEH investigation included an investigation into (a) the directors' knowledge and handling of the false harassment and discrimination allegations and (b) how the Directors worked with Activision's senior executives; and (3) the DFEH subpoenaed Activision's directors. However, the DFEH made no findings of systemic misconduct at Activision or any misconduct by Mr. Kotick and the Directors at the conclusion of its investigation. Denied that it is a fair inference and reasonably conceivable the "people familiar with the board" refers to Activision directors—such inference is speculative, legal argument, and not a well-pled factual allegation. Denied that the Board was "blindsided" by the California lawsuit's allegations.

77. In an interview given shortly before the *Kotick Knew* article, Kotick claimed he had been transparent with the Board and had given them as much information as they required. On November 16, 2021, Activision spokeswoman Helaine Klasky said in a written statement that Kotick was not "informed of every report of misconduct at every Activision Blizzard Company," that Activision's Board had been "informed at all times with respect to the status of regulatory matters" and that Kotick had not said the problems were only at Blizzard. Thus, the Board claimed to have been blindsided and not fully informed by Kotick, while Kotick claimed he had been transparent and had fully informed the Board. In short, both Kotick and the Board recognized the exposure they faced as a result of the Harassment Scandal and sought to cover for themselves by implicating the others.

ANSWER: Denied, except admitted that (1) Mr. Kotick had been transparent with

the Board and had given them all the information they required (although denied to the extent Plaintiff's use of the word "claimed" implies that Mr. Kotick had not in reality been transparent), and (2) Ms. Klasky's November 16, 2021 written statement speaks for itself. However, Mr. Kotick lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding the interview referenced in the first sentence, because Paragraph 77 does not identify what interview it is referencing. Denied that the "Board claimed to have been blindsided and not fully informed by Mr. Kotick, while Mr. Kotick claimed he had been transparent and had fully informed the Board." Denied that "Mr. Kotick and the Board recognized the exposure they faced as a result of the Harassment Scandal and sought to cover for themselves by implicating the others."

78. Contrary to Kotick's claim that harassment and discrimination had only happened, and had been resolved, years ago, *Kotick Knew* reported that thirty women employees wrote an email in 2020 (that Kotick was aware of) complaining of "unwanted touching, demeaning comments, exclusion from important meetings and unsolicited comments on their appearance."

ANSWER: Denied, except admitted that the text of the *Kotick Knew* article speaks for itself (although the veracity of the allegations contained therein is denied). Denied that Mr. Kotick's statements were inconsistent with the truth.

79. In response to *Kotick Knew*, over one-hundred current and former employees participated in a protest that same day and demanded that Kotick resign. Activision shares fell 6% on November 16, 2021 after *Kotick Knew* was published, closing at $66.14.

ANSWER: Denied, except admitted that (1) the text of the *Kotick Knew* article speaks for itself (although the veracity of the allegations contained therein is denied); (2) current and former Activision employees participated in a protest fueled by the false allegations of the *Kotick Knew* article, some of whom called for Activision executives to resign; and (3) Activision's stock price closed at $66.14 on November 16, 2021.

80. The same day that *The Wall Street Journal* published *Kotick Knew*, Activision and Kotick, as well as the Activision Board, issued press releases defending Kotick. In a tone-deaf response, Activision said it was disappointed by *Kotick Knew*, which it described as "a misleading view of Activision Blizzard and our CEO." Defending Kotick, Activision claimed: "Instances of sexual misconduct that were brought to his attention were acted upon." Thus, Activision admitted that instances of misconduct had been brought to Kotick's attention. Apparently to Kotick and Activision, a quick, quiet settlement of rape charges constituted "acting upon" sexual misconduct. *The Wall Street Journal* noted in another article published on November 16, 2021 that Activision's statement did not challenge the facts reported in *Kotick Knew*.

ANSWER: Denied, except admitted that (1) Activision issued press releases pointing out the false nature of the allegations in *Kotick Knew*; (2) those press releases speak for themselves; and (3) previous instances of misconduct had been brought to Mr. Kotick's attention and appropriately acted upon. Denied that Activision's statement did not challenge the facts reported in *Kotick Knew*. Denied that a "quick, quiet settlement of rape charges constituted 'acting upon' sexual misconduct" to Mr. Kotick and Activision, particularly to the extent this allegation

is designed to suggest wrongdoing by Mr. Kotick or Activision.

81. Activision's press release also touted changes underway at Kotick's direction, but left unexplained Kotick's failure to make changes for years even when there were multiple ongoing investigations. Activision attempted to portray Kotick as part of the solution when he was a major part of the problem.

ANSWER: Denied, except admitted that Activision's press release speaks for itself.

82. The Board's November 16, 2021 press release focused on changes "[u]nder Bobby Kotick's leadership," also attempting to portray Kotick as part of the solution, while ignoring the failure of that "leadership" to make real changes for many years. The Board's press release gave Kotick a complete and unqualified endorsement:

> The Board remains confident that Bobby addressed workplace issues brought to his attention . . . The Board remains confident in Bobby Kotick's leadership, commitment and ability to achieve these goals.

Thus, the Board admitted that "workplace issues" had been brought to Kotick's attention. This admission makes it reasonably conceivable that the Board knew of the misconduct at Activision, but, for Kotick's protection and its own, claimed that Kotick's responses were proper, though the Board knew otherwise.

ANSWER: Denied, except admitted that the November 16, 2021 press release speaks for itself. Denied that there were any "failure[s]" of leadership to make appropriate changes. Denied that any admission that "workplace issues" had been brought to Mr. Kotick's attention makes it reasonably conceivable that the Board knew of the misconduct at Activision, but, for Mr. Kotick's protection and its own, claimed that Mr. Kotick's responses were proper, though the Board knew otherwise—such allegation is speculative and not a well-pled factual allegation.

Such allegation is also inconsistent with other allegations throughout Plaintiff's Complaint that the Board was unaware of purported harassment and discrimination or that there was a disconnect between what Mr. Kotick knew versus what the other Directors knew.

83. The responses of Activision and its Board to the *Kotick Knew* article raise a fair inference and make it reasonably conceivable that by November 16, 2021, the Board knew that Kotick had been aware of instances of sexual misconduct but had determined to join Kotick and his flacks in a campaign of denial and minimization in order to protect Kotick and the Board.

ANSWER: Denied. The inference Plaintiff attempts to draw in paragraph 83 is speculative, legal argument, and not a well-pled factual allegation, and is denied.

84. In the wake of *Kotick Knew*, even more employees, investors and others demanded that Kotick resign. Nearly 1,900 Activision employees—almost 20% of all employees—signed a petition calling for Kotick to resign. Dan Bunting ("Bunting"), co-head of Activision Publishing's *COD* studio Treyarch, who was identified in *Kotick Knew* as among the harassers that Kotick had protected, resigned on November 16, 2021. After July 27, 2021, over thirty employees were pushed out of Activision and over forty received written reprimands. Yet the Board declined to hold Kotick accountable.

ANSWER: Denied, except admitted that (1) some employees and investors called for Mr. Kotick to resign, which was fueled by the false allegations in the *Kotick Knew* article; (2) Mr. Bunting resigned on November 16, 2021; and (3) after July 27, 2021, employees departed from Activision and some received written reprimands. Denied that the Activision Board declined to hold Mr. Kotick accountable—he had not engaged in any misconduct for which he could have or should have been held

"accountable."

85. Most ominously, Activision's most important business partners, Microsoft and Sony, were highly critical of Activision and sought to distance themselves from the Company. Microsoft manufactures the Xbox console and Sony manufactures the PlayStation console, the videogame industry's two leading consoles. Activision's largest franchise, *COD*, became successful largely based on Microsoft's Xbox Live platform and most of Activision's other games were published on Xbox consoles. On November 18, 2021, Microsoft then-VP of Gaming Spencer sent an email to Microsoft employees that referred to *Kotick Knew* and indicated that he and Microsoft's gaming leadership were "disturbed and deeply troubled by the horrific events and actions" at Activision, saying that:

> This type of behavior has no place in our industry.

Spencer said Microsoft was reevaluating its relationship with Activision in light of the Harassment Scandal.

ANSWER: Denied, except admitted that (1) Microsoft manufactures the Xbox console and Sony manufactures the PlayStation console; (2) Activision's largest franchise, *Call of Duty*, became successful based, at least in part, on Microsoft's and Sony's online platforms; (3) Activision games were published on Xbox and PlayStation, as well as consoles produced by Nintendo, and on computers and smartphones; and (4) Mr. Spencer's November 18, 2021 email speaks for itself.

86. Sony's PlayStation Chief Jim Ryan ("Ryan") also sent a note to Sony employees saying he and his leadership team were "disenchanted and frankly stunned to read" of Activision's "deep-seated culture of discrimination and harassment." In response to the stinging criticism and threats to change business relationships with Activision by two of its most important business partners, Activision issued a statement that it valued feedback from its "valued partners" and would be "engaging with them further."

ANSWER: Denied, except admitted that Mr. Ryan's note and Activision's

statement speak for themselves.

87. The growing controversy over Kotick and Activision caused JPMorgan Chase to cut its recommendation on Activision's stock, observing that the recent negative headlines had created uncertainty.

ANSWER: Denied, except admitted that JPMorgan downgraded its recommendation of Activision stock to "neutral" after its stock price declined in November 2021. Mr. Kotick lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 87 and denies them on that basis.

88. *The Wall Street Journal* reported that at a meeting with Company executives on Friday, November 19, 2021, Kotick said he might leave the Company if the sexual misconduct issues could not be fixed quickly. Thus, Kotick conceded the Harassment Scandal could force him to have to leave the Company.

ANSWER: Denied, except admitted that the text of the referenced *Wall Street Journal* article speaks for itself (although the veracity of allegations contained therein is denied, as is Plaintiff's characterization of the article). The article reported that "Mr. Kotick, who has led Activision for three decades, stopped short of saying he would step down in a Friday meeting with executives of the company's Blizzard Entertainment unit, but left the possibility open if misconduct issues across the company weren't fixed 'with speed,' these people said." Denied that the false allegations of systemic misconduct "could force [Mr. Kotick] to have to leave the Company."

89. Kotick's October 1, 2016 Employment Agreement provides in Section 7(d) that his employment "shall be terminated" for:

> **Cause.** By the Company, for cause, but only upon a vote of a majority of the entire Board at a meeting duly called at which Executive shall have the right to be present and be heard. The term "***Cause***" means … (iii) willful misconduct or gross negligence by the Executive in connection with the performance of his duties that has caused or is likely to cause severe harm to the Company; (iv) intentional dishonesty by the Executive in the performance of his duties hereunder which has a material adverse effect on the Company; or (v) a material breach by the Executive of his material obligations.

ANSWER: Admitted that Mr. Kotick's October 1, 2016 Employment Agreement speaks for itself (although denied that this paragraph correctly quotes the Agreement, as it omits the words "and held" and "highly").

90. Kotick's contribution to and handling of sexual harassment at Activision constituted "willful misconduct or gross negligence" which "caused or is highly likely to cause severe harm to the Company," including numerous investigations and suits and the dramatic drop in Activision's stock price, damage to Activision's business relationships and reputation, exposure to investigations and litigation and the revolt and revulsion among its employees. His attempts to minimize and cover up the scandal, his public statements concerning the scandal and his failure to inform the Board fully and candidly involved "intentional dishonesty" which had "a material adverse effect on the Company." His conduct represented a material breach of material obligations under the Employment Agreement.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, they are denied. Denied that Mr. Kotick engaged in any misconduct in connection with the false allegations of workplace misconduct, intentional or otherwise.

91. Under Sections 9(c)(i)-(ii) of Kotick's Employment Agreement, upon termination for Cause, Kotick would only be entitled to Accrued Obligations and all vested options would expire. According to the Proxy and Activision's 2022 annual proxy statement, if Kotick had been fired for Cause, he would have forfeited 2,201,878 unvested options and any unvested Performance Stock Units. Moreover, under Section 1(a)(13) of Kotick's Employment Agreement, for an Employment Violation (*i.e.*, any material breach of his Employment Agreement), Kotick would be subject to forfeiture of outstanding PSUs or Vested Shares and a clawback of a Recapture Amount consisting of the gross realized or unrealized gain from the vesting of PSUs or delivery of Vested Shares within a Look-Back Period of twelve months.

ANSWER: Denied, except admitted that Mr. Kotick's Employment Agreement speaks for itself (however, Plaintiff appears to conflate Mr. Kotick's Employment Agreement with the Incentive Plan that governed his PSUs, which also speaks for itself). The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, they are denied.

92. Kotick had been granted PSUs by the Compensation Committee on December 28, 2018, August 12, 2019 and December 31, 2020 that were to vest in March 2022. The Committee also granted him PSUs on September 9, 2020 and December 31, 2020 that vested on March 1, 2021. According to the 2021 Proxy, the fair value of Kotick's 2020 and 2021 equity grants was $149,856,770. Kotick's outrageous compensation caused stockholders to solicit votes "AGAINST" his pay, and a Glass Lewis recommendation of a "no" vote on Say on Pay, at the 2021 annual meeting. Activision failed to achieve the required vote on Say on Pay at its June 14, 2021 annual meeting but extended the voting and claimed on June 21, 2021 it had scrounged up enough votes to pass the proposal.

ANSWER: Denied, except admitted that (1) Mr. Kotick had been granted PSUs by the Compensation Committee on December 28, 2018, August 12, 2019 and December 31, 2020 that were to vest on March 31, 2022; (2) Mr. Kotick was also

granted PSUs on September 9, 2020 and December 31, 2020 that vested on March 1, 2021; (3) according to the 2021 Proxy, the fair value of Kotick's 2020 and 2021 equity grants was $149,856,770; (4) there was a Glass Lewis recommendation of a "no" vote on Say on Pay at the 2021 annual meeting; and (5) the Say on Pay proposal passed on June 21, 2021 (although denied to the extent the phrase "scrounged up" implies any impropriety, manipulation, or irregularity in how the voting occurred). Denied that Mr. Kotick's compensation was outrageous. Denied that Mr. Kotick's compensation caused stockholders to solicit votes "AGAINST" his pay.

93. In light of the Harassment Scandal on his watch, Kotick and other Director Defendants would have faced even more widespread stockholder dissent at Activision's 2022 annual meeting. The Merger, however, would provide an excuse to hold a rushed vote on the Merger Agreement before the 2022 annual meeting and save Kotick's job.

ANSWER: Denied. Mr. Kotick lacks knowledge or information sufficient to admit or deny whether the Directors would have faced stockholder dissent at Activision's 2022 annual meeting—as such allegation is hypothetical and not a well-pled factual allegation—but in any event, the veracity of any allegations in the so-called "Harassment Scandal" is denied. Denied that the Merger "would provide an excuse to hold a rushed vote on the Merger Agreement before the 2022 annual meeting and save Kotick's job."

94. According to the Proxy, Activision and Microsoft have developed and maintained a relationship for over twenty years. Kotick engaged in a "regular

dialogue" with Microsoft's Spencer, with whom Kotick said he had "a great relationship[.]" Kotick also had a relationship with Microsoft's CEO Satya Nadella ("Nadella"), with whom Kotick spoke "[f]rom time to time[.]" On November 19, 2021, three days after *Kotick Knew* was published, and the day after Spencer said Microsoft was reevaluating its relationship with Activision, Kotick spoke with Spencer.

ANSWER: Denied, except admitted that (1) Activision and Microsoft have developed and maintained a relationship for over twenty years; (2) the documents cited in this paragraph speaks for themselves; and (3) Mr. Kotick spoke with Mr. Spencer on November 19, 2021. Plaintiff's characterization of the timing of the Merger negotiations is denied as inaccurate and incomplete.

95. The Proxy and the December 3, 2021 minutes describe the "conversation" but do not say whether it was in person, by videoconference or by telephone, who initiated the conversation or how it came about. Both indicated that the conversation was "on a different topic" but do not identify what that topic was. However, on November 18, 2021 Spencer had severely criticized Activision and told Microsoft employees that Microsoft was reconsidering its relationship with Activision and Activision had responded by saying it would be reaching out to its valued partners. Thus, it is not only reasonably conceivable but likely that Kotick initiated the conversation, and that the unidentified topic was Microsoft's reaction to the Harassment Scandal and *Kotick Knew*, which had been published three days earlier.

ANSWER: Denied, except admitted that (1) the Proxy and the December 3, 2021 minutes speak for themselves and (2) Activision regularly reached out to its valued partners. The allegation that it is "likely that [Mr.] Kotick initiated the conversation and that the unidentified topic was Microsoft's reaction to the [false] [h]arassment [allegations] and *Kotick Knew* [article]" is speculative, argumentative, and not a

well-pled factual allegation that warrants a response, but to the extent required, it is denied.

96. While the Proxy and minutes suggested that "in the course of a [November 19] conversation" Spencer raised the idea of Microsoft acquiring Activision "out-of-the blue" while he and Kotick were discussing something else, it is reasonably conceivable (and far more likely) that Kotick and Spencer did not ignore the elephant in the room (*i.e.*, Kotick's and Activision's plight in light of the Harassment Scandal and *Kotick Knew*), and Spencer's acquisition overture had been invited by Kotick or was Spencer's response as a solution to that plight. The Proxy was deliberately misleading because it omitted that the Harassment Scandal led to Microsoft's acquisition overture.

ANSWER: Denied, except admitted that the Proxy and December 3, 2021 minutes speak for themselves (although denied that the Proxy was "misleading," much less "deliberately misleading"). The allegation that "it is reasonably conceivable (and far more likely) that [Mr.] Kotick and Spencer did not ignore the elephant in the room (*i.e.*, [Mr.] Kotick's and Activision's plight in light of the Harassment Scandal and *Kotick Knew*), and Spencer's acquisition overture had been invited by [Mr.] Kotick or was Spencer's response as a solution to that plight" is speculative, argumentative, and not a well-pled factual allegation that warrants a response, but to the extent required, it is denied.

97. Spencer recognized that the negative attention and pressure on Kotick would make the beleaguered CEO eager to sell Activision. Activision relied on Microsoft and Sony for a substantial portion of its revenue. Activision's 10-K annual report for 2021 (the "10-K") explained that Microsoft and Sony provide hardware platforms, digital platforms and video game consoles for consumers to use and pay for Activision's games. The 10-K stated: "Due to our reliance on third- party

platforms, platform providers are frequently able to influence our products and costs" with respect to consumer access and pricing. The 10-K explained on page 22:

> The control that these platform providers have over consumer access to our games, the fee structures and/or retail pricing for products and services for their platforms and online networks and the terms and conditions under which we do business with them could impact the availability of our products or the volume of purchases of our products made over their networks and our profitability. The networks provided by these platform providers are the exclusive means of selling and distributing our content on these platforms . . . If the platform provider establishes terms that restrict our offerings on its platform, significantly alters the financial terms on which these products or services are offered, or does not approve the inclusion of content on its platform, our business could be negatively impacted . . . If these platforms deny access to our games, modify their current discovery mechanisms, communication channels available to developers, operating systems, terms of service, or other policies (including fees), our business could be negatively impacted.

ANSWER: Denied, except admitted that Activision's 2021 10-K annual report speaks for itself. Mr. Kotick lacks knowledge or information sufficient to admit whether Mr. Spencer believed that the negative attention and pressure on Mr. Kotick would make him eager to sell Activision, and therefore denies such allegation.

98. The 10-K also stated on the same page:

> The success of our console business is driven in large part by our ability . . . to develop commercially successful products for these consoles. We also rely on . . . the continued support for these consoles by their manufacturers, including our ability to reach consumers

> via the online networks operated by these console manufacturers . . . If the consoles for which we develop new software products or modify existing products do not attain significant consumer acceptance, we may not be able to recover our development costs, which could be significant.

ANSWER: Admitted that the 10-K form speaks for itself.

99. Because of its commercial power over Activision, Microsoft had significant leverage during the Merger negotiations. If Microsoft distanced itself from Kotick and his mishandling of the Harassment Scandal by restricting consumers' access to Activision's games or manipulating the price of Activision's games, that would affect Activision's profitability. At the time of Kotick's November 19, 2021 conversation with Spencer, Microsoft and Sony had both denounced Kotick and his mishandling of the Harassment Scandal. Microsoft therefore had the upper hand: Kotick could sell Activision to Microsoft at the price that Microsoft wanted or risk Microsoft making changes to Activision's consumer access and fees. [redacted] The Proxy, however, did not describe these aspects of the CDL or the major role of the Harassment Scandal in the Merger.

ANSWER: Denied, except admitted that (1) the Proxy and CDL speak for themselves and (2) Mr. Kotick and Mr. Spencer spoke on November 19, 2021. Mr. Kotick lacks knowledge or information sufficient to admit whether, "[i]f Microsoft distanced itself from [Mr.] Kotick and his handling of [the alleged sexual harassment and discrimination issues] by restricting consumers' access to Activision's games or manipulating the price of Activision's games, that would affect Activision's profitability"—such allegation is speculative, argumentative, and not a well-pled factual allegation, and it is therefore denied.

100. Microsoft, moreover, was eager to buy Activision. "Microsoft's all-in on gaming." Indeed, "[g]aming is the biggest and fastest-growing entertainment industry in the world." Access to AAA content is crucial for Microsoft, and the company strives to ensure it provides new AAA content to its consumers on a regular basis. AAA games, however, are difficult and costly to produce because of the creative talent, budgets and time required to develop them. Acquiring Activision—one of the Big 4 that reliably produces AAA games and owns some of the most valuable intellectual property in the gaming industry, including *COD*—would not only give Microsoft access to the constant stream of AAA games it needs, but make Microsoft a dominant player in the gaming industry. Acquiring Activision would also give Microsoft a presence "in mobile gaming, which is the fastest-growing segment of gaming and the place where 94% of gamers spend their time today." "[I]n 2020[,] the gaming industry was worth $165 billion, with $85 billion coming from mobile gaming[.]" Microsoft, however, had "next to no presence in mobile gaming," while "three quarters of Activision's gamers and more than a third of [Activision's] revenues come from mobile offerings."

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

101. During their November 19, 2021 conversation, Spencer asked Kotick to schedule a call with Nadella to take place the next day. In the wake of *Kotick Knew*, Microsoft and its senior management saw a company, a Board and a long-time friend in crisis and swooped in, knowing a CEO in an untenable position with whom Microsoft had a close relationship would jump at the chance for a big payment, rather than resigning in disgrace. Microsoft also knew that as Activision's most important business partner it had the upper hand in negotiations with Activision, particularly given its threat to reevaluate its relationship with Activision in light of the Harassment Scandal.

ANSWER: Denied, except admitted that on November 19, 2021, Mr. Spencer asked Mr. Kotick to schedule a call with Mr. Nadella to take place the next day.

102. On November 20, 2021, Kotick had a call where Nadella affirmed Microsoft's interest in acquiring Activision. Kotick did not call a Board meeting to discuss Microsoft's overture until eighteen days later on December 3, 2021. Instead,

Kotick "promptly" and selectively reported his November 19, 2021 conversation with Spencer to defendants Kelly and Morgado. The Proxy said that Kotick and Kelly spoke to Allen & Co. on November 19 after Kotick's call with Spencer and that Kotick spoke with Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden") on November 20 after his call with Nadella. [redacted]

ANSWER: Denied, except admitted that (1) the Proxy and December 3, 2021 Board Minutes speak for themselves; (2) on November 20, 2021, Mr. Kotick had a call where Mr. Nadella discussed Microsoft's interest in acquiring Activision; (3) Mr. Kotick reported his November 19, 2021 conversation with Mr. Spencer to Messrs. Kelly and Morgado; and (4) the full Activision Board met on December 3, 2021 to discuss the offer from Microsoft. Denied that "[Mr.] Kotick did not call a Board meeting to discuss Microsoft's overture until eighteen days later on December 3, 2021." Denied that eighteen days after November 20 is December 3. Denied that Plaintiff's characterization of Mr. Kotick's communication with Messrs. Kelly and Morgado as "selective[]" is accurate.

103. The Proxy rationalized Kotick's decision to disclose Microsoft's overture to (i) Kelly, because he is Activision's Chairman, (ii) Morgado, because he is Activision's lead independent director and (iii) Allen & Co., because it "provided strategic financial advice to Activision" on other occasions. Kelly and Morgado, however, have worked with Kotick for over thirty years, and Kotick could count on them to help him orchestrate the deal and steer the Board into a Microsoft merger. Kotick could similarly rely on Allen & Co., who has been Kotick's go-to financial advisor for years.

ANSWER: Denied, except admitted that (1) the Proxy speaks for itself and (2) Mr.

Kotick and Mr. Kelly have had a business relationship since 1990. Denied that Mr. Kotick could "count on" Messrs. Kelly and Morgado to help "orchestrate the deal and steer the Board into a Microsoft merger," or that Mr. Kotick could "similarly rely on Allen & Co," to the extent this is meant to suggest any lack of independence, conflict of interest, or other impropriety. Denied to the extent the word "rationalized" is meant to suggest any impropriety.

104. Allen & Co. is a small firm known for building success by "patiently [], as Allen & Co. habitually does, [working] to build a client relationship." Its CEO Herb Allen ("Herb"), who has run the firm since 2002, and banker Nancy Peretsman ("Peretsman"), who has been with Allen & Co. since 1995, have nurtured their relationship with Kotick.

ANSWER: Denied, except admitted that (1) Herb Allen is the CEO of Allen & Company; (2) Nancy Peretsman has been a managing director of Allen & Company since 1994; and (3) Allen & Co. builds client relationships like any other financial firm, including with Mr. Kotick, although denied to the extent "nurtured their relationship" is meant to suggest any impropriety. Denied that Allen & Co. is a "small firm"—Allen & Co. is a sophisticated boutique firm established in 1922 with a well-established roster of clients including Activision, Google, Facebook, Coca-Cola, the New York Mets, Time Warner Cable, AOL, Walmart, Verizon, Ebay, and many more.

105. In 2007, Allen & Co. landed the job as Activision's sole financial advisor on the $18 billion Vivendi Merger. Herb and Peretsman advised Activision

and Kotick was responsible for hiring them. The proxy filed in connection with the Vivendi Merger (the "Vivendi Merger Proxy") disclosed that Kotick and Kelly were working with Allen & Co. at least one month before discussing the potential merger with the Board. The Vivendi Merger Proxy also disclosed that Allen & Co. had been advising Activision "in connection with other potential transactions" since 2002. Kotick, given his position as CEO and then-Chairman, would have engaged Allen & Co. since before 2002 on those other transactions.

ANSWER: Denied, except admitted that (1) Allen & Co. was Activision's financial advisor on the Vivendi Merger and (2) the Vivendi Merger Proxy speaks for itself. Denied to the extent Plaintiff suggests any impropriety or lack of independence based on Activision's prior dealings with Allen & Co.—if anything, the Vivendi Merger (which was abundantly successful and benefitted Activision shareholders immensely) demonstrates that Activision's process for engaging Allen & Co. with regard to the Microsoft Acquisition was entirely proper.

106. By 2010, Kotick was regularly attending Allen & Co.'s exclusive "Sun Valley Conference," otherwise known as "The Billionaire's Summer Camp." The conference is invite-only for CEOs, institutional investors, Hollywood stars and their families; Allen & Co. pays the entire bill; and according to media reports, many of Allen & Co.'s deals are "birthed" during the Sun Valley Conference.

ANSWER: Denied, except admitted that Mr. Kotick has attended the "Sun Valley Conference"—an annual conference attended by hundreds of industry leaders since the Conference was founded in 1983. Mr. Kotick lacks knowledge or information sufficient to admit whether Allen & Co. pays the entire bill for the Sun Valley Conference; whether "many of Allen & Co.'s deals are 'birthed' during the Sun Valley Conference"; and whether the conference "is invite-only for CEOs,

institutional investors, Hollywood stars and their families."

107. In July of 2012, Activision was the talk of the Sun Valley Conference after reports emerged that Vivendi wanted to sell its then-61% stake in Activision. Kotick and Kelly promptly formed ASAC to acquire Vivendi's Activision shares, and engaged Allen & Co. to advise them. Thus, Allen & Co. advised ASAC, which was adverse to Activision's then-special committee of directors on which Morgado served.

ANSWER: Denied, except admitted that ASAC II LP was formed to purchase shares from Vivendi. Denied that Vivendi or ASAC was ever "adverse to" Activision or its directors. Denied to the extent Plaintiff suggests any impropriety or lack of independence based on Activision's prior dealings with Allen & Co.—if anything, the purchase of shares from Vivendi (which was abundantly successful and benefitted Activision shareholders immensely) demonstrates that Activision's process for engaging Allen & Co. with regard to the Microsoft deal was entirely proper. Mr. Kotick lacks knowledge or information sufficient to admit whether "Activision was the talk of the Sun Valley Conference" in July 2012.

108. Allen & Co.'s Peretsman also advertises herself as advising Kotick personally. Peretsman has a biography in connection with her membership with the American Academy of Arts & Sciences ("AAAS"). Her AAAS biography touts her work as advising tech and media giants (*e.g.*, Facebook, Google and Amazon) and on business deals (*e.g.*, Time Warner Cable's merger with Charter Communications) and then highlights her work for two individuals, stating that "[h]er extensive advisory practice includes a portfolio of assignments for many leading entrepreneurs of this generation, including Barry Diller and Bobby Kotick." Indeed, in 2009, Allen & Co. started a private wealth-management business overseeing the personal fortunes of technology entrepreneurs like Kotick.

ANSWER: Denied. Mr. Kotick lacks knowledge or information sufficient to admit how Ms. Peretsman "advertises herself," but notes that Mr. Peretsman's AAAS biography (https://www.amacad.org/person/nancy-beth-peretsman) does not contain the quoted phrases, and he therefore denies the allegations in this paragraph. Mr. Kotick also lacks knowledge or information sufficient to admit if and when "Allen & Co. started a private wealth-management business overseeing the personal fortunes of technology entrepreneurs like [Mr.] Kotick." Denied to the extent Plaintiff suggests any impropriety or lack of independence based on Activision's prior dealings with Allen & Co.

109. Kotick also served as a director on the board of The Coca-Cola Company ("Coke" or "Coca-Cola") (the "Coke Board") with Allen & Co.'s former CEO and Herb's father Herbert Allen Jr. ("Herbert"), as well as Herb. Herbert was a Coke director for thirty-nine years from 1982 until August 2021. Kotick was a Coke director alongside Herbert from 2012 until Herbert's resignation. Then, on December 17, 2021—in the midst of the Merger negotiations—the Coke Board nominated Herb to fill his father's vacant seat. Kotick was a member of the Coke Board's Committee on Directors and Corporate Governance ("DGC") that nominated Herb in the middle of the Merger negotiations. In addition, according to Coke's SEC filings, Allen & Co. has historically served as one of Coke's significant financial advisors, a decision that Kotick, as a long tenured Coke director, would have been involved in.

ANSWER: Denied, except admitted that (1) Mr. Kotick has served as a director on Coca-Cola's Board, which is a further reflection of his proven leadership skills, business acumen and integrity and (2) Herb Allen and Herbert Allen also served on Coca-Cola's Board. Denied to the extent Plaintiff suggests any impropriety or lack

of independence based on Mr. Kotick's prior dealings with Allen & Co. or Coca-Cola.

110. Allen & Co. is a repeat advisor to Activision (significantly influenced by Kotick) and Kotick. Allen & Co. was not going to risk this lucrative and patiently nurtured relationship by advising Kotick inconsistent with his wishes.

ANSWER: Denied, except admitted that Allen & Co. served as an advisor to Activision on multiple occasions. Denied to the extent Plaintiff suggests any impropriety or lack of independence based on Activision's prior dealings with Allen & Co.—if anything, Activision's prior dealings with Allen & Co. created results that benefitted Activision shareholders immensely, which demonstrates that Activision's process for engaging Allen & Co. with regard to the Microsoft Acquisition was entirely proper.

111. In addition, as discussed below, [redacted] and the only other Allen & Co. banker to directly interface with and advise the full Activision Board, [redacted], each had over $1 million invested in Microsoft.

ANSWER: Denied, except admitted that [redacted] interfaced with the Activision Board. Denied that [redacted] were the only Allen & Co. employees who "directly interface[d] with and advise[d]" the Activision Board. Mr. Kotick lacks knowledge or information sufficient to know about the details of [redacted] but notes that Allen & Co.'s December 12, 2021 disclosure memo stated that (1) [redacted]

[redacted] and (2) [redacted] Denied to the extent Plaintiff suggests any impropriety or lack of independence based on any of the allegations in this paragraph.

112. On November 22, 2021, Kotick and Kelly spoke to Microsoft's Spencer. After the call, they informed Corti about Microsoft's interest in acquiring the Company. The Proxy rationalizes Kotick and Kelly's decision to tell Corti because he was Chair of the Audit Committee. Corti, however, was also among Activision's longest-standing, most conflicted directors.

ANSWER: Denied, except admitted that (1) Messrs. Kotick and Kelly spoke to Mr. Spencer on November 22, 2021, and after the call, they informed Mr. Corti about Microsoft's interest in acquiring Activision; and (2) the Proxy speaks for itself (although denied to the extent the word "rationalizes" is meant to suggest any impropriety). Denied that Mr. Corti was a conflicted director.

113. [redacted] November 22, 2021, however, was the day that the Activision Board announced its formation of the WRC, consisting of Ostroff (Chair) and Bowers, to oversee Activision's progress in improving its culture and eliminating harassment and discrimination at the Company. This indicates that Kotick and Kelly, as well as Morgado and Corti, communicated with the Board on November 22 about forming and announcing the WRC. Indeed, the minutes from the December 3 Board meeting state that [redacted] Thus, either Kotick and Kelly on November 22 opted only to tell Corti and not the remaining directors of Microsoft's interest in acquiring Activision or the Proxy and minutes are incorrect and they told

other directors about Microsoft's interest on November 22. Hartong's family trust purchased Activision shares on November 23. It is reasonably conceivable the timing of that purchase was not a coincidence.

ANSWER: Denied, except admitted that (1) the Proxy and December 3, 2021 Board minutes speak for themselves; (2) on November 22, 2021 the Activision Board announced the formation of the WRC, consisting of Ostroff (Chair) and Bowers, to oversee Activision's progress in optimizing its workplace environment and culture; and (3) an investment manager for the Susan Hartong Revocable Trust completed a purchase of 65 shares of Activision stock on November 23, 2021. Denied that the Proxy and December 3, 2021 Board minutes [redacted]

114. The absence of any mention in the Proxy of the November 22, 2021 Board action concerning the WRC is likely (and reasonably conceivably) a part of Defendants' deliberate effort to separate the Merger from the Harassment Scandal and pretend the scandal and its fallout had no role in the hasty sale of Activision to Microsoft. However, the severity of the scandal, its impact on Activision and its employees, business partners, customers, stockholders and stock price, the timing of the sale discussions and the participation of WilmerHale in Board meetings and other discussions involving the Merger show otherwise. The Company Disclosure Letter provides further evidence that Defendants intentionally sought to obscure the role of the Harassment Scandal in causing Kotick and the Board to push Activision into the Merger. It specifically references employee walkouts, material sexual harassment settlements and claims, and investigations arising out of the scandal that the Proxy does not mention.

ANSWER: Denied, except admitted that the Proxy and Company Disclosure Letter speak for themselves. Denied that there were any "deliberate" or "intentional[]" efforts to "obscure" any material facts.

115. On November 26, 2021, Kotick and Kelly spoke to Spencer, who told them Microsoft was considering making a bid for $80 per share. Kotick and Kelly discussed Microsoft's offer with Corti and Morgado (the "Gang of Four"). According to the Proxy, this Gang of Four purportedly "discussed potential ranges at which the full Activision Board may be willing to consider an acquisition proposal taking into consideration, among other factors, Activision Blizzard's historical trading prices, selected research analysts' estimates for Activision Blizzard and relative trading multiples of Activision Blizzard and its peers." Of course, the appropriate way to determine the range at which the full Activision Board would be willing to consider a sale of the Company would be to call a meeting of the full Board, present a detailed analysis of the value of the Company and have the full Board determine whether to put the Company up for sale and, if so, at what price range. Instead, Kotick and Kelly and two long-time cronies apparently made an *ad hoc*, seat-of-their-pants determination that Activision should be sold at a range of $90-105 per share. The report about the $90-105 range made to the Board at the December 3, 2021 Board meeting does not refer to potential ranges, trading prices, analysts' estimates or trading multiples and no such information was provided to the Board. It is reasonably conceivable that the Proxy's reference to historical trading prices, analysts' estimates and trading multiples was made up when the Proxy was drafted to make it appear the Gang of Four had some financial reasoning for the $90-105 range. Significantly, (i) the Proxy contains no disclosure of the historical trading prices, selected research analysts' estimates and trading multiples on which the Gang of Four supposedly based their $90 to $105 range and (ii) the Proxy disclosure indicates the Gang of Four did not [redacted] Any consideration of historical trading prices would include the decreased Activision stock prices since July 28, 2021 as a result of the Harassment Scandal. Any consideration of analysts' estimates would include the decreased estimates resulting from the Harassment Scandal, which would also affect Activision's trading multiples. Thus, to the extent the Gang of Four purported to consider the value of Activision, they were evaluating the Company as damaged goods as a result of the Harassment Scandal.

ANSWER: Denied, except admitted that (1) the Proxy and Meeting Minutes speak for themselves; (2) on November 26, 2021, Messrs. Kotick and Kelly spoke to Mr. Spencer, who told them Microsoft was considering making a bid for $80 per share;

(3) Messrs. Kotick, Kelly, Corti and Morgado "discussed potential ranges at which the full Activision Board of Directors may be willing to consider an acquisition proposal taking into consideration, among other factors, Activision Blizzard's historical trading prices, selected research analysts' estimates for Activision Blizzard and relative trading multiples of Activision Blizzard and its peers"; and (4) the December 3, 2021 Board Meeting Minutes summarize the discussions during the December 3, 2021 Board meeting—although denied to the extent Plaintiff suggests that (a) this summary discloses a complete set of information discussed at the meeting or (b) the Board was not provided with additional information and details about the $90-$105 range. Plaintiff's use of the term "Gang of Four" is pejorative and prejudicial; denied that a so-called "Gang of Four" existed. Plaintiff's speculative allegations regarding how to determine the value of a company are denied. Denied that Messrs. Kotick and Kelly made an *ad hoc* determination of Activision's value; that the Proxy "made up" information; and that the so-called "Gang of Four" was evaluating Activision as "damaged goods."

116. The Proxy said that on November 28, 2021, Kotick told Spencer the Activision Board would consider a Microsoft proposal in a range of $90 to $105 per share. Thus, without Board authorization, Kotick communicated to Microsoft that Activision was for sale for as little as $90. The Proxy contained no further description of this communication. Unsurprisingly, Microsoft quickly made a $90 per share offer.

ANSWER: Denied, except admitted that Mr. Kotick relayed the range to Microsoft

and Microsoft made a $90 per share offer.

117. On November 29, 2021, Spencer communicated to Kotick and Kelly that although Microsoft would negotiate between $90 and $105, Microsoft wanted to negotiate at the lower end of the range. Seeking to take advantage of the crisis at Activision, Microsoft pressed Kotick and Kelly for quick action before an upcoming Microsoft board meeting.

ANSWER: Denied, except admitted that Mr. Spencer communicated to Messrs. Kotick and Kelly that Microsoft was willing to negotiate between $90 and $105, as disclosed in the Proxy, which speaks for itself.

118. Sometime after their discussion with Spencer, Kotick and Kelly communicated Microsoft's $90 per share offer to Morgado and Corti and also Hartong and Nolan. The Proxy states that Kotick and Kelly told Hartong and Nolan because they were the "remaining members of the Audit Committee" without explaining why membership on the Audit Committee would entitle them to learn of the merger negotiations before the rest of the Board. Nolan and Hartong were included, like Morgado and Corti before them, because of their ties to Kotick. Kotick wanted to lobby and line-up a pro-merger coalition of his most loyal directors—constituting a majority of the directors before informing the full Board.

ANSWER: Denied, except admitted that Messrs. Kotick and Kelly communicated Microsoft's $90 per share offer to members of the Audit Committee (Messrs. Morgado, Corti, Hartong and Nolan), as disclosed in the Proxy, which speaks for itself. Denied that only certain Activision Directors were included because of their ties to Mr. Kotick, and that Mr. Kotick wanted to create a so-called pro-merger coalition of his most loyal directors.

119. In addition, each of Hartong and Nolan, as directors and members of

the Audit Committee, knew or should have known about Kotick's involvement in, and failure to prevent or contain, the Harassment Scandal. Notwithstanding, and in the midst of employee and stockholder sentiment that Kotick step down from his role, Hartong and Nolan, along with Morgado and Corti, allowed Kotick to continue to run the Company.

ANSWER: Denied.

120. On December 1, 2021, Kotick and Spencer discussed introductions between "the parties' respective legal teams and potential financial advisors," as well as the timing of Activision's delivery of its financial forecasts. Thus, Kotick had selected the Board's advisors, including Allen & Co. and Skadden, before informing the Board about the Merger.

ANSWER: Denied, except admitted that on December 1, 2021 Mr. Kotick discussed introductions between "the parties' respective legal teams and potential financial advisors," as well as the timing of Activision's delivery of its financial forecasts, as disclosed in the Proxy, which speaks for itself. Denied that Mr. Kotick had selected the Board's advisors before informing the Board about the Merger.

121. On December 3, 2021, Kotick and Kelly finally convened the Board via Zoom to discuss the Merger they had been negotiating for two weeks. The meeting attendees included WilmerHale, Allen & Co., Skadden and Sard Verbinnen & Co. ("Sard Verbinnen"), a crisis management public relations firm. Neither the Proxy nor the Books and Records explain why WilmerHale and Sard Verbinnen were invited to and attended the meeting or reflect any Board decision or authorization to retain WilmerHale or Sard Verbinnen to represent the Company. WilmerHale, however, was purportedly conducting an investigation into the scandal and was defending Activision, Kotick, the Director Defendants and various other current and former Activision officers in litigation arising out of the Harassment Scandal. It is reasonably conceivable that Sard Verbinnen had been retained to manage the public relations crisis created by the Harassment Scandal. Although the Board claims it did not consider Kotick's involvement in the Harassment Scandal in connection with the Merger, WilmerHale's presence for the entire meeting (and all other meetings at

which the Board discussed the Merger), Sard Verbinnen's presence [redacted] suggest otherwise.

ANSWER: Denied, except admitted that (1) the Proxy and the Books and Records speak for themselves; (2) on December 3, 2021, the Activision Board convened and discussed the Merger; and (3) the Meeting's attendees included WilmerHale, Allen & Co., Skadden, and Sard Verbinnen.

122. Skadden appeared at the December 3, 2021 Board meeting and subsequent meetings. Neither the Proxy nor the Books and Records reflect any Board authorization that Skadden represent the Company. This confirms that Kotick single-handedly chose Skadden as the Company's legal advisor.

ANSWER: Denied, except admitted that the Proxy and Books and Records speak for themselves. Denied that Mr. Kotick single-handedly chose Skadden to represent Activision.

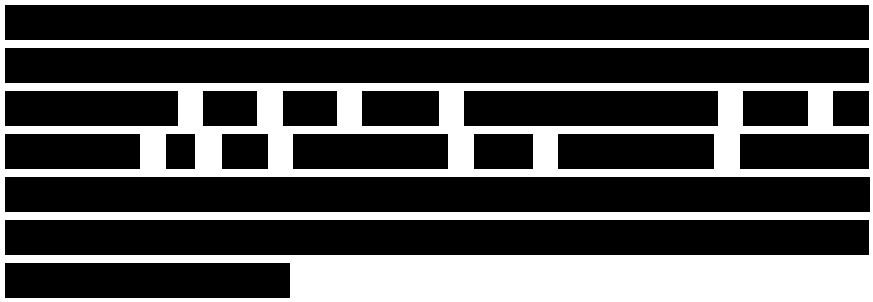
123. Allen & Co.'s Peretsman attended the Executive Session of the meeting. As with WilmerHale and Skadden, the Books and Records do not reflect any Board authorization for Allen & Co. to represent the Company. The Proxy, in contrast, said that after Morgado told the Board about the Company's discussions with Microsoft, the Board discussed formally engaging financial advisors. The Proxy stated:

> After discussing the relevant experience and qualifications of various potential financial advisors, the Activision Blizzard Board of Directors decided to work with Allen & Company. The Activision Blizzard Board of Directors selected Allen & Company on the basis of, among other factors, Allen & Company's qualifications and reputation, extensive experience in advising software companies in connection with potential strategic transactions (including

> in which Microsoft was a counterparty), its knowledge and understanding of Activision Blizzard's business and industry from its previous work with Activision Blizzard, and the absence of any known material conflicts with respect to Microsoft.

ANSWER: Denied, except admitted that (1) the Proxy and Books and Records speak for themselves and (2) Ms. Peretsman attended a portion of the December 3, 2021 Board meeting—but as reflected in the Meeting Minutes, Ms. Peretsman left the meeting before the Company discussed engagement of financial advisors.

124. The minutes from the December 3 meeting, however, do not reflect the Board's "selection" of Allen & Co. or consideration of Allen & Co.'s "previous work" for Activision or "conflicts with respect to Microsoft." Instead, the meeting minutes only state that the Board discussed:



The Proxy therefore creates the false impression that the Board approved Allen & Co.'s engagement and made a determination that Allen & Co. had no material conflicts at the December 3, 2021 Board meeting. This false impression was material, considering Kotick continued to involve Allen & Co. as though the Board had approved Allen & Co.'s engagement and considered its conflicts when the Board had not.

ANSWER: Denied, except admitted that the Proxy and December 3, 2021 Meeting Minutes speak for themselves. The Meeting Minutes summarize the discussions during the December 3, 2021 Board meeting, although any insinuation by Plaintiff

that (a) this summary discloses a complete set of information discussed at the meeting or (b) [redacted] is denied. Denied that there was any "false impression" or inconsistency between the Proxy and Meeting Minutes.

125. According to the minutes, [redacted]. The Proxy did not contain any mention of those subjects but just stated that Morgado provided the Board with an "update" on discussions with Microsoft regarding a potential acquisition of the Company. However, based on the Proxy, there was nothing to update because some Board members were already privy to the discussions and the rest did not know there had been any discussions. While the Proxy indicates that Kotick and Kelly reported the Microsoft discussions to Hartong and Nolan, the minutes indicate that only Kotick, Kelly, Morgado and Corti were aware of the discussions prior to the December 3, 2021 Board meeting.

ANSWER: Denied, except admitted that the Proxy and December 3, 2021 Meeting Minutes speak for themselves. To the extent Plaintiff attempts to insinuate that the Board was not appropriately informed about the status of the Microsoft negotiations, such insinuation is denied.

126. The minutes state that Kotick and Kelly had communicated the $90-105 range to Microsoft [redacted] The Proxy did not indicate that the $90-105 range had been mentioned at the December 3, 2021 Board meeting, and did not mention any consultation with Allen & Co. in developing that range. The minutes contain no indication of the basis for the range and make no mention of historical stock prices, research analysts' estimates or relative trading multiples. Neither the minutes nor the Proxy indicated that the Board authorized negotiation within that range.

ANSWER: Denied, except admitted that the Proxy and December 3, 2021 Board

Minutes speak for themselves. The Minutes summarize the discussions during the December 3, 2021 Board meeting, although any insinuation by Plaintiff that (a) this summary discloses a complete set of information discussed at the meeting, or (b) that the Board was not provided with additional information and details about the $90-$105 range, is denied. Denied to the extent Plaintiff suggests that negotiations with Microsoft in the $90-$105 range were unauthorized.

127. The discrepancies between the minutes and the Proxy reflect an effort to obscure that Allen & Co. was actually retained by Kotick without Board authorization, to pretend Allen & Co. was retained by the Board on December 3, 2021 when it was not and to claim Kotick and Kelly based the $90 to $105 range on some reasoned analysis rather than a spit-balled estimate. The minutes reflect that [redacted]

ANSWER: Denied, except admitted that the Proxy and December 3, 2021 Meeting Minutes speak for themselves. The Minutes summarize the discussions during the December 3, 2021 Board meeting, although any insinuation by Plaintiff that (a) this summary discloses a complete set of information discussed at the meeting, or (b) that the Board was not provided with additional information and details about the $90-$105 range and other material particulars of the potential deal with Microsoft, is denied. Denied that there were any "discrepancies" between the Proxy and Meeting Minutes; that Mr. Kotick retained Allen & Co. without Board authorization;

that he or Activision "pretend[ed]" about anything; or that the $90 to $105 range was a "spit-balled estimate."

128. [redacted]

ANSWER: Denied, except admitted that the [redacted] speak for themselves. [redacted] Denied that Mr. Kotick [redacted] Denied that [redacted]

[redacted] Denied that [redacted]

[redacted] Denied

that [redacted]

[redacted] Denied that [redacted]

[redacted]

[redacted]

129. Further, neither the Proxy nor the December 3, 2021 meeting minutes indicate that the Board authorized Kotick to continue pursuing discussions with Microsoft or otherwise gave Kotick any guidance on how to proceed. Apparently, it was so obvious that Kotick would and could proceed as he pleased that the Board did not bother to give him authorization or guidance and just let the conflicted CEO continue the negotiations.

ANSWER: Denied, except admitted that the Proxy and December 3, 2021 Minutes speak for themselves. The Minutes summarize the discussions during the December 3, 2021 Board meeting, although any insinuation by Plaintiff that (a) this summary discloses a complete set of information discussed at the meeting, or (b) that the Board was not provided with additional information and details about the potential deal with Microsoft, is denied. Denied that the Board failed to provide Mr. Kotick with "any guidance on how to proceed." Denied that "[a]pparently, it was so obvious that [Mr.] Kotick would and could proceed as he pleased that the Board did not bother to give him authorization or guidance and just let the conflicted CEO continue the negotiations." Denied that Mr. Kotick was "conflicted."

130. On December 3, 2021, the same day Kotick told the Board about the Merger, *Morningstar* issued a scathing report. The report recounted the Harassment Scandal and the numerous related departures from Activision, which contributed to the Company's delayed releases of Activision's key products. The report also described Kotick's role in and mishandling of the Harassment Scandal and the numerous calls for Kotick's resignation, including by nearly 20% of the employees. *Morningstar* concluded that "the best course to help Activision Blizzard move forward and unlock the value in its stock would be to replace Kotick."

ANSWER: Denied, except admitted that *Morningstar* published a report, the text of which speaks for itself (although the veracity of the allegations and evaluations in that report is denied). Denied that Mr. Kotick "mishandl[ed]" or acted improperly with regard to allegations of sexual harassment and discrimination at Activision—multiple investigations demonstrated the precise opposite (that Mr. Kotick appropriately acted whenever misconduct was brought to his attention). Denied that replacing Mr. Kotick would have been "the best course" for Activision.

131. The Morningstar ESG Report also said that "if Kotick tries to hang on at all costs, significant value destruction could occur." The Report stated that "[a] change at the top is the best way forward," observing:

> Despite Kotick attempting to holding onto the job, we think all parties (other than perhaps Kotick) would be best served with a change at the top. Given the flood of allegations and management missteps since July, we believe that Kotick and his senior team have lost the confidence of a significant portion of employees along with consumers and investors. This loss of confidence along with the allegations that Kotick covered up harassment complaints and prevented the firing of executives, damages Kotick's ability to make changes at Activision Blizzard.

> We think that if Kotick remains in his role, the firm will continue to struggle attracting and retaining talent, particularly within the development ranks.

ANSWER: Denied, except admitted that *Morningstar* published a report, the text of which speaks for itself (although the veracity of the allegations and evaluations in that report is denied). Denied that *Morningstar* appropriately evaluated the facts, particularly given that *Morningstar* relied on false allegations that lacked basis in reality.

132. Later, the report observed:

> We believe that by staying in the CEO role, Kotick is likely to not only hurt the firm's ability to compete for talent but also limit the growth potential for the core franchises. We think that the board needs to look outside of Activision Blizzard to find a new leader who could enact the cultural change necessary to ensure that sexual harassment and misconduct do not occur.

ANSWER: Denied, except admitted that *Morningstar* published a report, the text of which speaks for itself (although the veracity of the allegations and evaluations in that report is denied). Denied that *Morningstar* appropriately evaluated the facts, particularly given that *Morningstar* relied on false allegations that lacked basis in reality.

133. *Morningstar* correctly predicted that, given the composition of the Board and the ties between Kotick and the directors, the Board would not push Kotick out. Indeed, by its own admission, the Board did not consider pushing Kotick out. People familiar with the Board told the *The Wall Street Journal* that the Board

was not willing to pursue this alternative:

> [D]irectors who had stood by Mr. Kotick during the crisis were individually beginning to get anxious . . . Some directors didn't believe shareholders and employees would be comfortable without a major change but weren't willing to try to oust Mr. Kotick.

ANSWER: Denied, except admitted that *Morningstar* and the *Wall Street Journal* published reports (although the veracity of the allegations and evaluations in those reports is denied). Denied that *Morningstar* appropriately evaluated the facts, particularly given that *Morningstar* relied on false allegations that lacked basis in reality. The veracity of the allegations listed in the *Wall Street Journal* article is similarly denied.

134. Instead, the Board claimed in a public statement that it did not consider Kotick's status when it considered the Merger. It never considered whether the highest value for Activision might be without Kotick as CEO. The wrongdoing at Activision did not relate to the basic operation of its gaming business. Other companies, such as Google, have survived such scandals. The Merger was not the only realistic option.

ANSWER: Denied, except admitted that the Merger was not Activision's "only" option—although denied that Activision had a better "realistic option" on the table at the time. Mr. Kotick lacks knowledge or information as to Plaintiff's intended meaning of the phrases in sentences three and four, and denies them on that basis.

135. The Proxy represents that on December 3, 2021, after the Activision Board meeting, Kotick and Kelly received an email from the CEO of another gaming company, which the Proxy calls Company A, addressed to the Activision Board

expressing interest in exploring a potential strategic transaction. As described below, the other gaming company was likely [redacted] Kotick received an additional communication from that CEO requesting a meeting the following week. Though the email was addressed to the Board, the Proxy and Board minutes indicate that Kotick and Kelly did not disclose it to the Board until a Board meeting on December 10, 2021. Unlike their approach with Microsoft, Kotick and Kelly did not immediately follow up with Company A.

ANSWER: Denied, except admitted that the Proxy speaks for itself. Denied that Mr. Kotick and the other Directors failed to act promptly and appropriately with regard to Company A.

136. On December 6, 2021, Activision and Microsoft entered into a mutual non-disclosure agreement (the "NDA"). The Proxy and minutes indicate that at its December 3, 2021 meeting, the Board did not authorize Activision to enter into an NDA with Microsoft. [redacted] This restricted Activision's approach to a potential sale of the Company. For example, Activision could not trigger a bidding war between Microsoft (with its Xbox) and Microsoft's leading competitor Sony (with its PlayStation) over Activision (with its industry leading games) by disclosing to Sony that it was in discussions with Microsoft.

ANSWER: Denied, except admitted that Activision and Microsoft entered into an NDA on December 6, 2021, and that the NDA speaks for itself. Denied that Activision was unable to solicit bids as a result of the NDA; indeed, Activision solicited multiple bids after the NDA was signed.

137. After the NDA had been entered into, Kotick's management team shared with Microsoft Activision's LRP for Activision's financial performance for fiscal years 2021 through 2024.

ANSWER: Admitted that Activision shared its Long Range Plan with Microsoft after the NDA was executed. Denied that the ambitious future targets in the Long Range Plan constituted "Activision's financial performance."

138. According to the Proxy, on December 7, 2021, Activision (including Kotick and Kelly), Allen & Co. and Skadden met with Microsoft (including Spencer) and Microsoft's financial advisor and counsel to discuss, among other things, Activision's LRP. The portion of the minutes of the December 10, 2021 Activision Board meeting recounting Kelly's report on the December 7 meeting indicate [redacted] The Proxy blandly said Activision and Microsoft "discussed various other aspects of Activision Blizzard's business." The December 10 minutes state that [redacted] It is reasonably conceivable that the Harassment Scandal was among the [redacted] discussed and that the Proxy disclosure was part of a deliberate plan by Defendants to hide the fact that the Harassment Scandal was a major, if not the primary, factor to the Merger Agreement.

ANSWER: Denied, except admitted that (1) the Proxy and December 10, 2021 Meeting Minutes speak for themselves and (2) Activision met with Microsoft on December 7, 2021. The December 10, 2021 Minutes summarize the discussions during the December 10, 2021 Board meeting, but any insinuation by Plaintiff that (a) this summary discloses a complete set of information discussed at the meeting, or (b) that the Board was not provided with additional information and details about the potential deal with Microsoft, is denied.

139. On December 8, 2021, Spencer told Kotick that the Microsoft board had authorized a proposal to acquire Activision. On December 10, 2021, Kotick and Kelly convened the Board, with WilmerHale, Skadden and Allen & Co. in

attendance. Kelly told the Board about the December 7 meeting and December 8 communication from Microsoft. The Board purportedly discussed others who might be interested in exploring a potential transaction with the Company but rationalized why a deal with those parties would not work, including "regulatory hurdles" and why the Board should favor Microsoft. Significantly, neither the Proxy nor the minutes reflect any concerns about "regulatory hurdles" a transaction with Microsoft might face.

ANSWER: Denied, except admitted that (1) the Proxy and Meeting Minutes speak for themselves; (2) Mr. Spencer communicated to Mr. Kotick that Microsoft's Board had authorized a proposal to acquire Activision; and (3) the Activision Board held a meeting on December 10, 2021 in which the Directors discussed the Microsoft negotiations and other potential transactions. Denied to the extent the word "rationalized" is meant to suggest any impropriety. Denied that the Board "purportedly" discussed other potential acquirors to the extent this is meant to suggest that such discussions did not in fact occur. Denied that the Proxy and Minutes' absence of a discussion of "regulatory hurdles" is "significant," or that the Board and shareholders lacked adequate information about such potential "regulatory hurdles."

140. Kotick and Kelly also discussed with the Board on December 10, 2021 that they received emails from the CEO of a company code-named "Elate" expressing a desire to explore a potential transaction and to meet with Kotick in person. The minutes state that, unlike Kotick's quick and secretive reaction to Microsoft's proposal, Kotick told the Board "that he had not responded substantively to the CEO's email, pending direction from the Board." Rather than open- mindedly exploring a potential combination with an interested gaming company, the Proxy and minutes indicate the Board immediately began coming up with reasons not to

pursue the opportunity, including that a transaction involving a significant stock component would not be comparable to an all-cash offer. The Board purportedly concluded it was unlikely that a transaction with Elate would be competitive with an all-cash offer from Microsoft, even though there was no information on what a transaction with Elate would look like and Microsoft's cash offer was for only $80 per share. The Proxy and minutes claim the Board discussed "trading multiples of the two companies" but do not say what those multiples were and the Board had received no analysis of trading multiples. In short, Kotick and the Board simply made up excuses for not pursuing a transaction with Elate. Although the Board instructed Kotick to meet with Elate's CEO, the Board had already decided a transaction with Elate was unlikely.

ANSWER: Denied, except admitted that (1) the Proxy and December 10, 2021 Meeting Minutes speak for themselves and (2) Mr. Kotick and Mr. Kelly discussed correspondence with the CEO of Elate with the Activision Board. Denied that Mr. Kotick had a quick and secretive rection to Microsoft's proposal. Denied that Mr. Kotick and the Activision Board simply made up excuses for not pursuing a transaction with the company code-named Elate, and denied that the Activision Board had already "decided" a transaction with Elate was unlikely when it instructed Mr. Kotick to meet with Elate's CEO. Denied that Activision failed to have an "open-mind[]" in its discussions with Elate (although Elate ultimately was unable to make an offer that was competitive to Microsoft's offer). Elate also failed to present an opportunity for massive synergies of the sort that Microsoft could offer (such as an opportunity to work with Microsoft's engineering talent focused on artificial intelligence and machine learning).

141. The Proxy states that during the afternoon of December 10, 2021, Spencer told Kotick and Kelly that Microsoft would be sending a non-binding indication of interest to acquire Activision for $90 (*i.e.*, the low end of the $90 to $105 range that Kotick gave Microsoft on November 28). Microsoft subsequently delivered its $90 offer in writing, which was addressed to Kotick. The offer opened with a reference to the value of the "strategic relationship" between Microsoft and Activision and thanked Kotick for his "collaborative approach" in recent discussions. Referring to the Harassment Scandal, the offer said that Microsoft recognized that "this is a challenging time for the Company and its employees and that Activision is confronting a number of well-publicized concerns." Microsoft said it was "uniquely positioned to efficiently work through such issues as part of its diligence process for the transaction contemplated by the Preliminary Proposal and thereafter." The Proxy's two sentence description of Microsoft's offer does not mention any of the points described above.

ANSWER: Denied, except admitted that (1) the Proxy and written offers speak for themselves and (2) Microsoft delivered an offer of $90 per share, which Activision rejected in order to advance shareholders' interest in a better deal.

142. Microsoft's letter recognized that the Harassment Scandal was central to the merger discussions and would be the subject of due diligence. Microsoft's reference to the value of Activision's relationship with Microsoft conveyed a veiled threat, given Microsoft's public statements that it was reevaluating that relationship. Microsoft recognized Kotick was a collaborator, not an independent negotiator for the Activision stockholders. [redacted] The offer stated Microsoft could negotiate and sign a definitive agreement "expeditiously" if given "exclusive" access to Activision management and advisors. Microsoft requested a response by December 13, 2021.

ANSWER: Denied, except admitted that [redacted] and Microsoft requested a response by December 13, 2021.

143. The Board met on December 12, 2021 to discuss Microsoft's $90 per share offer. According to the minutes of the December 12, 2021 Board meeting, [redacted] Kotick reported that on December 10, 2021, Spencer told him Microsoft would be sending a $90 offer and implied that Microsoft might slightly increase the price but not significantly. [redacted] Microsoft and Activision later publicly disclosed their assessments: the Merger would face regulatory hurdles until the end of Microsoft's 2023 fiscal year.

ANSWER: Denied, except admitted that (1) the December 12, 2021 Minutes speak for themselves and (2) Microsoft and Activision disclosed that the Merger would face regulatory hurdles (just like any other transaction of this size).

144. The Proxy did not describe Kotick's December 12, 2021 report on his December 10 conversation with Spencer. Rather, it misrepresented that Morgado "described Messrs. Kotick's and Kelly's recent conversations with Mr. Spencer" without disclosing any information about the content of that call, including (i) Spencer's comments implying Microsoft would only increase the price slightly at best, ([redacted] Disclosure of this information would have been important to a reasonable Activision stockholder in evaluating the $95 merger price. First, armed with this information, a reasonable stockholder might conclude that the basis for Microsoft's $90 offer was that Kotick told Microsoft on November 28 the Company was for sale for as low as $90, so Microsoft was not going to offer much more than that.

ANSWER: Denied, except admitted that the Proxy and the December 12, 2021 Meeting Minutes speak for themselves. Denied that the Proxy misrepresented anything or lacked the information necessary for a reasonable stockholder to

evaluate the Merger. Plaintiff's speculative assertion as to what a stockholder "might conclude" is a legal conclusion and not a well-pled factual allegation that warrants a response, but it is nonetheless denied.

145. Second, a reasonable stockholder would consider it important that during the week of December 10, 2021 and on the evening of December 10, Kotick and Activision believed the LRP justified a higher valuation than $90. A reasonable stockholder would consider this information important in evaluating the legitimacy of Activision management's downward revision of the LRP on December 14, 2021. A reasonable stockholder could conclude that the downward revision was done to justify a lower sale price after Microsoft indicated it would not pay much more than $90 per share.

ANSWER: Denied.

146. Third, a reasonable stockholder would consider Activision's and Microsoft's discussion about the Merger's regulatory risks important. Those risks had a direct impact on how long Activision and its stockholders would be subject to the restrictive covenants of the Merger Agreement, when stockholders would receive the Merger consideration and if that consideration adequately compensated them for the risk of that delayed payment.

ANSWER: Denied.

147. At the December 12, 2021 meeting, Skadden and Allen & Co., said Microsoft's advisors said that Microsoft wanted to move quickly. Microsoft was cornering Activision into a quick deal.

ANSWER: Denied, except admitted that Skadden and Allen & Co. reported that Microsoft's advisors said Microsoft wanted to move quickly. Denied that Microsoft was "cornering Activision into a quick deal."

148. Rather than having any independent representative control the sale of

the Company, the Board allowed Kotick to (i) continue negotiating with Microsoft, (ii) contact three large-cap tech companies [redacted] to gauge their interest in quickly acquiring the Company and (iii) to meet with the CEO of Elate on December 14, 2021.

ANSWER: Denied, except admitted that Mr. Kotick: (1) continued to negotiate with Microsoft; (2) contacted other companies—unsolicited—to explore potential alternatives to the Microsoft transaction; and (3) met with the CEO of Elate—all of which were properly aimed at securing the best possible outcome for shareholders. Denied that there was a need for an "independent representative [to] control the sale of the Company." Denied that the Activision Board "allowed" Mr. Kotick to lead negotiations insofar as it implies Mr. Kotick controlled the Activision Board or that the Activision Board was not independent from Mr. Kotick, although admitted that the Board authorized Mr. Kotick to negotiate on the Company's behalf.

149. The Board never formed an independent committee or involved an independent director to negotiate with Microsoft or third parties. They never engaged, let alone considered engaging, an independent financial advisor to take Allen & Co.'s place or neutralize its conflicts. They never considered firing Kotick.

ANSWER: Denied, except admitted that Mr. Kotick negotiated on Activision's behalf (and his performance was exemplary) and Allen & Co. advised the Company (with similar performance), delivering tremendous results for shareholders.

150. The Board met again on December 14, 2021, with WilmerHale, Allen & Co. and Skadden in attendance. Senior management presented the Board with financial forecasts for the Company's long-term performance, which management had created by depressing the Company's LRP. The Proxy states the LRP "had been

downwardly adjusted" to account for . . . the "passage of time"; but the Board approved the LRP only six weeks earlier, and just four days earlier Kotick had asserted to Microsoft that the LRP warranted an offer above $90 per share, a conversation he had recounted to the Board just two days before the December 14 meeting and at the last Board meeting.

ANSWER: Denied, except admitted that (1) the Board met on December 14, 2021 with outside counsel and Allen & Co. present; and (2) the Board was presented with updated financial forecasts that were appropriately revised.

151. The December 14, 2021 minutes indicate that [redacted] The Proxy and minutes indicate that management told the Board: the updated financial forecasts were "***not*** intended to constitute a revised [LRP]," "did ***not*** reflect any adjustments that Activision [] might make in its strategy in response to Activision Blizzard's performance in the fourth quarter of 2021[,]" and management "would ***not*** typically refresh the outlook for years beyond 2022 at this stage of Activision Blizzard's typical financial planning process . . . ." The Proxy conceded that the forecasts had been adjusted downward so the Board could use them "for purposes of considering the potential transaction with Microsoft." The minutes (but not the Proxy) reflect that the Board instructed that Allen & Co. base its valuation analysis on the negatively revised forecasts.

ANSWER: Denied, except admitted that the Proxy and December 14, 2021 Meeting Minutes speak for themselves.

152. It is reasonably conceivable and a fair inference that after Spencer made it clear that Microsoft would not pay much more than the $90 Kotick had suggested as the low end of his range, Kotick had management revise the forecasts to justify a sale to Microsoft toward the lower end of his $90-105 range.

ANSWER: Denied, although this paragraph does not contain any well-pled factual

allegations to which a response is required.

153. Kotick also reported on his discussions with [redacted] and the December 14, 2021 meeting minutes reflect that regulatory risks were raised as a concern by two of the three companies he had contacted. The Proxy's account of Kotick's report did not mention regulatory risks.

ANSWER: Denied, except admitted that the Proxy and December 14, 2021 Meeting Minutes speak for themselves. Denied to the extent Plaintiff suggests an inconsistency between the Proxy and Minutes.

154. The Proxy states that before the December 14, 2021 meeting ended, the Board considered "certain information" regarding Allen & Co.'s material relationships with Microsoft and Activision that Allen & Co. had provided, but did not describe that information; yet the Proxy states that the Board concluded, "based on such information, there were no material conflicts that would preclude Allen & Co[.] from continuing to serve as financial advisor to Activision Blizzard."

ANSWER: Denied, except admitted that the Proxy speaks for itself. Denied to the extent Plaintiff suggests any inconsistency or impropriety in the Board's conduct.

155. Allen & Co.'s December 12, 2021 conflicts disclosure memo only addressed the absence of any work for Activision or Microsoft in the past two years and did not even mention Allen & Co.'s prior work for Activision. It did not address Allen & Co.'s relationship with Kotick, Kelly, ASAC or any other directors and officers (*i.e.*, Nolan). It did not mention that Herb Allen was serving on the Coke Board with Kotick. The conflicts disclosure memo admitted that:

[redacted]

ANSWER: Denied, except admitted that Allen & Co.'s December 12, 2021

conflicts disclosure memo speaks for itself. Denied that to the extent Plaintiff suggests any impermissible conflict of interest.

156. The Proxy said that Allen & Co.'s "experience and familiarity with Activision Blizzard" was a major factor in the Company's selection of the firm as financing advisor. Having raised that experience and familiarity, the Board was required to provide a full and fair summary of that experience and familiarity. The Proxy never disclosed Allen & Co.'s involvement with Kotick and Activision in connection with the Vivendi Merger or Kotick, Kelly and Nolan, including in connection with ASAC. The Board simply ignored that Kotick and Kelly involved Allen & Co. in Activision's transformative transactions, including the Vivendi Merger, and advising Kotick, Kelly and Nolan in negotiations opposite the Company when Vivendi exited the Company.

ANSWER: Denied, except admitted that the Proxy speaks for itself. Denied that Activision, Mr. Kotick, or the other Directors failed to properly disclose prior dealings with Allen & Co. The assertion that the Activision Board was "required to provide a full and fair summary" of Allen & Co.'s experience and familiarity with Activision is a legal conclusion to which no response is required; to the extent a response is required, it is denied. Denied that the Board simply ignored that Mr. Kotick and Mr. Kelly involved Allen & Co. in other Activision transactions.

157. Allen & Co.'s conflicts disclosure memo did, however, disclose that the two senior members of its deal team that advised the Board were invested in Microsoft: (i) [redacted], then worth $1.6 million, [redacted], then worth $1.1 million. [redacted]

[redacted]

ANSWER: Denied, except admitted that the Proxy, Activision's Board minutes, and Allen & Co.'s December 12, 2021 disclosure memo speak for themselves. Denied that [redacted] Mr. Kotick lacks knowledge or information sufficient to know about the details of [redacted], but notes that Allen & Co.'s December 12, 2021 disclosure memo stated that [redacted] Denied to the extent Plaintiff suggests any impropriety or lack of independence based on any of the allegations in this paragraph.

158. The December 14, 2021 minutes indicate that [redacted] The minutes indicate that [redacted] "[redacted] In contrast, the Proxy said that based on the disclosure memo, there were no conflicts that would prevent Allen & Co. "from continuing to serve as financial advisor."

ANSWER: Denied, except admitted that the Proxy and December 14, 2021 Meeting Minutes speak for themselves. Denied to the extent Plaintiff suggests an

inconsistency between the Proxy and Minutes.

159. Kotick met on December 14, 2021 with the CEO of Elate. The Proxy states that the Elate CEO indicated that a strategic combination would benefit both companies, but did not communicate any requests or propose specific actions by Activision. The Proxy does not indicate that Kotick gave any report on this December 14 meeting at the December 15, 2021 Board meeting. The December 15, 2021 minutes indicate Kotick only reported that he met with the Elate CEO on December 14, and the Elate CEO did not communicate any request or propose specific actions for the Company or Kotick. The minutes do not indicate that Elate's CEO had suggested a strategic combination. Neither the Proxy nor the minutes reflect any responses or reactions of Kotick during the December 14 meeting with Elate's CEO. Activision never contacted Elate again. It is a fair inference and reasonably conceivable that Kotick did not wish to pursue a combination with Elate because a sale to Microsoft would better protect him from the Harassment Scandal and allow him to cash out of Activision.

ANSWER: Denied, except admitted that (1) the Proxy and the December 15, 2021 Meeting Minutes speak for themselves, and (2) Kotick met with the CEO of Elate on December 14, 2021.

160. At the December 15, 2021 meeting, Allen & Co. presented its financial analyses of Microsoft's $90 per share offer and advised the Board on its potential responses. The Proxy stated that the Activision Board was provided with "financial forecasts of Activision Blizzard's long-term financial performance as extended through fiscal year 2026," and that Allen & Co.'s presentation was "based on the updated risk-adjusted financial forecasts approved by the [Board] on December 14, 2021, as extended through fiscal year 2026." Thus, management apparently revised again the forecasts it had just revised for the Board meeting the day before. There is no discussion of the purpose or effect of the second revision in two days.

ANSWER: Denied, except admitted that (1) the Proxy and December 15, 2021 Meeting Minutes speak for themselves, and (2) Allen & Co. presented its financial analyses of Microsoft's $90 per share offer and advised the Board. Denied to the

extent Plaintiff suggests that any revisions to Activision's risk-adjusted forecasts had any improper "purpose or effect."

161. Allen & Co.'s presentation showed that Activision's $59.52 closing price on December 14, 2021 was 43% below its fifty-two-week high and 7% below its thirty-day VWAP and Microsoft's $90 offer was 14% below the fifty-two-week high. The "Trading Profile" for Activision's stock showed three significant dates that had caused the stock to drop significantly:

> 7/20/21: California Department of Fair Employment and Housing (DFEH) sues [Activision]
>
> 11/2/21: Announcement of Q3 earnings, soft guidance, and delayed launch announcements
>
> 11/16/21: WSJ Article

[redacted]

ANSWER: Denied, except admitted that the referenced Proxy, Meeting Minutes, and Allen & Co. presentation speak for themselves.

162. Allen & Co.'s presentation also reflects [redacted]

[redacted]

The decreased numbers were intended to support the price Kotick had already signaled to Microsoft. The Board told Kotick to counter at $100 per share, but

authorized management to settle for $95 per share. This makes it reasonably conceivable that while the Board pretended to be negotiating with Microsoft, it understood that Kotick and Microsoft had already settled on a $95 price.

ANSWER: Denied, except admitted that (1) the referenced Allen & Co. presentation speaks for itself; (2) the Board directed Mr. Kotick to counter at $100 per share; and (3) the Board authorized management to execute a deal at $95 per share.

163. Once again, the minutes reflect that [redacted] The minutes and Proxy do not reflect any discussion of the regulatory risks of a transaction with Microsoft.

ANSWER: Admitted that the Proxy and Meeting Minutes speak for themselves. Denied that the "minutes and Proxy do not reflect any discussion of the regulatory risks of a transaction with Microsoft."

164. During the evening of December 15, 2021, Kotick and Kelly spoke to Spencer and countered with $100 per share.

ANSWER: Admitted.

165. On December 16, 2021, Nadella said Microsoft would increase its offer to $93. Kotick immediately said he was authorized to agree to $95 with a thirty-day exclusivity agreement at that price. Unsurprisingly, Nadella quickly accepted the $95 per share price. Thus, Kotick and Microsoft finalized the $95 price in the twenty-four-hour period between the evenings of December 15 and December 16.

ANSWER: Denied, except admitted that Mr. Nadella communicated that Microsoft would increase its offer to $93 (which Activision rejected), and then Mr.

Nadella again increased the offer to $95 per share.

166. The Board met on December 17, 2021, with Allen & Co., WilmerHale and Skadden. Kotick and Kelly told the Board about their $95 agreement with Microsoft. The meeting minutes state that the Board authorized management, "led by Mr. Kotick," to negotiate exclusively with Microsoft for thirty-days based on the $95 term sheet and such other terms as management deemed appropriate. The Board let Kotick finalize his deal with Microsoft. The exclusivity agreement was executed on December 20, 2021 (the "Exclusivity Agreement") and included a term sheet for the $95 per share Merger. The Exclusivity Agreement stated that it would expire on January 17, 2022 at 11:59 p.m. Pacific Time.

ANSWER: Denied, except admitted that the referenced meeting minutes and Exclusivity Agreement speak for themselves. Denied that the Activision Board "let" Mr. Kotick finalize "his" deal with Microsoft to the extent Plaintiff implies that the Activision Board lacked independence from Mr. Kotick.

167. The Exclusivity Agreement required Activision to terminate existing discussions with potential alternative bidders and notify Microsoft of any inquiries, indications of interest, proposals or offers from anyone during the Exclusivity Period. [redacted]

ANSWER: Admitted that the Exclusivity Agreement speaks for itself.

168. Activision and Microsoft's Exclusivity Term Sheet, annexed to the Exclusivity Agreement, acknowledged the risks the Defendants would face in obtaining antitrust approval. [redacted]. The Term Sheet provided for an Outside Date of twelve months from signing with two automatic three month extensions if regulatory approvals had not been received. It also provided for an antitrust termination fee from Microsoft of $2 billion for termination in under twelve months, $2.5 billion for termination in thirteen to fifteen months and $3 billion for termination in sixteen to eighteen months. [redacted]

[redacted]

ANSWER: Admitted that the Exclusivity Agreement and Term Sheet speak for themselves.

169. As discussed below, [redacted], was not included in the Merger Agreement. Instead, it was hidden in the CDL, which was not provided to the Activision stockholders, and was not described in the Proxy.

ANSWER: Denied, except admitted that the Term Sheet, CDL, and Merger Agreements speak for themselves.

170. The Board met [redacted] on December 21, 2021, and was informed of the Exclusivity Agreement and Term Sheet. Thus, in one month, Kotick and the Board agreed to sell Activision for $95 per share. The Board would not meet again until January 7, 2022, eighteen days later.

ANSWER: Denied, except admitted that the December 21, 2021 Minutes speak for themselves. Mr. Kotick further notes there is nothing unusual about the gap between December 21, 2021 and January 7, 2022, which obviously reflects the intervening holiday period. Denied that there was any impropriety as to the timeline

of the Acquisition.

171. On Friday, January 7, 2022, the Board met with Allen & Co., WilmerHale and Skadden. Kotick updated the Board on the status of the deal.

ANSWER: Admitted.

172. On Friday, January 14, 2022, the Board met with WilmerHale, Allen & & Co. and Skadden to get an update. There were again "updated" (*i.e.*, reduced) forecasts aimed at justifying selling the Company for $95 per share.

ANSWER: Denied, except admitted that the Board met on January 14, 2022, which was attended by representatives of the stated firms. Denied that the updated forecasts were "aimed at justifying selling the Company for $95 per share."

173. The minutes state that [redacted] updated the Board about the scope of Microsoft's due diligence. The Board materials provided in advance of the meeting, which the minutes state [redacted] reviewed, reflect that Microsoft had more questions about "Labor and Employment," [redacted] The CDL indicates that [redacted] The minutes do [redacted]. Neither does the Proxy's description of the January 14, 2022 Board meeting.

ANSWER: Denied, except admitted that the Proxy and referenced Meeting Minutes speak for themselves.

174. The Proxy said that Skadden gave a presentation on what the Proxy describes as "the key terms of the draft merger agreement," including "director and officer indemnification" and "Microsoft's regulatory undertakings." The portion of the minutes relating to the summary of the Merger Agreement is entirely redacted.

The minutes and Proxy say the Board discussed "regulatory considerations" concerning the Microsoft deal, but the Proxy does not say what was discussed and the portion of the minutes describing that discussion is redacted.

ANSWER: Admitted that the Proxy and cited Meeting Minutes speak for themselves. Denied to the extent Plaintiff suggests an inconsistency between the Proxy and Minutes.

175. The minutes from the meeting say [redacted] The presentation and description thereof in the minutes have been withheld from the Books and Records as privileged.

ANSWER: Denied, except admitted that the Proxy and cited Meeting Minutes speak for themselves. Denied to the extent Plaintiff suggests an inconsistency between the Proxy and Minutes. Denied that [redacted]

176. The Proxy states that on January 14, 2022, Skadden sent Microsoft's counsel an initial draft of Activision's confidential disclosure schedules to the merger agreement. The schedules were negotiated through multiple drafts "[b]etween January 14, 2022 and January 18, 2022," and there were "multiple conversations outstanding matters under the merger agreement." No disclosure schedules were provided to the Board. No disclosure schedules were included in the copy of the Execution Version of the Merger Agreement attached to the Proxy. Their contents were not described in the Proxy.

ANSWER: Denied, except admitted that the Proxy speaks for itself. Denied to the

extent Plaintiff suggests the Board lacked information that was necessary for it to approve of the transaction.

177. The Board met at 8:30 a.m. Pacific Time on Monday, January 17, 2022, the day the Exclusivity Agreement would expire at 11:59 p.m. Pacific Time, to approve the Merger. Allen & Co. provided its fairness presentation. As part of its review of the Company's stock trading history, Allen & Co. identified the same three critical dates as in its December 15, 2021 presentation: July 20, November 2 and November 16, 2021. However, the Proxy never disclosed that Allen & Co. had identified three dates indicating that the Harassment Scandal had a dramatic effect on the Company's stock trading price.

ANSWER: Denied, except admitted that (1) the Proxy, Exclusivity Agreement, and fairness presentation speak for themselves and (2) the Board met on January 17, 2022 at 8:30 a.m. Pacific Time. Denied to the extent Plaintiff suggests an inconsistency among the Proxy and fairness presentation.

178. Although Skadden purportedly reviewed the "key terms" of the Merger Agreement on January 17, 2022, the Board did not review or approve the entire agreement of merger. Instead, at the January 17 meeting, the Board reviewed the incomplete, Draft Merger Agreement. The Draft Merger Agreement did not identify the Merger consideration or include the CDL, disclosure schedules or Exhibit A to the Merger Agreement (the certificate of the surviving corporation). Footnotes to the Draft Merger Agreement confirm that the Company Disclosure Letter was still being drafted. Though the Proxy indicates multiple drafts of the disclosure schedules were exchanged from January 14 through January 17, 2022, the Board was not even provided with a draft of those schedules. [redacted]. The January 17 Draft Merger Agreement did not even refer to Activision; it referred to "[Denali]" as the "Company," including on the first page. It was labelled "STB Draft 01/17/22" and "Dated as of January [17], 2022." It defined the Merger consideration as "$[•]".

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph speak for themselves and (2) at the January 17 meeting, the Activision Board reviewed the Merger Agreement. Denied that that Skadden "purportedly" reviewed the "key terms" of the Merger Agreement, insofar as Plaintiff implies that Skadden in fact did not review the key terms. Denied that the Activision Board did not review or approve the contents of the Merger Agreement, and denied that it was "incomplete" in any material manner when approved.

179. The Proxy reveals that between January 14 and January 18, 2022, Activision and Microsoft "exchanged multiple drafts of the merger agreement." Kotick's representations to the Activision Board show that they were not reviewing the same draft of the merger agreement that Microsoft had purportedly approved. The January 17, 2022 minutes state that Kotick told the Board that Microsoft's board "had approved the proposed transaction on January 16, 2022." Microsoft could not have approved on January 16 the Draft Merger Agreement dated "January [17], 2022" that was in front of the Activision Board on January 17, 2022. So, Microsoft's board approved a different draft of the Merger Agreement than the Draft Merger Agreement the Activision Board approved and neither approved the Execution Version of the Merger Agreement or a Section 251-compliant agreement of merger.

ANSWER: Denied, except admitted that the Proxy and the January 17, 2022 Meeting Minutes speak for themselves.

180. The Proxy does not indicate when, if ever, the board of Anchorage approved some version of the Merger Agreement. The Proxy indicates drafts of the Merger Agreement were still being exchanged on January 17 and 18, 2022. Therefore, it is highly unlikely that the board of Anchorage approved the Merger Agreement before it was executed "[e]arly in the morning on January 18, 2022."

ANSWER: Denied, except admitted that the Proxy speaks for itself. The allegation

that "it is highly unlikely that the board of Anchorage approved the Merger Agreement before it was executed '[e]arly in the morning on January 18, 2022'" is not a well-pled factual allegation to which a response is warranted, but to the extent a response is required, the allegation is denied.

181. Skadden told Plaintiff during negotiations over the Books and Records production that "the confidential disclosures and Company Disclosure Letter are not [] board-level material," conceding the Board never reviewed them. Defendants admitted in their briefing in this Action that the Activision Board only reviewed a "draft" of the Merger Agreement. In addition, the Proxy states the disclosure schedules were still being negotiated through January 18, 2022, when the Merger Agreement was "finalized." The Board, however, did not reconvene later on January 17 or early on January 18, 2022 to approve the "finalized" Merger Agreement. The Board could have easily done so: it conducted all ten of its Merger- related Board meetings over Zoom.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph speak for themselves; (2) Skadden communicated with Plaintiff during negotiations over the Books and Records production; (3) the Proxy accurately states that the Merger Agreement was "finalized" on January 18, 2022; and (4) the Board conducted meetings via Zoom, including while the Merger was being negotiated. Denied that Skadden "conced[ed]" that the Board never reviewed the information in the "confidential disclosures and Company Disclosure Letter."

182. Moreover, despite the Draft Merger Agreement's obvious flaws, the Board did not ask for, or receive, a legal opinion that the Draft Merger Agreement and the Board's approval thereof satisfied the applicable merger statute under Delaware law. The minutes from the January 17, 2022, meeting [redacted] The

minutes only state that [redacted]

ANSWER: Denied, except admitted that the January 17, 2022 Meeting Minutes speak for themselves. Mr. Kotick cannot admit or deny whether the Board requested or received a legal opinion that the Draft Merger Agreement and the Board's approval thereof satisfied the applicable Delaware merger statute, as such information is protected by attorney client privilege, which Mr. Kotick does not waive.

183. It is reasonably conceivable and a fair inference that the Board rushed to approve the incomplete Draft Merger Agreement on January 17, 2022—because Microsoft's Exclusivity Agreement would expire at 11:59 p.m. Pacific Time on January 17, 2022.

ANSWER: Denied, although Mr. Kotick notes that this paragraph does not contain any well-pled factual allegations to which a response is required.

184. The resolutions the Activision Board purportedly approved on January 17, 2022 reflect that the Board was approving the Draft Merger Agreement. The resolutions [redacted] The resolutions authorize [redacted] This was an impermissible delegation to officers of the Board's non-delegable statutory obligation under Section 251 to approve the terms of the agreement of merger.

ANSWER: Denied, except admitted that the resolutions cited in this paragraph

speak for themselves. Denied that the Activision Board "purportedly" approved the referenced resolutions on January 17, 2022 insofar as Plaintiff implies that the Activision Board did not in fact approve said resolution. Plaintiff's assertion that the resolutions contained an impermissible delegation to officers of the Board's statutory obligations under Section 251 is a legal conclusion to which no response is required; to the extent a response is required, that assertion is denied.

185. The January 17, 2022 Board minutes admit that the amount of the 2022 and 2023 dividends Activision could pay was "one of the key open issues" and a committee of the Board (Morgado, Kelly and Corti) was delegated to negotiate that issue. What dividends Activision could pay its stockholders during the up to eighteen months (which became twenty-one months) for the Merger Agreement to be consummated was a key financial term that affected the value of the Merger to the Activision stockholders. The Proxy said Kotick discussed with Nadella and the *ad hoc* committee approved "the resolution of the outstanding dividend issue[.]" However, under 8 *Del. C.* § 141(c), a board committee cannot adopt a provision of an agreement of merger. Section 5.2(e) of the Merger Agreement provided that Activision may only pay "one regular cash dividend on the Company Common Stock in an amount per share of Company Common Stock not in excess of $0.47." The limitation on and suspension of dividends during the lengthy regulatory review process would significantly reduce the value of the Merger. Activision stockholders had historically received an annual dividend in the early part of each year. Because the Merger would not close until the end of 2023 or the first half of 2024, the 2023 annual dividend would be missed. Plaintiff alleged in its Amended Complaint that "unless Activision insists that the dividends resume and the stockholders receive interest, the net value of the Merger is less than $95 per share, assuming it is consummated, and given the increased regulatory risk, particularly in light of the FTC Suit, it is worth significantly less than that."

ANSWER: Denied, except admitted that (1) the Proxy, January 17, 2022 Meeting Minutes, Merger Agreement, and the Amended Complaint speak for themselves, and

(2) Activision stockholders had historically received a dividend in the early part of the calendar year, reflecting the extraordinary performance of Activision historically. Whether a board committee cannot adopt a provision of an agreement of merger under 8 *Del. C.* § 141(c) is a legal conclusion to which no response is required; to the extent a response is required, it is denied.

186. After the Board's approval of the Draft Merger Agreement at the January 17, 2022 meeting, Activision and Microsoft "finalized the merger agreement," which was executed early in the morning on January 18, 2022. The Board did not review the Execution Version of the Merger Agreement before it was signed. Activision announced the Merger in a press release issued at 8:28 a.m. Eastern Time (5:28 a.m. Pacific Time) on January 18.

ANSWER: Denied, except admitted that (1) the Board approved the Merger Agreement on January 17, 2022; (2) the Merger Agreement was executed on January 18, 2022; and (3) Activision issued a press release on January 18, 2022.

187. The representations in the Merger Agreement and the Proxy that the Activision Board approved the Merger Agreement were false. The Board only approved the Draft Merger Agreement.

ANSWER: Denied.

188. The terms of the Merger Agreement provided Kotick and the Board with material benefits not shared with Activision's public stockholders. Accordingly, the Merger Agreement was not approved by a majority of disinterested and independent directors.

ANSWER: Denied.

189. The Merger Agreement protected Kotick's tenuous position as

Activision's CEO and allowed him to remain in office. Section 5.1(iii)(B) required Activision to "keep available the services of its current officers and key employees." Section 5.2(g) of the Merger Agreement provided Kotick with immediate job security. It precluded Activision from terminating any employee at the level of Senior Vice President or above without Microsoft's approval. Section 2.6(b) provided that Activision's officers before the Merger would be Activision's officers after the Merger. When Activision and Microsoft announced the Merger on January 18, 2022, they stated in a press release that day that "Bobby Kotick will continue to serve as CEO of Activision Blizzard" and that "he and his team" would continue to run the Company. Microsoft and Activision also agreed that on or after July 18, 2022, the Board could extend Kotick's Employment Agreement by another twelve months. Kotick remained CEO of Activision. The Letter Agreement then extended the Merger Agreement and therefore Kotick's continued employment through the Merger's October 13, 2023 closing. Kotick did not resign until December 29, 2023. The Merger enabled him to ride the Activision gravy train for over two years after *Kotick Knew*'s publication.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph speak for themselves; (2) Microsoft and Activision agreed that on or after July 18, 2022, the Activision Board could extend Mr. Kotick's Employment Agreement by another twelve months; and (3) Mr. Kotick resigned on December 29, 2023. Denied that Section 5.2(g) of the Merger Agreement provided Mr. Kotick with "immediate job security" or "precluded" Activision from terminating any employee at the level of Senior Vice President or above without Microsoft's approval. In reality, Section 5.2(g) of the Merger Agreement prevented Activision from, "except in consultation with [Microsoft], terminat[ing] any employee at the level of Senior Vice President or above (other than for cause)," meaning that Mr. Kotick and other senior executives could be terminated for cause by Activision at any time, and could be

terminated without cause in consultation with Microsoft.

190. The Merger therefore protected Kotick's compensation. If Kotick was fired for Cause, he would forfeit 2,201,878 unvested options and PSUs, not receive any severance and only be entitled to insurance benefits valued at approximately $41,000. The Merger Agreement, in contrast, prevented Kotick from being fired even for Cause.

ANSWER: Denied, except Mr. Kotick admits that Paragraph 190 purports to characterize the Merger Agreement and the Employment Agreement and respectfully refers the Court to those documents for a complete and accurate description of their contents. Denied that the Merger protected Mr. Kotick's compensation and denied that the Merger Agreement prevented Mr. Kotick from being fired for cause. Denied that there was any legitimate reason to terminate Mr. Kotick for cause.

191. The Merger, moreover, provided Kotick with better compensation while the Merger was pending. As set forth above, on October 28, 2021, Kotick announced his purported Pay Cut Agreement with Activision to reduce his base salary and waive any bonuses and equity grants "until the Board" determined the Company had "achieved" the goals and commitments Kotick described in the October Press Release. Activision and Microsoft agreed, in blatant violation of the October Pay Cut Agreement, that if the Board's two-member WRC:

> concludes and reports publicly that Activision [] has made appropriate progress toward the achievement of the transformational gender-related goals and other commitments described in Activision Blizzard's press release on October 28, 2021, then the [] Board [] may, no earlier than six months after the date of the merger agreement, in its discretion [pay Kotick his usual salary under his Employment Agreement, up to $875,000, a

bonus of up to $1.75 million and an annual award of equity compensation up to $22 million per year].

ANSWER: Denied, except admitted that the Merger Agreement and October Press Release speak for themselves. Denied that the Merger "provided [Mr.] Kotick with better compensation while the Merger was pending." Denied that Mr. Kotick announced a "purported" pay cut on October 28, 2021, insofar as Plaintiff implies that in fact no pay cut occurred. Denied that there was any "violation" of the so-called "October Pay Cut Agreement."

192. Activision's agreement with Microsoft was more favorable to Kotick than his October Pay Cut Agreement, which provided that his base salary would be reduced and he would not receive any bonus or equity compensation until the Board determined Activision "achieved" the goals in the October Press Release. Under Activision's arrangement with Microsoft, Kotick's salary would only be reduced until the WRC determined Activision had made "appropriate progress" toward those goals. The goals and commitments the Company needed to "achieve" under Kotick's October agreement was a far more rigorous standard than merely making "appropriate progress," a term so vague as to be meaningless.

ANSWER: Denied, except admitted that the Merger Agreement and October 2021 Press Release speak for themselves.

193. The Merger Agreement affords Kotick, the Director Defendants and other current and former directors and officers materially greater right to indemnification and other protection than they would otherwise have had under Activision's Certificate and bylaws.

ANSWER: Whether the Merger Agreement provided rights that were "materially greater" is a legal conclusion to which no response is warranted, but to the extent a

response is required, it is denied.

194. Section 6.8 of the Merger Agreement contains three pages on "Directors' and Officers' Exculpation, Indemnification and Insurance."

ANSWER: Admitted that the Merger Agreement speaks for itself. Denied that Section 6.8 is "three pages" in length; it is slightly over two-pages long, but spans three pages.

195. The first sentence of Section 6.8(a) of the Merger Agreement provides:

> *Indemnified Persons.* The Surviving Corporation will (and Parent shall cause the Surviving Corporation to) honor and fulfill, in all respects, the obligations of the Company pursuant to any indemnification agreements set forth on Section 6.8(a) of the Company Disclosure Letter in effect on the date of this Agreement between the Company, on the one hand, and any of its current or former directors and officers, on the other hand, and the indemnification, exculpation and advancement of expenses provisions set forth in the Charter and the Bylaws as in effect on the date of this Agreement with respect to any of the Company's current or former directors and officers (collectively, the "**Indemnified Persons**").

ANSWER: Admitted that the Merger Agreement speaks for itself.

196. The first sentence of Section 6.8(a) can be broken down as follows:

Title:	Indemnified Persons
Indemnitors:	"The Surviving Corporation" will (and Parent shall cause the Surviving Corporation to)"
Obligations to Indemnify:	"honor and fulfill, in all respects, the

	obligations of the Company"
First Source of Company Indemnification:	"pursuant to any indemnification agreements set forth on Section 6.8(a) of the Company Disclosure Letter in effect on the date of this Agreement between the Company, on the one hand, and any of its current and former directors and officers, on the other hand"
Second Source of Company Indemnification:	"and the indemnification, exculpation and advancement of expenses provisions set forth in the Charter and Bylaws as in effect on the date of this Agreement"
Indemnified Persons:	"with respect to any of the Company's current or former directors and officers (collectively, the '**Indemnified Persons**')."

ANSWER: Admitted that the Merger Agreement speaks for itself. Denied that Plaintiff's characterization, labeling, or interpretation of Section 6.8(a) is accurate or complete.

197. [redacted] However, because the Company Disclosure Letter referenced in the Merger Agreement was not provided to the stockholders, the stockholders did not know how many existing indemnification agreements there were. Plaintiff sought indemnification agreements

in its 220 Demand and repeatedly pressed Activision to produce all such agreements. Activision's Books and Records production only [redacted]

ANSWER: To the extent Mr. Kotick understands this paragraph, it is denied, except admitted that (1) the CDL and Merger Agreement speak for themselves and (2) Plaintiff sought indemnification agreements in its 220 Demand, [redacted]

198. The CDL [redacted]. Activision's public filings confirm and provide examples of Activision's other indemnification agreements with its officers and directors. Section 18 of Kotick's Employment Agreement contains the following provision on indemnification and insurance:

> Indemnification and Attorneys' Fees. During the Employment Period and thereafter, the Company shall indemnify, hold harmless and defend the Executive to the fullest extent permitted by Delaware law and the Company's articles of incorporation and by-laws in effect from time to time from all damages, claims, losses, and costs and expenses (including reasonable attorney's fees) arising out of, in connection with, or relating to all acts or omissions taken or not taken by the Executive in good faith while performing services for the Company, and shall further promptly reimburse the Executive for all expenses (including attorney's fees) incurred in (i) enforcing this Agreement and (ii) to a maximum, of $80,000, in negotiating and drafting this Agreement. The Company shall use its best efforts to continue to maintain an insurance policy covering the officers and directors of the Company against claims and/or lawsuits, at least as favorable as such policy that is currently in effect, and shall cause the Executive to be covered under such policy upon the same terms and conditions as other similarly situated officers and directors during the Employment

Period and for a period of at least six (6) years thereafter.

ANSWER: Admitted that the CDL and Mr. Kotick's Employment Agreement speak for themselves. Mr. Kotick is without information sufficient to understand what "public filings" Plaintiff refers to herein, but admits that Activision publicly disclosed some of its employment agreements.

199. Durkin, Walther, Naughton and Activision's former President and COO Daniel Alegre ("Alegre") have the following indemnification provision in Section 12 of their employment agreements:

> The Employer agrees that it shall indemnify and hold you harmless to the fullest extent permitted by Delaware law from and against any and all third-party liabilities, costs and claims, and all expenses actually and reasonably incurred by you in connection therewith by reason of the fact that you are or were employed by the Activision Blizzard Group, including, without limitation, all costs and expenses actually and reasonably incurred by you in defense of litigation arising out of your employment hereunder.

This provision appears limited to third-party litigation.

ANSWER: Admitted that the employment agreements of Durkin, Walther, Naughton and Alegre speak for themselves. Plaintiff's characterization of the provision as being apparently "limited to third-party litigation" is denied.

200. The first sentence of Section 6.8(a) of the Merger Agreement creates a new contractual obligation of Microsoft to cause indemnification, advancement and exculpation of current and former Microsoft officers and directors under existing indemnification agreements and the Certificate and Bylaws in effect when Microsoft entered into the Merger Agreement. That obligation is not limited to acts or omissions prior to the Merger, discussions, the signing of the Merger Agreement or

even the consummation of the Merger.

ANSWER: Denied that Plaintiff's characterization or interpretation of Section 6.8(a) is accurate or complete. Admitted that the Merger Agreement speaks for itself.

201. The second and third sentences of Section 6.8(a) provide:

> In addition, during the period commencing at the Effective Time and ending on the Sixth anniversary of the Effective Time, the Surviving Corporation will (and Parent will cause the Surviving Corporation to) cause the certificates of incorporation, bylaws and other similar organizational documents of the Surviving Corporation to contain provisions with respect to indemnification, exculpation and advancement of expenses that are at least as favorable to the Indemnified Persons as the indemnification, exculpation and advancement of expenses provisions set forth in the Charter and the Bylaws as of the date of this Agreement. During such six-year period, such provisions may not be repealed, amended or otherwise modified in any manner except as required by applicable Law.

ANSWER: Admitted that the Merger Agreement speaks for itself.

202. The second and third sentences of Section 6.8(a) can be broken down as follows:

Additions to First Sentence:	"In addition"
Time Frame:	"during the period commencing at the Effective Time and ending on the Sixth anniversary of the Effective Time,"
Indemnitors:	"the Surviving Corporation will (and Parent will cause the Surviving

	Corporation to)"
Documents:	"cause the certificates of incorporation, bylaws and other similar organizational documents of the Surviving Corporation"
Provisions Required:	"to contain provisions with respect to indemnification, exculpation and advancement of expenses"
Standard for Provisions:	"that are at least as favorable to the Indemnified Persons as the indemnification, exculpation and advancement of expenses provisions set forth in the Charter and the Bylaws as of the date of this Agreement."
No Modification:	"During such six-year period, such provisions may not be repealed, amended or otherwise modified in any manner except as required by applicable Law."

ANSWER: Admitted that the Merger Agreement speaks for itself. Denied that Plaintiff's characterization, labeling, or interpretation of Section 6.8(a) is accurate or complete.

203. Rights under the second sentence are "[i]n addition" to the rights under the first sentence and apply during a six-year period after the closing of the Merger. The second sentence requires that Activision for six years maintain Certificate and Bylaw provisions "at least as favorable" for directors and officers as the provisions in existence before the Merger. Microsoft, which would become Activision's 100% stockholder in the Merger, agreed to an absolute prohibition against repeal, amendment or modification in any manner unless required by Law. In contrast, Article VI Section 6.3 of Activision's Certificate as of the date of the Merger Agreement permitted certificate amendments to the exculpation and indemnification

provisions of Sections 6.1 and 6.2 that were prospective. It also permitted stockholder amendments that did "not adversely affect any limitation on the personal liability of a director or officer of the Corporation existing at the time of such appeal [*sic*] on [*sic*] modification." Section 7.7 of Activision's Bylaws, as of the date of the Merger Agreement, also permitted prospective repeal or amendment that adversely affected the indemnification rights of Section 7.1 and 7.2. It only limited adversely affecting such rights "with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal." Microsoft and Activision (through Kotick and the Board) agreed to eliminate the stockholders' ability to limit or eliminate indemnification, advancement and exculpation under the Certificate and Bylaws as of the date of the Merger Agreement. Section 6.8(a) of the Merger Agreement creates a broader obligation to continue indemnification, advancement and exculpation rights of directors and officers than the then-existing Certificate and Bylaws. Thus, the second sentence goes beyond the then-existing rights under the Certificate and Bylaws for conduct occurring before the Merger. Moreover, the indemnification, exculpation and advancement rights under the second sentence of Section 6.8(a) are not limited to conduct occurring before the Merger.

ANSWER: Denied, except admitted that (1) the Merger Agreement, Activision's Certificate of Incorporation, and Activision's Bylaws speak for themselves; and (2) Section 6.8(a) of the Merger Agreement contains standard, commercially reasonable indemnification, exculpation, and advancement provisions consistent with market practice for transactions of this magnitude. These provisions were designed to ensure continuity of protection for directors and officers consistent with Activision's existing obligations, were fully disclosed to stockholders, and were approved as part of the Merger Agreement. Denied that Plaintiff's characterization of these provisions is accurate or complete.

204. Section 2.6(b) provided that the initial officers of Activision after the

Merger would be officers of Activision immediately before the Merger. Therefore, under the Merger Agreement, Kotick and other Activision officers gained additional rights that applied to conduct after the Merger.

ANSWER: Denied, except admitted that Section 2.6(b) of the Merger Agreement speaks for itself. Denied that Plaintiff's characterization of Section 2.6(b) is accurate or complete.

205. Section 5.2(a) of the Merger Agreement prohibited Activision from amending or otherwise changing the Certificate or Bylaws as of the date of the Merger Agreement. Thus, Microsoft and Activision (through Kotick and the Board) violated the rights of the stockholders under 8 *Del. C.* §§ 109(a) and 242(b)(1), Article V, Section 6.3 of the Certificate and Article VIII, Section 8.4 of the Bylaws to amend the Certificate and Bylaws.

ANSWER: Denied, except admitted that Section 5.2(a) of the Merger Agreement speaks for itself. Denied that Plaintiff's characterization of Section 5.2(a) is accurate or complete. Denied that Microsoft, Activision, Mr. Kotick or any of the Directors "violated the rights of stockholders."

206. The first sentence of Section 6.8(b) of the Merger Agreement provides:

> *Indemnification Obligation.* Without limiting the generality of the provisions of Section 6.8(a) during the period commencing at the Effective Time and ending on the sixth anniversary of the Effective Time, the Surviving Corporation will (and Parent will cause the Surviving Corporation to) indemnify and hold harmless, to the fullest extent permitted by applicable Law or pursuant to any indemnification agreements set forth on Section 6.8(b) of the Company Disclosure Letter with the Company or any of its Subsidiaries in effect on the date of this Agreement, each Indemnified Person from and against any costs, fees

> and expenses (including attorneys' fees and investigation expenses), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement or compromise in connection with any Legal Proceeding, whether civil, criminal, administrative or investigative, to the extent that such Legal Proceeding arises, directly or indirectly, out of or pertains, directly or indirectly, to (i) any action or omission, or alleged action or omission, in such Indemnified Person's capacity as a director, officer, employee or agent of the Company or any of its Subsidiaries or other Affiliates (regardless of whether such action or omission, or alleged action or omission, occurred prior to, at or after the Effective Time); and (ii) the Merger; as well as any actions taken by the Company, Parent or Merger Sub with respect thereto, except that if, at any time prior to the sixth anniversary of the Effective Time, any Indemnified Person delivers to Parent a written notice asserting a claim for indemnification pursuant to this Section 6.8(b) then the claim asserted in such notice will survive the sixth anniversary of the Effective Time until such claim is fully and finally resolved.

ANSWER: Admitted that Section 6.8(b) of the Merger Agreement speaks for itself.

207. The first sentence of 6.8(b) can be broken down as follows:

Title:	"Indemnification Obligation"
No Limit of 6.8(a):	"Without limiting the generality of the provisions of Section 6.8(a)"
Duration of Right:	"during the period commencing at the Effective Time and ending on the sixth anniversary of the Effective Time,"
Indemnitors:	"the Surviving Corporation will (and Parent will cause the Surviving Corporation to)"

Core Contractual Promise:	"indemnify and hold harmless"
Extent of Scope of Indemnification:	"to the fullest extent permitted by applicable Law or pursuant to any indemnification agreements set forth on Section 6.8(b) of the Company Disclosure Letter with the Company or any of its Subsidiaries in effect on the date of this Agreement,"
Indemnitees:	"each Indemnified Person"
Indemnifiable Items:	"from and against any costs, fees and expenses (including attorneys' fees and investigation expenses), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement or compromise"
Proceedings Covered:	"in connection with any Legal Proceeding, whether civil, criminal, administrative or investigative,"
Genesis of Proceeding:	"to the extent that such Legal Proceeding arises, directly or indirectly, out of or pertains, directly or indirectly, to"
Focus of Proceeding (i):	"(i) any action or omission, or alleged action or omission, in such Indemnified Person's capacity as a director, officer, employee or agent of the Company or any of its Subsidiaries or other Affiliates (regardless of whether such action or omission, or alleged action or omission, occurred prior to, at or after the Effective Time);"
Focus of Proceeding (ii):	"and (ii) the Merger; as well as any actions taken by the Company, Parent

	or Merger Sub with respect thereto,"
Extension of Indemnification Period:	"except that if, at any time prior to the sixth anniversary of the Effective Time, any Indemnified Person delivers to Parent a written notice asserting a claim for indemnification pursuant to this Section 6.8(b) then the claim criminal, administrative or investigative," asserted in such notice will survive the sixth anniversary of the Effective Time until such claim is fully and finally resolved."

ANSWER: Admitted that the Merger Agreement speaks for itself. Denied that Plaintiff's characterization, labeling, or interpretation of Section 6.8(b) is accurate or complete.

208. Section 1.1 (uu) of the Merger Agreement defines "Law":

> "**Law**" means any federal, state, local, municipal, multi-national or other law, statute, constitution, ordinance, code, decree, order (including any executive order), directive, judgment, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority and any order or decision of an applicable arbitrator or arbitration panel.

ANSWER: Admitted that Section 1.1(uu) of the Merger Agreement speaks for itself.

209. The first sentence of Section 6.8(b) indicates that it does not limit Section 6.8(a). It creates an additional contractual obligation by Microsoft and Activision to indemnify current or former Activision directors and officers for six

years after the Merger. The indemnification obligation is not tied to Activision's Certificate or Bylaws as of the date of the Merger Agreement or in the future. Unlike Section 6.8(a), it not only covers indemnification agreements "of the Company" set forth in the Company Disclosure Letter, but also such agreements with any Activision subsidiary. The indemnification applies to actions or omissions regardless of whether they occurred "prior to, at or after, the [Merger]." The indemnification is not limited to what is permitted by Delaware law, but extends "to the fullest extent permitted by applicable Law," which includes "any federal, state, local, municipal, multi-national or other law." Thus, Section 6.8(b) mandates indemnification if any law permits the indemnification.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself. Denied that Plaintiff's characterization or interpretation of Sections 6.8(a) and 6.8(b) is accurate or complete. Denied that these provisions are not "permitted by Delaware law."

210. The first sentence of Section 6.8(b) provides indemnification rights beyond the rights under Activision's Certificate and Bylaws, as of the date of the Merger Agreement. Indemnification under Article VI, Section 6.2 of the Certificate and Article VII, Section 7.1 of the Bylaws is limited to what is permitted by 8 *Del. C.* § 145 ("Section 145"). The then-existing indemnification rights were subject to Section 145(a)'s good faith and reasonable belief requirements and limited by Section 145(b)'s restriction of indemnification in actions by or in the right of the corporation to expenses.

ANSWER: Denied, except admitted that the Merger Agreement, Certificate of Incorporation, and Bylaws speak for themselves. Denied that Plaintiff's characterization or interpretation of Section 6.8(b) of the Merger Agreement, Article VI, Section 6.2 of the Certificate of Incorporation, or Article VII, Section 7.1 of the Bylaws is accurate or complete.

211. Section 6.8(b) adds "investigation expenses," and "losses, claims [and] damages" to Section 145(a)'s list of indemnifiable items. It does not contain Section 145(a)'s "actually and reasonably incurred" limitation. Nor does it contain Section 145(a)'s requirement that the person be made a party or be threatened to be made a party to a proceeding. Section 6.8(b) also applies to actions as an employee or agent and to actions prior to, at or after the Merger.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself. Denied that Plaintiff's characterization or interpretation of Sections 6.8(b) or Section 145(a) is accurate or complete.

212. The second sentence of Section 6.8(b) provides:

> In the event of any such Legal Proceeding, (A) the Surviving Corporation will have the right to control the defense thereof after the Effective Time; (B) each Indemnified Person will be entitled to retain his or her own counsel (the fees and expenses of which will be paid by the Surviving Corporation), whether or not the Surviving Corporation elects to control the defense of any such Legal Proceeding; (C) the Surviving Corporation will advance all fees and expenses (including fees and expenses of any counsel) as incurred by an Indemnified Person in the defense of such Legal Proceeding, whether or not the Surviving Corporation elects to control the defense of any such Legal Proceeding upon receipt of an undertaking by or on behalf of such Indemnified Person to repay such amount if it is ultimately determined that such Indemnified Person is not entitled to be indemnified; and (D) no Indemnified Person will be liable for any settlement of such Legal Proceeding effected without his or her prior written consent.

ANSWER: Admitted that Section 6.8(b) of the Merger Agreement speaks for itself.

213. The second sentence of Section 6.8(b) can be broken down as follows:

Surviving Corporation's Control:	"In the event of any such Legal Proceeding, (A) the Surviving Corporation will have the right to control the defense thereof after the Effective Time;"
Indemnitee's Counsel:	"(B) each Indemnified Person will be entitled to retain his or her own counsel (the fees and expenses of which will be paid by the Surviving Corporation), whether or not the Surviving Corporation elects to control the defense of any such Legal Proceeding;"
Advancement of Expenses:	"(C) the Surviving Corporation will advance all fees and expenses (including fees and expenses of any counsel) as incurred by an Indemnified Person in the defense of such Legal Proceeding, whether or not the Surviving Corporation elects to control the defense of any such Legal Proceeding upon receipt of an undertaking by or on behalf of such Indemnified Person to repay such amount if it is ultimately determined that such Indemnified Person is not entitled to be indemnified;"
Settlement:	"and (D) no Indemnified Person will be liable for any settlement of such Legal Proceeding effected without his or her prior written consent."

ANSWER: Admitted that the Merger Agreement speaks for itself. Denied that Plaintiff's characterization, labeling, or interpretation of Section 6.8(b) is accurate or complete.

214. The second sentence of Section 6.8(b) gives each current or former Activision director or officer the right to retain individual counsel. The Certificate and Bylaws as of the date of the Merger Agreement did not confer such a right.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself.

Denied that any agreement was necessary to "confer" a right to retain counsel.

215. The third sentence of Section 6.8(b) provides:

> Notwithstanding anything to the contrary in this Agreement, none of Parent, the Surviving Corporation nor any of their respective Affiliates will settle or otherwise compromise or consent to the entry of any judgment with respect to, or otherwise seek the termination of, any Legal Proceeding for which indemnification may be sought by an Indemnified Person pursuant to this Agreement unless such settlement, compromise, consent or termination includes an unconditional release of all Indemnified Persons from all liability arising out of such Legal Proceeding.

ANSWER: Admitted that Section 6.8(b) of the Merger Agreement speaks for itself.

216. The third sentence of Section 6.8(b) gives every current or former Activision director or officer the right to veto any settlement or other termination of litigation by Microsoft, Activision or any of their respective Affiliates unless the settlement or termination includes "an unconditional release" of all Indemnified Persons from all liability. Section 1.1(d) of the Merger Agreement contains a broad definition of Affiliate. The third sentence of Section 6.8(d) creates a new contractual right to require Microsoft, Activision and others to extract a complete and unconditional release for every Indemnified Person from all potential liability in order to be able to settle or terminate any civil, criminal, administrative or investigative proceeding. For example, if Activision wants to settle or resolve any lawsuits, SEC investigations or other proceedings involving the Company, it must secure a complete release for Kotick. The Certificate and Bylaws as of the date of the Merger Agreement did not give directors and officers an individual veto right over the ability of Activision, other directors and officers and other entities or

persons to resolve proceedings.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself. Denied that Plaintiff's characterization or interpretation of Section 6.8(b) is accurate or complete. Plaintiff's speculative hypotheticals and the legal conclusions in this paragraph are not well pled factual allegations to which a response is warranted, but to the extent a response is required, they are denied.

217. Section 6.8 also expands the range of "officers" of Activision entitled to mandatory indemnification and advancement. Article IV, Section 4.1 of the Bylaws in effect as of the date of the Merger Agreement provided that the Board shall elect the CEO, President, Secretary and Treasurer and may elect other officers, with all officers required to be elected at the Board's annual meeting or at such other time the Board determines. It provided that the Board may empower the CEO to appoint officers other than the four required to be elected by the Board. Thus, when Article VII, Sections 7.1 and 7.2 of the Bylaws conferred mandatory indemnification and advancement rights on a person who is an "officer of the Corporation," that was limited only to persons elected as officers of Activision by the Board or appointed by Kotick as CEO, pursuant to the Board authorization.

ANSWER: Denied, except admitted that the Merger Agreement and Bylaws speak for themselves. Denied that Plaintiff's characterization or interpretation of Section 6.8(b) of the Merger Agreement or Article VII, Sections 7.1 and 7.2 of the Bylaws is accurate or complete. Plaintiff's speculative hypotheticals and the legal conclusions in this paragraph are not well pled factual allegations to which a response is warranted, but to the extent a response is required, they are denied.

218. Section 6.8(a) of the Merger Agreement, in contrast, requires Microsoft and Activision to honor indemnification agreements between "the Company" and

"its current or former directors" and the indemnification and advancement provisions of the Certificate and Bylaws with respect to the Company's "current or former directors and officers" as of the date of the Merger Agreement. Section 6.8(a) does not limit the term "officers" to those elected by the Board or appointed by the CEO pursuant to Board authorization. Rather, it provides indemnification and advancement rights to any current or former officers. Thus, it makes any current or former officer—including, for example, Brack, who left Activision after his failure to address sexual harassment was exposed, an Indemnifiable Person under Section 6.8.

ANSWER: Denied, except admitted that (1) the Merger Agreement speaks for itself and (2) former President of Blizzard Entertainment J. Allen Brack is no longer employed by Activision. Denied that Plaintiff's characterization or interpretation of Section 6.8(a) of the Merger Agreement or Mr. Brack's departure is accurate or complete. Plaintiff's speculative hypotheticals and the legal conclusions in this paragraph are not well pled factual allegations to which a response is warranted, but to the extent a response is required, they are denied.

219. Section 6.8(b) requires Microsoft and Activision to indemnify not only pursuant to indemnification agreements "with the Company," but also indemnification agreements with "any of its Subsidiaries." Thus, if, as part of his departure from Blizzard, Brack entered into an indemnification agreement with Blizzard, Section 6.8(b) would require Microsoft and Activision to provide indemnification pursuant to that agreement.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself. Plaintiff's speculative hypothetical and the legal conclusions in this paragraph are not well pled factual allegations to which a response is warranted, but to the extent a response is required, they are denied.

220. Section 6.8(c) of the Merger Agreement requires Activision and Microsoft to maintain for six years after the Merger Activision's current D&O insurance, subject to a 350% cap on annual premiums. Section 6.8(c) of the CDL states that Activision's 2021 D&O premium was $4.1 million. Thus, Activision's directors and officers are entitled to D&O coverage up to an annual premium cost of $14.35 million. Section 7.5 of Activision's Bylaws as of the date of the Merger Agreement permitted, but did not require, Activision to maintain coverage. Section 18 of Kotick's Employment Agreement only requires Activision to use its best efforts to maintain D&O coverage at least as favorable as the coverage in effect when the agreement was signed on October 1, 2016 and to cause Kotick to be covered "upon the same terms and conditions as other similarly situated officers and directors."

ANSWER: Denied, except admitted that the Merger Agreement, CDL, Bylaws, and Mr. Kotick's Employment Agreement speak for themselves. Denied that Plaintiff's characterization or interpretation of Section 6.8(c) of the Merger Agreement, Section 6.8(c) of the CDL, Section 7.5 of the Bylaws, or Section 18 of Mr. Kotick's Employment Agreement is accurate or complete. Plaintiff's legal conclusions in this paragraph are not well pled factual allegations to which a response is warranted, but to the extent a response is required, they are denied.

221. Section 6.8 also contains provisions (i) requiring successors or assigns of Microsoft or Activision in a merger or sale of substantially all assets to assume all obligations under Section 6.8; (ii) precluding termination or modification of the Section 6.8 obligations; (iii) conferring third party beneficiary rights on the directors and officers; and (iv) indicating that the rights under Section 6.8 are in addition to, and not in substitution for, other such rights, and do not release or impair such rights.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself. Denied that Plaintiff's characterization or interpretation of Section 6.8 of the Merger Agreement is accurate or complete. Plaintiff's legal conclusions in this paragraph

are not well pled factual allegations to which a response is warranted, but to the extent a response is required, they are denied.

222. The provisions of Section 6.8 materially increased the indemnification, advancement, and insurance rights of Kotick and Activision's other directors, including their former colleagues like Brack who left Activision in the wake of the scandal. The expanded protection for Kotick and other officers would also help protect the directors by encouraging Kotick and other officers to fight any claims.

ANSWER: Denied, except admitted that (1) the Merger Agreement speaks for itself and (2) J. Allen Brack left the Company. Plaintiff's speculative hypotheticals and the legal conclusions in this paragraph are not well pled factual allegations to which a response is warranted, but to the extent a response is required, they are denied.

223. Importantly, these additional protections were not added on a clear day, but in the midst of the Harassment Scandal that, at the time the Board approved the Merger, had already generated three government investigations, two government lawsuits, numerous stockholder suits, demands for Kotick's resignation and the resignation or removal of various officers and employees who were defendants in one or more lawsuits, the subject of one or more investigations and/or otherwise subject to assertions of misconduct. Moreover, Section 6.8 of the Merger Agreement contains provisions that contravene Delaware law and Activision's Certificate and Bylaws, as of the date of the Merger Agreement.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself.

224. The terms of the Merger Agreement addressed the lawsuits arising out of the Harassment Scandal, including lawsuits filed against the Director Defendants.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself, including as to then-pending litigation.

225. Section 5.2(i) of the Merger Agreement stated that, except as approved by Microsoft, Activision:

> will not, and will not permit any of its Subsidiaries . . . to . . . (i) settle, release, waive or compromise any pending or threatened Legal Proceeding (which shall include Specified Litigation) against the Company or its Subsidiaries or agree to any remedies with respect to any Legal Proceeding or settlement thereof, except for the settlement of any Legal Proceedings or series of Legal Proceedings arising out of the same type of act or occurrence solely for monetary damages in an amount (1) not in excess of $10,000,000 for such Legal Proceedings or series of Legal Proceedings or (2) that does not exceed that which is reflected or reserved against in the Audited Company Balance Sheet[.]

ANSWER: Admitted that the Merger Agreement speaks for itself.

226. By requiring Microsoft's approval for the settlement of Specified Litigation, Section 5.2(i) of the Merger Agreement gave Microsoft a veto right.

ANSWER: Denied, except admitted that Section 5.2(i) of the Merger Agreement speaks for itself.

227. Section 1.1(sss) of the Merger Agreement defined "Specified Litigation" as "any of the matters set forth on Section 1.1(sss) of the Company Disclosure Letter." [redacted]

[redacted]

ANSWER: Denied, except admitted that the Merger Agreement and Company Disclosure Letter speak for themselves.

228. The exception in Section 5.2(i) of the Merger Agreement to Microsoft's control over settlements would not apply to the Specified Litigation listed in the CDL because [redacted]

ANSWER: Denied, except admitted that (1) the Merger Agreement speaks for itself and [redacted]. Plaintiff's speculative hypothetical and the legal conclusions in this paragraph are not well pled factual allegations to which a response is warranted, but to the extent a response is required, they are denied.

229. Activision and Microsoft negotiated terms of the Merger Agreement and CDL that gave Microsoft rights concerning the many lawsuits and investigations directed against the Director Defendants arising out of the Harassment Scandal. Further, Activision and Microsoft anticipated that additional lawsuits might be filed against the Director Defendants. These provisions demonstrate that Defendants recognized, and specifically contemplated, that the Director Defendants were the beneficiaries of the super-indemnification, exculpation, advancement and insurance protections Microsoft was to provide under the Merger Agreement. These provisions created a conflict of interest for the Director Defendants when approving, proceeding with and extending the Merger. If the Director Defendants took positions, made decisions or took actions regarding the Merger that displeased Microsoft, Microsoft might refuse to approve settlements, releases, waivers or remedies in one of the many proceedings that were Specified Litigation or might contest their right to advancement, indemnification and insurance protection under the Merger

Agreement.

ANSWER: Denied, except admitted that the Merger Agreement and Company Disclosure Letter (1) speak for themselves and (2) were negotiated by Activision and Microsoft. Plaintiff's speculative hypotheticals and the legal conclusions in this paragraph are not well pled factual allegations to which a response is warranted, but to the extent a response is required, they are denied.

230. Section 6.13(b) of the Merger Agreement gave Microsoft a similar veto right over "Transaction Litigation." It provided:

> The Company may not compromise, settle or come to an arrangement regarding, or agree to compromise, settle or come to an arrangement regarding, any Transaction Litigation unless Parent has consented thereto in writing.

ANSWER: Denied, except admitted that Section 6.13(b) of the Merger Agreement speaks for itself.

231. Section 1.1(bbbb) of the Merger Agreement defined "Transaction Litigation" as

> any Legal Proceeding against the Company or any of its . . . directors or otherwise relating to, involving or affecting the Company . . . arising from or otherwise relating to the Merger or any other transaction contemplated by this Agreement . . . .

ANSWER: Denied, except admitted that Section 1.1(bbbb) of the Merger Agreement speaks for itself.

232. "Transaction Litigation" includes this Action.

ANSWER: Plaintiff's allegation that this Action constitutes Transaction Litigation as defined in the Merger Agreement is a legal conclusion. To the extent it requires a response, it is admitted that the Merger Agreement speaks for itself.

233. On January 18, 2022, Activision and Microsoft issued a joint press release announcing the Merger, which immediately caused heightened scrutiny from employees, investors and analysts. In an interview with *VentureBeat*, Kotick spun various reasons and rationales for the Merger. *VentureBeat* asked Kotick about the purpose, timing and price of the deal. Kotick used Activision's workforce as a scapegoat, taking no accountability for the Harassment Scandal or its effect on Activision, the stock price or the opportunistic timing of Microsoft's offer.

ANSWER: Denied, except admitted that (1) on January 18, 2022, Activision and Microsoft issued a joint press release announcing the proposed transaction, and (2) Mr. Kotick participated in an interview with *VentureBeat*, now known as *GamesBeat*. Plaintiff's characterizations of Mr. Kotick's statements to the *VentureBeat* reporter are denied.

234. Kotick told *VentureBeat* that when Spencer called Kotick about the Merger, Kotick had just realized that Activision did not have the "thousands of people" in machine learning and data analytics that Activision needed to execute its future plans, but Microsoft did. Kotick claimed Activision was "starting to think about all these skills that we need, that we don't have and that were really necessary" to realize the Company's long-range plan. Kotick went on: "so when Phil called, it happened to be at a time where we were ***getting ready to start our long range planning process***, and realizing that these were going to be issues and challenges."

ANSWER: Denied, except admitted that (1) Mr. Kotick made statements to *VentureBeat*, which speak for themselves, and (2) Microsoft's roster of engineering talent was a significant benefit which supported the transaction. Denied that Mr.

Kotick "had just realized" that Activision would need additional engineering talent—particularly in the fields of artificial intelligence and machine learning—to stay competitive in the industry.

235. However, when Spencer called Kotick on November 19, 2021, management had already completed and the Board had already approved the LRP on November 2, 2021. Further, the LRP the Board approved on November 2, contemplated [redacted] Thus, when Spencer called Kotick, Activision was not "getting ready to start" its long range planning process; rather, that process was complete, including management's plan to meet "issues and challenges" with talent.

ANSWER: Denied, except admitted that (1) the Board approved a Long Range Plan on November 2, 2021; (2) Mr. Spencer called Mr. Kotick on November 19, 2021; (3) the Long Range Plan speaks for itself. Denied that Plaintiff's characterizations of the Long Range Plan are accurate.

236. Then, purporting to explain to *VentureBeat* why he said "yes" to Microsoft's offer, Kotick told *VentureBeat* that Microsoft "made this offer that was incredibly attractive at [a] 45% premium over the stock price[.]" In response to Kotick's comment about the "premium," *VentureBeat* asked if the "the sexual harassment investigation [was a] factor in this, as it certainly seemed to affect stock price." Kotick answered no. Kotick blamed the drop in Activision's stock price on the Company's November 2, 2021 announcement that it was delaying the release of *Overwatch 2* and *Diablo IV*. The delayed releases, however, were part of the fallout from the Harassment Scandal, as *Overwatch 2* and *Diablo IV*'s leaders left because of their involvement with the Cosby Suite. In response to Kotick's comment to *VentureBeat*, *Overwatch 2*'s producer Kennedy took to Twitter on January 19, 2022 and told the world that Kotick was to blame. Kennedy wrote:

Bobby, tell everyone about the random projects for OW1

> you all would shove on us, the team would do [overtime] for only them to get cancelled and for months of OW2 dev[elopement] to have been lost. ***Or how almost entire teams are turning over and citing you as the reason***. Don't be shy . . . Oh wait that's right you hide behind scapegoats because you're a coward, my mistake.

ANSWER: Denied, except admitted that (1) Mr. Kotick made statements to *VentureBeat* that speak for themselves and (2) Activision's stock price declined after the delay of *Overwatch 2* and *Diablo IV*. Mr. Kotick notes that Kennedy's account was apparently suspended by Twitter, and he is therefore without information sufficient to admit or deny what she may have stated, and therefore denies such allegation. Mr. Kotick also lacks knowledge or information sufficient to form a belief as to what was in Kennedy's mind if and when she tweeted.

237. Kennedy's Tweet was consistent with *Morningstar*'s conclusion, set forth in its December 3, 2021 report, that the exodus of Activision leaders because of the Harassment Scandal contributed to the delays, and as such: "the best course to help Activision Blizzard move forward and unlock the value in its stock would be to replace Kotick." Unnamed *Diablo IV* insiders would later tell the press that *Diablo IV*'s process was "plagued by mismanagement" and "leadership changes at Activision Blizzard and on the 'Diablo IV' team."

ANSWER: Denied, except admitted that (1) *Morningstar* published a report on December 3, 2021 reflecting the incorrect views of a particular analyst and (2) the *Washington Post* published an article with allegations from purported "insiders." Both of these articles speak for themselves, although the veracity of the allegations in those articles is denied. Mr. Kotick notes that Kennedy's account was apparently

suspended by Twitter, and he is therefore without information sufficient to admit or deny what she may have stated, and therefore denies such allegation. Mr. Kotick also lacks knowledge or information sufficient to form a belief as to (1) the allegations made by the alleged insiders to the *Washington Post* and (2) what Kennedy meant in her tweet, and on those bases denies the allegations in each.

238. *Morningstar* also issued a report on January 18, 2022, responding to the Merger's announcement. *Morningstar* commented that "Kotick and the board found a path around [Kotick's] potential expulsion by engaging with Microsoft." *Morningstar* described Kotick as "radioactive" and Microsoft's decision to allow Kotick to remain as Activision's CEO as "a concession to close the deal."

ANSWER: Denied, except admitted that Morningstar published a report on January 18, 2022. Morningstar's report reflects the incorrect views of a particular analyst and speaks for itself, but the veracity of the allegations in that report is denied.

239. Also on January 18, 2022, Microsoft announced that it promoted Spencer to the new role of CEO of Gaming. Thus, when the Merger closed, Kotick and Activision management would report directly to Spencer, who now oversees Microsoft's entire gaming business.

ANSWER: Admitted that Microsoft promoted Mr. Spencer to the role of CEO of Gaming. Admitted that, after the Merger closed, Activision management reported directly or indirectly to Mr. Spencer.

240. On March 23, 2022, shortly after reports that the DOJ and SEC had launched investigations into potential insider-trading of Activision stock, Hartong filed a Form 4 with the SEC reporting trades in Activision stock from August 27, 2021 to January 18, 2022, by the Susan Hartong Revocable Trust, a trust for

Hartong's spouse (the "Hartong Trust"). The Hartong Trust, which had not previously owned Activision shares, began acquiring shares from August 27 through September 21, 2021, then sold those shares on September 23 through September 30, 2021. The Hartong Trust began acquiring shares again on November 23, 2021, and acquired additional shares on November 30 and December 13, 14, 16 and 21, 2021, at prices ranging from $58.70 to $63.01. A relatively small and odd number of shares were purchased on these various dates, but the Form 4 reveals there were multiple purchases at a range of prices on each of these dates. For example, rather than purchasing 275 shares on December 16, 2021 in a single transaction, the Hartong Trust purchased 276 shares in multiple transactions at prices ranging from $61.17 to $61.49. It is reasonably conceivable these multiple purchases of a small number of shares through a trust was designed to disguise insider trading by Hartong or someone related to the Hartong Trust he had tipped to the Merger negotiations. Significantly, Activision shares were bought (i) on November 23, 2021, shortly after Merger negotiations began and the day after the Activision Board created the WRC; (ii) on November 30, 2021, the day after the Proxy says Hartong was told of the $90-105 range of the Microsoft Merger discussions, and (iii) on December 13, 14, 16 and 21 amidst a series of Activision Board meetings on the Merger that Hartong attended on December 10, 12, 14, 15, 17 and 21.

ANSWER: Denied, except admitted that: (1) the DOJ and SEC investigated trading of Activision stock; and (2) Paragraph 240 purports to characterize a Form 4 filed on March 23, 2022. Mr. Kotick respectfully refers the Court to the Form 4 for a complete and accurate description of its contents, including that Mr. Hartong disclaims beneficial ownership in the securities held in the Susan Hartong Revocable Trust. Plaintiff's speculative hypotheticals and the legal conclusions in this paragraph are not well pled factual allegations to which a response is warranted, but to the extent a response is required, they are denied.

241. The Hartong Trust sold seventy-four Activision shares on January 18, 2022 after the price rose to $81.79 following the announcement of the Merger. The

Form 4 claimed an "investment manager" effected all the numerous small trades over more than four months without Hartong's knowledge. However, that seems unlikely given that Hartong placed the Activision shares in the trust and the investment manager presumably knew Hartong was an Activision director. Hartong said he paid the Company $5,031.68 in recoverable profits on the sale of the seventy-four shares. However, the Hartong Trust purchased 295 shares between November 23 and December 21, 2021 and the Form 4 indicates the trust continued to own 221 shares. Thus, the Hartong Trust profited from the sale of those shares either before or when the Merger closed. On April 16, 2022, Hartong notified the Company he would not stand for reelection at the 2022 annual meeting. It is reasonably conceivable that the Hartong Trust's purchase and sales were the result of tips from Hartong, that Hartong belatedly reported the trades because of the SEC and DOJ insider trading investigations and that he drafted the Form 4, paid the $5,031.68 in short-swing profits and left the Activision Board to cover-up his wrongdoing.

ANSWER: Denied, except admitted that Paragraph 241 purports to characterize, and contains partial quotations from, a Form 4 filed on March 23, 2022. Mr. Kotick respectfully refers the Court to (a) the Form 4 for a complete and accurate description of its contents and (b) publicly available information regarding the trading price of Activision stock. Plaintiff's speculative hypotheticals and the legal conclusions in this paragraph are not well pled factual allegations to which a response is warranted, but to the extent a response is required, they are denied.

242. The timing of the purchases by the Hartong Trust in November and December 2021 indicates knowledge of the Microsoft negotiations, and certainly makes it a fair inference and reasonably conceivable that the purchases were based on insider knowledge, knowledge that Hartong as an Activision director would have had and could pass on to his spouse and/or the supposed investment manager of the trust. The Form 4 claims the trustee of the Hartong Trust directed the investment manager not to engage in further transactions in Activision stock, but does not identify the trustee or the investment manager. It is reasonably conceivable that Susan Hartong is the trustee of the Susan Hartong Revocable Trust and that the

investment manager is Susan Hartong or an entity with which she (and perhaps Hartong) may be involved, such as Parish Partners LLC, which is registered at the Hartong's residence on Parish Lane in New Canaan, Connecticut.

ANSWER: Denied, except admitted that (1) the Form 4 speaks for itself and (2) Susan Hartong is the trustee of the Susan Hartong Revocable Trust. Plaintiff's speculative hypotheticals and the legal conclusions in this paragraph are not well pled factual allegations to which a response is warranted, but to the extent a response is required, they are denied.

243. The timing and nature of the sale of seventy-four of the Hartong Trust's shares just after the Merger announcement and the over two months that elapsed between that January 18, 2022 sale and the March 23, 2022 filing of the Form 4 raises reasonably conceivable scenarios concerning what actually happened. Hartong's vague assertion in the Form 4 that he "recently" became aware of trades that occurred from August of 2021 until January of 2022 does not reveal when he actually learned of the trades. He could have known of trades in December; he could have learned of trades on or about January 18 and stopped further sales, but delayed two months and filed the Form 4 only after the SEC had launched an insider trading investigation; he could have learned of the trades in March, 2022, but that would not explain why trades stopped after January 18, 2022.

ANSWER: Denied, except admitted that the Form 4 speaks for itself. Plaintiff's speculative hypotheticals and the legal conclusions in this paragraph are not well pled factual allegations to which a response is warranted, but to the extent a response is required, they are denied.

244. Upon its announcement, the Merger immediately faced stringent scrutiny from antitrust regulators. Given the antitrust climate, and the size and nature of the Merger, it was no surprise that the Merger caused heavy and protracted scrutiny from antitrust regulars, including the FTC and the United Kingdom's CMA.

Defendants expected this would happen when they entered into the Merger Agreement. So did [redacted] who declined to engage in discussions with Activision because of the obvious regulatory risks that merging with Activision would pose. On February 1, 2022, it was reported that the FTC would review the Merger for antitrust issues rather than the DOJ. As part of its review of the Merger, on March 3, 2022, the FTC asked Activision and Microsoft for additional information as part of its regulatory review (a "Second Request"). This Second Request extended Defendants' waiting period under the Hart-Scott Rodino Act ("HSR Act") for closing the Merger until the 30th day after Activision and Microsoft "substantially compl[ied]" with the FTC's Second Request. Accordingly, as the Proxy disclosed, Activision and Microsoft did not expect to close the Merger until "Microsoft's fiscal year ending June 30, 2023," an expectation that proved optimistic. Ultimately, the regulatory proceedings substantially delayed the Merger and resulted in the Letter Agreement extending the time for completing the Merger until October 18, 2023.

ANSWER: Denied, except admitted that (1) the Merger faced regulatory review from the FTC and CMA; (2) on February 1, 2022, it was reported that the FTC would review the Merger; (3) on March 3, 2022, the FTC issued a Second Request; and (4) the Proxy and Letter Agreement speak for themselves. Plaintiff's speculative hypotheticals and the legal conclusions in this paragraph are not well pled factual allegations to which a response is warranted, but to the extent a response is required, they are denied.

245. Despite expecting and facing protracted regulatory approval of the Merger, Defendants rushed the Special Meeting of stockholders to approve the Merger. On March 21, 2022, after limited SEC review of a preliminary proxy statement filed on February 18, 2022, Activision issued the Proxy, and scheduled the Special Meeting for April 28, 2022. Defendants rushed the Merger vote before stockholders would have the opportunity to vote on Kotick's compensation and directorship at the Company's 2022 annual meeting.

ANSWER: Denied, except admitted that (1) Activision issued the Proxy on March

21, 2022 and (2) the Special Meeting was held on April 28, 2022. Denied that the "Special Meeting of stockholders" or "Merger vote" were "rushed" or were tied to Mr. Kotick's "compensation and directorship."

246. Defendants scheduled the premature Merger vote though they knew there would be protracted regulatory review of the Merger. Thus, the stockholders were forced to vote on the Merger Agreement and decide whether to exercise appraisal rights without any indication of the length of the antitrust review or the severity of the risk of an antitrust challenge.

ANSWER: Denied, except admitted that (1) stockholders voted on the Merger Agreement, overwhelmingly approving of the Agreement (with 98% of votes cast in favor of the merger) and (2) the Merger was subject to regulatory review, just like any other transaction of this size. Denied that "the stockholders were forced to vote on the Merger Agreement and decide whether to exercise appraisal rights without any indication of the length of the antitrust review or the severity of the risk of an antitrust challenge."

247. The Proxy did not contain a Section 251-compliant agreement of merger. Instead, Annex A of the Proxy only included the Execution Version of the Merger Agreement. The Merger Agreement did not include the CDL, disclosure schedules or Survivor's Certificate, which were required parts of a Section 251 agreement of merger.

ANSWER: Denied, except admitted that Annex A of the Proxy included the Execution Version of the Merger Agreement, which speaks for itself and contained all material information necessary to assess the merger. Plaintiff's allegations that

the Proxy "did not contain a Section 251-compliant agreement of merger" or omitted "required parts of a Section 251 agreement of merger" are legal conclusions to which no response is warranted, but to the extent a response is required, they are denied.

248. Meanwhile, leading up to the Special Meeting, Activision made purported corporate governance improvements that were mere window-dressing. On April 16, 2022, Hartong and Wasserman notified the Company they would not stand for reelection at the 2022 annual meeting and the Board temporarily expanded its size from nine to eleven members, elected Lulu C. Meservey ("Meservey") to serve as a new director and nominated Carr for election as a director at the 2022 annual meeting. Carr is a Senior Vice President at Bacardi and therefore reports to Corti, a Bacardi director, who was not disinterested and independent with respect to the Company or the Merger. As a member of the Board's Nominating and Corporate Governance Committee, Corti would have participated in selecting Carr as an Activision director. In addition, Meservey subsequently resigned from the Board on October 6, 2022 to become Activision's Executive Vice President, Corporate Affairs and Chief Communications Officer.

ANSWER: Denied, except admitted that (1) in April 2022, Mr. Hartong and Mr. Wasserman notified the Company they would not stand for reelection at the 2022 annual meeting; (2) the Board elected Lulu C. Meservey to serve as a director; (3) Ms. Carr was nominated for election as a director at the 2022 annual meeting; (4) Ms. Carr is a Senior Vice President at Bacardi; (5) Mr. Corti is a Bacardi director; and (6) Ms. Meservey resigned from the Board on October 6, 2022 to become Activision's Executive Vice President, Corporate Affairs and Chief Communications Officer. Denied that Activision took any actions that "were mere window-dressing." Denied that any of the Activision directors were "not

disinterested and independent with respect to the Company or the Merger."

249. Activision held the Special Meeting on April 28, 2022. In advance of the meeting, and as pled in detail below, Plaintiff attempted to use "the tools at hand" by demanding to inspect Books and Records before the Special Meeting. Activision, however, dragged its feet on responding and producing documents in response to Plaintiff's Section 220 Demand. Activision did not produce any documents to Plaintiff until after the Special Meeting.

ANSWER: Denied, except admitted that (1) Activision held the Special Meeting on April 28, 2022, where a fully-informed body of stockholders overwhelming approved the merger; (2) Plaintiff made a deficient Section 220 Demand; and (3) Activision produced documents to Plaintiff. Denied that Plaintiff's characterization of the Special Meeting or its purported actions in connection with the Special Meeting is accurate.

250. The Company reported in a Form 8-K filed on April 28, 2022 that on that date a majority of Activision's shares were present in person or by proxy and approved the Merger. Only 68.2% of Activision's stockholders voted in favor of the Merger Agreement. Almost 30% of Activision's stockholders chose not to vote and nearly 31% voted against, abstained or did not vote. The Proxy advised stockholders that not voting was equivalent to voting against the Merger Agreement. Stockholders were coerced into voting for the Merger to avoid remaining invested in an Activision that continued to be run by Kotick. When faced with the Hobson's choice of remaining invested in Activision (with Kotick in charge) or accepting a suboptimal merger price, they voted to extricate themselves from Kotick rather than on the merits of the Merger. Moreover, as pled below, the disclosures in the Proxy were materially inadequate and misleading, and as such the stockholder vote was not fully informed. Furthermore, the Merger closed based on a stale stockholder vote that occurred more than one-and-a-half years earlier.

ANSWER: Denied, except admitted that the Proxy and April 28, 2022 Form 8-K

speaks for itself. Denied that stockholders who abstained from voting thereby "voted against" the Merger. Denied that stockholders "were coerced into voting for the Merger"—they voluntarily approved of the merger given the substantial windfall that they recognized would result from the Merger.

251. Wasting no time, on April 29, 2022, the day after the Special Meeting, Activision filed its annual proxy statement (the "2022 Proxy") scheduling its annual meeting for June 21, 2022 (the "2022 Annual Meeting"). The 2022 Proxy solicited stockholders to approve the election of directors and an advisory proposal on executive compensation. In its summary of executive compensation, the 2022 Proxy disclosed that Kotick agreed to reduce his compensation in October, which could be restored according to the terms of his Employment Agreement if certain conditions were met. The 2022 Proxy, however, described those conditions based on the improved compensation terms that Activision agreed to with Microsoft in connection with the Merger. The 2022 Proxy did not disclose the terms of the October Pay Cut Agreement and therefore obscured that Activision's agreement with Microsoft violated it.

ANSWER: Denied, except admitted that (1) the 2022 Proxy and Merger Agreement speak for themselves and (2) the 2022 Proxy solicited approval from stockholders. Denied that the Merger Agreement "violated" any terms under which Mr. Kotick voluntarily took a pay cut. Denied that the 2022 Proxy "obscured" information from stockholders.

252. Proposal 5 in the 2022 Proxy for the 2022 Annual Meeting was a stockholder proposal submitted by the New York State Retirement Fund, a holder of 1,552,194 shares of Activision Common Stock. The proposal requested that the Board oversee an annual public report on the effectiveness and outcomes of Activision's efforts to prevent harassment and discrimination, including disclosure of relevant metrics and targets. The responses by Activision and the Board demonstrated that Kotick and the Board continued to deny, minimize and rationalize

Activision's toxic culture, and to exonerate Kotick and the Board from responsibility, in the hope that they could run out the clock and use the Merger to eliminate claims against them while having the super indemnification, advancement, exculpation and insurance rights under the Merger Agreement.

ANSWER: Denied, except admitted that (1) Proposal 5 in the 2022 Proxy speaks for itself; (2) Proposal 5 was submitted by the New York State Retirement Fund, which held shares in Activision; and (3) the proposal requested that the Board oversee an annual public report on the effectiveness and outcomes of Activision's workplace efforts. Denied that Activision or its Board members "continued to deny, minimize and rationalize Activision's toxic culture"—no such toxic culture existed.

253. In response to Proposal 5, the Board issued a series of statements absolving Kotick and the Board and blaming DFEH and the media for calling out Activision's sordid history of harassment and discrimination. The Board also highlighted reforms that were implemented in response to the Harassment Scandal, most of which were required components of the EEOC Consent Decree. Despite intense lobbying by Activision, Kotick and the Board, Proposal 5 passed.

ANSWER: Denied, except admitted that (1) Proposal 5 passed; (2) the Activision Board implemented reforms, some of which were required under the EEOC Consent Decree; and (3) the DFEH aka CRD's false allegations created a misimpression of "harassment and discrimination" issues at Activision. Denied that Activision had any "sordid history of harassment and discrimination."

254. On August 1, 2022, Activision issued a press release announcing that its teams had "made strong progress on a broad pipeline of new content," and would therefore be releasing *Overwatch 2* on October 4 and *COD: Modern Warfare II* ("*COD:MW2*") on October 28. Around the same time, the Merger faced protracted

regulatory review, as Defendants expected. The benefits from mitigating the Harassment Scandal and the release of new games would go to Microsoft, not Activision's stockholders.

ANSWER: Denied, except admitted that on August 1, 2022 Activision issued a press release announcing that it would be releasing *Overwatch 2* on October 4 and *COD: Modern Warfare II ("COD:MW2")* on October 28.

255. On September 1, 2022, the CMA announced that it had concluded its Phase 1 investigation of the Merger and determined that the Merger may substantially lessen competition in U.K. markets for gaming consoles, multi-game subscription services, and cloud gaming services. Kotick's response to the CMA's September 1, 2022 announcement conceded that Defendants always expected protracted investigations and review of the Merger by antitrust regulators.

ANSWER: Denied, except admitted that on September 1, 2022, the CMA announced that it had concluded its Phase 1 review.

256. On September 15, 2022, after Microsoft informed the CMA that it was not offering any concessions, the CMA announced that it was performing a protracted Phase 2 investigation of the Merger. The CMA had a March 1, 2023 deadline for completing its investigation that it subsequently extended to April 26.

ANSWER: Admitted that the CMA performed a Phase 2 investigation under the stated deadlines. To the extent the phrase "protracted' is meant to imply any impropriety or unusual timeline, such implication is denied.

257. On October 4, 2022, Activision released *Overwatch 2* on schedule, a stark contrast from its performance eleven months prior. Within one month of its release, *Overwatch 2*'s average daily player numbers had more than doubled that of its predecessor.

ANSWER: Denied, except admitted that (1) on October 4, 2022, Activision

released *Overwatch 2* and (2) O*verwatch 2*'s average daily player numbers increased compared to its predecessor.

258. On October 28, 2022, Activision released *COD:MW2* on schedule. *COD:MW2* delivered more than $800 million in worldwide sell-through in its first three days and was the #1 top-selling opening weekend in franchise history. *COD:MW2* also topped worldwide box office openings of 2022, including *Top Gun: Maverick* and *Doctor Strange in the Multiverse of Madness* combined. In its first ten days, *COD:MW2* crossed $1 billion in sell-through. It was the highest grossing entertainment launch in 2022, the fastest game in franchise history to cross $1 billion and ultimately became the highest-selling game in the U.S. in 2022.

ANSWER: Admitted that, under the leadership of Mr. Kotick and Activision's other directors and executives, *COD:MW2* was released and was a resounding success.

259. On November 8, 2022, the European Commission ("E.C.") announced it was opening an "in-depth" Phase 2 investigation of the Merger. The E.C. expressed the same concerns about the Merger as the CMA. The E.C. stated it had a March 23, 2023 deadline to complete its investigation and make a decision on the Merger, but then extended the deadline to April 11, 2023.

ANSWER: Admitted.

260. On December 8, 2022, the FTC filed its suit challenging the Merger and scheduled a trial that would not begin until August 2, 2023, after the Termination Date. That same day, each of Activision and Microsoft stated they would fight the FTC Suit.

ANSWER: Admitted.

261. As discussed below, the pending FTC Suit meant that a condition to closing the Merger would not be met before the July 18, 2023 Termination Date for the Merger Agreement. Activision and Microsoft therefore recognized that the

Merger would be substantially delayed. They filed joint papers in federal court stating that the FTC's process would take "several years." Activision and its senior officers planned accordingly. On December 13, 2022, five days after the filing of the FTC Suit, Activision's President and COO Alegre notified the Company he planned to leave when his employment agreement expired on March 31, 2023.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph speak for themselves; (2) the FTC suit impacted the Merger's timeline; and (3) Mr. Alegre departed from the Company after his employment agreement expired to become CEO of a different company.

262. On December 18, 2022, Activision's Compensation Committee approved adding Zerza (CFO), Bulatao (Chief Administrative Officer) and Dixton (Chief Legal Officer) to Activision's Enhanced Severance Plan. The Compensation Committee also approved the acceleration into December 2022 of cash and equity awards that would have been payable on or prior to the closing of the Merger, including $5,301,346 and 58,013 shares to Zerza, $5,303,680 and 9,910 shares to Bulatao and $839,513 and 12,450 shares to Dixton. These rushed payments reflected that the Merger's close would be delayed indefinitely so these executives got immediate payment rather than having to wait for the Merger to close.

ANSWER: Denied, except admitted that the Activision Board and Compensation Committee approved severance plans and set award schedules for the Company's officers. Denied that the payments referenced in paragraph 262 were "rushed" or "reflected that the Merger's close would be delayed indefinitely so these executives got immediate payment rather than having to wait for the Merger to close."

263. On January 31, 2023, the E.C. issued a formal statement of objections to the Merger that mirrored the CMA's and FTC's concerns.

ANSWER: Admitted that the E.C.'s "formal statement of objections" speaks for

itself.

264. On February 6, 2023, Activision announced exceptional fourth quarter 2022 results, with all three of its segments outperforming historical metrics and the wider industry. *Overwatch 2*'s in-game net bookings were the highest level to date for *Overwatch*. *COD:MW2* set the highest opening quarter in franchise history with $1.85 billion in net revenue, which was $694 million more than its fourth quarter the year before. King's *Candy Crush* was the top-grossing game franchise in the U.S. app stores for the twenty-second quarter in a row. Activision beat consensus estimates by wide margins for net bookings, adjusted EPS and revenue. Wells Fargo described Activision as "Firing on All Cylinders." Wedbush noted: "[Activision] Delivers Massive Upside in Q4, With Microsoft Smiling from a Distance." Wedbush noted further: "Should the deal fail, investors should see a rapid rebound in share price as arbitrageurs depart and conventional investors return." Wedbush was referring to the fact that Activision's stock price—which was trading below $95 per share—reflected the market's view of whether the Merger would close, as opposed to Activision's value.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph speak for themselves; (2) Activision performed well under Mr. Kotick's leadership in Q4 2022, including through the games referenced in this paragraph; and (3) Wells Fargo, Wedbush, and other firms released analyst estimates around this time.

265. On February 8, 2023, the CMA issued its provisional finding that the Merger was expected to result in a substantial lessening of competition in cloud gaming services and cloud gaming consoles (the "Provisional Findings"). The CMA also issued a Notice of Possible Remedies to the Merger ("Notice of Possible Remedies"): (i) prohibiting the Merger; (ii) divesting the business associated with *COD*; (iii) divesting Activision Publishing; or (iv) divesting Activision Publishing and Blizzard. Of course, Microsoft was not going to divest *COD*, Activision Publishing or Blizzard. These assets were among Microsoft's primary reasons for acquiring Activision.

ANSWER: Denied, except admitted that (1) on February 8, 2023, the CMA issued

its Provisional Findings and Notice of Possible Remedies; (2) the remedies included prohibiting the Merger or requiring divestitures; and (3) the assets listed in this paragraph were among the reasons why Microsoft acquired Activision.

266. Despite Activision's exceptional Q4 results, which the Company announced just two days prior, Activision's stock price dropped on February 8, 2023, after the CMA issued its Provisional Findings.

ANSWER: Denied, except admitted that Activision's stock price increased from $71.58 on February 6, 2023 to $75.60 on February 7; decreased to $72.89 on February 8; then increased to $75.26 on February 9.

267. On April 26, 2023, the CMA issued its final decision and report on the Merger (the "Final Report"), which reaffirmed the CMA's Provisional Findings. The CMA was prohibiting the Merger. Microsoft immediately announced that it would appeal (the "CMA Appeal"). Within a few hours, Activision stated that it would "fully support" that appeal.

ANSWER: Admitted that the documents cited in this paragraph speak for themselves.

268. Also on April 26, 2023, Kotick sent an email to Activision employees, reiterating that Activision would support the CMA Appeal. Kotick also expressed his personal commitment to the Merger. Kotick wrote:

> I'm going to do everything I personally can to advocate for us and help regulators understand the competitive dynamics in our industry.

ANSWER: Denied, except admitted that (1) on April 26, 2023, Mr. Kotick sent an email to Activision employees; (2) the email expressed support for the CMA Appeal

and Mr. Kotick's personal commitment to the transaction; and (3) the email speaks for itself. To the extent Plaintiff implies that Mr. Kotick sent the email for any improper motive or purpose, such implication is denied.

269. Unable to restrain himself from touting Activision's strong performance, Kotick also wrote:

> What gives me confidence is that, whether on our own or united with another company, we are one of the strongest companies in our industry, poised for continued growth, and building on our incredible IP.

Thus, unlike the story he told *VentureBeat* on January 18, 2022, about how Activision "needed" Microsoft's "thousands of people," Kotick admitted that Activision did not "need" Microsoft. Indeed, by then, Activision had proven *Morningstar*'s theory correct: its issues were governance, not business, and fixable.

ANSWER: Denied, except admitted that Mr. Kotick's April 26, 2023 email speaks for itself.

270. On April 26, 2023, Activision announced its second consecutive quarter of record-breaking performance, which Kotick described as "exceptional[]." Activision beat consensus revenue estimates and set new records for revenue and EPS. Activision's performance was being fueled by its pipeline of new games, including *COD:MW2* and *Overwatch 2*.

ANSWER: Admitted, except denied that Activision's performance was "being fueled" solely by the factors stated in this paragraph. Mr. Kotick lacks knowledge and information sufficient to form an understanding of which "consensus revenue estimates" Plaintiff references herein, but admits that Activision beat some revenue estimates around this time.

271. Activision's Q1 2023 Financial Results:

	Analyst Estimates	**Actual Results**	**Year-Over-Year Growth**
Net Revenue*	$2.11 billion	$2.38 billion	35%
Earnings Per Share*	N/A	$0.93	86%
Net Bookings	$1.77 billion	$1.86 billion	25%
Activision Publ. revenue	$556.3 million	$580 million	28%
Blizzard revenue	$435.9 million	$443 million	62%
King mobile revenue	$689.9 million	$739 million	8.3%

ANSWER: Admitted that Activision publicly reported financial results which speak for themselves, including for Q1 2023. Admitted that the analyst estimates cited by Plaintiff speak for themselves.

272. On May 1, 2023, Activision issued a notice and proxy statement (the "2023 Proxy") for a June 21, 2023 annual meeting (the "2023 Annual Meeting"). As discussed below, during the six months preceding the issuance of the 2023 Proxy, Plaintiff repeatedly explained in pleadings, briefs and letters to Defendants' counsel why the Merger failed to comply with Section 251. Plaintiff also repeatedly told Activision and the Director Defendants that they had the opportunity to fix the Merger's statutory defects, including by having the Board approve a Section 251-compliant agreement of merger and submitting that agreement to a vote of Activision stockholders at the 2023 Annual Meeting. Defendants ignored Plaintiff. The 2023 Proxy failed to alert stockholders of the possible statutory infirmities with the Merger. The 2023 Proxy did not reference this litigation.

ANSWER: Denied, except admitted that (1) Activision issued its 2023 Proxy on May 1, 2023, which speaks for itself, and (2) Plaintiff made incorrect assertions regarding the Merger's alleged legal defects. Denied that any of the Activision parties "ignored Plaintiff."

273. The 2023 Proxy disclosed that on April 25, 2023, and effective as of March 30, 2023, Kotick's employment agreement had been extended by twelve months to March 31, 2024. Kotick had successfully used the Merger to save his job, compensation, financial benefits and reputation for years following *Kotick Knew*.

ANSWER: Denied, except admitted that the 2023 Proxy disclosed that Mr. Kotick's employment agreement had been extended by twelve months. Denied that Mr. Kotick "used the Merger to save his job"—he resigned two months after the Merger closed, after delivering a tremendous result to shareholders that capped off thirty years of exceptional performance under his leadership. Denied that Mr. Kotick "used the merger to save his . . . compensation, financial benefits and reputation."

274. With respect to Kotick's compensation, the 2023 Proxy repeated the misleading disclosure in the 2022 Proxy about Kotick's Pay Cut Agreement. The 2023 Proxy did not disclose whether the WRC had restored Kotick's compensation in 2023. Now that the Merger has closed, Activision will never disclose the compensation that Kotick received during Activision's 2023 fiscal year.

ANSWER: Denied, except admitted that 2023 Proxy speaks for itself. Denied that there was any "misleading disclosure" in the 2022 Proxy or 2023 Proxy, including disclosures about Mr. Kotick's voluntary pay cut.

275. On June 6, 2023, Activision finally released *Diablo IV*. Leading up to its launch, Activision's developers wanted gamers focused on *Diablo IV*, not questioning whether to play the game or boycott the Company as a result of the Harassment Scandal. Instead, Kotick dredged up the scandal.

ANSWER: Denied, except admitted that Activision released *Diablo IV* on or about June 6, 2023.

276. In a May 31, 2023 interview that some called "bizarre," Kotick talked with *Variety* about the Harassment Scandal. He took no accountability for the scandal and blamed DFEH, the EEOC, the media and Activision's workforce for the scandal. Kotick told *Variety* that Activision "did not have a systemic issue with harassment—ever." He said the Harassment Scandal was really just "mischaracterizations reported in the media." He blamed those mischaracterizations on "a very aggressive labor movement working hard to try and destabilize the company." Thus, as he had done in his January 18, 2022 *VentureBeat* interview, he blamed the Harassment Scandal on his workforce. He essentially called them liars. It was Kotick, however, who was factually incorrect: Activision employees began unionizing after DFEH filed its lawsuit, not before. Moreover, Kotick's self-serving absolution flew in the face of: (i) the EEOC and DFEH Actions, filed after two-years of investigations; (ii) the exodus of high-profile employees; (iii) Kotick's October 2021 concession that a light had been shined on the Company's sexist and discriminatory practices; (iv) his November 19, 2021 acknowledgement that he may have to resign; and (v) Activision's payment of over $100 million in settlements, including in the EEOC Action, DFEH Action and the SEC Investigation (described below), plus substantial costs in remedial measures.

ANSWER: Denied, except admitted that Mr. Kotick participated in interviews with *Variety* and *VentureBeat*, which speak for themselves. Plaintiff's false and incomplete characterizations of the interviews and the baseless "Harassment Scandal" are denied.

277. Kotick also addressed the Merger. *Variety* reported: "he is only focused on guiding the deal through the regulatory roadblocks." Thus, despite the looming Termination Date, Kotick was not considering Activision's strategic alternatives. Despite admitting in his April 26, 2023 email that Activision was one of the strongest companies in the industry, Kotick was not considering Activision's viable option of terminating the Merger and remaining an independent company. Moreover, Kotick reiterated that viable course to *Variety*, stating:

> We have a great company. We have an enormous amount of momentum, and we have an extraordinary balance sheet . . . And we can continue to be successful alone like we have been for the last 30 years.

ANSWER: Denied, except admitted that the *Variety* interview and April 26, 2023 email speak for themselves. Denied that Mr. Kotick was "only focused" on the Merger.

278. *Diablo IV* was immediately another blockbuster hit. Activision announced on June 6, 2023, that *Diablo IV* was live, and, based on pre-launch sales since early access started on June 1, was Blizzard's fastest-selling game of all time. Within five days of its June 6 launch, *Diablo IV* had blown past $666 million in sales and was the best-selling opening in Blizzard's history, the box-office equivalent of the biggest opening week of the year and out-grossed worldwide box office horror films released in 2023.

ANSWER: Admitted that, under the leadership of Mr. Kotick and Activision's other directors and executives, *Diablo IV* was released and was a resounding success.

279. The week after *Diablo IV*'s release, on June 12, 2023, *Esquire* published an article in which Blizzard employees reacted to Kotick's May 31 *Variety* interview. *Esquire* titled the article: "*To Hell and Back: Inside the Tumultuous Making of Diablo IV*." *Esquire* based the article on interviews with more than two dozen current and former Blizzard employees, including *Diablo IV* developers. *Esquire* reported that Activision employees were "livid" with Kotick and "furious and depressed" by his comments to *Variety*. They debunked Kotick's theory that the Harassment Scandal was mere fiction. They told *Esquire* about their experiences at *Diablo IV* under Barriga and McCree, how Activision enabled Barriga and McCree to facilitate systemic harassment and the "traumatizing" impact it had. They said that since the DFEH Action exposed the Harassment Scandal and Barriga and McCree were forced out, conditions at *Diablo IV* had vastly improved. *Esquire* reported that employee retention was up across all business units, Activision's games remained on schedule and Activision's teams remained committed to exceeding player expectations. Employees made clear, however, that they did not attribute Activision's improvements to senior management. Rather, they attributed those improvements to "employee-led efforts across Activision." *Esquire* reported that employees were "still pushing for changes at the corporate level[.]" In other words, Activision's workforce still wanted Kotick out.

ANSWER: Denied, except admitted that the cited *Esquire* article speaks for itself. Mr. Kotick lacks knowledge or information as to what *Esquire* "based the article on," but denies that the allegations in the *Esquire* article are accurate or complete. Denied that the *Esquire* article "debunked" anything.

280. The pendency of the CMA Appeal, CMA Interim Order and FTC Suit meant that conditions to closing the Merger under Section 7.1 of the Merger Agreement were not going to be met by the Termination Date. Activision would therefore be able to walk away from the Merger and collect a $3 billion termination fee from Microsoft. That might have been a good result for Activision's public stockholders. Activision and Microsoft had negotiated the Merger when Activision's stock price, operations and financial performance were suffering from the Harassment Scandal. Circumstances had changed significantly in the twenty- one-months since. The Harassment Scandal had been largely mitigated. Activision had implemented a number of reforms, including, among others, investing $250 million to expand gaming and technology for marginalized communities, waiving the requirement for arbitration of sexual harassment and discrimination claims, hiring more developers, and engaging a third-party equal opportunity consultant. Activision was performing exceptionally well. The industry was focused on Activision's new games and upcoming games. The narrative had changed from the Harassment Scandal. As discussed below, Activision was worth more than $95 per share as of the Termination Date.

ANSWER: Denied, except admitted that (1) the Merger Agreement speaks for itself; (2) the Merger Agreement contained a termination provision; and (3) Activision invested significant funds toward expanding gaming and technology access to marginalized communities, waived arbitration requirements for claims of sexual harassment and discrimination, and engaged a third-party equal opportunity consultant.

281. However, under the No Solicitation provision of Section 5.3(a) of the Merger Agreement, Activision could not explore alternatives to the Merger prior to the termination of the Merger Agreement. Under Section 8.1(c) of the Merger Agreement, Activision would be able to terminate the Merger Agreement after 11:59 p.m. Pacific Time on July 18, 2023. Instead, Kotick, who had publicly committed to proceeding with the Merger, signed the Letter Agreement on July 18, 2023.

ANSWER: Denied, except admitted that (1) the Merger Agreement speaks for itself; and (2) Mr. Kotick signed the Letter Agreement on July 18, 2023.

282. The Letter Agreement (i) extended the Merger Agreement until at least October 18, 2023, (ii) extinguished Activision's right to collect $3 billion on the Termination Date, (iii) narrowed Activision's rights to terminate the Merger Agreement prior to the Amended Termination Date and (iv) narrowed the conditions to closing, which made it easier for the Defendants to close the Merger.

ANSWER: Denied, except admitted that the Letter Agreement speaks for itself.

283. Section 7.1(b) of the Merger Agreement provided that the obligations of Microsoft and Activision to consummate the Merger were subject to the conditions that:

> (b) *Competition Approvals* . . . all requisite clearances, consents and approvals pursuant [to the other Laws set forth in Section 7.1(b) of the Company Disclosure Letter] will have been obtained in each case, without the imposition, individually or in the aggregate, of a Burdensome Condition.

ANSWER: Admitted that the Merger Agreement speaks for itself.

284. The CMA Appeal therefore meant that all requisite antitrust clearances, consents and approvals that were conditions to closing the Merger under Section 7.1(b) of the Merger Agreement would not be met by the Termination Date. As of July 18, 2023, the CMA had not approved the Merger. Further, the CAT, which would preside over the CMA Appeal, had scheduled a multi-day hearing that would not even start until October 23, 2023.

ANSWER: Admitted that the Merger Agreement speaks for itself, and the CMA Appeal remained pending as of July 18, 2023.

285. In addition, Section 7.1(d) of the Merger Agreement provided that the closing of the Merger was subject to condition that:

> *No Prohibitive Laws or Injunctions*. No temporary restraining order, preliminary or permanent injunction or other judgment or order issued by an court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Merger will be in effect, nor will any action have been taken by any Governmental Authority of competent jurisdiction, and no . . . regulation or order will have been . . . entered . . . that . . . (i) prohibits, makes illegal, or enjoins (or seeks to prohibit make illegal or enjoin) the consummation of the Merger or (ii) imposes or seeks to impose a Burdensome Condition.

ANSWER: Admitted that the Merger Agreement speaks for itself.

286. The CMA's Interim Order and the pendency of the FTC Suit therefore meant that a condition to closing the Merger under Section 7.1(d) would not be met by the Termination Date. The Interim Order was a regulatory restraint preventing consummation of the Merger. The FTC Suit was an action taken by a Governmental Authority of competent jurisdiction that seeks to prohibit, make illegal or enjoin the consummation of the Merger. While a federal district court had denied the FTC's motion to enjoin the Merger until the outcome of the FTC Suit, the FTC appealed that decision to the Ninth Circuit on July 13, 2023.

ANSWER: Admitted that the Merger Agreement speaks for itself, and that regulatory review of the Merger remained pending as of July 18, 2023.

287. Section 8.1(c) of the Merger Agreement provided that the Merger Agreement could be validly terminated by either Activision or Microsoft if the Effective Time had not occurred by 11:59 p.m., Pacific Time, on July 18, 2023.

Section 8.1(c) did not provide for any extensions of the Termination Date beyond 11:59 p.m. Pacific Time on July 18, 2023. Activision and Microsoft jointly told the federal district court when opposing the FTC's injunction motion: the Merger Agreement "expire[d] on July 18, 2023," and "require[d] the parties to close by July 18, 2023." The CMA Appeal, Interim Order and FTC Suit meant that the Effective Time was not going to occur by the Termination Date. The Merger Agreement was set to expire.

ANSWER: Admitted that the Merger Agreement and referenced statements speak for themselves.

288. Moreover, upon the Merger Agreement's expiration, Activision would have the right to collect a $3 billion termination fee from Microsoft. Section 8.3(c) of the Merger Agreement provided:

> *Parent Termination Fee*. If this Agreement is terminated pursuant to . . . Section 8.1(c) and all conditions to this Agreement are satisfied . . . , other than the conditions set forth in Section 7.1(b) or Section 7.1(d) (solely in connection with an Antitrust Law), . . . then Parent shall promptly pay (or cause to be paid) to the Company . . . if such termination notice is provided at any time after April 18, 2023, an amount equal to $3,000,000,000 . . . .

ANSWER: Admitted that the Merger Agreement speaks for itself.

289. Instead of letting the Merger Agreement expire on the Termination Date, collecting a $3 billion termination fee and exploring strategic alternatives, Activision executed the Letter Agreement. The Letter Agreement changed numerous terms of the Merger Agreement, which benefitted the Defendants. The Letter Agreement was signed by Kotick, as CEO.

ANSWER: Denied, except admitted that (1) Mr. Kotick signed the Letter Agreement as CEO and (2) the Letter Agreement speaks for itself. Any implication that "the Letter Agreement benefitted" the Activision parties in any improper sense

or that Activision should have terminated the Merger Agreement is denied.

290. The Letter Agreement extinguished Activision's right to terminate the Merger Agreement on the Termination Date. Section 2(a) of the Letter Agreement provided:

> Each of Parent and the Company hereby unconditionally and irrevocably waives any right to terminate the Merger Agreement pursuant to Section 8.1(c) of the Merger Agreement prior to 11:59 p.m. (Pacific time) on October 18, 2023 (the "Waiver Period").

Section 2(a) deleted the July 18, 2023 Termination Date in the Merger Agreement and re-wrote and extended that date by three months, to 11:59 p.m. Pacific Time on October 18, 2023.

ANSWER: Admitted that the Letter Agreement speaks for itself.

291. At the same time, the terms of the Merger Agreement that the Letter Agreement did not address, including forbearance covenants such as the No Solicitation provision, remained unaffected. Section 5 of the Letter Agreement provided:

> Subject to the terms of this Letter, all terms, conditions and provisions of the Merger Agreement, Company Disclosure Letter and Parent Disclosure Letter shall remain in full force and effect.

ANSWER: Admitted that the Letter Agreement speaks for itself.

292. The provisions of the Merger Agreement that protected Kotick's job and compensation were therefore extended. At the time, Kotick knew that employees were still calling for his resignation. The super-exculpation, advancement, indemnification and insurance provisions in the Merger Agreement that protected Kotick and the Director Defendants were also extended. At the time, they were still litigating Specified Litigation: (i) California Derivative Actions (*York* and *Savage*) were still pending against Kotick and the Director Defendants, (ii) the Ninth Circuit was considering DFEH's attempt to overturn the trial court's approval of the EEOC

Consent Decree, (iii) DFEH was prosecuting the DFEH Action and (iv) the Federal Securities Action against Kotick and Kelly was on appeal in the Ninth Circuit. Kotick and the Director Defendants therefore received material benefits from extending the Merger that were not shared with Activision's former public stockholders.

ANSWER: Denied, except admitted that (1) the Merger Agreement and Letter Agreements speak for themselves; (2) the "Specified Litigation" was pending. Plaintiff's characterization of the Merger Agreement, Letter Agreement, and litigation is denied as inaccurate or incomplete.

293. The stockholders, on the other hand, remained subject to the stringent forbearance covenants in the invalid Merger Agreement for an extended period of time. In addition, the value of the $95 per share Merger consideration was reduced by the further delay of receipt of that consideration.

ANSWER: Denied, except admitted that the Merger Agreement and Letter Agreements speak for themselves. Plaintiff's characterization of the Merger Agreement, Letter Agreement, and merger consideration is denied as inaccurate or incomplete.

294. The Letter Agreement extinguished Activision's right to collect a $3 billion termination fee from Microsoft on the Termination Date. Section 2(g) of the Letter Agreement provided:

> the Company hereby unconditionally and irrevocably waives any right to the Parent Termination Fee during the Waiver Period . . . .

For Activision's public stockholders, $3 billion was approximately $3.80 per share.

ANSWER: Denied, except admitted that the Letter Agreement speaks for itself.

Mr. Kotick is without knowledge or information as to Plaintiff's basis for asserting a calculation of "approximately $3.80 per share" and therefore denies it.

295. The Letter Agreement narrowed Activision's rights to terminate the Merger Agreement before the Amended Termination Date. Section 2(b) of the Letter Agreement provided that Microsoft and Activision "unconditionally and irrevocably" waived the right to terminate the Merger Agreement "pursuant to any section of Article VIII of the Merger Agreement" other than Sections 8.1(a) or (c). Section 2(b) of the Letter Agreement therefore deleted Section 8.1(b) of the Merger Agreement. Section 8.1(b) had provided that Activision could terminate the Merger Agreement:

> if (i) any permanent injunction or other judgment or order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Merger will be in effect, or any action has been taken by any Governmental Authority of competent jurisdiction, that, in each case, prohibits, makes illegal or enjoins the consummation of the Merger and has become final and non-appealable; or (ii) any statute, rule, regulation or order will have been enacted, entered, enforced or deemed applicable to the Merger that prohibits, makes illegal or enjoins the consummation of the Merger . . . .

ANSWER: Denied, except admitted that the Letter Agreement and Merger Agreement speak for themselves. Plaintiff's characterizations of those documents are denied.

296. The Letter Agreement changed the conditions to closing the Merger under Sections 7.1(b)-(c) of the Merger Agreement, making it easier for Defendants to close the Merger. Section 2(c) of the Letter Agreement provided:

> Each of Parent, Merger Sub and the Company unconditionally and irrevocably waives any failure of the

> conditions to Closing set forth in Section 7.1(b) and Section 7.1(c) of the Merger Agreement, in each case, other than with respect to the United Kingdom.

Section 2(c) of the Letter Agreement eliminated the provision of Section 7.1(b) of the Merger Agreement (except with respect to the U.K.) making FTC approval a condition to closing the Merger.

ANSWER: Denied, except admitted that the Letter Agreement and Merger Agreement speak for themselves. Plaintiff's characterizations of those documents are denied.

297. Moreover, Section 2(d) of the Letter Agreement provided:

> Each of Parent, Merger Sub and the Company unconditionally and irrevocably waives any failure of the condition to Closing set forth in Section 7.1(d) of the Merger Agreement due to (i) any Governmental Authority seeking to prohibit, make illegal or enjoin the consummation of the Merger or seeking to impose a Burdensome Condition (emphasis added).

Section 2(d) of the Letter Agreement deleted the portion of Section 7.1(d) of the Merger Agreement that prevented the Defendants from closing the Merger while the FTC Suit was pending.

ANSWER: Denied, except admitted that the Letter Agreement and Merger Agreement speak for themselves. Plaintiff's characterizations of those documents are denied.

298. The Letter Agreement incorporated the sections of the Merger Agreement governing amendments and waivers, which enabled the Defendants to serially and indefinitely amend and extend the Merger Agreement. Section 6 of the Letter Agreement stated that Sections 8.4 and 8.5 of the Merger Agreement applied to the Letter Agreement, "*mutatis mutandis*, as if set forth herein." Sections 8.4 and

8.5 of the Merger Agreement governed amendments and waivers.

ANSWER: Denied, except admitted that the Letter Agreement and Merger Agreement speak for themselves.

299. The same day that Activision announced the Letter Agreement, it announced its third consecutive quarter of exceptional financial performance: Q2 2023. As reflected in the chart below, Blizzard and King beat analysts' estimates and set new second-quarter records. Blizzard did exceptionally well, with revenue growing 164% and operating income more than tripling year-over-year, which Activision attributed to *Diablo IV*. Activision explained that *Diablo IV* had sold-through more units than any other Blizzard title at an equivalent stage of release, and Blizzard's teams were making strong progress on expansions that would deliver major new features and continue the game's acclaimed narrative for years. Activision also announced that Blizzard's *Overwatch* team would be releasing *Overwatch 2: Invasion* on August 10, and would be the largest seasonal update yet.

ANSWER: Denied, except admitted that (1) under the leadership of Mr. Kotick and Activision's other directors and executives, Activision performed well financially over time and (2) on July 19, 2023, Activision announced its Q2 2023 financial results (which speak for themselves).

300. Activision's Q2 2023 Financial Results:

	Analyst Estimates	**Actual Results**	**Year-Over-Year Growth**
Net Revenues	N/A	$2.2 billion	34%
Earnings Per Share	N/A	$0.74	106%
Net Bookings	$2.32 billion	$2.46 billion	50%
Activision Publ. revenue	$578.2 million	$574 million	17%
Blizzard revenue*	$987.7 million	$1.06 billion	164%
King mobile revenue*	$706 million	$747 million	9%

ANSWER: Denied, except admitted that (1) Activision publicly reported financial

results which speak for themselves, including for Q2 2023 and (2) the analyst estimates cited by Plaintiff speak for themselves.

301. On August 22, 2023, the CMA announced that Microsoft had submitted a restructured deal to the CMA for consideration (the "Restructured Merger"). Under the Restructured Merger, Microsoft would divest certain cloud gaming rights for existing and future Activision games to Ubisoft Entertainment SA ("Ubisoft"). The CMA stated that it was reviewing the Restructured Merger anew.

ANSWER: Admitted.

302. On October 13, 2023, the CMA announced that it approved the Restructured Merger. Wasting no time, Microsoft and Activision completed the purported Merger on October 13 by filing the Certificate of Merger (the "Merger Certificate") with Delaware's Secretary of State. As described below, the Merger Certificate and the certificate attached thereto were false. The Merger Certificate also misrepresented that the Merger Agreement "has been approved, adopted, executed and acknowledged by each of the constituent corporations in accordance with Section 251" of the DGCL.

ANSWER: Denied, except admitted that (1) CMA announced that it approved the Restructured Merger on October 13, 2023; and (2) Microsoft and Activision filed the Certificate of Merger with Delaware's Secretary of State on October 13, 2023. Denied that Microsoft and Activision "[w]ast[ed] no time" to the extent Plaintiff suggests anything unusual or improper with the timing of the Merger Certificate's filing.

303. After the Merger closed, Kotick stayed at Activision for two months, reporting to Spencer. On December 20, 2023, Kotick sent an email to employees stating that he would resign from the Company, effective December 29.

ANSWER: Admitted.

304. Also after the Merger closed, the lawsuits against the Kotick and the Director Defendants arising from the Harassment Scandal were resolved. On November 15, 2023, the plaintiffs in the California Derivative Actions (*York* and *Savage*) voluntarily dismissed their actions, because the Merger had extinguished their claims. Thus, Kotick and the Director Defendants obtained a benefit from the Merger the stockholders did not share. On January 17, 2024, Activision settled the DFEH Action through a negotiated consent decree, pursuant to which Activision would pay eligible claimants $54.8 million. On January 25, the DFEH withdrew its appeal of the EEOC Action.

ANSWER: Denied, except admitted that (1) on November 15, 2023, the plaintiffs in the California Derivative Actions (*York* and *Savage*) voluntarily dismissed their actions (which had been stayed prior to dismissal); (2) on January 17, 2024, Activision settled the DFEH Action through a negotiated consent decree which provided for no liability and explicitly stated that no government agency, court, or anyone else ever made any findings of systemic harassment at Activision; and (3) the DFEH withdrew its appeal of the EEOC Action.

305. All in all, despite Kotick and the Director Defendants' denial of responsibility for the Harassment Scandal, the Company paid over $100 million to resolve Specified Litigation that implicated them: (i) $18 million to resolve the EEOC Action, (ii) $35 million to resolve the SEC Investigation and (iii) $54.8 million to resolve the DFEH Action. The Company also spent substantial additional costs: legal fees, implementing remedial measures and costs related to the Merger.

ANSWER: Denied, except admitted that the settlement agreements with the EEOC, SEC, and DFEH speak for themselves. Any implication of liability by virtue of the fact that Activision made a business decision to settle is denied.

306. Plaintiff attempted to use Section 220 to investigate its claims and

obtain a complete copy of the agreement of merger before being forced to vote on the Merger at the rushed Special Meeting. Plaintiff served its 220 Demand on March 7, 2022, seeking inspection of, among other documents, "documents specifically referenced in the Merger Agreement, which are necessary to understand the terms of the Merger Agreement." In particular, Plaintiff requested documents that were necessary to have the entire agreement of merger: (i) the CDL and the disclosure schedules to the Merger Agreement, (ii) the Parent Disclosure Letter, and (iii) indemnification agreements set forth in Sections 6.8(a) and (d) of the CDL. The 220 Demand pointed out that the Merger Agreement contained numerous representations, warranties and covenants that are conditions to closing and stated:

> However, the scope and effect of the representations, warranties, covenants and conditions cannot be determined from the Merger Agreement. Their scope and effect is affected by documents such as the Company Disclosure Letter, which has not been provided.

The 220 Demand also requested the CDL sections and schedules related to indemnification that are referred to in the Merger Agreement.

ANSWER: Denied, except admitted that that the 220 Demand speaks for itself. Denied that Special Meeting was "rushed" or that the Plaintiff was "forced" to vote on the Merger.

307. Plaintiff also demanded drafts of the Merger Agreement exchanged between Activision and Microsoft and Formal Board Materials concerning *Kotick Knew*, Activision's stock price and/or the potential liability of any current or former Company director or officer in connection with the Harassment Scandal. Activision let the March 15, 2022 statutory deadline for responding to the 220 Demand lapse, and on March 17, 2022 sent Plaintiff a written response refusing to produce documents (the "Refusal"). On March 21, 2022, Activision issued the Proxy and scheduled the Special Meeting for April 28, 2022.

ANSWER: Denied, except admitted that (1) Plaintiff made demands for documents and Activision responded; (2) Plaintiff's Demand Letter and Activision's March 17,

2022 response speak for themselves, and (3) on March 21, 2022, Activision issued the Proxy and scheduled the Special Meeting for April 28, 2022.

308. Plaintiff filed a Section 220 complaint on March 24, 2022, after Activision ignored Plaintiff's request to discuss the Refusal. Activision denied Plaintiff's inspection rights, ignored Plaintiff's request to discuss the Refusal and rushed the Merger vote at the Special Meeting. After Plaintiff filed its Section 220 complaint, Activision agreed to meet and confer.

ANSWER: Denied, except admitted that (1) Plaintiff filed a Section 220 complaint on March 24, 2022 and (2) Activision agreed to meet and confer. Denied that "Activision ignored Plaintiff's request[s,]" "denied Plaintiff's inspection rights," or "rushed the Merger vote at the Special Meeting."

309. Between March 24 and April 6, 2022, Plaintiff negotiated the scope of a Books and Records production with Activision. Activision refused to produce the CDL and disclosure schedules to the Merger Agreement, among other documents. On April 1, 2022, Plaintiff again specifically requested the CDL, disclosure schedules and indemnification agreements. On April 16, 2022, Activision told Plaintiff it would only agree to complete its production within sixty days of the execution of a confidentiality agreement. Activision did not start its production until May 12, 2022 (*i.e.*, after the Special Meeting) and did not complete its production until June 21, 2022. Books and Records the Company produced, however, should have been readily available in the minute book or files used to prepare the Proxy.

ANSWER: Denied, except admitted that Plaintiff made demands for documents and Activision responded.

310. After the Company's initial production, Plaintiff, on July 22, 2022, sought further documents, including again asking for the CDL and disclosure schedules that are specifically incorporated in the Merger Agreement. In written correspondence dated August 7, 2022, Activision agreed to (i) produce "any non-

privileged drafts of the Merger Agreement . . . that were considered by the [Board]"; (ii) review "all Board and committee materials from the relevant time period to determine if there is any additional responsive information" regarding any meeting concerning *Kotick Knew* or the potential liability of any current or former Company director or officer in connection with the Harassment Scandal; and (iii) to "provide certain Indemnification Agreements[.]" However, with respect to Plaintiff's repeated demand to inspect the CDL and disclosure schedules, the Company refused and wrote: "[t]hese requests are not for board-level material[.]" The Company thereby conceded the Board never reviewed the CDL or confidential disclosure schedules to the Merger Agreement. However, Activision did produce the Parent Disclosure Letter.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph speak for themselves and (2) Plaintiff made demands for documents and Activision responded. Denied that Activision conceded the Activision Board never reviewed the information in the CDL or confidential disclosure schedules to the Merger Agreement; to the contrary, the Board received a presentation on the Confidential Company Disclosure Letter and the Disclosures Schedules.

311. On August 2, 2022, the Company produced additional Books and Records to Plaintiff. The production included the Draft Merger Agreement dated January 17, 2022, which, based on Activision's representations, was therefore the only draft of the Merger Agreement the Board considered. The production did not include any Formal Board Materials concerning *Kotick Knew* or the potential liability of any current or former Company director or officer in connection with the Harassment Scandal. This confirms the Board's public statement that it did not consider Kotick's status when considering the Merger. The production also included 2003 indemnification agreements for each of Corti, Nolan and Morgado. Thus, Activision did not produce any other indemnification agreements, including those referenced in [redacted] of the CDL.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph speak for themselves and (2) Plaintiff made demands for documents and Activision

responded. Plaintiff's speculative inferences in this paragraph are not well pled factual allegations to which a response is warranted, but to the extent a response is required, such speculative inferences are denied.

312. On November 3, 2022, Plaintiff filed its Complaint challenging the Merger. In Count I, Plaintiff alleged that (i) the Draft Merger Agreement and Merger Agreement were not a Section 251-compliant agreement of merger; (ii) the Activision Board's approval of the Draft Merger Agreement did not comply with Section 251(b); (iii) the Execution Version of the Merger Agreement was not a Section 251-compliant agreement of merger and its execution did not comply with Section 251(b); and (iv) the submission of the Merger Agreement to the Activision stockholders did not comply with Section 251(c). Therefore, the Merger Agreement and the Merger, if consummated, were invalid and void and constituted an unlawful conversion of the Activision stockholders' shares. In Count II, Plaintiff alleged that the Director Defendants' failure to comply with Section 251 was a breach of fiduciary duty. On November 14, 2022, Plaintiff served Activision, Kotick and each of the Director Defendants with its Complaint, pursuant to Delaware law.

ANSWER: Denied, except admitted that the Plaintiff filed a Complaint containing false allegations and incorrect arguments, which Complaint speaks for itself. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

313. On January 25, 2022, Plaintiff filed its Amended Complaint. In Count I, Plaintiff re-pleaded its claims against the Defendants for violations of Section 251 and conversion. In Count II, Plaintiff (i) re-pleaded that the Director Defendants' failure to comply with Section 251 was a breach of fiduciary duty; and (ii) pleaded that the Director Defendants' continued failure to comply with Section 251—even after Plaintiff's Complaint pointed out the statutory defects—was a deliberate breach of their duty of loyalty, intentional misconduct and a knowing violation of law. Plaintiff also alleged that the Defendants could fix the Merger's statutory defects before the Merger closed, including by submitting a Section-251 compliant agreement of merger to a vote of the Activision stockholders at the 2023 Annual

Meeting. The Defendants, however, deliberately disregarded their opportunity to fix the Merger's statutory defects.

ANSWER: Denied, except admitted that the Plaintiff filed an Amended Complaint containing false allegations and incorrect arguments, which Amended Complaint speaks for itself. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

314. On February 23, 2023, Activision filed its 2022 annual report on Form 10-K (the "2022 Annual Report"). The 2022 Annual Report referenced this Action and included the following description of Plaintiff's claims:

> On November 3, 2022 a lawsuit captioned, *Sjunde AP-Fonden v. Activision Blizzard, Inc. et al*., C.A. No. 2022-1001-CM (Del. Ch.) was filed under seal in the Court of Chancery of the State of Delaware on behalf of a class of stockholders of the Company. The complaint names the Company, our directors, Microsoft and Merger Sub as defendants . . . The complaint also alleges that the Merger was not approved in compliance with the requirements of 8 *Del. C*. § 251, and seeks a declaration that the Merger would be invalid if consummated . . . On January 25, 2023, an amended complaint was filed in the Sjunde AP- Fonden action.

Kotick, Bowers, Carr, Corti, Kelly, Meyer, Morgado, Nolan and Ostroff signed the 2022 Annual Report.

ANSWER: Admitted that the 2022 Annual Report speaks for itself.

315. On March 24, 2023, Activision, Kotick and the Director Defendants filed a motion to stay Plaintiff's action until regulatory review of the Merger was complete and the Merger closed, which the Microsoft Defendants joined. On April 11, Plaintiff opposed Defendants' motion. Plaintiff explained that Section 251 violations had already occurred and could still be fixed.

ANSWER: Denied, except admitted that (1) the Activision parties filed a motion to stay and (2) the documents cited in this paragraph speak for themselves. Denied that any "Section 251 violations had already occurred [or] could still be fixed." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

316. On May 1, 2023, Plaintiff filed a motion for limited expedited proceedings on its Section 251 claims, and asked the Court to schedule a preliminary injunction hearing in July 2023. Plaintiff explained in its opening and reply papers that the Director Defendants (i) did not comply with Section 251 and (ii) could fix the Merger's statutory defects, including by submitting a Section 251-compliant agreement of merger to a vote of the Activision stockholders at the June 21, 2023 Annual Meeting. Each of the Defendants opposed Plaintiff's motions.

ANSWER: Denied, except admitted that (1) Plaintiff filed a motion for limited expedited proceedings and (2) the documents cited in this paragraph speak for themselves. Denied that the Merger "did not comply with Section 251" or had any "statutory defects." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

317. On May 15, 2023, Plaintiff's counsel sent a letter to Skadden urging Activision and the Director Defendants to cure the statutory defects before the Merger closed. Plaintiff's counsel wrote:

> Plaintiff is troubled and puzzled by the Activision Defendants' continuing refusal to cure their failure to comply with 8 *Del. C.* § 251 . . . It is still not too late to fix the defects.

ANSWER: Admitted that the document cited in this paragraph speaks for itself.

Denied that the Merger had any "statutory defects" that needed to be "cure[d]." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

318. At a May 16, 2023 hearing on Plaintiff's Expedition Motion, Plaintiff's counsel reiterated that Activision and the Activision Board had "a fair chance to fix the [statutory] problems; they did not." Plaintiff's counsel also reiterated that Activision and the Director Defendants could have submitted the agreement of merger to a stockholder vote at the 2023 Annual Meeting but had not.

ANSWER: Admitted that the document cited in this paragraph speaks for itself. Denied that the Merger had any "statutory problems" that needed to be "fix[ed]." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

319. On June 5, 2023, Activision and the Director Defendants filed a Motion to Stay Discovery and For Protective Order (the "Second Stay Motion"), as well as a Motion to Dismiss, for which they sought an over five-month briefing schedule followed by argument and a decision in 2024, which the Microsoft Defendants joined. Again, the Defendants sought to delay disposition of Plaintiff's statutory and conversion claims. Plaintiff opposed Defendants' proposed schedule, filed a motion for partial summary judgment on its statutory and conversion claims, and sought a prompt disposition of its motion on a sixty-two-day briefing schedule with argument in September 2023. Defendants, however, successfully urged the Court to schedule oral argument for November 2023.

ANSWER: Denied, except admitted that (1) the Activision parties filed a second motion to stay and (2) the documents cited in this paragraph speak for themselves.

320. Plaintiff submitted its opening papers in support of its motion for partial summary judgment on September 8, 2023. Plaintiff's papers explained that

Activision and the Activision Board violated Section 251, so the Merger, if consummated, would be invalid and constitute the unlawful conversion of the Activision stockholders' shares.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves. Denied that "the Activision Board violated Section 251" or that the Merger was "invalid and constitute[d] unlawful conversion." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

321. Defendants closed the Merger on October 13, 2023, without fixing the statutory defects. Given the plain terms of Section 251 and Plaintiff's detailed explanations for nearly a year of why there had not been compliance with the statute, Defendants' failure and repeated refusal to comply with Section 251 was a breach of the duty of loyalty, a knowing violation of law and intentional misconduct.

ANSWER: Denied, except admitted that the Merger closed on October 13, 2023. Denied that the Merger was subject to any "statutory defects." Denied that the Activision Directors engaged in any conduct that "was a breach of the duty of loyalty" or "a knowing violation of law and intentional misconduct." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

322. On March 27, 2024, Activision finally produced to Plaintiff what purports to be the CDL, disclosure schedules, Survivor's Certificate and Execution Version of the Merger Agreement.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph

speak for themselves and (2) Plaintiff made demands for documents and Activision responded. To the extent Plaintiff's use of the words "finally" or "what purports to be" are meant to imply any impropriety, such implication is denied.

323. Plaintiff brings this Action pursuant to Court of Chancery Rule 23, individually and on behalf of other former holders of Activision common stock, except the Defendants herein and any person(s), firm, trust, corporation or other entity related to or affiliated with them and their successors in interest (the "Class") who held Activision shares at any time from the announcement of the Merger Agreement through the closing of the Merger and were injured as a result of Defendants' wrongful actions.

ANSWER: Denied, except admitted that Plaintiff is bringing a class action pursuant to Court of Chancery Rule 23. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

324. This Action is properly maintainable as a class action.

ANSWER: This allegation constitutes a legal conclusion that warrants no response, but to the extent required, it is denied

325. The Class is so numerous that joinder of all members is impracticable. The Company had hundreds, if not thousands, of stockholders scattered throughout the United States. The number of shares of Activision stock outstanding on the following dates were:

January 13, 2022	779,057,360
March 14, 2022	780,922,900
July 24, 2023	786,798,320

Approximately 7.7 million shares were issued largely to directors, officers and

employees during the twenty-one-month pendency of the Merger.

ANSWER: Denied, except admitted (1) the Company had many shareholders in the United States, as reflected in Activision's 10-K forms for the years 2021 and 2022; (2) Activision had 786,798,320 shares outstanding on July 24, 2023; and (3) Activision's directors, officers, and employees were issued shares during the pendency of the Merger, as reflected in Activision's 2022 10-K form and Q2 2023 10-Q form. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

326. There are questions of law and fact common to the Class, including, *inter alia*, the following:

a. Whether an agreement of merger was validly adopted and approved by the Board under Section 251(b) and was submitted to the stockholders as required by Section 251(c), and whether the Merger was valid;

b. Whether the Merger Agreement and the Merger constituted the unlawful conversion of the Activision stockholders' shares;

c. Whether the Merger was entirely fair to the Class and whether the Director Defendants breached their fiduciary duties to Plaintiff and the Class and engaged in a knowing violation of the law and intentional misconduct;

d. Whether the Microsoft Defendants aided and abetted and conspired in the Director Defendants' breaches of fiduciary duty, knowing violation of the law and intentional misconduct; and

e. Whether Plaintiff and the Class are entitled to equitable relief, damages or other relief as a result of Defendants' wrongful conduct.

ANSWER: These allegations constitute legal conclusions that warrant no

response, but to the extent required, they are denied.

327. Plaintiff is committed to prosecuting the Action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the Class, and Plaintiff has the same interests as other members of the Class. Accordingly, Plaintiff is an adequate Class representative.

ANSWER: These allegations constitute legal conclusions that warrant no response, but to the extent required, they are denied. Denied that Plaintiff is an adequate Class representative, has the same interests as other class members, or can satisfy typicality requirements.

328. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the Class, which would as a practical matter be dispositive of the interest of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

ANSWER: These allegations constitute legal conclusions that warrant no response, but to the extent required, they are denied.

329. Defendants have acted or refused to act on grounds generally applicable to and causing injury to the Class, therefore making appropriate final declaratory relief with respect to the Class as a whole.

ANSWER: These allegations constitute legal conclusions that warrant no response, but to the extent required, they are denied. Denied that Mr. Kotick or the other Directors have caused any injury to Plaintiff or the purported Class.

330. The common questions of law and fact predominate over questions

affecting individual Class members and a class action is superior to other adjudication methods.

ANSWER: These allegations constitute legal conclusions that warrant no response, but to the extent required, they are denied. Denied that "common questions of law and fact predominate over questions affecting individual Class members and a class action is superior to other adjudication methods."

331. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

ANSWER: This paragraph does not warrant a response, but to the extent required, Mr. Kotick incorporates his responses to Plaintiff's other allegations.

332. The Delaware General Corporation Law in Section 251(a) only empowers Delaware corporations to merge "pursuant to an agreement of merger . . . complying and approved in accordance with this section." Under 8 *Del C.* § 251, a valid merger requires that three statutorily required acts be performed in the correct sequence: (i) the board must approve an agreement of merger containing the terms and conditions of the merger and the mode of carrying it into effect, (ii) the agreement of merger as approved by the board must be executed and acknowledged in accordance with 8 *Del. C.* § 103, and (iii) the executed and acknowledged agreement of merger as properly approved by the board must be submitted to the stockholders for approval.

ANSWER: These allegations constitute legal conclusions that warrant no response, but to the extent required, they are denied.

333. When the Director Defendants approved the Draft Merger Agreement on January 17, 2022, they did not review or approve a Section 251-compliant agreement of merger, as required by Section 251(b). Instead, they approved the Draft Merger Agreement, which did not contain required terms and elements of an agreement of merger under 8 *Del. C.* § 251(b). In further violation of Section 251(b),

the Director Defendants improperly delegated determination and approval of a critical financial term of the agreement of merger (*i.e.*, dividends) to an *ad hoc* committee of Kotick cronies. But Kotick, who was not on the *ad* hoc committee, actually negotiated the dividend term. The Merger Agreement that was, according to the Proxy, executed on January 18, 2022 and was attached as Annex A to the Proxy, also was not the agreement of merger Section 251(b) requires. The Company did not submit for approval and the stockholders did not approve a Section 251-compliant agreement of merger at the Special Meeting, as required by Section 251(c). Instead, they approved the Merger Agreement, which omitted portions of the agreement of merger required by Section 251.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph speak for themselves; (2) the Activision Directors approved the Merger Agreement on January 17, 2022; and (3) the Board delegated to an *ad hoc* committee, consisting of Mr. Corti, Mr. Kelly, and Mr. Morgado, the authority to continue to explore whether Microsoft would agree to enhance the dividend term contained in Section 5.2(e) of the interim operating covenants beyond what the Board had already approved, but those efforts were unsuccessful. Denied that the *ad hoc* committee was composed of "Kotick cronies." Denied that the Merger Agreement "did not contain required terms and elements of an agreement of merger under 8 *Del. C.* § 251(b)" or "violated" Section 251 whatsoever. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

334. Section 251(b) required the Board to adopt an agreement of merger that set forth all of the terms of the Merger. As Section 9.5 of the Merger Agreement acknowledges, the agreement of merger included the Company Disclosure Letter,

disclosure schedules and Exhibit A to the Merger Agreement, the Survivor's Certificate. The Board, however, only reviewed the incomplete January 17, 2022 Draft Merger Agreement, which omitted the Merger consideration, CDL, the disclosure schedules and Exhibit A. The Board did not otherwise review or approve the CDL or disclosure schedules.

ANSWER: The allegations in this Paragraph relate to claims that were resolved by the Section 205 Order and no response is required. To the extent a response is required, the allegations in this paragraph are denied, except admitted that (1) the documents cited in this paragraph speak for themselves and (2) the Activision Board reviewed and approved the Merger Agreement, including all of its material terms. Denied that the Board "did not otherwise review or approve" any required information; to the contrary, the Board received a presentation that included the information in the CDL and Disclosure Schedules. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

335. The Company Disclosure Letter is referred to forty-five times in the Merger Agreement, including the following:

(a) Section 1.1's definitions of "Company Material Adverse Effect"; "Company Stock Plans"; "Knowledge" ("the actual knowledge of the individuals set forth in Section 1.1(h) of the Company Disclosure Letter")"; "Material Contract"; "Significant Customer"; "Significant Vender"; "Specified Litigation"; and Subsidiary."

(b) The qualifications that Activision's representations and warranties are except "as set forth in the Company Disclosure Letter" (Article III);

(c) Sections 3.4, 4.4, 6.2(a)-(b), 7.1(b)-(c) referring to the required

government approvals "set forth in Section 7.1(b) and Section 7.1(c) of the Company Disclosure Letter";

(d) "Section 3.7(d) of the Company Disclosure Letter" containing a list of outstanding options and stock awards;

(e) Section 3.13(a) of the Company Disclosure Letter listing Material Contracts;

(f) Section 3.16(a) of the Company Disclosure Letter listing Material Intellectual Property; and

(g) Exceptions to Activision's affirmative obligations and forbearance covenants for interim operations of the Company set forth in Sections 5.1 and 5.2 of the Company Disclosure Letter.

ANSWER: The allegations in this Paragraph relate to claims that were resolved by the Section 205 Order and no response is required. To the extent a response is required, Mr. Kotick admits that the documents cited in this paragraph speak for themselves.

336. Section 1.4(a) of the Merger Agreement provides:

> The information set forth in each Section or subsection of the Company Disclosure Letter will be deemed to be an exception to (or, as applicable, a disclosure for purposes of) (i) the representations and warranties (or covenants, as applicable) of the Company that are set forth in the corresponding Section or subsection of this Agreement; and (ii) any other representation and warranties (or covenants, as applicable) of the Company that are set forth in this Agreement.

ANSWER: The allegations in this Paragraph relate to claims that were resolved by the Section 205 Order and no response is required. To the extent a response is

required, Mr. Kotick admits that the documents cited in this paragraph speak for themselves.

337. Activision refused to produce the CDL in response to Plaintiff's March 7, 2022 Section 220 Demand, Plaintiff's repeated requests during Section 220 negotiations and Plaintiff's initial document request served on May 3, 2023. Defendants finally produced what purports to be the CDL to Plaintiff on March 27, 2024 as part of the complete agreement of merger Plaintiff had been seeking for two years. The CDL, as produced by Activision to Plaintiff, [redacted] It contains a wealth of information including on [redacted] Under Section 251, this information should have been provided to the Activision directors and the Activision stockholders before they considered the Merger Agreement. It was not.

ANSWER: The allegations in this Paragraph relate to claims that were resolved by the Section 205 Order and no response is required. To the extent a response is required, the allegations in this paragraph are denied, except admitted that (1) Activision produced the CDL and (2) the CDL, Proxy, and Merger Agreement speak for themselves. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

338. Section 5.2 of the Merger Agreement precluded Activision from engaging in a wide range of corporate activities, including amending its Certificate or Bylaws. There were exceptions, "as set forth in Section 5.2 of the Company Disclosure Letter." Of course, since Defendants did not provide Plaintiff or Activision's other former stockholders with the CDL or the disclosure schedules, the

stockholders did not know the extent of Section 5.2's prohibitions. Other portions of Section 5.2 of the Merger Agreement were also affected by the withheld Company Disclosure Letter.

ANSWER: The allegations in this Paragraph relate to claims that were resolved by the Section 205 Order and no response is required. To the extent a response is required, the allegations in this paragraph are denied, except admitted that the documents cited in this paragraph speak for themselves.

339. While Section 5.2(a) of the Merger Agreement purported to prohibit Activision from amending or otherwise changing the Company's bylaws, Section 109(a) of the DGCL provides that a corporation's bylaws can be amended by the stockholders. In addition, Section 8.4 of Activision's bylaws provided that the bylaws may be altered, amended, changed, added to, repealed or rescinded, and new bylaws may be made by the stockholders. [redacted] Therefore, Section 5.2(a) of the Merger Agreement eliminated the stockholders' statutory and bylaw rights to amend the bylaws.

ANSWER: The allegations in this Paragraph relate to claims that were resolved by the Section 205 Order and no response is required. To the extent a response is required, the allegations in this paragraph are denied, except admitted that the documents cited in this paragraph speak for themselves. Denied that "Section 5.2(a) of the Merger Agreement eliminated the stockholders' statutory and bylaw rights to amend the bylaws." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

340. The CDL [redacted]

[redacted] This information was not provided to the Activision Board or the Activision stockholders before they considered the Merger Agreement.

ANSWER: The allegations in this Paragraph relate to claims that were resolved by the Section 205 Order and no response is required. To the extent a response is required, the allegations in this paragraph are denied, except admitted that the documents cited in this paragraph speak for themselves. Mr. Kotick further states that the Board received a presentation that included the information on the Confidential Company Disclosure Letter.

341. Section 9.5 of the Merger Agreement provides that the Merger Agreement and the documents referred to in the Merger Agreement, specifically including the Company Disclosure Letter, constitute the entire agreement.

ANSWER: The allegations in this Paragraph relate to claims that were resolved by the Section 205 Order and no response is required. To the extent a response is required, Mr. Kotick admits that the documents cited in this paragraph speak for themselves.

342. The Board did not review, approve and adopt the Company Disclosure Letter, the disclosure schedules, Exhibit A or the Merger Agreement. Therefore, the Board did not adopt the agreement of merger required by Section 251(b). Because there was no valid adoption of the agreement of merger by the Board, the agreement of merger was not adopted and approved by the Board as required by Section 251(b). Furthermore, the agreement of merger was not executed and acknowledged as required by Section 251(b) because the Merger Agreement that was executed on January 18, 2022 was not a proper board-approved agreement of merger. Therefore, the Merger violated Section 251(b) and was invalid.

ANSWER: The allegations in this Paragraph relate to claims that were resolved by

the Section 205 Order and no response is required. To the extent a response is required, the allegations in this paragraph are denied, except admitted that the documents cited in this paragraph speak for themselves. Denied that the Board did not review, approve, and adopt the Merger Agreement or its required elements and information. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

343. The Board failed to approve a key financial term of the Merger Agreement: the number and amount of dividends the Activision stockholders would receive during the lengthy pendency of the Merger. The January 17, 2022 Board minutes indicate that "one of the key open issues was the amount of the 2022 dividend that could be paid by the Company and [redacted] Thus, as of the January 17, 2022 Board meeting, this key open term had not been determined and therefore was not approved by the Board at that meeting.

ANSWER: Denied, except admitted that the Merger Agreement and January 17, 2022 Meeting Minutes speak for themselves. Denied that the Board failed to approve a "key" financial term of the Merger Agreement. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

344. On January 17, 2022, the Board purportedly delegated the negotiation, determination and approval of the dividend term to an *ad hoc* committee of Kotick's cohorts (Kelly, Morgado and Corti). The Proxy at page 42 and the April 15, 2022 Form 8-K (the "Supplemental Disclosure"), purportedly supplementing and revising page 42 of the Proxy, admit that Kotick discussed the resolution of the dividend issue with Microsoft on the evening of January 17, 2022 and that the *ad* hoc committee then approved Kotick's resolution of the issue. Thus, Activision and its Board admit

that Kotick negotiated the dividend term and the *ad hoc* committee, not the Board, approved the dividend term of the Merger Agreement. However, 8 *Del. C.* § 141(c)(1) controls what tasks the Board can delegate to a committee.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph speak for themselves; (2) the Board delegated to an *ad hoc* committee of the Board, consisting of Mr. Corti, Mr. Kelly, and Mr. Morgado, the authority to continue to explore whether Microsoft would agree to enhance the dividend contained in Section 5.2(e) of the interim operating covenants beyond what the Board had already approved; (3) Messrs. Kotick and Nadella discussed the dividend on January 17, 2022; and (4) 8 *Del. C.* § 141(c) addresses board committees. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

345. Section 141(c)(1) provides that for companies incorporated in Delaware before July 1, 1996 "no . . . committee shall have the power or authority in reference to . . . adopting an agreement of merger." Under 8 *Del. C.* § 141(c)(2), which Plaintiff believes applies to Activision Board committees, "no . . . committee shall have the power or authority in reference to the following matter: (i) approving or adopting, or recommending to the stockholders, any action or matter . . . expressly required by this chapter to be submitted to stockholder for approval . . ." Section 251(c) of the DGCL expressly requires that an agreement of merger be submitted to the stockholders for approval. Therefore, no committee of the Activision Board had the power or authority to approve an agreement of merger.

ANSWER: Denied that Activision Blizzard Inc. was incorporated before July 1, 1996—Activision Blizzard Inc. was formed on July 9, 2008. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent

required, the allegations are denied.

346. Section 251(b) required the Board to adopt a resolution approving an agreement of merger, including "the terms and conditions of the merger" and "the mode of carrying it into effect." The restriction on dividends was a term of the Merger. It was a covenant of the Company, the satisfaction of which was a condition to the Merger under Section 7.2(b) of the Merger Agreement. It was part of the mode of carrying the Merger into effect. Therefore, the number and amount of dividends that could be paid pending consummation of the Merger was a term of the agreement of merger that had to be approved by the Board. The Board could not delegate approval of that term to a committee.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

347. Particularly because it was expected that the Merger would be subject to lengthy regulatory review, Activision's ability to pay dividends prior to the Merger was a vital financial term that significantly affected the value of the Merger to the Activision stockholders. For example, under the Merger Agreement, Activision was only permitted to pay a $0.47 dividend per share in the first quarter of 2022, but could not pay the annual dividend for 2023 and would not be able to pay any further dividends before the Merger closed. Plaintiff therefore alleged in its Amended Complaint: "[t]he value of the purported $95 Merger is reduced by the missed dividends and what could have been earned on that money." The invalid Merger Agreement contained an improper term on dividends that was not approved by the Board. It therefore imposed impermissible restrictions on the Activision stockholders' ability to receive dividends.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph speak for themselves and (2) the Merger Agreement permitted Activision to pay a $0.47 dividend. Denied that the Merger Agreement was "invalid" or "imposed impermissible restrictions on the Activision stockholders' ability to receive

dividends." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

348. Section 251(c) required the Board to submit an agreement of merger approved in accordance with Section 251(b) to stockholders for approval. Only an agreement of merger satisfying the requirements of 8 *Del. C.* § 251(b) may be submitted to the shareholders under § 251(c). The entire agreement of merger containing the required elements must be submitted to the stockholders. The Board, however, had not properly approved the agreement of merger under Section 251(b) and only submitted the incomplete Merger Agreement for approval by the stockholders. The Board did not submit to the stockholders for approval, or even describe the contents of, the Company Disclosure Letter, disclosure schedules or Exhibit A which are required parts of the agreement of merger under Section 251. Therefore, stockholders did not approve the agreement of merger required by Section 251(b), as Section 251(c) requires. Therefore, there was no valid authorization of the agreement of merger by the stockholders. The Merger was invalid.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves. Denied that "stockholders did not approve the agreement of merger required by Section 251(b), as Section 251(c) requires." Denied that "there was no valid authorization of the agreement of merger by the stockholders." Denied that "[t]he Merger was invalid." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied. Mr. Kotick respectfully refers the Court to the Section 205 Order validating the Merger.

349. Defendants' failure to comply with Section 251 vitiated appraisal rights for the Activision stockholders. Under 8 *Del. C.* § 262(b), "[a]ppraisal rights shall be available . . . in a merger . . . to be effected pursuant to § 251 . . . ." Section

262(b)(2) provides for the availability of appraisal rights when stockholders "are required by the terms of an agreement of merger . . . pursuant to Section 251" to accept cash as merger consideration. However, in the Activision/Microsoft Merger, there was no agreement of merger pursuant to Section 251, and the Merger was not effected pursuant to Section 251 because Defendants did not comply with that statutory section. Aspects of the appraisal process are also tied to the stockholders' meeting to vote on the Section 251 agreement of merger and the effective date of the merger. Because of the Section 251 defects, there were no effective appraisal rights or legitimate appraisal process. Therefore, Plaintiff and the Class are entitled to a quasi-appraisal of the fair value of their shares on the closing date of October 13, 2023.

ANSWER: The allegations in Paragraph 349 relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations in this paragraph are denied, except admitted that the second sentence contains partial quotations from 8 *Del. C.* § 262(b). Mr. Kotick respectfully refers the Court to the DGCL for a complete and accurate description of its contents. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

350. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

ANSWER: This paragraph does not warrant a response, but to the extent required, Mr. Kotick incorporates his responses to Plaintiff's other allegations.

351. At the time of the closing of the Merger, Plaintiff and the Class held a property interest in the outstanding stock of Activision and had a right of possession to that stock. Defendants converted that stock by wrongfully exerting dominion and

control over the stock through a merger that was not authorized as required by the DGCL. Through the Merger, Defendants took the Activision shares of Plaintiff and the Class and replaced them with the right to receive $95 per share in cash. The taking of the shares without compliance with Section 251 was in disregard, violation and denial of the rights of Plaintiff and the Class as stockholders of Activision.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

352. To effect a valid merger between them, Activision and Anchorage were required by 8 *Del. C.* § 251(a) to act "pursuant to an agreement of merger . . . complying and approved in accordance with [Section 251]." Microsoft was the 100% owner of Anchorage and controlled Anchorage. As the 100% stockholder of Anchorage, a constituent corporation to the Merger, Microsoft was required by Section 251(c) to approve the Merger.

ANSWER: Denied, except admitted that Microsoft owned and controlled Anchorage. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

353. The Activision directors, as the board of directors of the Company, were required by Section 251(b) to approve an agreement of merger that stated the terms and conditions of the Merger, the mode of carrying it into effect, the changes to the certificate of incorporation of Activision, as the surviving corporation that would be effected by the Merger, and the consideration to be received in the Merger for Activision's shares. The Draft Merger Agreement that the Activision Board purportedly approved on January 17, 2022 did not contain items Section 251(b) required. The Activision directors, as the Activision Board, improperly delegated determination of the dividend term of the Merger Agreement to an *ad hoc* committee of the Board in violation of 8 *Del. C.* § 141(c) and § 251(b). Defendants Kelly, Morgado and Corti, as the *ad hoc* committee, permitted Kotick, who was not on the committee, to negotiate the dividend term.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself.

The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

354. Kotick negotiated the dividend term, though under Section 141(c) and 251 and the Board's resolutions he was not authorized to do so. Kotick, as Activision's CEO, executed the Merger Agreement on behalf of Activision, though it was not a Section 251-compliant agreement of merger that was "so adopted" by the Board, as required by Section 251(b).

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself. Denied that the Merger Agreement "was not a Section 251-compliant agreement of merger that was 'so adopted' by the Board, as required by Section 251(b)." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

355. Activision, the Activision directors, "By Order of the Board of Directors," Kotick as CEO and Kelly as Chairman of the Board submitted the Merger Agreement to the Activision stockholders and recommended its approval, though the Merger Agreement was not the agreement of merger required by Section 251(b). Therefore, the submission of the Merger Agreement to the Activision stockholders did not comply with Section 251(c).

ANSWER: Denied, except admitted that (1) the Merger Agreement speaks for itself and (2) Activision and the Directors submitted the Merger Agreement to the Activision stockholders and recommended its approval. Denied that the "Merger Agreement was not the agreement of merger required by Section 251(b)." Denied that "the submission of the Merger Agreement to the Activision stockholders did not comply with Section 251(c)." The allegations in this paragraph contain legal

conclusions that warrant no response, but to the extent required, the allegations are denied.

356. The defects in the Draft Merger Agreement, which had been provided to the Activision directors, were apparent on the face of the document. The DGCL is part of the contract among the corporation, directors, officers and stockholders. Just as stockholders are presumed to have knowledge of, and have assented to the contract, (i) Activision, (ii) its directors, who have a fiduciary duty to ensure that they and the corporation comply with the corporate contract and the law, and (iii) Kotick, as an officer, must be presumed to know, and have assented to the contract, including the terms of Section 251. From the face of the Draft Merger Agreement, the Activision directors, and Kotick as both a director and officer, had actual or constructive knowledge it did not comply with Section 251. Moreover, in pleadings and filings served on Kotick and the other directors, the non-compliance with Section 251 and Section 141(c) were specifically called to their attention, as well as to the attention of Activision, Microsoft and Anchorage.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself. Denied that there were "defects" in the Merger Agreement. Denied that Mr. Kotick or the other Directors "had actual or constructive knowledge [that the Merger Agreement] did not comply with Section 251." Denied that there was any "non-compliance with Section 251 and Section 141(c)." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

357. Corporations seeking to consummate a transaction under Section 251 know the requirements from the outset, given the existence of the statute. Under Delaware law, knowledge of the corporation's directors and officers is imputed to the corporation itself.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that

warrant no response, but to the extent required, the allegations are denied.

358. When he executed the Merger Agreement as an Activision officer on January 18, 2022, it was apparent to Kotick that it was not the Draft Merger Agreement that he and the other directors had considered and purportedly approved on January 17, 2022. The defects in the Execution Version of the Merger Agreement, including the absence of the Company Disclosure Letter and Survivor's Certificate, were obvious when Kotick executed the Merger Agreement and when it was subsequently submitted by Activision, the Board and Kotick to the Activision stockholders. Reasonable stockholders would assume the corporation, Board and CEO would not knowingly submit for a vote a transaction that they knew violated the DGCL.

ANSWER: Denied, except admitted that Mr. Kotick executed the Merger Agreement as an Activision officer on January 18, 2022. Denied that there were any "defects" in the Merger Agreement. The allegation that "[r]easonable stockholders would assume the corporation, Board and CEO would not knowingly submit for a vote a transaction that they knew violated the DGCL" is a speculative hypothetical to which no response is warranted, but to the extent required, it is denied. Denied that Mr. Kotick or the other Directors "knowingly submit[ted] for a vote a transaction that they knew violated the DGCL." Denied that the transaction "violated the DGCL." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

359. Because of the obvious defects in the Draft Merger Agreement, and in the approval, execution and submission of the Merger Agreement, Activision, its Board, Kotick, Microsoft and Anchorage could not have reasonably believed the approval and effectuation of the Merger was in compliance with Sections 251 and 141(c), particularly after Plaintiff for nearly a year pointed out the specific defects.

The defects were a matter of public record in this Action and in Activision's SEC filings.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

360. Microsoft, Activision, Anchorage (to which Activision is successor) and the Activision directors proceeded to close the Merger on October 13, 2023, even though Plaintiff in multiple pleadings and filings for nearly a year prior to the closing had pointed out in detail (i) the multiple defects in the Merger Agreement and the board approval, execution and submission to stockholders of the Merger Agreement and (ii) the multiple failures of the Merger to comply with Section 251 and 141(c) of the DGCL.

ANSWER: Denied, except admitted that the Merger closed on October 13, 2023. Denied that there were any "defects" in the Merger Agreement or its approval, execution, and submission. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

361. By engaging in the actions described above, Microsoft, Activision, the Activision directors and Kotick committed intentional conversion of the Activision shares of Plaintiff and the Class.

ANSWER: Denied. The allegations in this paragraph constitute legal conclusions that warrant no response, but to the extent required, the allegations are denied.

362. Plaintiff and the Class have suffered damages as a result of the conversion by merger of their Activision shares. The fair market value of all Activision's outstanding shares on January 18, 2022 was at least $95 per share, as

shown by Microsoft's agreement to pay that price. In the approximately twenty-one months from January 18, 2022 until the closing of the Merger on October 13, 2023, the fair market value of all the outstanding shares of Activision stock increased substantially because the Harassment Scandal was mitigated, highly successful new versions of several Activision games had been released and Activision's performance had substantially improved. Consequently, the fair market value of all Activision's outstanding shares at the time of the closing of the Merger was significantly more than $95 per share.

ANSWER: Denied, except admitted that the Merger closed on October 13, 2023. Denied that "Plaintiff and the Class have suffered damages as a result of the conversion by merger of their Activision shares." Denied that "the fair market value of all Activision's outstanding shares at the time of the closing of the Merger was significantly more than $95 per share." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

363. Defendants' failure to comply with Sections 251 and 141(c) effectively denied stockholders a vote on a Section 251-compliant agreement of merger, rendered the disclosure of the Merger Agreement and the notice of appraisal rights materially misleading and incomplete and effectively rendered appraisal rights meaningless. As a result, Plaintiff and the Class are entitled to quasi-appraisal.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

364. Plaintiff and the Class have no adequate remedy at law.

ANSWER: The allegation in this paragraph constitutes a legal conclusion that

warrant no response, but to the extent required, the allegations is denied. Denied that Plaintiff and the Class are entitled to any legal or equitable remedy or were harmed in any way.

365. By approving and entering into the Merger Agreement, Microsoft, Activision, Anchorage, the Activision directors and Kotick committed conversion of the Activision shares of Plaintiff and the Class by restricting and prohibiting the exercise of their rights as holder of those shares.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied. The allegations in this paragraph constitute legal conclusions that warrant no response, but to the extent required, the allegations are denied.

366. The Merger Agreement imposed direct and indirect restrictions and prohibitions on the rights of Activision stockholders. Section 5.2(a) of the Merger Agreement prohibited the stockholders from amending the bylaws or voting on certificate amendments, as Sections 109(a) and 242(b)(2) of the DGCL authorized them to do. Section 5.2(b) of the Merger Agreement prohibited the Activision stockholders from adopting a plan of dissolution, merger or recapitalization, as they were empowered to by Sections 242(a)(3), 242(b)(2), 251(c) and 275(b) of the DGCL. Section 5.2(d) of the Merger Agreement prohibited the stockholders from selling their stock back to Activision or exchanging their common stock for other stock or securities of Activision, as permitted by Section 160(a) of the DGCL. The Activision Board had previously authorized a stock repurchase program for Activision to repurchase up to $4 billion of Activision stock until February 23, 2023.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent

a response is required, the allegations are denied, except admitted that (1) the Merger Agreement speaks for itself and (2) the Activision Board authorized a stock repurchase program. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

367. Section 5.2(e)(A) of the Merger Agreement precluded stockholders from adopting stock splits, reverse stock or share reclassifications transactions that Sections 242(a)(3) and 242(b)(2) of the DGCL empowered the stockholders to vote on. Section 5.2(e)(B) of the Merger Agreement prevented the stockholders from receiving dividends or distributions in shares or property entirely and restricted cash dividends to one regular cash dividend not to exceed $0.47, in disregard or their rights to dividends and distributions pursuant to Section 170(a) of the DGCL. Section 5.2(q) of the Merger Agreement would not allow stockholders to vote to approve a sale of substantially all Activision's assets, a right Section 271(a) of the DGCL confers. Finally, the No Solicitation provisions of Section 5.3 of the Merger Agreement heavily restricted the stockholders' right to sell their Activision shares in any alternative transaction to the Microsoft Merger. Through the Merger Agreement, Microsoft, Activision and the Activision directors exercised control over the Activision shares of Plaintiff and the Class. That constituted conversion of their shares in disregard, violation and denial of their rights as stockholders.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied, except admitted that the Merger Agreement speaks for itself. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

368. The disregard, violation and denial of the Activision stockholder's rights imposed by Sections 5.2 and 5.3 of the Merger Agreement began on January

18, 2022 and lasted until October 13, 2023, a period of twenty months and twenty-five days. The Activision stockholders continued to hold a property interest in their shares during this period of conversion by deprivation of rights. The limitation and denial of rights continued for nearly a year after November 2, 2022, when Plaintiff filed its Complaint pointing out the Section 251 and 141(c) violations. The extended duration of the interference reinforces that conversion occurred. Because the Merger Agreement was invalid, it wrongfully imposed restrictions and prohibitions on Activision's stockholders in disregard, violation and denial of their rights to vote, sell their shares, receive dividends and approve fundamental corporate transactions. Therefore, the invalid Merger Agreement constituted a conversion of the Activision stockholders' shares.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied, except admitted that the Merger Agreement speaks for itself. Denied that the Merger Agreement was "invalid" or " constituted a conversion of the Activision stockholders' shares." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

369. Because of the conversion of their Activision shares by the Merger Agreement extending for nearly twenty-one months, Plaintiff and the Class are entitled to damages. On the date of conversion, January 18, 2022, the fair market value of all outstanding Activision shares was at least $95 per share, the price Microsoft agreed to pay. Plaintiff and the Class are entitled to interest at the legal rate on the fair market value of their Activision shares from January 18, 2022 through the date of payment of the Merger consideration after the closing of the Merger on October 13, 2023.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent

a response is required, the allegations are denied, except admitted that the Merger Agreement speaks for itself. Denied that "Plaintiff and the Class are entitled to damages." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

370. On October 13, 2023, Activision, Microsoft and Anchorage consummated the purported Merger by filing a Certificate of Merger with Delaware's Secretary of State ("SOS"). The Merger Certificate stated that it was "Pursuant to Sections 103 and 251" of the DGCL. The Merger Certificate, however, was false and violated Sections 103 and 251 of the DGCL. The Certificate did not attach the Survivor's Certificate that Section 251(b)(3) and (c)(4) requires. Activision falsely certified in the Merger Certificate, in violation of Section 103, that the Certificate of Incorporation of the Surviving Corporation attached as Exhibit A to the Merger Certificate was the Survivor's Certificate from the Merger Agreement when it was not. Activision's filing of the Merger Certificate to close the Merger constituted unlawful conversion of the Activision shares of Plaintiff and the Class.

ANSWER: Denied, except admitted that (1) the Merger closed on October 13, 2023 and (2) the documents cited in this paragraph speak for themselves. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

371. The Merger Agreement in Section 2.5(a) provided that Activision's certificate of incorporation would be amended and restated in the Merger "in the form attached" to the Merger Agreement as Exhibit A and would be the certificate of the surviving corporation.

ANSWER: Admitted that the Merger Agreement speaks for itself.

372. Section 2.2 of the Merger Agreement provided for "the Merger to be consummated pursuant to the DGCL by filing a certificate of merger" with the

Secretary of State "in accordance with the applicable provisions of the DGCL."

ANSWER: Admitted that the Merger Agreement speaks for itself.

373. Section 251(b)(3) requires an agreement of merger to set forth:

> such amendments or changes in the certificate of incorporation of the surviving corporation as are as desired to be effect by the merger (which amendments or changes may amend and restate the certificate of incorporation in its entirety), or, if no such amendments are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation[.]

ANSWER: Admitted that Section 251(b)(3) speaks for itself.

374. Section 251(c) permits that, in lieu of filing the agreement of merger with the SOS, a merger may be consummated by filing a certificate of merger containing required elements with the SOS. Section 251(c)(4) specifies one element that a merger certificate must contain:

> (c) If the agreement [required by this Section] shall be so adopted and certified by each constituent corporation [as required by this Section], it shall then be filed and shall become effective, in accordance with § 103 of this title. In lieu of filing the agreement of merger or consolidation required by this section, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in accordance with § 103 of this title, which states: . . . .
>
> (4) In the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety), or, if no such amendments or changes are desired, a statement that the certificate of incorporation of

> the surviving corporation shall be its certificate of incorporation[.]

ANSWER: Denied, except admitted that Section 251(c) speaks for itself. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

375. The language of Section 251(c)(4) and Section 251(b)(3) is identical. Section 251(c)(4) therefore requires that when a certificate of merger is filed with the SOS in lieu of filing the agreement of merger, the certificate of merger must contain the same survivor's certificate that is part of the agreement of merger.

ANSWER: Denied, except admitted that sections 251(c)(4) and 251(b)(3) speak for themselves and contain equivalent language. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

376. Pursuant to Section 2.2 of the Merger Agreement, Activision filed a certificate of merger with the SOS to effectuate the Merger. Section 251(c)(4) required that the Merger Certificate contain the Survivor's Certificate that was Exhibit A to the Merger Agreement.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph speak for themselves and (2) Activision filed a certificate of merger with the Delaware Secretary of State. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

377. Section 103 of the DGCL governs the filing of instruments with the

SOS. Section 103(a)(2) provides that an instrument that is required to be filed with the SOS must be executed by an authorized officer of the corporation. Section 103(b) provides that a document filed with the SOS may be acknowledged by:

> (2) The signature, without more, of the person or persons signing the instrument, in which case such signature or signatures shall constitute the affirmation or acknowledgment of the signatory, under penalties of perjury, that the instrument is such person's act and deed or the act and deed of the corporation, and that the facts stated therein shall be true at the time such instrument becomes effective in accordance with this chapter. (Emphasis added).

ANSWER: Denied, except admitted that Section 103 speaks for itself. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

378. Activision was required to execute the Merger Certificate when filing it with the SOS. Activision's CFO Zerza executed the Merger Certificate on behalf of Activision. The signature page to the Merger Certificate provided:

> IN WITNESS WHEREOF, Activision Blizzard, Inc. has caused this Certificate of Merger to be executed in its corporate name this _13_ day of October, 2023.
>
> ACTIVISION BLIZZARD, INC.
>
> By: [DocuSigned by Armin Zerza]
> Name: Armin Zerza
> Title: Chief Financial Officer

ANSWER: Denied, except admitted that the Merger Certificate speaks for itself. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

379. The Merger Certificate did not contain the Survivor's Certificate that was part of the agreement of merger, as Section 251(c)(4) required.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

380. Article Fifth of the Merger Certificate certified that:

> The certificate of incorporation of the Surviving Corporation shall be amended and restated to read in its entirety as set forth in Exhibit A attached hereto, and so amended and restated, shall be the certificate of incorporation of the Surviving Corporation until further amended or changed pursuant to the provisions of the DGCL.

ANSWER: Admitted that the Merger Certificate speaks for itself.

381. However, Exhibit A to the Merger Certificate (the "False Survivor's Certificate") was not the Survivor's Certificate. It was a different document.

ANSWER: Denied, except admitted that the Merger Certificate and Survivor's Certificate speak for themselves. Denied that there was a "False" Survivor's Certificate, although admitted that the document produced to Plaintiff with the control numbers Activision_0000151-000154 was not identical to the Survivor's Certificate.

382. Pursuant to Section 251(c)(7), Activision, as the surviving corporation of the Merger, was required to provide Plaintiff with a copy of the agreement of merger. With the Court's strong encouragement, Activision supplied Plaintiff with what purports to be the Merger Agreement, including Exhibit A, which was the

Survivor's Certificate. Plaintiff compared the Survivor's Certificate to the False Survivor's Certificate that was attached to the Merger Certificate and filed with the SOS.

ANSWER: Mr. Kotick lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 382 and denies them on that basis.

383. Article VII of the Survivor's Certificate, as produced by Activision to Plaintiff, provided:

> The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by paragraph (7) of subsection (b) of Section 102 of the DGCL, as the same may be amended and supplemented.

ANSWER: Mr. Kotick admits that Paragraph 383 contains partial quotations from the document with control number Activision_0000152.

384. Article VII of the False Survivor's Certificate that was filed with the SOS included the following underlined language that was not in the Survivor's Certificate:

> The personal liability of the directors and officers of the Corporation is hereby eliminated to the fullest extent permitted by paragraph (7) of subsection (b) of Section 102 of the DGCL, as the same may be amended and supplemented.

ANSWER: Denied, except admitted that Paragraph 384 contains partial quotations from the Fourth Amended and Restated Certificate of Incorporation of Activision attached as Exhibit A to the Certificate of Merger filed with the Delaware Secretary of State.

385. The False Survivor's Certificate was therefore a different document that included a provision eliminating the personal liability of Kotick and Activision's other officers (including Zerza) for a breach of the duty of care that the Survivor's Certificate did not. Section 102(b)(7) of the DGCL was amended, effective August 1, 2022, to allow for such a provision. It is therefore reasonably conceivable and a fair inference that the False Survivor's Certificate was created, and this provision was added to it, while the Merger was pending. Activision did not, however, amend its own Certificate of Incorporation to include such a provision while the Merger was pending. That would have required a vote of Activision's stockholders, pursuant to Section 242 of the DGCL. Instead, someone simply added the additional language to the False Survivor's Certificate.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph speak for themselves; (2) Section 102(b)(7) was amended, effective August 1, 2022; (3) Activision filed the Survivor Certificate with the Certificate of Merger that included an added officer exculpation provision that reflected then current-Delaware law following the August 1, 2022 amendment of Section 102(b)(7) of the DGCL and increased the number of shares of capital stock Activision had authority to issue following the Closing; and (4) Activision did not amend its certificate of incorporation before Closing. The speculative inference that "[i]t is therefore reasonably conceivable and a fair inference that the False Survivor's Certificate was created" is not a well pled factual allegation that warrants a response, but to the extent required, the allegation is denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

386. Article IV of the Survivor's Certificate also provided:

> The total number of shares of capital stock which the Corporation shall have authority to issue is 100 shares of common stock, par value $0.01 per share (the "**Common Stock**").

ANSWER: Admitted that Paragraph 386 contains partial quotations from Exhibit A.

387. However, Article IV of the False Survivor's Certificate provided:

> The total number of shares of capital stock which the Corporation shall have authority to issue is 1,200,000,000 shares of common stock, par value $0.01 per share (the "**Common Stock**").

ANSWER: Denied, except admitted that Paragraph 387 contain partial quotations from the Survivor Certificate.

388. The False Survivor's Certificate therefore represented that Activision could issue up to 1.2 billion shares of common stock, while the Survivor's Certificate only provided for a maximum issuance of 100 shares.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

389. Because the Merger Certificate did not contain the Survivor's Certificate that was part of the Merger Agreement, Activision's filing of the Merger Certificate was a violation of Section 251(c)(4).

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

390. Activision's filing of the Merger Certificate also violated Section 103. Zerza executed the Merger Certificate, on behalf of Activision, which provided that "Activision Blizzard, Inc., a Delaware corporation, does hereby certify" the statements in the Merger Certificate. By signing the Merger Certificate, Zerza and Activision certified that the statements in the Merger Certificate were true and correct, under penalty of perjury. Activision knew that the Merger Certificate did not contain the Survivor's Certificate.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

391. Activision marked the Survivor's Certificate "Confidential," pursuant to the Confidentiality Order in this Action. Activision therefore knew that the Survivor's Certificate had not been made public and therefore was not the same as the False Survivor's Certificate that Activision attached to the Merger Certificate and publicly filed. Activision knowingly violated Section 251(c)(4) and Section 103 by filing the Merger Certificate and the False Survivor's Certificate and certifying that it was pursuant to Sections 103 and 251 of the DGCL.

ANSWER: Denied, except admitted that Activision designated the Survivor's Certificate "Confidential" pursuant to the Confidentiality Order in this action. The speculative inference that "Activision therefore knew that the Survivor's Certificate had not been made public and therefore was not the same as the False Survivor's Certificate that Activision attached to the Merger Certificate and publicly filed" is not a well pled factual allegation that warrants a response, but to the extent required, the allegation is denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

392. Activision's conduct illustrates why requiring the agreement of merger to include amendments to the certificate of the surviving corporation is important even in a cash out merger. Otherwise, it is unlikely stockholders would be able to detect that the survivor's certificate may contain provisions beneficial to the corporation's officers, directors or particular stockholders.

ANSWER: Denied. The speculative inferences and legal conclusions in this paragraph are not well pled factual allegations to which a response is warranted, but to the extent required, they are denied.

393. Activision's filing of a fraudulent Merger Certificate attaching the False Survivor's Certificate in order to consummate the Merger constituted unlawful conversion of the Activision shares of Plaintiff and the Class for which there is no adequate remedy at law.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

394. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

ANSWER: This paragraph does not warrant a response, but to the extent required, Mr. Kotick incorporates his responses to Plaintiff's other allegations.

395. The Director Defendants, as Activision directors, and Kotick, as an Activision director and officer, owed the Company's public stockholders fiduciary duties of loyalty and care. In determining whether to pursue a sale of the Company and in approving the Merger Agreement, the Director Defendants had a duty not to benefit themselves at the expense of Activision's public stockholders. In connection with pursuing the Company's sale, they also had a duty to implement a fair process, negotiate a fair price and maximize stockholder value.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph

speak for themselves and (2) directors of public companies owe fiduciary duties to stockholders. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

396. The Director Defendants were not disinterested and independent with respect to determining to pursue the Merger and on what terms. Kotick was conflicted because he initiated and negotiated the Merger in the midst of and in response to the Harassment Scandal. Kotick knew that employees and investors were tired of his greed and excessive compensation, disgusted with his role in and lack of leadership concerning the Harassment Scandal and determined to force him out of the Company. A termination for Cause would be a huge financial loss for Kotick and destroy what remained of his already tarnished reputation. The Merger, however, would solve Kotick's crisis. It would allow him to keep his job during the lengthy period the Merger would be pending, avoid getting fired for Cause and forfeiting millions of dollars of unvested options and other financial benefits, entitle him to a huge cash-out of incentive compensation and other change in control benefits, and preserve his legacy. Because of his interest in continued employment and a change-in-control payout, Kotick's interests differed from those of Activision stockholders.

ANSWER: Denied. Any suggestion in this paragraph that either Mr. Kotick or the other Activision Directors (1) engaged in misconduct of any sort, (2) personally engaged in any sexual harassment or discrimination, or (3) knew about any systemic misconduct (none existed), is denied. To the contrary, as reflected in the settlement agreements with both the EEOC and DFEH (aka the CRD), there was never any finding of systemic misconduct at Activision or personal misconduct by Mr. Kotick or the other Activision Directors. The Merger with Microsoft delivered extraordinary value to shareholders—a $95 per share all-cash premium deal, approved by 98% of the votes cast. This transaction has been heralded as one of the

largest and most successful transactions in the history of gaming and the tech industry in general. Denied that the Merger was meant to "solve" any crisis.

397. The Merger Agreement Kotick ultimately negotiated with Microsoft was structured to further his self-interest. The Merger Agreement protected his tenuous position as CEO and allowed him to remain in office. Section 5.1(iii)(B) of the Merger Agreement required Activision to "keep available the services of its current officers and key employees" and Section 5.2(g) prohibited termination of the CEO. Section 2.2(b) provided that Activision's officers before the Merger would be the officers of Activision after the Merger. The broad indemnification, exculpation, advancement and insurance provisions of Sections 6.8(a)-(b) provide Kotick with materially greater protections, including in connection with claims arising out of the Merger and Harassment Scandal.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself (although denied that Plaintiff has correctly cited to its provisions). Denied that the Merger Agreement "was structured to further [Mr. Kotick's] self-interest." Denied that Mr. Kotick's position was "tenuous" or that the Merger Agreement "allowed [Mr. Kotick] to remain in office"—the other Directors had full confidence in Mr. Kotick and knew that the allegations of systemic misconduct were false; his position was never in jeopardy. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

398. Microsoft also agreed that the Board could extend Kotick's Employment Agreement for twelve-months as of July 18, 2022, and restore his compensation pursuant to terms that violated the October Pay Cut Agreement.

ANSWER: Denied, except admitted that Microsoft agreed that the Activision Board could extend Mr. Kotick's Employment Agreement for twelve-months as of

July 18, 2022.

399. Based on the minutes and the Proxy, in considering whether to pursue and in pursuing the Merger, the Board never considered Kotick's conflicts arising from the Harassment Scandal and his close relationship with Microsoft. They did not consider forcing Kotick to resign or firing him for Cause. That course could have been a valuable alternative to the Merger, considering Activision's stock price had tanked because of Kotick's mismanagement of the Harassment Scandal and not because of Activision's basic operations. Instead, the Board claims to have ignored the elephant in the room. The other Director Defendants also failed to control the sale process, allowed Kotick to choose the Board's advisors, including Allen & Co., and let Kotick negotiate the Merger.

ANSWER: Denied. Denied that "the Board claims to have ignored the elephant in the room"—the other Directors had full confidence in Mr. Kotick and knew that the allegations of systemic misconduct were false.

400. The other Director Defendants have longstanding, lucrative and personal relationships with Kotick. They prioritized those relationships and demonstrated a lack of independence by letting Kotick negotiate the Merger at an inopportune time for Activision in order to save his skin.

ANSWER: Denied—each Director applied their independent business judgment to analyze, negotiate, and execute the Merger, and the Board delivered a tremendous result that was overwhelmingly approved by shareholders.

401. The Director Defendants were also conflicted because they, like Kotick, were exposed by the Harassment Scandal. The scandal occurred on their watch. The DFEH, EEOC and SEC investigated the Board's knowledge, handling and disclosure of the Harassment Scandal, and how the directors worked with senior executives. The DFEH and SEC's subpoenas targeted the directors. The SEC Investigation involved Activision's compliance and controls, and its disclosure of those controls, which implicated the Audit Committee.

ANSWER: Denied, except admitted that the DFEH, EEOC and SEC conducted investigations—none of which found any systemic misconduct at Activision or personal misconduct by Mr. Kotick and the other Directors. Denied that the Directors were "conflicted" or "exposed" by the false allegations of harassment.

402. The California Derivative Actions were filed against the entire Board; and the potential damages against them increased with each lawsuit and investigation that Activision paid to resolve. The Board minutes and the Proxy's descriptions thereof reflect no discussion of derivative claims, but nevertheless the Proxy claims that among the Board's reasons for approving the Merger Agreement and recommending that the stockholders approve the Merger Agreement was:

> *Derivative Litigation.* The Activision Blizzard Board of Directors' consideration of the potential value to Activision Blizzard (and derivatively to Activision Blizzard Stockholders) of pending derivative litigation claims that have been brought against the Activision Blizzard's officers and directors, and, even assuming such litigation claims had material value, the Activision Blizzard Board of Directors' determination that the merger consideration of $95.00 per share provided more than adequate value for such litigation claims.

Thus, Kotick and the other Director Defendants have represented that they considered the potential damages against them from derivative claims against them as directors and officers and decided that the Merger consideration would include adequate payment by Microsoft for the derivative damages for which they might have been liable. So, by their own admission, part of the $95 Merger consideration was payment for derivative claims against them.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph speak for themselves and (2) derivative actions—fueled by false allegations—were filed against the Activision Directors. Denied that "by their own admission, part of

the $95 Merger consideration was payment for derivative claims against them." Denied that the Directors "represented that they considered the potential damages against them from derivative claims against them as directors and officers and decided that the Merger consideration would include adequate payment by Microsoft for the derivative damages for which they might have been liable." Plaintiff contorts the language of the Proxy, which simply states that the merger consideration would be "more than adequate value" for any such claims given the massive premium that the Directors delivered to shareholders.

403. The Director Defendants, including Kotick, also knew that the Merger would extinguish existing derivative claims against them, including those arising out of the Harassment Scandal.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

404. The Director Defendants were also interested in the Merger because the terms of the Merger Agreement provided them super-exculpation, advancement, indemnification and insurance rights, as it did for Kotick.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself. Denied that the Directors were "interested in the Merger" for any improper reason.

405. Because the Merger Agreement and the Merger were not approved by a disinterested and independent majority of the Board, the business judgment rule is inapplicable and the entire fairness standard applies. Because no Section 251-compliant agreement of merger was submitted to the Activision stockholders and the Proxy was materially misleading and incomplete, the burden is on Kotick and

the Director Defendants with respect to the multiple breach of fiduciary duty claims asserted below.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

406. As alleged above:

(a) The Director Defendants failed to approve a Section 251- compliant agreement of merger on January 17, 2022 through the closing of the Merger on October 13, 2023;

(b) As directors and an officer of a Delaware corporation, Kotick and the other Director Defendants had a fiduciary duty of loyalty to comply with the corporate contract, including the DGCL;

(c) The defects in the Draft Merger Agreement were apparent on its face and Kotick and the other Director Defendants had actual and constructive knowledge that the Draft Merger Agreement did not contain elements required by Section 251, including items such as the merger consideration, Survivor's Certificate and CDL, which were specifically referenced in the Draft Merger Agreement;

(d) Kotick and the Director Defendants were served with numerous pleadings and filings between November 2022 through the October 13, 2023 closing of the Merger that pointed out the numerous Section 251 defects.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied, including for the reasons stated in response to Plaintiff's corresponding allegations referenced above. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

407. As alleged above, it was obvious to Kotick when he executed the Merger Agreement on January 18, 2022, that the Merger Agreement was significantly different than the Draft Merger Agreement, but was still missing items specifically identified in the Merger Agreement (*i.e.*, the CDL and Survivor's Certificate), which were required by Section 251. Similarly, the same defects were obvious to Kotick and the other Director Defendants when they sent the Merger Agreement to the stockholders.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied, including for the reasons stated in response to Plaintiff's corresponding allegations referenced above. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

408. Kotick and the Director Defendants had a fiduciary duty of loyalty to manage Activision within the law and to ensure they and Activision complied with their legal obligations under Section 251. They could not act loyally by causing Activision and themselves to violate laws the Company and its directors were obligated to obey. They breached their duty of loyalty by knowingly violating Section 251 and knowingly causing Activision to violate Section 251. Their knowing violation of law was also intentional misconduct.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied, except admitted that the Directors owed fiduciary duties which they fully satisfied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

409. As alleged above, the Director Defendants improperly delegated determination of the dividend term to an *ad hoc* committee of the Board in violation of Sections 251 and 141(c) of the DGCL. Again, Kotick and the other Director Defendants had a fiduciary duty of loyalty to comply with the corporate contract, including the DGCL and Activision's bylaws, and had actual and constructive knowledge that the delegation violated the DGCL and the bylaws.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied, including for the reasons stated in response to Plaintiff's corresponding allegations referenced above, except admitted that the Directors owed fiduciary duties which they fully satisfied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied. Denied that Mr. Kotick and the Activision Directors "had actual and constructive knowledge that the delegation violated the DGCL and the bylaws."

410. Activision Bylaw 3.9(b) provided that a committee could only exercise delegable powers of the Board and no committee could have the power and authority in reference to any action or matter that the DGCL expressly required to be submitted to the stockholders. [redacted] The January 17, 2022 minutes and the Proxy admit that negotiation and approval of the dividend term of the Merger Agreement was delegated to the *ad hoc* committee.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied, except admitted that the documents

cited in this paragraph speak for themselves. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

411. The Director Defendants certainly had knowledge of the Activision bylaws because [redacted]

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied, except admitted that the documents cited in this paragraph speak for themselves. The speculative inference that the Directors "certainly had knowledge of the Activision bylaws" is not a well pled factual allegation that warrants a response. To the extent a response is required, it is admitted that the Directors knew of the existence of the Activision Bylaws, but denied that they had perfect memory of its provisions.

412. The Director Defendants' delegation of the negotiation and approval of the dividend term of the Merger Agreement to the *ad hoc* committee was a knowing violation of Sections 251 and 141(c) of the DGCL and Bylaw 3.9 and a breach of their duty of loyalty. It was also intentional misconduct.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied. The allegations in this paragraph

contain legal conclusions that warrant no response, but to the extent required, the allegations are denied. Denied that any of the Directors engaged in "a knowing violation of Sections 251 and 141(c) of the DGCL and Bylaw 3.9 and a breach of their duty of loyalty." Denied that the Directors engaged in any "intentional misconduct."

413. Kotick attended and participated in the January 17, 2022 Board meeting and therefore knew the negotiation of the dividend term had (improperly) been delegated to the *ad hoc* committee, not to him. He deliberately breached his duty of loyalty and by negotiating the dividend term.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied, except admitted that Mr. Kotick attended and participated in the January 17, 2022 Board meeting. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

414. The fiduciary duty of loyalty of Kotick as an officer and all the Director Defendants as directors when pursuing a sale of the Company imposed on them the burden of demonstrating (i) the reasonableness of their decision-making process, including the information on which they based their decision, and (ii) the reasonableness of their actions in light of the circumstances then existing.

ANSWER: Denied, except admitted that Mr. Kotick owed fiduciary duties to shareholders, which he fully satisfied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are

denied.

415. The potential sale of Activision had enormous consequences for Kotick. As described herein, Kotick suffered from disabling conflicts, including the need to preserve his job, the huge payout a merger would provide him, and the protections a merger could provide for claims against him arising out of the Harassment Scandal. Kotick had a substantial self-interest in a near term sale of Activision. As his discussions with Microsoft's Spencer and Nadella without Board authorization showed, Kotick favored a transaction with Microsoft from the outset. As the Proxy and minutes indicate, Kotick tilted the process in Microsoft's favor throughout. Activision never entered into a non-disclosure or other agreement with any prospective bidder other than Microsoft.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph speak for themselves and (2) Activision did not enter into merger related agreements with other bidders. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

416. The then-existing circumstances, as plead herein, create a reasonable inference that, in the sale of Activision to Microsoft, Kotick did not act reasonably in his hasty decision-making and actions because of his self-interest and lack of good faith. Kotick should have removed himself from any sale process. Instead, he initiated the process without Board authorization, conducted all negotiations with Microsoft, truncated discussions with other potential bidders, negotiated the dividend term when not authorized to do so, rushed the Board into approving a defective Draft Merger Agreement, executed the defective Merger Agreement and caused Activision to enter into the Letter Agreement. Kotick's self-interest and inappropriate role tainted the entire sale process from start to finish.

ANSWER: Denied, including for the reasons stated in response to Plaintiff's corresponding allegations regarding "then-existing circumstances." The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent

required, the allegations are denied. Denied that Mr. Kotick failed to "act reasonably in his hasty decision-making and actions because of his self-interest and lack of good faith"—Mr. Kotick always acted in good faith to advance shareholders' interests. Denied that Mr. Kotick "should have removed himself from any sale process"—he was in the best position to lead the process. Mr. Kotick acted appropriately at all times, delivering a tremendous result to shareholders. Denied that Mr. Kotick "tainted" the sale process whatsoever.

417. The Director Defendants were also motivated by their personal interests in limiting their exposure to the repercussions of the Harassment Scandal, protecting Kotick and avoiding a decision to terminate him. Like Kotick, they had personal motivations that differed from what was best for Activision and its stockholders. Like Kotick, they had personal interests in a near term sale. They insufficiently checked an overbearing and conflicted CEO and allowed him to tilt the process in his preferred direction.

ANSWER: Denied. The Directors, including Mr. Kotick, were never motivated by interests that conflicted with shareholders' interests—instead, the Directors always acted to maximize results for shareholders. Each Director applied their independent business judgment to analyze, negotiate, and execute the Merger, and the Board delivered a tremendous result that was overwhelmingly approved by shareholders.

418. The sale process was short, limited and dominated by Kotick. Activision dealt not just preferentially, but as a practical matter, exclusively, with Microsoft. Discussions between Microsoft and Kotick, who had no Board authorization, began on November 19, 2021. Within ten days, Kotick and Spencer had agreed on a $90 to $105 price range—four days before the Activision Board met on December 3, 2021. By delaying a meeting of the Board for two weeks, Kotick

prevented the start of any Board-centered sale process and gave Microsoft a substantial head start. The Board did not initiate any formal sale process at the December 3, 2021 Board meeting. The first contact from a potential bidder other than Microsoft was initiated by a gaming company (Company A), not Activision, on December 3, 2021, after Kotick had already been negotiating with Microsoft for two weeks. Microsoft entered into a non-disclosure agreement with Activision three days later, on December 8, 2021, and was immediately provided with Activision's LRP. On December 10, 2021, after the Board formally met for a second time, Microsoft had presented Activision with a $90 offer and a draft exclusivity agreement. The Board did not institute a sale process at its December 10 meeting, delaying such process considerations if instead the Board should decide to engage in discussions with Microsoft. But Kotick had already been engaged in discussions with Microsoft for three weeks. Microsoft reiterated its demand for exclusivity on December 16, and, by that evening, Activision's counsel sent a mark-up of the exclusivity agreement, which was negotiated over the next few days. Kotick and the Board knew Microsoft wanted to move fast to gain a competitive advantage over other potential bidders who might emerge. On December 17, 2021, the Activision Board authorized exclusive discussions with Activision at a $95 price for up to a thirty-day period. By December 20, 2021, Activision had entered into the thirty-day Exclusivity Agreement with Microsoft.

ANSWER: Denied, except admitted that (1) Mr. Spencer asked to discuss a potential strategic transaction during a call with Mr. Kotick on November 19, 2021; (2) Microsoft and Activision agreed to negotiate in the $90 to $105 price range; (3) Company A contacted Activision on December 3, 2021; (4) Microsoft and Activision entered into a non-disclosure agreement; (5) Activision provided Microsoft with a copy of the Long Range Plan; (6) Microsoft presented Activision with a $90 offer and a draft exclusivity agreement on December 10, 2021; (7) the Activision Board authorized a deal with Microsoft at $95 per share; (8) consistent with Microsoft's request, Activision entered into an Exclusivity Agreement with

Microsoft. Denied that Mr. Kotick lacked Board authorization or that the sale process "was short, limited and dominated by [Mr.] Kotick" in any improper way. Denied that Mr. Kotick "delay[ed] a meeting of the Board for two weeks" or gave Microsoft a "head start."

419. Microsoft's head start and the skewed sales process enabled Microsoft to back-up Activision with an exclusivity agreement before other competing bidders could get started. While Company A contacted Kotick and Kelly on December 3, 2021, by an email addressed to the Board, Kelly and Kotick did not advise the Board of that overture and a December 6, 2021 unsolicited email from Individual B until December 10, 2021, the same day Microsoft provided its draft exclusivity agreement. The Board rejected Individual B's overture immediately and left it up to Kotick to meet with Company A, which he did not do until December 14, 2021.

ANSWER: Denied, except admitted that (1) Company A contacted Messrs. Kotick and Kelly; (2) Individual B sent an unsolicited email on December 6, 2021; (3) Messrs. Kotick and Kelly notified the Board about Company A and Individual B; (4) Microsoft provided a draft exclusivity agreement on December 10, 2021; (5) the Board declined to pursue further discussions with Individual B; and (6) the Board directed Mr. Kotick to meet with Company A, which he did on December 14, 2021. Mr. Kotick denies Plaintiff's characterizations of the sales process.

420. On December 12, 2021 Allen & Co. suggested Companies C, D and E as potential bidders. Once again, the Board left it to Kotick, who had been negotiating with the preferred buyer, Microsoft, for several weeks. Unsurprisingly, Kotick's perfunctory contacts with the three companies went nowhere, as Microsoft pressed him for exclusivity. Company D indicated to Kotick on Friday, December 17, 2021, it was keen to explore a transaction and a follow-up video conference was scheduled for December 20. However, later that same day, Spencer told Kotick he

wanted exclusivity that very day and the exclusivity agreement was negotiated over that weekend. On December 20, 2021, Kotick told Company D circumstances had changed and Activision would very shortly not be able to continue discussions. There were no further discussions and Activision executed the Microsoft Exclusivity Agreement that same day.

ANSWER: Denied, except admitted that (1) on December 12, 2021, representatives of Allen & Co. suggested Companies C, D, and E as potential bidders; (2) the Board authorized and directed Mr. Kotick to contact those companies to gauge interest in a potential acquisition and he did so; (3) Company D indicated interest in exploring a transaction and a video conference was scheduled for December 20; (4) Mr. Spencer communicated that Microsoft sought exclusivity; (5) the exclusivity agreement was thereafter negotiated; (6) Mr. Kotick informed Company D on December 20, 2021, that circumstances had changed and that Activision would very shortly not be able to continue discussions; and (7) Activision executed an exclusivity agreement on December 20, 2021. Mr. Kotick denies Plaintiff's characterizations and conclusions, including that Mr. Kotick's contacts were "perfunctory" or "went nowhere" as a result of any lack of encouragement or effort by him. Mr. Kotick acted at all times pursuant to express Board authorization and direction, in furtherance of the Board's deliberate process to assess competitive alternatives to the Microsoft proposal.

421. It is a fair inference that (i) Kotick was tipping Microsoft as to the contacts with other potential bidders, leading Microsoft to push hard for exclusivity

in order to cut-off potential competing bids; (ii) Kotick did not encourage other potential bidders; and (iii) the exclusivity agreement was pushed along on the weekend of December 17-19, 2021 to enable Kotick to push away Company D on December 20, 2021. Kotick did not just play favorites, he sidelined potential alternative players.

ANSWER: Denied. The speculative inference offered by Plaintiff is not a well pled factual allegation to which a response is warranted, but to the extent required, it is denied. Denied that Mr. Kotick "play[ed] favorites" or "sidelined potential alternative players." Mr. Kotick always acted in good faith to secure the best possible deal for shareholders.

422. The sudden announcement of delays in game launchings in order to drive down Activision's stock price and the repeated modifications to projections are further evidence of an unreasonable process and a bad faith effort to justify the price Microsoft wanted to pay.

ANSWER: Denied. Plaintiff's characterizations of the game delays and projections are inaccurate. Mr. Kotick and the Directors always acted in good faith to secure the best possible deal for shareholders.

423. The actions of Kotick and the Board fell outside the range of reasonableness. Kotick conducted himself like a beleaguered CEO who was thirsty for a sale that would rescue him, avoid further shame and trigger his immense change-in-control benefits. Because of his desire for a deal, he behaved in ways that undercut Activision's negotiating leverage and undermined Activision's ability to achieve the best value reasonably available for the stockholders. He delayed in scheduling Board meetings while he had private discussions and negotiations with Microsoft. His terse interactions with other potential bidders reflected his favoritism toward Microsoft.

ANSWER: Denied. Mr. Kotick and the Directors always acted reasonably and in

good faith to secure the best possible deal for shareholders.

424. The Board breached its duty of loyalty by failing to exercise control, active participation or even meaningful oversight of the sale of Activision. It did not initiate a formal sale process—at the December meeting, at its December 10, 2021 meeting, or ever. They did not exert control over the conflicted CEO and take control of discussions with Microsoft and other possible bidders. Instead, they let Kotick control discussions and negotiations and failed to engage in sufficient monitoring of his activities. They just went along for the ride.

ANSWER: Denied. Mr. Kotick and the Directors always acted reasonably and in good faith to secure the best possible deal for shareholders. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

425. Kotick initiated and timed the Merger for the purpose of saving his job and preserving his financial interest and legacy at a time when shareholders, employees and analysts were calling for his ouster and major business partners, including Microsoft, were reevaluating their relationships because of the Harassment Scandal. Three days after *Kotick Knew* was published, Kotick told Activision employees he might have to resign. That same day, Kotick spoke with Spencer about Microsoft acquiring Activision, which would offer Kotick a lifeline.

ANSWER: Denied, except admitted that (1) Mr. Spencer asked to discuss a potential strategic transaction during a call with Mr. Kotick on November 19, 2021 and (2) the defamatory *Kotick Knew* article was published on November 16, 2021. Denied that Mr. Kotick "initiated and timed the Merger for the purpose of saving his job and preserving his financial interest and legacy"—notably, Microsoft initiated the discussions, not Mr. Kotick or Activision.

426. The timing for entering into the Merger Agreement with Microsoft was terrible for Activision. It was in the midst of the Harassment Scandal, the subject of numerous suits and investigations, confronted by massive employee unrest and had just announced a delay in two popular games (a delay which was related to departures due to the Harassment Scandal). Activision's stock price had been in free fall for months because of these factors.

ANSWER: Denied. Activision's stock price declined in mid-to-late 2021 because of then-existing business conditions, which was in line with the stock price trends of numerous tech and video game companies. Denied that the timing of the Merger was "terrible for Activision."

427. In contrast, the timing of the Merger negotiations served Kotick's self-interest in preserving his job and benefits and providing a rich cash-out, rather than a resignation or termination in disgrace. For both Kotick and the other Director Defendants, the Merger would also distract from the Harassment Scandal, avoid accountability and eliminate derivative suits.

ANSWER: Denied. Mr. Kotick was never in danger of being terminated—the Board knew that the harassment allegations were false and fully supported Mr. Kotick—and his interests were always aligned with shareholders' interests.

428. The negotiation of the Merger did not satisfy fair dealing. Kotick began negotiating without Board authorization, then involved Kelly and only disclosed the existence of negotiations to his long-time cronies, Morgado and Corti. The Board was not convened and advised of his unauthorized negotiations until two weeks later. Kotick involved conflicted directors (*e.g.*, Kelly, Corti and Morgado) and a conflicted advisor (Allen & Co.) at the outset of the discussions, before informing the full Board, so they could help him fashion his bailout that he would then serve up to the full Board for approval. Kotick had basically cut a deal before the Board ever convened.

ANSWER: Denied, except admitted that Mr. Kotick informed Messrs. Kelly,

Morgado, and Corti of the negotiations after Microsoft reached out to express interest. Mr. Kotick denies Plaintiff's characterization using the words "cronies" or "only," which inaccurately suggest impropriety or invalidity. Mr. Kotick and the Directors always acted fairly and in good faith to secure the best deal for shareholders.

429. Not only did the Board fail to terminate Kotick or press him to resign, but even after becoming aware of Kotick's unauthorized merger negotiations, the Board failed to take control of those negotiations, instead letting Kotick continue to fashion his own deal with his chosen advisors. There was no independent committee. Kotick conducted negotiations without the participation or supervision of any independent director or independent financial advisor. The Board acted in bad faith by failing to cabin Kotick's conflict and by failing to learn about and cabin the conflicts of Allen & Co.

ANSWER: Denied. Mr. Kotick and the Directors always acted fairly and in good faith to secure the best deal for shareholders. However, Mr. Kotick admits that the Board did not terminate Mr. Kotick or request Mr. Kotick's resignation (there was no legitimate reason to do so), or form a special independent committee (other than the *ad hoc* committee).

430. As the descriptions of the December 2021 and January 2022 Board meetings above demonstrate, the Board approval process was flawed and the Proxy's disclosure of that process repeatedly conflicts with the minutes.

ANSWER: Denied, including for the reasons discussed in Plaintiff's corresponding allegations regarding the Board's conduct and the Proxy.

431. As discussed above, the Board approval process was invalid for failure to comply with Section 251(b). The failure to comply with Section 251 was a breach of fiduciary duty by the Director Defendants.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

432. The defects in the Draft Merger Agreement, which had been provided to the Activision directors, were apparent on the face of the document. Kotick and the Director Defendants are presumed to know the terms of Section 251. From the face of the Draft Merger Agreement, the Activision directors, and Kotick as both a director and officer, had actual or constructive knowledge that the Draft Merger Agreement did not comply with Section 251. It was plainly a draft and did not include the CDL, disclosure schedules or Survivor's Certificate. In addition, Kotick and the Director Defendants were told that the dividend was an open issue. Moreover, they knew the Draft Merger Agreement they reviewed and approved was not the same version of the merger agreement that Microsoft's board approved. A reasonable director would not have approved a contract for the sale of her home that was an incomplete draft with the consideration blank and required elements missing.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves. The hypothetical and inflammatory allegation that a "reasonable director would not have approved a contract for the sale of her home that was an incomplete draft with the consideration blank and required elements missing" is not a well pled factual allegation that warrants a response, but to the extent required, the allegation is denied because it is counterfactual and attempts to draw an improper comparison. The allegations in this paragraph contain legal conclusions and hypothetical assertions that warrant no response, but to the extent required, the allegations are denied.

433. When Kotick executed the Execution Version of the Merger Agreement as an officer on January 18, 2022, Kotick could see from the face of the document that it was not the Draft Merger Agreement that he and the other directors considered and purportedly approved on January 17, 2022. It was also apparent that the Execution Version of the Merger Agreement did not include the Company Disclosure Letter and Survivor's Certificate. Because of the obvious defects in the Draft Merger Agreement, and the approval and execution of the Merger Agreement, Kotick and the Board could not have reasonably believed the approval of the Merger complied with Sections 251 and 141(c).

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves. The allegations in this paragraph contain legal conclusions and hypothetical assertions that warrant no response, but to the extent required, the allegations are denied.

434. Kotick and the Director Defendants could have demanded to review and approve the final Merger Agreement on January 18, 2022. They could have sought and demanded to receive a legal opinion on whether their approval of the Draft Merger Agreement complied with Sections 251 and 141(c). They could have easily reconvened over Zoom to approve the Merger Agreement before it was executed. It is reasonably conceivable and a fair inference that Kotick and the Director Defendants rushed to approve the Draft Merger Agreement, and did not reconvene to approve the Merger Agreement, because the Exclusivity Agreement with Microsoft expired on January 17. Instead of ensuring they complied with Delaware law, they wanted to ensure they approved the Merger Agreement that provided them non-ratable, material benefits, including the super-exculpation, indemnification, advancement and insurance protections. In doing so, they prioritized the interests of Kotick and themselves. This was a breach of their fiduciary duty of loyalty, intentional misconduct and a knowing violation of the law.

ANSWER: Denied. Mr. Kotick and the Directors always acted reasonably and in good faith to secure the best possible deal for shareholders. The allegations in this paragraph contain legal conclusions and hypothetical assertions that warrant no

response, but to the extent required, the allegations are denied.

435. The descriptions of the various Board meetings show that the approval of the Board was also uninformed, and the Board acted in bad faith and with conscious disregard of the directors' duties. The Board failed to approve the agreement of the merger and, instead, only reviewed an incomplete draft and left the negotiation and approval of a key financial term (*i.e.*, the payment of dividends) up to an *ad hoc* committee of his cronies. Kotick, rather than the *ad hoc* committee, negotiated the dividend term and it is reasonably conceivable based on the known facts and circumstances that the committee never actually held a meeting or signed a unanimous consent approving the dividend term.

ANSWER: Denied. Mr. Kotick and the Directors always acted reasonably and in good faith to secure the best possible deal for shareholders. The allegations in this paragraph contain legal conclusions and hypothetical assertions that warrant no response, but to the extent required, the allegations are denied.

436. As discussed above, the stockholder vote was invalid because of the failure to comply with Sections 251(b) and (c). The Director Defendants compounded their breaches of fiduciary duty by soliciting stockholders to approve the incomplete Merger Agreement which did not comply with Section 251.

ANSWER: Denied. Mr. Kotick and the Directors always acted reasonably and in good faith to secure the best possible deal for shareholders. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

437. The Director Defendants knew that the Execution Version of the Merger Agreement in the Proxy was not the Draft Merger Agreement they approved. They also knew that the Execution Version of the Merger Agreement submitted to Activision stockholders with the Proxy was not a Section 251-compliant agreement

of merger. The Proxy was signed by Kotick and Kelly on behalf of the Board. The Proxy contained the Notice of the Special Meeting, which Townsend signed "By Order of the Board of Directors." Any director reviewing the Merger Agreement could see it did not include the CDL, disclosures schedules or Survivor's Certificate. The Board knew the Execution Version of the Merger Agreement purported to be final, while the Draft Merger Agreement the Board approved did not. They therefore also knew that the stockholders' approval of the Execution Version of the Merger Agreement did not comply with Section 251(c). A stockholder vote on an invalid Merger Agreement is meaningless and of no effect. It is no vote at all.

ANSWER: Denied, except admitted that the Proxy speaks for itself and was signed by Messrs. Kotick and Kelly on behalf of the Board. The allegations in this paragraph contain legal conclusions and hypothetical assertions that warrant no response, but to the extent required, the allegations are denied.

438. Kotick, in his capacity as an officer, signed the Execution Version of the Merger Agreement that was provided with the Proxy. He knew the Execution Version of the Merger Agreement he signed was not the Draft Merger Agreement the Director Defendants approved. He also knew that the Execution Version of the Merger Agreement did not include the CDL, disclosure schedules or Survivor's Certificate. He therefore knew, in his capacity as an officer, that the stockholders were being asked to approve a Merger Agreement that did not comply with Section 251(c).

ANSWER: Denied, except admitted that Mr. Kotick signed the Merger Agreement, which speaks for itself. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

439. The failure to provide or describe the Company Disclosure Letter and Survivor's Certificate deprived the stockholders of statutorily required material information. For example, the number of antitrust approvals required (apparently sixteen) and the identity of the countries was material to the stockholders' evaluation of the antitrust risk. As discussed below, the CDL, as produced by Activision to

Plaintiff, contained terms that were not described in the Merger Agreement or Proxy. Particularly given the Harassment Scandal, Activision's indemnification agreements, as revealed in the Company Disclosure Letter, were material to the stockholders' assessment of director and officer independence and disinterest and the role of the Harassment Scandal in the pursuit of the Merger. Further, as discussed below, the CDL made clear that the Harassment Scandal was not divorced from the Merger negotiations.

ANSWER: Denied, except admitted that the CDL speaks for itself. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

440. The stockholder vote on the Merger does not reflect an endorsement of the Merger's merits. Rather, it reflects the preference of some stockholders when they were forced to choose between two bad options: (i) Kotick continuing to run the Company as CEO, or (ii) selling their stock to Microsoft for an unfair price at some unknown date eighteen-months or more after the Merger Agreement was signed. The Board forced Activision's stockholders into a hasty Hobson's choice between a no-premium sale and an unattractive status quo.

ANSWER: Denied.

441. Microsoft, Activision and the Director Defendants deliberately rushed the stockholder vote on the incomplete Merger Agreement. Section 6.3(a) of the Merger Agreement required Activision to file a preliminary proxy statement with the SEC within twenty business day of the January 18, 2022 Merger Agreement and to resolve SEC comments promptly and issue the definitive Proxy. Section 6.4(a) required Activision to hold a stockholder vote on the Merger Agreement "as promptly as reasonably practicable following the mailing of the Proxy Statement" and "on or around the 20th Business Day following the mailing of the Proxy Statement."

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself.

442. Kotick, the Board and Microsoft planned to and did rush the stockholders into a quick vote on the Merger before the antitrust risks and timing of

payment of the Merger consideration were clear. The hastily scheduled vote on the Merger before more was known about the likely length and outcome of the antitrust review left the stockholders staring into a black box.

ANSWER: Denied.

443. The prematurity of the stockholder vote was confirmed by subsequent events. As Defendants expected, the regulatory process was lengthy. The Merger did not close until October 13, 2023 because of regulatory proceedings. The FTC Suit is still pending. It is reasonably conceivable that the stockholders' view of the Merger Agreement might have been very different had the stockholder vote been delayed until more information concerning regulatory review and possible closing date was known. Activision could well have held the vote in the spring of 2023, rather than the spring of 2022.

ANSWER: Denied, except admitted that the Merger closed on October 13, 2023.

444. The rushed stockholder vote also forced the stockholders to decide whether to exercise appraisal rights with no idea of when, if ever, the Merger might close or how many dividends might be missed before the Merger would or might close. Appraisal demands had to be made before the vote on the Merger—almost two years before the Merger closed. A stockholder demanding appraisal had to hold the shares on the date of demand and continue to hold those shares until the effective time of the Merger, which was one-and-a-half years after the vote. An appraisal action could not be filed until the Merger became effective and would be based on the fair value of Activision at the time of the Merger. The appraisal decision, however, had to be made before Activision's results for 2022 and much of 2023 were known. Thus, in deciding before the Merger vote whether to demand appraisal, stockholders had to speculate concerning what Activision would be worth twenty-one months later. The rushed vote effectively deprived the stockholders of a fair opportunity to decide whether to seek appraisal.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions and hypothetical assertions that warrant no response, but to the extent required, the allegations are denied.

445. The voting results from the Special Meeting reflected the unappetizing choice that stockholders faced. The Proxy solicited stockholders to approve in separate proposals the Merger and the Merger-related compensation proposal, which included Kotick's payout. According to Activision's April 28, 2022 Form 8-K, of the 780,922,900 shares entitled to vote at the Special Meeting, 539,332,512 shares voted "For" the Merger (68.2%), while the remaining 31.2% voted against, directly or by abstaining or declining to vote. Only 357,220,104 shares voted "For" the Merger-related compensation proposal. The majority of Activision's stockholders did not approve Kotick's compensation.

ANSWER: Denied, except admitted that the April 28, 2022 Form 8-K speaks for itself. A fully-informed body of stockholders overwhelmingly approved of the Merger, with 98% of the cast votes approving the deal. Denied that the majority of Activision's stockholders did not approve Mr. Kotick's compensation—over 68% of voting stockholders voted "For" the Merger-related compensation proposal.

446. The stockholder vote on the Merger did not reflect an endorsement of the Merger's merits for the additional reason that the Proxy contained numerous misleading and partial disclosures and omitted material facts that rendered the stockholder vote uninformed, including the failure to provide the complete agreement of merger.

ANSWER: Denied. A fully-informed body of stockholders overwhelmingly approved of the Merger given the massive premium that the deal delivered, with 98% of votes cast in favor.

447. The Proxy contained a misleading and incomplete summary of the Merger negotiations that concealed the role of the Harassment Scandal in those negotiations. The November 19, 2021 call between Kotick and Microsoft occurred (i) one day after Microsoft said it was reviewing its relationship with Activision because of the Harassment Scandal, (ii) three days after *Kotick Knew*'s publication, (iii) when investors and employees were calling for Kotick's resignation and

termination because of the Harassment Scandal and (iv) Kotick and the Director Defendants were implicated in multiple lawsuits and investigations by the SEC, DFEH, EEOC and investors arising out of the Harassment Scandal, and anticipated more. In determining whether to approve the Merger, a reasonable stockholder would have considered it important that the Harassment Scandal was a factor in the initiation and continuation of Merger discussions and the negotiation of the Merger.

ANSWER: Denied, except admitted that (1) Mr. Kotick and Mr. Spencer held a call on November 19, 2021 and (2) litigation and investigations were pending. Plaintiff's characterization of the Merger negotiations is denied as inaccurate and misleading. The allegations in this paragraph contain legal conclusions and hypothetical assertions that warrant no response, but to the extent required, the allegations are denied.

448. The eleven-page "Background of the Merger" section of the Proxy did not mention the Harassment Scandal. Indeed, it misleadingly suggested that the Microsoft merger discussions resulted from regular review of strategic options and routine discussions with Microsoft about the gaming industry. The Proxy stated that on November 19, 2021 Spencer raised Microsoft's interest in acquiring Activision with Kotick "in the course of a conversation on a different topic." As discussed above, the timing and circumstances indicate that the "different topic" was the Harassment Scandal and Microsoft's public position that it was reevaluating its relationship with Activision because of that scandal. But that crucial fact was not disclosed to the Activision stockholders. The Proxy referenced that Activision and Microsoft had certain licensing arrangements and a business relationship of Activision games being carried on Microsoft's Xbox platform. However, it did not describe the financial and strategic importance of the Microsoft relationship or that Microsoft had said it was reevaluating that relationship because of the Harassment Scandal.

ANSWER: Denied, except admitted that the Proxy speaks for itself. Plaintiff's characterization of the Proxy, Merger, and the Merger negotiations is denied as

inaccurate and misleading.

449. The remainder of the Proxy also avoided any indication that the Harassment Scandal had any influence on the initiation or pursuit of Merger discussions. Indeed, even the references to litigation arising out of the Harassment Scandal are carefully crafted to avoid mention of the Harassment Scandal. The Execution Version of the Merger Agreement provided to stockholders in the Proxy did not reference the Harassment Scandal. The Proxy fostered the misleading impression that the Merger discussions were divorced from the Harassment Scandal.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves. Plaintiff's characterization of the Proxy, Merger, and the Merger negotiations is denied as inaccurate and misleading.

450. The Proxy listed twenty-four reasons for the Board's approval and recommendation of the Merger Agreement and thirteen potential negative factors without mentioning the Harassment Scandal.

ANSWER: Denied, except admitted that the Proxy speaks for itself.

451. The Proxy did not disclose that key Activision officers had resigned or been terminated because of their misconduct in connection with the Harassment Scandal. It did not disclose whether they were given severance packages, indemnification agreements or releases.

ANSWER: Denied, except admitted that the Proxy speaks for itself.

452. The Harassment Scandal was also a factor at other points in the merger discussions, such as the December 7, 2021 discussion where Microsoft raised questions about potential challenges and Microsoft's December 10, 2021 offer letter (*i.e*., a "challenging time" for Activision, which was "confronting a number of well publicized concerns").

ANSWER: Denied, except admitted that the December 10, 2021 offer letter speaks

for itself. Plaintiff's characterization of the Merger negotiations is denied as inaccurate and misleading.

453. The Proxy also failed to mention the effect that the Harassment Scandal had on Activision, its financial and operating performance and its stock price. Allen & Co.'s December 15, 2021 and January 17, 2022 presentations to the Board [redacted] This information was not disclosed even though (i) the first reason the Proxy gave for the Board's recommendation of the Merger was the purported premium over market, and (ii) Allen & Co.'s analysis of Activision's historical trading prices was referenced in the Proxy.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves. Plaintiff's characterization of the Proxy, Allen & Co.'s presentation, Activision's stock price, and the Merger is denied as inaccurate and misleading.

454. The Proxy repeatedly stated that the $95 Merger price represented "(i) a premium of approximately 45.3% to Activision's Blizzard's closing price on January 14, 2022," and "(ii) approximately 50.3% to the volume weighted average stock during the 30 trading days ended January 14, 2022." These mathematically correct calculations were misleading partial disclosure without the further disclosure that the "premium" was based on stock prices following a substantial decline after the Harassment Scandal hit. Indeed, the thirty-trading-day period commenced in the aftermath of (i) Activision's announcement that it was delaying the release of *Overwatch 2* and *Diablo IV*, which was the result of leadership departures because of the Harassment Scandal, and (ii) the series of disclosures culminating in *Kotick Knew*'s November 19, 2021 publication and Activision's inadequate response.

ANSWER: Denied, except admitted that the Proxy speaks for itself. Mr. Kotick and the Directors negotiated a tremendous deal delivering a massive premium to

shareholders of over 45%. Plaintiff's characterization of the Proxy, Activision's stock price, and the Merger is denied as inaccurate and misleading.

455. The Proxy disclosed that the interests of Kotick and the other Director Defendants may be different from the interests of the stockholders, and that the Board was aware of and considered these interests in evaluating the negotiation of, approving and recommending, the Merger Agreement. However, the Proxy only described the accelerated vesting of equity compensation, the value of equity awards, potential termination payments and golden parachute compensation. This was misleading partial disclosure because it did not include other interests that Kotick and the other Director Defendants had, including (i) Kotick eliminating his risk of being terminated for Cause and forfeiting his then-outstanding equity awards and (ii) the Director Defendants' risk of liability. Indeed, the Proxy also omitted information about the consequences of Kotick being terminated for "Cause" under his employment agreement.

ANSWER: Denied, except admitted that the Proxy speaks for itself. Plaintiff's characterization of the Proxy, Merger negotiations, and the Merger Agreement is denied as inaccurate and misleading.

456. Having made disclosure concerning the genesis and background of the Merger, the Director Defendants were required to provide a complete and accurate summary. Having touted the premium over the recent market prices, the Director Defendants were obligated to disclose factors that had affected those prices. Having described certain benefits to Kotick and the other Board members from the Merger, the Director Defendants had to disclose other benefits, such as the elimination of and expanded protection against potential liability and prevention of possible loss of employment and compensation for Kotick. Having described certain conflicts that Kotick and the Director Defendants faced in connection with the Merger, the Director Defendants had to fully and completely disclose their conflicts, including Microsoft's control over litigation in which they were named defendants. Instead of complete and accurate information, the Director Defendants deliberately chose to make misleading partial disclosure that omitted mention of the Harassment Scandal.

ANSWER: Denied. Plaintiff's characterization of the Proxy, Merger Agreement,

and the Merger is denied as inaccurate and misleading. The allegations in this paragraph contain legal conclusions and hypothetical assertions that warrant no response, but to the extent required, the allegations are denied.

457. A reasonable stockholder needed to know how the Harassment Scandal may have affected the sudden decision to sell the Company, the price of the sale and the interest of Kotick and the other Board members. This information was important in evaluating the Merger and deciding how to vote.

ANSWER: Denied. Plaintiff's characterization of the Proxy, stockholder vote, and the Merger is denied as inaccurate and misleading. The allegations in this paragraph contain legal conclusions and hypothetical assertions that warrant no response, but to the extent required, the allegations are denied.

458. The Survivor's Certificate was not contained in the Draft Merger Agreement that was approved by the Board, the Execution Version of the Merger Agreement signed by Kotick or the incomplete Merger Agreement that was submitted to the Activision stockholders. Among its amendments, the Survivor's Certificate confers exculpation rights on Activision officers (Article VII) and contains a savings clause (Article XI) that provides that if any portion of any provision of the Survivor's Certificate is "held to be invalid, illegal or unenforceable" that will not affect the validity and enforceability of other portions of that provision or any other provisions. Moreover, Article XI provides that the remaining parts of the Certificate:

> . . . shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service or for the benefit of the Corporation to the fullest extent permitted by law.

ANSWER: Denied, except admitted that the documents cited in this paragraph

speak for themselves.

459. Defendants' violation of Section 251(b)(3) by failing to provide the Survivor's Certificate resulted in the stockholders being deprived of information indicating Activision's directors and officers had secured for themselves increased liability protections.

ANSWER: Denied. Plaintiff's characterization of the Proxy, stockholder vote, and the Merger is denied as inaccurate and misleading. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

460. Section 9.5 of the Merger Agreement acknowledged that the CDL was part of the parties' agreement. The CDL, as produced by Activision to Plaintiff, said [redacted]

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

461. The CDL is referred to twenty-one times in the Proxy. However, the Proxy almost never described what the CDL actually contained. For example, in disclosing the interests of non-employee directors and executive officers in the accelerated vesting of equity compensation upon termination, the Proxy repeatedly

stated that termination for "cause" is "defined in the confidential disclosure letter to the merger agreement" but never says what that definition is. Similarly, the Proxy referenced the right of executive officers and others to terminate their employment after the Merger and get acceleration and severance benefits "pursuant to the merger agreement (as modified by the confidential disclosure letter to the merger agreement)" but does not describe the modifications made by the CDL.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

462. The Proxy's description of the terms of the Merger Agreement stated that "[t]he rights and obligations of the parties are governed by the express terms of the merger agreement (as qualified by the confidential disclosure letter to the merger agreement)." It said that its description of Activision's representations, warranties and covenant and the terms of the Merger Agreement were "subject to important qualifications, limitations and supplemental information" contained in the CDL. The stockholders were told not to rely on Activision's covenants in the Merger Agreement "because the parties may take certain actions that are . . . expressly permitted in the confidential disclosure letter to the merger agreement."

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

463. The Proxy's description of factors that will not be deemed a "Material Adverse Effect" and descriptions of Activision's representations, warranties and covenants said they were subject to "exceptions included in the confidential disclosure letter to the merger agreement" but those exceptions are not described in the Proxy. The Proxy said Activision may not "enter into agreements of the types listed in the confidential disclosure letter to the merger agreement" but did not say what types of agreements were listed.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

464. The Proxy said that the Merger Agreement provides that the surviving

corporation (*i.e.*, Activision) will (and Microsoft will cause it to) fulfill "indemnification agreements that are set forth in the confidential disclosure letter to the merger agreement." Section 6.8(a) of the Merger Agreement contains the indemnification commitment for "any indemnification agreements set forth on Section 6.8(a) of the Company Disclosure Letter." The Proxy and the Merger Agreement do not, however, identify any indemnification agreements. [redacted]

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

465. The Proxy said Activision was required to provide Microsoft updates on "certain litigation matters set forth in the confidential disclosure letter to the merger agreement."

ANSWER: Admitted that the Proxy speaks for itself.

466. In the Proxy, Defendants represented that:

> In the Merger Agreement, Activision Blizzard has made customary representations and warranties . . . that are subject, in some cases, to . . . certain additional exception included in the confidential disclosure letter to the merger agreement.

The Proxy's list of Activision's representations and warranties in the Merger Agreement includes only general mention of "employee benefit plans," "labor and employment matters," and "the absence of legal proceedings and orders."

ANSWER: Denied, except admitted that the Proxy speaks for itself.

467. The Merger Agreement, which was attached to the Proxy as Annex A,

contained several representations and warranties on these topics that were subject to exceptions set forth in the CDL. However, the Proxy made no disclosure concerning the exceptions contained in the CDL.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

468. Section 3.19(b) of the Merger Agreement stated that, "[e]xcept as would not have a Company Material Adverse Effect," Activision is in compliance and has complied since January 1, 2019 (January 1, 2018 as to California law) with employment laws.

ANSWER: Admitted that the Merger Agreement speaks for itself.

469. [redacted]

ANSWER: Denied, except admitted that [redacted]

470. Section 3.9(f), another supposedly customary representation in the Merger Agreement, suggested that there was no sexual harassment problem at Activision, representing:

> *(f) No Allegations of Sexual Harassment, Sexual Misconduct or Retaliation.*

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

471. [redacted]

ANSWER: Denied, except admitted that [redacted]

472. [redacted]

[redacted] The Proxy, which included the Merger Agreement's "no sexual harassment" representation, was a materially incomplete and misleading partial disclosure because there was no reference to the [redacted]

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

473. [redacted] The Proxy's disclosure concerning the Harassment Scandal was materially incomplete and misleading because the Proxy also did not provide, or describe the contents of, [redacted]

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

474. Moreover, because the Proxy did not provide or describe [redacted] Thus, while a reasonable stockholder reading the Execution Version of the Merger Agreement knew that Microsoft's approval was required to settle Specified Litigation, a reasonable stockholder did not know that involved litigation against Kotick and the Director Defendants arising out of the Harassment Scandal.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

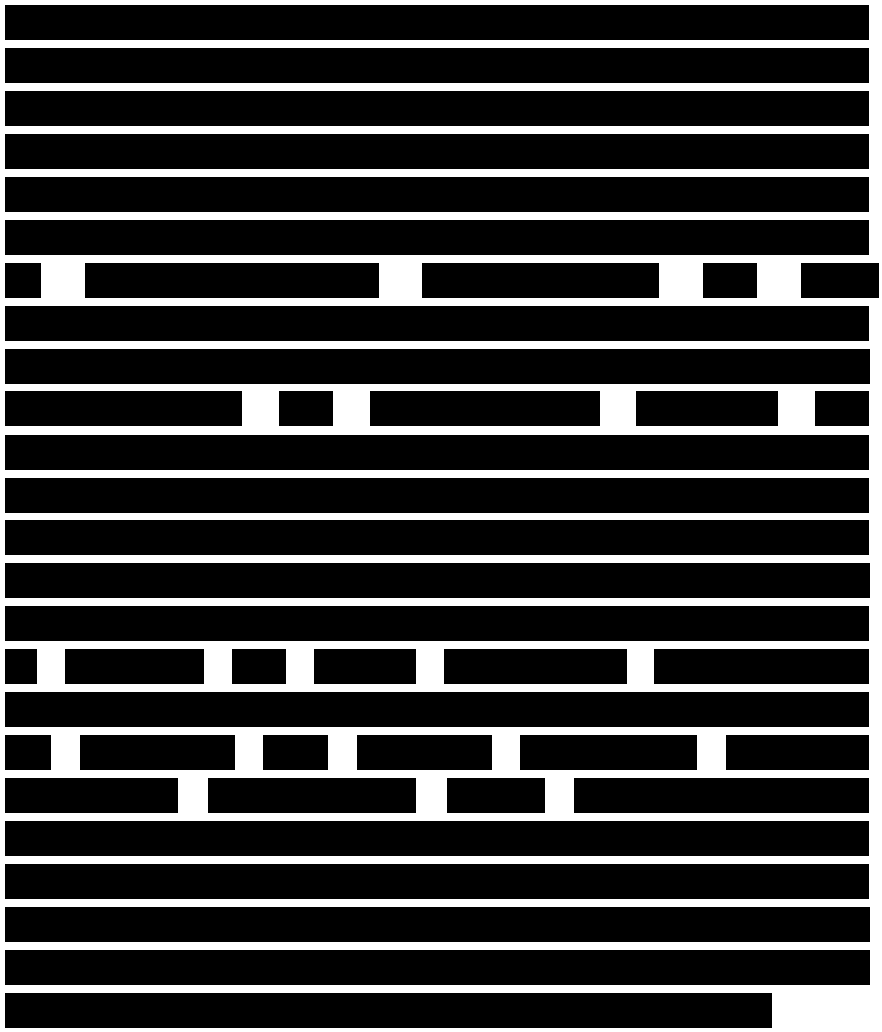
475. The information in the CDL was not deemed to expand Activision's representations, warranties and covenants "except with respect to Section 6.6 of the [CDL]."

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

476. Section 6.6 of the Merger Agreement, a lengthy covenant which gave Microsoft access to Activision's books and records, contained the following sentence: "Following the execution and delivery of this Agreement, the Parties will use commercially reasonable efforts to take the actions set forth on Section 6.6 of the Company Disclosure Letter." Neither the Proxy nor the Merger Agreement contained any disclosure of what actions Activision and Microsoft agreed to take in Section 6.6 of the CDL.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

477.



ANSWER:

478. The Proxy contained no disclosure of the This covenant was a further reflection that the Harassment Scandal was a major consideration in the Merger.

ANSWER: Denied, except admitted that the Proxy speaks for itself.

479. Section 6.15 of the Merger Agreement provided that:

> If at any time after the Effective Time any further action is necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation with full

> title to all properties, assets, rights, approvals, immunities and franchises of either the Company or Merger Sub, then the proper officers and directors of each Party will use their reasonable best efforts to take such action. Without limiting the foregoing, the Company shall take the actions set forth on Section 6.15 of the Company Disclosure Letter.

Neither the Merger Agreement nor the Proxy described what actions Activision was required to take under CDL Section 6.15.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

480. Section 6.15 of the CDL provides that, "[p]rior to Closing," Microsoft and Activision will negotiate a definitive "Cloud Agreement," pursuant to which Activision would purchase cloud services from Microsoft equal in value to at least one-third of the Parent Termination Fee. The Cloud Agreement was to become effective in the event the Parent Termination Fee was paid.

ANSWER: Denied, except admitted that the CDL speaks for itself.

481. Section 8.3(c) of the Merger Agreement provided for a $2 billion Parent Termination Fee prior to January 18, 2023, a $2.5 billion fee from January 18 to April 18, 2023 and a $3 billion fee after April 18, 2023. The Letter Agreement increased the Parent Termination Fee to $3.5 billion after August 29, 2023 and to $4.5 billion after September 15, 2023. The Letter Agreement did not amend, waive or modify Section 6.15 and provided in paragraph 5 that, subject to the Letter Agreement, all terms, conditions and provisions of the Merger Agreement and the CDL would remain in full force and effect.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

482. The Proxy contained no disclosure concerning the [redacted] The Proxy repeatedly referenced the Parent Termination Fee and described it in

detail. It never mentioned that if the Parent Termination Fee was paid, Activision would be obligated to purchase cloud services from Microsoft with a value of not less than one-third the amount of that fee. The only mention of "cloud-related agreements" in the Proxy was Allen & Co.'s disclaimer that its opinion did not address other terms of the merger, including "cloud-related agreements."

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

483. The Proxy indicated the Parent Termination Fee was the subject of significant negotiation and it was listed as one of the Board's reasons for adopting the Merger Agreement and recommending it to the stockholders. Having made disclosure concerning the Parent Termination Fee, Defendants were obligated to provide a complete account, including the CDL provision for a Cloud Agreement under which at least one-third of that fee would effectively be returned to Microsoft as payment for cloud services. A reasonable Activision stockholder would have considered the Cloud Agreement important in considering the significance of the Parent Termination Fee.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

484. The Proxy failed to disclose Allen & Co.'s historical involvement with Activision and Kotick. The Proxy omitted any disclosure about Allen & Co.'s engagements in connection with the Vivendi Merger, ASAC, or other assignments for Kotick, Kelly and Activision. The Proxy further failed to disclose that Kotick was a co-director on the Coke Board with Herbert and Herb Allen, and that Kotick nominated Herb to the Coke Board during the Merger negotiations. Instead, the Proxy represented that Allen & Co. had no conflicts:

> Allen & Company is not currently providing, and during the past two years has not provided, investment banking services to Activision Blizzard unrelated to the Merger or to Microsoft for which Allen & Company has received compensation[.]

ANSWER: Denied, except admitted that the Proxy speaks for itself.

485. The Proxy stated that Kotick promptly involved Allen & Co., "which had provided strategic financial advice to Activision Blizzard on other occasions." It claimed that the Board selected Allen & Co. as financial advisor based on factors including "its knowledge and understanding of Activision Blizzard's business and industry from its previous work with Activision Blizzard." The Proxy's discussion of Allen & Co. stated it was selected as financial advisor based on its "experience and familiarity with Activision Blizzard."

ANSWER: Denied, except admitted that the Proxy speaks for itself.

486. The repeated statements about Allen & Co.'s previous advice, work, experience and familiarity was incomplete partial disclosure without a summary of those prior activities, including that Allen & Co. had advised ASAC (*i.e.*, Kotick, Kelly and Nolan). Given the repeated references to prior work, experience and familiarity, the disclosure of no services in the two years preceding the Board's approval of the Merger was misleading partial disclosure without a summary of the substantial prior contacts.

ANSWER: Denied.

487. A reasonable stockholder would consider the extent of Kotick's relationship with Allen & Co. important when assessing why Kotick "promptly" called Allen & Co. after talking to Spencer, and whether Allen & Co. could render independent financial advice to Kotick or the Board. This was particularly so because the Board recommended that stockholders approve the Merger based on Allen & Co.'s fairness opinion.

ANSWER: Denied.

488. The Proxy also provided misleading partial disclosure about the Board's consideration of Allen & Co.'s conflicts and decision to engage Allen & Co. As pointed out earlier, the minutes contradicted the Proxy concerning the date of Allen & Co.'s engagement and whether Allen & Co. was consulted by Kotick before he gave Microsoft the $90-105 range. The Proxy disclosed that on December 3, 2021, the Board considered Allen & Co.'s conflicts with respect to Activision and Microsoft and "decided to work with Allen & Company." The Board, however, did not consider Allen & Co.'s conflicts until December 14, 2021—nearly one month after Allen & Co. had been working with Kotick, and after Allen & Co. attended a four-hour meeting with Microsoft about Activision's LRPs, as well as Board meetings on December 3, December 10 and December 12, 2021. Further, the Board

did not decide to work with Activision until January 14, 2022, the Friday before the Board's Monday vote on the Merger; and even then, the Board merely "developed" a "consensus" to engage Allen & Co.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

489. These misleading, partial disclosures were material. They obscured that Kotick retained Allen & Co. without Board authorization. A reasonable stockholder, when deciding how to vote on the Merger, would consider it important that the Board bowed to Kotick's prior choice of financial advisor before considering the advisor's conflicts or ever authorizing its engagement.

ANSWER: Denied.

490. The Proxy also provided misleading, partial disclosure about Allen & Co.'s conflicts with respect to Microsoft. The Proxy failed to disclose that [redacted] Instead, the Proxy mushed together its disclosure about the investments of Allen & Co. and its bankers, whether the investments were past or current, and whether the investments were in Activision or Microsoft. The Proxy represented:

> Allen & Company as a broker-dealer and certain of its affiliates, directors and officers have invested or may invest, hold long or short positions and may trade, either on a discretionary or non-discretionary basis, for their own or beneficiaries' accounts or for those of Allen & Company's clients, in the debt and equity securities (or related derivative securities) of Activision Blizzard, Microsoft and/or their respective affiliates.

ANSWER: Denied, except admitted that the Proxy speaks for itself.

491. A reasonable stockholder therefore could not discern that Allen & Co. bankers, who directly interfaced with and advised Activision and the Board, had significant personal investments in Microsoft and no investment in Activision. A reasonable stockholder would have considered this information important when

deciding whether these bankers were providing independent financial advice, and whether the Board was vigilant in deciding to rely on that advice. Having traveled the road of partial disclosure regarding Allen & Co.'s conflicts in the Proxy, the Defendants were required to provide full and accurate disclosure.

ANSWER: Denied.

492. The Proxy indicated that Allen & Co. reviewed Activision's trading prices but, as mentioned above, misleadingly failed to point out that the analysis showed the stock price had been adversely affected on days when significant events happened in the Harassment Scandal.

ANSWER: Denied, except admitted that the Proxy speaks for itself.

493. The Proxy stated that Allen & Co. conducted a Selected Price Targets Analysis, stating that Allen & Co. observed price targets for Activision indicating "an overall low to high target price range for Activision Blizzard common stock of $54.00 to $125.00 per share (with a mean of $90.52 per share and a median of $90.00 per share)." However, the Proxy did not disclose the dates the analysts issued the price targets that Allen & Co. observed. The Appendix to Allen & Co.'s January 17, 2022 presentation revealed that all the price targets were published on or after November 2, 2021, after the Harassment Scandal had a significant negative impact on analysts' price targets. Analyst reports issued prior to November 2, 2021 had significantly higher price targets. A reasonable stockholder would have considered this information important when determining whether the mean and median price targets, which would have been higher had Allen & Co. included earlier price targets, indicated the Merger price was fair.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

494. The Proxy disclosed that on October 28, 2021, Activision announced that Kotick told the Company he wanted his base salary to be reduced and not be awarded:

> any bonuses or equity grants until the Workplace Responsibility Committee of the Activision Blizzard

> Board of Directors has determined that Activision Blizzard has made appropriate progress toward achievement of the transformational gender-related goals and other commitments described in such announcement.

ANSWER: Admitted that the Proxy speaks for itself.

495. This disclosure was false. As detailed above, the October Press Release stated that Kotick told the Board to reduce his compensation "until the Board" (not the WRC) "determined that we have achieved" (not made "appropriate progress towards") "the transformational gender-related goals and other commitments" announced in the October Press Release. Indeed, the WRC was not formed until November 22, 2021. Kotick and Activision could not agree in October that the not-yet-formed WRC would decide if and when Kotick would receive bonuses and equity grants.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph speak for themselves and (2) the WRC was formed in November 2021.

496. The Proxy also represented:

> In connection with the merger, Activision Blizzard and Microsoft agreed that if the Workplace Responsibility Committee of the Activision Blizzard Board of Directors concludes and reports publicly that Activision Blizzard has made appropriate progress toward the achievement of the transformational gender-related goals and other commitments described in Activision Blizzard's press release on October 28, 2021 . . . then the Activision Blizzard Board of Directors may, no earlier than six months after the date of the merger agreement, in its discretion [] grant an annual equity award to Mr. Kotick as set forth in his employment agreement (as may be extended) . . . [and] provide cash compensation to Mr. Kotick under the existing terms of his employment agreement (as may be extended)

ANSWER: Admitted that the Proxy speaks for itself.

497. This disclosure, when coupled with the false disclosure about the October Press Release, was materially misleading. A stockholder reading this disclosure would think that Activision and Microsoft had agreed that Kotick's compensation would be consistent with his existing agreements with the Company pursuant to the October Pay Cut Agreement. However, Activision and Microsoft reached a watered-down, far less rigorous version of the October agreement that was more favorable to Kotick. A reasonable stockholder would consider this important considering that Kotick was the primary Merger negotiator.

ANSWER: Denied.

498. Further, on April 15, 2022, Activision filed a Form 8-K providing supplemental disclosure. With respect to Kotick's employment agreements with Microsoft, the 8-K disclosed:

> No discussions or negotiations regarding post-closing employment arrangements with Microsoft occurred between Microsoft and Mr. Kotick prior to the approval and execution of the merger agreement and the transactions contemplated thereby, or have occurred subsequent to such approval and execution, through the date hereof.

ANSWER: Admitted that the April 15, 2022 Form 8-K speaks for itself.

499. While the 8-K addressed discussions concerning Kotick's "post-closing employment," Activision and Microsoft had agreed (i) to the terms of Kotick's compensation while the Merger was pending, (ii) that the WRC could extend Kotick's Employment Agreement for twelve months and (iii) that, under Section 2.6(a) of the Merger Agreement, the initial officers of Activision after the Merger would be the officers of Activision immediately before the Merger, including Kotick. A reasonable stockholder would consider the timing and circumstances of these negotiations important, considering these terms benefitted Kotick, who was the primary negotiator of the Merger. Further, the disclosure that no discussions about "post-closing employment" occurred were simply not credible when Kotick's employment was discussed and he would remain an Activision officer after the Merger. He was not going to work for free. Having traveled the road of disclosure concerning the discussions of Kotick's employment and compensation, the

Defendants were required to provide a full and accurate summary.

ANSWER: Denied, except admitted that the Form 8-K speaks for itself.

500. The Merger consideration was not a fair price for Activision's stock on October 13, 2023.

ANSWER: Denied. This allegation is a legal conclusion that warrants no response, but to the extent required, Mr. Kotick denies the allegation.

501. The $95 Merger price was approved on January 17, 2022 and did not take into account that the Merger was unlikely to close before June 2023 because of antitrust risks. The Merger Agreement did not contain any provision for adjustment of the merger consideration. Consequently, the stock generally traded at or under $80 per share after the Merger's announcement, indicating the market was heavily discounting the Merger price both because of the substantial antitrust delays and the risks the Merger might not receive regulatory approval. During October 2022, Activision consistently traded below $75 per share, closing at $72.86 on October 28, 2022. The discounted present value on January 18, 2022 of $95 that would not be received until eighteen months later was approximately $85. The discounted present value on January 18, 2022 of $95 twenty-one months later was less than $83.

ANSWER: Denied, except admitted that (1) the $95 Merger price was approved and (2) in October 2022 Activision traded in the $70s. Denied that Activision's stock price closed at $72.86 on October 28, 2022—it closed at $72.85 on that date.

502. The risk of a delayed closing due to protracted regulatory review was obvious to Defendants throughout the Merger discussions, given the unfavorable antitrust climate and sheer size of the Merger. Microsoft's Vice Chair Brad Smith told the press on February 9, 2022, "we recognize that there will be more scrutiny of any large acquisition that is being made by a large tech company." More than seven months after the Merger Agreement was signed, Kotick told Company employees in a September 1, 2022 letter, "the process with all of the regulators is generally moving along as we expected." Kotick reiterated this statement on November 8.

ANSWER: Denied, except admitted that (1) the documents cited in this paragraph speak for themselves and (2) any deal of this magnitude would involve regulatory review.

503. The Merger Agreement also reflected that Defendants knew antitrust review could tie up Activision for at least eighteen months. The term sheet annexed to the December 20, 2021 exclusivity agreement and Microsoft's initial December 29 draft of the merger agreement provided for a lengthy period of suspended animation for Activision. Section 8.1(c) of the Merger Agreement established an outside termination date of July 18, 2023. Extended "drop-dead" dates reflected the risk of prolonged antitrust review and the potential that antitrust agencies would seek to block a transaction or require a remedy as a condition of clearance. The lengthy Termination Date reinforced that Defendants knew antitrust reviews would be lengthy. In addition, the Proxy disclosed that the target closing date would be sometime during Microsoft's fiscal year 2023 (*i.e.*, between July 1, 2022 and June 30, 2023).

ANSWER: Denied, except admitted that Merger Agreement speaks for itself.

504. Even putting aside the unfairness of the Merger price in light of the antitrust delay, the $95 deal was also unfair because it valued Activision only slightly above the stock's $90.14 trading price on July 26, 2021, the day before the suit by California regulators was disclosed. The month preceding July 27, 2021, Activision stock traded between $90.14 and $95.61. Thus, the Merger price represented little or no premium over the market price of Activision stock prior to the disclosures relating to the Harassment Scandal. Activision's stock price declined significantly several times in the fall of 2021, as news articles and other disclosures concerning the misconduct allegations were made public. Activision's stock price never recovered and did not trade above the mid-sixties from November 16, 2021 through January 14, 2022, the last trading day before the announcement of the Microsoft deal.

ANSWER: Denied, except admitted that Activision stock closed at $90.14 on July 26, 2021. Denied that in the "month preceding July 27, 2021, Activision stock traded

between $90.14 and $95.61"—Activision's stock ranged from $89.56 to $96.15 during that period. Denied that "the Merger price represented little or no premium over the market price of Activision stock"—the Merger price was a massive premium compared to the preceding market price. Denied that "Activision's stock price never recovered and did not trade above the mid-sixties from November 16, 2021 through January 14, 2022"—Activision's stock price reached $72.14 during that period.

505. The unfairness of the Merger price was also shown by the LRP and Allen & Co.'s DCF analysis. As of November 2, 2021, before Microsoft approached Kotick, the LRP estimated an implied value per share of $128 for the Flatout Case and $113 for the Risked Case. In addition, the LRP's sensitivity analysis for 2024 indicated an implied per share valuation range for Activision stock of [redacted] Indeed, the LRP suggested a share buyback because the stock price did not fully reflect Activision's then-current value. Management subsequently depressed the LRPs after Microsoft's approach for the purpose of negotiating the Merger. The Merger price also fell below the midpoint [redacted] of the DCF range of Allen & Co.'s final fairness opinion [redacted] which was based on the depressed LRPs.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves. Plaintiff's characterization of the Long Range Plan is contorted, inaccurate, and incomplete, and therefore denied. Denied that [redacted]

506. The extension of the Merger Agreement beyond the Termination Date invalidated Allen & Co.'s fairness opinion. The opinion was based on the assumption that the Merger would be consummated "without waiver, modification or amendment of any material term, condition or agreement," and that:

> . . . in the course of obtaining the necessary governmental, regulatory . . . approvals . . . no delay, limitation, restriction or condition . . . will be imposed or occur that would have an adverse effect on Activision Blizzard or the Merger.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

507. The unfairness of the Merger price was also reflected by analysts' pre-announcement price targets, several of which were above $95 per share. Moreover, analysts lowered their target prices in response to the Harassment Scandal.

ANSWER: Denied. Mr. Kotick is without knowledge and information sufficient to understand which "analysts" are being referred to in this paragraph, and therefore denies the allegations.

508. The unfairness of the Merger price was also reflected by Activision's post-announcement performance, including its releases of *Overwatch 2*, *COD:MW2* and *Diablo IV*, which indicated that Activision was more valuable as a standalone, independent company. Activision's business plan as of January 18, 2022 included releasing these games, which should therefore be considered when evaluating Activision's standalone value.

ANSWER: Denied.

509. While approving the Merger at an inopportune time and rushing stockholders to vote on the Merger, Kotick and the Director Defendants knew the Merger was not going to close for eighteen-months or longer because of antitrust review. Thus, Kotick and the Director Defendants, imprudently and in violation of their fiduciary duties, approved the highly risky Merger that would leave Activision adrift with Kotick at the helm.

ANSWER: Denied. Mr. Kotick and the Directors always acted reasonably and in

good faith to secure the best possible deal for shareholders. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

510. As a result of Kotick and the Director Defendants' breaches of fiduciary duty, Plaintiff and the Class have suffered substantial harm, as alleged herein, for which there is no adequate remedy at law.

ANSWER: Denied. Mr. Kotick and the Directors always acted reasonably and in good faith to secure the best possible deal for shareholders. Denied that the Plaintiff and Class suffered any harm, much less substantial harm—to the contrary, they received a large windfall based on a deal that delivered a massive premium of over 45%. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

511. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

ANSWER: This paragraph does not warrant a response, but to the extent required, Mr. Kotick incorporates his responses to Plaintiff's other allegations.

512. In determining whether to terminate the Merger Agreement, let it expire or continue it, the Director Defendants, as Activision directors, and Kotick, as an Activision director and officer, owed the Company's public stockholders continuing fiduciary duties of loyalty and care. Kotick and the other Director Defendants also had a fiduciary duty of loyalty and care in determining whether to fix the Merger's statutory defects before the Merger closed.

ANSWER: These allegations constitute legal conclusions that warrant no response,

but to the extent required, they are denied, except admitted that directors in any public company owe fiduciary duties to shareholders.

513. Kotick was conflicted because continuing the Merger Agreement, in effect, continued his compensation and protected his job, reputation, millions of dollars of unvested options and other benefits. The closing of the Merger would entitle him to cash-out his change in control benefits. If the Merger Agreement expired or was terminated, Kotick's fate at Activision was highly uncertain. As the July 18, 2023 Termination Date approached, Activision's employees were still calling for Kotick's ouster. The Specified Litigation arising out of the Harassment Scandal was still pending against Kotick, carrying the risk of potential personal liability and reputational damage. In addition, the Merger would provide him with materially greater indemnification, exculpation, advancement and insurance from lawsuits against him arising out of the Harassment Scandal and the Merger. If the Merger Agreement was terminated or expired, he would lose that enhanced protection. Closing the Merger would eliminate pending and potential derivative suits; if the Merger Agreement expired or was terminated, such suits would continue to be a threat.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, they are denied.

514. Kotick was also conflicted as a result of his relationship with Microsoft. Amidst the Harassment Scandal, Microsoft had swooped in to help Kotick save his reputation, legacy and net worth, and change Activision's narrative from the Harassment Scandal to the Merger. It is reasonable to infer that Kotick felt a sense of owing-ness to Microsoft. He was not going to abandon the Merger and impose huge costs on Microsoft, including the Parent Termination Fee and wasted time, effort and money in pursuing the Merger, particularly the costly and lengthy regulatory review.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions and hypothetical assertions that warrant no response, but to the extent required, the allegations are denied.

515. The Defendants who were directors as the Termination Date approached were also conflicted. Most of the Director Defendants had longstanding, lucrative ties and personal relationships with Kotick, which they prioritized and protected. Further, they also faced potential liability arising from, and were named defendants in lawsuits concerning their involvement in the Harassment Scandal and approval of the Merger, including this Action. As with Kotick, the Merger Agreement provided the Director Defendants materially greater rights to indemnification, advancement, exculpation and insurance if the Merger closed. Termination or expiration of the Merger Agreement would eliminate that increased protection. Closing the Merger would eliminate derivative suits; termination or expiration of the Merger Agreement would not.

ANSWER: Denied, except admitted that (1) some of the Activision Directors were named as defendants in lawsuits based on false allegation; and (2) as an uncontroversial matter of Delaware law, one result of a merger is the extinguishment of derivative claims brought on behalf of the former company. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

516. Because the Merger Agreement would either expire or become terminable on July 18, 2023, the Board was again required to employ a reasonable decision-making process and act reasonably in light of this development. Because the decision to continue the Merger Agreement was not approved by a disinterested and independent majority of the Board, the entire fairness standard applies.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

517. The Activision directors, including Kotick, owed continuing fiduciary duties to Activision's stockholders. When fiduciaries have a means to get out of a deal commitment or get a better deal, they have an obligation to reconsider the transaction, make an informed judgment and act reasonably and in the best interests

of the public stockholders. Kotick and the Director Defendants did not.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

518. As discussed above, the Director Defendants' failure to approve, and submit for stockholders to approve, a Section 251-compliant agreement of merger violated Sections 251(b) and (c). Their decision to continue the invalid Merger Agreement beyond July 18, 2023 and their failure to fix the statutory defects with respect to the Merger Agreement, even after Plaintiff filed and served the Defendants with its Complaint, Amended Complaint, and numerous briefs pointing out the defects, was a deliberate breach of their duty of loyalty, intentional misconduct and a knowing violation of law.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

519. For nearly a year between the filing of its Complaint and the Merger's October 13, 2023 Closing, Plaintiff repeatedly explained to the Director Defendants that the Merger violated Sections 251(b)-(c). Plaintiff insisted that the Director Defendants fix the statutory defects. Plaintiff pointed out that the Director Defendants could fix the statutory defects before by submitting a Section 251-compliant agreement of merger for a vote at the 2023 Annual Meeting. The Director Defendants were served with Plaintiff's pleadings. They signed the 2022 Annual

Report that identified this Action, and explained that Plaintiff alleged the Board did not comply with Section 251.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied, except admitted that: (1) the Plaintiff made false allegations of purported legal defects (which allegations are denied); (2) Plaintiff served pleadings; (3) the documents cited in this paragraph speak for themselves. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

520. While Defendants have contended that, under Section 8.1(c), the Merger Agreement would not automatically expire at 11:59 p.m. Pacific Time on July 18, 2023, the July 17, 2023 Minutes acknowledge that was the "drop dead date" provided in the Merger Agreement [redacted]The Board intentionally allowed continuation of an invalid Merger Agreement when they were on notice that it was in violation of Delaware law.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied, except admitted that (1) the documents cited in this paragraph speak for themselves and (2) the Merger Agreement would not have automatically expired on July 18, 2023. Plaintiff's characterization of the Merger Agreement is denied as inaccurate, misleading, and incomplete. The allegations in this paragraph contain legal conclusions that warrant

no response, but to the extent required, the allegations are denied.

521. The Director Defendants deliberately and intentionally left the invalid Merger Agreement in place without fixing the statutory defects. This was an intentional violation of the law, deliberate misconduct, and a breach of their duty of loyalty.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

522. Activision's public filings and public statements and the July 17, 2023 Minutes (defined and discussed below) [redacted]. The Board's failure to remedy the statutory defects indicates an unreasonable process. It is reasonably conceivable that the process was not reasonable.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

523. Terminating the Merger Agreement meant that (i) Kotick would have to face employees calling for his resignation, as well as lawsuits, and (ii) Kotick and the Director Defendants would forfeit the super-exculpation, indemnification, advancement and insurance protections of the Merger Agreement.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions and speculative assertions that warrant no response, but to the extent required, the allegations are denied.

524. Kotick had publicly expressed that he was "only" focused on pushing the Merger through. Kotick committed to do all he personally could to advocate for the Merger.

ANSWER: Denied that Mr. Kotick was "only" focused on the Merger—he was the CEO of a multi-billion dollar business that released numerous successful video games during the Merger period, and he consistently fulfilled all of his responsibilities. Mr. Kotick was fully devoted and focused on doing everything in his power to help the company succeed and advance the interests of shareholders.

525. The timing for continuing the Merger Agreement in July 2023 was terrible for Activision's public stockholders. The Harassment Scandal had been mitigated. Activision's performance in all segments was exceptional, and the Company was planning on releasing more new games. Activision had proven itself to be one of the strongest companies in the industry. The regulatory fate of the Merger was still uncertain.

ANSWER: Denied, except admitted that (1) Activision's financial performance in 2023 speaks for itself and (2) regulatory proceedings always involve uncertainty.

526. Activision and the Director Defendants have not disclosed any direct information concerning the negotiation of the Letter Agreement. The terms of the Letter Agreement suggest Activision did not seek the best terms available. Most importantly, the $95 Merger consideration remained the same, though eighteen months had passed and the Letter Agreement provided that the Merger Agreement would be left in place for three more months.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

527. Activision's public statements, filings and July 17, 2023 Minutes do not indicate that the Board had any role in the negotiation of the Letter Agreement. The Letter Agreement, 8-K announcing it and July 17, 2023 Minutes make no mention of the Activision Board negotiating the Letter Agreement. The July 17, 2023 Minutes reflect [redacted] The Letter Agreement was signed by Kotick as CEO and represented only that it was "duly executed and delivered by duly authorized officers." Only Kotick and Meservey made a public statement about the Letter Agreement. It is reasonably conceivable and a fair inference that Kotick controlled the negotiation of the Letter Agreement.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves. The allegations in this paragraph contain speculative assertions that warrant no response, but to the extent required, the allegations are denied.

528. The July 17, 2023 Minutes [redacted] The July 17, 2023 Minutes [redacted]

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

529. During this Action, Activision and the Director Defendants sent a July 19, 2023 letter to the Court providing an update on the Letter Agreement. Defendants' update did not state that the Board approved the Letter Agreement. Plaintiff asked Defendants in written correspondence dated July 31, 2023 (the "July 31 Letter") whether the Board approved the Letter Agreement, given the absence of any such evidence in the Letter Agreement, public filings, public statements and the July 19 Update. After an August 9 phone conversation among counsel for Plaintiff and Defendants, counsel for Activision and the Director Defendants sent Plaintiff written correspondence on August 15 directing Plaintiff to rely on Activision's "public filings and public statements."

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

530. Of course, the stockholders were not consulted or permitted to vote on the Letter Agreement, though Activision held a stockholders' meeting just a few weeks before. Disclosure was limited to filing the Letter Agreement as an exhibit to the 8-K summarizing its terms.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

531. The Letter Agreement was unfair to the Activision stockholders as of July 18, 2023 because it did not provide Activision's public stockholders with increased Merger consideration compensating them for the increased value of their shares. Activision's performance subsequent to January 18, 2022 demonstrated that the $95 Merger price was unfair as of July 18, 2023. By that time, the Harassment Scandal had abated. Activision had announced three consecutive quarters of record-breaking financial performance and blockbuster new games. Activision had proven that its risks were in governance and leadership, and not its organic business or industry position. Analysts recognized Activision's strong performance, including Wells Fargo's recognition that Activision was firing on all cylinders. Activision was in a much better position on July 18, 2023, than on January 18, 2022 when Activision executed the Merger Agreement.

ANSWER: Denied, except admitted that Activision released games in 2023 and

analysts covered Activision's financial performance. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

532. The lack of increased Merger consideration in the Letter Agreement was also unfair because extending the Merger Agreement beyond the Termination Date resulted in further reduction of the value of the already unfair Merger consideration. The $95 per share Merger consideration would be worth less in October 2023 than it was on July 18, 2023. Any increase in Activision's value during that period would accrue to the benefit of Microsoft, not the Activision stockholders.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions and speculative assertions that warrant no response, but to the extent required, the allegations are denied.

533. The Letter Agreement was unfair because extending the Termination Date subjected Activision and its stockholders to the continuation of the stringent restrictions of the Merger Agreement beyond July 18, 2023, including Sections 5.1, 5.2 and 5.3 of the Merger Agreement.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

534. The Letter Agreement was also unfair because it extended Section 9.6 of the Merger Agreement, which provided that Activision's stockholders had no rights or remedies under the Merger Agreement. Thus, as a result of the Letter Agreement, Activision's former stockholders were subject to the restrictions of the Merger Agreement for an extended period of time while having no rights under that agreement. The Letter Agreement was also unfair because its provision allowing Activision "to declare and pay one regular cash dividend" up to $0.99 was used to declare and pay an unlawful dividend on treasury shares totaling $424 million.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that

warrant no response, but to the extent required, the allegations are denied.

535. As a result of Kotick and the Director Defendants' breaches of fiduciary duty, Plaintiff and the Class have suffered substantial harm, as alleged herein, for which there is no adequate remedy at law.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied. Denied that the Plaintiff and Class suffered any harm, much less substantial harm—to the contrary, they received a large windfall based on a deal that delivered a massive premium of over 45%.

536. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

ANSWER: This paragraph does not warrant a response, but to the extent required, Mr. Kotick incorporates his responses to Plaintiff's other allegations.

537. As alleged above, Kotick and the other Director Defendants owed and breached fiduciary duties of loyalty and care.

ANSWER: Denied, except admitted that directors of any public company owe fiduciary duties to shareholders. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

538. Microsoft contributed to the conflicts Kotick and the Director Defendants faced in determining to pursue a sale of Activision and on what terms. Microsoft had reason to know that Kotick was pursuing a sale of Activision for his

own self-interest. Microsoft was aware of Kotick's desire to remain CEO, despite the Harassment Scandal and demands by employees and stockholders for his ouster. Activision's stock price was depressed by the Harassment Scandal. Microsoft leveraged Kotick's self-interest and Activision's impaired stock price for its benefit. It publicly stated that Microsoft was reevaluating its relationship with Activision in light of the Harassment Scandal, knowing that Kotick would be more likely to agree to a sale when facing a threat that Activision might lose a major customer and business partner. Predictably, Microsoft's threat prompted a discussion between Kotick and Spencer where they discussed a possible sale of Activision to Microsoft—an overture Spencer had already been authorized to make by Microsoft's CEO. Microsoft used its commercial leverage over Activision to offer Kotick a way to save his own skin in return for his support of the Merger at the expense of Activision's former public stockholders. Microsoft dictated a rapid pace for negotiations and demanded an Exclusivity Agreement in order to maximize the pressure on Kotick and the Board and prevent competition.

ANSWER: The allegations in this paragraph relate to claims that the Court dismissed in the Memorandum Opinion and no response is required. To the extent a response is required, the allegations are denied. Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in Count V against Microsoft.

539. Having brandished its commercial stick at Kotick, Microsoft offered him a bunch of carrots: the ability to stay on as CEO during the lengthy pendency of the Merger and as an initial officer in the post-Merger entity, acceptance of his change in control financial benefits that eliminated the risks he would be fired for Cause, and improved compensation terms.

ANSWER: Denied. Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in Count V against Microsoft.

540. Microsoft conducted due diligence on the Harassment Scandal and discussed it with Activision management. Microsoft took advantage of the Director Defendants' potential liability in pending lawsuits and investigations triggered by the Harassment Scandal by offering very broad and supplemental indemnification,

exculpation, advancement and insurance rights for the Director Defendants. Microsoft conspired with Kotick and the Director Defendants to help them evade the personal and professional consequences of the Harassment Scandal through their negotiation and approval of an ill-timed, unfair Merger, which would extinguish derivative claims against Kotick and the other Director Defendants.

ANSWER: Denied, except admitted that Microsoft conducted due diligence into the merger. Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in Count V against Microsoft.

541. Kotick and the Director Defendants broadcast to Microsoft, through a series of signals, their desire to secure protections through the Merger and the Merger Agreement, at the expense of seeking the best transaction reasonably available for Activision's former public stockholders.

ANSWER: Denied. Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in Count V against Microsoft.

542. Microsoft conspired with Kotick and the Director Defendants to engage in rushed negotiations during a temporary crisis to effectively preclude a fair sale process. The $70 billion sale to Microsoft, including due diligence, was orchestrated in less than two months, on the heels of *Kotick Knew*, when Activision's stock price was depressed, and over the Thanksgiving, Christmas and New Year holidays. Microsoft negotiated with Kotick and Kelly for two weeks without Activision Board authorization, and, within ten days, had agreed with Kotick on a $90-105 price range, four days before the Board even met. Rather than negotiate with the Board, Microsoft continued holding discussions with Kotick, including further price negotiations. Microsoft and Kotick agreed on a $95 per share Merger price that Microsoft knew was below the range of values reflected in Activision's Prior LRP; and a thirty-day Exclusivity Agreement that prevented Activision from engaging with other potential bidders. In mid-January 2022, Microsoft, Kotick and the Director Defendants rushed to finalize and announce the deal before the Merger Agreement was completed because the Exclusivity Agreement was about to expire. Microsoft knew this rushed process tilted Activision's sale in Microsoft's favor by (i) blocking Activision's ability to explore its strategic alternatives and engage with

other bidders and (ii) locking up a deal long before the Harassment Scandal abated.

ANSWER: Denied, except admitted that (1) the parties negotiated the transaction during the time period referenced in the Proxy Statement; (2) the parties entered into an exclusivity agreement, and (3) that the Merger Agreement was executed on January 18, 2022. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied. Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in Count V against Microsoft.

543. The Director Defendants also broadcast to Microsoft that they were not providing any meaningful oversight of Kotick. As the Proxy and the minutes make clear, Kotick almost exclusively handled Activision's negotiations with Microsoft, which knew that Kotick had powerful incentives to sell the Company to protect himself. Given the repeated sequence where Kotick would have contact with potential bidders, promptly speak to Microsoft and then Microsoft would push for exclusivity, it is a fair inference that Microsoft conspired with Kotick to impede and eliminate competition.

ANSWER: Denied, except admitted that Mr. Kotick participated in negotiations with Microsoft as disclosed in the Proxy Statement, which speaks for itself. The allegations in this paragraph contain legal conclusions and speculative inferences that warrant no response, but to the extent required, the allegations are denied. Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in Count V against Microsoft.

544. Microsoft knew the Merger did not result from a fair process because,

with its ally Kotick, it largely controlled that process. Microsoft set the rushed timing of the sale process, and orchestrated that process with a conflicted CEO who had powerful financial incentives to sell the Company to Microsoft. Microsoft deliberately did not interact with the Activision Board, which Microsoft recognized had improperly deferred to a conflicted CEO pursuing selfish desires to pursue the Merger and gain the protections of the Merger Agreement.

ANSWER: Denied. Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in Count V against Microsoft.

545. Microsoft knew the Merger's antitrust risks and did not expect to obtain antitrust approval until the end of its 2023 fiscal year. Microsoft, however, agreed with Kotick and the Director Defendants to hold the Special Meeting as soon as possible in the spring of 2022. Doing so aligned with (i) Microsoft's interests, as it wanted rapid stockholder approval to lock-up the deal and (ii) the Director Defendants' conflicts, because quick stockholder approval of the Merger Agreement would cloak Kotick and the Director Defendants with its protections. Microsoft extracted and agreed to contractual terms under the Merger Agreement that required Activision to rush the Special Meeting. Section 6.3 of the Merger Agreement required Activision to file a preliminary proxy within twenty business days of the Merger Agreement's execution and issue the Proxy promptly after the SEC approved the preliminary proxy. Section 6.4(a) required Activision to hold the Special Meeting within twenty business days of issuing the Proxy.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself. Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in Count V against Microsoft.

546. Microsoft collaborated with Kotick and the other Director Defendants to provide Activision's former public stockholders a misleading and incomplete Proxy, which pretended the Harassment Scandal was not a factor in the Merger and deliberately understated the antitrust risk. Microsoft knew that the Harassment Scandal had a significant role in the initiation and development of the Merger and the negotiation of the agreement of merger. Microsoft knew the "premium" disclosures were misleading partial disclosure without information on the effects of

the Harassment Scandal on the market price of Activision's stock. It also knew that the Proxy failed to completely and accurately describe important terms and qualifications of the CDL. It knew the CDL and Survivor's Certificate were not provided to Activision's former public stockholders, though the plain statutory language of Section 251—which Microsoft, as a party to the Merger Agreement, had read—required the submission of a complete agreement of merger at the Special Meeting. Indeed, the Merger Agreement itself said the CDL was part of the agreement and that the Survivor's Certificate was Exhibit A to the agreement. The Proxy contained no description of the CDL or the Survivor's Certificate. The Proxy's description of Microsoft's agreement on Kotick's compensation was also misleading and incomplete.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself.

Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in

Count V against Microsoft.

547. Microsoft exercised its right under Section 6.3 of the Merger Agreement to review and comment on the preliminary proxy statement, the Proxy and Supplemental Disclosure. Microsoft was obligated under Section 6.3(e)(ii) of the Merger Agreement to supply information for inclusion in the Proxy that was required to be disclosed in order to make the statements therein not misleading. However, it did not correct disclosures that it knew were misleading or incomplete. In addition, Microsoft did not exercise its right under Section 6.3 of the Merger Agreement to submit a copy of a Section 251-compliant agreement of merger to Activision's stockholders.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself.

Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in

Count V against Microsoft.

548. Microsoft acquired Activision for an unfair price that it negotiated twenty-one months before the Merger closed, when it knew from the outset that the Merger would face protracted antitrust review. The two automatic extensions for delayed regulatory clearance document that knowledge. To ensure that it would get

the benefit of the delay and improved performance by Activision, Microsoft agreed with Kotick and the Board that there would be no adjustment to the Merger consideration.

ANSWER: Denied. Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in Count V against Microsoft.

549. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

ANSWER: This paragraph does not warrant a response, but to the extent required, Mr. Kotick incorporates his responses to Plaintiff's other allegations.

550. As alleged above, Kotick and the other Director Defendants owed and breached continuing fiduciary duties of loyalty and care.

ANSWER: Denied, except admitted that directors in any public company owe fiduciary duties to shareholders. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

551. Microsoft knew that Kotick was still conflicted with respect to the Merger and the Merger Agreement as the July 18, 2023 Termination Date approached. *Esquire* published an article in June 2023, in which Blizzard employees confirmed they were still seeking Kotick's resignation. Kotick was publicly pronouncing his commitment to the Merger. If the Merger Agreement was terminated and Activision remained an independent entity, Kotick's future with the Company was uncertain.

ANSWER: Denied, except admitted that (1) an *Esquire* article discussing Mr. Kotick was published in June 2023 and (2) Mr. Kotick made public statements

expressing his commitment to pursuing the transaction with Microsoft given the tremendous result that the Merger would deliver to shareholders. Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in Count VI against Microsoft.

552. Microsoft knew that eight of the nine Director Defendants, including Kotick, continued to face potential liability in connection with pending Specified Litigation arising from the Harassment Scandal and the Merger. The Merger, however, would provide them with greater rights to exculpation, indemnification, advancement and insurance protections under the Merger Agreement. The Merger would also extinguish still-pending derivative claims against them. These conflicts were exacerbated by the Merger Agreement's requirement that Microsoft approve settlements, releases, waivers or remedies in Specified Litigation. These factors undermined Activision's ability to negotiate with Microsoft at arm's-length.

ANSWER: Denied, except admitted that, as an uncontroversial matter of Delaware law, one result of a merger is the extinguishment of derivative claims brought on behalf of the former company. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied. Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in Count VI against Microsoft.

553. Like Kotick and the Director Defendants, Microsoft has known since Plaintiff filed its Complaint that the Merger Agreement and the approval of the Merger and the Merger Agreement by Activision's Board and former stockholders did not comply with Section 251. Plaintiff served the Microsoft Defendants with all of its pleadings and filings in this Action. Microsoft read the plain statutory language of Section 251. It is reasonably conceivable and a fair inference that Microsoft (i) agreed with Activision, Kotick and the Director Defendants that they would refuse to fix the statutory defects in the Merger Agreement and approval process; and (ii)

worked with and conspired with Activision, Kotick and the Director Defendants to close the Merger, despite the statutory defects. To obtain its objective of acquiring Activision, Microsoft conspired in a knowing violation of law, intentional misconduct and a breach of loyalty by Kotick and the other Director Defendants.

ANSWER: Denied, except admitted that Plaintiff served pleadings in this Action. The allegations in this paragraph contain legal conclusions and speculative inferences that warrant no response, but to the extent required, the allegations are denied. Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in Count VI against Microsoft.

554. Section 6.13(b) of the Merger Agreement required Microsoft to consent in writing to any compromise, settlement or arrangement regarding Transaction Litigation, which includes this Action. Fixing the statutory defects would have compromised Plaintiff's claims, requiring Microsoft's written consent. Section 6.13(b) of the Merger Agreement also required Activision to "consult with [Microsoft] with respect to the defense, settlement and prosecution of any Transaction Litigation and [] consider in good faith [Microsoft's] advice with respect to such Transaction Litigation." It is reasonably conceivable and a fair inference that Microsoft did not advise Activision, Kotick or the Director Defendants to fix the Merger's statutory defects before closing the Merger. In addition, Microsoft joined in the efforts of Activision, Kotick and the Director Defendants to (i) stay this Action indefinitely and (ii) delay the disposition of Plaintiff's statutory claims until after the Merger closed.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself. The allegations in this paragraph contain legal conclusions and speculative inferences that warrant no response, but to the extent required, the allegations are denied. Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in Count VI against Microsoft.

555. Microsoft knowingly exploited Kotick and the Director Defendants' conflicts when it continued in pursuit of the Merger after the July 18, 2023 Termination Date. Microsoft knew that Activision would have the opportunity to walk away from the Merger on the July 18, 2023 Termination Date because conditions to closing would not be met. The Merger Agreement would either expire automatically, as Microsoft contended in federal court; or, alternatively, Activision could exercise its termination rights under Section 8.1(c) of the Merger Agreement, as Microsoft admitted in pleadings in this Action. As discussed above, there is no indication from Activision's public statements or public filings that the Board employed a reasonable process in determining to continue the Merger Agreement beyond the Termination Date. Instead, the public record is full of Kotick's statements that he was focused on persisting in pursuit of the Merger. The July 17, 2023 Minutes do not indicate that any of the Director Defendants, other than Kotick, were involved in discussions with Microsoft. It is therefore reasonably conceivable that the Board did not employ a reasonable process in agreeing to continue the invalid Merger Agreement. Microsoft would be acutely aware of Activision's process to the continuation of the Merger Agreement. Microsoft also had access to Activision's books and records under Section 6.6 of the Merger Agreement.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves. The allegations in this paragraph contain legal conclusions and speculative inferences that warrant no response, but to the extent required, the allegations are denied. Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in Count VI against Microsoft.

556. Microsoft knew that Activision's circumstances had improved considerably since the Merger Agreement's execution. Microsoft knew Activision had [redacted] The Board's decision to continue the Merger Agreement without employing a reasonable process demonstrated to Microsoft that Kotick and the Director Defendants were committed to protecting themselves, instead of securing a value-maximizing transaction.

ANSWER: Denied, except admitted that the Merger Agreement and fairness

opinion speak for themselves. The allegations in this paragraph contain legal conclusions and speculative inferences that warrant no response, but to the extent required, the allegations are denied. Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in Count VI against Microsoft.

557. Microsoft exploited Kotick's continued self-interest in securing the protections of the Merger Agreement. Microsoft extracted Kotick's execution of the Letter Agreement (i) before the Termination Date, (ii) without any amendment or waiver of the No Solicitation forbearance covenant of the Merger Agreement, (iii) without paying the $3 billion termination fee, (iv) without providing Activision's former public stockholders with an increase in the Merger consideration (v) with terms that made it easier for Microsoft to close the Merger and (vi) effectively paid Microsoft a $424 million dividend.

ANSWER: Denied. Mr. Kotick notes that the Court dismissed the aiding and abetting claims asserted in Count VI against Microsoft.

558. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

ANSWER: This paragraph does not warrant a response, but to the extent required, Mr. Kotick incorporates his responses to Plaintiff's other allegations.

559. On October 11, 2013, Activision acquired Vivendi S.A.'s Amber Holding Subsidiary Co. ("Amber"), which held 428,676,471 shares of Activision common stock. These Activision shares were recorded and consistently reflected in Activision's SEC filings for the next ten years as treasury stock. [redacted]

ANSWER: Denied, except admitted that Activision acquired Amber and [redacted]

560. In Section 3.7(a) of the Merger Agreement, Activision represented and warranted that "779,057,360 shares of Company Common Stock were issued and outstanding (for the avoidance of doubt, excluding shares held in treasury)" and that "428,676,471 shares of Company Common Stock were held by the Company as treasury shares." Thus, the Merger Agreement confirmed that the Activision shares held by Amber were treasury shares, not outstanding shares.

ANSWER: Denied, except admitted that the Merger Agreement speaks for itself.

561. Activision generates substantial amounts of cash. For example, from December 31, 2019 to December 31, 2021, just before the signing of the Merger Agreement, Activision's cash position increased from $5.794 billion to $10.423 billion. Activision continued to accumulate cash during the pendency of the Merger Agreement. In the third quarter of 2022, Activision began putting billions of dollars of cash into "Held-to-Maturity Investments." Essentially, Activision was parking cash in short-term government securities and money market accounts. By June 30, 2023, Activision's cash position had swelled to over $13.084 billion.

ANSWER: Denied, except admitted that (1) Activision generates substantial revenues and (2) Activision's cash positions and investments are reflected in public SEC filings, which speak for themselves.

562. Because of Activision's huge cash position and continuing ability to generate cash, Activision's ability to pay cash dividends while the Merger Agreement was pending was an important financial term. Because of the improper delegation of the resolution and approval of the dividend issue to an *ad hoc* committee, which improperly let Kotick negotiate the resolution, Activision was only permitted to pay one $0.47 per share 2022 annual dividend on its outstanding shares, a total of $366 million. After subtracting the $366 million dividend, Activision accumulated $2.661 billion in additional cash between December 31, 2021 and June 30, 2023. So, in the 18 months before the July 18, 2023 Termination Date, Activision only paid out in dividends to its stockholders approximately $366 million of the approximately $3.027 billion in additional cash it generated (about 12%).

ANSWER: Denied, except admitted that Activision paid a $0.47 per share dividend

for 2022.

563. On May 2, 2024, Microsoft and Activision filed a Verified Application of Microsoft Corporation and Activision Blizzard, Inc. for Relief Under 8 *Del C.* § 205 (the "Application"). Among the many exhibits to the Application was Exhibit P, July 17, 2023 Activision Board minutes adopting resolutions (the "July 17, 2023 Minutes"). Application ¶ 48 n.7.

ANSWER: Admitted that the documents cited in this paragraph speak for themselves. Plaintiff's characterization of the events discussed in footnote 360 is denied.

564. The July 17, 2023 Minutes state that the Activision Board approved the July 18, 2023 Letter Agreement modifying the Merger Agreement. The Letter Agreement provided that Activision could pay "one regular cash dividend for fiscal year 2023" in an amount per share not in excess of $0.99 (the "2023 Dividend").

ANSWER: Admitted that the documents cited in this paragraph speak for themselves.

565. [redacted]

inte

ANSWER: Admitted that the

[redacted]

566. [redacted] Thus, the Activision directors knew they were approving a cash dividend on Activision shares held by a wholly-owned subsidiary (i.e., treasury shares). Activision acknowledged again in its Form 10-Q for the period ended June 30, 2023, filed July 21, 2023 (the "Q2-2023 10-Q") that the Activision shares held by Amber are "Treasury Stock."

ANSWER: Denied, except admitted that Amber is "a wholly owned subsidiary" of Activision. The allegations in this paragraph contain speculative inferences that warrant no response, but to the extent required, the allegations are denied. Denied that Activision filed a 10-Q on July 21, 2023—a 10-Q was filed on July 31, 2023.

567. The portion of the 2023 Dividend paid to stockholders of outstanding shares totaled approximately [redacted] The total dividend declared and paid was approximately $1.2 billion, which would be about $1.52 per outstanding share. However, the dividend of $0.99 per share on the 428,676,471 Activision shares held by Amber totaled $424,389,684. In effect, Activision paid a $424 million dividend to Amber instead of the Activision stockholders. [redacted]

ANSWER: Denied, except admitted that Activision declared a $0.99 per share dividend to Activision common stockholders, including Amber.

568. It is more than a fair inference and reasonably conceivable that the Activision directors knew the difference between outstanding shares and treasury shares. Mr. Kotick was CEO of Activision for many years. It is certainly a reasonable inference that he knew the difference between outstanding shares and treasury shares. Many of Activision's directors had served on the Board for many years: Bowers (5), Carr (1), Corti (20), Kelly (22), Kotick (32), Meyer (9), Morgado (25), Nolan (10), and Ostroff (3). Activision's annual proxies touted the business positions, business experience and sophistication of its directors. Form 10-Ks they signed and Proxy Statements they issued referred to the Activision shares held by Amber as treasury shares and the shares held by stockholders as outstanding shares. It is a fair inference and certainly reasonably conceivable that Kotick and the other Activision Defendants knew the difference between outstanding shares and treasury shares. If not, they would not belong on the board of a major public corporation.

ANSWER: Denied, except admitted that Mr. Kotick and other Activision Directors served on the Board for years. The allegations in this paragraph contain speculative inferences that warrant no response, but to the extent required, the allegations are denied. Mr. Kotick further states that the Amber shares constituted "hook stock" (because it was common stock held by a wholly owned subsidiary).

569. Most of the Activision Directors had been on the Board for many years and had approved and declared many regular cash dividends on the outstanding shares of Activision [redacted] It is reasonably conceivable and a fair inference that these directors knew that cash dividends cannot be paid on treasury shares and that the 2023 Dividend should only go to holders of outstanding shares.

ANSWER: Denied, except admitted that Mr. Kotick and other Activision Directors served on the Board for years, during which time they declared cash dividends. The allegations in this paragraph contain speculative inferences that warrant no response, but to the extent required, the allegations are denied.

570. The Letter Agreement Activision filed with its July 18, 2023 8-K ("8-K-LA") stated that the Letter Agreement permitted Activision to pay "one regular cash dividend for fiscal year 2023 on Company Common Stock in an amount per share of Company Common Stock not in excess of $0.99." Section 2(f) of the Letter Agreement contained this same description of the 2023 Dividend. Neither indicated a dividend would be paid on the treasury shares held by Amber.

ANSWER: Denied, except admitted that the Letter Agreement speaks for itself.

571. Activision filed a second 8-K on July 19, 2023 announcing its financial results for the second quarter of 2023 (the "8K-FR"). The 8-K stated that:

> On July 18, 2023, the Company's Board of Directors declared a cash dividend of $0.99 per share of the Company's outstanding common stock, payable on August 17, 2023, to shareholders of record at the close of business on August 2, 2023.

The press release accompanying the 8K-FR repeated:

> Also on July 18, 2023, the Company's Board of Director declared a cash dividend of $0.99 per share of the Company's outstanding common stock, payable on August 17, 2023 to stockholders of record at the close of business on August 2, 2023 from cash on hand.

ANSWER: Admitted that the documents cited in this paragraph speak for themselves.

572. The press release quoted Kotick, so, presumably, he was aware of its contents. Thus, the 8K-FR and accompanying press release represented that the dividend was on outstanding stock, [redacted]

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

573. The Q2-2023 10Q at page 30 represented that:

> On July 18, 2023, our Board of Directors declared a cash dividend of $0.99 per share of our outstanding common stock, payable on August 17, 2023, to shareholders of record at the close of business on August 2, 2023.

Again, the Activision Board represented that the 2023 Dividend was only on outstanding shares.

ANSWER: Denied, except admitted that the 10-Q speaks for itself.

574. The version of the Letter Agreement filed with the 8K-LA did not contain Annex A, which included:



It is reasonably conceivable and a fair inference that Microsoft was well along in its negotiations with the UK antitrust regulators and strongly believed that [redacted] Thus, the $424 million dividend on the Activision shares held by Amber was effectively a $424 million dividend to Microsoft which, following the Merger, would own the Activision shares held by Amber and the cash put into Amber by the 2023 Dividend.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves. The allegations in this paragraph contain speculative inferences that warrant no response, but to the extent required, the allegations are denied.

575. [redacted]

[redacted]

[redacted]

ANSWER: Admitted that [redacted]

576. [redacted] $424 million was paid to Amber on the treasury shares and, [redacted]

ANSWER: Denied, except admitted that [redacted]

577. On October 13, 2023, Activision filed an 8-K announcing the closing of the Merger and confirming that while other treasury shares were cancelled in the Merger, the shares held by "a wholly owned subsidiary of the Company" (i.e., Amber) "remained outstanding and unaffected by the Merger." Thus, the Activision shares held by Amber and, consequently, Amber's assets, including the $424 million in cash paid on the treasury shares, [redacted]

ANSWER: Denied, except admitted that the 8-K speaks for itself.

578. As this TAC details, Activision consummated the Merger by filing a false Merger Certificate and a false Survivor's Certificate with the Delaware Secretary of State. A key difference between the Survivor's Certificate that was part of the Merger Agreement and the Survivor's Certificate Activision filed is that Activision's post-merger authorized Common Stock is increased from 100 shares to 1.2 billion shares. The increase in authorized shares [redacted] However, the change in the Survivor's Certificate represented a change in an agreement of merger term required by Section 251(b)(3), which was not approved by the Activision Board or the stockholders.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves.

579. Under Delaware law, the Activision treasury shares held by Amber are "issued" but not "outstanding." Treasury stock represents no effective obligation against the corporation and is not outstanding stock.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

580. The 2023 Dividend was a cash dividend. A cash dividend is a corporate distribution of cash assets to stockholders from the profits or surplus assets of the corporation. A cash dividend reduces the net assets of the corporation, transfers that amount of cash to its stockholders, severs a portion of the corporation's profits from the company and provides a current cash return on the stockholders' investment. A cash dividend must be paid equally on each share of outstanding stock.

ANSWER: Denied, except admitted that the 2023 Dividend was a cash dividend. Plaintiff's characterizations of the finances of cash dividends, including the inaccurate characterization that cash dividends "sever[]" profits, is denied.

581. The purpose and nature of cash dividends require that such dividends are only paid on outstanding shares. Dividends must be paid equally on each share of outstanding stock and cannot be declared and paid on treasury shares.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

582. Under 8 *Del. C.* § 170(a), the Activision directors were authorized to declare and pay dividends upon shares of Activision's capital stock, subject to any restrictions in Activision's certificate of incorporation. The first sentence of 8 *Del. C.* § 173 provides:

> No corporation shall pay dividends except in accordance with this chapter.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

583. Delaware law reads the word "dividend" to mean a validly declared dividend. Sections 170 and 173 did not authorize Activision's directors to pay an unlawful dividend on treasury shares.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

584. Section 4.3(a) of Activision's certificate of incorporation provided that:

> Holders of Common Stock will be entitled to receive such

dividends as may be declared by the Board of Directors.

Section 5.2(a) provides that the Board shall have the power "to fix the terms for the declaration and payment of dividends." Under Delaware law, when dividends are mentioned in the certificate, the word refers to dividends allowed and permitted by the law. The certificate did not authorize the Activision Board to pay an unlawful dividend on treasury shares.

ANSWER: Denied, except admitted that the Certificate of Incorporation speaks for itself (although denied that Plaintiff has correctly quoted section 5.2(a), which reads in relevant part: "to fix the times for the declaration and payment of dividends"). The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

585. The Activision Board lacked the corporate power under Sections 170, 173 and 174 and Activision's certificate to declare a dividend on the Activision treasury shares held by Amber and Activision had no corporate power to pay such a dividend. By declaring and paying an unlawful dividend on treasury shares, Activision and its directors violated Sections 170 and 173 and Activision's certificate. At the time of the unlawful dividend, Plaintiff and the Class had a claim for conversion of their shares resulting from the invalid dividend restriction contained in the invalid Merger Agreement and were therefore creditors of Activision.

ANSWER: Denied, except admitted that the Plaintiff has asserted a claim for conversion. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied

586. Given the pendency of the Merger, the improper dividend was for the benefit of Microsoft. The $424 million dividend on the treasury stock was paid from cash Activision had accumulated during the pendency of the Merger and should have been distributed to the Activision stockholders, whose dividend rights had been

impaired by the dividend term of the Merger Agreement improperly negotiated by Kotick after the Board's improper delegation of the dividend term to the *ad hoc* committee. It is a fair inference and reasonably conceivable that Microsoft extracted the unlawful dividend at least partly in exchange for partially releasing the invalid restriction on dividends in the invalid Merger Agreement.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions and speculative inferences that warrant no response, but to the extent required, the allegations are denied.

587. Defendants violated Delaware law by declaring, paying and receiving the proceeds of an unlawful dividend on treasury shares. Plaintiff and the Class were harmed because money available for dividends on outstanding shares was unlawfully diverted to payment of a dividend on the treasury shares.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

588. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

ANSWER: This paragraph does not warrant a response, but to the extent required, Mr. Kotick incorporates his responses to Plaintiff's other allegations.

589. The Activision Board approved the unlawful dividend on treasury shares and appointed the same *ad hoc* committee of Kotick's cronies (Corti, Kelly and Morgado) as had approved the invalid dividend restriction in the invalid Merger Agreement to declare the dividend and fix the record and payment dates. [redacted]

ANSWER: Denied, except admitted that: (1) the Board authorized a cash dividend

to be distributed to the holders of shares of Activision common stock; (2) the Board authorized an *ad hoc* committee comprised of Messrs. Corti, Kelly, and Morgado to declare a cash dividend to be payable on a date determined by the *ad hoc* committee on issued and outstanding shares as of a record date determined by the *ad hoc* committee; and (3) the July 17, 2023 Board Resolutions speak for themselves. The allegations in this paragraph contain legal conclusions that warrant no response, but to the extent required, the allegations are denied.

590. It is reasonably conceivable and a fair inference that the Director Defendants knew it was highly irregular to pay a dividend on treasury shares and dividends should only be declared on outstanding shares. Indeed, the Resolutions they approved authorized a dividend on the "issued and outstanding shares of common stock." The directors had issued numerous proxy statements and signed 10-Ks indicating that only shares held by stockholders were outstanding shares and treasury shares were not outstanding.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions and speculative inferences that warrant no response, but to the extent required, the allegations are denied.

591. The Draft Merger Agreement the Board purportedly approved, as well as the Merger Agreement, [redacted] "428,676,741 shares of Company Common Stock were held by the Company as treasury shares." Therefore, it is reasonably conceivable and a fair inference that the directors knew that treasury shares were not issued and outstanding shares. [redacted] It is reasonably conceivable and a fair inference that the Director

Defendants' improper and unlawful decision to redefine treasury shares as outstanding shares and approve a dividend on those shares was a bad faith breach of their duty of loyalty, intentional misconduct and a knowing violation of law.

ANSWER: Denied, except admitted that the documents cited in this paragraph speak for themselves. Denied that "428,676,741" shares of Company Common Stock were held by the Company as treasury shares.

592. The 2023 Dividend was the product of the modification of the invalid dividend restriction in the invalid Merger Agreement by the Letter Agreement, which also extended the Termination Date of the Merger Agreement and delayed payment of the Merger consideration for another three months. The 2023 Dividend was intended to mollify the stockholders. The Director Defendants committed a deliberate breach of loyalty by knowingly disseminating materially false information about the 2023 Dividend to the Activision stockholders while the Merger, a transaction for the purchase of their shares, was still pending.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions and speculative inferences that warrant no response, but to the extent required, the allegations are denied.

593. A reasonable stockholder would consider it material to know that Activision was paying a $424 million dividend on treasury shares [redacted] A reasonable stockholder could conclude that the $424 million dividend [redacted]

ANSWER: Denied. The allegations in this paragraph contain legal conclusions and speculative inferences that warrant no response, but to the extent required, the allegations are denied.

594. The Director Defendants not only failed to disclose the large dividend on the treasury shares, they deliberately misrepresented the nature of the 2023 Dividend. They repeatedly told the stockholders the 2023 Dividend was a $0.99

dividend on Activision's "outstanding" shares. Consequently, a reasonable stockholder would conclude that the 2023 Dividend was only paid to holders of Activision's outstanding shares. However, the Board had secretly redefined outstanding shares to include treasury shares. The Director Defendants' representation that the 2023 Dividend was confined to outstanding shares was false and deliberately misleading.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions and speculative inferences that warrant no response, but to the extent required, the allegations are denied.

595. The Director Defendants' unlawful actions diverted $424 million in dividend money from the Activision stockholders to the treasury shares and [redacted] As a result, Plaintiff and the Class suffered damages.

ANSWER: Denied. The allegations in this paragraph contain legal conclusions and speculative inferences that warrant no response, but to the extent required, the allegations are denied.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment in its favor and in favor of the Class and against all Defendants as follows:

a. Declaring this action is properly maintainable as a class action, and certifying Plaintiff as Class representative and its undersigned counsel as Class counsel;

b. Declaring that the Merger Agreement and the Merger, including the approval of the Merger Agreement by the Director Defendants and Activision's former public stockholders, did not comply with Section 251 and Section 141, rendering the Merger invalid;

c. Declaring that the invalid Merger and invalid Merger Agreement

constituted an unlawful conversion of stockholders' shares and award damages based on the conversion of the shares;

d. Declaring the payment of the $0.99 dividend on the treasury shares invalid;

e. Declaring that Kotick and the Director Defendants have breached their fiduciary duties of loyalty and care and engaged in bad faith and intentional misconduct and knowing violations of law;

f. Declaring that Microsoft aided and abetted and conspired in the breaches of fiduciary duty by Kotick and the Director Defendants;

g. Awarding appropriate declaratory and equitable relief to remedy the violations of Section 251 and Section 141, the unlawful dividend on the treasury shares, and the breaches of fiduciary duty by Kotick and the other Director Defendants, including a quasi-appraisal of the fair value of the shares of Plaintiff and the Class on the date of the Merger;

h. Awarding the Class damages, including pre-judgment and post-judgment interest;

i. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

j. Granting such other and further equitable relief as the Court may deem just, proper and equitable.

ANSWER: Plaintiff's prayer for relief is not a well-pled factual allegation to which a response is required. To the extent a response is required, the prayer for relief is denied. Denied that Plaintiff suffered any harm or is entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

Mr. Kotick asserts the following affirmative defenses to the Complaint. In asserting these defenses, Mr. Kotick does not assume any burden of proof, persuasion, or production when such burden properly rests with Plaintiff. Nothing stated herein is intended or shall be construed as an admission that any particular issue or subject matter is relevant to Plaintiff's allegations. Mr. Kotick expressly reserves the right to supplement, amend, or omit any or all of the following defenses, as warranted by discovery or other investigation, or as justice may require.

First Affirmative Defense
(Failure To State A Claim)

The Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense
(Lack of Injury or Damages)

Plaintiff's claims are barred, in whole or in part, because the Activision stockholders have suffered no injuries or damages.

Third Affirmative Defense
(Ratification)

Plaintiff's claims fail because the transaction was ratified by fully informed, uncoerced stockholders.

Fourth Affirmative Defense
(Business Judgment)

Plaintiff's claims fail because the business judgment rule applies.

Fifth Affirmative Defense
(*Revlon*)

Plaintiff's claims fail because Mr. Kotick satisfied his fiduciary duties under *Revlon* by seeking to secure the best value reasonably available for stockholders.

Sixth Affirmative Defense
(Entire Fairness)

Plaintiff's claims fail because the transaction was entirely fair as a matter of fair dealing and fair price.

Seventh Affirmative Defense
(Good Faith)

Plaintiff's claims fail in whole or in part because Mr. Kotick acted in good faith at all relevant times.

Eighth Affirmative Defense
(8 *Del. C.* § 141(e))

The conduct of Mr. Kotick cannot be a basis for liability because he relied in good faith on the advice of professional advisors pursuant to 8 *Del. C.* § 141(e).

Ninth Affirmative Defense
(8 *Del. C.* § 102(b)(7))

The conduct of Mr. Kotick alleged in the Complaint falls within the scope of the exculpatory provision set forth in Activision's Certificate of Incorporation pursuant to 8 *Del. C.* § 102(b)(7).

Tenth Affirmative Defense
(No Breach of Duty)

Plaintiff's claims are barred, in whole or in part, because Plaintiff cannot establish a breach of any fiduciary or other duty by Mr. Kotick.

Eleventh Affirmative Defense
(No Reliance / Disclosures Adequate)

Plaintiff's disclosure-based claims fail because Activision's stockholders were provided with all material information necessary to make an informed decision regarding the transaction, and neither Plaintiff nor any stockholder reasonably relied to their detriment on any alleged omission or misrepresentation.

Twelfth Affirmative Defense
(Lack of Materiality)

To the extent Plaintiff asserts statutory defects in the materials reviewed and approved by the Activision Board and shareholders, any such defects were immaterial to a fair assessment of the transaction.

Thirteenth Affirmative Defense
(No Derivative Claims)

To the extent Plaintiff purports to assert derivative claims, they are barred due to failure to comply with pre-suit demand requirements, which were not excused.

Fourteenth Affirmative Defense
(Waiver/Laches/Acquiescence/Estoppel)

Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, laches, acquiescence, quasi-estoppel, and/or estoppel.

Fifteenth Affirmative Defense
(Unclean Hands/*In pari delicto*)

Plaintiff's claims are barred, in whole or in part, by the doctrines of unclean hands and *in pari delicto*.

Sixteenth Affirmative Defense
(Lack of Causation)

Any injury allegedly sustained by Plaintiff or by any putative class member was not directly or proximately caused by any conduct or act of Mr. Kotick.

Seventeenth Affirmative Defense
(Alternate Cause)

The conduct of persons and/or entities other than Mr. Kotick was a superseding or intervening cause of any damage, loss, or injury allegedly sustained.

Eighteenth Affirmative Defense
(Justification)

Plaintiff's claims are barred, in whole or in part, because Mr. Kotick's conduct was justified and/or privileged.

Nineteenth Affirmative Defense
(Equitable Relief Unavailable)

Plaintiff's claims for equitable relief are barred, in whole or in part, because Plaintiff has an adequate remedy at law, and it has not suffered substantial harm.

Twentieth Affirmative Defense
(Failure to Mitigate)

To the extent Plaintiff suffered any damages (it did not), its recovery should be reduced because of its failure to mitigate damages.

Twenty-First Affirmative Defense
(Standing)

Plaintiff lacks standing to assert some or all of its claims.

Twenty-Second Affirmative Defense
(No Class Action)

Plaintiff's claims are not properly maintainable as a class action. Plaintiff is not an adequate and representative member of the proposed class.

Twenty-Third Affirmative Defense
(Mootness)

Plaintiff's improper delegation claims are mooted, in whole or in part, by the Board's execution of the Letter Agreement and the issuance of Activision's 2023 dividend.

Twenty-Fourth Affirmative Defense
(Shared Defenses)

Mr. Kotick adopts and incorporates by reference any and all other defenses asserted, or to be asserted, by any other Activision Director or corporate defendant to the extent these individuals may share in such defense.

Twenty-Fifth Affirmative Defense
(Reserve All Rights)

Mr. Kotick presently lacks knowledge or information upon which to form a belief as to whether he may have other defenses available. He therefore reserves the right to assert additional defenses as they are discovered.

PRAYER FOR RELIEF

Mr. Kotick respectfully requests that this Court enter an Order:

1. Awarding Mr. Kotick a declaration that Sjunde AP-Fonden has engaged in abuse of process;

2. Awarding Mr. Kotick a declaration that he may issue public records requests to AP7 as authorized by law;

3. Awarding Mr. Kotick monetary damages, in an amount to be proven at trial, for both the economic and non-economic injuries sustained as a direct, foreseeable and intended consequence of Sjunde AP-Fonden's abuse of process, including pre-judgment and post-judgment interest;

4. Dismissing Sjunde AP-Fonden's Complaint with prejudice;

5. Denying all claims for relief asserted by Sjunde AP-Fonden and the putative class;

6. Entering judgment in Mr. Kotick's favor;

7. Awarding Mr. Kotick his costs, disbursements, expenses, attorneys' fees, and expert fees incurred in connection with this action;

8. Awarding such other and further relief as this Court may deem just or proper.

/s/ Michael A. Barlow

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Dated: December 22, 2025