

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

PETER FISCHBEIN, On Behalf of Himself And All Others Similarly Situated,	X	<b>CASE NO.</b>
	:	
	:	
Plaintiff,	:	
	:	<b>CLASS ACTION COMPLAINT</b>
vs.	:	<b>FOR VIOLATIONS OF THE</b>
	:	<b>FEDERAL SECURITIES LAWS</b>
TAKE-TWO INTERACTIVE SOFTWARE, INC.	:	
RYAN A. BRANT, LARRY MULLER, KELLY G.	:	
SUMNER, JAMES H. DAVID JR. and PAUL	:	<b><u>JURY TRIAL DEMANDED</u></b>
EIBELER,	:	
	:	
Defendants.	:	
	X	

Plaintiff has alleged the following based upon the investigation of plaintiff's counsel, which included a review of United States Securities and Exchange Commission ("SEC") filings by Take-Two Interactive Software, Inc. ("Take-Two" or the "Company"), as well as regulatory filings and reports, securities analysts reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company, and plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

**NATURE OF THE ACTION**

1. This is a federal class action on behalf of purchasers of the common stock of Take-Two between February 24, 2000 and December 17, 2001, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

## **JURISDICTION AND VENUE**

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission ("SEC") [17 C.F.R. § 240.10b-5].

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337 and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

4. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C. § 1391(b). Many of the acts charged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District. Additionally, defendants maintain their chief executive offices and principal place of business within this District.

5. In connection with the acts alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

## **PARTIES**

6. Plaintiff Peter Fischbein as set forth in the accompanying certification incorporated by reference herein, purchased the common stock of Take-Two during the Class Period and has been damaged thereby.

7. Defendant Take-Two is a Delaware corporation with its principal executive offices located at 575 Broadway, New York, NY 10012. Take-Two designs and sells video games that can be played on personal computer and game-consoles.

8. The individual defendants identified below (the "Individual Defendants"), served at all times material to the claims set forth herein, as senior officers and/or directors of Take-Two in the positions set forth opposite their names:

<u>Name</u>	<u>Position</u>
Ryan A. Brant	Chief Executive Officer until February 26, 2001, and thereafter Chairman of the Board of Directors.
Kelly G. Sumner	Director until February 26, 2001, and thereafter Chief Executive Officer.
James H. David Jr.	Chief Financial Officer from Take-Two's third quarter of fiscal year 2000.
Paul Eibeler	President and director.
Larry Muller	Chief Financial Officer during the first two quarters of Take-Two's fiscal year 2000.

9. Because of the Individual Defendants' positions with the Company, they had access to the adverse undisclosed information about its business, operations, products, operational trends, financial statements, markets and present and future business prospects via access to internal corporate documents (including the Company's operating plans, budgets and forecasts and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith.

10. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company's public filings, press releases and other publications as alleged herein are the collective actions of the narrowly defined group of defendants identified above. Each of the above officers of Take-Two, by virtue of

their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, products, growth, financial statements, and financial condition, as alleged herein. Said defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware or recklessly disregarded that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

11. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, traded on the NASDAQ National Market, and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to disseminate promptly, accurate and truthful information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly-traded securities would be based upon truthful and accurate information. The Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

12. The Individual Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board

membership and/or executive and managerial positions with Take-Two, each of the Individual Defendants had access to the adverse undisclosed information about Take-Two's business prospects and financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about Take-Two and its business issued or adopted by the Company materially false and misleading.

13. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Each Individual Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Individual Defendants is responsible for the accuracy of the public reports and releases detailed herein and is therefore primarily liable for the representations contained therein.

14. Each of the defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Take-Two common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding Take-Two's business, finances, financial statements and the intrinsic value of Take-Two common stock; and (ii) caused plaintiff and other members of the Class to purchase Take-Two securities at artificially inflated prices.

#### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

15. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired the

securities of Take-Two between February 24, 2000 and December 17, 2001, inclusive, and who were damaged thereby. Excluded from the Class are defendants, the officers and directors of the Company, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

16. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Take-Two had approximately 36 million shares of common stock outstanding which were actively traded on the NASDAQ Stock Exchange. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Take-Two or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

17. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

18. Plaintiff will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

19. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by defendants' acts as alleged herein;

(b) whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations, financial statements of Take-Two; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

20. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

## **SUBSTANTIVE ALLEGATIONS**

### **Background Facts**

21. Take-Two is a global developer, marketer, distributor and publisher of video games that are played on various systems including personal computers, Sony PlayStation, Nintendo Game Boy and Microsoft X-Box, among others.

22. On December 14, 2001, the price of Take-Two common stock plummeted by 31%, falling to \$10.33 per share from \$15.05, as news leaked that the Company will likely restate its previously announced and filed financial reports. Then, an article published in the December 17th issue of Barron's revealed that in May 2001 the United States Securities & Exchange Commission (the "SEC") had sought information from Take-Two regarding potentially improper accounting for impaired assets and one-time charges. In addition, according to the article, an August 13, 2001, SEC letter inquired into Take-Two's accounting of its accounts receivables:" In August, an SEC letter asked why

the company grants 90 and 120-day payment terms and requested an accounting of cash payments on its receivables [ . . . ]"

23. On Monday, December 17, 2001, following the publication of the Barron's article, Take-Two issued a press release announcing that it would restate its previously filed financial statements for the fiscal year ended October 31, 2000 and the first three quarters of 2001, which had inflated by millions the Company's revenues and earnings. According to the press release, the Company improperly recognized revenue throughout the Class Period on products that were subsequently returned and/or purchased by the Company:

Based on the Company's detailed continuing review of its product returns and information known to date, the Company intends to revise its financial results for the fiscal year ended October 31, 2000 and each of the first three quarters of fiscal 2001 to eliminate sales of products to certain independent third-party distributors that were recognized as revenue and later returned or purchased by the Company in subsequent periods. Based on the foregoing, the Company is reassessing its method of recognizing revenue with respect to sales to certain third-party distributors.

For Take-Two's fiscal year 2000, the restatement will have the effect of "reflect[ing] an aggregate decrease in net sales of between \$12.0 million and \$15.0 million and an aggregate decrease of net income of between \$3.1 million and \$3.7 million [ . . . ] For the three quarters of Take-Two's fiscal year 2001, the nine month period ended July 31, 2001, the restatement "will reflect an aggregate decrease in net sales of approximately \$9.5 million and an aggregate increase in net income of approximately \$0.3 million [ . . . ]"

24. As now revealed, at all times during the Class Period, defendants issued materially false and misleading financial statements and press releases concerning Take-Two's revenues, income and earnings per share. The financial statements of the Company made during the Class Period, all of which implicitly and/or expressly were prepared in conformity with generally accepted accounting principles

(GAAP), were materially false and misleading because the Company materially overstated its revenues, income and earnings.

**Materially False And Misleading  
Statements Made During The Class Period**

25. The Class Period begins on February 24, 2000. On that date, Take-Two issued a press release announcing "record" financial results for its first fiscal quarter of 2000, the period ended January 31, 2000. According to the press release, net sales for the quarter were \$122.8 million, representing an 80% increase over the first quarter of 1999. Net income was reportedly \$4.7 million, or \$0.20 per share, a 65% increase over the first quarter of 1999. Commenting on the reported results, defendant Brant stated the following:

The first quarter of 2000 was another very strong quarter for our company, adding to our exceptional historical growth record. [ . . . ] The Company is focusing its expansion efforts on the Internet by continuing to evaluate and make strategic investments in online entertainment and e-commerce providers, and building on the Internet brand identity of Rockstar Games and the multiplayer capabilities of its interactive gaming content with particular focus on broadband connectivity of next-generation video game systems.

26. On March 16, 2000, Take-Two filed its Form 10-Q with the SEC for the first quarter of 2000, the period ended January 31, 2000, which was signed by defendants Brant and Muller and confirmed the previously announced financial results. In addition, with regard to the financial statements contained therein, the Form 10-Q stated the following:

The Interim Consolidated Condensed Financial Statements of the Company have been prepared in accordance with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all information and disclosures necessary for a presentation of the Company's financial position, results of operations and cash flows in conformity with generally accepted accounting principles. In the opinion of management, these financial statements reflect all adjustments, consisting only of normal recurring accruals, necessary for a fair presentation of the Company's financial position, results of operation and cash flows for such periods.

27. On June 1, 2000, Take-Two issued a press release announcing its results for the second quarter of 2000, the period ended April 30, 2000. The Company reported net sales of \$70 million, representing a 34% increase from the second quarter of 1999. Net income for the quarter was reported as \$3.3 million, or \$0.13 per share, representing a 115% increase over the second quarter of 1999. Defendant Brant commented on the seemingly-outstanding results and highlighted that the Company's balanced business model would continue to deliver:

Take-Two's performance in the second quarter of 2000 in many ways signifies its most important operating strides to date. During the second quarter the Company continued to show growth in all segments of its business, and most importantly demonstrated that its balanced business model can thrive in a variety of different industry climates. Put simply we continue to leverage the successes of our diverse business model into investments in next-generation gaming technologies which we believe will pave the way to an even brighter future for Take-Two.

28. On June 14, 2000, Take-Two filed its Form 10-Q with the SEC for the second quarter of 2000, the period ended April 30, 2000, which was signed by defendants Brant and Muller and confirmed the previously announced financial results. In addition, with regard to the financial statements contained therein, the Form 10-Q stated the following:

The Interim Consolidated Condensed Financial Statements of the Company have been prepared in accordance with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all information and disclosures necessary for a presentation of the Company's financial position, results of operations and cash flows in conformity with generally accepted accounting principles. In the opinion of management, these financial statements reflect all adjustments, consisting only of normal recurring accruals, necessary for a fair presentation of the Company's financial position, results of operation and cash flows for such periods.

29. On August 24, 2000, Take-Two issued a press release announcing its results for its third fiscal quarter of 2000, the period ended July 31, 2000. The Company reported net sales of \$71.4 million, representing a 12% increase from the third quarter of 1999. Net income for the quarter was

reportedly \$3.4 million, or \$0.14 per share. In the press release, defendant Brant highlighted the Company's resiliency during a purportedly unfavorable period for the software-gaming industry:

The third quarter of 2000 offered an opportunity for our Company to demonstrate the success of its diversified business model. In what has been a difficult time for the interactive entertainment software industry during which many other third party publishers and distributors have faced declining sales, we continue to grow our business profitably while building our publishing schedule, management infrastructure, and working capital position in order to best take advantage of the incredible industry wide opportunity that the launch of PlayStation 2 represents.

30. On September 14, 2000, Take-Two filed its Form 10-Q with the SEC for the third quarter of 2000, the period ended July 31, 2000, which was signed by defendants Brant and David and confirmed the previously announced financial results. In addition, with regard to the financial statements contained therein, the Form 10-Q stated the following:

The Consolidated Condensed Financial Statements of the Company have been prepared in accordance with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all information and disclosures necessary for a presentation of the Company's financial position, results of operations and cash flows in conformity with generally accepted accounting principles. In the opinion of management, these financial statements reflect all adjustments, consisting only of normal recurring accruals, necessary for a fair presentation of the Company's financial position, results of operations and cash flows for such periods.

31. On December 14, 2000, Take-Two issued a press release announcing its operational results for the fourth quarter and fiscal year 2000, the period ended October 31, 2000. For the fourth quarter, the Company reported net sales of \$122.6 million and net income of \$13.3 million. For the fiscal year 2000, Take-Two reported net sales of \$387 million, representing a 27% increase over fiscal year 1999, and net income of \$24.9 million, a 53% increase over fiscal year 1999. Defendant Eibeler touted the Company's successful year 2000 performance, which he attributed to the Company's competitive advantage in the industry:

Our fiscal 2000 results clearly represented the merits of Take-Two's long standing emphasis on establishing corporate growth through the combination of focused business units diversified across region, product line, service, platform, and price. This successful method has produced the most consistent financial results in the interactive entertainment software industry.

32. On January 29, 2001, Take-Two filed its Form 10-K with the SEC for the fiscal year 2000, the period ended October 31, 2000, which was signed by defendants David, Eibeler Sumner and Brant. The Form 10-K confirmed the previously announced financial results and purported to contain audited financial statements.

33. On February 26, 2001 Take-Two issued a press release announcing "record" financial results for the first quarter of 2001, the period ended January 31, 2001. The Company reported net sales of \$131 million and net income of \$7.8 million, or \$0.24 per share. The press release touted Take-Two's seemingly impressive quarterly performance, and represented that "For the quarter, Take-Two achieved its highest sell-through ranking as a leading publisher in the Company's history [ . . . ]"

34. On March 19, 2001, Take-Two filed its Form 10-Q with the SEC for the first quarter of 2001, the period ended January 31, 2001, which was signed by defendants Brant and David and confirmed the previously announced financial results. In addition, with regard to the financial statements contained therein, the Form 10-Q stated the following:

The unaudited Consolidated Condensed Financial Statements of the Company have been prepared in accordance with the instructions to Form 10-Q and Article 10 Regulation [of] S-X. Accordingly, the financial statements do not include all information and disclosures necessary for a presentation of the Company's financial position, results of operations and cash flows in conformity with generally accepted accounting principles. In the opinion of management, the financial statements reflect all adjustments (consisting only of normal recurring accruals) necessary for a fair presentation of the Company's financial position, results of operations and cash flows.

35. On May 24, 2001, Take-Two issued a press release announcing its financial results for the second quarter of 2001, the period ended April 30, 2001. The Company reported net sales of \$93.3 million for the quarter, representing a 33% increase over the same period in 2000, and net income of \$3.9 million, or \$0.12 per share. With regard to the Company's second quarter performance, defendant Eibeler stated the following:

From an operating standpoint, this was an excellent quarter for Take-Two. The continued and rapid maturation of our Company coincides with the beginning of what promises to be a period of record expansion for the interactive entertainment software industry. We have begun to see an acceleration in our business as evidenced by our top line growth, and we anticipate the strongest publishing schedule in our company's history to lead us to record profitability levels this Christmas.

36. On June 8, 2001, the Company filed a Form 10-Q with the SEC for the second quarter of 2001, the period ended April 30, 2001, which was signed by defendants Sumner and David and confirmed the previously announced financial results for the second quarter of 2001. In addition, with respect to the financial statements contained therein, the Form 10-Q stated the following:

The unaudited Consolidated Condensed Financial Statements of the Company have been prepared in accordance with the instructions to Form 10-Q and Article 10 [of] Regulation S-X. Accordingly, the financial statements do not include all information and disclosures necessary for a presentation of the Company's financial position, results of operations and cash flows in conformity with generally accepted accounting principles. In the opinion of management, the financial statements reflect all adjustments (consisting only of normal recurring accruals) necessary for a fair presentation of the Company's financial position, results of operations and cash flows.

37. On August 29, 2001, Take-Two issued a press release announcing its financial results for the third quarter of 2001, the period ended July 31, 2001. The Company reported net sales of \$84.5 million, representing an 18% increase over the same period in 2000, and net income of \$1.3 million, or \$0.04 per share. In the press release, defendant Eibeler stated that the Company was executing its business plan and that its seemingly-impressive revenue growth would continue:

The third quarter of 2001 represents another important milestone for Take-Two, as we continue to execute on our business plan. As stated previously, we have continued to concentrate our efforts on strengthening our balance sheet and maximizing capital efficiency, coupled with building a world-class entertainment software publishing company and distribution infrastructure. We believe our continued success in enhancing our financial, operational and product position is well timed, and will continue to record performance in our fourth quarter and in fiscal 2002. We anticipate that the acceleration that we have begun to see in our business and industry will intensify this fiscal year and well into 2002 and beyond.

38. On September 14, 2001, the Company filed its Form 10-Q with the SEC for the third quarter of 2001, the period ended July 31, 2001, which was signed by defendants Sumner and David and confirmed the previously announced financial results. With regard to the financial statements contained therein, the Form 10-Q stated the following:

The unaudited Consolidated Condensed Financial Statements of the Company have been prepared in accordance with the instructions to Form 10-Q and Article 10 [of] Regulation S-X. Accordingly, the financial statements do not include all information and disclosures necessary for a presentation of the Company's financial position, results of operations and cash flows in conformity with generally accepted accounting principles. In the opinion of management, the financial statements reflect all adjustments (consisting only of normal recurring accruals) necessary for a fair presentation of the Company's financial position, results of operations and cash flows.

39. The statements referenced above in paragraphs 25-38 were each materially false and misleading when made because they failed to disclose:

(a) that the Company was engaged in improper accounting practices which had the effect of materially overstating Take-Two's reported revenues and earnings;

(b) that Take-Two's financial statements issued during the Class Period were not prepared in accordance with GAAP and were therefore materially false and misleading; and

(c) as a result of the foregoing, defendants' opinions, estimates and projections regarding Take-Two's business and operations were lacking in a reasonable basis at all times.

### **The Truth Begins To Emerge**

40. As detailed in paragraph 23 above, a December 17, 2001 press release issued by the Company revealed, for the first time, that the Company had improperly recognized revenues and misstated its earnings for all of Take-Two's fiscal 2000 and the first three quarters of 2001. At the time that trading in Take-Two stock was halted on December 17, 2001, the stock last traded for \$10.33 per share --131% less than the Class Period high of \$23.95 per share, reached on June 7, 2001. At the same time the Company was announcing that it had falsely been reporting its financial results, defendants attempted to limit the decline in Take-Two stock by representing that the Company expected to revise its financial guidance for 2002 in a positive manner.

### **Undisclosed Adverse Information**

41. The market for Take-Two's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, Take-Two's common stock traded at artificially inflated prices during the Class Period. The artificial inflation continued until December 17, 2001, when the Company revealed for the first time that the Company had improperly recognized revenues and earnings during the Class Period and that Take-Two would be restating the financial reports it filed during that period.

42. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Take-Two's securities, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, including, inter alia:

(a) that the Company's financial statements were not prepared in accordance with GAAP and in accordance with the federal securities laws and SEC regulations concerning fair reporting;

(b) that the Company had violated GAAP and its own accounting policies by improperly recognizing revenues, income and earnings;

(c) that the Company's seeming growth was the result, in part, of improper accounting entries; and

(d) that the Company's estimates, projections and opinions as to its expected revenues, earnings, income and value of its stock were lacking in reasonable basis at all relevant times.

43. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about Take-Two's business, prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Take-Two and its business, prospects and operations, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein.

#### **SCIENTER ALLEGATIONS**

44. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing

public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding Take-Two, their control over, and/or receipt and/or modification of Take-Two's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Take-Two, participated in the fraudulent scheme alleged herein.

**Applicability Of Presumption Of Reliance:  
Fraud-On-The-Market Doctrine**

45. At all relevant times, the market for Take-Two's securities was an efficient market for the following reasons, among others:

(a) Take-Two's stock met the requirements for listing, and was listed and actively traded on the NASDAQ Stock Exchange, a highly efficient and automated market;

(b) As a regulated issuer, Take-Two filed periodic public reports with the SEC and the NASDAQ;

(c) Take-Two regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) Take-Two was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of

their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

46. As a result of the foregoing, the market for Take-Two's securities promptly digested current information regarding Take-Two from all publicly available sources and reflected such information in Take-Two's stock price. Under these circumstances, all purchasers of Take-Two's securities during the Class Period suffered similar injury through their purchase of Take-Two's securities at artificially inflated prices and a presumption of reliance applies.

### **NO SAFE HARBOR**

47. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Take-Two who knew that those statements were false when made.

### **FIRST CLAIM**

#### **Violation Of Section 10(b) Of The Exchange Act Against And Rule 10b-5 Promulgated Thereunder Against All Defendants**

48. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

49. During the Class Period, Take-Two and the Individual Defendants, and each of them, carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Take-Two's securities; and (iii) cause plaintiff and other members of the Class to purchase Take-Two's securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

50. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Take-Two's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

51. In addition to the duties of full disclosure imposed on defendants as a result of their making of affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, defendants had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. Sections 210.01 et seq.) and Regulation S-K (17 C.F.R.

Sections 229.10 et seq.) and other SEC regulations, including accurate and truthful information with respect to the Company's operations, financial condition and earnings so that the market price of the Company's securities would be based on truthful, complete and accurate information.

52. Take-Two and the Individual Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of Take-Two as specified herein.

53. These defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Take-Two's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Take-Two and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of Take-Two's securities during the Class Period.

54. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of his responsibilities and activities as a senior officer and/or director of the Company was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants

enjoyed significant personal contact and familiarity with the other defendants and was advised of and had access to other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

55. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Take-Two's operating condition and future business prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by defendants' overstatements and misstatements of the Company's business, operations and earnings throughout the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

56. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Take-Two's securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of Take-Two's publicly-traded securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period,

plaintiff and the other members of the Class acquired Take-Two securities during the Class Period at artificially high prices and were damaged thereby.

57. At the time of said misrepresentations and omissions, plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members of the Class and the marketplace known of the true financial condition and business prospects of Take-Two, which were not disclosed by defendants, plaintiff and other members of the Class would not have purchased or otherwise acquired their Take-Two securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

58. By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

59. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

## **SECOND CLAIM**

### **Violation Of Section 20(a) Of The Exchange Act Against The Individuals Defendants**

60. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

61. The Individual Defendants acted as controlling persons of Take-Two within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

62. In particular, each of these defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

63. As set forth above, Take-Two and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their

positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

**WHEREFORE**, plaintiff prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as Lead Counsel;

(b) Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: December 18, 2001

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