

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

MAX KAPLAN, Individually and On Behalf Of
All Others Similarly Situated,

Plaintiff,

vs.

TAKE-TWO INTERACTIVE SOFTWARE, INC.,
PAUL EIBLER, KARL H. WINTERS, and
GARY LEWIS,

Defendants.

Case No.

CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS

JURY TRIAL DEMANDED

Plaintiff alleges 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, Inc. ("Take-Two" or the "Company"), as well as regulatory filings and reports, securities analysts reports and advisories about the Company, press releases, 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 AND SUMMARY OF ALLEGATIONS

1. This is a class action on behalf of all persons and entities who purchased or otherwise acquired the securities of Take-Two between October 25, 2004 and January 27, 2006, inclusive ("Class Period"), and who were damaged thereby, seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. Take-Two describes itself as a global publisher of interactive software games designed for personal computers, and video game consoles and handheld platforms manufactured by Sony, Microsoft and Nintendo. The Company, together with its subsidiaries, developed, published, and distributed blockbuster video games, including Grand Theft Auto: San Andreas,

Grand Theft Auto: Liberty City Stories, Midnight Club 3: DUB Edition, and The Warriors. The Company sold its products as well as third-party software, hardware, and accessories through Best Buy, Blockbuster, Circuit City, GameStop, Target, Toys “R” Us, Wal-Mart, and national and regional drug store, supermarket and discount store chains and specialty retailers.

3. Prior to and during the Class Period, the Company’s most popular and best-selling products were a series of video games depicting street gang violence known as “Grand Theft Auto” which were published through the Company’s subsidiary, Rockstar Games. In fiscal 2005, the Grand Theft Auto franchise was a significant contributor to the Company’s financial performance, accounting for more than 38% of the Company’s total revenues that year.

4. On October 25, 2004, the first day of the Class Period, defendants announced the launch of Grand Theft Auto: San Andreas, a sequel in the Grand Theft Auto series, in retail stores across North America. The video game was an immediate success, selling more than 5 million copies in 2004. The Company stated that Grand Theft Auto: San Andreas “was the largest videogame launch in Take-Two’s history” and was the “top performing product in Take-Two’s publishing business this quarter and fiscal year” and the “top selling PlayStation 2 title in the United States in October and November.”

5. Unbeknownst to investors, however, defendants engaged in an undisclosed illegal and fraudulent scheme to bolster sales of Grand Theft Auto: San Andreas by including pornographic content that was embedded in the programming of the video game. The pornographic scenes were triggered by downloading from the internet a third-party program called “Hot Coffee” that unlocks pre-existing codes built into the game and allows the game player to see their character engage in sexual conduct. Defendants concealed the hidden sex

scenes so that they could get the video game onto the shelves of major retailers that otherwise refused to carry products containing sexual content.

6. On July 8, 2005, the Entertainment Software Rating Board (“ESRB”), a self-regulatory body for the computer and video game industry that applies and enforces ratings, advertising guidelines, and online privacy principles, announced that it had commenced an investigation into the “Hot Coffee” modification for Grand Theft Auto: San Andreas. The ESRB stated that the focus of the investigation was to determine whether the Company and its subsidiary, Rockstar, violated ESRB Rules and Regulations requiring full disclosure of the sexually explicit content in the video game and a change in rating to “Adult Only 18+” from its rating of “Mature 17+” (suitable for ages 17 and older) at the time. An “Adults Only 18+” rating, however, would be detrimental to video games sales because many major retailers refuse to carry such products.

7. Defendants attempted to avoid the adult rating, claiming that the pornographic material included in the video game was the work of hackers, stating “the ‘Hot Coffee’ modification is the work of a determined group of hackers who have gone to significant trouble to alter scenes in the official version of the game.”

8. On July 20, 2005, the Company announced that the ESRB, however, changed the rating on Grand Theft Auto: San Andreas to Adult Only and that the Company had ceased production of the current version of the title and would work on a new version that prevents the “Hot Coffee” modification. Major retailers, such as Wal-Mart, Game Stop, Circuit City, and Best Buy immediately pulled copies of the game off their store shelves. As a result of the re-rating of the game and the expected dramatic decline its sales, Take-Two significantly lowered its guidance for the third quarter ending July 31, 2005 to \$160 million to \$170 million in net

sales, from previous guidance of \$205 million to \$215 million, and a net loss per share of \$0.40 to \$0.45, from prior guidance of \$0.05 to \$0.10. In addition, the Company lowered its guidance for the fiscal year-ending October 31, 2005 to \$1.26 billion to \$1.31 billion in net sales, for prior guidance of \$1.3 billion to \$1.35 billion, and to \$1.05 to \$1.12 in diluted earnings per share, from \$1.40 to \$1.47.

9. On July 26, 2005, the Company announced that it received notice from the Federal Trade Commission (“FTC”) Division of Advertising Practices that it was the subject of an FTC investigation into advertising claims made by the Company regarding Grand Theft Auto: San Andreas. Specifically, the FTC sought to determine whether the Company intentionally deceived the ESRB to avoid an “Adults Only” rating on the game.

10. On January 18, 2006, the Company announced that it was unable to file its annual report for the year-ended October 31, 2005 on time and that it had filed a Form 12b-25 with the SEC seeking an extension. In its SEC filing, the Company stated that it failed to maintain effective controls to “identify, analyze and reconcile related inventory purchases included in accounts payable to underlying supporting documentation” and to “calculate amortization expense related to capitalized software development costs.” The Company stated that these deficiencies resulted in audit adjustments to its 2005 consolidated financial statements and may result in a misstatement of the accounts payable, inventory or cost of goods, and capitalized software development costs or amortization expense, and “*would result in a material misstatement of the annual or interim financial statements.*” (emphasis added)

11. On January 25, 2006, the Company reported the resignation of Barbara Kaczynski, a board member, audit committee chairperson, and a member of the corporate

governance committee of the Company. In a Form 8-K, filed with the SEC, included the following letter from Kaczynski's attorney:

Ms. Kaczynski does not know whether her resignation is of a type requiring disclosure under SEC rules and she does not feel able to express a view with respect to the language the Company intends to include in its Form 8-K disclosure about the resignation.

However, she is able to express to you directly the reasons why she resigned. During Ms. Kaczynski's tenure as a board member and chair of the audit committee, several matters requiring the board's attention caused Ms. Kaczynski concern. These matters included Take-Two's discovery of illicit images depicted in its "Grand Theft Auto" videogame, the Federal Trade Commission's investigation of Take-Two following that discovery, and various SEC inquiries directed at Take-Two and its employees.

More recently, in connection with preparation of the 10 K and its late filing, Ms Kaczynski's concerns have risen significantly because of what she views as an increasingly unhealthy relationship between senior management and the board of directors. In her experience, management's interactions with the board were characterized by a lack of cooperation and respect. Moreover, Ms. Kaczynski felt that management failed to keep the board informed of important issues facing the company or failed to do so in a timely fashion. In these circumstances, Ms. Kaczynski decided to resign her position as a member of the board. [Emphasis added.]

12. On January 27, 2006, before the market opened, the City Attorney for the City of Los Angeles was reported to have filed an action against the Company and Rockstar for making misleading statements in the marketing of Grand Theft Auto: San Andreas and engaging in unfair competition in violation of the California Business and Professions Code. The lawsuit demanded that Take-Two and Rockstar stop marketing the games to children, disgorge the profits from the estimated 200,000 copies of the game it sold for about \$10 million in California, and that it disclose the sex scenes to customers who purchased the video game before the change in ratings.

13. In reaction to this news, the price of Take-Two stock plummeted, falling \$2.34 per share, or 13.7%, from its closing price of \$17.03 on January 26, 2005, to close at \$14.69 on January 27, 2005, on unusually high volume.

14. As a result of defendants' fraudulent and illegal conduct, the price of Take-Two securities became artificially inflated during the Class Period. Company insiders, including the individual defendants named herein, took advantage of the artificial inflation, and sold more than 661,000 shares of their personally-held Take-Two stock for proceeds of over \$18 million.

JURISDICTION AND VENUE

15. 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 United States Securities and Exchange Commission ("SEC") [17 C.F.R. § 240.10b-5].

16. 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].

17. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C. § 1391(b). During the Class Period, a substantial portion of the wrongdoing alleged herein occurred within this District. In addition, the Company maintains its principal executive offices in this District.

18. 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.

THE PARTIES

19. Plaintiff Max Kaplan purchased Take-Two common stock as described in the attached certifications and was damaged thereby.

20. Defendant Take-Two is organized under the laws of Delaware and maintains its corporate headquarters at 622 Broadway, New York, NY 10012.

21. Defendant Paul Eibeler (“Eibeler”) was, at all relevant times, Chief Executive Officer (“CEO”) of the Company.

22. Defendant Karl H. Winters (“Winters”) was, at all relevant times, Chief Financial Officer of the Company.

23. Defendant Gary Lewis (“Lewis”) served as Global Chief Operating Officer of the Company until his resignation on January 6, 2006.

24. Defendants Eibeler, Winters and Lewis are referred to herein as “Individual Defendants.”

25. 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.

26. 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.

27. 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, and was traded on the Nasdaq National Market (the “Nasdaq”), 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 common stock would be based upon truthful and accurate information. The Individual Defendants’ misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

28. 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.

29. 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.

30. Each of the defendants is liable as a participant in a fraudulent scheme and course of conduct 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, operations, management and the intrinsic value of Take-Two common stock; (ii) enabled defendants to sell over \$18 million of Take-Two shares while in possession of material adverse non-public information about the Company; and (iii) caused plaintiff and other members of the Class to purchase Take-Two securities at artificially inflated prices.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

31. 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 common stock of Take-Two between October 25, 2004 and January 27, 2006, inclusive (the "Class"), and who were damaged thereby. Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, 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.

32. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Take-Two common shares were actively traded on the Nasdaq National Market. During the Class Period, the Company had over 71 million shares of common stock issued and outstanding. 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.

33. 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.

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

35. 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 and management of Take-Two; and

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

36. 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.

**DEFENDANTS' FALSE AND MISLEADING STATEMENTS
ISSUED DURING THE CLASS PERIOD**

37. On October 25, 2004, the first day of the Class Period, Take-Two announced that "Grand Theft Auto: San Andreas had been shipped to retail stores in North America" and that the game is available exclusively for the PlayStation®2 computer entertainment system. The Company also stated that Grand Theft Auto: San Andreas would be available in stores in Europe on October 29, 2004. According to the Company, "Grand Theft Auto: San Andreas is the next

installment in the gaming franchise that has sold over 32 million units to date, including over 13 million units of Grand Theft Auto: Vice City and over 11 million units of Grand Theft Auto 3.”

38. On December 16, 2004, Take-Two issued a press release announcing its financial results for the fourth quarter and fiscal year-ended October 31, 2004. In the release, the Company stated, in relevant part, as follows:

Net sales for the fourth quarter ended October 31, 2004, which included the launch of the blockbuster title Grand Theft Auto: San Andreas for the PlayStation®2 computer entertainment system, were \$438.0 million compared to \$277.6 million for the same period a year ago. Net income for the quarter was \$62.6 million, which included a \$7.5 million accrual to establish a reserve in connection with the Company’s SEC investigation as discussed below. Fourth quarter 2004 net income of \$62.6 million and diluted net income per share of \$1.36 compared to net income of \$26.3 million and diluted net income per share of \$0.58 the prior year.

Net sales for the fiscal year ended October 31, 2004 were \$1.13 billion compared to \$1.03 billion for fiscal 2003. Net income of \$65.4 million, including the \$7.5 million accrual related to the Company’s SEC investigation, compared to \$98.1 million in net income last year, with diluted net income per share of \$1.43 compared to \$2.27 last year.

* * *

Fourth Quarter Highlights

Rockstar’s Grand Theft Auto: San Andreas, released in late October for PlayStation 2, was a significant contributor to fourth quarter and fiscal year results. Created by the world-class developers Rockstar North, Grand Theft Auto: San Andreas was the top performing product in Take-Two’s publishing business this quarter and fiscal year. According to NPDFunworldSM, Grand Theft Auto: San Andreas was the top selling PlayStation® 2 title in the United States in October and November.

* * *

Management Comments

Richard Roedel, Chairman and Chief Executive Officer, stated, “Fiscal 2004 was a rebuilding year for us, as we made key management additions and improved certain areas of our distribution and publishing businesses. We achieved a number of important accomplishments in 2004 which make Take-Two a much stronger company going into 2005:

-- Grand Theft Auto: San Andreas was the largest videogame launch in Take-Two's history, further strengthening both our Rockstar label and the Company's financial position.

Paul Eibeler, President, added, ***"We are entering fiscal 2005 in a strong, competitive position. With the tremendous success of Grand Theft Auto: San Andreas, Rockstar Games has magnified the power of the Grand Theft Auto brand, and they will continue to build on the franchise with the launch of Xbox and PC versions of Grand Theft Auto: San Andreas in June. Our product portfolio going into 2005, which includes titles based on a combination of proven franchises, new brands and licensed properties, is the strongest in the Company's history. Combined with the expansion of our management team and the strengthening of our internal operations, we believe we are building the foundation for long term, sustained growth in the interactive entertainment industry."*** [Emphasis added.]

39. On December 22, 2004, the Company filed its annual report with the SEC on a Form 10-K. The Form 10-K reiterated the results announced in the Company's December 16, 2004 press release and included the following certification signed by defendants Winters and Eibeler Section 302 of the Sarbanes-Oxley Act of 2002 ("Sarbanes Oxley"):

2. Based on my knowledge, ***this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;***

3. Based on my knowledge, ***the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cashflows of the registrant as of, and for, the periods presented in this report;***

* * *

The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) ***All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information;*** and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting. [Emphasis added.]

40. On March 3, 2005, the Company issued a press release announcing its results for the quarter ended January 31, 2005. The press release stated in relevant part, as follows:

Net sales for the first quarter were \$502.5 million compared to \$375.5 million for the first quarter of fiscal 2004, an increase of 34%. Net income for the quarter rose to \$55.2 million, a 74% increase from net income of \$31.8 million during the same period last year. Diluted earnings per share of \$1.19 increased 70% from \$0.70 per diluted share in the prior year's first quarter.

Take-Two generated approximately \$185 million in cash flow from operations in the quarter, bringing the Company's cash position to approximately \$303 million as of January 31, 2005.

Take-Two attributed the sharply higher first quarter results primarily to continued strong consumer demand for its Grand Theft Auto: San Andreas title, as well as robust sales of the 2K Sports line of products and improved performance of the Company's Jack of All Games distribution business.

* * *

Rockstar Games

Rockstar's Grand Theft Auto: San Andreas, released in late October for the PlayStation®2 computer entertainment system, was a significant contributor to the first quarter results. Created by the world-class developers Rockstar North, Grand Theft Auto: San Andreas was the top performing product in Take-Two's publishing business in the quarter. According to NPDFunworldSM, Grand Theft Auto: San Andreas was the top selling PlayStation® 2 title in the United States in each of the four months since its release. The Company's life to date sales of Grand Theft Auto: San Andreas through the end of the first quarter have exceeded 12 million units.

* * *

Management Comments

Paul Eibeler, President and Chief Executive Officer, stated, *"Fiscal 2005 is off to a great start. We are extremely pleased with the continued success of Grand Theft Auto: San Andreas and Rockstar's plans to extend the reach of this blockbuster title to multiple platforms and the Asian market later this year.* Additionally, we have made significant progress in diversifying our business, building our product pipeline and adding to our sports game development

capabilities. We will continue to leverage our internal resources and invest in new opportunities, including extending our content to new hardware platforms. With our strong performance in the first quarter and our rapidly expanding portfolio of proven franchises, new brands and licensed properties, Take-Two is positioned for significant annual growth.” [Emphasis added.]

41. On March 10, 2005, the Company filed its quarterly report with the SEC on a Form 10-Q. The Form 10-Q reiterated the results announced in the Company’s March 3, 2005 press release. In addition, the Form 10-Q contained certifications signed by defendants Eibeler and Winters pursuant to Section 302 of Sarbanes Oxley, that were substantially similar to the certifications set forth in paragraph 39.

42. On June 2, 2005, Take-Two issued a press release announcing its financial results for the second quarter ended April 30, 2005. The financial results reflected the Company’s three-for-two stock split completed in April 2005. In the release, the Company stated, in relevant part, as follow:

Net sales in the second quarter increased 45% to \$222.1 million, compared to \$153.4 million in the second quarter of fiscal 2004. Net loss for the quarter was \$8.2 million, compared to a net loss of \$14.6 million last year, with a net loss of \$(0.12) per share compared to a net loss per share of \$(0.22) last year.

Net sales for the six months ended April 30, 2005 increased 37% to \$724.5 million, compared to \$528.9 million for the same period a year ago. Net income for the first six months more than doubled to \$47.1 million from net income of \$17.2 million in the comparable period last year. Diluted earnings per share of \$0.67 increased 168% from \$0.25 per diluted share in the prior year’s first six months.

Take-Two attributed its increased second quarter sales to the launch of *Midnight Club 3: DUB Edition* for PlayStation®2 and Xbox® and *Major League Baseball 2K5* for PlayStation® 2 and Xbox, ***as well as continued consumer demand for its Grand Theft Auto: San Andreas title for PlayStation® 2.***

* * *

In the release, defendant Eibeler touted *Grand Theft Auto: San Andreas* as a “continued success,” stating, in relevant part, as follows:

We were pleased with the performance of our second quarter releases, as well as the continued success of Grand Theft Auto: San Andreas. Additionally, having just returned from E3, we are excited about our future. Rockstar, 2K Games, 2K Sports and Global Star showcased a diverse assortment of over 25 games across all genres, platforms and demographic appeal to much critical and consumer acclaim. [Emphasis added.]

43. On June 9, 2005, Take-Two filed its second quarterly report with the SEC on Form 10-Q, reiterating the results reported on June 2, 2005. The Form 10-Q also included certifications signed by defendants Eibeler and Winters pursuant to Section 302 of Sarbanes Oxley that were substantially to the certifications set forth in paragraph 39.

44. On July 20, 2005, Take-Two announced the conclusion of the ESRB investigation and that the ESRB had changed the rating on Grand Theft Auto: San Andreas across all platforms to "Adults Only 18+" from "Mature 17+." The Company stated, in relevant part, as follows:

Take-Two Interactive Software, Inc. (NASDAQ: TTWO) announced today that the Entertainment Software Rating Board (ESRB) has changed the rating of Grand Theft Auto: San Andreas on all platforms from "Mature 17+" (M) to "Adults Only 18+" (AO) because of the so-called "hot coffee mod," an unauthorized third party modification that alters the retail version of the game. Take-Two cooperated fully with the ESRB's investigation.

Rockstar Games has ceased manufacturing of the current version of the title and will begin working on a version of the game with enhanced security to prevent the "hot coffee" modifications. This version will retain the original ESRB M-rating and is expected to be available during the Company's fourth fiscal quarter. Rockstar Games will be providing AO labels for retailers who wish to continue to sell the current version of the title.

As a result of the rating change, the Company revised its guidance lower as follows:

As a result of the re-rating of the game, Take-Two is lowering guidance for the third fiscal quarter ending July 31, 2005 to \$160 to \$170 million in net sales and a net loss per share of \$(0.40) to \$(0.45) to provide reserves for the value of the title's current North American retail inventory. Accordingly, guidance for the fiscal year ending October 31, 2005 is also being lowered to \$1.26 to \$1.31 billion in net sales and \$1.05 to \$1.12 in diluted earnings per share. [Emphasis added.]

45. On July 26, 2005, the Company announced that it was the subject of an FTC investigation into advertising claims made by the Company regarding Grand Theft Auto: San Andreas to determine whether the Company intentionally deceived the ESRB to avoid an “Adults Only” rating on the game.

46. On July 29, 2005, Take-Two announced that Australia’s Office of Film and Literature Classification (OFLC), the Australian entity responsible for rating films and video games, had revoked the classification of Grand Theft Auto: San Andreas. According to the Company, “[a]s a result of this decision, the game is now unclassified in Australia, and cannot be sold, advertised or distributed in that country.” Moreover, the Company stated that “the OFLC decision had been expected and the financial impact will not alter the Company’s recently announced guidance.”

47. On September 7, 2005, Take-Two issued a press release announcing its financial results for the third quarter ended July 31, 2005. The press release stated in relevant part, as follows:

Net sales in the third quarter increased 6% to \$169.9 million, compared to \$160.9 million in the third quarter of fiscal 2004. Net loss for the quarter was \$28.8 million, compared to a net loss of \$14.4 million last year, with a net loss of \$(0.41) per share compared to a net loss per share of \$(0.21) last year.

Net sales for the nine months ended July 31, 2005 increased 30% to \$894.4 million, compared to \$689.7 million for the same period a year ago. Net income for the first nine months increased to \$18.3 million from net income of \$2.7 million in the comparable period last year. Diluted earnings per share of \$0.26 increased from \$0.04 per diluted share in the prior year’s first nine months.

Take-Two attributed its increased third quarter sales to the launch of Grand Theft Auto: San Andreas for Xbox and PC and Midnight Club 3: DUB Edition for the PSPTM, along with the release of Charlie and the Chocolate Factory on multiple platforms and Sid Meier’s Pirates! for Xbox.

* * *

Guidance

Take-Two is updating its fiscal 2005 guidance primarily to reflect the movement of Bully for PlayStation® 2 and Xbox out of the current fiscal year to provide additional development time for the title, the movement of the Japanese launch of Grand Theft Auto: San Andreas for PlayStation® 2 out of the current fiscal year, and the movement of Sid Meier's Civilization IV for PC from fiscal 2006 into fiscal 2005. The Company now expects \$1.22 to \$1.27 billion in net sales and \$0.85 to \$0.90 in diluted net income per share for the fiscal year ending October 31, 2005.

Take-Two is issuing initial guidance for fiscal 2006, excluding the estimated impact from adoption of FASB 123®:

For the fiscal year ending October 31, 2006, \$1.4 to \$1.5 billion in net sales and \$1.25 to \$1.55 in diluted net income per share.

For the first quarter ending January 31, 2006, \$350 to \$400 million in net sales and \$0.14 to \$0.20 in diluted net income per share.

The Company's diluted earnings/(loss) per share for all periods above do not include the impact of adopting FASB 123®, requiring the expensing of employee stock options. With the adoption of FASB 123® beginning on November 1, 2005, the Company's estimated diluted net income per share guidance will be \$1.05 to \$1.30 for the fiscal year ending October 31, 2006 and \$0.10 to \$0.15 for the first quarter ending January 31, 2006.

* * *

Defendant Eibeler commented on the second quarter results, stating, in relevant part, as follows:

Paul Eibeler, President and Chief Executive Officer, stated, "Take-Two is in an excellent competitive position as our industry enters its next cycle of growth. We have a high quality line-up that is the most diverse in our history -- including the latest versions of established franchises, as well as newer titles that will become tomorrow's hits. Our Rockstar, 2K Games, 2K Sports and Global Star labels are building a product pipeline that will appeal to a broad range of consumers."

Mr. Eibeler continued, "We are particularly excited about the capabilities of the next generation hardware, which play to our strength--the ability to produce creative and engaging games that generate enthusiastic responses from gamers and reviewers alike. ***And, we have the financial and operational resources to capitalize on the opportunities presented by the current installed base and the millions of next generation console and handheld units that will be added in the coming months and years.***" [Emphasis added.]

48. On September 8, 2005, Take-Two filed its quarterly report with the SEC on Form 10-Q. In the Form 10-Q, the Company reiterated the results announced in its September 7, 2005

press release. In addition, the Form 10-Q also included certifications signed by defendants Eibeler and Winters pursuant to Section 302 of Sarbanes Oxley that were substantially to the certifications set forth in paragraph 39..

49. On January 5, 2006, Take-Two issued a press release announcing preliminary and unaudited financial results for the year-ended October 31, 2005. In the release, the Company stated, in relevant part, as follows:

New York, NY - January 5, 2006 - Take-Two Interactive Software, Inc. (NASDAQ:TTWO) today announced preliminary and unaudited financial results of \$1.2 billion in net sales and diluted net income per share of \$0.53 for its fiscal year ended October 31, 2005 and \$308 million in net sales and \$0.27 in diluted net income per share for its fiscal 2005 fourth quarter. These figures are considered preliminary due to the need for additional time to complete the Company's year-end results, including its assessments required for its first year of reporting under Section 404 of the Sarbanes-Oxley Act.

Take-Two expects to file its Form 10-K within the timeframe required by the Securities and Exchange Commission. The Company's diluted earnings per share for the periods above do not include the impact of adopting FASB 123', requiring the expensing of employee stock options beginning on November 1, 2005.

Guidance

Take-Two is revising its fiscal 2006 first quarter guidance to reflect the continued retail weakness for video game software during the holiday selling season in both North America and Europe, as well as the movement into the second quarter of Top Spin 2 for the Xbox 360™ video game and entertainment system from Microsoft, Nintendo DS™ and Game Boy® Advance and College Hoops 2K6 for the Xbox 360 to provide additional development time. The Company now expects \$230 to \$250 million in net sales and a net loss per share for the first quarter ending January 31, 2006.

Due to the continued uncertainties related to the retail environment and the timing and consumer acceptance of new video game hardware and software, as well as the timing of the Company's new product releases during 2006, Take-Two is not providing financial guidance for the fiscal year ending October 31, 2006, but now expects net revenue and earnings per share for fiscal 2006 to be significantly below the financial guidance previously provided by the Company and current analyst consensus estimates. [Emphasis added.]

50. On January 18, 2006, Take-Two filed with the SEC a Notice of Late Filing of its fiscal 2005 annual report, stating, in relevant part, as follows:

Although the Registrant has dedicated significant resources to completing its Annual Report on Form 10-K for the fiscal year ended October 31, 2005 (the “Form 10-K”), it has not been able to complete the Form 10-K on a timely basis because management is currently finalizing its financial statements and other disclosures for inclusion in its Form 10-K and the required assessment of its internal control over financial reporting as of October 31, 2005, as required by Section 404 of the Sarbanes-Oxley Act of 2002 (“Section 404”). Although the Registrant has made substantial progress in completing its Form 10-K, there have been delays primarily attributable to the significant amount of work imposed by the new requirements under Section 404. The Registrant currently anticipates filing the Form 10-K on or before the end of the extended deadline.

While management has not yet completed its assessment of the Registrant’s internal control over financial reporting, the Registrant’s management has concluded, as of the date of this filing, that the following material weaknesses existed as of October 31, 2005. A material weakness is a control deficiency, or a combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected.

- ***The Registrant did not maintain effective controls over the existence and valuation of its accounts payable related to inventory purchases. Specifically, the Registrant did not maintain effective controls to identify, analyze and reconcile amounts related to inventory purchases included in accounts payable to underlying supporting documentation. This control deficiency resulted in audit adjustments to the 2005 annual consolidated financial statements. In addition, this control deficiency could result in a misstatement of the accounts payable, inventory or cost of goods accounts or related disclosures that would result in a material misstatement of the annual or interim financial statements that would not be prevented or detected. Accordingly, management has determined that this control deficiency constitutes a material weakness.***

- ***The Registrant did not maintain effective controls over the accuracy of the amortization of its capitalized software development costs. Specifically, the Registrant did not have effective controls to accurately prepare and review inputs to a spreadsheet application used to calculate amortization expense related to capitalized software development costs. This control deficiency resulted in audit adjustments to the 2005 annual consolidated financial statements. In addition, this control deficiency could result in a misstatement of the capitalized software development costs or amortization expense or related disclosures that would result in a material misstatement of the annual or interim financial statements that would not be prevented or detected.***

Accordingly, management has determined that this control deficiency constitutes a material weakness. [Emphasis added.]

51. On January 25, 2006, Take-Two filed with the SEC a Current Report on a Form 8-K to report the resignation of Barbara Kaczynski, a board member, audit committee chairperson, and corporate governance committee member. The Form 8-K included the following letter from Kaczynski's attorney:

As you know, we have just been retained to represent Barbara Kaczynski. I write in response to your email of Friday, January 20, 2006, to Ms. Kaczynski, regarding her resignation from the board of directors of Take-Two Interactive Software, Inc. ("Take-Two").

Your email seeks confirmation from Ms. Kaczynski that her resignation from TakeTwo's board was not due to a disagreement with management of the type requiring disclosure under Item 5.02(a) of S.E.C. Form 8-K. Your email further asks Ms. Kaczynski to approve draft language describing the circumstances surrounding her resignation, which language the company intends to include in its upcoming Form 8-K disclosure.

Ms. Kaczynski does not know whether her resignation is of a type requiring disclosure under SEC rules and she does not feel able to express a view with respect to the language the Company intends to include in its Form 8-K disclosure about the resignation.

However, she is able to express to you directly the reasons why she resigned. During Ms. Kaczynski's tenure as a board member and chair of the audit committee, several matters requiring the board's attention caused Ms. Kaczynski concern. These matters included Take-Two's discovery of illicit images depicted in its "Grand Theft Auto" videogame, the Federal Trade Commission's investigation of Take-Two following that discovery, and various SEC inquiries directed at Take-Two and its employees.

More recently, in connection with preparation of the 10-K and its late filing, Ms. Kaczynski's concerns have risen significantly because of what she views as an increasingly unhealthy relationship between senior management and the board of directors. In her experience, management's interactions with the board were characterized by a lack of cooperation and respect. Moreover, Ms Kaczynski felt that management failed to keep the board informed of important issues facing the company or failed to do so in a timely fashion. In these circumstances, Ms. Kaczynski decided to resign her position as a member of the board. [Emphasis added.]

52. The statements in paragraphs 37 - 51 were materially false and misleading, and defendants knew or recklessly disregarded the statements as such, because of the following reasons:

(a) Take-Two failed to disclose that its best-selling title, Grand Theft Auto: San Andreas, contained embedded codes that, once unlocked, allowed game players to view pornographic scenes and that, therefore, required an “Adult Only” rating, rather than “Mature”;

(b) Defendants attempted to bolster sales of Grand Theft Auto: San Andreas by concealing the game’s pornographic content so that retailers that otherwise refused to carry “Adult Only” material, would agree to sell the game;

(c) Take-Two’s management was not cooperating with the Company’s Board of Directors and was failing to keep the Board of Directors informed of important issues or failing to do so in a timely fashion;

(d) Take-Two was misstating its accounts payable, inventory and cost of goods accounts;

(e) Take-Two was misstating capitalized software development costs and amortization expense;

(f) Take-Two had inadequate internal controls and procedures to ensure accuracy in its reported financial results; and

(g) As a result of (a)-(f) above, the Company’s fiscal 2006 financial guidance lacked any reasonable basis in fact.

THE TRUTH BEGINS TO EMERGE

53. On January 27, 2006, before the market opened, the City Attorney for the City of Los Angeles was reported to have filed an action against the Company and Rockstar for making misleading statements in marketing Grand Theft Auto: San Andreas and engaging in unfair

competition in violation of the California Business and Professions Code. The lawsuit demanded that Take-Two and Rockstar Games stop marketing the games to children, disgorge the profits from the estimated 200,000 copies of the game it sold for about \$10 million in California, and that it disclose the sex scenes to customers who purchased the video game before the change in ratings.

54. In reaction to this news, the price of Take-Two stock plummeted, falling \$2.34 per share, or 13.7%, from its closing price of \$17.03 on January 26, 2005, to close at \$14.69 on January 27, 2005, on unusually high volume.

55. On January 27, 2006, an article appeared on *TheStreet.com* titled "Tough Times For Take-Two Interactive," which stated, in relevant part, as follows:

Banc of America analyst Gary Take-Two helped spark the selloff Friday with his report on the company, in which he lowered his rating on the company's stock to sell from neutral and dropped his price target from \$19 to just \$12.

Take-Two cited a number of reasons for his downgrade, among them: *accounting and governance problems at the company, the potential for an investigation by the Securities and Exchange Commission and an accounting restatement, the rapid rate at which the company is burning cash, and his expectation that the company's earnings will be lower than expected because of a delay in releasing the next major version of its Grand Theft Auto series.*

"TTWO is not well-run, overly dependent on one product and will likely have to raise additional capital," said Take-Two. Because of these factors, despite his downgrade, "our new price target ... may still prove aggressive," added Take-Two, whose firm has done investment banking for Take-Two in the last year. [Emphasis added]

SCIENTER

56. 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.

57. During the Class Period, the Individual Defendants were motivated to engage in the illegal and fraudulent conduct alleged herein in order to sell their personally held shares of Take-Two stock at artificially inflated prices. As detailed above, the Individual Defendants, as officers and directors of the Company, were privy to confidential financial information concerning the Company's business, financial condition and future business prospects and outlook. In this capacity, the Individual Defendants had access to material, nonpublic information concerning the Company's true financial condition. Notwithstanding the duty not to sell Take-Two common stock under these circumstances, or to disclose the insider information prior to selling the stock, each of the Individual Defendants and several other directors of the Company, sold Take-Two stock at prices that were artificially inflated by defendants' material false and misleading statements and omissions. In total, Take-Two insiders sold more than 661,000 shares of Take-Two for proceeds of over \$18 million during the Class Period. The Company insiders engaged in the following sales transactions during the Class Period:

Todd Emmel: Director

Transaction Date	# of Shares Sold	\$ Price/Share	\$ Proceeds
3/18/2005	8,138	41.00	333,637.33
3/21/2005	2,467	41.42	102,203.80

Total Emmel **10,605** **435,841.13**

Robert Flug: Director

Transaction Date	# of Shares Sold	\$ Price/Share	\$ Proceeds
4/5/2005	15,000	39.26	588,899.71
6/17/2005	12,324	28.20	347,499.83
7/12/2005	6,000	27.73	166,380.00
9/23/2005	6,324	22.24	140,645.76

Total Flug: **39,648** **1,243,425.30**

Oliver Grace: Director

Transaction Date	# of Shares Sold	\$ Price/Share	\$ Proceeds
6/17/2005	184,500	28.18	5,199,210.00
6/20/2005	80,500	28.13	2,264,465.00
6/21/2005	24,900	27.88	694,212.00
6/22/2005	4,303	27.91	120,096.73
6/23/2005	5,797	27.91	161,794.27

Total Grace: **300,000** **8,439,778.00**

Gary Lewis: COO

Transaction Date	# of Shares Sold	\$ Price/Share	\$ Proceeds
3/11/2005	22,500	26.97	606,900.00
3/11/2005	6,000	26.82	160,960.00
6/20/2005	10,000	28.19	281,920.00
7/13/2005	20,000	27.75	555,000.00

Total Lewis: **58,500** **1,604,780.00**

Steven Tisch: Director

Transaction Date	# of Shares Sold	\$ Price/Share	\$ Proceeds
6/15/2005	2,000	28.52	57,036.00
6/16/2005	25,000	28.39	709,750.00

Total Tisch: **27,000** **766,786.00**

Karl Winters: CFO

Transaction Date	# of Shares Sold	\$ Price/Share	\$ Proceeds
3/11/2005	168,000	27.08	4,549,440.00

	6/14/2005	50,000	28.77	1,438,500.00
	9/26/2005	7,500	21.98	164,850.00
Total Winters:		225,500		6,152,790.00
Totals		661,253		\$18,643,400.43

LOSS CAUSATION/ECONOMIC LOSS

58. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the damages suffered by plaintiff and the Class.

59. During the Class Period, plaintiff and the Class purchased securities of Take-Two at artificially inflated prices and were damaged thereby. The price of Take-Two common stock declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

FIRST CLAIM

For Violation of § 10(b) of the 1934 Act and Rule 10b-5 Against All Defendants

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

61. During the Class Period, defendants carried out a plan, scheme and course of conduct that was intended to and, throughout the Class Period, did: (i) deceive the investing public regarding Take-Two's business, operations, management and the intrinsic value of Take-Two common stock; (ii) enable Company insiders, including defendants, to sell over 661,000 shares of their privately-held Take-Two stock for proceeds of more than \$18 million while in possession of material adverse non-public information about the Company; and (iii) cause

plaintiff and other members of the Class to purchase Take-Two securities at artificially inflated prices.

62. In furtherance of this unlawful scheme, plan and course of conduct, defendants, jointly and individually (and each of them) took the actions set forth herein. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of conduct that operated as a fraud and deceit upon the purchasers of the Company's common stock in an effort to maintain artificially high market prices for Take-Two's common stock 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.

63. 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.

64. 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 conduct that operated as a fraud and deceit upon the purchasers of Take-Two common stock during the Class Period.

65. 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.

66. 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. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly 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 common stock. 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

recklessly refraining from taking those steps necessary to discover whether those statements were false or misleading.

67. 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 common stock was artificially inflated during the Class Period. In ignorance of the fact that market prices of Take-Two's publicly traded common stock 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 common stock during the Class Period at artificially high prices and were damaged thereby.

68. 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 the truth regarding the problems that Take-Two was experiencing, which were not disclosed by defendants, plaintiff and other members of the Class would not have purchased or otherwise acquired their Take-Two common stock, or, if they had acquired such common stock during the Class Period, they would not have done so at the artificially inflated prices that they paid.

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

70. 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 common stock during the Class Period.

SECOND CLAIM

For Violation of § 20(a) of the 1934 Act Against All Defendants

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

72. 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 that 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.

73. 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.

74. 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 common stock during the Class Period.

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

- i) 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;
- ii) 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;
- iii) Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;
- iv) Awarding extraordinary, equitable and/or injunctive relief as permitted by law, equity and the federal statutory provisions sued hereunder, pursuant to Rules 64 and 65 and any appropriate state law remedies to assure that the Class has an effective remedy; and
- v) Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: February 14, 2006

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