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LOS ANGELES SUPERIOR COURT

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6 Attorneys for Plaintiff
7 No Doubt, a California Partnership

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

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11 NO DOUBT, a California Partnership,
12 Plaintiff,
13 v.
14 ACTIVISION PUBLISHING, INC.,
15 a Delaware Corporation,
16 Defendant.

BC 42 52 68

Case No.

COMPLAINT FOR:

- 1. FRAUDULENT INDUCEMENT;
- 2. VIOLATION OF CALIFORNIA CIVIL CODE § 3344 AND COMMON LAW RIGHT OF PUBLICITY;
- 3. BREACH OF CONTRACT;
- 4. UNFAIR BUSINESS PRACTICES (Cal. Bus. & Prof. Code § 17200);
- 5. INJUNCTIVE RELIEF; and
- 6. RESCISSION

BY FAX

*Dept #69
Judge [Signature]*

C17/CASE: BC425268 LEA/BEFR:
 RECEIPT #: DCH481620814
 DATE TIME: 11/04/09 08:45:45 AM
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JURY TRIAL DEMANDED

1 Plaintiff No Doubt ("No Doubt"), for its claims against Defendant Activision Publishing,
2 Inc. ("Activision"), alleges upon knowledge with respect to its own acts, and upon information
3 and belief as to all other matters, as follows:

4 I. SUMMARY OF THE DISPUTE

5 1. This is an action to enjoin and obtain redress for Activision's unauthorized and
6 improper exploitation of the name, performances and likenesses of No Doubt, an internationally
7 renowned musical group, in an attempt to boost the sales of Activision's flagship video game
8 franchise, *Guitar Hero*.

9 2. In violation of an express written contract with No Doubt, Activision created in a
10 new version of *Guitar Hero*, titled *Band Hero*, the ability to have lifelike embodiments of No
11 Doubt and its individual band members sing, dance and perform over sixty songs that were neither
12 contracted for nor approved of, and have never been performed, by No Doubt.

13 3. Specifically, Activision transformed No Doubt band members into a virtual
14 karaoke circus act by enabling each member's "performance" of over sixty musical works, many
15 of which include lyrics, contained in iconic songs, which are not appropriate for No Doubt and
16 have not been and would not have been chosen by No Doubt for recordings or public
17 performances. In addition to forcing unwanted performances upon No Doubt in excess of the
18 granted license, Activision also included a feature to cause members of No Doubt to perform
19 vocally as soloists without their band members, including having male members sing with female
20 voices. The feature also allows game-players to fully manipulate each character's likeness to
21 engage in unapproved acts with other characters included in the game. Activision also included a
22 feature to cause the female lead singer of No Doubt, Gwen Stefani, to perform unapproved songs
23 in voices other than her own, including male voices. Activision actively concealed its intent to use
24 the likenesses and performances of No Doubt's members in such a manner and, when Activision
25 was told that these uses were not permitted by the contract and not approved by the band,
26 Activision refused to correct its actions. An Activision executive asserted that doing so would be
27 "too expensive" and would jeopardize their revenue.

28

1 4. Activision's concern for its own financial interest over the personal and
2 professional harm to the members of No Doubt and its concealment of its secret intention to
3 ignore its written contract, constitutes fraudulent inducement, materially breaches the agreement
4 between the parties, infringes upon No Doubt's right of publicity, and violates California Business
5 and Professions Code section 17200. No Doubt has worked hard for over two decades to build
6 and maintain its image and accumulate a considerable amount of goodwill in the eyes of the
7 public. Activision's malicious conduct has and will continue to irreparably harm No Doubt and its
8 reputation, business and goodwill.

9 **II. PARTIES, JURISDICTION AND VENUE**

10 5. No Doubt is a musical group and a partnership organized and existing under the
11 laws of the State of California with its principal place of business in Los Angeles, California.

12 6. Activision is a corporation organized and existing under the laws of the State of
13 Delaware with its principal place of business in Santa Monica, CA.

14 7. The parties have agreed to this Court's jurisdiction. On May 21, 2009, the parties
15 entered into an agreement (the "Agreement"). A true and correct copy of the Agreement, redacted
16 only as to the compensation term, is attached as Exhibit A. The Agreement expressly provided:

17 The substantive laws of California shall apply to this Agreement, and the parties
18 consent to the exclusive jurisdiction of the courts in Los Angeles County.

19 Agreement, Paragraph 10.3.

20 **III. FACTS COMMON TO ALL CLAIMS**

21 8. No Doubt has achieved international renown as a successful music band. Equally
22 well known to No Doubt's fans are the limitations that No Doubt imposes upon endorsements or
23 sponsorships entered into by the band. No Doubt has maintained its highly regarded reputation by
24 carefully restricting the use of its name and likeness and in carefully choosing the songs it
25 performs, including songs initially recorded by others that it will perform or "cover." In twenty-
26 three years the band has only released ten very specifically selected cover songs. All other songs
27 the band has recorded have been written, in whole or in part, by members of the band. The artistic
28 judgment of when, where and how No Doubt will publicly appear has contributed to its

1 professional success and career longevity. No Doubt never agreed to allow Activision to
2 substitute its judgment for No Doubt's regarding the public image of No Doubt and its members
3 and therefore required that the Agreement contain express limitations and approval requirements.

4 9. Activision is a video game developer and publisher. Activision's best selling
5 products are the *Guitar Hero* series of video games, which involve the use of a guitar-shaped
6 joystick controller to simulate the playing of lead, bass guitar and rhythm guitar within virtual
7 rock music bands. The *Guitar Hero* series is among the top selling video game franchises in
8 history, reportedly selling more than 25 million units worldwide and earning over \$2 billion.

9 10. The most recent versions of *Guitar Hero* involve the use of lifelike character
10 representations, or "avatars," some of which depict famous musicians. Through the use of these
11 avatars, game-players can conduct virtual concert performances by the famous musicians
12 represented by these avatars.

13 **Activision's Unauthorized Manipulation of No Doubt's *Band Hero* Character Likeness**

14 11. On May 21, 2009, No Doubt and Activision entered into the Agreement whereby
15 No Doubt licensed Activision a specific, limited and restricted use of No Doubt's name, likeness,
16 and musical works in a new release of *Guitar Hero*, titled *Band Hero*. As part of the Agreement,
17 No Doubt permitted Activision to create avatar characters of No Doubt's likeness for the limited
18 purpose of allowing the characters to perform three (3) of No Doubt's own musical works within
19 the video game. The Agreement expressly provided for No Doubt's approval of proposed uses of
20 No Doubt's songs and likeness.

21 12. The Agreement only allowed the use of No Doubt's name and likeness as a
22 collective group, and did not permit the separate use of any individual band member's name or
23 likeness. According to the Agreement:

24 It is specifically acknowledged and agreed that the rights granted herein relate
25 solely to the group "No Doubt" and not the individual members' activities apart
26 from the group.

27 Agreement, Paragraph 1.1.

28

1 13. As part of the Agreement, No Doubt permitted Activision to use no more than
2 three of No Doubt's musical works in *Band Hero* for use with No Doubt's avatar characters. The
3 Agreement required that Activision obtain No Doubt's express approval prior to the use of each
4 song. According to the Agreement:

5 Activision shall use commercially reasonable efforts to license no more than three
6 (3) [No Doubt] songs (master/composition) for incorporation and use in the
7 Game. [No Doubt] shall have approval over the songs to be used, not to be
8 unreasonably withheld.

9 Agreement, Paragraph 4.

10 14. As required by the Agreement, No Doubt appeared for motion capture filming of
11 three of its musical works so that No Doubt's avatar characters could simulate a lifelike
12 performance of the three songs.

13 15. The Agreement also required Activision to obtain No Doubt's written approval
14 prior to *any* use of No Doubt's name or likeness in *Band Hero*. According to the Agreement:

15 Artist's likeness as implemented in the Game (the "Character Likeness"), *any* use
16 of Artist's name and/or likeness other than in a "billing block" fashion on the
17 back of the packaging for the Game, and the b-roll and photography *or other*
18 *representation of the Services or of Artist, shall be subject to Artist's prior*
19 *written approval.*

20 Agreement at Paragraph 6.1 (emphasis added).

21 16. Without No Doubt's knowledge or permission, and indeed when discovered over
22 its protest, and in breach of the Agreement, Activision included a feature in *Band Hero* that allows
23 a game-player to manipulate No Doubt's character likenesses to perform over *sixty* additional
24 musical works that are not associated with, have never been performed by, and were never
25 approved by No Doubt (the "Character Manipulation Feature").

26 17. The Character Manipulation Feature allows a game-player to create awkward and
27 distorted virtual performances by No Doubt's avatar characters of musical works in genres not
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1 associated with, and never performed by, No Doubt, certain of which contain lyrics that are
2 potentially harmful to the reputation and public persona of No Doubt.

3 18. The Character Manipulation Feature also allows a game-player a wide-range of
4 control over the movement of No Doubt's avatar characters, including the ability to cause the
5 characters to engage in unrealistic, and unapproved, movements and dances.

6 19. The Character Manipulation Feature further allows each member of No Doubt to
7 appear as solo artists performing entirely apart from the other members.

8 20. The Character Manipulation Feature, although obviously known to Activision, was
9 not disclosed to No Doubt before it entered into the Agreement and was not authorized under the
10 Agreement. No Doubt would not have entered into the Agreement had it known of Activision's
11 intent to use its likenesses in the Character Manipulation Feature. Activision chose to conceal the
12 additional exploitation of No Doubt's name, performance and likenesses in order to advance its
13 own commercial purposes.

14 21. On information and belief, without No Doubt's knowledge, Activision hired actors
15 to impersonate No Doubt so that it could create unapproved representations of No Doubt's
16 performances of the unauthorized additional musical works.

17 22. For example, the Character Manipulation Feature contains a representation of
18 Gwen Stefani, the lead singer of No Doubt, a world renown performer in her own right,
19 performing, without her approval, the song "Honky Tonk Woman"¹ by the Rolling Stones. While
20 No Doubt are avid fans of the Rolling Stones and even have performed in concerts with the
21 Rolling Stones, the Character Manipulation Feature results in an unauthorized performance by the
22 Gwen Stefani avatar in a male voice boasting about having sex with prostitutes in lyrics such as:

23 I met a gin soaked, bar-room queen in Memphis.

24 She tried to take me upstairs for a ride.

25 She had to heave me right across her shoulder,

26 cause I just cant seem to drink you off my mind.

27 _____
28 ¹ © 1969 Mick Jagger, Keith Richards and ABKCO Music, Inc.

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...
I laid a divorcee in New York City.
I had to put up some kind of a fight,
The lady then she covered me with roses.
She blew my nose and then she blew my mind.

23. In another example, the Character Manipulation Feature allows the avatar character of No Doubt bassist Tony Kanal to individually appear to sing, in a female voice, No Doubt's musical works even though Mr. Kanal never provided the lead vocals to any musical works during the motion capture filming with Activision, and indeed has never performed as a lead vocalist of the group. However, in the game his avatar character can be manipulated to provide the lead vocals in a woman's voice, to No Doubt's musical work "Just a Girl"¹ including the following lyrics:

Oh I'm just a girl, Guess I'm some kind of freak.
'Cause they all sit and stare with their eyes.
Oh I'm just a girl. Take a good look at me.
Just your typical prototype.

24. On information and belief, Activision was aware that its contract did not permit the use to which No Doubt and its members are subject, as Activision sought written permission from other famous musicians whose avatar characters appear in *Guitar Hero* to use their names and likenesses for the Character Manipulation Feature but nonetheless failed to seek such permission from No Doubt.

25. Activision's President and Chief Executive Officer Dan Rosensweig has admitted that Activision is fully capable of disabling the Character Manipulation Feature relating to No Doubt, but refuses to do so in order to commercially exploit No Doubt's name and likeness for its own financial interest. Indeed, Mr. Rosensweig admitted that Activision has disabled the

¹ © 1995 Crazy Velcro Music, Knock Yourself Out Music, MCA Music Publishing, and Music Corporation of America

1 Character Manipulation Feature relating to musician Jimi Hendrix at the request of the Hendrix
2 estate.

3 26. Through the use of No Doubt's name and likeness for the Character Manipulation
4 Feature, Activision has deceived No Doubt's fans, harmed No Doubt and its members'
5 reputations, business and goodwill, and deprived No Doubt of the benefits specifically negotiated
6 and due to it under the Agreement.

7 **FIRST CAUSE OF ACTION FOR FRAUDULENT INDUCEMENT**

8 27. No Doubt incorporates by reference paragraphs 1 through 26, as though fully set
9 forth.

10 28. Prior to and after executing the Agreement, Activision represented to No Doubt
11 that its name and likeness would only be used in conjunction with three selected No Doubt songs
12 within *Band Hero*. At the same time, Activision concealed its plan to use No Doubt's name and
13 likeness for the Character Manipulation Feature.

14 29. Upon information and belief, Activision's failure to disclose the Character
15 Manipulation Feature was made with an intent to defraud No Doubt by inducing it to enter into the
16 Agreement and cooperate for the motion capture filming of its likeness.

17 30. Upon information and belief, Activision knew that its nondisclosure and
18 suppression of the Character Manipulation Feature would mislead No Doubt and induce it into
19 entering into the Agreement. Activision knew that No Doubt would not agree to allow itself, and
20 its individual members appearing as solo artists, to "cover" songs of other artists, without No
21 Doubt's approval, especially songs in genres inconsistent with No Doubt's image or with
22 inappropriate lyrics.

23 31. Activision's intention to create the Character Manipulation Feature was concealed
24 and could not have been known by No Doubt until the release of *Band Hero*. Indeed in the
25 exchange of hundreds of emails regarding No Doubt's appearance as an avatar, and in many
26 communications with No Doubt, representatives of Activision never revealed its secret intention to
27 permit the manipulation of the No Doubt avatars and have No Doubt's band members perform
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1 inappropriately, harmfully and in an unapproved fashion. No Doubt would never have entered
2 into the Agreement if it had known of Activision's acts and intentions.

3 32. Upon information and belief, during negotiations with No Doubt, the following
4 Activision executives actively concealed the Character Manipulation Feature from No Doubt:

5 A. Tim Riley, Vice President

6 B. Scott McDaniel, Music Supervisor

7 The acts of these executives have been ratified and approved by Activision.

8 33. As a proximate result of Activision's fraud, No Doubt has been damaged in its
9 image, reputation and business in an amount which shall be proved at trial.

10 34. The acts of Activision as alleged herein were committed with malice, oppression
11 and fraud, and therefore justify the award of exemplary and punitive damages in an amount which
12 shall be proved at trial.

13 **SECOND CAUSE OF ACTION FOR VIOLATION OF CALIFORNIA CIVIL CODE**

14 **§ 3344 AND COMMON LAW RIGHT OF PUBLICITY**

15 35. No Doubt incorporates by reference paragraphs 1 through 34, as though fully set
16 forth.

17 36. Through its talents and hard work in the entertainment field, No Doubt's name,
18 performance and likeness are of substantial commercial value and possess considerable goodwill
19 in the eyes of the public (in particular in the eyes of purchasers of recorded music, concert tickets
20 and merchandise) and advertisers. No Doubt's name and likeness convey a message of artistic
21 integrity and a commitment to certain types of music, fashion and social viewpoints.

22 37. No Doubt never agreed to allow the use of its name and likeness for the Character
23 Manipulation Feature of *Band Hero*. Indeed, the agreement prohibits use of the No Doubt songs
24 or avatars without the prior written consent of No Doubt.

25 38. Activision has knowingly misappropriated No Doubt's name, performance and
26 likeness for commercial purposes, including the unauthorized commercial use of No Doubt's
27 name, performance and likeness for the Character Manipulation Feature. No Doubt has not
28 consented to such commercial use of its name, performance and likeness and indeed, has

1 demanded that Activision remove or "lock" the feature. Activision has refused No Doubt's
2 request, announcing that, while technologically possible and having done so for other artists, it is
3 "too expensive" to do so for No Doubt.

4 39. The acts alleged above constitute a violation of California Civil Code § 3344 and
5 No Doubt's common law right of publicity.

6 40. As a direct and proximate result of Activision's acts alleged above, No Doubt has
7 been damaged in an amount which shall be proved at trial. No Doubt is also entitled to profits
8 attributable to Activision's unauthorized use of its name and likeness.

9 41. Pursuant to Civil Code § 3344(a), No Doubt is entitled to recover reasonable
10 attorneys' fees.

11 42. Upon information and belief, Activision has engaged in the conduct alleged above
12 with oppression, fraud and malice. Accordingly, No Doubt is entitled to an award of punitive
13 damages against Activision in an amount which shall be proved at trial.

14 **THIRD CAUSE OF ACTION FOR BREACH OF CONTRACT**

15 43. No Doubt incorporates by reference paragraphs 1 through 42, as though fully set
16 forth.

17 44. No Doubt has fully performed all acts, covenants and conditions to be performed
18 on its part as required under the Agreement, except as such performance was prevented or excused
19 by the conduct of Activision.

20 45. Activision breached the Agreement, as alleged above, by its unpermitted use of No
21 Doubt's name and likeness for the Character Manipulation Feature of *Band Hero*.

22 46. As a proximate result of Activision's breach of the Agreement, No Doubt has
23 suffered damages in an amount which shall be proved at trial, plus attorneys' fees and costs, and
24 legal interest.

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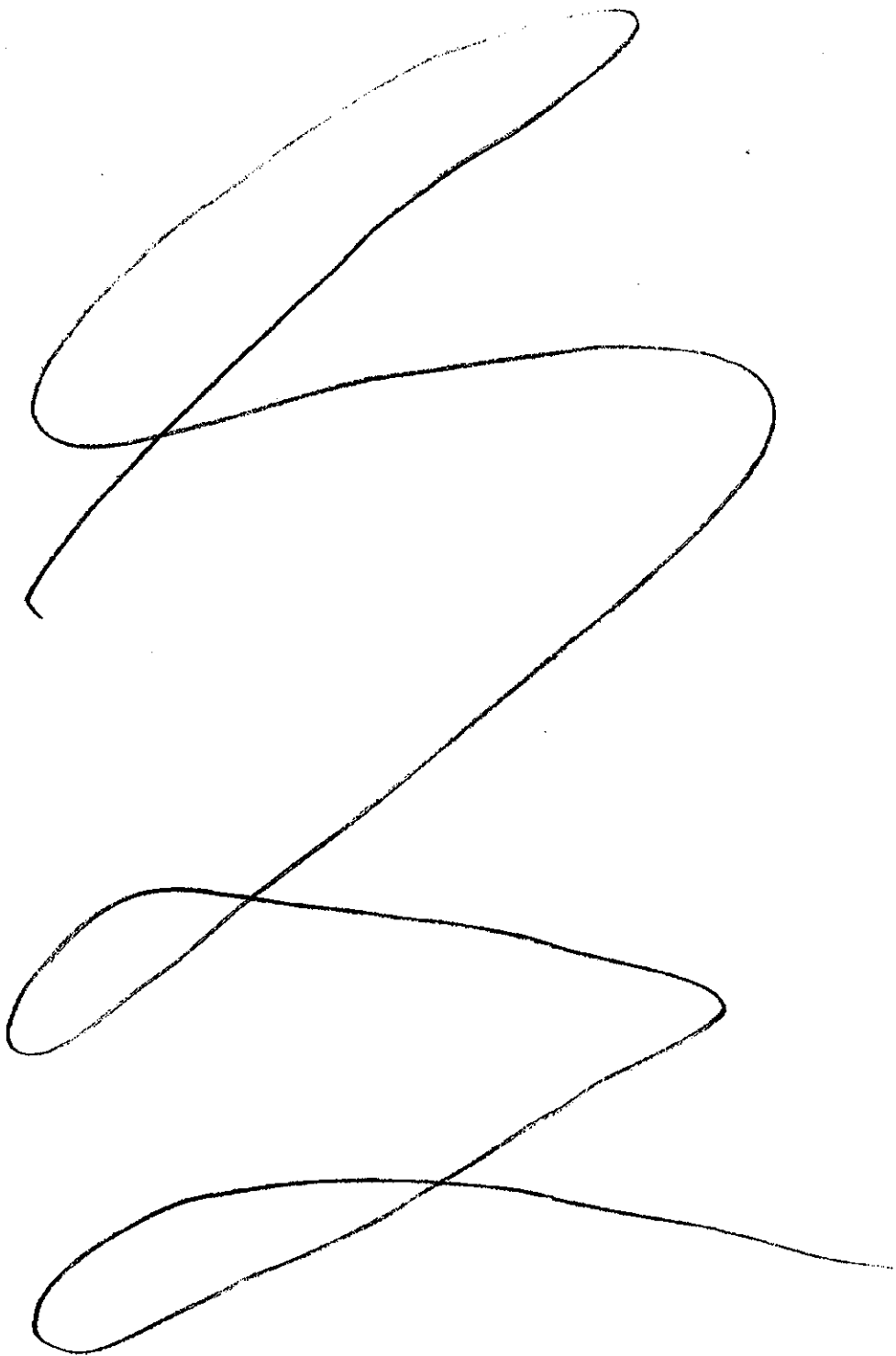


EXHIBIT A



3100 Ocean Park Boulevard
Santa Monica, California 90405
Tel: 310.255.2000
Fax: 310.255.2152
www.activision.com

Party: No Doubt
Activation Product: Band Hero
Deal Type: Character Name and Likeness License re No Doubt

PROFESSIONAL SERVICES AND CHARACTER LICENSE AGREEMENT

This Professional Services and Character License Agreement (the "Agreement") is entered into between Activision Publishing, Inc., and its affiliates, with an address of 3100 Ocean Park Blvd., Santa Monica, CA 90405 (collectively, "Activision"), and No Doubt, a California Partnership, c/o Seth Lichtenstein, Goldring, Hertz & Lichtenstein 450 North Roxbury Drive, 8th Floor, Beverly Hills, CA 90210 ("Artist") dated as of May 21, 2009 (the "Effective Date").

1. GENERAL

- 1.1 Artist owns and controls the personality rights (name and likeness rights) to the musical artist professionally known as No Doubt, including the band name and the name and likeness rights to each of the individual band members (Gwen Stefani, Tom Dumont, Tony Kanal, and Adrian Young). It is specifically acknowledged and agreed that the rights granted herein relate solely to the group "No Doubt" and not the individual members' activities apart from the group.
- 1.2 This Agreement sets out the terms upon which Artist has agreed to grant to Activision certain rights to utilize Artist's name(s), likeness(es), logo(s), and associated trademark(s) and other related intellectual property rights (the "Licensed Property") and to provide to Activision certain production and marketing services in connection with Activision's "Band Hero" video game (the "Game").

2. PRODUCTION SERVICES

- 2.1 Artist shall provide the following services regarding the Game production (collectively, the "Services"):
 - 2.1.1 Artist to participate in one (1) day of Game production services at the offices of the developer of the Game, Neversoft, in Woodland Hills, or such other location in Los Angeles as mutually determined by the parties, for the purposes of photographing and scanning Artist's likeness, and capturing Artist's motion-capture data.
 - 2.1.2 At a mutually agreed time and location, Activision shall be permitted to film "behind-the-scenes/b-roll footage" and/or take publicity photos of Artist and have Artist answer pre-approved interview questions about the Game for marketing and PR purposes. The photographers/videographers and all footage and other representations and any use or exploitation thereof shall be subject to Artist prior written approval.
- 2.2 Activision acknowledges the completion of the foregoing.

3. MARKETING SERVICES

- 3.1 Subject to Artist's professional commitments, Artist shall participate in three (3) entertainment-oriented, gaming enthusiast press or online media interviews (via phone, online, or in-person).
- 3.2 Artist shall, for the period Sept. 1, 2009 to Jan. 1, 2010 allow Band Hero promo materials approved by Artist to be placed on such of Artist's community website(s) as Artist shall determine.; The amount and size of such materials and the placement thereof within the applicable site(s) shall be determined by Artist.
- 3.3 Artist shall participate in either: (a) one (1) press day of no more than four (4) hours, in Los Angeles consisting of national broadcast television (e.g., morning shows, late-night shows, entertainment shows, etc.), radio call-ins, and/or phone or in-person interviews; or (b) one (1) Press Satellite Tour (up to 4 hours).

subject to mutual agreement on timing and location and with reasonable deference to No Doubt's scheduling needs and requirements.

- 3.4 Artist shall provide two (2) recorded video "shout-outs" (e.g., "Hi, this is No Doubt and we're in the new Band Hero game"), subject to Artist's scheduling demands and subject to Artist's review and approval of the contents of such "shout-outs".
- 3.5 Artist shall have approval rights over the press details for the marketing services set forth above (specific proposed shows, interviewer, etc.).
- 3.6 Activision shall pay for Artist's customary expenses related to the above marketing services, including but not limited to travel, hair, and makeup expenses. Any expenses to be reimbursed shall be subject to Activision's prior written approval, and upon request, Artist shall provide reasonable receipts or other proof of expenditure related to such expenses. In the event that Activision will not approve such customary expenses in advance, No Doubt shall have the option of not performing the applicable services.

4. MUSIC LICENSING

Activision shall use commercially reasonable efforts to license no more than three (3) Artist songs (master/composition) for incorporation and use in the Game. Artist shall have approval over the songs to be used, not to be unreasonably withheld. Activision shall be solely responsible for obtaining and paying for all necessary clearances and licenses, as well as any required third party approvals. Artist shall provide all reasonably requested assistance to Activision to facilitate music clearances and licensing of Artist's music for the Game.

5. GRANT OF RIGHTS; OWNERSHIP

- 5.1 Licensed Property. Artists grants to Activision the non-exclusive, worldwide right and license to use the Licensed Property (including Artist's likeness as provided by or approved by Artist) solely in the one (1) Game for all gaming platforms and formats, on the packaging for the Game, and in advertising, marketing, promotional and PR materials for the Game.
- 5.2 Ownership.
 - 5.2.1 All digitized images and models, and all motion data shall be considered as a "work for hire" (as defined under the U.S. Copyright Laws) on behalf of Activision, and Activision shall own all rights thereto, provided that Activision's uses of such materials shall be subject to the terms hereof and limited to those uses permitted herein.
 - 5.2.2 All b-roll footage and photographs of Artist taken during the Services shall be owned by Artist, subject to Activision's right to use the same in and in connection with the Game as set forth herein, and provided that (i) Activision may review and destroy any such materials that contain trade secret or other sensitive materials, (ii) Activision shall not be obligated to provide any clearances or licenses to any third party materials, and (iii) Artist shall not use any such materials without Activision's approval during a period of one (1) year from the Effective Date.

6. APPROVAL RIGHTS

- 6.1 Artist's likeness as implemented in the Game (the "Character Likeness"), any use of Artist's name and/or likeness other than in a "billing block" fashion on the back of the packaging for the Game, and the b-roll and photography or other representation of the Services or of Artist, shall be subject to Artist's prior written approval.
- 6.2 Activision shall submit each of the above (i.e., the Character Likeness, name uses, and b-roll and photography or other representation) to Artist for review and Artist shall have ten (10) business days to either approve or disapprove.
- 6.3 If Artist fails to either approve or disapprove a submission within such ten (10) business day period, Activision shall provide Artist notice of such failure and if Artist then fails to either approve or disapprove such submission within three (3) business days from Activision's notice, the submission shall be deemed approved.
- 6.4 Activision shall not be required to submit for approval uses of previously approved assets, provided such uses fall within the rights granted herein (e.g., using a previously approved Character Likeness depiction in multiple advertising materials).

7. EXCLUSIVITY

For a period of five (5) years from the Effective Date, Artist shall not license or otherwise authorize or permit any other party to use the Artist name, likeness, logos, or trademarks in or in connection with any other music-rhythm based videogame (including advertising or promotion related thereto). The foregoing shall not restrict: (i) any of the members of No Doubt from any individual activity, or (ii) any music licensing, and the limited use of Artist's name where customary as part of credits related thereto.

8. CONSIDERATION

- 8.1 Fees. In consideration for the in-game character name and likeness rights, marketing services set forth herein, and the rights to the Licensed Property granted herein, Activision shall pay Artist an aggregate fee of
- 8.2 Game Copies. Upon commercial release of the Game, Activision shall provide Artist with ten (10) complimentary copies of the Game.
- 8.3 Most Favored Nations. The license fee set forth above shall be on a most favored nations basis with respect to any other artist granting comparable in-game name and likeness rights for the Game (or any prior Guitar Hero or Band Hero game). If any other artist receives any greater fee or other financial compensation or consideration for granting such in-game name and likeness rights, then Activision shall provide Artist such proportionally higher fee or compensation. The foregoing shall not apply to any band-featured in-game agreements (e.g., Guitar Hero Metallica, Guitar Hero Aerosmith).
- 8.4 Buy-Out Nature of Fees. The above fees shall be the total compensation payable to Artist for the Services and the rights granted herein, and shall be made on a one-time, complete buy-out basis. Artist shall not be entitled to royalties, re-use, public performance, or other fees or payments with regard to the Services and/or any permitted uses or exploitation set forth herein. Artist represents and warrants that Artist shall procure any required record label or other third party waiver and consent necessary to enter into this Agreement, and that in no event shall Activision be required to make any payments to any such label or third party regarding the Services and/or rights granted herein. The foregoing shall not apply to clearances, licenses, permissions or consents relating to rights in any musical compositions or master recordings, it being understood that Activision shall be solely responsible for obtaining and paying for any such, clearances, licenses, permissions and consents.

9. REPRESENTATIONS, WARRANTIES AND INDEMNITY

Each party represents and warrants to the other that each has the right and authority to enter into and perform their obligations under this Agreement, and/or to grant the rights granted hereunder. Activision and Artist shall hold harmless one another and their officers, directors, agents and employees (as applicable) from and against all claims, liabilities, damages and expenses (including reasonable outside attorneys' fees and costs) arising out of a breach of this Agreement or any representations or warranties contained herein. Which is the subject of a final adverse judgment or settled with the indemnitee's consent

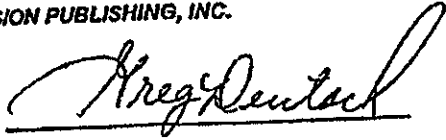
10. MISCELLANEOUS

- 10.1 Artist's services under this Agreement are personal in nature, and Artist shall not, without Activision's prior written consent, assign or transfer any of its rights or obligations under this Agreement. Subject to the foregoing, this Agreement shall inure to the benefit of the parties' successors, transferees or assigns and shall be binding upon the parties' successors, transferees or assigns.
- 10.2 Nothing contained in this Agreement shall be deemed to constitute a partnership between or joint venture by the parties hereto, nor shall either party be deemed the agent of the other. Artist is an independent contractor and nothing in this Agreement shall be interpreted or construed to create or establish the relationship of employer and employee between Activision and Artist.
- 10.3 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, thereby superseding all prior negotiations, preliminary agreements, correspondence or understandings, written or oral. No amendment or modification of this Agreement will be made except by an instrument in writing signed by both parties. If any provision of this Agreement is or becomes or is deemed invalid, illegal or unenforceable under the applicable laws or regulations of any jurisdiction, either such provision will be deemed amended to conform to such laws or regulations without materially altering the intentions of the parties and enforced accordingly or it shall be stricken and the remainder of this Agreement shall remain in full force and effect. The substantive laws of California shall apply to this Agreement, and the parties consent to the exclusive jurisdiction of the courts in Los Angeles County.

AGREED TO BY:

ACTIVISION PUBLISHING, INC.

By:



Name: Greg Deutsch

Title: Sr. Vice President and General Counsel

NO DOUBT

By:



Name:

TOM BANAL

Title:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
BERT H. DEIXLER, SBN 70614
GIL N. PELES, SBN 238889
PROSKAUER ROSE LLP
2049 Century Park East, Suite 3200
Los Angeles, CA 90067
 TELEPHONE NO.: 310-557-2900 FAX NO.: 310-557-2193
 ATTORNEY FOR (Name): **Plaintiff No Doubt**

FOR COURT USE ONLY

FILED

LOS ANGELES SUPERIOR COURT

NOV 04 2009

JOHN A. CLARKE, CLERK
 BY *[Signature]*
DAWN ALEXANDER, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF **Los Angeles**
 STREET ADDRESS: 111 N. Hill St.
 MAILING ADDRESS: Los Angeles, CA 90012
 CITY AND ZIP CODE: Los Angeles, CA 90012
 BRANCH NAME: **Central - Los Angeles**

CASE NAME: **NO DOUBT v. ACTIVISION PUBLISHING**

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) **Limited** (Amount demanded is \$25,000 or less)

Complex Case Designation

Counter **Joinder**

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **BC 42 52 68**

JUDGE: _____

DEPT: _____

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<p>Auto Tort</p> <p><input type="checkbox"/> Auto (22)</p> <p><input type="checkbox"/> Uninsured motorist (46)</p> <p>Other PI/PD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</p> <p><input type="checkbox"/> Asbestos (04)</p> <p><input type="checkbox"/> Product liability (24)</p> <p><input type="checkbox"/> Medical malpractice (45)</p> <p><input type="checkbox"/> Other PI/PD/W/D (23)</p> <p>Non-PI/PD/W/D (Other) Tort</p> <p><input type="checkbox"/> Business tort/unfair business practice (07)</p> <p><input type="checkbox"/> Civil rights (08)</p> <p><input type="checkbox"/> Defamation (13)</p> <p><input type="checkbox"/> Fraud (16)</p> <p><input type="checkbox"/> Intellectual property (19)</p> <p><input type="checkbox"/> Professional negligence (25)</p> <p><input type="checkbox"/> Other non-PI/PD/W/D tort (35)</p> <p>Employment</p> <p><input type="checkbox"/> Wrongful termination (36)</p> <p><input type="checkbox"/> Other employment (15)</p>	<p>Contract</p> <p><input checked="" type="checkbox"/> Breach of contract/warranty (06)</p> <p><input type="checkbox"/> Rule 3.740 collections (09)</p> <p><input type="checkbox"/> Other collections (09)</p> <p><input type="checkbox"/> Insurance coverage (18)</p> <p><input type="checkbox"/> Other contract (37)</p> <p>Real Property</p> <p><input type="checkbox"/> Eminent domain/Inverse condemnation (14)</p> <p><input type="checkbox"/> Wrongful eviction (33)</p> <p><input type="checkbox"/> Other real property (26)</p> <p>Unlawful Detainer</p> <p><input type="checkbox"/> Commercial (31)</p> <p><input type="checkbox"/> Residential (32)</p> <p><input type="checkbox"/> Drugs (38)</p> <p>Judicial Review</p> <p><input type="checkbox"/> Asset forfeiture (05)</p> <p><input type="checkbox"/> Petition re: arbitration award (11)</p> <p><input type="checkbox"/> Writ of mandate (02)</p> <p><input type="checkbox"/> Other judicial review (39)</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <p><input type="checkbox"/> Antitrust/Trade regulation (03)</p> <p><input type="checkbox"/> Construction defect (10)</p> <p><input type="checkbox"/> Mass tort (40)</p> <p><input type="checkbox"/> Securities litigation (26)</p> <p><input type="checkbox"/> Environmental/Toxic tort (30)</p> <p><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p>Enforcement of Judgment</p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p>Miscellaneous Civil Complaint</p> <p><input type="checkbox"/> RICO (27)</p> <p><input type="checkbox"/> Other complaint (not specified above) (42)</p> <p>Miscellaneous Civil Petition</p> <p><input type="checkbox"/> Partnership and corporate governance (21)</p> <p><input type="checkbox"/> Other petition (not specified above) (43)</p>
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. Large number of separately represented parties d. Large number of witnesses

b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court

c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): **6**

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 3, 2009

BERT H. DEIXLER (TYPE OR PRINT NAME) *[Signature]* (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

BY FAX

SHORT TITLE: NO DOUBT v. ACTIVISION PUBLISHING	CASE NUMBER BC 42 52 68
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CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:
 JURY TRIAL? YES CLASS ACTION? YES LIMITED CASE? YES TIME ESTIMATED FOR TRIAL _____ HOURS/ 3 DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked.
 For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (See Column C below)

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Class Actions must be filed in the County Courthouse, Central District. 2. May be filed in Central (Other county, or no Bodily Injury/Property Damage). 3. Location where cause of action arose. 4. Location where bodily injury, death or damage occurred. 5. Location where performance required or defendant resides. | <ol style="list-style-type: none"> 6. Location of property or permanently garaged vehicle. 7. Location where petitioner resides. 8. Location wherein defendant/respondent functions wholly. 9. Location where one or more of the parties reside. 10. Location of Labor Commissioner Office. |
|---|--|

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	2.
		<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1., 2., 4.
		<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4.
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 2., 4.	
	<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.	
	<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 2., 3.	
	<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4.	
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.

Non-Personal Injury/Property Damage/
Wrongful Death Tort (Cont'd.)

Employment

Contract

Real Property

Judicial Review
Unlawful Detainer

SHORT TITLE: NO DOUBT v. ACTIVISION PUBLISHING	CASE NUMBER
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A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice	1., 2., 3.
	<input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction)	2., 5.
	<input type="checkbox"/> A6008 Contract/Warranty Breach - Seller Plaintiff (no fraud/negligence)	2., 5.
	<input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud)	1., 2., 5.
	<input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff	2., 5., 8.
	<input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input checked="" type="checkbox"/> A6009 Contractual Fraud	1., 2., 3., 5.
	<input type="checkbox"/> A6031 Tortious Interference	1., 2., 3., 5.
	<input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure	2., 6.
	<input type="checkbox"/> A6032 Quiet Title	2., 6.
	<input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6.
Unlawful Detainer - Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

Judicial Review (Cont'd.)

Provisionally Complex Litigation

Enforcement of Judgment

Miscellaneous Civil Complaints

Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ / Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

SHORT TITLE: NO DOUBT v. ACTIVISION PUBLISHING

CASE NUMBER

Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE <input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			ADDRESS: 111 N. Hill St.
CITY: Los Angeles	STATE: CA.	ZIP CODE: 90012	By contract, the parties have agreed to the Central courthouse.

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Los Angeles County Superior courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subs. (b), (c) and (d)).

Dated: November 3, 2009

(SIGNATURE OF ATTORNEY/FILING PARTY)

Bert H. Deixler

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.