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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

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8 W. AXL ROSE, BLACK FROG MUSIC, INC.,
and BLACK FROG ENTITIES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICT

11 W. AXL ROSE, an individual and on behalf of a
12 band known as Guns N' Roses; BLACK FROG
13 MUSIC, INC., a California corporation; BLACK
14 FROG ENTITIES, INC., a California
15 corporation,

16 Plaintiffs,

17 v.

18 ACTIVISION BLIZZARD, INC., a Delaware
19 corporation; ACTIVISION PUBLISHING, INC.,
20 a Delaware corporation; and DOES 1 through 10,
inclusive,

21 Defendants.

CASE NO. BC450057

COMPLAINT FOR:

- (1) FRAUD - INTENTIONAL MISREPRESENTATION;
- (2) FRAUD - CONCEALMENT;
- (3) NEGLIGENT MISREPRESENTATION;
- (4) UNJUST ENRICHMENT;
- (5) BREACH OF CONTRACT; AND
- (6) PROMISSORY ESTOPPEL

JURY TRIAL DEMANDED

CHECK: 395.00
CASH:
CHANGE:
CARD:

CIT/CASE: RC450057 LEA/REFM:
RECEIPT #: CCH465980052
DATE PAID: 11/23/10 11:15:42 AM
PAYMENT: \$395.00
RECEIVED: 0310

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11/23/10

1 Plaintiffs W. Axl Rose ("Rose"), individually and on behalf of a band known as Guns N'
2 Roses, Black Frog Music, Inc. and Black Frog Entities, Inc. (collectively, "Plaintiffs") allege against
3 Activision Blizzard, Inc. and Activision Publishing, Inc. (together, "Activision"), and DOES 1
4 through 10, inclusive, and each of them (collectively, "Defendants"), as follows:

5 **PARTIES**

6 1. At all times mentioned herein, Plaintiff Rose was an individual residing in Los
7 Angeles County, California.

8 2. At all times mentioned herein, Plaintiff Black Frog Music, Inc. was and is a
9 California corporation with its principal place of business in Los Angeles County, California. Black
10 Frog Music, Inc. is a party to Rose's artist recording agreement.

11 3. At all times mentioned herein, Plaintiff Black Frog Entities, Inc. was and is a
12 California corporation with its principal place of business in Los Angeles County, California. Black
13 Frog Entities, Inc. is a party to Rose's publishing administration agreement.

14 4. Plaintiffs are informed and believe, and on that basis allege, that at all times relevant
15 for purposes of this Complaint Defendant Activision Blizzard, Inc. was a Delaware corporation duly
16 authorized to conduct business in the State of California, with its principal place of business in the
17 City of Santa Monica, Los Angeles County, California.

18 5. Plaintiffs are informed and believe, and on that basis allege, that at all times relevant
19 for purposes of this Complaint Defendant Activision Publishing, Inc. was a Delaware corporation
20 duly authorized to conduct business in the State of California, with its principal place of business in
21 the City of Santa Monica, Los Angeles County, California. Plaintiffs are informed and believe that
22 Activision Publishing, Inc. is a wholly owned subsidiary of Activision Blizzard, Inc.

23 6. Plaintiffs are informed and believe, and on that basis allege, that Defendants Does 1
24 through 10, inclusive, are individually and/or jointly liable to Plaintiffs for the wrongs alleged
25 herein. The true names and capacities, whether individual, corporate, associate or otherwise, of
26 Defendants DOES 1 through 10, inclusive, are unknown to Plaintiffs at this time. Accordingly,
27 Plaintiffs sue Defendants DOES 1 through 10, inclusive, by fictitious names and will amend this
28 Complaint to allege their true names and capacities after they are ascertained.

1 subsidiary Activision Publishing, Inc. (together, with Activision Blizzard, Inc., "Activision"), is in
2 the business of developing, publishing, and distributing interactive entertainment software,
3 peripheral products, and online games. One of Activision's most successful intellectual properties is
4 the "Guitar Hero" gaming franchise, a series of music-related video games first published in 2005
5 and acquired by Activision in 2006. Guitar Hero has generated well over a billion dollars in revenue
6 for Activision.

7 13. The Guitar Hero format requires players to depress colored buttons on the "fret" of a
8 guitar-shaped game controller (slung over the shoulder like a real guitar) to match notes that scroll-
9 on screen in time to popular rock guitar songs, which are played in sequence throughout the game to
10 a virtual audience of cheering fans.

11 14. The novelty of pretending to play rock guitar along with popular hard rock songs to
12 throngs of adoring virtual fans is the key to Guitar Hero's appeal. As the name implies, the game
13 taps into the myth and fantasy of the "guitar hero/rock superstar" and relies heavily on the proven
14 allure and popularity of the hit rock songs utilized. This formula has proven to be immensely
15 lucrative for Activision. Activision has touted its 2009 sequel in the "Hero" franchise as the highest
16 grossing new intellectual property in the United States and Europe for that year.

17 15. Given that popular music content is an essential component to Guitar Hero,
18 Activision actively pursues licenses to use popular rock songs as content for each sequel of the
19 game.

20 "Welcome to the Jungle"

21 16. In or around February of 2007, Activision contacted Guns N' Roses' licensing
22 administrator, Sussman & Associates, to request permission to use the Guns N' Roses song
23 "Welcome to the Jungle" in its yet-to-be released sequel to the Guitar Hero franchise.

24 17. "Welcome to the Jungle" is a highly renowned rock song of immense popularity. The
25 song is regarded by fans and critics alike as one of the greatest hard rock songs of all time; in 2009,
26 it was named *the* greatest hard rock song of all time by VH1 music. "Welcome to the Jungle" was
27 the first single from Guns N' Roses debut album, "Appetite for Destruction", which has become the
28 highest selling debut album of all time, with sales to date approaching 30 million.

1 18. Activision understood the extraordinary value Guns N' Roses and "Welcome to the
2 Jungle" could add to the Guitar Hero platform. "Welcome to the Jungle" was and is a perfect fit for
3 Activision's Guitar Hero franchise and especially for its third installment, "Guitar Hero III: Legends
4 of Rock" ("GH III"). GH III was set for release in 2007 and is the first game in the series to feature
5 a storyline in which the band starts as a local sensation playing local venues and struggles through a
6 series of challenges to achieve worldwide fame performing at venues around the world. Along the
7 way, the band has to overcome an evil music producer named Lou who forces the band to sign a
8 recording contract that is actually a contract for their souls. The band has to battle Lou in a battle for
9 their souls in "Lou's Inferno" in order to return to the mortal world as "Rock Legends."

10 19. No other rock song could more perfectly capture this transformative spirit and
11 Faustian bargain theme of GH III than "Welcome to the Jungle." The song itself is about the
12 struggle to overcome in a figurative jungle where "you can taste the bright lights but you won't get
13 them for free" and the ambition that "if you got a hunger for what you see you'll take it eventually."
14 When "Welcome to the Jungle" was released, it instantly elevated Guns N' Roses from an up-and-
15 coming band in the Hollywood, California local rock scene into one of the most popular rock groups
16 in the world.

17 20. Guns N' Roses and its members were transformed into true "Rock Legends" as a
18 result of the song. Activision understood this connection and the enormous potential success of a
19 GH III that included "Welcome to the Jungle" and was willing to do whatever it took to get the song.

20 21. Given the continuing importance of "Welcome to the Jungle" to the band Guns N'
21 Roses and to Rose personally, who is the primary writer and originator of the song and its co-author,
22 Rose is very cautious in his approval of any license for its use. Rose has always acted vigilantly to
23 preserve the integrity of the Guns N' Roses name and reputation and to ensure its ongoing success,
24 and this includes the use of its signature song.

25 22. In order to promote Guns N' Roses, Rose diligently attempts to channel fan and
26 media attention to the current status of the band, including its current lineup, and focus on the band's
27 current endeavors and plans for the future. Rose and Guns N' Roses pursue a forward-looking
28 outlook rather than one that dwells on the past. Nonetheless, members of the tabloid media have

1 tended to focus on and mythologize a rift within the band that occurred in 1996, when one of the
2 band's guitarists, Saul Hudson, aka "Slash", and Guns N' Roses parted ways.

3 23. A preoccupation on the part of some members of the media with the rift between
4 Slash and Guns N' Roses has led to a distorted public perception between the images and careers of
5 Slash and Guns N' Roses. Despite the fact that Slash has had nothing to do with Guns N' Roses'
6 ongoing popularity and success since 1996, his association with the band lingers, at least as far as
7 certain members of the media are concerned.

8 24. Therefore, Rose is careful not to license any use of the band's name and intellectual
9 property that would further perpetuate confusion in the public mind between Slash and Guns N'
10 Roses or promote the individual interests of Slash and his projects, including his band Velvet
11 Revolver ("VR"). Simply put, the association between Slash and Guns N' Roses ended almost
12 fifteen years ago; in furtherance of Guns N' Roses and to avoid confusion and dilution of the brand,
13 Rose resists any attempts to revive or strengthen this past association

14 25. Activision was keenly aware of Rose's concerns in these regards. Therefore, it began
15 spinning a web of lies and deception to conceal its true intentions to not only feature Slash and VR
16 prominently in GH III, but also promote the game by emphasizing and reinforcing an association
17 between Slash and Guns N' Roses and the band's song "Welcome to the Jungle."

18 Activision Begins its Campaign of Lies and Deception to Obtain Welcome to the Jungle

19 26. On February 26, 2007, Brandon Young, Activision's Music Supervisor and Licensing
20 Coordinator, requested approval through Wayne Milligan of Sussman & Associates, Guns N' Roses'
21 licensing representative and administrator to use "Welcome to the Jungle" in GH III.

22 27. Rose and his team carefully deliberated the request. A key concern of Rose was the
23 way in which the song "Welcome to the Jungle" would be depicted in GH III. Rose anticipated the
24 possibility that imagery of Slash and VR might be used in GH III. As part of his image, Slash
25 generally wears a black top hat and dark sunglasses when he plays onstage and he is easily
26 recognizable by those features, as well as by his long curly dark hair and nose-piercing.

27 28. In order to avoid conflation of the images and reputations of Guns N' Roses and
28 Slash and VR, Rose reasonably did not want any imagery of Slash or the songs of VR to be used in

1 association or conjunction with Guns N' Roses material. At the initial request for inclusion of
2 "Welcome to the Jungle" in GH III, Rose inquired as to whether Activision intended to use any
3 images of members of the old Guns N' Roses lineup, the then-current lineup, or VR in the game.
4 Rose told Activision that he would consider its request if Activision would confirm that no images,
5 avatars or other characters of any of the old lineup or then-current lineup of Guns N' Roses or VR
6 would be used. Activision verified that that no images, avatars or other characters of any of the old
7 lineup or then-current lineup of Guns N' Roses or VR would be used and "Welcome to the Jungle"
8 would not be used in any way that would indicate an association between Slash and Guns N' Roses
9 or promote Slash's separate and post-Guns N' Roses interests.

10 29. However, before giving his approval, Rose began learning through online sources that
11 Activision was planning to use the songs of VR and prominently feature Slash in GH III. This
12 greatly increased his apprehension that Guns N' Roses and "Welcome to the Jungle" were going to
13 be misused and/or misrepresented in GH III.

14 30. In May 2007, Milligan spoke with Young regarding Rose's concerns. Young again
15 reassured Milligan that no Slash images or VR songs would be used in GH III or in connection with
16 "Welcome to the Jungle." In a follow up confirmatory email, he wrote: "In light of our earlier
17 conversation, this email serves to confirm that given the approval for 'Welcome to the Jungle', we
18 have no intention of using Velvet Revolver in Guitar Hero 3."

19 31. Activision thereafter stepped up its efforts to deceive Rose. Tim Riley, Activision's
20 Executive Vice-President of Music Affairs, made further misrepresentations in an effort to conceal
21 Activision's plans to prominently feature Slash and VR in GH III, and associate Slash with Guns N'
22 Roses and "Welcome to the Jungle."

23 32. Riley sought to reassure Rose, through his representative Beta Lebeis, that in no
24 uncertain terms, if given the authorization to use "Welcome to the Jungle" in GH III, no VR-related
25 material would be included and no Slash imagery would be used at all, let alone in association with
26 Guns N' Roses and "Welcome to the Jungle."

27 33. In numerous conversations occurring in May 2007, Riley reassured and represented to
28 Lebeis that none of the "rumors" Rose was reading on the Internet regarding the planned use of

1 Slash and VR in GH III were true. For example, in one conversation, Riley flatly denied the rumors,
2 stating "Come on Beta, you know you can't believe everything you read on the Internet."

3 34. While the form and substance of these conversations may have occasionally varied,
4 the central message and operative language used did not: Riley "guaranteed" that, provided Rose
5 agreed to approve Activision's use of "Welcome to the Jungle," there would be no use of Slash in
6 association with Guns N' Roses and "Welcome to the Jungle" and no VR in GH III.

7 35. On June 5, 2007, relying on these numerous guarantees of Riley, as well as the
8 representations of Young and their prior agreement, Rose authorized Sussman & Associates to sign
9 approval for Universal Music Enterprises to release the master of "Welcome to the Jungle" and for
10 the publishing synch license of the song. With these licenses Activision was free to use "Welcome
11 to the Jungle" in GH III under the terms and conditions agreed to by Activision and Rose.

12 Activision's Lies Continue

13 36. In or around July 2007, press releases and other media reports began circulating
14 indicating that Slash and Velvet Revolver songs would be featured in Guitar Hero III.

15 37. One of these releases, dated July 10, 2007, included a quote from an executive vice
16 president of Activision publishing stating that "Guitar legend Slash, combined with Guitar Hero III:
17 Legends of Rock's robust soundtrack and innovative new game features, will continue to solidify the
18 brand's leadership in the rhythm-action genre..."

19 38. Upon learning that Activision had lied to him and his representatives, Rose, who was
20 in Japan as part of an extensive Guns N' Roses tour of Asia, acted immediately to rescind the
21 authorization he had given under false pretenses. Rose remained adamant that any use of Slash or
22 his likeness in GH III would be contrary to his understanding and agreement to authorize any use of
23 "Welcome to the Jungle".

24 39. Activision then redoubled its efforts to conceal the truth and again deceive Rose into
25 believing that they would abide by their guarantees and agreement with Rose. In a conversation
26 between Milligan and Riley on July 13, 2007, Riley explained that the press releases from the prior
27 week had only included Slash for purposes of a trade show. Activision re-confirmed, again in
28 conscious disregard of the truth, that Slash's avatar would not appear in GH III or at any time

1 “Welcome to the Jungle” was being played.

2 40. In August 2007, Riley told Rose’s representative that because of Rose’s concerns,
3 Activision had agreed to pull any VR songs from GH III and had made certain that no Slash imagery
4 would appear in the game.

5 41. Relying on Activision’s representations, Rose did not pull the licenses for use of
6 “Welcome to the Jungle” in GH III.

7 **Guitar Hero III is Released and Promoted in Direct Violation of the Agreements and**
8 **Guarantees Made by Activision**

9 42. On October 28, 2007, Activision released GH III. The game prominently features
10 Slash in direct connection with the use of “Welcome to the Jungle,” exploits the prior association
11 between Slash and Guns N’ Roses, promotes Slash’s and VR’s separate interests, and includes VR
12 tracks as available downloads, all in direct contravention of Activision’s prior representations and
13 agreement.

14 43. The centerpiece of the box cover for GH III features an animated depiction of Slash,
15 with his signature black top hat, long dark curly hair, dark sunglasses and nose-piercing. The
16 appearance of Slash on the cover of GH III was never disclosed to Rose or his representatives. The
17 television and Internet commercial accompanying the game’s release features special effects of the
18 real-life Slash emerging from the body of another young man to play a guitar solo from a VR song
19 along with the tag line “Is there a guitar hero in you?”

20 44. When the song “Welcome to the Jungle” is selected for play in GH III, an avatar of
21 Slash is depicted throughout the entire approximately four-minute song (none of the other avatars are
22 designed to depict any of the real then-current members of Guns N’ Roses). Virtual camera angles
23 focus in on the Slash avatar at points in the song and it is featured prominently throughout. When
24 playing “Welcome to the Jungle” on GH III, a fret board appears on the screen containing images of
25 what appear to be Slash’s top hat as well as drawings of guns and roses.

26 45. Upon information and belief, the Slash avatar was created using a special technology
27 called motion capture, in which real individuals are outfitted with sensors that capture their
28 movements so that the animated characters that depict them have more life-like movements. This

1 special effects technology takes a long time to implement, confirming that Activision knew well in
2 advance that it was going to use the Slash avatar extensively and during "Welcome to the Jungle,"
3 while at the same time deceiving Rose and his agents.

4 46. The Slash avatar is one of three "boss" characters in the game; during any particular
5 song, including "Welcome to the Jungle," a player who has earned enough points can choose Slash
6 as their own avatar. A player can thus easily choose the Slash avatar and play in time to "Welcome
7 to the Jungle." When Slash is selected as an avatar, a paragraph appears stating: "*As a member of*
8 *Guns N' Roses, Slash's Snakepit, and Velvet Revolver, Slash has established himself as a true guitar*
9 *hero....*"

10 47. Another special feature of the game is a "Battle Mode," in which a player can
11 challenge the Slash avatar to a guitar duel. After defeating Slash in the guitar battle, the user is
12 offered the choice to play an encore of "Welcome to the Jungle" alongside the Slash avatar. While
13 the famous opening guitar riff of "Welcome to the Jungle" begins sounding, the game's camera
14 angle zooms in on Slash playing guitar.

15 48. On Activision's official GH III website, users can find an animated depiction of Slash
16 above an animated guitar amplifier icon. When the user clicks on the icon, an audio clip of
17 "Welcome to the Jungle" is played. In addition, on the website's "Song List" for GH III, the "Guitar
18 Battle vs. Slash" and "Welcome to the Jungle" are listed in sequence.

19 49. Activision also includes VR tracks as downloadable additional songs for GH III.

20 **Activision Uses Another Guns N' Roses Song, "Sweet Child O'Mine," Without Any**

21 **Authorization to Promote GH III**

22 50. Adding insult to injury, Activision used another famous Guns N' Roses song, "Sweet
23 Child O' Mine," for an extended period of time in connection with an Internet promotion of GH III,
24 again featuring Slash as part of the promotion. Although Sweet Child O' Mine had been licensed to
25 use in Guitar Hero II, there was no authorization at all to use it in GH III and a request for
26 authorization had never even been made.

27 51. When confronted with this fact, Activision simply pointed the finger at the Internet
28 website *Yahoo!*, stating that it was entirely to blame for the unauthorized use of the song.

1 Slash imagery in association with Guns N' Roses and, more specifically, in association with
2 "Welcome to the Jungle" and no use of VR tracks in conjunction with GH III.

3 58. Defendants knew that its statements were false when they made them and made the
4 representations with the intent to deceive and defraud Plaintiffs and to fraudulently induce them into
5 authorizing the use of "Welcome to the Jungle" in conjunction with GH III.

6 59. Plaintiffs were ignorant of the falsity of the representations made by Defendants and
7 reasonably relied on Defendants' misrepresentations to their detriment when they authorized the use
8 of "Welcome to the Jungle" in conjunction with GH III.

9 60. As a direct and proximate result of Activision's misrepresentations, Plaintiffs have
10 suffered damages in an amount according to proof at trial and are also entitled to an award including,
11 but not limited to, disgorgement of Activision's wrongfully acquired profits believed to be in excess
12 of twenty million dollars (\$20,000,000).

13 61. Defendants' intentional misrepresentations were oppressive and malicious and made
14 in willful and conscious disregard of Plaintiffs' rights, thus justifying punitive damages under the
15 California Civil Code.

16 SECOND CAUSE OF ACTION

17 (Fraud - Concealment)

18 (Against All Defendants)

19 62. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 55 of this
20 Complaint as set forth herein in full.

21 63. Defendants concealed material facts from Plaintiffs as described in the preceding
22 paragraphs including, but not limited to, the facts that it intended to use Slash imagery in association
23 with Guns N' Roses and, more specifically, in association with "Welcome to the Jungle," and to use
24 VR tracks in conjunction with GH III.

25 64. Defendants concealed and suppressed the true facts with the intent to deceive and
26 defraud Plaintiffs and to fraudulently induce them into authorizing the use of "Welcome to the
27 Jungle" in conjunction with GH III.

28 65. As a direct and proximate result of Activision's fraudulent concealment, Plaintiffs

1 have suffered damages in an amount according to proof at trial and are also entitled to an award
2 including, but not limited to, disgorgement of Activision's wrongfully-acquired profits believed to
3 be in excess of twenty million dollars (\$20,000,000).

4 66. Defendants' concealment was oppressive and malicious and made in willful and
5 conscious disregard of Plaintiffs' rights, thus justifying punitive damages under the California Civil
6 Code.

7 **THIRD CAUSE OF ACTION**

8 **(Negligent Misrepresentation)**

9 **(Against All Defendants)**

10 67. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 55 of this
11 Complaint as set forth herein in full.

12 68. Defendants made misrepresentations of material fact as described in the preceding
13 paragraphs including, but not limited to, falsely representing that there would be no use in GH III of
14 Slash imagery in association with Guns N' Roses and, more specifically, in association with
15 "Welcome to the Jungle" and no use of VR tracks in conjunction with GH III.

16 69. Defendants had no reasonable basis for believing that such representations were true.
17 Activision should have known of their falsity because, among other things, at the time it made the
18 false representations it was actively planning and negotiating a deal with Slash and VR that included
19 using Slash imagery and VR tracks in a manner contrary to the representations made to Plaintiffs.

20 70. Plaintiffs were ignorant of the falsity of the representations made by Activision and
21 reasonably relied on Defendants' misrepresentations to their detriment when they authorized the use
22 of "Welcome to the Jungle" in conjunction with GH III.

23 71. As a direct and proximate result of Defendants' misrepresentations, Plaintiffs have
24 suffered damages in an amount according to proof at trial.

25 **FOURTH CAUSE OF ACTION**

26 **(Unjust Enrichment)**

27 **(Against Defendant Activision)**

28 72. Plaintiffs re-allege and by this reference incorporate each and every allegation

1 contained in paragraphs 1 through 55, inclusive, of this Complaint as if set forth in this cause of
2 action in full.

3 73. Activision has received and retained a substantial benefit by using the Guns N' Roses
4 brand and "Welcome to the Jungle" in GH III to the detriment and at the expense of Plaintiffs and it
5 would be inequitable and/or unconscionable for Activision to retain that benefit under the
6 circumstances.

7 74. Activision has been unjustly enriched in an amount according to proof at trial, but
8 believed to be in excess of twenty million dollars (\$20,000,000) and Plaintiffs are entitled in equity
9 to disgorgement of and/or imposition of a constructive trust on the amount to which Activision has
10 been unjustly enriched.

11 FIFTH CAUSE OF ACTION

12 (Breach of Contract)

13 (Against Defendant Activision)

14 75. Plaintiffs re-allege and by this reference incorporate each and every allegation
15 contained in paragraphs 1 through 55, inclusive, of this Complaint as if set forth in this cause of
16 action in full.

17 76. In or around May 2007, Activision and Plaintiffs entered into a written agreement
18 through a series of emails, the terms of which were as follows: Plaintiffs agreed to license the use of
19 "Welcome to the Jungle" in conjunction with GH III in exchange for Activision's promises and
20 guarantees that VR tracks would not be used in conjunction with GH III, Slash imagery would not
21 appear in GH III and, more specifically, Guns N' Roses and "Welcome to the Jungle" would not be
22 associated in GH III with Slash or VR or be used in a manner to promote Slash and VR.

23 77. Plaintiffs performed all of their obligations under the contract by authorizing the use
24 of "Welcome to the Jungle" in GH III.

25 78. Activision breached the contract when it released GH III, which prominently features
26 Slash imagery in direct connection with the use of "Welcome to the Jungle," exploits the prior
27 association between Slash and Guns N' Roses, promotes Slash's and VR's separate interests, and
28 includes VR tracks as available downloads, all of which was and is directly contrary to the

1 contractual obligations of Defendants.

2 79. Activision's breach was both material and opportunistic and a source of unjust
3 enrichment at the expense of Plaintiffs.

4 80. As a direct and proximate result of Activision's fraudulent concealment, Plaintiffs
5 have suffered damages in an amount according to proof at trial and are also entitled to an award
6 including, but not limited to, disgorgement of Activision's wrongfully acquired profits believed to be
7 in excess of twenty million dollars (\$20,000,000).

8 **SIXTH CAUSE OF ACTION**

9 (Promissory Estoppel)

10 (Against All Defendants)

11 81. Plaintiffs re-allege and by this reference incorporate each and every allegation
12 contained in paragraphs 1 through 55, inclusive, of this Complaint as if set forth in this cause of
13 action in full.

14 82. Defendants made clear and unambiguous promises that there would be no use of VR
15 tracks in conjunction with GH III and no use of Slash imagery in GH III or in association with Guns
16 N' Roses and, more specifically, in association with "Welcome to the Jungle".

17 83. In reasonable reliance on these promises, Plaintiffs agreed to license the use of
18 "Welcome to the Jungle" in conjunction with GH III.

19 84. Defendants breached their promises when Activision released GH III, which
20 prominently features Slash imagery in direct connection with the use of "Welcome to the Jungle,"
21 exploits the prior association between Slash and Guns N' Roses, promotes Slash's and VR's separate
22 interests, and includes VR tracks as available downloads.

23 85. As a direct and proximate result of their reliance on Activision Defendants' promises,
24 Plaintiffs have suffered damages in an amount according to proof at trial.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs pray for judgment as follows:


- 27 1. For disgorgement of profits unlawfully and/or inequitably obtained by Defendants
28 in a sum to be proven at trial, but believed to be in excess of twenty million dollars

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(\$20,000,000); and/or

- 2. for other restitution in the form of imposition of a constructive trust on the profits unlawfully and/or inequitably obtained by Defendants in a sum to be proven at trial, but believed to be in excess of twenty million dollars (\$20,000,000);
- 3. for compensatory and consequential damages according to proof at trial;
- 4. for punitive damages in amount appropriate to punish the Defendants and deter others from engaging in similar conduct;
- 5. for costs herein; and
- 6. for such other relief as the court may deem proper.

DATED: November 23, 2010 MILLER BARONDESS, LLP

By: 

Louis R. Miller
Attorneys for Plaintiffs
W. Axl Rose, Black Frog Music, Inc. and
Black Frog Entities, Inc.



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9/1/02/11