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8 *Attorneys for Defendants Activision Blizzard,*
9 *Inc., Robert A. Kotick, Dennis Durkin, Armin*
10 *Zerza and Brian Kelly*

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13

14 GARY CHENG, Individually and on
15 Behalf of All Others Similarly Situated,

16 Plaintiff,

17 v.

18 ACTIVISION BLIZZARD, INC.,
19 ROBERT A. KOTICK, DENNIS
DURKIN, SPENCER NEUMANN,
20 ARMIN ZERZA and BRIAN KELLY,

21 Defendants.
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Case No. 2:21-cv-06240-PA-JEM

**DECLARATION OF KEVIN P.
MUCK IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS SECOND AMENDED
CLASS ACTION COMPLAINT**

Date: August 15, 2022

Time: 1:30 p.m.

Place: Courtroom 9A, First Street
Courthouse

Judge: The Honorable Percy Anderson

1 I, Kevin P. Muck, declare as follows:

2 1. I am an attorney admitted to practice before this Court, a member of
3 the bar of the State of California, and a partner in the law firm of Wilmer Cutler
4 Pickering Hale and Dorr LLP, counsel for Defendants Activision Blizzard, Inc.
5 (“Activision” or the “Company”), Robert A. Kotick, Dennis Durkin, Armin Zerza,
6 and Brian Kelly in this action. I submit this Declaration in support of the motion to
7 dismiss the Second Amended Class Action Complaint for Violations of the Federal
8 Securities Laws, filed jointly by my clients and a separately represented co-
9 defendant, Spencer Neumann. I have personal knowledge of the matters set forth in
10 this declaration and, if called upon, could testify competently thereto.

11 2. Attached as **Exhibit A** is a true and correct copy of a press release
12 issued by Microsoft Corporation and Activision on January 18, 2022, publicly
13 available on Activision’s website at <https://investor.activision.com/node/34941/pdf>.
14 The copy attached as Exhibit A was obtained from Activision’s website on January
15 25, 2022.

16 3. Attached as **Exhibit B** is a true and correct copy of Activision’s Form
17 8-K, filed with the United States Securities and Exchange Commission (“SEC”) on
18 April 28, 2022.

19 4. Attached as **Exhibit C** is a chart reflecting, among other things, daily
20 closing prices for shares of Activision common stock for the alleged class period in
21 this action (November 8, 2018 through November 16, 2021), as obtained from
22 Bloomberg. The data contained in the chart attached as Exhibit C were obtained
23 from Bloomberg on June 15, 2022.

24 5. Attached as **Exhibit D** is a true and correct copy of Robert A. Kotick’s
25 letter to all employees, dated July 27, 2021, publicly available on the Company’s
26 website at <https://investor.activision.com/node/34326/pdf>. The copy attached as
27 Exhibit D was obtained from Activision’s website on January 25, 2022.

28 6. Attached as **Exhibit E** is a true and correct copy of Activision’s Notice

1 of Motion and Motion for Summary Adjudication filed on May 6, 2022, in the
2 action captioned *Department of Fair Employment and Housing v. Activision*
3 *Blizzard, Inc. et al.*, No. 21STCV26571 (California Superior Court, County of Los
4 Angeles).

5 7. Attached as **Exhibit F** is a true and correct copy of the “Order Re
6 Hearing on Consent Decree,” entered by the Court on March 22, 2022 in the action
7 captioned *U.S. Equal Employment Opportunity Commission v. Activision Blizzard,*
8 *Inc., et al.*, No. 2:21-CV-07682-DSF-JEM (U.S. District Court, C.D. Cal.) [ECF
9 No. 76].

10 8. Attached as **Exhibit G** is a true and correct copy of the United States
11 Equal Employment Opportunity Commission’s (“EEOC”) “Commissioner Charges
12 and Directed Investigations” webpage, publicly available on the EEOC’s website at
13 <https://www.eeoc.gov/commissioner-charges-and-directed-investigations>. The
14 copy attached as Exhibit G was obtained from the EEOC’s website on June 9, 2022.

15 9. Attached as **Exhibit H** is a true and correct copy of the California
16 Department of Fair Employment and Housing’s (“DFEH”) “Complaint Process”
17 webpage, publicly available on the DFEH’s website at
18 <https://www.dfeh.ca.gov/complaintprocess/>. The copy attached as Exhibit H was
19 obtained from the DFEH’s website on June 9, 2022.

20 10. Attached as **Exhibit I** is a true and correct copy of a redline
21 comparison of Plaintiffs’ First Amended Complaint filed on December 3, 2021
22 [ECF No. 39], and Plaintiffs’ Second Amended Complaint filed on May 18, 2022
23 [ECF No. 78], created by personnel at my law firm using Litera Compare and
24 Microsoft Word software. Generally, text appearing in blue represents additions to
25 the Second Amended Complaint, text appearing in red represents deletions, and text
26 appearing in green represents text that has been moved.

27 11. On June 3, 2022, counsel for all parties participated in a teleconference
28 pursuant to Local Rule 7-3. The participants in that conference were: Brian

1 Alexander of The Rosen Law Firm, P.A., counsel for Plaintiffs; Craig Varnen of
2 Gibson, Dunn & Crutcher LLP, counsel for defendant Spencer Neumann; and
3 myself and my colleague, Jessica Lewis, counsel for Defendants Activision, Mr.
4 Kotick, Mr. Durkin, Mr. Zerza, and Mr. Kelly. Both I and Mr. Neumann's counsel
5 explained the substance and specific bases for our respective clients' contemplated
6 motion to dismiss and why we believe the Second Amended Complaint does not
7 state a claim against any of the Defendants, including the failure to allege falsity,
8 scienter, or loss causation in accordance with applicable legal standards and the
9 Court's prior ruling dismissing the First Amended Complaint in this action.
10 Plaintiffs' counsel disagreed, and we were not able to reach a resolution that would
11 eliminate the necessity of a hearing.

12 I declare under penalty of perjury under the laws of the United States of
13 America that the foregoing is true and correct. Executed on June 16, 2022 at San
14 Francisco, California.

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16 /s/ Kevin P. Muck

Kevin P. Muck
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