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

12 **PAUL MOYNIHAN,**
an individual and as Successor-in-
13 Interest to Kerri Moynihan, an
individual, deceased;
14 **JANET MOYNIHAN,**
an individual and as Successor-in-
15 Interest to Kerri Moynihan, an
individual, deceased;

16 Plaintiffs,

17 vs.

18 **ACTIVISION PUBLISHING, INC.,**
a Delaware Corporation; and
19 **DOES 1 through 20,** inclusive,

20 Defendants.

Case No. **22STCV07890**

COMPLAINT FOR:

1. **WRONGFUL DEATH**
(CODE CIV. PROC. § 377.60);
2. **WORK ENVIRONMENT SEXUAL**
HARASSMENT
(GOV. CODE § 12940, subd. (j));
and
3. **FAILURE TO PREVENT**
HARASSMENT
(GOV. CODE § 12940, subd. (k)).

DEMAND FOR JURY TRIAL

[Filed concurrently with Joint Declaration Pursuant to Code of Civil Procedure Section 377.32 of Plaintiffs Paul Moynihan and Janet Moynihan to Commence Action as the Successors in Interest to Kerri Moynihan]

1 Plaintiffs Paul Moynihan (“**Paul**”) and Janet Moynihan (“**Janet**”) (collectively, “**Plaintiffs**”
2 or the “**Moynihans**”), on behalf of themselves and as successors-in-interest to Kerri Moynihan
3 (sometimes referred to herein as “**Kerri**” or “**Decedent**”), allege as follows against Defendants
4 Activision Publishing, Inc. (“**ACTIVISION**”) and DOES 1 through 20 (collectively,
5 “**Defendants**”):

6 **INTRODUCTION.**

7 1. ACTIVISION is one of the world’s leading video game publishers. It is best known
8 for the blockbuster *Call of Duty* video game franchise. ACTIVISION is a subsidiary of Activision
9 Blizzard, Inc. (“**Activision Blizzard**”), which is a member of the Fortune 500 and S&P 500. In
10 January 2022, Microsoft Corporation announced plans to acquire Activision Blizzard for \$68.7
11 billion.

12 2. As described further below, at all relevant times, ACTIVISION fostered and
13 permitted a sexually hostile work environment to exist in which female employees were routinely
14 sexually harassed, belittled, disparaged and discriminated against, and ACTIVISION failed and
15 refused to take corrective action or reasonable steps to prevent that harassment. Examples of such
16 sexual harassment included “cube crawls,” in which inebriated male employees “crawled” through
17 office cubicles and groped or engaged in other inappropriate conduct toward female employees;
18 unwanted sexual comments, advances and physical touching directed toward female employees by
19 male co-workers (including, in some cases, by high-ranking male executives); open banter by male
20 employees about their sexual conquests and female bodies; and jokes about rape.

21 3. In April 2017, Kerri Moynihan was a 32-year-old Certified Public Accountant
22 (“**CPA**”) and successful Finance Manager at ACTIVISION. She was one of the unfortunate victims
23 of such workplace sexual harassment. Kerri tragically died while attending an ACTIVISION work
24 retreat at Disney’s Grand Californian Hotel & Spa (the “**Grand Californian**”) in Anaheim,
25 California on April 27, 2017. She had worked at ACTIVISION for six-plus years, since January
26 2011. The Orange County Coroner ruled that her death was the result of a suicide.

27 4. Plaintiffs Paul and Janet Moynihan are Kerri’s parents. Kerri was their only child.
28 They have been devastated by Kerri’s death. After Kerri died, the Anaheim Police Department (the

1 “APD”) performed a perfunctory and incomplete investigation into the circumstances surrounding
2 her death that left many unanswered questions. During the investigation, ACTIVISION and Kerri’s
3 supervisor, Greg Restituto (“Restituto”), were not fully cooperative with investigators, with
4 Restituto lying to a detective and both he and ACTIVISION withholding relevant documents and
5 information from the APD.

6 5. Four years after Kerri’s death, evidence began to surface that Kerri was subjected to
7 brutal workplace sexual harassment at ACTIVISION that was a substantial factor in causing her
8 death by suicide while at the ACTIVISION retreat.

9 6. First, in July 2021, the California Department of Fair Employment and Housing
10 (“DFEH”) filed a lawsuit against ACTIVISION, its parent and affiliated companies, entitled
11 *Department of Fair Employment and Housing v. Activision Blizzard, Inc. et al.*, Los Angeles
12 Superior Court, Case No. 21STCV26571 (the “DFEH Action”). The Complaint in that case
13 detailed a shocking pattern of workplace sexual harassment and discrimination in violation of the
14 California Fair Employment and Housing Act (“FEHA”), Government Code sections 12900 *et seq.*,
15 and the California Equal Pay Act, Labor Code section 1197.5.

16 7. The *DFEH* Action alleges that female ACTIVISION employees were subjected to
17 constant workplace sexual harassment; that ACTIVISION unlawfully discriminated against female
18 employees in pay, assignments and promotions; and that ACTIVISION failed to take all reasonable
19 steps to prevent this workplace discrimination and harassment.

20 8. The Complaint in the *DFEH* Action specifically references Kerri and alleges that she
21 suffered from workplace sexual harassment. Among other things, it details an incident that took
22 place shortly before her death, in which “*male co-workers passed around a picture of [her] vagina*”
23 at an ACTIVISION holiday party.

24 9. Until the *DFEH* Action exposed these facts, the Moynihans had been entirely
25 unaware, and had no reason to believe, that Kerri had been a victim of workplace sexual harassment
26 while at ACTIVISION.

27 10. Moreover, as the *DFEH* Action revealed, not only did ACTIVISION’s executives
28 and human resources personnel know about the sexual harassment and fail to take all reasonable

1 steps to prevent it, but ACTIVISION went to extraordinary efforts to suppress and cover up
2 evidence of this conduct, such as by shredding documents and victim complaints and engaging in
3 secret settlements with victims that included repressive and punitive non-disclosure and non-
4 disparagement agreements.

5 11. Then, in September 2021, on the heels of the *DFEH* Action, the United States Equal
6 Employment Opportunity Commission (the “**EEOC**”) filed a federal lawsuit against ACTIVISION
7 and related companies, entitled *U.S. Equal Employment Opportunity Commission v. Activision*
8 *Blizzard, Inc. et al.*, United States District Court for the Central District of California, Case
9 No. 2:21-CV-07682 DSF-JEM (the “**EEOC Action**”). The Complaint in that case alleges violations
10 of Title VII of the Civil Rights Act. The EEOC’s complaint also alleges that female employees at
11 ACTIVISION have been subjected to widespread sexual harassment; that ACTIVISION knew or
12 should have known about such harassment and failed to take corrective and preventative measures;
13 and that ACTIVISION retaliated against victims who complained to management.

14 12. The Moynihans are bringing this action against ACTIVISION (1) for being a
15 substantial factor in the wrongful death of Kerri, pursuant to Code of Civil Procedure section
16 377.60; and (2) as a survivor action under FEHA for ACTIVISION having fostered and permitted a
17 work environment in which sexual harassment was pervasive and for failing to prevent such
18 harassment, which was a substantial factor in causing Kerri’s death, in violation of Government
19 Code section 12940, subdivisions (j) and (k), respectively.

20 **JURISDICTION AND VENUE.**

21 13. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
22 sections 85 and 88, by virtue of the fact that this is a civil action wherein the matter in controversy
23 exceeds \$25,000, exclusive of interest and costs.

24 14. Venue in Los Angeles County is proper pursuant to Code of Civil Procedure
25 section 395, subdivision (a) because ACTIVISION resides in Los Angeles County.

26 15. Venue in Los Angeles County is also proper pursuant to Government Code
27 section 12965, subdivision (c)(3) because the unlawful practices complained of herein were
28 committed in Los Angeles County, records relevant to the conduct and practices described herein

1 are maintained in Los Angeles County and ACTIVISION resides and has its principal office in
2 Los Angeles County.

3 16. All conditions precedent to bringing this action have been performed, fulfilled, or
4 waived.

5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES.**

6 17. The Moynihans were entirely unaware and lacked all knowledge of the unlawful
7 employment practices described in the *DFEH* Action, and specifically those relating to Kerri, before
8 July 24, 2021, when they first read news articles detailing the allegations in the *DFEH* Action, after
9 hearing about the articles from Paul Moynihan’s brother.

10 18. On October 19, 2021, within 90 days of learning of ACTIVISION’s unlawful
11 employment practices, the Moynihans filed an administrative complaint with the DFEH against
12 ACTIVISION, alleging that the acts of ACTIVISION described herein constituted violations of
13 FEHA and were a substantial factor in causing Kerri’s death. A copy of Plaintiffs’ administrative
14 complaint is attached hereto as **Exhibit A**.

15 19. On or about October 27, 2021, the DFEH issued a Right to Sue Notice to the
16 Moynihans, a copy of which is attached hereto as **Exhibit B**, which provided that the Moynihans’
17 administrative complaint “*has been closed effective October 19, 2021,*” “[*t*]his letter is . . . your
18 *Right to Sue notice,*” and “*a civil action may be brought under the provisions of [FEHA] against*
19 *[ACTIVISION] . . . within one year from the date of this letter.*”

20 **THE PARTIES.**

21 20. At all times relevant hereto, Plaintiff Paul Moynihan was a resident of Wilmington,
22 Massachusetts. He sues here as an individual and as a surviving parent of Decedent, with standing
23 pursuant to Code of Civil Procedure section 377.60, subdivision (a) to bring an action for the
24 wrongful death of Decedent. He is also suing for causes of action that survive Decedent’s death
25 pursuant to Code of Civil Procedure sections 377.10 *et seq.*

26 21. At all times relevant hereto, Plaintiff Janet Moynihan was a resident of Wilmington,
27 Massachusetts. She sues here as an individual and as a surviving parent of Decedent, with standing
28 pursuant to Code of Civil Procedure section 377.60, subdivision (a) to bring an action for the

1 wrongful death of Decedent. She is also suing for causes of action that survive Decedent’s death
2 pursuant to Code of Civil Procedure sections 377.10 *et seq.*

3 22. At all relevant times prior to her death, Decedent Kerri Moynihan was a resident of
4 Los Angeles County, California. Kerri died intestate on April 27, 2017, in Anaheim, California,
5 without a surviving spouse or children. Plaintiffs are filing concurrently herewith a joint
6 Declaration, pursuant to Code of Civil Procedure section 377.32, attaching a certified copy of
7 Decedent’s Death Certificate.

8 23. Defendant ACTIVISION is one of the world’s largest video game publishers. At all
9 relevant times, ACTIVISION was a Delaware corporation operating in and under the laws of the
10 State of California and conducting business in Los Angeles County. ACTIVISION’s corporate
11 headquarters is located in Santa Monica, California. At all relevant times, ACTIVISION regularly
12 employed five or more persons and was an “employer” within the meaning of Government Code
13 section 12926, subdivision (d), subject to FEHA. At all relevant times, ACTIVISION was also an
14 “employer” within the meaning of Government Code section 12940, subdivision (j)(4)(A).

15 24. The true names and capacities of the Defendants named herein as DOES 1
16 through 20, inclusive, are unknown to Plaintiffs. Plaintiffs are informed and believe, and on that
17 basis allege, that each such Defendant was a participant in the tortious conduct described herein and
18 is in some way liable for the harm sustained by Plaintiffs and/or Decedent. Plaintiffs will amend
19 this pleading to allege the true names and capacities of DOES 1 through 20 when they have been
20 ascertained.

21 **OVERVIEW OF CALIFORNIA LAW PROHIBITING SEXUAL HARASSMENT.**

22 25. The California Legislature has declared that it is “the public policy of this state that it
23 is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and
24 hold employment without discrimination or abridgement on account of . . . sex,” and that
25 “harassment creates a hostile, offensive, oppressive, or intimidating work environment and deprives
26 victims of their statutory right to work in a place free of discrimination when the harassing conduct
27 sufficiently offends, humiliates, distresses, or intrudes upon its victim, so as to disrupt the victim’s
28 emotional tranquility in the workplace, affect the victim’s ability to perform the job as usual, or

1 otherwise interfere with and undermine the victim’s personal sense of well-being.” Gov. Code
2 §§ 12920 & 12923.

3 26. FEHA was enacted in 1959 to codify these policies by safeguarding the “right and
4 opportunity” of employees “to seek, obtain, and hold employment without discrimination or
5 abridgement on account of . . . sex.” Gov. Code § 12920; *see Vo v. Las Virgenes Munic. Water*
6 *Dist.*, 79 Cal. App. 4th 440, 445 (2000) (“The broad goal of the FEHA is to safeguard an employee's
7 right to seek, obtain, and hold employment without being subjected to discrimination because of . . .
8 sex”)

9 27. FEHA deems it “an unlawful employment practice” for “an employer . . . or any
10 other person” (a) “to harass an employee,” (b) “because of . . . sex” or “gender.”
11 Gov. Code § 12940(j)(1). Under FEHA, “[h]arassment of an employee . . . by an employee, other
12 than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or
13 should have known of this conduct and fails to take immediate and appropriate corrective action.”
14 *Id.*

15 28. In this context, “harassment refers to bias that is expressed or communicated through
16 interpersonal relations in the workplace.” *Roby v. McKesson Corp.*, 47 Cal. 4th 686, 707 (2009). It
17 “includes but is not limited to,” “[v]erbal,” “[p]hysical” and “[v]isual forms of harassment,” and
18 “[s]exual favors.” Cal. Code Regs., tit. 2, § 11019. “Sexually harassing conduct need not be
19 motivated by sexual desire.” Gov. Code § 12940, subd. (j)(4)(C).

20 29. FEHA also makes it an unlawful employment practice for an employer “to fail to
21 take all reasonable steps necessary to prevent discrimination and harassment from occurring.”
22 Gov. Code § 12940, subd. (k).

23 **RELEVANT FACTUAL ALLEGATIONS.**

24 **A. THE DFEH’S FINDINGS REGARDING ACTIVISION’S HOSTILE** 25 **WORK ENVIRONMENT.**

26 30. The DFEH is an agency of the State of California charged with enforcing FEHA,
27 including investigating complaints by and on behalf of persons aggrieved by discriminatory
28 employment practices. *See* Gov. Code § 12930. The DFEH’s task is “to represent the interests of

1 the state and to effectuate the declared public policy of the state to protect and safeguard the rights
2 and opportunities of all persons from unlawful discrimination.” *DFEH v. Cathy’s Creations, Inc.*,
3 54 Cal. App. 5th 404, 410 (2020).

4 31. In or about late 2018, the DFEH began investigating ACTIVISION and affiliated
5 companies for discrimination against employees on the basis of sex and gender, and for its failure to
6 take all reasonable steps to prevent unlawful discrimination, harassment and retaliation. The
7 investigation lasted over two years.

8 32. In the course of its investigation, the DFEH found evidence that, among other things:
9 (a) ACTIVISION and affiliated companies had discriminated against female employees and
10 workers in regard to their terms and conditions of employment; (b) female employees and workers
11 had been subject to sexual harassment; and (c) ACTIVISION and its affiliated companies had failed
12 to take all reasonable steps to prevent unlawful discrimination, workplace harassment, or retaliation.

13 33. The Complaint in the *DFEH* Action sets forth the following findings, among others,
14 relating to sexual harassment and the hostile work environment at ACTIVISION, including during
15 Kerri’s employment at the company:

16 (a) “[ACTIVISION and its parent and affiliated companies] have . . . fostered a
17 pervasive ‘frat boy’ workplace culture that continues to thrive. In the office, women are subjected
18 to ‘cube crawls’ in which male employees drink copious amounts of alcohol as they ‘crawl’ their
19 way through various cubicles in the office and often engage in inappropriate behavior toward
20 female employees. Male employees proudly come into work hungover, play video games for long
21 periods of time during work while delegating their responsibilities to female employees, engage in
22 banter about their sexual encounters, talk openly about female bodies, and joke about rape.”

23 (b) “Defendants’ ‘frat boy’ culture is a breeding ground for harassment and
24 discrimination against women. Female employees are subjected to constant sexual harassment,
25 including having to continually fend off unwanted sexual comments and advances by their male co-
26 workers and supervisors and being groped at the ‘cube crawls’ and other company events. High-
27 ranking executives and creators engaged in blatant sexual harassment without repercussions
28 Defendants continuously condone the quid pro quo and hostile work environment. The message is

1 *not lost on their employees.”*

2 (c) *“DFEH’s investigation [over the course of more than two years] . . . found*
3 *that female employees and contingent or temporary workers were subject to sexual harassment.”*

4 (d) *“[W]omen [at ACTIVISION] were subjected to numerous sexual comments*
5 *and advances, groping and unwanted physical touching, and other forms of harassment. A female*
6 *employee noted that random male employees would approach her on Defendants’ work site and*
7 *comment on her breasts This behavior was known to supervisors and indeed encouraged by*
8 *them, including a male supervisor openly encouraging a male subordinate to ‘buy’ a prostitute to*
9 *cure his bad mood.”*

10 (e) *“[F]emale employees . . . complained of the harassment they suffered,*
11 *including that male co-workers groped them, that male supervisor [sic] asked them on dates, and of*
12 *other unwanted harassment. [ACTIVISION] failed to take reasonable action in responses to these*
13 *complaints.”*

14 (f) *“Employees were further discouraged from complaining as human resource*
15 *personnel were known to be close to alleged harassers. An internal investigation into the human*
16 *resource unit noted that there was a ‘big lack of trust’ and that ‘HR not held in high regard.’*
17 *Unsurprisingly, employee[s]’ complaints were treated in a perfunctory and dismissive manner and*
18 *not kept confidential from the alleged perpetrators.”*

19 (g) *“In retaliation for complaints regarding harassment and discrimination,*
20 *female employees experienced retaliation by [ACTIVISION] that included involuntary transfers,*
21 *selection for layoffs, and denial of projects and other opportunities.”*

22 (h) *ACTIVISION also “fail[ed] to take all reasonable steps necessary to prevent*
23 *discrimination and harassment of workers,” “failed to have an effective sexual harassment policy,*
24 *failed to adequately train all supervisors, managers, and executives on the prevention of*
25 *discrimination and harassment based on sex, and/or failed to timely discipline or stop*
26 *discriminatory or harassing behavior from occurring in the workplace.”*

27 (i) *“The problems of harassment and discrimination extended to and at a*
28 *minimum were known to those at the top. Defendants’ former Chief Technology Officer was*

1 *observed by employees groping inebriated female employees at company events and was known for*
2 *making hiring decisions based on female applicants' looks."*

3 (j) "[ACTIVISION] also retaliated against employee opposition to practices
4 *forbidden under FEHA and employee assistance or perceived assistance with civil rights*
5 *enforcement DFEH requested documents related to employee complaints, communications*
6 *and records about harassment or discrimination by [ACTIVISION]. [ACTIVISION] refused to*
7 *produce relevant evidence to DFEH, . . . suppressed evidence and interfered with a government*
8 *investigation"*

9 (k) *ACTIVISION has also "taken adverse actions aimed at curtailing employee*
10 *rights . . . such as soliciting waivers of employee rights and obtaining repressive, if not punitive,*
11 *secret settlements of sexual harassment claims, non-disclosure agreements, and non-disparagement*
12 *agreements with severe penalties against employees," and such "waivers and releases . . . overtly*
13 *interfere with the DFEH's statutory mandate to investigate and remedy discrimination."*

14 34. The Moynihans were entirely unaware, and had no reason to suspect, that such
15 activity was occurring at ACTIVISION while Kerri was employed at the company, until on or about
16 July 24, 2021, when they first read news articles detailing the allegations in the Complaint in the
17 *DFEH Action.*

18 **B. THE EEOC'S FINDINGS REGARDING SEXUAL HARASSMENT AT**
19 **ACTIVISION.**

20 35. The EEOC is an agency of the United States of America charged with the
21 administration and enforcement of Title VII of the Civil Rights Act. The EEOC was created out of
22 the Civil Rights Act of 1964, and was tasked by Congress to enforce federal anti-discrimination
23 laws in the employment sector.

24 36. For more than two-and-a-half years, from in or about September 2018 to June 2021,
25 the EEOC conducted an extensive investigation of allegations of sexual harassment and retaliation
26 by ACTIVISION and its affiliated companies.

27 37. The Complaint in the *EEOC Action* sets forth the following findings, among others,
28 relating to sexual harassment at ACTIVISION, including during Kerri's employment at the

1 company, made by the EEOC based on its investigation:

2 (a) *“Since in or around September 2016, there have been instances where*
3 *Defendants have engaged in unlawful employment practices in violation of §§ 701(k), 703(a) and*
4 *704(a) of Title VII, 42 U.S.C. 2000e-2(a) and 2000e-3(a) by subjecting a class of individuals to*
5 *sexual harassment, to pregnancy discrimination and/or to retaliation.”*

6 (b) *“Employees were subjected [to] sexual harassment that was severe or*
7 *pervasive to alter the conditions of employment. The conduct was unwelcome and adversely*
8 *affected the employees. The Defendants knew or should have known of the sexual harassment of the*
9 *adversely affected employees.”*

10 (c) *“Some employees complained about the sexual harassment, but Defendants*
11 *failed to take corrective and preventative measures. Once Defendants knew or should have known*
12 *of the sexual harassment of the adversely affected employees, Defendants failed to take prompt and*
13 *effective remedial action reasonably calculated to end the harassment.”*

14 (d) *“Defendants retaliated against employees who engaged in activity protected*
15 *by Title VII including, but not limited to, rejecting and/or complaining about sexual harassment*
16 *and/or complaining about pregnancy discrimination. As a result of engaging in such protected*
17 *activity, employees were subjected to adverse employment actions including discharge or*
18 *constructive discharge.”*

19 **C. KERRI MOYNIHAN.**

20 38. Kerri grew up in Wilmington, Massachusetts, where her parents Paul and Janet
21 continue to reside. She graduated cum laude from Northeastern University in 2008, with a degree
22 in Business Administration. She became a licensed CPA in Massachusetts and California in 2009,
23 passing all sections of the CPA examinations on her first attempt, which is rare. She moved to
24 Southern California that same year.

25 39. Kerri was a very social and well-liked person, and had many close friends, both in
26 Southern California and in Massachusetts. Kerri enjoyed going to the beach, exercising, dining at
27 restaurants and supporting the Red Sox, her favorite sports team. An animal lover, Kerri was
28 extremely fond of her pet cat, “Mr. Leo.” This photograph of Kerri is from 2009:

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40. Kerri was Paul and Janet’s only child. She was a loving, caring daughter to her parents, with whom she was extremely close. Kerri emailed her parents on a daily basis and usually spoke to at least one of them every day. Kerri and her parents went on family vacations together and Kerri frequently visited them during the holidays. The following photographs are of Kerri and her parents, all taken in 2016, within the year prior to Kerri’s death:

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41. Kerri began working for ACTIVISION in 2011 as a Staff Accountant. She was a passionate and dedicated employee who worked extremely long hours and was well-liked by her colleagues. In February 2016, she was promoted to the position of Finance Manager, supporting

1 ACTIVISION’s Latin American operations. At the time of her death, Kerri’s annual salary, with
2 bonus, was approximately \$106,000. By all accounts, she had a promising future at ACTIVISION.

3 **D. KERRI SUFFERED FROM WORKPLACE SEXUAL HARASSMENT AT**
4 **ACTIVISION.**

5 42. With respect to Kerri in particular, the DFEH found that:

6 *In a tragic example of the harassment that Defendants allowed to fester in their*
7 *offices, a female employee committed suicide while on a company trip due to a*
8 *sexual relationship that she had been having with her male supervisor*
9 *Another employee confirmed that the deceased female employee may have been*
10 *suffering from other sexual harassment at work prior to her death. Specifically, at*
11 *a holiday party before her death, male co-workers passed around a picture of the*
12 *deceased’s vagina.*

13 43. Plaintiffs are informed and believe, and on that basis allege, that the “female
14 employee” referenced in this quote is Kerri, and that the male supervisor is Restituto, who was a
15 Senior Finance Director at ACTIVISION.

16 44. At the time of her death, Kerri was involved in a sexual relationship with her male
17 supervisor – Restituto – who was married and had a newborn son. Kerri and Restituto’s
18 relationship began in or about the Fall of 2016. Plaintiffs are informed and believe, and on that
19 basis allege, that for a supervisor to have a sexual relationship with a subordinate is contrary to
20 ACTIVISION policy.

21 **E. THE CIRCUMSTANCES OF KERRI’S DEATH.**

22 45. On April 27, 2017, Kerri died at the Grand Californian, while on a work retreat for
23 ACTIVISION. Restituto was also present at the retreat.

24 46. The purpose of the retreat was for different divisions of ACTIVISION’s global sales
25 and finance teams to meet and give presentations. Plaintiffs are informed and believe, and on that
26 basis allege, that the retreat was originally scheduled to last from April 24 to April 26, 2017, but at
27 some point, was extended an additional day, to April 27, 2017. Kerri was scheduled to give a
28 presentation on April 27.

47. Kerri was in room number 4215, on the fourth floor of the Grand Californian, where
she was staying alone. Restituto was in room number 4221, directly across the hall. Other

1 ACTIVISION employees had rooms on the same floor.

2 48. The following photograph is of Kerri (pictured on the left) at a dinner with other
3 ACTIVISION employees on the night of April 26, 2017, just a few hours before her death,
4 sometime around 2:00 a.m. the next morning:



18 49. Later during the night of April 26, at approximately 11:00 p.m., Kerri and a group of
19 co-workers went to the Grand Californian's bar.

20 50. At approximately 1:24 a.m. on April 27, Kerri spoke with Restituto in the hotel's
21 lobby, then returned to the bar. At approximately 1:31 a.m., Restituto sent Kerri a text message
22 stating: "*Please don't do that. Not tonight. Think about it and make your decision when your mind*
23 *is clear.*" At approximately 1:52 a.m., Kerri left the bar and returned to her room. She died in her
24 hotel room sometime around 2:00 a.m. on April 27.

25 51. According to data from Restituto's room keycard, beginning at approximately
26 2:15 a.m., Restituto repeatedly left his room for short intervals. The next morning, beginning at
27 approximately 8:30 a.m., Restituto tried contacting Kerri. At approximately 9:00 a.m., Restituto
28 contacted hotel security. Kerri's body was discovered by a hotel security officer at approximately

1 9:27 a.m. She was found hanging from the towel rack with a bathrobe belt around her neck. One of
2 Restituito's room keys was found in Kerri's hotel room.

3 52. The Orange County Coroner concluded that the cause of Kerri's death was a ligature
4 hanging and that the manner of death was suicide. No basis was given in the Coroner's Report for
5 the determination that the death was a suicide.

6 53. All indications were that Kerri's suicide (if that) was the product of an uncontrollable
7 impulse:

8 (a) Kerri did not leave behind a suicide note.

9 (b) The implement with which she died (a bathrobe belt) came from the hotel
10 room and was not an item that she had brought with her to the hotel.

11 (c) There is no record of Kerri using her cell phone or a computer to search for
12 methods by which to commit suicide, nor were there any other indications of pre-planning of a
13 suicide.

14 (d) None of Kerri's text messages mentioned or suggested suicide.

15 (e) There is no record of Kerri making any statements at the hotel bar during the
16 time leading up to her death that she was considering suicide.

17 (f) Kerri had prepared and was scheduled to give a presentation at the retreat on
18 April 27, 2017.

19 (g) Kerri owned a pet cat, Mr. Leo, of which she was extremely fond, and while
20 she had made arrangements for someone to temporarily look after the cat while she was away for a
21 few days at the retreat, she had not made any permanent arrangements for the cat.

22 (h) At the time of her death, Kerri had plans to attend the Stagecoach Country
23 Music Festival, scheduled for April 28 through April 30, 2017.

24 (i) Kerri had plans to serve as the maid-of-honor at a friend's wedding and visit
25 her parents in Boston in May 2017, for which she had purchased plane tickets.

26 **F. THE COVERUP OF THE CIRCUMSTANCES OF KERRI'S DEATH BY**
27 **ACTIVISION AND RESTITUITO.**

28 54. On April 27, 2017, following the discovery of Kerri's body, Restituito called the

1 hotel and asked that a key card to his hotel room, which had been left in Kerri's hotel room, be
2 returned to him. He later told detectives that he had been in Kerri's room to prepare for a
3 presentation at the conference. According to the police report, Restituto made "*seemingly unusual*
4 *inquiries with other employees who were present with [Kerri] the night preceding her death.*"
5 Restituto also went to Kerri's apartment and cleaned it and removed items from it.

6 55. The first time an APD detective interviewed Restituto, he concealed the fact that he
7 had been having a sexual relationship with Kerri. He also lied to the police about his reason for
8 having a key to Kerri's apartment. It was not until he was interviewed a second time, and a
9 detective directly confronted him about his relationship with Kerri, that Restituto admitted that he
10 had been having a sexual relationship with her.

11 56. ACTIVISION refused to turn over Kerri's work-issued laptop to the APD, refused to
12 give them access to Restituto's work-issued laptop, refused to give them access to Restituto's
13 work-issued cell phone and told the police that Restituto's cell phone had been "wiped."

14 57. The APD did not dust Kerri's hotel room for prints or process the room as a crime
15 scene; did not inventory all of the property found in the room; did not preserve a razor head and
16 handle that had been found in the room; did not question Restituto as if he were a suspect; did not
17 search or seek consent to search Restituto's personal cell phone; did not question Restituto about
18 his text message to Kerri preceding her death; did not make an effort to determine a motive for
19 Kerri's purported suicide; and did not seek any warrants.

20 58. On or about May 23, 2017, the APD closed the case.

21 **G. PLAINTIFFS DISCOVER THAT KERRI WAS THE VICTIM OF WORKPLACE**
22 **SEXUAL HARASSMENT AT ACTIVISION.**

23 59. On or about July 20, 2021, the DFEH filed its Complaint in the *DFEH* Action
24 against ACTIVISION and related companies, asserting claims under FEHA and the Equal Pay Act.

25 60. Until the public filing of the DFEH's complaint, the Moynihans had been entirely
26 unaware, and had no reason to suspect: (a) that Kerri was the victim of sexual harassment at
27 ACTIVISION; (b) that male co-workers had passed around a photograph of her vagina at an
28 ACTIVISION holiday party preceding her death; or (3) that there was pervasive workplace sexual

1 harassment and a “frat boy” culture at ACTIVISION.

2 **H. DAMAGES SUSTAINED BY PLAINTIFFS.**

3 61. As noted earlier, at all relevant times prior to Kerri’s death, she had a loving, close
4 relationship with her parents. As a result of Kerri’s death, the Moynihans have lost Kerri’s love,
5 companionship, comfort, affection, society and moral support.

6 62. Plaintiffs have also lost the financial support that Kerri was likely to contribute to
7 them during their life expectancy, and the gifts and benefits that they would have expected to
8 receive from Kerri.

9 63. Additionally, as a direct and proximate result of ACTIVISION’s misconduct as
10 described herein, Kerri experienced humiliation, embarrassment, belittlement, sadness, discomfort,
11 emotional distress, mental anguish and pain and suffering, both preceding her death and in the
12 process of taking her own life.

13 **FIRST CAUSE OF ACTION**

14 **(For Wrongful Death)**

15 **(Code of Civil Procedure Section 377.60)**

16 **(Against All Defendants)**

17 64. Plaintiffs repeat and reallege paragraphs 1 through 63 of this Complaint as if fully
18 alleged herein.

19 65. California law provides that a cause of action for wrongful death may be asserted, “if
20 there is no surviving spouse” and “no surviving issue,” by “persons . . . who would be entitled to the
21 property of the decedent by intestate succession.” Code Civ. Proc. § 377.60(a). Kerri had no
22 surviving spouse and no surviving issue, and therefore Plaintiffs are entitled to her property by
23 intestate succession.

24 66. As detailed above, Kerri was subjected to unwanted sexual harassment in the course
25 of her employment at ACTIVISION, and ACTIVISION failed to take immediate, suitable and
26 effective remedial action and/or all reasonable steps to prevent such harassment, in violation of
27 Government Code section 12940, subdivisions (j)(1) and (k). Plaintiffs are informed and believe,
28 and on that basis allege, that such sexual harassment led to an uncontrollable impulse on Kerri’s

1 part to take her own life in the early morning hours of April 27, 2017.

2 67. ACTIVISION’s failure to take immediate, suitable and effective corrective action
3 and/or all reasonable steps to prevent that workplace sexual harassment was a substantial factor in
4 bringing about Kerri’s death.

5 68. Plaintiffs had no reason to suspect before July 24, 2021, that Kerri had been sexually
6 harassed in the course of her employment at ACTIVISION, or that such harassment had been a
7 substantial factor in leading to her death.

8 69. ACTIVISION’s conduct as described above violated the public policy embodied in
9 FEHA, and in committing such conduct, ACTIVISION stepped out of its proper role as an
10 employer. Accordingly, the exclusivity rule of the Worker’s Compensation Act, Labor Code
11 section 3600(a), does not apply in this case. *See Fermino v. Fedco, Inc.*, 7 Cal. 4th 701, 708, 715
12 (1994) (exclusivity rule does not apply when an employer “step[s] out of [its] proper role[],” such
13 as when the “employer’s conduct violates public policy”).

14 70. As a direct and proximate result of ACTIVISION’s conduct, Plaintiffs were
15 damaged in an amount according to proof at trial, but in no event less than \$1.0 million.

16 **SECOND CAUSE OF ACTION**

17 **(Survivor’s Action: Work Environment Sexual Harassment)**

18 **(Government Code Section 12940, subdivision (j))**

19 **(Against All Defendants)**

20 71. Plaintiffs repeat and reallege paragraphs 1 through 70 of this Complaint as if fully
21 alleged herein.

22 72. Plaintiffs assert this cause of action in their capacities as successors-in-interest to
23 Kerri.

24 73. At all relevant times, FEHA was in full force and effect and binding on
25 ACTIVISION.

26 74. At all relevant times prior to her death, Kerri was an employee of ACTIVISION.

27 75. While employed at ACTIVISION, and in the course of her employment, Kerri was
28 subjected to unwanted sexual harassment by ACTIVISION supervisors, managers, employees and

1 agents because she was a female, including, but not necessarily limited to, an incident in or about
2 December 2016, in which male co-workers passed around a photograph of Kerri's vagina at an
3 ACTIVISION holiday party. Plaintiffs will seek to amend this Complaint to add other incidents of
4 sexual harassment at the time such acts become known to Plaintiffs.

5 76. The harassing conduct to which Kerri was subjected was so severe and pervasive that
6 it created a hostile work environment.

7 77. A reasonable woman in Kerri's position would have considered the work
8 environment at ACTIVISION to be hostile, intimidating, offensive, oppressive and abusive.

9 78. Plaintiffs are informed and believe, and on that basis allege, that Kerri considered the
10 work environment at ACTIVISION to be hostile, intimidating, offensive, oppressive and abusive.

11 79. Plaintiffs are informed and believe, and on that basis allege, that Restituto was a
12 "supervisor" within the meaning of Government Code section 12926(r).

13 80. ACTIVISION and its supervisors and managers, including Restituto, knew or
14 should have known of the harassment to which Kerri had been and was being subjected and forced
15 to endure, yet they failed and refused to take immediate corrective action.

16 81. The harassment to which Kerri was subjected was a substantial factor in causing
17 harm to Kerri, including, without limitation, humiliation, embarrassment, belittlement, sadness,
18 discomfort, emotional distress, mental anguish and pain and suffering, all to her detriment and
19 damage, tragically culminating in Kerri's death at the age of 32.

20 82. As a direct and proximate result of ACTIVISION's conduct, Plaintiffs are entitled to
21 recover damages as successors in interest to Decedent in an amount according to proof at trial, but
22 in no event less than \$1.0 million.

23 83. Plaintiffs are informed and believe, and on that basis allege, that the reprehensible
24 conduct toward Kerri described above was done with malice, fraud and oppression and with
25 conscious disregard for Kerri's rights and with the intent, design and purpose of injuring her, and
26 that ACTIVISION participated in, authorized, condoned and/or ratified that reprehensible conduct
27 by its supervisors, managers, employees and agents. Accordingly, Plaintiffs are entitled to
28 exemplary and punitive damages pursuant to Civil Code section 3294.

1 84. As a result of ACTIVISION’s unlawful acts described above, Plaintiffs are also
2 entitled to reasonable attorney’s fees and costs, including expert witness fees, pursuant to
3 Government Code section 12965, subdivision (c)(6).

4 85. Until they read about the DFEH’s complaint on or about July 24, 2021, the
5 Moynihans had been entirely unaware, and had no reason to suspect, the harassment at
6 ACTIVISION to which Kerri had been subjected. *See Pollock v. Tri-Modal Distribution Services,*
7 *Inc.*, 11 Cal. 5th 918, 944 (2021) (“There is little basis to infer” that failure to timely file an
8 administrative complaint with the DFEH due to lack of “discovery of specific features or
9 circumstances of the alleged unlawful practice” was “meant to address . . . a scenario” where “a
10 person was entirely unaware of the alleged unlawful practice throughout the ordinary limitations
11 period and only later became aware of it.”)

12 **THIRD CAUSE OF ACTION**

13 **(Survivor’s Action: Failure to Prevent Harassment)**

14 **(Government Code Section 12940, subdivision (k))**

15 **(Against All Defendants)**

16 86. Plaintiffs repeat and reallege paragraphs 1 through 85 of this Complaint as if fully
17 alleged herein.

18 87. Plaintiffs assert this cause of action in their capacities as successors-in-interest to
19 Kerri.

20 88. As detailed above, while employed at ACTIVISION, and in the course of her
21 employment, Kerri was subjected to unwanted sexual harassment because she was a female,
22 including, but not necessarily limited to, an incident in or about December 2016, in which male co-
23 workers passed around a photograph of her vagina at an ACTIVISION holiday party. Plaintiffs will
24 seek to amend this Complaint to add other incidents of sexual harassment at the time such acts
25 become known to Plaintiffs.

26 89. ACTIVISION failed to take all reasonable steps to prevent the harassment to which
27 Kerri was being subjected.

28 90. ACTIVISION’s failure to take all reasonable steps to prevent harassment was a

1 substantial factor in causing harm to Kerri, including, without limitation, humiliation,
2 embarrassment, belittlement, sadness, discomfort, emotional distress, mental anguish and pain and
3 suffering, all to her detriment and damage and tragically culminating in Kerri's death.

4 91. As a direct and proximate result of ACTIVISION's conduct, Plaintiffs are entitled to
5 recover damages as successors in interest to Decedent in an amount according to proof at trial, but
6 in no event less than \$1.0 million.

7 92. Plaintiffs are informed and believe, and on that basis allege, that the reprehensible
8 conduct toward Kerri described above was done with malice, fraud and oppression and with
9 conscious disregard for Kerri's rights and with the intent, design and purpose of injuring her, and
10 that ACTIVISION participated in, authorized, condoned and/or ratified that reprehensible conduct
11 by its supervisors, managers, employees and agents. Accordingly, Plaintiffs are entitled to
12 exemplary and punitive damages pursuant to Civil Code section 3294.

13 93. As a result of ACTIVISION's unlawful acts as described above, Plaintiffs are
14 entitled to reasonable attorney's fees and costs, including expert witness fees, pursuant to
15 Government Code section 12965, subdivision (c)(6).

16 94. Until they read about the DFEH's complaint on or about July 24, 2021, the
17 Moynihans had been entirely unaware, and had no reason to believe or suspect, the harassment at
18 ACTIVISION to which Kerri had been subjected.

19 **PRAYER FOR RELIEF**

20 **As to the First Cause of Action for Wrongful Death:**

21 1. For compensatory, general and special damages, in an amount according to proof at
22 trial.

23 **As to the Second Cause of Action for Work Environment Sexual Harassment in**

24 **Violation of FEHA:**

25 1. For compensatory, general and special damages, including emotional distress
26 damages, in an amount according to proof at trial;

27 2. For punitive and exemplary damages pursuant to Civil Code section 3294; and

28 //

1 3. For attorney’s fees and costs, including expert witness fees, pursuant to Government
2 Code section 12965, subdivision (c)(6).

3 **As to the Third Cause of Action for Failure to Prevent Harassment in Violation of FEHA:**

4 1. For compensatory, general and special damages, including emotional distress
5 damages, in an amount according to proof at trial;

6 2. For punitive and exemplary damages pursuant to Civil Code section 3294; and

7 3. For attorney’s fees and costs, including expert witness fees, pursuant to Government
8 Code section 12965, subdivision (c)(6).

9 **For All Causes of Action:**

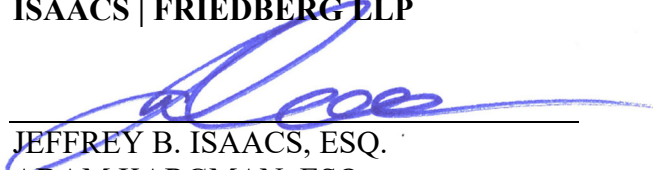
10 1. For prejudgment interest at the maximum rate permitted by law;

11 2. For costs of suit; and

12 3. For such other and further relief as the Court may deem just and proper.

13
14 DATED: March 3, 2022

ISAACS | FRIEDBERG LLP

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17 _____
18 JEFFREY B. ISAACS, ESQ.
19 ADAM KARGMAN, ESQ.
20 *Attorneys for Plaintiffs Paul Moynihan and*
21 *Janet Moynihan*
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DEMAND FOR JURY TRIAL

Plaintiffs Paul Moynihan and Janet Moynihan request a jury trial on all issues properly triable to a jury.

DATED: March 3, 2022

ISAACS | FRIEDBERG LLP



JEFFREY B. ISAACS, ESQ.
ADAM KARGMAN, ESQ.
Attorneys for Plaintiffs Paul Moynihan and Janet Moynihan

Exhibit A

Instructions for Obtaining a Right-to-Sue Notice

To file a lawsuit under the Fair Employment and Housing Act (FEHA), you must file a complaint and obtain a Right-to-Sue notice from the Department of Fair Employment and Housing (DFEH).

If you choose to file a complaint using the Right-to-Sue process you should be aware that:

1. Once DFEH has issued you a Right-to-Sue notice, DFEH will not investigate your complaint.
 2. You have one year from the date of your Right-to-Sue notice to file a lawsuit.
 3. You should have an attorney to file a lawsuit. If you wish to consult an attorney, you may wish to visit the California State Bar website at www.calbar.ca.gov for legal referral resources.
 4. DFEH will not file your complaint with the U.S. Equal Employment Opportunity Commission (EEOC). To receive a federal Right-to-Sue notice, you must contact EEOC at www.eeoc.gov or at (800) 669-4000 or TTY (800) 669-6820.
- Rather than receiving a Right-to-Sue notice to file a lawsuit, you may ask DFEH to investigate your complaint. If you do so, you may still obtain a Right-to-Sue notice and file a lawsuit at a later time. If you would like DFEH to consider your complaint for investigation, you begin the process by completing and submitting an Intake Form. You can do this in one of the following ways:
 - Use our online system at www.dfeh.ca.gov.
 - Go to our website at www.dfeh.ca.gov and download a copy of a blank Intake Form. Fill it out and email it to us at contact.center@dfeh.ca.gov or mail it to: 2218 Kausen Drive, Suite 100; Elk Grove, CA 95758.
 - Call our Communication Center at (800) 884-1684 (voice), 800-700-2320 (TTY) or California's Relay Service at 711

If you would like to proceed with obtaining a Right-to-Sue notice, fill out the Right-to-Sue form that follows these instructions and either email it DFEH at contact.center@dfeh.ca.gov or mail it to: 2218 Kausen Drive, Suite 100; Elk Grove, CA 95758. You may also obtain a Right-to-Sue notice using our online system at www.dfeh.ca.gov.

After you have submitted your form, we will send you a Right-to-Sue letter with the information you provided.



CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING RIGHT-TO-SUE

Your submission of this document acknowledges that you have read and agree to the DFEH's Privacy Policy. By submitting this document, you are declaring under penalty of perjury under the laws of the State of California that to the best of your knowledge all information stated is true and correct, except matters stated on information and belief, which you believe to be true.

DFEH CASE NUMBER (IF APPLICABLE):

COMPLAINANT:

NAME: Paul and Janet Moynihan as successors-in-interest to KERRI MOYNIHAN
TELEPHONE NUMBER: 781-640-5629

ADDRESS: 2 Sherburn Place
EMAIL ADDRESS: pmoy528gmail.com

CITY/STATE/ZIP: Wilmington, MA 01887
janet.a.moynihan@gmail.com

RESPONDENT:

NAME: Activision Publishing, Inc.
TELEPHONE NUMBER: 310-255-2000

ADDRESS: 3100 Ocean Park Blvd.

CITY/STATE/ZIP: Santa Monica, CA 90405

NUMBER OF EMPLOYEES: 1000+ TYPE OF EMPLOYER: Private

ADD CO-RESPONDENT:

NAME: _____

TITLE: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

ADD CO-RESPONDENT:

NAME: _____

TITLE: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

DATE OF HARM:

LAST DATE OF HARM (Month/Day/Year): 04/27/2017 (date of Keri's death)

Discovered additional harm/unlawful practices on
7/22/2021-7/24/2021.

1. I ALLEGE THAT I EXPERIENCED: Discrimination Harassment

BECAUSE OF MY ACTUAL OR PERCEIVED:

- Age (40 and over)
- Ancestry
- Association with a member of a protected class
- Color
- Criminal History
- Disability (physical or mental)
- Family Care and Medical Leave (CFRA) (employers of 5 or more people) includes serious health condition of employee or family member, child bonding, and military exigencies.
- Gender Identity or Expression
- Genetic Information or Characteristic
- Marital Status
- Medical Condition (cancer or genetic characteristic)
- Military and Veteran Status
- National Origin (includes language restrictions)
- Pregnancy, childbirth, breastfeeding, or related medical conditions
- Race
- Religious creed (includes dress and grooming practices)
- Sex/Gender
- Sexual harassment – hostile environment
- Sexual harassment – quid pro quo
- Sexual orientation
- Other (specify) _____

AS A RESULT, I WAS:

- Asked impermissible non-job-related questions
- Demoted
- Denied accommodation for pregnancy
- Denied accommodation for religious beliefs
- Denied any employment benefit or privilege
- Denied employer paid health care while on pregnancy disability leave
- Denied equal pay (includes violations of the Equal Pay Act)
- Denied Family Care and Medical Leave (CFRA) (employers of 5 or more people) includes serious health condition of employee or family member, child bonding, and military exigencies.
- Denied hire or promotion
- Denied or forced to transfer
- Denied reasonable accommodation for a disability
- Denied the right to wear pants
- Denied work opportunities or assignments
- Forced to quit
- Laid off
- Reprimanded
- Suspended
- Terminated
- Other (specify) Workplace sexual harassment may have led to Kerri's suicide on 4/27/2017.

I ALLEGE THAT I EXPERIENCED: Retaliation

BECAUSE I:

- Participated as a witness in a discrimination or harassment complaint
- Reported or resisted any form of discrimination or harassment
- Reported patient abuse (hospital employees only)
- Requested or used a disability-related accommodation
- Requested or used a pregnancy-disability-related accommodation
- Requested or used a religious accommodation
- Requested or used Family Care and Medical Leave (CFRA) (employers of 5 or more people) includes serious health condition of employee or family member, child bonding, and military exigencies.

AS A RESULT I WAS:

- Asked impermissible non-job-related questions
- Demoted
- Denied accommodation for pregnancy
- Denied accommodation for religious beliefs
- Denied any employment benefit or privilege
- Denied employer paid health care while on pregnancy disability leave
- Denied equal pay (includes violations of the Equal Pay Act)
- Denied Family Care and Medical Leave (CFRA) (employers of 5 or more people) includes serious health condition of employee or family member, child bonding, and military exigencies.

- Denied hire or promotion
- Denied or forced to transfer
- Denied reasonable accommodation for a disability
- Denied the right to wear pants
- Denied work opportunities or assignments
- Forced to quit
- Laid off
- Reprimanded
- Suspended
- Terminated
- Other (specify) _____

2. Do you have an attorney who agreed to represent you in this matter? Yes No
If yes, please provide the attorney's contact information.

COMPLAINANT'S REPRESENTATIVE INFORMATION

Attorney Name: Jeffrey Isaacs, Adam Kargman

Attorney Firm Name: Isaacs | Friedberg LLP

Attorney Address: 555 South Flower Street, Ste. 4250

Attorney City, State, and Zip: Los Angeles, CA 90071

3. Briefly describe what you believe to be the reason(s) for the discrimination, harassment, or retaliation. (Optional)

On April 27, 2017, our daughter, Kerri Moynihan, passed away while on a work retreat for her employer, Activision Publishing, Inc. ("Activision"), where she worked as a Senior Finance Executive. The Orange County Coroner concluded that Kerri's death was a suicide. Kerri had been in a sexual relationship with her supervisor, Greg Restituto, who had also been present at the work retreat. During the police investigation into Kerri's death, Activision did not turn over Kerri's work-issued laptop or Mr. Restuito's work-issued cell phone and laptop to police, and claimed that Mr. Restuito's cell phone had been "wiped." Additionally, Mr. Restuito was not forthcoming with detectives about his relationship with Kerri and lied about certain facts, such as his reason for having a key to Kerri's apartment.

On July 22, 2021, we learned that the Department of Fair Employment and Housing had filed a civil lawsuit against Activision entitled Department of Fair Employment and Housing v. Activision Blizzard Inc. et al., Los Angeles Superior Court, Case No. 21STCV26571 . We learned more details about the lawsuit on July 23 and 24, 2021. The lawsuit alleges that there has been constant sexual harassment at Activision, that the company's executive and human resources personnel knew about the harassment and failed to take reasonable steps to prevent it, and Activision covered up employee complaints about sexual harassment.

In particular, with respect to Kerri, the DFEH's complaint alleges that "a particularly tragic example" of harassment occurred when "a female employee committed suicide while on a company trip due to a sexual relationship that she had been having with her male supervisor Another employee confirmed that the deceased female employee may have been suffering from other sexual harassment at work prior to her death. Specifically, at a holiday party before her death, male co-workers passed around [a nude photo of her]."

Prior to reading these allegations in the DFEH's complaint, we had no knowledge, did not suspect and had no reason to suspect that Kerri "may have been suffering from other sexual harassment at work" or that a nude picture of her had been passed around at a holiday party.

Based on this new information, we have reason to believe that the sexual harassment Kerri was experiencing at Activision prior to her death may have been a proximate cause of her suicide. We are submitting this claim as Kerri's successors-in-interest pursuant to California Code of Civil Procedure sections 377.20(a) and 377.30.

VERIFICATION PAGE – THIS PAGE MUST BE COMPLETED

Before submitting the form, you must verify who you are and whether you are submitting this information for yourself or someone else.

Verifier Name: Paul Moynihan

Verifier's Relationship to Complainant: Father and Successor-in-interest

Verifier's City and State: Wilmington, Massachusetts

By submitting this document, you are declaring under penalty of perjury under the laws of the State of California that to the best of your knowledge all information stated is true and correct, except matters stated on information and belief, which you believe to be true.

VERIFICATION PAGE – THIS PAGE MUST BE COMPLETED

Before submitting the form, you must verify who you are and whether you are submitting this information for yourself or someone else.

Verifier Name: Janet Moynihan

Verifier's Relationship to Complainant: Mother and Successor-in-interest

Verifier's City and State: Wilmington, Massachusetts

By submitting this document, you are declaring under penalty of perjury under the laws of the State of California that to the best of your knowledge all information stated is true and correct, except matters stated on information and belief, which you believe to be true.

DEMOGRAPHIC INFORMATION

THIS INFORMATION IS OPTIONAL AND IS ONLY USED FOR STATISTICAL PURPOSES.

Primary Language: English

DOB: 05/22/1984

GENDER / GENDER IDENTITY:

- Male
- Female
- Non-Binary
- Other

MARITAL STATUS:

- Single
- Married
- Cohabitation
- Divorced

RACE:

- | | |
|---|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> American Indian, Native American or Alaskan Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American | <ul style="list-style-type: none"> <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input checked="" type="checkbox"/> White <input type="checkbox"/> Other |
|---|---|

ETHNICITY:

- Hispanic or Latino
- Non-Hispanic or Latino

NATIONAL ORIGIN:

- | | | | |
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| <ul style="list-style-type: none"> <input type="checkbox"/> Afghani <input checked="" type="checkbox"/> American [U.S.A] <input type="checkbox"/> Asian Indian <input type="checkbox"/> Bangladeshi <input type="checkbox"/> Cambodian <input type="checkbox"/> Canadian <input type="checkbox"/> Chinese <input type="checkbox"/> Cuban <input type="checkbox"/> Dominican <input type="checkbox"/> Egyptian <input type="checkbox"/> English <input type="checkbox"/> Ethiopian <input type="checkbox"/> Fijian <input type="checkbox"/> Filipino | <ul style="list-style-type: none"> <input type="checkbox"/> German <input type="checkbox"/> Ghanaian <input type="checkbox"/> Guamanian <input type="checkbox"/> Haitian <input type="checkbox"/> Hawaiian <input type="checkbox"/> Hmong <input type="checkbox"/> Indonesian <input type="checkbox"/> Iranian <input type="checkbox"/> Iraqi <input type="checkbox"/> Irish <input type="checkbox"/> Israeli <input type="checkbox"/> Italian <input type="checkbox"/> Jamaican | <ul style="list-style-type: none"> <input type="checkbox"/> Japanese <input type="checkbox"/> Korean <input type="checkbox"/> Laotian <input type="checkbox"/> Lebanese <input type="checkbox"/> Malaysian <input type="checkbox"/> Mexican <input type="checkbox"/> Nigerian <input type="checkbox"/> Other <input type="checkbox"/> Other African <input type="checkbox"/> Other Asian <input type="checkbox"/> Other Caribbean <input type="checkbox"/> Other European <input type="checkbox"/> Other Hispanic/Latino | <ul style="list-style-type: none"> <input type="checkbox"/> Other Middle Eastern <input type="checkbox"/> Pakistani <input type="checkbox"/> Puerto Rican <input type="checkbox"/> Salvadoran <input type="checkbox"/> Samoan <input type="checkbox"/> Sri Lankan <input type="checkbox"/> Syrian <input type="checkbox"/> Taiwanese <input type="checkbox"/> Thai <input type="checkbox"/> Tongan <input type="checkbox"/> Vietnamese |
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DEMOGRAPHIC INFORMATION

THIS INFORMATION IS OPTIONAL AND IS ONLY USED FOR STATISTICAL PURPOSES.

DISABILITY:

- | | |
|---|--|
| <input type="checkbox"/> AIDS or HIV | <input type="checkbox"/> Limbs [Arms / Legs] |
| <input type="checkbox"/> Blood / Circulation | <input type="checkbox"/> Mental |
| <input type="checkbox"/> Brain / Nerves / Muscles | <input type="checkbox"/> Sight |
| <input type="checkbox"/> Digestive / Urinary / Reproduction | <input type="checkbox"/> Speech / Respiration |
| <input type="checkbox"/> Hearing | <input type="checkbox"/> Spinal / Back / Respiration |
| <input type="checkbox"/> Heart | <input type="checkbox"/> Other Disability |

RELIGION:

- | | |
|--|---|
| <input type="checkbox"/> Agnostic | <input type="checkbox"/> Nonreligious |
| <input type="checkbox"/> Atheist | <input type="checkbox"/> Protestantism |
| <input type="checkbox"/> Bahai | <input type="checkbox"/> Primal-indigenous |
| <input type="checkbox"/> Buddhism | <input type="checkbox"/> Quakers |
| <input type="checkbox"/> Catholicism | <input type="checkbox"/> Rastafarianism |
| <input type="checkbox"/> Christianity | <input type="checkbox"/> Spiritism |
| <input type="checkbox"/> Confucianism | <input type="checkbox"/> Shinto |
| <input type="checkbox"/> Hinduism | <input type="checkbox"/> Sikhism |
| <input type="checkbox"/> Islam | <input type="checkbox"/> Taoism |
| <input type="checkbox"/> Jehovah's Witness | <input type="checkbox"/> Unitarian-Universalism |
| <input type="checkbox"/> Judaism | <input type="checkbox"/> Zoroastrianism |
| <input type="checkbox"/> Neo-Paganism | <input type="checkbox"/> Other |

SEXUAL ORIENTATION:

- Straight or Heterosexual Gay or Lesbian Bisexual Other

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT & HOUSING PRIVACY POLICY

The California Department of Fair Employment & Housing (DFEH) has adopted this Privacy Policy, effective January 1, 2017. DFEH values the security and privacy of your personal information and is committed to protecting your privacy rights. The DFEH seeks only to collect relevant personal information that enables us to assist you in investigating and resolving complaints of discrimination as prescribed by California Government Code sections 11135 et seq., 12900 et seq., and California Civil Code sections 51, 51.7, 52.5, and 54 et seq.

All personal information we collect is governed by the State of California Information Practices Act of 1977 (Civ. Code, §§ 1798-1798.78), Government Code sections 11015.5 and 11019.9, and the California Public Records Act (Gov. Code § 6250 et seq.).

Outlined below is our online Privacy Policy and Notice:

- [Legal Authority for Collection and Use of Information](#)
- [Disclosure and Sharing](#)
- [What happens to information you submit to us?](#)
- [Cookies](#)
- [Links](#)
- [Public Disclosure](#)
- [Minors](#)
- [Security](#)
- [Access and Corrections to your Personal Information](#)
- [How to contact us if you have any questions regarding this policy](#)
- [Changes to our Privacy Policy](#)
- [Effective date](#)

Legal Authority for Collection and Use of Information

We collect information that may be directly associated with a specific person. We call this "Personal Information," and it includes, names, addresses, telephone numbers and email addresses. We collect this Personal Information through lawful means from individuals who seek to file a complaint with the DFEH, and we use this information to establish jurisdiction and to conduct an investigation of any allegations of Civil Rights violations. If you seek to file a complaint, you are required to provide us with sufficient information in accordance with California Government Code sections 11135 et seq., 12900 et seq., and California Civil Code sections 51, 51.7, 52.5, and 54 et seq.

Disclosure and Sharing

We do not sell your personal information. Government Code section 11015.5, subdivision (6), prohibits DFEH and all state agencies from distributing or selling any electronically collected personal information about users to any third party without the permission of the user. Any distribution of electronically collected personal information will be solely for the purposes for which it was provided to us, as described below.

We also may share your personal information under the following circumstances:

1. You give us permission.
2. We receive a request from a party with legal authority to obtain the information, such as a subpoena.
3. As authorized by law, it is transferred to / shared with the U.S. Equal Employment Opportunity Commission, the National Labor Relations Board, the U.S. Department of Labor, the U.S. Department of Housing and Urban Development, the U.S. Department of Health and Human Services, the U.S. Department of Education, the U.S. Department of Justice, or any branch of the California State Government, or any other local or Federal agency with similar jurisdiction.
4. Non personal information, including the allegations in the complaint document itself, may be disclosed to the public under the California Public Records Act.

What happens to information you submit to us?

The Personal Information we obtain from you will be used for the purposes for which it was provided: to further the DFEH's efforts to investigate and attempt to resolve the allegations of unlawful discrimination, harassment and/or retaliation that you filed. Electronically collected Personal Information we gather about visits to our website is used to help us improve the user experience and for basic web metrics of our website.

Links

Our website may contain links to other websites on the Internet that are owned and operated by third parties. DFEH does not control the privacy policies or practices of these websites. You are advised to review the privacy policies of the third party offering the website before providing any personal information to these websites. DFEH is not responsible for the content or practices of any linked third party website and such third party websites are provided solely for the convenience and information to our visitors.

Cookies

We do not collect information such as names, addresses, and emails from individuals browsing DFEH's website. However, when you visit our website, a "cookie" may be saved on your computer. A cookie is a tiny piece of data stored by your browser that helps us recognize your unique computer and your preferences when using our website. The information DFEH automatically collects may include the type of browser used, date and time you visited the site, and web pages you visited. This information is collected to improve the user experience and for basic web metrics. The information is deleted after 30 days. This type of electronic information collection is permitted by law and is exempt from requests made under the Public Records Act.

You can refuse the cookie or delete the cookie file from your computer after you visit our website. You can find instructions for managing cookie controls on websites for particular browsers. For example:

- [Microsoft Internet Explorer browsers](#)
- [Macintosh Safari browsers](#)
- [Mozilla Firefox browsers](#)

Public Disclosure

In the State of California, laws exist to ensure that government is open and that the public has a right to access appropriate records and information possessed by state government. At the same time, there are exceptions to the public's right to access public records.

These exceptions serve various needs including maintaining the privacy of individuals. Both state and federal laws provide exceptions. All information collected at this site becomes a public record that may be subject to inspection and copying by the public, unless an exemption in law exists. In the event of a conflict between this Privacy Notice and the Public Records Act, the Information Practices Act and/or other law governing the disclosure of records, the Public Records Act, the Information Practices Act and/or other applicable law will control.

Minors

We recognize the importance of protecting privacy where minors (a person under 18 years of age) are involved. We are committed to protecting the privacy of minors and do not knowingly collect personal information from minors or create profiles of minors through our website. Users are cautioned, however, that the collection of personal information submitted online or in an e-mail will be treated as though it was submitted by an adult. DFEH strongly encourages parents, guardians and adults to be involved in the internet activities of their children or other minors they are responsible for and to provide guidance whenever minors are asked to provide personal information online. If you believe a minor has provided us with personal information, we ask that a parent or guardian contact us at 1-800-884-1684.

Security

DFEH has put security measures in place to safeguard and protect your information from unauthorized access, disclosure, and loss. Our policy limits access to personal information to employees who have an established business need for the Personal Information including those directly involved in the filing, investigation, resolution and/or litigation of your complaint. Information that is physically located within the DFEH is protected by various security measures, which may include the use of encryption software to protect the security of an individuals' personal information during transmission and storage. Personal Information is destroyed according to the DFEH's records retention policy, and we only retain these records for as long as necessary to fulfill our business need. We train our employees on procedures and management of personal information we collect as well as on taking precautions and complying with limitations on the release of personal information.

Access and Corrections to your Personal Information

You have the right to review any Personal Information we collect about you. If you request all or a portion of the Personal Information collected about you by the DFEH, we will provide you with the Personal Information requested and explain how we use the information. You may request changes to your Personal Information you believe is incorrect by submitting a written request that credibly shows the error. If you believe that your Personal Information is being used for a purpose other than what you intended when you submitted it, you may contact us so we can rectify the misuse. In all cases, we will take reasonable steps to verify your identity before granting access or making corrections.

How to contact us if you have any questions regarding this policy

If you have any questions or concerns about the information presented in this Privacy Notice, you may contact:

DFEH Privacy Officer
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758
1-800-884-1684

Changes to our Privacy Policy

We may update and revise our Privacy Policy. We will post any privacy policy changes on this page and, if the changes are significant, we will provide a more prominent notice.

Effective date

January 1, 2017

Exhibit B



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

October 27, 2021

Jeffrey Isaacs
555 South Flower Street Ste. 4250
Los Angeles, CA 90071
Adam Kargman
555 South Flower Street Ste. 4250
Los Angeles, CA 90071

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202110-15208027
Right to Sue: Moynihan as successors in interest to Kerri Moynihan / Activision Publishing Inc.

Dear Jeffrey Isaacs Adam Kargman:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

October 27, 2021

RE: **Notice of Filing of Discrimination Complaint**

DFEH Matter Number: 202110-15208027

Right to Sue: Moynihan as successors in interest to Kerri Moynihan / Activision Publishing Inc.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be made within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
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<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

October 27, 2021

Paul and Janet Moynihan as successors in interest to Kerri Moynihan
2 Sherburn Place
Wilmington, MA 01887

RE: Notice of Case Closure and Right to Sue

DFEH Matter Number: 202110-15208027

Right to Sue: Moynihan as successors in interest to Kerri Moynihan / Activision Publishing Inc.

Dear Paul and Janet Moynihan as successors in interest to Kerri Moynihan:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective October 19, 2021 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be submitted to the DFEH within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
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<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

Sincerely,

Department of Fair Employment and Housing

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
5 **(Gov. Code, § 12900 et seq.)**

6 **In the Matter of the Complaint of**

7 Paul and Janet Moynihan as successors in interest to
8 Kerri Moynihan

DFEH No. 202110-15208027

9 Complainant,

10 vs.

11 Activision Publishing Inc.
12 3100 Ocean Park Blvd.
13 Santa Monica, California 90405

14 Respondents

15
16 **1. Respondent Activision Publishing Inc.** is an **employer** subject to suit under the California
17 Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

18
19 **2. Complainant Paul and Janet Moynihan as successors in interest to Kerri Moynihan,**
20 resides in the City of **Wilmington, State of MA.**

21
22 **3. Complainant alleges that on or about July 24, 2021,** respondent took the following
23 adverse actions:

24 **Complainant was harassed** because of complainant's sex/gender, other, sexual
25 harassment- hostile environment, sexual harassment- quid pro quo.

26 **Additional Complaint Details:** On April 27, 2017, our daughter, Kerri Moynihan, passed
27 away while on a work retreat for her employer, Activision Publishing, Inc. ("Activision"),
28 where she worked as a Senior Finance Executive. The Orange County Coroner concluded
that Kerri's death was a suicide. Kerri had been in a sexual relationship with her supervisor,
Greg Restituto, who had also been present at the work retreat. During the police
investigation into Kerri's death, Activision did not turn over Kerri's work-issued laptop or Mr.
Restuito's work-issued cell phone and laptop to police, and claimed that Mr. Restuito's cell
phone had been "wiped." Additionally, Mr. Restuito was not forthcoming with detectives

1 about his relationship with Kerri and lied about certain facts, such as his reason for having a key to Kerri's apartment.

2 On July 22, 2021, we learned that the Department of Fair Employment and Housing had
3 filed a civil lawsuit against Activision entitled Department of Fair Employment and Housing v.
4 Activision Blizzard Inc. et al.. Los Angeles Superior Court, Case No. 21STCV26571. We
5 learned more details about the lawsuit on July 23 and 24, 2021. The lawsuit alleges that
6 there has been constant sexual harassment at Activision, that the company's executive and
7 human resources personnel knew about the harassment and failed to take reasonable steps
8 to prevent it, and Activision covered up employee complaints about sexual harassment.

9 In particular, with respect to Kerri, the DFEH's complaint alleges that "a particularly tragic
10 example" of harassment occurred when "a female employee committed suicide while on a
11 company trip due to a sexual relationship that she had been having with her male supervisor
12 Another employee confirmed that the deceased female employee may have been
13 suffering from other sexual harassment at work prior to her death. Specifically, at a holiday
14 party before her death, male co-workers passed around [a nude photo of her]."

15 Prior to reading these allegations on the DFEH's complaint, we had no knowledge, did not
16 suspect and had no reason to suspect that Kerri "may have been suffering from other sexual
17 harassment at work" or that a nude picture of her had been passed around at a holiday
18 party.

19 Based on this new information, we have reason to believe that the sexual harassment Kerri
20 was experiencing at Activision prior to her death may have been a proximate cause of her
21 suicide. We are submitting this claim as Kerri's successors-in-interest pursuant to California
22 Code of Civil Procedure sections 377.20 (a) and 377.30.
23
24
25
26

1 VERIFICATION

2 I, **Paul Moynihan**, am the **Family Member** in the above-entitled complaint. I have
3 read the foregoing complaint and know the contents thereof. The same is true of my
4 own knowledge, except as to those matters which are therein alleged on information
and belief, and as to those matters, I believe it to be true.

5 On October 19, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Wilmington, Massachusetts**

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Date Filed: October 19, 2021

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