

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

TAKE-TWO INTERACTIVE SOFTWARE, INC.,

Plaintiff,

-against-

APOGEE SOFTWARE, LTD.,

Defendant.

Index No.:

09601457

Summons

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the accompanying complaint in this action and to serve a copy of your answer on the Plaintiff's undersigned attorneys within twenty (20) days after the service of this summons and complaint, exclusive of the date of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiffs designate New York County as the place of trial. The basis of the venue is CPLR §§ 501 & 302(a) and General Obligations Law § 5-1402.

FILED
MAY 12 2009
NEW YORK
COUNTY CLERK'S OFFICE

Dated: New York, New York
May 11, 2009

MILBANK, TWEED, HADLEY & McCLOY LLP

By: 

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

TAKE-TWO INTERACTIVE SOFTWARE, INC.,

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-against-

APOGEE SOFTWARE, LTD.,

Defendant.

Index No.:

**Complaint for
Breach of Contract**

09601457

COMPLAINT

Plaintiff Take-Two Interactive Software, Inc. ("Take-Two"), by its undersigned attorneys, alleges the following in support of its Complaint against Apogee Software, Ltd. d/b/a 3D Realms ("Apogee"):

NATURE OF THE ACTION

1. Plaintiff Take-Two is a Delaware corporation with its principal place of business located at 622 Broadway, New York, New York 10012. Take-Two is a publisher, developer and distributor of interactive entertainment software, hardware and accessories, including video games for the PC, Sony's PLAYSTATION[®]3 computer entertainment system, the Xbox 360[®] video game and entertainment system from Microsoft, and the Wii[™] system from Nintendo.

2. Defendant Apogee is a developer of interactive entertainment software with its principal place of business located in Garland, Texas.

3. During the 1990s, Apogee released a series of successful videogames under the "Duke Nukem" franchise. The Duke Nukem brand is comprised of and known by the unique characters, personalities, storylines, themes, and audio / visual elements portrayed in the Duke Nukem videogames.

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4. Seeking to capitalize on the popularity of the Duke Nukem brand at the time, Apogee announced in April 1997 that it planned to develop a sequel to the previously-released Duke Nukem games, which was to be known as “Duke Nukem Forever” (referred to hereinafter as “DNF”).

5. During the late 1990s, Apogee and Infogrames, Inc. (“Infogrames”) entered into a series of agreements (the “Original Agreements”) whereby Apogee granted Infogrames the exclusive right to publish, distribute and sell various videogames within the Duke Nukem franchise, including DNF. On December 1, 2000, Take-Two and Infogrames entered into an Asset Purchase Agreement pursuant to which Infogrames sold and assigned to Take-Two all of its rights under the Original Agreements. In connection with the Asset Purchase Agreement, Take-Two paid in excess of \$12 million in consideration to Infogrames.

6. In December 2000 and in connection with the transfer of Infogrames’s exclusive publishing rights to Take-Two, Apogee and Take-Two entered into a license agreement (the “License Agreement”), which replaced and superseded the Original Agreements. Pursuant to the License Agreement, Take-Two obtained an “exclusive and worldwide” right to “promote and exploit” DNF following its successful development and delivery to Take-Two by Apogee. License Agreement, § 1(a). As set forth in the License Agreement, incident to Take-Two’s broad right to exclusively “promote and exploit” DNF, Take-Two also obtained the exclusive rights to “advertise, market and promote” DNF; to “manufacture,” “sell,” “bundle,” and “distribute” DNF; to “use and make copies” of DNF; and to sublicense all rights granted under the License Agreement. License Agreement, § 1(b).

7. In Section 2(a) of the License Agreement, Apogee agreed that “[e]ach version of source and object code of [DNF] ... shall be delivered” to Take-Two, along with all applicable

legal and copyright notices, trademarks, logos, instruction manuals and art work. In Section 2(d) of the License Agreement, the parties acknowledged that “it is material to this agreement that, without limitation, [Apogee] provide [Take-Two] with Master PC version of [DNF] as soon as it is completed.”

8. Under the License Agreement, Take-Two was entitled to all net revenues from unit sales of the game at retail after payment of royalties to Apogee. In addition, Infogrames had previously advanced \$400,000 to Apogee (the “Initial DNF Advance”) to be used to assist in funding the ongoing development of DNF. Pursuant to the Asset Purchase Agreement with Infogrames, Take-Two succeeded to Infogrames’s right to repayment.

9. In the years following execution of the License Agreement, Apogee continually delayed the completion date for DNF. Indeed, in 2007, seven years after Take-Two and Apogee entered into the License Agreement, and more than a decade after Apogee’s initial public announcement that it was creating DNF, Apogee had not yet completed development of DNF.

10. The release of DNF was highly anticipated within the video-gaming community. The protracted development of the game was well-publicized and became the subject of ridicule. For example, in a 2007 article entitled, “The Most Delayed Games Ever,” an industry columnist remarked that “[e]ither this is the longest game ever in production or an elaborate in-joke at the expense of the industry.”

11. By October 2007, in an effort to finally achieve completion with respect to the development of DNF, Take-Two and Apogee entered into a second agreement (the “2007 Agreement”). Pursuant to the 2007 Agreement, Take-Two lent Apogee an additional \$2,500,000 (the “Additional DNF Advance” and, together with the Initial DNF Advance, the “DNF Advances”). The 2007 Agreement provides that the unpaid balance of the Additional DNF

Advance shall become immediately due and payable if Apogee failed to release DNF by October 22, 2012.

12. Apogee repeatedly assured both Take-Two and the video-gaming community that it would use its best efforts to complete development of DNF in a timely manner. During the initial public announcement about DNF in April 1997, Apogee stated its intention to release DNF by mid-1998. It did not. In December 1999, Apogee made a public statement suggesting that DNF would be released in 2000. It was not. Likewise, in December 2000, Apogee made a public statement suggesting that DNF would be released in 2001. It was not. In 2003, Apogee informed Take-Two that it expected to finish DNF by the end of 2004 or the beginning of 2005. It did not.

13. In January 2006, George Broussard, who is a partner of Apogee, one of the original creators of the Duke Nukem brand and the director in charge of development of DNF at Apogee, gave an interview during which he discussed Apogee's progress on DNF. Broussard stated:

Things are together; we're in full production. We're basically just pulling all the pieces together and making the game out of it. There's a lot that's finished. All the guns are finished. Most of the creatures are finished. And as I said, we're just basically pulling it all together and trying to make it fun. We've kind of got all these disassociated elements that make up a game, and you put them together and things happen. And then you just tweak it and polish it until it's fun, and that's kind of the phase we're in now, just trying to make something that is really fun to play and interesting.

Broussard's comments were published by a popular website devoted to providing news and information to the video-gaming community.

14. In August 2006, industry press reports disclosed that several key employees had left Apogee. Apogee denied speculation that the loss of the key employees would result in further delays and stated that the game was still moving ahead. As recently as January 2009,

Broussard publicly announced that Apogee was beginning the year “with a vengeance” on completing DNF.

15. On May 6, 2009, despite its repeated assurances that the game would be released, Apogee publicly announced that it was shutting down its studios and terminating development of DNF. Apogee’s decision to terminate development of DNF was made without Take-Two’s approval.

16. Take-Two brings this action to recover the DNF Advances, with accrued interest, which is immediately due and payable as a consequence of Apogee’s repudiation of its commitment to complete development of DNF. In addition, Take-Two seeks (i) damages equal to the profits on sales of DNF that Take-Two would have made but for Apogee’s repudiation of its commitment to deliver the game to Take-Two and (ii) specific performance compelling Apogee to deliver to Take-Two all existing source and object code already developed for the DNF videogame and to cooperate with Take-Two in any future effort to complete development of DNF.

JURISDICTIONAL ALLEGATIONS

17. Jurisdiction and venue in this Court are proper under General Obligations Law § 5-1402 and CPLR 501. Section 15(b) of the License Agreement provides that the parties agreed to “submit to the exclusive jurisdiction of the courts located in New York, New York including the federal courts located there, without regard to its choice of law rules.” License Agreement, § 15(b).

18. Pursuant to New York’s long-arm statute, CPLR § 302(a)(1), this Court has personal jurisdiction over Apogee because this lawsuit arises out of its transaction of business within the State of New York.

19. Assignment of this action to the Commercial Division of the Supreme Court of the State of New York, County of New York, is appropriate because Take-Two asserts a breach of contract claim arising out of the parties' business dealings and the amount in controversy exceeds \$100,000, exclusive of punitive damages, interests, costs, disbursements and counsel fees claimed.

KEY CONTRACTUAL PROVISIONS

THE LICENSE AGREEMENT

20. In December 2000, Take-Two and Apogee entered into the License Agreement. Under the License Agreement, Apogee granted Take-Two "the exclusive right to exploit the PC Version" of DNF. License Agreement, §1(c)(i). The License Agreement defines "PC Version" as "a version designed to operate on IBM and fully compatible personal computers under any version of Windows or any successor operating system designed to operate on IBM and fully compatible personal computers." *Id.*

21. Under Section 2 of the License Agreement, Apogee agreed to deliver to Take-Two the object and source code for the PC Version of DNF to "[Take-Two]'s satisfaction in conformance with industry and technical standards for premium software products ..." License Agreement, § 2(d).

22. Section 1(c)(iii) of the License Agreement provides Take-Two with the exclusive option to develop and exploit "Console Versions" of the DNF videogame. The License Agreement defines "Console Version" as a version of the videogame for "use on any machine or device now known or later devised which: (A) runs computer software and is dedicated primarily to the playing of interactive videogames, ...; or (B) is a portable device with a built in viewing screen designed solely for personal handheld use." *Id.* Take-Two was permitted to exercise its

option to exclusively develop and exploit Console Versions by “giving Apogee written notice within 30 days following the release date of the PC Version of the product at retail.” *Id.* Thus, the option provides Take-Two with the exclusive, irrevocable and worldwide rights to develop and exploit versions of DNF that run on, among other devices, the Xbox 360[®], the PLAYSTATION[®]3, the PSP[®] (PlayStation[®] Portable) system, and the Nintendo Wii[™].

23. In light of Take-Two’s exclusive and worldwide rights to publish and exploit the PC and Console Versions of DNF, Apogee, including all its present and former principals, agents, officers, employees, and subcontractors, are prohibited from publishing, releasing, exploiting, selling, transferring or destroying any proprietary information and assets related to DNF, including, without limitation, the source and object code for the game.

24. In contrast to its obligations with respect to the PC Version of DNF, the License Agreement does not require Apogee to develop and deliver to Take-Two the completed source and object code for the Console Versions of the game. Significantly, however, the License Agreement obligates Apogee to “give [Take-Two] and approved developers for any Console Versions and any Derivative Works [as defined by the License Agreement] *all necessary cooperation* to effectuate the intentions of this Agreement and *to create the Product [i.e., DNF]*, including, without limitation, *technical assistance and delivery of appropriate source and object code and related materials.*” License Agreement, § 2(b).

25. The delivery to Take-Two by Apogee of the completed source and object code for the PC Version is imperative for Take-Two to obtain full cooperation from Apogee in the development of the Console Versions of DNF, as is Take-Two’s right. After a game has been developed for one platform (such as the PC) it becomes much easier for the game to be adapted to other platforms (such as the Xbox 360[®] or PLAYSTATION[®]3). The adaptation of a

developed game to a new platform is known within the industry as “porting.” Thus, Apogee’s delivery of the source and object code for the PC Version of DNF was an integral element of the parties’ agreement that Apogee would cooperate with Take-Two to develop Console Versions, as it would allow Take-Two to “port” the PC Version into a Console Version rather than have to start development of a Console Version from scratch.

THE 2007 AGREEMENT

26. On October 22, 2007, Take-Two and Apogee entered into the 2007 Agreement. Pursuant to the 2007 Agreement, Take-Two provided Apogee the Additional DNF Advance of \$2,500,000, which was disbursed to Apogee on July 11, 2008, thereby bringing the total DNF Advances to \$2,900,000. With respect to the Additional DNF Advance, Take-Two and Apogee agreed that simple interest at the rate of 7% per annum would begin to accrue on the balance remaining fourteen months after disbursement, *i.e.*, September 11, 2009. The parties further agreed that the Additional DNF Advance, with accrued interest, would become immediately due and payable in the event that Apogee fails to release DNF by October 22, 2012.

27. In addition, the parties agreed that as of June 22, 2009, Apogee shall grant Take-Two a “security interest in the Duke Nukem Forever game to secure repayment” of the DNF Advances. 2007 Agreement, § 8. To facilitate the perfection of the security interest, Apogee agreed to “execute any reasonable security agreements, financing statements, collateral copyright assignments and any amendments to the foregoing ...” *Id.* Apogee also granted Take-Two a limited power of attorney to file such documents “in any jurisdiction at any time [Take-Two] deems necessary to protect and maintain its [security] interest.” *Id.*

NEGOTIATIONS REGARDING DEVELOPMENT OF AN XBOX 360[®] VERSION

28. In early 2009, Take-Two informed Apogee of its intention to exercise the option to develop a Console Version of DNF for the Xbox 360[®]. Rather than develop the Xbox 360[®] version itself or hire another developer to do so, Take-Two solicited Apogee about expanding Apogee's current development of the PC Version of DNF to include an Xbox 360[®] version. The parties entered into negotiations on this point.

29. As part of negotiations, Apogee demanded that Take-Two fully fund Apogee's reaching certain milestones in the development of DNF. In light of the extensive delays in the development of the PC Version, Take-Two was reluctant to lend Apogee such significant sums of money without reasonable assurance that Apogee would make timely and meaningful progress in the development of DNF. Accordingly, Take-Two offered to fund 50% of Apogee's costs incurred in the concurrent development of both the Xbox 360[®] and PC Versions of the game up through Apogee achieving the "Alpha Milestone" for the PC Version, and to fund the remaining 50% upon completion of DNF. The Alpha Milestone is a term of art within the industry meaning the point at which a game's features and functionality are implemented and working, and the game is ready for quality assurance and full testing. In most cases, a game is commercially released within six months of reaching the Alpha Milestone. Once Apogee had achieved the Alpha Milestone for the PC Version, the game could be more easily "ported" into a version for the Xbox 360[®]. In addition, Apogee's achievement of the Alpha Milestone for the PC Version would have provided Take-Two with significant assurance that development of DNF for the PC was nearing completion and that "porting" the game to the Xbox 360[®] was feasible.

30. Take-Two's primary conditions to the funding of Apogee's development of DNF for the Xbox 360[®] was that Apogee achieve the Alpha Milestone for, and then the successful

release of, the PC Version — something that Apogee was already required to achieve in light of its obligation under the License Agreement to deliver source and object code for a complete PC Version of the game. Despite its ongoing and outstanding contractual obligations, Apogee rejected Take-Two's proposal. As a result, the parties failed to reach agreement regarding Apogee's development of the Xbox 360[®] version of DNF prior to Apogee's decision to shut down.

31. Take-Two intended to exercise its exclusive option under Section 1(c)(iii) of the License Agreement to independently develop the game for the Xbox 360[®] in the event that the parties could not reach agreement regarding Apogee's development of the Xbox 360[®] version. In accordance with its rights under Section 2(b) of the License Agreement, Take-Two is entitled to obtain from Apogee the source and object code for the PC Version in order to "port" the PC Version into a version for the Xbox 360[®].

APOGEE ANTICIPATORILY BREACHES THE PARTIES' AGREEMENTS

32. Following execution of both the License Agreement and the 2007 Agreement, Apogee repeatedly assured Take-Two and the video-gaming community that it was diligently working toward completing development of the PC Version of DNF.

33. Notwithstanding Apogee's consistent assurances that it would soon complete development of DNF, on May 6, 2009, Apogee closed its studios, terminated development of DNF and laid-off all employees who had been involved in the DNF project. Upon information and belief, Apogee has title to a substantial amount of funds deposited in an off-shore account, which Take-Two believes Apogee can use to fund its outstanding obligations.

34. By abandoning development of DNF, and making that fact publicly known, Apogee has repudiated and anticipatorily breached its commitment to deliver to Take-Two the

completed source code of DNF in a timely manner. As a consequence of Apogee's repudiation, Take-Two is entitled to immediately seek all remedies for breach, including that Apogee repay the DNF Advances with any accrued interest and that Apogee deliver the existing source code for the game that is in its possession.

35. But for Apogee's repudiation and anticipatory breach of the License Agreement and the 2007 Agreement, Take-Two would have exercised its option to develop and exploit the Xbox 360[®] version of DNF within 30 days following the release date of the PC Version at retail.

36. Despite its anticipatory breach of the License Agreement and the 2007 Agreement, Apogee has not repaid the DNF Advances to Take-Two and has not delivered to Take-Two *any* object or source code (complete or uncomplete) for any version of the DNF videogame.

37. Upon information and belief, employees of Apogee are shocked and angered by their recent termination. Many have worked on the DNF project for years. Until May 6, 2009, when Apogee closed its studios and stopped developing DNF, Apogee's management consistently led its employees and the public to believe that it had every intention of completing DNF. Upon information and belief, many of the employees had a personal stake in the royalty income stream that Apogee expected to obtain from sales of the game. Moreover, a videogame developer's reputation is dependent on the popularity of games actually released; it is difficult for a developer to be recognized for work that is not publicly available. Thus, there is a significant risk that former employees, agents and subcontractors of Apogee will leak to third parties proprietary information about DNF, such as the uncompleted source code, in an effort to obtain recognition for years of prior work on the DNF project, to improperly sell the information to a third-party, and / or to retaliate against Apogee.

38. Indeed, as a consequence of Apogee's shuttering of its studios, some of Apogee's current and former employees have already publicly released proprietary information about DNF. For example, on May 7, 2009, the day after Apogee decided to shut down development of DNF, Mr. Trammel Isaac, an Art Director who worked on the DNF project for almost three years, posted on his personal website a series of "previously unreleased DNF shots." Mr. Isaac posted the shots while expressing dismay that the DNF project had ended and noting that he was looking for new employment.

39. The unauthorized release, dissemination or distribution of DNF-related game-play, graphics, trailers, themes, characters, storylines and audio / visual elements irreparably and severely impairs Take-Two's exclusive rights to publish, exploit and control the DNF brand. The release, transfer, sale, alteration or destruction of the existing source and object code for the PC Version of DNF would irreparably harm Take-Two's ability to exploit and use the code in an effort to develop a version of DNF for the Xbox 360[®].

COUNT I

BREACH OF CONTRACT FOR FAILURE TO REPAY THE DNF ADVANCES

40. Take-Two re-alleges Paragraphs 1 through 39 as though each were fully set forth herein.

41. The License Agreement, as amended, constitutes a valid and binding contract between Take-Two and Apogee.

42. The 2007 Agreement constitutes a valid and binding contract between Take-Two and Apogee.

43. Take-Two has complied with and will continue to comply with and satisfy all of its obligations under the License Agreement and the 2007 Agreement.

44. Apogee has repudiated and anticipatorily breached its obligation, arising under both the License Agreement and the 2007 Agreement, to timely develop and deliver the source and object code for the PC Version of DNF.

45. Notwithstanding its repudiation and anticipatory breach of the License Agreement and the 2007 Agreement with respect to its obligations arising thereunder concerning development of DNF, Apogee has failed to return the DNF Advances with applicable interest.

46. Consequently, Take-Two is entitled to an award of damages equal to the DNF Advances with accrued interest.

COUNT II

BREACH OF CONTRACT FOR DIRECT DAMAGES RESULTING FROM FAILURE TO DEVELOP THE PC VERSION OF DNF

47. Take-Two re-alleges Paragraphs 1 through 46 as though each were fully set forth herein.

48. The License Agreement, as amended, constitutes a valid and binding contract between Take-Two and Apogee.

49. The 2007 Agreement constitutes a valid and binding contract between Take-Two and Apogee.

50. Take-Two has complied with and will continue to comply with and satisfy all of its obligations under the License Agreement and the 2007 Agreement.

51. Apogee has repudiated and anticipatorily breached its obligation, arising under both the License Agreement and the 2007 Agreement, to timely develop and deliver the source and object code for the PC Version of DNF.

52. Consequently, Take-Two is entitled to an award of damages equal to Take-Two's lost profits caused by Apogee's failure to timely develop and deliver the source and object code for the PC Version of DNF.

COUNT III

BREACH OF CONTRACT FOR FAILURE TO DELIVER THE EXISTING SOURCE CODE AND OTHERWISE COOPERATE WITH TAKE-TWO'S DEVELOPMENT OF THE CONSOLE VERSIONS OF DNF

53. Take-Two re-alleges Paragraphs 1 through 52 as though each were fully set forth herein.

54. The License Agreement, as amended, constitutes a valid and binding contract between Take-Two and Apogee.

55. The 2007 Agreement constitutes a valid and binding contract between Take-Two and Apogee.

56. Take-Two has complied with and will continue to comply with and satisfy all of its obligations under the License Agreement and the 2007 Agreement.

57. Apogee has repudiated and anticipatorily breached its obligation, arising under both the License Agreement and the 2007 Agreement, to timely develop and deliver the source and object code for the PC Version of DNF.

58. But for Apogee's repudiation and anticipatory breach of the License Agreement and the 2007 Agreement, Take-Two would have exercised its option to develop and exploit the Xbox 360[®] version of DNF within 30 days following the release date of the PC Version at retail.

59. Apogee is required to give "Take-Two and approved developers for any Console Versions ... all necessary cooperation ... including, without limitation, ... delivery of appropriate source and object code and related materials." License Agreement, § 2(b).

60. There is a significant, imminent and demonstrable risk that, in violation of Take-Two's exclusive rights to exploit and publish DNF and develop the Console Versions of DNF, Apogee or any of its current or former principals, agents, employees or subcontractors have and will continue to publish, exploit or destroy, or sell, release or transfer to a party other than Take-Two, proprietary information and assets related to DNF, such as the substantial amount of source and object code for the game currently in Apogee's possession. The publication, release, exploitation or destruction of DNF assets or proprietary information has caused and will continue to cause immediate and irreparable harm to Take-Two that is not compensable by money damages.

61. Take-Two seeks provisional relief restraining Apogee or any of its current or former principals, agents, employees or subcontractors from publishing, exploiting, or destroying, or selling, releasing or transferring to any party other than Take-Two, any proprietary information and assets related to DNF, including, without limitation, the substantial amount of source and object code for the game currently in Apogee's possession.

62. Apogee has failed to deliver the existing source and object code for DNF currently in its possession, in breach of its obligations under the License Agreement and the 2007 Agreement.

63. There is no adequate remedy at law for Apogee's failure to deliver the source and object code for DNF.

64. Apogee is required to cooperate with Take-Two in any future development of the Console Versions of DNF.

65. There is no adequate remedy at law for Apogee's failure to cooperate in the development of the Console Versions of DNF.

66. Accordingly, Take-Two seeks a permanent injunction that:
- a) enjoins Apogee or any of its current or former principals, agents, employees or subcontractors from publishing, exploiting or destroying, or selling, releasing or transferring to any party other than Take-Two, any proprietary information and assets related to DNF, including, without limitation, the substantial amount of source and object code for the game currently in Apogee's possession;
 - b) compels Apogee to deliver to Take-Two all object and source code for DNF currently in its possession; and
 - c) compels Apogee to reasonably cooperate in good faith with Take-Two in the development of the Console Versions of DNF.

PRAYER FOR RELIEF

WHEREFORE, Take-Two respectfully prays that the Court award the following relief:

- (1) Provisional relief restraining Apogee or any of its current or former principals, agents, employees or subcontractors from publishing, exploiting, or destroying, or selling, releasing or transferring to any party other than Take-Two, any proprietary information and assets related to DNF, including, without limitation, the substantial amount of source and object code for the game currently in Apogee's possession.
- (2) A judgment for money damages equal in amount to (i) the DNF Advances, with accrued interest plus (ii) Take-Two's lost profits caused by Apogee's breaches of the License Agreement and the 2007 Agreement.
- (3) A permanent injunction that (x) enjoins Apogee or any of its current or former principals, agents, employees or subcontractors from publishing, exploiting or destroying, or selling, releasing or transferring to any party other than Take-Two, any proprietary information and assets related to DNF, including, without limitation, the substantial amount of source and object code for the game currently in Apogee's possession, and (y) compels Apogee to (i) deliver to Take-Two the substantial amount of source and object code for the game currently in Apogee's possession and

- (ii) reasonably cooperate in good faith with Take-Two in the development of the Console Versions of DNF.
- (4) Take-Two's attorneys' fees and disbursements, together with its other costs incurred in pursuing this action, including costs and disbursements relating to this action.
- (5) Such and other further relief as the Court deems just and proper.

Dated: New York, NY
May 11, 2009

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Civil Action No.:

SUPREME COURT OF THE STATE OF NEW YORK
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SUMMONS AND COMPLAINT

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