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(ENDORSED)
FILED
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County Clerk
Santa Clara County
BY _____ DEPUTY

13 SUPERIOR COURT, STATE OF CALIFORNIA

14 COUNTY OF SANTA CLARA

15 RICHARD ARROYO, STEVE GERBER,
16 MARTY HUMMEL, STEVE KAHN,
17 ROBERT LINDSEY, WEST SHELL,
18 JAMES WALSH, and BRIAN WEBB,
19 On Behalf of Themselves and
20 All Persons Similarly
21 Situated,

22 Plaintiffs,

23 vs.

24 WARNER COMMUNICATIONS, INC., ATARI
25 CORPORATION, ATARI, INC., ATARI GAMES,
26 INC., TRAMEL TECHNOLOGY, INC., and
27 DOES 1 through 500,

28 Defendants.

) No. **566977**
)
) CLASS ACTION AND
) INDIVIDUAL COMPLAINT
) FOR WRONGFUL
) TERMINATION, BREACH
) OF CONTRACT, FRAUD,
) NEGLIGENT MISREPRE-
) SENTATION AND OTHER
) DAMAGES

Plaintiffs allege:

Parties and Venue

1. Plaintiffs, Richard Arroyo, Steve Gerber, Marty Hummel, Steve Kahn, Robert Lindsey, West Shell, James Walsh, and Brian Webb are individuals residing in various locations in the State of California, including Santa Clara County, and in other states including Massachusetts and New Jersey.

1 2. The acts and transactions set forth herein occurred,
2 wholly or in part, in Santa Clara County, California.

3 3. Defendant Warner Communications, Inc. ("Warner"), is a
4 corporation incorporated pursuant to the laws of the State of
5 Delaware, qualified to do business and doing business in the
6 County of Santa Clara, State of California. Plaintiffs are
7 informed and believe and based thereon allege that Warner's
8 principle place of business is in the State of California.

9 4. Defendant Atari, Inc., is a corporation incorporated
10 in the State of Delaware, qualified to do and doing business in
11 the State of California, and having its principal place of
12 business in Santa Clara County, California. Plaintiffs are
13 informed and believe and thereon allege that Defendant Atari
14 Games, Inc., is the same corporation as Defendant Atari, Inc.,
15 following a name change on July 11, 1984. Defendants Atari,
16 Inc. and Atari Games, Inc. will be referred to collectively as
17 "Atari, Inc." Defendants Warner and Atari, Inc., will be
18 referred to collectively as "the Warner Defendants."

19 5. Defendant Atari Corporation is a corporation organized
20 and doing business pursuant to the laws of the State of Nevada,
21 qualified to do and doing business in the County of Santa
22 Clara, California, and having its principal place of business
23 in Santa Clara County, California. Plaintiffs are informed and
24 believe and thereon allege that Defendant Tramel Technology,
25 Inc. ("TT") is a predecessor to the entity now known as Atari
26 Corporation, having its principal place of business in Santa
27 Clara County, California. Plaintiffs will request leave to
28 amend this Complaint to set forth the true capacity of TT when

1 ascertained. Defendants Atari Corporation and TT will be
2 referred to collectively as "Atari Corporation."

3 Unknown Defendants

4 7. The true names and capacities of DOES 1 through 500 are
5 unknown to Plaintiffs. Plaintiffs will amend this Complaint to
6 insert their true names and capacities upon ascertainment.
7 Plaintiffs are informed and believe and thereon allege that
8 each of the fictitiously named Defendants is liable to
9 Plaintiffs for the acts, events, and occurrences alleged herein
10 as a result of said Defendants' relationship to the named
11 Defendants or participation in said acts, events, and
12 occurrences, or approval or ratification thereof.

13 8. Plaintiffs are informed and believe and thereon allege
14 that some or all of Defendants DOES 1 through 500 reside or, in
15 the case of businesses, have their principal place of business
16 in the County of Santa Clara, State of California, or elsewhere
17 in the State of California.

18 Vicarious Liability Allegations

19 9. Plaintiffs are informed and believe and thereon allege
20 that each of the Defendants was, at all times herein mentioned,
21 the agent, employee, servant, or representative of the
22 remaining Defendants, and was acting within the course, scope
23 and authority of said relationship.

24 10. Whenever any corporate Defendant is alleged to have
25 done or omitted to do anything, said allegation shall be deemed
26 to mean and include an allegation that the corporation did said
27 acts through its agents, servants, employees, and
28 representatives, including, but not limited to, its officers,

1 directors, and managing agents, and that the said officers,
2 directors, and managing agents authorized and approved said
3 acts or omissions and ratified same.

4 11. The Defendants named in the heading of each specific
5 cause of action conspired and agreed with each other to carry
6 out the acts and transactions alleged in said cause of action,
7 and the acts and transactions alleged in each cause of action
8 were carried out by each Defendant in pursuit of and in
9 furtherance of the said civil conspiracy, and on such grounds
10 each of the said Defendants is liable for all of the acts of
11 all of the Defendants named in the heading of each cause of
12 action. Each cause of action is asserted only against the
13 Defendants named in the heading of such cause of action.

14 Plaintiffs' Employment

15 12. Each of the Plaintiffs and members of the Plaintiff
16 class was employed by Defendant Atari, Inc. at salary and
17 fringe benefit rates which will be shown according to proof,
18 from dates which will be shown according to proof. Plaintiffs
19 uniformly received good reviews and performance evaluations,
20 and Plaintiffs were in fact competently and diligently
21 performing their duties for Atari, Inc. up to and including the
22 Tramiel Sale Date (as defined in Paragraph 14 below).
23 Plaintiffs and the members of the Plaintiff class continued to
24 perform their duties in like manner for Atari Corporation to
25 the date on which their employment was terminated.

26 13. Atari Corporation took control of Atari, Inc. on or
27 about July 3, 1984, and from that date employed Plaintiffs and
28 the members of the Plaintiff class until they were terminated.

1 Plaintiffs and all members of the Plaintiff class were notified
2 of their termination on or around July 5, 1984, and were
3 actually terminated on dates which will be shown by proof.

4 The Tramiel Sale

5 14. On or about July 1, 1984 (referred to as "the Tramiel
6 Sale Date") the Warner Defendants and Atari Corporation entered
7 into agreements whereby assets and liabilities of Atari, Inc.
8 were transferred to Atari Corporation (referred to herein as
9 "the Tramiel Sale"). The Agreements were partially expressed
10 by a written Assets Purchase Agreement (referred to herein as
11 the "Agreement") and by oral negotiations and agreements.

12 Class Allegations

13 15. Pursuant to California Code of Civil Procedure,
14 Section 382, Plaintiffs Richard Arroyo, Steve Gerber, Marty
15 Hummel, Steve Kahn, Robert Lindsey, West Shell, James Walsh,
16 and Brian Webb sue individually and on behalf of all others
17 similarly situated. The class thus represented includes all
18 United States employees of Atari, Inc. who were terminated by
19 Atari Corporation after the Tramiel Sale Date and who had
20 previously agreed with the Warner Defendants to become members
21 of New Atari Company ("NATCO") as set forth at greater length
22 below.

23 16. Although the membership of the class is readily
24 ascertainable from the records of Defendants or other records
25 to which they have access, it is too numerous to be brought
26 before this Court. Plaintiffs are informed and believe, and
27 thereon allege, that in excess of one thousand employees are
28 included in the class as defined hereinabove.

1 17. Common questions of law and fact, which are
2 substantially similar, serve to unite the Plaintiffs to each
3 other and to the rest of the class on whose behalf this action
4 is instituted. The essential questions which serve to unite
5 Plaintiffs' class surround the fact that each of the Plaintiffs
6 and of the other class members was damaged when each was
7 terminated following Defendants' agreements, representations
8 and assurances of continuing employment if each employee agreed
9 to become associated with NATCO, as alleged at greater length
10 below.

11 18. Plaintiffs' claims are typical of, and in no manner
12 adverse to, or inconsistent with, those of the class they seek
13 to represent and Plaintiffs and their counsel are fully able
14 and willing to represent said interests. The following
15 considerations serve to further unite Plaintiffs' interests
16 with those of the class and to make imperative the maintenance
17 of this suit as a class action:

18 a. The maintenance of this class maximizes judicial
19 efficiency by precluding a multiplicity of duplicative
20 individual suits by individual class members;

21 b. This class action will allow representation of the
22 interests of many class members for whom litigation would
23 otherwise be impractical because the potential dollar recovery
24 of an individual suit would not justify the costs involved
25 therein; and

26 c. The prosecution of individual actions would create
27 a risk of inconsistent and varying adjudications with respect
28 to the individual claims and might establish incompatible

1 standards of conduct for Defendants.

2 New Atari Company

3 19. In May, 1984, James Morgan ("Morgan") was Chairman of
4 the Board and Chief Executive Officer of Atari, Inc.

5 Plaintiffs are further informed and believe and thereon allege
6 that James Morgan was an officer or managing agent of Warner.

7 In doing the things alleged to have been done by him in this
8 Complaint, Morgan acted on behalf of, and as an agent,
9 employee, and/or servant of Atari, Inc. and Warner.

10 20. In May of 1984, Morgan unveiled the New Atari Company
11 plan in a series of meetings, conferences, and speeches. The
12 plan as explained to Plaintiffs and all members of the class
13 represented by Plaintiffs was as follows:

14 a. A New Atari Company (referred to by the Warner
15 Defendants and herein as "NATCO") would be formed within Atari,
16 Inc.

17 b. NATCO would stress and afford absolutely open
18 communications right up to the level of the Chairman of the
19 Board. All NATCO employees would be kept advised at all times
20 of all major developments.

21 c. NATCO was the result of a "bottom up" reappraisal
22 of Atari, Inc. NATCO would have the effect of cutting the size
23 of Atari, Inc. dramatically, returning it to small company
24 concepts, and would reorganize the company using very
25 conservative sales and marketing projections.

26 d. In order to effectuate NATCO, approximately
27 one-third of the employees of Atari, Inc. were going to be
28 selected to be "NATCOized"--in effect, to be reemployed by

1 NATCO. Certain other employees who were in groups whose future
2 fate was uncertain would become part of something referred to
3 by Morgan as "Delta Company" (referred to herein as "Delta
4 Co."), and as decisions were made people who were in Delta Co.
5 would either be taken into NATCO or terminated. All employees
6 who did not go into Delta Co. or NATCO would be laid off
7 immediately.

8 e. NATCO would spin off or otherwise eliminate all
9 Atari, Inc., activities with the exception of development,
10 production, and sale of video games and computers, which would
11 be the focus of all efforts.

12 f. Employees who were to become part of NATCO had
13 been and would be very carefully selected for their
14 professional ability, loyalty, commitment, and ability to get
15 along with people. People who joined NATCO were asked to
16 commit themselves totally to the company, and to "take their
17 resumes off the street"--that is, to cease activities aimed at
18 obtaining other jobs.

19 g. Those who were selected to stay on with NATCO
20 would be the beneficiaries of a bonus pool equal to the amount
21 of money paid as bonuses in 1983 by Atari, Inc. Since only
22 one-third of Atari, Inc.'s 1983 employees would share this
23 bonus pool, the rest having been laid off prior to or pursuant
24 to the NATCO plan, it was represented that each employee could
25 expect to receive three times his or her 1983 bonus.

26 h. NATCO would rebuild the company so that it would
27 produce about \$500,000,000.00 in sales and be very
28 profitable--in the 20% range. All of the expenses of the old

1 and troubled Atari, Inc. organization would be allocated into
2 Delta Co. and NATCO would begin on an accounting basis on July
3 1, 1984. Profitability for some divisions was budgeted for
4 the second half of 1984, based on numbers which were indicated
5 by Morgan to be very conservative. Other divisions of Atari,
6 Inc., were told that they were targeted and budgeted to break
7 even in calendar year 1984 and to be profitable in calendar
8 year 1985. Otherwise, the same representations were made to
9 class members who were part of such divisions.

10 i. NATCO'S short term focus would be to minimize the
11 cash drain which Atari, Inc. had imposed on Warner, its parent,
12 so as to maximize Warner's cash flow, but long term goals would
13 focus on direct profits for Atari, Inc.

14 21. In the course of explaining the NATCO plan and program
15 on numerous occasions, Morgan represented to Plaintiffs and
16 members of the Plaintiff class (a) that Warner was committed to
17 turning Atari, Inc., around; (b) that Warner would continue to
18 provide financial and corporate support to Atari, Inc.; (c)
19 that Morgan had reviewed the NATCO plan in depth with the
20 Warner senior management and finance people; (d) that Warner
21 senior management and finance people had agreed to the NATCO
22 plan; (e) that Warner had agreed to fund the whole NATCO plan,
23 including funding Delta Co.; (f) that Warner had just sold
24 three buildings for \$22,000,000.00 and earmarked this among
25 other resources for financing the NATCO plan and Delta Co.; and
26 (g) that Warner had agreed to and would finance the bonus pool
27 described above.

28 22. Throughout the process of explaining the NATCO plan to

1 employees who were going to be "NATCOized," Morgan authorized
2 certain of said employees, including some members of the
3 Plaintiff class, to explain the plan and make the promises and
4 representations which accompanied it to people in their own
5 departments whom they were to select to be NATCOized, and the
6 above-stated representations and promises were made to all
7 employees who are members of the Plaintiff class, in the same
8 terms as Morgan and other officials of Atari, Inc. explained
9 it. Because of this technique, virtually identical
10 representations, promises, and explanations of the NATCO plan
11 were given to all members of the Plaintiff class.

12 23. In the course of explaining the NATCO plan and program
13 to members of the Plaintiff class, Morgan and persons
14 authorized by Morgan to explain the program to others told
15 employees that if they didn't feel they could make the
16 commitment and give the loyalty required by the NATCO plan, the
17 Warner Defendants would arrange a severance package for such
18 employees with severance pay based on regular Atari, Inc.
19 policies on severance pay. Such a package was not normally
20 available to voluntarily terminating employees.

21 Punitive Damage Allegations

22 24. Plaintiffs are informed and believe and thereon allege
23 that the Defendants' conduct as herein alleged was intended by
24 the Defendants to cause injury to the Plaintiffs and the
25 Plaintiff class or carried on by the Defendants with a
26 conscious disregard of the rights of the Plaintiffs and the
27 Plaintiff class.

28 25. Plaintiffs are informed and believe and thereon allege

1 that the Defendants' conduct subjected Plaintiffs and the
2 Plaintiff class to cruel and unjust hardship in conscious
3 disregard of the rights of Plaintiffs and the members of the
4 Plaintiff class.

5 26. Plaintiffs are informed and believe and thereon allege
6 that the acts of the Defendants constituted an intentional
7 misrepresentation, deceit, or concealment of a material fact or
8 facts, known to the Defendants, with the intention on the part
9 of the Defendants to thereby deprive Plaintiffs and members of
10 the Plaintiffs' class of property or legal rights and otherwise
11 cause them injury.

12 27. Plaintiffs are informed and believe and thereon allege
13 that the corporate Defendants authorized and ratified the
14 wrongful conduct for which damages are sought herein, and were
15 personally guilty of oppression, fraud, and malice through the
16 actions of their officers, directors, and managing agents, and
17 that the officers, directors, and managing agents of the
18 corporate Defendants acted as set forth in Paragraphs 24, 25,
19 and 26.

20 28. On the basis of Defendants' oppression, fraud, and
21 malice toward Plaintiffs as above-alleged, Plaintiffs and the
22 Plaintiff class are entitled to exemplary and punitive damages
23 in the sum of \$25,000,000.00, or in such greater sum as to the
24 Court or jury shall seem appropriate.

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1 did so in reliance on the Warner Defendants carrying out the
2 promises set forth above, and on the following promises which
3 were made by the Warner Defendants expressly, or which were
4 implied by the Warner Defendants' conduct and actions:

5 a. That Defendant Warner would provide sufficient
6 operating capital and otherwise exercise its control of
7 Defendant ATARI, INC., in such manner as to allow all of the
8 other promises made by the Warner Defendants to be carried out;

9 b. That Defendant Warner would provide sufficient
10 funds to carry out the promises set forth above and to continue
11 Plaintiffs and members of the Plaintiff class' employment for
12 an indefinite period of at least sufficient duration to achieve
13 the objectives and to carry out the NATCO plan above alleged.

14 c. That the Warner Defendants would refrain from
15 taking any action which would prevent Plaintiffs and the
16 members of the Plaintiff class from enjoying the fruits of the
17 contract which was being made.

18 d. That the Warner Defendants would, absent good,
19 just, and legitimate cause for termination, continue to employ
20 Plaintiffs and the members of the Plaintiff class.

21 e. That the Warner Defendants would continue to
22 employ the Plaintiffs and the members of the Plaintiff class
23 for an indefinite period of at least sufficient duration to
24 achieve the objectives and carry out the NATCO plan as above
25 alleged, and of sufficient duration that they would receive the
26 promised bonuses.

27 f. That the Warner Defendants would not act
28 arbitrarily in dealing with the Plaintiffs and members of the

1 Plaintiff class.

2 34. In or about May through July, 1984, the Warner
3 Defendants breached their promises by:

4 a. Failing to carry out the NATCO plan as set forth
5 in Paragraphs 19 through 23;

6 b. In the case of Defendant Warner, failing to
7 continue to provide financial and corporate support for the
8 NATCO and Delta Co. plans and failing to finance the bonus
9 pool;

10 c. In the case of Defendant Warner, failing to
11 provide sufficient operating capital and otherwise exercising
12 its control of Defendant Atari, Inc., in such manner as to
13 prevent the promises made by the Warner Defendants from being
14 carried out;

15 d. In the case of Defendant Warner, taking action
16 which prevented Plaintiffs and the members of the Plaintiff
17 class from enjoying the fruits of the NATCO contract.
18 Defendant Warner did so by selling Atari, Inc., or its assets
19 and liabilities to Atari Corporation, thus rendering it
20 impossible for the Warner Defendants to carry out the
21 above-stated promises and representations, without obtaining or
22 enforcing contractual commitments from Atari Corporation
23 requiring them to carry out the NATCO contract, promises, and
24 representations set forth above. Defendant Warner did so with
25 the knowledge set forth in Paragraph 35;

26 e. In the absence of any good, just, or legitimate
27 cause for termination, failing to continue the employment of
28 Plaintiffs and the members of the Plaintiff class for the

1 period of time specified in Paragraph 33e above, but rather
2 selling the assets and liabilities of Atari, Inc., knowing that
3 such sale would cause the termination of Plaintiffs and the
4 members of the Plaintiff class in July, 1984; and

5 f. Dealing arbitrarily with Plaintiffs and the
6 members of the Plaintiff class by terminating their employment
7 without good, just, or legitimate cause for termination and in
8 violation of the promises and representations which had been
9 made to the Plaintiffs and the members of the Plaintiff class.

10 35. Plaintiffs are informed and believe and thereon allege
11 that the Warner Defendants knew or had reason to know that
12 Atari Corporation had no intention of being bound by
13 commitments made by the Warner Defendants to employees of
14 Atari, Inc. such as the Plaintiffs and the class they
15 represent, and that Atari Corporation intended to terminate
16 huge numbers of the remaining employees of Atari, Inc.,
17 including Plaintiffs and the members of the Plaintiff class, as
18 soon as the Atari Corporation obtained control of the company.

19 36. As a direct, proximate, and foreseeable result of the
20 wrongful conduct set out in this Cause of Action, Plaintiffs
21 and each of the members of the Plaintiff class have suffered
22 damages in an amount in excess of this Court's jurisdiction,
23 the precise amount of which will be shown according to proof at
24 trial. Said damages include but are not limited to the lost
25 wages and benefits of the Plaintiffs and the members of the
26 Plaintiff class for the period set forth in Paragraph 33d,
27 bonuses for each Plaintiff and member of the Plaintiff class in
28 a sum three times the bonus received by each in 1983 from

1 Atari, Inc., damages to future employability and therefore loss
2 of future salary, wages, and benefits due in part to suffering
3 an extended period of unemployment because of being released
4 into the job market at a time when the numerous terminations
5 conducted by the Defendants caused a glut of persons seeking
6 employment, and further caused in part by being associated with
7 the bad reputation of Atari, Inc., caused by the Warner
8 Defendants' failure to carry out their promises, and certain
9 other incidental and consequential expenses and losses caused
10 thereby.

11 SECOND CAUSE OF ACTION

12 Breach Of Express And Implied Contract Against Atari
13 Corporation

14 37. Plaintiffs reallege and incorporate by reference
15 Paragraphs 1 through 23, and 30 through 36.

16 38. When the Tramiel Sale took place and when Atari
17 Corporation took over Atari, Inc.'s, assets and liabilities on
18 July 1, 1984, Atari Corporation did so with knowledge of the
19 NATCO contracts, promises, representations, and warranties
20 above-stated, or if they lacked direct knowledge thereof, they
21 had good reason to know and had access to said information. At
22 said time, the Tramiel Defendants accepted the services of the
23 Plaintiffs and the members of the Plaintiff class, and
24 continued to employ them for the period prior to their
25 termination as will be shown according to proof. Atari
26 Corporation then accepted, and has continued to accept, the
27 benefits of the said transaction. When Atari Corporation
28 accepted said benefits and accepted the services of said

1 employees, it accepted, approved, and ratified all of the
2 contracts, promises, representations, and warranties
3 above-stated to have been made by the Warner Defendants, and
4 expressly or impliedly agreed to be bound by them.

5 39. By the Agreement between Atari Corporation and the
6 Warner Defendants, and pursuant to considerations of statutory
7 and public policy, the Tramiel Defendants were bound to honor
8 the contracts, promises, representations, and warranties
9 above-alleged to have been made by the Warner Defendants to
10 Plaintiffs and members of the Plaintiff class.

11 40. Atari Corporation breached said contracts, promises,
12 representations, and warranties by failing to carry out same,
13 by failing to carry out the NATCO plan, and by abruptly,
14 arbitrarily, and without good, just, or legitimate cause
15 terminating the employ of the Plaintiffs and the members of the
16 Plaintiff class as set forth above.

17 41. As a direct, proximate, and foreseeable result of said
18 breach, Plaintiffs and the members of the Plaintiff class
19 suffered the damages set forth in Paragraph 36 above.

20 THIRD CAUSE OF ACTION

21 Breach Of Contract--Independent Consideration--Against The
22 Warner Defendants

23 42. Plaintiffs reallege and incorporate by reference
24 Paragraphs 1 through 23, and 30 through 36.

25 43. In consideration for the making of the said employment
26 agreements, Plaintiffs and the members of the Plaintiff class
27 provided certain benefits to the Warner Defendants and suffered

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1 certain detriment beyond and in addition to the rendition of
2 the personal services called for by said employment agreements.
3 The Plaintiffs and the members of the Plaintiff class did so by
4 providing loyal and dedicated service above and beyond the
5 normal requirements of employment and refraining from taking
6 actions which were to their personal benefit such as exploring
7 other job opportunities. Such actions were consistent with and
8 allowed by the employment arrangements between Plaintiffs and
9 the members of the Plaintiff class and the Warner Defendants
10 prior to the renegotiation of said contracts pursuant to the
11 NATCO plan.

12 44. Plaintiffs and the members of the Plaintiff class
13 also provided further independent, bargained-for consideration
14 for said employment contract by foregoing the Warner
15 Defendants' offer of participation in a severance plan which
16 was normally unavailable to employees who voluntarily
17 terminated.

18 45. At the time that the NATCO plan was announced, Atari,
19 Inc., was in complete turmoil, and was virtually paralyzed by
20 the rumors about what was going to happen to the company, and
21 by the extremely low employee morale and the great fears of
22 employees relating to their job security, future compensation,
23 association with an unsuccessful company, and the like. By
24 making the promises, representations, warranties, and contracts
25 above-alleged, the Warner Defendants gained the benefit of
26 quelling the grave employee discontent, relieving the paralysis
27 of employees caused by their fears and their low morale, and
28 obtaining the benefit of employees who believed that they would

1 have job security as a part of an ongoing, vital, well-
2 directed, and successful organization.

3 46. The above-alleged promises and representations became
4 implied as terms of the NATCO contracts because of the giving
5 of said consideration.

6 47. The Warner Defendants breached said contracts,
7 representations, and promises, as alleged in Paragraph 34, to
8 the damage of Plaintiffs as alleged in Paragraph 36.

9 FOURTH CAUSE OF ACTION

10 (Breach Of Contract--Independent Consideration Against
11 Atari Corporation

12 48. Plaintiff reallege and incorporate by reference
13 Paragraphs 1 through 23, 30 through 36, 38 through 41, and 43
14 through 47.

15 49. Atari Corporation breached the said contracts,
16 promises, representations, and warranties as set forth in
17 Paragraphs 34 and 40, and as a direct, proximate, and
18 foreseeable result thereof, Plaintiffs and the members of the
19 Plaintiff class suffered the damages set forth in Paragraph 36.

20 FIFTH CAUSE OF ACTION

21 (Breach Of Covenant of Good Faith And Fair Dealing Against The
22 Warner Defendants

23 50. Plaintiffs reallege and incorporate by reference
24 Paragraphs 1 through 28, 30 through 36 and 43 through 47.

25 51. As a result of the employment relationship which
26 existed between Plaintiffs and the members of the Plaintiff
27 class and the Warner Defendants, the express and implied
28 promises made in connection therewith, and the acts, conduct,

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1 and communications which resulted in said implied promises, the
2 Warner Defendants covenanted and promised, expressly or by
3 implication, to act in good faith toward and deal fairly with
4 Plaintiffs and members of the Plaintiff class concerning all
5 matters related to their employment, and in particular
6 concerning carrying out the contracts, promises,
7 representations, and warranties made in connection with the
8 NATCO plan, so as not to deprive Plaintiffs or the members of
9 the Plaintiff class of the benefits or to injure their right to
10 receive the benefits of said relationship.

11 52. Defendants' acts as aforesaid were wrongful, in bad
12 faith, and unfair, and therefore a violation of the Warner
13 Defendants' legal duties for the reasons set forth above, and
14 further in that the Warner Defendants intentionally, and with
15 conscious disregard of the rights and interests of the
16 Plaintiffs and the members of the Plaintiffs class, acted so as
17 to deprive Plaintiffs of and to injure their right to receive
18 the benefits of the said relationship, and in particular
19 conducted the Tramiel sale with knowledge, or with good reason
20 to know, that Atari Corporation immediately intended to deprive
21 the Plaintiffs and the members of the Plaintiff class of the
22 benefits of said relationship by terminating them in an abrupt,
23 arbitrary discharge, for reasons having nothing to do with
24 dissatisfaction with the individual services provided by the
25 Plaintiffs and the members of the Plaintiff class.

26 53. As a direct, proximate, and foreseeable result of the
27 aforementioned conduct, Plaintiffs and the members of the
28 Plaintiff class have suffered anxiety, worry, mental, physical,

1 and emotional distress, and other incidental and consequential
2 damages and expenses in an amount in excess of the jurisdiction
3 of this Court, the total amount of which will be proven at the
4 time of trial, and have further suffered the damages set forth
5 in Paragraph 36 of this Complaint.

6 SIXTH CAUSE OF ACTION

7 (Breach Of Covenant Of Good Faith And Fair Dealing Against
8 Atari Corporation

9 54. Plaintiffs reallege and incorporate by reference
10 Paragraphs 1, through 28, 30 through 36, 38 through 41, 43
11 through 47, and 51 through 53.

12 55. By virtue of the facts alleged in Paragraphs 38 and
13 39, Atari Corporation owed Plaintiffs the duties set forth in
14 Paragraph 51. Atari Corporation had no basis in good cause and
15 fact to terminate the Plaintiffs and the members of the
16 Plaintiff class, and in fact Atari Corporation made no attempt
17 to specifically evaluate the past performance or future
18 potential of any of the Plaintiffs or members of the Plaintiff
19 class prior to their abrupt and arbitrary dismissal. Atari
20 Corporation further lacked sufficient information, on the date
21 of the termination, even to determine whether the persons
22 terminated were, in the aggregate, useful to Atari's future.
23 Plaintiffs are informed and believe and thereon allege that the
24 terminations by the Tramiel Defendants were the result of their
25 determination to demonstrate an aggressive management style to
26 the outside world, at the expense of the Plaintiffs and the
27 members of the Plaintiff class.

28 56. Atari Corporation knew, or had reason to know, of the

1 contracts and rights of Plaintiff and the members of the
2 Plaintiff class as above alleged.

3 57. Atari Corporation breached the said duties as set
4 forth in Paragraphs 34 and 40 above, and directly, proximately,
5 and foreseeably caused Plaintiffs and the members of the
6 Plaintiff class to suffer the damages set forth in Paragraph 36
7 above.

8 SEVENTH CAUSE OF ACTION

9 Fraud Against The Warner Defendants

10 58. Plaintiffs reallege and incorporate by reference
11 Paragraphs 1 through 28, and 30 through 36.

12 59. Plaintiffs are informed and believe and thereon allege
13 that, on a date unknown but prior to May 15, 1984, the Warner
14 Defendants entered serious negotiations with Atari Corporation
15 for the sale of the assets and liabilities of Atari, Inc.

16 60. The representations set forth above, made by Morgan
17 and the Warner Defendants to Plaintiffs and the members of the
18 Plaintiff class, were in fact false. The promises and
19 contracts set forth above which were made by Morgan and the
20 Warner Defendants were in fact made and entered into without
21 intent to perform. The Warner Defendants knew that these
22 representations were false and that these contracts and
23 promises were made without the intent to perform when the
24 representations, promises, and contracts were made, and the
25 Warner Defendants acted with the intent to induce Plaintiffs to
26 rely thereon, to remain enthusiastic employees of Atari, Inc.,
27 thus furthering the Warner Defendants' ability to sell all or
28 part of Atari, Inc., to Atari Corporation or others, or to

1 receive additional capital or obtain financial partners for
2 their Atari operation, and otherwise to induce Plaintiffs to
3 act in the manner as set forth in Paragraphs 43 through 45
4 above.

5 61. The Warner Defendants knew of and approved Morgan's
6 representations, promises, and contracts before they were made,
7 and ratified same thereafter.

8 62. Plaintiffs and the members of the Plaintiff class
9 relied on these representations, promises, and contracts in
10 refraining from looking or continuing to look for other
11 employment, in remaining with and enthusiastically serving
12 Atari, Inc., and otherwise in taking the actions set forth in
13 Paragraphs 43, 44, and 45 above.

14 63. The reliance on these representations, promises, and
15 contracts by Plaintiffs and the members of the Plaintiff class
16 was reasonable because of Morgan's relationship with the Warner
17 Defendants, and the generally good reputation of Morgan and the
18 Warner Defendants, and further in that the Warner Defendants
19 appeared to set out on a course of action which corresponded to
20 their representations, promises, and contracts, and further in
21 that the Plaintiffs and the members of the Plaintiff class had
22 no reason to question the veracity of the representations or
23 the intent to perform the promises and contracts.

24 64. In making the above-stated representations, promises
25 and contracts, the Warner Defendants possessed, and held
26 themselves out to possess, superior knowledge and special
27 information regarding the subject of the representation, and
28 the Plaintiffs and the members of the Plaintiff class were so

1 situated that they could reasonably rely upon such supposed
2 superior knowledge and special information, and therefore the
3 above-stated representations, promises, and contracts, were
4 reasonably and foreseeably regarded by the Plaintiffs and the
5 members of the Plaintiff class as representations of fact.

6 65. Plaintiffs are informed and believe and thereon allege
7 that Morgan and the Warner Defendants, at and after the time
8 they made the promises and representations set forth above,
9 omitted and failed to disclose the fact that the Warner
10 Defendants were in serious and substantial negotiations, to
11 sell Atari, Inc. to Atari Corporation and/or others, that,
12 whether to Atari Corporation or to others, they intended to
13 sell Atari, Inc., that they were not going to require the
14 purchasers to live up to the representations, promises, and
15 warranties which had been made to Plaintiffs and the members of
16 the Plaintiff class, and that they knew or had good reason to
17 know that the purchasers had or would have no intention to live
18 up to any such agreements and in fact intended or would intend
19 to terminate Plaintiffs and the members of the Plaintiff class.
20 Said omissions and failures to disclose were intended to and
21 did induce Plaintiffs and the members of the Plaintiff class to
22 remain as enthusiastic employees of Atari, Inc., and to refrain
23 from seeking other permanent employment, thus furthering the
24 Warner Defendants' plan to sell the company.

25 66. Had Plaintiffs and the members of the Plaintiff class
26 known the true facts as set forth in the above Paragraphs, they
27 would have accelerated their efforts to find new jobs and/or
28 accepted Morgan's offer of a severance package, instead of

1 being lulled into a false sense of security. Had they
2 accelerated their efforts to find new jobs and/or terminated
3 their employment from Atari at the time, they would have been
4 in the job market at a much better time and would have
5 minimized the damages caused by the said representations, and
6 would have been able to take advantage of a better severance
7 program.

8 67. When they made the promises, representations, and
9 contracts set forth above, and through the Tramiel Sale Date
10 the Warner Defendants knew that the true facts of the situation
11 as set forth in Paragraph 66 were neither known nor readily
12 accessible to the Plaintiffs and the members of the Plaintiff
13 class.

14 68. A fiduciary or confidential relationship existed
15 between the Warner Defendants and the Plaintiffs and the
16 members of the Plaintiff class at the time the above-stated
17 promises, representations, and contracts were made by the
18 Warner Defendants and up to and including the Tramiel Sale Date
19 on account of their employee/employer relationship, and because
20 under the circumstances trust and confidence reasonably could
21 be and were reposed by the Plaintiffs and the members of the
22 Plaintiff class in the integrity and fidelity of the Warner
23 Defendants.

24 69. The Warner Defendants intentionally concealed the true
25 facts set forth in Paragraph 66, which were within their
26 knowledge, with the knowledge that the Plaintiffs and the
27 members of the Plaintiff class had no ability to investigate or
28 discover the said facts.

1 exercise due care.

2 76. As a direct, proximate, and foreseeable result of the
3 above-stated wrongs, Plaintiffs and the members of the
4 Plaintiff class suffered the damages set forth in Paragraphs 36
5 and 53.

6 NINTH CAUSE OF ACTION

7 Intentional Interference with Contractual Relations
8 Against the Warner Defendants and Atari Corporation

9 77. Plaintiffs reallege and incorporate by reference
10 Paragraphs 1 through 28 and 30 through 36.

11 78. The Defendants, and each of them, consented, agreed
12 and conspired to intentionally interfere with the contractual
13 relationship among the Warner Defendants and Plaintiffs and the
14 members of the Plaintiff class, causing their discharge.

15 79. At all time mentioned herein, Defendants and each of
16 them, were aware that each of the Plaintiffs and the members of
17 Plaintiff class and the Warner Defendants had a business
18 relationship in the form of an employment contract.

19 80. Defendants' acts, pursuant to Paragraph 78 included
20 the acts alleged in Paragraphs 1 through 28 and 30 through 36,
21 as well as the following. Atari Corporation terminated all
22 Plaintiffs and members of the Plaintiff class. The Warner
23 Defendants expressly or impliedly consented to Atari
24 Corporation's termination of Plaintiffs and members of
25 Plaintiff class, by, among other acts, failing to protect said
26 Plaintiffs' contractual interests during the negotiations for
27 the sale of Atari, Inc.'s assets and liabilities to Atari
28 Corporation. Plaintiffs are informed and believe and thereon

1 allege that the Warner Defendants had actual knowledge of Atari
2 Corporation's intent to terminate said persons. Further, the
3 Warner Defendants failed to warn Plaintiffs and members of
4 Plaintiff class of the actual intent of Atari Corporation to
5 terminate said Plaintiffs.

6 81. These various willful, intentional and malicious acts
7 by Defendants, and each of them, which resulted in the wrongful
8 termination of Plaintiffs and members of Plaintiff class, were
9 designed to prevent said Plaintiffs from performing their
10 employment contracts and enjoying the benefits thereof.

11 82. Plaintiffs suffered, as a direct and proximate result
12 of said acts, the damages set forth in Paragraphs 36 and 53.

13 TENTH CAUSE OF ACTION

14 Negligent Interference with Contractual Relations
15 Against Warner and Atari Defendants

16 83. Plaintiffs reallege and incorporate by reference
17 Paragraphs 1 through 23 and 30 through 36.

18 84. Defendants, and each of them, negligently interfered
19 with the contractual relationship among Warner, and said
20 Plaintiffs, causing their discharge.

21 85. At all times mentioned herein, Defendants, and each
22 of them, were aware, or in the exercise of reasonable care
23 should have been aware, that Plaintiffs and members of
24 Plaintiff class had a business relationship with the Warner
25 Defendants in the form of an employment contract.

26 86. Defendants, and each of them, negligently interfered
27 with Plaintiffs and members of Plaintiff class' contracts with
28 the Warner Defendants through the various acts alleged in

1 Paragraphs 1 through 23 and 30 through 36 as well as the
2 following. The Warner Defendants expressly or impliedly
3 consented to Atari Corporation's termination of Plaintiffs and
4 the members of Plaintiff class; negligently failed to protect
5 said Plaintiffs' contractual interests during the negotiations
6 for the sale of Atari, Inc.'s assets and liabilities to Atari
7 Corporation; and failed to warn Plaintiffs and members of
8 Plaintiff class of the intent of Atari Corporation to terminate
9 said Plaintiffs. Plaintiffs are informed and believe and
10 thereon allege that the Warner Defendants had actual knowledge
11 of the intentions of Atari Corporation to terminate said
12 Plaintiffs.

13 ELEVENTH CAUSE OF ACTION

14 (Breach Of Contract--Severance Pay--By Individual Plaintiffs
15 Against Atari, Inc.

16 87. Plaintiffs reallege and incorporate by reference
17 Paragraphs 1 through 14, 19 through 23, and 30 through 36 and
18 38 through 41.

19 88. During their employment by Atari, Inc., the individual
20 Plaintiffs had each become aware of a company policy that
21 persons at their level who were terminated involuntarily would
22 receive either three or six months severance pay, depending in
23 level. This was the established and executed policy of the
24 company, and Plaintiffs became aware of a number of people who
25 were so treated. Plaintiffs were aware of no exceptions which
26 had been made to this policy.

27 89. The individual Plaintiffs were aware of this policy of
28 Defendant Atari, Inc., at the time they were "NATCOized", as

1 more fully alleged in Paragraphs 19 through 23 of this
2 Complaint. Plaintiffs' knowledge of this policy was relied on
3 by them in making the decision to remain with Atari, Inc. at
4 that time. The said policy at all times acted as a major
5 inducement to Plaintiffs in remaining employees of Atari, Inc.

6 90. In return for the adherence to said policy by Atari,
7 Inc., the Plaintiffs continued their employment at the company.
8 Adherence to such policy was therefore part of the contractual
9 obligations of Atari, Inc.

10 91. Upon the individual Plaintiffs' termination from
11 Atari, Inc., the sums of severance pay which each of them
12 actually received and the sums of severance pay which each of
13 them would have and should have received had Atari, Inc.,
14 adhered to its recognized severance pay policy were
15 substantially different, in amounts which will be shown
16 according to proof.

17 92. Atari, Inc., was bound by its express or implied in
18 fact contract to pay to each individual Plaintiff the
19 difference between the amount actually received as severance
20 pay and the amount which should have been received if the
21 company's policy had been followed. Each individual Plaintiff
22 is now entitled to such sum as shown according to proof, plus
23 interest at the legal rate from the date of termination of
24 each, as damages for this breach of contract.

25 WHEREFORE, Plaintiffs pray judgment as follows:

26 1. For the damages set forth in Paragraph 36 hereof,
27 pursuant to the First Cause of Action and all other causes of
28 action in which the said Paragraph is incorporated;

