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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BUNGIE, INC.,

Plaintiff,

v.

ELITE BOSS TECH INCORPORATED,  
11020781 CANADA INC., DANIEL  
FAGERBERG LARSEN, ROBERT  
JAMES DUTHIE NELSON,  
SEBASTIAAN JUAN THEODOOR  
CRUDEN A/K/A "LUZYPHER," JOHN  
DOE NO. 4 A/K/A "GOODMAN,"  
YUNXUAN DENG A/K/A  
"YIMOSECAI," ANTHONY  
ROBINSON A/K/A "RULEZZGAME,"  
EDDIE TRAN A/K/A "SENTIENT",  
CHENZHIJIE CHEN A/K/A  
"CHENZHIJIE402, DSOFT, CVR  
37454303, MARTA MAGALHAES  
A/K/A MINDBENDER A/K/A  
BLUEGIRL, AND JOHN DOES NO. 9-  
20,

Defendants.

CASE NO. 2:21-cv-01112-TL

ORDER GRANTING IN PART  
PLAINTIFF'S MOTION FOR  
DEFAULT JUDGMENT

1 This matter comes before the Court on Plaintiff Bungie, Inc.’s Motion for Default  
2 Judgment. Dkt. Nos. 75-1, 76-1 (sealed). Having reviewed the Motion and all supporting  
3 materials, the Court GRANTS in part the Motion, ENTERS default judgment against Defendant  
4 Daniel Fagerberg Larsen, and ENTERS a permanent injunction against Larsen on the terms set  
5 forth in this Order.

### 6 I. BACKGROUND

7 Operating out of Bellevue, Washington, Bungie develops, distributes, and owns the  
8 intellectual property rights to a video game called “Destiny 2”, which is part of its “Destiny”  
9 franchise. Dkt. No. 43 ¶¶ 10, 50. Bungie alleges that Larsen, a resident of Denmark, and  
10 Defendant Robert Nelson and Patrick Schaufuss<sup>1</sup> developed, marketed, and sold “cheat”  
11 software for Destiny 2 through a website “Wallhax.com” that allowed users of Destiny 2 an  
12 unfair advantage when playing the game. *Id.* ¶ 1. The Court refers to the cheat as the “Wallhax  
13 cheat” and the business run by Larsen, Nelson, and Schaufuss as “Wallhax.”

14 Bungie alleges and has provided evidence that Larsen helped develop the software code  
15 and framework of the Wallhax cheat. *See* Dkt. No. 63 ¶¶ 5–8; Dkt. No. 68 ¶¶ 4–5 (sealed).  
16 Larsen worked together with Nelson and Schaufuss to develop, market, and sell the Wallhax  
17 cheat to consumers around the world. *See* Dkt. No. 63 ¶¶ 2–11; Dkt. No. 68 ¶ 5 (sealed); Dkt.  
18 No. 64 ¶ 14; Dkt. No. 64-13. Through a consent judgment, Nelson agreed the Wallhax cheat has  
19 been downloaded 6,765 times. Dkt. No. 29 ¶ 5. Nelson also agreed that the Wallhax cheat  
20 willfully violated Bungie’s two copyrights associated with Destiny 2—for its audiovisual work  
21 and software code. *Id.* ¶¶ 1–3. Nelson also agreed that the Wallhax cheat circumvented the  
22 technological measures Bungie employs to control and limit access to its Destiny 2 software,  
23

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24 <sup>1</sup> The Court notes that Schaufuss was named in the initial complaint as a defendant but was dropped as a defendant in the FAC.

1 such that each download of the Wallhax cheat constated a violation of the Digital Millennium  
2 Copyright Act (“DMCA”), 17 U.S.C. § 1201(a) and (b). *Id.* ¶¶ 4–5. The Parties agreed that  
3 judgment should be entered in the amount of \$13,530,000, representing statutory damages of  
4 \$2,000 for each of the 6,765 downloads. *Id.* ¶ 6. Defendants consented to entry of a broad  
5 permanent injunction concerning any further copyright infringement, and Bungie withdrew all  
6 other claims. *Id.* ¶ 7.

7 Bungie asserts the following claims against Larsen: (1) copyright infringement;  
8 (2) violations of the civil Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18  
9 U.S.C. § 1962; (3) violations of the DMCA; (4) violations of the Computer Fraud and Abuse Act  
10 (“CFAA”), 18 U.S.C. § 1030(a)(5)(B); (5) breach of contract; (6) intentional interference with  
11 contractual relations; (7) violations of the Washington Consumer Protection Act (“CPA”); and  
12 (8) civil conspiracy. Dkt. No. 43 ¶¶ 164–319. Bungie seeks entry of default judgment on all  
13 claims, asking for judgment to be entered in the amount of \$17,278,305.73. This total represents  
14 the sum of: (1) \$13,530,000 in statutory damages under the DMCA (Dkt. No. 76-1 at 36–38  
15 (sealed)); (2) \$466,718.90 as damages for its copyright claim, which Bungie asks to be trebled to  
16 \$1,400,156.71 (*id.* at 38–41 (sealed)); (3) \$666,666.00 in actual damages for its breach of  
17 contract, RICO, CFAA, and CPA claims, which Bungie asks to be trebled \$1,999,998.00 (*id.* at  
18 41–42 (sealed)); and (4) \$267,887.10 in attorney fees and \$80,263.92 in costs (Dkt. No. 64 ¶ 17;  
19 Dkt. No. 65 ¶ 3; Dkt. No. 76-3 ¶ 28 (sealed)). Bungie also asks for entry of a permanent  
20 injunction barring Larsen from engaging in future or further conduct that forms the basis of its  
21 claims in this action.

## II. ANALYSIS

### A. Legal Standard

The Court has already found Larsen in default. Dkt. No. 35. After entry of default, the Court may enter a default judgment. Fed. R. Civ. P. 55(b). This determination is discretionary. *See Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988). “Factors which may be considered by courts in exercising discretion as to the entry of a default judgment include: (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.” *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). In performing this analysis, “the general rule is that well-pled allegations in the complaint regarding liability are deemed true.” *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002) (quotation and citation omitted). And “[t]he district court is not required to make detailed findings of fact.” *Id.*

### B. Jurisdiction

Before entering default judgment, the Court must assure itself that it has subject matter jurisdiction and personal jurisdiction.

There is little doubt that the Court has subject matter jurisdiction over Bungie’s claims. Bungie brings claims under various federal laws, which fall within the Court’s original jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a). The Court has supplemental jurisdiction over Bungie’s state-law claims pursuant to 28 U.S.C. § 1367(a).

The Court also finds that it has personal jurisdiction over Larsen. A valid contractual forum selection clause to which a defendant has consented may satisfy personal jurisdiction. *See*

1 *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 458 (9th Cir. 2007) (noting that a  
2 forum selection clause may give rise to a waiver of objection provided the defendant agreed to be  
3 bound). Bungie has provided evidence that Larsen agreed to the terms of Bungie’s Limited  
4 Software License Agreement (“LSLA”), which required Larsen to “agree to submit to the  
5 personal jurisdiction of any federal or state court in King County, Washington.” Dkt. No. 43 ¶  
6 40. The Court accepts as true that Larsen agreed to these terms, given the well-pleaded  
7 allegations in the Amended Complaint. And the additional evidence submitted strongly suggests  
8 that Larsen had to have agreed to the LSLA in order to develop and refine the Wallhax cheat.  
9 Dkt. No. 76-3 ¶ 17 (sealed); Dkt. No. 63 ¶¶ 33–34.

10 **C. *Eitel* Factors Favor Default Judgment**

11 The Court reviews the *Eitel* factors to assess whether default judgment should be entered  
12 and in what specific amounts. The seven *Eitel* factors weigh in favor of entry of default judgment  
13 in Bungie’s favor. But the Court finds that the judgment shall not be entered as to all claims or in  
14 the full amount Bungie requests.

15 **1. Factor One: Prejudice to Bungie**

16 Without entry of default judgment Bungie will be prejudiced. Bungie has attempted to  
17 litigate this case and vindicate its rights under federal and state law against Larsen and the other  
18 defendants. Indeed, Bungie was able to settle its claims with Nelson and the corporate entities he  
19 owns, which led to entry of a consent judgment. But Larsen has failed to appear or participate in  
20 this litigation despite being personally served. Bungie faces prejudice by not being able to obtain  
21 complete relief on its claims against Larsen without entry of default judgment. This factor  
22 weighs in favor of granting default judgment.  
23  
24

1           **2. Factors Two and Three: Merits of Bungie’s Claims and Sufficiency of**  
2           **Complaint**

3           Bungie has demonstrated the merit of its claims and the sufficiency of the amended  
4           complaint as to all but the CPA claim. The Court reviews each claim.

5                   **a. Copyright Infringement**

6           “To establish direct copyright infringement, the [plaintiff] must (1) show ownership of  
7           the allegedly infringed material and (2) demonstrate that the alleged infringers violate at least  
8           one exclusive right granted to copyright holders under 17 U.S.C. § 106.” *Disney Enters., Inc. v.*  
9           *VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (citation and quotation omitted). “To prove  
10          ‘willfulness’ under the Copyright Act, the plaintiff must show (1) that the defendant was actually  
11          aware of the infringing activity, or (2) that the defendant's actions were the result of ‘reckless  
12          disregard’ for, or ‘willful blindness’ to, the copyright holder's rights.” *Louis Vuitton Malletier,*  
13          *S.A. v. Akanoc Sols., Inc.*, 658 F.3d 936, 944 (9th Cir. 2011) (citation and quotation omitted).

14          Bungie has sufficiently alleged a meritorious claim of willful copyright infringement.  
15          Bungie has copyright registrations for Destiny 2 both as an audiovisual work and as software,  
16          establishing its ownership. Dkt. No. 76-3 ¶ 3 (sealed); Dkt. No. 62-1. Bungie has alleged and  
17          provided evidence that Larsen was a partner in Wallhax and helped develop the Wallhax cheat  
18          which directly infringed on Bungie’s copyrighted works in a variety of ways. Dkt. No. 43 ¶¶ 87–  
19          106, 164–179; Dkt. No. 63 ¶¶ 2–9, 28–30, 31–34; Dkt. No. 68 ¶¶ 5, 7, 10–12 (sealed). And  
20          Bungie has provided cogent allegations and additional evidence that Larsen’s infringement was  
21          willful. Dkt. No. 43 ¶¶ 146–163, 184; Dkt. No. 63 ¶¶ 2–9, 15–16, 23–27, 33–34; Dkt. No. 68 ¶¶  
22          11–14 (sealed).

23          The Court finds that entry of default judgment on these claims is proper.

1                   **b.       *Civil RICO***

2                   Bungie’s well-pled complaint and supporting evidence establish Larsen’s liability under  
3 the civil RICO statute. To prevail on its RICO claim, Bungie must show: (1) a violation of 18  
4 U.S.C. § 1962; (2) injury to its business or property; and (3) causation of the injury by the  
5 violation. *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 451 (2006). The Court first examines  
6 the three alleged § 1962 violations and then the final two elements of the claim.

7                                   (1)     Violations of § 1962(c)

8                   To prove a violation under § 1962(c), Bungie must prove “(1) conduct (2) of an  
9 enterprise (3) through a pattern (4) of racketeering activity (known as ‘predicate acts’)  
10 (5) causing injury to plaintiff’s ‘business or property.’” *Living Designs, Inc. v. E.I. Dupont de*  
11 *Numours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005) (citation and quotation omitted). Bungie has  
12 demonstrated sufficient allegations and evidence that Larsen, Schaufuss, and Nelson operated the  
13 Wallhax business as an ongoing organization that acted as a continuing unit to help them develop  
14 and sell the Wallhax cheat. *See Boyle v. United States*, 556 U.S. 938, 944–45 (noting that “an  
15 enterprise includes any union or group of individuals associated in fact” which can be “proved  
16 by evidence of an ongoing organization, formal or informal, and by evidence that the various  
17 associates function as a continuing unit.” (citation and quotation omitted)); Dkt. No. 43 ¶¶ 198–  
18 212; Dkt. No. 63 ¶¶ 15–16, 19. Bungie has provided evidence that Larsen conducted a key part  
19 of the enterprise, by developing and refining the Wallhax cheat. *See* Dkt. No. 63 ¶¶ 2–10, 35–37;  
20 Dkt. No. 68 ¶¶ 5, 16 (sealed).

21                   Bungie has also shown that the Wallhax enterprise engaged in various predicate acts that  
22 injured Bungie’s business. Specifically, Bungie has alleged and provided evidence that Larsen  
23 and the enterprise engaged in criminal copyright infringement and money laundering in violation  
24 of 18 U.S.C. §§ 1956 and 1957. As to criminal copyright infringement, Bungie must demonstrate

1 that Larsen willfully infringed on a valid copyright for purposes of commercial advantage or  
2 private financial gain. *See* 17 U.S.C. § 506(a). Here, the allegations and evidence suffice to show  
3 that Larsen willfully accessed and utilized Bungie’s Destiny 2 software in order to develop the  
4 Wallhax cheat, which directly infringed on Bungie’s two valid copyrights for Larsen’s personal  
5 gain. Dkt. No. 43 ¶¶ 164–195, 222–23; Dkt. No. 63 ¶¶ 7, 27–34. The allegations and evidence  
6 are also sufficient to satisfy the predicate act of money laundering. A defendant engages in  
7 money laundering under 18 U.S.C. § 1956(a)(1)(A)(i) when they (1) conduct (or attempt to  
8 conduct) (2) a financial transaction, (3) knowing that the property involved in the financial  
9 transaction represents the proceeds of some unlawful activity, (4) with the intent to promote the  
10 carrying on of specified unlawful activity, and (5) the property was in fact be derived from a  
11 specified unlawful activity. 18 U.S.C. § 1956(a)(1). Bungie has shown that Larsen and the  
12 Wallhax enterprise obtained financial proceeds from the sale of the Wallhax cheat, which was the  
13 product of criminal copyright infringement. Dkt. No. 43 ¶¶ 164–195, 224–26; Dkt. No. 63 ¶¶ 15–27.

14 Bungie has shown a pattern of racketeering activity through the continuous operation of  
15 the Wallhax enterprise and over 6,000 downloads of the Wallhax cheat from at least 2019  
16 through 2021. Dkt. No. 63 ¶¶ 14–15, 26, 35; *see Allwaste, Inc. v. Hecht*, 65 F.3d 1523, 1527 (9th  
17 Cir. 1995).

18 The Court does not reach Bungie’s allegations that these acts constituted wire fraud, as  
19 doing so is unnecessary and the Court has doubt as to whether such a claim is adequately pleaded.

20 (2) Violation of § 1962(a) and (b)

21 The Court also finds that Bungie has demonstrated violations of 18 U.S.C. § 1962(a) and  
22 (b) by (1) Larsen receiving income from the Wallhax enterprise that was reinvested in the  
23 enterprise to develop as well as market new cheats; and (2) Larsen having an interest and control  
24 in the enterprise. *See* Dkt. No. 43 ¶¶ 196–212, 224–226; Dkt. No. 63 ¶¶ 6–9. The enterprise is



1 engaged in interstate or foreign commerce as it exists for the sole purpose of selling the Wallhax  
2 cheats. Dkt. No. 63 ¶ 16. This satisfies Bungie’s burden as to the first element of the RICO claim.

3 (3) Remaining RICO elements

4 As to the final two elements of the RICO claim, Bungie has shown an injury to its  
5 business or property that was proximately caused by the Wallhax enterprise’s conduct. To satisfy  
6 these elements, Bungie “must show that [it] has suffered a concrete financial loss by  
7 documenting the amount of damages to which he is entitled.” *Fireman’s Fund Ins. Co. v. Stites*,  
8 258 F.3d 1016, 1021 (9th Cir. 2001). Here, Bungie has provided evidence that it has expended a  
9 minimum of \$2,000,000 on security staffing and software to address the fallout from the Wallhax  
10 cheat and two other software cheats impacting the Destiny 2 game. Dkt. No. 76-3 ¶¶ 25–26 (sealed).

11 \* \* \*

12 In sum, the Court is satisfied that Bungie has sufficiently alleged a violation of RICO.  
13 The Court finds that entry of default judgment on these claims is proper.

14 **c. *The Digital Millennium Copyright Act***

15 The DMCA prohibits the circumvention of any technological measure that effectively  
16 controls access to a protected work and grants copyright owners the right to enforce that  
17 prohibition. 17 U.S.C. § 1201(a). Bungie may prove its claim under § 1201 by demonstrating  
18 that Larsen: “(1) traffic[ked] in (2) a technology or part thereof (3) that is primarily designed,  
19 produced, or marketed for, or has limited commercially significant use other than  
20 (4) circumventing a technological measure (5) that effectively controls access (6) to a  
21 copyrighted work.” *MDY Indus., LLC v. Blizzard Ent., Inc.*, 629 F.3d 928, 953 (9th Cir. 2010), *as*  
22 *amended on denial of reh’g* (Feb. 17, 2011), *opinion amended and superseded on denial of reh’g*,  
23 No. C09-15932, 2011 WL 538748 (9th Cir. Feb. 17, 2011). Here, Bungie has provided  
24 allegations and evidence that Larsen developed and designed the Wallhax cheat to circumvent

1 Bungie’s technological measures to protect its copyrighted works in violation of § 1201(a). Dkt.  
2 No. 43 ¶¶ 233–51; Dkt. No. 63 ¶¶ 16–23; Dkt. No. 68 ¶ 5, 9 (sealed); Dkt. No. 67 ¶ 52 (sealed).

3 And Bungie has shown that the Wallhax cheat circumvented the controls and that Larson himself  
4 evaded those controls by opening new accounts after being banned. *See* Dkt. No. 68 ¶ 8–9  
5 (sealed); Dkt. No. 67 ¶¶ 34–35 (sealed); Dkt. No. 76-3 ¶¶ 19, 21, 23 (sealed); Dkt. No. 63 ¶¶ 33–  
6 34. Additionally, Bungie has shown that Larsen violated § 1201(b)(1) by creating an infringing  
7 derivative work. The Court finds that entry of default judgment on these claims is proper.

8 **d. CFAA**

9 The CFAA states that “[w]hoever . . . intentionally accesses a computer without  
10 authorization or exceeds authorized access, and thereby obtains . . . information from any  
11 protected computer . . . shall be punished” by fine or imprisonment. 18 U.S.C. § 1030(a)(2)(C).  
12 “The term ‘protected computer’ refers to any computer ‘used in or affecting interstate or foreign  
13 commerce or communication,’ 18 U.S.C. § 1030(e)(2)(B)—effectively any computer connected to  
14 the Internet—including servers, computers that manage network resources and provide data to other  
15 computers.” *hiQ Labs, Inc. v. LinkedIn Corp.*, 31 F.4th 1180, 1195 (9th Cir. 2022) (citation omitted).

16 Bungie has provided sufficient allegations and evidence that Larsen violated the CFAA  
17 when he intentionally accessed the Destiny 2 servers to obtain the Destiny 2 software to create  
18 the Wallhax cheat without authorization. Dkt. No. 43 ¶¶ 252–74. By doing so, Larsen violated  
19 that terms of the LSLA and manipulated key elements of the Destiny 2 software through the  
20 Wallhax cheat. *See* Dkt. No. 76-3 ¶ 6 (sealed); Dkt. No. 67 ¶¶ 9, 35 (sealed); Dkt. No. 68 ¶ 11  
21 (sealed). Bungie has also provided evidence that Larsen’s efforts have caused it damage by  
22 requiring increased security measures. *See* Dkt. No. 76-3 ¶¶ 16–23 (sealed). The Court finds that  
23 entry of default judgment on these claims is proper.

1           e.       ***Breach of Contract and Intentional Interference with Contractual***  
2                                   ***Relationship***

3           To prove a breach of contract, Bungie must demonstrate that the “contract imposes a  
4           duty, the duty is breached, and the breach proximately causes damage to” it. *See Nw. Indep.*  
5           *Forest Mfrs. v. Dep’t of Lab. & Indus.*, 78 Wn. App. 707, 712 (1995). “A claim for tortious  
6           interference with a contractual relationship or business expectancy requires five elements: (1) the  
7           existence of a valid contractual relationship or business expectancy; (2) that defendants had  
8           knowledge of that relationship; (3) an intentional interference inducing or causing a breach or  
9           termination of the relationship or expectancy; (4) that defendants interfered for an improper  
10           purpose or used improper means; and (5) resultant damage.” *Leingang v. Pierce Cnty. Med.*  
11           *Bureau, Inc.*, 131 Wn.2d 133, 157 (1997). “Intentional interference requires an improper objective  
12           or the use of wrongful means that in fact cause injury to the person’s contractual relationship.” *Id.*

13           Bungie has provided sufficient allegations and evidence that Larsen breached the terms of  
14           the LSLA and tortiously interfered with Bungie’s contractual relationship with other users of  
15           Destiny 2. Bungie has shown that Larsen violated the terms of the LSLA by accessing Destiny 2  
16           and the underlying software to create the Wallhax cheat and by creating multiple accounts after  
17           being banned. *See* Dkt. No. 76-3 ¶ 6 (sealed); Dkt. No. 67 ¶¶ 9, 35 (sealed); Dkt. No. 68 ¶ 11  
18           (sealed). And by selling the Wallhax cheat to other users of Destiny 2, Larsen induced other  
19           users to violate the terms of the LSLA and interfere with Bungie’s control of Destiny 2 and the  
20           gaming environment through which it intended to generate revenue. *See* Dkt. No. 64-4 at  
21           73:2028 (noting Defendants’ acknowledgement that the cheat encouraged players to violate the  
22           LSLA). And Bungie has shown that it suffered damages through this conduct by losing out on  
23           in-game revenue and expending substantial sums to combat the Wallhax cheat. *See* Dkt. No. 76-  
24           3 ¶¶ 13–15, 24–27 (sealed). The Court finds that entry of default judgment on these claims is proper.

1                   **f.       CPA**

2                   To prevail on its CPA claim, Bungie must establish “(1) an unfair or deceptive act or  
3 practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4) injury to a  
4 person’s business or property, and (5) causation.” *Panag v. Farmers Ins. Co. of Wash.*, 166  
5 Wn.2d 27, 37 (2009) (citing *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105  
6 Wn.2d 778, 784 (1986)). “[A] claim under the Washington CPA may be predicated upon a per se  
7 violation of statute, an act or practice that has the capacity to deceive substantial portions of the  
8 public, or an unfair or deceptive act or practice not regulated by statute but in violation of public  
9 interest.” *Klem v. Wash. Mut. Bank*, 176 Wn.2d 771, 787 (2013).

10                  The Court remains unconvinced that Bungie has alleged a valid CPA claim. Specifically,  
11 it has not provided evidence of an unfair or deceptive act that had the capacity to deceive a  
12 substantial portion of the public. The Wallhax cheat was developed and sold as an express means  
13 to allow players to cheat in the Destiny 2 game. There are no cogent allegations or evidence that  
14 individuals who purchased the Wallhax cheat were deceived or that they did not intend to  
15 purchase a cheat-enabling software. Bungie suggests that Wallhax deceived consumers by failing  
16 to disclose the fact that the software logged and retained personal identifying information. But  
17 Bungie overstates the nature of the information collected, which does not actually appear to  
18 reveal anything more than top-level browser information. *See* Dkt. No. 76-1 at 34 (sealed); Dkt.  
19 No. 67 ¶¶ 39–50 (sealed). Even if this conduct injured purchasers of the Wallhax cheat, Bungie  
20 has not shown how this conduct caused it to suffer any injury. The Court rejects Bungie’s request  
21 for entry of default judgment on this claim.

22                   **g.       Civil Conspiracy**

23                  To establish a claim for civil conspiracy, a plaintiff must show “(1) two or more people  
24 combined to accomplish an unlawful purpose, or combined to accomplish a lawful purpose by

1 unlawful means; and (2) . . . an agreement to accomplish the conspiracy.” *Woody v. Stapp*, 146  
2 Wn. App. 16, 22 (Wash. Ct. App. 2008) (internal citation omitted). A claim for civil conspiracy  
3 must be predicated on “a cognizable and separate underlying claim.” *Gossen v. JPMorgan Chase*  
4 *Bank*, 819 F. Supp. 2d 1162, 1171 (W.D. Wash. 2011).

5 The Court finds that Bungie has sufficiently alleged a claim of civil conspiracy. As  
6 explained above in its analysis of Bungie’s RICO claim, Bungie has shown that Larsen conspired  
7 with Nelson and Schaufuss the unlawfully develop and sell the Wallhax cheat. This claim is  
8 predicated on the other cognizable claims, as explained above. The Court finds that entry of  
9 default judgment on these claims is proper.

10 **3. Factor Four: Sum of Money at Stake**

11 Given the substantial sums that are at stake and the seriousness of the alleged  
12 misconduct, the Court finds that this *Eitel* factor favors entry of default judgment

13 **4. Factor Five: Possibility of Dispute of Material Facts**

14 The Court finds little possibility that the core, material facts are in dispute. Not only has  
15 Larsen failed to appear in this action, but Bungie has provided detailed evidence in support of its  
16 claims that is likely difficult to be rebutted. The Court also notes that Nelson consented to entry  
17 of judgment in Bungie’s favor on its Copyright Act and DMCA claims, which confirms many of  
18 the key allegations concerning Larsen’s liability. This factor favors entry of default judgment.

19 **5. Factor Six: Whether Default is Due to Excusable Neglect**

20 There is no evidence that Larsen’s failure to appear is due to excusable neglect. Nelson  
21 also avers that Larsen was aware of this litigation, but believed he was beyond the reach of the  
22 courts. *See* Dkt. No. 63 ¶¶ 35–37. This factor favors entry of default judgment.

1 **6. Factor Seven: Strong Policy in Favor of Decision on the Merits**

2 The Court maintains a strong policy preference in favor of resolution of Bungie's claims  
3 on the merits. But Larsen's decision not to appear in this case vitiates against this policy. This  
4 factor weighs in favor of entry of default judgment.

5 \* \* \*

6 Having considered and balanced the *Eitel* factors, the Court finds that entry of default  
7 judgment is proper on all but the CPA claim. On this basis, the Court GRANTS the Motion in part.

8 **D. Amount of the Default Judgment**

9 Bungie asks the Court to award it: (1) \$13,530,000 in statutory damages for Larsen's  
10 violation of the DMCA; (2) \$466,718.90 in damages for its copyright claim, which Bungie asks  
11 to be trebled to \$1,400,156.71; (3) \$666,666.00 in actual damages for its breach of contract,  
12 RICO, CFAA, and CPA claims, which Bungie asks to be trebled to \$1,999,998.00; and  
13 (4) \$267,887.10 in attorney fees and \$80,263.92 in costs. The Court agrees in part.

14 First, Bungie is entitled to statutory damages for Larsen's violations of the DMCA.  
15 Under the Act, the Court may award statutory damages "in the sum of not less than \$200 or more  
16 than \$2,500 per act of circumvention, device, product, component, offer, or performance of  
17 service, as the court considers just." 17 U.S.C. § 1203(c)(3). Based on the allegations in the  
18 complaint and the evidence provided, the Court is satisfied that Larsen's violations of the DMCA  
19 were willful and that an award of up to \$2,500 per download of the Wallhax cheat is "just." *See,*  
20 *e.g., Sony Computer Ent. Am., Inc. v. Filipiak*, 406 F. Supp. 2d 1068, 1075 (N.D. Cal. 2005)  
21 (finding that an award of \$2,500 for the willful sale of copyright infringing devices). Bungie has  
22 asked for only \$2,000 per download and the Court finds that this amount is appropriate. The  
23 Court will therefore enter default judgment in the amount of \$13,530,000 for Larsen's violation  
24 of the DMCA. This is also consistent with the amount of the consent judgment entered against Nelson.

1 Second, while Bungie is entitled to recovery of both actual damages and statutory  
2 damages under the Copyright Act, it has shown only that it is entitled to statutory damages. *See*  
3 17 U.S.C. § 504(a). Bungie seeks to recover what it claims to be Larsen’s profits from the  
4 copyright infringement as permitted by 17 U.S.C. § 504(b), admitting that it is otherwise “unable  
5 to calculate such damages in this case.” Dkt. No. 76-1 at 38 n.9 (sealed). Without citing any  
6 specific evidence, Bungie asserts that Larsen’s profits total \$466,718.90. *Id.* at 37–40 (referring  
7 to “information acquired from Settling Defendants” without any specificity.) The only evidence  
8 as to profits that the Court can surmise can be found in emails from Nelson to Larsen and  
9 Schaufuss concerning revenue in euros or Canadian dollars and two sets of banking statements  
10 for one of Nelson’s corporate entities in both U.S. and Canadian dollars. Dkt. No. 64 ¶¶ 6, 10–  
11 11; Dkt. Nos. 64-6, 64-10, 64-11. These documents are submitted with a declaration of counsel  
12 which does not explain the contents of the documents or provide any basis for the calculations  
13 one might use to arrive at the sums requested, particularly since the records contain foreign  
14 currencies. The Court finds that Bungie has failed to meet its burden to provide admissible  
15 evidence of actual damages and the Court rejects the request to enter default judgment in the  
16 amount requested. But Bungie has asked for \$300,000, the maximum statutory award for  
17 Larsen’s willful infringement of its two copyrighted works. *See* 17 U.S.C. § 504(c)(2). The Court  
18 finds this request reasonable, given the two alleged infringements and the willful nature of  
19 Larsen’s efforts to infringe on the copyrighted works. The Court directs entry of default  
20 judgment to include \$300,000 for violations of the Copyright Act.

21 Third, Bungie requests an award of “mitigation expenses” that it claims to have incurred  
22 as a result of Larsen’s breach of contract, RICO, and CFAA violations. Dkt. No. 76-1 at 41–42  
23 (sealed). Bungie cites to a decision interpreting the CFAA, which concluded that the Act allows  
24 for recovery of reasonable costs incurred to “resecure” a computer from further damage. *See*

1 *United States v. Middleton*, 231 F.3d 1207, 1213 (9th Cir. 2000) (considering the term in the  
2 context of a criminal action). The Court also finds that the breach of contract would allow  
3 Bungie to recover damages, such as the mitigation damages that Bungie incurred to remedy the  
4 harms proximately caused by the breach. Here, Bungie has submitted evidence that it expended  
5 roughly \$2,000,000 to remedy the damage caused by the Wallhax cheat and two other cheat  
6 products that targeted Destiny 2. Dkt. No. 76-3 ¶¶ 25–26 (sealed). Bungie asks for an award of  
7 one third of these costs and that they be trebled under RICO, 18 U.S.C. § 1964(c). The Court  
8 finds this to be appropriate. The Court directs entry of default judgement to include \$1,999,998  
9 for the RICO claim. The Court notes that Bungie does not ask for a separate award of \$666,666  
10 for the breach of contract or CFAA violation, and therefore will enter default judgment only in  
11 the trebled figure.

12 Fourth, Bungie is entitled to reasonable attorney fees and costs. Reasonable attorney fees  
13 and costs are recoverable under the Copyright Act. *See* 17 U.S.C. § 505. “In deciding whether to  
14 award attorneys’ fees, courts in this Circuit consider certain factors, including (1) the degree of  
15 success obtained; [ (2) ] frivolousness; [ (3) ] motivation; [ (4) ] objective unreasonableness (both  
16 in the factual and legal arguments in the case); and [ (5) ] the need in particular circumstances to  
17 advance considerations of compensation and deterrence.” *Halicki Films, LLC v. Sanderson Sales*  
18 *& Mktg.*, 547 F.3d 1213, 1230 (9th Cir. 2008) (quotation and citation omitted). Here, the Court  
19 finds that all five factors favor an award of attorney fees and costs. And it finds the requested  
20 amounts to be reasonable. Here, the Court finds the requested amounts to be reasonable and finds  
21 the award of \$267,887.10 in attorney fees and \$80,263.92 in costs to be proper.

22 In total, the Court directs entry of default judgment in the amount of \$16,178,149.02.  
23  
24



1 **E. Injunctive Relief**

2 The Court finds it appropriate to enter a permanent injunction against Larsen on the  
3 majority of the terms Bungie requests. The Court notes that Bungie has requested an injunction  
4 that extends to its software beyond Destiny 2 and includes broad language about its affiliates,  
5 parents, and subsidiaries. The Court has limited the injunction to the Destiny 2 game, which is  
6 the sole game at issue with regard to Bungie’s copyright and DMCA claims. And the Court has  
7 limited the injunction to Bungie rather than any subsidiaries, parents, and affiliates, given that  
8 this action was brought solely by Bungie, Inc. and no other entities.

9 “As a general rule, a permanent injunction will be granted when liability has been  
10 established and there is a threat of continuing violations.” *MAI Sys. Corp. v. Peak Comput., Inc.*,  
11 991 F.2d 511, 520 (9th Cir. 1993). And under the Copyright Act, the Court may “grant  
12 temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain  
13 infringement of a copyright.” 17 U.S.C. § 502(a). A plaintiff seeking permanent injunctive relief  
14 must demonstrate: “(1) that it has suffered an irreparable injury; (2) that remedies available at  
15 law, such as monetary damages, are inadequate to compensate for that injury; (3) that,  
16 considering the balance of hardships between the plaintiff and defendant, a remedy in equity is  
17 warranted; and (4) that the public interest would not be disserved by a permanent injunction.”  
18 *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006).

19 The Court finds that all four *eBay* factors favor entry of a permanent injunction. First,  
20 based on the admitted allegations in the amended complaint, Larsen’s copyright infringement has  
21 caused irreparable harm to Bungie’s goodwill and reputation and has caused it to incur expenses  
22 to prevent further damage from cheat software. Second, Bungie has shown that monetary  
23 damages alone will not prevent Larsen from engaging in further abusive conduct. Given Larsen’s  
24 decision not to appear in this case, there can be no assurances that Larsen will no longer engage

1 in the conduct at issue in this case. This satisfies the Court that monetary damages alone are  
2 insufficient. Third, the equities favor Bungie, which seeks to enjoin Larsen from engaging in  
3 illegal conduct that benefits only Larsen. This favors Bungie and the requested injunction.  
4 Fourth, an injunction prohibiting Larsen from engaging in further conduct that infringes on  
5 Bungie's copyrights will serve the public interest. The Court GRANTS the Motion and ENTERS the  
6 following permanent injunction against Larsen as follows:

7           1.       Larsen, all persons acting under Larsen's direction or control (including but not  
8 limited to Larsen's agents, representatives, and employees), and those persons or companies in  
9 active concert or participation with Larsen who receive actual notice of this Order by personal  
10 service or otherwise, must immediately and permanently cease and desist from any of the  
11 following:

- 12                   a.       Taking any steps on Larsen's own behalf or assisting others in: (i)  
13                               creating, distributing, advertising, marketing or otherwise making  
14                               available; obtaining, possessing, accessing or using; promoting,  
15                               advertising, or encouraging or inducing others to purchase or use  
16                               (including via any social media account, website, or video-sharing  
17                               account); (ii) selling, reselling, or processing payments for; (iii) assisting  
18                               in any way with the development of; sharing, copying, transferring, or  
19                               distributing; (iv) publishing or distributing any source code or  
20                               instructional material for the creation of; (v) or operating, assisting,  
21                               promoting or linking to any website designed to provide information to  
22                               assist others in accessing, developing or obtaining: (A) the Destiny 2  
23                               Software Module, either alone, or in conjunction with the Defendant's  
24                               Software; or (B) any software whose use infringes Intellectual Property

1 owned or controlled by Bungie, circumvents technological measures that  
2 effectively control access to Destiny 2, violates Bungie’s licensing  
3 agreements, assists players of Destiny 2 in violating Bungie’s licensing  
4 agreements, or is designed to exploit or enable the exploitation of Destiny 2.

5 b. Investing or holding any financial interest in any enterprise, product, or  
6 company which Larsen knows or has reason to know is now, or intends in  
7 the future to be, engaged in any of the foregoing activities prohibited by  
8 this Default Judgment and Permanent Injunction.

9 c. Reverse engineering, decompiling, packet editing, or otherwise  
10 manipulating Destiny 2 without authorization, or providing any assistance  
11 to any person or entity engaged in such activities.

12 2. The Court further enjoins Larsen and all third parties acting in concert and  
13 participation with Larsen, including but not limited to any domain name registrars or registries  
14 holding or listing any of Larsen’s websites or storefronts, from supporting or facilitating access  
15 to any and all domain names, URLs, and websites (including, but not limited to, insert sites),  
16 including any and all future and successor domain names, URLs, and websites, through which  
17 Larsen traffics circumvention devices that threaten Bungie’s technological protection measures  
18 or which infringe Bungie’s Intellectual Property rights identified in this action.

19 3. Larsen is prohibited from using any social network, video sharing, or digital  
20 messaging accounts under their control (including, but not limited to, Facebook, groups or chats  
21 on Facebook, YouTube, Twitter, TikTok, Discord, GBATemp, Reddit, Telegram, Skype,  
22 WeChat, WhatsApp, Signal, or their equivalent) to provide any content relating to the  
23 distribution, marketing, offering for sale, or promotion of the Wallhax cheat software or any  
24 other software whose use infringes any of Bungie’s Intellectual Property rights specified in this

1 action, circumvents Bungie's technological measures that effectively control access to Destiny 2,  
2 or violates (or assists players of Destiny 2 in violating) Bungie's license agreements, and must  
3 take all necessary steps to remove any information on any non-dedicated (*e.g.*, personal) social  
4 network accounts under Larsen's control used to distribute or promote any of the foregoing.

5 4. Larsen is further prohibited from engaging in any other violation of the Digital  
6 Millennium Copyright Act or the Copyright Act, or any other federal or state law, with respect to  
7 Bungie and its intellectual property at issue in this action.

8 5. Larsen must destroy the Destiny 2 Software Module or any software that in any  
9 way interacts with or pertains to Bungie's Intellectual Property.

10 6. This permanent injunction constitutes a binding court order, and any violations of  
11 this order by Larsen will subject them to the full scope of this Court's contempt authority,  
12 including punitive, coercive, and monetary sanctions.

13 7. Any company or entity that Larsen controls in the future will also comply with the  
14 provisions of this Default Judgment and Permanent Injunction.

15 8. This permanent injunction is binding against Larsen worldwide, without regard to  
16 the territorial scope of the specific intellectual property rights asserted in the Amended  
17 Complaint, and may be enforced in any court of competent jurisdiction wherever Larsen or his  
18 assets may be found.

19 9. Nothing contained in this Default Judgment and Permanent Injunction limits the  
20 right of Bungie to seek relief, including without limitation damages, for any infringements of any  
21 Intellectual Property rights occurring after the date of this Judgment and Permanent Injunction.

22 10. The Court finds there is no just reason for delay in entering this Default Judgment  
23 and Permanent Injunction and, pursuant to Federal Rule of Civil Procedure 54, the Court directs  
24 the entry of this Default Judgment and Permanent Injunction against Defendants.

1 **III. CONCLUSION**


2 The Court finds that default judgment is appropriately entered in Bungie’s favor as to all  
3 but the CPA claim. The Court finds that the total damages award shall be entered in the amount  
4 of \$16,178,149.02 and consists of:

- 5 1. \$13,530,000 for violations of the DMCA;
- 6 2. \$300,000 for violations of the Copyright Act;
- 7 3. \$1,999,998 for violations of RICO; and
- 8 4. \$267,887.10 in attorney fees and \$80,263.92 in costs.

9 The Court further GRANTS Bungie’s request to be allowed to submit any final billings received  
10 relating to this action or the motion for default judgment after submission of the motion. Any  
11 further request for reimbursement for final billings must be received **within thirty (30) days** of  
12 this Order.

13 The Court also finds that entry of a permanent injunction on the terms specified above is  
14 appropriate and necessary. On these grounds, the Court GRANTS in part the Motion, ENTERS  
15 default judgment, and permanently ENJOINS Larsen on the terms specified above.

16 Dated this 9th day of May 2023.

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18 \_\_\_\_\_  
19 Tana Lin  
20 United States District Judge  
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