

The Honorable Tana Lin

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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, JOHN DOE NO. 1
A/K/A “SLYTIGER” A/K/A ARTHUR S.
ADERHOLT, JOHN DOE NO. 2 A/K/A
“BADGER,” JOHN DOE NO. 3 A/K/A
“LUZYPHER,” JOHN DOE NO. 4 A/K/A
“GOODMAN,” JOHN DOE NO. 5 A/K/A
“YIMOSECAI,” JOHN DOE NO. 6 A/K/A
“RIDDELL,” JOHN DOE NO. 7 A/K/A
“PISKUBI93,” AND JOHN DOES NO. 8-20,

Defendants.

Case No. 2:21-cv-01112-TL

STIPULATED MOTION FOR ENTRY
OF CONSENT JUDGMENT

**NOTE ON MOTION CALENDAR:
June 9, 2022**

STIPULATION AND MOTION FOR ENTRY OF JUDGMENT

Defendants Robert James Duthie Nelson, Elite Boss Tech, Inc., and 11020781 Canada, Inc. (the “Settling Defendants”) and Plaintiff Bungie, Inc., through their undersigned counsel, hereby stipulate as follows and jointly move that the Court enter an order and the Consent Judgment attached as Attachment A to the Order with and enforcing these stipulations as follows:

1 1. Defendants’ software referenced in the Complaint includes a software module that
2 is designed to be used with Destiny 2 (“the Destiny 2 Software Module”) that displays a
3 graphical overlay that integrates into and annotates Plaintiff’s copyrighted Destiny 2 audiovisual
4 work, and thereby infringes as an unauthorized derivative work.

5 2. Defendants’ software with the Destiny 2 Software Module operates by injecting
6 code into Plaintiff’s copyrighted Destiny 2 code, with the combined code working in concert to
7 enable and provide the “hacks” marketed by Defendants, and thereby infringes as an
8 unauthorized derivative work.

9 3. Defendants’ infringement was willful.

10 4. In addition, Defendants’ software with the Destiny 2 Software Module operates to
11 circumvent technological measures Plaintiff employs to control and limit access to its software,
12 including by aimbot smoothing and accessing data Plaintiff otherwise denies users access to, in
13 violation of 17 U.S.C. § 1201(a) and (b).

14 5. The Destiny 2 Software Module has been downloaded 6,765 times, and each such
15 download constitutes an independent provision of a circumvention device in violation of 17
16 U.S.C. § 1201(a) and (b).

17 6. Judgment will be entered against Defendant in the amount of \$13,530,000.00,
18 representing statutory damages of \$2,000 per violation of 17 U.S.C. § 1201.

19 7. Any claims alleged in the Complaint and not addressed herein against the Settling
20 Defendants are withdrawn by Plaintiff.

21 In addition, pursuant to 17 U.S.C. §§ 502, 504, 505, 506, and 1201, and this Court’s
22 inherent equitable powers, the Court should order as follows:

23 8. Defendants, all persons acting under Defendants’ direction or control (including
24 but not limited to Defendants’ agents, representatives, and employees), and those persons or
25 companies in active concert or participation with Defendants who receive actual notice of this
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1 Order by personal service or otherwise, must immediately and permanently cease and desist from
2 any of the following:

3 a. Taking any steps on Defendants' own behalf or assisting others in creating,
4 distributing, advertising, marketing or otherwise making available; obtaining,
5 possessing, accessing or using; promoting, advertising, or encouraging or
6 inducing others to purchase or use (including via any social media account,
7 website, or video-sharing account); selling, reselling, or processing payments for;
8 assisting in any way with the development of; sharing, copying, transferring, or
9 distributing; publishing or distributing any source code or instructional material
10 for the creation of; or operating, assisting, promoting or linking to any website
11 designed to provide information to assist others in accessing, developing or
12 obtaining: (i) the Destiny 2 Software Module, either alone, or in conjunction with
13 the Defendants' Software; or (ii) any software whose use infringes Intellectual
14 Property owned or controlled by Plaintiff or its parents, subsidiaries, or affiliates
15 (collectively, "Plaintiff"), circumvents technological measures that effectively
16 control access to Plaintiff's games, violates Plaintiff's licensing agreements,
17 assists players of Plaintiff's games in violating Plaintiff's licensing agreements, or
18 is designed to exploit or enable the exploitation of any game owned, published,
19 distributed or operated by Plaintiff.

20 b. Investing or holding any financial interest in any enterprise, product, or company
21 which Defendant knows or has reason to know is now, or intends in the future to
22 be, engaged in any of the foregoing activities prohibited by this Judgment and
23 Permanent Injunction.

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1 c. Reverse engineering, decompiling, packet editing, or otherwise manipulating
2 without authorization, any game owned, published, or operated by Plaintiff, or
3 providing any assistance to any person or entity engaged in such activities.

4 9. Defendants and all third parties acting in concert and participation with
5 Defendants, including but not limited to any domain name registrars or registries holding or
6 listing any of Defendants' websites or storefronts, are prohibited from supporting or facilitating
7 access to any and all domain names, URLs, and websites (including, but not limited to, insert
8 sites), including any and all future and successor domain names, URLs, and websites, through
9 which Defendants traffic in circumvention devices that threaten Plaintiff's technological
10 protection measures or which infringe Plaintiff's Intellectual Property rights.

11 10. Defendants are prohibited from using any social network, video sharing, or digital
12 messaging accounts under their control (including, but not limited to, Facebook, groups or chats
13 on Facebook, YouTube, Twitter, Tik Tok, Discord, GBATemp, Reddit, Telegram, Skype,
14 WeChat, WhatsApp, Signal, or their equivalent) to provide any content relating to the
15 distribution, marketing, offering for sale, or promotion of the Defendants' Software or any other
16 software whose use infringes any of Plaintiff's Intellectual Property Rights, circumvents
17 Plaintiff's technological measures that effectively control access to Plaintiff's games, or violates
18 (or assists players of Plaintiff's games in violating) Plaintiff's license agreements, and must take
19 all necessary steps to remove any information on any non-dedicated (e.g., personal) social
20 network accounts under Defendants' control used to distribute or promote any of the foregoing.

21 11. Defendants are further prohibited from engaging in any other violation of the
22 Digital Millennium Copyright Act or the Copyright Act, or any other federal or state law, with
23 respect to Plaintiff and its intellectual property.

24 12. Defendants must destroy the Destiny 2 Software Module or any software that in
25 any way interacts with or pertains to Plaintiffs' Intellectual Property.

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1 13. Any violations of this order by Defendants will subject them to the full scope of
2 this Court's contempt authority, including punitive, coercive, and monetary sanctions.

3 14. Any company or entity that any of Defendants control in the future will also
4 comply with the provisions of this Judgment and Permanent Injunction.

5 15. This permanent injunction is binding against Defendants worldwide, without
6 regard to the territorial scope of the specific intellectual property rights asserted in the Complaint
7 and may be enforced in any court of competent jurisdiction wherever Defendants or their assets
8 may be found.

9 16. The Parties irrevocably and fully waive notice of entry of this Judgment and
10 Permanent Injunction and notice and service of the entered Judgment and Permanent Injunction.
11 Plaintiff is not required to post any bond or security in connection with the Final Judgment and
12 Permanent Injunction, and Defendants have permanently, irrevocably, and fully waived any right
13 to request a bond or security.

14 17. The Parties irrevocably and fully waive all rights to appeal this Judgment and
15 Permanent Injunction, to have it vacated or set aside, to seek or obtain a new trial thereon or
16 otherwise to attack in any way, directly or collaterally, its validity or enforceability.

17 18. Nothing contained in this Judgment and Permanent Injunction limits the right of
18 the Plaintiff to seek relief, including without limitation damages, for any infringements of any
19 Intellectual Property rights occurring after the date of this Judgment and Permanent Injunction.

20 19. The Court will retain jurisdiction of this action to entertain further proceedings
21 and to enter further orders as may be necessary or appropriate to implement and enforce the
22 provisions of this Judgment and Permanent Injunction. The Parties consent to the personal
23 jurisdiction of the United States District Court for the Western District of Washington for
24 purposes of enforcing the Judgment and Permanent Injunction.

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20. The parties agree that there is no just reason for delay in entering this Judgment and Permanent Injunction and, pursuant to Federal Rule of Civil Procedure 54, request immediate entry of this Judgment and Permanent Injunction against Defendants.

SO STIPULATED AND MOVED, THROUGH COUNSEL OF RECORD.

DATED this 9th day of June, 2022.

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED. The Clerk is directed to enter judgment against Defendants Robert James Duthie Nelson, Elite Boss Tech, Inc., and 11020781 Canada, Inc. and in favor of plaintiff Bungie, Inc. in conformity with the stipulations above, and in the form of **Attachment A** to this Order.

DATED: _____

Tana Lin
United States District Court Judge

4873-3846-0708.1