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10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 ACTIVISION PUBLISHING, INC., a
14 Delaware corporation,
15 Plaintiff,
16 v.
17 ENGINEOWNING UG, et al.,
18 Defendants.

CASE NO. 2:22-cv-00051-MWF (JCx)

[Assigned to Judge Michael W. Fitzgerald]

**NOTICE OF MOTION AND
MOTION FOR ENTRY OF
DEFAULT JUDGMENT**

[Declarations of Marc E. Mayer and
Phil Terzian and [Proposed] Judgment
and Permanent Injunction filed
concurrently herewith]

Date: May 20, 2024

Time: 10:00 a.m.

Location: Courtroom 5A

Complaint Filed: 1/4/2022

Amended Complaint Filed: 9/16/2022

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NOTICE OF MOTION FOR DEFAULT JUDGMENT

PLEASE TAKE NOTICE THAT on April 29, 2024, at 11:30 a.m. in Courtroom 5A of the United States District Court for the Central District of California, located at 350 West 1st Street, Los Angeles, CA, 90012, Activision Publishing, Inc (“Activision”) will present its Motion for Default Judgment against Defendants Engineowning UG, Garnatz Enterprise LTD, Valentin Rick, Leonard Bugla, Leon Frisch, Marc-Alexander Richts, Alexander Kleeman, Leon Schlender, Bennet Huch, Ricky Szameitat, Marcel Bindemann, Alexander Kleemann, Remo Löffler, Charlie Wiest, Dennis Reissleich, and Pascal Classen (together, “Defendants”), pursuant to Local Rules 55-1 and 55-2 and Federal Rule of Civil Procedure 55(a). On February 6, 2024, the Court entered the defaults of the above-listed Defendants, except for Defendant Garnatz Enterprise LTD. (Dkt.142-149, 151, 153-157). On March 21, 2024, the Court entered the default of Defendant Garnatz Enterprise Ltd. (Dkt. 165.)

This Motion is brought on the grounds that Defendants have been served, defaults have been entered, and Defendants have failed to defend this action. Activision seeks a permanent injunction, a monetary judgment in the amount of \$14,465,600, and costs and fees in the amount of \$292,912. The monetary judgment is based on the minimum statutory damages for each violation by Defendants of Section 1201 of the Copyright Act (17 U.S.C. §1201) and represents a conservative approximation of the profits received by Defendants in connection with their distribution of the software products at issue in this lawsuit.

This Motion is based on this Notice, the attached Motion for Default Judgment, the concurrently-filed Declarations of Phil Terzian and Marc Mayer, and the pleadings, files, argument and other matters that may be presented at the hearing.

1 DATED: April 12, 2024

MITCHELL SILBERBERG & KNUPP LLP

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By: /s/ Marc E. Mayer

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Marc E. Mayer
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 Activision is the owner and publisher of the immensely popular *Call of Duty*
3 series of video games (the “COD Games”). First Amended Complaint (“FAC”)
4 (Dkt. 27) ¶1. This action involves a business enterprise known as
5 “EngineOwning” (“EO”), which is engaged in the marketing and sale of software
6 products designed to enable members of the public to cheat in the COD Games.
7 EO sells its products (referred to collectively as the “Cheats”) primarily via its
8 website Engineowning.to (the “Website”) and via a network of authorized resellers
9 around the world. These ongoing activities damage Activision’s games, its overall
10 business, and the experience of the COD player community. *Id.*

11 By this Motion, Activision seeks default judgment against two corporate
12 entities and 11 individuals (“Defendants”)¹ who are the owners and/or operators of
13 EO, and collectively are engaged in the development, sale, distribution, marketing,
14 and exploitation of EO’s software products. *Id.* ¶2. In creating, marketing, selling,
15 servicing, and distributing the Cheats, Defendants have engaged in numerous
16 unlawful acts under United States and California law. Specifically:

- 17 ● Defendants violated Section 1201 of the Digital Millennium
18 Copyright Act (“DMCA”), 17 U.S.C. § 1201(b)(1), by selling, importing, offering,
19 providing, and otherwise trafficking in technologies that circumvent or evade anti-
20 cheat technologies used by Activision to protect the integrity of the COD Games.
- 21 ● Defendants violated the Computer Fraud and Abuse Act (“CFAA”) by
22 selling (or including with their products) “hardware ID” (“HWID”) spoofers
23 (software that hides the ID of a user’s computer), which enable members of the
24 public to access restricted services for which they have previously been denied
25 access.

26 _____
27 ¹ The corporate Defendants are EngineOwning UG and Garnatz Enterprise Ltd.
28 The individual Defendants are: Valentin Rick, Leonard Bugla, Leon Frisch, Marc-
Alexander Richts, Alexander Kleeman, Leon Schlender, Bennet Huch, Ricky
Szameitat, Remo Loffler, Charlie Wiest, and Pascal Classen.

1 ● Defendants have knowingly, intentionally, and maliciously interfered
2 with and disrupted the contracts Activision has with its players, which explicitly
3 prohibit cheating in the COD Games.

4 ● Defendants have committed violations of the Racketeering Influenced
5 and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1962(c) and 1962(d), by
6 conducting and participating in an enterprise engaged in racketeering activity.

7 All Defendants have been served with the FAC. Dkt. 47-48, 51-63, 102-
8 104. In fact, most of them *appeared* in this action through counsel and filed a
9 motion to dismiss the action on various grounds. Dkt. 97. This Court denied that
10 motion on April 4, 2023. After losing their motion, these Defendants (apparently
11 unwilling or unable to defend the case on the merits) simply abandoned the case
12 and ceased communicating with their lawyer. As a result, Activision had no choice
13 but to take Defendants’ defaults, which were entered on February 6, 2024. *See*
14 Dkt. 142-149, 151, 153-157.

15 This Court should now enter default judgment against all of the Defendants.
16 As set forth below, Activision’s claims are supported by the uncontested
17 allegations, there is no possibility of excusable neglect, and there is no other way
18 for Activision to obtain the relief it seeks. Additionally, the amount of monetary
19 damages sought in this motion – approximately \$14 million in statutory damages,
20 plus \$292,912 in attorneys’ fees – is fair, reasonable and, indeed, conservatively
21 approximates a snapshot of the revenue received by Defendants from U.S. users
22 over a one-year period. Finally, the permanent injunctive relief sought by
23 Activision is narrowly tailored to ensure that Defendants are barred from
24 marketing, distributing, and selling the Cheats in the United States.

25 **II. FACTUAL BACKGROUND**

26 **Activision and Its Anti-Cheating Efforts.** Activision is a prominent U.S.
27 company in the business of producing, marketing, and distributing a catalog of
28

1 interactive entertainment products. Declaration of Phil Terzian (“Activision
2 Decl.”), ¶4. *Call of Duty* is Activision’s most popular game franchise, and the U.S.
3 is the largest market for the COD Games. Activision Decl. ¶5; *see also* Order re
4 Defendants’ Motion to Dismiss Case (Dkt. 100) at 3. Activision is the owner and
5 publisher of each of the COD Games. FAC ¶1.

6 The popularity of the COD Games have made them a target for sellers of
7 software products that enable players to cheat in the COD Games (such as being
8 able to see obstructed opponents or enhance weapon aiming.) FAC ¶75. Cheaters
9 ruin the game experience for legitimate players, harm the reputation of the game,
10 and cause players to quit the game or turn to competing products. *Id.* ¶98.

11 Activision attempts to control cheating in the COD Games through a
12 combination of contractual and technical measures. To play the COD Games,
13 players must consent to a Terms of Use (“TOU”) that explicitly prohibits the use of
14 cheats and advises players that their access to the Game may be lost if the player is
15 discovered to be cheating. FAC ¶26. Activision also employs a dedicated security
16 and anti-cheat team. Activision Decl. ¶8. Members of this team have developed
17 (and continue to update and refine) anti-cheat technology, such as the
18 “RICOCHET” anti-cheat system. *Id.* ¶9. This technology is designed to detect
19 when a player is using cheats and prevent cheaters from playing the game. *Id.*
20 When a user is caught cheating, that player may be suspended or restricted (i.e.
21 “banned”) from playing the game. Activision may also collect the player’s
22 computer HWID. *Id.* ¶11; FAC ¶77. Using HWID information, Activision is able
23 to prevent a banned user from improperly accessing Activision servers under a
24 different name or email address. FAC ¶77.

25 **EngineOwning and the Cheats.** “EngineOwning” (“EO”) is a
26 sophisticated business enterprise controlled and operated by a group of individuals
27 who conduct their activities online using anonymous screen names. FAC ¶¶1-4,
28 12-67. EO’s business is to develop, market, and distribute software cheats for

1 online games, especially the COD Games. FAC ¶12. Via the Website, EO
2 markets, sells, distributes, and maintains no fewer than *eight* Cheats dedicated to
3 the COD Games, including a cheat for Activision’s new 2022 Games. FAC ¶2. EO
4 promotes the Cheats via Twitter and YouTube. FAC ¶89.

5 The Cheats offer various features designed to unfairly assist users, such
6 “aimbots,” which automatically aim weapons at opponents; “ESP,” which allows
7 the cheating player to see hidden opponents; and “triggerbots,” which
8 automatically fire the player’s weapon. *Id.* ¶87. EO also offers a “Spoofers,” which
9 falsifies a player’s HWID to circumvent account bans, and thereby gain
10 unauthorized access to Activision’s servers. *Id.* ¶88.

11 The Cheats specifically were designed to bypass Activision’s anti-cheat
12 technology, and EO prominently markets them as such. Each of the product pages
13 for the Cheats states that Activision’s anti-cheat technologies are “Supported” or
14 “Secure” (i.e., the anti-cheat software is unable to detect the Cheat.) Dkt. 91,
15 Declaration of Marc E. Mayer, Esq. (“Mayer MTD Decl.”) Ex. 2. The Website
16 also contains a product “Status” page, which confirms the Cheat is “undetected.”
17 *Id.* Ex. 5. Being “undetected” is critical to the value and success of the Cheats,
18 because EO acknowledges the use of the Cheats is against the TOU and will result
19 in the player’s account being banned. *Id.*, Ex. 6(a). The Cheats even include
20 features designed to avoid “manual” detection by other players or Activision, such
21 as functions hiding the EO software interface while the player is streaming or make
22 aiming appear more “human.” FAC ¶95.

23 The Cheats may be purchased directly from the EngineOwning Website or
24 via a network of “resellers.” FAC ¶¶37-45. The average price for the Cheats is
25 \$20 for a 30-day subscription and \$40 for a 60-day subscription. Dkt. 91, Mayer
26 MTD Decl. Ex. 2. Defendants have not disclosed sales figures for the Cheats,
27 though they obviously have that information. Moreover, their failure to defend this
28 action and participate in discovery has precluded Activision from obtaining any

1 actual sales or revenue information. However, according to the Website, as of
2 early 2024 EO had **493,921**. “members” (individuals who signed up for an
3 account). Declaration of Marc E. Mayer (“Mayer MDJ Decl.”), ¶ 6 & Ex. 2. 6. If
4 each “member” purchased a one-year license for one of the Cheats (at \$240/year),
5 then EO would have received more than **\$100 million**. Activision has determined
6 that over the past four years, at least 72,328 U.S. users used the Cheats. Activision
7 Decl. ¶12.

8 **The EO Enterprise and its Operations.** Defendants are a group of
9 individuals and their shell companies who develop, own, operate, market and
10 distribute the Cheats. Defendants have for years attempted to evade detection (and
11 liability) by swapping online aliases or assuming fake identities. Dkt. 91, Mayer
12 MTD Decl. ¶38, Exs. 19-21.

13 The Enterprise has both public-facing and back-end components. The
14 public-facing part of the business is comprised largely of the Website, which
15 contains store listings for the Cheats, demonstration images and videos, purchase
16 pages, and online message boards. On these message boards, EO “administrators”
17 communicate directly with EO customers/“members,” assisting them with
18 technical and payment issues, and providing advice on how to avoid detection by
19 Activision. Dkt. 91, Mayer MTD Decl. Ex. 6. EO also markets its Cheats through
20 social media platforms such as YouTube, Twitter, Discord, and Telegram. Dkt.
21 91, Mayer MTD Decl. ¶¶6, 22-33, 48, 81, 88 & Exs. 12-18(b), 29, 63, 71. Behind
22 the scenes, certain Defendants create, code, and update the Cheats; manage online
23 servers; secure website hosting and other services; and coordinate and contract
24 with payment processors (and program the Website to work with payment
25 processors). *Id.* ¶4. EO administrators also approve, supervise, and manage
26 relationships with “resellers” (such as Classen and other defendants) who sell the
27 Cheats on behalf of the enterprise and keep a portion of the revenue. *Id.* ¶6.

1 Each of the individual Defendants plays a critical and central role in
2 producing, marketing, and distributing the Cheats:

3 • **EngineOwning UG** and **Garnatz Enterprise Ltd** are shell
4 companies used by Valentin Rick and others to shield their identities and handle
5 monetary transfers. FAC ¶¶14-15.

6 • **Valentin Rick** is the founder of EO and the mastermind behind the
7 venture. FAC ¶17. Rick created and set up the Enterprise and the Website,
8 developed (or participated in developing) the Cheats, and set up (and runs) the
9 corporate defendants. *Id.* ¶¶14-15.

10 • **Leon Schlender, Bennet Huch, Marc-Alexander Richts, and**
11 **Leonard Bugla** are co-founders of EO, and part of the “core” management team.
12 Dkt. 91, Mayer MTD Decl. ¶¶58, 60, 62, 65. They collaborated with Rick to set up
13 and run the Enterprise, the Website, and related shell companies. They each have
14 had high-level roles in administering the Website, marketing the EO software,
15 engaging with customers, and overseeing resellers. FAC ¶¶18, 20-22.

16 • **Ricky Szameitat** is a coder and developer of the Cheats. FAC ¶27.

17 • **Remo Löffler, Alexander Kleeman, and Leon Frisch** are
18 moderators and administrators of the Website. Dkt. 91, Mayer MTD Decl. ¶¶76,
19 77, 79, 91. They assisted customers with the purchase of the Cheats, provided
20 technical support, and oversaw and administered the online message boards. *Id.*

21 • **Charlie Wiest** provided technical support for the Cheats and acted as
22 a moderator for the Website forums. FAC ¶35.

23 • **Pascal Classen** is an “authorized market seller” of the Cheats and of
24 COD player accounts. *Id.* ¶83. Classen has been an avid promoter of the Cheats,
25 posted more than 2,000 messages on the Website, and created a “Teamspeak” chat
26 room for EO customers. *Id.* ¶¶84-90, Exs. 18(a), 66-73.

27 **EO’s Continued Operation.** Notwithstanding this lawsuit, Defendants
28 continue to operate the Website and sell the Cheats. In fact, the number of users of

1 the Cheats continues to grow. Additionally, Defendants continue to market the
2 Cheats via their Twitter account, and have posted Twitter advertisements as
3 recently as last week. *See* Mayer MDJ Decl., ¶¶ 2-5 & Exs. 1-3.

4
5 **III. PROCEDURAL HISTORY**

6 **The Complaint and FAC.** On January 4, 2022, Activision filed its initial
7 Complaint. Dkt. 1. In the Complaint, Activision sought damages for violation of
8 the anti-circumvention provisions of the Digital Millennium Copyright Act
9 (“DMCA”), 17 U.S.C. § 1201, and for intentional interference with contract. On
10 September 16, 2022, Activision filed its First Amended Complaint (“FAC”). Dkt.
11 27. The FAC added additional defendants and a claim for violations of the RICO
12 statute, 18 U.S.C. § 1962(c).

13 **Service on Defendants.** In late 2022 and early 2023, Activision completed
14 service on Defendants:

- 15 ● On or about November 10, 2022, one of the corporate defendants
16 (EngineOwning UG) and 10 of the individual defendants – Rick, Löffler, Classen,
17 Richts, Bugla, Schlender, Frisch, Kleeman, Huch – returned waivers of service.
18 All of these defendants were represented by counsel. Dkt. 52-62.
- 19 ● On October 25, 2022, service was effectuated on Charlie Wiest in
20 Germany via the Hague Convention. Dkt. 102.
- 21 ● On December 3, 2022, service was effectuated on Ricky Szameitat in
22 Germany via the Hague Convention. Dkt. 103.
- 23 ● On January 27, 2023 and March 10, 2023, service was effectuated on
24 Garnatz Enterprise Ltd in Belize via the Hague Convention. Dkt. 161.²

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26
27 ² Activision has been unable to serve defendants Pfeifer, Bindemann, Smaal,
28 Reissleisch, and Cartigny. CMM Holdings S.A. does not appear to be an existing
entity.

1 **The Motion to Dismiss.** On January 13, 2023, defendants Rick, Löffler,
2 Classen, Richts, Bugla, Schlender, Frisch, Kleeman, Huch, and EngineOwning UG
3 (the “Moving Defendants”) filed a Motion to Dismiss the Action on numerous
4 grounds, including for lack of personal jurisdiction, *forum non conveniens*,
5 international comity, and failure to state a claim.³ Dkt. 68. On April 4, 2023, the
6 Court denied the Motion to Dismiss, with the exception of Activision’s claim for
7 false designation of origin under the Lanham Act, which the Court dismissed with
8 leave to amend. Dkt. 100 & 101.

9 On May 5, 2023, the Moving Defendants’ counsel, Elliot Gipson, moved to
10 withdraw as counsel, stating that there had been a “breakdown in communication”
11 with his clients. Dkt. 109. On May 23, 2023, the Court granted the Motion to
12 Withdraw. Dkt. 111. In that Order, the Court extended the Moving Defendants’
13 time to answer the FAC until July 17, 2023. *None* of the Defendants filed an
14 Answer to the FAC, putting each of them in default.

15 **Entries of Default.** On February 1, 2, and 5, 2024, Activision filed requests
16 with the Clerk to take the default of 13 Defendants: EngineOwning UG, Rick,
17 Löffler, Classen, Richts, Bugla, Schlender, Frisch, Kleeman, Huch. Dkt. 128-135,
18 137-141. Additionally, on February 2, Activision filed an *ex parte* application for
19 entry of default against two additional Defendants: Szameitat and Wiest. Dkt. 136.
20 On February 6, 2024, the Court entered default against each of these 15
21 Defendants. Dkt. 142-149, 151-157. On March 21, 2024, the Court entered
22 default against Garnatz Enterprise Ltd. Dkt. 165.

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27 ³ In late 2022 and early 2023, Activision reached a settlement with Gayduchenko
28 and Manuel Santiago. Consent judgments and permanent injunctions were entered
against Santiago and Gayduchenko on February 15, 2023. Dkt. 86-87.

1 **IV. ACTIVISION IS ENTITLED TO DEFAULT JUDGMENT**

2 A court’s decision to grant default judgment is guided by the procedural
3 requirements set forth in Fed. R. Civ. P. 55(b)(2), Local Rule 55-1, and the
4 following factors (known as the *Eitel* factors):

- 5 (1) the possibility of prejudice to the plaintiff, (2) the merits of
6 plaintiff’s substantive claim, (3) the sufficiency of the complaint,
7 (4) the sum of money at stake in the action, (5) the possibility of a
8 dispute concerning material facts, (6) whether the default was due
9 to excusable neglect, and (7) the strong policy underlying the
Federal Rules of Civil Procedure favoring decisions on the merits.

10 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). While the decision to
11 grant a default judgment is left to the sound discretion of the Court, “default
12 judgments are more often granted than denied.” *PepsiCo v. Triunfo-Mex, Inc.*, 189
13 F.R.D. 431, 432 (C.D. Cal. 1999).

14 In determining whether to grant a default judgment, “[t]he general rule of
15 law is that upon default the factual allegations of the complaint, except those
16 relating to the amount of damages, will be taken as true.” *TeleVideo Sys., Inc. v.*
17 *Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987); *see also Visoneering Constr. v.*
18 *U.S. Fidelity & Guar.*, 661 F.2d 119, 124 (9th Cir. 1981) (“Well pleaded
19 allegations of the petition . . . are taken as admitted on a default judgment.”).

20 While a plaintiff must “prove up” damages when seeking a default judgment, this
21 evidentiary burden is “relatively lenient.” *Elektra Entm’t Grp., Inc. v. Bryant*,
22 2004 WL 783123, at *2 (C.D. Cal. Feb. 13, 2004).

23 “[T]he Court must draw all reasonable inferences in Plaintiff’s favor on
24 account of defendant’s failure to participate in the litigation process.” *Blizzard*
25 *Entm’t, Inc. v. Reeves*, 2010 WL 4054095, at *3 (C.D. Cal. Aug. 10, 2010); *see*
26 *also Henry v. Sneiders*, 490 F.2d 315, 317 (9th Cir. 1974) (noting on motion for
27 default judgment that “[a]ny insufficiency of the plaintiff’s evidence was a direct
28 result of appellant’s refusal to comply with a legitimate request for discovery”).

1 Activision has satisfied the procedural requirements of the Federal and Local
2 Rules, and the *Eitel* factors weigh in favor of entering default judgment against 17
3 Defendants: EngineOwning UG, Garnatz Enterprise Ltd, Rick, Loffler, Classen,
4 Richts, Bugla, Schlender, Frisch, Kleeman, Huch, Szameitat, and Wiest.
5 Activision’s requested relief is both reasonable and supported.

6 **A. Possibility of Prejudice.**

7 The first *Eitel* factor considers whether Activision will suffer prejudice if
8 default judgment is not entered. *Eitel*, 782 F.2d at 1471-72. Prejudice exists
9 where, absent entry of a default judgment, the plaintiff would lose the right to a
10 judicial resolution of its claims and would be without other recourse. *See Elektra*
11 *Entm’t Group Inc. v. Crawford*, 226 F.R.D. 388, 392 (C.D. Cal. 2005); *Bryant*,
12 2004 WL 783123, at *3. Without a default judgment, Activision will be deprived
13 of the right to judicial resolution of its claims, and Defendants will have profited
14 from their illegal conduct with impunity. *See, e.g., Bekins v. Zheleznyak*, 2018 WL
15 1174997, at *2 (C.D. Cal. Mar. 5, 2018) (finding possibility of prejudice where
16 defendants “have failed to defend this action” and as a result “plaintiffs would be
17 without other recourse for recovery unless default judgment is entered”).

18 **B. Merits of Claim and Sufficiency of Complaint.**

19 The second and third *Eitel* factors “require that a plaintiff state a claim on
20 which the [plaintiff] may recover.” *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp.
21 2d 1172, 1175 (C.D. Cal. 2002) (internal citations omitted). For purposes of
22 assessing these two factors, all allegations are deemed true. *Derek Andrew, Inc. v.*
23 *Poof Apparel Corp.*, 528 F.3d 696, 702 (9th Cir. 2008).

24 This Court already has found that it possesses personal jurisdiction over nine
25 Defendants when it *denied* their Motion to Dismiss in a detailed 55-page opinion.
26 Dkt. 100 & 101 (the “April 4 Decision”). In the April 4 Decision, the Court found
27 that Defendants “purposefully targeted an American company and American
28 consumers” (p. 19), that Defendants Schlender, Bugla, Huch, and Richts each were

1 individually involved in the EO Enterprise in material respects (pp. 25-26), and
2 that Defendants Frisch, Loffler, and Kleeman “play key roles in marketing and
3 promoting the Cheating Software and providing customers with technical and
4 payment support.” The Court also found that the claims were not “extraterritorial”
5 and did not violate notions of international comity. April 4 Decision at 37-44.

6 As for the specific claims asserted against Defendants, Activision clearly has
7 stated a claim on the merits:

8 **1. Trafficking In Circumvention Devices.**

9 Title 17 U.S.C. Section 1201(a)(2) states:

10 “No person shall manufacture, import, offer to the public,
11 provide, or otherwise traffic in any technology, product,
12 service, device, component, or part thereof, that—(A) is
13 primarily designed or produced for the purpose of circum-
14 venting a technological measure that effectively controls
15 access to a work protected under this title; (B) has only
16 limited commercially significant purpose or use other than
17 to circumvent a technological measure that effectively
18 controls access to a work protected under this title; or (C) is
19 marketed by that person or another acting in concert with
20 that person with that person’s knowledge for use in
21 circumventing a technological measure that effectively
22 controls access to a work protected under this title.”

19 Activision plausibly alleged each of the elements of an anti-trafficking
20 claim. Namely:

- 21 ● The COD Games, including but not limited to their source code and
22 audiovisual game play environments, are copyrighted works. FAC ¶199; *See MDY*
23 *Indus., LLC v. Blizzard Ent., Inc.*, 629 F.3d 928, 953 (9th Cir. 2010) (holding that
24 WoW's dynamic non-literal elements constitute a copyrighted work).
- 25 ● Activision incorporated into the COD Games technological measures
26 (namely, its proprietary anti-cheat technology) that effectively control access to the
27 COD Games, including access to the dynamic audiovisual elements that comprise
28 the game. *See MDY* at 958 (holding that developers of cheating software violated

1 DMCA § 1201(a)(2) with respect to WoW's dynamic non-literal elements, or real-
2 time game experience).

3 • The Cheats are comprised of and/or contain technologies, products,
4 services, devices, components, or parts thereof that primarily are designed or
5 produced for the purpose of circumventing technological measures that effectively
6 control access to the COD Games. Additionally, the Cheats (and the portions
7 thereof that circumvent Activision's anti-cheat technologies) have no
8 commercially significant purpose or use other than to circumvent a technological
9 measure that effectively controls access to a copyrighted work and that protects the
10 exclusive rights of a copyright owner.

11 Put simply, without the circumvention tools and technologies contained in
12 the Cheats, they cannot be used and will not operate. Defendants therefore market
13 their Cheats using terms such as "undetected" and "safe" – knowing that
14 consumers understand these terms to mean that the Cheats will not be detected by
15 Activision's anti-cheat measures. Defendants therefore are offering to the public,
16 providing, importing, or otherwise trafficking in technology that violates 17 U.S.C.
17 § 1201(a)(2). *See MDY* at 958 (holding that developers of cheating software
18 violated DMCA § 1201(a)(2) with respect to WoW's dynamic non-literal elements
19 (or real-time game experience)), *see also Blizzard Ent., Inc. v. Bossland GmbH*,
20 2017 WL 7806600 (C.D. Cal. Mar. 31, 2017) (awarding statutory damages in the
21 amount of \$8,563,600.00, attorneys' fees in the amount of \$174,872.00, and costs
22 in the amount of \$1,763.41.), *see Bungie, Inc. v. Bansal*, 2023 WL 3309496 (W.D.
23 Wash. May 8, 2023) (awarding \$6,700,973.34 and a permanent injunction).

24 **2. Violation of the Computer Fraud and Abuse Act, 18 U.S.C.**
25 **§§ 1030 et seq.**

26 Activision also has stated a claim under the Computer Fraud and Abuse Act
27 ("CFAA"). The COD Games are played using Activision's COD Game Servers
28 (the "Game Servers"), which store and transmit information necessary for COD

1 multiplayer games to take place. The Game Servers are protected computers under
2 18 U.S.C. § 1030(e)(2). FAC ¶122.

3 When a user is found to have engaged in improper use of cheating software
4 (such as the Cheats), Activision ensures that the user cannot subsequently access
5 its remote servers by collecting a cheating player’s “Hardware ID” (“HWID”) and
6 banning anyone using that HWID from accessing the servers. However,
7 Defendants “knowingly aided and abetted, conspired with, or otherwise caused”
8 players of the COD Games who lost access to Activision’s COD servers to
9 intentionally access those servers without authorization. *Id.* ¶123.

10 Alleging the use of a Spoofer to overcome a loss of authorized access and
11 gain access to a restricted server is sufficient to make out a CFAA violation. *See,*
12 *e.g., Niantic, Inc. v. Global++*, 2019 WL 8333451, at *6-7 (N.D. Cal. Sept. 26,
13 2019). Moreover, it is settled law that the CFAA encompasses acts of aiding and
14 abetting unauthorized access to a protected computer server. *United States v.*
15 *Nosal*, 844 F.3d 1024, 1040-41 (9th Cir. 2016); *COR Sec. Holdings Inc v. Banc of*
16 *California, N.A*, 2018 WL 4860032, at *7–8 (C.D. Cal. Feb. 12, 2018) (“[T]he
17 Ninth Circuit implicitly recognized aiding and abetting liability under the CFAA,
18 at least for criminal violations.”).

19 **3. Intentional Interference With Contractual Relations.**

20 “In California, the elements . . . for intentional interference with contractual
21 relations are (1) a valid contract between plaintiff and a third party; (2) defendant’s
22 knowledge of this contract; (3) defendant’s intentional acts designed to induce a
23 breach or disruption of the contractual relationship; (4) actual breach or disruption
24 of the contractual relationship; and (5) resulting damage.” *Blizzard Entm’t Inc. v.*
25 *Ceiling Fan Software LLC*, 28 F. Supp. 3d 1006, 1015 (C.D. Cal. 2013) (internal
26 quotation marks and citation omitted).

27 In order to install and play the COD Games, licensed users in the United
28 States first must assent to Activision’s TOU. Activision’s contracts with its users

1 for online services are enforceable contracts under California law. *Ceiling Fan*, 28
2 F. Supp. 3d at 1015 (granting summary judgment against cheat seller for inducing
3 breach of Blizzard's EULA); *see also Adobe Sys. Inc. v. One Stop Micro, Inc.*, 84
4 F. Supp. 2d 1086, 1089-93 (N.D. Cal. 2000) (end user license agreement valid
5 under California law). Each time a customer uses the Cheats, he or she breaches
6 Activision's TOU.

7 Defendants are aware that the TOU prohibits players from using the Cheats
8 and that players are at risk of being banned from the COD Games should they be
9 caught using the Cheats. Nevertheless, Defendants intentionally encourage and
10 induce users of the COD Games to purchase and use the Cheats, knowing that the
11 use of these products by their customers is a breach of these customers' contracts
12 with Activision. By inducing Activision's users to breach their contracts with
13 Activision, Defendants have intentionally interfered, and continue to interfere, with
14 the contracts between Activision and its users. FAC ¶126.

15 **4. Participation in a RICO Enterprise, 18 U.S.C. § 1962(c)**

16 To state a civil claim for a RICO violation under 18 U.S.C. § 1962(c),
17 Activision must plead and prove the following elements: "(1) conduct (2) of an
18 enterprise (3) through a pattern (4) of racketeering activity." *See* April 4 Decision
19 at 45, quoting *Rezner v. Bayerische Hypo-Und Vereinsbank AG*, 630 F.3d 866, 873
20 (9th Cir. 2010) (quoting *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496
21 (1985)).

22 In its Complaint, Activision alleged in detail how each Defendant, working
23 together and separately: 1) conducts or otherwise participates in a RICO
24 "enterprise," which is 2) engaged in a pattern of "racketeering activity" within the
25 meaning of 18 U.S.C. § 1962(c). FAC ¶¶144-151. Specifically, Activision alleged
26 that Defendants, working collectively, engaged in an enterprise that included sales
27 and marketing activity of "a network of sellers and resellers," FAC ¶154, as well as
28 creators and "moderators" of "groups" and "chat rooms" promoting the Cheating

1 Software and providing “customer” and “technical” support to purchasers, *id.*
2 ¶¶148, 153. As for racketeering activity, Activision alleged two RICO predicate
3 acts: violations of the Access Device Statute and Wire Fraud. Activision alleged
4 acts of fraud occurred when each of the Defendants “signed Activision’s TOU
5 under false pretenses in order to gain the benefit of the contract” at multiple times
6 over the past several years, as far back as 2012. FAC ¶161.

7 In its April 4 Order, this Court agreed that that the FAC adequately and
8 plausibly stated a claim against Defendants. *See* April 4 Decision at 49.

9 **C. Amount at Stake.**

10 Under the fourth *Eitel* factor, “the court must consider the amount of money
11 at stake in relation to the seriousness of [d]efendant’s conduct.” *PepsiCo, Inc.*, 238
12 F. Supp. 2d at 1176. Here, as further detailed below, Activision is seeking an
13 award of \$14,465,600. *See Craigslist, Inc. v. Kerbel*, 2012 WL 3166798 (N.D.
14 Cal. Aug. 2, 2012) (granting motion for default judgment in case involving
15 circumvention of security and copyright protection measures). Here, the amount of
16 money sufficient to remedy Activision’s injury would be extremely difficult to
17 quantify; but it is indisputable that such amount would be large. Therefore, the
18 money at stake by this Motion is nowhere near an amount that would compensate
19 Activision for the seriousness of Defendants’ conduct.

20 **D. Possibility of Dispute Regarding Material Facts.**

21 The fifth *Eitel* factor requires the Court to consider the possibility of a
22 dispute as to a material fact. *Eitel*, 782 F.2d at 1471-72. Initially, there is no
23 possible dispute concerning the material facts because the factual allegations of the
24 FAC are taken as true for purposes of this Motion. *Marcelos v. Dominguez*, 2009
25 WL 230033, at *4 (N.D. Cal. Jan. 29, 2009). In any event, the facts alleged in the
26 FAC are straightforward, and are not subject to reasonable dispute. *See JBR, Inc.*
27 *v. Cafe Don Paco, Inc.*, 2014 WL 5034640, at *14 (N.D. Cal. Aug. 25, 2014)
28 (“Because the defendants have not made an effort to challenge the complaint, there

1 is nothing to suggest that a dispute in the facts exists.”); *see also W. Reserve Life*
2 *Assur. Co. v. Canul*, 2012 WL 844589, at *3 (E.D. Cal. Mar. 12, 2012) (“[T]here is
3 little possibility of dispute concerning material facts because (1) based on the entry
4 of default, the Court accepts all allegations in Activision’s Complaint as true and
5 (2) Defendant has not made any effort to challenge the Complaint or otherwise
6 appear in this case.”). In fact, Activision proved many of these facts in their
7 Opposition to the Motion to Dismiss.

8 **E. Possibility of Excusable Neglect.**

9 Under the sixth *Eitel* factor, the Court considers whether Defendants’ default
10 resulted from excusable neglect. *Eitel*, 782 F.2d at 1471-72. As discussed above,
11 Defendants have been properly served, and many of them appeared in this action
12 through counsel. Dkt. 47-48, 51-63, 102-104. Certainly, all of these defendants are
13 well aware of this lawsuit. Activision also is providing all Defendants with a copy
14 of this Motion either through their counsel or at the addresses used for service of
15 process.

16 “Generally, courts will not find a defendant’s failure to participate excusable
17 where the defendant has been properly served and has notice of the entry of default
18 and the motion for default judgment.” *JBR, Inc.*, 2014 WL 5034640, at *14. The
19 failure to appear is particularly inexcusable here. Many of the Defendants even
20 retained counsel and filed a motion – and some engaged in settlement negotiations
21 *See, e.g.*, Dkt. 117, 119. Defendants’ failure to plead or otherwise defend was not
22 inadvertent – it was a deliberate choice born out of a desire to avoid discovery and
23 force Activision to incur the significant cost of locating their assets and enforcing a
24 judgment.

25 **F. Policy for Deciding Case on the Merits.**

26 The final *Eitel* factor considers the preference for deciding cases on the
27 merits. *Eitel*, 782 F.2d at 1471-72. “However, this factor, standing alone, cannot
28 suffice to prevent entry of default judgment for otherwise default judgment could

1 never be entered.” *Warner Bros. Ent. Inc. v. Caridi*, 346 F. Supp. 2d 1068, 1073
2 (C.D. Cal. 2004). Indeed, Rule 55 specifically authorizes the termination of a case
3 before a hearing on the merits in these precise circumstances. *See Bryant*, 2004
4 WL 783123, at *5. As a result, “the preference to decide cases on the merits does
5 not preclude a court from granting default judgment.” *PepsiCo, Inc.*, 238 F. Supp.
6 2d at 1177 (citation omitted). Here, the only reason this lawsuit cannot proceed to
7 the merits is because Defendants have failed to defend it.

8 In sum, the *Eitel* factors each weigh in Activision’s favor, and the Court
9 should grant this Motion and enter default judgment against Defendants.

10

11 **V. ACTIVISION IS ENTITLED TO A PERMANENT INJUNCTION**
12 **AND MONETARY DAMAGES IN THE AMOUNT OF \$14,465,600**

13 **A. Activision is Entitled to the Requested Injunction.**

14 DMCA section 1203(b)(1) and California Business and Professions Code
15 section 17200 provide the authority for entry of an injunction that bars future
16 violations of Activision’s rights. 17 U.S.C. § 1203(b)(1); Cal. Bus. & Prof. Code
17 § 17203. To obtain permanent injunctive relief, a plaintiff must show “(1) that it
18 has suffered an irreparable injury; (2) that remedies available at law, such as
19 monetary damages, are inadequate to compensate for that injury; (3) that,
20 considering the balance of hardships between the plaintiff and defendant, a remedy
21 in equity is warranted; and (4) that the public interest would not be disserved by a
22 permanent injunction.” *Kerbel*, 2012 WL 3166798, at *15.

23 Irreparable injury plainly is present here. The Cheats have harmed
24 Activision’s reputation and goodwill with its business partners and players. *See,*
25 *e.g., Gucci Am., Inc. v. Huoqing*, 2011 WL 31191, at *12-15 (N.D. Cal. Jan. 3,
26 2011) (irreparable injury would be suffered to reputation and goodwill if injunctive
27 relief not granted against online infringer and counterfeiter); *see also* Activision
28 Decl. at ¶¶14-17 (Cheating harms the gameplay and reputation of Activision

1 games). Monetary damages cannot fully or adequately compensate for this
2 irreparable harm, and the only appropriate remedy is to enjoin the further
3 distribution and sale of the Cheats. Additionally, it is clear that Defendants have
4 no intention of halting their activities (in fact, they have been as active as ever).
5 Thus, without an injunction Defendants will continue to distribute the Cheats,
6 compounding the ongoing harm to Activision.

7 The balance of hardships also clearly falls in Activision’s favor.
8 Defendants’ conduct. Activision has been irreparably harmed by Defendants
9 conduct, and that harm continues to compound so long as the Cheats are available.
10 *Id.* Given the nature of the harm to Activision, Defendants have no equity on their
11 side and the public interest in enforcing the DMCA is unmistakably on the side of
12 Activision.

13 The injunctive relief Activision requests is narrowly tailored to only bar
14 Defendants from engaging in the very activities that led to this litigation. *Chanel,*
15 *Inc. v. Lin*, 2010 WL 2557503, at *12 (N.D. Cal. May 7, 2010) (“[A]n injunction
16 must be narrowly tailored to remedy only the specific harms shown by Plaintiff
17 rather than to enjoin all possible breaches of the law.”) Several courts in this
18 District (including this Court) have entered injunctions similar to the one requested
19 here. In fact, this Court has already issued stipulated injunctions against two
20 defendants in this case that are comparable to the injunction sought here. Dkt. 86,
21 87. Accordingly, Activision is entitled to entry of the Proposed Injunction
22 submitted herewith. *See, e.g., Facebook, Inc. v. Grunin*, 77 F. Supp. 3d 965, 973
23 (N.D. Cal. 2015); *Bossland GmbH*, 2017 WL 7806600 at * 8-9.

24 **B. Activision Should Be Awarded \$14,465,600 In Damages.**

25 Activision has been, and continues to be, damaged as a direct and proximate
26 result of Defendants’ conduct. Activision has reason to believe that thousands (or
27 hundreds of thousands) of non-cheating U.S. players have stopped playing (and
28 making in-game purchases) because of the presence of cheating players.

1 Activision also has incurred millions or tens of millions of dollars in expenses in
2 connection with developing (and updating) its anti-cheat technology, policing its
3 game servers for evidence of cheating, investigating reports of cheating activity,
4 and addressing customer complaints and retention issues due to the prevalence of
5 cheating in the COD Games. It also has suffered reputational damage, which is
6 extremely difficult to quantify.

7 Because of the difficulty in assessing the precise amount of actual damages
8 suffered by Activision, Activision has elected to seek statutory damages for
9 Defendants' violations of the DMCA, pursuant to 17 U.S.C. § 1203(c). However,
10 as set forth below, Activision **does not seek a statutory damages windfall or**
11 **punitive award**. Rather, it seeks statutory damages in an amount that roughly
12 approximates (and almost certainly understates) the **profits** that Defendants
13 received from **U.S. users only** in connection with sales or licenses for the Cheating
14 Software, using a very conservative calculation. Courts routinely award statutory
15 damages as part of default judgments in cases involving violations of the DMCA.
16 *See, e.g., Blizzard Entm't, Inc. v. Reeves*, 2010 WL 4054095, at *3 (C.D. Cal.
17 Aug. 10, 2010), at *2-3; *Craigslist, Inc. v. Naturemarket, Inc.*, 694 F. Supp. 2d
18 1039, 1063-64 (N.D. Cal. 2010); *see also Ortiz-Gonzalez v. Fonovisa*, 277 F.3d 59,
19 63-64 (1st Cir. 2002).

20 Courts in the Ninth Circuit have held that awards for statutory damages for
21 violations of the DMCA may be based on the **number of end-user distributions** of
22 each device or product. *See Craigslist, Inc.*, 694 F. Supp. 2d at 1063-64 (basing
23 award on number of devices distributed); *Sony Computer Entm't Am., Inc. v.*
24 *Divineo, Inc.*, 457 F. Supp. 2d 957, 966-67 (N.D. Cal. 2006) (same); *Sony*
25 *Computer Entm't Am., Inc. v. Filipiak*, 406 F. Supp. 2d 1068, 1074 (N.D. Cal.
26 2005) (same). In other words, Activision is entitled to a separate award for each
27 download by an end-user of Defendants' Cheats in the United States. *Dish*
28 *Network, L.L.C. v. SatFTA*, 2011 WL 856268, at *7-8 (N.D. Cal. Mar. 9, 2011)

1 (awarding damages “on a per-download basis”); *Reeves*, 2010 WL 4054095, at *2-
2 3 (statutory damages based on number of people who obtained circumvention
3 device); *Proxima Beta PTE. Ltd. v. Martin*, 2022 WL 17886011, at *3 (C.D. Cal.
4 Nov. 14, 2022) (awarding \$9,525,000 damages based on approximations of the
5 number of downloads of the cheating software).

6 Because Defendants have refused to provide documents concerning their
7 sales of Cheats, Activision must rely upon the number of players using the Cheats
8 to approximate the total number of U.S. Cheats downloads as accurately and
9 conservatively as possible. To obtain this number, Activision has used the
10 following methodology: To fight against cheating in the COD Games, Activision
11 developed an anti-cheat initiative to identify players using Cheats. When a user is
12 caught cheating, the user’s account may be “banned” from playing the game.
13 Based on Activision’s investigation, no fewer than 150,825 accounts have been
14 disabled for using Cheats. Activision’s team determined that approximately 47.9%
15 of these accounts belong to U.S. users. *See* Activision Decl. ¶¶12-13. Thus,
16 Activision conservatively estimates that 72,328 of these players using the Cheats
17 were in the U.S. *Id.* ¶12.

18 Activision believes that the amount sought is consistent with (and almost
19 certainly is less than) Defendants’ actual revenue. According to the Website, the
20 “most popular” subscription plan is a monthly subscription at 19.95 Euros per
21 month.⁴ If, on average, each of the U.S. users opted for this subscription plan,
22 Defendants would have received approximately \$240 per year from each of its
23 U.S. users. Across 72,328 U.S. users, Defendants’ revenue would be no less than
24 \$17,358,720. However, to be conservative, Activision is prepared to assume that
25 each user spent no more than \$200 total—an amount equal to the *minimum*
26 statutory damages under the DMCA. 17 U.S.C. § 1203(c)(3)(A). Thus, Activision
27 seeks a total of **\$14,465,600** (72,328 multiplied by \$200).

28 ⁴ *See* <https://www.engineowning.to/shop/purchase/30>.

1 The foregoing statutory damages approach has been accepted by other courts
2 in this district as a fair and reasonable approximation of similar and difficult-to-
3 ascertain actual harm caused by hackers. *See Reeves*, 2010 WL 4054095, at *2-3;
4 *Bossland*, 2017 WL 7806600, at *9. As the court explained, in a very similar case
5 brought by Activision’s affiliate Blizzard Entertainment, Inc.:

6 [I]t is reasonable to infer that defendant has provided each of
7 its users with anti-circumvention products or services on at
8 least one occasion.... Accordingly, the Court concludes that
9 each of the 427,393 community members downloaded,
10 accessed, or otherwise used anti-circumvention software,
11 services, or products.... Accordingly, the Court concludes
12 that the appropriate amount of statutory damages is
13 \$85,478,600 (that is, 427,393 users multiplied by the
14 statutory minimum of \$200 per “act of circumvention”
15 and/or “performance of service”).

16 *Reeves*, 2010 WL 4054095, at *3 (internal citations omitted). In *Bossland*, the
17 Court likewise found that an award of statutory damages in the amount of \$200
18 times the number of estimated users of a circumvention device “is reasonable in
19 light of the fact that Blizzard seeks the low end amount of damages and provided a
20 reasonable download estimate.” *Bossland GmbH*, 2017 WL 7806600 at *9.

21 While Activision would surely be entitled to seek a larger amount given
22 Defendants’ clearly willful conduct, Activision seeks only compensation for the
23 harm to its business it has suffered; ***it does not seek any heightened punitive***
24 ***amount.*** Rather, because of the difficulty of proving the precise amount of actual
25 damages, such damages are being sought as a conservative approximation of actual
26 damages or profits, *see* 17 U.S.C. § 1203(c)(2). Such approximation is particularly
27 appropriate where, as here, the surreptitious nature of the Defendants’ business and
28 refusal to participate in a case renders difficult a more precise determination of
damages or profits.

1 **C. Activision is Entitled to \$292,912 In Attorneys’ Fees.**

2 Activision also is entitled to an award of attorneys’ fees in the amount of no
3 less than \$292,912. *See* L.R. 55-3 (for a default judgment award in excess of
4 \$100,000, attorneys’ fees are \$5,600 plus 2% of the amount over \$100,000). This
5 amount was calculated based on the sum of 2% of \$14,365,600 (\$287,312), plus
6 \$5,600—a total of \$292,912.

7
8 **VI. ACTIVISION ALSO SHOULD BE AWARDED OWNERSHIP OF**
9 **THE ENGINEOWNING.TO DOMAIN NAME**

10 Defendants used, and throughout this litigation have continued to use, the
11 website located at the domain name www.EngineOwning.to (the “Domain Name”)
12 to market, distribute, update, and sell the Cheats. The Domain Name is registered
13 with Tonic Domains Corporation, which is a California corporation with a
14 principal address in Tiburon, California. Mayer MDJ Decl., ¶¶8-11 & Exs. 4-6. In
15 light of Defendants’ continuing unlawful conduct, transfer of the Domain Name is
16 necessary to stop them from continuing to distribute the Cheats via the Website.
17 Such relief has been awarded to plaintiffs in other cases involving intellectual
18 property infringement, and is appropriate here. *See 9349-9176 Quebec Inc. v.*
19 *manyvids.to*, 2019 WL 1095821, at *1-2, 4 (N.D. Cal. Jan. 14, 2019), *report and*
20 *recommendation adopted*, 2019 WL 1095795 (N.D. Cal. Feb. 12, 2019) (ordering
21 transfer of .to domain name); *China Cent. Television v. Create New Tech. (Hk)*
22 *Ltd.*, 2016 WL 6871281 (C.D. Cal. May 31, 2016); *DISH Network L.L.C. v. Dima*
23 *Furniture, Inc.*, 2019 WL 2498224 at *8-9 (D. Md. June 17, 2019); *DISH Network*
24 *L.L.C. v. Mo’ Ayad Al Zayed Trading Est.*, No. 4:17-cv-03909 (S.D. Tex. Aug 24,
25 2018); *DISH Network L.L.C. v. Shava IPTV Network LLC*, No. 1:15-cv-00706

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1 (E.D. Va. Feb 2, 2018); *Warner Bros. Entm't, Inc. v. Doe*, No. 14-cv-3492
2 (S.D.N.Y. Oct 3, 2014).⁵

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VII. CONCLUSION

For the foregoing reasons, Activision respectfully requests that the Court enter a default judgment in favor of Activision and against Defendants for a monetary award of \$14,465,600, an injunction in the form of the Proposed Injunction, and attorneys' fees in the amount of \$292,912.

DATED: April 12, 2024

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⁵ Unpublished orders referenced herein are attached as Exhibit 7 to the Mayer MDJ Declaration.

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for plaintiff Activision Publishing, Inc. (“Activision”) certifies that this brief contains 6,957 words, word limit of L.R. 11-6.1.

DATED: APRIL 12, 2024

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