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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 ACTIVISION PUBLISHING, INC., a  
12 Delaware corporation,  
13 Plaintiff,

14 v.

15 ENGINEOWNING UG, a German  
16 corporation, CMM HOLDINGS S.A., a  
17 German corporation, VALENTIN  
18 RICK, an individual, LEONARD  
19 BUGLA, an individual, LEON  
FRISCH, an individual, IGNACIO  
20 GAYDUCHENKO, an individual,  
MARC-ALEXANDER RICHTS, an  
individual, ALEXANDER KLEEMAN,  
an individual, and DOES 1-50,  
inclusive,

21 Defendants.  
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CASE NO. 2:22-cv-00051- MWF (JCx)  
[Assigned to Judge Michael Fitzgerald]

**EX PARTE APPLICATION OF  
PLAINTIFF ACTIVISION  
PUBLISHING, INC. FOR  
LIMITED EARLY DISCOVERY  
TO IDENTIFY DOE  
DEFENDANTS**

Complaint Filed: January 4, 2022

1 **NOTICE OF EX PARTE APPLICATION**

2 PLEASE TAKE NOTICE that Plaintiff Activision Publishing, Inc.  
3 (“Plaintiff” or “Activision”) hereby applies *ex parte* pursuant to Federal Rule of  
4 Civil Procedure 26(d) and Local Rule 7-10 for leave to serve fifteen (15)  
5 subpoenas necessary for Activision to learn the identities of unnamed or alias  
6 “Doe” Defendants in this action and to ensure that all necessary parties have been  
7 named in this lawsuit. Copies of the proposed subpoenas are attached as **Exhibit 1**  
8 to the Declaration of Marc E. Mayer, filed concurrently herewith.

9 The Defendants in this lawsuit operate, oversee, provide services for, or  
10 otherwise participate in an online business venture called “EngineOwning.” The  
11 EngineOwning venture is engaged in the development, sale, distribution,  
12 marketing, and exploitation of a portfolio of malicious cheats and hacks (the  
13 “Cheating Software”) for popular multiplayer games, especially Activision’s  
14 immensely popular *Call of Duty* series of games (collectively, the “Games”). The  
15 Cheating Software enables players to manipulate the Games to their personal  
16 advantage, such as by automatically aiming weapons, revealing locations of  
17 opponents, and allowing players to see information that otherwise would be  
18 obscured. The Cheating Software also includes features that are deliberately  
19 designed to thwart Activision’s cheat detection software and to overcome or nullify  
20 actions taken by Activision against cheaters, such as “hardware ID spoofers” that  
21 mask the identity of a user’s computer. Defendants’ sale and distribution of the  
22 Cheating Software has caused and is continuing to cause Activision to lose revenue  
23 and to suffer damage to its goodwill and reputation.

24 Activision’s investigation has revealed that in addition to the named  
25 Defendants in this case (six individuals and two entities), at least 15 other  
26 anonymous individuals are independently and directly engaged in distributing the  
27 Cheating Software, maintaining or administering the EngineOwning Website,

1 providing technical support or assistance, and/or assisting with the development of  
2 the Cheating Software. These individuals, who are named as “Doe” defendants  
3 (the “Doe Defendants”) engage in unlawful activities using online aliases.  
4 Activision thus has been unable to determine the true names and capacities of these  
5 individuals or entities prior to filing this lawsuit, and have reason to believe that  
6 these individuals will continue to conceal their identities. In order for Activision to  
7 obtain the relief it seeks, and to ensure that all appropriate parties are included as  
8 Defendants in this lawsuit, expedited third-party discovery is necessary to identify  
9 the Doe Defendants as well as any additional unnamed parties.

10 Good cause exists for the requested limited discovery. This case involves  
11 violations of Section 1201 of the Digital Millennium Copyright Act, claims for  
12 intentional interference with contract, and claims for unfair competition. These  
13 claims are supported by law and will easily be proven. Activision has conducted  
14 an extensive and diligent investigation and has concluded that (1) subpoenas are  
15 necessary to identify the Doe Defendants, and (2) the entities identified in the  
16 subpoenas attached hereto are in possession of information that will either disclose  
17 the Doe Defendants’ true identities, or lead to the discovery thereof. Accordingly,  
18 Activision requests limited early discovery to identify the Doe Defendants and  
19 ensure that all such persons or entities are named in the action.

20 This Application is made on an *ex parte* basis, because if Activision is  
21 required to bring a noticed motion, it is likely that it will not obtain the requested  
22 information for several months, at the earliest. Activision then would be required  
23 to amend its Complaint and locate and serve any new or additional parties. As a  
24 result, without the requested expedited relief, this case potentially would not be at  
25 issue for many months.

26 This Application is based upon this Notice, the attached Memorandum of  
27 Points and Authorities, the attached supporting Declaration of Marc E. Mayer, the  
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1 Complaint in this action, and such other and further oral or documentary evidence  
2 and legal memoranda as may be presented at or before any hearing on this  
3 Application.  
4

5 DATED: January 13, 2022

MARC E. MAYER  
MARK C. HUMPHREY  
GENEVIEVE L. JAVIDZAD  
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9 Marc E. Mayer (SBN 190969)  
10 Attorneys for Activision  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

The Defendants in this lawsuit have built a profitable business based on the development, promotion, and sale of software products and related services that enable members of the public to cheat in the immensely popular *Call of Duty* series of video games (the “Cheating Software”). Plaintiff Activision Publishing, Inc. (“Activision”) is the owner of copyright in the *Call of Duty* games and maintains the competitive online multiplayer aspects of the games.

Like many unlawful online business ventures, Defendants operate in the shadows, using anonymous online aliases, private chat channels, fictitious shell corporations, Internet proxy or masking services, and online financial services in order to hide their identities and minimize their online footprints. In the meantime, under the (mistaken) belief that they cannot be found, Defendants have expressed open disdain for Activision’s enforcement efforts, including by creating new cheating products for Activision’s just-released game *Call of Duty: Vanguard*, updating their existing products to thwart Activision’s cheat detection efforts, and mocking Activision’s counsel by creating fake online accounts in their name. Indeed, just days *after* this lawsuit was filed, Defendants updated and improved the Cheating Software, announcing this development on their Twitter feed:



Defendants’ conduct has caused, and is continuing to cause, significant monetary and reputational harm to Activision and its products. Accordingly, by



1 this motion, Activision requests leave of court to issue subpoenas designed to elicit  
2 the identities of certain specific individuals whose online aliases have been  
3 disclosed in the Complaint and/or who own and or operate the corporate defendant  
4 in this action, EngineOwning UG.

5 Good cause exists for this request. The Doe Defendants are specific  
6 individuals who are actively and deliberately engaged in conduct intended to harm  
7 Activision. For months, Activision has been working to obtain the names of the  
8 Doe Defendants. While Activision has been able to identify some of the  
9 participants in the EngineOwning venture, it has not been successful in locating the  
10 Doe Defendants. Thus, the only way to ensure that all necessary individuals are  
11 included in this lawsuit (and have been served) is to seek circumscribed early  
12 discovery. The discovery sought by this *Ex Parte* Application should disclose  
13 information that will enable Activision to uncover the real names and locations of  
14 the primary individuals responsible for the operation of the EngineOwning  
15 Website and the development, promotion, and sale of the Cheating Software.

16 There will be no prejudice to any of the Defendants (named or unnamed) if  
17 the requested discovery is permitted. To the contrary, Activision would be entitled  
18 to this discovery in the normal course. In addition, the subpoenaed party will give  
19 notice to any impacted party, who will have a full opportunity to object or move to  
20 quash, if he or she so elects. (And, of course, any Doe Defendant who is identified  
21 and added as a named defendant will have a full opportunity to present his or her  
22 defenses to the merits of the claims.) Should any additional discovery be required,  
23 Activision will seek leave of Court to serve that discovery.

## 24 **II. STATEMENT OF FACTS**

25 **Activision and Its Anti-Cheating Enforcement Efforts.** Activision is the  
26 owner and publisher of the *Call of Duty* series of video games (the “COD  
27 Games”). The COD Games are “first-person shooter” video games that allow  
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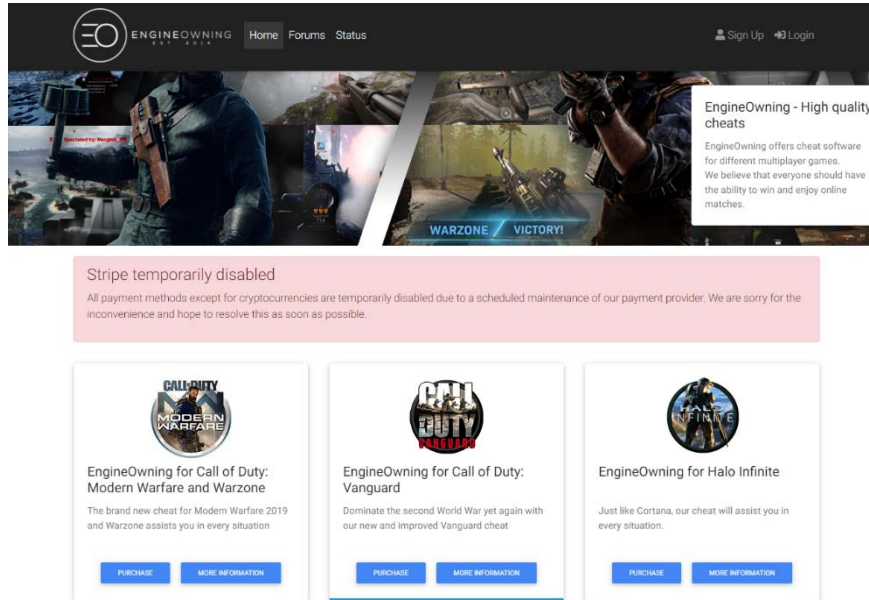
1 players to step into the shoes of elite soldiers and engage in infantry combat  
2 against other players around the world. The COD Games are highly competitive,  
3 and the games are played not just by casual players, but also by professional and  
4 semi-professional “esports” players (who compete for six and seven-figure prizes).  
5 Many players spend hundreds (or thousands) of hours developing their skills and  
6 competing to be at the top of online leaderboards, either for their personal  
7 satisfaction or in the hopes of being spotted by recruiters for professional esports  
8 franchises.

9 Activision implements both technical and contractual measures to prevent  
10 players from cheating or otherwise gaining unfair advantages in the game. These  
11 technical measures include anti-cheat software and other technology that is  
12 designed to detect the use of cheats and restrict access to players who use known  
13 software cheats. Additionally, all users must agree to a Terms of Use and End  
14 User License Agreement, which specifically prohibit players from cheating or  
15 using unauthorized software that gives them a competitive advantage.

16 **Defendants and EngineOwning.** Defendants are a group of individuals  
17 and shell corporations who either do business under the name “EngineOwning,” or  
18 work closely with the owners and operators of the EngineOwning venture.  
19 Collectively, Defendants are engaged in the development, sale, distribution,  
20 marketing, and exploitation of a portfolio of malicious cheats and hacks for  
21 popular online multiplayer games. The most popular and prominent of  
22 EngineOwning’s cheats are those it offers for use with the COD Games (the  
23 “Cheating Software”). The Cheating Software provides players with a variety of  
24 competitive advantages, such as seeing enemies through walls or other barriers,  
25 automatically aiming weapons, and (in EngineOwning’s words) “knowing where  
26 players, weapons and items are through the entire map.”

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1 The Cheating Software is sold primarily via a website located at  
2 [www.EngineOwning.to](http://www.EngineOwning.to) (the “EngineOwning Website”), which prominently  
3 features the Games on its home page, as illustrated below:



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15 Additionally, the Cheating Software is sold through resellers and distributors who  
16 are paid a portion of the sales of the Cheating Software. Broadly speaking,  
17 Defendants are software developers; website operators, “moderators,” and  
18 administrators; promoters and online “influencers”; resellers; and customer support  
19 representatives.

20 In order for the Cheating Software to operate, it circumvents or bypasses the  
21 technical anti-cheat and access control protections used by Activision to protect the  
22 integrity of the COD Games. Additionally, the use of the Cheating Software  
23 necessarily violates the Terms of Service and End-User License Agreement. In  
24 fact, the Cheating Software has no other purpose but to enable players to engage in  
25 conduct that is prohibited by Activision’s contracts with its players. Defendants  
26 are well aware that the use of cheats is prohibited by Activision – and that  
27 Activision spends an enormous amount of time, money, and energy policing its  
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1 game for cheaters – and thus it advertises the Cheating Software as “undetectable”  
2 by Activision. Defendants also provide “Hardware ID Spoofing,” which allows  
3 users to hide their computer’s digital “signature” and thus evade attempts by  
4 Activision to terminate the players’ accounts when they are caught cheating. As a  
5 result, when Defendants market and distribute the Cheating Software, they are  
6 knowingly engaging in acts of intentional interference with the contracts between  
7 Activision and its customers.

8 **Activision’s Pre-Lawsuit Investigation.** Starting in 2017, Activision, with  
9 the assistance of a highly experienced outside investigative service, conducted an  
10 extensive and diligent investigation into the owners and operators of  
11 EngineOwning. The investigation involved scouring public sources and databases,  
12 reviewing thousands of web pages and online message boards, and monitoring  
13 public chat rooms and video streams. As a result of this investigation, Activision  
14 was able to discover the identities of some of the operators of EngineOwning,  
15 including Defendants Valentin Rick (a/k/a Skyfail), Mark-Alexander Richts, and  
16 Ignacio Gayduchenko (a/k/a Kokole). In 2017 and 2018, Activision contacted  
17 each of these individuals in writing and demanded that they cease and desist from  
18 further selling the Cheating Software. They did not respond to these  
19 communications, even after four or five follow-up letters and emails. Declaration  
20 of Marc E. Mayer (“Mayer Decl.”), ¶ 5.

21 In the meantime, Defendants – now fully aware of Activision’s claims  
22 against them – expanded their operations. For example, Defendants created new  
23 versions of the Cheating Software, updated existing software, and expanded their  
24 reseller network and staff.

25 Activision’s investigators continued their investigation for the next two  
26 years, in an attempt to identify all of the participants in the EngineOwning business  
27 venture. During that investigation, Activision discovered the existence of many  
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1 more individuals who were directly involved in developing, supporting, or  
2 distributing the Cheating Software. Activision was able to identify some of these  
3 individuals, such as Defendants Leonard Bulga and Leon Frisch. However, despite  
4 its best efforts, Activision was not able to discover the real names of several other  
5 individuals, such as those using the aliases “Bonsai,” “Agriolo,” “Chronos,”  
6 “Deutschlander,” “Enceladus,” “Homie,” “Jeuwifghue,” “LogicX,” “LuoZheng,”  
7 “mortyy,” “NOL3X,” “SlapstiK,” “Croatle,” “Speedi13,” and “Requi.” These  
8 individuals have been sued as Does 1 through 15 in this lawsuit.

9       Activision has reason to believe that all of these Doe Defendants play direct,  
10 significant roles in connection with the EngineOwning enterprise and the sale of  
11 the Cheating Software. For example, “Croatle” or “Boss” (Doe 13) has a  
12 leadership role within the organization, through which he or she participates and/or  
13 assists in the development, maintenance, distribution and sale of the Cheating  
14 Software. “Speedi13” (Doe 14) and “Requi” (Doe 15) act or have acted as coders  
15 for the Cheating Software, and in that role have participated and/or assisted in the  
16 development, maintenance, distribution and sale of the Cheating Software.

17       **The Requested Discovery.** Activision’s investigation disclosed that  
18 Defendants (including the Doe Defendants) use a variety of online services to  
19 engage in their activities. These services include social media networks, payment  
20 processors, domain name registrars, and video game distribution platforms.  
21 Activision has reason to believe that each of these online services possesses critical  
22 information that will enable Activision to identify the Doe Defendants and other  
23 anonymous individuals who create, sell, market, and otherwise promote the  
24 Cheating Software. The requested third-party discovery falls into the following  
25 categories:

26       **1. Social Media Platforms.** Defendants use several social media  
27 networks and platforms to advertise the Cheating Software, communicate with  
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1 customers, announce updates and new products, and warn customers when the  
2 Cheating Software is detected by Activision. Most prominent of these is Discord,  
3 which is a communications platform focused on the video game community.  
4 Defendants operate several Discord “servers” and regularly communicate with  
5 each other on these servers. Defendants, including the Doe Defendants, also have  
6 Twitter, Instagram, Reddit, YouTube, and Trustpilot accounts that are used to  
7 promote the Cheating Software and otherwise communicate their activities to the  
8 public. These social media platforms require users to create an account by  
9 providing names and valid email addresses. They also keep records of IP  
10 addresses used to create these accounts. Accordingly, Defendants expect that  
11 subpoenas to these platforms will produce information that can be used to identify  
12 the Doe Defendants or other unnamed defendants that are involved with  
13 EngineOwning and the Cheating Software.

14 **2. Payment Processors.** Defendants use various online payment  
15 processors to sell the Cheating Software to the public. Additionally, Defendants  
16 may transfer money between and among themselves. For example, a reseller of the  
17 Cheating Software will remit a portion of the sale price to others within the  
18 organization. Among the payment processors used by Defendants are Stripe,  
19 PayPal, Amazon Pay, and Coinbase. Activision believes that these payment  
20 processors will possess critical information about the Doe Defendants, including  
21 email addresses, IP addresses, and other account information.

22 **3. Domain Name Services.** Defendants have registered domain names  
23 for the EngineOwning Website and other related websites through domain  
24 registrars located in the United States: namely, Tucows, Inc. and NameCheap, Inc.  
25 These entities are in possession of relevant information, such as names, addresses,  
26 email addresses, and IP addresses for the Doe Defendants. Additionally,

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1 Defendants use the services of Cloudflare to conceal the identity of the servers that  
2 they use to host the EngineOwning Website.

3 **4. Github Code Repositories.** Defendants operate or participate in  
4 repositories of computer code related to the Cheating Software. These code  
5 repositories are maintained by Github. Github allows members of the public to  
6 upload and share computer code and modify or improve code uploaded by others.  
7 Github users must register accounts with the service, and thus Github will be in  
8 possession of relevant identifying information.

9 **5. Steam.** Steam is a video game distribution platform that also includes  
10 certain community and social features, such as the ability to create social “groups,”  
11 lists of “friends,” and chat rooms. The Doe Defendants maintain Steam accounts.  
12 They also created accounts and groups intended to “troll” Activision and its  
13 counsel, such as the group titled “MSK Crime” and the account name “Marc E.  
14 Mayer.” Steam possesses information concerning these accounts, including  
15 verified email addresses and IP addresses.

16 Activision has attached all of its proposed subpoenas as **Exhibit 1** to this  
17 Application. These subpoenas have been prepared in good faith and for the  
18 legitimate purpose of identifying the Doe Defendants. They are narrow and  
19 limited only to information that is relevant to the identification of the Doe  
20 Defendants or other yet-unknown operators and sellers of the Cheating Software.  
21 Activision will provide the third parties with no less than 21 days to respond to the  
22 subpoenas.

23 **III. ACTIVISION SHOULD BE GRANTED LEAVE TO TAKE LIMITED**  
24 **THIRD PARTY DISCOVERY.**

25 District courts have broad discretion in scheduling discovery, including  
26 broad discretion to order expedited discovery prior to a Rule 26 conference. *Hallet*  
27 *v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002). The court may authorize expedited  
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1 discovery for “good cause.” *Semitoool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D.  
 2 273, 276 (N.D. Cal. 2002); *accord American LegalNet, Inc. v. Davis*, 673 F. Supp.  
 3 2d 1063, 1066 (C.D. Cal. 2009); *NobelBiz, Inc. v. Wesson*, 2014 WL 1588715, at  
 4 \*1 (S.D. Cal. Apr. 18, 2014); *Rose v. Abraham*, 2008 WL 3540542, at \*3 (E.D.  
 5 Cal. Aug. 13, 2008); *UMG Recordings, Inc. v. Doe*, 2008 WL 2949427, at \*3  
 6 (N.D. Cal. July 30, 2008) (collecting cases).

7 Good cause generally exists “where the need for expedited discovery, in  
 8 consideration of the administration of justice, outweighs the prejudice to the  
 9 responding party.” *Semitoool*, 208 F.R.D. at 276. In determining whether good  
 10 cause exists for pre-service discovery, courts consider whether: (1) the plaintiff can  
 11 identify the missing party with sufficient specificity such that the Court can  
 12 determine that defendant is a real person or entity who could be sued in federal  
 13 court; (2) the plaintiff has identified all previous steps taken to locate the elusive  
 14 defendant; (3) the plaintiff’s suit against defendant could withstand a motion to  
 15 dismiss; and (4) the plaintiff has demonstrated that there is a reasonable likelihood  
 16 of being able to identify the defendant through discovery such that service of  
 17 process would be possible. *Skout, Inc v. Jen Processing, Ltd*, 2015 WL 224930, at  
 18 \*2 (N.D. Cal. Jan. 15, 2015).

19 As set forth below, good cause exists for the requested limited expedited  
 20 discovery. In fact, Courts routinely allow early discovery to identify anonymous  
 21 or “Doe” defendants such as the Doe Defendants in this action. *See Gillespie v.*  
 22 *Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980) (“[W]here the identity of [the] alleged  
 23 defendant[] [is] not [] known prior to the filing of a complaint[,] the plaintiff  
 24 should be given an opportunity through discovery to identify the unknown  
 25 defendants, unless it is clear that discovery would not uncover the identities, or that  
 26 the complaint would be dismissed on other grounds[.]”); *Valentin v. Dinkins*, 121  
 27 F.3d 72, 75-76 (2d Cir. 1997); *Munz v. Parr*, 758 F.2d 1254, 1257 (8th Cir. 1985);



1 *Maclin v. Paulson*, 627 F.2d 83, 87 (7th Cir. 1980). Such discovery is especially  
2 appropriate where individuals “pseudonymously or anonymously” commit tortious  
3 acts over the Internet. *UMG Recordings, Inc. v. Doe*, 2008 WL 4104214, at \*4  
4 (N.D. Cal. Sept. 3, 2008) (“In Internet infringement cases, courts routinely find  
5 good cause exists to issue a Rule 45 subpoena to discover a Doe defendant’s  
6 identity, prior to a Rule 26(f) conference, where a plaintiff makes a prima facie  
7 showing of infringement, and there is no other way to identify the Doe defendant,  
8 and there is a risk an ISP will destroy its logs prior to the conference.”) (citation  
9 omitted). The Court likewise should allow such discovery here.

10 **A. The Requested Discovery Will Identify Specific Unnamed**  
11 **Individuals Who are Subject to Jurisdiction in This Court.**

12 Under the first factor, “the Court must examine whether the Plaintiff has  
13 identified the Defendants with sufficient specificity, demonstrating that each  
14 Defendant is a real person or entity who would be subjected to jurisdiction in this  
15 Court.” *Skout, Inc*, 2015 WL 224930, at \*2.

16 Activision’s Complaint includes specific allegations that each of the  
17 aforementioned fifteen Doe Defendants is a real individual who has undertaken a  
18 demonstrated effort to develop, maintain, and distribute the Cheating Software,  
19 assist customers in operating the Cheating Software, give advice to customers as to  
20 how to avoid being caught or detected by Activision for using the Cheating  
21 Software, communicate to users about updates and improvements to the Cheating  
22 Software, act as moderator and/or administrator of the EngineOwning Website,  
23 resell the Cheating Software (both through the EngineOwning Website and other  
24 means), or otherwise facilitate the distribution and use of the Cheating Software.  
25 Compl. ¶¶ 35-47. Activision has identified at least fifteen of the Doe Defendants’  
26 specific online aliases and personas. *Id.* at ¶¶ 11-20; *see also* Mayer Decl. ¶ 8.

27 The online activity engaged in by Defendants is in service of promoting  
28

1 widespread sales and use of the Cheating Software. *Id.* at ¶ 9. Therefore, the  
2 requested third party discovery is likely to uncover substantially more information  
3 about the Doe Defendants. The requested discovery will provide a tangible trail of  
4 evidence that will enable Activision to ascertain precisely who is behind these  
5 pseudonyms and where he, she, or they are located, so they may be identified, and  
6 if possible, named as defendants in this action.

7         Activision also has sufficiently alleged that the unnamed Doe Defendants  
8 are subject to the jurisdiction of this Court. *See* Compl. ¶¶ 5-8; *see also Skout, Inc.*,  
9 2015 WL 224930, at \*2 (finding that the allegations of the plaintiff’s complaint  
10 showed personal jurisdiction over unnamed defendants). Without discovery,  
11 Activision cannot conclusively determine where the Doe Defendants reside, but  
12 some or all of them may be located in the United States. Regardless, when foreign  
13 individuals advertise and distribute malicious software products in the United  
14 States, knowing that the software will be used to disrupt the business activities of a  
15 U.S. company and interfere with contracts between the company and its customers,  
16 they may be subject to personal jurisdiction in U.S. federal courts. *See, e.g.,*  
17 *Blizzard Ent., Inc. v. Bossland GmbH*, No. SACV161236DOCKESX, 2017 WL  
18 412262, at \*5 (C.D. Cal. Jan. 25, 2017) (personal jurisdiction over German  
19 company selling World of Warcraft cheating software to U.S. customers); *Blizzard*  
20 *Ent., Inc. v. Joyfun Inc Co., Ltd.*, No. SACV191582JVSDFMX, 2020 WL  
21 1972284, at \*6 (C.D. Cal. Feb. 7, 2020) (“The Court finds that Zroad HK  
22 purposefully availed itself of the privilege of conducting business in the United  
23 States by distributing the Infringing Game on platforms such as the Google Play  
24 store and Microsoft App store, selling virtual currency to American customers, and  
25 advertising the Infringing Game via platforms like Facebook.”); *Craigslist, Inc. v.*  
26 *Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1053 (N.D. Cal. 2010) (personal  
27 jurisdiction established in California where nonresident defendant: (i) maintained  
28

1 commercial website that was interactive and open to California residents; (ii)  
2 knowingly and intentionally accessed and used Plaintiff’s website and developed,  
3 marketed, and sold software for the sole purpose of enabling users to bypass the  
4 security measures of Plaintiff’s website, in violation of its TOUs; and (iii) directly  
5 targeted California and knew that Plaintiff would suffer the brunt of its harm in  
6 California because Plaintiff was headquartered and maintained its website in  
7 California).

8 As Judge Carter explained in *Blizzard Ent., Inc. v. Bossland GmbH*, No.  
9 SACV161236DOCKESX, 2017 WL 412262, at \*5 (C.D. Cal. Jan. 25, 2017):

10 Bossland's software works exclusively in conjunction  
11 with Blizzard's American-designed and American-based  
12 game. Bossland's Bots have been widely circulated in the  
13 United States, as Bossland has sold almost 100,000  
14 licenses to persons in the United States to use its Bots in  
15 the United States. Bossland caused copyright injury in  
16 the United States, and the “brunt” of the harm felt by  
17 Blizzard was suffered in the United States. Further,  
Bossland generates between ten and fifteen percent of its  
companywide revenue from the sale of the Bots in the  
United States.

18 Here, not only do the facts closely parallel those in *Bossland*, but Defendants  
19 have further solidified their presence in California – and intent to attract, maintain,  
20 and service U.S. and California customers – by boasting on the EngineOwning  
21 Website that they maintain at least two servers in the United States, including one  
22 in California. Compl. ¶ 7(e). Activision’s investigation also has revealed that  
23 Defendants contract with and extensively use a variety of entities located in the  
24 United States and the State of California, including domain name registries,  
25 hosting or content delivery services, as well as credit card processors and merchant  
26 banks. Moreover, Defendants know that their conduct is causing harm to  
27 Activision in the United States (and the State of California in particular). They

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1 even created fake online profiles for the purpose of harassing Activision’s outside  
2 counsel.

3 The foregoing is more than sufficient to establish specific personal  
4 jurisdiction over Defendants, including under the “effects” test of *Calder v. Jones*,  
5 465 U.S. 783 (1984). *See Core-Vent Corp. v. Nobel Industries AB*, 11 F.3d 1482,  
6 1486 (9th Cir. 1993) (in tort cases, jurisdiction is appropriate where there are “(1)  
7 intentional actions (2) expressly aimed at the forum state (3) causing harm, the  
8 brunt of which is suffered – and which the defendant knows is likely to be suffered  
9 – in the forum state.”).

10 **B. Activision Has Taken Reasonable Steps to Locate and Identify the**  
11 **Unnamed Defendants.**

12 “Under the second factor, the party should identify all previous steps taken  
13 to locate the elusive defendant.” *Skout, Inc*, 2015 WL 224930, at \*3. As set forth  
14 above, Activision has conducted an extensive preliminary investigation, including  
15 with the assistance of outside private investigative firms. Mayer Decl. ¶ 4. This  
16 comprehensive investigation revealed that the Doe Defendants have taken steps to  
17 obscure their identities, including by operating exclusively using online aliases. *Id.*  
18 ¶¶ 5-8; *see also* Compl. ¶¶ 11-20. Activision currently cannot tie these online  
19 aliases to real names without additional information maintained by the above-  
20 described third parties. The primary avenue available to Activision in order to  
21 collect core evidence in this case before it is lost or destroyed is to seek early  
22 discovery to identify those unnamed individuals responsible for the EngineOwning  
23 Website and the Cheating Software.

24 **C. Activision’s Claims Will Withstand a Motion to Dismiss.**

25 Activision’s claims are straightforward, strong, supported by relevant case  
26 law, and would easily survive a Motion to Dismiss. The DMCA, Section 17  
27 U.S.C. § 1201(b)(1), provides that “[n]o person shall manufacture, import, offer to  
28

1 the public, provide, or otherwise traffic in any technology, product, service, device,  
2 component, or part thereof, that... circumvent[s] protection afforded by a  
3 technological measure that effectively protects a right of a copyright owner[.]”  
4 Activision has sufficiently pleaded all elements of this claim: Activision alleges  
5 that the Call of Duty Games (“COD Games”) are protected works, Compl. ¶ 49,  
6 and that Activision has long maintained numerous technological measures within  
7 the COD Games that effectively control access to them, “including access to the  
8 dynamic audiovisual elements that comprise the game.” *Id.* ¶ 50.

9 The Complaint explains, in detail, how the Cheating Software is designed,  
10 marketed, sold and used for the sole purpose of enabling players of the COD  
11 Games to circumvent the extensive technological measures put in place to deny  
12 access to individuals using such software. *Id.* ¶¶ 40-47. In particular, the  
13 Complaint includes specific factual allegations that describe Defendants’  
14 marketing of the Cheating Software to specifically circumvent anti-cheating  
15 technologies and violate the DMCA. *Id.* ¶ 41. Further, Activision alleges that the  
16 Cheating Software has “no commercially significant purpose or use other than to  
17 circumvent a technological measure that effectively controls a copyrighted work  
18 and that protects the exclusive rights of a copyright owner.” *Id.* ¶ 52. These  
19 allegations are more than sufficient to state a claim for violation of the anti-  
20 circumvention provisions of the DMCA, 17 U.S.C. § 1201(b)(1). *See Blizzard*  
21 *Ent., Inc. v. Bossland GmbH*, 2017 WL 7806600, at \*4 (C.D. Cal. Mar. 31, 2017)  
22 (allegations that defendants’ cheating software was “designed to circumvent  
23 technological measures that control access to a copyright-protected work” satisfied  
24 a similar, if not higher, standard to obtain a default judgment under Rule 54.).<sup>1</sup>

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27 <sup>1</sup> Similar to a Rule 12 inquiry, a Default Judgment inquiry requires the Court to evaluate the  
28 sufficiency of a Complaint’s well-pleaded allegations. *Id.* at \*2, *Geddes v. United Fin. Grp.*, 559  
F.2d 557, 560 (9th Cir. 1977).

1 Activision also is likely to prevail on its claim for Intentional Interference  
 2 with Contractual Relations. Activision’s Terms of Use (“TOU”) for online  
 3 services are enforceable contracts under California law. *Blizzard Entertainment*  
 4 *Inc. v. Ceiling Fan Software LLC*, 28 F. Supp. 3d 1006, 1015 (C.D. Cal. 2013)  
 5 (granting summary judgment against hack maker for inducing breach of Blizzard’s  
 6 EULA); *see also Adobe Sys. Inc. v. One Stop Micro, Inc.*, 84 F. Supp. 2d 1086,  
 7 1089-93 (N.D. Cal. 2000) (end user license agreement valid under California law);  
 8 *Davidson & Assocs., Inc. v. Internet Gateway*, 334 F. Supp. 2d 1164, 1170-71,  
 9 1177-78 (E.D. Mo. 2004), *aff’d*, 422 F.3d 630 (8th Cir. 2005).

10 As is alleged in the Complaint, the Cheating Software cannot be used  
 11 without violating Activision’s EULA, which expressly prohibits players from  
 12 using precisely the type of Cheating Software that Defendants market and sell.  
 13 Compl. ¶¶ 32-34. The Complaint alleges and explains that these agreements must  
 14 be reviewed and assented to by each and every user in order to play the COD  
 15 Games. *See id.* ¶¶ 32, 34. In other words, the Complaint adequately alleges that  
 16 every user who uses the Cheating Software in the Games also necessarily has  
 17 assented to enforceable agreements that clearly prohibit the use of cheating  
 18 software. Furthermore, as is alleged in the Complaint, Defendants intentionally  
 19 induced other users to breach the TOU by selling the Cheating Software, despite  
 20 their knowledge that licensed users of the Games were required to assent to those  
 21 agreements. *Id.* ¶ 41.

22 Activision also has adequately alleged an Unfair Competition claim.  
 23 California Business & Professions Code § 17200 *et seq.* defines “unfair  
 24 competition” as an “unlawful, unfair or fraudulent business act or practice....”  
 25 Common law unfair competition has four elements: (1) a substantial investment of  
 26 “time, skill or money in developing its property”; (2) appropriation and use of the  
 27 property by another company at little or no cost; (3) the appropriation and use of  
 28

1 the “property was without the authorization or consent”; and (4) injury by the  
2 appropriation and use by the other company. *Coupons, Inc. v. Stottlemire*, 588 F.  
3 Supp. 2d 1069, 1075 (N.D. Cal. 2008). Activision has invested substantial time,  
4 skill and money in developing both the highly successful and lucrative Games, as  
5 well as maintaining anti-cheat technology. *See, e.g.*, Compl. ¶¶ 30-31. The  
6 Cheating Software uses and interacts with the Games in direct violation of  
7 Activision’s EULA in order to disrupt the player experience. And, as noted,  
8 Defendants’ for-profit activities harm Activision, while enriching Defendants. *Id.*  
9 at ¶ 35, 40-47.

10 **D. The Requested Discovery is Likely to Reveal the Identities of the**  
11 **Doe Defendants.**

12 “The final factor concerns whether the discovery sought will uncover the  
13 identities of the Doe Defendants.” *Skout, Inc*, 2015 WL 224930, at \*4. Here, the  
14 requested discovery will likely reveal the identities of the individuals or entities  
15 primarily responsible for the operation of the EngineOwning Website and the  
16 development, marketing, and sale of the Cheating Software, including the at least  
17 fifteen Doe Defendants, because the discovery will seek identifying information  
18 that the Doe Defendants were required to provide to the target Internet service  
19 providers in order to use their services, but instead did so under various aliases.

20 **E. The Need for the Requested Discovery Outweighs Any**  
21 **Conceivable Prejudice to Defendants.**

22 The proposed (limited) expedited discovery will serve the interests of  
23 justice, as it will ensure that all necessary defendants are included in this lawsuit as  
24 soon as possible. *See Knapp v. Americredit Fin. Servs., Inc.*, 204 F.R.D. 306,  
25 308-09 (S.D. W.Va. 2001) (granting expedited discovery to determine the identity  
26 of Doe defendants because it “further[s] the goal of assuring that the necessary  
27 parties are joined and participating in this action at the earliest possible date”);  
28

1 *Semitoool*, 208 F.R.D. at 277 (reasoning that expedited discovery is justified where  
2 it will “substantially contribute to moving th[e] case forward”); *see also* Mayer  
3 Decl. ¶ 15. Here, it is critical that Activision be able to expeditiously identify and  
4 include in this lawsuit all of the individuals responsible for the EngineOwning  
5 Website and the Cheating Software, including and especially the Doe Defendants  
6 in this lawsuit, for several reasons:

7 **First**, online data is often ephemeral in nature and is only retained for a  
8 limited period of time before it is destroyed in the ordinary course of business. *See*  
9 *UMG Recordings, Inc.*, 2008 WL 4104214, at \*5 (finding good cause for expedited  
10 discovery where there is a risk an online service provider might destroy logs and  
11 records of a defendant’s identifying information). The risk of losing critical data  
12 and evidence is particularly acute here, since this lawsuit has been publicized by  
13 the video game press and thus the Doe Defendants are aware that they have been  
14 sued. They may undertake efforts to make themselves even more difficult to find.  
15 For example, they may switch service providers or domain name providers. They  
16 may transfer assets to other corporations or other individuals. They may delete  
17 online profiles and accounts. They may use alternative payment processors or  
18 financial institutions, may move to untraceable currencies such as Bitcoin, or may  
19 change their aliases.

20 **Second**, if Activision is required to wait to take discovery until the named  
21 defendants appear in the action and participate in a Rule 26 conference (which they  
22 may not do), the Doe Defendants may not be named and included in the lawsuit for  
23 several months and, potentially, after the Court has already conducted a scheduling  
24 conference and set a trial date. It certainly is in the interests of justice for all  
25 necessary parties to be identified, and service commenced, immediately.

26 **Third**, some aspects of Activision’s requested relief, such as an order and  
27 injunction requiring Defendants to shut down the EngineOwning Website and the  
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1 Cheating Software, provide an accounting and deliver infringing materials, are  
2 only possible if aimed at an identified individual (or individuals).

3 In contrast to the foregoing, there will be no prejudice to Defendants (both  
4 named and unnamed) if the Application is granted. If the Court grants this  
5 Application, Activision will promptly serve the subpoenas and will provide a  
6 reasonable response date for the subpoena (no less than 21 days). The subpoenaed  
7 parties will be able to notify any affected persons that Activision is seeking their  
8 identities and all parties will have the opportunity to raise objections by filing a  
9 motion to quash in this Court before the return date of the subpoena. What’s more,  
10 the subpoenaed parties will be asked for information that they would have  
11 eventually provided in the normal course of discovery, so it imposes no extra  
12 burden for these same third parties to respond to discovery on an expedited basis.

13  
14 **IV. CONCLUSION**

15 For the foregoing reasons, Activision’s *Ex Parte* Application for leave to  
16 take expedited discovery should be granted.

17  
18 DATED: January 13, 2022

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