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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 TAKE-TWO INTERACTIVE SOFTWARE,
INC.,

13 Plaintiff,

14 v.

15 ANGELO PAPHENHOFF, a/k/a AAP, an
individual; THEO MORRA, an individual;
16 ERAY ORÇUNUS, an individual; ADRIAN
GRABER, an individual; DOE 1 a/k/a ASH R.
17 and ASH 735, an individual; and DOES 2
through 10, inclusive,
18

19 Defendants.

CASE NO. 3:21-CV-6831

**COMPLAINT FOR (1) COPYRIGHT
INFRINGEMENT AND (2) VIOLATION
OF 17 U.S.C. § 512(f)**

Demand for Jury Trial

20
21 Take-Two Interactive Software, Inc. (“Take-Two” or “Plaintiff”), by its attorneys Mitchell
22 Silberberg & Knupp LLP, complain and allege against Defendants Angelo Papenhoff, a/k/a aap;
23 Theo Morra; Eray Orçunus; Adrian Graber; Doe 1 a/k/a “Ash R.” and “Ash_735”; and Does 2
24 through 10 (collectively “Defendants”) as follows:
25

26 **PRELIMINARY STATEMENT**

27 1. Take-Two is among the world’s preeminent publishers of video games and
28 interactive entertainment products. Among the products published and sold by Take-Two is the

1 *Grand Theft Auto* (“GTA”) series of video games. GTA is one of the most successful and
2 critically acclaimed video game franchises of all time. Take-Two brings this lawsuit to halt the
3 activities of a group of individuals who have sought unlawfully to copy, adapt, and distribute to
4 the public infringing source code for two classic GTA titles: *Grand Theft Auto III* (“GTA3”) and
5 *Grand Theft Auto: Vice City* (“Vice City”) (collectively, the “Games”), without the authorization
6 or consent of Take-Two.

7 2. Defendants are part of a group of computer programmers and enthusiasts from
8 around the world that collectively have worked over the past few years (and in recent months in
9 particular) to create and distribute derivative source code for the Games via code “repositories” on
10 websites such as GitHub.com. Defendants’ source code projects, known as re3 and reVC, purport
11 to have created a set of software files (which Defendants claim they “reverse engineered” from the
12 original Game software) that allow members of the public to play the Games on various hardware
13 devices, but with so-called “enhancements” and “modifications” added by Defendants. Perhaps
14 most notably, Defendants claim that their derivative GTA source code enables players to install
15 and run the Games on multiple game platforms, including those on which the Games never have
16 been released, such as the PlayStation Vita and Nintendo Switch.

17 3. Defendants’ conduct is knowing, willful, and deliberate. Defendants are well
18 aware that they do not possess the right to copy, adapt, or distribute derivative GTA source code,
19 or the audiovisual elements of the Games, and that doing so constitutes copyright infringement.
20 Defendant Angelo Papenhoff even stated publicly that he was “very much worried” about Take-
21 Two’s discovery of the re3 and reVC projects. And, when Take-Two attempted to remove
22 Defendants’ infringing source code from the Internet, at least three Defendants (acting in at least
23 one instance with other Defendants’ participation and direction) knowingly filed bad faith counter
24 notifications that materially misrepresented the legality of their content, apparently claiming that
25 because they allegedly “reverse engineered” the Games’ source code, they somehow cannot be
26 liable for copyright infringement. Yet while making this claim, Defendants also have bragged that
27 their derivative versions of the Games are functionally and visually identical to the originals, and

1 have even suggested they be used for unauthorized “modding purposes.” As such, Defendants’
2 software plainly infringes Take-Two’s exclusive rights to copy, adapt, and distribute the Games.

3 4. Defendants’ conduct has caused, and is continuing to cause, irreparable harm to
4 Take-Two. By copying, adapting, and distributing derivative and original source code for the
5 Games, Defendants have made the Games fully and freely available to the public, have
6 appropriated a market that belongs to Take-Two (namely, the market for modified or handheld
7 versions of the Games), and enabled countless others to now create their own unauthorized,
8 derivative versions of the Games. Take-Two is entitled to damages, and injunctive and other
9 equitable relief against Defendants and those working in concert with them.

10
11 **THE PARTIES**

12 5. Take-Two is a corporation duly organized and existing under the laws of the State
13 of Delaware, with its principal place of business in New York, New York.

14 6. Take-Two is informed and believes, and on that basis alleges, that Defendant
15 Angelo Papenhoff, a/k/a “aap,” is an individual located in Germany. Papenhoff is a lead
16 developer on the software development projects known as “re3” (an acronym for “reverse-
17 engineered GTA3”) and “reVC” (an acronym for “reverse-engineered Vice City”).

18 7. Take-Two is informed and believes, and on that basis alleges, that Defendant Theo
19 Morra is an individual located in New Zealand. Morra created a “fork” of the re3 and reVC
20 repositories.

21 8. Take-Two is informed and believes, and on that basis alleges, that Defendant Eray
22 Orçunus is an individual located in Turkey. Orçunus is a lead developer on the re3 and reVC
23 projects.

24 9. Take-Two is informed and believes, and on that basis alleges, that Defendant
25 Adrian Graber is an individual located in Germany. Graber is the lead developer of derivative
26 software code that allows and enables the Games to be played on the Nintendo Switch console.

27 10. Take-Two is informed and believes, and on that basis alleges, that Defendant Doe
28 1, a/k/a “Ash R.” and “Ash_735” (hereinafter “Ash R.”), is an individual located in the United

1 Kingdom. Upon information and belief, Ash R. is a senior member of the re3 and reVC projects
2 and an active participant in the development, distribution, and promotion of the derivative source
3 code created by these projects.

4 11. The true names and capacities, whether individual, corporate, associate, or
5 otherwise, of the defendants sued herein as Does 2-10, inclusive, are unknown to Take-Two,
6 which has therefore sued said defendants by such fictitious names. Among these Doe defendants
7 are individuals using the screen names “Sergeanur,” “Nick007J,” and “Fire-Head.” Take-Two
8 will seek leave to amend this complaint to state the true names and capacities of all Doe
9 defendants once said defendants’ full identities and capacities are ascertained. Take-Two is
10 informed and believes, and on that basis alleges, that all defendants sued herein, including the Doe
11 defendants, directly participated in all or some of the acts set forth in this complaint, and therefore
12 are liable to Take-Two. (All of the aforementioned defendants collectively are referred to herein
13 as “Defendants.”)

14 12. Take-Two is informed and believes, and on that basis alleges, that at all times
15 mentioned in this complaint, each of the Defendants, with the exception of Defendant Morra, was
16 the agent of each of the others and, in doing the things alleged in this complaint, was acting within
17 the course and scope of such agency. To the extent it is determined that Defendant Morra equally
18 acted as an agent of the other Defendants, and/or that other Defendants equally acted on behalf of
19 Defendant Morra, Take-Two will seek leave to amend this complaint to so allege.

20
21 **JURISDICTION AND VENUE**

22 13. This is a civil action seeking damages, injunctive relief, and other equitable relief,
23 under the Copyright Act, 17 U.S.C. § 101 *et seq.*

24 14. This Court has subject matter jurisdiction over Take-Two’s claims for copyright
25 infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a).

26 15. Defendants Morra, Orçunus, and Graber have submitted to personal jurisdiction in
27 this Court because each of them submitted a counter notification pursuant to DMCA 17, U.S.C. §
28 512, which states “I consent to the jurisdiction of Federal District Court for the judicial district in

1 which my address is located (if in the United States, otherwise the Northern District of California
2 where GitHub is located), and I will accept service of process from the person who provided the
3 DMCA notification or an agent of such person.” Upon information and belief, Defendants
4 Papenhoff and Ash R. actively participated in, directed, and controlled the preparation and
5 submission of one or more of these counter notifications purporting to dispute Take-Two’s
6 justified takedown of the infringing software repositories. On information and belief, Papenhoff
7 and Ash R. also sought and received legal assistance in connection with one or more of the counter
8 notifications from individuals residing in this District and/or in the United States. Additionally,
9 Take-Two is informed and believes, and on that basis alleges, that all of the Defendants are subject
10 to personal jurisdiction in this Court because, among other reasons, Defendants (1) distributed
11 their infringing content to individuals located in this District or in the United States, (2) interacted
12 with and entered into contracts with service providers in this District, including platforms such as
13 GitHub, Twitter, Reddit, and YouTube, for purposes of furthering and promoting the infringing
14 conduct described herein, including by directly communicating with individuals residing in this
15 District and in the United States; and (3) engaged in conduct that they knew or should have known
16 would cause harm to Take-Two in this District.

17 16. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because this is a
18 judicial district in which a substantial part of the events giving rise to the claims occurred, and/or
19 in which Take-Two’s injury was suffered, and the venue where GitHub is located and to which
20 Defendants have consented to jurisdiction.

21 **FACTS APPLICABLE TO ALL CLAIMS**

22 **Take-Two And *Grand Theft Auto***

23 17. Take-Two is the publisher of the enormously popular *Grand Theft Auto* (“GTA”) series of video games. GTA, which was developed by Take-Two subsidiary Rockstar Games, is
24 one of the most critically acclaimed and commercially successful media franchises in the world.
25 Since the release of the original *Grand Theft Auto* in 1997, more than 200 million copies of GTA
26 games have been sold, and various GTA installments have won numerous awards for their game
27

1 design and storylines. Take-Two, with its partners and affiliates, produces, markets, advertises,
2 distributes, and otherwise exploits the GTA series in numerous countries throughout the world.

3 18. Among the games in the GTA series are the classic titles *Grand Theft Auto III*
4 (“GTA3”) and *Grand Theft Auto: Vice City* (“Vice City”) (collectively the “Games”). First
5 released in 2001 and 2002, respectively, GTA3 and Vice City were extraordinarily influential, and
6 are among the first games that provided players with an interactive “open-world,” where players
7 were free to traverse and explore a large-scale, three-dimensional virtual city. In both of the
8 Games, players are offered the opportunity to undertake a variety of activities or missions in fully
9 realized, living environments populated with pedestrians, police, buildings, shops, and a variety of
10 air, land, and sea vehicles. Both Games received significant critical acclaim, sold more than 30
11 million copies combined, and frequently are included in lists of the greatest video games of all
12 time. The Games, which were re-released in 2011 for updated and new platforms, continue to be
13 available for sale on Windows PCs, video game consoles such as the Sony PlayStation and
14 Microsoft Xbox, and certain mobile devices.

15 19. In order to create the Games’ living virtual worlds, the developers of GTA
16 painstakingly crafted the large-scale virtual cities depicted in the Games, including streets,
17 buildings, shops and business establishments, cars, street signs, parks, computer-controlled and
18 human-controlled characters, and hundreds of other objects, models, and game “assets.” The
19 underlying GTA software code interacts with all of these assets to generate and create the
20 interactive, dynamic world that players can explore and enjoy. GTA’s virtual world, and the code
21 that generates it, is the product of thousands of hours of work by programmers, artists, designers,
22 software engineers, and others.

23 20. Take-Two is the owner of valid registered copyrights in the Games, including PA
24 1-151-010 and PA 1-151-011. Take-Two’s exclusive rights in the Games include the rights to
25 reproduce, distribute, publicly perform, and adapt the Games, including by creating derivative
26 versions, and versions of the Games that run on new platforms or technologies (sometimes
27 referred to as “ports.”).

Defendants and the Infringing GTA Projects

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2 21. Take-Two is informed and believes, and on that basis alleges, that Defendants are
3 among the organizers of the projects known as “re3” and “reVC.” Additionally, Defendants are
4 the developers of the derivative software code created and distributed as part of the re3 and reVC
5 projects.

6 22. Defendants have stated that the purpose of re3 and reVC is to fully re-create the
7 underlying software code for the Games, but with certain purported “changes and improvements to
8 the original game,” such as compatibility with handheld consoles Nintendo Switch and
9 PlayStation Vita. Take-Two is informed and believes, and on that basis alleges, that in order to
10 effectuate this purpose, Defendants and those working in concert with them created a group of
11 publically available source code “repositories” on the website GitHub.com (a website that enables
12 members of the public to post, collaborate on, and distribute computer source code) (the “re3
13 GitHub Repositories”). Over time, Defendants supplemented, refined, and updated these source
14 code repositories until they had created and posted a full set of derivative software files for the
15 Games. From GitHub.com, the re3 GitHub repositories are currently being offered freely to the
16 public.

17 23. According to Defendants, the re3 GitHub Repositories purportedly contain “the
18 fully reversed source code for GTA III... and GTA [Vice City].” More specifically, via the re3
19 GitHub Repositories, Defendants are distributing to the public dozens, if not hundreds, of
20 derivative source code files for the Games. These source code files not only contain the derivative
21 software code that enables the Games to run on a player’s computer, but also contain Take-Two’s
22 original digital content such as text, character dialog, and certain game assets. Additionally, the
23 re3 GitHub Repositories include links to locations where members of the public can download a
24 complete, installable build of the re3 and reVC software.

25 24. Take-Two is informed and believes, and on that basis alleges, that by combining
26 the software contained in the re3 GitHub Repositories (or the compiled, installable build linked to
27 in the Repositories) with certain pre-existing assets and artwork from the Games, members of the
28 public will possess, and can play, complete versions of the Games. These derivative versions of

1 the Games are virtually identical to the original Games in function, appearance, and gameplay,
2 except for certain variations and modifications added by Defendants. Thus, a player in possession
3 of Defendants' derivative version of the Games can experience the exact same sights, sounds,
4 story, setting, dialog, and other creative content as they would experience in Take-Two's original
5 version of the Games.

6 25. Take-Two is further informed and believes, and on that basis alleges, that in
7 addition to creating, providing, and populating the re3 GitHub Repositories, Defendants, including
8 at minimum Defendants Papenhoff, Ash R., Orçunus, and Graber, maintain and foster a
9 community of developers and users of the derivative source code via social media websites and
10 apps, including a so-called "server" on the U.S.-based Discord group-chatting platform with
11 approximately 1,000 listed members. Via their dedicated Discord channel, Defendants offer
12 technical support, tips, encouragement, and other advice about the re3 and reVC projects,
13 coordinate their activities relating to the creating and promoting of these projects, and strategize
14 concerning the legal consequences of these activities, including the actions taken or expected to be
15 taken by Take-Two. Upon information and belief, Defendant Papenhoff is the official "server
16 owner" of this Discord channel and has personally made more than 5,000 postings, while
17 Defendants Ash R. and Orçunus have each contributed more than 2,000 postings.

18 26. Defendants have been public about their intent to create and distribute their own
19 pirated version of the Games, and have used social media and the press to promote the infringing
20 projects' visibility as well as to recruit users and developers. For example, on or about February
21 12, 2021, Defendant Ash R. posted links to the re3 and reVC GitHub repositories to his personal
22 account on the U.S.-based social media platform Twitter, announcing to his hundreds of followers
23 (including, on information and belief, ones he knew to reside in the United States) that both GTA3
24 and Vice City had "been FULLY reverse engineered!"¹ Soon after, Ash R. followed up his
25 announcements with another Twitter post offering a hyperlinked "invite" to the group's Discord
26 channel in order to solicit "help" with the projects, and communicated directly in response with

27 ¹ See https://twitter.com/Ash_735/status/1360664655904059398;
28 https://twitter.com/Ash_735/status/1360665006224912384.

1 one or more individuals who, upon information and belief, reside in the United States.² Upon
2 information and belief, including as a result of these activities, the re3 GitHub Repositories
3 received more than 3,800 “stars” from users as of February 18, 2021, including from users in the
4 United States.



28 ² See https://twitter.com/Ash_735/status/1361032557282828289.

1 27. Upon information and belief, Defendants Papenhoff, Ash R., and Orçunus
 2 coordinated such public statements to garner maximum attention for the re3 and reVC projects
 3 both globally and within the United States. For example, on or about February 13, 2021,
 4 Defendant Orçunus, introducing himself as a member of the “re3 team,” posted a thread to the
 5 U.S.-based social media platform Reddit, titled “GTA III and Vice City fully reverse engineered,
 6 with ports to many platforms,” that also linked to the re3 GitHub Repositories.³ Within days,
 7 Defendant Papenhoff, a/k/a “aap,” offered detailed statements to Eurogamer, a UK-based games
 8 journalism website, explaining exactly how he and other project members had reworked the GTA3
 9 and Vice City code to create games for the PC and Switch that look almost identical to the original
 10 games, with the admitted goal of providing an “open source GTA.” *See*
 11 [https://www.eurogamer.net/articles/2021-02-17-how-a-small-group-of-gta-fanatics-reverse-](https://www.eurogamer.net/articles/2021-02-17-how-a-small-group-of-gta-fanatics-reverse-engineered-gta-3-and-vice-city-without-so-far-getting-shut-down-by-take-two)
 12 [engineered-gta-3-and-vice-city-without-so-far-getting-shut-down-by-take-two.](https://www.eurogamer.net/articles/2021-02-17-how-a-small-group-of-gta-fanatics-reverse-engineered-gta-3-and-vice-city-without-so-far-getting-shut-down-by-take-two)

13 28. Papenhoff has admitted that the source code developed via the re3 and reVC
 14 projects is not original, but rather is (and was intended to be) a copy of the original. In fact,
 15 Defendants have bragged that their derivative source code was created by working backwards
 16 from Take-Two’s final “machine” code to re-create the human-readable code in which GTA was
 17 programmed:

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 19 “GTA 3 and Vice City were originally written in [programming
 20 language] C++ . . . The compiled executables that are shipped are in
 21 machine code. So the general task is to go from machine code back to
 22 C++. . . . To go back to C++ is by no means a simple 1:1 mapping, but
 over the last 10 or so years decompilers have appeared that help with this
 process. . . . So what we typically do is work with the output of the
 decompiler and massage it back into readable C++.” *Id.*

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 24 29. Similarly, Defendant Morra has admitted that the result of Defendants’ efforts is a
 25 pair of video games playable on PCs and the Nintendo Switch that look and function almost
 26 identically to the original Games, based on Defendants’ derivative code that is at minimum

27 ³ *See* [https://www.reddit.com/r/GTA/comments/lj4x1n/gta_iii_and_vice_city_fully_reverse_](https://www.reddit.com/r/GTA/comments/lj4x1n/gta_iii_and_vice_city_fully_reverse_engineered/)
 28 [engineered/](https://www.reddit.com/r/GTA/comments/lj4x1n/gta_iii_and_vice_city_fully_reverse_engineered/).

1 “functionally identical” to Take-Two’s copyrighted original code.⁴ In other words, Defendants
 2 slavishly recreated the original code to play the Games by “decompiling” the Games’ object (or
 3 “machine”) code and then working with that material to create a game experience that is identical
 4 to the original Games.

5 30. Defendants have also been public about adding new “features” to the Games that
 6 may be toggled on and off by users at will, including “new cheats” (which are strictly prohibited
 7 under Take-Two’s terms of service).⁵ In essence, Defendants’ derivative code creates
 8 unauthorized adaptations of the original Games while simultaneously allowing what Defendant
 9 Orçunus has bragged is “the accurate vanilla GTA III/VC experi[e]nce to the extent we’ve been
 10 able to achieve.” *Id.* Defendants (specifically Defendant Papenhoff) even outwardly promote the
 11 use of the re3 and reVC projects for further unauthorized “modding purposes,” encouraging users
 12 to further infringe the original Games and to violate their agreements with Take-Two that prohibit
 13 such activities.⁶

14 31. Defendants are well aware that their conduct is unlawful and infringes Take-Two’s
 15 copyrights. In fact, articles in the gaming press specifically have questioned why the re3 and
 16 reVC projects have not been shut down by Take-Two. Papenhoff admitted that he was “very
 17 much worried about that and tried to stay under the radar for as long as possible,” knowing that as
 18 soon as Take-Two learned of the project legal action would undoubtedly ensue.⁷

19 32. Papenhoff also has admitted to currently creating infringing derivative source code
 20 for Take-Two’s copyrighted video game GTA-Liberty City Stories dubbed “reLCS,” described as
 21 “currently work in progress,” and that he plans to do the same with GTA-Vice City Stories,
 22 described by him as “probably the holy grail of GTA reversing right now.”⁸

23 ⁴ See <https://torrentfreak.com/github-restores-reverse-engineered-gta-code-following-dmca-counter-notice-210507/>.

24 ⁵ See https://www.reddit.com/r/GTA/comments/lj4x1n/gta_iii_and_vice_city_fully_reverse_engineered/.

25 ⁶ See, e.g., <https://www.eurogamer.net/articles/2021-02-17-how-a-small-group-of-gta-fanatics-reverse-engineered-gta-3-and-vice-city-without-so-far-getting-shut-down-by-take-two>.

26 ⁷ See *id.*

27 ⁸ See *id.*; <https://github.com/GTAmocking/re3>. Take-Two owns valid registered copyrights in
 28 these two games as well, including PA 1-347-154 and PA 1-355-501.

1 33. On or about February 19, 2021, Take-Two submitted a “takedown” notice to
2 GitHub pursuant to the Digital Millennium Copyright Act, 17 U.S.C. § 512, that requested the
3 disabling and/or removal of the re3 GitHub Repositories. In at least three separate instances
4 between April and June of 2021, Defendants Orçunus, Morra, and Graber submitted sworn
5 counter notifications to GitHub claiming the takedown of the repositories was mistaken or
6 otherwise not legitimate. Take-Two is informed and believes, and on that basis alleges, that these
7 counter notifications were made in bad faith, and knowingly and deliberately misrepresented to
8 GitHub the contents of the re3 GitHub Repositories. After GitHub received the counter
9 notifications, the re3 GitHub Repositories were restored to public accessibility.

10 34. Upon information and belief, the counter notification signed by Defendant Orçunus
11 was in fact submitted on behalf of the entire re3 “team,” with active participation and direction
12 from Defendants Papenhoff and Ash R., who sought out legal advice from individuals in the
13 United States concerning a counter notification while strategizing on the group’s Discord channel.
14 On Discord, Defendants Papenhoff and Ash R. summarized and explained these legal discussions
15 and gave periodic updates on the group’s decision making. For example, Defendant Papenhoff
16 posted to Discord on June 2, 2021, “we will send a counter notice soon,” on June 6, 2021, that the
17 “counter has been sent,” and then on June 24, 2021, the day the re3 GitHub Repositories were
18 restored: “they either sue us or something or they don’t.” That same day, Defendant Ash R.
19 posted: “even now it’s still a case of WHEN and not IF Take-Two try and strike back.”

20 35. By their conduct, Defendants have caused and continue to cause irreparable harm
21 to Take-Two. Specifically, by creating and distributing re3 and reVC, Defendants have
22 appropriated for their own benefit Take-Two’s immensely valuable intellectual property.
23 Moreover, by creating derivative code and console “ports” of the Games, Defendants have sought
24 to exploit a potential market that belongs exclusively to Take-Two. And, because Defendants
25 have distributed their infringing source code for free over the Internet, it has been copied and re-
26 distributed countless times. Defendants’ conduct has resulted in damage to Take-Two in an
27 amount to be proven at trial. Unless and until Defendants are preliminarily or permanently
28 enjoined, Take-Two will continue to suffer severe harm.

CLAIM I

(Against All Defendants)

COPYRIGHT INFRINGEMENT

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4 36. Take-Two realleges and incorporates by reference the allegations in paragraphs 1
5 through 35, as if set forth fully herein.

6 37. Take-Two is the owner of valid and enforceable registered copyrights in the
7 Games. By virtue of such copyrights, Take-Two possesses the exclusive rights to reproduce,
8 publicly perform, distribute, publicly display, and adapt the Games, and Take-Two's other
9 copyrighted video games.

10 38. By copying, adapting, and distributing source code and other content related to the
11 Games, Defendants have deliberately and intentionally infringed Take-Two's protectable
12 expression. Take-Two has never authorized or given consent to Defendants to use their
13 copyrighted works in the manner complained of herein. Accordingly, Defendants have infringed
14 Take-Two's exclusive rights under copyright, pursuant to 17 U.S.C. § 501 *et seq.*

15 39. Defendants' acts of infringement are willful and malicious.

16 40. As a direct and proximate result of the infringements alleged herein, Take-Two is
17 entitled to damages in amounts to be proven at trial, which are not currently ascertainable.
18 Alternatively, Take-Two is entitled to maximum statutory damages of \$150,000 for each work
19 infringed, or in such other amount as may be proper under 17 U.S.C. § 504(c).

20 41. Take-Two further is entitled to its attorneys' fees and full costs pursuant to
21 17 U.S.C. § 505.

22 42. As a result of Defendants' acts and conduct, Take-Two has sustained and will
23 continue to sustain, substantial, immediate, and irreparable injury for which there is no adequate
24 remedy at law. Take-Two is informed and believes, and on that basis alleges, that unless enjoined
25 and restrained by this Court, Defendants will continue to infringe Take-Two's rights in the Games.
26 Take-Two is entitled to temporary, preliminary, and permanent injunctive relief to restrain and
27 enjoin Defendants' continuing infringing conduct.

CLAIM II

(Against Defendants Orçunus, Morra, and Graber)

VIOLATION OF U.S.C. § 512(f)

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4 43. Take-Two realleges and incorporates by reference the allegations in paragraphs 1
5 through 42, as if set forth fully herein.

6 44. On or about February 19, 2021, Take-Two submitted a statutorily compliant
7 DMCA notice and takedown to GitHub for, among others, the software repository located at
8 <https://github.com/GTAmodding/re3>. On or shortly after that date, GitHub removed and disabled
9 the materials available at that location from its site pursuant to 17 U.S.C. § 512. On or about June
10 6, 2021, Defendant Orçunus submitted to GitHub a Section 512(g)(2)(b) counter notice, stating,
11 under penalty of perjury, that the repository available at <https://github.com/GTAmodding/re3> was
12 removed and disabled by GitHub by mistake because “[t]he code in this repo was developed by
13 reverse engineering object code that is not contained in this repo. We believe that any code in this
14 repo that is similar to code or other content owned by Take-Two is either unprotected by copyright
15 or is permitted under fair use.” Upon information and belief, this counter notification referred to
16 “We” because it was submitted in consultation with, and under the direction of, other developers
17 and leaders on the re3 and reVC projects, including Defendants Papenhoff and Ash R., on whose
18 behalf it was in part submitted.

19 45. On or about February 19, 2021, Take-Two submitted a statutorily compliant
20 DMCA notice and takedown to GitHub for, among others, the software repository located at
21 <https://github.com/td512/re3>. On or shortly after that date, GitHub removed and disabled the
22 materials available at that location from its site pursuant to 17 U.S.C. § 512. On or about April 8,
23 2021, Defendant Morra sent to GitHub a Section 512(g)(2)(b) counter notice, stating, under
24 penalty of perjury, that the repository available at <https://github.com/td512/re3> was removed and
25 disabled by GitHub “as a result of a mistake or misidentification of the material to be removed or
26 disabled.”

27 46. On or about February 19, 2021, Take-Two submitted a statutorily compliant
28 DMCA notice and takedown to GitHub for, among others, the software repository located at

1 <https://github.com/AGraber/re3-nx>. On or shortly after that date, GitHub removed and disabled
2 the materials available at that location from its site pursuant to 17 U.S.C. § 512. On or about May
3 13, 2021, Defendant Graber sent to GitHub a Section 512(g)(2)(b) counter notice, stating, under
4 penalty of perjury, that the repository available at <https://github.com/AGraber/re3-nx> was removed
5 and disabled by GitHub “as a result of a mistake or misidentification of the material to be removed
6 or disabled.”

7 47. At the time Defendants Orçunus, Morra, and Graber sent their counter notices, they
8 materially misrepresented that their respective counter notices were “removed or disabled by
9 mistake or misidentification.” To the contrary, Defendant Orçunus’s, Morra’s, and Graber’s
10 counter notices were submitted to GitHub in bad faith, each defendant knowing that the
11 repositories listed in their respective counter notices contained derivative source code and original
12 source code that infringe Take-Two’s copyrights.

13 48. GitHub relied upon Defendants Orçunus’s, Morra’s, and Graber’s
14 misrepresentations contained in their respective counter notices, and based upon those
15 misrepresentations, GitHub reinstated on its website the repositories identified in the counter
16 notices. As a result of such reinstatement, Take-Two has suffered and continues to suffer
17 damages, including damages caused by the further distribution of the re3 and reVC code and the
18 costs and attorneys’ fees it incurred in addressing the false counter notices.

19 49. Accordingly, Defendant Orçunus, Morra, and Graber are liable for damages,
20 including costs and attorneys’ fees, incurred by Take-Two.

21 22 **PRAYER FOR RELIEF**

23 WHEREFORE, Take-Two prays that this Court enter judgment in its favor and award it
24 relief, including but not limited to an order:

25 1. Preliminarily and permanently enjoining Defendants, their officers, employees,
26 agents, subsidiaries, representatives, distributors, dealers, members, affiliates, and all persons or
27 entities acting in concert or participation with Defendants from manufacturing, producing,
28 distributing, adapting, displaying, advertising, promoting, posting on the Internet, maintaining on

1 the Internet, offering for sale or selling, or performing any materials that are substantially similar
2 to the Games and to GTA-Liberty City Stories and GTA-Vice City Stories, and removing all
3 infringing source code and games from the internet.

4 2. Requiring Defendants to deliver to Take-Two all copies of materials that infringe
5 or violate any of Take-Two’s rights described herein, including without limitation all copies of the
6 modified Games and the derivative source code for the Games, and any modified versions or
7 derivative source code for GTA-Liberty City Stories and GTA-Vice City Stories.

8 3. Requiring Defendants to provide Take-Two with an accounting of any and all sales
9 or downloads of products or services that infringe or violate any of Take-Two’s rights, as
10 described herein.

11 4. Awarding Take-Two actual or statutory damages for copyright infringement and
12 under 17 U.S.C. §§ 504 & 512, as appropriate.

13 5. Awarding Take-Two its full costs and attorneys’ fees in this action.

14 6. Imposing a constructive trust over any proceeds unjustly obtained by Defendants in
15 the United States, and/or any other products or services that violate any of Take-Two’s rights
16 described herein.

17 7. Awarding such other and further relief as this Court may deem just and appropriate.

18
19 DATED: September 2, 2021

RESPECTFULLY SUBMITTED,

KARIN G. PAGNANELLI
MARC E. MAYER
MITCHELL SILBERBERG & KNUPP LLP

23 By: /s/ Karin G. Pagnanelli
Karin G. Pagnanelli
24 Marc E. Mayer
Attorneys for Plaintiff
25 Take-Two Interactive Software, Inc.

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JURY DEMAND

Take-Two demands a trial by jury on all issues so triable.

DATED: September 2, 2021

RESPECTFULLY SUBMITTED,

KARIN G. PAGNANELLI
MARC E. MAYER
MITCHELL SILBERBERG & KNUPP LLP

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