

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No.: 5:18-cv-

EPIC GAMES, INC.,

Plaintiff,

v.

BRANDON LUCAS and COLTON
CONTER,

Defendants.

COMPLAINT

Plaintiff Epic Games, Inc. ("Epic" or "Plaintiff") complains of Defendant Brandon Lucas ("Lucas") and Defendant Colton Conter ("Conter") (together, "Defendants") as follows:

NATURE OF THE ACTION

1. This is a civil action seeking injunctive relief and damages for (i) copyright infringement in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501, *et seq.* as to both Defendants; (ii) contributory copyright infringement in violation of the Copyright Act, §§ 106 and 501, *et seq.* as to Lucas; (iii) breach of contract in violation of North Carolina law as to both Defendants; (iv) intentional interference with contractual relations in violation of North Carolina law as to Lucas; and (v) for unfair and deceptive trade practices and unfair methods of competition in violation of the North Carolina Unfair and Deceptive Trade Practices Act, codified at N.C. Gen. Stat. § 75-1.1, *et seq.* as to Lucas.

INTRODUCTION

2. The Copyright Act protects the owners of creative works from the unauthorized use of those works by others. The right to prepare derivative works based upon a copyrighted

work and to publicly perform and display a copyrighted work (or derivatives thereof) are some of the exclusive rights granted to copyright holders under the Act. The definition of derivative work encompasses any form in which the original work may be recast, transformed, or adapted. The exclusive right of public performance includes the public broadcast of audiovisual works, and the exclusive right of public display includes the right to show a copyrighted work, or a portion or an image of it, to the public. With a few exceptions that do not apply here, it is unlawful to make unauthorized derivative works, and to publicly perform or publicly display such works without the permission of the copyright owner. It is likewise unlawful to induce, cause, or materially contribute to the creation of unauthorized derivative works by others.

3. The Digital Millennium Copyright Act ("DMCA") was enacted in 1998 to bring the Copyright Act into the digital age. Among other things, the DMCA provides that a copyright holder may send an Online Service Provider (an "OSP") a written notification of claimed infringement (a "notice") which provides the OSP with certain statutorily-mandated information and serves as notice to the OSP that it is hosting content that infringes the copyright holder's rights. In order to avoid potential secondary liability for hosting the infringing material, the OSP must remove or disable the identified material after receiving the notice and notify the user who posted it. In response, the user may submit a counter notification stating that the material was removed due to mistake or misidentification. Once submitted, the counter notification commences a 10-day period during which the copyright holder must file an action against the user seeking to restrain the user from engaging in infringing activity. If the copyright holder does not file the action, the OSP is to restore the material at issue.

4. This is a copyright infringement, breach of contract, and tortious interference case in which the Defendants are infringing Epic's copyrights by injecting unauthorized cheat software ("cheats" or "hacks") into the copyright protected code of Epic's popular video game,

Fortnite®.¹ In so doing, Defendants are creating unauthorized derivative works of Fortnite by unlawfully modifying the game's code, and materially altering the game that the code creates, the experience of those who play it, and the experience of those who watch it being played.

5. Defendants are also posting videos on YouTube of themselves and/or others playing and cheating at Fortnite. Although he claims to be "against cheating in competitive play video games [and that he] only makes these videos for entertainment that it brings [people] on [his] channel", Lucas is using the videos to demonstrate and promote the hacks he sells, and to direct those who watch the videos to the websites where he sells them. On information and belief, those who purchase the hacks from Lucas use them to cheat while playing Fortnite.

6. Lucas' websites encourage visitors to purchase hacks and/or Fortnite user accounts preloaded with hacks. These hacks enable their users to unlawfully modify Fortnite's software. Lucas is operating these websites and selling these cheats and accounts for his own personal enrichment. He posts videos of people using the cheats for the same reason. His ill-gotten gains come at the expense of Epic and members of the Fortnite community.

7. Defendants' cheating and Lucas' inducing and enabling of others to cheat ruin the game playing experience of players who do not cheat because they create an uneven playing field, violate universally understood notions of fair play, and diminish the integrity of the game.

8. The software Defendants are using to cheat infringes Epic's copyrights in the game and breaches the terms of the agreements to which Defendants agreed in order to have access to the game. The same is true for Defendants' unauthorized public performances and displays of unlawfully modified versions of Fortnite on YouTube.

¹ Registered trademarks of Epic are shown with the registration symbol the first time each mark appears and without it thereafter.

9. Defendants have each been banned from playing Fortnite for this conduct but nevertheless continue to play and cheat using new accounts they create using false information.

10. Defendants' use of the cheats, Lucas's advertising and sale of cheats, and the YouTube videos in which Defendants show off the cheats, including their so-called "world record" number of kills, which came by cheating, are neither fair nor fair use. They are unfair and unlawful.

11. Accordingly, Defendants should be permanently enjoined from continuing to engage in the conduct complained of herein, their profits should be disgorged, and they should be ordered to pay Epic's damages, attorneys' fees, and costs related to this action.

JURISDICTION AND VENUE

12. This Court has jurisdiction over the subject matter of Plaintiff's federal claims under 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Copyright Act, 17 U.S.C. §§ 106 and 501, *et. seq.* This Court has supplemental jurisdiction over Plaintiff's related state law claims under 28 U.S.C. § 1367(a).

13. This Court has personal jurisdiction over Defendants because, as described below, each Defendant agreed to be subject to the exercise of jurisdiction over him by the courts in this District. This Court also has personal jurisdiction over each Defendant because they have purposefully availed themselves of the privileges of conducting activities and doing business in North Carolina and in this District, thus invoking the benefits and protections of North Carolina's laws, by entering into contractual agreements with Epic in North Carolina, and repeatedly accessing Epic's servers located in this District.

14. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) because this is a District in which a substantial part of the events giving rise to Plaintiff's claims occurred, in which Defendants committed acts of copyright infringement, and/or where

Plaintiff's injuries were suffered. Venue is also proper in this District because, as described below, Defendants consented to venue in this District.

THE PARTIES

15. Epic is a corporation duly organized and existing under the laws of the state of Maryland. Epic is registered to do business in North Carolina and has its principal place of business in Wake County, North Carolina.

16. On information and belief, Defendant Brandon Lucas, a.k.a. "Golden Modz," is a citizen and resident of the United States.

17. On information and belief, Defendant Colton Conter, a.k.a. "Exentric," is a citizen and resident of the United States.

THE PERTINENT FACTS

Epic and Fortnite

18. Founded in 1991, Epic is a Cary, North Carolina-based developer and publisher of computer games and content creation software. Epic is recognized worldwide as the creator of the Unreal®, Gears of War®, and Infinity Blade® series of games. Epic is also globally known as the creator of the Unreal Engine® game engine and suite of content creation tools. More recently, Epic released the multiplayer online battle arena game Paragon®, the virtual reality game Robo Recall®, and Fortnite.

19. First released in a limited manner in October, 2013, Fortnite is a co-op survival and building action game in which players may join together online to build forts, weapons, and traps in an effort to rebuild and defend towns left vacant in the wake of "the Storm" from the monsters that populate the Fortnite world.

20. Fortnite was released broadly on July 25, 2017.

21. Fortnite's free-to-play "Battle Royale" game mode was released to the public on September 26, 2017. (A true and correct screen print from the Fortnite page on Epic's website [available at: <https://www.epicgames.com/fortnite/en-US/buy-now/battle-royale>]² that provides a glimpse into Fortnite's fanciful and cartoonish world is pictured below at **Figure 1**.)

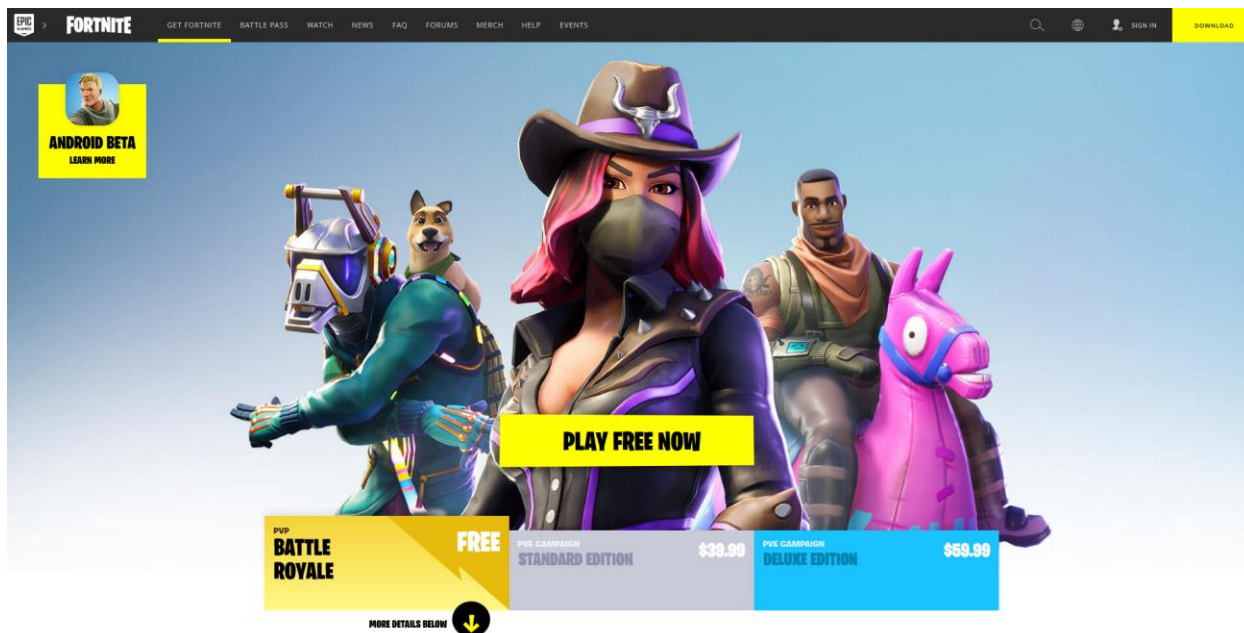


Figure 1

22. Like other games in the battle royale genre, Fortnite Battle Royale involves dropping (in Fortnite, by glider from a flying "battle bus") a limited number of players into a large map. Fortnite Battle Royale combines Fortnite's building skills and destructible environments with intense player vs. player ("PvP") combat.

23. Fortnite Battle Royale allows users to choose different game modes, including "Solo," in which the player plays alone, "Duos," in which players play in two-player groups, and "Squads," in which players play in four-player groups. (A true and correct screen print from the

² In accordance with Section IV. C. of the Electronic Case Filing Administrative Policies and Procedures Manual, hyperlinks in citations to the uniform resource locators ("URLs") of various content described herein have been removed and the URLs appear in brackets.

in-game screen where users choose the Fortnite Battle Royale game mode they want to play is pictured below at **Figure 2.**)

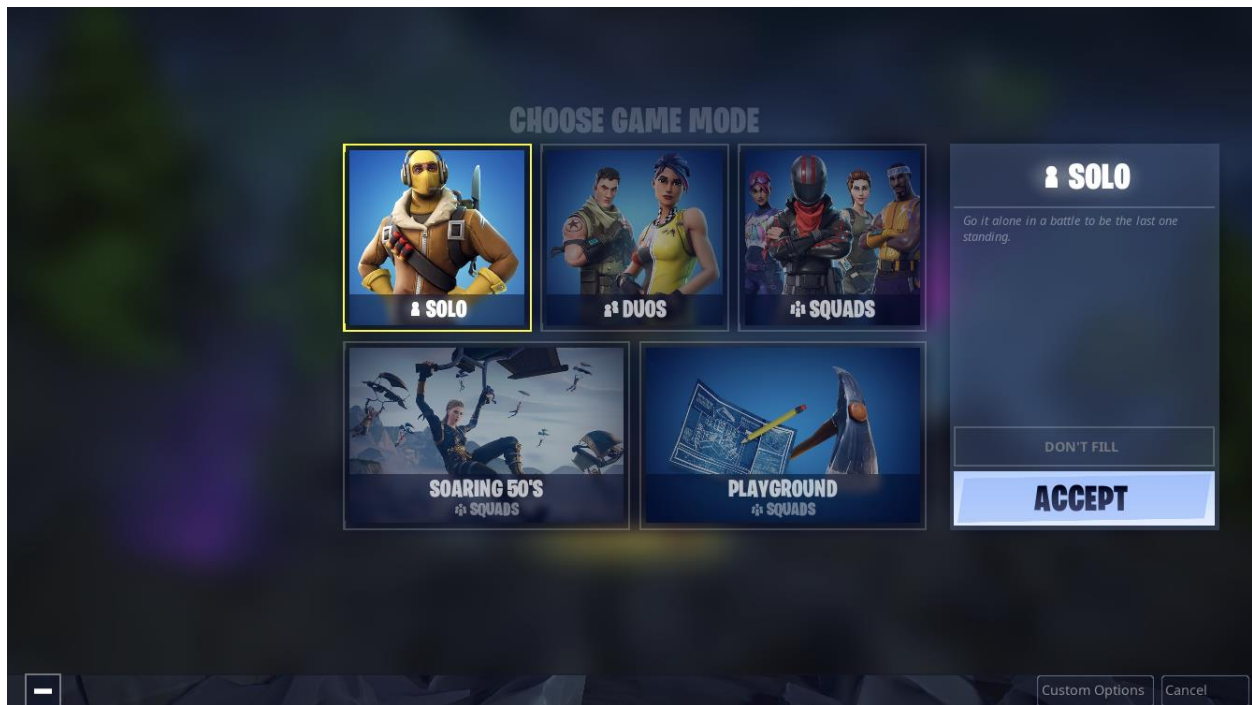


Figure 2

24. As the game goes on, the encroaching storm shrinks the habitable part of the map, forcing surviving players closer and closer together. The players battle each other until the last player or team remains standing. That player or team wins the game.

25. In designing Fortnite Battle Royale, Epic made a conscious choice not to sell items to players that would give any player a competitive advantage. This decision was made to ensure a fair playing field for all.

26. Fortnite has become massively popular. It is Epic's most successful game yet. Since its broad release about a year ago, Fortnite has garnered over 125 million users. In August of 2018 alone, Fortnite had over 78 million active players.

27. In addition to the tens of millions of people who play Fortnite, tens of millions of others watch "streamers," i.e., people who broadcast or "stream" Fortnite game play on various

platforms, including YouTube and Twitch. In the second week of August 2018, Fortnite was the most watched game on Twitch with 29.5 million total hours. The Fortnite channel on Twitch has over 30 million followers.

28. In May 2018, Epic announced that it will provide \$100 million dollars to fund prize pools for Fortnite esports competitions to be focused on the joy of playing and watching Fortnite. Some or all of these competitions have been or will be live streamed.

Epic's Copyrights in Fortnite

29. Epic is the author and owner of all the rights, title, and interest in the copyrights in Fortnite, including without limitation, in its computer software and the audio-visual works that software creates.

30. Epic's copyrights in various versions of Fortnite's computer code are the subjects of U.S. Copyright Registration Nos. TXu01-895-864 (dated December 18, 2013), TX008-186-254 (dated July 14, 2015), TX008-254-659 (dated March 3, 2016), TX008-352-178 (dated December 23, 2016), and U.S. Copyright Reg. No. TX0008-507-210 (dated March 21, 2018) (True and correct copies of these certificates of registration are attached hereto collectively as **Exhibit A.**)

Epic's Terms of Service

31. In order to play Fortnite on PC—which is the platform on which Defendants are accessing and cheating at Fortnite—a user must first create an account with Epic. In order to create an account, a would-be user must affirmatively acknowledge that he or she has “read and agree[d] to the Terms of Service” (the "Terms"). (A true and correct copy of the Terms of Service is attached hereto as **Exhibit B.**)

32. The Terms apply to any use of, or access to, Fortnite using one's PC, as Defendants do in this case.

33. The Terms also apply to any use of Epic's websites by any "guest or [] registered user" of "any content, functionality, products, and services offered on or through" Epic's websites. (*See id.* at 1.) This encompasses Epic's Fortnite website and its guests and registered users.

34. The Terms further apply to a user's "use of other Epic services that display or include [the] Terms." (*Id.*) This, too, covers Fortnite and those who use it.

35. The Terms request that users read the Terms "carefully" before beginning to access or use Epic's services. (*Id.*)

36. The Terms provide that "[b]y using [Epic's s]ervices, [the user] accept[s] and agree[s] to be bound and abide by these Terms . . ." (*Id.*) The Terms further provide that a user who does not want to agree to the Terms "must not use [Epic's s]ervices." (*Id.*)

37. The Terms include a section on "Governing Law and Jurisdiction," which provides that "[a]ny dispute . . . arising out of or related to these Terms ('Claim') shall be governed by North Carolina law Any legal suit, action, or proceeding arising out of, or related to, a [dispute or claim by the user arising out of or related to the Terms] shall be instituted exclusively in the federal courts of the United States or the courts of North Carolina, in each case located in Wake County." (*Id.* at 4.)

38. This section of the Terms further provides that, by agreeing to the Terms, the user "agree[s] to waive any and all objections to the exercise of jurisdiction over [the user] by such courts and to venue in such courts." (*Id.*)

39. The Terms explain that the services "including all content, features, and functionality thereof, are owned by Epic, its licensors, or other providers of such material and are protected by United States and international copyright . . . laws." (*Id.* at 1.)

40. The Terms also inform the user that use and access of certain "software or services . . . may be subject to separate agreement . . . such as end user license agreements."

(Id.)

41. The Terms further provide that users "may only access the [s]ervices through [their] own account. Users do not own their accounts, and gifting or otherwise transferring of accounts or access keys is prohibited." *(Id. at 1.)*

42. The Terms also include an "Intellectually Property Rights" section which sets forth the permissions users have with respect to Epic's intellectual property and things that users are prohibited from doing. Specifically, the Terms provide that users:

a. are "permitted to use [Epic's s]ervices for [their] personal, non-commercial use only or legitimate business purposes related to [their] role as a current or prospective customer of Epic"; **but**

b. **"must not copy, modify, create derivative works of, publicly display, publicly perform, republish, or transmit any of the material obtained through [Epic's s]ervices, or delete, or alter any copyright, trademark, or other proprietary rights notices from copies of materials from [Epic's s]ervices"; and**

c. **"must not reproduce, sell, or exploit for any commercial purposes any part of [Epic's s]ervices, access to [Epic's s]ervices or use of [Epic's s]ervices or any services or materials available through [Epic's s]ervices."** *(Id. at 1-2.)* (emphasis added).

43. The Terms further provide that users may use Epic's services "only for lawful purposes and in accordance with these Terms of Service. [Users] agree not to access or use the [s]ervices for any purpose that is illegal or beyond the scope of the [s]ervices' intended use . . ."

(Id.)

44. By creating an account with Epic in order to access, download, and play Fortnite, and by using Epic's services, including, without limitation, by playing Fortnite, Defendants each agreed to be bound by the Terms. And by creating multiple accounts as Defendants did here, Defendants each agreed to be bound by the Terms multiple times.

45. The Terms constitutes a valid and binding contract as between each Defendant and Epic.

46. Each Defendants' conduct described herein violates the Terms and breaches his agreement with Epic.

Fortnite End User License Agreement

47. In order to play Fortnite on PC, as Defendants did here, a user must first acknowledge that he or she has read and agreed to abide by the terms in the Fortnite End User License Agreement for PC ("EULA"). (A true and correct copy of the EULA is attached hereto as **Exhibit C.**)

48. The EULA applies to any user who downloads, uses, or "otherwise indicat[es] acceptance" of the EULA. (*Id.* at 1.)

49. Like the Terms, the EULA explicitly requests that individuals read the EULA "carefully." (*Id.*) The EULA further makes clear that the EULA "is a legal document that explains [the user's] rights and obligations" in connection with the access and use of Fortnite. (*Id.*)

50. The EULA includes a section titled "Governing Law and Jurisdiction" under which the user agrees that the EULA will be deemed to have been made and executed in the State of North Carolina. (*Id.* at 5.)

51. This section of the EULA further provides that "[a]ny action or proceeding brought to enforce the terms of this Agreement or to adjudicate any dispute must be brought in

the Superior Court of Wake County, State of North Carolina or the United States District Court for the Eastern District of North Carolina." (*Id.*)

52. Under this section of the EULA, the user agrees to "the exclusive jurisdiction and venue of these courts. . . . [and to] waive any claim of inconvenient forum and any right to a jury trial." (*Id.*)

53. The EULA grants an individual user "a personal, non-exclusive, non-transferable, non-sublicensable limited right and license to install and use one copy of the Software on a device for [the user's] personal entertainment use." (*Id.* at 1.)

54. Epic also includes a "License Conditions" section in its EULA. (*Id.*) In that section, the EULA specifically defines certain prohibited activities and states that **a player may not:**

- a. **use Fortnite "commercially or for a promotional purpose;"**
- b. **"copy, reproduce, distribute, display, or use [Fornite] in a way that is not expressly authorized in this Agreement;"**
- c. **"sell, rent, lease, license, distribute, or otherwise transfer it;"**
- d. **"reverse engineer, derive source code from, modify, adapt, translate, decompile, or disassemble it or make derivative works based on it;"**
- e. **"create, develop, distribute, or use any unauthorized software programs to gain advantage in any online or other game modes;"** and
- f. **"behave in a manner which is detrimental to the enjoyment of the Software by other users as intended by Epic"** (*Id.* at 1-2.) (emphasis added.)

55. Epic also includes a "Game Currency and Content" section in its EULA. (*Id.* at 2.) In that section, the EULA provides that users are granted a limited license to use in-game currency and content and that these are not "transferable[] or exchangeable under any

circumstances" and that users "may not transfer, sell, gift, exchange, trade, lease, sublicense, or rent [in-game currency or content] except within the [s]oftware and as expressly permitted by Epic." (*Id.* at 2-3.)

56. By accessing, downloading and/or using Fortnite, each Defendant agreed to be bound by the EULA.

57. Each Defendant also agreed to be bound by the EULA by affirmatively indicating his acceptance of its terms.

58. The EULA constitutes a valid and binding agreement between each Defendant and Epic.

59. Each Defendant's conduct described herein violates the terms of the EULA and breaches his contract with Epic.

The Defendants and their Unlawful Acts

60. Defendants are cheaters.

61. Nobody likes a cheater. And nobody likes playing with cheaters.

62. Defendant Lucas not only cheats, he also promotes, advertises, and sells software that enables those who use it to cheat.

63. Defendants use what they call "hacks" to unlawfully modify Fortnite's software and give themselves an unfair competitive advantage over other players when playing Fortnite.

64. These hacks give the cheaters who use them power to do or see things that others players cannot.

65. For instance, "aimbots" enable those who use them to automatically target and kill enemies without having to aim their weapons. Hacks (including aimbot hacks) that include "ESP" enable those who use them to see what they are not intended to see, such as valuable hidden "loot" and other players who would otherwise be out of sight.

66. These cheats give those who use them a decided and unfair competitive advantage over other players.

67. The most visible harm from Defendants' acts and the use of the cheats they promote and sell to others may occur in a virtual world, but it is felt in the real one. Defendants' cheating and enabling others to cheat detract from the pleasure Fortnite's players and audience take from the game.

68. Defendants' conduct is offensive to the overwhelming majority of the Fortnite community, whose enthusiasm about the game is a significant part of what has made Fortnite so successful.

69. Defendant Lucas is ruining not only the games in which he plays and cheats, but also those in which people play and cheat using the hacks he sold them. Each one of these games is important to the 99 other people playing it. None of these other players enjoy being cheated.

70. Epic does not allow or support cheats in Fortnite, including in Fortnite Battle Royale. Cheats are prohibited under the Terms and the EULA.

71. Each Defendant downloaded and accessed Fortnite.

72. Each Defendant used cheats in Fortnite to modify Fortnite's copyrighted code.

73. Each Defendant used cheats to gain an unfair advantage over other players while playing Fortnite knowing that such conduct is prohibited by their agreements with Epic and the rules of the game.

74. In some of their YouTube videos, Defendants play (sometimes together) in duos and squads, and joke that the cheat software gives its users "magical" powers, allowing them to "troll" Fortnite by killing dozens of other players and "win" the game.

75. Each Defendant created, posted, and publicly performed videos on his respective YouTube channel showing himself and/or others using hacks to cheat at Fortnite in part to demonstrate, advertise, and promote the cheats that Lucas sells on his websites.

Defendants' Use of Websites and Social Media Accounts to Engage in Unlawful Conduct

76. Defendant Lucas sells the hacks he advertised in the YouTube videos that are the subject of this complaint from at least two websites: [www.goldengodz.com] (the "Golden Godz Website") and [gtagods.com/shop](the "GTA Gods Website"). (True and correct copies of screen prints of the home pages of each of these webpages are attached hereto as **Exhibits D** and **E**.)

77. Defendant Lucas operates a third website, [www.goldenmodz.com] the ("Golden Modz Website"), which contains links to the Golden Godz Website. (A true and correct copy of a screen print of this webpage is attached hereto as **Exhibit F**.) The Golden Godz Website, the GTA Gods Website, and the Golden Modz Website are referred to hereinafter collectively as "the Cheat Websites."

78. Defendant Conter operates a YouTube channel under the screen name "Exentric," which is available at www.youtube.com/channel/UCQPwASvdtm_ZZ7VrFmcL5DQ (the "Exentric Channel").

79. Between September 4, 2018 to September 18, 2018, Conter used the Exentric Channel to post six videos of himself and/or others using hacks to cheat while playing Fortnite. These videos were available at [www.youtube.com/watch?v=SvIMlgD24OI], [www.youtube.com/watch?v=e0nkjnAHtMc], [www.youtube.com/watch?v=EDT4J9ajULk], [www.youtube.com/watch?v=ndbAxwSmnLI], [www.youtube.com/watch?v=bKsP5KgOJqU], and

[<www.youtube.com/watch?v=4_F2uVjzPtg>] (the "Conter infringing videos"). (True and correct copies of screen prints from the Exentric Channel, including of the Conter infringing videos, are attached hereto as **Exhibit G.**)

80. In each of these videos, Conter demonstrated use of the cheats to unlawfully modify the Fortnite game, including one in which he played in a group with Lucas.

81. The Exentric Channel has over 75,000 views and more than 7,000 subscribers, each of whom receive notifications when a video, like one of Conter's infringing videos, is posted.

82. On or around September 21, 2018, Epic submitted to YouTube DMCA notices that included all the required elements and asked YouTube to remove the Conter infringing videos. YouTube took down the Conter infringing videos soon thereafter.

83. On October 3, 2018, Conter submitted a counter notification responding to Epic's DMCA takedown notices for the nine infringing videos in which he stated "My videos fall under YouTube's fair use policy and all of the videos are my own creation and I am willing to defend these claims in court." (A true and correct copy of a screen print of Conter's counter notification with the contact information for Epic's personnel and Conter redacted is attached hereto as **Exhibit H.**)

84. Conter uses his Twitter account, @iExentricHD, primarily to promote his YouTube channel by posting hyperlinks and "Tweets" about his own videos. (A true and correct screen print, taken on October 4, 2018, of Conter's Twitter "feed," available at [<twitter.com/iExentricHD>], is attached hereto as **Exhibit I.**) As can be seen in Exhibit I, Conter's Twitter "feed" hyperlinks to his YouTube channel.

85. Conter also uses his Instagram account, @iexentrichd to link to and promote his YouTube channel. (A true and correct screen print of Conter's Instagram feed, taken on October

5, 2018, available at [<https://www.instagram.com/iexentricd/>], is attached hereto as **Exhibit J.)**

86. Defendant Lucas operates at least one YouTube channel under the screen name "Golden Modz," which is available at [www.youtube.com/channel/UCVyO8gWYTFzAzDuUvwouj08Q] (the "Golden Modz Channel").

87. Between August 11, 2018 and September 18, 2018, Lucas used the Golden Modz Channel to post nine videos of himself and others cheating while playing Fortnite. These videos were available at [www.youtube.com/watch?v=W251GaBhhsA], [www.youtube.com/watch?v=6lmOzUkQN38], [www.youtube.com/watch?v=EcUyN2vynG8], [www.youtube.com/watch?v=VSZMYiXG5W0], [www.youtube.com/watch?v=1L4TkNH4rdw], [www.youtube.com/watch?v=_on63qHc8gE], [www.youtube.com/watch?v=tLO8gswbAMo], [www.youtube.com/watch?v=jrDaz8siSxg], and [www.youtube.com/watch?v=7-h7DBbp5Bo] (the "Lucas infringing videos"). (True and correct copies of screen prints from the Golden Modz Channel, including of the Lucas infringing videos, are attached hereto as **Exhibit K.)** The video posted on September 18, 2018 features both Lucas and Conter cheating in a game of Fortnite.

88. In each of these videos, Lucas demonstrated the use of cheats to unlawfully modify Fortnite's software.

89. On the "About" page of his YouTube channel, Lucas describes its content as including Fortnite trolling videos and provides the URL of and links to his Golden Godz Website and various social media accounts, including Twitter, Instagram, Facebook, and Google+.

90. Lucas also provides a hyperlink to the Golden Godz Website in the majority of his videos on the Golden Modz Channel, including in the videos that are the subject of this complaint.

91. The Golden Modz Channel has over 1.7 million subscribers. These subscribers receive notifications when a video, like each of Lucas' infringing videos, is posted.

92. On or around September 18, 2018, Epic submitted DMCA takedown notices to YouTube that included all the required elements and asked YouTube to remove all nine of Lucas' infringing videos. YouTube took down Lucas' infringing videos soon thereafter.

93. On September 26, 2018, Lucas submitted a counter-notification responding to Epic's DMCA takedown notices in which he stated "[t]hese videos are my own creation. They fall under the fair use policy on YouTube and if the videos are not placed back up on my channel, I will fill discrimination against [sic]." (A true and correct copy of a screen print of Lucas' counter-notification with the contact information for Epic's personnel and Lucas redacted is attached hereto as **Exhibit L**.)

94. On September 22, 2018, Lucas posted another video that he titled, "I am getting sued by fortnite..." This video is available at [www.youtube.com/watch?v=Zh0jiRppKFQo]. In this video, Lucas admits to posting videos of game play during which "hacks" were used to cheat at Fortnite. In the description of that video posted on YouTube, Lucas included links to his Instagram and Twitter social media accounts, and a link to his "backup" YouTube channel, which currently has no available content. On information and belief, Lucas intends to use this back-up channel if the Golden Modz Channel is disabled or removed.

95. Lucas uses his Twitter account, @Golden_Modz to promote his YouTube channel by posting hyperlinks and "Tweets" about his videos. (A true and correct screen print, taken on October 3, 2018, of Lucas' Twitter feed, available at [twitter.com/Golden_Modz], is attached hereto as **Exhibit M**.) Lucas' Twitter feed also displays his email address and contains hyperlinks to his YouTube channel.

96. Lucas also promotes his YouTube channel by hosting "giveaways." For example, on September 17, 2018, Lucas posted an image of a "spiderman modded skin," which he also used in one of the infringing videos, and encouraged viewers of his Tweet to "LIKE[]" and RETWEET[]" the Tweet to enter to "win" the skin. (A true and correct screen print of this September 17, 2018 Tweet, available at: [twitter.com/Golden_Modz/status/1041802530118946817], is attached hereto as **Exhibit N**.) This so-called "spiderman [sic]" skin was, an unlicensed, unauthorized modified ("modded") skin, which Lucas used as a ploy to get "likes" and "retweets" to further disseminate his infringing videos and, ultimately, sell more hacks. The EULA and Terms prohibit the transfer of in-game content, such as skins.

97. Lucas also uses his Instagram account, @golden_modz, to promote his YouTube channels. (A true and correct screen print of Lucas' Instagram feed, taken on October 3, 2018, available at [www.instagram.com/golden_modz/?hl=en], is attached hereto as **Exhibit O**.) Lucas' Instagram account hyperlinks to his YouTube channel.

98. Lucas also promotes his YouTube channel using his Google+ account, GoldenModz, by reposting his videos, including the infringing videos, to that account. (A true and correct screen print of Lucas' Google+ account, available at [plus.google.com/+GoldenModz], is attached hereto as **Exhibit P**.) As shown in Exhibit P, Lucas' Google+ account has over 7,100 followers.

Defendants' Unlawful Cheating

99. On information and belief, the cheat software used by Defendants (and those that Defendant Lucas induces to use such software) improperly injects unauthorized code into the active memory of the game as it runs. The cheats manipulate the functionality of the game and give the cheater an unfair advantage over other players, changing and disrupting the game.

100. This unauthorized modification of the game's code as it runs on the cheater's computer and of the code that is sent back to Epic's servers materially changes both the game's code and the audio visual aspects of the game generated by the code. These changes create a different, but substantially similar, version of the Fortnite game than the Fortnite game generated by Epic's copyright protected software.

101. In using cheat software to modify the game's code in this way, Defendants and other cheaters who use the cheats Lucas sells create unauthorized derivative works based on Fortnite in violation of the Copyright Act.

102. Use of the cheat software also violates the express terms of both the EULA and the Terms, both of which prohibit any modification of the game and the creation of derivative works based on Fortnite.

103. Defendants have each been banned from Fortnite for violating the Terms and the EULA. On information and belief, Defendants each circumvented this by creating numerous other accounts under false names. Both Defendants continue to play and cheat at Fortnite in violation of the Terms and the EULA.

104. Conter's posting of the Conter infringing videos and Lucas' posting of the Lucas infringing videos each infringe Epic's exclusive rights to publicly display and/or publicly perform its copyrighted works in violation of the Copyright Act.

Lucas' Operation and Use of Cheat Websites to Engage in Prohibited Conduct

105. On information and belief, the Golden Godz Website is controlled and/or operated by Lucas. The "About" page of the Golden Modz Channel and the description boxes of the majority of the videos on the channel, including in Lucas' infringing videos, contain links to the Golden Godz Website. The Golden Godz Website is being used to broker the sale of Fortnite accounts, which, on information and belief, come fully-loaded with cheat software.

106. As can be seen in Exhibit D, Lucas is selling two types of aimbots on his website: the "PC ESP/AIMBOT SUB FORTNITE (PC)," which can be purchased for \$54.99 and includes "30 days of cheat," and the "PC ESP/AIMBOT LIFETIME FORTNITE (PC)," which can be purchased for \$299.99 and includes a "lifetime of cheat."

107. On information and belief, the Golden Godz Website also serves as a platform through which website visitors can sell their Fortnite accounts in violation of the Terms and the EULA. The website's homepage includes a menu item called "\$ Sell Us An Account." (A true and correct copy of a screen print of a portion of the homepage of the website with the menu visible and the aforementioned menu item designated by a red arrow is pictured directly below at Figure 3.)

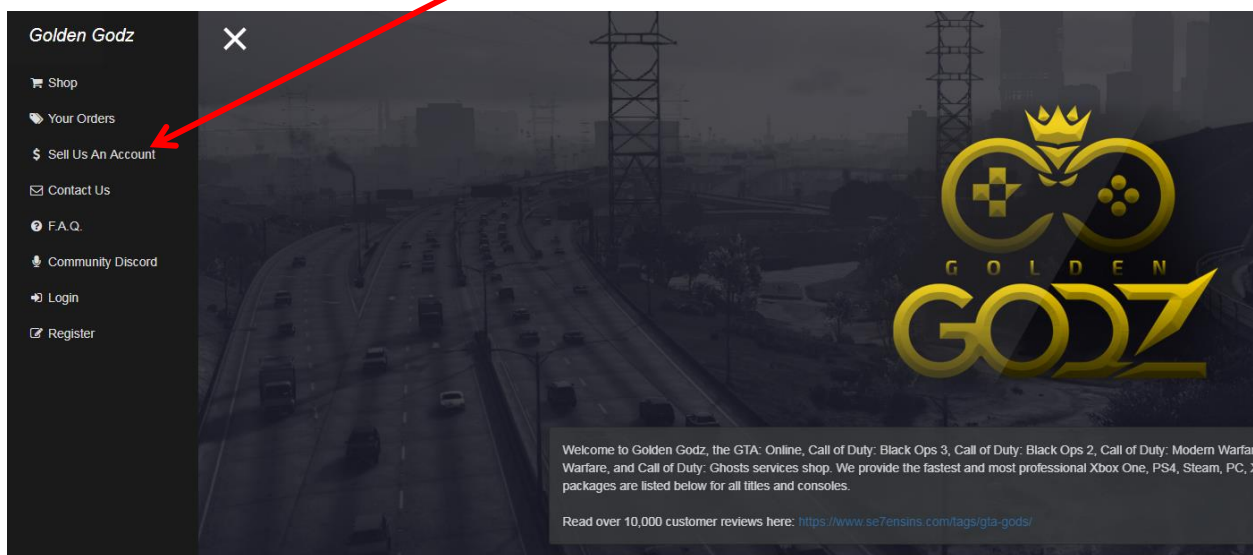


Figure 3

108. A website visitor who clicks this hyperlinked menu item is taken to a subpage where he or she is prompted to enter their login information, and is then taken to a fillable form in which the user can input information about the account he or she wishes to sell, including the "Desired Payment Amount" sought for the account. (A true and correct copy of a screen print of a portion of the subpage of the website featuring the fillable form is pictured directly below at Figure 4.)

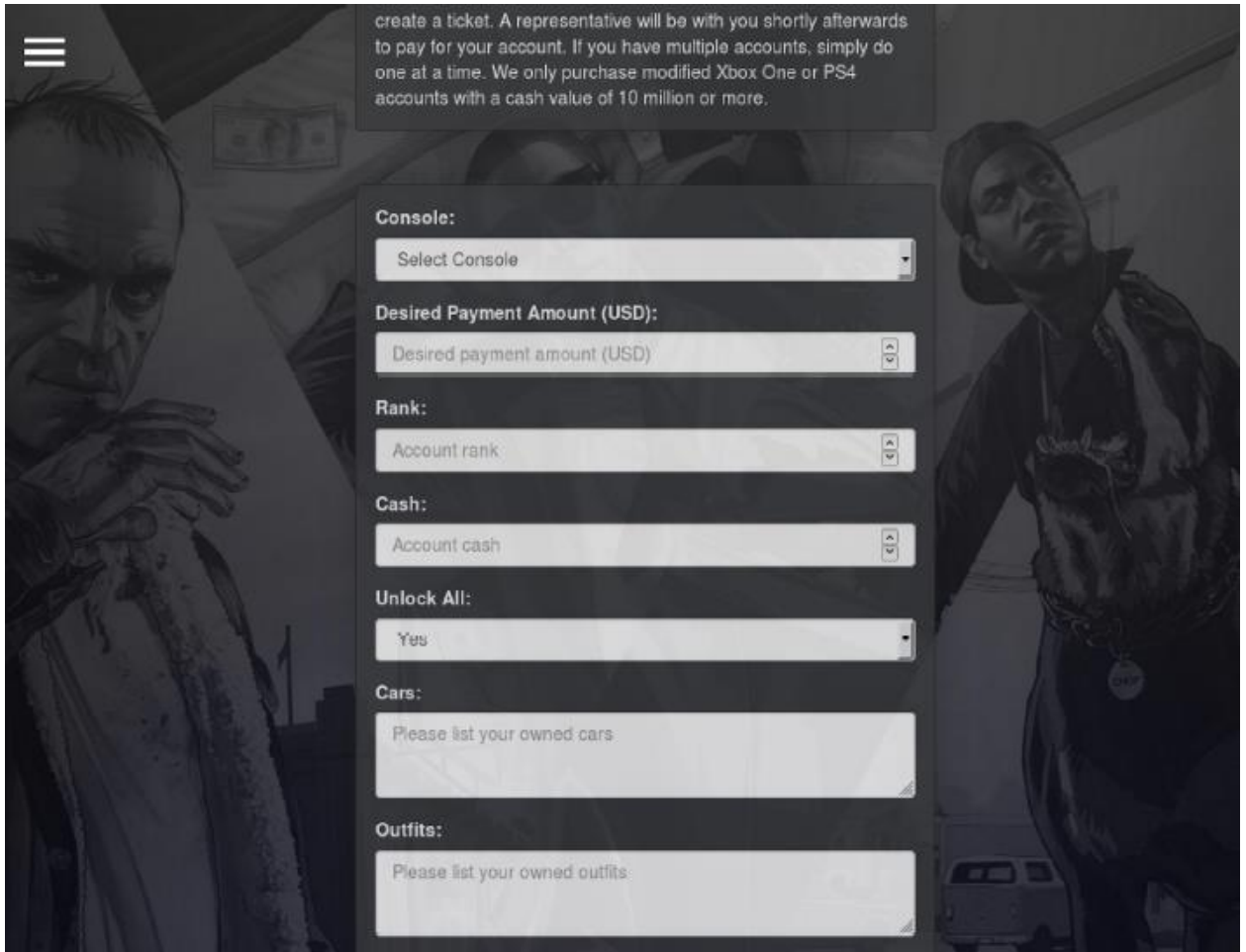


Figure 4

109. The GTA Gods Website, which, on information and belief, is controlled and/or operated by Lucas, appears to be an identical copy of the Golden Godz Cheat Website.

110. The Golden Modz Website, which, on information and belief, is controlled and/or operated by Lucas, redirects website visitors to the Golden Godz Cheat Website. *See* Exh. F.

111. Lucas' activities as described above violate Epic's Terms, which explicitly provides that that users "may only access the [s]ervices through [their] own account. Users do not own their accounts, and gifting or otherwise transferring of accounts or access keys is prohibited." *See* Exh. B at 1. Similarly, Lucas' activities violate Epic's EULA, which describes the limited license granted to users as "personal, non-exclusive, non-transferable, non-sublicensable." *See* Exh. C at 1.

112. Lucas' activities also violate the portion of Epic's Terms and EULA that prohibit the use of Epic's services, including Fortnite, for any commercial or promotional purpose. *See* Exh. B at 3, Exh. C at 1-2.

113. Lucas is "behave[ing] in a manner which is detrimental to the enjoyment of [Fortnite] by other uses as intended by Epic" in further violation of the EULA. *See* Exh. C at 2. This is evidenced by the content of Lucas' "About" page on his YouTube channel, which touts his "Fortnite trolling" content, *see* Fig. 2.

114. Defendants' conduct violates universally held notions of fair play.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF (AGAINST BOTH DEFENDANTS) **(Copyright Infringement in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501, *et seq.*)**

115. Epic re-alleges and incorporates fully by reference the allegations in paragraphs 1 through 114 of this complaint, as if set forth fully herein.

116. Epic is the author, creator and owner of all rights, title and interest in a number of valid, registered, and enforceable copyrights in Fortnite.

117. These copyrights are the subjects of the copyright registration certificates referenced above and attached hereto as Exhibit A, and are incorporated by reference as if fully set forth herein.

118. Defendants have had and continue to have access to Fortnite.

119. Defendants have infringed and continue to infringe Epic's copyrights in Fortnite by improperly using computer software that injects code into Fortnite's code which then materially modifies and changes Fortnite's code, thereby creating a substantially similar, unauthorized derivative work of Epic's copyrighted Fortnite code.

120. Epic never authorized Defendants to create derivative works based on Fortnite.

121. Defendants have also infringed Epic's copyrights in Fortnite by publicly displaying and/or publicly performing these unauthorized derivative works in Lucas' infringing videos and Conter's infringing videos posted on YouTube.

122. Defendants' submission of separate DMCA counter notifications, which require YouTube to restore the infringing content unless Epic files an action seeking a court order to restrain Defendants from engaging in infringing activity within 10 days, creates a continuing risk of copyright infringement.

123. Epic never authorized Defendants to publicly display or publicly perform the unauthorized derivative works.

124. In creating such unauthorized derivative works and by publicly displaying and/or publicly performing Defendants' unauthorized derivative works, Defendants have infringed Epic's copyrights and are liable to Epic for direct and willful infringement under 17 U.S.C. §§ 501, *et seq.*

125. Each Defendant promotes the cheats using his respective YouTube channel and other social media accounts because each Defendant obtains a financial benefit from the video postings complained of, and, on information and belief, Lucas obtains financial benefits from operating the Cheat Websites, by selling Fortnite accounts and/or the cheats he promotes and demonstrates in the infringing videos.

126. On information and belief, Epic has suffered actual damages, including lost sales and profits as a result of Defendants' infringement.

127. In addition to Epic's actual damages, Epic is entitled to receive any additional profits made by Defendants from their wrongful acts pursuant to 17 U.S.C. § 504.

128. In the alternative, Epic is entitled to statutory damages pursuant to 17 U.S.C. § 504(c). These statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2) due to Defendants' willful infringement.

129. Defendants' conduct is causing, and unless enjoined and restrained by this Court, will continue to cause, Plaintiff great and irreparable injury that cannot fully be compensated or measured in money. Epic has no adequate remedy at law for Defendants' wrongful conduct because (i) Epic's copyrights are unique and valuable property that have no readily determinable market value; (ii) Defendants' infringement constitutes an interference with Epic's goodwill and customer relations, and (iii) Defendants' wrongful conduct, and the damages resulting therefrom are continuing.

130. Moreover, the plain language of the DMCA requires that Plaintiff file an action seeking a court order to restrain Defendants from engaging in infringing activity within 10 days of Defendants' respective counter notifications.

131. Therefore, Epic is entitled to injunctive relief pursuant to 17 U.S.C. § 502 and to an order under 17 U.S.C. § 503(a) that prohibits Defendants from further infringing Epic's copyrights and orders Defendants to destroy all copies of infringing videos and the cheats they are using and selling in violation of Epic's copyrights

132. Epic is also entitled to recover its attorneys' fees and costs pursuant to 17 U.S.C. § 505.

SECOND CLAIM FOR RELIEF (AGAINST DEFENDANT LUCAS ONLY)
(Contributory Copyright Infringement
in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501, et seq.)

133. Epic re-alleges and incorporates fully by reference the allegations in paragraphs 1 through 132 of this complaint, as if set forth fully herein.

134. Epic is the owner of valid, registered, and enforceable copyrights in Fortnite.

135. Lucas has created and posted live-stream videos demonstrating his use of the cheat software in Fortnite, inducing others to use the cheat software in Fortnite, and providing users a way to obtain the cheat from his Cheat Websites.

136. This cheat software unlawfully modifies Fortnite's copyrighted code in a manner that infringes Epic's copyrights by creating unauthorized derivative works of, and substantially similar to, Epic's Fortnite software.

137. By providing users with access to the cheat on his Cheat Websites, including, without limitation, the Golden Godz Website (which is linked in Lucas' YouTube videos and in Lucas' Facebook account), Lucas materially contributed to the direct infringement of Epic's copyrights, actively encouraged and induced other cheaters and would-be cheaters to purchase and use the cheats, and supported their use of the cheats on Fortnite.

138. Lucas has actual knowledge of the direct infringing activities of the cheaters described above, by virtue of, without limitation, his operation of the Cheat Websites, and has caused or contributed materially to, and/or participated substantially in, such direct infringement.

139. Lucas' submission of the DMCA counter notification, which requires that YouTube restore the infringing videos and their links to the cheats, would enable additional direct and contributory infringement unless Epic files an action within 10 days seeking a court order to restrain Lucas from engaging in, inducing, and contributing to such direct infringement, creates a continuing risk of contributory copyright infringement.

140. Lucas has engaged in his acts of contributory infringement with the actual and/or constructive knowledge that the preparation of derivative works based upon Epic's Fortnite software infringes Epic's copyrights in the software.

141. On information and belief, Lucas engages in such conduct to promote the cheats on his YouTube channel and social media accounts because Lucas obtains a financial benefit

from his video postings, his operation of the Cheat Websites, and/or the sale of the accounts and/or cheats he promotes and demonstrates in the Lucas infringing videos.

142. Accordingly, Lucas is liable for contributory copyright infringement of Epic's Fortnite game.

143. On information and belief, Epic has suffered damages, including lost sales and profits, as a result of Lucas' contributory infringement.

144. In addition to Epic's actual damages, Epic is entitled to receive any additional profits made by Lucas from his wrongful acts pursuant to 17 U.S.C. § 504.

145. In the alternative, Epic is entitled to statutory damages pursuant to 17 U.S.C. § 504(c). These statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2) due to the Lucas' willful contributory infringement.

146. As a result of Lucas' contributory copyright infringement, Epic has suffered and will continue to suffer, substantial and irreparable damage to its business reputation and good will, as well as actual losses in an amount not yet fully ascertained, but which will be further determined according to proof. Epic's remedy at law is not adequate to redress the harm Lucas has caused and will continue to cause unless and until his conduct is otherwise restrained and enjoined.

147. Moreover, the plain language of the DMCA requires that Plaintiff file an action seeking a court order to restrain Lucas from engaging in infringing activity within 10 days of Lucas' counter notification.

148. By reason of the foregoing, Epic is entitled to injunctive relief against Lucas pursuant to 17 U.S.C. § 502.

149. Epic is also entitled to recover its attorneys' fees and costs pursuant to 17 U.S.C. § 505.

THIRD CLAIM FOR RELIEF (AGAINST BOTH DEFENDANTS)
(Breach of Contract)

150. Epic re-alleges and incorporates fully by reference the allegations in paragraphs 1 through 149 of this complaint, as if set forth fully herein.

151. Access to and use of Epic's services, including Fortnite, is governed by and subject to the Terms.

152. Access to and use of Fortnite is also governed by and subject to the EULA.

153. In order to use Epic's services, including Fortnite, all users must "read and agree" to the Terms in order to create an account with Epic.

154. In order to access Fortnite, users must "read and agree" to the terms of the EULA.

155. Each Defendant agreed to the Terms and the EULA by creating an account with Epic, using and accessing Epic's services, and/or downloading, playing, and/or accessing Fortnite. The Terms and the EULA are both valid, enforceable contracts between Epic and the each Defendant.

156. On information and belief, Each Defendant regularly used and accessed Epic's services having knowledge that he was bound by the Terms and by the EULA.

157. Epic has performed all of its obligations under the Terms and the EULA.

158. Each Defendant has and will likely continue to knowingly, intentionally, and materially breach the Terms and EULA by, among other things,

- a. exploiting Fortnite for a commercial and/or promotional purpose;
- b. as to Lucas only, selling, distributing, or otherwise transferring Fortnite accounts or parts of Fortnite accounts;
- c. making derivative works based on Fortnite;

d. copying, reproducing, distributing, displaying, using, modifying, performing, republishing, or transmitting Fortnite in a way not authorized in the EULA or the Terms;

e. creating, developing, distributing, or using unauthorized software programs to gain advantage in any online or other game modes; and/or

f. behaving in a manner which is detrimental to the enjoyment of the game by other users

159. As a direct result of each Defendant's breaches of the Terms and EULA, Epic has been, and will continue to be, harmed and is entitled to injunctive relief, compensatory damages, attorneys' fees, costs, and/or other equitable relief against Defendants.

FOURTH CLAIM FOR RELIEF (AGAINST DEFENDANT LUCAS ONLY)
(Intentional Interference with Contractual Relations)

160. Epic re-alleges and incorporates fully by reference the allegations in paragraphs 1 through 159 of this complaint, as if set forth fully herein.

161. As set forth above, in order to play Fortnite, a user must first create an account with Epic. To create an account, a user must agree to abide by the Terms. A user's agreement to abide the Terms creates a contract between Epic and the user.

162. The Terms expressly prohibit a user from "copy[ing], modify[ing], creat[ing] derivative works of, publicly display[ing], publicly perform[ing], republish[ing] or transmit[ing] any of the material obtained through [Epic's s]ervices." (Exhibit B at 2).

163. The Terms also provide that users "may only access the [s]ervices through [their] own account. Users do not own their accounts, and gifting or otherwise transferring of accounts or access keys is prohibited." (*Id.* at 1.)

164. In order to play Fortnite, a user must also agree to abide by the Fortnite EULA. A user's agreement to abide by the EULA also creates a contract between Epic and the user.

165. The EULA prohibits a player from "reverse engineer[ing], deriv[ing] source code from, modify[ing], adapt[ing], translat[ing], decompil[ing,] or disassembl[ing Fortnite] or mak[ing] derivative works based on [Fortnite]" and "creat[ing], develop[ing], distribut[ing], or us[ing] any unauthorized software programs to gain advantage in any online or other game modes." (Exh. C at 1).

166. The EULA also provides that it grants "a personal, non-exclusive, non-transferable, non-sublicensable limited right and license to install and use one copy of the Software on a device for [the user's] personal entertainment use" and that users may not "sell, rent, lease, license, distribute, or otherwise transfer" Fortnite or parts thereof. (Exh. C at 1-2.)

167. Epic's contracts with its users are valid and enforceable.

168. On information and belief, Lucas has knowledge of the contracts between Epic and its registered users, and Lucas has knowledge of the previously recited prohibitions that the Terms and the EULA place on users since Lucas is a registered user of Epic's services and has agreed to the terms of both the EULA and the Terms.

169. Lucas, knowing that the use of cheats and the purchase, sale, or transfer of accounts or parts of accounts by Fortnite users breaches the contracts between Epic and its users, has intentionally and willfully encouraged and induced users of Fortnite to use the cheat.

170. Lucas has intentionally interfered, and will continue to interfere, with the contracts formed between Epic and its users.

171. On information and belief, Lucas has acted without justification in intentionally interfering with the contracts between Epic and its users.

172. On information and belief, as a direct result of Lucas' actions, Epic has suffered damages in an amount to be proven at trial including, but not limited to, loss of goodwill among users of Epic's services, decreased profits, and lost profits from users whose accounts Epic has terminated for violations of the Terms and the Fortnite EULA.

173. As a direct result of Lucas' actions, Epic has sustained, and will continue to sustain, substantial, immediate, and irreparable harm for which there is no adequate remedy at law. Epic is entitled to injunctive relief to restrain and enjoin Lucas's continuing unlawful conduct.

174. Epic is further entitled to compensatory damages and any other available relief.

FIFTH CLAIM FOR RELIEF (AGAINST DEFENDANT LUCAS ONLY)
(Violation of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, *et seq.*)

175. Epic re-alleges and incorporates fully by reference the allegations in paragraphs 1 through 174 of this complaint, as if set forth fully herein.

176. This is a claim for unfair and deceptive trade practices under N.C. Gen. Stat. §§ 75-1.1, *et seq.*

177. Lucas has knowledge of the contracts between Epic and its registered users, and Lucas has knowledge of the previously recited prohibitions that the Terms and the EULA place on users since Lucas is a registered user of Epic's services and has agreed to the terms of both the EULA and the Terms.

178. Lucas has intentionally and willfully encouraged and induced users of Fortnite to (a) use cheats while playing the game and (b) purchase, sell, and/or transfer Epic accounts or parts of Epic accounts, all of which he knows constitute breaches of the contracts such users and Epic.

179. Lucas has acted without justification in intentionally interfering with the contracts between Epic and its users.

180. Lucas' intentional, continued interference with contracts formed between Epic and its users and other unfair methods of competition alleged herein are in or affecting United States and North Carolina commerce.

181. Lucas' intentional, continued interference with contracts formed between Epic and its users and other unfair methods of competition alleged herein are in or affecting commerce and are unfair or deceptive acts or practices in and affecting commerce.

182. As a direct and proximate result of Lucas' actions, Epic has sustained, and will continue to sustain, substantial, immediate, and irreparable harm for which there is no adequate remedy at law. Epic is entitled to injunctive relief to restrain and enjoin Lucas' continuing unlawful conduct.

183. Epic is entitled to and does seek recovery from Lucas of all damages proximately caused by, and all profits earned unjustly by, Lucas as a result of actions in violation of N.C. Gen. Stat. § 75-1.1 and, under § 75-16, to have such damages trebled.

184. Epic is also entitled to seek and does seek recovery of its reasonable attorneys' fees under N.C. Gen. Stat. § 75-16.1.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment in its favor, and against Defendants, and that the Court:

1. Enter judgment in Plaintiff's favor and against Defendants on all claims herein;
2. Adjudge Defendants to have infringed Epic's copyrights in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501, *et seq.*;

3. Adjudge Defendant Lucas to have contributorily infringed Epic's copyrights in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501, *et seq*;

4. Adjudge Defendants to have breached the Terms of Service and the Fortnite End User License Agreement in violation of North Carolina law;

5. Adjudge Defendant Lucas to have tortiously interfered with contracts between Plaintiff and users of its services in violation of North Carolina law;

6. Adjudge Defendant Lucas to have engaged in unfair or deceptive trade practices in violation of North Carolina law;

7. Declare that Defendants' infringement and other wrongdoings were willful in nature;

8. Enter an order pursuant to 17 U.S.C. § 502 that preliminarily and permanently enjoins both Defendants from infringing any of Epic's copyrighted works; and, as to Defendant Lucas, from inducing or materially contributing to the direct infringement of any of Epic's copyrighted works by others;

9. Enter an order that preliminarily and permanently enjoins Defendants from (i) violating the Terms of Service and (ii) violating the EULA, and, as to Defendant Lucas, also from (iii) intentionally interfering with Epic's contractual relations with the other parties to those agreements;

10. Enter an order pursuant to 17 U.S.C. § 502 that preliminarily and permanently enjoins Defendants by requiring the destruction of all infringing videos and copies of cheats or hacks in Defendants' possession, custody, or control that can be used to infringe Epic's copyrights in Fortnite so as to restrain Defendants' continued violations of Epic's copyrights in Fortnite;

11. Enter an order pursuant to 17 U.S.C. § 504 requiring that (i) Defendants

pay Epic the maximum amount of statutory damages permitted under 17 U.S.C. § 504, or, in the event that Epic elects to instead to recover actual damages and Defendants' additional profits from Defendants at any time before final judgment is rendered; and/or (ii) Defendants pay Epic's actual damages and Defendants' additional profits, together with interest, including pre-judgment, as fixed by the Court;

12. Enter an order pursuant to N.C. Gen. Stat. §§ 75-1.1, *et. seq.* trebling the damages awarded with respect to the Fourth Claim for Relief.

13. Enter an order pursuant to 17 U.S.C. § 505 and N.C. Gen. Stat §§ 75-16.1, *et seq.* awarding Epic its attorneys' fees, costs, and expenses; and

14. Award Plaintiff such other and further relief as the Court deems just and proper.

This the 10th day of October, 2018.

PARKER POE ADAMS & BERNSTEIN LLP

/s/Christopher M. Thomas

Christopher M. Thomas

N.C. Bar No. 31834

christhomas@parkerpoe.com

Tasneem A. Dharamsi

N.C. Bar No. 47697

tasneemdelphry@parkerpoe.com

PNC Plaza

301 Fayetteville Street, Suite 1400 (27601)

P.O. Box 389

Raleigh, North Carolina 27602-0389

Telephone: (919) 835-4626

Facsimile: (919) 834-4564

Attorneys for Plaintiff Epic Games, Inc.