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10 Attorneys for Plaintiffs
EPIC GAMES, INC. and EPIC GAMES
11 INTERNATIONAL S.À.R.L.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
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15 EPIC GAMES, INC., a Maryland
corporation; and EPIC GAMES
16 INTERNATIONAL S.À.R.L., a
Luxembourg Société à Responsabilité
17 Limitée,

18 Plaintiffs,

19 v.

20 PHILIP JOSEFSSON, an individual; and
21 ARTEM YAKOVENKO, an individual,

22 Defendants.

Case No.

COMPLAINT FOR:

- (1) **COPYRIGHT INFRINGEMENT**
- (2) **CONTRIBUTORY COPYRIGHT INFRINGEMENT**
- (3) **TRADEMARK INFRINGEMENT**
- (4) **FALSE DESIGNATION OF ORIGIN**
- (5) **BREACH OF CONTRACT**
- (6) **CALIFORNIA UNFAIR COMPETITION**

DEMAND FOR JURY TRIAL

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1 Plaintiffs Epic Games, Inc. and Epic Games International S.à.r.l. (collectively “Epic” or
2 “Plaintiffs”), for their Complaint against Defendants Philip Josefsson and Artem Yakovenko
3 (collectively “Defendants”), by and through their undersigned counsel allege as follows:

4 **INTRODUCTION**

5 1. Epic is the author and owner of all rights in Fortnite, a multiplayer survival and
6 building action video game. Epic seeks injunctive relief and damages arising from Defendants’
7 development, advertising, use, and distribution of a software cheat and associated videos that
8 exploit Fortnite, infringing Epic’s copyrights and trademarks and breaching Epic’s Terms of
9 Service (“Terms”) and the Fortnite End User License Agreement (“EULA”).

10 **PARTIES**

11 2. Epic Games, Inc. is a Maryland corporation, with its principal place of business in
12 Cary, North Carolina.

13 3. Epic Games International S.à.r.l. is a Luxembourg Société à Responsabilité
14 Limitée organized and existing under the laws of Luxembourg, acting through its Swiss branch,
15 and having a principal place of business in Switzerland.

16 4. On information and belief, Defendant Philip Josefsson is an individual who resides
17 in Gothenburg, Sweden.

18 5. On information and belief, Defendant Artem Yakovenko is an individual who
19 resides in Smolensk, Russia.

20 **JURISDICTION**

21 6. This Court has subject matter jurisdiction over the federal claims asserted herein
22 pursuant to 28 U.S.C. §§ 1331 and 1338 because this action alleges violations of the Copyright
23 Act (17 U.S.C. § 101, *et seq.*) and Lanham Act (15 U.S.C. §§ 1114, 1125). This Court has
24 supplemental jurisdiction over the remaining claims under 28 U.S.C. § 1367.

25 7. This Court has personal jurisdiction over Defendants because they consented to
26 jurisdiction in this judicial district by filing a Digital Millennium Copyright Act (“DMCA”), 17
27 U.S.C. § 512, counter notification with an entity located in this district. This Court also has
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1 personal jurisdiction over Defendants because they intentionally directed their unlawful activities
2 to this District.

3 8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a
4 substantial part of the events or omissions giving rise to this action occurred in this District and
5 because Defendants consented to jurisdiction in this judicial district. Venue is also proper in this
6 judicial district under 28 U.S.C. § 1391(c)(3) in that Defendants, residents of Sweden and Russia,
7 may be sued in any judicial district in the United States.

8 **INTRADISTRICT ASSIGNMENT**

9 9. This is an intellectual property action to be assigned on a district-wide basis under
10 Civil Local Rule 3-2(c).

11 **EPIC AND THE FORTNITE GAME**

12 10. Founded in 1991, Epic Games, Inc. is a leading video game developer for PC,
13 console, and mobile platforms.

14 11. Fortnite is a survival and action building game where players explore, scavenge
15 gear, build fortified structures and fight waves of monsters who want to kill the player and her
16 friends.

17 12. Fortnite was first released in or about October 2013.

18 13. Epic publicly released Fortnite's free-to-play Battle Royale game mode on or about
19 September 26, 2017.

20 14. Fortnite is an extremely popular game with over ten million players.

21 15. In Fortnite's Battle Royale game mode, players drop into an environment via a
22 glider from a flying battle bus and engage in intense player versus player combat until only one
23 player remains standing. That player wins the game.

24 16. In designing the Battle Royale game mode, Epic decided not to sell items to
25 players that would give any player a competitive advantage so that there was a fair playing field
26 for all players.

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EPIC’S COPYRIGHTS IN FORTNITE

17. Epic Games, Inc. is the author and owner of all copyrights in Fortnite, including but not limited to its maps, items, characters, user interface, and software.

18. Fortnite is copyrightable subject matter under the laws of the United States.

19. Epic Games, Inc. owns copyrights in Fortnite, including U.S. Copyright Registration Nos. TXu 1-895-864, TX 8-186-254, TX 8-254-659 and TX 8-352-178. True and correct copies of the certificates of registration for these works are attached hereto as Exhibit A.

EPIC’S FORTNITE TRADEMARK

20. Epic began using the FORTNITE mark in commerce at least as early as October 11, 2013.

21. Since its first use, Epic has continually used the FORTNITE mark in connection with video game software.

22. Epic has invested substantial resources in marketing, advertising, and distributing video games under the FORTNITE mark.

23. Fortnite, the video game bearing the FORTNITE mark, has more than ten million players.

24. Epic has attained substantial goodwill and strong recognition in the FORTNITE mark, and that mark has come to be associated with Epic.

25. Through its nationwide use and promotion of the FORTNITE mark, Epic has established strong rights in the FORTNITE mark and that mark is entitled to protection.

26. Epic owns United States Patent and Trademark Office (“USPTO”) Registration No. 4,481,629 for the FORTNITE mark. A true and correct copy of the registration for the FORTNITE mark is attached hereto as Exhibit B.

27. Epic also has a pending application for FORTNITE, USPTO Serial No. 87,484,706, for use in association with “[e]ntertainment services, namely, providing on-line computer games.”

EPIC’S TERMS OF SERVICE

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2 28. In order to use or access Epic’s websites, services, products, or content, a user
3 must agree to the Terms.

4 29. The Terms provide that “[t]he Services, including all content, features, and
5 functionality thereof, are owned by Epic, its licensors, or other providers of such material and are
6 protected by United States and international copyright . . . laws.”

7 30. Additionally, the Terms state that users “are permitted to use the Services for []
8 personal, non-commercial use only or legitimate business purposes related to [a user’s] role as a
9 current or prospective customer of Epic. Except as provided below, [users] must not copy,
10 modify, create derivative works of, publicly display, publicly perform, republish, or transmit any
11 of the material obtained through the Services, or delete, or alter any copyright, trademark, or other
12 proprietary rights notices from copies of materials from the Services.”

13 31. Under the Terms, users “must not reproduce, sell, or exploit for any commercial
14 purposes any part of the Services, access to the Services or use of the Services or any services or
15 materials available through the Services.”

16 32. Moreover, users “may use the Services only for lawful purposes and in accordance
17 with these Terms of Service. [Users] agree not to access or use the Services for any purpose that
18 is illegal or beyond the scope of the Services’ intended use (in Epic’s sole judgment).”

19 33. Defendants had accounts with Epic and agreed to be bound by the Terms by
20 registering those accounts and by using Epic’s services.

21 **FORTNITE’S EULA**

22 34. In order to use or play Fortnite, including the Battle Royale game mode, a user
23 must affirmatively accept the EULA.

24 35. The EULA grants users “a personal, non-exclusive, non-transferable, non-
25 sublicensable limited right and license to install and use one copy of the Software on a device for
26 . . . personal entertainment use.”

27 36. Under the EULA, Fortnite users may not, among other things:

28 a. “use it commercially or for a promotional purpose”;

- 1 b. “copy, reproduce, distribute, display, or use it in a way that is not expressly
2 authorized in this Agreement”;
- 3 c. “reverse engineer, derive source code from, modify, adapt, translate,
4 decompile, or disassemble it or make derivative works based on it”; or
- 5 d. “create, develop, distribute, or use any unauthorized software programs to
6 gain advantage in any online or other game modes.”

7 37. Defendants agreed to abide by the EULA by downloading and accessing Fortnite.

8 **CHEATS**

9 38. Cheats modify games to give a user an unfair competitive advantage over other
10 players.

11 39. Cheats give a cheater the power to do or see things that other players cannot do or
12 see. For example, a cheat may enable the user to see through solid objects, teleport, impersonate
13 another player by “spoofing” that player’s user name, or make moves other players cannot, such
14 as a spin followed by an instant headshot to another player.

15 40. Epic does not allow or support cheats in Fortnite, including in the Battle Royale
16 game mode.

17 41. Players who use cheats ruin the game play experience for those who play without
18 cheats and undermine the integrity of Fortnite.

19 **JOSEFSSON’S UNLAWFUL ACTS**

20 42. Josefsson downloaded and accessed Fortnite.

21 43. On information and belief, Josefsson created, developed, and/or wrote a software
22 cheat for Fortnite’s Battle Royale game mode.

23 44. Josefsson created and posted several videos on YouTube to advertise, demonstrate,
24 and distribute his cheat.

25 45. These videos feature Epic’s FORTNITE mark.

26 46. Additionally, the derivative works created by Josefsson’s cheat also contain the
27 FORTNITE mark. Josefsson intentionally induces others to infringe the FORTNITE mark by
28 distributing his cheat.

1 47. Epic has not authorized Josefsson to use Epic’s FORTNITE mark in this manner.

2 48. In or about October 2017, Josefsson posted a video along with a post on YouTube
3 that was available at <http://www.youtube.com/watch?v=YdsIStbPhvQ> (the “Josefsson video”)
4 that advertised, demonstrated, and provided a link to download his cheat.

5 49. The Josefsson video and associated post contained instructions on how to
6 download and install the cheat and showed full screen gameplay using the cheat.

7 50. On or about October 4, 2017, Epic submitted a takedown notice to YouTube for
8 the Josefsson video under the DMCA.

9 51. YouTube removed the Josefsson video.

10 52. On or about October 11, 2017, Josefsson submitted a counter notification to
11 YouTube.

12 53. In that notification Josefsson “consent[ed] to . . . if my address is outside of the
13 United States, the judicial district in which YouTube is located, and will accept service of process
14 from the claimant.”

15 54. On information and belief, YouTube is subject to the jurisdiction of the Northern
16 District of California.

17 **YAKOVENKO’S UNLAWFUL ACTS**

18 55. Yakovenko downloaded and accessed Fortnite.

19 56. On information and belief, Yakovenko purportedly created, developed, and/or
20 wrote a software cheat for Fortnite’s Battle Royale game mode.

21 57. Yakovenko created and posted several videos on YouTube to advertise,
22 demonstrate, and distribute his cheat.

23 58. These videos feature Epic’s FORTNITE mark.

24 59. Epic has not authorized Yakovenko to use Epic’s FORTNITE mark in this manner.

25 60. In or about September 2017, Yakovenko posted a video along with a post on
26 YouTube that was available at <http://www.youtube.com/watch?v=NLztaTKMmsM> (the “First
27 Yakovenko video”) that advertised, demonstrated, and provided a link to download his cheat.
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1 61. The First Yakovenko video and associated post contained instructions on how to
2 download and install the cheat and showed full screen gameplay using the purported cheat.

3 62. On or about October 2, 2017, Epic submitted a takedown notice to YouTube for
4 the First Yakovenko video under the DMCA.

5 63. YouTube took down the First Yakovenko video.

6 64. On or about October 5, 2017, Yakovenko submitted a counter notification to
7 YouTube for the First Yakovenko video.

8 65. Yakovenko then posted several additional videos on YouTube which were
9 available at <http://www.youtube.com/watch?v=9fKl9PpjV04>,
10 <http://www.youtube.com/watch?v=nWLxAqt6yog>,
11 <http://www.youtube.com/watch?v=AFLE1QN1HVU>, and
12 <http://www.youtube.com/watch?v=Ka5fW3L0cJ8> (the “Second Yakovenko videos”) purportedly
13 demonstrating his cheat and offering a download for the cheat.

14 66. The Second Yakovenko videos and associated posts contained instructions on how
15 to download and install the cheat and showed full screen gameplay using the purported cheat.

16 67. On or about October 10, 2017, Epic submitted a takedown notice to YouTube for
17 the Second Yakovenko videos under the DMCA.

18 68. YouTube took down the Second Yakovenko videos.

19 69. On or about October 12, 2017, Yakovenko submitted a counter notification to
20 YouTube for the Second Yakovenko videos.

21 70. By submitting counter notifications, Yakovenko consented to the jurisdiction of
22 the Northern District of California. Specifically, Yakovenko attested: “I consent to . . . if my
23 address is outside of the United States, the judicial district in which YouTube is located, and will
24 accept service of process from the claimant.”

25 71. Epic downloaded the purported cheat from the links provided in Yakovenko’s
26 YouTube videos. While the “cheat” does not appear to be a functional Fortnite cheat, it functions
27 as a bitcoin miner that infects the user’s computer with a virus that causes the user’s computer to
28 mine bitcoin for the benefit of an unknown third party.

FIRST CLAIM FOR RELIEF
Copyright Infringement
(17 U.S.C § 501 *et seq.*)
Against Defendants

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4 72. Epic realleges and incorporates by reference the allegations in the preceding
5 paragraphs as if fully set forth herein.

6 73. Fortnite constitutes an original work of authorship and copyrightable subject
7 matter under the laws of the United States.

8 74. Epic Games, Inc. owns or has exclusive rights to all right, title, and interest in
9 Fortnite.

10 75. Defendants had access to Fortnite.

11 76. Defendants' cheats and/or videos demonstrating those cheats infringe Epic's
12 copyrights in Fortnite by copying, reproducing, preparing derivative works from, and/or
13 displaying Fortnite publicly without Epic's permission.

14 77. Defendants' copies, reproductions, derivative works, and displays are identical
15 and/or substantially similar to Fortnite.

16 78. Defendants' actions were and are willful.

17 79. Epic has been and will continue to be damaged by Defendants' unlawful
18 infringement of Fortnite in an amount to be proven at trial.

19 80. Defendants' conduct has caused irreparable harm to Epic, and, unless enjoined,
20 will cause further irreparable harm for which Epic has no adequate remedy at law.

21 81. Epic is entitled to relief pursuant to 17 U.S.C. §§ 502-505, including, but not
22 limited to, injunctive relief, an order for the impounding and destruction of Defendants'
23 infringing copies and/or derivative works, compensatory damages (including, but not limited to
24 actual damages and/or Defendants' profits), statutory damages, punitive damages, and Epic's
25 costs and attorneys' fees in amounts to be determined at trial.

SECOND CLAIM FOR RELIEF
Contributory Copyright Infringement
(17 U.S.C § 501 *et seq.*)
Against Defendant Josefsson

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4 82. Epic realleges and incorporates by reference the allegations in the preceding
5 paragraphs as if fully set forth herein.

6 83. Josefsson provides those who download his cheat with the means to create
7 derivative works of Fortnite without Epic's consent.

8 84. Those users directly infringe Epic's copyrights by preparing derivative works from
9 Fortnite without the consent or authority of Epic.

10 85. Josefsson has engaged and continues to engage in the business of knowingly and
11 systematically inducing, causing, and/or materially contributing to unauthorized copying,
12 reproduction, preparation of derivative works from, and/or distribution of copies to the public of
13 Fortnite.

14 86. Josefsson's conduct constitutes contributory copyright infringement.

15 87. Josefsson's actions were and are willful.

16 88. Epic has been and will continue to be damaged by Josefsson's unlawful
17 contributory infringement of Fortnite in an amount to be proven at trial.

18 89. Josefsson's conduct has caused irreparable harm to Epic, and, unless enjoined, will
19 cause further irreparable harm for which Epic has no adequate remedy at law.

20 90. Epic is entitled to the relief provided by 17 U.S.C. §§ 502-505, including, but not
21 limited to, injunctive relief, an order for the impounding and destruction of Josefsson's infringing
22 copies and/or derivative works, compensatory damages (including, but not limited to actual
23 damages and/or Josefsson's profits), statutory damages, punitive damages, and Epic's costs and
24 attorneys' fees in amounts to be determined at trial.

THIRD CLAIM FOR RELIEF
Trademark Infringement
(15 U.S.C. § 1114)
Against Defendants

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4 91. Epic realleges and incorporates by reference the allegations in the preceding
5 paragraphs as if fully set forth herein.

6 92. Defendants' unauthorized use of the FORTNITE mark in association with the
7 videos promoting their cheats, as well as in the unauthorized derivative works created by
8 Josefsson's cheat, constitute infringement of Epic's federally registered FORTNITE mark in
9 violation of 15 U.S.C. § 1114(1).

10 93. Because of Epic's continuous and exclusive use of the FORTNITE mark, it has
11 come to mean, and is understood by consumers to signify products of Epic.

12 94. Defendants' use of the FORTNITE mark in connection with the sale, offering for
13 sale, distribution, and advertising of cheats, as well as the use of the FORTNITE mark within the
14 unauthorized derivative work created by Josefsson's cheat, is likely to cause confusion, mistake,
15 or deception as to the source, origin, or authenticity of Defendants' products and services.

16 95. Further, Defendants' activities are likely to lead consumers to conclude,
17 incorrectly, that Defendants' products and services originate with or are authorized by Epic, to the
18 damage and harm of Epic.

19 96. Defendants knew or should have known of Epic's rights, and their infringement
20 has been knowing, willful, and deliberate, such that the Court should award Epic its attorneys'
21 fees pursuant to 15 U.S.C. § 1117.

22 97. Epic has been, and continues to be, damaged by such acts in a manner that cannot
23 be fully measured or compensated in economic terms. Epic therefore has no adequate remedy at
24 law and seeks permanent injunctive relief pursuant to 15 U.S.C. § 1116.

25 98. Defendants' activities have damaged, and threaten to continue damaging, Epic's
26 reputation and goodwill.

FOURTH CLAIM FOR RELIEF
False Designation of Origin
(15 U.S.C. § 1125(a))
Against Defendants

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4 99. Epic realleges and incorporates by reference the allegations in the preceding
5 paragraphs as if fully set forth herein.

6 100. Epic has strong rights in the FORTNITE mark.

7 101. Defendants' actions constitute the use in interstate commerce of a false designation
8 of origin, false or misleading description of fact, or false or misleading representations of fact that
9 are likely to cause confusion or mistake, or to deceive as to the affiliation, connection, or
10 association of Defendants' products and services with Epic, or as to the origin, sponsorship, or
11 approval of the goods and services provided by Defendants in violation of 15 U.S.C. § 1125(a).

12 102. Defendants knew or should have known of Epic's rights, and Defendants' false
13 designation of origin has been knowing, willful, and deliberate, such that the Court should award
14 Epic its attorneys' fees pursuant to 15 U.S.C. § 1117.

15 103. Epic has been, and continues to be, damaged by such acts in a manner that cannot
16 be fully measured or compensated in economic terms. Epic therefore has no adequate remedy at
17 law and seeks permanent injunctive relief pursuant to 15 U.S.C. § 1116.

18 104. Defendants' acts have damaged, and threaten to continue damaging, Epic's
19 reputation and goodwill.

20 **FIFTH CLAIM FOR RELIEF**
21 **Breach of Contract**
22 **Against Defendants**

23 105. Epic realleges and incorporates by reference the allegations in the preceding
24 paragraphs as if fully set forth herein.

25 106. Access to and use of Epic's services is governed by and subject to the Terms.
26 Access to and use of Fortnite is governed by and subject to the EULA.

27 107. At all times relevant hereto, Epic prominently displayed and/or provided links to
28 the Terms and EULA. For instance, Epic users are presented with and must affirmatively accept
the Terms to register for an Epic account, which is necessary to play Fortnite on PC. In addition,

1 Epic prominently displayed links to the Terms at the bottom of Epic’s webpages. Fortnite players
2 are also presented with and must affirmatively accept the EULA to download and access Fortnite.

3 108. Defendants agreed to abide by the Terms and EULA by registering an account
4 with Epic, using the Epic services, and/or by accessing the Epic services to, among other things,
5 download and access Fortnite.

6 109. On information and belief, Defendants regularly accessed Epic’s services with
7 knowledge of the Terms and EULA.

8 110. The Terms and EULA are valid, enforceable contracts between Epic and
9 Defendants.

10 111. Defendants have willfully, continuously, and materially breached the Terms and
11 EULA by, for example:

- 12 a. Using Fortnite for a commercial use and/or promotional purpose;
- 13 b. Copying, modifying, creating derivative works of, publicly displaying,
14 publicly performing, republishing, and/or transmitting Fortnite without
15 permission from Epic;
- 16 c. Reproducing, selling, and/or exploiting Fortnite for a commercial purpose;
- 17 d. Using Fortnite for a purpose that is illegal or beyond the scope of Fornite’s
18 intended use;
- 19 e. Reverse engineering, deriving source code from, modifying, adapting,
20 translating, decompiling, or disassembling Fortnite or making a derivative
21 works based on it; and/or
- 22 f. Creating, developing, distributing, or using unauthorized software
23 programs to gain advantage in any online or other game modes.

24 112. Epic has performed its obligations pursuant to the Terms and EULA.

25 113. As a direct and proximate result of Defendants’ breaches of the Terms and EULA,
26 Epic has been and will continue to be harmed, thereby entitling it to injunctive relief,
27 compensatory damages, attorneys’ fees, costs, and/or other equitable relief against Defendants.
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- 1 (b) Creating, writing, developing, advertising, promoting, and/or offering for
2 sale or otherwise any software that infringes Epic’s copyrights;
- 3 (c) Using, in any manner whatsoever, Epic’s FORTNITE mark, or any
4 confusingly similar mark, logo, trade name, domain name or other source
5 identifier;
- 6 (d) Violating, inducing or enabling others to violate Epic’s trademark rights in
7 any manner whatsoever; and
- 8 (e) Unfairly competing with Epic in any manner whatsoever.
- 9 C. An order requiring that Defendants immediately destroy all copies of Fortnite or
10 any derivative work thereof;
- 11 D. An order requiring that Defendants immediately destroy all copies of any Fortnite
12 software cheats;
- 13 E. An award to Plaintiffs of restitution and damages, including, but not limited to,
14 liquidated, compensatory, statutory (including enhanced statutory damages for willful
15 infringement), punitive damages, and all other damages permitted by law;
- 16 F. That Plaintiffs be awarded pre-judgment and post-judgment interest on all
17 damages awarded against Defendants;
- 18 G. An award to Plaintiffs of their costs incurred in this suit, including, but not limited
19 to, reasonable attorneys’ fees; and
- 20 H. For such other relief as the Court deems just and proper.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiffs hereby demand a trial by jury of all issues so triable.
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1 DATED: October 17, 2017

PERKINS COIE LLP

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13 Epic Games International S.à.r.l.

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