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

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 EPIC GAMES, INC., a Maryland
corporation; and EPIC GAMES
15 INTERNATIONAL S.À.R.L., a
Luxembourg Société à Responsabilité
16 Limitée,

17 Plaintiffs,

18 v.

19 YASH GOSAI, an individual,
20 Defendant.

Case No. 18-152

COMPLAINT FOR:

- (1) **COPYRIGHT INFRINGEMENT**
- (2) **BREACH OF CONTRACT**
- (3) **CONVERSION**

DEMAND FOR JURY TRIAL

1 Plaintiffs Epic Games, Inc. and Epic Games International S.à.r.l. (collectively “Epic” or
2 “Plaintiffs”), for their Complaint against Yash Gosai (“Defendant”), by and through their
3 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 Defendant’s
7 advertising, use, and distribution of an exploit that allows players to obtain game currency
8 without paying for it and associated video featuring Fortnite gameplay, infringing Epic’s
9 copyrights and breaching Epic’s Terms of Service (“Terms”) and the Fortnite End User License
10 Agreement (“EULA”).

11 **PARTIES**

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

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

17 4. On information and belief, Defendant Yash Gosai is an individual who resides in
18 Auckland, New Zealand.

19 **JURISDICTION**

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

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

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

6 **INTRADISTRICT ASSIGNMENT**

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

9 **EPIC AND THE FORTNITE GAME**

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

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

15 11. Fortnite was first released in or about October 2013.

16 12. Epic publicly released Fornite’s Battle Royale game mode on or about September
17 26, 2017. Battle Royale is free to play.

18 13. Fortnite is an extremely popular game with over thirty million players.

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

22 15. Battle Royale players can purchase game currency, called “V-bucks,” through an
23 online store. V-bucks allow players to purchase cosmetic upgrades (“skins”) for their character
24 and game tools.

25 16. Players can purchase V-bucks packages for between \$9.99 (for 1,000 V-bucks)
26 and \$99.99 (for 13,500 V-bucks).

27
28

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 TERMS OF SERVICE

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

21. The Terms provide that “[t]he 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.”

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

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

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

25. Defendant had an account with Epic and agreed to be bound by the Terms by registering that account and by using Epic’s services.

FORTNITE’S EULA

1
2 26. In order to use or play Fortnite, including the Battle Royale game mode, a user
3 must affirmatively accept the EULA.

4 27. The EULA grants users “a personal, non-exclusive, non-transferable, non-
5 sublicensable limited right and license to install and use one copy of the Software on a device for
6 . . . personal entertainment use.”

7 28. Under the EULA, Fortnite users may not, among other things:

- 8 a. “use it commercially or for a promotional purpose”;
- 9 b. “copy, reproduce, distribute, display, or use it in a way that is not expressly
10 authorized in this Agreement”; or
- 11 c. “create, develop, distribute, or use any unauthorized software programs to
12 gain advantage in any online or other game modes.”

13 29. Defendant agreed to abide by the EULA by downloading and accessing Fortnite.

14 **EXPLOITS**

15 30. Exploits allow players to access game features in a way not intended by a game
16 developer. For example, an exploit may enable a player to obtain items for free that other users
17 must purchase or obtain limited-distribution game tools without earning them.

18 31. Epic does not encourage or allow use of exploits in Fortnite, including in the Battle
19 Royale game mode.

20 32. Players who search for and promote exploits ruin the game experience for others
21 and undermine the integrity of Fortnite.

22 33. Players who use exploits to avoid paying for items in Fortnite are stealing from
23 Epic.

24 **GOSAI’S UNLAWFUL ACTS**

25 34. Gosai downloaded and accessed Fortnite.

26 35. On information and belief, Gosai developed an exploit for Fortnite’s Battle Royale
27 mode that enables players to obtain V-bucks without paying for them.
28

1 36. Gosai created and posted a video on YouTube to advertise, promote and
2 demonstrate the exploit.

3 37. The video features Fortnite gameplay.

4 38. Epic has not authorized Gosai to use Epic's copyrighted work in this manner.

5 39. In or about December 2017, Gosai posted a video on YouTube that was available
6 at <http://www.youtube.com/watch?v=WISZj8aoSZA> (the "Gosai Video") that advertised,
7 promoted and demonstrated the exploit.

8 40. The Gosai Video contained instructions on how to perform the exploit and showed
9 full screen gameplay.

10 41. On or about December 29, 2017, Epic submitted a takedown notice to YouTube
11 for the Gosai Video under the DMCA.

12 42. YouTube took down the Gosai Video.

13 43. On or about December 29, 2017, Gosai submitted a counter-notification to
14 YouTube for the Gosai Video.

15 44. Because Gosai's address is located outside the United States, in his counter
16 notification, Gosai "consent[ed] to the jurisdiction of the Federal District Court for . . . the
17 judicial district in which YouTube is located, and will accept service of process from the
18 claimant."

19 45. On information and belief, YouTube is subject to jurisdiction in the Northern
20 District of California.

21 **FIRST CLAIM FOR RELIEF**
22 **Copyright Infringement**
23 **(17 U.S.C § 501 *et seq.*)**

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

26 47. Fortnite constitutes an original work of authorship and copyrightable subject
27 matter under the laws of the United States.

28 48. Epic owns or has exclusive rights to all right, title, and interest in Fortnite.

1 49. Defendant had access to Fortnite.

2 50. Defendant's videos demonstrating the exploit infringe Epic's copyrights in
3 Fortnite by copying, reproducing, preparing derivative works from, and/or displaying Fortnite
4 publicly without Epic's permission.

5 51. Defendant's copies, reproductions, derivative works, and displays are identical
6 and/or substantially similar to Fortnite.

7 52. Defendant's actions were and are willful.

8 53. Epic has been and will continue to be damaged by Defendant's unlawful
9 infringement of Fortnite in an amount to be proven at trial.

10 54. Defendant's conduct has caused irreparable harm to Epic, and, unless enjoined,
11 will cause further irreparable harm for which Epic has no adequate remedy at law.

12 55. Epic is entitled to relief pursuant to 17 U.S.C. §§ 502-505, including, but not
13 limited to, injunctive relief, an order for the impounding and destruction of Defendant's
14 infringing copies and/or derivative works, compensatory damages (including, but not limited to
15 actual damages and/or Defendant's profits), statutory damages, punitive damages, and Epic's
16 costs and attorneys' fees in amounts to be determined at trial.

17 **SECOND CLAIM FOR RELIEF**

18 **Breach of Contract**

19 56. Epic realleges and incorporates by reference the allegations in the preceding
20 paragraphs as if fully set forth herein.

21 57. Access to and use of Epic's services is governed by and subject to the Terms.
22 Access to and use of Fortnite is governed by and subject to the EULA.

23 58. At all times relevant hereto, Epic prominently displayed and/or provided links to
24 the Terms and EULA. For instance, Epic users are presented with and must affirmatively accept
25 the Terms to register for an Epic account. In addition, Epic prominently displayed links to the
26 Terms at the bottom of Epic's webpages. Fortnite players are also presented with and must
27 affirmatively accept the EULA to download and access Fortnite.
28

1 59. Defendant agreed to abide by the Terms and EULA by registering an account with
2 Epic, using the Epic services, and/or by accessing the Epic services to, among other things,
3 download and access Fortnite.

4 60. On information and belief, Defendant regularly accessed Epic's services with
5 knowledge of the Terms and EULA.

6 61. The Terms and EULA are valid, enforceable contracts between Epic and
7 Defendant.

8 62. Defendant has willfully, continuously, and materially breached the Terms and
9 EULA by, for example:

- 10 a. Using and exploiting Fortnite for a commercial and/or promotional
11 purpose;
- 12 b. Copying, modifying, creating derivative works of, publicly displaying,
13 publicly performing, republishing, and/or transmitting Fortnite without
14 permission from Epic; and/or
- 15 c. Using Fortnite for a purpose that is illegal or beyond the scope of Fornite's
16 intended use.

17 63. Epic has performed its obligations pursuant to the Terms and EULA.

18 64. As a direct and proximate result of Defendant's breaches of the Terms and EULA,
19 Epic has been and will continue to be harmed, thereby entitling it to injunctive relief,
20 compensatory damages, attorneys' fees, costs, and/or other equitable relief against Defendant.

21 **THIRD CLAIM FOR RELIEF**

22 **Conversion**

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

25 66. Epic owns or has a right to possession of the V-bucks it offers for sale in the
26 Fortnite game.

27 67. Defendant obtained V-bucks by a wrongful act, that is, by using an exploit to add
28 V-bucks to his account without paying for them.

1 68. Defendant’s acts have caused monetary damage to Epic in an amount to be proven
2 at trial.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiffs pray for the following relief:

5 A. That judgment be entered in Plaintiffs’ favor against Defendant on all claims;

6 B. That Defendant and his officers, agents, representatives, servants, employees,
7 heirs, successors, and assigns, and all others in active concert or participation with Defendant be
8 preliminarily and permanently enjoined from infringing, inducing or enabling others to infringe
9 Epic’s copyrights in any manner whatsoever;

10 C. An order requiring that Defendant immediately destroy all copies of Fortnite or
11 any work featuring Fortnite gameplay;

12 D. An award to Plaintiffs of restitution and damages, including, but not limited to,
13 liquidated, compensatory, statutory (including enhanced statutory damages for willful
14 infringement), punitive damages, and all other damages permitted by law;

15 E. That Plaintiffs be awarded pre-judgment and post-judgment interest on all
16 damages awarded against Defendant;

17 F. An award to Plaintiffs of their costs incurred in this suit, including, but not limited
18 to, reasonable attorneys’ fees; and

19 G. For such other relief as the Court deems just and proper.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiffs hereby demand a trial by jury of all issues so triable.

22 DATED: January 8, 2018

PERKINS COIE LLP

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27 Attorneys for Plaintiffs Epic Games, Inc. and
28 Epic Games International S.à.r.l.