

The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUNGIE, INC.,

Plaintiff,

v.

L.L.,

Defendants.

Case No. 2:22-cv-0981 RAJ

STIPULATED MOTION FOR ENTRY
OF CONSENT JUDGMENT

**NOTE ON MOTION CALENDAR:
SEPTEMBER 1, 2023**

STIPULATION AND MOTION FOR ENTRY OF JUDGMENT

Defendant L.L. (the “Defendant”) and Plaintiff Bungie, Inc., through their undersigned counsel, hereby stipulate as follows and jointly move that the Court enter the proposed Order and the Consent Judgment attached as Attachment A to the Order, based on the following stipulations between the parties:

1. Bungie is the holder of multiple copyright registrations for *Destiny 2*, including Registrations Nos. TX 8-933-655, TX 8-933-658, and TX 9-130-251 covering the *Destiny 2: Beyond Light*, and *Destiny 2: The Witch Queen* software, and Registrations No. PA 2-282-670 and PA 2-280-030, covering *Destiny 2* and *Destiny 2: Beyond Light* as audiovisual works.

1 Bungie also has further registrations pending for *Destiny 2: The Witch Queen*. Collectively,
2 these are referred to below as the “Copyrights.”
3

4 2. Washington recognizes a tort of cyberstalking that encompasses conduct
5 prohibited by Washington’s Cybercrime Act. *See Bungie, Inc. v. Comer*, No. 22-2-10761-8 SEA
6 (Wash. Super. Ct., King County, July 11, 2023). Defendant engaged in conduct that arguably
7 violates that statute.
8

9 3. Defendant has also used cheat software when playing *Destiny 2*.

10 4. The cheat software Defendant uses displays a graphical overlay that integrates
11 into and annotates Plaintiff’s copyrighted *Destiny 2* audiovisual work, and thereby infringes
12 Bungie’s Copyrights as an unauthorized derivative work.
13

14 5. The cheat software Defendant uses operates by injecting code into Plaintiff’s
15 copyrighted *Destiny 2* code, with the combined code working in concert to enable and provide
16 the “hacks,” and thereby infringes Bungie’s Copyrights as an unauthorized derivative work.
17

18 6. In addition, the cheat software Defendant uses operates to circumvent
19 technological measures Plaintiff employs to control and limit access to its software, including by
20 aimbot smoothing and accessing data to which Plaintiff otherwise denies users access, in
21 violation of 17 U.S.C. § 1201(a) and (b).
22

23 7. Defendant has used the cheat software countless times, and each use constitutes
24 an independent circumvention of technological measures that control access to *Destiny 2* in
25 violation of 17 U.S.C. § 1201(a).
26

1 8. Defendant also violated 17 U.S.C. § 1201(a) by creating new accounts to access
2 *Destiny 2* after being banned from *Destiny 2* and with knowledge that the account ban was
3 intended to restrict his access to *Destiny 2*, with each new account constituting the independent
4 circumvention of a technological measure that controls access to *Destiny 2*.
5

6 9. Defendant disaffirmed the license agreement that licensed him to download and
7 play *Destiny 2*, rendering that license void *ab initio*.
8

9 10. Thus, Defendant's download and use of *Destiny 2* was unlicensed and Defendant
10 infringed Plaintiff's Copyrights each time he opened the software, causing it to be copied into his
11 computer's RAM. *MAI v. Peak*, 991 F.2d 511, 26 USPQ2d 1458 (9th Cir. 1993).
12

13 11. Plaintiff is entitled to statutory damages of \$150,000.00 per infringed work, for a
14 total of \$300,000.00.
15

16 12. In addition, Plaintiff is entitled to statutory damages for each act of
17 circumvention.
18

19 13. Defendant stipulates and agrees that, between each use of cheat software and each
20 creation of a new account, Defendant engaged in at least 100 acts of circumvention.
21

22 14. Given that this likely undercounts the number of acts of circumvention in which
23 Defendant engaged, Plaintiff is entitled to statutory damages of \$2,000 per act of circumvention.
24

25 15. Judgment shall thus be entered against Defendant in the amount of \$500,000.00.
26

1 16. Any claims alleged in the Complaint and not addressed herein are withdrawn by
2 Plaintiff.

3
4 17. In addition, pursuant to 17 U.S.C. §§ 502, 504, 505, 506, and 1201, and the Court’s
5 inherent equitable powers, the Court should order the Defendant to immediately and permanently
6 cease and desist from any of the following:

7
8 A. Obtaining, possessing, accessing, using, developing, distributing, advertising,
9 marketing, promoting, performing, streaming, promoting, advertising, or encouraging or
10 inducing others to purchase or use the software referenced in the Complaint designed to be used
11 with *Destiny 2* (the “Cheat Software”) or any software whose use infringes intellectual property
12 owned or controlled by Plaintiff or its parents, subsidiaries, or affiliates (collectively, “Bungie”),
13 circumvents technological measures that effectively control access to Bungie’s games, violates
14 Bungie’s licensing agreements, or is designed to exploit or enable the exploitation of any game
15 owned, published, distributed or operated by Bungie;

16 B. Purchasing, selling, reselling, or processing payments for, or otherwise
17 participating in the sale, resale, and/or acquisition of Bungie accounts, emblems, clan names, or
18 any other asset, item, or other thing associated with Bungie’s games;

19 C. Obtaining, downloading, copying, playing, streaming, or otherwise interacting
20 with Bungie’s games;

21 D. Directly or indirectly threatening or harassing Bungie, or its employees, or any
22 member of the *Destiny 2* community in their capacity as such, or encouraging or otherwise
23 assisting any other party to do so. For purposes of clarity, “in their capacity as such” is intended
24 to clarify that, as to members of the *Destiny 2* community, this provision applies only to conduct
25 by Defendant relating to such member’s participation in the *Destiny 2* community;

26 E. Travelling within 1000 feet of Bungie’s offices, or knowingly travelling within

1 1000 feet of the known home address of any Bungie employee, except as is incidental to travel
2 on public highways and roadways for purposes other than to make contact with or otherwise
3 harass such Bungie employee;

4 F. Supporting, promoting, using, or facilitating access to any and all domain names,
5 URLs, and websites (including, but not limited to, OGUUsers.com), including any and all future
6 and successor domain names, URLs, and websites, through which Defendant has trafficked
7 Emblems or accounts, and through which he has obtained any circumvention devices that
8 threaten Plaintiff's technological protection measures or which infringe Plaintiff's Intellectual
9 Property rights. For the avoidance of doubt, nothing in this provision restricts Defendant's use of
10 social media where such use is not connected to the use and proliferation of cheating software.

11 G. Defendants shall take all necessary steps to disable, remove, or otherwise shut
12 down any social network, video sharing, or digital messaging accounts under his control
13 (including, but not limited to, Facebook, groups or chats on Facebook, YouTube, Twitter, Tik
14 Tok, Discord, GBATemp, Reddit, Telegram, Skype, WeChat, WhatsApp, Signal, or their
15 equivalent) that are dedicated to the activities in this Judgment for which he is liable and
16 permanently enjoined from or any other software whose use infringes any of Plaintiff's
17 Intellectual Property Rights, circumvents technological measures that effectively control access
18 to Plaintiff's games, or violates Plaintiff's license agreements, and shall any take all necessary
19 steps to remove any information on any non-dedicated (e.g., personal) social network accounts
20 under his control used to distribute or promote any of the foregoing. For the avoidance of doubt,
21 nothing in this provision restricts Defendant's use of social media where such use is not
22 connected to the use and proliferation of cheating software.

23 H. Defendant is further prohibited from engaging in any other violation of the Digital
24 Millennium Copyright Act or the Copyright Act, or any other federal or state law, with respect to
25 Plaintiff.

26 I. Defendant is ordered to destroy the Cheat Software or any software whose use

1 infringes Plaintiff’s Intellectual Property, circumvents technological measures that effectively
2 control access to Plaintiff’s games, violates Plaintiff’s licensing agreements, or is designed to
3 exploit or enable the exploitation of any game owned, published, or operated by Plaintiff.

4 J. This permanent injunction constitutes a binding court order, and any violations of
5 this order by Defendant will subject him to the full scope of this Court’s contempt authority,
6 including punitive, coercive, and monetary sanctions.

7 K. Any company or entity that Defendant may control in the future shall also comply
8 with the provisions of this Judgment and Permanent Injunction.

9 L. This permanent injunction is binding against the Defendant worldwide, without
10 regard to the territorial scope of the specific intellectual property rights asserted in the Complaint
11 of the above-captioned case and may be enforced in any court of competent jurisdiction
12 wherever Defendant or their assets may be found.

13 18. The Parties irrevocably and fully waive notice of entry of this Judgment and
14 Permanent Injunction and notice and service of the entered Judgment and Permanent Injunction.
15 Plaintiff is not required to post any bond or security in connection with the Final Judgment and
16 Permanent Injunction, and Defendant has permanently, irrevocably, and fully waived any right to
17 request a bond or security.
18

19 19. The Parties irrevocably and fully waive any and all rights to appeal this Judgment
20 and Permanent Injunction, to have it vacated or set aside, to seek or obtain a new trial thereon or
21 otherwise to attack in any way, directly or collaterally, its validity or enforceability.
22

23 20. Nothing contained in this Judgment and Permanent Injunction shall limit the right
24 of the Parties to seek relief, including without limitation damages, for any and all infringements
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1 of any Intellectual Property rights occurring after the date of this Judgment and Permanent
2 Injunction.

3

4 21. The Court should retain jurisdiction of this action to entertain such further
5 proceedings and to enter such further orders as may be necessary or appropriate to implement
6 and enforce the provisions of this Judgment and Permanent Injunction. The Parties consent to the
7 personal jurisdiction of the United States District Court for the Western District of Washington
8 for purposes of enforcing the Judgment and Permanent Injunction.

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SO STIPULATED AND MOVED, THROUGH COUNSEL OF RECORD.

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DATED this 16th day of August, 2023.

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED. The Clerk is directed to enter judgment against L.L. and in favor of plaintiff Bungie, Inc. in conformity with the stipulations above, and in the form of Attachment A to this Order.

DATED: _____

Richard A. Jones
United States District Court Judge

4889-5832-9207.2