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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUNGIE, INC.,

Plaintiff,

v.

LUCA LEONE,

Defendant.

Case No.

COMPLAINT FOR (1) BREACH OF
CONTRACT, (2) COPYRIGHT
INFRINGEMENT, (3) FRAUD, (4) DMCA
ANTI-CIRCUMVENTION, AND
(5) VIOLATION OF THE WASHINGTON
CONSUMER PROTECTION ACT

JURY DEMAND

Plaintiff Bungie, Inc. (“Bungie”), as and for its complaint against Defendant Luca Leone (“Leone”), respectfully alleges as follows:

INTRODUCTION

1. Defendant Leone, who tweets from the handle @inkcel, is a *Destiny 2* user who routinely streams himself using cheats – third-party software used to gain an unfair advantage by players without the skill or integrity to succeed at the game on their own merit and a level playing field, and which ruins the experience of playing *Destiny 2* for Bungie’s large community of honest gamers – and who Bungie has repeatedly banned from the game as a result.

1 2. Leone’s use of cheat software also – as alleged in detail below – violates a raft
2 of Federal and state statutes and the express terms of the Limited Software License Agreement
3 (“LSLA”) by which Bungie makes *Destiny 2* available to players. And when he repeatedly
4 created new Bungie accounts to play the game after being banned, claiming with each new
5 account creation that he agreed to terms of the LSLA but never intending to abide by those
6 terms, Leone committed serial fraud.

7 3. In fact, one of the terms of the LSLA expressly entitles Bungie to ban Leone
8 from playing the game for his cheating. Yet Leone has now made *thirteen* separate accounts in
9 his attempts to evade the ban, and each new account was therefore a separate breach of the
10 LSLA.

11 4. Leone has also repeatedly made threats targeting Bungie and its employees,
12 tweeting about his desire to “burn down” Bungie’s office building and declaring that specific
13 Bungie employees were “not safe” given Leone’s intent to move into their neighborhood.

14 5. Moreover, as alleged below, during the course of its investigation of Leone
15 Bungie uncovered *criminal* conduct: Leone is an active member of the “OGUsers” account
16 hacking and selling forum, where he sells (presumably stolen) social media accounts – and also
17 “sells” *Destiny 2* emblems (non-transferable digital art badges obtained by in-game
18 achievements or real-world conduct, which are prized by many players, especially collectors),
19 which is yet another violation of the LSLA.

20 6. Bungie’s LSLA, which is common to *Destiny 2* and to all of Bungie’s online
21 services, prohibits the unauthorized commercial exploitation of *Destiny 2*, and to any digital
22 assets within or connected to *Destiny 2* such as accounts and emblems, therefore each “sale” by
23 Leone of a *Destiny 2* emblem is a violation of the LSLA and a violation of Bungie’s copyrights
24 in and to the *Destiny 2* game.

25 7. Because *Destiny 2* emblems are non-transferable, (emblems are linked to a
26 Bungie.net account at the time they are awarded,) emblems transferred to an account through

1 any type of account-sharing or account-linking method are transient and subject to removal at
2 any time; therefore each “sale” by Leone also circumvents the technical measures that Bungie
3 employs to award emblems only to their intended recipient and defrauds the user who receives
4 the emblem from Leone.

5 8. Indeed, among the emblems Leone sells are emblems Bungie makes available
6 only to players who donate to selected charity drives; thus, not only is Leone lining his own
7 pockets in violation of the LSLA, but he is devaluing an award Bungie grants for charitable
8 giving and thereby harming the Bungie Foundation’s ability to fund charitable causes.

9 9. That combination of conduct makes Bungie’s decision to bring this lawsuit
10 easy. As Bungie has demonstrated repeatedly, it will not allow its game, its community, or its
11 employees to be abused, defrauded, or threatened. Leone has done all three, and this action is
12 the consequence.

13 **PARTIES, JURISDICTION AND VENUE**

14 10. Plaintiff Bungie is a Delaware corporation with its primary place of business at
15 550 106th Avenue NE, Suite 207, Bellevue, Washington 98004.

16 11. Upon information and belief, Defendant Leone is a California citizen last
17 residing at 1126 Donaldo Court, South Pasadena, California 91030, and, as of the time of this
18 filing, temporarily staying at 11410 NE 2nd Avenue, Vancouver, Washington 97685

19 12. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
20 § 1331, in that Plaintiff asserts claims under federal law, including for copyright infringement,
21 and violations of the Digital Millennium Copyright Act, and supplemental jurisdiction over
22 Bungie’s state law claims under 28 U.S.C. § 1367(a).

23 13. This court has personal jurisdiction over Defendant because Defendant
24 consented to jurisdiction in the state and federal courts in King County, Washington for any
25 dispute between him and Bungie. Leone is a *Destiny 2* player who repeatedly agreed to the
26 terms of *Destiny 2*’s LSLA, **Exhibit 1** hereto, which contains the following forum selection

1 clause: “you agree to submit to the personal jurisdiction of any federal or state court in King
2 County, Washington.”

3 14. Additionally, this court has personal jurisdiction over Defendant pursuant to
4 RCW 26.50.240, the Washington Long-Arm Statute, because the Defendant committed
5 tortious acts that caused Bungie injury in the state of Washington.

6 15. Venue is proper under 28 U.S.C. § 1391(b)(2), in that a substantial part of the
7 events or omissions giving rise to the claims occurred in this judicial district and Leone has
8 harmed Bungie in this judicial district.

9 **BACKGROUND**

10 **I. Destiny 2, Cheat Software, and the LSLA**

11 16. Bungie is the independent developer, owner, intellectual property rights holder,
12 and distributor of the video game *Destiny 2*, and the *Destiny* Franchise.

13 17. *Destiny 2* is a shared-world online first-person shooter available across multiple
14 platforms and played by tens of millions world-wide.

15 18. As explained in detail in the lawsuits Bungie has filed against manufacturers
16 and retailers of cheat software, the shared-world massively-multiplayer nature of *Destiny 2*'s
17 gameplay, and the *Destiny 2* business model – free to play as a base game, with downloadable
18 paid expansions and cosmetic enhancements – combine to make cheating a particularly
19 significant threat to *Destiny 2*'s continued commercial success.

20 19. To put it simply, Bungie's income depends on an engaged and satisfied player
21 community, and cheat software – with its aimbots that grant perfect aim, “wallhacks” that
22 allow users to shoot competitors through obstacles or track other players' locations, and other
23 unfair competitive advantages – is a direct assault on player satisfaction.

24 20. When cheating becomes rampant in games and honest players feel like they
25 can't win without cheating, honest players stop playing the game as often (or at all) and are
26 less engaged and interested in paying for additional content when they do.

1 21. For that reason, Bungie expends considerable effort and resources to prevent
2 cheating: developing and licensing anti-cheat software, employing personnel focused on cheat
3 detection and related issues, and litigating against the sources of cheat software.

4 22. And for that reason, Bungie requires *every* user who downloads *Destiny 2* (or
5 creates a new Bungie account to log into the software with) to agree to the LSLA, which
6 expressly prohibits cheating. In executing the LSLA, players specifically agree that they will
7 not, among other things:

- 8 • “hack or modify” the game;
- 9 • “receive or provide ‘boosting services,’ to advance progress or achieve results that
10 are not solely based on the account holder’s gameplay”; or
- 11 • “create, develop, modify, distribute, or use any unauthorized software programs to
12 gain advantage in any online or multiplayer game modes.”

13 23. Indeed, those agreements are expressly conditions of the license.

14 **II. Leone’s Accounts, Cheating and Bans**

15 24. It would be a vast understatement to merely describe Leone as a serial ban
16 evader and cheater.

17 25. Leone has repeatedly livestreamed himself cheating at *Destiny 2* on his Twitch
18 channel, miffysworld.

19 26. On December 6, 2021, Leone created an account for which he used the display
20 name “!”

21 27. On May 22, 2022, Leone’s “!” account was banned for cheating after he
22 streamed his use of a cheat suite.

23 28. On January 9, 2022, Leone preemptively created a second account, for which he
24 used the display name “GOT 2 GET IT.”

25 29. That account was banned on May 27, 2022 based on its hardware ID – a
26 vendor-defined identification string that Windows uses to match a device to a driver package,

1 and which confirmed that it was being used by Leone.

2 30. On January 29, 2022, Leone created another backup account, for which he used
3 the display name “HoeAnnihilator.”

4 31. That account was banned on May 22, 2022 after Leone streamed his use of a
5 cheat suite.

6 32. On May 20, 2022, Leone created another backup account, for which he used the
7 display name “Hoehitter.”

8 33. That account was also banned on May 22, 2022 after Leone streamed his use of
9 a cheat suite.

10 34. On May 23, 2022, Leone created another account, for which he used the display
11 name “TRAP\$TAR MIFFY.”

12 35. That account was banned on May 27, 2022 after Leone streamed his use of a
13 cheat suite.

14 36. On May 27, 2022, Leone created another account, for which he used the display
15 name “ugl1kgwj4kn7emj.”

16 37. That account was banned on June 8, 2022 after Bungie’s internal detection tools
17 caught it cheating.

18 38. On June 3, 2022, Leone created another account, for which he used the display
19 name “why.”

20 39. That account was banned on June 6, 2022 after Bungie’s internal detection tools
21 caught it cheating.

22 40. On June 6, 2022, Leone created another account, for which he used the display
23 name “gerogetwo.”

24 41. That account was banned on June 7, 2022 after Bungie’s internal detection tools
25 caught it cheating.

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1 42. On June 6, 2022, Leone created another account, for which he used the display
2 name “Bungie.”

3 43. That account was banned on June 6, 2022 after Bungie’s internal detection tools
4 caught it cheating.

5 44. On June 8, 2022, Leone created another account, for which he used the display
6 name “bungiemad.”

7 45. That account was banned on June 8, 2022 after Bungie identified it as a ban
8 evasion account.

9 46. On June 9, 2022, Leone created another account, for which he used the display
10 name “hahahalolxd.”

11 47. That account was banned on June 9, 2022 after Bungie identified it as a ban
12 evasion account.

13 48. On June 9, 2022, Leone created another account, for which he used the display
14 name “xibaje6864.”

15 49. That account was banned on June 9, 2022 after Bungie identified it as a ban
16 evasion account.

17 50. On June 10, 2022, Leone created another account, for which he used the display
18 name “Tourney Winner.”

19 51. That account was banned on June 11, 2022 after Bungie identified it as a ban
20 evasion account.

21 52. Upon information and belief, Leone has created other Bungie accounts which
22 Bungie has not identified and banned.

23 53. Each time Leone created a new account, he indicated his agreement to the
24 LSLA.

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1 **III. Leone's Threats**

2 54. On May 18, 2022, Leone tweeted¹ an image of the employee badge belonging to
3 Dylan Gafner, one of Bungie's community managers, with the hashtag "#NewProfilePic".

4 55. There were several replies to Leone's tweet. In a response to one such reply
5 from a user named "smile," Leone tweeted:

6 i just realized i'll be moving to a place that's 30 minutes away from
7 dmg [Gafner]

8 56. On information and belief, Leone's use of the initials "dmg" referred to Gafner,
9 who uses those initials in his Twitter handle.

10 57. Leone then responded to his own tweet: "he is not safe."

11 58. On June 10, 2022, Leone tweeted:²

12 it's a warm summer day in portland and dylan has just woken up
13 from his restless slumber. He rolls over to pick up his phone so he
14 can check twitter as he sees that someone is cheating with his full
15 government name as their bungie id

16 59. His follow-up tweet cleared up any confusion about who he was referring to:
17 "DYLAN GAFNER LMDOAOAOAOAO."

18 60. On June 27, 2022, Leone made it clear that he was actually moving to
19 Washington, tweeting:

20 i booked a flatbed to take my car from cali to washington. they told
21 us the people who had it before us extended their reservation and
22 offered a dolly instead. upon arrival the morons realized i would
23 have to remove my entire driveshaft if i wanted a dolly to work.

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25 _____
26 ¹ <https://web.archive.org/web/20220713203704/https://twitter.com/inkcel/status/1527109391308050433>

² <https://web.archive.org/web/20220630203813/https://twitter.com/inkcel/status/1535293368892157954>

1 61. On July 4, 2022, Leone made it clear that his move to Washington State was
2 complete and that he had no intention of ceasing his threats, offering to commit arson in Seattle
3 and offering a discount “if it’s bungie hq”.



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18 62. On July 5, 2022, Leone followed up on his previous threats by warning Bungie
19 to “keep [its] doors locked”.³

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26 ³ <https://web.archive.org/web/20220705184506/https://twitter.com/inkcel/status/1544362621108817926>

1 63. On July 13, Leone posted a screenshot of a tweet he had been forced to delete
2 after Twitter suspended his account. The tweet read “twitter celebrities deserve death”⁴.

3 4 Delete Tweet

5 Tweet 1 of 1

6 Violating our rules against **abuse and harassment**.

7 You may not engage in the targeted harassment of
8 someone, or incite other people to do so. This includes
9 wishing or hoping that someone experiences physical
10 harm.



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16 64. Just four days earlier, Leone tweeted an image composed of photographs of
17 three of Bungie’s community managers, each of whom have tens or hundreds of thousands of
18 Twitter followers, with the text “This post was fact-checked by real Bungie fanatics”
19 superimposed on top.⁵

20 IV. Leone Boasts About His Cheating and Ban Evasion

21 65. Leone has made no attempt to hide his cheating or ban evasion.

22 66. On the contrary, he brags about it incessantly from his @inkcel Twitter account,
23 and his pinned tweet links to a series of clips of Leone cheating from his various *Destiny*
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25
26 ⁴ <https://web.archive.org/web/20220714072647/https://twitter.com/inkcel/status/1547251159571632128>

⁵ <https://web.archive.org/web/2/https://twitter.com/inkcel/status/1545879086978871296>

1 accounts.

2 67. For example, on May 27, 2022, the day Bungie banned his TRAP\$TAR MIFFY
3 account and he created the new ugl1kgwj4kn7emj account, and in response to a Twitter user
4 asking how often he makes new accounts, Leone tweeted:⁶

5 this is my third account, TECHNICALLYYY i've only been
6 banned once bc i logged into another account without resetting ip
or anything after i got banned during the cal tournament

7 68. Later that same day, he tweeted,⁷ “i don’t think i’ll ever get banned from
8 making new accounts lol bungie not smar”. A few hours later, he quote-tweeted his own tweet
9 and said, “therefore, stream in a few days. be there or square”⁸.

10 69. Also on May 27, he tweeted⁹ “i will cheat on main i think”.

11 70. On June 4, 2022, Leone quote-tweeted a user who tweeted “@inkcel That's guy
12 is cheating and has a bunch of side account ???!!! @BungieHelp @Bungie @A_dmg04
13 @DestinyTheGame 🙄” saying “this is true”.¹⁰

14 71. On June 5, 2022, Leone issued a pair of tweets¹¹:

15 it costs 1 US dollar to bypass pinnacle activity verification on d2.

16 bungie, please do better.

17 He later followed up and explained:

18 when the game went free to play, any account without expansions
19 (usually cheaters) had to verify a phone number (has to be
20 physical, not something like google voice) to gain access to any
high level activity like raids or iron banner, trials etc

21 buttt you can just pay \$1 instead

22 ⁶ <https://web.archive.org/web/20220527140604/https://twitter.com/inkcel/status/1530188478151274496>

23 ⁷ <https://web.archive.org/web/20220527230100/https://twitter.com/inkcel/status/1530323060728815618>

24 ⁸ <https://web.archive.org/web/20220713223717/https://twitter.com/inkcel/status/1530330716810010624>

25 ⁹ <https://web.archive.org/web/20220713223338/https://twitter.com/inkcel/status/1530249787408232449>

26 ¹⁰ <https://web.archive.org/web/20220714040305/https://twitter.com/inkcel/status/1533166406937632768>

¹¹ <https://web.archive.org/web/20220614014602/https://twitter.com/inkcel/status/1533561657670086656>

1 72. As the conversation continued, he later added¹²:

2 my point is more bungie will NEVER be able to stop me if i
3 persisted in my actions. ever.

4 73. Finally, as if he needed to be even more blunt to drive the point home, he said¹³:

5 k let's just remember this all started from a clip of me flying with
6 infinite ammo walls and aimbot and then let's stop replying ok? Ok

7 74. On June 9, 2022, Leone tweeted “it's been over 2 weeks these guys are so
8 slow¹⁴” along with a screenshot showing that his account “bugniemad” had been banned from
9 the game:



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15 75. On June 11, 2022, Leone tweeted “7 bans in and still going strong @Bungie
16 battleye is shit took me 30 seconds to get around your silly hardware ban”.¹⁵

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18 76. On June 12, 2022, Leone responded to a user criticizing him for sharing a video
19 of himself cheating by tweeting¹⁶, “it's okay dmg¹⁷ is my friend he will be fine with you using
20 the clip”.

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22 ¹² <https://web.archive.org/web/2/https://twitter.com/inkcel/status/1533578918250221568>

23 ¹³ <https://web.archive.org/web/2/https://twitter.com/inkcel/status/1533698803311579136>

24 ¹⁴ <https://web.archive.org/web/20220714050647/https://twitter.com/inkcel/status/1535057312578121729>

25 ¹⁵ <https://web.archive.org/web/20220713204402/https://twitter.com/inkcel/status/1535520381695500289>

26 ¹⁶ <https://web.archive.org/web/20220612175535/https://twitter.com/inkcel/status/1536044377432199168>

¹⁷ “dmg” is a reference to one of Bungie’s Community Managers, Dylan Gafner.

1 77. On July 4, 2022, Leone tweeted:¹⁸

2 k who has ring 1 and wants to hard cheat for world first raid¹⁹ kk
3 dm me now kk i love youu @bungie.

4 **V. Leone's Emblem and Account Sales**

5 78. OGUUsers.com (“OGUsers”) is a website notorious as a marketplace for stolen
6 accounts and other criminal fraud.

7 79. Leone is an active member at OGUUsers, where he sells Instagram and other
8 social media accounts.

9 80. Leone also sells *Destiny 2* emblems and clan names on OGUUsers.

10 81. On information and belief, Leone also sold Bungie accounts at OGUUsers.

11 82. Leone purchased from other thieves some of the accounts he resold at OGUUsers.

12 83. On information and belief, Leone acquired some of the accounts he sold at
13 OGUUsers through his own hacking and fraud.

14 84. Leone is also a member of other online communities that focus on the illicit
15 sales of *Destiny* emblems.

16 85. On information and belief, Leone also bought and sold emblems within those
17 communities.

18 86. On July 6, 2022, Leone posted to his @inkcel Twitter account offering “2 \$100
19 donation links for \$50 each. Already redeemed mine”.

20 87. On information and belief, the “donation links” Leone describes are links to
21 download a Bungie emblem that was offered as a reward for donating \$100 to the Bungie
22 Foundation, Bungie’s charitable organization.

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24 _____
25 ¹⁸ <https://web.archive.org/web/2/https://twitter.com/inkcel/status/1544083395319238656>

26 ¹⁹ *Destiny 2* raids are highly challenging endgame content designed to be completable only by groups of players working cooperatively (a “fireteam”). When Bungie adds a new raid to its game, fireteams around the world spend hours working and racing to be the first team to complete the raid and get recognized as “world first.”

1 **VI. How Bungie Identified Leone**

2 88. On April 6, 2020, Leone created an account named “Knght1y,” which he later
3 changed to “inkpai” (the “Inkpai Account”). That same day, Leone created an account named
4 “Niight1y,” which he later changed to “inkums” (the “Inkums Account”). Leone logged into
5 both the Inkpai Account and the Inkums Account from the same Playstation 5 video game
6 console.

7 89. Both the Inkpai Account and the Inkums Account logged into the *Destiny 2*
8 servers from the IP address 23.241.9.87 (the “.87 Address”). The .87 Address is a residential IP
9 address, assigned by an internet service provider directly to a residence.

10 90. Leone’s “HoeAnnihilator,” “HoeHitter,” “TRAP\$TAR MIFFY,” and
11 “ug11kgwj4kn7emj” accounts also logged into the *Destiny 2* servers from the .87 Address.

12 91. In addition to the .87 address, the “HoeAnnihilator” account logged into the
13 *Destiny 2* servers from the IP address 154.6.26.56 (the “.56 VPN Address”). The .56 VPN
14 Address, unlike the .87 Address, belongs to a Virtual Private Network or VPN, a service used
15 to anonymize IP addresses. On information and belief, VPN services are often used by cheaters
16 and other bad actors to attempt to avoid detection.

17 92. The “HoeAnnihilator” account logged in from the .56 VPN address on May 22,
18 2022, at 12:56 PM; two minutes later, Leone’s “!” account logged in from the .56 VPN address
19 on May 26, 2022.

20 93. In addition to the .87 Address, the “ug11kgwj4kn7emj” account also logged into
21 the *Destiny 2* servers from the IP address 185.223.152.34 (the “.34 VPN Address”), which
22 belongs to a Virtual Private Network.

23 94. The “ug11kgwj4kn7emj” account logged in from the .34 VPN Address on
24 June 3, 2022, at 8:08 AM; twenty minutes later, Leone’s “why” account logged into the
25 *Destiny 2* servers from the .34 VPN Address on June 3, 2022.

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1 95. The “why” account also logged into the *Destiny 2* servers from the IP address
2 216.73.163.96 (the “.96 VPN Address”), which belongs to a Virtual Private Network, on
3 June 6, 2022, at 9:47 AM; ten minutes later, Leone’s “Bugnie” account logged into the
4 *Destiny 2* servers from the .96 VPN address.

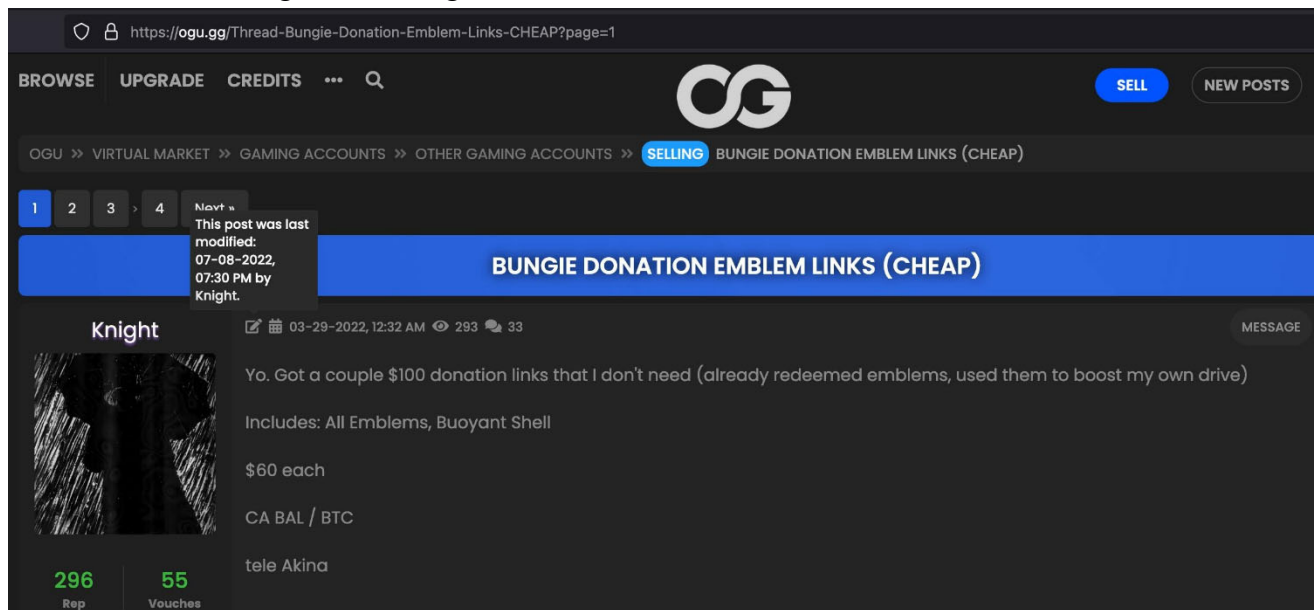
5 96. The close proximity in time between the VPN logins referenced above indicates
6 that the logins originated from the same physical location.

7 97. When Leone created the Inkpai Account, he did so using the email address
8 polyblanked@gmail.com.

9 98. Leone also entered polyblanked@gmail.com as his email address when he
10 placed an order for merchandise through the Bungie store. That order was shipped to: Luca
11 Leone at his Donaldo Court address in South Pasadena, California.

12 99. The polyblanked@gmail.com address also appears in the 2021 OGUUsers data
13 breach, associated with a username of “Knight.”

14 100. Knight sells Bungie emblems on OGUUsers, as seen below.



25 101. The screenshot above depicts Knight advertising “Donation Link Emblems,”
26 which are emblems given as a reward for donating to specified charities.

1 102. On information and belief, these emblem links were obtained by fraud.

2 103. The post selling Bungie emblems includes the text “tele Akina.”

3 104. On information and belief, this indicates that Knight’s address on the Telegram
4 instant messaging and social media service is @Akina.

5 105. The Telegram account @Akina participates heavily in the “Kiss of Death Chat”
6 located at t.me/kissmarkets (the “Kiss of Death Chat”).

7 106. The Kiss of Death Chat is a marketplace where users can buy and sell
8 usernames for social media, gaming, email, and other types of online accounts.

9 107. The usernames offered for sale on these forums are often highly desirable and
10 are usually acquired by the sellers through hacking or fraud.

11 108. On February 17, 2022, the Telegram account @Akina posted “buying @s that
12 look like ‘luca’ pm me” in the Kiss of Death Chat.

13 109. On information and belief, this message is intended to convey that @Akina is
14 looking for usernames which resemble the word “Luca” – Luca Leone’s first name.

15 110. In sum:

- 16 • The polyblanked@gmail.com account is associated with Leone’s *Destiny 2* activity,
17 his OGUUsers activity with fraudulent emblem and clan name sales, and his full name
18 and his physical address;
- 19 • All of Leone’s *Destiny 2* accounts can be associated with one another, and with
20 Leone;
- 21 • Leone’s Inkcel Twitter Account hosts his harassing threats, his fraudulent emblem
22 sales activity, and evidence of his cheating from his known *Destiny 2* accounts; and
- 23 • The @Akina Telegram account is associated with both Leone’s fraudulent emblem
24 and clan name sales activity at OGUUsers and his real name.

25 111. Thus, the information Bungie has obtained is a closed loop conclusively
26 identifying Luca Leone as the cheater, fraudster, and bad actor threatening its employees,

1 breaching its contract, and harming its reputation within the community.

2 **FIRST CAUSE OF ACTION**
3 **(Breach of Contract)**

4 112. Bungie repeats and realleges the allegations of Paragraphs 1-111 of this
5 Complaint as though fully set forth herein.

6 113. The LSLA is a valid, binding contract between Bungie and each individual
7 player of *Destiny 2*.

8 114. *Destiny 2* cannot be played unless each individual user agrees to Bungie’s
9 LSLA.

10 115. Upon each user’s first login to the game from a new account, the LSLA is
11 displayed in full in the game client.

12 116. The LSLA is also made easily and readily available on Bungie’s website.

13 117. The Defendant could not have played *Destiny 2* on any account of his if he had
14 not agreed to Bungie’s LSLA on his first use of that account.

15 118. Defendant agreed to the LSLA.

16 119. The LSLA contains users’ agreement that they may not “hack or modify
17 [*Destiny 2*], or create, develop, modify, distribute, or use any unauthorized software programs
18 to gain advantage in any online or multiplayer game modes” (the “Anticheat Provision”).

19 120. The LSLA contains users’ agreement that they may not commercially exploit
20 *Destiny 2* or any of its parts (the “Commercial Use Provision”).

21 121. The LSLA also contains users’ agreement that they may not “sell, lend, rent,
22 trade, or otherwise transfer any Live Content” (the “Live Content Provision”).

23 122. Defendant’s use of cheat software breached the Anticheat Provision of the
24 LSLA.

25 123. In addition, Leone’s OGUUsers account has posted offers to sell *Destiny 2*
26 emblems.

1 124. Upon information and belief, Leone has in fact sold *Destiny 2* emblems.

2 125. In so doing, Leone breached the Commercial Use Provision of the LSLA.

3 126. Moreover, the LSLA defines Live Content as “content provided to [*Destiny 2*]
4 users (e.g., unlockable content, gear, live events, activities, destinations, accounts, stats, virtual
5 assets, virtual currencies, codes, and achievements) in connection with use of [*Destiny 2*].”

6 127. Emblems are virtual assets provided to *Destiny 2* users in connection with their
7 use of *Destiny 2*.

8 128. Thus, Leone’s sales of *Destiny 2* emblems breached the Live Content Provision
9 of the LSLA.

10 129. In addition, the LSLA expressly provides that violations of the Anticheat
11 Provision, Commercial Use Provision, and Live Content Provision entitle Bungie to ban the
12 breaching user and thereby prevent them from accessing *Destiny 2*.

13 130. By creating new accounts to circumvent bans imposed by Bungie, Leone
14 violated his agreement that Bungie could prevent him from accessing *Destiny 2* if he breached
15 the LSLA.

16 131. As such, each time Leone created a new account to circumvent his ban was a
17 separate breach of the LSLA.

18 132. These breaches of the LSLA have damaged Bungie in an amount to be proven
19 at trial.

20 133. In addition, Bungie is entitled to preliminary and permanent injunctive relief
21 barring Defendant from continuing his breaching conduct and from carrying out his threats or
22 other harassment against Bungie, its employees or players.

23 **SECOND CAUSE OF ACTION**
24 **(Fraud in the Inducement)**

25 134. Bungie repeats and realleges the allegations of Paragraphs 1-133 of this
26 Complaint as though fully set forth herein.

1 135. As set forth above, Defendant entered into contract with Bungie each time he
2 signed the LSLA.

3 136. Upon information and belief, Defendant was aware at all relevant times that the
4 sale of emblems, use of cheat software, streaming of cheating gameplay, and registration of a
5 new account to evade a ban violated the LSLA.

6 137. Upon information and belief, at the time that he purported to indicate his
7 agreement to the LSLA upon the creation of each of his *Destiny 2* accounts, Defendant
8 intended to breach each and all of these provisions of the LSLA.

9 138. By indicating his agreement to the LSLA, Defendant represented to Bungie that
10 he intended to abide by the LSLA.

11 139. Leone's agreement and intent to abide by the LSLA's provisions was material
12 to the contractual relationship between Bungie and Leone, and to Bungie's willingness to allow
13 Leone access to the *Destiny 2* software.

14 140. Upon information and belief, Defendant's representation to Bungie that he
15 would abide by the LSLA's terms was intentionally false at the time it was made, and each
16 time it was made.

17 141. Defendant was aware that Bungie would not allow him access to the *Destiny 2*
18 software unless he indicated his agreement to the LSLA.

19 142. Defendant intended for Bungie to rely on his misrepresentation that he would
20 abide by the LSLA.

21 143. Bungie was justifiably ignorant to the falsity of Defendant's misrepresentation,
22 as it had no knowledge at the times that Leone indicated his agreement to the LSLA that the
23 anonymous account it was allowing access to the *Destiny 2* software was Leone's, or that the
24 person behind the account had any history of breaching the LSLA or present intent to breach
25 the LSLA.
26

1 144. Bungie relied on Defendant’s intentional misrepresentations when he agreed to
2 the LSLA by allowing him access to *Destiny 2* and its community.

3 145. Bungie has the right to rely on a user’s purported acceptance of the LSLA in
4 allowing the user access to the *Destiny 2* software.

5 146. Bungie’s reliance on Defendant’s misrepresentations damaged it in an amount
6 to be proven at trial.

7 147. In addition, Bungie is entitled to preliminary and permanent injunctive relief
8 barring Defendant from creating any new *Destiny 2* account, using any existing account to play
9 *Destiny 2*, and from carrying out his threats or other harassment against Bungie, its employees
10 or players.

11 **THIRD CAUSE OF ACTION**
12 **(Copyright Infringement)**

13 148. Bungie repeats and realleges the allegations of Paragraphs 1-147 of this
14 Complaint as though fully set forth herein.

15 149. Bungie is the holder of multiple copyright registrations for *Destiny 2*, including
16 Registrations No. TX 8-933-655, TX 8-933-658, and TX 9-130-251 covering the *Destiny 2*,
17 *Destiny 2: Beyond Light*, and *Destiny 2: The Witch Queen* software, and Registrations No.
18 PA 2-282-670 and PA 2-280-030, covering *Destiny 2* and *Destiny 2: Beyond Light* as
19 audiovisual works.²⁰

20 150. Defendant has infringed Bungie’s copyrights in *Destiny 2* in multiple ways.

21 151. First, the cheat software Defendant used creates visual elements that are
22 displayed as an overlay on, and within, the *Destiny 2* visual display.

23 152. The combined audiovisual work displayed by the interaction between Bungie’s
24 *Destiny 2* software and the cheat software Leone used is based on – but meaningfully different
25

26 ²⁰ Bungie’s registration of *Destiny 2: The Witch Queen* as an audiovisual work is pending and expected to issue soon.

1 from – Bungie’s copyrighted *Destiny 2* audiovisual work.

2 153. As such, Leone infringed Bungie’s copyright in *Destiny 2* as an audiovisual
3 work each time that he used cheat software to create an unauthorized derivative work of
4 *Destiny 2*.

5 154. Second, Bungie’s license of *Destiny 2* to users is expressly conditioned in the
6 LSLA on the users’ agreement not to use cheat software.

7 155. Upon information and belief, each time that Leone clicked to indicate his
8 agreement to the LSLA in order to obtain access to the *Destiny 2* software, both the first time
9 he downloaded it and as he created new accounts after being banned, he had a then-present
10 intent to violate the conditions of his license and use cheat software in his game play.

11 156. As such, the purported license was never valid, and each and every time he
12 downloaded and used the *Destiny 2* software he infringed Bungie’s copyrights in *Destiny 2*.

13 157. Moreover, the very first time Leone loaded cheat software as he opened
14 *Destiny 2* after each download, he vitiated the license and his subsequent use of the software
15 and display of the game on his computer or on stream was infringing.

16 158. Defendants’ copyright infringement was willful.

17 159. As a result of the foregoing, Bungie is entitled to an award of damages in an
18 amount to be proven at trial.

19 160. Alternatively, Bungie is entitled to statutory damages of \$150,000 for each
20 copyrighted work infringed, or in such other amount as may be proper under 17 U.S.C.
21 § 504(c) and an award of costs and attorneys’ fees pursuant to 17 U.S.C. § 505.

22 161. In addition, Bungie is entitled to preliminary and permanent injunctive relief
23 barring Defendant from continuing his infringing conduct and from carrying out his threats or
24 other harassment against Bungie, its employees or players.
25
26

1 **FOURTH CAUSE OF ACTION**
2 **(Circumvention of Technological Measures, 17 U.S.C. § 1201(a))**

3 162. Bungie repeats and realleges the allegations of Paragraphs 1-161 of this
4 Complaint as though fully set forth herein.

5 163. Bungie is the owner and holder of all intellectual property rights and interests in
6 its games, including all copyrights.

7 164. Bungie developed in-house and also contracts for extensive anti-cheating
8 technological measures that it put in place precisely to curb the type of software Defendant
9 regularly used.

10 165. Bungie's mitigation efforts are extensive and ongoing, incorporating efforts
11 such as monitoring player movements for unusually rapid or responsive behavior, monitoring
12 problematic or suspicious player activity, and validating client-generated values to ensure that
13 they are within expected ranges.

14 166. Bungie also controls what data is and is not visible to *Destiny 2* users. While
15 *Destiny 2*'s servers are aware at all times of the positions of every player and computer-
16 generated enemy or obstacle, the *Destiny 2* client software does not provide all of this
17 information to the player.

18 167. Instead, the *Destiny 2* client software renders this data such that players have
19 limited information, e.g., cannot see other players' avatars through walls or floors, which has
20 substantial implications for player strategy and behavior; and when it stores information in
21 memory the information is intentionally obfuscated so that players cannot view the information
22 without significant investment in prohibited technical measures.

23 168. Moreover, consistent with its intention of limiting access to *Destiny 2* to those
24 players who comply with the LSLA, Bungie bans accounts of players it catches cheating,
25 denying them further access to *Destiny 2*.
26

1 169. The sole purpose of the cheat software Defendant used is to breach Bungie's
2 technological protection measures, access its functions without authorization, and impair the
3 integrity of the *Destiny 2* software and system.

4 170. Defendant regularly uses cheating software specifically designed to circumvent
5 these defenses.

6 171. Indeed, circumventing Plaintiff's anti-cheat mitigation technology, which
7 functions to control and limit access to *Destiny 2* either directly or by identifying to Bungie
8 which accounts it must ban, is a primary function of the software Defendant used to cheat.

9 172. By using cheat software to access data Bungie engineered the *Destiny 2*
10 software to withhold from players, Defendant bypassed technological measures Bungie put in
11 place to control access to *Destiny 2*.

12 173. In addition, Bungie controls access to *Destiny 2* by requiring players to agree to
13 the LSLA before allowing their accounts to access the software, and by banning accounts that
14 violate the LSLA.

15 174. In some instances, Bungie enforces bans by relying on hardware ID.

16 175. Upon information and belief, Defendant used hardware ID spoofing tools to
17 disguise the hardware ID of the computer from which he was connecting to *Destiny 2* in an
18 attempt to avoid identification as a banned player and regain access to *Destiny 2*.

19 176. As such, Bungie is entitled to injunctive relief, an order directing the destruction
20 of all cheating software in Defendant's possession, the deletion all *Destiny 2* and Bungie
21 accounts defendant has created, an award of statutory damages in the maximum amount of
22 \$2,500 per instance of Defendant's deployment of cheat software for *Destiny 2*, and Bungie's
23 costs and attorneys' fees pursuant to 17 U.S.C. § 1203(b).
24
25
26

FIFTH CAUSE OF ACTION

(Violation of the Washington Consumer Protection Act, RCW 19.86.020)

177. Bungie repeats and realleges the allegations of Paragraphs 1-176 of this Complaint as though fully set forth herein.

178. Defendant's emblem sales occurred in trade or commerce.

179. Defendant's purchase and use of cheat software occurred in trade or commerce.

180. Defendant's Twitch streams occurred in trade or commerce.

181. As alleged above, Defendant's actions were unlawful.

182. Moreover, there is a strong public interest in protecting businesses from the unlawful theft and sale of their accounts and products, the copying and disruption of their work, and the harassment of their employees.

183. As a result of the foregoing, Bungie is entitled to an award of damages in an amount to be proven at trial, and treble damages and attorneys' fees as allowed under the statute.

JURY DEMAND

Pursuant to RCW 3.50.153, Plaintiff demands a trial by jury as to all issues so triable in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Bungie, Inc., prays for the following relief:

- A. That judgment be entered in Plaintiff's favor against Defendant on all applicable claims;
- B. That Defendant be preliminarily and permanently enjoined from harassing, stalking, or otherwise engaging in unwanted or unsolicited contact with Bungie, its employees, or *Destiny 2* players;

- 1 C. An award to Bungie of restitution and damages, including, but not limited to,
2 compensatory, statutory, punitive damages, and all other damages permitted by
3 law;
4
5 D. That Bungie be awarded pre-judgment and post-judgment interest on all
6 damages awarded against Defendant;
7
8 E. An award to Plaintiff of its costs incurred in this suit as well as reasonable
9 attorneys' fees; and
10
11 F. For such other relief as the Court deems just and proper.

12 DATED this 15th day of July, 2022.

13 *s/ Brian W. Esler*

14

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