

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

MICHAEL HEIDBREDER)

Plaintiff,)

vs)

EPIC GAMES, INC.,)

Defendant.)

Case No.:

**CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED**

TABLE OF CONTENTS

SUMMARY OF CASE..... 1

JURISDICTION AND VENUE 3

PARTIES 3

 A. Plaintiff 3

 B. Defendant..... 4

FACTUAL BACKGROUND..... 4

 A. Epic Games Collects and Stores PII for its Own Financial Gain 4

 B. PII Is Very Valuable on the Black Market..... 7

 C. Epic Games’ Inadequate Data Security Allowed the Breach of Fortnite
 User Accounts..... 10

CLAIMS ALLEGED ON BEHALF OF ALL CLASSES..... 15

 First Claim for Relief..... 15

 Second Claim for Relief..... 17

 Third Claim for Relief 18

 Fourth Claim for Relief..... 20

ADDITIONAL CLAIM ALLEGED ON BEHALF OF THE MISSOURI SUB-CLASS
ONLY 21

 Fifth Claim for Relief..... 21

PRAYER FOR RELIEF 23

JURY TRIAL DEMANDED 24

For his Class Action Complaint, Plaintiff Michael Heidebreder (“Plaintiff”), on behalf of himself and all others similarly situated, alleges the following against Defendant Epic Games, Inc. (“Defendant” or “Epic Games”), based on personal knowledge as to Plaintiff and Plaintiff’s own acts, and on information and belief as to all other matters based upon, *inter alia*, the investigation conducted by and through Plaintiff’s undersigned counsel:

SUMMARY OF CASE

1. This case involves a data breach Epic Games announced on January 16, 2019, wherein the personal information of 200 million Fortnite users was exposed due to a flaw in Fortnite’s code that allowed hackers and other nefarious users to take over player accounts and exploit their personal information for unsavory and illegal purposes (“Data Breach”).

2. Epic Games developed and operates Fortnite, a popular battle-royale style video game played by approximately 80 million people per month and with approximately 200 million registered users across computer, console, and mobile platforms.

3. As part of the sign-up process and as a consequence of playing Fortnite, users create, maintain, and update accounts containing personal information, including their names, email addresses, and credit or debit card information, referred to herein as “PII” (personally identifiable information).

4. On January 16, 2019, Epic Games publicly acknowledged that Fortnite users’ PII was subject to a security breach, but did not disclose a timeframe for the Data Breach or how many accounts were impacted. Epic Games has not yet directly informed or notified individual Fortnite users that their PII may be compromised as a result of the breach. Epic Games’ acknowledgement only came after Check Point Software Technologies Ltd. (“Check Point”), a cybersecurity firm, discovered vulnerabilities in Fortnite’s web infrastructure and disclosed their findings to Epic Games in November of 2018.

5. Fortnite’s vulnerabilities stemmed from its single sign-on (“SSO”) setup, a mechanism that allows users to log into multiple services with the same third-party account such

as Epic Games, Xbox, or Google. Once logged into a third-party account, users could log in and access their Fortnite account by requesting the third-party account send an access token¹ to Fortnite.

6. Hackers exploited the SSO by distributing phishing links over social media messages or forum posts claiming, *inter alia*, to be about a Fortnite promotion. When users opened the link, they were asked to log in to their Fortnite account via the SSO. But instead of having the third-party account send the security token to the legitimate login, hackers redirected those users to an old, unsecured URL maintained by Epic Games. Check Point's research revealed that hackers could embed that URL with malicious JavaScript allowing them to steal Fortnite access tokens which they could then use to take over users' accounts.

7. As a result of Defendant's failure to maintain adequate security measures and notify users of the security breach in a timely manner, Plaintiff and certain Fortnite users' PII was compromised. They have suffered an ascertainable loss in that the credit or debit card information linked to their Fortnite accounts was stolen as a result of Defendant's failures. Hackers used this information to purchase in-game Fortnite currency without the permission of the account holders, including Plaintiff. Hackers also used this information to steal player accounts. Some of these stolen accounts, once loaded up with in-game currency purchased fraudulently, were sold on third-party websites. The sale of Fortnite accounts on the dark web has increased recently,² with accounts selling for an average of approximately \$11.29.³ Furthermore, Plaintiff and the other impacted Fortnite users must undertake additional security measures, some at their own expense, to minimize the risk of

¹ Access tokens are the equivalent of digital keys that allow users logged into third-party accounts to use those accounts as a verification to log in to their Fortnite accounts.

² Antony Cuthbertson, Fortnite, Netflix and Uber Accounts Being Sold For Just £8 on the Dark Web (Feb. 19, 2019), available at <https://www.independent.co.uk/life-style/gadgets-and-tech/news/fortnite-account-sale-dark-web-price-index-netflix-uber-cyber-crime-a8786686.html> (last visited August 8, 2019).

³ Simon Migliano, Dark Web Market Price Index (February 2019 - UK Edition), available at <https://www.top10vpn.com/privacy-central/privacy/dark-web-market-price-index-2019-uk-edition/#indextop> (last visited August 8, 2019).

future data breaches including, without limitation, canceling credit or debit cards associated with their Fortnite and/or Epic Games accounts and changing their passwords to those accounts. But there is no guarantee that such security measures will in fact adequately protect their PII. As such, Plaintiff and the other Class members have an ongoing interest in ensuring that their PII is protected from past and future cybersecurity threats.

8. This Class Action Complaint is filed on behalf of all persons in the United States described more fully in the following sections, whose PII was compromised in the Data Breach.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because the aggregate amount in controversy exceeds \$5,000,000, exclusive of interests and costs, there are more than 100 class members, and at least one class member is a citizen of a state different from Defendant and is a citizen of a foreign state. The Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

10. Venue is proper under 28 U.S.C. § 1391(c) because Defendant is a corporation that does business in and is subject to personal jurisdiction in this District. Venue is also proper because a substantial part of the events or omissions giving rise to the claims in this action occurred in or emanated from this District, including the decisions made by Epic Games’ governance and management personnel that led to the Data Breach. Further, Epic Games’ terms of service governing users in the United States provides for venue in North Carolina for all claims arising out of Plaintiff’s relationship with Epic Games.

PARTIES

A. Plaintiff

11. Plaintiff Michael Heidbreder is an adult individual residing in the State of Missouri.

12. At all relevant times, Plaintiff had an Epic Games account, was a Fortnite user, and had a debit card linked to his Epic Games account.

B. Defendant

13. Defendant Epic Games, Inc. is a Maryland corporation with its principal executive offices located at 620 Crossroads Boulevard, Cary, North Carolina 27518.

14. At all relevant times, Defendant was and is engaged in the business of developing and operating video games, websites, and mobile applications in Wake County and throughout the United States of America.

FACTUAL BACKGROUND

A. Epic Games Collects and Stores PII for its Own Financial Gain

15. The majority of Epic Games' revenue comes from sales associated with its Fortnite video game. In 2018, Fortnite accounted for \$2.4 billion of Epic Games' revenue, “the most annual revenue of any [video] game in history.”⁴

16. While Fortnite's “Battle Royale” mode can be downloaded and played for free, users have the option of purchasing a “Battle Pass” each “Season” that allows access to exclusive in-game content for Battle Royale mode. Users can also purchase “PVE [player versus environment] Campaign Packs” ranging in price from approximately \$40.00 to \$150.00.

17. To purchase in-game content, Fortnite users must add a credit or debit card to their account. This card information is then stored under the supervision and care of Epic Games.

18. Regardless of whether a user purchases in-game content, they are still required to provide PII, including their full name and a valid email address.

19. Despite the fact that the majority of Epic Games' revenue comes from charges to credit and debit cards under its protection, on information and belief, Defendant failed, and continues to fail, to provide adequate protection for Fortnite users' personal and confidential information and has egregiously failed to provide sufficient and timely notice or warning of potential and actual cybersecurity breaches to Fortnite users.

⁴ Matthew Handrahan, Fortnite tops SuperData's 2018 chart with \$2.4 billion digital revenue (Jan. 16, 2019), available at <https://www.gamesindustry.biz/articles/2019-01-16-fortnite-tops-2018-superdata-chart-with-usd2-4b-digital-revenue> (last visited August 8, 2019).

20. Upon information and belief, information as to whose accounts were exposed and whose PII was accessed without authorization as a result of the Data Breach is within Epic Games' exclusive control. Epic Games knows where accounts were logged-in from, where access tokens originated from and were sent, what type of device was used to log in to accounts, and what activity, fraudulent or otherwise, occurred on accounts.

21. At all relevant times, Epic Games has assured Fortnite users that their privacy and security are of utmost importance to it, and Fortnite users have relied on those assurances in providing Epic Games with their PII. In fact, under a section of Epic Games' privacy policy entitled "How We Protect Personal Information," Epic Games provides that:

We maintain appropriate administrative, technical, and physical safeguards to protect your personal information from accidental, unlawful, or unauthorized destruction, loss, alteration, access, disclosure, or use and other unlawful forms of processing. In some cases, your information is accessible when you log into a feature we offer, and in those cases you need to keep your user credentials and password confidential and secure so that your information is protected.⁵

22. Epic Games failed to provide the security it promised to Fortnite users prior to the Data Breach, including that it "maintain[ed] appropriate administrative, technical, and physical safeguards to protect your personal information from accidental, unlawful, or unauthorized destruction, loss, alteration, access, disclosure, or use and other unlawful forms of processing."

23. Despite these assurances, Epic Games was forced to publicly reveal on January 16, 2019 that Fortnite users' personal information was subject to a data breach. According to media outlet reports, Check Point informed Defendant of the vulnerabilities in Fortnite's web infrastructure as early as November of 2018,⁶ but Defendant still has not yet directly informed or

⁵ Epic Games Global Privacy Policy (last updated Dec. 19, 2018), *available at* <https://www.epicgames.com/site/en-US/privacypolicy> (last visited August 8, 2019).

⁶ Jonathan Vanian, Researchers Discover Big Cybersecurity Flaw in Fortnite (Jan. 16, 2019), *available at* <http://fortune.com/2019/01/16/fortnite-security-flaw-checkpoint/> (last visited August 8, 2019); Lily Hay Newman, *A Fortnite Vulnerability Exposed Accounts to Takeover* (Jan. 16, 2019), *available at* <https://www.wired.com/story/fortnite-vulnerability-account-takeover/> (last visited August 8, 2019).

notified Fortnite users that their PII may have been and may continue to be compromised as a result of the Data Breach. Nor has Defendant disclosed when the vulnerability in Fortnite's code was introduced, how long hackers have had access to Fortnite users' PII, or how many user accounts were affected by the Data Breach.

24. The insufficient security policies and procedures implemented by Defendant is a material fact that a reasonable consumer would consider when deciding whether to create an Epic Games or Fortnite account and to provide Defendant with personal and confidential information. Had Plaintiff and the other Class members known that Defendant failed to employ necessary and adequate protection of their personal information, they would not have created an Epic Games or Fortnite account, or they would have limited the PII they shared with Epic Games. Plaintiff and the other Class members should have been able to rely upon Epic Games' Privacy Policy ensuring that "We maintain appropriate administrative, technical, and physical safeguards to protect your personal information from accidental, unlawful, or unauthorized destruction, loss, alteration, access, disclosure, or use and other unlawful forms of processing."⁷

25. This case involves the continuing and absolute disregard with which Defendant has chosen to treat the PII of account holders who played Fortnite. While this information was supposed to be protected, Epic Games – without authorization – exposed that information to third parties through lax and non-existent data safety and security policies and protocols.

26. In addition, Epic Games made the following representations to Fortnite users:

- "We are required to seek your consent before we use your personal information for any purpose incompatible with the purposes identified in this policy."⁸
- "We provide you with choices about whether to provide us with personal information and whether it is shared."⁹

⁷ Epic Games Global Privacy Policy (last updated Dec. 19, 2018), *available at* <https://www.epicgames.com/site/en-US/privacypolicy> (last visited August 8, 2019).

⁸ *Id.*

⁹ *Id.*

27. At all relevant times, Epic Games has maintained a Privacy Policy on its website which advised Fortnite users, in part:

As a general matter, we use your information to provide the services, experiences, merchandise, or information you request. *We also may use your information for the following purposes.*

1. For our legitimate interests, consistent with your rights and preferences, we use personal data:
 - To communicate with you, respond to your requests, or provide you with updates and information;
 - To better understand our users, their interests, and their preferences;
 - To personalize your experience, save your preferences, authenticate our users, and provide similar user-experience features;
 - To develop, deliver, and improve our products, services, and other offerings, some of which may be offered in partnership with other parties;
 - To manage and customize advertisements or promotional offers;
 - For security purposes;
 - For internal purposes such as auditing and data analysis.
2. To provide services that are subject to terms you have accepted, such as enforcing our licenses, agreements, and terms of service, which may include reasonable monitoring to detect and prevent misuse or fraud and to keep our games fair for all users.
3. *To the extent you give consent*, such as when we would like to process your personal information for a purpose that would otherwise be incompatible with this policy.
4. To comply with legal obligations.

(Emphases added).¹⁰

B. PII Is Very Valuable on the Black Market

28. The types of information compromised in the Data Breach are highly valuable to cybercriminals. The names, email addresses, passwords, security question answers, and credit and

¹⁰ *Id.*

debit card PII can all be used to gain access to a variety of existing accounts and websites and defraud Fortnite users of money and property.

29. Identity thieves can also use the PII to harm Plaintiff and the other Class members through embarrassment, blackmail, or harassment in person or online, or to commit other types of fraud including obtaining ID cards or driver's licenses, fraudulently obtaining tax returns and refunds, and obtaining government benefits. A Presidential Report on identity theft from 2008 states that:

In addition to the losses that result when identity thieves fraudulently open accounts or misuse existing accounts, . . . individual victims often suffer indirect financial costs, including the costs incurred in both civil litigation initiated by creditors and in overcoming the many obstacles they face in obtaining or retaining credit. Victims of non-financial identity theft, for example, health-related or criminal record fraud, face other types of harm and frustration.

In addition to out-of-pocket expenses that can reach thousands of dollars for the victims of new account identity theft, and the emotional toll identity theft can take, some victims have to spend what can be a considerable amount of time to repair the damage caused by the identity thieves. Victims of new account identity theft, for example, must correct fraudulent information in their credit reports and monitor their reports for future inaccuracies, close existing bank accounts and open new ones, and dispute charges with individual creditors.¹¹

30. To put it into context, the 2013 Norton Report – based on one of the largest consumer cybercrime studies ever conducted – estimated that the global price tag of cybercrime was around \$113 billion at that time, with the average cost per victim being \$298 dollars. That number no doubt increased after the PII of Plaintiff and the other Class members was leaked in the Data Breach.

31. The problems associated with identity theft are exacerbated by the fact that many cybercriminals will wait years before attempting to use the PII they have obtained. Indeed, in order to protect themselves, Plaintiff and the other Class members will need to remain vigilant

¹¹ The President's Identity Theft Task Force, *Combating Identity Theft: A Strategic Plan*, Federal Trade Commission, (April 2007), *available at* <http://www.ftc.gov/sites/default/files/documents/reports/combating-identity-theft-strategic-plan/strategicplan.pdf> (last visited August 8, 2019).

against unauthorized data use for years and decades to come.

32. Once stolen, PII can be used in a number of different ways. One of the most common is that it is offered for sale on the “dark web,” a heavily encrypted part of the Internet that makes it difficult for authorities to detect the location or owners of a website. The dark web is not indexed by normal search engines such as Google and is only accessible using a Tor browser (or similar tool) which aims to conceal users’ identities and online activity. The dark web is notorious for hosting marketplaces selling illegal items such as weapons, drugs, and PII.¹² Websites appear and disappear quickly, making it a very dynamic environment.

33. Once someone buys PII, it is then used to gain access to different areas of the victim’s digital life, including bank accounts, social media, and credit card details. During that process, other sensitive data may be harvested from the victim’s accounts, as well as from those belonging to family, friends, and colleagues.

34. In addition to PII, a hacked Fortnite account can be very valuable to cybercriminals because they are able to access credit or debit card information associated with the account. Once that card information is accessed, cybercriminals can and did purchase in-game Fortnite currency and other content, sold the Fortnite account and in-game purchases on the dark web and other places, like eBay, and/or used that information to make fraudulent purchases from third-parties. Sales of Fortnite accounts on the dark web have increased recently¹³ with accounts selling for an average of approximately \$11.29.¹⁴ In other words, cybercriminals specifically targeted Fortnite user PII to

¹² Brian Hamrick, *The dark web: A trip into the underbelly of the internet* (Feb. 9, 2017), available at <https://www.wlwt.com/article/the-dark-web-a-trip-into-the-underbelly-of-the-internet/8698419> (last visited August 8, 2019).

¹³ Anthony Cuthbertson, *Fortnite, Netflix and Uber Accounts Being Sold for Just £8 on the Dark Web* (Feb. 19, 2019), available at <https://www.independent.co.uk/life-style/gadgets-and-tech/news/fortnite-account-sale-dark-web-price-index-netflix-uber-cyber-crime-a8786686.html> (last visited August 8, 2019).

¹⁴ Simon Migliano, *Dark Web Market Price Index* (February 2019 - UK Edition), available at <https://www.top10vpn.com/privacy-central/privacy/dark-web-market-price-index-2019-uk-edition/#indextop> (last visited August 8, 2019).

profit at the users' expense through fraud and identity theft.

35. The object of the Data Breach was not only to access and obtain user PII, but to turn around and profit from that PII through further fraud and identity theft. In other words, the hackers intentionally targeted the PII exposed, accessed, and stolen in the Data Breach in order to commit further fraud and identity theft.

C. Epic Games' Inadequate Data Security Allowed the Breach of Fortnite User Accounts

36. On January 16, 2019, Epic Games acknowledged that Check Point "made [Epic Games] aware of vulnerabilities."¹⁵

37. Epic Games claimed that the vulnerabilities "were soon addressed."¹⁶

38. However, Epic Games did not know the origin or identity of the hackers. In fact, Epic Games had not fully assessed the scope of the attack – even though it represented that the vulnerability was fixed.¹⁷

39. Between November 2018 and January 2019, Plaintiff's debit card associated with his Epic Games account was, fraudulently and without his permission, charged for in-game Fortnite purchases as a result of the Data Breach.

40. Following his discovery of the fraudulent charges, Plaintiff expended many hours over the course of several months attempting to remediate the damages he suffered as a result of the fraudulent charges and to otherwise protect his PII exposed and stolen as a result of the Data Breach.

41. Unfortunately, despite numerous lapses in its approach to data security, Epic Games still lacks the safeguards and protections for Fortnite users' PII, and that information remains at risk today and into the future, until Epic Games is compelled to secure the PII stored on millions

¹⁵ Jonathan Vanian, Researchers Discover Big Cybersecurity Flaw in Fortnite (Jan. 16, 2019), available at <http://fortune.com/2019/01/16/fortnite-security-flaw-checkpoint/> (last visited August 8, 2019).

¹⁶ *Id.*

¹⁷ Lily Hay Newman, A *Fortnite* Vulnerability Exposed Accounts To Takeover (Jan. 16, 2019), available at <https://www.wired.com/story/fortnite-vulnerability-account-takeover/> (last visited August 8, 2019).

of United States citizens who play Fortnite.

CLASS ACTION ALLEGATIONS

42. Pursuant to Rule 23(b)(2), (b)(3), and (c)(4) of the Federal Rules of Civil Procedure, Plaintiff, individually and on behalf of all others similarly situated, brings this lawsuit on behalf of himself and as a class action on behalf of the following Class and Sub-Class:

Nationwide Class: All persons who registered for Epic Games accounts in the United States and whose PII was accessed, compromised, or stolen from Epic Games in the Data Breach and whose Epic Games accounts were subject to the terms of the Applicable EULA as defined *infra*.

Missouri Sub-Class: All residents of Missouri who registered for Epic Games accounts and whose PII was accessed, compromised, or stolen from Epic Games in the Data Breach and whose Epic Games accounts were subject to the terms of the Applicable EULA as defined *infra*.

43. Excluded from the Class are Defendant and any entities in which Defendant or its subsidiaries or affiliates have a controlling interest, and Defendant's officers, agents, and employees. Also excluded from the Class are the judge assigned to this action, members of the judge's staff, and any member of the judge's immediate family. Plaintiff reserves the right to amend the Class and Sub-Class definition if discovery and further investigation reveal that the Class should be expanded or otherwise modified.

44. **Numerosity:** The members of each Class are so numerous that joinder of all members of any Class would be impracticable. Plaintiff reasonably believes that Class members number hundreds of millions of people or more in the aggregate and well over 1,000 in the smallest of the classes. The names and addresses of Class members are identifiable through documents maintained by Defendant.

45. **Commonality and Predominance:** This action involves common questions of law or fact, which predominate over any questions affecting individual Class members, including:

- a. Whether Defendant represented to the Class that it would safeguard Class members' PII;

- b. Whether Defendant owed a legal duty to Plaintiff and the Class to exercise due care in collecting, storing, and safeguarding their PII;
- c. Whether Defendant breached a legal duty to Plaintiff and the Class to exercise due care in collecting, storing, and safeguarding their PII;
- d. Whether Class members' PII was accessed, compromised, or stolen in the Data Breach;
- e. Whether Defendant knew about the Data Breach before it was announced to the public and failed to timely notify the public of the Data Breach;
- f. Whether Defendant's conduct was an unlawful or unfair business practice under N.C. Gen. Stat § 71-1.1;
- g. Whether Defendant failed to provide timely notice of the Data Breach in violation of N.C. Gen. Stat § 75-65;
- h. Whether Defendant's violation of § 75-65 allowed for a private right of action under N.C. Gen. Stat § 71-1.1;
- i. Whether Plaintiff and the Class are entitled to equitable relief, including, but not limited to, injunctive relief and restitution; and
- j. Whether Plaintiff and the other Class members are entitled to actual, statutory, or other forms of damages, and other monetary relief.

46. As further indication of the common questions of law, Epic Games' Fortnite End User License Agreement in effect at the time of the Data Breach (the "Applicable EULA") provides that "any dispute will be resolved in accordance with the laws of North Carolina." A copy of the Applicable EULA is attached hereto as "Exhibit A."

47. Sometime between approximately February 7, 2019, the last time counsel for Plaintiff accessed the Applicable EULA, and approximately June 24, 2019, Epic Games modified the terms of the Applicable EULA into a new EULA (the "Current EULA"), attached hereto as "Exhibit B." One such modification was the Applicable EULA's section entitled "Class Action Waiver" changing to "Binding Individual Arbitration; Class Action Waiver" in the Current EULA. As described *supra*, the Class and Sub-Class only encompass persons whose Epic Games accounts were subject to the terms of the Applicable EULA.

48. Similar or identical statutory and common law violations, business practices,

and injuries are involved. Individual questions, if any, pale by comparison, in both quantity and quality, to the numerous common questions that dominate this action.

49. **Typicality:** Plaintiff's claims are typical of the claims of the other members of their respective classes because, among other things, Plaintiff and the other Class members were injured through the substantially uniform misconduct of Defendant. Plaintiff is advancing the same claims and legal theories on behalf of himself and all other Class members, and there are no defenses that are unique to Plaintiff. The claims of Plaintiff and of all other Class members arise from the same operative facts and are based on the same legal theories.

50. **Adequacy of Representation:** Plaintiff is an adequate representative of the classes because his interests do not conflict with the interests of the other Class members they seek to represent; he has retained counsel competent and experienced in complex class action litigation; and he will prosecute this action vigorously. The Class members' interests will be fairly and adequately protected by Plaintiff and his counsel.

51. **Superiority:** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this matter as a class action. The damages, harm, or other financial detriment suffered individually by Plaintiff and the other members of his respective classes are relatively small compared to the burden and expense that would be required to litigate their claims on an individual basis against Defendant, making it impracticable for Class members to individually seek redress for Defendant's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation would create a potential for inconsistent or contradictory judgments, and increase the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

52. Further, Defendant has acted or refused to act on grounds generally applicable

to the Class and, accordingly, final injunctive or corresponding declaratory relief with regard to the members of the Class as a whole is appropriate under Rule 23(b)(2) of the Federal Rules of Civil Procedure.

53. Likewise, particular issues under Rule 23(c)(4) are appropriate for certification because such claims present only particular, common issues, the resolution of which would advance the disposition of this matter and the parties' interests therein. Such particular issues include, but are not limited to:

- a. Whether Class members' PII was accessed, compromised, or stolen in the Data Breach;
- b. Whether (and when) Defendant knew about any security vulnerabilities that led to the Data Breach before they were announced to the public and whether Defendant failed to timely notify the public of those vulnerabilities and the Data Breach;
- c. Whether Defendant's conduct was an unlawful or unfair business practice under N.C. Gen. Stat § 71-1.1;
- d. Whether Defendant's representations that it would secure and protect the PII of Plaintiff and members of the classes were facts that reasonable persons could be expected to rely upon when deciding whether to use Defendant's services;
- e. Whether Defendant misrepresented the safety of its many systems and services, specifically the security thereof, and its ability to safely store Plaintiff's and the other Class members' PII;
- f. Whether Defendant concealed crucial information about its inadequate data security measures from Plaintiff and the Class;
- g. Whether Defendant knew or should have known that it did not employ reasonable measures to keep Plaintiff's and the other Class members' PII secure and prevent the loss or misuse of that information;
- h. Whether Defendant failed to implement and maintain reasonable security procedures and practices for Plaintiff's and the other Class members' PII in violation of N.C. Gen. Stat § 71-1.1;
- i. Whether Defendant failed to provide timely notice of the Data Breach in violation of N.C. Gen. Stat § 75-65;
- j. Whether Defendant owed a duty to Plaintiff and the Class to safeguard their PII and to implement adequate data security measures, and whether Defendant

breached that duty;

- k. Whether Defendant's representations were false with regard to storing and safeguarding Plaintiff and the other Class members' PII; and
- l. Whether Defendant's representations were material with regard to storing and safeguarding Plaintiff and the other Class members' PII.

CLAIMS ALLEGED ON BEHALF OF ALL CLASSES

First Claim for Relief **Violation of N.C. Gen. Stat. § 75-1.1**

54. Plaintiff hereby repeats, realleges, and incorporates by reference each and every allegation contained above as though the same were fully set forth herein.

55. The Applicable EULA provides that "any dispute will be resolved in accordance with the laws of North Carolina."

56. By reason of the conduct alleged herein, Defendant engaged in unlawful practices within the meaning of § 75-1.1. The conduct alleged herein affects "commerce" within the meaning of § 75-1.1.

57. Epic Games represented that it would utilize sufficient data security protocols and mechanisms to protect Fortnite users' PII.

58. Defendant stored the PII of Plaintiff and members of his respective classes in its electronic and consumer information databases. Defendant falsely represented to Plaintiff and the other Class members that the PII databases were secure. Defendant knew or should have known that it did not employ reasonable industry standards and appropriate security measures that would have kept Plaintiff's and the other Class members' PII secure and prevented the loss or misuse of their PII, yet it failed to disclose that information to Plaintiff and the other Class members.

59. Even without Defendant's misrepresentations, Plaintiff and the other Class members were entitled to and did assume that Defendant would take appropriate measures to keep their PII safe. At no time did Defendant disclose that Plaintiff's PII was vulnerable to hackers because its data security measures were inadequate. Such material information was only in the

possession of Defendant, which it had a duty to disclose. Defendant violated § 75-1.1 by misrepresenting – by affirmative conduct and by omission – the safety of its many systems and services, specifically the security thereof, and its ability to safely store Plaintiff’s and the other Class members’ PII. Defendant also violated § 75-1.1 by failing to implement reasonable and appropriate security measures or follow industry standards for data security – and failing to comply with its own posted privacy policies. If Defendant had complied with these legal requirements, Plaintiff and the other Class members would not have suffered the damages described herein. Defendant also violated § 75-1.1 by failing to notify Plaintiff and the other Class members of the Data Breach immediately following discovery of the breach. By failing to properly notify Plaintiff and the other Class members of the Data Breach, Defendant prevented them from protecting their PII from continuing exposure to hacking, getting stolen, and being used to defraud them of money or property.

60. Defendant’s acts, omissions, and misrepresentations as alleged herein were unlawful and in violation of § 75-1.1.

61. Plaintiff and the other Class members suffered injury in fact and lost money or property as the result of Defendant’s unlawful business practices. Had Plaintiff and the other Class members known of the flaws in Defendant’s data security protocols, they would not have given Defendant their PII necessary to play the game. Plaintiff’s and the other Class members’ PII was taken and is in the hands of those who will use it for their pecuniary gain (to the detriment of Plaintiff and the other Class members), is being sold for value (making it clear that information is of tangible value), and is being used to defraud Plaintiff and the other Class members as a result of the Data Breach.

62. As a result of Defendant’s unlawful business practices, which are violations of § 75-1.1, Plaintiff and the other Class members are entitled to restitution, disgorgement of wrongfully obtained profits, and injunctive relief.

Second Claim for Relief
Violation of N.C. Gen. Stat § 75-65

63. Plaintiff hereby repeats, realleges, and incorporates by reference each and every allegation contained above as though the same were fully set forth herein.

64. The Applicable EULA provides that “any dispute will be resolved in accordance with the laws of North Carolina.”

65. Defendant stored the PII of Plaintiff and the other members of his respective classes in its electronic and consumer information databases

66. Defendant violated § 75-65 by failing to notify Plaintiff and the other Class members of the Data Breach immediately following discovery of the breach. By failing to properly notify Plaintiff and the other Class members of the Data Breach, their PII was subject to continuing exposure to hacking, stolen, and used to defraud them of money or property.

67. Defendant’s actions and inactions as alleged herein were unlawful and in violation of § 75-65.

68. Violation of § 75-65 constitutes a violation of § 71-1.1 where, as here, the violation causes injury.

69. Plaintiff and the other Class members suffered injury in fact and lost money or property as the result of Defendant’s actions and inactions. Plaintiff’s and the other Class members’ PII was taken and is in the hands of those who will use it for their pecuniary gain (to the detriment of Plaintiff and the other Class members), is being sold for value (making it clear that information is of tangible value), and is being used to defraud Plaintiff and the other Class members as a result of the Data Breach.

70. As a result of Defendant’s actions and inactions, which are violations of §§ 71-1.1 and 75-65, Plaintiff and the other Class members are entitled to restitution, disgorgement of wrongfully obtained profits, and injunctive relief.

Third Claim for Relief
Negligence

71. Plaintiff hereby repeats, realleges, and incorporates by reference each and every allegation contained above as though the same were fully set forth herein.

72. Defendant owed a duty to Plaintiff and the Class to exercise reasonable care in safeguarding and protecting their PII and keeping it from being compromised, lost, stolen, misused, and or/disclosed to unauthorized parties. This duty included, *inter alia*, designing, maintaining, and testing Defendant's security systems to ensure that the PII of Plaintiff and the Class was adequately secured and protected, including using encryption technologies. Defendant further had a duty to implement processes that could detect a breach of its security system in a timely manner.

73. Defendant knew that the PII of Plaintiff and the Class was personal and sensitive information that is valuable to identity thieves and other criminals. Defendant also knew of the serious harms that could happen if the PII of Plaintiff and the Class was wrongfully disclosed, that disclosure was not fixed, and/or Plaintiff and the Class were not told about the disclosure in a timely manner.

74. By entrusting Defendant to safeguard their PII, Plaintiff and the Class had a special relationship with Defendant. Plaintiff and the Class signed up for Defendant's services and agreed to provide their PII with the understanding that Defendant would take appropriate measures to protect it, and would inform Plaintiff and the Class of any breaches or other security concerns that might call for action by Plaintiff and the Class. But Defendant did not. Defendant not only knew that its data security was inadequate, it also knew it did not have the tools to detect and document intrusions or exfiltration of PII. Defendant is morally culpable, given its repeated security breaches, wholly inadequate safeguards, and refusal to notify Plaintiff and the Class of breaches or security vulnerabilities.

75. Defendant breached its duty to exercise reasonable care in safeguarding and protecting Plaintiff's and the other Class members' PII by failing to adopt, implement, and maintain

adequate security measures to safeguard that information, despite repeated failures and intrusions, and allowing unauthorized access to their PII.

76. Defendant's failure to comply with industry standards and federal and state regulations further evidences its negligence in failing to exercise reasonable care in safeguarding and protecting Plaintiff's and the other Class members' PII.

77. Defendant's breaches of these duties were not merely isolated incidents or small mishaps. Rather, the breaches of the duties set forth above resulted from a long-term company-wide refusal by Defendant to acknowledge and correct serious and ongoing data security problems.

78. But for Defendant's wrongful and negligent breach of its duties owed to Plaintiff and the Class, their PII would not have been compromised, stolen, and/or viewed by unauthorized persons. Defendant's negligence was a direct and legal cause of the theft of the PII of Plaintiff and the Class and all their resulting damages.

79. The injury and harm suffered by Plaintiff and the other Class members was the reasonably foreseeable result of Defendant's failure to exercise reasonable care in safeguarding and protecting Plaintiff's and the other Class members' PII. Defendant knew its systems and technologies for processing and securing the PII of Plaintiff and the Class had numerous security vulnerabilities.

80. As a result of this misconduct by Defendant, the PII of Plaintiff and the Class was compromised, placing them at a greater risk of identity theft or subjecting them to identity theft, and their PII was disclosed to third parties without their consent. Plaintiff and the other Class members also suffered diminution in value of their PII in that it is now easily available to hackers on the dark web. Plaintiff and the Class have also suffered consequential out-of-pocket losses for procuring credit freeze or protection services, identity theft monitoring, and other expenses relating to identity theft losses or protective measures.

81. Defendant's misconduct as alleged herein is fraudulent, malicious and oppressive and was conduct carried on by Defendant with a willful, wanton, or conscious disregard of the rights or safety of Plaintiff and the Class. That despicable conduct has subjected Plaintiff and the

Class to cruel and unjust hardship in willful, wanton, or conscious disregard of their rights. As a result, Plaintiff and the Class are entitled to punitive damages against Defendant.

Fourth Claim for Relief
Breach of Implied Contract

82. Plaintiff hereby repeats, realleges, and incorporates by reference each and every allegation contained above as though the same were fully set forth herein.

83. Epic Games solicited and invited Plaintiff and the other Class members to use its services. Plaintiff and the other Class members accepted Epic Games' offer and created Fortnite user accounts requiring the provision of PII to Epic Games during the period of the Data Breach.

84. When Plaintiff and the other Class members used Epic Games services and products, they provided their PII. In so doing, Plaintiff and the other Class members entered into implied contracts with Epic Games pursuant to which it agreed to safeguard and protect their PII.

85. Each use of an Epic Games service or product made by Plaintiff and the other Class members was made pursuant to the mutually agreed-upon implied contract with Epic Games under which it agreed to safeguard and protect their PII.

86. Plaintiff and the other Class members would not have provided and entrusted their PII to Epic Games in the absence of the implied contract between them and Epic Games.

87. Plaintiff and the other Class members fully performed their obligations under the implied contracts with Epic Games.

88. Epic Games breached the implied contracts it made with Plaintiff and the other Class members by failing to safeguard and protect their PII.

89. As a direct and proximate result of Epic Games' breaches of the implied contracts between it and Plaintiff and the other Class members, Plaintiff and the other Class members sustained actual losses and damages as described in detail above.

**ADDITIONAL CLAIM ALLEGED ON BEHALF OF THE MISSOURI SUB-CLASS
ONLY**

Fifth Claim for Relief
Violation of Missouri Merchandising Practices Act
(Mo. Rev. Stat § 407.010, *et seq.*)

90. Plaintiff hereby repeats, realleges, and incorporates by reference each and every allegation contained above as though the same were fully set forth herein.

91. Plaintiff brings this claim on behalf of himself and the Missouri Sub-Class who are all residents of Missouri.

92. Epic Games is a “person” as defined by Mo. Rev. Stat. § 407.010(5). Plaintiff and Missouri Sub-Class members are actual consumers of the products and services offered by Epic Games.

93. Epic Games, operating in Missouri, engaged in deceptive, unfair, and unlawful trade acts or practices in the course of its business, vocation or occupation, in violation of Mo. Rev. Stat. § 407.020, including, but not limited to, the following:

- a. Knowingly misrepresenting and fraudulently advertising material facts pertaining to its products and services to the Missouri Sub-Class by representing and advertising that it would maintain adequate data privacy and security practices and procedures to safeguard Missouri Sub-Class members’ PII from unauthorized disclosure, release, data breaches, and theft;
- b. Knowingly misrepresenting material facts pertaining to its products and services to the Missouri Sub-Class by representing and advertising that it did and would comply with the requirements of relevant federal and state laws pertaining to the privacy and security of Missouri Sub-Class members’ PII;
- c. Knowingly omitting, suppressing, and concealing the material fact of the inadequacy of the privacy and security protections for Missouri Sub-Class members’ PII (intending to induce others to enter into a transaction);
- d. Engaging in unlawful practices by failing to maintain the privacy and security of Missouri Sub-Class members’ PII, in violation of duties imposed by and public policies reflected in applicable federal and state laws, resulting in the Data Breach; and
- e. Engaging in unlawful practices by failing to disclose the Data Breach to Missouri Sub-Class members in a timely and accurate manner, in violation of Mo. Rev. Stat. § 407.1500.

94. Under Mo. Rev. Stat. § 407.1500, Epic Games “maintains or possesses records or data containing personal information of residents of Missouri” and thus is required to “notify the owner or licensee of the information of any breach of security immediately following discovery of the breach.” Epic Games failed to immediately notify affected users of the Data Breach.

95. Epic Games’ representations and omissions were material because they were likely to deceive reasonable consumers about the adequacy of Epic Games’ data security and ability to protect the confidentiality of consumers’ PII.

96. Epic Games intended to mislead Plaintiff and the other Missouri Sub-Class members and induce them to rely on its misrepresentations and omissions.

97. Had Plaintiff and the other Missouri Sub-Class members known that Defendant failed to employ necessary and adequate protection of their personal information, they would not have created an Epic Games or Fortnite account or limited the PII they shared with Epic Games.

98. Epic Games engaged in the above unfair and deceptive acts or practices in the course of its business.

99. Epic Games engaged in the above unfair and deceptive acts or practices with malice and/or willfulness.

100. As a direct and proximate result of Epic Games’ unfair and deceptive practices, Missouri Sub-Class members suffered injuries to legally protected interests, including their legally protected interest in the confidentiality and privacy of their personal information.

101. The above unfair and deceptive practices and acts by Epic Games were immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury to Plaintiff and the other Missouri Sub-Class members that they could not reasonably avoid. This substantial injury outweighed any benefits to consumers or to competition.

102. Epic Games knew or should have known that its computer systems and data security practices were inadequate to safeguard Missouri Sub-Class members’ PII and thus, that risk of a data breach or theft was high. Epic Games’ actions in engaging in the above-named unfair practices

and deceptive acts were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of members of the Missouri Sub-Class.

103. Plaintiff and the other Missouri Sub-Class members seek relief under Mo. Rev. Stat. §§ 407.010, *et seq.*, including, but not limited to, compensatory damages, punitive damages, statutory damages, restitution, penalties, injunctive relief, and/or attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the other Class and Sub-Class members, respectfully request that this Court enter an Order:

- a. Certifying the United States Class and the Missouri Sub-Class, and appointing Plaintiff as Class and Sub-Class Representative;
- b. Enjoining Defendant from engaging in further negligent, deceptive, unfair, and unlawful business practices as alleged herein;
- c. Awarding Plaintiff and the other Class and Sub-Class members actual, compensatory, and consequential damages;
- d. Awarding Plaintiff and the other Class and Sub-Class members statutory damages and penalties, as allowed by law;
- e. Awarding Plaintiff and the other Class and Sub-Class members restitution and disgorgement;
- f. Requiring Defendant to provide appropriate credit monitoring services to Plaintiff and the other Class and Sub-Class members;
- g. Awarding Plaintiff and the other Class and Sub-Class members punitive damages;
- h. Awarding Plaintiff and the other Class and Sub-Class members pre-judgment and post-judgment interest;
- i. Awarding Plaintiff and the other Class and Sub-Class members reasonable attorneys' fees, costs and expenses, and;
- j. Granting such other relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a jury trial of all claims in this Class Action Complaint so triable.

DATED: August 8, 2019

Respectfully submitted,

/s/ Ivy T. Ngo

Ivy T. Ngo

Alexander F. Beale

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Local Rule 83.1(d) Counsel for Plaintiff

EXHIBIT A

(<https://www.epicgames.com/fortnite/home>)



- Deutsch (<https://www.epicgames.com/fortnite/en-US/eula?lang=de>)
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- Español (L.A.) (<https://www.epicgames.com/fortnite/en-US/eula?lang=es-MX>)
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Certain words or phrases are defined to have certain meanings when used in this Agreement. Those words and phrases are defined below in Section 16.

If your primary residence is in the United States of America, your agreement is with Epic Games, Inc. If it is not in the United States of America, your agreement is with Epic Games International S.à r.l., acting through its Swiss branch.

1. License Grant

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The Software may contain Cheat Detection software or features or you may be prompted to install Cheat Detection software during your installation of the Software. If you do not agree to install the Cheat Detection software or at any time remove or disable the Cheat Detection software or features, the License granted to you automatically terminates and you may not make use of the Software. The Software or the Cheat Detection software may collect and transmit details about your account, gameplay, and potentially unauthorized programs or processes in connection with Cheat Detection, subject to Epic's Privacy Policy. In the event that Cheats are identified, you agree that Epic may exercise any or all of its rights under this Agreement.

3. Updates and Patches

Epic may provide patches, updates, or upgrades to the Software that must be installed in order for you to continue to use the Software or Services. Epic may update the Software remotely without notifying you, and you hereby consent to Epic applying patches, updates, and upgrades. Epic may modify, suspend, discontinue, substitute, replace, or limit your access to any aspect of the Software or Services at any time. You acknowledge that your use of the Software or Services does not confer on you any interest, monetary or otherwise, in any aspect or feature of the Software or Services, including but not limited to any in-game rewards, achievements, character levels, Game Currency, or Content. You also acknowledge that any character data, game progress, game customization or other data related to your use of the Software or Services may cease to be available to you at any time without notice from Epic, including without limitation after a patch, update, or upgrade is applied by Epic. Epic does not have any maintenance or support obligations with respect to the Software or Services.

4. Game Currency and Content

Epic may offer you the ability to acquire licenses to in-game currency ("Game Currency") or Content, such as by: (a) purchasing a limited license to use Game Currency for a fee ("Purchased Game Currency"), (b) earning a limited license to use Game Currency by performing or accomplishing specific tasks in the Software, or (c) purchasing for a fee, exchanging Game Currency for, or earning a limited license to use Content. Also, Epic may facilitate the exchange of certain Content through the Software, in some cases for a fee. You may only use such Game Currency or Content if you pay the associated fee (if any). When you earn or pay the fee to obtain such Game Currency or Content, you are obtaining or purchasing from Epic the right to have your License include such Game Currency or Content. Regardless of any references Epic may make outside this Agreement to purchasing or selling Game Currency or Content, both Game Currency and Content are licensed, not sold, to you under the License. Use of an Epic Account Balance to purchase Game Currency or Content is subject to Epic's Terms of Service.

Neither Game Currency nor Content are redeemable for money or monetary value from Epic or any other person, except as otherwise required by applicable law. Game Currency and Content do not have an equivalent value in real currency and do not act as a substitute for real currency. Neither Epic nor any other person or entity has any obligation to exchange Game Currency or Content for anything of value, including, but not limited to, real currency. You agree that Epic may engage in actions that may impact the perceived value or purchase price, if applicable, of

Game Currency and Content at any time, except as prohibited by applicable law.

All purchases of Purchased Game Currency and Content are final and are not refundable, transferable, or exchangeable under any circumstances, except as otherwise required by applicable law. Epic, in its sole discretion, may impose limits on the amount of Game Currency or Content that may be purchased, earned, accumulated, redeemed or otherwise used.

Except as otherwise prohibited by applicable law, Epic, in its sole discretion, has the absolute right to manage, modify, substitute, replace, suspend, cancel or eliminate Game Currency or Content, including your ability to access or use Game Currency or Content, without notice or liability to you. You may not transfer, sell, gift, exchange, trade, lease, sublicense, or rent Game Currency or Content except within the Software and as expressly permitted by Epic. Except as otherwise prohibited by applicable law, Epic reserves and retains all rights, title, and interest in and to the Game Currency and Content. The license to Game Currency and Content under the License will terminate upon termination of the License and as otherwise provided herein.

When you provide payment information to Epic or its authorized processor, you represent that you are an authorized user of the payment card, PIN, key, account or other payment method specified by you, and you authorize Epic to charge such payment method for the full amount of the transaction.

5. User Generated Content

Any content that you create, generate, or make available through the Software or the Services, including buildings, chat posts, character data, game customization, in-game constructions, and screenshots, shall be "UGC". You hereby grant to Epic a non-exclusive, fully-paid, royalty-free, irrevocable, perpetual, transferable, and sublicensable license to use, copy, modify, adapt, distribute, and publicly display your UGC. You may not create, generate, or make available through the Software of the Services any UGC to which you do not have the right to grant Epic such license. In addition, you may not create, generate, or make available through the Software of the Services any UGC that is illegal or violates or infringes another's rights, including intellectual property rights or privacy, publicity or moral rights. Epic reserves the right to take down any UGC in its discretion.

6. Feedback

If you provide Epic with any Feedback, you hereby grant Epic a non-exclusive, fully-paid, royalty-free, irrevocable, perpetual, transferable, sublicensable license to reproduce, distribute, modify, prepare derivative works based on, publicly perform, publicly display, make, have made, use, sell, offer to sell, import, and otherwise exploit that Feedback for any purposes, for all current and future methods and forms of exploitation in any country. If any such rights may not be licensed under applicable law (such as moral and other personal rights), you hereby waive and agree not to assert all such rights. You understand and agree that Epic is not required to make any use of any Feedback that you provide. You agree that if Epic makes use of your Feedback, Epic is not required to credit or compensate you for your contribution. You represent and warrant that you have sufficient rights in any Feedback that you provide to Epic to grant Epic and other affected parties the rights described above. This includes but is not limited to intellectual property rights and other proprietary or personal rights.

7. Ownership/Third Party Licenses

Epic and its licensors own all title, ownership rights, and intellectual property rights in the Software and Services. Epic, Epic Games, Unreal, Unreal Engine, and Fortnite, and their respective logos, are trademarks or registered trademarks of Epic and its affiliates in the United States of America and elsewhere. All rights granted to you under this Agreement are granted by express license only and not by sale. No license or other rights shall be created hereunder by implication, estoppel, or otherwise.

The Software includes certain components provided by Epic's licensors. A list of credits and notices for third party components may be found in the game interface.

8. Disclaimers and Limitation of Liability

The Software (including any Game Currency and Content) and Services is provided on an "as is" and "as available" basis, "with all faults" and without warranty of any kind. Epic, its licensors, and its and their affiliates disclaim all warranties, conditions, common law duties, and representations (express, implied, oral, and written) with respect to the Software and Services, including without limitation all express, implied, and statutory warranties and conditions of any kind, such as title, non-interference with your enjoyment, authority, non-infringement, merchantability, fitness or suitability for any purpose (whether or not Epic knows or has reason

to know of any such purpose), system integration, accuracy or completeness, results, reasonable care, workmanlike effort, lack of negligence, and lack of viruses, whether alleged to arise under law, by reason of custom or usage in the trade, or by course of dealing. Without limiting the generality of the foregoing, Epic, its licensors, and its and their affiliates make no warranty that (1) the Software or Services will operate properly, (2) that the Software or Services will meet your requirements, (3) that the operation of the Software or Services will be uninterrupted, bug free, or error free in any or all circumstances, or (4) that any defects in the Software or Services can or will be corrected. Any warranty against infringement that may be provided in Section 2-312 of the Uniform Commercial Code or in any other comparable statute is expressly disclaimed. Epic, its licensors, and its and their affiliates do not guarantee continuous, error-free, virus-free, or secure operation of or access to the Software or Services. This paragraph will apply to the maximum extent permitted by applicable law.

To the maximum extent permitted by applicable law, neither Epic, nor its licensors, nor its or their affiliates, nor any of Epic's service providers (collectively, the "Epic Parties"), shall be liable in any way for any loss of profits or any indirect, incidental, consequential, special, punitive, or exemplary damages, arising out of or in connection with this Agreement or the Software (including any Game Currency or Content) or Services, or the delay or inability to use or lack of functionality of the Software or Services, even in the event of an Epic Party's fault, tort (including negligence), strict liability, indemnity, product liability, breach of contract, breach of warranty, or otherwise and even if an Epic Party has been advised of the possibility of such damages. Further, to the maximum extent permitted by applicable law, the aggregate liability of the Epic Parties arising out of or in connection with this Agreement or the Software (including any Game Currency or Content) or Services will not exceed the total amounts you have paid (if any) to Epic for the Software (including any Game Currency or Content) during the twelve (12) months immediately preceding the events giving rise to such liability. These limitations and exclusions regarding damages apply even if any remedy fails to provide adequate compensation.

Notwithstanding the foregoing, some countries, states, provinces or other jurisdictions do not allow the exclusion of certain warranties or the limitation of liability as stated above, so the above terms may not apply to you. Instead, in such jurisdictions, the foregoing exclusions and limitations shall apply only to the extent permitted by the laws of such jurisdictions. Also, you may have additional legal rights in your jurisdiction, and nothing in this Agreement will prejudice the statutory rights that you may have as a consumer of the Software or Services.

9. Indemnity

You agree to indemnify, pay the defense costs of, and hold Epic, its licensors, its and their affiliates, and its and their employees, officers, directors, agents, contractors, and other representatives harmless from all claims, demands, actions, losses, liabilities, and expenses (including attorneys' fees, costs, and expert witnesses' fees) that arise from or in connection with (a) any claim that, if true, would constitute a breach by you of this Agreement or negligence by you, or (b) any act or omission by you in using the Software (including any Game Currency or Content) or Services. You agree to reimburse Epic on demand for any defense costs incurred by Epic and any payments made or loss suffered by Epic, whether in a court judgment or settlement, based on any matter covered by this Section 9.

If you are prohibited by law from entering into the indemnification obligation above, then you assume, to the extent permitted by law, all liability for all claims, demands, actions, losses, liabilities, and expenses (including attorneys' fees, costs and expert witnesses' fees) that are the stated subject matter of the indemnification obligation above.

10. Termination

Without limiting any other rights of Epic, this Agreement will terminate automatically without notice if you fail to comply with any of its terms and conditions. You may also terminate this Agreement by deleting the Software. Upon any termination, the License will automatically terminate, you may no longer exercise any of the rights granted to you by the License, and you must destroy all copies of the Software in your possession.

Except to the extent required by law, all payments and fees are non-refundable under all circumstances, regardless of whether or not this Agreement has been terminated.

Sections 2, 5-13, and 15-17 will survive any termination of this Agreement.

11. Governing Law and Jurisdiction

You agree that this Agreement will be deemed to have been made and executed in the State of North Carolina, U.S.A., and any dispute will be resolved in accordance with the laws of North Carolina, excluding that body of law related to choice of laws, and of the United States of

America. Any action or proceeding brought to enforce the terms of this Agreement or to adjudicate any dispute must be brought in the Superior Court of Wake County, State of North Carolina or the United States District Court for the Eastern District of North Carolina. You agree to the exclusive jurisdiction and venue of these courts. You waive any claim of inconvenient forum and any right to a jury trial. The Convention on Contracts for the International Sale of Goods will not apply. Any law or regulation which provides that the language of a contract shall be construed against the drafter will not apply to this Agreement.

12. Class Action Waiver

You agree not to bring or participate in a class or representative action, private attorney general action, or collective arbitration related to the Software (including any Game Currency or Content) or Services or this Agreement. You also agree not to seek to combine any action or arbitration related to the Software or Services or this Agreement with any other action or arbitration without the consent of all parties to this Agreement and all other actions or arbitrations.

13. U.S. Government Matters

The Software is a "Commercial Item" (as defined at 48 C.F.R. §2.101), consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation" (as used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable). The Software is being licensed to U.S. Government end users only as Commercial Items and with only those rights as are granted to other licensees under this Agreement.

You represent and warrant to Epic that you are not located in a country that is subject to a U.S. Government embargo or that has been designated by the U.S. Government as a "terrorist supporting" country, and that you are not listed on any U.S. Government list of prohibited or restricted parties.

14. Amendments of this Agreement

Epic may issue an amended Agreement, Terms of Service, or Privacy Policy at any time in its discretion by posting the amended Agreement, Terms of Service, or Privacy Policy on its website or by providing you with digital access to amended versions of any of these documents when

you next access the Software. If any amendment to this Agreement, the Terms of Service, or Privacy Policy is not acceptable to you, you may terminate this Agreement and must stop using the Software. Your continued use of the Software will demonstrate your acceptance of the amended Agreement and Terms of Service as well as your acknowledgement that you have read the amended Privacy Policy.

15. No Assignment

You may not, without the prior written consent of Epic, assign, transfer, charge, or sub-contract all or any of your rights or obligations under this Agreement, and any attempt without that consent will be null and void. If restrictions on transfer of the Software in this Agreement are not enforceable under the law of your country, then this Agreement will be binding on any recipient of the Software. Epic may at any time assign, transfer, charge, or sub-contract all or any of its rights or obligations under this Agreement.

16. Definitions

As used in this Agreement, the following capitalized words have the following meanings:

“Cheat Detection” means functionality intended to identify Cheats.

“Cheats” means programs or other processes which may give players an unfair competitive advantage in the Software.

“Confidential Information” means any non-public information related to the Software, including without limitation information related to gameplay or other content, Game Currency, Content, the Services, your own feedback and comments, and the feedback or comments of any other licensee of the Software or any Epic representative.

“Content” means any virtual items or other content that Epic makes available for you to access or download through or in connection with the Software.

“Epic” means, depending on the location of your primary residence:

a. Epic Games, Inc., a Maryland Corporation having its principal business offices at Box 254,
Case 5:19-cv-00348-BO Document 1-1 Filed 08/08/19 Page 10 of 13

2474 Walnut Street, Cary, North Carolina, 27518, U.S.A.; or

b. Epic Games International S.à r.l., a Luxembourg Société à Responsabilité Limitée, located at Atrium Business Park, 33 rue du Puits Romain, L8070 Bertrange, Grand-Duchy of Luxembourg, acting through its Swiss branch, having its principal business offices at Lindenstrasse 16, 6340 Baar, Switzerland.

“Feedback” means any feedback or suggestions that you provide to Epic regarding the Software, Services or other Epic products and services.

“Services” means any services made available to you through the Software, including services to acquire, maintain and use Game Currency and Content.

“Software” means the proprietary software application known as Fortnite, and any patches, updates, and upgrades to the application, and all related content and documentation made available to you by Epic under this Agreement, including but not limited to all software code, titles, themes, objects, characters, names, dialogue, catch phrases, locations, stories, artwork, animation, concepts, sounds, audio-visual effects, methods of operation, and musical compositions that are related to the application, and any copies of any of the foregoing. Software specifically includes all Game Currency and Content for which you have paid the associated fee or otherwise acquired a license under Section 4.

17. Miscellaneous

This Agreement and any document or information referred to in this Agreement constitute the entire agreement between you and Epic relating to the subject matter covered by this Agreement. All other communications, proposals, and representations with respect to the subject matter covered by this Agreement are excluded.

The original of this Agreement is in English; any translations are provided for reference purposes only. You waive any right you may have under the law of your country to have this Agreement written or construed in the language of any other country.

This Agreement describes certain legal rights. You may have other rights under the laws of your jurisdiction. This Agreement does not change your rights under the laws of your jurisdiction if

the laws of your jurisdiction do not permit it to do so. Limitations and exclusions of warranties and remedies in this Agreement may not apply to you because your jurisdiction may not allow them in your particular circumstance. In the event that certain provisions of this Agreement are held by a court or tribunal of competent jurisdiction to be unenforceable, those provisions shall be enforced only to the furthest extent possible under applicable law and the remaining terms of this Agreement will remain in full force and effect.

Any act by Epic to exercise, or failure or delay in exercise of, any of its rights under this Agreement, at law or in equity will not be deemed a waiver of those or any other rights or remedies available in contract, at law or in equity.

You agree that this Agreement does not confer any rights or remedies on any person other than the parties to this Agreement, except as expressly stated.

Epic's obligations are subject to existing laws and legal process, and Epic may comply with law enforcement or regulatory requests or requirements despite any contrary term in this Agreement.



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Please read this Agreement carefully, in its entirety, that explains your rights and obligations related to your use of Epic's Software, including any Services you access or purchases you make through the Software. By downloading or using the Software, or by otherwise indicating your acceptance of this Agreement, you are agreeing to be bound by the terms of this Agreement. If you do not or cannot agree to the terms of this Agreement, you may not download or use this Software.

In particular, we want to highlight some important terms, policies, and procedures in this Agreement. By accepting this Agreement:

1. You are also agreeing to other Epic rules and policies that are expressly incorporated into this Agreement. Please read them carefully:

Our Privacy Policy (https://www.epicgames.com/site/en-US/privacypolicy) explains what information we collect from you and how we protect it.

Our Fan Content Policy (https://www.epicgames.com/site/en-US/fan-art-policy) explains what you can do with Epic's Intellectual Property in the content you create.

Our Terms of Service (https://www.epicgames.com/site/en-US/tos) explain the rules for our websites.

2. You grant Epic a license to use whatever content you create using the Service. You can find more information in the User Generated Content section below.

3. You and Epic agree to resolve disputes between us in individual arbitration (not in court). We believe the alternative dispute-resolution process of arbitration will resolve any dispute fairly and more quickly and efficiently than formal court litigation. Section 12 explains the process in

detail. We've put this up front (and in caps) because it's important:

THIS AGREEMENT CONTAINS A BINDING, INDIVIDUAL ARBITRATION AND CLASS-ACTION WAIVER PROVISION. IF YOU ACCEPT THIS AGREEMENT, YOU AND EPIC AGREE TO RESOLVE DISPUTES IN BINDING, INDIVIDUAL ARBITRATION AND GIVE UP THE RIGHT TO GO TO COURT INDIVIDUALLY OR AS PART OF A CLASS ACTION, AND EPIC AGREES TO PAY YOUR ARBITRATION COSTS FOR ALL DISPUTES OF UP TO \$10,000 THAT ARE MADE IN GOOD FAITH (SEE SECTION 12). YOU HAVE A TIME-LIMITED RIGHT TO OPT OUT OF THIS WAIVER.

TO ENTER INTO THIS LICENSE AGREEMENT, YOU MUST BE AN ADULT OF THE LEGAL AGE OF MAJORITY IN YOUR COUNTRY OF RESIDENCE. YOU ARE LEGALLY AND FINANCIALLY RESPONSIBLE FOR ALL ACTIONS USING OR ACCESSING OUR SOFTWARE, INCLUDING THE ACTIONS OF ANYONE YOU ALLOW TO ACCESS TO YOUR ACCOUNT. YOU AFFIRM THAT YOU HAVE REACHED THE LEGAL AGE OF MAJORITY, UNDERSTAND AND ACCEPT THIS AGREEMENT (INCLUDING ITS DISPUTE RESOLUTION TERMS). IF YOU ARE UNDER THE LEGAL AGE OF MAJORITY, YOUR PARENT OR LEGAL GUARDIAN MUST CONSENT TO THIS AGREEMENT.

Certain words or phrases are defined to have certain meanings when used in this Agreement. Those words and phrases are defined below in Section 16.

If your primary residence is in the United States of America, your agreement is with Epic Games, Inc. If it is not in the United States of America, your agreement is with Epic Games International S.à r.l., acting through its Swiss branch.

1. License Grant

Epic grants you a personal, non-exclusive, non-transferable, non-sublicensable limited right and license to install and use the Software on compatible devices you own or control for your personal entertainment use (the "**License**"). The rights that Epic grants you under the License are subject to the terms of this Agreement, and you may only make use of the License if you comply with all applicable terms.

The License becomes effective on the date you accept this Agreement. The Software is licensed, not sold, to you under the License. The License does not grant you any title or ownership in the Software.

2. License Conditions

You may not do or attempt to do any of the following with respect to the Software or any of its parts: (a) use it commercially or for a promotional purpose except as Epic expressly authorizes; (b) copy, reproduce, distribute (including via a network server), display, or use it in a way that is not expressly authorized in this Agreement; (c) sell, rent, lease, license, distribute, or otherwise transfer it; (d) reverse engineer, derive source code from, modify, adapt, translate, decompile, or disassemble it or make derivative works based on it; (e) remove, disable, circumvent, or modify any proprietary notice or label or security technology included in it; (f) create, develop, distribute, or use any unauthorized software programs to gain advantage in any online or other game modes; (g) use it to infringe or violate the rights of any third party, including but not limited to any intellectual property, publicity, or privacy rights; (h) use, export, or re-export it in violation of any applicable law or regulation; or (i) behave in a manner which is detrimental to the enjoyment of the Software by other users as intended by Epic, in Epic's sole judgment, including but not limited to the following - harassment, use of abusive or offensive language, game abandonment, game sabotage, spamming, social engineering, scamming, running or using methods which are not authorized by Epic and which interfere with the outcome and/or the course of the Software (including Cheats, bots, scripts, or mods not expressly authorized by Epic) by giving you and/or another user an advantage over other players who do not use such methods, or making or otherwise contributing to such unauthorized software.

The Software may contain Cheat Detection software or features or you may be prompted to install Cheat Detection software during your installation of the Software. If you do not agree to install the Cheat Detection software or at any time remove or disable the Cheat Detection software or features, the License granted to you automatically terminates and you may not make use of the Software. The Software or the Cheat Detection software may collect and transmit details about your account, gameplay, and potentially unauthorized programs or processes in connection with Cheat Detection, subject to Epic's Privacy Policy. In the event that Cheats are identified, you agree that Epic may exercise any or all of its rights under this Agreement.

3. Updates and Patches

Epic may provide patches, updates, or upgrades to the Software that must be installed in order

for you to continue to use the Software or Services. Epic may update the Software remotely without notifying you, and you hereby consent to Epic applying patches, updates, and upgrades. Epic may modify, suspend, discontinue, substitute, replace, or limit your access to any aspect of the Software or Services at any time. You acknowledge that your use of the Software or Services does not confer on you any interest, monetary or otherwise, in any aspect or feature of the Software or Services, including but not limited to (where applicable) any in-game rewards, trophies, achievements, character levels, Game Currency, or Content. You also acknowledge that any character data, game progress, game customization or other data related to your use of the Software or Services may cease to be available to you at any time without notice from Epic, including without limitation after a patch, update, or upgrade is applied by Epic. Epic does not have any maintenance or support obligations with respect to the Software or Services.

4. Game Currency and Content

Epic may offer you the ability to acquire licenses to in-game currency ("**Game Currency**") or Content, such as by: (a) purchasing a limited license to use Game Currency for a fee ("**Purchased Game Currency**"), (b) earning a limited license to use Game Currency by performing or accomplishing specific tasks in the Software, or (c) purchasing for a fee, exchanging Game Currency for, or earning a limited license to use Content. Also, Epic may facilitate the exchange of certain Content through the Software, in some cases for a fee. You may only use such Game Currency or Content if you pay the associated fee (if any). When you earn or pay the fee to obtain such Game Currency or Content, you are obtaining or purchasing from Epic the right to have your License include such Game Currency or Content. Regardless of any references Epic may make outside this Agreement to purchasing or selling Game Currency or Content, both Game Currency and Content are licensed, not sold, to you under the License. Use of an Epic Account Balance to purchase Game Currency or Content is subject to Epic's Terms of Service.

Neither Game Currency nor Content are redeemable for money or monetary value from Epic or any other person, except as otherwise required by applicable law. Game Currency and Content do not have an equivalent value in real currency and do not act as a substitute for real currency. Neither Epic nor any other person or entity has any obligation to exchange Game Currency or Content for anything of value, including, but not limited to, real currency. You agree that Epic may engage in actions that may impact the perceived value or purchase price, if applicable, of Game Currency and Content at any time, except as prohibited by applicable law.

All purchases of Purchased Game Currency and Content are final and are not refundable, transferable, or exchangeable under any circumstances, except as otherwise required by applicable law. Epic, in its sole discretion, may impose limits on the amount of Game Currency or Content that may be purchased, earned, accumulated, redeemed or otherwise used. Except as otherwise prohibited by applicable law, Epic, in its sole discretion, has the absolute right to manage, modify, substitute, replace, suspend, cancel or eliminate Game Currency or Content, including your ability to access or use Game Currency or Content, without notice or liability to you. You may not transfer, sell, gift, exchange, trade, lease, sublicense, or rent Game Currency or Content except within the Software and as expressly permitted by Epic.

Except as otherwise prohibited by applicable law, Epic reserves and retains all rights, title, and interest, property or otherwise, in and to the Game Currency and Content. The license to Game Currency and Content under the License will terminate upon termination of the License and as otherwise provided herein.

When you provide payment information to Epic or its authorized processor, you represent that you are an authorized user of the payment card, PIN, key, account or other payment method specified by you, and you authorize Epic to charge such payment method for the full amount of the transaction.

5. User Generated Content

Epic may provide features through the Software or the Services that allow You to create, develop, modify, or contribute Content ("UGC") and to upload, publish, or otherwise make available UGC to some or all users of the Services. These features may also allow you to interact with, manipulate, and change UGC in whole or in part. Epic may modify, limit, or discontinue certain features of the Service without notice or liability to you.

"UGC" includes without limitation buildings, chat posts, character data, game customization, in-game constructions, replays, cinematics, scripts and programs, modes, gameplay, experiences, interactive features, and screenshots, music, sounds, sound recordings (and the musical works embodied therein) audiovisual combinations, musical works, animations, and other types of works (standalone or in combination).

Subject to the rights and licenses You grant in this Agreement, you retain whatever rights that you may have in your UGC. Your rights in UGC only extend to the new, original content you create as part of your UGC and does not extend to or grant any rights to the Services, Software, Content created or made available by third-parties, or Content made available by Epic through the Software or Services.

License to Epic. If You make or have made available any UGC in the Services, You give Epic permission to host, copy, import, store, modify, adapt, display, publicly perform (including by means of digital audio transmissions), reproduce (and make mechanical reproductions of musical works embodied in sound recordings), create derivative works of (including synchronize to visual images), publicly display, transfer, sublicense, and distribute (collectively "Use") that UGC, in whole or in part, including for commercial publicity and marketing purposes, in any country. This permission is perpetual and irrevocable and applies to any media, platform, or channel in connection with the Software and Services.

The rights you grant to Epic in this Section are provided on a through-to-the-audience basis, which means the owners or operators of third-party services will not have any separate liability to you or any other third-party for UGC provided to or used on such third-party services via the Service. Epic needs these permissions in order to make your UGC available to players as part of the Services (i.e., in-game), and to make it available to streamers and content creators off of the Services (e.g., for use on other platforms). These rights need to be irrevocable because of the many channels in which UGC is distributed by us and others after it's created.

You understand that You are not entitled to receive any compensation, fees, consideration, or other remuneration in connection with your UGC for any reason, including Epic's exercise of the rights You grant to Epic in this Section and that Epic is not obligated to exercise the rights You grant.

Musical Works. Epic may, in its sole discretion, choose to make available sound recordings and the musical works embodied in the sound recordings ("Licensed Music") in connection with UGC. If Epic makes available Licensed Music for use in your UGC, Epic grants you a non-exclusive, personal, limited, revocable, non-transferable license to: (a) synchronize the Licensed Music into UGC during the period of time that the Licensed Music is made available through the Services, and (b) play, listen, and interact with UGC containing Licensed Music solely through the Services.

Your modifications (e.g., edits, use of a portion of) the Licensed Music to synchronize into the UGC are considered derivative works included in the definition of Licensed Music, the rights to which are retained by Epic and its licensors.

Special Rules for Recording Artists. If you are a composer or author of a musical work and are (a) affiliated with or a member of a performing-rights organization (“PRO”), (b) under contract with a record label, or (c) have assigned your rights to a music publisher, then you must notify the interested party of the royalty-free license you grant through this Agreement to Epic. You are solely responsible for ensuring your compliance with the relevant party’s reporting or contractual obligations, and (if applicable) obtaining the consent of that party to grant the royalty-free license(s) in this Agreement, including if you create any new recordings through the Service that your label may attempt to claim.

You represent and warrant that any UGC containing Licensed Music is not subject to and Epic has no obligation to pay royalties to any third party, including without limitation a sound recording copyright owner (e.g., a record label), a musical work copyright owner (e.g., a music publisher), a PRO (e.g., ASCAP, BMI, SESAC, etc.), a sound recording PRO, any unions or guilds, or other third parties.

Epic does not allow intellectual-property infringement activities through the Software or the Services. You may not and agree not to create, generate, or make available through the Software or the Services any UGC to which you do not have the right to grant Epic such license in all of the elements (including the Licensed Music) of the UGC.

If you do choose to create, generate, or make available your UGC through the Software or Services, You are solely responsible for your UGC and represent and warrant that:

(a) you are the creator and owner of, and have all the necessary licenses and rights to use and authorize Epic to exploit the license granted above;

(b) your UGC, and Epic’s use of the UGC as contemplated under this Agreement, will not infringe or violate any third-party rights, including copyright, trademark, patent, trade secret, moral rights, or the rights of privacy or publicity;

(c) Epic does not need to obtain any further licenses, provide attribution, or pay royalties or other compensation to any third parties; and

(d) Epic's use of your UGC will not violate any third-party contract or cause Epic to violate any applicable laws or regulations.

You are responsible for your UGC, so please don't make objectionable content available on or through the Services. If you do, we may have to take it down. Epic may, but is under no obligation, to edit or control any UGC You or others make available through the Software or the Services. Epic may at any time screen, remove, delete, edit, block, or refuse to publish UGC that violates this Agreement or is otherwise objectionable as determined in Epic's sole discretion and without prior notice or any liability to You or any third party. If You provide UGC, You may only use the tools that Epic provides through the normal functionality of the Service to remove or modify that specific type of UGC.

You understand that you may be exposed to UGC from a variety of sources when using the Software or the Services and acknowledge that UGC may be inaccurate, offensive, indecent, or otherwise objectionable. You agree that Epic shall not be responsible or liable for your or others' UGC.

To the fullest extent permitted by law, You waive and agree to waive all rights of authorship, paternity, attribution, integrity, disclosure, withdrawal, and any other rights that are known or referred to as "moral rights", "artist's rights", "droit moral", or other similar rights, recognized under any legal or equitable theory of any country or under any treaty, regardless of whether that right is referred to as a "moral right" (collectively "Moral Rights") in and to your UGC. You further knowingly and irrevocably agree to not exercise any Moral Rights in and to your UGC that You have not waived in any manner that interferes with any exercise of granted rights. You waive and agree not to assert your Moral Rights even if your UGC is altered or changed in a manner not agreeable to you.

6. Feedback

If you provide Epic with any Feedback, you hereby grant Epic a non-exclusive, fully paid, royalty-free, worldwide, perpetual, irrevocable, sublicensable, transferable, and assignable license to use, reproduce, distribute, modify, adapt, prepare derivative works based on, publicly perform,

publicly display, make, have made, use, sell, offer to sell, import, and otherwise exploit any and all Feedback for any purposes, for all current and future methods and forms of exploitation. "Feedback" means suggestions, comments, ideas, and all other types of information, including software and code, that you provide, publish, or otherwise communicate directly or indirectly (including your employees, agents, contractors, or representatives) to Epic or its agents that relates to the Services or Software. If any such rights may not be licensed under applicable law (such as moral and other personal rights), you hereby waive and agree not to assert any such rights. You understand and agree that Epic is not required to make any use of any Feedback that you provide. You agree that if Epic makes use of your Feedback, Epic is not required to credit or compensate you for your contribution. You represent and warrant that you have sufficient rights in any Feedback that you provide to Epic to grant Epic and other affected parties the rights described above. This includes but is not limited to intellectual-property rights and other proprietary or personal rights.

7. Ownership/Third Party Licenses

Epic and its licensors own all title, ownership rights, and intellectual property rights in the Software and Services. Features may be made available to you via the Software and Services that provide prefabricated templates or in-game items to use in connection with your UGC (defined below), however your use of a template does not give you any copyrights or other ownership in the template. Epic, Epic Games, Unreal, Unreal Engine, and Fortnite, and their respective logos, are trademarks or registered trademarks of Epic and its affiliates in the United States of America and elsewhere. All rights granted to you under this Agreement are granted by express license only and not by sale. No license or other rights shall be created hereunder by implication, estoppel, or otherwise.

The Software includes certain components provided by Epic's licensors. A list of credits and notices for third party components may be found in the game interface.

8. Disclaimers and Limitation of Liability

Nothing in this Agreement will prejudice the statutory rights that you may have as a consumer of the Software or Services. Some countries, states, provinces or other jurisdictions do not allow the exclusion of certain warranties or the limitation of liability as stated in this section, so the below terms may not fully apply to you. Instead, in such

jurisdictions, the exclusions and limitations below shall apply only to the extent permitted by the laws of such jurisdictions.

The Software (including any Game Currency and Content) and Services is provided on an “as is” and “as available” basis, “with all faults” and without warranty of any kind. Epic, its licensors, and its and their affiliates disclaim all warranties, conditions, common law duties, and representations (express, implied, oral, and written) with respect to the Software and Services, including without limitation all express, implied, and statutory warranties and conditions of any kind, such as title, non-interference with your enjoyment, authority, non-infringement, merchantability, fitness or suitability for any purpose (whether or not Epic knows or has reason to know of any such purpose), system integration, accuracy or completeness, results, reasonable care, workmanlike effort, lack of negligence, and lack of viruses, whether alleged to arise under law, by reason of custom or usage in the trade, or by course of dealing. Without limiting the generality of the foregoing, Epic, its licensors, and its and their affiliates make no warranty that (1) the Software or Services will operate properly, (2) that the Software or Services will meet your requirements, (3) that the operation of the Software or Services will be uninterrupted, bug free, or error free in any or all circumstances, or (4) that any defects in the Software or Services can or will be corrected. Any warranty against infringement that may be provided in Section 2-312 of the Uniform Commercial Code or in any other comparable statute is expressly disclaimed. Epic, its licensors, and its and their affiliates do not guarantee continuous, error-free, virus-free, or secure operation of or access to the Software or Services. This paragraph will apply to the maximum extent permitted by applicable law.

To the maximum extent permitted by applicable law, neither Epic, nor its licensors, nor its or their affiliates, nor any of Epic’s service providers (collectively, the “Epic Parties”), shall be liable in any way for any loss of profits or any indirect, incidental, consequential, special, punitive, or exemplary damages, arising out of or in connection with this Agreement or the Software (including any Game Currency or Content) or Services, or the delay or inability to use or lack of functionality of the Software or Services, even in the event of an Epic Party’s fault, tort (including negligence), strict liability, indemnity, product liability, breach of contract, breach of warranty, or otherwise and even if an Epic Party has been advised of the possibility of such damages. Further, to the maximum extent permitted by applicable law, the aggregate liability of the Epic Parties arising out

of or in connection with this Agreement or the Software (including any Game Currency or Content) or Services will not exceed the total amounts you have paid (if any) to Epic for the Software (including any Game Currency or Content) during the twelve (12) months immediately preceding the events giving rise to such liability. These limitations and exclusions regarding damages apply even if any remedy fails to provide adequate compensation.

9. Indemnity

This section only applies to the extent permitted by applicable law. If you are prohibited by law from entering into the indemnification obligation below, then you assume, to the extent permitted by law, all liability for all claims, demands, actions, losses, liabilities, and expenses (including attorneys' fees, costs and expert witnesses' fees) that are the stated subject matter of the indemnification obligation below.

You agree to indemnify, pay the defense costs of, and hold Epic, its licensors, its and their affiliates, and its and their employees, officers, directors, agents, contractors, and other representatives harmless from all claims, demands, actions, losses, liabilities, and expenses (including attorneys' fees, costs, and expert witnesses' fees) that arise from or in connection with (a) any claim that, if true, would constitute a breach by you of this Agreement or negligence by you, (b) any act or omission by you in using the Software (including any Game Currency or Content) or Services, or (c) any claim of infringement or violation of any third-party intellectual property rights arising from Epic's use of your UGC or Feedback as provided under Sections 5 or 6 of this Agreement. You agree to reimburse Epic on demand for any defense costs incurred by Epic and any payments made or loss suffered by Epic, whether in a court judgment or settlement, based on any matter covered by this Section 9.

10. Termination

Without limiting any other rights of Epic, this Agreement will terminate automatically without notice if you fail to comply with any of its terms and conditions. You may also terminate this Agreement by deleting the Software from all devices on which you've installed it. Upon any termination, the License will automatically terminate, you may no longer exercise any of the rights granted to you by the License, and you must destroy all copies of the Software in your possession.

Except to the extent required by law, all payments and fees are non-refundable under all circumstances, regardless of whether or not this Agreement has been terminated.

Sections 2, 5-13, and 15-17 will survive any termination of this Agreement.

11. Governing Law and Jurisdiction

This Agreement is entered into in the State of North Carolina, U.S.A., and shall be governed by, and construed in accordance with, the laws of the State of North Carolina, exclusive of its choice of law rules. For any Disputes deemed not subject to binding individual arbitration, as provided in the section immediately below, you and Epic agree to submit to the exclusive jurisdiction of the Superior Court of Wake County, North Carolina, or, if federal court jurisdiction exists, the United States District Court for the Eastern District of North Carolina. You and Epic agree to waive any jurisdictional, venue, or inconvenient forum objections to such courts (without affecting either party's rights to remove a case to federal court if permissible), as well as any right to a jury trial. The Convention on Contracts for the International Sale of Goods will not apply. Any law or regulation which provides that the language of a contract shall be construed against the drafter will not apply to this Agreement. This paragraph will be interpreted as broadly as applicable law permits.

12. Binding Individual Arbitration; Class Action Waiver

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

Most issues can be resolved quickly and amicably by contacting Epic customer support at <https://www.epicgames.com/customer-service> (<https://www.epicgames.com/customer-service>). But we understand that sometimes disputes can't be easily resolved by customer support. This Section explains how You and Epic agree to resolve those disputes, including (where applicable) by binding, individual arbitration.

Arbitration is an alternative dispute-resolution procedure that allows us to resolve issues without the formality of going to court. Any dispute between You and Epic is submitted to a neutral arbitrator (not a judge or jury) for fair and fast resolution. Arbitration is more efficient

for both you and Epic.

12.1 Informal Resolution.

If you have an issue that our customer support can't resolve, prior to starting arbitration You and Epic agree to attempt to resolve the dispute informally to help get us to a resolution and control costs for both parties. You and Epic agree to make a good-faith effort to negotiate any dispute between us for at least 30 days ("Informal Resolution"). Those informal negotiations will start on the day You or Epic receive a written Notice of a Dispute in accordance with this Agreement.

You will send your Notice of Dispute to Epic Games, Inc., Legal Department, ATTN: NOTICE OF DISPUTE, Box 254, 2474 Walnut Street, Cary, North Carolina, 27518, U.S.A. Include your name, account name you use while playing Fortnite, address, how to contact you, what the problem is, and what you want Epic to do. If Epic has a dispute with You, Epic will send our Notice of Dispute to your registered email address and any billing address You have provided us.

If you reside in the European Union ("EU"), You may also be entitled to submit Your complaint to the European Commission's Online Dispute Resolution (ODR) Platform (<https://ec.europa.eu/consumers/odr/main/index.cfm?event=main.home2.show&lng=EN>). ODR allows EU consumers to resolve disputes related to the online purchases of goods and services without going to court.

If the dispute isn't resolved within by Informal Resolution or small-claims court (below), You or Epic may start an arbitration in accordance with this Agreement.

12.2 Small Claims Court

Instead of using Informal Resolution, You and Epic agree that You may sue us in small-claims court in your choice of the county where you live or Wake County, North Carolina (if you meet the requirements of small-claims court). We hope you'll try Informal Resolution first, but you don't have to before going to small-claims court.

12.3 Binding Individual Arbitration.

THE ARBITRATION PROCEEDINGS IN THIS SECTION WILL BE CONDUCTED ON AN INDIVIDUAL BASIS ONLY.

You and Epic agree that Disputes will be settled by binding individual arbitration conducted by the Judicial Arbitration Mediation Services, Inc (<https://www.jamsadr.com/>). (“JAMS”) subject to the U.S. Federal Arbitration Act and federal arbitration law and according to the JAMS Streamlined Arbitration Rules (<https://www.jamsadr.com/rules-comprehensive-arbitration/>) and Procedures effective July 1, 2014 (the “JAMS Rules”) as modified by this Agreement.

This means that You and Epic agree to a dispute-resolution process where we submit any Dispute to a neutral arbitrator (not a judge or jury) that makes the final decision to resolve the Dispute. JAMS uses experienced professionals to arbitrate disputes, which helps You and Epic resolve any disputes fairly, but more quickly and efficiently than going to court. The arbitrator may award the same remedies to you individually as a court could, but only to the extent required to satisfy your individual claim.

The arbitrator’s decision is final, except for a limited review by courts under the U.S. Federal Arbitration Act, and can enforced like any other court order or judgment.

12.3.1 Disputes We Agree to Arbitrate:

You and Epic agree to submit all Disputes between You and Epic to individual binding arbitration. “Dispute” means any dispute, claim, or controversy (except those specifically exempted below) between You and Epic that relates to your use or attempted use of Epic’s products or services and Epic’s products and services generally, including without limitation the validity, enforceability, or scope of this Binding Individual Arbitration section.

You and Epic agree to arbitrate all Disputes regardless of whether the Dispute is based in contract, statute, regulation, ordinance, tort (including fraud, misrepresentation, fraudulent inducement, or negligence), or any other legal or equitable theory.

The Informal Resolution and Arbitration sections do not apply to (1) individual actions in small-claims court; (2) pursuit of enforcement actions through a government agency if the law allows; (3) a complaint or remedy under the EU General Data Protection Regulation; (4) an action to compel or uphold any prior arbitration decision; (5) Epic’s right to seek injunctive relief against

You in a court of law to preserve the status quo while an arbitration proceeds; (6) claims of piracy, creation, distribution, or promotion of Cheats, and intellectual-property infringement, and (7) the enforceability of the Class Action Waiver clause below.

You and Epic agree that whether a dispute is subject to arbitration under this Agreement will be determined by the arbitrator rather than a court.

12.3.2 Arbitration Procedure:

To start an arbitration, review the JAMS Rules and follow the instructions for initiating an arbitration on the JAMS (<http://www.jamsadr.com/rules-streamlined-arbitration>) website. The party starting an arbitration must send JAMS a "Demand for Arbitration" (available on its website), pay a filing fee, and mail a copy of the Demand for Arbitration to the opposing party. You will send a copy to Epic Games, Inc., Legal Department, ATTN: ARBITRATION OF DISPUTE, Box 254, 2474 Walnut Street, Cary, North Carolina, 27518, U.S.A. Epic will send our copy to your registered email address and any billing address You have provided us.

The arbitration will be conducted by a single JAMS arbitrator selected with substantial experience in resolving intellectual-property and commercial-contract disputes. You and Epic both agree that the arbitration will be conducted in the English language and that the arbitrator will be bound by this Agreement.

If an in-person hearing is required, the hearing will take place either in Wake County, North Carolina, or where You reside; **you choose**.

The arbitrator (not a judge or jury) will resolve the Dispute. Unless You and Epic agree otherwise, any decision or award will include a written statement stating the decision of each claim and the basis for the award, including the arbitrator's essential factual and legal findings and conclusions.

The arbitrator may only award legal or equitable remedies that are requested by You or Epic to satisfy one of our individual claims (that the arbitrator determines are supported by credible relevant evidence). The arbitrator may not award relief against Epic respecting any person other than You.

Any decision or award may be enforced as a final judgment by any court of competent jurisdiction or, if applicable, application may be made to such court for judicial acceptance of any award and an order of enforcement.

12.3.3 Arbitration Fees and Location:

If You start the arbitration, you must pay the JAMS filing fee required for consumer arbitrations.

In some situations, Epic will help with your fees to (hopefully) get us to a resolution quickly and fairly:

If the Dispute involves \$10,000 or less, Epic will pay all of the JAMS costs, including the fees you otherwise would have been required to pay.

If the above doesn't apply to You, but You demonstrate that arbitration costs will be prohibitive compared to litigation costs, Epic will pay as much of your JAMS costs as the arbitrator finds is necessary to prevent arbitration from being cost-prohibitive (as compared to the cost of litigation).

Even if Epic wins the arbitration and the applicable law or the JAMS Rules allow Epic to seek our portion of the JAMS fees from you, we won't.

The fee assistance offered above is contingent upon You bringing the arbitration claim in "good faith". If the arbitrator finds You brought an arbitration claim against Epic for an improper purpose, frivolously, or without a sufficient pre-claim investigation into the facts or applicable law, then the payment of all fees will be governed by the JAMS rules.

JAMS costs do not include your Attorneys' fees and costs and Attorneys' fees and JAMS costs are not counted when determining how much a dispute involves.

Epic won't seek our attorneys' fees or expenses from you in any arbitration, even if the law or the JAMS rules entitle us to do so. If you choose to be represented by an attorney, you will pay your own attorneys' fees and costs unless the applicable law provides otherwise.

12.3.4 Notice and Filing. If a Dispute must be arbitrated, You or Epic must start arbitration of

Case 5:19-cv-00348-BO Document 1-2 Filed 08/08/19 Page 17 of 26

the Dispute within two (2) years from when the Dispute first arose. If applicable law requires you to bring a claim for a Dispute sooner than two years after the Dispute first arose, you must start arbitration in that earlier time period. Epic encourages You to tell us about a Dispute as soon as possible so we can work to resolve it. **The failure to provide timely notice shall bar all claims.**

12.3.5 Continuation in Effect. This Binding Individual Arbitration section survives any termination of this Agreement or Epic's provision of services to You.

12.3.6 Future Arbitration Changes. Although Epic may revise this Agreement in its discretion, Epic does not have the right to alter this agreement to arbitrate or the rules specified herein with respect to any Dispute once that Dispute arises.

12.4 Class Action Waiver.

To the maximum extent permitted by applicable law, You and Epic agree to only bring Disputes in an individual capacity and shall not:

seek to bring, join, or participate in any class or representative action, collective or class-wide arbitration, or any other action where another individual or entity acts in a representative capacity (e.g., private attorney general actions); or

consolidate or combine individual proceedings or permit an arbitrator to do so without the express consent of all parties to this Agreement and all other actions or arbitrations.

12.5 Severability.

If all or any provision of this Binding Individual Arbitration agreement is found invalid, unenforceable, or illegal, then You and Epic agree that the provision will be severed and the rest of the agreement shall remain in effect and be construed as if any severed provision had not been included. The sole exception is that if the Class Action Waiver is found invalid, unenforceable, or illegal, You and Epic agree that it will not be severable; this entire Binding Individual Arbitration section will be void and unenforceable and any dispute will be resolved in court subject to the venue and choice of clauses specified in this Agreement. Under no circumstances shall arbitration be conducted on a class basis without Epic's express consent.

12.6 Your 30-Day Right to Opt Out

You have the right to opt out of and not to be bound by the arbitration and class action waiver provisions set forth in this Agreement. To exercise this right, You must send written notice of your decision to the following address: Epic Games, Inc., Legal Department, ATTN: ARBITRATION OPT-OUT, Box 254, 2474 Walnut Street, Cary, North Carolina, 27518, U.S.A. Your notice **must** include your name, mailing address, and account name you use while playing Fortnite, and state that you do not wish to resolve disputes with Epic through arbitration. **To be effective, this notice must be postmarked or deposited within 30 days of the date on which you first accepted this Agreement unless a longer period is required by applicable law; otherwise you will be bound to arbitrate disputes in accordance with this section.** You are responsible for ensuring that Epic receives your opt-out notice, so you may wish to send it by a means that provides for a delivery receipt. If you opt out of these arbitration provisions, Epic will not be bound by them with respect to Disputes with you.

13. U.S. Government Matters

The Software is a "Commercial Item" (as defined at 48 C.F.R. §2.101), consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation" (as used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable). The Software is being licensed to U.S. Government end users only as Commercial Items and with only those rights as are granted to other licensees under this Agreement.

You agree to comply with all applicable federal and foreign laws, regulations, and rules, and complete any required undertakings. You agree not to use, export, re-export, or download the Software or Services into (or to a national or resident of) any country to which the U.S. has embargoed goods, or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders. You represent and warrant that you are not located in, under the control of, or a national or resident of any U.S. restricted or prohibited country or on any U.S. restricted or prohibited list.

14. Amendments of this Agreement

Epic may issue an amended Agreement, Terms of Service, or Privacy Policy at any time in

Case 5:19-cv-00348-BO Document 1-2 Filed 08/08/19 Page 19 of 26

its discretion by posting the amended Agreement, Terms of Service, or Privacy Policy on its website or by providing you with digital access to amended versions of any of these documents when you next access the Software. If any amendment to this Agreement, the Terms of Service, or Privacy Policy is not acceptable to you, you may terminate this Agreement and must stop using the Software. Your continued use of the Software will demonstrate your acceptance of the amended Agreement and Terms of Service as well as your acknowledgement that you have read the amended Privacy Policy.

15. No Assignment

You may not, without the prior written consent of Epic, assign, transfer, charge, or sub-contract all or any of your rights or obligations under this Agreement, and any attempt without that consent will be null and void. If restrictions on transfer of the Software in this Agreement are not enforceable under the law of your country, then this Agreement will be binding on any recipient of the Software. Epic may at any time assign, transfer, charge, or sub-contract all or any of its rights or obligations under this Agreement.

16. Definitions

As used in this Agreement, the following capitalized words have the following meanings:

“Cheat Detection” means functionality intended to identify Cheats.

“Cheats” means programs, methods, or other processes which may give players an unfair competitive advantage in the Software.

“Confidential Information” means any non-public information related to the Software, including without limitation information related to gameplay or other content, Game Currency, Content, the Services, your own feedback and comments, and the feedback or comments of any other licensee of the Software or any Epic representative.

“Content” means any virtual items, virtual environments (such as islands), or other content that Epic makes available for you to access or download through or in connection with the Software, and expressly includes Licensed Music, and UGC that has been licensed to us by our users.

"Epic" means, depending on the location of your primary residence:

a. Epic Games, Inc., a Maryland Corporation having its principal business offices at Box 254, 2474 Walnut Street, Cary, North Carolina, 27518, U.S.A.; or

b. Epic Games International S.à r.l., a Luxembourg Société à Responsabilité Limitée, located at Atrium Business Park, 33 rue du Puits Romain, L8070 Bertrange, Grand-Duchy of Luxembourg, acting through its Swiss branch, having its principal business offices at Platz 3, 6039 Root, Switzerland.

"Feedback" means any feedback or suggestions that you provide to Epic regarding the Software, Services or other Epic products and services.

"Services" means any services made available to you through the Software, including services to acquire, maintain and use Game Currency and Content.

"Software" means the proprietary software application known as Fortnite, and any patches, updates, and upgrades to the application, and all related content and documentation made available to you by Epic under this Agreement, including but not limited to all software code, titles, themes, objects, characters, names, dialogue, catch phrases, locations, stories, artwork, animation, concepts, sounds, audio-visual effects, methods of operation, and musical compositions that are related to the application, and any copies of any of the foregoing. Software specifically includes all Game Currency and Content for which you have paid the associated fee or otherwise acquired a license under Section 4.

17. Miscellaneous

This Agreement and any document or information referred to in this Agreement constitute the entire agreement between you and Epic relating to the subject matter covered by this Agreement. All other communications, proposals, and representations with respect to the subject matter covered by this Agreement are excluded.

The original of this Agreement is in English; any translations are provided for reference purposes only. It is the express wish of the parties that these Terms and all related documents have been drawn up in English. Les parties déclarent qu'elles ont demandé et par les présentes

confirment leur desir exprés que cette convention soit rédigée en anglais. You waive any right you may have under the law of your country to have this Agreement written or construed in the language of any other country.

This Agreement describes certain legal rights. You may have other rights under the laws of your jurisdiction. This Agreement does not change your rights under the laws of your jurisdiction if the laws of your jurisdiction do not permit it to do so. Limitations and exclusions of warranties and remedies in this Agreement may not apply to you because your jurisdiction may not allow them in your particular circumstance. In the event that certain provisions of this Agreement are held by a court or tribunal of competent jurisdiction to be unenforceable, those provisions shall be enforced only to the furthest extent possible under applicable law and the remaining terms of this Agreement will remain in full force and effect.

Any act by Epic to exercise, or failure or delay in exercise of, any of its rights under this Agreement, at law or in equity will not be deemed a waiver of those or any other rights or remedies available in contract, at law or in equity.

You agree that this Agreement does not confer any rights or remedies on any person other than the parties to this Agreement, except as expressly stated.

Epic's obligations are subject to existing laws and legal process, and Epic may comply with law enforcement or regulatory requests or requirements despite any contrary term in this Agreement.

18. Additional Platform Terms

18.1 Sony PlayStation Users:

The following additional terms and conditions apply with respect to Software available for use on PlayStation devices that you own or control:

Please note that Epic will store Sony Entertainment Network account information, including your email address and Online ID, as explained in Epic's Privacy Policy. Epic may allow its users to search for other Epic accounts by their SEN account and other Epic users may send you friend requests. Your SEN account privacy settings will not apply to your Epic account.

In no event may you convert any Software virtual currency into real currency, tangible goods, or in-kind consideration, and you are expressly forbidden from engaging in off-platform sales or exchanges of such virtual currency, such as at eBay or other auction sites.

For SIEA users: Purchase and use of items are subject to the Network Terms of Service and User Agreement. This online service has been sublicensed to you by Sony Interactive Entertainment America.

For SIEE users: Any content purchased in an in-game store will be purchased from Sony Interactive Entertainment Network Europe Limited ("SIENE") and be subject to PlayStation™ Network Terms of Service and User Agreement which is available on the PlayStation® Store. Please check usage rights for each purchase as these may differ from item to item. Unless otherwise shown, content available in any in-game store has the same age rating as the game.

18.2 Microsoft Xbox Users.

The following additional terms and conditions apply with respect to Software available for use on Xbox Live devices that you own or control:

Neither Microsoft Corporation nor any of its affiliates (collectively, "**Microsoft**") have any maintenance or support obligations with respect to the Software or Services.

Nothing in this Agreement shall govern or change, in any way, your relationship with Microsoft under any agreements between you and Microsoft, including the Xbox Live terms of use.

Further, to the maximum extent permitted by applicable law, the aggregate liability of the Epic Parties (other than Microsoft) arising out of or in connection with this Agreement or the Software (including any Game Currency or Content) or Services will not exceed the total amounts you have paid (if any) to Epic for the Software (including any Game Currency or Content) during the twelve (12) months immediately preceding the events giving rise to such liability and Microsoft shall have no liability to you arising out of or in connection with this Agreement or the Software (including any Game Currency or Content) or Services. These limitations and exclusions regarding damages apply even if any remedy fails to provide adequate compensation.

18.3 Apple iOS Users.

The following additional terms and conditions apply with respect to Software available for use on any Apple, Inc. ("Apple") iPhone or iPad devices that you own or control:

You acknowledge that your agreement is not with Apple. Epic, not Apple, is solely responsible for the Software and the content thereof.

Your use of the Software shall be subject to the terms of this Agreement and as permitted by the Usage Rules set forth in the App Store Terms and Conditions as of the date you download or first use the Software (which you acknowledge you have had the opportunity to review).

You agree that Apple has no maintenance or support obligations with respect to the Software or Services.

You acknowledge and agree that Apple is not responsible for any product warranties, whether express or implied by law, with respect to the Software or Services. If you are legally entitled to a warranty in your country or other jurisdiction, then in the event of any failure of the Software or Services to conform to such required warranty, you may notify Apple, and Apple will refund the purchase price, if any, paid by you to Apple for the Software. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Software or Services, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to such required warranty will be Epic's sole responsibility. However, you understand and agree that in accordance with this Agreement, Epic has disclaimed all warranties of any kind with respect to the Software and Services, and therefore, there are no warranties applicable to the Software or Services, except those required by law.

As between Apple and Epic, Epic, not Apple, is responsible for addressing your or any third party's claims relating to the Software or Services or your possession and/or use of the Software or Services, including, but not limited to: (i) product liability claims; (ii) any claim that the Software or Services fail to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. In the event of any third party claim that the Software or Services or your possession and use of the Software or Services infringes that third party's intellectual property rights, Epic, not Apple, will be solely responsible

for the investigation, defense, settlement and discharge of any such intellectual property infringement claim (if and to the extent required under this Agreement).

You agree that this Agreement does not confer any rights or remedies on any person other than the parties to this Agreement, except as expressly stated. Notwithstanding the foregoing, Apple, and Apple's subsidiaries, are third party beneficiaries of this Agreement, and upon your acceptance of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary thereof.

Any end-user questions, complaints or claims with respect to the Software should be directed to help@fortnite.com.

18.4 Samsung GALAXY Users.

The following additional terms and conditions apply with respect to Software available for use on the Samsung GALAXY devices that you own or control:

The Software may provide you the ability to make payments through Samsung's In-App-Purchase APIs. In the event that you make a payment using Samsung's In-App-Purchase, the Samsung GALAXY Apps Terms and Conditions that you entered into with Samsung Electronics Co., Ltd. (or its affiliates) regarding the use of Samsung's In-App-Purchase and its equivalent terms shall apply to the payment and any refunds related to such payment.



(<https://www.facebook.com/FortniteGame>)



(<https://twitter.com/FortniteGame>)



(<https://www.twitch.tv/fortnitegame>)



(<https://www.youtube.com/epicfortnite>)



(<https://www.instagram.com/fortnite/>)



(<https://vk.com/fortnite/>)



[Home \(/fortnite/home\)](/fortnite/home)

[News \(/fortnite/news\)](/fortnite/news)

[Battle Pass \(/fortnite/battle-pass\)](/fortnite/battle-pass)

[FAQ \(/fortnite/faq\)](/fortnite/faq)

[Watch \(/fortnite/watch-fortnite\)](/fortnite/watch-fortnite)

[Forums \(/fortnite/forums\)](/fortnite/forums)

[Get Fortnite \(/fortnite/buy-now/battle-royale\)](/fortnite/buy-now/battle-royale)

[EULA \(/fortnite/eula\)](/fortnite/eula)

[Competitive \(/fortnite/competitive/home\)](/fortnite/competitive/home)

[Help \(http://fortnitehelp.epicgames.com/\)](http://fortnitehelp.epicgames.com/)

US/CANADA



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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Michael Heidbreder

(b) County of Residence of First Listed Plaintiff St. Louis County, MO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Ivy T. Ngo, Franklin D. Azar & Associates, P.C.
14426 East Evans Avenue, Aurora, CO 80014

DEFENDANTS Epic Games, Inc.

County of Residence of First Listed Defendant Wake County, NC
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District (specify)

6 Multidistrict Litigation - Transfer

8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332 Class Action Fairness Act

Brief description of cause:
Data breach exposing personal information due to a flaw in Fortnite's code

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 100,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 08/08/2019

SIGNATURE OF ATTORNEY OF RECORD: /s/ Ivy T. Ngo

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

Michael Heidbreder

Plaintiff(s)

v.

Epic Games, Inc.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Epic Games, Inc.
c/o CT Corporation System
150 Fayetteville St., #1011
Raleigh, North Carolina 27601

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Ivy T. Ngo
Franklin D. Azar & Associates, P.C.
14426 East Evans Avenue
Aurora, CO 80014

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Epic Games Hit with Class Action Case in North Carolina Over Fortnite Data Breach](#)
