

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JAYLEN BRANTLEY
7 Westwood Drive
Springfield, MA 01129

and

Case No.:
8:19-CV-00594-PWG

JARED NICKENS
3206 Wildwood Court
Monmouth Junction, NJ 08852

**: Amended Complaint
And Demand for Jury Trial**

Plaintiffs

v.

EPIC GAMES, Inc., a North Carolina Corporation;
Serve Resident Agent: Canon Pence
620 Crossroads Boulevard
Cary, NC 27518-6965

and

JOHN AND JANE DOES 1 THROUGH 50
JOHN DOE CORPORATIONS 1 THROUGH 10

Defendants

AMENDED COMPLAINT

Plaintiffs Jared Nickens and Jaylen Brantley ("Plaintiffs"), by and through their undersigned counsel, and pursuant to F.R.C.P. 15 files this as their Amended Complaint and assert the following claims against Defendants, Epic Games, Inc. ("Epic"), John and Jane Does 1 through 50 and John Doe Corporations 1 through 10, (collectively referred to as "Defendants"), and allege as follows:

I. NATURE OF ACTION

1. Through its unauthorized misappropriation of Plaintiffs' highly popular dance, the *Running Man* (the "Running Man"), in connection with its video game Fortnite Battle Royale ("Fortnite"), the Defendants have unfairly profited from exploiting Plaintiffs' protected likeness.

2. Plaintiffs created, named and/or popularized the Running Man as their signature movement, which exploded in popularity following its creation by Plaintiffs in early 2016 after (a) Plaintiffs' appearance on *The Ellen DeGeneres Show*, where Plaintiffs demonstrated their iconic moves; and (b) Plaintiffs' video of them executing the Running Man went "viral" once Plaintiffs posted it on the Internet in April of 2016. Plaintiffs' video has over 2 million views to date on Instagram alone, as well as additional millions of views on YouTube and Facebook. Plaintiffs' video was among the top searched results on Google for 2016.

3. Defendants capitalized on the Running Man's popularity, particularly with its younger fans, by selling this dance to players of Fortnite in Fortnite's electronic store-front. Once purchased, Fortnite players were then able to customize their in-game avatars to execute the Running Man while in the Fortnite universe. Defendants were even bold enough to sell the Running Man under its own name—*Running Man*. This in-game dance was immediately recognized by players and media worldwide as the Running Man. Although identical to the dance named, created, popularized, and demonstrated by Plaintiffs, Defendants did not credit Plaintiffs nor seek their consent to use Plaintiffs' likeness.

4. Fortnite is a game that is free to play, and since being released in or around September 2017, it has become among the most popular video games ever. While free to play, Fortnite nevertheless *made* approximately \$126 million *in profits* in February 2018, \$223 million in March, \$296 million in April, and \$318 million in May 2018 alone (the "biggest month ever for a video game."). *Profits alone* in 2018 exceeded \$3 billion, according to widely published reports. Fortnite derives its sales exclusively through electronic store-front purchases, including through the sale of dances such as the Running Man. Defendants should not be able to profit from Plaintiffs' fame, creativity and hard work by its intentional misappropriation of Plaintiffs' likeness. Plaintiffs seek injunctive relief and damages, including, but not limited to, Defendants' profits attributed to its improper sale and/or use of the Running Man and Plaintiffs' likeness.

II. THE PARTIES

5. Plaintiff Nickens now resides in Monmouth Junction, New Jersey and Plaintiff Brantley resides in Springfield, Massachusetts. At the time of the creation of the Running Man, both lived in the State of Maryland and attended the University of Maryland.

6. Epic is a North Carolina business corporation, with its principal place of business at 620 Crossroads Boulevard, Cary, North Carolina, 27518. Epic and John and Jane Does 1 through 50 and John Does Corporations 1 through 10 are the creators and developers of the Fortnite video game franchise, which was first released in July 2017.

III. SUBJECT MATTER JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction over this action

pursuant to 28 U.S.C. § 1332 (diversity jurisdiction), and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

8. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), (2) and (c) because Defendants transact substantial business in this District and because a substantial part of the events or omissions giving rise to this claim occurred in this District, including the creation and publication of the Running Man dance while Plaintiffs were living at The University of Maryland.

IV. FACTUAL BACKGROUND

A. Plaintiffs and the Creation of the Running Man

9. In 2016, Plaintiffs created a signature and original dance together, which they named the “Running Man” while listening and dancing to music with their friends and teammates. The dance is distinctive and immediately recognizable.

10. Since creating the Running Man, Plaintiffs incorporated it into routines in and around the State of Maryland, including during pre and half time breaks with members of The University of Maryland basketball team. Plaintiffs also posted videos of themselves and their friends, who later imitated the dance and posted it on social media sites, including on *YouTube* and other social media platforms, such as *Instagram* and *Facebook*.

11. By the end of 2016, the Running Man video(s) had over one million views on *YouTube*, and thousands of people began posting their own videos showing themselves executing the Running Man moves as a result of Plaintiffs’ issuing a social media “challenge” (i.e., Plaintiff’s challenged others to imitate the Running Man and post themselves executing it on social media). Plaintiffs’ video now has

over 100 million views on *YouTube*, and was a *Google* top search result in 2016.

12. Since its creation in 2016 and its rise to fame later that year, the Running Man maintained its popularity.

13. The Running Man has become synonymous with Plaintiffs, who are credited with creating the dance and video that became “viral.”

B. Fortnite: The Most Popular Game Ever

14. Even prior to releasing Fortnite, which would become among the most popular and successful video games ever, Epic had already developed two popular video game franchises: Unreal and Gears of War. Since releasing the first Gears of War game in 2005, Epic released several subsequent Gears of War video games, and the franchise has made over \$1 billion in total sales.

15. At or around 2011, following the release of the third Gears of War installment, Fortnite began from an Epic internal video game hackathon, or a gathering of Epic developers to brainstorm ideas and create games in a short period. Although the Fortnite game was not developed during the hackathon, the idea to merge building games (i.e., Minecraft) and shooter games (i.e. Gears of War or Call of Duty) emerged during the Hackathon.

16. On or around July 2017, Epic released the initial version of Fortnite as a *paid* battle-royale game (a battle royale game is a video game genre that blends the survival, exploration and scavenging elements of a survival game with last-man-standing gameplay). However, by September 2017, after PUBG Corp. released a competing game, PlayerUnknown's Battlegrounds, in the same battle

royale genre, which game became a worldwide success, Epic re-released Fortnite as Fortnite Battle Royale, but now as a *free-to-play* battle royale game on the Windows, macOS, PlayStation 4 and Xbox One platforms. Epic subsequently released Fortnite on the iOS, Nintendo and Android platforms on April 2, 2018, June 12, 2018, and August 9, 2018, respectively.

17. Similar to PlayerUnknown's Battlegrounds, Fortnite utilizes the battle royale format where up to 100 players, alone, in pairs, or groups, compete to be the last player or group alive.

18. As a free-to-play video game, Epic allows players to download and play Fortnite for free. Fortnite is supported by purchases made at its electronic storefront for virtual use in the game itself ("in-game purchases"). For example, players can make in-game purchases of currency, called "Vinderbucks" or "V-Bucks." The players in turn use V-Bucks to purchase customizations for their in-game avatars, including new characters, pickaxe modifications, glider skins, clothes and "emotes" (dances or movements). Fortnite also sells "Battle Passes" or additional levels that allow the player to unlock skins, gliders and emotes unique to that Pass. Fortnite offers four pricing levels for purchasing V-Bucks:

- 1) 1,000 V-Bucks for \$9.99;
- 2) 2,5000 (+300 Bonus) V-Bucks for \$24.99;
- 3) 6,000 (+1,500 Bonus) V-Bucks for \$59.99; or
- 4) 10,000 (+3,500 Bonus) V-Bucks for \$99.99.

19. There are four types of emotes: common emotes, uncommon emotes, rare emotes, and epic emotes. The rarer the emote, the more expensive or harder it is to obtain. Uncommon

emotes cost 200 V-Bucks. Rare emotes cost 500 V-Bucks. And Epic emotes cost 800 V-Bucks.

20. To start, Fortnite provides each player with the *Dance Moves* emote, a common emote, for no cost. Players can then obtain other emotes by purchasing and playing additional levels in Battle Passes (950 V-Bucks each) that come with emotes unique to that Pass, or by purchasing certain emotes directly with V-Bucks. On some 12 occasions, Fortnite sells Battle Pass emotes directly, without requiring the player to purchase the Battle Pass.

21. Emotes are incredibly popular and are fundamental to Fortnite's success. Players purchase emotes, alongside clothing and skins, to personalize their Fortnite experience. Emotes have also become popular outside Fortnite. Professional athletes in soccer and other sports have based their celebrations on Fortnite emotes. Young adults, teenagers, and kids also post videos of themselves on YouTube and social media performing emotes under various hashtags, including #fortnitedance or #fortnitevideos.

22. Upon information and belief, Defendants create emotes by copying and coding dances and movements directly from popular videos, movies, and television shows without consent. Defendants do so by coding still frames of the source material. For example, upon information and belief, Defendants coded the *Ride the Pony* emote, frame-by-frame, from the "Gangnam Style" dance made famous by the Korean entertainer, Psy. The *Ride the Pony* emote and Psy's dance are identical in every respect. On information and belief, Defendants did not obtain Psy's authorization for copying the dance and including it in Fortnite.

23. Upon information and belief, Defendants have also consistently sought to exploit African American talent, in particular in Fortnite, by copying their dances and movements. Defendants have copied the dances and movements of numerous African-American performers, including, for example, the dance from the 2004 Snoop Dogg music video, "Drop It Like It's Hot" (named the "Tidy" emote), Alfonso Ribeiro's performance of his famous "Carlton" dance on The Fresh Prince of Bel-Air television show (named the "Fresh" emote), the dance performed by Will Smith on the same television show (named the "Rambunctious" emote), the dance in Marlon Webb's popular "Band of the Bold" video (named the Best Mates" emote), Donald Faison's signature dance seen on the NBC television show Scrubs (named the "Dance Moves" emote), and the most pertinent here, the Running Man (named the "Running Man" emote). Upon information and belief, Defendants did not seek consent or authorization to use any of these movements or dances.

24. Soon after its release, Fortnite became an international phenomenon. The game eclipsed 10 million players merely two weeks after its release; 125 million players by July 2018. In November 2018, Bloomberg announced that Fortnite had 200 million player accounts across all platforms.

25. Fortnite's popularity has translated into record sales for Epic. Analysts have estimated that since its release, Fortnite has generated between \$1 billion to \$2 billion in revenue through in-game purchases, such as emotes. In May 2018, Fortnite broke its own record by generating approximately \$318 million in revenue, the biggest month ever for a video game. In fact, nearly 80 million people

played Fortnite in August 2018. Because of Fortnite's success, Epic's estimated valuation rose from about \$825 million to about \$5 billion. Bloomberg estimates that Epic's valuation could grow to \$8.5 billion by 2018's end.

C. Fortnite's Unauthorized Use of the Running Man

26. On July 12, 2018, Fortnite released its Season 5 Battle Pass. Players could purchase this Battle Pass, alongside its accompanying emotes and other customizations, for the regular price of 950 V-Bucks. As part of the Season 5 Pass, Fortnite offered a new rare emote that it called "The Running Man Emote" (the "Emote"). According to Fortnite, players can obtain the Emote as a reward from leveling up to Tier 63 of the Season 5 Battle Pass. Also, on certain occasions, Fortnite sold the Emote separately for 500 V-Bucks.

27. The Emote is *identical* to the Running Man, as exemplified in Plaintiffs' YouTube video. If a Fortnite player obtains or purchases the Emote, the player's avatar can execute the Running Man during Fortnite gameplay. The reaction from many players worldwide was immediate recognition of the Emote as the Running Man, while others likely believed the Emote was Epic's original creation.

28. Upon information and belief, Epic intentionally developed the Emote by copying the original video of the Running Man and/or copying an identical version of that video, to intentionally mimic Plaintiffs executing the Running Man. In fact, players have asked for the Emote by name in various online forums relating to Fortnite.

29. Epic did not seek to obtain Plaintiffs' authorization or consent for its use of their likeness and the Running Man for the Emote.

30. Moreover, Plaintiffs did not give Epic express or implied consent for its use of their likeness and the Running Man for the Emote. Epic also did not compensate Plaintiffs for its use of their likeness and the Running Man for the Emote.

31. Upon information and belief, Epic added the Emote to intentionally exploit for its own benefit the popularity of Plaintiffs and the Running Man without providing Plaintiffs any form of compensation.

32. Epic profited from its improper misappropriation of the Running Man by, *inter alia*: a) selling the Emote directly to players; b) selling the Season 5 Battle Pass that contains the Emote; c) advertising the Emote to attract additional players, including those persons familiar with the Running Man, to play Fortnite and make in-game purchases; d) retaining and attracting players by incentivizing those players to continue playing Fortnite; e) impliedly representing that Plaintiffs endorsed Epic's use of their likeness; f) creating an erroneous conclusion that the Emote was in fact associated with Plaintiffs and their signature move, the Running Man; and g) creating the false impression that Plaintiffs endorsed Fortnite.

33. Upon information and belief, Epic uses the Running Man, and other signature movements and dances, to create the false impression that Epic started them or that the artists with whom they are associated are endorsing the game. Indeed, players have posted thousands of videos themselves performing the Emote with the hashtag #fortnitedance, without referencing the Running Man or crediting Plaintiffs likenesses. Accordingly, upon information and belief, Epic actively and knowingly directs, causes, induces, and

encourages others, including, but not limited to, its players, designers, suppliers, distributors, resellers, software developers, and repair providers, to misappropriate the Running Man and Plaintiffs' likenesses.

34. Plaintiffs have stated in interviews that they do not consent or approve Epic's use of the Running Man for the Emote. Other prominent artists, including Chancelor Bennett, known as Chance the Rapper, have also publicly disapproved of Epic's practices, and advocated for Epic sharing profits with the artists associated with these signature movements.

35. Accordingly, Epic made a financial fortune from unlawfully and unfairly stealing Plaintiffs' and other artists' likenesses without crediting or compensating these artists. Plaintiffs thus bring this suit to prevent Fortnite from further using the Running Man or Plaintiffs' likenesses, and to recover the profits rightfully owed to them.

COUNT ONE

(Invasion of the Right of Privacy (Publicity))

36. Plaintiffs hereby repeat and re-allege the allegations set forth in paragraphs 1 through 35, above, as though fully set forth herein.

37. Through the use of Running Man as an in-game emote that can be purchased, Defendants misappropriated Plaintiffs' identities. The Emote depicts Plaintiffs' signature movement, the Running Man. Upon information and belief, Defendants created the Emote by capturing and digitally copying Plaintiffs executing the Running Man. Defendants then utilized the digital copy to create code that, if purchased, allows the player's avatars to execute the Running Man

identically to Plaintiffs' version.

38. Defendants did not seek or obtain Plaintiffs' authorization or consent for its use of their likeness for the Emote, and otherwise have willfully and intentionally used Plaintiff's likenesses in violation of their rights of publicity. Nor have Defendants compensated or credited Plaintiffs for their use of the Running Man in the Emote.

39. Defendants used Plaintiffs' likeness to generate significant wealth by: a) selling the infringing Running Man emote directly to players; b) selling the Season 5 Battle Pass that contains the emote; c) advertising the emote to attract additional players, including those persons familiar with the Running Man to play Fortnite and make in-game purchases; d) staying relevant to its current players to incentivize those players to continue playing Fortnite; e) impliedly representing that Plaintiffs consented to Epic's use of their likeness; f) erroneously causing an association of its emote with Running Man; and g) creating the false impression that Plaintiffs endorsed Fortnite.

40. Plaintiffs were damaged by Defendant's conduct as they were prevented from realizing the profits of licensing their likenesses to Defendants for commercial gain.

41. Defendants' conduct caused and will continue to cause confusion and mistake by leading the public to erroneously believe that Plaintiffs consented to the use of their likenesses in the Fortnite game.

42. Plaintiffs are entitled to permanent injunctive relief preventing Defendants, and its officers, agents, and employees, and all related persons from further using their likenesses.

43. Plaintiffs are also entitled to recover damages, including

any profits obtained by Defendants as a result of their misappropriation of Plaintiffs' likenesses, in an amount according to proof to be determined at the time of trial.

COUNT TWO

(Unfair Competition)

44. Plaintiffs hereby repeats and re-alleges the allegations set forth in paragraphs 1 through 43, above, as though fully set forth herein.

45. By exploiting and misappropriating Plaintiffs' likenesses through the improper use of the Running Man, Defendants have engaged in business acts or practices that constitute unfair competition in violation of the Lanham Act, 15 U.S.C. §§ 1051 *et. seq.*

46. Defendants' willful and continued unauthorized use of the Running Man for commercial gain has caused and will continue to cause confusion and mistake by leading the public to erroneously associate the Emote offered by Epic with the Running Man, as executed by and associated with Plaintiffs, as exemplified in their on-line video, in violation of The Lanham Act, 15 U.S.C §§ 1051 *et. seq.*

47. As a result of Defendants' violations, Defendants have unjustly enriched themselves by: a) selling the Emote directly to players; b) selling the Season 5 Battle Pass that contains the Emote; c) advertising the Emote to attract additional players, including those persons familiar with the Running Man to play Fortnite and make in-game purchases; d) staying relevant to its current players to incentivize those players to continue playing Fortnite; e) impliedly representing that Plaintiffs consented to Epic's use of their likenesses; f) erroneously causing an association of the Emote with the Running

Man; and g) creating the false impression that Plaintiffs endorsed Fortnite.

48. As a result of Defendant's conduct, Plaintiffs have been damaged by being precluded from receiving their rightful share of the profits from selling or licensing their signature movement and likenesses for commercial gain.

49. Moreover, Plaintiffs were damaged by Defendants' conduct as they were prevented from realizing the profits of licensing their likeness to Defendants for commercial gain.

50. Plaintiffs are entitled to permanent injunctive relief preventing Defendants, and their officers, agents, and employees, and all related persons, from further using their likenesses.

51. Plaintiffs are also entitled to recover damages, including any profits obtained by Defendants as a result of the misappropriation of Plaintiffs' likenesses as alleged above, in an amount according to proof to be determined at the time of trial.

COUNT THREE

(Common Law Unfair Competition)

52. Plaintiffs hereby repeat and re-allege the allegations set forth in paragraphs 1 through 51, above, as though fully set forth herein.

53. By exploiting and misappropriating Plaintiffs' mark and likenesses through the improper use of the Running Man, Defendants have engaged in business acts or practices that constitute unfair competition in violation of Maryland Common Law.

54. Defendants' willful and continued unauthorized use of the

Running Man and Plaintiffs' likenesses for commercial gain has caused and will continue to cause confusion and mistake by leading the public to erroneously associate the Running Man, executed and associated with Plaintiffs, with the Emote sold by Defendants, in violation of Maryland Common Law.

55. As a result of Defendants' violations, Defendants have unjustly enriched themselves by: a) selling the infringing Emote directly to players; b) selling the Season 5 Battle Pass that contains the Emote; c) advertising the Emote to attract additional players, including those persons familiar with the Running Man to play Fortnite and make in-game purchases; d) staying relevant to its current players to incentivize those players to continue playing Fortnite; e) impliedly representing that Plaintiffs consented to Epic's use of their likenesses; f) erroneously causing an association of its Emote with Running Man; and g) creating the false impression that Plaintiffs endorsed Fortnite.

56. As a result of Defendants' conduct, Plaintiffs have been damaged by being precluded from receiving their rightful share of the profits from selling or licensing their exclusive mark in the Running Man and/or their likenesses.

57. Moreover, Plaintiffs were damaged by Defendants' conduct as they were prevented from realizing the profits of licensing their likenesses to Defendants for commercial gain.

58. Plaintiffs are entitled to permanent injunctive relief preventing Defendant, and its officers, agents, and employees, and all related persons from further using their likenesses.

59. Plaintiffs are also entitled to recover damages, including any profits obtained by Defendants as a result of the infringements

alleged above, in an amount according to proof to be determined at the time of trial.

COUNT FOUR

(Unjust Enrichment)

60. Plaintiffs hereby repeat and re-allege the allegations set forth in paragraphs 1 through 59, above, as though fully set forth herein.

61. By using the likenesses and signature Running Man of Plaintiffs, Defendants have been unjustly enriched to the substantial detriment of Plaintiffs.

62. Defendants have retained the benefits under such circumstances as make it unjust and inequitable to retain them without paying Plaintiffs the value of the benefits it unjustly acquired.

COUNT FIVE

(Trademark Infringement Under 15 U.S.C. § 1125(a))

63. Plaintiffs hereby repeat and re-allege the allegations set forth in paragraphs 1 through 62, above, as though fully set forth herein.

64. Defendants' unauthorized use of the Running Man for the Emote in Epic's violent Fortnite game constitutes infringement in violation of 15 U.S.C. § 1125(a), *et seq.*, and has caused substantial and irreparable injury to Plaintiffs' reputation and goodwill. Since depicting the Running Man in online viral videos in 2016, the Running Man has become intricately associated with Plaintiffs' identities and personas. By virtue of Plaintiffs' prominent and continuous use of the

Running Man, Plaintiffs' mark has become distinctive and famous within the meaning of 15 U.S.C. § 1125(c). The Running Man is distinct and immediately recognizable.

65. Defendants used Plaintiffs' likeness and the Running Man to generate significant wealth by: a) selling the infringing Emote directly to players; b) selling the Season 5 Battle Pass that contains the Emote; c) advertising the Emote to attract additional players, including those persons familiar with the Running Man to play Fortnite and make in-game purchases; d) staying relevant to its current players to incentivize those players to continue playing Fortnite; e) impliedly representing that Plaintiffs consented to Epic's use of their likeness; f) erroneously causing an association of its emote with Running Man; and g) creating the false impression that Plaintiffs endorsed Fortnite.

66. As a direct and proximate result of Defendant's trademark infringement, Plaintiffs are entitled to permanent injunctive relief preventing Defendant, and its officers, agents, and employees, and all related persons from further using Plaintiffs' signature Running Man mark.

67. Plaintiffs are also entitled to recover damages, including any profits obtained by Defendants as a result of the infringements alleged above, in an amount according to proof to be determined at the time of trial.

68. Defendant's acts have been deliberate, willful, and intentional and purposeful to exploit Plaintiffs' celebrity and the Running Man mark.

69. Defendants threaten to continue to advertise, promote, market, sell, and offer for sale the infringing Running Man emote, and

unless and until restrained and enjoined will continue to do so to Plaintiffs' irreparable damage.

70. Defendants' conduct is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot be compensated or measured in money. Plaintiffs thus have no adequate remedy at law and is entitled to injunctive relief, prohibiting further infringements of Plaintiffs' trademark.

71. In addition, Plaintiffs have incurred costs and attorneys' fees to bring this action.

COUNT SIX

(Trademark Infringement Under Common Law)

72. Plaintiffs hereby repeat and re-allege the allegations set forth in paragraphs 1 through 71, above, as though fully set forth herein.

73. Since 2016, Plaintiffs have used, and thereby own common law trademark rights in the Running Man. The Running Man has acquired distinctiveness through Plaintiffs' continuous and widespread use of Plaintiffs' distinct set of movements in performances and videos in the United States.

74. In Fortnite, players can have their characters perform the Running Man signature set of movements within the game. Through Defendant's unauthorized use of the Running Man signature set of movements and mark name in Fortnite, Defendants have misappropriated Plaintiffs' trademark.

75. Defendants used Plaintiffs' likenesses and the Running

Man to generate significant wealth by: a) selling the infringing Running Man emote directly to players; b) selling the Season 5 Battle Pass that contains the emote; c) advertising the emote to attract additional players, including those persons familiar with the Running Man to play Fortnite and make in-game purchases; d) staying relevant to its current players to incentivize those players to continue playing Fortnite; e) impliedly representing that Plaintiffs consented to Epic's use of their likeness; f) erroneously causing an association of its emote with Running Man; and g) creating the false impression that Plaintiffs endorsed Fortnite.

76. As a result of Defendant's conduct, Plaintiffs have been damaged by being precluded from receiving their rightful share of the profits from selling or licensing the Running Man.

77. Moreover, Plaintiffs were damaged by Defendant's conduct as they were prevented from reaping the benefits of licensing the Running Man to Defendants.

78. Plaintiffs are entitled to permanent injunctive relief preventing Defendants, and their officers, agents, and employees, and all related persons from further using Plaintiffs' signature Running Man mark.

79. Plaintiffs are also entitled to recover damages, including any profits obtained by Defendants as a result of the infringements alleged above, in an amount according to proof to be determined at the time of trial.

80. In addition, Plaintiffs have incurred costs and attorneys' fees to bring this action.

COUNT SEVEN

(Trademark Dilution Under 15 U.S.C. § 1125(a))

81. Plaintiffs hereby repeat and re-allege the allegations set forth in paragraphs 1 through 80, above, as though fully set forth herein.

82. By virtue of the prominent and continuous use of the Running Man, Plaintiffs' mark has become distinctive and famous within the meaning of 15 U.S.C. § 1125(c).

83. Defendant's conduct dilutes the distinctive quality of Plaintiffs' mark in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

84. Defendant's conduct and actions have lessened the capacity of Plaintiffs' mark as Defendants did not credit Plaintiffs nor seek their consent.

85. Defendant's acts have been deliberate, willful, and intentional and purposeful to exploit Plaintiffs' celebrity and the Running Man mark.

86. Defendants threaten to continue to advertise, promote, market, sell, and offer for sale the infringing Emote, and unless and until restrained and enjoined will continue to do so to Plaintiffs' irreparable damage.

87. Defendants' conduct is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot be compensated or measured in money. Plaintiffs thus have no adequate remedy at law and is entitled to injunctive relief, prohibiting further dilution of Plaintiffs' trademark.

88. In addition, Plaintiffs have incurred costs and attorneys'

fees to bring this action.

COUNT EIGHT

(False Designation of Origin Under 15 U.S.C. § 1125(a))

89. Plaintiffs incorporate the allegations in Paragraphs 1 through 88 above as though fully set forth herein.

90. Defendants' conduct constitutes a false designation, description or representation in Violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and such unlawful acts have damaged Plaintiffs and resulted in unjust enrichment to Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request relief from this Court as follows:

1. An award of damages over and above \$5,000,000 for Defendant's violations of 15 U.S.C. S 1051 *et. seq.*;
2. An award of damages over and above \$5,000,000 for Defendant's violations of Plaintiffs' rights of publicity;
3. An award of exemplary damages over and above \$5,000,000 for Defendant's violations of Plaintiffs' rights of publicity;
4. An award of damages over and above \$5,000,000 for Defendants' infringement of Plaintiffs' trademark, and other damages;
5. An award for attorney's fees and costs of suit;
6. Punitive damages;
7. An Order enjoining and restraining Defendants from using, selling, or displaying Plaintiffs' copyright in its Fortnite game;
8. And for such other and further relief as this Court may deem just and proper.

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DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues.



Richard L. Jaklitsch

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of March, 2019, a copy of the foregoing Amended Complaint was mailed, postage prepaid, via first-class mail, to Joshua L. Simmons, Esquire and Dale M. Cendali, Esquire of Kirkland & Ellis, LLP at 601 Lexington Avenue, New York, NY 10022 and Canon Pence, Resident Agent for Epic Games, Inc. at 620 Crossroads Blvd., Cary, NC 27518.



Richard L. Jaklitsch /jac