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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUNGIE, INC., a Delaware corporation,

Plaintiff,

v.

KUNAL BANSAL, an individual, d/b/a
LAVICHEATS.COM,

Defendant.

CASE NO. 2:21-cv-01111-TL

ORDER ON PLAINTIFF’S MOTION
FOR DEFAULT JUDGMENT

This matter comes before the Court on Plaintiff Bungie, Inc.’s Motion for Default Judgment against Defendant Kunal Bansal (Dkt. No. 48).¹ Having reviewed the Motion and all supporting materials, the Court GRANTS the Motion in part, ENTERS default judgment, and permanently ENJOINS Bansal on the terms specified below.

¹ The Court notes that Bansal is the only remaining defendant in this action, given Bungie’s voluntary dismissal of all claims against the “Doe” defendants named in the complaint. *See* Dkt. No. 17.

I. BACKGROUND

1
2 Operating out of Bellevue, Washington, Bungie develops, distributes, and owns the
3 intellectual property rights to a video game called “Destiny 2.” Dkt. No. 1 ¶¶ 1, 4. Bungie alleges
4 that Bansal, a resident of India, operates a website, Lavicheats.com, through which he advertised
5 and sold cheat software that “hacks” the Destiny 2 software to allow players a competitive
6 advantage against other players in violation of Bungie’s software license agreement (“LSLA”)
7 that binds all Destiny 2 users. *Id.* ¶¶ 5, 43; Dkt. No. 47 ¶¶ 33–36; Dkt. No. 50 ¶ 4; Dkt. No. 51 ¶
8 2. Bansal sold two different variations of Destiny 2 cheating software—the “Delta” cheat and a
9 more extensive cheat called the “Ring-1” cheat (collectively the “Bansal Cheats”). Dkt. No. 50
10 ¶¶ 6–7. Bungie claims that Bansal did not develop the Bansal Cheats, but acted as a reseller. *Id.* ¶
11 8. Bungie alleges that the Bansal Cheats infringe on four copyrights to the computer software
12 and audiovisual works and screen displays in Destiny 2 and its “expansions”: (1) Registration
13 No. TX 8-933-655; (2) Registration No. TX 8-933-658; (3) Registration PA 2-282-670; and
14 (4) Registration PA 2-280-030. Dkt. No. 1 ¶ 24. Bungie also alleges that Bansal has used without
15 permission various trademarks associated with the Destiny 2 franchise. *Id.* ¶¶ 25 (listing five
16 trademarks), 52–53. Bungie alleges that the Bansal Cheats contain measures intended to avoid,
17 bypass, and impair Bungie’s technological measures that control access to the copyrighted works
18 at issue in this case and which violate the terms of the LSLA. Dkt. No. 1 ¶¶ 31–42, 50, 54–61.

19 Bungie asserts the following claims against Bansal: (1) violations of the Digital
20 Millennium Copyright Act (“DMCA”), 17 U.S.C. § 1201(a)(2); (2) contributory copyright
21 infringement; (3) vicarious copyright infringement; (4) trademark infringement; (5) false
22 designation of origin and unfair competition in violation of 15 U.S.C. § 1125(a); (6) violations of
23 the Washington Consumer Protection Act (“CPA”); (7) tortious interference with contractual
24 relationship; and (8) unjust enrichment. Dkt. No. 1 ¶¶ 64–135. Bungie seeks entry of default

1 judgment on all but the unjust enrichment claim and asks for judgment to be entered in the
2 amount of \$6,700,973.34. Dkt. No. 48 at 38. This represents the sum of: (1) \$5,580,000 in
3 statutory damages under the DMCA, *id.* at 28–31; (2) \$300,000 in statutory damages based on
4 the willful infringement of two copyrighted works, as permitted under the Copyright Act, 17
5 U.S.C. § 504(c), *id.* at 31–32; (3) \$579,270 in damages as permitted by the Lanham Act, 15
6 U.S.C. § 1117(a), *id.* at 32–33; (4) attorney fees of \$183,850.71; and (5) costs, including expert
7 fees, totaling \$57,852.63. *Id.* at 33–35. Bungie also asks for entry of a permanent injunction
8 barring Bansal from engaging in future or further conduct that forms the basis of its Copyright
9 Act, Trademark Act, and DMCA claims in this action. *Id.* at 35–38.

10 In support of the requested damages, Bungie alleges that notwithstanding its anti-cheating
11 efforts, the Bansal Cheats have caused it harm by diminishing the enjoyment of the game for
12 those not cheating and reducing its potential revenue from in-game sales to players. Dkt. No. 1
13 ¶¶ 62–63. Bungie’s Deputy General Counsel, James Barker, also explains the nature of its anti-
14 cheat circumvention efforts and the “minimum of \$2,000,000 on game security staffing and
15 software” that it has expended to combat the Bansal Cheats and other cheating devices of
16 Destiny 2. Dkt. No. 47 ¶¶ 1, 17–32, 47–59. Bungie has also provided evidence that the Delta
17 cheat was downloaded 962 times, while the Ring-1 cheat was downloaded 1,828 times. Dkt. No.
18 50 ¶ 9; Dkt. No. 50-2. Bungie states that in order to download either cheat, the user would have
19 had to purchase the cheat from Bansal at prices that varied depending on the length of the license
20 and the cheat acquired. Dkt. No. 48 at 24. Bungie calculates Bansal’s profits to range between
21 \$9,610.38 and \$124,098 for the Delta cheat and between \$36,377.20 to \$455,172 for the Ring-1
22 cheat. Dkt. No. 51 ¶ 3; Dkt. No. 51-1; Dkt. No. 48 at 25. Bungie seeks an award of the higher
23 range of these profits as damages for its Trademark claims. Dkt. No. 48 at 25.

24

II. DISCUSSION

A. Legal Standard

The Court has already found Bansal in default. Dkt. No. 29. After entry of default, the Court may enter a default judgment. Fed. R. Civ. P. 55(b). This determination is discretionary. *See Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988). “Factors which may be considered by courts in exercising discretion as to the entry of a default judgment include: (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.” *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). In performing this analysis, “the general rule is that well-pled allegations in the complaint regarding liability are deemed true.” *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002) (quotation and citation omitted). And “[t]he district court is not required to make detailed findings of fact.” *Id.*

B. Jurisdiction

Before entering default judgment, the Court must assure itself that it has subject matter jurisdiction and personal jurisdiction.

There is little doubt that the Court has subject matter jurisdiction over Bungie’s claims. Bungie brings claims under various federal laws, which fall within the Court’s original jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a). The Court has supplemental jurisdiction over Bungie’s state-law claims pursuant to 28 U.S.C. § 1367(a).

The Court now turns to the question of whether it has personal jurisdiction over Bansal, who is a nonresident, pursuant to Federal Rule of Civil Procedure 4(k)(2), the federal long-arm

1 statute. Under Rule 4(k)(2), personal jurisdiction may be established over a defendant if the
2 claims arise under federal law and: “(A) the defendant is not subject to jurisdiction in any state’s
3 courts of general jurisdiction; and (B) exercising jurisdiction is consistent with the United States
4 Constitution and laws.”

5 To measure whether the exercise of personal jurisdiction is consistent with the
6 Constitution, the Court engages in a “due process analysis [that] is nearly identical to the
7 traditional personal jurisdiction analysis with one significant difference: rather than considering
8 contacts between the [defendant] and the forum state, we consider contacts with the nation as a
9 whole.” *Lang Van, Inc. v. VNG Corp.*, 40 F.4th 1034, 1039 (9th Cir. 2022) (citation and
10 quotation omitted). To satisfy due process in this context, Bungie must demonstrate that: (1) the
11 nonresident defendant has either purposefully directed his activities at the United States or
12 purposefully availed himself of the privilege of conducting activities in the forum; (2) the claim
13 arises out of or relates to the defendant’s forum-related activities; and (3) the exercise of
14 jurisdiction comports with fair play and substantial justice. *Schwarzenegger v. Fred Martin*
15 *Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004); *see* Dkt. No. 48 at 5–8 (arguing that personal
16 jurisdiction is properly analyzed under the “purposeful direction” test of specific jurisdiction). To
17 establish “purposeful direction,” the Court applies the three-part “effects” test from *Calder v.*
18 *Jones*, 465 U.S. 783 (1984), which requires that the defendant must have “(1) committed an
19 intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows
20 is likely to be suffered in the forum state.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d
21 1218, 1228 (9th Cir. 2011) (quotation and citation omitted). If Bungie satisfies the first two
22 *Schwarzenegger* elements, the burden shifts to Bansal to make a compelling case that the
23 exercise of jurisdiction would not be reasonable. *Id.* at 802.

24

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