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Plaintiff Alfonso Ribeiro

THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Alfonso Ribeiro, an
individual,

Plaintiff,

v.

Epic Games, Inc., a North
Carolina corporation; and
Does 1 through 50, inclusive,

Defendants.

Case No. 2:18-cv-10412

Complaint

- 1. Direct Infringement of Copyright**
- 2. Contributory Infringement of Copyright**
- 3. Violation of the Right of Publicity under California Common Law;**
- 4. Violation of the Right of Publicity under Cal. Civ. Code § 3344;**
- 5. Unfair Competition under Cal. Bus. & Prof. Code § 17200, et seq.;**
- 6. Unfair Competition under 15 U.S.C. § 1125(a)**

Demand for Jury Trial

1 Plaintiff Alfonso Ribeiro, (“Plaintiff” or “Ribeiro”), by and through
2 his undersigned counsel, asserts the following claims against Defendant
3 Epic Games, Inc. (“Epic”) and Does 1 through 50 (collectively referred
4 to as “Defendants”), and alleges as follows:

5 I. OVERVIEW

6 1. Through its unauthorized use of Ribeiro’s highly popular
7 signature dance (“The Dance” or “Dance”) in its smash-hit, violent video
8 game, Fortnite Battle Royale (“Fortnite”), Epic has unfairly profited
9 from exploiting Ribeiro’s protected creative expression and likeness and
10 celebrity without his consent or authorization.

11 2. Ribeiro is an internationally famous Hollywood star, known
12 for his starring role as Carlton Banks from the hit television series *The*
13 *Fresh Prince of Bel-Air* and as host of *America’s Funniest Home Videos*.
14 Ribeiro created his highly recognizable “Dance,” that has also been
15 referred to by the public as “The Carlton Dance,” which exploded in
16 popularity and became highly recognizable as Ribeiro’s signature dance
17 internationally. The Dance is now inextricably linked to Ribeiro and
18 has continued to be a part of his celebrity persona.

19 3. Defendants capitalized on Alfonso Ribeiro’s celebrity and
20 popularity by selling The Dance as an in-game purchase in Fortnite
21 under the name “Fresh,” which players can buy to customize their
22 avatars for use in the game. Although misleadingly labeled in Fortnite,
23 the emote, as they are called, was immediately recognized by players
24 and media worldwide as Ribeiro’s The Dance. Epic did not seek, much
25 less obtain, Ribeiro’s consent to use, display, reproduce, sell, or create
26 a derivative work based upon The Dance or Ribeiro’s likeness. Epic did
27 not seek, much less obtain, Ribeiro’s consent to use, display, reproduce,
28

1 sell, or create a derivative work based upon The Dance or Ribeiro's
2 likeness.

3 4. Since being released in or around September 2017, Fortnite
4 has become among the most popular video games ever with sales far in
5 excess of \$1 billion. Indeed, Fortnite made approximately \$318 million
6 in May 2018 alone, the "biggest month ever for a video game." As a free-
7 to-play game, Fortnite derives its sales through in-game purchases.
8 Epic cannot profit from Ribeiro's hard-earned fame by its intentional
9 misappropriation of Ribeiro's original content and likeness. Epic cannot
10 increase the value of its main product by faking endorsements by
11 celebrities. Ribeiro seeks injunctive relief and damages, including, but
12 not limited to, Epic's profits attributed to its misappropriation of The
13 Dance and Ribeiro's likeness.

14 II. THE PARTIES

15 5. Ribeiro resides in Los Angeles, California.

16 6. Epic is a North Carolina business corporation with its
17 principal place of business at 620 Crossroads Boulevard, Cary, NC
18 27518. Epic is the creator and developer of the Fortnite video game
19 franchise, which was first released in July of 2017.

20 7. The true names and identities of the defendants herein sued
21 as Does 1 through 50, inclusive, are unknown to Ferguson, who
22 therefore sues those defendants by such fictitious names. When the
23 true names of those defendants have been ascertained, Ferguson will
24 amend this complaint accordingly. Each of the defendants aided and
25 abetted and is responsible in some manner for the occurrences herein
26 alleged, and Ferguson's injuries were proximately caused thereby.

1 8. At all times herein mentioned, each of the defendants was
2 acting as an agent, servant, employee or representative of defendants,
3 and, in doing the things alleged in this Complaint, was acting within
4 the course and scope of that agency, service, employment, or joint
5 venture.

6 **III. SUBJECT MATTER JURISDICTION AND**
7 **VENUE**

8 9. The Court has subject matter jurisdiction over this action
9 pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1332
10 (diversity), and 28 U.S.C. § 1367 (supplemental jurisdiction).

11 10. Venue is proper in this District under A) 28 U.S.C. §
12 1391(b)(2) (federal question jurisdiction), because a substantial part of
13 the events or omissions giving rise to the claim occurred in this District;
14 and B) 28 U.S.C. §§ 1391(b)(1) and (c) (personal jurisdiction), because
15 all defendants are subject to personal jurisdiction in this State and at
16 least one in this District.

17 **IV. FACTUAL BACKGROUND**

18 **A. Ribeiro and the Creation of The Dance**

19 11. Raised in the New York City borough of the Bronx, Ribeiro
20 has been acting since the age of eight, gaining notoriety and prominence
21 in particular for his dancing. Ribeiro starred in the Broadway musical
22 *The Tap Dance Kid* in 1983, released a single called *Alfonso Ribeiro –*
23 *Dance Baby* in 1984, appeared as a dancer in a Pepsi commercial with
24 Michael Jackson in 1984, and authored a dance instruction book in 1985
25 called *Alfonso’s Breakin’ & Poppin’ Book*.

26 12. In 1991, Ribeiro created The Dance and first performed it on
27 *The Fresh Prince of Bel-Air* during the episode *Will’s Christmas Show*.
28

1 Twenty-seven years later, The Dance remains distinctive, immediately
2 recognizable, and inextricably linked to Ribeiro's identity, celebrity, and
3 likeness.

4 13. Since its conception in 1991, The Dance has maintained its
5 popularity. Ribeiro continues to perform The Dance, even inserting it
6 during his famous performance in 2014 as part of his victorious run on
7 the hit television show *Dancing with the Stars*. Ribeiro is constantly
8 inundated with requests to perform The Dance; he has performed it on
9 numerous occasions at the behest of both the public¹ and celebrities.
10 Indeed, in 2016, the recording artist Justin Timberlake and NBA
11 superstar Stephen Curry, performed The Dance, alongside Ribeiro, at
12 the popular American Century Celebrity Golf Tournament.²

13 14. A 2013 video by the BBC including Will Smith and his son
14 Jaden Smith, Jeffrey Allen Townes (DJ Jazzy Jeff), and Ribeiro
15 performing The Dance has garnered over sixty-nine million views on
16 YouTube.³

17 15. The Dance has become synonymous with Ribeiro, who is
18 unanimously credited with creating The Dance. Ribeiro has also been
19 interviewed several times about the creation of The Dance and how to
20 properly perform it. Accordingly, The Dance is a part of Ribeiro's
21 identity and The Dance's unique movements readily evoke a connection
22 to Ribeiro.

23 _____
24 ¹ BlackAmericaWeb.com, *Alfonso Ribeiro: "Please Stop Asking Me To Dance"*,
25 <https://blackamericaweb.com/2013/08/13/alfonso-ribeiro-please-stop-asking-me-to-dance> (quoting Ribeiro as stating "[P]eople walk up to me and they say 'Do the dance'").

26 ² NBC Sports, *Stephen Curry and Justin Timberlake are Shown by Alfonso Ribeiro*
27 *how to Properly do "the Carlton" That Ribeiro made famous on "The Fresh Prince of*
28 *Bel-Air,"* NBC, <https://www.nbcsports.com/video/alfonso-ribeiro-justin-timberlake-stephen-curry-do-carlton>.

³ The video can be found at <https://www.youtube.com/watch?v=ZwS14TiO7Pk>.

1 **B. Fortnite: The Most Popular Video Game Ever**

2 16. Prior to releasing Fortnite, which has become among the
3 most popular and successful video games ever, Epic developed two
4 popular video game franchises: Unreal and Gears of War. Since
5 releasing the first Gears of War game in 2006 Epic released several
6 subsequent Gears of War video games, and the franchise has made over
7 \$1 billion in total sales.

8 17. In or around 2011, following the release of the third Gears
9 of War installment, Fortnite began from an Epic internal video game
10 “hackathon,” a gathering of Epic developers to brainstorm ideas and
11 create games in a short period. Although the Fortnite game was not
12 developed during the hackathon, the idea to merge building games (*i.e.*,
13 Minecraft) and shooter games (*i.e.*, Gears of War or Call of Duty)
14 emerged during the hackathon.

15 18. In or around July 2017, Epic released the initial version of
16 Fortnite as a paid early-access video game in the “Battle Royale” genre.
17 However, by September 2017, after PlayerUnknown’s Battlegrounds—
18 a game which occupied the same genre as Fortnite—became a
19 worldwide success, Epic released Fortnite Battle Royale, a free-to-play
20 third-person shooting game on the Windows, macOS, PlayStation 4, and
21 Xbox One platforms. Epic subsequently released Fortnite on the iOS,
22 Nintendo, and Android platforms on April 2, 2018, June 12, 2018, and
23 August 9, 2018, respectively.

24 19. Similar to PlayerUnknown’s Battlegrounds, Fortnite
25 utilizes the battle royale genre where a large number of players, alone,
26 in pairs, or groups, compete to be the last player or group alive. Indeed,
27 similar to Battlegrounds and Gears of War, Fortnite features the use of
28

1 weapons and violence, that players use to eliminate the competition by
2 attacking and shooting them.

3 20. As a free-to-play video game, Epic allows players to
4 download and play Fortnite for free. Epic's revenue from Fortnite comes
5 from in-game transactions where players can purchase virtual
6 currency, called "Vinderbucks" or "V-Bucks." The players in turn use
7 V-Bucks via the "Item Shop" to purchase customizations for their in-
8 game avatars, including new characters, pickaxe modifications, glider
9 skins, clothing, and emotes (dances or movements). Fortnite also sells
10 "Battle Passes" or additional levels that allow you to unlock skins,
11 gliders, and emotes unique to that Pass. Fortnite offers four pricing
12 levels for purchasing V-Bucks (in U.S. Dollars):

- 13 1) 1,000 V-Bucks for \$9.99;
- 14 2) 2,500 (+300 Bonus) V-Bucks for \$24.99;
- 15 3) 6,000 (+1,500 Bonus) V-Bucks for \$59.99; or
- 16 4) 10,000 (+3,500 Bonus) V-Bucks for \$99.99.

17 21. There are four types of emotes: common emotes, uncommon
18 emotes, rare emotes, and epic emotes. The rarer the emote, the more
19 expensive or harder it is to obtain. Uncommon emotes cost 200 V-
20 Bucks. Rare emotes cost 500 V-Bucks. And Epic emotes cost 800 V-
21 Bucks.

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

1 23. Emotes are incredibly popular and are fundamental to
2 Fortnite’s success. Players purchase emotes, alongside clothing and
3 skins, to personalize their Fortnite experience. Emotes have also
4 become popular outside Fortnite. Professional athletes in soccer and
5 other sports have based their celebrations on Fortnite emotes. Young
6 adults, teenagers, and kids also post videos of themselves on YouTube
7 and social media performing emotes under various hashtags, including
8 #fortnitedance or #fortnitevideos. Upon information and belief, Epic
9 intentionally induces others to perform these dances and mark them
10 with those hashtags, which give attribution to and endorse Fortnite the
11 game.

12 24. Upon information and belief, Epic creates emotes by copying
13 and coding dances and movements directly from popular videos, movies,
14 and television shows without consent. Epic does so by coding still
15 frames of the source material.

16 25. Epic has consistently sought to exploit African-American
17 talent, in particular in Fortnite, by copying their dances and movements
18 and sell them through emotes. Epic has copied the dances and
19 movements of numerous African-American performers, including,
20 among others, the dance from the 2004 Snoop Dogg music video, “Drop
21 It Like It’s Hot” (named the “Tidy” emote), 2 Milly’s “Milly Rock” dance
22 (named the “Swipe It” emote), the dance performed by Will Smith on
23 the television show *The Fresh Prince of Bel-Air* (named the
24 “Rambunctious” emote), the dance in Marlon Webb’s popular “Band of
25 the Bold” video (named the “Best Mates” emote), Donald Faison’s
26 signature dance seen on the NBC television show *Scrubs* (named the
27 “Dance Moves” emote), and, most pertinent here, Alfonso Ribeiro’s The
28

1 Dance. Upon information and belief, Epic did not seek consent or
2 authorization to use any of these movements or dances.

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

8 27. Fortnite's popularity has translated into record in-game
9 sales for Epic. Analysts have estimated that since its release, Fortnite
10 has generated between \$1 billion to \$2 billion in revenue through in-
11 game purchases such as emotes. In May 2018, Fortnite broke its own
12 record by generating approximately \$318 million in revenue, the biggest
13 month ever for a video game. In fact, nearly 80 million people played
14 Fortnite in August 2018. Because of Fortnite's success, Epic's estimated
15 valuation rose from about \$825 million to about \$5 billion. Bloomberg
16 estimates that Epic's valuation could grow to \$8.5 billion by 2018's end.

17 28. Upon information and belief, Epic will likely continue
18 adding popular emotes to Fortnite without the artists' or creators'
19 consent or approval to attract more players and add to its quickly-
20 growing revenue.

21 **C. Fortnite's Unauthorized Use of The Dance**

22 29. On January 2, 2018, Fortnite released the Fresh emote into
23 its Item Shop. Players could purchase the Fresh emote for 800 V-Bucks.

24 30. The Fresh emote is identical to Ribeiro's The Dance. If
25 obtained or purchased, the Fortnite player's avatar can perform The
26 Dance during Fortnite gameplay. The reaction from many players
27 worldwide was immediate recognition of the emote as embodying The
28 Dance and, in turn, Ribeiro. Indeed, by naming the emote "Fresh," Epic

1 intentionally induced a direct connection between the in-game purchase
2 and the show where The Dance started, *The Fresh Prince of Bel-Air*.
3 That connection implied an endorsement of that in-game purchase by
4 Ribeiro.

5 31. Epic developed the Fresh emote to intentionally mimic
6 Ribeiro performing The Dance.

7 32. Epic did not seek to obtain Ribeiro's authorization or consent
8 for its use of his likeness and The Dance for the Fresh emote.

9 33. Moreover, Ribeiro did not give Epic express or implied
10 consent for its use of his likeness and The Dance for the Fresh emote.
11 Epic also did not compensate Ribeiro for its use of his likeness and The
12 Dance for the Fresh emote.

13 34. Upon information and belief, Epic added the Fresh emote to
14 intentionally exploit the popularity of Ribeiro and The Dance without
15 providing Ribeiro any form of compensation.

16 35. Epic profited from its improper misappropriation of The
17 Dance and Ribeiro's likeness by, *inter alia*: 1) selling the infringing
18 Fresh emote directly to players; 2) advertising the Fresh emote to
19 attract additional players, including Ribeiro's fans or those persons
20 familiar with The Dance to play Fortnite and make in-game purchases;
21 3) using Ribeiro's fame to stay relevant to its current players to
22 incentivize those players to continue playing Fortnite; 4) impliedly
23 representing that Ribeiro consented to Epic's use of his likeness; 5)
24 intentionally causing the erroneous public association between the
25 Fresh and The Dance; 6) creating the false impression that Ribeiro
26 endorsed Fortnite; and 7) inducing and/or contributing to the
27 performance and misattribution of The Dance by others.

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1 36. Upon information and belief, Epic uses The Dance, and other
2 dances, to create the false impression that Epic started these dances
3 and crazes or that the performer who created them is endorsing the
4 game. Indeed, Epic induces others and/or contributes to their
5 performance and false attribution of The Dance. Fortnite Players have
6 posted thousands of videos of themselves performing the “Fresh” emote
7 with the hashtag, #fortnitedance, without referencing The Dance or
8 crediting Ribeiro as The Dance’s creator and owner. Accordingly, upon
9 information and belief, Epic actively and knowingly directs, causes,
10 induces, and encourages others, including, but not limited to, its
11 players, designers, suppliers, distributors, resellers, software
12 developers, and repair providers, to misappropriate Ribeiro’s likeness
13 and The Dance.

14 37. Prominent artists, including Chancelor Johnathan Bennett,
15 known as Chance the Rapper, and Terrence Ferguson, known as 2
16 Milly, have also publicly disapproved of Epic’s practices, and advocated
17 for Epic sharing profits with the artists that created these dances.

18 38. Epic has made a fortune from unlawfully and unfairly
19 misappropriating Ribeiro’s and other artists’ creative expression,
20 likeness, and endorsement without crediting or compensating these
21 artists. Ribeiro thus brings this lawsuit to prevent Fortnite from
22 further using his likeness and The Dance, and to recover the revenue
23 rightfully owed to him.

24 **FIRST CAUSE OF ACTION**

25 **(For Direct Infringement of Copyright Against All Defendants)**

26 39. Ribeiro hereby repeats and realleges the allegations set
27 forth in paragraphs 1 through 38 above, as though fully set forth herein
28

1 40. In 1991, Ribeiro created The Dance and first performed it on
2 *The Fresh Prince of Bel-Air* during the episode *Will's Christmas Show*.
3 On or around August 15, 2006, the segment of *The Fresh Prince of Bel-*
4 *Air* during which Ribeiro performs The Dance was published to
5 YouTube where it can be accessed by millions of people. The video
6 shows Ribeiro, as Carlton Banks, performing The Dance to the tune of
7 Tom Jones "It's Not Unusual."

8 41. Ribeiro is the undisputed creator of the wildly popular and
9 immediately recognizable Dance. YouTube videos depicting Ribeiro's
10 performance in *The Fresh Prince of Bel-Air* are the original depictions
11 of The Dance.

12 42. Ribeiro is in the process of registering The Dance with the
13 United States Copyright Office. On December 15, 2018, Ribeiro
14 submitted an application for copyright registration of three variations
15 of The Dance and assigned Copyright Office case numbers 1-
16 7226013364, 1-7226013290, and 1-7225814191.

17 43. Defendants have infringed and continue to infringe Ribeiro's
18 copyrights in The Dance by selling The Dance emote as an in-game
19 purchase, under the name "Fresh" that, if purchased, a player can use
20 to make his or her avatar perform during Fortnite gameplay;
21 substantially copying The Dance in digital form to the Fortnite game;
22 advertising The Dance in its promotional materials; and creating the
23 Fresh emote as a derivative work of The Dance.

24 44. Defendants did not seek to obtain Ribeiro's permission for
25 its use of The Dance for the Fresh emote. Nor have Defendants
26 compensated or credited Ribeiro for their use of The Dance.

27 45. Moreover, Defendants actively and knowingly directed,
28 caused, induced, and encouraged others, including, but not limited to,

1 its players, designers, suppliers, distributors, resellers, software
2 developers, and repair providers, to misappropriate Ribeiro's likeness
3 and The Dance.

4 46. Defendants' acts of infringement have been willful,
5 intentional, and purposeful, in disregard of and with indifference to
6 Plaintiff's rights.

7 47. Defendants' willful and continued unauthorized use of The
8 Dance has caused and will continue to cause confusion and mistake by
9 leading the public to erroneously associate the Fresh emote offered by
10 Epic with The Dance in violation of 17 U.S.C. §§ 101 et seq.

11 48. As a result of Defendants' conduct, Ribeiro has been
12 damaged by being precluded from receiving his rightful share of the
13 profits earned by Epic for its improper and unlicensed use of Ribeiro's
14 exclusive copyrights in The Dance in Fortnite.

15 49. Ribeiro is entitled to permanent injunctive relief preventing
16 Defendants, and their officers, agents, and employees, and all related
17 persons from further using The Dance and engaging in other acts in
18 violation of Copyright law.

19 50. As a direct and proximate result of Defendants'
20 infringement of Plaintiff's copyrights and exclusive rights under
21 copyright, Ribeiro is also entitled to recover damages, including
22 attorneys' fees, and any profits obtained by Defendants as a result of
23 the infringements alleged above, in an amount according to proof to be
24 determined at the time of trial.

25 51. In doing the acts herein alleged, Defendants acted
26 fraudulently, willfully, and with malice, and Ribeiro is therefore
27 entitled to punitive damages according to proof at the time of trial.

1 **SECOND CAUSE OF ACTION**

2 **(For Contributory Infringement of Copyright Against All**
3 **Defendants)**

4 52. Ribeiro hereby repeats and realleges the allegations set
5 forth in paragraphs 1 through 51 above, as though fully set forth herein.

6 53. Ribeiro is in the process of registering The Dance with the
7 United States Copyright Office. On December 15, 2018, Ribeiro
8 submitted applications for copyright registrations and assigned
9 Copyright Office case numbers 1-7226013364, 1-7226013290, and 1-
10 7225814191.

11 54. Defendants have infringed and continue to infringe Ribeiro's
12 copyrights in The Dance by selling The Dance emote as an in-game
13 purchase, under the name "Fresh" that, if purchased, a player can use
14 to make his or her avatar perform during Fortnite gameplay;
15 substantially copying The Dance in digital form to the Fortnite game;
16 advertising The Dance in its promotional materials; and creating the
17 Fresh emote as a derivative work of The Dance.

18 55. By providing the Fresh emote necessary for its players to
19 commit direct copyright infringement, Defendants have and continue to
20 materially contribute to the unauthorized reproductions and
21 distributions by its players of The Dance.

22 56. Defendants did not seek to obtain Ribeiro's permission for
23 its use of The Dance for the Fresh emote. Nor have Defendants
24 compensated or credited Ribeiro for their use of The Dance.

25 57. Moreover, Defendants actively and knowingly directed,
26 caused, induced, and encouraged others, including, but not limited to,
27 its players, designers, suppliers, distributors, resellers, software
28

1 developers, and repair providers, to misappropriate Ribeiro's likeness
2 and The Dance.

3 58. Defendants' acts of infringement have been willful,
4 intentional, and purposeful, in disregard of and with indifference to
5 Plaintiff's rights.

6 59. Defendants' willful and continued unauthorized use of The
7 Dance has caused and will continue to cause confusion and mistake by
8 leading the public to erroneously associate the Fresh emote offered by
9 Epic with The Dance in violation of 17 U.S.C. §§ 101 et seq.

10 60. As a result of Defendants' conduct, Ribeiro has been
11 damaged by being precluded from receiving his rightful share of the
12 profits earned by Epic for its improper and unlicensed use of Ribeiro's
13 exclusive copyrights in The Dance in Fortnite.

14 61. Defendants' conduct is causing and, unless enjoined and
15 restrained by this Court, will continue to cause Plaintiff great and
16 irreparable injury that cannot be compensated or measured in money.
17 Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502,
18 Plaintiff is entitled to injunctive relief, prohibiting further contributory
19 infringements of Plaintiff's copyrights.

20 62. As a direct and proximate result of Defendants'
21 infringement of Plaintiff's copyrights and exclusive rights under
22 copyright, Ribeiro is also entitled to recover damages, including
23 attorneys' fees, and any profits obtained by Defendants as a result of
24 the infringements alleged above, in an amount according to proof to be
25 determined at the time of trial.

26 63. In doing the acts herein alleged, Defendants acted
27 fraudulently, willfully, and with malice, and Ribeiro is therefore
28 entitled to punitive damages according to proof at the time of trial.

1 **THIRD CAUSE OF ACTION**

2 **(For Violation of the Right of Publicity Under California**
3 **Common Law Against All Defendants)**

4 64. Ribeiro hereby repeats and realleges the allegations set
5 forth in paragraphs 1 through 63, above, as though fully set forth
6 herein.

7 65. Through their use of The Dance as an in-game dance emote
8 that can be purchased as the Fresh, Defendants misappropriated
9 Ribeiro's identity. The Fresh emote depicts Ribeiro performing The
10 Dance.

11 66. Upon information and belief, Defendants created the Fresh
12 emote by capturing and digitally copying Ribeiro performing The Dance.
13 Defendants then utilized the digital copy to create code that, if
14 purchased, allows player avatars to perform The Dance.

15 67. Defendants did not seek or obtain Ribeiro's authorization or
16 consent for its use of his likeness or The Dance for the Fresh emote. Nor
17 have Defendants compensated or credited Ribeiro for their use of his
18 likeness or The Dance.

19 68. Defendants used Ribeiro's likeness and The Dance to
20 generate significant wealth by: 1) selling the infringing Fresh emote
21 directly to players; 2) advertising the Fresh emote to attract additional
22 players, including Ribeiro's fans or those persons familiar with The
23 Dance to play Fortnite and make in-game purchases; 3) using Ribeiro's
24 fame to stay relevant to its current players to incentivize those players
25 to continue playing Fortnite; 4) impliedly representing that Ribeiro
26 consented to Epic's use of his likeness; 5) intentionally causing the
27 erroneous public association between the Fresh and The Dance; 6)
28 creating the false impression that Ribeiro endorsed Fortnite; and 7)

1 inducing and/or contributing to the performance and misattribution of
2 The Dance by others.

3 69. As a performance artist, Ribeiro exploits his identity by
4 performing in shows, events, and with the media. Ribeiro was damaged
5 by Defendants' conduct as he was prevented from reaping the profits of
6 licensing his likeness or The Dance to Defendants.

7 70. Defendants' conduct caused and will continue to cause
8 confusion and mistake by leading the public to erroneously believe that
9 Ribeiro consented to the use of his likeness or The Dance in the Fortnite
10 game.

11 71. Ribeiro is entitled to permanent injunctive relief preventing
12 Defendants, and their officers, agents, and employees, and all related
13 persons from further using his likeness or The Dance.

14 72. Ribeiro is also entitled to recover damages, including any
15 profits obtained by Defendants as a result of the infringements alleged
16 above, in an amount according to proof to be determined at the time of
17 trial.

18 **FOURTH CAUSE OF ACTION**

19 **(For Violation of the Right of Publicity Under Cal. Civ. Code §**
20 **3344 Against All Defendants)**

21 73. Ribeiro hereby repeats and realleges the allegations set
22 forth in paragraphs 1 through 72, above, as though fully set forth
23 herein.

24 74. Through their use of The Dance as an in-game dance emote
25 that can be purchased as the Fresh, Defendants misappropriated
26 Ribeiro's identity. The Fresh emote depicts Ribeiro performing The
27 Dance.

28

1 75. Upon information and belief, Defendants created the Fresh
2 emote by capturing and digitally copying Ribeiro performing The Dance.
3 Defendants then utilized the digital copy to create code that, if
4 purchased, allows player avatars to perform The Dance.

5 76. Defendants did not seek or obtain Ribeiro's authorization or
6 consent for its use of his likeness or The Dance for the Fresh emote. Nor
7 have Defendants compensated or credited Ribeiro for their use of his
8 likeness or The Dance.

9 77. Defendants used Ribeiro's likeness and The Dance to
10 generate significant wealth by: 1) selling the infringing Fresh emote
11 directly to players; 2) advertising the Fresh emote to attract additional
12 players, including Ribeiro's fans or those persons familiar with The
13 Dance to play Fortnite and make in-game purchases; 3) using Ribeiro's
14 fame to stay relevant to its current players to incentivize those players
15 to continue playing Fortnite; 4) impliedly representing that Ribeiro
16 consented to Epic's use of his likeness; 5) intentionally causing the
17 erroneous public association between the Fresh and The Dance; 6)
18 creating the false impression that Ribeiro endorsed Fortnite; and 7)
19 inducing and/or contributing to the performance and misattribution of
20 The Dance by others.

21 78. As a performance artist, Ribeiro exploits his identity by
22 performing in shows, events, and with the media. Ribeiro was damaged
23 by Defendants' conduct as he was prevented from reaping the profits of
24 licensing his likeness or The Dance to Defendants.

25 79. Defendants' conduct caused and will continue to cause
26 confusion and mistake by leading the public to erroneously believe that
27 Ribeiro consented to the use of his likeness or The Dance in the Fortnite
28 game.

1 80. Ribeiro is entitled to permanent injunctive relief preventing
2 Defendants, and their officers, agents, and employees, and all related
3 persons from further using his likeness or The Dance.

4 81. Ribeiro is also entitled to recover damages, including any
5 profits obtained by Defendants as a result of the infringements alleged
6 above, in an amount according to proof to be determined at the time of
7 trial.

8 **FIFTH CAUSE OF ACTION**

9 **(Unfair Competition Under Cal. Bus. & Prof. Code § 17200)**

10 82. Ribeiro hereby repeats and realleges the allegations set
11 forth in paragraphs 1 through 81, above, as though fully set forth
12 herein.

13 83. By misappropriating Ribeiro’s likeness through the
14 improper use of The Dance, Defendants have engaged in business acts
15 or practices that constitute unfair competition in violation of Cal. Bus.
16 & Prof. Code. § 17200.

17 84. As a result of Defendants’ violations, Defendants have
18 unjustly enriched themselves by: 1) selling the infringing Fresh emote
19 directly to players; 2) advertising the Fresh emote to attract additional
20 players, including Ribeiro’s fans or those persons familiar with The
21 Dance to play Fortnite and make in-game purchases; 3) using Ribeiro’s
22 fame to stay relevant to its current players to incentivize those players
23 to continue playing Fortnite; 4) impliedly representing that Ribeiro
24 consented to Epic’s use of his likeness; 5) intentionally causing the
25 erroneous public association between the Fresh and The Dance; 6)
26 creating the false impression that Ribeiro endorsed Fortnite; and 7)
27 inducing and/or contributing to the performance and misattribution of
28 The Dance by others.

1 85. As a result of Defendants' conduct, Ribeiro has been
2 damaged by Defendants' conduct as he was prevented from reaping the
3 profits of licensing his likeness or The Dance to Defendants.

4 86. Ribeiro is entitled to permanent injunctive relief preventing
5 Defendants, and their officers, agents, and employees, and all related
6 persons from further using his likeness or The Dance.

7 87. Ribeiro is also entitled to recover damages, including any
8 profits obtained by Defendants as a result of the misappropriation
9 alleged above, in an amount according to proof to be determined at the
10 time of trial.

11 **SIXTH CAUSE OF ACTION**

12 **(Unfair Competition Under 15 U.S.C. § 1125(a))**

13 88. Ribeiro hereby repeats and realleges the allegations set
14 forth in paragraphs 1 through 87 above, as though fully set forth herein.

15 89. Since debuting The Dance, The Dance has exploded in
16 popularity. The Dance has become synonymous with Ribeiro, who is
17 unanimously credited with creating the dance that bears his famous
18 first role of Carlton Banks from *The Fresh Prince of Bel-Air*. Ribeiro
19 has also been interviewed several times about the creation of The Dance
20 and how to properly perform it. Accordingly, The Dance is a part of
21 Ribeiro's identity and the dance's unique movements readily evoke
22 imagery of Ribeiro's famous performances of The Dance.

23 90. Defendant's copying and relabeling of Ribeiro's The Dance
24 has caused confusion, deception, and mistake by the creation of the false
25 and misleading impression that Defendants were the creators of The
26 Dance or that Ribeiro was somehow affiliated, connected, or associated
27 with Defendants or provided sponsorship or approval to Defendants.
28

1 91. Defendants have further misrepresented the nature,
2 characteristics, qualities and origin of The Dance. Defendants have
3 diluted Ribeiro's signature Dance by inducing others to flood the
4 Internet with videos with performances of The Dance without any
5 attribution. Defendants have tarnished Riberio's signature Dance by
6 incorporating it, without permission, into a violent video game.

7 92. As a result of Defendants' conduct, Ribeiro is damaged by
8 Defendants' exploitation of his likeness through 1) selling the infringing
9 Fresh emote directly to players; 2) advertising the Fresh emote to
10 attract additional players, including Ribeiro's fans or those persons
11 familiar with The Dance to play Fortnite and make in-game purchases;
12 3) using Ribeiro's fame to stay relevant to its current players to
13 incentivize those players to continue playing Fortnite; 4) impliedly
14 representing that Ribeiro consented to Epic's use of his likeness; 5)
15 intentionally causing the erroneous public association between the
16 Fresh and The Dance; 6) creating the false impression that Ribeiro
17 endorsed Fortnite; and 7) inducing and/or contributing to the
18 performance and misattribution of The Dance by others.

19 93. Ribeiro is entitled to permanent injunctive relief preventing
20 Defendants, and their officers, agents, and employees, and all related
21 persons from further using The Dance.

22 94. Ribeiro is also entitled to recover damages, including
23 attorney's fees, as a result of the infringements alleged above, in an
24 amount according to proof to be determined at the time of trial.

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PRAYER FOR RELIEF

As to the First Cause of Action:

1. For an order restraining Defendants from using, selling, or displaying Ribeiro's copyright in the Fortnite game;
2. For an award of damages according to proof;
3. For punitive and/or exemplary damages;
4. For attorney's fees and costs;

As to the Second Cause of Action:

5. For an order restraining Defendants from using, selling, or displaying Ribeiro's copyright in the Fortnite game;
6. For an award of damages according to proof;
7. For punitive and/or exemplary damages;
8. For attorney's fees and costs;

As to the Third Cause of Action:

9. For an order restraining Defendants from using, advertising, promoting, marketing, selling or offering for sale Ribeiro's likeness in the Fortnite game;
10. For an award of damages according to proof;

As to the Fourth Cause of Action:

11. For an order restraining Defendants from using, advertising, promoting, marketing, selling or offering for sale Ribeiro's likeness in the Fortnite game;
12. For an award of damages according to proof;
13. For punitive and/or exemplary damages;

As to the Fifth Cause of Action:

14. For an order restraining Defendants from advertising, promoting, marketing, selling or offering for sale Ribeiro's copyright and likeness in the Fortnite game;

1 15. For an award of damages according to proof;

2 16. For punitive and/or exemplary damages;

3 17. For attorney's fees and costs;

4 **As to the Sixth Cause of Action:**

5 18. For an order restraining Defendants from advertising, promoting,
6 marketing, selling or offering for sale Ribeiro's copyright and
7 likeness in the Fortnite game;

8 19. For an award of damages according to proof;

9 20. For punitive and/or exemplary damages; and

10 21. For attorney's fees and costs;

11 **As to All Causes of Action:**

12 22. For costs of suit; and

13 23. For such other and further relief as the Court may deem proper.

14

15 Dated: December 17, 2018

Respectfully Submitted,

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**Pierce Bainbridge Beck Price &
Hecht LLP**

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18

By: /s/Carolynn Kyungwon Beck
Carolynn Kyungwon Beck
Attorneys for Plaintiff
Alfonso Ribeiro

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JURY TRIAL

Plaintiff Alfonso Ribeiro requests a trial by jury on all issues to which it is entitled a jury.

Dated: December 17, 2018

Respectfully Submitted,

Pierce Bainbridge Beck Price & Hecht LLP

By: /s/Carolynn Kyungwon Beck
Carolynn Kyungwon Beck

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