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AB

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Lenwood Hamilton, a/k/a
Hard Rock or Skip Hamilton,
1201 Willow Street, Apt. 5
Norristown, PA 19401,

Civil Action No. 2017-cv-_____

17 0169

Plaintiff

vs.

Lester Speight, a/k/a
Rasta the Urban Warrior, a/k/a
Augustus "Cole Train" Cole
8331 Woodlake Avenue
Canoga Park, CA 91304
or (alternative address)
P.O. Box 6482
Woodland Hills, CA 91365

Epic Games, Inc.
620 Crossroads Boulevard
Cary, NC 27518

Microsoft, Inc.
One Microsoft Way
Redmond, WA 98052-6399

Microsoft Studios, a division or
a subsidiary of Microsoft, Inc.,
4400 148th Avenue NE
Redmond, WA 98052

The Coalition, a division or
a subsidiary of Microsoft, Inc.,
858 Beatty Street, 6F
Vancouver, BC, Canada V68 1C1

Defendants

COMPLAINT

Handwritten signature and date: 1-11-17

Plaintiff, Lenwood Hamilton, by and through his undersigned counsel, hereby complains against Defendants Lester Speight, Epic Games, Inc., Microsoft, Inc., Microsoft Studios, and the Coalition, as follows:

PARTIES

1. Lenwood Hamilton ("Hamilton") is an adult individual with an address of 1201 Willow street, Apt. 5, Norristown, PA 19401. Hamilton is also known as "Hard Rock" Hamilton and/or Skip Hamilton.

2. Lester Speight ("Speight") is an adult individual with an address of 8331 Woodlake Avenue, Canoga, Park, CA 91304, and an alternate mailing address at P.O. Box 6482, Woodland Hills, CA 91365. In his career as a professional wrestler, Speight was known as Rasta the Urban Warrior. In the "Gears of War" video game series described later in this Complaint, Speight is the supposed human persona of an avatar named Augustus "Cole Train" Cole, or simply "Cole Train."

3. Epic Games, Inc. ("Epic"), is a North Carolina business corporation with a principal office address at 620 Crossroads Boulevard, Cary, NC 27518. Epic is the creator and developer of the "Gears of War" video game series that was first introduced in 2006.

4. Microsoft, Inc. ("Microsoft"), is a Washington State business corporation with a principal office address at One Microsoft Way, Redmond

WA 98052-6399. Microsoft is a distributor and/or publisher of the "Gears of War" video game series.

5. Microsoft Studios ("Microsoft Studios" or formerly "Microsoft Game Studios") is a Washington State business, and a division or subsidiary of Microsoft, Inc., with a principal office address at 4400 148th Avenue NE, Redmond, WA 98502. Microsoft Studios is a distributor and/or publisher of one or more of the "Gears of War" video game series that was first introduced in 2006.

6. The Coalition ("The Coalition"), is a British Columbia business, and a division or subsidiary of Microsoft, Inc., with a principal business office address of 858 Beatty Street, 6F, Vancouver, British Columbia, Canada V68 1C1. The Coalition is a distributor and/or publisher of one or more of the "Gears of War" video game series that was first introduced in 2006.

BACKGROUND

7. Hamilton played high school football in the 1970's at Wilson High School in Easton, PA. Although Hamilton was a talented athlete, he was not an academic standout.

8. Hamilton played college football at North Carolina State University in 1978-1980, and at Southern University in Baton Rouge, LA in 1981-1982.

9. On or about November 28, 1982, following the college football game between Southern University and Grambling College, Hamilton had a

consensual sexual relationship with a woman at a Baton Rouge hotel. However, the woman charged him with rape. Hamilton was arrested, imprisoned, tried and found guilty. However, the woman later recanted her testimony and the charges were dropped. Thus, Hamilton was never convicted, but he did suffer stigmatization and notoriety as a result of the ordeal.

10. In 1983-1984, Hamilton tried out for the Philadelphia Eagles professional football team as a free agent, but he did not make the team. However, there was a feature story published about Hamilton in the Philadelphia Inquirer on July 18, 1984, including photographs (**Exh. A**), describing his hard scrabble life and referencing his rape trial and acquittal.

11. In 1984-1985, Hamilton played for the Edmonton Eskimos in the Canadian Football League. Hamilton's tenure with the Eskimos was promoted by the Philadelphia Eagles.

12. In 1987, Hamilton was again on the squad of the Philadelphia Eagles in a strike-shortened season, and played in one NFL game.

13. Beginning in 1988, Hamilton became a professional wrestler. He had professional wrestling bouts in Pennsylvania, Puerto Rico, and Germany, among other venues.

14. In the 1990's Hamilton became a motivational speaker. As a speaker, he strives to inspire disadvantaged young people to believe in themselves, work hard, overcome adversity, and achieve success.

15. In or about 1996, Hamilton became interested in organizing his own pro wrestling organization to promote wrestling as family entertainment.

16. On or about January 6, 1997, Hamilton registered Soul City Wrestling, Inc. with the PA Department of State (Entity No. 2732099).

17. Beginning in 1997, Soul City Wrestling, Inc. promoted professional wrestling bouts at several venues in Philadelphia, and in Montgomery County and Northampton County, PA, among other venues. "Hard Rock" Hamilton was known as the "Soul City Heavyweight Champion of the World" in many of the wrestling bouts, and he was usually in the main event. One of the slogans of Soul City Wrestling, Inc. was "The Children are the Future." Another slogan pertinent to "Hard Rock" Hamilton was "Defender of the Youth of America."

18. Certain persons assisted Soul City Wrestling, Inc., including but not limited to Greg Bushu (an investor), and Robert Geary (a ring announcer and video, photography and audio director), and Jim Morrison a/k/a Bobo Brazil (a talent scout).

19. On or about March 24, 1998, Hamilton registered Soul City Sports, Inc. with the PA Department of State (Entity No. 2807247).

20. On or about March 31, 1998, Hard Rock Hamilton met with then Philadelphia Mayor Edward G. Rendell to request assistance and publicity for Soul City Wrestling, Inc. to supplement the efforts of the Police Athletic

League and Philadelphia Recreation Centers in developing meaningful activities for young people in the City, and the Mayor subsequently wrote Hamilton a supportive letter (**Exh. B**).

21. In or about July 1998, Bobo Brazil recruited Lester Speight a/k/a Rasta the Urban Warrior, to participate in a couple of bouts put on by Soul City Wrestling, Inc.

22. On or about July 25, 1998, Soul City Wrestling, Inc. sponsored a wrestling event at Viking Hall in Philadelphia featuring, among others, "Hard Rock" Hamilton and "Rasta the Urban Warrior" (Lester Speight). A copy of a poster (reduced in size) announcing this event is attached as **Exh. C**.

23. On or about July 25, 1998, Speight discussed plans for a video game with Hamilton at the wrestling event after-party. Speight said the video game he had in contemplation would feature violence, but Hamilton told Speight he was not interested in doing a video game centering on violence.

24. On or about August 29, 2001, Hamilton registered Soul City Entertainment, LLC with the PA Department of State (Entity No. 3023113).

25. On or about January 28, 2002, Hamilton registered Soul City Mentoring Program (Non-Profit Corporation) with the PA Department of State (Entity No. 3049626).

26. During the 2005 timeframe, a meeting was scheduled at the residence of Greg Bushu in Blue Bell, PA to discuss the direction of Soul City

Wrestling, Inc. and related companies, and a possible wrestling contract with the Disney Company. A day prior to the meeting, Bushu discussed with Hamilton the production of a possible video game that would involve violence, but Hamilton said he was not interested. Bushu said he would proceed without Hamilton.

27. The original invitees to the 2005 meeting were Greg Bushu, Robert Geary, Bobo Brazil and Hamilton.

28. Although the meeting was convened, Hamilton was not allowed to attend. Greg Bushu would not admit Hamilton to his residence.

29. During all relevant periods, Robert Geary had maintained a repository of Hamilton's voice recordings and photographs of Hard Rock Hamilton.

30. In 2006, Defendant Epic Games, Inc. developed the video game, Gears of War.

31. On or about November 7, 2006, Defendant Microsoft Studios published the video game, Gears of War.

32. The 2006 Gears of War video game (hereinafter "GOW-1") was a commercial success. Millions of dollars of GOW-1 were sold in the United States and abroad.

33. GOW-1 features the troops of Delta Squad on the fictional planet Sera in a determined fight against a subterranean enemy known as the Locust Horde that is threatening human survival. There are four main

avatar characters in Delta Squad, namely Marcus Fenix, Dominic "Dom" Santiago, Damon Baird, and Augustus "Cole Train" Cole. "Cole Train" is the only one of the four who is black. Promotional materials for the GOW-1 video game describe the human persona and voice of "Cole Train" as Lester Speight.

34. In 2006-2007 video game critics extolled GOW-1 as the "Xbox 360 Game of the Year." G4 TV named Marcus Fenix the "Best New Character" and gave Lester Speight's performance for "Augustus 'Cole Train' Cole" the award for "Best Voiceover."

35. In 2008, Defendant Epic Games, Inc. developed the video game, Gears of War 2 ("GOW-2"). GOW-2 featured the same avatars found in GOW-1.

36. On or about November 7, 2008, Defendant Microsoft Studios published the GOW-2 video game.

37. The GOW-2 video game was a commercial success. Millions of dollars of GOW-2 were sold in the United States and abroad.

38. In 2011, Soul City Wrestling sponsored its final wrestling event.

39. In 2011, Defendant Epic Games, Inc. developed the video game, Gears of War 3 ("GOW-3"). GOW-3 featured the same avatars found in GOW-1 and GOW-2.

40. On or about April 6, 2011, Defendant Microsoft Studios published the video game GOW-3.

41. The GOW-3 video game was a commercial success. Millions of dollars of GOW-3 were sold in the United States and abroad.

42. In 2013, Defendant Epic Games, Inc. developed the video game, Gears of War: Judgment ("GOW-J"). GOW-J featured the same avatars found in GOW-1, GOW-2 and GOW-3.

43. On or about March 19, 2013, Defendant Microsoft Studios published the video game GOW-J.

44. The GOW-J video game was a commercial success. Millions of dollars of GOW-J were sold in the United States and abroad.

45. On January 27, 2014, Microsoft announced that it had acquired all rights to the Gears of War video game franchise from Epic Games, Inc.

46. Also in January 2014, Microsoft announced that over 22 million units of the Gears of War video game series had been sold, and the sales had generated revenue of over \$1 billion.

47. Up until January 2015, Plaintiff Hamilton was not familiar with video games in general, and not at all familiar with the Gears of War video game series.

48. In January 2015, a playmate friend of Hamilton's son David brought to Hamilton's attention that there was a character in the Gears of War video game series that looked and sounded like Hamilton. Hamilton looked at some of the Gears of War video games and realized that the

avatar "Cole Train" was his own likeness, and also, Cole Train's voice was his own, Hamilton's.

49. Hamilton contacted his friend Dr. Ray Abdallah, a chiropractor, to ask if he had any legal recourse with regard to the Gears of War video games, and Dr. Abdallah, promptly, on January 12, 2015, put him in touch with Attorney Fred Tecce, Esq.

50. Hamilton spoke by telephone with Attorney Fred Tecce on January 12, 2015, and Attorney Tecce advised Hamilton that he had two years to file a lawsuit, and he would review relevant materials forwarded by Hamilton and Dr. Abdallah to determine if he was interested in taking Hamilton's case.

51. Hamilton and Dr. Abdallah forwarded materials to Attorney Tecce in January 2015 for review. In February 2015, Attorney Tecce advised Dr. Abdallah and Hamilton that he and his law firm were declining the case for business reasons, but he encouraged Hamilton to seek other counsel.

52. In July and August 2015, an attorney for Hamilton, Charles W. Campbell, Esq., was in touch with an attorney for Epic Games, Inc., via correspondence (**Exh. D**, August 7, 2015 letter, incorporated herein) to demand fair and reasonable compensation for Hamilton for Epic's use of Hamilton's likeness and voice in the Gears of War character Augustus Cole. Among other things, Attorney Campbell's letter stated:

Those connections [between Speight and Hamilton] include, but are not limited to:

1. The similarities between my client [Hamilton] and the appearance, dress, voice and tag lines of Augustus Cole;

2. The fact that Lester Speight (i.e. the voiceover and real-life persona of Augustus Cole) was an employee of my client's company (i.e. Soul City Wrestling) prior to the creation of the Augustus Cole character; and

3. The fact that my client and Lester Speight spoke about the creation of a video game character prior to the release of Gears of War.

Please see the enclosed documents, including (a) the side-by-side comparison of my client and Augustus Cole; (b) the various Soul City Wrestling cards showing my client and Lester Speight together; and (c) the accounting records of Soul City Wrestling evidencing the fact that Lester Speight was compensated by Soul City Wrestling.

53. Attached hereto as **Exh. E** is a photo comparison of avatar Augustus "Cole Train" Cole from the Gears of War video game series on the top, and a photograph of Plaintiff Lenwood Hamilton on the bottom.

54. Attached hereto as **Exh. F** is a photo comparison of avatar Augustus "Cole Train" Cole from the Gears of War video game series on the top in derby hat and wearing wristbands, and Hard Rock Hamilton, S.C.W. (Soul City Wrestling) in derby hat and wearing wristbands on the bottom.

55. The similarities of the avatar "Cole Train" and Hard Rock Hamilton include that both are black (and "Cole Train" is the only black avatar in the Gears of War series, they both played professional football (although in Gears of War the game is called "thrashball"), Cole Train's number is 83 (same year that Hamilton played for the Philadelphia Eagles -

1983), the derby hat, wristbands, a front gold tooth, and a striking resemblance of both physiognomy and body build.

56. In August 2015, Microsoft and/or Microsoft Studios and/or The Coalition published a remastering titled *Gears of War: Ultimate Edition* which was released for the Xbox One video game player. The *Ultimate Edition* includes the avatars in GOW-1, GOW-2, GOW-3, and GOW-J, and it has been a commercial success.

57. In 2016, Defendant The Coalition developed the video game, *Gears of War 4* ("GOW-4"). GOW-4 featured the same avatars found in GOW-1, GOW-2, GOW-3 and GOW-J.

58. In 2016, Defendant Microsoft Studios published the video game GOW-4.

59. The GOW-4 video game was a commercial success. Millions of dollars of GOW-4 were sold in the United States and abroad.

60. At all relevant times, Defendant Microsoft, Inc. was the parent company of Defendant Microsoft Studios.

61. At all relevant times, Defendant Speight was the alleged voiceover for the *Gears of War* character, Cole Train.

62. On April 5, 2016, Owen Forensics Services (Colonia, New Jersey) conducted a voice analysis and comparison, which compared the video game voiceover of Cole Train with the voice of Hamilton.

63. On April 29, 2016, forensic voice examiner Tom Owen of Owen Forensics Services completed a voice analysis and comparison report, which compared the video game voiceover of Cole Train from the Gears of War video games with the known voice of Hamilton recorded in his studio.

64. Forensic voice examiner Tom Owen opined in a written report dated April 29, 2016 (**Exh. G**), based on his education, training, certifications and experience in voice analysis (37 years), that the Cole Train voiceover used in the Gears of War video games and the voice of Hamilton are the same voice.

65. Forensic voice examiner Tom Owen issued his opinion to a reasonable degree of scientific certainty.

JURISDICTION AND VENUE

66. The relevant activities involving Plaintiff Hamilton and Defendant Speight occurred in the Eastern District of Pennsylvania, primarily in Philadelphia and Montgomery Counties.

67. Defendants Epic, Microsoft, Microsoft Studios, and the Coalition sold all versions of the Gears of War video games throughout the United States and within the Eastern District of Pennsylvania. For example, and not by way of limitation, the Gears of War video game series is available for purchase at numerous "GameStop" stores within the Eastern District of Pennsylvania.

68. Venue is proper in this district under 28 U.S.C. § 1391(b) as Defendants' activities have caused substantial damage to Plaintiff Hamilton in this district.

69. The amount in controversy exceeds \$75,000 and there is diversity of citizenship between Plaintiff Hamilton and all Defendants; thus, jurisdiction is proper under 28 U.S.C. § 1332.

70. There is jurisdiction in the Federal Courts for Lanham Act claims under 28 U.S.C. §§ 1331 and 1338(a), and 15 U.S.C. § 1121.

71. The District Court has supplemental jurisdiction under 28 U.S.C. § 1367(a).

**COUNT I – UNAUTHORIZED USE OF NAME OR LIKENESS
(INCLUDING VOICE) IN VIOLATION OF 42 Pa.C.S.A. § 8316**

72. The averments of Paragraphs 1 through 71 above are realleged and incorporated herein by reference.

73. Defendants Speight, Epic, Microsoft, Microsoft Studios, and The Coalition knew that the likeness and image (including, for example, such features as a derby hat) used for the avatar Augustus "Cole Train" Cole was not Lester Speight, but a different person.

74. Defendants Speight, Epic, Microsoft, Microsoft Studios, and The Coalition knew that the likeness and image (including, for example, such features as a derby hat) used for the avatar Augustus "Cole Train" Cole was not Lester Speight, but Plaintiff Lenwood Hamilton.

75. Defendants Speight, Epic, Microsoft, Microsoft Studios, and The Coalition knew that the voiceover used for the avatar Augustus "Cole Train" Cole was not Lester Speight, but a different person.

76. Defendants Speight, Epic, Microsoft, Microsoft Studios, and The Coalition knew that the voiceover used for the avatar Augustus "Cole Train" Cole was not Lester Speight, but Plaintiff Lenwood Hamilton.

77. Defendants Speight, Epic, Microsoft, Microsoft Studios, and The Coalition never requested or obtained written consent (or any consent) from Plaintiff Lenwood Hamilton to use his likeness, image or voice in the Gears of War video game series.

78. The likeness, image and voice of Plaintiff Lenwood Hamilton have commercial value in that Hamilton invested time, effort and money to promote his own persona as a professional football player, professional wrestler, public speaker, and operator of Soul City Wrestling, Inc., and related companies.

79. The conduct of the defendants in misappropriating the likeness, image and voice of Plaintiff Hamilton was outrageous and inexcusable, justifying punitive damages.

WHEREFORE, Plaintiff Lenwood Hamilton demands an accounting of damages, including a proportional percentage of the profits from the sales of the Gears of War video game series, plus punitive damages, plus costs of suit, and such other relief as the Court deems just under the circumstances.

**COUNT II – LANHAM ACT, § 43(a)(1)(A),
15 U.S.C. § 1125(a)(1)(A) – FALSE DESCRIPTION**

80. The averments of Paragraphs 1 through 79 above are realleged and incorporated herein by reference.

81. The Defendants, in connection with the promotion and sale of the Gears of War video game series in the United States and abroad, used the likeness, image and voice of Plaintiff Lenwood Hamilton, and falsely portrayed that it was the likeness, image and voice of Lester Speight, and their such actions were thus likely to cause mistake and deceive the public as to the real actor's identify of the avatar Augustus "Cole Train" Cole.

82. Plaintiff is entitled under 15 U.S.C. § 1117(a) to recover defendants' profits, a reasonable royalty, and costs of this action; the Court may treble the damages, if appropriate, and the Court may find that this is an exceptional case and award attorney's fees to Plaintiff.

WHEREFORE, Plaintiff Lenwood Hamilton demands an accounting of damages, including a proportional percentage of the profits from the sales of the Gears of War video game series, a reasonable royalty, treble damages, costs of suit, attorney's fees, and such other relief as the Court deems just under the circumstances.

**COUNT III – LANHAM ACT, § 43(a)(1)(B),
15 U.S.C. § 1125(a)(1)(B) – MISREPRESENTATION OF GOODS**

83. The averments of Paragraphs 1 through 82 above are realleged and incorporated herein by reference.

84. The Defendants, in connection with the promotion and sale of the Gears of War video game series in the United States and abroad, misrepresented the nature, characteristics and qualities of the Gears of War video game series in that they used the likeness, image and voice of Plaintiff Lenwood Hamilton, and falsely portrayed that it was the likeness, image and voice of Lester Speight, with regard to the real actor's identify of the avatar Augustus "Cole Train" Cole.

85. Plaintiff is entitled under 15 U.S.C. § 1117(a) to recover defendants' profits, a reasonable royalty, and costs of this action; the Court may treble the damages, if appropriate, and the Court may find that this is an exceptional case and award attorney's fees to Plaintiff.

WHEREFORE, Plaintiff Lenwood Hamilton demands an accounting of damages, including a proportional percentage of the profits from the sales of the Gears of War video game series, a reasonable royalty, treble damages, costs of suit, attorney's fees, and such other relief as the Court deems just under the circumstances.

COUNT IV - UNJUST ENRICHMENT

86. The averments of Paragraphs 1 through 85 above are realleged and incorporated herein by reference,

87. By using the likeness, image and voice of Plaintiff Lenwood Hamilton, Defendants have been unjustly enriched to the substantial detriment of Plaintiff Hamilton.

88. Defendants have retained the benefits under such circumstances as make it unjust and inequitable to retain them without paying Plaintiff Lenwood Hamilton the value of the benefits they unjustly acquired.

WHEREFORE, Plaintiff Lenwood Hamilton requests that this Court enter judgment in his favor and against Defendants, together with an award of compensatory damages, costs and such other and further relief as the Court deems appropriate under the circumstances.

COUNT V – MISAPPROPRIATION OF PUBLICITY

89. The averments of Paragraphs 1 through 88 above are realleged and incorporated herein by reference.

90. Defendants have used and appropriated Plaintiff Hamilton's valuable likeness, image and voice, without authorization, and for their own commercial advantage, in violation of his common law right of publicity.

91. The conduct of the defendants in misappropriating the likeness, image and voice of Plaintiff Hamilton was outrageous and inexcusable, justifying punitive damages.

WHEREFORE, Plaintiff Lenwood Hamilton demands an accounting of damages, including a proportional percentage of the profits from the sales of the Gears of War video game series, plus punitive damages, plus costs of suit, and such other relief as the Court deems just under the circumstances.

**COUNT VI – INVASION OF PRIVACY BY
MISAPPROPRIATION OF IDENTITY**

92. The averments of Paragraphs 1 through 91 above are realleged and incorporated herein by reference.

93. Defendants have used and appropriated Plaintiff Hamilton's valuable likeness, image and voice, without authorization, and for their own commercial advantage, in violation of his common law right of privacy.

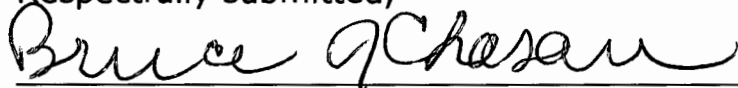
94. The conduct of the defendants in misappropriating the likeness, image and voice of Plaintiff Hamilton was outrageous and inexcusable, justifying punitive damages.

WHEREFORE, Plaintiff Lenwood Hamilton demands an accounting of damages, including a proportional percentage of the profits from the sales of the Gears of War video game series, plus punitive damages, plus costs of suit, and such other relief as the Court deems just under the circumstances.

JURY DEMAND

95. Plaintiff demands a jury for all issues triable to a jury.

Respectfully submitted,



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Attorney for Plaintiff Lenwood Hamilton

Dated: January 11, 2017