

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**ZENIMAX MEDIA INC. AND ID SOFTWARE
LLC,**

Plaintiffs,

v.

**SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC.,
AND SAMSUNG TELECOMMUNICATIONS
OF AMERICA**

Defendants.

Civil Action No.

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

Plaintiffs ZeniMax Media Inc. and id Software LLC (collectively “ZeniMax”) bring this Complaint against Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications of America (collectively “Samsung”), and allege as follows, upon personal knowledge as to themselves and upon information and belief as to all others:

NATURE OF THE ACTION

1. After years of research and the investment of millions of dollars, ZeniMax developed valuable intellectual property in the field of virtual reality (“VR”), including copyrighted computer code, software and hardware solutions, trade secrets, and technical know-how. This technology allows users to immerse themselves in virtual worlds for an unparalleled consumer experience.

2. John Carmack (“Carmack”), the former Technical Director at id Software LLC in Dallas, Texas, a wholly owned subsidiary of ZeniMax, headed ZeniMax’s VR research efforts in 2011 and 2012, seeking to address the technological challenges presented by VR. Carmack’s

employment at ZeniMax was governed by an employment agreement where he agreed (among other things) that all inventions created during the term of his employment, including copyrightable works and all other intellectual property, would be the sole and exclusive property of ZeniMax.

3. In May 2012, under the protection of a binding Non-Disclosure Agreement (“NDA”), ZeniMax provided Palmer Luckey (“Luckey”) and his company, Oculus VR, LLC (then Oculus LLC) (“Oculus”), with access to ZeniMax’s VR-related intellectual property. The NDA provided, among other things, that ZeniMax alone owned all the technology that it was disclosing, as well as any technology derived from it, and further provided that the technology could be used only as approved by ZeniMax.

4. At the time the NDA was executed, Oculus did not have a viable VR product. Oculus had a rudimentary headset that lacked fundamental VR functionality. To establish its VR business for its own commercial gain, Oculus breached the NDA, violated ZeniMax’s intellectual property rights, and exploited ZeniMax’s VR technology. Samsung, which had desired to release a mobile VR headset and sell greater quantities of its mobile devices, was aware, or reasonably should have been aware, that Oculus acquired its VR technology through this breach of the NDA and in violation of ZeniMax’s intellectual property rights. Despite this awareness, Samsung nonetheless obtained and used ZeniMax’s VR technology from Oculus, without ZeniMax’s consent.

5. Oculus’s conduct gave rise to a lawsuit filed in this Court against Oculus and Luckey in May 2014, *ZeniMax Media Inc. v. Oculus VR*, No. 3:14-cv-01849 (N.D. Tex.) (“the Oculus Action”), where a jury confirmed Oculus’s breach of its contractual obligations under the NDA, the infringement of ZeniMax’s copyrighted VR computer code, the unlawful conversion

of ZeniMax's property, and the false designation of ZeniMax's intellectual property.

6. The Oculus Action and the resulting \$500 million verdict were reported by the media, including *The New York Times*, *The Wall Street Journal*, and *USA Today*. The Oculus Action and the resulting verdict established that the Oculus VR software is tainted by Oculus's violations of ZeniMax's intellectual property rights and was obtained in violation of the NDA.

7. As a result of the Oculus Action, and the allegations and verdict therein, Samsung knows, or reasonably should know, that the Samsung Gear VR—a product marketed as being “powered by Oculus”—is based upon ZeniMax's intellectual property and includes information obtained by Samsung from Oculus, Luckey, and Carmack in violation of the NDA, ZeniMax's copyrights, and Carmack's employment agreement.

8. Notwithstanding its knowledge of the Oculus Action and the allegations and verdict therein, Samsung has used, and continues to utilize, ZeniMax's VR technology (or derivatives thereof) that was misappropriated by Oculus (now owned by Facebook) in its Samsung Gear VR which continues to be “powered by Oculus.”

9. At no time has Samsung ever obtained a license from ZeniMax or other lawful permission to use ZeniMax's intellectual property, and Samsung's ongoing use of ZeniMax's intellectual property amounts to a knowing and continuing misappropriation.

10. Samsung stands to realize substantial value as a result of its use of ZeniMax's misappropriated intellectual property and information obtained by Samsung from Oculus, Luckey, and Carmack in violation of the NDA and Carmack's employment agreement with ZeniMax.

11. Through this action, ZeniMax seeks damages and injunctive relief that will fairly and fully compensate it for Samsung's infringement and misappropriation of ZeniMax's

intellectual property, its unfair competition, its unjust enrichment, and for Samsung's continued interference with the contractual obligations that Oculus, Luckey, and Carmack owe ZeniMax. Without this relief, Samsung will continue to profit unjustly at ZeniMax's expense.

PRELIMINARY STATEMENT

12. Video game programmers spent decades trying but failing to create a commercially viable VR device that allows users to explore immersive virtual worlds. Prior to 2012, commercially available VR devices were of poor quality and failed to provide a captivating VR experience. In 2012, however, ZeniMax made important breakthroughs in VR hardware and software that made a truly immersive commercial VR device feasible. Wearing goggle-like headsets or head mounted displays ("HMDs") that provide video and sensor input, users could navigate a virtual world simply by turning their head to look left or right, up or down. There were substantial complex technical difficulties associated with rendering an imaginary world in a convincing and natural way, and without optical distortion. There were additional technical difficulties simultaneously coordinating a user's movements with the view presented on-screen without introducing a disorienting delay between the user's action and the corresponding change in display. ZeniMax made key breakthroughs in solving these and other significant technical challenges in early 2012, and revealed its VR technology in a demonstration to the press and others, in its booth, by appointment only, at a major industry convention, the Electronic Entertainment Expo ("E3"), held that June in Los Angeles. This VR demonstration resulted in widespread acclaim and generated significant publicity.

13. ZeniMax had invested significant human and financial resources researching and developing VR technology. In 2011 and 2012, Carmack, then Technical Director at id Software in Dallas, Texas, a wholly owned subsidiary of ZeniMax, headed ZeniMax's VR research efforts, seeking to address the technological challenges presented by VR. Carmack and other

ZeniMax employees conducted this research at ZeniMax offices, on ZeniMax computers, and using ZeniMax resources. All VR work performed by Carmack, under the terms of his employment agreement, is owned entirely by ZeniMax alone.

14. In 2012, after developing the breakthrough VR solutions using proprietary software, Carmack began experimenting with various lenses and HMDs to optimize the immersive VR experience. On an online forum, Carmack encountered Luckey, a self-described VR “hobbyist,” who assembled a primitive HMD called the “Rift.” Carmack asked Luckey for his HMD which was not functional and did not contain all of the hardware or any of the software needed for a VR experience, but had a pair of inexpensive wide optic lenses embedded in the HMD. Luckey sent Carmack his HMD and asked if ZeniMax would be willing to show its VR demonstration to him. ZeniMax demanded that Luckey sign a binding NDA which (i) prohibited any use of ZeniMax technology except as approved by ZeniMax, (ii) provided that ZeniMax alone owned all the intellectual property it disclosed to Luckey, and (iii) further provided that ZeniMax owned all work derived from its proprietary VR technology. Pursuant to that NDA, Luckey gained access to ZeniMax’s VR technology. Luckey and his company—then called Oculus LLC—commercialized ZeniMax’s VR technology. Oculus was the corporate embodiment of Luckey, and was found by the jury in the Oculus Action to be bound by the terms of the NDA.

15. In the fall of 2012, ZeniMax and Oculus began negotiations about a potential business arrangement to compensate ZeniMax for Oculus’s desired use of ZeniMax’s VR technology. During this time, Oculus continued to obtain ZeniMax’s proprietary software and intellectual property from Carmack which was then subsequently incorporated into the Oculus software developer kit (“SDK”). An SDK permits programmers to make use of new hardware by

providing the technical specifications by which a computer communicates with that hardware, as well as programming code that allows utilization of the hardware's functions.

16. Despite Carmack's repeated transfer of ZeniMax's VR technology and know-how to Oculus, Oculus refused to compensate ZeniMax for the technology it used in developing Oculus's VR product. ZeniMax tried for months to reach an acceptable business agreement with Oculus, but no resolution was reached and negotiations broke down. Oculus has never provided ZeniMax any compensation whatsoever and never received ZeniMax's permission to use any of ZeniMax's intellectual property or other confidential information.

17. In early 2013, Carmack was instructed to stop helping Oculus unless and until Oculus compensated ZeniMax fairly for its VR technology. Carmack continued to assist and communicate with Oculus secretly. Carmack ultimately quit his full-time employment at ZeniMax in late June 2013. Before leaving, without ZeniMax's permission and in violation of his employment agreement, Carmack stole thousands of ZeniMax's confidential documents and millions of lines of confidential code from ZeniMax.

18. Following his term as a full-time employee at ZeniMax, Carmack briefly worked as a technical advisor on a part-time basis at ZeniMax. In early August 2013, Carmack became Oculus's Chief Technology Officer ("CTO").

19. The code and confidential documents stolen by Carmack from ZeniMax permitted Oculus to secretly develop a mobile software developer kit ("Mobile SDK") and related software for the Samsung Gear VR. This Mobile SDK and related software—obtained and utilized by Samsung from Oculus—uses ZeniMax's trade secrets and copyrighted code and was obtained by Oculus (and subsequently by Samsung) in violation of the contractual obligations owed by Oculus and Luckey to ZeniMax under the NDA and in violation of the contractual obligations

owed by Carmack under his employment agreement with ZeniMax.

20. On May 21, 2014, ZeniMax commenced the Oculus Action, alleging (among other things) that Oculus had breached the NDA, misappropriated ZeniMax's intellectual property, and infringed ZeniMax's copyrights.

21. The filing of the Oculus Action was reported in the national media, including in *The New York Times*, *The Wall Street Journal*, and *USA Today*. Samsung was aware, or reasonably should have been aware, of the Oculus Action when it was filed.

22. On September 3, 2014, months after ZeniMax filed the Oculus Action, and with full knowledge of ZeniMax's allegations that Oculus, Luckey, and Carmack had misappropriated ZeniMax's VR technology, breached their contractual obligations governing the use of ZeniMax's VR technology, and infringed ZeniMax's copyrights, Samsung announced the Gear VR, a mobile VR product that would be "powered by" Oculus VR software (i.e., ZeniMax's VR technology). Samsung had licensed or otherwise received from Oculus VR technology which it knew, or reasonably should have known, included copyrighted code, trade secrets, and other intellectual property that Oculus had misappropriated from ZeniMax, and that was obtained in violation of the NDA and Carmack's employment agreement.

23. Samsung has never obtained any permission, right or license from ZeniMax to use any of ZeniMax's copyrighted code, trade secrets, or other intellectual property.

24. Samsung has never paid any royalty to ZeniMax for the use of any of ZeniMax's copyrighted code, trade secrets or other intellectual property.

PARTIES

25. Plaintiff ZeniMax Media Inc. is a Delaware corporation with its principal place of business in Rockville, Maryland.

26. Plaintiff id Software LLC, a wholly-owned subsidiary of ZeniMax Media Inc., is

a Delaware limited liability company with its principal place of business in Richardson, Texas.

27. On information and belief, Defendant Samsung Electronics Co., Ltd. is a corporation organized under the laws of the Republic of Korea, with a principal place of business at 129, Samsung-ro, Yeongtong-gu, Suwon-si, Gyeonggi-do, South Korea.

28. On information and belief, Defendant Samsung Electronics America, Inc. is a wholly-owned subsidiary of Samsung Electronics Co., Ltd. and a limited liability company organized under the laws of New York, with a principal place of business at 85 Challenger Road, Ridgefield Park, New Jersey 07660.

29. On information and belief, Defendant Samsung Telecommunications America, LLC is a wholly-owned subsidiary of Samsung Electronics Co., Ltd. and a limited liability company organized under the laws of Delaware, with a principal place of business at 1301 East Lookout Drive, Richardson, Texas 75082.

JURISDICTION AND VENUE

30. The Court has jurisdiction in this Action pursuant to 28 U.S.C. § 1338(a) because this is a civil action arising under 17 U.S.C. § 101 et seq. (federal copyright law) and the Federal Defense of Trade Secrets Act, 18 U.S.C. § 1832 et seq. The Court has supplemental jurisdiction over claims arising under the laws of Texas pursuant to 28 U.S.C. § 1367 because ZeniMax's claims are so related to the claims within the Court's original jurisdiction that they form part of the same case or controversy under Article 3 of the United States Constitution.

31. This Court has personal jurisdiction over Samsung. Samsung has continuous and systematic business contacts with the State of Texas. Samsung, directly or through subsidiaries or intermediaries (including distributors, retailers, and others), conducts business extensively throughout Texas, by shipping, distributing, offering for sale, selling, and advertising (including the provision of interactive web pages) its products and services in the State of Texas and the

Northern District of Texas. Samsung, directly and through subsidiaries or intermediaries (including distributors, retailers, and others), has purposefully and voluntarily placed infringing products—including the Samsung Gear VR—into this District and into the stream of commerce with the intention and expectation that they will be purchased and used by consumers in this District.

32. Venue is proper in this District because (1) a substantial part of the events giving rise to the claims occurred in the Northern District of Texas; and (2) Samsung conducts substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringement alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in Texas. *See* 28 U.S.C. § 1391(b) and (c) and 1400(a).

FACTS

A. ZeniMax Acquires id Software, Richly Compensating Carmack As Part Of The Acquisition

33. ZeniMax was founded in 1999 as the parent company of Bethesda Softworks, a developer and publisher of video games. In the years that followed, ZeniMax established and acquired highly-regarded video game studios and game franchises, bringing together world-class artists, producers, designers, engineers, and programmers to create industry best-in-class video games for its global publishing business. From the beginning, ZeniMax and its studios focused on pushing the boundaries of technology, achieving significant technical breakthroughs and developing industry-changing innovations.

34. id Software Inc., a video game development studio, was formed in 1991. id Software Inc. was formed by four founding shareholders, including Carmack, a skilled computer programmer who has spent most of his professional career developing technology for video

games. id Software Inc., then located in Mesquite, Texas, became a leading studio in the gaming industry recognized for its development of popular video game franchises, including *DOOM*®, *Quake*®, *Wolfenstein*®, and *RAGE*®.

35. In a transaction that closed on June 23, 2009 (the “Acquisition”), ZeniMax acquired id Software Inc., including all of its intellectual property and related assets. The id Software Inc. assets were thereafter held by Plaintiff id Software LLC, a wholly-owned subsidiary of ZeniMax that took over the business operations of id Software Inc. and continues to be wholly owned by ZeniMax.

36. In agreeing to acquire id Software Inc., ZeniMax recognized the value of id Software’s existing intellectual property rights, skilled work force, and its potential to continue to generate world-class technology and video games in the future. The parties to the transaction executed an Asset Purchase Agreement that specifically described the rights, obligations, and duties of each of the sellers (including Carmack) as well as the buyer, ZeniMax, with regards to the Acquisition.

37. The Asset Purchase Agreement provided ZeniMax with clear and unencumbered right, title, and interest in and to all of id Software’s rights, claims, properties, and interests. Section 2.01 of that Agreement specifically enumerated the intellectual property and franchise assets that the sellers (including Carmack) would convey to ZeniMax and which ZeniMax alone would own because of the Acquisition. Those assets conveyed to ZeniMax included (but were not limited to) the following:

- a. “All intellectual property rights of the Sellers of any kind or description, including DOOM, QUAKE, RAGE, WOLFENSTEIN, COMMANDER KEEN, ID, ID SOFTWARE, ORCS & ELVES, id Tech, and the id Tech engine”; . . . and
- b. “Trade secrets (as such are determined under applicable Law), know-how and other confidential business information, including technical information, marketing plans, research designs, plans, methods, techniques, and processes, any and all technology, customer and supplier lists, new business opportunities, computer software programs or applications, in both source and object code form, technical documentation of such software programs, statistical models, e-mails lists, inventions, sui generis database rights, databases, and data, whether in tangible or intangible form and whether or not stored, compiled or memorialized physically, electronically, graphically, photographically, or in writing.”

38. In Section 4.08 of the Asset Purchase Agreement, the sellers (including Carmack) expressly disclaimed any ongoing rights in or to the intellectual property conveyed in the transaction.

39. In addition, in Section 9.01 of the Asset Purchase Agreement, the sellers (including Carmack) expressly agreed to maintain the confidentiality of id Software’s confidential information going forward.

40. Under the Asset Purchase Agreement, Carmack was to receive tens of millions of dollars.

B. Carmack’s Employment at ZeniMax

41. As part of the Acquisition, ZeniMax entered into employment agreements with id Software’s employees, including Carmack. Carmack’s employment agreement with ZeniMax

was dated May 19, 2009, and extended until June 21, 2013. Pursuant to his employment agreement, Carmack received substantial payments for his employment by ZeniMax.

42. Carmack's employment agreement contained several provisions relevant to this action that Carmack would later violate. *First*, Carmack was required to disclose to ZeniMax all inventions relating to ZeniMax's current or anticipated research and development that Carmack created during the term of his employment. Carmack agreed that these inventions, including copyrightable works and other intellectual property, would be the sole and exclusive property of ZeniMax. Specifically, Carmack agreed that ZeniMax would be the author and owner of any copyrightable works, including software, prepared within the scope of his employment. Carmack assigned all rights in his work to ZeniMax alone.

43. *Second*, Carmack agreed that prior to the termination of his employment, he would promptly and completely return to ZeniMax all data, documents, and other company property to ZeniMax, and that after termination of his employment he would not retain any copies of any ZeniMax property for any reason.

44. *Third*, Carmack agreed not to recruit or otherwise solicit ZeniMax employees to leave their employment at ZeniMax.

45. Carmack owed fiduciary duties to ZeniMax, and he expressly agreed that he would comply with and be bound by ZeniMax's Employee Handbook, ZeniMax's Code of Conduct, and other company policies, which required Carmack to conduct himself in an honest and ethical manner and prohibited him from profiting by personally exploiting ZeniMax's assets.

46. ZeniMax invested significant resources into research and development projects. During the course of his work at ZeniMax, Carmack took the lead on researching and developing VR technology.

47. By March 2012, ZeniMax's research and development, under Carmack's direction, had yielded valuable and confidential know-how about how to develop, combine, and optimize hardware, firmware, and software for an immersive and commercially viable VR experience.

48. In March 2012, Carmack told colleagues that he would be demonstrating the capabilities of ZeniMax's VR technology in ZeniMax's booth, by appointment only, at the upcoming industry trade show, E3, in June 2012 and that it would be "the best damn VR demo the world has ever seen." At that time, Carmack had had no contact with Luckey or Oculus.

C. Carmack's Entanglements with Oculus

49. In April 2012, Carmack began communicating with Luckey. Luckey was a young, inexperienced hardware enthusiast who had assembled a simple head-mounted display that he called the "Rift." Among other things, the Rift was not a VR headset and did not provide a VR experience. The Rift lacked a sensor and the critical software written by Carmack at ZeniMax, which solved complex VR technical issues. Carmack used ZeniMax's proprietary VR technology to transform Luckey's primitive Rift HMD into a powerful, immersive VR experience.

50. In order to protect its proprietary VR Technology, and before Carmack was able to disclose any proprietary information to Luckey, ZeniMax required Luckey to sign a binding NDA, effective May 24, 2012. That NDA prevented the use of ZeniMax technology except as approved by ZeniMax, and further provided that ZeniMax was the sole owner of all the VR technology it might disclose under the NDA, as well as the owner of all work based on that disclosed technology.

51. The NDA defines ZeniMax's "Proprietary Information" as follows:

1. Proprietary Information. *“Proprietary Information”* means all information and know-how, regardless of whether or not in writing, of a private, secret or confidential nature that relates to the business, technical or financial affairs of the Disclosing Party, its parent, subsidiaries, affiliates, licensors, customers, potential customers, suppliers or potential suppliers provided or disclosed to the Receiving Party or which becomes known to the Receiving Party, whether or not marked or otherwise designated as “confidential”, “proprietary” or with any other legend indicating its proprietary nature. Proprietary Information includes, by way of illustration and not limitation, all forms and types of financial, business, scientific, technical, or engineering information, including patterns, plans, compilations, inventions and developments, products, formulas, designs, prototypes, methods, techniques, processes, procedures, computer programs and software (whether as source code or object code), documentation, technologies, plans, research, marketing, and reports, other technical information relating to the Disclosing Party’s business, and any information not generally known to the public or within the industry or trade in which the Disclosing Party competes, whether tangible or intangible, and whether or not stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing.

52. The NDA prohibited the use or disclosure of ZeniMax’s Proprietary Information, including its trade secrets, as follows:

2. Duties.

a. Maintenance of Confidentiality. With respect to the Disclosing Party’s Proprietary Information, the Receiving Party undertakes and agrees that Receiving Party shall secure and keep such Proprietary Information strictly confidential and:

[...]

(ii) Restrict disclosure to those of its directors, officers, employees or attorneys who clearly have a need-to-know such Proprietary Information, and then only to the extent of such need-to-know, and only in furtherance of the Proper Purpose;

(iii) Use such Proprietary Information only for the Proper Purpose and not disclose such Proprietary Information other than as set forth above unless the Disclosing Party shall have expressly authorized such disclosure in advance in writing; and

(iv) Not use any Proprietary Information to compete or obtain any competitive or other advantage with respect to the Disclosing Party.

53. Luckey executed and agreed to be bound by all of the terms and conditions in the NDA.

54. In June 2012, Luckey formed his company, Oculus LLC, which was also bound by the terms of the NDA, as found by the jury in the Oculus Action.

55. After execution of the NDA, and pursuant to the provisions therein, Carmack initially transferred critical portions of ZeniMax's code to Oculus via a file transfer protocol.

56. ZeniMax's VR technology, provided through Carmack, was instrumental to Oculus in creating its VR business. Oculus coder Peter Giokaris, for example, cut and pasted ZeniMax code into Oculus's code repository where he was implementing code for specific VR technical solutions. Only one day after receiving ZeniMax's code, Oculus coder Lee Cooper was able to complete a solution for chromatic aberration that he had been working on unsuccessfully for many months.

57. In the summer of 2012, ZeniMax and Oculus discussed the need for a business arrangement under which ZeniMax would be fairly compensated for the value of its VR technology supplied by Carmack under the NDA to Oculus. Months of negotiations proved fruitless, and by January 2013, it became clear to ZeniMax that Oculus would not agree to compensate ZeniMax fairly for the value of its VR technology.

58. While the business negotiations between ZeniMax and Oculus were ongoing, Carmack secretly continued to provide extensive VR code, advice, and technical assistance to Oculus, all of which was work product owned by ZeniMax and subject to the NDA. For example, in August 2012, Carmack communicated directly with Oculus's Chief Software Architect, Michael Antonov ("Antonov"), and provided critical advice on solving VR problems encountered using ZeniMax's VR technology. In August 2012, Carmack invited Oculus's VP of Product Development, Nate Mitchell ("Mitchell"), to id Software's offices for a meeting, during which Carmack permitted Mitchell to download ZeniMax's VR technology onto an Oculus

desktop computer with a large storage capacity. Over the course of the ensuing months, Carmack provided guidance to Antonov and other Oculus software engineers and provided detailed guidance on what solutions worked (and did not work). Oculus engineers copied ZeniMax code because they were unable on their own to solve the technical challenges posed by VR.

59. On January 14, 2013, with the negotiations between ZeniMax and Oculus stalled, Carmack was instructed in writing to discontinue any further assistance to Oculus in creating its VR product until a satisfactory business arrangement could be reached. Although Carmack indicated that he would remain loyal to ZeniMax, unbeknownst to ZeniMax at the time, Carmack made this pledge with no intention of honoring it. This pledge allowed Carmack to maintain access to ZeniMax's proprietary VR technology and resources that he provided to Oculus in violation of his employment agreement.

60. On March 17, 2013, unbeknownst to ZeniMax, Carmack created a personal, non-id Software email account that he used to communicate with Oculus CEO Brendan Iribe ("Iribe"), among others. Carmack advised Iribe that his new personal email address should "be used for any non Id Software related conversations." Carmack admitted during the Oculus Action that at the time he sent this e-mail, he intended to leave ZeniMax to work for Oculus as soon as his employment contract with ZeniMax expired in June 2013.

D. Carmack's Efforts at ZeniMax to Apply ZeniMax's VR Software to a Mobile Device

61. While still employed at ZeniMax, Carmack worked on applying ZeniMax's VR technology to mobile devices.

62. On July 31, 2013, Carmack brought a former ZeniMax employee and friend, Matt Hooper ("Hooper"), who had been fired by ZeniMax, back into id Software's offices after hours to "talk about Oculus." Carmack was aware of the comprehensive security measures ZeniMax

had to protect the confidentiality of its intellectual property, security measures Carmack knowingly and intentionally violated. After providing Hooper access to the locked premises, Carmack left Hooper unattended, free to examine ZeniMax confidential materials, at which point Hooper went alone into offices where ZeniMax maintained and stored confidential information. Later that night, Hooper emailed his contacts at Oculus disclosing that he and Carmack formulated an “attack plan” for the mobile VR work that they would undertake together at Oculus, and which Oculus would subsequently provide to Samsung. Hooper’s presence in ZeniMax’s offices was not disclosed by Carmack and was only discovered in a review of security tapes.

63. After Carmack’s employment contract with ZeniMax expired on June 21, 2013, Carmack took a position as Oculus’s Chief Technology Officer. Carmack, however, continued working in the summer of 2013, under a three-month agreement as a part-time technical advisor at id Software, which facilitated Carmack’s continued access to the studio’s offices and computer network and equipment.

64. During the final days of his full-time employment with ZeniMax, Carmack stole approximately 10,000 documents belonging to ZeniMax, including thousands of lines of source code from ZeniMax, by copying them to a USB drive without ZeniMax’s knowledge or permission. These documents and millions of lines of source code on a laptop taken by Carmack contained ZeniMax’s proprietary and confidential intellectual property. Carmack subsequently took that USB drive and laptop to Oculus and copied the documents to an Oculus computer on which Carmack worked.

E. Carmack Leads Oculus’s “Secret Project” with Samsung That Uses ZeniMax’s VR Technology in What Would Become the Samsung Gear VR

65. By October of 2013, if not long before, unbeknownst to ZeniMax, Oculus and

Samsung were working in secret on Samsung's mobile VR product, the Samsung Gear VR. On October 18, 2013, Carmack told industry sources that he was primarily working on a new "secret project" at Oculus, refusing to divulge further details. ZeniMax had no knowledge of what this "secret project" entailed or otherwise related to at this time.



"I'm mostly focused right now actually on a secret project I can't talk that much about inside Oculus... I'm working on core technology on something I can't actually talk about right now, it will be rolling into a bunch of important things."

(Interview, Oculus Rift's John Carmack Says a New Rift Dev Kit Is in the Works, Sees Consumer Model Running Android, available at <https://www.engadget.com/2013/10/18/oculus-rift-john-carmack-interview/> (published October 18, 2013)).

66. Not until months later would this "secret project" be revealed by Carmack to be Samsung's new mobile VR product, the Samsung Gear VR. At this time ZeniMax had no knowledge of the still-secret Gear VR or of Carmack's and Oculus's secret ongoing collaboration with Samsung.

67. In creating the Samsung Gear VR, Carmack and Oculus used the VR code and proprietary techniques that Carmack had developed while employed at ZeniMax, and which were ZeniMax's exclusively owned intellectual property. Carmack confirmed this in later sworn testimony, when he admitted that he merely "reimplemented" the same copyrighted code he had

created while an employee of ZeniMax when he created the Oculus VR software used in the Samsung Gear VR, including an SDK designed for Samsung mobile devices (the “Mobile SDK”) and related software.

68. On April 10, 2014, during the pendency of Carmack’s still-secret work for Oculus on the Samsung Gear VR, including the Mobile SDK and related software, ZeniMax sent a cease-and-desist letter to Oculus notifying it of possible litigation and requesting that “Oculus and persons associated with Oculus take immediate measures to preserve evidence.”

69. On April 18, 2014, in response to ZeniMax’s demand letter, Oculus’s in-house counsel sent an email to Oculus employees, including Carmack, informing them of the threat of imminent litigation from ZeniMax. On April 24, 2014, ZeniMax received confirmation from Oculus that all relevant evidence in their possession, custody, and control was being preserved.

70. Upon receipt of the notice of imminent litigation on April 18, 2014, Carmack immediately began to cover his tracks by destroying crucial evidence. Less than 24 hours after receiving the litigation notice, Carmack typed the following search on his computer: “how do you wipe a hard drive on mac os x.” At some time shortly thereafter (around April 22, 2014), Carmack intentionally wiped the hard drive of his Mac computer.

71. On April 19, 2014, still less than 24 hours after receiving the litigation notice, and while continuing to draft the code for the Samsung Gear VR, Carmack wrote and published the following tweet: “When you’re in a hurry and you know you wrote the exact needed code (well!) at a previous job, reimplementatation grates.”

72. During the Oculus Action, Carmack testified that his April 19, 2014 tweet referred to work he was doing to reimplement VR code that he had previously written for ZeniMax. Carmack admitted in testimony that the ZeniMax’s VR code, the intellectual property

rights for which were owned exclusively by ZeniMax, was reimplemented by Carmack while at Oculus to create the software that performs VR in the Samsung Gear VR. Carmack's work with this code was used in the development of the Samsung Gear VR—work that is comprised of and represents ZeniMax's intellectual property.

73. Many months into discovery in the Oculus Action, ZeniMax discovered that Carmack's theft went even further. After falsely testifying in one deposition that he was not in possession of any other computers with ZeniMax code, Carmack admitted at a second deposition that he was in possession of yet another Macbook onto which he had copied the source code for ZeniMax's *RAGE* video game, including the proprietary *id Tech 5* engine owned by ZeniMax. This engine represented a significant ZeniMax investment. Carmack used this other Macbook and the *id Tech 5* engine it contained while working on mobile VR for Oculus to write code that would later be implemented in the Samsung Gear VR.

74. To help him utilize ZeniMax's mobile VR technology on the Samsung Gear VR, including the Mobile SDK and related software, and in violation of his employment agreement, Carmack recruited at least five of his former co-workers, to leave ZeniMax and join Oculus in violation of the non-solicitation provisions of his employment agreement.

75. On March 25, 2014, Facebook, Inc. ("Facebook") announced a proposed acquisition of Oculus for \$2 billion in cash and stock. As Facebook CEO Mark Zuckerberg later confirmed, the final acquisition value was approximately \$3 billion. This acquisition for billions of dollars confirms the market value of the intellectual property developed by Carmack (and owned by ZeniMax) and that Carmack provided to Oculus pursuant to the NDA.

F. ZeniMax's Lawsuit Against Oculus

76. On May 21, 2014, ZeniMax filed the Oculus Action against Oculus for its unlawful use of its intellectual property. Among other claims, the Oculus Action publicly

accused Oculus of infringing ZeniMax copyrights, violating the NDA, and misappropriating other ZeniMax intellectual property. ZeniMax's filing of the Oculus Action and the underlying accusations were reported by industry-specific media outlets and the national media, including in *The New York Times*, *The Wall Street Journal*, and *USA Today*.

77. Based on the public nature of the complaint, as well as the extensive press coverage it received, Samsung knew, or reasonably should have known, of the allegations in the Oculus Action shortly after it was filed.

78. ZeniMax's complaint specifically and publicly alleged that Carmack "made breakthrough modifications" and "improvements" to the Oculus Rift by applying "proprietary solutions to address field of view, center of projection, and chromatic aberration issues," and programming "software to reduce latency and prevent distortion." These are a few of the very same solutions owned by ZeniMax that Oculus, Luckey, and Carmack provided to Samsung and that Samsung—with the assistance of Oculus, Luckey, and Carmack—implemented in the Samsung Gear VR, including the Mobile SDK.

79. Due to the public nature of these allegations, Samsung knew or reasonably should have known of ZeniMax's allegations that Oculus and Luckey were continually receiving "ZeniMax's accumulated proprietary information, trade secrets, and know-how" for implementation in Oculus products and that ultimately Oculus used ZeniMax's VR Technology to create a SDK that provided programmers with the "technical specifications by which a computer communicates with the device."

80. Due to the public nature of these allegations, Samsung knew, or reasonably should have known at least as of May 21, 2014, of ZeniMax's allegations that Oculus's VR code, which Samsung was planning on using for its Gear VR, was tainted with code that infringed

ZeniMax's copyrights, was created in violation of the NDA, and contained misappropriated ZeniMax's trade secrets.

81. Due to the public nature of these allegations, Samsung knew, or reasonably should have known at least as of May 21, 2014, of the key terms of the NDA—including the fact that all trade secrets and confidential information disclosed by ZeniMax to Oculus pursuant to the NDA remained the sole property of ZeniMax. For instance, ZeniMax alleged that Carmack had “agreed to disclose to ZeniMax inventions relating to the company’s current or anticipated research and development,” and that “all such inventions would be the exclusive property of ZeniMax.”

82. Based on Carmack’s tweet on April 19, 2014, which ZeniMax included in the original complaint filed in the Oculus Action a month later, Samsung knew, or reasonably should have known, that Carmack was re-implementing the “exact” code that he had written during his employment at ZeniMax while working on the “secret” Gear VR project for Samsung, and that this code continued to be owned by ZeniMax. These allegations should have alerted Samsung to the fact that ZeniMax, not Oculus, Luckey or Carmack, was the owner of the proprietary solutions and intellectual property that Carmack was disclosing to Oculus and which Oculus was, in turn, wrongfully providing to Samsung as part of the collaboration related to the Samsung Gear VR.

83. Notwithstanding that Samsung knew or reasonably should have known at least as of May 21, 2014, that ZeniMax, not Oculus, Luckey or Carmack, was the owner of the proprietary solutions and intellectual property that Carmack was disclosing to Oculus and which Oculus was, in turn, disclosing to Samsung as part of the collaboration related to the Samsung Gear VR, Samsung continued to develop the Gear VR with full knowledge of ZeniMax’s

allegations and without obtaining any right or permission from ZeniMax to use any of its copyrights or other confidential information.

G. Samsung Releases the Samsung Gear VR

84. On September 3, 2014, months after ZeniMax had brought suit against Oculus in the Oculus Action and publicly alleged that Oculus had taken its proprietary VR technology and breached contractual agreements owed by Oculus, Luckey and Carmack to ZeniMax, Samsung first announced its Gear VR product at its “Samsung Unpacked Event” in Berlin, Germany. (Video, *Samsung Unpacked 2014 episode 2 IFA Berlin 2014 – Galaxy Note 4, Gear VR, Gear S*, available at <https://www.youtube.com/watch?v=v1ypaxnWLB0> (published September 5, 2014)).

85. The Gear VR is a mobile VR product that utilizes a Samsung cellphone as both the display and processor, housed in a headset also sold by Samsung. The Samsung Gear VR makes use of the Mobile SDK and related software and is labeled as being “powered by Oculus.”

86. During the September 3, 2014 press conference, Samsung announced that the Gear VR was created in partnership with Oculus, with Oculus software “powering” the VR experience. Carmack was personally called on stage where he admitted that the Gear VR was the “secret project” that he had been working on for the past year of his life. (Video, *Samsung’s Unpacked 2014 Episode 2 Event*, available at <https://www.youtube.com/watch?v=5c1CGkM-a8U> (published September 2, 2014)).

87. Prior to this September 3, 2014 announcement, Samsung had not disclosed to ZeniMax or the public the existence of its Gear VR product or its collaboration with Carmack and Oculus.

88. On September 3, 2014, the same day as the Samsung Unpacked Event, Oculus released statements regarding the Samsung Gear VR, confirming that “John Carmack and the mobile team here at Oculus have spent the last year spearheading this effort. That time was split

between developing a new Oculus Mobile SDK and optimizing Android and the underlying GPU drivers for virtual reality.” (Article, *Introducing the Samsung Gear VR Innovator Edition*, available at <https://www3.oculus.com/en-us/blog/introducing-the-samsung-gear-vr-innovator-edition/> (published September 3, 2014)).

89. In the same press release, Oculus stated that the Gear VR was “powered by” Oculus’s software including the Mobile SDK: “The Gear VR is powered by the new Oculus Mobile SDK, and also uses variations of the Oculus Tracker and firmware built into the headset for extremely accurate, ultra low-latency 3DOF tracking. It’s impossible to deliver a high quality mobile experience without this kind of deep end-to-end hardware, software, and firmware optimization.” *Id.*

90. Prior to this September 3, 2014 announcement, neither Oculus nor Carmack had disclosed to ZeniMax or the public the existence of Samsung’s Gear VR product or its collaboration with Samsung.

91. On December 8, 2014, Samsung released an early version of the Gear VR, the “Gear VR: Innovator Edition” using Oculus software. This edition was “powered by Oculus,” included the Mobile SDK and related software, and was available for sale at retail stores targeted specifically to early adopters.

92. On November 20, 2015, Samsung began shipping the full version of the Gear VR, which is now marketed to all consumers. This version like the “Innovator Edition” is “powered by” the Oculus software and makes use of the Mobile SDK and related software.

93. On February 21, 2016, Facebook’s CEO Mark Zuckerberg presented Samsung’s keynote address, discussing the deep partnership between Samsung and Oculus in the area of mobile VR:



(Video, *Mark Zuckerberg talks at Samsung Galaxy Unpacked 2016: VR is the next social platform*, available at <https://www.youtube.com/watch?v=6ABwSBsgNKU> (March 30, 2016)).

94. On February 1, 2017, the jury in the Oculus Action returned a \$500 million verdict against the defendants in that case. Not only did the jury find that Oculus is bound by the NDA signed by its founder, Palmer Luckey, it found, among other things, that Oculus infringed ZeniMax's copyrights and violated contractual obligations owed to ZeniMax. Carmack was found by the jury to be liable for conversion based on his theft of ZeniMax's code and documents.

95. The verdict confirmed not only that Oculus had been bound by the NDA signed by Luckey, but that Oculus had violated both the NDA and ZeniMax's intellectual property rights (including being found to infringe ZeniMax's copyrights).

96. Due to the public nature of the verdict and the extensive press coverage thereof, Samsung was aware, or reasonably should have been aware, of the verdict at the time it was issued or shortly thereafter.

97. On April 21, 2017, undeterred by its knowledge of the jury's findings in the Oculus Action, Samsung released a new version of the Gear VR, still "powered by Oculus" and still using the Mobile SDK and related software—and making use of the same ZeniMax

technology that the jury determined was obtained by Oculus in violation of the NDA and ZeniMax's intellectual property rights (including ZeniMax's copyrights). Samsung has marketed, promoted, and sold the Gear VR extensively in the United States and worldwide.

COUNTS

COUNT 1 – Copyright Infringement

98. ZeniMax incorporates by reference all preceding and succeeding paragraphs of this complaint.

99. ZeniMax owns and has a valid copyright in the “*DOOM 3: BFG Edition*” computer program. A true and correct copy of the certificate of copyright registration, Copyright Registration No. PA0001851913, is attached as Exhibit 1.

100. ZeniMax owns and has valid copyrights in “*ZeniMax VR Testbed Code*,” “*ZeniMax VR Implementation Code*,” and “*ZeniMax VR Implementation Code - Assets*.” A true and correct copy of the certificates of copyright registration, Copyright Registration Nos. TXu 1-897-004, TXu 1-897-005, and TXu 1-992-013 are attached as Exhibits 2, 3, and 4 respectively.

101. ZeniMax's “*DOOM 3: BFG Edition*” computer program, “*ZeniMax VR Testbed Code*,” and “*ZeniMax VR Implementation Code*” (collectively, “ZeniMax Copyrighted Materials”) contain computer code that embodies ZeniMax's VR technology and constitute copyrightable subject matter within the meaning of 17 U.S.C. §102.

102. Samsung had access to ZeniMax Copyrighted Materials through current and former ZeniMax employees, through individuals (including Carmack and Luckey) under obligations of confidentiality to ZeniMax, and otherwise as a result of its partnership with Oculus.

103. Without authorization, Samsung has copied, publicly displayed, and distributed products, such as its Gear VR product, that utilize or are derived from ZeniMax's Copyrighted

Materials in whole or in part, and will continue to do so.

104. Products of Oculus, such as the Mobile SDK and related software required for the Samsung Gear VR to function, are substantially similar to the protected elements of ZeniMax's Copyrighted Materials.

105. Samsung has no license or any other form of permission to commercially copy, sell, license or distribute the ZeniMax Copyrighted Materials.

106. At least as a result of the Oculus Action, and certainly by the date of the jury's verdict in that litigation (February 2017), Samsung knew, or reasonably should have known, that the Oculus products utilized or were derived from ZeniMax's Copyrighted Materials.

107. As the distributor of the Gear VR, Samsung had and has a financial interest in the sale of the Gear VR.

108. Samsung's acts of direct, contributory, and/or vicarious copyright infringement are willful, deliberate, and in utter disregard of ZeniMax's copyrights, pursuant to the Copyright Act, 17 U.S.C. § 504.

109. Samsung's acts of direct, contributory, and/or vicarious copyright infringement have caused and will continue to cause damages to ZeniMax in an amount to be determined.

COUNT 2 – Texas State Trade Secret Misappropriation

110. ZeniMax incorporates by reference all preceding and succeeding paragraphs of this Complaint.

111. ZeniMax is the owner of valid and enforceable trade secrets in the ZeniMax mobile VR technology ("ZeniMax Trade Secrets") and general VR technology that has been altered for use on other mobile VR platforms (a process known as "porting"), including but not limited to: confidential programming code, methods, plans, designs, concepts, improvements,

modifications, research data and results, and know-how related to VR software; increasing the effective refresh rate of a display; asynchronous time warping; interfaces between VR headsets and interactive entertainment content and/or software; sensors and optical components calibration; latency reduction; low-latency head-tracking, including positional and absolute tracking; head and neck modeling; predictive tracking; chromatic aberration reduction; distortion, motion blur, and jitter/judder reduction; pre-warping of displayed images; combining and selecting devices, displays, cables, optics, and related hardware solutions best-suited for improving the user's VR experience; minimizing or removing the "screen door" effect on the display; and minimizing simulator sickness and/or motion sickness for users. ZeniMax Trade Secrets include valid, enforceable trade secrets in the confidential, proprietary components of ZeniMax's "*DOOM 3: BFG Edition*," "*ZeniMax VR Testbed Code*," "*ZeniMax VR Implementation Code*," "*ZeniMax VR Implementation Code – Assets*" and other computer program code.

112. All of the ZeniMax Trade Secrets are confidential, proprietary, and highly valuable secrets.

113. The ZeniMax Trade Secrets are not generally known or readily ascertainable. ZeniMax took reasonable precautions to maintain the secrecy of the ZeniMax Trade Secrets, including by maintaining confidentiality provisions in employment agreements with key employees (including Carmack), secured password-protected networks and databases, and insisting on robust confidentiality agreements with third-parties to whom the information is disclosed, including Oculus and Luckey via the NDA.

114. Carmack had possession of ZeniMax's trade secrets as a result of his employment at ZeniMax—and, pursuant to the terms of his employment agreement, Carmack agreed to keep

ZeniMax's trade secrets confidential and further agreed that those trade secrets were owned by ZeniMax.

115. Carmack never received ZeniMax's permission to disclose any of its confidential information, including its trade secrets, to Samsung.

116. ZeniMax disclosed and provided its trade secrets to Oculus and Luckey pursuant to the NDA. Pursuant to the terms of that NDA, Oculus and Luckey agreed not to disclose any of ZeniMax's confidential information, including its trade secrets, to any third-party—including Samsung—without ZeniMax's prior written permission.

117. Neither Oculus nor Luckey received ZeniMax's permission to disclose any of its confidential information, including its trade secrets, to Samsung.

118. Samsung knew, or reasonably should have known, that Oculus, Luckey and Carmack were obligated to keep ZeniMax's trade secrets confidential and refrain from unauthorized use of those trade secrets.

119. Samsung knew, or reasonably should have known, that Oculus, Luckey and Carmack did not—and still do not—have permission to disclose any of ZeniMax's confidential information or trade secrets to Samsung.

120. Samsung intended to leverage and commercially exploit ZeniMax's trade secrets for the financial benefit of its mobile phone business and in furthering its sales of the Samsung Gear VR. In furtherance of that plan, and without authorization from ZeniMax, Samsung improperly acquired access to ZeniMax's trade secrets through its relationship with Oculus, Luckey and Carmack, and intended to leverage, commercially exploit, and otherwise use the ZeniMax trade secrets without permission, authorization or compensation to ZeniMax.

121. Samsung had notice that ZeniMax's trade secrets were confidential, proprietary,

and highly valuable, and that obtaining access to ZeniMax's trade secrets through its relationship with Oculus and Carmack would be a breach of the NDA as well as Carmack's employment agreement.

122. The foregoing acts constitute trade secret misappropriation of ZeniMax's trade secrets under the Texas Uniform Trade Secret Act, Tex. Civ. Prac. & Rem. Code § 134A.

123. Samsung's conduct challenged herein was undertaken with full knowledge of ZeniMax's rights.

124. Samsung's conduct was malicious, deliberate, and willful, or in the alternative at least grossly negligent.

125. Samsung's misappropriation of ZeniMax's trade secrets has caused and will continue to cause damage to ZeniMax in an amount to be determined at trial.

COUNT 3 – Federal Trade Secret Misappropriation

126. ZeniMax incorporates by reference all preceding and succeeding paragraphs of this Complaint.

127. ZeniMax is the owner of valid and enforceable trade secrets in the ZeniMax's VR Technology, including but not limited to: confidential programming code, methods, plans, designs, concepts, improvements, modifications, research data and results, and know-how related to VR software; interfaces between VR headsets and interactive entertainment content and/or software; sensors and optical components calibration; latency reduction; low-latency head-tracking, including positional and absolute tracking; head and neck modeling; predictive tracking; chromatic aberration reduction; distortion, motion blur, and jitter/judder reduction; pre-warping of displayed images; combining and selecting devices, displays, cables, optics, and related hardware solutions best-suited for improving the user's VR experience; minimizing or

removing the “screen door” effect on the display; and minimizing simulator sickness and/or motion sickness for users. ZeniMax Trade Secrets include valid, enforceable trade secrets in the confidential, proprietary components of ZeniMax’s “*DOOM 3: BFG Edition*” computer program code.

128. All of the ZeniMax Trade Secrets are confidential, proprietary, and highly valuable secrets.

129. The ZeniMax Trade Secrets are not generally known or readily ascertainable. ZeniMax took reasonable precautions to maintain the secrecy of the ZeniMax Trade Secrets, including by maintaining confidentiality provisions in employment agreements with key employees (including Carmack), secured password-protected networks and databases, and insisting on robust confidentiality agreements with third-parties to whom the information is disclosed, including Oculus and Luckey via the NDA. Carmack had possession of ZeniMax’s trade secrets as a result of his employment at ZeniMax—and, pursuant to the terms of his employment agreement, Carmack agreed to keep ZeniMax’s trade secrets confidential and further agreed that those trade secrets were owned by ZeniMax.

130. Carmack never received ZeniMax’s permission to disclose any of its confidential information, including its trade secrets, to Samsung.

131. ZeniMax disclosed and provided its trade secrets to Oculus and Luckey pursuant to the NDA. And, pursuant to the terms of that NDA, Oculus and Luckey agreed not to disclose any of ZeniMax’s confidential information, including its trade secrets, to any third-party—including Samsung—without ZeniMax’s prior written permission.

132. Neither Oculus nor Luckey received ZeniMax’s permission to disclose any of its confidential information, including its trade secrets, to Samsung.

133. Samsung knew, or reasonably should have known, that Oculus, Luckey and Carmack were obligated to keep ZeniMax's trade secrets confidential and refrain from unauthorized use of those trade secrets.

134. Samsung knew, or reasonably should have known, that Oculus, Luckey and Carmack did not—and still do not—have permission to disclose any of ZeniMax's confidential information or trade secrets to Samsung.

135. Samsung intended to leverage and commercially exploit ZeniMax's trade secrets for the financial benefit of its mobile phone business and in furthering its sales of the Samsung Gear VR. In furtherance of that plan, and without authorization from ZeniMax, Samsung improperly acquired access to ZeniMax's trade secrets through its relationship with Oculus, Luckey and Carmack, and intended to leverage, commercially exploit, and otherwise use the ZeniMax trade secrets without permission, authorization or compensation to ZeniMax.

136. Samsung had notice that ZeniMax's trade secrets were confidential, proprietary, and highly valuable, and that obtaining access to ZeniMax's trade secrets its relationship with Oculus and Carmack would be a breach of the NDA as well as Carmack's employment agreement.

137. The foregoing acts constitute trade secret misappropriation of ZeniMax's trade secrets under the Defend Trade Secret Act, 28 U.S.C. § 1836.

138. Samsung's conduct was malicious, deliberate, and willful, or in the alternative at least grossly negligent.

139. Samsung's misappropriation of ZeniMax's trade secrets has caused and will continue to cause damage to ZeniMax in an amount to be determined at trial.

COUNT 4 – Unfair Competition

140. ZeniMax incorporates by reference all preceding and succeeding paragraphs of this Complaint.

141. ZeniMax owns valuable copyrightable works, trade secrets, and confidential information, which separately and in combination create a competitive advantage in the interactive entertainment industry and were created through extensive time, labor, skill, and money.

142. Samsung committed one or more illegal acts, including copyright infringement and trade secret misappropriation, by using ZeniMax's intellectual property without authorization to develop, promote, and commercialize the Samsung Gear VR.

143. In partnership with Oculus, Luckey and Carmack, Samsung developed and released the Samsung Gear VR with full knowledge of ZeniMax's claims in the Oculus Action. Indeed, and even following the jury's verdict in the Oculus Action, Samsung released a new version of its Gear VR.

144. As a direct result of Samsung's illegal conduct, Samsung has deprived ZeniMax of the control and dissemination of its proprietary inventions and confidential know-how concerning mobile VR technology.

145. Samsung interfered with ZeniMax's ability to return value to its shareholders for the time, money, and effort invested in developing revolutionary mobile VR technology. Samsung violated the principles of the common law of unfair competition by attempting to profit from ZeniMax's intellectual property and the wrongful acts of Oculus, Luckey and Carmack.

146. The wrongful conduct Samsung has caused and will continue to cause significant commercial harm to ZeniMax in an amount to be determined at trial.

COUNT 5 – Unjust Enrichment

147. ZeniMax incorporates by reference all preceding and succeeding paragraphs of this Complaint.

148. Oculus obtained ZeniMax's intellectual property subject to the NDA and in violation of the Carmack's employment agreement. Samsung received, from Oculus and Carmack ZeniMax's intellectual property in violation of the NDA and Carmack's employment agreement. Samsung then—after wrongfully receiving ZeniMax's intellectual property without ZeniMax's permission—commercially exploited ZeniMax's intellectual property for its own gain, selling millions of Gear VR units.

149. Samsung never obtained a license or other permission to use any of ZeniMax's intellectual property, technology or information. Samsung has now been unjustly enriched by exploiting ZeniMax's work and intellectual property as if it was its own.

150. Samsung took unlawful advantage of ZeniMax's employees, software, and disclosures in confidence to Oculus by knowingly using ZeniMax's confidential information and know-how to develop, design, improve, demonstrate, market, and promote the Samsung Gear VR.

151. Samsung has knowingly and wrongfully obtained and/or passively received a substantial, commercial benefit from ZeniMax's contributions to the Oculus Mobile SDK, and related VR Technology, including technical improvements, design solutions, and marketing promotion provided by ZeniMax to Oculus.

152. Samsung has been unjustly enriched by gaining unauthorized access to ZeniMax's intellectual property and leveraging and commercially exploiting ZeniMax's intellectual property for the financial benefit of Samsung's business of mobile phone sales as well as sales of the Gear VR.

153. Samsung's wrongful conduct and unjust enrichment caused and will continue to cause damage to ZeniMax in an amount to be determined at trial.

COUNT 6 – Tortious Interference with Contract

154. ZeniMax incorporates by reference all preceding and succeeding paragraphs of this Complaint.

155. ZeniMax entered into a valid, enforceable and binding written contract with John Carmack, effective June 23, 2009, (the "Carmack Employment Agreement").

156. Under the terms of the Carmack Employment Agreement, Carmack agreed to disclose to ZeniMax inventions relating to the company's current or anticipated research and development that Carmack created during the term of his employment, keep his work confidential, and agreed that all such inventions would be the sole and exclusive property of ZeniMax. Carmack further agreed that ZeniMax would be the author and owner of any copyrightable works that he prepared within the scope of his employment.

157. ZeniMax entered into a valid, enforceable and binding written contract with Luckey and Oculus, effective May 24, 2012, (the "NDA").

158. Under the NDA, Luckey and Oculus agreed not to use or disclose ZeniMax's confidential information without ZeniMax's prior approval. Luckey and Oculus further agreed to restrict use of ZeniMax's confidential information for a "Proper Purpose" to be approved by ZeniMax, and to disclose such information only to his directors, officers, employees, or attorneys who clearly have a need-to-know.

159. Oculus was bound by the NDA as if it were a signatory thereto.

160. ZeniMax fully performed its obligations under the Carmack Employment Agreement and the NDA.

161. On or shortly after May 21, 2014, with ZeniMax's filing of its original Complaint against Oculus VR, Inc. and Luckey, Samsung was aware, or reasonably should have been aware, of the existence and terms of the Carmack Employment Agreement and the NDA.

162. Samsung interfered with the Carmack Employment Agreement and the NDA by willfully and intentionally causing Carmack, Luckey and Oculus to use ZeniMax's contract-protected information without permission and in breach of the obligations that Carmack, Luckey and Oculus owed ZeniMax under the Carmack Employment Agreement and the NDA.

163. This interference proximately caused irreparable injury to ZeniMax and actual damage and loss.

DEMAND FOR JURY TRIAL

ZeniMax hereby demands a trial by a jury on all issues so triable by right.

PRAYER FOR RELIEF

For the foregoing reasons, ZeniMax asks that the Court issue citation for Samsung to appear and answer, and that ZeniMax be awarded a judgment against Samsung for the following:

- A. actual damages suffered by ZeniMax;
- B. statutory Damages under 17 U.S.C. § 101 et seq.;
- C. direct profits of Defendants from sales of infringing works, and indirect profits of Defendants resulting from the infringing works;
- D. profits made by Defendants through the use of the trade secrets;
- E. a reasonable royalty;
- F. injunctive relief;
- G. punitive and exemplary damages;
- H. enhanced damages;
- I. prejudgment and post-judgment interest;
- J. court costs

- K. attorney fees; and,
- L. all other relief to which ZeniMax is entitled.

Dated: May 12, 2017.

McKool Smith, P.C.

/s/ Theodore Stevenson, III

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ATTORNEYS FOR PLAINTIFFS
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SOFTWARE, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via the Court's ECF system on May 12, 2017.

/s/ Joshua W. Budwin

Joshua W. Budwin