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9 and ESDFOS, LLC

10  
11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

14 RAGNAROK GAME, LLC, a Delaware  
limited liability company, ESDFOS, LLC, a  
15 Delaware limited liability company,

16 Plaintiffs,

17 vs.

18 NINE REALMS, INC. dba HUMAN HEAD, a  
Wisconsin company; BETHESDA  
19 SOFTWARES, LLC, a Delaware company;  
ZENIMAX MEDIA, INC., a Delaware  
20 company; ROUNDHOUSE STUDIOS LLC, a  
Delaware company; CHRISTOPHER J.  
21 RHINEHART, an individual; BEN GOKEY,  
an individual; PAUL MACARTHUR, an  
22 individual, ROB EDGAR, an individual, and  
DOES 1 to 20, inclusive,

23 Defendants.

Case No. 19STCV43434

Hon. Ruth Ann Kwan

**SECOND AMENDED COMPLAINT FOR:**

1. **BREACH OF CONTRACT**
2. **FRAUDULENT CONCEALMENT**
3. **CONVERSION**
4. **FRAUDULENT MISREPRESENTATION**
5. **NEGLIGENT MISREPRESENTATION**
6. **UNFAIR BUSINESS PRACTICES (Cal. Bus. & Prof. Code § 17200)**
7. **TORTIOUS INTERFERENCE WITH CONTRACT**
8. **TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONSHIP**

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**9. RECEIPT OF STOLEN PROPERTY  
(Cal. Penal Code § 496(c))**

**10. RECEIPT OF STOLEN PROPERTY  
(Wis. Stat. § 895.446)**

**DEMAND FOR JURY TRIAL**

## INTRODUCTION

1  
2           1.       This lawsuit seeks redress for fraud and the intentional sabotage of two video  
3 games, *Rune II* and *Oblivion Song*, perpetrated by one of the most infamous conglomerates in the  
4 video game industry against an emerging threat to their empire. The highly-anticipated release of  
5 *Rune II* was maliciously torpedoed in a conspiracy between the game’s developer, desperate for  
6 cash, and a large video game conglomerate intent on destroying threats to its own video-game  
7 franchises. *Oblivion Song* was left in a state of unfinished disrepair as a result of the same  
8 conspiracy. The victims of this conspiracy were the games’ original publishers, who had financed  
9 development of the games to the tune of more than \$4.5 million. These publishers were  
10 abandoned with two unfinished games and a marketing and public relations disaster when the  
11 developer mysteriously, but very loudly, announced its closure the day after *Rune II* was released.

12           2.       Behind the scenes, the conglomerate had conspired with the developer for months  
13 to gain control of the games and undermine their release. This was accomplished through a *de*  
14 *facto* merger of the two co-conspirators. Once the conglomerate had power over the developer, it  
15 forced the developer to abandon both games. Bent on snuffing out potential competition, the  
16 conglomerate instructed its new employees to keep the merger secret and breach their contractual  
17 obligations. After the merger became public, the co-conspirators refused to turn over the games’  
18 source code. This made a rescue of *Rune II* all but impossible. Through these actions, the co-  
19 conspirators undermined the release of *Rune II* and attempted to destroy any chance that *Rune II* or  
20 *Oblivion Song* might gain market share.

21           3.       The history that led to this sabotage began over two-and-a-half years ago, when  
22 video-game publisher Ragnarok Game, LLC (“Ragnarok,” one of the Plaintiffs in this action)  
23 partnered with video-game developer Human Head Studios (“Human Head,” one of the  
24 Defendants) to create the long-awaited sequel to the classic video game, *Rune*. Stemming from  
25 the original *Rune* intellectual property, the new game title would be called *Rune II*.

26           4.       Ragnarok’s affiliate, ESDFOS, LLC (“ESDFOS,” the other Plaintiff in this action),  
27 subsequently entered into a similar deal with Human Head to create a video game based on the  
28 popular comic book series *Oblivion Song*.

1           5.       Ragnarok and ESDFOS (“Plaintiffs”), on the one hand, and Human Head, on the  
2 other hand, agreed to a long-term relationship together. In the *Rune II* agreement between  
3 Ragnarok and Human Head, as well as in the *Oblivion Song* agreement between ESDFOS and  
4 Human Head, Human Head agreed to be responsible for game development, live operations, and  
5 joint marketing. Human Head also agreed to handle community management as part of the  
6 marketing effort for the games.

7           6.       Because Human Head represented that expertise is such a critical element of game  
8 production and marketing, Plaintiffs were willing to give Human Head lucrative contracts,  
9 including a substantial upside in the sales of *Rune II* and *Oblivion Song*. Plaintiffs, on the other  
10 hand, were to finance and provide milestone approval and general direction for the games. All  
11 assets, including a license to the Rune intellectual property, were to belong to Plaintiffs.

12           7.       Human Head was interested in a deal with Plaintiffs for both immediate cash flow  
13 as well as a financial upside. Specifically, Plaintiffs set up milestone schedules of development  
14 for Human Head, where Human Head would be paid for completed milestones that were to be  
15 approved by Plaintiffs, on a milestone by milestone basis. There were 11 milestones for each  
16 game. Because of Human Head’s delays, errors, and mismanagement, however, 23 milestones  
17 were required before *Rune II* would even be ready for its ill-fated initial launch. To complete over  
18 twice the anticipated milestones, Ragnarok stepped up with more funding. Human Head was paid  
19 for every completed milestone.

20           8.       In addition, Human Head was eligible for a share of potential profits to be made  
21 when *Rune II* and *Oblivion Song* started selling to their fans, in part because Ragnarok wanted to  
22 foster a partnership-style relationship with Human Head.

23           9.       Human Head shared in potential profits through co-ownership of the LLCs. This  
24 co-ownership structure placed Human Head in a heightened relationship of trust and confidence  
25 with Plaintiffs.

26           10.      Human Head accepted Ragnarok’s milestone payments of approximately \$3.5  
27 million, but failed to perform its contractual obligation to deliver a bug-free, Cooperative  
28 Multiplayer, fully Localized and tested *Rune II* game. Moreover, Ragnarok ultimately had to take

1 over much of what Human Head had agreed to do itself, including product roadmap, live  
2 operations, marketing, and community management.

3 11. Similarly, Human Head accepted ESDFOS's milestone payments of approximately  
4 \$2 million, but failed to perform its contractual obligation to develop a working, commercially  
5 viable *Oblivion Song* game. Indeed, far from delivering a high-quality, playable game, ESDFOS  
6 failed to get the game even to an Alpha stage.

7 12. Unbeknownst to Plaintiffs, Human Head began conspiring with Defendants  
8 Bethesda Softworks ("Bethesda") and Zenimax Media Inc. ("Zenimax") in the late summer of  
9 2019.

10 13. Deliberately hiding this fact from Plaintiffs, Human Head contacted representatives  
11 of Bethesda and Zenimax about an acquisition. At the very same time, Human Head represented  
12 to Plaintiffs that it would complete development of *Rune II*, usher it through launch, and support  
13 its further growth and development after launch.

14 14. These statements were patently false. But they were a necessary deceit for Human  
15 Head to solve its cash flow problem. As Human Head has testified, they did not tell Plaintiffs  
16 about the acquisition because, if they had "[Plaintiffs] would have pulled away and looked for a  
17 new developer. And we would not have seen further payments for *Oblivion Song* or *Rune*."

18 15. In an act of utter bad faith and contractual breach of confidentiality requirements,  
19 Human Head secretly provided Bethesda and Zenimax with "keys" that permitted it to play a  
20 confidential, pre-release version of *Rune II*. This enabled Bethesda and Zenimax to see for  
21 themselves the threat that *Rune II* posed to their hit franchise, *Skyrim/Elder Scrolls*. Plaintiffs  
22 were never informed of this betrayal.

23 16. Two weeks prior to launch of *Rune II*, Zenimax secretly formed a new subsidiary,  
24 Roundhouse Studios LLC ("Roundhouse"), and used that company to purchase all of Human  
25 Head's equipment and take over its leases. That equipment contained Plaintiffs' trade secrets, the  
26 source code and materials for *Rune II* and *Oblivion Song*. In that same time frame, in order to  
27 complete a *de facto* merger, Zenimax arranged to have all employees dismissed from Human Head  
28 and hired by Zenimax.

1           17.     Once Zenimax controlled all of Human Head’s employees and assets, it then  
2 ordered those employees to cease development work on *Rune II* and *Oblivion Song*. And on the  
3 date of the launch, to ensure maximum damage to *Rune II* and protect its *Skyrim* franchise,  
4 Zenimax took the game’s project lead, Christopher Rhinehart, entirely off the chess board. Mr.  
5 Rhinehart was *Rune II*’s creative heart and soul who was also serving as the lead developer.  
6 Zenimax sent Mr. Rhinehart on a two-day business trip to Austin, Texas. Seeking to drive a stake  
7 through the heart of *Rune II*, Bethesda and Zenimax then authored a press release *the day after*  
8 *Rune II’s initial launch* designed to torpedo *Rune II*’s status with consumers.

9           18.     Neither Bethesda/Zenimax nor Human Head communicated the *de facto* merger or  
10 the order to cease development to Plaintiffs. Instead, former Human Head executives led  
11 Plaintiffs to believe that Human Head and its principals—all of whom were now employees of  
12 Zenimax—would be available to support the launch of the game.

13           19.     As part of its long-term contract with Ragnarok, Human Head was not only  
14 contractually committed to support *Rune II*’s launch, but also to support the game beyond its  
15 launch, in exchange for a \$110,000 fee to be paid by Ragnarok. Human Head made a similar  
16 long-term commitment to supporting *Oblivion Song*.

17           20.     In a November 7, 2019 email sent merely 5 days prior to the launch of *Rune II*, and  
18 before *Oblivion Song* was even close to completion, however, Human Head told Plaintiffs that  
19 Human Head was shutting its doors and terminating all of its employees, and if Plaintiffs  
20 attempted to contact former Human Head employees, it would be a problem.

21           21.     Unbeknownst to Plaintiffs, this November 7 email was co-written by Human Head  
22 and Zenimax/Bethesda. And the email entirely omitted the truth of the matter: Zenimax had  
23 already hired all of Human Head’s employees and through an alter ego called Roundhouse  
24 Studios, purchased all of Human Head’s equipment and taken over its leases. Zenimax had  
25 already ordered those employees to cease work on game development.

26           22.     Not until the day after the official launch of the game, on November 13, 2019, did  
27 Plaintiffs learn that Bethesda and Zenimax played any role in the preceding events. On that day,  
28 Human Head issued a press release, also secretly wordsmithed by Zenimax and Bethesda,

1 announcing Human Head’s “wind down” and the supposed formation of a new studio,  
2 “Roundhouse.”

3 23. Going forward, Ragnarok would have to support *Rune II* on its own. Going  
4 forward, ESDFOS would have to develop, launch, and support *Oblivion Song* on its own.

5 24. Despite Human Head’s sudden, unexpected disappearance, *Rune II* launched on the  
6 Epic Games Store on November 12, 2019. Thanks to Ragnarok’s persistence over the past two-  
7 and-a-half years, including in propping up Human Head where it had failed, the game achieved  
8 initial success. Indeed, unlike Human Head’s past two projects, *Rune II* was met with positive  
9 reviews, including the following review dated November 12, 2019, the day *Rune II* launched:

10 *RUNE II* is one of 2019’s biggest surprises. Originally set for release in September  
11 last year, the game was delayed and delayed again, with the result being a  
12 product that proves Shigeru Miyamoto correct: “A delayed game is eventually  
13 good, a bad game is bad forever.” After *The Quiet Man* bombed and *Survived By*  
14 failed to survive early access, gamers could be forgiven for doubting Human Head  
15 Studios’s ability to deliver on the long-awaited follow-up to the classic Norse  
16 action-adventure, *Rune*. However, the team has come out swinging with one of  
17 the most satisfying—if not necessarily best—adventures of the year.

18 25. Less than 24 hours after the launch, however, the headlines were no longer about  
19 the success and bright future of *Rune II*. Rather, below is a sampling of the headlines the next  
20 day:



28

# Prey developer Human Head shuts down; Bethesda hires team to open new studio

JEFF GRUBB @JEFFGRUBB NOVEMBER 13, 2019 7:43 AM

ARTICLES

## I don't know which is more pathetic: Bethesda finally killing Human Head Studios or HHS sending Rune 2 out to die

NOVEMBER 13, 2019 | JOHN PAPADOPOULOS | 52 COMMENTS

26. Despite earlier assurances from Human Head that it would not do anything to damage the *Rune II* launch or Plaintiffs, less than 24 hours after the launch, Human Head publicly announced its acquisition by Bethesda – Plaintiffs’ competitor. This announcement, Human Head has testified, negatively affected sales of the game. *Human Head did not inform Plaintiffs at any time that Human Head was seeking an acquisition partner or otherwise looking to make a corporate change.* Whether because of malice, greed, or a desire to protect its competitive products, or all of the above, there can be no question that Human Head and its co-conspirators at Zenimax and Bethesda timed the announcement to maximize damage to Ragnarok and *Rune II*.

27. In summary: (a) Human Head entered into long-term agreements with Plaintiffs – the whole goal of which was to launch *Rune II* and *Oblivion Song* and to provide the necessary support for their commercial success, (b) Human Head accepted millions of dollars in payment, but failed to perform, (c) Human Head secretly conspired with Bethesda and Zenimax to abandon Plaintiffs (and the *Rune II* community) in an apparent attempt to defraud and harm Plaintiffs and the games, (d) Zenimax converted the trade secret source code and other assets underlying both games when it purchased all of Human Head’s equipment through an alter ego, Roundhouse Studios LLC, (e) Zenimax and Bethesda knowingly and intentionally caused Human Head to breach its obligations with respect to *Oblivion Song* and *Rune II*, and (f) at the active instructions of Zenimax, Human Head timed the unveiling of its plan to cause maximum damage.



1 corporation, doing business as “Human Head Studios” (hereinafter “Human Head”).

2 35. Plaintiffs are informed and believe, and thereon allege, that Defendant CHRIS  
3 RHINEHART is, and at all relevant times was, an individual, residing in Wisconsin.

4 36. Plaintiffs are informed and believe, and thereon allege, that Defendant BEN  
5 GOKEY is, and at all relevant times was, an individual, residing in Wisconsin.

6 37. Plaintiffs are informed and believe, and thereon allege, that Defendant PAUL  
7 MACARTHUR is, and at all relevant times was, an individual, residing in Wisconsin.  
8 RHINEHART, GOKEY, and MACARTHUR will hereinafter collectively be referred to as the  
9 “Principals.”

10 38. Defendant ZENIMAX MEDIA, INC. is, and at all relevant times was, a Delaware  
11 corporation with headquarters at 1370 Piccard Dr., Suite 120, Rockville Maryland 20850  
12 (hereinafter, “Zenimax”). Since 1999, Zenimax has been registered to do business as a foreign  
13 corporation in California.

14 39. On information and belief, Zenimax Media Inc. regularly and systematically  
15 conducts business in California. Its representatives attend at least two large trade conferences  
16 every year in California.

17 40. Defendant BETHESDA SOFTWARES LLC is, and at all relevant times was, a  
18 Delaware limited liability company with headquarters at 1370 Piccard Dr. , Suite 120, Rockville  
19 Maryland 20850 (hereinafter “Bethesda”).

20 41. Defendant ROUNDHOUSE STUDIOS LLC is, and at all relevant times was, a  
21 Delaware limited liability company with its principal place of business at c/o Zenimax Media Inc.,  
22 1370 Piccard Dr., Suite 120, Rockville Maryland 20850 (hereinafter, “Roundhouse”).

23 42. Plaintiffs are informed and believe, and thereon allege, that Defendant ROB  
24 EDGAR is, and at all relevant times was, an individual, residing in California.

25 43. The true names and capacities, whether individual, corporate, associate, or  
26 otherwise, of defendant Does 1 through 20, inclusive, are presently unknown to Plaintiffs, and for  
27 that reason these defendants are sued by such fictitious names. Plaintiffs are informed and  
28 believe, and based thereon allege, that each of the Doe defendants is in some way responsible for

1 the damages herein alleged. Plaintiffs will seek leave of Court to amend this complaint when the  
2 true names and capacities of said defendants are known.

3 44. Defendants Human Head, Bethesda, Zenimax, Roundhouse, Ben Gokey,  
4 Christopher Rhinehart, Paul MacArthur, Rob Edgar, and Does 1 to 20 will hereinafter collectively  
5 be referred to as Defendants.

6 **JURISDICTION AND VENUE**

7 45. This Court has jurisdiction pursuant to the choice of law and forum selection  
8 clauses in the Game Development Agreements for *Rune II* and *Oblivion Song*. These clauses  
9 provide that any dispute between the parties relating to the contracts shall be governed by  
10 California law and that the parties to the contracts submit to the exclusive jurisdiction of the state  
11 and federal courts of Los Angeles County.

12 46. Venue is proper pursuant to the choice of law and forum selection clauses in the  
13 Game Development Agreements for *Oblivion Song* and *Rune II*.

14 47. Human Head was a signatory to the Game Development Agreements for *Oblivion*  
15 *Song* and *Rune II*, and is therefore subject to the choice of law and forum selection clauses therein.

16 48. This Court properly exercises jurisdiction over Zenimax because, on information  
17 and belief, it is subject to general jurisdiction in California. This Court further has jurisdiction  
18 over Zenimax because it is subject to specific jurisdiction in connection with the instant dispute on  
19 the basis of the factual allegations set forth herein. This Court further has jurisdiction over  
20 Zenimax because it is subject to the choice of law and forum selection clause in the Game  
21 Development Agreements for *Rune II* and *Oblivion Song* on the basis of the factual allegations set  
22 forth herein.

23 49. This Court properly exercises jurisdiction over Bethesda because, on information  
24 and belief, it is subject to general jurisdiction in California. This Court further has jurisdiction  
25 over Bethesda because it is subject to specific jurisdiction in connection with the instant dispute on  
26 the basis of the factual allegations set forth herein. This Court further has jurisdiction over  
27 Bethesda because it is subject to the choice of law and forum selection clause in the Game  
28 Development Agreements for *Rune II* and *Oblivion Song* on the basis of the factual allegations set

1 forth herein.

2 50. This Court properly exercises jurisdiction over Roundhouse because, as alleged  
3 below, it is an alter ego of Zenimax. This Court further has jurisdiction over Roundhouse because  
4 it is subject to specific jurisdiction in connection with the instant dispute on the basis of the factual  
5 allegations set forth herein. This Court further has jurisdiction over Roundhouse because it is  
6 subject to the choice of law and forum selection clause in the Game Development Agreements for  
7 *Rune II* and *Oblivion Song* on the basis of the factual allegations set forth herein.

8 51. This Court properly exercises jurisdiction over Rob Edgar because he lives part-  
9 time in California with his wife and two step-children.

## 10 FACTUAL ALLEGATIONS

### 11 The *Rune II* Development Agreements

12 52. On or about April 21, 2017, Ragnarok entered into a Game Development  
13 Agreement with Human Head for development of a cooperative, survival-oriented role playing  
14 game featuring a Viking warrior, set in Norse Mythology, and based on the original, action  
15 adventure video game, “Rune” (hereinafter “Rune II Agreement”).

16 53. Ragnarok agreed to pay Human Head \$1.5 million as a “Development Fee,” in  
17 exchange for Human Head’s development services, with payments to be triggered according to a  
18 specific and explicit Deliverables and Milestone Schedule, which included 11 initial milestones.  
19 The Rune II Agreement granted Ragnarok sole discretion to approve or disapprove of any of  
20 Human Head’s deliverables and other work product submitted as part of each milestone. Human  
21 Head represented that its work product would be accurate and “bug free” and *Rune II* would  
22 function in accordance with the precise milestones and specifications outlined in the Rune II  
23 Agreement. Because *Rune II* was the long-awaited sequel to Human Head’s flagship game (the  
24 original Rune), Ragnarok believed Human Head when it said it was highly motivated to go above  
25 and beyond the terms of the contract and to deliver an amazing game for its fans.

26 54. The Rune II Agreement granted Ragnarok an exclusive, unlimited, worldwide  
27 license to use, market, promote and exploit the intellectual property rights associated with the  
28 original Rune game (“Rune IP”) for at least five years after the launch. Moreover, Human Head

1 was precluded from exploiting the Rune IP during the term of the Rune II Agreement, except in  
2 limited circumstances. The Rune IP was highly valued, both commercially and as Human Head’s  
3 “baby.” And, upon information and belief, Human Head believed that if Ragnarok were to  
4 terminate the Rune II Agreement, which it has not, the Rune IP would revert back to Human Head.

5 55. The Rune II Agreement provided that Human Head would perform programming  
6 and game development, all set forth in a series of milestones, in a “first class manner in keeping  
7 with the highest industry standards”:

8 “Developer agrees to provide programming and game development services  
9 relating to the Game (“Services”) in close collaboration with the Company and to  
10 deliver each item of work product (the “Deliverables”) in accordance with the  
11 applicable milestone dates (“Milestones”) as all are described in detail on Exhibit  
12 A, attached hereto and incorporated herein. Developer will perform the Services in  
13 a first-class manner in keeping with the highest industry standards.” (Rune II  
14 Agreement 1(a)).

15 56. The Rune II Agreement provided that Human Head would be paid for each  
16 completed milestone, but only upon approval of the milestone by the publisher:

17 “Company will pay Developer a fee of \$1,500,000 (the “Development Fee”) in  
18 exchange for the Services, payable in the amounts and in accordance with the  
19 schedule and Milestones as listed on the attached Exhibit A.” (Rune II Agreement  
20 1(c)(i))

21 57. The Rune II Agreement provided that Human Head would provide post-launch  
22 operations support and live operations services, and that the parties would enter into a “LiveOps”  
23 agreement for further work after launch:

24 “Company will pay Developer a one-time fee of \$110,000 (the ‘Support Fee’) in  
25 exchange for Developer’s post-launch support and live-operations Services as  
26 described on the attached Exhibit B for not less than one month. Developer and  
27 Company shall enter into a LiveOps agreement no later than 20 business days after  
28 the Early Access Launch.” (Rune II Agreement 1(c)(ii)).

58. Exhibit B to the Rune II Agreement provided that Human Head would provide six  
months of live operations support:

“For a period of six months after Launch, Developer will provide ongoing  
development, management, and support services relating to the Game” including  
but not limited to ongoing content development, operating  
system/middleware/hardware update support, customer support, live operations  
management, and promotion of the game. (Rune II Agreement Exhibit B).

1  
2 59. The Rune II Agreement vested ownership of *Rune II* and all associated IP in  
3 Plaintiff Ragnarok Game LLC.

4 “Company shall be considered the author of the Work Product and Company shall  
5 exclusively own all right, title, and interest in and to the Work Product in all forms,  
6 formats, and media, whether now known or hereafter devised, in perpetuity  
7 throughout the universe.” (Rune II Agreement 3(a)).

8 60. Human Head warranted that the finished product would be fully functional and bug  
9 free:

10 Developer represents and warrants that . . . (iii) the Work Product is accurate and  
11 “bug free,” and the Game will function in accordance with its specifications . . . .”  
12 (Rune II Agreement 5(a)).

13 61. The Rune II Agreement had a term of five years and was not terminable at will by  
14 Human Head. Human Head could only terminate the Rune II Agreement for cause (which, to  
15 date, it has not done):

16 “The term of this Agreement (the “Term”) shall extend from the Effective Date  
17 until the date that is five years after the Early Access Launch, unless sooner  
18 terminated in accordance with this Section 8.” (Rune II Agreement 8(a)).

19 “Company [i.e. Plaintiffs] may terminate this Agreement for convenience at any  
20 time upon thirty (30) days’ notice to Developer. Either party may terminate this  
21 Agreement immediately upon written notice to the other party if the other party has  
22 materially breached the terms of this Agreement and failed to cure such breach  
23 within ten (10) business days of receipt of notice from the non-breaching party  
24 describing the breach in reasonable detail.” (Rune II Agreement 8(b)).

25 62. The Rune II Agreement required each party to protect the confidentiality of certain  
26 information, including the terms of the agreement between Ragnarok Game LLC and Human  
27 Head.

28 “During the Term of this Agreement and for a period of three (3) years from the  
expiration or earlier termination of this Agreement, each Party hereto will regard  
and preserve as strictly confidential all information and material, including the  
terms and conditions of this Agreement, provided by the other Party (hereinafter  
“Confidential Information”). (Rune II Agreement 11(c)).

63. The Rune II Agreement contained a choice of law and venue provision selecting  
California law and submitting to the exclusive jurisdiction of Los Angeles state and federal courts.

1 This Agreement and all performance under this Agreement shall be governed by  
2 the laws of the State of California without regard to conflict of law principles. In  
3 any dispute relating to this Agreement, the parties hereto admit venue and submit  
4 themselves to the exclusive jurisdiction of the state or federal courts located in Los  
5 Angeles County, California. (Rune II Agreement 12(a)).

6 64. The confidentiality provision in the Rune II Agreements, along with the course of  
7 dealings between Human Head and Plaintiffs, ensured that the source code for each of the games  
8 would be accorded the strictest confidentiality and secrecy.

9 65. Pursuant to the confidentiality provision and to the course of dealings between  
10 Human Head and Plaintiffs, anyone who had access to the source code was required to execute a  
11 non-disclosure agreement, and anyone who viewed an early version of the game was required to  
12 execute a non-disclosure agreement.

13 66. The secrecy of a game's source code is one mechanism through which the game  
14 derives monetary value.

15 67. Despite Human Head's claims to the contrary, Human Head was unable to build a  
16 game ready for launch in 11 milestones. Therefore, on or about February 8, 2019, Ragnarok and  
17 Human Head entered into the "First Amendment to Ragnarok Game Development Agreement"  
18 (hereinafter "Rune II Amendment" and collectively with the Rune II Agreement, the "Rune II  
19 Agreements"). This was necessary in order to finance the delivery of a game ready for launch.  
20 The additional investment was required in order to pay Human Head. Ragnarok and Human Head  
21 agreed to amend the Rune II Agreement by expanding the scope of work, in part to ensure delivery  
22 of an exceptional entertainment experience for fans of the original Rune game and to meet the  
23 fans' desire for a competitive, head-to-head "Death Match" in the game.

24 68. By amending the Rune II Agreement, Ragnarok and Human Head intended to  
25 extend development of *Rune II* by means of a distribution agreement with Epic Games, Inc. In  
26 reliance on Human Head's promise of cooperation in distribution of the game, Ragnarok agreed to  
27 pay Human Head additional milestone payments, which would now equal approximately \$3  
28 million in total for additional development services, specifically adding performance of Milestones  
15 to 23, culminating in launching on the Epic Store.

1           69.     The Rune II Agreement contemplated a long term relationship between Ragnarok  
2 and Human Head, with a contract term that was to extend at least five years from the initial  
3 launch, with an option by Ragnarok to extend the term for an additional five year term under  
4 certain financial conditions. By entering into the Rune II Agreements and thereby agreeing to pay  
5 Human Head \$3 million, Ragnarok sought to incentivize Human Head to deliver excellent work  
6 product and to work with Ragnarok as a team to implement the vision of creating a dynamic,  
7 engaging game in *Rune II*.

8           70.     Human Head’s breach of the Rune II Agreement and its false promises precluded  
9 both parties from achieving these contracted goals.

10           **The Oblivion Song Agreement**

11           71.     On or about May 2, 2018, ESDFOS entered into a Game Development Agreement  
12 with Human Head for development of a video game based on the popular comic *Oblivion Song*  
13 (hereinafter “Oblivion Song Agreement”). The comic *Oblivion Song* was an original intellectual  
14 property by the same creators of the record breaking entertainment franchise, *The Walking Dead*.

15           72.     The Oblivion Song Agreement was structured in the same manner as the Rune II  
16 Agreement and contained material terms analogous to those set forth in paragraphs 55-63 above  
17 except for the post-launch support fee, whose terms departed from the Rune II Agreement and are  
18 described below. For example, ESDFOS agreed to pay Human Head \$1.5 million as a  
19 “Development Fee,” in exchange for Human Head’s development services, with payments to be  
20 triggered according to a specific and explicit Deliverables and Milestone Schedule, which  
21 included 11 initial milestones. The Oblivion Song Agreement granted ESDFOS sole discretion to  
22 approve or disapprove of any of Human Head’s deliverables and other work product submitted as  
23 part of each milestone. Human Head represented that its work product would be accurate and  
24 “bug free” and *Oblivion Song* would function in accordance with the precise milestones and  
25 specifications outlined in the Oblivion Song Agreement. The Oblivion Song Agreement was not  
26 terminable at will by Human Head.

27           73.     In addition, ESDFOS agreed to pay Human Head an additional \$110,000 per month  
28 for six months as a “Support Fee” in exchange for Human Head’s post-launch support and live-

1 operations services, including but not limited to developing additional content as requested by  
2 ESDFOS, developing and incorporating updates and upgrades, providing direct technical  
3 assistance to users, and full-scale live ops management.

4 74. In other words, just as the Rune II Agreement required an ongoing, close working  
5 relationship between Ragnarok and Human Head even after the initial release of *Rune II*, the  
6 Oblivion Song Agreement required a similar ongoing, close working relationship between  
7 ESDFOS and Human Head following the initial release of *Oblivion Song*.

8 **Human Head’s Performance Fell Far Below the Contractual Standards, Despite**  
9 **Diligent Efforts By Ragnarok and ESDFOS**

10 75. Throughout the *Rune II* development process, Human Head consistently failed to  
11 meet contractual milestones and specifications. Human Head’s original Lead Programmer on  
12 *Rune II* left in Dec 2018 because his contract was not renewed. Human Head did not disclose this  
13 to Ragnarok. The replacement Lead Programmer selected by Human Head left after the fourth  
14 missed deadline to launch. As a result of its deficient performance and its failure of oversight (or  
15 active participation in directing code to be damaged), Human Head missed four prior scheduled  
16 launch dates, resulting in a year-and-a-half delay in the launch of *Rune II*. The Rune II Agreement  
17 originally called for a launch date of April 23, 2018. This contracted launch date was adjusted and  
18 postponed 4 times to September 2018, January 2019, August 2019, and finally to November 12,  
19 2019, when the Game was finally launched on the Epic Games platform. Yet despite all this,  
20 Ragnarok remained a committed partner to Human Head.

21 76. Ragnarok was forced to go above and beyond the industry norms for publishers as  
22 well as the contractual requirements of the Rune II Agreements. The following are but a few  
23 examples of the good faith actions that Ragnarok took to support Human Head in the development  
24 of *Rune II*:

- 25 (a) After falling far behind schedule, Ragnarok lead an initiative to get Human  
26 Head and *Rune II* back on track;
- 27 (b) Ragnarok was forced to get into the nitty gritty of game features and guide  
28 Human Head based on changes in the gaming market (Human Head agreed

- 1 that these actions by Ragnarok were very beneficial to the project);
- 2 (c) Ragnarok led daily production calls to help keep Human Head on track;
- 3 (d) Ragnarok replaced *Rune II*'s community manager after poor E3
- 4 performance and lack of influencer engagement;
- 5 (e) Ragnarok directed Community Management to focus on influencers and
- 6 social community;
- 7 (f) Ragnarok was compelled to engage a marketing firm and use creative
- 8 techniques due to Human Head's development delays and *Rune II* not being
- 9 ready to show publically;
- 10 (g) Ragnarok hired a primary Human Head social content creator after Human
- 11 Head let him go despite the content creator's value to *Rune II*;
- 12 (h) Ragnarok secured a Russian Community Manager;
- 13 (i) Ragnarok managed community feedback from influencer tests and
- 14 channeled this feedback into actionable steps for their incorporation into the
- 15 development of *Rune II*;
- 16 (j) Ragnarok brought on additional testing services (Testronic) to test in
- 17 advance of *Rune II*'s launch and prepare for post-launch updates and fixes,
- 18 which Defendants inexplicably resisted;
- 19 (k) Ragnarok began and guided discussions for post-launch content (Human
- 20 Head and Ragnarok agreed that post launch was very important and critical
- 21 to the success to *Rune II*).

22 77. As the November 2019 launch date approached, Human Head's performance under

23 the *Rune II* Agreement began to worsen. From July to October 2019, Ragnarok repeatedly wrote

24 to Human Head itemizing the incomplete items on the contractual milestones, many of which

25 remain unaddressed to date, only to be met with evasion, false promises, and delay tactics.

26 78. For example, the *Rune II* Agreements required Human Head to deliver a "fully Co-

27 Op multi-player game by July 30, 2019" as part of Milestone 21. Human Head breached its

28 contractual duties by failing to timely deliver a Cooperative Multiplayer functionality that worked

1 with the Epic Online Store technology and was well-tested. In addition, Human Head conceded  
2 that outstanding issues remained with the Loki Battle of *Rune II* as part of Milestone 22, yet  
3 Human Head demanded payment for that milestone nevertheless. Ragnarok disapproved  
4 Milestone 23 because Human Head failed to meet multiple contract specifications, including  
5 fixing bugs, addressing balance issues, and ensuring polish and optimization. When asked to  
6 complete Milestone 23, Human Head repeatedly sought to delay content and bug fixing until the  
7 post-initial launch period.

8 **Human Head Holds Secret Merger Discussions With Bethesda and Zenimax While**  
9 **Demanding Payment From Plaintiffs**

10 79. Human Head’s July 2019 failure to satisfy Milestones 21 and 22 caused both  
11 parties to discuss their relationship and the path forward. On Friday, August 9, Plaintiffs’ CEO  
12 Matt Candler wrote to Human Head:

13 Human Head as the Developer of *Rune II* has a contract to deliver to MS 23. Beyond that,  
14 who knows. I know what this game COULD become . . . it’s in gathering a group of your  
15 friends and jumping on a boat and going on raid and getting loot. Ideally the World  
16 supports this process over and over via asymmetrical PVP elements. One team builds up  
17 their base, another Team raids it – is repelled or succeeds and the base is protected or  
18 raided. . . If HH wants to keep working on *Rune II* and go on this journey, well HH has  
19 the first crack at showing me a plan for what I know this game COULD become.

20 80. Human Head responded to Mr. Candler’s challenge by unequivocally stating that it  
21 wanted to continue developing *Rune* through MS 23 and beyond: “Bottom line: HH definitely  
22 wants to be part of this journey. It’s our IP and we have poured too much sweat, blood and money  
23 into this to see it fail or not be able to continue working on it.”

24 81. Unbeknownst to Plaintiffs, no less than ten days before Human Head made these  
25 promises to complete *Rune II* and develop the game further, it had begun seeking a company to  
26 acquire Human Head. As Human Head knew, the terms of the acquisition would dictate whether  
27 it could continue working on *Rune II* or *Oblivion Song*.

28 82. These acquisition discussions were facilitated by Human Head’s agent, Rob Edgar,  
who, without Plaintiffs’ permission, provided confidential information, including copies of the  
Game Development Agreements and general descriptions of the status of development of *Rune II*

1 and *Oblivion Song*, to several potential Human Head acquirers. Plaintiffs were not informed their  
2 trade secrets were being disclosed to third parties.

3 83. As Human Head’s Ben Gokey wrote in an email to Plaintiffs, “Rob is our agent,  
4 and as such is part of our studio and our business. If you’re doing business with us, you’re  
5 working with Rob. Managing our business relationships is within his responsibilities, and helping  
6 resolve disputes over milestones and payment issues is unquestionably part of his job. This is  
7 standard practice in the industry.”

8 84. Neither Human Head nor Edgar told Plaintiffs that Human Head was seeking an  
9 acquisition. They consciously made this omission in order to induce Plaintiffs to continue  
10 payments. Human Head testified that it did not tell plaintiffs about the acquisition because, if it  
11 had, “[Plaintiffs] would have pulled away and looked for a new developer. And we would not  
12 have seen further payments for *Oblivion Song* or *Rune*.”

13 85. In concert with Human Head, Edgar intentionally misled Plaintiffs about Human  
14 Head’s intentions in an attempt to induce additional payments to Human Head - from which Edgar  
15 would also be compensated.

16 86. Human Head commenced acquisition discussions with Bethesda and Zenimax in  
17 the late summer or early fall of 2019.

18 87. As part of acquisition discussions, Zenimax performed due diligence on Human  
19 Head.

20 88. Zenimax’s due diligence included requests for “keys” that permitted it to play a  
21 confidential version of *Rune II*. It also requested copies of the *Rune II* and *Oblivion Song*  
22 Agreements. Human Head provided keys and copies of the requested agreements to Zenimax.

23 89. Human Head explained its contractual obligations with respect to *Oblivion Song*  
24 and *Rune II* to Bethesda and Zenimax.

25 90. As part of the negotiations leading up to the acquisition, Zenimax asked for a  
26 summary of Human Head’s current obligations and debts. On information and belief, at the time  
27 the transaction was consummated, Zenimax caused some or all of those debts to be paid.

28 91. Human Head did not disclose anything about its discussions with Bethesda and

1 Zenimax to Plaintiffs. Instead, Human Head endeavored to induce Plaintiffs' reliance by omitting  
2 material facts from their conversations: "How are we going to, you know, get our funds for  
3 Oblivion Song if they think we're just going to go under or if they think there's an acquisition,"  
4 Human Head testified. "So that was our big concern. We can't tell these guys."

5 **Bethesda and Zenimax Exploit Human Head To Sabotage *Rune II***

6 92. One early review of *Rune II* described it as "Skyrim on steroids." The hit video  
7 game *Skyrim* is part of Bethesda's *Elder Scrolls* franchise and was both developed and published  
8 by Bethesda and its affiliates. This review signaled to Bethesda and Zenimax that one of their  
9 biggest cash cows was under threat.

10 93. Zenimax told Human Head that upon consummation of an acquisition or similar  
11 transaction, Zenimax would require Human Head to cease work on *Rune II* and *Oblivion Song*.  
12 Human Head has testified that during acquisition discussions, Zenimax stated that it did not permit  
13 its affiliated studios to work on intellectual property not owned by Zenimax. If Human Head and  
14 Bethesda/Zenimax consummated an acquisition, Human Head testified, then Human Head would  
15 not be permitted to continue working on *Rune II* or *Oblivion Song*. This would necessarily force  
16 Human Head to breach its contractual obligations.

17 94. Human Head did not inform Plaintiffs of this requirement prior to the *de facto*  
18 merger, and Human Head's principals, acting as employees of Zenimax, misrepresented this  
19 requirement after the *de facto* merger.

20 95. Zenimax was the only potential acquisition partner that required Human Head to  
21 cease work on *Rune II* and *Oblivion Song*. "If [the transaction with Zenimax] didn't happen,"  
22 Human Head testified, "we would have . . . continued to try and do *Oblivion Song* and *Rune II*  
23 with [Plaintiffs]."

24 96. On information and belief, other potential acquisition partners wanted Plaintiffs'  
25 acquiescence and cooperation in any acquisition of Human Head. Zenimax was the only  
26 prospective acquisition partner that required secrecy and would not permit further development  
27 work on *Rune II* or *Oblivion Song*.

28 97. By acquiring Human Head, Zenimax and Bethesda had a chance to destroy the

1 competition before it hit the market. *Rune II* was scheduled to launch on November 12, 2019.  
2 Zenimax and Bethesda set out to sabotage that launch in the weeks leading up to that day.

3 98. On or about Friday, November 1, 2019, Zenimax caused the formation of  
4 Roundhouse Studios, LLC in Delaware. Despite Human Head’s public statement to the contrary,  
5 Roundhouse is headquartered in Maryland at the same address as Zenimax and Bethesda.

6 99. On or about Friday, November 1, 2019, Zenimax arranged to have Human Head  
7 dismiss all of its employees. On or about Monday, November 4, 2019, Zenimax then hired all of  
8 Human Head’s former employees and each of its six co-founders as direct employees of Zenimax.

9 100. As soon as Zenimax hired Human Head’s former employees, they were no longer  
10 permitted to work on *Rune II* or *Oblivion Song*. This inhibited completion of either game.

11 101. On or about November 4, 2019, Zenimax caused Roundhouse to acquire all of  
12 Human Head’s valuable physical assets, including computers and storage devices, as well as tables  
13 and chairs. This acquisition inhibited completion of the game.

14 102. The consideration paid for the acquisition of Human Head’s tangible assets was de  
15 minimis. In an October 1, 2019 email outlining the terms of the potential transaction, Bethesda’s

16 Rob Echter wrote: “[REDACTED]” Human Head  
17 testified that in fact, [REDACTED]  
18 [REDACTED]  
19 [REDACTED]”

20 103. The consideration paid to Human Head for its assets was insufficient for Human  
21 Head to cover its existing obligations. “[REDACTED]” Human Head

22 testified. “[REDACTED]  
23 [REDACTED]  
24 [REDACTED]” [REDACTED]  
25 [REDACTED].

26 104. Bethesda and Zenimax did not intend for Human Head to survive the transaction.  
27 In the October 1, 2019 email from Mr. Echter, he wrote “[REDACTED]  
28 [REDACTED]”

1 When Human Head objected to the burden of the bankruptcy process, Bethesda’s Rob Echter  
2 wrote to Human Head and stated, “[REDACTED]”

3 105. Human Head testified that [REDACTED]  
4 [REDACTED]  
5 [REDACTED]”

6 106. On information and belief, at the time of the November 4, 2019 *de facto* merger,  
7 Human Head could not pay its debts as they came due and had outstanding debts to third parties.

8 107. On information and belief, at the time of the November 4, 2019 *de facto* merger,  
9 Human Head was insolvent.

10 108. According to Human Head’s testimony, as part of the asset purchase, the storage  
11 devices and machines on which the developers programmed and saved *Rune II* and *Oblivion Song*  
12 became the property of Roundhouse. The source code for both games was stored on those devices  
13 and nowhere else.

14 109. Through the mechanism of the November 4 transaction, Zenimax gained control  
15 and took possession of *Rune II* and *Oblivion Song*. Not only did Zenimax indirectly own the  
16 devices on which the source code for both games was stored, but it controlled the principals of  
17 Human Head, who were now also employees of Zenimax. Human Head testified that, after  
18 November 4, 2019, any work performed on *Rune II* or *Oblivion Song* was performed “in property  
19 leased by Roundhouse, on computers owned by Roundhouse by people who were employed by  
20 Zenimax.”

21 110. On or about November 4, 2019, Zenimax caused Roundhouse to take assignment of  
22 Human Head’s real estate lease.

23 111. On information and belief, Zenimax caused Human Head’s outstanding and  
24 overdue rent on its real estate leases to be paid on or about the time the leases were assigned to  
25 Roundhouse.

26 112. Roundhouse Studios has no employees.

27 113. On information and belief, it has minimal operating capital.

28 114. Roundhouse Studios’ assets are commingled with Zenimax assets. Its real estate is

1 occupied exclusively by Zenimax employees and its computers are used exclusively by Zenimax  
2 employees.

3 115. Completely dominated and controlled by Zenimax, without employees or operating  
4 capital, Roundhouse Studios LLC is nothing more than an alter ego of Zenimax.

5 116. Despite Human Head's public announcement that Bethesda had formed  
6 Roundhouse as an affiliated studio in Madison, Wisconsin, not even Human Head understands  
7 what Roundhouse is, what it does, or who formed it. "[REDACTED]

8 [REDACTED].  
9 117. Human Head does not know what the relationship between Roundhouse, Zenimax,  
10 and Human Head is. When asked, "I'm still just trying to understand what the relationship is  
11 between Zenimax, Roundhouse, and [Human Head]," Human Head answered: "You and me  
12 both."

13 118. What remained of Human Head after November 4, 2019 was an empty shell  
14 corporation holding some of the obligations and debts of the former company, but none of the  
15 assets.

16 119. Despite this purported corporate transformation, nothing changed. The same  
17 people go to work in the same building in Madison, Wisconsin every day. They perform work on  
18 the same computers. The work they perform is the same: they design and develop video games.  
19 Their salaries stayed the same throughout the transition. In reality, Human Head was folded into  
20 Zenimax as a division located in Wisconsin.

21 120. Human Head and Zenimax, along with Rob Edgar, Human Head's principals, and  
22 Roundhouse, kept the *de facto* merger and all of its details secret from Plaintiffs.

23 121. Because the transaction was kept secret from Plaintiffs, and because Human Head's  
24 principals became employees of Zenimax, working in property leased by Roundhouse and on  
25 hardware owned by Roundhouse, it is impossible for Plaintiffs to allege whether Messrs. Gokey,  
26 Rhinehart, and MacArthur were acting as principals of Human Head or as employees of Zenimax  
27 from November 4, 2019 onward. Instead, from November 4, 2019 onward, they can only be said  
28 to be acting in their dual capacity as employees of Zenimax and principals of hollowed-out Human

1 Head.

2 122. As of November 4, 2019, with the acquisition of Human Head's equipment and  
3 leases, the hiring of its former employees, and the fact that Human Head's principals were now  
4 working simultaneously as employees of Zenimax, the two entities became closely related.  
5 Actions performed by the principals of Human Head were, by definition, actions performed by  
6 employees of Zenimax. Representations made by Human Head's principals to Plaintiffs in  
7 California were simultaneously representations made by employees of Zenimax to Plaintiffs in  
8 California. The two entities were working in concert; Human Head had been *de facto* merged into  
9 Bethesda.

10 123. As the final November 12, 2019 launch date approached, Ragnarok tried repeatedly  
11 to motivate Human Head to embrace and implement the vision contemplated by the Rune II  
12 Agreements for a dynamic and engaging *Rune II* game that would captivate gaming fans. Human  
13 Head was uninterested in implementing that vision and now Ragnarok finally knows why: Human  
14 Head was already in the process of being acquired by Bethesda and Zenimax. Human Head  
15 nevertheless continued to invoice Ragnarok for *Rune II*'s Milestones 21, 22 and 23 and to insist on  
16 payment for incomplete work product.

17 124. Despite Human Head's failures, Ragnarok, having agreed to team up with Human  
18 Head over a period of many years, continued to make good-faith payments to Human Head, with  
19 the understanding that Human Head would eventually complete the work and deliver in  
20 accordance with the contract specifications.

21 125. Ragnarok was mistaken because Human Head, Zenimax, and Bethesda had other  
22 plans after the launch on the Epic platform, which Human Head and Bethesda/Zenimax, along  
23 with the six Human Head co-founders, in their dual role as Zenimax employees and Human  
24 Head's principals, actively concealed from Ragnarok.

25 126. Meanwhile, Human Head also breached ongoing obligations regarding *Oblivion*  
26 *Song*. Human Head failed to meet milestones on time. As with *Rune II*, ESDFOS paid for  
27 completed milestones despite the fact that Human Head delivered deficient products that had to be  
28 rejected and redone. And as with *Rune II*, Human Head claimed expertise, this time in design of

1 certain game mechanics, but failed to deliver competent, workmanlike products.

2 127. Human Head also breached its ongoing obligations by failing to inform ESDFOS  
3 about loss of key personnel and by engaging in communications with potential investors without  
4 ESDFOS's knowledge or consent. On information and belief, Human Head shared ESDFOS  
5 intellectual property and confidential business information without ESDFOS's knowledge or  
6 consent. Human Head also set up a play test with another potential investor, which Human Head  
7 then unilaterally cancelled, without notifying or discussing with ESDFOS. These actions  
8 significantly hindered progress in completing and launching *Oblivion Song*.

9 128. As a result of this, Human Head never completed *Oblivion Song*. Given the state of  
10 the code before Human Head abandoned it, *Oblivion Song* would have to be entirely  
11 reprogrammed *in a different programming language* before it could be shipped to stores for sale to  
12 players.

13 129. Gaining control of the games was the first step in the sabotage of *Rune II* and  
14 *Oblivion Song*. The second step, detailed below, involved instructing Human Head's former  
15 employees to cease development work. The third step, also set out below, involved torpedoing the  
16 marketing plans tied to the release of *Rune II*. All the while, Bethesda and Zenimax's role was  
17 kept secret.

18 **Human Head Abandoned the Game Shortly Before the November 12, 2019 Launch of**  
19 ***Rune II***

20 130. During the development process of both *Rune II* and *Oblivion Song*, Plaintiffs and  
21 Human Head communicated regularly through daily production and development calls and regular  
22 emails. Since August 2019, as the deadline for the launch of *Rune II* quickly approached, those  
23 communications only increased, with Plaintiffs and Human Head speaking by phone at 11 a.m.  
24 every day. A regular topic on the agenda was the Live Ops Plans and Post-Launch Bug Fixes for  
25 *Rune II*. In other words, based on the discussions, Plaintiffs had no reason to doubt at that time  
26 that Human Head was committed to the project. Moreover, in discussions about post-launch  
27 plans, Chris Rhinehart reassured Ragnarok that he was enthusiastic about continuing to develop  
28 the game.

1           131. Things changed, however, just a couple of weeks before launch of *Rune II*. As an  
2 act of good faith in order to ensure a smooth launch, Ragnarok had made an early payment of  
3 \$90,000 for the final Milestone 23 in late October, 2019. Despite this gesture of good faith,  
4 Human Head and its Principals and staff suddenly became uncommunicative and unavailable  
5 during the week prior to launch.

6           132. On information and belief, Zenimax instructed its new employees to cease  
7 development work on both games. This order made it impossible to fix bugs in *Rune II* in the  
8 days prior to launch. On information and belief, Zenimax also prohibited Human Head from  
9 telling Plaintiffs about this instruction or any other aspect of the transaction between Human Head  
10 and Bethesda/Zenimax.

11           133. To maintain the ruse, Human Head resorted to increasingly fantastical explanation.  
12 For example, one week prior to launch, Human Head told Plaintiffs that the employee responsible  
13 for reporting the status of outstanding bugs and daily issues supposedly disappeared on vacation to  
14 Las Vegas, in violation of all industry norms about team availability just before launch of a game.  
15 Similarly, Chris Rhinehart and Ben Gokey went silent and were unresponsive despite the existing  
16 daily meetings and calls.

17           134. Zenimax acted with the malicious intention of harming the successful release of  
18 *Rune II* when it forbade Human Head's former employees from performing development or other  
19 work on *Rune II*. Zenimax further acted with malice in converting the source code for *Rune II* and  
20 *Oblivion Song*. Zenimax further acted with malice by hiding the transaction with Human Head  
21 and by instructing Human Head not to inform Plaintiffs, thereby inducing Plaintiffs' further  
22 reliance on Human Head's performance in the crucial week when Plaintiffs could have pivoted its  
23 marketing strategy or otherwise minimized the effect of Human Head's disappearance.

24           135. Instead of dealing openly with Plaintiffs, Zenimax's actions undermined the  
25 marketing efforts for *Rune II*. Zenimax went so far as to send Chris Rhinehart, the *Rune II* project  
26 lead and public face of the game, on a two-day business trip to Austin Texas on November 12,  
27 2019, the day the game launched. This business trip ensured that Mr. Rhinehart, the most  
28 important public-facing individual in the marketing of the game, was unavailable for any PR or

1 marketing work on the most important day for game sales. Instead, he was on a plane, in transit,  
2 or attending meetings at Arkane Studios, another affiliate of Zenimax.

3 136. Human Head’s odd behavior and misrepresentations extended to *Oblivion Song* as  
4 well. For months, Human Head and its agent Rob Edgar represented that they had been working  
5 on setting up play tests and soliciting interest from other game publishers. Additionally, Human  
6 Head agreed to include Plaintiffs in any high level business discussions of *Oblivion Song*.  
7 However, in the fall of 2019, Rob Edgar excluded ESDFOS from negotiations with potential  
8 backers that discussed the *Oblivion Song* budget and development schedule. Suddenly, and  
9 without prior notice to Plaintiffs, on October 17, 2019, Ryan Jackson of Human Head wrote to one  
10 such publisher that “[w]e’re working through some internal business concerns here regarding  
11 *Oblivion Song* and I’m afraid we will have to cancel the demo this Friday. Since this is the  
12 second time we have had to push I am uncomfortable trying to reschedule until we have these  
13 internal issues resolved . . . .” When Plaintiffs pressed for further details from Human Head,  
14 Human Head and its agent Rob Edgar explained that they had unilaterally cancelled the playtest,  
15 claimed the reason for cancelling was that they were owed money, retracted that reason, and then  
16 gave that reason again.

17 **Human Head and Zenimax Misrepresent Human Head’s Closure**

18 137. On November 7, 2019 – just three business days before the *Rune II* launch – Ben  
19 Gokey of Human Head wrote privately to Plaintiffs to tell them that, after over 20 years in  
20 existence, Human Head was closing its doors and could not meet its obligations to provide live-  
21 operations support to *Rune II*. Mr. Gokey did not explain that he and his entire team had been  
22 hired by Zenimax days before, that they were current employees of Zenimax, that Bethesda had  
23 assumed Human Head’s leases through its subsidiary Roundhouse, or any of the other details of  
24 the transaction consummated in the previous days. No mention was made of an acquisition or  
25 future plans. Rather, Human Head stated that it was simply going away for good.

26 138. On information and belief, Zenimax and Bethesda assisted Mr. Gokey, himself a  
27 Zenimax employee, in drafting the November 7, 2019 email to Plaintiffs.

28 139. Just in case news of the secret acquisition leaked, Zenimax and Bethesda prepared a

1 defensive press release. They were rightfully concerned that they would appear to have acted with  
2 malice in sabotaging *Rune II*.

3 140. Human Head thereafter stated privately to Plaintiffs that it would not make its  
4 offices and equipment available to Ragnarok prior to the launch, despite earlier plans to do so.  
5 What Human Head did not tell Plaintiffs was that Zenimax had taken over the leases through its  
6 subsidiary, Roundhouse. Human Head also requested an additional half million dollars in order to  
7 “buy out” Human Head’s interest in the game. In addition, for the half million dollars, Human  
8 Head explained to Ragnarok that only then would it return Ragnarok’s trade secret source code  
9 and assets. Oddly, however, the request was accompanied by a request for a “release of liability.”

10 141. On November 8, 2019, a conference call was held between Plaintiffs’ Matt  
11 Candler, Sam Goldberg, and Sam Kim, on the one hand, and Human Head’s Christopher  
12 Rhinehart, Ben Gokey, and Paul MacArthur (all three of whom were now employees of Zenimax  
13 and therefore its agents), on the other hand, to discuss how to proceed given Human Head’s  
14 closure. Ben Gokey explained that Human Head could no longer “continue as Human Head.”

15 142. Sam Goldberg expressed Plaintiffs’ shock and concern at this unexpected news,  
16 especially given Human Head’s earlier enthusiasm about its commitment to the launch of both  
17 games and beyond. Ben Gokey reassured Plaintiffs that the Human Head principals would use  
18 their best efforts to support Plaintiffs’ efforts to “move forward with these products.” After Sam  
19 Goldberg emphasized how critical Chris Rhinehart was to the launch and marketing of *Rune II*,  
20 Rhinehart again reassured Plaintiffs that he would be available to assist, especially with respect to  
21 the mission critical marketing functions around the November 12, 2019 game launch.

22 143. It quickly became evident to Ragnarok, however, that it would have to shoulder the  
23 responsibility of ensuring *Rune II* launched without Human Head’s support. Human Head failed  
24 to attend any of the prescheduled marketing and public relations events (live streams), despite its  
25 commitment to do so and frequent requests by Ragnarok. On information and belief, this absence  
26 of Human Head’s former principals and former employees, all now secretly employees of  
27 Zenimax, was at the instruction of Zenimax. Despite assuring Ragnarok he would be available to  
28 support the launch, Chris Rhinehart said he was “traveling” when Ragnarok asked him if he was

1 available to attend a production call on November 14, 2019. As Mr. Rhinehart testified, this trip  
2 was on Zenimax business.

3 144. Despite Human Head’s manifest breach of the *Rune II* Agreement, Plaintiffs did  
4 not terminate the contract in the days prior to launch. Instead, unaware of the acquisition and  
5 believing in their partnership with Human Head, Plaintiffs proceeded with another payment  
6 shortly thereafter, hoping to help Human Head through a momentary cash crunch.

7 145. Bethesda and Zenimax had other plans for the launch of *Rune II*. By, *inter alia*,  
8 securing the physical absence and unavailability of the *Rune II* project lead, Zenimax succeeded in  
9 sabotaging the marketing effort.

10 146. Zenimax acted with malice in sending Mr. Rhinehart on a business trip and  
11 instructing him to keep it secret. His absence was in violation of his contractual obligations to  
12 support the launch of *Rune II* and the timing of his absence shows that Bethesda and Zenimax  
13 sought to harm *Rune II*’s marketing efforts.

14 147. Almost all of the launch management was left to Ragnarok, its marketing partner,  
15 Reverb Communications, Inc., and its server company, Zuez. Together, they had to scramble to  
16 ensure the launch of *Rune II* didn’t fail without Human Head’s promised support.

17 148. Despite Human Head’s failure to support the launch on the Epic Games platform,  
18 and despite Human Head’s abandonment of *Rune II* and betrayal, Ragnarok dutifully paid Human  
19 Head \$180,000 as Ragnarok had agreed to do as part of the *Rune II* Agreements.

20 **Human Head and Zenimax Fraudulently Conceal Their Transaction**

21 149. On November 13, 2019, exactly one day after the *Rune II* launch, Chris Rhinehart  
22 announced to the press that Human Head was being acquired by Bethesda: “Sadly, we had to  
23 wind down the business of Human Head Studios and close its doors..... We reached out to our  
24 friends at Bethesda for help..... With the formation of Roundhouse Studios, Bethesda offered  
25 every employee of Human Head a position at the new company.”

26 150. This statement was false in several respects. None of Human Head’s employees  
27 became employees of Roundhouse or of Bethesda. They were all hired by Zenimax.

28 151. Zenimax timed this announcement of Human Head’s wind-down, which it helped

1 write, to ensure maximum disruption and damage to *Rune II*'s launch. Bethesda acted with malice  
2 in timing the press release to depress sales of *Rune II* and squeeze out a potential competitor.

3 152. On November 15, 2019, three days after the launch, Bethesda itself confirmed on  
4 social media that it had acquired Human Head as part of its Roundhouse Studios. Peter Hines, the  
5 Senior VP of Marketing and Communications at Bethesda, announced on Twitter that Bethesda  
6 had opened a new studio in Madison, Wisconsin in collaboration with Chris Rhinehart and the  
7 Human Head team.

8 153. These announcements drew significant attention away from the PR campaign  
9 Plaintiffs had planned for the launch of *Rune II*.

10 154. These announcements discouraged purchases. As Human Head testified, the  
11 announcement of Human Head's closure likely negatively affected sales of *Rune II*.

12 155. Roundhouse Studios and Human Head have the same exact business address:  
13 1741 Commercial Ave, Madison, Wisconsin. However, Roundhouse's official headquarters is at  
14 the same address as Zenimax and Bethesda. Roundhouse is a shell company created only to hold  
15 physical assets. Zenimax has hired all of Human Head's former employees, including its former  
16 principals, and Zenimax has taken all of Human Head's assets through its alter ego Roundhouse.  
17 Although Human Head publicly announced this transaction on November 13, 2019, the same  
18 Human Head team of employees and principals in the same physical location had actually been  
19 employees of Zenimax since November 4, 2019.

20 156. Plaintiffs were completely unaware of any of these developments and only learned  
21 about them from the press, along with the rest of the gaming community, and through discovery in  
22 this action. In fact, when Plaintiffs had asked Human Head on the November 8 call if Plaintiffs  
23 could reach out to former Human Head employees, Gokey said that "would be a problem." The  
24 problem Gokey knew (but didn't mention) was that those employees were Zenimax employees.

25 157. Zenimax, Bethesda, Roundhouse, Human Head, Christopher Rhinehart, Ben  
26 Gokey, Paul MacArthur, and Rob Edgar did not disclose any of this information to Plaintiffs  
27 during the multiple conversations they had about the future plans for *Rune II* and *Oblivion Song* in  
28 October and November 2019, including the November 8th conversation when Human Head

1 announced its closure.

2 158. Zenimax, Bethesda, Human Head, Roundhouse, Human Head’s principals acting  
3 also as employees of Zenimax, and Rob Edgar all actively hid the events of November 4, 2019,  
4 including the firing of all Human Head employees, their hiring by Zenimax, and the sale of all of  
5 Human Head’s assets to Roundhouse. This made it impossible for Plaintiffs to engage in any  
6 contingency planning, or to revise marketing and launch strategies.

7 159. Because the Defendants actively concealed their activities, the Plaintiffs were  
8 ignorant of the events of November 4, 2019 and could not hire new development teams to take  
9 over from Human Head.

10 160. Had Plaintiffs known that Human Head had entered a *de facto* merger with  
11 Plaintiffs’ competitors Zenimax and Bethesda, it would immediately have hired a new developer.

12 161. Plaintiffs allege, on information and belief, that during the weeks and months  
13 preceding the *Rune II* launch, Zenimax, Bethesda, Human Head, Rhinehart, Gokey, MacArthur,  
14 and Edgar knowingly and maliciously failed to disclose to Plaintiffs that: (1) Human Head was  
15 “closing its doors” as soon as *Rune II* launched if not before, (2) at Zenimax’s instruction, Human  
16 Head did not intend to continue operating as Human Head after the *Rune II* launch, (3) at the  
17 instruction of Zenimax, Human Head had no intent to support the *Rune II* launch, (4) at the  
18 instruction of Zenimax, Human Head intended to breach its long-term contractual relationship  
19 with Ragnarok to support and further develop *Rune II*, (5) at the instruction of Zenimax, Human  
20 Head had no intention of entering into the Live-Operations agreement contemplated by the *Rune II*  
21 Agreements, and (6) Human Head had been covertly making plans to join Bethesda/Zenimax  
22 while purportedly working on *Rune II*. At the same time, Human Head knowingly and  
23 maliciously concealed that: (1) at the instruction of Zenimax, it had no intention of completing  
24 *Oblivion Song*; (2) at the instruction of Zenimax, it had no intention of supporting *Oblivion Song*  
25 through launch and beyond; and (3) Human Head had been covertly making plans to join Bethesda  
26 while purportedly working on *Oblivion Song*.

27 162. As articulated by one journalist in a November 13, 2019 article, Human Head “was  
28 also in talks with Bethesda for the past couple of months (this type of acquisitions don’t happen in

1 a matter of days). And if that was the case, the team has been basically lying to its Rune fans for  
2 the past few months.....”

3 163. On information and belief, Zenimax, Bethesda, Rob Edgar, Human Head and its  
4 principals intentionally failed to disclose the truth because they wanted Plaintiffs to continue to  
5 pay money to Human Head and because they ultimately intended to try to sabotage the *Rune II*  
6 and *Oblivion Song* games that Plaintiffs had actively assisted Human Head to develop and support.

7 **Human Head Affirmatively Misrepresented Its Intent To Continue Its Relationship**  
8 **With Plaintiffs And To Grow the *Rune II* and *Oblivion Song* Games**

9 164. Prior to the launch of *Rune II* on November 12, 2019, Human Head, its agent Rob  
10 Edgar, and Human Head’s principals in their dual capacity as employees of Zenimax repeatedly  
11 misrepresented to Ragnarok and ESDFOS that they were invested in the future success of *Rune II*  
12 and *Oblivion Song* and intended to follow through on the “future plans” for *Rune II* and *Oblivion*  
13 *Song* discussed between Ragnarok and Christopher Rhinehart, Ben Gokey and Paul MacArthur.

14 165. On October 24, 2019, Matt Candler of Ragnarok emailed Christopher Rhinehart  
15 and Ben Gokey, seeking to continue discussions about future plans for Live Operations Services  
16 and Additional Content for *Rune II* and for growing *Rune II* together. That same day, after  
17 receiving a \$90,000 payment from Ragnarok for Milestone 23, Ben Gokey responded, in an email  
18 on which Chris Rhinehart was copied: “Great to hear streamer feedback is aligned with *our*  
19 *future plans* – that should help us move forward efficiently.” Similarly, on November 5, 2019,  
20 just two days before Plaintiffs learned the truth that Human Head was closing its doors that same  
21 week, Christopher Rhinehart told Matt Candler of Ragnarok in an email: “I’m super glad  
22 streamers are digging it [the game]. Looking forward to seeing how the general public likes it.”

23 166. In October and November 2019, Christopher Rhinehart and Matt Candler had  
24 several discussions about post-launch plans, during which Rhinehart assured Candler that  
25 Rhinehart and Human Head were enthusiastic about and committed to continuing to develop and  
26 grow *Rune II* and *Oblivion Song*. Defendants’ representations were false and intended to induce  
27 Plaintiffs to continue to honor the payment schedules under the *Rune II* Agreements and *Oblivion*  
28 *Song* Agreement.

1           167. Had Plaintiffs known these facts about Defendants’ future plans, Plaintiffs would  
2 have taken actions including but not limited to retaining another developer to support the  
3 development and launch of *Rune II* and *Oblivion Song* and issuing communications to the *Rune II*  
4 gaming community to describe the transition from Human Head to an alternative developer.

5           **Bethesda/Zenimax and Human Head Convert Certain *Rune II* and *Oblivion Song***  
6           **Property and Then Transfer Incomplete, Altered, and/or Unusable Assets**

7           168. The *Rune II* Agreements and *Oblivion Song* Agreement expressly provide that  
8 Plaintiffs exclusively own all right, title and interest in the content and materials developed by  
9 Human Head for *Rune II* and *Oblivion Song*, including deliverables, software (including source  
10 and object codes), work product, and the *Rune II* and *Oblivion Song* games (“Game Assets”).

11           169. On or about November 13, 2019, shortly after learning of Zenimax’s acquisition of  
12 Human Head, Plaintiffs asked that Human Head and its principals, now also acting publicly as  
13 employees of Zenimax, turn over all Game Assets.

14           170. As Human Head testified, despite Plaintiffs’ repeated demands commencing  
15 November 13, 2019, neither Human Head, nor Messrs. Gokey, Rhinehart, or MacArthur, who  
16 were all now employees of Zenimax, provided the Game Assets by December 1, 2019, by  
17 December 15, 2019, or by January 1, 2020.

18           171. In fact, for the next several months, Defendants refused to transfer the Game  
19 Assets, despite repeated requests by Plaintiffs and their counsel.

20           172. Bethesda, Zenimax, Human Head and the dual-hatted Human Head principals who  
21 were also Zenimax employees were maliciously holding the Game Assets hostage. This hostage-  
22 taking ensured that Plaintiffs could not rescue the game that Zenimax, working with Human Head,  
23 had sabotaged. It was further evidence of Zenimax’s malice. The hostage-taking attempted to  
24 coerce Plaintiffs to make payments for Human Head’s incomplete deliverables. In fact, Ben  
25 Gokey informed Sam Goldberg on November 18, 2019 that he was withholding delivery of the  
26 assets until such time as Plaintiffs make additional payments for milestones that had been  
27 *disapproved*. Human Head and its principals, acting in their dual capacity as employees of  
28 Zenimax, disregarded Plaintiffs’ plea that withholding the assets would harm not only Ragnarok,

1 but also *Rune II*'s fans and community and Ragnarok's business relationship with Epic, if  
2 Ragnarok is unable to support *Rune II* after its early launch.

3 173. By withholding the Game Assets, it was impossible for Plaintiffs to evaluate the  
4 status of the game, determine the scope of remaining work, or set out regarding the scope of  
5 remaining development work for any new developer hired to complete and support the game. This  
6 compounded the harm done to plaintiffs.

7 174. To add insult to injury, Human Head's former principals, acting in their dual  
8 capacity as employees of Zenimax, continued to alter the source and object codes for *Rune II*,  
9 despite repeated and explicit instructions from Ragnarok that they immediately cease all such  
10 alterations. On November 19, 2019, a week after Human Head "laid off" all its employees and  
11 "closed its doors," and after months of deficiencies, Human Head's principals, now employees of  
12 Zenimax, insisted on altering the *Rune II* code despite demands that there be no changes to the  
13 code at all. Ragnarok had understandably lost trust in Human Head's principals; furthermore,  
14 Ragnarok reasonably believed that the former Human Head employees were now working for  
15 Bethesda. Nevertheless, over Ragnarok's express instructions to the contrary, Human Head's  
16 principals in their dual role as Zenimax employees not only continued to change the code, but  
17 even uploaded and attempted to launch an altered, unapproved *Rune II* build to the Epic Games  
18 Store Staging. This move could only have been driven by malice and a desire to undermine  
19 Ragnarok, the success of *Rune II*, and the *Rune II* community.

20 175. Defendants ultimately began transferring certain Game Assets to Plaintiffs in the  
21 first quarter of 2020. The transfer did not just come too late. Rather, the assets that ultimately  
22 were transferred were incomplete and unusable. Indeed, it appears as if Defendants with  
23 malicious intent deliberately organized the assets in such a way as to ensure they were as  
24 indecipherable and unusable as possible.

25 **Veil Piercing Allegations (Roundhouse Is An Alter Ego Of Zenimax)**

26 176. On November 13, 2019, Human Head announced to the world that it was closing,  
27 but that "[w]ith the formation of Roundhouse Studios, Bethesda offered every employee of  
28 Human Head a position at the new company."

1           177. This announcement was written jointly by Zenimax, Bethesda, and Human Head's  
2 principals.

3           178. This announcement was false. It misled Plaintiffs and the commercial world at  
4 large.

5           179. In fact, Roundhouse has no personnel. All former Human Head employees and  
6 Human Head's principals were offered employment by Zenimax, not by "the new company"  
7 Roundhouse.

8           180. Human Head does not know why Roundhouse was created or what the relationship  
9 between Roundhouse, Zenimax, and Bethesda is or was.

10          181. On information and belief, Roundhouse is wholly controlled by Zenimax. All of its  
11 property is exclusively for use by Zenimax employees.

12          182. Unlike other studios affiliated with Zenimax, Roundhouse has no website.

13          183. Unlike other studios affiliated with Zenimax, Roundhouse has posted no current  
14 job openings on Zenimax's website.

15          184. Roundhouse has not announced any current projects or games during its time in  
16 existence.

17          185. On information and belief, Roundhouse is undercapitalized.

18          186. Roundhouse was formed to acquire the assets of Human Head, and as such was the  
19 mechanism by which the trade secret source code and Game Assets for *Rune II* and *Oblivion Song*  
20 was converted and held hostage.

21          187. The principals of Human Head, acting in their dual capacity as employees of  
22 Zenimax and as principals of the now-defunct Human Head, refused to return the trade secret  
23 source code and game assets for *Rune II* or *Oblivion Song* for several months.

24          188. If Roundhouse is found liable, that liability should carry through to its member or  
25 members. which directed and controlled all of its actions and which employed the principals of  
26 now-defunct Human Head.

27          189. On information and belief, the sole member of Roundhouse is Zenimax.

28           **Closely Related Entity Allegations**

1 190. As part of Zenimax's diligence of Human Head, it requested, received and on  
2 information and belief reviewed the Game Development Agreements for *Rune II* and *Oblivion*  
3 *Song*.

4 191. In the months leading up to the launch of *Rune II* and in the weeks after the launch  
5 of *Rune II*, Human Head acted in concert with Zenimax to sabotage the release of *Rune II*.

6 192. The November 4, 2019 transaction, in which Zenimax formed Roundhouse to  
7 purchase Human Head's assets and in which Zenimax then hired all of Human Head's personnel,  
8 leaving Human Head as an empty shell corporation with no assets and only liabilities, was a *de*  
9 *facto* merger. Through this *de facto* merger, Zenimax acquired control of all of Human Head's  
10 assets and personnel.

11 193. For the period of time from November 4, 2019 until November 13, 2019, which  
12 comprised the week preceding the launch of *Rune II* through the day after launch, the principals of  
13 Human Head were simultaneously employees of Zenimax.

14 194. As agents of Zenimax, the actions undertaken by Human Head's principals were  
15 performed with full knowledge, license, and at the instruction of, Zenimax.

16 195. Through its instructions to its employees, Zenimax worked in concert with Human  
17 Head to sabotage *Rune II*. Human Head, Zenimax, and Bethesda thus worked in concert to harm  
18 Plaintiffs.

19 196. Through their refusal to turn over the Game Assets, Human Head's principals,  
20 acting in their dual capacity as Zenimax employees, made it impossible for Plaintiffs to rescue the  
21 sabotaged launch of *Rune II* or to make needed fixes to *Oblivion Song*.

22 **Successor Liability Allegations (de facto Merger/Fraudulent Evasion Of**  
23 **Liabilities/Single Enterprise)**

24 197. On November 4, 2019, in a secret transaction, Zenimax hired all of Human Head's  
25 former employees and it hired Human Head's six founders as employees.

26 198. On November 4, 2019, Zenimax caused Roundhouse to acquire all of Human  
27 Head's assets for less than fair market value.

28 199. Roundhouse is an alter ego of Zenimax.

1           200.    The consideration paid for Human Head’s assets was insufficient to cover Human  
2 Head’s outstanding obligations, including commissions due to Rob Edgar that remain unpaid.

3           201.    As part of this transaction, on information and belief, Zenimax caused Human  
4 Head’s past-due rent to be paid.

5           202.    As a result of this transaction, Human Head ceased business operations beyond  
6 wind-down activities. On information and belief, Human Head took on no new projects after the  
7 date of the transaction.

8           203.    This transaction constituted a *de facto* merger of Human Head into Zenimax.

9           204.    During the period from November 4, 2019 to November 13, 2019, Human Head’s  
10 principals were secretly employees of Zenimax, whose subsidiary, Bethesda, is a competitor of  
11 Plaintiffs.

12           205.    During the period from November 4, 2019 to the launch of *Rune II* on November  
13 13, 2019, through this secret employment arrangement, Human Head and Bethesda worked in  
14 concert to sabotage the launch of *Rune II*.

15           206.    During the period from November 4, 2019 to November 13, 2019, neither Human  
16 Head nor Bethesda told Plaintiffs that Human Head was winding down, that all of Human Head’s  
17 employees had been dismissed and hired by Zenimax, that Human Head’s principals were  
18 simultaneously employees of Zenimax, that Human Head’s former employees were forbidden  
19 from doing development work and its principals were restricted to performing wind-down work on  
20 *Rune II*, or that Human Head and Bethesda were working together to sabotage the Release of *Rune*  
21 *II*.

22           207.    Starting on November 8, 2019, Plaintiffs repeatedly demanded the return of the  
23 trade secret source code and all other Game Assets, which was now housed on computers owned  
24 by Roundhouse in offices leased by Roundhouse.

25           208.    Ben Gokey, Paul MacArthur, and Chris Rhinehart refused to turn over the source  
26 code or other assets. Plaintiffs allege they were acting in their dual capacity as Human Head  
27 principals and Zenimax employees.

28           209.    The secret formation of Roundhouse Studios and the attempt to transfer all of

1 Human Head's assets but none of its liabilities to this entity, while moving all of its employees to  
2 Zenimax, was an attempt to fraudulently evade Human Head's obligations.

3 210. The conversion of the Game Assets and the attempt to hold them for ransom was an  
4 attempt to fraudulently extort money and a release of liability from Plaintiffs.

5 211. If Human Head is found liable in this action, Zenimax should be deemed its  
6 successor and held liable in its place because the transaction between Human Head and Bethesda  
7 was a *de facto* merger and because the transaction was for the purpose of fraudulently evading  
8 Human Head's liabilities.

9 212. In the alternative, Human Head and Zenimax comprise a single entity.

10 **FIRST CAUSE OF ACTION**

11 **(For Breach of Contract Against Defendant Human Head and its successor, Zenimax)**

12 213. Plaintiffs incorporate by reference the allegations set forth above as though set forth  
13 fully herein.

14 214. Plaintiff Ragnarok and Defendant Human Head entered into the Rune II Agreement  
15 and the Rune II Amendment.

16 215. Plaintiff Ragnarok did all, or substantially all, of the significant things the Rune II  
17 Agreement required it to do, except to the extent that its performance was excused by Human  
18 Head's conduct.

19 216. As set forth in the preceding paragraphs, Defendant Human Head breached the  
20 Rune II Agreement by, *inter alia*, failing to meet and satisfy the Milestones and Schedules set  
21 forth in the Rune II Agreements and by failing to provide support and live-operations services in  
22 connection with the launch of *Rune II*.

23 217. Human Head also breached the Rune II Agreements by failing to negotiate in good  
24 faith a LiveOps agreement after launch of *Rune II* on the Epic Store platform and generally by  
25 failing to deal with Ragnarok in good faith.

26 218. Human Head further breached the Rune II Agreements by providing copies of the  
27 agreements to various potential acquisition partners, including Defendants Zenimax and Bethesda,  
28 in violation of the Agreements' confidentiality provisions.

1           219. As an agent of Human Head, Defendant Rob Edgar facilitated the breach of the  
2 Rune II Agreements by providing copies of the agreements to various potential acquisition  
3 partners, including Defendants Zenimax and Bethesda, in violation of the Agreements'  
4 confidentiality provisions.

5           220. Human Head further breached the Rune II Agreements by providing potential  
6 acquisition partners, including Defendants Zenimax and Bethesda, with keys that enabled them to  
7 play *Rune II* in violation of the Agreements' confidentiality provisions.

8           221. Human Head further breached the Rune II Agreement by failing to return the Game  
9 Assets to Ragnarok, despite repeated requests, and by altering the code without Ragnarok's  
10 consent or approval.

11           222. As a proximate result of Human Head's breaches of contract, Ragnarok has been  
12 damaged in an amount to be proven at trial.

13           223. Plaintiff ESDFOS and Defendant Human Head entered into the Oblivion Song  
14 Agreement.

15           224. ESDFOS did all, or substantially all, of the significant things the Oblivion Song  
16 Agreement required it to do, except to the extent that its performance was excused by Human  
17 Head's conduct.

18           225. As set forth in the preceding paragraphs, Defendant Human Head breached the  
19 Oblivion Song Agreement by, *inter alia*, failing to meet and satisfy the Milestones and Schedules  
20 set forth in the Oblivion Song Agreement. Human Head also breached the Oblivion Song  
21 Agreement by entering into negotiations with and/or interfering with potential third-party  
22 investors in the game, without ESDFOS's knowledge or consent.

23           226. Human Head further breached the Oblivion Song Agreement by providing copies  
24 of the Agreement to various potential acquisition partners, in violation of the Agreement's  
25 confidentiality provisions.

26           227. Acting as agent of Human Head, Defendant Rob Edgar facilitated the breach of the  
27 Oblivion Song Agreement by providing copies of the Agreement to various potential acquisition  
28 partners, in violation of the Agreement's confidentiality provisions.



1 omitted material facts regarding the closure of Human Head and its *de facto* merger into Zenimax.

2 237. Defendants Zenimax and Bethesda edited communications purportedly authored by  
3 Human Head and subsequently sent to Plaintiffs that omitted material facts regarding the closure  
4 of Human Head and its *de facto* merger into Zenimax.

5 238. Defendants were concerned that if they informed Plaintiffs of their intentions,  
6 including to close down operations and become acquired by Bethesda, it would result in financial  
7 harm to Defendants.

8 239. Defendants intended to deceive Plaintiffs by concealing the facts identified in the  
9 preceding paragraphs.

10 240. Had Plaintiffs known these facts about Defendants' future plans, Plaintiffs would  
11 have taken actions to mitigate the harm to them, including but not limited to retaining another  
12 developer to support the development and launch of *Rune II* and *Oblivion Song* and issuing  
13 communications to the *Rune II* gaming community to describe the transition from Human Head to  
14 an alternative developer.

15 241. As a proximate result of Defendants' fraud and deceit, Plaintiffs have suffered  
16 damages in an amount to be proven at trial.

17 242. Defendants engaged in the aforementioned acts and omissions with oppression,  
18 fraud and/or malice, with the intent to sabotage both games and consequently injure Plaintiffs.  
19 Accordingly, Plaintiffs are entitled to an award of punitive damages against Defendants in an  
20 amount to be proven at trial.

21 **THIRD CAUSE OF ACTION**

22 **(For Conversion Against All Defendants)**

23 243. Plaintiffs incorporate by reference the allegations set forth above as though set forth  
24 fully herein.

25 244. Plaintiffs are the rightful owners of the Game Assets, pursuant to the Rune II  
26 Agreement and the Rune II Amendment and the Oblivion Song Agreement.

27 245. Defendants secretly transferred possession and control of the Game Assets to  
28 Defendant Roundhouse and its alter ego, Zenimax, on November 4, 2019.



1 employees and its six principals.

2 255. Acting as principals of Human Head and as employees of Zenimax, Christopher  
3 Rhinehart and Ben Gokey misrepresented to Plaintiffs that they would support the launch of *Rune*  
4 *II*.

5 256. The principals of Human Head, acting simultaneously as employees of Zenimax,  
6 and in concert with other employees of Zenimax, misrepresented the status of Human Head and its  
7 “wind down” and closure to Plaintiffs.

8 257. The principals of Human Head, acting simultaneously as employees of Zenimax,  
9 and in concert with other employees of Zenimax, misrepresented the relationship between Human  
10 Head, Zenimax, Roundhouse and Bethesda to Plaintiffs.

11 258. These representations were not true. Defendants knew these representations were  
12 false at the time they made them and they made them recklessly and without regard to their truth.

13 259. Defendants intended to defraud Plaintiffs and induce reliance by Plaintiffs on these  
14 statements, in part to lull Plaintiffs into believing that Defendants Human Head and its Principals  
15 were committed to the future success of *Rune II* and *Oblivion Song*.

16 260. Plaintiffs reasonably relied on Defendants’ statements to its detriment.

17 261. As a proximate result of Plaintiffs’ reliance on Defendants’ misrepresentations,  
18 Plaintiffs have suffered damages in an amount to be proven at trial.

19 262. Defendants engaged in the aforementioned acts and omissions with oppression,  
20 fraud and/or malice, with the intent to sabotage both games and consequently injure Plaintiffs.  
21 Accordingly, Plaintiffs are entitled to an award of punitive damages against Defendants in an  
22 amount to be proven at trial.

23 **FIFTH CAUSE OF ACTION**

24 **(For Negligent Misrepresentation Against All Defendants)**

25 263. Plaintiffs incorporate by reference the allegations set forth above as though set forth  
26 fully herein.

27 264. As set forth in the preceding paragraphs, Defendants Human Head and its  
28 Principals represented to Plaintiffs on multiple occasions that they intended to remain contracting

1 partners with Plaintiffs , that they were committed to supporting and further developing *Rune II*  
2 and *Oblivion Song*, and they were invested in the “future plans” for *Rune II* and *Oblivion Song*.

3 265. On or about November 4, 2019, Defendant Roundhouse acquired all of Human  
4 Head’s assets, including the Game Assets, and Zenimax hired all of Human Head’s former  
5 employees and its six principals.

6 266. Acting as principals of Human Head and as employees of Zenimax, Christopher  
7 Rhinehart and Ben Gokey represented to Plaintiffs that they would support the launch of *Rune II*.

8 267. The principals of Human Head, acting simultaneously as employees of Zenimax,  
9 and in concert with other employees of Zenimax, misrepresented the status of Human Head, its  
10 “wind down” and closure, to Plaintiffs.

11 268. The principals of Human Head, acting simultaneously as employees of Zenimax,  
12 and in concert with other employees of Zenimax, misrepresented the relationship between Human  
13 Head, Zenimax, Roundhouse and Bethesda to Plaintiffs.

14 269. These representations were not true and Defendants had no reasonable basis to  
15 believe these representations were true at the time they made them.

16 270. Plaintiffs allege, on information and belief, that Defendants intended to induce  
17 reliance by Plaintiffs on these statements, in part to lull Plaintiffs into believing that Defendants  
18 were committed to the future success of *Rune II* and *Oblivion Song*.

19 271. Plaintiffs reasonably relied on Defendants’ statements to their detriment.

20 272. As a proximate result of Plaintiffs’ reliance on Defendants’ misrepresentations,  
21 Plaintiffs have suffered damages in an amount to be proven at trial.

22 **SIXTH CAUSE OF ACTION**

23 **(For Unfair Business Practices in Violation of California Business & Professions Code**

24 **Section 17200 Against All Defendants)**

25 273. Plaintiffs incorporate by reference the allegations set forth above as though set forth  
26 fully herein.

27 274. Defendants’ conduct described above constitutes unlawful, unfair and/or fraudulent  
28 business practices in violation of Business and Professions Code Section 17200.



1 November 1, 2019, and fraudulent omission of material facts concerning the *de facto* merger  
2 between Zenimax and Human Head.

3 283. Zenimax, Bethesda, and Roundhouse acted with malice by, *inter alia* (i) keeping  
4 their transaction with Human Head secret, which enabled further fraud on Plaintiffs; (ii)  
5 converting Plaintiffs' property; and (iii) arranging the work schedules of Mr. Rhinehart and the  
6 former employees of Human Head to cause maximum financial injury to *Rune II* on the day it was  
7 launched.

8 284. The interference of Zenimax, Bethesda, and Roundhouse in the contractual  
9 relationship between Plaintiffs and Human Head caused damages by sabotaging the launch of  
10 *Rune II* and leaving *Oblivion Song* in such a state of disrepair that it has to be abandoned. These  
11 damages are in an amount to be determined at trial.

12 **EIGHTH CAUSE OF ACTION**

13 **(For Tortious Interference with Prospective Economic Relations Against Zenimax, Bethesda,**  
14 **and Roundhouse)**

15 285. Plaintiffs incorporate by reference the allegations set forth above as though set forth  
16 fully herein.

17 286. The *Rune II* Agreements and the *Oblivion Song* Agreement were validly binding  
18 contracts between Plaintiffs and Human Head. These agreements were not terminable at will by  
19 Human Head and had a term of five years. The *Rune II* Agreements provided that the parties  
20 would negotiate a further post-launch statement of work and milestone schedule in good faith.

21 287. Zenimax, Bethesda, and Roundhouse were aware of the agreements and had them  
22 in their possession.

23 288. Zenimax, Bethesda, and Roundhouse knowingly and intentionally caused Human  
24 Head to abandon its commitment to further development of the games pursuant to agreements to  
25 be reached. Human Head testified that "if [the transaction with Bethesda] didn't happen . . . we  
26 would have . . . continued to try and do *Oblivion Song* and *Rune II* with [Plaintiffs]."

27 289. Zenimax, Bethesda, and Roundhouse engaged in wrongful conduct to further the  
28 breach by actions including but not limited to intentional conversion of the Game Assets for *Rune*

1 *II* and *Oblivion Song*, fraudulent misrepresentation of the status of Human Head commencing on  
2 November 1, 2019, and fraudulent omission of material facts concerning the *de facto* merger  
3 between Zenimax and Human Head.

4 290. Zenimax, Bethesda, and Roundhouse acted with malice by (i) keeping their  
5 transaction with Human Head secret, which enabled further fraud on Plaintiffs, and (ii) converting  
6 Plaintiffs' property and failing to instruct their employees Gokey, Rhinehart, and MacArthur to  
7 return Plaintiffs' property despite repeated demands.

8 291. The interference of Zenimax, Bethesda, and Roundhouse in the prospective  
9 economic relationship between Plaintiffs and Human Head caused damages by harming the  
10 successful development of the games after launch. These damages are in an amount to be  
11 determined at trial.

#### 12 **NINTH CAUSE OF ACTION**

##### 13 **(Against Zenimax and Roundhouse For Violation of Cal. Penal Code 496(c))**

14 292. Plaintiffs incorporate by reference the allegations set forth above as though set forth  
15 fully herein.

16 293. The *Rune II* Agreements and the *Oblivion Song* Agreement vested ownership of the  
17 Game Assets in Plaintiffs.

18 294. As of November 4, 2019, ownership of the computers and storage devices  
19 containing the source code for *Oblivion Song* and *Rune II*, source code that comprised a part of  
20 the Game Assets, was transferred from Human Head to Roundhouse. As of November 4, 2019,  
21 these computers and storage devices were housed in offices leased by Roundhouse. Defendant  
22 Roundhouse, and through it Defendant Zenimax, therefore possessed and controlled the Game  
23 Assets.

24 295. As of November 4, 2019, Human Head's principals became employees of Zenimax  
25 and acted as its agents.

26 296. As of November 13, 2019, Plaintiffs demanded that Human Head's principals turn  
27 over the Game Assets. Human Head's principals refused. Human Head's principals continued  
28 this refusal for several months.



1 307. As a result of this conduct, Plaintiffs were damaged in an amount to be proven at  
2 trial.

3 308. Pursuant to Wis. Stat. § 895.446, Plaintiffs seek treble damages, the costs of suit,  
4 and attorneys' fees.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs Ragnarok Game, LLC and ESDFOS, LLC pray for relief as  
7 hereinafter set forth:

8 1. For compensatory damages in an amount to be proven at trial, but no less than \$100  
9 million.

10 2. For restitution of all monies paid by Ragnarok Game, LLC and ESDFOS, LLC to  
11 Defendants.

12 3. For injunctive relief prohibiting future unfair business practices, and fraudulent and  
13 deceitful conduct by Defendants, and requiring Defendants to return to Plaintiffs the property  
14 described above.

15 4. For punitive damages.

16 5. For treble damages.

17 6. For attorneys' fees and costs.

18 7. For prejudgment and postjudgment interest.

19 8. For such other relief that the Court may award.

20

21 DATED: October 16, 2020

BROWNE GEORGE ROSS LLP

Keith J. Wesley



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23  
24 By: \_\_\_\_\_

Keith J. Wesley

25 Attorneys for Plaintiffs Ragnarok Game, LLC and  
26 ESDFOS, LLC

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**DEMAND FOR JURY TRIAL**

Plaintiff Ragnarok Games, LLC hereby demands trial by jury.

DATED: October 16, 2020

BROWNE GEORGE ROSS LLP  
Keith J. Wesley



By: \_\_\_\_\_  
Keith J. Wesley  
Attorneys for Plaintiff Ragnarok Game, LLC and  
ESDFOS, LLC

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**PROOF OF SERVICE**

**Ragnarok Game, LLC v. Nine Realms, Inc.  
Case No. 19STCV43434**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 2121 Avenue of the Stars, Suite 2800, Los Angeles, CA 90067.

On October 20, 2020, I served a true copy of the following document described as **SECOND AMENDED COMPLAINT** on the interested parties in this action as follows:

Madison S. Spach, Jr. Shawn Etemadi Andrew Tsu Spach, Capaldi, Waggaman, LLP 4675 MacArthur Court Suite 550 Newport Beach, California 92660 Tel: 949.852.0710 Fax: 949.852.0714 Email: mspach@scwlawfirm.com setemadi@scwlawfirm.com adtsu@scwlawfirm.com	Attorneys for Defendant and Cross-Complainant, NINE REALMS, INC. dba HUMAN HEAD, and Defendants CHRISTOPHER J. RHINEHART, BEN GOKEY, and PAUL MACARTHUR
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**BY ELECTRONIC SERVICE:** I served the document on the persons listed above by submitting an electronic version of the document to First Legal, through the user interface at [www.firstlegal.com/efiling](http://www.firstlegal.com/efiling).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 20, 2020, at Los Angeles, California.



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Nancy Torrecillas