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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 CRYTEK GMBH,
12 Plaintiff,
13 vs.
14 CLOUD IMPERIUM GAMES CORP. and
ROBERTS SPACE INDUSTRIES CORP.,
15 Defendants.
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) Case No. 2:17-CV-08937
) [HON. DOLLY M. GEE]
) **ANSWER TO SECOND**
) **AMENDED COMPLAINT**

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1 For their answer to Plaintiff Crytek GmbH's ("Crytek") Second Amended
2 Complaint [ECF 39] ("SAC"), Cloud Imperium Games Corp. ("CIG") and Roberts Space
3 Industries Corp. ("RSI") (together, "Defendants") state as follows:

4 **SECOND AMENDED COMPLAINT**¹

5 The non-numbered paragraph that appears under the heading "Second Amended
6 Complaint" is a preamble that pleads no facts to which a response is required. To the
7 extent a response may be required, Defendants admit that Crytek brought a civil action
8 against Defendants in the United States District Court for the Central District of
9 California captioned *Crytek GmbH v. Cloud Imperium Games Corp.*, No. 2:17-CV-
10 08937, and that the operative pleading in that action is the SAC. Defendants deny that
11 they are liable to Crytek for any of the conduct alleged in the SAC and specifically deny
12 that they are liable to Crytek for allegedly breaching the parties' Game License
13 Agreement ("GLA") or for copyright infringement. Defendants deny any and all
14 remaining assertions in this paragraph.

15 **NATURE OF ACTION**

16 1. Paragraph 1 consists of legal conclusions to which no response is required.
17 To the extent a response may be required, Defendants admit that this Court has exclusive
18 subject matter jurisdiction over certain purported claims within this action under 28
19 U.S.C. §§ 1131 and 1338(a). Defendants further admit that they are citizens of California
20 and that Crytek asserts that it is a citizen of a foreign state. Defendants further admit that
21 Crytek asserts that the amount in controversy exceeds \$75,000. Defendants deny any and
22 all of Crytek's remaining assertions in Paragraph 1.

23 2. Defendants are without knowledge or information sufficient to form a belief
24 about the truth of Crytek's assertions in Paragraph 2 and on that basis deny them.

25 ¹ Defendants' Answer reproduces the headings from the SAC verbatim solely for the
26 Court's convenience and ease of reference. Defendants' use of these headings is not an
27 admission as to the truth of any assertions contained therein. To the extent these
28 headings are construed as assertions to which a response may be required, Defendants
deny the assertions contained therein.

1 3. Defendants admit that, in or about 2012, they or their predecessors-in-
2 interest (for convenience, also referred to herein as “Defendants”) began to develop a
3 new game called “Star Citizen” and its related space fighter game “Squadron 42.”
4 Defendants further admit that they decided to use the CryEngine video game
5 development platform to develop “Star Citizen” and its related space fighter game
6 “Squadron 42.” Defendants further admit they first used CryEngine under a standard
7 evaluation license offered by Crytek until the parties entered into a license term sheet on
8 or about October 10, 2012. Defendants further admit that their crowdfunding campaign
9 for “Star Citizen” and its related space fighter game “Squadron 42” raised over 150
10 million dollars and that amount represents a record for video game crowdfunding
11 projects. Defendants deny Crytek’s remaining assertions in Paragraph 3 and specifically
12 deny that Crytek undertook any special, unusual, or extraordinary efforts with respect to
13 Defendants that went beyond the level of support and engagement that Crytek provides to
14 its licensees that Crytek considers likely to produce a triple-A game, or that Defendants’
15 success is attributable to Crytek’s alleged efforts, or anything other than Chris Roberts’
16 authorship and Defendants’ unique and unprecedented approach to involve the
17 community in the creation of “Star Citizen” and its related space fighter game “Squadron
18 42.”

19 4. Defendants admit that Crytek and CIG entered into the GLA and refer to the
20 GLA for the terms therein. On information and belief, Defendants aver that the terms of
21 the GLA are standard for Crytek in most or all licenses that Crytek enters into with other
22 game developers for their use of CryEngine. Defendants deny Crytek’s remaining
23 assertions in Paragraph 4 and specifically deny that they breached the GLA or infringed
24 any copyright owned by Crytek.

25 5. Defendants deny Crytek’s assertions in Paragraph 5 and specifically deny
26 that Crytek is entitled to any relief in this action.
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28

1 **THE PARTIES**

2 6. Defendants are without knowledge or information sufficient to form a belief
3 about the truth of Crytek's assertions in Paragraph 6 and on that basis deny them.

4 7. Defendants admit that CIG is a corporation organized under the laws of
5 Delaware and registered to do business in California with its principal place of business
6 in Los Angeles, California.

7 8. Defendants admit that, at the time this action was filed, RSI was a
8 corporation organized under the laws of Delaware and was registered to do business in
9 California with its principal place of business in Los Angeles, California. Defendants
10 deny any and all of Crytek's remaining assertions in Paragraph 8.

11 **JURISDICTION AND VENUE**

12 9. Paragraph 9 consists of legal conclusions to which no response is required.
13 To the extent a response may be required, Defendants admit that this Court has exclusive
14 subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).
15 Defendants deny any and all of Crytek's remaining assertions in Paragraph 9.

16 10. Paragraph 10 consists of legal conclusions to which no response is required.
17 To the extent a response may be required, Defendants admit that they are citizens of
18 California and that Crytek asserts that it is a citizen of a foreign state. Defendants further
19 admit that Crytek asserts that the amount in controversy exceeds \$75,000. Defendants
20 deny any and all of Crytek's remaining assertions in Paragraph 10.

21 11. Paragraph 11 consists of legal conclusions to which no response is required.
22 To the extent a response may be required, Defendants admit that this Court has personal
23 jurisdiction over them. Defendants deny that they have engaged in any actionable
24 conduct within the State of California or anywhere else. Defendants are without
25 knowledge or information sufficient to form a belief about the truth of the Crytek's
26 remaining assertions in Paragraph 11 and on that basis deny them.

27 12. Paragraph 12 consists of legal conclusions to which no response is required.
28 To the extent a response may be required, Defendants admit that venue is proper in this

1 District pursuant to 28 U.S.C. § 1391. Defendants deny any and all of Crytek's
2 remaining assertions in Paragraph 12.

3 **FACTS GIVING RISE TO THIS ACTION**

4 13. Defendants admit that Chris Roberts is a video game designer. Defendants
5 further admit that Ortwin Freyermuth is an attorney who has represented clients in the
6 entertainment industry. Defendants further admit that Mr. Roberts and Mr. Freyermuth
7 are Defendants' co-founders. Defendants further admit that, on or about October 10,
8 2012, they initiated a crowdfunding campaign to raise money for "Star Citizen" and its
9 related space fighter game "Squadron 42." Defendants deny any and all of Crytek's
10 remaining assertions in Paragraph 13.

11 14. Defendants deny Crytek's assertions in Paragraph 14 and specifically deny
12 that Crytek undertook any special, unusual, or extraordinary efforts with respect to
13 Defendants that went beyond the level of support and engagement that Crytek provides to
14 its licensees that Crytek considers likely to produce a triple-A game, or that Defendants'
15 success is attributable to Crytek's alleged efforts, or anything other than Chris Roberts'
16 authorship and Defendants' unique and unprecedented approach to involve the
17 community in the creation of "Star Citizen" and its related space fighter game "Squadron
18 42."

19 15. Defendants admit that Crytek and Defendants entered into the GLA, which
20 is dated as of November 20, 2012. Defendants further admit that Mr. Freyermuth played
21 a lead role in negotiating the GLA on behalf of Defendants. Defendants further admit
22 that, prior to co-founding Defendants, when Mr. Freyermuth was in private practice, he
23 represented Crytek on matters unrelated to the GLA or Defendants' business and aver
24 that, before representing Defendants in their negotiations with Crytek, Crytek executed a
25 written conflict-of-interest waiver with respect to Mr. Freyermuth's previous
26 representation of Crytek on unrelated matters. Defendants further admit that Carl Jones
27 was an employee of Crytek and is now an employee of Defendants. Defendants are
28

1 without knowledge or information sufficient to form a belief about the truth of Crytek’s
2 remaining assertions in Paragraph 15 and on that basis deny them.

3 16. Defendants admit that, under the GLA, they agreed to pay Crytek a license
4 and “royalty buy-out” fee for access to and use of CryEngine in the “Star Citizen” *and*
5 “Squadron 42” video games. Defendants deny any and all of Crytek’s remaining
6 assertions in Paragraph 16 and specifically deny they paid a “below-market license rate”
7 for CryEngine and aver, on information and belief, that the GLA’s provisions obligating
8 Defendants to display Crytek’s copyright and trademark notices are standard in Crytek’s
9 CryEngine licensing agreements.

10 17. Defendants admit that they met their initial crowdfunding goal for “Star
11 Citizen.” Defendants further admit that they added additional “stretch goals” to the “Star
12 Citizen” crowdfunding campaign. Defendants further admit that they raised over \$50
13 million by 2014, over \$100 million by 2015, and over \$150 million by 2017. Defendants
14 further admit that “Star Citizen” has hit a record for video game crowdfunding projects
15 and is one of the highest-funded crowdfunding campaigns of all time. Defendants deny
16 that they “made . . . use of Crytek’s materials” in the “Star Citizen” crowdfunding
17 campaign in any manner for which they did not otherwise have the rights to use those
18 materials. Defendants deny any and all of Crytek’s remaining assertions in Paragraph 17.

19 18. Defendants deny Crytek’s assertions in Paragraph 18 and specifically deny
20 that they breached the GLA or infringed any copyright owned by Crytek.

21 **A. Defendants Are Developing a Separate Game Using CryEngine Without**
22 **Permission²**

23 19. Defendants deny that Section 2.1.2 of the GLA contained a promise to use
24 CryEngine for the development of only one video game and refer to the GLA for the
25 complete terms therein, including the GLA’s definition of the term “Game” as “Star
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27 ² To the extent this subheading is deemed an allegation to which Defendants’ response
28 may be required, Defendants deny the Crytek’s assertions contained in this subheading
and specifically deny that they are developing a separate game using CryEngine.

1 Citizen *and its related space fighter game ‘Squadron 42’*” (emphasis added).

2 Defendants deny any and all of Crytek’s remaining assertions in Paragraph 19.

3 20. Defendants admit that Section 2.1.2 of the GLA contains the quoted
4 language and refer to the GLA for the complete terms therein. Defendants deny that the
5 GLA limits the use of the CryEngine computer program to a single video game called
6 “Star Citizen” and refer to the GLA for the terms therein, including the GLA’s definition
7 of the term “Game” as “Star Citizen *and its related space fighter game ‘Squadron 42’*”
8 (emphasis added). Defendants deny any and all of Crytek’s remaining assertions in
9 Paragraph 20.

10 21. Defendants admit that Exhibit 2 of the GLA contains the quoted language,
11 but aver that Crytek failed to quote the relevant language in full. The full sentence reads:
12 “For the avoidance of doubt, the Game does not include any content being sold and
13 marketed separately, *and not being accessed through the Star Citizen Game client*, e.g.,
14 a fleet battle RTS sold and marketed as a separate, standalone PC game *that does not*
15 *interact with the main Star Citizen game (as opposed to an add-on / DLC to the*
16 *Game)*” (emphasis added). Defendants deny any and all of Crytek’s remaining assertions
17 in Paragraph 21.

18 22. Defendants deny that on December 16, 2015, they announced that
19 “Squadron 42” would be sold separately from “Star Citizen” and aver that, on December
20 16, 2015, Defendants announced that they would be offering a package in which “Star
21 Citizen” and “Squadron 42” would be available together as a crowdfunding incentive for
22 \$30 and that, in 2016, that package would no longer be available. Defendants admit that,
23 pursuant to Exhibit 2 of the GLA, “STAR CITIZEN (the ‘Game’)” is described as
24 featuring “Squadron 42: Single Player – Offline or Online ((Drop in / Drop out co-op
25 play)” in addition to “Star Citizen: Persistent Universe (hosted by CIG).” Defendants
26 deny that they had promised in the GLA that “Squadron 42” would not “be sold
27 separately”; and aver that Exhibit 2 of the GLA states that “the Game does not include
28 any content being sold and marketed separately, *and not being accessed through the*

1 *Star Citizen Game client*, e.g., a fleet battle RTS sold and marketed as a separate,
2 standalone PC game *that does not interact with the main Star Citizen game (as opposed*
3 *to an add-on / DLC to the Game)*” (emphasis added). Defendants deny any and all of
4 Crytek’s remaining assertions in Paragraph 22.

5 23. Defendants admit that, on January 29, 2016, they made a public
6 announcement, clarified shortly thereafter, that Squadron 42 would be available “as either
7 a stand alone game or an optional addon for Star Citizen rather than be included by
8 default.” Defendants aver that, on February 8, 2016, they made another announcement
9 clarifying that “Star Citizen” and “Squadron 42” would still be “functionally connected,”
10 would continue to be accessed “though the same game client,” and that “performance in
11 Squadron 42 [would] still have an impact on [players’] career[s] in [Star Citizen].”
12 Defendants deny any and all of Crytek’s remaining assertions in Paragraph 23.

13 24. Defendants admit that, on a February 5, 2016 telephone call, Crytek’s
14 counsel expressed to Mr. Freyermuth Crytek’s concern about Defendants distributing
15 “Squadron 42” as a standalone game. Defendants aver that, on this phone call, Mr.
16 Freyermuth clarified Defendants’ plans with respect to “Squadron 42,” which Crytek’s
17 counsel agreed would not violate the GLA. Defendants further aver that, on February 7,
18 2016, Mr. Freyermuth sent an email to Crytek’s counsel memorializing their telephone
19 conversation and stating that Defendants would publish a corrective statement to clarify
20 that “Squadron 42” would remain functionally tied to “Star Citizen” and only accessible
21 through the “Star Citizen” game client, which Defendants did on February 8, 2016.
22 Defendants deny Crytek’s characterization of its February 5, 2016 communication to
23 Defendants and deny any and all of Crytek’s remaining assertions in Paragraph 24.

24 25. Defendants admit that, on February 14, 2016, they began to raise additional
25 crowdfunding by offering “Squadron 42,” as explained in their February 8, 2016
26 announcement described in Paragraph 23 above. Defendants deny Crytek’s remaining
27 assertions in Paragraph 25 and specifically deny that they “fail[ed] to obtain a license”
28 from Crytek for “Squadron 42,” that “Squadron 42” has actually ever been made

1 available as a “standalone” game, and that any of the conduct Crytek alleges in the SAC
2 constitutes an “intentional[] and willful[]” breach of the GLA or “intentional[] and
3 willful[]” copyright infringement.

4 26. Defendants admit that, on December 23, 2016, in reference to Star Citizen
5 and Squadron 42, Defendants announced that “[b]oth games are currently in development
6 and are backed by a record-breaking \$139 million crowd funded effort.” Defendants
7 deny any and all of Crytek’s remaining assertions in Paragraph 26.

8 27. Defendants deny Crytek’s assertions in Paragraph 27 and specifically deny
9 that the GLA does not permit Defendants to use CryEngine to develop “Squadron 42,”
10 that Defendants are obligated to pay Crytek any additional compensation for any of their
11 use of CryEngine, or that Crytek has suffered any actionable harm as a result of any of
12 Defendants’ use of CryEngine in connection with “Squadron 42” or otherwise.

13 **B. Defendants Removed Crytek Trademarks and Copyright Notices from**
14 **Their Games and Marketing Materials Without Permission³**

15 28. Defendants admit that Sections 2.8.1, 2.8.2, and 2.8.3 of the GLA generally
16 concern the display of Crytek’s trademarks and copyright notices in the “Star Citizen”
17 video game and related marketing materials, but deny Crytek’s characterization of those
18 provisions and refer to the GLA for the complete terms therein. Defendants aver, on
19 information and belief, that Sections 2.8.1, 2.8.2, and 2.8.3 of the GLA are standard in
20 Crytek’s CryEngine licensing agreements. Defendants deny any and all of Crytek’s
21 remaining assertions in Paragraph 28.

22 29. Defendants admit that Section 2.8.1 of the GLA contains the quoted
23 language, but deny Crytek’s characterization of the provision and refer to the GLA for
24 the complete terms therein. Defendants deny any and all of Crytek’s remaining
25 assertions in Paragraph 29.

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28 ³ To the extent this subheading is deemed an allegation to which Defendants’ response
may be required, Defendants deny Crytek’s assertions contained in this subheading.

1 30. Defendants admit that Section 2.8.2 of the GLA contains the quoted
2 language, but deny Crytek’s characterization of the provision and refer to the GLA for
3 the complete terms therein. Defendants deny any and all of Crytek’s remaining
4 assertions in Paragraph 30.

5 31. Defendants deny Crytek’s assertions in Paragraph 31 that Section 2.8.3 of
6 the GLA states that any changes to Crytek’s trademarks and copyright notices in “Star
7 Citizen” requires Crytek’s prior written approval and a ten-day approval period and refer
8 to the GLA for the terms therein.

9 32. Defendants admit that, pursuant to the GLA, “Star Citizen” initially
10 contained a splash screen that included Crytek’s trademarks and copyright notices.
11 Defendants further admit that the screenshot in Paragraph 32 appears to be an accurate
12 reproduction of what this splash screen looked like. Defendants deny any and all of
13 Crytek’s remaining assertions in Paragraph 32.

14 33. Defendants deny that they “knew Crytek’s right to display its trademarks
15 and copyright notices in the Star Citizen video game and related marketing materials was
16 a critical component of the GLA.” Defendants admit that, in a video dated September 24,
17 2016, found at <https://www.youtube.com/watch?v=fDROliuDczo>, Mr. Roberts stated that
18 “we don’t call [the video game engine] CryEngine anymore, we call it Star Engine,” a
19 term used internally by Defendants’ employees to identify the cumulative code base
20 comprising CryEngine, plus Defendants’ substantive modifications, additions, and re-
21 designs to CryEngine, as authorized and contemplated by GLA Section 2.1.1.
22 Defendants deny any and all of Crytek’s remaining assertions in Paragraph 33 and
23 specifically deny that, in making this statement, Mr. Roberts “publicly sought to
24 minimize Crytek’s contribution to Star Citizen.”

25 34. Defendants admit that, after they began operating under the Amazon
26 Lumberyard license, Defendants no longer included Crytek’s copyright and trademark
27 notices in “Star Citizen” and related marketing materials. Defendants deny any and all of
28 Crytek’s remaining assertions in Paragraph 34 and specifically deny that Defendants’

1 omission of Crytek’s trademarks and copyright notices from “Star Citizen” and related
2 marketing materials breached the GLA.

3 35. Defendants deny Crytek’s assertions in Paragraph 35 and specifically deny
4 that “[t]he licensing fee negotiated under the GLA reflected a substantial reduction from
5 Crytek’s usual licensing fees in view of the promotional consideration and other
6 consideration that Defendants promised to Crytek in Sections 2.8.1, 2.8.2, and 2.8.3 of
7 that Agreement,” or that Crytek has been damaged in any way as a result of any conduct
8 alleged in the SAC.

9 **C. Defendants Broke Their Promise Not to Compete with CryEngine by**
10 **Adopting And Promoting a Competing Game Engine⁴**

11 36. Based on the Court’s December 6, 2018 Order Granting Defendants’ Motion
12 to Dismiss the SAC in Part [ECF 49], no response to Paragraph 36 is necessary.

13 37. Based on the Court’s December 6, 2018 Order Granting Defendants’ Motion
14 to Dismiss the SAC in Part [ECF 49], no response to Paragraph 37 is necessary.

15 38. Based on the Court’s December 6, 2018 Order Granting Defendants’ Motion
16 to Dismiss the SAC in Part [ECF 49], no response to Paragraph 38 is necessary.

17 39. Based on the Court’s December 6, 2018 Order Granting Defendants’ Motion
18 to Dismiss the SAC in Part [ECF 49], no response to Paragraph 39 is necessary.

19 **D. Defendants Broke Their Promise to Collaborate On CryEngine**
20 **Development⁵**

21 40. Defendants admit that Section 7.3 of the GLA generally concerns
22 Defendants’ obligation to provide “bug fixes and optimizations” to Crytek, but deny
23 Crytek’s characterization of that provision, and specifically deny that such an obligation
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25 ⁴ Based on the Court’s December 6, 2018 Order Granting Defendant’s Motion to Dismiss
26 the SAC in Part [ECF 49], no response to this subheading is necessary.

27 ⁵ To the extent this subheading is deemed an allegation to which Defendants’ response
28 may be required, Defendants deny the assertions contained in this subheading and
specifically deny that they broke their promise to collaborate on CryEngine development.

1 to deliver bug fixes and optimizations, which is standard in game license agreements,
2 constitutes “collaboration,” and refer to the GLA for the complete terms therein.

3 Defendants deny any and all of Crytek’s remaining assertions in Paragraph 40.

4 41. Defendants admit that Section 7.3 of the GLA contains the quoted language,
5 but deny Crytek’s characterization of that provision and refer to the GLA for the
6 complete terms therein. Defendants deny any and all of Crytek’s remaining assertions in
7 Paragraph 41.

8 42. Defendants admit that, on or about November 16, 2015, more than three
9 years after entering into the GLA, Crytek for the first time requested bug fixes and
10 optimizations from Defendants. Defendants aver that, between November 18, 2015 and
11 December 4, 2015, Crytek and Defendants exchanged multiple emails regarding the bug
12 fixes and optimizations, but Crytek failed to respond to Defendant’s December 4, 2015
13 email tendering delivery of the requested bug fixes and optimizations. Defendants deny
14 any and all of Crytek’s remaining assertions in Paragraph 42.

15 43. Defendants admit that, on or about November 24, 2016, almost a year after
16 Defendants tendered the bug fixes and optimizations to Crytek, Defendants received a
17 letter from Crytek contending Defendants were in breach of Section 7.3 of the GLA.
18 Defendants deny that they were in breach of Section 7.3 of the GLA. Defendants aver
19 that, by letter dated November 30, 2016, Defendants reminded Crytek that Defendants
20 had tendered the bug fixes and optimizations in December 2015, but Crytek never
21 accepted delivery or responded to the tender. Defendants further aver that, by letter dated
22 December 2, 2016, Crytek acknowledged its failure to respond to Defendants’ December
23 2015 email and notified Defendants that Crytek was withdrawing its November 24, 2016
24 breach notice. Defendants deny any and all of Crytek’s remaining assertions in
25 Paragraph 43 and specifically deny that they did not comply with their obligations under
26 Section 7.3 of the GLA.

27 44. Defendants admit that, by letter dated June 22, 2017, more than six months
28 after Crytek’s last communication on the topic, Crytek again requested bug fixes and

1 optimizations under Section 7.3 of the GLA. Defendants deny that, “to date,” they “have
2 not made a good faith effort to provide Crytek with the promised bug fixes and
3 optimizations.” Defendants aver that, on or about January 23, 2018, approximately six
4 months after receiving Crytek’s request, Defendants delivered their “bug fixes and
5 optimizations” to CryEngine as a complete compilable version. Defendants deny any and
6 all of Crytek’s remaining assertions in Paragraph 44.

7 45. Defendants deny Crytek’s assertions in Paragraph 45 and specifically deny
8 that they have failed to provide “the technology to Crytek that they promised to Crytek
9 under the GLA” or that Crytek has been damaged in any way as a result of any conduct
10 alleged in the SAC.

11 **E. Defendants Disclosed CryEngine Technology to Third Parties Without**
12 **Permission⁶**

13 46. Defendants admit that Sections 2.2.1, 2.2.2, and 2.6 of the GLA generally
14 concern the confidentiality of the underlying technology for CryEngine (including
15 computer source code), but deny Crytek’s characterization of that provision and refer to
16 the GLA for the complete terms therein. Defendants deny any and all of Crytek’s
17 remaining assertions in Paragraph 46.

18 47. Defendants admit the GLA contains the quoted language, but refer to the
19 GLA for the complete terms therein.

20 48. Defendants admit the GLA contains the quoted language, but refer to the
21 GLA for the complete terms therein.

22 49. Defendants admit the GLA contains the quoted language, but refer to the
23 GLA for the complete terms therein.

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27 ⁶ To the extent this subheading is deemed an allegation to which Defendants’ response
28 may be required, Defendants deny Crytek’s assertions in this subheading and specifically
deny that they disclosed CryEngine technology to third parties without permission.

1 50. Defendants admit that, on or about May 6, 2015, they began posting a series
2 of videos online titled “Bugsmashers.” Defendants deny any and all of Crytek’s
3 remaining assertions in Paragraph 50.

4 51. Defendants admit that, on or about August 26, 2017, they announced a
5 partnership with third-party developer Faceware Technologies. Defendants deny any and
6 all of Crytek’s remaining assertions in Paragraph 51 and specifically deny that they gave
7 Faceware Technologies access to CryEngine source code or had any obligation to
8 disclose to Crytek their partnership with Faceware Technologies.

9 52. Defendants deny Crytek’s assertions in Paragraph 52.

10 COUNTS

11 **COUNT 1: BREACH OF CONTRACT**

12 53. Defendants incorporate by reference their responses to the assertions in the
13 preceding paragraphs of this Answer.

14 54. Defendants deny Crytek’s assertions in Paragraph 54.

15 55. Defendants deny Crytek’s assertions in Paragraph 55.

16 56. Defendants deny Crytek’s assertions in Paragraph 56.

17 57. Defendants deny Crytek’s assertions in Paragraph 57.

18 58. Defendants deny Crytek’s assertions in Paragraph 58.

19 59. Based on the Court’s December 6, 2018 Order Granting Defendants’ Motion
20 to Dismiss the SAC in Part [ECF 49], no response to Paragraph 59 is necessary.

21 60. Defendants deny Crytek’s assertions in Paragraph 60.

22 **COUNT 2: COPYRIGHT INFRINGEMENT**

23 61. Defendants incorporate by reference their responses to the assertions in the
24 preceding paragraphs of this Answer.

25 62. Defendants are without knowledge or information sufficient to form a belief
26 about the truth of Crytek’s assertions in Paragraph 62 and on that basis deny them.

27 63. Defendants deny Crytek’s assertions in Paragraph 63.

28 64. Defendants deny Crytek’s assertions in Paragraph 64.

1 65. Defendants deny Crytek's assertions in Paragraph 65.

2 66. Defendants deny Crytek's assertions in Paragraph 66.

3 67. Defendants deny Crytek's assertions in Paragraph 67.

4 68. Defendants deny Crytek's assertions in Paragraph 68.

5 69. Defendants deny Crytek's assertions in Paragraph 69.

6 70. Defendants deny Crytek's assertions in Paragraph 70.

7 **PRAYER FOR RELIEF**

8 Defendants deny that Crytek is entitled to the relief sought, or any relief, in this
9 action.

10 **AFFIRMATIVE DEFENSES**

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(Failure to State a Claim)**

13 The SAC fails to state facts sufficient to constitute a claim upon which relief can
14 be granted against Defendants.

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(Express License)**

17 The GLA expressly permits the conduct of which Crytek complains in the SAC.

18 **THIRD AFFIRMATIVE DEFENSE**

19 **(No Breach)**

20 Defendants performed all duties owed to Crytek under the GLA, other than duties
21 which were prevented or excused by Crytek's actions or inactions.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 **(Lack of Privity)**

24 There is no privity of contract between Crytek and RSI, as RSI is not a party to the
25 GLA.

1 **FIFTH AFFIRMATIVE DEFENSE**

2 **(Prevention of Performance)**

3 Crytek prevented Defendants from performing under the GLA by refusing to
4 accept Defendants' tender of its "bug fixes and optimizations" to CryEngine pursuant to
5 the GLA.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 **(Non-intentional Breach)**

8 To the extent Defendants are determined to have breached any provision of the
9 GLA, any such breach was not intentional and therefore no damages are recoverable
10 under Section 6.1.4 of the GLA.

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 **(Implied Condition)**

13 Defendants' obligation to display Crytek's copyright and trademark notices in
14 "Star Citizen" and its related space fighter game "Squadron 42" or their related marketing
15 materials is subject to the implied condition that Defendants are actually using CryEngine
16 in "Star Citizen" and/or "Squadron 42."

17 **EIGHTH AFFIRMATIVE DEFENSE**

18 **(Copyright Preemption)**

19 Crytek's state law claims for breach of contract are preempted, in whole or in part,
20 by the federal Copyright Act, 17 U.S.C. §§ 101 *et seq.*

21 **NINTH AFFIRMATIVE DEFENSE**

22 **(Fair Use)**

23 Crytek's copyright claims are barred, in whole or in part, by the fair use doctrine,
24 17 U.S.C. § 107.

1 **TENTH AFFIRMATIVE DEFENSE**

2 **(Failure to Register)**

3 Crytek has failed to register the copyrights in one or more of the versions of the
4 CryEngine computer program it alleges Defendants infringed and thus is not permitted to
5 file this suit or maintain this action as to those unregistered works.

6 **ELEVENTH AFFIRMATIVE DEFENSE**

7 **(Invalid Subject Matter)**

8 To the extent that parts of CryEngine, Crytek’s purported copyrighted work,
9 constitute facts, ideas, or scenes-à-faire, such parts lack copyright protection and cannot
10 form the basis of a copyright infringement claim against Defendants.

11 **TWELFTH AFFIRMATIVE DEFENSE**

12 **(Merger Doctrine)**

13 Crytek’s copyright claims are barred, in whole or in part, by the merger doctrine.

14 **THIRTEENTH AFFIRMATIVE DEFENSE**

15 **(De Minimis Use Doctrine)**

16 Crytek’s copyright claims are barred, in whole or in part, by the *de minimis* use
17 doctrine.

18 **FOURTEENTH AFFIRMATIVE DEFENSE**

19 **(No Statutory Damages or Attorney’s Fees)**

20 Crytek is barred by 17 U.S.C. § 412 from claiming statutory damages or attorney’s
21 fees under the Copyright Act because all alleged acts of infringement began before first
22 registration of Crytek’s copyrighted work.

23 **FIFTEENTH AFFIRMATIVE DEFENSE**

24 **(Failure to Mitigate Damages)**

25 Crytek has failed to take reasonable steps to reduce or minimize its alleged
26 damages.

SIXTEENTH AFFIRMATIVE DEFENSE

(Laches)

Crytek’s claims are barred, in whole or in part, by the doctrine of laches.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Crytek’s claims are barred, in whole or in part, by the doctrine of unclean hands.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Waiver)

Crytek’s claims are barred, in whole or in part, by the doctrine of waiver.

NINETEENTH AFFIRMATIVE DEFENSE

(Estoppel)

Crytek’s claims are barred, in whole or in part, by the doctrine of estoppel.

TWENTIETH AFFIRMATIVE DEFENSE

(Ripeness)

At least some of Crytek’s claims in the SAC are not ripe for adjudication by this Court.

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