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 SONY INTERACTIVE ENTERTAINMENT LLC

14
 15 **UNITED STATES DISTRICT COURT**
 16 **NORTHERN DISTRICT OF CALIFORNIA**

17 SONY INTERACTIVE ENTERTAINMENT
 18 LLC, a California limited liability company,

19 Plaintiff,

20 v.

21 TENCENT HOLDINGS LTD., a Cayman
 Islands corporation; TENCENT
 22 TECHNOLOGY (SHANGHAI) COMPANY
 LTD. d/b/a AURORA STUDIOS and/or
 23 POLARIS QUEST, a Chinese company;
 TENCENT AMERICA LLC, a Delaware
 24 limited liability company; PROXIMA BETA
 PTE LTD. d/b/a TENCENT GAMES and/or
 25 LEVEL INFINITE, a Singapore corporation;
 PROXIMA BETA U.S. LLC, a Delaware
 26 limited liability company; and DOES 1-10.

27 Defendants.

Case No. 3:25-cv-06275-JSC

**PLAINTIFF SONY INTERACTIVE
 ENTERTAINMENT LLC'S NOTICE OF
 MOTION AND MOTION FOR
 PRELIMINARY INJUNCTION;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT**

Date: November 20, 2025
 Time: 10:00 a.m.
 Courtroom: 8 – 19th Floor
 Judge: Hon. Jacqueline Scott Corley

**REDACTED VERSION OF
 DOCUMENT SOUGHT TO BE
 SEALED.**

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1 **NOTICE OF MOTION AND MOTION**

2 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD**

3 PLEASE TAKE NOTICE that on November 20, 2025, at 10:00 a.m., or as soon thereafter
4 as this matter may be heard, in the courtroom of the Honorable Jacqueline Scott Corley, located in
5 Courtroom 8, on the 19th Floor of the United States Courthouse, 450 Golden Gate Avenue, San
6 Francisco, California, 94102, Plaintiff Sony Interactive Entertainment LLC (“SIE”) will and hereby
7 does move this Court, pursuant to Federal Rule of Civil Procedure 65, for an order to protect its
8 copyrights in *Horizon Zero Dawn* and *Horizon Forbidden West* (the “*Horizon Works*”) and
9 trademark rights in *Horizon’s* female protagonist (the “ALOY Character Mark”) during the
10 pendency of this action.

11 Specifically, SIE seeks a preliminary injunction enjoining Defendants (“Tencent”) from
12 reproducing, preparing derivative works of, displaying, performing, and distributing any works
13 copied or derived from SIE’s *Horizon Works*, including *Light of Motiram*, and from using the ALOY
14 Character Mark or any confusingly similar mark pending trial. The grounds for this motion are that
15 SIE is likely to succeed on the merits of its copyright and trademark claims; that it will suffer
16 irreparable harm during the pendency of this action absent the requested relief; that the balance of
17 equities favors SIE; and that the public interest will be served by issuing a preliminary injunction to
18 maintain the status quo during the pendency of this action.

19 This Motion is based upon the Complaint filed in this action, the Memorandum of Points and
20 Authorities following herein, as well as the Declarations of Diana Rutowski, Jan-Bart van Beek,
21 Lucas van Tol, Asad Qizilbash, and Matthew Kuykendall and exhibits thereto, filed herewith, the
22 previously filed Declarations of Annette L. Hurst (Dkt. 61-1) and Olivier Courtemanche (Dkt. 63),
23 as well as such other and further papers that may be filed in support of the Motion, and any other
24 evidence or argument presented in support prior to or at the hearing of this Motion.

1 **STATEMENT OF ISSUES**

2 Whether the Court should preliminarily enjoin Defendants from continuing to infringe the
3 *Horizon* Works and the ALOY Character Mark during the pendency of this action, where SIE is
4 likely to succeed on the merits of its copyright and trademark claims, will suffer irreparable harm
5 absent the requested relief, the balance of equities favors SIE, and the public interest is served by
6 the injunction?

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **INTRODUCTION**

9 Creating a successful video game requires a tremendous investment of time and money
10 fueled by audiovisual and storytelling inspiration. SIE invested six years and considerable sums to
11 create *Horizon Zero Dawn*, a blockbuster video game that spawned a highly successful *Horizon*
12 Franchise. Tencent wanted to short circuit this costly and risky game development process. It
13 sought a license from SIE to create a *Horizon* sequel. When SIE declined, Tencent proceeded
14 anyway. It began developing and promoting an unlicensed copycat game called *Light of Motiram*.
15 Fans and leading trade publications were shocked and appalled when Tencent released the game's
16 first promotional materials. For example, the popular videogame publication Kotaku reacted:

17 To be clear, we're not saying, 'Oh hey, that kind of reminds of *Horizon*.' This is more of a,
18 'Oh my good lord, what are they *thinking* this is outrageous!' *Light of Motiram* is one of
19 those cases where you feel safe to type the words 'complete rip-off' without worrying about
a letter from someone's lawyers.

20 Rutowski Decl. Ex. 21. Beyond the public outrage, Tencent's infringement threatens SIE's *Horizon*
21 Franchise development plans too.

22 To protect its valuable *Horizon* Franchise, business partners, and the public from Tencent's
23 knock-off that would squelch gaming innovation, SIE seeks a preliminary injunction. Each factor
24 favors injunctive relief: (1) SIE is highly likely to succeed on its copyright and trademark claims
25 given the extreme similarities between protectable elements of *Horizon* and *Light of Motiram*; (2)
26 without an injunction, SIE will incur irreparable harm to its rights as well as the goodwill of its
27 fanbase; (3) the balance of hardships favors SIE; and (4) protecting SIE's intellectual property from
28 Tencent's knock-off that is causing significant public confusion overwhelmingly favors the public

1 interest. Courts regularly grant preliminary injunctive relief in these same circumstances to protect
2 video games and similar media from unlicensed knock-offs. *E.g.*, *Daybreak Game Co. LLC, v.*
3 *Kristopher v. Takahashi*, 2025 WL 2691161, at *1 (S.D. Cal. Sept. 19, 2025) (video game);
4 *Interplay Ent. Corp. v. TopWare Interactive, Inc.*, 751 F. Supp. 2d 1132, 1138 (C.D. Cal. 2010)
5 (video game); *Columbia Pictures Indus., Inc. v. Miramax Films Corp.*, 11 F. Supp. 2d 1179, 1190
6 (C.D. Cal. 1998) (movie trailer). The Court should grant this motion to protect SIE, its development
7 partners, and the public from Tencent’s promotional campaign and forthcoming knock-off product.

8 STATEMENT OF FACTS

9 A. SIE Invests in Developing and Launching *Horizon Zero Dawn*.

10 SIE, through its subsidiary Guerrilla Games, invested over six years and [REDACTED]
11 dollars creating *Horizon Zero Dawn*. Van Beek Decl. ¶ 19. *Horizon Zero Dawn* began as one of
12 many pitches for a new game: a live-action, open-world, third-person perspective role-playing
13 game set in a vibrant and verdant post-post-apocalyptic world. *Id.* ¶¶ 6-9. *Horizon Zero Dawn*’s
14 creators imagined a fresh take on a post-apocalyptic world through three creative “pillars” that
15 would be incorporated throughout the narrative, setting, sound, and feel of the game—“majestic
16 wilderness,” “awe-inspiring machines,” and “tribal characters.” *Id.* ¶¶ 12-15. The “majestic
17 wilderness” pillar invokes a rich, lush natural landscape sprinkled with ruins of a collapsed
18 civilization reclaimed by nature. *Id.* ¶ 13. The “awe-inspiring machines” pillar invokes massive
19 terraforming robotic animals that dominate the landscape and narrative. *Id.* ¶ 14. And the “tribal”
20 pillar invokes the surviving humans who inhabit the world in culturally distinct tribal communities.
21 *Id.* ¶ 15. Once SIE greenlit the game, it invested in a legion of over [REDACTED]
22 [REDACTED] to bring *Horizon* to life. *Id.* ¶ 19.
23 The result was *Horizon*’s unique look, sound, and story that made it a blockbuster.

24 **Visual elements.** Working from the three pillars, *Horizon*’s designers created their own
25 post-apocalyptic landscape with expressively distinct and memorable characters. *Infra* 11-12
26 (images of landscape). *Horizon* is set in an optimistic recovering post-post-apocalyptic world
27 featuring lush jungles, rich forests, broad deserts, and frozen mountain ranges dotted with ruins
28 from a lost high-tech human society. Van Beek Decl. ¶¶ 20-25. Getting the look right required “less

1 obvious design choices in texture, scale, spring settings, shading, [and] shadow casting.” *Id.* ¶ 25.

2 The landscape features 25 distinct terraforming animal-like robots called “Machines.” *Id.*
3 ¶ 29; *see also id.* ¶¶ 26-32. Inspired by dinosaurs, the Machines were a risky decision because
4 “[p]rimitive tribes hunting high-tech machines based on an extinct species a thousand years in the
5 future seemed illogical.” *Id.* ¶ 27. Each Machine combines sleek alloy plating with animal-like
6 joints and eye-like sensors. *Id.* ¶ 31.

7 The tribes are the final pillar of the visual landscape. *Id.* ¶¶ 33-36. SIE created 60–200-page
8 style manuals for each tribe, describing the unique expression of each tribe. *Id.* ¶¶ 34. Distinctive
9 color palettes and attire reinforce each tribe’s home biome and cultural distinctiveness. For
10 example, the Nora tribe wears primitive apparel made primarily from animal hides, leather, linen,
11 and protective metal plates, accented with feathers, embroidery, wooden beads, and metal. *Id.* ¶ 36.

12 SIE also created the unique and memorable main character Aloy, who has become a
13 recognizable icon and brand of both the *Horizon* Franchise and SIE. *Id.* ¶¶ 37-41. Aloy is a striking
14 figure characterized by her fiery red hair and unique tribal-inspired attire blending traditional and
15 industrial materials. *Id.* ¶ 39. Aloy is accompanied by yet another creative asset of SIE: a small,
16 triangular, high-tech device called a “Focus” that augments reality with holographic projections to
17 help the player identify threats and discover more about *Horizon*’s world. *Id.* ¶ 67.

18 **Audio elements.** *Horizon* features an award-winning original score created by world class
19 musicians, vocalists, and composers. Van Tol Decl. ¶¶ 15-23. The score embodies and reinforces
20 the three creative pillars to immerse the player in the overall look and feel of the game. *Id.* ¶¶ 7, 15.
21 The “awe-inspiring machines” pillar is reflected through electronic music elements; the “tribal”
22 pillar is reflected through percussion; and the “nature” pillar features “organic sounds.” *Id.* ¶¶ 8-
23 10. The composers spent over two years refining the score, which reflects countless unique
24 expressive choices that “went against what people would logically expect.” *Id.* ¶ 12. For example,
25 the artists wrote the score through Aloy’s eyes, making the sound intimate to “avoid ‘Hollywood’
26 sounds that are big and ‘wet,’ overprocessed.” *Id.* ¶ 12-13. The score includes vocals by a soprano
27 to reflect Aloy’s lyrical voice. *Id.* ¶ 13. The percussive sounds in the tribal pillar are made using
28 “bows on piano wire ... and cellos are played with plectrums or the back of a bow.” *Id.* ¶ 9.

1 **Narrative themes.** *Horizon*'s narrative and storyline also embody the three creative pillars.
2 Players control Aloy as she explores the rich natural biomes that stretch across the open world map.
3 Van Beek Decl. ¶ 74. On her journey, Aloy discovers the remnants of a lost civilization, known as
4 the "Old Ones," and learns about its collapse. *Id.* Her "Focus" device provides information about
5 the old civilization's ruins and the world around her. *Id.* ¶ 67. The culturally distinct primitive tribes
6 and animalistic, robotic Machines feature heavily in *Horizon*'s narrative. The tribes each have
7 distinct identities. *Id.* ¶ 70. For example, Aloy's tribe, the Nora tribe, is a matriarchal society, while
8 the Tenakth tribe has an aggressive and violent warrior culture. *Id.* Likewise, the Machines have
9 distinct identities each tied to a terraforming purpose. *Id.* ¶ 30. And *Horizon*'s narrative allows
10 players to tame certain Machines and ride them across the landscape. *Id.* ¶ 21.

11 **B. *Horizon Zero Dawn*'s Success Launches a Franchise and Spawns the Iconic**
12 **ALOY Character Mark.**

13 Upon its 2017 release for PlayStation 4, *Horizon Zero Dawn* became an instant success.
14 Video game journalists recognized that SIE had created something extraordinary. One publication
15 lauded *Horizon Zero Dawn* as an "artistic work[] that can scarcely be compared to anything that's
16 come before" and "among the freshest, most moving, most topical works of science fiction."
17 Rutowski Decl. Ex. 16 at 1, 3. IGN stated that *Horizon Zero Dawn* "leaves an indelible mark on
18 the memory...[and] carves out a unique identity." *Id.* Ex. 11 at 1. Other publications described it
19 as "singular and weirdly coherent," "truly new" and "genre-blending," and "a unique new
20 aesthetic." *Id.* Exs. 12, 14, 15. Since its release, *Horizon Zero Dawn* has received many prestigious
21 awards and accolades. *See* Van Beek Decl. ¶ 45.

22 Aloy, the fiery red-head main character, quickly became a fan favorite. Fans proudly show
23 off their Aloy tattoos to the *Horizon* developers at video game conferences and even boast about
24 naming children after her. *Id.* ¶ 40. And The Gamer named Aloy an all-time Iconic Video Game
25 Character. Rutowski Decl. Ex. 26 at 6-7; Qizilbash Decl. ¶ 23. Aloy became the face not only of
26 the *Horizon* games, but also of SIE. *Id.* ¶¶ 20, 25. Aloy appears in many other games and serves as
27 the foundation for marketing for the entire platform. *Id.* ¶¶ 19-22, 25. SIE sells merchandise
28 featuring Aloy, including action figures, plush toys, apparel, ornaments and figurines, and a variety

1 of other items that cement the brand association in the minds of the consuming public. *Id.* ¶ 20.

2 *Horizon Zero Dawn*'s success generated an entire series of games known as the *Horizon*
 3 Franchise. In 2017, SIE released a *Horizon Zero Dawn* expansion—*Horizon Zero Dawn: The*
 4 *Frozen Wilds*. Van Beek Decl. ¶ 46. In 2018 SIE began work on a sequel—*Horizon Forbidden*
 5 *West*. SIE invested over ██████████ employees and ██████████ in the project. *Id.* In 2022, SIE
 6 released it to great acclaim, including multiple game of the year awards. *Id.* ¶¶ 46-47. In 2023, SIE
 7 released *Horizon Forbidden West: Burning Shores* and *Horizon Call of the Mountain* (2023). *Id.*
 8 ¶ 48. In 2024, SIE branched out to create *Lego Horizon Adventures*. *Id.* ¶ 49.

9 While *Horizon* has already become one of SIE's ██████████ most valuable franchises, SIE is
 10 expanding it further with the ALOY Character Mark as a prominent feature. Qizilbash Decl. ¶¶ 6-
 11 18. SIE develops its franchises as “flywheels” ██████████
 12 ██████████
 13 ██████████ *Id.* ¶ 7. ██████████
 14 ██████████ *Id.* ¶¶ 7, 18, 29. SIE is
 15 actively pursuing ██████████
 16 ██████████ a movie adaptation, and a ██████████. *Id.* ¶¶ 7-18.

17 **C. Tencent Seeks a License, SIE Says No, And Tencent Still Tests and Promotes**
 18 ***Light of Motiram* to Massive Public Outcry.**

19 In March 2024, Tencent approached SIE executives seeking a license to create a video game
 20 set in the *Horizon* universe. Tencent emphasized that its interest in *Horizon* was due to its “[h]igh
 21 IP value” and “international acclaim.” Courtemanche Decl. (Dkt. 63) Ex. A at 16. Tencent touted
 22 that its development team at Aurora Studios included “[d]ie-hard fans” of *Horizon* who played the
 23 game together at work. *Id.* at 17. In April 2024, SIE declined the pitch. *Id.* ¶ 11 & Ex. B. SIE
 24 informed Tencent that while SIE “greatly appreciate[d] Aurora’s level of passion and the effort
 25 they put into the pitch ... given where Guerrilla Games and *Horizon* franchise is, we don’t think it
 26 makes sense to pursue a *Horizon* universe crossover or full game development with that IP.” *Id.*
 27 Ex. B.

28 After SIE said no, Tencent could have done what SIE did years earlier—heavily invest in

1 creating a new game. Instead, Tencent went ahead with its plan to use the *Horizon* intellectual
2 property. It announced the upcoming release of an open-world survival game entitled *Light of*
3 *Motiram* with a striking resemblance to the *Horizon* games.

4 Tencent released promotional materials including gameplay trailers, screenshots, and
5 promotional images to a U.S. audience across Steam, Facebook, Instagram, X, Discord, YouTube,
6 and Reddit. Rutowski Decl. Exs. 1.A, 7.A, 8.A, 9.A-B, 24, 25, 28A, 30-33, 46A, 47A, 60, 62, 67.
7 The promotional materials are filled with the most distinctive and recognizable protected elements
8 of the *Horizon* Franchise. Van Beek Decl. ¶¶ 54-69. Tencent’s promotions led with an Aloy look-
9 alike, using her image as a logo all over its social media. *Id.* ¶¶ 54, 62; Rutowski Decl., Exs. 1A,
10 60. Tencent’s screenshots and trailers include *Horizon*’s visually unique post-apocalyptic setting,
11 as well as look-alike animal-robot machines, look-alike tribes, and even a look-alike Focus device.
12 *Infra* 11-13. Tencent even hired a composer of the *Horizon* score to give its game trailer the same
13 sound as *Horizon*, down to the unique sounds for *Horizon*’s three pillars. Van Tol Decl. ¶¶ 22, 25.

14 The public reacted to Tencent’s promotional release with derision and confusion. It quickly
15 deemed the game a *Horizon* rip-off. One *Horizon* fan commented: “wait so it’s not apart of the
16 same universe? I just watched gameplay and thought ‘looks like they’ve dialled it up for the sequel’.
17 How’s this even allowed to be so similar to HZD IP?” Rutowski Decl. Ex. 22 at 3 (typos in original).
18 Another commented: “this is as blatant as a knockoff can get. I don’t even think they’re trying to
19 hide that this is just a blatant knockoff.” *Id.* Ex. 37.B at 1:12. Video game journalists described
20 *Light of Motiram* as “a major *Horizon* rip-off,” “an obvious knock off,” a “copycat” with a main
21 character that “resembles Aloy to a tee,” and “extremely similar to *Horizon Zero Dawn*,” *Id.* Exs.
22 18, 19, 34, 35. Kotaku concluded: “This Wild Copying of *Horizon Zero Dawn* Is Just Begging For
23 Sony To Sue.” *Id.* Ex. 21.

24 Because SIE, its affiliates, and Tencent are worldwide business partners, SIE attempted to
25 resolve the matter privately. Qizilbash Decl. ¶ 38. SIE informed Tencent that the game violated its
26 intellectual property rights. *Id.* ¶ 27. Tencent *again* requested a license, and SIE *again rejected*
27 Tencent’s request. *Id.* Tencent forged ahead over SIE’s objection, releasing a new promotional
28 trailer for *Light of Motiram* and announcing that, “[i]n the near future, *Light of Motiram* will also

1 commence global testing.” Rutowski Decl. Ex. 8.B. at 2:32. Tencent further announced *Light of*
2 *Motiram* was “Coming Soon” on the U.S.-based Epic distribution site. Rutowski Decl. Ex. 23.

3 **D. SIE Sues, Tencent Evades.**

4 Ultimately, despite the business relationship and SIE’s requests, Tencent proceeded to
5 develop and promote *Light of Motiram*. The copycat game is generating significant marketplace
6 confusion at a critical point when SIE is working to bring new audiences to *Horizon*. Qizilbash
7 Decl. ¶¶ 28-39. As *Light of Motiram* promotional materials took root, an SIE expansion partner
8 began to express significant concerns about Tencent’s *Horizon* knock-off harming the market for
9 new *Horizon* adaptations. *Id.* ¶¶ 29-33. *Light of Motiram* is a PC game and threatens to directly
10 erode the market for the upcoming *Horizon* PC game currently under development. *Id.* And because
11 PC games are easily converted into mobile-format games—both “forever” games that are
12 constantly evolving unlike console games—*Light of Motiram* similarly threatens the *Horizon*
13 mobile expansion under development. *Id.* ¶ 29-34; Courtemanche Decl. (Dkt. 63) Ex. B (Tencent
14 touting its “proven PC-to-mobile experience”). SIE accordingly filed suit. SIE alleged that *Light of*
15 *Motiram* infringes SIE’s *Horizon* copyrights as well as its ALOY Character Mark. *See generally*
16 Dkt. 1. After filing suit, SIE warned Tencent that it planned to seek injunctive relief and gave
17 Tencent yet another chance to withdraw *Light of Motiram*. Rutowski Decl. Ex. 69. It has not done
18 so.

19 Instead, since SIE filed suit, Tencent has obfuscated its plans for releasing *Light of Motiram*
20 and hid behind its opaque corporate structure. After SIE sued, Tencent altered the game pages on
21 key U.S. distribution websites of Steam and Epic Games, which had signaled a near-term release,
22 to show a new claimed release date of Q4 2027.¹ Hurst Decl. (Dkt. 61-1) ¶¶ 2-3; Rutowski Decl.
23 Ex. 23. SIE served the U.S. Tencent entities, which asked for a stay of the case or an extension.
24 When SIE inquired about the game’s release date in connection with the requested extensions,
25 Defendants’ counsel claimed no direct knowledge, instead pointing to public announcements.

26 _____
27 ¹ SIE is deeply skeptical of Tencent’s alteration of the purported release date *after* SIE filed suit.
28 SIE notes that the release date remains within the time frame of the pendency of this lawsuit, with
cases in this District running at an average of at least 30 months to judgment.

1 Rutowski Decl. Ex. 70. As soon as SIE served the parent company Tencent Holdings, Defendants’
2 counsel acknowledged that they represent Tencent Holdings, too. Hurst Decl. (Dkt. 61-1) ¶ 7. Yet,
3 despite appearing for the U.S. entities and the parent company, Defendants’ counsel *still* refuses to
4 act for the other two foreign defendants. They refuse to acknowledge or waive service for the
5 foreign subsidiaries/affiliates (*id.*) and their refusal to act resulted in reassignment from a
6 Magistrate Judge to which all other parties consented (Dkt. 51).

7 As discussed in greater detail in SIE’s opposition to Tencent’s motion to dismiss (Dkt. 61),
8 Defendants are playing a shell game of who-did-what in a tactical effort to avoid being held
9 accountable for Tencent’s infringement. The U.S.-based entities claim no involvement in *Light of*
10 *Motiram* development or marketing and no direct knowledge of release plans. Dkt. 48 at 4;
11 Rutowski Decl. Ex. 70. In light of growing market confusion about *Light of Motiram*’s connection
12 to *Horizon*, express concerns from an SIE partner about *Light of Motiram*, and Tencent’s shell game
13 and obfuscation of its release plans that suggest Tencent will continue to infringe SIE’s intellectual
14 property during the pendency of this lawsuit, SIE now moves for preliminary injunctive relief to
15 protect it from irreparable harm.

16 ARGUMENT

17 A preliminary injunction should issue when a plaintiff shows (1) it will likely succeed on
18 its claims; (2) it will likely suffer irreparable harm without relief, (3) the balance of equities favor
19 it; and (4) an injunction will serve the public interest. *See Winter v. Natural Res. Def. Council, Inc.*,
20 555 U.S. 7, 20 (2008); *Daybreak Game*, 2025 WL 2691161, at *1 (preliminarily enjoining
21 infringing video game). All four factors are easily satisfied here. After failing to secure a license,
22 Tencent flagrantly copied SIE’s protected rights in the *Horizon* Franchise—and it did so to such an
23 extent that the public immediately decried the unmistakable and extensive plagiarism. *Infra* §I.
24 Without an injunction, SIE will suffer harm to the *Horizon* Franchise, including expansion
25 opportunities, which no monetary award can adequately compensate. *Infra* § II. Conversely,
26 enjoining further infringement will not unfairly harm Tencent, which knew of SIE’s intellectual
27 property rights before deciding to disregard them. *Infra* § III. Lastly, an injunction will promote the
28 public interest by demonstrating to the market that investments in creative games will be protected

1 and curtailing further consumer confusion caused by the infringing *Light of Motiram*. *Infra* § IV.

2 **I. SIE IS LIKELY TO PREVAIL ON THE MERITS OF ITS CLAIMS.**

3 **A. *Light of Motiram* Is a Blatant Infringement of *Horizon*.**

4 To succeed on its copyright infringement claim, SIE “must show that (1) [it] owns a valid
5 copyright” and “(2) [Tencent] copied protected aspects of [its] work.” *Hanagami v. Epic Games,*
6 *Inc.*, 85 F.4th 931, 940 (9th Cir. 2023). SIE can establish illicit copying by showing that Tencent
7 had access to its work and that the “works share substantial similarities.” *Id.* at 941 (emphasis
8 omitted). The Ninth Circuit applies a two-part test to determine substantial similarity. The first part,
9 or “extrinsic test,” “assesses the objective similarities of the two works.” *Id.* The second part, or
10 “intrinsic test,” considers if the “total concept and feel” of the two works are “substantially similar”
11 from the perspective of an “ordinary, reasonable person.” *Unicolors, Inc. v. Urb. Outfitters, Inc.*,
12 853 F.3d 980, 985 (9th Cir. 2017) (quotation omitted). “Duplication or near identity is not necessary
13 to establish infringement.” *Sid & Marty Krofft Television Prods., Inc. v. McDonald’s Corp.*, 562
14 F.2d 1157, 1167 (9th Cir. 1977).

15 Here, there can be no meaningful dispute that (a) SIE possesses enforceable copyright
16 interests in the *Horizon* Franchise as the exclusive U.S. licensee, or (b) that Tencent accessed SIE’s
17 works. The *Horizon* Franchise receives copyright protection as an audiovisual work, which extends
18 to a game’s unique story, characters, sights, sounds, and feel. *E.g.*, *Micro Star v. Formgen Inc.*, 154
19 F.3d 1107, 1112 (9th Cir. 1998) (finding protection and likely infringement of Duke Nukem video
20 game). The U.S. Copyright Office has issued Certificates of Registration for the works at issue:
21 *Horizon Zero Dawn* on PS4 (U.S. Reg. No. PA0002516411); *Horizon Forbidden West* on PS4
22 (U.S. Reg. No. PA0002392809); and PS5 (U.S. Reg. No. PA0002391316), which establishes “a
23 prima facie valid copyright in [the *Horizon*] video game programs.” *Sega Enters. Ltd. v. MAPHIA*,
24 857 F. Supp. 679, 686 (N.D. Cal. 1994); 17 U.S.C. § 410(c); Kuykendall Decl. ¶¶ 3-6 (SIE is the
25 exclusive licensee of these copyrights). Tencent repeatedly admitted that it accessed SIE’s work.
26 Declaring its fandom and depicting its employees playing the game in presentations, Tencent
27 expressly asked to license the *Horizon* Franchise on multiple occasions. *See supra* 5-6. That leaves
28 only the remaining element discussed below—and the overwhelming evidence shows substantial

1 similarity under the extrinsic and intrinsic tests.

2 **1. *Light of Motiram* Misappropriates Protectable Elements from *Horizon*.**

3 Works are substantially similar under the extrinsic test when they contain objectively
4 similar expressive elements, such as “plot, theme, dialogue, mood, setting, pace, characters, and
5 sequence of events.” *Metro-Goldwyn-Mayer, Inc. v. Am. Honda Motor Co.*, 900 F. Supp. 1287,
6 1297 (C.D. Cal. 1995). The inquiry focuses on “what is similar, not what is different, when
7 comparing two works.” *Spry Fox LLC v. LOLApps Inc.*, 2012 WL 5290158, at *6 (W.D. Wash.
8 Sept. 18, 2012). Courts regularly find video games and other media substantially similar when an
9 infringer copies recognizable expressive elements to capitalize on the original’s success. *See id.*
10 (“Yeti Town” and “Triple Town” substantially similar at pleading stage); *Columbia Pictures*, 11 F.
11 Supp. 2d at 1186 (“Men in Black” and “The Big One” promotional materials substantially similar;
12 granting preliminary injunction); *Krofft*, 562 F.2d at 1166-67 (H.R. Pufnstuf character and
13 McDonald’s Mayor McCheese character substantially similar); *Tetris Holding, LLC v. Xio*
14 *Interactive, Inc.*, 863 F. Supp. 2d 394, 410-12 (D.N.J. 2012) (Tetris and “Mino” game substantially
15 similar; granting summary judgment); *Atari, Inc. v. N. Am. Philips Consumer Elecs. Corp.*, 672
16 F.2d 607, 617–21 (7th Cir. 1982) (PAC-MAN and “gobbler” substantially similar; granting
17 preliminary injunction).

18 Tencent’s copying of *Horizon* is blatant, pervasive, and specifically designed to appeal to
19 *Horizon* fans. *Light of Motiram* has objectively similar expressive elements that parrot each of
20 *Horizon*’s core creative pillars and mimic *Horizon*’s expressive facets, including its visual
21 elements, audio elements, and story and narrative elements.

22 ***Visual elements.*** The *Horizon* Franchise contains numerous distinctive and expressive
23 visual elements, including the vibrant, lush post-post-apocalyptic landscape, animal-like machines,
24 tribes, and the memorable lead character Aloy. *Supra* 2-3. SIE invested years and ██████████ to
25 express each element in a unique and creative way. *Id.* Rather than doing the same, Tencent copied.
26 A comparison of each of the core visual elements of the *Horizon* Franchise with promotional
27 screenshots from *Light of Motiram* illustrates the undeniable evidence of substantial similarity.
28

1 Start with the overall setting of the two games. Tencent’s title page mirrors *Horizon*’s
 2 featuring an Aloy-look-alike identically posed in the lower left corner overlooking the same setting
 3 featuring lush plants, snow-capped mountains, and dinosaur-like machines.



10 Van Beek Decl. ¶ 58; Rutowski Decl. Ex. 55. The substantial similarity persists throughout
 11 Tencent’s promotional images. The images in the left column below show SIE’s unique expression
 12 of a post-apocalyptic world. *Supra* 2-3 (discussing setting). The images on the right are from *Light*
 13 *of Motiram*. Tencent objectively copied nearly every aspect of *Horizon*’s expressive scenes. The
 14 images appear as if Tencent instructed its *Light of Motiram* team to: “create scenes that look like
 15 *Horizon*.” As video game journalists observed “it’s hard to tell if the [promotional] screenshots are
 16 from *Light of Motiram* or one of the *Horizon* games.” *Id.* Ex. 5. at 3.

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The <i>Horizon</i> Franchise	<i>Light of Motiram</i> Promotional Material



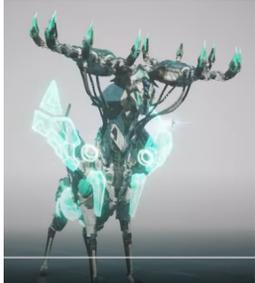
7 Van Beek Decl. ¶¶ 59-61; Rutowski Decl. Exs. 28.B at 0:30, 56, 1.B at 3:04. Moreover, Tencent
8 even incorporated elements from *Horizon* that do not make sense outside the context of the *Horizon*
9 story. For example, the *Horizon* setting prominently features patches of “red grass, to provide
10 camouflage while red-haired Aloy hunts Machines.” See Van Beek Decl. ¶ 62. *Light of Motiram*’s
11 design features patches identical to *Horizon*’s red grass.



18 *Id.*; Rutowski Decl. Ex. 28.B at 1:42.

19 The similarities do not stop there. *Light of Motiram* also copied *Horizon*’s unique animal-
20 robot Machines (dubbed “Mechanimals” in *Motiram*). SIE’s artists painstakingly perfected their
21 expression of the *Horizon* Machines with light gray and dark gray metal alloys, including metal
22 armor mimicking recognizable animal musculature, glowing ocular sensors mimicking eyes and an
23 assortment of attached components, cannisters, and cables. *Supra* 3. *Light of Motiram*’s
24 promotional materials prominently depict “Mechanimals” that are visually expressed in a
25 substantially similar manner to the *Horizon* Machines. Tencent chose the same animals and
26 depicted them with similar accentuated body parts. Van Beek Decl. ¶¶ 63-65. Here are just two
27 examples, with many more shown in the Van Beek Declaration (at ¶ 64).
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<i>Horizon Franchise</i>	<i>Light of Motiram Promotional Material</i>
	
	

Tencent also gave its Mechanimals a similar manner of movement, including how they can be ridden. *Compare Horizon*, Rutowski Decl. Ex. 65.B at: 1:06-10 (*Horizon*) with *id.* Ex. 47.B at :42-45 (*Light of Motiram*); *Hanagami*, 85 F.4th at 943-45 (requiring courts to consider character’s movement); *Atari*, 672 F.2d at 618 (finding infringement of PAC-MAN character based on similar “size, shape, and manner of movement”). Again, it appears Tencent instructed its team to: “create Mechanimals that look and move like *Horizon*’s Machines.”

Not content with replicating the setting and signature Machines, Tencent also copied *Horizon*’s distinctive lead character Aloy and tribal visuals. The first and third images from the left depict Aloy from *Horizon*. The interspersed *Light of Motiram* images copy Aloy’s unique look to a tee, including her distinctive red hair, tribal dress, and distinctive color schemes.

<i>Horizon</i>	<i>Light of Motiram</i>	<i>Horizon</i>	<i>Light of Motiram</i>
			

1 Van Beek Decl. ¶ 66; Rutowski Decl. Exs. 60, 55.

2 **Audio elements.** *Light of Motiram* also contains audio elements that are objectively similar
3 to *Horizon*'s protectable content. Recall, the *Horizon* soundtrack contains several distinct features,
4 including unique scores for each of the three pillars of robots (electronic), tribes (percussive), and
5 nature (evoking beauty), and soprano vocals intended to represent Aloy's musical voice. *Supra* 3.
6 Tencent hired one of the composers of the *Horizon* score, apparently to evoke *Horizon*'s musical
7 elements. Van Tol Decl. ¶¶ 22, 25. The *Light of Motiram* announcement trailer contains the same
8 distinctive pillars of robots (electronic), tribes (percussive), and nature (evoking beauty), and also
9 features a similar female voice. *Id.* ¶¶ 24, 26.

10 Further, there are objective similarities in protected elements from the music in the trailer
11 and the "City on the Mesa" song on the *Horizon Zero Dawn* soundtrack. *See* Van Tol ¶ 26;
12 *Hanagami*, 85 F.4th at 944 (describing protectable elements). As the Principal Music Supervisor
13 overseeing the *Horizon* score explains: both "the melody is very similar" and it "is a result that one
14 can expect when giving both the *Horizon* main theme and *City On the Mesa* as reference musical
15 pieces to a composer." Van Tol ¶ 26; *see also id.* (discussing fans making similar comparisons,
16 available at <https://youtu.be/NC9AciQQEe0?si=Odngflju6eKkHmff&t=430>).

17 **Story elements.** Finally, *Light of Motiram* contains protectable story and narrative elements
18 that are objectively similar to *Horizon*. The stories follow the same narrative and have the same
19 unique take on tribal and post-apocalyptic themes. Recall in *Horizon*'s story, players explore a post-
20 apocalyptic formerly high-tech open world reclaimed by nature and inhabited by primitive tribes,
21 with distinctive views on technology, and terraforming animal-like robots. During the journey they
22 traverse diverse biomes and discover the relics of the Old Ones, which reveal, bit by bit, the truth
23 of the calamities that befell the high-tech civilization and resulted in its collapse. *Supra* 4. The
24 "About This Game" section of the *Light of Motiram* Steam Page could have been written about
25 *Horizon*. Tencent summarizes the setting and narrative of *Light of Motiram* as follows:

26 Earth and human civilization as we once knew it are gone. Across untamed wilderness,
27 giant mechanical beasts roam freely, while humanity struggles to rebuild from the dawn of
28 a new primitive era. Journey from lush tropical rainforests to barren desert landscapes and

1 snow-capped mountain peaks—as you discover unique Mechanimals and mysterious ruins
2 in different regions, gradually uncovering the secrets of MOTIRAM.

3 Rutowski Decl. Ex. 1.A at 2; *see also id.* Ex. 24 at 1 (emphasizing “mysterious mechanical creatures
4 inhabiting the wilderness, and high-tech structures that do not belong to this era scattered
5 throughout”). Beyond the overarching story, *Light of Motiram* copied other narrative elements.
6 *Light of Motiram*’s “Mechanimals” share a substantially similar narrative origin and purpose to
7 *Horizon*’s Machines—both are terraforming, animal-inspired robots. *Supra* 4; Rutowski Decl. Ex.
8 68 (*Light of Motiram* website). For example, the *Light of Motiram* Mechanimal modeled after a
9 bull purportedly was designed to use its horns for “large scale land clearing operations.” *Id.* Further,
10 like *Horizon*, *Light of Motiram*’s narrative allows players to ride certain robotic animals across the
11 open world map. *Id.* Ex. 62, at 4. *Light of Motiram*’s expression of this narrative element is
12 substantially similar to Aloy’s ability to mount and ride certain Machines. *Supra* 4.

13 Similarly, *Light of Motiram* copied narrative elements from *Horizon*’s tribes. Tribes are a
14 creative pillar of the *Horizon* world, with SIE giving each tribe unique expression and identity, like
15 the matriarchal Nora tribe and the aggressive and violent Tenkath tribe. *Supra* 4. The tribes also
16 differ in their view of the Old Ones’ lost technological knowledge. Van Beek Decl. ¶ 70. Just as in
17 the *Horizon* narrative, the *Light of Motiram* tribes also have differing views on whether to reject or
18 embrace lost technology. Rutowski Decl. Ex. 25. And Tencent announced that its tribes will include
19 the “matriarchal” “Ranau” tribe (akin to the *Horizon* Franchise’s Nora tribe) and the “warlike”
20 “Dariman” tribe (akin to the *Horizon* Franchise’s Tenakth tribe). *Id.*

21 Finally, Tencent copied the narrative Focus device. In *Horizon*, Aloy is assisted on her
22 journey by her “Focus” device—a high-tech relic from the Old Ones’ civilization that plays a
23 critical narrative role in revealing information about the Old Ones’ ruins, as well as other aspects
24 of the players’ immediate environment. Van Beek Decl. ¶¶ 67-69. Tencent included an objectively
25 similar device called “Angelos” with an objectively similar narrative purpose. Angelos, like the
26 Focus, is “a ‘Relic’ of the once-destroyed advanced civilization.” Rutowski Decl. Ex. 24 (*Light of*
27 *Motiram* Reddit). Angelos also similarly permits the player to “communicate and interact with this
28 world and the remnants of civilization through it” and reveals “many untold stories.” *Id.*

1 Each objectively similar protected element Tencent copied from *Horizon* is alone sufficient
2 to establish substantial similarity under the extrinsic test, but in addition the “totality of the
3 similarities between the two [works] ... belies any claim of literary accident.” *Shaw v. Lindheim*,
4 919 F.2d 1353, 1363 (9th Cir. 1990). SIE is thus very likely to show substantial similarity under
5 the extrinsic test.

6 **2. Industry Commentary Confirms Ordinary Observers View *Light of***
7 ***Motiram*’s Concept and Feel as Substantially Similar to *Horizon*’s.**

8 SIE also has an overwhelming likelihood of establishing substantial similarity under the
9 intrinsic test, which asks whether an ordinary reasonable observer would consider the “total concept
10 and feel” of the two works “substantially similar.” *Unicolors*, 853 F.3d at 985-87. Here, the *Light*
11 *of Motiram* promotional materials establish that the two games have a substantially similar “concept
12 and feel” from the visual setting to the musical score to the story and narrative. *Supra* 10-15
13 (discussing similarities). Any *Horizon* fan would immediately think of *Horizon* when seeing *Light*
14 *of Motiram*. See *Metro-Goldwyn-Mayer*, 900 F. Supp. at 1299 (granting injunction after considering
15 likely success in proving substantial similarity under intrinsic tests); *Columbia Pictures*, 11 F. Supp.
16 2d at 1185 (same).

17 Indeed, numerous reasonable observers *have already concluded* that the look and feel of
18 the two games is substantially similar. See *Spry Fox*, 2012 WL 5290158, at *7 (relying on “reports
19 of video game bloggers”). Journalists described *Light of Motiram* as “a major *Horizon* rip-off,” “an
20 obvious knock off,” a “copy cat” and “extremely similar to *Horizon Zero Dawn*.” *Supra* 6. Other
21 publications commented that “the developers of *Light of Motiram* borrowed the visual style from
22 the Sony [*Horizon*] series to such an extent that if someone told me this is a spin-off of that brand,
23 I would easily believe them.” Rutowski Decl. Ex. 4. Ordinary video game players also recognized
24 the identical look and feel. Visitors to *Light of Motiram*’s own Steam page made similar
25 observations. One commented: “No way you think it’s OK to copy *Horizon* this much ><”. *Id.* Ex.
26 7.A at 1. Another added: “Not only does it look like a copy of the *horizon* games, but you had the
27 cheek to copy the cover art aswell [sic].” *Id.* at 2. *Light of Motiram* blatantly misappropriated the
28 overall look and feel of the *Horizon* Franchise.

1 **B. *Light of Motiram*'s Redhead Female Icon Infringes the ALOY Character Mark.**

2 SIE will also likely prevail on its Lanham Act and California trademark claims. To do so,
3 SIE must show that (1) it holds a protectable mark, and (2) Tencent's imitating mark is likely to
4 cause consumer confusion. *See Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1124 (9th Cir.
5 2014). SIE holds a highly distinctive and strong ALOY Character Mark. *Infra* § I.B.1. Tencent
6 infringed this mark when it deliberately deployed an Aloy look-alike in order to exploit *Horizon*'s
7 goodwill and attract *Horizon* fans to its competing knock-off. *Infra* § I.B.2. The cornerstone of
8 trademark infringement is protecting consumers against the actual confusion here.

9 **1. The ALOY Character Mark Is Highly Distinctive and Strong.**

10 “For over a century, trademark and unfair competition law has protected the names and
11 appearance of characters.” McCarthy on Trademarks and Unfair Competition § 4.2 (5th ed.) (May
12 2025 update). “[I]ngredients” of “entertainment characters” that are protectable under trademark
13 law include their “physical appearances and costumes.” *DC Comics, Inc. v. Filmation Assocs.*, 486
14 F. Supp. 1273, 1277 (S.D.N.Y. 1980); *see Universal City Studios, Inc. v. J.A.R. Sales, Inc.*, 1982
15 WL 1279, at *4, 9 (C.D. Cal. Oct. 20, 1982) (finding “physical appearance of the character ‘E.T.’”
16 protectable trademark and granting injunction); *cf. DC Comics v. Towle*, 802 F.3d 1012, 1020 (9th
17 Cir. 2015) (recognizing Batmobile character may be “distinctive ... even if the character does not
18 maintain the same physical appearance in every context” in analyzing copyright; also finding
19 willful trademark infringement of the Batmobile). A trademark receives strong protection if it is
20 inherently distinctive or has strong marketplace recognition. *See Pom Wonderful*, 775 F.3d at 1126;
21 1 McCarthy on Trademarks and Unfair Competition § 10:43 (5th ed.) (“[I]f the character fits within
22 the category of inherently distinctive marks, there is no need to prove secondary meaning.”).

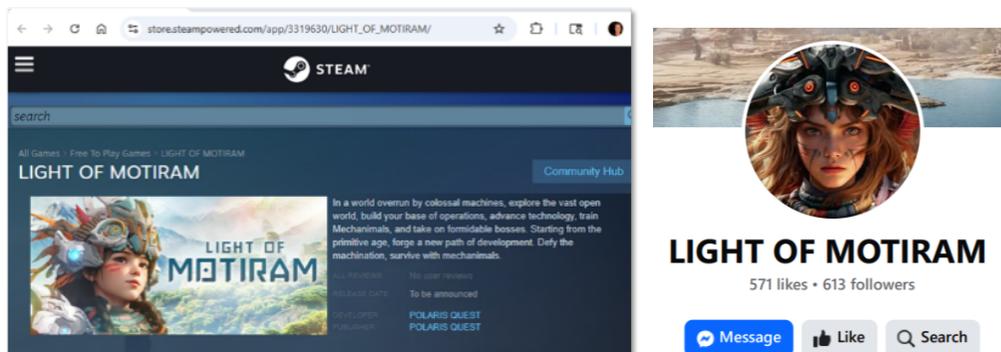
23 Aloy—with her “notoriety” and “highly original appearance”—qualifies as a protectable
24 character mark, and a “strong” one at that. *Universal City Studios*, 1982 WL 1279, at *4. Aloy has
25 a distinctive look. As depicted and discussed (at 3,13), she is a young and fierce tribal warrior-
26 huntress characterized by fiery red hair, high cheekbones, and outfits that blend tribal and industrial
27 metallic elements. Van Beek Decl. ¶ 39. Aloy's look is unrelated to any utilitarian aspect of
28 *Horizon*'s product and operates purely as a source-identifying emblem to distinguish *Horizon*

1 games from other videogame products, which entitles it to strong protection. *See Pom Wonderful*,
2 775 F.3d at 1126. Further, the marketplace has recognized the ALOY Character Mark as
3 distinctive. *See id.* Aloy has been recognized as an all-time best video game character. *See supra*
4 4. Commentators describe Aloy as a marquee PlayStation mascot and consider it “synonymous
5 with Sony.” Rutowski Decl. 29. And video game fan communities consistently recognize her image
6 as emblematic of *Horizon*. Qizilbash Decl. ¶¶ 19, 24; Van Beek Decl. ¶ 41. That is because since
7 *Horizon Zero Dawn*’s debut in February 2017, SIE has consistently used the ALOY Character Mark
8 in commerce as a source-identifier for *Horizon* and SIE goods and services. *Id.* Aloy’s visage has
9 consistently appeared on *Horizon* video-game packaging, digital storefront banners, official
10 PlayStation website headers, social-media avatars across Facebook, Instagram, X, Discord,
11 YouTube, and Reddit, trailer thumbnails, licensed merchandise such as collectible statues, limited-
12 edition apparel, museum-quality art prints, and other promotional materials—cementing the
13 association of the ALOY Character Mark’s distinctive look with the *Horizon* and SIE brands.
14 Qizilbash Decl. ¶¶ 19-25. Indeed, Aloy is so well known that other game makers license the right
15 to use her character in other popular games, like Fortnite. *Id.* ¶ 22.

16 2. Tencent’s Deliberate Use of an Aloy Clone Causes Actual Confusion.

17 Tencent’s blatant exploitation of the ALOY Character Mark to promote its knockoff
18 competing game is also not merely likely to confuse consumers, it already has. To determine
19 whether a reasonable likelihood of confusion exists, courts consider the *Sleekcraft* factors:
20 (1) strength of the protected mark; (2) proximity and relatedness of the goods; (3) type of goods
21 and the degree of consumer care; (4) similarity of the protected mark and the allegedly infringing
22 mark; (5) marketing channel convergence; (6) evidence of actual consumer confusion;
23 (7) defendant’s intent in selecting the allegedly infringing mark; and (8) likelihood of product
24 expansion. *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348–49 (9th Cir. 1979). While each factor
25 points towards confusion here, a party need not prevail on every factor to establish a likelihood of
26 confusion. For instance, when “virtual[ly] identit[ical] ... marks ... [are] used with identical
27 products or services likelihood of confusion ... follow[s] as a matter of course.” *Brookfield*
28 *Commc’ns, Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1056 (9th Cir. 1999). That is the case here.

1 Tencent used virtually identical images of the ALOY Character Mark to promote an
 2 identical product—a competing video game—and it did so in the same marketing channels used by
 3 *Horizon*—e.g., Steam, Facebook, Instagram, X, Discord, YouTube, and Reddit. *See, e.g.*, Rutowski
 4 Decl. Exs. 1.A, 8.A, 9.B, 60, 62 (marketing channels). The following images are just two examples
 5 (from Steam and Facebook) of numerous instances in which Tencent featured its Aloy lookalike as
 6 a product-promoting logo:



13 *Id.*; Exs. 1.A, 67; *see also* 8.A, 9.A, 24, 25, 60. Each features the copy-cat ALOY Character Mark
 14 as a profile logo with red hair, tribal-inspired attire, and at times a blue-glowing earpiece that
 15 unmistakably echoes Aloy. *Id.* Tencent also released promotional branding with the look-alike
 16 posed nearly identically to Aloy in *Horizon* branding. *See supra* 11, 13. Tencent’s use of a
 17 substantially similar character mark to promote a substantially similar game is overwhelmingly
 18 likely to confuse.

19 Indeed, there is evidence that Tencent’s misappropriation has already led to actual
 20 confusion which “is persuasive proof that future confusion is likely.” *GoTo.com, Inc. v. Walt*
 21 *Disney Co.*, 202 F.3d 1199, 1208 (9th Cir. 2000). As discussed (at 6-7), commentary on various
 22 websites and social platforms shows actual and extensive confusion as to whether *Light of Motiram*
 23 is affiliated with *Horizon*. One post expressed such confusion this way: “OMG!!! Finally, Sony are
 24 releasing Horizon 3 and its free to play!!!!... wait a minute.... This isn’t sony... guys help I think I
 25 clicked on the wrong game!!” Rutowski Decl. Ex. 7.A; *see also id.* Ex. 22 at 3. That a consumer
 26 may subsequently detect the ruse makes no difference. “[T]he diversion of consumers’ initial
 27 interest is a form of confusion against which the Lanham Act protects.” *Brookfield*, 174 F.3d at
 28 1063.

1 Finally, when a company “knowingly adopts a mark similar to another’s, ... courts presume
2 that the defendant can accomplish [its] purpose: that is, that the public will be deceived.” *Sleekcraft*,
3 599 F.2d at 354; *see also Brookfield Comm’n’s*, 174 F.3d at 1059 (“This factor favors the plaintiff
4 where the alleged infringer adopted [its] mark with knowledge, actual or constructive, that it was
5 another’s trademark.”). Here, that principle applies in spades because Tencent *expressly told* SIE
6 that it wanted to release a new game using SIE’s *Horizon* intellectual property. *Supra* 5. Tencent’s
7 marketing and promotional strategy confirms that it is doing exactly what it told SIE it planned to
8 do—using Aloy to promote Tencent’s game—and reflects a deliberate infringement of the ALOY
9 Character Mark. *See Courtemanche Decl.* (Dkt. 63) Ex. A, at 24 (Tencent pitch discussing
10 “character image licensing” and option for “licensing Aloy as a new NPC”).

11 **II. SIE IS LIKELY TO SUFFER IRREPARABLE HARM.**

12 Absent an injunction, Tencent’s ongoing copyright and trademark infringement will cause
13 SIE irreparable harm during this lawsuit. SIE’s harm falls into two categories that courts routinely
14 find irreparable in both copyright and trademark cases—(A) harm in the form of loss of control of
15 intellectual property rights, which here include expansion and licensing opportunities for *Horizon*,
16 and (B) harm to its fanbase, goodwill, and reputation. *See Daybreak Game*, 2025 WL 2691161,
17 at*12 (copyright: “irreparable harm stemming from the infringement (e.g., loss of market share,
18 reputational harm),” and loss of “right to control the use of his/her copyrighted material”); *Boldface*
19 *Licensing %8F Branding v. By Lee Tillett, Inc.*, 940 F. Supp. 2d 1178, 1196 (C.D. Cal. 2013)
20 (trademark: “los[s] of] business opportunities, customers, and goodwill” irreparable). “In run-of-
21 the-mill copyright litigation, ... proof of such harm stemming from infringement ... should not be
22 difficult to establish.” *Apple, Inc. v. Psystar Corp.*, 673 F. Supp. 2d 943, 948 (N.D. Cal. 2009). And
23 on the Lanham Act claim, SIE is entitled to a statutory “rebuttable presumption of irreparable
24 harm ... upon a finding of likelihood of success.” 15 U.S.C § 1116(a).

25 **A. Tencent’s Infringement Interferes with SIE’s Creative Control and** 26 **Jeopardizes Licensing and Expansion Plans.**

27 SIE’s *Horizon* copyrights and ALOY Character Mark give it exclusive creative control over
28 whether and how to expand the *Horizon* Franchise. *See Metro-Goldwyn-Mayer Studios, Inc. v.*

1 *Grokster, Ltd.*, 518 F. Supp. 2d 1197, 1217–18 (C.D. Cal. 2007). Tencent’s unauthorized *Horizon*
2 copycat compromises SIE’s right “not to license [its] property,” which can only be protected with
3 injunctive relief. *See A&M Recs., Inc. v. Napster, Inc.*, 239 F.3d 1004, 1028–29 (9th Cir. 2001).

4 SIE will also suffer irreparable harm to specific expansion plans. *See Universal City*
5 *Studios*, 1982 WL 1279, at *5 (finding irreparable harm when “Universal will be hurt in its efforts
6 to produce and distribute future motion pictures”); *Universal City Studios, Inc. v. Film Ventures*
7 *Intl., Inc.*, 543 F. Supp. 1134, 1139 (C.D. Cal. 1982) (finding irreparable harm when “the
8 commercial exploitation of ‘Jaws’ and ‘Jaws 2’ through theatrical rerelease, television, and video
9 cassettes will be diminished”). As the SIE Senior Vice President who directs franchise development
10 explained, SIE is at a “critical point in the *Horizon* franchise’s expansion” [REDACTED]

11 [REDACTED]
12 [REDACTED] Qizilbash Decl. ¶¶ 5, 7, 18, 29; *supra* 5 (discussing expansion strategy). But a
13 “copycat game [will] upset the already delicate balance.” *Id.* ¶ 18. Tencent’s promotion, and
14 forthcoming release, of a competing game causes irreparable harm by “undermin[ing]” SIE’s
15 negotiating position for new markets and “damage[ing] goodwill with licensees” by threatening to
16 reduce the value of those new markets. *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 865
17 (9th Cir. 2017); *see Interplay*, 751 F. Supp. 2d at 1138 (finding irreparable harm on trademark claim
18 when “Interplay has a new version of its Battle Chess game that it expects to release sometime next
19 year and this litigation is unlikely to be resolved before then”); Qizilbash Decl. ¶¶ 27-40.

20 Critically, an [REDACTED]
21 [REDACTED] *See VidAngel*, 869 F.3d at 865-66 (finding irreparable
22 harm when “licensees rais[ed] concerns” about the infringing work). Preliminary injunctive relief
23 is imperative to ensure SIE’s valuable relationships are not harmed during the pendency of these
24 proceedings. [REDACTED]

25 [REDACTED]
26 [REDACTED] Qizilbash Decl. ¶¶ 29-
27 33. [REDACTED] *Id.* ¶ 33. [REDACTED]

28 [REDACTED] *Id.*

1 ¶ 15. Any further dilution of the ALOY Character Mark threatens the value of the Aloy brand,
2 SIE's creative control over its copyrights, and these expansion opportunities. *Id.* ¶¶ 26, 35-40. And
3 all of these harms are occurring now, based on Tencent's promotional campaign, irrespective of
4 the precise timing of *Light of Motiram*'s release. The threat of irreparable harm during the pendency
5 of this action absent an injunction is thus clear and imminent.

6 **B. SIE Will Suffer Unquantifiable Losses to Goodwill and Reputation.**

7 Tencent's infringement has and will also continue to irreparably harm SIE's goodwill and
8 reputation by usurping creative control over the Franchise from SIE and misleadingly and wrongly
9 associating *Light of Motiram* with the *Horizon* Franchise in consumers' minds. This false
10 association, which Tencent deliberately fostered, causes multiple unquantifiable harms. SIE has
11 spent more than a decade carefully cultivating the *Horizon* Franchise to maintain its reputation as
12 a high-quality video game and popular brand. Qizilbash Decl. ¶¶ 6, 10 19, 27. Any unauthorized
13 use of the *Horizon* copyrights and the ALOY trademark in, or to promote, a competing product
14 creates an untenable and unquantifiable risk of "negative consumer reaction" associated with the
15 *Horizon* Franchise that "will undoubtedly cause irreparable harm to the public image of [*Horizon*]."
16 *Interplay Ent.*, 751 F. Supp. 2d at 1138 (trademark); *see Sega Enters.*, 857 F. Supp. at 689 (finding
17 irreparable harm in copyright case from possible harm to business and reputation from distribution
18 of altered, inferior copies of Sega games); Qizilbash Decl. ¶¶ 36-40 (explaining SIE cannot quantify
19 such losses). SIE will also lose its right to control how, if at all, its copyrighted expression is used.
20 *See Metro-Goldwyn-Mayer*, 518 F. Supp. 2d at 1217-18.

21 Further, without an injunction, Tencent will continue to compromise the distinctiveness of
22 the ALOY Character Mark in unquantifiable ways (which is why Congress mandated a
23 presumption of irreparable harm). Tencent risks destroying a carefully curated set of associations,
24 creating an untenable risk that fans seeing the ALOY Character Mark are less likely to immediately
25 think of SIE/*Horizon*; they now may think of *Light of Motiram*.

26 It makes no difference to the harm analysis that Tencent has replaced some of its original
27 promotional materials. Compl. ¶ 123. Tencent has already generated widespread attention and
28 interest in *Light of Motiram* as a *Horizon* knock-off through its promotional campaign. Because

1 Tencent has already created the association and hype about *Light of Motiram* as a *Horizon*
2 substitute, any continued promotion, even with noninfringing material, threatens the same
3 irreparable harm to SIE’s licensing and goodwill by communicating to the market that Tencent’s
4 competing copycat game remains forthcoming. *See Brookfield*, 174 F.3d at 1063 (initial interest
5 confusion); *cf. Hidden Empire Holdings, LLC v. Angelone*, 2022 WL 17080131, at *13 (C.D. Cal.
6 Sept. 30, 2022) (“Defendants’ public promotion of the video game through their website, social
7 media, and press releases, undeniably has and will continue to undermine Plaintiffs’ right to first
8 publication.”).

9 **III. THE BALANCE OF HARDSHIPS FAVORS SIE.**

10 The balance of hardships also tips in SIE’s favor. SIE is likely to suffer the aforementioned
11 unquantifiable harms, including loss of fanbase and interference with ongoing business
12 opportunities, to one of its ██████████ most valuable franchises at a pivotal point in the *Horizon*
13 Franchise’s expansion. Conversely, Tencent will suffer no cognizable harm. Any harm to Tencent
14 from ceasing its infringement “does not merit significant equitable protection,” *VidAngel*, 869 F.3d
15 at 867, as it “cannot complain of the harm that will befall it when properly forced to desist from its
16 infringing activities,” *Triad Sys. Corp. v. Se. Exp. Co.*, 64 F.3d 1330, 1338 (9th Cir. 1995). As a
17 willful infringer that “deliberately proceeded” with developing and marketing *Light of Motiram*
18 despite SIE’s warnings, Tencent “cannot now be heard to complain that it will be ... injured” by an
19 injunction. *Helene Curtis Indus. v. Church & Dwight Co.*, 560 F.2d 1325, 1333-1334 (7th Cir.
20 1977). SIE’s “proposed injunction merely prohibits [Tencent] from engaging in activities it was
21 never entitled to carry out in the first place.” *Niantic, Inc., v. Global ++, et al.*, 2019 WL 8333451,
22 at *9 (N.D. Cal Sept. 26, 2019) (granting preliminary injunction).

23 **IV. A PRELIMINARY INJUNCTION WILL PROTECT THE PUBLIC INTEREST.**

24 Finally, a preliminary injunction will protect the public interest in guarding intellectual
25 property rights, avoiding marketplace confusion, and safeguarding companies’ significant
26 investments in high-quality video games like *Horizon*. *See VidAngel*, 869 F.3d at 867 (holding
27 “public has a compelling interest in protecting copyright owners’ marketable rights” and “economic
28 incentive to continue creating television programming”); *Waymo LLC v. Uber Techs., Inc.*, 2017

1 WL 2123560, at *11 (N.D. Cal. May 15, 2017) (holding “public has an interest in vindicating
2 intellectual property rights, and in prohibiting unfair competition”); *Playboy Enters., Inc. v.*
3 *Baccarat Clothing Co., Inc.*, 692 F.2d 1272, 1275 (9th Cir. 1982) (“consuming public is equally
4 injured by an inadequate judicial response to trademark infringement”). If Tencent is free to knock
5 off a successful franchise, the public will be severely harmed as original content creators lose the
6 incentive to invest the resources necessary to make the next blockbuster franchise. *See* Qizilbash
7 Decl. ¶ 39 (discussing incentives); *supra* 2 (discussing SIE’s massive investments). Tencent can
8 claim no public interest in promoting a game using misleading and infringing materials that usurps
9 the market for *Horizon* products, confusing the public into believing *Light of Motiram* is part of the
10 *Horizon* Franchise or a *Horizon* substitute.

11 In any event, the public has already spoken here. Journalists, fans, and consumers are
12 offended by Tencent’s *Horizon* rip-off and it has generated confusion in the marketplace. *Supra*
13 18-19 (discussing confusion). The well-recognized public interest in vindicating intellectual
14 property rights and preserving incentives for creating new works supports an injunction here.

15 **V. THE COURT SHOULD NOT REQUIRE A BOND.**

16 “The district court is afforded wide discretion in setting the amount of the bond, ... and the
17 bond amount may be zero if there is no evidence the party will suffer damages from the
18 injunction.” *Connecticut Gen. Life Ins. Co. v. New Images of Beverly Hills*, 321 F.3d 878, 882 (9th
19 Cir. 2003) (internal citations omitted). The Court should require no bond here because there is no
20 cost to or burden on Tencent to comply. Tencent need not pull any released video game from the
21 market; it need only cease its infringing activities and refrain from releasing an infringing product.

22 **CONCLUSION**

23 The Court should grant SIE’s motion for preliminary injunction, enjoining Tencent from
24 reproducing, preparing derivative works of, displaying, performing, and distributing any works
25 copied or derived from SIE’s *Horizon* Works, including *Light of Motiram*, and from using the
26 ALOY Character Mark or any confusingly similar mark pending trial.

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Respectfully submitted,

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