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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NINTENDO OF AMERICA INC.,

Plaintiff,

v.

GARY BOWSER,

Defendant.

NO.

COMPLAINT

JURY DEMAND

PRELIMINARY STATEMENT

Plaintiff Nintendo of America Inc., by and through its counsel, on personal knowledge as to its own actions and on information and belief as to the actions, capabilities, and motivations of others, hereby alleges as follows:

1. Nintendo of America Inc., a wholly-owned subsidiary of Nintendo Co., Ltd., markets and distributes electronic video game consoles, games, and accessories developed by Nintendo Co., Ltd., including the Nintendo Switch and the Nintendo Switch Lite consoles (collectively the “Nintendo Switch”), as well as the proprietary and copyrighted software that serves as the Nintendo Switch’s operating system. Collectively, Nintendo of America Inc. and

1 Nintendo Co., Ltd. are referred to herein as “Nintendo.” Nintendo also makes award-winning
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3 video games that can be played on the Nintendo Switch. To protect its intellectual property rights,
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5 and to ensure that only authorized and licensed Nintendo Switch games can be played on the
6
7 Nintendo Switch, Nintendo designed the Nintendo Switch with sophisticated security features
8
9 meant to prevent unauthorized operating systems from being used on the Nintendo Switch, and to
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11 prevent pirated video games from being played on the Nintendo Switch. The Nintendo Switch is
12
13 one of the most popular video game consoles of all time.

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15 2. Defendant Gary Bowser is one of the leaders of Team Xecuter, a pirate operation
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17 that unlawfully manufactures and traffics in an unauthorized operating system called the “SX OS,”
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19 and accompanying piracy tools which install it (the “Circumvention Devices”), for commercial
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21 gain. The purpose of the Circumvention Devices and the SX OS—developed, manufactured, and
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23 trafficked under Defendant’s leadership—is to hijack the Nintendo Switch by interrupting and
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25 bypassing its technological security features and protections. This thereby allows the Nintendo
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27 Switch to be used for massive intellectual property theft and infringement.

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29 3. The Circumvention Devices strip away or circumvent technological protection
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31 measures Nintendo put into place to protect its invaluable copyrighted software and video games
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33 from unauthorized access and copying (the “Technological Measures”).
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35 4. Once this circumvention has occurred, the SX OS is able to run on the Nintendo
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37 Switch, modifying the authentic, authorized Nintendo Switch operating system, thus allowing
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39 users to bypass the Technological Measures to obtain and play virtually any pirated game made
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41 for the Nintendo Switch, all without paying anything to Nintendo or to any of the large number of
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43 other game developers and publishers making and selling games for the Nintendo Switch. For
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45 example, users can find pirated Nintendo Switch games online, transfer unauthorized copies to a

1 memory card, insert that card into the Nintendo Switch, and then, with the SX OS running, play
2 those infringing games on the hacked Nintendo Switch for free. If a user already owns a *lawful*,
3 properly-purchased Nintendo Switch game, the user can use the SX OS and accompanying features
4 to turn that game into an *unlawful* copy, which allows the user to share additional unauthorized
5 copies with more users also using the SX OS on the Nintendo Switch.
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11 5. Defendant has been one of only a handful of key members of Team Xecuter,
12 running the day-to-day operations of the hacking group, including: operating websites that traffic
13 in the Circumvention Devices and SX OS; trafficking in the devices through other distribution
14 channels, including multiple resellers; leading the marketing of the products and websites,
15 including overseeing advertisements on the group’s websites and managing income from ad sales;
16 and overseeing and/or liaising among Team Xecuter’s other key players, including distribution
17 and manufacturing centers abroad, forum moderators, individual users, and resellers selling the
18 Circumvention Devices, including in the United States and in this District, several of whom have
19 already been adjudicated as having engaged in unlawful activity by two federal courts. Indeed,
20 Defendant has been reported to be “the closest thing to a public face for the team of coders and
21 foreign manufacturers that made up the [Team Xecuter] supply chain.”
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33 6. As part of his leadership, Defendant has operated at least four websites—TEAM-
34 XECUTER.COM, XECUTER.ROCKS, TEAM-XECUTER.ROCKS, and, upon information and
35 belief, SX.XECUTER.COM (the “Websites”)—through which he has unlawfully trafficked in,
36 promoted, and marketed the SX OS and Circumvention Devices. Defendant also created and ran
37 the website MAXCONSOLE.COM, which served as a central location for Defendant to post
38 reviews, advertisements (including from resellers), and support forums for the Circumvention
39 Devices and the resellers selling those Devices. Defendant has also provided material support to
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1 reseller websites through which Circumvention Devices have been trafficked, including in this
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3 District, and has also operated a number of accounts at blogs, forums, and other online news
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5 outlets, typically under the alias “Gary Opa” or “GaryOPA,” which is sometimes displayed along
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7 with Defendant’s real name, as in: “Gary Bowser (garyopa).” Defendant will often take the content
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9 that he has posted on the Team Xecuter Websites under the name Team Xecuter, and post the same
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11 content to his own site and third-party sites under the alias GaryOPA, showing that he is the illegal
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13 operation’s front man, and demonstrating that he frequently had control over the content of the
14
15 Websites.

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17 7. Defendant has been a leader in the hacking and piracy community targeting
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19 Nintendo’s intellectual property more broadly for many years. Defendant has trafficked in
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21 circumvention devices and helped facilitate infringement of Nintendo video games not only on the
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23 Nintendo Switch, but also on earlier consoles, including the Nintendo DS, released in 2004, the
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25 Wii, released in 2006, and the Nintendo 3DS, released in 2011.

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27 8. Defendant is also known to law enforcement. Defendant was charged in Canada in
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29 2008 in connection with his elaborate operation involving counterfeit Nintendo video games and
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31 the modification of video game consoles. And late last year, Defendant was indicted by the United
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33 States Attorney’s Office for the Western District of Washington for, *inter alia*, trafficking in
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35 circumvention devices, the vast majority of which target Nintendo consoles, and which include the
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37 devices at issue here. The indictment in *United States v. Louarn et al.*, No. 2:20-cr-00127-RSL
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39 (the “Indictment”), alleges that Defendant, along with two other individuals—Max Louarn and
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41 Yuanning Chen—ran a criminal enterprise under the name Team Xecuter, which “developed,
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43 manufactured, marketed, and sold a wide variety of circumvention devices . . . designed . . .
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45 primarily to circumvent technological measures in a manner that allowed users to play pirated

1 versions of copyrighted videogames” The indictment notes that the enterprise specifically
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3 designed the devices “to circumvent the technological measures in . . . Nintendo Switch consoles.”
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5 9. Under the joint leadership, direction, and control of Defendant, Chen, and Louarn,
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7 Team Xecuter has grown into an international pirate ring, manufacturing and trafficking in
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9 unlawful Circumvention Devices and operating systems on a massive scale in this District and
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11 around the globe. On information and belief, Defendant has trafficked in many thousands of
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13 Circumvention Devices and downloads of the SX OS throughout the United States, including in
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15 this District.

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17 10. Indeed, Team Xecuter’s unlawful SX OS is the most-installed piracy software on
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19 the Nintendo Switch. At one point, the SX OS was pre-installed on 89% of modded/hacked
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21 Nintendo Switch products available for illegal sale.

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23 11. Defendant’s unlawful conduct has caused Nintendo and all those third parties that
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25 develop games for the Nintendo Switch platform tremendous harm. Nintendo’s copyrighted
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27 games are at the heart of its popularity, and Nintendo’s business necessarily relies upon the
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29 authorized and licensed sale of authentic copies of the video games, and upon the trust of third-
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31 party game developers that the games they develop will be secure on Nintendo’s consoles and will
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33 not be illegally distributed or played.

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35 12. This is exactly why Nintendo has invested and continues to invest in Technological
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37 Measures to secure its consoles and protect against unauthorized access to and infringement of
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39 copyrighted games developed by Nintendo and thousands of third-party developers.

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41 13. Recognizing the threats faced by copyright owners like Nintendo in the age of
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43 digital piracy, Congress enacted the Anti-Circumvention and Anti-Trafficking provisions of the
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45 Digital Millennium Copyright Act (“DMCA”), making it illegal to circumvent or traffic in devices

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