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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TAKE-TWO INTERACTIVE SOFTWARE,
INC. and ROCKSTAR GAMES, INC.,

Plaintiffs,

- against -

PINKERTON CONSULTING &
INVESTIGATIONS, INC. and PINKERTON
SERVICE CORPORATION,

Defendants.

Case No. 19-cv-338

ECF Case

DECLARATORY JUDGMENT ACTION

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Take-Two Interactive Software, Inc. (“Take-Two”) and Rockstar Games, Inc. (“Rockstar”) (collectively, “Plaintiffs”), by and through their attorneys, Kirkland & Ellis LLP, for their Complaint, hereby allege against Defendants Pinkerton Consulting & Investigations, Inc. (“Pinkerton Consulting”) and Pinkerton Service Corporation (“Pinkerton Service”) (collectively, “Defendants”) as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this declaratory judgment action to remove the cloud that Defendants have created over Plaintiffs' recently released videogame, *Red Dead Redemption 2* ("*Red Dead 2*"). As discussed in detail below, *Red Dead 2* is a historically accurate videogame set in the Wild West in the late 1800s. In Plaintiffs' depiction, among numerous other historical elements, they have included references to the historic Pinkerton National Detective Agency and Pinkerton agents, which at that time played an infamous role in law enforcement. Defendants claim to hold trademark rights in the names "Pinkerton Detective Agency" and "Pinkerton," which are used in *Red Dead 2*. Defendants assert that Plaintiffs have infringed those rights by referencing the historical Pinkerton National Detective Agency and Pinkerton agents and using the Pinkerton National Detective Agency's historical badge in the game. By doing so, Defendants ignore well-established First Amendment principles that protect expressive works, like *Red Dead 2*, from exactly the types of claims that Defendants have lodged against Plaintiffs. Put simply, Defendants cannot use trademark law to own the past and prevent creators from including historical references to Pinkerton agents in depictions of the American West.

2. *Red Dead 2* is a gripping Wild West adventure, which tells the story of an outlaw gang being pursued by bounty-hunters and mercenaries. Among the gang's pursuers are agents of the historic Pinkerton National Detective Agency. *Red Dead 2* is set in a huge, virtual American landscape that recreates miles of western lands, from mountains to rivers and from pristine lakes to newly industrialized towns. *Red Dead 2* is essentially an interactive film and the main storyline takes over 60 hours to unfold. Historical references are woven into the fabric of the game at every level: players encounter and participate in historical events, hunt with historical weapons, and listen to historical music performed on era appropriate instruments. The game's reference to the historical Pinkerton National Detective Agency and its agents is but one

of a myriad of ways that *Red Dead 2* accurately portrays the historical Nineteenth Century American landscape.

3. It is an established historical fact that the Pinkerton National Detective Agency played a key role in the history of American law enforcement and the taming of the Wild West. In the late 1800s, the U.S. Department of Justice employed Pinkerton agents to enforce federal law, pursue local investigations, and hunt down fugitives. Pinkerton agents, or “Pinkertons,” were hired to track numerous Wild West outlaws such as Jesse James, the Reno Gang, and the Wild Bunch including Butch Cassidy and the Sundance Kid. Pinkertons also were employed by wealthy business owners and robber barons to protect their interests, often resulting in violent clashes between Pinkertons and civilians. For example, the Pinkerton National Detective Agency became active in union busting, participating in one of the most violent union busting episodes in American history. The Pinkerton National Detective Agency was so active in American society during the Nineteenth Century that the term “Pinkerton” entered the lexicon as a term for private detectives.


4. Indeed, because of their centrality in the zeitgeist of the American West, Pinkerton agents have long been a staple in works of historical fiction about the Wild West. Many of these works are discussed below.

5. In *Red Dead 2*, Pinkertons are hired by an affluent businessman to hunt down a Wild West gang that has been interfering with his business interests. The inclusion of Pinkertons in the *Red Dead 2* story is neither excessive nor exceptional: Of the 106 “missions” that comprise the 60 hour storyline, the Pinkerton characters appear in only 10. Moreover, expressive use of the term “Pinkerton” in a historical story set in the Wild West to describe a Pinkerton National Detective Agency employee is common in historical entertainment. The term

has been used in films like *The Long Riders*, television shows like *Deadwood*, songs like Elton John’s “Ballad of a Well-Known Gun,” and books like *The Pinkerton Detective Series*.

6. Plaintiffs’ references to “Pinkerton Detective Agency” and “Pinkerton” in *Red Dead 2* are protected by the First Amendment and do not infringe any rights held by Defendants. The Pinkerton National Detective Agency is part of the history of America. Creative works about the American West are permitted as a matter of law to include such real historical events, figures, and businesses. Particularly where there is no likelihood that consumers will be confused about the source of the creative work, trademark owners should not be permitted to use trademark law to harass authors, chill speech, and diminish the historical tenor of works like *Red Dead 2*. Historical fiction—television, movies, plays, books, and games—would suffer greatly if trademark claims like Defendants’ could even possibly succeed.

7. Despite the clear applicability of the First Amendment, Defendants sent Plaintiffs a cease and desist on December 13, 2018, apparently hoping to profit from the recent success of *Red Dead 2*. Defendants asserted, without support, that *Red Dead 2* is likely to cause confusion

with Defendants’ PINKERTON’S mark, as well as a Pinkerton detective badge:  (the “Star Badge”) (together, the “Defendants’ Marks”). Defendants demanded that Plaintiffs pay an ongoing royalty for each game sold to include “Pinkerton” and “Pinkerton Detective Agency” in *Red Dead 2*. When Plaintiffs explained that *Red Dead 2* is protected by the First Amendment, Defendants reiterated their demands and stated Defendants were prepared to take legal action if a license agreement was not reached.

8. As a result of Defendants’ intransigent and unreasonable position, Plaintiffs had no choice but to seek an order from this Court declaring that Plaintiffs’ references to “Pinkerton”

and the name “Pinkerton Detective Agency” in *Red Dead 2* do not infringe Defendants’ rights. Moreover, to deter such unreasonable claims in the future, Plaintiffs seek their attorney’s fees in bringing this lawsuit due to the exceptional nature of Defendants’ claims.

THE PARTIES

9. Plaintiff Take-Two Interactive Software, Inc. is a Delaware corporation having its principal place of business in this District. Take-Two is a multinational publisher, developer, and distributor of video games and video game peripherals.

10. Plaintiff Rockstar Games, Inc. is a wholly owned subsidiary of Take-Two Interactive Software, Inc. Rockstar Games is a Delaware corporation having its principal place of business in this District.

11. Upon information and belief, Defendant Pinkerton Consulting & Investigations, Inc. is a Delaware corporation having offices in Ann Arbor, Michigan and at 61 Broadway, New York, New York. Pinkerton Consulting conducts business in this District and offers New York specific services, including acting as New York State Banking Regulators.

12. Upon information and belief, Defendant Pinkerton Service Corporation is a wholly owned subsidiary of Pinkerton Consulting Investigations, Inc. Pinkerton Service is a California corporation having offices at 4330 Park Terrace Drive, Westlake Village, CA.

13. Upon information and belief, Pinkerton Service exclusively licenses Defendants’ marks to Pinkerton Consulting and Defendants’ marks are used extensively in this District.

JURISDICTION AND VENUE

14. This is an action arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the Lanham Act, 15 U.S.C. § 1051 et seq.

15. This Court has subject matter jurisdiction under 28 U.S.C. §§ 2201 and 2202 because there is a substantial and concrete controversy between the parties of sufficient

immediacy that warrants a declaratory judgment. This Court has jurisdiction over this matter pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338, and 1367 in that this matter involves an action arising under the Lanham Act.

16. This Court has general personal jurisdiction over Defendants because Defendants transact, solicit, conduct, or have conducted business on a continuous and systematic basis in this District through advertising, promotion, and sale of their services bearing the trademarks at issue. For example, Defendants have a page on their website, www.pinkerton.com, describing services provided specifically at Defendants' New York office. This webpage bears the name "Pinkerton," one of the trademarks at issue, and provides contact information for a New York Director who "leads all of Pinkerton New York's Risk Management service." A true and correct copy of the webpage is attached hereto as **Exhibit 1**.

17. Upon information, Defendants' press kit describes its New York Office as a "Regional Hub." Defendants' headquarters was "moved to downtown New York" in 1960, where it was headquartered when the "PINKERTON's" mark was registered in 1970. A true and correct copy of Defendants' press kit is attached hereto as **Exhibit 2**.

18. Upon information and belief, the Court also has specific jurisdiction over Defendants because they have purposefully availed themselves of the privilege of conducting business in New York, including but not limited to by operating offices in New York, by employing agents who specialize in New York-specific regulations and who solicit New York-specific clients, and by registering with the New York Department of State. In doing so, Defendants use the trademarks that they assert Plaintiffs have infringed. Thus, a direct connection exists between Defendants' actions in this District and the subject matter of this lawsuit.

19. Defendants also have taken steps to enforce Defendants' Marks in New York State, including making threats of litigation by sending multiple cease-and-desist letters to Plaintiffs in this District concerning this dispute and affecting commerce originating in this State. Defendants additionally asked Plaintiffs to enter into a licensing arrangement regarding Defendants' Marks, which further affects commerce originating in this District.

20. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)–(d) because a substantial part of the events giving rise to Plaintiffs' claims occurred in this judicial district and Defendants are subject to the Court's personal jurisdiction.

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

Red Dead 2

21. *Red Dead 2* was released in the United States on October 26, 2018 for PlayStation 4 and Xbox One. A true and correct copy of the video game is attached hereto as **Exhibit 3**.¹

22. *Red Dead 2* is a creative work.

23. *Red Dead 2* reflects creative choices in, among other things, its characters, setting, plot, graphics, animations, music, dialogue, and other expressive elements.

24. *Red Dead 2*'s main storyline takes approximately 60 hours to unfold. The game is comprised of roughly 500,000 lines of dialogue and 300,000 animations.

25. The article *Red Dead Redemption 2 details revealed: 60 hours long, 500,000 lines of dialogue, 300,000 animations* states, "The final game contains 300,000 animations and 500,000 lines of dialogue in total." A true and correct copy of the article is attached hereto as

Exhibit 5.

¹ Plaintiffs have attached the Xbox One version of *Red Dead 2* to this Complaint. For the convenience of the Court, Plaintiffs will make an Xbox One console available to the Court upon request. A scan of the packaging for *Red Dead 2* is attached hereto as **Exhibit 4**.

26. *Red Dead 2* was created over a seven year period by over two thousand people, including writers, actors, musicians, artists, animators, designers, and programmers.

Red Dead 2's Plot

27. *Red Dead 2* begins in the American West of 1899. As the Wild West era draws to an end, lawmen and bounty hunters work to track down the West's remaining outlaw gangs. The charismatic Dutch van der Linde and his eponymous gang have roamed the American West for years. Now they are being chased across America by authorities seeking to make the West far less wild.

28. Players experience the story as Arthur Morgan, a dangerous man who was adopted as a boy by gang leader Dutch Van Der Linde. The Van Der Linde gang is the only family Arthur has ever known but through the course of the story, his unswerving loyalty to them—and Dutch—is tested.

29. The *Red Dead 2* story begins after a robbery goes badly wrong in the town of Blackwater and the gang flees for their lives. Looking for a last big score that will let them establish good lives on the right side of the law, the gang repeatedly fails to accomplish their goal. At one point in the story they rob the private train car of a business tycoon who in turn hires Pinkertons to protect his interests. This is just one of dozens of different sub-plots the player will encounter throughout the over 60 hours it takes to experience the main story of *Red Dead 2*.

30. The main story of *Red Dead 2* is told through a series of “missions.” Players can follow the main story missions, participate in dozens of optional missions, or pursue dozens of hours of optional adventures. Missions may require players to accomplish a certain task within a particular time frame or to seek out certain characters who advance the narrative. Players can

spend dozens of hours exploring the world without engaging the main story line or they can follow the story missions if they choose.

31. The player has considerable freedom in how they encounter the story and certain player actions will even influence the story outcome. For example, players can participate in optional tasks include hunting for legendary animals, working with local sheriffs as a bounty-hunter, searching for dinosaur bones in the dessert, making tonics, crafting weapons, breaking wild horses, or following treasure maps. The game takes place in a huge virtual world that covers a wide range of American landscapes stretching from the Gulf of Mexico to the Rockies, with over 50 unique weapons, more than 100 unique vehicles, over 200 different animal species, and even 1,000 different articles of clothing.

32. Playing *Red Dead 2* demonstrates the level of detail and complexity of the game. True and correct copies of gameplay capture videos for the missions in which the Pinkertons appear in *Red Dead 2* are attached as **Exhibits 6–14**.

The Historical Accuracy of *Red Dead 2*

33. *Red Dead 2* reflects historical events and characters to immerse the player in the game.

34. *Red Dead 2* contains multiple plotlines based on historical events.

35. *Red Dead 2* contains a plotline centered on the U.S. government seizure of Native American land.

36. The Native American land plotline is based on real historical events, including the seizure of the Black Hills from Native American nations in the late 1800s, and the treatment of the Osage tribe by the government in the early Twentieth Century.

37. In one scene in *Red Dead 2*, Arthur encounters a suffrage rally and discusses women's suffrage with them, reflecting the historical women's suffrage movement taking place in Southern and Southwestern states in the late 1800s.

38. *Red Dead 2*'s gang of outlaws on the run from the law reflects the historical presence of fugitive criminals across the American frontier in the late Nineteenth Century and the historical attempts to apprehend these gangs.

39. Beyond historical events, *Red Dead 2* contains a variety of details that enrich the historical setting, including the inclusion of historical "new" technologies available in the late Nineteenth Century, such as electric current, rail roads, "mechanical men," and the hot air balloon.

40. *Red Dead 2* contains historically accurate weapons options designed to reflect real technology available in the late 1800s. True and correct video clips of *Red Dead 2* depicting these weapons are attached hereto as **Exhibit 15–18**.

41. In one mission in *Red Dead 2*, Arthur attends a "Magic Lantern Show," a historical form of entertainment common at the turn of the Nineteenth Century.

42. *Red Dead* includes historically accurate flora and fauna from the late Nineteenth Century American West.

43. *Red Dead 2* includes music that is historically accurate to the time period and performed on instruments common to music of the period like the jug, harmonica, banjo, fiddle, and cello.

44. *Red Dead 2* features a racially and ethnically diverse set of characters.

45. The diversity of *Red Dead 2*'s characters reflects the demographic makeup of the historical American West.

46. One *Red Dead 2* character, the robber baron character who hires the Pinkertons is a reference to the historical industrialists famous in the United States in the late 1800s.

47. The Van Der Linde gang has historical parallels to Butch Cassidy and the Wild Bunch, an outlaw gang that operated during the end of the Wild West and was ultimately chased out of the country by Pinkertons.

Recognition of *Red Dead 2*'s Historical Accuracy

48. Leading commentators have praised *Red Dead 2* for its complexity and attention to detail.

49. For example, in the article *Red Dead Redemption 2: Game Review*, The Hollywood Reporter wrote that “The depth of the game's content borders on the inconceivable. There is so much to do and see in Red Dead Redemption 2 that at times it can feel overwhelming.” A true and correct copy of the article is attached as **Exhibit 19**.

50. Similarly, in the article *Red Dead Redemption 2 Is True Art*, The New York Times opined that *Red Dead 2* is “A new American epic for the digital age . . . it is a literary experience that emphasizes — and simulates — tragedy and personal consequences.” A true and correct copy of the article is attached as **Exhibit 20**.

51. Articles also have acknowledged *Red Dead 2*'s historical accuracy. They note its importance and how it adds to the player's overall experience of the game.

52. For instance, in the article *How Historically Accurate is Red Dead Redemption 2?*, IGN, a popular video game, stated, “Rockstar Games has gone above and beyond to make the world seem deeply believable while functioning within the parameters of an open world entertainment experience” and praises the “realism” of its broad themes. The article went on, “Here's hoping that Red Dead Redemption 2's success in deriving such a measure of historical reality paves the way for more period pieces in gaming that vault us into an illusion of life long

past and reward our curiosity with learning and discovery.” A true and correct copy of the article is attached hereto as **Exhibit 21**.

53. Likewise, in the article *Birding Like its 1899: Inside a Blockbuster American West Video Game*, the Audubon Society commended the game’s inclusion of “200 distinct, interactive species of animal,” stating that they were “impressed with the breadth and relative accuracy of the species represented.” A true and correct copy of the article is attached hereto as **Exhibit 22**.

54. The Guardian, in the article *Get Real! Behind the Scenes of Red Dead Redemption 2 - The Most Realistic Game Ever Made*, also commended the game’s realism, stating that “Rockstar aims to provide players with a wild west fantasy so authentic that you can forget it is not real.” A true and correct copy of the article is attached hereto as **Exhibit 23**.

The Marketing for *Red Dead 2*

55. The marketing and promotion of *Red Dead 2* states that the source of the videogame is Plaintiffs.

56. The front cover of *Red Dead 2*’s packaging states “Rockstar Games Presents Red Dead Redemption II.” Ex. 4.

57. The back cover of *Red Dead 2*’s packaging includes the mark ROCKSTAR GAMES and Plaintiffs’ Rockstar Logo. Ex. 4.

58. *Red Dead 2* has three official trailers distributed by Take-Two (the “Promotional Trailers”). True and correct copies of the Promotional Trailers are attached hereto as **Exhibits 24-26**.

59. Each of the Promotional Trailers for *Red Dead 2* prominently displays Plaintiffs’ trademarks and logos.

60. *Red Dead 2* has three “accolades” trailers distributed by Take-Two (the “Accolades Trailers”). True and correct copies of the Accolades Trailers are attached hereto as **Exhibits 27–28**.

61. Each of the Accolades Trailers for *Red Dead 2* prominently displays Plaintiffs’ trademarks and logos.

62. *Red Dead 2* has three “launch” trailers, to promote the release of the game (the “Launch Trailers”). True and correct copies of the Launch Trailers are attached hereto as **Exhibits 29–31**.

63. Each of the Launch Trailers for *Red Dead 2* displays Plaintiffs’ trademarks and logos.

64. *Red Dead 2* has a trailer related to an exclusive early access event for PS4 players (the “Early Access Trailer”). A true and correct copy of the Exclusive Access Trailer is attached hereto as **Exhibit 32**.

65. The Early Access Trailer for *Red Dead 2* displays Plaintiffs’ trademarks and logos.

66. As shown to the right, *Red Dead 2* was advertised through a billboard campaign. The billboards displayed Plaintiffs’ trademarks and logos, as well as the phrase “From the Makers of *Grand Theft Auto*.”



67. Plaintiffs license a guide for *Red Dead 2* (the “Guide”), which displays Plaintiffs’ trademarks and logos. A true and correct copy of the Guide is attached hereto as **Exhibit 33**.

68. The Guide’s cover states, “Rockstar Games Presents Red Dead Redemption II: The Complete Official Guide.”

69. Plaintiffs also distributed print and online advertisements for *Red Dead 2*. These advertisements display Plaintiffs’ trademarks and logos. Examples of print and online advertisements for *Red Dead 2* are attached as **Exhibit 34**.

70. The image to the right depicts a print advertisement and magazine cover for *Red Dead 2*.



Defendants

Defendants’ History

71. Upon information and belief, Pinkerton National Detective Agency was founded by Allan Pinkerton in 1850 in Chicago, Illinois. It was among the first private detective agencies in the United States. Although it went by “Pinkerton National Detective Agency” throughout the Nineteenth Century, Defendants currently do business under two names: “Pinkerton Consulting & Investigations” and “Pinkerton Corporate Risk Management.”

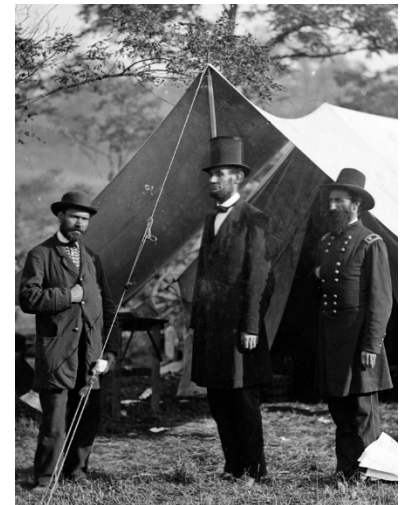
72. Upon information and belief, when the Pinkerton National Detective Agency was founded in the middle of the Nineteenth Century it initially specialized in protecting railways from thefts by gangs of outlaws. In this way, Pinkerton agents acted as law-enforcement-for-hire for large railroad companies and wealthy businessmen looking for added security. Through their involvement in the railroad, the Pinkerton National Detective Agency and Pinkerton agents, known as “Pinkertons,” began to gain notoriety as a central player in the Wild West.

73. Upon information and belief, the image to the right shows Pinkerton agents in 1885, including William Pinkerton, Allan Pinkerton's son.



74. Upon information and belief, in 1855, Pinkerton agents acted as hired muscle for railway companies looking to protect their shipments in the American West. The agency was hired by the Illinois Central Railroad to act as private security. Pinkertons posed as political dissidents in order to search out criminals targeting the train route. This led to an incident in 1861 in which Pinkerton agents uncovered and foiled an assassination plot to attack President Abraham Lincoln in his railway car.

75. The image to the right shows Allan Pinkerton, left, with Abraham Lincoln, middle.



76. Upon information and belief, in the late 1800s, the Pinkerton National Detective Agency was hired by the United States government to act as private, quasi-law enforcement officers—tracking, apprehending, and often killing outlaw gangs and targets in the Wild West. Pinkerton agents pursued a variety of famous American West outlaws, including Jesse James, the Younger Gang, the Dalton Brothers, and Butch Cassidy and the Wild Bunch.

77. Upon information and belief, in the 1890s, Pinkerton agents chased Butch Cassidy and the Wild Bunch out of the country. The Pinkerton National Detective Agency's notoriety grew even further due to its pursuit of famous Wild West outlaws.

78. Upon information and belief, the Pinkerton National Detective Agency significantly grew in size during the late Nineteenth Century and thousands of Pinkertons operated across the United States, often working as a private law enforcement arm of the United States government. The company employed so many Pinkertons that Ohio outlawed the agency out of fear that it had become a private militia.

79. Upon information and belief, even after they began working for United States government, Pinkertons continued to perform security work for American industrialists and union-busters. In 1892, Pinkertons participated in an attempt by Henry Frick, Chairman of the Carnegie Steel Company, to break up the iron and steel unions. At that time, union workers operating in Carnegie's steel plants went on strike, locking themselves in the factory.

80. Upon information and belief, Pinkerton agents were hired by Mr. Frick to break up striking workers. The violent encounter between the agents and the striking workers resulted in a battle on July 6, 1892. Three hundred Pinkerton agents assembled near the Homestead Works of the Carnegie Steel Company, where workers had taken shelter in a fortified mill. Bearing Winchester rifles, the Pinkerton agents intended to remove the union organizers by force. The result was a violent fight during which nine workers were killed and seventy suffered significant injuries.

81. Upon information and belief, the event is known as the "Homestead Strike" or the "Pinkerton Rebellion." The Pinkerton Rebellion was one of the most violent union disputes in United States history.

82. Upon information and belief, following the Pinkerton Rebellion, union sympathizers accused the Pinkerton National Detective Agency of inciting the riot that resulted

in the deaths of nine striking men. The company's notorious reputation as union-busters and mercenaries grew even further.

83. Upon information and belief, in 1893 Congress passed the Anti-Pinkerton Act, which limited the federal government's ability to hire private investigators or mercenaries like the Pinkerton National Detective Agency. The legislation was passed due to concerns that the federal government was using private contractors, including the Pinkerton National Detective Agency, as a quasi-military forces ready for combat. The Anti-Pinkerton Act was also widely recognized as a response to the federal government's use of Pinkerton agents to disrupt and harass labor organizers.

84. Upon information and belief, at the turn of the century and into the early Twentieth Century, Pinkerton agents acted as factory guards and performed investigations into labor union activities. The Pinkerton National Detective Agency continued to accept jobs investigating unions until the 1930s, when Congress passed the Wagner Act, deeming such investigations into union activity unlawful. The Pinkerton National Detective Agency's earnings dropped significantly after the Wagner Act's passage.

85. Upon information and belief, in 1965 the Pinkerton National Detective Agency became Pinkerton's Inc. During this period, the company shifted focus from detective work to security services, with greater focus on accounting and insurance firms. Defendants continued to provide private security services throughout the late Twentieth Century, but by 1990, less than two percent of its guards carried guns.

86. Upon information and belief, Defendants acknowledge their history as a key business in the Wild West. Defendants expressly admit and acknowledge their historical role in

protecting the railroads; the pursuit of Jesse James and Butch Cassidy, as well as other famous outlaws; and the foiled Lincoln assassination plot.

87. Defendants' website has a timeline, touting their involvement in taming the Wild West and the pursuit and capture of famous Wild West outlaws (the "Defendants' Timeline"). A true and accurate copy of the Defendants Timeline is attached hereto as **Exhibit 35**.

88. Defendants' history, including its law enforcement role in the Wild West, is a historical fact that no one can own.

Defendants Today

89. Upon information and belief, today, Defendants are providers of corporate risk management solutions. Defendants perform at least the following services: risk advisory, risk-based screening, security risk management (including security guard management, facility security, special event security, and supply chain security), corporate investigations, protection services, threat response services, and protective intelligence. Defendants have offices in North America, South America, Europe, the Middle East, and Asia.

90. Upon information and belief, today, Defendants do not hunt down outlaw gangs in the western United States.

91. Upon information and belief, Defendants were acquired in 1999 by Securitas Security Service USA, Inc., and are subsidiaries of Securitas AB.

92. Upon information and belief, from 1850 to 1925, detectives working for the Pinkerton National Detective Agency used shield-shaped solid silver badges with engraved lettering to identify themselves. Starting in 1930, the design of the badges was changed to a star shape with gold plating and black lettering. The latter is the badge depicted in the Defendants' Marks.

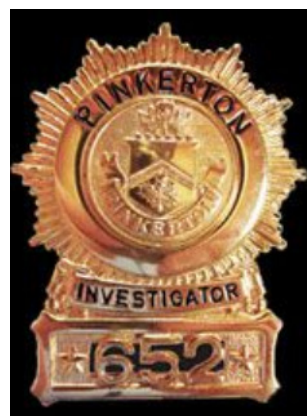
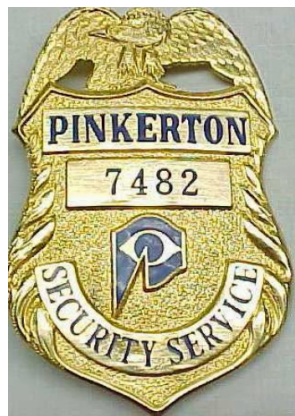
93. The image to the right depicts the badge used by the Pinkerton National Detective Agency from 1850 to 1925 (the "Historical Pinkerton Badge"):



94. Upon information and belief, Defendants no longer use the Historical Pinkerton Badge.


95. Defendants do not have a live trademark registration for the Historical Pinkerton Badge with the U.S. Patent & Trademark Office ("USPTO").

96. The following images depict modern badges used by Defendants in the period after 1930, specifically the "Eagle Badge" (left) and the "Star Badge" (right):



97. Upon information and belief, Pinkerton Service has registered the following

trademarks and logos with the USPTO:  (Registration Nos. 3,773,594; 1,780,710; and

1,778,207);  (Registration No. 2,450,925); PINKERTON'S (Registration No. 887,265);

and  (Registration No. 546,426).

98. Upon information and belief, Defendants' employees currently carry the Eagle Badge for identification as company investigators.

99. Upon information and belief, Defendants' employees currently do not carry the Star Badge or the Historical Pinkerton Badge for identification as company investigators.

Pinkerton in Media and Popular Culture

100. Upon information and belief, because of the Pinkerton National Detective Agency's notoriety and key involvement in the Wild West, its agents have appeared in numerous creative works set in the Nineteenth Century and early Twentieth Century time period. In the works in which they appear, Pinkerton agents are often depicted capturing outlaws or acting as mercenaries in the Wild West.

101. Wikipedia's *Pinkerton (detective agency)* entry describes depictions of the Pinkerton National Detective Agency and Pinkertons in popular media. A true and correct copy of the entry is attached hereto as **Exhibit 36**.

102. Upon information and belief, the Pinkerton National Detective Agency and Pinkertons are referenced in media about the American West.

103. Upon information and belief, Pinkerton agents sometimes are depicted in media donning bowler hats, suits, and other American Western apparel.

104. Upon information and belief, Pinkerton agents, in fact, wore bowler hats, suits, and other Western apparel.

105. Upon information and belief, Pinkerton agents sometimes are depicted in media with silver shield-shaped badges.

Television Series

106. Pinkerton agents appear extensively in various television shows about the American West and the turn of the Nineteenth Century.

107. For example, upon information and belief, in the 1959 American western television series *Wanted: Dead or Alive*, starring Steve McQueen, a young runaway is framed for killing a Pinkerton agent.

108. Upon information and belief, in the 1959 American western television series *Bronco*, the main character encounters a Pinkerton agent who has been captured by stage coach robbers.

109. Upon information and belief, a Pinkerton agent is a character in the 1968 American western television series *The High Riders*.

110. Upon information and belief, in the 1972 American western television series *Crossties*, one of the characters vows to die fighting the Pinkertons.

111. Upon information and belief, in the 1989 American western television series *The Young Riders*, a detective named Pinkerton National Detective Agency is hired to secure a shipment of gold.

112. Upon information and belief, in the 1997 American western television series, *Dead Man's Gun*, Pinkerton agents are hired to investigate a kidnapping.

113. Upon information and belief, in the 2010 period drama *Boardwalk Empire*, one of the characters is revealed to be a Pinkerton agent.

114. Upon information and belief, in the 2004 American western television series *Deadwood*, Pinkerton agents appear throughout the series.

115. Upon information and belief, in the 2012 television series *Ripper Street*, set in the late Nineteenth Century, one of the characters is revealed to be a former Pinkerton agent.

116. Upon information and belief, in the 2012 television series *Copper*, three Pinkerton agents appear in the series.

117. Upon information and belief, in the 2014 Canadian western television series *When Calls the Heart*, Pinkerton agents are employed as security for a mining company.

118. Upon information and belief, in the 2014 television series *Penny Dreadful*, Pinkerton agents confront one of the characters in a bar.

Movies

119. Pinkerton agents are often included as characters or referenced in movies about the Wild West and the early Twentieth Century.

120. Upon information and belief, in the 1942 American western film *The Sundown Kid*, a Pinkerton agent goes to prison to get information about a counterfeiting operation, in order to track down a famous outlaw and his gang.

121. Upon information and belief, in the 1953 American western film *The Lone Hand*, one of the characters is ambushed and killed by a Pinkerton agent.

122. Upon information and belief, in the 1954 American western film *Wyoming Renegades*, one of the main characters turns out to be a Pinkerton agent, undercover to catch a gang of Wild West outlaws.

123. Upon information and belief, in the 1954 American western film *The Bounty Hunter*, Pinkerton agents are hired to track down a gang of train robbers.

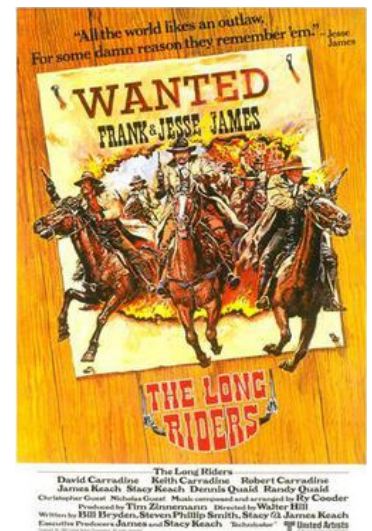
124. Upon information and belief, in the 1957 American western film *Hell's Crossroads*, a Pinkerton agent is one of the main characters involved in the hunt for Jesse James.

125. Upon information and belief, in the 1972 American western film *The Great Northfield Minnesota Raid*, a banker hires Pinkerton agents to track the outlaws Jesse James and Cole Younger.

126. Upon information and belief, a Pinkerton agent is a character in the 1972 American western *The Train Robbers*.

127. Upon information and belief, in the 1980 American western film *The Long Riders*, Pinkerton agents are depicted investigating criminal activity in the Wild West.

128. An image of an advertisement for *The Long Riders* is shown to the right.



129. Upon information and belief, in the 1994 American western film *Bad Girls*, the main characters are tracked down by Pinkerton agents.

130. Upon information and belief, in the 1995 American western made-for-television movie *Bonanza: Under Attack*, Pinkerton agents and the outlaw Frank James, brother of Jesse James, appear throughout the film.

131. Upon information and belief, in the 1995 American western, *Frank & Jesse*, Pinkerton agents try to track down the film's main characters, a group of outlaws who rob banks and trains.

132. Upon information and belief, in the 1997 film *Titanic*, a character's bodyguard is revealed to be a former Pinkerton agent.

133. Upon information and belief, in the 2001 American western film *American Outlaws*, Allan Pinkerton and detectives from the Pinkerton National Detective Agency are hired by the owner of a fictional rail road to track down Jesse James.

134. Upon information and belief, in the 2004 film *The Legend of Butch & Sundance*, Butch Cassidy and his gang fight Pinkerton agents.

135. Upon information and belief, in the 2005 film *The Legend of Zorro*, Pinkerton agents appear throughout the movie.

136. Upon information and belief, in the 2010 American western remake *3:10 to Yuma*, Pinkerton agents appear at the beginning of the film.

137. Upon information and belief, the 2011 American western film *Blackthorn* features a former Pinkerton agent who resolves to prove that Butch Cassidy and the Sundance Kid are still alive.

138. Upon information and belief, the term "Pinkerton Agent" appears in at least 21 film descriptions on the Internet Movie Database. A true and correct copy of the search results for "Pinkerton Agent" on the Internet Movie Database is attached hereto as **Exhibit 37**.

Books

139. Pinkerton agents are often featured in books about the Wild West and the turn of the Nineteenth Century.

140. Upon information and belief, Pinkerton agents appear in Beverly Jenkins' novels *Vivid* and *Before Dawn*.

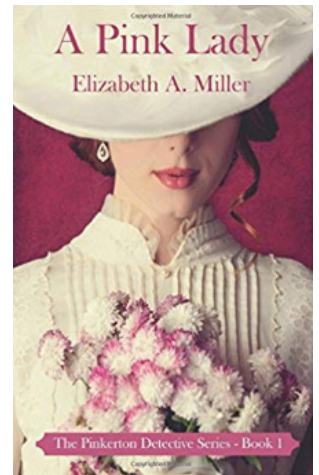
141. Upon information and belief, a Pinkerton agent appears in Sir Arthur Conan Doyle's Sherlock Holmes novel *The Valley of Fear*.

142. Upon information and belief, Pinkerton agents appear in a variety of western novels by Louis L'Amor, including the novel *Milo Talon*.

143. Upon information and belief, the main character in Belle Boyd's novel *Fiddlehead* is a Pinkerton agent.

144. Upon information and belief, Pinkerton agents also appear in and play a central role in romance novels about the American West, including *The Pinkerton Detective Series* by Elizabeth M. Miller and *The Tinkered Pinkerton* by Helen Louise Carroll.

145. An image of the cover of Book 1 of Elizabeth Miller's *Pinkerton Detective Series* is shown to the right, with a subtitle noting that it is part of the author's "Pinkerton Detective Series."



146. Upon information and belief, a Pinkerton agent is a character in Derek Hart's American western book, *For Love or Honor Bound*.

147. Upon information and belief, a Pinkerton agent is the main character in the American western book series *Pinkerton Man Series* by C.J. Dady.

148. Upon information and belief, a Pinkerton agent appears as a character in Kathleen Y'Barbo's American western book, *The Confidential Life of Eugenia Cooper*.

149. Upon information and belief, Pinkerton agents are main characters in J.D. Hardin's American western book, *The Pinkerton Killers*.

150. Upon information and belief, Pinkerton agents also appear in the 1980 novelization of the musical *Annie*.

151. Upon information and belief, there are 8,850 references to “pinkerton agent” in the Google Books database. A true and correct copy of the first page of the Google Books search results for the term “pinkerton agent” is attached hereto as **Exhibit 38**.

Other Media

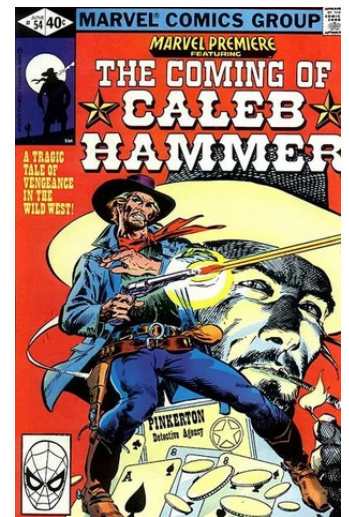
152. Upon information and belief, the protagonist of the video game *BioShock Infinite* is a former Pinkerton agent known for his violent methods putting down strikes.

153. Upon information and belief, in the online video game *Poptropica*, a Pinkerton agent’s services are used to catch a thief.

154. Upon information and belief, Pinkerton agents are characters in the 1997 American western comic book series *Justice Riders*.

155. Upon information and belief, Pinkerton agents are character in the 2012 American western comic book series *Lucky Luke*, in the book, *Lucky Luke Versus The Pinkertons*.

156. Upon information and belief, the Marvel character Caleb Hammer from several comic books, including *The Coming of Caleb Hammer*, is an agent for the Pinkerton Detective Agency. The image to the right depicts Caleb Hammer on the cover of *The Coming of Caleb Hammer* with a business card labeled “Pinkerton Detective Agency.”



Pinkerton Agents in *Red Dead 2*

157. Consistent with past works, *Red Dead 2* uses references to Pinkerton agents in its depiction of the Wild West and the early Twentieth Century.

158. At the bottom of Page 29 of the Guide, in a list of characters appearing in *Red Dead 2*, “The Pinkertons” are described as “A detective agency established by Allan Pinkerton, the Pinkertons are private agents hired by the US government to track western outlaws such as those from the Van der Linde Gang.” Ex. 33.

159. Pinkerton Detective Agency characters appear in only 10 of *Red Dead 2*'s missions, out of over 100 total missions in the main storyline.

160. In one subplot of the main storyline, the Van der Linde gang robs a train and the train owner, Leviticus Cornwall, responds by hiring Pinkerton agents to track down and apprehend Arthur and his fellow outlaws. Ex. 6.

161. A cinematic cut-scene (“cinematic”) is essentially a short video that seamlessly integrates with gameplay that furthers the story of the game. Players first encounter agents from the Pinkerton Detective Agency during a cinematic scene in which Arthur is fishing by a stream with his friend’s son. While the player is enjoying this tranquil activity, it is suddenly interrupted when two men approach dressed in bowler hats, red vests, ties, and grey coats. The men each have a silver shield-shaped badge affixed to their chest, the text of which is often not legible in the game.

162. The silver shield-shaped badges in *Red Dead 2* are not the same design as the Star Badge.

163. The following images show Pinkerton agents Milton and Ross as they appear in *Red Dead 2*:



164. In *Red Dead 2*, the two men introduce themselves as “Agent Milton. Agent Ross. Pinkerton Detective Agency, seconded to the United States government.” They inform Arthur that he is a “wanted man” and that there is a reward of “\$5,000 for your head alone.” The

agents tell Arthur that they do not want Arthur. They want the man that has raised Arthur and cared for him since he was orphaned – the head of his gang Dutch Van de Linde.

165. The image to the right shows the encounter between Agent Milton and Arthur in *Red Dead 2*.



166. Beyond this initial encounter, Agents Milton and Ross appear in other scenes in the game during which they attempt to apprehend Arthur and members of his gang.

167. In another scene, Agent Milton ambushes the Van der Linde gang as they convene in a cabin. Mr. Milton approaches outside, out of sight, telling Arthur and the gang, “This is Agent Milton with the Pinkerton Detective Agency. On behalf of Cornwall Kerosene and Tar, the United States Government and the Commonwealth of West Elizabeth, we are here to arrest you.” Ex. 10.

168. The image to the right shows Agents Milton and Ross as they appear during the ambush scene in *Red Dead 2*.



169. Agents Milton and Ross’s badges are not legible in the ambush scene described in the previous Paragraph.

170. When the Pinkertons appear in *Red Dead 2*, the word “Pinkerton” generally only is mentioned to identify the agent’s occupation. Exs. 6–14.

171. *Red Dead 2* does not state in words that it is sponsored by Defendants.

172. *Red Dead 2* does not state in words that it is affiliated with Defendants.

173. *Red Dead 2* does not state in words that it is associated with Defendants.

174. *Red Dead 2* does not state in words that it is endorsed by Defendants.

175. *Red Dead 2* does not state in words that it is sponsored by the Pinkerton National Detective Agency.

176. *Red Dead 2* does not state in words that it is affiliated with the Pinkerton National Detective Agency.

177. *Red Dead 2* does not state in words that it is associated with the Pinkerton National Detective Agency.

178. *Red Dead 2* does not state in words that it is endorsed by the Pinkerton National Detective Agency.

Marketing for *Red Dead 2* Does Not Include Defendants' Marks or Reference Defendants

179. *Red Dead 2's* front cover does not use the word "Pinkerton," the Historical Pinkerton Badge, or the Star Badge. Ex. 4.

180. *Red Dead 2's* front cover does not reference Defendants. Ex. 4.

181. *Red Dead 2's* back cover does not reference the Pinkerton National Detective Agency. Ex. 4.

182. *Red Dead 2's* back cover does not use the word "Pinkerton," the Historical Pinkerton Badge, or the Star Badge. Ex. 4.

183. *Red Dead 2's* back cover does not reference Defendants. Ex. 4.

184. *Red Dead 2's* back cover does not reference the "Pinkerton National Detective Agency." Ex. 4.

185. *Red Dead 2's* Promotional Trailers do not use the word "Pinkerton," the Historical Pinkerton Badge, or the Star Badge. Exs. 24–26.

186. *Red Dead 2's* Promotional Trailers do not show reference Defendants. Exs. 24–26.

187. *Red Dead 2*'s Promotional Trailers do not reference the Pinkerton National Detective Agency. Exs. 24–26.
188. *Red Dead 2*'s Accolades Trailers do not use the word “Pinkerton,” the Historical Badge, or the Star Badge. Exs. 27–28.
189. *Red Dead 2*'s Accolades Trailers do not show reference Defendants. Exs. 27–28.
190. *Red Dead 2*'s Accolades Trailers do not reference the Pinkerton National Detective Agency. Ex. 27-28.
191. *Red Dead 2*'s Launch Trailers do not use the word “Pinkerton” or the Star Badge. Ex. 29-31.
192. *Red Dead 2*'s Launch Trailers do not reference Defendants. Exs. 29–31.
193. *Red Dead 2*'s Launch Trailers do not reference the Pinkerton National Detective Agency.
194. *Red Dead 2*'s Early Access Trailer does not use the word “Pinkerton,” the Historical Badge, or the Star Badge. Ex. 32.
195. *Red Dead 2*'s Early Access Trailer does not reference Defendants. Ex. 32.
196. *Red Dead 2*'s Early Access Trailer does not reference the Pinkerton National Detective Agency. Ex. 32.
197. *Red Dead 2*'s billboards do not use the word “Pinkerton,” the Historical Pinkerton Badge, or the Star Badge. Ex. 34.
198. *Red Dead 2*'s billboards do not reference Pinkerton. Ex. 34.
199. Plaintiffs' print and online advertisements for *Red Dead 2* do not use the word “Pinkerton” or reference Defendants. Ex. 34.

200. Plaintiffs' print and online advertisements for *Red Dead 2* do not use the Historical Pinkerton Badge or the Star Badge. Ex. 34.

201. Plaintiffs' print and online advertisements for *Red Dead 2* do not reference the Pinkerton National Detective Agency. Ex. 34.

Defendants' Cease and Desist Letter

202. On December 13, 2018, more than six weeks after *Red Dead 2* was released to widespread attention and acclaim, Defendants sent Plaintiffs a cease-and-desist letter. A true and correct copy of Defendants' December 13 letter is attached hereto as **Exhibit 39**.

203. The December 13 letter claimed that the appearance of two Pinkerton agent characters in *Red Dead 2* infringed Defendants' trademarks and constituted unfair competition.

The letter only specifically cited PINKERTON'S (Registration No. 887,265) and  (Registration No. 546,426) as the trademarks Defendants claim Plaintiffs had infringed.

204. Defendants specifically allege that "the Pinkerton National Detective Agency is widely used including the Andrew Milton and Edgar Ross characters," which it alleges "creates the false impression that the game originates from [Defendants] or that [Defendants are] somehow connected to or associated with Rockstar Games in a way that deceives customers or causes confusion or mistake."

205. Defendants' December 13 letter further alleged that "Rockstar Games' usage is likely to dilute the distinctive quality of [Defendants'] Marks. This attempted association of [Defendants] and Rockstar Games through the Red Dead Redemption II game is likely to blur the distinctive character and tarnish the reputation of [Defendants'] famous trademarks. Your

use of the [Defendants'] Marks, therefore, constitutes trademark infringement and unfair competition under applicable federal and state laws.”

206. Defendants demanded in their December 13 letter that Plaintiffs compensate Defendants, “for the use of its valuable trademark,” further stating, “While we are willing to discuss a lump sum figure, given the prominence of the [Defendants] brand and the importance of the Pinkerton characters to the game story an applicable percentage of each game sold is an appropriate royalty rate.”

207. Plaintiffs responded to Defendants on December 18, 2018. A true and correct copy of Plaintiffs' response is attached hereto as **Exhibit 40**.

208. In their December 18 response, Plaintiffs explained that *Red Dead 2* is an expressive work protected by the First Amendment and Defendants' trademark claim is precluded by the First Amendment because the references to Pinkerton agents are (1) artistically relevant to the work and (2) not explicitly misleading as to its source.

209. Defendants responded on January 4, 2019 by sending Plaintiffs another cease and desist letter. A true and correct copy of Defendants' January 4 letter is attached hereto as **Exhibit 41**.

210. In Defendants' January 4 letter, Defendants indicated that they disagree with Plaintiffs' contention that the First Amendment applies here and stated, “Of course, and not surprisingly, [Defendants are] prepared to protect its legal rights and Assets. It can do so through legal action or through discussions leading to an appropriate licensing agreement.”

211. Defendants have not identified to Plaintiffs marketing material for *Red Dead 2* that uses the word “Pinkerton” or Defendants' Marks.

212. Defendants have not identified to Plaintiffs advertisements for *Red Dead 2* that use the word “Pinkerton” or Defendants Marks.

213. Defendants have not identified to Plaintiffs official trailers for *Red Dead 2* that use the word “Pinkerton” or Defendants Marks.

214. Defendants have not identified to Plaintiffs examples of consumers that are confused as to a connection between Defendants and *Red Dead 2*.

There is An Actual Controversy Between the Parties

215. *Red Dead 2* is a creative work, entitled to First Amendment protection. The First Amendment precludes a trademark infringement claim by Defendants here, as the depiction of Pinkerton agents in the game is artistically relevant to the game and is not explicitly misleading to consumers.

216. This conclusion is supported by the game *Red Dead 2* itself, as well as its marketing and packaging. The inclusion of historical references to Pinkerton agents in *Red Dead 2* is artistically relevant to the game, as *Red Dead 2* is a game about the end of the Wild West era and Pinkerton agents played a key historical role therein.

217. Consumers would not believe that the video game was produced by or in association with Defendants.

218. In particular, Plaintiffs’ trademarks appear prominently on the product packaging, as well as at the beginning of the game, and in trailers and other advertising for the game.

219. No marks owned by Defendants appear in any advertising for *Red Dead 2*.

220. Plaintiffs’ use of the phrases “Pinkerton Detective Agency” and “Pinkerton” to describe the occupations of characters appearing in *Red Dead 2* constitutes nominative fair use, as Plaintiffs do not use these terms to describe the source of Plaintiffs’ product, but rather, use them to describe the historical agency and its employees.

221. Defendants' threat of legal action in its December 13 and January 4 letters has given rise to uncertainty and controversy with respect to Plaintiffs' ongoing right to reference the "Pinkerton Detective Agency" and "Pinkerton" in *Red Dead 2*. Plaintiffs seek to resolve this dispute as promptly as possible so that they can focus on creating innovative videogames that tell exciting stories without the threat of litigation.

222. To resolve the legal and factual questions raised by Defendants and to afford relief from the uncertainty and controversy caused by Defendants' actions, Plaintiffs are entitled to a declaratory judgment that *Red Dead 2* does not infringe any trademark rights Defendants may own.

223. Defendants' assertion that Plaintiffs have infringed Defendants' trademarks adversely affects Plaintiffs. Unless resolved by the Court, the uncertainty and controversy between the parties will continue to harm Plaintiffs.

CLAIM FOR RELIEF

COUNT I

Declaratory Judgment of Non Infringement Under the First Amendment

224. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

225. Defendants allege that Plaintiffs' reference to "Pinkerton," the "Pinkerton Detective Agency," and the Historical Pinkerton Badge in *Red Dead 2* infringes Defendants' Marks. It has communicated that assertion in a cease and desist letter creating a controversy between the parties.

226. *Red Dead 2* is a creative work reflecting creative choices in plot, setting, dialogue, animation, and other artistic elements. Thus, *Red Dead 2* is protected by the First Amendment.

227. *Red Dead 2* references the Pinkerton Detective Agency and Historical Pinkerton Badge as part of the creative expression of the video game. Those references are relevant to Plaintiffs' artistic message as Plaintiffs have sought to create a historically realistic depiction of the Wild West, and the references relate to the historical feel, setting, and plot of the videogame.

228. Plaintiffs' references to the Pinkerton Detective Agency and the Historical Pinkerton Badge only appear in the context of the video game. Plaintiffs' packaging and trailers for *Red Dead 2* do not reference Defendants or Pinkerton National Detective Agency, nor do they suggest Defendants' sponsorship or affiliation of *Red Dead 2*.

229. Under trademark law, the use of a mark in a creative work that is artistically relevant to the work and not overtly misleading is protected by the First Amendment. In such circumstances, it is black-letter law that the First Amendment precludes a trademark infringement claim.

230. Because Defendants have threatened to take legal action to prevent Plaintiffs from continuing to reference "Pinkerton," the "Pinkerton Detective Agency," and the Historical Pinkerton Badge in *Red Dead 2*, notwithstanding the fact that the First Amendment precludes a trademark infringement claim in this instance, Plaintiffs are entitled to a declaratory judgment of non-infringement on this basis alone.

COUNT II
Declaratory Judgment of Nominative Fair Use

231. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

232. Defendants' Marks are not used as source indicators in *Red Dead 2*.

233. Pinkerton agents cannot be readily identified without using the Defendants' Marks.

234. *Red Dead 2* uses “Pinkerton,” “Pinkerton Detective Agency,” and the Historical Pinkerton Badge to refer to the historical Pinkerton National Detective Agency.

235. To the extent that they use Defendants’ Marks, Plaintiffs only use as much as necessary to identify the historical Pinkerton National Detective Agency in *Red Dead 2*.

236. Consumers are not likely to be confused about the source of Plaintiffs’ products, given its extensive use of its own logos and trademarks in marketing for *Red Dead* as well as the differences in the products offered.

237. Under trademark law, the use of a trademark to reference or describe the trademark holder’s business is permitted where the business cannot be readily described without the use of the mark, the mark is used only as necessary to describe the business, and the use is not likely to cause confusion.

238. Accordingly, Plaintiffs’ use of “Pinkerton,” “Pinkerton Detective Agency,” and the Historical Pinkerton Badge in *Red Dead 2* constitutes nominative fair use and is not trademark infringement.

239. Plaintiffs seek a declaratory judgment from this Court that Plaintiffs’ use of “Pinkerton” and “Pinkerton Detective Agency” in *Red Dead 2* is nominative fair use.

COUNT III

Declaratory Judgment of No Likelihood of Confusion

240. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

241. Plaintiffs’ and Defendants’ services are unrelated.

242. In particular, Plaintiffs produce and distribute innovative videogames.

243. Defendants do not produce or distribute videogames.

244. By contrast, Defendants provide corporate risk management and security.

245. Plaintiffs do not provide corporate risk management or security solutions.

246. Upon information and belief, it is unlikely that Defendants will begin offering videogames or videogame related products or services.

247. In *Red Dead 2*, Plaintiffs use the historical name “Pinkerton Detective Agency.”

248. Plaintiffs do not use Defendants’ current names—“Pinkerton Consulting & Investigations, Inc.” or “Pinkerton Service Corporation”—in *Red Dead 2*.

249. In *Red Dead 2*, Plaintiffs use the Historical Pinkerton Badge.

250. Plaintiffs do not use the Star Badge in *Red Dead 2*.

251. There is no evidence that consumers are confused about the source of *Red Dead 2*.

252. A new copy of the Xbox One version of *Red Dead 2* can be purchased from GameStop for \$59.99. A true and correct copy of the GameStop purchase page for the Xbox One version of *Red Dead 2* is attached hereto as **Exhibit 42**.

253. In light of the differences between their uses of their respective marks, the differences between the products and services for which their marks are used, and the fact that they have thus far co-existed without confusion, Plaintiffs’ use of “Pinkerton,” “Pinkerton Detective Agency,” and the Historical Pinkerton Badge is not likely to cause confusion or mistake as to the source or affiliation of Plaintiffs’ products, or confuse consumers into believing that Plaintiffs’ products are sponsored or endorsed by Defendants.

254. Plaintiffs seek a declaratory judgment from this Court that Plaintiffs’ use of “Pinkerton,” “Pinkerton Detective Agency,” and the Historical Pinkerton Badge is not likely to cause confusion as to the source or affiliation of its products or confuse consumers into believing its products are sponsored or endorsed by Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Take-Two and Rockstar Games respectfully request Judgment against Defendants as follows:

1. Find and declare that Plaintiffs' references to the Pinkerton National Detective Agency in *Red Dead 2*, including through use of the phrases "Pinkerton," "Pinkerton Detective Agency," and the Historical Pinkerton Badge do not infringe Defendants' trademark or other rights;
2. Award Plaintiffs reasonable attorneys' fees, expenses, and costs in this action; and
3. Grant such other, further, and different relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand trial by jury on all issues so triable in this action.

Dated: January 11, 2019

/s/ Dale M. Cendali

Dale M. Cendali

Joshua L. Simmons

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