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FILED
APR 15 2010

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
PHILADELPHIA

MICHAEL E. KUNZ, Clerk
By  Dep. Clerk

CARL EVANS, DONALD SPENCER,
VALERIE SPENCER, CINDY CARTER,
individuals, on Behalf of themselves and for
the Benefit of all with the Common or
General Interests, Any Persons Injured, and
All Others Similarly Situated,

CIVIL DIVISION

10 1679

No.

COMPLAINT -- CLASS ACTION
FOR DAMAGES AND INJUNCTIVE
RELIEF

Plaintiffs,

v.

LINDEN RESEARCH, INC., a corporation,
and PHILIP ROSEDALE, an individual,

Defendants.

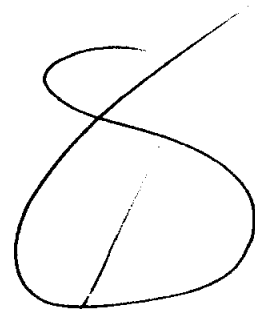
JURY TRIAL DEMANDED

PLAINTIFFS' COMPLAINT IN CIVIL ACTION

AND NOW COME, the Plaintiffs, by and through their attorneys, Jason A. Archinaco,
Esquire and the law firm of Pribanic Pribanic + Archinaco LLC, and avers as follows:

THE PARTIES

1. Plaintiff, Carl Evans, is an adult individual and resident of the County of Philadelphia, Commonwealth of Pennsylvania.
2. Plaintiff, Donald Spencer, is an adult individual and resident of the State of Florida.
3. Plaintiff, Valerie Spencer, is an adult individual and resident of the State of Florida.
4. Plaintiff, Cindy Carter, is an adult individual and resident of the State of Wisconsin.



5. Defendant Linden Research, Inc. (hereinafter "Linden"), is a Delaware corporation, with a primary business address and at all relevant times, providing its services out of the State of California at 1100 Sansome Street, San Francisco, CA. Linden uses the name "Linden Lab" on the Internet to conduct business.

6. Defendant, Phillip Rosedale, (hereinafter "Rosedale") is an adult individual and a resident of the State of California with an address of 2717 Pacific Avenue, San Francisco, CA 94115-1129.

PROCEDURAL BACKGROUND

7. On or about October 4, 2006, Plaintiff Marc Bragg filed an action that was subsequently removed by Linden to the United States District Court for the Eastern District of Pennsylvania at docket number 2:06-cv-04925-ER before the Honorable Eduardo C. Robreno.

8. On or about May 30, 2007, this Court ruled that Defendant Linden's arbitration clause was unconscionable. That opinion has been reported on and is located at *Bragg v. Linden Research, Inc.*, 487 F.Supp. 2d 593 (E.D.Pa. 2007). See, Exhibit "1."

9. The issue of the arbitration clause and other issues raised in the Bragg case are, once again, before this Court. Defendants are bound by and collaterally estopped by this Court's prior rulings, having never taken any appeal.

JURISDICTION

10. This court has jurisdiction over this action under 28 U.S.C §§ 1332(d) and 1367. Jurisdiction is appropriate under § 1332(d) because the aggregate amount in controversy in this class action exceeds \$5 million and at least one member of the class of Plaintiffs is a citizen of a different state than at least one Defendant.

11. This court has personal jurisdiction over the Defendant Linden because Linden conducted business in the State of Pennsylvania, has entered into contracts with Pennsylvania residents and has knowingly and repeatedly transmitted computer files over the Internet to Pennsylvania residents. Defendant Linden is collaterally estopped and bound by this Court's prior ruling regarding personal jurisdiction, located at *Bragg v. Linden Research, Inc.*, 487 F.Supp. 2d 593, 597-602 (E.D.Pa. 2007).

12. This court has personal jurisdiction over Defendant Rosedale because Rosedale has established minimum contacts with Pennsylvania by conducting business in the state and by making representations as part of a national campaign to induce individuals, including Pennsylvania residents, to visit the Defendants' Second Life website and to purchase virtual property. Defendant Rosedale is collaterally estopped and bound by this Court's prior ruling regarding personal jurisdiction, located at *Bragg v. Linden Research, Inc.*, 487 F.Supp. 2d 593, 597-602 (E.D.Pa. 2007).

13. As this Court previously held with regard to Defendant Rosedale: "The Court holds that Rosedale's representations—which were made as part of a national campaign to induce persons, including Bragg, to visit Second Life and purchase virtual property—constitute sufficient contacts to exercise specific personal jurisdiction over Rosedale." *Bragg*, 487 F.Supp.2d at 598.

14. Further, Defendant "Rosedale's personal role was to "bait the hook" for potential customers to make more interactive contact with Linden by visiting Second Life's website. Rosedale's activity was designed to generate additional traffic inside Second Life. He was the hawker sitting outside Second Life's circus tent, singing the marvels of what was contained inside to entice customers to enter." *Id.* at 600.

15. Under 28 U.S.C. § 1391(a)(2), venue is proper in this court because a substantial part of the events giving rise to the claims occurred in this district. Defendants have committed the acts complained of herein in and throughout the Commonwealth of Pennsylvania, including Philadelphia County.

GENERAL ALLEGATIONS

BACKGROUND

16. Linden operates a massively multiplayer role-playing game ("MMORPG") known as "Second Life" and hosted at <http://secondlife.com>.

17. To participate in Second Life, a participant must download Linden's client software and install it on the user's computer. A participant may participate for free, or upgrade to a premium membership.

18. In Second Life, participants from around the world interact together in a huge "virtual" world / environment.

19. The virtual world contains many of the real world goods and items from cars to homes to slot machines. Linden represents that it promotes the creation and trade of such goods and items by its participants and refers to such items as "virtual property."

20. Defendants' computer code was designed and intended to act like real world property that requires the payment of U.S. Dollars to buy, own, and sell that property and to allow for the conveyance of title and ownership rights in that property separate and apart from the code itself, and as such, Plaintiffs' rights in the virtual property should be regulated and protected like real world property.

21. Participants in Second Life create characters called "avatars," develop their own unique reputation and/or buy and sell unique software, encoded and scripted "objects," design

numerous creative and unique buildings, clothes, equipment, furnishings, etc., run businesses, and purchase uniquely located and described pieces of "virtual land" from the Defendants. Defendant Linden represents that Avatars have the "right" to enter the Second Life world.

22. Although referred to as a "game," Second Life is a business operated to generate a profit for Linden and, upon information and belief, Second Life generates a substantial profit for Linden, Rosedale and Linden's investors. Rosedale has publicly stated that Second Life is not a game but rather is a "platform."

VIRTUAL WORLDS - GENERALLY

23. Linden is not the only company that operates a virtual world for a profit and, indeed, the industry has become saturated with such games ranging from Blizzard's World of Warcraft to Sony's Everquest and announced but unreleased projects. However, unlike the industry leaders, Linden is the only MMORPG that represents that its participants retain / obtain ownership rights to the land they purchase from Linden and retain all intellectual property rights for any virtual items or content created by the participant and, indeed, Linden did not even restrict or disclaim such ownership interests in their "Terms of Service" agreement (hereinafter "TOS").

24. As the Court found in the *Bragg* case: "Assertedly, by recognizing virtual property rights, Linden would distinguish itself from other virtual worlds available on the Internet and thus increase participation in Second Life." *Bragg*, 487 F.Supp.2d at 596.

25. A virtual world is a place one co-inhabits with hundreds of thousands of other people simultaneously. It is persistent and dynamic, in that the world exists independent of any participant's presence (much like the Internet does), and in that a participant's actions can

permanently shape the world. Even when one is not in the virtual world, the environment continues to exist and changes over time.

26. Millions of people with Internet connections were at all relevant times to this action living large portions of their lives, forming friendships with others, building and acquiring virtual property, forming contracts, substantial business relationships and forming social organizations in these virtual worlds.

27. These millions of individuals were at all relevant times to this action paying substantial sums of money to exist in these virtual worlds; hundreds of millions of dollars flow into the coffers of Sony, Blizzard, and other companies like Linden that provide the servers upon which these virtual worlds reside. World of Warcraft, for example, boasts a subscriber base in excess of 11 million and is believed to be generating revenues in excess of \$1 billion annually.

28. There are no courts, no halls of Congress, and no visible mechanisms for civic governance; however, it is foreseeable to the corporate companies that own these virtual worlds, including Linden, that where large amounts of real money flow, legal consequences must follow and, indeed, Linden enforces its legal rights to payments to which it is entitled, and to protecting its business through real world laws.

29. In many respects, these virtual worlds exist similar to theme parks such as Disney World. Thus, although Second Life itself is an "attraction" in some respects, shops selling merchandise exist and a variety of transactions occur inside the virtual world just like shops and transactions exist inside Disney World, independent of entrance to the park itself. Unlike Disney World, where Disney chooses to operate many of the shops and control many of the transactions inside of Disney World, nearly every sale of virtual goods and nearly every virtual "shop" is operated by the third party individual participants of Second Life, as opposed to Linden itself.

Moreover, just like the transactions that occur inside Disney World are subject to the laws of the United States of America, so too are the transactions that occur inside and in connection with Second Life.

30. Unlike Disney World, however, Linden has been in the business of selling the land inside the "theme park." Thus, Linden no longer owns the very world they created, instead choosing to sell the world / land to consumers. Rosedale has referred generally to Second Life as a "country." Indeed, the "world" operates similar to a common carrier's network in that large numbers of people can meet, interact and "speak" to one another on such network.

31. In other respects, Second Life itself is much like Microsoft's Internet Explorer in that it simply gives a participant access to a "world" (like the Internet), where the "participant" can enter into a variety of transactions and visit various places. In many respects, Second Life is simply a three-dimensional version of Microsoft's Internet Explorer – and the places one can visit using that graphical three-dimensional web browser are simply three dimensional graphical web sites. Rosedale has acknowledged that "Second Life is like the Internet but it's 3-D"

32. Unlike Microsoft's Internet Explorer, however, participants can "see" the other visitors various "web sites" and locations and choose to interact with them by "chatting" or exchanging goods, money, services and land with them.

33. This similarity has lead some commentators to note that Second Life is, in actuality, an operating system like Microsoft Windows and is ultimately designed to compete with Microsoft's Windows. Indeed, Rosedale has promoted Second Life as a "platform."

VIRTUAL ITEM AND PROPERTY OWNERSHIP - GENERALLY

34. Typically, in such virtual worlds, the operators of the worlds claim to not permit the participants to hold any rights to "virtual items" (houses, buildings, cars and other virtual

objects) or "virtual land" that exist inside the game world. Both are referred to generally by participants in such worlds as "virtual property."

35. Indeed, several of such companies, who have not provided any rights to the participants, have threatened lawsuits to prevent the trade and sale of virtual items, land, money and accounts and have attempted to prevent the sale and trade of virtual items, land, money, goods and even the accounts that contain such virtual items, lands, money and goods.

36. Generally speaking, most virtual worlds derive their revenue and profit, not from the sale of virtual items, land, money or goods, but rather from monthly subscription fees paid to the operators of the worlds.

37. The industry standard has generally been to deny that the participants hold any rights in the virtual items, land, money and/or goods that participants hold in their accounts. This denial is despite the growing body of legal work that sets forth that, irrespective of such company's claims, participants in such worlds can, and do, have rights to their virtual property and any statements or claims to the contrary are unconscionable.

38. Despite such denials of ownership by participants, the trade of virtual items, land, money and goods is believed, by some estimates, to have exceeded \$1 billion annually in the United States. Further, it is estimated that in 2010, the United States market may reach \$1.6 billion. Some experts estimate the worldwide market at \$10 billion or higher.

39. Further, despite such a prospering "black market" for virtual items, land, money and goods, because such transactions have been branded as "illegitimate" by the operators of many (if not most) of the virtual worlds, many participants in such virtual worlds have refrained from buying or selling virtual items, land, money and goods despite their rights to do so.

40. In many respects, a golden opportunity existed for some time for any virtual world game company to claim and represent the legitimization of the buying and selling of virtual items, land, money and goods by the payment and exchange of U.S. Dollars and claim to preserve and protect the participant's intellectual property and ownership rights in any items or goods created inside the game world by the participant.

SECOND LIFE'S PLACE IN THE CROWDED MMORPG MARKET AND FALSE REPRESENTATIONS OF OWNERSHIP OF VIRTUAL LAND AND ITEMS

41. When Second Life was first "opened" by Linden in 2003, the competition in the industry for participants in virtual worlds was fierce and the industry was dominated by well-known players.

42. Upon information and belief, Linden had difficulty differentiating itself from other, higher profile games and thus, turning a profit for Linden.

43. Initially, Linden chose the familiar route of refusing to recognize participants' rights to the virtual property in-game.

44. Second Life, unlike other virtual worlds, was devoid of any name recognition, fancy graphics or exciting game-play. As such, Second Life generally languished and trailed its peers in terms of number of participants.

45. As such, desperate for a participant base to generate profits, Linden made a calculated business decision to depart from the industry standard of denying that participants had any rights to virtual items, land and/or goods. Linden decided that it could maximize its own profits if it, instead, globally represented to participants in its world that their ownership rights and intellectual property rights to the virtual items, land and goods held in the participants' accounts would be preserved and recognized.

46. Rosedale has admitted that his company made such decisions because "we couldn't grow as quickly as [Second Life] needed to, we had one round of layoffs. There were 31 of us and 11 of us left. That was in late 2003, when **we pretty much thought we were dead.**" (emphasis added). Indeed, Rosedale was concerned specifically about himself as he had invested at least \$1 million of his own money in the failing project.

47. Thus, as Rosedale has admitted, the representation was made to consumers that: "What you have in Second Life is real and it is yours. It doesn't belong to us. We have no claim to it. Whatever you do in Second Life is your own intellectual property. You can claim copyright on it. You can make money."

48. Further, Rosedale has admitted the representations with regard to land were identical. "We said the same thing about land: Land is yours to own and resell. . . . Let's just make this a real world. Let's let it have a real economy and let's make property have real value."

49. Linden announced its new business model orally at the "State of Play" conference in or about November, 2003 and followed with a press release reducing those representations to writing shortly thereafter, publishing the press release generally and also storing it on Linden's website. The press release, dated November 14, 2003, is entitled "Second Life Residents to Own Digital Creations" and quotes Rosedale throughout.

50. In the November 14, 2003 press release, Linden touted its modifications to Second Life's Terms of Service, stating that "the revised TOS allows subscribers to retain full intellectual property protection for the digital content they create."

51. In the same press release, Linden, by and through Rosedale, stated: "Until now, any content created by users for persistent state worlds, such as EverQuest or Star Wars Galaxies, has essentially become the property of the company developing and hosting the

world," said Rosedale. "We believe our new policy recognizes the fact that persistent world users are making significant contributions to building these worlds and should be able to both own the content they create and share in the value that is created. The preservation of users' property rights is a necessary step toward the emergence of genuinely real online worlds."

52. Linden's claims to allow Second Life participants to retain their intellectual property rights was even believed by well-known, Stanford University Professor of Law, and Founder of the Stanford Center for Internet and Society, Lawrence Lessig.

53. Indeed, Lessig had such confidence and belief in the representations made by Linden and Rosedale that he permitted himself to be quoted in the November 14, 2003 press release and stated that: "Linden Lab has taken an important step toward recognizing the rights of content generators in Second Life . . . As history has continually proven, when people share in the value they create, greater value is derived for all. Linden Lab is poised for significant growth as a result of this decision."

54. As set forth above, even the well known law professor believed the press release and statements of Linden and noted that Linden was "poised for significant growth" as a result of the decision.

55. Following those representations that were widely regarded as revolutionary to the virtual world industry, Linden's participant base greatly expanded, as predicted by Lessig.

56. Further, in December, 2003, Linden and Rosedale again decided to attempt to increase the participant base of Second Life by representing that participants could own "virtual land" inside of Second Life.

57. The representations of Defendants were so successful that Rosedale admits that "[t]he investors could see this thing starting to go. In early 2004 we got a couple million bucks more."

58. Linden and Rosedale continued their pattern and practice of representations, not only in the media, but also through press releases stored on Linden's website. For example, on March 30, 2004, a press release quoting Rosedale was issued called "Now Selling: Real Estate on the Digital Frontier."

59. The land owned by participants was taxed by Linden. Indeed, by June 3, 2004, as Rosedale acknowledged to the USA Today in his continued media campaign efforts led by him, the real estate tax revenue on land sold to the participants exceeded the amount the company was generating in subscriptions.

60. Similarly, in 2004, Rosedale was quoted: "The idea of land ownership and the ease with which you can own land and do something with it... is intoxicating." Rosedale fully expressed his concept of land ownership by admitting that "land ownership feels important and tangible. It's a real piece of the future."

61. Thus, by mid-2004, Linden and Rosedale's representations had caused significant dollars to not only be invested in Second Life, through the purchase of virtual land, but also a significant revenue stream generated from the taxation of that virtual land.

62. Linden and Rosedale continued their publicity campaign regarding ownership rights in Second Life in an effort to continue increasing the participant base and the profits to both Linden and Rosedale.

63. Defendants published their representations on the Second Life website, including a section called "Own Virtual Land," which discussed "owning land" in Second Life.

Defendants also published on the Second Life website a section entitled "IP Rights," which stated that "Linden Lab's Terms of Service agreement recognizes Residents' right to retain full intellectual property protection for the digital content they create in Second Life This right is enforceable and applicable both in-world and offline . . . You create it, you own it – and it's yours to do with as you please."

64. Not only did Defendants succeed through their representations in obtaining more participants, aka consumers, but they also obtained more money from investors.

65. Thus, on or about October 28, 2004, Defendants announced that they had obtained another \$8 million in financing. Interestingly, however, a pattern was beginning to be disclosed. That is, Linden did not have adequate capitalization to operate prior to making the "ownership" representation.

66. Following each advance, Defendants continued with their media campaign of representations of land ownership and intellectual property rights.

67. On or about June 14, 2005, an interview with Rosedale was published by Guardian Unlimited: Gamesblog. During the course of that interview, Rosedale represented to the world that participants who purchased land in Second Life owned the land.

68. In response to a question about the integration of Western Capitalism into the Second Life world, Rosedale represented / stated: "We like to think of Second Life as ostensibly as real as a developing nation...The fundamental basis of a successful developing nation is property ownership...**We started selling land free and clear, and we sold the title, and we made it extremely clear that we were not the owner of the virtual property.**" (emphasis added)

69. As Linden and Rosedale's representations about ownership of land in Second Life continued, and as Linden and Rosedale continued to represent that the participants in Second Life retained their intellectual property rights, the participant base for Second Life continued to grow, thereby generating more money for Linden, Rosedale and the investors.

70. On September 7, 2005, Defendants issued another press release entitled "Virtual Land Sales and in-world economy driving growth." Rosedale was again quoted in that press release published to the public and stored on Linden's website.

71. The following day, as of September 8, 2005, Defendants' representations with regard to virtual land ownership had been so successful that Linden had eliminated subscription fees. In commenting on the elimination of subscription fees in an article posted at CNET news and in disclosing the profit motive of Defendants, Rosedale stated: "We're going to make more [money] because some people who wouldn't have otherwise signed up are going to buy land . . ."

72. On October 3, 2005, Defendants issued another press release stating "Second Life Opens The Lindex Currency Exchange." In that press release, Rosedale is again quoted and such press release is archived on the Linden website. The press release generally described the "currency exchange" as a real currency exchange and did not disclose that it is not really a true currency exchange.

73. As of March 28, 2006, efforts to convince consumers that they, in fact, would own the land they bought from Defendants, was so successful that a company press release touted that "Second Life has grown to over 165,000 residents with an economy worth over \$60mm per year." Linden boasted that "Second Life has enjoyed month over month record growth in subscriber acquisition, its economy and the number of subscribers that are generating profits in US currency."

74. Further, the March 28, 2006 press release perpetuated Defendants' scheme of associating themselves with well-known and respected figures in an effort to further "legitimize" Defendants' representations they were making to consumers at large. Like the prior press release where Defendants associated themselves with Lawrence Lessig, the respected legal scholar, the March, 2006 press release announced that Linden had obtained \$11mm in new financing from Globespan Capital Partners, with participation from Jeff Bezos, the founder of Amazon.com. Linden also noted that other investors, including Mitch Kapor, the founder of Lotus Development Corp., was also involved in their business as an investor. It is unknown whether Defendants disclosed to Lessig, Bezos or Kapor that the representations that they made to consumers about land ownership in Second Life were false.

75. Defendants aligned themselves in the media with their investors, including Kapor, because as Rosedale stated, they are interested in the "social good" of technology.

76. Rosedale represented on April 13, 2006, in an interview with PSFK.com, in response to a question about whether there was any "gray area" with regard to copyright and intellectual property rights in Second Life, that: "Things are pretty clear – as a user, you own what you create in Second Life." Further, in discussing the importance of land ownership and quoting the concepts set forth in Hernando de Soto's "The Mystery of Capital," Rosedale stated: "[S]uccessful countries always start by making sure that people can freely own, resell, and mortgage the real-estate on which they live. This is a Very Big Idea . . . This was one of the key things that drove our ideas around land ownership and the introduction of IP rights."

77. Thus, Rosedale continued the façade that Plaintiffs and other participants actually owned the virtual property they purchased from Defendants and, in explaining that Second Life

was akin to a country, added further “credibility” to the representations he and Linden were making to consumers at large.

78. Rosedale and Linden continued with their public campaign to attract new participants with their promised “utopia” of virtual ownership rights. On or about July 20, 2006, Rosedale gave a “podcast” interview with After TV. During that interview, Rosedale continued to reinforce the representations being made. In relevant part Rosedale stated that, “everything inside it [Second Life] is made by the people who are there and in fact, the land itself and the space and everything is owned, controlled and built by the people who are there. . . .”

79. Further, when asked by the reporter about how one goes about “owning land” in Second Life, Rosedale replied “You just buy it.” Further, he stated “You buy it generally from other users. You can participate in a land auction and buy it from us . . .”

80. Rosedale was also asked: “So your economic model is selling virtual land; do you have an advertising model?” In response, Rosedale stated, in relevant part: “. . . everyone owns their own stuff, their own property – **there’s no way we could just advertise on that property without asking because it isn’t ours you know. It belongs to land owners.**” (emphasis added).

81. Rosedale also admitted in the After TV interview that “The majority of our money is made in recurring fees—think of them being like property taxes that you pay when you own land.”

82. By July, 2006, the representations of Defendants succeeded in growing the participant base to over 300,000 consumers.

83. In February, 2007, Defendant Rosedale appeared on the cover of Inc. Magazine and had a lengthy “interview” with the magazine. On the cover, Rosedale reinforced the

representations he has been making to consumers, stating: **“What you have in Second Life is real and it is yours. It doesn’t belong to us. You can make money.”** (emphasis added).

84. As set forth previously, the course of representations by Linden and Rosedale resulted in an increased participant base and more profit for Defendants from each participant.

85. It is believed, and therefore averred, that following each substantial press release / interview, that the participant base of Second Life spiked and continued to grow.

86. Rosedale’s participation in the repeated representations was a purposeful campaign and is in no way unintentional. Indeed, it is believed from statements made by Rosedale that he created a press campaign designed to cause consumers to believe that they owned virtual land and they retained their intellectual property rights. Rosedale’s statements have been mirrored by press releases issued by Defendant Linden in which he is quoted. Further, the press releases, in addition to being intentionally circulated on the Internet, were stored on Defendant Linden’s website.

87. Further, for years, prominently displayed on the homepage of its website, Defendant Linden stated the following, uniformly to consumers: **“SECOND LIFE IS AN ONLINE, 3D VIRTUAL WORLD, IMAGINED, CREATED AND OWNED BY ITS RESIDENTS.”** (emphasis added).

88. As the Court stated in *Bragg*: “Although it is not the only virtual world on the Internet, Second Life was the first and only virtual world to specifically grant its participants property rights in virtual land.” *Bragg*, 487 F.Supp.2d at 606.

89. During the course of the litigation with Marc Bragg and after the Court issued its opinion holding Linden’s arbitration clause unconscionable, Defendant Linden removed the word “owned” from the front page of its website. In its place, Defendant restated the

representation on the front page and changed it to: "SECOND LIFE IS AN ONLINE, 3D VIRTUAL WORLD, IMAGINED AND CREATED BY ITS RESIDENTS." Upon information and belief, Defendant Linden changed the representation on the front page of its website in an attempt to reduce a future class size because it knew it was engaging in the ownership misrepresentation. Although not specifically stated, Defendant Linden began a campaign of deceptively and quietly attempting to strip ownership rights from those that had purchased virtual land.

90. Further, during the course of litigation with Marc Bragg, Defendants filed an Answer in Federal Court admitting the following with regard to "ownership" of land:

Defendants aver that in response to the question, "Second Life famously offers its players total ownership of their in-game creations. Why?" the June 14 Guardian Unlimited article quoted Rosedale as saying, in part, "We like to think of Second Life as ostensibly as real as a developing nation," and that, in the context of discussing the theories of Hernando DeSoto, author of "The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else," Rosedale was quoted as saying that DeSoto concludes that "[t]he fundamental basis of a successful developing nation is property ownership." Defendants admit that in response to the question "How does that Western capitalism translate into Second Life?" Rosedale was quoted as saying "We launched Second Life without out of world trade and after a few months we looked at it and thought, 'We're not doing this right, we're doing this wrong.' We started selling land free and clear, and we sold the title, and we made it extremely clear that we were not the owner of the virtual property." **Defendants aver that the references to "selling the land free and clear" and selling "title" are metaphors or analogies to the concepts of ownership of real property, as what is "owned: with respect to "virtual land" in Second Life is in fact a license to computing resources.** See, Defendants Linden Research, Inc. and Philip Rosedale's Answer to Complaint and Linden Research, Inc.'s Counterclaims Against Plaintiff Marc Bragg, ¶ 48 (attached hereto as "Exhibit 2")(emphasis added)

Thus, in their Federal Court Answer, Defendants admitted that the representation of "ownership" was, in fact, false and misleading. Defendants' Answer is an admission against interest and they are estopped from altering or otherwise changing their Answer from the *Bragg* lawsuit.

91. Following the removal of the word "OWN" from the title of Defendant Linden's initial webpage, Defendants, however, continued to represent throughout their website and publicly that if a participant / consumer purchased virtual land they "owned" such virtual land. Thus, even though Defendants had confessed in Federal Court that their representation of "ownership" was false, Defendants continued to make such promises to lure prospective participants / consumers into purchasing land under the false representation that if they bought virtual land they would own it.

92. Despite removing the word "own" from the front page of its website, Defendant Rosedale continued giving interviews touting the "ownership" in Second Life, including an interview given August 2, 2007 to Dot Net.

93. Similarly, despite quietly confessing in a Federal Court Answer that "own" does not truly mean "own," on April 1, 2008, Defendant Rosedale testified to Congress. When doing so, he and Defendant Linden prepared a video, which, once again, represented that Second Life was "imagined, created and owned" (emphasis added) by its residents.

94. Following the representations made to Congress, in or about July 2008, Defendant Linden boasted on its website about further growth and land sales, claiming that land mass grew over 44% over the first quarter of the year.

95. Moreover, in December 2008 (and, upon information and belief, even more recently until an unknown date), Defendant Linden continued to represent on its website that if a consumer purchased land in Second Life, the consumer owned such land. On the Second Life website, Defendant Linden stated in a Frequently Asked Question ("FAQ") page: "Why would I want to own land? Defendant Linden then goes on to explain some of the virtues of virtual land ownership. Moreover, Defendant Linden discussed the ability of the consumer to sell land that

he purchased again, both expressly and implicitly setting forth that those consumers who purchased land in Second Life owned it.

96. At an unknown date, however, Defendant Linden began changing the representations made to consumers. Defendant Linden, in accord with removing the representation of ownership from the front page of its website, began to remove other references to ownership throughout the site. Thus, Defendant Linden unilaterally changed the representation on its website from: "Why would I want to own land?" to "Why would I want to have land?" Over time, Linden began to unilaterally attempt to remove the ownership rights that had previously been conveyed.

97. Despite removing such representations, Defendant Linden took no steps to compensate the estimated hundreds of thousands of customers that were duped into buying virtual land and items under the false promise of ownership, nor in repaying the millions upon millions of dollars obtained from such consumers from the ownership representation falsehood.

98. The representations of ownership were a profitable lie designed to induce consumers to purchase land that they do not truly own under the false premise of ownership.

99. Defendants have continued to make their representations until an unknown recent date and have succeeded in allegedly obtaining in excess of 15 million participants and over 50,000 land buyers.

100. Upon information and belief, over \$50 million and likely more than \$100 million was paid by consumers to Defendants for virtual land pursuant to the false representation of ownership. Further, significant monies have been paid by consumers with regard to virtual items that they believe they own, but do not truly own.

101. Upon information and belief, Defendant Linden has not adequately capitalized itself to return the money of those that purchased the land. Instead, upon information and belief, Defendant Linden utilized such funds to continue operating the company.

VIRTUAL PROPERTY IN SECOND LIFE

102. As set forth above and herein, Linden represented that it recognized rights of in-game participants to their virtual items, land, money and goods. Moreover, Linden represented that it recognized the intellectual property rights of the participants in their creations.

103. The virtual items created by participants as well as the land owned by the participants is retained, preserved and stored by Linden on its servers.

104. In other words, a participant's account and valuables of Second Life are stored as electromagnetic records on Linden's servers. Defendants are simply paid for that storage and to hold the land and objects in trust for the owners of the virtual items and property.

105. The owner of the account is entitled to control the account and valuables' electromagnetic record and may freely sell or transfer it. Although a participant's account and valuables are "virtual," they are valuable property in the real world. Participants can auction them, sell them, license them or transfer them online and through other independent third parties, like eBay.com, slexchange.com, and others.

106. A participant can sell any code / virtual items they offer or may restrict the code so the purchaser cannot modify it, resell it or transfer it at all; alternatively, participants may author code that allows the buyer to resell it that may require the buyer to pay the seller for each such sale.

107. Simply put, the system of transferring the virtual items and objects created by a participant mirrors that of the real world in nearly every respect. As set forth previously, similar

to a store that exists inside Disney World, participants list and sell their goods and virtual items for sale or trade.

108. A participant's accounts and valuables are the same as its property in the real world.

109. A participant's interests in these virtual items, objects and properties persist regardless of the system currently connected to it, separate from the intellectual property that exists in Defendants' underlying code, much similar to a document or book simply created with a program such as Microsoft Word. Indeed, some commentators have noted that Second Life, in essence, is simply an "operating system" similar to Microsoft Windows.

110. A participant can invite people into his virtual property, hold meetings in it, invest in it, exclude others from occupying or visiting it, and sell it to other people who might want to do the same independent of and regardless of the intellectual property that exists in Defendants' code.

111. Accordingly, Plaintiffs' virtual property rights are divisible and severable from the rights of other participants in the game and the owner of the server upon which Defendants' code resides.

112. These virtual properties, both the virtual land and the virtual objects, have value in real U.S. Dollars across the globe measuring in the billions of dollars including millions of participants.

113. Defendants intended their code and their public statements regarding ownership and use rights of the land and objects to materially induce Plaintiffs, as well as thousands of other participants, to invest real U.S. Dollars in purchasing land, and buying and selling the objects described above, and Defendants have actively encouraged participants to do so.

114. Because of Defendants' transfer of title and ownership interests to Plaintiffs in their virtual assets, and Defendants' creation of a market economy in which Plaintiffs' property interests may be sold for real cash value, expectations that these virtual assets constitute property are entirely foreseeable, in addition to the representations made by Linden and Rosedale specifically providing for such property rights and the preservation of the same.

115. Along with Defendants' promise of the transfer of title to Plaintiffs of the title to virtual land and the ownership rights to copyright and intellectual property creations, Defendants' virtual world possesses all of the real world features of exclusive ownership: persistence of rights; transfer under conditions of agreement and duress; free alienability of title; and a currency system to support trade in these property-based assets, including the buying and selling of these assets with U.S. currency. Private property is the default in Defendants' service, providing its customers with a bundle of rights, including the fundamental rights to use, exclude and transfer property interests.

VIRTUAL PROPERTY IN SECOND LIFE – PROPERTY OWNERSHIP

116. For a participant to purchase and own land in Second Life, the participant must upgrade to a premium membership and pay a monthly "tier," or tax that varies in amount depending on the amount of land the participant owns.

117. A participant may then split the land into varying sizes and parcels, resell it to other participants and convey title, retain it, build upon it, restrict what can be built upon it, change the shape of the land, i.e. "terra form" it, rent it, lease it, and / or exclude all participants, or just some participants from trespassing upon it. While Linden continues to create "new" land, once land is created and/or sold to a participant, it continues to exist and is not "deleted" or

otherwise destroyed. It is unique, just like real land, as no two parcels are identical in location or topography.

118. To obtain premier accounts, participants are required to provide Defendants with private and confidential information including a credit card number and associated information so it can be charged, or a PayPal account to debit. Defendants retain participants' personal information on their servers.

119. Participants access their personal account information, purchase "lindens" (the in-game money), buy and sell lindens for U.S. currency, pay for land, and monitor their accounts via the Internet. A currency exchange is maintained that sets, just like any other currency exchange, the exchange rate between "lindens" and U.S. currency.

120. Defendant Linden's website expressly stated that a participant may cancel an account at any time and led participants to believe that upon canceling, their private account information, such as their credit card information or PayPal account information, would be destroyed and no longer used or retained or made available to the public.

**PLAINTIFFS ARE INDUCED INTO "PARTICIPATING" IN
THE SECOND LIFE WORLD**

121. Plaintiff Evans is an individual who signed up and paid Defendant Linden to participate in Second Life. Plaintiff Evans purchased virtual items in Second Life and believed he owned them. Linden unilaterally, in or about March 2008, took such items from Plaintiff Evans without compensation and terminated his access to his virtual items. Defendant Linden also took Plaintiff Evans' U.S. currency.

122. Plaintiffs Donald Spencer and Valerie Spencer (the "Spencers") are individuals who signed up and paid Defendant Linden to participate in Second Life. The Spencers purchased virtual land in Second Life, as well as virtual items, and believed they owned them.

Linden unilaterally, in or about April-May 2006, took such land, items and Plaintiffs' U.S. currency from them without compensation. Further, Defendant Linden unilaterally terminated their access to their virtual land and items without warning or due process of any kind.

123. Plaintiff Carter is an individual who signed up and paid Defendant Linden to participate in Second Life. Carter purchased virtual land in Second Life, as well as virtual items, and believed she owned them. Linden unilaterally, in or about April-May 2006, took such land and items from her without compensation. Further, Defendant Linden unilaterally terminated her access to her virtual land and items.

124. Plaintiffs were induced into "investing" in and purchasing virtual property from Linden and Rosedale by the representations made by Linden and Rosedale in press releases, interviews, through the Second Life website and representations made inside Second Life itself.

125. Plaintiffs believed the representations made by Linden and Rosedale and justifiably relied upon them. Indeed, there was nothing to make Plaintiffs suspect that the representations being made by Linden and Rosedale were false.

126. By promising Plaintiffs that they would receive and retain all right, title, interest, copyright and intellectual property rights to the land, objects and virtual property, Plaintiffs purchased and/or created in Second Life, Defendants intended to and did in fact deceptively induce Plaintiffs to invest thousands in U.S. Dollars via the wires and mails crossing state lines.

127. Indeed, over the course of their participation in the game, Plaintiffs acquired a significant amount of virtual property from Defendants, or others in-game. Further, Plaintiffs acquired a number of virtual items from independent third parties.

128. Plaintiffs trusted and believed that the money they deposited with Linden, as well as the money they invested in the virtual property, could not and would not be stolen or

otherwise converted by the Defendants. Further, Plaintiffs trusted and believed that Linden's representations that Plaintiffs would retain all of their intellectual property rights were true and that Defendants would not interfere in the use and/or exercise of those rights.

129. Defendant Linden, despite the representations of ownership, took the virtual land, items and money in the accounts of Plaintiffs without compensation. Further, Defendant Linden "froze" Plaintiffs' accounts preventing them from accessing the account to use, cancel or modify it or enjoy or use the virtual items, land or real world money contained therein. In essence, Linden prevented Plaintiffs from accessing any of their items, land or goods to which they had all rights, title and interest.

130. Defendant Linden's acts were inconsistent with its public announcements with regard to virtual land ownership and IP right retention. Such actions were taken despite Rosedale's specific admission and statement on July 20, 2006 that **"you can't for example just take someone else's property in Second Life."** (emphasis added). Moreover, Rosedale's comment was made in the context of him referring to such an act as a crime. Rosedale's statements are an admission against him and Linden that Defendants acts were improper and, in fact, a crime and that Rosedale and Linden considered such acts to be criminal.

131. In so wrongfully taking Plaintiffs' land, Defendants also removed, retained, and/or converted all other personal property and objects then owned by Plaintiffs in-game, all of which Plaintiffs had purchased with U.S. currency, and all of which, including the land, had real value and could have been sold to multiple ready, willing and able buyers. Plaintiffs were never offered the opportunity to do so.

132. Defendants took, retained and converted Plaintiffs' virtual property, without just cause, excuse or notice of any kind, including their virtual land, buildings, businesses, code

scripted objects, and linden dollars all of which had been purchased with real world U.S. dollars as a result of Defendants' fraudulent representations.

133. Moreover, Plaintiffs Evans and Spencers had U.S. currency in their accounts. Linden simply took their money, along with all of Plaintiffs' other possessions.

134. Defendants' conduct, as described, is part of a continuing and systematic plan and scheme using the national wires and mails intended to, and in fact causing to, defraud Plaintiffs, and other similarly situated consumers, out of thousands of dollars by promising to preserve and/or otherwise provide rights that the Defendants do not provide, never intended to provide, and, indeed, lie about to potential participants.

135. The promise by Defendants to potential participants in Second Life that they will retain all rights, title and interest in the virtual land, property and goods was a lie. Apparently, Defendants never intended to perform according to their promises and representations.

136. Plaintiffs are representatives of a class of individuals who believed that own means own and were, consequently, induced to invest in the Second Life world based upon the false advertisements and representations of Defendants.

137. Plaintiffs are representatives of a class of individuals who own rights, either to virtual land or virtual items, despite Defendants' statements to the contrary and attempts to deprive Plaintiffs and other consumers of such rights, either directly or through subversive means.

"THE LIQUIDITY EVENT" – I.E. ONE OF THE LIKELY MOTIVES

138. Defendant Linden has announced that it was "open sourcing" its software platform.

139. Indeed, Mitch Kapor, the then board chairman of Linden, discussed the concept in terms of a "liquidity event," i.e., taking the company public where he, Rosedale and other insiders will likely make a substantial profit from the public offering of the company.

140. In so announcing, Kapor also announced that Defendant Linden was moving its business model away from their land sales business model as Defendant Linden hopes to aim for over 100 million servers running on its platform.

141. Commentators have noted that the net effect of such a decision is, in essence, the long-term devaluation of all the land purchased by consumers to zero, as now any individual can simply hook up a server to the Linden "platform" and create their own land.

142. Thus, although Defendant Linden continues to host auctions for land and continues to expressly state and otherwise imply that the virtual land they are selling is "owned" by the participants and has value, the land does not given the profit decisions Defendants are now making for their own benefit by unilaterally altering the consumer's title, interest and rights in their property without consideration, the consumer's knowledge or consent.

143. Indeed, if Defendants' claim to be advancing the interests of "shareholders," they intend not to honor the representation of land ownership and, instead, seek to retain the right to devalue the land and/or otherwise impermissibly and improperly convert consumers' money through their false representations.

144. Irrespective of any duties that Defendant Linden's management may have to shareholders, it is simply impermissible to allow Defendants to defraud consumers to maximize their own profits at the expense of such consumers through repeated false statements.

145. Kapor claims the Defendants have made a "clearly stated intent" to move away from the land sale business. To the contrary, prior to Kapor's statements, the intent of the Defendants in defrauding consumers was never stated and was, in fact, concealed.

146. Indeed, despite Kapor's statements to a media outlet in an interview, the Defendants have never publicly announced to consumers that they intend on devaluing the land for which consumers have paid large sums of money to Defendants.

147. The sad reality is that Defendants are simply planning a return to their original business model, i.e., that consumers truly own nothing, through deceit.

148. The business model of Defendant Linden is, thus, modeled after a real world dictatorship that causes investors to build an infrastructure in the country claiming there are "ownership" rights where the true but secret intent is actually to nationalize the assets and infrastructure built by the "investors" or in actuality unsuspecting consumers.

149. Defendant Linden has quietly gone about doing so by removing, one by one, the representations of ownership on its website yet providing no compensation to those that it induced under the false promises of ownership. Despite the quiet removal of such representations over time, Defendants' prior representations continue to proliferate and cause consumers to believe that when they purchase land in Second Life, they own it. For example, to this day, the publicly monitored and edited Wikipedia entry for Second Life continues to state that consumers can "own" land in Second Life.

150. Despite the prominence of Wikipedia, as an example, and Defendant's knowledge that they have caused the "ownership lie" to proliferate on the internet, Defendants have taken no steps to affirmatively withdraw or remove the continually false and misleading statements, nor have they given any notice of their false or misleading statements. Instead, they continue to

allow such false representations to exist on the Internet so that they can continue to profit from the ownership lie to this day.

151. Kapor has acknowledged specifically that such decisions will cause a devaluation of the money invested by consumers and has stated that Defendant Linden needs to engage in a "managed transition" and it would be "insanely stupid to do it any other way." Kapor has also stated that there will be "plenty of advance notice."

152. Indeed, there is no advance notice, given that Plaintiffs and numerous other consumers have already invested their time and money based on one set of representations. Indeed, what Kapor is talking about is not "notice" at all but Defendant Linden simply unilaterally changing the deal after the fact and imposing new terms upon consumers to the consumer's detriment. Attempts to do so are unconscionable and Defendants should be estopped.

153. Moreover, Defendants plan appears to have been to simply lie to consumers, telling them they owned the world. Then, once critical mass was achieved, unilaterally strip such ownership rights- knowing that to "go public" or sell the company, Linden would need to own the world that it had already sold.

"THE CURRENCY EXCHANGE"

154. Defendant Linden operates a currency exchange. Indeed, Linden portrays to consumers that it operates a true currency exchange. In truth, it is not really a currency exchange but instead a way to simply take consumers money, devalue it and not return the money to consumers.

155. At least one knowledgeable expert has written a detailed analysis that suggests that Defendant Linden is either a ponzi / pyramid scheme or a High Yield Investment Program,

which inevitably becomes a ponzi / pyramid scheme. See, Capitalism 2.0, The Linden Dollar Game article, attached hereto as Exhibit "3."

156. Thus, contrary to the representations of Defendants that they are operating a true "currency exchange," the reality is that they are not operating such an exchange.

**SECOND LIFE'S ATTEMPTED FINE PRINT, AKA
THE TERMS OF SERVICE AGREEMENT ("TOS")**

157. Defendants provide what is known as a Terms of Service Agreement ("TOS"). Although referred to as a TOS, the reality is that the "agreement" is nothing more than a contract of adhesion. The TOS is routinely not read by consumers, but consumers are required to click "I agree" to gain access to their virtual items and land.

158. Defendants' TOS is very similar, in essence, to the fine print on the back of a ticket checking your automobile with a valet or, similarly, entrance to a theme park.

159. Like the unconscionable terms contained within such contracts of adhesion that provide the potential participant with absolutely no negotiating leverage, the Linden TOS is similarly drafted in such an unconscionable, heavy handed way. Moreover, the TOS is consistently changed and, despite the fact that a participant may "join" while one TOS is in "effect" and may have already "invested" thousands of dollars based on one TOS, the participant is forced to "accept" any revised TOS to gain access to his virtual property, land and items. Thus, Linden simply unilaterally imposes any contract terms on the participant without regard to whether the participant signed up under a different TOS and does so without consideration.

160. As the Court stated in the *Bragg* case: "In effect, the TOS provides Linden with a variety of one-sided remedies to resolve disputes" *Bragg*, 487 F.Supp.2d at 608.

161. Further, like such fine print upon access to a theme park, the TOS is naturally limited and cannot possibly apply to any valid transaction that occurs within the theme park

itself. Such fine print could not possibly operate to suspend the laws of the United States inside of Disney World, nor the transactions that occur inside its "walls." Equally, no fine print provided by Defendants could possibly operate to suspend the laws of the United States inside of Second Life.

162. Indeed, any attempt to claim that the TOS effectively operates, in any way, to suspend the laws of the United States, is simply unconscionable and absurd.

163. While Defendants provided a TOS, it did not state or provide any term or condition such that Defendants may retain and/or convert Plaintiffs' money, or that Plaintiffs ever waived their rights to property interests or their U.S. currency on deposit held in trust with Defendants. Moreover, the TOS did not address deleting land and, in fact, the land existing in Second Life is never deleted, instead persisting with a name, size and location, all the things that make "real property" unique. Indeed, any such terms would be utterly inconsistent with the repeated representations made by Defendants in the media and press. Any terms in a TOS to the contrary would be unconscionable and/or an illegal forfeiture clause.

164. To the extent that Defendants seek to interpret their own TOS inconsistently with the representations made by them to the world in the media and press or that Defendants may withhold, retain, and/or convert Plaintiffs' property interests or Plaintiffs' U.S. currency on deposit in trust with Defendants in any way, shape or form, such terms and/or conditions are unconscionable and should otherwise be deemed void as against public policy and not enforceable.

165. Further, Defendants' TOS provided no clear or reasonable notice to Plaintiffs that Defendants may at any time, without notice, and/or without identifying a violation of Defendants' TOS, withhold, retain, and/or convert all property interests and U.S. Currency

belonging to the Plaintiffs. Even if the TOS had contained any such terms, they would be unconscionable and unenforceable.

166. Further, the TOS cannot possibly be permitted to remove and/or otherwise subvert the ownership interests that Plaintiffs have been provided and/or obtained in their virtual land and/or items. In no way, can the TOS be interpreted to allow Linden to simply unilaterally change the deal after the fact and, in particular, to benefit Linden to the detriment of consumers.

167. The TOS, in effect at the time Plaintiffs became participants, provided, in relevant part, the following misleading assertions, in relevant part, but not limited to:

- a. in Section 1.3, that "Linden Lab and other parties have rights in their respective content, which you agree to respect" leading Plaintiffs to believe that they had full ownership and title rights in their content, and that Defendants would respect and preserve same to the best of their ability;
- b. in Section 1.3, that "Linden Lab and other Content Providers [which includes Plaintiffs] have rights in their respective Content under copyright and *other applicable laws* and treaty provisions, and that except as described in this Agreement, such rights are not licensed or otherwise transferred by mere use of the Service[]" leading Plaintiffs to believe that by investing thousands of dollars in U.S. currency constitutes something substantially more than "mere use" of the Service and that investment was not subject to conversion, fraudulent or otherwise, by Defendants;
- c. in Section 1.4, establishing a "currency" (Linden Dollar) and granting a limited license to same, but not otherwise limiting or restricting Plaintiffs's rights to withdraw U.S. currency in their respective account, and not clearly explaining that

the limited license right could be revoked or modified as to a single or group of users, instead suggesting that Defendants' right to modify the limited license right it granted would be applied to all participants, and not selectively modified for one or more;

- d. in Section 1.5, explaining that the use of the words "buy" and "sell" on their website is used to indicate the transfer of the limited license right described in Section 1.4, and stating that Defendants may deny any sell order individually "for any reason," which terms are unconscionable and contrary to, but not in any way suggesting that, the U.S. currency in Plaintiffs' accounts were subject to the above arbitrary standard;
- e. in Section 2.5, providing that any participant may cancel an account at any time and in not stating or otherwise suggesting that any such cancellation would forfeit any and/or all U.S. currency placed and/or transferred into Plaintiffs' accounts;
- f. in Section 2.6, providing that Defendants may "suspend or terminate your account any time, without refund or obligation," but not otherwise providing that the assets and ownership interests conveyed by Defendants and/or third parties would be retained by Defendants, or otherwise unrecoverable. Moreover, to the extent that Defendants attempt to interpret Section 2.6 inconsistently with their public statements and representations, they should be estopped from doing so and any interpretation inconsistent with their public representations is unconscionable and/or any interpretation that Section 2.6 is tantamount to any "right" of Defendants to convert the property and/or currency of Plaintiffs, such an

interpretation is unconscionable, unenforceable as a matter of law and an illegal liquidated damages clause and/or penalty provision;

- g. in Sections 3.2 and 3.3, granting Defendants the irrevocable right to delete all data stored on Defendants' servers, and granting ownership of the "account" only in Defendants, but not otherwise granting Defendants the right to convert Plaintiffs' U.S. currency held in trust by Defendants, or the title to the virtual property conveyed to Plaintiffs to the extent the data representing that property has not been deleted or, further, the right to interfere with the intellectual property rights of the participant. Moreover, to the extent that Defendants attempt to interpret Section 3.2 or 3.3 inconsistently with their public statements and representations, they should be estopped from doing so and any interpretation inconsistent with their public representations is unconscionable and/or any interpretation that Sections 3.2 and 3.3 is tantamount to any "right" of Defendants to convert the property and/or currency of Plaintiffs, such an interpretation is unconscionable, unenforceable as a matter of law and an illegal liquidated damages clause and/or penalty provision;
- h. in Section 5, et seq., providing various releases in favor of Defendants, many of which are unconscionable, and/or require mutuality, and none of which release Defendants from any claim for conversion of the U.S. currency held in trust by Defendants in favor of Plaintiffs, or release Defendants for conversion of assets and data belonging to Plaintiffs that have not been deleted (i.e., the land purchased by Plaintiffs), or release Defendants for damages caused by interfering with prospective economic advantage or economic relations between participants,

or release Defendants for intentionally destroying Plaintiffs' data with an intent to harm and without any proper purpose;

- i. in Section 5.4, acknowledging that certain limitations and terms stated in the TOS may not be enforceable in various jurisdictions.

168. Defendants' representations regarding the transfer of full and alienable title to participants upon the purchase of land, and the transfer of ownership rights consequent to participants' copyright and trademark interests, and Plaintiffs' consideration given in light of those statements, are material modifications to the TOS to the extent those statements by Defendants are contrary to the written terms of the TOS.

169. Further, Defendants did not state in their TOS that they had the unfettered right to take back the title to any of the land they sold nor did Defendants provide any process for the recovery of title from their participants. Further, the TOS did not state that Defendants have the unfettered right to obstruct or otherwise impede a participant's use of his intellectual property rights or that the TOS governs or acts to otherwise interfere with transactions between third parties. Further, Defendants cannot seek to interpret any TOS inconsistently with ownership rights that Plaintiffs possess, whether in the virtual land, property or items they acquired from Linden or third parties.

170. In essence, despite Defendants' public statements regarding land ownership and the retention of intellectual property rights, Defendants simply depart from those public statements at their own whim and for their own profits.

171. Because Defendants assert, through their actions and statements, that they can take virtual property possessed by Second Life participants and/or unilaterally change the deal

after-the-fact, that property has less value than it would have if Defendants respected the ownership interests held by Second Life participants as promised to them by Defendants.

CLASS ACTION ALLEGATIONS

172. Plaintiffs hereby incorporate as if more fully set forth at length herein, paragraphs 1 through 171 above.

173. Plaintiffs bring this class action pursuant to Rule 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and a nationwide Class defined as all persons who are or were owners, possessors, purchasers, creators or sellers of virtual land or any other items of virtual property or items as participants in the Second Life game at any point between November 14, 2003 and the date of class certification (the "Main Class"). Virtual property includes, but is not limited to, Second Life's in-game currency, known as "Lindens," virtual land and virtual items.

174. Plaintiffs also recognize a subclass of the Main Class: Subclass A.

175. In addition to bring suit on behalf of the Main Class, all four Plaintiffs sue on behalf of Subclass A. Subclass A is a subclass, pursuant to Rule 23(c)(5) of the Federal Rules of Civil Procedure, of persons whose assets, including virtual property and real-world personal property (such as in-game accounts funded with U.S. dollars), have been deliberately and intentionally converted, taken, "frozen," or otherwise rendered unusable by the Defendants. In addition to exclusive ownership interests in their virtual property, members of Subclass A have been deprived of their ownership rights and/or rights to access, possess, use, transfer, sell, or otherwise exploit their virtual property.

176. The members of the Main Class are so numerous that joinder of all members is impracticable. Plaintiffs do not know the exact size of the proposed class or the identities of the

proposed class members, since such information is in the exclusive control of the Defendants. However, there are likely tens of thousands, if not millions, of members in the Main Class, geographically dispersed throughout the United States. Additionally, Subclass A is so numerous that joinder of all members is impracticable.

177. The Defendants' unlawful acts and unfair trade practices have affected all members of the Main Class in a similar manner. As explained above, the Main Class members relied on Defendants' uniform representations that Second Life users own their in-game virtual property. However Defendants, through their representations and actions, have wrongfully deprived the Main Class of their ownership of virtual property and have deprived the Main Class of certain intellectual property rights, such as copyrights. Additionally, all members of Subclass A have lost their rights to access, possess, use, transfer, sell or otherwise exploit their Second Life related assets.

178. Among the questions of law and fact common to the Main Class are:
- a. The nature and scope of Defendants' wrongful practices;
 - b. Whether Defendants falsely and uniformly asserted that Plaintiffs and Main Class members were owners of virtual land, when they were not;
 - c. Whether Defendants wrongfully stripped Plaintiffs and Main Class members of ownership, access to, use and/or possession of their virtual property;
 - d. Whether Defendants wrongfully deprived Plaintiffs and Main Class members of intellectual property rights, such as copyrights;
 - e. Whether the TOS agreements (as they were presented to new users and as they were unilaterally revised and imposed upon existing users), were contracts of adhesion, were unconscionable or contained unconscionable provisions;

- f. Whether Defendants engaged in and continue to engage in fraud and/or fraud in the inducement;
- g. Whether the Court can award declaratory and injunctive relief; and
- h. The proper amount of damages.
- i. Whether Defendants falsely asserted that the class members owned the virtual land, when they truly did not;
- j. Whether Defendants represented that class members owned virtual land;
- k. Whether Defendants representations about the ownership of virtual land and items was a violation of California Civil Code Sections 1770(a)(5), (7), (9), (14) and/or (16);
- l. Whether Defendants are subject to liability for violating the Consumer Legal Remedies Act ("CLRA"), Civ. Code §§ 1750-1784;
- m. Whether Defendants have violated the Unfair Competition Law, Bus. & Prof. Code §§ 17200-17209;
- n. Whether Defendants have violated the False Advertising Law ("FAL"), Bus. & Prof. Code §§ 17500-17536;
- o. Whether the subclass is entitled to an award of compensatory damages pursuant to Civil Code section 1780(a)(1);
- p. Whether the subclass is entitled to an award of statutory damages pursuant to Civil Code section 1780(a)(1);
- q. Whether the subclass is entitled to an award of restitution pursuant to Civil Code section 1780(a)(3);

- r. Whether the subclass is entitled to an award of punitive damages pursuant to Civil Code section 1780(a)(4);
 - s. Whether the Defendants have been unjustly enriched as a result of the unlawful, fraudulent, and unfair conduct alleged in this Complaint, such that it would be inequitable for Defendants to retain the benefits conferred upon them by Plaintiffs and the proposed class;
 - t. Whether the class is entitled to an award of restitution pursuant to Business & Professions Code section 17203; and
 - u. Whether the Defendant violated California Civil Code §1812.600, et. seq.
179. Among the questions of law and fact common to Subclass A are:
- a. Whether Defendants unlawfully confiscated virtual and real-world property owned by Second Life users;
 - b. Whether Defendants unlawfully terminated access to users' virtual and real world property;
 - c. Whether the Defendants have been and continue to be unjustly enriched;
 - d. The value of the property Defendants confiscated from individual Second Life users; and
 - e. The proper amount of damages related to the confiscation of virtual and real-world property owned by Second Life users.

180. Plaintiffs' claims are typical of those of the Main Class and Subclass A they seek to represent because Plaintiffs and all members of the Main Class and Subclass A were injured and/or continue to be injured in the same manner by Defendants' violations, illegal acts and practices, and other wrongful conduct complained of herein.

181. Plaintiffs will fully and adequately protect the interests of all members of the Main Class and Subclass A.

182. Plaintiffs have retained counsel that is experienced in class action and consumer fraud claims.

183. Plaintiffs have no interests that are adverse to or in conflict with other members of the Main Class or Subclass A.

184. The questions of law and fact common to the members of the Main Class and Subclass A predominate over any questions, which may affect only individual members.

185. The Defendants act, acted or refuse to act on grounds generally applicable to the Main Class and Subclass A, making final declaratory or injunctive relief appropriate.

186. The prosecution of separate actions by individual members of the Main Class and Subclass A would create a risk of inconsistent or varying adjudications with respect to individual members of the Main Class and Subclass A which would, as a practical matter, be dispositive of the interests of other members of the Class who are not parties to the action, or could substantially impair or impede their ability to protect their interests.

187. Prosecuting separate actions by or against each of the individual Main Class and Subclass A members would prejudice the parties opposing the Main Class and Subclass A through inconsistent or varying adjudications that would establish incompatible standards of conduct for the parties opposing the Main Class and Subclass A.

188. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy in that:

- a. Individual claims by the Main Class and Subclass A members are impractical as the costs of pursuit far exceed what any one

individual Plaintiff or Main Class or Subclass A member has at stake;

- b. As a result, individual members of the Main Class and Subclass A have no interest in prosecuting and controlling separate actions;
- c. It is desirable to concentrate litigation of the claims herein in this forum; and
- d. The proposed Class action is manageable.

189. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

190. To the extent, and in the alternative, should this Court find that any individual class Plaintiffs are unsuitable to represent the interests of the Class, alternative Class members can readily and easily be located and substituted.

CAUSES OF ACTION

COUNT I

VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT, Ca. Civ. Code § 1750, et. seq. v. ALL DEFENDANTS (ON BEHALF OF THE MAIN CLASS)

191. Plaintiffs and Main Class members hereby incorporate by reference Paragraphs 1 through 190, as more fully set forth above.

192. California law is applicable to Plaintiffs and Main Class members' claims as it was expressly chosen by Defendant Linden to apply to the dealings between the Plaintiffs and Main Class members and Defendants.¹

¹ Indeed, during the *Bragg* proceeding the Court noted: "Both parties agree that California law should govern the question of whether the arbitration clause is unconscionable." *Bragg*, 487 F.Supp.2d at 605 n.16. As such, Plaintiffs do not anticipate Defendants taking an inconsistent position in this proceeding and, in fact, Defendants are estopped from doing so. If Defendants falsely claim California law does not apply, Plaintiffs reserve the right to add claims under any other jurisdictions unfair trade practice, false advertising or consumer protection statute.

193. Plaintiffs and Main Class members are "consumers" as defined by Cal. Civ. Code § 1761(d).

194. Plaintiffs and Main Class members and Defendants have engaged in "transactions" as defined by Cal. Civ. Code § 1761(e).

195. Defendants have engaged in deceptive practices, unlawful methods of competition, and/or unfair acts as defined by Cal. Civ. Code § 1750, et. seq., in transactions for the sale of good and services with Plaintiffs and Main Class members. Plaintiffs and Main Class members have suffered harm as a proximate result of the violations of law and wrongful conduct of the defendant alleged herein.

196. As set forth above and herein, the intentional and unlawful acts, statements and material omissions of Defendants constitute violations of the California Consumer Legal Remedies Act, codified at Cal. Civ. Code § 1750, et. seq.

197. More specifically, as set forth above, Defendant violated Cal. Civ. Code § 1770 (a) (5), (7), (9), (14), (16), and (19).

198. Indeed, as set forth at length above, Defendants' material misrepresentations and omissions pertaining to the features of and within Second Life amount to an unlawful and deceptive long-term advertising campaign.

199. These material misrepresentations and omissions were justifiably relied upon by Plaintiffs and Main Class members.

200. The material misrepresentations and omissions made by Defendants and justifiably relied upon by Plaintiffs and Main Class members were a substantial factor in influencing their decision to purchase virtual property and items and participate in Second Life.

201. Again, Defendants have engaged in unlawful conduct, which caused substantial harm to Plaintiffs and Main Class members, the gravity of which far outweighs any purported utility of such conduct, policies or procedures.

202. As a result of Defendants' violation of such statute, Plaintiffs and Main Class members are entitled to an order enjoining such methods, acts, or practices as well as all other relief provided for by Cal. Civil Code § 1780, et. seq.

203. Accordingly, the Court should provide the following injunctive relief and Defendants should be enjoined:

- a. from continuing in their false and misleading advertising campaign of virtual property ownership;
- b. from continuing in their false and misleading advertising campaign of permitting consumers to retain their intellectual property rights;
- c. from continuing in their false and misleading advertising campaign of running a "currency exchange" when, in fact, it is not an exchange at all but a mechanism to devalue consumers' money;
- d. from prohibiting or otherwise interfering with consumers' access to the virtual property purchased from Defendant Linden and with the court creating such an easement as is necessary under the circumstances to permit such access;
- e. from prohibiting or otherwise interfering with consumers' ability to transfer, sell, or otherwise exploit their virtual property purchased from Defendant Linden;
- f. from prohibiting or otherwise interfering with consumers intellectual property and/or copyrights in their virtual property and/or creations;

- g. from prohibiting and/or otherwise claiming that consumers who purchase virtual land from Defendant Linden are not the owners of such land;
- h. from taking any position or making any assertion that the virtual land sold by Defendant Linden is somehow still owned by Defendant Linden and has not actually been sold to Plaintiffs and Main Class members;
- i. from prohibiting or otherwise interfering with Plaintiffs and Main Class members' right to access, sell or otherwise transfer their virtual items and/or virtual land;
- j. from prohibiting or otherwise interfering with Plaintiffs and Main Class members' right to exploit, transfer, assign and/or otherwise utilize their intellectual property and copyrights;
- k. from prohibiting or otherwise taking any act to confiscate or improperly possess Plaintiffs and Main Class members' U.S. currency, whether simply deposited in an account with Defendant Linden and/or transferred into Linden dollars; and
- l. from confiscating or otherwise causing any forfeiture of Plaintiffs and Main Class members property without proper and adequate due process.

204. Pursuant to Cal. Civil Code § 1782, if defendant does not rectify its illegal acts within 30 days, plaintiffs intend to amend this Complaint to add claims for the following:

- a. actual damages;
- b. restitution of money to Plaintiffs and Main Class members;
- c. punitive damages;
- d. attorneys' fees and costs; and
- e. other relief that the Court deems proper.

WHEREFORE, Plaintiffs and Main Class members pray this Honorable Court enter judgment against Defendants and in their favor and provide the injunctive relief as set forth herein and any other damages which the Court shall deem just and proper for Plaintiffs and Main Class members and against Defendants Linden Research, Inc. and Philip Rosedale with the court to award such attorney fees as it deems proper and just.

JURY TRIAL DEMANDED

COUNT II

VIOLATIONS OF THE FALSE ADVERTISING LAW (Cal. Bus. & Prof. Code § 17500)
v. ALL DEFENDANTS (ON BEHALF OF THE MAIN CLASS)

205. Plaintiffs and Main Class members hereby incorporate by reference Paragraphs 1 through 204 as more fully set forth above.

206. As set forth in detail above, Defendants falsely advertised to the public as a whole that all right, title and interest to the virtual land and all associated ownership rights would pass to buyers and that Plaintiffs and Main Class members would retain their intellectual property rights in and to virtual items.

207. Defendants conduct violated the False Advertising Law, Cal. Bus. & Prof. Code § 17500, et. seq.

208. Indeed, as set forth at length above, Defendants' material misrepresentations and omissions pertaining to the features of and within Second Life amount to an unlawful and deceptive long-term advertising campaign.

209. These material misrepresentations and omissions were justifiably relied upon by Plaintiffs and Main Class members.

210. The material misrepresentations and omissions made by Defendants and justifiably relied upon by Plaintiffs and Main Class members were a substantial factor in influencing their decision to purchase virtual property and items and participate in Second Life.

211. Resultantly, Plaintiffs and Subclass members have suffered injury in fact and have lost money and/or property as a result of Defendants' unlawful conduct.

212. Accordingly, pursuant to Cal. Bus. & Prof. Code § 17535, the Court should provide the following injunctive relief and Defendants should be enjoined:

- a. from continuing in their false and misleading advertising campaign of virtual property ownership;
- b. from continuing in their false and misleading advertising campaign of permitting consumers to retain their intellectual property rights;
- c. from continuing in their false and misleading advertising campaign of running a "currency exchange" when, in fact, it is not an exchange at all but a mechanism to devalue consumers' money;
- d. from prohibiting or otherwise interfering with consumers' access to the virtual property purchased from Defendant Linden and with the court creating such an easement as is necessary under the circumstances to permit such access;
- e. from prohibiting or otherwise interfering with consumers' ability to transfer, sell, or otherwise exploit their virtual property purchased from Defendant Linden;
- f. from prohibiting or otherwise interfering with consumers intellectual property and/or copyrights in their virtual property and/or creations;
- g. from prohibiting and/or otherwise claiming that consumers who purchase virtual land from Defendant Linden are not the owners of such land;

- h. from taking any position or making any assertion that the virtual land sold by Defendant Linden is somehow still owned by Defendant Linden and has not actually been sold to Plaintiffs and Main Class members;
- i. from prohibiting or otherwise interfering with Plaintiffs and Main Class members' right to access, sell or otherwise transfer their virtual items and/or virtual land;
- j. from prohibiting or otherwise interfering with Plaintiffs and Main Class members' right to exploit, transfer, assign and/or otherwise utilize their intellectual property and copyrights;
- k. from prohibiting or otherwise taking any act to confiscate or improperly possess Plaintiffs and Main Class members' U.S. currency, whether simply deposited in an account with Defendant Linden and/or transferred into Linden dollars; and,
- l. from confiscating or otherwise causing any forfeiture of Plaintiffs and Subclass members property without proper and adequate due process.

213. Furthermore, Plaintiffs and Main Class members request that the following relief:

- a. actual damages;
- b. restitution of money to plaintiffs and Subclass members;
- c. punitive damages;
- d. disgorgement of all revenues obtained as a result of Defendants' violations of the False Advertising Law;
- e. attorneys' fees and costs; and
- f. other relief that the Court deems proper.

WHEREFORE, Plaintiffs and Main Class members pray this Honorable Court enter judgment against Defendants and in their favor and provide actual damages, restitution, punitive

damages, the injunctive relief as set forth herein and any other damages which the Court shall deem just and proper for Plaintiffs and Main Class members and against Defendants Linden Research, Inc. and Philip Rosedale with the court to award such attorney fees as it deems proper and just.

JURY TRIAL DEMANDED

COUNT III

**VIOLATION OF CALIFORNIA CIVIL CODE § 1812.600, et. seq. v. ALL DEFENDANTS
(ON BEHALF OF THE MAIN CLASS)**

214. Plaintiffs and Main Class members hereby incorporate by reference Paragraphs 1 through 213, as more fully set forth above.

215. California Civil Code §1812.600, et. seq., governs auction transactions in or originating from the State of California.

216. The sale of the virtual land, as set forth more fully at length herein and above, occurred via and qualifies as an "auction" pursuant to Cal. Civ. Code §1812.601(b).

217. Defendant, Linden, is an "auction company" as that term is defined in Cal. Civ. Code §1812.601(c).

218. Further, Defendant, Linden, is an auctioneer as that term is defined in Cal. Civ. Code. §1812.601(d).

219. The virtual property sold by Defendant, Linden, qualifies as a good under Cal. Civ. Code §1812.601(g).

220. Cal. Civ. Code §1812.600, et. seq., cannot be waived and any attempts to waive such code sections are contrary to public policy, void and unenforceable pursuant to Cal. Civ. Code §1812.609.

221. Upon information and belief, Plaintiffs and Main Class members allege that Defendants have not provided a bond to the California Secretary of State, did not post or distribute the terms, conditions, restrictions, and procedures for the goods sold at their auctions, and upon re-auctioning Plaintiffs and Main Class members' land as described below, did not provide Plaintiffs and Main Class members with either the information required to be provided and associated with those subsequent auction transactions, or the proceeds thereof, all in violation of various provisions of the above statute including: Cal. Civ. Code §§ 1812.600(a)-(c); 1812.607(a), (c), (g), (i), (j), (k), (l), and (m); and 1812.608(a), (c), (d), (f), (g), (i), (j) and (k).

222. Defendant, Linden, also violated Cal. Civ. Code § 1812.605 (c) and 1812.608 (c), (j), (g), (i) and (j) by failing to truthfully represent the goods to be auctioned, and indeed, lying about the goods that were being auctioned, their value and/or condition as more fully set forth at length herein and above.

223. Defendant Rosedale aided and abetted Defendant Linden in violating Cal. Civ. Code § 1812.600 et seq. by making numerous false statements in the media and to the press and, accordingly, is liable pursuant to Cal. Civ. Code § 1812.608 (b), (c), (i) and has, accordingly, committed a misdemeanor and is punishable pursuant to § 1812.604.

224. By violating Cal. Civ. Code § 1812.600, et. seq., and pursuant to § 1812.604, Defendant Linden is guilty of a misdemeanor.

225. Accordingly, this Court should enter injunctive relief to enjoin and/or cause Defendants to comply with California law as codified above and herein.

226. In accordance with Cal. Civ. Code § 1812.603(b), Plaintiffs and Main Class members request restitution for the expenses incurred in the investigation related to this action.

227. Furthermore, Plaintiffs and Main Class members request the imposition of civil penalties against Defendants and reasonable attorneys' fees and costs pursuant to Cal. Civ. Code § 1812.600(m) and Cal. Civ. Proc. Code § 1021.5.

WHEREFORE, Plaintiffs and Main Class members pray this Honorable Court enter judgment against Defendants and in their favor and provide restitution, the injunctive relief as set forth herein, and any other damages which the Court shall deem just and proper for Plaintiffs and Main Class members and against Defendants Linden Research, Inc. and Philip Rosedale with the court to award such attorney fees as it deems proper and just.

JURY TRIAL DEMANDED

COUNT IV

VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW(Cal. Bus. & Prof. Code § 17200) v. ALL DEFENDANTS (ON BEHALF OF THE MAIN CLASS)

228. Plaintiffs and Main Class members hereby incorporate by reference Paragraphs 1 through 227 as more fully set forth above.

229. Defendants knowingly and actively misrepresented to Plaintiffs, Main Class members and to the public as a whole that all right, title and interest to the virtual land and all associated ownership rights would pass to buyers and that Plaintiffs and Main Class members would retain their intellectual property rights in and to virtual items.

230. These misrepresentations were material to the transaction as it involved the development of real estate in Second Life in which Defendants represented that all right, title and ownership rights were to be conferred to buyers and that all intellectual property rights were retained by the participants and/or otherwise preserved in virtual items.

231. At all times relevant hereto, it was the intent of Defendants to deceive, defraud and induce reliance of both Plaintiffs, Main Class members and the public as a whole upon the material misrepresentations.

232. Such misrepresentations constitute unfair competition under Cal. Bus. & Prof. Code § 17200 that provides: "unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code."

233. Defendants' conduct violated the following laws: Cal. Civ. Code § 1770 (a) (5), (7), (9), (14), (16), and (19); Cal. Bus. & Prof. Code § 17500, et. seq; and Cal. Civ. Code §§ 1812.600(a)-(c), 1812.607(a), (c), (g), (i), (j), (k), (l), and (m); 1812.608(a), (c), (d), (f), (g), (i), (j) and (k). Furthermore, as set forth above, Defendant Linden violated Cal. Civ. Code § 1812.605 (c) and 1812.608 (c), (j), (g), (i) and (j) and Defendant Rosedale violated Cal. Civ. Code § 1812.608 (b), (c), (i).

234. Defendants' violations of these laws amount to violations of Cal. Bus. & Prof. Code § 17200.

235. Furthermore, Defendants conduct constitutes unfair or fraudulent business acts or practices and/or unfair, deceptive, untrue or misleading advertising.

236. Indeed, as set forth at length above, Defendants' material misrepresentations and omissions pertaining to the features of and within Second Life amount to an unlawful and deceptive long-term advertising campaign.

237. These material misrepresentations and omissions were justifiably relied upon by Plaintiffs and Main Class members.

238. The material misrepresentations and omissions made by Defendants and justifiably relied upon by Plaintiffs and Main Class members were a substantial factor in influencing their decision to purchase virtual property and items and participate in Second Life.

239. Had Plaintiffs and Main Class members known that Defendants misrepresented ownership rights in order to induce Plaintiffs and Main Class members to purchase virtual land, Plaintiffs and Main Class members would have never purchased the virtual land and/or otherwise invested their U.S. currency and/or time in Second Life and with Defendants.

240. Further, Defendants never explicitly stated that depositing U.S. currency with Defendants in an account was, in truth, a forfeiture of such real world money. Indeed, every statement made by Defendants gave the appearance, impression and deceptively caused Plaintiffs and Main Class members to believe that their real world U.S. currency was actually their own money, and not simply being taken, without their knowledge, by the Defendants for their own unlawful and unjust reasons.

241. As a result of the fraudulent and deceptive conduct engaged in by the Defendants, Plaintiffs and Main Class members sustained injury in fact and lost money or property. Indeed, Plaintiffs and Main Class members have suffered damages and were harmed in excess of \$5 million.

242. As such, Plaintiffs and Main Class members request restitution, disgorgement of all revenues from Defendants' unlawful conduct, reasonable attorneys' fees and costs and any other relief deemed appropriate by the Court.

243. Further, the Court should provide the following injunctive relief and Defendants should be enjoined:

- a. from continuing in their false and misleading advertising campaign of virtual property ownership;
- b. from continuing in their false and misleading advertising campaign of permitting consumers to retain their intellectual property rights;
- c. from continuing in their false and misleading advertising campaign of running a "currency exchange" when, in fact, it is not an exchange at all but a mechanism to devalue consumers' money;
- d. from prohibiting or otherwise interfering with consumers' access to the virtual property purchased from Defendant Linden and with the court creating such an easement as is necessary under the circumstances to permit such access;
- e. from prohibiting or otherwise interfering with consumers' ability to transfer, sell, or otherwise exploit their virtual property purchased from Defendant Linden;
- f. from prohibiting or otherwise interfering with consumers intellectual property and/or copyrights in their virtual property and/or creations;
- g. from prohibiting and/or otherwise claiming that consumers who purchase virtual land from Defendant Linden are not the owners of such land;
- h. from taking any position or making any assertion that the virtual land sold by Defendant Linden is somehow still owned by Defendant Linden and has not actually been sold to Plaintiffs and Main Class members;
- i. from prohibiting or otherwise interfering with Plaintiffs and Main Class members' right to access, sell or otherwise transfer their virtual items and/or virtual land;

- j. from prohibiting or otherwise interfering with Plaintiffs and Main Class members' right to exploit, transfer, assign and/or otherwise utilize their intellectual property and copyrights;
- k. from prohibiting or otherwise taking any act to confiscate or improperly possess Plaintiffs and Main Class members' U.S. currency, whether simply deposited in an account with Defendant Linden and/or transferred into Linden dollars; and,
- l. from confiscating or otherwise causing any forfeiture of Plaintiff and Main Class members' property without proper and adequate due process.

WHEREFORE, Plaintiffs and Main Class members pray this Honorable Court enter judgment against Defendants and in their favor and provide restitution, disgorgement of revenues, and injunctive relief as set forth herein for Plaintiffs and Main Class members and against Defendants Linden Research, Inc. and Philip Rosedale with the court to award such attorney fees as it deems proper and just.

JURY TRIAL DEMANDED

COUNT V

FRAUD AND/OR FRAUD IN THE INDUCEMENT v. ALL DEFENDANTS
(ON BEHALF OF THE MAIN CLASS)

244. Plaintiffs and Main Class members hereby incorporate by reference Paragraphs 1 through 243, as more fully set forth above.

245. As set forth above and herein, Defendants made:

- a. False representations;
- b. Material to the transaction at hand;
- c. Made falsely and with knowledge of their falsity and/or recklessness as to whether the statements were true and/or false;

- d. With the intent of misleading Plaintiffs and Main Class members into relying upon the misrepresentations;
- e. That Plaintiffs and Main Class members justifiably relied upon; and
- f. That caused and/or proximately caused Plaintiffs and Main Class members' damages and/or injuries.

246. As a result of the fraudulent and deceptive common course of conduct engaged in by the Defendants, Plaintiffs and Main Class members were defrauded, sustained damages and were harmed in an amount to be determined at trial.

247. Indeed, as set forth at length above, Defendants' material misrepresentations and omissions pertaining to the features of and within Second Life, were centrally orchestrated and amount to an unlawful and deceptive long-term advertising campaign.

248. Accordingly, the Court should provide the following injunctive relief and Defendants should be enjoined:

- a. from continuing in their false and misleading advertising campaign of virtual property ownership;
- b. from continuing in their false and misleading advertising campaign of permitting consumers to retain their intellectual property rights;
- c. from continuing in their false and misleading advertising campaign of running a "currency exchange" when, in fact, it is not an exchange at all but a mechanism to devalue consumers' money;
- d. from prohibiting or otherwise interfering with consumers' access to the virtual property purchased from Defendant Linden and with the court creating such an easement as is necessary under the circumstances to permit such access;

- e. from prohibiting or otherwise interfering with consumers' ability to transfer, sell, or otherwise exploit their virtual property purchased from Defendant Linden;
- f. from prohibiting or otherwise interfering with consumers intellectual property and/or copyrights in their virtual property and/or creations;
- g. from prohibiting and/or otherwise claiming that consumers who purchase virtual land from Defendant Linden are not the owners of such land;
- h. from taking any position or making any assertion that the virtual land sold by Defendant Linden is somehow still owned by Defendant Linden and has not actually been sold to Plaintiffs and Main Class members;
- i. from prohibiting or otherwise interfering with Plaintiffs and Main Class members' right to access, sell or otherwise transfer their virtual items and/or virtual land;
- j. from prohibiting or otherwise interfering with Plaintiffs and Main Class members' right to exploit, transfer, assign and/or otherwise utilize their intellectual property and copyrights;
- k. from prohibiting or otherwise taking any act to confiscate or improperly possess Plaintiffs and Main Class members U.S. currency, whether simply deposited in an account with Defendant Linden and/or transferred into Linden dollars; and,
- l. from confiscating or otherwise causing any forfeiture of Plaintiffs and Class members property without proper and adequate due process.

249. Plaintiffs and Main Class members suffered harm and should be awarded compensatory damages.

250. Furthermore, Defendants' course of conduct was outrageous, wanton, willful and reckless. As such, punitive damages should be awarded in favor of Plaintiffs and Main Class members and against Defendants.

WHEREFORE, Plaintiffs and Main Class members pray this Honorable Court enter judgment against Defendants and in their favor and provide compensatory damages, punitive damages, the injunctive relief as set forth herein and any other damages which the Court shall deem just and proper for Plaintiffs and Main Class members and against Defendants Linden Research, Inc. and Philip Rosedale with the court to award such attorney fees as it deems proper and just.

JURY TRIAL DEMANDED

COUNT VI

CONVERSION v. DEFENDANT LINDEN
(ON BEHALF OF SUBCLASS A MEMBERS)

251. Plaintiffs and Subclass A members hereby incorporate by reference Paragraphs 1 through 250, as more fully set forth above.

252. Plaintiffs and Subclass A members held all title, interest and possessory rights to the virtual land, items and intellectual property herein described that was acquired from Defendants and/or third parties and/or created by Plaintiffs and Subclass A members and paid for using U.S. Currency.

253. Plaintiffs and Subclass A members equally held all title, interest and possessory rights in their U.S. Currency that was held on deposit by Defendants.

254. The virtual property and U.S. currency described above and herein are interests capable of precise definition and exclusive possession or control. Plaintiffs and Subclass A members had legitimate claims to exclusivity of such virtual property and U.S. currency. As set

forth above and herein, these rights were secured to Plaintiffs and Subclass A members through various statements made by Defendants to and in the media, and through the Plaintiffs and Subclass A Members' payment of U.S. Currency for such items.

255. Defendants intentionally, without Plaintiffs and Subclass A members' consent and without lawful justification, interfered with and destroyed Plaintiffs and Subclass A members' right of property in, or use or possession of the goods and/or chattel as more fully set forth above and herein.

256. The interference with and disposition of Plaintiffs and Subclass A members' rights were wrongful and caused Plaintiffs and Subclass A members damages.

257. Defendants did not refund or otherwise return the consideration paid for the property. Moreover, Defendant Linden re-auctioned certain Plaintiffs and Subclass A members' virtual property and retained all the benefit of such auctions and were thereby unjustly enriched.

258. Defendants should be enjoined and caused to return Plaintiffs and Subclass A members' property to them.

259. Plaintiffs and Subclass A members suffered harm and should be awarded compensatory damages.

260. Furthermore, Defendant's conduct was outrageous, wanton, willful and reckless. As such, punitive damages should be awarded in favor of Plaintiffs and Subclass A members and against Defendants.

WHEREFORE, Plaintiffs and Subclass A members pray this Honorable Court enter judgment against Defendant and in their favor and provide compensatory damages, punitive damages, the injunctive relief as set forth herein and any other damages which the Court shall

deem just and proper for Plaintiffs and Subclass A members and against Defendant Linden Research, Inc. with the court to award such attorney fees as it deems proper and just.

JURY TRIAL DEMANDED

COUNT VII

**INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS /
PROSPECTIVE ECONOMIC ADVANTAGE v. DEFENDANT LINDEN
(ON BEHALF OF SUBCLASS A)**

261. Plaintiffs and Subclass A members hereby incorporate by reference Paragraphs 1 through 260, as more fully set forth above.

262. Plaintiffs and Subclass A members possessed all intellectual property rights in the virtual items they created in Second Life and had the exclusive rights to exploit such copyrights, intellectual property rights and/or virtual land.

263. Plaintiffs and Subclass A members also possessed all rights in the virtual property they bought in Second Life from Defendants and/or third parties.

264. Plaintiffs and Subclass A members had previously and, at the time that Defendants stole their property, entered into contracts with third parties for the sale of virtual property and/or the virtual items they had created in Second Life. Further, Plaintiffs and Subclass A members had the right and/or ability to sell the virtual items they had obtained from third parties to others.

265. Prospective contractual relations existed between Plaintiffs and Subclass A members and third parties for the sale of virtual property and/or items, including the intellectual property Plaintiffs and Subclass A members had created and/or the transfer of such rights to a third party.

266. Defendants had knowledge of Plaintiffs and Subclass A members' rights in virtual land and items they possessed and of Plaintiffs and Subclass A members' past sale of such virtual items and of such prospective sales of such items and land.

267. More specifically, Plaintiffs and Subclass A members had exclusive rights to exploit their copyrights, intellectual property and/or virtual land, including the exclusive right of distribution which Defendants have maliciously interfered with and prevented Plaintiffs and Subclass A members from exploiting.

268. Defendants intentionally, without any privilege and/or justification, wrongfully interfered with Plaintiffs and Subclass A members' rights to such prospective contractual relations / economic advantage and caused Plaintiffs and Subclass A members economic damage.

269. Accordingly, Defendants should be enjoined from interfering in Plaintiffs and Subclass A members' prospective contractual relations and/or economic advantage and/or taking any acts that interfere with their exclusive ability to exploit their copyrights, other intellectual property rights and/or virtual land.

270. Plaintiffs and Subclass A members suffered harm and should be awarded compensatory damages.

271. Furthermore, Defendant's conduct was outrageous, wanton, willful and reckless. As such, punitive damages should be awarded in favor of Plaintiffs and Subclass A members and against Defendants.

WHEREFORE, Plaintiffs and Subclass A members pray this Honorable Court enter judgment against Defendant and in their favor and provide compensatory damages, punitive damages, the injunctive relief as set forth herein and any other damages which the Court shall

deem just and proper for Plaintiffs and Subclass A members and against Defendant Linden Research, Inc. with the court to award such attorney fees as it deems proper and just.

JURY TRIAL DEMANDED

COUNT VIII

UNJUST ENRICHMENT v. ALL DEFENDANTS
(ON BEHALF OF SUBCLASS A MEMBERS)

272. Plaintiffs and Subclass A members hereby incorporate by reference Paragraphs 1 through 271, as more fully set forth above.

273. Plaintiffs and Subclass A members conferred a benefit upon Defendants when they purchased virtual property and items from Defendants with U.S. currency.

274. Defendants not only took Plaintiffs and Subclass A members' virtual property from them, but also resold it to the highest bidder. Defendants also took Plaintiffs and Subclass A members' U.S. currency.

275. The re-sale of the property was not governed by any written contract.

276. Defendants' sold the virtual property at auction to the highest bidder to unjustly enrich themselves at the expense of Plaintiffs and Subclass A members.

277. At no time did Defendants remit the money they obtained in the re-auction to Plaintiffs and Subclass A members.

278. Accordingly, Defendants should be enjoined from the use of such money and of depriving Plaintiffs and Subclass A members of such money.

279. Plaintiffs and Subclass A members suffered harm and should be awarded compensatory damages.

280. Furthermore, Defendants' conduct was outrageous, wanton, willful and reckless. As such, punitive damages should be awarded in favor of Plaintiffs and Subclass A members and against Defendants.

WHEREFORE, Plaintiffs and Subclass A members pray this Honorable Court enter judgments against Defendants and in their favor and provide compensatory damages, punitive damages, and the injunctive relief as set forth herein and any other damages this court deems just and proper for Plaintiffs and Class members with the court to award such attorney fees as it deems proper and just.

JURY TRIAL DEMANDED

COUNT IX

WRONGFUL EXPULSION v. DEFENDANT LINDEN
(ON BEHALF OF SUBCLASS A MEMBERS)

281. Plaintiffs and Subclass A members hereby incorporate by reference Paragraphs 1 through 280, as more fully set forth above.

282. Defendant Linden operated Second Life as if it was a private association and, as such, it was.

283. Without any notice or due process of any kind, Plaintiffs and Subclass A members were wrongfully ejected and expelled from Second Life, thereby depriving them of their assets and ownership interests.

284. Such a wrongful expulsion and ejection without due process or any process is contrary to law and against the interests of justice.

285. Further, Defendant Linden's wrongful expulsion of Plaintiffs and Subclass A members contradicted its campaign of representations that Plaintiffs, Subclass A members and

the general public owned the virtual property and items they purchased and created. As such, Defendant Linden violated its own policies and procedures.

286. Further, in light of such representations, Defendant Linden's wrongful expulsion of Plaintiffs and Subclass A members was maliciously motivated.

287. Accordingly, Defendant Linden should be enjoined and injunctive relief should be granted reinstating Plaintiffs and Subclass A members to the Second Life world / network where they can use, transfer or otherwise exploit their assets and other property.

WHEREFORE, Plaintiffs and Subclass A members pray this Honorable Court enter judgment against Defendants and in Plaintiffs and Subclass A members favor and provide the injunctive relief as set forth herein for Plaintiffs and Subclass A members with the court to award such attorney fees as it deems proper and just.

JURY TRIAL DEMANDED

Respectfully submitted,

Date:

PRIBANIC, PRIBANIC + ARCHINACO LLC

By JAA7341

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