


As shown below, all of Plaintiff's claims result from Linden's decision to exercise its rights under the Terms of Service governing Second Life and agreed to by Plaintiff.<sup>3</sup> The Terms of Service agreed to by Plaintiff contain a valid arbitration clause that requires that any disputes between the parties be resolved through arbitration in California, where Plaintiff practices law,  owns real estate and visits frequently. Accordingly, under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the "FAA"), California law, and consistent with decisions from this jurisdiction and elsewhere, Defendants move to enforce the arbitration provision and to compel Plaintiff to submit his claims against Defendants to arbitration pursuant to the terms of the Terms of Service.

## II. ARGUMENT

### A. The Parties Entered Into A Valid And Enforceable Contract

On December 7, 2005, Plaintiff became a member of Second Life, the online computer-simulated environment operated by Linden.<sup>4</sup> As part of the application process, Plaintiff accepted the Terms of Service of Second Life, which include a California choice of law provision, an arbitration provision and a forum selection clause. Critically, Plaintiff does not contest that he agreed to the Terms of Service. Indeed, Plaintiff avers in his Complaint (a true and correct copy of which is attached hereto as Exhibit "A") that he accepted the Terms of Service prior to becoming a Second Life participant. See Complaint, ¶ 126.

<sup>3</sup> The Complaint asserts ten claims against Defendants, including claims under Pennsylvania's Unfair Trade Practices and Consumer Protection Laws (73 P.S. §201-1, *et seq.*), California's Unfair and Deceptive Practices Act (Cal. Bus. & Prof. Code §17200), California's Consumer Legal Remedies Act (Ca. Civ. Code § 1750, *et seq.*), California's Civil Code (§1812.600, *et seq.*), Fraud and/or Fraud in the Inducement, Conversion, Intentional Interference with a Contractual Relation, Breach of Contract, Unjust Enrichment, and Tortious Breach of the Covenant of Good Faith and Fair Dealing (California Law).

<sup>4</sup> Information concerning Second Life can be found at <http://www.secondlife.com>.

