

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, Plaintiffs have provided defendants with 30 days notice of its illegal acts through the filing and service of their Complaint, yet defendants have taken no action to rectify their improper and illegal conduct. As such, through the filing of this First Amended Complaint, Plaintiffs now seek the following relief:

- 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, actual damages, restitution of money, and punitive damages 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 and costs 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

Date: June 15, 2010

Respectfully submitted,

PRIBANIC, PRIBANIC + ARCHINACO LLC

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