IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA
PHILADELPHIA

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
Plaintiffs,	)	Case No. 2:10-cv-01679-ER
v.	)	JURY TRIAL DEMANDED
LINDEN RESEARCH, INC. a corporation, and PHILIP ROSEDALE, an individual,	)	
Defendants.	)	

ORDER

AND NOW, this ____ day of _____, 2010, upon consideration of Defendants' Motion for Leave to File Reply in Support of Defendants Linden Research, Inc. and Philip Rosedale's Motion to Dismiss Under Rule 12(b)(6) or in the Alternative to Transfer Pursuant to 28 U.S.C. § 1404(a), it is ORDERED that Defendants' Motion is GRANTED; that Defendants may file a reply in the form attached to Defendants' Motion; and that the Clerk is directed to file the Reply attached to the Motion as of the date of this Order.

BY THE COURT:

_____
EDUARDO C. ROBRENO
United States District Judge

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA
PHILADELPHIA

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
Plaintiffs,	)	Case No. 2:10-cv-01679-ER
v.	)	JURY TRIAL DEMANDED
LINDEN RESEARCH, INC. a corporation, and PHILIP ROSEDALE, an individual,	)	
Defendants.	)	

MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF DEFENDANTS LINDEN RESEARCH, INC. AND PHILIP ROSEDALE'S MOTION TO DISMISS UNDER RULE 12(B)(6) OR IN THE ALTERNATIVE TO TRANSFER PURSUANT TO 28 U.S.C. § 1404(A)

Defendants Linden Research, Inc. and Philip Rosedale hereby move this Court for leave to file a Reply in Support of Defendants' Motion to Dismiss Under Rule 12(b)(6) or in the Alternative to Transfer Pursuant to 28 U.S.C. § 1404(a). As grounds for this Motion, Defendants state:

1. On July 9, 2010, Defendants filed a Motion to Dismiss Under Rule 12(b)(6) or in the Alternative to Transfer Pursuant to 28 U.S.C. § 1404(a).

2. On July 30, 2010, Plaintiffs filed a Response in Opposition to Defendant's Motion to Dismiss and for Leave to Conduct Discovery.

3. On August 6, 2010, Plaintiffs filed a Motion for Leave to File Second Amended Complaint.

4. On August 27, 2010, the Deputy Clerk filed a notice for an initial pretrial conference for September 9, 2010, at 10:00 a.m. before the Honorable Eduardo C. Robreno.

5. On August 30, 2010, the Deputy Clerk ordered a hearing before Judge Robreno to consider the Motion to Dismiss and any related responses for September 9, 2010, at 10:00 a.m.

6. Defendants request leave to submit a short reply brief in the form attached hereto as Exhibit A in order to respond to certain issues raised by Plaintiffs in their Opposition to the Motion to Dismiss.

Respectfully submitted,

By: /s/ Laurence Z. Shiekman

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Dated: September 2, 2010

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA
PHILADELPHIA

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
Plaintiffs,	)	Case No. 2:10-cv-01679-ER
v.	)	JURY TRIAL DEMANDED
LINDEN RESEARCH, INC. a corporation, and PHILIP ROSEDALE, an individual,	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF DEFENDANTS LINDEN RESEARCH, INC. AND PHILIP ROSEDALE'S MOTION TO DISMISS UNDER RULE 12(B)(6) OR IN THE ALTERNATIVE TO TRANSFER PURSUANT TO 28 U.S.C. § 1404(A)

Pursuant to Local R. Civ. P. 7.1(c), Defendants, by their attorneys, move for leave of Court to file the attached Reply in Support of Defendants Linden Research, Inc. and Philip Rosedale's Motion to Dismiss Under Rule 12(b)(6) or in the Alternative to Transfer Pursuant to 28 U.S.C. § 1404(a). Defendants refrained from seeking leave to file a reply brief until now due to the possibility that this Court would grant leave to allow Plaintiffs to file a Second Amended Complaint, which would have rendered the original Motion to Dismiss moot. Now, as it appears that this Court will decide the Motion to Dismiss prior to the Motion for Leave to File a Second Amended Complaint, Defendants move this Court for leave to file the attached reply.

This Court may permit a reply brief when it "deems it appropriate." Local R. Civ. P. 7.1(c). Defendants respectfully submit that the attached Reply responds only to issues raised

in Plaintiffs' opposing brief, and is necessary to address these issues, which are not discussed in the initial brief. Defendants believe that the reply brief will assist the Court in resolving the instant motion, which will be considered at a hearing before Judge Robreno on September 9, 2010.

Respectfully submitted,

By: /s/ Laurence Z. Shiekman

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Attorneys for Defendants Linden Research, Inc. and Philip Rosedale

Dated: September 2, 2010

EXHIBIT “A”

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

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, Plaintiffs, v. LINDEN RESEARCH, INC. a corporation, and PHILIP ROSEDALE, an individual, Defendants.	)	Civil Action No. 20-cv-01679-ER

REPLY IN SUPPORT OF DEFENDANTS LINDEN RESEARCH, INC. AND PHILIP ROSEDALE'S MOTION TO DISMISS UNDER RULE 12(B)(6) OR IN THE ALTERNATIVE TO TRANSFER PURSUANT TO 28 U.S.C. § 1404(A)

Despite Plaintiffs' fixation with the long-resolved *Bragg* case, this is a different matter, brought by different plaintiffs with different claims, and subject to an entirely different contract. In *Bragg,* this Court invalidated an arbitration provision that would have required a single plaintiff, who filed a small claims case in Philadelphia, to travel to San Francisco to litigate that claim. Linden has since replaced that provision with one that allows plaintiffs with claims for less than $10,000 to bring those claims via non-appearance, telephonic arbitration, and sets venue in San Francisco only in cases seeking substantial damages, such as this one, which purports to seek in excess of $5 million in damages. That venue provision, which is modeled on eBay's venue terms, has been considered and upheld by numerous courts, including this one.[1] Plaintiffs, in contrast, have identified no case in which that provision has been invalidated.

The question before this Court is simple: Should Mr. Evans, despite having knowingly agreed to jurisdiction and venue in California **dozens of times***,* nonetheless be entitled to ignore those contracts. The answer is clearly "no." Mr. Evans, the only party with any connection to this District, has contracted to bring his claims elsewhere, and those contracts should be enforced.

None of Plaintiffs' arguments to the contrary have any merit. The fact that this Court invalidated a prior, entirely different arbitration and venue provision is irrelevant. So are Plaintiffs' arguments that other provisions of the Terms of Service are somehow unconscionable, or that Mr. Evans was previously a party to earlier agreements. And as to the actual terms at

[1] *See* cases cited in Defs.' Mot. to Dismiss Under Rule 12(b)(6) or in the Alternative to Transfer Pursuant to Rule 28 U.S.C. § 1404(a) (Dkt. No. 11) ("Motion") at 9-12; *see also Tricome v. eBay, Inc.*, Civ. A. No. 09-2492, 2009 WL 3365873 (E.D. Pa. Oct. 19, 2009)*; Universal Grading Serv. v. eBay, Inc.*, No. 08-cv-3557, 2009 WL 2029796 (E.D.N.Y. June 10, 2009)*; In re eBay*, No. 09-10-00265-CV, 2010 WL 2695803 (Tex. App. July 8, 2010) (mandamus enforcing eBay venue provision); *TradeComet.com LLC v. Google*, 693 F. Supp. 2d 370 (S.D.N.Y. 2010).

issue here, although Plaintiffs largely fail to address them, they have been uniformly and repeatedly found valid and enforceable by every court to have considered them.

I. EVANS IS BOUND BY THE CURRENT TERMS OF SERVICE

Plaintiffs' first attempt to avoid the venue agreement is an argument that some of the Plaintiffs had older accounts that were previously subject to an earlier version of the Terms of Service, that modifications to those agreements were not supported by consideration, and thus that there is no governing venue provision. The terms of the previous agreement, however, are irrelevant here: The **current** terms of service, which Mr. Evans agreed to in creating some thirty **new** user accounts (many of them under fraudulent identities) provide that the venue and arbitration provisions apply to "this Agreement **and the relationship between you and Linden Lab.**" Those agreements also expressly supersede prior versions. (*See* Terms of Service ¶ 13.3, Declaration of John Rountree (submitted with Motion) ("Rountree Decl.") Exh. A.) The fact that Mr. Evans previously entered into other agreements does not alter the analysis: He is subject to multiple agreements that he will bring **any** claims relating to the relationship between him and Linden in conformance with those contracts.[2]

[2] Moreover, requiring users to agree to updated terms of service from time to time is a near-universal standard in electronic commerce, and is a business necessity lest different users be subject to different agreements. *See, e.g., ProCD, Inc. v. Zeidenberg*, 86 F.3d 1447, 1451 (7th Cir. 1996) ("[s]tandardization of agreements serves many of the same functions as standardization of goods and services; both are essential to a system of mass production and distribution. Scarce and costly time and skill can be devoted to a class of transactions rather than the details of individual transactions.") (quoting Restatement (2d) of Contracts § 21 cmt. a (1981)). Neither is there merit to the argument that there was no consideration for the modified venue provisions: *See, e.g., Beauticontrol, Inc. v. Burditt*, Civ. A. No. 01-0744, 2001 WL 1149360, at *4 (N.D. Tex. Sept. 26, 2001) (replacement contract does not require different consideration); *Wilson of Wallingford, Inc. v. Reliable Data Sys., Inc.*, Civ. A. No. 95-6686, 1995 WL 734232, at *2 (E.D. Pa. Dec. 5, 1995) (party is presumed to have received appropriate consideration for a forum selection clause).

II. THE OTHER NON-RESIDENT PLAINTIFFS' CHOICE OF FORUM IS AFFORDED LESS DEFERENCE

It is well-established that a plaintiff's choice of forum is afforded less deference when the plaintiff has chosen a foreign forum. *See Piper Aircraft Co. v. Reyno,* 454 U.S. 235, 255-56, 102 S. Ct. 252, 266 (1981) ("a foreign plaintiff's choice deserves less deference"); *see also Agrotors, Inc. v. Bell Helicopter Textron, Inc*., Civ. A. No. 03-4345, 2004 WL 438654, at *4 (E.D. Pa. Mar. 8, 2004) (the deference afforded to a plaintiff's choice of forum is lessened where the plaintiff does not reside in the forum state); *L.C. Baron, Inc. v. H.G. Caspari, Inc*., 678 F. Supp. 100, 103 (E.D. Pa. 1987) (same); *New Image, Inc. v. Travelers Indem. Co*., 536 F. Supp. 58, 59 (E.D. Pa. 1981) ("the force of the rule [that a plaintiff's choice of forum should be accorded substantial weight] is substantially attenuated where the chosen forum is not the plaintiff's place of residence"); *Nextel Spectrum Acquisition Corp. v. Burlington County Coll*., Civ. A. No. 07-2270, 2007 WL 4554231, at *2 (E.D. Pa. Dec. 27, 2007) (same); *Tongue v. Olin Corp*., Civ. A. No. 94-1951, 1994 WL 263709, at * 2 (E.D. Pa. June 14, 1994) (same). Aside from Mr. Evans, no other plaintiff resides within the Eastern District of Pennsylvania: Mr. and Mrs. Spencer reside in Florida and Ms. Carter resides in Wisconsin.

III. THE VENUE PROVISION IS VALID AND ENFORCEABLE

A. The Proper Legal Standard

The sole question for the Court to decide on this motion is whether to uphold the normal presumption that a forum selection clause is prima facie valid, or whether Plaintiffs have instead made a "strong showing" that (1) the forum selected is "so gravely difficult and inconvenient" that the party "will for all practical purposes be deprived of his day in court" or (2) the clause was procured through "fraud and overreaching." *Foster v. Chesapeake Ins. Co*., 933 F.2d 1207, 1219 (3d Cir. 1991) (quoting *M/S Bremen v. Zapata Off-Shore Co*., 407 U.S. 1, 15,

18 , 92 S. Ct. 1907, 1916, 1918 (1972)). If the contract is challenged as unconscionable, "[t]he party challenging the contractual provision has the burden to prove unconscionability." *Feldman v. Google Inc.*, 513 F. Supp. 2d 229, 240-41 (E.D. Pa. 2007) (citing *Crippen v. Cent. Valley RV Outlet, Inc.*, 124 Cal. App. 4th 1159, 1165 (Cal. Ct. App. 2004)); *Engalla v. Permanente Med. Group, Inc*., 15 Cal.4th 951, 972 (Cal. 1997) (party challenging contract on unconscionability grounds failed to carry burden). Plaintiffs cannot meet that burden.

Plaintiffs attempt to obfuscate the proper standard to be applied in this motion by arguing that this case is nothing more than a repeat of *Bragg*. But it is not. In *Bragg*, the Court applied a Rule 56(c) summary judgment standard to the question whether a valid agreement to arbitrate exists between the parties, resolving all reasonable doubts and inferences in favor of the party opposing arbitration (*i.e*., Bragg). *Bragg* Order at 24-25. In applying that standard, the Court noted that there was no presumption or policy that favored the existence of a valid arbitration agreement. *Id.* at 25. Here, by contrast, the question is the enforceability of a venue provision, not an arbitration clause, and Plaintiffs bear the burden of showing unconscionability. As set forth herein, they cannot meet that burden.

B. Procedural Unconscionability

Plaintiffs contend that this Court should find the Terms of Service to be a contract of adhesion and therefore procedurally unconscionable. First, as Plaintiffs' own authorities show, courts (including in this and other districts) routinely hold that a contract is not necessarily one of adhesion simply because it is a form contract. *See, e.g*., *Tricome*, 2009 WL 3365873, at *3 (holding that eBay's "User Agreement [whose forum selection clause mirrors the forum selection clause in Linden's modified Terms of Service] is not a contract of adhesion because of its Forum Selection Clause"); *Universal Grading Serv.*, 2009 WL 2029796 (upholding eBay

venue provision); *Nazaruk v. eBay, Inc.*, No. 06CV242, 2006 WL 2666429 (D. Utah Sept. 14, 2006), *affirmed* 223 F. App'x 815 (10th Cir. 2007) (same). Indeed, the United States Supreme Court has explicitly held that a forum selection clause in a standardized, non-negotiable contract is quite permissible. *See Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 593-94, 111 S. Ct. 1522, 1527 (1991) (finding the non-negotiable forum selection clause to be acceptable because the cruise line had a special interest in limiting fora as it could be subject to suit in many locales); *see also Great W. Mortgage Corp. v. Peacock*, 110 F.3d 222, 229 (3d Cir.1997) (illustrating that more than a disparity in bargaining power is needed in order to show that an agreement was not entered into willingly); *Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 7 F.3d 1110, 1118 (3d Cir. 1993) (same).

In *Feldman v. Google*, this district court applied California and Pennsylvania law to the question whether a similar forum selection clause was unconscionable, and held that it was not. *Feldman*, 513 F. Supp. 2d at 241. There, the plaintiff argued that Google's AdWords Agreement was unconscionable because it was a contract of adhesion which was not negotiated at arm's length and was offered on a "take it or leave it" basis, without an opportunity to bargain. Internet users had to agree to the terms in order to activate an AdWords account and purchase AdWords. *See id*. at 240. Feldman also argued that, although there were other Internet service providers offering similar services, only Yahoo offered comparable advertising and Yahoo's sign up system was similar to Google's, so he was deprived of any meaningful choice. *Id*. The Court rejected these arguments and held that the AdWords Agreement was not procedurally unconscionable because the plaintiff "was not in any way pressured to agree to the AdWords Agreement, was capable of understanding the Agreement's terms, consented to them, and could have rejected the Agreement with impunity." *Id*. at 241.

The *Tricome* court also addressed the question of unconscionability and whether the plaintiff had a meaningful choice in rejecting eBay's forum selection clause. It held:

> Agreeing to the User Agreement, and thus all of its terms, was not necessary for Plaintiff; instead, Plaintiff did so merely to increase his business opportunities (and thus, his profits). Plaintiff had the opportunity to carefully read the User Agreement and reject the terms contained therein. However, he accepted the User Agreement. Moreover, eBay did not engage in high pressure tactics or put external pressure on Plaintiff to accept the User Agreement-it simply made the opportunity available to the general public. Here, Plaintiff-an experienced businessman-sought out eBay's services, chose to become a registered user of eBay, and by doing so acknowledged that he had read and agreed to the terms of the User Agreement, including the Forum Selection Clause.

Tricome, 2009 WL 3365873, at *3.

Linden's forum selection clause, which contains virtually the same language as the forum selection clause examined in *Tricome*, is not procedurally unconscionable for similar reasons. It is undisputed that Second Life users had full notice of its terms in plain English. The terms were not hidden: They were presented at the login screen and called out in their own section of the Terms of Service under the bolded heading "Dispute Resolution." In Mr. Evans' case, his repeated references to the Terms of Service, and to the dispute resolution provisions in particular, demonstrate that he was fully aware of the provision's terms. (Rountree Decl. ¶¶ 15-17 and Exh. I.)[3] He then accepted them over and over again. Nothing compelled Mr. Evans to join Second Life: Just as the *Tricome* and *Feldman* plaintiffs had meaningful choices (despite their arguments to the contrary), Mr. Evans and the other plaintiffs had the full panoply of choices in alternative forms of entertainment, Internet sites from which to purchase virtual items

[3] Even if Mr. Evans hadn't confirmed his knowledge of the terms of his contracts, courts presume such terms have been "reasonably communicated" to the user where (as here) the user has assented to the terms by "clickthrough." *See, e.g.*, *Universal Grading Serv.*, 2009 WL 2029796, at *12 (eBay venue provision); *Person v. Google Inc.*, 456 F. Supp. 2d 488, 493 (S.D.N.Y. 2006) (enforcing clickthrough venue provision); *Novak v. Tucows*, No. 06-cv-1909, 2007 WL 922306, at *7-9 (E.D.N.Y. 2007).

or participate in a virtual world, or engage in whatever activity motivated their individual decisions to accept Linden's Terms of Service. Simply put, he didn't have to choose to "play Second Life," which he considers "in the end just a game." (Rountree Decl. Exh. I, Ticket 4051-6839913.) Having chosen to, he cannot write his own rules.

C. Substantive Unconscionability

Plaintiffs wrongly contend that enforcing the venue provision will somehow deprive Mr. Evans of his "day in court," on the theory that he cannot be expected to bring a "$30 to $50" claim in San Francisco.[4] This argument simply ignores both the dispute resolution provisions at issue and the nature of this case. For any claim of less than $10,000, the Terms of Service provide for low cost, non-appearance-based arbitration that expressly excludes any requirement of personal appearance anywhere. Mr. Evans was and is free to avail himself of that option. Instead, he has chosen to bring a putative class action on behalf of millions of users, self-described as seeking in excess of $5 million dollars. There is no injustice in asking sophisticated plaintiffs' counsel to bring an allegedly multi-million-dollar case in the proper forum. Thus, the factors which led to the Court's finding of substantive unconscionability in the *Bragg* case simply are not present here.

Plaintiffs' cited authorities support this conclusion. In *Tricome*, the court concluded that eBay's forum selection clause was not substantively unconscionable because "it is not so unduly one-sided so as to shock the conscience." *Tricome*, 2009 WL 3365873, at *3. The Court noted that eBay "operates around the world and it not shocking for it to want to focus its legal defense in a particular forum rather than have to litigate in potentially hundreds or thousands of other jurisdictions." *Id.* The Court also noted that the forum selection clause

[4] Not surprisingly, none of the other Plaintiffs' declarations assert that litigating this action in San Francisco as opposed to Philadelphia will deprive them of *their* day in Court.

"conserves litigant and judicial resources by dispelling confusion over where suits are to be brought; this is not a □shocking□ motive or result." *Id*. Finally, the Court reiterated the plaintiff's "meaningful choice not to accept" insofar as "he sought to use eBay merely to augment an existing business." *Id*.

The *Feldman* court, which analyzed the unconscionability of Google's AdWords Agreement under California law, also found those provisions to be *not* substantively unconscionable. There, the plaintiff argued that the agreement contained unilateral clauses—including the forum selection clause (which requires that all billing disputes be adjudicated in California), a disclaimer of all warranties and limiting liabilities and a requirement that claims relating to charges be brought within sixty days of the charges—the effect of which was alleged to discourage meritorious litigation regarding billing disputes. Relying on the Supreme Court's holding in *Carnival Cruise Lines, Inc. v. Shute*, the *Feldman* court held that Google's forum selection clause neither was unreasonable nor shocks the conscience:

As Plaintiffs have not met their burden of persuasion as to unconscionability, the Court should uphold Linden's modified Terms of Service, and in particular, the forum selection clause at issue here, as valid.[5]

> As the United States Supreme Court has found, a forum selection clause in a standardized, non-negotiable contract may be permissible for several reasons, reasons which apply here. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 593-94, 111 S.Ct. 1522, 113 L.Ed.2d 622 (1991). Just as a cruise line has a special interest in limiting fora because it could be subject to suit

[5] As this Court noted in *Bragg*, under California law, "a contract may provide a 'margin of safety' that provides the party with superior bargaining strength protection for which it has legitimate commercial need." *Bragg* Order at 40. Defendants believe that policy reasons cited by the *Feldman* and *Tricome* courts are similarly applicable to Linden's legitimate commercial needs and are sufficient to support a finding that Linden's dispute resolution mechanism is not unconscionable. However, should the Court disagree, Defendants respectfully request an opportunity to adequately brief this issue. Cal. Civ. Code Section 1670.5 (when a contract is alleged to be unconscionable, "the parties *shall* be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.") (emphasis added).

> where its passengers come from many locales, Defendant has the same interest where its internet users are located across the United States and the world. *See id*. at 593, 111 S.Ct. 1522. Another benefit of such a forum selection clause is that it dispels confusion over where suits are to be brought, conserving both litigant and judicial resources. *Id*. at 593-94, 111 S.Ct. 1522. Finally, just as for the passengers in *Carnival Cruise Lines*, the benefits of such a forum selection clause may be passed to internet users in the form of reduced rates for services, because of savings enjoyed by internet service providers by limiting the fora for suit. *See id*. at 594, 111 S.Ct. 1522. Plaintiff's argument that the terms discourage litigation of billing disputes thus is not persuasive, especially where Defendant's principal place of business is in California. See *Barnett v. Network Solutions, Inc.,* 38 S.W.3d 200, 204 (Tex.App.2001) (citing *Carnival Cruise Lines*, 499 U.S. at 594, 111 S.Ct. 1522).

D. THE *JUMARA* FACTORS FAVOR TRANSFER

Even if the Court were to find the forum selection clause invalid, the balance of *Jumara* factors still weigh in favor of transfer. Defendants are not required to show "'truly compelling circumstances' for a change of venue, but rather that 'all relevant things considered, the case would be better off transferred to another district.'" *Nextel Spectrum Acquisition Corp.*, 2007 WL 4554231, at * 2 (citations omitted). Defendants easily satisfy that threshold.

First, as Plaintiffs recognize, in a putative class action where all of the operative facts common to the putative class occurred in California, the fact that one of the named plaintiffs resides in this district is accorded little deference. (Opp'n at 29, Motion at 17-18.) That is so regardless of the existence of a forum selection clause. Plaintiffs cite no authority to the contrary and instead request discovery. However, the relevant cases were decided on the basis of the nationwide class allegations alone, not on the basis of discovery relating to the location of the class members. Furthermore, as set forth above, the choice of venue in this District of the three plaintiffs who do not reside here is entitled to no deference.

Second, the indisputable locus of events in this case is California. Plaintiffs' contention that the facts occurred in the Eastern District of Pennsylvania because Mr. Evans interacted with Defendants from his home in Philadelphia ignores the other three named Plaintiffs as well as the putative class members' interactions with Defendants. Nor do Plaintiffs refute the well-established authority in this District that where the alleged harm arises from policy decisions of a corporate defendant, as is alleged here, the defendant's headquarters can be considered the place where events giving rise to the claim occurred. (Motion at 19.)

Lastly, it is indisputable that a court sitting in California is more familiar with California law than a court sitting in any other state, particularly where the claims arise from alleged violations of California statutes. The fact that the *Bragg* case was litigated in this forum is irrelevant: That case resolved before the merits of the claims was litigated, and importantly, those claims were asserted by an individual, not by a "geographically dispersed" national class.

IV. DISCOVERY

Finally, Plaintiffs suggest that this Court should defer ruling on this motion until they can take discovery, purportedly to determine whether other Second Life users reside in this District. That is a red herring, as there is no authority to support Plaintiffs' request. The First Amended Complaint asserts that the "tens of thousands, if not millions" of class members are "geographically dispersed throughout the United States." (FAC ¶176.) Defendants are not aware of any authority allowing discovery on a venue motion to determine the distribution of the alleged class, and Plaintiffs do not cite any. The only relevant question is whether a plaintiff who seeks to bring claims on behalf of a national class is entitled to great deference on his choice of home forum, and courts in this and other districts uniformly hold that he is not, for the obvious reason that the members of the purported class are likely to be found all over the country.

(Motion at 17-18.) At the end of the day, there is only one party to this lawsuit who lives in this District: Mr. Evans, who has contracted repeatedly to bring his claims elsewhere.

V. CONCLUSION

For the reasons set forth in Defendants' motion and herein, Defendants respectfully request that this action be dismissed, or in the alternative transferred to the District Court for the Northern District of California.

Respectfully submitted,

By: */s/ Laurence Z. Shiekman*

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Attorneys for Defendants Linden Research, Inc. and Philip Rosedale

Dated: September 2, 2010

CERTIFICATE OF SERVICE

I, Laurence Z. Shiekman, hereby certify that on September 2, 2010, a copy of the foregoing Motion For Leave to File Reply in Support of Defendants Linden Research, Inc. and Philip Rosedale's Motion to Dismiss Under Rule 12(b)(6) or in the Alternative to Transfer Pursuant to 28 U.S.C. § 1404(a), and supporting documents, has been electronically filed with the Clerk of the Court using CM/ECF, which shall send notification of such filing to the following:

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Attorney for Plaintiffs

/s/ Laurence Z. Shiekman
Laurence Z. Shiekman

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