

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NOV 04 2008

LAWRENCE K. BAERMAN, CLERK
ALBANY

<hr/> <hr/> <p>RICHARD MINSKY, an individual, d/b/a SLART® ENTERPRISES,</p> <p style="text-align: right;">Plaintiff</p> <p>vs.</p> <p>Linden Research, Inc., d/b/a Linden Lab®, a Delaware corporation, John Doe (a/k/a Victor Vezina), an individual, Philip Rosedale, an individual, Mitchell Kapor, an individual, other Does, presently unknown to Plaintiff</p> <p style="text-align: right;">Defendants</p> <hr/> <hr/>	<p>Civil Case No.: 08-CV-819</p> <p style="text-align: center;">LEK/DRH</p> <p>PLAINTIFF'S RESPONSE TO MOTION TO DISMISS OF DEFENDANTS PHILIP ROSEDALE AND MITCHELL KAPOR</p>
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MEMORANDUM OF LAW

PRELIMINARY STATEMENT

Defendants Mitchell Kapor (“Kapor”) and Philip Rosedale (“Rosedale”) submitted a Memorandum of Law on October 10, 2008, purporting that the Plaintiff Richard Minsky (“I” or “me”) failed to state a claim upon which relief may be granted.

Their Memorandum is flawed in its facts, its logic, and its application of case law. I did meet the Federal and State requirements for pleading a fraud claim. The case law cited in the Motion for Dismissal supports the validity of my Claims Four and Five. Judge Mordue’s decision in the cited case indicates that the Defendants’ Motion to Dismiss should be denied.

DEFENDANTS MISSTATED THE ALLEGATIONS

At the beginning of the time covered in the Complaint, Defendant Kapor was Chairman of Linden Research, Inc. ("Linden") and Defendant Rosedale was Chief Executive Officer (CEO). There exists in their actions "unity of interest and ownership," "wrongful conduct" and "proximate cause." In addition to any statements made by them as individuals, they are responsible for statements issued "anonymously" by Linden, including the Press Release of November 14, 2003. Linden is a privately held corporation, and the actions of these two investors, who were also the two officers responsible and liable for strategic planning and day-to-day decisions, inured directly to their benefit. By condoning infringement of my trademark and other tortious acts that violated my Intellectual Property rights they engaged in wrongful conduct. They directed their legal staff to act on their behalf, and it is the Defendants' policy decisions that are being effectuated by their employees. The Defendants' actions have directly harmed me by confusing consumers as to the origin of goods or services I did not create, weakening my trademark, interfering with my ability to conduct business, redirecting consumers who are looking to buy at my gallery to spend their money elsewhere, and encouraging others to make my mark a term in widespread use, thereby endangering its value as a mark.

In the second paragraph of the "Allegations" section, Defendants repeat for the umpteenth time the canard of my SLART trademark application history with the USPTO that they foisted on the Court in their failed attempt to dissolve the TRO (Dkt 15), which I answered September 10, 2008 (*see generally* Dkt 20) and incorporate that answer herein by reference. Besides being a false version of the history of my trademark, it is irrelevant to the present motion.

FLAWS IN DEFENDANTS' ARGUMENT

1. CLAIMS FOUR AND FIVE DO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

Defendants argue that Claims Four and Five should be dismissed because they fail to state a claim upon which relief may be granted. They say that I did not meet either the Federal or State requirements. I did meet the requirements, as shown below, with sufficient facts to establish a fraud claim, and additional factual evidence will emerge following Discovery.

A. The Particularity Requirements of Rule 9(b)

9(b) Fraud or Mistake; Condition of Mind.

In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

In writing the Complaint I followed the "Instructions for Filing a Complaint" provided by this Court, which state "Your complaint should not contain legal arguments or case citations." Although I did not state the legal arguments, I did consider five factors before filing the Fraud Claims: (1) a false statement of a material fact, (2) knowledge on the part of the defendant that the statement is untrue, (3) intent on the part of the defendant to deceive the alleged victim, (4) justifiable reliance by the alleged victim on the statement, and (5) injury to the alleged victim as a result. These factors are addressed in Claims Four and Five and elsewhere in the Complaint.

(1) The false statements of material fact are that the Defendants claimed I could start a business in Second Life, make real money doing so, and they would

preserve my Intellectual Property (IP) rights (Complaint ¶¶ 56- 58, 61-62, and Exhibit A):

“...I got involved very very early as the first investor and helping Philip think things through back in 2000.” ... “So Second Life at age five serves many purposes. It is a means of economic empowerment, it is a creative outlet and as you know, many people around the world are making a living on their creative work they love doing in Second Life.”

Mitch Kapor on July 7, 2008, in a speech celebrating the fifth anniversary of SL,

Defendants Rosedale and Kapor issued a Press Release on November 14, 2003 (Complaint ¶ 58), making the statement:

“Linden Lab Preserves Real World Intellectual Property Rights of Users of its Second Life Online Service” (*Exhibit A*)

The press release also contains statements by Defendant Rosedale concerning the preservation of IP rights, including:

"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."

quoting Defendant Rosedale at The New York Law School "State of Play" conference in November, 2003

Additional statements by these Defendants concerning preservation of IP rights and the likelihood of making real money from these rights by starting a business in Second Life will emerge as this case proceeds. At the time I entered Second Life in November of 2006 and started a business there, these promises were a cornerstone of Defendants' publicity (*see* Complaint Exhibit A).

(2) Enactment of the Brand Center License Policy on March 24, 2008 proves that Defendants knew their statements were untrue. Not only did the Defendants fail to

preserve my IP rights, they demanded that I abandon my rights and claimed them as their own after I made them valuable (Complaint ¶¶ 59 and 63). They stated that they refused to recognize my IP rights and tried to coerce and entice me into abandoning my Intellectual Property rights and adopting their License, which is based on claims that are of questionable validity (Complaint ¶ 28- 33).

(3) In order to prove intent to deceive, I need to have discovery. However, intent to deceive is likely, given the Defendants' actions. Defendants hold their own IP interests above those of the users of its service (*see* Dkt. 20 generally, and Dkt. 20 Exhibit A; and Complaint Exhibit D), yet they still make statements that are materially false concerning this (*see* statement by Kapor in (1) above).

Kapor is an experienced entrepreneur, and as a sophisticated player understands the stages of development of a company like Linden. It is widely believed or speculated that Linden is engaged in the purge of SL names as part of its preparation for an Initial Public Offering. Whether that is the case or there are other motivations in his game plan are subject to discovery, along with other evidence that addresses general allegations of "malice, intent, knowledge, and other conditions of a person's mind."

It's like the landlords who encouraged artists to rent lofts in run down neighborhoods, like SOHO or TriBeCa in Manhattan, in order to have them fix the places up and make the neighborhood attractive, and then tried to evict the artists, claiming they were living in the lofts illegally, so they could sell the lofts for millions as residential condos. The Loft Board was formed to protect the living loft rights of the artists, but there is no agency other than the Court to protect my IP rights from the Defendants.

Defendants promoted the notion that Linden would protect the IP rights of residents of SL in order to get the residents to build this online world for the Defendants and make the Defendants' investment valuable. That included encouraging residents to start businesses, including many businesses that used the letters SL to identify their products and services. Now the Defendants are systematically coercing residents into changing the names of their businesses, including residents who included SL in their business names long before Defendants claimed it as a mark.

(4) I relied on the Defendants' statements, which sounded reasonable, that I could start a business in Second Life, I would retain ownership of Intellectual Properties in Second Life, and that it was their policy to preserve my rights in those Properties (see Complaint Exhibit A, and attached Exhibit A). On the basis of those statements I entered Second Life, started a business there, created Intellectual Property, and have spent almost two years of my life developing value in the SLART brand. I paid the Defendants to advertise the SLART brand for my services and products, which helped make them valuable (Dkt. 38, Exhibit B and Dkt. 10, Exhibit A). At the time I developed the SLART brand there was no indication that the Defendants would claim it after I gained widespread recognition for it.

It took a Court action to get the Defendants to recognize my rights, and the two individual Defendants Rosedale and Kapor are and were the decision makers at the head of this privately held corporation. They initiated or condoned the fraudulent actions. Kapor's history as the founder of the Electronic Frontier Foundation added credibility to the claim that they would preserve my IP rights (Complaint ¶ 56).

(5) Defendants have injured me in several ways through their actions (Complaint ¶ 51). By encouraging and condoning trademark infringement Defendants caused confusion among consumers as to the origin of goods and services that use my SLART brand. Defendants encouraged others to use my brand on their products and services and encouraged others to use it descriptively, claiming it is the same as SL art, after the USPTO ruled that it is distinct. The use by others of my brand has been shown (Dkt. 10, Exhibit A) to bring others' businesses ahead of mine in searches specifically seeking my brand, which encourages those seeking to purchase from me to spend their money elsewhere. I have no way of calculating the enormity of these losses. In the complaint I assigned an arbitrary value of \$1,000 per day to each of these claims, commencing April 24, 2008 (Complaint, ¶ 73). That figure represents less than I am paid for a one hour lecture.

In order to defend my brand from the Defendants' onslaught my only recourse is this legal action, which takes a huge amount of my time, and reduces my ability to provide the goods and services that earned the SLART brand its widespread recognition for the highest quality of content and production.

In order to grow my business I need venture capital, and Defendants' refusal to stop infringing uses of my brand, their telling me I must stop approaching their users who infringe my brand, their refusal to serve notices on infringing users I have no other way of properly serving, and their claims that they own my SLART brand, all make it difficult or impossible to find investors who would be willing to risk capital on Slart Enterprises. It is only because of the Temporary Restraining Order by Consent, and the Preliminary

Injunction by Consent that is now in place, that the Defendants are enjoined from their tortious behavior.

At the time I started using SLART, and right through my trademark application, including the opposition period, the Defendants did nothing to suggest to me that they had any problem with my brand name. They waited until I had spent a huge amount of time creating value in this brand before claiming it was theirs.

B. The Elements of Fraud under New York Law

The above pages 1 through 7 also address the issues Defendants raise in their Section B and are included herein by reference. The plain English factors listed above (p. 3, I, A) that I considered when writing the Complaint appear to me to be identical in meaning to those cited by Defendants in the first paragraph of their section B (*Zanett*).

The presentation in the Complaint satisfies the *necessary* and *sufficient* conditions of a fraud claim. I did present exact quotes that are materially false (*see* p. 4, (1) above). The Defendants quote *Acito* and *Sweringen*, that I may either “cite facts showing both a motive for committing fraud and a clear opportunity for doing so,” or “identify circumstances indicating conscious or reckless misbehavior by the defendants.” I have shown that above in my responses to Section A on pp. 4-5, marked (2) and (3).

The statement by Defendant Kapor quoted in Complaint ¶ 57 is an admission that he and Rosedale developed the strategy for Linden as far back as 2000, and that he was the first investor. That establishes "unity of interest and ownership." On November 14, 2003, when the Press Release (PR) “Linden Lab Preserves Real World Intellectual Property Rights of Users of its Second Life Online Service” [Exhibit A] was issued,

Defendant Kapor was Chairman of Linden and Defendant Rosedale was CEO. The PR states that Kapor became Chairman in April, 2003.

Defendants admitted the statements on their website, and still continue to make claims to preserving users' IP rights, despite the evidence to the contrary, such as my present case and Linden's March 24, 2008 Brand Center Policy.

They have been using that policy to coerce users, who had in good faith built businesses identified by names and brands using "SL" as part of their name, to abandon business names and marks that had been in use for years before Linden made any public claims to SL as a mark. To do this they required users to agree to Terms of Service that required the users to abandon their legal interests in their brands in favor of Linden (*see* SL Brand Center License, Complaint Exhibit D). Linden had up until that time advertised and promoted these user-created brands (*see* Dkt. 20, Exhibit A).

Defendants continue to demand that users must abandon brands that pre-date Defendants' claims to SL as a mark, and simultaneously continue claiming to preserve the users' Intellectual Property rights.

Defendants are attempting to coerce me into changing the name of my publication, which would lose the goodwill it has established, in order to expand their own power and influence; and control my content through their Brand Center Policy, which would violate my First Amendment rights.

Users of SL created valuable properties in Second Life, and failure to accept the Defendants' new Terms of Service after March 24, 2008 would keep users from access to those properties, including the "real money" the Defendants claimed the users would be able to earn from their businesses within Second Life, and other valuable properties

created by the users. This is a tortious attempt to deprive users of access to properties without due process and coerces the users into accepting the Terms of Service and Brand Center License, which relies on claims of rights that do not exist and makes requirements that harm the businesses of its users who created value through their creation of content in good faith.

Defendants go on to cite *Sweringen*, and chose to point out Judge Mordue's citing of *Primavera* and *Shields*. These suggest that pecuniary gain alone is not sufficient to infer fraudulent intent. The fraud claim in *Sweringen* had "generate greater revenues" as the only support for scienter.

Pecuniary gain is not the only factor inferring fraud with Kapor and Rosedale. Control of the term SL has become an obsession with the Defendants. Whether it is greed or something else that motivates the Defendants' strategy of having artists create their world and then make claims on the IP rights that they had promised to uphold, it has become a Policy of the Defendants and they systematically try to enforce it.

Defendants claim they cannot be guilty of fraud because they were entitled to dispute my rights in SLART. Due process is fundamental to law. In perpetrating their fraud the Defendants violated my constitutional right to due process. Even if Linden were entitled to dispute my rights in SLART, which is arguable, the entitlement to dispute rights is not the entitlement to violate them without due process of law. And that is exactly what the Defendants did when they supported infringement of my trademark. The Defendants decided my trademark was in the way of their control of everything that uses the letters SL, and appointed themselves judge and jury in their decision that my common

law and registered trademark was invalid. Linden also violated their own Terms of Service 5.1(b) (Dkt. 15, Exhibit A) by making a legal judgment in this matter:

(b) to the extent Linden Lab elects to resolve such disputes, it will do so in good faith based solely on the general rules and standards of the Service and will not make judgments regarding legal issues or claims;

Defendants, in an attempt to confuse the issues before this Court, make assertions regarding their attempt to cancel the SLART trademark, which is an action they brought before the Trademark Trial and Appeals Board (TTAB). Whatever the outcome of that procedure, it is irrelevant to the case at hand. The only relevant issue is that up to and including the outcome of the present case, and the TTAB case, Defendants are and were required by law to respect my rights in the SLART trademark. Defendants denied me my rights, in their self-interest.

Defendants also assert that I did not allege injuries in the Complaint that are based on harm caused by the statements of Kapor and Rosedale. Contrary to Defendants' assertions, the injuries were stated in the Complaint, and that is documented above in A(5) on pages 6 and 7.

It is reasonable to infer scienter in the present case from the facts presented, which give rise to a strong inference of fraudulent intent. It's hard to be more specific until Discovery on these Claims is completed. This is sufficient to support the denial of the Defendants' Motion to Dismiss. On the same page of the *Sweringen* decision, (Page 4, *4) cited by the Defendants, Judge Mordue also cites *Breard v. Sachnof & Weaver, Ltd.*, 941 F.2d 142, 143 (2nd Cir. 1991), "allegations of scienter ... are not subjected to the more exacting consideration applied to the other components of fraud." Also *Cohen v. Koenig*. 25 F.3d 1168, 1173 (2nd Cir. 1994) Nevertheless, there must exist a "minimal

factual basis for... conclusory allegations of scienter.” And *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1057 (2nd Cir. 1993) “In fact, conclusory allegations of scienter are sufficient ‘if supported by facts giving rise to a strong inference of fraudulent intent.’”

The factual allegations in my complaint provide a basis for all the Federal and State factors for establishing fraud. These facts, when supplemented by additional evidence and information revealed through Discovery, will prove the fraud allegations indisputably. Therefore the Defendants’ Motion to Dismiss should be denied. In *Sweringen*, Judge Mordue also quotes (Ibid., Page 2) *Gregory v. Daly*, 243 F.3d 687, 691 (2nd Cir. 2001). When considering a motion to dismiss a complaint under Rule 12(b)(6), a court “ ‘must accept as true all of the factual allegations set out in plaintiff’s complaint, draw inferences from those allegations in the light most favorable to plaintiff, and construe the complaint liberally.’ ” And further, quoting *Conley v. Gibson*, 355 U.S. at 45-46 (1957) A court may not dismiss an action “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [its] claim which would entitle it to relief.” Judge Mordue also cites *Todd v. Exxon Corp.*, 275 F.3d 191, 198 (2nd Cir. 2001), “ ‘[T]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.’ ”

Judge Mordue’s final decision (Ibid., Page 4) after considering all the quoted precedents, including *Primavera* and *Shields*: “Accordingly, defendant NYSDRA’s motion to dismiss the second cause of action is denied.”

Therefore, the motion of Defendants Kapor and Rosedale to dismiss Claims Four and Five should be denied.

II REGARDING LEAVE TO AMEND CLAIMS FOUR AND FIVE

My responses above are incorporated herein by reference. The Defendants, in keeping with their failure to address the issues in the Complaint, cite several irrelevant cases in an attempt to get the Court to dismiss Claims Four and Five with prejudice. My Claims Four and Five are substantive. If there is a defect in the way I presented the Claims that requires them to be presented differently, amendment would not be “futile” as the Defendants suggest. The five factors were stated clearly enough in the current version of the Complaint, however, that Defendants’ motion should be denied, and I should be entitled to offer further evidence to support my claims if necessary. Therefore the Court should allow me leave to amend the Claims if so required in the interest of Justice.

In particular, many more statements by the Defendants may be presented regarding people starting a business in Second Life and making real money with the ownership of Intellectual Property rights that the Defendants would preserve. The Defendants have not denied these statements, which they have been making for five years, and they continue to make them.

Discovery will reveal the details of how and when the Policy decisions were made that led to Defendants’ actions concerning their attempts to appropriate my Intellectual Property, as well as the Policies that involved appropriating Intellectual Properties in general, of which mine are a prominent example, and that will reveal the knowledge of the Defendants that their statements about preserving Intellectual Property rights were false and misleading.

Discovery also will reveal Defendants' intent to deceive, by showing that they had knowledge of their plans to acquire control of Intellectual Properties, such as trademarks and business names that include the letters SL, at the same time as they were making public statements that they were preserving Intellectual Property rights. Discovery therefore will prove scienter beyond inference.

Defendants argue that my contention that Kapor and Rosedale are individually liable for fraud "strains the bounds of good faith pleading." Defendants' public statements induced me to enter Second Life, start a business, create an Intellectual Property, a common law trademark, apply for and be awarded registration of that trademark, build brand awareness, and after my brand became widely known and valuable they are trying to take it and encourage infringement of it using their corporate entity and employees. This harms me. This is part of a strategy and policy created by or condoned by Kapor and Rosedale, who are and were in a position to set both strategy and policy. This is not stretching the bounds of good faith pleading.

Defendants had an opportunity to oppose my mark, and if they felt it were harmful to them, that would have been the time to make their claim. They have an obligation to oppose a registration they have issues with during the opposition period. They have specialized attorneys representing them in matters before the USPTO who are supposed to know that. It is wrongful for the Defendants to encourage me to build value in my mark and then claim it is theirs. They have no valid claim against me. They are making false claims of fraud in the registration process only for the reason that they are prohibited by law from making any other claims in their vendetta to get rid of my

trademark, as part of their attempt to make me the poster boy for “Do What Linden’s Lawyers Tell You to Do or You’ll Be Up To Your Ears in Mud.”

The law says that Trademark Registration is *prima facie* evidence of my rights. Defendants denied my rights because they were upset with themselves for deciding after I registered my trademark that they wanted it. Even if they truly believed they had grounds for petitioning for its cancellation, I have my rights in the mark. This was admitted in the TRO and Preliminary Injunction by Consent. At the time they denied my trademark rights these rights were in effect. The Defendants are sophisticated players and knew what they were doing. They willfully violated the law and my constitutional right to due process, and violated my Intellectual Property rights, which they had said they would support, and are guilty of fraud.

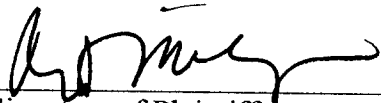
CONCLUSION

I did meet the pleading requirements of Federal Rule of Civil Procedure 9(b) and the essential elements of a fraud claim upon which relief may be granted under New York law.

Defendants provided case law that specifically states that the facts I included in my Complaint are the facts sufficient for a judgment of fraud, and a case with less substance than mine regarding scienter, but in which Judge Mordue nevertheless denied the Defendants’ Motion to Dismiss the Fraud Claim (Second Cause of Action) in the *Sweringen* decision. Therefore they knew before they filed the Motion to Dismiss that it should be denied.

I respectfully request the Court to deny the present Motion to Dismiss of Defendants Philip Rosedale and Mitchell Kapor.

DATED: NOVEMBER 4, 2008



Signature of Plaintiff

EXHIBIT A

LINDEN RESEARCH, INC. PRESS RELEASE OF NOVEMBER 14, 2003

copied from the lindenlab.com website on October 28, 2008

Second Life Residents To Own Digital Creations

Linden Lab Preserves Real World Intellectual Property Rights of Users of its Second Life Online Service

NEW YORK CITY (November 14, 2003): Linden Lab, creator of online world Second Life, today announced a significant breakthrough in digital property rights for its customers and for users of online worlds. Changes to Second Life's Terms of Service now recognize the ownership of in-world content by the subscribers who make it. The revised TOS allows subscribers to retain full intellectual property protection for the digital content they create, including characters, clothing, scripts, textures, objects and designs.

In addition, Second Life has committed to exploring technologies to make it easy for creators to license their content under Creative Commons licenses.

Speaking to an audience of digital rights specialists and virtual world enthusiasts at the NYLS "State of Play" conference, Founder and CEO Philip Rosedale described the new policy as a major breakthrough for users of online worlds.

"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."

Unlike traditional online game environments where anything created in-world is owned by the service provider, Second Life has responded to its residents' desire to own their work just as they would any other original creations. Under these terms they can create, and sell derivative works based on content they've made, or license the work to others.

Second Life residents began creating their world in October, 2002 as beta testers, and continued through commercial launch of the service in June 2003. In just over a year, more than 10,000 users have created a richly diverse world, filled with more than 200,000 objects, complex characters, a range of living situations from whimsical hobbit-

style homes to urban apartments, to sprawling mansions, and special recreational areas including a 40-ride amusement park and an island retreat. Everything in the world, from the antique carousel to the hot race cars to the resident-abducting alien spaceship was designed and built by the residents.

The economy supporting this activity includes over 12,000 objects for sale. Each month, nearly 100,000 user-to-user transactions for goods and services take place, with more than Linden\$19million in in-world currency changing hands.

"Linden Lab has taken an important step toward recognizing the rights of content generators in Second Life," said Lawrence Lessig, Stanford University Professor of Law, and Founder of the Stanford Center for Internet and Society. "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."

About Linden Lab

Based in San Francisco, Linden Lab was founded in 1999 by Philip Rosedale to create a revolutionary new form of shared 3D entertainment. The former CTO of RealNetworks, Rosedale pioneered the development of many of today's streaming media technologies, including RealVideo. In April 2003, noted software pioneer Mitch Kapor, founder of Lotus Development Corporation, was named Chairman.

Second Life launched in June 2003 after being named a Time Magazine "Coolest Invention of 2002" during its beta test. Currently available to all PC users via a download at www.SecondLife.com, the world of Second Life, which grows with the size of the community, is now close to 1000 virtual acres and by the end of 2004 should be as large as Manhattan. A Macintosh version is expected early in 2004.

About Creative Commons

A nonprofit corporation, Creative Commons promotes the creative re-use of intellectual works, whether owned or public domain. It is sustained by the generous support of The Center for the Public Domain, the Hewlett Foundation, and the John D. and Catherine T. MacArthur Foundation. Creative Commons is based at Stanford Law School, where it shares staff, space, and inspiration with the school's Center for Internet and Society. For general information, visit <http://creativecommons.org>.

Note to editors: Second Life and Linden Lab are trademarks or registered trademarks of Linden Research, Inc. All other trademarks are properties of their respective owners.

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL AND BY MAIL

NOV 4 2008

State of New York
County of Columbia

LAWRENCE K. BAERMAN, CLERK
ALBANY

Re: Civil Case No.: 08-CV-819 LEK/DRH Richard Minsky v Linden Research, Inc. et al

I, Richard Minsky, hereby certify that I am the plaintiff herein and served a copy of the following document:

PLAINTIFF'S RESPONSE TO MOTION TO DISMISS OF DEFENDANTS PHILIP ROSEDALE AND MITCHELL KAPOR

on Defendants' counsel: Janet Cullum, Daniel Hurteau and Andrew Rose
At the following e-mail addresses:

jcullum@cooley.com
ACRose@nixonpeabody.com
DHurteau@nixonpeabody.com

on the following date: NOVEMBER 4, 2008

and by first class U.S. Mail to

Janet L. Cullum
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1114 Avenue of the Americas
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Andrew C. Rose
Nixon, Peabody Law Firm - Albany Office
677 Broadway
10th Floor
Albany, NY 12207

by depositing a true and correct copy of said document(s) with the postal clerk on duty at the United States Post Office in Columbiaville, NY on the following date: NOVEMBER 4, 2008

I certify that the foregoing is true and correct.

DATED: NOVEMBER 4, 2008



Signature of Plaintiff