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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 EROS, LLC, a Florida Limited Liability
18 Company, and SHANNON GREI, d/b/a
19 Nomine, an individual, on behalf of
20 themselves and all others similarly situated,

21 Plaintiffs,

22 v.

23 LINDEN RESEARCH, INC., a Delaware
24 Corporation, and LINDEN RESEARCH
25 INTERNATIONAL, INC., a Delaware Corp.,

26 Defendants.

) Case No.

) **COMPLAINT FOR:**

) **(1) Copyright Act of 1976, 17**
) **U.S.C. §§ 101, 105, 115 and**
) **502;**

) **(2) Lanham Act, 15 U.S.C.**
) **§§ 1114, 1125;**

) **(3) Cal. Bus. and Prof. Code**
) **§ 17200;**

) **(4) Cal. Bus. and Prof. Code**
) **§ 17500; and,**

) **(5) Tortious Interference with**
) **Economic Relations.**

) DEMAND FOR JURY TRIAL
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COMPLAINT

1 Plaintiffs, by their attorneys, upon personal knowledge as to themselves and their own
2 acts and upon information and belief as to all other matters, allege as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiffs Eros, LLC (“Eros”) and Shannon Grei, d/b/a Nomine (“Grei”)
5 (collectively, “Plaintiffs”), bring this class action complaint against Defendants Linden
6 Research, Inc. and Linden Research International, Inc. (collectively, “Linden Lab” or
7 “Defendant”), headquartered in San Francisco, California, for its practice of violating the
8 real-world intellectual property rights of proprietors of virtual content within the Second Life
9 virtual world (“Second Life”), which Linden Lab owns and operates.

10 2. Second Life is an adults-only online 3D virtual world that allows its users to
11 do exactly what the name implies: live a second life separate and distinct from the users’
12 real-world lives. Within Second Life, users (known as “Residents”) can obtain employment,
13 purchase land, commit crimes, build homes and careers, make friends, fall in love, have sex,
14 visit museums, and most important, make and spend money.

15 3. Some proprietors within Second Life, including Plaintiffs, sell (virtual) items
16 protected by real-world copyrights and trademarks.

17 4. Plaintiffs allege that Linden Lab has directly and secondarily violated the
18 intellectual property rights of Plaintiffs and other Second Life proprietors. Linden Lab
19 directly and secondarily infringes the trademark of Plaintiff Eros by using Eros’s mark to sell
20 infringing virtual goods within Second Life and by providing the tools to other infringing
21 Second Life users. Linden Lab directly and secondarily violates the copyrights of Plaintiff
22 Grei by reproducing and displaying her copyrighted works within Second Life, and by
23 materially contributing to and supervising the infringing conduct of others within Second
24 Life.

1 19. Second Life has its own currency and currency exchanges to support all this
2 commerce.

3 20. The Second Life currency, Linden Dollars, is represented by the symbol “L\$.”

4 21. Linden Dollars can be exchanged for real-world money accepted outside
5 Second Life, including U.S. Dollars. This means that real money changes hands in Second
6 Life, and real commerce occurs.

7 22. Defendant Linden Lab operates the official exchange, LindeX, which allows
8 users to exchange Linden Dollars for U.S. Dollars—for a fee of 3.5% per transaction.

9 23. The ability to exchange Linden Dollars for U.S. Dollars—combined with
10 Linden Lab’s encouragement and development tools—has allowed true commercial activities
11 to flourish within Second Life, with user-to-user transactions surpassing \$120 million (U.S.)
12 in the First Quarter of 2009 alone.

13 ([https://blogs.secondlife.com/community/features/blog/2009/04/16/the-second-life-economy-
14 -first-quarter-2009-in-detail](https://blogs.secondlife.com/community/features/blog/2009/04/16/the-second-life-economy-first-quarter-2009-in-detail)).

15 24. Included in Second Life’s “in-world” commercial activities are the sale and
16 licensing of products and services protected by intellectual property rights, including
17 trademarks, service marks, and copyrights.

18 25. Linden Lab has long promoted the ability to sell virtual goods and services in
19 Second Life, including trademarked and copyrighted materials.

20 **Second Life: the Technical Details**

21 26. The Second Life Grid is the technical backbone of Second Life, comprising
22 the hardware on which the simulated world resides and all of the software and programs that
23 allow the world to exist.

24 27. Linden Lab owns and operates the Second Life Grid, hosting it on a series of
25 servers for the world itself and the items that exist inside Second Life. These items, which
26 include items that merchants, like Plaintiffs, sell in-world, are referred to as “assets.” Each
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1 asset can be identified by a universally unique identifier, or UUID. This means that each
2 item Plaintiffs and others create for sale in-world—including those protected by real-world
3 trademarks and copyrights—can be identified by UUIDs.

4 **Second Life: How Piracy Works In-World**

5 28. The Second Life Grid utilizes what is effectively a Digital Rights
6 Management (“DRM”) scheme, but the nature of the system allows third-party programs to
7 bypass the DRM. For example, one such program, CopyBot, now allows users to copy
8 unique assets—even those protected by real-world trademarks and copyrights. Although
9 such use is prohibited under the Second Life Terms of Service (“TOS”) and may be
10 prosecuted under the Digital Millennium Copyright Act (“DMCA”), Linden Lab conducts
11 little supervision or enforcement to insure that such content copying is eliminated,
12 minimized, or detected. Moreover, whatever DRM-type protection Linden Lab offers against
13 such piracy-enabling programs is easily circumvented and hopelessly ineffective.

14 29. Although Linden Lab may ban a Resident who is observed using CopyBot,
15 BuilderBot, CryoLife, or any number of other similar circumvention clients, it will not ban a
16 user for simply uploading or even selling copied content. In this case, Linden Lab's
17 enforcement of intellectual property law is limited to that required by the "safe harbor"
18 provisions of the Digital Millennium Copyright Act, which requires filing a real-world
19 lawsuit. Although a few high-profile businesses in Second Life have filed such lawsuits, the
20 majority of businesses in Second Life do not make enough money to afford prosecuting the
21 matter on an individual basis. Thus, Linden Lab effectively allows piracy to run rampant in
22 Second Life and does not afford its Resident businesses any effective protection against it.

23 30. The DMCA does not adequately protect Second Life users primarily because
24 infringers can so easily circumvent it. A Second Life pirate who becomes subject to a
25 DMCA takedown notice will usually not challenge it, but rather will simply create a new free
26 account and re-upload the content, employing the tried and true whack-a-mole approach.

1 31. In some circumstances, using the DMCA for protection within Second Life is
2 not only ineffective, but actually counter-productive. Often times, Second Life infringers
3 will counter-file against the DMCA, which results in the restoration of the pirated content
4 and the release of personal information to both the rights-holder and the infringer. Because
5 many content creators in Second Life choose to remain anonymous, this aspect of the DMCA
6 has an intimidating and chilling effect on those content creators who do not wish to
7 jeopardize their privacy and anonymity. Additionally, some Second Life infringers threaten
8 rights-holding merchants with the release of their protected assets for free if they file DMCA
9 claims against the infringers. Second Life infringers are all too familiar with these aspects of
10 the DMCA and use the DMCA as a shield to continue infringing and profiting with minimal
11 or no consequence.

12 32. In addition, the technical process of removal and re-instatement of content on
13 Second Life is subject to failure that can result in content becoming unusable to the IP owner
14 and its customers.

15 33. Also, Linden Lab has shown that it is not vigilant in enforcing DMCA
16 takedown notices, as Plaintiff Grei has experienced.

17 34. Accordingly, Linden Lab has made trademark and copyright infringement free
18 and easy, turning the Second Life community into a vast virtual flea market in which users
19 peddle knockoffs and pirated copies of IP-protected products and services. Despite Linden
20 Lab's actual knowledge of such widespread activity, it has taken no substantive action to
21 prevent, limit, or prohibit such widespread infringement.

22 35. For example, Residents attempting to purchase Eros's SexGen virtual beds in
23 Second Life will be presented with a selection of infringing knockoffs of trademarked virtual
24 goods and services, as well as the genuine article sold by Plaintiff Eros. The same is also
25 true for Plaintiff Grei's copyrighted saleable works.

1 36. Linden Lab also knowingly and willingly profits from these infringing
2 activities in numerous ways. First, pirates must rent (for real-world currency) virtual world
3 “locations” from Linden Lab in order to sell the infringing and trademarked or copyrighted
4 items or works. Second, pirates must then “upload” their infringing work, products or
5 services into the Second Life virtual world, for which Defendants impose a fee. Third, all in-
6 world transactions on Second Life are made through the exchange of Linden Dollars. Linden
7 Dollars may be exchanged for real-world currency at in-world currency exchanges. Not
8 surprisingly, Linden Lab also operates the most widely used currency exchange platform in
9 the Second Life community, LindeX, for use at which it imposes an exchange fee of 3.5%.
10 Fourth, Linden Lab operates the website XStreetSL.com, which is an online marketplace for
11 goods and services to be used in Second Life. Fifth, Linden Lab also operates an in-world
12 classified ads system. Pirated works are available both on XStreetSL.com and the in-world
13 classifieds system.

14 37. In other words, Linden Lab has created in Second Life a system in which it
15 directly engages in piracy, actively allows its users to engage in piracy by providing the tools
16 for it, and by which it profits from its own piracy and the piracy of its users. As a result,
17 Linden Lab is violating established intellectual property law and the fact that the forum for
18 the infringement is a new one—an online virtual world—does nothing to shield it from
19 liability.

20 **Second Life Terms of Service**

21 38. At all times relevant to this Complaint, the Second Life Terms of Service
22 (<http://secondlife.com/corporate/tos.php>) recognize and allow Second Life users to retain all
23 intellectual property rights in the digital content that they create, place, or otherwise own
24 within Second Life.

25 39. As of August 31, 2009, the Second Life Terms of Service state in relevant
26 part:

1 **1.3 Content available in the Service may be provided by users of the**
2 **Service, rather than by Linden Lab. Linden Lab and other parties**
3 **have rights in their respective content, which you agree to respect.**

4 You acknowledge that Linden Lab and other content providers have rights in
5 their respective Content under copyright and other applicable laws and treaty
6 provisions, and that except as described in this Agreement, such rights are not
7 licensed or otherwise transferred by mere use of the Service. . . .

8 **3.2 You retain copyright and other intellectual property rights with**
9 **respect to Content you create in Second Life, to the extent that you**
10 **have such rights under applicable law. . . .**

11 Users of the Service can create Content on Linden Lab’s servers in various
12 forms. Linden Lab acknowledges and agrees that, subject to the terms and
13 conditions of this Agreement, you will retain any and all applicable copyright
14 and other intellectual property rights with respect to any Content you create
15 using the Service, to the extent you have such rights under applicable law.

16 40. Plaintiffs did not grant Linden Lab any license, authorization, permission or
17 consent to use the pirated goods, services or works. Instead, in violation of Plaintiffs’ rights
18 under copyright and trademark law, Linden Lab has by the acts alleged herein willfully,
19 intentionally, and purposefully infringed the copyrighted works and trademarked goods and
20 services, and/or knowingly facilitated, enabled, induced, and materially contributed to
21 infringing uses thereof, and/or refused to exercise its ability to control or supervise infringing
22 uses thereof.

23 41. Linden Lab directly derives substantial financial benefits from this scheme,
24 including by earning revenue from licensing the virtual real estate used to offer and sell,
25 imposing of a fee for the upload of infringing works, goods or services by infringers, and
26 charging promotional and advertising fees. Linden Lab also retains a portion of the proceeds
27 of nearly every sale associated with the infringed trademarks and copyrights by infringers,
28 and from the overall increase in user traffic and commercial value of its business and

1 property arising from the “draw” of infringing copyrighted and trademarked intellectual
2 property of others.

3 42. Further, Linden Lab has continued to willfully infringe Plaintiffs’ rights even
4 after Plaintiffs notified them that its use of Plaintiffs’ trademarked goods and services and
5 copyrighted materials violates Plaintiffs’ rights under copyright and trademark law.

6 43. Defendant Linden Lab knows, or should know, and/or with reasonable
7 diligence could ascertain, a substantial amount of content in Second Life is protected by
8 trademark and copyright laws.

9 44. Plaintiffs did not grant the pirates and their customers any license,
10 authorization, permission, or consent to use the pirated goods, services or works. Instead, and
11 in violation of Plaintiffs’ rights under copyright law and trademark law, Linden Lab has
12 willfully, intentionally and with disregard to Plaintiffs’ intellectual property rights infringed
13 and secondarily infringed the same.

14 45. Not only has Linden Lab engaged in violations of the Lanham Act and
15 Copyright Act by directly, vicariously, and contributorily infringing Plaintiffs’ copyrights
16 and trademarks, and by inducing others to infringe the same, Linden Lab has also knowingly
17 and intentionally engaged in and continues to engage in unfair, deceptive, and misleading
18 business practices under California law.

19 46. By its actions alleged herein, Linden Lab has engaged in tortious interference
20 with economic relations under California law.

21 **FACTS RELATING TO PLAINTIFF EROS**

22 47. Eros, LLC is a proprietor of, among other items, adult-themed merchandise
23 within Second Life®. Eros’s CEO is Kevin Alderman, aka Stroker Serpentine.

24 48. Mr. Alderman is among Second Life’s most famous and successful merchants,
25 having been profiled in *Wired*, *Business Week*, *CBS News*, and *Fox Business Channel*.

1 49. Among the virtual products Eros markets and sells within Second Life is its
2 SexGen® line of adult-themed animation sequences. SexGen products, of which there are
3 nearly forty (40) distinct virtual products, are not only the most popular among their
4 competitors within Second Life, but are also among the most popular virtual products of any
5 kind within Second Life. Eros counts over 100,000 active Second Life users as customers.

6 50. As a result of Eros’s substantial sales and its CEO’s notoriety, the SexGen
7 mark has become famous and distinctive among the relevant consumers, serving to
8 distinguish Eros’s goods among its competitors and to identify Eros as the source of the
9 goods.

10 51. Eros owns the SexGen® mark, which is registered on the principal trademark
11 register as United States trademark registration number 3483253. Eros filed for the mark on
12 June 11, 2007 and it became a registered service mark on August 12, 2008.

13 52. The SexGen mark is categorized as one “[p]roviding temporary use of non-
14 downloadable software for animating three-dimensional virtual characters,” according to the
15 U.S. Patent and Trademark Office. It was first used as of January 1, 2005.

16 **FACTS RELATING TO TRADEMARK INFRINGEMENT**

17 53. Plaintiff Eros’s virtual erotic SexGen products sold for use in Second Life
18 have been counterfeited, cloned, and ripped off countless times by a multitude of Second Life
19 Residents. The manner in which this has occurred is akin to the knockoff handbags and
20 purses sold near Canal Street in New York City. Some of the bags are stolen, but actual
21 brand-name handbags sold at deep discounts, while many others are knockoffs that merely
22 use the brand-name makers’ designs and trademarks. The same is true of the knockoff
23 SexGen products sold within Second Life. In either case, Linden Lab and merchants in
24 Second Life are infringing Eros’s registered trademark.

25 54. These two methods do damage to Eros in different ways. Those merchants
26 who actually clone Eros’s products and resell them are selling Eros’s goods without
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1 compensating Eros, falsely designating the origin of the goods, and causing confusion among
2 consumers in the process. These companies are making money only because of the goodwill
3 that Eros had already generated for the SexGen brand. On the other hand, those merchants
4 who sell cheap, imitation knock-offs bearing the SexGen mark harm Eros by causing further
5 confusion among consumers when the products they purchased do not function in the ways
6 they expect SexGen products to function. This harms the SexGen mark and Eros.

7 55. Second Life Resident Eva Capalini made unauthorized use of Eros's SexGen
8 mark by creating counterfeit SexGen products and selling them to other Residents. Making
9 matters worse, Eva Capalini created the counterfeit SexGen products in such a way that other
10 Second Life IP pirates, such as LindAn Figgis and Good Hax, could copy her counterfeits
11 and sell them. This allowed Eva Capalini's counterfeit products to sell with great volume
12 and cause great harm to Plaintiff Eros.

13 56. Second Life Residents Rase Kenzo (Thomas Simon of New York) and
14 Volkov Catteno (Robert Leatherwood of Azle, Texas) also made unauthorized use of Eros's
15 SexGen mark by cloning, or creating exact replicas, of SexGen's products for sale within
16 Second Life.

17 57. Eva Capalini's infringing activities are particularly notable. On June 17,
18 2008, Linden Lab disabled access by Second Life Residents to the SexGen-infringing assets
19 created by Eva Capalini. Promptly thereafter, though, Linden Lab restored access to the
20 disabled content because of public outcry within Second Life. Because the infringing content
21 bore the SexGen mark, Residents blamed Eros for the broken content. As a result, Eros was
22 forced to launch an extensive marketing campaign to rectify public perception (created by an
23 infringer and Linden Lab) that Eros's SexGen products are unreliable. Eros even offered
24 genuine replacement products to unsuspecting purchasers of infringing content in order to
25 salvage its reputation.

1 58. These are just a few of the examples of those who infringed the SexGen mark
2 within Second Life.

3 59. The use by Eva Capalini, Rase Kenzo, Volkov Catteno, LindAn Figgis, and
4 Good Hax of the SexGen mark was in connection with goods and services.

5 60. The use by Eva Capalini, Rase Kenzo, Volkov Catteno, LindAn Figgis, and
6 Good Hax of the SexGen mark occurred on the internet, which is inherently in interstate
7 commerce. Second Life can be and is used around the world, including all states in the U.S.

8 61. The use by Eva Capalini, Rase Kenzo, Volkov Catteno, LindAn Figgis, and
9 Good Hax of the SexGen mark created a likelihood of consumer confusion as to whether
10 these Residents' virtual products were the real SexGen products made by Eros or knockoffs
11 and whether Eros would support these Residents' imitation products.

12 62. Linden Lab had actual or constructive knowledge that these Residents were
13 using the Second Life platform to infringe Eros's SexGen mark.

14 63. Linden Lab directly controls and monitors the technology and systems that
15 comprise the Second Life platform, which is what these Residents used to infringe the
16 SexGen mark. Everything necessary to infringe Eros's mark is stored on Linden Lab's
17 servers, including: the in-world locations where these Residents infringed on the SexGen
18 mark; the LindeX currency exchanges where these Residents and other infringers exchange
19 Linden Dollars for real-world currency. Additionally, Linden Lab rents or sells the virtual
20 land and sites, and the actual facilities necessary for infringers to pirate Eros's mark. Linden
21 Lab also charges upload fees and promotional fees to infringers uploading pirated content
22 they intend to sell in-world. Finally, Linden Lab directly profits from the LindeX currency
23 exchanges that infringers like these Residents use to exchange ill-gotten in-world gains for
24 real-world currency.

1 74. Ms. Grei owns the copyright to “Nominee Araignee Set,” which she registered
2 with the United States Copyright Office on September 24, 2007 and bears the registration
3 number VAu000958340. The Copyright Office lists its date of creation as 2005 and
4 categories it as “Visual Material.”

5 **FACTS RELATING TO COPYRIGHT INFRINGEMENT**

6 75. Plaintiff Grei’s copyrighted skins and clothing sold for use in Second Life
7 have been counterfeited, cloned, and ripped off countless times by a multitude of Second Life
8 Residents who then sell the copyrighted skins as their own in blatant violation of her rights
9 under copyright law.

10 76. Second Life Resident Rase Kenzo (Thomas Simon of New York) made
11 unauthorized use of Grei’s copyrighted works—in particular, the virtual clothes she sells—by
12 copying these virtual clothes and selling them within Second Life.

13 77. Second Life Resident Peta Voom also made unauthorized use of Grei’s
14 copyrighted works—in this case, nearly every item in her store—by directly copying her
15 designs and selling them within Second Life.

16 78. These are just a few of the examples of those who infringed the Nomine mark
17 within Second Life.

18 79. Linden Lab had actual or constructive knowledge that these Residents were
19 using the Second Life platform to infringe Grei’s Nomine copyright.

20 80. Linden Lab both materially contributes to the infringement and has the right
21 and ability to supervise the infringing conduct because it directly controls and monitors the
22 technology and systems that comprise the Second Life platform, which is what these
23 Residents used to infringe the Grei’s copyrighted works. Everything necessary to infringe
24 Grei’s works is stored on Linden Lab’s servers, including: the in-world locations where these
25 Residents infringed on Grei’s works; the LindeX currency exchanges where these Residents
26 and other infringers exchange Linden Dollars for real-world currency. Additionally, Linden
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1 Lab rents or sells the virtual land and sites, and the actual facilities necessary for infringers to
2 pirate Grei's works. Linden Lab also charges upload fees to infringers uploading pirated
3 content they intend to sell in-world. Finally, Linden Lab directly profits from the LindeX
4 currency exchanges that infringers like these Residents use to exchange ill-gotten in-world
5 gains for real-world currency.

6 81. Linden Lab, on an ongoing basis, knowingly and voluntarily continues to
7 engage infringing activities in order to generate revenue and commercial gain, despite
8 knowledge that its activities are in direct violation of applicable federal law.

9 82. Linden Lab has financially benefitted from the damage those like the
10 infringers named above have inflicted on Grei's copyrighted works.

11 83. Linden Lab operates a marketplace both in-world through its fee-based
12 classifieds and at XStreetSL.com. Second Life Residents can search for and purchase
13 thousands of virtual items for use in Second Life in these marketplaces.

14 84. Plaintiff Grei's copyright-protected virtual products are available in these
15 marketplaces, along with infringing products sold by competitors.

16 85. Linden Lab directly infringes Grei's copyrighted works by displaying the
17 infringing works throughout Second Life.

18 86. Linden Lab also directly infringes Grei's copyrighted works by reproducing
19 the infringing works on its own servers and computers.

20 87. The infringing works exist in servers wholly controlled by Linden Lab.

21 **CLASS ALLEGATIONS**

22 88. Plaintiff Eros brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and
23 23(b)(3) on behalf of itself and two classes, the Trademark Owner Class and the Trademark
24 Infringement Class. Plaintiff Grei brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and
25 23(b)(3) on behalf of herself and two classes, the Copyright Owner Class and the Copyright
26 Infringement Class:

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a) **The Trademark Owner Class.** All individuals and entities in the United States who own, have owned, or otherwise have the right to enforce licensing rights to goods and services bearing trademarks or service marks registered with the United States Patent and Trademark Office, and who engage or have engaged in commercial transactions in Second Life associated with such registered trademark or service marks.

b) **The Trademark Infringement Class.** All individuals and entities in the United States who (1) own, have owned, or otherwise have the right to enforce licensing rights to goods and services bearing trademarks or service marks registered with the United States Patent and Trademark Office, (2) engage or have engaged in commercial transactions in Second Life associated with such registered trademark or service marks, and (3) whose trademarks and/or service marks were infringed in Second Life.

c) **The Copyright Owner Class.** All individuals and entities in the United States who own, have owned, or otherwise have the right to enforce licensing rights in connection with a copyright registered with the U.S. Register of Copyrights and who engage or have engaged in commercial transactions in Second Life associated with such copyrighted works.

d) **The Copyright Infringement Class.** All individuals and entities in the United States who (1) own, have owned, or otherwise have the right to enforce licensing rights in connection with a copyright registered with the U.S. Register of Copyrights (2) engage or have engaged in commercial transactions in Second Life associated with such copyrighted works, and (3) whose copyrights were infringed in Second Life.

1 Excluded from each Class are Defendants, their legal representatives, assigns, and
2 successors, and any entity in which Defendants have a controlling interest. Also excluded is
3 the judge to whom this case is assigned and the judge's immediate family.

4 89. The Classes consist of thousands of individuals and other entities, making
5 joinder impractical.

6 90. The claims of Plaintiffs Eros and Grei are typical of the claims of all of the
7 other members of their respective Classes.

8 91. Plaintiffs will fairly and adequately represent and protect the interests of the
9 other members of the Classes and Subclass. Plaintiffs have retained counsel with substantial
10 experience in prosecuting complex litigation and class actions. Plaintiffs and their counsel
11 are committed to vigorously prosecuting this action on behalf of the members of the Classes
12 and Subclass, and have the financial resources to do so. Neither Plaintiffs nor their counsel
13 have any interest adverse to those of the other members of the Classes.

14 92. Absent a class action, most members of the Classes and Subclass would find
15 the cost of litigating their claims to be prohibitive and will have no effective remedy. The
16 class treatment of common questions of law and fact is also superior to multiple individual
17 actions or piecemeal litigation in that it conserves the resources of the courts and the litigants,
18 and promotes consistency and efficiency of adjudication.

19 93. Linden Lab has acted and failed to act on grounds generally applicable to
20 Plaintiffs and the other members of the Classes, requiring the Court's imposition of uniform
21 relief to ensure compatible standards of conduct toward the members of the Classes.

22 94. The factual and legal bases of Linden Lab's liability to Plaintiffs and to the
23 other members of the Classes are the same, resulting in injury to Plaintiffs and all of the other
24 members of the Classes. Plaintiffs and the other members of the Classes have all suffered
25 harm and damages as a result of Linden Lab's wrongful conduct.

1 counterfeit, copy, or colorable imitation of a registered mark that is likely to cause confusion,
2 mistake, or deception.

3 100. In order to sustain a claim of trademark infringement under § 1114(1), Eros
4 must show that it has a valid, protectable mark, and that Linden Lab's use of the mark is
5 likely to cause confusion.

6 101. Eros's mark, SexGen, is a registered trademark.

7 102. Linden Lab uses in commerce Plaintiff Eros's SexGen mark to sell infringing,
8 counterfeit products in its in-world marketplace and XStreetSL.com online marketplace by
9 way of its "Featured Items" placed by Linden Lab at the top of search results for "SexGen."

10 103. By using Eros's SexGen mark to sell both legitimate and infringing,
11 counterfeit SexGen products, Linden Lab's use of the mark is likely to cause confusion.

12 104. Linden Lab's acts of infringement of the SexGen mark have been willful,
13 intentional, and purposeful, in disregard of and indifferent to the rights of Plaintiff Eros.

14 105. Linden Lab benefits from the infringement by way of increased revenue
15 derived from additional product uploads, virtual land rentals, and additional currency
16 exchanges.

17 106. Linden Lab's trademark infringement has caused injury to Eros in the form of
18 lost sales and revenue, lost business reputation, consumer confusion. Linden Lab's
19 trademark infringement has also caused Plaintiff Eros irreparable injury. Unless restrained
20 and enjoined, Linden Lab will continue to commit such acts. Plaintiff's remedy at law is not
21 adequate to compensate it for these inflicted and threatened injuries, entitling Plaintiff to
22 remedies including injunctive relief.

23 **SECOND CAUSE OF ACTION**

24 **False Designation of Trademark Origin, 15 U.S.C. § 1125**

25 **(on behalf of Plaintiff Eros and Trademark Infringement Class)**

26 107. Plaintiffs incorporate by reference the foregoing allegations.
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1 116. Contributory trademark infringement occurs when a defendant either
2 intentionally induces a third party to infringe a person’s mark, or supplies a service or
3 product to a third-party with actual or constructive knowledge that the service or product is
4 being used to infringe the person's mark.

5 117. Defendant Linden Lab supplied an infringing service—the Second Life
6 platform—to infringing entities with actual or constructive knowledge that these entities
7 were and are violating Plaintiff Eros’s trademark by mislabeling its imitation products as
8 genuine SexGen products.

9 118. Linden Lab exercised direct control and monitoring of the Second Life
10 platform and XStreetSL.com website used by Second Life Residents to infringe on Eros’s
11 SexGen registered trademark.

12 119. The infringing products are sold within Linden Lab’s Second Life platform
13 and at Linden Lab’s XStreetSL.com website, and both of these systems are used to locate and
14 obtain the infringing material.

15 120. Linden Lab had the power to remove infringing material from Second Life
16 and XStreetSL.com, but failed or refused to do so.

17 121. Linden Lab benefits from the infringement by way of increased revenue
18 derived from additional product uploads, virtual land rentals, and additional currency
19 exchanges.

20 122. Linden Lab’s acts of infringement of the SexGen mark have been willful,
21 intentional, and purposeful, in disregard of and indifferent to the rights of Plaintiff Eros.

22 123. Linden Lab’s contributory trademark infringement has caused injury to Eros
23 in the form of lost sales and revenue, lost business reputation, consumer confusion.

24 124. Linden Lab’s contributory trademark infringement has also caused Plaintiff
25 Eros irreparable injury. Unless restrained and enjoined, Linden Lab will continue to commit
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1 such acts. Plaintiff's remedy at law is not adequate to compensate it for these inflicted and
2 threatened injuries, entitling Plaintiff to remedies including injunctive relief.

3 **FOURTH CAUSE OF ACTION**

4 **Vicarious Trademark Infringement, 15 U.S.C. § 1114**

5 **(on behalf of Plaintiff Eros and Trademark Infringement Class)**

6 125. Plaintiffs incorporate by reference the foregoing allegations.

7 126. Vicarious trademark infringement occurs when a defendant controls, directs,
8 facilitates, encourages, promotes, allows, enables, or otherwise permits a third-party to
9 infringe a mark, and receives a benefit from doing so.

10 127. Linden Lab exercises joint ownership or control over the infringing products
11 and services because it maintains the right, power, and ability to control, edit, alter, modify,
12 and maintain the software, hardware, and entire computer infrastructure and eco-system used
13 to effectuate third-party infringements.

14 128. Linden Lab exercised direct control and monitoring of the Second Life
15 platform and XStreetSL.com website used by Second Life Residents to infringe on Eros's
16 SexGen registered trademark.

17 129. The infringing products are sold within Linden Lab's Second Life platform
18 and at Linden Lab's XStreetSL.com website, and both of these systems are used to locate and
19 obtain the infringing material.

20 130. Linden Lab had the power to remove infringing material from Second Life
21 and XStreetSL.com, but failed or refused to do so.

22 131. Linden Lab benefits from the infringement by way of increased revenue
23 derived from additional product uploads, virtual land rentals, and additional currency
24 exchanges.

25 132. Linden Lab's acts of infringement of the SexGen mark have been willful,
26 intentional, and purposeful, in disregard of and indifferent to the rights of Plaintiff Eros.

1 Plaintiff Grei is entitled to a permanent injunction requiring Defendants to employ reasonable
2 methodologies to prevent or limit infringement of Plaintiff Grei's copyrights.

3 **SEVENTH CAUSE OF ACTION**

4 **Contributory Copyright Infringement, 17 U.S.C. § 501**

5 **(on behalf of Plaintiff Grei and Copyright Infringement Class)**

6 147. Plaintiffs incorporate by reference the foregoing allegations.

7 148. Contributory copyright infringement occurs when a defendant has knowledge
8 of another's infringement and either materially contributes to or induces that infringement.

9 149. Second Life users have infringed and are infringing Plaintiff Grei's rights in
10 her registered copyrighted visual works by uploading and selling infringing copies of
11 Plaintiff Grei's copyrighted works within Second Life and publicly displaying without
12 authorization. Second Life users are therefore directly infringing Plaintiff Grei's exclusive
13 rights of reproduction and public display under 17 U.S.C. §§ 106(1) and (5).

14 150. Linden Lab has knowledge that Second Life Residents have and are infringing
15 Plaintiff Grei's copyrighted works within Second Life.

16 151. Linden Lab has and continues to materially contribute to the infringement by
17 supplying the Second Life platform and tools to infringers, without which those individuals
18 would not be able to infringe Plaintiff Grei's registered copyright.

19 152. Linden Lab's acts of infringement have been willful, intentional, and
20 purposeful, in disregard of and indifferent to the rights of Plaintiff Grei.

21 153. As a direct and proximate result of Linden Lab's infringement of Plaintiff's
22 copyrights and exclusive rights under copyright, Plaintiff Grei is entitled to the maximum
23 statutory damages pursuant to 17 U.S.C. § 504(c). Alternatively, at Plaintiff's election,
24 pursuant to 17 U.S.C. § 504(b), Plaintiff shall be entitled to her actual damages plus Linden
25 Lab's profits from infringement, as will be proven at trial.

1 business practices, and thereby knowingly interfered with Plaintiffs' expectancy in a manner
2 by engaging in conduct that was wrongful by legal measure or measures other than the fact of
3 the interference itself.

4 178. Linden Lab is thereby liable to Plaintiffs for damages arising from their
5 actions.

6 179. By reason of Linden Lab's acts, Plaintiffs' remedy at law is not adequate to
7 compensate it for the injuries inflicted by Linden Lab.

8 **TWELFTH CAUSE OF ACTION**

9 **Negligent Interference with Economic Relations**

10 **(on behalf of all Plaintiffs and all Classes)**

11 180. Plaintiffs incorporate by reference the foregoing allegations.

12 181. Linden Lab's acts alleged herein have deprived and continue to deprive
13 Plaintiffs of past and prospective economic and commercial opportunities to exploit their
14 intellectual property.

15 182. A plaintiff seeking to recover from negligent interference with prospective
16 contractual or economic relations under California law must prove that a defendant knew, or
17 should have known, that its acts or omissions interfered with plaintiff's expectancy, thereby
18 engaging in conduct that it knew or should have known exhibited "disinterested
19 malevolence" and was wrongful by some legal measure other than the fact of the interference
20 itself.

21 183. Linden Lab, by its acts alleged herein, has knowingly, willfully and
22 intentionally engaged in primary and secondary copyright and trademark infringement, unfair
23 business practices, and thereby knowingly interfered with Plaintiffs' expectancy in a manner
24 by engaging in conduct that was wrongful by legal measure or measures other than the fact of
25 the interference itself.

26 184. Linden Lab is thereby liable to Plaintiffs for damages arising from its actions.
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs Eros, LLC and Ms. Grei, on behalf of themselves and the
3 Classes, pray for the following relief:

4 A. Certify this case as a class action on behalf of the Classes defined above;
5 appoint Eros, LLC and Shannon Grei as class representatives; and appoint their counsel as
6 class counsel;

7 B. Declare that the actions of Linden Lab, as set out above, result in Trademark
8 Infringement, False Designation of Origin Trademark Infringement, Contributory Trademark
9 Infringement, Vicarious Trademark Infringement, Intentional Interference with Economic
10 Relations, Negligent Interference with Economic Relations, and violate Cal. Bus. & Prof.
11 Code §§ 17200 and 17500;

12 C. Enter judgment against Linden Lab for all statutory damages authorized by
13 the Lanham Act, or, at Plaintiff's choosing, Linden Lab's profits, the costs of the action, and
14 actual damages caused by its conduct and, to the extent authorized under the Lanham Act,
15 treble damages;

16 D. Enter judgment against Linden Lab for all statutory damages authorized by
17 the Copyright Act, or, at Plaintiff's choosing, actual damages caused by its conduct;

18 E. Award restitution against Linden Lab for all money to which Plaintiffs and the
19 Classes are entitled in equity;

20 F. Award Plaintiffs and the Classes their reasonable litigation expenses and
21 attorneys' fees, as authorized by the Lanham Act and the Copyright Act;

22 G. Award Plaintiffs and the Classes pre- and post-judgment interest, to the extent
23 allowable;

24 H. Enter injunctive and/or declaratory relief as is necessary to protect the
25 interests of Plaintiffs and the Classes; and

26 I. Award such other and further relief as equity and justice may require.
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JURY TRIAL

Plaintiffs demand a trial by jury for all issues so triable.

Respectfully submitted,

Dated: September 15, 2009

KAMBEREDELSON, LLC

By: 

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