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Attorneys for Defendant
Ozimals, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMARETTO RANCH BREEDABLES, LLC,	)	Case No.: C-10-05696 CRB
)	
Plaintiff,	)	DEFENDANT OZIMALS, INC.'S
	)	RESPONSE AND STATEMENT OF
vs.	)	NON-OPPOSITION TO PLAINTIFF
	)	AMARETTO RANCH BREEDABLES,
OZIMALS, INC.,	)	LLC'S MOTION FOR PRELIMINARY
	)	INJUNCTION; REQUEST TO VACATE
	)	HEARING
Defendant.	)	Date: January 11, 2011
	)	Time: 1:00 P.M.
	)	Courtroom: 8, 19th Floor
	)	Judge: Hon. Charles R. Breyer

Pending before the Court is the Motion for Preliminary Injunction of Plaintiff Amaretto Ranch Breedables, LLC ("Amaretto"). By this Response, Defendant Ozimals, Inc. ("Ozimals") states that it does not oppose the entry of a Preliminary Injunction in this matter, although it

1 requests the Court to vacate the hearing set for January 11, 2011.¹ A proposed order acceptable
2 to Ozimals is filed herewith. Ozimals further states as follows:

3 1. Amaretto Ranch Breedables, LLC (“Amaretto”) filed this action seeking a
4 Temporary Restraining Order, ostensibly under 17 U.S.C. § 512(f), enjoining Ozimals from
5 submitting to non-party service provider Linden Research, Inc. (“Linden”) a notification under
6 the Digital Millennium Copyright Act, 17 U.S.C. § 512, regarding the infringement by Amaretto
7 of Ozimals’s software. The TRO also requested that Linden be enjoined from acting on any such
8 takedown notice. The Court granted the TRO on December 21, 2010, and set the matter for
9 hearing on Amaretto’s Motion for Preliminary Injunction on January 11, 2011. The Motion for
10 Preliminary Injunction seeks to extend the relief granted in the TRO for a longer period of time.

11 2. The notification and counter-notification process outlined in the DMCA is a pre-
12 cursor to copyright infringement litigation and acts as a discretionary safe harbor for non-party
13 service providers such as Linden. *See* 17 U.S.C. § 512. Amaretto has filed a request for
14 declaratory judgment in this action, seeking a judgment that its software does not infringe
15 Ozimals’s copyright, and Ozimals has filed a complaint for copyright infringement against
16 Amaretto in the United States District Court for the Northern District of Alabama. Hence, the
17 parties are now well beyond the DMCA notification process. Accordingly, Ozimals is willing to
18 forego further DMCA notification activity.

19 3. It will be an inefficient use of judicial resources, and those of the parties, for the
20 Court to hear this motion. The motion is limited to the takedown process. Therefore, it would
21 be inefficient for the Court to rule on this motion and the likelihood of success on the merits, on
22 an extremely abbreviated schedule and without the opportunity for full briefing or evidentiary
23 submissions by the parties, or even any discovery at all by the parties —only later to have this
24 Court, or the Northern District of Alabama, hear motions on the parties’ claims relating to
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26

27 ¹ Although Ozimals does not oppose the motion, it respectfully reserves all of its jurisdictional
28 and other defenses.

1 copyright infringement with a more complete factual record and with the benefit of legal
2 authority tailored to the record.

3 4. Without waiving any of its rights, or any procedural or substantive defenses
4 Ozimals therefore is willing to stipulate, and hereby does stipulate, to the entry of the proposed
5 Preliminary Injunction filed together with this Response and Statement of Non-Opposition. The
6 relief granted in this Proposed Preliminary Injunction is the same as that in Amaretto's Proposed
7 Preliminary Injunction (Doc. 36), with the exception of eliminating Linden for the reasons set
8 forth below and vacating the hearing set for January 11, 2011.

9 5. Because Ozimals does not oppose the Motion, Ozimals proposed to Amaretto on
10 January 4, 2011 that the parties enter into a stipulation and jointly propose a Preliminary
11 Injunction order to the Court. The purpose of the stipulation was to make briefing on the motion
12 and a hearing unnecessary, and thus to save the Court's and parties' time. On the morning of
13 January 5, 2011, Ozimals sent Amaretto a draft Stipulated Preliminary Injunction and Proposed
14 Order, a copy of which is attached as Exhibit A.

15 6. On January 5, 2011, however, Amaretto said it would not enter into a stipulation
16 without Linden as a signatory. Linden, however, will not agree to any stipulated preliminary
17 injunction. In fact, counsel for Linden said that it intends to file an opposition to the motion
18 today. Given Linden's opposition, Ozimals offered to enter into a stipulation whose relief does
19 not include Linden. Amaretto declined to enter such a stipulation.

20 7. Ozimals is willing to forego further DMCA activity and thus does not believe
21 Linden is necessary to be included in any injunction. Consequently, the proposed order filed
22 herewith does not include Linden in its scope. Nonetheless, if the Court believes that binding
23 Linden with the injunction is necessary, Ozimals has no objection.

24 8. Ozimals respectfully requests that the Court vacate the hearing set for January 11,
25 2011. Ozimals understands, however, that the Court may wish to hold oral argument on the legal
26 arguments that Linden is likely to raise. Nonetheless, if the Court holds argument on the motion,
27 Ozimals requests that the Court not hold an evidentiary hearing in connection with the motion
28 and any such argument be limited strictly to those issues raised by Linden in its objection.

EXHIBIT A
Draft Stipulated Preliminary Injunction

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Attorneys for Plaintiff
Amaretto Ranch Breedables, LLC

Attorneys for Defendant
Ozimals, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMARETTO RANCH BREEDABLES, LLC,)
Plaintiff,)
vs.)
OZIMALS, INC.,)
Defendant.)

Case No.: C-10-05696 CRB
**STIPULATED PRELIMINARY
INJUNCTION; [PROPOSED] ORDER**
Date: January 11, 2011
Time: 1:00 P.M.
Courtroom: 8, 19th Floor
Judge: Hon. Charles R. Breyer

WHEREAS, on December 28, 2010, Plaintiff Amaretto Ranch Breedables, LLC filed a Motion for Preliminary Injunction seeking an injunction against Defendant Ozimals, Inc. (“Ozimals”) and Linden Research, Inc. (“Linden Research”) to enjoin Defendant from enforcing current and serving additional “take down” notices pursuant to the Digital

1 Millennium Copyright Act (“DMCA”) and to enjoin Linden Research from acting upon any
2 such notices (Docket No. 32);

3 WHEREAS, the parties have met and conferred regarding Plaintiff’s Motion for
4 Preliminary Injunction and the necessity of holding a hearing on the motion;

5 WHEREAS, Defendant is willing to stipulate to the entry of a preliminary injunction to
6 refrain from enforcing current take down notices or serving additional take down notices
7 pursuant to the DMCA during the pendency of this suit, although Defendant does not stipulate
8 to any of Plaintiff’s proposed findings of fact and conclusions of law and will address all
9 substantive issues in the context of the copyright infringement claims in this case;

10 WHEREAS, the parties request that the hearing set in this matter for January 11, 2011
11 be vacated;

12 IT IS HEREBY STIPULATED, by and between the parties, hereto, through their
13 respective counsel, as follows pursuant to Civ. L. R. 7-12:

14 1. Linden Research, and its respective officers, directors, employees, agents,
15 subsidiaries, distributors, and all persons in active concert or participation with Linden
16 Research, are preliminarily enjoined from taking down from the Second Life virtual world
17 (“Second Life”) Plaintiff’s virtual horses and food (the “Horse Product Line”), and Ozimals is
18 enjoined from serving or attempting to enforce any DMCA notifications seeking the removal of
19 Plaintiff’s Horse Product Line from Second Life.

20 2. This Preliminary Injunction shall remain in effect during the pendency of this
21 action, or until such further date as set by the Court or stipulated by the parties.

22 3. Plaintiff shall maintain its bond in the amount of Twenty-Five Thousand Dollars
23 (\$25,000.00), as payment of damages to which Defendant may be entitled for a wrongful
24 injunction or restraint, during the pendency of this action, or until further Order of the Court.

25 4. The hearing on Plaintiff’s Motion for Preliminary Injunction, previously set for
26 January 11, 2011, shall be vacated.

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SO STIPULATED this ____ day of January, 2011:

KRIEG, KELLER, SLOAN, REILLY
& ROMAN LLP

Dated: January __, 2011

/s/

By: _____

KENNETH E. KELLER
Attorneys for Plaintiff
Amaretto Ranch Breedables, LLC

COOKE, KOBRICK, & WU LLP

Dated: January __, 2011

/s/

By: _____

STEPHEN S. WU
Attorneys for Defendant
Ozimals, Inc.

DECLARATION OF CONSENT

Pursuant to General Order No. 45, Section X(B) regarding signatures, I hereby attest under penalty of perjury that concurrence in the filing of this document has been obtained from Kenneth E. Keller.

COOKE, KOBRICK, & WU LLP

Dated: January __, 2011

/s/
By: _____
STEPHEN S. WU
Attorneys for Defendant
Ozimals, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____

By: _____
Hon. Charles R. Breyer
United States District Judge

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