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16 AMARETTO RANCH BREEDABLES, LLC

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 AMARETTO RANCH BREEDABLES, LLC, a
20 California Limited Liability Corporation

CASE No.: CV 10-5696 CRB

21 Plaintiff,

22 v.

23 OZIMALS, INC., an Alabama corporation;
24 CANDACE SARGENT, an individual; CAMERON
25 HOLT, an individual; CREATIVE ACORN
26 STUDIOS, an Alabama entity.

**AMARETTO RANCH BREEDABLES,
27 LLC'S ANSWER TO DEFENDANT
28 OZIMALS, INC.'S COUNTERCLAIM**

29 Defendants.

30 OZIMALS, INC., an Alabama corporation,

31 Counterclaim Plaintiff,

32 v.

33 AMARETTO RANCH BREEDABLES, LLC, a
34 California Limited Liability Corporation,

35 Counterclaim Defendant.

1 Plaintiff and Counterclaim Defendant, Amaretto Ranch Breedables, LLC (“Amaretto”)
2 hereby submits the following Answer and Affirmative Defenses to the Counterclaim of Defendant
3 Ozimals, Inc. (“Ozimals”), in paragraphs numbered to correspond to those of the Counterclaim.

4 **THE PARTIES**

5 1. As to Paragraph 1 of the Counterclaim, Amaretto admits that Ozimals is purporting to
6 assert a claim for copyright infringement of its software code in its Counterclaim and is seeking a
7 permanent injunction and damages against Amaretto, a California limited liability company.

8 Amaretto denies the remaining allegations of Paragraph 1 of the Counterclaim.

9 2. Amaretto admits the allegations of Paragraph 2 of the Counterclaim.

10 3. As to Paragraph 3 of the Counterclaim, Amaretto admits that Ozimals is an Alabama
11 corporation with its principal place of business located in Pelham, Alabama. Amaretto admits that
12 Ozimals purports to develop, market, and distribute virtual breedable bunnies and associated
13 products in the virtual Second Life world. Amaretto lacks knowledge or information sufficient to
14 form a belief about the truth of the remaining allegations of Paragraph 3 and on that basis, denies
15 them.

16 4. Amaretto admits the allegations of Paragraph 4 of the Counterclaim.

17 5. Amaretto admits the allegations of Paragraph 5 of the Counterclaim.

18 6. As to Paragraph 6 of the Counterclaim, Amaretto admits that venue is proper in this
19 Court. Amaretto denies the remaining allegations of Paragraph 6 of the Counterclaim.

20 7. Amaretto admits the allegations of Paragraph 7 of the Counterclaim.

21 8. Amaretto admits that Ozimals purports to have developed a line of software-based,
22 virtual bunnies for use on Second Life, and that users may buy and sell bunnies in a secondary
23 market, and breed and collect them. Amaretto admits that each software-based bunny is capable of
24 breeding with other bunnies. Amaretto denies the remaining allegations of Paragraph 8 of the
25 Counterclaim.

26 9. Amaretto lacks knowledge or information sufficient to form a belief about the truth of
27 the allegations in Paragraph 9 of the Counterclaim that Ozimals’ bunnies were first made available
28

1 to certain users of Second Life in September of 2009 as part of the beta-testing of the software
2 conducted by Ozimals, and on that basis, denies them. Amaretto denies the remaining allegations of
3 Paragraph 9 of the Counterclaim.

4 10. As to Paragraph 10 of the Counterclaim, upon information and belief, Amaretto
5 admits that on January 9, 2010, Ozimals made the bunnies generally available by selling them on
6 Second Life. Amaretto denies the remaining allegations of Paragraph 10 of the Counterclaim.

7 11. As to Paragraph 11 of the Counterclaim, Amaretto admits that a person purporting to
8 act on behalf of Amaretto “chatted” on-line with Candace Sargent, and avers that the contents of that
9 on-line “chat” speaks for itself. Amaretto denies the remaining allegations of Paragraph 11 of the
10 Counterclaim.

11 12. As to Paragraph 12 of the Counterlcaim, Amaretto admits that in September 2010,
12 Amaretto released its software horses and related software products. Amaretto denies the remaining
13 allegations of Paragraph 12 of the Counterclaim.

14 13. Amaretto denies the allegations of Paragraph 13 of the Counterclaim.

15 14. As to Paragraph 14 of the Counterclaim, Amaretto admits that on November 2, 2010,
16 Ozimals sent Amaretto a cease and desist letter, and further avers that the contents of that letter
17 speaks for itself. Amaretto admits that on November 22, 2010, Amaretto responded to the
18 November 2, 2010 letter, and avers that the contents of that letter speaks for itself. Amaretto denies
19 the remaining allegations of Paragraph 14 of the Counterclaim.

20 15. Amaretto admits that on December 1, 2010, Ozimals submitted a letter to Linden
21 Labs, which it purported to be a “takedown notice” and that Linden informed Amaretto of the letter.
22 Amaretto further admits that on December 9, 2010, Amaretto submitted a counter-notification to
23 Linden Labs. Amaretto denies the remaining allegations of Paragraph 14 of the Counterclaim.

24 16. Amaretto admits that Ozimals filed a lawsuit on December 20, 2010 styled *Ozimals,*
25 *Inc. v. Amaretto Ranch Breedables, LLC*, No 10-cv-03520 (N.D. Ala 2010) and avers that the
26 contents of that lawsuit speak for itself. Amaretto admits that Ozimals did not serve Amaretto with
27 that complaint and voluntarily dismissed the Alabama action, and avers that the Court issued an

1 Order to Show Cause to Ozimals why the complaint had not yet been served. Amaretto denies the
2 remaining allegations of Paragraph 16 of the Counterclaim.

3 17. Amaretto admits that Ozimals' Counterclaim purports to seek affirmative relief for a
4 claim of copyright infringement. Amaretto denies any remaining allegations of Paragraph 17 of the
5 Counterclaim.

6 **FIRST CLAIM**

7 **Copyright Infringement – 17 U.S.C. § 501 et seq.**

8 18. Amaretto repeats and incorporates by reference its responses to Paragraphs 1 through
9 17, inclusive of its Answer to the Counterclaim.

10 19. As to Paragraph 17 of the Counterclaim, Amaretto admits the Copyright Office
11 granted Ozimals a Certificate of Registration No. TX 7-251-661 to Ozimals, but avers that the
12 registration is invalid and was otherwise fraudulently obtained. Amaretto denies the remaining
13 allegations of Paragraph 19 of the Counterclaim.

14 20. Amaretto denies the allegations of Paragraph 20 of the Counterclaim.

15 21. Amaretto denies the allegations of Paragraph 21 of the Counterclaim.

16 22. Amaretto denies the allegations of Paragraph 22 of the Counterclaim.

17 23. Amaretto denies the allegations of Paragraph 23 of the Counterclaim.

18 **AFFIRMATIVE DEFENSES**

19 As separate defenses to Ozimals' Counterclaim, Amaretto alleges as follows:

20 **FIRST AFFIRMATIVE DEFENSE**

21 (Failure to State a Cause of Action)

22 1. Ozimals' claims are barred because it has failed to state a cause of action upon which
23 relief may be granted.

24 **SECOND AFFIRMATIVE DEFENSE**

25 (Plaintiff Lacks Standing)

26 2. Ozimals' claims are barred because Ozimals is not the real party in interest and lacks
27 standing to pursue the claims at issue.

THIRD AFFIRMATIVE DEFENSE

(Lack of Authorship)

3. Ozimals' claims are based barred because Ozimals is not the author of the work which is the subject of the copyright being asserted.

FOURTH AFFIRMATIVE DEFENSE

(Plaintiff Does Not Own Valid Copyright)

4. Ozimals' claims are barred because Ozimals does not own a valid and/or enforceable copyright in the work allegedly infringed.

FIFTH AFFIRMATIVE DEFENSE

(Lack of Copyright Liability)

5. Ozimals' counterclaim is barred because the material Ozimals claims was infringed is not copyrightable because, among other things, it is not sufficiently creative or original.

SIXTH AFFIRMATIVE DEFENSE

(Independent Creation)

6. Ozimals' claims are barred because Amaretto's allegedly infringing materials were created independently from Ozimals' alleged work.

SEVENTH AFFIRMATIVE DEFENSE

(Lack of Substantial Similarity)

7. Ozimals' claims are barred because the respective works at issue are not substantially similar.

EIGHTH AFFIRMATIVE DEFENSE

(Non-Copyrightable, Ideas and/or Subject Matter)

8. Ozimals' claims are barred because the subject matter identified in the Counterclaim is not copyrightable, among other things, because it is not sufficiently creative or original, it is in the public domain, it consists of scenes à faire, and/or because the similarities, if any, between Ozimals' alleged work and the product sold by Amaretto relate to a nonprotectable idea, and hence nonprotectable subject matter under the Federal Copyright Act.

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