

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

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

**Supplemental Declaration of John Rountree**

I, John Rountree, declare as follows:

1. I am Director of Customer Relations of defendant Linden Research, Inc. (“Linden Lab”), a Delaware corporation headquartered in San Francisco, California. As part of my responsibilities, I manage the teams that respond to customer inquiries and complaints. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to them.

2. I submit this supplemental declaration in response to the Court’s request for supplemental briefing.

3. My original declaration included a chart (Exhibit G) listing the creation dates, subsequent Terms of Service agreement dates, and last login dates for 101 separate Second Life accounts identified as belonging to Carl Evans. The entry for Evans Account Number 99 reading “CURRENTLY ACTIVE” indicated that the account was currently in use as of the day the chart was compiled. I have been asked to update that data, and have confirmed that that account has been in nearly daily use, and was accessed at least as recently as September 29, 2010. In addition, three more accounts have been identified as belonging to Mr. Evans, each of which is also active on a near-daily basis. This updated data is set forth in Exhibit A hereto, and the three additional accounts of Mr. Evans are identified as Evans Account Numbers 102, 103, and 104.

4. I have been asked to provide the same categories of data for the Second Life accounts identified as belonging to Cindy Carter, Donald Spencer, and Valerie Spencer. That data is also set forth in Exhibit A.

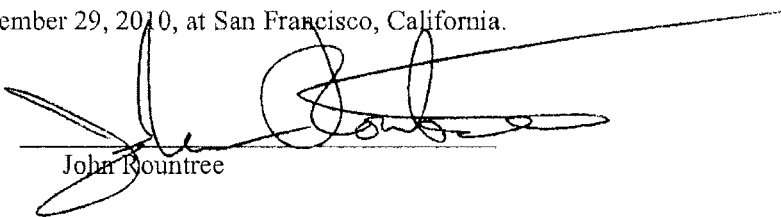
5. Exhibit G to my prior declaration includes three different dates (where available) for each account. First, there is the date on which the account was created. In the process of creating an account, the user must click on a “Create Account” button with the legend “By

clicking Create Account you are indicating that you have read and agree to the **Terms of Service Agreement** and **Privacy Policy**.” A true and correct copy of that page is attached hereto as Exhibit B (the bolded words are hyperlinks to the relevant agreements).

6. Once a user has created an account and downloaded the Second Life viewer software, he or she can log into the three-dimensional virtual environment of Second Life. The first time each account is logged into, the user must again agree to the Terms of Service, on a screen that presents the Terms of Service in a scrolling window and requires the user to agree before proceeding. A true and correct copy of this screen is attached hereto as Exhibit C.

7. The second date on each line of Exhibit G is the last date on which the user agreed to the Terms of Service in the scrolling window of the Second Life viewer. That date will be either (a) the date that account was first logged into, or (b) a later date on which the user logged into that account and agreed to a revised version of the Terms of Service. A number of Mr. Evans’ accounts have no such date. This means that, although Mr. Evans created those accounts, he never logged into them. The last date in each row of Exhibit G is the last date the account was logged into. For accounts that were never logged into, Exhibit G reads “N/A.” The same format is used for the accounts listed in Exhibit A hereto. For each Plaintiff, the rows in bold indicate the instances where that Plaintiff has agreed to the current Terms of Service.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 29, 2010, at San Francisco, California.

  
John Rountree

## **Exhibit A**

## Second Life Accounts of Plaintiffs

<b>Carl Evans Account No.</b>	<b>Account Creation Date</b>	<b>Last Date of Click Through of Terms of Service Agreement</b>	<b>Last Date of Account Login</b>
<b>Evans Account 104</b>	<b>6/13/2010</b>	<b>6/13/2010 11:01:16</b>	<b>9/26/2010</b>
<b>Evans Account 103</b>	<b>6/1/2010</b>	<b>6/1/2010 18:15:55</b>	<b>9/29/2010</b>
<b>Evans Account 102</b>	<b>3/31/2010</b>	<b>3/31/2010 10:35:43</b>	<b>9/29/2010</b>
Evans Account 101	3/13/2010	3/13/2010 0:25:24	3/17/2010
Evans Account 100	2/13/2010	2/16/2010 18:23:00	2/16/2010
<b>Evans Account 99</b>	<b>2/13/2010</b>	<b>3/31/2010 13:54:14</b>	<b>9/29/2010</b>
Evans Account 98	2/12/2010	2/14/2010 20:20:16	2/16/2010
Evans Account 97	4/27/2008		N/A
Evans Account 96	3/21/2008	3/24/2008 21:22:20	2/11/2010
Evans Account 95	3/4/2008		N/A
Evans Account 94	3/3/2008		N/A
Evans Account 93	1/23/2008	1/23/2008 13:04:07	2/27/2008
Evans Account 92	1/11/2008	1/11/2008 8:34:28	2/28/2008
Evans Account 91	12/20/2007	12/20/2007 18:37:56	12/21/2007
Evans Account 90	12/3/2007	12/3/2007 18:52:34	12/3/2007
Evans Account 89	12/2/2007	12/2/2007 13:23:58	12/3/2007
Evans Account 88	12/1/2007	12/1/2007 8:26:16	3/2/2008
Evans Account 87	11/27/2007	11/27/2007 17:28:18	11/30/2007
Evans Account 86	11/27/2007	11/27/2007 17:45:22	11/30/2007
Evans Account 85	11/15/2007	11/15/2007 14:01:51	11/15/2007
Evans Account 84	11/13/2007	11/13/2007 19:06:00	11/16/2007
Evans Account 83	11/11/2007	11/11/2007 6:51:56	11/11/2007
Evans Account 82	11/11/2007	11/11/2007 7:03:08	11/11/2007
Evans Account 81	10/4/2007	10/4/2007 5:27:38	10/7/2007
Evans Account 80	10/3/2007	10/3/2007 8:56:31	10/3/2007
Evans Account 79	10/2/2007	10/2/2007 6:20:43	11/11/2007
Evans Account 78	10/1/2007	10/1/2007 16:34:43	10/1/2007
Evans Account 77	9/30/2007	9/30/2007 5:56:29	9/30/2007
Evans Account 76	9/29/2007	9/29/2007 22:16:21	9/30/2007
Evans Account 75	9/24/2007	9/24/2007 8:22:48	9/24/2007
Evans Account 74	9/24/2007	9/24/2007 9:35:05	9/24/2007
Evans Account 73	9/20/2007	9/20/2007 11:00:27	9/20/2007
Evans Account 72	9/12/2007		N/A
Evans Account 71	9/12/2007	9/12/2007 7:54:48	9/12/2007
Evans Account 70	9/10/2007		N/A
Evans Account 69	9/10/2007	9/10/2007 14:42:50	9/11/2007
Evans Account 68	9/7/2007		N/A
Evans Account 67	9/3/2007	9/3/2007 14:49:21	9/9/2007
Evans Account 66	9/1/2007	9/1/2007 5:16:27	9/1/2007
Evans Account 65	8/30/2007		N/A
Evans Account 64	8/30/2007	8/30/2007 11:26:44	9/1/2007
Evans Account 63	8/27/2007	12/4/2007 12:10:58	2/28/2008
Evans Account 62	8/27/2007	11/30/2007 18:47:11	3/2/2008
Evans Account 61	8/24/2007	8/24/2007 5:36:36	8/24/2007
Evans Account 60	8/19/2007	8/19/2007 8:10:55	8/23/2007
Evans Account 59	8/18/2007		N/A
Evans Account 58	8/18/2007		N/A

Evans Account 57	8/18/2007	8/18/2007 8:31:13	8/18/2007
Evans Account 56	8/17/2007	8/17/2007 14:14:29	8/24/2007
Evans Account 55	8/16/2007	8/16/2007 22:37:01	8/16/2007
Evans Account 54	8/14/2007		N/A
Evans Account 53	8/13/2007	8/13/2007 16:22:11	8/14/2007
Evans Account 52	8/4/2007	8/14/2007 7:26:16	8/14/2007
Evans Account 51	8/2/2007	8/2/2007 18:09:06	8/23/2007
Evans Account 50	7/20/2007	7/20/2007 16:34:48	7/20/2007
Evans Account 49	7/20/2007	7/20/2007 16:47:10	8/2/2007
Evans Account 48	7/19/2007	7/19/2007 10:20:42	7/19/2007
Evans Account 47	7/17/2007	7/17/2007 13:25:53	7/17/2007
Evans Account 46	7/17/2007	7/17/2007 13:35:00	7/17/2007
Evans Account 45	7/5/2007	7/5/2007 11:13:26	7/5/2007
Evans Account 44	7/2/2007	7/2/2007 17:17:28	7/30/2007
Evans Account 43	7/1/2007	7/1/2007 10:19:20	7/1/2007
Evans Account 42	6/30/2007		N/A
Evans Account 41	6/30/2007		N/A
Evans Account 40	6/29/2007		N/A
Evans Account 39	6/29/2007	6/29/2007 16:41:51	6/29/2007
Evans Account 38	6/29/2007	6/29/2007 17:09:45	6/29/2007
Evans Account 37	6/22/2007	6/22/2007 15:00:35	6/22/2007
Evans Account 36	6/22/2007	6/22/2007 15:27:06	6/23/2007
Evans Account 35	6/19/2007	7/19/2007 23:30:21	7/20/2007
Evans Account 34	6/17/2007	6/17/2007 16:57:13	6/17/2007
Evans Account 33	6/12/2007	6/12/2007 6:11:03	8/23/2007
Evans Account 32	6/11/2007	6/11/2007 6:38:56	6/11/2007
Evans Account 31	6/11/2007	6/11/2007 6:26:07	6/11/2007
Evans Account 30	6/11/2007	6/10/2007 17:30:03	6/11/2007
Evans Account 29	6/10/2007	6/10/2007 16:49:12	6/10/2007
Evans Account 28	6/5/2007	6/6/2007 14:08:00	6/10/2007
Evans Account 27	6/4/2007		N/A
Evans Account 26	6/4/2007		N/A
Evans Account 25	6/4/2007		N/A
Evans Account 24	6/4/2007		N/A
Evans Account 23	6/4/2007	6/4/2007 5:30:57	6/4/2007
Evans Account 22	5/28/2007	2/28/2007 9:49:56	8/27/2007
Evans Account 21	5/26/2007	5/26/2007 9:25:29	6/4/2007
Evans Account 20	5/26/2007	2/3/2007 7:11:38	6/4/2007
Evans Account 19	5/1/2007		N/A
Evans Account 18	5/1/2007	5/1/2007 23:48:07	5/3/2007
Evans Account 17	5/1/2007		N/A
Evans Account 16	4/26/2007	4/26/2007 5:47:45	4/26/2007
Evans Account 15	3/16/2007	3/16/2007 15:40:29	3/16/2007
Evans Account 14	3/11/2007	3/11/2007 11:01:46	3/11/2007
Evans Account 13	3/11/2007	3/11/2007 11:22:49	3/11/2007
Evans Account 12	3/11/2007	3/10/2007 18:17:15	3/14/2007
Evans Account 11	3/8/2007	3/18/2007 18:36:20	5/26/2007
Evans Account 10	3/6/2007	3/7/2007 18:28:31	3/6/2007
Evans Account 9	3/6/2007	3/7/2007 18:37:33	3/24/2007
Evans Account 8	3/5/2007	3/6/2007 19:38:24	3/6/2007
Evans Account 7	3/5/2007	3/5/2007 15:01:38	3/24/2007
Evans Account 6	3/4/2007	6/4/2007 5:49:43	6/4/2007
Evans Account 5	3/2/2007	3/2/2007 19:28:09	3/3/2007

Evans Account 4	3/2/2007	3/2/2007 0:37:47	8/24/2007
Evans Account 3	3/1/2007	3/1/2007 6:20:33	3/3/2007
Evans Account 2	2/26/2007	2/26/2007 10:29:22	2/26/2007
Evans Account 1	2/26/2007	2/26/2007 18:23:44	2/26/2007

<b>Donald Spencer</b>			
<b>Account No.</b>	<b>Account Creation Date</b>	<b>Last Date of Click Through of Terms of Service Agreement</b>	<b>Last Date of Account Login</b>
D. Spencer Account 8	6/26/2009	6/26/2009 12:49:46	6/28/2009
D. Spencer Account 7	9/8/2007	7/11/2008 7:51:05	2/1/2010
D. Spencer Account 6	7/27/2007	2/11/2008 13:07:09	2/11/2008
<b>D. Spencer Account 5</b>	<b>12/12/2006</b>	<b>4/13/2010 21:37:45</b>	<b>8/19/2010</b>
D. Spencer Account 4	5/23/2006	6/28/2006 21:51:00	7/20/2006
<b>D. Spencer Account 3</b>	<b>5/6/2006</b>	<b>7/31/2010 17:53:41</b>	<b>7/31/2010</b>
D. Spencer Account 2	5/5/2006	6/26/2009 12:34:00	6/26/2009
D. Spencer Account 1	10/18/2005	12/7/2005 5:05:00	5/1/2006

<b>Valerie Spencer</b>			
<b>Account No.</b>	<b>Account Creation Date</b>	<b>Last Date of Click Through of Terms of Service Agreement</b>	<b>Last Date of Account Login</b>
V. Spencer Account 4	12/6/2007	7/11/2008 7:42:00	1/17/2010
V. Spencer Account 3	3/21/2007	3/24/2008 20:57:00	2/1/2010
<b>V. Spencer Account 2</b>	<b>6/29/2006</b>	<b>3/31/2010 14:50:00</b>	<b>9/16/2010</b>
V. Spencer Account 1	10/20/2005	1/6/2006 10:55:00	5/2/2006

<b>Cindy Carter Account</b>			
<b>No.</b>	<b>Account Creation Date</b>	<b>Last Date of Click Through of Terms of Service Agreement</b>	<b>Last Date of Account Login</b>
Carter Account 24	2/26/2009	2/26/2009 7:15:16	6/18/2009
<b>Carter Account 23</b>	<b>9/25/2008</b>	<b>4/1/2010 16:59:17</b>	<b>9/17/2010</b>
Carter Account 22	2/11/2008	10/30/2009 15:33:13	11/1/2009
<b>Carter Account 21</b>	<b>2/7/2008</b>	<b>4/28/2010 17:09:01</b>	<b>9/16/2010</b>
<b>Carter Account 20</b>	<b>10/9/2007</b>	<b>4/3/2010 17:12:06</b>	<b>9/26/2010</b>
Carter Account 19	9/21/2006		N/A
Carter Account 18	9/21/2006	9/5/2008 12:32:59	9/5/2008
Carter Account 17	9/15/2006	3/24/2008 20:33:25	8/20/2009
Carter Account 16	9/10/2006		N/A
Carter Account 15	9/10/2006		N/A
<b>Carter Account 14</b>	<b>8/10/2006</b>	<b>3/31/2010 17:07:00</b>	<b>6/22/2010</b>
Carter Account 13	8/9/2006	8/9/2006 19:38:36	8/9/2006
Carter Account 12	8/8/2006	5/3/2008 23:12:22	5/3/2008
Carter Account 11	5/22/2006	3/28/2008 15:02:00	8/22/2009
Carter Account 10	5/2/2006	6/28/2006 21:45:24	11/1/2006
Carter Account 9	3/1/2006	3/1/2006 22:17:35	5/2/2006
Carter Account 8	2/17/2006		N/A
Carter Account 7	1/8/2006	1/8/2006 14:12:06	5/2/2006
Carter Account 6	1/5/2006	1/5/2006 17:52:00	5/2/2006
Carter Account 5	10/21/2005	9/5/2008 12:44:00	9/5/2008
Carter Account 4	10/20/2005	12/14/2005 11:08:00	5/1/2006
Carter Account 3	8/11/2005	3/25/2008 10:28:38	5/15/2009
Carter Account 2	5/14/2005	8/20/2006 16:27:01	8/20/2006
<b>Carter Account 1</b>	<b>12/12/2004</b>	<b>7/5/2010 11:11:21</b>	<b>9/27/2010</b>

## **Exhibit B**



中文 English Français Deutsch 日本語 한국어 Português Español Italiano Nederlands

### Create your Second Life Personality

#### Create your user name and password

Your username includes a first and last name. First last names are available for a limited time. Choose a first name to use, which last names are available now.

Create a First Name



Create a Password

**Note:** Your username is both your screen name in Second Life, and your login ID. Once you register, your username cannot be changed.

#### Choose a starting look

Click on images below to select a starting look. Once in Second Life, you can change your appearance, or drop for a whole new look.



First Name Last Name



You in Second Life

### Just a Few More Details ...

Email Address

I was born Month Day Year

Security Question Select a question

Security Answer

Security Check



Enter the two words above

Problems? Try a different one.

You can also try an audio captcha instead or get help.

**Need Help? Have Questions?**

Please see our FAQ

By clicking Create Account you are indicating that you have read and agree to the Terms of Service Agreement and Privacy Policy.

Create Account

## **Exhibit C**

Please read the following Terms of Service and Privacy Policy carefully. To continue logging in to Second Life, you must accept the agreement.

## TERMS OF SERVICE

Last updated: March 31, 2010

Effective date: April 30, 2010

Welcome to Second Life! This agreement (this "Agreement" or the "Terms of Service") describes the terms on which Linden Research, Inc. ("Linden Lab") offers you access to Second Life. "Second Life" or the "Service" means the multi-user online service offered by Linden Lab, including its Websites, Servers, Linden Software, Linden In-World Content, and User Content (as those terms are defined in this Agreement). This offer is conditioned on your agreement to all of the terms and conditions contained in the Terms of Service, including the policies and terms linked to or otherwise referenced in this Agreement.

By using Second Life, you agree to and accept these Terms of Service. If you do not so agree, you should decline this Agreement, in which case you are prohibited from accessing or using Second Life.

### 0.0 TABLE OF CONTENTS

This Agreement includes both the terms above and the following 14 sections, which you may jump to directly by selecting the appropriate link below. The headings and subheadings are for your convenience only – you are responsible for reviewing all

I Agree to the Terms of Service and Privacy Policy

Cancel

Continue