

BRONSTER HOSHIBATA
A Law Corporation

MARGERY S. BRONSTER #4750
mbronster@bhhawaii.net

REX Y. FUJICHAKU #7198
rfujichaku@bhhawaii.net

1003 Bishop Street, Suite 2300
Honolulu, Hawai`i 96813
Telephone: (808) 524-5644
Facsimile: (808) 599-1881

Attorneys for Defendants
NC INTERACTIVE, INC. and
NCSOFT CORPORATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CRAIG SMALLWOOD,	)	Civ. No. CV09-00497 ACK BMK
)	
Plaintiff,)	
	)	DEFENDANTS' ANSWER TO
v.	)	SECOND AMENDED
	)	COMPLAINT, FILED APRIL 7,
NCSOFT CORPORATION and	)	2010; CERTIFICATE OF SERVICE
NC INTERACTIVE, INC.,)	
)	
Defendants.	)	Trial Date: Not scheduled
)	
)	
)	

DEFENDANTS' ANSWER TO
SECOND AMENDED COMPLAINT, FILED APRIL 7, 2010

Defendants NC INTERACTIVE, INC. ("NCI") and NC SOFT CORPORATION ("NCsoft") (collectively "Defendants"), by and through their attorneys Bronster Hoshibata, hereby answer Plaintiff Craig Smallwood's ("Plaintiff") Second Amended Complaint, filed April 7, 2010 [Doc. No. 21] ("SAC"), as follows:

In response to the numbered paragraphs of Plaintiff's SAC, Defendants admit, deny or otherwise aver as follows:

 FIRST DEFENSE

1. Plaintiff's SAC fails to state a claim upon which relief can be granted.

SECOND DEFENSE

2. As to Paragraph 1 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.
3. As to Paragraph 2 of the SAC, Defendants admit that NCsoft is a South Korean corporation, but deny the remaining allegations therein.
4. As to Paragraph 3 of the SAC, Defendants admit that NCI is a wholly owned subsidiary of NCsoft. Defendants deny the remaining allegations in Paragraph 3 of the SAC.

5. As to Paragraph 4 of the SAC, Defendants admit that Plaintiff entered into a User Agreement with NCI that allowed Plaintiff to access and play Lineage II in the State of Hawai`i. Defendants deny the remaining allegations therein.

6. Paragraph 5 of the SAC states Plaintiff's characterization of the lawsuit and does not require a response. To the extent that Paragraph 5 requires a response, Defendants deny the allegations therein.

7. As to Paragraph 6 of the SAC, Defendants reallege and incorporate the preceding averments to Paragraphs 1 through 5 of the SAC as though fully set forth therein.

8. As to Paragraph 7 of the SAC, Defendants admit that there is diversity of citizenship between the parties, but deny the remaining allegations.

9. As to Paragraph 8 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

10. As to Paragraph 9 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

11. As to Paragraph 10 of the SAC, Defendants reallege and incorporate the preceding averments to Paragraphs 1 through 9 of the SAC as though fully set forth therein.

12. As to Paragraph 11 of the SAC, NCsoft admits that it designed, developed, tested, and inspected various massively multiplayer online role playing games, including Lineage II. Further, NCI admits that it marketed, tested, promoted, advertised, sold licensed for use, and/or distributed Lineage II in the United States. Defendants deny the remainder of Plaintiff's allegations.

13. As to Paragraph 12 of the SAC, Defendants admit that two (not three) accounts were opened in 2004/2005 but deny the remaining allegations.

14. As to Paragraph 13 of the SAC, Defendants admit that the accounts were typically paid for by charge card or other means in accordance with the terms and conditions of the User Agreement. Defendants deny the remaining allegations.

15. As to Paragraph 14 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

16. As to Paragraph 15 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

17. As to Paragraph 16 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

18. As to Paragraph 17 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

19. As to Paragraph 18 of the SAC, Defendants deny the allegations.

20. As to Paragraph 19 of the SAC, Defendants admit that Lineage II was played around the world. As to the remaining allegations, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations, and on that basis deny the same.

21. As to Paragraph 20 of the SAC, Defendants admit that it continues to develop new games for fans to play. Defendants deny the remaining allegations.

22. As to Paragraph 21 of the SAC, Defendants admit that in 2009, Defendants began selling/licensing a new computer game, "Aion", in the United States. Defendants deny the remaining allegations.

23. As to Paragraph 22 of the SAC, Defendants deny the allegations.

24. As to Paragraph 23 of the SAC, Defendants admit that Plaintiff was "banned" from further play of LineageII. As to the remaining allegations, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations, and on that basis deny the same.

25. As to Paragraph 24 of the Second Amended Complaint, Defendants admit that Plaintiff was banned from further play of Lineage II in all of his accounts. Defendants deny the remaining allegations.

26. As to Paragraph 25 of the SAC, Defendants deny the allegations.

27. As to Paragraph 26 of the SAC, Defendants admit that Plaintiff could no longer play the game or create any new account/s to play the game after being banned. Defendants deny the remaining allegations.

28. As to Paragraph 27 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

29. As to Paragraph 28 of the SAC, Defendants admit that Plaintiff contacted NCI in order to reinstate his Lineage II accounts. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations, and on that basis deny the same.

30. As to Paragraph 29 of the SAC, Defendants admit that Plaintiff contacted NCI in order to reinstate his Lineage II accounts, and that NCI refused to lift the ban and reinstate Plaintiff's accounts on the basis that Plaintiff violated numerous terms of the User Agreement. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations, and on that basis deny the same.

31. As to Paragraph 30 of the SAC, Defendants deny the allegations.

32. As to Paragraph 31 of the SAC, Defendants deny the allegations.

33. As to Paragraph 32 of the SAC, Defendants deny the allegations.

34. As to Paragraph 33 of the SAC, Defendants deny the allegations.

35. As to Paragraph 34 of the SAC, Defendants admit that one of the reasons Plaintiff was banned from his Lineage II accounts was due to his involvement in real money transfers which is expressly forbidden by the User Agreement and the Rules of Conduct agreed to by Plaintiff each time he logged into the game. Defendants deny the remaining allegations contained therein.

36. As to Paragraph 35 of the SAC, Defendants admit that NCI sent a support email to Plaintiff upon his request, and that the document speaks for itself. To the extent that further response is required, Defendants deny the remaining allegations contained therein.

37. As to Paragraph 36 of the SAC, Defendants state that the document speaks for itself. Defendants are without sufficient knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

38. As to Paragraph 37 of the SAC, Defendants deny the allegations.

39. As to Paragraph 38 of the SAC, Defendants state that the document speaks for itself. To the extent that a response is required, Defendants deny the allegations therein.

40. As to Paragraph 39 of the SAC, Defendants deny the allegations.

41. As to Paragraph 40 of the SAC, Defendants deny the allegations.

42. As to Paragraph 41 of the SAC, Defendants deny the allegations.

43. As to Paragraph 42 of the SAC, Defendants deny the allegations.

44. As to Paragraph 43 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

45. As to Paragraph 44 of the SAC, Defendants deny the allegations.

46. As to Paragraph 45 of the SAC, Defendants admit that the User Agreement is prominently displayed before a player attempts to log into his/her account, and that the User Agreement has been amended. Defendants deny the remainder of the allegations.

47. As to the second, misnumbered Paragraph 45 and that is the 46th paragraph of the SAC, Defendants admit that Lineage II players can and often do play in groups. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations, and on that basis deny the same.

48. As to Paragraph 47 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

49. As to Paragraph 48 of the SAC, Defendants deny the allegations.

50. As to Paragraph 49 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

51. As to Paragraph 50 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

52. As to Paragraph 51 of the SAC, Defendants admit that Game Masters are present in Lineage II, and are there to police the players and enforce the game rules. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations, and on that basis deny the same.

53. As to Paragraph 52 of the SAC, Defendants deny the allegations.

54. As to Paragraph 53 of the SAC, Defendants state that the document speaks for itself. To the extent that a response is required, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

55. As to the second (misnumbered) Paragraph 53 of the SAC, Defendants deny the allegations therein.

56. As to Paragraph 54 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

57. As to Paragraph 55 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

58. As to Paragraph 56 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

59. As to Paragraph 57 of the SAC, Defendants deny the allegations.

60. As to Paragraph 58 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the same.

61. As to Paragraph 59 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

62. As to Paragraph 60 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

63. As to Paragraph 61 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

64. As to Paragraph 62 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

65. As to Paragraph 63 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

66. In response to Paragraphs 64 – 71 of the SAC, Defendants state that Count I [Misrepresentation/Deceit] has been dismissed by this Court's Order Granting In Part and Denying In Part Defendant's Motion to Dismiss the Second Amended Complaint, filed on August 4, 2010 [Doc. No. 36]. To the extent that a further response is required, Defendants deny the claims and allegations advanced therein.

67. In response to Paragraphs 72 – 82 of the SAC, Defendants state that Count II [Unfair and Deceptive Trade Practices] has been dismissed by this Court's Order Granting In Part and Denying In Part Defendant's Motion to Dismiss the Second Amended Complaint, filed on August 4, 2010 [Doc. No. 36]. To the extent that a further response is required, Defendants deny the claims and allegations advanced therein.

68. As to the allegations contained in Paragraph 83 of the SAC, Defendants reallege and incorporate the preceding averments to Paragraphs 1 through 82 of the SAC as though fully set forth herein.

69. As to Paragraph 84 of the SAC, Defendants deny the allegations.

70. As to Paragraph 85 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

71. As to Paragraph 86 of the SAC, Defendants deny the allegations.

72. As to Paragraph 87 of the SAC, Defendants state that the allegations are legal conclusions which do not require an answer. To the extent that an answer is required, Defendants deny the allegations.

73. As to Paragraph 88 of the SAC, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and on that basis deny the allegations therein.

74. As to the allegations contained in Paragraph 89 of the SAC, Defendants reallege and incorporate the preceding averments to Paragraphs 1 through 88 of the SAC as though fully set forth herein.

75. As to Paragraph 90 of the SAC, Defendants deny the allegations.

76. As to Paragraph 91 of the SAC, Defendants deny the allegations.

77. As to Paragraph 92 of the SAC, Defendants state that the allegation is a legal conclusion which does not require an answer. To the extent that an answer is required, Defendants deny the allegation.

78. As to Paragraph 93 of the SAC, Defendants deny the allegations.

79. As to the allegations contained in Paragraph 94 of the SAC, Defendants reallege and incorporate the preceding averments to Paragraphs 1 through 93 of the SAC as though fully set forth herein.

80. As to Paragraph 95 of the SAC, Defendants deny the allegations.

81. As to Paragraph 96 of the SAC, Defendants deny the allegations.

82. As to Paragraph 97 of the SAC, Defendants deny the allegations.

83. As to the second misnumbered Paragraph 97 - 100 of the SAC, Defendants state that Count VI [Intentional Infliction of Emotional Distress] has been dismissed by this Court's Order Granting In Part and Denying In Part Defendant's Motion to Dismiss the Second Amended Complaint, filed on August 4, 2010 [Doc. No. 36]. To the extent that a further response is required, Defendants deny the claims and allegations advanced therein.

84. As to the allegations contained in Paragraph 101 of the SAC, Defendants reallege and incorporate the preceding averments to Paragraphs 1 through 100 of the SAC as though fully set forth herein.

85. As to Paragraph 102 of the SAC, Defendants deny the allegations.

86. As to Paragraph 103 of the SAC, Defendants deny the allegations.

87. As to Paragraph 104 of the SAC, Defendants deny that Plaintiff is entitled to recover damages from Defendants in the amount of \$3,000,000.

Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations, and on that basis deny the same.

88. As to Paragraphs 105 - 107 of the SAC, Defendant state that Count VIII [Punitive Damages] has been dismissed by this Court's Order Granting In Part and Denying In Part Defendant's Motion to Dismiss the Second Amended Complaint, filed on August 4, 2010 [Doc. No. 36]. To the extent that a further response is required, Defendants deny the claims and allegations advanced therein.

89. Defendants deny any allegations to which they have not provided an answer herein.

THIRD DEFENSE

90. Defendants intend to rely upon the defense of accord and satisfaction.

FOURTH DEFENSE

91. Defendants intend to rely upon the defense of assumption of risk.

FIFTH DEFENSE

92. Defendants intend to rely upon the defense of contributory negligence.

SIXTH DEFENSE

93. Defendants intend to rely upon the defense of estoppel.

SEVENTH DEFENSE

94. Defendants intend to rely upon the defense of statute of limitations.

EIGHTH DEFENSE

95. Defendants intend to rely upon the defense of laches.

NINTH DEFENSE

96. Defendants intend to rely upon the defense that Plaintiff failed to mitigate his damages, if any.

TENTH DEFENSE

97. Defendants intend to rely upon the defense of consent.

ELEVENTH DEFENSE

98. Defendants intend to rely upon the defense of waiver.

TWELFTH DEFENSE

99. Defendants intend to rely upon the defense of disclaimer of warranty.

THIRTEENTH DEFENSE

100. Defendants intend to rely upon the defense of contribution.

FOURTEENTH DEFENSE

101. Defendants intend to rely upon the defense of misuse.

FIFTEENTH DEFENSE

102. Defendants intend to rely upon the defense that Plaintiff failed to allege fraud with particularity.

SIXTEENTH DEFENSE

103. Defendants intend to rely upon the defense of acceptance.

SEVENTEENTH DEFENSE

104. Defendants intend to rely upon the defense of unclean hands.

EIGHTEENTH DEFENSE

105. Defendants intend to rely upon the defense that Plaintiff's emotional distress and any medical problems he may currently have were the sole result of a pre-existing condition.

NINETEENTH DEFENSE

106. Defendants intend to rely upon the defense of reservation, warning, disclosure or disclaimer.

TWENTIETH DEFENSE

107. Defendants intend to rely on the defense that Plaintiff's claims are barred by Plaintiff's breach of contract and/or duty, default, failure and/or misconduct that was beyond Defendants' control.

TWENTY-FIRST DEFENSE

108. Defendants intend to rely upon the defense that Plaintiff's damages and injuries, if any, were proximately caused by third parties or persons/entities over which Defendants had no control.

TWENTY-SECOND DEFENSE

109. Defendants intend to rely on the defense that independent or intervening forces by persons/entities other than Defendants are proximate or legal causes of Plaintiff's damages for which Defendants cannot be held liable.

TWENTY-THIRD DEFENSE

110. Defendants intend to rely upon the defense that Plaintiff failed to join indispensable parties.

TWENTY-FOURTH DEFENSE

111. Defendants intend to rely upon the defense that Plaintiff's claims and damages are limited by the User Agreement.

TWENTY-FIFTH DEFENSE

112. Defendants intend to rely upon the defense that Plaintiff's claims are barred by compromise and settlement.

TWENTY-SIXTH DEFENSE

113. Defendants intend to rely upon the defense that statements made by Defendants relating to Plaintiff were true.

TWENTY-SEVENTH DEFENSE

114. Defendants intend to rely upon the defense that statements made by Defendants relating to Plaintiff were not made to third parties.

TWENTY-EIGHTH DEFENSE

115. Defendants intend to rely on the defense of absence of malice.

TWENTY-NINTH DEFENSE

116. Defendants intend to rely on every other affirmative defense available to them in law and equity.

WHEREFORE, Defendants pray as follows:

1. That all remaining claims contained in Plaintiff's SAC against Defendants be dismissed with prejudice.
2. That Defendants be awarded their reasonable attorneys fees and costs.
3. That Defendants be given such other and further relief as this Court deems just and proper.

DATED: Honolulu, Hawai`i, August 18, 2010.

/s/ REX Y. FUJICHAKU
MARGERY S. BRONSTER
REX Y. FUJICHAKU

Attorneys for Defendants
NC INTERACTIVE, INC. and
NCSOFT CORPORATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CRAIG SMALLWOOD, et al.,	)	Civ. No. CV09-00497 ACK BMK
)	
Plaintiff,	)	CERTIFICATE OF SERVICE
)	
v.	)	(RE: DEFENDANTS' ANSWER
	)	TO SECOND AMENDED
NC SOFT CORPORATION and	)	COMPLAINT, FILED APRIL 7,
NC INTERACTIVE, INC.,	)	2010)
)	
Defendant.)	
)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 18, 2010, a true and correct copy of DEFENDANTS' ANSWER TO SECOND AMENDED COMPLAINT, FILED APRIL 7, 2010, was duly served via U.S. Mail, postage pre-paid, addressed as follows:

LILA B. KANAE, ESQ.
2211 Ala Wai Boulevard, #2106
Honolulu, Hawaii 96815
Attorney for Plaintiff
CRAIG SMALLWOOD

DATED: Honolulu, Hawai'i, August 18, 2010.

/s/ REX Y. FUJICHAKU
MARGERY S. BRONSTER
REX Y. FUJICHAKU

Attorneys for Defendants
NC INTERACTIVE, INC. and
NC SOFT CORPORATION