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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NEXON AMERICA, INC., a Delaware corporation, and NEXON KOREA CORPORATION, a Korean corporation,

Plaintiffs,

v.

RYAN MICHAEL CORNWALL a/k/a "Riu Kuzaki" and "Alexandria Cornwall"; YANGYU ZHOU a/k/a "Yang Yu," "W8baby," and "Gamersoul"; DOUGLAS CRANE a/k/a "DJ" and "Lonerboy"; WILLIAM "BILLY" KEISTER a/k/a "ThePhoneGuy"; AMARJOT GILL a/k/a "Alphaamar"; DEREK OSGOOD a/k/a "Jayce"; COLIN JOHNSON a/k/a "Colin "; LINDA LIU a/k/a "linnyda942"; JEREMY SIMPSON; V.H. a/k/a "Vince"; DOE 1 a/k/a "Bizarro" and "Andrew," DOE 2 a/k/a "Cam1596," and DOES 3 through 10, inclusive,

Defendants.

CASE NO. 2:12-cv-00160-RSWL-FFM

Honorable Ronald S.W. Lew

PLAINTIFFS' OPPOSITION TO DEFENDANT DOUGLAS CRANE'S MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND/OR TO TRANSFER VENUE (DOCKET NOS. 31 AND 35)

Date: July 17, 2012
Time: 10:00 a.m.
Ctrm: 21, Spring St. Courthouse

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs Nexon America, Inc. and NEXON Korea Corporation (collectively, "Nexon") hereby submit this Opposition to the Motions to Dismiss for Lack of Personal Jurisdiction filed by Defendant Douglas Crane a/k/a "DJ" and "lonerboy" ("Crane") on June 7, 2012 and June 11, 2012 (Docket Nos. 31 and 35).

I. INTRODUCTION

This is an action for copyright infringement, violation of the Digital Millennium Copyright Act, and related claims arising from Defendants' distribution of software products designed to alter or manipulate Nexon's online computer game, "MapleStory" (sometimes referred to as MapleStory "hacks" or "cheats") on the Internet websites www.riukuzaki.com, now known as www.unallied.com (the "Riu Kuzaki Website") and www.gamersoul.com, formerly known as www.w8baby.com (the "GamerSoul Website").

Crane is one of several defendants in this case, including Ryan Michael Cornwall (a/k/a "Riu Kuzaki" and "Alexandria Cornwall"), who has appeared in this action. Crane was one of the chief administrators of the GamerSoul Website and was the person responsible for selling the hacks at issue, including by collecting and processing customer payments. In the course of approximately 18 months, Crane completed thousands of transactions for the sale of infringing hacks and cheats, including hundreds of transactions with customers in the State of California.

Nexon filed its initial complaint on January 12, 2012, and its Amended Complaint (adding Crane) on March 1, 2012. On March 20, 2012, Crane filed his Answer, and did not contest jurisdiction or venue. Now, three months after the Amended Complaint was filed, nearly a month after the parties' Rule 26 conference took place, after the Court set a pre-trial schedule, and after discovery was served, Crane moves to dismiss this action for lack of personal jurisdiction and

to transfer the case to the District of Massachusetts. Crane's motions fail for a number of reasons.

Initially, Crane's motions to dismiss fail because he waived the defenses of lack of personal jurisdiction and, to the extent he is arguing it, improper venue. Crane chose not to bring these motions when he first appeared in this case, instead filing an Answer. In that Answer, Crane admitted that venue was proper in this District, and waived any objection to personal jurisdiction by not raising it as a defense. Furthermore, Crane waived all objections to this Court's jurisdiction and venue over the contract claims by agreeing in the Terms of Use and End User License Agreement ("EULA") to submit to the personal and exclusive jurisdiction and venue of the courts in Los Angeles County, California.

Regardless of the foregoing, Crane is subject to personal jurisdiction in California because he purposefully availed himself of the benefits of the State of California, including by selling products designed to alter and disrupt Nexon's flagship computer game MapleStory to hundreds of customers in California. Crane's conduct was targeted at Nexon America Inc., which Crane knew or reasonably should have known was located in California. Crane's arguments that he does not reside in or regularly travel to California (even if they were supported, which they are not) are irrelevant. A defendant – especially a defendant alleged to have infringed copyrights – is subject to jurisdiction when he sells infringing products in the forum and engages in activities that are intended to harm the intellectual property of entities located in the forum. It is not necessary that the defendant have physically entered the forum. Were that the case, then those engaged in infringement over the Internet could operate with impunity, knowing that no matter who is injured by their conduct or where their infringing products are sold, they could never be haled into court anywhere other than their place of residence.

Crane's request to change venue also should be denied. There is no dispute that because Crane is subject to jurisdiction in California, he "may be found" here for purposes of copyright venue. 28 U.S.C. § 1400(a). Crane also specifically "waive[d] any . . . venue or inconvenient forum objections" to this Court in the Terms of Use and EULA he assented to in order to access MapleStory. Nor does Crane offer any factual or legal support for transfer under the "convenience" factors of 28 U.S.C. § 1404. Nexon's choice of forum is entitled to great deference, especially where, as here, Nexon's offices, witnesses, and documents all are located in California. Moreover, transfer of Nexon's claims against Crane to Massachusetts would be highly prejudicial, including because it would splinter this litigation (now pending for more than six months), forcing Nexon to litigate duplicative and overlapping claims in multiple jurisdictions. Crane's argument that it would be unduly "burdensome" for him to litigate in California is completely unsupported. In fact, the burden would be far greater for Nexon to transport all of its witnesses and documents to Massachusetts, where only one of the multiple defendants in this case resides.

Crane's motions to dismiss for lack of personal jurisdiction, and request to transfer venue, should be denied.

II. SUMMARY OF BACKGROUND FACTS

Nexon and MapleStory. Nexon America, Inc. and NEXON Korea Corporation are, together, the owner of copyrights and/or certain exclusive rights in the computer game "MapleStory." Am. Compl., ¶¶ 11, 25 (Docket No. 14); see Declaration of Lloyd Korn ("Korn Decl."), ¶ 8. MapleStory is a popular online computer role-playing game in which large numbers of people simultaneously interact in a dynamic, virtual, computer-generated world. Am. Compl., ¶¶ 2, 26; Korn Decl., ¶ 3. Nexon offers MapleStory for free download. Nexon generates revenue by selling "in-game" assets and add-ons, such as upgraded armor, weapons, costumes, or pets. Am. Compl., ¶ 27; Korn Decl., ¶ 3.

MapleStory is a tightly controlled online environment with a defined set of game rules that are set by Nexon's computer servers. Nexon has implemented technological and contractual measures to prevent users from hacking, altering, and manipulating the MapleStory game. First, Nexon has implemented a technology known as "HackShield" that attempts to detect the use of unauthorized software "hacks" or "cheats," including by scanning a user's computer for the presence of unauthorized software code. Am. Compl., ¶¶ 33-36; Korn Decl., ¶ 4.

Second, all participants in MapleStory must assent to a set of "Terms of Use" and an "End User License Agreement" before installing the MapleStory software and accessing the MapleStory computer server. Am. Compl., ¶¶ 37-42; Korn Decl., ¶ 4. These contracts, among other things, prohibit users from "[m]odify[ing] the [MapleStory] Software . . . or the Service to change 'game play,' including without limitation, creating cheats and/or hacks or using third-party software to access files in the Software or Service." Am. Compl., ¶ 40(e); Korn Decl., ¶ 4, Ex. A. The Terms of Use also state:

> "This Agreement is governed by and construed in accordance with the laws of the State of California, United States of America, without regard to principles of conflicts of laws that would result in the application of the law of a different jurisdiction. You agree to submit to the exclusive jurisdiction of any State or Federal court located in the County of Los Angeles, United States of America, and waive any jurisdictional, venue or inconvenient forum objections to such courts." Korn Decl., ¶ 5, Ex. A.

Similarly, the EULA provides:

> "This Agreement shall be governed by and construed in accordance with the laws of the State of California, U.S.A., without regard to principles of conflicts of laws that would result in the application of the law of a different jurisdiction. Any dispute arising out of or related to this Agreement shall be subject to the exclusive jurisdiction of the State and Federal courts located in Los Angeles County, California, U.S.A, and the parties hereby irrevocably agree to submit to the personal and exclusive jurisdiction and venue of such courts, and waive any jurisdictional, venue or inconvenient forum objections to such courts." Korn Decl., ¶ 6, Ex. B.

Crane signed up to play MapleStory and in doing so necessarily agreed to the Terms of Use and EULA. Am. Compl., ¶ 59; Declaration of Marc E. Mayer ("Mayer Decl."), Ex. L.

Nexon America Inc. ("Nexon America") is a Delaware corporation with its principal place of business in El Segundo, California. Am. Compl., ¶ 9; Korn Decl., ¶ 2. All North American operations pertaining to Nexon and its products, including MapleStory, take place from its El Segundo office. Korn Decl., ¶ 8. Nexon's North American business affairs representatives, technical staff and coders (including its technical security specialists), anti-piracy team, licensing staff, and customer support personnel are located in El Segundo, California. Id. Nexon America is the exclusive licensee of the rights to distribute and operate MapleStory in the United States and North America. It licenses those rights from Plaintiff Nexon Korea, which is located in Seoul, Korea. Nexon Korea is an affiliate of Nexon America and is the owner of the worldwide copyright in MapleStory. Id.

Neither Nexon America nor Nexon Korea has any offices, employees, real property, assets, or bank accounts in the State of Massachusetts. Id., ¶ 9. Their employees do not regularly travel to Massachusetts and do not specifically target residents of Massachusetts. Id. Neither Nexon America nor Nexon Korea is a party to any lawsuits in the State of Massachusetts and neither has any reason to travel there in the ordinary course of business. Id.

W8Baby and GamerSoul. Prior to the filing of this lawsuit, Nexon became aware of the existence (and growing popularity) of a website known as W8Baby.com, which was engaged in the distribution of a variety of software products designed to alter or modify MapleStory (sometimes referred to as "hacks" or "cheats"). In 2011, W8Baby.com changed its name to "GamerSoul." Am. Compl., ¶ 51; Korn Decl., ¶ 7.

GamerSoul is a website dedicated almost entirely to the manipulation and

hacking of MapleStory. The GamerSoul Website consists of a number of "message boards" or "forums," in which users purport to exchange and discuss MapleStory and the use and development of various MapleStory "hacks" and "cheats." Am. Compl., ¶ 57. In fact, the primary purpose of the GamerSoul Website is to advertise and sell several exclusive MapleStory software hacks and cheats. Among the most popular of these products are (1) the "Bizarro Trainer," a software "bot" that automates gameplay of MapleStory and thereby permits users to unfairly acquire valuable in-game assets, and (2) the "RiPE" packet editor and "RiME" memory editor, which allow users to alter MapleStory's gameplay by changing the way in which users communicate and interact with Nexon's MapleStory computer server. Id., ¶¶ 52-54, 44. GamerSoul sells these products via a number of links and advertisements it places on its website. Mayer Decl., ¶ 3, Ex. A. Clicking on these links directs users to a payment page in which "VIP" access to the desired product can be purchased via third-party payment services, such as AlertPay, PayPal, and 2Checkout.com. Id. Purchase of "VIP" access to the desired product also allows users to access various GamerSoul "VIP" message boards, in which users can discuss the use of these products and obtain technical support from GamerSoul moderators and "staff." Id.

At the time the lawsuit was filed, all of these products, and many more, were sold on GamerSoul. (RiPE and RiME also were sold on the website of their creator, defendant Ryan Cornwall, a/k/a "Riu Kuzaki.") Am. Compl., ¶¶ 43-57. It is now well-established that such products violate Section 1201 (the anti-circumvention provisions) of the DMCA and infringe Nexon's copyrights. See MDY Indus., Inc. v. Blizzard Entm't, Inc., 629 F.3d 928, 953-54 (9th Cir. 2010) (computer game "bot" that automatically played game for players violated Section 1201(a)(2) of the DMCA); Midway Mfg. Co. v. Artic Int'l, Inc., 704 F.2d 1009, 1013-14 (7th Cir. 1983) (chips that sped up gameplay created derivative work and infringed copyright). Additionally, the use of these software products violates

Nexon's contracts with its users and thus their sale constitutes intentional interference with these contracts. See, e.g., Davidson & Associates v. Jung, 422 F.3d 630, 637-39 (8th Cir. 2005) (end user license agreements and terms of use agreements are enforceable and claims for breach not preempted by Copyright Act).

Crane's Involvement with GamerSoul. Crane (doing business under the handle "lonerboy") was one of the primary administrators and operators of GamerSoul. Am. Compl., ¶ 15. Among other things, Crane regularly communicated with members of the GamerSoul community and actively solicited users to purchase GamerSoul products, including the "Bizarro Trainer." See, e.g., Mayer Decl., Ex. E ("now would be a very good and smart time to make SURE you are one of the people who maintain an active BT license"). He also was an active user and advocate of the Bizarro Trainer software, which he apparently used to operate multiple MapleStory accounts simultaneously and unfairly acquire in-game items for later sale. Id., Ex. H ("now got 8 going... OMFG this is like a Dream... I need a lice[nse] for my other computers NOWWWWWW!! :P time to make Bank!").

Crane personally posted hundreds of messages to the GamerSoul Website. Many of those messages specifically discussed Nexon, Nexon's business practices, and ways to cheat and hack MapleStory without being detected by Nexon. See Mayer Decl., Ex. B-H. For example, among Crane's comments concerning Nexon are the following:

- "Buy BT and goo fuk [Nexon] up bro!"
- "allthough [sic] Nexon would never admit to it, the fact is they make a shyt [sic] load of money from sites like [W8Baby/GamerSoul] by selling [Nexon dollars], not to mention that without hacks of somesort [sic] they would loose [sic] about 1 million players who find the fun of the game is acually [sic] attempting to find glitches, exploits, etc."

- "the more [Nexon] patch[es MapleStory], the more valueable[sic] BT [Bizarro Trainer] becomes . . . ."
- "there are certain things that the admins of this site feel are just 'off limits' here because its infringing to point that they believe is wrong. . . . you may say well hacking/coding/botting talk is in the same category but the fact is...[MapleStory] is a free game and most these things no[sic] not hurt Nexon's income. . . ."

Id., Exs. B-H.

Moreover, Crane knew that the use of the software products was infringing and warned users about being caught by Nexon. See Mayer Decl., Ex. F ("fukkkkkkkkk... juts [sic] got permed [permanently banned from playing MapleStory] in scania =\ watch out [Nexon is] onto us =\.").

Perhaps most critically, Crane was the person primarily responsible for selling GamerSoul products and collecting revenue on behalf of GamerSoul. When a user wished to purchase products such as the Bizarro Trainer, the user would make a payment (using third party payment service AlertPay) to an account maintained by Crane under the e-mail address w8babyvipftw@gmail.com. Mayer Decl., Ex. J, K. Crane then would authorize that person to download the GamerSoul products, keep a portion of the revenue for himself, and transmit some of the revenue to other owners and operators of the website. Id.

Crane's active participation in the sale and distribution of the software products at issue—whether or not he created that software—constitutes trafficking in circumvention devices, contributory and vicarious copyright infringement, inducement to infringe copyrights, and interference with contract. See 17 U.S.C. § 1201(a)(2) ("no person shall . . . offer to the public, provide, or otherwise traffic in" circumvention technology); Gershwin Publ'g Corp. v. Columbia Artists Mgmt., Inc., 443 F.2d 1159, 1162 (2d Cir. 1971) ("[O]ne who, with knowledge of the infringing activity, induces, causes or materially contributes to the infringing

conduct of another, may be held liable as a 'contributory' infringer."); Cable/Home Commc'n Corp. v. Network Prods., Inc., 902 F.2d 829, 846-47 (11th Cir. 1990) (party that financially promoted and encouraged the manufacture of "pirate chips" that copied plaintiffs' copyrighted computer program was liable for contributory copyright infringement); Shapiro Bernstein & Co. v. H.L. Green Co., 316 F.2d 304, 308-09 (2d Cir. 1963) (department store that sold counterfeit recordings was vicariously liable for infringement).

Nexon's limited initial investigation confirmed that in the period from September 2010 to January 31, 2012, Crane completed at least 3,500 transactions with GamerSoul users using payment processor AlertPay. Mayer Decl., Exs. J, K. That is likely only a small portion of overall transactions, as Crane may have used other payment processors or other e-mail addresses to collect payments.

Of the total transactions reported by Crane and AlertPay, approximately 10% (more than 350) were with customers in California (who self-identified as being in California). Mayer Decl., Exs. J, K. However, many of the transactions (more than 50%) do not contain complete address information. If those with no address information are excluded, then the total percentage of California transactions rises to nearly ***25%***. Id., ¶ 16. Thus, based on pure extrapolation, it is a fair assumption that Crane completed at least ***800*** transactions (25% of 3,500 transactions) with California customers in the 18 months preceding this lawsuit. Id.

Procedural History and Case Status. On January 6, 2012, Nexon filed its Complaint against defendants Ryan Cornwall (a/k/a Riu Kuzaki), Ryan Griffin-Crane (a/k/a lonerboy), Yang Yu Zhou, V.H., and certain anonymous Doe defendants, including "Bizarro" and "Alphaamar." Nexon asserted claims for copyright infringement, secondary copyright infringement, violation of the DMCA, breach of contract, and intentional interference.

Based on its further investigation, Nexon learned that "lonerboy" was not

Ryan Griffin-Crane, but instead is defendant Douglas Crane (Ryan's father). Accordingly, on March 1, 2012, Nexon filed an Amended Complaint adding Douglas Crane, along with a number of other individuals formerly identified as "Doe" defendants: William Keister, Amarjot Gill (formerly "Doe 2 a/k/a Alphaamar"), Derek Osgood, Colin Johnson, Linda Liu, and Jeremy Simpson.

On March 20, 2012, Crane filed his Answer to the Amended Complaint. (Docket No. 16). He did not assert any defense based on lack of personal jurisdiction or improper venue in his Answer. Crane also did not file any motions to dismiss or request a meeting to discuss any contemplated motions. Crane specifically did not challenge jurisdiction or venue. To the contrary, Crane participated in a Rule 26 conference.

On June 7, 2012 and June 11, 2012, nearly three months after filing his Answer, Crane filed the instant motions to dismiss, for the very first time asserting that the Court does not possess jurisdiction over him.

Defendant Ryan Cornwall has appeared in the action and has not contested jurisdiction or venue. Several other defendants have been served, but have not responded and are in default.

III. CRANE HAS WAIVED HIS OBJECTIONS TO PERSONAL JURISDICTION AND VENUE

As an initial, threshold matter, Crane's motions to dismiss for lack of personal jurisdiction and for improper venue should be denied because they are untimely and the defenses have been waived, both expressly and impliedly. Furthermore, Crane waived all jurisdictional, venue, and inconvenient forum objections with respect to the contract claims in agreeing to the Terms of Use and EULA.

"In civil cases, Federal Rule of Civil Procedure 12(h)(1) mandates a waiver of the defense of lack of personal jurisdiction unless it is raised in the answer." S.E.C. v. Eurobond Exch., Ltd., 13 F.3d 1334, 1337 (9th Cir. 1994); see Fed. R.

Civ. P. 12(h)(1). Improper venue is likewise a threshold defense that is waived if not raised as an affirmative defense in the answer or asserted in a pre-answer motion under Rule 12(b). Fed. R. Civ. P. 12(h)(1).

These defenses were available to Crane at the time of his first appearance in this case. Indeed, Crane was on notice that this suit had been filed in California—and that it should have been filed against him—from the start of the action because Nexon's initial complaint sued "DJ"/"Lonerboy," but erroneously named Crane's son. After Nexon amended its complaint to name Crane, Crane chose not to challenge personal jurisdiction or venue by filing a motion under Rule 12(b), but instead filed an Answer. And although Crane asserted a number of other affirmative defenses in his Answer, he did ***not*** assert the defenses of lack of personal jurisdiction or improper venue. See Answer to Am. Compl. at 13-14 (Docket No. 16). In fact, Crane specifically admitted that venue was proper in this District. See id., ¶ 8 ("Defendant admits the allegations set forth in Paragraph 8."); Am. Compl., ¶ 8 ("Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400 because this is a judicial District in which a substantial part of the events giving rise to the claims occurred, and/or which Nexon's injury was suffered."). Moreover, for months, Crane participated in the case without ever seeking to amend his Answer or file these motions. Crane waived any objections to personal jurisdiction and improper venue, and Rule 12(h)(1) mandates that his motions to dismiss be denied.

Moreover, Crane waived any challenge to jurisdiction and venue with respect to the contract claims because in the Terms of Use, he "agree[d] to submit to the exclusive jurisdiction of any State or Federal court located in the County of Los Angeles, United States of America, and waive any jurisdictional, venue or inconvenient forum objections to such courts." Korn Decl., ¶ 5, Ex. A. Moreover, in the EULA, Crane agreed that "[a]ny dispute arising out of or related to this Agreement shall be subject to the exclusive jurisdiction of the State and Federal

courts located in Los Angeles County, California, U.S.A, and the parties hereby irrevocably agree to submit to the personal and exclusive jurisdiction and venue of such courts, and waive any jurisdictional, venue or inconvenient forum objections to such courts." Korn Decl., ¶ 6, Ex. B. Where, as here, the clause specifies the jurisdiction or venue as "exclusive," it is mandatory and "the clause will be enforced." Docksider, Ltd. v. Sea Tech., Ltd., 875 F.2d 762, 763, 764 (9th Cir. 1989) (clause providing that "Venue of any action brought hereunder shall be deemed to be in Gloucester County, Virginia" clearly designated Gloucester County, Virginia was the exclusive forum and was mandatory); see also Koresko v. RealNetworks, Inc., 291 F. Supp. 2d 1157, 1158, 1162-63 (E.D. Cal. 2003) ("When Plaintiff clicked the click-box on the screen marked, "I agree" on Defendant's website, he expressly agreed to litigate any claims against RealNetworks exclusively in the State of Washington" because the end user license agreement provided that the user "hereby consent[s] to the exclusive jurisdiction of the state and federal courts sitting in the State of Washington").

IV. CRANE IS SUBJECT TO PERSONAL JURISDICTION IN CALIFORNIA

At this stage in the proceedings, Nexon "need only make a ***prima facie*** showing of jurisdiction to survive a jurisdictional challenge." Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd., 243 F. Supp. 2d 1073, 1082 (C.D. Cal. 2003) (emphasis added). See also Data Disc, Inc. v. Sys. Tech Assocs., Inc., 557 F.2d 1280, 1285 (9th Cir. 1977) (same). Further, uncontroverted allegations in the complaint must be taken as true, and any conflicts in statements contained in affidavits must be resolved in the plaintiff's favor. See AT&T v. Compagnie Bruxelles Lambert, 94 F.3d 586, 588 (9th Cir. 1996); Bancroft & Masters, Inc. v. Augusta Nat'l, Inc., 223 F.3d 1082, 1087 (9th Cir. 2000) ("Because the prima facie jurisdictional analysis requires us to accept the plaintiff's allegations as true, we must adopt [the plaintiff's] version of events for purposes of this appeal."). Here,

Crane has not submitted any affidavits, and therefore, the allegations in Nexon's First Amended Complaint are uncontroverted.

Personal jurisdiction over Crane is governed by Cal. Code Civ. Proc. § 410.10, which provides for the exercise of jurisdiction to the broadest extent permissible under the Constitution. See Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998); Chan v. Society Expeditions, Inc., 39 F.3d 1398, 1405 (9th Cir. 1994) ("outer limits" of due process). Accordingly, "the only question before the Court is whether the exercise of *in personam* jurisdiction in this case is consistent with due process." Grokster, 243 F. Supp. 2d at 1082. In other words, Crane need only have "certain minimum contacts with the forum [state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Id. (quoting Int'l Shoe Co. v. State of Washington, 326 U.S. 310, 316 (1945)).

Under the doctrine of "specific jurisdiction"—applicable where the claim "arises out of or relates to the defendants' contacts with the forum"—the exercise of personal jurisdiction "is ***presumptively reasonable*** where: (1) a nonresident defendant purposefully avails itself of the privilege of conducting activities in the forum state, thereby invoking the protections of its laws; and (2) the plaintiff's claims arise out of the defendants' forum-related activities." Grokster, 243 F. Supp. 2d at 1084 (emphasis added). These two elements are met here, and Crane has not come close to rebutting the presumption of reasonableness.

A. Crane Has Purposefully Availed Himself Of The Benefits Of The Forum And Purposefully Directed His Activities At The Forum.

The "purposeful availment" requirement "ensures that a defendant will not be haled into Court based upon "random, fortuitous, or attenuated" contacts with California. See Panavision, 141 F.3d at 1320. The "purposeful availment" prong, despite its label, also includes "purposeful direction" and "may be satisfied by purposeful availment of the privilege of doing business in the forum; by purposeful

direction of activities at the forum; or by some combination thereof." Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme, 433 F.3d 1199, 1206 (9th Cir. 2006). "It is not required that a defendant be physically present or have physical contacts with the forum, so long as his efforts are 'purposefully directed' toward forum residents." Panavision, 141 F.3d at 1320. See also Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004). Accordingly, Crane's assertions that he does not reside in California are irrelevant. "Even where a defendant does not directly contact the forum state, purposeful availment may be demonstrated where the ***effects*** of a defendant's conduct are felt in the forum state." Grokster, 243 F. Supp. 2d at 1088 (emphasis added); Panavision, 141 F.3d at 1321-22.

In determining whether a defendant has "purposefully directed" his or her tortious activities to the State of California, courts use a three-part "effects test," derived from the Supreme Court's decision in Calder v. Jones, 465 U.S. 783 (1984). Under this test, "the defendant allegedly must have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." Yahoo! Inc., 433 F.3d at 1206.[1] See also Bancroft & Masters, 223 F.3d at 1087 ("effects" test "is satisfied when the defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state"). All three factors of the Calder "effects test" are met here:

First, the "intentional act" element of the Calder test is "easily satisfied in a copyright infringement case." Liberty Media Holding, LLC v. Tabora, No. 11-1183 MJP, 2012 WL 28788, at *3 (S.D. Cal. Jan. 4, 2012). Here, Nexon has alleged that Crane knowingly and deliberately sold and distributed infringing and

[1] As the Ninth Circuit has clarified, "the 'brunt' of the harm need not be suffered in the forum state"; "If a jurisdictionally sufficient amount of harm is suffered in the forum state, it does not matter that even more harm might have been suffered in another state." Yahoo! Inc., 433 F.3d at 1207.

otherwise unlawful products, including in the State of California. He also knowingly interfered with Nexon's contracts with its users. This is precisely the type of conduct that courts have found to constitute "intentional acts" under the first prong of Calder. See Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1128 (9th Cir. 2008) ("Recordon committed an intentional act when it created and posted an elder law section on its website that infringed Brayton Purcell's copyright."); see also CollegeSource, Inc. v. AcademyOne, Inc., 653 F.3d 1066, 1077 (9th Cir. 2011) (defendant "committed intentional acts by downloading CollegeSource's catalogs, republishing them on its own websites, and obtaining course descriptions from those catalogs").

Second, Crane "expressly aimed" his conduct at the State of California. The "express aiming requirement . . . is satisfied when the defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state." CollegeSource, 653 F.3d at 1077. There can be little dispute that Crane targeted his conduct at Nexon in California. The entire purpose of the GamerSoul Website was to offer software products specifically designed to alter and modify MapleStory. Crane knew that by selling these products, he was exploiting, infringing, and profiting from Nexon's intellectual property. Crane also does not claim that he was unaware that Nexon America is located in California. Indeed, that fact is well-known and well-publicized, including within Nexon's Terms of Use. Korn Decl., ¶ 5, Ex. A. Nor can Crane credibly make any such claim, having sold (and made hundreds of thousands of dollars from) products designed to harm Nexon and MapleStory and by regularly communicating with GamerSoul users about Nexon, its products, and its business practices. See CollegeSource, 653 F.3d at 1079; see also Grokster, 243 F. Supp. 2d at 1089-90 ("Sharman is and has been well aware of the charge that its users are infringing copyrights, and reasonably should be aware that many, if not most, music and video copyrights are owned by California-based companies."). Crane

knew that his conduct would cause harm to Nexon in California, and for this reason alone, the second prong of the specific jurisdiction analysis is met here.

"Express aiming" is present here for the additional reason that Crane sold the infringing products to hundreds of customers in the State of California, and received thousands of dollars in revenue from those customers. See Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 774-75 (1984) (defendant published magazines in Ohio and circulated them in the forum state, New Hampshire); Mattel, Inc. v. MCA Records, Inc., 296 F.3d 894, 899 (9th Cir. 2002) (finding purposeful direction where defendant distributed its pop music albums from Europe in the forum state, California); Colt Studio, Inc. v. Badpuppy Enter., 75 F. Supp. 2d 1104, 1109-10 (C.D. Cal. 1999) (sales of subscriptions to California consumers to interactive internet website subjected defendant to personal jurisdiction); Editorial Musical Latino Americana, S.A. v. Mar Int'l Records, Inc., 829 F. Supp. 62, 64 (S.D.N.Y. 1993) ("Offering one copy of an infringing work for sale in [the forum state], even if there is no actual sale, constitutes commission of a tortious act within the state sufficient to imbue this Court with personal jurisdiction over the infringers."). Crane knew the precise volume of his sales to California, including because many purchasers specifically indicated in their AlertPay transactions that they resided in California. He thus certainly knew that he was obtaining a financial benefit from California-related activities and might be forced to defend a lawsuit in California.

In Keeton, the plaintiff, a New York resident, sued Hustler Magazine (an Ohio corporation) in New Hampshire for defamation. The only basis for jurisdiction was the fact that approximately 10,000 to 15,000 copies of Hustler are sold in New Hampshire each year. The Supreme Court found that jurisdiction was present, because the Hustler sales in New Hampshire (while only a small portion of overall sales) were nevertheless a continuous and deliberate exploitation. Accordingly, the Court found that "there is no unfairness in calling [defendant] to

answer for the contents of that publication wherever a substantial number of copies are regularly sold and distributed." 465 U.S. at 1482.

More recently, in Mavrix Photo, Inc. v. Brand Techs., Inc., 647 F.3d 1218, 1230 (9th Cir. 2011), the defendant, a celebrity gossip website, was alleged to have infringed the plaintiff's copyright by posting to its website several of the plaintiff's copyrighted photographs. The defendant's website (like GamerSoul) had a national audience. Nevertheless, the Court found that the defendant had expressly aimed its conduct at California because many of its customers were from California and it made money from those customers—including by selling advertisements on its websites that were viewed by California residents. Id. at 1230. Additionally, the defendant's website was centered on celebrity gossip, an industry centered in California. As the Court noted:

> "The record does not show that Brand marketed its website in California local media. But it is clear from the record that Brand operated a very popular website with a specific focus on the California-centered celebrity and entertainment industries. Based on the website's subject matter, as well as the size and commercial value of the California market, we conclude that Brand anticipated, desired, and achieved a substantial California viewer base. This audience is an integral component of Brand's business model and its profitability. As in Keeton, it does not violate due process to hold Brand answerable in a California court for the contents of a website whose economic value turns, in significant measure, on its appeal to Californians." Id.

Crane's contacts with California (between 10% and 25% of his overall sales) are far more substantial than was present in Keeton, in which only a tiny percentage of overall sales (10,000-15,000 copies per month) were sold by defendant Hustler Magazine in the forum state (New Hampshire). Just as in Keeton, Crane's activities in California "cannot by any stretch of the imagination be characterized as random, isolated, and fortuitous." 465 U.S. at 774. As in Keeton (and Mavrix), Crane directly profited from customers in California and thus obtained significant "economic value" from Californians. Finally, express

aiming is even more clearly present here than in Keeton because (unlike in Keeton) Nexon America is located in California, and Crane knew that he was selling products designed to alter MapleStory (Nexon's flagship product).

Third, there is no dispute that Crane's conduct caused harm to Nexon in California, where it is located. "In determining the situs of a corporation's injury, our precedents recognize that in appropriate circumstances a corporation can suffer economic harm both where the bad acts occurred and where the corporation has its principal place of business." Mavrix, 647 F.3d at 1231. Crane knew that his conduct was likely to cause such harm. See Columbia Pictures Television v. Krypton Broad. of Birmingham, Inc., 106 F.3d 284, 289 (9th Cir. 1997) ("[Plaintiff] alleged, and the district court found, that [defendant] willfully infringed copyrights owned by [plaintiff], which, as [defendant] knew, had its principal place of business in the Central District [of California]."); Panavision, 141 F.3d at 1321-22 (appropriation of "Panavision" trademarks constituted sufficient "purposeful availment" because the defendant "engaged in a scheme to register Panavision's trademarks as his domain names for the purpose of extorting money from Panavision. His conduct, as he knew it likely would, had the effect of injuring Panavision in California where Panavision has its principal place of business and where the movie and television industry is centered."); Grokster, 243 F. Supp. 2d at 1088 ("[J]urisdiction typically is appropriate where a foreign defendant engages in significant infringement of a resident's intellectual property, and knows where the harm from that infringement is likely to be suffered.").

B. Plaintiffs' Claims Arise From Defendants' Forum-Related Activities.

Nexon's claims in this action against Crane arise from the sale and distribution of infringing software via the GamerSoul Website. Accordingly, the claims plainly arise from the forum-related activities. See Harris Rutsky & Co. v. Bell & Clements Ltd., 328 F.3d 1122, 1132 (9th Cir. 2003) ("[Defendant's] alleged

tortious conduct in London had the effect of injuring [plaintiff] in California. But for [defendant's] conduct, this injury would not have occurred."); Grokster, 243 F. Supp. 2d at 1086 (defendant's "distribution of the [software at issue] and licensing of its use, are 'but for' causes of the alleged infringement").

C. The Exercise Of Personal Jurisdiction Over Crane Is Reasonable.

Once the foregoing two elements are met, a ***presumption*** arises that the exercise of jurisdiction is "reasonable." Grokster, 243 F. Supp. 2d at 1084; see Ballard v. Savage, 65 F.3d 1495, 1500 (9th Cir. 1995) (courts "presume that an otherwise valid exercise of specific jurisdiction is reasonable"). To overcome that presumption, Crane "must present a ***compelling case*** that the presence of some other considerations would render jurisdiction unreasonable." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985) (emphasis added). See also Panavision, 141 F.3d at 1323 (defendant failed to present "compelling case" that jurisdiction was unreasonable); Bancroft & Masters, 223 F.3d at 1089. Crane's unsupported, self-serving, and incorrect claims are insufficient to do so. See Columbia Pictures, 106 F.3d at 289 ("[Defendant's] contentions—that he had more of a burden litigating in California than Columbia would have had in Florida, that Florida had a stronger interest in adjudicating the dispute because [defendant] lived in Florida, and that Florida was the most efficient forum—are insufficient to meet this burden.").

As a threshold matter, jurisdiction over an out-of-state defendant will be considered "reasonable" as long as the defendant has "fair warning that the particular activity may subject that person to the jurisdiction of a foreign sovereign." Grokster, 243 F. Supp. 2d at 1091. Crane certainly had "fair warning." As discussed above, Crane knew and expected that the GamerSoul Website marketed, distributed, and advertised to consumers in California. Crane also knew and reasonably should have known that Nexon America is based in California and thus his conduct caused harm in California.

Additionally, examination of the seven "reasonableness" factors reveals that each favors Nexon. Certainly, none presents a "compelling case" against the exercise of jurisdiction over Crane. See Panavision, 141 F.3d at 1323 (enumerating seven "reasonableness" factors).

1. Purposeful Interjection. "The factor of purposeful interjection is satisfied by a finding of purposeful availment." Grokster, 243 F. Supp. 2d at 1092. See also Nissan Motor Co. v. Nissan Computer Corp., 89 F. Supp. 2d 1154, 1161 (C.D. Cal.), aff'd, 246 F.3d 675 (9th Cir. 2000) (purposeful interjection is "analogous to purposeful availment."). As set forth above, the purposeful availment standard is satisfied here.

2. Burden on Defendant. "[U]nless the inconvenience is so great as to cause a deprivation of due process, [defendant's burden] will not overcome clear justifications for the exercise of jurisdiction." Panavision, 141 F.3d at 1323. Litigating in California obviously would not deprive Crane of due process. "In this era of fax machines and discount air travel, requiring [a defendant] to litigate in California is not constitutionally unreasonable." Id.

3. Extent of Conflict with a Foreign State. Because copyright infringement and DMCA are federal claims, "the federal analysis would be the same in either [Massachusetts] or California." Panavision, 141 F.3d at 1323. Nexon's claims for intentional interference with contractual relations and unfair competition under California Business and Professions Code § 17200 arise under California law, as does the breach of contract claim, as the Terms of Use and EULA provide that they will be governed by California law. Korn Decl., ¶¶ 5, 6, Ex. A, Ex. B.

4. Forum State's Interest in Adjudicating Dispute. "California has an interest in providing effective judicial redress for its citizens. This interest is particularly strong where the claim is one for tortious injury. Because the claims in this case implicate widespread, pervasive infringement of copyrights owned by

California residents, the state's interest is considerable." Grokster, 243 F. Supp. 2d at 1093 (internal citations omitted).

5. Efficient Judicial Resolution. This factor—which "focuses on the location of the evidence and witnesses"—is "no longer weighed heavily given the modern advances in communication and transportation." Panavision, 141 F.3d at 1323.

6. Convenient and Effective Relief for Plaintiff. Nexon's evidence and witnesses are located in California. See Plasco, Inc. v. Auten, Case No. C-95-20146, 1995 WL 354870, *4 (N.D. Cal. June 7, 1995). Nexon's injury occurred in California (and in Korea). See Decker Coal Co.v. Commonwealth Edison Co., 805 F.2d 834, 841 (9th Cir. 1986). Further, Nexon filed this action more than six months ago. Transfer of this action would further delay Nexon's ability to obtain relief.

7. Existence of an Alternative Forum. "[T]his factor is significant only if other factors weigh against an exercise of jurisdiction." Grokster, 243 F. Supp. 2d at 1094. See also Corporate Inv. Business Brokers v. Melcher, 824 F.2d 786, 791 (9th Cir. 1987). Whether this action could be litigated in Massachusetts is irrelevant—and certainly is not a "compelling" reason to find jurisdiction in California unreasonable.

V. CRANE CANNOT MEET HIS HEAVY BURDEN OF PROVING HIS ENTITLEMENT TO TRANSFER

Crane admitted in his Answer that this case is properly venued in the Central District of California. Furthermore, for purposes of the copyright venue provisions, "a defendant 'may be found' wherever personal jurisdiction is proper." Colt Studio, Inc. v. Badpuppy Enter., 75 F. Supp. 2d 1104, 1112 (C.D. Cal. 1999). Because, as set forth above, there is personal jurisdiction over California, venue is appropriate in this District.

Nor does Crane offer any factual or legal basis for his request that the Court transfer the case to the District of Massachusetts. As discussed, he "agree[d] to submit to the exclusive jurisdiction of any State or Federal court located in the County of Los Angeles," and "waive[d] any jurisdictional, venue or inconvenient forum objections to such courts." Korn Decl., ¶ 5, Ex. A. The forum selection clauses of the Terms of Use and EULA are mandatory and should be enforced.

But even apart from the forum selection clauses, transfer should be denied because Crane cannot meet his heavy burden of upsetting Nexon's reasonable choice of this forum, which is where Nexon is located. See Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986) ("The defendant must make a ***strong showing*** of inconvenience to warrant upsetting the plaintiff's choice of forum." (emphasis added)). To the contrary, each and every one of the Section 1404 convenience factors favors litigation of this case in California:

- Nexon's offices and primary place of business are in this District. Korn Decl., ¶ 8.
- Nexon's witnesses and business records, including those pertaining to its ownership of the infringed works, are in this District. Id.
- The injury occurred in the Central District of California, where Nexon is located. See Endless Pools, Inc. v. Wave Tec Pools, Inc., 362 F. Supp. 2d 578, 587 (E.D. Pa. 2005) (trademark holder's infringement damages "occurred and continues to occur [where the holder is located]").
- This Court has a substantial interest in redressing Nexon's injuries. See Liu v. Republic of China, 892 F.2d 1419, 1426 (9th Cir. 1989) ("California . . . has a significant interest in ensuring that its residents are compensated for torts committed against them, and in discouraging the commission of such torts within its borders."); Miss America Org. v. Mattel, Inc., 945 F.2d 536, 543 (2d Cir. 1991) (the

Copyright Act grants "the copyright holder its choice of forum and express[es] a policy of giving the holder an advantage over the alleged infringer.").

- California law will provide the "rules of decision" for Nexon's state law claims for breach of contract, intentional interference, and unfair competition. See In re Eastern District Repetitive Stress Injury Litig., 850 F. Supp. 188, 196 (E.D.N.Y. 1994) ("Federal courts have generally favored adjudication of a controversy by the court which sits in the state whose law will provide the rules of decision.").

Additionally, interests of justice and judicial economy overwhelmingly favor litigation in California. This case involves a number of defendants located in various jurisdictions. California is the only jurisdiction in which all of the defendants can be joined together in a single action, as each of them are subject to personal jurisdiction in California by virtue of their infringement of Nexon's copyrights. Moreover, Crane is the only defendant that has contested jurisdiction or venue. Cornwall has appeared in the case and has not contested jurisdiction or venue. Other defendants have been served and may yet appear. If claims against Crane were to be severed and transferred, then the result would be a splintering of the case, with simultaneous and overlapping litigation in California and Massachusetts. That would create a substantial risk of inconsistent rulings on the same facts and issues. It also would be unfair to Nexon, which would be saddled with the burden of multiple and duplicative lawsuits in different jurisdictions. See R. Griggs Group Ltd. v. Consol. Shoe, Inc., C98-4676 FMS, 1999 WL 226211, at *5 (N.D. Cal. Apr. 9, 1999) (denying motion to transfer filed by defendants in one action where there were other related actions filed by the plaintiff pending in the same district; "Even though each case may involve different defendants, litigation in many fora wastes judicial resources, the resources of a plaintiff who is forced to hire and educate multiple legal counsel, and risks inconsistent results." (internal

citations omitted)); Cambridge Filter Corp. v. Int'l Filter Co., Inc., 548 F. Supp. 1308, 1310 (D. Nev. 1982) ("Litigation of related claims in the same tribunal is favored in order to avoid duplicitous litigation, attendant unnecessary expense, loss of time to courts, witnesses and litigants, and inconsistent results. The waste of judicial resources and inconvenience to parties and witnesses are manifest when the same issues arising from the same transactions are litigated in two different courts." (internal citation omitted)).

The ***only*** basis offered by Crane to "change venue to Boston MA" is his unsupported, one-sentence contention that it would be a "significant burden" for him to litigate the case in California because he "has no business or personal reason to travel to California." That single sentence, which is not made under oath or backed up by any tangible evidence, is not alone sufficient to warrant transfer. Stx, Inc. v. Trik Stik, Inc., 708 F. Supp. 1551, 1555-56 (N.D. Cal. 1988) ("[T]he defendant must make a ***strong showing*** of inconvenience to warrant upsetting the plaintiff's choice of forum.").

Moreover, the burden to Crane of litigating this action in California is not significant. Crane himself is the only witness in Massachusetts with knowledge of the facts at issue. To the extent he possesses relevant documents, those are largely (if not entirely) in electronic format and can be easily transported via e-mail. Mohamed v. Mazda Motor Corp., 90 F. Supp. 2d 757, 778 (E.D. Tex. 2000) (location of documents has "been given decreasing emphasis due to advances in copying technology and information storage. . . . Indeed, this factor was probably of more significance in the pre-copier, pre-electric typewriter, pre-PC, pre-e-mail, pre-videotape days . . . ."); Gardipee v. Petroleum Helicopters, Inc., 49 F. Supp. 2d 925, 931("the location of documents and business records is given little weight"). Likewise, there are many direct flights from Boston to Los Angeles, and thus it is not an unreasonable burden to Crane to appear in Los Angeles for trial. Bd. of Trustees v. Elite Erectors, Inc., 212 F.3d 1031, 1037 (7th Cir. 2000) ("Easy air

transportation, the rapid transmission of documents, and the abundance of law firms with nationwide practices, make it easy these days for cases to be litigated with little extra burden in any of the major metropolitan areas.").

By contrast, Nexon expects that several witnesses will testify at trial on its behalf on issues such as copyright ownership, the operation of MapleStory, the technical and contractual measures used to protect the integrity of MapleStory, and its damages. All of Nexon's documents are in California. Its counsel is in California. Transfer thus would only shift the inconvenience from Crane to Nexon, and in fact would create a much greater burden for Nexon than for Crane. See Stx, Inc., 708 F. Supp. at 1556 ("[I]f the gain to convenience to one party is offset by the added inconvenience to the other, the courts have denied transfer of the action."); Decker Coal, 805 F.2d at 843 (if transfer would merely shift balance of inconvenience to the moving party, transfer is not warranted).

VI. CONCLUSION

For the foregoing reasons, Crane's Motions to Dismiss for Lack of Personal Jurisdiction and/or to Transfer Venue should be denied.

MITCHELL SILBERBERG & KNUPP LLP

DATED: June 26, 2012

By: /s/Marc E. Mayer
Marc E. Mayer
Attorneys for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF Los Angeles

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and am not a party to this action; my business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, CA 90064-1683.

On June 26, 2012, I served a copy of the foregoing document(s) described as **PLAINTIFFS' OPPOSITION TO DEFENDANT DOUGLAS CRANE'S MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND/OR TO TRANSFER VENUE (DOCKET NOS. 31 AND 35)** on the interested parties in this action at their last known address as set forth below by taking the action described below:

Mr. Ryan Cornwall
1818 S 2nd Street
Apt. 55
Waco, TX 76706

☑ **BY MAIL**: I placed the above-mentioned document(s) in sealed envelope(s) addressed as set forth above, and deposited each envelope in the mail at Los Angeles, California. Each envelope was mailed with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on June 26, 2012, at Los Angeles, California.

Jennifer Gaines

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF Los Angeles

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and am not a party to this action; my business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, CA 90064-1683, and my business email address is bag@msk.com.

On June 26, 2012, I served a copy of the foregoing document(s) described as **PLAINTIFFS' OPPOSITION TO DEFENDANT DOUGLAS CRANE'S MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND/OR TO TRANSFER VENUE (DOCKET NOS. 31 AND 35)**on the interested parties in this action at their last known address as set forth below by taking the action described below:

Douglas Crane

EMAIL: dcranelonerboy@yahoo.com

☑ **BY ELECTRONIC MAIL**: I served the above-mentioned document electronically on the parties listed at the email addresses above and, to the best of my knowledge, the transmission was complete and without error in that I did not receive an electronic notification to the contrary

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on June 26, 2012, at Los Angeles, California.

Jennifer Gaines