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10 DESCENDENT STUDIOS INC. and
Defendant ERIC PETERSON

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 LITTLE ORBIT LLC, a California
14 Limited Liability Company,
15
16 Plaintiff,

16 vs.

17 DESCENDENT STUDIOS INC., a
18 Texas corporation, and ERIC
19 PETERSON, an individual,

20 Defendants.

21 DESCENDENT STUDIOS INC., a
22 Texas corporation,

23 Counterclaimant,

24 vs.

25 LITTLE ORBIT LLC, a California
26 Limited Liability Company,

27 Counterdefendant.
28

Case No. 8:20-cv-00089-DOC-JDE
**DESCENDENT STUDIOS INC.'S
COUNTERCLAIM**
DEMAND FOR JURY TRIAL

Judge: Hon. David O. Carter
Complaint Filed: 1/16/2020

1 Defendant and Counterclaimant Descendent Studios, Inc., by counsel, hereby
2 submits these Counterclaims against Plaintiff and Counterdefendant Little Orbit LLC.

3 **PARTIES AND JURISDICTION**

4 1. Defendant and Counterclaimant Descendent Studios, Inc.
5 (“Descendent”) is a corporation organized under the laws of the State of Texas with
6 its principal place of business in Austin, Texas.

7 2. Little Orbit LLC (“Little Orbit”) is a limited liability company organized
8 under the laws of California with its principal place of business in California.

9 3. Little Orbit failed to identify its members or their citizenship in its
10 Complaint. However, to the extent diversity jurisdiction exists over Plaintiff’s
11 complaint (which has not been pled or established) it also exists over this
12 Counterclaim involving two of the same three parties and the same contracts.

13 4. The amount in controversy exceeds \$75,000, exclusive of interest and
14 costs.

15 5. In addition, to the extent there is jurisdiction in this Court over the
16 original complaint, these Counterclaims arise from the same transactions,
17 occurrences, contracts and common nucleus of operative facts as the Plaintiff’s
18 original claims, so the Court would have supplemental jurisdiction over these
19 Counterclaims.

20 6. Jurisdiction and venue over Plaintiff and its claims are proper in this
21 Court, to the extent diversity jurisdiction exists, because Plaintiff resides here and
22 filed its original Complaint here, thereby submitting to the personal jurisdiction of
23 this Court and to Venue here.

24 **COUNT I: BREACH OF CONTRACT**

25 7. Descendent hereby incorporates by reference all prior Paragraphs to
26 these Counterclaims as though fully set forth herein.

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1 8. In October of 2017, the parties entered into a Development Agreement
2 for a computer game to be run on personal computers, XBOX 1 consoles, and
3 PlayStation 4 consoles.

4 9. Little Orbit committed anticipatory repudiations and prior material
5 breaches which discharged Defendants of any obligations under the Development
6 Agreement. Among these prior material breaches and repudiations of the
7 Development Agreement by Little Orbit were: (A) Little Orbit not putting out the
8 promised marketing spend and efforts with the 47 studios as promised and agreed;
9 (B) Little Orbit demanding additional budget-busting, delay-creating work-product
10 and development efforts without paying for them nor allotting sufficient time for their
11 completion; (C) Little Orbit agreeing to develop but then failing to develop the
12 additional API demanded by Little Orbit; (D) Little Orbit failing to pay console
13 vendors including, Torus and Boombox, forcing Boombox to quit the project; (E)
14 Little Orbit failing to pay other project vendors, such as CGBott and Glass Egg,
15 delaying both the PC and console versions of the game; (F) Little Orbit switching
16 engine versions from v. 4.18 to v. 4.19; (G) Little Orbit changing the user interface
17 (“UI”) back and forth at least four times; (H) Little Orbit adding new consoles,
18 including the lower-end technology Nintendo Switch, that required more
19 modifications and adaptations; (I) Little Orbit failing to document and account for
20 and share documentation of expenses that it supposedly paid; and, (J) Little Orbit not
21 providing Descendent with quarterly statements or any statements about presales of
22 the game.

23 10. Little Orbit, through Matthew Scott, admitted imposition of erroneous
24 and extra-contractual new requirements that blew both the budget and the
25 development time-line, which led to the parties executing a Terms Sheet Addendum
26 in November of 2018.

1 11. The Terms Sheet Addendum required Little Orbit to pay \$60,000 per
2 month to Descendent through December 2019. Little Orbit made on \$60,000
3 payment but then ran out of money and never paid the remaining 11 payments due of
4 \$60,000 each, making Little Orbit liable for breach for not paying Descendent the
5 additional \$660,000.

6 12. Notably, the Terms Sheet Addendum contained no completion deadlines
7 for anything. There was good reason for that which was discussed at the time.
8 Little Orbit had demanded a new and different Application Program Interface
9 (“API”), had agreed to develop the new API itself, but had totally failed do to so.
10 Until Little Orbit fulfilled its agreement to develop the new API, there was no way to
11 test anything that Descendent was developing, so it was impossible to commit to a
12 development or completion timeline. Therefore, the Terms Sheet Addendum did not
13 contain any full or partial completion dates or deadlines.

14 13. Little Orbit committed the first material breach of the Terms Sheet
15 Addendum after it was signed by failing to pay eleven required installments of
16 \$60,000 due under the Terms Sheet Addendum and by wrongfully terminating the
17 Development Agreement without just cause or excuse. Little Orbit further breached
18 the Development Agreement as modified by the Terms Sheet Addendum by not
19 providing any royalty accounting(s) after termination of the agreement.

20 14. Little Orbit’s breaches of contract and wrongful termination cost
21 Descendent \$660,000 in wrongfully withheld payments plus \$5 million in reasonably
22 anticipated profits that would have been earned had Little Orbit fulfilled its
23 contractual obligations and not wrongfully terminated the Development Agreement
24 and the Terms Sheet Addendum.

25 15. Descendent fully performed its obligations under the relevant contracts
26 and satisfied all conditions precedent to Little Orbit’s performance, except as excused
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1 due to Little Orbit's modifications, prior material breaches and repudiations of the
2 original terms of the agreements.

3 **COUNT II: LIBEL, DEFAMATION AND TRADE LIBEL**

4 16. Descendent hereby incorporates by reference all prior Paragraphs to
5 these Counterclaims as though fully set forth herein.

6 17. In February of 2020, Little Orbit began to publish and republish the
7 false, frivolous and reckless allegations of its Complaint in this case to the public and
8 the trade press.

9 18. Little Orbit intentionally induced the writing of and then published,
10 republished and uploaded onto pcgamer.com an article, a true and correct copy of
11 which is attached hereto as Exhibit A, about this case which repeated the false and
12 defamatory allegations of Little Orbit's Complaint, including the following:

- 13 • Descendent is at fault and in breach for failing to complete the game;

14 In fact, Little Orbit was at fault and in breach for not completing the new
15 API it had insisted on and which it had agreed to develop and for
16 repeatedly making additional extra-contractual demands and for
17 unilaterally imposing budget-busting and deadline-blowing extra-
18 contractual requirements.

- 19 • Descendent is at fault and in breach for failing to meet the original
20 milestones and target release date;

21 In fact, Little Orbit was at fault and in breach for not completing the API
22 it had insisted on and which it had agreed to develop and for repeatedly
23 making additional extra-contractual demands and for unilaterally
24 imposing budget-busting and deadline-blowing extra-contractual
25 requirements.

- 26 • Descendent is at fault and in breach for failing to meet delivery dates;

27 In fact, Little Orbit was at fault and in breach for not completing the API
28 it had insisted on and which it had agreed to develop and for repeatedly
making additional extra-contractual demands and for unilaterally

1 imposing budget-busting and deadline-blowing extra-contractual
2 requirements.

- 3 • Descendent is at fault and in breach for failing to meet quality standards;

4 In fact, there were no quality standards that Descendent failed to meet or
5 would have failed to meet absent the previously described breaches and
6 interference by Little Orbit;

- 7 • Descendent is at fault and in breach for the fact that “key personnel” left
8 and were not replaced with “equally competent personnel,” which left
9 Descendent incapable of delivering the game as promised;

10 In fact, only one managerial employee left before Little Orbit
11 terminated, and he was promptly replaced by an equally or more
12 competent employee;

- 13 • Descendent failed to meet some fabricated extended delivery date
14 supposedly set forth in the Terms Sheet addendum (although it includes
15 no delivery dates or deadlines);

16 In fact, the Terms Sheet addendum contains no deadlines because Little
17 Orbit had breached its agreement to develop the new API, and Little
18 Orbit was at fault and in breach for repeatedly making additional extra-
19 contractual demands and for unilaterally imposing budget-busting and
20 deadline-blowing extra-contractual requirements.

- 21 • That Descendent made multiple false disparaging statements about Little
22 Orbit;

23 In fact, all of the statements made by Descendent about Little Orbit were
24 in fact true.

- 25 • That Interplay terminated the trademark license due to “Descendent’s
26 repeated breaches of the Agreement and term sheet.”

27 In fact, Interplay terminated the trademark license due to *Little Orbit’s*
28 repeated breaches of the Development Agreement and Terms Sheet.

1 19. Little Orbit wrote, published and re-published these false, frivolous and
2 baseless statements knowing that they were false, frivolous and baseless, with actual
3 knowledge that they were false, frivolous and baseless, with actual malice toward
4 Descendent and with a reckless disregard for the truth.

5 20. Little Orbit wrote, published and re-published these false, frivolous and
6 baseless statements with the intent to wrongfully harm and injure Descendent and
7 with reckless disregard for the rights and interests of Descendent.

8 21. Little Orbit has made, published and re-published multiple false
9 statements disparaging Descendent to the general public and to third parties in the
10 gaming industry and community.

11 22. The false statements made, published and re-published by Little Orbit
12 would be clearly or necessarily understood to have disparaged the quality and
13 reputation of Descendent and its services and personnel as game developers in the
14 gaming industry.

15 23. The false statements by Little Orbit constitute trade libel and commercial
16 disparagement *per se*.

17 24. The false statements made, published and re-published by Little Orbit
18 tended to disparage Descendent in the gaming industry and community and were
19 intended to harm Descendent's reputation in the gaming industry and community.

20 25. The false statements made, published and re-published by Little Orbit
21 were false, frivolous and baseless, and Little Orbit made them and published and
22 republished them with actual malice toward Descendent and with a reckless disregard
23 for the truth.

24 26. Little Orbit knew and should have known that its false, frivolous and
25 baseless statements would harm the reputation of Descendent as a developer of
26 quality electronic games.

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DEMAND FOR JURY TRIAL

Counterclaimant Descendent Studios Inc. hereby demands trial by jury.

Dated: February 28, 2020

Respectfully submitted,

MINTZ LEVIN COHN FERRIS GLOVSKY
AND POPEO PC

By /s/ Nada I. Shamonki

Nada I. Shamonki
Attorneys for Defendant/Counterclaimant
DESCENDENT STUDIOS INC. and
Defendant ERIC PETERSON

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CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and am not a party to the above-entitled action.

On February 28, 2020, I filed a copy of the following document(s):

**DESCENDENT STUDIOS INC.'S COUNTERCLAIM;
DEMAND FOR JURY TRIAL**

By electronically filing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- **Leo Edward Lundberg , Jr**
leo.law.55@gmail.com
- **Michael Danton Richardson**
mdantonrichardson@yahoo.com

Executed on February 28, 2020, at Los Angeles, California. I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

/s/ Diane Hashimoto
Diane Hashimoto