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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EMC

THE CODEMASTERS SOFTWARE COMPANY LIMITED, a United Kingdom corporation,

Plaintiff,

vs.

GAZILLION, INC., a Delaware Corporation; NETDEVIL LIMITED, a Colorado corporation.

Defendants.

Case No. CV 10 5429

COMPLAINT BY THE CODEMASTERS SOFTWARE COMPANY LIMITED FOR BREACH OF CONTRACT OR, IN THE ALTERNATIVE, RESCISSION

Plaintiff THE CODEMASTERS SOFTWARE COMPANY LIMITED ("CODEMASTERS") alleges:

JURISDICTION AND VENUE

1. Jurisdiction lies under 28 U.S.C §1332 as this is a civil case with an amount in controversy exceeding $75,000.00, the Plaintiff is a corporation with its

principal place of business in the United Kingdom and both defendant corporations are citizens of states of the United States (incorporated in Delaware and Colorado and headquartered or doing business in California) as more specifically alleged below.

2. Venue lies within the Northern District of California under 28 USC §1391(2) in that a substantial part of the events related to the claims herein took place in this District, and under 28 USC §1391(3) in that both defendants are subject to personal jurisdiction in this District at the time of the filing of this Complaint, as more specifically alleged below.

THE PARTIES

3. Plaintiff CODEMASTERS is a corporation duly organized under the laws of the United Kingdom. CODEMASTERS is engaged in the business of manufacturing, distributing, selling and otherwise commercially exploiting video games as well as hosting and operating massively multiplayer online games ("MMOGS")

4. Defendant GAZILLION, INC. ("GAZILLION") is a corporation duly organized under the laws of the State of Delaware with its headquarters and principal place of business in San Mateo, California. Defendant NETDEVIL LIMITED ("NETDEVIL") is a wholly owned subsidiary of GAZILLION. GAZILLION is a developer, publisher and operator of MMOGS, both on its own and through Defendant NETDEVIL LIMITED ("NETDEVIL").

5. NETDEVIL is a corporation duly organized under the laws of the State of Colorado. NETDEVIL is engaged in the business of designing and developing MMOGS. NETDEVIL owns or controls and is presently operating and distributing a MMOG entitled *Jumpgate* (herein "THE PREQUEL GAME") and also owns or

controls and is developing an MMOG which is the sequel to THE PREQUEL GAME, entitled *Jumpgate: Evolution* (herein the "THE GAME").

6. CODEMASTERS is informed and believes that GAZILLION and NETDEVIL are authorized to do, and are doing business in the State of California, including the Northern District of California, in that they operate THE PREQUEL GAME, which is a paid subscriber-based MMOG. CODEMASTERS is informed and believes that hundreds or more of such subscribers reside in California, including the Northern District of California. THE GAME is directly related to, arises directly from, and is intended to further exploit THE PREQUEL GAME which GAZILLION and NETDEVIL presently market in California and elsewhere.

CLAIM FOR BREACH OF CONTRACT

7. CODEMASTERS and NETDEVIL entered into a written Licensing Agreement dated June 9, 2008 which was subsequently amended in three written amendments dated, respectively, July 29, 2008, September 17, 2008 and January 20, 2009. The term "THE AGREEMENT" as used herein shall refer to the Licensing Agreement and its three amendments.

8. Pursuant to THE AGREEMENT, NETDEVIL, as the owner or controller of all rights in THE GAME, granted CODEMASTERS the exclusive license and right to distribute THE GAME in the United Kingdom and Europe and certain other territories around the world in box format and electronically and to host and operate THE GAME in its exclusive territory. In exchange for that licensing right, and because THE GAME was still in the development stage, CODEMASTERS agreed to advance certain funds to NETDEVIL in agreed increments as THE GAME was being developed in a series of steps referred to as "milestones" in THE AGREEMENT and to pay for certain Art Assets.

9. Sometime between June 9, 2008 and the occurrence of the breaches of contract alleged herein, NETDEVIL became the wholly owned subsidiary of GAZILLION, and GAZILLION claims that as a result it became the successor of all of NETDEVIL's rights and liabilities under THE AGREEMENT. CODEMASTERS has never agreed to release NETDEVIL of its obligations under THE AGREEMENT and alleges that both NETDEVIL and GAZILLION, as the owner and controller of NETDEVIL, and as NETDEVIL's successor in interest, are liable for the breaches of contract alleged herein.

10. In compliance with its obligations under THE AGREEMENT, CODEMASTERS paid Defendants $1.1 million in advances to date and $299,629.67 in Art Assets costs.

11. THE AGREEMENT obligated NETDEVIL to achieve a series of defined development milestones by dates certain and to complete the development of THE GAME for commercial release on or before February 24, 2009.

12. Defendants have failed and refused to comply with the development schedule in THE AGREEMENT, such that THE GAME has never been ready for commercial release because NETDEVIL has not completed development of THE GAME. Such failure and refusal constitutes a material breach of Defendants' obligations under THE AGREEMENT.

13. Paragraph 4 (d)(i) and (ii) of THE AGREEMENT provided as follows:

> *4(d) (i) Within three (3) business days after Codemasters' final acceptance of each Deliverable, including without limitation the final completed and approved Software, and within three (3) business days after Codemasters' acceptance of any modifications, revisions, upgrades or Updates (collectively "Modifications') to either the Game Software or the Server Software, Licensor will deposit into the Technology Escrow with the Escrow Agent documented source code for such accepted Deliverable or*

Modification (such aforementioned source code shall be referred to as the "Escrowed Source Code').

4(d)(ii) The parties shall enter into a mutually-agreeable three-party escrow agreement with Codemasters' escrow agent, National Computing Center (or such other escrow agent reasonably agreed between the parties), with their data vault located in the United Kingdom. The expense of such escrow shall be paid for by Codemasters.

14. In material breach of its obligations under paragraphs 4(d)(i) and (ii) of THE AGREEMENT, NETDEVIL has failed and refused to enter into the mandated escrow agreement and has failed and refused to deposit the source code into any escrow.

15. CODEMASTERS fully performed all of its obligations under THE AGREEMENT other than those obligations which it was legally excused from performing.

16. CODEMASTERS has demanded that NETDEVIL perform its obligations under THE AGREEMENT and has fully complied with THE AGREEMENT's requirements for notice of breach and opportunity to cure with respect to the breaches alleged herein.

17. As a direct and proximate result of the breach of contract herein alleged CODEMASTERS has been damaged in the amount of:

(a) $1.1 million paid as advances to NETDEVIL;

(b) $299,629.67 paid for Art Assets;

(c) External costs in an amount according to proof at the time of trial for:

- Localisation
- Marketing
- Hardware Game Servers and Data Centre costs
- Travel & Accommodation

(d) Internal staff costs associated with the following areas in an amount according to proof at the time of trial:

- Production
- Quality Assurance
- Community
- Website development and management
- Marketing
- Network operations
- General and Administration (e.g., legal, finance, HR, senior management); and

(e) The loss of use of said funds paid with respect to the forgoing items of damages from the date of each payment.

18. THE AGREEMENT provides for an award of "all costs" including attorneys fees and court costs to CODEMASTERS in the event of litigation to enforce its rights under THE AGREEMENT. As a direct and proximate cause of the breaches of contract alleged herein, CODEMASTERS has and will continue to incur costs including attorneys fees and costs in an amount to be proven at the time of trial.

CLAIM FOR RESCISSION

19. CODEMASTERS repeats and repleads the allegations contained in Paragraphs 1 through 18, and incorporates the same by this reference.

20. The above-described breaches on the part of Defendants, and each of them, constitute a material failure of consideration and/or failure to perform Defendants' obligations under THE AGREEMENT. This is particularly true of Defendants' failure to complete development of *Jumpgate: Evolution* in time for its commercial release on or before February 24, 2009, or at all.

21. CODEMASTERS will suffer substantial harm and injury under THE AGREEMENT if it is not rescinded in that, as a result of Defendants' failure to perform, CODEMASTERS will be deprived of the benefit of its bargain, and will have paid Defendants directly (Milestone advances) and for their benefit (Art Assets costs) the sum of $1,399,629.67 and has incurred expenditures directly related to the Agreement as specified in paragraph 17 above without receiving anything of value in return.

22. CODEMASTERS intends service of the Summons and Complaint in this action to serve as notice of rescission of THE AGREEMENT, and hereby offers to restore to Defendants whatever rights, claims, or interest it now holds in *Jumpgate: Evolution* under THE AGREEMENT, on condition that Defendants, and each of them, restore to CODEMASTERS all consideration and expenses CODEMASTERS has paid thereunder as specified in paragraph 17 above together with interest thereon at a rate to be determined at the time of trial from the date of each payment until judgment.

23. The relief sought under this Claim is alternative to that sought under the First Claim set forth above, and prior to entry of Judgment in this action CODEMASTERS will make an election between the two. CODEMASTERS disavows any intention to seek a double recovery.

Wherefore CODEMASTERS prays as follows:

1. For damages for breach of contract as pleaded and according to proof at the time of trial;
2. In the alternative, for rescission of THE AGREEMENT and restitution to CODEMASTERS of all sums paid to Defendants thereunder, according to proof at the time of trial;
3. For its costs including attorneys fees and costs according to proof at the time of trial;

4. For prejudgment interest on all sums awarded at the maximum rate allowed by law; and,

5. For such other and further relief as the court may deem just and proper.

DATED: November 30, 2010

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