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5 Attorney for Plaintiff
6 AQUA CONNECT, INC.

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

12 AQUA CONNECT, INC., a Nevada Corporation,) Case No.: CV11-5764 RSWL (MANx)
13)
14 Plaintiff,) **FIRST AMENDED COMPLAINT**
15) **JURY TRIAL DEMANDED**
16 vs.) Courtroom: 21
17)
18 CODE REBEL LLC, a Hawaii Limited Liability Company; ARBEN KRYEZIU,) Judge: Hon. Ronald S. W. Lew
19 an individual; VLADIMIR BICKOV; and) Complaint Filed: May 25, 2011
DOES 1 through 300 inclusive,)
20 Defendants.)
21)
22)
23)
24)

THE PARTIES

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3 Plaintiff Aqua Connect, Inc. (“Plaintiff”) hereby complains and alleges as
4 follows:

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6 1. Plaintiff is, and at all times mentioned in this Complaint was, a
7 Nevada Corporation with its principal place of business in Los Angeles County,
8 California.

9
10 2. Upon information and belief, Defendant Code Rebel LLC (“Code
11 Rebel”) is a Hawaii limited liability company with its principal place of business in
12 Hawaii. Upon information and belief, Code Rebel has systematic and continuous ties to
13 California, and also purposely availed itself to the benefits and protections of the state of
14 California. Further, its actions in the State of California give rise to this action.

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16 3. Upon information and belief, Defendant Arben Kryeziu is, and at all
17 times mentioned in this Complaint was, a resident of Hawaii. Upon information and
18 belief, Kryeziu has systematic and continuous ties to California, and also purposely
19 availed himself to the benefits and protections of the state of California. Further, his
20 actions in the State of California give rise to this action.

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22 4. Upon information and belief, Defendant Vladimir Bickov is, and at
23 all times mentioned in this Complaint was, a resident of Russia. Upon information and
24 belief, Kryeziu has systematic and continuous ties to California, and also purposely
25 availed himself to the benefits and protections of the state of California. Further, his
26 actions in the State of California give rise to this action.

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28 5. The true names and capacities, whether individual, corporate,

1 partnership, associate or otherwise, of defendants DOES 1 through 300 inclusive, and
2 each of them, are unknown to Plaintiff who therefore sues them by such fictitious names.
3 Plaintiff will seek leave to amend this Complaint to show the true names and capacities
4 of DOES 1 through 300 when it has discovered them. Plaintiff alleges that, at all times
5 mentioned herein, all of the defendants acted or participated in some manner in the acts
6 alleged herein, and in some way caused and are responsible for Plaintiff's damages. All
7 references to the named defendant shall include, without limitation, DOES 1 through 300
8 inclusive.

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10 **JURISDICTION AND VENUE**

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12 6. Plaintiff contends this action was improperly removed to federal
13 court, this court lacks subject matter jurisdiction over this action, and that this action
14 should have been remanded to the California state court in which it originated on October
15 12, 2011.

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17 **STATEMENT OF FACTS**

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19 7. Plaintiff sells and markets software known as Aqua Connect
20 Terminal Server ("ACTS").

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22 8. On or around January 24, 2008, Vladimir Bickov, in his capacity as
23 an agent of Code Rebel and at the behest of Arben Kryeziu, downloaded a trial version of
24 ACTS.

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26 9. In order to install the ACTS software, Bickov was required to agree
27 to a written End User License Agreement ("EULA"). Bickov agreed to the EULA on
28 behalf of Code Rebel. A true and correct copy of the EULA that was agreed to is

1 attached as Exhibit 1, and is hereby incorporated herein.
2

3 10. Upon information and belief, Code Rebel and its agents also
4 requested trial versions of subsequent versions of ACTS, and agreed to the EULAs in
5 effect at the time which were materially the same as Exhibit 1.
6

7 11. In each EULA, Code Rebel agreed not to reverse engineer the ACTS
8 software.
9

10 12. All defendants colluded to reverse engineer ACTS.
11

12 13. On or around June of 2009, Code Rebel began distributing a
13 competing software product, IRAPP TS, that was the result of the reverse engineering of
14 ACTS, and Code Rebel continues to do so currently. A substantial number of Code
15 Rebel's IRAPP TS customers are California citizens, and upon information and belief
16 Code Rebel's website wherein the IRAPP TS software resides is physically located in
17 California.
18

19 14. Defendants Kryeziu and Bickov have a long history of reverse
20 engineering and/or misappropriating others' software.
21

22 **FIRST CLAIM**

23 (Breach of Contract: As to All Defendants)
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25 15. Plaintiff incorporates herein by reference paragraphs 1 through 14 of
26 this Complaint.
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28 16. The EULA was a written agreement that bound Code Rebel.

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17. Code Rebel breached the EULA by reverse engineering ACTS.

18. Plaintiff performed all obligations under the agreement.

19. Code Rebel’s breach caused Plaintiff to lose profits because some customers purchased the competing software program from Code Rebel.

20. Upon information and belief, Plaintiff lost over \$10,000,000.00 in profit that it would have otherwise earned if Code Rebel did not breach its agreement.

21. With respect to future distribution, upon information and belief, damages would be insufficient because defendants do not have sufficient assets or income to compensate Plaintiff for the future harm likely to be borne by Plaintiff. Further, injunctive relief would avoid the necessity of a multiplicity of suits.

22. Code Rebel is an alter-ego for the other defendants. The defendants have failed to obey the LLC formalities, Code Rebel was insufficiently capitalized and insured, the other defendants have comingled funds with Code Rebel, and for the court to respect the limited liability status of Code Rebel would sanction a fraud.

SECOND CLAIM

(False Promise: As to All Defendants)

23. Plaintiff incorporates herein by reference paragraphs 1 through 22 of this Complaint.

24. All of the defendants, as part of a conspiracy, made a promise to

1 Plaintiff that they would not reverse engineer ACTS.

2
3 25. That promise was important to the transaction.

4
5 26. All of the defendants intended at the time of making the promise to
6 reverse engineer ACTS.

7
8 27. All of the defendants intended that Plaintiff rely on their promise.

9
10 28. Plaintiff did in fact reasonably rely on their promise.

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12 29. All of the defendants conspired to reverse engineer ACTS.

13
14 30. Plaintiff was harmed because it lost profits because some customers
15 purchased the competing software program from Code Rebel.

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17 31. Plaintiff's reliance on defendants' promise was a substantial factor in
18 causing that harm. If the defendants had not agreed to the EULA, Plaintiff would not
19 have given them a copy of ACTS, and Code Rebel would have been unable to create a
20 competing product and/or some of the features would have been missing from Code
21 Rebel's product, making it less competitive.

22
23 32. Upon information and belief, Plaintiff lost over \$10,000,000.00 in
24 profit that it would have otherwise earned if the defendants did not break their promise.

THIRD CLAIM

(Misappropriation of Trade Secrets: As to All Defendants)

33. Plaintiff incorporates herein by reference paragraphs 1 through 32 of this Complaint.

34. Plaintiff owned the following trade secrets: a detailed and specific method of implementing a terminal server in Mac OS X.

35. At the time of misappropriation by defendants, this was a trade secret.

36. All defendants knew at all relevant times that the contract with Plaintiff prohibited reverse engineering.

37. All defendants actively participated in improperly acquiring the Plaintiff's trade secret by reverse engineering in violation of said contract.

38. Each and every defendant actively participated in the disclosure of said trade secrets for personal monetary gain by selling the trade secrets to third parties.

39. Plaintiff was harmed because it lost profits because some customers purchased the competing software program from Code Rebel which utilized Plaintiff's trade secrets.

40. All of the defendants were unjustly enriched by the misappropriation when they all profited from a product that utilized Plaintiff's trade secrets.

1 41. All of the defendants' conduct was a substantial factor in causing
2 that harm and unjust enrichment. Without the misappropriation of trade secrets, Code
3 Rebel would have been unable to create a competing product and/or some of the features
4 would have been missing from Code Rebel's product, making it less competitive and/or
5 there would have been a material delay in the release of their product. All defendants
6 profited from the products of Code Rebel.

7
8 42. Upon information and belief, Plaintiff lost over \$10,000,000.00 in
9 profit that it would have otherwise earned if the secrets were not misappropriated.
10 Alternatively, upon information and belief, all defendants were enriched by at least
11 \$10,000,000.00 in profit that it would not have otherwise earned if the secrets were not
12 misappropriated.

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14 **FOURTH CLAIM**

15 (California Business and Professions Code § 17200: As to All Defendants)

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17 43. Plaintiff incorporates herein by reference paragraphs 1 through 42 of
18 this Complaint.

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20 44. The acts and practices alleged to have been committed by the
21 defendants above constitute unlawful, unfair, and fraudulent business acts or practices
22 within the meaning of section 17200 of the Business & Professions Code.

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24 45. As a result of the unlawful, unfair, and fraudulent business acts or
25 practices of the defendants, Plaintiff suffered damages by losing substantial profits.

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27 46. Argued in the alternative for each defendant, each defendant
28 received a profit of at least \$10,000,000.00, as a result of their unlawful, unfair, and

1 fraudulent business acts or practices at the expense of Plaintiff.

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3 **FIFTH CLAIM**

4 (Unjust Enrichment: As to All Defendants)

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6 47. Plaintiff incorporates herein by reference paragraphs 1 through 46 of
7 this Complaint.

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9 48. For all the reasons explained above, all defendants were unjustly
10 enriched.

11
12 49. Argued in the alternative for each defendant, each defendant
13 received a profit of at least \$10,000,000.00, as a result of their unlawful, unfair, and
14 fraudulent business acts or practices at the expense of Plaintiff.

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16 **PRAYER FOR RELIEF**

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18 WHEREFORE, Plaintiff prays that judgment be entered against the named
19 defendants as follows:

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21 **FIRST CLAIM**

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23 1. For contract damages of at least \$10,000,000.00 according to proof.

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25 2. For specific performance in the form of an injunction restraining all
26 defendants from distributing the fruits of their reverse engineering, which includes but is
27 not limited to: the source code of ACTS, the source code/compiled version of Code
28 Rebel’s terminal server product, IRAPP TS, and any and all software products that are a

1 derivative of IRAPP TS or ACTS.

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3 3. For attorney's fees.

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5 **SECOND CLAIM**

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7 4. For damages of at least \$10,000,000.00 according to proof.

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9 5. For an injunction restraining all defendants from distributing the
10 fruits of their reverse engineering, which includes but is not limited to: the source code of
11 ACTS, the source code/compiled version of Code Rebel's terminal server product,
12 IRAPP TS, and any and all software products that are a derivative of IRAPP TS or
13 ACTS.

14
15 6. For punitive damages.

16
17 **THIRD CLAIM**

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19 7. For damages of at least \$10,000,000.00 according to proof.

20
21 8. In the alternative, for restitution of illicit profits in the amount of at
22 least \$10,000,000.00 according to proof.

23
24 9. For an injunction restraining all defendants from distributing the
25 fruits of their reverse engineering, which includes but is not limited to: the source code of
26 ACTS, the source code/compiled version of Code Rebel's terminal server product,
27 IRAPP TS, and any and all software products that are a derivative of IRAPP TS or
28 ACTS.

1 10. For punitive damages.

2
3 **FOURTH CLAIM**

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5 11. For disgorgement of profits of at least \$10,000,000.00 according to
6 proof.

7
8 12. For an injunction restraining all defendants from distributing the
9 fruits of their reverse engineering, which includes but is not limited to: the source code of
10 ACTS, the source code/compiled version of Code Rebel's terminal server product,
11 IRAPP TS, and any and all software products that are a derivative of IRAPP TS or
12 ACTS.

13
14 **FIFTH CLAIM**

15
16 13. For restitution of illicit profits in the amount of at least
17 \$10,000,000.00 according to proof.

18
19 14. For an injunction restraining all defendants from distributing the
20 fruits of their reverse engineering, which includes but is not limited to: the source code of
21 ACTS, the source code/compiled version of Code Rebel's terminal server product,
22 IRAPP TS, and any and all software products that are a derivative of IRAPP TS or
23 ACTS.

24
25 **ALL CLAIMS**

26
27 15. For prejudgment interest.

1 16. For costs of suit incurred in this action.

2
3 17. For such other and further relief as the court deems proper.

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5 DATED: October 15, 2011

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7 By: /s/ Michael K. Hagemann
8 Michael K. Hagemann
9 Attorney for Plaintiff, AQUA CONNECT, INC.

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JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial pursuant to Rule 38(a) of the Federal Rules of Civil Procedure.

DATED: October 15, 2011

By: /s/ Michael K. Hagemann
Michael K. Hagemann
Attorney for Plaintiff, AQUA CONNECT, INC.

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