

ORIGINAL

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CLERK, U.S. DISTRICT COURT
JAN 22 2013
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

12 AQUA CONNECT, INC., a Nevada Corporation,
13
14 Plaintiff,
15
16 vs.
17 CODE REBEL LLC, a Hawaii Limited Liability Company; ARBEN KRYEZIU,
18 an individual; VOLODYMYR BYKOV
19 a/k/a VLADIMIR BICKOV, an individual
20 Defendants.
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) Case No.: CV11-5764 RSWL (MANx)
)
) **SECOND AMENDED COMPLAINT**
)
) **JURY TRIAL DEMANDED**
)
) Courtroom: 21
)
) Judge: Hon. Ronald S. W. Lew
) Complaint Filed: May 25, 2011
) Trial Date: August 13, 2013
)
)
)
)
)

28 SECOND AMENDED COMPLAINT

THE PARTIES

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2
3 Plaintiff Aqua Connect, Inc. (“Plaintiff”) hereby complains and alleges as
4 follows:

5
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.

15
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.

21
22 4. Upon information and belief, Defendant Volodymyr Bykov a/k/a
23 Vladimir Bickov is, and at all times mentioned in this Complaint was, a resident of
24 Russia. Upon information and belief, Bykov has systematic and continuous ties to
25 California, and also purposely availed himself to the benefits and protections of the state
26 of California. Further, his actions in the State of California give rise to this action.

JURISDICTION AND VENUE

1
2
3 5. Plaintiff contends this action was improperly removed to federal
4 court, this court lacks subject matter jurisdiction over this action, and that this action
5 should have been remanded to the California state court in which it originated on October
6 12, 2011.

STATEMENT OF FACTS

7
8
9
10 6. Plaintiff sells and markets software known as Aqua Connect
11 Terminal Server ("ACTS").

12
13 7. On or around January 24, 2008, Bykov, in his capacity as an agent of
14 Code Rebel and at the behest of Arben Kryeziu, downloaded a trial version of ACTS.

15
16 8. In order to install the ACTS software, Bykov was required to agree
17 to a written End User License Agreement ("EULA"). Bykov agreed to the EULA on
18 behalf of Code Rebel. A true and correct copy of the EULA that was agreed to is
19 attached as Exhibit 1, and is hereby incorporated herein.

20
21 9. Upon information and belief, Code Rebel and its agents also
22 requested trial versions of subsequent versions of ACTS, and agreed to the EULAs in
23 effect at the time which were materially the same as Exhibit 1.

24
25 10. In each EULA, Code Rebel agreed not to reverse engineer the ACTS
26 software.

27
28 11. All defendants colluded to reverse engineer ACTS.

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

7
8 13. Defendants Kryeziu and Bykov have a long history of reverse
9 engineering and/or misappropriating others' software.

10
11 **FIRST CLAIM**

12 (Breach of Contract: As to All Defendants)

13
14 14. Plaintiff incorporates herein by reference paragraphs 1 through 13 of
15 this Complaint.

16
17 15. The EULA was a written agreement that bound Code Rebel.

18
19 16. Code Rebel breached the EULA by reverse engineering ACTS.

20
21 17. Plaintiff performed all obligations under the agreement.

22
23 18. Code Rebel's breach caused Plaintiff to lose profits because some
24 customers purchased the competing software program from Code Rebel.

25
26 19. Upon information and belief, Plaintiff lost over \$10,000,000.00 in
27 profit that it would have otherwise earned if Code Rebel did not breach its agreement.

1 28. All of the defendants conspired to reverse engineer ACTS.

2
3 29. Plaintiff was harmed because it lost profits because some customers
4 purchased the competing software program from Code Rebel.

5
6 30. Plaintiff's reliance on defendants' promise was a substantial factor in
7 causing that harm. If the defendants had not agreed to the EULA, Plaintiff would not
8 have given them a copy of ACTS, and Code Rebel would have been unable to create a
9 competing product and/or some of the features would have been missing from Code
10 Rebel's product, making it less competitive.

11
12 31. Upon information and belief, Plaintiff lost over \$10,000,000.00 in
13 profit that it would have otherwise earned if the defendants did not break their promise.

14
15 **THIRD CLAIM**

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

17
18 32. Plaintiff incorporates herein by reference paragraphs 1 through 31 of
19 this Complaint.

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

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

27
28 35. Argued in the alternative for each defendant, each defendant

1 received a profit of at least \$10,000,000.00, as a result of their unlawful, unfair, and
2 fraudulent business acts or practices at the expense of Plaintiff.

3
4 **FOURTH CLAIM**

5 (Unjust Enrichment: As to All Defendants)

6
7 36. Plaintiff incorporates herein by reference paragraphs 1 through 35 of
8 this Complaint.

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

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

16
17 **PRAYER FOR RELIEF**

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

21
22 **FIRST CLAIM**

- 23
24 1. For contract damages of at least \$10,000,000.00 according to proof.
25
26 2. For specific performance in the form of an injunction restraining all
27 defendants from distributing the fruits of their reverse engineering, which includes but is
28 not limited to: the source code of ACTS, the source code/compiled version of Code

1 Rebel's terminal server product, IRAPP TS, and any and all software products that are a
2 derivative of IRAPP TS or ACTS.

3
4 **SECOND CLAIM**

5
6 3. For damages of at least \$10,000,000.00 according to proof.

7
8 4. 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 5. For punitive damages.

15
16 **THIRD CLAIM**

17
18 6. For disgorgement of profits of at least \$10,000,000.00 according to
19 proof.

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

26
27 **FOURTH CLAIM**

1 8. For restitution of illicit profits in the amount of at least
2 \$10,000,000.00 according to proof.

3
4 9. For an injunction restraining all defendants from distributing the
5 fruits of their reverse engineering, which includes but is not limited to: the source code of
6 ACTS, the source code/compiled version of Code Rebel's terminal server product,
7 IRAPP TS, and any and all software products that are a derivative of IRAPP TS or
8 ACTS.

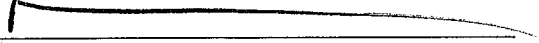
9
10 **ALL CLAIMS**

11
12 10. For prejudgment interest.

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14 11. For costs of suit incurred in this action.

15
16 12. For such other and further relief as the court deems proper.

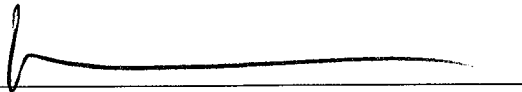
17
18 DATED: January 18, 2013

19
20 By: 
21 Michael K. Hagemann
22 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: January 18, 2013

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

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Exhibit 1

14-Day Trial Agreement

AQUA CONNECT, INC ("Licensor") IS WILLING TO LICENSE THE ENCLOSED SOFTWARE AND DOCUMENTATION (the "Software") TO YOU ("You OR Licensee") ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS IN THIS 14-DAY TRIAL AGREEMENT (the "Agreement"). IF YOU ARE AN EMPLOYEE OR AGENT OF A COMPANY (The "Company") AND ARE ENTERING INTO THIS AGREEMENT TO OBTAIN THE SOFTWARE FOR USE BY THE COMPANY FOR ITS OWN BUSINESS PURPOSES, YOU HEREBY AGREE THAT YOU ENTER INTO THIS AGREEMENT ON BEHALF OF THE COMPANY AND THAT YOU HAVE THE AUTHORITY TO BIND THE COMPANY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

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6. EXPENSES. Each party shall bear all expenses that it may incur in connection with this Agreement.

7. TERM; TERMINATION. This Agreement is effective as of Today's Date (the "Effective Date") and shall continue for Fourteen (14) days (the "Trial Period"). Upon expiration of the Trial Period the Software will become useless and Licensee will have the option of licensing the Software. Upon the expiration of the Trial Period, the license granted to Licensee will terminate and Licensee, at its expense, must certify that all relevant materials will be purged. Licensee, if necessary, will also promptly return all copies of the Software and all Confidential Information in its possession to Licensor.

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