

1 Robert A. Weikert (Bar No. 121146)
2 rweikert@nixonpeabody.com
3 Dawn N. Valentine (Bar No. 206486)
4 dvalentine@nixonpeabody.com
5 NIXON PEABODY LLP
6 One Embarcadero Center
7 San Francisco, California 94111-3600
8 Tel: (415) 984-8200
9 Fax: (415) 984-8300

6 David L. May (appearance *pro hac vice*)
7 dmay@nixonpeabody.com
8 Jennette E. Wisner (appearance *pro hac vice*)
9 jwisner@nixonpeabody.com
10 NIXON PEABODY LLP
11 799 9th Street NW
12 Washington, DC 20001-4501
13 Tel: (202) 585-8000
14 Fax: (202) 585-8080

11 *Attorneys for Stardock Systems, Inc.*

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **OAKLAND DIVISION**

17 STARDOCK SYSTEMS, INC.,
18 Plaintiff/Counter-Defendant,
19 vs.
20 PAUL REICHE III and ROBERT
21 FREDERICK FORD,
22 Defendants/Counter-Claimants.

Case No.: 17-cv-07025-SBA

NOTICE OF ERRATA

23 AND RELATED COUNTERCLAIM
24

25
26 **TO THE COURT, PARTIES, AND ALL COUNSEL OF RECORD:**

27 Plaintiff and Counter-Defendant Stardock Systems, Inc. (“Stardock”), by and through its

28 CASE NO. 4:17-CV-07025-SBA

1 counsel, timely filed its Answer and Affirmative Defenses to Defendants’ and Counter-Claimants’
2 Amended Counterclaim on July 30, 2018. Per the Federal Rules of Civil Procedure, each paragraph
3 in the Answer was to provide a response to the corresponding paragraph in Defendants’ and
4 Counter-Claimants’ Amended Counterclaim. A transcription error resulted in one paragraph in the
5 Answer being omitted and in a “mis-numbering” of Stardock’s responsive paragraphs.

6 Attached is an amended Answer and Affirmative Defenses to Defendants’ and Counter-
7 Claimants’ Amended Counterclaim that Stardock respectfully requests be filed to replace the
8 Answer filed yesterday. Stardock respectfully requests that the attached Answer and Affirmative
9 Defenses to Defendants’ and Counter-Claimants’ Amended Counterclaim operate as Stardock’s
10 responsive pleading to Defendants’ and Counter-Claimants’ Amended Counterclaim.

11 Dated: July 31, 2018

Respectfully submitted,

13 **NIXON PEABODY LLP**

14 By: /s/ Robert A. Weikert

15 Robert A. Weikert (Bar No. 121146)
16 rweikert@nixonpeabody.com
17 Dawn N. Valentine (Bar No. 206486)
18 dvalentine@nixonpeabody.com
19 NIXON PEABODY LLP
20 One Embarcadero Center
21 San Francisco, California 94111-3600
22 Tel: (415) 984-8200
23 Fax: (415) 984-8300

24 David L. May (appearance *pro hac vice*)
25 dmay@nixonpeabody.com
26 Jennette E. Wisner (appearance *pro hac vice*)
27 jwisner@nixonpeabody.com
28 NIXON PEABODY LLP
799 9th Street NW
Washington, DC 20001-4501
Tel: (202) 585-8000
Fax: (202) 585-8080

Attorneys for Stardock Systems, Inc.

28

1 Robert A. Weikert (Bar No. 121146)
2 rweikert@nixonpeabody.com
3 Dawn N. Valentine (Bar No. 206486)
4 dvalentine@nixonpeabody.com
5 NIXON PEABODY LLP
6 One Embarcadero Center
7 San Francisco, California 94111-3600
8 Tel: (415) 984-8200
9 Fax: (415) 984-8300

6 David L. May (appearance *pro hac vice*)
7 dmay@nixonpeabody.com
8 Jennette E. Wisner (appearance *pro hac vice*)
9 jwisner@nixonpeabody.com
10 NIXON PEABODY LLP
11 799 9th Street NW
12 Washington, DC 20001-4501
13 Tel: (202) 585-8000
14 Fax: (202) 585-8080

11 *Attorneys for Stardock Systems, Inc.*

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **OAKLAND DIVISION**

17 STARDOCK SYSTEMS, INC.,
18 Plaintiff/Counter-Defendant,
19 vs.
20 PAUL REICHE III and ROBERT
21 FREDERICK FORD,
22 Defendants/Counter-Claimants.

Case No.: 17-cv-07025-SBA

**PLAINTIFF AND COUNTER-
DEFENDANT'S ANSWER AND
AFFIRMATIVE DEFENSES TO
DEFENDANTS' AND COUNTER-
CLAIMANTS' AMENDED
COUNTERCLAIM**

23 AND RELATED COUNTERCLAIM
24

25
26 Plaintiff and Counter-Defendant Stardock Systems, Inc. ("Stardock"), by and through its
27 counsel, responds as follows to Defendants and Counter-Claimants Paul Reiche III's ("Reiche")

28 CASE NO. 4:17-CV-07025-SBA

1 and Robert Frederick Ford's ("Ford") (collectively, "Defendants") Amended Counterclaim.

2 **INTRODUCTION**

3 1. Stardock denies Defendants' allegation that Stardock is infringing on their alleged
4 copyrights to the games or engaging in any form of unfair competition. Stardock further denies
5 Defendants' allegation that they have the exclusive rights to make derivative works from the Star
6 Control and Star Control II games. Stardock lacks knowledge or information sufficient to form a
7 belief about the truth of any and all other allegations asserted in Paragraph 1 of the Amended
8 Counterclaim, and on that basis denies the allegations.

9
10 2. Stardock lacks knowledge or information sufficient to form a belief about the truth
11 of any and all allegations asserted in Paragraph 2 of the Amended Counterclaim, and on that basis
12 denies the allegations.

13
14 3. Stardock admits that, at the very least, it acquired the rights and registration for the
15 STAR CONTROL trademark (U.S. Trademark Registration No. 2,046,036) and the Star Control 3
16 copyright (U.S. Copyright Registration No. PA 799-000) from Atari in 2013. Except as expressly
17 admitted herein, Stardock denies any and all other allegations asserted in Paragraph 3 of the
18 Amended Counterclaim in their entirety.

19
20 4. Stardock admits that it has attempted to resolve this matter informally with
21 Defendants and decided to file this suit as a result of the parties being unable to reach an agreement.
22 Except as expressly admitted herein, Stardock denies any and all other allegations asserted in
23 Paragraph 4 of the Amended Counterclaim in their entirety.

24 **PARTIES**

25 5. Stardock admits the allegations in Paragraph 5 of the Amended Counterclaim.

26 6. Stardock admits the allegations in Paragraph 6 of the Amended Counterclaim.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. Stardock admits that it is a Michigan corporation with a principal place of business in Plymouth, Michigan and formerly had a location in Sunnyvale, California. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 7 of the Amended Counterclaim, and on that basis denies the allegations.

JURISDICTION AND VENUE

8. Stardock admits the allegations in Paragraph 8 of the Amended Counterclaim.

9. Stardock admits the allegations in Paragraph 9 of the Amended Counterclaim, but denies that it engaged in any wrongdoing or unlawful conduct.

10. Stardock admits the allegations in Paragraph 10 of the Amended Counterclaim, but denies that it engaged in any wrongdoing or unlawful conduct.

INTRADISTRICT ASSIGNMENT

11. Stardock admits the allegations in Paragraph 11 of the Amended Counterclaim, but denies that it engaged in any wrongdoing or unlawful conduct.

FACTUAL BACKGROUND

Reiche and Ford’s Creation and Development of Star Control and Star Control II

12. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 12 of the Amended Counterclaim, and on that basis denies the allegations.

13. Stardock admits that Accolade and Reiche entered into a License Agreement with an effective date of October 7, 1988, although Stardock denies that Reiche owned the rights that he purported to license pursuant to the 1988 Agreement. Stardock also admits that the 1988 License Agreement is shown in Exhibit 1 to the Amended Counterclaim and reflects the terms set forth in

1 the agreement. Stardock lacks knowledge or information sufficient to form a belief about the truth
2 of any and all other allegations asserted in Paragraph 13 of the Amended Counterclaim, and on that
3 basis denies the allegations.

4 14. Stardock asserts that the language of the 1988 License Agreement is set forth in
5 Exhibit 1 to the Amended Counterclaim. Except as expressly admitted herein, Stardock denies any
6 and all other allegations in Paragraph 14 of the Amended Counterclaim, including Defendants'
7 interpretation and construction of the agreement, in their entirety.

8 15. Stardock asserts that the language of the 1988 License Agreement is set forth in
9 Exhibit 1 to the Amended Counterclaim. Except as expressly admitted herein, Stardock denies any
10 and all other allegations in Paragraph 15 of the Amended Counterclaim, including Defendants'
11 interpretation and construction of the agreement, in their entirety.

12 16. Stardock asserts that the language of the 1988 License Agreement is set forth in
13 Exhibit 1 to the Amended Counterclaim. Except as expressly admitted herein, Stardock denies any
14 and all other allegations of Paragraph 16 of the Amended Counterclaim, including Defendants'
15 interpretation and construction of the agreement, in their entirety.

16 17. Stardock asserts that the language of the 1988 License Agreement is set forth in
17 Exhibit 1 to the Amended Counterclaim. Except as expressly admitted herein, Stardock denies any
18 and all other allegations in Paragraph 17 of the Amended Counterclaim, including Defendants'
19 interpretation and construction of the agreement, in their entirety.

20 18. Stardock asserts that the language of the 1988 License Agreement is set forth in
21 Exhibit 1 to the Amended Counterclaim. Except as expressly admitted herein, Stardock denies any
22 and all other allegations in Paragraph 18 of the Amended Counterclaim, including Defendants'
23 interpretation and construction of the agreement, in their entirety.

1 19. Stardock asserts that the language of the 1988 License Agreement is set forth in
2 Exhibit 1 to the Amended Counterclaim. Except as expressly admitted herein, Stardock denies any
3 and all other allegations in Paragraph 19 of the Amended Counterclaim, including Defendants'
4 interpretation and construction of the agreement, in their entirety.

5 20. Stardock lacks knowledge or information sufficient to form a belief about the truth
6 of any and all allegations asserted in Paragraph 20 of the Amended Counterclaim, and on that basis
7 denies the allegations.

8 21. Stardock lacks knowledge or information sufficient to form a belief about the truth
9 of any and all allegations asserted in Paragraph 21 of the Amended Counterclaim, and on that basis
10 denies the allegations.

11 22. Stardock admits that other individuals were involved in the development and
12 creation of Star Control I and Star Control II. Stardock lacks knowledge or information sufficient
13 to form a belief about the truth of any and all other allegations asserted in Paragraph 22 of the
14 Amended Counterclaim, and on that basis denies such allegations.

15 23. Stardock lacks knowledge or information sufficient to form a belief about the truth
16 of any and all allegations asserted in Paragraph 23 of the Amended Counterclaim, and on that basis
17 denies the allegations.

18 24. Stardock admits that Star Control I and Star Control II have become popular over
19 the last couple of decades in the video game community. Stardock also admits that the following
20 link contains the content associated with it: [https://kotaku.com/the-game-that-won-our-classic-pc-](https://kotaku.com/the-game-that-won-our-classic-pc-games-list-if-it-ha-1349952997)
21 [games-list-if-it-ha-1349952997](https://kotaku.com/the-game-that-won-our-classic-pc-games-list-if-it-ha-1349952997). Stardock lacks knowledge or information sufficient to form a
22 belief about the truth of any and all other allegations asserted in Paragraph 24 of the Amended
23 Counterclaim, and on that basis denies such allegations.

1 25. Stardock lacks knowledge or information sufficient to form a belief about the truth
2 of any and all allegations asserted in Paragraph 25 of the Amended Counterclaim, and on that basis
3 denies the allegations.

4 26. Stardock admits that Exhibit 2 to the Amended Counterclaim shows an unsigned
5 document titled “Addendum No. 1 to License Agreement Between Accolade, Inc. and Paul Reiche
6 III”. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and
7 all other allegations asserted in Paragraph 26 of the Amended Counterclaim, and on that basis
8 denies such allegations.
9

10
11 ***Star Control 3 and 4 and Expiration of the 1988 License Agreement***

12 27. Stardock admits that Exhibit 3 to the Amended Counterclaim shows a document
13 titled “Addendum No. 2 to License Agreement Between Accolade, Inc. and Paul Reiche III”.
14 Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all
15 other allegations asserted in Paragraph 27 of the Amended Counterclaim, and on that basis denies
16 such allegations.

17 28. Stardock admits that Defendants’ Amended Counterclaim defines the “Classic Star
18 Control Games” as Star Control, Star Control II, and Star Control III, collectively.

19 29. Stardock lacks knowledge or information sufficient to form a belief about the truth
20 of any and all allegations asserted in Paragraph 29 of the Amended Counterclaim, and on that basis
21 denies the allegations.
22

23 30. Stardock lacks knowledge or information sufficient to form a belief about the truth
24 of any and all allegations asserted in Paragraph 30 of the Amended Counterclaim, and on that basis
25 denies the allegations.
26

27 31. Stardock lacks knowledge or information sufficient to form a belief about the truth
28

1 of any and all allegations asserted in Paragraph 31 of the Amended Counterclaim, and on that basis
2 denies the allegations.

3 32. Stardock admits that Exhibit 4 to the Amended Counterclaim shows a document
4 titled "Addendum No. 3 to License Agreement Between Accolade, Inc. and Paul Reiche III".
5 Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all
6 other allegations asserted in Paragraph 32 of the Amended Counterclaim, and on that basis denies
7 such allegations.

8 33. Stardock admits that the purported language from Paragraph 1.5 of Addendum No.
9 3 is set forth in Exhibit 4 to the Amended Counterclaim and that the document speaks for itself.
10 Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all
11 other allegations asserted in Paragraph 33 of the Amended Counterclaim, and on that basis denies
12 such allegations.

13 34. Stardock admits that the purported language from Paragraph 4.1 of Addendum No.
14 3 is set forth in Exhibit 4 to the Amended Counterclaim. Stardock lacks knowledge or information
15 sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 34
16 of the Amended Counterclaim, and on that basis denies such allegations.

17 35. Stardock admits that the purported language from Paragraph 7 of Addendum No. 3
18 is set forth in Exhibit 4 to the Amended Counterclaim. Stardock lacks knowledge or information
19 sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 35
20 of the Amended Counterclaim, and on that basis denies such allegations.

21 36. Stardock lacks knowledge or information sufficient to form a belief about the truth
22 of any and all other allegations asserted in Paragraph 36 of the Amended Counterclaim, and on that
23 basis denies the allegations.

1 37. Stardock lacks knowledge or information sufficient to form a belief about the truth
2 of any and all allegations asserted in Paragraph 37 of the Amended Counterclaim, and on that basis
3 denies the allegations.

4 ***Accolade's Successors' Abandonment and Fraudulent Renewal***

5 ***of the Registration for the Star Control Trademark***

6 38. Stardock lacks knowledge or information sufficient to form a belief about the truth
7 of any and all allegations asserted in Paragraph 38 of the Amended Counterclaim, and on that basis
8 denies the allegations.

9 39. Stardock admits that on November 25, 2002, Accolade assigned U.S. Trademark
10 Registration No. 2,046,036 for STAR CONTROL to Infogrames, and on March 17, 2003,
11 Infogrames filed with the United States Patent and Trademark Office ("USPTO") a Declaration of
12 Use and Incontestability along with a specimen of use showing use of the mark of STAR
13 CONTROL. Stardock lacks knowledge or information sufficient to form a belief about the truth of
14 any and all other allegations asserted in Paragraph 39 of the Amended Counterclaim, and on that
15 basis denies such allegations.

16 40. Stardock admits that Infogrames was renamed Atari. Stardock lacks knowledge or
17 information sufficient to form a belief about the truth of any and all other allegations asserted in
18 Paragraph 40 of the Amended Counterclaim, and on that basis denies the allegations.

19 41. Stardock admits that on September 18, 2007, Atari filed with the USPTO a
20 Declaration of Use in Commerce and Application for Renewal of Registration for U.S. Trademark
21 Registration No. 2,046,036 for STAR CONTROL. Stardock lacks knowledge or information
22 sufficient to form a belief about the truth of the allegation that as part of a valuation of its IP in late
23 2006, Atari reported that it made no sales of Star Control from at least 2001 through November
24 2006, Atari reported that it made no sales of Star Control from at least 2001 through November
25 2006, Atari reported that it made no sales of Star Control from at least 2001 through November
26 2006, Atari reported that it made no sales of Star Control from at least 2001 through November
27 2006, Atari reported that it made no sales of Star Control from at least 2001 through November
28 2006, Atari reported that it made no sales of Star Control from at least 2001 through November

1 2006, and thus, the Star Control trademark was deemed to have no value at that time, and on that
2 basis denies the allegation. Except as expressly admitted herein, Stardock denies any and all other
3 allegations asserted in Paragraph 41 of the Amended Counterclaim in their entirety.

4 ***Reiche and Ford’s Continued Development of the Star Control Universe***
5 ***Through The Ur-Quan Masters and Agreement with Atari to Resume Sales***
6 ***of the Classic Star Control Games***
7

8 42. Stardock denies that Reiche and Ford regained all rights to “their games,” including
9 Star Control I and Star Control II. Stardock lacks knowledge or information sufficient to form a
10 belief about the truth of any and all other allegations asserted in Paragraph 42 of the Amended
11 Counterclaim, and on that basis denies such allegations.

12 43. Stardock admits that Defendants’ Amended Counterclaim define the “Reiche and
13 Ford’s Star Control Games” as Star Control, Star Control II, including The Ur-Quan Masters, and
14 Reiche’s Preexisting Characters used in Star Control 3, collectively. Stardock denies the accuracy
15 of this definition and further denies any suggestion or assertion that Reiche and Ford own any
16 intellectual property in the alleged aforesaid defined Reiche and Ford’s Star Control Games.
17

18 44. Stardock denies Reiche’s and Ford’s suggested possession and ownership of Star
19 Control, Star Control II, including The Ur-Quan Masters, and Reiche’s Preexisting Characters used
20 in Star Control 3. Stardock admits that the Classic Star Control Games have become popular over
21 the last couple of decades in the video game community and have acquired a reputation and
22 goodwill among the purchasing public. Stardock lacks knowledge or information sufficient to form
23 a belief about the truth of any and all other allegations asserted in Paragraph 44 of the Amended
24 Counterclaim, and on that basis denies such allegations.
25

26 45. Stardock admits that Exhibits 6 and 7 to the Amended Counterclaim show copyright
27
28

1 registration certificates for the works titled “Star Control II”, and which purport to list Reiche and
2 Ford as the claimants. Stardock lacks knowledge or information sufficient to form a belief about
3 the truth of any and all other allegations asserted in Paragraph 45 of the Amended Counterclaim,
4 and on that basis denies such allegations.

5
6 46. Stardock lacks knowledge or information sufficient to form a belief about the truth
7 of any and all allegations asserted in Paragraph 46 of the Amended Counterclaim, and on that basis
8 denies the allegations.

9
10 47. Stardock lacks knowledge or information sufficient to form a belief about the truth
11 of any and all allegations asserted in Paragraph 47 of the Amended Counterclaim, and on that basis
12 denies the allegations.

13
14 48. Stardock lacks knowledge or information sufficient to form a belief about the truth
15 of any and all allegations asserted in Paragraph 48 of the Amended Counterclaim, and on that basis
16 denies the allegations.

17
18 49. Stardock lacks knowledge or information sufficient to form a belief about the truth
19 of any and all allegations asserted in Paragraph 49 of the Amended Counterclaim, and on that basis
20 denies the allegations.

21
22 50. Stardock lacks knowledge or information sufficient to form a belief about the truth
23 of any and all allegations asserted in Paragraph 50 of the Amended Counterclaim, and on that basis
24 denies the allegations.

25
26 51. Stardock lacks knowledge or information sufficient to form a belief about the truth
27 of any and all allegations asserted in Paragraph 51 of the Amended Counterclaim, and on that basis
28 denies the allegations.

52. Amended Counterclaim Stardock lacks knowledge or information sufficient to form

1 a belief about the truth of the allegations asserted in Paragraph 52 of the Amended Counterclaim,
2 and on that basis denies such allegations.

3 53. Stardock lacks knowledge or information sufficient to form a belief about the truth
4 of the allegations asserted in Paragraph 53 of the Amended Counterclaim, and on that basis denies
5 such allegations.
6

7 ***Stardock Purportedly Buys Star Control Trademark and Star Control 3 Copyright***

8 54. Stardock admits that in or around 2013, Atari filed for bankruptcy and put its assets
9 up for auction, including the Star Control Franchise. Stardock denies that only Star Control 3 was
10 included in the Star Control Franchise put up for auction. Stardock admits that Atari sold its Star
11 Control Assets to Stardock under a Purchase Agreement dated July 18, 2013 and that the Purchase
12 Agreement defined the Purchased Assets as including the Intellectual Property identified on
13 Schedule 1.01(a), the contracts listed on Schedule 2.01(b), and certain causes of action related to
14 the Intellectual Property. Stardock denies the allegation that any other assets and properties of Atari
15 were specifically excluded from the Purchased Assets.
16

17 55. Stardock admits that Exhibit 5 to the Amended Counterclaim shows the Purchase
18 Agreement between Atari and Stardock. Stardock lacks knowledge or information sufficient to
19 form a belief about the truth of the allegation that Schedule 1.01(a) and Schedule 2.01(b) to the
20 Purchase Agreement were not attached to the filing with the bankruptcy court, and on that basis
21 denies such allegation. Stardock denies the allegation that any intellectual property or contract
22 rights were not transferred to Stardock.
23

24 56. Stardock admits the allegations in Paragraph 56 to the Amended Counterclaim.

25 57. Stardock denies that the transfer of Atari's Digital Distribution Agreement with
26 GOG Limited and Accolade's License Agreement with Reiche pertained only to Star Control 3.
27

1 Stardock admits the other allegations in Paragraph 57 of the Amended Counterclaim.

2 58. Stardock denies the allegation that Atari did not purport to sell, nor did it even own
3 or have the right to sell, any rights to the alleged Reiche and Ford's Star Control Games to Stardock,
4 including Reiche's alleged Preexisting Characters used in Star Control 3. Stardock lacks
5 knowledge or information sufficient to form a belief about the truth of any and all other allegations
6 asserted in Paragraph 58 of the Amended Counterclaim, and on that basis denies such allegations.
7

8 ***Reiche and Ford Repeatedly Reject Stardock's Requests to License Reiche***
9 ***and Ford's Star Control Games for Use in Stardock's New Game***

10 59. Stardock admits the allegations in Paragraph 59 of the Amended Counterclaim, but
11 asserts that the statements made in the referenced July 22, 2013 email are being presented out of
12 context and were based on Mr. Wardell's understandings at the time and the representations and
13 warranties made, *inter alia*, in the 1988 License Agreement, which Stardock now believes to be
14 false, misstated, and/or misleading.
15

16 60. Stardock admits the allegations in Paragraph 60 of the Amended Counterclaim, but
17 asserts that the statements made by Mr. Wardell in the referenced July 23, 2013 email are being
18 presented out of context and were based on Mr. Wardell's understandings at the time and the
19 representations and warranties made, *inter alia*, in the 1988 License Agreement, which Stardock
20 now believes to be false, misstated, and/or misleading.
21

22 61. Stardock admits that on or around July 24, 2013, it announced its acquisition and
23 plan to release a new game inspired by Star Control II. Stardock admits that at that time, the new
24 game was expected to be more of a revisit to Star Control II than a continuation. Stardock denies
25 the allegation that Mr. Wardell "admitted" that Atari doesn't own the copyright to Star Control I
26 and II and that in order to make a Star Control II HD, a license from Reiche is needed. Stardock
27
28

1 asserts that any such statements made by Mr. Wardell are being presented out of context and were
2 based on Mr. Wardell's understandings at the time and the representations and warranties made,
3 *inter alia*, in the 1988 License Agreement, which Stardock now believes to be false, misstated,
4 and/or misleading.

5
6 62. Stardock admits that Mr. Wardell contacted Reiche and Ford on July 30, 2013 via
7 email and suggested that Reiche and Ford work with Stardock on the development of Star Control:
8 Origins, but denies any and all of the other allegations in Paragraph 62 of the Amended
9 Counterclaim in their entirety.

10
11 63. Stardock lacks knowledge or information sufficient to form a belief about the truth
12 of any and all allegations asserted in Paragraph 63 of the Amended Counterclaim, and on that basis
13 denies the allegations.

14
15 64. Stardock lacks knowledge or information sufficient to form a belief about the truth
16 of any and all allegations asserted in Paragraph 64 of the Amended Counterclaim, and on that basis
17 denies the allegations.

18
19 65. Stardock admits the allegations in Paragraph 65 of the Amended Counterclaim.

20
21 66. Stardock admits that later that day (September 16, 2013), it acknowledged Reiche's
22 and Ford's response, and that Stardock offered to sell the Star Control IP it acquired from Atari to
23 Defendants. Except as expressly admitted herein, Stardock denies any and all of the other
24 allegations in Paragraph 66 of the Amended Counterclaim in their entirety.

25
26 67. Stardock admits the allegations in Paragraph 67 of the Amended Counterclaim.

27
28 68. Stardock admits the allegations in Paragraph 68 of the Amended Counterclaim.

***Stardock Begins Making False Statements About Reiche and Ford’s Involvement
in Its New Game, and Asks Reiche and Ford Again Repeatedly to License
Their Star Control Games, Which They Refuse***

69. Stardock admits that Mr. Wardell participated in an interview on January 3, 2014. Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 69 of the Amended Counterclaim, and denies that Mr. Wardell made any false or misleading statements.

70. Stardock admits the allegations in Paragraph 70 of the Amended Counterclaim, but asserts that any such statements made by Mr. Wardell are being presented out of context and were based on Mr. Wardell’s understandings at the time and the representations and warranties made, *inter alia*, in the 1988 License Agreement, which Stardock now believes to be false, misstated, and/or misleading.

71. Stardock admits the allegations in Paragraph 71 of the Amended Counterclaim.

72. Stardock admits that, upon information and belief, it alleges in its Second Amended Complaint that the Atari-GOG Agreement expired on March 22, 2015 and that all subsequent sales of the Classic Star Control Games on GOG infringed its trademarks and copyrights accordingly. Stardock admits that it entered into a separate agreement with GOG after the expiration of the Atari-GOG Agreement. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 72 of the Amended Counterclaim, and on that basis denies the allegations.

73. Stardock admits the allegations in Paragraph 73 of the Amended Counterclaim, but asserts that any such statements made by Mr. Wardell are being presented out of context and were based on Mr. Wardell’s understandings at the time and the representations and warranties made,

1 *inter alia*, in the 1988 License Agreement, which Stardock now believes to be false, misstated,
2 and/or misleading.

3 74. Stardock admits the allegations in Paragraph 74 of the Amended Counterclaim, but
4 asserts that any such statements made by Mr. Wardell are being presented out of context and were
5 based on Mr. Wardell's understandings at the time and the representations and warranties made,
6 *inter alia*, in the 1988 License Agreement, which Stardock now believes to be false, misstated,
7 and/or misleading.

8 75. Stardock admits the allegations in Paragraph 75 of the Amended Counterclaim, but
9 asserts that any such statement made by Mr. Wardell is being presented out of context and was
10 based on Mr. Wardell's understandings at the time and the representations and warranties made,
11 *inter alia*, in the 1988 License Agreement, which Stardock now believes to be false, misstated,
12 and/or misleading.

13 76. Stardock admits the allegation regarding Mr. Wardell's December 3, 2015 email.
14 Stardock admits that Mr. Wardell made the quoted statements with respect to the use of basic and
15 unprotectable concepts and ideas from Star Control in Galactic Civilizations. Stardock denies the
16 allegation that Stardock had already "borrowed" heavily from Star Control II for the Galactic
17 Civilizations game.

18 77. Stardock admits that Mr. Wardell sent an email to Defendants on October 12, 2016,
19 which speaks for itself. Defendants have misstated the contents of that email in Paragraph 77 of
20 the Amended Counterclaim, and further any such statements made by Mr. Wardell in the email are
21 being presented out of context and were based on Mr. Wardell's understandings at the time and the
22 representations and warranties made, *inter alia*, in the 1988 License Agreement, which Stardock
23 now believes to be false, misstated, and/or misleading.

1 78. Stardock admits that Star Control: Origins and Galactic Civilizations provide
2 modification tools that allow users to build and create things in the game. Stardock admits that on
3 July 28, 2017, Mr. Wardell asked Reiche and Ford if, in light of the upcoming 25th anniversary of
4 Star Control II, they would do “an interview regarding your work on Star Control 1/2, the Ur-Quan
5 Masters, past, present and future of your universe.” Stardock lacks knowledge or information
6 sufficient to form a belief about the truth of the allegation that Reiche and Ford later learned that
7 many ships and alien races from the alleged Reiche and Ford’s Star Control Games appeared in
8 Galactic Civilizations, and on that basis denies such allegations. Based on the information that is
9 now available to Stardock, it is Stardock’s position that there was no need to seek such permission
10 and/or license from Reiche and Ford. Inasmuch as Reiche and Ford allege that they own any valid
11 and enforceable intellectual property rights in the Classic Star Control Games, Stardock denies that
12 allegation. Except as expressly admitted herein, Stardock denies any and all of the other allegations
13 in Paragraph 78 of the Amended Counterclaim in their entirety.
14

15 79. Stardock admits the allegations in Paragraph 79 of the Amended Counterclaim.
16

17 80. Except as otherwise denied below, Stardock admits the allegations in Paragraph 80
18 of the Amended Counterclaim, but asserts that any such statements made by Mr. Wardell are being
19 presented out of context and were based on Mr. Wardell’s understandings at the time and the
20 representations and warranties made, *inter alia*, in the 1988 License Agreement, which Stardock
21 now believes to be false, misstated, and/or misleading. Based on the information that is now
22 available to Stardock, it is Stardock’s position that there was no need to seek such permission and/or
23 license from Reiche and Ford. Inasmuch as Reiche and Ford allege that they own any valid and
24 enforceable intellectual property rights in the Classic Star Control Games, Stardock denies that
25 allegation.
26
27
28

1 81. Except as otherwise denied below, Stardock admits the allegations in Paragraph 81
2 of the Amended Counterclaim, but asserts that any such statements made by Mr. Wardell are being
3 presented out of context and were based on Mr. Wardell's understandings at the time and the
4 representations and warranties made, *inter alia*, in the 1988 License Agreement, which Stardock
5 now believes to be false, misstated, and/or misleading. Based on the information that is now
6 available to Stardock, it is Stardock's position that there was no need to seek such permission and/or
7 license from Reiche and Ford. Inasmuch as Reiche and Ford allege that they own any valid and
8 enforceable intellectual property rights in the Classic Star Control Games, Stardock denies that
9 allegation.
10

11 82. Stardock lacks knowledge or information sufficient to form a belief about the truth
12 of the allegation that Reiche or Ford own any intellectual property in Star Control I and Star Control
13 II, and on that basis denies the allegation. Except as otherwise denied below, Stardock admits the
14 other allegations in Paragraph 82 of the Amended Counterclaim. Inasmuch as Reiche and Ford
15 allege that they own any valid and enforceable intellectual property rights in the Classic Star
16 Control Games, Stardock denies that allegation.
17

18 83. Stardock lacks knowledge or information sufficient to form a belief about the truth
19 of the allegation that the 1988 License Agreement terminated and expired in 2001, and on that basis
20 denies the allegation. Stardock admits that on October 4, 2017, it advised Reiche and Ford that it
21 had a license to use Reiche's and Ford's alleged intellectual property under the 1988 License
22 Agreement. Based on the information that is now available to Stardock, it is Stardock's position
23 that there was no need to seek such permission and/or license from Reiche and Ford. Inasmuch as
24 Reiche and Ford allege that they own any valid and enforceable intellectual property rights in the
25 Classic Star Control Games, Stardock denies that allegation.
26
27
28

1 84. Except as otherwise denied below, Stardock admits the allegations in Paragraph 84
2 of the Amended Counterclaim. Based on the information that is now available to Stardock, it is
3 now Stardock's position that there was no need to seek such permission and/or license from Reiche
4 and Ford. Inasmuch as Reiche and Ford allege that they own any valid and enforceable intellectual
5 property rights in the Classic Star Control Games, Stardock denies that allegation.
6

7 85. Stardock denies that Mr. Wardell has made any admissions via his communications
8 with respect to any alleged Reiche and Ford intellectual property alleged in Paragraph 85 of the
9 Amended Counterclaim. Except as otherwise denied below, Stardock admits the existence of the
10 communication as set forth in Paragraph 85 of the Amended Counterclaim, but asserts that any
11 such statements made by Mr. Wardell are being presented out of context and were based on Mr.
12 Wardell's understandings at the time and the representations and warranties made, *inter alia*, in the
13 1988 License Agreement, including Reiche and Ford's representations and warranties with respect
14 to the alleged intellectual property they own related to the Classic Star Control Games, which
15 Stardock now believes to be false, misstated, and/or misleading. Based on the information that is
16 now available to Stardock, it is Stardock's position that there was no need to seek such permission
17 and/or license from Reiche and Ford. Inasmuch as Reiche and Ford allege that they own any valid
18 and enforceable intellectual property rights in the Classic Star Control Games, Stardock denies that
19 allegation.
20

21 86. Stardock admits the existence of the communication as set forth in Paragraph 86 of
22 the Amended Counterclaim, but asserts that any such statements made by Mr. Wardell are being
23 presented out of context and were based on Mr. Wardell's understandings at the time and the
24 representations and warranties made, *inter alia*, in the 1988 License Agreement, which Stardock
25 now believes to be false, misstated, and/or misleading. Inasmuch as Reiche and Ford allege that
26
27

1 they own any valid and enforceable intellectual property rights in the Classic Star Control Games,
2 Stardock denies that allegation. Stardock lacks knowledge or information sufficient to form a belief
3 about the truth of any and all other allegations asserted in Paragraph 86 of the Amended
4 Counterclaim, and on that basis denies such allegations.

5
6 87. Stardock admits that on October 7, 2017, Reiche and Ford responded and claimed
7 that they had received no royalties for many years and therefore the 1988 License Agreement had
8 expired. Stardock also admits that Reiche and Ford purported to advise Mr. Wardell that
9 Stardock's planned use of "Super Melee" from Star Control II in Star Control: Origins was not
10 authorized. Inasmuch as the allegations within Paragraph 87 of the Amended Counterclaim suggest
11 that Reiche and Ford own any valid and enforceable intellectual property as it pertains to the Classic
12 Star Control Games such that Stardock would have been required to seek Reiche and Ford's
13 permission and/or license to use the alleged intellectual property, such allegations are denied.
14

15 88. Stardock admits that it responded later that day, but denies any and all other
16 allegations in Paragraph 88 of the Amended Counterclaim in their entirety.

17 89. Stardock admits that on October 9, 2017, Reiche and Ford announced their plans to
18 create and develop a new game that would be a sequel to The Ur-Quan Masters to be called "Ghosts
19 of the Precursors" and using the STAR CONTROL mark and THE UR-QUAN MASTERS mark.
20

21 ***Stardock's Copyright and Trademark Infringement and Other Unfair Competition***

22 90. Stardock admits that it has sold the Classic Star Control Games through Steam.
23 Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 90
24 of the Amended Counterclaim, including the suggestion that Reiche and Ford own any rights
25 (intellectual property rights or otherwise) in and to the Classic Star Control games such that
26 Stardock would have been required to obtain Reiche's and Ford's permission and/or license with
27
28

1 respect to the sale thereof.

2 91. Stardock admits that the screenshot from Stardock's website depicted in Paragraph
3 91 of the Amended Counterclaim shows links to buy these games through Steam, and shows
4 Stardock's lawful use of THE UR-QUAN MASTERS mark. Except as expressly admitted herein,
5 Stardock denies any and all other allegations in Paragraph 91 of the Amended Counterclaim,
6 including the suggestion that Reiche and Ford own any rights (intellectual property rights or
7 otherwise) in and to the Classic Star Control games such that Stardock would have been required
8 to obtain Reiche's and Ford's permission and/or license with respect to the sale thereof.
9

10 92. Stardock admits the allegation that it branded "Star Control 1+2" on GOG's website
11 to be called "Star Control: The Ur-Quan Masters."
12

13 93. Stardock admits the allegation that Reiche and Ford sent Steam a notice of
14 infringement and request to remove the Classic Star Control Games and that Stardock sent Steam
15 a counter-notice. Except as expressly admitted herein, Stardock denies any and all other allegations
16 in Paragraph 93 of the Amended Counterclaim in their entirety.

17 94. Stardock admits the allegation that it sent GOG a counter-notice and on that basis
18 GOG resumed selling the Classic Star Control games. Except as expressly admitted herein,
19 Stardock denies any and all other allegations in Paragraph 94 of the Amended Counterclaim in their
20 entirety.
21

22 95. Stardock denies the allegations in Paragraph 95 of the Amended Counterclaim.

23 96. Stardock admits the allegations in Paragraph 96 of the Amended Counterclaim.

24 97. Stardock admits the allegations in Paragraph 97 of the Amended Counterclaim.

25 98. Stardock admits that in November 2017, it released a beta version of Star Control:
26 Origins. Except as expressly admitted herein, Stardock denies any and all other allegations in
27

1 Paragraph 98 of the Amended Counterclaim in their entirety.

2 99. Stardock denies that the screenshot in Paragraph 99 of the Amended Counterclaim
3 shows the ships as used in Star Control I or Star Control II. Based on the information that is now
4 available to Stardock, it is Stardock's position that there was no need to seek such permission and/or
5 license from Reiche and Ford. Inasmuch as Reiche and Ford allege that they own any valid and
6 enforceable intellectual property rights in the Classic Star Control Games, Stardock denies that
7 allegation.
8

9 100. Stardock admits that Star Control: Origins provides modification tools that allow
10 users to build and create things in the game. Except as expressly admitted herein, Stardock denies
11 any and all other allegations in Paragraph 100 of the Amended Counterclaim in their entirety.
12

13 101. Stardock denies the allegations in Paragraph 101 of the Amended Counterclaim.

14 102. Stardock admits the allegation that it has described Star Control: Origins as a
15 "reboot" to Star Control II. Except as expressly admitted herein, Stardock denies any and all other
16 allegations in Paragraph 102 of the Amended Counterclaim in their entirety.

17 103. Stardock denies any allegation that it has copied alien race or lore artwork allegedly
18 owned by Reiche or Ford without Reiche's or Ford's permission and/or license or that Reiche or
19 Ford are in fact the owners of any alleged alien race or lore artwork from Star Control I or Star
20 Control II. Stardock also denies that Reiche and Ford have any rights in the Classic Star Control
21 Games that would require Stardock to have obtained Reiche's and/or Ford's permission and/or
22 license to use material from the Classic Star Control Games in connection with Star Control:
23 Origins or its website, marketing or otherwise. Stardock admits all other allegations in Paragraph
24 103 of the Amended Counterclaim.
25

26 104. Stardock admits that Star Control: Origins refers to the Precursors as an ancient,
27
28

1 advanced alien species that explored the universe long ago but then vanished. Stardock denies any
2 allegation that it has copied alien race or lore artwork allegedly owned by Reiche or Ford without
3 Reiche's or Ford's permission and/or license or that Reiche or Ford are in fact the owners of any
4 alleged alien race or lore artwork from Star Control I or Star Control II. Stardock also denies that
5 Reiche and Ford have any rights in the Classic Star Control Games that would require Stardock to
6 have obtained Reiche's and/or Ford's permission and/or license to use material from the Classic
7 Star Control Games in connection with Star Control: Origins or its website, marketing or otherwise.
8 Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 104
9 of the Amended Counterclaim in their entirety.
10

11 105. Stardock admits the allegation that players of Star Control: Origins will travel to and
12 explore new star systems and planets and encounter various alien species via hyperspace travel.
13 Stardock denies any allegation that it has copied alien race artwork allegedly owned by Reiche or
14 Ford without Reiche's or Ford's permission and/or license or that Reiche or Ford are in fact the
15 owners of any alleged alien race artwork from Star Control I or Star Control II. Stardock also
16 denies that Reiche and Ford have any rights in the Classic Star Control Games that would require
17 Stardock to have obtained Reiche's and/or Ford's permission and/or license to use material from
18 the Classic Star Control Games in connection with Star Control: Origins or its website, marketing
19 or otherwise. Except as expressly admitted herein, Stardock denies any and all other allegations in
20 Paragraph 105 of the Amended Counterclaim in their entirety.
21
22

23 106. Stardock admits the allegation that players of Star Control: Origins have the ability
24 to search for Tzo Crystal and earn or collect resource units to exchange for things. Stardock denies
25 any allegation that it has copied alien race artwork or any other artwork allegedly owned by Reiche
26 or Ford without Reiche's or Ford's permission and/or license or that Reiche or Ford are in fact the
27
28

1 owners of any alleged alien race artwork or other artwork from Star Control I or Star Control II.
2 Stardock also denies that Reiche and Ford have any rights in the Classic Star Control Games that
3 would require Stardock to have obtained Reiche's and/or Ford's permission and/or license to use
4 material from the Classic Star Control Games in connection with Star Control: Origins or its
5 website, marketing or otherwise. Except as expressly admitted herein, Stardock denies any and all
6 other allegations in Paragraph 106 of the Amended Counterclaim in their entirety.
7

8 107. Stardock admits that Mr. Wardell stated the quoted language in Paragraph 107 of
9 the Amended Counterclaim on Stardock's website. Stardock denies any allegation that it has
10 copied alien race artwork allegedly owned by Reiche or Ford without Reiche's or Ford's permission
11 and/or license or that Reiche or Ford are in fact the owners of any alleged alien race artwork from
12 Star Control I or Star Control II. Stardock also denies that Reiche and Ford have any rights in the
13 Classic Star Control Games that would require Stardock to have obtained Reiche's and/or Ford's
14 permission and/or license to use material from the Classic Star Control Games in connection with
15 Star Control: Origins or its website, marketing or otherwise. Except as expressly admitted herein,
16 Stardock denies any and all other allegations in Paragraph 107 of the Amended Counterclaim in
17 their entirety.
18

19 108. Stardock admits that it conducted an informal survey among potential purchasers of
20 Star Control: Origins concerning which aliens to include from the classic Star Control games in the
21 new game and that Mr. Wardell stated that a number of the alien races that appeared in Star Control
22 II would also appear in Star Control: Origins. Stardock denies any allegation that it has copied
23 alien race artwork allegedly owned by Reiche or Ford without Reiche's or Ford's permission and/or
24 license or that Reiche or Ford are in fact the owners of any alleged alien race artwork from Star
25 Control I or Star Control II. Stardock also denies that Reiche and Ford have any rights in the Classic
26
27
28

1 Star Control Games that would require Stardock to have obtained Reiche’s and/or Ford’s
2 permission and/or license to use material from the Classic Star Control Games in connection with
3 its Star Control: Origins or website, marketing or otherwise. Except as expressly admitted herein,
4 Stardock denies any and all other allegations in Paragraph 108 of the Amended Counterclaim in
5 their entirety.
6

7 109. Stardock admits that a ship named the “Earthling Cruiser” will appear in Star
8 Control: Origins. Stardock denies any allegation that it has copied space ship artwork allegedly
9 owned by Reiche or Ford without Reiche’s or Ford’s permission and/or license or that Reiche or
10 Ford are in fact the owners of any alleged space ship artwork from Star Control I or Star Control
11 II. Stardock also denies that Reiche and Ford have any rights in the Classic Star Control Games
12 that would require Stardock to have obtained Reiche’s and/or Ford’s permission and/or license to
13 use material from the Classic Star Control Games in connection with Star Control: Origins or its
14 website, marketing or otherwise. Except as expressly admitted herein, Stardock denies any and all
15 other allegations in Paragraph 109 of the Amended Counterclaim in their entirety.
16

17 110. Stardock admits that Mr. Wardell has stated that Star Control: Origins will feature
18 aliens from the classic Star Control games. Stardock denies any allegation that it has copied alien
19 race artwork allegedly owned by Reiche or Ford without Reiche’s or Ford’s permission and/or
20 license or that Reiche or Ford are in fact the owners of any alleged alien race artwork from Star
21 Control I or Star Control II. Stardock also denies that Reiche and Ford have any rights in the Classic
22 Star Control Games that would require Stardock to have obtained Reiche’s and/or Ford’s
23 permission and/or license to use material from the Classic Star Control Games in connection with
24 Star Control: Origins or its website, marketing or otherwise. Except as expressly admitted herein,
25 Stardock denies any and all other allegations in Paragraph 110 of the Amended Counterclaim in
26
27
28

1 their entirety.

2 111. Stardock admits that Mr. Wardell has stated that Star Control: Origins will include
3 an alien species called "Arilou." Stardock denies any allegation that it has copied alien race artwork
4 allegedly owned by Reiche or Ford without Reiche's or Ford's permission and/or license or that
5 Reiche or Ford are in fact the owners of any alleged alien race artwork from Star Control I or Star
6 Control II. Stardock also denies that Reiche and Ford have any rights in the Classic Star Control
7 Games that would require Stardock to have obtained Reiche's and/or Ford's permission and/or
8 license to use material from the Classic Star Control Games in connection with Star Control:
9 Origins or its website, marketing or otherwise. Except as expressly admitted herein, Stardock
10 denies any and all other allegations in Paragraph 111 of the Amended Counterclaim in their entirety.
11

12 112. Stardock admits that Mr. Wardell has stated that Star Control: Origins will include
13 an alien species called "Melnorme." Stardock denies any allegation that it has copied alien race
14 artwork allegedly owned by Reiche or Ford without Reiche's or Ford's permission and/or license
15 or that Reiche or Ford are in fact the owners of any alleged alien race artwork from Star Control I
16 or Star Control II. Stardock also denies that Reiche and Ford have any rights in the Classic Star
17 Control Games that would require Stardock to have obtained Reiche's and/or Ford's permission
18 and/or license to use material from the Classic Star Control Games in connection with Star Control:
19 Origins or its website, marketing or otherwise. Except as expressly admitted herein, Stardock
20 denies any and all other allegations in Paragraph 112 of the Amended Counterclaim in their entirety.
21

22 113. Stardock denies the allegation that it has extensively used material from the alleged
23 Reiche and Ford's Star Control Games on Stardock's website and in marketing both the Classic
24 Star Control Games and Star Control: Origins. Stardock also denies that Reiche and Ford have any
25 rights in the Classic Star Control Games that would require Stardock to have obtained Reiche's
26
27

28

1 and/or Ford's permission and/or license to use material from the Classic Star Control Games in
2 connection with its website, marketing or otherwise.

3 114. Stardock denies any allegation that it has copied alien race artwork allegedly owned
4 by Reiche or Ford without Reiche's or Ford's permission and/or license or that Reiche or Ford are
5 in fact the owners of any alleged alien race artwork from Star Control I or Star Control II. Stardock
6 also denies that Reiche and Ford have any rights in the Classic Star Control Games that would
7 require Stardock to have obtained Reiche's and/or Ford's permission and/or license to use material
8 from the Classic Star Control Games in connection with its website, marketing or otherwise.
9 Stardock admits the other allegations in Paragraph 114 of the Amended Counterclaim.
10

11 115. Stardock admits that the parties were engaged in extensive settlement discussions
12 from October-December 2017. Stardock denies that it was the party that broke off those settlement
13 negotiations. Stardock admits that it filed suit against Reiche and Ford in mid-December. Stardock
14 admits that it owns U.S. Copyright Registration No. PA 799-000. Except as expressly admitted
15 herein, Stardock denies any and all other allegations in Paragraph 115 of the Amended
16 Counterclaim in their entirety.
17

18 ***Stardock's Fraudulent Claims to Trademark Rights to Prevent Reiche and Ford from Making***
19 ***Their Own Derivative Work***
20

21 116. Stardock admits the allegation that it has recently filed a series of U.S. trademark
22 applications for the names of many of the aliens and features used in Star Control I and Star Control
23 II. Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph
24 116 of the Amended Counterclaim in their entirety.

25 117. Stardock admits that it contends that Stardock has used the THE UR-QUAN
26 MASTER mark since at least August 10, 2013, and asserts that any known period of non-use of
27

1 the mark is excusable non-use with the intent to resume use of the mark. Consequently, Stardock
2 denies Defendants' allegation that the above-referenced contention is false. Stardock admits the
3 other allegations in Paragraph 117 of the Amended Counterclaim.

4 118. Stardock admits that it claims that THE UR-QUAN MASTERS mark was used as a
5 source identifier by Accolade and then Atari and that Stardock acquired the rights in and to THE
6 UR-QUAN MASTERS mark from Atari and has since continued to use the mark in its marketing
7 and sales of the classic Star Control games until recently. Stardock also admits that it claims that
8 Defendants' use of THE UR-QUAN MASTERS mark infringes its rights in and to the mark.
9 Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 118
10 of the Amended Counterclaim in their entirety.

11 119. Stardock admits the allegations in Paragraph 119 of the Amended Counterclaim.

12 120. Stardock admits that it claims that the marks asserted in Paragraph 120 in the
13 Amended Counterclaim were used as source identifiers by Accolade and then Atari and that
14 Stardock acquired the rights in and to such marks from Atari and has since continued to use the
15 marks in its marketing and sales of the classic Star Control games until recently. Stardock also
16 admits that it claims that Defendants' use of the marks infringes its rights in and to the marks.
17 Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 120
18 of the Amended Counterclaim in their entirety.

19 121. Stardock denies the allegations in Paragraph 121 of the Amended Counterclaim.

20 122. Stardock admits that it has filed U.S. trademark applications for the marks asserted
21 in Paragraph 122 in the Amended Counterclaim on an intent to use basis. Except as expressly
22 admitted herein, Stardock denies any and all other allegations in Paragraph 122 of the Amended
23 Counterclaim in their entirety.

1 123. Stardock admits the allegations in Paragraph 123 of the Amended Counterclaim.

2 124. Stardock admits that in its Notice of Opposition against the application for the mark
3 GHOSTS OF THE PRECURSORS, Stardock alleges that has acquired from Atari all “product
4 names/titles, sub-names/titles, cover art, characters (*e.g.*, aliens), alien race names, character names,
5 spaceship names and spaceship designs” from the classic Star Control games, including but not
6 limited to the mark PRECURSORS. Except as expressly admitted herein, Stardock denies any and
7 all other allegations in Paragraph 124 of the Amended Counterclaim in their entirety.
8

9 125. Stardock admits that in its Notice of Opposition against the application for the mark
10 GHOSTS OF THE PRECURSORS, Stardock alleges that the mark PRECURSORS has been in use
11 in commerce through sales of the games by Accolade and then Atari and subsequently, Stardock.
12 Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 125
13 of the Amended Counterclaim in their entirety.
14

15 126. Stardock admits that in its Notice of Opposition against the application for the mark
16 GHOSTS OF THE PRECURSORS, Stardock alleges that Reiche’s and Ford’s use of the mark
17 GHOSTS OF THE PRECURSORS would be confusingly similar to Stardock’s purported mark(s),
18 create a likelihood of confusion, and damage Stardock. Stardock lacks knowledge or information
19 sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 126
20 of the Amended Counterclaim, and on that basis denies the allegations.
21

22 127. Stardock admits the allegations that on November 27, 2017, it filed U.S. Trademark
23 Application Serial No. 87/697,919, and on February 22, 2018, it filed U.S. Trademark Application
24 Serial No. 87/807,839, both for the mark STAR CONTROL. Except as expressly admitted herein,
25 Stardock denies any and all other allegations in Paragraph 127 of the Amended Counterclaim in
26 their entirety.
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST CAUSE OF ACTION

(Copyright Infringement – 17 U.S.C. § 501)

128. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 127 above as if set forth in full.

129. Stardock denies the allegations in Paragraph 129 of the Amended Counterclaim.

130. Stardock denies the allegations in Paragraph 130 of the Amended Counterclaim.

131. Stardock denies the allegations in Paragraph 131 of the Amended Counterclaim.

132. Stardock denies the allegations in Paragraph 132 of the Amended Counterclaim.

133. Stardock denies the allegations in Paragraph 133 of the Amended Counterclaim.

SECOND CAUSE OF ACTION

(Declaratory Judgment re: Ownership of Copyrights)

134. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 133 above as if set forth in full.

135. Stardock denies the allegations in Paragraph 135 of the Amended Counterclaim.

136. Stardock denies the allegations in Paragraph 136 of the Amended Counterclaim.

137. Stardock denies the allegations in Paragraph 137 of the Amended Counterclaim.

THIRD CAUSE OF ACTION

(Unfair Competition – Lanham Act § 43(a) (15 U.S.C. § 1125(a))

138. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 137 above as if set forth in full.

139. Stardock denies the allegations in Paragraph 139 of the Amended Counterclaim.

140. Stardock denies the allegations in Paragraph 140 of the Amended Counterclaim.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

141. Stardock denies the allegations in Paragraph 141 of the Amended Counterclaim.

142. Stardock denies the allegations in Paragraph 142 of the Amended Counterclaim.

143. Stardock denies the allegations in Paragraph 143 of the Amended Counterclaim.

FOURTH CAUSE OF ACTION

(Common Law Trademark Infringement and Unfair Competition)

144. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 143 above as if set forth in full.

145. Stardock denies the allegations in Paragraph 145 of the Amended Counterclaim.

146. Stardock denies the allegations in Paragraph 146 of the Amended Counterclaim.

147. Stardock denies the allegations in Paragraph 147 of the Amended Counterclaim.

148. Stardock denies the allegations in Paragraph 148 of the Amended Counterclaim.

149. Stardock denies the allegations in Paragraph 149 of the Amended Counterclaim.

150. Stardock denies the allegations in Paragraph 150 of the Amended Counterclaim.

151. Stardock denies the allegations in Paragraph 151 of the Amended Counterclaim.

FIFTH CAUSE OF ACTION

(Unfair Competition (Cal. Bus. & Prof. Code § 17200 et seq.))

152. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 151 above as if set forth in full.

153. Stardock denies the allegations in Paragraph 153 of the Amended Counterclaim.

154. Stardock denies the allegations in Paragraph 154 of the Amended Counterclaim.

155. Stardock denies the allegations in Paragraph 155 of the Amended Counterclaim.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIXTH CAUSE OF ACTION

(Cancellation of U.S. Trademark Registration No. 2,046,036)

156. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 155 above as if set forth in full.

157. Stardock denies the allegations in Paragraph 157 of the Amended Counterclaim.

SEVENTH CAUSE OF ACTION

(Conversion)

158. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 157 above as if set forth in full.

159. Stardock denies the allegations in Paragraph 159 of the Amended Counterclaim.

160. Stardock denies the allegations in Paragraph 160 of the Amended Counterclaim.

161. Stardock denies the allegations in Paragraph 161 of the Amended Counterclaim.

162. Stardock denies the allegations in Paragraph 162 of the Amended Counterclaim.

EIGHTH CAUSE OF ACTION

(Declaratory Judgment re: Trademark Rights)

163. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 162 above as if set forth in full.

164. Stardock denies the allegations in Paragraph 164 of the Amended Counterclaim.

165. Stardock denies the allegations in Paragraph 165 of the Amended Counterclaim.

166. Stardock denies the allegations in Paragraph 166 of the Amended Counterclaim.

167. Stardock denies the allegations in Paragraph 167 of the Amended Counterclaim.

168. Stardock denies the allegations in Paragraph 168 of the Amended Counterclaim.

1 169. Stardock denies the allegations in Paragraph 169 of the Amended Counterclaim.

2

3 **NINTH CAUSE OF ACTION**

4

5 **(Fraud)**

6

7 170. Stardock realleges and incorporates herein by reference its responses to Paragraphs
8 1 through 169 above as if set forth in full.

9

10 171. Stardock denies the allegations in Paragraph 171 of the Amended Counterclaim.

11

12 172. Stardock denies the allegations in Paragraph 172 of the Amended Counterclaim.

13

14 173. Stardock denies the allegations in Paragraph 173 of the Amended Counterclaim.

15

16 174. Stardock denies the allegations in Paragraph 174 of the Amended Counterclaim.

17

18 175. Stardock denies the allegations in Paragraph 175 of the Amended Counterclaim.

19

20 176. Stardock denies the allegations in Paragraph 176 of the Amended Counterclaim.

21

22 177. Stardock denies the allegations in Paragraph 177 of the Amended Counterclaim.

23

24 178. Stardock denies the allegations in Paragraph 178 of the Amended Counterclaim.

25

26 **RESPONSE TO PRAYER FOR RELIEF**

27

28 To the extent that this section requires a response, Stardock denies that Defendants are
entitled to any relief whatsoever from any of the claims alleged in their purported Amended
Counterclaim, including any of the relief alleged and listed in the Amended Counterclaim’s
Prayer for Relief.

29

30 **GENERAL DENIAL**

31

32 Stardock further denies each and every allegation in the Amended Counterclaim that is not
specifically admitted, denied, or otherwise responded to in this Answer.

33

34 **AFFIRMATIVE DEFENSES**

35

36 **FIRST AFFIRMATIVE DEFENSE**

37

38

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendants fail to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Defendants’ claims are barred by the doctrines of estoppel, waiver and/or laches.

THIRD AFFIRMATIVE DEFENSE

Defendants are not entitled to injunctive relief because, among other things, there is no risk of irreparable harm and money damages would be adequate.

FOURTH AFFIRMATIVE DEFENSE

One or more of Defendants’ claims are barred by preemption.

FIFTH AFFIRMATIVE DEFENSE

Defendants lack standing to bring one or more of their causes of action.

SIXTH AFFIRMATIVE DEFENSE

On information and belief, Defendants’ copyright claims are barred and their claimed works are not entitled to copyright protection because their copyrights and/or copyright registrations are invalid and/or unenforceable.

SEVENTH AFFIRMATIVE DEFENSE

On information and belief, Defendants’ copyright claims are barred because they are not the rightful owners of the alleged copyrights.

EIGHTH AFFIRMATIVE DEFENSE

On information and belief, Defendants’ copyright claims are barred because the works embodied in the relevant copyright registrations are not copyrightable.

NINTH AFFIRMATIVE DEFENSE

Defendants’ copyright claims are barred and Defendants trademark claims are limited because any alleged infringement was innocent and lacked intent.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TENTH AFFIRMATIVE DEFENSE

On information and belief, Defendants’ trademark and related claims are barred because they are based on trademark rights that Defendants do not own.

ELEVENTH AFFIRMATIVE DEFENSE

Defendants’ trademark and related claims are barred because the alleged infringing use was not as a source identifier.

TWELFTH AFFIRMATIVE DEFENSE

Defendants’ claims are barred, in whole or in part, because Stardock had a license to use the claimed copyrights and/or trademark rights.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendants’ claims are barred, in whole or in part, in that Defendants authorized, consented to, and/or acquiesced in Stardock’s alleged actions.

FOURTEENTH AFFIRMATIVE DEFENSE

On information and belief, Defendants’ alleged copyright claims are barred under 17 U.S.C. § 411 and this Court lacks subject-matter jurisdiction over such claims in that Defendants failed to file for and/or obtain a copyright registrations for at least some of the claimed copyrights before filing the Amended Counterclaim.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendants’ remedies for its copyright claims are limited under 17 U.S.C. § 412 in that it failed to obtain a copyright registrations within three months after the first publication of the work.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendants’ copyright claims are barred by the doctrine of fair use.

SEVENTEENTH AFFIRMATIVE DEFENSE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendants’ trademark claims are barred by the doctrine of fair use.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendants’ copyright claims are barred by the merger doctrine, and therefore Defendants cannot establish ownership of any valid and enforceable copyrights and infringement of any such alleged copyrights.

NINETEENTH AFFIRMATIVE DEFENSE

Defendants’ copyright claims are barred by scènes à faire, and therefore Defendants cannot establish ownership of any valid and enforceable copyrights and infringement of any such alleged copyrights.

TWENTIETH AFFIRMATIVE DEFENSE

Defendants’ copyright claims are barred by de minimis use.

TWENTY FIRST AFFIRMATIVE DEFENSE

Defendants fail to state their fraud claim with particularity, as required by Rule 9(b) of the Federal Rules of Civil Procedure.

TWENTY SECOND AFFIRMATIVE DEFENSE

Defendants’ fraud claim is time barred and due to be dismissed.

TWENTY THIRD AFFIRMATIVE DEFENSE

Defendants’ declaratory judgment re: trademark rights claim is barred because they are not the rightful owners of the alleged trademarks.

TWENTY FOURTH AFFIRMATIVE DEFENSE

Defendants’ declaratory judgment re: trademark rights claim is barred because Plaintiff has prior rights in and to the alleged trademarks.

TWENTY FIFTH AFFIRMATIVE DEFENSE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendants’ claims are barred, in whole or in part, by the doctrine of unclean hands.

ADDITIONAL AFFIRMATIVE DEFENSES

Stardock reserves the right to supplement its affirmative defenses as discovery progresses and additional information becomes available.

JURY DEMAND

Stardock demands a trial by jury on all issues so triable.

Dated: July 31, 2018

Respectfully submitted,

NIXON PEABODY LLP

By: /s/ Robert A. Weikert

Robert A. Weikert (Bar No. 121146)
rweikert@nixonpeabody.com
Dawn N. Valentine (Bar No. 206486)
dvalentine@nixonpeabody.com
NIXON PEABODY LLP
One Embarcadero Center
San Francisco, California 94111-3600
Tel: (415) 984-8200
Fax: (415) 984-8300

David L. May (appearance *pro hac vice*)
dmay@nixonpeabody.com
Jennette E. Wisner (appearance *pro hac vice*)
jwisner@nixonpeabody.com
NIXON PEABODY LLP
799 9th Street NW
Washington, DC 20001-4501
Tel: (202) 585-8000
Fax: (202) 585-8080

Attorneys for Stardock Systems, Inc.