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13 and ROBERTS SPACE INDUSTRIES CORP.

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 CRYTEK GMBH,

17 Plaintiff,

18 vs.

19 CLOUD IMPERIUM GAMES CORP. and
20 ROBERTS SPACE INDUSTRIES CORP.,

21 Defendants.

22 Case No. 2:17-CV-08937

23 [HON. DOLLY M. GEE]

24 **DECLARATION OF ORTWIN**
25 **FREYERMUTH IN SUPPORT OF**
26 **DEFENDANTS' MOTION FOR A**
27 **BOND PURSUANT TO CAL. CIV.**
28 **P. CODE § 1030**

Date: April 26, 2019

Time: 9:30 AM

Courtroom: 8C

1 I, ORTWIN FREYERMUTH, declare as follows:

2 1. I am the Co-Founder, Vice Chairman, and General Counsel of Cloud
3 Imperium Games Corp. and Roberts Space Industries Corp. (together, “CIG” or
4 “Defendants”), the defendants in the above-captioned action.

5 2. I make this declaration in support of CIG’s Motion for a Bond Pursuant to
6 California Code of Civil Procedure section 1030 (the “Motion”). I make this declaration
7 on the basis of personal knowledge, except where indicated otherwise.

8 **Star Citizen, Squadron 42, and CryEngine**

9 3. I have been at CIG since its inception.

10 4. Since 2012, CIG has been developing the video games *Star Citizen* and
11 *Squadron 42*.

12 5. *Star Citizen* will be an online, multiplayer space adventure, trading, and
13 dogfighting game.

14 6. *Squadron 42* will be a story-driven, single-player campaign set in the *Star*
15 *Citizen* universe.

16 7. Only preliminary, so-called “alpha modes” of *Star Citizen* have been
17 released. No part of *Squadron 42* has been released. Both games remain in development.
18 CIG maintains the source code for *Squadron 42* in the same code base as *Star Citizen*.

19 8. When CIG began to develop the games, it elected to use plaintiff Crytek
20 GmbH’s (“Crytek”) CryEngine video game development platform. CIG and Crytek
21 entered into a Game License Agreement (“GLA”) dated November 20, 2012, a true and
22 correct copy of which is attached hereto as **Exhibit 1**.

23 **The Switch to Lumberyard**

24 9. By an agreement dated April 30, 2016, Amazon granted CIG a license to use
25 in *Star Citizen* and *Squadron 42* not only Lumberyard, but also the version of CryEngine
26 that was then embedded in the games’ source code. Following execution of the Amazon
27 license, CIG began developing the games under the Amazon license. When CIG releases
28

1 *Squadron 42* to the public, the game engine source code will be licensed under this
2 Amazon agreement, not the GLA.

3 10. Attached hereto as **Exhibit 2** is a true and correct copy of a press release
4 issued by CIG on December 23, 2016, entitled “Star Citizen and Squadron 42 Utilize
5 Amazon Lumberyard Game Engine,” which I obtained from
6 [https://robertsspaceindustries.com/comm-link/press/15660-star-citizen-and-squadron-42-](https://robertsspaceindustries.com/comm-link/press/15660-star-citizen-and-squadron-42-utilize-amazon-lumberyard-game-engine)
7 [utilize-amazon-lumberyard-game-engine](https://robertsspaceindustries.com/comm-link/press/15660-star-citizen-and-squadron-42-utilize-amazon-lumberyard-game-engine).

8 Pre-Selling of *Squadron 42*

9 11. Attached hereto as **Exhibit 3** is a true and correct copy of a press release
10 issued by CIG on January 29, 2016, entitled “Roundup: Free Fly, 2.1.2 Patch and Other
11 Updates!,” which I obtained from [https://robertsspaceindustries.com/comm-](https://robertsspaceindustries.com/comm-link/transmission/15178-Roundup-Free-Fly-212-Patch-And-Other-Updates)
12 [link/transmission/15178-Roundup-Free-Fly-212-Patch-And-Other-Updates](https://robertsspaceindustries.com/comm-link/transmission/15178-Roundup-Free-Fly-212-Patch-And-Other-Updates).

13 12. During a February 5, 2016 phone call, I clarified to Crytek’s general counsel
14 that CIG still planned to make *Squadron 42* available only through the *Star Citizen* game
15 client. Crytek’s general counsel confirmed to me that the GLA allows CIG to sell a
16 module like *Squadron 42* separately as long as players could access the module only
17 through the *Star Citizen* game client.

18 13. Attached hereto as **Exhibit 4** is a true and correct copy of an email that I
19 sent to Crytek’s general counsel on February 7, 2016, memorializing our telephone
20 conversation and confirming that CIG would publish a corrective statement to clarify that
21 *Squadron 42* would remain functionally tied to *Star Citizen* and only accessible through
22 the *Star Citizen* game client.

23 14. Attached hereto as **Exhibit 5** is a true and correct copy of that clarification:
24 a press release issued by CIG on February 8, 2016 entitled “Package Split Information,”
25 which I obtained from [https://robertsspaceindustries.com/comm-link/transmission/15189-](https://robertsspaceindustries.com/comm-link/transmission/15189-Package-Split-Information)
26 [Package-Split-Information](https://robertsspaceindustries.com/comm-link/transmission/15189-Package-Split-Information). CIG began pre-selling *Squadron 42* as a separate unit on
27 February 14, 2016.
28

1 of the transmittal letter, dated January 23, 2018, that CIG’s counsel delivered to Crytek’s
2 counsel with the bug fixes.

3 26. CIG has heard nothing from Crytek regarding the bug fixes since that time.

4 **Crytek’s Credits**

5 27. On December 23, 2016, with CIG’s release of “alpha” build version 2.6 of
6 *Squadron 42*, CIG replaced Crytek’s copyright and trademark notices on the *Star Citizen*
7 credits splash screen with the Amazon Lumberyard copyright and trademark notices. By
8 that time, CIG had already entered into, and was developing both *Star Citizen* and
9 *Squadron 42* under CIG’s license agreement with Amazon.

10 28. Crytek alleges that CIG’s removal of the Crytek and CryEngine copyright
11 and trademark notices from *Star Citizen*’s credits splash screen resulted in loss of
12 “promotional consideration.”

13 29. Crytek’s claimed damage is belied by the fact that Crytek has been trying to
14 disassociate itself from CIG and *Star Citizen* since 2015.

15 30. I personally saw on YouTube that Crytek prominently featured CIG, RSI,
16 and *Star Citizen* in its 2013 and 2014 “Developer Showcase” videos that, upon
17 information and belief, Crytek exhibited at the Game Developers Conference (“GDC”),
18 an annual gathering of game development professionals held in March in San Francisco,
19 California, which I attended. GDC is one of the gaming industry’s most important trade
20 shows and one of the largest gatherings of game development professionals each year.

21 31. I also personally saw on YouTube that Crytek omitted *Star Citizen* from its
22 2015 “Developer Showcase” video. After January 22, 2015, to the best of my
23 knowledge, Crytek never again featured CIG, RSI, or *Star Citizen* in any of its social
24 media, marketing, or promotional campaigns.

25 **“Bugsmashers” Videos**

26 32. The “Bugsmashers” videos feature a CIG software engineer walking through
27 how he addresses coding errors identified in the game. The videos often show footage of
28 the engineer’s screen as he addresses bugs in the code.

1 33. On information and belief, any snippets of CryEngine source code displayed
2 in “Bugsmashers” videos would carry no independent utility. This is because CryEngine
3 is a massively complex computer program comprising millions of lines of interdependent
4 code and thousands of files divided among many different modules that all need to work
5 in tandem to accomplish the various tasks that make a modern video game work.

6 **Faceware**

7 34. On August 25, 2017, CIG announced that it had entered into an agreement
8 with Faceware Technologies, Inc. (“Faceware”) for CIG to use Faceware’s facial
9 animation and motion capture technology in *Star Citizen*.

10 35. To the best of my knowledge, CIG never provided Faceware with access to
11 the CryEngine source code in any way. I confirmed this fact with CIG’s Technical
12 Director-Content, who directly supervises CIG’s technical collaboration with Faceware.

13 **Expert Source Code Analysis**

14 36. The source code for CryEngine, *Star Citizen/Squadron 42*, and Amazon
15 Lumberyard comprises thousands of files and millions of lines of code.

16 37. Crytek’s claims related to *Squadron 42*, the bug fixes, and the
17 “Bugsmashers” videos likely will require source code analysis by expert software
18 engineers.

19
20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed on March 28, 2019 at Los Angeles, California.

22
23 
24 ORTWIN FREYERMUTH
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