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RICHARD W. WILKINS
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NORTHERN DISTRICT OF CALIFORNIA
MR

1 Larry W. McFarland (Bar No. 129668)
E-Mail: lmcfarland@kmwlaw.com
2 Dennis Wilson (Bar No. 155407)
E-Mail: dwilson@kmwlaw.com
3 David K. Caplan (Bar No. 181174)
E-Mail: dcaplan@kmwlaw.com
4 KEATS McFARLAND & WILSON LLP
9720 Wilshire Boulevard
5 Penthouse Suite
Beverly Hills, California 90212
6 Telephone: (310) 248-3830
Facsimile: (310) 860-0363

E-filing

7 Attorneys for Plaintiff
8 ZYNGA GAME NETWORK, INC.

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14
15 ZYNGA GAME NETWORK, INC.

CV 09 2958
CASE NO.

16 Plaintiff,

17 v.

18 DUC DOAN,

19 Defendant.
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COMPLAINT FOR:

- (1) VIOLATION OF 15 U.S.C. § 1125(a);
- (2) VIOLATION OF 15 U.S.C. § 1125(d);
- (3) VIOLATION OF CAL. BUS. & PROF. CODE § 17200;
- (4) STATE COMMON LAW TRADEMARK INFRINGEMENT
- (5) COMMON LAW PASSING OFF AND UNFAIR COMPETITION;
- (6) BREACH OF CONTRACT; AND
- (7) INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS

PVT

DEMAND FOR JURY TRIAL

CASE NO. _____
COMPLAINT

1 Plaintiff Zynga Game Network, Inc. ("Zynga") brings this action against Duc
2 Doan ("Defendant") for injunctive relief and damages under the laws of the United
3 States and the State of California.

4 **Nature of the Action**

5 1. This is an action for violation of the federal Lanham Act, 15 U.S.C. §§
6 1125(a), and 1125(d); violation of the California statutory law of unfair competition,
7 Cal. Bus. & Prof. Code § 17200; California common law trademark infringement,
8 passing off and unfair competition; breach of contract; and for intentional interference
9 with contractual relations.

10 **The Parties**

11 2. Plaintiff Zynga is a corporation organized and existing under the laws of
12 the State of Delaware and has its principal place of business in San Francisco,
13 California.

14 3. On information and belief, Defendant Duc Doan is an individual
15 currently residing in Warrensburg, Missouri.

16 **Jurisdiction and Venue**

17 4. This action arises under the trademark laws of the United States, 15
18 U.S.C. § 1051, *et seq.*, particularly under 15 U.S.C. §§ 1125(a) and 1125(d); state
19 unfair competition law; the common law of trademark infringement, passing off and
20 unfair competition; breach of contract; and the common law of intentional interference
21 with contractual relations. This Court has jurisdiction of the federal claims under 28
22 U.S.C. §§ 1331 and 1338, and 15 U.S.C. §§ 1116, 1121, and 1125. This Court has
23 supplemental jurisdiction of the state unfair competition claims under 28 U.S.C. §
24 1338(b), those claims being joined with a substantial and related claim under the
25 Trademark Laws of the United States, and supplemental jurisdiction of all of the state
26 law claims under 28 U.S.C. § 1367(a), those claims being so related to the federal
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1 claims that they form part of the same case or controversy and derive from a common
2 nucleus of operative fact.

3 5. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(2), and
4 because Defendant has consented to venue in this district.

5 **Intradistrict Assignment**

6 6. This being an Intellectual Property Action, the Court's Assignment Plan
7 provides for assignment of this Action on a district-wide basis. To the extent this
8 Action may be deemed to have arisen in a particular county within this District, that
9 county is San Francisco County on the grounds that a substantial part of the events or
10 omissions which give rise to Zynga's claims occurred in San Francisco County, where
11 Zynga is located.

12 **Factual Allegations**

13 7. Zynga is the largest social gaming company, providing, *inter alia*, online
14 poker games, word games, board games, role playing games and party games
15 including Texas Hold'Em Poker, Mafia Wars, YoVille, Vampires, Street Racing,
16 Scramble and Word Twist. Zynga's games are available on Facebook, MySpace,
17 Bebo, Hi5, Friendster, Tagged, Yahoo!, the iPhone and iPod Touch, among others.

18 8. Zynga coined the trademark and service mark (collectively "mark")
19 ZYNGA and has made use of the mark ZYNGA in commerce since June 2007.

20 9. Zynga's games have been a runaway success. In July, 2008, Zynga had
21 over 1.3 million daily active users and 20 million registered users. As of January 1,
22 2009, Zynga had over 75 million registered users. As of May, 2009, Zynga had more
23 than 9.5 million daily users.

24 10. Zynga's success and the success of the ZYNGA mark have been widely
25 reported in the press, on the Internet and in blogs.

26 11. The mark ZYNGA is inherently distinctive, and furthermore, by virtue of
27 the extensive online sales and advertising under the mark ZYNGA, the ZYNGA mark
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1 has become well-known within social gaming circles as a source identifier for Zynga's
2 games.

3 12. Zynga currently owns United States Federal Trademark Application
4 Serial No. 77684104 for the mark ZYNGA in International Class 009 for
5 downloadable software for games and entertainment on wireless devices and
6 computers, and International Class 041 for entertainment services, namely providing
7 on-line computer games. The application has not been withdrawn or opposed.

8 13. One of Zynga's most popular properties is Zynga's Texas Hold'em Poker
9 (the "Game"), a computerized version of the world-famous poker game.

10 14. Zynga makes the Game available through social networking websites and
11 applications (collectively "Providers"), including but not limited to those identified in
12 Paragraph 6 above.

13 15. Zynga's Terms of Service govern users' play of the Game.

14 16. When users sign up with Zynga to play the Game, they receive a certain
15 number of virtual "chips" that they use to compete in games with other players using
16 the Providers' sites and/or applications. Players can increase their total number of
17 "chips" through their play, and can also purchase "chips" from Zynga.

18 17. Zynga has not authorized any third party to sell the "chips" required to
19 play the Game.

20 18. The Terms of Service that govern users' play of the Game provide that
21 the "chips" used in the Game "are not redeemable for any sum of 'real world' money
22 or monetary value." The Terms of Service also prohibit sale of "chips" "for 'real
23 world' money" and prohibit the use of the Game for unacceptable purposes, including
24 activity in "conflict with the spirit or intent of" the Game.

25 19. Without Zynga's authorization or approval, Defendant has registered and
26 currently operates or previously operated websites at the Internet domain names

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1 ZYNGACHIP.COM; ZYNGACHIP.NET; CCCHIPS.COM (the "Domain Names" or
2 the "Websites").

3 20. Through the Websites, Defendant "sells" "chips" that users, playing the
4 Game through the Providers' websites and/or applications, can use to compete with
5 other players who obtained their "chips" directly from Zynga.

6 21. Defendant "sells" these "chips" using the ZYNGA mark, and at prices
7 that are substantially lower than the prices paid by users who obtain their "chips" from
8 Zynga.

9 22. Defendant has used the Game itself as part of his scheme, transferring the
10 "chips" he sells during game play in contravention of the Game's terms of service
11 and/or security measures.

12 23. Zynga has never authorized Defendant to use the mark ZYNGA or to sell
13 "chips" for use in the Game, nor has Zynga authorized Defendant to use the Game to
14 transfer "chips" that he has "sold" to players through the Websites.

15 **FIRST CAUSE OF ACTION**

16 **(False Designation of Origin Regarding the Mark ZYNGA)**

17 **(15 U.S.C. § 1125(a))**

18 24. Zynga repeats, realleges and incorporates each and every allegation of the
19 foregoing paragraphs, as though fully set forth in this cause of action.

20 25. Defendant's use of the mark ZYNGA constitutes use of a false
21 designation of origin or false and misleading representation in interstate commerce
22 that wrongfully and falsely designates, describes and represents that Defendant's
23 products are connected, affiliated or associated with Zynga, and is likely to cause
24 confusion as to Defendant's affiliation, connection or association with Zynga, or as to
25 the origin, sponsorship, or approval of Defendant's products or activities by Zynga.

26 26. Defendant's conduct as alleged herein has caused and will continue to
27 cause Zynga irreparable harm for which there is no adequate remedy at law, and is
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1 also causing damage to Zynga in an amount which cannot be accurately computed at
2 this time but will be proven at trial.

3 **SECOND CAUSE OF ACTION**

4 **(Federal Cybersquatting Regarding the Mark ZYNGA)**

5 **(15 U.S.C. § 1125(d))**

6 27. Zynga repeats, realleges and incorporates each and every allegation of the
7 foregoing paragraphs, as though fully set forth in this cause of action.

8 28. Defendant has registered and used Internet domain names that are
9 confusingly similar to the ZYNGA mark (the "Zynga Domain Names") willfully and
10 with a bad faith intent to profit from the mark ZYNGA.

11 29. The mark ZYNGA was distinctive at the time of registration of the Zynga
12 Domain Names and remains distinctive today.

13 30. The Zynga Domain Names were confusingly similar to the mark
14 ZYNGA at the time Defendant registered them, and remain so today.

15 31. Defendant's conduct as alleged herein has caused and will continue to
16 cause Zynga irreparable harm for which there is no adequate remedy at law, and is
17 also causing damage to Zynga in an amount which cannot be accurately computed at
18 this time but will be proven at trial, or at Zynga's election, an award statutory
19 damages in an amount to be determined by the Court.

20 **THIRD CAUSE OF ACTION**

21 **(California Statutory Unfair Competition)**

22 **(California Business and Professions Code § 17200, et seq.)**

23 32. Zynga repeats, realleges and incorporates each and every allegation of the
24 foregoing paragraphs, as though fully set forth in this cause of action.

25 33. Defendant competes directly with Zynga by selling the "chips" that are
26 required to play the Game.

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1 adequate remedy at law, and is also causing damage to Zynga in an amount which
2 cannot be accurately computed at this time but will be proven at trial.

3 42. This Court has jurisdiction over the subject matter of this claim pursuant
4 to the provisions of 28 U.S.C. § 1338(b), this being a claim of infringement joined
5 with a substantial and related claim under the Trademark Laws of the United States,
6 and under 28 U.S.C. § 1367.

7 **FIFTH CAUSE OF ACTION**

8 **(California Common Law Passing Off and Unfair Competition)**

9 43. Zynga repeats, realleges and incorporates each and every allegation of the
10 foregoing paragraphs, as though fully set forth in this cause of action.

11 44. By virtue of his conduct as alleged herein, Defendant has engaged and is
12 engaging in unfair competition and passing off under the common law of the State of
13 California.

14 45. As well as harming the public, Defendant's conduct as alleged herein has
15 caused and will continue to cause Zynga irreparable harm for which there is no
16 adequate remedy at law, and is also causing damage to Zynga in an amount which
17 cannot be accurately computed at this time but will be proven at trial.

18 46. Defendant's actions were undertaken intentionally to obtain an unfair
19 advantage over Zynga and in conscious disregard of Zynga's rights, and were
20 malicious, oppressive and/or fraudulent. Zynga requests punitive or exemplary
21 damages pursuant to California Civil Code § 3294(a) in an amount sufficient to punish
22 and deter Defendant and to make an example of him.

23 47. This Court has jurisdiction over the subject matter of this claim pursuant
24 to the provisions of 28 U.S.C. § 1338(b), this being a claim of unfair competition
25 joined with a substantial and related claim under the Trademark Laws of the United
26 States, and under 28 U.S.C. § 1367.

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1 a breach or disruption of those contractual relationships by selling "chips" for the
2 Game without authorization, at prices that are substantially lower than the prices paid
3 by users who obtain their "chips" from Zynga, and by distributing "chips" to users in
4 a manner prohibited by the Terms of Service.

5 57. Defendant's actions as alleged herein have caused actual disruption or
6 breach of Zynga's contractual relationships with individual users.

7 58. Defendant's conduct as alleged herein has caused and will continue to
8 cause Zynga irreparable harm for which there is no adequate remedy at law, and is
9 also causing damage to Zynga in an amount which cannot be accurately computed at
10 this time but will be proven at trial.

11 59. This Court has jurisdiction over the subject matter of this claim pursuant
12 to the provisions of 28 U.S.C. § 1367.

13 **REQUEST FOR RELIEF**

14 Zynga requests that this Court:

15 A. Enter a permanent injunction enjoining Defendant, his officers, directors,
16 agents, employees, representatives and all persons acting in concert or participation
17 with him from using the mark ZYNGA, alone or in combination with any other words
18 or phrases, in a manner that is likely to cause confusion with respect to the mark
19 ZYNGA or with respect to Zynga's approval or authorization of Defendant's actions,
20 including but not limited to enjoining Defendant from registering any Internet domain
21 names containing the term ZYNGA, or any variations or misspellings of the term
22 ZYNGA, alone or in combination with any other terms;

23 B. Enter a permanent injunction enjoining Defendant, his officers, directors,
24 agents, employees, representatives and all persons acting in concert or participation
25 with him from accessing, playing, or otherwise participating in the Game;

26 C. Enter a permanent injunction requiring Defendant, his officers, directors,
27 agents, employees, representatives and all persons acting in concert or participation
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1 with him to immediately cease any conduct suggesting or tending to suggest that any
2 products or services he advertises or offers for sale are directly or indirectly sponsored
3 or approved by, or affiliated with Zynga;

4 D. Order the transfer of the Domain Names to Zynga;

5 E. Enter a finding that Defendant's actions were willful, deliberate, and
6 malicious;

7 F. As to the First Cause of Action, award damages in an amount to be
8 proven at trial that will be trebled pursuant to 15 U.S.C. § 1117(a);

9 G. As to the First Cause of Action, enter an order, pursuant to 15 U.S.C. §
10 1118 and other applicable law, directing Defendant to deliver for destruction all
11 products in his possession or under his control that infringe Zynga's intellectual
12 property rights;

13 H. As to the Second Cause of Action, award damages in an amount to be
14 proven at trial, or at Zynga's election, statutory damages in the amount of \$100,000
15 for each and every one of the Zynga Domain Names;

16 I. As to the Fourth, Fifth, Sixth and Seventh Causes of Action, award
17 damages in an amount to be proven at trial;

18 J. As to the Fifth Cause of Action, award punitive damages in an amount
19 sufficient to punish and deter Defendant;

20 K. Enter an award of attorneys' fees and costs; and

21 L. Award any such other and further relief as this Court deems just and
22 proper.

23 **PLAINTIFF ZYNGA HEREBY DEMANDS A TRIAL BY JURY.**

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25 Dated: June 30, 2009

26 By: 

27 Larry McFarland
Keats McFarland & Wilson LLP
Attorneys for Plaintiff
ZYNGA GAME NETWORK, INC.

28 CASE NO. _____
COMPLAINT