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RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA

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

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

CRB

14
15 ZYNGA GAME NETWORK, INC.

CASE 09 2441

16 Plaintiff,

COMPLAINT FOR:

17 v.

- (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

18 JOHN DOES 1-5 d/b/a
19 ZYNGACHIPS.COM,

20 Defendants.

DEMAND FOR JURY TRIAL

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CASE NO. _____
COMPLAINT

1 Plaintiff Zynga Game Network, Inc. (“Zynga”) brings this action against DOES
2 1-5 for injunctive relief and damages under the laws of the United States and the State
3 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; and for California common law trademark
8 infringement, passing off and unfair competition.

9 **The Parties**

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

13 3. Zynga is currently unaware of the identities of Defendants John Does 1-5
14 (“Defendants”), and therefore sues such defendants by such fictitious acronyms.
15 Zynga is informed and believes that discovery will reveal the true identities of the
16 Defendants. Zynga will amend this Complaint to identify Defendants by name after
17 their identities are discovered. On information and belief, the actions alleged herein to
18 have been undertaken by Defendants were undertaken by each Defendant
19 individually, were actions that each Defendant caused to occur, were actions that each
20 Defendant authorized, controlled, directed, or had the ability to authorize, control or
21 direct, and/or were actions in which each Defendant assisted, participated or otherwise
22 encouraged, and are actions for which each Defendant is liable. Each Defendant aided
23 and abetted the actions of the Defendants set forth below, in that each Defendant had
24 knowledge of those actions, provided assistance and benefitted from those actions, in
25 whole or in part. Each of the Defendants was the agent of each of the remaining
26 Defendants, and in doing the things hereinafter alleged, was acting within the course
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1 and scope of such agency and with the permission and consent of each and every one
2 of the other Defendants.

3 **Jurisdiction and Venue**

4 4. This action arises under the trademark laws of the United States, 15
5 U.S.C. § 1051, *et seq.*, particularly under 15 U.S.C. §§ 1125(a) and 1125(d); state
6 unfair competition law; and the common law of trademark infringement, passing off
7 and unfair competition. This Court has jurisdiction over the federal claims under 28
8 U.S.C. §§ 1331 and 1338, 15 U.S.C. §§ 1116, 1121, and 1125. This Court has
9 supplemental jurisdiction of the state law claims under 28 U.S.C. § 1338(b), those
10 claims being joined with a substantial and related claim under the Trademark Laws of
11 the United States, and also has supplemental jurisdiction of the state law claims under
12 28 U.S.C. § 1367(a), those claims being so related to the federal claims that they form
13 part of the same case or controversy and derive from a common nucleus of operative
14 fact.

15 5. Venue is proper in this district under 28 U.S.C. §§ 1391(b).

16 **Factual Allegations**

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

22 7. Zynga coined the trademark and service mark (collectively "mark")
23 ZYNGA and has made use of the mark ZYNGA in commerce since June 2007.

24 8. Zynga's games have been a runaway success. In July, 2008, Zynga had
25 over 1.3 million daily active users and 20 million registered users. As of January 1,
26 2009, Zynga had over 75 million registered users. As of May, 2009, Zynga had more
27 than 9.5 million daily users.

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1 9. Zynga's success and the success of the ZYNGA mark have been widely
2 reported in the press, on the Internet and in blogs.

3 10. The mark ZYNGA is inherently distinctive, and furthermore, by virtue of
4 the extensive online sales and advertising under the mark ZYNGA, the ZYNGA mark
5 has become well-known within social gaming circles as a source identifier for Zynga's
6 games.

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

12 12. One of Zynga's most popular properties is Zynga's Texas Hold'em Poker
13 (the "Game"), a computerized version of the world-famous poker game in which
14 players compete for virtual poker "chips". Players receive some "chips" when they
15 sign up with Zynga and receive additional "chips" periodically as a part of their free
16 Zynga membership. Players can also purchase additional "chips" from Zynga.

17 13. Defendants are the registrants of Internet domain name
18 <zyngachips.com>. Defendants have registered <zyngachips.com> using names that
19 are not currently known to Zynga.

20 14. The domain name <zyngachips.com> is confusingly similar to the
21 ZYNGA mark. The domain name does not resolve to a website owned, operated,
22 authorized, or endorsed by Zynga. Rather, it resolves to a website (the "Website")
23 controlled by Defendants.

24 15. The Website contains numerous advertisements for and/or hyperlinks to a
25 variety of products and services. When a person looking for Zynga lands on the
26 Website, that person may click on one of the advertisements or hyperlinks on the site.
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1 When that occurs, the user is diverted from the Zynga website he or she was seeking
2 to visit, costing Zynga the opportunity to interact with that user.

3 16. On information and belief, Defendants use <zyngachips.com> to profit
4 from the ZYNGA mark.

5 17. Upon information and belief, Defendants registered <zyngachips.com>
6 willfully and with a bad faith intent to profit from the ZYNGA mark.

7 **FIRST CAUSE OF ACTION**

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

9 **(15 U.S.C. § 1125(a))**

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

12 19. Defendants' use of the mark ZYNGA constitutes use of a false
13 designation of origin or false and misleading representation in interstate commerce
14 that wrongfully and falsely designates, describes and represents that Defendants are
15 connected, affiliated or associated with Zynga, and is likely to cause confusion as to
16 Defendants' affiliation, connection or association with Zynga, or as to the origin,
17 sponsorship, or approval of Defendants' products or activities by Zynga.

18 20. Defendants' conduct as alleged herein has caused and will continue to
19 cause Zynga irreparable harm for which there is no adequate remedy at law, and is
20 also causing damage to Zynga in an amount which cannot be accurately computed at
21 this time but will be proven at trial.

22 **SECOND CAUSE OF ACTION**

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

24 **(15 U.S.C. § 1125(d))**

25 21. Zynga repeats, realleges and incorporates each and every allegation of the
26 foregoing paragraphs, as though fully set forth in this cause of action.

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1 22. Defendants have registered and used <zyngachips.com> with a bad faith
2 intent to profit from the mark ZYNGA.

3 23. The mark ZYNGA was distinctive at the time of registration the
4 <zyngachips.com> domain name and remains distinctive today.

5 24. The <zyngachips.com> domain name was confusingly similar to the
6 mark ZYNGA at the time Defendants registered it, and remains so today.

7 25. Defendants' 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, or at Zynga's election, an award of statutory
11 damages in an amount to be determined by the Court.

12 **THIRD CAUSE OF ACTION**

13 **(California Statutory Unfair Competition)**

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

15 26. Zynga repeats, realleges and incorporates each and every allegation of the
16 foregoing paragraphs, as though fully set forth in this cause of action.

17 27. Defendants are making unauthorized commercial use of the mark
18 ZYNGA in a deliberate, willful, intentional and wrongful attempt to trade on Zynga's
19 goodwill, reputation and financial investments in the mark ZYNGA.

20 28. By reason of their conduct as alleged herein, Defendants have engaged in
21 unlawful, unfair and/or fraudulent ongoing business practices.

22 29. As a direct result of their unfair competition with regard to the mark
23 ZYNGA, Defendants have unlawfully acquired, and continue to acquire on an
24 ongoing basis, an unfair competitive advantage and have engaged, and continue to
25 engage in, wrongful business conduct to their monetary advantage and to the
26 detriment of Zynga.

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1 30. Defendants' illegal and unfair business practices are continuing, and
2 injunctive relief pursuant to California Business and Professions Code § 17203 is
3 necessary to prevent and restrain further violations by Defendants.

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

8 **FOURTH CAUSE OF ACTION**

9 **(Common Law Trademark Infringement of the Mark ZYNGA)**

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

12 33. Defendants' unauthorized use of the mark ZYNGA constitutes trademark
13 infringement and is likely to cause confusion, deception and mistake among the
14 consuming public and trade as to the source of, and authorization for the products
15 and/or services sold by Defendants in violation of the common law of the State of
16 California.

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

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

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FIFTH CAUSE OF ACTION

(California Common Law Passing Off and Unfair Competition)

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

37. By virtue of their conduct as alleged herein, Defendants have engaged and are engaging in unfair competition and passing off under the common law of the State of California.

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

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

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

REQUEST FOR RELIEF

Zynga requests that this Court:

A. Enter a permanent injunction enjoining Defendants, their officers, directors, agents, employees, representatives and all persons acting in concert or participation with them from using the mark ZYNGA, alone or in combination with any other words or phrases, in a manner that is likely to cause confusion with respect to the mark ZYNGA or with respect to Zynga's approval or authorization of

1 Defendants' actions, including but not limited to enjoining Defendants from
2 registering any Internet domain names containing the term ZYNGA, or any variations
3 or misspellings of the term ZYNGA, alone or in combination with any other terms;

4 B. Enter a permanent injunction requiring Defendants, their officers,
5 directors, agents, employees, representatives and all persons acting in concert or
6 participation with them to immediately cease any conduct suggesting or tending to
7 suggest that any products or services they advertise or offer for sale are directly or
8 indirectly sponsored or approved by, or affiliated with Zynga;

9 C. Order the transfer of the <zyngachips.com> domain name to Zynga;

10 D. Enter a finding that Defendants' actions were willful, deliberate, and
11 malicious;

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

14 F. As to the First Cause of Action, enter an order, pursuant to 15 U.S.C. §
15 1118 and other applicable law, directing Defendants to deliver for destruction all
16 products in their possession or under its control that infringe Zynga's intellectual
17 property rights;

18 G. As to the Second Cause of Action, award damages in an amount to be
19 proven at trial, or at Zynga's election, statutory damages in the amount of \$100,000;

20 H. As to the Fourth and Fifth Causes of Action, award damages in an
21 amount to be proven at trial;

22 I. As to the Fifth Cause of Action, award punitive damages in an amount
23 sufficient to punish and deter Defendants;

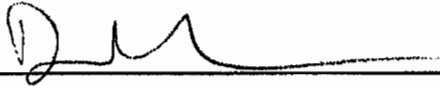
24 J. Enter an award of attorney's fees and costs; and
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K. Award any such other and further relief as this Court deems just and proper.

PLAINTIFF ZYNGA HEREBY DEMANDS A TRIAL BY JURY.

Dated: June 2, 2009

By: 

Dennis L. Wilson
Keats McFarland & Wilson LLP
Attorneys for Plaintiff
ZYNGA GAME NETWORK, INC.