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and Blizzard Entertainment, Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

MDY INDUSTRIES, LLC,)
)
Plaintiff and Counter-Claim)
Defendant)
)
vs.)
)
BLIZZARD ENTERTAINMENT, INC.,)
and VIVENDI GAMES, INC.)
)
Defendants and)
Counter-Claim Plaintiffs.)
)

Case No.: CV06-02555-PHX-DGC

**BLIZZARD ENTERTAINMENT,
INC. AND VIVENDI GAMES,
INC. STATEMENT OF FACTS
IN SUPPORT OF THEIR
MOTION FOR SUMMARY
JUDGMENT**

The Honorable David G. Campbell

BLIZZARD ENTERTAINMENT, INC.,)
and VIVENDI GAMES, INC.)
)
Third-Party Plaintiffs,)
)
vs.)
)
MICHAEL DONNELLY,)
)
Third-Party Defendant.)
)

The Parties

Blizzard Entertainment

1. Blizzard Entertainment, Inc. (“Blizzard”) is a Delaware corporation,
with its principal place of business located in Irvine, CA. Vivendi Games, Inc., a
Delaware corporation having a principal place of business in Los Angeles,

1 California, is Blizzard's corporate parent.

2 2. Blizzard has been developing and selling popular computer games for
3 14 years, and more than 20 million accounts have been registered by individuals to
4 play Blizzard's games online. (Mar. 20, 2008 Aff. of Greg Ashe ("Ashe Aff."),
5 Ex. 1 ¶ 4).

6 3. Blizzard has received numerous accolades for its games, and in
7 particular World of Warcraft ("WoW"), and has been repeatedly recognized for its
8 unsurpassed attention to the desires of its customers, and for creating games that
9 best cater to those customer demands. (Ashe Aff., Ex. 1 ¶ 5; Jan. 24, 2008 Dep. of
10 Koleman S. Strumpf, Ph.D. ("Strumpf Dep."), Ex. 2 at 247:7-22).

11
12
13 ***Michael Donnelly and MDY Industries LLC***

14 4. Defendant Donnelly is an Arizona resident residing at 4808 N. 24th
15 Street, Apt. 1008, Phoenix, Arizona. (MDY & Donnelly's Answer to Defs.'
16 Countercl. & Third Party Compl. ("MDY's Answer"), Ex. 3 ¶ 5; Defs.' Answer to
17 First Am. Compl., Countercls. & Third-Party Compl. ("Defs.' Answer"), Ex. 4 ¶
18 5 of Countercls. & Third Party Compl.).

19 5. Defendant Donnelly is the only member of MDY Industries LLC, and
20 MDY Industries LLC is an Arizona Limited Liability Company organized in
21 December 2004, and registered at 2311 E. Shea Boulevard, Phoenix, Arizona.
22 (MDY's Answer, Ex. 4 ¶ 6).

23
24 6. Donnelly's online alias is "Mercury," sometimes abbreviated as
25 "Merc.". (Sept. 25, 2007 Dep. of Michael M. Donnelly Volume I ("Donnelly I"),
26 Ex. 5 at 71:23-72:1).

1 13. Thousands of WoW players can play on any given WoW server
2 simultaneously, and can communicate, cooperate with, fight and otherwise interact
3 with other players on that server. (Ashe Aff., Ex. 1 ¶ 10).

4 14. Methods of communication among WoW players include private chat,
5 group chat, area chat (chat that can be seen by players near the speaker), channel
6 chat (chat limited to people in a particular channel), direct voice communication,
7 animations and gestures conveying emotions (emotes) and other methods. (Ashe
8 Aff., Ex. 1 ¶ 11).

9 15. There is no “single-player” mode in WoW. (Ashe Aff., Ex. 1 ¶ 12).

10 16. In order to play WoW, consumers must obtain and install a legitimate
11 version of the WoW game client on a personal computer. (Ashe Aff., Ex. 1 ¶ 13).

12 17. Also in order to play WoW, consumers must make periodic payments
13 for a subscription permitting continued access to authorized WoW servers. (Ashe
14 Aff., Ex. 1 ¶ 14).

15 18. The WoW universe cannot be experienced unless a user is connected
16 to a WoW server using an authorized subscription. (Ashe Aff., Ex. 1 ¶ 15).

17 19. A central objective for WoW players is to advance their characters
18 through the various levels recognized in the game. (Ashe Aff., Ex. 1 ¶ 16).

19 20. WoW players can gain experience and obtain levels by engaging in
20 individual or group quests with a range of goals. (Ashe Aff., Ex. 1 ¶ 17).

21 21. WoW players can also gain experience points and obtain levels by
22 engaging in battles with monsters located throughout the WoW universe. (Ashe
23 Aff., Ex. 1 ¶ 18).

1 22. By achieving new levels, players can access new content in the WoW
2 universe. (Ashe Aff., Ex. 1 ¶ 19).

3 23. Gaining new levels requires the investment of substantial time and
4 effort playing the game. (Ashe Aff., Ex. 1 ¶ 20).

5 24. There are hundreds of WoW servers active at any given time, each
6 with hundreds or thousands of players online playing. (Ashe Aff., Ex. 1 ¶ 21).

7 25. WoW currently has more than 10 million subscribers worldwide.
8 (Ashe Aff., Ex. 1 ¶ 22).

9 26. WoW currently has more than 2.5 million subscribers in North
10 America. (Ashe Aff., Ex. 1 ¶ 23).

11 27. WoW incorporates a complex closed economy continually balanced by
12 Blizzard to maintain economic equilibrium. (Nov. 13, 2007 Expert Report of
13 Edward Castronova (“Castronova Report”), Ex. 7 at 6-7; Ashe Aff., Ex. 1 ¶ 26).

14 28. WoW players enjoy playing WoW in numerous ways. Many players
15 seek the advancement of their characters to the highest level, and attempt to
16 acquire more and better in-game assets such as weapons and armor. (Nov. 13,
17 2007 Dep. of Greg Ashe Volume I (“Ashe I”), Ex. 8 at 17:1-21).

18 29. Many WoW players enjoy the social and role-playing aspects of the
19 game. For these players, in-game chat and socialization in an immersive virtual
20 universe is a primary draw to the game. (Ashe I, Ex. 8 at 17:4-9, 171:9-20, 172:8-
21 14).

22 30. Blizzard attempts to calibrate the advancement of characters through
23 WoW to maintain a stable, in-game economy that provides equal opportunities for
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1 players to reap similar rewards consistent with their investment of time in the
2 game. For example, WoW is fine-tuned to establish the amount of in-game virtual
3 currency a player should earn from level 1 to level 40 in the game, and at
4 subsequent progressions. (Ashe I, Ex. 8 at 157:6-25, 161:16-19).

5
6 31. WoW's economy includes the ability to buy and sell through in-game
7 vendors; loot defeated enemies; buy, sell and barter directly with other players;
8 and buy and sell goods using any of the auction houses placed throughout the
9 WoW universe. (Ashe Aff., Ex. 1 ¶ 24).

10
11 32. The goods available to buy, sell and barter in WoW include food,
12 drink, armor, weapons, trinkets, pets, costumes and thousands of other items.
13 (Ashe Aff., Ex. 1 ¶ 25).

14
15 33. The WoW game is frequently updated and enhanced. (Ashe Aff., Ex.
16 1 ¶ 28).

17
18 34. The largest update since WoW's launch came in the form of a large
19 expansion pack called World of Warcraft: The Burning Crusade™. (Ashe Aff.,
20 Ex. 1 ¶ 29).

21
22 35. With the exception of The Burning Crusade expansion pack, all
23 updates to WoW have been free to WoW users. Ashe cite. (Ashe Aff., Ex. 1 ¶
24 30).

25
26 36. Blizzard has been recognized throughout the gaming industry and
27 among game players for its careful attention to meeting the demands of players in
28 creating some of the world's most popular game. (Ashe Aff., Ex. 1 ¶ 5-6; Strumpf
Dep., Ex. 2 at 247:7-22).

1 37. Blizzard’s track record includes ten #1-selling games and multiple
2 Game of the Year awards. (Ashe Aff., Ex. 1 ¶ 7).

3 38. Blizzard’s achievements have been recognized in the media as well.
4 On January 16, 2007, New York Times writer Seth Schiesel began playing
5 Blizzard’s “Burning Crusade” expansion for WoW and he wrote about his
6 experiences in what the newspaper described as an “online serial review and
7 travelogue through the world’s most successful virtual universe.” (N.Y. Times
8 Article, *Conquering the Burning Crusade*, Ex. 9 at 1, 2).

9 39. Mr. Schiesel’s observations were made during a two week period in
10 which he played WoW for 186 hours and his observations were posted on the
11 newspaper’s website at the following URL:
12 <http://www.nytimes.com/ref/arts/warcraft-journal.html>. (*Id.*, Ex. 9 at 2).

13 40. In his January 31, 2007 post, he remarked that “World of Warcraft is
14 so compellingly designed and so finely measured that it has been unnervingly easy
15 to lose myself in completely. Once you have some friends in the game, and in
16 some cases even if you don’t, there is simply always more to do – another skill to
17 learn, another quest to complete, another tier of luxury goods to revel in.” (*Id.*, Ex.
18 9 at 2).

19 41. In a post dated January 29, 2007, Schiesel described how his character
20 had reached the maximum level a character could attain two years ago. (*Id.*, Ex. 9
21 at 3-4).

22 42. While reviewing the “Burning Crusade,” he decided that to create a
23 new character “to see how the other half lives.” (*Id.*, Ex. 9 at 4).

1 43. In that context he remarked that “[f]rom a gameplay perspective, the
2 new zones and new races work well for introducing new players to the game.
3 Massively-multiplayer games can be extremely complex, but one of the top
4 reasons WOW has been so popular is that it doles out that complexity very
5 carefully. If a game frustrates you in the first 15 minutes you will probably put it
6 away and never go back to it. World of Warcraft almost never makes that
7 mistake.” (*Id.*, Ex. 9 at 4).
8

9 44. In his January 25, 2007 post, Schiesel discussed what players can do
10 after their characters have reached the maximum level of 70. (*Id.*, Ex. 9 at 8-19).
11

12 45. He observed that “the game-making goblins and gnomes at Blizzard
13 Entertainment want you to keep playing and paying and they know that what
14 keeps players psychologically engaged is a sense of progress. There always has to
15 be another carrot dangling just out of reach - one more challenge to conquer, one
16 more foe to defeat and, not least, one more rare and powerful weapon or magic
17 artifact to acquire.” (*Id.*, Ex. 9 at 9).
18

19 46. He also noted that the environment created by Blizzard creates a fun
20 game play environment for players of varying skill levels,
21

22 “I’ve been looking for some really poorly designed dungeons and I just
23 haven’t found them yet. Each has been finely tuned; the battles are
24 appropriately challenging, the stories are interesting and the rewards have
25 been attractive.

26 One of the coolest things Blizzard has done in the expansion is take some
27 of the epic “feel” that was previously the exclusive province of big raids
28 and bring it to smaller settings. In WOW’s older five-player dungeons, the
big bad guy at the end has usually been just that: a guy not much larger than
the players themselves. If you wanted to fight big dragons and such, you
had to play with dozens of other characters.

1 Now, even players in five-person dungeons can go up against massive
2 hydra and the towering elemental of sound called Murmur. It's a nice
3 switch because it lets more casual players feel like they playing an
important part in the overall WOW storyline.” (*Id.*, Ex. 9 at 10-11).

4 47. In his January 23, 2007 post, Schiesel explained:

5 “the real genius [of games like “The Sims” and “Grand Theft Auto”] has
6 been not in great characters or fabulous graphics but in providing settings
7 that draw in players like an inhabitant.

8 That dynamic is even more important in online role-playing games like
9 World of Warcraft and may be the prime reason why the game is set to take
10 in more than \$1 billion this year. People who play such games can end up
11 spending hundreds or thousands of hours in them over many years for two
reasons: the other real people inside them and the overall virtual
environment they occupy. . . . [T]he environment itself has to be fun to be
in, great to look at and rewarding to explore.

12 And providing such an environment is the one thing that World of Warcraft
13 does better than any other game. As I have spent most of the last week
14 playing The Burning Crusade I have been impressed over and over again at
15 how richly textured the world is that the team at Blizzard Entertainment has
16 created and how much care they clearly lavished on making sure it is
almost impossible to get bored. Everywhere you turn is a new spot to
discover, a new monster to gawk at, a new problem in need of solving.”
(*Id.*, Ex. 9 at 14-15).

17 48. Schiesel also observed that “[t]here is so much to do and so much to
18 see across Outland that I did nothing but follow quest chains around the continent
19 all the way from Level 60 to Level 70 and I still barely touched one of the game's
20 high-end zones. In most games, players often feel like they've run out of content.
21 That was almost never a problem in the original World of Warcraft and certainly
22 won't be one for expansion players any time soon.” (*Id.*, Ex. 9 at 15).

23 49. The software code responsible for the extensive and richly detailed
24 creative elements forming the online world of the WoW gaming environment are
25 copyrighted works owned by Blizzard. Blizzard has received copyright
26 registrations in both the server and game client software code. (Copyright
27
28

1 Registration Numbers TXu 1-166-151, TX 5-984-004, and PA-1-247-131, Ex. A
2 to Defs. Answer, Ex. 10).

3 50. When users launch a copy of WoW from their hard drive in order to
4 access the game servers and play the game, the user makes a copy of WoW in
5 RAM. (Nov. 14, 2007 Dep. of Matthew Versluys (“Versluys Dep.”), Ex. 11 at
6 26:21 to 27:5; Ashe I, Ex. 8 at 98:21-99:11).

8 51. After the initial launch of the client from the hard drive into RAM, as a
9 player moves through the game, additional copyrighted game content is loaded
10 from the hard drive into RAM as the player reaches points in the game as needed,
11 depending on the circumstances in the game. (Versluys Dep., Ex. 11 at 28:7-14).

13 52. When Glider users load WoW into RAM, WoW is able to be both
14 perceived and communicated to, including interacting with Glider itself. (Jan. 11,
15 2008 Dep. of Joseph Calandrino (“Calandrino Dep.”), Ex. 12 at 69:11 to 70:16).

17 **Threats to WoW Gaming Experience - Bots**

18 ***Explanation of Bots and Botting***

19 53. The word “bot” is a shortened version of the phrase “software robot.”
20 (Castronova Report, Ex. 7 at 3).

21 54. A bot is a piece of software used to automate game play tasks normally
22 performed by a human. (Donnelly I, Ex. 5 at 49:10-11; Ashe 163:6-18;
23 Castronova Report, Ex. 7 at 3-4).

25 55. Botting is a term used to describe the practice of using a bot to perform
26 functions normally performed by a human. (Ashe I, Ex. 8 at 163:6-18, 164:2-9;
27 Castronova Report, Ex. 7 at 3-4).

1 56. Bots can be used to automate game-play in WoW to the extent that, in
2 using a bot, a WoW character can travel through the WoW universe, fight and
3 defeat foes, sell the loot taken from defeated foes, and, in doing so, continue to
4 acquire experience points (resulting in increasing levels) and virtual wealth
5 without a human at the keyboard. (Ashe I, Ex. 8 at 178:16-23; Castronova
6 Report, Ex. 7 at 3-4).

8 57. Because bots do not eat, sleep, work or go to school, bots can play
9 much longer than a human without stopping. (Ashe I, Ex. 8 at 164:6-9;
10 Castronova Report, Ex. 7 at 2).

12 ***In-Game Economic Impact of Botting***

13 58. Botting distorts the game economy by flooding it with excess
14 resources. (Feb. 29, 2008 Castronova Supplemental Report (“Castronova
15 Supplemental”), Ex. 13 at 2; Ashe I, Ex. 8 at 164:2-22).

17 59. Botting skews game balance, because the game is fine-tuned to control
18 the kinds and amounts of virtual in-game resources a player may accumulate at
19 various stages, and botting enables those resources to enter the game more
20 quickly. (Ashe I, Ex. 8 at 157:9 to 158:18).

21 60. Bots create an oversupply of items acquired in the game, devaluing
22 those items and reducing the amount of virtual currency legitimate players can
23 earn from selling them within the game environment. (Ashe I, Ex. 8 at 162:4-11;
24 Jan. 15 2008 Dep. of Edward Castronova (“Castronova Dep.”), Ex. 14 at 128:17 to
25 129:8).

27 61. Botting causes inflation of in-game costs, and significant depreciation
28

1 of the value of certain in-game items. (Ashe I, Ex. 8 at 162:4-11; Castronova
2 Dep., Ex. 14 at 135:17 to 136:3).

3
4 ***In-Game Resource Shortages Due to Botting***

5 62. Botters consume in-game resources real players need to advance and
6 accomplish quests (Ashe I, Ex. 8 at 177:4-21; Castronova Dep., Ex. 14 at 124:12
7 to 125:9).

8 63. Botters monopolize non-consumable in-game resources real players
9 need to advance and accomplish quests (Ashe I, Ex. 8 at 177:4-21; Castronova
10 Report, Ex. 7 at 6-7).

11
12 ***Real-World Resource Drain Due to Botting***

13 64. Blizzard attempts to balance the load of players on its multiple game
14 servers so that network resources are allocated equally over various servers within
15 the WoW universe. The key variable in achieving this balance is the number of
16 hours typically spent in the game by an average user, and Blizzard uses these
17 averages to set its design expectations. (Ashe I, Ex. 8 at 165:8 to 166:15; Nov. 14,
18 2007 Deposition of Bill Galey (“Galey Dep.”), Ex. 15 at 58:23 to 59:8).

19 65. Blizzard’s designs expectations are frustrated, and resources are
20 allocated unevenly, when bots are introduced into the WoW universe, because
21 bots spend far more time in-game than an ordinary player would and consume
22 resources the entire time. (Ashe I, Ex. 8 at 166:5-15; Castronova Dep. Ex. 14 at
23 136:13-148:4).

24
25
26 ***Social Impact of Botting***

27 66. “[B]ots compete with real players, crowding them out of game content
28

1 and sometimes even ‘beating’ them in the game.” (Castronova Supplemental, Ex.
2 13 at 2).

3 67. Botting destroys interactive role-playing elements, because players
4 cannot interact with the bots. (Ashe I, Ex. 8 at 158:8 to 159:2).

5 68. “Players do not want to play a game in which the other players are not
6 actually present.” (Castronova Supplemental, Ex. 13 at 2; Ashe I, Ex. 8 at 158:8-
7 14; Nov. 6, 2007 Dep. of Robert Hale (“Hale Dep.”), Ex. 16 at 23: 1-3).

8
9 ***Decrease of Demand Due to Botting***

10 69. “The presence of bots negatively affects the nature, atmosphere, and
11 reputation of WoW, in the same way that steroids negatively affect the nature,
12 atmosphere, and reputation of baseball.” (Castronova Supplemental, Ex. 13 at 2).

13 70. “[C]heating (and its ancillary effects, such as economic distortions)
14 reduces the demand of consumers to participate in the product.” (Castronova
15 Supplemental, Ex. 13 at 2).

16
17
18 **The Problems of RMT and Gold Farming**

19 71. Real Money Trade (“RMT”) is the practice of selling the in-game gold
20 for real money outside of the game. (Ashe Aff., Ex. 1 ¶ 31)

21 72. Gold farming is the practice of gathering as much in-game gold as
22 possible for purposes of engaging in RMT. (Ashe Aff., Ex. 1 ¶ 32)

23 73. Selling in-game gold outside of WoW is a violation of the Terms of
24 Use (“TOU”). (See provisions quoted in paras. 74-75, infra).

25 74. Before October 16, 2006, the WoW TOU provided in pertinent part:
26 “Blizzard Entertainment does not recognize any property claims outside of World
27
28

1 of Warcraft or the purported sale, gift or trade in the ‘real world’ of anything
2 related to World of Warcraft. Accordingly, you may not sell items for ‘real’
3 money or exchange items outside of World of Warcraft.” (June 6, 2005 TOU, Ex.
4 17 at § 8).

5
6 75. After October 16, 2006, the WoW TOU provided in pertinent part:
7 “Blizzard does not recognize any virtual property transfers executed outside of the
8 Game or the purported sale, gift or trade in the ‘real world’ of anything related to
9 the Game. Accordingly, you may not sell items for ‘real’ money or otherwise
10 exchange items for value outside of the Game.” (Oct. 6, 2006 TOU, Ex. 18 at §
11 5(c)(8)).
12

13 76. Gold farming and RMT skew WoW’s in-game economy by causing
14 inflation and other economic pressures. (Castronova Dep., Ex. 14 at 158:13-15,
15 159:1-3).
16

17 77. Gold farming and RMT introduce commercial elements into WoW,
18 damaging the immersive effect of the game. (Ashe I, Ex. 8 at 170:23-173:9).

19 78. Players that buy gold have an immediate and sizeable advantage over
20 other players, because they can use that gold to buy goods, including armor,
21 weapons, potions and other items, that make their character(s) much more
22 powerful in the game compete at highest level. (Castronova Dep., Ex. 14 at
23 178:17 to 179:17).
24

25 79. WoW players have filed a class action lawsuit against IGE, the
26 operator of the largest RMT marketplace. The complaint alleges that rule-abiding
27 players’ game experience is being ruined by IGE’s encouragement and facilitation
28

1 of RMT because it is destroying the WoW in-game economy and rendering the
2 game unfair to users who play by the rules. (June 1, 2007 Class Action Compl.,
3 *Hernandez v. Internet Gaming Entm't* (S.D. Fla. Filed June 1, 2007), Ex. 19).
4

5 **Blizzard's Need to Have and Enforce Rules**

6 80. As a multiplayer, interactive game, the conduct of each player impacts
7 the game-play experience of other players. (Ashe I, Ex. 8 at 170:23-173:9;
8 Castronova Supplemental, Ex. 13 at 2).
9

10 81. The use of bots and other cheats inside WoW have a significant
11 negative impact on the game-play experience of other users. (Ashe I, Ex. 8 at
12 170:23-173:9; Castronova Supplemental, Ex. 13 pg. 2).
13

14 82. Blizzard employs a staff of customer service representatives, including
15 in-game “Game Masters” who respond to and assist players with in-game
16 problems and complaints. (Galey Dep., Ex. 15 at 11:24 to 12:18, 48:21 to 49:7).
17

18 83. Between December 22, 2004 and March 18, 2008, Blizzard received
19 more than 465,000 in-game petitions from users complaining about bots. (Ashe
20 Aff., Ex. 1 at 27).
21

22 **The World of Warcraft EULA and TOU**

23 84. Players’ usage of the game is governed by the terms of both the WoW
24 End Use License Agreement (“EULA”) and the TOU. (Nov. 14, 2007 Dep. of
25 Greg Ashe Volume II (“Ashe II”), Ex. 20 at 328:14 to 329:2; Ashe Aff., Ex. 1 ¶
26 33)
27

28 85. To play WoW, users must view and demonstrate acceptance of the
EULA at numerous times: before installing the software; upon running the

1 software for the first time; and upon applying patches to the software when it is
2 changed or upgraded by Blizzard. (Ashe II, Ex. 20 at 328:14 to 329:2).

3
4 86. To play WoW, users must view and demonstrate acceptance of the
5 TOU at numerous times: when creating an account; when connecting to the
6 service for the first time; and upon applying patches to the software when it is
7 changed or upgraded by Blizzard. (Ashe II, Ex. Ex. 20 at 328:14 to 329:2).

8
9 87. Users must scroll through the entire EULA and TOU agreements, and
10 then affirmatively indicate their assent by clicking the word Accept on each of the
11 contracts, before they can access the game content. (Ashe II, Ex. Ex. 20 at 328:14
12 to 329:2)

13
14 88. Users are again required to scroll through and agree to the EULA and
15 the TOU after each revision of the WoW game or the WoW EULA or TOU.
16 (Ashe I, Ex. 8 136:19 to 137:2).

17
18 89. The EULA conditions users' right to copy and use the game upon
19 doing so only in conformity with the scope of the license. The first paragraph of
20 the EULA states: "IF YOU DO NOT AGREE TO THE TERMS OF THIS
21 AGREEMENT, YOU ARE NOT PERMITTED TO INSTALL, COPY, OR USE
22 THE GAME." The EULA further notes that "Any use, reproduction . . . of the
23 Game not expressly authorized by the terms of this License Agreement is
24 expressly prohibited." (Feb. 2, 2007 EULA, Ex. 21 at Introduction, § 1, 2).

25 ***Blizzard's EULA and TOU Provisions at Issue***

26
27 90. Prior to June 1, 2006, the WoW EULA provided in pertinent part: "IF
28 YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT,

1 PROMPTLY RETURN THE UNUSED SOFTWARE PROGRAM TO THE
2 PLACE OF PURCHASE, OR CONTACT BLIZZARD CUSTOMER SERVICE
3 AT (800) 592-5499 FOR A FULL REFUND OF THE PURCHASE PRICE
4 WITHIN 30 DAYS OF THE ORIGINAL PURCHASE.” (Nov. 2004 EULA, Ex.
5 22 § 1).
6

7 91. Prior to June 1, 2006, the WoW EULA provided in pertinent part:
8 “Licensor hereby grants, and by installing the Game Client you thereby accept, a
9 limited, non-exclusive license and right to install the Game Client for your
10 personal use on one (1) or more computers which you own or which are under
11 your personal control.” (Nov. 2004 EULA, Ex. 22 § 1).
12

13 92. Prior to June 1, 2006, the WoW EULA provided in pertinent part: “this
14 Agreement shall coexist with, and shall not supersede, the Terms of Use.” (Nov.
15 2004 EULA, Ex. 22 § 13).
16

17 93. After June 1, 2006, the WoW EULA provided in pertinent part: “IF
18 YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU ARE
19 NOT PERMITTED TO INSTALL, COPY, OR USE THE GAME.” (June 1, 2006
20 EULA, Ex. 23 at Introduction).
21

22 94. After June 1, 2006, the WoW EULA provided in pertinent part: “Any
23 use, reproduction . . . of the Game not expressly authorized by the terms of the
24 License Agreement is expressly prohibited.” (June 1, 2006 EULA, Ex. 23 at
25 Introduction).
26

27 95. After June 1, 2006, the WoW EULA provided in pertinent part:
28 “Subject to your agreement to and continuing compliance with this License

1 Agreement, Blizzard hereby grants, and you hereby accept, a limited, non-
2 exclusive license to (a) install the Game Client on one or more computers owned
3 by you or under your legitimate control, and (b) use the Game Client in
4 conjunction with the Service for your non-commercial entertainment purposes
5 only.” (June 1, 2006 EULA, Ex. 23 § 15).
6

7 96. After June 1, 2006, the WoW EULA provided in pertinent part: “this
8 Agreement shall coexist with, and shall not supersede, the Terms of Use.” (June
9 1, 2006 EULA, Ex. 23 § 15).
10

11 97. Prior to June 1, 2006, the WoW EULA provided in pertinent part:
12 Users may not “create or maintain, under any circumstance, any unauthorized
13 connections to the Game or the Service. All connections to the Game and/or the
14 Service, whether created by the Game Client or by other tools and utilities, may
15 only be made through methods and means expressly approved by Licensor. Under
16 no circumstances may you connect, or create tools that allow you or others to
17 connect, to the Game's proprietary interface or interfaces other than those
18 expressly provided by Licensor for public use.” (Nov. 2004 EULA, Ex. 23 §
19 4(iv)).
20

21 98. After June 1, 2006, the WoW EULA provided in pertinent part: Users
22 shall not “exploit the Game or any of its parts, including without limitation the
23 Game Client, for any commercial purpose” or “facilitate, create or maintain any
24 unauthorized connection to the Game or the Service, including without limitation
25 any connection to any unauthorized server that emulates, or attempts to emulate,
26 the Service. All connections to the Game and/or the Service, whether created by
27
28

1 the Game Client or by other tools and utilities, may only be made through methods
2 and means expressly approved by Blizzard. Under no circumstances may you
3 connect, or create tools that allow you or others to connect, to the Game's
4 proprietary interface other than those expressly provided by Blizzard for public
5 use." (June 1, 2006 EULA, Ex. 23 § 4(iv)).
6

7 99. Before October 16, 2006, the WoW TOU provided in pertinent part:
8 "You agree that you will not (i) modify or cause to be modified any files that are a
9 part of a World of Warcraft installation; (ii) create or use cheats, "mods", and/or
10 hacks, or any other third-party software designed to modify the World of Warcraft
11 experience; (iii) use any third-party software that intercepts, "mines", or otherwise
12 collects information from or through World of Warcraft..." (June 2, 2005 TOU,
13 Ex. 24 § 2(c)).
14

15 100. Before October 16, 2006, the WoW TOU provided in pertinent part:
16 Users may not "Use bots or other automated techniques to collect information
17 from World of Warcraft or any forum or website owned or administered by
18 Blizzard Entertainment; ... Cheat or utilize World of Warcraft "exploits" in any
19 way, including without limitation modification of the game program files." (June
20 2, 2005 TOU, Ex. 24 §§ 3(B)(vi), (Viii)).
21
22

23 101. After October 16, 2006, the WoW TOU provided in pertinent part:
24 "You agree that you will not (i) modify or cause to be modified any files that are a
25 part of the Program or the Service; (ii) create or use cheats, bots, "mods", and/or
26 hacks, or any other third-party software designed to modify the World of Warcraft
27 experience; or (iii) use any third-party software that intercepts, "mines", or
28

1 otherwise collects information from or through the Program or the Service.” (Oct.
2 16, 2006 TOU, Ex. 18 § 3(B)).

3 102. After October 16, 2006, the WoW TOU provided in pertinent part:
4 Users may not “Use bots or other automated techniques to collect information
5 from the Program or any forum of website owned or administered by Blizzard; ...
6 Cheat or utilize ‘exploits’ while playing the Program in any way, including
7 without limitation modification of the Program’s files...” (Oct. 16, 2006 TOU,
8 Ex. 18 §§ 5(b)(6)-(7).
9

10 103. The October 16, 2006 update to the WoW TOU added the word “bot”
11 was to section 4.B.(ii) to add additional clarity to the section, and not to correct an
12 ambiguity. (Ashe I, Ex. 8 at 140:18 to 141:5).
13

14 104. Even before October 16, 2006, the WoW TOU prohibited use of
15 unauthorized third-party software running in parallel with the game. (Ashe I, Ex.
16 8 at 140:18 to 141:5).
17

18 **Blizzard's Technical Measures to Enforce Rules**

19 105. Blizzard employs several different technical measures to prevent
20 breaches of its EULA and TOU. (Ashe Aff., Ex. 1 at 34).

21 106. Game servers are part of Blizzard’s technological measures preventing
22 unauthorized access because they implement discipline when unauthorized use of
23 WoW is detected. (Versluys Dep., Ex. 11 at 35:13-21).
24

25 107. One of Blizzard’s most important technical measures is referred to as
26 Warden. (Ashe Aff., Ex. 1 at 35).
27

28 ***Warden - Scan.dll***

1 resident in memory conducting scans for cheats and other unauthorized programs
2 while the game is being played. (Ashe I, Ex. 8 at 15:2-10, 32:5-11).

3 116. Upon detecting an unauthorized program, the resident component can
4 immediately kick users out of the game and prevent further copying of
5 copyrighted WoW game content into RAM. (Ashe I, Ex. 8 at 57:15-21).

6 117. Upon detecting an unauthorized program, the resident component can
7 immediately ban a user's account so that the user cannot log in, effectively
8 denying the user access to the game. (Ashe I, Ex. 8 at 57:15-21).

9 118. Thousands of Glider users have been kicked out of the game and had
10 their accounts banned for running Glider as a result of detection by Warden's
11 resident component. (Ashe Aff., Ex. 1 ¶ 36).

12 119. At present, Glider's anti-detection features are able to circumvent the
13 resident component's ability to detect and block Glider usage. (Ashe I, Ex. 8 at
14 238:1-10).

15 **The MDY Business**

16 ***Glider***

17 120. Donnelly conceived of and began developing Glider in March 2005,
18 and began offering the Glider software for download and sale to the public
19 through the WoWGlider.com website in May 2005. (Donnelly I, Ex. 5 at 34:16-
20 25, 51:21 to 52:2).

21 121. MDY sells and distributes the Glider software, formerly known as
22 WoWGlider, through its website located at <http://www.mmoglider.com>,
23 previously located at <http://www.wowglider.com>. (MDY's Answer, Ex. 3 ¶ 40).

1 130. MDY also resells Glider through the following affiliated websites:
2 www.worldofglider.de; www.wow-glider.de; www.wowglider.com.cn. (I.R., Ex.
3 27 at 4:22-27).

4 131. Robert Hale a/k/a “Rabid Dog” is a paid forum moderator for the
5 MDY website. In that role, Hale provides assistance and instruction to Glider
6 purchasers on how to use the program. (Hale Dep., Ex. 16 at 8:4-7).

8 **Operation of Glider**

9 132. Glider operates by examining data structures inside the WoW program
10 file in order to determine the game state, including such items as nearby monsters,
11 player statistical data (health, etc.), chat window contents, visible interface objects
12 such as dialog boxes, and other data. (I.R., Ex. 27 at 7:28, 8:1-3)

14 133. Glider examines the game state to determine the proper course of
15 action and initiates it by injecting input into the computer via the SendInput
16 Windows API or by directly sending the game WM_CHAR,
17 WM_MOUSEMOVE, and WM_(L/R)BUTTON(UP/DOWN) messages. (I.R.,
18 Ex. 27 at 8:1-3)

20 134. Glider also hooks several kernel functions to facilitate injecting input
21 into the game, such as GetCursorPos, SetCursorPos, and GetCursorInfo. (I.R., Ex.
22 27 at 8:3-5)

24 135. To avoid easy detection and blocking of Glider by Blizzard’s cheat
25 detection software, Glider users must use the Glider program’s “launch pad” to
26 initiate the start up and loading of WoW into RAM. (Ashe II, Ex. 20 at 319:1-9;
27 Calandrino Dep., Ex. 12 at 78:12-18; Donnelly I, Ex. 5 at 103:13-16).

1 GetActiveWindow. (I.R., Ex 27 at 8:20-22).

2 143. Glider avoids detection of its window titles by randomizing the title
3 bar, including those of any “help windows” created by Glider. (I.R., Ex. 27 at
4 8:23-24).

5
6 144. Glider’s shadow driver avoids detection by randomly renaming itself
7 and removing itself from the list of loaded modules. (I.R., Ex. 27 at 8:25-26).

8 ***The Value of Glider’s Anti-Detection Features***

9 145. Glider’s viability arises entirely from its ability to evade detection, and
10 many of Glider’s features are dedicated to anti-detection. (Donnelly I, Ex. 5 at 86,
11 96, 105, 108-09, 113-16, 130, 135-36, 172-73).

12
13 146. MDY constantly updates Glider to ensure its continued success in
14 cracking Warden’s evolving detection and access control technologies. Each time
15 Blizzard devises a new method to detect Glider and block Glider users’ access to
16 WoW, Donnelly makes changes to Glider to avoid detection. (Donnelly I, Ex. 5 at
17 85:10-25; 86:1-6, 90-96).

18
19 147. MDY acknowledged the value of the anti-detection features in
20 refraining from charging extra fees for advanced circumvention functionality,
21 noting that Glider’s circumvention ability is as essential to Glider’s success as
22 seatbelts are to a car, and that Glider’s value would be limited if it could not
23 circumvent Blizzard’s technological measures. (Donnelly I, Ex. 5 at 129:16-25;
24 130:1-7).

25
26 148. At one point, after Blizzard developed a new method of detecting
27 Glider, Donnelly sought and received help from Joseph Thaler who sold
28

1 information about Blizzard's new detection measures to MDY for \$18,000. (Nov.
2 9, 2007 Dep. of Joseph Thaler, Ex. 28 at 48:3 - 49:21).

3
4 ***Glider's Communications with MDY's Server***

5 149. When Glider runs, it first authenticates with the MDY server at
6 www.mmoglider.com by negotiating a key exchange to create a secure channel.
7 (I.R., Ex. 27 at 9:2-3).

8 150. Once a secure channel is determined, Glider sends the game version,
9 Glider version, and product key to the MDY server at www.mmoglider.com for
10 validation. (I.R., Ex. 27 at 9:2-4).

11 151. If the Glider key communicated to the MDY server at
12 www.mmoglider.com has not been locked, and is otherwise in good standing, the
13 server allows Glider to operate by providing it with memory locations of game
14 data for the specified game version. (I.R., Ex. 27 at 9:2-6).

15 152. If the authentication fails, the MDY server at www.mmoglider.com
16 will not provide Glider with the memory locations of game data, and Glider will
17 not run. (I.R., Ex. 27 at 9:6-8).

18 153. Glider updates itself by comparing its internal version number to the
19 one available at the MDY server at www.mmoglider.com. Glider will prompt the
20 user to update the program if it finds a more recent version available from the
21 MDY server. (I.R., Ex. 27 at 9:9-11).

22 154. MDY maintains control of all purchased Glider programs by requiring
23 that they connect to the MDY server at www.mmoglider.com before running.
24 Thus, MDY has the ability to disable any copy or all copies of WoWGlider at any
25
26
27
28

1 time. (MDY's Answer, Ex. 3 ¶ 93).

2 155. MDY, by maintaining a central server of software keys for paying
3 Glider users, has the right and ability to terminate the use of Glider at any time,
4 and MDY receives a direct financial benefit from Glider sales. (MDY's Answer,
5 Ex. 3 ¶¶ 93-94)).
6

7 **In-Game Impact of Glider**

8 156. Glider enables players to level and otherwise develop characters faster.
9 (Nov. 6, 2007 Dep. of Robert Hale, Ex. 16 at 31:4-7, 14-16, 20-25)
10

11 157. Glider enables players to collect large amounts of in-game gold and
12 items for RMT (real world sale). (Hale Dep., Ex. 16 at 31:4-7, 14-16, 20-25)

13 158. Glider includes specific profiles that allow users to, without human
14 participation, battle monsters, recover from death, loot fallen adversaries, sell
15 goods to vendors for gold, fish for food and treasure, and several other activities
16 available to WoW players. (Ashe I, Ex. 8, 111:15-22).
17

18 ***Sample User Complaints Concerning Glider***

19 159. On August 9, 2006, a petition filed by a user (account number
20 4740445) indicated that during a 3 day period, a player who was "using a bot
21 (such as glider)" was observed "kill[ing] the orcs" in a specific area of the WoW
22 game environment, "completely ruining the area for everyone else." (Aug. 9,
23 2006 User Compl., BLIZZM00034311, Ex. 29).
24

25 160. On August 25, 2006, a petition filed by a user (account number
26 8506996) indicated that s/he could not complete an in-game quest due to 2 bots
27 who were farming "in the Highlands." The user demanded that Blizzard "DO
28

1 SOMETHING ABOUT WOWGLIDER!!!!!!!!!!!!!!” (Aug. 25, 2006 User Compl.,
2 BLIZZM00081706, Ex. 30).

3
4 161. On September 9, 2006, a petition filed by a user (account number
5 8506996) indicated that s/he had identified two players using WoWGlider. The
6 user asked whether Blizzard intended to address the “absolutly [sic] Horrible
7 Botting Problem.” (Sept. 9, 2006 User Compl., BLIZZM00081758, Ex. 31).

8
9 162. On October 12, 2006, a petition filed by a user (account number
10 3426538) indicated that a character named “Arlann” was exhibiting “common bot
11 behaviour [sic]...WoW Glider...He’s busily spinning around like WoW glider
12 does.” The user also stated that the bot’s presence hurt his game experience .
13 (Oct. 12, 2006 User Compl., BLIZZM00034576, Ex. 32).

14
15 163. On November 15, 2006, a petition filed by a user (account number
16 3821196) indicated that four “auto-farmers Clearly using Glider” were making
17 impossible for him to play. The user suggested that if Blizzard could not keep
18 players from using Glider, s/he would stop playing (and paying for) the game.
19 (Nov. 15, 2006 User Compl., BLIZZM00072302, Ex. 33).

20
21 164. On November 16, 2006, a petition filed by a user (account number
22 3821196) indicated that the user had cancelled his/her WoW account due to
23 frustration with players using Glider who were “clearing a quest area 3 DAYS
24 NON-STOP,” making it impossible for that user to complete in-game quests.
25 (Nov. 16, 2006 User Compl., BLIZZM00072307, Ex. 34).

26
27 165. On November 25, 2006, a petition filed by a user (account number
28 3821196) indicated that s/he had observed two characters using Glider to “farm in

1 exactly the same spot for a week 24 hours a day.” The user also expressed his/her
2 belief that, because Blizzard has millions of subscribers, it does not care that the
3 problems caused by the use of Glider were going to get worse in the future. (Nov.
4 25, 2006 User Compl., BLIZZM00072365, Ex. 35).

5
6 166. On April 24, 2007, a petition filed by a user (account number
7 6536425) indicated that s/he had consistently encountered four characters using “a
8 cheat code or that glider program” to farm in a specific location within the game.
9 The user explicitly states that s/he will cancel her/his account if Blizzard did not
10 put a stop to such activities. (Apr. 24, 2007 User Compl., BLIZZM00288837, Ex.
11 36).

12
13 167. On April 25, 2007, a petition filed by a user (account number
14 6536425) indicated that it was the fourth, and final, petition s/he would submit
15 complaining about multiple characters using Glider. The petition went on to say
16 that, because the use of Glider by other players made it “impossible to play,” the
17 user was cancelling his/her account. (Apr. 25, 2007 User Compl.,
18 BLIZZM00288845, Ex. 37).

19
20 168. Over time, Blizzard’s WoW forums have contained a number of
21 threads filled with messages complaining about the presence of bots, and
22 specifically Glider, in WoW. For example, in a post dated November 3, 2007, a
23 user stated that “*Blizzard needs to beef up the warden and autoban Glider users if*
24 *they want to get rid of AFK'ing [botting]*. The software is using a rootkit to hide
25 behind (avoid Warden). They also have a software called Tripwire that monitors
26 Warden. As warden changes, tripwire will notify the glider software and shut it
27
28

1 down until they can adapt to the newest warden. Its quite involved. Forget about
2 all that. The whole thing is the rootkit, figure out a way around that and these guys
3 are done.” (Mar. 20, 2008 Aff. of Jonathan B. Berroya (“Berroya Aff”), Ex. 38 ¶
4 2 & attachment 1).

6 169. Another post on Blizzard’s WoW forums, dated January 14, 2008,
7 stated that, “The facts of the matter are on Rampage battleground, for at least the
8 last 2-3 weeks the majority of our team is botting which is the real reason we don’t
9 win.” The poster goes on to say that “[y]ou can stand in our base and watch all
10 the bidders recalling over and over or pathing down the same paths over and over
11 using mimic/glider. It gets worse after midnite.” (Berroya Aff. ¶ 3, Ex. 38 &
12 attachment 2).

14 170. On February 1, 2008, a WoW forum user posted a message stating:
15 “Everyone keeps asking for BG's [Battle Grounds] to suck less. There's a very
16 simple solution: track down and delete Gliders.” The user concluded his post by
17 saying “Seriously. Crack down on the bidders. They ruin the BG's. If I want to
18 play with bots I'll load up something like Battlefielld 1942 and play a bot match.
19 Instead AV has turned into the 6 humans + 34 Gliders vs the same on other team .
20 . . .” (Berroya Aff., Ex. 38 ¶ 4 & attachment 3).

22 **Glider Use Violates the WoW EULA and TOU**

23 ***Bots and Other Automated Programs are Prohibited***

24 25 171. Glider is a bot. (Donnelly I, Ex. 5 at 49:4-15; Eikenberry Dep., Ex. 26
26 at 51:11-12; Hale Dep., Ex. 16 at 10:2-4).

27 172. Glider is designed to automate user tasks in the World of Warcraft
28

1 environment. (Donnelly I, Ex. 5 at 49:4-15).

2 173. Glider allows users to play WoW without actually spending time in
3 front of the computer. (Donnelly I, Ex. 5 at 52:12-15, 54:2-19).

4 174. The use of bots and other automation software in WoW is prohibited
5 by those provisions of the TOU quoted in paragraphs 100 - 102, *supra*.

6
7 ***Programs that Collect Information from WoW are Prohibited***

8 175. Glider collects information from WoW. (Donnelly I, Ex. 5 at 103:7 to
9 104:13).

10 176. The use of software that collects information from WoW is prohibited
11 by those provisions of the TOU quoted in SOF ¶¶ 99 - 102, *supra*.

12
13 ***Unauthorized Third Party Programs are Prohibited***

14 177. MDY agrees that Glider is not approved or authorized by Blizzard.
15 (Donnelly I, Ex. 5 at 195:9-12).

16 178. Unauthorized third party programs such as Glider are prohibited by the
17 provisions of the EULA and TOU quoted in SOF ¶¶ 89 - 104, *supra*.

18
19 ***Donnelly Agreed to and Understood the EULA and TOU***

20 179. Donnelly agreed to the TOU and EULA. (Donnelly I, Ex. 5 at 193:9
21 to 194:25).

22 180. Donnelly understands that all WoW users must agree to the TOU and
23 EULA. (Donnelly I, Ex. 5 at 194:22-25).

24
25 ***MDY Knew that Glider Violates the EULA and TOU***

26 181. Donnelly recalls seeing the EULA upon WoW launch, being required
27 to scroll through the document and agree, seeing the EULA again upon being
28

1 patched, and seeing and agreeing to the TOU (Donnelly I, Ex. 5 at 193:9 to
2 194:25).

3 182. The Frequently Asked Questions (“FAQ”) on the Glider website
4 provide in relevant part: “Q: Is using Glider cause for suspension/ban? A: Yes,
5 Glider is against the Terms of Service as provided by Blizzard for World of
6 Warcraft. If you are detected using Glider, your account will be suspended for 72
7 hours and very likely banned completely.” The MDY website’s FAQ boasts that
8 “Glider provides a number of features to help lower the risk of detection,” and that the
9 “current version of Glider...is not known to be detected by these methods.” (FAQ,
10 Ex. 39 at 2).
11

12
13 183. MDY knew that Blizzard considered Glider use to be a violation of its
14 TOU. (Donnelly I, Ex. 5 at 197:17-23).

15 184. Robert Hale, an MDY forum moderator who regularly assists Glider
16 users, also acknowledged that use of bots results in Blizzard banning WoW
17 accounts. (Hale Dep., Ex. 16 at 14:13-25).
18

19 185. Hale had multiple WoW accounts banned for using Glider. (Hale Dep.
20 Ex. 16 at 15:2-11)

21 186. Glider contains functionality that “examines your configuration and
22 then gives you recommendations on what you can do to minimize your risk of
23 detection.” (Donnelly I, Ex. 5 at 105:17-21).
24

25 187. A November 25, 2005 email from Donnelly to a Glider user
26 acknowledges that “[s]ince Blizzard does not want bots running at all, it’s a
27 violation to use them.” (MDY 06987, Ex. 40).
28

1 ***MDY Knows its Customers Use Glider for Commercial Purposes***

2 188. The MMOGlider.com website previously offered a forum on
3 professional botting and farming for money. (Ashe I, Ex. 8 at 284:19-25 to
4 285:5).

5
6 189. MDY markets Glider on MarkeeDragon.com, a site featuring forums
7 about buying, selling, and trading WoW accounts in violation of the WoW TOU.
8 (Eikenberry Dep., Ex. 26 at 15:14-21).

9 190. Marcus Eikenberry, owner of MarkeeDragon.com, encouraged
10 Donnelly to refer users who sought to trade, buy, and sell WoW accounts and
11 items to Eikenberry's website, which had popular trading forums in place.
12 (Eikenberry Dep., Ex. 26 at 41:19 to 42:11).

13
14 191. The MarkeeDragon site users and Glider users constitute the "same
15 demographic" (Eikenberry Dep. Ex. 26 at 42:19-24).

16
17 192. The Glider and MarkeeDragon sites both had forums where account
18 trading and Glider were discussed. (Eikenberry Dep., Ex. 26 at 43:1-7).

19 193. Donnelly tells Glider users how to use Markeedragon.com to "sell
20 your Glider efforts." (Nov. 22, 2005 Glider Forum Post, Ex. 41).

21 194. A March 1, 2007 email message from a Glider user to Donnelly reads,
22 in relevant part: "I got hit so hard with these bans I won't be gliding on 7+
23 accounts for a while.. at least until I get back on my feet. I owe you so much..
24 only 25 dollars a key and your program became one of my main sources of
25 income." (MDY 06653, Ex. 42).

26
27 195. A November 17, 2006 email message from a Glider user to Donnelly
28

1 reads, in relevant part, that the Glider purchaser uses 6 Glider keys to convert his
2 LAN centre to a gold farming factory. (MDY 06801, Ex. 43).

3 196. A May 17, 2007 email message from a Glider user to Donnelly reads,
4 in relevant part: "I'd like to talk to you more about Glider and the potential of
5 using it on a wide scale for the purposes of account leveling and gold farming."
6 (MDY 07562, Ex. 44).

7
8 197. MDY forum moderator Robert Hale testified that he has promoted
9 Glider use to customers by explaining that a \$25 investment in Glider allows
10 botters to use the program to acquire and sell in-game virtual property at a profit.
11 (Hale Dep., Ex. 16 at 29:9-25).

12 **Glider use Harms Blizzard**

13
14 198. The proliferation of Glider has resulted in enormous direct costs for
15 Blizzard to combat its destructive effects on WoW and its legitimate users. (Ashe
16 I, Ex. 8 at 159, 238-239).

17
18 199. Blizzard spends at least \$970,939.60 in direct costs addressing the
19 problem of bots in WoW, and this greatly understates the overall costs of botting
20 to Blizzard. (Castronova Supplemental, Ex. 13 at 1 n.1).

21 200. Blizzard must devote significant resources to anti-cheating
22 mechanisms that would instead be used to improve the product and the overall
23 game-play experience. (Ashe I, Ex. 8 at 159:3-23)

24
25 201. Cheating increases Blizzard's costs because it must respond to
26 cheating and try to keep it in check by developing and deploying costly anti-
27 cheating software, policies and processes; investigating and responding to
28

1 customer complaints; and locating and disciplining cheaters. (Castronova
2 Supplemental, Ex. 13 at 2; Ashe I, Ex. 8 at 159:3-23).

3 202. Blizzard must employ its Game Masters, who act as in-game
4 moderators to answer customer questions and ensure a fair gaming experience, in
5 the remedial task of attempting to manually detect Glider Use. (Castronova
6 Report, Ex. 7 at 14).

7 203. Game Masters also must review and respond to the ever-increasing
8 numbers of user complaints relating to cheating. (Ashe I, Ex. 8 at 159, 179-180,
9 211).

10 204. Intentionally Left Blank; See Para. 83.

11 205. The over 465,000 petitions from players complaining about bots
12 include only “those specifically referencing bots, as opposed to complaints about
13 [the] secondary effects of bots, such as over-farmed areas, in-games sales, and
14 game economy imbalances.” (Castronova Supplemental, Ex. 13 at 1; Ashe I, Ex.
15 8 at 180:3-20).

16 206. “[P]layer petitions complaining of in-game bots . . . represent only a
17 small percentage of the players whose game experience is significantly diminished
18 by bots.” (Castronova Supplemental, Ex. 13 at 1).

19 207. Complaints take time and effort to file, exhibiting customers’ extreme
20 displeasure (Castronova Supplemental, Ex. 13 at 1).

21 208. Donnelly understands that most WoW players dislike seeing bots in
22 the game, acknowledging that players report botting by other players “because
23 they don’t like it.” (Donnelly I, Ex. 5 at 122:15-23).

1 209. Donnelly agrees that it is proper for Glider users to be banned upon
2 detection (Donnelly I, Ex. 5 at 197:17-23).

3 210. “[A] more accurate picture of the negative impact that Glider has on
4 the goodwill of WoW players and potential players is reflected in the flood of
5 messages concerning bots and game economy imbalances on Blizzard’s own
6 [website] forums [and] numerous other third-party forums.” (Castronova
7 Supplemental, Ex. 13 at 1).

8 211. Blizzard loses subscription fees because bidders proceed through the
9 game at an accelerated pace compared to what their normal subscription lifetime
10 would be without using a bot. (Ashe I, Ex. 8 at 160:15-17; Castronova
11 Supplemental, Ex. 13 at 2).

12 212. “Botting itself allows bidders to move through game content more
13 quickly than they otherwise would, which reduces Blizzard’s revenue.”
14 (Castronova Supplemental, Ex. 13 at 2).

15 213. Botting reduces the time investment necessary to reach higher levels.
16 (Hale Dep., Ex. 16 at 12:15 to 13:17).

17 214. Glider causes reputation harm to Blizzard which, in turn, causes
18 “[p]layers [to] quit subscribing to [WoW]; [causes] fewer new players to
19 subscribe; and [causes] those that do subscribe [to be] less willing to pay for game
20 elements such as expansion packs, game time cards, character transfers, and the
21 like.” (Castronova Supplemental, Ex. 13 at 2).

22 215. “The number of Glider bots does not have to be large for their effect
23 on the game to be huge[; a] single incident is sufficient to ruin the reputation of a
24
25
26
27
28

1 game.” (Castronova Supplemental, Ex. 13 at 2).

2 216. Botting results in an increased supply of certain items in the WoW
3 economy, which devalues special items. (Ashe I, Ex. 8 at 161:1-7, 162:4-11).

4 217. New players are frustrated by attempted interaction with bots, resulting
5 in “an extremely traumatic experience when we have sold the idea that this is an
6 online game that allows you to play with other players.” (Ashe I, Ex. 8 at 173:2-9).

7 218. Glider is the most well-known bot. (Ashe I, Ex. 8 at 181:7-11).

8 219. The largest customer complaint thread ever created on the WoW
9 European website forums concerns botters, with Glider as the primary culprit.
10 (Ashe I, Ex. 8 at 211:1-15; WoW-Europe.com Forums Thread, Ex. 45).

11 220. Customers have made clear that botting impacts their experience and
12 they want it out of the game. (Galey Dep., Ex. 15 at 48:9-25, 49:1-6).

13 221. Glider consumes more Blizzard resources than other cheat because of
14 its sophisticated anti-detection features. (Ashe I, Ex. 8 at 223:2-7).

15 222. Glider is the longest-standing cheat and has had the most resources
16 devoted to it. (Ashe I, Ex. 8 at 238:22-25).

17 223. Blizzard has to divert resources from game development to combat
18 Glider. (Ashe I, Ex. 8 at 238:22-25, 239:4-19).

19 224. Blizzard must devote programming resources to automatic detection of
20 Glider use, a cost that has increased each time MDY has revised the Glider code to
21 combat these measures. (Castronova Report, Ex. 7 at 15-16).

22 225. Blizzard has received “tons of customer service tickets” complaining
23 of botting. (Ashe I, Ex. 8 at 159:1-23).

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1 10:22 to 11:9). 3Q07: \$366,306.28; 4Q07 \$476,404.82; 1Q07 (through March 12)
2 \$633,229.43. (I.R. at 10:22-25; 11:1-9). (Mar. 13, 2008 Email from Venable to
3 Genetski, Ex. 46).

4
5 ***MDY's Improper Motive***

6 234. MDY sells and actively develops a program that is designed to be used
7 in breach of WoW's EULA and TOU. (Ashe I, Ex. 8 at 263:1-8).

8 235. Donnelly reverse engineered Warden in violation of the WoW EULA.
9 (Donnelly I, Ex. 5 at 91:15-25).

10 236. Donnelly reverse engineered Warden to learn how to make his
11 program undetectable and thus more attractive to users. (Donnelly I, Ex. 5 118:14
12 to 121:4; MDY 06718, Ex. 47).

13 237. MDY encourages users to use Launch Pad – a component of Glider –
14 as a primary means of avoiding detection by Blizzard. (Ashe II, Ex. 20 at 319:1-
15 4).
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18 238. Glider avoids detection by other players because “if another player
19 suspects that the game play is automated, they’ll report that character to the in-
20 game staff.” (Donnelly I, Ex. 5 at 122:13-18).

21 239. Donnelly designed Glider to encrypt output to make it difficult for
22 Blizzard to analyze it. (Donnelly I, Ex. at 188:11-17).

23 240. Donnelly agrees that it is proper for Glider users to be banned upon
24 detection (Donnelly I, Ex. at 197:17-23).

25 241. Donnelly admits that “[t]he downside of it [botting] is the impact on
26 non-botters in the long-term: if the botting population becomes too big, other
27
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1 players become more aware of them and think badly about the game." (MDY
2 06981, Ex. 48).

3 242. Donnelly believes that "[t]he trick here is that Blizzard has a finite
4 amount of development and test resources, so we want to make it bad business to
5 spend that much time altering their detection code to find Glider, since Glider's
6 negative effect on the game is debatable." (MDY 06987, Ex. 40).

7
8 243. Donnelly believes that "[t]he bottom line is that Blizzard can detect
9 anything that's available to the public with enough effort, since they control the
10 client. So rather than attack that strength, we attack the weakness and try to make
11 it a bad idea or make their changes very risky, since they don't want to risk
12 banning or crashing innocent customers." (MDY 06987, Ex. 40).

13
14 244. Donnelly tells Glider users how to use Markeedragon.com to "sell
15 your Glider efforts." (Nov. 22, 2005 Glider Forum Post, Ex. 41).

16
17 245. Donnelly violated the WoW TOU by sharing his account credentials
18 with third parties for the purpose of testing Glider. (Donnelly I, Ex. 5 at 78:18-
19 24).

20 ***MDY Targets Advertising to Players Looking for Cheats and Exploits***

21 246. MDY bid on the Google AdWords search terms "World of Warcraft
22 bot" and "World of Warcraft cheat" because "[y]ou try to guess what people are
23 searching for that might also be interested in Glider." (Donnelly I, Ex. 5 at 65:1-
24 13; 68:15-25).

25
26 247. Donnelly bought banner ads on RPGbugs.com and mmoexploits.com,
27 websites that promote cheats and hacks for WoW. (Donnelly II, Ex. 49 at 232:1-
28

1 3).

2 **Quantifying Financial Damages**

3 248. Evidence supporting that Glider causes Blizzard real, concrete
4 reputational and financial harm is absolutely overwhelming. (Castronova
5 Supplemental, Ex. 13 at 2).
6

7 249. “Blizzard must devote thousands of employee hours to bot
8 enforcement, . . . includ[ing] game-masters (customer service reps) [investigating
9 and] responding to customer complaints, network costs, business and legal efforts,
10 developers’ time, and specific anti-hacking work.” (Castronova Supplemental,
11 Ex. 13 at 3).
12

13 250. “[C]osts of . . . worker time [devoted to bot enforcement] are
14 substantial, amounting to almost \$1 million per year.” (Castronova Supplemental,
15 Ex. 13 at 3).
16

17 251. “In the absence of bots, this money would either go directly to
18 Blizzard’s bottom line as cost savings, or as revenue-enhancing improvements in
19 the product (i.e., by transferring workers from complaint handling to game
20 design).” (Castronova Supplemental, Ex. 13 at 3).
21

22 252. “At \$970,000 per year, Blizzard has lost almost \$3 million as a result
23 of bot-related activities since Glider was introduced to the public.” (Castronova
24 Supplemental, Ex. 13 at 3).
25

26 253. These costs “do not take into account the damage Glider causes to
27 WoW’s reputation, or the resulting loss in subscribers.” (Castronova
28 Supplemental, Ex. 13 at 3).

1 254. On average, WoW players pay Blizzard approximately a \$15 monthly
2 subscription fee. (Castronova Report, Ex. 7 at 21).

3 255. As detailed in Blizzard's expert report, by automating their characters'
4 progress through the WoW "leveling" process, Glider users compress the time
5 period required to reach the higher levels of WoW. (Castronova Report, Ex. 7 at
6 20-21; Hale Dep. Ex. 16 at 13:6-13).

7 256. In so doing, Glider users "skip ahead" to the advanced levels without
8 having to pay the additional monthly fees required of a legitimate human player to
9 reach that level. (Hale Dep., Ex. 16 at 13:6-13).

10 257. Studies of normal WoW players indicate that attaining the highest
11 level character in WoW takes approximately 480 hours of play time. (Castronova
12 Report, Ex. 7 at 20).

13 258. As Blizzard's economic expert detailed, a casual player can be
14 expected to average 2 hours of play per day, in which case that user would need to
15 pay 8 months worth of subscription fees to reach the highest level. (Castronova
16 Report, Ex. 7 at 20).

17 259. By contrast, a user running Glider 24 hours a day can complete 480
18 hours of play in just 20 days, or less than one month. (Castronova Report, Ex. 7 at
19 21).

20 260. Given a Glider user can forego 7 months of subscription fees during
21 the time needed to reach the highest character level, Blizzard's expert calculated
22 that Glider users can avoid up to \$105 in subscription revenue Blizzard would
23 otherwise receive by using Glider as a shortcut. Multiplying this \$105 savings
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1 times the 100,000 Glider programs sold demonstrates lost revenue to Blizzard of
2 \$10.5 million. (Castronova Report, Ex. 7 at 21).

3 261. Blizzard's economic expert also provided a model for quantifying the
4 losses to Blizzard due to botting behavior's affect on demand for the game.
5 (Castronova Report, Ex. 7 at 21).
6

7 262. Although World of Warcraft remains very popular, and indeed has
8 generally increased in popularity due to the richness of its in-game experience, this
9 popularity does not offset the real threat that the harms of unfettered Glider usage
10 detailed herein pose to WoW. (Castronova Report, Ex. 7 at 21).
11

12 263. Starting from a conservative estimate that a one percent increase in a
13 cheating behavior such as botting results in a .05% decrease in demand for the
14 game, Dr. Castronova concluded that Blizzard bears a loss of profit of \$900,000
15 per 100,000 users, per year. (Castronova Report, Ex. 7 at 22).
16

17 264. Under this damages model, the loss to Blizzard in profits due solely to
18 customer dissatisfaction from Glider totals over \$18 million per year. (Castronova
19 Report, Ex. 7 at 23).
20

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1 **CERTIFICATE OF SERVICE**

2

3 I hereby certify that on March 21, 2008, I electronically transmitted the attached

4 document to the Clerk's Office using the CM/ECF System for filing and

5 transmittal of a Notice of Electronic Filing to the following CM/ECF

6 registrants:

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13 /s/ Christian S. Genetski

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