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 BLIZZARD ENTERTAINMENT, INC.

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 10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12
 13 BLIZZARD ENTERTAINMENT,
 INC.,

14
 15 Plaintiff,

16 vs.

17 ALYSON REEVES, D/B/A
 18 SCAPEGAMING, and DOES 1
 through 5 inclusive,

19 Defendants.
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Case No. 2:09-cv-7621-SVW-AJW

DECLARATION OF GREG ASHE
 IN SUPPORT OF PLAINTIFF
 BLIZZARD ENTERTAINMENT,
 INC.'S MOTION FOR ENTRY OF
 DEFAULT JUDGMENT AND
 PERMANENT INJUNCTION

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DECLARATION OF GREG ASHE

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2 1. I am a resident of Pasadena, California. Since October 2004, and at all
3 times relevant herein, I have been an employee of Blizzard Entertainment, Inc.,
4 the Plaintiff in this action, most recently as Manager of Business Intelligence. In
5 this position, I have responsibility for various aspects of the World of Warcraft
6 computer game (“World of Warcraft” or WoW”), including creating and
7 implementing programs and technology to stop cheating and unauthorized sales. I
8 have personal knowledge of the matters set forth in this declaration, and if called
9 as a witness, I could and would testify competently thereto.

10 **Blizzard’s World of Warcraft™ Online Computer Game**

11 2. Blizzard is a premier publisher of entertainment software. Blizzard is
12 best known for its high-quality computer games, including the DIABLO®,
13 STARCRAFT® and WARCRAFT® gaming franchises. Since establishing the
14 Blizzard label in 1994, Blizzard has quickly become one of the world’s most
15 respected and popular makers of computer games. Many of Blizzard’s games
16 feature online game play over the Internet via an online gaming service provided
17 by Blizzard. Over 11 million individuals actively play Blizzard’s games online.

18 3. Blizzard’s World of Warcraft™ (“WoW”) is the company’s most
19 ambitious and advanced online computer game. WoW is a Massively Multiplayer
20 Online Roleplaying Game (“MMORPG”), a genre of computer game in which
21 large numbers of players interact with each other simultaneously in a virtual
22 persistent online world. WoW allows players to experience the WARCRAFT®
23 universe in great detail, customizing their own experiences by participating in a
24 variety of different activities alone or with others.

25 4. World of Warcraft allows players from around the globe to assume the
26 roles of different characters within the game as they explore, adventure and quest
27 across WoW’s vast online world.

28 5. A central objective for players of WoW is to advance their characters

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1 through the various levels recognized in the game, thereby accessing new content
2 in the WoW gaming environment as levels increase. Leveling characters in WoW
3 requires an investment of time and effort playing the game.

4 6. World of Warcraft, like other MMORPG games, derives revenue based
5 on a subscription fee model. In order to experience the WoW gaming
6 environment, consumers must obtain a legitimate version of the WoW game client
7 software, and then make periodic payments for a subscription permitting them to
8 continue accessing Blizzard's authorized WoW servers and playing in the
9 authorized WoW gaming environment.

10 7. Unfortunately, the gaming experience of legitimate players of WoW is
11 under near constant attack by cheaters, scammers, and other wrongdoers seeking
12 to exploit WoW for their own illegitimate ends. For this reason, Blizzard seeks to
13 protect the sanctity of the WoW gaming experience through both contractual
14 obligations and technical measures.

15 8. The software code responsible for the extensive and richly detailed
16 creative elements forming the online world of the WoW gaming environment are
17 copyrighted works owned by Blizzard.

18 9. Blizzard has received copyright registrations in both the server and
19 game client software code. See Copyright Registration Numbers TXu 1-166-151,
20 TX 5-984-004, and PA-1-247-131, attached hereto as Exhibit A.

21 10. WoW uses a client-server model. To access the online world, a user
22 must have special software installed on his or her computer (the "WoW game
23 client" or "game client").

24 11. The game client is specifically designed to work in combination only
25 with computer servers maintained and operated by or on behalf of Blizzard.

26 12. Because the copyrighted content making up the WoW gaming
27 environment is stored on both the WoW game client and the WoW game server, a
28 user seeking access to the WoW gaming environment must have both a game

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1 client and access to a legitimate WoW game server.

2 13. The WoW game client is designed to connect only with authorized
3 servers. Blizzard’s servers are designed to connect only to the Blizzard game
4 client.

5 14. Blizzard charges players a set monthly subscription fee for access to its
6 authorized WoW servers.

7 15. Blizzard developed the WoW gaming environment through tremendous
8 effort and at tremendous expense to the company, employing numerous game
9 designers, artists, producers and programmers to conceive of and create a gaming
10 experience that has appealed to millions of players worldwide.

11 **The World of Warcraft™ End User License Agreement**

12 16. Prior to playing WoW, users must install the game client on a personal
13 computer. During that installation process, the game client displays a contract to
14 the user called the World of Warcraft™ End User License Agreement (“EULA”).
15 See EULA, attached as Exhibit B.

16 17. In order to install the game client, and again before playing the game
17 for the first time, the user must manifest assent to the EULA by clicking on a
18 button labeled “Accept.” The user also may decline to enter into this contract by
19 clicking on a button labeled “Decline,” at which point the game client will
20 terminate, denying access to the user.

21 18. Any use of the WoW game client that is not in accordance with the
22 EULA is expressly prohibited. Among other provisions, the EULA contains an
23 express limitation on the license, which provides that the user may not “in whole
24 or in part, copy, photocopy, reproduce, translate, reverse engineer, derive source
25 code from, modify, disassemble, decompile, or create derivative works based on
26 the Game....” See Ex. B, EULA para. 2(A).

27 19. The EULA also provides that the user may not “exploit the Game or
28 any of its parts, including without limitation the Game Client, for any commercial

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1 purpose...” EULA, para 2(C).

2 20. The EULA also provides that the user may not “host, provide or
3 develop matchmaking services for the Game or intercept, emulate or redirect the
4 communication protocols used by Blizzard in any way, for any purpose, including
5 without limitation unauthorized play over the internet, network play, or as part of
6 content aggregation networks....” See EULA para 2(F).

7 21. The EULA also provides that the user may not “facilitate, create or
8 maintain any unauthorized connection to the Game or the Service, including
9 without limitation (a) any connection to any unauthorized server that emulates, or
10 attempts to emulate, the Service; and (b) any connection using programs or tools
11 not expressly approved by Blizzard.” See EULA para. 2(G).

12 22. The EULA also provides Blizzard with the right to deploy patches to
13 the user’s computer, stating “Blizzard may deploy or provide patches, updates and
14 modifications to the Game that must be installed for the user to continue to play
15 the Game. Blizzard may update the Game remotely including without limitation
16 the Game Client residing on the user's machine, without the knowledge of the
17 user, and you hereby grant to Blizzard your consent to deploy and apply such
18 patches, updates and modifications.” EULA para. 9.

19 23. The provisions of the EULA are designed to protect the integrity of the
20 game.

21 **The World of Warcraft™ Terms of Use**

22 24. Prior to playing WoW, users must create an account with Blizzard.
23 During that account creation process, Blizzard displays a contract to the user
24 called the World of Warcraft™ Terms of Use (the “TOU”). See TOU, attached as
25 Exhibit C.

26 25. In order to create a WoW account, the user must manifest assent to the
27 TOU by clicking on a button labeled “Accept.” The user also may decline to
28 enter into this contract by clicking on a button labeled “Decline,” at which point

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1 the account creation process will terminate, denying access to the user.

2 26. Any use of the WoW game client or access to the WoW gaming
3 environment that is not in accordance with the TOU is expressly prohibited.
4 Among other provisions, the TOU provides that no one other than Blizzard shall
5 host, provide access to, or emulate the communication protocols used to create the
6 WoW gaming environment. Additionally, the TOU prohibits modifying WoW
7 software, adding components to WoW, or using third-party programs for the
8 purpose of hosting WoW. The use of any tools to “hack or alter” WoW software
9 also is specifically prohibited.

10 27. The provisions of the TOU are designed to protect the integrity of the
11 game by, among other things, preventing the very conduct demonstrated by the
12 defendants – developing pirated game servers to allow the unchecked use of
13 pirated versions of the WoW game client.

14 28. The TOU provides that the user may not “exploit the Game or any of
15 its parts, including without limitation the Game Client, for any commercial
16 purpose...” See Ex. C, ToU para. 2(B).

17 29. The TOU also provides that the user may not “host, provide or develop
18 matchmaking services for the Game or intercept, emulate or redirect the
19 communication protocols used by Blizzard in any way, for any purpose, including
20 without limitation unauthorized play over the internet, network play, or as part of
21 content aggregation networks....” See Ex. C, ToU para. 2(E).

22 30. The TOU also provides that the user may not “facilitate, create or
23 maintain any unauthorized connection to the Game or the Service, including
24 without limitation (a) any connection to any unauthorized server that emulates, or
25 attempts to emulate, the Service; and (b) any connection using programs or tools
26 not expressly approved by Blizzard.” See Ex. C, ToU para. 2(F).

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Blizzard’s Anti-Piracy Mechanisms

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2 31. Blizzard has received United States copyright registrations in both its
3 game client software and its server software. See Exhibit A.

4 32. Blizzard has implemented a number of technological measures to
5 control access to the copyrighted elements in the game client.

6 33. In order to play WoW, a user must first install and then “launch” the
7 WoW client.

8 34. After the game client is installed, it must then interact with the WoW
9 game server in order to create the online world and provide access to the
10 copyrighted content of the WoW gaming environment. Game clients are pre-
11 configured to connect only with Blizzard’s WoW game server.

12 35. The WoW client software cannot be used to play WoW without a
13 connection to a server.

14 36. Section 2 of the WoW EULA prohibits players from using non-
15 Blizzard servers. See Exhibit B.

16 37. When the WoW client is launched, a copy of the program is loaded into
17 the user’s own computer’s random access memory. Although players may load
18 the executable portion of the game client into RAM prior to any authentication,
19 the majority of the copyrighted content — the visual and aural content that make
20 up the WoW game environment — are not loaded until after a player authenticates
21 with Blizzard’s WoW server.

22 38. Blizzard only authorizes users to copy WoW into random access
23 memory in conformity with the terms of its EULA and TOU.

24 39. When users first attempt to launch the WoW game client, authenticate
25 to the WoW game server, and access the copyrighted elements of the WoW
26 gaming environment, they must demonstrate that they have purchased a valid
27 license to play the game.

28 40. Each authorized user is issued a unique 26-digit alphanumeric

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1 authentication code (the “Authentication Code”) upon purchase of a license to
2 play WoW. Prior to playing the game, users must create an account via a separate
3 interface that requires them to enter their Authentication Code. Once the
4 Authentication Code has been validated, the user must create a unique account
5 username and password. Each Authentication Code can only be used to create
6 one account, and the Authentication Code is permanently attached to that account
7 after the account has been created.

8 41. When the user runs the game client software, the game client displays a
9 login screen in which the user must enter his or her unique account username and
10 password. The client then sends information, including the username and
11 password, to the server. If this information passes certain authentication tests, the
12 server allows the player to access and experience the copyrighted WoW gaming
13 environment.

14 42. Access to a WoW server is required in order for a player to experience
15 the WoW game environment. In this way, the server “unlocks” the copyrighted
16 information on the game client.

17 **Defendant’s Unlawful Activities**

18 43. I am informed and believe that Defendant Alyson Reeves d/b/a
19 Scapegaming until recently operated www.scapegaming.com, which served as a
20 portal to a number of servers operated by Scapegaming, designed to emulate the
21 actual WoW game servers Blizzard operates.

22 44. The Scapegaming servers emulated (mimicked) Blizzard’s own World
23 of Warcraft servers, and enabled the unauthorized, large-scale, multi-player online
24 play of World of Warcraft. The Scapegaming servers are not authorized by
25 Blizzard.

26 45. I am informed and believe that Defendant, and others acting in concert
27 with Defendant, initially began development of unauthorized servers to
28 accommodate players that wished to play World of Warcraft without paying a

1 monthly fee to Blizzard.

2 46. I am informed and believe that Defendant has advertised its servers on
3 the "Top 100" list of unauthorized WoW servers. Defendant has included a link
4 to: <http://www.xtremetop100.com/in.php?site=1132192645> on its homepage and
5 elsewhere on its website encouraging Scapegaming users to "vote" for
6 Scapegaming as one of the "best" unauthorized servers in order to attract more
7 users.

8 47. I am informed and believe that Defendant employed individuals as
9 "game masters," or "GMs", "database" team members, "donations" supervisors,
10 developers, and forum moderators to administer its servers and website.

11 48. I am informed and believe that Defendant offered five different servers
12 to its users: WoWScape, WoWCrack, WoWLegion, Battlescape, and PTR.

13 49. I am informed and believe that Defendant described its WoWScape
14 server as a "funserver." This "funserver" attempted to replicate the WoW online
15 gaming experience, but at the same time allowed players to advance in WoW and
16 obtain objects more quickly than Blizzard's authorized servers by offering 40x
17 experience rates, 60x drop rates, custom gear and unscripted instances.

18 50. I am informed and believe that Defendant described its WoWCrack
19 server as "Blizzlike High Rate." This "Blizzlike High Rate" server attempted to
20 replicate the WoW online gaming experience Blizzard provides, but at the same
21 time allows players to advance in WoW and obtain objects more quickly than
22 Blizzard's authorized servers but not as quickly as the "funserver."

23 51. I am informed and believe that Defendant described its WoWLegion
24 server as "Blizzlike." This "Blizzlike" server was designed to replicate the WoW
25 online gaming experience Blizzard provides on its authorized servers, allowing
26 players to advance in WoW at only a slightly accelerated rate.

27 52. I am informed and believe that Defendant described its Battlescape
28 server as a "Pure PvP Realm," which attempted to replicate the "Player versus

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1 Player” battle realms that Blizzard provides on its authorized servers. Unlike
2 Blizzard’s servers, however, players using Scapegaming’s PvP realm were
3 immediately assigned a high-level character that would take months to obtain on
4 Blizzard’s authorized servers.

5 53. I am informed and believe that Defendant described its PTR server as a
6 “Test Realm,” which Scapegaming used to test new features. This test realm also
7 attempted to replicate the WoW online gaming experience Blizzard provides.

8 54. I am informed and believe that Defendant announced plans to offer
9 another server that would attempt to replicate Blizzard’s authorized servers as
10 those servers existed several years ago, before Blizzard released its “Wrath of the
11 Lich King” and “Burning Crusade” expansion packs.

12 55. I am informed and believe that playing WoW on a Scapegaming server,
13 other than the Battlescape server, required the user to have a copy of World of
14 Warcraft Wrath of the Lich King installed on their computer. The Battlescape
15 server required the player to have World of Warcraft with the Burning Crusade
16 Expansion installed.

17 56. Blizzard has not authorized the Scapegaming servers and therefore their
18 operation violates the express provisions of the EULA and TOU.

19 57. Likewise, players’ use of the Scapegaming servers exceeds the express
20 license limitations set forth in the WoW EULA and TOU.

21 58. I am informed and believe that Defendant was well aware that its
22 activities were unauthorized, even going so far as to place a term in the
23 Scapegaming Terms of Use designed to prevent Blizzard from discovering or
24 receiving information about Scapegaming’s actions stating that: “No one from
25 Blizzard, associated with Blizzard or any such affiliated company or anyone
26 directed by Blizzard or its Related companies is permitted to enter these web sites
27 or view any content contained within these sites at any time what so ever due to
28 controversial reasons.”

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1 59. I am informed and believe that the copies of World of Warcraft, World
2 of Warcraft Burning Crusade, and World of Warcraft Wrath of the Lich King
3 expansion packs that must be installed in order to access Scapegaming servers do
4 not need to be authorized copies.

5 60. I am informed and believe that unlike the authentic WoW game
6 servers, the Scapegaming servers have never even attempted to determine whether
7 a game client connecting to them is legitimate. Instead, the Scapegaming servers,
8 as designed, allowed unauthorized versions of the game client to enter the WoW
9 online world and access the copyrighted content residing on the game client.

10 61. In addition, the Scapegaming servers allowed any user to create an
11 account without first submitting an Authentication Code.

12 62. The Scapegaming servers thus allowed users to bypass the anti-piracy
13 checks Blizzard has implemented that otherwise take place before the game client
14 may be used to enter the WoW gaming environment.

15 63. Scapegaming permits owners of pirated versions of the game client to
16 access the copyrighted WoW game experience.

17 64. Blizzard has not authorized Scapegaming to provide servers nor has it
18 authorized Scapegaming to create any derivative works based on its client or
19 server software.

20 65. Blizzard has not authorized Scapegaming to modify or reverse engineer
21 any WoW software, including the game client, or to use the game client in
22 conjunction with an unauthorized server.

23 66. I am informed and believe that Defendant and Scapegaming users have
24 bypassed the Authentication Code check required by the installation program and
25 installed the pirated version of the game client on the hard drive of a computer for
26 use in connecting to Scapegaming's unauthorized servers.

27 67. I am informed and believe that Defendant and Scapegaming users
28 caused this pirated version of the game client to be run on a computer, and in

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1 doing so viewed the TOU, and manifested assent to the TOU by clicking on the
2 “Accept” button.

3 68. I am informed and believe that during the course of developing the
4 custom Scapegaming server emulation software, Defendant attempted to cause a
5 pirated version of the game client, or a version of the game client that had been
6 modified without Blizzard’s consent, to connect to the legitimate WoW game
7 server.

8 69. I am informed and believe that Scapegaming developed, maintained,
9 and actively updated its own custom emulation software designed to replicate the
10 WoW online experience.

11 70. Scapegaming’s custom emulation software uses content from the WoW
12 client in order to replicate the WoW online experience.

13 71. I am informed and believe that Scapegaming’s developers
14 disassembled, decompiled, “packet sniffed” or otherwise reverse engineered
15 portions of Blizzard’s game client during the course of development of the
16 Scapegaming server.

17 72. I am informed and believe that at all times during the course of
18 development of the Scapegaming server program, Defendant had specific
19 knowledge that the server program was being used to enable individuals who had
20 obtained pirated versions of the game client to access the copyrighted content
21 contained therein along with a derivative copy of the WoW online game
22 experience in violation of the EULA and TOU.

23 73. Scapegaming also provides instructions to its users on how to
24 “downpatch” their WoW client programs.

25 74. “Downpatching” allows users to downgrade their versions of the WoW
26 game client from the latest version in order to make the game client compatible
27 with unauthorized servers and to avoid software controls that Blizzard implements
28 in new patches to prevent the use of its client software on unauthorized servers.

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1 75. In addition to providing instructions on how to “downpatch,”
2 Scapegaming also provided links to pirated, older versions of the WoW game
3 client designed to work with its unauthorized servers and links to “alternative
4 patching” files and instructions that allow users to patch their game client without
5 connecting to Blizzard’s server.

6 76. I am informed and believe that links to pirated versions of World of
7 Warcraft were posted for download on the Scapegaming website.

8 77. I am informed and believe that on July 29, 2009, “Justice,” a
9 “moderator” acting on behalf of scapegaming posted links to Blizzard’s
10 copyrighted patches for use in downpatching scapegaming users’ copies of WoW
11 without accessing Blizzard’s authentication servers.

12 78. Applying patches without connecting to Blizzard’s server allows users
13 to circumvent Blizzard’s authentication software and patch pirated copies of
14 WoW.

15 79. I am informed and believe that on July 26, 2009, “Peyton” (one of
16 Defendant’s aliases) announced that scapegaming had plans to put up a new
17 server or realm called “Chronicles” that would allow users to play an older
18 version of World of Warcraft that did not include the popular Burning Crusade or
19 Wrath of the Lich King expansion packs.

20 80. I am informed and believe that on July 28, 2009, scapegaming user
21 “Beckon” posted links to pirated versions of World of Warcraft version 1.12.1 for
22 download on the scapegaming website. WoW 1.12.1 is an older version of the
23 game client that Beckon claims could be used with “Wowchronicles.”

24 81. Due to Defendant’s deliberate hosting, development, distribution, and
25 promotion of the Scapegaming server, players around the world have been able to
26 use Scapegaming’s servers to access Blizzard’s copyrighted content to play
27 pirated copies of WoW and copies of WoW modified without Blizzard’s
28 permission without paying monthly subscription fees.

1 82. The availability of unauthorized servers, like Scapegaming, that allow
2 users with pirated versions of the game client to access Blizzard’s copyrighted
3 content on the game client has materially contributed to the demand for infringing
4 copies of the game client on the Internet.

5 83. By developing and making available its unauthorized servers,
6 Scapegaming deprives Blizzard of the fruits of its labors resulting from the
7 development of WoW.

8 84. Scapegaming unjustly profited from these unlawful acts by
9 encouraging its users to make “donations” to fund its continued operation. It
10 encouraged these “donations” by providing “donors” with additional items that
11 those “donors” could use on scapegaming’s servers.

12 85. The “donations” solicited by Scapegaming appear to be thinly-veiled
13 sales of virtual property and characters available in WoW.

14 86. For example, on the “Funserver” players that “donated” to
15 scapegaming were able to choose from a range of items, ranging in cost from \$1
16 (to advance their character 2 levels) to \$300 for an “Ancient Pack #4” collection
17 of a number of rare WoW items.

18 87. Most of the same items were available to players on the WoW Legion
19 server, the server Scapegaming claims to be “Blizzlike,” but at an increased cost.
20 For those players, prices ranged from \$2 (to advance a character two levels), to
21 \$300 for a package containing a level 70 character with weapons, gold, and other
22 advanced in game items.

23 88. On the WoWCrack server, which Scapegaming describes as “High
24 Rate Blizzlike,” most of the same items were available for purchase as on the
25 other two servers, ranging in price from \$2 (to advance a character two levels) to
26 \$250 for a package containing a high level character, and assorted other advanced
27 in game items and gold.

28 89. The virtual property, characters and other in-game rewards received by

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1 “donors” are Blizzard’s intellectual property.

2 90. In order to gain access to gameplay using the advanced items available
3 for purchase on the WoW Legion service on Blizzard’s authorized servers, a
4 United States’ resident player would have to pay a \$14.99/month fee for many
5 months in order to complete the tasks required to gain access to these items.

6 91. By using scapegaming’s servers, players were able to obtain the use of
7 those items in an in-game environment without paying Blizzard that monthly fee,
8 resulting in millions of dollars in lost subscription fees.

9 **Damages**

10 92. I am informed and believe that, based on records subpoenaed from

11 at Irvine, California, between July 23, 2007 and September 26, 2009. Defendant conducted



GREG ASHE

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