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 15 PLAYER AUCTIONS, LLC

16 UNITED STATES DISTRICT COURT  
 17 CENTRAL DISTRICT OF CALIFORNIA  
 18 WESTERN DIVISION

19  
 20 ZYNGA GAME NETWORK INC., a  
 Delaware Corporation,

21  
 22 Plaintiff,

23 v.

24 PLAYER AUCTIONS, LLC, a limited  
 liability company,  
 25 Defendant.

**CASE NO. CV 10-2576 CBM (JCx)**

**JOINT SCHEDULING  
 CONFERENCE REPORT AND  
 DISCOVERY PLAN PURSUANT TO  
 FEDERAL RULE OF CIVIL  
 PROCEDURE 26(f)**

Date: December 6, 2010  
 Time: 11:00 a.m.  
 Ctrm: 2

1 Pursuant to Federal Rule of Civil Procedure 26(f) and this Court’s Order Setting  
2 the Scheduling Conference, Plaintiff Zynga Game Network Inc. (“Zynga” or  
3 “Plaintiff”) and Player Auctions, LLC (“Player Auctions” or “Defendant”) hereby  
4 provide their Joint Scheduling Conference Report, in response to this Court’s  
5 Standing Order dated April 9, 2010, and Minute Order of September 30, 2010.

6 **I. APRIL 9, 2010 STANDING ORDER**

7 **a. Factual Summary of the Case.**

8 **i. Plaintiff’s Statement**

9 On April 18, 2010, Plaintiff filed its Complaint against PlayerAuctions.com.  
10 On September 8, 2010, Plaintiff filed its First Amended Complaint to name the proper  
11 plaintiff, Player Auctions.

12 Zynga is the largest social gaming company, providing, *inter alia*, online  
13 games, including but not limited to Zynga Poker, Mafia Wars, FarmVille and YoVille  
14 (the “Games”). Zynga owns United States Federal Trademark Registrations for  
15 ZYNGA and YOVILLE, and applications for MAFIA WARS and FARMVILLE (the  
16 “Marks”). Zynga also owns registrations with the United States Copyright Office for  
17 its Zynga Poker, Mafia Wars and FarmVille games.

18 When users sign up with Zynga to play the Games, they receive a certain  
19 amount of “Virtual Currency,” including, but not limited to, chips, coins, cash and/or  
20 points that they use to compete in the Games with other players. Among other things,  
21 the Terms of Service that govern users’ play of the Games prohibit users from selling  
22 “Virtual Currency” or “Virtual Goods” for real-world money or otherwise exchanging  
23 “Virtual Currency” or “Virtual Goods” for anything of value outside the Games.

24 Zynga alleges that Player Auctions allows sellers to post and “sell” “Virtual  
25 Currency” or “Virtual Goods” that users can use to compete with other players who  
26 obtained their “Virtual Currency” or “Virtual Goods” directly from Zynga, in  
27 violation of the Games’ Terms of Service. Zynga also alleges that Player Auctions  
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1 uses the Marks and copyrighted images from the Games to advertise and sell “Virtual  
2 Currency” or “Virtual Goods” without authorization from Zynga. Based on Player  
3 Auctions’s acts as alleged in the First Amended Complaint, Zynga asserts claims for  
4 direct, contributory, and vicarious copyright infringement in violation of the United  
5 States Copyright Act, 17 U.S.C. § 501; violation of the federal Lanham Act, 15 U.S.C.  
6 §§ 1125(a); violation of the California statutory law of unfair competition, Cal. Bus.  
7 & Prof. Code § 17200; California common law trademark infringement, passing off  
8 and unfair competition; and for intentional interference with contractual relations.

9 ii. Defendant’s Statement

10 Player Auctions denies that it has infringed any copyright rights, trademark  
11 rights, or other rights belonging to Plaintiff. Player Auctions provides a legal online  
12 marketplace for buyers and sellers of “Virtual Currency” and “Virtual Goods.” Player  
13 Auctions does not take possession of any “Virtual Currency” and “Virtual Goods”;  
14 rather it merely connects buyers with sellers who complete the transfer of between and  
15 among themselves. Player Auctions does not use utilize any of Plaintiff’s alleged  
16 copyrighted or trademarked material in connection with its online marketplace. Player  
17 Auctions is not a party to any contract with Plaintiff, and is not bound by the terms  
18 and conditions imposed by Plaintiff on users of its games.

19 **b. The Basis for the Court’s Subject-Matter Jurisdiction.**

20 This action arises under the copyright laws of the United States, 17 U.S.C. §  
21 101, *et seq.*, the trademark laws of the United States, 15 U.S.C. § 1051, *et seq.*,  
22 particularly under 15 U.S.C. §§ 1125(a); state unfair competition law; the common  
23 law of trademark infringement, passing off and unfair competition; and the common  
24 law of intentional interference with contractual relations. This Court has jurisdiction  
25 of the federal claims under 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. §§ 1116,  
26 1121, and 1125. This Court has supplemental jurisdiction of the state unfair  
27 competition claims under 28 U.S.C. § 1338(b), those claims being joined with a  
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1 substantial and related claim under the Trademark Laws of the United States, and  
2 supplemental jurisdiction of all of the state law claims under 28 U.S.C. § 1367(a),  
3 those claims being so related to the federal claims that they form part of the same case  
4 or controversy and derive from a common nucleus of operative fact.

5 **c. Key Legal Issues**

6 The key legal issues in this case are (1) whether Defendant used, in support of  
7 its advertisement and sale of “Virtual Currency” and “Virtual Goods”, images which  
8 are substantially similar to Plaintiff’s copyrighted images, (2) whether consumers are  
9 likely to be confused by Defendant’s products and advertising, (3) whether Defendant  
10 breached the Games’ Terms of Service, (4) whether Defendant’s conduct was willful,  
11 and (5) whether Plaintiff has the right to exclusively control the purchase and sale of  
12 “Virtual Currency” and “Virtual Goods” in connection with its games, and preclude  
13 any competitors, such as Player Auctions.

14 **d. Probable Damages**

15 Plaintiffs are entitled to recover Defendant’s profits derived from its unlawful  
16 infringement of the Zynga Poker, Mafia Wars and FarmVille copyrighted works; or  
17 (ii) statutory damages for each act of infringement in an amount provided by law, as  
18 set forth in 17 U.S.C. § 504, at Plaintiff’s election before the entry of a final judgment,  
19 together with prejudgment and post-judgment interest. At this stage of the  
20 proceedings, Plaintiff is not aware of the level of profits at issue. There are at least  
21 three copyrighted works at issue here – Zynga Poker, Mafia Wars and FarmVille.  
22 Statutory damages for three infringements would range from \$2,250 to \$90,000 for  
23 non-willful infringement, and up to \$450,000 for willful infringement. 17 U.S.C. §  
24 504.

25 Plaintiffs are also entitled to recover their reasonable attorneys’ fees if they are  
26 the prevailing parties. 17 U.S.C. § 505.

1 Plaintiffs are also entitled to recover the Defendant's profits under the Lanham  
2 Act. 15 U.S.C. § 1117. Actual profits may be enhanced under the Lanham Act, up to  
3 trebled profits. 15 U.S.C. § 1117(a)-(b).

4 Player Auctions denies liability, and denies that Plaintiff has suffered any  
5 damages whatsoever as a result of Player Auction's conduct.

6 **e. Additional Parties**

7 The parties do not anticipate adding any additional parties at this time, but may  
8 seek to add additional parties as discovery proceeds.

9 The parties propose a cut-off date to join other parties and to amend pleadings  
10 of March 7, 2011.

11 **f. Whether All or Part of the Procedures of the Manual for Complex**  
12 **Litigation Should be Utilized**

13 The parties do not believe that this is a complex case warranting use of the  
14 procedures of the Manual For Complex Litigation.

15 **g. Proposed Discovery Cut-Off Date**

16 The parties recognize that this cut-off date would be the final day for  
17 completion of discovery, including resolution of all discovery motions. The parties  
18 propose June 6, 2011 as the last day to complete discovery of all fact witnesses. The  
19 parties also propose July 6, 2011 as the last day to submit FRCP 26(a)(2)  
20 identification of experts and expert reports; August 5, 2011 as the last day to submit  
21 expert rebuttal reports, if any; and August 31, 2011 as the last day to depose experts.

22 **h. What Motions (other than discovery motions) are Contemplated**

23 There are no prior or pending motions in this action.

24 The parties anticipate that summary judgment or summary adjudication motions  
25 will be filed after the close of discovery.

26 The parties propose a motion filing cut-off date of July 25, 2011.

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1                   **i. Prospects of Settlement**

2                   The parties believe that there is a reasonable prospect of settlement between  
3 Plaintiff and the Defendant. The parties have discussed some parameters of a  
4 settlement, and the discussions are ongoing.

5                   The parties propose Settlement Procedure No. 3 under Local Rule 16-15.

6                   **j. Court or Jury Trial**

7                   This is a Jury Trial case. Plaintiff demanded Jury Trial in the Complaint, filed  
8 on April 18, 2010 and the First Amended Complaint filed on September 8, 2010.

9                   **k. The Estimated Length of Trial.**

10                  The parties estimate three to five court days.

11                  **l. The Name of the Attorney(s) Who Will Try the Case.**

12                  For Plaintiff, Dennis L. Wilson and David Caplan, of Keats McFarland &  
13 Wilson LLP. For Defendant, Brian H. Newman, of Dykema Gossett PLLC.

14                  **m. Prospects of Counsel Exercising Their Right, under 28 U.S.C. § 636,**  
15                  **to Consent to the Designation of a Magistrate Judge to Conduct All**  
16                  **Proceedings (including trial) and Final Disposition, pursuant to**  
17                  **General Order 05-07 (also referenced as General Order 194)**

18                  The parties will not consent to the designation of a Magistrate Judge to conduct  
19 all proceedings.

20                  **II. SEPTEMBER 30, 2010 MINUTE ORDER**

21                  **a. Description of the Case**

22                  See Section I. a. above.

23                  **b. Depositions**

24                  The parties have not noticed any depositions to date. The parties anticipate  
25 taking approximately five (5) depositions each, but in no event more than ten (10)  
26 depositions per side.

1 Plaintiff anticipates noticing its Rule 30(b)(6) deposition on Player Auctions for  
2 late January, 2011.

3 Player Auctions anticipates noticing its Rule 30(b)(6) deposition on Plaintiff for  
4 January or February 2011.

5 **c. Written Discovery**

6 The parties have not served any discovery to date.

7 The parties anticipate serving discovery before the end of November or in early  
8 December, with responses due thirty (30) days thereafter.

9 **d. Experts**

10 The parties anticipate that they will each call two expert witnesses on the issues  
11 of likelihood of confusion and online game business.

12 **e. Proposed Pre Trial Conference Date**

13 Based on the proposed fact discovery cut-off of June 6, 2011 and cut-off to  
14 submit FRCP 26(a)(2) identification of experts and expert reports of July 6, 2011 , the  
15 parties propose a Pre-Trial Conference Date of September 26, 2011. The parties  
16 chose this date to accommodate the required pre-filing conference under Local Rule 7-  
17 3, the 28 day motion period provided by L.R. 7, then time for the Court to rule on any  
18 filed summary judgment motions, and time for the parties to prepare and file the  
19 required Pre-Trial papers.

20 **f. Date Demand for Jury Trial Was Filed**

21 On April 18, 2010, Plaintiff filed its Complaint with a demand that the case be  
22 tried to a jury. On September 8, 2010, Plaintiff filed its First Amended Complaint  
23 with a demand that the case be tried to a jury.

24 **g. Prospects of Settlement**

25 See Section I. i. above.

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1                   **h. Position of Counsel Regarding Consent to Proceed Before a**  
2                   **Magistrate Judge**

3                   See Section I. m. above.

4                   **i. Contemplated Motions**

5                   See Section I. h. above.

6                   **III. FEDERAL RULES OF CIVIL PROCEDURE 26(F) ISSUES**

7                   **a. Evidence Preservation [FRCP 26(f)(2)]**

8                   The parties have taken reasonable steps to preserve documents relating to the  
9 issues presented in the First Amended Complaint based on their current understanding  
10 of the issues.

11                   **b. Initial Disclosures [Rule 26(f)(3)(A)]**

12                   The parties agree that no changes should be made in the timing, form, or  
13 requirement for disclosures under Rule 26(a).

14                   The parties agree to exchange initial disclosures on or before November 29,  
15 2010.

16                   **c. Subjects on Which Discovery May be Needed and**  
17                   **Whether Discovery Should be Conducted in Phases or**  
18                   **Limited on Particular Issues [Rule 26 (f)(3)(B)]**

19                   Plaintiff anticipates serving discovery on the claims in Zynga’s First Amended  
20 Complaint, Player Auction’s Answer and affirmative defense, and the parties’  
21 respective prayers for relief.

22                   Defendant anticipates on serving discovery regarding the terms and conditions  
23 imposed by Plaintiff on its users, the alleged “confusion” caused by Player Auctions,  
24 and Plaintiff’s policy of monopolizing the purchase and sale of “Virtual Currency”  
25 and “Virtual Goods” in connection with its games.

26                   As indicated in section I. g. above, the parties propose that discovery be  
27 conducted in phases, with June 6, 2011 as the last day to complete discovery of all fact  
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1 witnesses; July 6, 2011 as the last day to submit FRCP 26(a)(2) identification of  
2 experts and expert reports; August 5, 2011 as the last day to submit expert rebuttal  
3 reports, if any; and August 31, 2011 as the last day to depose experts.

4 **d. Electronic Discovery [Rule 26(f)(3)(C)]**

5 The parties have not raised any issues relating to disclosure or discovery of  
6 electronically stored information, including the form or forms in which it should be  
7 produced.

8 **e. Privilege [Rule 26(f)(3)(D)]**

9 The parties expect to submit a stipulated protective order with respect to any  
10 confidential information that should be protected from public disclosure, including  
11 procedures to assert claims for privilege after production.

12 **f. Limitations on Discovery [Rule 26(f)(3)(E)]**

13 The parties agree that no changes should be made to the limitations on  
14 discovery imposed under these rules or by local rule, and that no other limitations  
15 should be imposed.

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1 **g. Other Orders [Rule 26(f)(3)(F)]**

2 Other than the possibility of requesting the entry of a stipulated protective order  
3 regarding confidential information that should be protected from public disclosure  
4 under FRCP 26(c), the parties do not presently anticipate requesting any other orders  
5 that should be entered by the court under Rule 26(c) or under Rule 16(b) and (c).  
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7  
8 Dated: November 23, 2010 KEATS McFARLAND & WILSON LLP

9  
10 By: /s/ David K. Caplan  
11 David K. Caplan  
12 Attorneys for Plaintiff  
13 ZYNGA GAME NETWORK INC.

14  
15 Dated: November 23, 2010 DYKEMA GOSSETT

16  
17 By: /s/ Brian H. Newman  
18 Brian H. Newman  
19 Attorneys for Defendant  
20 PLAYER AUCTIONS. LLC

21  
22 **SIGNATURE ATTESTATION:** I hereby attest that I have authorization on file for  
23 any signatures indicated by a conformed signature within this e-filed document.  
24

25  
26 /s/ David K. Caplan  
27 David K. Caplan  
28