

1 BUCHALTER NEMER
A Professional Corporation
2 BRIAN H. NEWMAN (SBN: 205373)
bnewman@buchalter.com
3 OREN BITAN (SBN: 251056)
obitan@buchalter.com
4 1000 Wilshire Blvd., Suite 1500
Los Angeles, CA 90017-5704
5 Telephone: (213) 891-0700
Facsimile: (213) 896-0400

6 Attorneys for Defendant Player Auctions, LLC
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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

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ZYNGA GAME NETWORK, INC., a
Delaware Corporation,

Plaintiff,

vs.

PLAYER AUCTIONS, LLC, a limited
liability company,

Defendant.

Case No. CV 10-2576 CBM (JCx)
**ANSWER OF DEFENDANT
PLAYER AUCTIONS, LLC TO
FIRST AMENDED COMPLAINT**

1 Defendant Player Auctions, LLC (“Defendant”) answers the First Amended
2 Complaint (“Complaint”) filed by plaintiff Zynga Game Network, Inc. (“Plaintiff”)
3 as follows:

4 1. Paragraph 1 of the Complaint states a legal conclusion which
5 Defendant is not required to admit or deny.

6 2. Defendant is without sufficient knowledge or information to form a
7 belief as to the truth of the allegations in paragraph 2 of the Complaint, and on that
8 basis denies each and every allegation contained therein.

9 3. In response to paragraph 3 of the Complaint, defendant admits that it
10 has its principal place of business in Los Angeles, California.

11 4. Paragraph 4 of the Complaint states a legal conclusion which
12 Defendant is not required to admit or deny.

13 5. Paragraph 5 of the Complaint states a legal conclusion which
14 Defendant is not required to admit or deny.

15 6. Defendant is without sufficient knowledge or information to form a
16 belief as to the truth of the allegations in paragraph 6 of the Complaint, and on that
17 basis denies each and every allegation contained therein.

18 7. Defendant is without sufficient knowledge or information to form a
19 belief as to the truth of the allegations in paragraph 7 of the Complaint, and on that
20 basis denies each and every allegation contained therein.

21 8. Defendant is without sufficient knowledge or information to form a
22 belief as to the truth of the allegations in paragraph 8 of the Complaint, and on that
23 basis denies each and every allegation contained therein.

24 9. Defendant is without sufficient knowledge or information to form a
25 belief as to the truth of the allegations in paragraph 9 of the Complaint, and on that
26 basis denies each and every allegation contained therein.

27 10. Defendant is without sufficient knowledge or information to form a
28 belief as to the truth of the allegations in paragraph 10 of the Complaint, and on that

1 basis denies each and every allegation contained therein.

2 11. Defendant is without sufficient knowledge or information to form a
3 belief as to the truth of the allegations in paragraph 11 of the Complaint, and on that
4 basis denies each and every allegation contained therein.

5 12. Defendant is without sufficient knowledge or information to form a
6 belief as to the truth of the allegations in paragraph 12 of the Complaint, and on that
7 basis denies each and every allegation contained therein.

8 13. Defendant is without sufficient knowledge or information to form a
9 belief as to the truth of the allegations in paragraph 13 of the Complaint, and on that
10 basis denies each and every allegation contained therein.

11 14. Defendant is without sufficient knowledge or information to form a
12 belief as to the truth of the allegations in paragraph 14 of the Complaint, and on that
13 basis denies each and every allegation contained therein.

14 15. Defendant is without sufficient knowledge or information to form a
15 belief as to the truth of the allegations in paragraph 15 of the Complaint, and on that
16 basis denies each and every allegation contained therein.

17 16. Defendant is without sufficient knowledge or information to form a
18 belief as to the truth of the allegations in paragraph 16 of the Complaint, and on that
19 basis denies each and every allegation contained therein.

20 17. Defendant is without sufficient knowledge or information to form a
21 belief as to the truth of the allegations in paragraph 17 of the Complaint, and on that
22 basis denies each and every allegation contained therein.

23 18. Defendant is without sufficient knowledge or information to form a
24 belief as to the truth of the allegations in paragraph 18 of the Complaint, and on that
25 basis denies each and every allegation contained therein.

26 19. Defendant is without sufficient knowledge or information to form a
27 belief as to the truth of the allegations in paragraph 19 of the Complaint, and on that
28 basis denies each and every allegation contained therein.

1 20. Defendant is without sufficient knowledge or information to form a
2 belief as to the truth of the allegations in paragraph 20 of the Complaint, and on that
3 basis denies each and every allegation contained therein.

4 21. Defendant is without sufficient knowledge or information to form a
5 belief as to the truth of the allegations in paragraph 21 of the Complaint, and on that
6 basis denies each and every allegation contained therein.

7 22. Defendant is without sufficient knowledge or information to form a
8 belief as to the truth of the allegations in paragraph 22 of the Complaint, and on that
9 basis denies each and every allegation contained therein.

10 23. Defendant is without sufficient knowledge or information to form a
11 belief as to the truth of the allegations in paragraph 23 of the Complaint, and on that
12 basis denies each and every allegation contained therein.

13 24. Defendant is without sufficient knowledge or information to form a
14 belief as to the truth of the allegations in paragraph 24 of the Complaint, and on that
15 basis denies each and every allegation contained therein.

16 25. Defendant is without sufficient knowledge or information to form a
17 belief as to the truth of the allegations in paragraph 25 of the Complaint, and on that
18 basis denies each and every allegation contained therein.

19 26. Defendant is without sufficient knowledge or information to form a
20 belief as to the truth of the allegations in paragraph 26 of the Complaint, and on that
21 basis denies each and every allegation contained therein.

22 27. Defendant is without sufficient knowledge or information to form a
23 belief as to the truth of the allegations in paragraph 27 of the Complaint, and on that
24 basis denies each and every allegation contained therein.

25 28. Defendant is without sufficient knowledge or information to form a
26 belief as to the truth of the allegations in paragraph 28 of the Complaint, and on that
27 basis denies each and every allegation contained therein.

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1 29. Defendant is without sufficient knowledge or information to form a
2 belief as to the truth of the allegations in paragraph 29 of the Complaint, and on that
3 basis denies each and every allegation contained therein.

4 30. Defendant is without sufficient knowledge or information to form a
5 belief as to the truth of the allegations in paragraph 30 of the Complaint, and on that
6 basis denies each and every allegation contained therein.

7 31. Defendant is without sufficient knowledge or information to form a
8 belief as to the truth of the allegations in paragraph 31 of the Complaint, and on that
9 basis denies each and every allegation contained therein.

10 32. Defendant is without sufficient knowledge or information to form a
11 belief as to the truth of the allegations in paragraph 32 of the Complaint, and on that
12 basis denies each and every allegation contained therein.

13 33. Defendant is without sufficient knowledge or information to form a
14 belief as to the truth of the allegations in paragraph 33 of the Complaint, and on that
15 basis denies each and every allegation contained therein.

16 34. Defendant is without sufficient knowledge or information to form a
17 belief as to the truth of the allegations in paragraph 34 of the Complaint, and on that
18 basis denies each and every allegation contained therein.

19 35. Defendant admits the allegations in paragraph 35 of the Complaint.

20 36. In response to paragraph 36 of the Complaint, Defendant admits that
21 the website www.playerauctions.com provides a forum for users to buy and sell
22 virtual currency and/or virtual goods from a variety of online games including
23 certain games manufactured by Zynga.

24 37. Defendant denies the allegations in paragraph 37 of the Complaint.

25 38. In response to paragraph 38 of the Complaint, Defendant admits that it
26 charges a small fee when users buy and sell virtual currency and/or virtual goods on
27 the website www.playerauctions.com, but denies that it is using the "Marks."
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1 39. In response to paragraph 38 of the Complaint, Defendant admits that
2 users can sell virtual currency and/or virtual goods for actual money on the website
3 www.playerauctions.com. Defendant is without sufficient knowledge or
4 information to form a belief as to the truth of the remaining allegations in paragraph
5 39 of the Complaint, and on that basis denies those allegations.

6 40. Defendant denies the allegations in paragraph 40 of the Complaint.

7 41. Defendant admits the allegations in paragraph 41 of the Complaint.

8 42. Defendant denies the allegations in paragraph 42 of the Complaint.

9 43. Defendant admits the allegations in paragraph 43 of the Complaint.

10 44. Defendant denies the allegations in paragraph 44 of the Complaint.

11 45. Defendant incorporates its previous responses.

12 46. Defendant is without sufficient knowledge or information to form a
13 belief as to the truth of the allegations in paragraph 46 of the Complaint, and on that
14 basis denies each and every allegation contained therein.

15 47. Defendant is without sufficient knowledge or information to form a
16 belief as to the truth of the allegations in paragraph 47 of the Complaint, and on that
17 basis denies each and every allegation contained therein.

18 48. Defendant denies the allegations in paragraph 48 of the Complaint.

19 49. Defendant denies the allegations in paragraph 49 of the Complaint.

20 50. Defendant denies the allegations in paragraph 50 of the Complaint.

21 51. Defendant denies the allegations in paragraph 51 of the Complaint.

22 52. Defendant incorporates its previous responses.

23 53. Defendant is without sufficient knowledge or information to form a
24 belief as to the truth of the allegations in paragraph 53 of the Complaint, and on that
25 basis denies each and every allegation contained therein.

26 54. Defendant denies the allegations in paragraph 54 of the Complaint.

27 55. Defendant denies the allegations in paragraph 55 of the Complaint.

28 56. Defendant denies the allegations in paragraph 56 of the Complaint.

- 1 57. Defendant denies the allegations in paragraph 57 of the Complaint.
- 2 58. Defendant denies the allegations in paragraph 58 of the Complaint.
- 3 59. Defendant denies the allegations in paragraph 59 of the Complaint.
- 4 60. Defendant incorporates its previous responses.
- 5 61. Defendant is without sufficient knowledge or information to form a
- 6 belief as to the truth of the allegations in paragraph 61 of the Complaint, and on that
- 7 basis denies each and every allegation contained therein.
- 8 62. Defendant denies the allegations in paragraph 62 of the Complaint.
- 9 63. Defendant denies the allegations in paragraph 63 of the Complaint.
- 10 64. Defendant denies the allegations in paragraph 64 of the Complaint.
- 11 65. Defendant denies the allegations in paragraph 65 of the Complaint.
- 12 66. Defendant denies the allegations in paragraph 66 of the Complaint.
- 13 67. Defendant denies the allegations in paragraph 67 of the Complaint.
- 14 68. Defendant incorporates its previous responses.
- 15 69. Defendant denies the allegations in paragraph 69 of the Complaint.
- 16 70. Defendant denies the allegations in paragraph 70 of the Complaint.
- 17 71. Defendant incorporates its previous responses.
- 18 72. Paragraph 72 of the Complaint states a legal conclusion which
- 19 Defendant is not required to admit or deny.
- 20 73. Defendant denies the allegations in paragraph 73 of the Complaint.
- 21 74. Defendant denies the allegations in paragraph 74 of the Complaint.
- 22 75. Defendant denies the allegations in paragraph 75 of the Complaint.
- 23 76. Defendant denies the allegations in paragraph 76 of the Complaint.
- 24 77. Defendant denies the allegations in paragraph 77 of the Complaint.
- 25 78. Defendant incorporates its previous responses.
- 26 79. Paragraph 79 of the Complaint states a legal conclusion which
- 27 Defendant is not required to admit or deny.
- 28 80. Defendant denies the allegations in paragraph 80 of the Complaint.

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Failure to Mitigate Damages)**

3 96. As its Third and Separate Affirmative Defense, Defendant alleges that
4 Plaintiff has failed to mitigate the damages, if any, that Plaintiffs have allegedly
5 suffered.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 **(Waiver)**

8 97. As its Fourth and Separate Affirmative Defense, Defendant alleges
9 that as a result of Plaintiff's own conduct, Plaintiff has waived any claim for relief
10 in conjunction therewith, and, thus, are barred or precluded from maintaining such
11 action or obtaining any judgment or relief whatsoever against Defendant.

12 **FIFTH AFFIRMATIVE DEFENSE**

13 **(Estoppel)**

14 98. As its Fifth Affirmative Defense, Defendant alleges that Plaintiff as a
15 result of its own conduct, is estopped from prevailing on their claims.

16 **SIXTH AFFIRMATIVE DEFENSE**

17 **(Wrongful Acts of Third Parties)**

18 99. As its Sixth and Separate Affirmative Defense, Defendant alleges that
19 individuals other than Defendant contributed to and/or caused Plaintiff's damages,
20 if any, and that should Plaintiff recover any damages, Defendants are entitled to
21 have such damages reduced or eliminated to the extent that third parties caused or
22 contributed to such damages.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 **(Innocent Infringement and Good Faith)**

25 100. As its Seventh and Separate Affirmative Defense, Defendant alleges
26 that to the extent that Plaintiff's trademark was infringed, Defendant acted in good
27 faith, innocent of any knowledge or intent to infringe Plaintiff's rights. If such
28 good faith and lack of intent does not, as a matter of law, preclude a finding of

1 liability, any general or statutory damages awarded should be correspondingly
2 reduced.

3 **EIGHTH AFFIRMATIVE DEFENSE**

4 (Laches)

5 101. As its Eighth Affirmative Defense, Defendant alleges that Plaintiff's
6 claims are barred under the doctrine of laches.

7 **NINTH AFFIRMATIVE DEFENSE**

8 (Unclean Hands)

9 102. As its Ninth Affirmative Defense, Defendant alleges that Plaintiff's
10 claims are barred under the doctrine of unclean hands.

11 **TENTH AFFIRMATIVE DEFENSE**

12 (Non-Infringement)

13 103. As its Tenth Affirmative Defense, Defendant's website does not
14 infringe any purported trademark or copyright rights, or any other purported rights,
15 of Plaintiff.

16 **ELEVENTH AFFIRMATIVE DEFENSE**

17 (Fair Use)

18 104. As its Eleventh Affirmative Defense, Defendant's alleged use of the
19 Plaintiff's copyright(s) constitutes fair use.

20 **TWELFTH AFFIRMATIVE DEFENSE**

21 (Reservation of Defenses)

22 105. As its Twelfth Affirmative Defense, Defendant alleges that it has
23 insufficient knowledge or information upon which to form a belief as to whether it
24 may have additional, and as yet unstated affirmative defenses available, and
25 reserves the right to assert such additional defenses in the event that further
26 discovery, investigation or analysis indicate they are proper.

27 **PRAYER FOR RELIEF**

28 **WHEREFORE**, Defendant prays for judgment as follows:

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1. That Plaintiff take nothing by way of the Complaint;
2. That the Complaint be dismissed with prejudice and judgment entered in favor of Defendant;
3. That Defendant be awarded its attorneys' fees and costs of suit; and
4. For such other and further relief as the Court deems just and proper.

DATED: September 29, 2010

BUCHALTER NEMER
A Professional Corporation

By: /s/ Brian H. Newman
BRIAN H. NEWMAN
Attorneys for Defendant
Player Auctions, LLC

