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8 Attorneys for Plaintiff
Bally Gaming, Inc. d/b/a Bally Technologies

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA
 11 WESTERN DIVISION

13 BALLY GAMING, INC. d/b/a BALLY
 TECHNOLOGIES, a Nevada
 14 corporation,
 15 Plaintiff,
 16 v.
 17 DESIGN TIME INTERACTIVE, INC.,
 a California corporation,
 18 Defendant.

CASE NO: 2:14-cv-07000-CAS (AJWx)
 Hon. Christina A. Snyder

**[PROPOSED] CONSENT JUDGMENT
 AND PERMANENT INJUNCTION**

Glaser Weil Fink Jacobs
 Howard Avchen & Shapiro LLP

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1 Bally Gaming, Inc. d/b/a Bally Technologies (“Bally”) on the one hand, and
2 Design Time Interactive, Inc. (“DTI”) on the other (each a “Party,” and collectively
3 the “Parties”), and the Parties having consented to the terms of the permanent
4 injunction set forth below, this Court hereby finds as follows:

5 1. This case arises under the laws of the United States, specifically the
6 trademark laws of the United States, 15 U.S.C. §1114 and 15 U.S.C. §1125, *et seq.*
7 This Court has original jurisdiction of this action under 15 U.S.C. §1121 and 28
8 U.S.C. §§ 1331 and 1338.

9 2. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 because
10 the claims are so related as to form part of the same case or controversy.

11 3. This Court has personal jurisdiction over DTI because it solicits,
12 transacts and does business in this District, a substantial part of the wrongful acts or
13 omissions complained of occurred in this District, and DTI is subject to personal
14 jurisdiction in this District. DTI purposefully directed its activities toward this
15 District when it willfully infringed Bally's intellectual property rights, specifically
16 targeted consumers here, and a substantial part of the harm was felt in this District.

17 4. Venue is proper in the United States District Court for the Central
18 District of California under 28 U.S.C. §§ 1391(b) and (c).

19 5. Bally is, among other things, a leading manufacturer of casino gaming
20 machines and equipment and a licensor of proprietary games.

21 6. Bally owns intellectual property rights, including trademark rights in its
22 distinctive names, logos and designs together with art, graphic designs, methods of
23 play and other intellectual property. More specifically, Bally owns and extensively
24 uses several trademarks which are well-known and famous throughout the United
25 States and worldwide, including but not limited to: U.S. Trademark Registration
26 Number (“Reg. No.”) 85301631 for the mark BIG VEGAS, which is used for gaming
27 machines (devices which accept a wager) and gaming software which generates or
28 displays outcomes for gaming machines, as well as common law trademark rights for

1 BIG VEGAS in connection with the above and entertainment services and online
2 games.

3 7. Through Bally's expansive sales, leasing, licensing and marketing
4 efforts, the games which use the BIG VEGAS mark have become a standard fixture in
5 casinos throughout the country and online, resulting in widespread consumer
6 recognition.

7 8. Bally filed this action against DTI alleging, *inter alia*, that DTI has been
8 unlawfully promoting and selling iOS/iPhone applications under the name "Big
9 Vegas Roulette" (the "Infringing Game") in violation of United States intellectual
10 property laws.

11 9. Bally has no adequate remedy at law and the alleged harm to Bally and
12 to the public outweighs the harm to any legitimate interests of DTI.

13 10. Bally, on the one hand, and DTI on the other, desire to avoid the cost and
14 expense of trial and to resolve the referenced disputes in a business-like fashion, but
15 intend that the Court retain continuing jurisdiction in the event of the breach of the
16 separate settlement agreement between Bally and DTI relating to this case (the
17 "Settlement Agreement") or this Consent Judgment and Permanent Injunction, or
18 other need for judicial intervention.

19 In accordance with the Settlement Agreement, the parties hereto stipulate and
20 agree to this consent judgment and to the entry of a permanent injunction against DTI
21 in the form set forth below.

22 It is hereby ORDERED, ADJUDGED, and DECREED that:

23 1. Bally's Trademarks are Valid and Enforceable. Bally's federal and
24 common law trademark rights in the BIG VEGAS mark are valid, and enforceable.

25 2. Permanent Injunction against DTI. DTI, and all of its respective
26 affiliates, subsidiaries, agents, officers, employees, representatives, successors,
27 assigns, attorneys, and all other persons acting for, with, by, through, or under
28 authority from DTI, or in concert or participation with DTI, are **permanently**

1 **enjoined and restrained** from directly, or indirectly, infringing Bally's BIG VEGAS
2 mark in any manner, by:

- 3 a. Using, displaying, advertising, promoting, registering, transferring, or
4 assigning, including on or in connection with any products, services,
5 promotional items, domain names or web sites, the name "Big Vegas
6 Roulette" or any other BIG VEGAS mark in Apple's iTunes Store;
7 b. Using the phrase "Big Vegas Roulette" or any other BIG VEGAS
8 mark in connection with their products or services.

9 Furthermore, under the terms of the injunction, DTI is required to:

- 10 a. Disclose and document the number of games which infringe on the
11 BIG VEGAS mark sold to date, inclusive of gross revenues and
12 profits related to such sales;
13 b. Ensure Bally's access to the Big Vegas name through Apple's iTunes
14 Store and any other internet platform.

15 3. Payment of Settlement Sum. DTI shall pay Bally the agreed upon sum
16 on the date set forth in the Settlement Agreement.

17 4. Service. Service may be made upon the Parties by registered mail or
18 overnight delivery service (acceptance signature required) addressed as follows:

19 To DTI: Design Time Interactive, Attn: Nicholas C. Golden
20 13011 Oakwood Lane, La Mirada, CA 90638.

21 To Bally: Bally Gaming, Inc. d/b/a Bally Technologies, Attn: Asst. General
22 Counsel and Senior Director of IP, Michele McShane, 6650 El Camino Road,
23 Las Vegas, Nevada 89118, copy to counsel for Bally, Adrian Pruetz, Glaser
24 Weil Fink Howard Avchen & Shapiro LLP, 10250 Constellation Blvd., 19th
25 Floor, Los Angeles, California 90067.

26 A copy of this Consent Judgment and Permanent Injunction shall be deemed
27 sufficient notice under Federal Rule of Civil Procedure 65.

28 5. Retention of Jurisdiction to Enforce Settlement Agreement and Consent

1 Judgment and Permanent Injunction. The Court retains jurisdiction to enforce the
2 parties' Settlement Agreement and the Consent Judgment and Permanent Injunction.

3 6. Entry of Judgment. The Court expressly determines that there is no just
4 reason for delay in entering this Consent Judgment and Permanent Injunction
5 pursuant to Federal Rule of Civil Procedure 54(a), and the Court enters this Consent
6 Judgment and Permanent Injunction against DTI.

7 7. Expenses of the Action. Each party shall bear its own costs and
8 attorneys' fees in connection with this action.

9
10 IT IS SO ORDERED, ADJUDGED AND DECREED:

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12 DATED: September 10, 2014

13 *Christina A. Snyder*
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15 Hon. Christina A. Snyder
16 United States District Judge
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