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12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN FRANCISCO DIVISION

16 ZYNGA GAME NETWORK, INC., a Delaware
 Corporation,

18 Plaintiff,

19 v.

20 JOHN DOES 1-5 D/B/A FAST-CHIPS.COM

21 Defendants.

CASE NO. **09 05298**
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COMPLAINT FOR:

- (1) VIOLATION OF 15 U.S.C. § 1125(a); (2) VIOLATION OF 18 U.S.C. § 1030; (3) VIOLATION OF CAL. BUS. & PROF. CODE § 17200; (4) VIOLATION OF CALIFORNIA PENAL CODE § 502; (5) STATE COMMON LAW TRADEMARK INFRINGEMENT; (6) COMMON LAW PASSING OFF AND UNFAIR COMPETITION; (7) BREACH OF CONTRACT; (8) INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS; (9) TRESPASS TO CHATTELS

DEMAND FOR JURY TRIAL

CASE NO. _____
 COMPLAINT

1 Plaintiff Zynga Game Network, Inc. ("Zynga") brings this Complaint against defendants
2 John Does 1-5 d/b/a FAST-CHIPS.COM (collectively "Defendants") for injunctive relief and
3 damages under the laws of the United States and the State of California.

4 **Nature of the Action**

5 1. This is an action for violation of the federal Lanham Act, 15 U.S.C. § 1125(a);
6 violation of the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030; violation of the
7 California statutory law of unfair competition, Cal. Bus. & Prof. Code § 17200; violation of
8 California Penal Code § 502; California common law trademark infringement, passing off and unfair
9 competition; breach of contract; intentional interference with contractual relations; and for trespass
10 to chattels.

11 **The Parties**

12 2. Plaintiff Zynga is a corporation organized and existing under the laws of the State of
13 Delaware and has its principal place of business in San Francisco, California.

14 3. Zynga is currently unaware of the identities of Defendants John Does 1-5
15 ("Defendants"), and therefore sues such defendants by such fictitious acronyms. Zynga is informed
16 and believes that discovery will reveal the true identities of the Defendants. Zynga will amend this
17 Complaint to identify Defendants by name after their identities are discovered.

18 4. On information and belief, the actions alleged herein to have been undertaken by
19 Defendants were undertaken by each Defendant individually, were actions that each Defendant
20 caused to occur, were actions that each Defendant authorized, controlled, directed, or had the ability
21 to authorize, control or direct, and/or were actions in which each Defendant assisted, participated or
22 otherwise encouraged, and are actions for which each Defendant is liable. Each Defendant aided
23 and abetted the actions of the Defendants set forth below, in that each Defendant had knowledge of
24 those actions, provided assistance and benefitted from those actions, in whole or in part. Each of the
25 Defendants was the agent of each of the remaining Defendants, and in doing the things hereinafter
26 alleged, was acting within the course and scope of such agency and with the permission and consent
27 of each and every one of the other Defendants.

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1 **Jurisdiction and Venue**

2 5. This action arises under the trademark laws of the United States, 15 U.S.C. § 1051, *et*
3 *seq.*, particularly under 15 U.S.C. § 1125(a), as well as the Computer Fraud and Abuse Act, 18
4 U.S.C. § 1030; state unfair competition law; California Penal Code § 502; the common law of
5 trademark infringement, passing off and unfair competition; breach of contract; the common law of
6 intentional interference with contractual relations, and the common law of trespass to chattels. This
7 Court has jurisdiction of the federal claims under 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. §§
8 1116, 1121, and 1125. This Court has supplemental jurisdiction of the state unfair competition
9 claims under 28 U.S.C. § 1338(b), those claims being joined with a substantial and related claim
10 under the Trademark Laws of the United States, and supplemental jurisdiction of all of the state law
11 claims under 28 U.S.C. § 1367(a), those claims being so related to the federal claims that they form
12 part of the same case or controversy and derive from a common nucleus of operative fact.

13 6. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(2), and because
14 Defendants have consented to venue in this district.

15 **Intradistrict Assignment**

16 7. This being an Intellectual Property Action, the Court's Assignment Plan provides for
17 assignment of this Action on a district-wide basis. To the extent this Action may be deemed to have
18 arisen in a particular county within this District, that county is San Francisco County on the grounds
19 that a substantial part of the events or omissions which give rise to Zynga's claims occurred in San
20 Francisco County, where Zynga is located.

21 **Factual Allegations**

22 8. Zynga is the largest social gaming company, providing, *inter alia*, online poker
23 games, word games, board games, role playing games and party games including Texas Hold'Em
24 Poker, Mafia Wars, YoVille, Vampires, Street Racing, Scramble and Word Twist. Zynga's games
25 are available on Facebook, MySpace, Bebo, Hi5, Friendster, Tagged, Yahoo!, the iPhone and iPod
26 Touch, among others.

27 9. Zynga coined the trademark and service mark (collectively "mark") ZYNGA and has
28 made use of the mark ZYNGA in commerce since June 2007.

1 10. Zynga's games have been a runaway success. In July, 2008, Zynga had over 1.3
2 million daily active users and 20 million registered users. As of January 1, 2009, Zynga had over 75
3 million registered users. As of May, 2009, Zynga had more than 9.5 million daily users.

4 11. Zynga's success and the success of the ZYNGA mark have been widely reported in
5 the press, on the Internet and in blogs.

6 12. The mark ZYNGA is inherently distinctive, and furthermore, by virtue of the
7 extensive online sales and advertising under the mark ZYNGA, the ZYNGA mark has become well-
8 known within social gaming circles as a source identifier for Zynga's games.

9 13. Zynga owns United States Federal Trademark Registration No. 3,685,749 for the
10 mark ZYNGA in International Class 009 for downloadable computer game software for use on
11 wireless devices and computers, and International Class 041 for entertainment services, namely
12 providing on-line computer games. A true and correct copy of federal Trademark Registration
13 Certificate 3,685,749 is attached hereto as Exhibit 1.

14 14. One of Zynga's most popular properties is Zynga Poker (the "Game"), a
15 computerized version of the world-famous Texas Hold'Em poker game.

16 15. Zynga makes the Game available through social networking websites and
17 applications (collectively "Providers"), including but not limited to those identified in Paragraph 8
18 above.

19 16. Zynga owns or leases the computer servers that players must access in order to play
20 the Game. Zynga grants players who participate in the Game a revocable license to access its
21 servers for the purpose of playing the Game.

22 17. Zynga's Terms of Service govern users' play of the Game, and players who use the
23 Game must consent to the Terms of Service.

24 18. Players who use the Game in a manner not expressly authorized by Zynga, including
25 without limitation in violation of the Terms of Service, are not authorized to participate in the Game,
26 or to access Zynga's servers.

27 19. When users sign up with Zynga to play the Game, they receive a certain number of
28 virtual "chips" that they use to compete in games with other players using the Providers' sites and/or

1 applications. Players can increase their total number of “chips” through their play, and can also
2 purchase “chips” from Zynga.

3 20. Zynga grants players a limited, revocable license to use the “chips” while playing the
4 Game, but retains sole and exclusive ownership of the “chips” and the source code that allows the
5 “chips” to be used in the Game.

6 21. Zynga has not authorized any third party to sell the “chips” required to play the
7 Game.

8 22. Among other things, the Terms of Service that govern users’ play of the Game
9 prohibit players from selling “chips” for real-world money or otherwise exchanging “chips” for
10 anything of value outside the Game.

11 23. Zynga also notifies players within the Game that they are not authorized to buy or sell
12 “chips” outside of the Game, and that they can be banned from the Game for buying or selling
13 “chips.”

14 24. Zynga has implemented security measures to prevent the unauthorized purchase, sale,
15 and transfer of “chips.”

16 25. Without Zynga’s authorization or approval, Defendants have created and currently
17 operate a website at the Internet domain name FAST-CHIPS.COM (the “Website” or the “Domain
18 Name”), possibly among others.

19 26. Through the Website, Defendants “sell” “chips” that users, playing the Game through
20 the Providers’ websites and/or applications, can use to compete with other players who obtained
21 their “chips” directly from Zynga.

22 27. Defendants advertise and “sell” these “chips” using the ZYNGA mark and/or
23 confusingly similar misspellings or variations of the ZYNGA mark.

24 28. Defendants “sell” “chips” for use in the Game for real-world money, and at prices
25 that are substantially lower than the prices paid by users who obtain their “chips” from Zynga.

26 29. Defendants have used the Game itself as part of their scheme, transferring the “chips”
27 they “sell” during game play in contravention of the Game’s terms of service and/or security
28 measures, and in violation of the license they received from Zynga to participate in the Game.

1 domain names containing the term ZYNGA and/or of confusingly similar misspellings or variations
2 thereof, alone or in combination with any other terms;

3 C. Enter a permanent injunction enjoining Defendants and their officers, directors,
4 agents, employees, representatives and all persons or entities acting in concert or participation with
5 Defendants from accessing, playing, or otherwise participating in the Game, or in any other game or
6 application that Zynga makes available;

7 D. Enter a permanent injunction enjoining Defendants and their officers, directors,
8 agents, employees, representatives and all persons or entities acting in concert or participation with
9 Defendants from buying, selling, offering for sale, advertising, exchanging, trading or otherwise
10 dealing in "chips" for use in the Game, as well as any currency or items used in any game or
11 application that Zynga makes available.

12 E. Enter a permanent injunction requiring Defendants and their officers, directors,
13 agents, employees, representatives and all persons or entities acting in concert or participation with
14 Defendants to immediately cease any conduct suggesting or tending to suggest that any products or
15 services they advertise or offer for sale are directly or indirectly sponsored or approved by, or
16 affiliated with Zynga;

17 F. Order the transfer of the Domain Name, and any other Internet domain names
18 Defendants are using in connection with the sale, offering for sale, advertisement, or exchange of
19 "chips" for use in the Game, to Zynga;

20 G. Enter a finding that Defendants' actions were willful, deliberate, and malicious;

21 H. Enter a finding that Defendants' actions were malicious, oppressive and/or
22 fraudulent;

23 I. Award Zynga damages in an amount to be proven at trial that will be trebled pursuant
24 to the applicable statute, as well as pre-judgment and post-judgment interest;

25 J. Enter an order, pursuant to 15 U.S.C. § 1118 and other applicable law, directing
26 Defendants to deliver for destruction all products in their possession or under their control that
27 infringe Zynga's intellectual property rights;

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- K. Award Zynga punitive damages in an amount sufficient to punish and deter Defendants;
- L. Enter an award of attorneys' fees and costs; and
- M. Award any such other and further relief as this Court deems just and proper.

PLAINTIFF ZYNGA HEREBY DEMANDS A TRIAL BY JURY.

Dated: November 6, 2009

By: _____ /s/
Christopher T. Varas
Keats McFarland & Wilson LLP
Attorneys for Plaintiff
ZYNGA GAME NETWORK, INC.

EXHIBIT 1

United States of America

United States Patent and Trademark Office



Reg. No. 3,685,749 ZYNGA GAME NETWORK INC. (DELAWARE CORPORATION)
Registered Sep. 22, 2009 365 VERMONT STREET
SAN FRANCISCO, CA 94103

Int. Cls.: 9 and 41 FOR: DOWNLOADABLE COMPUTER GAME SOFTWARE FOR USE ON WIRELESS DEVICES AND COMPUTERS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

TRADEMARK FIRST USE 6-0-2007; IN COMMERCE 6-0-2007.
SERVICE MARK
PRINCIPAL REGISTER FOR: ENTERTAINMENT SERVICES, NAMELY, PROVIDING ON-LINE COMPUTER GAMES, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 6-0-2007; IN COMMERCE 6-0-2007.

THE MARK CONSISTS OF A DOG NEXT TO ZYNGA.

SER. NO. 77-684,104, FILED 3-5-2009.

KIM SAITO, EXAMINING ATTORNEY



David S. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT 1
PAGE 14