

Zynga Game Network, Inc. v. Gregory Szimonisz, et al.
U.S. District Court, Northern District of California
San Francisco Division
Case No. CV 09-5298 MHP

EXHIBIT 1

**STIPULATION REGARDING ENTRY OF FINAL JUDGMENT
UPON CONSENT**

EXHIBIT 1

1 Larry W. McFarland (Bar No. 129668)
E-Mail: lmcfarland@kmwlaw.com
2 Dennis Wilson (Bar No. 155407)
E-Mail: dwilson@kmwlaw.com
3 David K. Caplan (Bar No. 181174)
E-Mail: dcaplan@kmwlaw.com
4 Christopher T. Varas (Bar No. 257080)
E-Mail: cvaras@kmwlaw.com
5 KEATS McFARLAND & WILSON LLP
9720 Wilshire Boulevard
6 Penthouse Suite
Beverly Hills, California 90212
7 Telephone: (310) 248-3830
Facsimile: (310) 860-0363

8 Attorneys for Plaintiff
9 ZYNGA GAME NETWORK INC.

10
11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15
16 ZYNGA GAME NETWORK INC., a Delaware
Corporation,

17
18 Plaintiff,

19 v.

20 GREGORY SZIMONISZ, an individual; and
JARET SZIMONISZ, an individual,

21 Defendants.
22
23
24
25
26
27

CASE NO. CV:09-5298 MHP

FINAL JUDGMENT UPON CONSENT

28 Exhibit 1

Page 2

CASE NO. CV:09-5298 MHP
FINAL JUDGMENT UPON CONSENT

1 Plaintiff Zynga Game Network Inc. (“Zynga”), having filed a Complaint in this action
2 charging defendants Gregory Szimonisz and Jaret Szimonisz (collectively “Defendants”), with
3 Federal Trademark Infringement pursuant to 15 U.S.C. § 1125(a) and 15 U.S.C. § 1114(1), Federal
4 Computer Fraud and Abuse pursuant to 18 U.S.C. § 1030, California Unauthorized Computer
5 Access pursuant to California Penal Code § 502, California Statutory Unfair Competition pursuant to
6 California Business & Professions Code § 17200, California Common Law Trademark Infringement
7 and Unfair Competition, Breach of Contract, Intentional Interference with Contractual Relations, and
8 Trespass to Chattels, and Zynga and Defendants (Zynga and Defendants are hereinafter collectively
9 referred to as the “Parties”) desiring to settle the controversy between the Parties, it is

10 **ORDERED, ADJUDGED AND DECREED** as between the Parties hereto that:

11 1. This Court has jurisdiction over the Parties to this action and over the subject matter
12 hereof pursuant to 15 U.S.C. §§ 1116, 1121 and 1125, and 28 U.S.C. §§ 1331, 1338(a) and (b), and
13 1367(a). Service was properly made against Defendants.

14 2. Zynga owns the trademark and service mark ZYNGA (the “ZYNGA Mark”) and has
15 used the Zynga Mark in commerce since June 2007.

16 3. The ZYNGA Mark is inherently distinctive and by virtue of Zynga’s extensive
17 advertising and sales under the ZYNGA Mark, has become well-known within social gaming circles
18 as a source identifier for Zynga’s online games.

19 4. Zynga currently owns United States Federal Trademark Registration No. 3685749 for
20 the ZYNGA Mark in International Class 009 for downloadable software for games and
21 entertainment on wireless devices and computers, and International Class 041 for entertainment
22 services, namely providing on-line computer games.

23 5. Zynga is the publisher of Zynga Poker (the “Game”), a computerized version of the
24 world-famous poker game in which players compete with one another using virtual “chips.”

25 6. Zynga’s Terms of Service, which govern users’ play of the Game, provide that the
26 “chips” used in the Game are not redeemable for any sum of “real world” money or monetary value.
27 The Terms of Service also prohibit sale of “chips” “for ‘real world’ money” and prohibit the use of
28 the Game for unacceptable purposes, including activity in “conflict with the spirit or intent of” the

1 Game. Zynga has not authorized any third party to sell or distribute the “chips” used in the Game.

2 7. Defendants affirmatively assented to and are bound by the Terms of Service
3 governing use of the Game, which are located at <http://www.zynga.com/about/terms-of-service.php>.

4 8. Defendants have owned and operated websites through which they have unlawfully
5 advertised, purchased, sold and offered to purchase and sell “chips” for use in the Game, and have
6 wrongfully used the ZYNGA Mark to advertise and sell these unauthorized “chips”. Defendants
7 have operated these websites from the following Internet domain names: FAST-CHIPS.COM;
8 FAST-CHIPS.NET; FAST-CHIPS.ORG; BUYFACEBOOKTWITTERCHIPS.ORG;
9 BUYFACEBOOK-TWITTERCHIPS.COM; BUYFACEBOOK-TWITTERCHIPS.INFO;
10 BUYFACEBOOK-TWITTERCHIPS.NET.

11 9. Defendants’ conduct violates Zynga’s intellectual property, contractual, and other
12 rights, and Defendants are liable for all of the Causes of Action alleged in Zynga’s First Amended
13 Complaint in this matter.

14 10. Defendants’ unlawful actions giving rise to Zynga’s claims were undertaken willfully
15 and maliciously, and the damages awarded to Zynga in Paragraph 13 below are damages for willful
16 and malicious injury for purposes of 11 U.S.C. § 523(a)(6).

17 11. Defendants and their affiliates, agents, servants, employees, representatives,
18 successors, assigns, and any person, corporation or other entity acting under Defendants’ direction or
19 control, or in active concert or participation with Defendants, are immediately and permanently
20 enjoined throughout the world from:

21 a. Directly or indirectly using the ZYNGA trademark and any other mark,
22 symbol, or logo that is a reproduction, counterfeit, copy, or colorable imitation of or that is
23 confusingly similar to, or that is identical with, or substantially indistinguishable from, the ZYNGA
24 mark on or in connection with any goods or services;

25 b. Infringing any of Zynga’s intellectual property rights in any manner, including
26 but not limited to the ZYNGA Mark, any copyrights owned by Zynga, or any other rights owned by
27 Zynga related to the Game;

28 c. Engaging in any conduct that tends falsely to represent that, or is likely to

1 confuse, mislead or deceive purchasers, Defendants' customers and/or members of the public to
2 believe that, the actions of Defendants are connected with Zynga, are sponsored, approved, or
3 licensed by Zynga, or are in any way connected or affiliated with Zynga;

4 d. Affixing, applying, annexing, or using in connection with the manufacture,
5 distribution, advertising, sale, and/or offering for sale or other use of any goods or services, a false
6 description or representation, including words or other symbols, tending to falsely describe or
7 represent such goods as being those of, or authorized by, Zynga;

8 e. Registering any Internet domain name that includes the ZYNGA Mark, or any
9 variations or misspellings thereof, whether alone or in combination with any other term(s) or
10 character(s);

11 f. Accessing, directly or indirectly, any computer server or computer system
12 owned, leased or operated by Zynga for any reason whatsoever, including without limitation any
13 server or computer that provides access to the Game, or to any other game or application published
14 by Zynga;

15 g. Advertising, purchasing, selling, trading, exchanging, profiting from,
16 accepting or processing payments for, or facilitating or participating in any way in the advertisement,
17 purchase, sale, trade, or exchange of "chips" for use in the Game or any virtual item used in any
18 Zynga game or application;

19 h. Participating in any way in the display of online "sponsored links" or any
20 other form of pay-per-click or pay-per-impression advertising related to "chips" for use in the Game
21 or any other virtual item used in any Zynga game or application, including but not limited to causing
22 hyperlinks and other advertising materials to be displayed in response to searches for "zynga", or
23 searches for any of Zynga's games or applications;

24 i. Otherwise competing unfairly with Zynga in any manner; and

25 j. Effecting assignments or transfers, forming new entities or associations or
26 utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set
27 forth in subparagraphs (a)-(i) above.

28 12. To the extent the Internet domain names identified in Paragraph 8 above have not

1 already been transferred to Zynga, the registrars through which these domain names are registered
2 are ORDERED to transfer the ownership of these domain names to Zynga.

3 13. Defendants' unlawful acts have damaged Zynga in the amount of Fifteen Thousand
4 Dollars (\$15,000). Defendants are hereby ordered to pay to Zynga damages in the amount of
5 \$15,000. Defendants are jointly and severally liable for these damages.

6 14. Defendants are hereby ordered to pay Zynga's reasonable attorneys' fees and costs.
7 Defendants are jointly and severally liable for this award.

8 15. This Court retains jurisdiction, including without limitation personal jurisdiction over
9 Defendants, for the purpose of making any further orders necessary or proper for the enforcement,
10 construction or modification of the Settlement Agreement between Zynga and Defendants or this
11 Judgment, and the punishment of any violations thereof.

12 16. This Judgment shall be deemed to have been served upon Defendants at the time of
13 its execution by the Court.

14 //
15 //
16 //
17 //
18 //
19 //
20 //
21 //
22 //
23 //
24 //
25 //
26 //
27 //
28 //

Exhibit 1
Page 6

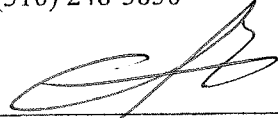
1 17. The Court expressly determines that there is no just reason for delay in entering this
2 Judgment, and pursuant to Rule 54(a) of the Federal Rules of Civil Procedure, the Court directs entry
3 of judgment against Defendants as to all of Zynga's claims.
4

5 Dated _____, 2010

Honorable Marilyn Hall Patel
United States District Court Judge

6 Presented by:

7
8 LARRY W. McFARLAND
9 DENNIS L. WILSON
10 DAVID K. CAPLAN
11 CHRISTOPHER T. VARAS
12 KEATS McFARLAND & WILSON LLP
13 9720 Wilshire Blvd.
14 Penthouse Suite
15 Beverly Hills, CA 90212
16 (310) 248-3830

17
18 
19 _____
20 Christopher Varas
21 Attorneys for Plaintiff
22 Zynga Game Network Inc.

23
24
25
26
27
28
CONSENTS

The undersigned hereby consents to the entry of Final Judgment Upon Consent.

29 Dated  _____, 2010

Colbern C. Stuart, III
LEXEVIA LLP
Attorneys for Defendants Gregory Szimonisz
and Jaret Szimonisz

Exhibit 1

Page 7