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

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16 **DANIEL M. MILLER,**
 17
 18 Plaintiff,

19 v.

20 **FACEBOOK, INC. and YAO WEI**
 21 **YEO,**
 22 Defendants.

No. **3:10-CV-00264 (WHA)**

DECLARATION OF YAO WEI YEO IN
OPPOSITION TO PLAINTIFF DANIEL
MILLER'S MOTION FOR DEFAULT
JUDGMENT

Date: June 9, 2011
 Time: 2:00 p.m.
 Courtroom: 9, 19th Floor
 Judge: Hon. William Alsup

23 I, Yaowei Yeo, hereby declare:

24 1. I am a citizen of the Republic of Singapore. I am not a citizen of any other
 25 nation. My home is in Singapore, where I reside. I have always been a resident of Singapore
 26 except when I attended Cornell University, in Ithaca, New York, between the fall of 2005 and
 my graduation in the spring of 2008. I carry a Singaporean passport. Other than my attendance
 at Cornell, I have come to the United States only as a tourist. I have never been an employee
 for any company or otherwise worked for anyone in the United States. I am 26 years old and I
 have no prior experience in dealing with lawsuits, either in Singapore or the United States. My

1 degree from Cornell is in Electrical and Computer Engineering.

2 2. In this document I wish to explain that although I was aware of this lawsuit
3 beginning in 2009, I did not get involved with it or believe that I needed to get involved with it
4 because I never received formal papers involving me. Then, on April 12, 2011, I received an
5 email from Mr. Miller's lawyers notifying me that they were seeking a default judgment against
6 me. After receiving that email and after communicating the next day with Mr. Miller's lawyer,
7 I immediately retained counsel. Court papers say I was served with the summons and complaint
8 much earlier, in June 2010, by the mailing of those documents to my UPS mail box in New
9 York City. However, I did not actually receive those papers until April 18, 2011, when I
10 visited that mail box and picked up my accumulated mail.

11 3. My first contact from Mr. Miller was on April 30, 2009. On that date I received
12 an email message from Mr. Miller, whom I did not know and had never heard of before, stating
13 that the game I developed known as Chain Rxn was a "direct duplication" of the game
14 Boomshine, which he said he created, and threatening me with legal action. On the same day I
15 replied by email and told him that Chain Rxn is not a "direct duplication of your game." My
16 message was very short.

17 4. Then, on May 11, 2009, I received another email regarding Boomshine. This
18 message was from a lawyer, Mr. Robert Madayag, claiming to represent Mr. Miller, and
19 demanding that I cease and desist activities with Chain Rxn. The message was long, and
20 formal. I replied to Mr. Madayag on May 21, 2009, advising that I would seek advice about
21 this and respond. On June 9, 2009, I sent Mr. Madayag a formal response to his message,
22 denying any wrongdoing on my part, stating:

23 We refer to your letter of 11 May 2009. We have considered your allegations and
24 deny each and every allegation made therein. We further deny that K2xL is entitled
25 to make the demands set out in the letter. We have sought legal advice and are
26 prepared to defend all claims and allegations should the need arise. Further, we ask
that your client discontinues the representations made
on <http://k2xl.com/wordpress/2009/04/29/authorized-flash-game-cloning/> that
the Chain Rxn application is a "clone" of your client's Boomshine application. In
the meantime, all our rights are reserved.

1 5. I did not receive a reply to this message and I did not take any further action at
2 that time. Because of my interest and involvement in internet gaming, I am aware generally of
3 the current events in that space, and I periodically perform Google searches on subjects related
4 to myself, Chain Rxn and other related subjects. Sometime in 2009 while performing such a
5 search, I discovered the existence of Mr. Miller's lawsuit against Facebook and me. I was very
6 interested in this, particularly because of Facebook's involvement, but I had not been the
7 recipient of any legal documents in the case and, as a resident of Singapore, I did not take any
8 action of any kind, other than to periodically review the status through the website Justia.com
9 (where I first learned of the existence of the case). When I first learned about the case, there
10 was a pending motion to transfer venue in the state of Georgia. I was, as stated above, residing
11 in Singapore at this time.

12 6. During the summer of 2010 I decided to call the Facebook lawyers to find out
13 what was going on in the case. I made this telephone call because I was visiting friends in
14 California, which prompted me think of Mr. Miller's lawsuit. It was purely coincidental that
15 Mr. Miller's counsel claims to have served me at my UPS mailbox in New York around the
16 same time; I had not picked up that mail, and it had nothing to do with my calling Facebook.

17 7. I first attempted to call Julio C. Avalos, Esq., one of the lawyers listed for
18 Facebook on the papers listed in Justia.com. My call was returned by a different attorney
19 employed by Facebook (I don't remember his name). We had a short conversation, and my
20 recollection is that he told me that if I have questions about my rights I should hire a lawyer.
21 However, he asked me if I had received any papers about the lawsuit, and when I informed him
22 that I had not, he told me that until I received papers I didn't need to get involved.

23 8. At this point, it seemed to me that this lawsuit was really a dispute between
24 Facebook, on which my game Chain Rxn was available as an application, and Mr. Miller. My
25 understanding of this was somewhat confirmed by what I read on the Justia website.

26 9. Next, on April 12, 2011, I received the email from Mr. Miller's attorneys

1 transmitting a copy of a motion to impose a default judgment against me. These were the first
2 papers I had received personally. Until that time I did not think I needed to do anything about
3 this lawsuit because I had never personally received papers. But after receiving the e-mail from
4 Mr. Miller's counsel, I immediately sent Mr. Miller an email at the email address I had for him.
5 On April 13, 2011 I received an email message from his attorney, Mr. Brian Hancock. Mr.
6 Hancock asked that I communicate only with him and stated that Mr. Miller was willing to
7 entertain any proposals for resolution that I might have. He also advised me of the status of
8 upcoming events, including a jury trial and the date of the motion for the default judgment
9 against me.

10 10. I replied to Mr. Hancock's email the same day and repeated what I had advised
11 Mr. Miller, namely, that I was not guilty of any wrongdoing regarding Chain Rxn, and that
12 since I was confident in my position, the case should be discontinued to avoid further costly and
13 protracted process. Mr. Hancock replied to my message on the same day advising that Mr.
14 Miller would not dismiss the lawsuit and that "...if you feel so strongly that Mr. Miller's case
15 has no merit, then I would suggest you retain counsel and enter an appearance in this action, or,
16 alternatively, in the hope of avoiding costly, protracted litigation, we can talk seriously about a
17 monetary figure that would resolve this litigation once and for all."

18 11. I again replied to Mr. Hancock's message, repeating my fervent belief in my
19 innocence and stating my belief that to settle with Mr. Miller would be an admission of guilt,
20 among other things. Mr. Hancock replied to that message explaining that a settlement can be
21 structured without an admission of guilt, and that since I had not been a party to the lawsuit he
22 had not had the opportunity to review my evidence, and would like to do so. He stated:

23 You have Mr. Miller's response. You are not being strong-armed into doing
24 anything. Mr. Miller is unwilling to voluntarily dismiss his claim against you. If
25 you are unwilling to discuss any possibility of a monetary settlement of this dispute
26 that would compensate Mr. Miller for your past infringement of his Boomshine
copyright, then I see no point in continuing this correspondence. Of course, any
settlement would be subject to the strictest confidentiality, and litigants routinely
insist on structuring settlement agreements so that there is no admission of liability.

1 As to your claims of possessing evidence that proves beyond any doubt that
2 ChainRxn does not infringe Mr. Miller's copyright, I would ask that you produce
3 such evidence so that we might review it and assess our position accordingly.
4 Since you have failed to enter an appearance in this action to date, we've not been
5 able to seek discovery from you. The Protective Order governing this action is
6 attached for your review and was issued by the Court so as to insure that sensitive
7 information and documentation produced in this litigation is not improperly
8 disclosed. If you feel that you should consult with an attorney before producing
9 any evidence in your possession relevant to this action, I would strongly urge you
10 to do so. (Emphasis added.)

11 12. On April 14, 2011, I retained Mr. Andrew Holland of the Thoits, Love,
12 Hershberger & McLean law firm in Palo Alto to defend me, and I first was able to meet with
13 him in person on April 27, 2011. I immediately began the process of collecting necessary
14 information for my attorneys. I wanted the opportunity to show Mr. Hancock and Mr. Miller
15 that I did not duplicate or improperly copy Boomshine, as suggested by Mr. Hancock.

16 13. I earnestly believe I have not copied or improperly infringed the Boomshine
17 game, that I was never formally and properly served with this lawsuit, and that I should be
18 allowed to defend myself on the substance of these claims.

19 14. On April 18, 2011, while visiting New York City, I went to my UPS mail box to
20 pick up any accumulated U.S. mail I had received. This visit to my mail box was my first since
21 I had opened the mail box with UPS in March 2010. I had signed up for the box while in New
22 York for a visit, for the purpose of collecting any miscellaneous U.S. mail sent to me, since I
23 was no longer residing in Ithaca (after my graduation in 2008). I used my New York driver's
24 license as identification during registration for the box.

25 15. On April 18, 2011, when I collected the mail in my box, I found that most of it
26 was junk mail, which I discarded. But the mail also included two packages or envelopes of legal
documents. The first package contained a 2 page document entitled SUMMONS and a 23 page
document entitled FIRST AMENDED COMPLAINT. The second package contained the
following:

- a. Plaintiff's Daniel M Miller's motion for default judgment -- 11 pages
- b. Declaration of Brian D Hancock in support of motion for default judgment against

- 1 defendant Yao Wei Yeo - 3 pages
- 2 c. Declaration of Bradley Green - 2 pages
- 3 d. Declaration of Robert Kajikami - 2 pages
- 4 e. 2nd amended complaint - 11 pages
- 5 f. Documents pertaining to proof of service -9 pages
- 6 g. Notice of entering of default - 1 page
- 7 h. Proposed order granting plaintiff's motion for default judgment - 2 pages
- 8 i. proposed judgment pursuant to entry of default - 3 pages

9 16. In sum, the reason for my non-involvement in this case is that I reside in Singapore
10 and I never received personal delivery of documents notifying me that I was being sued. I had
11 only read about the case online, and I understood that I did not need to do anything until I received
12 papers. It was only on April 12, 2011, that I received at my email address the documents
13 informing me of the impending default judgment hearing. And until I found the papers in my mail
14 box on April 18, 2011, to my knowledge neither plaintiff nor his lawyers had taken any steps to
15 try and contact me personally during the lawsuit after the Spring 2009 email exchange. In short,
16 until I received the notice on April 12, 2011 that I was the subject of an application for a default
17 judgment, I did not think I was required to voluntarily bring myself into the lawsuit.

18 17. I would like to explain the background of my development of Chain Rxn:

19 Chain Rxn, the allegedly infringing game, was developed over a period of time beginning
20 in 2008. The iteration of the game that is in contention was completed in Singapore. The website
21 from which it was hosted is located in the US, specifically in Los Angeles. I have never attempted
22 to nor actually gained access to the source code that forms the Boomshine game, and I certainly
23 didn't copy any portion of the Boomshine source code. Moreover, as explained below, while
24 there are some similarities between Chain Rxn and Boomshine (as well as many differences), I
25 independently developed Chain Rxn based on my years of experience and interest with Flash
26 games. (Adobe Flash is a multimedia platform used to add animation, video and interactivity to
web pages.)

19 19. I have been experimenting and playing with Flash since 2001. A significant part of
20 my influence came from a website located at <http://www.phong.com/>, where the designer would

1 create interesting Flash experiments that play with round circles, colors and basic interactivity. By
2 late 2004, I had already created graphic content that moved beyond simple linear motion with
3 balls, simulating complex mathematical movement and utilized 3-D movement and graphics.
4 These experiments included the use of circular objects in strong bright colors which are similar to
5 the monochrome background motif that Chain Rxn features.

6 20. I first learned of Boomshine in college, and I played the game on a few occasions.
7 I found Boomshine interesting because it was similar to many of my prior flash experiments, but
8 beyond that, I found it very simplistic and I did not refer to it when developing Chain Rxn or use it
9 as a template to create Chain Rxn. Chain Rxn has some basic conceptual similarities to other
10 chain reaction type games such as Boomshine and Atari's Missile Command, but I consider Chain
11 Rxn to be quite different from these and other chain reaction type games.

12 21. I began developing Chain Rxn purely for entertainment purposes. Generally
13 speaking, the first step was to create a single ball on a screen and then to write a computer code
14 which allowed the ball to move around in a linear fashion, and then to rebound off the edges of the
15 screen. This took less than twenty minutes. My next step was to duplicate this single ball a
16 number of times on the screen, and to assign each one a different speed and direction of
17 movement. I experimented with making the balls rebound off of one end of the screen and
18 reappear on the other side but decided that this was confusing because it was not intuitive (like an
19 actor walking off one end of a stage and instantaneously reappearing on the other side). Another
20 system that I tried was to make the balls bounce off each other like pool balls on a table, but this
21 turned out to be too chaotic. I eventually settled on having the balls rebound off the edges because
22 it was intuitively deterministic. This process of experimentation took much more time than what
23 was actually spent on the finished product.

24 22. My next step was to write the computer code for the interactive explosion and then
25 implement the scoring system. I created a score that reflected not only the number of balls that had
26 been exploded, but also the length of the explosion chains so that the score increased exponentially

1 with the length of the explosion chain. By the time I had completed this phase of the
2 development, I had isolated a number of variables that would affect the basic mechanism of the
3 game, namely the width and height of the game screen, the speed of the balls and the amount of
4 variation between the speeds of different balls, the width and height of the balls, the width and
5 height of the explosions, and the amount of time it takes for the balls to explode, to last and for the
6 explosion to collapse. All of these factors significantly changed the basic functionality of Chain
7 Rxn, and I spent hours determining the optimal combination. My primary aim was to make the
8 game easy and fun to complete, but yet still provide a challenge that would make the game re-
9 playable and open-ended.

10 23. Once I had created the basic core of Chain Rxn, I had to determine the number of
11 balls per level and the required number of exploded balls to pass each level. I began trying to write
12 mathematical models to derive a formula to calculate the probability for a set number of balls on
13 screen. This proved more difficult than I had anticipated, so I settled with simulating the game
14 thousands of times to derive probabilities at each level. The process of determining the number of
15 balls to use took a few days, but it was done in parallel with other development.

16 24. The other aspect that had to be developed was the sound. A rigorous process was
17 taken where the sound was synthesized and tested until I decided it was perfect, everything from
18 pitch to timbre. I had different implementations of the sound, one of which was when the sound
19 played in relation to the color of the ball that had exploded.

20 25. I also had to determine the look and feel of Chain Rxn. This was done over a
21 period of time. Everything was tweaked and tested, including the background color, the look of
22 the cursor before the first explosion is created, the bright and vibrant color of the balls and
23 explosions and the interaction between the colors during overlapping explosions.

24 26. Once the basic game play and the look and feel were satisfactory to me, I had to
25 build an interface around it. I wanted the interface to be simple to understand, even for speakers
26 who did not understand English. Thus, I tried to use as little words as possible and tried to use

1 numbers and symbols to reinforce the concepts whenever possible. The logo for Chain Rxn (3
2 intersecting circles), for example, was designed to convey the game mechanism. The moving
3 arrow on the first page was designed to convey the message 'click to continue'. The success or
4 failure screens between levels were marked out clearly with big green and red icons to denote
5 success or failure. I also wanted the interface to be uncluttered, neat and elegant, in line with my
6 own general artistic style.

7 27. Chain Rxn was tweaked and changed, left aside at times, and finally completed in
8 approximately March 2009. It immediately received rave reviews amongst users, which was
9 somewhat of a surprise to me since it had been nothing more than a personal pet project. The main
10 appeal of the game, as it turned out, was its bright beautiful colors that attracted users to try the
11 game, validating my artistic vision of bright happy colors against a grey background.

12 28. I estimate the costs associated with Chain Rxn to be at least a few thousand dollars.

13 29. As I mentioned above, my activities in the US have been limited since my
14 graduation from Cornell. As far as Chain Rxn is concerned, its activities were limited to the
15 domain hosting in southern California and its status as an application within Facebook. I did not
16 maintain any interactive website for Chain Rxn whereby anyone could conduct any business
17 transactions or contact me. The game had a simple site where it could be played. The game's site
18 on Facebook allowed visitors to contact me by email, but did not sell any products or services.
19 When I began my relationship with Facebook, I did not know of Mr. Miller or where he resided or
20 did business. And again, my UPS mail box was set up only as a landing spot for mail that might
21 be directed to me within the US, primarily as a result of my residency in Ithaca while a student at
22 Cornell.

23 I declare under penalty of perjury that the foregoing is true and correct and that this
24 declaration was executed on May 16, 2011.

25
26


Yao Wei Yeo