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Theodore K. Stream, State Bar No. 138160  
Jamie Wrage, State Bar No. 188982  
Emma D. Enriquez, State Bar No. 225059  
**GRESHAM SAVAGE NOLAN & TILDEN,**  
**A Professional Corporation**  
3750 University Avenue, Suite 250  
Riverside, CA 92501-3335  
Ted.Stream@greshamsavage.com  
Jamie.Wrage@greshamsavage.com  
Emma.Enriquez@greshamsavage.com  
Telephone: (951) 684-2171  
Facsimile: (951) 684-2150

Robert P. Taylor, State Bar #46046  
**MINTZ, LEVIN, COHN, FERRIS,**  
**GLOVSKY AND POPEO, PC**  
1400 Page Mill Road  
Palo Alto, CA 94304  
rptaylor@mintz.com  
Telephone: (650) 251-7740  
Facsimile: (650) 400-6995

Attorneys for Plaintiff Psycho Monkey, LLC

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO**

PSYCHO MONKEY, LLC,

Plaintiff,

v.

ZYNGA GAME NETWORK, INC., a  
Delaware Corp. and DOES 1-10,  
inclusive,

Defendants.

**ORIGINAL  
FILED**  
FEB 11 2009  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CASE NO. CV 09 0603 MEJ

**FIRST AMENDED COMPLAINT  
FOR DAMAGES AND  
INJUNCTIVE RELIEF BASED  
ON:**

- 1. **COPYRIGHT INFRINGEMENT**  
[17 U.S.C. §§ 101 et. seq.]
- 2. **FEDERAL UNFAIR  
COMPETITION/FALSE  
DESIGNATION OF ORIGIN** [15  
U.S.C. §§ 1125(a) et. seq.]
- 3. **CALIFORNIA UNFAIR  
COMPETITION [CALIFORNIA  
BUSINESS AND PROFESSIONS  
CODE §§ 17200 et. seq.]**

**JURY TRIAL DEMANDED**

**FIRST AMENDED COMPLAINT FOR COPYRIGHT INFRINGEMENT, FEDERAL  
UNFAIR COMPETITION AND CALIFORNIA UNFAIR COMPETITION**

GRESHAM SAVAGE  
NOLAN & TILDEN,  
A PROFESSIONAL CORPORATION  
3750 University Ave., Ste. 250  
Riverside, CA 92501-3335  
(951) 684-2171

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I.

**NATURE OF ACTION**

1. Psycho Monkey, LLC (“Psycho Monkey”) creates and manages text-based games for online, social networks. Psycho Monkey owns the intellectual rights to a unique game, “Mob Wars”, which is operated on the social network “Facebook”. After Defendants failed in its efforts to acquire “Mob Wars” and to hire Psycho Monkey’s principal for development of its own games, Defendants cloned “Mob Wars” and dubbed its game “Mafia Wars”. Defendants have illegally posted “Mafia Wars” on “Myspace”, “Facebook”, and other social networks. “Mafia Wars” is wrongfully diverting customers and revenue from Psycho Monkey.

II.

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over the claims relating to the Copyright Act (17 U.S.C. §§ 101, 501) and the Lanham Act (15 U.S.C. §§ 1125 et. seq.) pursuant to 28 U.S.C. § 1331 (federal subject matter jurisdiction) and 28 U.S.C. §1338(a) (any act of Congress relating to copyrights, patents and trademarks). This Court has subject matter jurisdiction over the related state law claims under 28 U.S.C. § 1367 (action asserting a state claim of unfair competition joined with a substantial and related federal claim under the patent, copyright or trademark laws).

3. This Court has personal jurisdiction over Defendants because Defendants are doing business in California and have wrongfully diverted business from Psycho Monkey by posting “Mafia Wars” and charging fees for game usage in California.

4. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and (c) because a substantial part of the events giving rise the claim occurred in this

1 District, Defendants' principal place of business is in this District, and harm to  
2 Psycho Monkey has occurred in this District. This action is properly assigned to  
3 the San Francisco Division of this judicial district pursuant to Local Rules 3-2 (c)  
4 and (d) because this is an intellectual property action arising in San Francisco  
5 County.

6 **III.**

7 **PARTIES**

8 5. Psycho Monkey is, and was at all times relevant herein, a limited  
9 liability company in good standing, organized under the laws of the State of  
10 California, and having its principal place of business in the State of California,  
11 County of San Francisco.

12 6. Defendant Zynga Game Network, Inc. ("Zynga") is, and was at all  
13 times relevant herein, a Delaware corporation, having its registered place of  
14 business in Menlo Park, County of San Mateo. Zynga is a direct competitor of  
15 Psycho Monkey's.

16 7. Psycho Monkey is unaware of the true names and capacities, whether  
17 individual, corporate or otherwise, of Defendants Does 1 through 10, inclusive, and  
18 therefore sues these Defendants by such fictitious names. Psycho Monkey will  
19 seek leave to amend this complaint when the status and identity of these  
20 Defendants are ascertained. The Doe Defendants include persons and entities  
21 assisting or acting in concert with the other Defendants in connection with the acts  
22 complained herein. All further references in this Complaint to "Defendant" or  
23 "Defendants" expressly include each fictitiously named Defendant.

24 8. Psycho Monkey is informed and believes and thereon alleges that at  
25 all times herein mentioned and material hereto, some or all of said Defendants  
26 were the officers, directors, principals, agents, servants, employees and/or  
27 authorized representatives of some or each and every other Defendant, and each of  
28

1 them; and that, in doing the actions herein alleged or in not doing those acts herein  
2 alleged not to have been performed by omission, said Defendants were acting  
3 within the course and scope of such agency and/or authority.

4 **IV.**

5 **GENERAL ALLEGATIONS**

6 9. In or around December 2007, David Maestri (“Maestri”) created an  
7 interactive, online game, “Mob Wars”. Maestri is a principal of Psycho Monkey.

8 10. Mob Wars is played on the social networking website  
9 www.facebook.com (“Facebook”). Players assume the role of a mobster and  
10 interact with other players on Facebook using that persona. The goal of the game  
11 is to build a reputation as a mobster within the Facebook community by carrying  
12 out various tasks. A player’s status depends on the number of points the player has  
13 accumulated.

14 11. Players are awarded points, in large part, based on the number of  
15 connections each player has within the Facebook community. A player’s ability to  
16 carry out assigned tasks and move on to the next level in the game depends on the  
17 number of connections.

18 12. Points are also awarded to players that agree to “click” on to links for  
19 outside advertisers and to participate in certain activities therein. These links  
20 generate revenue for Psycho Monkey.

21 13. Players may also purchase points directly from Psycho Monkey.

22 14. On July 9, 2008, Psycho Monkey registered its work, “Mob Wars”,  
23 with the United States Copyright Office. A true and correct copy of Certificate of  
24 Registration, TX 6-851-076, is attached hereto as Exhibit “1” and is incorporated  
25 by reference. The registered work includes the source code and screen shot for  
26 each command term referenced in paragraph 15 below.

1           15.   “Mob Wars” has eleven distinct command terms. Players must use  
2 these terms in order to advance through the game. Players are ranked according to  
3 four categories: (1) “bank funds”, (2) “fight count”, (3) “kill count”, and (4) “kills  
4 on the hit list”. Players use the following eleven distinct command terms to  
5 improve rankings:

- 6           •     Job List. The job list allows players to earn money and  
7           experience. This is ordinarily the first command term that players  
8           engage in because they need money and experience in order to  
9           progress to the next level. Within this command term, players are  
10          initially asked to perform tasks such as muggings, burglaries, car  
11          thefts, and liquor store robberies. As a player earns more experience,  
12          they will be offered different jobs. Each job requires a minimum  
13          amount of energy, weapons, or tools. Energy is consumed every time  
14          a player completes a task.
- 15          •     Stockpile. Players can acquire weapons, vehicles, and gadgets  
16          through this command term. Players can use the money they earn  
17          from the “Job List” to purchase crowbars, baseball bats, guns and  
18          vehicles. Weapons, vehicles and gadgets are necessary in order to  
19          complete high level tasks on the “Job List.” Furthermore, weapons  
20          can be used to attack other mobsters or defend attacks initiated by  
21          other mobsters.
- 22          •     Fight Now. Players can attack and steal from rival mobsters  
23          through this command term. By clicking on this command term,  
24          players are given a list of players (and the size of their mobs) that can  
25          be attacked. If a player is successful in the fight, he robs that player  
26          of a portion of their money. If a player is unsuccessful in the fight, he

1 loses health and stamina points. Players are recognized in the “Made  
2 Men” command term for winning the most fights.

3 • Bank Account. Players can deposit money they earn from the  
4 game into a Bank Account through this command term. A player  
5 must have a minimum of \$10,000 to deposit money into the Bank.  
6 All money in the bank account is a safe-haven for players because a  
7 player that loses a fight or gets killed will not lose any money he has  
8 in the bank account.

9 • The City. Players can claim control over the city and earn  
10 recurring income through this command term. Players can purchase  
11 empty lots, city blocks, downtown squares, villas, restaurants, and  
12 apartments. Each property costs a different amount of money based  
13 on the income generated therefrom.

14 • The Hospital. Players can heal their wounds by going to the  
15 hospital. As mentioned above, players will lose health and stamina  
16 points if they lose a fight or get killed. Players cannot go to the  
17 Hospital unless they have a Bank Account.

18 • My Mob. Players can earn money for each new player that  
19 joins their mob through this command term. These players are  
20 acquired by “inviting” other members of the social network to play  
21 the game. If the invitation is accepted, that person becomes a mob  
22 member. The size of a player’s mob directly impacts that player’s  
23 ability to win fights and defend against attacks.

24 • The Hit List. Players can publicly list rival mobsters on the  
25 “Hit List.” All players (even those that are not in your mob) are  
26 encouraged to kill these players for two reasons. First, players are  
27 praised for the total number of kills they have on the Hit List in the  
28

1 “Made Men” command term. Second, players can earn money by  
2 killing people on the Hit List.

3 • The Godfather. The flow of the game is regulated through the  
4 Godfather command term. While playing the game, players will  
5 invariably consume energy, need cash, or build mob allies through the  
6 social networking platform. This can take considerable time because  
7 a player can only earn one energy point every five minutes, can only  
8 acquire cash by consuming energy, and can only add mob members by  
9 interacting with other players. If a player does not want to wait, they  
10 can purchase cash, mob members, or energy with real money through  
11 Psycho Monkey.

12 • My Boss. This command term allows players to view their  
13 statistics and boost their character traits.

14 • Made Men. This command term praises the best players in the  
15 game by identifying players that have: (1) the most money in their  
16 Bank Account; (2) won the most fights, (3) killed the most people,  
17 and (4) killed the most people on the “Hit List.”

18 16. Mob Wars was first published in February of 2008. Shortly thereafter,  
19 Defendants approached Maestri/Psycho Monkey in an attempt to acquire the  
20 intellectual rights to Mob Wars. Psycho Monkey and Defendants entered into  
21 discussions, accordingly. After negotiations fell through, Defendants intentionally  
22 and deliberately cloned Mob Wars, dubbing its game “Mafia Wars”. Defendants  
23 then posted “Mafia Wars” on www.Myspace.com (“Myspace”), Facebook, and  
24 other social networks as part of its campaign to wrongfully divert revenues from  
25 Mob Wars.

26 17. Exhibit “2” consists of true and correct copies of the following  
27 documents: (a) Psycho Monkey’s screen shots for “Mob Wars”, as of July 2008,  
28

1 and (b) Defendants' infringing material, as of July 2008, for "Mafia Wars", as  
2 published on "Myspace". For comparison purposes, each Psycho Monkey screen  
3 shot precedes that of the correlating, infringing material.

4 V.

5 **FIRST CAUSE OF ACTION**  
6 **(COPYRIGHT INFRINGEMENT [17 U.S.C. §§ 101, et. seq.]**  
7 **Against All Defendants**

8 18. Psycho Monkey refers to and incorporates paragraphs 1 to 17 above  
9 as though fully set forth herein.

10 19. Defendants deliberately and intentionally copied the physical and  
11 operational aspects of Mob Wars. Defendants copied Mob Wars' layout and  
12 arrangement, visual presentation, sequence and flow, scoring system, and Mob  
13 Wars' overall look.

14 20. Defendants Copied the Layout and Arrangement of Main Menu. Mob  
15 Wars' Main Menu is creatively structured around eleven distinct command terms --  
16 (1) "The Job List"; (2) "The Hit List"; (3) "The City"; (4) "The Bank"; (5) "The  
17 Godfather"; (6) "The Hospital"; (7) "Fight Now"; (8) "My Stockpile"; (9) "My  
18 Mob"; (10) "My Boss"; and (11) "Made Men". Defendants copied all eleven  
19 command terms and arranged the command terms, along with a similar description  
20 of each command term, in a format nearly identical to that of Mob Wars.

21 21. Defendants Copied the Individual Screen Displays for Each  
22 Command Term.

- 23 • *The Job List/Crime Jobs* – In order to gain experience in Mob  
24 Wars and Mafia Wars, a player must complete jobs or missions.  
25 This command term is labeled "The Job List" in Mob Wars and  
26 "Crime Jobs" in Mafia Wars. Both of these screen displays  
27 describe each task, the payout for each task, the experience for  
28 each task, the energy required for each task, and the weapons



required for each task. The following matrix shows the substantial similarity between the two screens' displays:

Mob Wars	Mafia Wars
"Mugging" Payout: \$200-\$300 Experience: +1 Req'd Energy: 1 Req'd Weapons: None	"Mugging" Payout: \$200-\$300 Experience: +1 Req'd Energy: 1 Req'd Weapons: None
"House Burglary" Payout: \$800-\$1,200 Experience: +3 Req'd Energy: 3 Req'd Weapons: Crowbar	"Corner Store Hold-Up" Payout: \$800-\$1,200 Experience: +3 Req'd Energy: 3 Req'd Weapons: Crowbar
"Stoplight Car Theft" Payout: \$1,400 - \$2,500 Experience: + 5 Req'd Energy: 5 Req'd Weapons: Pistol	"Warehouse Robbery" Payout: \$1,400-\$2,500 Experience: +5 Req'd Energy: 5 Req'd Weapons: Colt Revolver
"Liquor Store Robbery" Payout: \$2,800 - \$4,600 Experience: +8 Req'd Energy: 7 Req'd Weapons: Pistol & Shotgun	"Auto Theft" Payout: \$2,800-\$4,600 Experience: +8 Req'd Energy: 7 Req'd Weapons: Colt Revolver and Sawed-Off Shotgun

- *The City/Properties.* Players can acquire rental property in to build a bank account. This command term is labeled "The City" in Mob Wars and "Properties" in Mafia Wars. Screens contain the following additional similarities:

Mob Wars	Mafia Wars
"Empty Lot"	"Abandoned Lot"

Income: \$100 Buy/Sell: \$5,000	Income: \$100 Buy/Sell: \$5,000
"City Block" Income: \$300 Buy/Sell: \$50,000	"Commercial Block" Income: \$300 Buy/Sell: \$50,000
"Downtown Square" Income: \$2,000 Buy/Sell: \$1,000,000	"Prime Downtown Lot" Income: \$2,000 Buy/Sell: \$1,000,000

- *The Bank/The Bank.* The "bank" is a safe haven for players to store their money. This command term is labeled "The Bank" in Mafia Wars and Mob Wars. Although these screen displays are not identical, they convey the same expression in a similar manner. If players get killed in Mafia Wars or Mob Wars, they lose all money not otherwise held in a bank.
- *The Godfather/The Godfather.* The "Godfather" command term is the monetization process by which players can purchase, through "favor points" or "reward points," cash, mob members, or energy. This command term is labeled "The Godfather" in Mafia Wars and Mob Wars. This command term allows players to expedite the game-play so that they can accomplish tasks faster than normal. Players can acquire "favor points" in Mob Wars or "reward points" in Mafia Wars by signing up for certain advertising links or purchasing "favor points" or "reward points" with real money from the web host (Psycho Monkey or Zynga). The following matrix shows the substantial similarity between these two screens' displays:

<b>Mob Wars</b>	<b>Mafia Wars</b>
Offer: The Godfather offers you	Godfather's Offer: The

1 2 3 4 5 6	\$5,500 for 10 favor points Action: accept for 10 favor points.	Godfather offers you \$10,000 for 10 reward points Action: accept for 10 points.
7 8 9	Offer: The Godfather offers you 1 mob member (hired gun) for 20 favor points. Action: accept for 20 favor points.	Offer: The Godfather offers you 1 extra family member for 20 reward points. Action: accept for 20 reward points.
10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Offer: The Godfather offers you 10 energy (refill) for 10 favor points. Action: accept for 10 favor points.	Offer: The Godfather offers you a full energy refill for 10 reward points. Action: accept for 10 points.

- *The Hospital/The Hospital.* Players go to the Hospital to increase their health. This heals wounds incurred during fights/battles. This command term is labeled “The Hospital” in both Mob Wars and Mafia Wars. In both games, a player must use “clean” money in order to go to the Hospital. In order to have clean money, a player must have sufficient funds to open a Bank Account (\$10,000.00).
- *My Stockpile/Inventory.* Players must have weapons in order to complete jobs or missions. Weapons can be obtained through the “My Stockpile” command term in Mob Wars and the “Inventory” command term in Mafia Wars. The screen displays for these command terms are nearly identical, as they both provide users with the selection of weapons, the cost of weapons, and the attack/defense value for the weapons. The following matrix shows that the weapons cost the same and retain the same attack and defense values:

Mob Wars	Mafia Wars
Details: Crowbar/Attack 1 Buy/Sell: \$300	Details: Crowbar/Attack 1/Defense 1 Buy/Sell: \$300
Details: Baseball Bat/Attack 1/Defense 1 Buy/Sell: \$700	Details: Baseball Bat/Attack 1/Defense 0 Buy/Sell: \$700
Details: Colt 1911/Attack 2/Defense 2 Buy/Sell: \$1000	Details: Colt Pistol/Attack 2/Defense 2 Buy/Sell: \$1000
Details: 44 Magnum/Attack 3/Defense 1 Buy/Sell: \$2000	Details: Sawed Off Shotgun/Attack 3/Defense 1 Buy/Sell: \$2000
Details: Pump-Action Shotgun/Attack 2/Defense 4 Buy/Sell: \$3000	Details: Grenades/Attack 2/Defense 4 Buy/Sell: \$3000

- Fight Now/FIGHT!* Players can engage in a fight with another player using various different weapons. This command term is labeled "Fight Now" in Mob Wars and "FIGHT!" in Mafia Wars. Both of these screen displays are in blue type-font and list other players (and their mob size) that are online and can be attacked. Fighting allows users to gain experience points to move to towards the next level. If a player wins the fight, they also steal a portion of the other player's money.
- My Mob/My Mafia.* Players can form strategic alliances with other users in the platform host website (Facebook) by creating their own mob. This command term is labeled "Your Mob" in Mob Wars and "My Mafia" in Mafia Wars. The screen displays for both games allow players to band together and attack other mobs, defend attacks initiated by other mobs, gain money, and acquire experience points. Although the screen display in Mafia Wars is

1 slightly different from Mob Wars, the underlying expression  
2 behind these command terms and the accompanying screen  
3 displays have been copied by Mafia Wars.

- 4 • *The Hit List/The Hit List*. Players can list other players on the Hit  
5 List as a retaliatory move. This command term is labeled “The Hit  
6 List” in Mob Wars and Mafia Wars. The Hit List is publicly  
7 announced to all players and encourages all players of the game to  
8 attack players that are listed on the Hit List. Players that have  
9 killed the largest number of people on the Hit List are praised in  
10 the “Top Mobsters” command term in Mob Wars and the “Top  
11 Families” command term in Mafia Wars. Furthermore, players can  
12 steal the money from any player they kill on the Hit List.
- 13 • *My Boss/Upgrades*. Players can view their own statistics by virtue  
14 of this command term. This command term is labeled “My Boss”  
15 in Mob Wars and “Upgrades” in Mafia Wars. By clicking on this  
16 command term, players are directed to a screen display that  
17 contains a player’s attack strength, defenses strength, max energy,  
18 max health, and stamina. The following matrix shows the  
19 substantial similarity between these two screens’ displays:

<b>Mob Wars</b>	<b>Mafia Wars</b>
Attack Strength: Attack points make your mob more effective when attacking other mobs.	Attack Strength: Attack points make your mob more effective when attacking other mobs.
Defense Strength: Defense points make your mob more effective at defending from hostile mob attacks.	Defense Power: Defense points make your mob more effective at defending from hostile mob attacks.
Max Energy: Increase your energy capacity to complete	Maximum Energy: Increase your energy capacity to

more jobs and other actions.	complete more jobs and other actions.
Max Health: Increase your max health to better survive intense fights.	Max Health: Increase your max health to better survive intense fights.
Stamina: Increase your stamina to fight more often.	Maximum Stamina: Increase your stamina to fight more often. 2 skill points needed for increase!

- *Made Men/Top Families.* Both Mob Wars and Mafia Wars rank players according to the same four categories: "Kill Count" (most kills); "Top Fighters" (most fights won); "Top Bounty Hunters" (most kills for people on the Hit List); and "Top Tycoons" (most money in the bank). The following shows the screen display for this command term:

<b>Mob Wars</b>	<b>Mafia Wars</b>
Most Deadly – Knock-out Count	Most Deadly – KO Count
Top Fighters – Win Count	Top Fighters – Win Count
Top Bounty Hunters – Head Count	Top Bounty Hunters – Head Count
Top Tycoons – Bank Funds	Top Tycoons – Bank Funds

22. Defendants Copied the Sequence and Flow of Mob Wars. Players in both games are confined to the same parameters based on time, energy, health, stamina, weapons, experience, and size of players' mob. Players must efficiently use their skill and calculation to complete missions, purchase weapons, acquire property, fight other players, kill other players, and build their own mob. Mob Wars' sequence and flow is copied because players are required to strategically

1 balance the following two criteria: (1) the ability to complete tasks by gaining  
2 experience, money, weapons, and mob members, and (2) the ability to complete  
3 these tasks by efficiently managing a player's time, which can only be  
4 accomplished by economically regenerating energy, health, and stamina.

5 23. Defendants Copied The Scoring System in Mob Wars. The scoring  
6 system in Mafia Wars is substantially similar to the scoring system in Mob Wars:  
7 (i) the choice of weapons, their functions and their prices are virtually identical; (ii)  
8 the choice of jobs, the weapons and energy needed to complete the jobs, and the  
9 experience points received for completing jobs are virtually identical; (iii) the price  
10 of properties, the choice of properties, and the income from owning properties are  
11 virtually identical; (iv) the costs to purchase godfather reward points ("favor  
12 points" or "reward points") are virtually identical; (v) the requirements for the  
13 "hitlist" are identical; and (vi) the "upgrade" feature is virtually identical because  
14 the values for increase strength, energy, health, and stamina are substantially  
15 similar.

16 24. Defendants Copied The Overall Plot, Theme, Mood, Setting, Pace,  
17 Characters, and Sequence of Mob Wars. As demonstrated in more detail above,  
18 Mafia Wars copied the physical and operational aspects of Mob Wars by copying  
19 the layout and arrangement of Mob Wars, the visual presentation of each screen  
20 display within the game, the sequence and flow of the game, the scoring system  
21 used by the game, and the overall look and feel of the game. Furthermore, Mafia  
22 Wars copied the underlying premise behind the game, which is to build your bank  
23 account, form your own mob (by making alliances with other users on the social  
24 networking website or by purchasing mob members from Psycho Monkey),  
25 fighting and killing rival mob members, and killing people on the "hit list."  
26 Therefore, Defendants copied the same plot, theme, mood, setting, pace,  
27 characters, and sequence of events from Mob Wars.

28

1 25. Defendants copied Mob Wars in a manner that clearly infringes on  
2 Psycho Monkey's copyright and unless Defendants are enjoined, they will continue  
3 do so. At no time did Psycho Monkey authorize Defendants to reproduce, adapt,  
4 or distribute Mob Wars.

5 26. Each player that is wrongfully diverted to Mafia Wars constitutes an  
6 entire network of social connections and related revenues (each player's social  
7 network on Facebook is part of the player's value as a customer to Psycho  
8 Monkey).

9 27. As a direct result of Defendants' infringement of Psycho Monkey's  
10 rights, Psycho Monkey has sustained, and will continue to sustain, substantial  
11 injury, loss, and damages in an amount exceeding \$100,000.00 and as proven at  
12 trial.

13 28. Psycho Monkey is entitled to a permanent injunction restraining  
14 Defendants, their officers, directors, agents, employees, representatives and all  
15 persons acting in concert with them from engaging in further acts of copyright  
16 infringement.

17 29. Psycho Monkey is further entitled to recover from Defendants the  
18 gains, profits and advantages Defendants have obtained as a result of their acts of  
19 copyright infringement. Psycho Monkey is at present unable to ascertain the full  
20 extent of the gains, profits and advantages Defendants have obtained by reason of  
21 their acts of copyright infringement, but Psycho Monkey is informed and believes,  
22 and on that basis alleges, that Defendants obtained such gains, profits and  
23 advantages in an amount exceeding \$500,000.00.

24 VI.

25 **SECOND CAUSE OF ACTION**  
26 **(UNFAIR COMPETITION/FALSE DESIGNATION OF ORIGIN [15 U.S.C.**  
27 **1125(a)])**  
28 **Against All Defendants**



1           30. Psycho Monkey refers to and incorporates paragraphs 1 to 29 above  
2 as though fully set forth herein.

3           31. Psycho Monkey operates Mob Wars, its flagship game, under the  
4 mark "Mob Wars". The mark consists of the words in a stylized format.

5           32. Psycho Monkey first adopted and began using this mark in or around  
6 February of 2008 when it launched Mob Wars on Facebook and the mark is  
7 protected under common law. Psycho Monkey is in the process of obtaining  
8 formal trademark registration.

9           33. Psycho Monkey has continuously used this mark since that date to  
10 identify its Mob Wars game and the mark is intended to identify the game across  
11 different social networking platforms.

12           34. Mob Wars has over 3 million subscribers. The internet, however,  
13 constitutes a virtual market that spans the globe. Psycho Monkey has worked to  
14 promote this mark as part of its distinctive game site within the social networking  
15 community.

16           35. The font type/graphic style for "Mafia Wars" is markedly similar to  
17 "Mob Wars". Defendants have placed the name "Mafia Wars" in or around the  
18 same locations throughout the game as in Mob Wars.

19           36. Defendants' violation of Psycho Monkey's common law trademark  
20 rights is likely to cause confusion, mistake, or deception among customers in  
21 violation of the Lanham Act.

22           37. Each player that is wrongfully diverted to Mafia Wars constitutes an  
23 entire network of social connections and related revenues (each player's social  
24 network on Facebook is part of the player's value as a customer to Psycho  
25 Monkey).

26           38. As a direct result of Defendants' violation of 15 U.S.C. §§ 1125(a) et.  
27 seq., ("Lanham Act"), Psycho Monkey has sustained, and will continue to sustain,  
28

1 substantial injury, loss and damages in an amount exceeding \$100,000.00 and as  
2 proven at trial.

3 39. Psycho Monkey is entitled to a permanent injunction restraining  
4 Defendants, their officers, directors, agents, employees, representatives and all  
5 persons acting in concert with them from engaging in the conduct described herein  
6 that violates the Lanham Act.

7 40. Psycho Monkey is further entitled to recover from Defendants the  
8 gains, profits, and advantages Defendants have obtained as a result of their  
9 violation of the Lanham Act. Psycho Monkey is at present unable to ascertain the  
10 full extent of the gains, profits, and advantages Defendants have obtained by  
11 reason of their acts of copyright infringement, but Psycho Monkey is informed and  
12 believes, and on that basis alleges, that Defendants obtained such gains, profits,  
13 and advantages in an amount exceeding \$500,000.00.

14 **VII.**

15 **THIRD CAUSE OF ACTION**  
16 **(UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS AND**  
17 **PROFESSIONS CODE § 17200)**  
18 **Against All Defendants**

19 41. Psycho Monkey refers to and incorporates paragraphs 1 to 40 above  
20 as though fully set forth herein.

21 42. The aforesaid acts by Defendants illegally infringe upon Psycho  
22 Monkey's intellectual property rights and have wrongfully diverted business away  
23 from Psycho Monkey. Defendants have, and continue to, unfairly compete with  
24 Psycho Monkey in violation of California Business and Professions Code §§ 17200  
25 et. seq. (California Unfair Competition Law, the "UCL").

26 43. Defendants' actions as alleged above violate the "unfair" prong of the  
27 UCL because (a) the utility of such actions is outweighed by the gravity of the  
28 harm they cause to Psycho Monkey, (b) such actions are immoral, unethical,

1 oppressive, unscrupulous, and substantially injurious to consumers, and (c) such  
2 actions constitute incipient violations of state and federal copyright laws.

3 44. Defendants' actions as alleged above violate the "fraudulent" prong of  
4 the UCL because they are likely to mislead and confuse a statistically significant  
5 percentage of reasonable consumers.

6 45. Defendants' actions as alleged above violate the "unlawful" prong of  
7 the UCL because those same actions also constitute violations of the state and  
8 federal statutes set forth above.

9 46. Defendants' conduct has injured Psycho Monkey and, unless  
10 enjoined, will continue to cause great, immediate, and irreparable injury to Psycho  
11 Monkey.

12 47. Psycho Monkey is without an adequate remedy at law.

13 48. Psycho Monkey is therefore entitled to injunctive relief and an order  
14 for disgorgement of all of Defendants' ill-gotten gains pursuant to California  
15 Business and Professions Code § 17203.

16 **PRAYER**

17 **WHEREFORE**, Psycho Monkey prays for judgment against Defendants as  
18 follows:

19 1. For a permanent injunction enjoining Defendants and all persons  
20 acting in concert with them from manufacturing, producing, distributing, adapting,  
21 displaying, advertising, promoting, offering for sale and/or selling, or performing  
22 any materials that are substantially similar to Mob Wars, and to deliver to the  
23 Court for destruction or other reasonable disposition all materials and means for  
24 producing the same in Defendants' possession or control;

25 2. For a permanent injunction, enjoining Defendants and all persons  
26 acting in concert with them from using the name "Mafia Wars" in connection with  
27 any web-based mafia-style video game on any social networking website or from  
28

1 otherwise using Psycho Monkey's mark, "Mob Wars", or in any way causing the  
2 likelihood of confusion, deception, or mistake as to the source, nature, or quality of  
3 Defendants' games and to deliver to the Court for destruction or other reasonable  
4 disposition all materials bearing the infringing mark in Defendants possession or  
5 control;

6 3. For any and all damages sustained by Psycho Monkey in a sum no  
7 less than \$100,000.00;

8 4. For all of Defendants' profits wrongfully derived from the  
9 infringement of Psycho Monkey's intellectual property rights in an amount no less  
10 than \$500,000.00;

11 5. For reasonable attorney's fees;

12 6. For costs of suit herein; and

13 7. For other such relief as the Court deems proper.

14 Dated: February 11, 2009

GRESHAM SAVAGE NOLAN & TILDEN,  
A Professional Corporation

16  
17 By: 

Theodore K. Stream

Jamie Wfage

Emma D. Enriquez

Attorneys for Plaintiff, Psycho Monkey, LLC

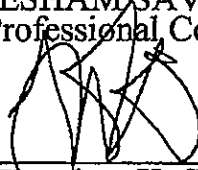
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**DEMAND FOR JURY TRIAL**

Plaintiff Psycho Monkey hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Dated: February 11, 2009

GRESHAM SAVAGE NOLAN & TILDEN,  
A Professional Corporation



By: \_\_\_\_\_  
Theodore K. Stream  
Jamie Wrage  
Emma D. Enriquez  
Attorneys for Plaintiff, Psycho Monkey, LLC