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10
 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION
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15 ZYNGA GAME NETWORK INC., a Delaware
 Corporation,
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 17 Plaintiff,
 18 v.
 19 JASON WILLIAMS, an individual, LUNA
 MARTINI, an individual, and JOHN DOES 1-5
 20 D/B/A MW GROUP
 21 Defendants.
 22

CASE NO. CV-10:01022 JF (PVTx)

**MOTION TO CONTINUE FRCP 4(m)
 SERVICE DEADLINE; AND**

**MEMORANDUM OF POINTS AND
 AUTHORITIES**

No Hearing Date Requested

1 **MOTION**

2 Plaintiff Zynga Game Network Inc. (“Zynga”) hereby moves the Court pursuant to Civil
3 Local Rules 6-3 and 7-11 for an order continuing the service deadline of Federal Rule of Civil
4 Procedure (“Rule”) 4(m). This motion is based on the Motion, the declaration of David K. Caplan,
5 the [Proposed] Order, all pleadings on file in this action, and any other matter that may be submitted
6 in support of the motion.

7 **ISSUES TO BE DECIDED**

8 Whether the Federal Rule of Civil Procedure 4(m) deadline for Zynga to serve Defendants,
9 currently July 8, 2010, shall be continued.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 Plaintiff Zynga Game Network Inc. (“Zynga”) respectfully requests that the Court continue
13 the service deadline of Federal Rule of Civil Procedure (“Rule”) 4(m) as set forth below.

14 **II. FACTS**

15 Rule 4(m) requires the plaintiff to serve the defendant within 120 days of the date a case is
16 filed, unless it shows that there is good cause to extend that period. This case was filed on March
17 10, 2010. Accordingly, the Rule 4(m) deadline will expire on July 8, 2010.

18 To date, Zynga has been unable to confirm the identity or location of the defendants in this
19 case (“Defendants”). (*See* Declaration of David K. Caplan in Support of Zynga’s Motion to
20 Continue FRCP 4(m) Service Deadline (“Caplan Decl.”) ¶ 2; *see also* Dkt. Nos. 9-11 (Zynga’s
21 Motion for Leave to Conduct Third Party Discovery (“Discovery Motion”) and Declarations of Tara
22 D. Rose and Sean Hanley in Support of Zynga’s Motion for Leave to Conduct Third Party
23 Discovery); Dkt. Nos. 12-13 (Zynga’s Motion to Continue Case Management Conference and
24 Declaration of Tara D. Rose in support of Zynga’s Motion to Continue Case Management
25 Conference). As such, Zynga has been unable to serve Defendants with process. As noted in
26 Zynga’s Discovery Motion, Zynga is optimistic that production from third parties, will allow Zynga
27 to confirm Defendants’ identity and location, and effect service on them. (*See* Dkt. No. 9.)
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III. ARGUMENT

There is good cause to continue the Rule 4(m) deadline. The Rule provides that the deadline to effect service (or to confirm that Defendants must be served outside the United States pursuant to Rule 4(f) or 4(j)(1), in which case the Rule does not apply) must be extended for “an appropriate period” if the plaintiff demonstrates good cause for its failure to effect service on the defendant within 120 days. Rule 4(m). In this case, there is good cause to continue both dates because Zynga must conduct additional third party discovery before it can identify and serve Defendants with process.¹

On May 20, 2010, the Honorable Patricia V. Trumbull granted in part and denied in part Zynga’s Motion for Leave to Conduct Third Party Discovery. (Dkt. No. 14.) Following, Zynga served subpoenas for the production of documents and information on GoDaddy.com, Inc., Microsoft Office Live and PayPal, Inc. (*See* Caplan Decl. ¶ 3.) Production from GoDaddy.com, Inc. provided the same spurious physical addresses for Defendants as that listed in the Whois database information for the domain names listed in the Complaint.² (*Id.* ¶¶ 4-5.) Production from GoDaddy.com, Inc. also provided three additional addresses for Defendants in Seattle, Washington, Chicago, Illinois, and New York, New York, but a search for these addresses has revealed that all three addresses do not exist. (*See id.* ¶ 6.) Production from PayPal, Inc. provided a name and address in Taipei City, Taiwan, but Zynga has not yet been able to confirm whether this information is legitimate. (*Id.* ¶ 7.) Zynga is currently awaiting production from Microsoft Office Live. (*Id.* ¶ 8.)

Assuming the address in Taipei City, Taiwan is legitimate and/or Microsoft Office Live provides the requested documents and information regarding Defendants’ identity and location,

¹ The fact that Zynga has yet to confirm Defendants’ identities or locations prevents Zynga from submitting this motion as a stipulation. (Caplan Decl. ¶ 8.)

² Zynga unsuccessfully attempted to serve Defendants at the physical addresses listed for Internet domain names MWBLACKMARKET.COM and MWFEXPRESS.COM, and the physical address listed for Internet domain name MAFIAWARSDIRECT.COM is not complete. (*See* Declaration of Tara D. Rose in support of Zynga’s Motion to Continue Case Management Conference ¶ 4-8, Exs. 1-4 (Dkt. No. 13)).

1 Zynga anticipates that it will be able to confirm Defendants' identity and location within the next
2 two months. Accordingly, Zynga respectfully requests that the Court continue the Rule 4(m)
3 deadline until September 8, 2010.³ Zynga is optimistic that the requested continuance will allow
4 Zynga sufficient time to complete third party discovery, comply with Rule 4(m) to the extent it
5 applies in this case, and effect service on Defendants prior to this deadline.

6 **IV. CONCLUSION**

7 For the foregoing reasons, Zynga respectfully requests that the Court issue an order
8 continuing the Rule 4(m) service deadline in this matter. Zynga will gladly provide any additional
9 information the Court may request regarding this Motion.

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11 Dated: July 2, 2010

By: _____ /s/

12 David K. Caplan
13 Keats McFarland & Wilson LLP
14 Attorneys for Plaintiff
15 ZYNGA GAME NETWORK INC.

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26 ³ As is evident from documents produced by PayPal, Inc. pursuant to Zynga's subpoena, it is likely
27 that Defendants are located outside of the United States. If that proves to be the case, Rule 4(m) will
28 not apply. See Fed.R.Civ.P. 4(m). However, because Zynga has not yet confirmed Defendants'
identity and location, it cannot say with certainty that Rule 4(m) will not apply in this case.