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10 ZYNGA GAME NETWORK INC.

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

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

17
18 Plaintiff,

19 v.

20 JASON WILLIAMS, an individual, LUNA
MARTINI, an individual, WAN-WEN KUO, an
21 individual, and JOHN DOES 2-5 D/B/A MW
GROUP,

22 Defendants.
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CASE NO. CV 10-01022 JF (PVTx)

FIRST AMENDED 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

1 Pursuant to Federal Rule of Civil Procedure 15(a)(1)(A), Plaintiff Zynga Game Network Inc.
2 (“Zynga”) files this First Amended Complaint against defendants Jason Williams, Luna Martini,
3 Wan-Wen Kuo and John Does 2-5, d/b/a “MW Group” (collectively “Defendants”) for injunctive
4 relief and damages under the laws of the United States and the State of California.

5 **Nature of the Action**

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

12 **The Parties**

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

15 3. On information and belief, Defendant Jason Williams is an individual currently
16 residing in San Francisco, California.

17 4. On information and belief, Defendant Luna Martini is an individual currently residing
18 in San Francisco, California or New York, New York.

19 5. On information and belief, Defendant Wan-Wen Kuo is an individual currently
20 residing in Taipei, Taiwan.

21 6. Zynga is currently unaware of the identities of Defendants John Does 2-5, and
22 therefore sues such defendants by such fictitious acronyms. Zynga is informed and believes that
23 discovery will reveal the true identities of the Defendants. Zynga will amend this First Amended
24 Complaint to identify Defendants by name after their identities are discovered.

25 7. On information and belief, the actions alleged herein to have been undertaken by
26 Defendants were undertaken by each Defendant individually, were actions that each Defendant
27 caused to occur, were actions that each Defendant authorized, controlled, directed, or had the ability
28 to authorize, control or direct, and/or were actions in which each Defendant assisted, participated or

1 otherwise encouraged, and are actions for which each Defendant is liable. Each Defendant aided
2 and abetted the actions of the Defendants set forth below, in that each Defendant had knowledge of
3 those actions, provided assistance and benefitted from those actions, in whole or in part. Each of the
4 Defendants was the agent of each of the remaining Defendants, and in doing the things hereinafter
5 alleged, was acting within the course and scope of such agency and with the permission and consent
6 of each and every one of the other Defendants.

7 **Jurisdiction and Venue**

8 8. This action arises under the trademark laws of the United States, 15 U.S.C. § 1051, *et*
9 *seq.*, particularly under 15 U.S.C. §§ 1125(a), as well as the Computer Fraud and Abuse Act, 18
10 U.S.C. § 1030; state unfair competition law; California Penal Code § 502; the common law of
11 trademark infringement, passing off and unfair competition; breach of contract; the common law of
12 intentional interference with contractual relations, and the common law of trespass to chattels. This
13 Court has jurisdiction of the federal claims under 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. §§
14 1116, 1121, and 1125. This Court has supplemental jurisdiction of the state unfair competition
15 claims under 28 U.S.C. § 1338(b), those claims being joined with a substantial and related claim
16 under the Trademark Laws of the United States, and supplemental jurisdiction of all of the state law
17 claims under 28 U.S.C. § 1367(a), those claims being so related to the federal claims that they form
18 part of the same case or controversy and derive from a common nucleus of operative fact.

19 9. Venue is proper in this district under 28 U.S.C. §§ 1391(b), and because Defendants
20 have consented to venue in this district.

21 **Intradistrict Assignment**

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

27 **Factual Allegations**

28 11. Zynga is the largest social gaming company, providing, *inter alia*, online poker

1 games, word games, board games, role playing games and party games including Zynga Poker,
2 Mafia Wars, YoVille, Vampires, Street Racing, Scramble and Word Twist. Zynga's games are
3 available on Facebook, MySpace, Bebo, Hi5, Friendster, Tagged, Yahoo!, the iPhone and iPod
4 Touch, among others.

5 12. Zynga's games have been a runaway success. In July, 2008, Zynga had over 1.3
6 million daily active users and 20 million registered users. As of January 1, 2009, Zynga had over 75
7 million registered users. As of May 2009, Zynga had more than 9.5 million daily users. Today,
8 Zynga has over 100 million unique users playing its games every month.

9 13. One of Zynga's most popular properties is Mafia Wars (the "Game"), a computer
10 game for use on wireless devices and computers that allows users to start a Mafia family with their
11 friends and compete to become the most powerful family.

12 14. Zynga has made use of the trademark MAFIA WARS in commerce since at least
13 September 2008. The MAFIA WARS trademark is referred to herein as the "mark".

14 15. Zynga's success and the success of the MAFIA WARS mark have been widely
15 reported in the press, on the Internet and in blogs. As of February, 2009, the Game had over 1.1
16 million daily active users. As of July, 2009, the Game had more than 4 million daily active users.
17 As of December, 2009, the Game had over 7 million daily active users.

18 16. The mark MAFIA WARS has acquired distinctiveness, and by virtue of the extensive
19 online sales and advertising under the mark MAFIA WARS, the MAFIA WARS mark has become
20 well-known within social gaming circles as a source identifier for the Game.

21 17. Zynga currently owns United States Federal Trademark Application Serial No.
22 77772110 for the mark MAFIA WARS in International Class 009 for downloadable computer game
23 software for use on wireless devices and computers, and International Class 041 for entertainment
24 services, namely, providing on-line computer games.

25 18. Zynga makes the Game available through social networking websites and
26 applications (collectively "Providers"), including but not limited to those identified in Paragraph 11
27 above.

28 19. Zynga owns or leases the computer servers that players must access in order to play

1 the Game. Zynga grants players who participate in the Game a revocable license to access its
2 servers for the purpose of playing the Game.

3 20. Zynga’s Terms of Service govern users’ play of the Game, and players who use the
4 Game must consent to the Terms of Service.

5 21. Players who use the Game in a manner not expressly authorized by Zynga, including
6 without limitation in violation of the Terms of Service, are not authorized to participate in the Game,
7 or to access Zynga’s servers.

8 22. When users sign up with Zynga to play the Game, they receive a certain amount of
9 “Virtual Currency” that they use to compete in the Mafia Wars game with other players using the
10 Providers’ sites and/or applications. Players can increase their total amount of “Virtual Currency”
11 through their play, and can also purchase “Virtual Currency” from Zynga.

12 23. Players use “Virtual Currency” to purchase various virtual, in-Game digital items
13 (“Virtual Goods”).

14 24. Zynga grants players a limited, revocable license to use the “Virtual Currency” or
15 “Virtual Goods” while playing the Game, but retains sole and exclusive ownership of the “Virtual
16 Currency” or “Virtual Goods” and the source code that allows the “Virtual Currency” or “Virtual
17 Goods” to be used in the Game.

18 25. Zynga has not authorized any third party to sell the “Virtual Currency” or “Virtual
19 Goods” required to play the Game.

20 26. Among other things, the Terms of Service that govern users’ play of the Game
21 prohibit users from selling “Virtual Currency” or “Virtual Goods” for real-world money or otherwise
22 exchanging “Virtual Currency” or “Virtual Goods” for anything of value outside the Game.

23 27. Without Zynga’s authorization or approval, Defendants have created and currently
24 operate or previously operated websites at the Internet domain names MWBLACKMARKET.COM,
25 MAFIAWARSDIRECT.COM and MWFEXPRESS.COM (the “Websites” or the “Domain
26 Names”), possibly among others.

27 28. Through the Websites, Defendants “sell” “Virtual Goods” that users, playing the
28 Game through the Providers’ websites and/or applications, can use to compete with other players

1 who obtained their “Virtual Goods” directly from Zynga.

2 29. Defendants advertise and “sell” these “Virtual Goods” using the MAFIA WARS
3 mark and/or confusingly similar misspellings or variations of the MAFIA WARS mark.

4 30. Defendants “sell” “Virtual Goods” for use in the Game for real-world money, and at
5 prices that are substantially lower than the prices paid by users who obtain their “Virtual Goods”
6 from Zynga.

7 31. Defendants have used the Game itself as part of their scheme, transferring the
8 “Virtual Goods” they “sell” during game play in contravention of the Game’s terms of service and/or
9 security measures, and in violation of the license they received from Zynga to participate in the
10 Game.

11 32. Zynga has never authorized Defendants to use the mark MAFIA WARS or to “sell”
12 “Virtual Goods” for use in the Game, nor has Zynga authorized Defendants to use the Game to
13 transfer “Virtual Goods” that Defendants have “sold” to players through the Websites.

14 **FIRST CAUSE OF ACTION**

15 **(False Designation of Origin Regarding the Mark MAFIA WARS)**

16 **(15 U.S.C. § 1125(a))**

17 33. Zynga repeats, realleges and incorporates each and every allegation of the foregoing
18 paragraphs, as though fully set forth in this cause of action.

19 34. Defendants’ use of the mark MAFIA WARS and/or of confusingly similar
20 misspellings or variations thereof constitutes use of a false designation of origin or false and
21 misleading representation in interstate commerce that wrongfully and falsely designates, describes
22 and represents that Defendants’ products and services are connected, affiliated or associated with
23 Zynga, and is likely to cause confusion as to Defendants’ affiliation, connection or association with
24 Zynga, or as to the origin, sponsorship, or approval of Defendants’ products or services by Zynga in
25 violation of 15 U.S.C. §1125(a).

26 35. Defendants’ conduct as alleged herein has caused and will continue to cause Zynga
27 irreparable harm for which there is no adequate remedy at law, and is also causing damage to Zynga
28 in an amount which cannot be accurately computed at this time but will be proven at trial.

1 **SECOND CAUSE OF ACTION**

2 **(Violation of the Federal Computer Fraud and Abuse Act)**

3 **(18 U.S.C. § 1030)**

4 36. Zynga repeats, realleges and incorporates each and every allegation of the foregoing
5 paragraphs, as though fully set forth in this cause of action.

6 37. Zynga’s computer servers are involved in interstate and foreign commerce and
7 communication, and are protected under 18 U.S.C. § 1030(e)(2).

8 38. Defendants have intentionally accessed Zynga’s computer servers without
9 authorization and/or in excess of authorized access, and through interstate or foreign communication,
10 obtained information from Zynga’s computers in violation of 18 U.S.C. § 1030(a)(2)(c).

11 39. Defendants have, knowingly and with intent to defraud, accessed Zynga’s computer
12 servers without authorization and/or in excess of authorized access, furthered the intended fraud, and
13 obtained something of value, in violation of 18 U.S.C. § 1030(a)(4).

14 40. Defendants’ actions have caused loss to one or more persons, including without
15 limitation Zynga, in a one year period aggregating at least \$5,000 in value.

16 41. Defendants’ conduct as alleged herein has caused and will continue to cause Zynga
17 irreparable harm for which there is no adequate remedy at law, and is also causing damage to Zynga
18 in an amount which cannot be accurately computed at this time but will be proven at trial.

19 **THIRD CAUSE OF ACTION**

20 **(California Statutory Unfair Competition)**

21 **(California Business and Professions Code § 17200, *et seq.*)**

22 42. Zynga repeats, realleges and incorporates each and every allegation of the foregoing
23 paragraphs, as though fully set forth in this cause of action.

24 43. Defendants compete directly with Zynga by “selling” the “Virtual Goods” that are
25 required to play the Game.

26 44. Defendants are making unauthorized commercial use of the mark MAFIA WARS
27 and/or of confusingly similar misspellings or variations thereof in a deliberate, willful, intentional
28 and wrongful attempt to trade on Zynga’s goodwill, reputation and financial investments in the mark

1 MAFIA WARS.

2 45. By reason of Defendants' conduct as alleged herein, Defendants have engaged in
3 unlawful, unfair and/or fraudulent ongoing business practices in violation of California Business &
4 Professions Code § 17200.

5 46. As a direct result of Defendants' unfair competition with regard to the mark MAFIA
6 WARS, Defendants have unlawfully acquired, and continue to acquire on an ongoing basis, an
7 unfair competitive advantage and have engaged, and continue to engage in, wrongful business
8 conduct to Defendants' monetary advantage and to the detriment of Zynga.

9 47. Defendants' illegal and unfair business practices are continuing, and injunctive relief
10 pursuant to California Business and Professions Code § 17203 is necessary to prevent and restrain
11 further violations by Defendants.

12 48. This Court has jurisdiction over the subject matter of this claim pursuant to the
13 provisions of 28 U.S.C. § 1338(b), this being a claim of unfair competition joined with a substantial
14 and related claim under the Trademark Laws of the United States, and under 28 U.S.C. § 1367.

15 **FOURTH CAUSE OF ACTION**

16 **(Violation of California Penal Code § 502)**

17 49. Zynga repeats, realleges and incorporates each and every allegation of the foregoing
18 paragraphs, as though fully set forth in this cause of action.

19 50. Zynga is the owner or lessee of the computers, computer systems, computer network,
20 computer programs and data that operate the Game.

21 51. Defendants have knowingly accessed and without permission made use of data from
22 Zynga's computers, computer systems and computer network in order to wrongfully control or
23 obtain money, property, or data in violation of California Penal Code § 502(c)(1)(B).

24 52. Defendants have knowingly accessed and without permission taken, copied or made
25 use of data from Zynga's computers, computer systems, or computer network in violation of
26 California Penal Code § 502(c)(2).

27 53. Defendants have knowingly and without permission used computer services in
28 violation of California Penal Code § 502(c)(3).

1 54. Defendants have knowingly and without permission disrupted or caused the
2 disruption of computer services or denied or caused the denial of computer services to authorized
3 users of Zynga's computers, computer systems, and computer network in violation of California
4 Penal Code § 502(c)(5).

5 55. Defendants have knowingly and without permission provided or assisted in providing
6 a means of accessing Zynga's computers, computer systems and computer networks in violation of
7 California Penal Code § 502. *See* California Penal Code § 502(c)(6).

8 56. Defendants have knowingly and without permission accessed or caused to be
9 accessed Zynga's computers, computer systems and computer network in violation of California
10 Penal Code § 502(c)(7).

11 57. Defendants' actions as alleged herein have caused Zynga to suffer damage and loss.

12 58. Defendants' actions as alleged herein have been oppressive, fraudulent or malicious.
13 Zynga requests punitive or exemplary damages pursuant to California Civil Code § 3294(a) in an
14 amount sufficient to punish and deter Defendants and to make an example of Defendants.

15 59. Defendants' actions as alleged herein have caused and will continue to cause Zynga
16 irreparable harm for which there is no adequate remedy at law, and are also causing damage to
17 Zynga in an amount which cannot be accurately computed at this time but will be proven at trial.

18 60. This Court has jurisdiction over the subject matter of this claim pursuant to the
19 provisions of 28 U.S.C. § 1367.

20 **FIFTH CAUSE OF ACTION**

21 **(Common Law Trademark Infringement of the Mark MAFIA WARS)**

22 61. Zynga repeats, realleges and incorporates each and every allegation of the foregoing
23 paragraphs, as though fully set forth in this cause of action.

24 62. Defendants' unauthorized use of the mark MAFIA WARS and/or of confusingly
25 similar misspellings or variations thereof constitutes trademark infringement and is likely to cause
26 confusion, deception and mistake among the consuming public and trade as to the source of, and
27 authorization for the products and/or services sold by Defendants in violation of the common law of
28 the State of California.

1 paragraphs, as though fully set forth in this cause of action.

2 71. By participating in the Game, Defendants have agreed to be bound by the Terms of
3 Service governing use of the Game as alleged above.

4 72. Zynga has performed all conditions, covenants and promises required to be performed
5 on its part in accordance with the Terms of Service except as excused by Defendants' failure to
6 perform all conditions, covenants and promises required to be performed on Defendant's part.

7 73. By "selling" "Virtual Goods" for use in the Game through the Websites, and by using
8 the Game itself to transfer the "Virtual Goods" they sell, Defendants have breached the Terms of
9 Service.

10 74. Defendants' conduct as alleged herein has caused and will continue to cause Zynga
11 irreparable harm for which there is no adequate remedy at law, and is also causing damage to Zynga
12 in an amount which cannot be accurately computed at this time but will be proven at trial.

13 75. This Court has jurisdiction over the subject matter of this claim pursuant to the
14 provisions of 28 U.S.C. § 1367.

15 **EIGHTH CAUSE OF ACTION**

16 **(Intentional Interference with Contractual Relations)**

17 76. Zynga repeats, realleges and incorporates each and every allegation of the foregoing
18 paragraphs, as though fully set forth in this cause of action.

19 77. Zynga has existing valid contracts with users of the Game.

20 78. Zynga is informed and believes, and on that basis alleges, that Defendants have
21 knowledge of those contracts, and that Defendants have acted intentionally to induce a breach or
22 disruption of those contractual relationships by "selling" "Virtual Goods" for the Game without
23 authorization, at prices that are substantially lower than the prices paid by users who obtain their
24 "Virtual Goods" from Zynga, and by distributing "Virtual Goods" to users in a manner prohibited by
25 the Terms of Service.

26 79. Defendants' actions as alleged herein have caused actual disruption or breach of
27 Zynga's contractual relationships with individual users.

28 80. Defendants' conduct as alleged herein has caused and will continue to cause Zynga

1 irreparable harm for which there is no adequate remedy at law, and is also causing damage to Zynga
2 in an amount which cannot be accurately computed at this time but will be proven at trial.

3 81. This Court has jurisdiction over the subject matter of this claim pursuant to the
4 provisions of 28 U.S.C. § 1367.

5 **NINTH CAUSE OF ACTION**

6 **(Trespass to Chattels)**

7 82. Zynga repeats, realleges and incorporates each and every allegation of the foregoing
8 paragraphs, as though fully set forth in this cause of action.

9 83. Zynga has a possessory interest in the servers that Defendants have used to access the
10 Game and in the virtual “Virtual Goods” Defendants sell.

11 84. Defendants have intentionally and without authorization interfered with Zynga’s
12 possessory interest in the servers and the “Virtual Goods” by using the servers to conduct their
13 unauthorized and unlawful activities as alleged herein.

14 85. Defendants’ conduct as alleged herein has caused and will continue to cause Zynga
15 irreparable harm for which there is no adequate remedy at law, and is also causing damage to Zynga
16 in an amount which cannot be accurately computed at this time but will be proven at trial.

17 86. Defendants’ actions were undertaken intentionally to obtain an unfair advantage over
18 Zynga and in conscious disregard of Zynga’s rights, and were malicious, oppressive and/or
19 fraudulent. Zynga requests punitive or exemplary damages pursuant to California Civil Code §
20 3294(a) in an amount sufficient to punish and deter Defendants and to make an example of
21 Defendants.

22 87. This Court has jurisdiction over the subject matter of this claim pursuant to the
23 provisions of 28 U.S.C. § 1367.

24 **REQUEST FOR RELIEF**

25 Zynga requests that this Court:

26 A. Enter a permanent injunction enjoining Defendants and their officers, directors,
27 agents, employees, representatives and all persons or entities acting in concert or participation with
28 Defendants from accessing or using Zynga’s computer servers, including without limitation the

1 Game or any other games or applications that Zynga makes available, for any purpose whatsoever;

2 B. Enter a permanent injunction enjoining Defendants and their officers, directors,
3 agents, employees, representatives and all persons or entities acting in concert or participation with
4 Defendants from using the mark MAFIA WARS and/or confusingly similar misspellings or
5 variations thereof, alone or in combination with any other words or phrases, in a manner that is
6 likely to cause confusion with respect to the mark MAFIA WARS or with respect to Zynga's
7 approval or authorization of Defendants' actions, including but not limited to enjoining Defendants
8 from registering any Internet domain names containing the term MAFIA WARS and/or of
9 confusingly similar misspellings or variations thereof, alone or in combination with any other terms;

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

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

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

24 F. Order the transfer of the Domain Names, and any other Internet domain names
25 Defendants are using in connection with the sale, offering for sale, advertisement, or exchange of
26 "Virtual Goods" for use in the Game, to Zynga;

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

28 H. Enter a finding that Defendants' actions were malicious, oppressive and/or

1 fraudulent;

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

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

7 K. Award Zynga punitive damages in an amount sufficient to punish and deter
8 Defendants;

9 L. Enter an award of attorneys' fees and costs; and

10 M. Award any such other and further relief as this Court deems just and proper.

11 **PLAINTIFF ZYNGA HEREBY DEMANDS A TRIAL BY JURY.**

12
13 Dated: September 7, 2010

By: _____

14 Dennis L. Wilson
15 Keats McFarland & Wilson LLP
16 Attorneys for Plaintiff
ZYNGA GAME NETWORK, INC.

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DEMAND FOR JURY TRIAL

Plaintiff Zynga Game Network Inc. hereby demands a trial by jury on all issues for which a jury trial may be had.

Dated: September 7, 2010

Respectfully submitted,

KEATS MCFARLAND & WILSON LLP

By: _____

Dennis L. Wilson
Attorney for Plaintiff
ZYNGA GAME NETWORK INC.