

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 Tara D. Rose (Bar No. 256079)  
 E-Mail: trose@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 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA  
 13 SAN JOSE DIVISION

14  
 15 ZYNGA GAME NETWORK INC., a Delaware  
 Corporation,  
 16  
 17 Plaintiff,  
 18 v.  
 19 JASON WILLIAMS, an individual, LUNA  
 MARTINI, an individual, WAN-WEN KUO, an  
 20 individual, and JOHN DOES 4-5 D/B/A MW  
 GROUP  
 21 Defendants.  
 22

**CASE NO. CV-10:01022 JF (PVTx)**  
  
**ADMINISTRATIVE MOTION TO SERVE  
 DEFENDANTS BY ELECTRONIC MAIL;  
 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 Federal  
3 Rule of Civil Procedure (“Rule”) 4(f)(3) and Civil Local Rule 7-11<sup>1</sup> for an order authorizing Zynga  
4 to serve the defendants Jason Williams, Luna Martini and Wan-Wen Kuo in this matter  
5 (“Defendants”) with process by electronic mail (“email”) in English. This motion is based on the  
6 Motion, the Declaration of David K. Caplan in Support of Zynga’s Administrative Motion to Serve  
7 Defendants by Electronic Mail (“Caplan Decl.”), the [Proposed] Order, all pleadings on file in this  
8 action, and any other matter that may be submitted in support of the motion.

9 **ISSUE TO BE DECIDED**

10 Whether Zynga shall be granted leave to serve Defendants with process, in English, via  
11 email.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. INTRODUCTION**

14 Plaintiff Zynga Game Network Inc. (“Zynga”) respectfully requests that the Court authorize  
15 it to serve Defendants with process, in English, via email pursuant to Rule 4(f)(3).

16 **II. FACTS**

17 **A. Background**

18 Zynga filed this action on March 10, 2010 against Jason Williams, Luna Martini and  
19 anonymous defendants doing business as MW Group. (Dkt. No. 1.) On September 7, 2010, Zynga  
20 filed its First Amended Complaint adding Wan-Wen Kuo as a defendant and alleging that he is  
21 located in Taiwan. (See Dkt. No. 22, ¶ 5.)

22 Plaintiff alleges that Defendants, without Plaintiff’s authorization or approval, created and  
23 operated websites at the Internet domain names MAFIAWARSDIRECT.COM,  
24 MWBLACKMARKET.COM and MWFEXPRESS.COM through which Defendants sold various in-  
25 game digital items for use in playing one of Zynga’s most popular properties, Mafia Wars (the

26 \_\_\_\_\_  
27 <sup>1</sup> Zynga has filed this motion as an administrative motion without requesting a hearing date because  
28 the motion is unopposed and because a prompt ruling in less than the normal 35 days required for  
noticed motions will allow Zynga to move this case forward expeditiously.

1 “Game”), in contravention of the Game’s terms of service and/or security measures, and in violation  
2 of Plaintiff’s trademark rights and the license they received from Zynga to participate in the Game.  
3 (See First Amended Complaint (“Dkt. No. 22”) ¶¶ 11-32.)

4 On May 20, 2010, Magistrate Judge Trumbull granted Zynga authority to issue third party  
5 subpoenas to confirm the identities and locations of the Defendants. (Dkt. No. 14.) Zynga  
6 subsequently issued subpoenas as authorized by the Court, and analyzed the documents and  
7 information it received in response to those subpoenas. (Caplan Decl., ¶ 2.)

8 **B. Physical Addresses for Defendants.**

9 Zynga unsuccessfully attempted to serve Defendants at the physical addresses listed for  
10 Defendants in the Whois database information Domain History for the Internet domain names  
11 MWBLACKMARKET.COM and MWFEXPRESS.COM. (See Caplan Decl. ¶¶ 4-5; see also  
12 Declaration of Tara D. Rose in support of Zynga’s Motion to Continue Case Management  
13 Conference (“Dkt. No. 13”) ¶¶ 4-6.) The physical address listed in the Whois database information  
14 for MWBLACKMARKET.COM is not a home or business address for Defendants, but rather is a  
15 UPS Depot from which cargo trucks and vans are dispatched. (See Dkt. No. 13, ¶¶ 4-6.) The  
16 physical address listed in the Whois database information for MWFEXPRESS.COM does not exist  
17 in the city listed for the domain name. (See id.)

18 The physical address listed in the Whois database information for  
19 MAFIAWARSDIRECT.COM was for Indiana University East and the Whois database address did  
20 not include a suite, dorm or office number necessary to locate a person or entity at the University.  
21 (See Dkt. No. 13 ¶¶ 7-8.)

22 The documents and information Zynga received in response to its subpoenas for defendants  
23 Jason Williams and Luna Martini identified the same bogus addresses as those listed in the Whois  
24 database information Domain History for the Internet domain names registered to these defendants,  
25 as well as three additional addresses in Seattle, Washington, Chicago, Illinois, and New York, New  
26 York, all of which do not exist. (See Caplan Decl. ¶¶ 4-6.)

1           **C. Email Addresses for Defendants**

2           Although the physical addresses associated with Defendants have proved to be bogus,  
3 Plaintiff has uncovered information regarding email addresses associated with the defendants.

4           The WHOIS database lists the registrant of the MAFIAWARSDIRECT.COM domain name  
5 as defendant Jason Williams, with an email address of <jwilliams1980@ymail.com>. (See Caplan  
6 Decl., Exh. 2.) The website located at http://MAFIAWARSDIRECT.COM listed the operator's  
7 email address as <mafiawarsdirect@gmail.com>. (See *id.*, Exh. 7.)

8           The WHOIS database lists the registrant of the MWFEXPRESS.COM domain name as  
9 defendant Luna Martini, with an email address of <lmartini888@gmail.com>. (See Caplan Decl.,  
10 Exh. 4). The website located at http://MWFEXPRESS.COM listed the operator's email address as  
11 <mwfexpress@gmail.com>. (See *id.*, Exh. 11.)

12           The WHOIS database lists the registrant of the MWBLACKMARKET.COM domain name  
13 as defendant Jason Williams, with an email address of <jwilliams1980@ymail.com>. (See Caplan  
14 Decl., Exh. 3). The website located at http://MWBLACKMARKET.COM listed the operator's  
15 email address as <mafiawarsblackmarket@gmail.com>. (See *id.*, Exh. 5). Zynga issued a subpoena  
16 to GoDaddy regarding the registration of the MWBLACKMARKET.COM domain name and  
17 GoDaddy produced documents which identified the user of the <cindypearst@yahoo.com> email  
18 address as the registrant of the MWBLACKMARKET.COM domain name. (See *id.*, Exh. 8.)

19           Zynga issued subpoenas to PayPal for information regarding the users of the email addresses  
20 <jwilliams1980@ymail.com>,<mafiawarsdirect@gmail.com>, <lmartini888@gmail.com>,  
21 <mwfexpress@gmail.com>, <mafiawarsblackmarket@gmail.com>. In response, Paypal produced  
22 documents which identify Wan-Wen Kuo of Taiwan with an email address of  
23 <mafiawarsdirect@gmail.com>. (See Caplan Decl., Exh. 1.)

24           In summary, the documents and information Zynga received in third party discovery, as well  
25 as Zynga's own investigation of publicly-available information, have revealed the following email  
26 addresses that Defendants currently use or have used in the past: jwilliams1980@ymail.com  
27 (Defendant Jason Williams); mafiawarsblackmarket@gmail.com (defendant Jason Williams);  
28

1 cindypearst@yahoo.com (defendant Jason Williams); lmartini888@gmail.com (defendant Luna  
2 Martini); mwfexpress@gmail.com (defendant Luna Martini); and mafiawarsdirect@gmail.com  
3 (defendants Jason Williams and Wan-Wen Kuo). (See Caplan Decl., Exhs. 1-8.)

### 4 III. ARGUMENT

5 Federal Rule of Civil Procedure (“Rule”) 4(f) governs the service of defendants outside of  
6 the United States. The rule permits an individual in a foreign country to be served by “means not  
7 prohibited by international agreement, as the court orders.” Fed. R. Civ. P. 4(f)(3). The Ninth  
8 Circuit has confirmed that forms of service permitted by Rule 4(f)(3) are valid, provided they: 1) are  
9 court-directed; 2) are not prohibited by international agreement; and 3) comport with constitutional  
10 notions of due process in that they are “reasonably calculated, under all the circumstances, to apprise  
11 interested parties of the pendency of the action and afford them an opportunity to present their  
12 objections.” Rio Properties, Inc. v. Rio Int’l Interlink, 284 F.3d 1007, 1014-16 (9th Cir. 2002)  
13 (quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314, 94 L. Ed. 865, 70 S.Ct 652  
14 (1950) (Jackson, J.)).

15 Furthermore, the Ninth Circuit has emphasized that service pursuant to Rule 4(f)(3) stands  
16 “independently, on equal footing” with other methods of service prescribed in Rule 4(f), and is  
17 “neither a ‘last resort’ nor ‘extraordinary relief.’” Rio Properties, 284 F.3d at 1015 (quoting Forum  
18 Fin. Group LLC v. President & Fellows, 199 F.R.D. 22, 23 (D. Me. 2001). In fact, the Ninth Circuit  
19 specifically “disapprove[d] of the statements in [Graval v. P.T. Bakrie & Bros., 986 F.Supp. 1326  
20 (C.D. Cal. 1996)] which would require attempted service by all feasible alternatives before service  
21 under Rule 4(f)(3) is allowed.” Rio Properties, 284 F.3d at 1016. Accordingly, it is appropriate for  
22 the Court to grant Zynga’s motion, provided the method of service it is requesting does not violate  
23 any international agreement and is reasonably calculated to provide the Defendants with notice of  
24 the pending litigation so that they may defend against Zynga’s suit. As discussed below, Zynga’s  
25 requested method of service does not violate any international agreement and comports with due  
26 process.

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**A. Email Service Does Not Violate Any International Agreement**

The primary international agreement regarding service of judicial documents in foreign countries is the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638 (the “Hague Convention” or the “Convention”). See Brockmeyer v. May, 383 F.3d 798, 801 (9th Cir. 2004). However, the Convention does not apply in this case for two independent reasons.

First, the Convention does not apply when the government of the state or territory in which the defendant resides is not a signatory to the Convention. See, e.g., Rio Properties, 284 F.3d at 1015 n.4. Paypal’s documents confirm that Defendant Wan-Wen Kuo resides in Taiwan. (Caplan Decl., Exh. 1.) Taiwan is not a signatory to the Hague Convention. (See Caplan Decl., Exh. 9. (Status Table).)

Second, by its own terms, the Convention does not apply “where the address of the person to be served . . . is not known.” Hague Convention, Art. 1. As noted above, defendants Jason Williams and Luna Martini have provided their online service providers with bogus addresses, making it impossible for Zynga to confirm the location of these defendants. Therefore, the Convention does not apply to these Defendants.

For both these reasons, the Hague Convention does not govern service of process on Defendants, nor is Zynga aware of any other international agreement that would be relevant to this motion.

**B. Email Service Comports With Due Process**

As noted above, alternative service under Rule 4(f)(3) comports with due process if it is “‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” Rio Properties, 284 F.3d at 1016. In this case, email is the method of service most likely to reach the Defendants. In Rio Properties, the Ninth Circuit affirmed a district court decision authorizing the plaintiff to use email to serve a defendant after the plaintiff was unable to locate a valid physical address for service on the defendant, which operated an online sports gambling site. In finding that email service satisfied due

1 process, the Ninth Circuit observed, “when faced with an international ebusiness scofflaw, playing  
2 hide-and-seek with the federal court, email may be the only means of effecting service of process.”  
3 284 F.3d at 1018.

4 This case presents a similar scenario. Third party discovery has not confirmed valid service  
5 addresses for Defendants. However, Zynga has identified several email addresses that Defendants  
6 themselves provided to their customers, and to online service providers upon whom they relied to  
7 keep their business operating. It is very likely that all of these email addresses are valid because  
8 Defendants must rely on them to receive business-related correspondence from their customers and  
9 service providers. Under these circumstances, it is much more likely that email service will reach  
10 Defendants than that physical service will reach them. On this record, and in light of the Ninth  
11 Circuit’s clear language that email service satisfies due process and stands on “equal footing” with  
12 other methods of service, it is appropriate for the Court to authorize Zynga to serve the Defendants  
13 by email. See Rio Properties, 284 F.3d at 1015.

14 Other courts in this District have granted email service motions filed by Zynga in similar  
15 cases. See, e.g., Zynga v. Erkan, et al., Case No. CV:09-3264 SC (Dkt. No. 33); Zynga v. Greene, et  
16 al., Case No. CV:09-2744 SI (Dkt. No. 65); Zynga v. Suhail, et al., Case No. CV:09-5301 JSW (Dkt.  
17 No. 21).<sup>2</sup>

18 Zynga further requests authorization to serve Defendants with process in English. Zynga  
19 bases this request on the fact that Defendants’ websites were written in English (see Caplan Decl.,  
20 Exhs. 5-7) and the fact that Defendants use several email addresses that use English phrases, such as  
21 “black market,” “direct” and “express”.

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28 <sup>2</sup> Although similar, these cases are not Related to this case per Civil Local Rule 3-12.

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**IV. CONCLUSION**

For the foregoing reasons, Zynga respectfully requests that the Court issue an order authorizing Zynga to serve the Defendants with process, in English, via email. A proposed order is submitted herewith. Zynga is prepared to provide any additional information the Court may request regarding this Motion.

Dated: October 8, 2010

By: \_\_\_\_\_/s/\_\_\_\_\_  
David K. Caplan  
Keats McFarland & Wilson LLP  
Attorneys for Plaintiff  
ZYNGA GAME NETWORK INC.