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 Attorneys for Plaintiff
 9 ZYNGA INC.

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

14 ZYNGA GAME NETWORK INC., a Delaware
 Corporation,

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 16 Plaintiff,

17 v.

18 JASON WILLIAMS, an individual, LUNA
 MARTINI, an individual, WAN-WEN KUO, an
 19 individual, and JOHN DOES 4-5 D/B/A MW
 GROUP

20 Defendants.
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CASE NO. CV-10:01022 JF (PSGx)

**DECLARATION OF DAVID K. CAPLAN IN
 SUPPORT OF ZYNGA INC.'S MOTION
 FOR ATTORNEYS' FEES**

Noted For Hearing:
DATE: June 24, 2011
TIME: 9:00 a.m.
PLACE: Courtroom 3, 5th Floor

1 I, David K. Caplan, declare as follows:

2 1. I am a partner of the firm Keats McFarland & Wilson LLP (“KMW”), counsel to
3 Zynga Inc. (“Zynga”) in this matter. I am over the age of eighteen and am competent to testify.
4 Unless otherwise stated herein, I have personal knowledge of the facts stated in this declaration, and
5 if called upon to do so, I could and would testify competently thereto.

6 2. Attached hereto as **Exhibit 1** is a true and correct copy of the American Intellectual
7 Property Law Association’s (“AIPLA”) Report of the Economic Survey 2009 reports data for typical
8 2008 billing rates for intellectual property attorneys surveyed (the “AILPA Report”). AILPA
9 conducts this survey every other year.

10 3. Together with KMW partner Dennis Wilson, I have been responsible for managing
11 this litigation. I have also been integrally involved in all decisions regarding litigation strategy.

12 4. I have practiced law primarily in the field of Internet law and traditional intellectual
13 property law for more than fifteen years. I was admitted to the California State Bar in 1995. A copy
14 of my biography is attached hereto as **Exhibit 2**. My billing rate throughout this case has been \$460
15 per hour through the end of 2010 and \$495 per hour beginning in 2011, which is consistent with the
16 billing rates for attorneys with my level of experience as reported in the AILPA Report.

17 5. Throughout this case, I have regularly delegated tasks to Tara Rose, who is an
18 associate at KMW with approximately three years of intellectual property experience. Ms. Rose
19 assisted in researching and drafting most of the pleadings in this litigation, as well as drafting and
20 assisting in the preparation and issuance of third party subpoenas. Ms. Rose’s practice is primarily
21 focused on Internet law and traditional intellectual property litigation. Ms. Rose was admitted to the
22 California State Bar in 2008. A copy of Ms. Rose’s biography is attached hereto as **Exhibit 3**. Ms.
23 Rose’s billing rate throughout this case has been \$230 per hour through the end of 2010 and \$285
24 per hour beginning in 2011, which is consistent with the billing rates for attorneys with her level of
25 experience as reported in the AILPA Report.

26 6. Dennis Wilson, a founding partner of KMW, has also been involved in this case,
27 consulting with Zynga’s in-house attorneys and other personnel, and coordinating KMW’s efforts in
28

1 prosecuting this case. Mr. Wilson has more than nineteen years of intellectual property experience.
2 His practice is also focused exclusively on Internet law and traditional intellectual property law. He
3 was admitted to the California State Bar in 1991. A copy of Mr. Wilson’s biography is attached
4 hereto as **Exhibit 4**. Mr. Wilson’s billing rate throughout this case has been \$495 per hour through
5 the end of 2010 and \$530 per hour beginning in 2011, which is consistent with the billing rates for
6 attorneys with his level of experience as reported in the AILPA Report. Mr. Wilson regularly
7 delegated tasks to me throughout this case.

8 7. Many of the tasks involved in this litigation – which has lasted for over a year –
9 required significant investments of time and effort. As Zynga documented in the motions it has filed
10 in this case, Defendants concealed their identity and location, which required Zynga to conduct
11 significant third party discovery to determine what name and contact information they provided to
12 third parties with whom they contracted for services related to their unauthorized sale and
13 advertisement of “Virtual Goods” that customers can purportedly use to progress their way through
14 Zynga’s games. This created a substantial amount of work, including drafting motions for third
15 party discovery; preparing and serving third party subpoenas; analyzing the information contained in
16 the documents and electronic records produced in response to the subpoenas; preparing the motion to
17 serve defendants by electronic mail once the available sources of information about Defendants’ true
18 location had been exhausted; and finally, preparing and filing the motion for default judgment.

19 8. Zynga’s counsel also analyzed publicly available information about the Defendants in
20 order to identify potential third party witnesses, and to confirm the extent of Defendants’ “Virtual
21 Goods” selling activity. This analysis was necessary to identify third parties likely to have
22 information about Defendants’ identities and locations, and to confirm the extent of the Defendants’
23 “Virtual Goods” selling activities.

24 9. To the maximum extent possible in light of the substantial amount of work required
25 to assemble and present Zynga’s case to the Court, KMW staffed its work so as to achieve maximum
26 efficiency, including by diligently delegating work to less expensive time keepers and not billing
27 Zynga for some time actually worked.

1 10. KMW requires lawyers and other timekeepers to record their time so as to be
2 prepared for fee petitions and to track investment in any particular matter. Consistent with KMW's
3 practice, all time related to this matter was recorded by all timekeepers, with appropriate narrative
4 descriptions, on a daily basis. In preparing the instant motion, I have reviewed all of KMW's time
5 records for this matter.

6 11. Over the course of this litigation, I spent 15.3 hours in obtaining the default judgment
7 against the Defendants. At my hourly rate of \$460 through the end of 2010 and \$495 beginning in
8 2011, Zynga was billed \$7,146.50 for my time in obtaining the default judgment against the
9 Defendants.

10 12. Over the course of this litigation, Ms. Rose spent 59.2 hours in obtaining the default
11 judgment against the Defendants. At her hourly rate of \$230 through the end of 2010 and \$285
12 beginning in 2011, Zynga was billed \$14,067.00 for her time in obtaining the default judgment
13 against the Defendants

14 13. Over the course of this litigation, Mr. Wilson spent 2.4 hours in obtaining the default
15 judgment against the Defendants. At his hourly rate of \$495 through the end of 2010 and \$530
16 beginning in 2011, Zynga was billed \$1,205.50 for his time in obtaining the default judgment against
17 the Defendants.

18 14. No conference regarding Zynga's request for an award of fees in this case was
19 possible because the Defendants have failed to participate in this litigation.

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15. Pursuant to Civil Local Rule 54-5(b)(2), Zynga is prepared to submit its contemporaneous time records for the Court's *in camera* inspection, should the Court so request.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 20th day of May, 2011 at Natick, Massachusetts.

_____/s/_____
David K. Caplan