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9 *Bally Gaming, Inc. d/b/a Bally Technologies*

10  
11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA  
13 WESTERN DIVISION

14 BALLY GAMING, INC., a Nevada  
15 corporation d/b/a Bally Technologies,

16 Plaintiff,

17  
18 v.

19 CAREY RICHARDSON, an individual  
20 d/b/a The iApp Shop; and DOES 1-10,

21 Defendant.  
22  
23  
24

CASE NO.: 2:14-cv-05634

**COMPLAINT FOR:**

1. PATENT INFRINGEMENT
2. COPYRIGHT INFRINGEMENT
3. TRADEMARK INFRINGEMENT
4. FEDERAL UNFAIR COMPETITION
5. CALIFORNIA STATUTORY UNFAIR COMPETITION
6. CALIFORNIA COMMON LAW UNFAIR COMPETITION

**[JURY TRIAL DEMANDED]**

1 Plaintiff Bally Gaming, Inc. d/b/a Bally Technologies (“Bally”), by and  
2 through its counsel, submits this Complaint against Defendant Carey Richardson  
3 d/b/a The iApp Shop (“Defendant”) and alleges as follows:

4 **THE PARTIES**

5 1. Bally is a Nevada Corporation with its principal place of business at  
6 6601 S. Bermuda Rd., Las Vegas, Nevada 89119.

7 2. On information and belief, Defendant is an individual residing and doing  
8 business under the fictitious name The iApp Shop in Perrysburg, Ohio.

9 3. Bally is unaware of the true names and capacities of Defendants sued  
10 hereunder as DOES 1 through 10 inclusive, and therefore sues these Defendants by  
11 such fictitious names. Bally is informed and believes and thereon alleges that each of  
12 the fictitiously named Defendants is responsible in some manner for the occurrences  
13 herein alleged, and that Bally’s damages as herein alleged were proximately caused  
14 by their conduct. Bally will amend this Complaint to allege the true names and  
15 capacities of the Defendants DOES 1 through 10 when ascertained.

16 **JURISDICTION AND VENUE**

17 4. This Complaint arises under the laws of the United States, specifically  
18 the patent, trademark, and copyright laws of the United States, 35 U.S.C. §271, et seq.,  
19 15 U.S.C. §§1114 and 1125, and 17 U.S.C. §101, et seq. This Court has original  
20 jurisdiction of this action under 15 U.S.C. §1121 and 28 U.S.C. §§1331 and 1338.  
21 This Court has supplemental jurisdiction under 28 U.S.C. §1367 because the claims  
22 are so related as to form part of the same case or controversy.

23 5. Personal jurisdiction and venue are proper in this district under 28 U.S.C.  
24 §§1391 and 1400(b). On information and belief, Defendant offers software  
25 applications infringing Bally’s intellectual property (“Infringing Apps”) via the  
26 Internet directed at residents of California and this District, has conducted and/or  
27 solicited business in California and this District, has provided infringing products or  
28 services to the residents of California and this District, and/or has committed,

1 contributed to, and/or induced acts of infringement in California and this District.  
2 Defendant purposefully directed his activities toward California and this District  
3 when he willfully infringed Bally's intellectual property rights, specifically targeted  
4 consumers here, and a substantial part of the harm was felt in California and this  
5 District.

6         6. On information and belief, Defendant is subject to this Court's specific  
7 and general personal jurisdiction consistent with the principles of due process and/or  
8 the California Long Arm Statute, due at least to his business in this forum directly  
9 related to the allegations set forth herein, including: (i) a portion of the infringement  
10 alleged herein, including making, using, selling, offering to sell, and/or importing  
11 products, services, methods and/or systems that infringe the patents-, trademarks-, and  
12 copyrights-in-suit; (ii) the presence of established distribution and/or marketing  
13 channels; and (iii) regularly doing or soliciting business, engaging in other persistent  
14 courses of conduct, and/or deriving substantial revenue from goods and services  
15 provided to individuals and entities in California and this judicial district.

16         7. On information and belief, Defendant has purposefully and voluntarily  
17 placed one or more infringing products or services into the stream of commerce by at  
18 least placing one or more Infringing Apps on the Apple, Inc. iTunes Store, such that  
19 these products or services would be accessible to consumers in California and this  
20 District.

21         8. On information and belief, Defendant executed a Registered Apple  
22 Developer Agreement with Apple, Inc., subjecting himself to the laws of the State of  
23 California and to personal jurisdiction and venue in California.

24         9. On information and belief, Defendant has availed himself of the benefits  
25 and privileges of conducting business in the State of California, at least through the  
26 Internet means, and therefore, the exercise of jurisdiction over Defendant would not  
27 offend traditional notions of fair play and substantial justice.  
28

## **FACTUAL ALLEGATIONS**

### **Bally's Proprietary Games and Intellectual Property**

10. For decades, Bally has been a leading global supplier of innovative products and technologies for the gaming industry. Among other assets, Bally owns a substantial portfolio of proprietary casino table games, electronic table systems, electronic gaming machines, and website games, which feature online versions of Bally's table games as well as online play-for-fun games, and associated intellectual property rights.

11. Bally created and/or acquired the rights in the casino games entitled Three Card Poker, Three Card Poker Progressive, and their side bet, Pair Plus (individually and collectively, the "Bally Games").

12. Through its marketing and promotional efforts, Bally popularized the Bally Games.

13. Bally has developed and continues to develop electronic versions of its proprietary games, including the Bally Games, for use in connection with online casinos, social gaming sites, and mobile applications.

14. Bally licenses the Bally Games to casino operators located in California and nationwide.

15. In particular, Bally extensively licenses its intellectual property, including the Bally Games, to Indian Gaming Casinos throughout Southern California and this District.

16. California has the largest Indian gaming casino market in the country with 60 operating Indian casinos that took in approximately \$6.9 billion in revenues in 2013, nearly 25% of the total Indian casino revenues nationwide and the most of any state. Twenty-one of those casinos are located in Southern California and thirteen are located within this District.

17. Moreover, Southern California is the single largest source of visitors to Las Vegas, accounting for 26% of the 39.6 million total visitors (or approximately

1 10.3 million visitors) in 2013, according to a survey by the Las Vegas Convention and  
2 Visitors Authority. Thus, Southern California contains the single largest pool of  
3 gamblers in the nation that would be interested in learning or practicing Three Card  
4 Poker before trying their luck on Bally's tables in Las Vegas.

5 18. On information and belief, Defendant actually or constructively knew  
6 that California's Indian Gaming Casino market is the largest in the country.

7 19. Bally earns a substantial portion of its business revenue through  
8 licensing Bally Games and associated intellectual property rights to third parties  
9 worldwide.

10 20. Bally is registered to do business in California through the California  
11 Secretary of State.

12 21. Further, Bally's casino products and related services in California and  
13 this District are subject to stringent regulation and approval procedures by the  
14 California Gambling Control Commission ("CGCC"). Accordingly, Bally has several  
15 licenses from the CGCC, including Manufacturer & Distributor of Gambling  
16 Equipment – Vendor and Gaming Vendor Provider and Bally is included on the  
17 CGCC's list of Gaming Resource Suppliers (Vendors) Found Suitable by the CGCC.

18 **Bally's Patents**

19 22. Bally is the exclusive owner of all rights to United States Patent No.  
20 6,698,759, entitled "Player Banked Three Card Poker and Associated Games" (the  
21 "'759 Patent"), including but not limited to the right to sue for damages. The '759  
22 Patent was duly issued by the United States Patent and Trademark Office on March 2,  
23 2004.

24 23. Bally is the exclusive owner of all rights to United States Patent No.  
25 6,237,916, entitled "Method and Apparatus for Playing Card Games" (the "'916  
26 Patent"), including but not limited to the right to sue for damages. The '916 Patent  
27 was duly issued by the United States Patent and Trademark Office on May 29, 2001.  
28

### **Bally's Copyrights**

24. Bally is the owner of copyrights in its proprietary Three Card Poker featuring Pair Plus Game Design and Layout, which was published as early as January 1, 1996. On July 28, 2009, Bally registered the Three Card Poker featuring Pair Plus Game Design and Layout with the United States Copyright Office, Reg. No. VA1680816.



25. On September 4, 2012, Bally also registered the Three Card Poker 1.0 computer file with the United States Copyright Office, Reg. No. TX7699199.

### **Bally's Trademarks**

26. Bally is the owner of several common law and federally registered trademarks which it has continuously used in California and nationwide in connection with entertainment services and games.

27. Bally is the owner of a federal trademark registration, Reg. No. 3,011,356 issued by the USPTO on November 1, 2005, for the "Three Card Poker" Design depicted below for use on or in connection with "multiple player, stand alone interactive electronic game machine with video output."



28. Bally is the owner of a federal trademark registration, Reg. No. 2,650,060 issued by the USPTO on November 12, 2002, for the "Three Card Poker" Design depicted below for use on or in connection with "software for the play of card

1 games.”



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6 29. Bally is the owner of a federal trademark registration, Reg. No.  
7 4,109,825 issued by the USPTO on March 6, 2012, for the “Three Card Poker”  
8 Design depicted below for use on or in connection with “software for providing a  
9 game of chance on a gaming platform that enables electronic credit wagering.”



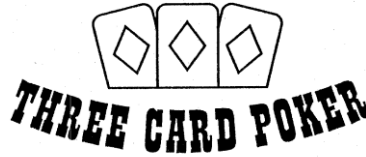
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14 30. Bally is the owner of a federal trademark registration, Reg. No.  
15 2,397,403 issued by the USPTO on October 24, 2000, for the “Three Card Poker”  
16 Design depicted below for use on or in connection with “entertainment services;  
17 namely providing live casino games in gaming establishments.” Affidavits have been  
18 filed pursuant to Sections 8 and 15 of the Lanham Act, 15 U.S.C. §§ 1058 and 1065,  
19 and this registration is incontestable.



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24 31. Bally is the owner of a federal trademark registration, Reg. No.  
25 2,233,569 issued by the USPTO on March 23, 1999, for the “Three Card Poker”  
26 Design depicted below for use on or in connection with “playing cards, layout cloth,  
27 and instructions sold as a unit for playing casino card games.” Affidavits have been  
28 filed pursuant to Sections 8 and 15 of the Lanham Act, 15 U.S.C. §§ 1058 and 1065,



1 and this registration is incontestable.



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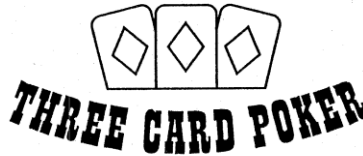
6 32. Bally is the owner of a federal trademark registration, Reg. No.

7 4,199,195 issued by the USPTO on August 28, 2012, for the “Three Card Poker”

8 Design depicted below for use on or in connection with “entertainment services,

9 namely, providing a live game of chance on a gaming table that enables credit

10 wagering.”



14 33. Bally is the owner of a federal trademark registration, Reg. No.

15 3,623,808 issued by the USPTO on August 28, 2012, for the “Three Card Poker

16 Progressive” Design depicted below for use on or in connection with “entertainment

17 services, namely, providing a live game of chance with a progressive jackpot feature.”



22 34. Bally is the owner of a federal trademark registration, Reg. No.

23 2,395,326 issued by the USPTO on October 17, 2000, for the Fan Design depicted

24 below for use on or in connection with “entertainment services; namely providing live

25 casino games in gaming establishments.” Affidavits have been filed pursuant to

26 Sections 8 and 15 of the Lanham Act, 15 U.S.C. §§ 1058 and 1065, and this

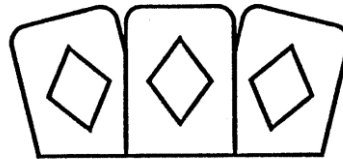
27 registration is incontestable.

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35. Bally is the owner of a federal trademark registration, Reg. No. 2,036,848 issued by the USPTO on February 11, 1997, for the Fan Design depicted below for use on or in connection with “casino card games.” Affidavits have been filed pursuant to Sections 8 and 15 of the Lanham Act, 15 U.S.C. §§ 1058 and 1065, and this registration is incontestable.



36. Reg. Nos. 3,011,356; 2,650,060; 4,109,825; 2,397,403; 2,233,569; and 4199,195 for the “Three Card Poker” Design, Reg. No. 3,623,808 for the “Three Card Poker Progressive” Design, and Reg. Nos. 2,395,326 and 2,036,848 for the Fan Design are collectively the “THREE CARD POKER” trademarks.

37. Bally is the owner of a federal trademark registration, Reg. No. 4,234,994 issued by the USPTO on October 30, 2012, for “Pair Plus” for use on or in connection with “software for the play of card games.”

38. Bally is the owner of a federal trademark registration, Reg. No. 4,234,993 issued by the USPTO on October 30, 2012, for “Pair Plus” for use on or in connection with “layout cloth for casino card games.”

39. Bally is the owner of the common law trademark for “Pair Plus” which it has used continuously on or in connection with its proprietary games, including as a proprietary side bet in Bally’s Three Card Poker game since at least 1995.

40. Reg. Nos. 4,234,994 and 4,234,993 for “Pair Plus” and the common law trademark for “Pair Plus” are collectively the “Pair Plus” trademarks.

41. Bally has extensively advertised, marketed, and promoted the Bally Games using the Three Card Poker Marks and Pair Plus Marks, which has cemented

1 the public's identification of those Marks as designating Bally's products in  
2 California and throughout the nation.

3 42. In particular, consumers have come to recognize one or more distinctive  
4 features as designating Bally products, including, but not limited to the Three Card  
5 Poker marks, Three Card Poker Progressive marks, and Pair Plus marks, as well as  
6 various other Bally trademarks, logos, and proprietary designs; Bally's proprietary  
7 card shuffler; a half-circle shaped playing board; the trade name of the game and/or  
8 logo prominently displayed in the center of the board; and other non-functional  
9 elements incorporated into Bally's proprietary games.

10 43. The '759 and the '916 Patents, the Three Card Poker, Three Card Poker  
11 Progressive, and Pair Plus marks, and the Three Card Poker featuring Pair Plus Game  
12 Design and Layout constitute the Three Card Poker Intellectual Property, as defined  
13 above.

#### 14 **Defendant's Wrongful and Infringing Activities**

15 44. On information and belief, Defendant is a developer of online software,  
16 including online downloadable apps. Without authorization or permission from Bally,  
17 Defendant develops, designs, manufactures, markets, distributes, displays, uses,  
18 and/or sells the Infringing Apps for various devices through Apple's iTunes Store at  
19 <https://itunes.apple.com/us/artist/the-iapp-shop/id456080979>, its website at  
20 <http://www.theiappshop.com/>, and other means.

21 45. On information and belief, Defendant develops, designs, manufactures,  
22 markets, distributes, displays, uses, and/or sells Infringing Apps, including but not  
23 limited to "3 Card Poker: Simulated Casino Gambling," which is described or has  
24 been described at least in part online at <https://itunes.apple.com/us/app/3-card-poker-simulated-casino/id611176333?mt=8>; "3 Card Poker Progressive: Simulated Casino  
25 Gambling," which is described or has been described at least in part online at  
26 [https://itunes.apple.com/us/app/3-card-poker-progressive-](https://itunes.apple.com/us/app/3-card-poker-progressive-simulated/id656636229?mt=8)  
27 [simulated/id656636229?mt=8](https://itunes.apple.com/us/app/3-card-poker-progressive-simulated/id656636229?mt=8); and "Any Card Poker: 3 Card Poker, 4 Card Poker and  
28

1 5 Cards Stud Poker, Simulated Casino Gambling Table Card Game,” which is  
2 described or has been described at least in part online at  
3 <https://itunes.apple.com/us/app/any-card-poker-3-card-poker/id665903004?mt=8>.

4 46. On information and belief, Defendant has been and is directly infringing,  
5 inducing others to infringe, and/or contributorily infringing, literally, under the  
6 doctrine of equivalents, and/or jointly, one or more claims of the ’759 Patent in  
7 California and this District, and elsewhere in the United States by, among other things,  
8 making, using, selling, offering to sell, and/or importing systems and methods that  
9 implement, utilize or otherwise embody the patented invention, including but not  
10 limited to the Infringing Apps.

11 47. On information and belief, Defendant has been and is directly infringing,  
12 inducing others to infringe, and/or contributorily infringing, literally, under the  
13 doctrine of equivalents, and/or jointly, one or more claims of the ’916 Patent in  
14 California and this District, and elsewhere in the United States by, among other things,  
15 making, using, selling, offering to sell, and/or importing systems and methods that  
16 implement, utilize or otherwise embody the patented invention, including but not  
17 limited to the Infringing Apps.

18 48. On information and belief, Defendant copied, distributed, advertised,  
19 and/or sold, and continues to copy, distribute, advertise, and/or sell unauthorized  
20 Three Card Poker, Three Card Poker Progressive, and Pair Plus games and  
21 applications, which are substantially similar to and copy protected elements of Bally’s  
22 proprietary Three Card poker featuring Pair Plus Game Design and Layout.

23 49. On information and belief, Defendant copied protected elements of  
24 Bally’s proprietary Three Card Poker and Three Card Poker Progressive, featuring  
25 Pair Plus, Game Design and Layout willfully and intentionally and with disregard for  
26 Bally’s rights therein.

27 50. On information and belief, Defendant’s Infringing Apps are identical or  
28 confusingly similar to, and compete with Bally’s Three Card Poker, Three Card Poker

1 Progressive, and Pair Plus Games.

2 51. Defendant's use, offer for sale and sale of confusingly similar imitations  
3 of Bally's Three Card Poker, Three Card Poker Progressive, and Pair Plus games,  
4 using the same or similar marks, is likely to deceive, confuse, and mislead purchasers  
5 and prospective purchasers into believing that the Infringing Apps sold by Defendant  
6 are developed by, designed by, manufactured by, authorized by, or in some manner  
7 associated with Bally, which they are not. The likelihood of confusion, mistake, and  
8 deception engendered by Defendant's misappropriation of Bally's trademarks is  
9 causing irreparable harm to the goodwill symbolized by these marks and the  
10 reputation for quality that they embody, in California and in this District. On  
11 information and belief, Defendant continues to use, offers for sale, and sells  
12 confusingly similar imitations of Bally's Three Card Poker, Three Card Poker  
13 Progressive, and Pair Plus games that compete with the games manufactured and sold  
14 by Bally.

15 52. On information and belief, Defendant has willfully, intentionally, and  
16 maliciously adopted and used confusingly similar imitations of Bally's Three Card  
17 Poker, Three Card Poker Progressive, and Pair Plus trademarks in connection with his  
18 Infringing Apps.

19 53. On information and belief, Defendant advertises the Infringing Apps for  
20 sale in California and nationwide.

21 54. On information and belief, Defendant is aware of Bally's business  
22 activities in California and this District in Indian gaming Casinos.

23 55. On information and belief, Defendant's sale of the Infringing Apps in  
24 California and this District are substantial.

## 25 **COUNT I**

### 26 **PATENT INFRINGEMENT IN VIOLATION OF 35 U.S.C. §271**

#### 27 **Infringement of United States Patent No. 6,698,759**

28 56. Bally realleges and incorporates by reference each and every allegation

1 contained in the above paragraphs as if fully set forth herein.

2 57. On information and belief, Defendant has been and is directly infringing,  
3 inducing others to infringe, and/or contributorily infringing, literally, under the  
4 doctrine of equivalents, and/or jointly, one or more claims of the '759 Patent in the  
5 State of California, in this District, and elsewhere in the United States by, among  
6 other things, making, using, selling, offering to sell, and/or importing systems and  
7 methods that implement, utilize or otherwise embody the patented invention,  
8 including by way of example the Infringing Apps. Therefore, Defendant is liable for  
9 infringement of the '759 Patent.

10 58. Defendant has been and is inducing and/or contributing to the direct  
11 infringement of the '759 Patent by at least, but not limited to, customers and end-  
12 users of its products, including but not limited to the Infringing Apps, which have no  
13 substantial non-infringing uses, by at least the following affirmative acts: (1)  
14 advertising in public and marketing the features, benefits, and availability of the  
15 accused systems, products, and services; (2) promoting the adoption and installation  
16 of the accused systems, products, and services; and (3) providing instructions on how  
17 to use the accused systems, products, and services.

18 59. Defendant has knowledge of the '759 Patent and has had the specific  
19 knowledge that his Infringing Apps described above infringes the '759 Patent, since  
20 at least May 2014.

21 60. Bally has been and is irreparably harmed by Defendant's infringement of  
22 the '759 Patent. Bally has incurred substantial damages, including monetary damages.

23 **Infringement of United States Patent No. 6,237,916**

24 61. Bally realleges and incorporates by reference each and every allegation  
25 contained in the above paragraphs as if fully set forth herein.

26 62. On information and belief, Defendant has been and is directly infringing,  
27 inducing others to infringe, and/or contributorily infringing, literally, under the  
28 doctrine of equivalents, and/or jointly, one or more claims of the '916 Patent in the

1 State of California, in this District, and elsewhere in the United States by, among  
2 other things, making, using, selling, offering to sell, and/or importing systems and  
3 methods that implement, utilize or otherwise embody the patented invention,  
4 including by way of example the Infringing Apps. Therefore, Defendant is liable for  
5 infringement of the '916 Patent.

6 63. Defendant has been and is inducing and/or contributing to the direct  
7 infringement of the '916 Patent by at least, but not limited to, customers and end-  
8 users of its products, including but not limited to the Infringing Apps, which have no  
9 substantial non-infringing uses, by at least the following affirmative acts: (1)  
10 advertising in public and marketing the features, benefits, and availability of the  
11 accused systems, products, and services; (2) promoting the adoption and installation  
12 of the accused systems, products, and services; and (3) providing instructions on how  
13 to use the accused systems, products, and services.

14 64. Defendant has knowledge of the '916 Patent and has had the specific  
15 knowledge that his Infringing Apps described above infringes the '916 Patent, since  
16 at least May 2014.

17 65. Bally has been and is irreparably harmed by Defendant's infringement of  
18 the '916 Patent. Bally has incurred substantial damages, including monetary damages.

## 19 COUNT II

### 20 COPYRIGHT INFRINGEMENT IN VIOLATION OF 17 U.S.C. §501

21 66. Bally realleges and incorporates by reference each and every allegation  
22 contained in the above paragraphs as if fully set forth herein.

23 67. Bally is, and at all relevant times has been, the copyright owner, by way  
24 of assignment, of the Three Card Poker featuring Pair Plus Game Design and Layout.  
25 Bally owns rights under the Copyright Act to the Three Card Poker featuring Pair  
26 Plus Game Design and Layout, including the rights to reproduce, distribute, and  
27 display them. The Three Card Poker featuring Pair Plus Game Design and Layout is  
28 wholly original with Bally and, as fixed in tangible media, is copyrightable subject

1 matter under the Copyright Act.

2 68. Bally asserts that Defendant has copied, distributed, advertised, and/or  
3 sold, and continues to copy, distribute, advertise, and/or sell an unauthorized Three  
4 Card Poker game, which is substantially similar to and copies protected elements of  
5 Bally's Three Card Poker featuring Pair Plus Game Design and Layout.

6 69. By engaging in this conduct, Defendant has acted in willful disregard of  
7 laws protecting Bally's copyrights. Bally has sustained and will continue to sustain  
8 substantial damage to the value of its creative works, specifically including the Three  
9 Card Poker featuring Pair Plus Game Design and Layout.

10 70. Bally has suffered and continues to suffer direct and actual damages as a  
11 result of Defendant's infringing conduct. Bally is entitled to recover statutory  
12 damages or its actual damages as well as Defendant's profits generated from the  
13 promotion, distribution, sale, and offer for sale of Defendant's infringing products,  
14 pursuant to 17 U.S.C. §504, as well as enhanced damages for willful infringement.

15 71. Bally has no adequate remedy at law and has suffered and continues to  
16 suffer irreparable harm and damage, including but not limited to lost sales and  
17 business opportunities and damage to Bally's reputation and brand as a result of the  
18 above-described acts. On information and belief, Bally alleges that, unless enjoined  
19 by the Court, Defendant's infringing activity will continue, with attendant and  
20 irreparable harm to Bally. Accordingly, Bally seeks preliminary and permanent  
21 injunctive relief pursuant to 17 U.S.C. §502.

22 72. By reason of the foregoing, Bally has incurred and will continue to incur  
23 attorneys' fees and other costs in connection with the prosecution of its claims against  
24 Defendants, which Bally is entitled to recover from Defendant pursuant to 17 U.S.C.  
25 §505.

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**COUNT III**  
**TRADEMARK INFRINGEMENT**  
**IN VIOLATION OF 15 U.S.C §1114 ET SEQ.**

73. Bally realleges and incorporates by reference each and every allegation contained in the above paragraphs as if fully set forth herein.

74. Defendant is manufacturing, marketing, distributing, displaying, and selling applications and software in interstate commerce bearing the same and/or confusingly similar imitations of Bally's Three Card Poker, Three Card Poker Progressive, and Pair Plus marks.

75. Defendant's manufacturing, marketing, distributing, displaying, and selling games and software in interstate commerce bearing the same and/or confusingly similar imitations of Bally's Three Card Poker, Three Card Poker Progressive, and Pair Plus marks is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendant's products are manufactured, produced, distributed, endorsed, sponsored, approved, or licensed by Bally, or are associated or connected with Bally.

76. Defendant has used marks confusingly similar to Bally's federally registered Three Card Poker, Three Card Poker Progressive, and Pair Plus marks in violation of 15 U.S.C. §1114. Defendant's activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the trade and public, and additional injury to Bally's goodwill and reputation as symbolized by the registered Three Card Poker, Three Card Poker Progressive, and Pair Plus marks, for which Bally has no adequate remedy at law.

77. Defendant's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Bally's federally registered Three Card Poker and Pair Plus marks to Bally's great and irreparable injury.

78. Defendant has caused and is likely to continue causing substantial injury to the public and to Bally, and Bally is entitled to injunctive relief and to recover

1 Defendants' profits, actual damages, enhanced profits and damages, costs and  
2 reasonable attorneys' fees under 15 U.S.C. §§1114, 1116 and 1117.

3 **COUNT IV**

4 **FEDERAL UNFAIR COMPETITION IN VIOLATION OF 15 U.S.C §1125**

5 79. Bally realleges and incorporates by reference each and every allegation  
6 contained in the above paragraphs as if fully set forth herein.

7 80. Defendant is using, offering for sale, and selling confusingly similar  
8 imitations of Bally's Three Card Poker, Three Card Poker Progressive, and Pair Plus  
9 common law trademarks, as described in this Complaint, which has caused and is  
10 likely to cause confusion, deception, and mistake by creating the false and misleading  
11 impression that the Infringing Apps are manufactured or distributed by Bally, are  
12 affiliated, connected, or associated with Bally, or have the sponsorship, endorsement,  
13 or approval of Bally.

14 81. Defendant has made false representations, false descriptions, and false  
15 designations of Bally's goods in violation of 15 U.S.C. §1125(a). Defendant's  
16 activities have caused and, unless enjoined by this Court, will continue to cause a  
17 likelihood of confusion and deception of members of the trade and public, as well as  
18 injury to Bally's goodwill and reputation as symbolized by the Three Card Poker,  
19 Three Card Poker Progressive, and Pair Plus common law trademarks, for which  
20 Bally has no adequate remedy at law.

21 82. Defendant's actions demonstrate an intentional, willful, and malicious  
22 intent to trade on the goodwill associated with Bally's Three Card Poker, Three Card  
23 Poker Progressive, and Pair Plus common law trademarks, to the great and irreparable  
24 injury of Bally.

25 83. Defendant's conduct has caused, and is likely to continue causing,  
26 substantial injury to the public and to Bally. Bally is entitled to injunctive relief and  
27 to recover Defendant's profits, actual damages, enhanced profits and damages, costs  
28 and reasonable attorneys' fees under 15 U.S.C. §§1125(a), 1116 and 1117.

**COUNT V****CALIFORNIA STATUTORY UNFAIR COMPETITION IN VIOLATION OF  
CAL. BUS. & PROF. CODE §17200**

84. Bally realleges and incorporates by reference each and every allegation contained in the above paragraphs as if fully set forth herein.

85. Defendant's acts and practices, as alleged above, constitute unfair competition in violation of Cal. Bus. & Prof. Code §17200. Defendant has engaged in unlawful, unfair, or fraudulent business practices within the meaning of Cal. Bus. & Prof. Code §17200.

86. Defendant intentionally infringed the Bally Games, as alleged above, to purposefully trade off the goodwill and reputation of Bally and to confuse and deceive consumers by creating the false and misleading impression that Defendant's products are manufactured, produced, distributed, endorsed, sponsored, approved, or licensed by Bally, or are associated or connected with Bally.

87. On information and belief, Defendant performed the acts alleged herein intentionally, for the purpose of injuring Bally. The acts alleged herein continue to this day and present a threat to Bally, the general public, the trade and consumers.

88. As a result of Defendant's wrongful acts, Bally has suffered and will continue to suffer loss of income, profits, and valuable business opportunities and if not preliminarily and permanently enjoined, Defendant will have unfairly derived and will continue to unfairly derive income, profits, and business opportunities as a result of his wrongful acts.

89. Pursuant to Cal. Bus. & Prof. Code §17200, Bally seeks an order of this Court preliminarily and permanently enjoining Defendant from continuing to engage in the unlawful, unfair, or fraudulent acts or practices set forth herein, as well as restitution or disgorgement of any monies received by Defendants through such acts or practices.

**COUNT VI**

**CALIFORNIA COMMON LAW UNFAIR COMPETITION**

90. Bally realleges and incorporates by reference each and every allegation contained in the above paragraphs as if fully set forth herein.

91. Defendant intended to use Bally's Three Card Poker, Three Card Poker Progressive, and Pair Plus marks, or confusingly similar imitations thereof, in a manner which is likely to confuse and mislead members of the relevant public as to the origin, sponsorship, approval or license of Defendant's products and as to the false association of said products with Bally. Defendant's conduct as alleged herein was intended to confuse and mislead members of the public, and members of the public will believe that Bally sponsored, approved, or is affiliated with Defendant and that Bally originated, approved, or licensed Defendant's products.

92. Defendant's conduct alleged herein infringes Bally's Three Card Poker and Pair Plus trademark rights and constitutes passing off and common law unfair competition with Bally, all of which has damaged and will continue to irreparably damage Bally's goodwill and reputation unless restrained by this Court, because Bally has no adequate remedy at law.

93. Bally has suffered and continues to suffer direct and actual damages as a result of Defendant's Infringing Apps, including but not limited to lost sales and business opportunities and damage to Bally's reputation and the Three Card Poker and Pair Plus marks. Bally is entitled to recover its actual damages as well as Defendant's profits generated from the promotion, distribution, sale, and offer for sale of Defendant's infringing products.

94. Because Defendant's conduct alleged herein has been intentional, oppressive, malicious, fraudulent, and in willful disregard of Bally's rights, Bally is also entitled to recover punitive and exemplary damages.

95. Bally has suffered, and if Defendant is not enjoined from his wrongful acts of common law trademark infringement, passing off and unfair competition, will

1 continue to suffer great and irreparable injury, loss and damage to its rights in and to  
 2 its Three Card Poker and Pair Plus marks and the goodwill associated therewith for  
 3 which it has no adequate remedy at law.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Bally respectfully requests that this Court:

6 a. enter judgment in favor of Bally that Defendant has infringed, and  
 7 continues to infringe, Bally's intellectual property rights, including the valid and  
 8 enforceable '759 and '916 Patents, the Three Card Poker, Three Card Poker  
 9 Progressive, and Pair Plus marks, and the Three Card Poker copyright featuring Pair  
 10 Plus Game Design and Layout.

11 b. enjoin Defendant, its officers, subsidiaries, agents, servants, employees,  
 12 and all persons in active concert with any of them, from any further infringement  
 13 Bally's copyrights and trademarks in any manner, including but not limited to:

- 14 1) Using, displaying, advertising, promoting, registering, transferring, or  
 15 assigning, including on or in connection with any products, services,  
 16 promotional items, domain names or web sites, the Three Card Poker  
 17 game, the Pair Plus feature, the Three Card Poker, Three Card Poker  
 18 Progressive, and Pair Plus marks, the Three Card Poker featuring Pair  
 19 Plus Game Design and Layout, or any confusingly similar variation  
 20 thereof;
- 21 2) Using, offering for sale, or selling, any trademark, logo, design, or  
 22 source designation of any kind on or in connection with Defendant's  
 23 goods that is likely to cause confusion, mistake, deception, or public  
 24 misunderstanding that such goods are produced or provided by Bally,  
 25 are sponsored or authorized by Bally, or are in any way connected or  
 26 related to Bally;
- 27 3) Using, offering for sale, or selling, any trademark, logo, design, or  
 28 source designation of any kind on or in connection with Defendant's

1 goods that dilutes or is likely to dilute the distinctiveness of the  
2 trademarks or logos of Bally;

3 4) Passing off, palming off, or assisting in passing off or palming off  
4 Defendant's goods as those of Bally, or otherwise continuing any and  
5 all acts of unfair competition as alleged in this Complaint;

6 5) Reproducing, distributing, displaying, selling or offering for sale  
7 products that copy protected elements of Bally's products, the Three  
8 Card Poker featuring Pair Plus Game Design and Layout or  
9 substantially similar variations thereof; and

10 6) Engaging in acts of Federal copyright or patent infringement or  
11 Federal or California statutory or common law trademark  
12 infringement, passing off or unfair competition that would damage or  
13 injure Bally and/or Bally's trademarks, logos, proprietary designs  
14 and/or other intellectual property.

15 c. order Defendant to cease offering for sale, marketing, promoting, and  
16 selling, to remove from stores and websites all products bearing Bally's Three Card  
17 Poker and Pair Plus marks, Bally's Three Card Poker featuring Pair Plus Game  
18 Design and Layout, or any other confusingly similar variation, which are in  
19 Defendant's possession or have been supplied by Defendant or under his authority, to  
20 any store or customer, including, but not limited to, any wholesaler, distributor,  
21 distribution center, retail store, consignor, or marketer, and also to deliver to each  
22 such store or customer a copy of this Court's order as it relates to said injunctive relief  
23 against Defendant;

24 d. order Defendant to deliver up for impoundment and for destruction, all  
25 games, apps, bags, boxes, labels, tags, signs, packages, advertising, sample books,  
26 promotional material, stationary, software, source code or other materials in the  
27 possession, custody, or under the control of Defendant's and/or Defendant's  
28 downstream distributors, bearing Bally's trademarks, copyrights, or any colorable

imitation thereof;

e. compel Defendant to account to Bally for any and all profits derived by Defendant from the sale or distribution of infringing goods as described in this Complaint;

f. finds that Defendant's acts of trademark infringement, copyright infringement, and unfair competition to be knowing and willful, an exception case within the meaning of 15 U.S.C. §1117 and 15 U.S.C. §504;

g. award Bally damages, including its actual damages (or statutory damages for certain acts of copyright infringement, if Bally so elects), Defendant's profits, treble and punitive damages, pre- and post-judgment interest, enhanced damages and costs pursuant to 35 U.S.C. §284, as well as its attorneys' fees and costs, in an amount to be ascertained pursuant to applicable laws, including, without limitation, 15 U.S.C. §1117, 15 U.S.C. §504, 35 U.S.C. §285, and California law; and

h. grant Bally such other relief as the Court deems just and equitable.

Date: July 21, 2014

Respectfully submitted,

/s/ Adrian M. Pruetz

Adrian M. Pruetz

Erica J. Van Loon

Marcus F. Chaney

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*Bally Gaming, Inc. d/b/a Bally*

*Technologies*



**DEMAND FOR JURY TRIAL**

Bally demands a trial by jury on all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Date: July 21, 2014

Respectfully submitted,

/s/ Adrian M. Pruetz

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