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NORTHERN DISTRICT OF CALIFORNIA

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 ZYNGA INC.,

12 Plaintiff,

13 v.

14 LEXOS MEDIA, INC.,

15 Defendant.

CV Case No. 12 1952

**COMPLAINT FOR DECLARATORY
JUDGMENT OF NONINFRINGEMENT AND
INVALIDITY OF U.S. PATENT NOS.
5,995,102, 6,065,057, 6,118,449, 7,111,254, AND
7,975,241**

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1 As a technology leader and patent holder, Zynga Inc. (“Zynga”) vigorously supports the valid
2 enforcement of intellectual property rights. Zynga will take appropriate action to protect itself, however,
3 when others try to misuse such rights as Lexos Media, Inc. (“Lexos”) has attempted with its repeated
4 allegations of patent infringement against Zynga. Zynga thus initiates this action to seek relief from the
5 Court, including declarations that Lexos’s patents are not valid and not infringed by Zynga.

6 **NATURE OF THE ACTION**

7 1. This is an action arising under the patent laws of the United States for declaratory
8 judgment of non-infringement and invalidity of United States Patent Nos. 5,995,102, 6,065,057,
9 6,118,449, 7,111,254, and 7,975,241 (the ’102 patent, the ’057 patent, the ’449 patent, the ’254 patent,
10 and the ’241 patent, respectively and, collectively, the patents-in-suit).

11 **THE PARTIES**

12 2. Plaintiff Zynga is a Delaware corporation with its principal place of business at 699
13 Eighth Street, San Francisco, California.

14 3. On information and belief, Defendant Lexos is a Delaware corporation with its principal
15 places of business at 6214 Presidential Court, Suite C, Fort Myers, Florida.

16 **JURISDICTION AND VENUE**

17 4. This action arises under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, and
18 under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*

19 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a),
20 2201(a), and 2202.

21 6. On information and belief, this Court has personal jurisdiction over Lexos because Lexos
22 is doing business in this Judicial District. Lexos nationally distributes a product called “AdBull.” On
23 information and belief, the patents-in-suit are based on AdBull-related technology. On information and
24 belief, Lexos Media announced the launch of AdBull in San Francisco, California, and directly solicited
25 customers in San Francisco, California to license its purportedly-patented technology. Specifically, on
26 information and belief, Craig Pizaris-Henderson, Lexos’s founder and CEO, and John Moran, Lexos’s
27 Chief Revenue Officer, participated in the launch in San Francisco of AdBull and met with publishers
28 who wanted to discuss licensing AdBull in this judicial district. In addition, as discussed in more detail

1 below, Lexos has made overtures to Zynga to license its technology along with the patents-in-suit, which
2 overtures Zynga has rejected.

3 7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(c).

4 8. An immediate, real, and justiciable controversy exists between Zynga and Lexos as to (1)
5 whether the '102, '057, '449, '254 and '241 patents are valid, and (2) whether Zynga infringes these
6 patents.

7 **INTRA-DISTRICT ASSIGNMENT**

8 9. Pursuant to Civil Local Rule 3-2(c), this is an Intellectual Property Action assigned on a
9 district-wide basis.

10 **FACTUAL BACKGROUND**

11 10. The '102 patent is entitled "Server System and Method for Modifying a Cursor Image."
12 The '057 patent is entitled "Method for Authenticating Modification of a Cursor Image." The '449
13 patent is entitled "Server System and Method for Modifying a Cursor Image." The '254 patent is entitled
14 "System for Replacing a Cursor Image in Connection with Displaying the Contents of a Web Page."
15 And the '241 patent is entitled "System for Replacing a Cursor Image in Connection with Displaying the
16 Contents of a Web Page."

17 11. Lexos has written to Zynga threatening litigation on the patents-in-suit: "Lexos is the
18 owner of several patents on core technology related to cursor-based content delivery and presentation,
19 including [the patents-in-suit]." Lexos further stated that Zynga's cursor technology "appears to infringe
20 one or more claims of [the patents-in-suit]." It asked Zynga to confirm that, if Zynga was not interested
21 in pursuing a license with Lexos, it would "respect Lexos's intellectual property rights and discontinue
22 all use of cursor-based content that is within the scope of any claim of [the patents-in-suit]." Lexos
23 further threatened that even if Zynga so confirmed, "Lexos may still pursue recovery for Zynga's prior
24 infringement of the [patents-in-suit]." Lexos specifically identified Zynga's game Farmville as
25 potentially infringing. Thereafter, Lexos invited Zynga to license its technology and the associated
26 patent rights. It also provided Zynga with infringement charts that claimed to show how Zynga's game
27 Farmville infringed its patents. Zynga declined this invitation.

28 12. On information and belief, Lexos owns the patents-in-suit.

1 13. As a result, there is an actual controversy as to whether Zynga’s technology infringes the
2 patents-in-suit and whether the patents-in-suit are valid.

3 **FIRST COUNT**

4 **(Declaration of Non-infringement of the ’102 patent)**

5 14. Zynga repeats and incorporates by reference the allegations of the preceding paragraphs in
6 their entirety.

7 15. Zynga—with Farmville or any of its other games—has not infringed, and is not now
8 infringing, the claims of the ’102 patent.

9 **SECOND COUNT**

10 **(Declaration of Invalidity of the ’102 patent)**

11 16. Zynga repeats and incorporates by reference the allegations of the preceding paragraphs in
12 their entirety.

13 17. The claims of the ’102 patent are invalid under 35 U.S.C. §§ 101, 102, 103 and/or 112.

14 18. As one example, Zynga has uncovered many systems that pre-date the priority date of the
15 ’102 patent—including video games such as *Command & Conquer: Red Alert*—that render invalid the
16 claims of the ’102 patent.

17 **THIRD COUNT**

18 **(Declaration of Non-infringement of the ’057 patent)**

19 19. Zynga repeats and incorporates by reference the allegations of the preceding paragraphs in
20 their entirety.

21 20. Zynga—with Farmville or any of its other games—has not infringed, and is not now
22 infringing, the claims of the ’057 patent.

23 **FOURTH COUNT**

24 **(Declaration of Invalidity of the ’057 patent)**

25 21. Zynga repeats and incorporates by reference the allegations of the preceding paragraphs in
26 their entirety.

27 22. The claims of the ’057 patent are invalid under 35 U.S.C. §§ 101, 102, 103 and/or 112.
28

1 23. As one example, Zynga has uncovered many systems that pre-date the priority date of the
2 '057 patent—including video games such as *Command & Conquer: Red Alert*—that render invalid the
3 claims of the '057 patent.

4 **FIFTH COUNT**

5 **(Declaration of Non-infringement of the '449 patent)**

6 24. Zynga repeats and incorporates by reference the allegations of the preceding paragraphs in
7 their entirety.

8 25. Zynga—with Farmville or any of its other games—has not infringed, and is not now
9 infringing, the claims of the '449 patent.

10 **SIXTH COUNT**

11 **(Declaration of Invalidity of the '449 patent)**

12 26. Zynga repeats and incorporates by reference the allegations of the preceding paragraphs in
13 their entirety.

14 27. The claims of the '449 patent are invalid under 35 U.S.C. §§ 101, 102, 103 and/or 112.

15 28. As one example, Zynga has uncovered many systems that pre-date the priority date of the
16 '449 patent—including video games such as *Command & Conquer: Red Alert*—that render invalid the
17 claims of the '449 patent.

18 **SEVENTH COUNT**

19 **(Declaration of Non-infringement of the '254 patent)**

20 29. Zynga repeats and incorporates by reference the allegations of the preceding paragraphs in
21 their entirety.

22 30. Zynga—with Farmville or any of its other games—has not infringed, and is not now
23 infringing, the claims of the '254 patent.

24 **EIGHTH COUNT**

25 **(Declaration of Invalidity of the '254 patent)**

26 31. Zynga repeats and incorporates by reference the allegations of the preceding paragraphs in
27 their entirety.

28 32. The claims of the '254 patent are invalid under 35 U.S.C. §§ 101, 102, 103 and/or 112.

1 33. As one example, Zynga has uncovered many systems that pre-date the priority date of the
2 '254 patent—including video games such as *Command & Conquer: Red Alert*—that render invalid
3 claims of the '254 patent.

4 **NINTH COUNT**

5 **(Declaration of Non-infringement of the '241 patent)**

6 34. Zynga repeats and incorporates by reference the allegations of the preceding paragraphs in
7 their entirety.

8 35. Zynga—with Farmville or any of its other games—has not infringed, and is not now
9 infringing, the claims of the '241 patent.

10 **TENTH COUNT**

11 **(Declaration of Invalidity of the '241 patent)**

12 36. Zynga repeats and incorporates by reference the allegations of the preceding paragraphs in
13 their entirety.

14 37. The claims of the '241 patent are invalid under 35 U.S.C. §§ 101, 102, 103 and/or 112.

15 38. As one example, Zynga has uncovered many systems that pre-date the priority date of the
16 '241 patent—including video games such as *Command & Conquer: Red Alert*—that render invalid
17 claims of the '241 patent.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Zynga prays for the following relief:

20 A. A declaration that Zynga has not infringed and is not infringing any claims of the '102
21 patent;

22 B. A declaration that all claims of the '102 patent are invalid;

23 C. A declaration that Zynga has not infringed and is not infringing any claims of the '057
24 patent;

25 D. A declaration that all claims of the '057 patent are invalid;

26 E. A declaration that Zynga has not infringed and is not infringing any claims of the '449
27 patent;

28 F. A declaration that all claims of the '449 patent are invalid;

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G. A declaration that Zynga has not infringed and is not infringing any claims of the '254 patent;

H. A declaration that all claims of the '254 patent are invalid;

I. A declaration that Zynga has not infringed and is not infringing any claims of the '241 patent;

J. A declaration that all of the claims of the '241 patent are invalid;

K. An order declaring that Zynga is the prevailing party to this action and that this is an exceptional case, awarding Zynga its costs, expenses, disbursements, and reasonable attorneys' fees under 25 U.S.C. § 285 and all other applicable statutes, rules, and common law;

L. An order declaring that Lexos pay all costs associated with this action; and

M. An order granting Zynga such other and additional relief as the Court deems just and proper.

Dated: April 19, 2012

DURIE TANGRI LLP

By: _____

DARALYN J. DURIE
SONALI D. MAITRA

Attorneys for Plaintiff
ZYNGA INC.