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7 California corporation

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ORANGE**

11 K2 NETWORK, INC., a California
12 corporation,

13 Plaintiff,

14 v.

15 MGAME CORPORATION, a
16 corporation organized under the laws of
the Republic of Korea; MGAME USA,
17 INC., a California corporation; GAME
CAFÉ SERVICES, INC., a California
18 corporation and successor in interest to
GAME CAFÉ SERVICES, LLC, a
19 California limited liability company;
HAESUNG "CHRIS" HWANG, an
individual, and Does 1 to 50, inclusive,

20 Defendants.
21

Case No. 30-2012-00555196-CU-BC-CJC

COMPLAINT FOR:

- 22 (1) MISTAKEN RECEIPT
- 23 (2) BREACH OF LICENSE AGREEMENT
- 24 (3) BREACH OF OPERATING AGREEMENT
- 25 (4) FRAUD
- 26 (5) INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS

27 Judge Franz E. Miller
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1 Plaintiff K2 Network, Inc. alleges as follows:
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3 **THE PARTIES**

4 1. Plaintiff K2 Network, Inc. ("K2") is a corporation, organized and existing
5 under the laws of the State of California, having its principal place of business in
6 California.

7 2. K2 is informed and believes and based thereon alleges that defendant
8 MGame Corporation ("MGame Corporation") is a corporation organized under the laws
9 of the Republic of Korea, having its principal place of business in Korea, and doing
10 business worldwide.

11 3. K2 is informed and believes and based thereon alleges that defendant
12 MGame USA, Inc. ("MGame USA") is a corporation organized under the laws of the
13 State of California, having its principal place of business in California. K2 is further
14 informed and believes and based thereon alleges that MGame USA is a partly or fully
15 owned subsidiary of MGame Corporation.

16 4. K2 is informed and believes and based thereon alleges that defendant Game
17 Café Services, Inc. ("GCS, Inc.") is a corporation organized under the laws of the State of
18 California, having its principal place of business in California, and is the successor in
19 interest to Game Café Services, LLC ("GCS, LLC") a California limited liability
20 company. K2 is further informed and believes and based thereon alleges that GCS, Inc. is
21 a partly or fully owned subsidiary of MGame Corporation and/or MGame USA.

22 5. Defendant Chris Hwang is a former President of K2 and was the manager,
23 president and CEO of GCS, LLC. K2 is informed and believes and based thereon alleges
24 that Mr. Hwang currently resides in Turkey and is now a part owner of GCS, Inc.

25 6. The true names and capacities of the defendants named herein as Does 1 to
26 50, inclusive, whether individual, corporate, associate or otherwise, are presently
27 unknown to K2, who therefore sues said defendants by such fictitious names. K2 will
28 seek leave to amend its complaint to allege the true names and capacities when the same

1 have been ascertained. K2 is informed and believes, and based thereon alleges, that each
2 of the fictitiously named defendants was responsible in some manner for the acts and
3 omissions alleged herein and is liable to K2 therefor.

4 7. K2 is informed and believes, and based thereon alleges, that in doing the
5 acts and omissions alleged herein, each defendant, including the Doe Defendants acted
6 individually for himself and itself, and as the agent, employee, alter ego, and/or
7 representative of each of the other defendants and, in doing the acts and omissions alleged
8 herein, each was at all times acting within the course and scope of said agency,
9 representation or employment relationship with the advance knowledge, acquiescence or
10 subsequent ratification of each and every other defendant.

11 GENERAL ALLEGATIONS

12 8. On or about November 7, 2003, K2 and MGame Corporation entered into an
13 Exclusive Game Distribution and License Agreement (the "Agreement"). Under the
14 Agreement, MGame Corporation granted to K2 "the sole, irrevocable, exclusive right to
15 operate, promote, publish, produce, distribute and service" a massively multiplayer online
16 computer game called "Knight Online." In return, K2 paid MGame Corporation license
17 fees and ongoing royalties.¹ A copy of the Agreement is attached hereto as Exhibit A.

18 9. On or about October 2, 2005, K2 and MGame Corporation extended the
19 Agreement (the "2005 Extension Memo") for an additional two years. A copy of the 2005
20 Extension Memo is attached hereto as Exhibit B.

21 10. On or about April 1, 2006, K2, MGame Corporation, and MGame USA,
22 entered into a Game Service Agreement (the "2006 GSA") for Knight Online. Under the
23 2006 GSA, the parties agreed, among other things, that: (i) MGame USA would have the
24 right, on behalf of MGame Corporation, to collect Knight Online royalties, or a portion
25 thereof, from K2; (ii) MGame USA would share all of MGame Corporation's obligations
26 under the Agreement and the extensions thereto; and (iii) if MGame USA failed to
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28 ¹ The Agreement and extensions thereto refer to these royalties as "Revenue Sharing" payments.

1 perform its obligations, MGame Corporation would perform those obligations. A copy of
2 the 2006 GSA is attached hereto as Exhibit C.

3 11. On or about October 1, 2007, K2 and MGame Corporation extended the
4 Agreement (the "2007 Extension Agreement") for an additional year. A copy of the 2007
5 Extension Agreement is attached hereto as Exhibit D.

6 12. On or about October 2, 2008, K2 and MGame Corporation again extended
7 the Agreement (the "2008 Extension Agreement") for an additional year. Under the 2008
8 Extension Agreement, the parties agreed on a method for calculating royalties for the sales
9 of electronic serial numbers ("ESNs," also called "EPINs") sold for Knight Online. K2
10 agreed to pay MGame Corporation monthly royalties on incomes generated from ESN
11 that K2 "collected and recharged from Cyber Cafes and all ordinary users into the bank
12 account of [K2] before any channel costs." (Exhibit E, p. 3, Article 5, subparagraph i). A
13 copy of the 2008 Extension Agreement is attached hereto as Exhibit E.

14 13. On or about June 8, 2009, K2, MGame Corporation, Chris Hwang, and
15 GCS, LLC executed an Operating Agreement of GCS, LLC (the "GCS Operating
16 Agreement"). Under the GCS Operating Agreement, K2 and MGame Corporation
17 granted GSC, LLC the exclusive right to market, sell and distribute electronic serial
18 numbers ("ESNs") for Knight Online in Turkey for a two year period commencing June 1,
19 2009 and ending June 1, 2011. An unexecuted copy of the GCS Operating Agreement is
20 attached hereto as Exhibit F.²

21 14. On or about June 4, 2009, K2 and MGame Corporation again extended the
22 Agreement (the "2009 Extension Agreement") for an additional two years. Under the
23 2009 Extension Agreement, the parties reaffirmed that K2 would pay MGame
24 Corporation (or MGame USA) monthly royalties for ESN income based on the amount of
25 ESN monies received "into the bank account of [K2] without any sales, channel and
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27 ² Although K2 is currently unable to locate an executed copy of the GCS Operating Agreement, K2 and MGame
28 Corporation both acknowledged in Article 3, paragraph 7 of the 2011 Extension Agreement that the GCS Operating
Agreement was signed on or around June 8, 2009.

1 marketing costs deducted.” (Exhibit F, p. 3, Article 5, subparagraph i). A copy of the
2 2009 Extension Agreement is attached hereto as Exhibit G.

3 15. On or about June 4, 2011, K2 and MGame corporation again extended the
4 Agreement (the “2011 Extension Agreement”) for an additional eighteen (18) months,
5 such that the Agreement would expire on December 3, 2012 (the “Expiration Date”). A
6 copy of the 2011 Extension Agreement is attached hereto as Exhibit H.

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8 **FIRST CAUSE OF ACTION**

9 **(Mistaken Receipt – Against MGame and MGame USA)**

10 16. K2 restates and realleges all preceding paragraphs of this Complaint, as if
11 fully set forth here.

12 17. On or about March 1, 2012, K2 completed an audit of royalty payments paid
13 to MGame Corporation and/or MGame USA for Knight Online. K2 discovered that from
14 August 2009 to October 2011, it had overpaid MGame Corporation and MGame USA
15 \$1,903,254.07 in royalties (the “Royalty Overpayments”). K2 further discovered that the
16 Royalty Overpayments resulted from improperly calculated receipts from ESN sales and,
17 in particular, from “bonus” ESNs which were improperly included in K2’s cash receipts.
18 A copy of the audit summary page is attached hereto as Exhibit I.

19 18. Upon discovering the mistake, K2 promptly asked MGame and/or MGame
20 USA to return the full amount of the Royalty Overpayments.

21 19. MGame and/or MGame USA has not returned the amount of the Royalty
22 Overpayments to K2.

23 20. MGame and/or MGame USA currently owes K2 \$1,358,395.12 (which is
24 the \$1,903,254.07 Royalty Overpayments less \$544,858.95 in royalty payments owing to
25 MGame Corporation for November 2011, December 2011 and January 2012 that K2 has
26 offset against the amount of the Royalty Overpayments).

SECOND CAUSE OF ACTION

(Breach of Contract – Against MGame Corporation and MGame USA)

21. K2 restates and realleges all preceding paragraphs of this Complaint, as if fully set forth here.

22. Paragraph 4.1.4.1 of the Agreement requires MGame Corporation to “[p]rovide maintenance and upgrade service upon [K2’s] request....”

23. Paragraph 3.1.1 of the 2006 GSA requires MGame USA to “provide maintenance and upgrade services to [K2] upon its request....”

24. Paragraph 4.1.4(a) of the Agreement provides that MGame Corporation “[w]arrant[s] to [K2] that [K2] shall quietly and peacefully, enjoy and possess its rights during the Term.”

25. Article 3, paragraph 3, of the 2011 Extension Agreement requires MGame Corporation to “block IP access from [K2’s] Territory to servers not operated by [K2] within thirty (30) days of receiving written request from [K2] to block such servers, and shall use best commercial efforts to prohibit access from [K2’s] Territory to servers not operated by [K2].”

26. Article 7, paragraph 1, of the 2011 Extension Agreement provides that if the Agreement is terminated prior to the Expiration Date for any reason other than K2’s default, MGame Corporation would pay K2 a specified termination payment.

27. On or about February 23, 2012, MGame Corporation sent K2 a letter purporting to terminate the 2011 Extension Agreement. MGame Corporation’s purported termination is without cause, and constitutes an express repudiation of the 2011 Extension Agreement. Further, MGame Corporation failed to pay the early termination payment as required by the 2011 Extension Agreement. A copy of MGame Corporation’s February 23, 2012 termination letter is attached hereto as Exhibit J.

28. K2 has fully performed all conditions and terms of the Agreement and the various extensions thereto which were required on its part and which were not otherwise excused or offset by the Royalty Overpayments.

1 29. MGame Corporation and MGame USA breached the Agreement and the
2 various extensions and amendments thereto, including, without limitation, the 2006 GSA
3 and the 2011 Extension Agreement, and the implied covenants of good faith and fair
4 dealing contained therein, by actions, which include, but are not limited to, the following:

- 5 (a) by failing, on numerous occasions, to provide maintenance and
6 upgrade service upon K2's request;
- 7 (b) by failing to block IP access from [K2's] Territory to servers not
8 operated by [K2];
- 9 (c) by failing to use best commercial efforts to prohibit access from K2's
10 Territory to servers not operated by K2;
- 11 (d) by breaching its warranty that K2 "shall quietly and peacefully enjoy
12 its rights" during the license term, including, but not limited to, by causing
13 GCS, Inc. to breach its obligations to K2 under the GCS Operating
14 Agreement (as set forth more fully below);
- 15 (e) by wrongfully repudiating the Agreement and the various extensions
16 thereto prior to the Expiration Date; and
- 17 (f) by purporting to terminate the Agreement and the various extensions
18 thereto without making the early termination payment to K2 called for in the
19 2011 Extension Agreement and without complying with the server
20 equipment transfer called for in the 2011 Extension Agreement.

21 30. As a direct and proximate result of MGame Corporation and MGame USA's
22 breaches of their contractual duties, K2 has sustained substantial damages, in amounts
23 according to proof at trial, but not less than \$6,250,000.

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THIRD CAUSE OF ACTION

**(Breach of Contract – Against GCS, Inc., as successor in interest to GCS, LLC,
MGame Corporation, and Chris Hwang)**

31. K2 restates and realleges all preceding paragraphs of this Complaint, as if fully set forth here.

32. As stated above, K2 is informed and believes and based thereon alleges that on or about June 8, 2009, K2, MGame Corporation, Chris Hwang, and GCS, LLC executed the GCS Operating Agreement. Under the GCS Operating Agreement, K2 and MGame Corporation granted GSC, LLC the exclusive right to market, sell and distribute ESNs for Knight Online in Turkey for a two year period commencing June 1, 2009 and ending June 1, 2011.

33. Paragraph 12.1 of the GCS Operating Agreement required GCS, LLC to “use its best commercial efforts to maximize the sales of ESNs through the Territory during the Distribution Term.”

34. Paragraph 12.7(a)(iv) provides that GCS, LLC's rights to distribute ESNs in Turkey terminates upon GCS, LLC's dissolution.

35. K2 is informed and believes and based thereon alleges that GCS, LLC dissolved on November 2, 2009, when it converted, unbeknownst to K2, into GCS, Inc.

36. K2 has fully performed all conditions and terms of Section 12 of the GCS Operating Agreement which were required on its part and which were not otherwise excused or offset.

37. K2 is informed and believed and based thereon alleges that GCS, Inc., as successor in interest to GCS, LLC, MGame Corporation, and Chris Hwang, breached the GCS Operating Agreement by actions, which include, but are not limited to, the following:

- (a) by distributing ESNs in Turkey after its right to do so had been terminated upon the conversion of GCS, LLC into GCS, Inc.; or, in the alternative

1 (b) by failing to use its best commercial efforts to maximize the sales of
2 ESNs through the Territory during the Distribution Term;

3 (c) by establishing “eNTiTy Games” (www.nttgame.com) and NFinity
4 Games, which shared staff and office space with GCS, Inc. and, among
5 other things, published at least two competing games such as “Point Blank”
6 and “Valiant”; and

7 (d) by promoting its own European-based version of Knight Online to
8 Turkish consumers and various Turkish resellers despite its obligation to
9 promote and sell ESN codes in Turkey only for the version of Knight Online
10 operated by K2 in Turkey.

11 38. As a direct and proximate result of GCS, Inc., MGame Corporation, and
12 Chris Hwang’s breach of their contractual duties, K2 has sustained substantial damages, in
13 amounts according to proof at trial, but not less than \$2,200,000.
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15 **FOURTH CAUSE OF ACTION**

16 **(Fraud – Against GCS, Inc., as successor in interest to GCS, LLC, MGame
17 Corporation, and Chris Hwang)**

18 39. K2 restates and realleges all preceding paragraphs of this Complaint, as if
19 fully set forth here.

20 40. As stated above, K2 is informed and believes and based thereon alleges that
21 on or about June 8, 2009, K2, MGame Corporation, Chris Hwang, and GCS, LLC
22 executed the GCS Operating Agreement.

23 41. K2 is informed and believes and based thereon alleges that GCS, LLC
24 dissolved on November 2, 2009, when it converted, unbeknownst to K2, into GCS, Inc.

25 42. K2 is informed and believes and based thereon alleges that when the parties
26 executed the GCS Operating Agreement, MGame Corporation’s “head of international
27 business,” Stephen Choi, and GCS, LLC’s manager, president and CEO, Chris Hwang,
28 falsely represented to K2’s then-CEO Joshua Hong that they would perform their

1 obligations under the GCS Operating Agreement with (i) no intention of performing their
2 obligations; and (ii) the intent to defraud K2 and induce it into entering into the GCS
3 Operating Agreement;

4 43. K2 is informed and believes and based thereon alleges that MGame
5 Corporation, Chris Hwang, and GCS, LLC intended to convert GCS, LLC into GCS, Inc.
6 at the time they executed the GCS Operating Agreement and intentionally concealed this
7 fact from K2.

8 44. K2 justifiably relied on the misrepresentation made by MGame Corporation,
9 Chris Hwang, and GCS, LLC by entering into the GCS Operating Agreement.

10 45. As a direct and proximate result of MGame Corporation, Chris Hwang, and
11 GCS, LLC's misrepresentation, K2 has sustained substantial damages, in amounts
12 according to proof at trial, but not less than \$2,200,000.

13 FIFTH CAUSE OF ACTION

14 **(Intentional Interference With Contractual Relations – Against Chris Hwang)**

15 46. K2 restates and realleges all preceding paragraphs of this Complaint, as if
16 fully set forth here.

17 47. The original members of GCS, LLC, the predecessor in interest to GCS,
18 Inc., were MGame Corporation and Chris Hwang. Mr. Hwang was the manager,
19 president, and CEO of GCS, LLC and, on information and belief, is now a part owner of
20 GCS, Inc., along with MGame Corporation.

21 48. K2 is informed and believes and based thereon alleges that:

22 (a) Mr. Hwang knew of K2's Agreement with MGame Corporation; and

23 (b) Mr. Hwang created, managed, funded, and/or operated NFinity
24 and/or eNTiTy Games with the intention of disrupting the Agreement and
25 the various extensions thereto and inducing MGame Corporation to breach
26 the Agreement and the various extensions thereto;
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(c) Mr. Hwang's acts did in fact disrupt the Agreement and the various extensions thereto and induced MGame Corporation to breach the Agreement and the various extensions thereto.

49. As a direct and proximate result of Mr. Hwang's tortious interference with the Agreement, K2 has sustained substantial damages, in amounts according to proof at trial, but not less than \$2,200,000.

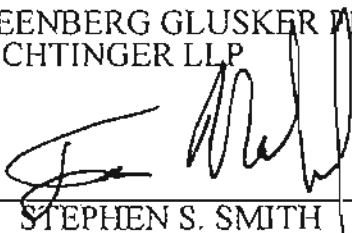
PRAYER FOR RELIEF

WHEREFORE, K2 prays for judgment against defendants as follows:

1. For general and special damages according to proof at trial;
2. For punitive damages on its Fourth and Fifth Causes of Action;
3. For costs of suit and attorney fees incurred by K2 herein;
4. For prejudgment interest according to proof;
5. For such other and further relief as the Court may deem just and proper.

DATED: March 19, 2012

GREENBERG GLUSKER FIELDS CLAMAN &
MACHTINGER LLP

By: 

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DAN D. NABEL
Attorneys for Plaintiff K2 Network, Inc., a
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