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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

BY _____
U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
2012 FEB 19 PM 4:03

12 FOURTH AGE LIMITED, a United Kingdom
13 corporation; PRISCILLA MARY ANNE REUEL
14 TOLKIEN, as TRUSTEE OF THE TOLKIEN
15 TRUST, a United Kingdom Charitable Trust; THE
16 J.R.R. TOLKIEN ESTATE LIMITED, a United
17 Kingdom corporation; HARPERCOLLINS
18 PUBLISHERS, LTD., a United Kingdom
19 corporation; UNWIN HYMAN LTD., a United
20 Kingdom corporation; and GEORGE ALLEN &
21 UNWIN (PUBLISHERS) LTD., a United
22 Kingdom corporation,

23 Plaintiffs,

24 v.

25 WARNER BROS. DIGITAL DISTRIBUTION,
26 INC., a division of WARNER BROS. HOME
27 ENTERTAINMENT, INC., a Delaware
28 corporation; WARNER BROS.
ENTERTAINMENT, INC., a Delaware
corporation, as successor-in-interest to New Line
Cinema Corp.; WARNER BROS. CONSUMER
PRODUCTS, INC., a Delaware corporation;
WARNER BROS. INTERACTIVE
ENTERTAINMENT, INC., a division of
WARNER BROS. HOME ENTERTAINMENT,
INC., a Delaware corporation; NEW LINE
PRODUCTIONS, INC., a California corporation,
THE SAUL ZAENTZ COMPANY d/b/a Middle-
earth Enterprises, a Delaware corporation; and
DOES 1-10, inclusive,

Defendants.

Case No. **CV 12 9912** - ABC
(Sfx)

COMPLAINT FOR:

- (1) COPYRIGHT INFRINGEMENT;**
- (2) BREACH OF CONTRACT**
- (3) DECLARATORY RELIEF – Gambling Games and Downloadable Games; and**
- (4) DECLARATORY RELIEF – Trademarks, Service Marks and Services Licensing**

REQUEST FOR JURY TRIAL

GREENBERG GLUSKER FIELDS CLAMAN
& MACHTINGER LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, California 90067-4590

1 Plaintiffs Fourth Age Limited, a United Kingdom corporation; Priscilla Mary
2 Anne Reuel Tolkien, as Trustee of The Tolkien Trust, a United Kingdom Charitable
3 Trust; The J.R.R. Tolkien Estate Limited, a United Kingdom corporation;
4 HarperCollins Publishers, Ltd., a United Kingdom corporation; Unwin Hyman Ltd.,
5 a United Kingdom corporation; and George Allen & Unwin (Publishers) Limited., a
6 United Kingdom corporation (collectively, “plaintiffs”) allege as follows:

7 JURISDICTION AND VENUE

8 1. This action arises under the Declaratory Judgment Act, 28 U.S.C. §
9 2201, and the United States Copyright Act, 17 U.S.C. §§ 101 *et seq.* Jurisdiction is
10 based upon 28 U.S.C. §§ 1331 and 1338(a), and the principles of pendent
11 jurisdiction pursuant to 28 U.S.C. § 1367(a).

12 2. Venue in this Judicial District is proper under 28 U.S.C. §§ 1391(b)
13 and (c), and § 1400(a) because a substantial part of the events giving rise to the
14 plaintiffs’ claims occurred in this Judicial District, one or more defendants resides
15 and may be found in this District, and because defendants are subject to personal
16 jurisdiction in this District by virtue of their residing, transacting and/or soliciting
17 business in this District.

18 INTRODUCTION

19 3. This case involves merchandising rights in and to *The Lord of the*
20 *Rings* and *The Hobbit*. Professor J.R.R. Tolkien’s seminal work “*The Lord of the*
21 *Rings*” is one of the most esteemed literary properties of all time. This epic story is
22 widely considered among the greatest literary works of twentieth century
23 imaginative fiction, and is reported to be the second most-read book in the United
24 States after the Bible. Professor Tolkien’s *The Hobbit* is equally beloved and
25 revered as a treasured literary classic.

26 4. From 2000 to 2003 (and pursuant to a limited license obtained by its
27 predecessors-in-interest, one of which is defendant The Saul Zaentz Company),
28 defendant Warner Bros. Entertainment, Inc., through its subsidiary, New Line

1 Cinema and other affiliated companies, produced and distributed three motion
2 pictures (the “Films”) based on *The Lord of the Rings*. Defendants also obtained
3 film rights to *The Hobbit*, and three motion pictures based on *The Hobbit* are
4 scheduled to be released in December 2012, December 2013 and July 2014.

5 5. When plaintiffs’ predecessors-in-interest sold the film rights to *The*
6 *Lord of the Rings* and *The Hobbit* in 1969, they also granted defendants’
7 predecessors-in-interest limited merchandising rights. Specifically, defendants’
8 predecessors-in-interest obtained the *limited* right to use the characters, places,
9 objects and events referred to in *The Lord of the Rings* and *The Hobbit* “solely and
10 only upon and in connection with the manufacture, sale and distribution of ... any
11 and all *articles of tangible personal* property, other than novels, paperbacks and
12 other printed published matter...” (emphasis added). The original contracting
13 parties thus contemplated a limited grant of the right to sell consumer products of
14 the type regularly merchandised at the time (such as figurines, tableware, stationery
15 items, clothing, and the like). They did not include any grant of exploitations such
16 as electronic or digital rights, rights in media yet to be devised or other intangibles
17 such as rights in services. To emphasize the limited nature of the grant, plaintiffs’
18 predecessors-in-interest specifically reserved “the right to utilize and/or dispose of
19 all rights and/or interests not herein specifically granted.”

20 6. The sale of legitimate Tolkien-related merchandise has, over the years,
21 generated millions of dollars in revenue. Goods which incorporate elements from
22 Tolkien’s *The Lord of the Rings* and *The Hobbit* books continue to be hugely in
23 demand world-wide.

24 7. However, in recent years, and particularly in the aftermath of the
25 unprecedented financial and critical success of the Films, defendants have, with
26 increasing boldness, engaged in a continuing and escalating pattern of usurping
27 rights to which they are not entitled — rights which belong exclusively to plaintiffs.
28 For example, although their limited merchandising license only gives them the right

1 to sell *tangible* merchandise, defendants have developed, licensed and/or sold (and
2 continue to develop, license and/or sell) downloadable video games based on *The*
3 *Lord of the Rings* and *The Hobbit*, available only by downloading and/or access via
4 the Internet, via mobile apps, tablet apps or other similar digital distribution
5 channels, or through other online interconnectivity such as Facebook. There is no
6 physical or tangible item of merchandise sold to the consumer with these games.
7 Defendants also have asserted and continue to assert that they have rights relating to
8 a wide variety of goods and services beyond “articles of tangible personal property”
9 and have registered trademarks and/or filed “intent to use” applications in those
10 same categories, including without limitation hotels, restaurants, travel agencies,
11 ringtones, online/downloadable games and housing developments — categories of
12 rights which plainly have not been granted to them.

13 8. To make matters worse, plaintiffs discovered that defendants have, in
14 excess of the limited rights granted to them, begun licensing the production and
15 distribution of gambling games (both over the Internet and in brick-and-mortar
16 casinos) featuring characters and story elements from *The Lord of the Rings*.
17 Gambling constitutes a further category of rights which have never been granted to
18 defendants (and which plaintiffs themselves would intend never to exploit). Not
19 only does the production of gambling games patently exceed the scope of
20 defendants’ rights, but this infringing conduct has outraged Tolkien’s devoted fan
21 base, causing irreparable harm to Tolkien’s legacy and reputation and the valuable
22 goodwill generated by his works. Fans have publicly expressed confusion and
23 consternation at seeing *The Lord of the Rings* associated with the morally-
24 questionable (and decidedly non-literary) world of online and casino gambling.
25 Rampant are comments such as “I actually feel angry about this...this insults
26 Tolkien...[and] is a nasty, greedy, ugly act...Whoever is responsible should be
27 ashamed of themselves,” and “if this isn’t prostituting art, I don’t know what is.”
28 The damage to the goodwill that plaintiffs have painstakingly cultivated over the

1 decades is patent.

2 9. Plaintiffs never agreed to grant defendants unlimited and infinite rights
3 to exploit *The Lord of the Rings* or *The Hobbit* generally and in perpetuity.
4 Plaintiffs did not bargain for (nor did they obtain any purchase price for)
5 defendants' progressive usurpation of plaintiffs' valuable intellectual property
6 rights.

7 10. Plaintiffs have done everything in their power to appeal to defendants
8 to stop this unlawful exploitation without resort to litigation. In good faith,
9 plaintiffs engaged in lengthy settlement discussions with defendants, all to no avail.
10 Defendants have made it abundantly clear that they have no intention of ceasing
11 their infringing and wrongful conduct. To the contrary, plaintiffs believe that
12 defendants intend to pursue similar extra-contractual licensing activity in the future,
13 both with respect to *The Lord of the Rings* and *The Hobbit*. If left unchecked,
14 defendants will unilaterally convert their narrow contractual grant of rights into an
15 unlimited entitlement to exploit *The Lord of the Rings* and *The Hobbit* in any way
16 they desire, for their own financial enrichment and with cynical disregard of the
17 categories of rights that have been retained by plaintiffs.

18 11. Plaintiffs have no choice but to seek relief in the courts.

19 **THE PARTIES**

20 12. Plaintiff Fourth Age Limited ("Fourth Age") is a corporation created
21 and existing under the laws of the United Kingdom.

22 13. The Tolkien Trust, constituted by a deed of trust dated April 1, 1977,
23 is a registered charity in the United Kingdom that benefits a wide range of
24 charitable causes throughout the world, which have included Save the Children
25 Fund, The Darfur Appeal, Asia Earthquake Appeal, The Niger Appeal, The
26 National Campaign for Homeless People (Great Britain), Breakthrough Breast
27 Cancer, Alzheimer's Society, Foundation for Children with Leukemia, National
28 Library for the Blind, Rebuilding Sri Lanka, World Cancer Research Foundation,

1 Climate Outreach Information Network, Friends of the Earth Trust, UNICEF,
2 World Wildlife Foundation, The Poetry Trust, Performing Rights Society and many
3 other worthy causes.

4 14. Plaintiff Priscilla Mary Anne Reuel Tolkien is a Trustee of The
5 Tolkien Trust and she is a citizen and resident of the United Kingdom.

6 15. Plaintiffs The Tolkien Trust and Fourth Age, and each of them, are
7 successors to J.R.R. Tolkien with respect to his copyright interests in *The Lord of*
8 *the Rings* literary work.

9 16. Plaintiff The J.R.R. Tolkien Estate Limited is a corporation created
10 and existing under the laws of the United Kingdom. The J.R.R. Tolkien Estate
11 Limited is the successor to J.R.R. Tolkien with respect to his copyright interests in
12 *The Hobbit* literary work.

13 17. Plaintiff HarperCollins Publishers, Ltd. (“HarperCollins”) is a
14 corporation created and existing under the laws of the United Kingdom.
15 HarperCollins is the worldwide exclusive licensee of the book publishing rights in
16 *The Lord of the Rings* and *The Hobbit*. Plaintiff Unwin Hyman Ltd. is a
17 corporation created and existing under the laws of the United Kingdom and is a
18 wholly owned subsidiary of HarperCollins. Plaintiff George Allen & Unwin
19 (Publishers) Ltd. is the successor, by way of name change, of George Allen &
20 Unwin Ltd. and is a wholly owned subsidiary of Unwin Hyman Ltd. Certain rights
21 to proceeds from the July 8, 1969 contract between George Allen & Unwin
22 (Publishers) Ltd. and United Artists, described below, were assigned to Unwin
23 Hyman Ltd. and HarperCollins Publishers, Ltd.

24 18. Plaintiffs are informed and believe, and based thereon allege that
25 defendant Warner Bros. Digital Distribution, Inc. (“WB Digital Distribution”) is a
26 division of Warner Bros. Home Entertainment, Inc., a corporation organized and
27 existing under the laws of the State of Delaware, doing business in Los Angeles,
28 California.

1 19. Plaintiffs are informed and believe, and based thereon allege that
2 defendant Warner Bros. Interactive Entertainment, Inc. (“WB Interactive”) is a
3 division of Warner Bros. Home Entertainment, Inc., a corporation organized and
4 existing under the laws of the State of Delaware, doing business in Los Angeles,
5 California.

6 20. Plaintiffs are informed and believe, and based thereon allege that
7 defendant Warner Bros. Entertainment, Inc. (“Warner Bros. Entertainment”) is the
8 parent company of WB Digital Distribution and WB Interactive, and is organized
9 and existing under the laws of the State of Delaware, doing business in Los
10 Angeles, California. Plaintiffs are further informed and believe, and based thereon
11 allege that Warner Bros. Entertainment, including its subsidiaries, WB Digital
12 Distribution and WB Interactive, is an entertainment conglomerate, engaged in the
13 business of, *inter alia*, the development, production and distribution of motion
14 pictures, television programming, and digital content, as well as various licensing
15 activities in connection therewith. Plaintiffs are further informed and believe, and
16 based thereon allege that Warner Bros. Entertainment is the successor in interest to
17 New Line Cinema Corporation (“New Line Cinema”), a surrendered Delaware
18 corporation, previously engaged in the business of developing, producing and
19 distributing motion pictures.

20 21. Plaintiffs are informed and believe, and based thereon allege, that
21 defendant Warner Bros. Consumer Products, Inc. (“WBCP”) is a corporation
22 organized and existing under the laws of the State of Delaware, doing business in
23 Los Angeles, California. Plaintiffs are further informed and believe, and based
24 thereon allege, that WBCP is a wholly-owned subsidiary of Warner Bros.
25 Entertainment, engaged in the business of, *inter alia*, licensing merchandising
26 rights based on motion pictures produced by Warner Bros. Entertainment.

27 22. Plaintiffs are informed and believe, and based thereon allege, that
28 defendant New Line Productions, Inc. (“New Line Productions”) is a corporation

1 organized and existing under the laws of the State of California, with its principal
2 place of business in Los Angeles, California. Plaintiffs are further informed and
3 believe, and based thereon allege that New Line Productions was a wholly owned
4 subsidiary of New Line Cinema prior to its surrender, and New Line Productions is
5 currently a wholly owned subsidiary of Warner Bros. Entertainment, engaged in the
6 business of, *inter alia*, the development, production and distribution of motion
7 pictures, as well as licensing activities in connection therewith. New Line
8 Productions, New Line Cinema, WB Digital Distribution, WB Interactive, WBCP
9 and Warner Bros. Entertainment are collectively referred to herein as “Warner
10 Bros.”

11 23. Plaintiffs are informed and believe, and based thereon allege, that
12 defendant The Saul Zaentz Company d/b/a Middle-earth Enterprises (“Zaentz”) is a
13 corporation organized and existing under the laws of the State of Delaware, with its
14 principal place of business in Berkeley, California, doing business in Los Angeles,
15 California. Plaintiffs are further informed and believe, and based thereon allege
16 that Zaentz engages in the business of, *inter alia*, the development and production
17 of motion pictures, as well as licensing activities in connection therewith.

18 24. The true names and capacities of the defendants named herein as
19 DOES 1 through 10, inclusive, whether individual, corporate, associate or
20 otherwise, are presently unknown to plaintiffs, who therefore sue said defendants
21 by such fictitious names. Plaintiffs will seek leave to amend their complaint to
22 allege the true names and capacities of said defendants when plaintiffs have
23 ascertained the same. On information and belief, plaintiffs allege that each of the
24 fictitiously named defendants was responsible in some manner for the acts and
25 omissions alleged herein and are liable to plaintiffs therefor.

26 25. Plaintiffs are informed and believe, and based thereon allege that in
27 doing the acts and things hereinafter alleged, each defendant acted individually for
28 himself and itself, and as the agent, employee, and/or representative of each of the

1 other defendants and, in doing the things hereinafter alleged, each was at all times
2 acting within the course and scope of said agency, representation or employment
3 relationship with the advance knowledge, acquiescence or subsequent ratification of
4 each and every other defendant.

5
6 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

7 **The Literary Works.**

8 26. J.R.R. Tolkien (1892 – 1973) was a writer, poet, philologist and
9 University professor at Oxford University. He is the world-famous author and
10 original copyright owner of the fantasy classics “The Hobbit: or There And Back
11 Again” (“The Hobbit”) and the three volume work known as “The Lord of the
12 Rings,” which consists of “The Fellowship of the Ring,” “The Two Towers” and
13 “The Return of the King” (collectively, “*The Lord of the Rings*”).

14 27. Professor Tolkien’s literary works have been translated into numerous
15 different languages and are widely considered to be among the most popular and
16 influential works in 20th-century literature. *The Lord of the Rings* has repeatedly
17 been voted the “Book of the 20th Century” by various publications worldwide.
18 Since their first publication more than 50 years ago, *The Hobbit* and each volume of
19 *The Lord of the Rings* have been among the best-selling fictional works of all time.

20 28. *The Lord of the Rings* and *The Hobbit* are set in Professor Tolkien’s
21 fictional world of Middle-earth, inhabited by his own imaginary characters and
22 populated by his own imaginary places, scenes, elements, situations and events.
23 The language and lore of Middle-earth, and the fantasy-realm Professor Tolkien
24 created in these literary works, have delighted readers around the world and have
25 permeated our popular culture. The international following generated by Professor
26 Tolkien’s literary works have helped make *The Lord of the Rings* and *The Hobbit*,
27 and the characters, places, scenes, elements, situations and events depicted therein
28 distinctive and famous throughout the world.

1 29. Plaintiffs have complied in all respects with the copyright laws of the
2 United States, and all other laws governing copyright, and, as Professor Tolkien’s
3 heirs and assigns, are the owners of the exclusive rights and privileges in and to the
4 copyrights in *The Lord of the Rings* and *The Hobbit*, as well as in and to numerous
5 *Lord of the Rings* and *Hobbit*-related copyrights.

6 30. Plaintiffs own the rights, subject to certain licenses, to exploit
7 trademarks and service marks based on *The Lord of the Rings* and *The Hobbit*.

8 31. As a result of plaintiffs’ dedicated efforts and the phenomenal success
9 of Professor Tolkien’s literary works, *The Lord of the Rings* and *The Hobbit* (and
10 associated and proprietary characters, elements and marks) are among the most
11 famous and valuable marks in the world. Plaintiffs have established an excellent
12 reputation and developed highly valuable goodwill in *The Lord of the Rings* and
13 *The Hobbit* (and associated characters, elements and marks) and in the products,
14 goods and services featuring them.

15 **Zaentz’s Acquisition of Film and Limited Merchandising Rights in *The Lord of***
16 ***the Rings and The Hobbit***.

17 32. Plaintiffs’ predecessors-in-interest, Sassoon Trustee and Executor
18 Corporation, Ltd. (“Sassoon”) and George Allen & Unwin, Ltd. (“GAU”), and
19 Zaentz’s and Warner Bros.’ predecessor-in-interest, United Artists Corporation
20 (“United Artists”), entered into a pair of contemporaneously written contracts,
21 dated as of July 8, 1969 regarding, *inter alia*, certain motion picture rights in *The*
22 *Lord of the Rings* and *The Hobbit*. One of these agreements was between Sassoon
23 and United Artists (the “1969 Sassoon Agreement”) and the other was between
24 GAU and United Artists (the “1969 GAU Agreement”). These two agreements are
25 collectively referred to herein as the “1969 Agreements.” Each of the 1969
26 Agreements states that it is to be governed by New York law.

27 33. Under the 1969 Agreements, United Artists obtained, *inter alia*, the
28 right to make films based on *The Lord of the Rings* and agreed, among other things,

1 to pay GAU and Sassoon a total of 7.5% participation in defined “Gross Receipts”
2 from any films based upon *The Lord of the Rings*.

3 34. Further, under Schedule D to the 1969 Agreements (subsequently
4 executed by the parties), United Artists additionally obtained certain *limited*
5 merchandising rights in connection with *The Lord of the Rings* and *The Hobbit*.
6 Schedule D to the 1969 GAU Agreement (the “GAU Schedule D”) and Schedule D
7 to the 1969 Sassoon Agreement (the “Sassoon Schedule D”) are collectively
8 referred to herein as the “Merchandising Agreements.” The Tolkien Trust and
9 Fourth Age are the successors-in-interest to Sassoon under the 1969 Sassoon
10 Agreement and Sassoon Schedule D. HarperCollins is the successor-in-interest to
11 GAU under the 1969 GAU Agreement and GAU Schedule D.

12 35. The crux of the parties’ agreement with respect to merchandising was
13 that United Artists obtained the limited right to use the characters, places, objects
14 and events referred to in *The Lord of the Rings*, “*solely and only upon and in*
15 *connection with* the manufacture, sale and distribution of...any and all *articles of*
16 *tangible personal property*, other than novels, paperbacks and other printed
17 published matter...”

18 36. To underscore the limited nature of the rights being conveyed, the
19 1969 Agreements contain a broad and open-ended reservation of rights clause, by
20 which plaintiffs’ predecessors-in-interest expressly reserved “the right to utilize
21 and/or dispose of *all rights* and/or interests *not herein specifically granted...*”

22 37. Paragraph 15 of the Merchandising Agreements additionally contains a
23 “No Waiver, etc...” clause, which states, *inter alia*, “None of the terms of this
24 agreement can be waived or modified except by an express agreement in writing
25 signed by both parties.”

26 38. The Merchandising Agreements were amended on or about October
27 20, 1975 (the “1975 Amendment”). The 1975 Amendment further clarifies the
28 scope of the limited merchandising rights granted under the 1969 Agreements and

1 was intended to “provide general guidance in determining the rights in other such
2 articles as to which questions may arise in the future.” In providing such guidance,
3 the 1975 Amendment lays out several categories of products as illustrative
4 examples of the types of “articles of tangible personal property” the parties
5 intended to be included in the limited 1969 merchandising rights grant (such as
6 drawing books, posters, stationery items, figurines, calendars and similar items
7 using primarily artwork from the films and not the printed word or any other
8 artwork). The articles specifically referenced in these agreements make clear that
9 the parties always intended that the merchandising rights grant encompass only
10 items of tangible property of the type sold to consumers.

11 39. Thereafter, pursuant to a written agreement and assignment dated as of
12 December 2, 1976 between United Artists and Zaentz, Zaentz acquired from United
13 Artists, all of United Artists’ right, title and interest in and to The Lord of the Rings
14 under and pursuant to the 1969 Agreements and the Merchandising Agreements
15 (the “Zaentz/UA Agreement”).

16 40. In or about November 16, 1981, the Merchandising Agreements were
17 further amended (the “1981 Amendment”). Collectively, the 1969 Agreements, the
18 Merchandising Agreements, the 1975 Amendment and the 1981 Amendment shall
19 be referred to herein as the “Merchandising License.”

20 **Warner Bros.’ Acquisition of Limited Film-Related Merchandising Rights**
21 **under the Merchandising License.**

22 41. Thereafter, through a series of written agreements, New Line Cinema
23 succeeded to many of the rights, interests and obligations of United Artists and
24 Zaentz under the 1969 Agreements and the Merchandising License.

25 42. New Line Cinema ultimately produced and distributed three films
26 based on *The Lord of the Rings*: “The Lord of the Rings: The Fellowship of the
27 Ring” (“Film 1”), “The Lord of the Rings: The Two Towers” (“Film 2”), and “The
28 Lord of the Rings: The Return of the King” (“Film 3”) (collectively, the “Films”).

1 The three Films, released for theatrical distribution in 2001, 2002 and 2003,
2 respectively, met with virtually unprecedented critical and financial success.

3 43. The Films generated a reported \$6 billion in world wide revenue and
4 which, plaintiffs are informed and believe, and based thereon allege, earned billions
5 of dollars for New Line Cinema and its parent company, Warner Bros.
6 Entertainment. Plaintiffs are further informed and believe, and based thereon
7 allege, that the Films have additionally earned Zaentz and Warner Bros. millions of
8 dollars in legitimate merchandising licensing revenue.

9 44. Plaintiffs are informed and believe, and based thereon allege, that in or
10 about 2008, New Line Cinema and New Line Productions merged with and/or
11 became wholly owned subsidiaries of Warner Bros. Entertainment.

12 **The Unlawful Online Slots.**

13 45. In or about September 2010, plaintiffs, for the first time, learned of an
14 online slot game known as the “Lord of the Rings: Fellowship of the Ring: Online
15 Slot Game,” which prominently features and uses characters, events, images and
16 story elements from the first volume of Professor Tolkien’s *The Lord of the Rings*
17 and from Film 1 (the “Online Slots”). The Online Slots are a digital simulation of
18 an actual, physical slot machine, and (in various jurisdictions of the world) allow
19 players to gamble real money. Plaintiffs learned of the Online Slots when one of
20 their attorneys by chance received a “spam” email advertising an “Online Casino
21 Palace” featuring the Online Slots. Plaintiffs are informed and believe, and based
22 thereon allege, that the email received by plaintiffs’ counsel was merely one out of
23 millions in a widespread spam email campaign used to advertise the Online Slots.

24 46. Upon further investigation, Plaintiffs are informed and believe, and
25 based thereon allege, that defendants have purported to license, and continue to
26 provide content and approvals in connection with, the development, distribution
27 and marketing of the Online Slots.

28 47. Plaintiffs are informed and believe, and based thereon allege, that due

1 to the success of the Online Slots, defendants may currently be working to develop
2 similar virtual gambling games based upon the two subsequent volumes in *The*
3 *Lord of the Rings (The Two Towers and The Return of the King)* and *The Hobbit*.

4 **The Unlawful Casino Slot Machine.**

5 48. Plaintiffs are informed and believe, and based thereon allege, that
6 defendants also have purported to license, and continue to provide content and
7 approvals in connection with, a *Lord of the Rings*-themed casino slot machine,
8 featuring the characters, events and imagery from the work (the “Casino Slot
9 Machine”). Plaintiffs are informed and believe, and based thereon allege, that
10 defendants purported to license the right to develop, manufacture and distribute the
11 Casino Slot Machine to WMS Gaming, Inc., which, in turn, has licensed and
12 distributed, and continues to manufacture, license and distribute the Casino Slot
13 Machine to casinos across the world, including in California.

14 49. Plaintiffs are informed and believe, and based thereon allege, that one
15 feature of the Casino Slot Machine allows players to continue to view and interact
16 with the content featured on the Casino Slot Machine once a player has left the
17 casino, by logging into a website over the Internet.

18 50. Shortly after discovering these infringing activities, plaintiffs put
19 defendants on written notice that any purported licensing activity in connection
20 with the Online Slots or Casino Slot Machines grossly exceeded their rights
21 pursuant to the Merchandising License. Plaintiffs further informed defendants that
22 such licensing activities constituted a material breach of the Merchandising License
23 and a direct infringement of plaintiffs’ rights in and to *The Lord of the Rings*.

24 51. Promptly after sending their breach and infringement notifications,
25 plaintiffs engaged in extensive and detailed settlement discussions with defendants.
26 These discussions were unsuccessful.

27 52. Not only do the Casino Slot Machines themselves fall outside the
28 categories of rights granted to defendants, but defendants are additionally

1 authorizing, inciting and/or encouraging the purchaser or lessees of the Casino Slot
2 Machines to provide gambling services to the general public in further infringement
3 of plaintiffs' rights: the Casino Slot Machines are manufactured for no other
4 purpose other than to facilitate these gambling services.

5 **The Unlawful Downloadable-Only (Non-gambling) Video Games.**

6 53. Plaintiffs are informed and believe, and based thereon allege that
7 defendants have, without authorization from plaintiffs to do so, developed, licensed,
8 sold, distributed and/or marketed a series of video games based on *The Lord of the*
9 *Rings*, that do not require any tangible physical purchase, but can simply be
10 acquired digitally by way of electronic download and/or accessed online, through a
11 variety of digital platforms including without limitation in browsers, on social
12 networks such as Facebook, through mobile phones and smart phone applications,
13 internet-connected TVs and other portable devices such as iPads and tablets.

14 54. Plaintiffs are further informed and believe, and based thereon allege
15 that defendants have, without authorization from plaintiffs to do so, developed,
16 licensed, sold, distributed and/or marketed video games based on *The Hobbit* that
17 are likewise accessible only online and/or through digital download.

18 55. Defendants do not have rights to such online and/or downloadable-
19 only video games (the "Downloadable Games"). The grant of rights in the
20 Merchandising License only gives Warner Bros. and Zaentz the right to create
21 articles of tangible personal property. The Downloadable Games are not tangible
22 merchandise. Defendants' exploitation of the Downloadable Games is
23 unauthorized and an infringement of plaintiffs' valuable intellectual property rights.

24 **The Unlawful Exploitation of Services Licensing, Service Marks and**
25 **Trademarks.**

26 56. The Merchandising License does not give Zaentz unlimited and
27 infinite rights to exploit *The Lord of the Rings* or *The Hobbit* generally and in
28 whatever manner it desires. To the contrary, Zaentz and Warner Bros. have only

1 limited merchandising rights and their trademark rights must strictly track their
2 substantive merchandising rights under the Merchandising License. In other words,
3 defendants can only register marks in the categories in which they have obtained
4 legitimate rights to exploit *The Lord of the Rings* and *The Hobbit* merchandising,
5 and must refrain from registering marks that preclude plaintiffs (the rightful owners
6 of the marks) from exercising their own superior rights in the marks made famous
7 by Professor Tolkien himself.

8 57. In spite of these restrictions, Zaentz has, slowly and consistently,
9 begun to expand its trademark program to encroach upon areas of merchandise
10 exploitation reserved to the plaintiffs, gradually eroding the defined contractual
11 boundaries of the rights grant. One example of such encroachment involves
12 Zaentz's registering trademarks and service marks for a wide variety of goods and
13 services which plainly have not been licensed to Zaentz to exploit under the
14 Merchandising License.

15 58. Additionally, despite express contractual language limiting defendants'
16 merchandising and trademark rights to "articles of tangible personal property,"
17 defendants contend that they have obtained rights in a broad array of goods and
18 services well beyond the limited grant contained in the Merchandising License. For
19 example, defendants have taken the position that their merchandising and trademark
20 rights extend to intangible items such as downloadable games and to services
21 licensing such as travel agencies, hotels, restaurants, theme parks, housing
22 developments and casino gambling.

23 59. Zaentz has even encroached on the one area of merchandising that has
24 expressly been carved out of all negotiations and agreements between the parties
25 from the very inception of the parties' relationship in the late 1960s — printed
26 publications. Zaentz has unlawfully registered as the owner of trademarks in
27 International Class 16 (paper goods and printed matter), with the effect thereby of
28 excluding Plaintiffs from registering their own legitimate trademarks in that class.

1 materially contributing to the foregoing, with knowledge thereof.

2 65. At no time did defendants seek or obtain plaintiffs' permission or
3 consent to exploit *The Lord of the Rings* and/or *The Hobbit* in the Online Slots, the
4 Casino Slot Machine and/or the Downloadable Games.

5 66. Plaintiffs are informed and believe, and based thereon allege that
6 defendants' infringing acts were, and continue to be, committed willfully and
7 knowingly.

8 67. As a direct and proximate result of defendants' copyright infringement
9 as alleged above, plaintiffs have suffered and will continue to suffer injury and
10 damage in an amount to be determined according to proof, but which plaintiffs are
11 informed and believe, and based thereon allege exceeds \$80 million. Furthermore,
12 plaintiffs are informed and believe, and based thereon allege, that defendants have
13 received or will receive profits, gains or other benefits from their infringing
14 activities, all of which should be disgorged to plaintiffs. In the alternative,
15 plaintiffs reserve the right to seek statutory damages for defendants' intentional
16 infringement of their copyrights.

17 68. Defendants' infringement of plaintiffs' copyrights in *The Lord of the*
18 *Rings* and *The Hobbit* has caused and will continue to cause irreparable harm to
19 plaintiffs which cannot be fully compensated by monetary damages. Plaintiffs have
20 no adequate remedy at law. Plaintiffs are therefore entitled to injunctive relief
21 preventing defendants from infringing plaintiffs' copyrights in *The Lord of the*
22 *Rings* and *The Hobbit*, and recalling from the market all unauthorized uses of *The*
23 *Lord of the Rings* and *The Hobbit* that have been made or authorized by defendants
24 and/or their licensees.

25 69. Plaintiffs have incurred and will continue to incur attorneys' fees in
26 pursuing this action, which plaintiffs are entitled to recover from defendants
27 pursuant to 17 U.S.C. § 505.
28

1 **SECOND CLAIM FOR RELIEF**

2 (Against Warner Bros. Entertainment, Zaentz and Does 6-10 For Breach of
3 Contract)

4 70. Plaintiffs repeat and reallege, and incorporate herein by reference, the
5 allegations contained in paragraphs 1 through 69, above, as though fully set forth
6 herein.

7 71. As set forth in detail above, pursuant to the terms of the Merchandising
8 License, plaintiffs, through their predecessors-in-interest, granted to Zaentz and
9 Warner Bros. Entertainment, through their predecessors-in-interest, certain limited
10 merchandising rights in connection with *The Lord of the Rings* and the Films, and
11 *The Hobbit*.

12 72. Further, there was at all times relevant herein, an implied covenant in
13 the Merchandising License that Zaentz and Warner Bros. Entertainment would act
14 in good faith and deal fairly with plaintiffs in all aspects of their contractual
15 relationship, and would refrain from conduct that would result in destroying,
16 frustrating, or injuring plaintiffs' rights under the Merchandising License.

17 73. Plaintiffs have fully performed all duties and obligations required to be
18 performed on their part under the Merchandising License.

19 74. Zaentz and Warner Bros. Entertainment have materially breached and
20 repudiated the Merchandising License by, among other things, engaging in a course
21 of conduct which far exceeds the scope of the limited rights granted to them under
22 the Merchandising License, in connection with, without limitation, the Online Slots,
23 the Casino Slot Machine, the Downloadable Games, and/or the improper
24 registration, exploitation, and/or use of service marks and trademarks, and/or the
25 licensing and/or exploitation of services in connection with *The Lord of the Rings*
26 and *The Hobbit* as hereinabove alleged.

27 75. Moreover, Zaentz and Warner Bros. Entertainment also have
28 repeatedly breached the covenant of good faith and fair dealing contained in the

1 Merchandising License by, among other things, exceeding the scope of the limited
2 rights granted to them under the terms of the Merchandising License and engaging
3 in numerous other wrongful acts and omissions as alleged hereinabove, all of which
4 have deprived plaintiffs of the benefits of the Merchandising License.

5 76. As a direct and proximate result of Zaentz's and Warner Bros.
6 Entertainment's acts of breach, plaintiffs have been damaged to date in a sum to be
7 determined according to proof, but which plaintiffs are informed and believe, and
8 on that basis allege exceeds \$80 million. Plaintiffs' damages will only increase if
9 Zaentz and Warner Bros. Entertainment continue their acts of breach.

10 11 **THIRD CLAIM FOR RELIEF**

12 (Against all Defendants for Declaratory Judgment – Gambling Games and
13 Downloadable Games Beyond Scope of Merchandising License)

14 77. Plaintiffs repeat and reallege, and incorporate herein by reference, the
15 allegations contained in paragraphs 1 through 76, above, as though fully set forth
16 herein.

17 78. By reason of the foregoing facts, an actual controversy has arisen
18 between the parties as to whether the right to develop, produce, advertise, distribute
19 and/or otherwise exploit (a) gambling games based on *The Lord of the Rings* and/or
20 *The Hobbit* (such as the Online Slots and Casino Slot Machine) and (b) digital,
21 downloadable-only video games based on *The Lord of the Rings* and *The Hobbit*,
22 available for play only via the Internet or via download through digital platforms
23 such as, for example, mobile apps, tablet apps or other similar digital distribution
24 channels (such as the Downloadable Games) is beyond the scope of the
25 merchandising rights granted to Warner Bros. and Zaentz pursuant to the terms of
26 the Merchandising License and, therefore, whether such development, production,
27 advertisement, distribution and/or other exploitation constitutes an infringement of
28 plaintiffs' copyrights in *The Lord of the Rings* and *The Hobbit*. Plaintiffs contend,

1 and defendants dispute, that such development, production, advertisement,
2 distribution and/or other exploitation is beyond the scope of the limited
3 merchandising rights granted under the Merchandising License, and, therefore, such
4 development, production, advertisement, distribution and/or other exploitation
5 constitutes an infringement of plaintiffs' copyrights in and to *The Lord of the Rings*
6 and *The Hobbit*.

7 79. In view of the foregoing, an actual controversy has arisen and exists
8 between the plaintiffs and defendants within the meaning of the Declaratory
9 Judgment Act, 28 U.S.C. § 2201. Accordingly, plaintiffs hereby request a
10 declaration of this Court under the provisions of 28 U.S.C. § 2201, setting forth the
11 respective rights and other legal relations of plaintiffs and defendants. In particular,
12 plaintiffs request a declaration that:

- 13 a. the right to develop, produce, advertise, distribute and/or otherwise
14 exploit gambling games based on *The Lord of the Rings* and/or *The*
15 *Hobbit* (including, without limitation, the Online Slots and Casino Slot
16 Machine), is beyond the scope of the rights granted to Warner Bros.
17 and Zaentz pursuant to the Merchandising License and, therefore, that
18 such development, production, advertisement, distribution and/or other
19 exploitation constitutes an infringement of plaintiffs' copyrights in and
20 to *The Lord of the Rings* and/or *The Hobbit*, entitling plaintiffs to
21 damages as well as permanent injunctive relief; and
- 22 b. the right to develop, produce, advertise, distribute and/or otherwise
23 exploit downloadable-only/online/digital video games based on *The*
24 *Lord of the Rings* and/or *The Hobbit* (including, without limitation, the
25 Downloadable Games), is beyond the scope of the rights granted to
26 Warner Bros. and Zaentz pursuant to the Merchandising License and,
27 therefore, that such development, production, advertisement,
28 distribution and/or other exploitation constitutes an infringement of

1 plaintiffs' copyrights in and to *The Lord of the Rings* and/or *The*
2 *Hobbit*, entitling plaintiffs to damages as well as permanent injunctive
3 relief.

4 **FOURTH CLAIM FOR RELIEF**

5 (Against all Defendants for Declaratory Judgment – Extra-Contractual Trademark,
6 Service Marks and Services Licensing Activity)

7 80. Plaintiffs repeat and reallege, and incorporate herein by reference, the
8 allegations contained in paragraphs 1 through 79, above, as though fully set forth
9 herein.

10 81. The Merchandising License makes clear that the trademark rights
11 being licensed to Zaentz and/or Warner Bros. are strictly limited to trademarks used
12 in connection with the manufacture and sale of those “articles of tangible personal
13 property” — and only those articles — for which they have been given the right to
14 manufacture and sell pursuant to the Merchandising License.

15 82. Without any authorization from plaintiffs to do so, defendants have
16 used (and/or asserted the right to use), applied for and/or received trademark and
17 service mark registrations which fall outside the rights granted under the
18 Merchandising License.

19 83. Additionally, defendants contend that they have obtained rights in a
20 broad array of goods and services well beyond the limited grant contained in the
21 Merchandising License, and have registered trademarks and/or service marks
22 and/or filed “intent to use” applications in such categories. Merely by way of
23 example, defendants contend, and Plaintiffs dispute, that they have obtained
24 substantive rights to license others to use the “Name and Subject Marks” (as
25 defined in the Merchandising License) in association with services, and that
26 defendants have broad merchandising rights in such goods and/or services as, for
27 example, “hotels, restaurants, travel agencies, ringtones, online games and housing
28 developments,” casino gambling and online/downloadable video games.

1 84. Plaintiffs contend, and defendants dispute, that such license, use,
2 registration or attempted registration, or other exploitation of Plaintiffs' intellectual
3 property rights is beyond the scope of the limited merchandising rights granted
4 under the Merchandising License, and, therefore, such development, production,
5 advertisement, distribution and/or other exploitation as described hereinabove
6 constitutes an infringement of plaintiffs' intellectual property rights in and to *The*
7 *Lord of the Rings* and/or *The Hobbit*.

8 85. By reason of the foregoing facts, an actual controversy has arisen
9 between the parties as to:

- 10 a. whether the right to license or exploit services in any categories, or the
11 ability to register, use or exploit service marks in any categories
12 (including without limitation hotels, restaurants, travel agencies,
13 ringtones, online/downloadable games, housing developments,
14 educational services, parties, festivals and cultural activities and/or
15 amusement, theme parks and/or casino gambling) in connection with
16 *The Lord of the Rings* and/or *The Hobbit*, is beyond the scope of the
17 merchandising rights granted to Warner Bros. and/or Zaentz pursuant
18 to the terms of the Merchandising License; and
19 b. what is the scope and extent of defendants' rights to register and/or use
20 *Lord of the Rings* and/or *Hobbit*-related trademarks.

21 86. In view of the foregoing, an actual controversy has arisen and exists
22 between the plaintiffs and defendants within the meaning of the Declaratory
23 Judgment Act, 28 U.S.C. § 2201. Accordingly, plaintiffs hereby request a
24 declaration of this Court under the provisions of 28 U.S.C. § 2201, setting forth the
25 respective rights and other legal relations of plaintiffs and Warner Bros. and Zaentz.
26 In particular, plaintiffs request the following declarations:

- 27 a. That defendants do not have the right to license or exploit any services
28 in any categories, nor the ability to register, use or exploit service

1 marks in any categories in connection with *The Lord of the Rings*
2 and/or *The Hobbit*, and, therefore, that defendants' conduct as
3 described hereinabove constitutes an infringement of plaintiffs'
4 valuable intellectual property rights in and to *The Lord of the Rings*
5 and/or *The Hobbit*, entitling plaintiffs to damages as well as permanent
6 injunctive relief; and

7 b. Plaintiffs further desire a judicial determination of the parties'
8 respective rights and obligations under the Merchandising License as
9 they relate to the registration and/or use of *Lord of the Rings* and/or
10 *Hobbit*-related marks.

11 87. A judicial declaration is necessary and appropriate at this time so that
12 the parties may ascertain their respective rights and duties.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, plaintiffs pray for judgment as follows:

15 1. On the First Claim for Relief, for defendants' knowing and willful
16 infringement of plaintiffs' copyrights in *The Lord of the Rings* and *The Hobbit*:

- 17 a. For damages according to proof but which plaintiffs are informed and
18 believe exceeds \$80 million, or in the alternative, statutory damages;
19 b. For permanent injunctive relief to be determined by the Court at trial;
20 and
21 c. For plaintiffs' reasonable attorneys' fees.

22
23 2. On the Second Claim for Relief, for Zaentz's and Warner Bros.
24 Entertainment's breach of the Merchandising License:

- 25 a. For damages according to proof but which plaintiffs are informed and
26 believe exceed \$80 million; and
27 b. For interest at the maximum legal rate.
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- 3. On the Third Claim for Relief:
 - a. for a declaration of the parties’ rights regarding the scope of the Merchandising License;
 - b. for a declaration that defendants’ development, production, advertisement, distribution and/or other exploitation of gambling games based on *The Lord of the Rings* and/or *The Hobbit* (including, without limitation, the Online Slots and Casino Slot Machine), constitutes an infringement of plaintiffs’ copyrights and to in *The Lord of The Rings* and/or *The Hobbit*; and
 - c. for a declaration that defendants’ development, production, advertisement, distribution and/or other exploitation of downloadable-only/online/digital video games based on *The Lord of the Rings* and/or *The Hobbit* (including, without limitation, the Downloadable Games), constitutes an infringement of plaintiffs’ copyrights in and to *The Lord of The Rings* and/or *The Hobbit*.
- 4. On the Fourth Claim for relief:
 - a. For a declaration that defendants do not have the right to license or exploit any services in any categories, nor the ability to register, use or exploit service marks in any categories in connection with *The Lord of the Rings* and/or *The Hobbit*; and
 - b. for a declaration of the parties’ respective rights and obligations under the Merchandising License as they relate to the registration and/or use of *Lord of the Rings* and/or *Hobbit*-related trademarks and/or service marks and/or the ability to license or exploit services.
- 5. On All Claims for Relief:
 - a. For plaintiffs’ costs of suit herein; and

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b. For such other and further relief as the Court may deem just and proper.

DATED: November 19, 2012

GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER LLP

By: Bonnie Eskenazi
BONNIE E. ESKENAZI (SBN 119401)
Attorneys' for the Tolkien-related
Plaintiffs

REQUEST FOR JURY TRIAL

Plaintiffs hereby request a jury trial on all issues so triable.

DATED: November 19, 2012

GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER LLP

By: Bonnie Eskenazi
BONNIE E. ESKENAZI (SBN 119401)
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Plaintiffs