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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

MDY INDUSTRIES, LLC,
Plaintiff and Counterdefendant,

vs.

**BLIZZARD ENTERTAINMENT, INC.,
and VIVENDI GAMES, INC.,**

Defendants and Counterclaimants,

**BLIZZARD ENTERTAINMENT, INC.,
and VIVENDI GAMES, INC.,**

Third-Party Plaintiffs,

vs.

MICHAEL DONNELLY, an individual

Third-Party Defendant.

Case No.: CV06-02555-PHX-DGC

**AFFIDAVIT OF MICHAEL M.
DONNELLY**

I, Michael M. Donnelly, being first duly sworn on oath deposes and says that I reside in Maricopa County, Arizona, that I have personal knowledge of the facts set forth herein and would testify to the same if requested at trial.

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1. This paragraph left intentionally blank.

2. Blizzard implies in paragraph 57 of its Statement of Facts (“SOF”) that it includes Glider in the definition of the term “bots.” I do not dispute that Glider is a “bot” program. When Blizzard, however, states that “bots” can play much longer than a human without stopping, this is not true with Glider. After a person uses Glider for a certain amount of time, Glider can no longer increase a character’s level in the game and, thus becomes useless unless a human moves the character in the game to an appropriate area and updates Glider’s configuration to reflect the new area.

3. Paragraph 62 of Blizzard’s SOF is incorrect. Blizzard’s game design compensates for any acquisition of resources by Glider users. For example, when there are more players in an area, the available number of monsters to kill in WoW will accelerate to compensation for the number of players. Thus, Blizzard has designed WoW to include sufficient resources for both Glider and non-Glider users.

4. 68 - Many WoW players do not mind if they play a game in which the other players are not actually present. The fact that MDY has sold over 100,000 Glider keys indicate that while 465,000 WoW users may have complained about bots, approximately 25% of that number apparently approve of Glider use. Furthermore, Glider only automates the parts of the game that are playable by a single player and does not work in parts of the game that require players to work together.

5. 81 - The use of Glider with WoW has little, or no negative impact on the game-play experience of others. Game design prevents Glider from monopolizing resources and the number of Glider users is too small for many players to encounter them directly.

6. 83 - The MDY Parties do not dispute that Blizzard may have received 465,000 in-game petitions from users complaining about bots. The petitions, however, are extremely unreliable as to their accuracy. Blizzard has presented no evidence that any of the 465,000 bot complaints pertained to Glider users. In fact, because MDY had

1 not sold Glider until June, 2005, Blizzard's alleged complaints between December 22,
2 2004 and June, 2005 could not have pertained to Glider. Unlike Blizzard's general
3 complaints about bots that do not demonstrate that one person quit playing the game
4 because of Glider, MDY has received hundreds of unsolicited communications
5 indicating that they either would have quit playing WoW, or never have played WoW
6 without having Glider available because they literally did not have the time to play for
7 the long period of time necessary to reach level 70. A sample of these communications
8 are attached as **Exhibit M**. Therefore, any WoW user is just as likely to dislike bot
9 programs as a user is to have decided to play WoW or open a second WoW account
10 solely because it could use Glider to avoid having to spend anywhere between eight to
11 twelve months at a minimum to get to level 70 where the real game of WoW begins.

12 7. 111 - Scan.dll and Warden stop the *game* from copying further elements
13 into RAM. The user can still copy the elements at any time by simply dragging the
14 WoW folder somewhere else, such as a hard disk, flash drive, CD-ROM, or other
15 storage. The contents will also pass through RAM during this copy.

16 8. 112 – The computer loads the *entire* WoW executable file into memory at
17 the authentication portion, including game logic for spells, combat, LUA scripting, and
18 everything else. The only content that is not yet loaded into memory is game resource,
19 namely graphics, sound, text. I have witnessed this directly through the Digger tool that
20 examines the game image in memory, which was provided to Blizzard in discovery. I
21 did this by placing a breakpoint at the LUA function named "ScanDLLStart" (address
22 0x76c200 in client patch 2.4.1) within the game, then starting the game. When the
23 breakpoint was reached to indicate scan.dll was about to load, I paused execution and
24 ran Digger to capture what was in the game's memory space. I found that all of the code
25 in wow.exe had been loaded.

26 9. 113 - Specifically, a user cannot *attempt* to authenticate his user name and
27 password if Scan.dll detects a program because the input controls for account name and
28 password are not presented. Scan.dll is not part of the authentication process, because

1 Scan.dll can only check for third-party software *before* authentication.

2 10. 123 - Glider currently can be used to automate Windows Solitaire.
3 (<http://www.youtube.com/watch?v=f7Oy9fOwyr4>). Additionally, MDY is currently
4 developing the Glider platform for use with other games similar to WoW. Glider is also
5 a tool to assist people with physical disabilities in playing WoW. In particular, any
6 person who has difficulties using a standard keyboard can program Glider to mimic the
7 keystrokes they would use to play WoW. This is especially helpful to those who have
8 lost limbs. Many people have commented to me how this feature has helped them play
9 WoW where they otherwise might not have done so.

10 11. 126 - Glider is not designed to circumvent Warden. Glider is designed,
11 and is solely marketed as, a tool to assist WoW players in leveling their characters to
12 level 70 at a faster than normal rate. Glider's ability to circumvent Warden is a feature
13 of Glider. Furthermore, I did not even implement Glider's ability to circumvent Warden
14 until over six months after I first began developing Glider. I added the anti-detection
15 feature in September, 2005 only after I realized that Blizzard objected to Glider's use
16 with WoW.

17 12. 129 - MDY does not sell or resell Glider through MarkeeDragon.com.

18 13. 135 - Launchpad was a feature of Glider from October, 2005 through
19 January, 2008. It is no longer necessary or even possible for a Glider user to start the
20 WoW software client using Glider as of version 1.5.7, released in January, 2008.

21 14. 137 - Launchpad has been not been a feature of Glider since January,
22 2008. Since that time, Blizzard has not detected one use of Glider by any of Glider's
23 customers through a component of Warden.

24 15. 168 - The reference to "AFK'ing [botting]" is for the battlegrounds feature
25 of WoW and is not used to gain experience in the game
26 (<http://www.worldofwarcraft.com/pvp/battlegrounds>). Although Glider can function in
27 battlegrounds, it requires a third-party add-on program. MDY explicitly discourages
28 using Glider in battlegrounds and does not sell or promote any add-on programs that

1 would enable Glider to work in battlegrounds. *See Exhibit N.*

2 16. 177 - I did not know that Blizzard disapproved of Glider use until after
3 four months of selling the program when Blizzard first banned one of MDY's customers
4 for using Glider. At that point, I did not believe it was proper for Blizzard to unilaterally
5 try to shut down my business that I had developed over the past several months simply
6 by changing a term in its EULA that outlawed my software within WoW. I then
7 developed code within the Glider software to avoid detection by Blizzard so that MDY's
8 customers could continue to play WoW with MDY's Glider software. I only took such
9 action to protect my business interests in MDY, not to harm Blizzard.

10 17. 182 - MDY did not add the language in its FAQ section cited in Blizzard's
11 SOF #182 until after September of 2005 – shortly after Blizzard banned the first Glider
12 customers. The MDY Parties did not believe Glider would be a violation of the terms as
13 they existed at the time. *See Exhibit O.* I reviewed the "Limitations on Your Use of
14 World of Warcraft" section of the TOU in existence at the time and concluded that
15 Glider was not prohibited.

16 18. 182 - I added the language in the FAQ section of MDY's website as a
17 reaction to learning that Blizzard had banned Glider customers as a warning to let the
18 customers know that Blizzard apparently believed Glider was an unauthorized third-
19 party program. Also, Blizzard's reference to the FAQ omits the rest of MDY's entry
20 that refers to the sweeping nature of the contract and shows that the MDY Parties did not
21 believe Glider was specifically against Blizzard's TOU, but rather virtually anything
22 Blizzard wants was against Blizzard's TOU. Specifically, the following language
23 appears in the relevant MDY FAQ section.

24 "While Glider does not violate any of the terms listed under
25 Blizzard's 'Client/Server Manipulation Policy,' it is still a third-party
26 program and their Terms of Service are very open in what falls
27 under that definition, meaning they can find you in violation for
28 pretty much anything they want."

1 19. 188 - Marcus Eikenberry posted the material that Blizzard refers to in
2 paragraph 188 of Blizzard's SOF. I removed the post on September 17, 2006 even
3 before the litigation commenced due to its content. What MDY specifically stated about
4 the post is located on MDY's forum at
5 <http://vfourms.mmoglider.com/showthread.php?t=31623> attached hereto as **Exhibit P**.

6 20. 189. While it is true that MDY markets Glider on MarkeeDragon.com,
7 MDY markets Glider on that website because the site has a reputation for being a place
8 where many WoW players go to discuss the WoW game. The MarkeeDragon.com
9 website is a site devoted to the discussion of several computer games of a similar genre
10 to WoW. MDY does not market on the site because the site features forums about
11 buying, trading or selling WoW accounts in violation of Blizzard's TOU. I have no
12 control over what MarkeeDragon.com discusses or promotes. *See* **Exhibit Q**.

13 21. 193 - Although Blizzard is correct that MDY posted information about
14 referring to MarkeeDragon.com with regard to selling Glider efforts on November 22,
15 2005, shortly thereafter, I began prohibiting any discussions of WoW account trading or
16 selling. MDY does not earn a commission or have any business interest in
17 MarkeeDragon.com website other than to sell Glider (Donnelly Depo at 219:9-12).
18 Selling or buying accounts is not allowed on the Glider forums
19 (<http://vforums.mmoglider.com/announcement.php?f=30>) Note: WTT/WTS/WTB are
20 short-hand for "want to trade", "want to sell", and "want to buy" respectively.

21 22. 194-95 - MDY does not now, nor has it ever, marketed Glider for the
22 purpose of gold farming in WoW. In fact, I actively discourage such a practice because
23 the sole intended use for Glider is to help WoW users decrease the time it takes to level
24 their characters to Level 70 in WoW. Forum post by Jason Beatty, MDY employee:
25 <http://vforums.mmoglider.com/showpost.php?p=659355&postcount=17>, forum post by
26 Michael Donnelly:
27 <http://vforums.mmoglider.com/showpost.php?p=448270&postcount=128>
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1 23. 227 - If Blizzard bans a Glider user's account, most Glider users will
2 choose to immediately open up another account.

3 24. 230 - Blizzard's statement that a Glider user has a special advantage
4 because he can play multiple accounts simultaneously is no special advantage because
5 any player who does not use Glider can play multiple accounts simultaneously.

6 25. 234 - I never developed Glider to be used in breach of WoW's EULA and
7 TOU. Greg Ashe cannot speak on my behalf or for MDY, which means that his
8 statement is pure speculation as to my motive. I designed the Glider program initially
9 for myself, and then for other users to level their characters. I did not know that
10 Blizzard objected to Glider use until Blizzard first banned a Glider user's account in late
11 September, 2005. My intent in selling Glider was not to harm Blizzard or the World of
12 Warcraft experience, but rather my intent was to capitalize on a market demand for a
13 program like Glider and to make a profit.

14 26. 235 - While I did reverse engineer Warden, I did so solely for the purpose
15 of allowing Glider to work with WoW.

16 27. 239 - I did not design Glider to encrypt output to make it difficult for
17 Blizzard to analyze it. I designed Glider with encrypted output to prevent a competitor
18 from analyzing Glider.

19 28. 241 - I did state that if the botting population becomes too big, other
20 players become more aware of botters and will think badly about the game. However,
21 the botting population has not become too big in WoW and is not in danger of becoming
22 too big, given the microscopically small penetration of Glider (less than 0.28%). In
23 addition, that comment was made 5 months after Glider was released when the bulk of
24 the player focus was on leveling. Since then, the majority of Blizzard's content has been
25 adding content that is only accessible at the maximum level, such as arenas and heroic
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1 dungeons. Given the lower number of players leveling, I feel Glider has an even smaller
2 chance of impacting other players than it did in November of 2005.

3 29. 245 - While I did share my account credentials, I did so only with other
4 employees of WoW to assist in the reverse engineering process of WoW's Warden
5 feature.

6 30. 259 - While theoretically if a person uses Glider 24 hours a day, a person
7 could complete 480 hours of play in just 20 days, no person actually does use Glider 24
8 hours a day. In fact, the number of hours that people use Glider varies in the same way
9 that the number of hours that people who play WoW without Glider varies.

10 31. I conducted a survey of Glider customers to determine two primary pieces
11 of data: (1) Because of Glider, did you play WoW longer, shorter, or no change once
12 you reached level 70 than you would have if you had never used Glider? and (2) How
13 many additional WoW accounts did you sign up for as a Glider customer?

14 32. I conducted the survey by asking Glider customers to respond to these
15 questions and programmed the software used to conduct the survey to ensure that no one
16 could answer the questions more than once.

17 33. As to question 1, of the 6,126 Glider customers who responded, 3,180
18 indicated that they played longer, 2,282 stated that their play time did not change, and
19 664 indicated that they played shorter. However, of the 664 who indicated that they
20 played for a shorter amount of time, 440 of those said they played for a shorter amount
21 of time because Blizzard banned their accounts.

22 34. As to Question 2, of the 6,126 responses, 5,612 indicated that they had
23 signed up for at least one additional account. Additionally, nearly half of the
24 respondents (3,140) indicated that Blizzard had banned their accounts, of which 2,283
25 simply opened up a new WoW account after they were banned. Thus, the majority of
26 Glider users play WoW for a longer period of time once they reach level 70 than WoW
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1 players than if they did not use Glider. Additionally, Glider users, on average, open
2 nearly one additional account. Essentially, Glider users pay Blizzard twice the revenue
3 than non-Glider users.

4 35. I am not aware of a single case in which Blizzard's license has ever been
5 terminated under any of the provisions set forth in Section 6 of EULA.

6 36. Glider works by reading the player's state information (character health,
7 nearby monsters, nearby chests and mines, the character's spells) from the user's RAM
8 memory. It then sends keystrokes into the WoW client software on behalf of the user to
9 try to kill the monsters and do other repetitive tasks such as collecting loot from killed
10 monsters and harvestable objects. Under no circumstances can Glider:

- 11 a. alter the WoW client game software in anyway;
- 12 b. give the WoW player the ability to do anything that a human
- 13 player could not already do;
- 14 c. give the WoW player additional power, wealth, or in-game
- 15 advantage over any player other than allowing the player not
- 16 to be present when playing the game;
- 17 d. give the WoW player the ability to make any copies of, make
- 18 derivative works of, or publicly distribute copies of the WoW
- 19 client software.
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21 37. Scan.dll's only function is to detect third-party software when WoW is
22 *first* loaded into RAM. After Scan.dll has made one check of the system after the game
23 is loaded, it stops function. Although Scan.dll can control whether a licensee can access
24 the WoW game client software to *play* the WoW game during the initial loading of the
25 WoW game client, Scan.dll cannot control whether a licensee can *access* the WoW
26 game client software code for the purpose of examining, copying, making derivative
27 works or distributing copies of WoW. In fact, Scan.dll cannot prevent the licensee *from*
28 *manually loading the game client into RAM*. Even if Scan.dll detects prohibited

1 software code – it can only stop the licensee from *playing*, not copying, the WoW
2 software code. Any person can manually copy the game client into RAM by using any
3 file viewer, such as Notepad, to open individual WoW software files from a person's
4 hard drive. When this is done, the files are loaded into RAM. All Scan.dll can do is
5 prevent a person from playing the game.

6 38. MDY continuously updates Glider's ability to avoid detection from Warden only
7 because MDY must maintain Glider's interoperability with WoW.

8 39. When MDY started selling Glider, Glider did not originally avoid detection. I
9 did not originally include detection avoidance as a feature of Glider because I never believed
10 that using Glider with WoW would violate Blizzard's EULA. I added this feature to Glider
11 solely as a countermeasure to Blizzard's unilateral attempt to take away what I believed was a
12 rightful software business.

13 40. Since January of 2008, MDY's Glider software no longer needs to, nor is
14 capable of, launching the WoW software client program to work with WoW. Glider
15 users are able to load the WoW software first, and then load Glider.

16 Signed this April 24, 2008,

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20 /s/Michael M. Donnelly
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