

1 RODGER R. COLE (CSB NO. 178865)
rcole@fenwick.com

2 FENWICK & WEST LLP
 Silicon Valley Center
 3 801 California Street
 Mountain View, CA 94041
 4 Telephone: (650) 988-8500
 Facsimile: (650) 938-5200

5 JENNIFER L. KELLY (CSB NO. 193416)
jkelly@fenwick.com

6 MARY E. MILIONIS (CSB NO. 238827)
mmilionis@fenwick.com

7 FENWICK & WEST LLP
 555 California Street - 12th Floor
 8 San Francisco, CA 94104
 Telephone: (415) 875-2300
 9 Facsimile: (415) 281-1350

10 Attorneys for Plaintiffs and Counterclaim-
 defendants Capcom Co., Ltd. and Capcom
 11 Entertainment, Inc., and Third Party Defendant
 Capcom U.S.A., Inc.

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN JOSE DIVISION

15 CAPCOM CO., LTD. AND CAPCOM
 16 ENTERTAINMENT, INC.,

17 Plaintiffs,

18 v.

19 THE MKR GROUP, INC.,
 20 Defendant.

21 THE MKR GROUP, INC.,

22 Counterclaim-Plaintiff and
 Third-Party Plaintiff,

23 v.

24 CAPCOM CO., LTD. AND CAPCOM
 ENTERTAINMENT, INC.,

25 Counterclaim-Defendants

26 and

27 CAPCOM U.S.A, INC.

28 Third-Party Defendant.

Case No. CV-08-0904 RS

**DECLARATION OF JENNIFER L. KELLY
 IN SUPPORT OF PLAINTIFFS' AND
 THIRD PARTY DEFENDANT'S MOTION
 TO DISMISS AMENDED
 COUNTERCLAIMS AND THIRD PARTY
 COMPLAINT**

Date: August 6, 2008

Time: 9:30 a.m.

Courtroom: 4, 5th Floor

Judge: Hon. Richard Seeborg

1 I, Jennifer L. Kelly, declare:

2 1. I am an attorney admitted to practice before this Court and am an associate in the
3 law firm of Fenwick & West, LLP, which represents Plaintiffs and Counterclaim-Defendants
4 Capcom Co., Ltd. and Capcom Entertainment, Inc. and Third Party Defendant Capcom U.S.A.,
5 Inc. (collectively, "Capcom") in this action. I submit this declaration in support of Capcom's
6 accompanying Motion to Dismiss Counterclaim-Plaintiff The MKR Group, Inc.'s ("MKR")
7 Amended Counterclaims and Third-Party Complaint (the "Motion to Dismiss"). I have personal
8 knowledge of the matters set forth in this declaration and, if called upon to do so, could and
9 would testify competently as to the matters set forth herein.

10 2. Attached as **Exhibit 1** to the Request for Judicial Notice In Support of Capcom's
11 Motion to Dismiss Amended Counterclaims and Third Party Complaint ("RJN") is a true and
12 correct DVD copy of the film *George A. Romero's Dawn of the Dead* ("DOTD") that I purchased
13 from Amazon.com on June 2, 2008.

14 3. Attached as **Exhibit 2** to the RJN is a true and correct of the synopsis of DOTD
15 deposited with the U.S. Copyright Office that I caused to be obtained from the Library of
16 Congress on or about February 22, 2008.

17 4. Attached as **Exhibit 3** to the RJN is a true and correct copy of the script for DOTD
18 deposited with the U.S. Copyright Office that I caused to be obtained from the U.S. Copyright
19 Office on or about March 12, 2008.

20 5. Attached as **Exhibit 4** to the RJN is a true and correct of the video game *Dead*
21 *Rising* that I obtained from Capcom Entertainment, Inc. ("CEI") on June 4, 2008.

22 6. Attached as **Exhibit 6** to the RJN is a true and correct DVD copy of the film *White*
23 *Zombie* that I purchased from Amazon.com on June 2, 2008. Attached as **Exhibit 7** to the RJN is
24 a true and correct copy of the Wikipedia encyclopedia reference for *White Zombie*, located on the
25 Internet at http://en.wikipedia.org/wiki/White_Zombie_%28film%29, which I caused to be
26 printed on June 3, 2008.

27 7. Attached as **Exhibit 8** to the RJN is a true and correct DVD copy of the film *I*
28 *Walked With a Zombie* that I purchased from Amazon.com on June 2, 2008. Attached as **Exhibit**

2 **9** to the RJN is true and correct copy of the Wikipedia encyclopedia reference for *I Walked With*
 3 *a Zombie*, located on the Internet at http://en.wikipedia.org/wiki/I_walked_with_a_zombie,
 4 which I caused to be printed on June 3, 2008.

5 8. Attached as **Exhibit 10** to the RJN is a true and correct DVD copy of the film *Plan*
 6 *9 From Outer Space* that I purchased from Amazon.com on June 2, 2008. Attached as **Exhibit**
 7 **11** to the RJN is a true and correct copy of the Wikipedia encyclopedia reference for *Plan 9 From*
 8 *Outer Space*, located on the Internet at http://en.wikipedia.org/wiki/Plan_9_from_outer_space,
 9 which I caused to be printed on June 3, 2008.

10 9. Attached as **Exhibit 12** to the RJN is a true and correct DVD copy of the film *The*
 11 *Last Man on Earth* that I purchased from Amazon.com on June 2, 2008. Attached as **Exhibit 13**
 12 to the RJN is a true and correct copy of the Wikipedia encyclopedia reference for *The Last Man*
 13 *on Earth*, located on the Internet at
 14 http://en.wikipedia.org/wiki/The_Last_Man_on_Earth_%281964_film%29, which I caused to be
 15 printed on June 3, 2008.

16 10. Attached as **Exhibit 14** to the RJN is a true and correct DVD copy of the film
 17 *Night of the Living Dead* that I caused to be purchased from the Virgin Megastore located in San
 18 Francisco, California on June 5, 2008. That DVD contains a copy of the script for *Night of the*
 19 *Living Dead*, in PDF format, which I caused to be printed and have attached a true and correct
 20 copy thereof as **Exhibit 15** to the RJN. Attached as **Exhibit 16** to the RJN is a true and correct
 21 copy of the Wikipedia encyclopedia reference for *Night of the Living Dead*, located on the
 22 Internet at http://en.wikipedia.org/wiki/Night_of_the_living_dead, which I caused to be printed
 23 on June 3, 2008.

24 11. Attached as **Exhibit 17** to the RJN is a true and correct DVD copy of the film *Day*
 25 *of the Dead* that I purchased from Amazon.com on June 2, 2008. Attached as **Exhibit 18** to the
 26 RJN is a true and correct copy of the Wikipedia encyclopedia reference for *Day of the Dead*,
 27 located on the Internet at http://en.wikipedia.org/wiki/Day_of_the_Dead_%28film%29, which I
 28 caused to be printed on June 3, 2008.

12. Attached as **Exhibit 19** to the RJN is a true and correct DVD copy the film *Land*

1 of the Dead that I purchased from Amazon.com on June 2, 2008. Attached as **Exhibit 20** to the
2 RJN is a true and correct copy of the Wikipedia encyclopedia reference for *Land of the Dead*,
3 located on the Internet at http://en.wikipedia.org/wiki/Land_of_the_dead, which I caused to be
4 printed on June 3, 2008.

5 13. Attached as **Exhibit 21** to the RJN is a true and correct DVD copy of the film
6 *Night of the Comet* that I purchased from Amazon.com on June 2, 2008. Attached as **Exhibit 22**
7 to the RJN is a true and correct copy of the Wikipedia encyclopedia reference for *Night of the*
8 *Comet*, located on the Internet at http://en.wikipedia.org/wiki/Night_of_the_comet, which I
9 caused to be printed on June 3, 2008.

10 14. Attached as **Exhibit 23** to the RJN is a true and correct DVD copy of the film
11 *Shaun of the Dead* that I purchased from Amazon.com on June 2, 2008. Attached as **Exhibit 24**
12 to the RJN is a true and correct copy of the Wikipedia encyclopedia reference for *Shaun of the*
13 *Dead*, located on the Internet at http://en.wikipedia.org/wiki/Shawn_of_the_dead, which I caused
14 to be printed on June 3, 2008.

15 15. Attached as **Exhibit 25** to the RJN is a true and correct DVD copy of the film
16 *Planet Terror* that I purchased from Amazon.com on June 2, 2008. Attached as **Exhibit 26** to the
17 RJN is a true and correct copy of the Wikipedia encyclopedia reference for *Planet Terror*, located
18 on the Internet at http://en.wikipedia.org/wiki/Planet_Terror, which I caused to be printed on
19 June 3, 2008.

20 16. Attached as **Exhibit 27** to the RJN is a true and correct DVD copy of the film 28
21 *Days Later* that I purchased from Amazon.com on June 2, 2008. Attached as **Exhibit 28** to the
22 RJN is a true and correct copy of the Wikipedia encyclopedia reference for *28 Days Later*,
23 located on the Internet at http://en.wikipedia.org/wiki/28_days_later, which I caused to be printed
24 on June 3, 2008.

25 17. Attached as **Exhibit 29** to the RJN is a true and correct DVD copy of the film 28
26 *Weeks Later* that I purchased from Amazon.com on June 2, 2008. Attached as **Exhibit 30** is a
27 true and correct copy of the Wikipedia encyclopedia reference for *28 Weeks Later*, located on the
28 Internet at http://en.wikipedia.org/wiki/28_weeks_later, which I caused to be printed on June 3,

2008.

18. Attached as **Exhibit 31** to the RJN is a true and correct DVD copy of the films *Resident Evil* and *Resident Evil: Apocalypse* that I purchased from Amazon.com on June 2, 2008. Attached as **Exhibit 32** is a true and correct copy of the Wikipedia encyclopedia reference for *Resident Evil*, located on the Internet at http://en.wikipedia.org/wiki/Resident_Evil_%28film%29, which I caused to be printed on June 3, 2008.

19. Attached as **Exhibit 34** is a true and correct copy of the Wikipedia encyclopedia reference for *Resident Evil: Apocalypse*, located on the Internet at http://en.wikipedia.org/wiki/Resident_Evil:_Apocalypse, which I caused to be printed on June 3, 2008.

20. Attached as **Exhibit 35** is a true and correct DVD copy of the film *Resident Evil: Extinction* that I purchased from Amazon.com on June 2, 2008. Attached as **Exhibit 36** is a true and correct copy of a Wikipedia encyclopedia reference for *Resident Evil: Extinction*, located on the Internet at http://en.wikipedia.org/wiki/Resident_Evil:_Extinction, which I caused to be printed on June 3, 2008.

21. Attached as **Exhibit 37** to the RJN is a true and correct copy of the video game *Resident Evil* that I obtained from CEI on June 4, 2008.

22. Attached as **Exhibit 38** to the RJN is a true and correct copy of the video game *Resident Evil: The Deadly Silence* I obtained from CEI on June 4, 2008.

23. Attached as **Exhibit 39** to the RJN is a true and correct copy of the video game *Resident Evil: Code Veronica* that I obtained from CEI on June 4, 2008.

24. Attached as **Exhibit 40** to the RJN is a true and correct copy of the video game *Resident Evil: Outbreak* that I obtained from CEI on June 4, 2008.

25. Attached as **Exhibit 41** to the RJN is a true and correct copy of the video game *Resident Evil: The Umbrella Chronicles* that I obtained from CEI on June 4, 2008.

26. Attached as **Exhibit 42** to the RJN are true and correct copies of screen shots that, on February 2, 2008, I caused to be printed from the Urban Dead website, located on the Internet

1 at www.urbandead.com. Attached as **Exhibit 43** to the RJN is a true and correct copy of a
2 Wikipedia encyclopedia reference for *Urban Dead*, an online multi-player role-playing game,
3 located on the Internet at <http://en.wikipedia.org/wiki/Urban>, which I caused to be printed on
4 June 6, 2008. Attached as **Exhibit 44** to the RJN is a true and correct copy of the Urban Dead
5 Wiki entry for the game's Monroeville Mall, located on the Internet at
6 http://wiki.urbandead.com/index.php/Monroeville_Mall, which I caused to be printed on June 6,
7 2008.

8 I declare under penalty of perjury under the laws of the United States that the foregoing is
9 true and correct, and that this declaration was executed at San Francisco, California, on June 11,
10 2008.

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12 _____
13 /s/ Jennifer L. Kelly
14 Jennifer L. Kelly
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