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IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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DATE INITIAL

ADKNOWLEDGE, INC., d/b/a Super
Rewards and KITN MEDIA USA, INC.,
d/b/a Super Rewards,
Appellants - Defendants,

v.

REBECCA SWIFT, on behalf of herself and
all others similarly situated,
Respondent - Plaintiff.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
(Hon. Elizabeth D. Laporte, United States Magistrate Judge)
No. 4:09-CV-05443 EDL

**RESPONDENT REBECCA SWIFT'S NOTICE OF FILING RECORD
EXCERPTS UNDER SEAL**

C. BROOKS CUTTER
JOHN R. PARKER, JR.
KERSHAW, CUTTER & RATINOFF, LLP
401 WATT AVENUE
SACRAMENTO, CA 95864
(916) 448-9800

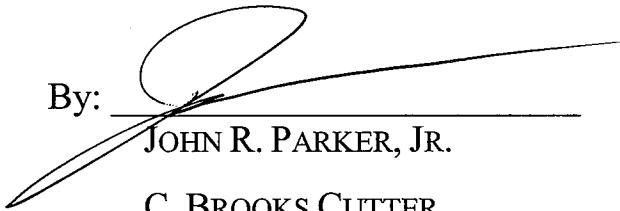
Counsel for Respondent.

Pursuant to Ninth Circuit Rule 27-13, Respondent Rebecca Swift hereby serves notice that documents previously filed under seal in the District Court are being filed under seal in this Court.

The District Court's order sealing Exhibit A to the Declaration of John R. Parker, Jr., (Dkt. No. 93), the underlying Protective Order (Dkt. No. 51), and the Under Seal Exhibit A (Dkt. No. 98) are attached. Exhibit A is being separately filed and served as an Under Seal Supplemental Record Excerpt.

DATED: March 8, 2012

KERSHAW, CUTTER & RATINOFF LLP

By: 

JOHN R. PARKER, JR.

C. BROOKS CUTTER
JOHN R. PARKER, JR.
KERSHAW, CUTTER & RATINOFF, LLP
401 WATT AVENUE
SACRAMENTO, CA 95864
(916) 448-9800
FAX) (916) 669-4499

EXHIBIT 1

1 Richard L. Seabolt (SBN 67469)
2 Suzanne R. Fogarty (SBN 154319)
3 Oliver E. Benn (SBN 244618)
4 **DUANE MORRIS LLP**
5 Spear Tower, One Market Plaza, Suite 2200
6 San Francisco, CA 94105-1127
7 Telephone: 415.957.3000
8 Facsimile: 415.957.3001
9 E-mail: RLSearbolt@DuaneMorris.com
10 SRFogarty@DuaneMorris.com
11 OBenn@DuaneMorris.com

12 Attorneys for Defendant,
13 ZYNGA INC.

14
15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 REBECCA SWIFT, individually, on behalf of the
18 general public, and all others similarly situated,

19 Plaintiff,

20 v.

21 ZYNGA GAME NETWORK INC.;
22 ADKNOWLEDGE, INC.; D/B/A SUPER
23 REWARDS; KITN MEDIA USA, INC., D/B/A
24 SUPER REWARDS,

25 Defendants.

26 Case No.: CV 09-5443 EDL

27 **[PROPOSED] ORDER SEALING**
28 **EXHIBITS A THROUGH D**
ATTACHED TO THE DECLARATION
OF JOHN R. PARKER, JR. (DKT. NO.
70)

Complaint Filed: November 17, 2009

19 The Court, having considered the accompanying Declaration of Richard L. Seabolt Pursuant
20 to Civil Local Rule 79-5(d) In Support of Zynga Inc.'s Request to Maintain Certain Confidential
21 Documents Under Seal, hereby ORDERS as follows:

22 Exhibits A through D, attached to the Declaration of John R. Parker, Jr. (Dkt. No. 70) should
23 remain sealed.

24 IT IS SO ORDERED.

25 Date: July 29, 2011

26 DM1\2758971.1

Elizabeth D. Laporte

27 Hon. Elizabeth D. Laporte
United States Magistrate Judge

1 Richard L. Seabolt (SBN 67469)
2 Suzanne R. Fogarty (SBN 154319)
3 Oliver E. Benn (SBN 244618)
4 **DUANE MORRIS LLP**
5 Spear Tower, One Market Plaza, Suite 2200
6 San Francisco, CA 94105-1127
7 Telephone: 415.957.3000
8 Facsimile: 415.957.3001
9 E-mail: RLSeabolt@DuaneMorris.com
10 SRFogarty@DuaneMorris.com
11 OBenn@DuaneMorris.com

12 Attorneys for Defendant,
13 ZYNGA INC.

14
15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 REBECCA SWIFT, individually, on behalf of the
18 general public, and all others similarly situated,

19 Plaintiff,
20 v.

21 ZYNGA GAME NETWORK INC.;
22 ADKNOWLEDGE, INC.; D/B/A SUPER
23 REWARDS; KITN MEDIA USA, INC., D/B/A
24 SUPER REWARDS,

25 Defendants.

26 Case No.: CV 09-5443 SBA

27 **STIPULATED PROTECTIVE ORDER**

28 Complaint Filed: November 17, 2009

1. **PURPOSES AND LIMITATIONS.**

2. Disclosure and discovery activity in this action are likely to involve production of
3. confidential, proprietary, or private information for which special protection from public disclosure
4. and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
5. the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
6. Order. The parties acknowledge that this Order does not confer blanket protections on all
7. disclosures or responses to discovery and that the protection it affords from public disclosure and use
8. extends only to the limited information or items that are entitled to confidential treatment under the
9. law.

1 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that
2 this Stipulated Protective Order does not entitle them to file confidential information under seal;
3 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be
4 applied when a party seeks permission from the court to file material under seal.

5 **2. DEFINITIONS.**

6 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
7 information or items under this Order.

8 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
9 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
10 Civil Procedure 26(c).

11 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
12 as their support staff).

13 2.4 Designating Party: a Party or Non-Party that designates information or items that it
14 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

16 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
17 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
18 transcripts, and tangible things), that are produced or generated in disclosures or responses to
19 discovery in this matter.

20 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
21 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
22 consultant in this action.

23 2.7 House Counsel: attorneys who are employees of a party to this action. House
24 Counsel does not include Outside Counsel of Record or any other outside counsel.

25 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
26 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or
27 Non-Party would create a substantial risk of serious harm that could not be avoided by less
28 restrictive means.

1 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
2 entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this action
4 but are retained to represent or advise a party to this action and have appeared in this action on
5 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

6 2.11 Party: any party to this action, including all of its officers, directors, employees,
7 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

8 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
9 Material in this action.

10 2.13 Professional Vendors: persons or entities that provide litigation support services
11 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
12 storing, or retrieving data in any form or medium) and their employees and subcontractors.

13 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

15 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
16 Producing Party.

17 3. **SCOPE.**

18 The protections conferred by this Stipulation and Order cover not only Protected Material (as
19 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
20 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
21 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
22 However, the protections conferred by this Stipulation and Order do not cover the following
23 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
24 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
25 publication not involving a violation of this Order, including becoming part of the public record
26 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
27 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
28

1 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
 2 Protected Material at trial shall be governed by a separate agreement or order.

3 **4. DURATION.**

4 Even after final disposition of this litigation, the confidentiality obligations imposed by this
 5 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
 6 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
 7 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
 8 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
 9 time limits for filing any motions or applications for extension of time pursuant to applicable law.

10 **5. DESIGNATING PROTECTED MATERIAL.**

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
 12 Non-Party that designates information or items for protection under this Order must take care to
 13 limit any such designation to specific material that qualifies under the appropriate standards. To the
 14 extent practical to do so, the Designating Party must designate for protection only those parts of
 15 material, documents, items, or oral or written communications that qualify – so that other portions of
 16 the material, documents, items, or communications for which protection is not warranted are not
 17 swept unjustifiably within the ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
 19 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
 20 encumber or retard the case development process or to impose unnecessary expenses and burdens on
 21 other parties) expose the Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it designated for
 23 protection do not qualify for protection at all or do not qualify for the level of protection initially
 24 asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the
 25 mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
 27 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,

1 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
2 designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents, but
5 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
6 affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL ATTORNEYS' EYES
7 ONLY" to each page that contains protected material. If only a portion or portions of the material on
8 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
9 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level
10 of protection being asserted.

11 A Party or Non-Party that makes original documents or materials available for
12 inspection need not designate them for protection until after the inspecting Party has indicated which
13 material it would like copied and produced. During the inspection and before the designation, all of
14 the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
15 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
16 copied and produced, the Producing Party must determine which documents, or portions thereof,
17 qualify for protection under this Order. Then, before producing the specified documents, the
18 Producing Party must affix the "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
19 ATTORNEYS' EYES ONLY" legend to each page that contains Protected Material. If only a
20 portion or portions of the material on a page qualifies for protection, the Producing Party also must
21 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

22 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
23 the Designating Party identify on the record, before the close of the deposition, hearing, or other
24 proceeding, all protected testimony and specify the level of protection being asserted. When it is
25 impractical to identify separately each portion of testimony that is entitled to protection and it
26 appears that substantial portions of the testimony may qualify for protection, the Designating Party
27 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
28 to have up to 21 days to identify the specific portions of the testimony as to which protection is

1 sought and to specify the level of protection being asserted. Only those portions of the testimony
2 that are appropriately designated for protection within the 21 days shall be covered by the provisions
3 of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition
4 or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be
5 treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."
6 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other
7 proceeding to include Protected Material so that the other parties can ensure that only authorized
8 individuals who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A) are
9 present at those proceedings. The use of a document as an exhibit at a deposition shall not in any
10 way affect its designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
11 EYES ONLY."

12 Transcripts containing Protected Material shall have an obvious legend on the title
13 page that the transcript contains Protected Material, and the title page shall be followed by a list of
14 all pages (including line numbers as appropriate) that have been designated as Protected Material
15 and the level of protection being asserted by the Designating Party. The Designating Party shall
16 inform the court reporter of these requirements. Any transcript that is prepared before the expiration
17 of a 21-day period for designation shall be treated during that period as if it had been designated
18 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its entirety unless otherwise
19 agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

20 (c) for information produced in some form other than documentary and for any
21 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
22 container or containers in which the information or item is stored the legend "CONFIDENTIAL" or
23 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only a portion or portions of the
24 information or item warrant protection, the Producing Party, to the extent practicable, shall identify
25 the protected portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
27 designate qualified information or items does not, standing alone, waive the Designating Party's
28 right to secure protection under this Order for such material. Upon timely correction of a

1 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
 2 accordance with the provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 5 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
 6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
 7 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
 8 confidentiality designation by electing not to mount a challenge promptly after the original
 9 designation is disclosed.

10 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
 11 by providing written notice of each designation it is challenging and describing the basis for each
 12 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
 13 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
 14 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
 15 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
 16 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
 17 Party must explain the basis for its belief that the confidentiality designation was not proper and
 18 must give the Designating Party an opportunity to review the designated material, to reconsider the
 19 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
 20 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
 21 has engaged in this meet and confer process first or establishes that the Designating Party is
 22 unwilling to participate in the meet and confer process in a timely manner.

23 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 24 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
 25 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
 26 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
 27 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
 28 competent declaration affirming that the movant has complied with the meet and confer

1 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
 2 motion including the required declaration within 21 days (or 14 days, if applicable) shall
 3 automatically waive the confidentiality designation for each challenged designation. In addition, the
 4 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
 5 good cause for doing so, including a challenge to the designation of a deposition transcript or any
 6 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
 7 competent declaration affirming that the movant has complied with the meet and confer
 8 requirements imposed by the preceding paragraph.

9 The burden of persuasion in any such challenge proceeding shall be on the Designating
 10 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
 11 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
 12 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
 13 retain confidentiality as described above, all parties shall continue to afford the material in question
 14 the level of protection to which it is entitled under the Producing Party's designation until the court
 15 rules on the challenge.

16 **7. ACCESS TO AND USE OF PROTECTED MATERIAL.**

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 18 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 19 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 20 the categories of persons and under the conditions described in this Order. When the litigation has
 21 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
 22 DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a location and in a
 24 secure manner that ensures that access is limited to the persons authorized under this Order.

25 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
 26 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 27 information or item designated "CONFIDENTIAL" only to:

1 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
2 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
3 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
4 Bound" that is attached hereto as Exhibit A;

5 (b) the officers, directors, and employees (including House Counsel) of the
6 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
7 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

8 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
9 is reasonably necessary for this litigation and who have signed the "Acknowledgment and
10 Agreement to Be Bound" (Exhibit A);

11 (d) the court and its personnel;

12 (e) court reporters and their staff, professional jury or trial consultants, mock
13 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and
14 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

15 (f) during their depositions, witnesses in the action to whom disclosure is
16 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
17 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
18 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
19 separately bound by the court reporter and may not be disclosed to anyone except as permitted under
20 this Stipulated Protective Order.

21 (g) the author or recipient of a document containing the information or a
22 custodian or other person who otherwise possessed or knew the information.

23 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
24 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
25 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
26 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

27 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
28 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the

1 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
 2 Bound" that is attached hereto as Exhibit A;

3 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
 4 for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
 5 A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

6 (c) the court and its personnel;

7 (d) court reporters and their staff, professional jury or trial consultants, and
 8 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
 9 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

10 (e) the author or recipient of a document containing the information or a
 11 custodian or other person who otherwise possessed or knew the information.

12 7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY CONFIDENTIAL
 13 - ATTORNEYS' EYES ONLY" Information or Items to Experts.

14 (a) Unless otherwise ordered by the court or agreed to in writing by the
 15 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
 16 information or item that has been designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
 17 ONLY" pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that
 18 (1) identifies the general categories of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
 19 ONLY" information that the Receiving Party seeks permission to disclose to the Expert, (2) sets
 20 forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a
 21 copy of the Expert's current resume, (4) identifies the Expert's current employer(s), (5) identifies
 22 each person or entity from whom the Expert has received compensation or funding for work in his or
 23 her areas of expertise or to whom the expert has provided professional services, including in
 24 connection with a litigation, at any time during the preceding five years, and (6) identifies (by name
 25 and number of the case, filing date, and location of court) any litigation in connection with which the
 26 Expert has offered expert testimony, including through a declaration, report, or testimony at a
 27 deposition or trial, during the preceding five years.

1 (b) A Party that makes a request and provides the information specified in the
2 preceding respective paragraphs may disclose the subject Protected Material to the identified Expert
3 unless, within 14 days of delivering the request, the Party receives a written objection from the
4 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

5 (c) A Party that receives a timely written objection must meet and confer with the
6 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
7 within seven days of the written objection. If no agreement is reached, the Party seeking to make the
8 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with
9 Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion
10 must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to
11 Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm that the
12 disclosure would entail, and suggest any additional means that could be used to reduce that risk. In
13 addition, any such motion must be accompanied by a competent declaration describing the parties'
14 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
15 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to
16 approve the disclosure.

17 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of
18 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
19 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

20 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
21 **OTHER LITIGATION.**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

25 (a) promptly notify in writing the Designating Party. Such notification shall
26 include a copy of the subpoena or court order;

27 (b) promptly notify in writing the party who caused the subpoena or order to
28 issue in the other litigation that some or all of the material covered by the subpoena or order is

1 subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective
2 Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by
4 the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with the subpoena
6 or court order shall not produce any information designated in this action as "CONFIDENTIAL" or
7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a determination by the court
8 from which the subpoena or order issued, unless the Party has obtained the Designating Party's
9 permission. The Designating Party shall bear the burden and expense of seeking protection in that
10 court of its confidential material – and nothing in these provisions should be construed as
11 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
12 another court.

13 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED**
14 **IN THIS LITIGATION.**

15 (a) The terms of this Order are applicable to information produced by a Non-
16 Party in this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
17 ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in connection with this
18 litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions
19 should be construed as prohibiting a Non-Party from seeking additional protections.

20 (b) In the event that a Party is required, by a valid discovery request, to produce a
21 Non-Party's confidential information in its possession, and the Party is subject to an agreement with
22 the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

23 1. promptly notify in writing the Requesting Party and the Non-Party that
24 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

25 2. promptly provide the Non-Party with a copy of the Stipulated
26 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
27 description of the information requested; and

3 (c) If the Non-Party fails to object or seek a protective order from this court
4 within 14 days of receiving the notice and accompanying information, the Receiving Party may
5 produce the Non-Party's confidential information responsive to the discovery request. If the Non-
6 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
7 possession or control that is subject to the confidentiality agreement with the Non-Party before a
8 determination by the court.¹ Absent a court order to the contrary, the Non-Party shall bear the
9 burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

18 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
19 **PROTECTED MATERIAL.**

20 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
21 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
22 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
23 modify whatever procedure may be established in an e-discovery order that provides for production
24 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
25 parties reach an agreement on the effect of disclosure of a communication or information covered by

¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 the attorney-client privilege or work product protection, the parties may incorporate their agreement
2 in the stipulated protective order submitted to the court.

3 **12. MISCELLANEOUS.**

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
5 its modification by the court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
7 no Party waives any right it otherwise would have to object to disclosing or producing any
8 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
9 Party waives any right to object on any ground to use in evidence of any of the material covered by
10 this Protective Order.

11 12.3 Filing Protected Material. Without written permission from the Designating Party or
12 a court order secured after appropriate notice to all interested persons, a Party may not file in the
13 public record in this action any Protected Material. A Party that seeks to file under seal any
14 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
15 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
16 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
17 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
18 protection under the law. If a Receiving Party's request to file Protected Material under seal
19 pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the
20 information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by
21 the court.

22 **13. FINAL DISPOSITION.**

23 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
24 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
25 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
26 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
27 the Protected Material is returned or destroyed, the Receiving Party must submit a written
28 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)

1 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
2 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
3 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
4 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
5 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
6 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
7 and expert work product, even if such materials contain Protected Material. Any such archival
8 copies that contain or constitute Protected Material remain subject to this Protective Order as set
9 forth in Section 4 (DURATION).

10

11 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:**

12 **KERSHAW, CUTTER & RATINOFF, LLP**

13

14 DATED: March 31, 2011

/s/

15 J.R. Parker
16 Attorneys for Plaintiff, REBECCA SWIFT

17 **DUANE MORRIS LLP**

18

19 DATED: March 31, 2011

/s/

20 Richard L. Seabolt
21 Attorneys for Defendant, ZYNGA INC.

22 **NEWMAN & NEWMAN**

23

24 DATED: March 31, 2011

/s/

25 Derek Newman
26 Attorneys for Defendants,
27 ADKNOWLEDGE, INC. and
28 KITN MEDIA USA, INC.

29 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

30

31 DATED: April 1, 2011


32 Honorable Elizabeth D. Laporte
33 United States Magistrate Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3

4 I, _____ [print or type full name], of

5 _____ [print or type full address], declare under penalty of perjury that I have read in

6 its entirety and understand the Stipulated Protective Order that was issued by the United States

7 District Court for the Northern District of California on April ___, 2011 in the case of *Rebecca Swift*

8 *v. Zynga Game Network Inc.; Adknowledge, Inc.; D/B/A Super Rewards, KITN Media USA, Inc,*

9 *D/B/A Super Rewards*, Case No. CV 09-5443 SBA. I agree to comply with and to be bound by all

10 the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so

11 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise

12 that I will not disclose in any manner any information or item that is subject to this Stipulated

13 Protective Order to any person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the

15 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective

16 Order, even if such enforcement proceedings occur after termination of this action.

17 I hereby appoint _____ [print or type full name] of

18 _____ [print or type full address and telephone number] as

19 my California agent for service of process in connection with this action or any proceedings related

20 to enforcement of this Stipulated Protective Order.

21

22 Date: _____

23 City and State where sworn and signed: _____

24

25 Printed name: _____

26

27 Signature: _____

CERTIFICATE OF SERVICE

I, Katie Gradwohl, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 401 Watt Avenue, Sacramento, California 95864. On March 8, 2012, I served the within documents:

RESPONDENT REBECCA SWIFT'S NOTICE OF FILING RECORD EXCERPTS UNDER SEAL

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below.

Derek A. Newman

derek@newmanlaw.com

Derek Linke (admitted *Pro Hac Vice*)

linke@newmanlaw.com

John Du Wors

duwors@newmanlaw.com

NEWMAN & NEWMAN, ATTORNEYS AT LAW, LLP

1201 Third Ave., Suite 1600

Seattle, WA 98101

Facsimile: (206) 274-2801

Attorneys for Defendants

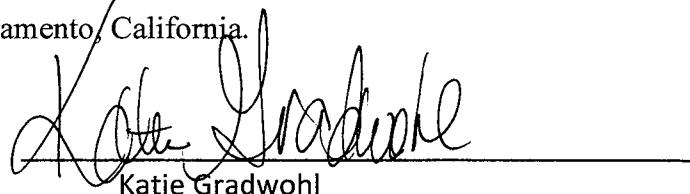
ADKNOWLEDGE, INC., D/B/A SUPER REWARDS and KITN MEDIA

USA, INC., D/B/A SUPER REWARDS

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 8, 2012, at Sacramento, California.



Katie Gradwohl