

1 **KERSHAW, CUTTER & RATINOFF, LLP**  
 William A. Kershaw (State Bar No. 057486)  
 2 Email: [wkershaw@kcrlegal.com](mailto:wkershaw@kcrlegal.com)  
 C. Brooks Cutter (State Bar No. 121407)  
 3 Email: [bcutter@kcrlegal.com](mailto:bcutter@kcrlegal.com)  
 Stuart C. Talley (State Bar No. 180374)  
 4 Email: [stalley@kcrlegal.com](mailto:stalley@kcrlegal.com)  
 John R. Parker, Jr. (State Bar No. 257761)  
 5 Email: [jparker@kcrlegal.com](mailto:jparker@kcrlegal.com)  
 6 401 Watt Avenue  
 Sacramento, California 95864  
 7 Telephone: (916) 448-9800  
 8 Facsimile: (916) 669-4499

9 **WEXLER WALLACE LLP**  
 Mark J. Tamblyn (State Bar No. 179272)  
 10 Email: [mjt@wexlerwallace.com](mailto:mjt@wexlerwallace.com)  
 Ian J. Barlow (State Bar No. 262213)  
 11 Email: [ijb@wexlerwallace.com](mailto:ijb@wexlerwallace.com)  
 12 455 Capitol Mall, Suite 231  
 Sacramento, California 95814  
 13 Telephone: (916) 492-1100  
 14 Facsimile: (916) 492-1124

15 Attorneys for *Plaintiff*

17 UNITED STATES DISTRICT COURT  
 18 NORTHERN DISTRICT OF CALIFORNIA

19 REBECCA SWIFT, on behalf of herself and  
 20 all others similarly situated,

21 Plaintiff,

22 v.

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

26 Defendants.  
 27  
 28

Case No. CV 09-5443 SBA

**CLASS ACTION**

**FIRST AMENDED COMPLAINT FOR VIOLATIONS OF:**

- (1) THE UNFAIR COMPETITION LAW;
- (2) THE CONSUMERS LEGAL REMEDIES ACT; AND
- (3) UNJUST ENRICHMENT.

**JURY TRIAL DEMANDED**

1  
2 Plaintiff Rebecca Swift (“Plaintiff”), individually and on behalf of all others similarly  
3 situated, alleges by and through her attorneys, upon information and belief, as follows:

4 **NATURE OF THE ACTION**

5 1. This case seeks to remedy a fraudulent scheme perpetrated by Defendants to lure  
6 unsuspecting consumers into signing up for services and goods that they do not want or need.  
7 Specifically, the Defendant Zynga Game Network Inc. (“Zynga”) is in the business of developing  
8 and making available to users of Facebook, MySpace, and other social networking sites a large  
9 variety of popular on-line games including without limitation Mafia Wars, Zynga Poker,  
10 FarmVille, Vampires, YoVille!, and Roller Coaster Kingdom.

11 2. Users are allowed to play the Zynga’s games free of charge. Since its inception,  
12 however, Zynga has admittedly sought to generate as much revenue as possible through its “free”  
13 games by “monetizing” them. Although most “free” content made available on the internet is  
14 supported through traditional banner advertising, where advertisers pay for the right to present  
15 advertisements that appear next to or along with the “free” content, Zynga has taken a different  
16 tack. Instead of hosting advertisements to its users, Zynga generates revenue by selling virtual  
17 currency to players within the games that it has developed.

18 3. Each of Zynga’s games is social in nature, allowing the players to create an online  
19 persona or avatar that can interact with other players’ persona or avatar. Each of these games is  
20 also competitive, allowing players to compare their virtual accomplishments with each other, and  
21 in many cases, allowing them to compete with each other directly within the game. For example,  
22 in the game Mafia Wars, the player creates a virtual persona, a fledgling criminal who may  
23 advance within the criminal world by committing various illegal acts within the game. A player  
24 in Mafia Wars can also “attack” another player. The more “powerful” player—the player who  
25 has acquired more virtual goods and services for his or her persona within the game—will  
26 normally win, acquiring in-game benefits, and the player who loses will suffer some sort of  
27 detriment to his online persona within the game.

28 4. Each game is designed to be more enjoyable for users who have acquired

1 increasing amounts of virtual currency. Players who have acquired this virtual currency in each  
2 game can use it to acquire more in-game goods and services, to unlock new levels of the game, to  
3 better compete against other players, or to otherwise make the game more enjoyable. Virtual  
4 currency can be acquired when players slowly “earn” it by accomplishing various tasks in the  
5 game, through means that are entirely dictated by Zynga. When players “earn” their own virtual  
6 currency within these games, however, Zynga gains nothing—which is why it may be “earned”  
7 very slowly. Accordingly, Zynga has pushed its users to acquire virtual currency in ways that  
8 directly enrich Zynga.

9           5. Specifically, Zynga encourages its users to acquire virtual currency and online  
10 goods and services within Zynga’s games in a manner that produces revenue for Zynga.  
11 Generally, users can purchase this virtual currency and online goods and services directly from  
12 Zynga. However, most Zynga game users are unwilling to pay real-world money for “virtual  
13 currency” inside of a video game.

14           6. Accordingly, Zynga provides another way for users to acquire virtual currency:  
15 through “special offer” transactions that Defendants have created and developed to be integrated  
16 within each of Zynga’s game applications. Through these “Integrated Special Offer  
17 Transactions,” or “ISOTs,” Zynga provides users in-game virtual currency in exchange for users’  
18 participation in “special offers” provided by Zynga and its business partners, including  
19 Defendants Adknowledge, Inc., and KITN Media USA, Inc., both doing business as “Super  
20 Rewards” (“Super Rewards” or “Super Rewards Defendants”).

21           7. Zynga has partnered with other companies, including without limitation Offerpal,  
22 Super Rewards, DoubleDing, and Gambit—some or all of which plaintiff is informed and  
23 believes are funded by Zynga’s principals and investors—to create and develop these ISOTs.  
24 These ISOTs, generally referred to in the industry as “lead-gens” (lead generators) have caused  
25 the widespread deception of Zynga’s users.

26           8. Plaintiff is informed and believes and on that basis alleges that these Integrated  
27 Special Offer Transactions, or ISOTs, work as follows: Zynga partners with an offer aggregator  
28 like, for example, the Super Rewards Defendants. Zynga and Super Rewards create and develop

1 the interfaces within Zynga’s games that allow Zynga game users to select a “special offer” in  
2 exchange for virtual currency. Defendants have created and developed the ISOT such that after  
3 the user selects a false and misleading “special offer” in order to obtain virtual currency within a  
4 Zynga game. As soon as the user has completed the “special offer” presented by Zynga, Super  
5 Rewards, and another Zynga business partner—whether a “wiki toolbar,” “IQ Test,” “Video  
6 Professor,” or “GreenTea Purity,” the Zynga business partner pays Zynga and Super Rewards for  
7 the lead generation and Zynga remits to the user a certain amount of in-game virtual currency.  
8 Zynga, Super Rewards, and their business partners are aware that the ISOTs presented to users of  
9 Zynga game applications are false and misleading.

10 9. Users of Zynga game applications who have participated in these false and  
11 misleading ISOTs created and developed by Defendants then enjoy the virtual currency that  
12 Zynga has offered (“click on this special offer to receive Yocash”) and then remitted to users  
13 within Zynga’s game applications.

14 10. Plaintiff is informed and believes and on that basis alleges that this somewhat  
15 complicated structure was specifically created in an attempt to shield Defendants from liability as  
16 a result of the deceptive and misleading ISOTs that they developed and created with their  
17 business partners, at least some of which may be owned or controlled by Zynga and its principals.

18 11. For example, plaintiffs are informed and believe and on that basis alleges that offer  
19 aggregator DoubleDing, which has worked with Zynga to produce false and misleading ISOTs  
20 within Zynga games, is a company funded and founded by Zynga CEO Mark Pincus.

21 12. For example, FarmVille is a game that is promoted and made available through  
22 Facebook’s social networking site. This game presents a “virtual world” where players can start  
23 and manage their own virtual farmers. In this game, users must have game cash to expand their  
24 farm, purchase supplies, etc. Zynga allows FarmVille players to purchase this virtual cash  
25 directly with a credit card or, alternatively, the user can participate in an ISOT developed and  
26 created by Defendants to appear within Zynga’s games.

27 13. One of the ISOTs that has often appeared within various Zynga games is an on-  
28 line “IQ test.” The ISOT indicates that the user can earn additional virtual currency by obtaining

1 a certain score on an on-line IQ test. To take the test, the user must provide his or her cell phone  
2 number and is told that the results of the test will be sent to the user via text message. However,  
3 what the user does not know is that by providing his or her cell phone number, the user has  
4 unwittingly subscribed to a useless Short Message Service (“SMS”) subscription and will be  
5 billed on a monthly basis through his or her cell phone bill. Users who manage to discover the  
6 obscure charge on their phone bills are then met with hurdles as they attempt to cancel the service  
7 and/or obtain a refund. This is just an example of the many deceptive ISOTs developed and  
8 created by Defendants that have harmed consumers throughout the United States. A description  
9 of how these scams work, including a demonstrative video clip, is available at Michael Arrington,  
10 “*Horrible Things*” *Slink Back Into Zynga*, TechCrunch, Nov. 7, 2009,  
11 <http://techcrunch.com/2009/11/07/horrible-things-slink-back-into-zynga/>.

12 14. These ISOTs have repeatedly misled and defrauded users of Zynga games. The  
13 ISOTs developed and created by Defendants entice Zynga game users into participating in  
14 business transactions, such as the IQ quiz described above, that, if conducted legitimately, simply  
15 would not produce sufficient revenue for Zynga’s purposes. Accordingly, Defendants have acted  
16 in concert to create and develop ISOTs reasonably calculated to deceive persons of ordinary  
17 prudence and comprehension, and have used the mails and interstate communication wires in  
18 furtherance of their scheme.

19 15. Zynga has specifically admitted that, at least for the first several years of the  
20 company’s existence, these false and misleading Integrated Special Offer Transactions were  
21 necessary for the business to succeed.

22 16. Recently, executives of Zynga admitted that these Integrated Special Offer  
23 Transactions appearing within Zynga’s game applications were designed to mislead consumers  
24 and generate increasing revenue for its business. In a recent speech, Zynga CEO, Mark Pincus,  
25 described how shortly after founding Zynga he desperately needed revenue in order to keep  
26 control of his company. He then boasted that this revenue was primarily generated through scams  
27 like the one described above:  
28

1 “Like I needed the revenue now. So, so **I funded the company myself but I**  
2 **did every horrible thing in the book to just get revenues right away.** I  
3 mean we gave our users poker chips if they downloaded this wiki toolbar,  
4 which was like . . . I don’t know. I downloaded it once and I couldn’t get rid  
5 of it. **We did anything possible to just get revenues so that we could grow**  
6 **and be a real business.**” (Emphasis added.)

7 17. After making this public admission, many media outlets began to question Zynga’s  
8 practices surrounding its ISOTs. In response to this controversy, in November 2009 Zynga  
9 purported to have banned all ISOTs within its game applications. In fact, in a belated  
10 acknowledgement that Zynga’s ISOTs were deceptive or worse, Zynga’s CEO recently conceded  
11 that all such offers would be banned “*until we see any that offer clear user value.*”

12 18. Now, as of February 2010, Zynga has brought a few integrated special offer  
13 transactions back to its games, claiming that it has weeded out those ISOTs that were repeatedly  
14 misleading and defrauding Zynga’s users.

15 19. Zynga CEO Mark Pincus has also followed up on his comments that at Zynga he  
16 “did every horrible thing in the book just to get revenues right away,” stating that  
17 “that was a video, uh, that was taken while I was giving a talk, uh, about a  
18 year earlier and it was part of a series of talks that I have given since then to  
19 entrepreneurs and they’re all on the web and I invite people to watch all of  
20 them and **the real point I was making was that, as entrepreneurs, we**  
21 **ought to have profitable services as early as we can so we can control our**  
22 **destinies and so we can be in a position, as my company was recently, to**  
23 **do the right thing and make the long-term decisions like, get rid of all**  
24 **offers.**” (Emphasis added.)

25 20. Thus, Zynga’s own CEO has effectively admitted that Zynga has known for some  
26 time that the ISOTs and its partners designed and promoted were taking advantage of Zynga’s  
27 users, and that it was necessary for Zynga to generate enough revenue from these false and  
28 misleading ISOTs so that Zynga, flush with cash, could “do the right thing.”

1 21. However, despite taking these steps, Defendants have not offered to reimburse any  
2 of the millions of users who have been misled by the bogus ISOTs.

3 **JURISDICTION AND VENUE**

4 22. The aggregate amount in controversy for the Class exceeds \$5,000,000. Plaintiff  
5 seeks to certify a nationwide class consisting of individuals who reside in all 50 states.  
6 Defendants Zynga Game Network, Inc., Adknowledge, Inc., and KITN Media USA, Inc., are  
7 Delaware corporations with their principal place of business in San Francisco (California),  
8 Kansas City (Missouri), and Santa Monica (California), respectively. Diversity, therefore, can be  
9 found because, under U.S.C. §1332(d)(2)(A), a member of the class of Plaintiffs is a citizen of a  
10 state different from one of the Defendants. No exceptions to jurisdiction under U.S.C. §1332(d)  
11 apply. Accordingly, this Court has diversity jurisdiction pursuant to 28 U.S.C. §1332(d) also  
12 known as the Class Action Fairness Act.

13 23. Venue in this District is proper in that Defendants do business in the District,  
14 Defendant Zynga maintains its principal place of business in the District, and the Plaintiff resides  
15 in the District.

16 **INTRADISTRICT ASSIGNMENT**

17 24. Pursuant to Local Rules 3-5(b) and 3-2(d), assignment to the San Francisco  
18 Division is proper because defendant Zynga Game Network, Inc. maintains its principal place of  
19 business in San Francisco County and a substantial part of the events or omissions that give rise  
20 to Plaintiff's claims occurred in San Francisco County.

21 **THE PARTIES**

22 25. Plaintiff Rebecca Swift is a resident of Santa Cruz, California. During the class  
23 period Mrs. Swift used various Zynga game applications within the Facebook network, including  
24 Farmville, Mafia Wars, YoVille!, and Roller Coaster Kingdom. In each of these applications,  
25 Zynga attempted to induce her to earn virtual in-game currency by accepting ISOTs with Zynga  
26 and its business partners, including the Super Rewards Defendants. The Plaintiff was misled by  
27 the ISOTs created, developed, and promulgated by the Defendants and, as a result, has suffered  
28 damages as described below.

1 26. Defendant Zynga Game Network, Inc., is a Delaware corporation with its principal  
2 place of business at 365 Vermont St., San Francisco, California 94103.

3 27. Defendant Adknowledge, Inc., is a Delaware corporation with its principal place  
4 of business at 4600 Madison Avenue, Suite 1000, Kansas City, Missouri, 64112.

5 28. Defendant KITN Media USA, Inc., is a Delaware corporation with its principal  
6 place of business at 3003 Exposition Boulevard, First Floor, Santa Monica, California 95833.

7 29. Defendant Adknowledge, Inc., and Defendant KITN Media USA, Inc., have both  
8 done business under the name "Super Rewards" and are referred to herein as "Super Rewards"  
9 and "Super Rewards Defendants."

10 30. Plaintiff is informed and believes and on that basis alleges that at all relevant times  
11 each of the Defendants named herein was an agent, employee, manufacturer, supplier, distributor,  
12 designer, engineer, retailer, seller, franchisee, representative, partner, joint venturer, alter ego, and  
13 related or affiliated entity or providers of services to or on behalf of each of the other Defendants.  
14 Plaintiff is informed and believes and on that basis alleges that Defendants and other unnamed  
15 third parties conspired and combined among themselves to commit the acts complained of herein  
16 and that each was the joint venturer and/or partner of the other.

### 17 **FACTS**

#### 18 **A. General Allegations**

19 31. Zynga promotes itself as the top social gaming company on the web, providing a  
20 network of on-line games that can be played by subscribers of networking sites such as Facebook  
21 and MySpace. Mafia Wars, YoVille!, FarmVille, and Poker are among the many games that are  
22 published and hosted by Zynga. It is estimated that more than 40 million individuals throughout  
23 the United States are active players of Zynga's games.

24 32. There is no cost to users who want to play Zynga's games. However, to earn  
25 revenues, Zynga has intentionally designed its games so that they can be "monetized." What this  
26 means is that all of Zynga's games allow users to collect virtual currency that can be used  
27 throughout the game to purchase virtual items or unlock options that make the games more  
28 enjoyable. The only way that this virtual currency can be collected is by 1) earning it on-line by



1 accomplishing virtual tasks; 2) buying it directly from Zynga with a credit or debit card; or 3)  
2 participating in an Integrated Special Offer Transaction or ISOTs developed and created by  
3 Defendants and described more fully above.

4 33. Historically, most, if not all, of the ISOTs within Zynga game applications have  
5 been scams, which is why all ISOTs were apparently removed from Zynga games in November  
6 2009, and only a handful of ISOTs are now available within Zynga games as of February 2010.  
7 Zynga now claims that it has eliminated ISOTs that are misleading to consumers.

8 34. The ISOTs created and developed by Defendants are highly misleading and often  
9 result in users subscribing to goods or services that they do not want or need. Consumers who  
10 attempt to cancel services or obtain refunds are then met with roadblocks designed to thwart  
11 cancellation and/or refunds or otherwise “save” the customer.

12 35. Over the past four years, Zynga has generated enormous profits through these false  
13 and misleading special offers. In fact, Andre Trader, co-founder of Zynga, has admitted that  
14 these false and misleading “special offers” are a large reason for Zynga’s growth and have  
15 accounted for up to one-third of Zynga’s revenue. With industry sources estimating annual  
16 revenue from \$100 million to \$250 million per year, this means that Zynga has potentially  
17 obtained \$33 to \$84 million per year from consumers responding to the “special offers” it  
18 promotes and promulgates through its on-line games.

19 **B. Facts Specific To Plaintiff**

20 36. During the class period, Plaintiff, Rebecca Swift, has used various Zynga game  
21 applications within the Facebook network, including FarmVille, Mafia Wars, YoVille!, and  
22 Roller Coaster Kingdom. She has been exposed to lengthy, consistent and widespread marketing  
23 and promotion of integrated special offer programs within Zynga game applications. In each of  
24 these applications, Zynga has attempted to induce her to earn virtual in-game currency by  
25 participating in ISOTs with Zynga business partners, including without limitation Super Rewards.

26 37. Plaintiff is informed and believes and on that basis alleges that in or around April  
27 2009, Mrs. Swift, through an ISOT created and developed by Zynga and Super Rewards,  
28 provided her cell phone number to a business partner of Defendants in order to be texted a “code”

1 that she could use to redeem for “Yocash”—virtual currency within Zynga’s Yoville application.  
2 Neither Zynga nor Super Rewards, nor Defendants’ business partner informed Mrs. Swift that  
3 providing her cell phone would result in charges to her phone bill. Defendants’ misleading  
4 implementation of the ISOT was a substantial factor in Plaintiff’s decision to provide her cell  
5 phone number and enter into the transaction. On or about April 16, 2009, and three times  
6 afterwards, Mrs. Swift’s cell phone was charged \$9.99 without her knowledge or consent.  
7 Plaintiff is informed and believes and on that basis alleges that all or part of these charges were  
8 obtained by Defendants.

9 38. On or about June 14, 2009, Mrs. Swift participated in an ISOT for a “risk-free  
10 Green Tea Purity Trial” while playing the game YoVille! that was created and developed by  
11 Zynga and Super Rewards. The ISOT indicated that Plaintiff could earn virtual YoVille! cash (or  
12 “YoCash”) if she participated in a “risk free trial” for a green tea herbal supplement. The ISOT  
13 indicated that the Plaintiff could cancel the trial anytime within fifteen days of her initial order.  
14 To participate in the program, Plaintiff provided her debit card number and was charged \$5.95 for  
15 shipping and handling. Defendants’ misleading implementation of the ISOT was a substantial  
16 factor in Plaintiff’s decision to provide her cell phone number and enter into the transaction.

17 39. Mrs. Swift sent an email to Defendants’ business partner, the apparent  
18 manufacturer of the supplements, asking to cancel her “Green Tea Purity Trial” on or about June  
19 24, 2009, ten days after entering the fifteen-day “risk free trial,” after she received, mailed from  
20 China, a package of 30 green tea pills and three tea bags.

21 40. On or about July 4, 2009, an unknown entity named “Support Green Tea” emailed  
22 Mrs. Swift, informing her that she would be charged \$79.95, despite Ms. Swift’s specific prior  
23 request to cancel her trial offer. Ms. Swift was unsuccessful at any further attempts to contact  
24 “Support Green Tea” via telephone. On July 6, 2009, Ms. Swift’s bank account was charged  
25 \$79.95, as well as a \$2.38 “foreign transaction fee.” On July 20, 2009, Ms. Swift’s bank account  
26 was charged \$85.90, as well as another \$2.38 foreign transaction fee. Sometime afterwards, she  
27 received, again mailed from China, a package of 30 green tea pills and three tea bags. The  
28 materials shipped to Mrs. Swift are worth far less than the \$165.85 charged to Mrs. Swift’s

1 account after she requested to cancel the “free” trial offer that she accepted in exchange for  
 2 “Yocash” in Zynga’s Yoville application. Despite repeated efforts, Mrs. Swift has been unable to  
 3 obtain a refund of any of the amounts charged to her for this “risk free” trial.

4 41. Plaintiff is informed and believes Zynga and the Super Rewards Defendants  
 5 designed and developed the ISOT described above and shared the funds that were taken from  
 6 Plaintiff. At all times Zynga and the Super Rewards Defendants were aware, or should have been  
 7 aware, of the false and misleading nature of the ISOT they presented to Plaintiff. Plaintiff also  
 8 alleges that Zynga actively encouraged Plaintiff to accept the ISOT at issue through the design  
 9 and promotion of its on-line games.

### 10 CLASS ACTION ALLEGATIONS

11 42. Plaintiff brings this action pursuant to Rules 23(a), (b)(1), (b)(2) and (b)(3) of the  
 12 Federal Rules of Civil Procedure, on behalf of herself and all others similarly situated. Plaintiff  
 13 seeks to represent the following Class (“Class”):

14 **All persons in the United States who from November 2005 to January**  
 15 **31, 2009 acquired or accumulated virtual currency or other virtual**  
 16 **goods and services within a Zynga game application as part of an**  
 17 **integrated special offer transaction presented through that**  
 18 **application, and who was charged money as a result thereof.**

19 43. Subject to additional information obtained through further investigation and  
 20 discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or  
 21 amended complaint. Specifically excluded from the Class are business entities for purposes of  
 22 Plaintiff’s claim for relief under the Consumers Legal Remedies Act, Civil Code § 1750, *et seq.*  
 23 Also specifically excluded are Defendants, their officers, directors, agents, trustees, parents,  
 24 children, corporations, trusts, representatives, employees, principals, servants, partners, joint  
 25 venturers, or entities controlled by Defendants, and their heirs, successors, assigns, or other  
 26 persons or entities related to or affiliated with Defendants and/or their officers and/or directors, or  
 27 any of them; the Judge assigned to this action, and any member of the Judge’s immediate family.

28 44. **Numerosity - Fed.R.Civ.P. 23(a)(1)** - Members of the Class are so numerous  
 that their individual joinder is impracticable. Plaintiff is informed and believes, and on that basis  
 alleges, that the proposed class contains more than 100,000 members. The precise number of

1 class members is unknown to Plaintiff. Class members are likely to be known by Defendants,  
2 however, and thus, may be notified of the pendency of this action by mail, email, and  
3 supplemented (if deemed necessary or appropriate by the Court) by published notice.

4 45. **Existence and Predominance of Common Questions of Fact and Law –**  
5 **Fed.R.Civ.P. 23(a)(2), 23(b)(3)** - There are questions of law and fact common and of general  
6 interest to the class. Said common questions include, but are not limited to, the following:

7 a. Whether Defendants' conduct as described herein constitutes an unfair, fraudulent  
8 or unlawful business practice prohibited by California Business and Professions Code Sections  
9 17200 *et. seq.* and by 18 U.S.C. §§ 1341 and 1343;

10 b. Whether the integrated special offer transactions promulgated and promoted within  
11 Zynga's game applications were likely to deceive the public;

12 c. Whether Defendants conspired to mislead consumers;

13 d. Whether Defendants and other entities acted in concert and/or were joint venturers  
14 in connection with integrated special offer transactions promulgated and promoted within  
15 Zynga's game applications;

16 e. Whether Defendants had a duty to protect users from false and misleading  
17 integrated special offer transactions promulgated and promoted within Zynga's game  
18 applications;

19 f. Whether Defendants knew or reasonably should have known that the integrated  
20 special offer transactions promulgated and promoted within Zynga's game applications were  
21 likely to deceive the public;

22 g. Whether the Defendants' uniform conduct as described herein violates California's  
23 Consumers Legal Remedies Act;

24 h. Whether Defendants have been unjustly enriched as a result of the conduct  
25 described herein;

26 i. Whether Plaintiff and class members are entitled to restitution, declaratory, and  
27 injunctive relief as sought herein.

28 j. Whether Defendants omitted material facts in connection with integrated special

1 offer transactions.

2 k. Whether Defendants' conduct caused damage to Plaintiff and members of the  
3 Class, and the appropriate measure of such damages;

4 l. Whether Plaintiff and the Class are entitled to restitution.

5 46. Defendants' defenses, to the extent that any such defenses apply, are applicable  
6 generally to Plaintiff and the entire Class and are not distinguishable as to proposed Class  
7 members.

8 47. **Typicality – Fed.R.Civ.P. 23(a)(3)** - Plaintiff's claims are typical of the claims of  
9 the Class as a whole, all of whom have sustained and/or will sustain damages as a proximate or  
10 legal result of the common course of conduct of Defendants. Plaintiff's claims are typical of the  
11 Class because Defendants subjected all Class members to the same course of conduct.

12 48. **Adequacy – Fed.R.Civ.P. 23(a)(4)** - Plaintiff will fairly and adequately protect  
13 the interests of the Class and has no interest antagonistic to those of the Class. Plaintiff has  
14 retained counsel that are highly experienced in the prosecution of complex consumer class action  
15 litigation.

16 49. **Superiority – Fed.R.Civ.P. 23(b)(3)** - A class action is superior to other available  
17 means for the fair and efficient adjudication of the claims of Plaintiff and members of the class.  
18 Although the injury suffered by each individual class member likely ranges from \$100 to \$300,  
19 injury of such magnitude is nonetheless relatively small given the burden and expense of  
20 individual prosecution of the complex and extensive litigation necessitated by Defendants'  
21 conduct. It would be virtually impossible for members of the class individually to redress  
22 effectively the wrongs done to them. Even if the members of the Class could afford such  
23 individual litigation, the court system could not. Individualized litigation presents a potential for  
24 inconsistent or contradictory judgments arising from the same set of facts. Individualized  
25 litigation increases the delay and expense to all parties, and to the court system, presented by the  
26 complex legal and factual issues of the case. By contrast, the class action device presents far  
27 fewer management difficulties, and provides the benefits of single adjudication economy of scale  
28 and comprehensive supervision by a single court.



1 marketplace. Moreover, the utility of Defendants' conduct, if any, is outweighed by the harm it  
2 causes to Plaintiff and the Class. Defendants' acts and practices are immoral, unethical,  
3 oppressive, unscrupulous, or substantially injurious to Plaintiff and the Class.

4 55. Zynga and the Super Rewards Defendants formed a scheme or artifice, namely, the  
5 Integrated Special Offer Transactions as described herein, which were reasonably calculated to  
6 deceive Zynga users of ordinary prudence and comprehension, and have used the mails interstate  
7 communications wires in furtherance of their scheme, violating 18 U.S.C. § 1341 and 1343.

8 56. Plaintiff and the Class have been lost money and were injured in fact by and as a  
9 result of Defendants' unfair and unlawful practices.

10 57. Pursuant to Business and Professions Code sections 17200, 17203 and 17204,  
11 Plaintiff, on behalf of himself, the Class and the general public, seeks an order of this Court:  
12 enjoining Defendants from continuing the unfair business practices described herein. Plaintiff  
13 additionally requests an order awarding Plaintiff and the Class restitution of all monies  
14 wrongfully acquired from the class by means of such unlawful acts and practices, so as to deter  
15 Defendants and to rectify Defendant's unfair and unlawful practices and to restore any and all  
16 monies to Plaintiff and the Class and to the general public, which are still retained by Defendants,  
17 plus interest, attorneys' fees and costs pursuant to, *inter alia*, Code of Civil Procedure section  
18 1021.5.

19 **SECOND CLAIM FOR RELIEF**

20 **[Against All Defendants for Violation of the Consumers Legal Remedies Act]**

21 58. The allegations of the preceding paragraphs are incorporated by reference as if  
22 fully set forth herein.

23 59. Defendants provide "services" within the meaning of Civil Code sections 1761(a),  
24 1761(b) and 1770.

25 60. Defendants are "persons" within the meaning of Civil Code sections 1761(c) and  
26 1770.

27 61. Users of Defendants' services, including Plaintiff and the Class, are "consumers"  
28 within the meaning of Civil Code section 1761(d) and 1770.

1           62. Plaintiff's and each and every Class member's use of the services offered by  
2 Defendants constitute "transactions" within the meaning of Civil Code sections 1761(e) and 1770.

3           63. Defendants' unfair or deceptive acts or practices as described herein were  
4 undertaken by Defendants in transactions intended to result or which resulted in the sale of goods  
5 and services to consumers, and were intended to induce, and did in fact induce, Plaintiff and the  
6 Class to purchase for personal use such good and services, which they would not have otherwise  
7 purchased. Further, Defendants' suppression and/or concealment of the material facts as  
8 described herein was calculated to induce, and did in fact induce, Plaintiff and the Class to  
9 provide valuable consideration to Defendants.

10           64. Defendants' joint and concerted practices, acts and course of conduct as described  
11 herein violates the Consumers Legal Remedies Act ("CLRA") in that they caused the following  
12 unfair and deceptive practices to occur:

- 13           A. Defendants "represent[ed] that goods or services . . . have sponsorship,  
14 approval, characteristics, ingredients, uses, benefits, or quantities which they  
15 do not have;" in violation of section 1770(a)(5) of the CLRA
- 16           B. Defendants advertised goods and services with the intent not to sell them as  
17 advertised. Civ. Code § 1770(a)(9);
- 18           C. Defendants represented that a transaction confers or involves rights, remedies,  
19 or obligations which it does not have or involve, or which are prohibited by  
20 law. Civ. Code § 1770(a)(14); and
- 21           D. Defendants "represented that the transactions were supplied in accordance with  
22 a previous representation when they were not" in violation of section  
23 1770(a)(16) of the CLRA

24           65. Defendants' practices, acts and course of conduct as described above, are likely to  
25 mislead a reasonable consumer acting reasonably under the circumstances to her or her detriment.  
26 In engaging in their violations of the CLRA, Defendants actively concealed and failed to disclose  
27 material facts about the true characteristics of the integrated special offer transactions in which  
28 Plaintiff and the Class Members participated.





1 70. Defendants have knowledge of this benefit.

2 71. Defendants have voluntarily accepted and retain this benefit.

3 72. The circumstances, as described herein are such that it would be inequitable for  
4 Defendants to retain the ill-gotten benefit without paying the value thereof to Plaintiff and the  
5 Class.

6 73. Plaintiff and the Class are entitled to the amount of Defendants' ill-gotten gains,  
7 including interest, resulting from its unlawful, unjust, unfair and inequitable conduct as alleged  
8 herein. Plaintiff and the Class may make claims on a pro rata basis for restitution.

9 74. Accordingly, and in addition, Plaintiff seeks the imposition of a constructive trust  
10 on those monies by which the Defendants have been unjustly enriched as a result of the unlawful  
11 practices described herein.

12 **PRAYER**

13 WHEREFORE, Plaintiff prays for the following relief:

- 14 1. For an order certifying that this action may be maintained as a class action against  
15 Defendants, appointing Plaintiff and her counsel to represent the Class and directing  
16 that reasonable notice of this action be given by Defendants to the Class;
- 17 2. For restitution and disgorgement, according to proof, including prejudgment interest  
18 as allowed by law;
- 19 3. That pursuant to sections 17203 and 17204 of the Business and Professions Code,  
20 Defendants be permanently enjoined from performing or proposing to perform any of  
21 the aforementioned acts of unfair and deceptive business practices;
- 22 4. That pursuant to section 17206 of the Business & Professions Code, section 1021.5 of  
23 the Code of Civil Procedure, and the Court's inherent equitable power, Plaintiff  
24 recover her costs, including costs of suit, and reasonable attorneys' fees;
- 25 5. That Plaintiff and the Class recover actual and punitive damages from Defendant  
26 Zynga pursuant to the CLRA; and
- 27 6. That Plaintiff be entitled to such other and further relief as this Court may deem just  
28 and proper.

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**JURY DEMAND**

To the full extent available, Plaintiff demands a trial by jury.

Dated: February 10, 2010

**KERSHAW, CUTTER & RATINOFF**

By /s/ Stuart C. Talley  
STUART C. TALLEY

William A. Kershaw  
C. Brooks Cutter  
John R. Parker, Jr.  
401 Watt Avenue  
Sacramento, California 95864  
Telephone: (916) 448-9800  
Facsimile: (916) 669-4499

Mark J. Tamblyn  
Ian J. Barlow  
**WEXLER WALLACE LLP**  
455 Capitol Mall, Suite 231  
Sacramento, California 95814  
Telephone: (916) 492-1100  
Facsimile: (916) 492-1124

Attorneys for Plaintiff

