

JS 44 (Rev. 12/07) (CAND. Rev 1/10)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> Alpha Investment, LLC	<b>DEFENDANTS</b> Zynga Inc. and Andrew Trader
<b>(b)</b> County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)  <b>(c)</b> Attorney's (Firm Name, Address, and Telephone Number)  Gerald E. Hawxhurst (Bar No. 220327), Joshua P. Gelbart (Bar No. 274021) CRONE HAWXHURST LLP 10880 Wilshire Blvd., Suite 1150 Los Angeles, CA 90024	County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.  Attorneys (If Known)  Scott Vick, VICK LAW GROUP   A Professional Corporation Jeffrey Kaban, Cooley LLP

*3/20/11*

ORIGINAL

<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)																												
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td colspan="2">Citizen of This State</td> <td colspan="2">Incorporated or Principal Place of Business in This State</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td colspan="2">Citizen of Another State</td> <td colspan="2">Incorporated and Principal Place of Business in Another State</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> <tr> <td colspan="2">Citizen or Subject of a Foreign Country</td> <td colspan="2">Foreign Nation</td> </tr> </table>	PTF	DEF	PTF	DEF	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of This State		Incorporated or Principal Place of Business in This State		<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen of Another State		Incorporated and Principal Place of Business in Another State		<input checked="" type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6	Citizen or Subject of a Foreign Country		Foreign Nation	
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IV. NATURE OF SUIT (Place an "X" in One Box Only)								
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Veterans) <input checked="" type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 170 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 26 Franchise	<b>TORTS</b> <table style="width:100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">PERSONAL INJURY</th> <th style="text-align: left;">PERSONAL INJURY</th> </tr> <tr> <td style="vertical-align: top;"> <input checked="" type="checkbox"/> 310 Airplane  <input type="checkbox"/> 315 Airplane Product Liability  <input type="checkbox"/> 320 Assault, Libel &amp; Slander  <input type="checkbox"/> 330 Federal Employers' Liability  <input type="checkbox"/> 340 Marine  <input type="checkbox"/> 345 Marine Product Liability  <input type="checkbox"/> 350 Motor Vehicle  <input type="checkbox"/> 355 Motor Vehicle Product Liability  <input type="checkbox"/> 360 Other Personal Injury           </td> <td style="vertical-align: top;"> <input type="checkbox"/> 362 Personal Injury—Med. 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Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus—Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
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**V. ORIGIN** (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 28 U.S.C. § 1332

Brief description of cause:  
 Mandatory injunction; declaratory judgment; intentional interference w/ econ advantage; breach of k; tort. interference w/ k

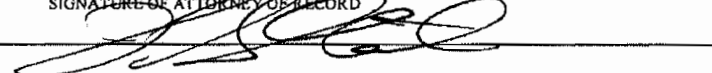
**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$ > \$75,000** CHECK YES only if demanded in complaint: **JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)**

SAN FRANCISCO/OAKLAND  SAN JOSE  EUREKA

DATE: 07/15/2011

SIGNATURE OF ATTORNEY OF RECORD: 

FAXED

ORIGINAL

1 Gerald E. Hawxhurst (Bar No. 220327)  
jerry@cronehawxhurst.com  
2 Joshua P. Gelbart (Bar No. 274021)  
jgelbart@cronehawxhurst.com  
3 CRONE HAWXHURST LLP  
10880 Wilshire Blvd., Suite 1150  
4 Los Angeles, California 90024  
Telephone: (310) 893-5150  
5 Facsimile: (310) 893-5195

6 Jacob S. Pultman (*Pro Hac Vice Forthcoming*)  
jacob.pultman@newyork.allenoverly.com  
7 Andrew H. Reynard (*Pro Hac Vice Forthcoming*)  
andrew.reynard@newyork.allenoverly.com  
8 Molly C. Spieczny (*Pro Hac Vice Forthcoming*)  
molly.spieczny@newyork.allenoverly.com  
9 ALLEN & OVERY LLP  
1221 Avenue of the Americas  
10 New York, NY 10020  
Telephone: (212) 610-6300  
11 Facsimile: (212) 610-6399

12 Attorneys for Plaintiff  
Alpha Investment, LLC

CV 11 3500

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

16 ALPHA INVESTMENT, LLC,

17 Plaintiff,

18 v.

19 ZYNGA INC. and ANDREW TRADER,

20 Defendants.

CASE NO.

~~CV 11 3500~~  
COMPLAINT

DEMAND FOR JURY TRIAL

FILED

JUL 15 2011

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
E-filing

MO  
JS

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COMPLAINT

FAXED  
FIRST LEGAL SUPPORT SERVICES

1 Plaintiff Alpha Investment, LLC ("Alpha"), by and through its attorneys, for its complaint  
2 against defendants Zynga Inc. ("Zynga") and Andrew Trader ("Trader"), alleges the following  
3 upon knowledge as to its own actions and upon information and belief for the remainder of the  
4 complaint:

5 **NATURE OF THE ACTION**

6 1. In August 2010, Alpha entered into a Stock Purchase Agreement (the "August  
7 SPA") with Trader to acquire one million shares of Class A Common stock of Zynga (the  
8 "Shares") with a purchase price of \$12.87 per share.

9 2. In or around November 2010, at Zynga's request, Alpha entered into a revised  
10 Stock Purchase Agreement (the "November SPA") with Trader to add specific terms requested by  
11 Zynga for the acquisition of these Zynga Shares by Alpha at the same price per share.

12 3. This action arises from Zynga's deliberate and wrongful efforts to impose improper  
13 and unlawful restrictions on the Shares that Alpha contracted to purchase under the August SPA  
14 and then under the November SPA and Zynga's wrongful refusal to register the Shares in Alpha's  
15 corporate name. Zynga's wrongful and unreasonable conduct is interfering with Alpha's rights  
16 and its opportunity to purchase, own and hold the Shares, and to hold those Shares free from  
17 unwarranted transfer restrictions.

18 4. Since the signing of the August SPA and the associated escrow agreement between  
19 Alpha and Trader (the "Escrow Agreement"), approximately \$12.87 million of Alpha's capital has  
20 been held in an escrow account for purchase of the Shares, but Alpha has been deprived of the  
21 bargained-for benefit of its contract with Trader because Zynga has improperly refused to allow  
22 the stock sale to proceed. Zynga has continuously and unreasonably refused to recognize the stock  
23 transfer and to register the Shares in the name of Alpha without any valid justification.

24 5. Zynga's intentional interference has prevented Alpha from realizing the bargained-  
25 for benefits of its agreements with Trader, *i.e.*, the opportunity to purchase, own and hold the  
26 Shares, and to hold those Shares free from unwarranted transfer restrictions. Alpha is entitled to  
27 receive these benefits given its negotiation of and entry into the August SPA and the November  
28

1 SPA with Trader, and Alpha's compliance with all of the requirements set forth in these  
2 agreements.

3 6. Indeed, Alpha has complied with all of the requirements under each of the August  
4 SPA and the November SPA for transfer of the Shares from Trader to Alpha. Upon information  
5 and belief, Trader has also complied with the requirements under both the August SPA and the  
6 November SPA to transfer the Shares from Trader to Alpha, including the requirement that Trader  
7 provide a legal opinion to Zynga representing that the offer and sale of the Shares complies with  
8 applicable federal and state securities laws, such that Zynga has no basis to withhold its consent to  
9 the registration of the Shares in Alpha's corporate name.

10 7. Alpha therefore seeks a mandatory injunction requiring Zynga to (i) accept the  
11 legal opinion that, upon information and belief, was provided to Zynga by Trader, (ii) register the  
12 Shares in Alpha's corporate name, and (iii) issue and deliver to Alpha a duly executed stock  
13 certificate evidencing the Shares in Alpha's corporate name. In addition, Alpha seeks damages  
14 against Zynga for its improper interference with Alpha's agreements with Trader.

15 8. Alternatively, in the event that Trader is found to have failed to perform his  
16 contractual obligations under the November SPA, and thereby prevented Alpha from obtaining the  
17 Shares, Alpha seeks specific performance of all of Trader's obligations under the November SPA,  
18 in addition to the relief Alpha seeks from Zynga.

19 9. Further, and also in the alternative, if for any reason the November SPA is found to  
20 be unenforceable and in the event that Trader is found to have failed to perform his contractual  
21 requirements under the August SPA, Alpha seeks specific performance of all of Trader's  
22 obligations under the August SPA, in addition to the relief Alpha seeks from Zynga.

23 **PARTIES**

24 10. Alpha Investment, LLC is a limited liability corporation organized under the laws  
25 of Abu Dhabi with an address at P.O. Box 186, Abu Dhabi, United Arab Emirates. Alpha is a  
26 citizen of Abu Dhabi.

27 11. Defendant Zynga Inc. is a private Delaware corporation and has its principal place  
28 of business at 365 Vermont Street, Suite A, San Francisco, California 94103.



1 Wars. Upon information and belief, Zynga has more than 215 million active monthly users and 50  
2 million active daily users.

3 20. Zynga was formed as a limited liability company under the name Presidio Media  
4 LLC in California on or about April 19, 2007. It was converted to a Delaware corporation named  
5 Presidio Media Inc. on or about October 25, 2007. Thereafter, the corporation was renamed  
6 Zynga Game Network Inc. on or about February 11, 2008, and was later renamed Zynga Inc. on or  
7 about November 17, 2010.

8 21. According to the Fourteenth Amended and Restated Certificate of Incorporation of  
9 Zynga Inc., filed on or about April 18, 2011, Zynga is a private corporation with shares of  
10 authorized common stock numbering 1,019,092,724 and shares of authorized preferred stock  
11 numbering 399,822,180. Of Zynga's shares of authorized common stock, 998,575,252 shares are  
12 designated "Class A Common Stock."

13 22. Through its entry into the August SPA and the November SPA, Alpha sought to  
14 invest in Zynga.

15 23. On July 1, 2011, Zynga filed with the United States Securities and Exchange  
16 Commission a Form S-1 Registration Statement and, upon information and belief, it intends to file  
17 an initial public offering ("IPO") in the next several months.

18 **B. Andrew Trader**

19 24. Trader is a co-founder of Zynga and former employee of Zynga who owns shares  
20 of Class A Common Stock in Zynga pursuant to a Stock Option Agreement and Stock Option  
21 Exercise Agreement, dated on or about January 3, 2008 (the "Binding Stockholder Agreements"),  
22 between Zynga and Trader.

23 25. The Binding Stockholder Agreements provided that Zynga had a right of first  
24 refusal (the "Right of First Refusal") for any proposed sale of Trader's shares for a period of 30  
25 days from the time Zynga was given notice of the terms of the sale.

26 **C. SecondMarket**

27 26. Nonparty SecondMarket, Inc. ("SecondMarket") is an online marketplace for, *inter*  
28 *alia*, stock in a variety of high growth private companies. It provides a private environment for

1 early investors and employee shareholders to sell their shares prior to a company's initial public  
2 offering or other liquidity event. According to SecondMarket's Private Company Report for the  
3 third quarter of 2010, SecondMarket has facilitated transactions in private company stock of  
4 companies including Zynga, Facebook, and Twitter, among others.

5 27. Through the private marketplace forum provided by SecondMarket, Alpha and  
6 Trader were introduced in the summer of 2010 and began exploring the potential purchase and  
7 sale of Trader's shares in Zynga, the relevant terms of which were negotiated and set forth in the  
8 August SPA and the November SPA.

9 **D. The August Stock Purchase Agreement and Escrow Agreement**

10 28. On or about August 26, 2010, Alpha and Trader entered a Stock Purchase  
11 Agreement (as defined above, the "August SPA"), pursuant to which Alpha agreed to purchase  
12 from Trader 1,000,000 shares of Zynga Class A Common Stock (as defined above, the "Shares")  
13 for \$12.87 per share and an aggregate price of \$12,870,000.

14 29. On the same date, Alpha, Trader and SecondMarket entered into an Escrow  
15 Agreement (as defined above, the "Escrow Agreement"), pursuant to which Alpha agreed to place  
16 approximately \$12,870,000 in escrow (with SecondMarket as escrow agent) for its purchase of the  
17 Shares from Trader.

18 30. The August SPA provided, *inter alia*, that Alpha agreed to be bound by and comply  
19 with the limitations on transfer of the Shares set forth in the Binding Stockholder Agreements.  
20 Such limitations on transfer did not include any restrictions or prohibitions on Alpha's ability to  
21 transfer or sell the Shares beginning on the date of Alpha's acquisition of the Shares and prior to  
22 the effective date of an initial public offering of Zynga's common stock.

23 31. The August SPA also provided that the sale of the Shares from Trader to Alpha was  
24 subject to Zynga's Right of First Refusal and that, pursuant to that Right of First Refusal, Trader  
25 would provide Zynga with notice of the proposed transfer upon execution of the August SPA.

26 **E. Trader Provides Notice to Zynga**

27 32. On or about August 26, 2010, Trader provided Zynga and counsel for Zynga with a  
28 Notice of Proposed Transfer (the "Notice") that set forth the terms of the agreement between

1 Alpha and Trader and formally provided Zynga with (i) notice of the proposed sale of the Shares  
2 pursuant to the August SPA and (ii) the opportunity for Zynga to exercise its Right of First  
3 Refusal for purchase of the Shares.

4 33. The Notice provided, in relevant part:

5 I acknowledge that this Notice is an offer to sell the Offered Shares  
6 to the Company [Zynga] and/or its assignee(s) pursuant to the  
7 Company's Right of First Refusal at the Offered Price.

8 The Company and/or its assignee(s) shall have 30 days from the  
9 date of this Notice to provide written notice to me if they elect to  
10 exercise their respective Right of First Refusal.

11 34. On or about August 26, 2010, David Kinitsky ("Kinitsky"), an employee of  
12 SecondMarket, sent an email to Zynga and its outside counsel attaching the August SPA and the  
13 Notice.

14 **F. Zynga Recognized the Contract between Alpha and Trader**

15 35. On or about August 26, 2010, Karyn Smith ("Smith"), Deputy General Counsel for  
16 Zynga, responded to Kinitsky's email as follows: "Duly noted. We will advise you by September  
17 25 regarding our intention to exercise our right of first refusal on these shares."

18 36. More than 30 days passed and Zynga did not exercise its Right of First Refusal.  
19 During the period between August 26, 2010 and September 25, 2010, Zynga did not contact Alpha  
20 or SecondMarket.

21 37. On or about September 26, 2010, Kinitsky emailed Zynga and its outside counsel,  
22 noting that the Right of First Refusal period had expired. Kinitsky requested that Zynga confirm  
23 that it had waived its Right of First Refusal and send "any and all final closing materials" so that  
24 the transfer of the Shares between Trader and Alpha could be completed.

25 38. On or about September 27, 2010, Smith responded, stating that Zynga had decided  
26 not to exercise its Right of First Refusal with respect to the Shares. Smith noted that Zynga's  
27 outside counsel, Brian Erb of Ropes & Gray LLP ("Erb"), would thereafter communicate with  
28



1 SecondMarket “regarding the documentation required to complete this transfer” of shares from  
2 Trader to Alpha.

3 **G. Zynga Makes a Series of Unjustified Demands for the Imposition of Improper**  
4 **Restrictions on the Sale of Shares**

5 39. On or about September 29, 2010, Zynga, through its counsel Erb, sent an email to  
6 SecondMarket, Alpha and Trader, attaching an alternative form of a Stock Purchase Agreement, as  
7 well as a Representation Letter and Stock Transfer Instructions.

8 40. These documents, specifically the Representation Letter, purported to impose  
9 additional restrictions on the sale of the Shares from Trader to Alpha beyond those in the August  
10 SPA, the Binding Stockholder Agreements, Zynga’s Tenth Amended and Restated Certificate of  
11 Incorporation then in effect and, upon information and belief, Zynga’s own bylaws then in effect.  
12 In particular, unlike the August SPA, the additional restrictions provided that Alpha was  
13 prohibited from selling or transferring the Shares from the moment it acquired them, *i.e.*,  
14 beginning on the date of its acquisition of the Shares, until the later of (i) 180 days after the initial  
15 public offering of Zynga’s common stock or (ii) the termination date of a market standoff  
16 agreement contained in the Binding Stockholder Agreements that restricts the sale of Zynga shares  
17 for a limited period of time after Zynga’s IPO.

18 41. The Representation Letter proposed by Zynga in Erb’s September 29, 2010 email  
19 provided, in relevant part:

20 In connection with the proposed sale of the Shares pursuant to the  
21 [Stock Purchase] Agreement, the undersigned, Purchaser and Seller,  
22 hereby represent and warrant to, and agree with, the Company as  
23 follows: . . .

24 (v) without limiting the foregoing, Purchaser hereby  
25 acknowledges and agrees that the Shares will be subject to  
26 resale restrictions which prohibit the transfer or sale of the  
27 Shares at any time during the period beginning on the date of  
28

1 acquisition by Purchaser and ending on the later of (a) 180  
2 days after the effective date of the initial public offering of  
3 the Company's common stock or (b) the date on which the  
4 market stand-off agreement referenced in clause (iv) above  
5 terminates; Purchaser acknowledges that the certificate  
6 evidencing the Shares will bear a legend to the foregoing  
7 effect; Purchaser shall enter into any agreement reasonably  
8 required by the Company to implement the foregoing.

9 42. In addition, the Stock Transfer Instructions proposed by Zynga in its email of  
10 September 29, 2010 provided that the alternative form of Stock Purchase Agreement, which  
11 referenced the proposed Representation Letter containing the improper restrictions, was "the only  
12 form of Stock Purchase Agreement that will be accepted by Zynga in connection with the sale of  
13 your shares." Zynga's newly imposed, improper and wrongful restrictions were consistent with  
14 the clear message Zynga later delivered to Trader—that under no circumstances would Zynga  
15 permit the transaction with Alpha to be accomplished.

16 **H. Alpha Requests that Zynga Remove the Additional Restrictions**

17 43. Upon reviewing the transfer restrictions in the form of section (v) of the  
18 Representation Letter proposed by Zynga as set forth above, counsel for Alpha advised  
19 SecondMarket and counsel for Zynga that Alpha would not agree to be bound by restrictions that  
20 were not contained in existing agreements between Zynga and Trader, namely the Binding  
21 Stockholder Agreements, that were not otherwise legally required, or that were outside of market  
22 norms.

23 44. Specifically, Alpha indicated its objection to the language in section (v) of the  
24 proposed Representation Letter providing that Alpha was prohibited from selling or transferring  
25 the Shares from the moment it acquired them, *i.e.*, beginning on the date of acquisition of the  
26 Shares, until the later of (i) 180 days after the initial public offering of Zynga's common stock or  
27 (ii) the termination date of a market standoff agreement contained in the Binding Stockholder  
28

1 Agreements.

2 45. On or about November 9, 2010, Kinitsky sent Zynga's counsel an email expressing  
3 Alpha's views on these issues and requesting that section (v) of the proposed Representation  
4 Letter be removed. The email stated that section (v) of the Representation Letter "was a novel  
5 restriction on the shares not present in [Trader's] hands," and that "[i]mposing such a restriction, if  
6 enforceable, within a Representation Letter allows the company to apply it selectively." Kinitsky  
7 further stated that Alpha "finds the provision unacceptable." On Alpha's behalf, Kinitsky  
8 proposed execution of a version of the Representation Letter without these improper restrictions.

9 46. On or about November 12, 2010, Kinitsky sent a follow-up email to counsel for  
10 Zynga asking if he had discussed the provision with Zynga.

11 **I. Zynga Refuses Alpha's Proposed Representation Letter**

12 47. On or about November 17, 2010, Erb, as counsel for Zynga, responded that, "to the  
13 extent the transfer restrictions are contained in Zynga's constitutional documents, it's irrelevant  
14 whether or not that provision is in the representation letter in the form of an agreement on the  
15 buyer's part." Erb also stated that, "[n]otwithstanding your or buyer's counsel view, Zynga is  
16 perfectly comfortable that this provision is enforceable."

17 48. Neither Zynga nor Erb provided Alpha with any basis for the restrictions under  
18 California or Delaware law or in Zynga's then-existing Certificate of Incorporation. Nor did  
19 Zynga provide Alpha with any bylaw restrictions to this effect.

20 49. Kinitsky responded, again on November 17, 2010, asking Erb which of Zynga's  
21 constitutional documents contained the transfer restrictions at issue. Erb replied that same day,  
22 stating that the restrictions were contained in Zynga's bylaws. Neither Erb nor Zynga has  
23 provided Alpha with Zynga's bylaws. Upon information and belief, Zynga's bylaws contained no  
24 such restrictions.

25 **J. Alpha's Compliance with the November SPA**

26 50. On or about November 23, 2010, Alpha signed and executed (i) the Stock Purchase  
27 Agreement in the form that Zynga had provided on September 29, 2010 (as defined above, the  
28 "November SPA") and (ii) a signed Representation Letter that omitted the unreasonable and

1 improper language of Section (v) regarding transfer restrictions and added a new Section (viii), by  
2 which Trader agreed to indemnify Zynga for any losses incurred by Zynga arising out of a  
3 determination that SecondMarket's or Trader's activities had violated federal or California  
4 securities laws (the "November Representation Letter").

5 51. On or about November 23, 2010, Alpha, through its counsel, delivered to  
6 SecondMarket electronic versions of Alpha's signatures of the November SPA and the November  
7 Representation Letter. On or about November 30, 2010, Alpha, through its counsel, delivered to  
8 SecondMarket the original versions of Alpha's signatures of each of these agreements

9 52. Section 2.3 of the November SPA provided as follows:

10 Deliveries by Purchaser. Prior to the Closing Date, Purchaser shall  
11 deliver (a) to Seller, payment of the Total Purchase Price by check  
12 or wire transfer of funds for the benefit of Seller in accordance with  
13 Seller's instructions; (b) to Seller and the Company, a duly executed  
14 copy of this Agreement; and (c) to the Company, any other  
15 agreement or document reasonably required by the Company in  
16 connection with the transfer of the Shares.

17 53. Alpha satisfied all of the requirements of Section 2.3 of the November SPA. In  
18 particular: (i) in August 2010, pursuant to the Escrow Agreement, Alpha placed approximately  
19 \$12,870,000 in escrow for its purchase of the Shares from Trader; (ii) in November 2010, Alpha  
20 delivered executed copies of the November SPA and the November Representation Letter to  
21 SecondMarket; and (iii) upon information and belief, on or about November 30, 2010,  
22 SecondMarket delivered the November SPA and the November Representation Letter to Trader,  
23 who executed and delivered them to Zynga. Alpha has therefore satisfied all of its obligations for  
24 consummating its purchase of the Shares from Trader under the November SPA and has satisfied  
25 any and all other obligations for consummating that purchase.

26 54. To the extent that Zynga had sought to require that Alpha sign and deliver a form  
27 of Representation Letter that would have imposed restrictions on transfer of the Shares beginning  
28 on the date that Alpha acquired the Shares, such a requirement was improper and unreasonable,

1 and Alpha is therefore excused from delivering such a form of Representation Letter. Alpha has  
2 therefore satisfied all of its obligations for consummating its purchase of the Shares from Trader  
3 under the November SPA and has satisfied any and all other obligations for consummating that  
4 purchase .

5 **K. Trader's Compliance with the November SPA**

6 55. Upon information and belief, on or about November 30, 2010, Trader delivered to  
7 Zynga an electronic closing package containing the materials Trader was required to provide to  
8 Zynga under the November SPA.

9 56. Section 2.2 of the November SPA provided as follows:

10 Deliveries by Seller. Prior to the Closing Date, Seller shall deliver  
11 (a) to Purchaser and the Company a duly executed copy of this  
12 Agreement; and (b) to the Company (i) the original stock  
13 certificate(s) representing the Shares and the Stock Certificate  
14 Number(s) set forth on Exhibit A hereto (the "***Stock Certificate***  
15 ***Number(s)***"), (ii) a duly executed Stock Power and Assignment  
16 Separate from Stock Certificate in the form attached hereto as  
17 Exhibit B, (iii) a duly executed copy of the Representation Letter in  
18 the form attached hereto as Exhibit C (the "***Representation Letter***"),  
19 (iv) an opinion in form and substance satisfactory to the Company  
20 from counsel to the Seller satisfactory to the Company that states  
21 that the offer and sale of the Shares is being made pursuant to Rule  
22 144 of the Securities Act of 1933, as amended (the "***Act***"), and will  
23 be in compliance with all applicable federal and state securities  
24 laws; (v) any stock transfer fee, stock handling fee, stock certificate  
25 exchange or registration fee, or the like required by the Company;  
26 and (vi) any other agreement or document reasonably required by  
27 the Company in connection with the transfer of the Shares.

28 57. Additionally, Section 3 of the Stock Transfer Instructions proposed by Zynga in its

1 email of September 29, 2010 provided, *inter alia*, as follows:

2 Pursuant to Section 2.2 of the Stock Purchase Agreement, you must  
3 obtain a legal opinion that states that the offer and sale of your  
4 shares is being made pursuant to Rule 144 of the Securities Act of  
5 1933, as amended, and will be in compliance with all applicable  
6 federal and state securities laws. A draft of such opinion should be  
7 forwarded to our outside legal counsel, Ropes & Gray LLP . . . .

8 58. Upon information and belief, Trader has satisfied all of the requirements of Section  
9 2.2 of the November SPA and the requirements contained in Zynga's Stock Transfer Instructions.  
10 In particular, upon information and belief, on or about November 30, 2010, Trader delivered to  
11 Zynga: (i) duly executed copies of the November SPA; (ii) the original stock certificates  
12 representing the Shares and their corresponding Stock Certificate Numbers; (iii) a duly executed  
13 Stock Power and Assignment; (iv) a legal opinion from TroyGould PC stating that the offer and  
14 sale of the Shares is being made pursuant to Rule 144 of the Securities Act of 1933, as amended,  
15 and will be in compliance with all applicable federal and state securities laws (the "TroyGould PC  
16 Legal Opinion"); and (v) any stock transfer fee, stock handling fee, stock certificate fee, stock  
17 certificate exchange or registration fee, or similar fee required by Zynga. Upon information and  
18 belief, Trader has therefore satisfied all of its obligations for consummating its sale of the Shares  
19 to Alpha under the November SPA.

20 **L. Zynga Unreasonably Refuses to Allow the Transfer of Shares from Trader to Alpha**

21 59. On or about December 22, 2010, Kinitsky emailed counsel for Alpha, explaining  
22 that "the message we [SecondMarket and Trader] are receiving from Zynga is that they are simply  
23 not going to let any transfer take place here."

24 60. Zynga refused to allow the transfer of shares from Trader to Alpha to take place  
25 despite having received the TroyGould PC Legal Opinion and despite, upon information and  
26 belief, having permitted such transactions to take place without the unreasonable and improper  
27 restrictions set forth above on multiple occasions prior to and contemporaneous with Zynga's  
28 receipt of the fully executed November SPA and accompanying materials.

1           61.     For example, SecondMarket's own website provides that transactions in Zynga  
2 common stock represented 15% of all transactions that SecondMarket helped complete in  
3 February 2010.

4           62.     Further, upon information and belief, approximately \$6 million in Zynga shares  
5 were traded via marketplaces such as SecondMarket in 2009, and Digital Sky Technologies has  
6 invested \$180 million in Zynga through both direct investment and the purchase of company  
7 shares via marketplaces such as SecondMarket.

8           63.     The TroyGould PC Legal Opinion—provided by a nationally recognized and  
9 sophisticated law firm—was reasonable, fair and, upon information and belief, consistent with  
10 legal opinions that Zynga had previously received in connection with the sale or transfer of Zynga  
11 shares via marketplaces such as SecondMarket.

12          64.     Under such circumstances, Zynga cannot reasonably, plausibly or in good faith  
13 claim that the TroyGould PC Legal Opinion, which provides that the offer and sale of the Shares  
14 is being made pursuant to Rule 144 of the Securities Act of 1933, as amended, and will be in  
15 compliance with all applicable federal and state securities laws, is or was unacceptable.

16          65.     Indeed, at no time during any communications between Alpha and Zynga during  
17 the period from August 26, 2010, when Zynga received the Notice of the August SPA, through  
18 December 2010, when Alpha was informed that Zynga "is simply not going to let any transfer take  
19 place here," did Zynga ever assert that it was not satisfied with the TroyGould PC Legal Opinion  
20 or that it had concerns about whether the transaction between Trader and Alpha was legal under  
21 federal or California securities laws or any other laws, rules or regulations.

22          66.     Further, upon information and belief, at no time during any communications  
23 between Trader and Zynga during the period from August 26, 2010, when Zynga received the  
24 Notice of the August SPA, through December 2010, when Zynga informed Trader and  
25 SecondMarket that Zynga "is simply not going to let any transfer take place here," did Zynga ever  
26 assert that it was not satisfied with the TroyGould PC Legal Opinion or that it had concerns about  
27 whether the transaction between Trader and Alpha was legal under federal or California securities  
28 laws or any other laws, rules or regulations.

1           67. As a result of Zynga's unreasonable, arbitrary and improper refusal to accept the  
2 TroyGould PC Legal Opinion or to permit the share transfer to Alpha from Trader, Alpha has been  
3 denied the bargained-for benefit of its contract with Trader, *i.e.*, the opportunity to purchase, own  
4 and hold the Shares and to hold those Shares free from unreasonable restrictions. Zynga's refusal  
5 is of particular consequence to Alpha because, as has been widely reported in the media, Zynga's  
6 valuation has increased tremendously since Alpha and Trader signed the August SPA, and the  
7 value of the Shares Alpha agreed to purchase under the August SPA and under the November SPA  
8 has increased in value significantly since then.

9 **M. The Delaware and Central District of California Actions**

10           68. Zynga is a Delaware corporation and its internal corporate matters are governed by  
11 Delaware law. Therefore, Alpha brought an action against Zynga in the Delaware Court of  
12 Chancery, captioned *Alpha Investment, LLC v. Zynga Inc.*, C.A. No. 6225-VCS, challenging  
13 Zynga's effort to preclude Alpha and Trader from consummating the sale of the Shares.

14           69. On February 28, 2011, Alpha filed its Verified Complaint in the Delaware Court of  
15 Chancery and on March 1, 2011, Alpha served its Verified Complaint on Zynga. Alpha brought  
16 claims against Zynga for mandatory injunctive relief requiring Zynga to register the Shares in  
17 Alpha's name, as well as claims for declaratory relief and for tortious interference with Alpha's  
18 prospective business advantage.

19           70. On March 4, 2011, Alpha served Zynga with its First Request for Production of  
20 Documents, seeking, *inter alia*, Zynga's corporate governance documents and bylaws. Zynga  
21 produced no discovery in response, but rather, on March 21, 2011, it moved to dismiss the action  
22 and, on April 8, 2011, moved to stay all discovery.

23           71. In its motion to stay discovery, Zynga argued that staying discovery was  
24 appropriate because Alpha had not and could not assert that Trader had taken all steps necessary to  
25 effectuate the transfer of the Shares from Trader to Alpha. Specifically, Zynga claimed that  
26 Trader had failed to meet his obligation to provide Zynga with a legal opinion. According to  
27 Zynga, "Nowhere in the Complaint . . . does Alpha allege that Mr. Trader has satisfied this  
28 condition. In fact, Mr. Trader has not done so."





1           76.     Zynga chose to allow its 30 day Right of First Refusal to lapse during which time it  
2 had the right and opportunity to purchase the Shares and thus prohibit the sale and transfer of the  
3 Shares to Alpha. Given that Zynga chose not to exercise this right and that, as set forth above, all  
4 of the conditions for closing under the November SPA and/or the August SPA have been satisfied,  
5 Zynga was required to act in good faith and consistent with its prior course of conduct with respect  
6 to previous purchases of its shares. Zynga should have properly accepted the TroyGould PC  
7 Legal Opinion that was provided to it by Trader, registered the Shares in Alpha's corporate name  
8 and issued Alpha a duly executed stock certificate evidencing the Shares in Alpha's corporate  
9 name in accordance with the August SPA and/or the November SPA, and it should have done so  
10 without seeking to impose any additional, improper restrictions on the Shares.

11           77.     Zynga has repeatedly and unreasonably refused to register the Shares in Alpha's  
12 corporate name and to issue Alpha a certificate for the Shares. Instead, Zynga has (i) purported to  
13 impose additional improper and unlawful restrictions on the Shares, (ii) insisted that it will only  
14 register the Shares in Alpha's corporate name and issue Alpha a certificate for the Shares with  
15 these additional, wrongful restrictions in place, (iii) averred before the Chancery Court of the State  
16 of Delaware that Trader did not satisfy his obligation by providing Zynga with a satisfactory legal  
17 opinion when, upon information and belief, Trader provided such an opinion in the TroyGould PC  
18 Legal Opinion, and (iv) refused to register the transfer in any event.

19           78.     Alpha and Trader have satisfied all of the conditions for closing under the  
20 November SPA and/or the August SPA.

21           79.     A mandatory injunction requiring Zynga to accept the TroyGould PC Legal  
22 Opinion provided by Trader, to register the Shares in Alpha's corporate name and to issue Alpha a  
23 certificate for the Shares is necessary because Alpha lacks an adequate remedy at law.

24           80.     By reason of the foregoing, and notwithstanding any provision to the contrary,  
25 Alpha is entitled to a mandatory injunction requiring Zynga to accept the TroyGould PC Legal  
26 Opinion provided by Trader, to register the Shares in Alpha's corporate name and to issue Alpha a  
27 certificate for the Shares and without the imposition of any wrongful or unreasonable restrictions  
28 on the Shares beyond those contained in the November SPA and the November Representation

1 Letter and/or the August SPA.

2 **SECOND CLAIM FOR RELIEF**

3 **(Declaratory Judgment Against Zynga)**

4 81. Alpha incorporates the allegations in paragraphs 1 through 80 as if fully set forth  
5 herein.

6 82. A declaratory judgment is necessary because Alpha lacks an adequate remedy at  
7 law.

8 83. Alpha and Zynga have an actual controversy concerning Zynga's obligation to  
9 authorize the transfer of the Shares to Alpha from Trader, to register the Shares on behalf of Alpha  
10 and to issue Alpha a certificate for the Shares in accordance with the November SPA and/or the  
11 August SPA.

12 84. The parties have a real and adverse interest in the controversy, and such  
13 controversy is ripe for judicial determination.

14 85. By reason of the foregoing and pursuant to 28 U.S.C. §§ 2201 and 2202, Alpha is  
15 entitled to a declaration that (i) Trader provided Zynga with a satisfactory legal opinion in the  
16 TroyGould PC Legal Opinion; (ii) Zynga is obliged to authorize the transfer of Shares in  
17 accordance with the November SPA and/or the August SPA; (iii) Zynga is precluded from placing  
18 additional, unspecified and unreasonable restrictions on the Shares beyond those contained in the  
19 August SPA or in the November SPA and the November Representation Letter; and (iv) Zynga  
20 must register the Shares in Alpha's corporate name and issue Alpha a certificate for the Shares.

21 **THIRD CLAIM FOR RELIEF**

22 **(Intentional Interference with Prospective Economic Advantage Against Zynga)**

23 86. Alpha incorporates the allegations in paragraphs 1 through 85 as if fully set forth  
24 herein.

25 87. Alpha had a valid and binding prospective business relationship with Trader with a  
26 strong probability of future economic benefit to Alpha, as set forth in both the August SPA and the  
27 November SPA between Alpha and Trader.

28 88. Zynga acknowledged the existence of Alpha's business expectancy and

1 intentionally interfered with that expectancy by, *inter alia*, (i) demanding additional, wrongful and  
2 unreasonable restrictions on transfer of the Shares, (ii) not accepting the TroyGould PC Legal  
3 Opinion provided by to Zynga by Trader and (iii) refusing to allow the sale and transfer of the  
4 Shares from Trader to Alpha.

5 89. Zynga, in refusing to allow transfer of the Shares from Trader to Alpha without  
6 imposing additional, wrongful and unreasonable restrictions that, upon information and belief,  
7 were unprecedented in Zynga's prior course of conduct with respect to previous purchases of its  
8 shares and not supported by its Tenth Amended and Restated Certificate of Incorporation or its  
9 bylaws then in effect, was not acting with justification, in good faith, or to protect a legitimate  
10 business interest.

11 90. Nor was Zynga acting with justification, in good faith, or to protect a legitimate  
12 business interest in refusing to allow transfer of the Shares from Trader to Alpha despite having  
13 received the TroyGould PC Legal Opinion provided to Zynga by Trader.

14 91. Rather, such actions were wrongful in and of themselves, and they also were  
15 performed with the intention of interfering with Alpha's business relationship with Trader. In  
16 fact, Zynga's refusal to allow the sale and transfer of the shares from Trader to Alpha did interfere  
17 with Alpha's business relationship with Trader.

18 92. Zynga's interference has deprived Alpha of its business expectancy, *i.e.*, to  
19 purchase, own and hold the Shares and to hold those Shares free from additional and unreasonable  
20 restrictions on transfer.

21 93. Alpha has suffered damages caused by Zynga's interference with Alpha's business  
22 relationship with Trader.

23 **FOURTH CLAIM FOR RELIEF**

24 **(In the Alternative, Breach of Contract, Against Trader)**

25 94. Alpha incorporates the allegations in paragraphs 1 through 74 as if fully set forth  
26 herein.

27 95. Upon information and belief, the November SPA is a valid and enforceable written  
28 contract between Alpha and Trader. Further, if for any reason the November SPA is found not to

1 be enforceable, the August SPA is a valid and enforceable written contract between Alpha and  
2 Trader.

3 96. Alpha has performed its obligations and complied with all closing conditions and  
4 requirements under the November SPA and/or the August SPA. To the extent that Alpha has not  
5 performed all of its obligations and complied with all of the conditions under the November SPA  
6 and/or the August SPA, its performance of such conditions has been excused, waived, prevented  
7 or made impossible or impracticable by Trader.

8 97. To the extent that Trader did not provide Zynga with a satisfactory legal opinion in  
9 the TroyGould PC Legal Opinion, or failed to satisfy any other requirements for delivery to Zynga  
10 under Section 2.2 of the November SPA (or Section 2.3 of the August SPA, as applicable), Trader  
11 failed to meet his obligations and therefore breached the November SPA and/or the August SPA.

12 98. To the extent Trader breached his obligations in the November SPA and/or the  
13 August SPA, as a direct and proximate cause of Trader's wrongful conduct, Alpha has suffered  
14 damages because Alpha has been deprived of its bargained-for benefit of its contract with Trader,  
15 *i.e.*, the opportunity to purchase, own and hold the Shares, the value of which exceeds the  
16 minimum jurisdictional amount for this action.

17 **FIFTH CLAIM FOR RELIEF**

18 **(Tortious Interference with Contract, in the Alternative, Against Zynga)**

19 99. Alpha incorporates the allegations in paragraphs 1 through 74 and 94 through 98 as  
20 if fully set forth herein.

21 100. Alpha had a valid and binding economic relationship with Trader with a strong  
22 probability of future economic benefit to Alpha, as set forth in both the August SPA and the  
23 November SPA between Alpha and Trader.

24 101. Zynga had knowledge of this economic relationship at least as early as August 26,  
25 2010, when Trader provided Zynga and counsel for Zynga with the Notice that set forth the terms  
26 of the agreement between Alpha and Trader and formally provided Zynga with (i) notice of the  
27 proposed sale of the Shares pursuant to the August SPA and (ii) the opportunity for Zynga to  
28 exercise its Right of First Refusal for purchase of the Shares.

1           102. Further, upon information and belief, the November SPA between Alpha and  
2 Trader is a valid contract, of which Zynga also had knowledge, given that, upon information and  
3 belief, the fully executed November SPA was provided to Zynga on or about November 30, 2010.

4           103. If, for any reason, the November SPA is found not to be enforceable, the August  
5 SPA is a valid contract of which Zynga had knowledge pursuant to the Notice that was provided to  
6 it by Trader in August 2010.

7           104. Upon information and belief, Zynga, in refusing to allow transfer of the Shares  
8 from Trader to Alpha without imposing additional, wrongful and unreasonable restrictions that  
9 were unprecedented in Zynga's prior course of conduct with respect to previous purchases of its  
10 shares and not supported by its Tenth Amended and Restated Certificate of Incorporation or its  
11 bylaws then in effect, acted intentionally and unreasonably in order to induce Trader to breach his  
12 obligations under Section 2.2 of the November SPA (or Section 2.3 of the August SPA, as  
13 applicable).

14           105. Likewise, upon information and belief, Zynga, in intentionally, arbitrarily and  
15 unreasonably refusing to accept the TroyGould PC Legal Opinion provided to it by Trader, acted  
16 intentionally and unreasonably in order to induce Trader to breach his obligations under Section  
17 2.2 of the November SPA (or Section 2.3 of the August SPA, as applicable).

18           106. Zynga's intentional refusal to allow transfer of the Shares from Trader to Alpha  
19 without imposing additional, wrongful and unreasonable restrictions on such transfer, as well as its  
20 intentional refusal to accept the TroyGould PC Legal Opinion, caused Trader to breach his  
21 contractual obligations under the November SPA and/or the August SPA.

22           107. As a direct and proximate cause of Zynga's intentional and wrongful conduct,  
23 Alpha has suffered damages as a result of Trader's breach of the November SPA and/or the  
24 August SPA because Alpha has been deprived of its bargained-for benefit of the November SPA  
25 and/or the August SPA, *i.e.*, the opportunity to purchase, own and hold the Shares, the value of  
26 which exceeds the minimum jurisdictional amount for this action.

27  
28

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff Alpha respectfully requests that the Court enter judgment in its  
3 favor and against defendants Zynga and Trader as follows:

- 4 a. Awarding Alpha its actual damages on each of its claims;
- 5 b. Granting Alpha all injunctive relief requested herein;
- 6 c. Issuing a mandatory injunction requiring Zynga to accept the TroyGould  
7 PC Legal Opinion provided to it by Trader, register the Shares in Alpha's  
8 corporate name and issue Alpha a certificate for the shares;
- 9 d. Granting Alpha the declaratory and equitable relief requested herein;
- 10 e. Declaring and determining that Zynga has tortiously interfered with Alpha's  
11 prospective business advantage;
- 12 f. As to the Fourth Claim for Relief for Breach of Contract, ordering specific  
13 performance under the November SPA and/or the August SPA by Trader;
- 14 g. Awarding Alpha its costs, expenses, disbursements, and attorney's fees in  
15 respect hereto; and
- 16 h. Granting Alpha such other relief as the Court deems just and proper.


17 **JURY DEMAND**

18 Plaintiff hereby demands a trial by jury on all claims so triable pursuant to Fed. R. Civ.  
19 Proc. § 38(b).

20  
21 DATED: July 15, 2011

ALLEN & OVERY LLP

CRONE HAWXHURST LLP

22  
23  
24 By:   
25 for Gerald E. Hawxhurst  
26 Attorneys for Plaintiff  
27 Alpha Investment, LLC  
28