

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
 Claude M. Stern (Bar No. 96737)  
 2 claudestern@quinnemanuel.com  
 Karin Kramer (Bar No. 87346)  
 3 karinkramer@quinnemanuel.com  
 555 Twin Dolphin Drive, 5<sup>th</sup> Floor  
 4 Redwood Shores, California 94065-2139  
 Telephone: (650) 801-5000  
 5 Facsimile: (650) 801-5100

6 PAUL HASTINGS LLP  
 7 Bradford K. Newman (Bar No. 178902)  
 bradfordnewman@paulhastings.com  
 8 Peter C. Meier (Bar No. 179019)  
 petermeier@paulhastings.com  
 9 1117 S. California Avenue  
 Palo Alto, CA 94304-1106  
 10 Telephone: (650) 320-1800  
 Facsimile: (650) 320-1900

11  
 12 Attorneys for Defendant/Counterclaimant Zynga Inc.

13  
 14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA  
 16 SAN FRANCISCO DIVISION

<p>18 ELECTRONIC ARTS INC.,          19 Plaintiff,          20 vs.          21 ZYNGA INC.,          22 Defendant.</p>	<p>CASE NO. 3:12-CV-04099-SI  <b>ZYNGA'S ANSWER AND DEMAND FOR          JURY TRIAL</b></p>
---	--

1 Zynga Inc. (“Zynga”) herein answers Electronic Arts Inc.’s (“EA”) Complaint:

2 **NATURE OF THE ACTION**

3 The paragraph numbers below correspond to and answer those in EA’s Complaint. For  
4 each paragraph, if an allegation is not explicitly admitted, it is denied.

5 1. Zynga denies the allegations of Paragraph 1 of the Complaint and further states:

6 The two games at issue in EA’s Complaint, Zynga’s *The Ville* and EA’s *The Sims Social*,  
7 belong to a longstanding and well-developed genre known as “life simulation” games. No one,  
8 including EA, may lay claim to the exclusive right to develop and release games in that genre, or  
9 to employ the common modes of expression and functional elements that must of necessity be  
10 used in the genre and that have come to characterize it. Such elements of game design and game  
11 play are not original to EA and are not protectable under the Copyright Act, 17 U.S.C. §102, *et*  
12 *seq.*

13 EA did not invent the genre. Fifteen years before EA released its first life simulation  
14 console game, *The Sims*, Activision released *Little Computer People*. It was followed by  
15 *Tenshitachi no gogo*, *Girls Garden*, and others, all released years before *The Sims*. Will Wright,  
16 creator of *The Sims*, acknowledged that he had played *Little Computer People* and been influenced  
17 by it.

18 Zynga is recognized as the leader in social gaming, as opposed to historic console or PC  
19 gaming, and is the company that brought the life simulation genre to Facebook. Zynga’s *YoVille*,  
20 released in 2008, three years **before** *The Sims Social*, was the first commercially viable life  
21 simulation game on Facebook. *YoVille* allowed players to: customize a virtual avatar by selecting  
22 its skin color, facial features, hair color, hair style, and clothing; decorate and arrange furniture  
23 within a virtual home; work a virtual job; and socialize with other players by visiting them and  
24 sending them virtual gifts.

25 In other words, it was Activision—not EA—that first developed the ideas found in *The*  
26 *Sims Social*, and it was Zynga—not EA—that first brought the concept to Facebook.

27 Zynga is the leading online social gaming company on Facebook. *The Ville* is the most  
28 recent in Zynga’s history of successful video games in Zynga’s *Ville* game franchise. Zynga

1 followed the 2008 release of *YoVille* with *FarmVille* (2009), *Café World* (2009), *FishVille* (2009),  
2 *PetVille* (2009), *FrontierVille* (2010), *CityVille* (2010), *CastleVille* (2011), and then *The Ville* in  
3 June 2012. Most of these games are in the life simulation genre.

4 As the screenshots from just three of Zynga's games show—and contrary to EA's  
5 allegation that *The Ville* copies *The Sims Social*—*The Ville* continues the evolutionary  
6 development of Zynga's own lineage:

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

### Zynga's YoVille (Launched May 2008)



### Zynga's Café World (Launched September 2009)



### Zynga's The Ville (Launched June 2012)



1 As life simulation games, *The Ville* and *The Sims Social* show people in their homes  
2 interacting with each other. In that context, certain modes of expression are customary and  
3 necessary to express the genre, such as sitting on a couch watching TV, taking a shower, and  
4 going to sleep in a bed. Such modes of expression, known as “*scènes à faire*,” are not  
5 protectable. Allowing one company to own them would thwart competition, innovation, and  
6 creativity.

7 In fact, what characterizes a genre is that there are common elements found in all examples  
8 of that genre. EA itself knows this. After Zynga’s December 2010 launch of *CityVille*—the  
9 most successful social game in the city building genre—EA subsequently launched *SimCity Social*  
10 in June 2012. Both games share the same genre and many common elements. A side-by-side  
11 comparison of Zynga's *CityVille* and EA’s *SimCity Social* shows that EA draws heavily on  
12 elements found in Zynga’s *CityVille* game. In fact, in promoting its game, EA explicitly played  
13 on Zynga’s popular *CityVille*: “More City, Less Ville.” EA’s “city” game showcases elements  
14 customary to the look, feel, and workings of big cities that characterize Zynga’s game, released 18  
15 months earlier. Crowded city blocks, tall buildings, and the need to hire staff to run the city are a  
16 few of the many elements shared by both games:

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Zynga's *CityVille*  
2 (Launched December 2010)

EA's *SimCity Social*  
3 (Launched June 2012)



25 Employing *scènes à faire* and common functional elements is not copyright infringement; it is  
26 how a genre is expressed.

27 EA has never been able to successfully compete in the social gaming market, despite  
28 spending billions of dollars on acquisitions. Both of EA's life simulation games for Facebook,

1 *The Sims Social* and *SimCity Social*, had a modicum of early success, but then quickly failed due  
2 to poor game mechanics, among other things.

3 EA's inability to compete successfully in the modern market for social games playable on  
4 the internet and mobile platforms as distinct from the market for console games where EA was  
5 once prominent led to a departure of talent from EA to other, more dynamic game companies.  
6 EA cannot credibly dispute the point. In a May 2012 interview, EA's CEO acknowledged as  
7 much. Referencing Zynga, he pointed out that "the other guys have lapped us three times."

8 EA's lawsuit ultimately rests on the implausible assumption that Zynga would launch a  
9 "copy" of a game that had failed months before Zynga released its own game. By the time Zynga  
10 launched *The Ville*, the user base for EA's *The Sims Social* had plummeted, and Zynga is informed  
11 and believes that EA already had relegated the game to its India Studio where EA games in  
12 decline are sent to be inexpensively maintained and ultimately discontinued. According to  
13 AppData, *The Sims Social* peaked at 66-million Monthly Active Users (MAUs) nine months  
14 before Zynga released *The Ville* and, in the nine months between its launch and Zynga's release of  
15 *The Ville*, *The Sims Social* plummeted to 15.5-million MAUs— a 78% decline.

16 Zynga did not achieve its success in the social gaming sphere by launching games that  
17 users don't want to play. It achieved its success by innovating in popular genres, a tradition it has  
18 continued with *The Ville*.

19 2. Zynga denies that *The Sims* was the first game of its kind. Zynga lacks  
20 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in  
21 Paragraph 2 of the Complaint, and therefore denies the same.

22 3. Zynga denies that *The Sims Social* was highly creative and original. Zynga lacks  
23 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in  
24 Paragraph 3 of the Complaint, and therefore denies the same.

25 4. Zynga has moved to strike the allegations in Paragraph 4 of the Complaint, and  
26 therefore neither admits nor denies the same.

27 5. Zynga denies the allegations in Paragraph 5 of the Complaint.  
28



1           20. Zynga lacks knowledge or information sufficient to form a belief as to the  
2 allegations in Paragraph 20 of the Complaint, and therefore denies the same.

3           21. Zynga lacks knowledge or information sufficient to form a belief as to the  
4 allegations in Paragraph 21 of the Complaint, and therefore denies the same.

5           22. Zynga lacks knowledge or information sufficient to form a belief as to the  
6 allegations in Paragraph 22 of the Complaint, and therefore denies the same.

7           23. Zynga lacks knowledge or information sufficient to form a belief as to the  
8 allegations in Paragraph 23 of the Complaint, and therefore denies the same.

9           24. Zynga lacks knowledge or information sufficient to form a belief as to the  
10 allegations in Paragraph 24 of the Complaint, and therefore denies the same.

11           25. Zynga denies that the appearances, personalities, traits, needs, activities, and forms  
12 of currency described by this paragraph are unique. Zynga lacks knowledge or information  
13 sufficient to form a belief as to the remaining allegations in Paragraph 25 of the Complaint, and  
14 therefore denies the same.

15           26. Zynga lacks knowledge or information sufficient to form a belief as to the  
16 allegations in Paragraph 26 of the Complaint, and therefore denies the same.

17           27. Zynga lacks knowledge or information sufficient to form a belief as to the  
18 allegations in Paragraph 27 of the Complaint, and therefore denies the same.

19           28. Zynga lacks knowledge or information sufficient to form a belief as to the  
20 allegations in Paragraph 28 of the Complaint, and therefore denies the same.

21           29. Zynga admits that *The Sims Social* had more daily average users than *Farmville*  
22 for a very brief period of time. Zynga lacks knowledge or information sufficient to form a belief  
23 as to the remaining allegations in Paragraph 29 of the Complaint, and therefore denies the same.

24           30. Zynga lacks knowledge or information sufficient to form a belief as to the  
25 allegations in Paragraph 30 of the Complaint, and therefore denies the same.

26           31. Zynga admits that there are a large number of online social games on Facebook  
27 and that many of those games fall within genres or categories of games such as bubble shooter  
28 games, farming games, and others. Zynga denies the remaining allegations of Paragraph 31.

1           32.    Zynga has moved to strike the allegations in Paragraph 32 of the Complaint, and  
2 therefore neither admits nor denies the same.

3           33.    Zynga has moved to strike the allegations in Paragraph 33 of the Complaint, and  
4 therefore neither admits nor denies the same.

5           34.    Zynga has moved to strike the allegations in Paragraph 34 of the Complaint, and  
6 therefore neither admits nor denies the same.

7           35.    Zynga has moved to strike the allegations in Paragraph 35 of the Complaint, and  
8 therefore neither admits nor denies the same.

9           36.    Zynga has moved to strike the allegations in Paragraph 36 of the Complaint, and  
10 therefore neither admits nor denies the same.

11          37.    Zynga has moved to strike the allegations in Paragraph 37 of the Complaint, and  
12 therefore neither admits nor denies the same.

13          38.    Zynga has moved to strike the allegations in Paragraph 38 of the Complaint, and  
14 therefore neither admits nor denies the same.

15          39.    Zynga has moved to strike the allegations in Paragraph 39 of the Complaint, and  
16 therefore neither admits nor denies the same.

17          40.    Zynga has moved to strike the allegations in Paragraph 40 of the Complaint, and  
18 therefore neither admits nor denies the same.

19          41.    Zynga has moved to strike the allegations in Paragraph 41 of the Complaint, and  
20 therefore neither admits nor denies the same.

21          42.    Zynga has moved to strike the allegations in Paragraph 42 of the Complaint, and  
22 therefore neither admits nor denies the same.

23          43.    Zynga has moved to strike the allegations in Paragraph 43 of the Complaint, and  
24 therefore neither admits nor denies the same.

25          44.    Zynga has moved to strike the allegations in Paragraph 44 of the Complaint, and  
26 therefore neither admits nor denies the same.

27          45.    Zynga has moved to strike the allegations in Paragraph 45 of the Complaint, and  
28 therefore neither admits nor denies the same.

1           46. Zynga has moved to strike the allegations in Paragraph 46 of the Complaint, and  
2 therefore neither admits nor denies the same.

3           47. Zynga has moved to strike the allegations in Paragraph 47 of the Complaint, and  
4 therefore neither admits nor denies the same.

5           48. Zynga has moved to strike the allegations in Paragraph 48 of the Complaint, and  
6 therefore neither admits nor denies the same.

7           49. Zynga has moved to strike the allegations in Paragraph 49 of the Complaint, and  
8 therefore neither admits nor denies the same.

9           50. Zynga has moved to strike the allegations in Paragraph 50 of the Complaint, and  
10 therefore neither admits nor denies the same.

11           51. Zynga has moved to strike the allegations in Paragraph 51 of the Complaint, and  
12 therefore neither admits nor denies the same.

13           52. Zynga has moved to strike the allegations in Paragraph 52 of the Complaint, and  
14 therefore neither admits nor denies the same.

15           53. Zynga denies the allegations of paragraph 53 of the Complaint.

16           54. Zynga admits that John Schappert left EA to pursue opportunities in social games  
17 and came to work for Zynga as its Chief Operating Officer in 2011. Zynga lacks knowledge or  
18 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 54  
19 of the Complaint, and therefore denies the same.

20           55. Zynga admits that Jeff Karp left EA to pursue opportunities in social games and  
21 came to work for Zynga. Zynga lacks knowledge or information sufficient to form a belief as to  
22 the truth of the remaining allegations in Paragraph 54 of the Complaint, and therefore denies the  
23 same.

24           56. Zynga admits that Barry Cottle left EA to pursue opportunities in social games and  
25 came to work for Zynga in 2012. Zynga lacks knowledge or information sufficient to form a  
26 belief as to the truth of the remaining allegations in Paragraph 54 of the Complaint, and therefore  
27 denies the same.

28           57. Zynga denies the allegations of Paragraph 57 of the Complaint.

1           58. Zynga admits that, similar to anyone with access to Facebook, it is likely that  
2 some Zynga employees had access to *The Sims Social* when the game was released on Facebook.  
3 Zynga denies the remaining allegations of Paragraph 58 of the Complaint.

4           59. Zynga admits that it released a marketing page for *The Ville* on Facebook on June  
5 27, 2012. Zynga denies the remaining allegations of Paragraph 59 of the Complaint.

6           60. Zynga denies the allegations of Paragraph 60 of the Complaint.

7           61. Zynga has moved to strike the allegations in Paragraph 61 of the Complaint, and  
8 therefore neither admits nor denies the same.

9           62. Zynga has moved to strike the allegations in Paragraph 62 of the Complaint, and  
10 therefore neither admits nor denies the same.

11          63. Zynga denies the allegations of Paragraph 63 of the Complaint.

12          64. Zynga admits that character customization is common in social games. Zynga  
13 admits that one playing *The Ville* creates a character to live in the created world and customizes  
14 the character. Zynga lacks knowledge or information sufficient to form a belief as to the truth of  
15 the remaining allegations in Paragraph 64 of the Complaint, and therefore denies the same.

16          65. Zynga denies the allegations of Paragraph 65 of the Complaint.

17          66. Zynga denies the allegations of Paragraph 66 of the Complaint.

18          67. Zynga admits that *The Ville* has six character types as set forth in Paragraph 67.  
19 Zynga denies the remaining allegations of Paragraph 67 of the Complaint.

20          68. Zynga lacks knowledge or information sufficient to form a belief as to the truth of  
21 the allegations regarding *The Sims Social* in Paragraph 68 of the Complaint, and therefore denies  
22 the same. Zynga denies the remaining allegations of Paragraph 68 of the Complaint.

23          69. Zynga denies the allegations of Paragraph 69 of the Complaint.

24          70. Zynga admits that its Scoundrel character performs an archetypal gesture typical  
25 of the depiction of villains. Zynga lacks knowledge or information sufficient to form a belief as  
26 to the truth of the remaining allegations in Paragraph 70 of the Complaint, and therefore denies  
27 the same.

28

1           71. Zynga admits that its Artist character performs an archetypal gesture typical of the  
2 depiction of artists. Zynga lacks knowledge or information sufficient to form a belief as to the  
3 truth of the remaining allegations in Paragraph 71 of the Complaint, and therefore denies the  
4 same.

5           72. Zynga admits that its Partier character performs an archetypal gesture typical of  
6 the depiction of such characters. Zynga lacks knowledge or information sufficient to form a  
7 belief as to the truth of the remaining allegations in Paragraph 72 of the Complaint, and therefore  
8 denies the same.

9           73. Zynga admits that its Mogul character performs an archetypal gesture typical of  
10 the depiction of such characters. Zynga lacks knowledge or information sufficient to form a  
11 belief as to the truth of the remaining allegations in Paragraph 73 of the Complaint, and therefore  
12 denies the same.

13           74. Zynga denies the allegations of Paragraph 74 of the Complaint.

14           75. Zynga admits that there are RGB values that are represented visually and  
15 numerically and that they range from 0 to 255. Zynga lacks knowledge or information as to the  
16 number of different color combinations and the RGB values chosen by EA for its characters and  
17 therefore denies the allegations regarding those. Zynga denies the remaining allegations of  
18 Paragraph 75 of the Complaint.

19           76. Zynga admits that in customizing a character while playing *The Ville*, the user can  
20 select different outfits for the character to wear and that such action is common in online social  
21 games. Zynga lacks knowledge or information sufficient to form a belief as to the truth of the  
22 allegations regarding clothing choices in *The Sims Social* and their depiction in the Complaint.  
23 Zynga denies the remaining allegations of Paragraph 76 of the Complaint.

24           77. Zynga admits that *The Sims*, *The Sims Social*, and *The Ville* have an isometric  
25 perspective over their characters' homes as is necessary and common in such games.

26           78. Zynga admits that players of *The Ville* are given a home with basic furnishings to  
27 begin to develop their world. Zynga lacks knowledge or information sufficient to form a belief  
28 as to the truth of the allegations regarding the attributes of the initial home presented to a player

1 of *The Sims Social* and therefore denies the same. Zynga denies the remaining allegations of  
2 Paragraph 78 of the complaint.

3 79. Zynga lacks knowledge or information sufficient to form a belief as to the truth of  
4 the allegations in Paragraph 79 of the Complaint regarding the dimensions of games other than its  
5 own and therefore denies the same. Zynga denies the remaining allegations of Paragraph 79 of  
6 the Complaint.

7 80. Zynga admits that players of *The Ville* may customize their characters and homes.  
8 Zynga lacks knowledge or information sufficient to form a belief as to the truth of the remaining  
9 allegations in Paragraph 80 of the Complaint, and therefore denies the same.

10 81. Zynga admits that the similarity of the homes a player creates in the two games  
11 may depend, among other things, on the choices in each game. Zynga lacks knowledge or  
12 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 81  
13 of the Complaint and therefore denies the same.

14 82. Zynga lacks knowledge or information sufficient to form a belief as to the truth of  
15 the allegations in Paragraph 82 of the Complaint, and therefore denies the same.

16 83. Zynga denies the allegations of Paragraph 83 of the Complaint.

17 84. Zynga admits that players of *The Ville* can purchase a green yoga mat in the game.  
18 Zynga denies the remaining allegations of Paragraph 84 of the Complaint.

19 85. Zynga admits that *The Ville* has a mode known in the industry as “walls down.”  
20 Zynga lacks knowledge or information sufficient to form a belief as to the truth of the allegations  
21 regarding the use by *The Sims Social* of “walls down” and therefore denies those allegations.  
22 Zynga denies the remaining allegations of Paragraph 85 of the Complaint.

23 86. Zynga lacks knowledge or information sufficient to form a belief as to the truth of  
24 the allegations regarding the use by *The Sims Social* of “walls down” and therefore denies those  
25 allegations. Zynga denies the remaining allegations of Paragraph 86 of the Complaint.

26 87. Zynga denies the allegations of Paragraph 87 of the Complaint.

27  
28

1 88. Zynga lacks knowledge or information sufficient to form a belief as to the truth of  
2 the allegations regarding the use by *The Sims Social* of a value metric and therefore denies those  
3 allegations. Zynga denies the remaining allegations of Paragraph 88 of the Complaint.

4 89. Zynga denies the allegations of Paragraph 89 of the Complaint.

5 90. Zynga admits that its characters have bodily needs which players must satisfy, as  
6 is common in games of this type. Zynga lacks knowledge or information sufficient to form a  
7 belief as to the truth of the allegations regarding the bodily needs aspects of *The Sims Social* and  
8 therefore denies those allegations. Zynga denies the remaining allegations of Paragraph 90 of  
9 the Complaint.

10 91. Zynga lacks knowledge or information sufficient to form a belief as to the truth of  
11 the allegations regarding the bodily needs aspects of *The Sims Social* and therefore denies those  
12 allegations. Zynga denies the remaining allegations of Paragraph 91 of the Complaint.

13 92. Zynga admits that in *The Ville*, when a player decides to take a shower, the player  
14 clicks on the shower stall, the player walks to the shower, the player takes off his or her clothes  
15 thereby revealing the player in undergarments, the player gets into the shower, the shower curtain  
16 closes, and steam appears on the top of the shower. Zynga lacks knowledge or information  
17 sufficient to form a belief as to the truth of the allegations regarding the bodily needs aspects of  
18 *The Sims Social* and therefore denies those allegations. Zynga denies the remaining allegations  
19 of Paragraph 92 of the Complaint.

20 93. Zynga denies the allegations of Paragraph 93 of the Complaint.

21 94. Zynga lacks knowledge or information sufficient to form a belief as to the truth of  
22 the allegations of Paragraph 94 of the Complaint and therefore denies those allegations.

23 95. Zynga denies the allegations of Paragraph 95 of the Complaint.

24 96. Zynga denies the allegations of Paragraph 96 of the Complaint.

25 97. Zynga admits that in *The Ville*, a player can select various types of interaction with  
26 another character, that some of the players' actions vary depending on the level of their  
27 relationships with other characters in the game, that there is a horizontal bar that displays the  
28 level of the characters' relationship, that once a player's relationship with another character

1 reaches a certain level the player receives a notification that a notice may be sent to another  
2 character, and that players have an option to “break up” with one another. Zynga lacks  
3 knowledge or information sufficient to form a belief as to the truth of the allegations regarding  
4 the character interaction and socialization aspects of *The Sims Social* and therefore denies those  
5 allegations. Zynga denies the remaining allegations of Paragraph 97 of the Complaint.

6 98. Zynga admits that in *The Ville*, characters engage in conversation and interactions  
7 with each other. Zynga lacks knowledge or information sufficient to form a belief as to the truth  
8 of the allegations regarding the character interaction and socialization aspects of *The Sims Social*  
9 and therefore denies those allegations. Zynga denies the remaining allegations of Paragraph 98  
10 of the Complaint.

11 99. Zynga lacks knowledge or information sufficient to form a belief as to the truth of  
12 the allegations regarding the character interaction and socialization aspects of *The Sims Social*  
13 and therefore denies those allegations. Zynga denies the remaining allegations of Paragraph 99  
14 of the Complaint.

15 100. Zynga admits that in *The Ville* players can dance next to a stereo with musical  
16 notes visually displayed. Zynga lacks knowledge or information sufficient to form a belief as to  
17 the truth of the allegations regarding the character interaction and socialization aspects of *The*  
18 *Sims Social* and therefore denies those allegations. Zynga denies the remaining allegations of  
19 Paragraph 100 of the Complaint.

20 101. Zynga admits that in *The Ville* players can watch television together on a couch.  
21 Zynga lacks knowledge or information sufficient to form a belief as to the truth of the allegations  
22 regarding the character interaction and socialization aspects of *The Sims Social* and therefore  
23 denies those allegations. Zynga denies the remaining allegations of Paragraph 101 of the  
24 Complaint.

25 102. Zynga admits that in *The Ville* players can share certain game milestones with  
26 friends. Zynga lacks knowledge or information sufficient to form a belief as to the truth of the  
27 allegations regarding the character interaction and socialization aspects of *The Sims Social* and  
28

1 therefore denies those allegations. Zynga denies the remaining allegations of Paragraph 102 of  
2 the Complaint.

3 103. Zynga denies the allegations of Paragraph 103 of the Complaint.

4 104. Zynga denies the allegations of Paragraph 104 of the Complaint.

5 105. Zynga admits that the Complaint repeats and realleges each and every allegation in  
6 the previous paragraphs as if fully set forth therein. Zynga repeats and re-alleges the responses  
7 in Paragraphs 1 – 104, above, as if fully set forth herein.

8 106. Zynga denies that *The Sims Social* is an original, creative work. Zynga lacks  
9 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in  
10 Paragraph 106 of the Complaint, and therefore denies the same.

11 107. Zynga denies the allegations of Paragraph 107 of the Complaint.

12 108. Zynga denies the allegations of Paragraph 108 of the Complaint.

13 109. Zynga denies the allegations of Paragraph 109 of the Complaint.

14 110. Zynga denies the allegations of Paragraph 110 of the Complaint.

15 111. Zynga denies the allegations of Paragraph 111 of the Complaint.

16 **PRAYER FOR RELIEF**

17 Zynga denies that EA is entitled to any relief. Zynga further provides notice that it will  
18 seek to recover the attorney's fees and costs of defending itself against EA's claims.

19 **ZYNGA'S DEFENSES TO EA'S CLAIM**

20 By stating the defenses set forth below, Zynga does not agree or concede that it bears the  
21 burden of proof or persuasion on any of them.

22 **FIRST DEFENSE**

23 **(Failure to State a Claim)**

24 EA's Complaint fails to state a cause of action upon which relief can be granted.

25 **SECOND DEFENSE**

26 **(Failure to Register or Invalid Copyrights)**

27 EA's copyright claim is barred on the grounds that EA has not received registration for the  
28 alleged copyright as required by 17 U.S.C. § 411 or, in the alternative, EA's claim is barred, in

1 whole or in part, to the extent it seeks to enforce copyright registrations that contain misstatements  
2 or omissions that were material to the registrations and material to the purpose for which EA  
3 invokes the registrations in this action.

4 **THIRD DEFENSE**

5 **(Lack of Originality)**

6 EA's claim is barred, in whole or in part, on the grounds that its copyrights are invalid for  
7 lack of originality pursuant to 17 U.S.C. § 102(a).

8 **FOURTH DEFENSE**

9 **(Functionality)**

10 EA's copyright claim is barred, in whole or in part, because the allegedly protectable  
11 features and/or characteristics of the game are functional.

12 **FIFTH DEFENSE**

13 **(Merger)**

14 EA's copyright claims are barred, in whole or in part, by the merger doctrine.

15 **SIXTH DEFENSE**

16 **(*Scènes à Faire*)**

17 EA's copyright claim is barred, in whole or in part, by the *scènes à faire* doctrine.

18 **SEVENTH DEFENSE**

19 **(Fair Use)**

20 EA's copyright claim is barred, in whole or in part, by the fair use doctrine pursuant to 17  
21 U.S.C. § 107.

22 **EIGHTH DEFENSE**

23 **(*De Minimis Doctrine*)**

24 EA's copyright claim is barred, in whole or in part, by the *de minimis* doctrine.

25 **NINTH DEFENSE**

26 **(Failure to Mitigate Damages)**

27 EA's claim is barred, in whole or in part, by its failure to mitigate damages.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TENTH DEFENSE**

**(Limitation on Damages)**

EA’s prayer for statutory copyright damages, if any, is limited to the extent that EA is not able to allege or prove facts sufficient to show that the alleged infringement was willful.

**ELEVENTH DEFENSE**

**(Copyright Misuse)**

EA’s claim is barred, in whole or in part, because of EA’s copyright misuse.

**TWELFTH DEFENSE**

**(Unclean Hands)**

EA’s claim is barred, in whole or in part, by the doctrine of unclean hands.

**THIRTEENTH DEFENSE**

**(Release)**

EA’s claim is barred, in whole or in part, by the doctrine of release.

**FOURTEENTH DEFENSE**

**(Waiver)**

EA's claim is barred, in whole or in part, by the doctrine of waiver.

**PRAYER FOR RELIEF**

1. That judgment be entered in favor of Zynga and against EA on EA’s claim;
2. That the Court grant Zynga an award for reasonable attorneys’ fees, costs and disbursements incurred in this action pursuant to statute, including but not limited to 17 U.S.C. § 505; and
3. That the Court grant Zynga such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Zynga hereby demands a jury trial of all issues in this Complaint which are triable to a jury.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: September 14, 2012

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

PAUL HASTINGS LLP

By /s/ Claude M. Stern  
Claude M. Stern  
Attorneys for Defendant/Counterclaimant Zynga  
Inc.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ECF ATTESTATION**

I, Timothy A. Butler, am the ECF User whose ID and Password are being used to file this:  
**ZYNGA'S ANSWER AND DEMAND FOR JURY TRIAL.** In compliance with Civil Local  
Rule 5-1(i)(3), I hereby attest that Claude M. Stern has concurred in this filing.

Dated: September 14, 2012

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By:  /s/ Timothy A. Butler