

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

6 PAUL HASTINGS LLP
 7 Bradford K. Newman (Bar No. 178902)
 8 bradfordnewman@paulhastings.com
 9 Peter C. Meier (Bar No. 179019)
 10 petermeier@paulhastings.com
 11 1117 S. California Avenue
 12 Palo Alto, CA 94304-1106
 Telephone: (650) 320-1800
 Facsimile: (650) 320-1900

11 Attorneys for Defendant/Counter-Claimant
 12 ZYNGA INC.

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 ELECTRONIC ARTS INC.,
 16 Plaintiff,
 17 vs.
 18 ZYNGA INC.,
 19 Defendant.

CASE NO. CV 12 4099 SI

**ZYNGA INC.’S *EX PARTE* APPLICATION
 TO FILE UNDER SEAL PORTIONS OF
 ITS COUNTERCLAIM FOR BREACH OF
 CONTRACT AND VIOLATION OF
 CALIFORNIA BUSINESS AND
 PROFESSIONS CODE SECTION 17200**

21 ZYNGA INC.,
 22 Counter-Claimant,
 23 vs.
 24 ELECTRONIC ARTS INC.,
 25 Counter-Defendant.

1 Pursuant to Civil Local Rules 7-10, 79-5, and this Court’s Standing Order, Defendant and
2 Counter-Claimant Zynga Inc. (“Zynga”) respectfully applies *Ex Parte* for an order to file under
3 seal portions of its Counterclaim for Breach Of Contract And Violation Of California Business
4 And Professions Code Section 17200, and exhibits A and B thereto.

5 Zynga files this *Ex Parte* Application on the compelling grounds that these documents
6 contain information that the parties have previously agreed is confidential, the dissemination of
7 which to third parties could adversely impact both parties’ interests. The proposed sealing is
8 narrowly tailored and only seeks to protect those limited portions of the Counterclaim that contain
9 reference to the substance of the confidential settlement agreements or the agreements
10 themselves. Zynga has lodged the above-referenced documents in an envelope labeled as
11 follows: “DOCUMENT SUBMITTED UNDER SEAL AND CHAMBERS COPY.”

12 Under California law, protecting information subject to a confidentiality agreement
13 justifies granting a limited application to seal. California courts hold that there is an “overriding
14 interest” in sealing records that are protected from disclosure by a confidentiality agreement.
15 *Universal City Studios, Inc. v. Superior Court*, 110 Cal. App. 4th 1273, 1283 (2003) (“We agree
16 with defendant that its contractual obligation not to disclose can constitute an overriding
17 interest....”); *see also NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 1222
18 n.46 (1999) (acknowledging that courts have found “the enforcement of binding contractual
19 obligations not to disclose” to be an “overriding interest” that supports closure of documents to
20 the public) (citing *Publiker Industries v. Cohen*, 733 F.2d 1059, 1073 (1984)).

21 The information sought to be sealed is entitled to protection under the law as Zynga seeks
22 to seal only those specific documents, or portions of documents, that constitute, contain, or reveal
23 aspects of settlement agreements entered into by the parties to this lawsuit and which Zynga is
24 bound by contract to maintain as confidential. Zynga’s compelling reasons for maintaining the
25 confidential nature of this information overcomes any right of public access to court documents,
26 and that overriding interest supports sealing the record. If disclosed to a third party, this
27 information would reveal confidential information. The proposed sealing, which is limited to the
28 portions outlined in the accompanying Declaration of Stephen N. Yang and Proposed Order, is

1 narrowly tailored, as the non-confidential information in those documents is being publicly filed.
2 No less restrictive means exist to achieve the overriding interest of protecting this information. In
3 the absence of an order sealing the confidential settlement agreements and references to such
4 agreements, the parties' interests would be seriously prejudiced.

5 Zynga's request for an order sealing the documents mentioned above complies with Local
6 Rules. The portions of the document sought to be filed under seal is being contemporaneously
7 filed in paper form with the Clerk, as required by Local Rule 79-5. This request is based upon
8 this *Ex Parte* Application, the accompanying Declaration of Stephen N. Yang, and all exhibits
9 attached thereto filed in support of Zynga's Counterclaim for Breach Of Contract And Violation
10 Of California Business And Professions Code Section 17200, all of which contain the factual
11 basis in support of this *Ex Parte* Application, all other documents which are being or will be filed
12 or lodged in support thereof, all other documents on file herein, and such other and further
13 evidence as the Court may consider prior to its ruling.

14 DATED: September 14, 2012

QUINN EMANUEL URQUHART & SULLIVAN
15 CLAUDE M. STERN
16 KARIN KRAMER

17 PAUL HASTINGS LLP
18 BRADFORD K. NEWMAN
19 PETER C. MEIER

20 By: /s/ Bradford K. Newman

21 Attorney for Defendant/Counter-Claimant
22 Zynga Inc.

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ECF ATTESTATION

I, Timothy A. Butler, am the ECF User whose ID and Password are being used to file this:
ZYNGA INC.'S EX PARTE APPLICATION TO FILE UNDER SEAL PORTIONS OF ITS
COUNTERCLAIM FOR BREACH OF CONTRACT AND VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS CODE SECTION 17200. In compliance with Civil Local
Rule 5-1(i)(3), I hereby attest that Bradford K. Newman has concurred in this filing.

Dated: September 14, 2012

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By: /s/ Timothy A. Butler