

EXHIBIT A

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

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19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**
21 **CV 10 5192**

22 Karen Bryant and Christopher Brock on behalf of
themselves and all others similarly situated,

23 Plaintiffs,

24 vs.

25 Facebook, Inc., and Zynga Game Network, Inc.,

26 Defendants.
27
28

Case No. _____

COMPLAINT

DEMAND FOR JURY TRIAL

CLASS ACTION

1 Plaintiffs Karen Bryant and Christopher Brock, on behalf of themselves and all others similarly
2 situated, allege as follows:

3 **NATURE OF THE CASE**

4 1. Defendant Facebook is the vastly popular online social network on which millions of
5 users create online profiles and engage in an array of social activities. One increasingly popular
6 Facebook activity is the playing of third party games offered within Facebook. For the most part, these
7 online games are made by companies other than Facebook, who, like Facebook, make much of their
8 money by selling advertisement space. Defendant Zynga is the dominant Facebook game designer with
9 an estimated 100 million people using Facebook to play its games each month.

10 2. Because of the nature of the Facebook website, Facebook and Zynga accrue personal,
11 sensitive information about users, such as their names, sexual orientations, and religious beliefs.
12 Facebook and Zynga promise to safeguard their users' personal information, but, contrary to their
13 promises, they each provide users' personal information to outside companies.

14 3. Plaintiffs are members of Facebook who regularly play Zynga games. On information
15 and belief, Facebook and Zynga shared Plaintiffs' personal information with outside companies.
16 Plaintiffs bring claims for breach of contract and unjust enrichment under California law, and for
17 violations of the Electronic Communications Privacy Act, the Federal Stored Communications Act,
18 California's Computer Crime Law, and California's Unfair Competition Law.

19 **PARTIES**

20 4. Plaintiff Karen Bryant is a citizen and resident of San Francisco, California.

21 5. Plaintiff Christopher Brock is a citizen of New York City, New York.

22 6. Defendant Facebook, Inc., is a privately held corporation incorporated in Delaware with
23 its principle place of business in Palo Alto, California.

24 7. Defendant Zynga Game Network, Inc., is a privately held corporation incorporated in
25 Delaware with its principal place of business in San Francisco, California.

26 **JURISDICTION AND VENUE**

27 8. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 for deprivation of rights
28 guaranteed under the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510 *et seq.*, and the Stored

1 Communications Act, 18 U.S.C. §§ 2701 *et. seq.*

2 9. This Court has jurisdiction over both Defendants because each Defendant maintains its
3 principal headquarters in California, is registered to conduct business in California, has sufficient
4 minimum contacts in California, or otherwise intentionally avails itself of the markets within California,
5 to render the exercise of jurisdiction by this Court proper and necessary. Moreover, both Defendants'
6 wrongful conduct (as described below) emanates from California.

7 10. Venue is proper in this District under 28 U.S.C. § 1391(a) because a substantial part of
8 the events or omissions giving rise to the Plaintiffs' claims occurred in this judicial district.

9 **INTRADISTRICT ASSIGNMENT**

10 11. Assignment to the San Jose division of this District under Local Rule 3-2 is proper
11 because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Santa
12 Clara County.

13 **SUBSTANTIVE ALLEGATIONS**

14 **Facebook and Zynga**

15 12. Facebook is the most visited website in the world, providing more than 500 million users
16 with an online social network service that allows users to connect with friends and family, and engage in
17 other online social networking activity. Facebook users are playing online social games with increasing
18 frequency. Some estimates have more than one hundred million people playing social network games
19 on Facebook's website each month.

20 13. The social network games are typically made by third parties such as Zynga, which is the
21 world's largest online social gaming company with six of the ten most popular games on Facebook.
22 Zynga's games include Farmville (59.4 million users), Texas HoldEm (36.3 million users), FrontierVille
23 (30.6 million users), Café World (21.9 million users), Mafia Wars (21.9 million users) and Treasure Isle
24 (15.3 million users).

25 14. While neither Facebook nor Zynga charge for membership, each receives substantial
26 revenue from selling advertisement space on Facebook, and within the Zynga games. Facebook's
27 revenue from advertisers is projected to top \$1 billion in 2010, which includes the \$5 million to \$8
28 million Facebook receives from Zynga each month. For its part, Zynga serves one billion ad

1 impressions a day and is now estimated to be worth over \$5 billion. Zynga also derives much of its
2 revenue from “virtual payments,” in which users convert real cash into proprietary virtual currency.

3 Private Information on Facebook

4 15. Facebook requires that new members provide their first and last name, email address,
5 gender, and birth date. Facebook then assigns each user a unique identification number known as a
6 Facebook ID, which allows Facebook to track and store its users’ activities, preferences, and personal
7 information.

8 16. Facebook users create personal profiles that often contain photographs and other personal
9 information, such as their name, age, location, and interests. Frequently, Facebook users post more
10 sensitive information—ranging from sexual orientation and relationship status to political and religious
11 beliefs. Many Facebook users also link their profiles with their Facebook “friends” so they can view
12 one another’s profiles, exchange messages, and jointly take part in other activities.

13 17. When a Facebook user plays a Zynga game, they can do so only after agreeing to let
14 Facebook pass along some of their information to Zynga. Facebook sends Zynga the user’s name,
15 Facebook friends’ names, gender, and Facebook ID.

16 Defendants’ Promises of Privacy Protections

17 18. Facebook promises to safeguard its users’ private information. Facebook acknowledges
18 that “[p]rivacy and the tools for tailoring what information is shared with whom are at the heart of
19 trust[]” because Facebook is “where people keep so much of their lives and information. . . .”

20 19. Facebook’s Privacy Policy contains guidelines that constrain Facebook’s use and
21 transmission of users’ information. Facebook tells its users, “Your privacy is very important to us. We
22 designed our Privacy Policy to make important disclosures about ... how we collect and can use your
23 content and information.” The Privacy Policy indicates Facebook “does not share personally
24 identifiable information with advertisers” without getting users’ permission. Facebook further promises:
25 “We don’t share your information with advertisers without your consent. (An example of consent would
26 be if you asked us to provide your shipping address to an advertiser to receive a free sample.)” In
27 Facebook’s Statement of Rights and Responsibilities, Facebook states, “We do not give your content or
28 information to advertisers without your consent.”

1 about the user based on the content of the advertisement, i.e., that the Facebook user was interested in
2 the advertised product or service.

3 25. Although Facebook discloses to its users that advertisers can target them in this manner,
4 both Defendants promise that users' personally identifiable information will never be shared with
5 outside companies. Nevertheless, both Defendants transmit users' Facebook IDs and, using the
6 Facebook IDs, advertisers and data gathering companies can tie the demographic and preference
7 information about individuals to their identities. Thus, Facebook and Zynga have in effect revealed
8 users' real names, friends' names, and a variety of other private information to third party companies.
9 Both Defendants transmitted the information even when users had set their privacy settings to the
10 strictest setting possible.

11 26. By allowing third-parties to access Facebook users' real names and private information,
12 Facebook and Zynga have enabled advertisers and data gathering companies to compile exhaustive
13 dossiers. A recent Wall Street Journal article noted that one company used a 67-year-old woman's
14 Facebook ID and name to put together a dossier reflecting her name and city and state of residence, and
15 that she's "a conservative who is interested in Republican politics, has an interest in the Bible and
16 contributes to political and environmental causes." Privacy experts recognize the dangers that arise
17 when companies fail to protect personal information. "Here's the truth of the matter when it comes to
18 data mining today: The data they collect will be used in ways they never imagined or intended," said
19 Michael Fertik, CEO of privacy software maker ReputationDefender. "What I'm worried about is
20 health information and your life getting stolen from you. That moment of reckoning is coming."

21 Plaintiffs' Experiences

22 27. Plaintiffs Karen Bryant and Christopher Brock are Facebook users who have played
23 Zynga games on Facebook. Plaintiffs have each clicked on third party advertisements on Facebook,
24 including while accessing a Zynga application.

25 28. On information and belief, Plaintiffs' personal identifying information, including their
26 Facebook IDs, was transmitted by Facebook and Zynga to outside companies. Plaintiffs and other
27 members of the proposed class have therefore suffered injury in fact, lost money or property, and
28 suffered damage or loss stemming from Defendants' unlawful conduct.

- 1 b. Facebook and Zynga unjustly enrich themselves through their breaches;
- 2 c. Facebook and Zynga have engaged in unfair or fraudulent business practices in
- 3 violation of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et*
- 4 *seq.*;
- 5 d. Facebook and Zynga have violated California’s Computer Crime Law, Cal. Pena.
- 6 Code § 502, through their conduct as alleged in this complaint;
- 7 e. Facebook and Zynga have violated the Electronic Communications Privacy Act,
- 8 18 U.S.C. §§ 2510 *et. seq.*, through their conduct as alleged in this complaint; and
- 9 f. Facebook and Zynga have violated the Federal Stored Communications Act, 18
- 10 U.S.C. §§ 2701, *et seq.*, through their conduct as alleged in this complaint.

11 36. Typicality. Plaintiffs’ claims are typical of the claims of the Classes, because, among

12 other things, Plaintiffs are Facebook users who have played Zynga social network games on Facebook’s

13 website and who have clicked on third party advertisements on Facebook while accessing a Zynga

14 application.

15 37. Adequacy. Plaintiffs are adequate representatives of the Classes because their interests

16 do not conflict with the interests of the members of the Classes they seek to represent. Plaintiffs have

17 retained counsel competent and experienced in complex class action litigation, and Plaintiffs intend to

18 prosecute this action vigorously. Plaintiffs and their counsel will fairly and adequately protect the

19 interests of the Classes.

20 38. Superiority. The class action is superior to other available means for the fair and efficient

21 adjudication of this dispute. The injury suffered by each Class member, while meaningful on an

22 individual basis, is not of such magnitude as to make the prosecution of individual actions against Zynga

23 economically feasible. Even if Class members themselves could afford such individualized litigation,

24 the court system could not. In addition to the burden and expense of managing multiple actions arising

25 from Zynga’s disclosure of Class members’ personal information warranty, individualized litigation

26 presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the

27 delay and expense to all parties and the court system presented by the legal and factual issues of the

28

1 case. By contrast, the class action device presents far fewer management difficulties and provides the
2 benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

3 39. In the alternative, the Classes may be certified because:

- 4 a. the prosecution of separate actions by the individual members of the Classes
5 would create a risk of inconsistent or varying adjudication with respect to
6 individual Class members which would establish incompatible standards of
7 conduct for Facebook and Zynga, Rule 23(b)(1)(A);
- 8 b. the prosecution of separate actions by individual Class members would create a
9 risk of adjudications with respect to them which would, as a practical matter, be
10 dispositive of the interests of other Class members not parties to the
11 adjudications, or substantially impair or impede their ability to protect their
12 interests, Rule 23(b)(1)(B); and
- 13 c. Facebook and Zynga have acted or refused to act on grounds generally applicable
14 to the Classes, thereby making appropriate final and injunctive relief with respect
15 to the members of the Classes as a whole, Rule 23(b)(2).

16 **FIRST CAUSE OF ACTION**

17 **(Breach of Contract)**

18 40. On behalf of themselves and the members of both Classes, Plaintiffs re-allege as if fully
19 set forth, each and every allegation set forth herein.

20 41. Facebook's Statement of Rights and Responsibilities is a legally binding contract
21 between Facebook and Facebook users.

22 42. Facebook's Statement of Rights and Responsibilities incorporates Facebook's Privacy
23 Policy.

24 43. Facebook's Statement of Rights and Responsibilities and Privacy Policy are form
25 contracts of adhesion. Facebook unilaterally prepared the terms and the Class members are unable to
26 negotiate a modification of terms.

1 44. Facebook’s Statement of Rights and Responsibilities contains the following choice of law
2 clause: “The laws of the State of California will govern this Statement, as well as any claim that might
3 arise between you and us, without regard to conflict of law provisions”.

4 45. Under the plain terms of its Statement of Rights and Responsibilities and Privacy Policy,
5 Facebook is prohibited from transmitting Plaintiffs’ and other Class members’ personal information,
6 such as their Facebook IDs, to third party advertisers and data gathering companies.

7 46. Facebook breached these contracts by transmitting Plaintiffs’ and Class members’
8 personal information, such as their Facebook IDs, to outside companies including advertising
9 companies, and Facebook received money as a result of the breach.

10 47. Zynga’s Terms of Service is a legally binding contract between Zynga and the persons
11 who use Zynga’s games and applications, including through the Facebook Platform.

12 48. Zynga’s Terms of Service incorporates Zynga’s Privacy Policy.

13 49. Zynga’s Terms of Service and Privacy Policy are form contracts of adhesion. Zynga
14 unilaterally prepared the terms and Class members are unable to negotiate a modification of those terms.

15 50. Zynga’s Terms of Service contains the following choice of law clause: “This Agreement
16 and all aspects of the Service shall be governed by and construed in accordance with the internal laws of
17 the United States and the State of California governing contracts entered into and to be fully performed
18 in California (i.e., without regard to conflict of laws provisions) regardless of your location.”

19 51. Under the plain terms of its Terms of Service and Privacy Policy, Zynga is prohibited
20 from transmitting Plaintiffs’ and other Class members’ personal information, such as their Facebook
21 IDs, to third party advertisers and data gathering companies.

22 52. Zynga is bound by its agreements with Facebook, embodied in the Facebook Platform
23 Principles and Facebook’s Statement of Rights and Responsibilities, to not transmit users’ personal
24 information such as their Facebook IDs to third party advertisers or data gathering companies. The
25 Plaintiffs and other members of the Classes are third party beneficiaries of these agreements.

26 53. Zynga breached these contracts by transmitting Plaintiffs’ and Class members’ personal
27 information, such as their Facebook IDs, to outside companies including advertising companies, and
28 Zynga received money as a result of its breach.

1 54. The members of the Classes did all, or substantially all, of the significant things that the
2 Facebook and Zynga contracts required.

3 55. Plaintiffs and other members of the Classes suffered harm as a result of the Defendants'
4 breaches, Facebook and Zynga profited as a result of their breaches, and Plaintiffs and the Class
5 members are therefore entitled to recover disgorgement of the gains Defendants received by virtue of
6 their breaches as well as specific performance.

7 56. Zynga's Terms of Service contain a number of provisions that are unconscionable and
8 void as violative of public policy, including:

- 9 a. Users must "irrevocably waive all rights to seek injunctive or other equitable
10 relief and ... to limit ... claims to claims for monetary damages (if any)" even
11 though Zynga reserves the right to sue for injunctive relief;
- 12 b. Users must "first attempt to negotiate any Dispute ... informally for at least thirty
13 (30) days before initiating any arbitration or court proceeding";
- 14 c. Users must acquiesce to Zynga's election for final, exclusive, and binding
15 arbitration;
- 16 d. "To the full extent permitted by law, (1) no arbitration shall be joined with any
17 other; (2) there is no right or authority for any Dispute to be arbitrated on a class-
18 action basis or to utilize class action procedures; and (3) there is no right or
19 authority for any Dispute to be brought in a purported representative capacity on
20 behalf of the general public or any other persons"; and
- 21 e. A one year statute of limitations for all claims and causes of actions.

22 57. Plaintiffs' individual and representative claims are additionally not subject to the
23 "Informal Negotiations and Arbitration" clauses, even if they are enforceable, because another term of
24 the contract excludes from their purview any claims "related to, or arising from, allegations of ...
25 invasion of privacy or unauthorized use; and ... any claim for injunctive relief."
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1 **SECOND CAUSE OF ACTION**

2 **(Unjust Enrichment)**

3 58. On behalf of themselves and both Classes, Plaintiffs re-allege as if fully set forth, each
4 and every allegation set forth herein.

5 59. Facebook and Zynga have wrongfully used and provided personal information of
6 Plaintiffs and the members of the Classes, including their Facebook IDs, and they have collected and
7 retained money relating to their use and providing of the data to third party advertisers and data
8 gathering companies. Accordingly, Facebook and Zynga received money at the expense of Plaintiffs
9 and Class members.

10 60. Facebook and Zynga have received benefits from Plaintiffs and Class members that they
11 have unjustly and inequitably retained at Plaintiffs' and Class members' expense.

12 61. As a direct and proximate result of Facebook's and Zynga's violations of law, Plaintiffs
13 and Class members were deprived of the use of the money received from the improper use and
14 providing of their personal information, including their Facebook IDs, which was unlawfully collected
15 and retained by Facebook and Zynga, and are therefore entitled to recovery of the money.

16 **THIRD CAUSE OF ACTION**

17 **(For violation of the California Computer Crime Law, Cal. Penal Code § 502)**

18 62. Plaintiffs, on behalf of themselves and both Classes, re-allege as if fully set forth, each
19 and every allegation set forth herein.

20 63. The California legislature passed the California Computer Crime Law, Cal. Pen. Code §
21 502, in recognition of a "proliferation of computer technology" resulting in, among other things,
22 "unauthorized access to computers, computer systems, and computer data." The legislature passed the
23 legislation to protect "the integrity of all types and forms of lawfully created ... computer data" and "the
24 protection of the privacy of individuals."

25 64. Facebook and Zynga knowingly accessed and without permission used Plaintiffs' and
26 other Class members' data in order to wrongfully obtain money and property.

1 73. Defendants' acts and practices, as alleged in this complaint, constitute unlawful, unfair,
2 and/or fraudulent practices, in violation of the Unfair Competition Law (UCL), Cal. Bus. & Prof. Code
3 §§ 17200, *et seq.*

4 74. Facebook and Zynga are "persons" as defined in § 17201.

5 75. The business practices engaged in by Defendants that violate the Unfair Competition
6 Law include:

- 7 a. Transmitting users' Facebook IDs to outside companies despite promises not do
8 so;
- 9 b. Receiving revenues in connection with the transmission of Facebook IDs and
10 unjustly retaining those revenues; and
- 11 c. Representing to Class members that their personal information would be
12 safeguarded and taking insufficient precautions to prevent transmission of the
13 information.

14 76. The Defendants engaged in unlawful business practices by violating the Electronic
15 Communications Privacy Act, 18 U.S.C. §§ 2510, *et seq.*; the Federal Stored Communications Act, 18
16 U.S.C. §§ 2701, *et seq.*; and California's Computer Crime Law, Cal. Pen. Code § 502.

17 77. Defendant engaged in unfair business practices by, among other things:

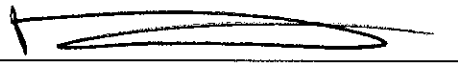
- 18 a. Engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or
19 substantially injurious to Plaintiffs and other members of the Classes;
- 20 b. Engaging in conduct that undermines the policies underlying the Electronic
21 Communications Privacy Act, the Federal Stored Communications Act, and
22 California's Computer Crime Law; and
- 23 c. Engaging in conduct that causes a substantial injury to consumers, not outweighed
24 by any countervailing benefits to consumers or to competition, which the
25 consumers could not have reasonably avoided.

26 78. The Defendants engaged in fraudulent business practices by providing users' personal
27 information to outside companies despite promising to safeguard their personal information.
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1 DATED: November 16, 2010

Respectfully submitted,

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