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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

15 NANCY WALTHER GRAF, an individual, on  
16 behalf of herself and all others similarly situated,

17 Plaintiff,

18 v.

19 ZYNGA GAME NETWORK, INC., a Delaware  
20 corporation,

20 Defendant.

Case No.

CV 10-1680  
CLASS ACTION

CLASS ACTION COMPLAINT

ACTION FILED: 10/18/10

JURY TRIAL DEMANDED

21 Plaintiff Nancy Walther Graf ("Plaintiff") bring this suit on behalf of herself and all others  
22 similarly situated, and make the following allegations on information and belief, except as to  
23 allegations pertaining to Plaintiff, which are based on her personal knowledge:

24 I. INTRODUCTION

25 1. Plaintiff bring this class action complaint against Zynga Game Network, Inc.  
26 ("Zynga") for sharing its users' sensitive personally identifiable information ("PII"), including users'  
27 real names, with Zynga's advertising partners and internet marketing companies, in violation of  
28 Zynga's agreement with Facebook, Inc., accepted industry standards, and state and federal law.

FILED  
2010 OCT 18 P 1:50  
RICHARD W. WILKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MJG  
JS

E-filing

JL



1 **IV. INTRADISTRICT ASSIGNMENT**

2 8. Intradistrict assignment to the San Francisco Division is proper because the principal  
3 offices of defendant Zynga are located in San Francisco County.

4 **V. STATEMENT OF FACTS**

5 **A. About Zynga**

6 9. Defendant Zynga is one of the largest providers of Facebook, Inc. (“Facebook”)  
7 social applications. Zynga makes and offers social games that are free and accessible to Facebook  
8 users. Zynga’s most popular games, Farmville, Texas HoldEm, FrontierVille, Café World, Mafia  
9 Wars, and Treasure Isle, are offered by and through Facebook to Facebook users and have over 59  
10 million Facebook users.

11 10. In order to play any Zynga game on Facebook, Zynga requires Facebook users to  
12 register a profile with Zynga. In particular, Zynga requires its users to submit their name, address  
13 and gender in order to play its games.

14 11. Zynga uses third-party advertising companies to serve ads on its Facebook gaming  
15 applications and enjoys substantial profits therefrom.

16 12. Zynga also profits from its users by selling them “virtual currency” that they can use  
17 to purchase “virtual items” in Zynga games. For example, Zynga users use “virtual currency” to buy  
18 virtual tractors and other virtual goods within the Farmville application.

19 **B. Plaintiff is a Third-Party Beneficiary of Facebook’s Terms and Conditions**  
20 **Governing Zynga**

21 13. Because Facebook users share so much information through Facebook, Facebook  
22 places certain restrictions on its third-party application developers like Zynga to protect Facebook  
23 user’s personally-identifiable information. Plaintiff is unaware at this time whether Facebook takes  
24 any or reasonable steps to enforce its terms and conditions against third-party application developers  
25 like Zynga.

26 14. Facebook’s terms and conditions prohibit third parties, such as Zynga, who create  
27 applications offered on Facebook from transferring data about Facebook users to outside advertising  
28 and data companies, even if a user agrees to do so. Facebook prohibits its application developers  
from “include[ing] functionality that proxies, requests or collects Facebook usernames or

1 passwords” and from “directly or indirectly transfer[ring] any data you receive from us to (or use  
2 such data in connection with) any ad network, ad exchange, data broker, or other advertising related  
3 toolset, even if a user consents to such transfer or use.” Facebook also prohibits its developers from  
4 using “a user’s friend list outside of your application, even if a user consents to such use.” All users  
5 of Zynga’s Facebook applications are intended third-party beneficiaries of Facebook’s agreement  
6 with Zynga.

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8 **C. Zynga Violates Its Facebook’s Terms and Conditions**

9 15. In direct violation of its agreement with Facebook, Zynga shares its users’  
10 information with third-party advertisers and internet marketing companies without users’ knowledge  
11 or consent.

12 16. According to a *Wall Street Journal* article published on October 18, 2010, Zynga  
13 caused the names of its users of Facebook applications, such as Farmville, to be transmitted to third  
14 parties, including advertisers and internet marketing companies, without user consent. Zynga  
15 transmitted its users’ personally identifiable information to these third parties for substantial profit.

16 17. When a Zynga user clicks on an advertisement displayed on a Zynga game, such as  
17 Farmville, Zynga sends a “Referrer Header” to the corresponding advertiser. The Referrer Header  
18 reveals the specific web page address the user was viewing prior to clicking the advertisement.  
19 Through the design of the Zynga applications, Zynga has caused users’ browsers to send Referrer  
20 Header transmissions that report the user ID or username of the user who clicked an ad, as well as  
21 other personally-identifiable information.

22 18. When a Zynga advertiser receives a Referrer Header reporting the user who clicked  
23 an ad, the advertiser can obtain substantial additional information about the user, such as the user’s  
24 Facebook ID and name. The advertiser can then navigate to that user’s Facebook or Zynga profile,  
25 where it can obtain even more personally-identifiable information of that user, including gender,  
26 picture, friends, networks, wall posts, photos, and more. Alternatively, an advertiser can design  
27 software to automatically collect and store this data as to each user who clicks an ad. However the  
28 advertiser elects to obtain this information, Zynga does nothing to prevent the advertiser from using  
the information for whatever purpose the advertiser chooses.

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2 19. Upon information and belief, Zynga also caused its users' personally-identifiable  
3 information to third-party data gathering companies. These data gathering companies transmit that  
4 personally-identifiable information to other third parties for profit.

5 **VI. CLASS ACTION ALLEGATIONS**

6 20. Plaintiff brings this action on behalf of herself and all other persons in the following  
7 similarly-situated class: *all registered users of Facebook.com in the United States who, at any time*  
8 *after October 18, 2006 registered a profile with Zynga* (the "Class"). Excluded from the Class are  
9 Zynga, its officers and directors, legal representatives, successors or assigns, any entity in which  
10 Zynga has or had a controlling interest, the judge to whom this case is assigned and the judge's  
11 immediate family.

12 21. The Class is composed of numerous people, whose joinder in this action would be  
13 impracticable. The disposition of their claims through this class action will benefit Class members,  
14 the parties and the courts. Upon information and belief, Zynga has over 50 million users and there  
15 are millions of persons in the Class.

16 22. Upon information and belief, the identities and contact information of the individual  
17 members of the Class are available through Zynga's electronic records.

18 23. There is a well-defined community of interest in questions of law and fact affecting  
19 the Class. These questions of law and fact predominate over individual questions affecting  
20 individual Class members, including, but not limited to, the following:

- 21 a. whether Plaintiff and the Class are intended third-party beneficiaries of  
22 Facebook's agreement with Zynga not to divulge personally-identifiable  
23 information;
- 24 b. whether Zynga violated its agreement with Facebook by making its users'  
25 personal information and advertisement click information available to advertisers  
26 and third parties without authorization;
- 27 c. what and how personally-identifiable data and advertisement click information  
28 was transmitted to advertisers and other third parties;

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- d. whether Class members are entitled to damages as a result of Zynga's conduct, and, if so, what is the measure of those damages;
  - e. whether Zynga's conduct described herein violated the Electronic Communications Privacy Act, 18 U.S.C. § 2510 *et seq.* (the "ECPA");
  - f. whether Zynga's conduct described herein Stored Communications Act, 18 U.S.C. § 2701 *et seq.*(the "SCA");
  - g. whether Zynga's conduct described herein violated California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*);
  - h. whether Zynga's conduct described herein violated California's Computer Crime Law (Cal. Penal Code § 502);
  - i. whether Zynga's conduct described herein violated the California Legal Remedies Act (Cal. Civ. Code § 1750, *et seq.*);
  - j. whether Zynga's conduct described herein constitutes a breach of contract; and
  - k. whether Zynga was unjustly enriched as a result of its conduct described herein.

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24. Zynga engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Class members. Similar or identical statutory and common law violations, business practices and injuries are involved. Individual questions, if any, pale by comparison to the numerous common questions that dominate.

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25. The injuries sustained by members of the Class flow, in each instance, from a common nucleus of operative facts. In each case, Zynga caused or permitted unauthorized communications of private and personally identifying information to be delivered to third parties without adequate or any notice, consent or opportunity to opt out.

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26. Given the similar nature of the Class members' claims and the absence of material differences in the statutes and common laws upon which the Class members' claims are based, a nationwide class will be easily managed by the Court and the parties.

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27. Because of the relatively small size of the individual Class members' claims, no Class user could afford to seek legal redress on an individual basis.

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2 28. Plaintiff claims are typical of those of the Class as all members of the Class are  
3 similarly affected by Zynga's uniform and actionable conduct as alleged herein.

4 29. Zynga has acted and failed to act on grounds generally applicable to Plaintiff and the  
5 other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible  
6 standards of conduct toward the members of the Class.

7 30. Plaintiff will fairly and adequately protect the interests of the Class and has retained  
8 counsel competent and experienced in class action litigation. Plaintiff has no interests antagonistic  
9 to, or in conflict with, the Class that Plaintiff seek to represent.

10 31. Plaintiff reserves the right to revise the above class definition based on facts learned  
11 in discovery.

12 **COUNT I**  
**(Violation of the Electronic Communications Privacy Act)**

13 32. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

14 33. The Electronic Communications Privacy Act, 18 U.S.C. § 2510 *et seq.* (the "ECPA")  
15 broadly defines an "electronic communication" as "any transfer of signs, signals, writing, images,  
16 sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio,  
17 electromagnetic, photoelectronic or photooptical system that affects interstate or foreign  
18 commerce..." 18 U.S.C. § 2510(12).

19 34. Pursuant to the ECPA, Zynga operates an "electronic communications service" as  
20 defined in 18 U.S.C. § 2510(15). Zynga provides its users with the ability to send or receive  
21 electronic communications to or from many of Zynga's millions of users and to or from third parties  
22 who are not Zynga users, such as advertisers. Zynga also provides its advertisers the ability to send  
23 electronic communications to Zynga users by placing targeted advertisements on Zynga's  
24 applications, and allows Zynga users to receive those electronic communications and send electronic  
25 communications to advertisers by clicking on advertising banners.

26 35. The ECPA broadly defines the contents of a communication. Pursuant to the ECPA,  
27 "contents" of a communication, when used with respect to any wire, oral, or electronic  
28 communications, include any information concerning the substance, purport, or meaning of that  
communication. 18 U.S.C. § 2510(8). "Contents," when used with respect to any wire or oral

1 communication, includes any information concerning the identity of the parties to such  
2 communication or the existence, substance, purport, or meaning of that communication. The  
3 definition thus includes all aspects of the communication itself. No aspect, including the identity of  
4 the parties, the substance of the communication between them, or the fact of the communication  
5 itself, is excluded. The privacy of the communication to be protected is intended to be  
6 comprehensive.

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8 36. The ECPA prevents an electronic communications service provider from intentionally  
9 divulging the contents of any communication while in transmission on that service to any person or  
10 entity other than an addressee or intended recipient of such communication. 18 U.S.C. § 2511(3)(a).

11 37. Plaintiff and Class members are “person[s] whose ... electronic communication[s]  
12 [are] disclosed... or intentionally used in violation of this chapter” within the meaning of 18 U.S.C. §  
13 2520(a).

14 38. By clicking on an advertisement banner displayed on Zynga applications, users are  
15 asking Zynga to send an electronic communication to the advertiser who supplied the ad. But  
16 pursuant to Zynga’s agreement with Facebook, users do not expect and do not consent to Zynga’s  
17 disclosure of all contents of that communication. Zynga users expect that certain aspects of their  
18 communications concerning advertisers—namely their identities—will be configured by Zynga to be  
19 private.

20 39. The design of the Zynga’s applications and Zynga’s agreements to provide user data  
21 to third-parties are evidence of Zynga’s conscious objective to divulge the identities of its users to  
22 advertisers and other third parties. By divulging user identities and other user information to third  
23 parties without user consent, Zynga intentionally violated 18 U.S.C. § 2511(3)(a). Zynga  
24 intentionally disclosed user identities to third parties to enhance its profitability and revenue through  
25 advertising. This disclosure was not necessary for the operation of Zynga’s system or to protect  
26 Zynga’s rights or property.

27 40. Each incident in which Zynga divulged personally identifiable information of a  
28 Zynga user is a separate and distinct violation of the ECPA. Plaintiff and members of the Class  
therefore seek remedy as provided for by 18 U.S.C. § 2520, including such preliminary and other



1 equitable or declaratory relief as may be appropriate, damages consistent with subsection (c) of that  
2 section to be proven at trial, punitive damages to be proven at trial, and attorneys' fees and other  
3 litigation costs reasonably incurred.

4  
5 41. Plaintiff and the Class, pursuant to 18 U.S.C. § 2520(2), are entitled to preliminary,  
6 equitable, and declaratory relief, in addition to statutory damages of the greater of \$10,000 or \$100 a  
7 day for each day of violation, actual and punitive damages, reasonable attorneys' fees, and Zynga's  
8 profits obtained from the violations described herein.

9  
10 **COUNT II**  
11 **(Violations of the Stored Communications Act)**

12 42. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

13 43. The Stored Communications Act of 1986 ("SCA") incorporates the ECPA's  
14 definition of an "electronic communication service." 18 U.S.C. § 2711(1). As set forth above,  
15 Zynga is an electronic communications service provider within the meaning of the ECPA and is  
16 therefore also subject to the restrictions contained in the SCA governing electronic communications  
17 service providers.

18 44. The SCA also incorporates the ECPA's broad definition of "electronic  
19 communication" and "electronic storage." 18 U.S.C. § 2711(1). Pursuant to the ECPA and SCA,  
20 "electronic storage" means any "temporary storage of a wire or electronic communication incidental  
21 to the electronic transmission thereof." 18 U.S.C. § 2510(17)(A). This type of electronic storage  
22 includes communications in intermediate electronic storage that have not yet been delivered to their  
23 intended recipient.

24 45. Examples of communications held by Zynga in temporary storage pursuant to 18  
25 U.S.C. § 2510(17)(A) include private messages and posts not yet received by the intended recipient  
26 and user requests to Zynga to visit advertiser websites.

27 46. The SCA prohibits any electronic communications service provider from divulging to  
28 any person or entity the contents of a communication while in electronic storage by that service. 18  
U.S.C. § 2702(a)(1).

47. When a Zynga user clicks on an ad, the user is asking Zynga to send an electronic  
communication to that advertiser allowing the user to view the advertiser's website. By clicking an

1 ad, the Zynga user also tells Zynga, via an electronic communication, who the user is, what web  
2 page the user is viewing, and where the user wants to go. This information is held in temporary  
3 storage by Zynga pending the delivery of the user's request to the advertiser website. By divulging  
4 to third parties the user's identity and what page they were viewing, Zynga violated 18 U.S.C. §  
5 2702(a)(1).

6  
7 48. The design of the Zynga's applications and Zynga's agreements to provide user data  
8 to third-parties are evidence of Zynga's conscious objective to divulge the identities of its users to  
9 advertisers and other third parties. By divulging user identities and other user information to third  
10 parties without user consent, Zynga intentionally violated 18 U.S.C. § 2702(1)(a). Zynga  
11 intentionally disclosed user identities and other information to third parties to enhance its  
12 profitability and revenue through advertising. The disclosures were not necessary for the operation  
13 of Zynga's systems or to protect Zynga's rights or property.

14 49. The SCA definition of "electronic storage" also includes "storage of [a wire or  
15 electronic] communication by an electronic communication service for purposes of backup  
16 protection of such communication." 18 U.S.C. § 2510(17)(B). The personally-identifiable  
17 information that Zynga users send via electronic communications to Zynga, such as their name, is  
18 electronically stored by Zynga for backup purposes. The user's personally-identifiable information,  
19 once registered with Zynga, remains available for viewing and re-access at a later time by the user  
20 and other persons authorized by the user to access that information. This storage is one of the main  
21 services that Zynga provides to its users.

22 50. Because Zynga thus operates as a "virtual filing cabinet" for its users, allowing them  
23 to store and re-access that information at a later time, Zynga is also a "remote computing service"  
24 provider pursuant to 18 U.S.C. § 2711(2).

25 51. The SCA, at 18 U.S.C. § 2702(a)(2), provides that "a person or entity providing an  
26 remote communication service to the public shall not knowingly divulge to any person or entity the  
27 contents of any communication which is carrier or maintained on that service (A) on behalf of, and  
28 received by means of electronic transmission...a subscriber or customer of such service; (B) solely  
for the purpose of providing storage...to such subscriber or customer, if the provider is not

1 authorized to access the contents of any such communications for purposes of providing any services  
2 other than storage or computer processing.”

3  
4 52. As a result of Zynga’s disclosure of user identities, Zynga gives unauthorized access  
5 to and thereby divulges electronically-stored information to third parties about its users. With the  
6 user name that Zynga provides them, for example, third parties can navigate to a user’s Facebook or  
7 Zynga profiles and see a user’s stored electronic communications, including names, gender, pictures,  
8 friends, networks, wall posts, photos, and more. Because Zynga is both an electronic  
9 communication service provider and a remote computing service provider, Zynga’s disclosure of this  
10 information to third parties is in violation of both 18 U.S.C. § 2702(a)(1) and (2). As set forth  
11 above, Zynga’s disclosures were knowing and intentional and designed to enhance its profitability  
12 and revenue through advertising. The disclosures were not necessary for the operation of Zynga’s  
13 system or to protect Zynga’s rights or property.

14 53. Zynga intentionally and knowingly divulged confidential and private information  
15 relating to Plaintiff and Class member’ stored electronic communications without the consent,  
16 knowledge or authorization of Plaintiff and members of the Class.

17 54. Plaintiff and Class members are “person[s] aggrieved by [a] violation of [the SCA] in  
18 which the conduct constituting the violation is engaged in with a knowing or intentional state or  
19 mind...” within the meaning of 18 U.S.C. § 2707(a).

20 55. Each incident in which Zynga provided personally identifiable information of a user,  
21 thereby divulging that user’s stored communications to a third party, is a separate and distinct  
22 violation of the SCA, subject to the remedies provided under the SCA, and specifically pursuant to  
23 18 U.S.C. § 2707(a).

24 56. Plaintiff and users of the Class therefore seek remedy as provided for by 18 U.S.C. §  
25 2707(b) and (c), including such preliminary and other equitable or declaratory relief as may be  
26 appropriate, damages consistent with subsection (c) of that section to be proven at trial, punitive  
27 damages to be proven at trial, and attorneys’ fee and other litigation costs reasonably incurred.

28 57. Plaintiff and the Class, pursuant to 18 U.S.C. § 2707(c), are entitled to preliminary,  
equitable, and declaratory relief, in addition to statutory damages of no less than \$1,000 per

1 violation, actual and punitive damages, reasonable attorneys' fees, and Zynga's profits obtained  
2 from the violations described herein.

3  
4 **COUNT III**  
**(Violation of Cal. Bus. & Prof. Code § 17200)**

5 58. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

6 59. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et*  
7 *seq.*, protects both consumers and competitors by promoting fair competition in commercial markets  
8 for goods and services.

9 60. The UCL prohibits any unlawful, unfair or fraudulent business act or practice. A  
10 business practice need only meet one of the three criteria to be considered unfair competition. An  
11 unlawful business practice is anything that can properly be called a business practice and that at the  
12 same time is forbidden by law.

13 61. As described herein, Zynga's nonconsensual disclosure of its users' personal  
14 information to third parties without their authorization is a violation of the UCL.

15 62. Zynga has violated the "unlawful" prong of the UCL in that Zynga's conduct violated  
16 the ECPA (18 U.S.C. § 2510 *et seq.*), the SCA (18 U.S.C. § 2701 *et seq.*), Consumer Legal  
17 Remedies Act (Cal. Civ. Code § 1750 *et seq.*), and the California Computer Crime Law (Cal. Penal  
18 Code § 502).

19 63. Zynga violated the fraudulent prong of the UCL by explicitly representing in its  
20 agreement with Facebook that it would not make users' personal information available to any third  
21 party. Zynga used those misrepresentations to induce users to submit to Zynga their personally-  
22 identifiable information. Zynga then knowingly transmitted that information to third parties without  
23 authorization.

24 64. Zynga violated the unfair prong of the UCL by gaining control over and divulging to  
25 third parties its users' PII without consent and under false pretenses.

26 65. Zynga's unfair or deceptive practices occurred primarily and substantially in  
27 California. Decisions concerning the retention and safeguarding the disclosure of user information  
28 were made in California, Zynga maintains all or a substantial part of its computer systems containing

1 user information in California, and the disclosure of its users' information took place primarily and  
2 substantially in California.

3  
4 66. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff seek an order of this Court  
5 permanently enjoining Zynga from continuing to engage in the unfair and unlawful conduct  
6 described herein. Plaintiff seek an order requiring Zynga to (1) immediately cease the unlawful  
7 practices stated in this Complaint; and (2) awarding Plaintiff and the Class reasonable costs and  
8 attorneys' fees pursuant to Cal. Code Civ. Proc. § 1021.5.

9 **COUNT IV**

10 **(Violation of California's Computer Crime Law ("CCCL"), Cal. Penal Code § 502)**

11 67. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

12 68. Zynga knowingly accessed and without permission used any data, computer,  
13 computer system, or computer network in order to execute a scheme or artifice to deceive and/or to  
14 wrongfully control or obtain money, property, or data in violation of Cal. Penal Code § 502(c)(1).  
15 Zynga did so by accessing and sharing with third parties the personal information of Plaintiff and  
16 Class members in order to deceive Zynga users and/or to wrongfully obtain money from third parties  
17 and to obtain more data from Zynga users.

18 69. Zynga knowingly accessed and without permission took, copied, or made use of  
19 Plaintiff's and Class members' personal information in violation of § 502(c)(2).

20 70. Zynga knowingly and without permission used or caused to be used computer  
21 services by impermissibly accessing, collecting, and transmitting Plaintiffs' and Class members'  
22 personal information in violation of § 502(c)(3).

23 71. Zynga knowingly and without permission provided or assisted in providing a means  
24 of accessing a computer, computer system, or computer network by creating a system that allowed  
25 advertisers to impermissibly access, collect, and transmit Plaintiff's and Class members' personal  
26 information in violation of § 502(c)(6).

27 72. Zynga knowingly and without permission accessed or caused to be accessed  
28 Plaintiff's and Class members' computers and/or computer networks by impermissibly divulging  
Plaintiff's and Class members' personal information to third parties in violation of § 502(c)(7).

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2 73. Zynga knowingly and without permission introduced a computer contaminant, as  
3 defined in § 502(b)(10), by introducing computer instructions designed to record or transmit to third  
4 parties Plaintiff's and the Class's personally-identifiable information on Zynga's computer networks  
5 without the intent or permission of Plaintiff or the Class in violation of § 502(c)(8).

6 74. As a direct and proximate result of Zynga's violation of § 502, Zynga caused loss to  
7 Plaintiff and the Class members in an amount to be proven at trial. Plaintiff and the Class are  
8 entitled to the recovery of attorneys' fees pursuant to § 502(e).

9 75. Plaintiff and Class members have also suffered irreparable injury as a result of  
10 Zynga's unlawful conduct, including the collection and sharing of their personal information.  
11 Additionally, because the stolen information cannot be returned, the harm from the security breach is  
12 ongoing and compounding. Accordingly, Plaintiff and the Class have no adequate remedy at law,  
13 entitling them to injunctive relief.

14 **COUNT V**

15 **(Violation of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, et seq.)**

16 76. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

17 77. The Consumers Legal Remedies Act prohibits the act, use or employment by any  
18 person of any deception, fraud, false pretense, false promise, misrepresentation, concealment,  
19 suppression or omission of any material fact with intent that others rely upon such act in connection  
20 with the sale or advertisement of any merchandise whether or not any person has in fact been misled,  
21 deceived or damaged thereby.

22 78. As described within, Zynga has engaged in deceptive practices, unlawful methods of  
23 competition, and/or unfair acts as defined by Cal. Civ. Code §§ 1750, et seq., to the detriment of  
24 Plaintiff and the Class.

25 79. Zynga, acting with knowledge, intentionally and unlawfully brought harm upon  
26 Plaintiff and the Class by deceptively inducing Plaintiff and the Class to register with Zynga, supply  
27 Zynga with personal and private information, and click on advertisements based upon deceptive and  
28 misleading representations that it would not disclose their personal or private information to third-  
parties. Specifically, Zynga violated Cal. Civ. Code § 1750 in at least the following respects:

- 1
- 2 a. In violation of § 1770(a)(5) by representing that goods or services have
- 3 characteristics and benefits that they do not have;
- 4 b. In violation of § 1770(a)(14) by representing that a transaction confers or involves
- 5 rights, remedies, or obligations which it does not have or involve, or which are
- 6 prohibited by law; and
- 7 c. In violation of § 1770(a)(16) by representing that the subject of a transaction has
- 8 been supplied in accordance with a previous representation when it has not.

9 80. Plaintiff and the Class have suffered harm as a direct and proximate result of the

10 Zynga's violations of law and wrongful conduct.

11 81. Under Cal. Civ. Code § 1780(a) & (b), Plaintiff and the Class seek injunctive relief

12 requiring Zynga to cease and desist the illegal conduct described herein, and any other appropriate

13 remedy for violations of the CLRA. For the sake of clarity, Plaintiff explicitly disclaims any claim

14 for damages under the CLRA at this time.

15 **COUNT VI**

16 **(Breach of Contract)**

17 82. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

18 83. In order to offer gaming applications to Plaintiff and the Class, Facebook required

19 Zynga to its terms and conditions governing third-party application developers (the "Agreement").

20 84. The Agreement is intended to protect Plaintiff and the Class and Plaintiff and the

21 Class are third-party beneficiaries of the Agreement.

22 85. Plaintiff and the Class transmitted sensitive personally-identifiable information to

23 Zynga in exchange for Zynga's implicit and explicit promise that it would not share that personal

24 information with third parties, including but not limited to advertisers.

25 86. Zynga users pay for Zynga's services with their personal information. Zynga's users

26 exchange something valuable—access to their personal information—for Zynga's services and

27 Zynga's promise to safeguard that personal information pursuant to Zynga's Agreement with

28 Facebook.

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87. Zynga collects revenues in large part because the personal information submitted by its users increases the value of Zynga’s advertising services and marketable data. Because Zynga has access to highly personal information about its users, Zynga’s advertising platform is particularly attractive to advertisers and marketers who can and do use that personal information to deliver highly-targeted ads to Zynga’s users. Similarly, because Zynga has access to highly personal information about its users, Zynga’s data set of user information is particularly attractive to data gathering companies who can and do use that personal information to sell marketing services to other third parties. In this regard, Zynga’s services are vehicles to acquire personal information about consumers in order to sell that personal information to third parties.

88. If not for the inherent and identifiable value of access to personal consumer information, Zynga would be much less profitable. Thus, its promises concerning the safeguarding of the personal information Zynga receives from its users in exchange for its services are vital to its business and its users.

89. Zynga materially breached its Agreement with Facebook, which Plaintiff and the Class were intended third-party beneficiaries of, through its unlawful conduct alleged herein, including its disclosure of Plaintiff’s and the Class’s personal information to third parties.

90. As a result of Zynga’s misconduct and breach of the Agreement described herein, Plaintiff and the Class suffered injury.

**COUNT VII**

**(Violation of Cal. Civ. Code §§ 1572 & 1573)**

91. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

92. Cal. Civ. Code § 1572 provides in relevant part that actual fraud exists when a party to a contract suppresses “that which is true, by one having knowledge or belief of the fact” “with intent to deceive another party thereto, or to induce him to enter into the contract.”

93. Cal. Civ. Code § 1573 provides in relevant part that constructive fraud exists “[i]n any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.”



1  
2 94. Zynga violated § 1572 through its repeated and explicit false assertions that it would  
3 not share the identity of its users with third parties without consent, as described herein. Zynga  
4 further violated this section by suppressing its knowledge of this fact.

5 95. Additionally and/or alternatively, Zynga violated § 1573 by breaching its duty to  
6 protect its users' identities from third parties and gaining an advantage in doing so, by misleading its  
7 users to their prejudice, as described herein.

8 96. Plaintiff, on behalf of themselves and the Class, seek damages from Zynga, including  
9 but not limited to disgorgement of all proceeds Zynga obtained from its unlawful business practices.

### 10 **COUNT VIII**

#### 11 **(Unjust Enrichment (In the Alternative))**

12 97. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

13 98. Plaintiff and the Class have conferred a benefit upon Zynga. Zynga has received and  
14 retained money belonging to Plaintiff and the Class as a result of sharing its users' personal  
15 information with its third parties without their consent, as described herein.

16 99. Zynga appreciates or has knowledge of said benefit.

17 100. Under principles of equity and good conscience, Zynga should not be permitted to  
18 retain money belonging to Plaintiff and the Class that it unjustly received as a result of its actions.

19 101. Plaintiff and the Class have suffered loss as a direct result of Zynga's conduct.

20 102. Plaintiff, on their own behalf and on behalf of the Class, seek the imposition of a  
21 constructive trust on and restitution of the proceeds of Zynga received as a result of its conduct  
22 described herein, as well as attorney's fees and costs pursuant to Cal. Civ. Proc. Code § 1021.5.

### 23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following  
25 relief:

26 A. Certify this case as a class action on behalf of the Class defined above, appoint  
27 Plaintiff Graf as class representative, and appoint her counsel as class co-counsel;

28 B. Declare that Zynga's actions, as described herein, violate the ECPA (18 U.S.C. §  
2510 *et seq.*), the SCA (18 U.S.C. § 2701 *et seq.*), California Unfair Competition Law (Cal. Bus. &

1 Prof. Code § 17200, *et seq.*), the Computer Crime Law (Cal. Penal Code § 502), and the Consumer  
2 Legal Remedies Act (Cal. Bus. & Prof. Code § 1750), and constitute breach of contract, fraud, and  
3 unjust enrichment;

4 C. Awarding injunctive and other equitable relief as is necessary to protect the interests  
5 of Plaintiff and the Class, including, *inter alia*, an order prohibiting Zynga from engaging in the  
6 wrongful and unlawful acts described herein;

7 D. Disgorge Zynga of all revenue earned from its social gaming applications offered on  
8 Facebook during the class period;

9 E. Awarding damages, including statutory damages where applicable, to Plaintiff and  
10 the Class in an amount to be determined at trial;

11 F. Awarding all economic, monetary, actual, consequential, and compensatory damages  
12 caused Zynga's conduct, and if its conduct is proved willful, award Plaintiff and the Class exemplary  
13 damages;

14 G. Award restitution against Zynga for all money to which Plaintiff and the Class are  
15 entitled in equity;

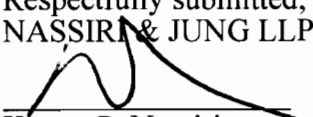
16 H. Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys'  
17 fees;

18 I. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent  
19 allowable; and

20 J. Awarding such other and further relief as equity and justice may require.  
21

22 Dated: October 18, 2010

Respectfully submitted,  
NASSIRI & JUNG LLP

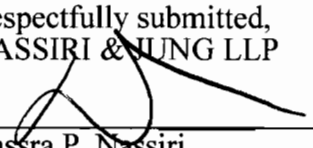
  
Kassra P. Nassiri  
Attorneys for Plaintiff

1 **JURY TRIAL DEMANDED**

2 Plaintiff hereby demands a trial by jury.

3  
4 Dated: October 18, 2010

5 Respectfully submitted,  
6 NASSIRI & JUNG LLP

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9 Kassra P. Nassiri  
10 Attorneys for Plaintiff  
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