

1 Juli E. Farris, CA Bar No. 141716
2 KELLER ROHRBACK L.L.P.
3 1201 Third Avenue, Suite 3200
4 Seattle, Washington 98101
5 Telephone: 206-623-1900
6 Facsimile: 206-623-3384
7 jfarris@kellerrohrback.com

FILED *Paul*
2010 OCT 28 P 2:16
RICHARD W. HARRIS
CLERK, U.S. DISTRICT COURT
N.D. CALIFORNIA

8 [Additional counsel appear on signature page]

9 Attorneys for Plaintiff John Swanson

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 CV 10-04902

HRL

13 JOHN SWANSON, an individual, on behalf of)
14 himself and all others similarly situated,)
15)
16 Plaintiff,)
17)
18 v.)
19)
20 ZYNGA GAME NETWORK, INC., a Delaware)
21 corporation,)
22)
23 Defendant.)
24)
25)
26)

No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff John Swanson ("Plaintiff"), individually and on behalf of a Class of all others similarly situated as defined below, brings this action against Defendant Zynga Game Network, Inc. ("Zynga" or "Defendant"). Plaintiff's complaint alleges damages and injunctive relief under the Electronic Communications Privacy Act of 1986, 18 U.S.C. § 2510, *et seq.*, the Stored Communications Act, 18 U.S.C. § 2701, *et seq.*, California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, California's Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*, California's Computer Crime Law, Cal. Penal Code § 502, *et seq.*, and under the common law theories of breach of contract and unjust enrichment. Plaintiff demands a trial by jury.

COMPLAINT
(CAUSE NO. _____)

LAW OFFICES OF
KELLER ROHRBACK L.L.P.
1201 THIRD AVENUE, SUITE 3200
SEATTLE, WASHINGTON 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

1 **NATURE OF THE CASE**

2 1. Plaintiff's class action complaint arises out of his use of Zynga's applications, or
3 "apps", on the social-networking site Facebook, Inc. ("Facebook").

4 2. Unbeknownst to Plaintiff and Class members, Zynga transmits user's Personally
5 Identifiable Information (also referred to as "PII") when they sign up and use Zynga
6 applications, including users' real names and their friends' names, to Zynga's advertising
7 partners and internet marketing and tracking companies, as well as other downstream partners, in
8 violation of Zynga's own private policy, Zynga's agreement with Facebook, accepted industry
9 standards, and federal and state law.
10

11 3. Without obtaining their consent, Zynga has intentionally and knowingly
12 transmitted PII, including users' real names and their friends' names, to various third parties for
13 a substantial profit.
14

15 **JURISDICTION AND VENUE**

16 4. This Court has jurisdiction under 28 U.S.C. § 1331 because Plaintiff has alleged
17 the violation of the federal statutes, 18 U.S.C. § 2510, *et seq.*, and 18 U.S.C. § 2701, *et seq.* This
18 Court has jurisdiction over the state claims pursuant to 28 USC § 1367.

19 5. Venue lies within this District under 28 U.S.C. § 1391(b)-(c) because: (a) Zynga
20 conducts business in this District; (b) certain acts giving rise to the claims asserted in this Class
21 Action Complaint occurred in this District; (c) the actions of Zynga alleged in this Complaint
22 caused damage to Plaintiff and a substantial number of Class members within this District; (d)
23 Zynga maintains its headquarters in this District; and (e) Plaintiff resides within and is a citizen
24 of this District.
25
26

1 **PARTIES**

2 6. Plaintiff John Swanson is a resident of San Jose, California. He is a registered
3 user of Zynga’s services and specifically used the FarmVille application owned, operated and
4 offered by Zynga. During the relevant time period as defined below, Plaintiff Swanson used the
5 FarmVille application.

6 7. Defendant Zynga Game Network, Inc. is a Delaware corporation that maintains
7 its headquarters in San Francisco County, California. Defendant Zynga conducts business
8 throughout California and the nation.
9

10 **STATEMENT OF FACTS**

11 **A. Zynga’s Applications**

12 8. Defendant Zynga is the largest provider of Facebook social applications. Zynga
13 makes and offers social games that are free and accessible to Facebook users. Zynga’s most
14 popular games include: FarmVille, Texas HoldEm Poker, Café World, Mafia Wars,
15 FrontierVille, Treasure Isle, PetVille, and YoVille. Zynga first began offering applications on
16 Facebook on or around July 2007.
17

18 9. As of August 25, 2010, according to the website www.insidesocialgames.com - a
19 website tracking the popularity of applications used on Facebook – Zynga had well over 200
20 million Facebook users downloading, utilizing, and playing their games. FarmVille currently
21 has over 59 million Facebook users alone, and is by far the most popular game or “app” on
22 Facebook. Texas HoldEm Poler, also a Zynga developed application, is second with nearly 30
23 million users. In fact, the top seven Facebook games are all created and developed by Zynga.
24
25
26

1 10. In order to play any Zynga game on Facebook, Zynga requires Facebook users to
2 register a profile with Zynga. The registration process requires users to submit their name,
3 address and gender to Zynga.

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

6 12. Zynga also profits from its users by selling them “virtual currency,” a form of
7 digital currency that allows users to purchase digital goods, or “virtual items” such as an online
8 token, graphic, or game piece, that represents something of value by virtue of its importance to a
9 specific game. For example, Zynga users use “virtual currency” to buy virtual tractors and other
10 virtual goods within the FarmVille application. One way users obtain “virtual currency” is
11 through purchasing such currency with real money. In order to progress in the game faster,
12 many Zynga users choose to purchase “virtual currency” with real money.

13 13. These profits are substantial. Upon information and belief, Zynga will generate
14 an estimated \$500 million in revenue from selling “virtual currency” to its users in 2010 alone.

15 **B. Facebook’s Terms and Conditions Governing Zynga**

16 14. Facebook places certain restrictions on its third-party application developers like
17 Zynga to protect Facebook user’s Personally Identifiable Information. Plaintiff is unaware at this
18 time whether Facebook takes steps to enforce its terms and conditions against third-party
19 application developers like Zynga.

20 15. Facebook’s terms and conditions prohibit third parties, such as Zynga, who create
21 applications offered on Facebook from transferring data about Facebook users to outside
22 advertising and data companies, *even if a user agrees to do so.*

1 16. Facebook expressly prohibits its application developers from including
2 “functionality that proxies, requests or collects Facebook usernames or passwords.” Facebook
3 also expressly prohibits application developers from “directly or indirectly transfer[ring] any
4 data you receive from us to (or use such data in connection with) any ad network, ad exchange,
5 data broker, or other advertising related toolset, even if a user consents to such transfer or use.
6 By indirectly we mean you cannot, for example, transfer data to a third party who then transfers
7 the data to an ad network. By any data we mean all data obtained from the Facebook API,
8 including aggregate, anonymous or derivative data. Facebook also prohibits its developers from
9 using “a user’s friend list outside of your application, even if a user consents to such use.”¹

10
11 17. All users of Zynga’s Facebook applications are intended third-party beneficiaries
12 through Facebook’s agreement with application developers, including Zynga.

13
14 **C. Zynga Violates Facebook’s Terms and Conditions**

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

18 19. According to a *Wall Street Journal* article published on October 18, 2010, Zynga
19 caused the names of its users of Facebook applications, such as FarmVille, to be transmitted to
20 third parties, including advertisers and internet marketing and tracking companies, without user
21 consent. The distribution of the user’s names is significant – the article reports that user names
22 were sent to at least 25 advertising and internet data firms. Zynga transmitted its users’
23 Personally Identifiable Information to these third parties for substantial profit.
24
25
26

¹ Facebook’s policies to application developers are found at <http://developers.facebook.com/policy/> (visited on October 25, 2010).

1 20. Upon information and belief, the actual technical details of what occurs are as
2 follows: when a Facebook user downloads an application on his or her Facebook page, the
3 content of the website when a user is utilizing the application is controlled by the application
4 developer. The content of the game is displayed alongside third party advertisements. When a
5 user clicks on an advertisement displayed on a Zynga game, Zynga automatically forwards a
6 “Referrer Header” to the third party advertiser. The Referrer Header reveals the specific web
7 page address the user was viewing prior to clicking the advertisement, which includes the user’s
8 unique Facebook ID. Through the design of the Zynga applications, Zynga has caused users’
9 browsers to automatically send Referrer Header transmissions that report the user ID or
10 username of the user who clicked an ad, as well as other Personally Identifiable Information, to
11 the third-party advertiser.
12

13 21. When a Zynga advertiser receives a Referrer Header reporting the user who
14 clicked an ad, the advertiser can obtain substantial additional information about the user, such as
15 the user’s Facebook ID and name. The advertiser can then navigate to that user’s Facebook or
16 Zynga profile, where it can obtain even more Personally Identifiable Information of that user,
17 including *inter alia*, gender, picture, friends, networks, wall posts, photos, and more.
18 Alternatively, an advertiser can design software to automatically collect and store this data as to
19 each user who clicks an ad. However the advertiser elects to obtain this information, Zynga does
20 nothing to prevent the advertiser from using the information for whatever purpose the advertiser
21 chooses.
22

23 22. Upon information and belief, Zynga also caused its users’ Personally Identifiable
24 Information to be distributed to third-party data gathering companies. These data gathering
25
26

1 companies also transmit user's Personally Identifiable Information to other downstream partners
2 for profit.

3 **D. Zynga Violates its Own Policies**

4 23. In addition to violating Facebook's express policies governing the use of its users
5 Personally Identifiable Information, Zynga also violates its own private policy regarding third-
6 party advertising companies by engaging in the conduct described above. Zynga's private policy
7 specifically provides, *inter alia*, that "Zynga does not provide any Personally Identifiable
8 Information to third-party advertising companies."²

9
10 24. In the October 18, 2010 *Wall Street Journal* article referenced above, a Zynga
11 spokeswoman said, "Zynga has a strict policy of not passing personally identifiable information
12 to any third parties. We look forward to working with Facebook to refine how web technologies
13 work to keep people in control of their information." However, it is clear from the circumstances
14 described in the article that the evidence demonstrates otherwise.

15
16 **CLASS ACTION ALLEGATIONS**

17 25. Plaintiff brings this action on behalf of himself and as a class action under Rule
18 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class (the
19 "Class"):

20 All persons in the United States who are registered users of Facebook.com and who
21 registered a profile with Zynga Game Network, Inc. from June 2007 through the present
22 (the "relevant time period"). Excluded from the Class are Zynga, its officers and
23 directors, legal representatives, successors or assigns, any entity in which Zynga has or
had a controlling interest, and federal governmental entities and instrumentalities.

24 26. Plaintiff believes that there are tens of thousands, and perhaps millions, of Class
25 members located throughout the United States, the exact number and their identities being

26 ² Zynga's private policies are found at <http://www.zynga.com/about/privacy-policy.php> (visited on October 25, 2010).

1 known by Defendant, making the Class so numerous and geographically dispersed that joinder of
2 all members is impracticable.

3 27. There are questions of law and fact common to the Class, including, but not
4 limited to, the following:

- 5 (a) Whether Plaintiff and the Class are intended third-party beneficiaries of
6 Facebook's agreement with Zynga not to divulge Personally Identifiable
7 Information;
8
9 (b) Whether Zynga violated its agreement with Facebook by making its users'
10 Personally Identifiable Information and advertisement click information
11 available to advertisers and third parties without consent or authorization;
12
13 (c) Whether Zynga violated its own private policy by making its users'
14 Personally Identifiable Information and advertisement click information
15 available to advertisers and third parties without consent or authorization;
16
17 (d) How Personally Identifiable Information and other data were transmitted
18 to third party advertisers, internet marketing companies, and other
19 downstream parties;
20
21 (e) Whether the Class is entitled to damages as a result of Zynga's conduct,
22 and, if so, the measure of those damages;
23
24 (f) Whether Zynga's conduct described herein violates the Electronic
25 Communications Privacy Act, 18 U.S.C. § 2510 *et seq.*;
26
27 (g) The appropriate amount of statutory damages that should be awarded to
the Class under 18 U.S.C. § 2520;

- 1 (h) The appropriate amount of punitive damages that should be awarded to the
2 Class under 18 U.S.C. § 2520;
- 3 (i) Whether Zynga's conduct described herein violates the Stored
4 Communications Act, 18 U.S.C. § 2701 *et seq.*;
- 5 (j) The appropriate amount of statutory damages that should be awarded to
6 the Class under 18 U.S.C. § 2707(c);
- 7 (k) Whether Zynga's conduct described herein violates California's Unfair
8 Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*);
- 9 (l) Whether Zynga's conduct described herein violates the Consumer Legal
10 Remedies Act (Cal. Civ. Code § 1750, *et seq.*);
- 11 (m) Whether Zynga's conduct described herein violates California's Computer
12 Crime Law (Cal. Penal Code § 502);
- 13 (n) Whether Zynga's conduct described herein constitutes a breach of
14 contract; and
- 15 (o) Whether Zynga was unjustly enriched as a result of its conduct described
16 herein.

17
18
19 28. Plaintiff's claims are typical of the claims of Class members, and Plaintiff will
20 fairly and adequately protect the interests of the Class. Plaintiff and all members of the Class are
21 similarly affected by Defendant's wrongful conduct in violation of the federal and state statutes
22 mentioned above in that their Personally Identifiable Information is distributed by Defendant
23 without their consent or authorization to third party advertisers and other downstream parties.
24 Plaintiff's claims arise out of the same common course of conduct giving rise to the claims of the
25
26

1 other Class members. Plaintiff's interests are coincident with, and not antagonistic to, those of
2 the other Class members.

3 29. Plaintiff is represented by counsel who is competent and experienced in the
4 prosecution of class action litigation.

5 30. The prosecution of separate actions by individual members of the Class would
6 create a risk of inconsistent or varying adjudications, establishing incompatible standards of
7 conduct for Defendant.

8 31. The questions of law and fact common to the members of the Class predominate
9 over any questions affecting only individual members.

10 32. A class action is superior to other available methods for the fair and efficient
11 adjudication of this controversy. The Class is readily definable. Prosecution as a class action
12 will eliminate the possibility of repetitious litigation. Treatment as a class action will permit a
13 large number of similarly situated persons to adjudicate their common claims in a single forum
14 simultaneously, efficiently, and without the duplication of effort and expense that numerous
15 individual actions would engender. This action presents no difficulties in management that
16 would preclude maintenance as a class action. Because of the relatively small size of the
17 individual Class members' claims, no Class user could afford to seek legal redress on an
18 individual basis.

19 33. Plaintiff reserves the right to revise the class definition based on facts acquired in
20 discovery.

1 **CAUSES OF ACTION**

2 **COUNT I:**

3 **VIOLATION OF THE ELECTRONIC COMMUNICATIONS PRIVACY ACT**

4 34. Plaintiff incorporates herein and realleges each allegation set forth in the previous
5 paragraphs.

6 35. The Electronic Communications Privacy Act, 18 U.S.C. §2510 *et seq.* (the
7 “ECPA”) broadly defines an “electronic communication” as “any transfer of signs, signals,
8 writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a
9 wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or
10 foreign commerce[.]” 18 U.S.C. § 2510(12).

11 36. Pursuant to the ECPA, Zynga operates an “electronic communications service” as
12 defined in 18 U.S.C. § 2510(15). Zynga provides its “users” – defined as any person or entity
13 who either uses an electronic communication service, or is duly authorized by the provider of
14 such service to engage in such use, *see* 18 U.S.C. § 2510(13)(a)-(b) – with the ability to send or
15 receive electronic communications to or from many of Zynga’s millions of users and to or from
16 third parties who are not Zynga users, such as advertisers. Zynga also provides its advertisers the
17 ability to send electronic communications to Zynga users by placing targeted advertisements on
18 Zynga’s applications, and allows Zynga users to receive those electronic communications and
19 send electronic communications to advertisers by clicking on advertising banners. By allowing
20 third party advertisers to place such advertisements within the applications, Zynga derives
21 substantial profits therefrom.

22 37. The ECPA broadly defines the contents of a communication. Specifically,
23 “‘contents,’ when used with respect to any wire, oral, or electronic communication, includes any
24
25
26

1 information concerning the substance, purport, or meaning of that communication.” 18 U.S.C.
2 § 2510(8). Thus, the privacy of the communication to be protected is intended to be
3 comprehensive.

4 38. The ECPA prevents an electronic communications service provider from
5 “intentionally divulge[ing] the contents of any communication (other than one to such person or
6 entity, or an agent thereof) while in transmission on that service to any person or entity other
7 than an addressee or intended recipient of such communication or an agent of such addressee or
8 intended recipient.” 18 U.S.C. § 2511(3)(a). Defendant Zynga is in direct violation of this
9 portion of the ECPA.
10

11 39. By clicking on an advertisement displayed on Zynga applications, Zynga sends an
12 electronic communication to the advertiser who supplied the advertisement without the user’s
13 consent. Pursuant to Zynga’s agreement with Facebook and Zynga’s own private policy, users
14 do not expect and do not consent to Zynga’s disclosure such communication. Zynga users
15 expect that certain aspects of their communications concerning advertisers—namely their
16 identities—will be configured by Zynga to be private.
17

18 40. The design of the Zynga’s applications and Zynga’s agreements to provide user
19 data to third-parties are evidence of Zynga’s direct violation of the ECPA, as Zynga divulges the
20 identities of its users to advertisers and other third parties, who in turn also divulge information
21 to other downstream parties. By divulging such information without user consent, Zynga
22 intentionally violated 18 U.S.C. § 2511(3)(a). The disclosures were not necessary for the
23 operation of Zynga’s systems or to protect Zynga’s rights or property.
24

25 41. Plaintiff and Class members are “person[s] whose...electronic communication[s]
26 [are] disclosed...or intentionally used in violation of this chapter” within the meaning of the

1 ECPA, and are therefore entitle to recover under the ECPA in a civil action against Defendant
2 Zynga. 18 U.S.C. § 2520(a).

3 42. Each incident in which Zynga divulged Personally Identifiable Information of a
4 Zynga user is a separate and distinct violation of the ECPA. Plaintiff and members of the Class
5 therefore seek a remedy as provided for by 18 U.S.C. § 2520, including such preliminary and
6 other equitable or declaratory relief as may be appropriate, damages to be proven at trial
7 including punitive damages, and a reasonable attorney's fee and other litigation costs reasonably
8 incurred. 18 U.S.C. § 2520(b)(1)-(3).

9
10 43. Plaintiff and the Class, pursuant to 18 U.S.C. § 2520(2), are entitled to
11 preliminary, equitable, and declaratory relief, in addition to statutory damages of the greater of
12 \$10,000 or \$100 a day for each day of violation, actual and punitive damages, reasonable
13 attorneys' fees, and Zynga's profits obtained from the violations described herein.
14

15 **COUNT II:**

16 **VIOLATION OF THE STORED COMMUNICATIONS ACT**

17 44. Plaintiff incorporates herein and realleges each allegation set forth in the previous
18 paragraphs.

19 45. The Stored Communications Act of 1986 ("SCA") incorporates the ECPA's
20 definition of an "electronic communication service." 18 U.S.C. § 2711(1). As set forth above,
21 Zynga is an electronic communications service provider within the meaning of the ECPA and is
22 therefore also subject to the restrictions contained in the SCA governing electronic
23 communications service providers.
24

25 46. The SCA also expressly prohibits "a person or entity providing an electronic
26 communication service to the public shall not knowingly divulge to any person or entity the

1 contents of a communication while in electronic storage by that service.” 18 U.S.C.
2 § 2702(a)(1). Defendant Zynga, as an electronic communication service provider, is in violation
3 of this statute by divulging Personally Identifiable Information to third party advertisers, internet
4 marketing and targeting companies, and other downstream parties without a user’s consent.

5 47. The SCA also incorporates the ECPA’s broad definition of “electronic
6 communication” and “electronic storage.” 18 U.S.C. § 2711(1). Pursuant to the ECPA and SCA,
7 “electronic storage” means any “temporary storage of a wire or electronic communication
8 incidental to the electronic transmission thereof.” 18 U.S.C. § 2510(17)(A). This type of
9 electronic storage includes communications in intermediate electronic storage that have not yet
10 been delivered to their intended recipient.

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

14 49. When a Zynga user clicks on an ad, Zynga sends an electronic communication to
15 the third party advertiser allowing the user to view the advertiser’s website. By clicking an ad,
16 the Zynga user also tells Zynga, via an electronic communication, who the user is, what web
17 page the user is viewing, and where the user wants to go. This information is held in temporary
18 storage by Zynga pending the delivery of the user’s request to the advertiser website. By
19 divulging to third parties the user’s identity and what page they were viewing, Zynga is in
20 violation of 18 U.S.C. § 2702(a)(1).

21 50. The design of the Zynga’s applications and Zynga’s agreements to provide user
22 data to third-parties are evidence of Zynga’s clear conduct of divulging the identities of its users
23 to advertisers and other third parties. By divulging user identities and other user information to
24
25
26

1 third parties without user consent, Zynga intentionally violated 18 U.S.C. § 2702(l)(a). Zynga
2 intentionally disclosed user identities and other information to third parties to enhance its
3 profitability and revenue through advertising. The disclosures were not necessary for the
4 operation of Zynga's systems or to protect Zynga's rights or property.

5
6 51. The SCA definition of "electronic storage" also includes "storage of [a wire or
7 electronic] communication by an electronic communication service for purposes of backup
8 protection of such communication." 18 U.S.C. § 2510(17)(B). The Personally Identifiable
9 Information that Zynga users send via electronic communications to Zynga, such as their name,
10 is electronically stored by Zynga for backup purposes. The user's Personally Identifiable
11 Information, once registered with Zynga, remains available for viewing and re-access at a later
12 time by the user and other persons authorized by the user to access that information. This
13 storage is one of the main services that Zynga provides to its users.

14
15 52. In addition, the SCA prohibits "a person or entity providing remote computing
16 service to the public shall not knowingly divulge to any person or entity the contents of any
17 communication which is carried or maintained on that service." Defendant Zynga, as a remote
18 computing service provider, is in violation of this statute by divulging Personally Identifiable
19 Information to third party advertisers, internet marketing and targeting companies, and other
20 downstream parties without a user's consent.

21
22 53. Because Zynga thus operates as a "virtual filing cabinet" for its users, allowing
23 them to store and re-access that information at a later time, Zynga is also a "remote computing
24 service" provider pursuant to 18 U.S.C. § 2711(2).

25
26 54. As a result of Zynga's disclosure of user identities, Zynga gives unauthorized
access to and thereby divulges electronically-stored information to third parties about its users.

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

10 55. Zynga intentionally and knowingly divulged confidential and private information
11 relating to Plaintiff and Class members' stored electronic communications without the consent,
12 knowledge or authorization of Plaintiff and Class members.
13

14 56. Plaintiff and Class members are "person[s] aggrieved by [a] violation of [the
15 SCA] in which the conduct constituting the violation is engaged in with a knowing or intentional
16 state or mind" within the meaning of the SCA, are therefore entitle to recover under the SCA in a
17 civil action against Defendant Zynga. 18 U.S.C. § 2707(a).
18

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

24 58. Plaintiff and users of the Class therefore seek remedy as provided for by 18
25 U.S.C. § 2707(b) and (c), including such preliminary and other equitable or declaratory relief as
26 may be appropriate, damages to be proven at trial, including punitive damages, and a reasonable
attorney's fee and other litigation costs reasonably incurred.

1 59. Plaintiff and the Class, pursuant to 18 U.S.C. § 2707(c), are entitled to
2 preliminary, equitable, and declaratory relief, in addition to statutory damages of no less than
3 \$1,000 per violation, actual and punitive damages, reasonable attorneys' fees, and Zynga's
4 profits obtained from the violations described herein.

5
6 **COUNT III:**

7 **VIOLATION OF CAL. BUS. & PROF. CODE § 17200**

8 60. Plaintiff incorporates herein and realleges each allegation set forth in the previous
9 paragraphs.

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

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

17 63. As described herein, Zynga's disclosure of its users' Personally Identifiable
18 Information to third parties without their consent or authorization is a violation of the UCL.

19 64. Zynga has violated the "unlawful" prong of the UCL in that Zynga's conduct
20 violated the ECPA (18 U.S.C. § 2510 *et seq.*), the SCA (18 U.S.C. §2701 *et seq.*).

21 65. Zynga violated the fraudulent prong of the UCL by explicitly representing in its
22 agreement with Facebook that it would not make users' personal information available to any
23 third party. Zynga used those misrepresentations to induce users to submit to Zynga their
24
25
26

1 Personally Identifiable Information. Zynga then knowingly transmitted that information to third
2 parties without authorization.

3 66. Zynga violated the unfair prong of the UCL by gaining control over and divulging
4 to third parties its users' Personally Identifiable Information without consent and under false
5 pretenses.

6 67. Zynga's unfair or deceptive practices occurred primarily and substantially in
7 California. Zynga is headquartered in San Francisco, California, and decisions concerning the
8 retention and safeguarding the disclosure of user information were made in California. Zynga
9 maintains all or a substantial part of its computer systems containing user information in
10 California, and the disclosure of its users' information took place primarily and substantially in
11 California.

12 68. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff and the Class seek an order
13 of this Court permanently enjoining Zynga from continuing to engage in the unfair and unlawful
14 conduct described herein. Plaintiff and the Class also seek an order requiring Zynga to (1)
15 immediately cease the unlawful practices stated in this Complaint; and (2) awarding Plaintiff and
16 the Class reasonable costs and attorneys' fees pursuant to Cal. Code Civ. Proc. § 1021.5.

17
18
19 **COUNT VI:**

20 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT,**
21 **CAL. CIV. CODE § 1750**

22 69. Plaintiff incorporates herein and realleges each allegation set forth in the previous
23 paragraphs.

24 70. The Consumers Legal Remedies Act prohibits the act, use or employment by any
25 person of any deception, fraud, false pretense, false promise, misrepresentation, concealment,
26 suppression or omission of any material fact with intent that others rely upon such act in

1 connection with the sale or advertisement of any merchandise whether or not any person has in
2 fact been misled, deceived or damaged thereby.

3 71. As described within, Zynga has engaged in deceptive practices, unlawful methods
4 of competition, and/or unfair acts as defined by Cal. Civ. Code §§ 1750, *et seq.*, to the detriment
5 of Plaintiff and the Class.
6

7 72. Zynga knowingly, intentionally and unlawfully brought harm upon Plaintiff and
8 the Class by deceptively inducing Plaintiff and the Class to register with Zynga, supply Zynga
9 with personal and private information, and click on advertisements based upon deceptive and
10 misleading representations that it would not disclose their personal or private information to
11 third-parties.

12 73. Specifically, Zynga violated Cal. Civ. Code § 1750 in at least the following
13 respects:
14

- 15 a. by representing that goods or services have characteristics and benefits
16 that they do not have in violation of § 1770(a)(5);
17 b. by representing that a transaction confers or involves rights, remedies, or
18 obligations which does not have or involve, or which are prohibited by
19 law in violation of § 1770(a)(14); and
20 c. by representing that the subject of a transaction has been supplied in
21 accordance with a previous representation when it has not in violation of §
22 1770(a)(16).
23

24 74. Plaintiff and the Class have suffered harm as a direct and proximate result of the
25 Zynga's violations of law and wrongful conduct.
26

1 75. Under Cal. Civ. Code § 1780(a)-(b), Plaintiff and the Class seek injunctive relief
2 requiring Zynga to cease and desist the illegal conduct described herein, and any other
3 appropriate remedy for violations of the CLRA.
4

5 **COUNT V:**

6 **VIOLATION OF CALIFORNIA'S COMPUTER CRIME LAW,
7 CAL. PENAL CODE § 502**

8 76. Plaintiff incorporates herein and realleges each allegation set forth in the previous
9 paragraphs.

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

17 78. Zynga knowingly accessed and without permission took, copied, or made use of
18 Plaintiff's and Class members' Personally Identifiable Information in violation of Cal. Penal
19 Code § 502(c)(2).

20 79. Zynga knowingly and without permission used or caused to be used computer
21 services by impermissibly accessing, collecting, and transmitting Plaintiff's and Class members'
22 Personally Identifiable Information in violation of Cal. Penal Code § 502(c)(3).

23 80. Zynga knowingly and without permission provided or assisted in providing a
24 means of accessing a computer, computer system, or computer network by creating a system that
25
26

1 allowed advertisers to impermissibly access, collect, and transmit Plaintiff's and Class members'
2 Personally Identifiable Information in violation of Cal. Penal Code § 502(c)(6).

3 81. Zynga knowingly and without permission accessed or caused to be accessed
4 Plaintiff's and Class members' computers and/or computer networks by impermissibly divulging
5 Plaintiff's and Class members' Personally Identifiable Information to third parties in violation of
6 Cal. Penal Code § 502(c)(7).

7
8 82. Zynga knowingly and without permission introduced a computer contaminant, as
9 defined in Cal. Penal Code § 502(b)(10), by introducing computer instructions designed to
10 record or transmit to third parties Plaintiff's and the Class's Personally Identifiable Information
11 on Zynga's computer networks without the intent or permission of Plaintiff or the Class in
12 violation of Cal. Penal Code § 502(c)(8).

13
14 83. As a direct and proximate result of Zynga's violation of § 502, Zynga caused loss
15 to Plaintiff and the Class members in an amount to be proven at trial. Plaintiff and the Class are
16 entitled to the recovery of attorneys' fees pursuant to Cal. Penal Code § 502(e).

17 84. Plaintiff and Class members have also suffered irreparable injury as a result of
18 Zynga's unlawful conduct, including the collection and sharing of their personal information.
19 Additionally, because the stolen information cannot be returned, the harm from the security
20 breach is ongoing. Accordingly, Plaintiff and the Class have no adequate remedy at law,
21 entitling them to injunctive relief.
22

23 **COUNT VI:**

24 **BREACH OF CONTRACT**

25 85. Plaintiff incorporates herein and realleges each allegation set forth in the previous
26 paragraphs.

1 86. In order to offer gaming applications to Plaintiff and the Class, Facebook required
2 Zynga to its terms and conditions governing third-party application developers. In addition,
3 Zynga has its own private policy with users that it will not “provide any Personally Identifiable
4 Information to third-party advertising companies.” These policies are intended to protect Plaintiff
5 and the Class.
6

7 87. Plaintiff and the Class transmitted sensitive Personally Identifiable Information to
8 Zynga in exchange for Zynga’s implicit and explicit promise that it would not share that
9 Personally Identifiable Information with third parties, including but not limited to advertisers.
10

11 88. Zynga users pay for Zynga’s services with their personal information. Zynga’s
12 users exchange something valuable—access to their personal information—for Zynga’s services
13 and Zynga’s promise to safeguard that personal information pursuant to the Agreements.
14

15 89. Zynga collects revenues in large part because the Personally Identifiable
16 Information submitted by its users increases the value of Zynga’s advertising services and
17 marketable data. Because Zynga has access to highly personal information about its users,
18 Zynga’s advertising platform is particularly attractive to advertisers and marketers who can and
19 do use that personal information to deliver highly-targeted ads to Zynga’s users. Similarly,
20 because Zynga has access to highly personal information about its users, Zynga’s data set of user
21 information is particularly attractive to data gathering companies who can and do use that
22 personal information to sell marketing services to other third parties. In this regard, Zynga’s
23 services are vehicles to acquire personal information about consumers in order to sell that
24 personal information to third parties.
25
26

1 90. Zynga materially breached the Agreements referenced above, through its unlawful
2 conduct alleged herein, including its disclosure of Plaintiff s and the Class's personal information
3 to third parties.

4 91. As a result of Zynga's misconduct and breach of the Agreements described
5 herein, Plaintiff and the Class suffered injuries in an amount to be proven at trial.
6

7 **COUNT VII:**

8 **UNJUST ENRICHMENT**

9 92. Plaintiff incorporates herein and realleges each allegation set forth in the previous
10 paragraphs.

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

15 94. Zynga appreciates or has knowledge of this benefit.

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

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

20 97. 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

24 **PRAYER FOR RELIEF**

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

1 A. Certify this case as a class action on behalf of the Class defined above, appoint
2 Plaintiff John Swanson as class representative, and appoint his counsel as class co-counsel;

3 B. Declare that Zynga's actions, as described herein, violate the ECPA (18 U.S.C.
4 § 2510 *et seq.*), the SCA (18 U.S.C. § 2701 *et seq.*), California's Unfair Competition Law (Cal.
5 Bus. & Prof. Code § 17200, *et seq.*), California's Consumers Legal Remedies Act (Cal. Civ.
6 Code §§ 1750, *et seq.*), California's Computer Crime Law (Cal. Penal Code § 502, *et seq.*), and
7 constitute breach of contract, and unjust enrichment;
8

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

12 D. Disgorgement of all revenue earned from Zynga from its social gaming
13 applications offered on Facebook during the class period;

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

16 F. Awarding all economic, monetary, actual, consequential, and compensatory
17 damages caused Zynga's conduct, and if its conduct is proved willful, award Plaintiff and the
18 Class exemplary damages;
19

20 G. Award restitution against Zynga for all money to which Plaintiff and the Class are
21 entitled in equity;
22

23 H. Awarding Plaintiff and the Class their reasonable litigation expenses and
24 attorneys' fees as provided by 18 U.S.C. § 2520 and 18 U.S.C. § 2707(b)(3);

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

1 J. For such other and further relief as is just and proper under the circumstances.

2 **DEMAND FOR JURY TRIAL**

3 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a jury
4 trial as to all issues triable by a jury.

5
6
7 RESPECTFULLY SUBMITTED this 27th day of October, 2010.

8 KELLER ROHRBACK L.L.P.

9
10 By: 

11 Juli E. Farris, CA Bar No. 141716

12 Mark A. Griffin

13 David J. Ko

14 1201 Third Avenue, Suite 3200

15 Seattle, WA 98101-3052

16 Tel: (206) 623-1900

17 Fax: (206) 623-3384

18 jfarris@kellerrohrback.com

19 mgriffin@kellerrohrback.com

20 dko@kellerrohrback.com

21 *Attorneys for Plaintiff John Swanson*