

EXHIBIT A

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County of Santa Clara
Superior Court

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12
 13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 14 FOR THE COUNTY OF SANTA CLARA
 15

16 CHRISTALEE ABREU, individually and
 17 on behalf of a class of similarly situated
 individuals,

18 Plaintiff,

19 v.

20
 21 SLIDE, INC., a Delaware Corporation,
 22 and GOOGLE, INC., a Delaware
 corporation,

23 Defendants.
 24

Case No. 111C V215376

25 CLASS ACTION COMPLAINT FOR:

- 26 (1) Violations of Cal. Civ. Code § 1668
- 27 (2) Violations of Cal. Civ. Code § 1670.5
- 28 (3) Declaratory Relief
- (4) Injunctive Relief
- (5) Violations of Cal. Civ. Code § 1750 *et seq.*
- (6) Violations of Cal. Bus. & Prof. Code § 17200 *et seq.*
- (7) Fraud in the Inducement
- (8) Unjust Enrichment

DEMAND FOR JURY TRIAL

FAXED

1 **CLASS ACTION COMPLAINT**

2 Plaintiff Christalee Abreu, for her Class Action Complaint, alleges as follows upon
3 information and belief, based upon, *inter alia*, investigation conducted by her attorneys, except as to
4 those allegations pertaining to Plaintiff and her counsel personally, which are alleged upon personal
5 knowledge:

6 **NATURE OF THE ACTION**

7 1. This case is about Defendants Slide, Inc.'s ("Slide") and Google, Inc.'s ("Google")
8 (collectively, "Defendants") use of an online gaming application that encouraged its individual
9 customers to spend hundreds or even thousands of real dollars on virtual currency, goods, and
10 property under unconscionable terms that purported to give consumers no rights, value, or real
11 interest in their purchases. In contrast, Defendants allowed themselves to retain all profits from
12 consumers' transactions, were obliged to do absolutely nothing in consideration of consumers'
13 purchases, and could eliminate all access to consumers' money, goods, and property on a whim.

14 2. In August of 2011, Defendants decided to do exactly that, and announced that its
15 service – along with all its customers' investments – would cease to exist within a six-month
16 period.

17 **PARTIES**

18 3. Plaintiff Christalee Abreu ("Abreu" or "Plaintiff") is a natural person domiciled in
19 the State of California.

20 4. Defendant Google, Inc. ("Google") is a corporation incorporated and existing under
21 the laws of the State of Delaware with its principal place of business located at 1600 Ampitheatre
22 Parkway, Mountain View, California 94043. Google does business throughout the United States,
23 including in the State of California and this District.

24 5. Defendant Slide, Inc. ("Slide") is a corporation incorporated and existing under the
25 laws of the State of Delaware with its principal place of business at 1600 Ampitheatre Parkway,
26 Mountain View, California 94043. Slide is a wholly owned subsidiary of Defendant Google. Slide
27 does business throughout the United States, including in the State of California and this District.

1 **SPP's Revenue Model: "Virtual Items" and the VIP Program**

2 15. Defendants did not charge an initial or monthly subscription fee for basic access to
3 the SPP game. However, the design of the SPP platform encouraged customers to purchase in-
4 game virtual items with real currency, which, once purchased, could be displayed on the paying
5 customer's virtual pet and within the pet's virtual habitat.

6 16. Virtual items in SPP could be obtained in two ways. First, "regular" items could be
7 obtained using "coins," which users earned by performing various tasks and attaining achievements
8 within the game. Second, "golden" items could be obtained solely by spending "gold," which had
9 to be purchased with actual cash payments using a debit or credit card, or a user's PayPal account.
10 During all relevant time periods, gold could be purchased for 10 cents on the dollar, with no cap on
11 the amount that an individual user could buy. For example, \$10 in actual currency could be used to
12 purchase 100 gold.

13 17. In designing and maintaining the SPP game, Defendants' primary goal was to induce
14 users to purchase virtual gold. Accordingly, while Defendants made a small number of "regular"
15 items immediately available to new SPP users, the vast majority of items, features, and content
16 within SPP could be obtained only with gold.

17 18. Defendants directly and expressly influenced the relative value of new virtual items
18 introduced to the game by releasing golden items in limited quantities. For example, while a large
19 quantity of 5,000 virtual hotdogs would be worth relatively little on an individual basis, a limited
20 quantity of 10 virtual stuffed animals would be seen as rarer and, consequently, more desirable by
21 SPP customers and worth much more. Defendants highlighted the limited quantities of rare items
22 to encourage sales, by stating, for example, "Get them now, they will run out!"

23 19. Moreover, once limited items were "sold out," Defendants would often further
24 manipulate the SPP market by "restocking" limited items and selling them at a higher price. Thus,
25 Defendants' representations about the limited available quantity of certain items were in many
26 cases arbitrary and false—and always to Defendants' benefit.

27 20. Near the end of 2010, Defendants created an additional source of revenue by
28 introducing a new "VIP Status" subscription program, which allowed SPP users access to

1 “exclusive” premium content that was not otherwise available to traditional SPP players.

2 Defendants charged users \$4.95 per month to sign up for and retain their VIP status each month.

3 On information and belief, thousands of SPP users signed up for the VIP Status program within the
4 first month of its introduction.

5 **The Secondary Market for SPP Virtual Items**

6 21. Virtual items purchased within SPP are fully transferable among SPP users, leading
7 to the development of a robust secondary market to buy and sell “used” items. Indeed, Defendants
8 encouraged customers to buy and sell virtual items amongst each other through “trades,” which
9 could either be gratuitous gifts or transactions for actual cash utilizing third parties, such as PayPal,
10 to coordinate the exchange of cash for virtual items.

11 22. To facilitate such trades, Defendants allowed users to advertise for and solicit trades
12 on user forums run on its website (www.spp.com). Much like established online auction websites,
13 such as Ebay, users can “rate” each transaction they have with a seller, and such information is
14 made available to other SPP users who may later purchase virtual goods from the same seller.

15 23. Because of the scarcity of certain items released by Defendants, the value of virtual
16 items often grew exponentially once they appeared on the SPP secondary market.

17 24. Defendants enjoyed on-going monetary benefits from its own facilitation of and
18 continued influence over the SPP secondary market, as shifts in the value of virtual goods
19 incentivized SPP users to purchase newly released gold items from Defendants (again, using “gold”
20 that was purchased with actual cash) which could later be sold and/or traded.

21 25. In June of 2010, Defendants announced a new “Authorized Reseller Program,”
22 which allowed certain SPP users to sell virtual goods directly to other SPP customers. The
23 Authorized Reseller Program expressly granted authorized SPP users a license to use “assets and
24 logos from SPP,” and the ability to deliver virtual goods directly to other SPP users’ accounts. On
25 information and belief, Authorized Resellers paid a fee directly to Defendants in exchange for the
26 right to sell virtual items under the program.

27 26. Thus, Defendants allowed, encouraged, and assisted its customers in buying and
28 selling virtual items for cash—whether directly through the SPP game (using gold) or through the

1 SPP-hosted and endorsed trading platforms—and were well aware of the value of such items to SPP
2 users.

3 **SPP Users' Rights to Virtual Goods and Currency**

4 27. While SPP is intentionally designed to encourage and incentivize users to purchase
5 (and later re-sell or trade) virtual currency, goods, and property within the game, Defendants
6 purport to give users no rights, value, or other tangible or transferable interest in their purchases and
7 property.

8 28. In particular, the Terms of Use (“TOU”) that purportedly govern the use of SPP
9 provide in relevant part that: “Other than a limited, personal, revocable, non-transferable, non-
10 sublicensable license to use Virtual Goods or Virtual Currency in the Service, you have no right or
11 title in or to any such Virtual Goods or Virtual Currency appearing or originating in the Service, or
12 any other attributes associated with use of the Service or stored within the Service.”

13 29. Moreover, the TOU purport to give Defendants “the absolute right to manage,
14 regulate, control, modify and/or eliminate such Virtual Currency and/or Virtual Goods as it sees fit
15 in its sole discretion, and the Company shall have no liability to you or anyone for the exercise of
16 such rights.”

17 30. While the TOU purport to grant SPP users a “limited license right” to use the virtual
18 products and services they purchased with cash, those same terms provide that such use was limited
19 by, essentially, whether or not Defendants felt like allowing it. In particular, the terms described
20 customers’ limited license as a right to use the products they purchased “when, as, and if allowed.”

21 31. Further, while aspects of the TOU give an impression of objective fairness towards
22 its users (stating, for example, that any user may “lose all Virtual Goods and Virtual currencies in
23 your account” *if* Defendants “delete your account as provided in these Terms”), in reality those
24 terms are governed by no standards at all (stating, in the same sentence, that Defendants “may
25 delete your account for any reason or no reason at all”).

26 32. In other words, while Defendants encourage users to spend hundreds or even
27 thousands of dollars on virtual gold and are aware of the demonstrable value of virtual items,
28 Defendants simultaneously attempt to assign no value to users’ purchases and reserve the right to

1 eliminate them at any time, for any reason, and without notice.

2 **Defendants' June 2011 Announcements and New Features**

3 33. In early June of 2011, Defendants announced several changes to SPP through the
4 game's official online forums. The most noteworthy announcement was the discontinuation of the
5 SPP "gold" purchasing program. There, Defendants announced that SPP users could no longer
6 purchase gold using cash, and that Defendants would no longer be releasing new "gold items" for
7 purchase.

8 34. Because numerous users had gold balances remaining in their accounts at the time of
9 the announcement, Defendants additionally instructed SPP users to spend any outstanding gold on
10 existing virtual items on or before June 30, 2011. After that date, Defendants stated that no gold
11 items would be available, and the value of any gold remaining in users' accounts would disappear
12 and would not be refunded.

13 35. Defendants' announcements caused uproar among SPP users, many of whom
14 worried that their investments of both time and money into the SPP application were in jeopardy.

15 36. In response, Defendants expressly reassured users that the reason for the changes
16 was that "SPP had become a mature product, capable of standing on its own," that "We have
17 always been focused on features that would one day allow SPP to thrive on its own, and we feel it
18 has now reached that point," and that rumors of discontinuing support for SPP entirely "in the near
19 future" were untrue.

20 37. Defendants also promised customers that "it [was] completely untrue" that SPP
21 would be turned off in July 2011 or "in the near future." Defendants promised that they had "no
22 plans to shut the site down" because Slide had been working to "optimize SPP.com to be as
23 efficient as possible and require minimal maintenance and resources."

24 38. Defendants also used the June 2011 announcements as a final sales pitch to convince
25 users to sign up for SPP VIP Status. Following the promises regarding SPP's longevity and
26 continued support described above, Defendants informed users that "[a]fter July 1 [2011], we won't
27 be accepting any new VIP subscriptions," but promised those who signed up for the program before
28 June 30, 2011 that they would enjoy continued access to the VIP Status "for life."

1 39. To further its campaign to register users for VIP Status, Defendants programmed a
2 prompt to appear on customers' screens after logging into SPP. That prompt warned customers –
3 even those already signed up for the VIP Status program – that they would lose their VIP Status
4 indefinitely unless they re-entered their debit or credit card information by June 30, 2011.

5 **SPP Customers React to Defendants' Promises**

6 40. Defendants' June 2011 announcements had the calculated impact of increasing the
7 value and demand for both the VIP Status and existing in-game items.

8 41. Because users who paid for VIP Status before June 30, 2011 were told that they
9 would enjoy the program "for life" after that date, thousands of SPP users either renewed their
10 monthly VIP subscriptions or signed up for the VIP Status program for the first time.

11 42. Similarly, because Defendants had stopped releasing new, in-game content and
12 because Defendants actively encouraged and facilitated the sale of virtual items on the secondary
13 market, customers purchased and stockpiled – both through SPP's own user forums and through
14 Authorized Resellers – hundreds of virtual items, anticipating that such items would maintain and
15 even increase in value after June 30, 2011.

16 **Defendants' Sudden Cancellation of the SPP Platform**

17 43. In July 2011, Defendants eliminated all gold balances remaining in SPP customer
18 accounts. Defendants did not offer to refund the cash value of gold that was not spent through SPP
19 prior to that date.

20 44. In August 2011, and despite the assurances made regarding the continued support of
21 SPP and the "lifetime" benefits purchased by many users, Defendants announced that the SPP
22 gaming application would be terminated within six months. At that time, Defendants explained that
23 SPP users would lose online access to their virtual pet and all in-game goods that were purchased
24 either directly through SPP, third parties, or otherwise.

25 45. In a subsequent announcement on or about September 6, 2011, Defendants
26 confirmed that they "will be taking SPP offline on March 6, 2012."

27 46. To date, Defendants have failed to provide a viable method or procedure for
28 consumers to retain their in-game purchases or property after SPP is terminated. Instead,

1 Defendants have offered only two limited options to consumers, neither of which allows SPP
2 players to fully access their purchases or their pets' environments: (1) Defendants have advised SPP
3 customers that they can take "screenshots" of their pets, habitats, and other purchased items (akin to
4 taking a still photograph of their purchases); and (2) Defendants have released an "SPP Lite"
5 application, which, in effect, takes animated screenshots of those same items, but will not display
6 all items, limits the functionality of other items, and otherwise prevents users from accessing their
7 in-game purchases.

8 47. Accordingly, and because both options entirely strip the value from consumers'
9 original purchases (or fails to allow customers to even display certain purchased items), SPP users
10 each stand to lose access to investments that cost many users hundreds or even thousands of dollars.

11 48. Even though Defendants announced the termination date of the SPP game and
12 recognized that SPP virtual items will soon become effectively valueless, Defendants continue to
13 allow existing users to purchase virtual items for cash through the Authorized Reseller Program and
14 allowed new users to join SPP throughout September 2011.

15 **FACTS RELATING TO PLAINTIFF ABREU**

16 49. Plaintiff Christalee Abreu joined SPP in 2009 and has been an active user since that
17 time. As of August, 2011, Plaintiff had created and maintained three active virtual pets through
18 three separate SPP accounts.

19 50. Plaintiff has purchased numerous in-game items with actual cash that she has used to
20 develop habitats for her virtual pets. Since she began playing SPP, Plaintiff has spent in excess of
21 \$1,000 purchasing gold from Defendants as well as in-game items from third-party sellers.

22 51. Soon after the program was announced in late 2010, Plaintiff purchased VIP access
23 for one of her SPP accounts. Plaintiff continued to pay for VIP status for this account in each
24 successive month through June, 2011.

25 52. In June, 2011, Plaintiff viewed Defendants' announcements encouraging SPP
26 players to purchase VIP subscriptions before Defendants eliminated the service. In response, and in
27 reliance on Defendants' representation that it would continue to support SPP, Plaintiff purchased
28 VIP subscriptions for her two remaining accounts.

1 53. Prior to August 27, 2011, Plaintiff had no knowledge that Defendants intended to
2 terminate the SPP game. Plaintiff continued to purchase in-game items on the secondary market up
3 until Defendants' announcement that they planned to terminate SPP in March, 2012.

4 CLASS ALLEGATIONS

5 54. Plaintiff Christalee Abreu brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and
6 23(b)(3) on behalf of herself and two classes of similarly situated individuals (the "Classes")
7 defined as follows:

8 **SPP Class:** All persons in the United States who have one or more registered SuperPoke!
9 Pets accounts and have purchased virtual gold or in-game items from SPP-certified resellers.

10 **VIP Class:** All persons in the United States who have purchased one or more months of the
11 SuperPoke! Pets VIP status program.

12 Excluded from the Class are 1) any Judge or Magistrate presiding over this action and members of
13 their families; 2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any
14 entity in which the Defendants or their parents have a controlling interest and their current or
15 former employees, officers and directors; 3) Plaintiff's counsel, 4) persons who properly execute
16 and file a timely request for exclusion from the class; 5) the legal representatives, successors or
17 assigns of any such excluded persons; and 6) all persons who have previously had claims similar to
18 those alleged herein finally adjudicated or who have released their claims against Defendants.

19 Further excluded are Plaintiff's attorneys.

20 55. Upon information and belief, there are thousands of persons in the Classes, such that
21 joinder of all members is impracticable.

22 56. Plaintiff's claims are typical of the claims of all of the other members of the Classes.
23 Plaintiff will fairly and adequately represent and protect the interests of the other members of the
24 Classes. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation
25 and class actions. Plaintiff and her counsel are committed to vigorously prosecuting this action on
26 behalf of the members of the Classes, and have the financial resources to do so. Neither Plaintiff
27 nor her counsel have any interest adverse to those of the other members of the Classes.
28

1 57. Absent a class action, most members of the Classes would find the cost of litigating
2 their claims to be prohibitive, and will have no effective remedy. The class treatment of common
3 questions of law and fact is also superior to multiple individual actions or piecemeal litigation in
4 that it conserves the resources of the courts and the litigants, and promotes consistency and
5 efficiency of adjudication.

6 58. Defendants have acted and failed to act on grounds generally applicable to Plaintiff
7 and the other members of the Classes, requiring the Court's imposition of uniform relief to ensure
8 compatible standards of conduct toward members of the Classes.

9 59. The factual and legal bases of Defendants' liability to Plaintiff and to the other
10 members of the Classes are the same, resulting in injury to Plaintiff and all of the other members of
11 the Classes. Plaintiff and the other members of the Classes have all suffered harm and damages as
12 a result of Defendants' wrongful conduct.

13 60. There are many questions of law and fact common to the claims of Plaintiff and the
14 other members of the Classes, and those questions predominate over any questions that may affect
15 individual members of the Classes. Common questions for the Classes include but are not limited
16 to the following:

- 17 a) Whether Defendants' TOU, and the provisions contained there, are invalid
18 and unenforceable;
- 19 b) Whether Defendants were aware of the impending termination of the SPP
20 application prior to the June, 2011 announcements described herein;
- 21 c) Whether Defendants manipulated the primary or secondary market for SPP
22 virtual goods;
- 23 d) Whether Defendants' conduct violated the California Consumer Legal
24 Remedies Act with respect to the Classes;
- 25 e) Whether Defendants' conduct violated the California Unfair Competition
26 Law with respect to the Classes;
- 27 f) Whether Defendants' conduct constituted fraud in the inducement with
28 respect to the Classes;

1 Clauses.”

2 66. Under the TOU, Defendants reserve the right to “delete your account for any reason
3 or for no reason at all,” which causes a consumer to “lose all Virtual Goods and Virtual Currencies
4 in your account,” many of which were purchased with actual currency. Defendants retain “the
5 absolute right to manage, regulate, control, modify and/or eliminate such Virtual Currency and/or
6 Virtual Goods as it sees fit in its sole discretion, and [Defendants] shall have no liability to you or
7 anyone for the exercise of such rights.”

8 67. Similarly, in a section entitled “ADDITIONAL RIGHTS OF THE COMPANY,” the
9 TOU again grants Defendants “the right to refuse registration of, or cancel Your user account
10 and/or User ID in its discretion for any reason or for no reason. Any content that has been uploaded
11 through the Service, any Virtual Goods, Virtual Currency, Music . . . or other characteristic of your
12 account . . . may be deleted at any time without notice to you. The Company is exempt from
13 liability to any person for any claim based upon its good faith termination of an account or
14 disabling of access to or removal of any content.”

15 68. Accordingly, while Defendants have intentionally designed the SPP platform to
16 encourage players to spend actual money on virtual currency and goods, Defendants reserve the
17 right to unilaterally cancel and permanently eliminate these purchases at their sole and unfettered
18 discretion. While the TOU purport to limit Defendants’ liability only to claims arising from “good
19 faith” account terminations, the TOU simultaneously provide that “any reason”—or indeed, no
20 reason at all—will constitute “good faith” and shield Defendants from liability.

21 69. Under a section entitled “INDEMNIFICATION,” Defendants’ TOU provide that
22 consumers must “agree to indemnify and hold the Company (and any employee, officer, director or
23 affiliate of the Company, each a ‘Company Person’) harmless (including costs and attorneys’ fees)
24 from any claim or demand made by any third party due to or arising out of your access to or use of
25 the Service, [or] the violation of these Terms by you.”

26 70. Notably, there are no limitations on Defendants’ right to seek indemnification from
27 its users, such that the TOU would require users to indemnify Defendants for entirely frivolous or
28 groundless lawsuits, or even disputes arising from the user’s own claims against Defendants (such

1 as disputes between Defendants and applicable insurance carriers).

2 71. The TOU also purport to limit the period for which a consumer may recover
3 monetary damages. Under a section entitled “DISCLAIMERS; LIMITATIONS; WAIVERS OF
4 LIABILITY,” the TOS provides that “UNDER NO CIRCUMSTANCES WILL THE COMPANY
5 PARTY BE LIABLE TO YOU FOR MORE THAN THE AMOUNT YOU HAVE PAID THE
6 COMPANY IN THE NINETY (90) DAYS IMMEDIATELY PRECEDING THE DATE ON
7 WHICH YOU FIRST ASSERT ANY . . . CLAIM.”

8 72. This exculpatory provision is designed to and does ensure that, even if a consumer
9 discovers a viable claim against Defendants and immediately brings a lawsuit, the consumer will be
10 entitled to little or no money damages because the claim may have arisen earlier than 90 days
11 immediately preceding the date on which the claim is asserted. For the majority of consumers who
12 do not immediately discover their claims—even if such claims were concealed by Defendants—or
13 cannot secure representation, the exculpatory clause is a complete bar to recovery.

14 73. Defendants further immunize themselves from liability by limiting all applicable
15 statutes of limitations period. Under a heading entitled “Statute of Limitations,” the TOS provides
16 that “You and the Company both agree that regardless of any statute or law to the contrary, any
17 claim or cause of action arising out of or related to use of the Service, Terms or Privacy Policy must
18 be filed within ONE (1) YEAR after such claim or cause of action arose or be forever barred.”

19 74. Defendants also include a one-sided arbitration clause, positioned at the end of the
20 TOU under a section entitled “MISCELLANEOUS”, that does the following:

- 21 a. Allows Defendants to bring any claim for injunctive relief in state or federal court,
22 but requires that consumers irrevocably waive all rights to seek injunctive or any
23 other equitable relief. In other words, Defendants reserve their own rights to bring
24 suit in federal or state court for injunctive relief, but require that consumers
25 irrevocably waive that right.
- 26 b. Uses the “commercial arbitration rules” of the American Arbitration Association,
27 which under R-4 (a)(ii) of their rules, Plaintiff would be required to pay a \$775 filing
28 fee.

- 1 c. Provides no opportunity for consumers to recover costs or attorneys' fees even if
2 their arbitrations are successful.
- 3 d. Requires consumers to initiate and engage in "informal negotiations" with
4 Defendants for "at least thirty (30) days before initiating any arbitration or court
5 proceeding," thereby delaying consumers' ability to seek redress and lowering the
6 amount of damages available pursuant to the limitations described in paragraph 71,
7 above.

8 75. The sum total of Defendants' numerous "Get out of Jail Free Clauses" mean, that if
9 Plaintiff wanted the chance to recover her money, goods, or property after Defendants eliminated
10 them without cause, the following rules would govern:

- 11 a. She would be required to pay an initial \$775 filing fee for an arbitration;
12 b. Unlike Defendants, she would have no right to seek injunctive relief;
13 c. She would face insurmountable hurdles in establishing monetary damages, since
14 Defendants can purportedly eliminate all Virtual Goods and Currency without notice
15 "for any reason or for no reason" and Defendants are "exempt from liability" as a
16 result of such action;
- 17 d. She would only be allowed to seek monetary damages based on monies paid to
18 Defendants in the 90 days prior to notifying Defendants of her claim, which would
19 effectively be reduced to 60 days while Plaintiff attempted to engage in the required
20 "informal negotiations" prior to filing her complaint;
- 21 e. Even if she won, she would not be entitled to recover any of her actual costs and
22 attorneys fees, regardless of Defendants' level of culpability; and
23 f. If she lost she would be responsible for paying all the costs borne by Defendants,
24 including their attorneys' fees.

25 76. No reasonable attorney would represent a consumer in such arbitration on a
26 contingency basis. (And indeed, a reasonable attorney would be duty bound to recommend that the
27 consumer not pay him or her to bring such arbitration on a fee-based compensation model.)

28 77. A reasonably sophisticated individual would not be able to navigate the applicable

1 Commercial Arbitration Rules, let alone successfully argue that the Indemnification and Limitations
2 clauses are not enforceable.

3 78. As Defendants know, under these sets of rules, no rational economic actor would
4 ever initiate arbitration against it.

5 79. On information and belief, no consumer has ever initiated arbitration against
6 Defendants under these TOU.

7 80. Pursuant to its Consumer Due Process Protocol, the American Arbitration
8 Association would not accept or preside over arbitration between Plaintiff and Defendants based
9 upon the one-sided and unfair terms contained in Defendants' TOU.

10 81. Under California law, it is illegal to insert exculpatory clauses into consumer
11 adhesion contracts. Specifically, Cal. Civ. Code § 1668 states:

12 All contracts which have for their object, directly or indirectly, to exempt anyone
13 from responsibility for his own fraud, or willful injury to the person or property
14 of another, or violation of law, whether willful or negligent, are against the policy
of the law.

15 82. Moreover, California Courts have found contracts which contain an exculpatory
16 clause to be unconscionable and against public policy at the time they are made, and therefore, in
17 violation of Cal. Civ. Code § 1670.5, which states:

18
19 If the court as a matter of law finds the contract or any clause of the contract to
20 have been unconscionable at the time it was made the court may refuse to
21 enforce the contract, or it may enforce the remainder of the contract without the
unconscionable clause, or it may so limit the application of any unconscionable
clause as to avoid any unconscionable result

22 83. Accordingly, Plaintiff desires a judicial determination of the respective rights and
23 duties of Plaintiff and Defendants with respect to Defendants' "Get Out of Jail Free Clauses" and a
24 declaration that Defendants' "Get Out of Jail Free Clauses," both separately and together, are
25 unconscionable and unenforceable pursuant to Cal. Civ. Code § 1668 and Cal. Civ. Code § 1670.5.

26 84. Plaintiff and members of the Class have adverse legal interests, and there is a
27 substantial controversy between Plaintiff, members of the Classes, and Defendants of sufficient
28 immediacy and reality to warrant the issuance of a declaratory judgment as to whether Defendants'

1 "Get Out of Jail Free Clauses" are unconscionable and unenforceable pursuant to Cal. Civ. Code §
2 1668 and Cal. Civ. Code § 1670.5.

3 85. Pursuant to Code of Civil Procedure 1060, such a declaration is necessary and
4 appropriate at this time in order that Plaintiff and Defendants may ascertain their relative rights and
5 duties with respect to the TOS.

6 **SECOND CAUSE OF ACTION**
7 **Declaratory Relief – Defendants' Terms of Use**
8 **Lack Mutuality and Are Illusory**
9 **(Individually and on behalf of the Classes)**

10 86. Plaintiff incorporates by reference the foregoing allegations as if fully set forth
11 herein.

12 87. Based on the allegations raised throughout the Complaint and in Plaintiff's First
13 Cause of Action (incorporated herein), Defendants' TOU lack mutuality of obligation and are
14 illusory.

15 88. Specifically, the TOU purport to give SPP users no rights, value, or other interest in
16 their purchases and purport to give Defendants the right to unilaterally terminate users' accounts
17 and eliminate their purchases without notice and in Defendants' sole, unfettered discretion.

18 89. Moreover, Plaintiff has no meaningful way to enforce the TOU and Defendants thus
19 have no obligation to honor any of their contractual obligations.

20 90. Members of the Classes and Defendants have adverse legal interests, and there is a
21 substantial controversy between members of the Classes and Defendants of sufficient immediacy
22 and reality to warrant the issuance of a declaratory judgment as to whether Defendants' Terms of
23 Use Agreement is invalid and unenforceable against Plaintiff and the Classes.

24 91. Plaintiff desires a judicial determination of the respective rights and duties of
25 Plaintiff and Defendants with respect to the TOU and a declaration that Defendants' TOU is invalid
26 and unenforceable.

27 92. Pursuant to Code of Civil Procedure 1060, such a declaration is necessary and
28 appropriate at this time in order that Plaintiff and Defendants may ascertain their relative rights and

1 duties with respect to the Terms of Use Agreement.

2 **THIRD CAUSE OF ACTION**
3 **Injunctive Relief**
4 **(Individually and on behalf of the Classes)**

5 93. Plaintiff incorporates by reference the foregoing allegations as if fully set forth
6 herein.

7 94. As alleged herein, in August 2011, Defendants suddenly announced that the SPP
8 gaming application would be terminated by March 6, 2012. After that date, SPP users will lose
9 online access to their virtual pet and all in-game goods that were purchased either directly through
10 SPP, third parties, or otherwise.

11 95. To date, Defendants have not made available any method by which consumers can
12 continue to fully access their in-game purchases and other investments after Defendants terminate
13 the SPP platform in March 2012. The two limited options that have been announced by Defendants
14 entirely strip the value from consumers' original purchases or fail to allow consumers to even
15 display certain purchased items.

16 96. If Defendants are allowed to terminate the SPP application as planned in March
17 2012, Plaintiff and Class members will permanently lose access to their investments and property,
18 which was purchased with actual and valuable currency.

19 97. Accordingly, Plaintiff seeks an injunction enjoining Defendants from terminating
20 the SPP gaming application, continuing until Defendants make available adequate methods by
21 which Plaintiff and the Class can continue to fully access their investments, property, and goods
22 outside of the SPP application.

23 **FOURTH CAUSE OF ACTION**
24 **Violation of the Consumer Legal Remedies Act Cal. Civ. Code § 1750 *et seq.***
25 **(Individually and on behalf of the Classes)**

26 98. Plaintiff incorporates by reference the foregoing allegations as if fully set forth
27 herein.

28 99. The Consumers Legal Remedies Act ("CLRA") prohibits the act, use or employment
by an person of any deception, fraud, false pretense, misrepresentation, concealment, suppression,

1 or omission of any material fact with intent that others rely upon such act in connection with the
2 sale or advertisement of any merchandise whether or not any person has in fact been misled,
3 deceived or damaged thereby.

4 100. The CLRA applies to Defendants' actions and conduct as described herein because it
5 extends to transactions that are intended to result, or which have resulted, in the sale of goods or
6 services to consumers.

7 101. Defendants are "persons" as defined by Cal. Civ. Code § 1761(c).

8 102. Plaintiff and each member of the Classes are "consumers" as defined by Cal. Civ.
9 Code § 1761(d).

10 103. SPP and the products provided therefrom are "goods" and/or "services" within the
11 meaning of Cal. Civ. Code § 1761(a) and (b), respectively.

12 104. As described herein, Defendants engaged in deceptive practices, unlawful methods
13 of competition, and/or unfair acts as defined by Cal. Civ. Code §§ 1750 et seq., to the detriment of
14 Plaintiff and the Classes.

15 105. Defendants acted with knowledge, and intentionally and unlawfully brought harm
16 upon Plaintiff and the Classes by deceptively inducing Plaintiff and the Classes to spend money and
17 purchase "gold" and "gold items" while retaining the right to eliminate such purchases without
18 notice or cause, to engage in secondary markets for the goods, and to join the "VIP Status" program
19 while knowing the imminent termination of the application would eliminate the value of the goods
20 and services.

21 106. Specifically, Defendant violated Cal. Civ. Code § 1750 in at least the following
22 respects:

23 a. In violation of § 1770(5), representing that goods or services have characteristics,
24 uses, or benefits which they do not have;

25 b. In violation of § 1770(9), advertising goods and services with intent not to sell them
26 as advertised;

27 c. In violation of § 1770(1), representing that a transaction confers or involves rights,
28 remedies, or obligations which it does not involve;

1 d. In violation of § 1770(19), inserting an unconscionable provision in a contract.

2 107. Defendants' unfair or deceptive acts or practices occurred repeatedly in Defendants'
3 business, and were capable of deceiving a substantial portion of the public who registered for
4 Defendants' application.

5 108. The facts misrepresented and/or omitted by Defendants to Plaintiff and the Classes
6 are material in that a reasonable consumer would have considered them to be important in deciding
7 whether to purchase products from Defendants or the Defendants' affiliate dealers and join
8 Defendants' "VIP Status" program. Had Plaintiff and the Classes known the application would be
9 terminated and the goods would be rendered worthless, they would not have purchased goods from
10 Defendants, their affiliate dealers, or joined (or renewed subscriptions for) the "VIP Status"
11 program.

12 109. As a direct and proximate result of Defendants' violation of Cal. Civ. Code § 1750,
13 *et seq.*, Plaintiff and each member of the Classes have suffered harm in the form of monies paid to
14 Defendant, as well as a diminution in value of the virtual items that they purchased from
15 Defendants. Plaintiff, on behalf of herself and the Classes, seeks injunctive relief and monetary
16 damages under the CLRA. For the sake of clarity, Plaintiff specifically disclaims any right to
17 recover damages under the CLRA at this time.

18 **FIFTH CAUSE OF ACTION**
19 **Violation of the Unfair Competition Law Cal. Bus. & Prof. Code § 17200 *et seq.***
20 **(Individually and on behalf of the Classes)**

21 110. Plaintiff incorporates by reference the foregoing allegations as if fully set forth
22 herein.

23 111. California's Unfair Competition Law ("UCL") protects both consumers and
24 competitors by promoting fair competition in commercial markets for goods and services.

25 112. The UCL prohibits any unlawful, unfair or fraudulent business act or practice. A
26 business practice need only meet one of the three criteria to be considered unfair competition. An
27 unlawful business practice is anything that can properly be called a business practice and that at the
28 same time is forbidden by law. An unfair business practice is any such practice whose harm to the
victim outweighs its benefits.

1 113. As described above, Defendants have violated the “unlawful” prong of the UCL by
2 violating the CLRA.

3 114. As described herein, Defendants have violated the “unfair” prong of the UCL by
4 inducing Plaintiff and members of the Classes to purchase goods and services from Defendants and
5 Defendants’ affiliates. As described herein and among other examples of unfair conduct,
6 Defendants lured consumers into buying “gold,” entering into third party transactions with
7 Defendants’ “affiliates” and/or joining the “VIP Status” program while: (1) offering nothing in
8 consideration for users’ cash payments for gold and virtual items; (2) reserving the unilateral right
9 to terminate user accounts and eliminate user purchases without notice or cause; (3) failing to
10 disclose material information regarding the impending termination of the SPP gaming application.
11 The injuries caused by Defendants’ conduct are not outweighed by any countervailing benefits to
12 consumers or competition, and Plaintiff and members of the Classes could not have reasonably
13 avoided the injuries they sustained.

14 115. As described herein, Defendants have also violated the “fraudulent” prong of the
15 UCL by knowingly and willfully making false and misleading statements about the continued
16 operation of the SPP gaming application and VIP Status Program, and failing to disclose material
17 information regarding the impending termination of the application and the total loss of value of
18 “gold,” “gold items,” and the money spent on the VIP Status program.

19 116. Defendants’ false representations and omissions were likely to mislead Plaintiff and
20 members of the Classes from acting reasonably under the circumstances, and constitutes a deceptive
21 trade practice in violation of the UCL.

22 117. As a direct and proximate result of Defendants’ unlawful, unfair, and fraudulent acts,
23 Plaintiff and each member of the Classes have suffered injury in fact and lost money by purchasing
24 “gold” within the SPP gaming application, by buying goods from Defendants’ “affiliates,” and by
25 joining Defendants’ “VIP status” program. Plaintiff and the Classes have also been harmed by the
26 diminution in value of the virtual items that they purchased from Defendants.

27 118. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining
28 Defendants from continuing to engage in the unfair and unlawful conduct described herein.

1 Plaintiff seeks an order requiring Defendant to (1) immediately cease the unlawful practices alleged
2 in this Complaint; (2) make full restitution of all funds wrongfully obtained; (3) immediately cease
3 the permanent termination of the application; and (4) pay interest, attorneys' fees, and costs
4 pursuant to Cal. Code Civ. Proc. § 1021.5.

5 **SIXTH CAUSE OF ACTION**
6 **Fraud in the Inducement**
7 **(Individually and on behalf of the Classes)**

8 119. Plaintiff incorporates by reference the foregoing allegations as if fully set forth
9 herein.

10 120. As described herein, Defendants made false and misleading statements regarding the
11 continued, long-term operation of the SPP gaming application and/or failed to disclose material
12 information regarding the impending termination of the SPP application.

13 121. Through the misrepresentations and omissions detailed herein, Defendants
14 wrongfully induced Plaintiff and the members of the VIP Class to purchase or renew VIP Status
15 program subscriptions "for life" in June 2011, knowing that the SPP application would be
16 terminated shortly thereafter.

17 122. Further, Defendants wrongfully induced Plaintiff and the members of the SPP Class
18 to purchase "gold items" by making false representations regarding the limited quantity of such
19 items, by failing to disclose the actual quantity of such items that would eventually be offered for
20 sale through the SPP application, and by encouraging users to continue to purchase "gold" virtual
21 items knowing that the SPP application would be terminated shortly thereafter.

22 123. Defendants knew or should have known that its misstatements and omissions
23 regarding the long-term availability of the SPP application and VIP Status program, as well as the
24 limited quantity of certain "gold" items, would be misleading to Plaintiff and the Classes.

25 124. Defendants intended that Plaintiff and the other members of the Classes rely upon
26 their misstatements and omissions regarding the long-term availability of the SPP application and
27 VIP Status program, as well as the limited quantity of certain "gold items."

28 125. Plaintiff and the other members of the putative Classes relied on Defendants'
misrepresentations and omissions as evidenced by their purchase or renewal of subscriptions to the

1 VIP Status program in June 2011 and purchase of gold items.

2 126. In deceiving Plaintiff and members of the Classes as described herein, Defendants
3 have engaged in fraudulent practices designed to induce consumers to register for or renew
4 subscriptions to Defendant's VIP Status program and spend money to purchase virtual gold and
5 virtual items.

6 127. As a proximate result of Defendant's misrepresentations and omissions as alleged
7 herein, Plaintiff and members of the Classes have suffered damages in the form of monies paid to
8 Defendants.

9 **SEVENTH CAUSE OF ACTION**
10 **Unjust Enrichment**
11 **(Individually and on behalf of the Classes)**

12 128. Plaintiff incorporates by reference the foregoing allegations as if fully set forth
13 herein.

14 129. Plaintiff and the Classes have conferred a benefit upon Defendants. Defendants
15 have received and retained money belonging to the Plaintiff and the Classes as a result of
16 Defendants' unlawful and deceptive practices.

17 130. Defendants appreciate or have knowledge of said benefit.

18 131. Under principles of equity and good conscience, Defendants should not be permitted
19 to retain money belonging to Plaintiff and the Classes that it unjustly received as result of its
20 actions.

21 132. Plaintiff and members of the Classes have suffered financial loss as a direct result of
22 Defendants' conduct.

23 133. Plaintiff, on behalf of herself and the Classes, seek restitution for Defendants'
24 unlawful conduct.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs pray that the Court enter judgment in their favor and against
27 Defendants as follows:
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- a) Certifying this action as a class action and designating Plaintiff as Class Representative and her counsel as Class Counsel;
- b) Declaring that the Terms of Use that purportedly governing the use of the SPP game are invalid because: (1) the TOU include numerous invalid and unconscionable exculpatory clauses, commonly known as "Get Out of Jail Free Clauses;" and (2) the TOU lack mutuality and are illusory;
- c) Declaring that Defendants' actions, as set out above, violate the CLRA (Cal. Civ. Code §§ 1750, *et seq.*) and the UCL (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); and that Defendants' conduct constitutes fraud in the inducement and unjust enrichment;
- d) Awarding preliminary and permanent equitable and injunctive relief for the Classes, including: (1) enjoining Defendants from terminating the SPP gaming application as announced in September, 2011; (2) enjoining Defendants from engaging in further violations of the CLRA and UCL; (3) awarding restitution for monies unjustly received; and (4) whatever other equitable relief this Court deems appropriate;
- e) Awarding actual damages to Plaintiff and the Classes;
- f) Awarding Plaintiff and the Classes reasonable costs and attorneys' fees;
- g) Awarding pre- and post-judgment interest;
- h) Awarding punitive damages;
- i) Granting such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMAND

The Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: December 20, 2011

CHRISTALEE ABREU,
individually and on behalf of a class of
similarly situated individuals

By: 
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