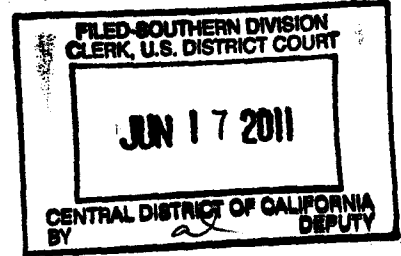


1 GIRARDI | KEESE  
 THOMAS V. GIRARDI, SBN 36603  
 2 tgirardi@girardikeese.com  
 GRAHAM B. LIPPSMITH, SBN 221984  
 3 glippsmith@girardikeese.com  
 1126 Wilshire Boulevard  
 4 Los Angeles, California 90017  
 Telephone: (213) 977-0211  
 5 Facsimile: (213) 481-1554

6 MILORD & ASSOCIATES, P.C.  
 MILORD A. KESHISHIAN, SBN 197835  
 7 milord@milordlaw.com  
 2049 Century Park East, Suite 3850  
 8 Los Angeles, CA 90067  
 Telephone: (310) 226-7878  
 9 Facsimile: (310) 226-7879

10 Attorneys for Plaintiff

11 UNITED STATES DISTRICT COURT  
 12 CENTRAL DISTRICT OF CALIFORNIA



13 SOCIALAPPS, LLC, d/b/a take(5)social  
 14 and playSocial, a California company,  
 15 Plaintiff,

16 v.

17 ZYNGA, INC., a California corporation;  
 18 ZYNGA GAME NETWORK, INC., a  
 California corporation; and DOES 1  
 19 through 10, inclusive,  
 20 Defendants.

**SACV 11-00919** (WSC (MLG))  
 CASE NO.

COMPLAINT FOR DAMAGES

COUNTS:

1. COPYRIGHT INFRINGEMENT;
2. VIOLATIONS OF CALIFORNIA UNIFORM TRADE SECRETS ACT (CAL. CIV. CODE § 3436 ET SEQ.);
3. BREACH OF WRITTEN CONTRACT;
4. BREACH OF IMPLIED-IN-FACT CONTRACT;
5. BREACH OF CONFIDENCE; AND
6. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

DEMAND FOR JURY TRIAL

21 PD 1/521  
 22  
 23  
 24  
 25  
 26  
 27  
 28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**COMPLAINT FOR DAMAGES**

**JURISDICTION AND VENUE**

1. These causes of action arise under the provisions of the Copyright Act (17 U.S.C. §§ 101, 501), the law of the State of California and the common law. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1125. This Court has subject matter jurisdiction over the state law causes of action under 28 U.S.C. § 1367(a) because these are claims that are so related to claims within the original jurisdiction of this Court under the copyright and unfair competition laws of the United States that they form part of the same case or controversy.

2. Venue in this judicial district is proper under 28 U.S.C. § 1391(b) and (c) because the events giving rise to this action occurred in this district, namely Defendants have, among other acts, marketed and sold in this district products that infringe Plaintiff's copyrights, and because the Defendants' actions have resulted in Lanham Act violations and unfair competition throughout the State of California, including in this venue.

**THE PARTIES**

3. Plaintiff SocialApps, LLC d/b/a playSocial and take(5)social ("Plaintiff") is and was at all times relevant herein a California company and a citizen of California in Los Angeles County. Plaintiff's primary business is developing, posting and maintaining online social network games for sale. Plaintiff owns the rights to the myFarm source code and has all of Michael Yager and DesignerMichael, LLC's rights therein.

4. Defendants Zynga, Inc. and Zynga Game Network, Inc. (jointly, "Zynga") are corporations with their headquarters located in San Francisco, California. Zynga also has locations in Los Angeles, California and Los Gatos, California. Zynga is and was at all times herein a direct competitor of Plaintiff because Zynga's primary business is and was at all times herein developing, posting and maintaining online social network games for sale. Zynga markets and sells its social network game services throughout the entire United

1 States, including throughout all of California.

2 5. The true names and capacities of Defendants Does 1-10 are unknown to  
3 Plaintiff, and Plaintiff will seek leave of Court to amend this complaint to allege such names  
4 and capacities as soon as they are ascertained.

5 6. Whenever Plaintiff refers to any act, deed, or conduct of "Defendants," said  
6 references mean that Zynga and DOES 1-10 engaged in the acts, deeds or conduct by and  
7 through one or more of its officers, directors, agents, employees or representatives who  
8 were actively engaged in the management, direction, control or transaction of Defendants  
9 Zynga and DOES 1-10's ordinary business affairs.

10 7. Plaintiff is informed and believes and thereon alleges that at all times relevant  
11 hereto each of the Defendants, including without limitation the Doe Defendants, was the  
12 agent, affiliate, officer, director, manager, principal, alter-ego and/or employee of the other  
13 Defendants and was at all times acting within the scope of such agency, affiliation, alter-ego  
14 relationship and/or employment and actively participated in, or subsequently ratified and  
15 adopted, or both, each and all of the acts or conduct alleged herein, with full knowledge of  
16 all the facts and circumstances, including, but not limited to, full knowledge of each and all  
17 of the violations of Plaintiff's rights and the damages to Plaintiff proximately caused  
18 thereby.

19  
20 **GENERAL ALLEGATIONS**

21 8. Prior to November 2008, Plaintiff invested substantial time, resources and  
22 funds to develop "myFarm," the first farming social network game that allowed players to  
23 create their own virtual farms, raise virtual produce and animals and harvest their virtual  
24 farm goods to trade with or sell to other players. Seeking to capitalize on the meteoric rise  
25 of social network gaming platforms accessed through Facebook, Plaintiff created and first  
26 publicly released myFarm on Facebook in or about November 2008.

27 9. To enhance the myFarm playing experience, Plaintiff created a unique system  
28 in which players have the option to use "myFarm Credits." Players acquire myFarm Credits

1 by either (1) purchasing them from Plaintiff's clearinghouse partner or (2) partaking in  
2 listed surveys and offers by advertising partners. With the myFarm Credits, players buy  
3 virtual myFarm Cash to develop their farms, activate other game features and support the  
4 game. Plaintiff's myFarm Credits and myFarm Cash features are the means by which  
5 myFarm generates its revenues.

6 10. In or about May 2009, Defendants approached Plaintiff in an attempt to acquire  
7 the intellectual rights and source code for myFarm. On May 9, 2009, Defendants and  
8 Plaintiff entered into a Letter Agreement and Term Sheet providing key business terms and  
9 for confidentiality concerning both the transaction and any company information—  
10 including proprietary source code—Plaintiff provided to Defendants in what Defendants  
11 called their "due diligence." Under both the express terms of the Letter Agreement and  
12 implied through Defendants and Plaintiff's words and conduct and industry norms, Plaintiff  
13 and Defendants had a bilateral expectation that if Defendants used Plaintiff's myFarm  
14 concept and distinct features, Defendants would compensate and credit Plaintiff for such  
15 use.

16 11. Using the ruse of "due diligence," Defendants required Plaintiff to produce its  
17 confidential source code for myFarm, and Plaintiff provided Defendants with the source  
18 code they requested under a reasonable belief that Defendants were in fact performing their  
19 due diligence and that Defendants would abide by the confidentiality terms binding them.  
20 By providing this confidential source code, Plaintiff revealed to Defendants numerous  
21 aspects of myFarm's functionality, including its processes for using myFarm Credits,  
22 myFarm's key feature for generating revenue.

23 12. Shortly after Plaintiff provided Defendants with the confidential source code  
24 that Defendants requested, Defendants ceased communicating with Plaintiff. Although  
25 Plaintiff was not aware of it at the time Zynga took Plaintiff's confidential source code,  
26 Defendants used their ruse of due diligence to access Plaintiff's confidential source code.  
27 Plaintiff is informed and believes that, shortly thereafter, Defendants intentionally and  
28 deliberately used Plaintiff's confidential source code to clone myFarm's key features as part

1 of a campaign to wrongfully divert revenues from myFarm and generate additional  
2 revenues.

3 13. Defendants never compensated or credited Plaintiff for using myFarm's  
4 confidential source code. Defendants also never obtained Plaintiff's permission to use the  
5 source code. Despite this, Plaintiff is informed and believes Defendants used Plaintiff's  
6 source code when it first released "Farmville" on or about June 19, 2009. Until Defendants'  
7 June 19, 2009 release of Farmville, Plaintiff neither knew nor had reason to know that  
8 Defendants used its myFarm confidential source code without compensating Plaintiff or  
9 Plaintiff's permission.

10 14. On or about June 13, 2011, Plaintiff registered myFarm with the United States  
11 Copyright Office. A true and correct copy of the Application, Service Request No. 1-  
12 621918421, is attached hereto as Exhibit 1 and is incorporated by reference.

13 15. The registered work includes the source code for myFarm.

14 16. Plaintiff is informed and believes that Defendants used and continue to use  
15 Plaintiff's confidential source code to create, maintain, and generate substantial revenues  
16 from Defendants' Farmville game.

17 17. Plaintiff is also informed and believes that Defendants used and continues to  
18 use Plaintiff's confidential source code to create, maintain, and generate substantial  
19 revenues from Defendants' other popular virtual world games including but not limited to  
20 FrontierVille, CityVille, and FishVille. ("Other Virtual World Games").

21  
22 **FIRST CAUSE OF ACTION**

23 **COPYRIGHT INFRINGEMENT (17 U.S.C. §§ 101, *ET SEQ.*)**

24 **(Against All Defendants)**

25 18. Plaintiff repeats, alleges and incorporates by reference the allegations  
26 contained in this Complaint as though fully set forth herein.

27 19. Plaintiff owns the copyright to the myFarm source code.

28 20. Defendants have deliberately and intentionally infringed on Plaintiff's

1 copyright without authorization, in direct violation of the Copyright Act, 17 U.S.C. §§ 106  
2 and 501. Such infringing conduct includes, but is not limited to, Defendants' copying of  
3 myFarm's source code in the creation and maintenance of Farmville and the Other Virtual  
4 World Games.

5 21. Each infringement by Defendants constitutes a separate and distinct act of  
6 infringement against myFarm.

7 22. Defendants' acts of infringement are willful, in disregard of and with  
8 indifference to the rights of Plaintiff. At no time did Plaintiff authorize Defendants to  
9 reproduce, adapt, or distribute myFarm.

10 23. Each player that is wrongfully diverted to Farmville and Zynga's Other Virtual  
11 World Games constitutes an entire network of social connections and related revenues.

12 24. As a direct and proximate result of Defendants' infringement of Plaintiff's  
13 rights, Plaintiff has sustained, and will continue to sustain, substantial injury, loss, and  
14 damages in an amount exceeding \$100,000.00 and as will be proven at trial.

15 25. Plaintiff is entitled to a permanent injunction restraining Defendants, their  
16 officers, directors, agents, employecs, reprcsentatives and all persons acting in concert with  
17 them from engaging in further acts of copyright infringement.

18 26. Plaintiff is further entitled to rccover from Defendants the gains, profits and  
19 advantages Defendants have obtained as a result of their acts of copyright infringement.  
20 Plaintiff is at present unable to ascertain the full extent of the gains, profits and advantages  
21 Defendants have obtained by reason of their acts of copyright infringement, but Plaintiff is  
22 informed and believes, and on that basis alleges, that Defendants obtained such gains,  
23 profits and advantages in an amount exceeding \$500,000.00.

24 ///

25 ///

26 ///

27 ///

28 **SECOND CAUSE OF ACTION—VIOLATIONS OF CALIFORNIA UNIFORM**

**TRADE SECRETS ACT (CAL. CIV. CODE §§ 3436, ET SEQ.)****(Against All Defendants)**

1  
2  
3 27. Plaintiff repeats, alleges and incorporates by reference the allegations  
4 contained in this Complaint as though fully set forth herein.

5 28. Plaintiff is the sole owner and/or possessor of its proprietary source code for  
6 myFarm and its various features as a result of substantial time, resources and funds to  
7 develop myFarm.

8 29. Plaintiff's source code had economic value in that it contained information not  
9 generally known within the trade and was the culmination of many years of research and  
10 development. Plaintiff made reasonable efforts to ensure that its source code remained a  
11 secret by disclosing this information only to those who required this information to perform  
12 their jobs and by requiring those who accessed this information to refrain from disclosing or  
13 disseminating this information.

14 30. Plaintiff's confidential source code was a trade secret that merits legal  
15 protection from Defendants' misappropriation in that Defendants used the ruse of  
16 conducting "due diligence" in negotiations for purchasing Plaintiff's technology and  
17 Plaintiff is informed and believes that Defendant used Plaintiff's source code to develop and  
18 release Farmville and its Other Virtual Games, steering users away from Plaintiff's game  
19 and generate its own revenues from Plaintiff's technology.

20 31. Defendants misappropriated Plaintiff's confidential source code. Plaintiff is  
21 informed and believes that Defendants used Plaintiff's confidential source code to develop  
22 and release Farmville and its Other Virtual Games, steering users away from Plaintiff's  
23 game and generate its own revenues from Plaintiff's technology. Defendants did this for  
24 their own benefit in violation of the confidentiality provisions of at least the Letter  
25 Agreement. Defendants then developed and released products that directly competed and  
26 continue to compete with Plaintiff's myFarm product, causing Plaintiff to lose valuable  
27 revenues and its existing and potential business, goodwill and reputation derived therefrom.

28 32. As a proximate result of Defendants' misconduct, Plaintiff's business, profits,

1 goodwill and reputation have been damaged in an amount to be determined at trial.

2 33. Defendants conduct as described herein was despicable and was committed  
3 maliciously, fraudulently and oppressively with the wrongful intention of injuring Plaintiff  
4 and with a willful and conscious disregard of the rights of Plaintiff. Defendants subjected  
5 Plaintiff to cruel and unjust hardship, and via intentional misrepresentation, deceit, or  
6 concealment of material facts, Defendants intended to deprive Plaintiff of property or legal  
7 rights all to the detriment of Plaintiff and to the financial benefit of Defendants.

8 34. Defendants' conduct is particularly reprehensible because Plaintiff is informed  
9 and believes it was part of a repeated corporate practice and not an isolated occurrence.  
10 Plaintiff is informed and believes and thereon alleges that Defendants have substantially  
11 increased their profits as a result.

12  
13 **THIRD CAUSE OF ACTION—BREACH OF WRITTEN CONTRACT**

14 **(Against All Defendants)**

15 35. Plaintiff repeats, alleges and incorporates by reference the allegations  
16 contained in this Complaint as though fully set forth herein.

17 36. On or about May 9, 2009, Plaintiff and Defendants entered into a written  
18 agreement with term sheet whereby Plaintiff conditioned an offer to convey concepts and/or  
19 game features for its myFarm game in exchange for Defendants' obligation to pay and  
20 credit Plaintiff for the concepts if Defendants were to use those concepts and/or game  
21 features in social network games. Defendants also agreed not to disclose, divulge or exploit  
22 those concepts and/or game features without Plaintiff's authorization and/or payment and  
23 credit to Plaintiff for use of the concepts and/or game features in social network games.

24 37. Plaintiff performed all conditions, covenants, and promises required on its part  
25 to be performed in accordance with the terms and conditions of its written agreement with  
26 the Defendants.

27 38. Defendants breached and continue to breach their written agreement with  
28 Plaintiff by developing, releasing, maintaining and/or offering for sale features on social



1 network games using Plaintiff's myFarm concepts and/or game features without  
2 compensating or crediting Plaintiff. Defendants also breached and continue to breach their  
3 written agreement with Plaintiff by using Plaintiff's myFarm concepts and/or game features  
4 without Plaintiff's authorization or permission.

5 39. As a direct and proximate result of Defendants' material breaches of the  
6 written agreement, Plaintiff has suffered and will continue to suffer actual damages in an  
7 amount to be proven at trial.

8  
9 **FOURTH CAUSE OF ACTION—BREACH OF IMPLIED-IN-FACT CONTRACT**  
10 **(Against All Defendants)**

11 40. Plaintiff repeats, alleges and incorporates by reference the allegations  
12 contained in this Complaint as though fully set forth herein.

13 41. Beginning in at least May 2009, Plaintiff and Defendants entered into an  
14 implied-in-fact contract, as shown by their course of conduct, whereby Plaintiff conditioned  
15 an offer to convey concepts and/or game features for its myFarm game in exchange for  
16 Defendants' obligation to pay and credit Plaintiff for the concepts and/or game features if  
17 Defendants were to use those concepts and/or game features in social network games.

18 42. By their course of conduct, Defendants voluntarily accepted Plaintiff's  
19 disclosures, knowing that using Plaintiff's concepts for and/or game features of myFarm in  
20 social network games carried with it an obligation to, at a minimum, compensate and credit  
21 Plaintiff for their use.

22 43. Plaintiff conveyed and Defendants accepted these concepts and/or game  
23 features pursuant to the standard custom and practice in the entertainment industry of  
24 providing creative concepts to Defendants in exchange for compensation and credit to  
25 Plaintiff if Defendant were to use those concepts and/or game features.

26 44. Plaintiff performed all conditions, covenants, and promises required on its part  
27 to be performed in accordance with the terms and conditions of its agreement with the  
28 Defendants.

1 45. Defendants' actions and conduct implied and led Plaintiff to reasonably believe  
 2 that it would be fully compensated and credited for Plaintiff's concepts for and/or game  
 3 features of myFarm in social network games should Defendants choose to develop, release,  
 4 maintain and/or offer for sale such social network games.

5 46. Defendants breached and continue to breach their implied contract with  
 6 Plaintiff by developing, releasing, maintaining and/or offering for sale features on social  
 7 network games using Plaintiff's myFarm concepts and/or game features without  
 8 compensating or crediting Plaintiff.

9 47. As a direct and proximate result of Defendants' material breaches of the  
 10 implied-in-fact contract, Plaintiff has suffered and will continue to suffer actual damages in  
 11 an amount to be proven at trial.

12  
 13 **FIFTH CAUSE OF ACTION—BREACH OF CONFIDENCE**  
 14 **(Against All Defendants)**

15 48. Plaintiff repeats, alleges and incorporates by reference the allegations  
 16 contained in this Complaint as though fully set forth herein.

17 49. Beginning in May 2009, Plaintiff and Defendants also entered into a  
 18 confidential relationship, as shown by their course of conduct, whereby Plaintiff  
 19 conditioned an offer to convey concepts and/or game features for its myFarm game in  
 20 exchange for Defendants' obligation not to disclose, divulge or exploit those concepts  
 21 and/or game features without Plaintiff's authorization and/or payment and credit to Plaintiff  
 22 for use of the concepts and/or game features in social network games.

23 50. By their course of conduct, Defendants voluntarily accepted Plaintiff's  
 24 disclosures, knowing that using Plaintiff's concepts for and/or game features of myFarm in  
 25 social network games without Plaintiff's authorization carried with it an obligation to, at a  
 26 minimum, compensate and credit Plaintiff for their use.

27 51. Plaintiff conveyed and Defendants accepted these concepts and/or game  
 28 features pursuant to the standard custom and practice in the entertainment industry of

1 providing creative concepts to Defendants in exchange for maintaining their confidentiality,  
2 not disclosing, divulging or exploiting those concepts and/or game features without  
3 Plaintiff's authorization and/or compensation and credit to Plaintiff if Defendant were to use  
4 those concepts and/or game features.

5 52. Plaintiff performed all conditions, covenants, and promises required on its part  
6 to be performed in accordance with the terms and conditions of its agreement with the  
7 Defendants.

8 53. Defendants' actions and conduct implied and led Plaintiff to reasonably believe  
9 that Defendants would not disclose, divulge or exploit those concepts and/or game features  
10 without Plaintiff's authorization and/or compensation and credit to Plaintiff if Defendant  
11 were to develop, release, maintain and/or offer for sale such social network games.

12 54. Defendants breached and continue to breach their confidence with Plaintiff by  
13 developing, releasing, maintaining and/or offering for sale features on social network games  
14 using Plaintiff's myFarm concepts and/or game features without Plaintiff's authorization  
15 and without compensating or crediting Plaintiff.

16 55. As a direct and proximate result of Defendants' material breaches of  
17 confidence, Plaintiff has suffered and will continue to suffer actual damages in an amount to  
18 be proven at trial.

19  
20 **SIXTH CAUSE OF ACTION—BREACH OF THE IMPLIED COVENANT OF**  
21 **GOOD FAITH AND FAIR DEALING**

22 **(Against All Defendants)**

23 56. Plaintiff repeats, alleges and incorporates by reference the allegations  
24 contained in this Complaint as though fully set forth herein.

25 57. Every contract carries with it the implied covenant of good faith and fair  
26 dealing. Having relied on that covenant, Plaintiff entered into each of the written and  
27 implied agreements with Defendants.

28 58. Defendants had a duty to act fairly and in good faith with respect to meeting

1 their responsibilities to Plaintiff under each of the agreements.

2 59. Plaintiff performed all conditions, covenants, and promises required on its part  
3 to be performed in accordance with the terms and conditions of its agreements with the  
4 Defendants.

5 60. Defendants breached and continue to breach their agreements with Plaintiff by  
6 developing, releasing, maintaining and/or offering for sale features on social network games  
7 using Plaintiff's myFarm concepts and/or game features without compensating or crediting  
8 Plaintiff. Defendants also breached and continue to breach their agreements with Plaintiff  
9 by using Plaintiff's myFarm concepts and/or game features without Plaintiff's authorization  
10 or permission.

11 61. Plaintiff is informed and believes that from the outset of the negotiations with  
12 Plaintiff, Defendants never intended to meet their responsibilities to Plaintiff under each of  
13 the agreements, including, but not limited to compensating and/or crediting Plaintiff for its  
14 concepts and/or game features and refraining from disclosing, divulging or exploiting  
15 Plaintiff's concepts and/or game features without Plaintiff's authorization and without  
16 compensating or crediting Plaintiff. However, Defendants deceived Plaintiff into believing  
17 that they would abide by the terms of the agreement and, at a minimum, not use the ruse of  
18 conducting "due diligence" to access Plaintiff's source code in order to steal Plaintiff's  
19 concepts and/or game features.

20 62. As a direct and proximate result of Defendants' breaches of the implied  
21 covenant of good faith and fair dealing, Plaintiff has suffered and will continue to suffer  
22 actual damages in an amount to be proven at trial.

23 63. Defendants conduct as described herein was despicable and was committed  
24 maliciously, fraudulently and oppressively with the wrongful intention of injuring Plaintiff  
25 and with a willful and conscious disregard of the rights of Plaintiff. Defendants subjected  
26 Plaintiff to cruel and unjust hardship, and via intentional misrepresentation, deceit, or  
27 concealment of material facts, Defendants intended to deprive Plaintiff of property or legal  
28 rights all to the detriment of Plaintiff and to the financial benefit of Defendants.



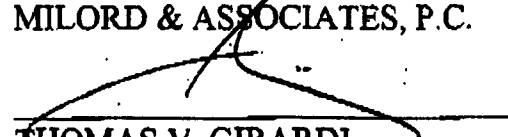
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Plaintiff hereby demands a jury trial.

Dated: June 17, 2011

GIRARDI | KEESE  
MILORD & ASSOCIATES, P.C.

By:

  
~~THOMAS V. GIRARDI~~  
GRAHAM B. LIPPSMITH

MILORD A. KESHISHIAN  
Attorneys for Plaintiff