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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 Garen Meguerian, individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 APPLE, INC.,

16 Defendant.

17 **CV 11**

18 **1758**

19 Case No.

20 CLASS ACTION COMPLAINT

21 JURY TRIAL DEMANDED

22 **HRL**

23 Plaintiff Garen Meguerian, individually and on behalf of the class described
24 below, by his attorneys, makes the following allegations pursuant to the
investigation of counsel and based upon information and belief, except as to
allegations specifically pertaining to Plaintiff and counsel, which are based on
personal knowledge.

I. OVERVIEW OF THE ACTION

1. Plaintiff brings this class action on behalf of himself and other parents
and guardians who (a) permitted their minor children to download from defendant
Apple, Inc. ("Apple" or "Defendant") a free application ("App") and (b) then
incurred charges for game-related voidable purchases that the minor was induced

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NORTHERN DISTRICT OF CALIF.

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1 by Apple to make, without the parents' and guardians' knowledge or authorization.

2 2. In addition to its distinction as a market leader in the manufacture,
3 marketing and sale of computers and computing devices, Apple is also the leading
4 seller of "Apps," i.e., software applications that users download on their mobile
5 computing devices. Among the many thousands of Apps that Apple offers for sale
6 are gaming Apps targeted at children. Numerous gaming Apps are offered for free,
7 although many such games are designed to induce purchases of what Apple refers
8 to as "In-App Purchases" or "In-App Content," i.e., virtual supplies, ammunition,
9 fruits and vegetables, cash and other fake "currency," etc., within the game in order
10 to play the game with any success ("Game Currency"). These games are highly
11 addictive, designed deliberately so, and tend to compel children playing them to
12 purchase large quantities of Game Currency, amounting to as much as \$100 per
13 purchase or more.

14 3. Apple requires its users to authenticate their accounts by entering a
15 password prior to purchasing and/or downloading an App or buying Game
16 Currency. Until recently, however, once the password was entered, Apple
17 permitted the user, even if a minor, to buy Game Currency for up to fifteen minutes
18 without re-entering the password. This practice enabled minors to buy Game
19 Currency, in one click sums of \$99.99 or more, without entering a password,
20 causing Apple to pocket millions of dollars from such Game Currency transactions
21 with minors and without the authorization of their parents, whose credit cards or
22 PayPal accounts are automatically charged for the purchases. Further, because the
23 passwords now required for purchases of Game Currency are the same passwords
24 required for any Apple purchase, minors aware of such password may purchase

1 Game Currency without authorization from their parents for that purchase.

2 4. Apple's practice of selling Game Currency to children, garnering
3 millions of dollars of ill-gotten gains thereby, has attracted the attention of the
4 Federal Trade Commission ("FTC"). Such attention caused Apple in early 2011 to
5 begin requiring the entry of a password for all individual transactions, and to warn
6 users that "free" games may contain in-app content for sale. Nevertheless, Apple
7 continues to sell Game Currency to minors.

8 5. As a result, Plaintiff brings this action for monetary and equitable
9 relief under California's breach of contract laws, the Consumer Legal Remedies
10 Act, Business and Professions Code Sections 17200 *et seq.*, and/or for Unjust
11 Enrichment.

12 II. JURISDICTION AND VENUE

13 6. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d). This is a
14 class action involving more than 100 class members. Plaintiff and other members
15 of the Class are citizens of a state different from Defendant, and the amount in
16 controversy, in the aggregate, exceeds the sum of \$5 million exclusive of interest
17 and costs.

18 7. Defendant is a California corporation, has its principal place of
19 business in Cupertino, California, transacts business in this District, has subjected
20 itself to this Court's jurisdiction through such activity, and a substantial part of the
21 events and omissions giving rise to the claim occurred in this District.

22 Accordingly, venue is proper in this District under 28 U.S.C. § 1391.

23 III. PARTIES

24 8. Plaintiff Garen Meguerian resides in Phoenixville, Pennsylvania with

1 his wife and their 12 and 9 year-old daughters. Mr. Meguerian permitted his
2 younger daughter to download from iTunes a number of free gaming Apps,
3 including "Zombie Café," "Treasure Story" and "City Story." Mr. Meguerian,
4 however, was completely unaware of the fact that within the span of a few weeks
5 she bought such Game Currency as "Zombie Toxin," "Gems" and "City Cash."
6 Those transactions between Apple and a nine-year-old child cost Mr. Meguerian
7 approximately \$200. *See* Plaintiff's iTunes Purchase History, attached hereto, and
8 incorporated herein by reference, as Exhibit A.

9 9. Defendant Apple is a California corporation with its principal place of
10 business in Cupertino, California.

11 IV. FACTUAL ALLEGATIONS

12 10. Apple is one of the leading manufacturers and sellers of computing
13 products, including the iMac desktop computer, MacBook laptops, iPad tablets,
14 iPhone smart phones, and iPod and iTouch handheld music players and gaming
15 devices.

16 11. Apple also sells content (e.g., music, movies, TV shows, audio books
17 and Apps) that can be downloaded on its and other manufacturers' computing
18 devices. Apple sells Apps through its "App Store," which may be accessed
19 directly from certain devices (such as, e.g., iPads, iPhones and iTouches) or
20 through other Apple-owned retail outlets (e.g., iTunes, Mac App Store,
21 iBookstore).

22 12. Apple offers Apps in many genres, including travel, business,
23 education, finance, entertainment and games. Games are by far the most
24 downloaded of all genres. Apps can be downloaded for free, or for a licensing fee

1 that ranges from \$.99 to \$9.99 or more. It is the gaming Apps that Apple targets
2 and sells to minor children that are the subject of this action.

3 13. Apple is by far the leading retailer of Apps. Apps are either
4 developed by Apple or licensed to Apple by independent App developers. The
5 App developers license their Apps to Apple for sale at iTunes, and Apple splits the
6 revenues earned from the sale of the App, or from the sale of In-App Purchases,
7 with the App developer.

8 14. Apple supervises and controls the function and operation of the Apps
9 it sells. Before an App is made available by Apple, Apple staff test the App and
10 confirm its compliance with dozens of rules that Apple imposes unilaterally. If
11 Apple deems an App noncompliant with Apple's rules, Apple will not make the
12 App available for sale.

13 15. In all instances relevant to this action, the sale of the App and/or any
14 Game Currency is a transaction directly between Apple and the consumer. There
15 is no privity between the user and the developer of the App (unless Apple itself is
16 the App developer); Apple, and Apple alone, is the provider to the user of the App;
17 Apple charges its customer's credit card or PayPal account, and indeed an App
18 developer never receives a customer's credit card number or PayPal account
19 information.

20 16. Anyone thirteen years old or older can open an account to purchase
21 (i.e., license) content from Apple. Opening an account requires, among other
22 things, selecting a user name and password, providing certain contact and other
23 information, and agreeing to Apple's Terms & Conditions. Users may then make
24 purchases in any of a number of ways, including payment by "iTunes Cards,"

1 "iTunes Gift Certificates," "Content Codes," "Allowance Account balances," and,
2 most frequently, by supplying Apple with a credit card number or PayPal account.
3 For users who specify credit card or Paypal payment, Apple automatically draws
4 funds from the account holder's credit card or PayPal account.

5 17. Prior to the purchase of an App, Apple requires account holders to
6 enter their password. Until recently, however, once the account holder entered that
7 password, he or she (or in cases relevant to this Complaint, his or her minor child)
8 could make purchases for up to fifteen minutes without re-entering the password.
9 Thus, a parent could permit a child to download a free gaming App by entering his
10 or her password, and then allow the child to download and play the game. What
11 Apple did not tell parents, however, is that their child was then able to purchase
12 Game Currency for fifteen minutes without any supervision, oversight or
13 authorization.

14 18. In early 2011, Apple changed its practice to require the input of a
15 password for every individual purchase, thereby ending the fifteen minute purchase
16 window. Apple made this change because the FTC was about to commence an
17 investigation into Apple's improper sales practices. Even after this change, Apple
18 continues to sell Game Currency to minors. Minors 13 and older are permitted to
19 open their own Apple accounts, and minors younger than 13 may purchase Game
20 Currency by using their parents' general Apple password (no special Apple
21 password is required to purchase Game Currency).

22 19. As alleged above, many games are targeted to minors, and are free or
23 cost a nominal charge to download. Many such games, however, are designed to
24 encourage minors to purchase Game Currency, if the game is to be played with any

1 success.

2 20. Many games are, by design, highly addictive, and are developed
3 strategically to induce purchases of Game Currency. For example, the game
4 "Smurfs' Village" is free to download. The object of the game, however, is to
5 build a virtual village, and the construction process is greatly sped up by the
6 purchase of "Smurfberries," Game Currency that costs real money. The screen
7 shot below is a picture of the "Smurfberry Shop," which is embedded in the Smurf
8 Village gaming App. This "shop" offers for sale different amounts of
9 Smurfberries. Fifty Smurfberries cost \$4.99; 1,000 Smurfberries cost \$59.

10 21. A news story about Apple's business scheme states:

11 The Federal Trade Commission has confirmed it will
12 investigate mobile games that are advertised as free but
13 then entice players into buying virtual goods within the
14 game, especially those that target younger users. This
15 comes after several complaints surfaced by parents who
16 found out their children were racking up huge purchases
17 without understanding what they were doing,
18 including one young gamer who managed to download
19 more than \$1,400 in virtual Smurfs currency.

20 Smurfs Village leads the headlines for this story. It's a
21 "free" iPhone game clearly targeting a young
22 demographic. Once in the game, players are asked to
23 spend Smurfberries at every turn. That problem is solved
24 easily enough with a menu that offers the ability to buy
more berries. Even though Smurfberries aren't real, the
money used to buy them is.

Players are lured in by enticing pictures of huge
bucketfuls of Smurfberries, and just a couple taps is all it
takes to drain money out of an iPhone account holder's
credit card and make players flush with in-game funds.

1 The app does ask users to confirm purchases, but as the
2 FTC notes, some users may not fully understand what
3 they're confirming. "Consumers, particularly children,
4 are unlikely to understand the ramifications of these
5 types of purchases," wrote FTC chairman Jon Leibowitz
6 in a statement.

7 Massachusetts Congressman Edward Markey responded,
8 "What may appear in these games to be virtual coins and
9 prizes to children result in very real costs to parents. I am
10 pleased that the FTC has responded, and as the use of
11 mobile apps continues to increase, I will continue to
12 actively monitor developments in this important area."

13 The Smurfs game has gained so much attention because
14 it exploded to the #1 spot of top-earning iPhone games.
15 That's when the media learned of the easy
16 microtransaction system in the game. There's even a
17 button to purchase \$100 in Smurfberries, which most
18 rational, hard-working people would probably never
19 click, but appears mouthwatering to players who think
20 they're just innocently playing a game.

21 While some of the charges definitely come as the result
22 of a parent legitimately buying berries for their kid, there
23 is also controversy over the 15-minute user
24 authentication buffer. A dad could download the Smurfs
game onto his iPad and hand it over to his daughter to
play. The daughter can then rack up as many charges as
she wants for 15 minutes before the app will ask for re-
verification of the account. Before you know it, your
credit card statement's been smurfed right in the smurf.

25 [http://www.gamesradar.com/iphone/iphone/news/z/a20110223180187
55018/g-201010071388669064](http://www.gamesradar.com/iphone/iphone/news/z/a2011022318018755018/g-201010071388669064).

26 22. Apple offers many games that use the same bait-and-switch business
27 scheme as Smurfs' Village. Apple entices the child with a free download of a
28 gaming platform that then offers the sale of irresistible Game Currency in order to
29 enjoy the game as it was designed. Such games include "Bakery Story" (which
30

1 sells virtual gems that are used to acquire items for the virtual bakery), “Treasure
2 Story” (which sells virtual gems), “City Story” (which sells virtual cash), “Tap
3 Zoo” (which sells virtual “pouches of stars” and “vials of coins”), “Tap Fish”
4 (which sells virtual “fish bucks”), “Glass Tower” (which sells virtual “level
5 packs”), “Sundae Maker” (which sells virtual ice cream and toppings), “Cake
6 Maker” (which sells virtual cake ingredients and other cake-making items), and
7 many, many others.

8 23. The targeting of children by Apple and inducing them to purchase,
9 without the knowledge or authorization of their parents, millions of dollars of
10 Game Currency is unlawful exploitation in the extreme. Fortunately for the
11 members of the Class, such purchases of Game Currency constitute voidable
12 contracts because they were entered into with minors.

13 24. Either in response to the FTC’s investigation, or as a result of a guilty
14 conscience, Apple now provides the following warning next to the “Install” button
15 of the App: “PLEASE NOTE: [Smurfs’ Village] is free to play, but charges real
16 money for additional in-app content. You may lock out the ability to purchase in-
17 app content by adjusting your device’s settings.” Nevertheless, Apple continues
18 to sell Game Currency to minors.

19 25. Apple has not offered to return to its account holders any of the
20 millions of dollars it received from their minor children’s purchases of Game
21 Currency.

22 V. CLASS ACTION ALLEGATIONS

23 26. Plaintiff brings this action as a class action for monetary and equitable
24 relief pursuant to Rules 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure

1 on behalf of the following class: All persons in the United States who had an
2 iTunes account and paid for a purchase of Game Currency made by their minor
3 children without their knowledge and authorization (the "Class"). Excluded from
4 the Class are Apple; any entity in which it has a controlling interest; any of its
5 parents, subsidiaries, affiliates, officers, directors, employees and members of their
6 immediate families; and members of the federal judiciary.

7 27. The members of the Class are readily ascertainable but are so
8 numerous that joinder is impracticable. The exact number and names of the
9 members of the Class are presently unknown to Plaintiff, but can be ascertained
10 readily through discovery. Plaintiff believes that there are thousands of members
11 of the Class whose names and addresses may be readily discovered upon
12 examination of the records in the custody and control of Apple.

13 28. There are questions of law and fact common to the Class, and such
14 questions predominate over individual questions. Defendant pursued a common
15 course of conduct toward the Class as alleged. This action arises out of a common
16 nucleus of operative facts. Common questions include:

- 17 (a) Whether Apple sold Game Currency;
- 18 (b) Whether Apple sold Game Currency to minors;
- 19 (c) Whether Apple knew that many gaming Apps it sells at
20 its iTunes Store are designed to induce minors to
21 purchase Game Currency;
- 22 (d) Whether Apple intended for minors to purchase such
23 Game Currency without the knowledge or authorization
24 of the minors' parents or guardians;

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- (d) Whether Apple's sales to minors of Game Currency constitute voidable contracts;
- (e) Whether Apple's scheme to induce minors to purchase Game Currency violates California's CLRA and UCL;
- (f) Whether Apple was unjustly enriched by its scheme; and
- (g) Whether Plaintiff and the Class have been damaged, and if so, in what amount.

29. Plaintiff's claim is typical of the claims of other members of the Class, and there is no defense available to Apple that is unique to Plaintiff. Plaintiff paid approximately \$200 to Apple for purchases of Game Currency made by his minor daughter in a couple of weeks without his knowledge or authorization.

31. Plaintiff will fairly and adequately represent the interests of the Class. Plaintiff has no interests that are antagonistic to those of the Class. Plaintiff has the ability to assist and adequately protect the rights and interests of the Class during the litigation. Further, Plaintiff is represented by counsel who are competent and experienced in this type of class action litigation.

32. This class action is not only the appropriate method for the fair and efficient adjudication of the controversy, but is, in fact, the superior method to all other available methods because:

- (a) The joinder of thousands of geographically diverse individual class members is impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;

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- (b) There is no special interest by class members and individually controlling prosecution of separate causes of action;
- (c) Class members' individual claims are relatively modest compared with the expense of litigating the claim, thereby making it impracticable, unduly burdensome, expensive, if not totally impossible, to justify individual class members' addressing their loss;
- (d) When Defendant's liability has been adjudicated, claims of all class members can be determined by the Court and administered efficiently in a manner that is far less erroneous, burdensome, and expensive than if it were attempted through filing, discovery, and trial of many individual cases;
- (e) This class action will promote orderly, efficient, expeditious, and appropriate adjudication and administration of class claims to promote economies of time, resources, and limited pool of recovery;
- (f) This class action will assure uniformity of decisions among class members;
- (g) Without this class action, restitution will not be ordered and Defendant will be able to reap the benefits or profits of its wrongdoing; and
- (h) The resolution of this controversy through this class action presents fewer management difficulties than individual claims filed in which the parties may be subject to varying indifferent adjudications of their rights.

1 33. Class certification is appropriate because Defendant has acted, or
2 refused to act, on grounds generally applicable to the Class, making class-wide
3 equitable, injunctive, declaratory and monetary relief appropriate. In addition, the
4 prosecution of separate actions by or against individual members of the Class
5 would create a risk of incompatible standards of conduct for Defendant and
6 inconsistent or varying adjudications for all parties. A class action is superior to
7 other available methods for the fair and efficient adjudication of this action.

8 VI. CALIFORNIA LAW APPLIES TO THE ENTIRE CLASS.

9 34. California's substantive laws apply to every member of the Class,
10 regardless of where in the United States the class member resides. Apple imposes
11 on its account holders a set of Terms and Conditions that must be accepted before
12 becoming an account holder and before making any purchases or downloads from
13 Apple's iTunes Store. Among such Terms and Conditions is the following:
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15 The Services are operated by Apple from its offices in the
16 United States. You agree to comply with all local, state,
17 federal, and national laws, statutes, ordinances, and
18 regulations that apply to your use of the Services. All
19 transactions on the Services are governed by California
20 law, without giving effect to its conflict of law
21 provisions. Your use of the Services may also be subject
22 to other laws. You expressly agree that exclusive
23 jurisdiction for any claim or dispute with Apple or
24 relating in any way to your use of the Services resides in
the courts of the State of California.

25 35. Further, California's substantive laws may be constitutionally applied
26 to the claims of Plaintiff and the Class under the Due Process Clause, 14th
27 Amend., § 1, and the Full Faith and Credit Clause, Art. IV § 1 of the U.S.

1 Constitution. California has significant contact, or significant aggregation of
2 contacts, to the claims asserted by Plaintiff and all class members, thereby creating
3 state interests that ensure that the choice of California state law is not arbitrary or
4 unfair.

5 36. Defendant's United States headquarters and principal place of
6 business is located in California. Defendant also owns property and conducts
7 substantial business in California, and therefore California has an interest in
8 regulating Defendant's conduct under its laws. Defendant's decision to reside in
9 California and avail itself of California's laws, and to engage in the challenged
10 conduct from and emanating out of California, renders the application of California
11 law to the claims herein constitutionally permissible.

12 37. California is also the state from which Defendant's alleged
13 misconduct emanated. This conduct similarly injured and affected Plaintiff and all
14 other class members.

15 38. The application of California laws to the Class is also appropriate
16 under California's choice of law rules because California has significant contacts
17 to the claims of Plaintiff and the proposed Class, and California has a greater
18 interest in-applying its laws here than any other interested state.

19 VII. CAUSES OF ACTION

20 FIRST CAUSE OF ACTION
21 (Breach of Contract)

22 39. Plaintiff repeats and re-alleges herein the foregoing allegations.

23 40. All Game Currency that Apple presents for sale constitutes an offer to
24 enter into a sales contract.

1 41. All Game Currency purchased by a minor constitutes acceptance of
2 Apple's offer.

3 42. Every payment made by the members of the Class for the purchase of
4 Game Currency by their minor children constitutes consideration for the provision
5 of the Game Currency.

6 43. Accordingly, all transactions that are the subject of this Complaint are
7 possessed of the three elements of a contract, i.e., offer, acceptance and
8 consideration.

9 44. Because the persons who accepted Apple's offers were minors,
10 however, all such contracts are voidable at the class members' option as a matter of
11 California law.

12 45. Accordingly, all such contracts should be voided and the Class
13 should be made whole through restitution and all other remedies available under
14 California law.

15
16 SECOND CAUSE OF ACTION
17 (Violation of the
California Consumers Legal Remedies Act)

18 46. Plaintiff repeats and re-alleges herein the foregoing allegations.

19 47. At all times relevant hereto, there was in full force and effect the
20 California Consumers Legal Remedies Act (CLRA), Cal. Civ. Code § 1750.

21 48. Plaintiff and the other class members are consumers within the
22 meaning of Cal. Civ. Code § 1761(d).

23 49. Apple violated the CLRA's proscription against the concealment of
24 the characteristics, use, benefit, or quality of goods by actively marketing and

1 promoting certain gaming Apps as “free” with the intent to induce from minors the
2 purchase of Game Currency. Specifically, Apple has violated: (a) § 1770(a)(5)’s
3 proscription against representing that goods have uses or characteristics they do not
4 have; (b) § 1770(a)(7)’s proscription against representing that goods are of
5 particular standard or quality when they are of another; (c) § 1770(a)(14)’s
6 proscription against “Representing that a transaction confers or involves rights,
7 remedies, or obligations which it does not have or involve, or which are prohibited
8 by law.”

9 50. Under California law, a duty to disclose arises in four circumstances:
10 (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the
11 defendant had exclusive knowledge of material facts not known to the plaintiff; (3)
12 when the defendant actively conceals a material fact from the plaintiff; or (4) when
13 the defendant makes partial representations but also suppresses some material
14 facts.

15 51. Apple owed a duty to disclose material facts about the Game
16 Currency embedded in games it marketed, advertised and promoted to children as
17 “free.” Apple breached such duty as alleged in this Complaint.

18 52. Plaintiff and the Class suffered actual damages as a direct and
19 proximate result of Apple’s action, concealment and/or omissions in violation of
20 the CLRA, as evidenced by the substantial sums Apple pocketed.

21 53. Plaintiff, on behalf of himself and for all those similarly situated,
22 demands judgment against Apple for equitable relief in the form of restitution
23 and/or disgorgement of funds paid to Apple, and an award of attorney fees pursuant
24 to Civil Code § 1780(d).

1 54. In accordance with § 1782(a) of the CLRA, on April 11, 2011,
2 Plaintiff's counsel served Apple, by certified mail, with notice of its alleged
3 violations of the CLRA.

4 55. If Apple does not fully meet the demand set forth in that letter, then
5 Plaintiff will amend or seek leave to amend this complaint in order to seek the
6 following relief under CLRA § 1780, for Apple's violations of CLRA §§
7 1770(a)(5) and (a)(7):

- 8 • actual damages under Cal. Civ. Code § 1780(a)(1);
- 9 • punitive damages under Cal. Civ. Code § 1780(a)(4);
- 10 • attorneys' fees and costs under Cal. Civ. Code § 1780(d); and
- 11 • any other relief the Court deems proper under Cal. Civ. Code §
12 1780(a)(5).
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15 THIRD CAUSE OF ACTION
16 (Violation of Bus. & Prof. Code § 17200 et seq.)

17 56. Plaintiff repeats and re-alleges herein the foregoing allegations.

18 57. Plaintiff brings this cause of action on behalf of himself, on behalf of
19 the other class members, and in his capacity as private attorney general against
20 Defendant for its unlawful, unfair, fraudulent and/or deceptive business acts and/or
21 practices pursuant to the California Business & Professions Code § 17200 *et seq.*
22 ("UCL"), which prohibits unlawful, unfair and/or fraudulent business acts and/or
23 practices.

24 58. Plaintiff asserts these claims as a representative of an aggrieved group

1 and as a private attorney general on behalf of the general public and other persons
2 who have expended funds that Defendant should be required to reimburse under
3 UCL § 17200 *et seq.*

4 59. This claim is predicated on the duty to refrain from unlawful, unfair
5 and deceptive business practices. Plaintiff and the other class members hereby
6 seek to enforce a general proscription of unfair business practices and the
7 requirement to refrain from deceptive conduct.

8 60. The UCL §§ 17200, *et seq* prohibits acts of “unfair competition.” As
9 used in this section, “unfair competition” encompasses three distinct types of
10 misconduct: (a) “unlawful...business acts or practices;” (b) “unfair fraudulent
11 business acts or practices;” and (c) “unfair, deceptive or misleading advertising.”

12 61. Apple violated the UCL by engaging in conduct that violated each of
13 the three prongs identified by the statute as set forth throughout this Complaint.

14 62. Apple committed an *unlawful* business act or practice in violation of
15 the UCL § 17200 *et seq.*, when it violated the CLRA.

16 63. Apple committed *unfair and fraudulent* business acts and practices in
17 violation of the UCL §§ 17200 and 17500, *et seq.*, by actively advertising,
18 marketing and promoting certain gaming Apps as “free” with the intent to induce
19 minors to purchase Game Currency in a manner likely to deceive the public.

20 64. Apple’s deceptive practices were specifically designed to induce the
21 children of Plaintiff and the other members of the Class to purchase Game
22 Currency.

23 65. Apple’s deceptive practices have deceived and/or are likely to deceive
24 Plaintiff and members of the consuming public.

1 66. As a direct and proximate cause of Apple's violation of the UCL,
2 Plaintiff and the Class have suffered harm in that they have not been reimbursed
3 for the purchases of Game Currency their children made from Apple.

4 67. As a direct and proximate result of Apple's violation of the UCL
5 § 17200, *et seq.*, Apple has been unjustly enriched and should be required to make
6 restitution to Plaintiff and the Class or disgorge its ill-gotten profits pursuant to the
7 UCL § 17203.

8 68. Plaintiff, on behalf of himself and for all other similarly situated,
9 demands judgment against Apple for injunctive relief in the form of restitution,
10 and/or disgorgement of funds paid to Apple as alleged herein, as well as attorneys'
11 fees, costs and interest.

12 FOURTH CAUSE OF ACTION
13 (Unjust Enrichment (alternative claim))

14 69. Plaintiff repeats and re-alleges herein the foregoing allegations.

15 70. Plaintiff and the Class have conferred benefits on Apple by paying for
16 the Game Currency that their children purchased from Apple without their
17 authorization.

18 71. Defendant knowingly and willingly accepted those monetary benefits
19 from Plaintiff and the Class.

20 72. Under the circumstances alleged herein, it is inequitable for Defendant
21 to retain such benefits at the expense of Plaintiff and the Class.

22 73. Defendant has been unjustly enriched at the expense of and detriment
23 to Plaintiff and the Class by wrongfully collecting money to which Defendant, in
24 equity, is not entitled.

1 74. Plaintiff and the Class are entitled to recover from Defendant all
2 amounts wrongfully collected and improperly retained by Defendant, plus interest
3 thereon.

4 75. As a direct and proximate result of Defendant's unjust enrichment,
5 Plaintiff and the Class have suffered injury and are entitled to reimbursement,
6 restitution and disgorgement from Defendant of the benefits conferred by Plaintiff
7 and the Class.

8 76. As a direct and proximate result of Defendant's misconduct as set
9 forth herein, Defendant has been unjustly enriched.

10 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for
11 an Order as follows:

- 12 A. Finding that this action satisfies the prerequisites for maintenance as
13 a class action under Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and
14 certifying the Class defined herein;
- 15 B. Designating Plaintiff as representative of the Class and his counsel
16 as class counsel;
- 17 C. Entering judgment in favor of Plaintiff and the Class and against
18 Defendant;
- 19 D. Awarding Plaintiff and members of the Class their individual
20 damages and attorneys' fees and allowing costs, including interest
21 thereon; and/or restitution and equitable relief; and
- 22 E. Granting such further relief as the Court deems just.
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1 VIII. JURY DEMAND

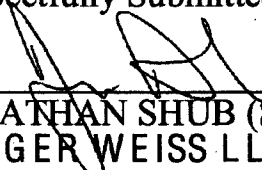
2 Plaintiff demands a trial by jury on all issues so triable.

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4 Dated: April 11, 2011

Respectfully Submitted,

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Exhibit "A"