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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT

JANE BARCELO and CHRISTINA ISERNIA,
on behalf of themselves and all other similarly
situated individuals,

Plaintiffs,

v.

PAPAYA GAMING LTD. and PAPAYA
GAMING, INC.,

Defendants.

Case No.: 24STCV32626

CLASS ACTION COMPLAINT

- (1) Violation of Lanham Act,
15 U.S.C. § 1125(a)
- (2) Violation of California Legal Remedies
Act, Cal. Civ. Code §§ 1750, *et seq.*
- (3) Violation of California Unfair Competition
Law, Cal. Civ Code §§ 17200, *et seq.*
- (4) Violation of California Business and
Professions Code, Cal. Civ. Code §§
17500-17509
- (5) Violation of New York General Business
Law § 349
- (6) Violation of New York General Business
Law § 350

JURY TRIAL DEMANDED

Plaintiffs, Jane Barcelo and Christina Isernia (collectively, "Plaintiffs"), by and through their counsel, on behalf of themselves and as representatives of putative members of the below defined Class Members, bring this action against Papaya Gaming, Ltd. and Papaya Gaming, Inc.

CLASS ACTION COMPLAINT

1 (collectively, “Papaya” or “Defendants”) and allege the following, upon personal knowledge as to
2 themselves and upon information and belief, and upon information and belief, as to defendants and
3 all others, derived from, among other things, the investigation of counsel, and hereby alleges:

4 **INTRODUCTION**

5 1. Papaya is advertised as an online gaming platform, where users compete in games
6 of skill against other human users for money. Papaya purports to match players in accord with their
7 skill level for competitive play. Papaya alleges that it has no vested interest in who wins or loses its
8 games.

9 2. Upon information and belief, in fact, Papaya controls the outcome of its gaming
10 platforms and uses its own “bots” to play against its human players, effectively “rigging” the game
11 and withholding the winnings for its own financial gain.¹

12 3. Plaintiffs and Class Members are pursuing their claims against Defendants and
13 allege, among other things, that Defendants’ business practices, as set forth in further detail herein,
14 constitute deceptive trade practices and false advertising, in violation of the Lanham Act 15 U.S.C.
15 §1125(a) and consumer protection claims under California state law, specifically, Cal. Civ. Code
16 §§ 1750, *et seq.*, Cal. Civ. Code §§ 17200, *et seq.*; California Business and Professions Code (§§
17 17500-17509 – False Advertising Law); New York General Business Law § 349 and New York
18 General Business Law §350.

19 4. Plaintiffs allege that, through their website, www.papaya.com (the “Website”),
20 Defendants falsely advertised and promoted their mobile games as “fair game[s] for everyone”
21 when, in fact, Plaintiffs contend the games are rigged by Defendants through the use of computer
22 algorithms or “bots” that are masquerading as human players.² The use of the “bots” transforms a
23 legal game of human skill into an illegal game of chance or gambling in which Papaya’s
24 unknowing players had little-to-no influence on the outcome.

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26
27 ¹ The term “bots” is used throughout this Class Action Complaint to describe computer generated
28 players used as an agent for Defendants, to simulate human play. *See generally*,
<https://www.fortinet.com/resources/cyberglossary/bot>, [last accessed 10-08-24]

² <https://www.papaya.com/about-us> [last accessed 10-08-2024]

1 she was playing against real humans, in real time. Ms. Isernia suffered real harm when she lost
2 money playing these games. Plaintiff Isernia would not have continued to spend money on
3 Papaya’s games had she known that they were populated by computer operated “bots.” Ms. Isernia
4 was enticed to play Papaya’s games due to its misleading statements and false advertising.

5 11. Plaintiffs allege that Defendants filled their player pools with computerized “bots”
6 to, among other things, artificially speed up the process by which Papaya players are placed into
7 multiplayer tournaments, to entice players to keep playing, and to deposit more money into their
8 Papaya accounts in the hopes of winning a supposed “skill-based tournament.” Plaintiffs and Class
9 Members incurred actual harm, in the loss of money, because of Papaya’s misleading statements
10 and fraudulent scheme, as discussed further herein.

11 12. Defendant, **Papaya Gaming Ltd.**, is a foreign limited liability company with its
12 principal place of business in Tel-Aviv-Yafo, Israel. Upon information and belief, Defendant was
13 founded in 2016 for the primary purpose of developing mobile games for real money tournaments.
14 Since 2019, Defendant “has been committed to the future of gaming through an innovative and
15 forward-thinking approach to game development.”³

16 13. Defendant, **Papaya Gaming, Inc.**, is a Delaware corporation, and upon
17 information and belief, a U.S.-based subsidiary of Papaya Gaming, Ltd.⁴ On information and
18 belief, Papaya has an established U.S. place of business located at 106 West 32nd Street, New
19 York, New York, 10001, and upon further information and belief, may also conduct business at 35
20 Hamasger St., Tel Aviv-Yafo, Israel.⁵

21 14. Defendants are global, privately held companies that are not currently publicly
22 traded on any stock market.

23 **JURISDICTION AND VENUE**

24 15. Plaintiff Barcelo is a citizen of California and resides in Los Angeles County.

25 16. Plaintiff Isernia is a citizen of New York and resides in Suffolk County.

26 _____
27 ³ <https://www.papaya.com/about-us#our-story-section> [last accessed 10-08-2024]

28 ⁴ <https://icis.corp.delaware.gov/eCorp/EntitySearch/NameSearch.aspx> [last accessed 10-08-2024]

⁵ https://www.facebook.com/solitairecash/about/?_rdr [last accessed 10-08-2024]

1 17. Consistent with the Due Process Clauses of the Fifth and Fourteenth Amendments,
2 this Court has *in personam* jurisdiction over Defendants because they conduct commerce in the
3 State of California and are therefore present in the State of California such that requiring an
4 appearance does not offend traditional notions of fair play and substantial justice.

5 18. Defendants targeted business in California and provide continuous and systematic
6 business in this District, they provide products and services to the residents of this District 24
7 hours a day, 7 days a week, and Defendants knew and intended that their products would be used
8 within this District, which is one of the most populous regions in the United States. Papaya asserts
9 that 95% of its business is based in the United States, including many who reside within this
10 District.⁶

11 19. Until December 27, 2023, Defendants' Terms of Use contained a venue provision
12 providing for the exclusive jurisdiction and venue of the state and federal courts in Los Angeles,
13 California. Moreover, Defendants have agreed to waive any jurisdictional challenges for the
14 limited purposes of this action.

15 20. Plaintiffs and a number of Class Members residing in this district were victims of
16 Defendants' gaming platforms, false advertising, and deceptive promotions. Plaintiffs allege that
17 Defendants ran an illegal gambling operation where the outcomes were rigged in Defendants'
18 favor.

19 21. Accordingly, venue is proper under the California Consumer Legal Remedies Act
20 (Cal. Civ. Code §§ 1750, *et seq.*), California Unfair Competition Law (Cal. Civ. Code §§ 17200, *et*
21 *seq.*), and California Business and Professions Code (§§ 17500-17509 – False Advertising Law).

22 FACTUAL ALLEGATIONS

23 **A. Defendants, through advertisements, present themselves to the public as a gaming**
24 **company that matches customers with live, human gamers in a fair gaming platform.**

25 22. According to Defendants' Website, Defendants are a customer-centric business that
26 develops and provides multiplayer mobile game applications and tournaments, including highly

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28 ⁶ <https://support.solitairecash.com/hc/en-us/articles/360017634778-Is-my-area-supported> [last
accessed 10-08-2024]

1 popular games that offer cash rewards. According to its Website, Papaya boasts 37 million total
2 downloads worldwide, 15 million tournaments played *every day*, and 1 million server requests *per*
3 *minute*.⁷ Defendants maintain that their participants are matched against other human players of
4 similar skill levels.⁸

5 23. Further, Defendants' Website alleges, "[o]ur primary focus is transforming single-
6 player games into rewarding, multi-player skill-based tournaments. Whether it's our users or
7 employees, we challenge everyone to take risks, try new things, and push themselves to new
8 heights of achievement."⁹

9 24. Defendants make mobile games playable through standalone applications, with
10 each application dedicated to one game. Defendants currently offer four (4) gaming platforms:
11 Solitaire Cash, Bingo Cash, Bubble Cash, and 21 Cash (collectively, "Papaya Games").

12 25. The Papaya Games are available for download through Apple's App Store, and/or
13 Samsung's Galaxy Store.¹⁰ Defendants' gaming platforms are amongst the most popular
14 downloads on both the Apple and Android Apps in the Casino Category. As of October 8, 2024,
15 Solitaire Cash is ranked #4 in the Casino Category, showing a 4.6 out of 5.0 star rating, based on
16 362.2K reviews.¹¹ Bingo Cash is ranked #6 in the Casino Category, showing a 4.7 out of 5.0 star
17 rating, based on 165.4k reviews.¹² Bubble Cash is ranked #5 in the Casino Category, showing a
18 4.6 out of 5.0 star rating, based on 134k reviews.¹³ Finally, 21 Cash is ranked #92 in the Casino
19 Category, with 4.7 out of 5.0 stars, based on 16.5k reviews.¹⁴ Based on these rankings, all of these
20 gaming platforms are hugely popular with unsuspecting consumers who believe they are playing
21 against other human players.

22 26. Further, all of these games are advertised as "skill-based," as seen below.
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24 ⁷ <https://www.papaya.com/about-us#our-story-section> [last accessed 10-08-2024]

25 ⁸ <https://www.papaya.com/about-us#our-story-section> [last accessed 10-08-2024]

26 ⁹ *Id.* [last accessed 10-08-2024]

27 ¹⁰ <https://www.papaya.com/games> [last accessed 10-08-2024]

28 ¹¹ <https://apps.apple.com/us/app/solitaire-cash/id1446254576?mt=8> [last accessed 10-08-2024]

¹² <https://apps.apple.com/us/app/bingo-cash/id1522266397> [last accessed 10-08-2024]

¹³ <https://apps.apple.com/us/app/bubble-cash/id1475514684> [last accessed 10-08-2024]

¹⁴ <https://apps.apple.com/us/app/21-cash/id1562569259> [last accessed 10-08-2024]

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Open the Mac App Store to buy and download apps.



Solitaire Cash 17+
Skill-based Real Money Games
[Papaya Gaming](#)
Designed for iPad
#4 in Casino
★★★★★ 4.6 • 362.2K Ratings
Free

Open the Mac App Store to buy and download apps.



Bingo Cash 17+
Online Skill-based Bingo Game
[Papaya Gaming](#)
Designed for iPad
#6 in Casino
★★★★★ 4.7 • 165.4K Ratings
Free

Open the Mac App Store to buy and download apps.



Bubble Cash 17+
Skill-based Pop Shooter Game
[Papaya Gaming](#)
Designed for iPad
#5 in Casino
★★★★★ 4.6 • 134K Ratings
Free

Open the Mac App Store to buy and download apps.



21 Cash 17+
Skill-based Blitz Card Game
[Papaya Gaming](#)
Designed for iPad
#92 in Casino
★★★★★ 4.7 • 16.5K Ratings
Free

1 27. Defendants claim that they match players against others “with a similar skill level to
2 ensure a fun and fair experience for everyone.”¹⁵ Defendants’ Website asserts that the
3 “matchmaking becomes more accurate” the more the players play, as “the algorithm learns [their]
4 skill better.”¹⁶ Finally, Papaya contends that “skill levels are determined separately for each game
5 and updated after each contest.”¹⁷ The Website goes on to state, “[y]our opponents will not all
6 have the exact same skill level as you – you will often be matched with players of slightly greater
7 or lesser skill. As you win more contests, your matchups will keep getting harder.”¹⁸ These
8 representations gave Plaintiffs and Class Members the impression that Defendants’ platforms were
9 not computer-generated and “fair” play.

10 28. Plaintiffs and Class Members, relying on Defendants’ advertising and marketing
11 claims, purchased and played Papaya’s games based on Defendants’ “skill-based” representations.
12 They did so with the belief that they would be matched with other human players of similar skill
13 levels. This express representation and expectation directly influenced Plaintiffs and Class
14 Members’ decisions to buy and invest their time and money in Defendants’ games.

15 29. Defendants’ Website suggests throughout that their games are based on human
16 players, making representations such as, “[a]fter you finish a tournament, other players might still
17 be playing since not everyone starts at the same time.”¹⁹

18 30. The Website goes on to state, “[t]he tournament will close once enough players
19 have joined and completed their games. Until then, the leaderboard will show ‘Results Pending,’
20 indicating that some players are still in action. As soon as all players have completed the
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23 ¹⁵ [https://support.papaya.com/hc/en-us/articles/15894114230289-Am-I-playing-against-opponents-
24 with-the-same-skill-level-as-myself](https://support.papaya.com/hc/en-us/articles/15894114230289-Am-I-playing-against-opponents-with-the-same-skill-level-as-myself) [last accessed 10-08-2024]

25 ¹⁶ <https://support.papaya.com/hc/en-us/articles/15894159123601-How-does-the-matchmaking-work>
[last accessed 10-08-2024]

26 ¹⁷ <https://support.papaya.com/hc/en-us/articles/15894159123601-How-does-the-matchmaking-work>
[last accessed 10-08-2024]

27 ¹⁸ <https://support.papaya.com/hc/en-us/articles/15894159123601-How-does-the-matchmaking-work>
[last accessed 10-08-2024]

28 ¹⁹ [https://support.papaya.com/hc/en-us/articles/15894183062929-How-long-does-it-take-to-see-the-
results-of-the-tournament](https://support.papaya.com/hc/en-us/articles/15894183062929-How-long-does-it-take-to-see-the-results-of-the-tournament) [last accessed 10-08-2024]

1 tournament, you'll see your final placement and collect any rewards you've won.....Please note
2 that the completion time for tournaments can vary based on the number of participants.”²⁰

3 31. As shown herein, Defendants' Website repeatedly emphasizes that Plaintiffs and
4 Class Members are playing against live, actual human players, furthering Plaintiffs and Class
5 Members' understanding that Defendants' gaming platforms are, in fact, “skill-based” and “fair.”
6 Defendants go further, stating that they have “no vested interest in who wins or loses,” and that
7 they do not “profit on the outcome of the tournament” that they provide.”²¹ Based on these
8 representations, Plaintiffs and Class Members purchased, downloaded, and played Defendants'
9 games.

10 32. However, upon playing, users started to notice irregularities in gameplay that
11 suggested the presence of “bots” or non-human players. Further investigation revealed that a
12 significant number of the opponents in the games were, in fact, not human players, but rather,
13 computer-generated “bots.” Indeed, Defendants fill their games with computer-generated “bots”
14 for their own advantage and profits, contrary to their marketing representations.

15 **B. Defendants' behavior constitutes a deceptive trade practice.**

16 33. Papaya's practice of pairing human players with “bots,” while advertising a fair and
17 skill-based matchmaking system, constitutes a deceptive trade practice. Because Defendants need
18 to provide opponents for the live, actual players of their games, Papaya relies on the use of “bots”
19 in order to maintain their player base. Without Defendants' use of “bots,” if and when Defendants
20 fail to attract enough live players, those actual players would have to wait longer to be matched
21 with other players and actually play the games. If players have to wait long enough, it will deter
22 their future play. As a result, Defendants have a compelling, profit-motivated incentive to use
23 “bots” so that their games appear to have enough human players participating, thereby making the
24 gaming platforms attractive to actual human players.

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27 ²⁰ <https://support.papaya.com/hc/en-us/articles/15894183062929-How-long-does-it-take-to-see-the-results-of-the-tournament> [last accessed 10-08-2024]

28 ²¹ <https://support.papaya.com/hc/en-us/articles/15893852279825-Are-Papaya-Gaming-s-Games-legal> [last accessed 10-08-2024]

1 **C. Defendants falsely advertise their gaming platforms to entice players into thinking**
2 **they are fair and skill-based platforms.**

3 34. Papaya’s marketing materials and advertisements mislead consumers by falsely
4 claiming that players are paired with other players of similar skill levels. Upon information and
5 belief, confirmed by the investigation of Class Counsel, Defendants’ use of “bots” as opponents is
6 never disclosed. Accordingly, Defendants’ representations throughout their Website and gaming
7 platforms are false. Driven by their desire to create a fast-paced gaming platform, Defendants’
8 disclosure of the use of “bots” would be contrary to their core mechanics and competitive nature.
9 This conduct is a direct violation of Federal and State laws regarding deceptive trade practices and
10 false advertising, as set forth below.



22

20 **D. Defendants’ apps encourage users to play their games for real money.**

21 35. While it is possible to play Defendants’ games for free, Defendants also offer
22 players the ability to compete for a chance to win real money. On Defendants’ Website, they
23 allege, “[w]hile other games are solitary and self-contained, we’re social and truly rewarding.
24 Winners can gain either game currency - virtual gems, or real money.”²³ According to Defendants,
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28 ²² <https://apps.apple.com/us/app/solitaire-cash/id1446254576?mt=8> [last accessed 10-09-2024]

²³ <https://www.papaya.com/about-us#our-story-section> [last accessed 10-09-2024]

1 “[i]t's not just about experiencing a moment of fleeting pleasure. Players can actually benefit in the
2 long run.”²⁴

3 36. Defendants’ representations promise players financial gain. Winning cash prizes
4 requires the participants to make a deposit into their gaming accounts. While it is possible to play
5 without making a deposit, such players are only playing for “Gems.”²⁵ “Gems” can be used to win
6 “Bonus Cash,” which can then be used to participate in tournaments but cannot be withdrawn. To
7 the contrary, winnings gained by using “Bonus Cash” (deposits made into one’s account) can be
8 withdrawn for real cash value.²⁶ However, playing for “Gems” is still considered a real-money
9 tournament – under a “Freeroll Tournament,” because players can compete for “Gems” and win
10 “Bonus Cash.”²⁷ Players can then use their “Bonus Cash” to enter more advanced tournaments.²⁸
11 Defendants consider this a real-money tournament. Defendants further represent, “[t]his way, we
12 ensure *everyone* has a shot at winning cash prizes.”²⁹ See a screenshot from Defendants’ Bingo
13 game below.



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23 ²⁴ <https://www.papaya.com/about-us#our-story-section> [last accessed 10-09-2024]

24 ²⁵ <https://support.papaya.com/hc/en-us/articles/15893758020753-Do-I-need-to-pay-to-play> [last
accessed 10-09-2024]

25 ²⁶ <https://support.papaya.com/hc/en-us/articles/15893758020753-Do-I-need-to-pay-to-play> [last
accessed 10-09-2024]

26 ²⁷ <https://support.papaya.com/hc/en-us/articles/15894171134993-What-is-the-Freeroll-tournament>
[last accessed 10-09-2024]

27 ²⁸ <https://support.papaya.com/hc/en-us/articles/15894171134993-What-is-the-Freeroll-tournament>
[last accessed 10-09-2024]

28 ²⁹ <https://support.papaya.com/hc/en-us/articles/15894171134993-What-is-the-Freeroll-tournament>
[last accessed 10-09-2024]

³⁰ <https://apps.apple.com/us/app/bingo-cash/id1522266397?mt=8> [last accessed 10-09-2024]

1 41. The Class is so numerous that a joinder of all Members in this action is
2 impracticable. There are hundreds of thousands, if not millions, of geographically dispersed Class
3 Members throughout the United States. There is a well-defined community of interests in the
4 questions of law and fact involved in the claims asserted in this case. As discussed below, all
5 claims asserted on behalf of the Class share a substantial number of common questions of both law
6 and fact that render them well suited for aggregate treatment.

7 41. Class Members can be readily identified and notified in an administratively feasible
8 manner using, among other information, Defendants’ own electronic transactional records.

9 42. Plaintiffs’ claims are typical of those of Class Members. Plaintiffs and all Class
10 Members claim that Defendants’ alleged misconduct violates the Lanham Act (15 U.S.C.
11 §1125(a)), the California Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*), the
12 California Unfair Competition Law (Cal. Civ. Code §§ 17200, *et seq.*), the California Business and
13 Professions Code (Cal. Civ. Code §§ 17500-17509), and New York General Business Law § 349.
14 Plaintiffs and all Class Members also allege that they were injured by the same conduct that misled
15 Plaintiffs and the Class into spending money to enter tournaments and games that Defendants had
16 filled and/or controlled with “bots” rather than live, actual players, as advertised.

17 43. Plaintiffs will protect and represent the interests of Class Members fairly and
18 adequately. The interests of Plaintiffs and Plaintiffs’ counsel are fully aligned with, and not
19 opposed to, the interests of the Class Members. Plaintiffs are willing to dispatch the duties
20 incumbent upon a class representative to protect the interests of all Class Members. In addition,
21 Plaintiffs’ counsel has significant experience successfully prosecuting complex class actions and
22 possesses the necessary resources to vigorously litigate the case to the greatest extent necessary for
23 the Class.

24 44. There are multiple questions of law and fact that are common to the Class, that the
25 Class can prove with evidence common to all Class Members, including the following:

- 26 a. Whether Papaya matches human players against “bots” or otherwise uses
27 “bots” to impact game outcomes;

- b. Whether Papaya’s use of “bots” constitutes illegal gambling;
- c. Whether Papaya’s misrepresentations and omissions are false, misleading, deceptive, or likely to deceive reasonable consumers;
- d. Whether Papaya’s operations, as described in this Class Action Complaint, violate state or federal laws;
- e. Whether Papaya’s actions or inactions violate the consumer protection statutes invoked herein; and
- f. Whether Plaintiffs are entitled to a preliminary injunction enjoining Defendants’ conduct.

45. Questions of law and fact are common to Class Members and will predominate over any individualized questions of law or fact. Defendants have acted and refused to act on the grounds generally applicable to the Class. Class treatment is the preferred method for the fair and efficient adjudication of this controversy, especially when considering the fact that each individual Class Members’ claims would render individual litigation impractical and economically inefficient. Proceeding this way will allow Class Members to prosecute their common claims, and for Defendants to defend themselves against these claims, in front of a single court, simultaneously and efficiently, without unnecessary duplication of effort and expense required by separate actions. The benefits of proceeding this way substantially outweigh any difficulties that may arise out of the management of this case as a class action.

CAUSES OF ACTION

COUNT I

Violation of the Lanham Act, 15 U.S.C. § 1125(a)

46. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 45 as if fully set forth herein.

47. Plaintiffs bring this cause of action on behalf of themselves and on behalf of all other Class Members, against Papaya for its deceptive business practices. This claim is predicated on the duty to refrain from deceptive business practices and deceptive conduct.

1 48. The Lanham Act, 15 U.S.C. §1125(a)(1), was enacted in 1946, as a federal statute
2 that addresses trademark protection and unfair competition. It was designed to prevent businesses
3 from misrepresenting their goods or services and to protect consumers and competitors from
4 deceptive practices.

5 49. In a civil action, the false advertising prong of the Lanham Act provides:

6 (1) Any person who, on or in connection with any goods or services, or any
7 container for goods, uses in commerce any word, term, name, symbol, or
8 device, or any combination thereof, or any false designation of origin, *false*
9 *or misleading description of fact, or false or misleading representation of*
10 *fact*, which —

11 (A) is likely to cause confusion, or to cause mistake, or to deceive as to
12 the affiliation, connection, or association of such person with another
13 person, or as to the origin, sponsorship, or approval of his or her
14 goods, services, or commercial activities by another person; or

15 (B) in commercial advertising or promotion, misrepresents the nature,
16 characteristics, qualities, or geographic origin of his or her or another
17 person’s goods, services, or commercial activities, shall be liable in a
18 civil action by any person who believes that he or she is or is likely
19 to be damaged by such act. 15 U.S.C. § 1125(a)(1)(A).

20 50. 15 U.S.C. § 1125(a)(1)(A) is often used when false or misleading statements are
21 alleged to have hurt a consumer or business. The claimant must prove that a false or misleading
22 statement was made in commerce and that the statement creates a likelihood of harm to the
23 plaintiff. 15 U.S.C. § 1125(a)(1)(A).

24 51. In *Clorox Company Puerto Rico*, the Court found in commercial advertising or
25 promotion, when one misrepresents the nature, characteristics, qualities, or geographic origin of
26 his or her or another person’s goods, services, or commercial activities, they shall be liable in a
27 civil action by *any person* who believes that he or she is or is likely to be damaged by such
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1 act. *Clorox Company Puerto Rico v. Gamble Commercial Company*, 228 F.3d 24, 33 (1st Cir.
2 2000).

3 52. “To prove a false advertising claim under the Lanham Act a plaintiff must
4 demonstrate that (1) the defendant made a **false or misleading** description of fact or representation
5 of fact in a **commercial advertisement** about his own or another's product; (2) the
6 misrepresentation is **material**, in that it is likely to influence the purchasing decision; (3) the
7 misrepresentation actually **deceives or has audience**; (4) the defendant placed the false or
8 misleading statement in **interstate commerce**; and (5) the plaintiff **has been or is likely to be**
9 **injured** as a result of the misrepresentation, either by direct diversion of sales or by a lessening of
10 goodwill associated with its products.” *Cashmere & Camel Hair Manuf. Inst. v. Saks Fifth*
11 *Avenue*, 284 F.3d 302, 310–11 (1st Cir. 2002), *see also Clorox*, 228 F.3d at 33 n. 6. A “crucial
12 [statutory] limitation” of the Lanham Act, is that it only applies to “commercial advertising or
13 promotion.” *Podiatrist Association, Inc. v. La Cruz Azul De Puerto Rico, Inc.*, 332 F.3d 6, 19 (1st
14 Cir. 2003).

15 53. Under the Lanham Act, false advertising claims can be based on statements that are
16 either “literally false” or “misleading.” A statement is considered “literally false” if it is factually
17 incorrect. If the statement is not “literally false” but is likely to mislead or confuse consumers, it
18 can still form the basis of a false advertising claim. *See Merck Eprova AG v. Gnosis S.p.A.*, 901
19 F.Supp.2d 436 (2012), *Merck Eprova AG v. Brookstone Pharmaceuticals, LLC*, 920 F.Supp.2d
20 404 (2013), *13 National Products, Inc. v. Gamber-Johnson LLC*, 699 F.Supp.2d 1232 (2010),
21 *Pearson Educ., Inc. v. Boundless Learning, Inc.*, 919 F.Supp.2d 434 (2013).

22 54. Plaintiffs and Class Members are consumers and end users of Papaya’s gaming
23 platforms. As the supplier of a worldwide, online gaming platform, Papaya was engaged in
24 consumer-oriented interstate commerce.

25 55. Defendants intentionally, willfully, and consciously acted to misrepresent and omit
26 material information regarding its tournaments to Plaintiffs and the Class, to deceive illicit
27 payments from their consumers to enter Papaya’s gaming tournaments.

1 56. Defendants advertised their games were on a “skill-based” platform, where players
2 would be competing against other “live” humans, with similarly situated “skill-levels.”

3 57. Papaya knowingly failed to disclose – and continues to fail to disclose – that it fills
4 its games with “bots.” Defendants’ use of “bots” further challenges Defendants’ assertion that their
5 games are “fair” and “skill based.” The use of “bots” creates an unfair competitive environment
6 for Papaya’s players. “Bots” can be programed to have superior skills, they can also be
7 manipulated by Defendants, which significantly reduces the chances of human players ever
8 winning. The ability to play against live, actual players is material information, that a reasonable
9 person would consider important, prior to deciding whether or not to enter into Defendants’ games
10 or tournaments. As a result, Plaintiffs contend that Defendants withhold material information from
11 their gaming platforms, which directly influences consumers’ purchasing decisions.

12 58. Defendants advertised their “skill-based” games on the Apple, Android, and Galaxy
13 application platforms, as depicted in the pictures herein. Defendants rig their games to lead
14 customers into believing that they are playing real-cash tournaments, where players have a real
15 opportunity of winning, when, in reality, the tournaments are actually designed so that human
16 players lose and are enticed to continue playing in order to recuperate some of their money.

17 59. Papaya’s representations were material, Plaintiffs and Class Members relied upon
18 those representations and paid to play the games based on false and/or misleading information.
19 Defendants intentionally, willfully, and consciously acted to misrepresent and omit material
20 information regarding their tournaments. Papaya did this in order to illicit payment from its players
21 and to entice them into paying to enter its tournaments.

22 60. The misrepresentations deceived Plaintiffs and Class Members, as they believed
23 they were playing other human players of similar skill, rather than “bots,” controlled and operated
24 by Defendants. The omission of this critical fact results in a misrepresentation of the true nature of
25 the games and constitutes a violation of the law. The misrepresentations resulted in financial gain
26 for Defendants, while Plaintiffs and Class Members, on the other hand, have suffered injury-in-

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1 fact, as Plaintiffs and Class Members spent and/or lost money or property in the amounts paid to
2 Papaya.

3 61. As represented by the numbers herein, Defendants have a *huge* following, likely a
4 direct result of their false and misleading representations. Defendants purposely placed these false
5 and misleading statements into the stream of commerce in order to entice people to pay to play
6 their games. Plaintiffs and Class Members suffered financial losses as a direct result of Papaya's
7 deceptive practices. The methods by which Defendants operated deprived Plaintiffs and Class
8 Members of an opportunity to win, as advertised. The resulting financial harm warrants restitution
9 and compensation in the amounts spent by Plaintiffs and Class Members playing Defendants'
10 games.

11 62. When a plaintiff establishes a violation of the Lanham Act, it may be entitled,
12 "subject to the principles of equity," to recover "any damages sustained by the plaintiff," i.e., lost
13 profits. 15 U.S.C. § 1117(a). But a plaintiff who establishes liability for false advertising "will be
14 entitled only to such damages as were *caused by* the violation." *Burndy Corp. v. Teledyne*
15 *Industries, Inc.*, 748 F.2d at 771 (2d Cir.1984) (emphasis added). A court may engage in "some
16 degree of speculation" in determining the amount of damages, but "causation must first be
17 established." *Id.*

18 63. Similarly, while attorney's fees are available to a prevailing plaintiff in a Lanham
19 Act suit in "exceptional cases," 15 U.S.C. § 1117(a), and when there is "evidence of fraud or bad
20 faith," *Gordon & Breach Sci. Publishers S.A. v. Am. Inst. of Physics*, 166 F.3d 438, 439 (2d Cir.
21 1999) (citation omitted), Papaya's conduct in this case is sufficiently egregious to justify the award
22 of attorneys' fees.

23 64. Plaintiffs are entitled to bring an action for damages resulting from deceptive trade
24 practices, including false advertising. Federal and state statutes provide for the recovery of actual
25 damages, equitable relief, attorney fees and costs, and some acts also provide for punitive or even
26 treble damages when they take into consideration the seriousness of the offending conduct.
27 Plaintiffs seek such damages in an amount to be determined at the trial of this matter.

1 **COUNT II**

2 **Violation of the California Consumer Legal Remedies Act**
3 **(Cal. Civ. Code §§ 1750, et seq.) (“CLRA”)**

4 65. Plaintiff Barcelo incorporates by reference the allegations in paragraph 1 through
5 45 as if fully set forth herein.

6 66. The CLRA was enacted in 1970 to protect California consumers against unfair and
7 deceptive practices in the sale of goods and services. The Act specifically prohibits various unfair
8 methods of competition, false advertising, and other deceptive practices, such as misrepresenting
9 the characteristics, ingredients, benefits, or quantities of goods or services. Under the CLRA,
10 consumers who suffer damages because of prohibited practices can file a lawsuit seeking actual
11 damages, punitive damages, and restitution. Under the CLRA, actual damages can be recovered,
12 but in no case shall the total award of damages in a class action be less than \$1,000 per Class
13 Member. The Act also allows for the recovery of attorneys’ fees and costs and provides for
14 injunctive relief to prevent ongoing deceptive practices.

15 67. Papaya’s advertising and promotion of gaming applications are misleading and
16 deceptive under the CLRA. Papaya explicitly stated that its games offer fair, skill-based
17 tournaments. Consumers reasonably relied on Defendants’ representations and paid to play one or
18 more of their four games. In reality, consumers, including Plaintiff Barcelo and Class Members,
19 were actually competing against “bots,” which was not disclosed in Papaya’s Terms of Use or
20 anywhere else on its platform. The omission misrepresents the true nature of Papaya’s games and
21 constitutes a violation of the CLRA, as consumers, including Plaintiffs and Class Members, were
22 led to believe that they were engaging in fair competition.

23 68. Accordingly, Plaintiff Barcelo seeks statutory damages available under the CLRA in
24 an amount to be determined at the trial of this matter.

1 **COUNT III**

2 **Violation of the California Unfair Competition Law**
3 **(Cal. Civ. Code §§ 17200, et seq.) (“UCL”)**

4 69. Plaintiff Barcelo incorporates by reference all the allegations of paragraphs 1
5 through 45 as if fully set forth herein.

6 70. The UCL is a broad statute that prohibits unlawful, unfair, or fraudulent business
7 acts or practices, as well as false advertising. The law is intended to provide a comprehensive
8 remedy for a wide range of wrongful business practices that harm consumers or competitors. The
9 UCL grants a private right of action to individuals and entities harmed by unfair competition.
10 Claimants can seek restitution for any money or property acquired through unfair practices, as well
11 as injunctive relief to stop ongoing or future violations. While the UCL does not allow for the
12 recovery of damages, it is a powerful tool for addressing unfair business practices and providing
13 equitable remedies.

14 71. Defendants’ use of “bots” creates an unfair competitive environment for consumers.
15 “Bots” can be programmed to have superior skills, they can be manipulated and controlled by
16 Defendants, which significantly reduces the chances of human players ever winning. Papaya
17 rigged its games to lead consumers into believing that they had a real opportunity of winning. This
18 practice undermines a consumer’s idea of fair and competitive gaming, Defendants’ practices
19 violate the UCL.

20 72. Accordingly. Plaintiff Barcelo seeks restitution under the UCL in an amount to be
21 determined at the trial of this matter, as well as injunctive relief of Defendants’ conduct described
22 herein.

23 **COUNT IV**

24 **Violation of the California Business and Professions Code**
25 **(§§ 17500-17509) (False Advertising Law “FAL”)**

26 73. Plaintiff Barcelo incorporates by reference all the allegations in paragraphs 1
27 through 45 as if fully set forth herein.

1 74. The California Business and Professions Code states that it is unlawful for any
2 person, firm, corporation, or association to make or disseminate any statement which is untrue or
3 misleading, and which is known, or which by the exercise of reasonable care should be known, to
4 be untrue or misleading, in any advertising medium, including over the internet, with the intent
5 directly or indirectly to sell any products or services or to induce the public to enter into any
6 obligation relating thereto.

7 75. Papaya’s acts, practices, representations, omissions and courses of conduct with
8 respect to advertising violates the FAL by alleging consumers could enter tournaments to play
9 games of skill, against live, actual players, when, in reality, Defendants filled or controlled their
10 games by computer programmed “bots.”

11 76. Plaintiff Barcelo and Class Members have standing to pursue these claims because
12 they have suffered injury-in-fact and a loss of money and/or property, as a result of the wrongful
13 conduct alleged herein.

14 77. The FAL requires basic fairness in advertising and permits a civil remedy against
15 those who deceive consumers. The FAL prohibits not only false advertising, but also advertising
16 that is “either actually misleading or which has a capacity, likelihood or tendency to deceive or
17 confuse the public.” *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008)
18 (quoting *Kasky v. Nike, Inc.*, 27 Cal. 4th 939, 951, 119 Cal.Rptr.2d 296, 45 P.3d 243 (2002)).
19 Claims under the FAL are governed by the “reasonable consumer” standard, which requires a
20 plaintiff to “show that members of the public are likely to be deceived” by the defendant's
21 marketing claims. *Id.* (internal quotation marks and citation omitted).

22 78. To state a claim under California’s Bus. Prof. Code §§ 17200, *et seq.*, Plaintiff
23 Barcelo must allege that Defendants’ statements are likely to deceive a reasonable
24 consumer. *See Consumer Advocates v. Echostar Satellite Corp.*, 113 Cal.App.4th 1351, 1358–60,
25 8 Cal.Rptr.3d 22 (2003); *Freeman v. Time, Inc.*, 68 F.3d 285, 289 (9th Cir. 1995). The term
26 “likely” means probable, not just possible. *Freeman*, 68 F.3d at 289. If the alleged
27 misrepresentation would not mislead a reasonable consumer, then the allegation may be dismissed
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1 on a motion to dismiss. *See Haskell v. Time, Inc.*, 857 F.Supp. 1392, 1399 (E.D. Cal. 1994).
2 Further, when determining whether a statement is misleading under the FAL, the primary evidence
3 to consider is the advertising itself. *See id.*

4 79. Plaintiff Barcelo has alleged that Defendants knew of the falsity of their advertising
5 statements at the time they were made and that such statements were made for purpose of inducing
6 users to spend money playing their games. Defendants' statements regarding their games being
7 skill-based and played against other human users is likely to deceive – and indeed did deceive –
8 reasonable consumers, including Plaintiff Barcelo and Class Members. As a result of Defendants'
9 false advertising, Plaintiff Barcelo and Class Members suffered injury in fact

10 80. Accordingly. Plaintiff Barcelo seeks restitution under the FAL in an amount to be
11 determined at the trial of this matter.

12 COUNT V

13 Violation of New York General Business Law (“GBL”) § 349

14 81. Plaintiff Isernia incorporates by reference all the allegations in paragraphs 1 through
15 45 as if fully set forth herein.

16 82. Several provisions of New York's consumer protection statute protect consumers
17 from deceptive and fraudulent practices. *See, e.g., Plavin v. Group Health Inc.*, 35 N.Y.3d 1, 9
18 (2020); *City of New York v. Smokes-Spirits.Com, Inc.*, 12 N.Y.3d 616, 621 (2009). New York
19 General Business Law (“GBL”) §349 prohibits “[d]eceptive acts or practices in the conduct of any
20 business, trade or commerce in the furnishing of any service in the state.” *Karlin v. IVF Am., Inc.*,
21 93 N.Y.2d 282, 291 (1999). GBL §349 was intended to provide authority to handle numerous types
22 of false and deceptive business practices that impact New York consumers, and it “seeks to secure
23 an honest marketplace where trust, and not deception, prevails.” *Goshen v. Mutual Life Ins. Co. of*
24 *N.Y.*, 98 N.Y.2d 314, 324 (2002). Accordingly, much like its federal counterpart, the Federal Trade
25 Commission Act, GBL § 349 “is intentionally broad, applying to virtually all economic activity.”
26 *Id.*

1 83. To state a claim under GBL § 349, a plaintiff bringing such a cause of action must
2 allege that: (1) the defendant has engaged in “consumer-oriented” conduct (2) that conduct was
3 materially misleading; and (3) the plaintiff suffered an injury as a result. *Plavin v. Group Health*
4 *Inc.*, 35 N.Y.3d 1, 10 (2020).

5 84. Papaya engaged in “consumer-oriented” conduct by targeting users on the internet,
6 through false and misleading advertising, by suggesting that consumers would be playing in “real
7 time” against “real people.”

8 85. Based on Papaya’s misrepresentations, consumers, including Plaintiff Isernia, did not
9 know they were playing against “bots” and agreed to spend their time and money playing Papaya’s
10 games.

11 86. As a direct result of Papaya’s false representations, consumers, including Plaintiff
12 Isernia, paid and lost their money and, therefore, suffered actual harm.

13 87. Although initially, only the New York Attorney General’s Office could sue to
14 enforce the consumer protection statute, the Legislature subsequently added a private right of action
15 in 1980 for any person who has been injured by reason of a violation, allowing injunctive relief,
16 damages, and attorney’s fees. *See, e.g., Plavin v. Group Health Inc.*, 35 N.Y.3d 1, 9 (2020); *Blue*
17 *Cross & Blue Shield of N.J., Inc. v. Philip Morris USA Inc.*, 3 N.Y.3d 200, 205 (2004); *Stutman v.*
18 *Chemical Bank*, 95 N.Y.2d 24, 29 (2000).

19 88. Accordingly, Plaintiff Isernia seeks statutory damages available under the GBL §349
20 in an amount to be determined at the trial of this matter.

21 **COUNT VI**

22 **Violation of New York General Business Law (“GBL” §350)**

23 89. Plaintiff Isernia incorporates by reference all the allegations in paragraphs 1 through
24 45 as if fully set forth herein.

25 90. New York General Business Law §350 prohibits “[f]alse advertising in the conduct
26 of any business, trade or commerce or in the furnishing of any service” in the state. N.Y. Gen. Bus.
27 Law § 350.

1 91. “The standard for recovery under General Business Law § 350, while specific to
2 false advertising, is otherwise identical to Section 349.” *Denenberg v. Rosen*, 71 A.D.3d 187, 897
3 N.Y.S.2d 391, 395 (1st Dep’t 2010) (quoting *Goshen v. Mut. Life Ins. Co. of N.Y.*, 98 N.Y.2d 314,
4 324 n.1, 746 N.Y.S.2d 858, 774 N.E.2d 1190 (2002)). Given this overlap, “courts have found that
5 the scope of § 350 is as broad as that of § 349 ... and that its essential elements are the
6 same.” *Braynina v. TJX Cos.*, No. 15 Civ. 5897 (KPF), 2016 WL 5374134, at *4 (S.D.N.Y. Sept.
7 26, 2016) (internal citation omitted); *see also Orlander v. Staples, Inc.*, 802 F.3d 289, 300 (2d Cir.
8 2015) (treating the two causes of action the same); *Koch v. Acker, Merrall & Condit Co.*, 18 N.Y.3d
9 940, 941, 944 N.Y.S.2d 452, 967 N.E.2d 675 (2012).

10 92. Accordingly, Plaintiff Isernia seeks statutory damages available under the GBL §350
11 in an amount to be determined at the trial of this matter.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiffs respectfully request that this Court issue an Order for the
14 following:

15 A. An Order that this action may be maintained as a class action under (Cal. Code of
16 Civil Procedure 382);

17 B. An Order appointing Plaintiffs as Class Representatives and Plaintiffs’ counsel of
18 record as Class Counsel;

19 C. An Order directing notice of this action,

20 D. An Order finding that Defendants violated the Lanham Act, 15 U.S.C. §1125(a)(1);

21 E. An Order finding that Defendants violated the California Consumer Legal
22 Remedies Act (CLRA), Cal. Civ. Code §§ 1750, *et seq.*;

23 F. An Order finding that Defendants violated the California Unfair Competition Law
24 (UCL), Cal. Civ. Code §§ 17200, *et seq.*;

25 G. An Order finding that Defendants violated the California Business and Professions
26 Code, Cal. Civ. Code §§ 17500-17509 (FAL);

1 H. An Order finding that Defendants violated New York General Business Law (GBL)
2 §349;

3 I. An Order finding that Defendants violated New York General Business Law (GBL)
4 §350;

5 J. An Order finding that Plaintiffs and the Class are entitled to recover damages,
6 including statutory damages, to the maximum extent allowed under the applicable laws;

7 K. An Order awarding judgment in favor of Plaintiffs and Class Members against
8 Defendants in an amount to be determined;

9 L. An Order enjoining Defendants, their affiliates, successors, transferees, assignees,
10 officers, directors, partners, agents and employees thereof, and all other persons acting or claiming
11 to act on their behalf or in concert with them, from continuing, maintaining or renewing the
12 conduct alleged herein, and from adopting or following any practice, plan, program, or device
13 having a similar purpose or effect;

14 M. An Order awarding Plaintiffs and Class Members pre- and post-judgment interest in
15 the maximum amount and to the maximum extent permitted by law;

16 N. An Order awarding Plaintiffs and Class Members their costs of suit and reasonable
17 attorneys' fees to the maximum extent allowed by law; and

18 O. An Order granting other and further relief, in law or equity as this Court may deem
19 just and proper.

20 **JURY TRIAL DEMAND**

21 93. Plaintiffs demand a jury trial on all triable issues.

22 DATED: December 10, 2024

/s/ Alex R. Straus

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28 CLASS ACTION COMPLAINT