

1 MICHAEL J. SACKSTEDER (CSB No. 191605)
 msacksteder@fenwick.com
 2 BRYAN A. KOHM (CSB No. 233276)
 bkohm@fenwick.com
 3 FENWICK & WEST LLP
 555 California Street, 12th Floor
 4 San Francisco, CA 94104
 Telephone: 415.875.2300
 5 Facsimile: 415.281.1350

6 GEOFFREY MILLER (CSB No. 308676)
 gmiller@fenwick.com
 7 FENWICK & WEST LLP
 Silicon Valley Center
 8 801 California Street
 Mountain View, CA 94041
 9 Telephone: 650.988.8500
 Facsimile: 650.938.5200

10 Attorneys for Plaintiff
 11 Supercell Oy

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14

15 SUPERCELL OY,
 16 Plaintiff,
 17 v.
 18 GREE, INC.,
 19 Defendant.

Case No.: _____

**COMPLAINT FOR DECLARATORY
 JUDGMENT REGARDING PATENT
 NON-INFRINGEMENT**

FENWICK & WEST LLP
 ATTORNEYS AT LAW

20
 21
 22
 23
 24
 25
 26
 27
 28

1 Plaintiff Supercell Oy (“Supercell”), by and through its attorneys, brings this Complaint
2 for Declaratory Judgment against Defendant GREE, Inc. (“GREE” or “Defendant”) and alleges
3 the following:

4 **NATURE OF THE ACTION**

5 1. This is an action for a declaratory judgment relating to U.S. Patent Nos. 10,328,347
6 (the ’347 patent); 10,335,683 (the ’683 patent), and 10,335,682 (the ’682 patent) (collectively the
7 “patents-in-suit”) arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and, 2202, and
8 the patent laws of the United States, including Title 35, United States Code. Specifically,
9 Supercell seeks a declaratory judgment of non-infringement as to the patents-in-suit.

10 2. A dispute exists between Supercell and GREE. GREE has alleged that Supercell’s
11 Clash of Clans game infringes the patents-in-suit and a Japanese patent to which the patents-in-
12 suit claim priority. Supercell contends that it has the right to engage in this activity without
13 license. Supercell thus seeks a declaration that it does not infringe the patents-in-suit.

14 **PARTIES**

15 3. Supercell Oy is a corporation organized under the laws of Finland, with a principal
16 place of business at Itämerenkatu 11-13, Helsinki, 00180, Finland. Supercell’s wholly-owned
17 subsidiary Supercell, Inc. maintains an office at 555 California St., San Francisco, California,
18 94104.

19 4. On information and belief Defendant GREE, Inc. is a corporation organized under
20 the laws of Japan with a principal place of business at 6-10-1, Roppongi, Roppongi Hills Mori
21 Tower Minato-Ku, Tokyo, Japan.

22 **JURISDICTION AND VENUE**

23 5. Supercell hereby restates and re-alleges the allegations set forth in paragraphs 1
24 through 4.

25 6. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202;
26 the patent laws of the United States, 35 U.S.C. § 1 et seq.

27 7. This Court has original jurisdiction over the subject matter of this action pursuant to
28 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

1 8. Personal jurisdiction over Defendant is proper in this District because it has
2 availed itself of the rights and benefits of the laws of California. On May 17, 2018, GREE
3 admitted in a pleading to this Court that it “transact[s] and conduct[s] business in this District and
4 the State of California, and [is] subject to the personal jurisdiction of this Court.” *See Supercell*
5 *Oy v. GREE, Inc.*, 4:17-cv-05556-YGR, Dkt. No. 65, ¶10 (N.D. Cal. May 17, 2017). GREE
6 further admitted that this Court has personal jurisdiction over GREE, Inc. and several of its
7 subsidiaries. *Id.* at ¶¶10-14, 16-17. GREE, by and through its affiliates and subsidiaries,
8 including GFR Fund I GP, LLC (formerly GREE VR Capital, LLC), GFR Fund II GP, LLC,
9 GREE International Entertainment, Inc., and Funzio Games, Inc., maintains or maintained offices
10 in the Northern District of California at 1350 Bayshore Highway, Suite 920, Burlingame,
11 California 94010, 185 Berry Street, San Francisco, California 94107, and 642 Harrison Street,
12 San Francisco, California 94107. In addition, GREE, Inc.’s Chief Technology Officer and Senior
13 Vice President, Masaki Fujimoto, is managing partner of GFR Fund I GP, LLC (formerly GREE
14 VR Capital LLC), which maintains its business address at 1350 Bayshore Highway, Suite 920,
15 Burlingame, California, 94010, in the Northern District of California.

16 9. Personal jurisdiction over Defendant is also proper in this District because
17 Defendant has chosen to conduct business relating to the licensing and enforcement activities of
18 its U.S. and worldwide patent portfolio within the Northern District of California. On September
19 12, 2016, GREE sent a letter seeking to enforce its rights in U.S. Patent Application 14/983,984
20 (which issued as U.S. Patent No. 9,597,594 (“the ’594 patent”)) to Supercell, whose main U.S.
21 location is within this District. The ’594 patent is in the same patent family as the patents-in-suit.
22 GREE specifically chose counsel located within this District to represent its efforts relating to the
23 licensing and enforcement of GREE’s patent portfolio, including the patent family of the patents-
24 in-suit. GREE’s lead counsel for negotiating an agreement relating to licensing and enforcement
25 of the worldwide patent portfolios of each of the Parties – including the patent family of the
26 patents-in-suit – is located within the Northern District of California. Furthermore, GREE
27 retained counsel located in the Northern District of California to represent it as backup counsel in
28 a post-grant review action before the Patent Trial and Appeal Board in which all independent

1 claims of the '594 patent were found invalid under 35 U.S.C § 101. Finally, on information and
 2 belief, GREE sent a representative from its Tokyo headquarters to attend a mediation between
 3 GREE and Supercell in the case *Supercell Oy v. GREE, Inc.*, Case No. 4:17-cv-05556-YGR,
 4 Dkt. No. 65, ¶ 10 (N.D. Cal. May 17, 2017), which took place in San Francisco, California
 5 relating to the licensing and enforcement of the patent family of the patents-in-suit.

6 10. Personal jurisdiction over Defendant is proper in this District because it has
 7 systematic and continuous business contacts with California. GREE has systematic and
 8 continuous business contacts with the state through its distribution of mobile game applications
 9 through third-party distributors located in this district to users located within this district. GREE,
 10 by and through its affiliates and subsidiaries, including GFR Fund I GP, LLC (formerly GREE
 11 VR Capital, LLC), GFR Fund II GP, LLC, GREE International Entertainment, Inc., Fantasy
 12 Legend Studios, Inc., and Funzio Games, Inc., maintains or maintained offices in the Northern
 13 District of California at 1350 Bayshore Highway, Suite 920, Burlingame, California 94010,
 14 185 Berry Street, San Francisco, California 94107, and 642 Harrison Street, San Francisco,
 15 California 94107.

16 11. Venue is proper in this district under 28 U.S.C. § 1391(b) because GREE is subject
 17 to personal jurisdiction in this judicial district, GREE is a foreign defendant for which venue is
 18 proper in any district, and GREE, as it has admitted in a pleading in this Court, has directed its
 19 business activities at this judicial district.

20 **INTRADISTRICT ASSIGNMENT**

21 12. Pursuant to Civil L.R. 3-2(c), this action is to be assigned on a district-wide basis
 22 because it is an intellectual property action.

23 **FACTUAL BACKGROUND**

24 13. Supercell hereby restates and re-alleges the allegations set forth in paragraphs 1
 25 through 12.

26 14. On June 25, 2019, the United States Patent and Trademark Office (“USPTO”)
 27 issued the '347 patent entitled “Computer Control Method, Control Program and Computer.”
 28 The '347 patent states on its face that it was filed on June 29, 2017 and that it was assigned to

1 GREE, Inc. The '347 patent claims priority to Japanese Patent Application 2013-202721, which
2 GREE identified as being infringed by Supercell's Clash of Clans game. A true and correct copy
3 of the '347 patent is attached to this Complaint as Exhibit A.

4 15. On July 2, 2019, the USPTO issued the '682 patent entitled "Computer Control
5 Method, Control Program and Computer." The '682 patent states on its face that it was filed on
6 August 24, 2018 and that it was assigned to GREE, Inc. The '682 patent claims priority to
7 Japanese Patent Application 2013-202721, which GREE identified as being infringed by
8 Supercell's Clash of Clans game. A true and correct copy of the '682 patent is attached to this
9 Complaint as Exhibit B.

10 16. On July 2, 2019, the USPTO issued the '683 patent entitled "Computer Control
11 Method, Control Program and Computer." The '683 patent states on its face that it was filed on
12 August 24, 2018 and that it was assigned to GREE, Inc. The '683 patent claims priority to
13 Japanese Patent Application 2013-202721, which GREE identified as being infringed by
14 Supercell's Clash of Clans game. A true and correct copy of the '683 patent is attached to this
15 Complaint as Exhibit C.

16 17. There is an actual controversy within the jurisdiction of this Court under 28 U.S.C.
17 §§2201 and 2202 as to each of the patents-in-suit.

18 18. On September 12, 2016, Naoki Yoshida from the law firm of Finnegan,
19 Henderson, Farabow, Garrett & Dunner, LLP, former counsel for GREE, Inc., sent a letter to
20 Iikka Paananen, CEO of Supercell Oy. In the September 12 letter, GREE identified and asserted
21 it is the legal owner of 19 Japanese patents and U.S. Patent Application 14/983,984, which issued
22 as the '594 patent and is part of the patent family of the patents-in-suit. GREE further stated, "It
23 has come to GREE's attention that Supercell is currently distributing at least four mobile game
24 products worldwide: 'Boom Beach,' 'Clash of Clans,' 'Clash Royale,' and 'Hay Day.' Upon
25 review of the products, GREE believes that these products may infringe one or more of GREE's
26 patents and may be encompassed by the allowed claims of the U.S. patent application." GREE
27 further asserted "GREE would rather reach a reasonable agreement with Supercell than to take on
28

1 a patent fight; however, GREE is willing to take that fight on if this cannot be accomplished.”

2 Exhibit D.

3 19. On May 27, 2019, GREE filed a complaint for patent infringement in the United
4 States District Court for the Eastern District of Texas, in a case captioned, *GREE, Inc. v.*
5 *Supercell Oy*, Case 2:19-cv-00200 (E.D. Tex.) (the “Texas action”). The complaint asserts U.S.
6 Patent No. 10,300,385 against Supercell’s “Clash of Clans” game.

7 20. On June 3, 2019, as a matter of right pursuant to Federal Rule of Civil Procedure
8 15(a)(1)(A), GREE filed a first amended complaint in the Texas action.

9 21. On June 24, 2019, in violation of the Civil Local Rules of the Eastern District of
10 Texas, GREE filed a Motion for Leave to File a Second Amended Complaint without meeting and
11 conferring with counsel for Supercell. In further violation of the Local Rules of the Eastern
12 District of Texas, GREE misled the Court by including a “Certificate of Conference” at the end of
13 the motion indicating that it had conducted the required conference with opposing counsel. GREE,
14 however, failed to state that it had, in fact, complied with the “meet and confer” requirement under
15 Civil Local Rules CV-7(h) and CV-7(i). The proposed Second Amended Complaint in the Texas
16 action alleges Supercell infringes “at least exemplary claim 28 of the Eda ’347 patent.”

17 22. On June 27, 2019, the Eastern District of Texas Court, seemingly unaware that
18 GREE intentionally failed to comply with the Local Rules, granted the Motion for Leave to File
19 the Second Amended Complaint.

20 23. On July 1, 2019, again in violation of the Civil Local Rules of the Eastern District
21 of Texas, GREE filed a Motion for Leave to File a Third Amended Complaint without meeting and
22 conferring with counsel for Supercell. In further violation of the Local Rules of the Eastern
23 District of Texas, GREE again misled the Court by including a “Certificate of Conference” at the
24 end of the motion indicating that it had conducted the required conference with opposing counsel.
25 GREE, again however, failed to state that it had, in fact, complied with the “meet and confer”
26 requirement under Civil Local Rules CV-7(h) and CV-7(i). The motion is pending. The proposed
27 Third Amended Complaint in the Texas action alleges that Supercell’s Clash of Clans game
28

1 infringes “at least exemplary claim 1 of the Eda ’682 patent” and “at least exemplary claim 1 of
2 the Eda ’683 patent.”

3 24. Because GREE intentionally violated the Civil Local Rules of the Eastern District
4 of Texas by filing the June 24, 2019 Motion for Leave to Amend without complying with the
5 “meet and confer” requirement, upon objection and reconsideration, the motion will be denied
6 and the Second Amended Complaint will be struck from the record.

7 25. Because GREE intentionally violated the Civil Local Rules of the Eastern District
8 of Texas by filing the July 1, 2019 Motion for Leave to Amend without complying with the
9 “meet and confer” requirement, the motion will be denied and the Third Amended Complaint will
10 not be filed in the Texas action.

11 26. Based on the foregoing, a justiciable controversy exists between Supercell and
12 GREE as to whether Supercell infringes the patents-in-suit. Absent a declaration of
13 noninfringement or release of all claims, GREE will continue to wrongly assert the patents-in-suit
14 against Supercell, and thereby cause Supercell irreparable harm.

15 **COUNT I: DECLARATORY RELIEF REGARDING**
16 **NON-INFRINGEMENT OF U.S. PATENT NO. 10,328,347**

17 27. Supercell restates and incorporates by reference each of the allegations set forth in
18 paragraphs 1 through 26 above, as if fully set forth herein.

19 28. GREE contends that Supercell has or is infringing one or more claims of the
20 ’347 patent.

21 29. On information and belief, GREE claims to be the owner of all right, title and
22 interest in the ’347 patent, including the right to assert all causes of action arising under that
23 patent and the right to any remedies for infringement of it.

24 30. Supercell does not infringe any claim of the ’347 patent, directly or indirectly,
25 contributorily or otherwise, through its or its customer’s activities in conjunction with any of
26 Supercell’s products or services.

27 31. As set forth above, an actual and justiciable controversy exists between Supercell
28 and GREE as to Supercell’s noninfringement of the ’347 patent.

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

- C. For an order finding that this is an exceptional case under 35 U.S.C. § 285 and awarding relief, including reasonable attorneys’ fees, costs, and expenses;
- D. For recovery of actual and compensatory damages, according to proof at trial;
- E. For an award of costs, expenses and reasonable attorneys’ fees incurred by Plaintiff in bringing and prosecuting this Complaint; and
- F. For such other and further relief as this Court may deem just and proper.

Dated: July 22, 2019

FENWICK & WEST LLP

By: /s/ Michael J. Sacksteder
 Michael J. Sacksteder
 Attorneys for Plaintiff
 Supercell Oy

FENWICK & WEST LLP
ATTORNEYS AT LAW