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7 **STATE OF WASHINGTON**
8 **THURSTON COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,
10 **Plaintiff,**
11 **v.**
12 SUPER BASIC, LLC AND MAPLE
13 MEDIA, LLC,
14 **Defendants.**

NO.
CONSENT DECREE
(CLERK'S ACTION REQUIRED)

15 **I. JUDGMENT SUMMARY**

- 16 1.1 Judgment creditor: State of Washington
17 1.2 Judgment Debtors: Super Basic, LLC and Maple Media, LLC
18 1.3 Principal Judgment Amount: \$500,000 (of which \$400,000 is suspended
19 pursuant to Section V below)
20 1.4 Interest on Unpaid Judgment
21 Amounts if Judgment Debtors
Breach Terms of Payment: 12% per annum
22 1.5 Attorney for Judgment Creditor: Andrea M. Alegrett,
23 Assistant Attorney General
24 1.6 Attorney for Judgment Debtors: Paul Connell
25 Alexis Cocco
26 Todd O. Maiden
Reed Smith LLP

1 1.7 Plaintiff State of Washington (“State”) conducted an investigation and
2 commenced this action pursuant to the Consumer Protection Act (CPA), RCW 19.86.020, the
3 Children’s Online Privacy Protection Act, 15 U.S.C. § 6501-6506 (COPPA), and the Children
4 Online Privacy Protection Rule, 16 C.F.R. Part 312, (COPPA Rule); and

5 1.8 Defendants Super Basic, LLC and Maple Media, LLC (“Defendants”), are
6 California limited liability companies with principal places of business in Los Angeles.
7 Defendants have waived service with a Summons and Complaint in this matter; and

8 1.9 The State appears by and through its attorneys, Robert W. Ferguson, Attorney
9 General, and Andrea M. Alegrett, Assistant Attorney General, and Defendants appear through
10 their attorneys, Paul Connell and Alexis Cocco, of Reed Smith; and

11 1.10 The State and Defendants agree on a basis for the settlement of the matters alleged
12 in the Complaint and to the entry of this Consent Decree against Defendants without the need
13 for trial or adjudication of any issue of law or fact; and

14 1.11 Defendants, by entering into this Consent Decree, do not admit the allegations of
15 the Complaint other than those facts deemed necessary to the jurisdiction of this Court; and

16 1.12 The State and Defendants agree this Consent Decree does not constitute evidence
17 or an admission regarding the existence or non-existence of any issue, fact, or violation of any
18 law alleged by the State; and

19 1.13 Defendants recognize and state that this Consent Decree is entered into
20 voluntarily and that no promises, representations, or threats have been made by the Attorney
21 General’s Office or any member, officer, agent, or representative thereof to induce it to enter
22 into this Consent Decree, except for the promises and representations provided herein; and

23 1.14 Defendants waive any right they may have to appeal from this Consent Decree or
24 to otherwise contest the validity of this Consent Decree; and

25 1.15 Defendants agree that this Court retains jurisdiction of this action and jurisdiction
26 over Defendants for the purpose of implementing and enforcing the terms and conditions of this

1 Consent Decree and for all other purposes related to this matter; and

2 1.16 Defendants agree that their payments made or due pursuant to this Consent
3 Decree are not amenable to discharge in bankruptcy and that they will not seek its discharge in
4 bankruptcy, nor oppose its being determined not amenable to discharge in bankruptcy; and

5 1.17 Defendants agree their payments made or due pursuant to this Consent Decree
6 are not preferential transfers of assets and they will not make or support arguments to the contrary
7 in bankruptcy court or elsewhere.

8 The Court, finding no just reason for delay;

9 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

10 **II. GENERAL**

11 2.1 This Court has jurisdiction of the subject matter of this action and of the parties.

12 2.2 This Consent Decree or the fact of its entry does not constitute evidence or an
13 admission by any party regarding the existence or non-existence of any issue, fact, or violation of
14 any law alleged by Washington. To the contrary, Defendants have denied and continue to deny any
15 and all wrongdoing of any kind whatsoever and retain, and do not waive, any and all defenses
16 Defendants may have with respect to such matters.

17 2.3 This Consent Decree fully and finally resolves and forever discharges and releases
18 all claims and causes of action under the CPA and COPPA that the State of Washington has filed
19 or may in the future file against Defendants arising out of or relating to the facts and matters
20 specifically described in the Complaint, except that Defendants' material failure to comply with this
21 Consent Decree shall permit the Attorney General of Washington to take such further action against
22 Defendants as provided for herein.

23 **III. DEFINITIONS**

24 For the purpose of this Order, the following definitions apply:

25 3.1 The terms "child," "collects," "collections," "delete," "disclosure," "Internet,"
26 "online contact information," "operator," "parent," "person," "personal information," "third

1 party,” “verifiable consent,” and “website or online service directed to children,” have the same
2 meaning as those terms are defined in Section § 312.2 of the COPPA Rule, 16 C.F.R § 312.2.

3 3.2 “Covered Conduct” means any collection of personal information from children under
4 the age of 13 years old.

5 3.3 “Defendants” means Super Basic, LLC and Maple Media, LLC.

6 **IV. INJUNCTIONS**

7 4.1 The injunctive provisions of this Consent Decree shall apply to Defendants and to
8 their successors, assigns, and others acting in concert with Defendant.

9 4.2 Defendants shall immediately inform all successors, assigns, transferees, officers,
10 agents, employees, representatives, and all other persons or entities in active concert or participation
11 with Defendants whose responsibilities relate to the Covered Conduct, of the terms and conditions
12 of this Consent Decree and shall direct those persons and/or entities to comply with this
13 Consent Decree.

14 4.3 The injunctive relief set forth below applies to business activity conducted in the
15 State of Washington. Defendants’ failure to comply with any injunctive provision of this Consent
16 Decree is a material breach of this Consent Decree.

17 4.4 Defendants are hereby permanently enjoined and restrained from directly or
18 indirectly violating or failing to comply with COPPA, the COPPA Rule, and the CPA, as they are
19 currently written and may be amended in the future.

20 4.5 In connection with being an operator (a) of any Web site or online service directed
21 to children or (b) of any Web site or online service with actual knowledge that it is collecting or
22 maintaining personal information from a child, Defendants shall, if applicable:

- 23 a. Make reasonable efforts, taking into account available technology, to ensure that a
24 parent of a child receives direct notice of Defendants’ practices with regard to the
25 collection, use, or disclosure of personal information from children, including notice
26 of any material change in the collection, use, or disclosure practices to which the

1 parent has previously consented;

- 2 b. Post a prominent and clearly labeled link to an online notice of their information
3 practices with regard to children, if any, on the home or landing page or screen of
4 its Web site or online service, and at each area of the Web site or online service
5 where personal information is collected from children. Such online notice must
6 include (1) contact information for all third parties collecting personal information;
7 (2) a description of what information the operator collects from children, how the
8 operator uses such information, and the operator's disclosure practices; and (3) a
9 description of parental rights;
- 10 c. Provide parents with direct notice of their information collection practices regarding
11 the collection, use, or disclosure of personal information from users;
- 12 d. Obtain verifiable parental consent before any collection, use, or disclosure of
13 personal information from children, including consent to any material change in the
14 collection, use, or disclosure practices to which the parent has previously consented;
- 15 e. Not collect personal information from users under the age of 13 years old, including
16 through (1) requesting, promoting, or encouraging the child to submit information,
17 even if it is optional; (2) allowing a child to make personal information publically
18 available; or (3) passively tracking a child online, without first providing parents
19 with direct notice and obtaining verifiable parental consent;
- 20 f. Delete a child's personal information at the request of a parent; and
- 21 g. Not retain personal information collected from a child for longer than is reasonably
22 necessary to fulfill the purpose for which the information was collected.

23 4.6 Section 4.5 shall not apply to any websites or online services that are not directed
24 towards children as their primary audience if Defendants:

- 25 a. Do not collect personal information from visitors prior to collecting age
26 information; and

- 1 b. Prevent the collection, use, or disclosure of personal information from visitors
2 who identify themselves as under age 13 without first complying with the notice
3 and parental consent provisions.
- 4 c. The collection of age information provided in 4.6(a) may be accomplished
5 through utilizing an age screen for entry and use, either directly or through
6 reasonable reliance on user authentication and registration through a third-party
7 website or online service where the third party has instituted an age screen, and
8 deny use to any person identifying as a child (as defined by COPPA).
- 9 d. Defendants shall delete or remove, without undue delay, any personal information
10 collected or maintained pertaining to a child as soon as Defendants learn that an age
11 screen has been circumvented. Defendants shall immediately remove such
12 information from the website or online service but may retain the information
13 internally while engaging in a reasonable investigation to confirm whether the
14 personal information belongs to a child.

15 4.7 Defendants shall destroy all personal information, in all forms in their possession,
16 custody, or control, that is associated with user accounts created by any child without the parent's
17 consent existing at the time of entry of this Order.

18 4.8 For services that collect personal information from users and are directed to children
19 but do not target children as the primary audience, Defendants shall:

- 20 a. For all new users, implement an age verification that requires users to input their
21 birthdate. Users who state that they are under 13 years old will not be permitted to
22 use the service and Defendants will destroy any personal information collected from
23 that user;
- 24 b. For all existing users, implement an age verification prompt that will require users
25 to input their birthdate. Users who state that they are under 13 years old will not be
26 permitted to use the service and Defendants will destroy all personal information

1 collected from that user, except that Defendants may, with the affirmative consent
2 of the user, transfer the user's photos to the user's device and allow such user to
3 retain their username, so long as that username does not function in the same manner
4 as online contact information;

5 c. For existing users who state that at the time of entry of this Order, that they were
6 under the age of 13 years old at the time Defendants collected their personal
7 information, Defendants shall destroy such personal information collected from that
8 user, except that Defendants may, with the affirmative consent of the user, transfer
9 the user's photos to the user's device and retain the user's registration
10 information; and

11 d. If the age of a particular user of an existing account is not confirmed to be over 13
12 years old either through an age screen or reasonable reliance on a third party
13 platform that utilizes an age scree, within six months after entry of this Order,
14 Defendants shall within six months of entry of the order: (a) remove such user's
15 personal information from their web sites and online services; (b) not disclose any
16 personal information regarding such user; and (c) destroy such personal information
17 within twelve months after entry of this Order. If the age of a particular user whose
18 information has been removed is not identified within 12 months of entry of this
19 Order, Defendants shall comply with paragraphs 4.8(a)-(c) above.

20 4.9 Defendants shall perform regular human and computer based audits of user's
21 profiles, tags, posts, and activity on any cases where content may be perceived to be relevant to or
22 directed to children or Defendants have actual knowledge of use by children, and that any such
23 content is and practices related to such content comply with the terms of this Order.

24 4.10 Defendants shall continue auditing and moderation of its computer based tagging
25 logic to include words and descriptions of content that may be relevant to or directed to children,
26 and any content identified by this process will be subject to human review.

1 4.11 Defendants shall not engage in unfair or deceptive acts or practices related to the
2 covered conduct or practices covered by this Order.

3 4.12 Within fifteen (15) months from the entry of this Order, Defendant shall submit a
4 compliance report to the State, sworn under penalty of perjury. This compliance report shall include:

- 5 a. The contact information for each Defendant;
- 6 b. A description of Defendants' business activities, including the goods and
7 services offered;
- 8 c. Describe in detail whether and how Defendants are in compliance with each section
9 of this Order, as applicable;
- 10 d. For each Web site or online service operated by Defendants, provide a copy of any
11 privacy notice, direct notice to parents, and any other disclosures made to users,
12 children, and parents regarding its collection and use of personal information;
- 13 e. If applicable, provide a statement setting forth in detail any methods used to obtain
14 verifiable parental consent prior to any collection, use, and/or disclosure of personal
15 information from children or the methods used to avoid collecting, using, and/or
16 disclosing personal information from children;
- 17 f. If applicable, provide a statement setting forth in detail the means provided for
18 parents to review any personal information collected from their children and to
19 refuse to permit its further use or maintenance;
- 20 g. If applicable, provide a statement setting forth in detail why each type of information
21 collected from a child is reasonably necessary for the provision of the particular
22 related activity; and
- 23 h. If applicable, provide a statement setting forth in detail the procedures used to
24 protect the confidentiality, security, and integrity of personal information collected
25 from children.
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1 4.13 Unless otherwise directed by a representative of the State in writing, Defendants'
2 compliance report made pursuant to this order must be emailed to: andrea.alegrett@atg.wa.gov, or
3 sent via certified mail to Office of the Attorney General, Attention: Andrea Alegrett, Assistant
4 Attorney General, 800 Fifth Avenue, Suite 2000, Seattle, Washington 98104. The subject line must
5 begin with: State v. Super Basic LLC, et al.

6 V. MONETARY JUDGMENT

7 5.1 Pursuant to RCW 19.86.080, Washington shall recover and Defendants shall pay
8 Washington the amount of \$500,000, of which \$400,000 is suspended, for costs and reasonable
9 attorney's fees incurred by Washington in pursuing this matter, for monitoring and potential
10 enforcement of this Consent Decree, for future enforcement of RCW 19.86, or for any lawful
11 purpose in the discharge of the Attorney General's duties at the sole discretion of the
12 Attorney General.

13 5.2 The suspension of \$400,000 is expressly premised upon the truthfulness, accuracy,
14 and completeness of Defendants sworn financial statements and related documents submitted to the
15 State, namely:

- 16 a. Consolidated Profit and Loss Statement for the Period ending December 31, 2018;
- 17 b. Consolidated Balance Sheet as of December 31, 2018;
- 18 c. Consolidated Profit and Loss Statement for the Period ending September 30, 2019;
- 19 d. Consolidated Balance Sheet as of September 30, 2019;
- 20 e. Income Statements for the period of January 2019 through September 2019; and
- 21 f. Income Statements for the period of April 2018 through July 2019.

22 5.3 Defendants shall pay the sum of \$100,000 referenced in Paragraph 5.1 no later than
23 30 days following entry of this Consent Decree. The payment shall be made by valid check, made
24 payable to the "Attorney General - State of Washington," and shall be delivered to the Office of the
25 Attorney General, Attention: Margaret Farmer, Administrative Office Manager, 800 Fifth Avenue,
26 Suite 2000, Seattle, Washington 98104. The re line must state: State v. Super Basic LLC, et al.

1 faith to schedule the deposition at a time convenient for the deponent and his or her legal counsel.

2 6.7 This Consent Decree is binding upon and inures to the benefit of Defendants'
3 successors and assigns. Defendants must notify the Attorney General's Office at least thirty (30)
4 days prior to any change-in-control of Super Basic LLC or Maple Media LLC that would change
5 the identity of the corporate entity responsible for compliance obligations arising under this Consent
6 Decree, including but not limited to dissolution, assignment, sale, merger, or other action that would
7 result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent,
8 or affiliate that engages in any acts or practices subject to this order; the proposed filing of a
9 bankruptcy petition; or a change in the corporate name or address; provided, however, that with
10 respect to any proposed change of which Defendants learn less than thirty (30) days prior to the
11 date such action is to take place, Defendants may notify the Attorney General's Office as soon as is
12 practicable after obtaining such knowledge. Defendants' notification obligations shall expire five
13 years after the entry of this Order.

14 6.8 Any notice required under this Consent Decree must, unless otherwise agreed by
15 the parties in writing, be sent in writing to the following persons or to persons subsequently
16 designated by the parties:

17 For the State of Washington:

18 Office of the Attorney General
19 Consumer Protection Division
20 ATTN: Andrea Alegrett, Assistant Attorney
21 General
22 800 Fifth Avenue, Suite 2000
23 Seattle, WA 98104-3188

17 For Defendants:

18 Paul Connell
19 Reed Smith LLP
20 10 South Wacker Drive
21 Chicago, IL 60606

22 and

23 Ramsey Hanna
24 Reed Smith LLP
25 1901 Avenue of the Stars, Suite 700
26 Los Angeles, CA 90067

1 DONE IN OPEN COURT this _____ day of _____, 2020.

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4 JUDGE/COURT COMMISSIONER

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6 Approved for entry and presented by:

Approved for Entry, Notice of Presentation
Waived:

7 ROBERT W. FERGUSON
8 Attorney General

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11 ANDREA M. ALEGRETT, WSBA #50236
12 Assistant Attorney General

TODD O. MAIDEN WSBA# 14922

13 State of Washington

Reed Smith LLP

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**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

STATE OF WASHINGTON, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> SUPER BASIC, LLC AND MAPLE MEDIA, LLC, <p style="text-align: center;">Defendants.</p>	NO. COMPLAINT	
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I. INTRODUCTION

1.1 Plaintiff, State of Washington, by and through its attorneys Robert W. Ferguson, Attorney General, and Andrea M. Alegrett, Assistant Attorney General, brings this action against Defendants Super Basic, LLC and Maple Media, LLC.

1.2 Plaintiff alleges that Defendants engaged in unfair and deceptive acts or practices in violation of the Consumer Protection Act (“CPA”), RCW 19.86, the Children’s Online Privacy Act of 1998 (“COPPA”), 15 U.S.C. §§ 6501-06, and the Children’s Online Privacy Protection Rule (“COPPA Rule”), 16 C.F.R. Part 312, by collecting personal information from children under the age of 13 years old without parental consent.

II. JURISDICTION AND VENUE

2.1 Plaintiff files this Complaint and institutes these proceedings pursuant to the CPA, COPPA, and the COPPA Rule. The Attorney General has statutory authority to commence this action pursuant to RCW 19.86.080, RCW 19.86.140, and 15 U.S.C. § 6504.

IV. FACTS

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2 4.1 In April 2018, Defendants purchased the We Heart It (WHI) platform and took
3 over its operations. WHI is a social media platform with approximately 500,000 monthly active
4 users in the United States. WHI is available on a website¹ and through an app on Apple, Inc.'s
5 and Google Inc.'s App Stores. Users create profiles on the WHI platform where they can upload
6 and share photos and images. WHI has various pages or "channels" that users can follow. Several
7 of these channels appeal to children, including those dedicated to Disney, Harry Potter, DC
8 Comics, Pokémon, and child celebrities or celebrities who appeal to children.

9 4.2 Up until October 2019, WHI permitted any person, regardless of age, to create a
10 WHI account.

11 4.3 WHI collects personal information from users by requesting, promoting, or
12 encouraging the submission of information specific to those users. WHI requires a user creating
13 an account to provide an email address and username, which functions as the user's online
14 contact information, and encourages the user to upload a profile photo. The user may provide
15 additional personal information, including a bio, their location, and a link to an external blog
16 or website.

17 4.4 WHI users can also create personal albums, which they share on their profile
18 pages. These albums may include photos of the user and include tags identifying the user's
19 location or age. When users uploaded photos, Defendants also collected the photos metadata,
20 which included geolocation data for some images. In June 2019, Defendants began deleting the
21 metadata from uploaded images.

22 4.5 When a WHI user creates an account, Defendants also collect persistent
23 identifiers, including cookies, IP address, iOS advertising ID, and Android advertising ID. WHI
24 permits third party advertising networks to collect persistent identifiers from WHI users.

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¹ <https://weheartit.com/>

1 4.6 Users may interact with other users by sending direct messages or by liking or
2 “hearting” the content posted or shared by other users.

3 4.7 By default, WHI user profiles are set to public, which means that a user’s profile
4 can be viewed or searched for by other users. WHI’s direct messaging was also set to public by
5 default. In May 2019, Defendants changed the default setting for messaging and profiles
6 to private.

7 4.8 Defendants did not provide direct notice to or obtain verifiable parental consent
8 from parents prior to collecting personal information from users under the age of 13 years old.

9 V. FIRST CAUSE OF ACTION

10 (Violation of the Consumer Protection Act, RCW 19.86.020)

11 5.1 Plaintiff realleges paragraphs 1.1 through 4.8 and incorporates them as if fully set
12 forth herein.

13 5.2 Defendants engaged in “trade” or “commerce” within the meaning of the
14 Consumer Protection Act, RCW 19.86.010(2).

15 5.3 Defendants engaged in unfair and deceptive conduct in trade or commerce
16 affecting consumers in Washington and other states, including but not limited to the following:

- 17 a. Collecting personal information from users under the age of 13 years old
18 without obtaining parental consent;
- 19 b. Failing to provide notice on their website and mobile apps disclosing the
20 information they collect online from children, how they use such
21 information, and their disclosure practices for such information;
- 22 c. Failing to provide direct notice to parents of the information they collect
23 online from children, how they use such information, and their disclosure
24 practices for such information;
- 25 d. Failing to obtain consent from parents before any collection or use of
26 personal information from children; and

1 e. Retaining personal information collected online from children for longer
2 than reasonably necessary to fulfill the purpose for which the information
3 was collected.

4 5.4 Defendants' actions affect the public interest because they collected the personal
5 information of children under the age of 13 without obtaining parental consent.

6 5.5 Defendants' business practices have the capacity to deceive a substantial number
7 of Washington consumers.

8 5.6 Defendants' business practices are not reasonable in relation to the development
9 and preservation of business.

10 5.7 Based on the above unfair or deceptive acts and practices, Plaintiff is entitled to
11 relief under the CPA including injunctive relief pursuant to RCW 19.86.080, civil penalties
12 pursuant to RCW 19.86.140 of up to two thousand dollars (\$2,000) per violation for each and
13 every violation of RCW 19.86.020, and reimbursement of the costs of this action, including
14 reasonable attorneys' fees, pursuant to RCW 19.86.080.

15
16 **VI. SECOND CAUSE OF ACTION**
(Violation of the Children's Online Privacy Protection Rule)

17 6.1 Plaintiff realleges paragraphs 1.1 through 5.7 and incorporates them as if fully
18 set forth herein.

19 6.2 Defendants are operators subject to the COPPA Rule.

20 6.3 In numerous instances, in connection with the acts and practices described herein,
21 Defendants collected and used personal information from children under the age of 13 years old
22 in violation of the COPPA Rule by:

23 a. Failing to provide notice on their website and mobile apps disclosing the
24 information they collect online from children, how they use such
25 information, and their disclosure practices for such information, among
26

1 other required content, in violation of Section 312.4(d) of the Rule, 16
2 C.F.R. § 312.4(d);

3 b. Failing to provide direct notice to parents of the information Defendants
4 collect online from children, how they use such information, and their
5 disclosure practices for such information, among other required content, in
6 violation of Section 312.4(b) of the Rule, 16 C.F.R. § 312.4(b);

7 c. Failing to obtain consent from parents before any collection or use of
8 personal information from children, in violation of Section 312.5(a)(1) of
9 the Rule, 16 C.F.R. § 312.5(a)(1); and

10 d. Retaining personal information collected online from children for longer
11 than reasonably necessary to fulfill the purpose for which the information
12 was collected, in violation of Section 312.10 of the Rule, 16 C.F.R. § 312.10.

13 6.4 Pursuant to 15 U.S.C. § 6502(c), a violation of the Rule constitutes an unfair or
14 deceptive act or practice in or affecting commerce.

15 **VII. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, State of Washington, prays for relief as follows:

17 7.1 That the Court adjudge and decree that Defendants have engaged in the conduct
18 complained of herein.

19 7.2 That the Court adjudge and decree that the conduct complained of constitutes unfair
20 or deceptive acts and practices and is unlawful in violation of the Consumer Protection Act,
21 RCW 19.86, the Children’s Online Privacy Act of 1998 (“COPPA”), 15 U.S.C. §§ 6501-06, and
22 the Children’s Online Privacy Protection Rule (“COPPA Rule”), 16 C.F.R. Part 312.

23 7.3 That the Court issue a permanent injunction enjoining and restraining Defendants,
24 and their representatives, successors, assigns, officers, agents, servants, employees, and all other
25 persons acting or claiming to act for, on behalf of, or in active concert or participation with
26 Defendants, from continuing or engaging in the unlawful conduct complained of herein.

