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11 **THE UNITED STATES DISTRICT COURT**  
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 **SAN FRANCISCO DIVISION**

**CV 11 3796**

14 JOHN B. KIM, and DAN C. SCHUTZMAN,  
15 Individually, on Behalf of Themselves and All  
16 Others Similarly Situated,

17 Plaintiffs,

18 v.

19 SPACE PENCIL, INC. D/B/A KISSMETRICS,  
BABYPIPS.COM, INVOLVER.COM, MOO,  
20 INC., SITENING, LLC., SHOEDAZZLE.COM  
INC., 8TRACKS INC., ABOUT.ME,  
21 FRIENDLY, GIGA OMNI MEDIA INC.,  
HASOFFERS.COM, KONGREGATE INC.,  
22 LIVEMOCHA INC., ROCKETTHEME, LLC,  
FITNESS KEEPER, INC., SEOMOZ, INC.,  
23 SHARECASH, LLC., SLIDESHARE.NET,  
SPOKEO, INC., SPOTIFY USA, INC.,  
24 VISUAL.LY, CONDUIT USA, FLITE, INC.,  
25 TANGIENT, LLC, ETSY INC, AND  
IVILLIAGE, INC.

26 Defendants.

CASE NO. \_\_\_\_\_

**JURY DEMAND**

**CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF:**

1. Electronic Communications Privacy Act, 18 U.S.C. § 2510;
2. Computer Crime Law, Cal. Penal Code § 502;
3. Trespass to Personal Property/Chattel; and
4. Unfair Competition Law, Cal. Bus. and Prof. Code § 17200.

**FILED**

AUG - 1 2011

RICHARD W. WHEATING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**EDL**

**BY FAX**

Complaint

1  
2 Plaintiffs, on behalf of themselves and all others similarly situated (each, a "Class  
3 Member" and, collectively, the "Class") allege as follows based on personal knowledge and on  
4 information and belief based on investigations of counsel.

5 **PARTIES**

6 1. Plaintiffs are individuals residing in the United States and each of whom, during  
7 the Class Period (as defined herein), used his or her Internet-connected computer and Web-  
8 browsing software ("browser") installed on that computer to visit Defendants' websites.

9 2. Plaintiff John B. Kim is a resident of San Diego County, California. He has  
10 visited Defendant Spokeo, Inc.'s website, <http://spokeo.com>, a number of times over the course  
11 of the past year.

12 3. Plaintiff Dan C. Schutzman is a resident of Los Angeles County, California. He  
13 has visited Defendant Spotify, USA, Inc.'s website, <http://spotify.com> and Defendant  
14 Fitnesskeeper, Inc.'s website, <http://runkeeper.com> several times over the course of the past year.

15 4. Defendant BabyPips.com ("Babypips") is a business organization, form unknown,  
16 with principal offices in Richmond, Virginia. Defendant operates the website <http://babypips.com>.

17 5. Defendant Involver.com ("Involver") is a Delaware Corporation with its principal  
18 place of business located at 611 Mission Street, San Francisco, California. Defendant operates  
19 the website <http://involver.com>.

20 6. Defendant Moo, Inc. ("Moo") is a Delaware corporation with its principal place  
21 of business located at 855 Waterman Avenue, East Providence, Rhode Island. Defendant Moo,  
22 Inc. operates the website <http://moo.com>.

23 7. Defendant Sitening, LLC ("Sitening") is a business organization, form unknown,  
24 with its principal place of business located at 1414 17<sup>th</sup> Avenue, Nashville, Tennessee.  
25 Defendant Sitening operates the website <http://raventools.com>.

1           8. Defendant Shoedazzle.com, Inc. ("Shoedazzle") is a business organization, form  
2 unknown, with its principal place of business located at 2501 Colorado Avenue, Santa Monica,  
3 California. Defendant Shoedazzle operates the website <http://shoedazzle.com>.

4           9. Defendant 8tracks Inc. ("8tracks") is a Delaware corporation with its principal  
5 place of business located at 192 Orchard Street, New York, New York. Defendant 8tracks  
6 operates the website <http://8tracks.com>.

7           10. Defendant About.me is a Delaware corporation with its principal place of business  
8 located at Pier 38 The Embarcadero, San Francisco, California. Defendant About.me operates  
9 the website <http://about.me>.

10           11. Defendant friend.ly is a business organization, form unknown, with its principal  
11 place of business located in Mountainview, California. Defendant friend.ly operates the website  
12 <http://friend.ly>.

13           12. Defendant Giga Omni Media Inc. ("Gigaom") is a Delaware corporation with its  
14 principal place of business located at 217 2<sup>nd</sup> Street, San Francisco, California. Defendant  
15 Gigaom operates the website <http://gigaom.com>.

16           13. Defendant Hasoffers.com is a business organization, form unknown, with its  
17 principal place of business located at 2220 Western Avenue, Seattle, Washington. Defendant  
18 Hasoffers.com operates the website <http://hasoffers.com>.

19           14. Defendant Kongregate Inc. ("Kongregate") is a Delaware corporation with its  
20 principal place of business located at 625 Westport Parkway, Grapevine, Texas. Defendant  
21 Kongregate operates the website <http://kongregate.com>.

22           15. Defendant LiveMocha Inc. ("LiveMocha") is a business organization, form  
23 unknown, with its principal place of business located in Bellevue, Washington. Defendant Live  
24 Mocha operates the website <http://livemocha.com>.

1           16. Defendant Rockettheme, LLC ("Rockettheme") is a Colorado corporation with its  
2 principal place of business located in Golden, Colorado. Defendant Rockettheme operates the  
3 website <http://rockettheme.com>.

4           17. Defendant Fitnesskeeper, Inc. ("Fitnesskeeper") is a business organization, form  
5 unknown, with its principal place of business located in Boston, Massachusetts. Defendant  
6 Fitnesskeeper operates the website <http://runkeeper.com>.

7           18. Defendant Seomoz, Inc. ("Seomoz") is a Delaware corporation with its principal  
8 place of business in Seattle, Washington. Defendant Seomoz operates the website  
9 <http://seomoz.org>.

10           19. Defendant ShareCash, LLC ("Sharecash") is a New York corporation with its  
11 principal place of business located in Queens, New York. Defendant Sharecash operates the  
12 website <http://sharecash.org>.

13           20. Defendant Slideshare, Inc. ("Slideshare") is a Delaware corporation with its  
14 principal place of business located at 490 2<sup>nd</sup> Street, San Francisco, California. Defendant  
15 Slideshare operates the website <http://slideshare.net>.

16           21. Defendant Spokeo, Inc. ("Spokeo") is a Delaware corporation with its principal  
17 place of business in Pasadena, California. Defendant Spokeo operates the website  
18 <http://spokeo.com>.

19           22. Defendant Spotify USA, Inc. ("Spotify") is a Delaware corporation with its  
20 principal place of business in New York, New York. Defendant Spotify operates the website  
21 <http://spotify.com>.

22           23. Defendant visual.ly is a business entity, form unknown, with its principal place of  
23 business in San Francisco, California. Defendant visual.ly operates the website <http://visual.ly>.

1           24. Defendant Conduit USA Inc. ("Conduit") is an Israeli corporation authorized to  
2 do business in the State of California, with its principal place of business in San Mateo,  
3 California. Defendant Conduit operates the website <http://wibiya.com>.

4           25. Defendant Flite, Inc. ("Flite") is a Delaware corporation with its principal place of  
5 business in San Francisco, California. Defendant Flite operates the website  
6 <http://widgetbox.com>.

7           26. Defendant Tangient, LLC ("Tangient") is a California corporation with its  
8 principal place of business in San Francisco, California. Defendant Tangient operates the  
9 website <http://wikispaces.com>.

10           27. Defendant Etsy Inc. ("Etsy") is a Delaware corporation with its principal place of  
11 business located in New York, New York. Defendant Etsy operates the website  
12 <http://www.etsy.com>.

13           28. Defendant iVillage, Inc. ("iVillage") is a business organization, form unknown,  
14 with its principal place of business in New York, New York. Defendant iVillage is part of the  
15 NBC Universal Women & Lifestyle Entertainment Networks Group. Defendant iVillage  
16 operates the website <http://astrology.com>.

17           29. Defendants Babypips, Involver, Moo, Sitening, Shoedazzle, 8tracks, About.me,  
18 friend.ly, Gigaom, Hasoffers.com, Kongregate, LiveMocha, Rockettheme, Fitnesskeeper,  
19 Seomoz, Sharecash, Spokeo, Spotify, visual.ly, Conduit, Flite, Tangient, Etsy and iVillage are  
20 collectively referred to as the "Website Defendants."

21           30. Defendant Space Pencil, Inc. d/b/a KISSmetrics ("Kissmetrics") is a business  
22 organization, form unknown, with principal executive offices and headquarters located at 407  
23 Morning Lane, Redwood City, California 94065.

24           31. The "Website Defendants" and Kissmetrics are collectively referred to as  
25 "Defendants."

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## INTRADISTRICT ASSIGNMENT

32. Kissmetrics's principal executive offices and headquarters are in this District at 407 Morning Lane, Redwood Shores, California, so intra-district assignment to the San Francisco Division is proper.

## JURISDICTION AND VENUE

33. This Court has diversity jurisdiction in this case under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). This complaint states claims on behalf of national classes of consumers who are minimally diverse from Defendants. The amount in controversy exceeds \$5 million, exclusive of interest and costs. The Classes (as defined herein) consist of more than one hundred members.

34. This Court also has federal question jurisdiction under 28 U.S.C. § 1331 as this action arises in part under a federal statute, including the Electronic Communications Privacy Act.

35. This Court has supplemental jurisdiction with respect to the pendent state law claims under 28 U.S.C. § 1367.

36. This Court has personal jurisdiction over Defendants because some of the acts alleged herein were committed in the state of California and because some of the Defendants are registered to do business in this state and Defendants systematically and continuously conduct business in this state.

37. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant Kissmetrics operates primarily in Redwood City, California.

## GENERAL ALLEGATIONS

A. **Plaintiffs and Class Members' used their browser privacy controls to prevent tracking.**

38. Plaintiffs and Class Members value their privacy while Web-browsing.

1           39. Plaintiffs and Class Members have a reasonable expectation of privacy while  
2 Web-browsing.

3           40. Plaintiffs and Class Members do not want to be tracked online.

4           41. Plaintiffs and Class Members believe their Web-browsing is private and not the  
5 business of anyone except the Website with which they choose to communicate.  
6

7           42. Plaintiffs and Class Members consider many of their online communications to  
8 involve their personal information—information of a private, confidential, sensitive, and intimate  
9 nature involving personal and professional matters such as finance, health, politics, religion,  
10 family and relationship matters and events, and other matters regarding which they protect their  
11 communications from disclosure to others.

12           43. Plaintiffs' online communications included such information, both their own and  
13 of persons with whom they corresponded.

14           44. Plaintiffs and Class Members believe their decisions to disclose or not disclose  
15 information when they view a particular Web page, select content or options on the page, or enter  
16 information on the page, is their decision to make.

17           45. Plaintiffs and Class Members believe the information they disclose online is an  
18 asset they possess and to which online third parties have no presumptive right of access.  
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20           46. Plaintiffs and Class Members believe their computers, Internet connectivity  
21 through their ISPs, and software installed on their computers ("Computer Assets")—are theirs to  
22 use and control, to preserve their privacy and for other reasons, such as preventing unwanted  
23 communications from diminishing the speed of their Internet connections.

24           47. Plaintiffs and Class Members believe their Computer Assets are assets they pay  
25 for, possess, and/or to which they enjoy a right of possession and use.

1           48.     Plaintiffs and Class Members believe online parties with whom they have not  
2 chosen to communicate have no presumptive right to access or use Plaintiffs and Class Members'  
3 Computer Assets.

4           49.     Plaintiffs and Class Members' ability to block and delete browser cookies is  
5 material to them in protecting their privacy interests and keeping their Computer Assets from  
6 being used in ways Plaintiffs and Class Members' do not want their Computer Assets used,  
7 including to diminish and invade their privacy interests.

8           50.     To avoid being tracked online, Plaintiffs and Class Members used and relied on  
9 their browser controls to block and/or delete browser cookies from tracking companies,  
10 including Defendants.

11           51.     Plaintiffs did so to protect their privacy interests and to improve the performance  
12 of their computers while they browsed the Web.

13           52.     Plaintiffs and Class Members reasonably expected their browser controls to block  
14 or delete cookies, preventing them from being tracked online, profiled, and served behaviorally  
15 targeted advertisements.

16           53.     Plaintiffs subsequently discovered that, despite their use of browser controls,  
17 Defendants had been tracking their online activities and had stored a number of files on their  
18 computers.

19           54.     The files Defendants stored on their computers were not browser cookies. They  
20 were Adobe Flash Local Stored Objects (LSOs).

21           **B.           Kissmetrics and Website Defendants' Rogue Tracking Exploits**

22           55.     Plaintiffs and Class Members share reasonable expectations about tracking of  
23 their online activities and limits of that tracking, relating to who will be tracking, what will be  
24 tracked, and how tracking will be done.  
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1           56.     Plaintiffs and Class Members reasonably expect that websites performing tracking  
2 do so by storing information in cookies on the computers of visitors to their websites.

3           57.     While it is generally reasonable to expect a website to use cookies for tracking,  
4 the Website Defendants and Kissmetrics created numerous, alternative, "shadow" mechanisms  
5 for tracking; Defendants engaged in tracking by exploiting Plaintiff and Class Members'  
6 browsers and other software in ways that consumers did not reasonably expect.

7           58.     Defendants engage in these tracking activities regardless of any visitor's browser  
8 privacy controls over accepting, blocking, or deleting cookies.

9           59.     Besides Defendants' exploit of Adobe Flash LSOs, described below, the other  
10 exploits described below are so outside the boundaries of reasonable expectations that even  
11 industry experts had not observed these exploits "in the wild," that is, in actual use on websites  
12 available to the public.

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14           **C.           Kissmetrics and Website Defendants' exploits of browser cache and HTML5**  
15                           **storage**

16           60.     The purpose of a browser cache is to store, on a user's computer, copies of web  
17 pages viewed by the user. The next time the user visits the web page, if it has not changed, the  
18 page can simply be loaded from the browser cache instead of being downloaded from the  
19 Internet, which would take more time.

20           61.     Kissmetrics and Website Defendants, however, repurposed the browser cache of  
21 Plaintiffs and Class Members' browser software. They coordinated together so that Kissmetrics  
22 stored coded information, specific to each individual Plaintiff and Class Member, in the code  
23 used to display the Website Defendants' web pages. The code had nothing to do with what the  
24 user viewed. Like cookies, the code contained tracking information.

25           62.     When a Plaintiff or Class Member returned to the web pages of a Website  
26 Defendant, the browser automatically retrieved its cached copy. While the page was being  
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1 displayed, the Kissmetrics scripts embedded in the web page inspected the cached copy to search  
2 for the previously set tracking codes.

3 63. Using the tracking codes stored in the cached page, Kissmetrics recreated its own  
4 and the Website Defendants' tracking cookies that had been deleted by the user and to bypass the  
5 use of cookies entirely.

6 64. This practices constitutes a "hack," in the sense that word is used as a term of art  
7 by information technology and security professionals.

8 65. In addition, the Website Defendants stored tracking information in DOM local  
9 storage, for those Plaintiffs and Class Members using recent browser versions enabled with  
10 HTML5.

11 66. It is contrary to standard practices to use DOM local storage in place of cookies.

12 67. The Website Defendants used DOM local storage to store unique identifiers,  
13 identified by the keyvalue "ai," assigned to Plaintiffs and Class Members. The Website  
14 Defendants shared these unique identifiers with Kissmetrics, such that the identical value was  
15 stored in Kissmetrics' "km\_cid" cookie.

16 68. The coordinating and respawning of cookies using Website Defendants' DOM  
17 local storage values was performed by Kissmetrics' code embedded in the web pages of the  
18 Website Defendants.

19 69. Further, for each Plaintiff and Class Member, Defendants utilized the same,  
20 common identifier across all the Website Defendants' websites and in Kissmetrics' own  
21 processes in which it merged and analyzed Plaintiffs and Class Members' data for its own  
22 purposes, independent of any services it provided to the Website Defendants.

23 70. It is contrary to Internet standards, for privacy reasons, for two websites to share  
24 common identifiers.

1           71. It is contrary to Internet standards to use alternative mechanisms to cookies,  
2 respawn cookies, and bypass cookies using DOM local storage, in which the information never  
3 expires, without first obtaining user consent.

4           **D. Defendants' exploit of Adobe Flash LSOs**

5           72. Adobe Flash Player software is installed on the majority of U.S. consumers'  
6 computers, including those of Plaintiffs and Class Members.

7           73. The Website Defendants repurposed the Adobe Flash software installed on  
8 Plaintiffs and Class Members' computers; the Website Defendants used Adobe Flash local shared  
9 objects (LSOs) on Plaintiffs and Class Members' computers as an alternative mechanism in  
10 which to store the same information it was storing in cookies.

11           74. Similarly, Kissmetrics stored tracking information in Adobe Flash LSOs that it  
12 later accessed.

13           75. In fact, the Kissmetrics code embedded in Website Defendants' web pages  
14 operated so that it cycled through tracking data stored in cookies, browser cache files and DOM  
15 local storage (described above), and Adobe Flash LSOs, so that it could retain Plaintiffs and  
16 Class Members' tracking data by one means or another, and thereby respawn cookies and track  
17 Plaintiffs and Class Members over long periods of time and multiple websites, regardless of  
18 whether they were registered or logged in.

19           76. The Adobe Flash LSOs were not used by any Defendant for purposes of retaining  
20 user preferences for the display of Flash-based video content.

21           77. LSOs were designed to store information such as users' volume control settings  
22 for videos, game score for multi-session video games, and other user preferences for playing  
23 content using their Flash players—not as an alternative to browser cookies to track users.

24           78. Plaintiffs and Class Members did not expect that, if they deleted the Website  
25 Defendants' guid cookies stored by their browser, or any of Kissmetrics cookies, or that if they  
26 switched browsers, the Website Defendants and Kissmetrics would use the information they  
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1 stored in Adobe LSOs to respawn its guid cookie, so that the Website Defendants could maintain  
 2 a persistent, unique code to identify the particular individual.

3 79. These tracking activities were designed to be surreptitious.

4 80. Plaintiff and Class Members had no reasonable means to detect or control these  
 5 tracking activities.

6  
 7 Figure 1. *Comparison of cookies and LSOs*

<i>Cookies</i>	<i>Adobe Flash LSOs</i>
<i>Characteristics and Operation</i>	
[a] subject to global standards .....	subject to Adobe specifications
[b] set/used only by originating Website ..	set/used by multiple Websites*
[c] encrypted if Web page is encrypted .....	unencrypted; warning messages from user's browser can be suppressed
[d] 4 kilobytes .....	up to 100 KB by default; may be larger
[e] expires when user exits browser .....	persistent by default by default
<i>User Controls</i>	
[f] can control through browser .....	cannot control through browser**
[g] can identify originating Website .....	cannot reasonably identify originating Website*
[h] can view cookie contents .....	cannot reasonably view LSO contents
[i] relatively apparent and usable .....	not reasonably apparent and usable; constitutes added burden (compared to other options)
* Adobe Flash permits cross-domain LSO creation and use, <i>i.e.</i> , a Website can set an LSO for another Website, or read another Website's LSO; Adobe Flash also permits cross-site scripting, allowing for privacy-invasive and security threatening exploits.	
** User must be aware of and use proprietary Adobe tools available on Adobe Website.	

24  
 25 81. Adobe Systems Incorporated has stated<sup>1</sup>:

26  
 27 <sup>1</sup> Responses to Adobe's small step forward on Flash-cookie control, posted by  
 28 Wiebke Lips, Adobe Systems Inc., Jan. 29, 2010, available at  
<http://blog.privacychoice.org/2010/01/29/adobes-small-step-forward-on-flash-cookie-control/>;  
 Complaint

1 Adobe does not support the use of our products in ways that  
intentionally ignore the user's expressed intentions.

2 ...  
3 In every case where rich Internet applications are possible, Local  
4 Storage is available (and necessary). The Local Storage capability  
5 in Adobe Flash Player is equivalent in concept to the emerging  
6 Local Storage capabilities in i.e. HTML5 and Silverlight. The fact  
7 that Local Storage in these technologies is distinct from the  
8 existing browser cookie system and treated as such by the browsers  
9 today underscores the need for responsible use of Local Storage in  
10 modern Web applications.

11 82. On Plaintiffs and Class Members' computers, Defendants' LSOs remain stored  
12 and available to Defendants for their use.

13 83. Unlike cookies, for which commercial browsers provide consumers some measure  
14 of control, consumers have no reasonable means to block, detect, or delete LSOs and are  
15 burdened by other, material differences between cookies and LSO. See Figure 1 on page 12,  
16 above.

17 ***Harm***

18 84. Defendants acquired personal information to which they were not entitled and  
19 which Plaintiffs and Class Members had affirmatively sought and reasonably expected to prevent  
20 Defendants from acquiring.

21 85. Defendants' conduct in acquiring such information without authorization or  
22 consent has caused and causes economic loss to Plaintiffs and Class Members in that the  
23 personal information acquired by Defendants has economic value to Plaintiffs and Class  
24 Members.

25 86. In addition, Defendants' conduct in acquiring such information without  
26 authorization or consent has caused economic loss to Plaintiffs and Class Members in that such  
27 information has economic value to Plaintiffs and Class Members as an asset they exchange for  
28 valuable content and services provided by websites; Plaintiffs and Class Members would have  
blocked Defendants' LSOs and other exploits described herein, would not have patronized

see also Letter to FTC, Adobe Systems Inc., Jan. 27, 2010, p. 9, available at  
<http://www.ftc.gov/os/comments/privacy-round-table/-544506-00085.pdf>.

Complaint

1 Defendants' websites, and would have avoided websites utilizing Defendants' repurposed LSOs  
2 and other exploits described herein; Defendants' conduct has thus imposed opportunity costs on  
3 Plaintiffs and Class Members, depriving them of the opportunity to exchange their valuable  
4 information for the content and services of websites engaging in practices that comported with  
5 Plaintiffs and Class Members' reasonable privacy expectations.

6 87. Defendants' conduct in using Plaintiffs and Class Members' Computer Assets to  
7 set and use LSOs and other exploits described herein for tracking Plaintiffs and Class Members  
8 constituted the unconsented use of Plaintiffs and Class Members' Computer Assets, including  
9 Internet connectivity, for which Plaintiffs and Class Members paid, and so Defendants acquired  
10 the use of such assets without payment and thus subjected Plaintiffs and Class Members to  
11 economic loss.

12 88. Defendants' unconsented use of Plaintiffs and Class Members' Computer Assets,  
13 for which Plaintiffs and Class Members paid, diminished the performance of Plaintiffs and Class  
14 Members' computers and Internet connectivity, in that LSO-based methods of information  
15 collection require the transfer of larger files using more resource-intensive computer processes  
16 that must be completed in sequence during the download of Web pages, causing Web pages to  
17 load more slowly than Web pages involving the transfer of cookie values; such diminution in  
18 performance of Computer Assets constituted an economic loss to Plaintiffs and Class Members.  
19

20 89. The consequences of the aforementioned conduct also constitute an interruption in  
21 service in that they were recurrent, through the Class Period, affecting Plaintiffs and Class  
22 Members' experiences on numerous websites.

23 90. Defendants' use of Plaintiffs and Class Members' Computer Assets and collection  
24 and use of their personal information in a nontransparent manner, which cannot reasonably be  
25 detected at the time or later discovered, has deprived Plaintiffs and Class Members of the ability  
26 to protect their privacy and Computer Assets, assess the effects of Defendants' actions on their  
27 privacy and Computer Assets, and reasonably undertake self-help measures.

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1           91. Defendants' use of LSOs and other exploits described herein subjects and/or has  
2 subjected Plaintiffs and Class Members to additional harm in that, in further circumvention of  
3 their browser settings, Defendants have re-spawned cookies that Plaintiffs and Class Members  
4 deleted, and/or Plaintiffs and Class Members face the imminent harm of such re-spawning  
5 through the various exploit methods described herein.

6           92. The value of Plaintiffs and Class Members' losses are discernable through the  
7 discovery of information from Defendants and expert evaluation.

8           93. Plaintiffs and other members of the Class seek to maintain privacy and  
9 confidentiality of their unique, personal, and individual information assets, including PII and  
10 details of their browsing and online viewing activities.

11           94. The private and confidential character of Plaintiffs and Class Members' personal  
12 information is further demonstrated by their utilization of browser privacy controls, including  
13 Microsoft's default privacy settings and/or by periodically deleting cookies.

14           95. Defendants acquired personal information to which it was not entitled and which  
15 Plaintiffs and Class Members had reasonably expected to prevent Defendants from acquiring.

16           96. The private and confidential character of Plaintiffs' and Class Members' personal  
17 information is further demonstrated by Defendants' use of surreptitious and deceptive methods to  
18 deposit unconsented to cookies and LSOs and other exploits described herein on Plaintiffs and  
19 Class Members' computers.

20           97. Defendants' conduct in acquiring such information without authorization or  
21 consent has caused and causes economic loss to Plaintiffs and Class Members in that the  
22 personal information acquired by Defendants has economic value to Plaintiffs and Class  
23 Members.

24           98. In addition, Defendants' conduct in acquiring such information without  
25 authorization or consent has caused economic loss to Plaintiffs and Class Members in that such  
26 information has economic value to Plaintiffs and Class Members as an asset they exchange for  
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1 valuable content and services provided by websites; Plaintiffs and Class Members would have  
2 blocked Defendants' LSOs and other exploits described herein, would not have patronized  
3 Defendants' websites, and would have avoided websites utilizing Defendants' repurposed LSOs  
4 and other exploits described herein; Defendants' conduct has thus imposed opportunity costs on  
5 Plaintiffs and Class Members, depriving them of the opportunity to exchange their valuable  
6 information for the content and services of websites engaging in practices that comported with  
7 Plaintiffs and Class Members' reasonable privacy expectations.

8           99. In addition, Defendants impose discernable opportunity costs on Plaintiffs and  
9 Class Members. The Website Defendants can compete and thrive only if they sustain a sufficient  
10 traffic volume to attract merchants and advertisers.

11           100. Plaintiffs and Class Members, through their patronage, provide that traffic and so  
12 barter for their ability to access—and continue to enjoy—the content and services they bought  
13 with that patronage.

14           101. Defendants, through their conduct, deprived and deprive Plaintiffs and Class  
15 Members of the opportunity to use their information to purchase from and promote the continued  
16 availability of websites that conform to their reasonable expectations, that is, online merchants  
17 that deal honestly in the content and services offered to consumers and their related privacy  
18 disclosures.

19           102. Each Plaintiff and Class Member incorporated privacy considerations into his or  
20 her online viewing decision whenever they visited a Website Defendant's website. Plaintiffs and  
21 Class Members made their viewing selection purchases on the Website Defendant's website, and  
22 not another competitor's website, because they trusted that such Website Defendant's privacy  
23 practices comported with their privacy preferences, as expressed through their browser's privacy  
24 controls.

25           103. Had Plaintiffs and Class Members known that Defendants' privacy practices were  
26 not as represented, i.e., that Defendants use unauthorized persistent cookies and LSOs and other  
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1 exploits described herein to track their web activities, and share personal information obtained  
2 through tracking and otherwise with third parties, Plaintiffs and Class Members would not have  
3 visited the websites of the Website Defendants.

4 104. Finally, the personal information Defendants wrongfully obtained from Plaintiffs  
5 and Class Members constitutes valuable data in the advertising-related market for consumer  
6 information. Plaintiff and Class Members are presently harmed or face imminent harm from  
7 Defendants' wrongful acquisition and use of their information, preempting Plaintiffs and Class  
8 Members from realizing for themselves the full value of their own information.

9 105. The costs and harms described above are aggravated by Defendants' continued  
10 retention and commercial use of the improperly acquired user data; by reducing the scarcity of  
11 Plaintiffs' and Class Members' valuable information, Defendants has further reduced the  
12 economic value of such information, causing Plaintiffs and Class Members economic harm.

13 106. Thus, Defendants' unauthorized taking of Plaintiffs' and other Class Members'  
14 personal information therefore imposes financial harm on them and constitutes an unwanted cost  
15 incurred by them for accessing Defendants' website.

16 107. Plaintiffs' and other Class Members' information acquired by Defendants had and  
17 has discernable value to them. That value can be established through information that is available  
18 in the market, combined with usage information that is available in Defendants' records and  
19 through expert valuation.

#### 20 CLASS ALLEGATIONS

21 108. Pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure,  
22 Plaintiffs brings this action pursuant to on behalf of themselves and the following Class:

23 All persons in the United States who visited a Website Defendant's  
24 website and were assigned a Kissmetrics and Website Defendants'  
25 identifier.

26 109. Excluded from the Class are Defendants, and their assigns, successors, and legal  
27 Complaint

1 representatives, and any entities in which Defendants have controlling interests.

2 110. Also excluded from the Class are the judge to whom this case is assigned and  
3 members of the judge's immediate family.

4 111. The "Class Period" for the Class is December 1, 2010 through the present.

5 112. Plaintiffs reserve the right to revise the definition of the Class based on facts they  
6 learn in the course of litigation.

7 113. The Class consists of millions of individuals, making joinder impractical.

8 114. Plaintiffs' claims are typical of the claims of all other members of the Class.

9 115. Plaintiffs will fairly and adequately represent the interests of the Class. Plaintiffs  
10 have retained counsel with substantial experience in prosecuting complex litigation and class  
11 actions, including privacy cases.

12 116. Plaintiffs and their counsel are committed to prosecuting this action vigorously on  
13 behalf of the Class and have the financial resources to do so.

14 117. Plaintiffs and their counsel do not have any interests adverse to those of the Class.

15 118. Absent a class action, most Class Members would find the cost of litigating their  
16 claims to be prohibitive and would have no effective remedy.

17 119. The class treatment of common questions of law and fact in this matter is superior  
18 to multiple individual actions or piecemeal litigation, in that it conserves the resources of the  
19 Court and litigants and promotes consistency and efficiency of adjudication.

20 120. Defendants have acted and failed to act on grounds generally applicable to  
21 Plaintiffs and the Class, requiring the Court's imposition of uniform relief to ensure compatible  
22 standards of conduct toward the Class.

23 121. The factual and legal bases of Defendants' liability to Plaintiffs and Class  
24 Members are the same, resulting in injury to Plaintiffs and all other Class Members. Plaintiffs  
25

26  
27  
28

1 and Class Members have all suffered harm and damages as a result of Defendants' wrongful  
2 conduct.

3 122. There are many questions of law and fact common to Plaintiffs and the Class and  
4 which predominate over any questions that may affect only individual Class Members. Common  
5 and predominant questions for the Class include but are not limited to the following:

6 a. whether Defendants' circumvented Plaintiffs and Class Members' browser  
7 and software control in placing and using LSOs and other exploits described herein on Plaintiffs  
8 and Class Members' computers;

9  
10 b. whether Defendants' placement and use of LSOs and other exploits  
11 described herein was without consent, without authorization, and/or exceeding authorization;

12 c. whether Defendants obtained and shared, or caused to be obtained and  
13 shared, Plaintiffs and Class Members' personal information through tracking using LSOs and  
14 other exploits described herein that Defendants placed on their computers;

15 d. what personal information of Plaintiffs and Class Members was obtained  
16 and continues to be retained and used by Defendants;

17  
18 e. what are the identities of third parties that obtained Plaintiffs and Class  
19 Members' personal information as a result of Defendants' conduct;

20 f. whether Defendants' conduct described herein violates the Electronic  
21 Communications Privacy Act, 18 U.S.C. § 2510, et seq.;

22 g. whether Defendants' acquisition of Plaintiffs and Class Members' personal  
23 information and use of Plaintiffs and Class Members' Computer Assets harmed Plaintiffs and  
24 Class Members;

25 h. whether Defendants' use of Plaintiffs and Class Members' Computer  
26 Assets damaged and/or diminished the utility and/or value of those Computer Assets;

27  
28 i. whether, as a result of Defendants' conduct, Plaintiffs and Class Members

1 are entitled to equitable relief and/or other relief, and if so the nature of such relief; and

2 j. whether, as a result of Defendants' conduct, Plaintiffs and Class Members  
3 are entitled to damages, punitive damages, and/or treble damages.  
4

5 123. The questions of law and fact common to the Class predominate over any  
6 questions affecting only individual members and a class action is superior to all other available  
7 methods for the fair and efficient adjudication of this controversy.

8 124. Plaintiffs' claims for relief include those set forth below.

9 **CLAIMS FOR RELIEF**

10 **CLAIM ONE: Violation of the Electronic Communications Privacy Act**  
11 **TITLE 18 UNITED STATES CODE, SECTION 2510, et seq. (Wiretap Act)**

12 125. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

13 126. Each Defendant intercepted Plaintiff and Class Members' electronic  
14 communications in that each Defendant executed Flash applications and placed LSO files and  
15 other tracking exploits on Plaintiff and Class Members' computers, which the Defendant used as  
16 a device to acquire the contents of communications between websites and respectively, Plaintiff  
17 and Class Members, thereby diverting and transferring information containing and constituting  
18 the substance, purport, and meaning of Plaintiff and Class Members' communications.

19 127. Defendants' conduct was in violation of Title 18, United States Code, Section  
20 2511(1)(a) because Defendant intentionally intercepted and endeavored to intercept Plaintiff and  
21 Class Members' electronic communications.

22 128. Defendants' conduct was in violation of Title 18, United States Code, Section  
23 2511(1)(d) in that Defendants used and endeavored to use the contents of Plaintiff and Class  
24 Members' electronic communications, knowing and having reason to know that the information  
25 was obtain through interception in violation of Title 18, United States Code Section 2511(1).

26 129. Defendants' conduct was knowing and intentional in that Defendants designed  
27 their processes for setting LSOs and other tracking exploits described herein, and Defendants  
28 executed those processes, specifically for the purpose of engaging in the interceptions that

1 Defendants did, in fact, carry out.

2 130. When a Class Member visited a Website Defendant's website, Kissmetrics and the  
3 remaining Website Defendants were not parties authorized to participate in such  
4 communications.

5 131. Defendants were not parties to the respective communications between Plaintiff  
6 and Class Members and websites, which Kissmetrics monitored in-process.

7 132. Defendants' interception processes were invisible to Plaintiff and Class Members.

8 133. In addition, Defendants' interception processes were designed specifically to  
9 circumvent Plaintiff and Class Members' browser privacy controls that prevented Defendants  
10 from collecting Plaintiff and Class Members information through standard and more accepted  
11 means, *i.e.*, through the use of browser cookies.

12 134. Defendants failed to disclose their interception processes to Plaintiff and Class  
13 Members.

14 135. Because Defendants' interception processes were invisible and undisclosed, any  
15 consent Defendants received to participate in or provide content for communications did not  
16 constitute consent to Defendants' interception.

17 136. Only Plaintiff and Class Members possessed the authority to consent to another  
18 party's overriding of their browser privacy controls.

19 137. Defendants' interception was therefore undertaken without the consent of any  
20 party to the communications Defendants intercepted.

21 138. Further, Defendants' interception was accomplished through their surreptitious  
22 and unexpected repurposing of Flash software installed on Plaintiff and Class Members  
23 computers and other tracking exploits described herein, which was not in Defendants' ordinary  
24 course of business.

25 139. Defendants' repurposing of Plaintiff and Class Members Flash software and other  
26 tracking exploits and Defendants' interception of Plaintiff and Class Members' electronic  
27 communications were not necessarily incident to Defendants' rendition of services or protection  
28 of rights or property.

1 140. As a direct and proximate result of Defendants' conduct, Plaintiff and Class  
2 Members' electronic communications were intercepted and intentionally used in violation of  
3 Title 18, United States Code, Chapter 119.

4 141. Accordingly, Plaintiff and Class Members are entitled to such preliminary and  
5 other equitable or declaratory relief as may be just and proper.

6 142. Plaintiff and Class Members are also entitled to damages computed as the greater  
7 of: (i) the sum of actual damages suffered by Plaintiff and Class Members plus Defendants'  
8 profits made through the violative conduct herein; (ii) statutory damages for each Class Member  
9 of \$100 a day for each day of violation; or (iii) statutory damages of \$10,000 per individual.

10 143. Plaintiff and Class Members are also entitled to and request Defendants' payment  
11 of punitive damages.

12 144. Plaintiff and Class Members are also entitled to and hereby request Defendants'  
13 payment of reasonable attorneys' fees and other litigation costs reasonably incurred.

14 **CLAIM TWO: Violation of the Privacy Act**  
15 **California General Laws, Chapter 214, Section 1B**

16 145. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

17 146. Defendants circumvented Plaintiffs and Class Members browser privacy controls,  
18 conducted tracking in unreasonable and unexpected way, and used Plaintiffs and Class Members'  
19 Computer Assets to store LSOs and engage in other tracking exploits described herein.

20 147. Through the use of the LSOs and other exploits described herein, Defendants  
21 disclosed to the other third parties, and/or caused to be disclosed to the other third parties,  
22 Plaintiffs and Class Members' Web-browsing information, which included facts of a highly  
23 private, sensitive, personal or intimate nature.

24 148. Defendants did so repeatedly throughout the Class Period.

25 149. Defendants did so knowing and intending to engage in conduct that Plaintiffs and  
26 Class Members did not reasonably expect.

27 150. Defendants did so knowing Plaintiffs and Class Members' reasonably believed  
28 their privacy was protected.

1           151. Defendants did so intending to circumvent the measures Plaintiffs and Class  
2 Members' had taken to protect their privacy.

3           152. Defendants did so knowing their actions would seriously diminish, intrude upon,  
4 and invade Plaintiffs and Class Members' privacy.

5           153. Defendants did so intending to seriously diminish, intrude upon, and invade  
6 Plaintiffs and Class Members' privacy.

7           154. Defendants did so in a manner designed to evade detection by Plaintiffs and Class  
8 Members.

9           155. Defendants had no legitimate, countervailing business interest in engaging in such  
10 conduct.

11           156. Defendants' actions did unreasonably, substantially, and seriously interfere with  
12 Plaintiffs and Class Members' privacy.

13           157. In addition, Defendants' conduct has caused and causes Plaintiffs and Class  
14 Members' irreparable injury. Unless restrained and enjoined, Defendants will continue to commit  
15 such acts. Plaintiffs and Class Members' remedy at law is not adequate to compensate them for  
16 these inflicted, imminent, threatened, and continuing injuries, entitling Plaintiffs and Class  
17 Members to remedies including injunctive relief

18           158. Plaintiffs and Class Members are entitled to equitable relief that includes  
19 Defendants' cessation of the conduct alleged herein.

20           159. Plaintiffs and Class Members are entitled to equitable relief that includes an  
21 accounting of what personal information of theirs was collected, used, merge, and further  
22 disclosed to whom, under what circumstances, and for what purposes.

23           160. As a proximate and direct result of Defendants' invasion of privacy, Plaintiffs and  
24 Class Members were harmed, including as detailed in the "Harm" section, above.

25           161. Plaintiffs and Class Members are therefore entitled to damages in an amount to be  
26 determined at trial.

27           162. Plaintiffs and Class Members request such other preliminary and equitable relief  
28 as the Court deems appropriate.

**CLAIM THREE: Trespass to Chattel  
as to all Defendants**

1  
2  
3       163. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

4       164. The common law prohibits the intentional intermeddling with personal property,  
5 including a computer, in possession of another that results in the deprivation of the use of the  
6 personal property or impairment of the condition, quality, or usefulness of the personal property,  
7 or impairs some other legally protected interest, including the legally protected interest in  
8 privacy and confidential information.

9       165. By engaging in the acts alleged in this complaint without the authorization or  
10 consent of Plaintiffs and Class Members, Defendants dispossessed Plaintiffs and Class Members  
11 from use and/or access to their Computer Assets. Further, these acts impaired the use, value, and  
12 quality of Plaintiffs and Class Members' Computer Assets. Defendants' acts constituted an  
13 intentional interference with the use and enjoyment of Plaintiffs' Computer Assets. By the acts  
14 described above, Defendants repeatedly and persistently engaged in trespass to personal property  
15 in violation of the common law.

16       166. Without Plaintiffs and Class Members' authorization or consent, or in excess of  
17 any authorization or consent given, Defendants knowingly and intentionally accessed Plaintiffs  
18 and Class Members' property, thereby intermeddling with Plaintiffs and Class Members' right to  
19 exclusive possession of the property and causing injury to Plaintiffs and the members of the  
20 Class.

21       167. Defendants engaged in deception and concealment to gain access to Plaintiffs and  
22 Class Members' computers.

23       168. Defendants engaged in the following conduct with respect to Plaintiffs and Class  
24 Members' computers: Defendants accessed and obtained control over Plaintiffs and Class  
25 Members' Computer Assets; Defendant caused the installation of code on the hard drives of the  
26 computers; Defendant deliberately programmed the operation of its code to bypass and  
27 circumvent the computer owners' privacy and security controls, to remain beyond their control,  
28 and to continue to function and operate without notice to them or consent from them.



1           169. All these acts described above were acts in excess of any authority Plaintiffs and  
2 Class Members granted when visiting websites and none of these acts was in furtherance of  
3 Plaintiffs and Class Members' viewing the content or utilizing services on websites. By engaging  
4 in deception and misrepresentation, whatever authority or permission Plaintiffs and Class  
5 Members may have granted to the Defendants did not apply to Defendants' conduct.

6           170. Defendants' installation and operation of its program used, interfered, and/or  
7 intermeddled with Plaintiffs and Class Members' computer systems. Such use, interference  
8 and/or intermeddling was without Class Members' consent or, in the alternative, in excess of  
9 Plaintiffs and Class Members' consent.

10          171. Defendants' installation and operation of its program constitutes trespass,  
11 nuisance, and an interference with Class Members' chattels, to wit, their computers.

12          172. Defendants' installation and operation of its program impaired the condition and  
13 value of Class Members' computers.

14          173. Defendants' trespass to chattels, nuisance, and interference caused real and  
15 substantial damage to Plaintiffs and Class Members.

16          174. As a direct and proximate result of Defendant's trespass to chattels, nuisance,  
17 interference, unauthorized access of and intermeddling with Plaintiffs and Class Members'  
18 property, Defendant has injured and impaired in the condition and value of Class Members'  
19 Computer Assets, as follows:

20               a. by consuming the resources of and/or degrading the performance of  
21 Plaintiffs and Class Members' Computer Assets (including hard drive space, memory, processing  
22 cycles, and Internet connectivity);

23               b. by diminishing the use of, value, speed, capacity, and/or capabilities of  
24 Plaintiffs and Class Members' computers;

25               c. by devaluing, interfering with, and/or diminishing Plaintiffs and Class  
26 Members' possessory interest in their Computer Assets;

27               d. by altering and controlling the functioning of Plaintiffs and Class  
28 Members' Computer Assets;

1 e. by infringing on Plaintiffs and Class Members' right to exclude others  
2 from their Computer Assets;

3 f. by infringing on Plaintiffs and Class Members' right to determine, as  
4 owners of their computers, which programs should be installed and operating on their computers;

5 g. by compromising the integrity, security, and ownership of Class Members'  
6 computers; and

7 h. by forcing Plaintiffs and Class Members' to expend money, time, and  
8 resources in order to remove the program installed on their computers without notice or consent.

9 175. Defendants' conduct constituted an ongoing and effectively permanent  
10 impairment of Plaintiffs and Class Members' computers in that Defendants' conduct affected  
11 Plaintiffs and Class Members in a substantial amount of their Web-browsing, throughout the  
12 Class Period, through the use of LSOs and the artifacts of other exploits described herein that  
13 continue to reside on Plaintiffs and Class Members' computers, and through which Defendants  
14 obtained information the use of which they continue to enjoy.

15 176. Plaintiffs and Class Members each had and have legally protected, privacy and  
16 economic interests in their Computer Assets and their personal information.

17 177. Plaintiffs and Class Members sustained harm as a result of Defendants' actions, in  
18 that the expected operation and use of their Computer Assets were altered and diminished on an  
19 ongoing basis.

20 178. As a direct and proximate result of Defendants' trespass to chattels, interference,  
21 unauthorized access of and intermeddling with Plaintiffs and Class Members' Computer Assets,  
22 Plaintiffs and Class Members have been injured, as described above.

23 179. Plaintiffs, individually and on behalf of the Class, seeks injunctive relief  
24 restraining Defendants from further such trespass to chattels and requiring Defendants to account  
25 for their use of Plaintiffs and Class Members' Computer Assets, account for the personal  
26 information they have acquired, purge such data, and pay damages in an amount to be  
27 determined.

28

1                                   **CLAIM FOUR: Violation of the Unfair Competition Law (“UCL”)**

2                                   **California Business and Professions Code § 17200, et seq.**

3           180.     Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

4           181.     By engaging in the above-described acts and practices, Defendants have  
5 committed one or more acts of unfair competition within the meaning of the UCL and, as a  
6 result, Plaintiffs and the Class have suffered injury-in-fact and have lost money and/or  
7 property—specifically, personal information and the full value of their computers.

8           182.     Defendants’ actions described above, including False Advertising, are in violation  
9 of California Business and Professions Code section 17500, et seq. and violations of the right of  
10 privacy enshrined in Article I, Section 1 of the Constitution of the State of California.

11          183.     In addition, Defendants’ business acts and practices are unlawful, because they  
12 violate California Business and Professions Code section 17500, et seq., which prohibits false  
13 advertising, in that they were untrue and misleading statements relating to Defendants’  
14 performance of services and with the intent to induce consumers to enter into obligations relating  
15 to such services, and regarding statements Defendants knew were false or by the exercise of  
16 reasonable care Defendants should have known to be untrue and misleading.

17          184.     Defendants’ business acts and practices are also unlawful in that they violate the  
18 California Consumer Legal Remedies Act, California Civil Code, Sections 1647, et seq., 1750, et  
19 seq., and 3344, California Penal Code, section 502, and Title 18, United States Code, Section  
20 1030. Defendants are therefore in violation of the “unlawful” prong of the UCL.

21          185.     Defendants’ business acts and practices are unfair because they cause harm and  
22 injury-in-fact to Plaintiffs and Class Members and for which Defendants have no justification  
23 other than to increase, beyond what Defendants would have otherwise realized, its profit in fees  
24 from advertisers and its information assets through the acquisition of consumers’ personal  
25 information. Defendants’ conduct lacks reasonable and legitimate justification in that Defendants  
26 have benefited from such conduct and practices while Plaintiffs and the Class Members have  
27 been misled as to the nature and integrity of Defendants’ services and have, in fact, suffered  
28 material disadvantage regarding their interests in the privacy and confidentiality of their personal

1 information. Defendants' conduct offends public policy in California tethered to the right of  
2 privacy set forth in the Constitution of the State of California, and California statutes recognizing  
3 the need for consumers to obtain material information with which they can take steps to  
4 safeguard their privacy interests, including California Civil Code, Section 1798.80.

5 186. In addition, Defendants' modus operandi constituted a sharp practice in that  
6 Defendants knew or should have known that consumers care about the status of personal  
7 information and its privacy but were unlikely to be aware of the manner in which Defendants  
8 failed to fulfill its obligation to observe consumers' privacy expressed in their browser settings.  
9 Defendants are therefore in violation of the "unfair" prong of the UCL.

10 187. Defendants' acts and practices were fraudulent within the meaning of the UCL  
11 because they are likely to mislead the members of the public to whom they were directed.

12 188. As a result, Plaintiffs and the Class have suffered and will continue to suffer  
13 damages.

14 189. Further, as a direct and proximate result of Defendant's willful and intentional  
15 actions, Plaintiffs and the Class have suffered damages in an amount to be determined at trial  
16 and, unless Defendant is restrained, Plaintiffs will continue to suffer damages.

## 17 **VII. PRAYER FOR RELIEF**

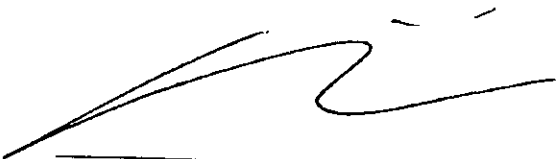
18 Plaintiffs, individually and on behalf of all others similarly situated, pray for the  
19 following relief:

- 20 A. Certify this matter as a class action.
- 21 B. Enter judgment in favor of Plaintiffs and Class Members.
- 22 C. Enter injunctive and/or declaratory relief as is necessary to protect the interests of  
23 Plaintiffs and Class Members, including reformation of practices and an accounting and purging  
24 of wrongfully obtained personal information;
- 25 D. Award statutory damages to Plaintiffs and Class Members.
- 26 E. Award compensatory damages to Plaintiffs and Class Members in amounts to be  
27 proved at trial.
- 28 F. Award restitution against Defendants in amounts to be proved at trial.

- 1 G. Award increased and/or treble damages in amounts to be proved at trial.
- 2 H. Award liquidated damages in amounts to be proved at trial.
- 3 I. Award punitive damages in the interest of justice.
- 4 J. Award disgorgement of monies obtained through and as a result of unfair and/or
- 5 deceptive acts and/or practices and/or unjust enrichment, in amounts to be proved at trial.
- 6 K. Award Plaintiffs and Class Members pre- and post-judgment interest to the extent
- 7 allowable.
- 8 L. Make such orders or judgments as may be necessary to restore to Plaintiffs and
- 9 Class Members any money and property acquired by Defendants through wrongful conduct.
- 10 M. Award Plaintiffs and Class Members reasonable litigation expenses and attorneys'
- 11 fees.
- 12 N. Award such other and further relief as equity and justice may require or allow.

13 Respectfully submitted,

14  
15 Dated this 1<sup>st</sup> day of August 2011



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