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13 IN THE UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA
 15 WESTERN DIVISION ,

16 IN RE SPECIFIC MEDIA
 FLASH LSO LITIGATION

CASE NO. 8:10-cv-01256-GW (JCGx)
JURY DEMAND
FIRST AMENDED, CONSOLIDATED
CLASS ACTION COMPLAINT FOR:
 1) **Violation of Computer Fraud and**
Abuse Act, 18 U.S.C. § 1030;
 2) **Violation of Computer Crime Law,**
Cal. Penal Code § 502;
 3) **Violations of Invasion of Privacy Act,**
Cal. Penal Code § 630;
 4) **Violation of Consumer Legal**
Remedies Act, Cal. Civ. Code § 1750;
 5) **Unfair Competition, Cal. Bus. and**
Prof. Code § 17200;
 6) **Trespass to Personal Property/Chattel;**
 7) **Unjust Enrichment**

Amended/Consolidated
 Class Action Complaint

1 Section 1391(b) because defendant Specific Media is a corporation head- quar-
2 tered in Orange County in the State of California.

3 7. In addition, venue is proper in this District under Title 28, United
4 States Code, Section 1391(b) because Defendant’s improper conduct alleged in
5 this complaint occurred in, was directed from, and/or emanated from this judicial
6 district.

7 IV. STATEMENT OF FACTS

8 A. Specific Media’s Business

9 8. Specific Media is an online third-party ad network that earns its
10 revenue by delivering targeted advertisements.

11 9. According to comScore Media Metrix’s report for October 2010,
12 Specific Media displayed ads to over 153 million users, a “reach” of over 72 per-
13 cent of the total Internet audience, placing Specific Media ninth among online ad
14 networks.

15 10. When a consumer visits a web page that includes a third-party ad-
16 vertisement, the display of the advertisement occurs because the web page causes
17 the consumer to communicate with the ad network’s systems; thus, Specific Me-
18 dia’s “audience” consists of consumers who visited websites on which Specific
19 Media displayed its clients’ advertisements, not consumers who chose to com-
20 municate with Specific Media or necessarily knew of Specific Media’s existence.

21 11. Specific Media delivers its clients’ advertisement on an ad network
22 consisting of websites, or “publishers,” which Specific Media pays for its in-
23 ventory. “Inventory” is advertising display space on web pages.

24 12. For delivering its ads on Specific Media’s inventory, advertisers pay
25 Specific Media performance-based fees.

26 13. Like many online, third-party services, Specific Media tracks con-
27 sumers by depositing and reading HTTP cookies containing unique identifiers
28 and browsing history information that it uses to create behavioral profiles; when

1 a profiled consumer visits a web page on which Specific Media serves adver-
2 tisements, Specific Media uses the profile to select particular categories of ads
3 with which to target the user.

4 14. Specific Media augmented its tracking technology by using tracking
5 devices that users could not reasonably detect, block, or delete .

6 15. In particular, Specific Media stored tracking devices on consumers'
7 computers in Adobe Flash local shared objects ("LSOs," sometimes referred to
8 as Flash LSOs).

9 16. The LSOs Specific Media stored on users' computers were stored in
10 files that listed a domain of origin as *http://udn.specificclick.net*.

11 17. Specific Media used LSOs so it could engage in tracking and profil-
12 ing to circumvent the privacy and security controls of users who had set their
13 browsers' to block third-party HTTP cookies, block Specific Media's HTTP
14 cookies, or who deleted Specific Media's HTTP cookies.

15 18. In addition, Specific Media used LSOs so that, for a user who de-
16 leted their Specific Media HTTP cookies, Specific Media could use the data in
17 the LSO on the user's computer as a back-up, to restore or "re-spawn" the de-
18 leted HTTP cookie.

19 19. Specific Media's use of this technology was independently con-
20 firmed in a report issued by academic researchers and titled, "Flash LSOs and
21 Privacy."¹

22 20. In a letter to the Federal Trade Commission earlier this year, Adobe
23

24 ¹ "Flash LSOs and Privacy," A. Soltani, S. Canty, Q. Mayo, L. Thomas,
25 and C.J. Hoofnagle, Univ. Cal., Berkeley, Aug. 10, 2009 at 3, available at
26 *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1446862* (last accessed Jan.
27 7, 2011) (attached hereto as Exhibit B).

1 Systems Incorporated condemned the use of LSOs to back-up and re-spawn
2 HTTP cookies without express user consent. Letter to FTC, Adobe Systems Inc.,
3 Jan. 27, 2010, available at [http://www.ftc.gov/os/comments/privacy-
4 roundtable/544506-00085.pdf](http://www.ftc.gov/os/comments/privacy-roundtable/544506-00085.pdf) (last accessed July 27, 2010).

5 **B. Plaintiffs' Experiences**

6 21. Plaintiffs are persons who have set the privacy and security controls
7 on their browsers to block third-party cookies and/or who periodically delete
8 third-party cookies.

9 22. None of the Plaintiffs have given any consent or received any notice
10 regarding Specific Media's use of devices other than third-party cookies to en-
11 gage in or to approximate cookie-like tracking and profiling activities.

12 23. Subsequently, Plaintiffs examined the contents of the local storage
13 associated with the Adobe Flash Player application on their computers. They ob-
14 served that the objects in local storage included Flash LSOs set by
15 "*http://udn.specificclick.net*. It is Plaintiffs' belief that these objects are tracking
16 devices used by Specific Media, without authorization, to monitor and profile
17 their Internet activities.

18 24. Plaintiffs did not receive notice of the installation of such devices,
19 did not consent to the installation of such devices, and did not want such devices
20 to be installed on their computers.

21 25. Plaintiffs believe that, if they were to re-visit the websites on which
22 Specific Media LSOs were set, or were to visit other websites on which Specific
23 Media served online advertisements, the tracking devices would be used as sub-
24 stitutes for HTTP cookies and to re-spawn previously deleted cookies.

25 26. Plaintiffs consider information about their online activities to be in
26 the nature of confidential information that they protect from disclosure, including
27 by periodically deleting cookies.

28 27. Plaintiffs' experiences are typical of the experiences of Class Mem-

1 bers.

2 **C. User Consequences**

3 28. Defendant manipulated its Flash LSOs in storage areas of Plaintiffs’
4 and Class Members’ computers, which were computers used in and affecting in-
5 terstate commerce and communication and were therefore protected computers
6 as defined in the Computer Fraud and Abuse Act, Title 18, United States Code,
7 Section 1030(e)(2).

8 29. Defendant’s actions were surreptitious and without notice and so
9 were conducted without authorization and/or exceeding authorization.

10 30. Plaintiffs and Class Members sought to maintain the secrecy and
11 confidentiality of their personal information assets acquired by Defendant

12 31. Defendant’s conduct has caused economic loss to Plaintiffs and
13 Class Members in that their personal information has discernable value, both to
14 Defendant and to Plaintiffs and Class Members, and of which Defendant has de-
15 prived Plaintiffs and Class Members and, in addition, retained and used for its
16 own economic benefit.

17 32. The aggregated loss and damage sustained by Subscribers set forth
18 above includes economic loss with an aggregated value of at least \$5,000 during
19 a one-year period.

20 33. Defendant engaged in the acts and omissions set forth in this com-
21 plaint through an organized campaign of deployment, which constituted a single
22 act.

23 34. The means by which Defendant obtained such information, and the
24 reasons Defendant engaged in its campaign to circumvent user deletion of cook-
25 ies demonstrate the confidential character of such information and users’ efforts
26 to protect it.

27 **V. CLASS ALLEGATIONS**

28 35. Pursuant to the Federal Rules of Civil Procedure 23(a), (b)(1),

1 (b)(2), and (b)(3), Plaintiffs bring this action as a class action on behalf of them-
2 selves and all others similarly situated as members of the Class, defined as fol-
3 lows:

4 All persons residing in the United States who, during the
5 Class Period, used any web browsing program on any device
6 to access web pages during which time and related to which
7 Specific Media stored Adobe Flash local shared objects
8 (LSOs) on such persons' computers.

9 36. Excluded from the Class are Defendant, its legal representatives, as-
10 signs, and successors, and any entity in which Defendant has a controlling inter-
11 est. Also excluded is the judge to whom this case is assigned and the judge's
12 immediate family.

13 37. The "Class Period" is defined as two years prior to the filing of this
14 action to the date of Class certification.

15 38. Plaintiffs reserve the right to revise this definition of the Class based
16 on facts learned in the course of litigation of this matter.

17 39. The Class consists of millions of individuals and other entities, mak-
18 ing joinder impractical.

19 40. The claims of Plaintiffs are typical of the claims of all other Class
20 Members

21 41. Plaintiffs will fairly and adequately represent the interests of the
22 other Class Members. Plaintiffs have retained counsel with substantial experi-
23 ence in prosecuting complex litigation and class actions. Plaintiffs and their
24 counsel are committed to prosecuting this action vigorously on behalf of Class
25 Members and have the financial resources to do so. Neither Plaintiffs nor their
26 counsel have any interests adverse to those of the other Class Members.

27 42. Absent a class action, most Class Members would find the cost of
28 litigating their claims to be prohibitive and will have no effective remedy.

1 43. The class treatment of common questions of law and fact is superior
2 to multiple individual actions or piecemeal litigation in that it conserves the re-
3 sources of the courts and the litigants, and promotes consistency and efficiency
4 of adjudication.

5 44. Defendant has acted and failed to act on grounds generally applica-
6 ble to Plaintiffs and the other Class Members, requiring the Court's imposition of
7 uniform relief to ensure compatible standards of conduct toward the Class Mem-
8 bers.

9 45. The factual and legal bases of Defendant's liability to Plaintiffs and
10 other Class Members are the same, resulting in injury to Plaintiffs and all of the
11 other Class Members. Plaintiffs and the other Class Members have all suffered
12 harm and damages as a result of Defendant's wrongful conduct.

13 46. There are many questions of law and fact common to Plaintiffs and
14 the Class Members and those questions predominate over any questions that may
15 affect individual Class Members. Common questions for the Class include, but
16 are not limited to the following, regarding Defendant's conduct described herein:

17 a. whether Defendant, without authorization, created and/or ma-
18 nipulated Adobe Flash Player local stored objects on computers to which Class
19 Members' enjoyed rights of possession superior to those of Defendant;

20 b. for what purposes Defendant created and/or manipulated
21 Adobe Flash Player local stored objects on Class Members' computers;

22 c. whether Defendant's conduct constituted statutory and com-
23 mon-law violations that include::

- 24 i. the Computer Fraud and Abuse Act, 18 U.S.C. § 1030;
25 ii. the Computer Crime Law, Cal. Penal Code § 502;
26 iii. the Invasion of Privacy Act, Cal. Penal Code § 630;
27 iv. the Consumer Legal Remedies Act, Cal. Civ. Code §
28 1750;

- 1 v. Unfair Competition, Cal. Bus. and Prof. Code § 17200;
- 2 vi. Trespass to Personal Property/Chattel;
- 3 vii. Unjust Enrichment
- 4 d. whether Defendant continues to retain valuable information
- 5 assets from and about Class Members;
- 6 e. what uses of such information were exercised and continue to
- 7 be exercised by Defendant; and
- 8 f. whether Defendant has been unjustly enriched.

9 47. The questions of law and fact common to Class Members predomi-
10 nate over any questions affecting only individual members, and a class action is
11 superior to all other available methods for the fair and efficient adjudication of
12 this controversy.

13 48. Based on the foregoing allegations, Plaintiffs' claims for relief in-
14 clude those set forth below.

15 **COUNT I**
16 **VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT**
17 **18 U.S.C. § 1030, et seq.**

18 49. Plaintiffs here incorporate and reallege all allegations set out in
19 paragraphs 1 through 48, above.

20 50. Defendant intentionally accessed Plaintiffs' and Class members'
21 computers, which were computers used for interstate commerce and/or commu-
22 nications; Defendant did so without authorization and/or exceeding authorized
23 access to such computers; and Defendant thereby obtained information from
24 such protected computers in violation of Title 18, United States Code, Section
25 1030(a)(2)(C).

26 51. Further, Defendant knowingly caused the transmission of a pro-
27 gram, information, code, or command, and as a result of such conduct, intention-
28

1 ally caused damage without authorization, to a protected computer in violation of
2 Title 18, United States Code, Section 1030(a)(5)(A).

3 52. Defendant intentionally accessed Plaintiffs' and Class members'
4 protected computers without authorization, and as a result of such conduct, reck-
5 lessly caused damage in violation of Title 18, United States Code, Section
6 1030(a)(5)(B).

7 53. Defendant intentionally accessed Plaintiffs' and Class members'
8 protected computers without authorization, and as a result of such conduct,
9 caused damage and loss.

10 54. Defendant's conduct in setting Adobe LSOs on consumers' comput-
11 ers arose from an automated process instigated by defendant in a campaign that
12 constituted a single act, for purposes of the Computer Fraud and Abuse Act.

13 55. Defendant's conduct in setting LSOs on Plaintiffs' and Class Mem-
14 bers' computers, circumventing and diminishing such computers' performance
15 and capabilities, as further alleged herein, and collecting personal information
16 that has economic value to Plaintiffs and the unauthorized collection of which re-
17 sulted in the deprivation or diminution of such economic value, caused Plaintiffs
18 and Class Members to sustain aggregated loss and damage, including economic
19 loss with an aggregated value of at least \$5,000 during a one-year period.

20 56. Further, Defendant's access to Plaintiffs' and Class Members' pro-
21 tected computers and electronic communications has caused Plaintiffs and Class
22 Members irreparable injury. Unless restrained and enjoined, Defendant will con-
23 tinue to commit such acts.

24 57. Further Plaintiffs' and Class Members' remedy at law is not ade-
25 quate to compensate them for harm to them, entitling Plaintiffs and Class Mem-
26 bers to remedies that include injunctive relief as provided by Title 18, United
27 States Code, Section 1030(g).

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COUNT II
VIOLATION OF THE COMPUTER CRIME LAW (“CCCL”)
CALIFORNIA PENAL CODE § 502

58. Plaintiffs here incorporate and reallege all allegations set out in paragraphs 1 through 57, above.

59. Defendant violated California Penal Code section 502 by knowingly accessing, copying, using, made use of, interfering, and/or altering, data belonging to Plaintiffs and Class Members: (1) in and from the State of California; (2) in the home states of the Plaintiffs and Class Members; and (3) in the state in which the servers that provided the communication link between Plaintiffs and Class Members and the websites they interacted with were located.

60. Defendant violated California Penal Code section 502(c)(1) by knowingly accessing and without permission altering and making use of data from Plaintiffs’ and Class Members’ computers in order to devise and execute business practices to deceive Plaintiffs and Class Members into surrendering private electronic communications and activities for Defendant’s financial gain, and to wrongfully obtain valuable private data from Plaintiffs.

61. Defendant violated California Penal Code section 502(c)(2) by knowingly accessing and without permission taking, or making use of data from Plaintiffs’ and Class Members’ computers.

62. Defendant violated California Penal Code section 502(c)(3) by knowingly and without permission using and causing to be used Plaintiffs’ and Class Members’ computer services.

63. Defendant violated California Penal Code section 502(c)(4) by knowingly accessing and, without permission, adding and/or altering the data from Plaintiffs’ and Class Members’ computers.

64. Defendant violated California Penal Code section 502(c)(5) by knowingly and without permission disrupting or causing the disruption of Plain-

1 tiffs' and Class Members' computer services or denying or causing the denial of
2 computer services to Plaintiffs and the Class.

3 65. Defendant violated California Penal Code section 502(c)(6) by
4 knowingly and without permission providing, or assisting in providing, a means
5 of accessing Plaintiffs' and Class Members' computers, computer system, and/or
6 computer network.

7 66. Defendant violated California Penal Code section 502(c)(7) by
8 knowingly and without permission accessing or causing to be accessed Plaintiffs
9 and Class Members' computers, computer systems, and/or computer networks.

10 67. Defendant violated California Penal Code section 502(c)(8) by
11 knowingly introducing a computer contaminant into the Plaintiffs' and Class
12 Members' computers, computer systems, and/or computer networks, and doing
13 so to obtain data regarding Plaintiffs' and Class Members' electronic communi-
14 cations.

15 68. Plaintiffs and Class Members have also suffered irreparable injury
16 from these unauthorized acts of disclosure in that their information has been har-
17 vested, retained, and used by Defendant, and continues to be retained and used
18 by Defendant; due to the continuing threat of such injury and, in addition, the
19 threat that Defendant will transfer Plaintiffs and Class Members' information to
20 yet other third parties, Plaintiffs and Class Members have no adequate remedy at
21 law, entitling them to injunctive relief.

22 69. Plaintiffs and Class Members have additionally suffered loss by rea-
23 son of these violations, including, without limitation, violation of the right of pri-
24 vacy.

25 70. As a direct and proximate result of Defendant's unlawful conduct
26 within the meaning of California Penal Code section 502, Defendant has caused
27 loss to Plaintiffs and Class Members in an amount to be proven at trial. Plaintiffs
28 and Class Members are also entitled to recover their reasonable attorneys' fees

1 pursuant to California Penal Code section 502(e).

2 71. Plaintiffs and the Class Members seek compensatory damages, in an
3 amount to be proven at trial, and injunctive or other equitable relief.

4 72. Plaintiffs and Class Members have suffered irreparable and incalcu-
5 lable harm and injuries from Defendant's violations. The harm will continue un-
6 less Defendant is enjoined from further violations of this section. Plaintiffs and
7 Class Members have no adequate remedy at law.

8 73. Plaintiffs and the Class Members are entitled to punitive or exem-
9 plary damages pursuant to Cal. Penal Code section 502(e)(4) because Defen-
10 dant's violation were willful and, on information and belief, Defendant is guilty
11 of oppression, fraud, or malice as defined in Cal. Civil Code section 3294.

12 74. Defendant's unlawful access to Plaintiffs' and Class Members'
13 computers and electronic communications has caused them irreparable injury.
14 Unless restrained and enjoined, Defendant will continue to commit such acts.
15 Plaintiffs and Class Members' remedy at law is not adequate to compensate it for
16 these inflicted and threatened injuries, entitling Plaintiffs and Class Members to
17 remedies including injunctive relief as provided by California Penal Code section
18 502(e).

19 **COUNT III**

20 **VIOLATION OF THE INVASION OF PRIVACY ACT**

21 **CALIFORNIA PENAL CODE § 630, et seq.**

22 75. Plaintiffs here incorporate and reallege all allegations set out in
23 paragraphs 1 through 74, above.

24 76. Plaintiffs and Class Members did not consent to Defendant's actions
25 in intercepting, reading, and/or learning the contents of their online communica-
26 tions.

27 77. Plaintiffs and Class Members did not consent to any of the Defen-
28 dant's actions in using the contents of its communications with such California-

1 based entities.

2 78. Defendant perpetrated, caused, and or directly participated in the in-
3 terception, reading, and/or learning the contents of the communications between
4 Plaintiffs, Class Members and California-based web entities.

5 79. Plaintiffs and Class Members have additionally suffered loss by rea-
6 son of these violations, including, without limitation, violation of the right of pri-
7 vacy.

8 80. Unless restrained and enjoined, Defendant will continue to commit
9 such acts. Pursuant to Section 637.2 of the California Penal Code, Plaintiffs and
10 the Class have been injured by the violations of California Penal Code section
11 631. Wherefore, Plaintiffs, on behalf of themselves and on behalf of a similarly
12 situated Class of consumers, seek damages and injunctive relief.

13 **COUNT IV**

14 **VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT (“CLRA”)**
15 **CALIFORNIA CIVIL CODE § 1750, *et seq.***

16 81. Plaintiffs here incorporate and reallege all allegations set out in
17 paragraphs 1 through 80, above.

18 82. In violation of Civil Code section 1750, *et seq.* (the “CLRA”), De-
19 fendant has engaged and is engaging in unfair and deceptive acts and practices in
20 the course of transactions with Plaintiffs, and such transactions are intended to
21 and have resulted in the sales of services to consumers. Plaintiffs and the Class
22 Members are “consumers” as that term is used in the CLRA because they sought
23 or acquired Defendant’s good or services for personal, family, or household pur-
24 poses. Defendant’s past and ongoing acts and practices include but are not lim-
25 ited to Defendant’s representation that is goods or services were of s particular
26 standard, quality, and grade when in fact, they were of another; in particular, De-
27 fendant’s activities as an online ad-delivery company constituted its representa-
28 tion that it utilized accepted methods of communicating with users and retaining

1 information about them, that is, HTTP cookies, and regarding which users have a
2 certain measure of control but when, in fact, Defendant was utilizing Flash LSOs
3 as tracking devices for purposes of circumventing users' controls.,

4 83. Representing that goods or services are of a particular standard,
5 quality, or Defendant's violations of Civil Code § 1770 have caused damage to
6 Plaintiffs and the other Class Members and threaten additional injury if the viola-
7 tions continue. This damage includes the losses set forth above.

8 84. Plaintiffs assert that their first complaint filings constituted fulfill-
9 ment of their notification burden under section 1782 and that Defendant has not
10 adequately responded within the required 30 days, and Plaintiffs therefore re-
11 quest all relief to which they are justly entitled under Civil Code, Section 1780,
12 in an amount to be determined at trial.

13 **COUNT V**

14 **VIOLATION OF THE UNFAIR COMPETITION LAW ("UCL")**
15 **CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, et seq.**

16 85. Plaintiffs here incorporate and reallege the allegations set out in
17 paragraphs 1 through 84, above.

18 a. Defendant's actions described above, including False Adver-
19 tising, are in violation of California Business and Professions Code section
20 17500, *et seq.* and violations of the right of privacy enshrined in Article I, Sec-
21 tion 1 of the Constitution of the State of California.

22 86. By engaging in the above-described acts and practices, Defendant
23 has committed one or more acts of unfair competition within the meaning of the
24 UCL and, as a result, Plaintiffs and the Class have suffered injury-in-fact and
25 have lost money and/or property—specifically, personal information and the full
26 value of their computers.

27 87. Defendant's business acts and practices are unlawful, in part, be-
28 cause they violate California Business and Professions Code § 17500, *et seq.*,

1 which prohibits false advertising, in that they were untrue and misleading state-
2 ments relating to Defendant's performance of services and with the intent to in-
3 duce consumers to enter into obligations relating to such services, and regarding
4 statements Defendant knew were false or by the exercise of reasonable care De-
5 fendant should have known to be untrue and misleading.

6 88. Defendant's business acts and practices are also unlawful in that
7 they violate the California Consumer Legal Remedies Act, California Civil
8 Code, Sections 1647, et seq., 1750, et seq., and 3344, California Penal Code, sec-
9 tion 502, and Title 18, United States Code, Section 1030. Defendant is therefore
10 in violation of the "unlawful" prong of the UCL.

11 89. Defendant's business acts and practices are unfair because they
12 cause harm and injury-in-fact to Plaintiffs and Class Members and for which De-
13 fendant has no justification other than to increase, beyond what Defendant would
14 have otherwise realized, its profit in fees from advertisers and its information as-
15 sets through the acquisition of consumers' personal information. Defendant's
16 conduct lacks reasonable and legitimate justification in that Defendant has bene-
17 fited from such conduct and practices while Plaintiffs and the Class Members
18 have been misled as to the nature and integrity of Defendant's services and have,
19 in fact, suffered material disadvantage regarding their interests in the privacy and
20 confidentiality of their personal information. Defendant's conduct offends public
21 policy in California tethered to the Consumer Legal Remedies Act, the right of
22 privacy set forth in the Constitution of the State of California, and California
23 statutes recognizing the need for consumers to obtain material information with
24 which they can take steps to safeguard their privacy interests, including Califor-
25 nia Civil Code, Section 1798.80.

26 90. In addition, Defendant's *modus operandi* constituted a sharp prac-
27 tice in that Defendant knew or should have known that consumers care about the
28 status of personal information and its privacy but were unlikely to be aware of

1 the manner in which Defendant failed to fulfill its obligation to observe consum-
2 ers' privacy expressed in their browser settings. Defendant is therefore in viola-
3 tion of the "unfair" prong of the UCL.

4 91. Defendant's acts and practices were fraudulent within the meaning
5 of the UCL because they are likely to mislead the members of the public to
6 whom they were directed.

7 92. As a result, Plaintiffs and the Class have suffered and will continue
8 to suffer damages.

9 93. Further, as a direct and proximate result of Defendant's willful and
10 intentional actions, Plaintiffs and the Class have suffered damages in an amount
11 to be determined at trial and, unless Defendant is restrained, Plaintiffs will con-
12 tinue to suffer damages.

13 **COUNT VI**

14 **TRESPASS TO PERSONAL PROPERTY AND CHATTELS**

15 94. Plaintiffs here incorporate and reallege all allegations set out in
16 paragraphs 1 through 93, above.

17 95. The common law prohibits the intentional intermeddling with per-
18 sonal property, including a computer, in possession of another that results in the
19 deprivation of the use of the personal property or impairment of the condition,
20 quality, or usefulness of the personal property.

21 96. By engaging in the acts alleged in this complaint without the
22 authorization or consent of Plaintiffs and Class Members, Defendant dispos-
23 sessed Plaintiffs and Class Members from use and/or access to their computers,
24 or parts of them. Further, these acts impaired the use, value, and quality of Plain-
25 tiffs and Class Members' computers. Defendant's acts constituted an intentional
26 interference with the use and enjoyment of the computers. By the acts described
27 above, Defendant repeatedly and persistently engaged in trespass to personal
28 property in violation of the common law.

1 97. Without Plaintiffs and Class Members' consent, or in excess of any
2 consent given, Defendant knowingly and intentionally accessed Plaintiffs' and
3 Class Members' property, thereby intermeddling with Plaintiffs' and Class
4 Members' right to possession of the property and causing injury to Plaintiffs and
5 the members of the Class.

6 98. Defendant engaged in deception and concealment to gain access to
7 Plaintiffs and Class Members' computers.

8 a) Defendant engaged in the following conduct with respect to
9 Plaintiffs and Class Members' computers: Defendant accessed
10 and obtained control over computers; Defendant caused the in-
11 stallation of code on the hard drives of the computers; Defendant
12 programmed the operation of its code to circumvent the com-
13 puter owners' privacy and security controls, to remain beyond
14 their control, and to continue function and operate without notice
15 to them or consent from them.

16 99. All these acts described above were acts in excess of any authority
17 any user granted when visiting websites and none of these acts was in further-
18 ance of users' viewing the content or utilizing services on websites. By engaging
19 in deception and misrepresentation, whatever authority or permission Plaintiffs
20 and Class Members may have granted to the Defendant did not apply to Defen-
21 dant's conduct.

22 100. Defendant's installation and operation of its program used, inter-
23 ferred, and/or intermeddled with Plaintiffs' and Class Members' computer sys-
24 tems. Such use, interference and/or intermeddling was without Class Members'
25 consent or, in the alternative, in excess of Plaintiffs' and Class Members' con-
26 sent.

27 101. Defendant's installation and operation of its program constitutes
28

1 trespass, nuisance, and an interference with Class Members' chattels, to wit, their
2 computers.

3 102. Defendant's installation and operation of its program impaired the
4 condition and value of Class Members' computers.

5 103. Defendant trespass to chattels, nuisance, and interference caused
6 real and substantial damage to Plaintiffs and Class Members.

7 104. As a direct and proximate result of Defendant's trespass to chattels,
8 nuisance, interference, unauthorized access of and intermeddling with Plaintiffs
9 and Class Members' property, Defendant has injured and impaired in the condi-
10 tion and value of Class Members' computers, as follows:

11 a. by consuming the resources of and/or degrading the
12 performance of Plaintiffs' and Class Members' computers (including hard drive
13 space, memory, processing cycles, and Internet connectivity);

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

16 c. by devaluing, interfering with, and/or diminishing Plaintiffs'
17 and Class Members' possessory interest in their computers;

18 d. by altering and controlling the functioning of Plaintiffs' and
19 Class Members' computers;

20 e. by infringing on Plaintiffs' and Class Members' right to
21 exclude others from their computers;

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

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

27 h. by forcing Plaintiffs' and Class Members' to expend money,
28

1 time, and resources in order to remove the program installed on their computers
2 without notice or consent.

3 **COUNT VII**
4 **UNJUST ENRICHMENT**

5 105. Plaintiffs here incorporate and reallege all allegations set out in
6 paragraphs 1 through 104, above.

7 106. A benefit has been conferred upon Defendant by Plaintiffs and the
8 Class; on information and belief, Defendant, directly or indirectly, has received
9 and retains information regarding online communications and activities of Plain-
10 tiffs, and Defendant has received and retain information regarding specific pur-
11 chase and transactional information that is otherwise private, confidential, and
12 not of public record, and/or have received revenue from the provision of such in-
13 formation.

14 107. Defendant appreciates or has knowledge of said benefit.

15 108. Under principles of equity and good conscience, Defendant should
16 not be permitted to retain the information and/or revenue it acquired through its
17 unlawful conduct; all funds, revenues, and benefits Defendant has unjustly re-
18 ceived as a result of its actions rightfully belong to Plaintiffs and the Class.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
21 situated, pray for judgment against Defendant as follows:

22 1. Certify this case as a Class action on behalf of the Class defined
23 above, appoint Plaintiffs as Class representatives, and appoint their counsel as
24 Class counsel;

25 2. Declare that the actions of Defendant, as set out above, violate the
26 following:

- 27 a. Computer Fraud and Abuse Act, 18 U.S.C. § 1030;
28 b. California's Computer Crime Law, Penal Code § 502;

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- c. California’s Invasion Of Privacy Act, California Penal Code § 630;
- d. California’s Consumer Legal Remedies Act, Civil Code § 1750;
- e. California’s Unfair Competition Law, Business and Professions Code § 17200;
- f. Trespass to Personal Property/Chattels;
- g. Unjust Enrichment

3. As applicable to the Classes *mutatis mutandis*, awarding injunctive and equitable relief including, *inter alia*: (i) prohibiting Defendant from engaging in the acts alleged above; (ii) requiring Defendant to disgorge all of its ill-gotten gains to Plaintiffs and the other Class Members, or to whomever the Court deems appropriate; (iii) requiring Defendant to delete all data surreptitiously or otherwise collected through the acts alleged above; (iv) requiring Defendant to provide Plaintiffs and the other Class Members a means to easily and permanently decline any participation in any data collection activities; (v) awarding Plaintiffs and Class Members full restitution of all benefits wrongfully acquired by Defendant by means of the wrongful conduct alleged herein; and (vi) ordering an accounting and constructive trust imposed on the data, funds, or other assets obtained by unlawful means as alleged above, to avoid dissipation, fraudulent transfers, and/or concealment of such assets by Defendant;

4. Award damages, including statutory damages where applicable, to Plaintiffs and Class Members in an amount to be determined at trial;

5. Award restitution against Defendant for all money to which Plaintiffs and the Classes are entitled in equity;

6. Restrain Defendant, its officers, agents, servants, employees, and attorneys, and those in active concert or participation with them from continued access, collection, and transmission of Plaintiffs and Class Members’ personal

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information via preliminary and permanent injunction;

- 7. Award Plaintiffs and the Class Members:
 - a. their reasonable litigation expenses and attorneys' fees;
 - b. pre- and post-judgment interest, to the extent allowable;
 - c. restitution, disgorgement and/or other equitable relief as the Court deems proper;
 - d. compensatory damages sustained by Plaintiffs and all others similarly situated as a result of Defendant's unlawful acts and conduct;
 - e. statutory damages, including punitive damages;
 - f. permanent injunction prohibiting Defendant from engaging in the conduct and practices complained of herein;

8. For such other and further relief as this Court may deem just and proper.

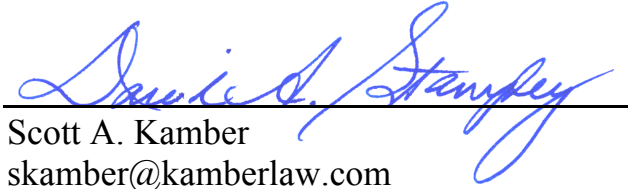
1 Respectfully, submitted

2 DATED: January 12, 2011

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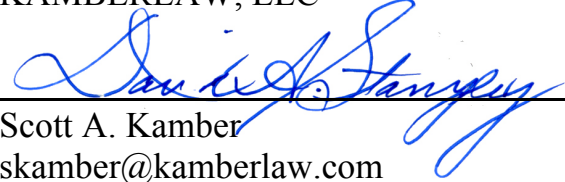
1 **JURY TRIAL DEMAND**

2 Plaintiffs hereby demand a trial by jury of all issues so triable.

3 Respectfully, submitted

4 DATED: January 12, 2011

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