

1 134. Plaintiff and Class Members seek compensatory damages, in an amount to be
2 proven at trial.

3 135. Plaintiff and Class Members have suffered irreparable and incalculable harm and
4 injuries from Defendants' violations. The harm will continue unless Defendants are enjoined
5 from further violation of this section. Plaintiff and Class Members have no adequate remedy at
6 law.
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8 136. Plaintiff and the Class Members are entitled to punitive or exemplary damages
9 pursuant to Cal. Penal Code § 502(e)(4) because Defendants' violations were willful and, on
10 information and belief, Defendant is guilty of oppression, fraud, or malice as defined in Cal.
11 Civil Code § 3294.
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13 137. Plaintiff and the Class Members have also suffered irreparable injury from these
14 unauthorized acts of disclosure, to wit: all of their personal, private, and sensitive web
15 communications have been harvested, viewed, accessed, stored, and used by Defendants, and
16 have not been destroyed, and due to the continuing threat of such injury, have no adequate
17 remedy at law, entitling Plaintiff to injunctive relief.
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19 **FOURTH CAUSE OF ACTION**
20 **(Violations of California's Invasion of Privacy Act,**
21 **California Penal Code 630, *et seq.*)**

22 138. Plaintiff incorporates by reference and realleges all paragraphs previously alleged
23 herein.

24 139. Plaintiff asserts this claim against the California Defendants named herein in this
25 complaint on behalf of herself and the Class.
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27 140. California Penal Code section 631 provides, in part:

28 "Any person who ... willfully and without the consent of all
parties to the communication, or in any unauthorized manner,

1 reads, or attempts to read, or to learn the contents or meaning of
2 any message, report, or communication while the same is in transit
3 or passing over any wire, line, or cable, or is being sent from, or
4 received at any place within this state; or who uses, or attempts to
5 use, in any manner, or for any purpose, or to communicate in any
6 way, any information so obtained, or who aids, agrees with,
7 employs, or conspires with any person or persons to unlawfully do,
8 or permit, or cause to be done any of the acts or things mentioned
9 above in this section, is punishable ...”

10 141. At all relevant times, Defendants’ business practices of accessing the Computing
11 Device data of the Plaintiff and Class Members was without authorization and consent,
12 including, but not limited to, obtaining any and all communications.

13 142. On information and belief, Plaintiff, and each Class Member, during one or more
14 of their interactions on the internet during the Class Period, communicated with one or more web
15 entities based in California, or with one or more entities whose servers were located in
16 California.

17 143. Communications from the California web-based entities to Plaintiff and Class
18 Members were sent from California. Communications to the California web-based entities from
19 Plaintiff and Class Members were sent to California.

20 144. Plaintiff and Class members did not consent to any of the Defendants’ actions in
21 intercepting, reading, and/or learning the contents of their communications with such California-
22 based entities.

23 145. Plaintiff and Class Members did not consent to any of the Defendants’ actions in
24 using the contents of their communications with such California-based entities.

25 146. Defendants are not a “public utility engaged in the business of providing
26 communications services and facilities...”
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1 147. The actions alleged herein by the Defendants were not undertaken “for the
2 purpose of construction, maintenance, conduct or operation of the services and facilities of the
3 public utility.”

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5 148. The actions alleged herein by the Defendants were not undertaken with respect to
6 any telephonic communication used for communication exclusively within a state, county, city
7 and county, or city correctional facility.

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9 149. The Defendants directly participated in the interception, reading, and/or learning
10 of the contents of the communications between Plaintiff, Class Members and California-based
11 web entities.

12 150. Alternatively, and of equal violation of the California Invasion of Privacy Act, the
13 Defendants aided, agreed with, and/or conspired with third parties to unlawfully do, or permit, or
14 cause to be done all of the acts complained of herein.

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16 151. Plaintiff and Class Members have additionally suffered loss by reason of these
17 violations, including, without limitation, violation of the right of privacy.

18 152. Unless restrained and enjoined, Defendants will continue to commit such acts.
19 Pursuant to Section 637.2 of the California Penal Code, Plaintiff and the Class have been injured
20 by the violations of California Penal Code section 631. Wherefore, Plaintiff, on behalf of herself
21 and on behalf of a similarly situated Class of consumers, seeks damages and injunctive relief.

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23 **FIFTH CAUSE OF ACTION**
24 **(Violations of California’s Unfair Competition law (“UCL”),**
25 **Cal. Business and Professions Code § 17200, et seq.0**

26 153. Plaintiff incorporates by reference and realleges all paragraphs previously and
27 subsequently alleged herein.

1 154. Plaintiff asserts this claim against the California Defendants named herein in this
2 complaint on behalf of herself and the Class.

3 155. In violation of California Business and Professions Code § 17200 *et seq.*,
4 Defendants' conduct in this regard is ongoing and includes, but is not limited to, statements
5 made by Defendants in their information privacy and confidentiality practices.
6

7 156. By engaging in the acts and practices described herein, Defendants have
8 committed one or more acts of unfair competition within the meaning of the UCL and, as a
9 result, Plaintiff and the Class members have suffered injury-in-fact and have lost money and/or
10 property – specifically, personal information, cleanup costs, and/or bandwidth costs.
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12 157. In reasonable reliance on Defendants' misrepresentations and omissions, Plaintiff
13 visited the referenced websites which caused Defendants' tacking mechanisms to be placed on
14 her Computing Devices.
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16 158. Defendants' business acts and practices are unlawful, in part, because they violate
17 California Business and Professions Code § 17500, *et seq.*, which prohibits false advertising, in
18 that they were untrue and misleading statements relating to Defendants' performance of services,
19 made with the intent to induce consumers to enter into obligations relating to such services, and
20 regarding which statements Defendants knew, or which by the exercise of reasonable care
21 Defendants should have known, to be true and misleading. Defendants' business acts and
22 practices are also unlawful in that they violate the California Consumers Legal Remedies Act,
23 California Civil Code § 1750 *et seq.*, California Penal Code § 502, and 18 U.S.C. § 1030.
24 Defendants are therefore in violation of the "unlawful" prong of the UCL.
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26 159. Defendants' business acts and practices are unfair because they cause harm and
27 injury in fact to Plaintiff and Class Members, and for which Defendants have no justification
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1 other than to increase, beyond what Defendants would have otherwise realized, their profit in
2 fees from advertisers and their information assets through the acquisition of consumers' personal
3 information. Defendants' conduct lacks reasonable and legitimate justification in that Defendants
4 have benefited from such conduct and practices while Plaintiff and the Class Members have been
5 misled as to the nature and integrity of Defendants' services and have, in fact, suffered material
6 disadvantage regarding their interests in the privacy and confidentiality of their personal
7 information. Defendants' conduct offends public policy in California tethered to the Consumers
8 Legal Remedies Act, the state constitutional right of privacy, and California statutes recognizing
9 the need for consumers to obtain material information that enables them to safeguard their own
10 privacy interests, including Cal. Civ. Code § 1798.80. In addition, Defendants' modi operandi
11 constitute sharp practices in two ways: (i) Defendants know, or should know, that consumers
12 care about the status of personal information and Internet privacy but are unlikely to be aware of
13 the manner in which Defendants fail to fulfill their commitments to respect consumers' privacy;
14 and (ii) to the extent consumers do become aware of Defendants' conduct and practices,
15 Defendants' business model is designed to generate high traffic volume to make up for the loss
16 of revenue from consumers disaffected by Defendants' misleading messages. Defendants are
17 therefore in violation of the "unfair" prong of the UCL.
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22 160. Defendants' acts and practices were fraudulent within the meaning of the UCL
23 because they are likely to mislead the members of the public to whom they were directed.

24 161. Plaintiff, on behalf of herself and on behalf of each member of the Class, seeks
25 individual restitution, injunctive relief, and other relief allowed under the UCL.
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1 **SIXTH CAUSE OF ACTION**
2 **Violations of California's Consumer Legal Remedies Act ("CLRA")**
3 **Cal. Civ. Code § 1750, et seq.)**

4 162. Plaintiff incorporates by reference and realleges all paragraphs previously alleged
5 herein.

6 163. Plaintiff asserts this claim against the California Defendants named herein in this
7 complaint on behalf of herself and the Class.

8 164. In violation of California Civil Code § 1750, et seq. (the "CLRA"), Defendants
9 have engaged and are engaging in unfair and deceptive acts and practices in the course of
10 transactions with Plaintiff, and such transactions are intended to and have resulted in the sales of
11 services to consumers. Plaintiff and the Class Members are "consumers" as that term is used in
12 the CLRA because they sought or acquired Defendants' services primarily for personal, family,
13 or household purposes. Defendants' past and ongoing acts and practices include, but are not
14 limited to:
15

16 a. Defendants' representations that their services have characteristics, uses,
17 and benefits that they do not have, in violation of Civil Code § 1770(a)(5);

18 b. Defendants' representations that their services are of a particular standard,
19 quality and grade but are of another standard quality and grade, in violation of Civil Codes §
20 1770(a)(7); and
21

22 c. Defendant's advertisement of services with the intent not to sell those
23 services as advertised, in violation of Civil Code § 1770(a)(9).
24

25 165. Defendants' violation of Civil Code § 1770 have caused ongoing harm to Plaintiff
26 and the other Class Members and threaten additional injury if the violations continue. This
27 damage includes the loss of the benefit of bargain of Defendants' services, transactions for which
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1 were premised, in part, on consumers' reasonable expectations of the material accuracy of
2 Defendants' representations in their information privacy and confidentiality practices.

3
4 166. At this time, Plaintiff seeks only injunctive relief under this cause of action.
5 Pursuant to Civil code § 1782, in conjunction with the filing of this action, Plaintiff will notify
6 Defendants in writing of the particular violations of Civil Code § 1770 and demand that
7 Defendants rectify the problems associated with their behavior detailed above, which acts and
8 practices are in violation of Civil Code § 1770.

9
10 167. If Defendants fail to respond adequately to Plaintiff's above-described demand
11 within 30 days of Plaintiff's notice, pursuant to Civil Code § 1782(b), Plaintiff will amend the
12 complaint to request damages and other relief, as permitted by Civil Code § 1780.

13 **SEVENTH CAUSE OF ACTION**
14 **(California Customer Records Act,**
15 **Cal. Civ. Code § 1798.80 et seq.)**

16 168. Plaintiff incorporates by reference and realleges all paragraphs previously alleged
17 herein.

18 169. Plaintiff asserts this claim against the California Defendants named herein in this
19 complaint on behalf of herself and the Class.

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21 170. The California Customer Records Act mandates, among other things, that a
22 business take all responsible steps to destroy or arrange for the destruction of users' contact data
23 within its custody or control which contain personal information which is no longer to be
24 retained by the business. Cal. Civ. Code § 1798.81.

25 171. A business may destroy customer records by erasing the information, or
26 modifying the personal information in those records to make it unreadable or undecipherable
27 through any means. Cal. Civ. Code § 1798.81 (b), (c).
28

1 172. Defendants have violated Cal. Civ. Code § 1798.81 by failing to erase or
2 otherwise destroy their users' contact data collected for a limited purpose.

3 173. Pursuant to Cal. Civ. Code § 1798.84, Plaintiff and the Class Members seek
4 damages, including statutory damages of \$3,000 per violation and injunctive relief. Plaintiff and
5 the Class Members also seek attorney's fees pursuant to Cal. Code Civ. Proc. § 1021.5, as well
6 as such other and further relief as the Court deems just and proper.
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8 **EIGHTH CAUSE OF ACTION**
9 **(Conversion)**

10 174. Plaintiff incorporates by reference and realleges all paragraphs previously alleged
11 herein.

12 175. Plaintiff's and Class Members' Computing Device data, including, but not limited
13 to, their Computing Devices' online usage data is being used by Defendants to obtain PI, PII, and
14 SII derived from Plaintiff's and Class Members' Computing Device browsing activities. Such
15 property, owned by the plaintiff and Class Members, is valuable to the Plaintiff and Class
16 Members.
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18 176. Plaintiff's and Class Members' Computing Devices use bandwidth. Defendants'
19 activities, made the basis of this action, used without notice or authorization such bandwidth for
20 purposes not contemplated nor agreed to by Plaintiff and Class Members when they visited
21 websites contained Defendants' tracking mechanisms. Such property, owned by the Plaintiff and
22 Class Members, is valuable to the Plaintiff and Class Members.
23

24 177. Defendants unlawfully exercised dominion over said property and thereby
25 converted Plaintiff's and Class Members' property, by providing PI, PII, and SII to third parties
26 and by using Plaintiff's and Class Members' bandwidth for data mining, in violation of
27 collective class allegations, made the basis of this action.
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**NINTH CAUSES OF ACTION IX
(Trespass to Personal Property / Chattels)**

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3 179. Plaintiff incorporates by reference and realleges all paragraphs previously alleged
4 herein.

5 180. The common law prohibits the intentional intermeddling with personal property,
6 including a Computing Device, in possession of another which results in the deprivation of the
7 use of the personal property or impairment of the condition, quality, or usefulness of the personal
8 property.

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

17
18 182. Without Plaintiff's and Class Members' consent, or in excess of any consent
19 given, Defendants knowingly and intentionally accessed Plaintiff's and Class Members'
20 property, thereby intermeddling with Plaintiff's and Class Members' right to possession of the
21 property and causing injury to Plaintiff and the Class Members.

22
23 183. Defendants engaged in deception and concealment in order to gain access to
24 Plaintiff's and Class Members' Computing Devices.

25
26 184. Defendants undertook the following actions with respect to Plaintiff's and Class
27 Members' Computing Devices:
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- 1 a. Defendants accessed and obtained control over the user's Computing
2 Device;
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4 b. Defendants caused the installation of a new code onto the HDD of the
5 user's Computing Device; and
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7 c. Defendant programmed the operation of their code to function and operate
8 without notice or consent on the part of the owner of the Computing Device, and outside of the
9 control of the owner of the Computing Device.

10 185. All these acts described above were acts in excess of any authority any user
11 granted when they visited the websites containing the Defendants' tracking mechanisms and
12 none of these acts was in furtherance of users viewing the websites containing the Defendants'
13 tracking mechanisms. By engaging in deception and misrepresentation, whatever authority or
14 permission Plaintiff and Class Members may have granted to Defendants was exceeded.

15
16 186. Defendants' installation and operation of their tracking mechanisms used,
17 interfered, and/or intermeddled with Plaintiff's and Class Members' Computing Devices. Such
18 use, interference and/or intermeddling was without Plaintiff's and Class Members' consent or, in
19 the alternative, in excess of Plaintiff's and Class Members' consent.

20
21 187. Defendants' installation and operation of their tracking mechanisms constitutes
22 trespass, nuisance, and an interference with Plaintiff's and Class Members' chattels, to wit, their
23 Computing Devices.

24 188. Defendants' installation and operation of their tracking mechanisms impaired the
25 condition and value of Plaintiff's and Class Members' Computing Devices.

26
27 189. Defendants' trespass to chattels, nuisance, and interference caused real and
28 substantial damage to Plaintiff and Class Members.

1 190. As a direct and proximate result of Defendants' trespass to chattels, nuisance,
2 interference, unauthorized access of and intermeddling with Plaintiff's and Class Members'
3 property, Defendants have injured and impaired the condition and value of Plaintiff's and Class
4 Members' Computing devices, as follows:

- 5
- 6 a. By consuming the resources of and/or degrading the performance of
7 Plaintiff's and Class Members' Computing Devices (including space,
8 memory, processing cycles, and Internet connectivity);
- 9
- 10 b. By diminishing the use of, value, speed, capacity, and/or capabilities of
11 Plaintiff's and Class Members' Computing Devices;
- 12 c. By devaluing, interfering with, and/or diminishing Plaintiff's and Class
13 Members' possessory interest in their Computing Devices;
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- 15 d. By altering and controlling the functioning of Plaintiff's and Class
16 Members' Computing Devices;
- 17 e. By infringing on Plaintiff's and Class Members' right to exclude others
18 from their Computing Devices;
- 19 f. By infringing on Plaintiff's and Class Members' right to determine, as
20 owners of their Computing Devices, which programs should be
21 installed and operating on their Computing Devices;
- 22
- 23 g. By compromising the integrity, security, and ownership of Plaintiff's
24 and Class Members' Computing Devices; and
- 25 h. By forcing Plaintiff and Class Members to expend money, time, and
26 resources in order to remove the tracking mechanisms installed on their
27 Computing Devices without notice or consent.
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**TENTH CAUSE OF ACTION
(Unjust Enrichment)**

191. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

192. Plaintiff asserts this claim against each and every Defendant named herein in this complaint on behalf of herself and the Class.

193. A benefit has been conferred upon Defendants by Plaintiff and the Class Members. On information and belief, Defendants, directly or indirectly, have received and retained information regarding Plaintiff and Class Members that is otherwise private, confidential, and not of public record, and/or have received revenue from the use and provision of such information.

194. Defendants appreciate or have knowledge of said benefit.

195. Under Principles of equity and good conscience, Defendants should not be permitted to retain the information and/or revenue that they acquired by virtue of their unlawful conduct. All funds, revenues, and benefits received by Defendants rightfully belong to Plaintiff and the Class Members, which Defendants have unjustly received as a result of their actions.

VII. PRAYER FOR RELIEF

Plaintiff Zetha Nobles, individually and on behalf of all others similarly situated, prays for the following relief:

- A. Certify this matter as a class action.
- B. Enter judgment in favor of Plaintiff and the Class.
- C. Enter injunctive and/or declaratory relief as is necessary to protect the interests of Plaintiff and the Class.

1 D. Except for the cause of action for violation of the CLRA, award damages to Class
2 Members, in amounts to be proved.

3 E. Except for the cause of action for violation of the CLRA, award restitution against
4 Defendants in amounts to be proved.

5 F. Except for the cause of action for violation of the CLRA, award increased or
6 statutory damages in amounts to be proved.

7 G. Except for the cause of action for violation of the CLRA, award disgorgement of
8 monies obtained through and as a result of unfair and/or deceptive acts and/or practices, in
9 amounts to be proved.

10 H. Except for the cause of action for violation of the CLRA, award Plaintiff and the
11 Class pre- and post-judgment interest, to the extent allowable.

12 I. Except for the cause of action for violation of the CLRA, make such orders or
13 judgments as may be necessary to restore to any person in interest any money or property that
14 may have been acquired by means of false or misleading advertising or unfair competition.

15 J. Except for the cause of action for violation of the CLRA, award Plaintiff and the
16 Class their reasonable litigation expenses and attorneys' fees.

17 K. Award such other and further relief as equity and justice may require.
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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues triable.

Respectfully submitted,

THE TERRELL LAW GROUP

Dated: June 26, 20112


REGINALD TERRELL, ESQ.

REGINALD TERRELL, ESQ.
THE TERRELL LAW GROUP
Post Office Box 13315, PMB #148
Oakland, California 94661
Telephone: (510) 237-9700
Facsimile: (510) 237-4616