

1 **CLASS ACTION COMPLAINT**

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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 ***

3 SHARI SIMON and KATHRYN VORHOFF)
4 on behalf of themselves and all others)
5 similarly situated,)

Case No.:

6 Plaintiffs,)

CLASS ACTION COMPLAINT

7 vs.)

[Jury Trial Demanded]

8 AMAZON.COM, INC. d/b/a ZAPPOS.COM)

9 Defendants.)

11 COMES NOW, Plaintiffs Shari Simon and Katharine Vorhoff on behalf of themselves and all
12 other persons similarly situated (hereinafter referred to as "Plaintiffs"), who bring this action based
13 upon personal knowledge as to themselves and their own acts, and as to all other matters upon
14 information and belief, based upon *inter alia*, the investigation made by their attorneys.

16 **NATURE OF THE CASE**

17 1. Defendant Amazon.com, Inc ("Amazon"), doing business as Zappos.com, failed to
18 safeguard the confidential personal identifying information of at least 24 million consumers (hereinafter
19 referred to as "Class Members"). As a result of Amazon's failures, the class was victimized by
20 cybercriminals who exploited Amazon's lax security and obtained Class Members' personal identifying
21 information. Plaintiffs bring this class action to redress the harm caused by Amazon's failure.

22 2. Zappos.com ("Zappos" or "the Company") is a division of Amazon, and is an online
23 retailer of apparel, shoes, handbags, home furnishings, beauty products and accessories. In Zappos'
24 communications to its customer, the company brags that "**shopping on Zappos.com is safe and**
25 **secure-guaranteed**" and represents that "you'll pay nothing if unauthorized charges are made to your
26 credit card as a result of shopping at Zappos.com." (bold in original).
27
28

1 3. Specifically, on or sometime prior to Sunday, January 15, 2012, cybercriminals (or a
2 single criminal) accessed insufficiently protected servers belonging to Zappos. As a result of Zappos'
3 failure to properly secure its servers, the criminals obtained extensive personal information belonging
4 to 24 million Zappos customers, including, *inter alia*, names, account numbers, passwords, email
5 addresses, billing and shipping addresses, phone numbers and the last four digits of credit cards
6 used to make purchases ("personal identifying information").
7

8 4. As a result of Defendant's actions, Ms. Simon, Ms. Vorhoff and the Class were harmed.
9 Immediately following the breach -- in fact, the *very next day* -- Class Members complained that
10 criminals had transferred money from their bank accounts, using the very credit cards that the Class
11 Members maintained on file for use at Zappos. For example, the Las Vegas Journal Review reported
12 that a Class Member was victimized by identity theft the day after the disclosure occurred. *See*
13 [http://www.lvrj.com/business/Zappos-alerts-account-holders-of-hacker-security-breach-](http://www.lvrj.com/business/Zappos-alerts-account-holders-of-hacker-security-breach-137453118.html)
14 [137453118.html](http://www.lvrj.com/business/Zappos-alerts-account-holders-of-hacker-security-breach-137453118.html).
15

16 5. As a result of Defendant's actions, Ms. Simon and Ms. Vorhoff were forced to take
17 remedial steps to protect themselves from future loss. Indeed, all of the Class Members are currently at
18 a very high risk of direct theft and prophylactic protective measures, like the purchase of credit
19 monitoring, are reasonable and necessary to prevent future loss.
20

21 6. Defendant's wrongful actions and/or inaction constitute common law negligence,
22 invasion of privacy by the public disclosure of private facts, breach of implied contract, false
23 advertising, and also constitute violations of California and Washington law.
24

25 7. Plaintiffs, on behalf of themselves, the Class and subclasses, seek (i) actual damages,
26 economic damages, emotional distress damages, statutory damages and/or nominal damages, (ii)
27 exemplary damages, (iii) injunctive relief, and (iv) attorneys' fees, litigation expenses and costs.
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1 **JURISDICTION AND VENUE**

2 8. The jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331 because this is a civil
3 action arising under the laws of the United States. This court has subject matter jurisdiction pursuant
4 to 28 U.S.C. § 1332(d).

5 9. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391 because the defendant is
6 subject to the personal jurisdiction of this District and a substantial part of the events or omissions
7 giving rise to the claims occurred in this District. Indeed, Zappos is headquartered in this District and
8 most of the policies and procedures challenged by this lawsuit originated in this District.
9

10 **PARTIES**

11 10. Plaintiff Shari Simon is a resident of California. On January 16, 2012, Ms. Simon
12 received an email from Zappos stating that her personal identifying information was stolen and/or
13 compromised.
14

15 11. Plaintiff Katharine Vorhoff is a resident of Washington. On January 16, 2012, Ms.
16 Vorhoff received an email from Zappos stating that her personal identifying information was stolen
17 and/or compromised.
18

19 12. Defendant Amazon is a Delaware corporation with its principle place of business in
20 Seattle, Washington. Amazon is an online retailer that conducts business throughout the United
21 States, including Nevada.

22 13. Zappos maintains corporate headquarters in Las Vegas, Nevada.

23 **FACTS**

24 14. Identity theft, which costs Americans approximately \$54 billion per year, occurs
25 when a individual's personal identifying information is used without his or her permission to
26 commit fraud or other crimes. Victims of identity theft typically lose more than 100 hours dealing with
27 the crime, and they typically lose over \$500 in money which they are unable to recover.
28

1 15. According to the Federal Trade Commission:

2 Identity theft is serious. While some identity theft victims can resolve
3 their problems quickly, others spend hundreds of dollars and many days
4 repairing damage to their good name and credit record. Some
5 consumers victimized by identity theft may lose out on job opportunities,
6 or be denied loans for education, housing or cars because of negative
7 information on their credit reports. In rare cases, they may even be
8 arrested for crimes they did not commit.

9 16. In an effort to calm consumers' reasonable apprehensions regarding the risk of identity
10 theft attendant to online transactions, Zappos' website promises and boasts that "Zappos.com servers
11 are protected by secure firewalls -- communication management computers specially designed to keep
12 information secure and inaccessible by other Internet users. So *you're absolutely safe while you*
13 *shop.*" (emphasis added). Unfortunately, this promise is untrue.

14 17. On January 16, 2012, Plaintiffs and over 24 million Class Members received an email
15 from Zappos notifying them that their personal identifying information was stolen. Zappos' email
16 admitted that "[w]e were recently the victim of a cyber attack by a criminal who gained access to parts
17 of our internal network and systems through one of our servers."

18 18. The criminal was able to access the servers because Zappos failed to take basic security
19 precautions. Disturbingly, Zappos did not properly encrypt its customers' data. Had it done so, the
20 disclosure would not have occurred.

21 19. Zappos also failed to properly encrypt its customers' passwords. In a letter to Class
22 Members, Zappos stated that the information was "cryptographically scrambled." However, Tim
23 Rohrbaugh, an internet security expert, recently explained that "cryptographically scrambled" is a
24 "virtually meaningless term," and that the hackers would be able to obtain and use the Class Members'
25 confidential personal identifying information with relative ease.

26 20. According to Tony Hsieh, Zappos' CEO, the criminals obtained Class Members'
27 personal identifying information, including, *inter alia*, their names, account numbers, passwords,
28

1 email addresses, billing and shipping addresses, phone numbers, and the last four digits of their
2 credit cards used to make purchases.

3 21. Zappos was woefully unprepared to address the security breach and did not have the
4 proper policies and procedures in place to respond to customers' concerns. Tellingly, the Company
5 shut down its customer service phone lines for nearly a week instead of promptly and responsibly
6 offering assistance to the victims.
7

8 22. Zappos' lack of preparation and adequate protection of Plaintiffs' and Class Members'
9 personal identifying information is especially disturbing given the advertising statements made on
10 Zappos.com. From this security breach, it has now become apparent that the "Zappos guarantee" is a
11 lie.
12

13 23. As a result of Defendant's failure to properly secure its servers and safeguard Plaintiffs'
14 and Class Members' personal identifying information, Ms. Simon, Ms. Vorhoff and Class Members'
15 privacy has been invaded.

16 24. Moreover, all of this personal identifying information can easily be used to steal
17 directly from Class Members or to steal Class Members' identities, as has already happened to multiple
18 victims.
19

20 25. Indeed, in the wake of Zappos' negligent failure, data expert Professor Stephen
21 Wicker of Cornell explained that "large databases of consumer information can be used for identity
22 theft. . . . As Zappos acknowledged, users who use the same or similar passwords are at risk of theft
23 through access to other sites such as Amazon or Ebay."
24

25 26. Given all of the information obtained, the criminals would also be able to create
26 numerous fake accounts, as part of their identity theft operation.

27 27. The theft of passwords is especially pernicious because people habitually use similar
28 usernames and passwords for all of their online accounts. Accordingly, the cybercriminals will be able

1 to go from website to website, accessing victims' private accounts and using those accounts to commit
2 theft and/or fraud.

3 28. As a direct and/or proximate result of Zappos' wrongful disclosure, criminals now have
4 Plaintiffs' and Class Members' personal identifying information, along with the knowledge that
5 Plaintiffs and Class Members are accustomed to receiving emails from Zappos. Additionally, the
6 disclosure makes Plaintiffs and Class Members much more likely to respond to requests from Zappos
7 or law enforcement agencies for more personal information, such as bank account numbers, login
8 information or even Social Security numbers. Because criminals know this and are capable of posing
9 as Zappos or law enforcement agencies, consumers like Plaintiffs and their fellow Class Members are
10 more likely to unknowingly give away their sensitive personal information to other criminals.
11

12 29. Defendant's wrongful actions and/or inaction here directly and/or proximately caused the
13 public disclosure of Plaintiffs' and Class Members' personal identifying information without their
14 knowledge, authorization and/or consent. As a further direct and/or proximate result of Defendant's
15 wrongful actions and/or inaction, Plaintiffs and Class Members have suffered, and will continue to
16 suffer, damages including, without limitation, loss of the unencumbered use of their current
17 passwords, the loss of their passwords, expenses for credit monitoring and identity theft insurance,
18 out-of-pocket expenses, anxiety, emotional distress, loss of privacy, and other economic and non-
19 economic harm.
20

21 30. Plaintiffs and Class Members are now required to monitor their accounts and to respond
22 to identity theft. In order to try to mitigate the damage caused by Defendant, Class Members are also
23 required to take the time to change the passwords on their Zappos accounts (as recommended by
24 Zappos), change the passwords "on any other web site where [Plaintiffs and Class Members] use the
25 same or a similar password" (as further recommended by Zappos), and change other elements of their
26 compromised personal identifying information. Even taking all of these precautions, Plaintiffs and
27
28

1 Class Members now face a very high risk of identity theft.

2 31. Accordingly, Connecticut Senator Richard Blumenthal has written Zappos, stating that:

3 enterprising criminals can leverage information like names, addresses,
4 email addresses, and other breached information to gain access to
5 consumers' accounts and commit identity theft and fraud. Therefore, I
6 request that Zappos provide its customers with the option of receiving
7 two years of credit monitoring and a credit freeze, as well as any costs
8 resulting from the security breach, to be paid for by Zappos.

9 32. Nonetheless, Defendant has not offered Plaintiffs and Class Members any
10 compensation or direct personal protection from the disclosure -- such as credit monitoring services
11 and/or identity theft insurance. Defendant's failure to make such a remedial offer distinguishes it
12 from many other entities which have moved quickly to remediate similar invasions of their customers'
13 privacy.

14 33. Defendant has not offered Plaintiffs and Class Members any compensation or direct
15 personal protection from the disclosure despite the statements and the "Zappos guarantee" on its
16 website promising to do just that -- provide compensation if fraudulent charges result from the use
17 of Zappos.com.

18 34. Zappos' security failures have harmed millions, and are resulting in nationwide
19 attention. In addition to Senator Blumenthal, nine Attorneys General have written a letter to Zappos
20 about this breach. This letter correctly states that "[t]his incident raises serious concerns about the risk
21 of identity theft, fraud, targeted email 'phishing' or other scams, as well as the effectiveness of the
22 Company's measures to protect the confidentiality and security of private information that it receives
23 from consumers."

24
25 **CLASS ACTION ALLEGATIONS**

26 35. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this class
27 action as a national class action on behalf of themselves and the following Class of similarly situated
28 individuals:

1 All persons whose personal identifying information, including,
2 *inter alia*, name, account number, password, email address,
3 billing and shipping addresses, phone number, and the last four
4 digits of the credit cards used to make purchases, was stolen or
otherwise obtained by an unauthorized individual or individuals
from Zappos' servers or other Zappos' computer systems or databases.

5 36. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Ms. Simon brings a
6 subclass of California residents on behalf of herself and the following subclass of similarly situated
7 individuals:

8 All persons, residing in California and/or accessing Zappos.com
9 from California, whose personal identifying information,
10 including, *inter alia*, name, account number, password, email
11 address, billing and shipping addresses, phone number, and the last
12 four digits of the credit cards used to make purchases, was stolen or
otherwise obtained by an unauthorized individual or individuals
from Zappos' servers or other Zappos' computer systems or databases.

13 37. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Ms. Vorhoff brings a
14 subclass of Washington residents on behalf of herself and the following subclass of similarly situated
15 individuals:

16 All persons, residing in Washington and/or accessing Zappos.com
17 from Washington, whose personal identifying information,
18 including, *inter alia*, name, account number, password, email
19 address, billing and shipping addresses, phone number, and the last
20 four digits of the credit cards used to make purchases, was stolen or
otherwise obtained by an unauthorized individual or individuals
from Zappos' servers or other Zappos' computer systems or databases.

21 38. Both the Class and the subclasses specifically exclude Defendant and its officers,
22 directors, agents and/or employees, the Court and Court personnel.

23 39. The putative Class is comprised of over 24 million persons, making joinder
24 impracticable. The putative subclasses are likely comprised of over 1 million persons each, making
25 joinder similarly impracticable. Disposition of this matter as a class action will provide substantial
26 benefits and efficiencies to the Parties and the Court.
27
28

1 40. The rights of each Class Member were violated in an identical manner as a result of
2 Defendant's willful, reckless and/or negligent actions and/or inaction.

3 41. Questions of law and fact common to all Class Members exist and predominate over
4 any questions affecting only individual Class Members including, *inter alia*:

- 5 a) Whether Defendant negligently failed to maintain and/or execute reasonable
6 procedures designed to prevent unauthorized access to Plaintiffs' and Class
7 Members' personal identifying information;
8 b) Whether Defendant was negligent in storing and failing to adequately
9 safeguard Plaintiffs' and Class Members' personal identifying information;
10 c) Whether Defendant owed a duty to Plaintiffs and Class Members to exercise
11 reasonable care in protecting and securing their personal identifying
12 information;
13 d) Whether Defendant breached its duty to exercise reasonable care in failing to
14 protect and secure Plaintiffs' and Class Members' personal identifying
15 information;
16 e) Whether by publicly disclosing Plaintiffs' and Class Members' personal
17 identifying information without authorization, Defendant invaded Plaintiffs' and
18 Class Members' privacy;
19 f) Whether Defendant created an implied contract with Plaintiffs and Class
20 Members to keep their personal identifying information confidential; and
21 g) Whether Plaintiffs and Class Members sustained damages as a result of
22 Defendant's failure to secure and protect their personal identifying information.
23 24 25 26

27 42. Plaintiffs and their counsel will fairly and adequately represent the interests of Class
28 Members. Plaintiffs have no interests antagonistic to, or in conflict with, Class Members' interests.

1 Plaintiffs' attorneys' are highly experienced in the prosecution of consumer class action, complex
2 litigation and data breach cases.

3 43. Plaintiffs' claims are typical of Class Members' claims in that Plaintiffs' claims and
4 Class Members' claims all arise from Defendant's wrongful disclosure of their personal identifying
5 information and from Defendant's failure to properly secure and protect the same.
6

7 44. A class action is superior to all other available methods for fairly and efficiently
8 adjudicating Plaintiffs' and Class Members' claims. Plaintiffs and Class Members have been
9 irreparably harmed as a result of Defendant's wrongful actions and/or inaction. Litigating this case as
10 a class action will reduce the possibility of repetitious litigation relating to Defendant's failure to secure
11 and protect Plaintiffs' and Class Members' personal identifying information.
12

13 45. Class certification, therefore, is appropriate pursuant to Fed. R. Civ. P. 23(b)(3) because
14 the above common questions of law or fact predominate over any questions affecting individual Class
15 Members, and a class action is superior to other available methods for the fair and efficient adjudication of
16 this controversy.
17

18 46. Class certification also is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because
19 Defendant has acted or refused to act on grounds generally applicable to the Class, so that final injunctive
20 relief or corresponding declaratory relief is appropriate as to the Class as a whole.
21

22 47. The expense and burden of litigation would substantially impair the ability of Class Members
23 to pursue individual lawsuits in order to vindicate their rights. Absent a class action, Defendant will
24 retain the benefits of its wrongdoing despite its serious violations of the law.
25

CLAIMS FOR RELIEF

COUNT I **NEGLIGENCE**

26 48. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1-47 above as if
27 fully set forth herein.
28

1 49. Defendant owed a duty to Plaintiffs and Class Members to safeguard and protect their
2 personal identifying information.

3 50. Defendant breached its duty by failing to exercise reasonable care in its
4 safeguarding and protection of Plaintiffs' and Class Members' personal identifying information.

5 51. It was reasonably foreseeable that Defendant's failure to exercise reasonable care in
6 safeguarding and protecting Plaintiffs' and Class Members' personal identifying information would
7 result in an unauthorized third party gaining access to such information for no lawful purpose, and that
8 such third parties would use Plaintiffs' and Class Members' personal identifying information for
9 malevolent and unlawful purposes, including the commission of direct theft and identity theft.
10

11 52. Plaintiffs and the Class Members were (and continue to be) damaged as a direct and/or
12 proximate result of Defendant's failure to secure and protect their personal identifying information as a
13 result of, *inter alia*, direct theft, identity theft, expenses for credit monitoring and identity theft insurance
14 incurred in mitigation, out-of-pocket expenses, anxiety, emotional distress, loss of privacy, and other
15 economic and non-economic harm, for which they suffered loss and are entitled to compensation.
16

17 53. Defendant's wrongful actions and/or inaction (as described above) constituted (and
18 continue to constitute) negligence at common law.
19

20 **COUNT II**
21 **INVASION OF PRIVACY BY PUBLIC DISCLOSURE OF PRIVATE FACTS**

22 54. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1-47 above as if
23 fully set forth herein.

24 55. Plaintiffs' and Class Members' personal identifying information is and always
25 has been private information.

26 56. Defendant's efforts to obtain Plaintiffs' and Class Members' personal identifying
27 information, followed by Defendant's failure to secure and protect the same, directly resulted in the
28 public disclosure of such private information.

1 57. Dissemination of Plaintiffs' and Class Members' personal identifying information is not of
2 a legitimate public concern; publication of their personal identifying information would be, is and will
3 continue to be, offensive to Plaintiffs, Class Members, and other reasonable people.

4 58. Plaintiffs and the Class Members were (and continue to be) damaged as a direct and/or
5 proximate result of Defendant's invasion of their privacy by publicly disclosing their private facts
6 including, *inter alia*, direct theft, identity theft, expenses for credit monitoring and identity theft
7 insurance, out-of-pocket expenses, anxiety, emotional distress, loss of privacy, and other economic
8 and non-economic harm, for which they are entitled to compensation. At the very least, Plaintiffs and
9 the Class Members are entitled to nominal damages.

10 59. Defendant's wrongful actions and/or inaction (as described above) constituted (and
11 continue to constitute) an invasion of Plaintiffs' and Class Members' privacy by publicly disclosing
12 their private facts (*i.e.*, their personal identifying information).

15 **COUNT III**
16 **BREACH OF CONTRACT**

17 60. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1-47 above as if
18 fully set forth herein.

19 61. Zappos' customers purchased merchandise by exchanging money in consideration for
20 those goods via Zappos' website, thereby creating a contract between the parties.

21 62. As a uniform condition precedent to the completion of all transactions made by Zappos
22 customers under the contract, including those made by Plaintiffs and Class Members, Zappos required
23 consumers to provide Zappos with their personal identifying information, which provided measurable
24 benefits to Zappos in that the provision of this information allowed Zappos to market directly to its
25 customers and to obtain knowledge of their customers' shopping habits.

26 63. Through its statements regarding its security measures, including the "Zappos
27 guarantee" and through its own password requirements, Zappos explicitly and impliedly promised
28

1 Plaintiffs and the Class Members that it would take adequate measures to protect their personal
2 identifying information.

3 64. Indeed, a material term of this contract is a covenant by Zappos that it will take
4 reasonable efforts to safeguard consumers' personal identifying information. Zappos promises in its
5 guarantee to all of its customers that "Zappos.com servers are protected by secure firewalls—
6 communication management computers specially designed to keep information secure and inaccessible
7 by other Internet users. So you're absolutely safe while you shop."

8
9 65. Plaintiffs and Class Members fulfilled their obligations under the contract by providing
10 their personal identifying information and purchasing Zappos' goods.

11 66. Notwithstanding its obligations imposed by this express contract, Zappos failed to
12 safeguard and protect Plaintiffs' and Class Members' personal identifying information. Zappos'
13 breaches of its obligations under the contract between the parties directly caused Plaintiff and Class
14 Members to suffer injuries.

15
16 67. Considering the fact that numerous customers have reported instances of identity theft
17 immediately following the breach, the information stolen included account login information, and the
18 theft targeted credit card numbers, Plaintiffs and the Class Members should reasonably be expected to
19 take prophylactic measures and undertake attendant costs to prevent and mitigate the harm likely to be
20 suffered.

21
22 **COUNT IV**
23 **BREACH OF IMPLIED CONTRACT**

24 68. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1-47 above as if
25 fully set forth herein.

26 69. The covenant to adequately safeguard Plaintiffs' and Class Members' personal
27 identifying information is an implied term in the contract, to the extent it is not an express term.
28

1 70. Notwithstanding its obligations imposed by this implied contract, Zappos failed to
2 safeguard and protect Plaintiffs' and Class Members' personal identifying information. Zappos'
3 breaches of its obligations under the contract between the parties directly caused Plaintiffs and Class
4 Members to suffer injuries.

5
6 71. Considering the fact that numerous customers have reported instances of identity theft
7 immediately following the breach, the information stolen included account login information, and the
8 theft targeted credit card numbers, Plaintiffs and the Class Members should reasonably be expected to
9 take prophylactic measures and undertake attendant costs to prevent and mitigate the harm likely to be
10 suffered.

11
12 **COUNT V**
UNFAIR COMPETITION
13 **Cal. Bus. & Prof. Code § 17200 *et seq.***

14 72. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1-47 above as if
15 fully set forth herein.

16 73. The acts, practices, misrepresentations and omissions by Amazon described above, and
17 Amazon's dissemination of deceptive and misleading advertising and marketing materials in
18 connection therewith, constitute unlawful, unfair and fraudulent business acts and practices and untrue
19 and misleading advertising within the meaning of California Business & Professions Code §17200, *et*
20 *seq.*, California's Unfair Competition Law ("UCL"). The conduct alleged herein is a "business
21 practice" within the meaning of the UCL.
22

23 74. Amazon's acts, omissions, and misrepresentations as alleged herein were unlawful and
24 in violation of, *inter alia*, Cal. Bus. Prof. Code §17500, *et seq.*, Cal. Civ. Code §1750, *et seq.*, and Cal.
25 Civ. Code §1798.80, *et seq.*
26

27 75. Amazon engaged in "unfair" business acts or practices by the promotional efforts
28 undertaken and disseminated, given that Amazon knew or should have known that its online shoppers

1 were at risk of identity theft and fraud, and it determined to benefit economically by categorically
2 denying this risk to consumers. Amazon's misconduct offends public policy and is immoral,
3 unscrupulous, unethical and offensive, and causes substantial injury to consumers.

4
5 76. Amazon's unlawful, fraudulent or unfair business acts and practices present a continuing
6 threat to Plaintiffs, Class Members and the general public in that, Amazon has refused to publicly
7 acknowledge the Defect, correct its wrongdoing, and provide compensation for the damages it has
8 caused to consumers.

9
10 77. Plaintiffs would not have registered nor subscribed to services offered by Amazon on
11 Zappos.com or provided Amazon with their sensitive personal information had they known of
12 Amazon's failure to maintain adequate security measures to protect Plaintiffs' sensitive personal
13 information.

14
15 78. Pursuant to California Business & Professions Code §17203, Plaintiff Simon, on behalf
16 of herself, the other subclass Members, and the general public, seeks an order of this Court enjoining
17 Amazon from withholding information regarding the defects in Zappos' internet security. Plaintiff
18 Simon, on the same basis, seek restitution of any monies wrongfully acquired or retained by Amazon
19 and disgorgement of Amazon's ill-gotten gains obtained by means of its unfair practices.

20
21 **COUNT VI**
MISLEADING ADVERTISING
Cal. Bus. & Prof. Code § 17500 *et seq.*

22
23 79. Plaintiffs repeat and re-alleges the allegations contained in Paragraphs 1-47 above as if
24 fully set forth herein.

25
26 80. California Business & Professions Code §17500 prohibits various deceptive practices in
27 connection with the dissemination in any manner of representations for the purpose of inducing, or
28 which are likely to induce, directly or indirectly, customers to purchase consumer products such as the
shoes and other goods sold on Zappos.com.

1 81. Amazon's acts, practices, misrepresentations and omissions alleged herein were
2 intended to, and did, induce the consuming public to purchase goods via Zappos.com based on
3 Amazon's "safe and secure guarantee," which violated and continues to violate California Business &
4 Professions Code §17500, in that Amazon caused advertisements for its products to be placed before
5 the general public, but products did not conform to the advertisements.
6

7 82. As a result of the foregoing, Plaintiff Simon, other subclass members, and the general
8 public are entitled to injunctive and equitable relief, restitution, and an order requiring disgorgement of
9 Amazon's ill gotten gains, as described above.

10 **COUNT VI**
11 **IMPROPER DISCLOSURE AND NOTIFICATION OF SECURITY BREACH**
12 **Cal. Civ. Code § 1798.80 *et seq.*; Wash. Stat. § 19.255.020 *et. seq.***

13 83. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1-47 above as if
14 fully set forth herein.

15 84. The data breach discussed herein constitutes a "breach of a security system" and is
16 governed by both Cal. Civ. Code § 1798.80 *et seq.* and Wash. Stat. § 19.255.020 *et. seq.*

17 85. Amazon unreasonably delayed in properly informing victims of the breach after
18 Amazon became aware that the breach had occurred. When Amazon notified victims of the breach,
19 such notification was incomplete and therefore inadequate because it did not provide sufficient details
20 about the breach. Moreover, for one week after the breach, Amazon failed to respond in any way to
21 queries from Class Members. Amazon did not provide a dedicated phone number to assist Class
22 Members, and Zappos compounded this failure by shutting down its regular phone lines.
23

24 86. No law enforcement agency instructed Amazon to delay notification or that notification
25 would impede any investigation.
26

27 87. Plaintiffs, on behalf of themselves and the subclasses, seek all remedies available under
28 Cal. Civ. Code § 1798.80 *et seq.* and/or Wash. Stat. § 19.255.020 *et. seq.*, including, but not limited to:

1 (a) damages suffered by Plaintiffs and the other subclasses' members as alleged herein; (b) statutory
2 damages for Amazon's willful, intentional, and/or reckless violation of Cal. Civ. Code § 1798.80 *et*
3 *seq.* and/or Wash. Stat. § 19.255.020 *et. seq.*; and (c) equitable relief.

4 88. Plaintiffs also seek reasonable attorneys' fees and costs under Cal. Civ. Code § 1798.80
5 *et seq.* and/or Wash. Stat. § 19.255.020 *et. seq.*
6

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs respectfully request that the Court enter judgment against Defendant
9 as follows:

10 1. Certifying this action as a class action, with a class as defined above;
11 2. Awarding compensatory damages to redress the harm caused to Plaintiffs and Class
12 Members in the form of, *inter alia*, direct theft, identity theft, loss of unencumbered use of existing
13 passwords, loss of passwords, expenses for credit monitoring and identity theft insurance, out-of-pocket
14 expenses, anxiety, emotional distress, loss of privacy, and other economic and non-economic harm.
15 Plaintiffs and Class Members also are entitled to recover statutory damages and/or nominal damages.
16 Plaintiffs and Class Members' damages were foreseeable by Defendant and exceed the minimum
17 jurisdictional limits of this Court.
18

19 3. Ordering injunctive relief including, without limitation, (i) credit monitoring, (ii) identity
20 theft insurance, and (iii) requiring Defendant to submit to periodic compliance audits by a third party
21 regarding the security of consumers' personal identifying information its possession, custody and
22 control.
23

24 4. Awarding Plaintiffs and the Class interest, costs and attorneys' fees; and
25 5. Awarding Plaintiffs and the Class such other and further relief as this Court deems just
26 and proper.
27

28 //

1 **DEMAND FOR TRIAL BY JURY**

2 Pursuant to Federal Rule of Civil Procedure Rule 38, Plaintiffs hereby demand a trial by jury.

3 DATED this 14th day of February, 2012.

4 **WINNER & CARSON, P.C.**

5
6
7 /s/Brent A. Carson

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