

(Handwritten signature)

FILED

DEC 23 2010

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

E-filing

PSG

1 Scott A. Kamber (not admitted)
 2 skamber@kamberlaw.com
 3 David A. Stampely (not admitted)
 4 dstampely@kamberlaw.com
 5 KamberLaw, LLC
 6 100 Wall Street, 22nd Floor
 7 New York, New York 10005
 8 Telephone: (212) 920-3072
 9 Facsimile: (212) 920-3081
 10
 11 Avi Kreitenberg (SBN 266571)
 12 akreitenberg@kamberlaw.com
 13 KamberLaw, LLP
 14 1180 South Beverly Drive, Suite 601
 15 Los Angeles, California 90035
 16 Telephone: (310) 400-1050
 17 Facsimile: (310) 400-1056
 18
 19 Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

(Handwritten mark)

14 JONATHAN LALO, Individually and On
 15 Behalf of a Class of Similarly Situated
 16 Individuals,

Plaintiff,

v.

18 APPLE INC., a California Corporation;
 19 BACKFLIP, a Delaware Corporation;
 20 DICTIONARY.COM, a California
 21 Corporation; PANDORA, INC., a California
 22 Corporation; THE WEATHER CHANNEL, a
 23 Georgia Corporation,

Defendants.

CASING: CV10 5878

JURY DEMAND

CLASS ACTION COMPLAINT FOR:

1. Violations of the Electronic Communications Privacy Act, , 18 U.S.C. § 2510
2. Violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030
3. Unfair Competition, California Business and Professions Code § 17200
4. Violations of the Consumer Legal Remedies Act, California Civil Code § 1750
5. Unjust Enrichment

26 Plaintiff Jonathan Lalo, individually and on behalf of all others similarly situated, make
 27 the following allegations based on their personal knowledge of their own acts and observations
 28 and, otherwise, upon information and belief based on investigation of counsel.

ORIGINAL

BY FILING

I. NATURE OF THE CASE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. This is a class action brought on behalf of the Plaintiffs and other owners and users of the Apple iPhone and iPad who were the victims of privacy violations and unfair business practices by Apple Inc. (“Apple”), Pandora Media, Inc. (“Pandora”), and Gogii, Inc. (“Gogii”).

2. Plaintiffs downloaded applications (“apps”) to their iPhone and iPad mobile devices from an Apple-sponsored website as part of the use of their mobile devices. Apple claims to review each application before offering it to its users, purports to have implemented app privacy standards, and claims to have created “strong privacy protections” for its customers. However, Plaintiffs have discovered that some of these apps have been transmitting their personal, identifying information (“PII”) to advertising networks without obtaining their consent.

3. Each Apple iPhone is encoded with an electronically readable Unique Device Identifier (“UDID”). This UDID, which cannot be blocked, altered, or deleted, is now being used by ad networks to track Plaintiffs and the Class – including what apps they download, how frequently they use the apps, and for how long. Some apps are also selling additional information to ad networks, including users’ location, age, gender, income, ethnicity, sexual orientation and political views.

4. Plaintiffs did not consent to their PII being provided to third parties, nor were they aware that these apps were able to do so.

5. Plaintiffs allege that Defendants invaded their privacy, misappropriated and misused their personal information, and interfered with the operability of their mobile devices—conduct and consequences for which they now seek relief.

II. PARTIES

6. Plaintiff Jonathan Lalo (referred to herein as “Plaintiff” or collective “Plaintiffs”) is a resident of Los Angeles County, California.

7. Defendant Apple, Inc. (“Apple”) is a California corporation with its principal place of business at 1 Infinite Loop, Cupertino, California 95014. Apple is the maker of the

1 Apple iPhone.

2 8. Defendant Pandora, Inc. is the maker of the Pandora App and is a California
3 corporation with its principal place of business at 2101 Webster Street, Oakland, California
4 94612.

5 9. Defendant Backflip Studios, Inc. is the maker of the Paper Toss app and is a
6 Delaware Corporation with its principal place of business in Boulder, Colorado.

7 10. Defendant The Weather Channel, Inc. is the maker of the Weather Channel
8 iPhone app and is a Georgia Corporation with its principal place of business at 300 Interstate
9 North Parkway Southeast, Atlanta, Georgia 30339.

10 11. Defendant Dictionary.com, LLC is the maker of the Dictionary.com iPhone app
11 and is a California Corporation with its principal place of business at 555 12th Street, Oakland,
12 California 94607.

13 12. The defendants named above are collectively referred to in this complaint as
14 "Defendants."

15 **III. JURISDICTION AND VENUE**

16 13. This Court has subject-matter jurisdiction over this action pursuant to Title 28,
17 United States Code, Section 1331.

18 14. Venue is proper in this District under Title 28, United States Code, Section
19 1391(b) because Defendants' improper conduct alleged in this complaint occurred in, was
20 directed from, and/or emanated from this judicial district. Two of the defendants are California
21 corporations with their principal places of business in this district.

22 **IV. FACTUAL ALLEGATIONS**

23 15. Plaintiff has owned an iPhone since the first introduction of the device. During
24 that time, he has downloaded a number of iPhone apps, which he has backed up and migrated
25 each time he has replaced his iPhone with a new one.

26 16. For a period range from several years to the past six months, Plaintiff has in-
27 stalled a number of apps on his iPhone, including:

28

- 1 a. Dictionary.com
- 2 b. Pandora
- 3 c. Paper Toss
- 4 d. The Weather Channel

5 17. Apple sets its iPhones and iPads with a UDID, which is a unique identifying
6 number assigned to each device. UDIDs cannot be deleted or blocked by users. These UDIDs
7 can be used to track the user of the device, including a variety of information that can be
8 inferred based on the apps that user downloads.

9 18. Apple claims that it reviews all apps available on its App Store. It states that it
10 does not allow apps to transmit data about a user without consent.

11 19. In contrast to Apple's statements, the above-listed applications acquire UDID
12 and geographic location information from users' iPhones without users' consent and in a
13 manner that is not apparent to users.

14 20. For example, Pandora reportedly sends age, gender, location, and UDIDs to a
15 variety of third-party ad networks. Pandora sends this information without the prior consent of
16 its users, in violation of Apple's app rules, and a variety of state and federal laws. Pandora
17 violates the privacy rights of its users for its own financial gain.

18 21. Similarly, according to the Wall Street Journal's investigative coverage re-
19 ported December 18, 2010, all of the other apps listed above transmit UDID and geographic
20 location information, in addition to other information about users and their uses of the apps.

21 22. Plaintiffs did not expect, receive notice of, or consent to Defendants' tracking
22 of his iPhone app use and did not want Defendants to engage in such activity. Plaintiffs did not
23 expect, receive notice of, or consent to Defendants providing his PII to any third parties.

24 23. Defendants' activities were in conflict with the privacy policies and/or terms of
25 use of the Apple app store.

26 24. Defendants' actions exceeded the scope of any authorization that could have
27 been granted by Plaintiffs at the time of downloading and using the above-listed apps.

28 25. Plaintiffs' communications on the Internet, during which time Defendants used

1 and collected their information, were electronic communications.

2 26. Thus, Defendants engaged in and/or caused interception of communications
3 without authorization.

4 27. Plaintiffs consider information about their mobile communications to be in the
5 nature of confidential information.

6 28. Plaintiffs consider information about themselves and their mobile commuica-
7 tions to be their personal property.

8 29. Plaintiffs consider information about any website they visit, or apps they down-
9 load, to be in the nature of confidential information and personal property that they do not
10 expect to be available to an unaffiliated company.

11 30. Plaintiffs believe that the merger of this information that is likely to occur in the
12 hands of an ad network, based on the profiling performed by ad networks, to constitute the
13 deanonymization of their supposedly anonymous UDID and/or geographic location and there-
14 fore, to constitute personally identifiable information.

15 31. Plaintiffs did not consent to being personally identified to ad networks or for
16 their personally identifiable information to be shared with and used on behalf of Defendants.

17 32. Defendants' actions were knowing, surreptitious, and without notice and so
18 were conducted without authorization and exceeding authorization.

19 33. Defendants misappropriated Plaintiffs' personal information.

20 34. Defendants' conduct caused economic loss to Plaintiffs in that their personal in-
21 formation has discernable value, both to Defendant and to Plaintiffs.

22 35. Defendants deprived Plaintiffs of and/or diminished the economic value of their
23 personal information.

24 36. Defendants used Plaintiffs' personal information for their own economic bene-
25 fit.

26 37. Plaintiffs' experiences are typical of the experiences of Class Members.

27 38. The aggregated loss and damage sustained by the Class, as defined herein, in-
28 cludes economic loss with an aggregated value of at least \$5,000 during a one-year period.

1 39. Defendants perpetrated the acts and omissions set forth in this complaint
2 through an organized campaign of deployment, which constituted a single act.

3 40. Based on Defendants' actions in acquiring Plaintiffs' and Class Members' per-
4 sonal information, an implied contract existed between Defendants and Class Members, to
5 which Defendants' assent may be fairly inferred, and under which contract Defendants were
6 unjustly enriched.

7 41. Plaintiffs and Class Members have been harmed by Defendants' deceptive
8 acquisition of their personal information in the loss of their rights to use, share, and maintain
9 the confidentiality of their information, each according to his or her own discretion.

10 **V. CLASS ALLEGATIONS**

11 42. Pursuant to the Federal Rules of Civil Procedure 23(a), (b)(1), (b)(2), and
12 (b)(3), Plaintiffs bring this action as a class action on behalf of themselves and all others
13 similarly situated as members of the Class, defined as follows:

14 All persons residing in the United States who have down-
15 loaded and used one of Defendants' apps on their iPhone
16 or iPad from December 1, 2008 to the date of the filing
17 of this Complaint.

18 43. Excluded from the Class are Defendants, their legal representatives, assigns,
19 and successors, and any entities in which Defendants have controlling interests. Also excluded
20 is the judge to whom this case is assigned and the judge's immediate family.

21 44. The "Class Period" is December 1, 2008 to the present.

22 45. Plaintiffs reserve the right to revise this definition of the Class based on facts
23 learned in the course of litigating this matter.

24 46. The Class consists of millions of individuals and other entities, making joinder
25 impractical.

26 47. The claims of Plaintiffs are typical of the claims of all other Class Members.

27 48. Plaintiffs will fairly and adequately represent the interests of the other Class
28 Members. Plaintiffs have retained counsel with substantial experience in prosecuting complex

1 litigation and class actions. Plaintiffs and their counsel are committed to prosecuting this
2 action vigorously on behalf of Class Members and have the financial resources to do so.
3 Neither Plaintiffs nor their counsel have any interests adverse to those of the other Class
4 Members.

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

7 50. The class treatment of common questions of law and fact is superior to multiple
8 individual actions or piecemeal litigation in that it conserves the resources of the courts and the
9 litigants, and promotes consistency and efficiency of adjudication.

10 51. Defendants have acted and failed to act on grounds generally applicable to
11 Plaintiffs and other Class Members, requiring the Court's imposition of uniform relief to
12 ensure compatible standards of conduct toward the Class Members.

13 52. The factual and legal bases of Defendants' liability to Plaintiff and other Class
14 Members are the same, resulting in injury to Plaintiff and all of the other Class Members.
15 Plaintiff and other Class Members have all suffered harm and damages as a result of Defen-
16 dants' wrongful conduct.

17 53. There are many questions of law and fact common to Plaintiffs and the Class
18 Members and those questions predominate over any questions that may affect individual Class
19 Members. Common questions for the Class include, but are not limited to the following:

20 a. whether Defendants, without authorization, tracked and compiled in-
21 formation to which Class Members enjoyed rights of possession superior to those of Defen-
22 dants;

23 b. whether Defendants, without authorization, created personally identifi-
24 able profiles of Class Members;

25 c. Whether Defendants violated: (i) the Computer Fraud and Abuse Act,
26 18 U.S.C. § 1030; (ii) the Electronic Communications Privacy Act, 18 U.S.C. § 2510; (iii)
27 California Business and Professions Code § 17200; (iv) The Consumer Legal Remedies Act,
28 Cal. Civ. Code § 1750; and (v) other violations of common law.

1 d. Whether Defendants misappropriated valuable information assets of
2 Class Members;

3 e. Whether Defendants created or caused or facilitated the creation of per-
4 sonally identifiable consumer profiles of Class Members;

5 f. Whether Defendants continue to retain and/or sell, valuable information
6 assets from and about Class Members;

7 g. What uses of such information were exercised and continue to be exer-
8 cised by Defendants;

9 h. Whether Defendants invaded the privacy of Class Member; and

10 i. Whether Defendants have been unjustly enriched.

11 54. The questions of law and fact common to Class Members predominate over any
12 questions affecting only individual members, and a class action is superior to all other avail-
13 able methods for the fair and efficient adjudication of this controversy.

14 **VI. CLAIMS FOR RELIEF**

15 55. Based on the foregoing allegations, Plaintiffs' claims for relief include the
16 following:

17 **COUNT I**

18 **Violations of the Computer Fraud and Abuse Act,**

19 **18 U.S.C § 1030, et seq.**

20 56. Plaintiffs incorporates the above allegations by reference as if fully set forth
21 herein.

22 57. The Computer Fraud and Abuse Act, 18 U.S.C. § 1030, referred to as "CFAA,"
23 regulates fraud and related activity in connection with computers, and makes it unlawful to
24 intentionally access a computer used for interstate commerce or communication, without
25 authorization or by exceeding authorized access to such a computer, thereby obtaining infor-
26 mation from such a protected computer, within the meaning of U.S.C. § 1030(a)(2)(C).

27 58. Defendants violated 18 U.S.C. 1030 by intentionally accessing Plaintiff's and
28 Class Members' computers without authorization or by exceeding authorization, thereby

1 obtaining information from such a protected computer.

2 59. The CFAA, 18 U.S.C. § 1030(g) provides a civil cause of action to “any person
3 who suffers damage or loss by reason of a violation of CFAA.

4 60. The CFAA, 18 U.S.C. § 1030(a)(5)(A)(i) makes it unlawful to “knowingly
5 cause the transmission of a program, information, code, or command and as a result of such
6 conduct, intentionally cause damage without authorization, to a protected computer,” of a loss
7 to one or more persons during any one-year period aggregating at least \$5,000 in value.

8 61. Plaintiff’s computer is a “protected computer . . . which is used in interstate
9 commerce and/or communication” within the meaning of 18 U.S.C. § 1030(e)(2)(B).

10 62. Defendants violated 18 U.S.C. § 1030(a)(5)(A)(i) by knowingly causing the
11 transmission of a command to be downloaded to Plaintiff’s computer, which is a protected
12 computer as defined above. By storing LSOs and executing browser-history sniffing code to
13 access collect, and transmits details of Plaintiff’s web activities and communications, Defen-
14 dants intentionally caused damage without authorization to those Class Members’ computers
15 by impairing the integrity of the computers.

16 63. Defendants violated 18 U.S.C. 1030(a)(5)(A)(ii) by intentionally accessing
17 Plaintiff’s and Class Members’ protected computers without authorization, and as a result of
18 such conduct, recklessly caused damage to Plaintiff’s and Class Members computers by
19 impairing the integrity of data and/or system and/or information.

20 64. Defendants violated 18 U.S.C. 1030 (a)(5)(A)(iii) by intentionally accessing
21 Plaintiff and Class Members’ protected computers without authorization, and as a result of
22 such conduct, caused damage and loss to Plaintiff and Class Members.

23 65. Plaintiff and Class Members suffered damage by reason of these violations, as
24 defined in 18 U.S.C. 1030(e)(8), by the “impairment to the integrity or availability of data, a
25 program, a system or information.”

26 66. Plaintiff and Class Members have suffered loss by reason of these violations, as
27 defined in 18 U.S.C. 1030(e)(11), by the “reasonable cost . . . including the cost of responding
28 to an offense, conducting a damage assessment, and restoring the data, program, system, or

1 information to its condition prior to the offense, and any revenue lost, cost incurred, or other
2 consequential damages incurred because of interruption of service.”

3 67. Plaintiff and Class Members have suffered loss by reason of these violations,
4 including, without limitation, violation of the right of privacy, and disclosure of personal
5 information that is otherwise private, confidential, and not of public record.

6 68. As a result of these takings, Defendants’ conduct has caused a loss to one or
7 more persons during any one-year period aggregating at least \$5,000 in value in real economic
8 damages.

9 69. Plaintiff and Class Members have additionally suffered loss by reason of these
10 violations, including, without limitation, the right of privacy.

11 70. Defendants’ unlawful access to Plaintiff’s and Class Members’ computers and
12 electronic communications has caused Plaintiff and Class Members irreparable injury. Unless
13 restrained and enjoined, Defendants will continue to commit such acts. Plaintiff’s and Class
14 Members’ remedy at law is not adequate to compensate it for these inflicted and threatened
15 injuries, entitling Plaintiff and Class Members to remedies including injunctive relief as pro-
16 vided by 18 U.S.C. § 1030(g).

17 **COUNT II**

18 **Violations of the Electronic Communications Privacy Act,**

19 **18 U.S.C. § 2510, et seq.**

20 71. Plaintiff incorporates the above allegations by reference as if fully set forth
21 herein.

22 72. The Electronic Communications Privacy Act of 1986, 18 U.S.C. § 2510, re-
23 ferred to as “ECPA,” regulates wire and electronic communications interception and intercep-
24 tion of oral communications, and makes it unlawful for a person to “willfully intercept [],
25 endeavor [] to intercept, or procure . . . any other person to intercept or endeavor to intercept
26 any wire, oral, or electronic communication,” within the meaning of 18 U.S.C. § 2511(1).

27 73. Defendants violated 18 U.S.C. § 2511 by intentionally acquiring and/or
28 intercepting, by device or otherwise, Plaintiff and Class members’ electronic communications,

1 without knowledge, consent, or authorization.

2 74. The contents of data transmissions from and to Plaintiff and Class Members'
3 personal computers constitute "electronic communications" within the meaning of 18 U.S.C. §
4 2510.

5 75. Plaintiff is a "person whose . . . electronic communication is intercepted . . . or
6 intentionally used in violation of this chapter" within the meaning of 18 U.S.C. § 2520.

7 76. Defendants violated 18 U.S.C. § 2511(1)(a) by intentionally intercepting, en-
8 deavoring to intercept, or procuring any other person to intercept or endeavor to intercept
9 Plaintiff's electronic communications.

10 77. Defendants violated 18 U.S.C. 2511(1)(c) by intentionally disclosing, or en-
11 deavoring to disclose, to any other person, the contents of Plaintiff's electronic communica-
12 tions, knowing or having reason to know that the information was obtained through the inter-
13 ception of Plaintiff's electronic communications.

14 78. Defendants violated 18 U.S.C. § 2511(1)(d) by intentionally using or endeavor-
15 ing to use, the contents of Plaintiff's electronic communications, knowing of having reason to
16 know that the information obtained through the interception of Plaintiff's electronic communi-
17 cations.

18 79. Defendants' intentional interception of these electronic communications was
19 without Plaintiff or the Class Members' knowledge, consent, or authorization and was under-
20 taken without a facially valid court order or certification.

21 80. Defendants' intentional interception of these electronic communications was
22 without the knowledge, consent, or authorization of the publishers' websites with which
23 Plaintiff and Class Members were communicating and was undertaken without a facially valid
24 court order or certification.

25 81. Defendants intentionally used such electronic communications, with knowl-
26 edge, or having reason to know, that the electronic communications were obtained through
27 interception, for an unlawful purpose.

28 82. Defendants unlawfully accessed and used, and voluntarily disclosed, the con-

1 tents of the intercepted communications to enhance their profitability and revenue through
2 advertising. This disclosure was not necessary for the operation of Defendants' systems or to
3 protect Defendants' rights or property.

4 83. The Electronic Communications Privacy Act of 1986, 18 U.S.C. § 2520(a) pro-
5 vides a civil cause of action to "any person whose wire, oral, or electronic communications is
6 intercepted, disclosed, or intentionally used" in violation of ECPA.

7 84. Defendants are liable directly and/or vicariously for this cause of action. Plain-
8 tiff therefore seeks remedy as provided for by 18 U.S.C. § 2520, including such preliminary
9 and other equitable or declaratory relief as may be appropriate, damages consistent with
10 subsection (c) of that section to be proven at trial, punitive damages to be proven at trial, and a
11 reasonable attorney's fees and other litigation costs reasonably incurred.

12 85. Plaintiff and Class Members have additionally suffered loss by reason of these
13 violations, including, without limitation, violation of the right of privacy.

14 86. Plaintiff and the Class, pursuant to 18 U.S.C. § 2520, are entitled to prelimi-
15 nary, equitable, and declaratory relief, in addition to statutory damages of the greater of
16 \$10,000 or \$100 per day for each day of violation, actual and punitive damages, reasonable
17 attorneys' fees, and Defendants' profits obtained from the above described violations. Unless
18 restrained and enjoined, Defendants will continue to commit such acts. Plaintiff's remedy at
19 law is not adequate to compensate it for these inflicted and threatened injuries, entitling Plain-
20 tiff to remedies including injunctive relief as provided by 18 U.S.C. 2510.

21 **COUNT III**

22 **Violations of the Unfair Competition Law (UCL)**

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

24 87. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

25 88. In violation of California Business and Professions Code, Section 17200 *et seq.*,
26 Defendant's conduct in this regard is ongoing and includes, but is not limited to, statements
27 made by Defendant and Defendant's omissions, including as set forth above.

28 89. By engaging in the above-described acts and practices, Defendant has commit-

1 ted one or more acts of unfair competition within the meaning of the Unfair Competition Law
2 and, as a result, Plaintiff and the Class have suffered injury-in-fact and have lost money and
3 property—specifically, personal information; the expenses of investigation, mitigation, and
4 remediation; and the opportunity cost of having installed and used Defendant’s software.

5 ***Unlawful Business Act and Practices***

6 90. Defendant’s business acts and practices are unlawful, in part, because they vio-
7 late California Business and Professions Code, Section 17500, *et seq.*, which prohibits false
8 advertising, in that they were untrue and misleading statements relating to Defendant’s per-
9 formance of services and with the intent to induce consumers to enter into obligations relating
10 to such services, and regarding which statements Defendant knew or which, and by the exer-
11 cise of reasonable care Defendant should have known, were untrue and misleading.

12 91. Defendant’s business acts and practices are also unlawful in that they violate
13 the California Consumer Legal Remedies Act, California Civil Code, Section 1750, *et seq.*;
14 Title 18, United States Code, Section 1030, *et seq.*; and Title 18, United States Code, Sec-
15 tion 2701, *et seq.* Defendant is therefore in violation of the unlawful prong of the Unfair
16 Competition Law.

17 92. Defendant’s business acts and practices are also unlawful in that they violate
18 the California Constitution, Article I, Section 1, which articulates the inalienable right to
19 pursue and obtain privacy, in that, through Toolbar, Defendant willfully interfered with and
20 obstructed users’ rights and actual attempts to pursue and obtain the privacy promised by
21 Defendant as an inducement for users to install Toolbar.

22 ***Unfair Business Act and Practices***

23 93. Defendant’s business acts and practices are unfair because they have caused
24 harm and injury-in-fact to Plaintiff and Class Members and for which Defendant has no justi-
25 fication other than to increase, beyond what Defendant would have otherwise realized, its
26 information assets supportive of its advertising revenue.

27 94. Defendant’s conduct lacks reasonable and legitimate justification in that Defen-
28 dant has benefited from such conduct and practices while Plaintiff and the Class members

1 have been misled as to the nature and integrity of Defendant's products and services and have,
2 in fact, suffered material disadvantage regarding their interests in the privacy and confidential-
3 ity of their personal information. Defendant's conduct offends public policy in California
4 tethered to the Consumer Legal Remedies Act, the state constitutional right of privacy, and
5 California statutes' recognition of the need for consumers to be information and equipped to
6 protect their own privacy interests, such as California Civil Code, Section 1798.8, such that
7 consumers may make informed decisions in their choices of merchants and other means of
8 safeguarding their privacy.

9 95. In addition, Defendant's *modus operandi* constitutes a sharp practice in that De-
10 fendant knew and should have known that consumers care about the status of personal infor-
11 mation and privacy but are unlikely to be aware of and able to detect the means by which
12 Defendant was conducting itself in a manner adverse to its commitments and its users' inter-
13 ests, through the undisclosed functions of Toolbar. Defendant is therefore in violation of the
14 unfair prong of the Unfair Competition Law.

15 96. Defendant's acts and practices were fraudulent within the meaning of the Un-
16 fair Competition Law because they were likely to mislead the members of the public to whom
17 they were directed.

18 97. Plaintiff, on behalf of himself and on behalf of each member of the Class, seeks
19 restitution, injunctive relief, and other relief allowed under the Unfair Competition Law.

20 **COUNT IV**

21 **Violations of the Consumer Legal Remedies Act (CLRA),**

22 **California Civil Code § 1750, et seq.**

23 98. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

24 99. In violation of Civil Code, Section 1750, *et seq.*, Defendant has engaged and is
25 engaging in unfair and deceptive acts and practices in the course of transactions with Plaintiff,
26 and such transactions are intended to and have resulted in the sales of services to consumers.
27 Plaintiff and the Class Members are consumers as that term is used in the Consumer Legal
28 Remedies Act because they sought or acquired Defendant's good or services for personal,

1 family, or household purposes. Defendant's past and ongoing acts and practices include but are
2 not limited to:

3 100. Defendant's representations that their services have characteristics, uses, and
4 benefits they do not have, in violation of Civil Code, Section 1770(a)(5);

5 101. Defendant's representations that their services are of a particular standard, qual-
6 ity and grade but are of another standard quality and grade, in violation of Civil Code, Sec-
7 tion 1770(a)(7); and

8 102. Defendant's advertisement of services with the intent not to sell those services
9 as advertised, in violation of Civil Code, Section 1770(a)(9);

10 103. Defendant's violations of Civil Code, Section 1770 have caused damage to
11 Plaintiff and the other Class members and threaten additional injury if the violations continue.
12 This damage includes the injuries and losses set forth above

13 104. At this time, Plaintiff seeks only injunctive relief under this cause of action.
14 Pursuant to Civil Code, Section 1782, in conjunction with the filing of this action, Plaintiff
15 will notify Defendant in writing of the particular violations of Civil Code, Section 1770 and
16 demand that Defendant rectify the problems associated with their behavior detailed above,
17 which acts and practices are in violation of Civil Code, Section 1770.

18 105. If Defendant fails to respond adequately to Plaintiff's above-described demand
19 within 30 days of Plaintiff's notice, pursuant to Civil Code, Section 1782(b), Plaintiff will
20 amend the complaint to request damages and other relief, as permitted by Civil Code, Sec-
21 tion 1780.

22

23

COUNT V

24

Unjust Enrichment

25 106. Plaintiff incorporates the above allegations by reference as if fully set forth
26 herein.

27 107. A benefit has been conferred upon Defendants by Plaintiff and the Class
28 whereby Defendants, directly or indirectly, have received and retained information regarding

1 online communications and activity of Plaintiff and Class Members. Defendants have received
2 and retained information regarding specific reading and communications content that is other-
3 wise private, confidential, and not of public record, and/or has received revenue from the
4 provision of such information.

5 108. Defendants appreciate and/or have knowledge of said benefit.

6 109. Under principles of equity and good conscience, Defendants should not be
7 permitted to retain the information and/or revenue that they acquired by virtue of their unlaw-
8 ful conduct. All funds, revenue, and benefits received by Defendants rightfully belong to
9 Plaintiff and the Class, which Defendants have unjustly received as a result of their actions.

10 110. Plaintiff and Class Members have no adequate remedy at law.

11 **VII. DEMAND FOR RELIEF**

12 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays
13 for judgment against Defendants and that the Court may:

- 14 A. certify this case as a Class action on behalf of the Class defined above, appoint
15 Plaintiff as Class representative, and appoint his counsel as Class counsel;
- 16 B. declare that Defendants' actions violate the statutes and common-law jurispru-
17 dence set forth above;
- 18 C. award injunctive and equitable relief as applicable to the Class *mutatis mutan-*
19 *dis*, including:
- 20 i. prohibiting Defendants from engaging in the acts alleged above;
- 21 ii. requiring Defendants to provide reasonable notice and choice to con-
22 sumers regarding Defendants' data collection, profiling, merger, and de-
23 anonymization activities;
- 24 iii. requiring Defendants to disgorge to Plaintiff and Class Members or to
25 whomever the Court deems appropriate all of Defendants' ill-gotten
26 gains;
- 27 iv. requiring Defendants to delete all data from and about Plaintiff and
28 Class Members that it collected and/or acquired from third parties

- 1 through the acts alleged above;
- 2 v. requiring Defendants to provide Plaintiff and other Class Members rea-
- 3 sonable means to decline, permanently, participation in Defendants' col-
- 4 lection of data from and about them;
- 5 vi. awarding Plaintiff and Class Members full restitution of all benefits
- 6 wrongfully acquired by Defendants through the wrongful conduct al-
- 7 leged above; and
- 8 vii. ordering an accounting and constructive trust to be imposed on the data
- 9 from and about Plaintiff and Class Members and on funds or other as-
- 10 sets obtained by unlawful means as alleged above, to avoid dissipation,
- 11 fraudulent transfers, and/or concealment of such assets by Defendants;
- 12 D. award damages, including statutory damages where applicable, to Plaintiff and
- 13 Class Members in an amount to be determined at trial;
- 14 E. award restitution against Defendants for all money to which Plaintiff and the
- 15 Class are entitled in equity;
- 16 F. restrain, by preliminary and permanent injunction, Defendants, its officers,
- 17 agents, servants, employees, and attorneys, and those participating with them in
- 18 active concert, from identifying Plaintiff and Class Members online, whether by
- 19 personal or pseudonymous identifiers, and from monitoring, accessing, collect-
- 20 ing, transmitting, and merging with data from other sources any information
- 21 from or about Plaintiff and Class Members;
- 22 G. award Plaintiff and the Class their reasonable litigation expenses and attorneys'
- 23 fees; pre- and post-judgment interest to the extent allowable; restitution; dis-
- 24 gorgement and other equitable relief as the Court deems proper; compensatory
- 25 damages sustained by Plaintiff and the Class; statutory damages, including pu-
- 26 nitive damages; and permanent injunctive relief prohibiting Defendant from
- 27 engaging in the conduct and practices complained of herein; and
- 28 for such other and further relief as this Court deems just and proper.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

DATED: December 23, 2010

KAMBERLAW, LLC
KAMBERLAW, LLP

By: 

AVI KREITENBERG
One of the Attorneys for Plaintiff,
individually and on behalf of a class of
similarly situated individuals

Scott A. Kamber
skamber@kamberlaw.com
David A. Stampley
dstampley@kamberlaw.com
KamberLaw, LLC
100 Wall Street, 23rd Floor
New York, New York 10005
Telephone: (212) 920-3072
Facsimile: (212) 920-3081

Avi Kreitenberg (SBN 266571)
akreitenberg@kamberlaw.com
KamberLaw, LLP
1180 South Beverly Drive, Suite 601
Los Angeles, California 90035
Telephone: (310) 400-1050
Facsimile: (310) 400-1056
Attorneys for Plaintiff

JURY TRIAL DEMAND


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff hereby demands a trial by jury of all issues so triable.

Respectfully submitted,

DATED: December 23, 2010

KAMBERLAW, LLC
KAMBERLAW, LLP

By: 
AVI KREITENBERG
One of the Attorneys for Plaintiff,
individually and on behalf of a class of
similarly situated individuals

Scott A. Kamber
skamber@kamberlaw.com
David A. Stampley
dstampley@kamberlaw.com
KamberLaw, LLC
100 Wall Street, 23rd Floor
New York, New York 10005
Telephone: (212) 920-3072
Facsimile: (212) 920-3081

Avi Kreitenberg (SBN 266571)
akreitenberg@kamberlaw.com
KamberLaw, LLP
1180 South Beverly Drive, Suite 601
Los Angeles, California 90035
Telephone: (310) 400-1050
Facsimile: (310) 400-1056

Attorneys for Plaintiff