

1 SEAN P. REIS - SBN 184004  
sreis@edelson.com  
2 EDELSON MCGUIRE LLP  
30021 Tomas Street, Suite 300  
3 Rancho Santa Margarita, California 92688  
Telephone: (949) 459-2124  
4 Facsimile: (949) 459-2123

5 RAFEY S. BALABANIAN (*Admitted Pro Hac Vice*)  
rbalabanian@edelson.com  
6 CHRISTOPHER L. DORE (*Admitted Pro Hac Vice*)  
cdore@edelson.com  
7 BENJAMIN H. RICHMAN (*Admitted Pro Hac Vice*)  
brichman@edelson.com  
8 EDELSON MCGUIRE LLC  
350 North LaSalle Street, Suite 1300  
9 Chicago, Illinois 60654  
Telephone: (312) 589-6370  
10 Facsimile: (312) 589-6378

11 *Attorneys for Plaintiff and the putative class*

12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 KIMBERLY YORDY, individually and on  
behalf of all others similarly situated,

15 *Plaintiff,*

16 v.

17 PLIMUS, INC., a California corporation,

18 *Defendant.*  
19

Case No. 12-cv-00229-TEH

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

Judge: Honorable Thelton E. Henderson  
Action filed: January 13, 2012

20  
21  
22  
23  
24  
25  
26  
27  
28





**FACTS COMMON TO ALL COUNTS****The Growth of Downloadable Online Media & Defendant's Deceptive Marketing Tactics.**

9. With the rise of electronic readers such as the Amazon Kindle, media devices such as the Apple iPhone and iPad, and the continued boom of video game consoles, consumers have increasingly sought out new ways to purchase digital goods such as eBooks, movies, and games to use on these devices. However, matching the demand for digital goods is a plethora of illegal or fraudulent retailers selling access to allegedly exclusive digital goods that are in fact already available to consumers for free, selling access to pirated versions of popular books, movies and games under the direct representations that the products are genuine and legal, and in some instances, simply selling access to nothing at all. Defendant Plimus, through its direct relationship with the Unlimited Download Websites and the affiliate marketing community, promotes, operates, facilitates, and helps create the websites and marketing that allows these fraudulent retailers to flourish.

10. The "Unlimited Download Websites" operating with the direct involvement of, and solely through, Defendant Plimus, include but are not limited to:

www.mypadmedia.com	www.yourpadcenter.com
www.allwiigamesdownloads.com	www.downloadipadmovies.com
www.ereaderslibrary.com	www.youripaddownloads.com
www.360downloadcenter.com	www.thereadingsite.com
www.flickrmusic.com	www.unlimitedpspmovies.com
www.wiidownloadbay.net	www.thedroidlibrary.com
www.allconsoledownloads.com	www.downloadmoviesonipad.com
www.thenovelnetwork.com	www.ps2gamesdownloads.com
www.themoviehome.com	www.unlimitedpspmovies.com
www.downloadanimevideos.com	www.youripodmovies.com
	www.unlimitedps3downloads.com

1	www.unlimitedps3games.com	www.cinema-on-demand.net
2	www.pspgodownloadcenter.com	www.unlimitedddsdownload.com
3	www.tvshowexpress.com	www.epadmedia.com
4	www.musicflickr.com	www.wiidownloadhub.com
5	www.pocketdownloadcenter.com	www.gamestationbay.com
6	www.full-tv-downloads.com	www.moviesforipad.info

7  
8 11. Plimus, through its own website, generally, and directly through its employees  
9 (including Affiliate Managers and Account Managers, described below), provides affiliate  
10 marketing, website development, and payment processing services to many fraudulent sellers of  
11 digital goods. Plimus's robust marketplace allows those retailers to connect with thousands of  
12 third party affiliates who, in conjunction with Plimus, promote the retailers websites by any and all  
13 means. This so-called "50,000 Affiliate" marketplace allows Plimus and its online retail partners  
14 to rapidly flood the Internet with sham product reviews, fake blog posts, videos, and other  
15 advertisements intended to draw consumers to fraudulent websites offering "unlimited" downloads  
16 of digital goods for a low one-time fee.

17 12. Plimus employs numerous "Affiliate Managers" to interface with affiliate marketers  
18 promoting Plimus products. These employees work directly with the affiliates to recommend new  
19 offers to promote, design affiliate marketing materials, maximize cost per click advertising, and  
20 generally increase the affiliates conversion rates (*i.e.*, sales on the websites being promoted). A  
21 description of the Affiliate Manager position located on Plimus's websites includes the following  
22 responsibilities:

23 Recruit new accounts and products to the marketplace; Work with top affiliates to  
24 ensure they attain their sales goals; Perform team sales calls to find sales  
25 opportunities; Ability to own all the aspects of attending conferences; including  
26 identify leads and set meetings in the conferences; Work closely with the account  
27 management team to make sure every contract is translated to sales; Work with our  
28 marketing team to ensure that the affiliate is maximizing and growing; Analyze the  
29 affiliates reports and data to consult with the affiliate on ways to improve their  
30 business with Plimus; The affiliate manager will inform the product team about  
31 enhancements that rise from the affiliates.

1           13.     In an effort to increase the number of consumer registrations on the Unlimited  
2 Download Websites at issue here, Defendant Plimus works in concert with affiliates to distribute  
3 paid text advertisements, graphic banner advertisements, fake testimonials, and fake blog posts, all  
4 promising access to such things as “BESTSELLING eBooks” for “No monthly *or ‘Pay Per*  
5 *Download’* fees.” These advertisements and other marketing materials represent that bestselling  
6 books, such as *Dreams From My Father* by President Obama and *Twilight* by Stephenie Meyer,  
7 will be available to members along with other “unlimited free Novels, Comics, Newspapers &  
8 more!”

9           14.     Likewise, other affiliate material designed and disseminated by and through Plimus  
10 to promote the Unlimited Download Websites state, for example, “Download Unlimited iPad 2  
11 Movies, Music, Games, App...and more!,” “No Pay Per Download! Download All Your Favorite  
12 Movies NOW!,” and “for just one payment you are able to download limitless movies for a  
13 lifetime!” These advertisements and other marketing materials represent that newly released  
14 movies such as *Star Trek*, *Cars 2*, *Harry Potter*, *Up* and *District 9* will be available as part of the  
15 unlimited downloads.

16           15.     Another example of such advertisements—which misrepresent the products and  
17 services actually offered by one of the Unlimited Download Websites, MyPadMedia and its related  
18 eBook websites<sup>1</sup>—appear in numerous locations across the Internet:

19                   Unlimited **free** Novels, Comics.. No monthly, “Pay Per **Download**”  
20                   fees!

21                   Download UNLIMITED eBooks, Novels, Magazines, and Newspapers  
22                   Straight To Your iPad, Kindle, Nook or e-reader! Compatible with ANY  
23                   device!

24                   DOWNLOAD AS MANY EBOOKS AS YOU LIKE FOR FREE!  
25                   [Stated along side photos of international bestsellers, including *The Help*  
26                   by Kathryn Stockett, *The Girl with the Dragon Tattoo* by Stieg Larson,

27 <sup>1</sup>           www.mypadmedia, www.thenovelnetwork.com, www.thereadingsite.com,  
28           www.thedroidlibrary.com, www.thereadingsite.com, and www.epadmedia.com.

1                   *Water for Elephants* by Sara Gruen, *Twilight* by Stephenie Meyer, *The*  
 2                   *Hidden Reality* by Brian Greene, and *Unbroken* by Laura Hillenbrand].<sup>2</sup>

3           16.       Defendant Plimus designs computer code and URLs, which are then provided by  
 4 Plimus to affiliates and built into the banner advertisements promoting the Unlimited Download  
 5 Websites. Examples of such code for banner advertisements include:

6                   <a  
 7                   href="http://www.plimus.com/jsp/redirect.jsp?contractId=2895906&referrer  
 8                   =YOURUSERNAME"></a>

11                   <a  
 12                   href="http://www.plimus.com/jsp/redirect.jsp?contractId=2960306&referrer  
 13                   =YOURUSERNAME"></a>

15           17.       In addition, the following book covers appear in various advertisements: *Harry*  
 16 *Potter* [various books in the series] by J.K. Rowling, *The Girl Who Played With Fire* by Stieg  
 17 Larson, *Eat Pray Love* by Elizabeth Gilbert, *Dreams From My Father* by Barack Obama, *Catching*  
 18 *Fire* by Suzanne Collins, *Diary of a Wimpy Kid* by Jeff Kinney, *Maximum Ride* by James  
 19 Patterson, and *127 Hours: Between A Rock And A Hard Place* by Aron Ralston.

20           18.       In yet another example of the deceptive nature of Plimus's affiliate marketing  
 21 materials, Plimus, in conjunction with its affiliate marketing partners, creates fake review websites  
 22 to promote the Unlimited Download Websites. For example, the *novelnetworkreviews.info*—a  
 23 self-proclaimed independent writer offering an “Unbiased Review” of the Novel Network—  
 24 purportedly “spent hours searching for a trust free download site” and “guarantee[s] that [the  
 25 Novel Network] does much more for the money you pay.” The advertisement continues,

26 \_\_\_\_\_  
 27 <sup>2</sup>       To purchase the eBooks pictured in this advertisement alone would cost approximately \$60  
 at Amazon.com.

1 supposedly comparing the Novel Network to its own sister website, The Reading Site (as if they  
 2 were competitors but in reality they are one and the same): “I personally checked if The Reading  
 3 Site really offers the best sellers of different genre which it boasts of offering members. It has quite  
 4 many novels like “The Harry Potter Series”, Elizabeth Gilbert’s “Eat, Pray, Love”, “Twilight  
 5 Series”, the controversial “Oprah Biography”, “Sex And the City”, “Da Vinci Code” and on and  
 6 on.” Once again, this blog is created and operated with the oversight and at the direction of  
 7 Plimus, and Plimus pays the entity behind the blog directly for driving consumers to the Unlimited  
 8 Download Website.<sup>3</sup>

9 19. Similarly, [www.downloadmoviestoipad.com](http://www.downloadmoviestoipad.com) purports to be a review of Download  
 10 iPad Movies, an Unlimited Download Website allegedly offering unlimited movie downloads for a  
 11 one-time fee. The website includes the statement “The best program I have found for download  
 12 movies to ipad is ‘download ipad movies’ for one fee you can download unlimited movies for  
 13 life!” Additionally, under a frequently asked questions section, it states: “I have heard programs  
 14 like this only offer old movies, is that correct? No, members have access to just released movies in  
 15 about 2 weeks after first release, so that you can download movies to ipad,” and goes on to state  
 16 that five of the top ten movies downloaded were *Straw Dogs*, *Rise of the Planet of the Apes*, *The*  
 17 *Help*, *Warrior*, and *Colombiana*. As before, this website was created and is operated with the  
 18 oversight and at the direction of Plimus by a paid affiliate of Plimus.<sup>4</sup>

19 20. The fake blogs and reviews created, refined and promoted by Plimus additionally  
 20 contain fabricated “consumer reviews” touting the products and services available through the  
 21 Unlimited Download Websites:

22 \_\_\_\_\_  
 23 <sup>3</sup> Other fabricated affiliate websites promoting eBooks include, but are not limited to:  
 24 [thenovelnetwork.org](http://thenovelnetwork.org), [novelnetworkexposed.com](http://novelnetworkexposed.com), [thenovelnetwork.net](http://thenovelnetwork.net),  
 25 [www.bookdownloadsites.com/sites/novel-network.html](http://www.bookdownloadsites.com/sites/novel-network.html), [ebooksfor-ipad.com/the-novel-network-independent-review](http://ebooksfor-ipad.com/the-novel-network-independent-review),  
 26 [mypadmediascam.com](http://mypadmediascam.com), [themypadmedia.com](http://themypadmedia.com), [books-for-ipad.net](http://books-for-ipad.net),  
 27 [mypadmedia.org](http://mypadmedia.org), [www.mypadmediareviewed.org](http://www.mypadmediareviewed.org), [ipadownloadnews.net](http://ipadownloadnews.net),  
 28 [thereadingsitescam.com](http://thereadingsitescam.com), [www.thereadingsite.net](http://www.thereadingsite.net), [www.thereadingsiteebooks.com](http://www.thereadingsiteebooks.com).

<sup>4</sup> Other fabricated affiliate websites promoting movies include, but are not limited to:  
 26 [downloadmoviesforipad.com](http://downloadmoviesforipad.com), [ipadownloadmovies.org](http://ipadownloadmovies.org), [downloadipadmovies.info](http://downloadipadmovies.info),  
 27 [downloadmovietoipad.com](http://downloadmovietoipad.com), [downloadmoviestoipad.com](http://downloadmoviestoipad.com).



1 Your site is truly MIND-BLOWING! My Kindle is now filled with over  
2 150+ novels that would have usually cost me \$10 each, but thanks to you  
3 guys, it cost me nothing! Just this week I downloaded the entire Twilight  
series. I love it! Carol R. Vasquez, San Diego, CA

4 This site is truly MIND-BLOWING! My Android smartphone is now filled  
5 with over 150+ eBooks that would have usually cost me \$20 each, but  
thanks to you guys, it cost me nothing! Just this week, I downloaded the  
6 whole Harry Potter series. I love it! Nadine A. Spears, Seattle, WA

7 The Novel Network rocks! I have been able to download all my favorite  
8 comic books straight to my iPad! I just tap on the title I want, and its on my  
iPad, free for me to read! You have saved me so much time and money.  
Thanks guys! Michael J. Payne, Houston, TX

9 21. Similar fabricated testimonials can be found for the Unlimited Download Websites  
10 offering movies:

11 Incredible Database! "I was pleasantly surprised by the amount of iPad  
12 movies available. Downloading was simple and transferring the movies to  
my iPad was easy too. The movies are great, with no loss of quality."  
Margaret Bergmann, UK

13 Fast Downloads & The Largest Networks! "I have rediscovered my iPad!  
14 DownloadiPadMovies is definitely a service I would recommend. The  
service is excellent and downloading is easy and fast. Thank you!" Sharon  
15 Dafish, Finland

16 Easy and Fun! "My son has found so many new utilities that he wasn't  
17 aware of that I've had to take the iPad away from him! Your fault!" Ron  
Kuzorski, USA

18 22. In reality, these so-called "consumer reviews" are not written by actual consumers  
19 or members of the Unlimited Download Websites, but instead, are entirely fabricated by Plimus  
20 and its affiliate partners working in conjunction with Plimus through Affiliate Managers. Indeed,  
21 as seen above, reviews containing identical, word-for-word content appear across the Internet, with  
22 only the name of the reviewing "consumer" and the product having been changed.

23 23. As part of the Plimus affiliate marketing page appearing on the Unlimited  
24 Download Websites, Defendant Plimus provides marketing materials including the falsified  
25 consumer reviews described above. For example, on the Unlimited Download Website  
26 www.themoviehome.com, there is page labeled "Affiliates." At the top of this page appears the  
27 following image:



1  
2  
3  
4  
5  
6 Among various other content on this page, there is a section titled “Articles and Reviews,” which  
7 states: “Here are some articles and reviews you can use you promote The Movie Home. Feel free  
8 to write some of your own.” Headings include “Looking for legal movie downloads? Find the  
9 right site to use” and “Stop renting! Download your movies in HD quality today!,” each with their  
10 own lengthy and allegedly neutral third party discussion of The Movie Home. The section  
11 marked “The Movie Home Review” includes such statements as:

12 Is Netflix not working out because the download speeds are too slow or you  
13 just can’t get your money’s worth per month? Now there is another option.  
14 You can download unlimited movies and television shows legally at The  
15 Movie Home with just a one-time fee of \$49.95 . . . What types of movies  
16 and shows are available? With over one million titles to choose from, you  
17 have access to a range of genres . . . They include movies produced from  
18 major studios like Universal Pictures, Dreamworks, Paramount Pictures, and  
19 20th Century Fox . . . With a deal as good as this, what are you waiting for?  
20 This download site is completely legal. It is not a peer-to-peer sharing site.  
21 There are no copyright infringements. You just get the option to download  
22 as many shows as you want from the database selection with a small one-  
23 time fee.

24 Likewise, other Unlimited Download Websites like TheNovelNetwork.com provide  
25 falsified consumer reviews on the Plimus affiliate page. Under the heading “Casual Review (Nook  
26 user)” is a “review” from Christy C. Stipe of Apple Springs, Texas. It includes such statements as:

27 As a mom of two kids, I found it quite expensive to pay \$15 for every book  
28 downloaded, especially when you read as many books as I do! . . . After  
checking out the features The Novel Network claimed to offer, I signed up  
in a heartbeat! . . . I was tingling with excitement. My dreams of having an  
entire portable library with me wherever I went could soon be possible . . .  
The Novel Network database was gigantic! They had over 30,000 titles  
available for me to download. And these weren’t books by authors I’ve  
never heard of. They were bestsellers like The Girl with the Dragon Tattoo,  
Breaking Dawn (The Twilight Saga), The Rembrandt Affair (Gabriel  
Allon), The Passage, The Obama Diaries, and Lost Symbol by Dan Brown.  
Basically, any book I wanted to read, or would have to spend \$15 to  
download from Barnes & Noble or Amazon, I could find at The Novel

1 Network, and download for free . . . One of the most fabulous features of  
2 The Novel Network is that they also allow me to download the daily  
3 newspaper to my Nook! Any paper in the world, I can have it straight on  
4 Nook!

5 25. The Plimus affiliate page also contains instructions and links for banner  
6 advertisements, screenshots, promotional ideas (e.g., “Write articles or reviews which compare The  
7 Novel Network to myPadMedia.com. Include a ranking, a star rating, a recommendation etc.”),  
8 how to use “exit pop ups” to keep a consumer from leaving the page, keywords to use for search  
9 engine marketing (e.g., “free movies watch online,” “play movie for free”), and instructions for  
10 sending mass amounts of spam email promoting an Unlimited Download Website. Under the  
11 heading “Email Marketing,” the Plimus affiliate page states, “A fast and easy way to make sales is  
12 to send mass emails to potential customers. You may already have a list of subscribers, or are in  
13 the process of building one. We recommend that you use a service like Streamsend to send your  
14 mass emails.”

15 26. Consumers are also driven to the Unlimited Download Websites by deceptive video  
16 advertisements found on the popular video sharing website, YouTube.com. These video  
17 advertisements supposedly highlight the “benefits” of registering as a member of such websites as  
18 The Novel Network and Download iPad Movies; namely, gaining “access to thousands of eBooks  
19 with no additional payment” and “the largest database [for movies] the internet has ever seen.”  
20 Not surprisingly, the videos are produced and published by Plimus’s paid affiliate advertisers.

21 27. When a consumer clicks on a banner advertisement or a link in a fake blog, the  
22 consumer is routed directly through Plimus’s servers—as is apparent by the tracking links that  
23 appear in a consumer’s browser after clicking on the banner advertisement—before being routed to  
24 any of the Unlimited Download Websites. Examples of such tracking links include:

25 [directing to TheNovelNetwork.com]

26 <https://www.plimus.com/jsp/redirect.jsp?contractId=2895906&referrer=easyreader>

27 [directing to MyPadMedia.com]

28 <https://www.plimus.com/jsp/redirect.jsp?contractId=2895416&referrer=franco86>

1 [directing to DownloadiPadMovies.com]

2 <https://www.plimus.com/jsp/redirect.jsp?contractId=2894760&referrer=download1>

3 The notation “easyreader” and “franco86” at the end of the URLs designates the identity of the  
4 affiliate so that, if a consumer is deceived by that affiliate’s marketing and makes a purchase at an  
5 Unlimited Download Website, Defendant Plimus will know which affiliate to pay for his or her  
6 valuable service.

7 28. All of Plimus’s deceptive marketing materials are created, published and exist for  
8 one purpose: to drive unsuspecting consumers to the Unlimited Download Websites, where they  
9 are further induced to submit their confidential contact and payment information to Plimus for  
10 what they have been led to believe is—but in reality, is not—unlimited access to a vast library of  
11 digital goods.

12 **The Unlimited Download Websites Contain Further Misrepresentations, Which**  
13 **Plimus Helps to Design, Oversees and Directs to Induce Consumers to Register for**  
14 **Access by Providing Their Confidential Contact and Billing Information.**

15 29. After clicking through advertisements promoting the Unlimited Download  
16 Websites, and being directed through Plimus’s servers, consumers reach one of the Unlimited  
17 Download Websites.

18 30. Along with Affiliate Managers, Plimus employs Account Managers who work  
19 directly with “vendors” like the Unlimited Download Websites. Much like their Affiliate Manager  
20 counterparts, Plimus Account Managers work closely with each vendor to match their marketing  
21 with the affiliate marketing, modify the design and representations on the Unlimited Download  
22 Websites, and generally change how they promote and sell products in order to increase  
23 conversions (*i.e.*, sales). A recent job posting for an account manager position at Plimus included  
24 the following responsibilities:

25 Establish an on-going relationship with key account contacts to build high customer  
26 satisfaction; Work closely with tactical account managers and support team  
27 members with an emphasis on devising plans that they can execute to grow  
28 revenues; Consult with global key accounts to increase revenue by implementing up  
29 sells, cross-sells and promotions; Identify and track detailed system updates for  
30 organizational revenue growth; Manage growth of assigned accounts and act as a

1 partner advocate, internally, in resolving specific business support and technical  
2 issues.

3 31. In addition, since approximately May 2010, Plimus has operated the "Round Table"  
4 support program for vendors like the Unlimited Download Websites. In a 2010 press release,  
5 Plimus stated:

6 The goal of the program builds upon a Plimus business partnership philosophy that  
7 provides custom, personalized business services and support to increase bottom line  
8 sales of charter Plimus e-Commerce member vendors.... The Round Table Account  
9 Manger will recommend best practices and provide business services such as  
10 transaction analysis, payment optimization, sales add-on and promotions,  
11 conversion optimization, refund and chargeback review, and much more... "At  
12 Plimus we have a simple business model. We make money when our vendors make  
13 money', said Mark Hassin, Director of Client Relations and manager of the Plimus  
14 Round Table program. "It drives our philosophy of continuously improving our  
15 vendor programs and providing our vendors and member affiliates with innovative  
16 tools for their online sales success."

17 32. More recently, Plimus announced its "Compass Club" support program. In a press  
18 release, Plimus stated:

19 Some of the strategies to be utilized will include creating new sales channels,  
20 building global business relationships, and utilizing Plimus' ReACT model. The  
21 ReACT model will focus on four basic concepts: Traffic - turn browsers into  
22 buyers; Close Rate - convert each buyer; Average Order Value - increase the value  
23 of the order; and Retention - encourage repeat buyers...

24 Members of the Plimus Compass Club are entitled to expedited technical support; a  
25 dedicated account manager; and strategic account specialist to chart their course to  
26 success and higher revenues...

27 The new Plimus Compass Club offers our top tier vendors the most personalized  
28 service in the industry with the sole purpose of increasing their conversions and  
revenues." Thomas Teger, VP of Products & Strategy at Luxion, a new member of  
the Compass Club, states "This program is about more than just support, it's about  
Plimus becoming our business partner. The personalized business review with our  
Plimus account manager and the Plimus strategic account specialist highlighted  
several Plimus features that we weren't utilizing that could increase our conversion  
rates and drive more revenue."

33. Defendant's close interaction and integration with vendors like the Unlimited  
Download Websites is apparent from an alleged vendor testimonial appearing on the Plimus  
website: "'We look forward to working with our Plimus account manager' said Phil Schnyder,  
Director of Business Development at Avanquest. 'We have always enjoyed the service and support

1 from Plimus in the past and really appreciate the continued interest from them in improving our  
2 sales success around the world.””

3 34. As part of the services Plimus provided and continues to provide to the Unlimited  
4 Download Websites, Plimus helped create and refine statements, graphics, and inducements which  
5 falsely represented that registered members of the Unlimited Download Websites would receive  
6 unlimited access to popular eBooks (*Game of Thrones*, the *Twilight* series, and the *Harry Potter*  
7 collection), movies (*In Time*, *Moneyball*, *Paranormal Activity 3*, and *The American*) and video  
8 games (*Assassins Creed*, *Call of Duty*, and *Battlefield*). By controlling and participating in the  
9 design and creation of the deceptive representations appearing on the Unlimited Download  
10 Websites, Plimus directed and oversaw all misrepresentations made to consumers and acted with  
11 knowledge when charging consumers for the Unlimited Download Websites’ products. Plimus’s  
12 Account Managers had full visibility and knowledge of how the Unlimited Download Websites  
13 were marketing their products, and willingly participated, helped to modify and enhance those  
14 efforts to increase sales.

15 35. Additionally, the covers of bestselling books, movies, and video games cycle across  
16 the webpages in colorful animations, along with the images of numerous other well known  
17 eBooks, movies, and video games that are displayed across the bottom of the webpage. The book,  
18 movie, and video game covers change every time a new customer enters the website to showcase  
19 the vast array of digital goods available to members. Additionally, many of the Unlimited  
20 Download Websites provide the option to see the “top downloaded” items for each specific  
21 website. When a user clicks this option on any of the Unlimited Download Websites, an identical  
22 graphic appears, showing a flashing progress bar and the words “Please wait, establishing  
23 connection,” after which it will produce a supposed list of the current most downloaded movies,  
24 games, or books. However, this is a static list that has nothing to do with any customers actually  
25 downloading digital goods, as can be seen from the following code underlying the  
26 [www.downloadipadmovies.com](http://www.downloadipadmovies.com) site:  
27  
28

```

1      <h1>Top Download iPad Movies</h1>
2          <div id="top">
3              <a href='access' class='lista_top'>
4                  Puss in Boots</a>
5                  <a href='access' class='lista_top'>
6                      Tower Heist</a>
7                      <a href='access' class='lista_top'>
8                          A Very Harold & Kumar 3D Christmas</a>
9                          <a href='access' class='lista_top'>
10                             Paranormal Activity 3</a>
11                             <a href='access' class='lista_top'>
12                                 In Time</a>
13                                 <a href='access' class='lista_top'>
14                                     Footloose</a>
15                                     <a href='access' class='lista_top'>
16                                         Real Steel</a>
17                                         <a href='access' class='lista_top'>
18                                             The Rum Diary</a>
19                                             <a href='access' class='lista_top'>
20                                                 The Ides of March</a>
21                                                 <a href='access' class='lista_top'>
22                                                     Moneyball</a>
23                                                     </div>
24         </div>

```

36. In the end, the only things provided to registered members of any of the Unlimited Download Websites include access to digital goods that are already available for free elsewhere on the Internet, such as eBooks found at Project Gutenberg,<sup>5</sup> or else, simply provides links to torrent search engines that allow a consumer to download already publically shared digital goods.

37. Importantly, all torrent search engine links provided thorough the Unlimited Download Websites are available on the Internet and are free for anyone to access. Even more importantly, however, accessing and downloading files through a torrent search engine is illegal and constitutes copyright infringement of the digital goods acquired. Accordingly, Plimus and the Unlimited Download Websites are promoting and profiting by directing consumers to illegal means of obtaining digital goods, all the while taking affirmative steps to give consumers the distinct impression that their conduct is legal. Plimus, through its business relationships with the

<sup>5</sup> Project Gutenberg is located at www.gutenberg.org. It is a repository of over 36,000 eBooks that exist in the public domain. Any consumer can visit the site and has free and unlimited access to download any available book. Bestselling books, such as the *Harry Potter* series, are not available at Project Gutenberg.



1 Unlimited Download Websites and specifically through its Account Managers, is fully and  
2 completely aware that the Unlimited Download Websites do not offer or sell what they represent,  
3 and in fact, that they are promoting and profiting from fraudulent conduct.

4 **Plimus Charges and Collects from Consumers Registration Fees for Access to the**  
5 **Unlimited Download Websites.**

6 38. After first being directed to an Unlimited Download Website by Plimus, and then  
7 agreeing to register on an Unlimited Download Website, consumers are re-directed to a “Secure  
8 Order Form” located on a landing page owned and operated by Defendant Plimus (*e.g.*,  
9 [www.plimus.com/jsp/buynow.jsp?contractId=2894766](http://www.plimus.com/jsp/buynow.jsp?contractId=2894766) [directing to a purchase page for  
10 DownloadiPadMovies.com]). The checkout page prominently features the statement “Powered by  
11 Plimus.”

12 39. On these checkout pages, Plimus again represents that the consumer will receive  
13 unlimited access to digital downloads. For example: “myPadMedia.com Unlimited Lifetime  
14 Membership (including all downloads),” and then provides the total price. In so doing, Plimus  
15 again fully adopts the conduct and representations of the Unlimited Download Websites, which it  
16 helped to design, direct and enhance. This checkout page provided Plimus with the opportunity to  
17 give consumers complete and truthful information, which it had within its knowledge, regarding  
18 the actual products and services available through the Unlimited Download Websites; however,  
19 Plimus instead omitted and concealed this information and allowed consumers to submit payment  
20 information based on Plimus’s misrepresentations and omissions.

21 40. Consumers are instructed to input their contact and payment information into the  
22 appropriate submission fields in order to pay for the registration fee. After submitting the  
23 requested information, the consumer may complete their purchase by clicking the appropriate  
24 button.

25 41. At no point does Plimus direct consumers to read or accept any terms and  
26 conditions applicable to purchasing through Plimus or any Unlimited Download Website.  
27 Additionally, at no point does Plimus inform the consumers that the Unlimited Download



1 Websites do not actually provide the products or services advertised. Accordingly, at the most  
2 material point in the transaction, when a consumer is required to submit confidential payment  
3 information and agree to pay a substantial fee based on previous representations made by Plimus  
4 and the Unlimited Download Websites, Plimus omits and conceals the true facts about the product  
5 being sold, and knowingly lets the consumer submit payment information under false pretenses.

6 42. Payment for all of the Unlimited Download Websites goes directly to Plimus, who  
7 then pays the affiliate marketer it directed to publish the misleading advertisements that drove the  
8 consumer to the Unlimited Download Website in the first instance. After making that payment,  
9 and keeping a share for itself, Defendant Plimus pays the remainder to the Unlimited Download  
10 Website.

11 **The Unlimited Download Websites Were Purposefully Designed and Operated in a**  
12 **Deceptive Manner Because They Profit Significantly as a Result.**

13 43. Plimus and the Unlimited Download Websites knowingly and purposefully  
14 designed their affiliate marketing and merchant websites, and widely promoted them, in an effort  
15 to deceive consumers and to induce them to provide their confidential contact and billing  
16 information.

17 44. Indeed, as a result of their practices described herein, Defendant and the Unlimited  
18 Download Websites have received numerous complaints from consumers and requests for refunds.  
19 The Unlimited Download Websites actively discourage consumer complaints or simply ignore  
20 them altogether. For example, on one of the Unlimited Download Websites' Frequently Asked  
21 Questions pages, consumers are warned against contacting their credit card companies and banks  
22 to request a "charge back" of their registration fees—a legitimate recourse for consumers who  
23 have been defrauded or otherwise charged without their authorization. According to those  
24 statements, "charge backs are widely considered by online retailers as a form of theft by  
25 customers." Defendant Plimus additionally receives numerous complaints directly from  
26 consumers, no doubt putting it on notice of the true nature of the Unlimited Download Websites.

1           45. By partaking directly in the creation and promotion of the Unlimited Download  
2 Websites, Plimus is fully knowledgeable of their content, their illegal business models, and the fact  
3 that consumers are deceived by them and subsequently submit complaints about them. Defendant  
4 actively modifies, promotes, facilitates, markets, and encourages the widespread distribution of the  
5 Unlimited Download Websites (as described above), and provides the Plimus brand name in an  
6 effort to induce consumers' trust and reliance in submitting payment information. Plimus is  
7 incentivized to continue its unlawful conduct and allow the fraudulent conduct of the Unlimited  
8 Download Websites to flourish as a result of the services it provides, because it has received and  
9 continues to receive significant revenues as a result. The more deceptive the Unlimited Download  
10 Websites, the better those websites will convert sales, and the more profit Plimus will receive.

11           46. Many of the Unlimited Download Websites are among Plimus's top performing  
12 vendors and are featured above and beyond other offers within the Plimus Marketplace; in fact  
13 many of the Unlimited Download Websites are specifically listed as offers "recommended by  
14 Plimus" to its affiliates. Such promotion of the Unlimited Download Websites on the Plimus  
15 website is in addition to the regular and widespread recommendation of the Unlimited Download  
16 Websites carried out by Plimus Affiliate Managers.

17           **Plimus's Subsequent Banning of the Unlimited Download Websites.**

18           47. Prior to filing her original class action complaint in this matter, Plaintiff's Counsel  
19 contacted Plimus in or around October 2011 to notify it of Plaintiff's problems with  
20 TheNovelNetwork.com, one of its Unlimited Download Websites.

21           48. Shortly thereafter, attorneys representing Plimus contacted Plaintiff's counsel.  
22 Plaintiff's counsel and attorneys representing Plimus subsequently had a telephone conference on  
23 or around November 18, 2011. On November 21, 2011, attorneys for the parties attended a  
24 meeting at the Chicago office of Edelson McGuire LLC, whereupon a presentation was made  
25 regarding the conduct alleged in the original class action complaint and herein, and specifically  
26  
27  
28

1 regarding the websites: www.thenovelnetwork.com, www.thereadingsite.com,  
2 www.mypadmedia.com, www.thedroidlibrary.com, and www.themoviehome.com.

3 49. Following the meeting, additional email communications took place between  
4 Plaintiff's counsel and attorneys for Plimus, the last of which took place on December 2, 2011.

5 50. On or around December 31, 2011, Plimus banned TheNovelNetwork.com and four  
6 other Unlimited Download Websites, including MyPadMedia.com and TheMovieHome.com. The  
7 stated reason for banning the merchant behind those sites was that the refund rate was too high.

8 51. In the days following Plimus's banning of the TheNovelNetwork and related sites,  
9 the merchant behind those sites attempted to sell the websites, and in so doing, made the following  
10 statements:

- 11 • *Do these sites infringe on copyright/use P2P?* No, these websites DO NOT offer p2p  
12 programs. They provide users with access to public domain content databases (movies and  
13 ebooks) that do not have copyright and are therefore free to provide. We also provide  
14 instructional guides in our members areas on how they can put this content on their  
portable devices. I have had ZERO legal problems running these sites. They are completely  
legal. Our websites contain no copyright content and all images are used in fair-use and for  
demonstrative/example purposes.
- 15 • The Novel Network, myPadMedia, and TheReadingSite were all ranked within Plimus's #5  
16 bestselling products of all time, with the most affiliates. Due to the super large number of  
sales for all these products, a private account manager was assigned by Plimus to deal with  
17 any issue I might have with my account. Very convenient!
- 18 • Our websites provide access to millions of open source public domain books which are free  
19 for us to provide and have no copyright issues. The images you see on the websites are for  
illustrative/example purposes only (they may or may not be in database), however if  
20 customer can't find that book for free, they can purchase it from an external source in the  
members area at a cost (however we do not receive revenue for that.)

21 52. Thereafter, Plimus continued to market and profit from the twenty-seven other  
22 Unlimited Download Websites listed in this Amended Complaint.

### 23 **FACTS RELATING TO PLAINTIFF KIMBERLY YORDY**

24 53. In or around July 2011, Plaintiff Kimberly Yordy arrived at one of the Unlimited  
25 Download Websites directly promoted by Plimus, specifically TheNovelNetwork.com, after  
26 clicking on and being directed through a paid advertisement operated by one of Plimus's affiliate  
27

1 marketers, which promoted unlimited downloads of bestselling eBooks substantially similar to  
2 those described herein.

3 54. Upon reaching TheNovelNetwork.com, Plaintiff was presented with consumer  
4 testimonials, several images of popular eBooks supposedly available, and Plimus's representations  
5 of the benefits of registering to access TheNovelNetwork.com, as described above.

6 55. Defendant Plimus represented and Plaintiff understood that she could gain  
7 unlimited access to numerous bestselling eBooks in exchange for a one-time membership fee of  
8 \$49.95.

9 56. Accordingly, Plaintiff followed the necessary steps to become a registered member  
10 of TheNovelNetwork.com, including submitting her contact and billing information to Plimus  
11 through the Plimus payment page (e.g., [www.plimus.com/jsp/buynow.jsp?contractId=2895906](http://www.plimus.com/jsp/buynow.jsp?contractId=2895906)).

12 57. The Plimus checkout page viewed by Plaintiff was designed and maintained by  
13 employees in Plimus's California headquarters. The checkout page viewed by Plaintiff  
14 additionally existed and was operated on Plimus's servers also located in California (IP address:  
15 209.128.93.234).

16 58. After submitting her payment information to Plimus, Plaintiff was directed to the  
17 TheNovelNetwork.com membership page, where she discovered that the site did not contain any  
18 eBooks at all, and merely linked to eBooks that were already publicly available for free. Had this  
19 fact been disclosed to Plaintiff, she would not have registered to become a member of  
20 TheNovelNetwork.com nor agreed to pay \$49.95 to do so.

21 59. Shortly thereafter, Plaintiff contacted customer support for TheNovelNetwork.com  
22 via e-mail and requested that her membership be canceled and that a refund of all fees Plimus  
23 charged to and collected from her be issued.

24 60. Plaintiff has yet to receive a response or a refund of any of the monies Plimus  
25 collected from her.

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

**CLASS ALLEGATIONS**

61. Plaintiff brings this action pursuant to Federal Rules of Civil Procedure 23(b)(2) and (b)(3) on behalf of herself and a class (the “Class”) defined as follows:

All persons in the United States who paid a fee through Plimus to access any of the Unlimited Download Websites.

The following persons are excluded from the Class: 1) any Judge or Magistrate presiding over this action and members of their families; 2) Defendant, Defendant’s subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former employees, officers and directors; 3) Defendant’s Counsel; 4) persons who properly execute and file a timely request for exclusion from the Class; 5) Plaintiff’s counsel; (6) any person who has had their claims fully and finally adjudicated or otherwise released; and (7) the legal representatives, successors or assigns of any such excluded persons.

62. **Numerosity:** The exact number of the members of the Class is unknown and not available to Plaintiff at this time, but it is clear that individual joinder is impracticable. Defendant has deceived and profited from thousands of consumers who fall into the definition set forth above. Members of the Class can be identified through Defendant’s records.

63. **Typicality:** Plaintiff’s claims are typical of the claims of other members of the Class, as Plaintiff and other members sustained damages arising out of the wrongful conduct of Defendant, based upon the same transactions that were made uniformly with Plaintiff and the public.

64. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class, and have retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interest antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff.

65. **Predominance and Superiority:** Class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy, as joinder of all members is impracticable. The damages suffered by the individual members of the Class will

1 likely be relatively small, especially given the burden and expense of individual prosecution of the  
2 complex litigation necessitated by Defendant's actions. It would be virtually impossible for the  
3 members of the Class to obtain effective relief from Defendant's misconduct on an individual  
4 basis. Even if members of the Class themselves could sustain such individual litigation, it would  
5 not be preferable to a class action, because individual litigation would increase the delay and  
6 expense to all parties due to the complex legal and factual controversies presented in this  
7 Complaint. By contrast, a class action presents far fewer management difficulties and provides the  
8 benefits of single adjudication, economy of scale, and comprehensive supervision by a single  
9 court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be  
10 ensured.

11       66.     **Commonality:** There are many questions of law and fact common to the claims of  
12 Plaintiff and the Class, and those questions predominate over any questions that may affect  
13 individual members of the Class. Common questions for the Class include, but are not limited to  
14 the following:

- 15             (a)     Whether Defendant's conduct alleged herein constitutes violations of Cal.  
16                     Bus. & Prof. Code §§ 17500, *et seq.*;
- 17             (b)     Whether Defendant's conduct alleged herein constitutes violations of Cal.  
18                     Civ. Code §§ 1750, *et seq.*;
- 19             (c)     Whether Defendant's conduct alleged herein constitutes violations of Cal.  
20                     Bus. & Prof. Code §§ 17200, *et seq.*;
- 21             (d)     Whether Defendant's conduct alleged herein constitutes fraud in the  
                      inducement;
- 22             (e)     Whether Defendant's conduct alleged herein constitutes fraud by omission;
- 23             (f)     Whether Defendant's conduct alleged herein constitutes negligent  
24                     misrepresentation;
- 25             (g)     Whether Defendant's conduct alleged herein constitutes breach of contract;  
26                     and
- 27             (h)     Whether Defendant's conduct alleged herein constitutes unjust enrichment.

**COUNT I**  
**Violation of California’s False Advertising Law**  
**Cal. Bus. & Prof. Code §§ 17500, et seq.**  
**(On Behalf of Plaintiff and the Class)**

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

67. Plaintiff incorporates by reference the foregoing allegations.

68. It is unlawful for a corporation to knowingly make, by means of any advertising device or otherwise, any untrue or misleading statement with the intent to sell a product or service, or to induce the public to purchase a product or service. Any statement in advertising that is likely to deceive members of the public constitutes false and misleading advertising under Cal. Bus. & Prof. Code §§ 17500, et seq.

69. As alleged herein, Defendant designs, directs, oversees, facilitates and disseminates advertising that it knows or should reasonably know is false and misleading because it misrepresents the actual nature and content of the digital goods available through the Unlimited Download Websites. This conduct includes, but it is not limited to, promoting and advertising access to the Unlimited Download Websites through online banner advertisements and recruiting and paying affiliates to promote the Unlimited Download Websites.

70. Defendant actively misrepresents, and/or has knowledge that misrepresentations are being made, about the specific digital goods that are available to paid members on the Unlimited Download Websites. These false representations act to enhance the apparent legitimacy of the Unlimited Download Websites, thereby inducing consumers to submit their payment information to Plimus for a paid membership to an Unlimited Download Website.

71. Defendant also designs, falsely advertises through, and/or has direct knowledge of, the use of fake “consumer reviews” of the Unlimited Download Websites. Although these “reviews” are represented as coming from real-life customers, they are actually created by or through, or in coordination with, Defendant Plimus as part of its marketing and advertising scheme. The creators and operators of the fake review websites are in direct contract with and paid for their services by Defendant Plimus. These untrue statements induce consumers into purchasing memberships from the Unlimited Download Websites by falsely suggesting that

1 consumers will have an experience similar to the satisfied “consumers” who provide such  
2 “reviews.” Consumers, however, do not have the same experience as recounted in the fake  
3 reviews.

4 72. Additionally, Defendant shares profits with third party “affiliates” who, *en mass*,  
5 create fake blogs, videos, and reviews of the Unlimited Download Websites at Plimus’s direction.  
6 These “affiliates” are matched with the Unlimited Download Websites through Plimus’s “affiliate”  
7 marketplace. The fake blogs, videos, and reviews are knowingly created to inundate search  
8 engines, such as Google, with false experiences so that any true information is buried when a  
9 consumer performs a web search about the Unlimited Download Websites.

10 73. By committing the acts alleged in this Complaint, Defendant has disseminated  
11 untrue and/or misleading statements through online advertising, and/or had direct knowledge of the  
12 falsity of the advertising published on its behalf, in order to sell products and services on the  
13 Unlimited Download Websites, in violation of the proscriptions of Cal. Bus. & Prof. Code §  
14 17500.

15 74. Plaintiff and members of the Class were all charged monies by Plimus for the  
16 Unlimited Download Websites memberships, and they would not have purchased any membership  
17 had they known the actual content (or lack thereof) provided on the Unlimited Download  
18 Websites. Accordingly, Plaintiff and members of the Class have suffered injury in fact and lost  
19 money as a result of Defendant Plimus’s acts of false advertising.

20 75. Plaintiff seeks an order requiring Defendant to (1) immediately cease the unlawful  
21 practices stated in this Complaint; (2) make full restitution of all funds wrongfully obtained; and  
22 (3) pay interest, attorneys’ fees, and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

23 **COUNT II**  
24 **Violation of the Consumers Legal Remedies Act**  
25 **Cal. Civ. Code §§ 1750, *et seq.***  
26 **(On Behalf of Plaintiff and the Class)**

27 76. Plaintiff incorporates by reference the foregoing allegations.  
28



1           77.     The Consumers Legal Remedies Act (“CLRA”) prohibits the act, use or  
2 employment by any person of any deception, fraud, false pretense, false promise,  
3 misrepresentation, concealment, suppression or omission of any material fact with intent that  
4 others rely upon such act in connection with the sale or advertisement of any merchandise whether  
5 or not any person has in fact been misled, deceived or damaged thereby.

6           78.     As alleged herein, Defendant has engaged in and has, and continues to have, direct  
7 knowledge of deceptive practices, unlawful methods of competition, and/or unfair acts as defined  
8 by Cal. Civ. Code §§ 1750, *et seq.*, to the detriment of Plaintiff and the Class.

9           79.     Defendant utilizes and has, and continues to have, knowledge of false and deceptive  
10 advertising that both conceals the actual digital goods offered by the Unlimited Download  
11 Websites and widely and willfully misrepresents testimonial support for the Unlimited Download  
12 Websites.

13           80.     The Unlimited Download Websites’ offers contain unconscionable terms by falsely  
14 stating the characteristics of the digital goods and are unfair and inequitable in that the material  
15 terms of the offers are hidden and actively misrepresented.

16           81.     Defendant Plimus, acting with knowledge, intentionally and unlawfully brought  
17 harm upon Plaintiff and the Class by aiding in the inducement of Plaintiff and the members of the  
18 Class to purchase a product, and thereafter charging them for that product, through the use of  
19 deceptive and misleading advertisements that fail to clearly and conspicuously disclose the actual  
20 characteristics of the goods and services provided. Specifically, Defendant violated Cal. Civ. Code  
21 § 1750 in at least the following respects:

22                   (a)     In violation of § 1770(a)(2) by using and allowing the use of false  
23 testimonials to misrepresent the source, sponsorship, approval, or certification of Unlimited  
24 Download Websites’ goods or services;

25                   (b)     In violation of § 1770(a)(3) by misrepresenting, paying for, and facilitating  
26 the affiliation, connection, or association with, or certification by, third party blogs,  
27

1 websites and others in relation to Unlimited Download Websites' goods or services;

2 (c) In violation of § 1770(a)(9) by advertising and charging for the Unlimited  
3 Download Websites' goods or services with the intent not to sell them as advertised.

4 82. Plaintiff and the Class relied upon Defendant Plimus's false and deceptive  
5 advertising described herein, including fake blogs, fake testimonials, and deceptive landing pages,  
6 all of which conceal the actual content provided to paying members of the Unlimited Download  
7 Websites.

8 83. The injuries of which Plaintiff and members of the Class complain are a direct and  
9 proximate result of Defendant's violations of the law and wrongful conduct described herein.

10 84. Under Cal. Civ. Code § 1780(a) and (b), Plaintiff and the Class seek injunctive  
11 relief requiring Defendant to cease and desist the illegal conduct alleged in this Complaint, and any  
12 other appropriate remedy for violations of the CLRA. For the sake of clarity, Plaintiff explicitly  
13 disclaims any claim for damages under the CLRA at this time.

14 **COUNT III**  
15 **Violation of California's Unfair Competition Law**  
16 **Cal. Bus. & Prof. §§ 17200, *et seq.***  
17 **(On Behalf of Plaintiff and the Class)**

18 85. Plaintiff incorporates by reference the foregoing allegations.

19 86. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et*  
20 *seq.*, protects both consumers and competitors by promoting fair competition in commercial  
21 markets for goods and services.

22 87. The UCL prohibits any unlawful, unfair, or fraudulent business act or practice. A  
23 business practice need only meet one of the three criteria to be considered unfair competition. An  
24 unlawful business practice is anything that can properly be called a business practice and that at  
25 the same time is forbidden by law. A fraudulent business practice is one in which members of the  
26 public are likely to be deceived.

1           88.     As alleged herein, Defendant’s continued utilization and/or knowledge of unlawful  
2 and unconscionable marketing practices constitute unlawful and unfair business practices in  
3 violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

4           89.     In deceiving Plaintiff and the Class by taking part in, and having full knowledge of,  
5 the creation, distribution, and dissemination of advertising that misrepresents the benefits of being  
6 a member of an Unlimited Download Website, and inducing Plaintiff and members of the Class to  
7 proffer payment to Plimus based on those misrepresentations and omissions, Plimus has engaged  
8 in deceptive trade practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

9           90.     The characteristics of a product or service are material terms of any transaction  
10 because they are likely to affect a consumer’s choice of, or conduct regarding, whether to purchase  
11 a product. Any deception related to characteristics of a consumer product or service is materially  
12 misleading.

13           91.     Plimus’s misrepresentation of the digital goods or services provided through the  
14 Unlimited Download Websites is likely to mislead a reasonable consumer who is acting reasonably  
15 under the circumstances.

16           92.     The injury caused by Plimus’s conduct is not outweighed by any countervailing  
17 benefits to consumers or competition, and the injury is one that consumers themselves could not  
18 reasonably have avoided.

19           93.     Plimus has also violated the “fraudulent” prong of the UCL in that Plimus’s  
20 statements, advertisements, and representations regarding what consumers would receive from the  
21 Unlimited Download Websites are false and likely to deceive a reasonable consumer. Further  
22 Plimus’s acts constitute fraud in the inducement and fraud by omission.

23           94.     Plimus has also violated the “unlawful” prong of the UCL in that its conduct  
24 violated the Consumer Legal Remedies Act (Cal. Bus. & Prof. Code §§ 1750, *et seq.*) and  
25 California’s False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*).  
26  
27  
28

1 95. Plaintiff and the Class have suffered harm as a proximate result of Plimus's  
2 violations of law and wrongful conduct in the form of monies lost.

3 96. Pursuant to Cal. Bus. & Prof. Code §§ 17203, Plaintiff seeks an order requiring  
4 Plimus to (1) immediately cease the unlawful practices alleged in this Complaint; (2) make full  
5 restitution of all funds wrongfully obtained from Plaintiff and the Class; and (3) pay interest,  
6 attorneys' fees, and costs pursuant to Cal. Code Civ. Pro. § 1021.5.

7 **COUNT IV**  
8 **Fraud in the Inducement**  
9 **(On Behalf of Plaintiff and the Class)**

9 97. Plaintiff incorporates by reference the foregoing allegations.

10 98. As described with particularity herein, Plimus has designed, oversees, disseminated  
11 and/or has, and continues to have, direct knowledge of the dissemination of false and misleading  
12 advertising promoting the Unlimited Download Websites. This conduct includes, but it is not  
13 limited to, promoting and advertising the Unlimited Download Websites' goods or services  
14 without disclosing the actual characteristics and content of the goods or services, which are  
15 material terms of any transaction. Plimus promoted and charged for the Unlimited Download  
16 Websites' memberships with full knowledge that consumers were acting in reliance on its false  
17 statements.

18 99. Through a series of advertisements, representations, omissions, and false statements  
19 regarding the Unlimited Download Websites, Defendant Plimus acted in concert with the  
20 Unlimited Download Websites to misrepresent and obscure the actual digital goods a consumer  
21 receives upon purchasing a membership to any of the Unlimited Download Websites.

22 100. Defendant Plimus, in conjunction with the Unlimited Download Websites, took  
23 concrete and intentional steps to misrepresent the actual content Class members would ultimately  
24 receive upon purchasing a membership.

25 101. Defendant Plimus actively took part in designing and optimizing the Unlimited  
26 Download Websites' landing and checkout pages so as to increase the rate of conversions (*i.e.*,

1 sales), and had full knowledge and visibility of the content of the Unlimited Download Websites  
2 and each transaction, including knowledge of the unavailability of the promised digital goods.

3 102. By committing the acts alleged in this Complaint, Plimus has designed,  
4 disseminated and/or has, and continues to have, knowledge of the dissemination of untrue and  
5 misleading statements through fraudulent advertising in order to sell or induce members of the  
6 public to purchase paid memberships to the Unlimited Download Websites.

7 103. The content being paid for is a material term of any transaction because it directly  
8 affects a consumer's choice of, or conduct regarding, whether to purchase a product. Any  
9 deception or fraud related to the content of a consumer product is materially misleading.

10 104. The misrepresentation or omission of the contents of a product is likely to mislead a  
11 reasonable consumer who is acting reasonably under the circumstances.

12 105. Plimus knew or should have known of the falsity of the representations it made  
13 regarding the Unlimited Download Websites it marketed and charged for.

14 106. Plimus intended that the deceptive and fraudulent misrepresentations and omissions  
15 it made and the Unlimited Download Websites would induce a consumer to rely and act by  
16 submitting their confidential contact and payment information.

17 107. Plimus charged and collected from Plaintiff and members of the Class monies for a  
18 sham product. Accordingly, Plaintiff and members of the Class have suffered injury in fact and  
19 lost money in justifiable reliance on Plimus's misrepresentations and omissions of material fact.

20 108. In deceiving Plaintiff and the Class by creating, enhancing and supporting  
21 advertising that fails to clearly and conspicuously disclose, and in fact actively misrepresents, the  
22 actual content included in a membership to the Unlimited Download Websites, and inducing  
23 Plaintiff and the Class to proffer payment based on those misrepresentations, Plimus has engaged  
24 in and has, and/or continues to have, direct knowledge of fraudulent practices designed to mislead  
25 and deceive consumers.



1 actual digital goods provided to paid members of the Unlimited Download Websites.

2 (b) Plaintiff and the Class members could not reasonably have been expected to  
3 learn or discover that Plimus was concealing the actual content provided through the  
4 membership.

5 (c) Plimus knew that Plaintiff and the Class Members could not reasonably  
6 have been expected to learn or discover the actual content provided through the  
7 membership.

8 116. The facts concealed or not disclosed by Plimus to Plaintiff and the Class, and the  
9 facts that Plimus knew or should have known were concealed by the Unlimited Download  
10 Websites, are material in that a reasonable consumer would have considered them to be important  
11 in deciding whether to purchase a paid membership. Had Plaintiff and the Class known of the  
12 actual digital goods or services provided to paid members, they would not have purchased a  
13 membership.

14 117. Plimus concealed or failed to disclose the true content available to members in  
15 order to induce Plaintiff and the Class to act thereon and proffer payment. Plaintiff and the Class  
16 justifiably relied on Plimus's omissions to their detriment by paying for a membership. The  
17 detriment is evident from Plaintiff's and the Class Members' purchase of memberships.

18 118. As a direct and proximate result of Plimus's misconduct, Plaintiff and the Class  
19 have suffered actual damages in the form of monies paid to purchase a membership.

20 **COUNT VI**  
21 **Negligent Misrepresentation**  
22 **(On Behalf of Plaintiff and the Class)**

23 119. Plaintiff incorporates by reference the foregoing allegations.

24 120. Through their online advertisements, marketing, and testimonials, Defendant  
25 Plimus represented to Plaintiff and the members of the Class that membership to the Unlimited  
26 Download Websites would allow for the unlimited access to and download of digital goods  
27 including eBooks, movies, and video games.





1 Websites (thenovelnetwork.com). A material inducement and term of the contract was Plimus's  
2 representation that thousands of digital goods were available for unlimited access through the  
3 membership, that were legal and genuine, and not otherwise available for free.

4 128. Specifically, as part of the retail sales contract offered on the Plimus checkout page,  
5 Plimus represents that the Class will receive unlimited access to digital downloads by making a  
6 statement substantially similar to the following: "myPadMedia.com Unlimited Lifetime  
7 Membership (including all downloads)," and then providing the total price.

8 129. As a result of Plimus's misrepresentations detailed in this Amended Complaint,  
9 Plaintiff and the Class paid for memberships through Defendant Plimus with the understanding  
10 that they would receive unlimited access to thousands of genuine digital goods, including eBooks,  
11 movies, and video games, that were not otherwise available for free.

12 130. Plimus failed to provide unlimited access to recent bestsellers and other newly  
13 released digital goods in exchange for the membership fees paid by Plaintiff and the Class, thereby  
14 breaching its contract with Plaintiff and the other members of the Class.

15 131. At all times relevant to this action, Defendant acted willfully and with intent to  
16 breach contracts entered into with Plaintiff and the Class.

17 132. Plaintiff and the Class have fully performed their contractual obligations.

18 133. Plaintiff and the Class have suffered damages as a direct result of Plimus's unlawful  
19 and wrongful practices described herein in the form of monies paid and lost.

20 134. Plaintiff, on her own behalf, and on behalf of the Class, seeks damages for Plimus's  
21 breach of contract, as well as interest and attorneys' fees and costs.

22 **COUNT VIII**  
23 **Unjust Enrichment**  
24 **(in the alternative to breach of contract)**  
25 **(On behalf of Plaintiff and the Class)**

26 135. Plaintiff incorporates by reference the foregoing allegations, excluding paragraphs  
27 125 through 134.

28 136. If the Court finds Plaintiff's contract with Defendant Plimus invalid or

1 unenforceable, Plaintiff and members of the Class have no valid contractual relationship with  
2 Defendant Plimus.

3 137. Defendant Plimus knowingly profited from the charges it placed on and collected  
4 from Plaintiff's and Class Members' accounts for membership in the Unlimited Download  
5 Websites.

6 138. Plaintiff and the Class have conferred a benefit upon Defendant Plimus. Defendant  
7 Plimus has received and retained money belonging to Plaintiff and the Class as a result of its  
8 unlawful and deceptive conduct described herein.

9 139. Defendant Plimus appreciates or has knowledge of the benefit conferred upon it by  
10 Plaintiff and the Class.

11 140. Under principles of equity and good conscience, Defendant Plimus should not be  
12 permitted to retain the money belonging to Plaintiff and the Class that it unjustly received as a  
13 result of its unlawful and deceptive conduct described herein.

14 141. Plaintiff and the Class have suffered financial loss as a direct result of Defendant  
15 Plimus's unlawful and deceptive conduct described herein.  
16 Plaintiff, on her own behalf and on behalf of the Class, seeks restitution of the proceeds Defendant  
17 Plimus received as a result of its unlawful and deceptive conduct described herein, as well as  
18 attorneys' fees and costs pursuant to Cal. Civ. Proc. Code § 1021.5.

19 //  
20 //  
21 //  
22 //  
23 //  
24 //  
25 //  
26 //

27  
28

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

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Kimberly Yordy, individually and on behalf of the Class, requests that the Court enter an Order providing for the following relief:

- A. Certify this case as a class action on behalf of the Class defined above, appoint Plaintiff as Class Representative, and appoint her counsel as Class Counsel;
- B. Declare that Defendant’s actions, as set out above, violate Cal. Bus. & Prof. Code §§ 17500 *et seq.*, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, Cal. Civ. Code §§ 1750 *et seq.*, and constitute fraud in the inducement, fraud by omission, negligent misrepresentation, breach of contract, and unjust enrichment;
- C. Award all economic, monetary, actual, consequential, statutory and compensatory damages caused by Defendant’s conduct, and if their conduct is proven to be willful, award Plaintiff and the Class exemplary damages;
- D. Award restitution against Defendant for all money to which Plaintiff and the Class are entitled in equity;
- E. Award Plaintiff and the Class their reasonable litigation expenses and attorneys’ fees;
- F. Award Plaintiff and the Class pre- and post-judgment interest, to the extent allowable;
- G. Enter injunctive and/or declaratory relief as is necessary to protect the interests of Plaintiff and the Class; and
- H. Award such other and further relief as equity and justice may require.

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

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury for all issues so triable.

Respectfully submitted,

Dated: March 23, 2012

**KIMBERLEY YORDY**, individually and on behalf of all others similarly situated,

By: /s/ Christopher L. Dore  
One of Plaintiff's Attorneys

SEAN P. REIS - SBN 184004  
sreis@edelson.com  
EDELSON MCGUIRE LLP  
30021 Tomas Street, Suite 300  
Rancho Santa Margarita, California 92688  
Telephone: (949) 459-2124  
Facsimile: (949) 459-2123

RAFEY S. BALABANIAN (Admitted *Pro Hac Vice*)  
rbalabanian@edelson.com  
CHRISTOPHER L. DORE (Admitted *Pro Hac Vice*)  
cdore@edelson.com  
BENJAMIN H. RICHMAN (Admitted *Pro Hac Vice*)  
brichman@edelson.com  
EDELSON MCGUIRE LLC  
350 North LaSalle Street, Suite 1300  
Chicago, Illinois 60654  
Telephone: (312) 589-6370  
Facsimile: (312) 589-6378

**CERTIFICATE OF SERVICE**

I, Christopher L. Dore, an attorney, hereby certify that on March 23, 2012, I served the above and foregoing *First Amended Class Action Complaint*, by causing true and accurate copies of such paper to be filed and transmitted to all parties and their counsel of record via the Court's CM/ECF electronic filing system, on this the 23rd day of March, 2012.

/s/ Christopher L. Dore

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