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**Pro hac vice admission to be sought.*

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Additional Counsel Listed on Signature Page

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

MILO ILLICH, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

INSTANT CHECKMATE, INC., a
Delaware corporation,

Defendant.

Case No. **'14CV3026 DMS KSC**

**CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL**

1 Plaintiff Milo Illich brings this Class Action Complaint and Demand for
2 Jury Trial against Defendant Instant Checkmate, Inc., (“InstantCheckmate”) to
3 enjoin its practice of deceptively marketing its online background report
4 products and to obtain redress for all persons injured by such conduct. Plaintiff,
5 for his Complaint, alleges as follows upon personal knowledge as to himself
6 and his own acts and experiences and, as to all other matters, upon information
7 and belief, including investigation conducted by his attorneys.

8 **NATURE OF THE ACTION**

9 1. Defendant owns and operates www.instantcheckmate.com, a
10 website that purportedly offers consumers the ability to obtain background
11 reports to “learn the truth about the history of your family and friends.”

12 2. InstantCheckmate advertises that its reports contain “REAL police
13 records (driving citations, speeding tickets, felonies, misdemeanors, sexual
14 offenses, mugshots, etc.), background reports, marriage/divorce history, address
15 information, phone numbers, a history of lawsuits and much more.” So much
16 information, in fact, that the results can be “shocking.”

17 3. After viewing such advertisements, consumers seeking background
18 reports can conduct a search on Defendant’s website. The website then begins a
19 lengthy “search,” invariably stating that it has found a match and that the
20 consumer should “locate the person you’re searching for on this list of possible
21 matches.” Throughout the background report search process (as well as in
22 advertisements appearing on internet search results), Defendant misrepresents
23 the actual results available for a given person by indicating that they have, for
24 example, a criminal record or have been divorced.

25 4. When consumers click on “ACCESS REPORT” to learn of the
26 details of the purported results, however, Defendant states that the entirety of
27 the search results, without any qualification or limitation, are only available
28 after paying a monthly fee.

14. Once a consumer clicks on the ads, they are directed to Defendant's homepage where Defendant provides numerous representations about what information its reports will provide. For example, as noted in Figure 3, Defendant represents it provides "30 different data points" and "unlimited reports."



(Figure 3.)

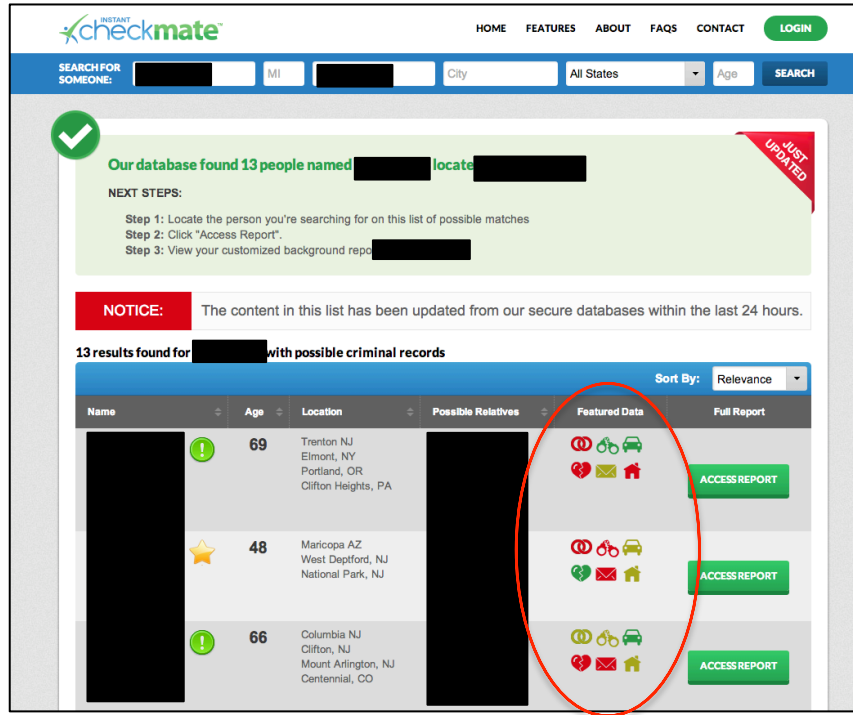
15. The website first prompts the consumer to enter the name of the subject of the background check. Once the name is entered, Defendant displays an animated graphic depicting a "search" for the subject. (See Figure 4.) As the "search" is progressing, Defendant represents that certain information has purportedly been found by placing a green checkmark next to an information category. (See id.)



(Figure 4.)²

16. Next, Defendant states that its “database found” a match and that “the content in this list has been updated from our secure database within the last 24 hours.” (See Figure 5.) Defendant also causes a green “ACCESS REPORT” button to appear that will ostensibly grant access to the report. (See *id.*)

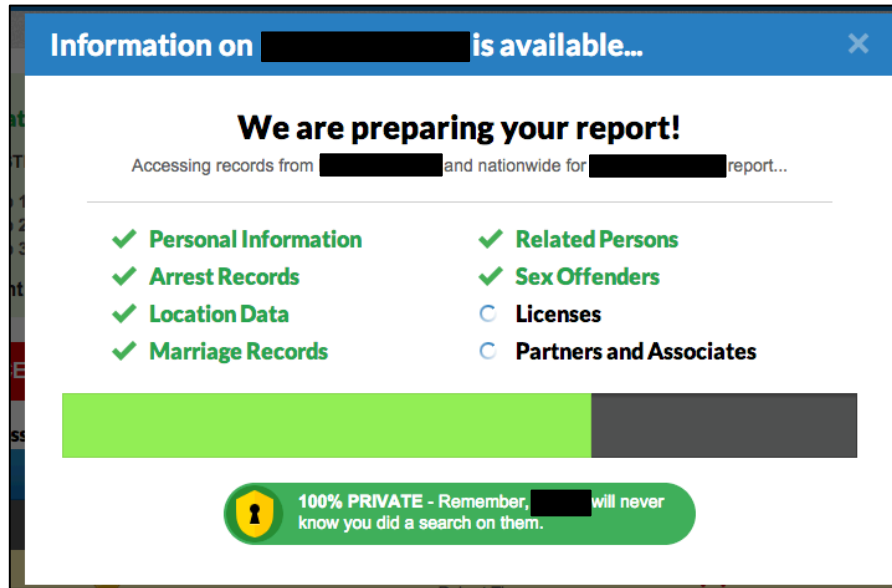
² The name of the person being searched has been redacted to protect his or her privacy.



(Figure 5.)

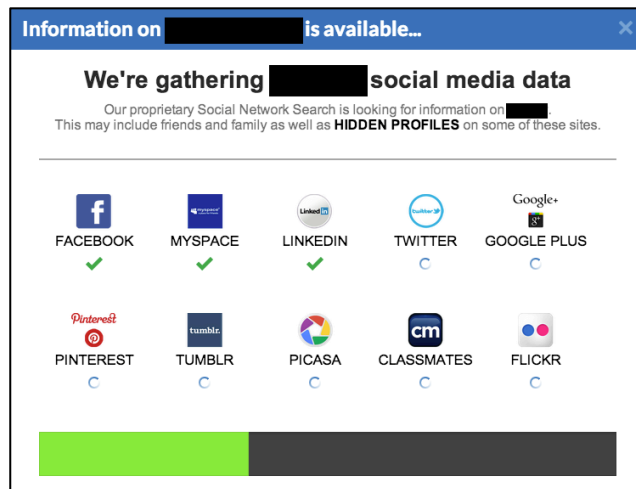
17. Additionally, this screen provides a column for “Featured Data” (circled in red) which includes symbols representing that Defendant’s report for the listed persons contains arrest records, marriage records, auto ownership, divorce records, contact information, and location information.

18. A consumer who clicks on the “access report” button is then forced to sit through a five-minute long animation (deceptively) depicting a search. During this “search,” Defendant represents that it is “preparing your report” and that it is “accessing” “arrest records,” “marriage records,” and gathering information about “related persons,” “licenses,” and information about “sex offenders.” (See Figure 6.) As before, Defendant displays green check marks to indicate a positive match for the searched person.



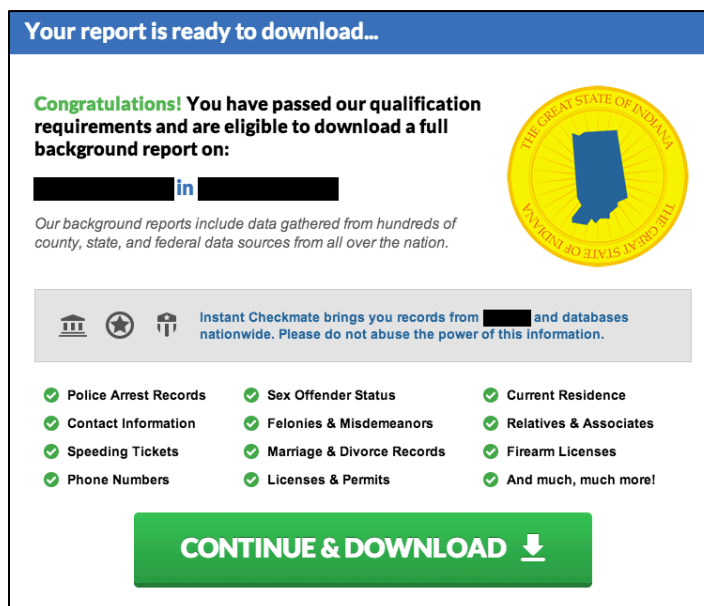
(Figure 6.)

19. Defendant continues in this vein by claiming that it is gathering “social media data.” Here, Defendant yet again uses green checkmarks in an attempt to convey that information has been affirmatively found.



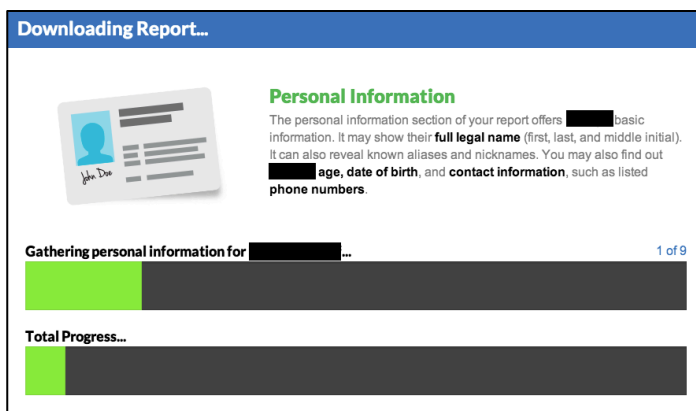
(Figure 7.)

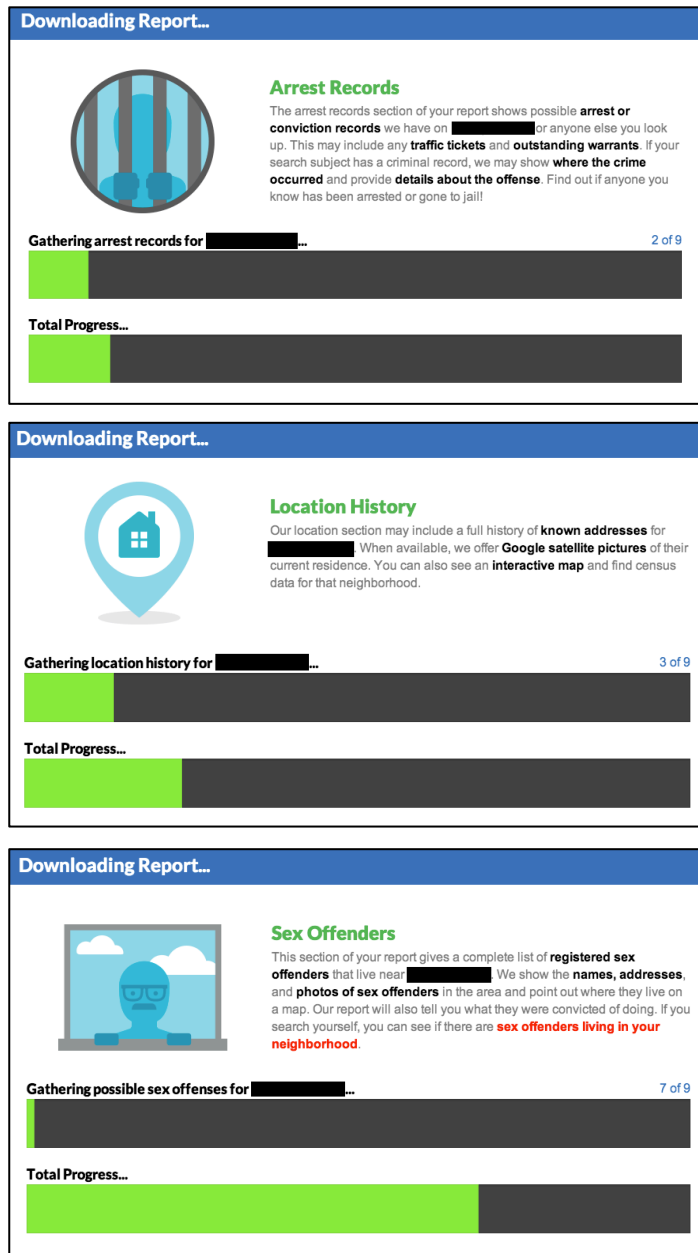
20. Defendant then claims that the “report is ready to download.” At this point, Defendant shows a purported official state seal (which it lacks authority to use), claims that the report “includes data gathered from hundreds of county, state, and federal data sources,” and provides a list of data that will be included in the report. (See Figure 8.)



(Figure 8.)

21. After a consumer clicks on Defendant’s “Continue & Download” button, they are forced to wait through another round of animations, ostensibly designed to increase the reports’ credibility. (See Figure 9, showing sample screenshots from Defendant’s “Continue and Download” process”). Defendant claims that while it is “Downloading [the] Report,” it is getting the subject’s personal information, arrest records, location history, and sex offender information.

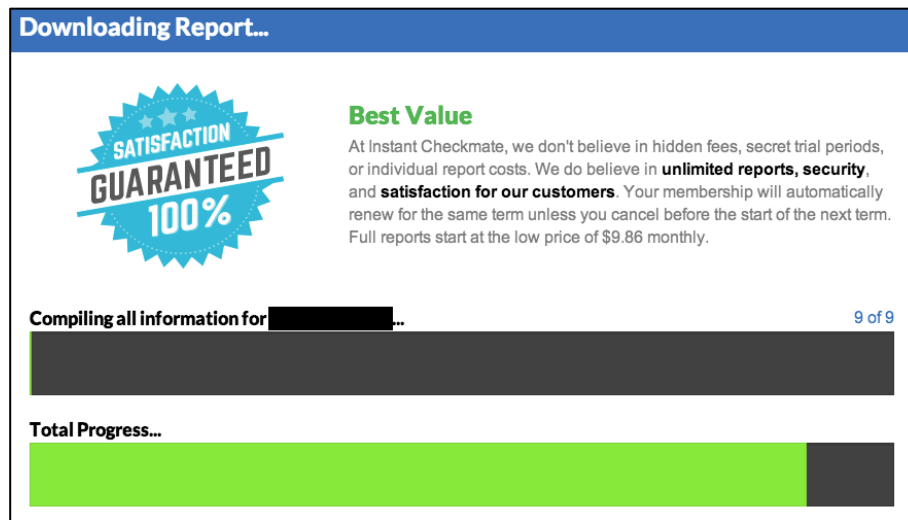




(Figure 9.)

22. Defendant then, for the first time, represents that the report will require—at the minimum—\$9.86 per month³. Defendant also adds, falsely, “[w]e don’t believe in hidden fees” or “individual report costs,” *but* that it does “believe in” “[u]nlimited reports.” (See Figure 10.)

³ Consumers are later informed that the \$9.86 monthly fee is only available if they pay \$59.56 for a six-month subscription.



(Figure 10.)

23. When the “Downloading Report” process is complete, Defendant leads consumers to a webpage where it asks for payment information for access to the report. Defendant’s page fails to indicate that information will be withheld unless a consumer pays fees above and beyond the initial monthly access fee. At the time a consumer submits their payment information, they are unequivocally led to believe that paying a monthly fee will allow for access to *all available information*.

24. The checkout page also includes a section describing what the report will include. Here, Defendant first states that “this report *may* include” a list of information categories and then places green check marks next those categories—and an exclamation point contained in a red circle next to “criminal arrest records”—to give the appearance that positive results have been in fact located. (See Figure 11.) In reality, Defendant’s reports *never* include email addresses, for example, and Defendant’s report for the individual searched below did not contain any criminal or arrest records.

FINAL STEP: Activate Your Account and Unlock Your Report!

Pick your Package

MOST POPULAR!
☒ **Monthly Membership** \$22.86/mo*
 1 Month of UNLIMITED Reports

☐ **Moderate Users** \$14.86/mo*
 3 Months of UNLIMITED Reports (\$44.58 Today)

☐ **Power Users** \$9.86/mo*
 6 Months of UNLIMITED Reports (\$59.16 Today)

NO HASSLE CANCELLATION

YOUR SATISFACTION IS IMPORTANT TO US!

If at any time you are dissatisfied with our product, call our Member Care number at 1 (866) 490-5980 and we'll do our best to make you happy.

Payment Information

Security is Our Top Priority

This website utilizes some of the most advanced techniques to protect your information and ensure your transaction is secure.

Payment: ☒ Visa or Mastercard ☐ Paypal Secure Payments

Name on Card: [redacted]

Card Number: [redacted]

Expiration Date: 07 (Jul) 2014

CVV2 Code: [redacted]

☐ I agree to the Instant Checkmate Terms of Use, Limited License, and Privacy Policy. By clicking "View My Report," you are providing your electronic signature authorizing Instant Checkmate to charge your card as described, until you cancel.

☐ I understand and agree that Instant Checkmate is not a "consumer reporting agency," as defined in the Fair Credit Reporting Act (15 U.S.C. § 1681, et seq.) (FCRA), and does not provide "consumer reports," as defined in FCRA. I understand and represent that I am not purchasing and will not use Instant Checkmate's products or services for any purpose in connection with determining a person's eligibility for credit, insurance, employment or for any other eligibility determination subject to FCRA.

VIEW MY REPORT

The Background Report on [redacted] May Include:

- ✓ Criminal Arrest Records
- ✓ Speeding Tickets
- ✓ Marriage/Divorce Records
- ✓ Addresses and Phone Numbers
- ✓ Sex Offender Status
- ✓ Email Addresses
- ✓ Facebook Profiles
- ✓ LinkedIn Accounts
- ✓ Much More!

100% AVAILABLE - Remember, anyone might see these records! Find out what's out there NOW.

Frequently Asked Questions

Why isn't this free?
 Unfortunately, we have to pay for the information we provide. Free reports would put us out of business.

How is my report delivered?
 After signing up, you can instantly view your report online. You will also have the option to download and print!

Can I buy a single report?
 Our competitors charge more for a single report than we charge for a month of UNLIMITED reports! Why settle?

How does the billing work?
 *To get unlimited reports, select a one-month membership for \$22.86, a three-month membership for \$44.58 (\$14.86/mo), or a six-month membership for \$59.16 (\$9.86/mo). Your membership will automatically renew for the same term unless you cancel before the start of the next term. Instant Checkmate will charge the recurring membership fee of \$22.86, \$44.58, or \$59.16 (depending on the membership option you select) to the same card you use today until you cancel. To cancel, call 1-866-490-5980 24 hours a day (weekdays) or 5am - 10 pm Pacific Time (weekends).

Customer Reviews

"Thanks to Instant CheckMate, I found out my boyfriend of 2 years is a registered sex offender."
 ~ ★★★★★ ~
 Carol G.

"No matter how much or long you know somebody, you can always find out something new..."
 ~ ★★★★★ ~
 Ralph R.

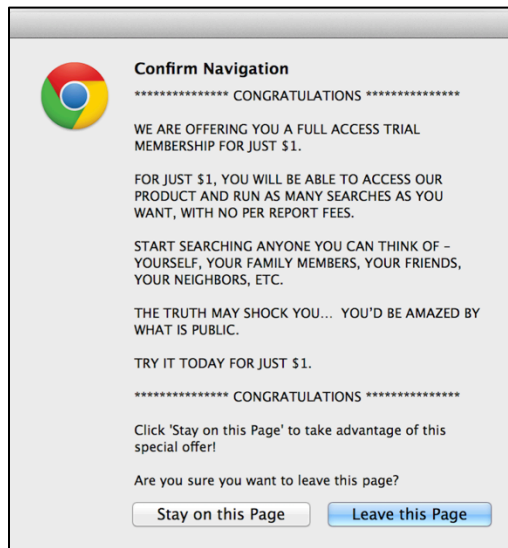
FELONIES • MISDEMEANORS • SPEEDING TICKETS • MUGSHOTS • SEX OFFENDERS

Background checks have been featured on:

FOX abc CNN FOX NBC CBS

(Figure 11.)

25. In an effort to bolster its pricing deception, Defendant causes a “pop-up” screen to appear on consumers’ screens while they are viewing the checkout page. The pop-up screen purports to offer a specific trial offer and indicates that a consumer may “run as many searches as you want, *with no per report fees.*” (See Figure 12.) (Emphasis added).



(Figure 12.)

26. After a consumer submits payment for the monthly access fee, Defendant provides them with a report that is substantially similar in appearance to the report shown in Figure 13, on the following page.

27. Yet, the provided reports do not contain the information Defendant indicated would be included. For example, Defendant often indicates divorce records as being included in a report's "Featured Data," yet the paid-for reports invariably do not contain such records. Worryingly, where Defendant indicates that a report's "Featured Data" includes criminal records, there are similarly none.

*

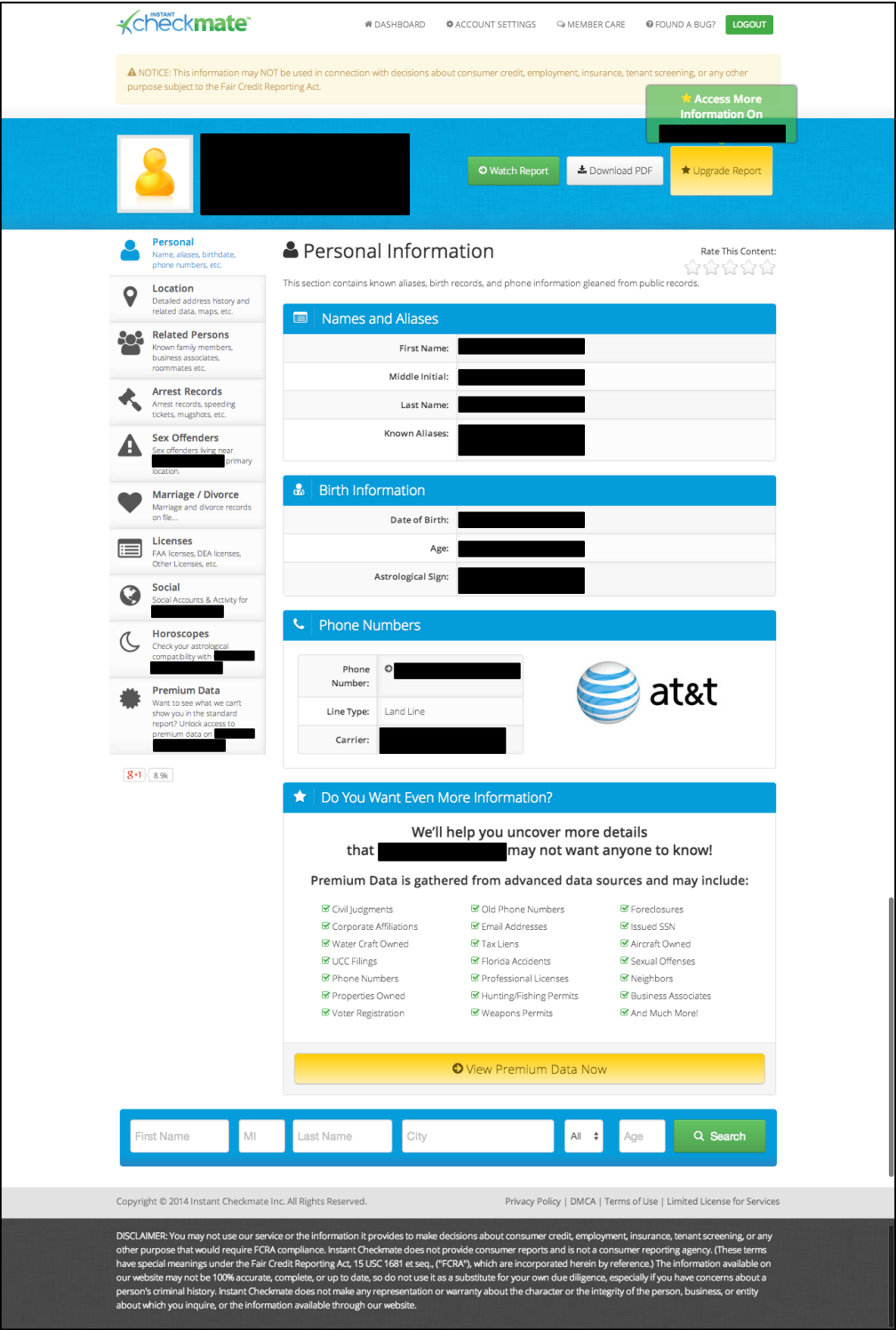
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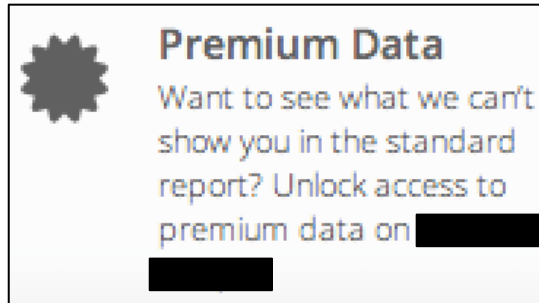
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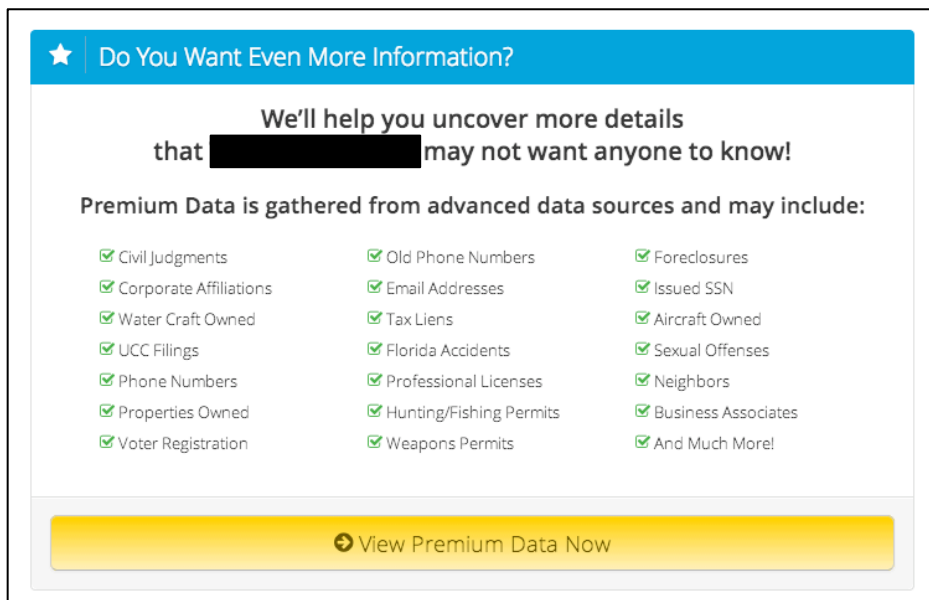
(Figure 13, showing representative background report.)

28. Moreover, Defendant represents to consumers that have already paid to access a report that it is actively withholding information. Defendant claims that it has gathered from “advanced sources” that, for an unstated reason,

InstantCheckmate “can’t show [] in a standard report.” (See Figures 14 and 15.)



(Figure 14.)

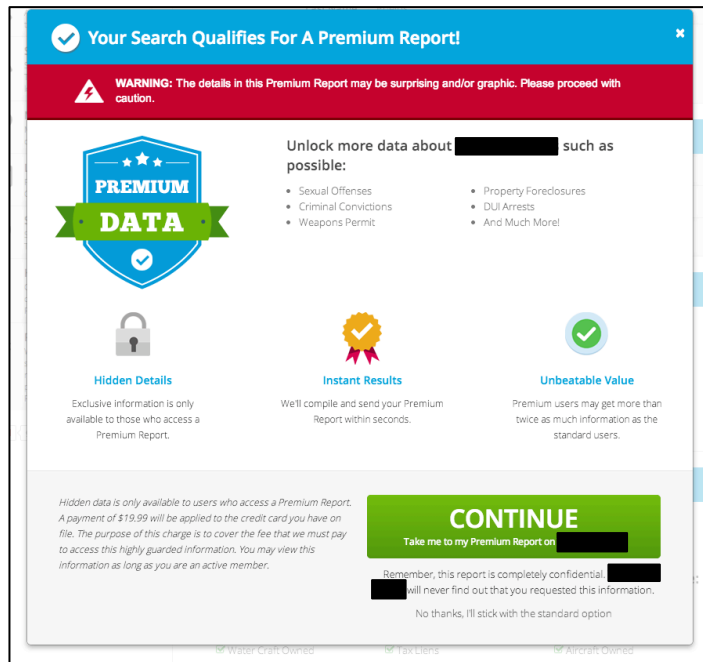


(Figure 15.)

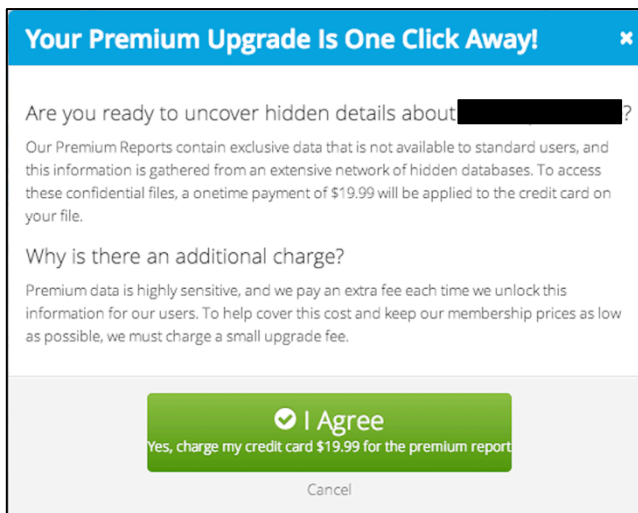
29. Defendant provides a long list of data points that are included in the “Premium Report,” such as contact information, location information, business associates, sexual offenses, licenses, properties owned, and corporate affiliations. Notably, Defendant’s original representations promised that many (if not all) of these same data points would be available within the initial (*i.e.*, non-Premium) report.

30. When an individual clicks on the “view premium data now” button, Defendant causes another pop-up to appear that informs the consumer that the data is “hidden” and exclusive to the premium report. Defendant also represents that the premium report may contain sexual offences, criminal

convictions, and “much more.”



(Figure 16.)



(Figure 17.)

31. As previously indicated, the premium report contains additional information that Defendant previously represented would be included in the first report such as contact info, location information, relatives, and associates.

32. Likewise, just like representations made for the standard report, much of the promised information available through a premium report is simply not provided upon payment.

II. Facts Relating to Plaintiff Milo Illich.

33. In August 2014 Plaintiff Illich encountered an advertisement for InstantCheckmate.com while browsing the internet. The advertisement Plaintiff Illich clicked on was substantially similar to the advertisement shown in Figure 1 and included a representation that he would receive access to myriad information, including arrest records. Once he clicked on the advertisement, Illich was taken to a webpage hosted on www.instantcheckmate.com where he viewed representations substantially similar to those described above concerning information contained in one of Defendant's reports. Based on those representations, Plaintiff Illich entered the name and location of the person for which he wanted to conduct a background check search.

34. Thereafter, Defendant caused animations and pop-ups to appear on Plaintiff's screen informing him that dozens of sources were being searched and numerous individual pieces of information were being compiled about the searched person. Defendant then requested that Plaintiff Illich provide more information regarding the searched person. After he provided such information, Defendant again caused animations and pop-ups to appear, representing that additional information sources were being searched and that Defendant was compiling a comprehensive report about the searched person.

35. After approximately five minutes of such animations, Defendant indicated that it had compiled a report containing sufficient information about the searched person. At this time, Defendant stated that before Plaintiff Illich could access the report he must pay at least \$22.86.

36. Relying on Defendant's representations that it had found and compiled specific information about the searched person, Plaintiff Illich submitted his payment information and paid the \$22.86 access fee.

37. Defendant then provided Illich access to the report. However, Defendant's report did not contain the information Defendant represented that it

1 would include. Specifically, Defendant represented to Plaintiff Illich that the
 2 report would include “police records,” such as “driving citations, speeding
 3 tickets, felonies, misdemeanors, sexual offenses, mugshots” and more. Instead,
 4 the report contained grossly inaccurate information, information that would
 5 otherwise be freely available on the internet, and did not include the subject’s
 6 police records already known already known to Plaintiff Illich. In addition,
 7 Defendant stated that certain information it previously represented would be
 8 included in the \$22.86 report was only accessible if Plaintiff paid a one-time fee
 9 of \$19.99. Having been deceived once already, Plaintiff did not agree to pay
 10 \$19.99 for the purportedly available information.

11 38. Had Plaintiff Illich known the report for \$22.86 was not going to
 12 contain the information he was promised—and that he would have had to pay
 13 an additional \$19.99 to access that information—he would not have submitted
 14 his credit card information to pay for Defendant’s report.

15 CLASS ALLEGATIONS

16 39. **Class Definition:** Plaintiff brings this action pursuant to Federal
 17 Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of himself and a
 18 proposed class defined as follows:

19 **Class:** All persons in the United States who paid an access fee for a
 20 background report on InstantCheckmate.com.

21 The following people are excluded from the Class: (1) any Judge or Magistrate
 22 presiding over this action and members of their families; (2) Defendant,
 23 Defendant’s subsidiaries, parents, successors, predecessors, and any entity in
 24 which the Defendant or its parents have a controlling interest and its current or
 25 former employees, officers and directors; (3) persons who properly execute and
 26 file a timely request for exclusion from the Class; (4) persons whose claims in
 27 this matter have been finally adjudicated on the merits or otherwise released;
 28 (5) Plaintiff’s counsel and Defendant’s counsel; and (6) the legal

1 representatives, successors, and assigns of any such excluded persons.

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

7 41. **Commonality:** There are many questions of law and fact common
8 to the claims of Plaintiff and the Class, and those questions predominate over
9 any questions that may affect individual members of the Class. Common
10 questions for the Class include, but are not limited to the following:

- 11 a) Whether Defendant intentionally misrepresented the
12 information included in its reports and the actual price of
13 such reports;
- 14 b) Whether Defendant's conduct described herein was willful;
- 15 c) Whether Defendant's conduct described herein constitutes a
16 violation of California's Consumers Legal Remedies Act
17 (Ca. Civ. Code. §§ 1750 *et seq.*);
- 18 d) Whether Defendant's conduct described herein constitutes a
19 violation of the Unfair Competition Law (Cal. Bus. & Prof.
20 Code §§ 17200, *et seq.*);
- 21 e) Whether Defendant's conduct described herein constitutes a
22 violation of the False Advertising Law (Cal. Bus. & Prof.
23 Code §§ 17500, *et seq.*);
- 24 f) Whether Defendant's conduct described herein constitutes
25 Fraud in the Inducement;
- 26 g) Whether Defendant's conduct described herein constitutes
27 Fraud by Omission; and
- 28 h) Whether Defendant's conduct described herein constitutes a

Breach of Contract.

42. **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.

43. **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.

44. **Policies Generally Applicable to the Class:** This class action is appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Class as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class, and making final injunctive relief appropriate with respect to the Class as a whole. Defendant's policies challenged herein apply and affect members of the Class uniformly and Plaintiff's challenge of these policies hinges on Defendant's conduct with respect to the Class as a whole, not on facts or law applicable only to Plaintiff.

45. **Superiority:** This case is also appropriate for class certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all parties is impracticable. The damages suffered by the individual members of the Class will likely be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Defendant's misconduct. Even if members of the Class could sustain such individual litigation, it would still not

1 be preferable to a class action, because individual litigation would increase the
 2 delay and expense to all parties due to the complex legal and factual
 3 controversies presented in this Complaint. By contrast, a class action presents
 4 far fewer management difficulties and provides the benefits of single
 5 adjudication, economy of scale, and comprehensive supervision by a single
 6 Court. Economies of time, effort, and expense will be fostered and uniformity
 7 of decisions ensured.

8 46. Plaintiff reserves the right to revise the foregoing “Class
 9 Allegations” and “Class Definition” based on facts learned through additional
 10 investigation and in discovery.

11 **FIRST CAUSE OF ACTION**
 12 **Violation of Consumers Legal Remedies Act**
 13 **Cal. Civ. Code §§ 1750, *et seq.***
(On Behalf of Plaintiff and the Class)

14 47. Plaintiff incorporates by reference the foregoing allegations as if
 15 fully set forth herein.

16 48. The Consumers Legal Remedies Act (“CLRA”) applies to
 17 Defendant’s actions and conduct as described herein because it extends to
 18 transactions that are intended to result, or which have resulted, in the sale of
 19 goods or services to consumers.

20 49. Defendant is a “person” as defined by Cal. Civ. Code § 1761(c).

21 50. Plaintiff and each member of the Class is a “consumer” as defined
 22 by Cal. Civ. Code § 1761(a).

23 51. The subscriptions purchased by Plaintiff and the Class members
 24 are “services” within the meaning of Cal. Civ. Code § 1761(a).

25 52. As described herein, Defendant has engaged in deceptive practices,
 26 unlawful methods of competition, and/or unfair acts as defined by Cal. Civ.
 27 Code §§ 1750 *et seq.*, to the detriment of Plaintiff and the Class.

28 53. Defendant, acting with knowledge, intentionally and unlawfully

1 brought harm upon Plaintiff and the Class by representing that its subscriptions
2 allowed unlimited access to background reports containing information, such as
3 criminal records, divorce records, sexual offender status, and contact
4 information, among others, when in fact Defendant's representations were false.

5 54. Additionally, Defendant, acting with knowledge, intentionally and
6 unlawfully brought harm upon Plaintiff and the Class by failing to disclose the
7 true cost of its background report products.

8 55. Specifically, Defendant represented that by subscribing to its
9 service, at a minimum charge of \$9.86 per month, that Plaintiff and the Class
10 members would receive access to "unlimited reports" containing police arrest
11 records, contact information, speeding tickets, phone numbers, sex offender
12 status, felonies & misdemeanors, marriage & divorce records, licenses &
13 permits, current residence, relatives & associates, firearm licenses, and "much
14 much more." (*See* Figures 8, 10.)

15 56. In fact, however, when Plaintiff and Class paid for their
16 subscriptions to Defendant's website, the reports lacked data that Defendant had
17 indicated would be included, such as divorce data, criminal records, phone
18 numbers and other contact information, professional licenses, hunting and
19 fishing permits, weapons permits, sexual offenses, and other forms of so-called
20 "Premium Data." (*See* Figures 13–15.) In order for Plaintiff and the Class to
21 access that information—which was originally promised as part of the base
22 subscription price—Plaintiff and the Class would have been required to pay an
23 additional \$19.99 per report.

24 57. As such, Defendant violated Cal. Civ. Code § 1750 in at least the
25 following respects:

- 26 a. By using and allowing the use of false testimonials to
27 misrepresent the source, sponsorship, approval, or
28 certification of Defendant's background report

1 subscriptions, in violation of § 1770(a)(2);

- 2 b. By misrepresenting the affiliation, connection, or association
 3 with, or certification by, another by placing a purported
 4 official state seal in the marketing of Defendant's
 5 background reports, in violation of § 1770(a)(3); and
 6 c. By advertising and charging for Defendant's background
 7 report subscriptions with the intent to not sell them as
 8 advertised, in violation of § 1770(a)(9).

9 58. Defendant's unfair or deceptive acts or practices were capable of
 10 deceiving a substantial portion of the purchasing public.

11 59. Plaintiff and the Class relied upon Defendant's false and deceptive
 12 advertising described herein, including its false representations that certain
 13 information would be included in a standard report and that the monthly
 14 subscription fees would allow unlimited access to full background reports, and
 15 its concealment the fact that consumers would need to pay additional fees to
 16 access the full, as-advertised, reports.

17 60. The injuries of which Plaintiff and members of the Class complain
 18 are a direct and proximate result of Defendant's violations of the law and
 19 wrongful conduct described herein.

20 61. Under Cal. Civ. Code § 1780(a), Plaintiff, individually and on
 21 behalf of the Class, seeks an injunction requiring Defendant to cease and desist
 22 the illegal conduct alleged in this Complaint, and all other appropriate remedies
 23 for their violations of the CLRA. For the sake of clarity, Plaintiff explicitly
 24 disclaims any claim for damages under the CLRA at this time.

25 **SECOND CAUSE OF ACTION**
 26 **Violations of California's Unfair Competition Law**
 27 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***
 28 **(On Behalf of Plaintiff and the Class)**

62. Plaintiff incorporates by reference the foregoing allegations as if

1 fully set forth herein.

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

5 64. The UCL prohibits any unlawful, unfair, or fraudulent business act
6 or practice, including the employment of any deception, fraud, false pretense,
7 false promise, misrepresentation, or the concealment, suppression, or omission
8 of any material fact. A business practice need only meet one of the three criteria
9 to be considered unfair competition.

10 65. As alleged herein, Defendant's continued utilization and/or
11 knowledge of unlawful and unconscionable marketing practices constitute
12 unlawful and unfair business practices in violation of Cal. Bus. & Prof. Code
13 §§ 17200, *et seq.*

14 66. By misrepresenting the scope of information available in, and the
15 nature of, the background reports accessible through its monthly subscriptions,
16 and by inducing Plaintiff and the Class members to proffer payment to
17 Defendant based on those misrepresentations, Defendant has engaged in
18 deceptive trade practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et*
19 *seq.*

20 67. The characteristics of a product or service are material terms of
21 any transaction because they are likely to affect a consumer's choice of, or
22 conduct regarding, whether to purchase a product. Any deception related to
23 characteristics and price of a consumer product or service is materially
24 misleading.

25 68. Defendant's misrepresentation of the true characteristics of its
26 monthly subscriptions, and of the true price and characteristics of its
27 background reports, is designed to, and likely to, mislead a reasonable
28 consumer acting reasonably under the circumstances.

69. The injury caused by Defendant's conduct is not outweighed by any countervailing benefits to consumers or competition (as neither consumers nor competition benefit from Defendant's misrepresentations) and the injury is one that consumers themselves could not reasonably have avoided.

70. Defendant has also violated the "fraudulent" prong of the UCL in that Defendant's statements, advertisements, and representations regarding what the monthly subscriptions to Defendant's background reports include (and at what price) are false and likely to deceive a reasonable consumer. Further, Defendant's acts constitute fraud in the inducement and fraud by omission.

71. Defendant has also violated the "unlawful" prong of the UCL in that its conduct violated the Consumer Legal Remedies Act (Cal. Bus. & Prof. Code §§ 1750, *et seq.*) and California's False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*).

72. Plaintiff and the Class have suffered harm as a proximate result of Defendant's violations of law and wrongful conduct in the form of monies lost.

73. Pursuant to Cal. Bus. & Prof. Code §§ 17203, Plaintiff seeks an order (i) permanently enjoining Defendant from engaging in the conduct described herein; (ii) awarding Plaintiff and the Class actual damages in the form of monies paid for Defendant's products; and (iii) requiring Defendant to pay reasonable costs and attorneys' fees pursuant to Cal. Code Civ. Pro. § 1021.5.

THIRD CAUSE OF ACTION
Violation of False Advertising Law
Cal. Bus. & Prof. Code §§ 17500 *et seq.*
(On Behalf of Plaintiff and the Class)

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

75. California's False and Misleading Advertising Law ("FAL") prohibits corporations from intentionally disseminating advertisements for

1 products or services that are “unfair, deceptive, untrue, or misleading.” Cal.
2 Bus. & Prof. Code §17500.

3 76. As alleged herein, Defendant designed and disseminated
4 advertising and representations that it knows or should reasonably know are
5 false and misleading because it misrepresents the actual characteristics and
6 price of the subscriptions to its services.

7 77. Defendant actively misrepresents the benefits offered under by its
8 monthly subscriptions, as well as the true price of its background reports, and
9 the scope of information available at each price point.

10 78. Specifically, while Defendant represented that its monthly
11 subscription would offer *unlimited* access to complete background reports, the
12 monthly subscriptions only offered limited, incomplete versions of the
13 background reports. To access complete reports—including information
14 advertised as being available as part of the monthly subscription, such as
15 divorce data, criminal records, phone numbers and other contact information,
16 professional licenses, hunting and fishing permits, weapons permits, sexual
17 offenses—Plaintiff and the Class were then required to pay an additional (and
18 undisclosed prior to the purchase of the monthly subscription) one-time fee per
19 report.

20 79. By committing the acts alleged in this Complaint, Defendant has
21 disseminated untrue and/or misleading statements through online advertising
22 and its website in order to sell its background report products, in violation of the
23 proscriptions of Cal. Bus. & Prof. Code §§ 17500, *et seq.*

24 80. Plaintiff and members of the Class were all charged monies by
25 Defendant for its background report products, and they would not have paid
26 those costs had they known they would not get the information they were
27 promised, or that they would need to pay undisclosed fees to obtain it.

28 81. Accordingly, Plaintiff and members of the Class have suffered

1 injury in fact and lost money as a result of Defendant's acts of false advertising.
2 Plaintiff seeks an order (i) permanently enjoining Defendant from engaging in
3 the fraudulent conduct described herein; (ii) awarding Plaintiff and the Class
4 actual damages in the form of monies paid for Defendant's products; and (iii)
5 requiring Defendant to pay reasonable costs and attorneys' fees pursuant to Cal.
6 Code Civ. Proc. § 1021.5.

7 **FOURTH CAUSE OF ACTION**
8 **Fraud in the Inducement**
9 **(On Behalf of Plaintiff and the Class)**

10 82. Plaintiff incorporates by reference the foregoing allegations.

11 83. As described with particularity herein, Defendant has designed,
12 and disseminated false and misleading advertising and statements promoting its
13 background report products. This conduct includes, but it is not limited to,
14 promoting and advertising subscriptions to its background report services as
15 offering unlimited access to complete background reports, when, in fact, the
16 subscriptions offered access only to limited reports, and consumers were
17 required to pay additional fees in order to access complete reports.

18 84. Thus, Defendant also advertised the subscriptions to background
19 report services without disclosing the actual characteristics of the subscription
20 and the true cost of accessing the complete reports, which are material terms of
21 any transaction.

22 85. Defendant promoted and charged for its background report
23 subscriptions with full knowledge that consumers were acting in reliance on its
24 false statements.

25 86. Through a series of advertisements, representations, omissions, and
26 false statements regarding its background report products, Defendant
27 misrepresented and obscured the actual cost and characteristics of its
28 subscriptions and background reports in order to induce members of the public

1 to purchase them.

2 87. Defendant took concrete and intentional steps to misrepresent the
3 actual prices and characteristics of its subscriptions and background reports.

4 88. Defendant intentionally designed its website and checkout process
5 to increase the rates of conversion (*i.e.*, sales) by misrepresenting the
6 characteristics of its subscriptions and intentionally concealing the actual prices
7 to be charged to obtain all advertised information.

8 89. By committing the acts alleged in this Complaint, Defendant has
9 designed and disseminated untrue and misleading statements through fraudulent
10 advertising in order to sell or induce members of the public to purchase
11 Defendant's subscriptions.

12 90. The price of a service is a material term of any transaction because
13 it directly affects a consumer's choice of, or conduct regarding, whether to
14 purchase a service. Any deception or fraud related to the price of a consumer
15 product is materially misleading.

16 91. The misrepresentation or omission of the characteristics of a
17 service is likely to mislead a reasonable consumer who is acting reasonably
18 under the circumstances.

19 92. Defendant knew of the falsity of its representations regarding the
20 background report subscriptions it marketed and charged for.

21 93. Defendant intended that its deceptive and fraudulent
22 misrepresentations and omissions would induce consumers to rely and act by
23 submitting their contact and payment information.

24 94. Defendant charged and collected from Plaintiff and members of
25 the Class monies without clearly and conspicuously stating the actual prices
26 necessary to obtain all available information as well as failing to disclose the
27 actual characteristics (*e.g.*, the information contained in the reports) of its
28 subscriptions. Accordingly, Plaintiff and members of the Class have suffered

1 injury in fact and lost money in justifiable reliance on Defendant's
2 misrepresentations and omissions of material fact.

3 95. In deceiving Plaintiff and the Class by creating, enhancing, and
4 supporting advertising that fails to clearly and conspicuously disclose, and in
5 fact actively misrepresents, the actual prices and characteristics of its
6 background report subscriptions, and inducing Plaintiff and the Class to proffer
7 payment based on those misrepresentations, Defendant has engaged in
8 fraudulent practices designed to mislead and deceive consumers.

9 96. Plaintiff and the Class have suffered harm as a proximate result of
10 Defendant's violations of law and wrongful conduct.

11 97. Plaintiff seeks an order (i) permanently enjoining Defendant from
12 engaging in the fraudulent conduct described herein; (ii) awarding Plaintiff and
13 the Class actual damages in the form of monies paid for Defendant's
14 subscriptions; and (iii) requiring Defendant to pay reasonable costs and
15 attorneys' fees.

16 **FIFTH CAUSE OF ACTION**
17 **Fraud By Omission**
18 **(On Behalf of Plaintiff and the Class)**

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

21 99. Based on Defendant's misrepresentations and omissions, Plaintiff
22 and the Class reasonably expected that Defendant's subscriptions would include
23 certain characteristics and could be fully obtained for a fixed price. Specifically,
24 Defendant's misrepresentations and omissions reasonably led Plaintiff and the
25 Class to believe that their monthly subscriptions would allow them access to
26 unlimited complete background reports. As described above, however, that was
27 not the case.

28 100. At all times, Defendant knew that the actual characteristics of its

1 background check subscriptions, and the prices of its background reports (and
2 what information they would contain) were not clearly and conspicuously
3 disclosed.

4 101. Defendant was under a duty to Plaintiff and the Class to disclose
5 the true characteristics and prices of its background report subscriptions
6 because:

7 a) Defendant was in a superior position to know the true state
8 of facts about the actual price and characteristics of those subscriptions;

9 b) Plaintiff and the Class members could not reasonably have
10 been expected to learn or discover that Defendant was concealing the
11 actual price and characteristics of its background report subscriptions;
12 and

13 c) Defendant knew that Plaintiff and the Class Members could
14 not reasonably have been expected to learn or discover the actual price of
15 its background report subscriptions.

16 102. The facts Defendant intentionally concealed from Plaintiff and the
17 Class were material in that a reasonable consumer would have considered them
18 to be important in deciding whether to purchase Defendant's products. Had
19 Plaintiff and the Class known that they would have had to pay additional fees to
20 access the full reports advertised as being included in the subscriptions, they
21 would not have paid for their subscriptions.

22 103. Defendant concealed or failed to disclose the true prices and
23 characteristics of its services in order to induce Plaintiff and the Class to act
24 thereon and proffer payment. Plaintiff and the Class justifiably relied on
25 Defendant's omissions to their detriment.

26 104. As a direct and proximate result of Defendant's misconduct,
27 Plaintiff and the Class have suffered actual damages in the form of monies paid
28 to purchase Defendant's products.

1 105. Plaintiff seeks an order (i) permanently enjoining Defendant from
2 engaging in the fraudulent conduct described herein; (ii) awarding Plaintiff and
3 the Class actual damages in the form of monies paid for Defendant's products;
4 and (iii) requiring Defendant to pay reasonable costs and attorneys' fees.

5 **SIXTH CAUSE OF ACTION**

6 **Breach of Contract**

7 **(On Behalf of Plaintiff and the Class)**

8 106. Plaintiff incorporates by reference the foregoing allegations as if
9 fully set forth herein.

10 107. In reliance upon Defendant's misrepresentations and deceptive
11 advertising, Plaintiff and Class members entered into contracts with Defendant
12 to purchase background report subscriptions. A material and inducing term of
13 the contracts was Defendant's representations regarding (i) what information
14 would be available in the reports as part of the subscriptions; and (ii) what the
15 total cost would be to obtain the information promised.

16 108. As a result of Defendant's misrepresentations detailed in this
17 Complaint, Plaintiff and the Class were not provided with the information
18 Defendant indicated would be included with the reports, and were not able to
19 obtain all available information for the advertised price, each in breach of the
20 consumer retail contracts.

21 109. Defendant breached its contractual obligations by failing to
22 provide all information it stated would be included, as well as not disclosing it
23 would require Plaintiff and Class members to pay additional fees to obtain what
24 information it did have, thereby breaching its contracts with Plaintiff and the
25 other members of the Class.

26 110. At all times relevant to this action, Defendant acted willfully and
27 with the intent to breach contracts entered into with Plaintiff and the Class.

28 111. Plaintiff and the Class have fully performed their contractual

obligations.

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

113. As a result, Plaintiff seeks an order (i) permanently enjoining Defendant from engaging in the conduct described herein; (ii) awarding Plaintiff and the Class actual damages in the form of monies paid for Defendant's products; and (iii) requiring Defendant to pay reasonable costs and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Milo Illich on behalf of himself and the Class respectfully request that the Court enter an order:

A. Certifying this case as a class action on behalf of the Class defined above, appointing Milo Illich as the representative of the Class, and appointing his counsel as class counsel;

B. Declaring that Defendant's actions, as set out above, violate the CLRA (Cal. Civ. Code §§ 1750, *et seq.*); UCL (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); the FAL (Cal. Bus. & Prof. Code §§ 17500, *et seq.*), and constitute fraud by omission, fraud in the inducement, and breach of contract;

C. Award injunctive relief and other relief as is necessary to protect the interests of the Class, including, *inter alia*, an order: (i) prohibiting Defendant from engaging in the wrongful and unlawful acts described herein, and (ii) awarding Plaintiff and the Class actual damages paid for Defendant's products;

D. Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;

E. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and

1 F. Awarding such other and further relief as the Court deems
2 reasonable and just.

3 **DEMAND FOR JURY TRIAL**

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

5
6 Dated: December 30, 2014

Respectfully submitted,

MILO ILLICH, individually and on
behalf of all others similarly situated,

7 By: /s/ Samuel Lasser
8 One of Plaintiff's Attorneys

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**Pro hac vice admission to be sought.*

*Attorneys for Plaintiff and the Putative
Class*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MILO ILLICH, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Sonoma County

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Samuel M. Lasser, Edelson PC

1934 Divisadero Street, San Francisco, California 94115

415-994-9930

DEFENDANTS

INSTANT CHECKMATE, INC., a Delaware corporation,

County of Residence of First Listed Defendant San Diego County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'14CV3026 DMS KSC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d)(2) (diversity)

Brief description of cause:

Violations of CLRA, UCL, and FAL; fraudulent inducement; fraud by omission; breach of contract

VII. REQUESTED IN COMPLAINT:☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$
5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

12/30/2014

SIGNATURE OF ATTORNEY OF RECORD

/s/ Samuel Lasser

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____