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UNITED STATES DISTRICT COURT

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DISTRICT OF ARIZONA

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Mark Schellenbach; William Ryder; on behalf of themselves and all others similarly situated,
 	
                                          Plaintiffs,
 	
      v.
 	
GoDaddy.com, LLC, a Delaware Corporation,
 	
                                          Defendant.
	Case No.: 2:16-cv-00746-DGC
	
	AMENDED CLASS ACTION COMPLAINT
	
	(Violation of Arizona Consumer Fraud Act; Fraudulent Concealment; California False Advertising Law; and California Unfair Competition Law)
	
	(JURY TRIAL DEMANDED)

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1   Plaintiffs Mark Schellenbach and William Ryder, by and through their

2 undersigned attorneys, bring this action on behalf of themselves and all others similarly

3 situated and allege the following, based upon personal knowledge as to themselves and,

4 in all other respects, based on publically available information, the investigation of

5 counsel, and information and belief.

6 **I.   INTRODUCTION**

7   1.   This is a class action arising from Defendant GoDaddy.com, LLC's

8 ("GoDaddy," "Defendant," or the "Company") omission of material information

9 regarding the nature, form, and function of "Dedicated Server" hosting services provided

10 by the Company.

11   2.   GoDaddy, which describes itself as "the world's largest technology

12 provider dedicated to small businesses," sells a variety of internet services, including

13 internet domain registration, web-based business applications, and forms of server

14 access, including "Cloud Servers," "Virtual Private Servers," and "Dedicated Servers."

15   3.   A server is a computer or computer program that manages access to a

16 centralized resource such as a webpage. A "Dedicated Server" is a server that is

17 dedicated to one customer; the resources of that server are not shared or utilized by any

18 other customer, and the customer has full access to all of the resources of the Dedicated

19 Server. In contrast, a "Virtual Private Server," sometimes referred to as a "Virtualized

20 Dedicated Server," is a "virtual machine," a software-based server that allows for several

21 separate servers to run on, and share the resources of, one physical server. Because

22 Virtual Private Servers share resources, one Virtual Private Server can be negatively

23 impacted by the operation of another Virtual Private Server located on the same physical

24 device. Put more simply, a "Dedicated Server" is a single physical computer server

25 dedicated to one customer who has full access to that server and its resources. A Virtual

26 Private Server is one of several software-based servers that are located on, and share the

27 resources of, a single physical server. Users have limited access to the underlying

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1   hardware, and the hard drive used by the Virtual Private server may have data that is

2   unrelated to a particular user. GoDaddy defines its "Dedicated Servers" as "Our ultimate

3   server option. Your own dedicated server, with all the performance, control and

4   flexibility you need."[1] In contrast, GoDaddy's Virtual Private Servers are described as

5   "Similar to a Dedicated Server," "but with a little less control and a lower price tag."[2]

6   4.   GoDaddy offers servers at three distinct price points: "Cloud Servers,"

7   "Virtual Private Servers," and "Dedicated Servers." Dedicated Servers are priced

8   substantially higher than the other server products GoDaddy offers, including its Cloud

9   Servers and its Virtual Private Servers. However, in marketing its Dedicated Servers,

10 GoDaddy does not inform its customers that GoDaddy's Dedicated Services are

11 virtualized, and that due to this fact, (a) the drives housing customers' Dedicated Servers

12 may contain data unrelated to them; (b) because of this unrelated data, users are not

13 allowed the full access to these servers and their resources that Dedicated Server users

14 would expect; (c) GoDaddy's virtualization prevents its customers from node-level

15 access to their servers, apparently because such access would, in turn, provide users with

16 access to data housed on the drive of their Dedicated Server that is unrelated to them;

17 and (d) the Dedicated Servers are configured in such a way that their use is not exclusive

18 to a single purchaser but, instead, operate in much the same way as Virtual Private

19 Servers, which GoDaddy offers at a lower price.   Hence, in reality, GoDaddy's

20 purported Dedicated Servers are, in fact, "Virtualized Dedicated Servers."

21 **II.   JURISDICTION AND VENUE**

22   5.   This Court possesses original matter jurisdiction over this action pursuant

23 to 28 U.S.C. § 1332(d)(2) because:

24   a.   The Plaintiffs are citizens of a different state than that of the Defendant.

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27 [1]   https://www.godaddy.com/servers, last visited on August 29, 2016.

28 [2]   *Id.*

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b.   Based on information and belief, the amount in controversy, exclusive of interest and costs, exceeds $5,000,000.

6.   Venue is proper in the District of Arizona pursuant to 28 U.S.C. § 1391(b) because GoDaddy is headquartered, and conducts substantial business, in the District of Arizona.

III.   PARTIES

7.   GoDaddy.com, LLC, is an internet domain registrar and web hosting company. GoDaddy maintains its corporate headquarters at 14455 North Hayden Road in Scottsdale, Arizona.

8.   Plaintiff Mark Schellenbach is a website designer based in Los Angeles, California. Beginning in December 2014 and continuing thereafter, Plaintiff Schellenbach, with Plaintiff William Ryder, purchased a Dedicated Server hosting plan maintained by Defendant.

9.   Plaintiff William Ryder is a website designer based in Los Angeles, California. Beginning in December 2014 and continuing thereafter, Plaintiff Ryder, with Plaintiff Mark Schellenbach, purchased a Dedicated Server hosting plan maintained by Defendant.

IV.   FACTUAL ALLEGATIONS

A.   The Servers Offered to Consumers by GoDaddy

10.   A server is a physical device or computer program that manages shared resources, such as web pages, databases, or computer files. As the web-based economy has grown, so too has the market for server solutions. GoDaddy is one of the largest providers of server hosting in the United States, providing a wide variety of server hosting plans. GoDaddy's server hosting business is a significant driver of Company revenue.   GoDaddy categorizes its revenue in three separate streams, "domains," "hosting and presence," and "business applications." Typically, more than one third of GoDaddy's revenue is derived from its "hosting and presence business." For example, in

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1   both calendar years 2014 and 2015, GoDaddy earned approximately 36% of its revenue,

2   or $507.9 million and $592 million respectively, from its hosting and presence business.

3   11.   GoDaddy provides three types of server hosting services, "Cloud Servers,"

4   "Virtual Private Servers," and "Dedicated Servers."

5   12.   Cloud Servers, sometimes referred to as Cloud or Shared Hosting, allow

6   multiple users to share the resources of a single physical server. With Cloud Hosting,

7   the resources of a physical server are allocated dynamically, *i.e.*, based on the demand of

8   each user. As a result, the performance of one website on a cloud server can be

9   dramatically impacted by the amount of traffic being directed to other users that share

10   the resources of the physical server.

11   13.   Virtual Private Servers, which are also sometimes referred to as Virtual

12   Dedicated Servers, are software-based servers that, like shared hosting, allow several

13   clients to use the resources of the same physical server. Virtual Private Servers rely on

14   platform virtualization software to function.   This platform virtualization software

15   allows for the creation of multiple operating system instances, called containers, to be

16   housed on a single physical server. Unlike Shared Hosting, in a Virtual Private Server

17   environment the resources of the physical server are allocated among the Virtual Private

18   Servers that are hosted on the physical server. In theory, this allows the users of Virtual

19   Private Server better performance and control than they would see in a Shared Hosting

20   environment, but less control and performance than they would see in a Dedicated

21   Server-hosting environment. Because each Virtual Private Server is allotted only a

22   portion of the resources of the physical server, costs associated with Virtual Private

23   Server hosting are generally significantly less expensive than are those associated with

24   Dedicated Servers. In a Virtual Private Server environment, even when only one Virtual

25   Private Server is operating on a physical server, the Virtual Private Server's access to the

26   resources of the physical server can be limited or otherwise hindered by way of that

27   virtualization.

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14.   Dedicated Servers are exactly that, one user has complete control and access to one physical server and the resources of that server are for the sole use of that user.   The performance of that user's Dedicated Server is not dependent on, nor negatively impacted by, any other user, because no other user shares access to the physical components of the server, and the hard drive supporting the Dedicated Server contains only data related to the Dedicated Server's user. Users of Dedicated Servers pay a premium for the unlimited access and control that comes with a Dedicated Server, and this access and control is not available on Virtual Private Servers or Cloud Servers.

15.   These three types of server environments can be analogized to the differences between an apartment, a condominium and a house. Shared hosts, like apartments, share the same, unallocated resources. Virtual Private Servers, like condos, share ownership of some specific common resources, and Dedicated Servers, like houses, are completely controlled by the owner, who has full and unlimited access to its resources.
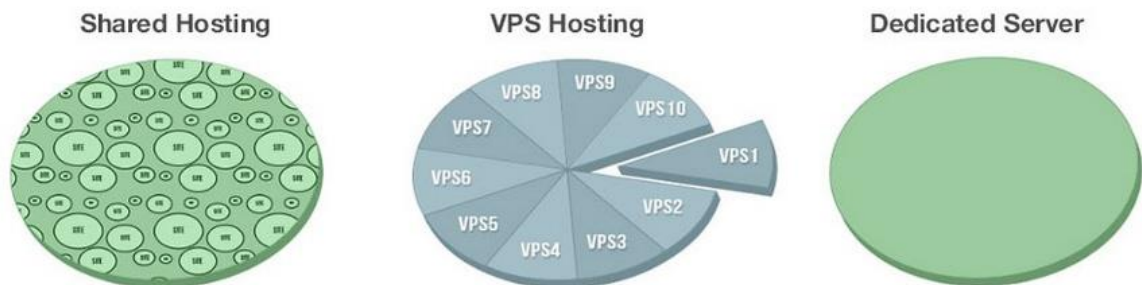
B.   GoDaddy's Marketing Representations Regarding its "Dedicated Server"

16.   On October 31, 2014, GoDaddy issued a press release titled "GoDaddy Launches New Dedicated and VPS Servers with Added Support for Designers and Developers." In the release, the Company announced that these new services would be offered through its "GoDaddy Pro" website, geared toward "tech-savvy developers and designers who need more detailed product information."

17.   On its website, GoDaddy represented that "[i]f you purchase a Dedicated

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1   Server, *an entire server is reserved exclusively for your account and usage. You will*

2   *have exclusive rights to your server's bandwidth, memory, and storage space, and your*

3   *server's performance will not be affected by traffic and the usage patterns of other*

4   *customers.*" (emphasis added).[3]

5   18.   On its website, GoDaddy highlights the nature and use of a Dedicated

6   Server, specifically noting that users have "exclusive rights" to the server and "admin

7   (root) access":

8   WHAT IS A DEDICATED SERVER?

9   Unlike normal hosting plans, which put many customers'
     accounts on a single server, a Dedicated Server is reserved
10   exclusively for the account and usage of a single customer.
                 This means that the Dedicated Server customer has exclusive
11   rights to their server's bandwidth, memory, and storage space,
                 and performance is not affected by traffic and the usage
12   patterns of other customers.

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14   When you purchase a Dedicated Server, you are actually
                 leasing a server box that is configured and set up according to
15   your preferences, but remains at our data center. A Dedicated
                 Server account provides you with a dedicated IP address and
16   full control of server usage and software installation, with
                 admin (root) access to the server.
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18   You can use a Dedicated Server for a wide variety of
                 purposes, including gaming servers, database management,
19   and traffic-intensive websites. Dedicated Servers are
                 particularly useful for companies and individuals who run
20   very-high-traffic websites or applications and who need the
                 bandwidth, versatility, and consistent performance of a
21   dedicated box.

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23   19.   In advertising its Dedicated Servers, GoDaddy provides a detailed

24   description of the technical specifications of its servers, providing customers with the

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26   [3]   https://www.godaddy.com/help/what-is-a-dedicated-server-127, last visited on March 7,
     2016.   Following the filing of the initial complaint in this matter, GoDaddy removed this
27   reference to Dedicated Servers from its website.

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1 ability to choose the size of their Dedicated Server's hard drive, the amount of RAM that

2 the Dedicated Server will be equipped with and the amount of bandwidth dedicated to

3 the Dedicated Server.[4]
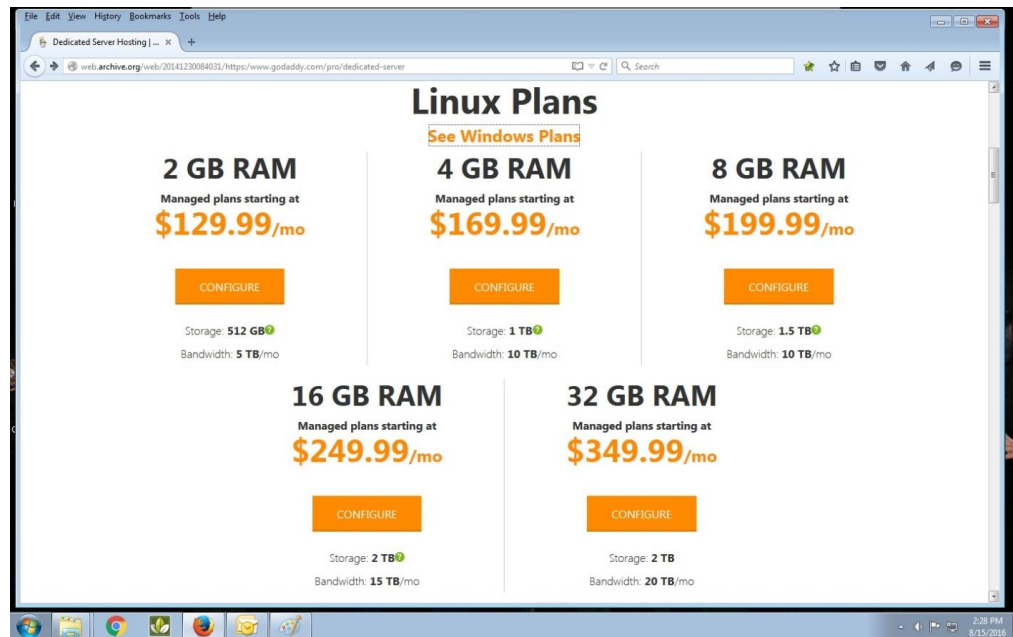

C. GoDaddy's Material Omissions

20. GoDaddy's description of its Dedicated Servers omits material information

that was required to be disclosed and would be important to the purchaser's decision to

purchase the product and at what price. Specifically GoDaddy does not disclose that the

hard drives used by GoDaddy's Dedicated Servers are "Virtualized."

21. GoDaddy also fails to disclose that users are prevented from fully using all

of the resources on its Dedicated Servers. For example, users are prevented from full

node-level access to the servers. GoDaddy prevents such access because, as GoDaddy

employees eventually disclosed to Plaintiffs, providing such access would allow users to

access "containers" maintained on server hard drives that were unrelated to the users.

22. Even while omitting this material information, GoDaddy provides granular

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[4] The image below was archived and saved on www.archive.org, a website maintained by
the Internet Archive on December 30, 2014, at http://web.archive.org/web/20141230084031/
https:/www.godaddy.com/pro/dedicated-server, last visited on August 16, 2016.

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1 detail regarding the hard drives installed in its Dedicated Servers, advertising their use of

2 Redundant Array of Independent Disks ("RAID") technology. However, GoDaddy does

3 not disclose that these disks are "virtualized" and that the disks contain data unrelated to

4 the users.
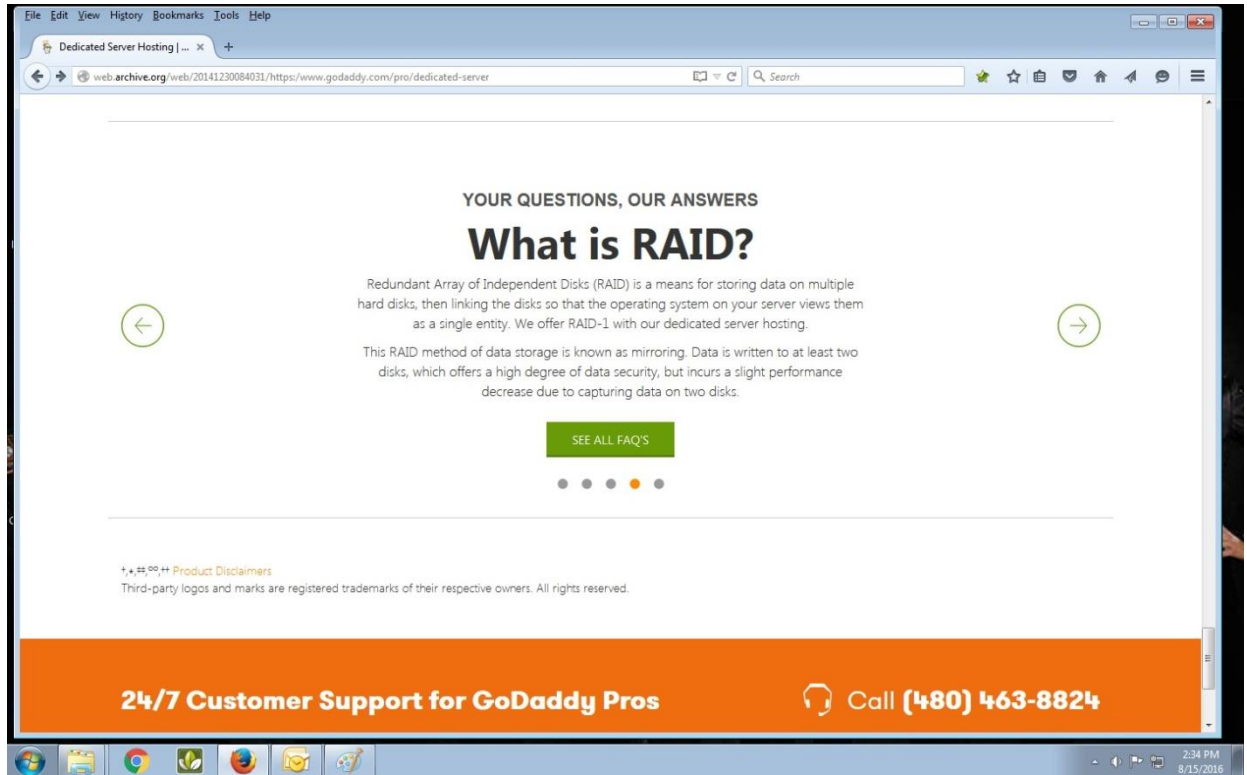
17   23.   GoDaddy highlighted the hard drives used in its Dedicated Servers in

18 multiple places on its Dedicated Server webpage. Beyond the examples noted above,

19 GoDaddy also referred to its RAID disk mirroring in its overview of the features of its

20 Dedicated Servers, again omitting to disclose that these disks are "virtualized" and that

21 the disks contain data unrelated to the users.

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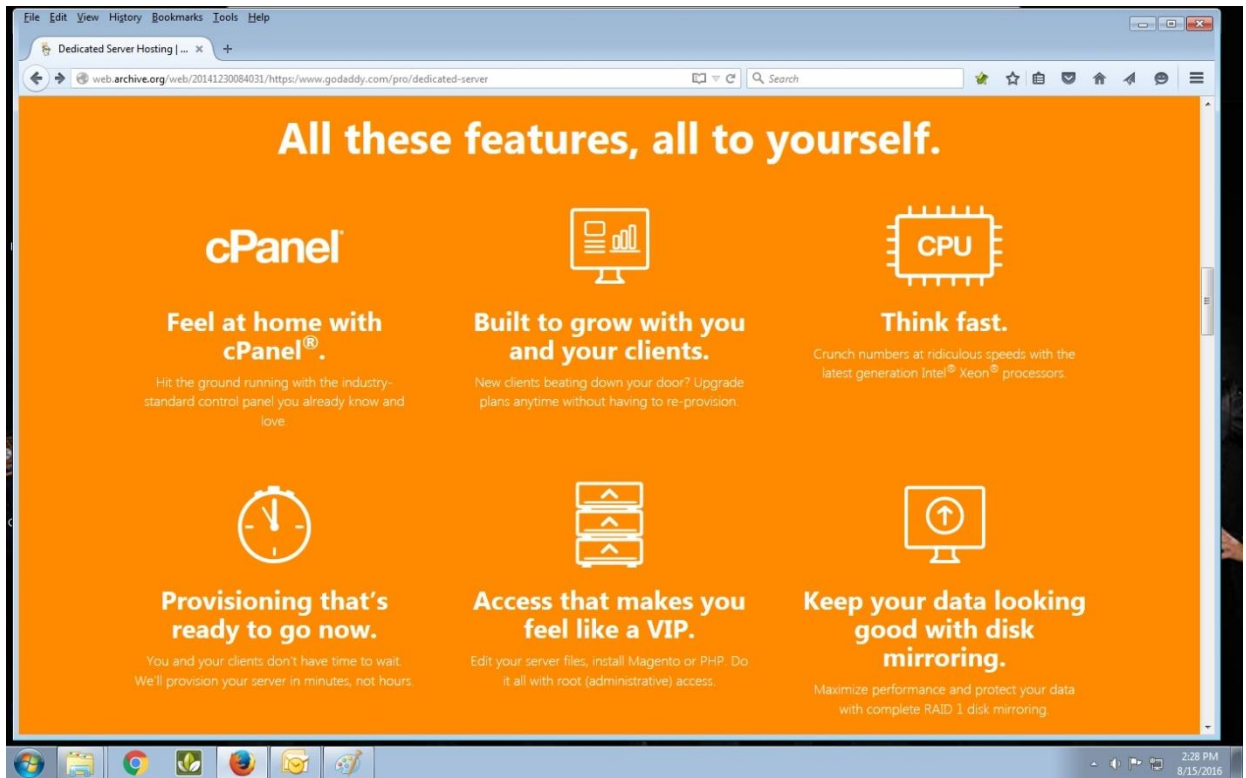
24.   Finally, while making disclosures about the "Levels of Management" available to its Dedicated Servers, GoDaddy omitted reference to the fact that its "Dedicated Servers" were virtualized through the use of OpenVZ virtualization software.

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25.   Later in the Class Period, GoDaddy updated the webpage on which it marketed the Dedicated Servers. However, at no time did GoDaddy disclose that its Dedicated Servers and their hard drives were "virtualized." Nor did GoDaddy disclose that its Dedicated Servers are configured using a container-based virtualization program, OpenVZ. Moreover, GoDaddy did not disclose that the physical hard drives of its Dedicated Servers are comprised of "containers" unrelated to those of its Dedicated Server Customers, thus requiring GoDaddy to limit users' access to, and control of, their servers. As a result, GoDaddy's Dedicated Servers are inherently flawed.

26.   GoDaddy should have disclosed (but chose not to) its virtualization practices and its use of container-based virtualization software on the website that it used and continues to use to advertise its Dedicated Servers. It did not. Instead, GoDaddy purposefully omitted reference to the nature of its "virtualized" Dedicated Servers.

27.   GoDaddy sells a variety of Dedicated Server plans under various configurations that run either the Windows or LINUX operating system. These Dedicated Server Configurations are priced from $79.99 per month to as much as

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1   $379.99 per month.[5]

2   28.   GoDaddy's Virtual Private Servers, in contrast, are sold at a substantially

3   lower price than it charges for Dedicated Server packages, beginning at $24.99 per

4   month.   However, as set forth below, users of GoDaddy's Dedicated Servers are not

5   actually getting Dedicated Servers.

6   **D.   Plaintiffs Discover that Their Dedicated Server Uses "Virtualized"
        Hard Drivers**

7   29.   Plaintiffs are website designers who needed a non-virtualized server for

8   their business. Accordingly, they compared dedicated servers offered by GoDaddy and

9   its competitors.   In December 2014, Plaintiffs selected and purchased GoDaddy's

10 Dedicated Server plan. However, shortly after purchasing GoDaddy's Dedicated Server,

11 Plaintiffs began experiencing crippling performance issues relating to their server.

12 Plaintiffs were unaware of GoDaddy's "virtualization" of their Dedicated Servers and,

13 had Plaintiffs known of this "virtualization," they would not have purchased a GoDaddy

14 Dedicated Server, or, had they wanted a virtualized server, they would have paid less for

15 it.

16 30.   In October 2015, in an attempt to alleviate their performance problems,

17 Plaintiffs upgraded their Dedicated Server package with GoDaddy, transitioning from a

18 2 Gigabyte ("GB") Dedicated Server running the Linux operating system, priced at

19 $119.99 per month plus an additional $10 per month for managed support, to a 4

20 Gigabyte Dedicated Server, priced at $159.99 per month plus an additional $10 per

21 month for managed support. However, this upgrade did not alleviate Plaintiffs' server-

22 related performance issues.

23 31.   As a result of these recurring performance issues, Plaintiffs engaged an

24 independent server expert to diagnose and resolve the performance issues.   After

25

26 _____

    [5]   GoDaddy's monthly costs reflect a substantial discount for new customers. For example,
    GoDaddy's lowest priced Dedicated Server plan initially costs $79.99 per month for a twelve

27 month contract, paid in advance. However, that monthly cost jumps dramatically to $129.99
    per month upon renewal.

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1   analyzing Plaintiffs' server, their IT consultant determined that GoDaddy's so-called

2   Dedicated Servers are running OpenVZ, a "container-based" virtualization program for

3   Linux.   OpenVZ allows a host, like GoDaddy, to control, and limit access to, the

4   resources of the server and to create multiple isolated operating system instances, also

5   referred to as "containers," on a single physical server, *i.e.*, a virtual private or virtual

6   dedicated server. At no point in the purchase process or upgrade process did GoDaddy

7   disclose to Plaintiffs that it utilizes "virtualized" discs in its Dedicated Servers. These

8   virtualized servers, which operate as "instances" or "containers" on a single physical

9   device, are subject to performance issues that traditional Dedicated Servers are not. As

10 with any virtual server environment, the addition of virtualization can hamper server

11 performance, especially where multiple virtual servers are operating in separate

12 instances on one physical device, because the operations of one instance can impact the

13 speed of operations on other instances.

14   32.   Plaintiffs chose to purchase a Dedicated Server from GoDaddy after

15 reviewing GoDaddy's description of its Dedicated Servers on the GoDaddy.com website

16 and after comparing the features and costs of GoDaddy's Dedicated Servers with

17 Dedicated Servers offered by GoDaddy's competitors. Had Plaintiffs known that

18 GoDaddy's Dedicated Servers were virtualized, that the hard drives used in GoDaddy's

19 Dedicated Servers were virtualized, and/or that as a result of this virtualization,

20 GoDaddy's Dedicated Server customers do not have full access to, and use of their

21 Dedicated Servers, Plaintiffs would not have purchased the GoDaddy Dedicated Servers

22 or would not have agreed to purchase them at the price they paid.   Thus, Plaintiffs,

23 whose concerns over server performance led them to discover this deception, are paying

24 more for server performance than they are actually receiving—in other words, GoDaddy

25 is charging Plaintiffs for superior service while omitting to disclose that it is providing

26 inferior service via a virtualized instance.

27   33.   Only in November, 2015, when Plaintiffs provided GoDaddy Technical

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1   Support ("GoDaddy Support") with evidence that the Dedicated Server offered by the

2   Company was, in fact, a virtualized server running OpenVZ, did GoDaddy Support

3   acknowledge that the instance in which their server was operating was "virtualized." In

4   another communication with GoDaddy Support on December 10, 2015, GoDaddy

5   Support denied Plaintiffs' request to run a specific root-level command because, as it

6   explained, running such a command, or allowing Plaintiffs access to that level of control

7   over their Dedicated Server would "give information related to the entire virtual

8   environment, *including other containers that you would not be relevant [sic], nor*

9   *secure information to give to you*." When asked to confirm that the Plaintiffs were

10 being granted access to a Dedicated Server, GoDaddy Support acknowledged that

11 Plaintiffs were being provided a "Virtualized Dedicated Server," as opposed to a

12 "Dedicated Server," and that "the disk itself would be virtualized," thus "*[i]t is not the*

13 *same as our legacy dedicated servers that would run from a physical drive*." With

14 these acknowledgements by GoDaddy Support, Plaintiffs confirmed the information that

15 GoDaddy had omitted to disclose, information that, to this day, GoDaddy continues to

16 omit from its website.

17   34.   Shortly after GoDaddy disclosed that Plaintiffs were not receiving the

18 benefit of the Dedicated Server that they were paying for, Plaintiffs chose to stop using

19 GoDaddy for hosting services and moved to another hosting company.

20 **V.   CLASS ACTION ALLEGATIONS**

21   35.   The claims of all members of the Class derive directly from a single course

22 of conduct by GoDaddy. GoDaddy has engaged, and continues to engage, in uniform

23 and standardized conduct, the omission of material information from the Class.

24 GoDaddy does not differentiate, in degree of care or candor, its actions or inactions, or

25 the content of its omissions, among individual members of the Class. Accordingly,

26 Plaintiffs bring this lawsuit as a class action on their own behalf and on behalf of all

27 other persons similarly situated as members of the proposed Class pursuant to Fed. R.

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1 Civ. P. 23(a) and (b)(1) and/or (b)(2) and/or (b)(3). This action satisfies the numerosity,

2 commonality, typicality, adequacy, predominance, and superiority requirements of those

3 provisions.

4   36.   Plaintiffs bring this action and seek to certify and maintain it as a class

5 action under Rules 23(a); (b)(1) and/or (b)(2); and (b)(3) of the Federal Rules of Civil

6 Procedure on their behalf and on behalf of the following Class and Subclass:

7 **The Nationwide Class (the "Class")**

8
   All individuals or entities who purchased or subscribed to "Dedicated
9 Server" services provided by GoDaddy from October 2014 to the present.

10
   The California Subclass
11

12 All persons in the state of California who purchased or subscribed to
   "Dedicated Server" services provided by GoDaddy from October 2014
13 through the present.

14   37.   The following persons are excluded from the Classes: Defendant; any

15 affiliate, parent, or subsidiary of Defendant; any entity in which Defendant has a

16 controlling interest; any officer, director, or employee of Defendant; any successor or

17 assign of Defendant; counsel for Plaintiff or anyone employed by counsel for Plaintiff in

18 this action and their immediate family; and any Judge to whom this case is assigned and

19 his or her immediate family and staff.

20   38.   This action has been brought and may properly be maintained on behalf of

21 the Classes proposed above under the criteria of Rule 23 of the Federal Rules of Civil

22 Procedure.

23   39.   **Numerosity**. This action satisfies the requirements of Fed. R. Civ. P.

24 23(a)(1). Plaintiffs are informed and believe that thousands of individuals geographically

25 disbursed throughout the United States have purchased Dedicated Server services from

26 Defendant, making individual joinder of all Class members impracticable.

27   40.   Each of the Classes is ascertainable because its members can be readily

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1   identified using sales records, contracts, and other information kept by Defendant in the

2   usual course of business and within their control. Plaintiffs anticipate providing

3   appropriate notice to the Class, in compliance with Fed. R. Civ. P. 23(c)(1)(2)(A) and/or

4   (B), to be approved by the Court after class certification, or pursuant to court order under

5   Fed. R. Civ. P. 23(d).

6   41.   **Existence and predominance of common questions**. Common questions

7   of law and fact exist as to all members of the Class and predominate over questions

8   affecting only individual members of the Class members as required by Fed. R. Civ. P.

9   23(a)(2). These common questions include the following:

10   a.   Whether GoDaddy engaged in the conduct alleged herein;

11   b.   Whether, by omitting material information that it had a duty to

12 disclose, GoDaddy falsely advertised, marketed, and sold Dedicated Server services;

13   c.   Whether purchasers of GoDaddy's Dedicated Server services

14 overpaid for those services;

15   d.   Whether the Defendant violated Ariz. Rev. Stat. § 44-1522(A) by

16 failing to disclose or concealing material facts as described herein;

17   e.   Whether, as to the California Subclass, the Defendant violated

18 Cal. Bus. & Prof. Code § 17200 by failing to disclose or concealing material facts as

19 described herein;

20   f.   Whether, as to the California Subclass, the Defendant violated

21 Cal. Bus. & Prof. Code § 17500 by failing to disclose or concealing material facts as

22 described herein;

23   g.   Whether Defendant is liable to the Class for damages and/or

24 penalties, as a result of their own knowledge, conduct, action, or inaction, and if so, in

25 what amount; and

26   h.   Whether Plaintiffs and the other members of the Class are

27 entitled to equitable relief, including but not limited to restitution or a preliminary

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1 and/or permanent injunction.

2   42.   **Typicality.** Plaintiffs' claims are typical of the claims of the Class as

3 required by Fed. R. Civ. P. 23(a)(3), because, among other things, as did the proposed

4 Class members, Plaintiffs also purchased Dedicated Server services from GoDaddy in

5 reliance on disclosures from which GoDaddy omitted material information.

6   43.   **Adequacy.** Plaintiffs are adequate representatives of the Class because

7 their interests do not conflict with the interests of the members of the Class they seek to

8 represent. Plaintiffs have retained counsel competent and experienced in complex class

9 action litigation, and Plaintiffs intend to prosecute this action vigorously. The interests of

10 the members of Class will be fairly and adequately protected by Plaintiffs and their

11 counsel. As such, Plaintiffs meets the requirements of Fed. R. Civ. P. 23(a)(4).

12   44.   **Declaratory and Injunctive Relief.** Fed. R. Civ. P. 23(b)(2): Defendant

13 has acted or refused to act on grounds generally applicable to Plaintiffs and the other

14 members of the Class, thereby making appropriate final injunctive relief and declaratory

15 relief, as described below, with respect to the Class as a whole.

16   45.   **Superiority.** A class action is superior to other available means for the fair

17 and efficient adjudication of this dispute. The injury suffered by each member of the

18 Class, while meaningful on an individual basis, is not of such magnitude as to make the

19 prosecution of individual actions against GoDaddy economically feasible. Even if

20 members of the Class themselves could afford such individualized litigation, the court

21 system could not. In addition to the burden and expense of managing many actions

22 arising from the design defect, individualized litigation presents a potential for

23 inconsistent or contradictory judgments. Individualized litigation increases the delay and

24 expense to all parties and the court system presented by the legal and factual issues of

25 the case. By contrast, the class action device presents far fewer management difficulties

26 and provides the benefits of single adjudication, economy of scale, and comprehensive

27 supervision by a single court.

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46.   In the alternative, the Class may be certified because:

        a.   the prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual members of the Class;

        b.   the prosecution of separate actions by individual members of the Class would create varying standards of conduct required of the Defendant;

        c.   the prosecution of separate actions by individual members of the Class would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other members of the Class not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and

        d.   GoDaddy has acted, or refused to act on, grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to the members of the Class as a whole.

VI.   CAUSES OF ACTION

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COUNT I

VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT

(ARIZ. REV. STAT. §§ 44-1521, *et seq*.)

(On Behalf of the Nationwide Class)

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47.   Plaintiffs incorporate by reference the allegations set forth above as if set forth fully herein.

48.   Plaintiffs bring this claim on behalf of themselves and the Nationwide Class.

49.   Plaintiffs and GoDaddy are each "persons" as defined by Ariz. Rev. Stat. § 44-1521(6). The Server Hosting products are "merchandise" as defined by Ariz. Rev. Stat. § 44-1521(5).

50.   The Arizona Consumer Fraud Act proscribes "[t]he act, use or

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1 employment by any person of any deception, deceptive act or practice, fraud, false

2 pretense, false promise, misrepresentation, or concealment, suppression or omission of

3 any material fact with intent that others rely upon such concealment, suppression or

4 omission, in connection with the sale or advertisement of any merchandise whether or

5 not any person has in fact been misled, deceived or damaged thereby."

6   51.   By omitting, failing to disclose, and actively concealing that the

7 "Dedicated Servers" offered by GoDaddy were "Virtualized," GoDaddy engaged, and

8 continues to engage, in deceptive business practices prohibited by the Arizona Consumer

9 Fraud Act, Ariz. Rev. Stat. § 44-1522(A).

10   52.   GoDaddy owed Plaintiffs a duty to disclose the defective nature of the

11 Dedicated Servers because GoDaddy**:**

12   a)   Possessed exclusive knowledge of the form and function of the

13   products that it was marketing as Dedicated Servers;

14   b)   Intentionally concealed the fact that the Dedicated Servers were, in

15   fact, virtualized servers; and/or

16   c)   Omitted material information about the characteristics and

17   performance of the Dedicated Servers generally.

18   53.   GoDaddy's omissions were likely to and did in fact deceive reasonable

19 consumers, including Plaintiffs, about the true performance and characteristics of the

20 Dedicated Servers.

21   54.   As a result of its violations of the Arizona Consumer Fraud Act detailed

22 above, GoDaddy caused actual damage to Plaintiffs and, if not stopped, will continue to

23 harm members of the Class.

24   55.   Plaintiffs and the other members of the Class sustained damages as a result

25 of GoDaddy's unlawful acts and are, therefore, entitled to damages and other relief as

26 provided under the Arizona Consumer Fraud Act**.**

27   56.   Plaintiffs also seek punitive damages as provided under the Arizona

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1   Consumer Fraud Act.

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3   **COUNT II**

4   **FRAUDULENT CONCEALMENT**

5   **(On Behalf of the Nationwide Class)**

6   57.   Plaintiffs incorporate by reference the allegations set forth above as if set

7   forth fully herein.

8   58.   Plaintiffs bring this claim on behalf of themselves and the Class. GoDaddy

9   intentionally concealed that the Dedicated Server services it offered were "Virtualized,"

10 and, through their omissions, denied Plaintiffs and the other members of Class

11 information that is highly relevant to their purchasing decision.

12   59.   Through advertising, the Company's website, and other forms of

13 communication, GoDaddy omitted material information from consumers and the Class.

14   60.   GoDaddy knew that its omissions were material to consumers and

15 members of the Class.

16   61.   GoDaddy had a duty to disclose the purposefully omitted information.

17   62.   Plaintiffs and other members of the Class were ignorant of the fact that

18 GoDaddy dedicated servers were "virtualized" and that the hard drives of those servers

19 were themselves "virtualized." Plaintiffs were also ignorant of the fact that the hard

20 drives in their virtualized Dedicated Servers included data unrelated to their servers.

21   63.   The aforementioned omissions were material because, had they been

22 disclosed, Plaintiffs and the other members of the Class would not have bought the

23 Dedicated Server services, or would not have bought a "Virtualized Dedicated Server" at

24 the prices they paid.

25   64.   The aforementioned omissions were material because the facts omitted

26 were of the type that would typically be relied on by a person purchasing or leasing a

27 server.

28   19

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65.   Defendant intentionally omitted this material information in order to sell Dedicated Server services for higher prices than it could have sold "Virtual Dedicated Server" services.

66.   As a result of their reliance, Plaintiffs and the other members of the Class have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase of the Dedicated Server services.

67.   GoDaddy's conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other members of the Class. Plaintiffs and the other members of the Class are therefore entitled to an award of punitive damages to the extent permitted under applicable law.

COUNT III

NEGLIGENT MISREPRESENTATION

(On Behalf of the California Subclass)

68.   Plaintiffs incorporate by reference the allegations set forth above as if set forth fully herein.

69.   Plaintiffs bring this claim on behalf of themselves and the California Subclass.

70.   Defendant had a duty to provide honest and accurate information to customers so that customers could make informed decisions regarding the purchase of Dedicated Server services.

71.   Defendant had exclusive knowledge of the material fact that its "Dedicated Server" was "virtualized," as set forth in detail above.

72.   Defendant suppressed and omitted the material fact that its "Dedicated Server" was "virtualized," as detailed above.

73.   Defendant knew, or in the exercise of reasonable diligence should have known, that consumers would be misled by the omission of this material information.

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74.   GoDaddy actively and intentionally omitted these material facts, in whole or in part, with the intent to deceive and induce Plaintiffs and the Members of the Class to pay from $79.99 to $379.99 per month for a "Dedicated Server."

75.   Plaintiffs and the Class were unaware of the omitted material facts and would not have acted as they did if they had known the omitted facts. Had they known these facts, they would not have paid the substantially higher price for Go Daddy's "Virtual Dedicated Server" or would have obtained a true Dedicated Server from someone other than GoDaddy.

76.   By reason of the foregoing, GoDaddy's omission of material facts proximately caused Plaintiffs and members of the Class to sustain damages in an amount to be determined at trial.

COUNT IV

VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW

(California Business & Professions Code §§ 17500, *et seq.*)

(On Behalf of the California Subclass)

77.   Plaintiffs incorporate by reference the allegations set forth above as if set forth fully herein.

78.   Plaintiffs bring this claim on behalf of themselves and on behalf of the members of the California Subclass.

79.   Cal. Bus. & Prof. Code § 17500 provides**:**

> It is unlawful for any . . . corporation . . . with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise,. . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated … from this state before the public in any state, in any newspaper or other publication, or any advertising device, . . . or in any other manner or means whatever, including over the Internet, any statement . . . . which is untrue or misleading, and which is

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known, or which by the exercise of reasonable care should be
known, to be untrue or misleading.

80.   Defendant caused to be made or disseminated through California and the United States, through advertising, marketing and other publications, statements, including statements included on its website, that omitted material information from consumers and members of the Class. Defendant knew, or should have known through the exercise of reasonable care, that the omitted information was material to consumers, including Plaintiffs and the other members of the California Subclass.

81.   Defendant has violated Cal. Bus. & Prof. Code § 17500 because its omissions regarding its Dedicated Servers were material and likely to deceive a reasonable consumer.

82.   Plaintiffs and the other members of the California Subclass have suffered an injury in fact, including the loss of money or property, as a result of Defendant's unfair, unlawful, and/or deceptive practices. In purchasing Dedicated Server services from Defendant, Plaintiffs and the other members of the California Subclass relied on the representations by Defendant from which Defendant omitted material information. Had Plaintiffs and the other members of the California Subclass been aware of the omitted information, they would not have purchased the Dedicated Server services and/or paid as much for them. Accordingly, Plaintiffs and other members of the California Subclass overpaid for their Dedicated Server services and did not receive the benefit of their bargain.

83.   All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated, both in the state of California and nationwide.

84.   Plaintiffs, individually and on behalf of the other members of the California Subclass, request that this Court enter such orders or judgments as may be necessary to enjoin Defendant from continuing their unfair, unlawful, and/or deceptive

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1   practices and to restore to Plaintiffs and the other members of the California Subclass

2   any money Defendant acquired by unfair competition, including restitution and/or

3   restitutionary disgorgement, and for such other relief set forth below.

COUNT V

VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW

(California Business & Professions Code §§ 17200, *et seq.*)

(On Behalf of the California Subclass)

8   85.   Plaintiffs incorporate by reference the allegations set forth above as if set

9   forth fully herein.

10   86.   Plaintiffs bring this claim on behalf of themselves and on behalf of the

11 members of the California Subclass.

12   87.   California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§

13 17200, *et seq.*, defines unfair business competition to include any "unfair," "unlawful,"

14 or "fraudulent" business act or practice. The Act also provides for injunctive relief,

15 restitution, and disgorgement of profits for violations.

16   88.   Defendant's unlawful, unfair, and fraudulent business acts and practices, as

17 described herein, were and are in violation of the UCL. Defendant's conduct violates the

18 UCL in the following ways:

19   a)   By knowingly and intentionally concealing from Plaintiff and the

20   other members of the California Subclass material information

21   regarding its "Dedicated Servers"; and

22   b)   By violating other California laws, including Cal. Bus. & Prof.

23   Code § 17500.

24   89.   Defendant's omissions alleged herein caused Plaintiffs and the other

25 members of the California Subclass to make their purchases or leases of GoDaddy's

26 Dedicated Servers. Had they been aware of the information omitted by Defendants,

27 Plaintiffs and the other members of the California Subclass would not have purchased

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1 these "Virtual Dedicated Servers," would not have purchased these "Virtual Dedicated

2 Servers" at the prices they paid, and/or would have purchased alternative dedicated

3 servers from other sources.

4   90.   Defendant's practice is also immoral, unethical, oppressive or

5 unscrupulous and causes injury to consumers which outweigh its benefits.

6   91.   Accordingly, Plaintiffs and the members of the California Subclass have

7 suffered injury in fact, including lost money or property as a result of Defendant's

8 omissions.

9   92.   Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or

10 practices by Defendant, under Cal. Bus. & Prof. Code § 17200.

11   93.   Plaintiffs request that this Court enter such orders or judgments as may be

12 necessary to enjoin Defendant from continuing its unfair, unlawful, and/or deceptive

13 practices and to restore to Plaintiffs and members of the California Subclass any money

14 Defendant acquired by unfair competition, including restitution and/or restitutionary

15 disgorgement, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code §

16 3345; and for such other relief set forth below.

17 **VII.   PRAYER FOR RELIEF**

18   WHEREFORE, Plaintiffs and the proposed Classes pray for judgment as follows:

19   1.   For an order certifying this action as a class action;

20   2.   For an order appointing Plaintiffs as representatives of the Classes and

21 their counsel of record as Class counsel;

22   3.   For an award of damages pursuant to the Arizona Consumer Fraud Act;

23   4.   For an award of actual, general, special, incidental, statutory,

24 compensatory and consequential damages in an amount to be proven at trial;

25   5.   For an award of exemplary and punitive damages in an amount to be

26 proven at trial;

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6.   For an order requiring Defendant to disgorge, restore, and return all monies wrongfully obtained together with interest calculated at the maximum legal rate;

7.   For an order enjoining the wrongful conduct alleged herein;

8.   For costs;

9.   For interest;

10.   For attorneys' fees under applicable law; and

11.   For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial for all claims so triable.

DATED: September 1, 2016   **ROSE LAW GROUP, PC**

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