

KAZEROUNI LAW GROUP, APC

Abbas Kazerounian, Esq. (249203)

ak@kazlg.com

Matthew M. Loker, Esq. (279939)

ml@kazlg.com

245 Fischer Avenue, Unit D1

Costa Mesa, CA 92626

Telephone: (800) 400-6808

Facsimile: (800) 520-5523

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

Todd M. Friedman, Esq. (216752)

tfriedman@attorneysforconsumers.com

Adrian R. Bacon, Esq. (280332)

abacon@attorneysforconsumers.com

324 S. Beverly Dr., #725

Beverly Hills, CA 90212

Telephone: (877) 206-4741

Facsimile: (866) 633-0228

HYDE & SWIGART

Joshua B. Swigart, Esq. (225557)

josh@westcoastlitigation.com

2221 Camino del Rio South, Suite 101

San Diego, CA 92108

Telephone (619) 233-7770

Facsimile: (619) 297-1022

Attorneys for Plaintiff,

Darren Handy

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**DARREN HANDY,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

LOGMEIN, INC.,

Defendant.

Case No.: 14-cv-1355 JLT

CLASS ACTION

**THIRD AMENDED COMPLAINT
FOR DAMAGES FOR VIOLATIONS
OF CALIFORNIA BUSINESS AND
PROFESSIONS CODE § 17200**

JURY TRIAL DEMANDED

HON. JENNIFER L. THURSTON

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INTRODUCTION

1. DARREN HANDY (“Plaintiff”), by Plaintiff’s attorneys, brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, to challenge the illegal actions LOGMEIN, INC. (“Defendant”) with regard to Defendant’s misleading business practices that caused Plaintiff damages.
2. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to a Plaintiff, or to a Plaintiff’s counsel, which Plaintiff alleges on personal knowledge.
3. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.
4. Unless otherwise stated, Plaintiff alleges that any violations by Defendant were knowing and intentional, and that Defendant did not maintain procedures reasonably adapted to avoid any such violation.
5. Unless otherwise indicated, the use of any Defendant’s name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of that Defendant named.

JURISDICTION AND VENUE

6. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of the State of California, seeks relief on behalf of a California class, which will result in at least one class member belonging to a different state than that of Defendant, a company whose principal place of business and State of Incorporation are in the State of Massachusetts. In addition, the matter in controversy exceeds \$5,000,000 exclusive of interest of costs. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

- 1 7. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons: (i)
2 Plaintiff resides in the County of Kern, State of California which is within this
3 judicial district; (ii) the conduct complained of herein occurred within this
4 judicial district; and, (iii) Defendant conducted business within this judicial
5 district at all times relevant.
6
7 8. Because Defendant conducts business within the State of California, personal
8 jurisdiction is established.

9 **PARTIES**

- 10 9. Plaintiff is an individual who resides in the County of Kern, State of
11 California and a “person” as defined by Cal. Bus. & Prof. Code § 17201.
12 10. Plaintiff is informed and believes, and thereon alleges, that Defendant is a
13 company whose State of Incorporation and principal place of business is in the
14 State of Massachusetts.
15 11. Plaintiff is informed and believes, and thereon alleges, that Defendant is a
16 worldwide company that offers consumers the ability for remote control, file
17 sharing, systems management, data backup, business collage and on-demand
18 customer support for various operating systems.

19 **FACTUAL ALLEGATIONS**

- 20 12. At all times relevant, Plaintiff is an individual residing within the State of
21 California.
22 13. Plaintiff is informed and believes, and thereon alleges, that at all time
23 relevant, Defendant conducted business in the State of California.

24 *Defendant’s Ignition App*

- 25 14. On April 4, 2010, Plaintiff purchased an “app” called Ignition from Defendant
26 for \$29.99 via iTunes. Ignition is a an extension/add-on feature to LogMeIn’s
27 PC-based remote access services, which allows users to utilize LogMeIn’s
28 PC-based virtual private network (VPN) services by use of an application that

1 is downloaded onto a consumer's smartphone or tablet device.

2 15. In order for Ignition to function and allow customers to remotely access their
3 virtual desktops, Defendant must maintain constant levels of technical service,
4 which support the functionality of the Ignition App.

5 16. A consumer's use and value, regarding the use and functionality of the
6 Ignition Apps that they purchased and downloaded onto their smartphone or
7 tablet devices, is tied directly to Defendant's continued financial and technical
8 support of the Ignition App.

9 17. Defendant's Ignition app was advertised as a one-and-done product, to be
10 purchased for \$29.99 free and clear, with the intent and implication of it being
11 used as a premium and supplemental add-on product to LogMeIn's free PC-
12 based offering ("LogMeIn Free"). While LogMeIn had other PC-based
13 services at the time Ignition was introduced, the vast majority of users,
14 including Plaintiff, utilized LogMeIn Free. Further, the vast majority of
15 LogMeIn Ignition users, utilized LogMeIn Free, and purchased Ignition in
16 conjunction with their use and enjoyment of LogMeIn Free

17 18. LogMeIn Free was a VPN service, offered for and advertised as "free" by
18 Defendant. LogMeIn Free allowed users to remotely access a desktop PC
19 from a remote location, by using another desktop or laptop computer, which
20 was connected to the Internet. LogMeIn Free allowed users to sit at one
21 computer, at any location, and access a different computer as if you were
22 sitting in front of the connected computer itself. Defendant offered and
23 advertised these remote access services as free of charge for years. Even the
24 name of the product had the word "Free" as part of its hook to entice
25 customers to download and utilize Defendant's many products and services,
26 including Ignition.

27 19. Defendant also, at some point prior to January 21, 2014, introduced a
28

1 premium version of the LogMeIn service known as LogMeIn Pro, which was
2 offered for an annual fee, and offered some additional features, including
3 remote printing and file sharing.

- 4 20. The vast majority of Defendant's customers, including Plaintiff, from any
5 time prior to January 21, 2014, utilized LogMeIn Free as opposed to
6 LogMeIn's paid subscription services. In fact, many popular review sites
7 recommended that consumers forgo the expensive alternative LogMeIn Pro as
8 unnecessary for the average consumer.¹ The vast majority of Defendant's
9 customers who were Ignition users, including Plaintiff, from any time prior to
10 January 21, 2014, likewise utilized and relied upon LogMeIn Free, and the
11 free use of this companion/base product, to Ignition.

12
13 *LogMeIn's Misleading Messages And Forced Migration*

- 14 21. Following years of benefiting from Defendant's marketing, Defendant
15 abruptly informed consumers on January 21, 2014 that consumers would no
16 longer be able to utilize Ignition for the functions which consumers, including
17 Plaintiff, reasonably believed they had paid \$29.99 as consideration thereto.
- 18 22. On or around January 21, 2014, Defendant posted a message on its website,
19 stating as follows:

20 "[s]tarting in January, we will gradually migrate users of LogMeIn-
21 branded remote access offerings and Ignition-branded remote access
22 offerings to a single, premium access product."²

- 23 23. Defendant further posted a message, which was available to all LogMeIn Free
24 users, including Ignition users, upon their attempt to log into their LogMeIn
25 Free accounts which stated as follows:

26 **You no longer have access to your computers.**

27
28 ¹ See for instance: http://www.pcworld.com/article/231929/logmein_free.html

² See <http://blog.logmein.com/it-management/logmein-changes>.

1 In order to continue using remote access, you'll need to
2 purchase an account subscription of LogMeIn Pro. But you
3 can still take advantage of discounted introductory pricing,
4 with packages starting at \$49/year for two computers (bold
face in original).

5 24. Additionally, Defendant posted further messages on its website, indicating to
6 consumers that LogMeIn Ignition, as well as LogMeIn Free, would each be
7 "impacted" by the migration:

8 "LogMeIn Free will no longer be available starting January 21,
9 2014. We will begin gradually migrating users of LogMeIn and
10 Ignition-branded remote access offerings to a paid-only
account-level subscription of LogMeIn Pro.

11 ...

12 For owners of LogMeIn Ignition for iPad/iPhone and LogMeIn
Ignition for Android.

13 While customers who purchased these apps are impacted by
14 this change, we have taken steps to be especially attentive to
15 these customers. LogMeIn Ignition for iPad/iPhone and
16 Android app purchasers will receive significant discounts, as
17 well as generous terms to ease the transition. Details of these
offers are being sent to Ignition mobile users this week, both
via email and in-product notifications."³

18 Another such posting stated as follows:

19 "FAQ about Changes to LogMeIn Free

20 Q: Why are you making this change?

21 A: In order to address the evolving needs of our customers, we
22 will be unifying our portfolio of free and premium remote
23 access products into a paid-only offering. We believe this
24 offering to be the best premium desktop, cloud and mobile
access experience available in the market today"⁴

25
26 ³ <http://community.logmein.com/t5/Free/Changes-to-LogMeIn-Free/td-p/107089>.

27 A true and correct copy of this URL is attached hereto as Exhibit A.

28 ⁴ This posting was previously available on Defendant's website at
<http://help.logmein.com/SelfServiceKnowledgeRenderer?type=FAQ&id=kA0a00000000shH8CAI>, and was cited in Plaintiff's First Amended Complaint. ECF No. 20

- 1 25. Consumers, including Plaintiff, reasonably believed, after being exposed to
2 such messages by Defendant, that LogMeIn was entirely discontinuing all
3 technical and financial support, including the server functionality and
4 databases, required to maintain a continued level of service for both Ignition
5 and LogMeIn Free users.
- 6 26. These statements, which were widely disseminated to the public, misled
7 Plaintiff and reasonably-minded consumers into believing that they would no
8 longer be able to utilize their Ignition Apps to remotely log in to their virtual
9 desktops.
- 10 27. These statements, which were widely disseminated to the public, misled
11 Plaintiff and reasonably-minded consumers into believing that the Ignition
12 Apps, which they paid valuable consideration of \$29.99 each to purchase, as
13 well as the companion/base service of LogMeIn Free were now being
14 rendered completely valueless and functionless.
- 15 28. Consumers, including Plaintiff, reacted with outrage over Defendants'
16 announcements that Ignition and LogMeIn Free would no longer be available
17 to consumers who had paid for LogMeIn services. For example, the following
18 comments (along with hundreds of similar comments) were posted by
19 consumers on LogMeIn's Ignition App posting on the Google App Store's
20 website:⁵

21
22 ///

23
24
25 ¶25 FN 2. Since the filing of Plaintiff's Complaint, Defendant appears to have
26 removed this URL from its website, but it can still be accessed using the following
27 URL:

28 <http://web.archive.org/web/20141203145204/http://help.logmein.com/SelfServiceKnowledgeRenderer?type=FAQ&id=kA0a000000shH8CAI>.

⁵ See, <https://play.google.com/store/apps/details?id=com.logmein.ignitionpro.android&hl=en>

COMMENTS

“Was great until you forced yearly fee I paid 29.99 for this app 3 years ago no problems until today. LogMeIn just removed their free subscription which means I am now forced to pay in order to continue to use this software. Even LogMeIn website says that this could not happen on their community forums. But they are doing it non the less. I am filling Google Play TOS violation and with the Better Business Bureau.” Mark Hobnobber 8/19/14

“Terrible company Thanks a lot for treating your early adopters like garbage by selling them a fixed price product and then forcing a subscription model on them. Terrible customer loyalty. Do not download - there is a plethora of FREE apps that work just as well as this one.” Tony TeKare 7/18/14

“Bait and switch.. do not use Bought the paid version and now they switch to a subscription based model.. true bait and switch and completely illegal.. this company must be forced out of business, Google please suspend all of thier apps.” Matrix SS 7/21/14.

No longer functional App will no longer function on my Galaxy s4. Very unsatisfied. Scott Turner 2/25/15

paid for 3 years ago, now not working So a few years ago I had to Pay via Android store for the ap which I did. Now logmein changes their terms and I can no longer use what I paid for. logged support call, what a joke. Rather consider teamviewer, cheaper if you buy (and logmein will force you to buy) a company that sells a product then no longer allows you to use, can't be trusted. RIC Spear 1/20/15

Will not support ignition customers I bought log me in ignition for \$30. Now they renamed the app, made it free, but charge for the computer license and will not support ignition customers. I have phoned and emailed multiple times, but no one wants to help. I believe there are many like me out there. Company must have gotten to big, and they lost track of their products. No one knows how to handle this. One tech support guy knew what ignition was and agreed with me, but know one can make it work. Would ask for a refund if I could. Grant Van Skiver 1/25/15

App crashing The latest update with the search function is crashing the app on the phone. I am a heavy user of Logmein accessing more than 500 machines. Please fix this!! Smallthingzzz 1/15/15

I paid for sub and it won't work I paid for pro service and this app won't work it's junk. Noneya Bidnez 1/27/15

Scammed Paid 30 bucks for "unlimited" use. Few months later I was being billed. I used logmein for years, personal and business use. I always recommended it to my friends. But now, I have to go with teamviewer. With

1 them, you post once and you're good to go. Christopher Banacka 11/15/14

2 Very disappointed... Paid for app, and then LMI changed... 0 stars! I was
3 using the free LogMeIn service on about 25 computers and bought this app to
4 access them from my phone / tablet. A few months later, LMI discontinued
5 the free version, limited me to 10 computers, and now have no use of my
6 account at all. Only way to use is to pay about \$100 PER PC! I am deleting all
7 accounts and trying to get a refund. VERY DISAPPOINTED WITH
8 LOGMEIN. There are other services out there that work similar or the same
9 for cheaper. Joseph Anderson 12/31/.15

8 Stopped working since latest update Used to work well until latest update.
9 Now keeps telling me no internet connection. Does not matter if I am
10 connected to WiFi or not. Used to be able to use even if I have a not very
11 strong 3g signal. Now can't even login Asif Mirza 11/15/14

11 Bait and switch If I knew the free service would later become an annual
12 charge (and a two computer limit?), I wouldn't have paid the thirty dollars for
13 the app when it came out. Phillip Catelano 10/28/14

13 Horrible company Paid \$30 for this app and received service free. Now they
14 are giving the app away to everyone and charging for service even if you
15 bought the app. I switched to TeamViewer and have been happy since. Free
16 app and free service for non-commercial users. Mike Led 10/27/14

16 Removed free remote login Without free remote login, I know longer need the
17 app. Nicholas Cina 8/7/14

17 greed and broken promises No more to say. Was a long time advocate. Was.
18 C Brown 10/20/14

18 Paid user I paid \$30.00 for this app and now I can't use it because they now
19 charge \$99.00 for 2 computers, thanks for ripping me off... Mike Freeman
20 11/5/14

21 Paid 29.99 No more free accounts. Not happy Steve Johnson 8/20/14

22 ...⁶

23 29. Defendant answered consumers' legitimate outcries to this announcement by
24 admitting that the reason it was making this change, and pushing its customers
25 to sign up for a paid subscription service, rather than continue using the

26 ⁶ LogMeIn's own website shows hundreds of pages of similar posting and
27 comments made by hundreds, if not thousands, of LogMeIn customers who
28 express frustration about LogMeIn's announcement regarding the migration to a
paid subscription model: See <http://community.logmein.com/t5/Free/Changes-to-LogMeIn-Free/td-p/107089>).

1 products its customers had already paid for, was to migrate customers to a
2 paid subscription service, in order to generate more revenues:

3 “In order to address the evolving needs of our customers, we will be
4 unifying our portfolio of free and premium remote access products into
5 a paid-only offering”⁷

6 30. Defendant’s aforementioned, widely publicized statements, which were
7 disseminated to all users of LogMeIn Free and LogMeIn Ignition, reasonably
8 led consumers, including Plaintiff, to believe that they would no longer be
9 able to utilize the Ignition App, an app which they had each paid \$29.99 to
10 download, enjoy and utilize free and clear.

11 31. Plaintiff himself received these misleading messages. Specifically, Defendant
12 informed Plaintiff that “[t]o continue using remote access, [Plaintiff would]
13 need to purchase an account-level subscription of LogMeIn Pro...”

14 32. Since Plaintiff was not interested in paying additional amounts beyond the
15 \$29.99 required to purchase Defendant’s app, Plaintiff refused to make further
16 purchases with Defendant.

17 33. Thereafter, Plaintiff received a message from Defendant when trying to log
18 into his LogMeIn Free account on his computer that stated the following:

19 **You no longer have access to your computers.**

20
21 In order to continue using remote access, you’ll need to
22 purchase an account subscription of LogMeIn Pro. But you
23 can still take advantage of discounted introductory pricing,
24 with packages starting at \$49/year for two computers (bold
25 face in original).

26 34. Plaintiff was misled by Defendant into believing that the Ignition App, which
27 he paid \$29.99 for, had been shut down, and would no longer allow him
28 remote access to his desktop at his office.

⁷ <http://help.logmein.com/SelfServiceKnowledgeRenderer?type=FAQ&id=kA0a000000shH8CAI>; (last visited February 17, 2015).

1 35. Thereafter, Plaintiff temporarily ceased all use of the LogMeIn Ignition and
2 LogMeIn Free services entirely.

3 36. Relying on Defendant's statements that remote access would no longer be
4 available to Plaintiff. Plaintiff incurred additional expenses, including travel
5 expenses, cost of fuel, and additional commuting time to and from his
6 physical office, and also lost value stemming from his discontinuation of use
7 of a product he had already paid \$29.99 for.

8 37. Plaintiff did not log back in to the Ignition App for a full month, after
9 receiving these misleading messages from Defendant, being of the reasonable
10 belief that Ignition had ceased working entirely due to Defendant's statements
11 that the App would no longer be supported, and also being of the mind that,
12 even if it did work, that it was of limited use without the functionality of the
13 base/companion LogMeIn Free service to which it was an actual and intended
14 add-on service.

15 38. Plaintiff was not alone in his reasonable beliefs, as demonstrated by the
16 comments of consumers described in Paragraph 28.

17 39. Plaintiff alleges, on information and belief, that Defendant's frequency of
18 customer usership, including both the number of unique periodic Ignition
19 users, and the frequency with which each unique Ignition user logged into
20 their Ignition Apps, dropped off precipitously in the months following
21 Defendant's aforementioned misleading announcements.

22 40. Plaintiff alleges, on information and belief, that Defendant profited from this
23 alleged precipitous drop-off, due to reduced costs in tech-support, customer
24 service, and infrastructure and bandwidth costs, as well as increased revenues
25 from sales of LogMeIn Pro accounts, subscribed to by consumers who would
26 not have otherwise subscribed, but for Defendant's misleading statements, and
27 forced migration of users to the paid subscription model.
28

- 1 41. Plaintiff further alleges, on information and belief, that Defendant had earned
2 a fixed revenue for purchases of Ignition made by consumers, yet continued
3 to experience ongoing variable expenditures to support the continued use and
4 enjoyment of the Ignition App by those same customers, including Plaintiff.
- 5 42. After experiencing backlash from its customer base surrounding its
6 announcements regarding its forced migration of Ignition users to a paid
7 subscription model, Defendant later backtracked from its misleading and
8 deceptive statements regarding Ignition's reduced functionality, and attempted
9 to soften the blow to its reputation and its damage to consumers, by releasing
10 statements that indicated Ignition would in fact continue to function.
- 11 43. However, consumers, including Plaintiff, remained deceived and confused by
12 Defendant's misleading statements, and experienced a loss of use and
13 enjoyment over their purchased Ignition Apps.
- 14 44. Plaintiff suffered actual damages, incurring personal expenses, as a result of
15 Defendant's misleading statements (as described above). These expenses
16 would not have been incurred, but for the fact that Defendant misled Plaintiff
17 into believing that he could no longer utilize the functionality of the Ignition
18 App for which he paid \$29.99. In fact, avoiding these expenses was one of
19 the primary and substantial reasons that Plaintiff paid \$29.99 in exchange for
20 Ignition.
- 21 45. Plaintiff alleges that the transmission of misleading statements to consumers,
22 including to Plaintiff, as alleged above, was part of a systemic scheme
23 employed by Defendant, in order to forcibly and deceptively migrate its user
24 base to a paid subscription model, reduce corporate expenditures, and increase
25 revenues, for financial gain, at the expense of its customers.
- 26 46. In misleading Plaintiff and other similarly situated consumers, Defendant
27 deceived Plaintiff and others into believing that the product they paid for was
28

1 no longer serviceable and available for use, as part of a widespread and
2 systemic ruse to unfairly, fraudulently and unlawfully induce said consumers
3 into purchasing paid subscription services rather than continue using the
4 already purchased, free and clear, Ignition app services, at considerable and
5 previously undisclosed additional expense.

6 47. Regardless of whether Defendant's representations to Plaintiff were true or
7 untrue, such statements had a tendency to mislead Plaintiff and other similarly
8 situated consumers, who relied upon such representations and either ceased
9 use of the app (saving Defendant additional maintenance expense by way of
10 such misrepresentations), or were misled into purchasing a LogMeIn Pro
11 subscription at considerable additional expense.

12 48. Such reliance was reasonable, in light of Defendant's misleading
13 representations.

14 49. As of January 22, 2014, Plaintiff reasonably believed that he could no longer
15 utilize Defendant's app without paying a previously-undisclosed fee required
16 by Defendant.

17 50. Defendant's misleading messages sent to Plaintiff and consumers were part of
18 Defendant's scheme to migrate consumers to a paid subscription service,
19 despite their already having paid in full for a service which purported to
20 provide the exact same services.

21 51. Furthermore, Plaintiff is not alone; Defendant has improperly induced
22 thousands of other consumers to either discontinue usage of Defendant's app
23 or pay a substantial yearly fee.

24 52. Plaintiff alleges these activities (collectively referred to herein as "Misleading
25 Messages And Forced Migration") to be a violation of California's Unfair
26 Competition Law, Business & Professions Code §17200 *et seq.* (the "UCL");
27 and California's False Advertising Law California Bus. & Prof. Code §
28

1 17500, et seq. (the “FAL”).

2 *LogMeIn’s Bait And Switch*

3 53. Plaintiff further alleges that Defendant engaged in a classic bait and switch,
4 through which a large community of Defendant’s customers, including
5 Plaintiff, were induced to pay \$29.99 for an expensive premium smartphone
6 and tablet application, only to be told at a later time that they would have to
7 pay a hefty fee for subscription services to receive the same level of service
8 they thought they had previously purchased in full.

9 54. According to Defendant’s misleading statements, as alleged above, consumers
10 that desired to continue using Ignition were required to purchase an account-
11 level subscription of LogMeIn Pro. Said subscriptions range from \$99.00 per
12 year for individuals and up to \$449.00 per year for small businesses.

13 55. Failure to disclose that additional fees may apply unfairly induced and
14 motivated Plaintiff’s purchase of Defendant’s app. This omission was
15 material to Plaintiff’s purchase, and induced his reliance to purchase Ignition.
16 Further, Defendant had a duty to disclose to Plaintiff and other Ignition app
17 purchasers that additional fees may apply to their purchase at a later time.

18 56. The vast majority of Defendant’s customer base of Ignition users relied on the
19 free use of LogMeIn Free, a companion/add-on product, which was
20 inextricably intertwined with LogMeIn Ignition, both technologically and via
21 consumer preferences, consumer use patterns, and reasonable consumer
22 expectations.

23 57. LogMeIn Free and LogMeIn Ignition both served a similar role, and are
24 utilized for this same function, yet in separate contexts and temporal settings.
25 In this sense, LogMeIn Free and Ignition are complementary products and
26 services, which were intended, developed and marketed by Defendant to be
27 used in tandem (depending on the setting), not in isolation.
28

1 58. LogMeIn Free was a VPN service, used by consumers when intending to log
2 into their remote desktops while on their PC or Laptop computer.

3 59. LogMeIn Ignition was a VPN service, used by consumers when intending to
4 log into their remote desktops while on their smartphone or tablet device.

5 60. Consumers' strong preference, during the time these products were offered,
6 was to utilize LogMeIn Ignition as an add-on service to the base service of
7 LogMeIn Free. The vast majority of consumers looking for VPN packages,
8 including Plaintiff, required the use of a PC-based offering, and were willing
9 to purchase an upgrade, or companion/add-on service for their mobile devices,
10 only because they were also enjoying the free use of Defendant's PC-based
11 offering.

12 61. Plaintiff alleges, on information and belief, that consumers' reasonable
13 expectations and *de facto* use of LogMeIn Free and Ignition, was such that a
14 reasonable consumer would be highly unlikely to purchase Ignition in
15 isolation from their use and enjoyment of LogMeIn Free.

16 62. Thus, Plaintiff alleges that LogMeIn Free's free price point and continued
17 foreseeable availability, is an implied condition of purchase, for any consumer
18 who purchased Ignition.

19 63. Plaintiff utilized these products/services in tandem, and reasonably believed
20 that these products/services were paired as a joint offering at the time he
21 purchased Ignition for \$29.99.

22 64. Further, since the time of LogMeIn's deceptive migration, LogMeIn has
23 released a new smartphone application: LogMeIn (hereinafter "LogMeIn
24 App").

25 65. Just as with tandem services LogMeIn Free and LogMeIn Ignition, Defendant
26 advertises LogMeIn App to be used in conjunction with LogMeIn Pro,
27 through its present-day marketing:
28

1 “The world of remote control just got a little sweeter, just in time for
2 the holidays.

3 We’re thrilled to unveil our NEW free app in the App Store that
4 provides our premier remote control experience free to iPad and iPhone
5 users. After seven years of delivering free remote control from any
6 internet connected computer to a remote computer, we’ve brought the
7 same functionality for free to your iOS device. Did we mention that it’s
8 100% free?

8 New users of the LogMeIn app will be able to remotely control any PC
9 or Mac with LogMeIn installed, no additional cost is required to simply
10 access and control your remote computer. So your files, apps and
11 desktops are always within reach from your mobile device

11 ...
12 LogMeIn app paired with a LogMeIn Pro subscriptions gives you the
13 best of LogMeIn’s remote access capabilities anytime, anywhere on
14 virtually any device.”⁸

14 66. LogMeIn App is free to download, and in all material respects, serves the
15 same functionality as Ignition previously served for Plaintiff and other
16 similarly situated consumers. LogMeIn App is free to download onto any
17 smartphone or tablet device, however, it requires a subscription to LogMeIn
18 Pro in order for the app to be functional. LogMeIn App, upon being initiated
19 on a smartphone device, prompts a consumer to enter in their account
20 information, and requires 1) a LogMeIn account, and 2) At least one PC of
21 Mac running LogMeIn software. LogMeIn Free is no longer available to
22 consumers, and thus, LogMeIn App requires a LogMeIn Pro account in order
23 to function. LogMeIn Pro and LogMeIn App are thus, inextricably
24 intertwined products and services, just as LogMeIn Free and LogMeIn
25 Ignition were at the time Plaintiff and other similarly situated consumers
26 purchased Ignition. LogMeIn App cannot be used in any meaningful fashion
27

28 ⁸ <http://blog.logmein.com/tag/logmein-app>

1 without a LogMeIn Pro account.

2 67. Defendant continues to market and promote its VPN offerings (smartphone
3 plus PC) as tandem services, which are inextricably intertwined and offered
4 for clear and intended use in conjunction with one another, not as separate
5 products.

6 68. Plaintiff alleges, on information and belief, that Defendant forcibly phased out
7 and forcibly discontinued the tandem services of LogMeIn Free and Ignition,
8 (despite their having been paid for in full by thousands of consumers) in order
9 to start selling the tandem services of LogMeIn Pro and LogMeIn App at a
10 considerably higher price point.

11 69. Plaintiff alleges, on information and belief, that Defendant was aware, at the
12 time it instituted its forced Migration to a paid subscription model, that its
13 customer-base reasonably expected and in fact utilized LogMeIn Free and
14 Ignition as companion side-by-side products, in conjunction with one another,
15 and not as independent stand-alone services. In fact, Defendant still
16 advertises and utilizes its existing services, in exactly the same manner.

17 70. Plaintiff alleges, on information and belief, that Defendant was aware, at the
18 time it instituted its forced Migration to a paid subscription model, that its
19 customer-base would experience decreased value, functionality and usefulness
20 in the Ignition app, which they purchased for \$29.99, if LogMeIn Free was
21 discontinued.

22 71. Defendant's customer base did in fact experience decreased value,
23 functionality and usefulness in the Ignition app, which they purchased for
24 \$29.99, once LogMeIn Free was discontinued.

25 72. As indicated and exemplified by the customer complaints cited above, and
26 which are pervasive throughout each of the consumer review sites referenced
27 in this Complaint, consumers, including Plaintiff, were reasonably led to
28

1 believe by Defendant that VPN services for their phones/tablets were a
2 supplemental add-on/companion service to a base VPN service for their PCs
3 or laptops.

4 73. As indicated and exemplified by the customer complaints cited above, and
5 which are pervasive throughout each of the consumer review sites referenced
6 in this Complaint, LogMeIn's "free" availability was a primary and material
7 motivating factor in consumers' including Plaintiff's, decision to purchase
8 Ignition.

9 74. Defendant failed to adequately inform consumers, at the time of their purchase
10 of Ignition, that any additional fees would be required at a later time to
11 continue uninterrupted use of the Ignition App, and its companion/add-on
12 products and services.

13 75. This failure to disclose constitutes a misrepresentation by omission, as
14 Defendant had a duty to conspicuously disclose this material fact at the time
15 Plaintiff and other similarly situated consumers purchased Ignition, as
16 information regarding the imposition of additional fees was not known by
17 Plaintiff or other similarly situated consumers, because Defendant possessed
18 exclusive knowledge of its own pricing schemes and business strategies.

19 76. Defendant advertised Ignition as a supplemental product/service to LogMeIn
20 Free, not as a standalone product. For instance, Defendant's widely
21 disseminated advertisements characterize Ignition as "One app to control all
22 your information." In explanation, Defendant stated:

23
24 With one touch, you can directly control all of your computers
25 from your iPad or iPhone. It's anywhere, anytime access to
26 everything on your PC or Mac – all your files, applications and
27 desktops – right at your fingertips.

28 77. Moreover, Defendant advertised Ignition as "One app to manage your files."

1 You don't have to be at your computer or even access your
2 computer or to work with your files on the go. Now you can
3 grab files from your computer and save them directly to your
4 iPad/iPhone to create your own file system. And you can use
5 your iPad/iPhone to transfer files between computers. With
6 everything you need in the palm of your hand, you're free to
7 go.

8 78. Next, Defendant advertised Ignition as "One app to expand your iPad's
9 possibilities."

10 Want to use your iPad as your primary device while on the
11 road? Go for it. Ignition combines the ease of your iPad with
12 the strength of your computers. One touch opens any file on
13 your home or work computer. Then you can edit it with your
14 computer applications. And save it down to your iPad so you
15 can view and open files, even when you're away from Wi-
16 Fi/3G.

17 79. Finally, Defendant advertised Ignition as "One app to be more productive."

18 Be fast, be mobile, and get stuff done quickly and easily. You
19 don't have to figure out a workaround or have to change the
20 way you normally work. You can get everything on your
21 computers, and you can view and share anything on or offline.
22 With Ignition, you have the flexibility and freedom to work
23 anywhere, anytime.

24 80. These advertisements, among others, further misled consumers by
25 encouraging them to purchase Ignition as a companion/add-on product to
26 LogMeIn Free. These advertisements, among others, held Ignition out to be a
27 side-by-side product sold in conjunction with existing VPN services, not as a
28 stand-alone product to be used in isolation. Further, Ignition was in fact a
side-by-side companion/add-on product to be used in conjunction with
existing VPN services, namely with LogMeIn Free, as evidenced by
Defendant's continued, to this day, offering of its existing VPN services as a
package.

81. Defendant therefore had a duty to disclose that it would, or might, later

1 materially alter its pricing model and/or servicing model for companion/add-
2 on products and services, which would impact consumers' use and enjoyment
3 of the products they were purchasing (i.e. Ignition).

4 82. In agreeing to pay \$29.99 for Ignition, Plaintiff actually relied upon
5 Defendant's material omission, that this fee would permit Plaintiff to use
6 Defendant's app uninterrupted and for the foreseeable future, without the
7 requirement of further payments or additional fees. Plaintiff further
8 reasonably believed that by agreeing to pay \$29.99, LogMeIn Free's
9 companion/add-on service would remain available at the same rates as they
10 were at the time of his purchase of Ignition. Said reliance is based upon the
11 fact that Defendant did not adequately warn Plaintiff, nor consumers similarly
12 situated, that further fees may apply to ensure uninterrupted usage of
13 Defendant's app, or that Defendant's app may, at a later time, be significantly
14 devalued in terms of usefulness, convenience, and functionality in conjunction
15 with its related base-services, by Defendant's own affirmative business
16 practices. These business practices include, as discussed in more detail below,
17 changing the pricing model for companion/add-on services in a material
18 fashion, charging Plaintiff and other similarly situated consumers undisclosed
19 and unexpected fees to continue their same level of use of combined service,
20 and sending consumers misleading messages which led them to reasonably
21 believe that they would no longer be able to utilize the functions of Ignition at
22 all.
23

24 83. Had Defendant warned Plaintiff that additional fees may apply, Plaintiff
25 would not have purchased Ignition.

26 84. Had Defendant adequately warned Plaintiff that LogMeIn Free would be
27 replaced with an expensive subscription-based service, Plaintiff would not
28 have purchased Ignition.

1 85. Plaintiff placed considerable value on his ability to utilize necessary
2 companion PC-based VPN services (LogMeIn Free) at no cost, in deciding to
3 purchase what he reasonably believed was part of a VPN service package.

4 86. In inducing Plaintiff to purchase Defendant's app, Defendant did not inform
5 Plaintiff that additional fees beyond the \$29.99 already paid to download the
6 Ignition App would ever be required to continue usage of Ignition and its
7 companion/base services.

8 87. Plaintiff alleges that the failure to adequately disclose the imposition of
9 additional fees beyond the \$29.99 already paid to download the Ignition App
10 is a material omission.

11 88. Plaintiff alleged these activities (collectively referred to herein as "Bait And
12 Switch") to be a violation of California's UCL and FAL.

13
14 **CLASS ALLEGATIONS**

15 89. Plaintiff brings this action on his own behalf, and on behalf of all others
16 similarly situated ("The Class").

17 90. Plaintiff represents, and is a member of, "The Class" defined as follows: (i) all
18 persons in the State of California; (ii) that purchased Defendant's app,
19 LogMeIn Ignition; (iii) at any time prior to January 21, 2014.

20 91. Defendant and their employees or agents are excluded from the Class.

21 92. Plaintiff does not know the exact number of persons in the Class, but believes
22 them to be in the several hundreds, if not thousands, making joinder of all
23 these actions impracticable.

24 93. The identity of the individual members is ascertainable through Defendant's
25 and/or Defendant's agents' records or by public notice.

26 94. There is a well-defined community of interest in the questions of law and fact
27 involved affecting the members of The Class. The questions of law and fact
28 common to the Class predominates over questions affecting only individual

1 class members, and include, but are not limited to, the following:

- 2 a. Whether Defendant's practices are "unfair" as defined by California
3 Business and Professions Code § 17200;
- 4 b. Whether Defendant's practices are "illegal" as defined by California
5 Business and Professions Code § 17200;
- 6 c. Whether Defendant's practices are "fraudulent" as defined by
7 California Business and Professions Code § 17200;
- 8 d. Whether such practice violates California Business and Professions
9 Code § 17200;
- 10 e. Whether Defendant violated California Bus. & Prof. Code § 17500, et
11 seq.
- 12 f. Whether members of the Classes are entitled to declaratory relief; and,
13
- 14 g. Whether members of the Classes are entitled to injunctive relief.

15 95. Plaintiff will fairly and adequately protect the interest of the Classes.

16 96. Plaintiff has retained counsel experienced in consumer class action litigation
17 and in handling claims involving unlawful debt collection practices.

18 97. Plaintiff's claims are typical of the claims of the Class which all arise from the
19 same operative facts involving Defendant's practices.

20 98. A class action is a superior method for the fair and efficient adjudication of
21 this controversy.

22 99. Class-wide damages are essential to induce Defendant to comply with the
23 federal and State laws alleged in the Complaint.

24 100. Class members are unlikely to prosecute such claims on an individual basis
25 since the individual damages are small. Management of these claims is likely
26 to present significantly fewer difficulties than those presented in many class
27 claims, e.g., securities fraud.

28 101. Plaintiff and the Class seek injunctive relief against Defendant to prevent

1 Defendant from forcing consumers to purchase a subscription for Defendant's
2 app.

3 102. Defendant has acted on grounds generally applicable to the Class thereby
4 making appropriate final declaratory relief with respect to the class as a
5 whole.

6 103. Members of The Class are likely to unaware of their rights.

7 104. Plaintiff contemplates providing notice to the putative class members by direct
8 mail in the form of a postcard and via publication.

9 105. Plaintiffs request certification of a hybrid class combining the elements of
10 Fed. R. Civ. P. 23(b)(3) for monetary damages and Fed. R. Civ. P. 23(b)(2)
11 for equitable relief.
12

13 FIRST CAUSE OF ACTION

14 Violation of the California False Advertising Act

15 (Cal. Bus. & Prof. Code §§ 17500 et seq.)

16 106. Plaintiff incorporates by reference each allegation set forth above.

17 107. Pursuant to California Business and Professions Code section 17500, et seq., it
18 is unlawful to engage in advertising "which is untrue or misleading, and
19 which is known, or which by the exercise of reasonable care should be known,
20 to be untrue or misleading."

21 108. Defendant misled consumers by making misrepresentations and untrue
22 statements about the Ignition App, namely, through its Misleading Messages
23 And Forced Migration, as well as its Bait And Switch. Specifically,
24 Defendant made misleading statements to Plaintiff and other similarly situated
25 consumers, which caused them to reasonably believe that Ignition and
26 LogMeIn Free were both being discontinued, and that in order to receive the
27 same level of service as previously paid for in full, Plaintiff and other
28 similarly situated consumers would need to pay additional subscription fees

1 and sign up for a LogMeIn Pro account. Further, Defendant misled
2 consumers by leading Plaintiff and other Class Members to believe that
3 LogMeIn Free and Ignition were companion services, while failing to disclose
4 that the app would be rendered obsolete and substantially less valuable, useful
5 and practical by Defendant's own business decisions, at a later time, and that
6 considerable subscription fees would be required to continue using the
7 applications.

8
9 109. Further, Defendant failed to disclose material facts to Plaintiff and other class
10 members, at the time of their purchase of Ignition, as described in detail
11 above. Defendant had a duty to disclose the fact that additional fees may
12 apply to Plaintiff's purchase, but failed to make such disclosures. Defendant
13 also misled consumers by leading them to believe that the product they had
14 purchased, for valuable consideration, was now valueless and functionless, in
15 order for Defendant to monetarily gain advantage over its customers and
16 avoid future foreseeable expenditures for reasonable maintenance costs.

17 110. Defendant knew that their representations and omissions, relating both to its
18 Misleading Messages And Forced Migration, as well as its Bait And Switch
19 were untrue and misleading, and deliberately made the aforementioned
20 representations and omissions in order to deceive reasonable consumers like
21 Plaintiff and other Class Members into paying more for something they
22 reasonably believed they had already purchased, or alternatively stop using a
23 service that was paid for in full, in order to avoid foreseeable expenditures for
24 reasonable maintenance costs.

25 111. As a direct and proximate result of Defendant's Misleading Messages And
26 Forced Migration, as well as its Bait And Switch, Plaintiff and the other Class
27 Members have suffered injury in fact and have lost money or property.
28 Plaintiff reasonably relied upon Defendant's representations regarding the

1 Ignition App, namely Defendant's Misleading Messages And Forced
2 Migration, as well as its Bait And Switch. In reasonable reliance on
3 Defendant's false and misleading statements and practices, as described
4 herein, Plaintiff and other Class Members purchased the Ignition App, and
5 later prematurely ceased their enjoyment and use of the Ignition App. In turn
6 Plaintiff and other Class Members were provided with an Ignition App that
7 turned out to be of significantly less value than what they were led to believe
8 they had purchased, and therefore Plaintiff and other Class Members have
9 suffered injury in fact.

10
11 112. The Misleading Messages And Forced Migration, as well as the Bait And
12 Switch described herein presents a continuing threat to Plaintiff and the Class
13 Members in that Defendant persists and continues to engage in these practices,
14 and will not cease doing so unless and until forced to do so by this Court.
15 Defendant's conduct will continue to cause irreparable injury to consumers
16 unless enjoined or restrained. Plaintiff is entitled to preliminary and
17 permanent injunctive relief, as well as disgorgement and restitution to Plaintiff
18 and all Class Members Defendant's revenues associated with their false
19 advertising, or such portion of those revenues as the Court may find equitable.
20

21 **SECOND CAUSE OF ACTION**

22 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**

23 [Against All Defendants]

24
25 113. Plaintiff incorporates by reference all of the above paragraphs of this
26 Complaint as though fully stated herein.

27 114. Actions for relief under the unfair competition law may be based on any
28 business act or practice that is within the broad definition of the UCL. Such
violations of the UCL occur as a result of unlawful, unfair or fraudulent

1 business acts and practices. A plaintiff is required to provide evidence of a
2 causal connection between a defendant's business practices and the alleged
3 harm--that is, evidence that the defendant's conduct caused or was likely to
4 cause substantial injury. It is insufficient for a plaintiff to show merely that the
5 defendant's conduct created a risk of harm. Furthermore, the "act or practice"
6 aspect of the statutory definition of unfair competition covers any single act of
7 misconduct, as well as ongoing misconduct.

8 **UNFAIR**

9 115. California Business & Professions Code § 17200 prohibits any “unfair ...
10 business act or practice.” Defendant’s acts, omissions, misrepresentations,
11 and practices as alleged herein also constitute “unfair” business acts and
12 practices within the meaning of the UCL in that its conduct is substantially
13 injurious to consumers, offends public policy, and is immoral, unethical,
14 oppressive, and unscrupulous as the gravity of the conduct outweighs any
15 alleged benefits attributable to such conduct. There were reasonably available
16 alternatives to further Defendant’s legitimate business interests, other than the
17 conduct described herein. Plaintiff reserves the right to allege further conduct
18 which constitutes other unfair business acts or practices. Such conduct is
19 ongoing and continues to this date.

20 116. In order to satisfy the “unfair” prong of the UCL, a consumer must show that
21 the injury: (1) is substantial; (2) is not outweighed by any countervailing
22 benefits to consumers or competition; and, (3) is not one that consumers
23 themselves could reasonably have avoided.

24 117. Here, Defendant’s conduct has caused and continues to cause substantial
25 injury to Plaintiff and members of the Class. Plaintiff and members of the
26 Class have suffered injury in fact due to Defendant’s unilateral decision to
27 require subscription service for Defendant’s app, as well as its misleading
28 messages to consumers. Thus, Defendant’s conduct has caused substantial

1 injury to Plaintiff and the members of the Class.

2 118. Moreover, Defendant's conduct as alleged herein solely benefits Defendant
3 while providing no benefit of any kind to any consumer. Such deception
4 utilized by Defendant convinced Plaintiff and members of the Class that the
5 \$29.99 paid for Defendant's app would be the only required fee. Such
6 deception utilized by Defendant convinced Plaintiff and members of the Class
7 to prematurely discontinue their use and enjoyment of the Ignition App.
8 Consumers experienced absolutely no benefit from this deception. Thus, the
9 injury suffered by Plaintiff and the members of the Class is not outweighed by
10 any countervailing benefits to consumers.

11 119. Finally, the injury suffered by Plaintiff and members of the Class is not an
12 injury that these consumers could reasonably have avoided. After Defendant,
13 falsely represented that Defendant's app was available for a flat fee of \$29.99,
14 these consumers suffered injury in fact due to Defendant's refusal to continue
15 to make said app available to consumers that paid this fee. Further, after
16 Defendant misled consumers by sending misleading messages relating to the
17 discontinuation of Ignition, these consumers suffered injury in fact as
18 Defendant convinced Plaintiff and members of the Class to prematurely
19 discontinue their use and enjoyment of the Ignition App. As such, Defendant
20 took advantage of Defendant's position of perceived power in order to deceive
21 Plaintiff and the Class members. Therefore, the injury suffered by Plaintiff
22 and members of the Class is not an injury which these consumers could
23 reasonably have avoided.

24 120. Thus, Defendant's conduct has violated the "unfair" prong of California
25 Business & Professions Code § 17200.

26 **FRAUDULENT**

27 121. California Business & Professions Code § 17200 prohibits any "fraudulent ...
28 business act or practice." In order to prevail under the "fraudulent" prong of

1 the UCL, a consumer must allege that the fraudulent business practice was
2 likely to deceive members of the public.

3 122. The test for “fraud” as contemplated by California Business and Professions
4 Code § 17200 is whether the public is likely to be deceived. Unlike common
5 law fraud, a § 17200 violation can be established even if no one was actually
6 deceived, relied upon the fraudulent practice, or sustained any damage.

7 123. Here, not only were Plaintiff and the Class members likely to be deceived by
8 Defendant’s Bait And Switch, but these consumers were actually deceived by
9 Defendant. Such deception is evidenced by the fact that Plaintiff agreed to
10 pay the required download fee to use Defendant’s app only to be surprised by
11 Defendant’s new requirement for a yearly subscription payment. Plaintiff’s
12 reliance upon Defendant’s deceptive statements is reasonable due to the
13 unequal bargaining powers of Defendant and Plaintiff. For the same reason, it
14 is likely that Defendant’s fraudulent business practice would deceive other
15 members of the public. Defendant’s Bait And Switch constitutes a
16 “fraudulent” act under the UCL.

17 124. Separate and apart from the allegations in the preceding paragraph, here, not
18 only were Plaintiff and the Class members likely to be deceived by
19 Defendant’s Misleading Messages And Forced Migration, but these
20 consumers were actually deceived by Defendant. Such deception is evidenced
21 by the fact that Plaintiff ceased all use of the Ignition App for a prolonged
22 period of time following his receipt of deceptive and misleading messages
23 regarding his use and enjoyment of Ignition and LogMeIn Free. Plaintiff’s
24 reliance upon Defendant’s deceptive statements is reasonable due to the
25 unequal bargaining powers of Defendant and Plaintiff, and the fact that
26 Defendant’s misleading statements were widely publicized and subject to high
27 levels of criticism at the time by other reasonable consumers. For the same
28 reason, it is likely that Defendant’s fraudulent business practice would deceive

1 other members of the public. Defendant's Misleading Messages And Forced
2 Migration constitute a "fraudulent" act under the UCL.

3 125. Thus, Defendant's conduct has violated the "fraudulent" prong of California
4 Business & Professions Code § 17200.

5 **UNLAWFUL**

6 126. California Business and Professions Code Section 17200, et seq. prohibits
7 "any unlawful...business act or practice."

8 127. As explained above, Defendant deceived Plaintiff and other Class Members
9 by representing the Ignition App to be a service that was provided for a one
10 time fee, while also failing to disclose that the app would be rendered obsolete
11 by Defendant's own business decisions, at a later time, and that considerable
12 subscription fees would be required to continue using the applications.
13 Defendant further deceived Plaintiff and other Class Members through its
14 Misleading Messages And Forced Migration.

15 128. These representations and omissions by Defendant are therefore an
16 "unlawful" business practice or act under Business and Professions Code
17 Section 17200 et seq.

18 129. Defendant used false advertising, marketing, and misrepresentations to induce
19 Plaintiff and Class Members to purchase the Ignition App. Had Defendant not
20 falsely advertised, marketed or misrepresented the Ignition App, Plaintiff and
21 Class Members would not have purchased the Class Products, or would have
22 purchased an alternative and appropriate services that provided the services
23 they believed they were purchasing. Defendant's conduct therefore caused
24 and continues to cause economic harm to Plaintiff and Class Members.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiff, and The Class Members prays for judgment as follows:

- 27
- Certifying the Class as requested herein;
 - Providing such further relief as may be just and proper.
- 28

1 In addition, Plaintiff, and The Class Members pray for further judgment as
2 follows:

- 3 • Restitution of the funds improperly obtained by Defendant;
- 4 • Any and all statutory enhanced damages;
- 5 • All reasonable and necessary attorneys' fees and costs provided by
6 statute, common law or the Court's inherent power;
- 7 • For equitable and injunctive and pursuant to California Business and
8 Professions Code § 17203; and,
- 9 • Any and all other relief that this Court deems just and proper.

10
11
12 Dated: September 18, 2015

Law Offices of Todd M. Friedman, P.C.

13 By: /s/ Adrian R. Bacon
14 Todd M. Friedman, Esq.
15 Adrian R. Bacon, Esq.
16 Attorneys for Plaintiff

17 **TRIAL BY JURY**

18 130. Pursuant to the seventh amendment to the Constitution of the United States of
19 America, Plaintiff and The Class are entitled to, and demand, a trial by jury.

20
21 Dated: September 18, 2015

Law Offices of Todd M. Friedman, P.C.

22 By: /s/ Adrian R. Bacon
23 Todd M. Friedman, Esq.
24 Adrian R. Bacon, Esq.
25 Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Filed electronically on this 18th day of September, 2015, with:

United States District Court CM/ECF system

Notification sent electronically on this 18th day of September, 2015, to:

Honorable Judge Jennifer L. Thurston
United States District Court
Eastern District of California

William Trach
william.trach@lw.com

Brian T. Glennon
brian.glennon@lw.com

James H. Moon
james.moon@lw.com

LATHAM & WATKINS LLP

s/Adrian R. Bacon

Adrian R. Bacon