

1 **SINGLETON SCHREIBER, LLP**
 CHRISTOPHER R. RODRIGUEZ, SB# 212274
 2 E-Mail: crodriguez@singletonschreiber.com
 ANDREW D. BLUTH, SB# 232387
 3 E-Mail: abluth@singletonschreiber.com
 JOHN R. TERNIEDEN, SB# 330343
 4 E-Mail: jternieden@singletonschreiber.com
 TRENT J. NELSON, SB# 340185
 5 E-Mail: tnelson@singletonschreiber.com
 YUQING "EMILY" MIN, SB# 347239
 6 E-Mail: emin@singletonschreiber.com
 1414 K Street, Suite 470
 7 Sacramento, California 95814
 Telephone: (916) 248-8478
 8 Facsimile: (619) 255-1515

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9 **LAW OFFICES OF THOMAS LEARY, APC**
 THOMAS A. LEARY, SB# 123792
 10 3023 First Avenue
 San Diego, California 92103
 11 Phone: (619) 291-1900

12 Attorneys for Plaintiffs

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 14 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
 15 **COUNTY OF SAN DIEGO**
 16

17 AIDAN LARDIZABAL, an individual;
 18 and MAYRA ALEJANDRA PUENTES,
 an individual, on behalf of themselves and
 19 all others similarly situated,

20 Plaintiffs,

21 v.

22 THE VANGUARD GROUP, INC., a
 Pennsylvania corporation; and DOES 1
 23 through 100, inclusive,

24 Defendants.

No. 37-2023-00055108-CU-MC-CTL

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

25
 26 **COMPLAINT**

27 Plaintiffs Aidan Lardizabal and Mayra Alejandra Puentes, by and through their undersigned
 28 counsel, on their own behalf and on behalf of all other entities and persons similarly situated

1 (residents of California only) (collectively, “Plaintiffs”), sue The Vanguard Group, Inc.
2 (“Vanguard”) and DOES 1 through 100 (“Doe Defendants”) (Vanguard and Doe Defendants are
3 collectively referred to herein simply as the “Defendants”) and for this Complaint, allege upon
4 information and belief, and based on the investigation to date of their counsel, as follows:

5 **INTRODUCTION**

6 1. This is a class action brought for the benefit and protection of Plaintiffs, and all other
7 similarly situated consumers who are residents of California and who used, visited, and/or engaged
8 in transactions via Defendants’ website “investor.vanguard.com” (the “Site”), which states that
9 “This Site is owned and operated by The Vanguard Group, Inc., and all of its subsidiaries and
10 affiliates, including Vanguard Brokerage Services and Vanguard Marketing Corporation.”

11 2. By way of this action, Plaintiffs, and all others similarly situated, seek damages,
12 civil penalties, injunctive relief, public injunctive relief, and other relief necessitated by
13 Defendants’ unlawful and unfair actions in violation of California Civil Code section 1670.8.
14 Plaintiffs on behalf of themselves and all others similarly situated seek an order permanently
15 enjoining Defendants from engaging in these ongoing unlawful practices, and civil penalties and
16 damages available under California law.

17 3. Because of the current power of the internet and social media platforms to publicize
18 a company’s offerings of goods or services—and the potential harm to corporate interests when
19 negative consumer statements “go viral”—Defendants have a significant incentive to minimize the
20 negative publicity they receive, including in the form of negative online reviews and comments.
21 Some companies have gone so far as to attempt to prohibit customers and potential customers from
22 making negative statements about the goods or services they offer, to the detriment of consumers,
23 potential consumers, and the public of the State of California. Fortunately, California Civil Code
24 section 1670.8 was enacted to protect the right of California consumers to voice their opinions,
25 observations, and experiences about the products and services delivered or offered to California
26 consumers, as well as the citizens of the State of California. The California Legislature reasonably
27 and correctly determined that such freedom is important to keep the public informed and keep large
28 corporations honest about the quality of the goods or services they offer to consumers.

1 4. Section 1670.8(a) provides as follows: “(1) **A contract or proposed contract** for
2 the sale or lease of consumer goods or services **may not include a provision waiving the**
3 **consumer’s right to make any statement** regarding the seller or lessor or its employees or agents,
4 or concerning the goods or services” and “(2) **It shall be unlawful to threaten or seek to enforce**
5 **a provision made unlawful under this section, or to otherwise penalize a consumer for making**
6 **any statement protected under this section.**” Section 1670.8’s protections are so important that
7 the statute expressly provides that “**any waiver of the provisions of this section is contrary to**
8 **public policy, and is void and unenforceable.**”

9 5. In order to use and benefit from Defendants’ Site, visitors and users of the Site are
10 informed that they must agree to Vanguard’s Terms of Use (the “Terms”). The Terms specifically
11 state that “By using this Site, you agree to follow and be bound by these Terms of Use, which
12 govern your use of the Site...If you do not agree to these Terms of Use, do not use this Site.”

13 6. While conducting substantial business with California consumers, the Conditions
14 Defendants impose upon Vanguard’s customers and prospective customers clearly violate Section
15 1670.8. By using the Site and agreeing to the Terms, Vanguard requires its customers and
16 prospective customers to agree as follows: “You agree not to use the Site to:...submit, upload, post,
17 e-mail, transmit, or otherwise make available any [statement or content] **that personally attacks**
18 **or is derogatory toward Vanguard as an entity, Vanguard employees, any Vanguard products**
19 **or services, or any Vanguard Materials.**” The Site further forces users to agree not to use any of
20 Vanguard’s product or brand names “in any manner that disparages or discredits Vanguard.”
21 Vanguard threatens any customer or prospective customer that violates these terms by making a
22 disparaging statement about Vanguard that his or her “rights...herein terminate immediately upon
23 any violation...of these Terms of Use.” In doing so, Defendants seek to silence their customers or
24 potential customers from criticizing Defendants, their employees, their products or services, or any
25 of their materials. This chilling activity is the precise conduct prohibited by Section 1670.8.

26 7. Defendants’ conduct is unlawful, including among other reasons, because it is aimed
27 to stifle California consumers’ right to free speech, and the right of the California public to hear
28 lawful discourse. Defendants’ strong-arm tactics to silence injured parties were and continue to be

1 intentionally exercised to protect Defendants’ self-promoting public image for commercial and
2 other benefits. Defendants’ unlawful business practices, purposefully designed to maintain and
3 increase its consumers and prop up its stock price, all while denying public, consumers, and
4 potential consumers accurate information so that they may make informed decisions as consumers.

5 8. By way of these provisions, Defendants seek to have Site users waive their right as
6 consumers to make negative statements regarding Defendants, or their employees, their products
7 or services, or any of their materials. These unlawful restrictions—imposed by Defendants against
8 their own customers and prospective customers—are an important component of Defendants’
9 business strategy, which relies upon the popularity of their product and service offerings to generate
10 significant revenues and profits. But Defendants’ efforts to silence their customers and prospective
11 customers is clearly prohibited by California law, thereby subjecting Defendants to significant
12 penalties, as described herein.

13 **JURISDICTION AND VENUE**

14 9. This Court has jurisdiction over the claims and causes of action asserted herein
15 because such claims arise solely and specifically out of Defendants’ unlawful practices within the
16 State of California, and relate to at least one statute—California Civil Code section 1670.8—that
17 was designed to protect California’s citizens, the application of which is exclusively a matter for
18 the courts of this State.

19 10. Venue is proper in this Court because: Defendants transact business in California
20 and in the County of San Diego based on Plaintiffs’ use of the Site in this County. Defendants have
21 committed unlawful acts in the County by and through the Site and associated business transactions
22 within the County; and a substantial part of the events giving rise to the claims alleged herein
23 occurred in this County, where at least one of the Plaintiffs resides.

24 **THE PARTIES**

25 11. At all relevant times, Plaintiff Aidan Lardizabal was and has been a citizen of the
26 State of California and a resident of San Diego County. Mr. Lardizabal is an individual who used
27 and completed transactions on the Site within the applicable limitations period in San Diego County
28 in the State of California.

1 12. At all relevant times, Plaintiff Mayra Alejandra Puentes was and has been a citizen
2 of the State of California and a resident of San Diego County. Ms. Puentes is an individual who
3 used and completed transactions on the Site within the applicable limitations period in San Diego
4 County in the State of California.

5 13. Defendants conduct business in the state of California with California citizens.
6 Defendants develop, market, and disseminate a wide variety of financial services and products.
7 Defendants operate in California and generate revenue through the Site in the form of, among other
8 things, marketing products and services to consumers and charging its customers, including
9 Plaintiffs, to complete transactions on the Site.

10 14. The true names and/or capacities, whether individual, corporate, partnership,
11 associate, governmental, or otherwise, of the Doe Defendants, inclusive, and each of them, are
12 unknown to Plaintiffs at this time, who therefore sues said Doe Defendants by such fictitious names.
13 Plaintiffs are informed and believe, and thereon allege, that each defendant designated herein as a
14 Doe Defendant caused injuries and damages proximately thereby to Plaintiffs as hereafter alleged,
15 and that each Doe Defendant is liable to Plaintiffs for the acts and omissions alleged herein below,
16 and the resulting injuries to Plaintiffs, and damages sustained by Plaintiffs. Plaintiffs will amend
17 this Complaint to allege the true names and capacities of said Doe Defendants when that same is
18 ascertained.

19 **FACTS COMMON TO ALL CLASS MEMBERS**

20 15. At all relevant times, Defendants were, and currently are, in the business of
21 advertising, promoting, marketing, and selling financial products and services through the Site.
22 The Site is targeted to, and accessible by, the citizenry of California.

23 16. Defendants are well-aware that their public image is vital to maintaining and gaining
24 customers. If the public sees content posted by Site users that may be insulting to Defendants
25 and/or any of their employees, products or services, or materials, then their current customers
26 and/or prospective customers may shift to a competitor, ultimately resulting in loss of business and
27 loss of revenue.

28 17. Thus, in order to maintain a positive public image, Defendants have engaged in an

1 intentional business strategy to silence each and every customer or potential customer by purporting
2 to bind users to their Terms—immediately upon using the Site.

3 18. Specifically, By using the Site and agreeing to the Terms, Vanguard requires its
4 customers and prospective customers to agree as follows: “You agree not to use the Site
5 to:...submit, upload, post, e-mail, transmit, or otherwise make available any [statement or content]
6 **that personally attacks or is derogatory toward Vanguard as an entity, Vanguard employees,**
7 **any Vanguard products or services, or any Vanguard Materials.”** The Site further forces users
8 to agree not to use any of Vanguard’s product or brand names “in any manner that disparages or
9 discredits Vanguard.” Vanguard threatens any customer or prospective customer that violates these
10 terms by making a disparaging statement about Vanguard that his or her “rights...herein terminate
11 immediately upon any violation...of these Terms of Use.”

12 19. Site users use the Site to execute financial transactions and consider for purchase a
13 wide variety of financial products and services, including without limitation brokerage services,
14 stocks, bonds, mutual funds, CDs and other investment products.

15 20. Defendants have promoted and sold, and continue to promote and sell, financial
16 products and services to California consumers through the Site.

17 21. Defendants forbid any California consumers who use the Site from making any
18 “personal attacks” or “derogatory” statements about Defendants themselves, or any of their
19 employees, products or services, or materials.

20 22. In doing so, Defendants have and continue to engage in unlawful conduct, that is
21 contrary to public policy and in violation of California Civil Code section 1670.8.

22 23. Each of the Plaintiffs specifically identified herein, and millions more similarly
23 situated persons in the State of California, have used the Site—either as consumers or potential
24 consumers—and thus have ostensibly been subjected to the unlawful Terms.

25 **CLASS ACTION ALLEGATIONS**

26 24. Pursuant to California Code of Civil Procedure section 382, Plaintiffs bring this
27 class action on their own behalf and on behalf of all other similarly situated consumers in California.
28 The proposed class is defined as follows:

1 a. During the fullest period allowed by law, all persons residing in California who visited
2 or used the Site or completed transactions on the Site (“Class”).

3 25. Like Plaintiffs, all Class members are California residents who visited or used the
4 Site or completed transactions on the Site and who were subject to the Terms that limit their right
5 as consumers to make any statements regarding Defendants, their employees, their products or
6 services, or any of their materials.

7 26. Excluded from the Class are assigned judges and members of their families within
8 the first degree of consanguinity; Defendants; and Defendants’ subsidiaries, affiliates, officers, and
9 directors.

10 27. The requirements of Code of Civil Procedure section 382 are satisfied for the
11 proposed Class.

12 28. The proposed Class is so numerous that individual joinder of all the members is
13 impracticable because members of the Class number in the tens or hundreds of thousands. The
14 precise number of Class members and their identities are unknown to Plaintiffs at this time but are
15 objectively ascertainable and will be determined through appropriate discovery and other readily
16 available means.

17 29. Defendants possess objective evidence as to the identity of each Class member and,
18 to a reasonable degree of certainty, the harm suffered by each Class member, including without
19 limitation web traffic data evidencing visits to and/or transactions on the Site, sales receipts, phone
20 numbers, names, rewards accounts data, credit card data, customer service complaint
21 forms/emails/date, and other evidence which objectively identifies class members.

22 30. Class members may be notified of the pendency of this action by mail, publication
23 and/or through the records of Defendants.

24 31. There are common questions of law and fact affecting Plaintiffs and Class members.
25 Common legal and factual questions include, but are not limited to:

26 a. Whether each imposition of Defendants’ Terms upon members of the Class constitutes a
27 violation of the provisions of California Civil Code section 1670.8 and, if so, whether each such
28 violation is a “willful, intentional, or reckless” violation;

1 b. Whether Defendants’ Terms are unlawful, contrary to public policy, void and/or
2 unenforceable;

3 c. Whether Class members are entitled to civil penalties; and

4 d. Whether, as a result of Defendants’ misconduct alleged herein, Plaintiffs and Class
5 members are entitled to injunctive, public injunctive, and/or monetary relief and, if so, the amount
6 and nature of such relief.

7 32. Plaintiffs’ claims are typical of the claims of the proposed Class because the rights
8 of Plaintiffs and Class members were violated in the same manner by the same conduct.

9 33. Plaintiffs and Class members are all entitled to recover statutory penalties and other
10 relief arising out of Defendants’ violations of statutory law alleged herein.

11 34. Plaintiffs will fairly and adequately represent and protect the interests of the Class.

12 35. Plaintiffs’ interests do not conflict with the interests of the Class they seek to
13 represent. Plaintiffs have retained counsel competent and experienced in prosecuting class actions,
14 and Plaintiffs intend to vigorously prosecute this action.

15 36. The class mechanism is superior to other available means for the fair and efficient
16 adjudication of the claims of Plaintiffs and Class members.

17 37. Given the relative value of statutory penalties available to any of the individual Class
18 members, individual litigation is not practicable.

19 38. Individual Class members will not wish to undertake the burden and expense of
20 individual cases.

21 39. In addition, individualized litigation increases the delay and expense to all parties
22 and multiplied the burden on the judicial system. Individualized ligation also presents the potential
23 for inconsistent or contradictory judgments.

24 40. In contrast, the class action device presents far fewer management difficulties and
25 provides the benefits of single adjudication, economy of scale, and comprehensive supervision by
26 a single court.

27 41. Questions of law and fact common to all Class members predominate over any
28 questions affecting only individual Class members. Injuries sustained by Plaintiffs and Class

1 members flow, in each instance, from a common nucleus of operative facts as set forth above.

2 42. In each case, Defendants' actions caused harm to all Class members as a result of
3 such conduct. The resolution of these central issues will be the focus of the litigation and
4 predominate over any individual issues.

5 43. Proposed Class counsel possesses the knowledge, experience, reputation, ability,
6 skill, and resources to represent the Class and should be appointed lead counsel for the Class.

7 **COUNT I— VIOLATION OF CIVIL CODE SECTION 1670.8**

8 44. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 43 of their
9 Complaint. Plaintiffs assert this cause of action on behalf of themselves and all other similarly
10 situated persons residing in California who used and/or completed transactions on the Site.

11 45. Defendants are in the business of marketing and selling financial products and
12 services.

13 46. Plaintiffs and Class members visited or used the Site or conducted financial
14 transactions on the Site.

15 47. Pursuant to the Terms, Defendants told Plaintiffs and the Class members that, among
16 other things, they must agree to not "submit, upload, post, e-mail, transmit, or otherwise make
17 available any User Content that personally attacks or is derogatory toward Vanguard as an entity,
18 Vanguard employees, any Vanguard products or services, or any Vanguard Materials."

19 48. By simply using the Site, Defendants purport to have charged Plaintiffs and Class
20 members with having read, understood, and agreed to be bound by the Terms.

21 49. By way of the restrictions alleged above, Defendants intentionally, willfully, or
22 recklessly seek to have Plaintiffs and the Class members waive their right as consumers to make
23 any disparaging statements regarding Defendants or their employees, products or services, or
24 materials, which restriction is prohibited under California Civil Code 1670.8 and is contrary to
25 public policy.

26 50. Defendants have repeatedly violated California Civil Code 1670.8 in relation to each
27 of the Plaintiffs and Class members and their respective uses of or transactions on the Site.

28 51. Defendants' conduct has caused Plaintiffs and Class members to suffer harm.

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LAW OFFICES OF THOMAS LEARY,
APC



By: _____
Thomas A. Leary
Attorneys for Plaintiffs