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Attorneys for Plaintiff and all others similarly situated

**THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

SHERRY ORSON, on behalf of
herself and all others similarly
situated,

Plaintiff,

vs.

CARBONITE, INC., and DOES 1
through 20, inclusive, and each of
them,

Defendants.

Case No.

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF:**

- (1) California Consumers Legal Remedies Act, Cal. *Civil. Code* §§ 1750, *et seq.*
- (2) California Unfair Competition Law, Cal. *Bus & Prof. Code* §§ 17200, *et seq.*
- (3) California False Advertising Law, Cal. *Bus & Prof. Code* §§ 17500, *et seq.*
- (4) Unjust Enrichment
- (5) Fraudulent Concealment / Equitable Estoppel
- (6) Breach of Contract

DEMAND FOR JURY TRIAL

**DECLARATION OF SHERRY
ORSON**

1 Plaintiff Sherry Orson ("Plaintiff"), on behalf of herself and all others
 2 similarly situated, alleges the following upon information and belief based upon
 3 personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action for herself and others similarly situated
 6 seeking damages and any other available legal or equitable remedies resulting
 7 from the illegal actions of CARBONITE, INC. and/or DOE DEFENDANTS 1
 8 through 20 (hereinafter "Defendant(s)" or "Carbonite"). This matter involves
 9 Carbonite's wrongful business practice of failing to disclose to consumers that
 10 its computer backup services and software fails to back up their consumers'
 11 computer data thereby resulting in consumers' loss of computer data and
 12 payment for Carbonite's nonfunctional services.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because: (1) the
 15 amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs;
 16 (2) Defendant has purposefully availed itself of doing business activities within
 17 California, where it sells the services at issue in this lawsuit to Plaintiff and
 18 other members of the proposed Class; and (3) Plaintiff, a resident of California,
 19 seeks relief on behalf of a Class, which will result in at least one class member
 20 belonging to a different state than that of Defendant, a company with its
 21 principal place of business in Massachusetts and its State of Incorporation in
 22 Delaware. Therefore, both the damages threshold and diversity jurisdiction
 23 under the Class Action Fairness Act of 2005 ("CAFA") are present, and this
 24 Court has jurisdiction.

25 3. Venue is proper in the United States District Court for the Central
 26 District of California pursuant to 28 U.S.C. § 1391(b), in that Defendant
 27 transacts business within the state of California and the Central District of
 28 California and a substantial portion of the acts giving rise to this action occurred

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1 in the Central District. Furthermore, Plaintiff is a resident of Los Angeles
2 County.

3 **PARTIES**

4 4. Plaintiff, Sherry Orson ("Plaintiff"), is a natural person residing in
5 Los Angeles County in California.

6 5. Defendant, Carbonite, Inc. is a Delaware corporation with its
7 principal place of business at 2 Avenue de Lafayette, Boston, Massachusetts
8 02111. Plaintiff is informed and believes that Carbonite conducted and conducts
9 business in Los Angeles County.

10 6. The above named Defendant, and its subsidiaries and agents, are
11 collectively referred to as "Defendants." The true names and capacities of the
12 Defendants sued herein as DOE DEFENDANTS 1 through 20, inclusive, are
13 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
14 names. Each of the Defendants designated herein as a DOE is legally
15 responsible for the unlawful acts alleged herein. Plaintiff will seek leave of
16 Court to amend the Complaint to reflect the true names and capacities of the
17 DOE Defendants when such identities become known.

18 7. Plaintiff is informed and believes and thereon alleges that at all
19 relevant times, each and every Defendant was acting as an agent and/or
20 employee of each of the other Defendants and was the owner, agent, servant,
21 joint venturer and employee, each of the other and each was acting within the
22 course and scope of its ownership, agency, service, joint venture and
23 employment with the full knowledge and consent of each of the other
24 Defendants. Plaintiff is informed and believes and thereon alleges that each of
25 the acts and/or omissions complained of herein was made known to, and ratified
26 by, each of the other Defendants.

27 8. At all times mentioned herein, each and every Defendant was the
28 successor of the other and each assumes the responsibility for each other's acts

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1 and omissions.

2 **FACTUAL ALLEGATIONS**

3 9. Defendant is in the business of providing online computer backup
4 service for documents, electronic mail, music, photos and the like to more than
5 1.5 million customers, including 50,000 small business costumers nationwide.

6 10. Carbonite offers three separate lines of products, namely, (1)
7 Personal Plans for individual computers and home offices; (2) Pro Plans for
8 small businesses; and (3) Server Plans for databases and live applications.

9 11. Defendant provides its customers with the Personal Plan for an
10 annual fee starting at \$59.99. According to Defendant's website,
11 www.carbonite.com, "Carbonite keeps small business and home offices running
12 smoothly...Business doesn't stop when you leave the office. That's why
13 Carbonite lets you access (or even restore) your files anytime, anywhere so you
14 never have to worry about leaving your files behind...Our product works
15 automatically, so you never have to remember to back up. You can recover your
16 files with just a few clicks...From running your small business to running your
17 household, our goal is to provide secure and affordable cloud backup for all your
18 files."

19 12. Upon subscribing to Defendant's service, the customer installs the
20 Defendant's software program on the customer's computers that operates
21 continuously in the background. The customer software automatically seeks out
22 new and changed files on the customer's computers so that the customer's data is
23 constantly and automatically backed up.

24 13. Carbonite induces its customers to purchase its services by stating
25 "It's a fact: computers crash, laptops get stolen and files get accidentally deleted.
26 But with Carbonite as your backup plan – and with the "Restore" button at your
27 disposal, you can be confident knowing you'll be back to business." Defendant
28 represents itself as the solution to the significant problem of losing data. Per

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1 Defendant's website, "We keep America's small business running."

2 14. In its promotional materials and on its website, Defendant represents
3 to consumers that consumers' files are safe and protected when using
4 Defendant's back-up software since consumer's data is backed up automatically
5 and continually in Defendant's "state-of-the-art data centers, safe from computer
6 glitches, hurricanes and everything in between." On its website Defendant
7 discusses the safety of its services and states, "Well, let's just say that not using
8 the cloud is equivalent of keeping your money in your mattress. Storing your
9 data in a professionally managed data center means it is given the proper TLC
10 and attention it needs – redundant disk arrays, temperature controlled
11 environments, backup power generators and more."

12 15. Based on Defendant's marketing statements and the absence of any
13 legitimate information from Defendant to the contrary, a reasonable consumer
14 would have no reason to suspect that Defendant experiences glitches with its
15 software which can and does result in the degradation and corruption of
16 consumers' backed up data.

17 16. By purchasing Defendant's services, Defendant claims that its
18 customers' files are backed up automatically and continually thereby protecting
19 its customers from disasters such as accidental file deletion, theft, and/or drive
20 failure. Defendant represents and claims that in the event of disaster, its
21 customers will be able to recover their files from the cloud in just a few clicks.

22 17. Plaintiff purchased Carbonite's software and services on or about
23 September 13, 2010 and made the required payments to Carbonite in order to
24 back up her computer. At all times prior to November 21, 2014, to Plaintiff's
25 knowledge, the data on Plaintiff's network of computers was being backed up by
26 Defendant.

27 18. On or about November 21, 2014, Plaintiff's computer failed due to
28 a problem with the operating system. Immediately thereafter, Plaintiff attempted

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1 to restore the backed up data using Defendant's software. At that time, it became
 2 evident that Plaintiff was unable to retrieve the data that Defendant represented
 3 was backed up.

4 19. Plaintiff telephoned defendant on November 21, 2014 and spoke to
 5 Defendant's employees, agents and/or representatives, Christian, Daniel, Rabena
 6 and a Manager named Alegra, all of whom confirmed that Carbonite had lost all
 7 of plaintiff's data and that Carbonite had failed to back up the data on plaintiff's
 8 computer since 2011. Defendant could neither restore nor retrieve all of
 9 Plaintiff's data and it is now lost.

10 **CLASS ALLEGATIONS**

11 20. Plaintiff brings this action on behalf of itself and all others similarly
 12 situated, as a member of the proposed two classes (hereinafter the "Classes"),
 13 which are defined as follows:

14 "All customers of Defendant within the United States
 15 who paid defendant's annual fee and were not notified
 16 by Defendant that their computers were not being
 17 backed up for a period of time and who lost data as a
 18 result of Defendant's failure to provide functioning
 19 back-up services;"

20 21. Plaintiff represents, and is a member of, the Classes, consisting of
 21 all customers of Defendant within the United States that were not notified by
 22 Defendant that their computers were not being backed up for a period of time
 23 and who lost data as a result of Defendant's failure to provide functioning
 24 back-up services and paid defendant's annual fee during the time that
 25 Defendant's back-up services were nonfunctional.

26 22. Plaintiff and members of the Classes were harmed by the acts of
 27 Defendant in that Defendant failed to notify its customers of its back-up system
 28 failure thereby resulting in data loss by Defendant's customers.

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23. Excluded from the Class are governmental entities, Defendants, any entity in which Defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class are any judges, justices or judicial officers presiding over this matter and the members of their immediate families and judicial staff.

24. This action is properly maintainable as a class action. This action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements for a class action.

25. **Numerosity:** The Classes are so numerous that the individual joinder of all of its members is impractical. Plaintiff does not know the number of members in the Classes, but believes the Class members number in the thousands, if not more. While the exact number and identities of the members of the Classes are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes and thereon alleges that the Classes include thousands of members. Plaintiff alleges that the members of the Classes may be ascertained by the records maintained by Defendant.

26. **Common Questions of Law and Fact Predominate:** There are many questions of law and fact common to the representative Plaintiff and the Classes, and those questions substantially predominate over any questions that may affect individual Class members in that the claims of all Class members for each of the claims herein can be established with common proof. Common questions of fact and law include, but are not limited to, the following:

a. Whether Defendant failed to notify its customers of its back-up system failure;

b. Whether Defendant's failure to notify its customer was the cause of the loss of data by its customers;

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1 c. Whether Plaintiff and the members of the Classes were damaged
2 thereby, the measure of those damages and the nature and extent of other relief
3 that should be afforded.

4 27. **Typicality:** Plaintiff's claims are typical of the claims of the
5 members of the Classes, as Plaintiff was subject to the same common course of
6 conduct by Defendants as all other Class members. The injuries of each
7 member of the Classes were caused directly by Defendant's wrongful conduct
8 as alleged herein.

9 28. **Adequacy of Representation:** Plaintiff will fairly and adequately
10 protect the interests of the members of the Class. Plaintiff has retained attorneys
11 experienced in the prosecution of class actions.

12 29. **Superiority of Class Action:** A class action is superior to other
13 available methods of fair and efficient adjudication of this controversy, since
14 individual litigation of the claims of all Class members is impracticable. Even if
15 every Class member could afford individual litigation, the court system could
16 not. It would be unduly burdensome to the court in which individual litigation
17 of numerous issues would proceed. Individualized litigation would also present
18 the potential for varying, inconsistent, or contradictory judgments and would
19 magnify the delay and expense to all parties and to the court system resulting
20 from multiple trials of the same complex factual issues. By contrast, the
21 conduct of this action as a class action presents fewer management difficulties,
22 conserves the resources of the parties and of the court system, and protects the
23 rights of each Class member.

24 30. The prosecution of separate actions by individual Class members
25 would create a risk of adjudications with respect to them that would, as a
26 practical matter, be dispositive of the interest of the other Class members not
27 parties to such adjudications or that would substantially impair or impede the
28 ability of such non-party Class members to protect their interests.

31. Defendant has acted or refused to act in respect generally applicable to The Classes, thereby making appropriate final and injunctive relief with regard to the members of the California Classes as a whole.

FIRST CAUSE OF ACTION

VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, CAL. CIVIL CODE §§ 1750, ET SEQ.

(By Plaintiff, Individually and on Behalf of All Class Members, Against Defendants)

32. Plaintiff repeats and incorporates by reference into this cause of action all of the above paragraphs of this Complaint as though fully stated herein.

33. *The Consumers Legal Remedies Act* ("CLRA") creates a non-exclusive statutory remedy for unfair methods of competition and unfair or deceptive acts or business practices. Its self-declared purpose is to protect consumers against these unfair and deceptive business practices, and to provide efficient and economical procedures to secure such protection. California *Civ. Code* § 1760. The CLRA was designed to be liberally construed and applied in favor of consumers to promote its underlying purposes. *Id.*

34. Defendant's computer back-up services are "services" within the meaning of California *Civ. Code* § 1761(b).

35. Plaintiff and each member of the Class are "consumers" within the meaning of California *Civ. Code* § 1761(d).

36. Defendants have violated the CLRA by engaging in the unfair and/or deceptive acts and practices set forth herein, including but not limited to:

(a) Defendant's deceptive acts and practices occurred in the course of selling its defective computer back-up services to consumers;

(b) Defendant had exclusive knowledge of undisclosed material facts, *i.e.* that there was degradation in its clients' back-up and that its

1 back-up software was not functioning;

2 (c) Defendant engaged in unfair acts and practices by
3 withholding these material facts from Plaintiff and the Class members; and

4 (d) Plaintiff and the Class members were not aware that there
5 was degradation in their backups and that Defendant's software was not
6 functioning.

7 37. Defendants have violated the CLRA by engaging in the above
8 unfair acts and practices, which results in the following violations:

9 (a) In violation of California *Civ. Code* § 1770(a)(4), Defendant
10 has used deceptive representations in connection with its computer backup
11 services;

12 (b) In violation of California *Civ. Code* § 1770(a)(5), Defendant
13 has represented that its back up software and services have characteristics,
14 uses and benefits that they do not have;

15 (c) In violation of California *Civ. Code* § 1770(a)(7), Defendant
16 has represented that its back up software and services are of a particular
17 standard, quality or grade when they are not; and

18 (d) In violation of California *Civ. Code* § 1770(a)(9),
19 Defendant has advertised its back up software and services with intent not to
20 sell them as advertised.

21 38. Defendant's unfair and deceptive business practices in carrying out
22 the marketing program described above were and are intended to and did and do
23 result in the purchase of Defendants' computer backup services by consumers,
24 including Plaintiff, in violation of the CLRA.

25 39. In reasonable reliance on Defendant's misrepresentations and
26 omissions, Plaintiff purchased Defendant's backup computer services for more
27 money than it should have been required to spend and Plaintiff was not
28 reimbursed for Defendant's non-functional services. Plaintiff has therefore

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1 suffered injury proximately caused by Defendant's unfair and deceptive
 2 practices.

3 40. Had Defendant not misrepresented and omitted the true facts
 4 relating to computer backup services, Plaintiff and Class members, as
 5 reasonable consumers, would have behaved differently.

6 41. Unless Defendant is permanently enjoined from continuing to
 7 engage in such violations of the CLRA, future consumers of the Defendant's
 8 computer back up services will be harmed by Defendant's acts and practices in
 9 the same way as have Plaintiff and Class members.

10 42. Plaintiff does not presently seek damages as a result of Defendant's
 11 violations of the CLRA, but Plaintiff will amend this complaint to seek damages
 12 pursuant to California *Civ. Code* § 1782 if Defendant does not correct, repair,
 13 replace or otherwise rectify the deceptive practices complained of herein within
 14 30 days from notice.

15 **SECOND CAUSE OF ACTION**

16 **VIOLATION OF THE UNFAIR COMPETITION LAW**

17 **(By Plaintiff, Individually and on Behalf of All Class Members,**
 18 **Against Defendants, for Violations of *California Bus. & Prof. Code* §§**
 19 **17200, *et seq.*)**

20 43. Plaintiff repeats and incorporates by reference into this cause of
 21 action all of the above paragraphs of this Complaint as though fully stated
 22 herein.

23 44. California *Bus. and Prof. Code* §§ 17200, *et seq.* (the "Unfair
 24 Competition Law" or "UCL") authorizes private lawsuits to enjoin acts of
 25 "unfair competition," which include any unlawful, unfair, or fraudulent business
 26 practice.

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45. The material misrepresentations, concealment, and non-disclosures by Defendant as part of their marketing and advertising for their computer backup services are unlawful, unfair, and fraudulent business practices prohibited by the UCL.

46. By engaging in the above-described acts and practices, Defendant has committed one or more acts of unfair competition within the meaning of *Bus. & Prof. Code* §§ 17200, *et seq.*

Defendant committed “unlawful” business acts and practices by:

(a) engaging in conduct that violates California’s *Consumers Legal Remedies Act*, *Civ. Code* §§ 1770(a)(4), (a)(5), (a)(7) and (a)(9);

(b) engaging in conduct that violates California’s False Advertising Law, *Cal. Bus. & Prof. Code* §§ 17500, *et seq.*; and

(c) engaging in conduct that violates various other laws, regulations, statutes, and/or common law duties.

Defendants committed “unfair” business acts and practices by:

(a) engaging in conduct where the utility of such conduct, if any, is outweighed by the gravity of the consequences to Plaintiff and to other Class members, and is not an injury the consumers themselves could have reasonably avoided;

(b) engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiff and to other Class members; and

(c) engaging in conduct that undermines or violates the spirit or intent of the consumer protection laws detailed herein.

Defendants committed “fraudulent” business acts and practices by deceiving consumers into believing that their services and software would backup the consumer’s computer data and by concealing the fact from consumers that the software was not backing up the data on their computers.

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1 47. In reasonable reliance on Defendant's unlawful, unfair, and
 2 fraudulent conduct, Plaintiff purchased Defendant's computer backup services
 3 for more money than it should have been required to spend and Plaintiff was not
 4 reimbursed for Defendant's services when they were non-functional. Plaintiff
 5 has therefore suffered injury proximately caused by Defendant's unfair and
 6 deceptive practices.

7 48. Had Defendant not misrepresented and omitted the true facts
 8 relating to its computer backup services, Plaintiff and Class members, as
 9 reasonable consumers, would have behaved differently.

10 49. Defendant's practices, as set forth above, have misled the general
 11 public in the past and will mislead the general public in the future. Defendant's
 12 business acts and practices, as alleged herein, have caused injury to Plaintiff, the
 13 Classes and the public.

14 50. Pursuant to California *Bus. and Prof. Code* § 17203, Plaintiff and
 15 the Classes seek an order of this Court enjoining Defendant from continuing to
 16 engage in unlawful, unfair, and/or fraudulent/deceptive business practices and
 17 any other acts prohibited by law, including those acts set forth in the complaint.
 18 Plaintiff and the Classes also seek an order (a) requiring Defendant to make full
 19 restitution of all moneys it wrongfully obtained from Plaintiff and the Classes,
 20 and (b) requiring Defendant to disgorge all ill-gotten revenues and/or profits as
 21 an additional form of restitution of funds wrongfully taken from Plaintiff and the
 22 Classes to which Defendant is not entitled.

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THIRD CAUSE OF ACTION

VIOLATION OF THE FALSE ADVERTISING LAW

(By Plaintiff, Individually and on Behalf of All Class Members, Against Defendants, for Violations of California *Bus. & Prof. Code* §§ 17500, *et seq.*)

51. Plaintiff repeats and incorporates by reference into this cause of action all of the above paragraphs of this Complaint as though fully stated herein.

52. California *Bus. and Prof. Code* § 17500, *et seq.* provides that “[i]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal property ... 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 by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading....”

53. Defendant misled consumers by making untrue statements about the standard, quality and properties of its computer backup services, as alleged above. Defendant disseminated untrue and misleading representations regarding the security and safety of its consumer’s computer data when backed up using Defendant’s software and services. Defendant knew that their representations and omissions were untrue and misleading, and deliberately made the aforementioned representations and omissions in order to deceive reasonable consumers like Plaintiff and the Class members.

54. As a direct and proximate result of Defendant’s misleading and false advertising, Plaintiff and the members of the Classes have suffered injury in fact and have lost money or property. Plaintiff reasonably relied upon Defendant’s representations regarding Defendant’s computer backup services

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1 and Defendant's ability to securely and safely backup Plaintiff's computer data.
 2 In reasonable reliance on Defendant's false advertising, Plaintiff purchased
 3 Defendant's computer backup services and therefore, Plaintiff has suffered
 4 injury in fact.

5 55. The misleading and false advertising described herein presents a
 6 continuing threat to Plaintiff and the Classes in that Defendant persists and
 7 continues to engage in these practices, and will not cease doing so unless and
 8 until forced to do so by this Court. Defendant's conduct will continue to cause
 9 irreparable injury to consumers unless enjoined or restrained. Plaintiff is
 10 entitled to preliminary and permanent injunctive relief ordering Defendant to
 11 cease their false advertising, as well as disgorgement and restitution to Plaintiff
 12 and the Classes of all of Defendant's revenues associated with their false
 13 advertising, or such portion of those revenues as the Court may find equitable.

14 **FOURTH CAUSE OF ACTION**

15 **UNJUST ENRICHMENT**

16 **(By Plaintiff, Individually and on Behalf of All Class Members, Against**
 17 **Defendants)**

18 56. Plaintiff repeats and incorporates by reference into this cause of
 19 action all of the above paragraphs of this Complaint as though fully stated
 20 herein.

21 57. Defendant has received a benefit at the expense of Plaintiff and
 22 plaintiff Class members. Defendant improperly obtained money from Plaintiff
 23 and plaintiff Class members as a result of their purchases of Defendant's
 24 computer back up services. No substantial justification exists for Defendant's
 25 conduct. Accordingly, Defendant has received a benefit and have unjustly
 26 retained this benefit at the expense of Plaintiff and the plaintiff Classes.

27 58. As a direct and proximate result of Defendant's misconduct,
 28 Plaintiff and plaintiff Class members have paid money for goods they were to

1 receive at lower prices and are thereby entitled to restoration of their data and
2 property.

3 **FIFTH CAUSE OF ACTION**

4 **FRAUDULENT CONCEALMENT/EQUITABLE ESTOPPEL**

5 **(By Plaintiff, Individually and on Behalf of All Class Members, Against**
6 **Defendants)**

7 59. Plaintiff repeats and incorporates by reference into this cause of
8 action all of the above paragraphs of this Complaint as though fully stated
9 herein.

10 60. Defendant had a duty to disclose to Plaintiff and the Classes that
11 Defendant's software was not backing up the data on their computers.

12 61. Defendant concealed the truth from Plaintiff and the Classes by
13 failing to disclose that Defendant's software was not backing up the data on
14 their computers.

15 62. Defendant had the opportunity to disclose these facts to Plaintiff
16 and the Classes, but Defendant failed to do so.

17 63. Defendant knew that suppressing the truth from Plaintiff and the
18 Classes would induce them to continue paying for Defendant's nonfunctional
19 services and not cancel service.

20 64. Plaintiff and the Classes justifiably relied on Defendant to their
21 detriment by continuing to allow Defendant to provide purported back-up
22 services for their computers.

23 65. Had Defendant disclosed the material fact that the software was not
24 backing up its customers computers, Plaintiff and the Classes would not have
25 continued to do business with Defendant and would have taken the necessary
26 steps to avoid being damaged.

27 66. Through the schemes described above, Defendant has received
28 money belonging to Plaintiff and the Classes through the sale of computer

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1 backup services that were nonfunctional.

2 67. Defendant has reaped substantial profits by concealing the fact that
3 its computer backup services were nonfunctional. Ultimately, this resulted in
4 Defendant's wrongful receipt of profits and injury to Plaintiff and the Classes.
5 Defendant has benefited from the receipt of such money that it would not have
6 received and/or had to reimburse for nonfunctional computer backup services.
7 As a direct and proximate result of Defendant's misconduct as set forth above,
8 Defendant has been unjustly enriched.

9 **SIXTH CAUSE OF ACTION**

10 **BREACH OF CONTRACT**

11 **(By Plaintiff, Individually and on Behalf of All Class Members, Against**
12 **Defendants)**

13 68. Plaintiff repeats and incorporates by reference into this cause of
14 action all of the above paragraphs of this Complaint as though fully stated
15 herein.

16 69. Defendant breached the contract by taking money from Plaintiff
17 and the Classes and then failing to provide the promised computer data back-up
18 services.

19 70. Defendant's breach has caused injury to Plaintiff and the Classes.

20 71. Plaintiff performed all conditions, covenants, and promises
21 required on its part to be performed in accordance with the terms of the contract.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Classes, prays for relief and judgment as follows:

1. An order certifying this action as a class action and appointing Plaintiff and its counsel to represent the Classes;

2. For the first cause of action, preliminary and permanent injunctive relief enjoining Defendants, their agents, servants and employees, and all persons acting in concert with them, from engaging in, and continuing to engage in, the unfair or deceptive acts or business practices alleged above and that may yet be discovered in the prosecution of this action;

3. For the second and third causes of action, preliminary and permanent injunctive relief enjoining Defendants, their agents, servants and employees, and all persons acting in concert with them, from engaging in, and continuing to engage in, the misleading and false advertising alleged above and that may yet be discovered in the prosecution of this action; restitution; disgorgement of all money or property wrongfully obtained by Defendants by means of their herein-alleged unlawful, unfair, and fraudulent business practices and misleading and false advertising; and attorneys' fees and costs;

4. For the fourth cause of action, restitution and attorneys' fees and costs;

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1 5. For the fifth and sixth causes of action, the same remedies for the
2 first through fourth causes of action in addition to compensatory damages,
3 general damages, and prejudgment and post-judgment interest on the
4 compensatory and general damages; and

5 Such other and further relief as the Court deems just and proper.

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8 Dated: April 22, 2015

Respectfully submitted,

9 By: /s/ John P. Kristensen

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DEMAND FOR JURY TRIAL

Plaintiff(s) hereby demand(s) a trial by jury for all such triable claims.

Dated: April 22, 2015

Respectfully submitted,

By: /s/ John P. Kristensen

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