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8 *others similarly situated*

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 HENRY ZELAYA, and VERONICA  
12 CAMPOS, on behalf of themselves and  
all others similarly situated,

13 Plaintiffs,

14 v.

15 YAHOO! INC., a Delaware  
16 Corporation, and DOES 1-10, inclusive,

17 Defendants.

) Case No.

) **CLASS ACTION**  
) **COMPLAINT FOR:**

) **1. VIOLATION OF THE**  
) **ELECTRONIC**  
) **COMMUNICATIONS PRIVACY**  
) **ACT (18 U.S.C. §§ 2510 *et seq.*);**

) **2. VIOLATION OF CALIFORNIA'S**  
) **INVASION OF PRIVACY ACT (CAL**  
) **PENAL CODE §§ 630 *et seq.*)**

) **DEMAND FOR JURY TRIAL**

LAW OFFICES  
KIRTLAND & PACKARD LLP

1 Plaintiffs Henry Zelaya and Veronica Campos (“Plaintiffs”), on behalf of  
 2 themselves and all others similarly situated, allege as follows. Plaintiffs’ allegations  
 3 are based on the investigation of counsel, and thus on information and belief, except  
 4 as to the individual allegations of Plaintiffs, as to which Plaintiffs have personal  
 5 knowledge.

### 6 INTRODUCTION

7 1. Defendant Yahoo! Inc. (“Defendant” or “Yahoo!”) claims to “take your  
 8 privacy seriously” and is “committed to gaining your trust.” Yahoo! makes  
 9 these claims while, in the same breath, it admits to gathering extensive private  
 10 and personal information from its Yahoo! Mail subscribers for its own  
 11 economic and commercial gain. Yahoo! does this by going through the actual  
 12 content of electronic mail (“email”) that is sent and received by its  
 13 subscribers. Yahoo! has the ability to intercept, read, record, and monitor all  
 14 emails that go to and from its Yahoo! Mail subscribers with an @yahoo.com  
 15 email address.

16 2. However, what Yahoo! does not do is seek permission or consent from the  
 17 hundreds of thousand of people who are not subscribers of Yahoo! Mail and  
 18 do not have an @yahoo.com email address but who exchange emails with  
 19 Yahoo! Mail subscribers. Yahoo! is reading the private, confidential, and  
 20 personal content of non-Yahoo! Mail subscribers too. Only for them, it is  
 21 without any notice, permission, or consent.

### 22 THE PARTIES

23 3. Plaintiff Henry Zelaya is a citizen and resident of Los Angeles County,  
 24 California and does not use Yahoo! Mail as his email provider. During all  
 25 relevant times to this action, Plaintiff Zelaya has both sent emails to and  
 26 received emails from Yahoo! Mail users.

27 4. Plaintiff Veronica Campos is a citizen and resident of San Diego County,  
 28 California and does not use Yahoo! Mail as her email provider. During all

1 relevant times to this action, Plaintiff Campos has both sent emails to and  
2 received emails from YAHOO! Mail users.

3 5. Defendant Yahoo! is a Delaware Corporation with its principal place of  
4 business in Sunnyvale, California. Yahoo! conducts business in California  
5 and all fifty states of the United States of America.

6 6. Plaintiffs do not know the true names or capacities of the persons or entities  
7 sued herein as DOES 1-10, inclusive, and therefore sues such Defendants by  
8 such fictitious names. Plaintiffs are informed and believe, and upon such  
9 information and belief alleges, that each of the DOE Defendants is in some  
10 manner legally responsible for the damages suffered by Plaintiffs and the  
11 members of the Class as alleged herein. Plaintiffs will amend this complaint  
12 to set forth the true names and capacities of these Defendants when they have  
13 been ascertained, along with appropriate charging allegations, as may be  
14 necessary.

15 7. At all times herein mentioned, Defendants and each of them were the agents,  
16 principals, servants, employees and subsidiaries of each of the remaining  
17 Defendants, and were at all times acting within the purpose and scope of such  
18 agency, service and employment, and directed, consented, ratified, permitted,  
19 encouraged and approved the acts of each remaining Defendant.

20 **JURISDICTION AND VENUE**

21 8. This Court has subject matter jurisdiction pursuant to the Class Action  
22 Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member  
23 is of diverse citizenship from one Defendant; there are more than 100 Class  
24 members nationwide; the aggregate amount in controversy exceeds  
25 \$5,000,000; and minimal diversity exists.

26 9. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial  
27 part of the events or omissions giving rise to the claims occurred and/or  
28 emanated from this District, and Defendant resides in this district.

**FACTUAL ALLEGATIONS**

- 1
- 2 10. Yahoo! provides a free, web-based email service called Yahoo! Mail. Yahoo!
- 3 first offered email services in 1997 under its “Classic” version which was
- 4 available until June 2013 when all Yahoo! Mail users were forced to switch
- 5 to Yahoo!’s new, beta version of Yahoo! Mail. The beta version of Yahoo!
- 6 Mail was introduced in October 2010 at which point Yahoo! Mail users were
- 7 encouraged to make the switch to the new beta version.
- 8 11. With the introduction of the beta version of Yahoo! Mail came a change in
- 9 Yahoo! Mail’s ability and practice of intercepting, scanning, and reading
- 10 Yahoo! Mail subscribers’ emails for the purposes of targeted advertising.
- 11 12. Indeed, Yahoo! admits to scanning the contents of private emails for the
- 12 purposes of targeted, “personalized” advertising to its users. Yahoo! admits to
- 13 using a device “that looks for patterns, keywords, and files in Mail,
- 14 Messenger, and other communications content. In order to bring you the
- 15 newest Yahoo! Mail, Yahoo!’s automated systems will scan and analyze all
- 16 incoming and outgoing email, IM, and other communications content sent
- 17 and received from your account in order to personalize your experience. This
- 18 will result in both product enhancement as well as more relevant advertising
- 19 in addition to a safer, less cluttered Mail experience.”
- 20 13. Yahoo! intercepts, scans, monitors, and reads the contents of its Yahoo! Mail
- 21 subscribers’ emails but similarly intercepts, scans, monitors, and reads the
- 22 private and confidential contents of non-Yahoo! Mail subscribers who have
- 23 never given their consent, impliedly or expressly, to Yahoo!’s use of their
- 24 emails’ contents. These non-Yahoo! Mail subscribers, i.e. Plaintiffs and the
- 25 Class, have similarly never been offered Yahoo!’s Privacy Policy and Terms
- 26 of Use, much less given consent to have their private and confidential emails
- 27 be treated pursuant thereto.
- 28

- 1 14. Yahoo! only provides to its subscribers notice of the way it collects and uses  
2 subscribers' personal information in its Privacy Policy and Terms of Service;  
3 however, Yahoo! provides no such notice to non-Yahoo! Mail subscribers  
4 who may send or receive emails from Yahoo! Mail subscribers.
- 5 15. The emails exchanged between Yahoo! Mail subscribers and non-Yahoo!  
6 Mail subscribers are private and/or confidential as they may contain business  
7 communications, private communications, sensitive and/or proprietary  
8 communications, and/or attachments that may be similarly characterized.
- 9 16. Plaintiffs and the Class have a reasonable expectation of privacy in the  
10 content of their emails, i.e. electronic communications,<sup>1</sup> because emails sent  
11 to Yahoo! Mail users are transmitted in certain electronic communication  
12 formats with destination specific, limited addresses which specifically  
13 identify the sole intended recipients of an email. Plaintiffs and the Class  
14 similarly receive emails sent from Yahoo! Mail subscribers in the same  
15 manner. As such, the destination addresses are confined to those persons  
16 specified as intended recipients.
- 17 17. Plaintiffs and the Class had an objectively reasonable expectation that their  
18 private, sensitive, and confidential emails would not be intercepted, scanned,  
19 monitored, or read by Yahoo! as not only had they not given consent to such  
20 an invasion of privacy, but their emails contained information that they  
21 expected would be kept between them and the sole identified recipient(s).  
22 The highly private and confidential email communications sent by Plaintiffs  
23 to Yahoo! Mail subscribers included communications involving, but not  
24 limited to, private health matters, financial information, proprietary  
25 information, personally sensitive information, and/or personally identifying  
26 information.

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27  
28 <sup>1</sup> The emails sent to and from Plaintiffs and the Class Members to Yahoo! Mail users are deemed "electronic communications" as defined by 18 U.S.C. § 2510(12).

**CLASS DEFINITIONS AND CLASS ALLEGATIONS**

18. Plaintiffs bring this action on behalf of themselves, on behalf of all others similarly situated, as members of the Class or subclasses (collectively referred to hereafter as the “Class”) defined as follows:

(1) California Class: The class that Plaintiffs seek to represent (the “California Class”) consists of all persons who are citizens or residents of California who through their non-Yahoo! Mail accounts, (1) received an original email message from a Yahoo! Mail account user with an @yahoo.com address, or (2) sent an email message to an Yahoo! Mail account user with an @yahoo.com address and received a reply, from within two years before the filing of this action up through and including the date of class certification. Excluded from the Class are Defendant, any parent, subsidiary, affiliate or controlled person of Defendant, as well as the officers and directors of Defendant, and the immediate family member of any such person. Also excluded is any judge who may preside over this case.

(2) Nationwide Class: The class that Plaintiffs seek to represent (the “Nationwide Class”) is defined to include all persons in the United States who through their non-Yahoo! Mail accounts, (1) received an original email message from a Yahoo! Mail account user with an @yahoo.com address, or (2) sent an email message to an Yahoo! Mail account user with an @yahoo.com address and received a reply, from within two years before the filing of this action up through and including the date of class certification. Excluded from the Class are Defendant, any parent, subsidiary, affiliate or controlled person of Defendant, as well as the officers and directors of Defendant, and the immediate family member of any such person. Also excluded is any judge who may preside over this case.

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- 1 19. This action is brought and may be properly maintained as a class action  
2 pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and  
3 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy,  
4 predominance and superiority requirements of those provisions.
- 5 20. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual  
6 joinder of all of its members is impractical. While the exact number and  
7 identities of Class members are unknown to Plaintiffs at this time and can  
8 only be ascertained through appropriate discovery, Plaintiff is informed and  
9 believes the Class includes thousands of members. Plaintiff alleges that the  
10 Class may be ascertained by the records maintained by Defendant.
- 11 21. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all  
12 members of the Class, which predominate over any questions affecting only  
13 individual members of the Class. These common legal and factual questions,  
14 which do not vary from class member to class member, and which may be  
15 determined without reference to the individual circumstances of any class  
16 member, include, but are not limited to, the following:
- 17 (a) For the Electronic Communications Privacy Act (the “ECPA”)
  - 18 claims:
    - 19 i. Whether Yahoo! intentionally intercepted, endeavored to
    - 20 intercept, or procured any other person to intercept or endeavor
    - 21 to intercept Plaintiffs’ and Class Members’ electronic
    - 22 communications as made the basis of this suit;
    - 23 ii. Whether the emails sent by and to Plaintiffs and Class
    - 24 Members were electronic communications;
    - 25 iii. Whether Yahoo! used an electronic, mechanical, or other
    - 26 device;
    - 27 iv. Whether Yahoo! acquired any content of email sent by and
    - 28 to Plaintiffs and Class Members;

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- iv. Whether that content amounted to any information concerning the substance, purport, or meaning of the electronic communications by and to Plaintiffs and Class Members;
- v. Whether Yahoo! acted intentionally;
- vi. Whether statutory or liquidated damages against Yahoo! should be assessed; and,
- vii. Whether injunctive and declaratory relief against Yahoo! should be issued.

(b) For the California’s Invasion of Privacy Act (“CIPA”) claims:

- i. Whether Yahoo!, as a corporation, is a “person;”
- ii. Whether Yahoo!, as a corporation, acts through “persons” for whose actions Yahoo! is liable.
- iii. Whether Yahoo! uses a “machine,” “instrument,” “contrivance,” or “in any other manner” to read, attempt to read, or to learn the content or meaning of Plaintiffs’ and the Class Members’ emails;
- iv. Whether Yahoo! acts willfully when it reads, attempts to read, or learns the content or meaning of Plaintiffs’ and Class Members’ emails;
- v. Whether Yahoo! has the consent of all parties to the communication or does it act in an unauthorized manner when it reads, attempts to read, or learns the content or meaning of Plaintiffs’ and Class Members’ emails;
- vi. Does Yahoo!’s review, processing, acquisition or copying of Plaintiffs’ and Class Members’ email amount to Yahoo! reading, attempting to read, or learning the content or meaning of Plaintiffs’ and Class Members’ emails;



1           vii. Do Plaintiffs' and Class Members' emails amount to "any  
2           message, report, or communication;"

3           viii. At the time Yahoo! reads, attempts to read, or learns the  
4           contents or meaning of Plaintiffs' and Class Members' emails,  
5           are the emails in transit to the Yahoo! mail recipients;

6           ix. At the time Yahoo! reads, attempts to read, or learns the  
7           contents or meaning of Plaintiffs' and Class Members' emails,  
8           are the emails passing over any wire, line, or cable;

9           x. Whether Yahoo! utilizes any telegraph or telephone line, wire,  
10          cable or instrument.

11 22. [Fed. R. Civ. P. 23(a)(3)] Plaintiffs' claims are typical of the claims of the  
12          members of the Class. Plaintiffs and all members of the Class have sustained  
13          injury and are facing irreparable harm arising out of Defendant's common  
14          course of conduct as complained of herein. The losses of each member of the  
15          Class were caused directly by Defendant's wrongful conduct as alleged  
16          herein.

17 23. [Fed. R. Civ. P. 23(a)(4)] Plaintiffs will fairly and adequately protect the  
18          interests of the members of the Class. Plaintiffs have retained attorneys  
19          experienced in the prosecution of class actions, including complex consumer  
20          and mass tort litigation.

21 24. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available  
22          methods of fair and efficient adjudication of this controversy, since individual  
23          litigation of the claims of all Class members is impracticable. Even if every  
24          Class member could afford individual litigation, the court system could not.  
25          It would be unduly burdensome to the courts in which individual litigation of  
26          numerous issues would proceed. Individualized litigation would also present  
27          the potential for varying, inconsistent or contradictory judgments, and would  
28          magnify the delay and expense to all parties and to the court system resulting

1 from multiple trials of the same complex factual issues. By contrast, the  
 2 conduct of this action as a class action, with respect to some or all of the  
 3 issues presented herein, presents fewer management difficulties, conserves  
 4 the resources of the parties and of the court system, and protects the rights of  
 5 each Class member.

6 25. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by  
 7 thousands of individual Class members would create the risk of inconsistent  
 8 or varying adjudications with respect to, among other things, the need for and  
 9 the nature of proper notice, which Defendant must provide to all Class  
 10 members.

11 26. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by  
 12 individual class members would create a risk of adjudications with respect to  
 13 them that would, as a practical matter, be dispositive of the interests of the  
 14 other Class members not parties to such adjudications or that would  
 15 substantially impair or impede the ability of such non-party Class members to  
 16 protect their interests.

17 27. [Fed. R. Civ. P. 23(b)(2)] Defendant has acted or refused to act in respects  
 18 generally applicable to the Class, thereby making appropriate final injunctive  
 19 relief with regard to the members of the Class as a whole.

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF THE ELECTRONIC COMMUNICATIONS**

22 **PRIVACY ACT**

23 **(18 U.S.C. §§ 2510 *et seq.*)**

24 **(By Plaintiffs and the Class Against Defendant)**

25 28. Plaintiffs hereby incorporate paragraphs 1-27 above as if set forth in full.

26 29. Plaintiffs, on their own behalf, and on behalf of the Class, assert violations of  
 27 the Electronic Communications Privacy Act (the "ECPA"), 18 U.S.C. §§  
 28 2511(1)(a) and (1)(d), for Yahoo!'s unlawful interception and use of

1 Plaintiffs' electronic communications. Plaintiffs have standing to assert a  
2 cause of action herein pursuant to 18 U.S.C. § 2520(a) as they are "person[s]  
3 whose ... electronic communication[s] [were] intercepted ... in violation of  
4 this chapter."

5 30. Yahoo!, as a corporation, is a "person" pursuant to 18 U.S.C. § 2510(6).

6 31. Yahoo!'s actions affect interstate commerce in that Plaintiffs and the putative  
7 class are citizens and residents of various states and have sent emails to  
8 Yahoo! Mail accounts in states different than their own. Also, Yahoo!'s  
9 actions as an electronic communication service provider offering Yahoo!  
10 Mail throughout the United States demonstrate its affect interstate commerce.

11 32. In violation of the ECPA, Defendant has, or does "intentionally intercept[],  
12 endeavors to intercept, [and/] or procures any other person to intercept or  
13 endeavor to intercept, any wire, oral, or electronic communication" and/or  
14 has, or does "intentionally use[], or endeavors to use, the contents of any  
15 wire, oral, or electronic communication, knowing or having reason to know  
16 that the information was obtained through the interception of a wire, oral, or  
17 electronic communication" of Plaintiffs and the Class. 18 U.S.C. §§  
18 2511(1)(a) and (1)(d).

19 33. Yahoo!'s interception of and use of the contents of Plaintiffs' and the Class's  
20 electronic communications was not necessary for the rendering of an  
21 electronic mail service or for the protection of the rights or property of  
22 Yahoo!, but instead was done for the purpose of targeted advertising to  
23 Yahoo! Mail subscribers without the Plaintiffs' or the Class's consent.

24 34. The industry standard for electronic mail services does not include the  
25 interception and use of the content of email messages, especially without  
26 consent. Yahoo!'s interception of the content of the Plaintiffs' and the  
27 Class's electronic mail messages were not related to the ability to send and  
28 receive electronic mail and was not electronic communication "services"

1 within the meaning of the industry. Yahoo!’s content-based advertising and  
2 other uses of Plaintiffs’ and Class Members’ electronic mail are not a  
3 “service” of an electronic communication service as defined by 18 U.S.C. §  
4 2510(15).

5 35. Plaintiffs and the Class, as members to the electronic communications alleged  
6 herein, did not consent to Yahoo!’s interception or use of the contents of the  
7 electronic communications.

8 36. As a result of Yahoo!’s violations of the ECPA, pursuant to 18 U.S.C. §  
9 2520, Plaintiffs and the Class are entitled to: preliminary and permanent  
10 injunctive relief to require Yahoo! to fully disclose its activities and halt  
11 Yahoo!’s violations; declaratory relief; statutory damages for Plaintiffs and  
12 each Class Member at the greater of \$100 a day for each day of violation or  
13 \$10,000; and reasonable attorneys’ fees and costs reasonably incurred.

14 **SECOND CAUSE OF ACTION**

15 **VIOLATION OF CALIFORNIA’S INVASION OF PRIVACY ACT**

16 **(CAL PENAL CODE §§ 630 *et seq.*)**

17 **(By Plaintiffs and the Class Against Defendant)**

18 37. Plaintiffs hereby incorporate paragraphs 1-36 above as if set forth in full.

19 38. Yahoo!, as a corporation, is a “person” under California Penal Code.

20 39. Plaintiffs, on behalf of themselves and the Class, assert violations of  
21 California’s Invasion of Privacy Act (“CIPA”), Cal. Penal Code §§ 630, *et*  
22 *seq.*, and specifically sections 631(a) and 632, for Yahoo!’s unlawful reading  
23 and recording of electronic mail content Plaintiffs and the Class sent to, or  
24 received from, Yahoo! Mail users. Yahoo! uses this information to learn  
25 information about the sender and recipient, and uses it for commercial  
26 advantage, gain, and profit.<sup>2</sup>

27 \_\_\_\_\_  
28 <sup>2</sup>Yahoo! is not a “public utility” under Cal. Penal Code § 631(b) as defined by the  
California State statutory and case law.

- 1 40. Section 631(a) of the California Penal Code states that it is unlawful for  
2 “[a]ny person by means of any machine, instrument, or contrivance, or in any  
3 other manner, intentionally taps, or makes any unauthorized connection,  
4 whether physically, electrically, acoustically, inductively, or otherwise, with  
5 any telegraph or telephone wire, line, cable, or instrument, including the wire,  
6 line, cable, or instrument of any internal telephonic communication system, or  
7 **who willfully and without the consent of *all* parties to the**  
8 **communication**, or in any unauthorized manner, **reads, or attempts to read,**  
9 **or to learn the contents or meaning of any message, report, or**  
10 **communication** while the same is in transit or passing over any wire, line, or  
11 cable, or is being sent from, or received at any place within this state; or who  
12 uses, or attempts to use, in any manner, or for any purpose, or to  
13 communicate in any way, any information so obtained, or who aids, agrees  
14 with, employs, or conspires with any person or persons to unlawfully do, or  
15 permit, or cause to be done any of the acts or things mentioned above in this  
16 section....” (emphasis added). It was held by the California Supreme Court  
17 that section 631 protects against “intentional wiretapping, willfully  
18 attempting to learn the contents or meaning of a communication in transit  
19 over a wire, and attempting to use or communicate information obtained as a  
20 result of engaging in either of the previous two activities.” *Tavernetti v.*  
21 *Superior Court*, 583 P.2d 737, 741 (Cal. 1978).
- 22 41. Yahoo! has violated section 631(a) by intentionally, without the express or  
23 implied consent of *all parties to the communication*, intercepting, reading,  
24 and otherwise learning the contents or meaning of the electronic messages  
25 that Plaintiffs and the Class received from, or sent to, Yahoo! Mail users.  
26 This willful interception of Plaintiffs’ and the Class’s communications was  
27 unlawful and purely for Yahoo!’s own commercial and economic gain  
28 without regard for those non-Yahoo! Mail users’ privacy.

1 42. Similarly, section 632 of the California Penal Code prohibits the intentional,  
 2 un-consented to recording of confidential communications. A  
 3 communication is “confidential” under section 632 “if a party to that  
 4 conversation has an objectively reasonable expectation that the conversation  
 5 is not being overheard or recorded . . . . The standard of confidentiality is an  
 6 objective one defined in terms of reasonableness.” *Faulkner v. ADT Sec.*  
 7 *Servs., Inc.*, 706 F.3d 1017, 1019 (9th Cir. 2013).

8 43. Here, Yahoo! unlawfully intercepted, scanned, read, and recorded the  
 9 confidential communications of Plaintiffs and the Class without implied or  
 10 express consent. Plaintiffs and the Class had an objectively reasonable  
 11 expectation of privacy in their emails as the highly private and confidential  
 12 email communications sent by Plaintiffs to Yahoo! Mail subscribers included  
 13 communications involving, but not limited to, private health matters, financial  
 14 information, proprietary information, personally sensitive information, and/or  
 15 personally identifying information.

16 44. Yahoo!’s unlawful interceptions of Plaintiffs’ and Class’s emails were done  
 17 intentionally, willfully, and with no regard for the Plaintiffs’ and Class’s  
 18 privacy. Yahoo!’s interceptions were solely for its own financial,  
 19 commercial, and economic gain. As such, pursuant to section 637.2 of the  
 20 California Penal Code, Plaintiffs and the Class are entitled to: preliminary and  
 21 permanent injunctive relief to require Yahoo! to fully disclose its practices  
 22 and halt its violations; declaratory relief; monetary relief in the amount set  
 23 forth in § 637.2 (a)(1) for each Class member; and reasonable attorneys’ fees  
 24 and costs reasonably incurred.

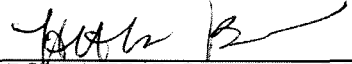
25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiffs, individually and on behalf of the Class, pray for  
 27 relief and judgment as follows:  
 28

- 1           1.     For preliminary and permanent injunctive relief requiring
- 2     Yahoo! to fully disclose its practices and halt its violations;
- 3           2.     for certification of the putative class;
- 4           3.     that Plaintiffs be appointed as Class Representatives;
- 5           4.     appropriate declaratory relief;
- 6           5.     a verdict against Defendant for the causes of action alleged
- 7     against it and for Class damages;
- 8           6.     an award to Plaintiffs for their personal damages pursuant to
- 9     their respective causes of action;
- 10          9.     For attorneys' fees and expenses pursuant to all applicable laws;
- 11          10.    For costs of suit; and
- 12          11.    For such other and further relief as the Court deems just and
- 13     proper.

14  
15     DATED: October 4, 2013

KIRTLAND & PACKARD LLP

16  
17     By:   
 18     MICHAEL LOUIS KELLY  
 19     BEHRAM V. PAREKH  
 20     HEATHER M. BAKER  
 21     *Counsel for Plaintiffs and the Class*

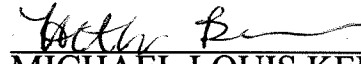
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**JURY TRIAL DEMANDED**

Plaintiffs demand a jury trial on all issues so triable.

DATED: October 4, 2013

KIRTLAND & PACKARD LLP

By:   
MICHAEL LOUIS KELLY  
BEHRAM V. PAREKH  
HEATHER M. BAKER  
*Counsel for Plaintiffs and the Class*

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