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& Haubert, PLLC, on behalf of
itself and all others
similarly situated.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

WILSON & HAUBERT, PLLC

Plaintiff,

vs.

YAHOO! INC.

Defendant

) Case No.:

) **CLASS ACTION COMPLAINT**

) **JURY TRIAL DEMANDED**

COMPLAINT

Comes now the Plaintiff, Wilson & Haubert, PLLC (“Plaintiff”), acting individually and on behalf of all other persons similarly situated, for its Complaint and demand for jury trial states and alleges as follows:

INTRODUCTION

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2 1. Plaintiff brings this action as a class action pursuant to Rules 23(a), (b)(1), (b)(2)
3 and (b)(3) of the Federal Rules of Civil Procedure on behalf of all persons who purchased
4 Localworks (“Localworks”) from Defendant Yahoo! Inc., only to learn after the point of sale that
5 the purported benefits of Localworks are illusory, and that the representations regarding the
6 benefits of Localworks were unlawful, unfair, and fraudulent. Plaintiff seeks injunctive relief,
7 compensatory damages, restitution, disgorgement, and recovery of attorneys fees and litigation
8 costs.
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10 **PARTIES AND JURISDICTION**

11 2. Plaintiff Wilson & Haubert, PLLC is a small business organized under the laws
12 of the State of Arkansas as a professional limited liability company. Its principal place of
13 business is North Little Rock, Arkansas.
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15 3. Defendant Yahoo! Inc. (“Yahoo!” or the “Company”) is a Delaware
16 corporation headquartered at 701 First Avenue Sunnyvale, California.
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18 4. The Court has subject matter jurisdiction over this nationwide class action
19 pursuant to 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005, because the
20 matter in controversy exceeds \$5,000,000.00, exclusive of interest and costs, and is a class action
21 in which some members of the Class are citizens of states different than Defendant. *See* 28
22 U.S.C. § 1332(d)(2)(A). The Court has personal jurisdiction over Defendant because it owns and
23 operates businesses that are headquartered in California and conducts substantial business
24 throughout California.
25

26 5. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) because Yahoo! is
27 headquartered in this district.
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1 6. Venue is also proper in this district pursuant to Defendant’s Universal Terms
2 of Service (as incorporated in the Yahoo Small Business Terms of Service) which provide that
3 “all claims, causes of action or disputes . . . shall be brought exclusively in the courts located in
4 the county of Santa Clara, California or the Northern District of California . . .” See attached
5 Exhibits A and B.

6
7 7. California law governs the substantive legal issues in the instant matter, as
8 Defendant’s Universal Terms of Service, incorporated by reference into all agreements entered
9 into between Plaintiff and Defendant, expressly provide that California law will govern the
10 parties’ relationship.

11 **FACTUAL BACKGROUND**

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13 8. The marketing of businesses in the modern economy relies heavily on
14 establishing a presence on the internet. This modern reality applies with equal force to both
15 multinational corporations and local merchants, as potential customers search for goods and
16 services almost exclusively on the World Wide Web (“the web”). Accordingly, maintaining an
17 accurate and up-to-date presence on the web – particularly online directories providing business
18 listings – is vital to marketing small businesses. Indeed, a March, 2011 Forbes article cited
19 multiple studies showing that prospective customers overwhelmingly – 80% of the time – rely on
20 web listings when searching for local services or goods.¹ An April, 2013 Forbes article cites
21 research finding even that number has climbed: now, 97% of consumers conduct their searches
22 for local businesses online.²
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27 ¹ Kern Lewis, *Should Small Businesses Still Book Yellow Page Ads?*, Forbes (Mar. 28, 2011) (available at
<http://www.forbes.com/sites/kernlewis/2011/03/28/should-small-businesses-still-book-yellow-page-ads/>).

28 ² Tim Devaney and Tom Stein, *Your Business Needs to Get Social, Local and Mobile – Fast*, Forbes (Apr. 16, 2013)
(available at <http://www.forbes.com/sites/capitalonespark/2013/04/16/your-business-needs-to-get-social-local-and-mobile-fast/>).

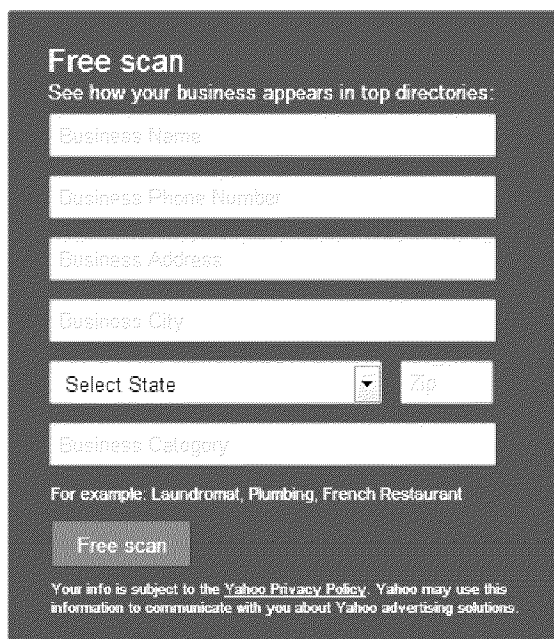
1 9. Effectively, then, the *entirety* of a business’s prospective customer base turns
2 to the web when searching for goods and services. One of the chief mechanisms for consumer
3 online search is a web directory (the equivalent of the Yellow Pages section of a phone book). It
4 follows, then, that being represented in as many web directories as possible – and being
5 represented accurately – is critical for businesses, as this is the main driver for customers to learn
6 about the businesses and to employ their services.

8 10. Localworks is an internet marketing tool offered by Yahoo! that purports to
9 “drive new leads [to the enrollee’s business] by pushing your listing and expanded content out to
10 40+ key directories across the web.” Most fundamentally, Localworks purports to correct
11 “inconsistent information and missed marketing opportunities across all listed directories. This
12 makes it easy to correct errors and push new information out to these directories so your content
13 is always up-to-date.” In addition, Localworks promises:

- 15 • Accurate business listings on 40+ top sites
- 16 • Simple Management of all listings
- 17 • Enhanced customer engagement with photos, videos, and product descriptions
- 18 • Tracking of impressions, profile views, clicks

19 11. Yahoo! represents that the 40+ sites upon which enrollees are listed “receive
20 more than 150 million local searches per month.” Further, according to Defendant, “desktop,
21 mobile, and navigational devices can all access the directories, making it easy for customers to
22 find your listing whether they are at home or out running errands. This provides a guaranteed
23 presence in local searches and optimizes the results of a general search.”
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1 12. On November 6, 2013, Plaintiff visited the Localworks home page,³ where he
2 was prompted to enter information related to his business for a “free” scan, to determine whether
3 Wilson & Haubert, PLLC was accurately listed in the web directories covered by a Localworks
4 subscription. Plaintiff received this prompt:



Free scan
See how your business appears in top directories:

Business Name

Business Phone Number

Business Address

Business City

Select State

Business Category

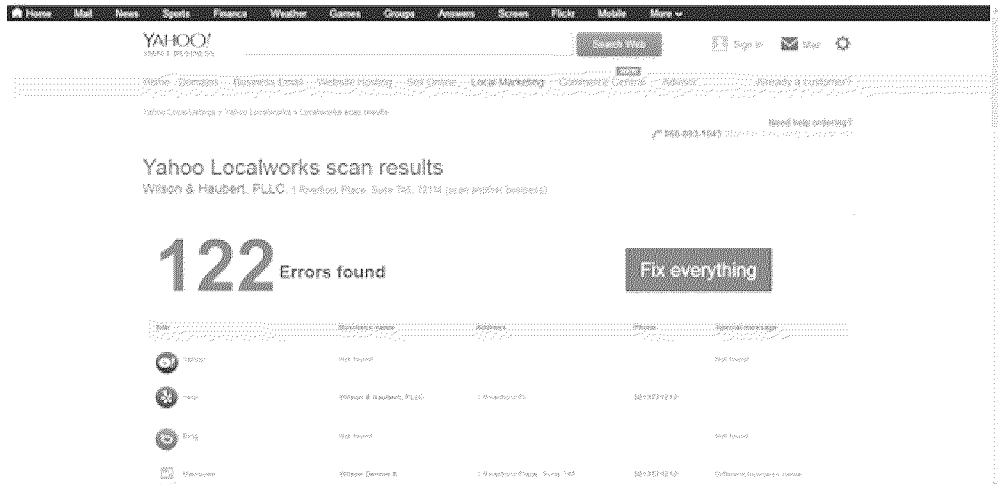
For example: Laundromat, Plumbing, French Restaurant

Your info is subject to the [Yahoo Privacy Policy](#). Yahoo may use this information to communicate with you about Yahoo advertising solutions.

17 13. Upon completing the above form, Plaintiff was informed that over 100 “errors”
18 – inaccuracies in listings in the various web directories linked to Localworks – were found.
19 Plaintiff was further directed to specific errors across specific directories:
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³ <http://smallbusiness.yahoo.com/localworks/>



14. Relying on the representations made by Defendant – namely, that purchasing the services offered by Localworks would “fix everything” – Plaintiff enrolled in Localworks on or about November 6, 2013, paying the quarterly \$89.97 fee by credit card.

15. Consistent with the instructions provided by Localworks, on November 6, 2013 Plaintiff created a personalized template including changes to errors found on various websites. Localworks confirmed receipt of these changes the same day.

16. Plaintiff subsequently checked Yahoo’s “Marketing Dashboard,” a feature of Localworks enabling enrollees to view the status of their listings in the directories serviced by Localworks. The information provided on the Marketing Dashboard, as of 10:08 PM, Central Standard Time, on November 10, 2013, represented to Plaintiff that listings had been published on all of the directories, with the possible exception of Bing and City Search:

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Marketing Dashboard for Wilson & Haubert, PLLC

My businesses: Business control panel

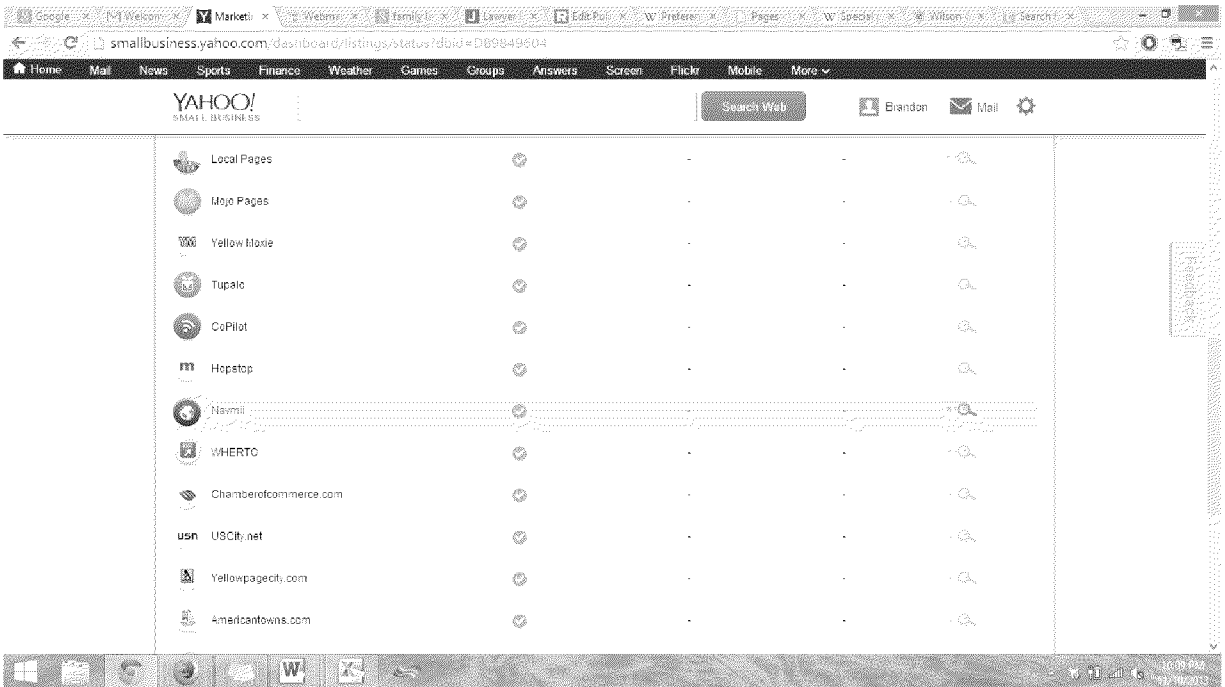
BY LISTING | YAHOO! LOCAL | LISTING PERFORMANCE | MY REPUTATION | LISTING STATUS

Listing status information for Wilson & Haubert, PLLC

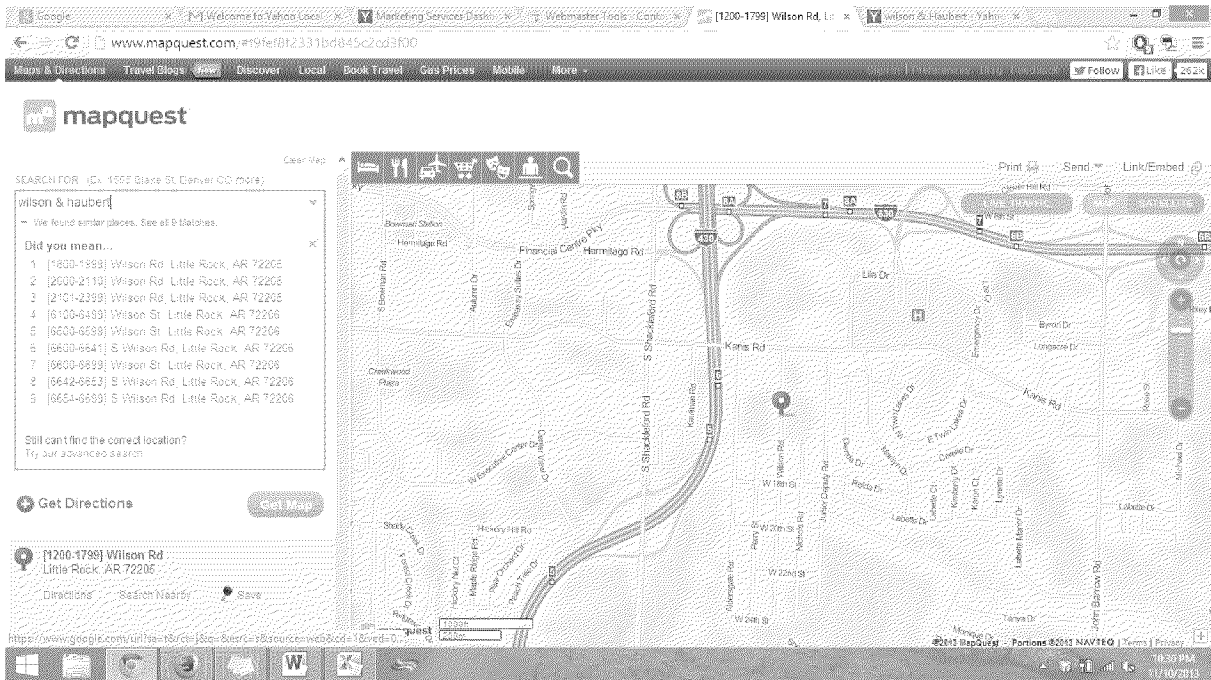
Site	Listing published	Available reviews	Average rating	View listing
Yelp	✓	-	4.5/5.0	View listing
Bing	✓	-	4.5/5.0	View listing
Map Quest	✓	-	4.5/5.0	View listing
City Search	✓	-	4.5/5.0	View listing
White Pages	✓	-	4.5/5.0	View listing
Superpages	✓	-	4.5/5.0	View listing
Local.com	✓	-	4.5/5.0	View listing
Merchant Circle	✓	-	4.5/5.0	View listing

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Local.com	✓	-	4.5/5.0	View listing
Merchant Circle	✓	-	4.5/5.0	View listing
Elocal	✓	-	4.5/5.0	View listing
Local Database	✓	-	4.5/5.0	View listing
Topix	✓	-	4.5/5.0	View listing
City Squares	✓	-	4.5/5.0	View listing
Yellowise	✓	-	4.5/5.0	View listing
YellowEct	✓	-	4.5/5.0	View listing
Hopstop	✓	-	4.5/5.0	View listing
ELocal	✓	-	4.5/5.0	View listing
ShowMeLocal	✓	-	4.5/5.0	View listing
Local Pages	✓	-	4.5/5.0	View listing
More Pages	✓	-	4.5/5.0	View listing

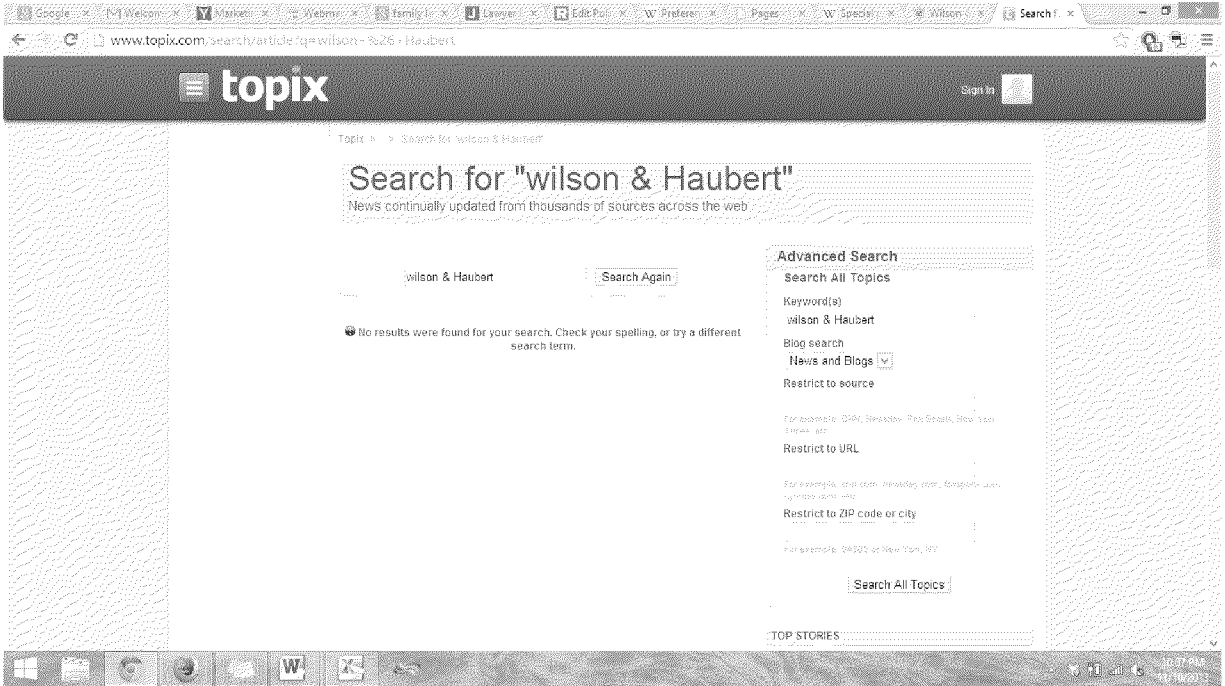


17. However, when Plaintiff checked the actual directories, many did *not* display any listing for Plaintiff – among them, Mapquest, Merchant Circle, White Pages, and Topix:



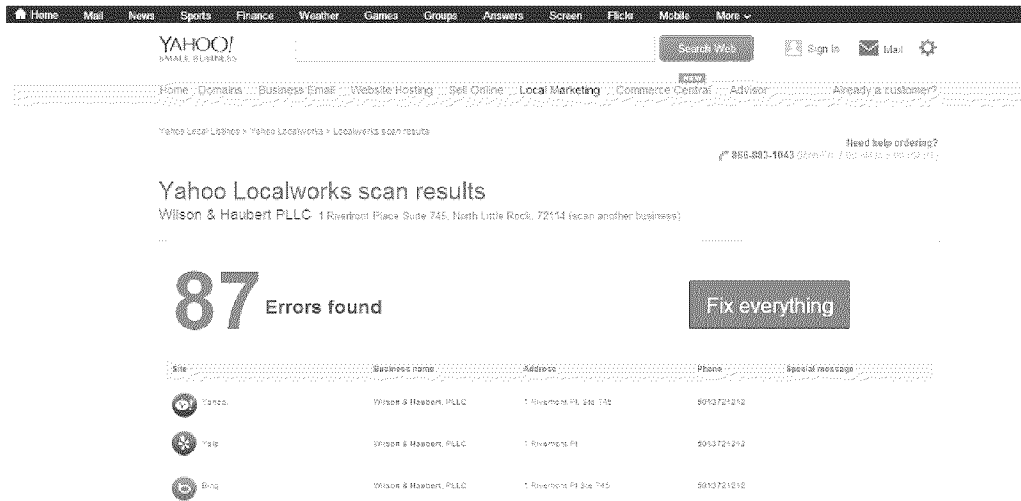
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18. Despite Defendant’s representations that the errors it identified had been corrected, and that Plaintiff’s business information was now included on the 40+ sites, enrollment in Localworks did not provide such benefits. Indeed, two weeks after enrolling in Localworks, Plaintiff ran the same free diagnostic described in paragraph 12, at which time he was informed that the 122 errors identified across the various web directories remained.

19. At the filing of this action – over one month since Plaintiff has enrolled in Localworks – the diagnostic on the site’s main page states that 87 errors remain:



20. Further, listing updates on four of the directories – Yelp, Bing, Superpages, & Elocal – were enacted by *Plaintiff*, upon the realization that Localworks was not updating *Plaintiff*'s information.

21. Defendant has consistently misrepresented the benefits of the Localworks program. Such misrepresentations include, *inter alia*, statements made in Defendant's marketing materials.

22. Immediate updating of relevant business information is critical to enrollees, because "cancellation of Yahoo Localworks will result in the removal of all new directory listings and listings updates created when you purchased Yahoo Localworks. If you previously had a basic listing on any of the target directories, your listing should revert to the original basic listing." In other words, Yahoo! represents to its customers that if the customer ever discontinues paying monthly fees, any corrections or updates made during the service period will be eliminated. Therefore, to the extent Localworks provides any value in exchange for each monthly fee, such value is limited to that month to which each fee applies.

CLASS ACTION ALLEGATIONS

1 23. This action is brought on behalf of Plaintiff, individually, and as a class action,
2 on behalf the following class (collectively referred to as “the Class” or “Class”)

3 All persons residing in the the United States who purchased
4 Localworks.

5 24. The Class does not include Defendant, or its officers, directors, agents, or
6 employees.

7 25. Plaintiff reserves the right to modify or amend the definition of the Class
8 before the Court determines whether certification is appropriate.

9 26. The members of the Class are so numerous that joinder is impractical. Upon
10 information and belief, the Class consists of thousands, the identity of whom, is within the
11 knowledge of Defendant and can be ascertained only by resort to Defendant’ records.

12 27. The representative Plaintiff’s claims are typical of the claims of the members
13 of the Class in that (1) it, like all members of the Class, maintained Localworks accounts; and (2)
14 purchased Defendant’s products and were not informed, at the point of sale, that the “services”
15 did not perform as advertised.

16 28. Questions of law and fact common to the Class predominate over questions
17 that may affect individual Class members, including, *inter alia*:

18 a. whether Defendant’s conduct constitutes an unfair and/or deceptive trade
19 practice;

20 b. whether Defendant’s conduct constitutes a breach of its contract with
21 Plaintiff and Class members;

22 c. whether Plaintiff and members of the Class have sustained damages, and if
23 so, what is the proper measure of those damages;

24 d. whether injunctive relief is appropriate in this matter.
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1 29. Plaintiff will fairly and adequately represent and protect the interests of the
2 Class in that it has no interest that is antagonistic to, or that irreconcilably conflicts with, those of
3 other members of the Class.

4 30. Plaintiff has retained counsel competent and experienced in the prosecution of
5 class action litigation.

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7 31. A class action is superior to all other available methods for the fair and
8 efficient adjudication of Plaintiff's and the Class members' claims. Plaintiff and the members of
9 the Class have suffered irreparable harm as a result of Defendant's deceptive, intentional,
10 reckless, negligent, and unlawful conduct. The damages suffered by individual Class members
11 may be relatively small, and thus few, if any individual class members can afford to seek legal
12 redress on an individual basis for the wrong complained of herein. Absent a class action, Plaintiff
13 and members of the Class will continue to suffer losses as a result of Defendant's unlawful and
14 negligent conduct.
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17 **COUNT I**
18 **Breach of Contract**
19 **(On Behalf of the Class)**

20 31. Plaintiff repeats all paragraphs above.

21 32. Plaintiff and members of the Class have contracted with Defendant for
22 Localworks.

23 33. Pursuant to the terms of the contract between Defendant and Plaintiff and
24 members of the Class, Yahoo committed to ensure that Plaintiff's and the Class members' listing
25 information is accurately reflected in each of the directories Localworks purports to cover.

26 34. Plaintiff and the Class have performed all, or substantially all, of the obligations
27 imposed upon them under the terms of their respective contracts with Yahoo.
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1 35. All conditions required by the contract for Yahoo's performance have occurred.

2 36. Yahoo breached its contract with Plaintiff and the Class members by failing to
3 maintain accurate business listings for its Localworks customers, in each of the directories it
4 purports to cover through Localworks.

5 37. Plaintiff and the Class members have been harmed by Yahoo's failure to
6 perform its obligations under its contract with Plaintiff and the Class members.
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9 **COUNT II**
10 **Unjust Enrichment**
11 **(On Behalf of the Class)**

12 38. Plaintiff repeats all paragraphs above.

13 39. Plaintiff and all other Class members conferred benefits on Defendant by
14 paying for Localworks.

15 40. Defendant knowingly and willingly accepted monetary benefits resulting from
16 Plaintiff's and all other Class members' purchases, but failed to honor their obligations to
17 Plaintiff and all other Class members, specifically by failing to publish, update and correct
18 business information on the 40+ web directories.

19 41. Under the circumstances described herein, it is inequitable for Defendant to
20 retain these monetary benefits, derived from Plaintiff and all other Class members.

21 42. By engaging in the conduct described above, Defendant has been unjustly
22 enriched at the expense of Plaintiff and all other Class members. Accordingly, it would be
23 contrary to principles of equity and good conscience to permit Defendant to retain any ill-gotten
24 monetary benefits obtained as a result of the actions described herein.
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1 quarterly fees that they would not have otherwise paid. Plaintiff and the Class members are
2 entitled to injunctive relief and restitution, in an amount to be proven at trial.

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4 **COUNT IV**

5 **Violation of Cal. Bus. & Prof. Code §17500, *et seq.* – False Advertising**

6 39. Plaintiff incorporates by reference each of the foregoing allegations.

7 40. Pursuant to Cal. Bus. & Prof. Code §17500, it is unlawful for any person or
8 business to make untrue or misleading representations with regard to the services they advertise,
9 with the intent of inducing customers to purchase services, among other things.

10 41. Defendant is a “person” for the purposes of Cal. Bus. & Prof. Code §17506.

11 42. Defendant, with the intent to induce consumers to purchase Localworks, made
12 and disseminated uniform, untrue and/or misleading statements to Plaintiff and the Class, which
13 Defendant knew or reasonably should have known were untrue and/or misleading at the time the
14 statements were made.

15 43. The false and misleading statements and advertisements described herein were
16 uniformly experienced by Plaintiff and all Class members, since they were built into Defendant’s
17 web interface.

18 44. Plaintiff and the Class members have been damaged as a result of Defendant’s
19 false advertising, which caused Plaintiff and the Class members to pay the quarterly fees that
20 they would not have otherwise paid.

21 45. Independent of Plaintiff’s actual deception, reliance, and damage, the
22 advertisements complained of herein are deceptive on their face, and extrinsic evidence of
23 deception is unnecessary to establish liability. A person of ordinary intelligence would not infer
24 from Defendant’s advertising and representations the true nature of Localworks.

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26 46. Plaintiff and the Class members are entitled to injunctive relief and restitution, in
27 an amount to be proven at trial.

COUNT V

Violation of Cal. Bus. & Prof. Code §17200, *et seq.* – Unlawful Business acts and Practices (Predicated on Fraud/False Advertising)

47. Plaintiff incorporates by reference each of the foregoing allegations.

48. Defendant’s violations of Cal. Bus. & Prof. Code §17500, *et seq.*, is an “unlawful” act providing the basis for a finding of liability under the “unlawful” prong of Cal. Bus. & Prof. Code §17200, *et seq.*

49. Defendant’s unlawful violations of Cal. Bus. & Prof. Code § 17500, *et seq.*, are objectively material to a reasonable consumer and have deceived and/or are likely to deceive Plaintiff, the Class members, and other reasonable consumers.

50. Plaintiff and the Class members have been damaged as a result of Defendant’s unlawful violation of Cal. Bus. & Prof. Code § 17500, *et seq.*, which caused Plaintiff and the Class members to pay the quarterly fees that they would not have otherwise paid.

51. Had Plaintiff not been deceived by the false statements violating Cal. Bus. & Prof. Code § 17500, *et seq.*, it would not have purchased Localworks.

52. Plaintiff and the Class members have been damaged as a result of Defendant’s unlawful violations of Cal. Bus. & Prof. Code §17500, *et seq.* They are entitled to injunctive relief and restitution, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seek judgment in favor of itself and the Class for the following:

A. That the Court determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure; that Plaintiff is a proper class representative; and that the best practicable notice of this action be given to members of the Class represented by Plaintiff;

B. That judgment be entered against Defendant and in favor of Plaintiff and the Class on the causes of action in this Complaint;

1 C. That judgment be entered against Defendant finding that the conduct of
2 Defendant is in violation of Cal. Bus & Prof. Code §§17200, *et seq.*, and §§17500, *et seq.*, and
3 enjoining Defendant from continuing in such conduct;

4 D. That judgment be entered against Defendant for injunctive and equitable
5 relief, restitution, and compensatory damages in an amount to be determined at trial;

6 E. That judgment be entered against Defendant imposing interest on
7 damages;

8 F. That judgment be entered against Defendant imposing litigation costs and
9 attorneys' fees; and

10 G. For all other and further relief as this Court may deem necessary and
11 appropriate.

12 Plaintiff demands a jury trial on all issues so triable.

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17 DATED: December 19, 2013

Respectfully Submitted,

18 **CARNEY BATES & PULLIAM, PLLC**

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