

1 SHEPHERD, FINKELMAN, MILLER & SHAH, LLP
 2 JAMES C. SHAH (SBN 260435)
 3 ROSE F. LUZON (SBN 221544)
 4 One California Street, Suite 900
 5 San Francisco, CA 94111
 6 Phone: 415-429-5272
 7 Fax: 866-300-7367
 8 jshah@sfmslaw.com
 9 rluzon@sfmslaw.com

10 CHIMICLES & TIKELLIS LLP
 11 STEVEN A. SCHWARTZ
 12 TIMOTHY N. MATHEWS
 13 CHRISTINA D. SALER
 14 One Haverford Centre
 15 361 W. Lancaster Avenue
 16 Haverford, PA 19041
 17 Telephone: (610) 642-8500

Counsel for Plaintiff

18 **UNITED STATES DISTRICT COURT**
 19 **NORTHERN DISTRICT OF CALIFORNIA**
 20 **SAN JOSE DIVISION**

21 BRANTON LEA, individually and
 22 on behalf of all others similarly
 23 situated,

Plaintiff,

vs.

24 LINKEDIN CORPORATION,

Defendant.

Case No: _____

CLASS ACTION

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

26 Plaintiff, Branton Lea (“Plaintiff”), by and through his attorneys, brings this
 27 action, on behalf of himself and others similarly situated, against Defendant,
 28 LinkedIn Corporation (“Defendant” or “LinkedIn”), and, except for information

1 based on his own personal knowledge, alleges, on information and belief based on
2 the investigation conducted by his counsel, as follows:

3
4 **INTRODUCTION AND NATURE OF THE ACTION**

5 1. Plaintiff brings this action to remedy violations of the California
6 Common Law Right of Publicity and California Unfair Competition Law in
7 connection with LinkedIn's scheme to grow its business through the
8 misappropriation of its members' names and likeness.

9 2. LinkedIn is a business-oriented social networking service that
10 enables its members to make "connections" with other members for the purported
11 goal of advancing members' professional pursuits. As of October 2014, LinkedIn
12 reported that it is "the world's largest professional network on the Internet . . .
13 hav[ing] more than 300 million members in over 200 countries and territories" and
14 "[t]hrough [its] propriety platform, members are able to create, manage and share
15 their professional identity online, build and engage with their professional network,
16 access shared knowledge and insights, and find business opportunities, enabling
17 them to be more productive and successful."¹

18 3. LinkedIn's usefulness or value is, therefore, only as good as the
19 breadth and relevance of its member network. Indeed, LinkedIn acknowledges that
20 its "future growth will depend, in part, on our ability to continue to increase our
21 member base and create value for our members"² because increased membership
22 "will result in increased sales of our Talent Solutions, Marketing Solutions and
23 Premium Subscriptions, as customers will have access to a larger pool of
24 professional talent."³

25
26

¹ LinkedIn's Form 10-Q filed with the Securities and Exchange Commission on October 30,
27 2014, at page 22.

² *Id.*

28 ³ LinkedIn's Form 10-K filed with the Securities and Exchange Commission on February 13,
2014, at page 40.

1 4. One of the ways in which LinkedIn grows its member base
2 exponentially is by persuading its new and existing members to upload their
3 external email address books (e.g., Outlook, Gmail, AOL, etc.), and then
4 persuading the user to allow LinkedIn to send contact requests to anyone who is
5 already on LinkedIn and also to send email invitations to anyone who is not already
6 a member on LinkedIn suggesting that they join. This email contact upload system
7 has been critical to the success and growth of LinkedIn. According to LinkedIn co-
8 founder Reid Hoffman, uploading members' external email contacts was one of the
9 most important keys to LinkedIn's success in building its network:

10
11 When we launched [LinkedIn] we had hoped that ... the growth would pick
12 up by itself. ... And we had a small trickle ... but not an explosion of
13 growth. And I sat down with the team and said, if we don't solve this were
14 dead. ... And so I said, I have one good idea and we're going to try it and see
15 if it works. And the idea was ... we said we would allow people to
16 essentially upload their address book. ... And that caused our growth curve
17 to go from this to this [showing steep line with his hand].

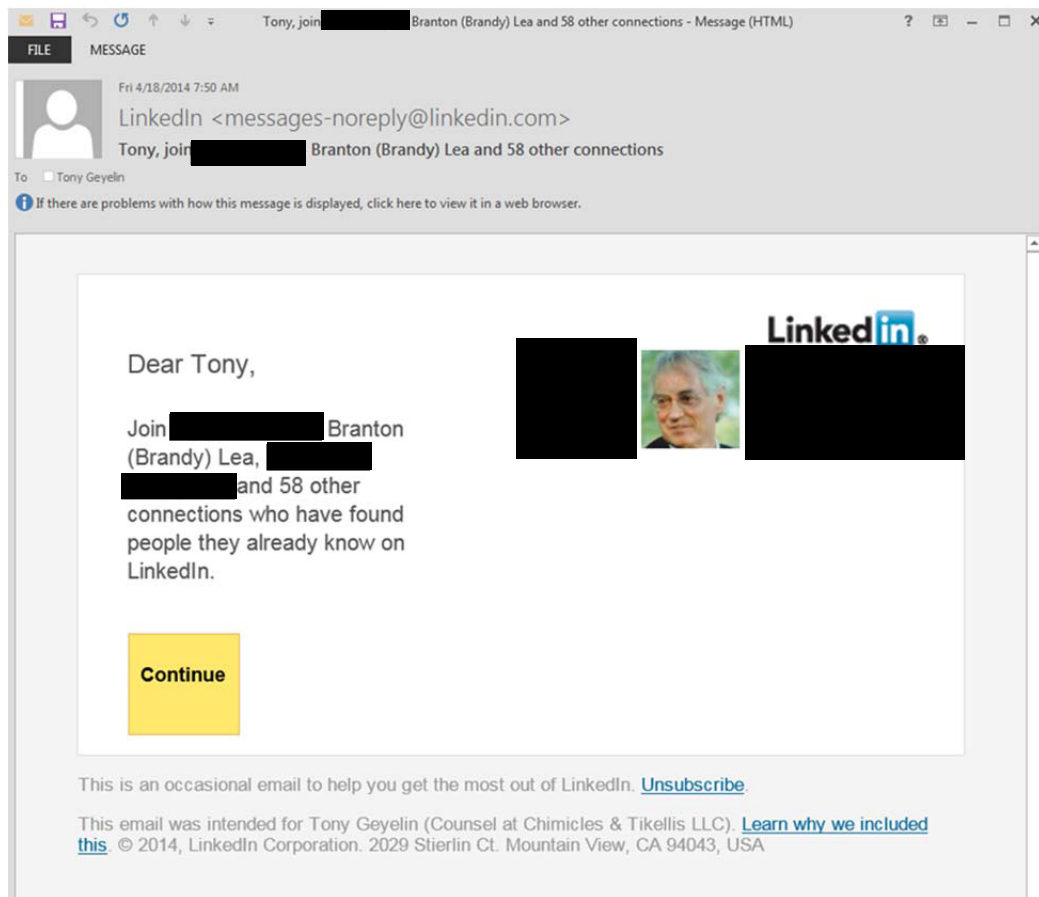
18 Interview of Reid Hoffman on Bloomberg TV, May 9, 2013, available at:
19 [http://www.bloomberg.com/video/reid-hoffman-discusses-founding-linkedin-
20 P6pT1HPQQaSQqcRZ7SPeZA.html](http://www.bloomberg.com/video/reid-hoffman-discusses-founding-linkedin-P6pT1HPQQaSQqcRZ7SPeZA.html)

21 5. This service – i.e., harvesting members' email addresses in order
22 to send contact requests and new member invitations – is therefore extremely
23 valuable to LinkedIn. LinkedIn has a strong interest in persuading new and existing
24 members to utilize this “contact uploader” service.

25 6. Whenever a new user registers for LinkedIn, LinkedIn tries to
26 persuade that new user to upload their external email address contacts. Only a
27 fraction of new registrants agree to allow LinkedIn to upload their address book and
28 send emails to their contacts, however. Accordingly, in order to continue its
desired growth, LinkedIn needed a way to persuade existing users to upload their

1 email address books and then to allow LinkedIn to send invitations and contact
2 requests.

3 7. In order to persuade existing LinkedIn members to upload their
4 email address books, LinkedIn began sending periodic emails to its existing
5 members indicating that certain of their LinkedIn contacts had utilized the contact
6 uploader service, as an enticement to persuade those users to do the same thing.
7 The emails typically show the name and photograph of four or more of the email
8 recipient's existing LinkedIn connections and invite the recipient to "join" those
9 connections by clicking a link to the contact uploader service page. For example,
10 the following email invites the LinkedIn user to "Join ... Branton (Brandy) Lea ...
11 and 58 other connections who have already found people they know on LinkedIn."



1 8. If the email recipient clicks the “continue” button in order to
2 “Join ... Branton (Brandy) Lea,” he is taken to LinkedIn’s contact uploader page,
3 where he is prompted to enter his email addresses and password information for his
4 external email accounts in order to allow LinkedIn to upload his external email
5 contacts. If the email recipient complies, LinkedIn then asks the user to send an
6 invitation to connect to all of the contacts who are already LinkedIn users, and to
7 send email invitations to all contacts who are not already LinkedIn members asking
8 them to join LinkedIn.

9 9. The email sent by LinkedIn expressly indicates that Brandy Lea
10 and the other contacts listed have utilized the contact uploader and, by using their
11 names and likenesses on the solicitation email, LinkedIn implicitly suggests that
12 they have endorsed the contact uploader service. Given that his trusted connections
13 have purportedly utilized and endorsed the service, the email recipient is enticed to
14 “join ... Brandy ... and ... other connections...” in utilizing the contact uploader
15 service.

16 10. The problem, however, is that Brandy Lea and the other
17 LinkedIn members whose names and likenesses have been used to advertise the
18 contact uploader service never gave permission for LinkedIn to use their names and
19 likeness to promote this service. In fact, they are never even made aware that
20 LinkedIn has sent these emails using their names and likenesses. Worse yet, upon
21 information and belief, the vast majority of users whose names and likenesses have
22 been misappropriated to promote the contact uploader service never actually used
23 the contact uploader service that LinkedIn suggests the recipient should “join” them
24 in using. LinkedIn has misappropriated their names and likenesses without
25 permission and used them in a misleading manner to promote its contact uploader
26 service for LinkedIn’s financial gain.

27 11. Plaintiff brings this lawsuit on behalf of himself and all other
28 LinkedIn members whose names and likenesses have been used by LinkedIn to

1 advertise the contact uploader service without their permission. Plaintiff and other
2 individuals similarly situated have been harmed by LinkedIn's misappropriation of
3 their names, likeness and/or photographs to benefit Defendant. Plaintiff and Class
4 members each have a right of publicity under the common law. LinkedIn reaped
5 commercial benefits from the unauthorized use of their names, likeness and/or
6 photographs, and Plaintiff and Class members received no compensation.

7 **JURISDICTION AND VENUE**

8 12. This Court has subject matter jurisdiction over this action
9 pursuant to 28 U.S.C. § 1331. This Court has personal jurisdiction over LinkedIn
10 because (i) a substantial portion of the wrongdoing alleged in this complaint took
11 place in this State; and (ii) LinkedIn is authorized to do business here, has sufficient
12 minimum contacts with this State, and/or otherwise intentionally avails itself of the
13 markets in this State through the promotion, marketing, and sale of products and
14 services in this State, to render the exercise of jurisdiction by this Court permissible
15 under traditional notions of fair play and substantial justice. Under the Class
16 Action Fairness Act of 2005 this Court has jurisdiction of this matter because the
17 amount of damages sustained by the Class exceeds five million dollars.

18 13. Venue is proper in this Court pursuant to 28 U.S.C. §
19 1391(b)(1)-(2) because LinkedIn's corporate headquarters are located in the
20 Northern District of California. Venue is also proper under California Civil
21 Procedure § 17203 as this is a court of competent jurisdiction.

22 **PARTIES**

23 14. Plaintiff is a United States citizen and resident and citizen of
24 East Norriton, Pennsylvania. Plaintiff is employed in sales and marketing. He
25 became a member of LinkedIn to connect with individuals with whom he may
26 have, or be able to develop, business relationships. Plaintiff never knowingly
27 uploaded his contacts via the LinkedIn contact uploader service, nor did he agree to
28

1 allow LinkedIn to send emails using his name and likeness to promote the contact
2 uploader service.

3 15. Defendant's principal executive offices are located at 2029
4 Stierlin Court, Mountain View, California. The company became incorporated in
5 Delaware in March 2003 under the name LinkedIn, Ltd. and changed its name to
6 LinkedIn Corporation in January 2005. Defendant, thus, is a citizen of California
7 and Delaware. LinkedIn is a public company that began trading on the New York
8 Stock Exchange in May 2011. LinkedIn's network is vast with approximately 300
9 million members in over 200 countries and territories. As of December 30, 2014,
10 LinkedIn's market capitalization was \$28.85 billion.

11 **ADDITIONAL FACTS**

12
13 16. To become a member on LinkedIn, Plaintiff and the Class
14 members were required to complete a form on the LinkedIn website,
15 www.linkedin.com, that required them to enter their first name, last name, email
16 address, and password for their LinkedIn account. There is no charge to become a
17 LinkedIn member although LinkedIn sells a "Premium Subscription" for which
18 users are billed monthly. Once these fields were entered, the member clicked "Join
19 LinkedIn" button and an account was created. By clicking the "Join now" button,
20 the member "agree[s] to LinkedIn's User Agreement, Privacy Policy and Cookie
21 Policy."

22 17. LinkedIn's current Privacy Policy states:

23 **Sharing Information with Third Parties**

24 ...

25 We will not disclose personal information that is not published to your
26 profile or generated through engagement with our other services, such
27 as Groups and Company Pages, except to carry out your instructions
28 (for example, to process payment information) or unless [sic] we have
your separate consent unless we have a good faith belief that
disclosure is permitted by law or is reasonably necessary to: (1)

1 comply with a legal requirement or process, including, but not limited to,
2 to, civil and criminal subpoenas, court orders or other compulsory
3 disclosures; (2) enforce this Privacy Policy or our User Agreement; (3)
4 respond to claims of a violation of the rights of third parties; (4)
5 respond to Member service inquiries; or (5) protect the rights,
6 property, or safety of LinkedIn, our Services, our Members, Visitors,
7 or the public.

8 ...

9 **Testimonials and Advertisements Placed through LinkedIn Ads**

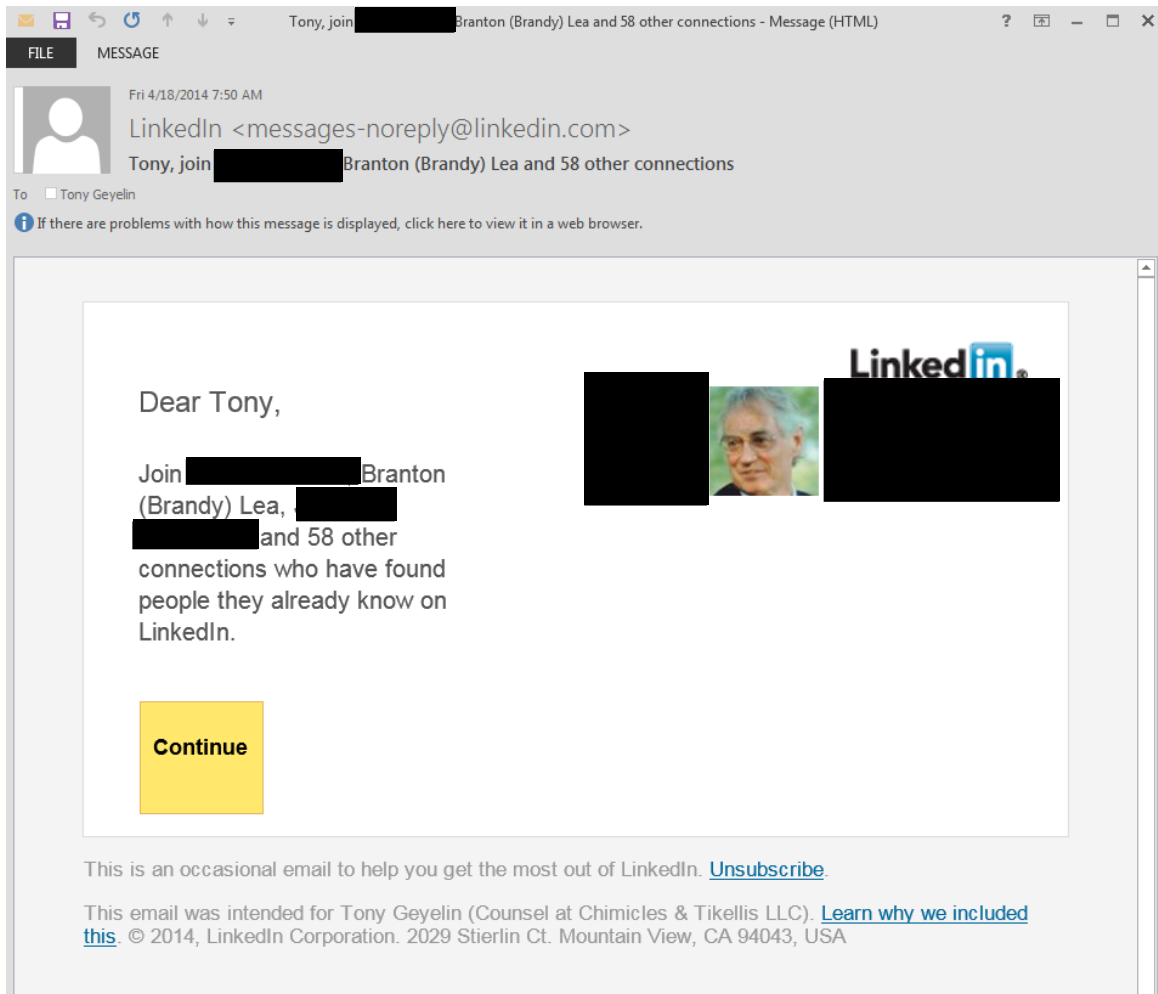
10 If you provide any testimonials about our goods or services or place
11 advertisements through the LinkedIn Ads, we may post those
12 testimonials and examples of advertisements you place in connection
13 with our promotion of these services to third parties. Testimonials and
14 advertisements may include your name and other personal information
15 that you have provided. For more information about LinkedIn Ads,
16 please see the LinkedIn Ads Terms of Use.

17 18. Upon joining LinkedIn, new members are invited to utilize
18 LinkedIn's contact uploader. Only a fraction of new users do so, however.

19 19. Nothing in the User Agreement or Privacy Policy indicates that
20 LinkedIn members consent to their name or profile picture being used in a manner
21 to advertise or endorse LinkedIn's contact uploader service without permission.

22 20. Since the contact uploader is one of the key ways in which
23 LinkedIn grows its membership, LinkedIn is highly motivated to persuade its
24 members to utilize the contact uploader. LinkedIn does so by sending emails to its
25 members indicating that many of the recipient's existing connections have utilized
26 the contact uploader service and implicitly suggesting that those users have
27 endorsed the contact uploader service because they "found people they already
28 know on LinkedIn" by using it. The email shows the names and pictures of four or
29 more of the email recipient's connections, chosen by LinkedIn without their prior
30 knowledge or consent, and suggests that the email recipient should "join" those

1 four plus a large number in using the contact uploader. This is one example of one
2 of these emails:



19

20

21

22

23

24

25

26

27

28

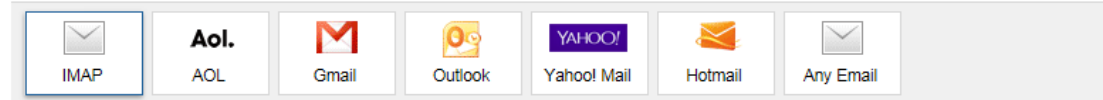
21. LinkedIn sends many of these emails to existing users on a periodic basis, utilizing various names and photos of the recipients LinkedIn connections. LinkedIn suggests that the recipient should “join” their contacts by clicking the “continue” button in the email.

22. When the email recipient clicks “continue” to join the individuals whose names and photos were used in the email advertisement, he or she is taken to the contact uploader page, which instructs the user to “Get started by adding your email address” and email password, to allow LinkedIn to access the

1 users email address book. The contact uploader will typically be preloaded with the
 2 email address to which the solicitation email was sent.

3
 4 See Who You Already Know on LinkedIn

Manage imported contacts ▶



5
 6 Get started by adding your email address.

7 timothymathews@chimicles.com [Change](#)

8 Email password

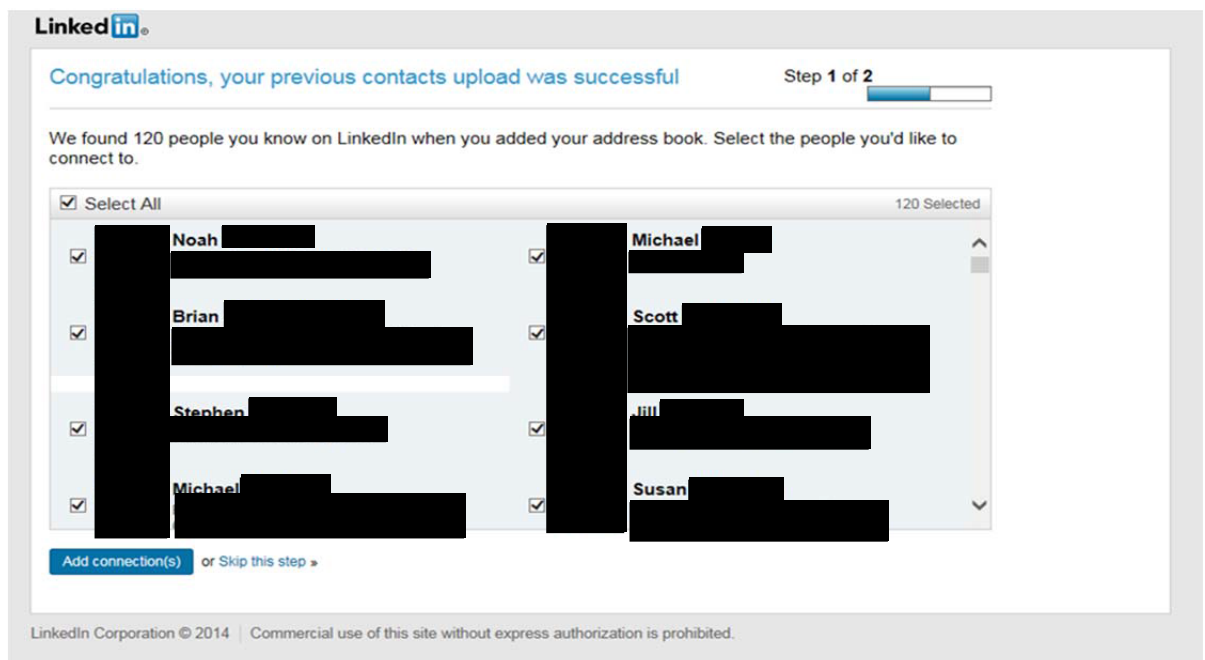
9

10

11 We'll import your address book to suggest connections and help you manage your contacts.
 12 [Learn More](#)

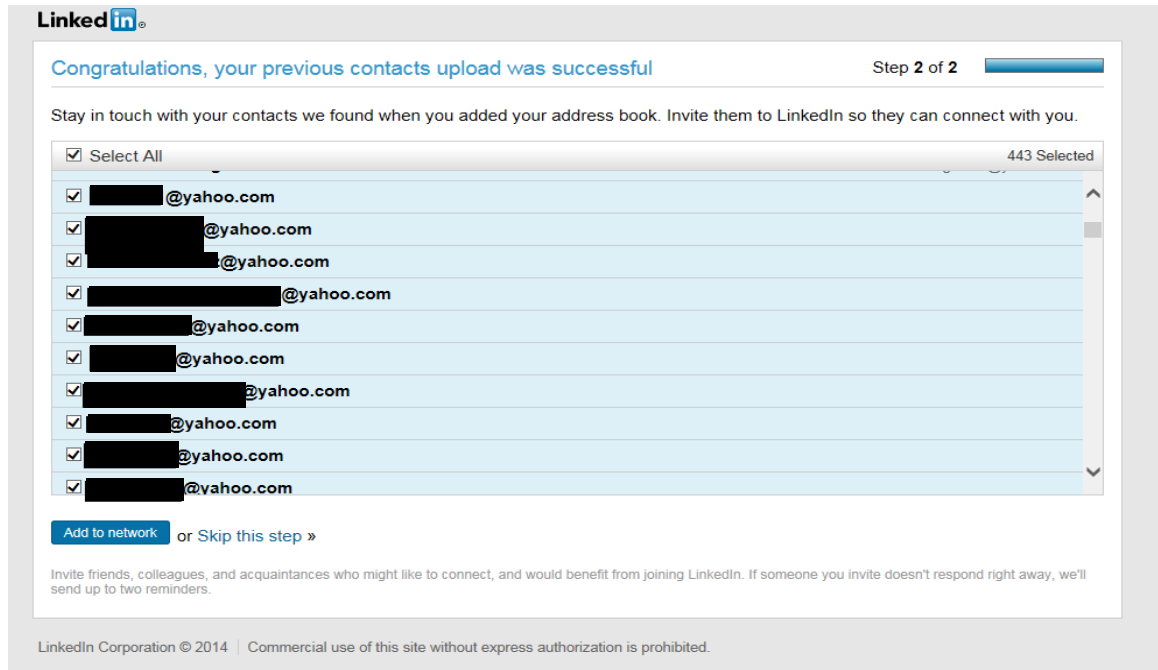
13 23. LinkedIn then accesses the user's external email account to
 14 locate not only the contacts saved in the user's address book but also every contact
 15 to whom the user has ever sent an email and from whom the user has ever received
 16 an email. LinkedIn then checks its own member database to determine which of
 17 those emails are associated with existing LinkedIn accounts and which are not.

18 24. For email addresses associated with existing LinkedIn accounts,



1 LinkedIn suggests that the user send requests to connect on LinkedIn.

2 25. For emails addresses where no existing LinkedIn account was
3 identified, on the next screen LinkedIn suggests that the user should “Stay in touch
4 with your contacts that we found when you added your address book. Invite them
5 to LinkedIn so they can connect with you.”



17 If the user agrees, LinkedIn sends up to three emails to each of those contacts
18 indicating that the user has invited them to join LinkedIn.

19 26. By suggesting that the email recipient's connections have
20 utilized and endorsed the contact uploader service, the recipient is more likely to
21 utilize it himself. Thus, there is measurable value to LinkedIn in using the names
22 and likenesses of members to endorse the service. LinkedIn charges its own
23 members around \$10 per email to send emails to members with whom they are not
24 connected.

25 27. Moreover, there is measurable commercial value to LinkedIn
26 because its primary sources of revenue are dependent on the size and growth of its
27 membership base. LinkedIn earns money through talent solutions (high-priced
28 accounts for employment recruiters), marketing, and premium subscriptions. The

1 fastest growing area has been talent solutions, which brought in \$275.9 million in
2 the first quarter of 2014 alone. All of these revenue sources depend on having a
3 large user base. One commentator estimated in 2013 that a single LinkedIn user
4 has a value of \$93. George Anders, *A Twitter User Is Worth \$110; Facebook's*
5 *\$98; LinkedIn's \$93*, www. Forbes.com, 11/7/2013, available at:
6 [http://www.forbes.com/sites/georgeanders/2013/11/07/a-twitter-user-is-worth-110-](http://www.forbes.com/sites/georgeanders/2013/11/07/a-twitter-user-is-worth-110-facebooks-98-linkedins-93/)
7 [facebooks-98-linkedins-93/](http://www.forbes.com/sites/georgeanders/2013/11/07/a-twitter-user-is-worth-110-facebooks-98-linkedins-93/) .

8 28. There is a measurable economic benefit to LinkedIn to each new
9 member it secures, and by using the names and likenesses of its existing members
10 without their knowledge or permission to advertise the contact uploader service,
11 LinkedIn has persuaded many members to upload their own contacts and send new
12 member invitations, thereby exponentially growing its member base.

13 29. LinkedIn credits these endorsements with its ability to grow
14 virally with low marketing costs in its 2013 10-K:

15
16 To date, our member base has grown virally based on members
17 inviting other members to join our network. Through this word-of-
18 mouth marketing, we have been able to build our brand with relatively
19 low marketing costs. We use the quality of our own products and
20 solutions as our most effective marketing tool, and word-of-mouth
21 momentum continues to drive member awareness and trust worldwide.

22 30. Endorsement of a product or service by a known friend or
23 contact is the holy grail of advertising. LinkedIn used the names and likenesses of
24 its members, without their knowledge or consent, to promote the contact uploader
25 in order to exponentially grow its member base. Accordingly, these emails directly
26 enable LinkedIn to increase its revenue through sales of premium memberships,
27 advertising, and employment recruiting services. LinkedIn members, like Plaintiff,
28 did not intend to provide these commercial benefits to LinkedIn and have been
harmed by LinkedIn's misappropriation of their identities and likenesses.

1 36. Plaintiff asserts a nationwide class under California law
2 consisting of:

3 All natural persons whose name, photograph, likenesses,
4 or identity was used without permission in an email sent
5 by LinkedIn to advertise LinkedIn's contact uploader
6 service.

7 37. Excluded from the proposed Class are the following individuals
8 and/or entities: the Court, all Court personnel involved in the handling of this case,
9 as well as their immediate family members; LinkedIn and its subsidiaries, affiliates,
10 officers and directors, current or former employees, and any entity in which
11 LinkedIn has a controlling interest; all individuals who timely elect to be excluded
12 from this proceeding using the correct protocol for opting out; and any and all
13 federal, state or local governments, including but not limited to their departments,
14 agencies, divisions, bureaus, boards, sections, groups, counsels and/or subdivisions.

15 38. **Numerosity:** Upon information and belief, the Class comprises
16 millions of natural persons throughout the United States and is so numerous that the
17 joinder of all members of the Class is impracticable. While the exact number of
18 individuals who have received endorsement emails sent without their consent can
19 only be ascertained through discovery, the identity of Class members is readily
20 determinable from LinkedIn's records.

21 39. **Common Questions of Law and Fact Predominate:** There
22 are questions of law and fact common to the Class, which predominate over any
23 individual issues, including:

- 24 a. Whether Plaintiff and the Class consented to the use of
25 their names, photographs, likenesses, or identities in
26 endorsement emails sent by LinkedIn to existing LinkedIn
27 members;
28 b. Whether LinkedIn economically benefited or derived
 some other commercial benefit by using Plaintiff and the

- 1 Class member's names, photographs, likenesses or
2 identities in the endorsement emails;
- 3 c. Whether Plaintiff and Class members were harmed by the
4 unauthorized use of their names, photographs, likenesses,
5 or identities in endorsement emails;
- 6 d. Whether Plaintiff and Class members have sustained
7 monetary loss and the proper measure of that loss;
- 8 e. What the monetary value of a non-celebrity endorsement
9 is when used in a social network endorsement email
10 invitation sent to a targeted audience;
- 11 f. Whether LinkedIn's conduct as alleged herein violates
12 applicable laws; and
- 13 g. Whether Plaintiff and Class members are entitled to
14 declaratory and injunctive relief.

15 40. **Typicality:** Plaintiff's claims are typical of the claims of the
16 members of the Class. Plaintiff and all members of the Class have been similarly
17 affected by Defendant's common course of conduct.

18 41. **Adequacy of Representation:** Plaintiff will fairly and
19 adequately represent and protect the interest of the Class. Plaintiff has retained
20 counsel with substantial experience in handling complex class action litigation.
21 Plaintiff and his counsel are committed to prosecuting this action vigorously on
22 behalf of the Class.

23 42. **Superiority of Class Action:** A class is superior to all other
24 available methods for the fair and efficient adjudication of this lawsuit, because
25 individual litigation of the claims of all class members is economically unfeasible
26 and procedurally impracticable. While the aggregate damages sustained by the
27 Class is likely in the millions of dollars, the individual damages incurred by each
28 Class member resulting from LinkedIn's wrongful conduct are too small to warrant

1 the expense of individual suits. The likelihood of individual Class members
2 prosecuting their own separate claims is remote, and, even if every Class member
3 could afford individual litigation, the court system would be unduly burdened by
4 individual litigation of such cases. Individual members of the Class do not have
5 significant interest in individually controlling the prosecution of separate actions,
6 and individualized litigation would also present the potential for varying,
7 inconsistent, or contradictory judgments and would magnify the delay of the same
8 factual and legal issues. Plaintiff knows of no difficulty to be encountered in the
9 management of this action that would preclude its maintenance as a class action. In
10 addition, Defendant has acted on grounds generally applicable to the Class and, as
11 such, final injunctive relief or corresponding declaratory relief with regard to the
12 members of the Class as a whole is appropriate.

13 43. Given that LinkedIn engaged in a common course of conduct as
14 to Plaintiff and the Class, similar or identical injuries and common law and
15 statutory violations are involved and common questions far outweigh any potential
16 individual questions.

17 44. Plaintiff reserves the right to revise the above class definition
18 based on facts adduced in discovery.

20 **FIRST CAUSE OF ACTION**

21 **For Violations of California's Common Law Right of Publicity** 22 **(On behalf Plaintiff and the Class)**

23 45. Plaintiff realleges and incorporates by reference the allegations
24 contained in the paragraphs above as if fully set forth herein.

25 46. California's Common Law Right of Publicity law protects
26 persons from the unauthorized appropriation of the person's identity by another for
27 commercial gain.
28

1 47. During the class period, LinkedIn knowingly used Plaintiff's
2 name, photograph, or likeness to directly advertise LinkedIn's contact uploader
3 service.

4 48. Plaintiff did not consent to LinkedIn's usage of his name,
5 photograph, or likeness.

6 49. Plaintiff received no compensation or other consideration for
7 LinkedIn's use thereof.

8 50. Plaintiff was harmed by LinkedIn's actions.

9 51. Plaintiff was deprived of the earnings from the use of his
10 identity for which he is entitled.

11 52. The use of Plaintiff's name, photograph and likeness was
12 directly connected to LinkedIn's commercial use.

13 53. LinkedIn's actions were a substantial factor in causing
14 Plaintiff's harm.

15 54. LinkedIn's invitations and reminders that were endorsed with
16 Plaintiff's name and photograph were not used in conjunction with news, public
17 affairs, a sports broadcast or account, or a political campaign.

18 55. Plaintiff and members of the Class seek injunctive relief, and
19 other such preliminary and other equitable or declaratory relief, and other such
20 preliminary and equitable or declaratory relief as may be appropriate.

21 56. Plaintiff and members of the Class seek a remedy as
22 provided for by the California Common Law Right of Publicity in an amount
23 equal to the greater of, the amount that LinkedIn avoided paying to the members
24 of the class in marketing costs, the value that LinkedIn derives from use of its
25 members' name and/or likeness, actual damages, any profits attributable to
26 LinkedIn's illegal action before taking into account any actual damages,
27 punitive damages, attorneys' fees and costs, and any other relief as may be
28 appropriate.

