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13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16 FRANCISCO ESPITIA, VANESSA
ZENDEJAS, and JOE A. SANCHEZ
17 FRAIRE, individually and on behalf of a
class of similarly situated individuals,

18 Plaintiffs,

19 v.

20
21 HIPSTER, INC., a Delaware Corporation;

22 Defendant.
23
24
25
26
27

CASE No. 3:13-cv-00432-LB

JURY DEMAND

FIRST AMENDED COMPLAINT FOR:

1. **Computer Fraud and Abuse Act 18 U.S.C. §1030;**
2. **California Computer Crime Law, Penal Code § 502;**
3. **Trespass to Personal Property / Chattels;**
4. **California Consumer Legal Remedies Act Civ. Code §1750;**
5. **Unfair Competition Law, Business and Professions Code § 17200;**
6. **Conversion;**
7. **Invasion of Privacy and Seclusion; and**
8. **Unjust Enrichment**

1 Plaintiffs, FRANCISCO ESPITIA (“Espitia”), VANESSA ZENDEJAS (“Zendejas”), and
2 JOE A. SANCHEZ FRAIRE (“Fraire”), (hereinafter collectively referred to as “Plaintiffs”), by
3 and through their attorneys Parisi & Havens LLP, the Law Offices of Alan Himmelfarb, and the
4 Law Office of Joseph H. Malley, P.C., bring this action on behalf of themselves and all others
5 similarly situated against Defendant Hipster, Inc.. Plaintiffs’ allegations as to themselves and
6 their own actions, as set forth herein, are based upon their information and belief and personal
7 knowledge, and all other allegations are based upon the investigations of counsel. This Court has
8 subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §
9 1332(d) as set forth below.

10 **I. NATURE OF THE ACTION**

11 1. “App” is short for application software. A mobile application (or mobile app) is a
12 software application designed to run on smartphones, tablet computers, and other mobile
13 devices. Mobile apps are typically obtained through application distribution platforms, operated
14 by the owner of the mobile operating system, such as the Apple App Store.

15 2. Defendant Hipster, Inc., developed and distributed a mobile app through the
16 Apple App Store. The mobile app, “Hipster” (“Hipster App” or “App”), promoted its App as
17 follows:

18 “Easily share where you are and what you’re doing with postcards of your
19 photos.”

20 3. The Hipster App, however, did more than provide a way for users to make
21 postcards out of their pictures and share them. Undisclosed to users, once the Hipster App was
22 downloaded to a user’s iPhone, the App instantly rooted through the iPhone, copied the user’s
23 contact address book contact information, and, without any notification whatsoever to the
24 iPhone’s owner, uploaded that private and personal information to Hipster’s web servers.

25 4. At no point in this process were users informed that this copying, uploading, or
26 storage by Hipster of this private and personal information would occur, was occurring, or did
27 occur. No consent of any type was sought by the Hipster App.

28 5. This copying, uploading, and storage of contact address book contact information

1 took place regardless if the user selected the most restrictive and private settings that the Hipster
2 App offered. This copying, uploading, and storage of contact address book contact information
3 took place regardless if the user selected the most restrictive and private settings that the iPhone
4 itself offered. The Hipster App was designed to ignore and override privacy settings on the
5 iPhone itself, uploading this private data even when privacy settings were set to insure that this
6 data would never be shared.

7 6. Plaintiffs bring this consumer Class Action lawsuit pursuant to Federal Rules of
8 Civil Procedure 23(a), (b)(1), (b)(2), and (b)(3), on behalf of themselves and a proposed class of
9 similarly situated Individuals, (hereinafter referred to as the “Class”), who were victims of
10 unfair, deceptive, and unlawful business practices; wherein their property, privacy, and security
11 rights were violated by Defendant Hipster, Inc.

12 **II. PARTIES**

13 7. Plaintiff Vanessa Zendejas (“Zendejas”) is a resident of Dallas County, Texas.

14 8. Plaintiff Francisco Espitia (“Espitia”) is a resident of Dallas County, Texas.

15 9. Plaintiff Joe A. Sanchez Fraire (“Fraire”) is a resident of Dallas County, Texas.

16 10. Defendant Hipster, Inc. was a privately held Delaware corporation headquartered
17 at 650 Page Mill Rd, Palo Alto, CA 94304. Hipster operates an internet business as a
18 smartphone-based social network utilizing an application software that performs specific
19 functions for a web-based platform on mobile devices. Launched in January 2011, Hipster was
20 located online at <https://hipster.com/> Hipster is located within the Apple iTunes store at:
21 <https://itunes.apple.com/us/app/hipster/id461983020?mt=8Hipster> and in the Android Market at:
22 <http://www.androidtapp.com/hipster/>
23

24 **III. JURISDICTION AND VENUE**

25 11. This Court has jurisdiction over the subject matter this action pursuant to 28
26 U.S.C. § 1331.

27 12. This Court has jurisdiction over Defendant Hipster because it is a corporation
28 headquartered in San Francisco County, California, and is a citizen of the state of California.

1 Plaintiff asserts claims on behalf of a proposed class whose members are domiciled throughout
2 the fifty states and the U.S. territories. There is minimal diversity of citizenship between
3 proposed Class Members and Defendant.

4 13. Venue is proper in this District under 28 U.S.C. § 1391(b) because Hipster is a
5 corporation headquartered in San Francisco County, California, and/or because the improper
6 conduct alleged in this Complaint occurred in, was directed from, and/or emanated from this
7 judicial district.

8 **IV. INTRADISTRICT ASSIGNMENT**

9 14. Pursuant to Local Rule 3-5(b) and 3-2(c), this action should be assigned to the
10 San Francisco Division of the Northern District of California because Defendant resides in San
11 Francisco.

12 15. This Complaint details these allegations, the statutory and common law remedies
13 Plaintiffs seek for these wrongs, including injunctive remedies and accountability for those
14 entities responsible.

15 **V. FACTS**

16 16. The Hipster App was launched in October 2011. The Hipster App was made
17 available through the Apple App Store for iPhone users.

18 17. The Hipster App was promoted as an image sharing service, which facilitated
19 sharing of images across services, including social services like Facebook, Tumblr, Twitter,
20 Foursquare, or Hipster's own website.

21 18. The App permitted modification of images though the addition of frames and
22 filters, to make the image look like an old-style postcard.

23 19. Immediately upon establishing the account, the Hipster App, automatically and
24 without notification or consent, uploaded contents of the user's contact address book to the
25 Hipster servers, including all listed email addresses.

26 The Contact Address Book

27 20. A contact address book is a database within computing devices for storing entries
28

1 called “contacts.” Each contact consists of a few standard fields of data, including but not limited
2 to, contact names, e-mail addresses, instant message screen names, phone numbers, job
3 employer, addresses, websites, birthdays, and notes.

4 21. The contact address book is one of the most private and personal files a user
5 maintains on their iPhone. The contact address book reflects the connections, associations, and
6 relationships that are unique to the owner of the iPhone. Not just which organizations the user
7 belongs to, but which organizations the user actually communicates with on a regular basis. Is
8 the user seeing a doctor? A psychiatrist? A specialist in the treatment of personal and
9 potentially embarrassing conditions? What political, social or religious organizations is the user
10 associated with? All of this information, and more, is revealed if an examiner can gain access to
11 a user’s contact address book. The contact address book answers a fundamental question with
12 hard evidence: Who is this person communicating with?

13 22. The iPhone comes with pre-installed software, permitting the user to enter certain
14 categories of information related to the use of the iPhone. When the owner first receives the
15 iPhone, all of the contact fields for the contact address book are blank.

16 23. In order to utilize the contact address book, the user must either have preexisting
17 knowledge or must undertake some level of research, study, and self-learning in order to gain
18 sufficient knowledge and skill to take advantage of the capabilities and parameters of the contact
19 address book functions.

20 24. In addition, to utilize the contact address book, the user must individually mark or
21 key in or input entries for each of the contact address book fields, utilizing the touch screen key
22 pad on the iPhone, or they can import the contacts that they created on their computer. Any
23 creation of an address book would take at a minimum several seconds. Each individual entry
24 requires time and investment of work and resources on the part of the user.

25 25. A user’s contact address book is a creative work on the part of the user. Like
26 fingerprints, practically no two contact address books are identical. In fact, each contact address
27 book is unique and personal to the owner of the iPhone. Though each contact address book may
28 consist of nothing more than simple names and telephone contact numbers (although more

1 detailed information may be added), the compilation of that user's particular or selected contacts
2 is a unique creative process tailored to the specific needs and judgments of the user.

3 26. Additional field information, such as what to include in the "name" field, or what
4 additional information to input in the "notes" field, is all an individual creation as a result of
5 work undertaken by the user to tailor the iPhone and its contact address book function to his or
6 her own specific and particular needs and desires.

7 27. Which relationships the user selects to make available within the iPhone's contact
8 address book reflects that particular user's choice of which relationships in the user's life merit
9 special treatment (instant contact accessibility).

10 28. In other words, each iPhone contact address book is a creative effort involving
11 choice, individual assessment, judgment, and creative effort, unique to the individual.

12 29. These choices of the individual, which are collectively incorporated into the
13 totality of the contact address book in the iPhone, are highly personal and private. Contact
14 address books are not shared, are not publicly available, are not publicly accessible, and are not
15 ordinarily obtainable unless the user physically relinquishes custody of his or her iPhone to
16 another individual.

17 30. The investment of time, effort, skill, and creative energy used to build the user's
18 unique contact address book has independent value. The investment made by a user to create
19 their contact address book is substantial, and capable of valuation, based upon the time spent
20 learning and building the contact address book, time spent creating and inputting data and
21 information, the number of entries in the contact address book, and time spent modifying and
22 updating the contact address book. For any U.S. citizen, the investment of time cannot be valued
23 at less than \$7.25 per hour (U.S. minimum wage) or some similar amount subject to proof at the
24 time of trial. Thus, even ten seconds of entry time to create a single contact in a contact address
25 book cannot be valued at less than 1.2 cents per entry. Taking into account the time each user
26 necessarily spent in learning, building, modifying, and updating a contact address book, times
27 the number of entries an address book contains on average, the investment of time actually
28 exceeds by many orders of magnitude the minimum estimate of 1.2 cents of investment in

1 creating a contact address book.

2 31. The cost to hire a technician to assemble the data and information contained in a
3 contact address book is substantial. The technician would need to be familiar with the Apple
4 iPhone (proficient in the use of the device), knowledgeable regarding the particular version of
5 the contact address book supported by that particular iPhone, obtain the basic data and
6 information from the user, and undertake the task of assembling and configuring the contact
7 address book so that the final product fits the needs and desires of the user. These are skills that
8 are available in the marketplace, but they would cost the user real dollars in order to employ a
9 technician to undertake the task of creating or assembling the contact address book. In no case
10 would it cost less than \$7.25 in value (U.S. minimum wage at one hour of invested time), or
11 some similar amount subject to proof at the time of trial, to hire and retain a knowledgeable
12 technician to undertake the task of building, modifying, and/or updating a contact address book.

13 32. The contact address book is a product that has independent value in the
14 marketplace. Companies that wish to obtain access to an individual's contact address book are
15 ordinarily required to offer the user something of such value or use, such that the individual is
16 presented with a fair choice about whether to permit access to the contact address book in
17 exchange for what is being offered. In such a case, the user is presented with a clear choice: in
18 order to obtain the thing of value, the user will be required to provide the offering company
19 access to the user's contact address book. Because information contained in the contact address
20 book is ordinarily of such private and personal value to the user, the proposed exchange must
21 ordinarily meet some minimum threshold of use or value to the user in order to persuade the user
22 to open up their contact address book to the offering party.

23 33. The contact address book has independent value, not only to the user, but also to
24 businesses engaged in profiting from and exploiting social media through advertising. The
25 contact address book reveals not merely theoretical connections between people, but the actual
26 real-world connections that people engage in.

27 34. That information has independent value in the marketplace. For example,
28 Facebook, has built a multi-billion dollar business based upon the personal, real-world

1 connections between people.

2 35. Target marketing companies spend millions of dollars compiling information on
3 the relational connections between people in their databases. The data they collect and compile
4 is a commodity that they sell to businesses hoping to reach specific target audiences.

5 36. Lists of addresses, telephone numbers and email addresses are commodities that
6 are available for sale in the marketplace. Companies pay substantial sums for the right to market
7 to a viable, verified list of current names, telephone numbers, and email addresses. On
8 information and belief, and Plaintiffs thereupon allege, the value of the contents of a single
9 contact address book, whether sold separately or sold in aggregation with other contact address
10 books, would be not less than 1 cent per contact address book.

11 37. Hipster did not disclose to iPhone users that the user's contact address book
12 would be copied and uploaded to Hipster's servers. Beginning in October 2011, and continuing
13 from the date of the introduction of the App up until at least February 2012, Hipster did not
14 inform any users that the contact address book would be copied, uploaded, or retained.

15 38. Between October 2011 and February 2013, it was reported that Hipster enticed
16 over 500,000 mobile device users to download the Hipster App.

17 39. From the time the Hipster App was made available until approximately February
18 2012, the Hipster App, without notice or consent to any user, immediately upon signing up,
19 uploaded the contents of the user's contact address book to its servers, and retained that
20 information. In this manner, Hipster thus obtained the email addresses contained in the iPhones
21 of half-a-million users. If the average number of contact address book entries per user was even
22 a low as twenty entries per iPhone (some users report over 10,000 contacts – there appears to be
23 no maximum number of contacts that an iPhone can store), Hipster, in a period of less than three
24 months, obtained more than 10 million email addresses without anyone outside the company
25 realizing or understanding what Hipster had acquired.

26 The Hipster App

27 40. When Hipster introduced its App on the internet, it did so with the following
28 language:

1 Hipster is creating a real-time, visual public record of the world’s locations.

2 Using their iPhones and Android devices, people share where they are and what
3 they are doing by sending their friends a photographic postcard. The postcards
4 become permanently attached to the locations they were sent from, and are
5 forever accessible to all those who come later.

6 41. The App was represented to be “free.”

7 42. In fact, the Hipster App was not “free.” Contrary to Hipster’s representations,
8 users paid a significant, though completely undisclosed, price for the App.

9 43. Essentially, and literally, Hipster “stole” the contact address book, not only of the
10 Plaintiffs, but of millions of additional users.

11 44. The app that Hipster users downloaded was represented to them to be “Easily
12 share where you are and what you’re doing with postcards of your photos.”

13 45. Instead, the App was a Trojan horse— one that allowed Hipster to collect millions
14 of email addresses from its unsuspecting users, without ever having to go out in the marketplace
15 to buy those contacts, if such a list could even be had at any price.

16 46. By stealing contact information, Hipster was able to achieve a remarkable and
17 unprecedented benchmark within the hot and developing social networking community. Within
18 a half a year of its launch, Hipster had become a company that was valued in the low millions.
19 That valuation was made concrete when, on information and belief, AOL paid a sum in excess of
20 \$1 million to purchase the company. On information and belief, and Plaintiffs thereupon allege,
21 the value of the contacts and connections Hipster acquired by stealing the contact address books
22 of hundreds of thousands of its customers was instrumental in achieving that million plus dollar
23 valuation.

24 47. When Hipster took a user’s contact address book, the user was not notified that
25 the contact address book was part of the bargain. All users were presented with was vague
26 information about the benefits and attributes of the Hipster App. In none of those descriptions,
27 were users informed that the contact address book was the quid pro quo for the downloaded App.
28 Other iPhone apps were forced to offer more value when they disclosed that the contact address
book was part of the price for use of the App. In this way, Hipster cheated the user (and other

1 apps that told the truth) by not disclosing the true cost of the use of the Hipster App.

2 48. Had users known the true costs of the Hipster App, they would not have agreed to
3 download the App. The users' investment in time, energy, and creativity to build and maintain
4 their contact address book was worth far more money than the Hipster App ostensibly traded for.
5 Thus, users were deprived of the true measure of benefits that their contact address book
6 information could have been exchanged for.

7 49. Users owned all copyrights to their contact address book. User's had sole
8 discretion over whom to grant the right to copy their contact address book to. When Hipster
9 stole their contact address book without notice, and without fair or adequate compensation, users
10 were deprived of value that their creative work embodied.

11 50. When Hipster made a copy of each user's contact address book, users lost their
12 copyright -- the actual, exclusive and personally-owned right to make a copy thereof, and to
13 prevent others from making a copy thereof. Hipster took that right away from iPhone users
14 when it stole a copy of the contact address book and uploaded that data to its servers. This loss of
15 the exclusive right to make and control rights over a copy of a copyrighted work is tangible, and
16 subject to valuation, but in no case is the loss of this right worth less than \$5.00 for each of the
17 iPhone owners who had their contact address book copied without their permission by Hipster.

18 51. When users purchased their iPhones, it was with the understanding that the
19 iPhone came with certain safeguards for privacy and security, both internal to the iPhone, and
20 external, through the control of the Apple server, and Apple's strict control over its App Store.

21 52. Apple made representations that users relied upon in purchasing and valuing the
22 purchase of their iPhones, including the representations that Apple "takes precautions—
23 including administrative, technical, and physical measures—to safeguard your personal
24 information against theft, loss, and misuse, as well as against unauthorized access, disclosure,
25 alteration, and destruction."

26 53. These ostensible protections were material to iPhone purchasers, and supported
27 the premium price paid by purchasers to become an owner of an iPhone.

28 54. Hipster's conduct in overriding these ostensible protections to the users' privacy

1 and security devalued the iPhone for its users. Users would not have purchased Apple's iPhone,
2 or alternatively, would not have paid as much for it had they known that the Hipster App would
3 circumvent both internal and external safeguards designed for the protection of their private and
4 personal information residing on the iPhone.

5 55. Because users were tricked into downloading the Hipster App, believing that the
6 price and consequences of the downloaded App were different than Hipster represented they
7 were, any use of the Hipster App was achieved by and through fraud and deception. All use of
8 the Hipster App after being downloaded by users was based upon the intentional dissembling by
9 Hipster of the App's true cost.

10 56. Based upon this deception by Hipster, iPhone users lost storage space on their
11 iPhone: storage space which could have been utilized instead for a legitimate App that had
12 disclosed its true costs of use. Thus, the false pretenses under which the Hipster App was
13 downloaded caused actual harm: the diminution of the actual value of an iPhone that had the
14 Hipster App installed upon it which overrode privacy and security settings and protections built
15 into the ordinary use of the iPhone. Had users known of Hipster's ability to override and ignore
16 these privacy and security protections, they would not have purchased the iPhone, or they would
17 not have paid as much for it.

18 57. Based upon this deception by Hipster, iPhone users incurred impaired battery life,
19 in that each use of the Hipster App (both its known and unknown features) utilized the battery
20 each time it was active on the iPhone. The iPhone battery is not an infinite resource. The battery
21 must be regularly recharged. It may not, however, be infinitely recharged. The charge and
22 discharge cycle of the battery causes chemical changes in the active battery material, diminishing
23 the battery's storage capacity and requiring even more frequent recharging. Thus, each activation
24 of the Hipster App and its access and utilization of the finite iPhone battery power, for both
25 disclosed and undisclosed functions, contributed directly to the ultimate demise of the battery.
26 iPhone users could have instead utilized their finite battery life for a legitimate App that had
27 disclosed the true costs of its use. Thus, the false pretenses under which the Hipster App was
28 downloaded, installed, and run on the user's iPhone caused actual harm in the diminishment of

1 the life of the battery for the iPhone.

2 58. Based upon this deception by Hipster, iPhone users face the necessity of expert
3 removal of the Hipster App from their iPhones. The costs to hire a technician who can
4 knowledgeably, effectively, completely, and permanently remove the Hipster App, and all its
5 code, both disclosed and undisclosed, is substantial. The knowledge required from such an
6 operation is not easily obtained outside of Apple itself. Thus, the false pretenses under which the
7 Hipster App was downloaded, installed, and run on the user's iPhone caused actual harm to users
8 in necessitating expensive expert removal of the Hipster App and all of its code, both disclosed
9 and undisclosed, from the iPhone in order to restore the iPhone to its previously secure state.

10 59. When users downloaded the Hipster App, they downloaded it with the
11 understanding that they were installing an App that permitted "Easily share where you are and
12 what you're doing with postcards of your photos." On that basis and with that understanding,
13 users gave permission to install the App software on their iPhones.

14 60. Users were not informed, and thus never did, nor could they have, given
15 permission for Hipster to copy, upload, store, and retain a copy of material in their contact
16 address book. Thus any permission that was granted by the iPhone user to Hipster, permitting
17 access to the user's iPhone for the specific and limited purpose of installing an App that would
18 permit "Easily share where you are and what you're doing with postcards of your photos." was
19 grossly exceeded by the undisclosed actions that Hipster undertook once it was permitted to
20 access the iPhone.

21 61. Contact address books are stored in the memory of the user's iPhone. The user
22 has the option to create a duplicate copy on a personal, stand-alone system (syncing) which they
23 control, but in all cases, the contact address book is not otherwise shared, transmitted, broadcast,
24 or otherwise divulged on publicly accessible channels. Unless the user physically relinquishes
25 custody of his or her iPhone to another individual, without express permission, no one other than
26 the iPhone's owner ever has access to the contact address book.

27 62. Hipster violated this exclusive control when it took, without notice, the contact
28 address book and uploaded it to its servers. The Hipster App did not bother with any type of

1 encryption. The copying and transmission of the contact address book from the iPhone to the
2 Hipster servers was effected “in the clear.” When Hipster transmitted a copy of the user’s
3 contact address book “in the clear,” which means it was done without any encryption
4 whatsoever, the user’s contact address book was publicly disclosed. Any and all strangers who
5 monitor web transmissions had complete and unrestricted access to unencrypted transmissions
6 that utilized “in the clear” transmissions.

7 63. The design of the iPhone, and specifically, the iPhone design that stores, accesses,
8 and utilizes the contact address book exclusively within the physical boundaries of the iPhone
9 unit itself is a central component of the iPhone function. This functionality insures that the
10 contact address book remains within and under the complete control of the iPhone owner. This
11 functionality insures that the contact address book retains its confidentiality.

12 64. When Hipster copied, uploaded and stored the contact address book to its servers
13 in the cloud, Hipster broke these aspects of the iPhone’s functionality. Once Hipster copied,
14 uploaded and stored the contact address book on its servers in the cloud, the functionality of the
15 iPhone’s design that deals with the iPhone’s contact address book was broken, in at least two
16 respects: First, the iPhone was designed to keep the contact address book under the complete
17 control of the iPhone owner. Second, the iPhone was designed such that the contact address
18 book would stay safely, securely, and confidentially within the confines of iPhone hardware.
19 Both of these design aspects of the iPhone were destroyed by Hipster’s App.

20 65. Plaintiffs and Class Members expended money, time, and resources investigating
21 and attempting to mitigate their iPhones’ diminished performance

22 66. Defendant’s conduct caused outrage, mental suffering, and harm to Plaintiffs’ and
23 Class Members’ privacy expectations.

24 67. Individuals that downloaded the Hipster App must now request Defendant remove
25 their data from its servers. Individuals that never downloaded Defendant’s app, but are named
26 within Plaintiffs’ and Class Members’ contact address book data will have no notice of the
27 Defendant’s action so as to request Defendant to delete their personal information.

28 68. The Defendant’s actions were surreptitious, and so were conducted without

1 authorization and exceeding authorization.

2 69. Plaintiffs were not made aware of, nor did they consent to the taking of this data,
3 and there was no way to opt out of this surreptitious collection of information. The information
4 collected included but was not limited to: a Plaintiff' contacts and the interactions with their
5 contacts.

6 70. As a result, Plaintiffs had the resources of their iPhones consumed and diminished
7 without permission. Such resources were measurable and of actual value, and included iPhones
8 storage, battery life, and bandwidth from Plaintiffs' wireless services provider. The monetary
9 value of the resources taken from Plaintiffs are quantifiable. The rate at which battery charge was
10 diminished on the iPhones as a result of the Defendant's actions was material to Plaintiff,
11 particularly given the power resource constraints on the iPhones: the Defendant's repeated
12 actions during App executions utilized a portion of battery capacity with each action due to the
13 power requirements of CPU processing, file input and output actions, and Internet connectivity.

14 The Value of Personal Information in the Market

15 71. The monetary and trade value of the information that Defendant took from users
16 is well understood in the e-commerce industry. Personally identifiable information ("PII") is
17 now viewed as a form of currency. Professor Paul M. Schwartz noted in the Harvard Law
18 Review:

19 Personal information is an important currency in the new millennium.
20 The monetary value of personal data is large and still growing, and
21 corporate America is moving quickly to profit from the trend. Companies
22 view this information as a corporate asset and have invested heavily in
23 software that facilitates the collection of consumer information.¹

22 72. Another recent article put the point even more succinctly: "PII is now a
23 commodity that companies trade and sell."²

24
25 ¹ Paul M. Schwartz, *Property, Privacy and Personal Data*, 117 HARV. L. REV. 2055, 2056-57
(2004).

26 ² John T. Soma, et al., *Corporate Privacy Trend: The 'Value' of Personally Identifiable*
27 *Information ("PII") Equals the 'Value' of Financial Assets*, XV RICH. J.L. & TECH. 1 (2009)
28 ("Soma Article"), at 1 (citing C. Ciocchetti, *The Privacy Matrix*, 12 J. TECH. L. & POL'Y 245,
247 (2007); M. Kightlinger, *The Gathering Twilight? Information Privacy on the Internet in the*
First Amended Class Action Complaint

1 73. The Soma Article further states: “PII, which companies obtain at little cost, has
2 quantifiable value that is rapidly reaching a level comparable to the value of traditional financial
3 assets.”³

4 74. Likewise, in the Wall Street Journal, privacy expert and then-fellow at the Open
5 Society Institute, Christopher Soghoian, confirms the incentive for the Defendant’s actions in
6 taking users contact address books:

7
8 The dirty secret of the Web is that the “free” content and services that
9 consumers enjoy come with a hidden price: their own private data. Many
10 of the major online advertising companies are not interested in the data
11 that we knowingly and willingly share. Instead, these parasitic firms
12 covertly track our web-browsing activities, search behavior and
geolocation information. Once collected, this mountain of data is
analyzed to build digital dossiers on millions of consumers, in some cases
identifying us by name, gender, age as well as the medical conditions and
political issues we have researched online.

13 Although we now regularly trade our most private information for access
14 to social-networking sites and free content, the terms of this exchange
were never clearly communicated to consumers.⁴

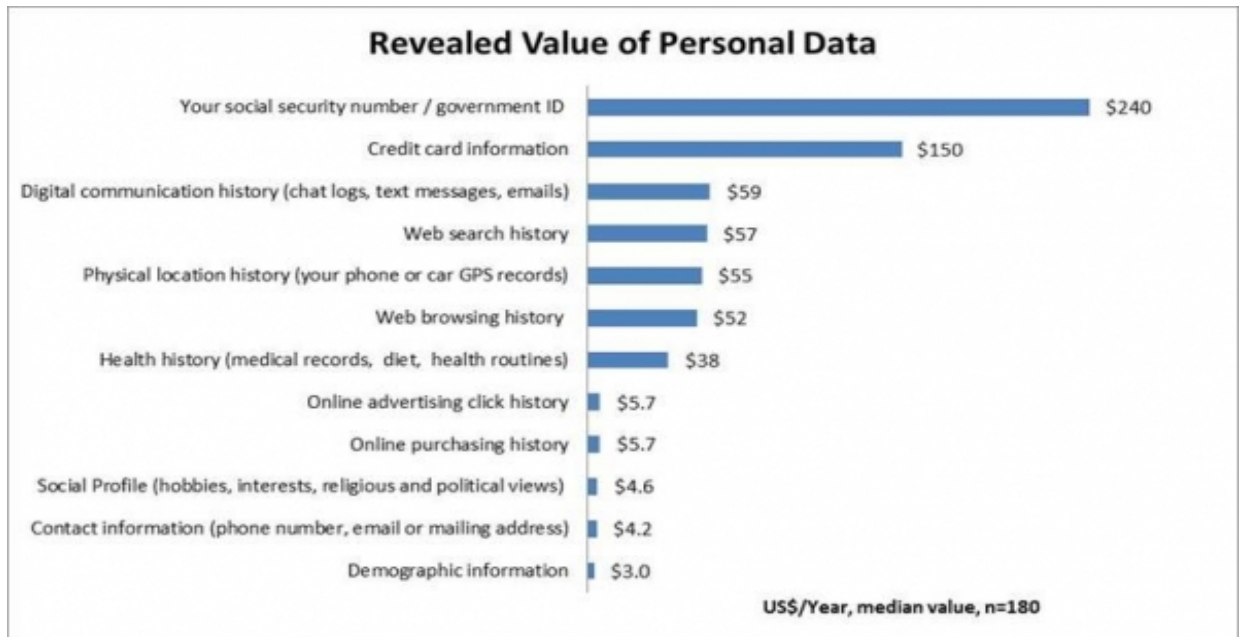
15 75. The cash value of personal information can be quantified. For example, in a
16 recent study authored by Tim Morey, researchers studied the value that 180 Internet users placed
17 on keeping personal data secure. Contact information was valued by the study participants at
18 approximately \$4.20 per year. The chart below summarizes the findings:⁵
19
20
21
22

23 *Post-Enlightenment Era*, 24 J. MARSHALL J. COMPUTER & INFO. L., 353, 384 (2006)).

24 ³ *Id.* at 2.

25 ⁴ Julia Angwin, *How Much Should People Worry About the Loss of Online Privacy?*, WALL ST.
26 J. (Nov. 15, 2011), available at,
<http://online.wsj.com/article/SB10001424052970204190704577024262567105738.html>.

27 ⁵ Tim Morey, *What’s Your Personal Data Worth?*, DESIGN MIND, (Jan. 18, 2011),
28 <http://designmind.frogdesign.com/blog/what039s-your-personal-data-worth.html>.



76. Facebook's initial public stock offering also demonstrated the market value of PII. A February 15, 2012 article in *The Financial Times* stated: "Two weeks ago Facebook announced an initial public offering that could value the company at up to \$100 [billion]. Facebook is worth so much because of the data it holds on its 845 [million] users."⁶

77. Moreover, active markets exist all over the world for this type of data. For instance, a company in the United Kingdom, Allow Ltd., has created a business model based on the value of personally identifiable information. When a customer signs up for Allow Ltd. the company sends a letter on behalf of its new client to the top companies in the United Kingdom that harvest personal data demanding that those companies immediately stop using the client's personally identifiable data.

78. A February 28, 2011 Wall Street Journal article stated that Allow, Ltd. paid one user \$8.95 for permitting Allow to tell a credit card company that the user was looking for a new

⁶ Richard Falkenrath, *Google Must Remember Our Right to be Forgotten*, FIN. TIMES (Feb. 15, 2012), <http://www.ft.com/cms/s/0/476b9a08-572a-11e1-869b-00144feabdc0.html#axzz2F4G7Qqnv>.

1 credit card.⁷ Allow is one of a number of companies that offer users a real market for their
2 personal information. That same Wall Street Journal article described the new company
3 IntelliProtect. Demonstrating further the clear attribution of specific dollar values to PII, for a
4 fee of \$8.95 per month IntelliProtect prevents users from seeing ads based on private
5 information.⁸

6 79. Another start-up, Enliken, “enables people to sell themselves to advertisers
7 directly,” and values a user’s data at \$12 per year. This again illustrates a market in which users
8 can actually sell Personally Identifiable Information, indicating that its value can be realized.⁹

9 80. The company Privacy Choice has a program called PrivacyFix, which measures
10 the value that users are paying for the exchange “where companies are able to take user data, sell
11 it to advertisers, and make money that allows them to give themselves a paycheck while keeping
12 [users] afloat in free digital services.” PrivacyFix measures users’ last 60 days of activity on
13 Google, extrapolates it to a year, and uses a value-per-search estimate. Privacy Choice’s
14 founder, Jim Brock, boasts that his Google value “checks in at more than \$700 per year.”¹⁰

15 81. The market highly covets personal user data because such private information is
16 not readily available. Defendant discovered a way to get this personal information without
17 having pay users anything.

18 **VI. RULE 9(b) ALLEGATIONS**

19 82. Federal Rule of Civil Procedure (“Rule”) 9(b) provides that “[i]n alleging fraud or
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21 ⁷ Julia Angwin & Emily Steel, *Web’s Hot New Commodity: Privacy*, WALL ST. J. (Feb. 28,
22 2011), available at,
23 <http://online.wsj.com/article/SB10001424052748703529004576160764037920274.html>.

24 ⁸ *Id.*

25 ⁹ Melissa Knowles, *Startup Gives Users Control Over Sale of Personal Data*, YAHOO! BLOG
26 (October 3, 2012), <http://news.yahoo.com/blogs/trending-now/startup-gives-users-control-over-sale-personal-data-194752267.html>.

27 ¹⁰ Joe Mullin, *How Much Do Google and Facebook Profit From Your Data?*, ARS TECHNICA,
28 (Oct. 9, 2012), <http://arstechnica.com/tech-policy/2012/10/how-much-do-google-and-facebook-profit-from-your-data/>.

1 mistake, a party must state with particularity the circumstances constituting fraud or mistake.”
2 Fed. R. Civ. P. 9(b). As detailed in the paragraphs above, Plaintiffs have satisfied the
3 requirements of Rule 9(b) by establishing the following elements with sufficient particularity.

4 WHAT:

5 83. Defendant Hipster made the following material misrepresentations regarding its
6 Hipster App:

7 Hipster is creating a real-time, visual public record of the world’s
8 locations.

9 Using their iPhones and Android devices, people share where they are and
10 what they are doing by sending their friends a photographic postcard. The
11 postcards become permanently attached to the locations they were sent
12 from, and are forever accessible to all those who come later.

13 84. These statements were misrepresentations because they did not tell the truth about
14 what the Hipster App was, how it worked, and what it would do. What was portrayed as an App
15 to share pictures, in fact, concealed what was essentially a Trojan horse which engaged in
16 surreptitious data collection practices immediately upon use. Users who sought to obtain a photo
17 sharing App ended up with a program on their iPhones that accessed places on the iPhone
18 memory. This activity was never disclosed to the iPhone users. Users were not told that the App
19 would make a copy of their contact address book, upload that contact address book to Hipster’s
20 servers, and that Hipster would retain and use a copy of that secretly acquired information.

21 85. When Hipster represented that the app was “free,” it was engaging in a
22 misrepresentation. The App was designed to hide the true price users would pay. In exchange
23 for the Hipster App, users were required to relinquish a copy, and surrender their copyright, of
24 their contact address book, a transaction which they would not have permitted had they been
25 informed of the true cost of the Hipster App.

26 86. When Hipster represented that the download was “free,” it was engaging in a
27 misrepresentation. The download included within it a mechanism for extracting a price from the
28 user (the user’s contact address book). All of this was undisclosed and the user was not given all
information necessary to fairly and honestly evaluate whether the App was really worth the
download. Thus, the download was not free. The download was specifically designed to hide
the fact that a price was being extracted from the user without the user’s knowledge or consent.

1 WHEN:

2 87. On or about October 2011, Defendant made its Hipster App available through the
3 Apple App Store. In its announcement, Hipster made the representations discussed above.
4 Thereafter, and for the entire period for which App was available on the market and the App
5 functioned to copy and transmit the contact address book, Hipster continued to represent that its
6 App was “free,” and the download was “free,” and never, during that time period, did Hipster
7 disclose the true cost of the download or use of the App, or how the App ensured that users
8 would pay the price for the App. In addition, for the entire time period from October 2011 up to
9 and including some time on or about February 2012, Hipster continued to make incomplete and
10 deceptive statements about the App, concealing its true actions and activities once it was started.

11 88. During the time period from October 2011 up to and including some time on or
12 about February 2012, Defendant continuously and uninterruptedly made identical representations
13 that the App was free and continuously and uninterruptedly did not disclose the true nature, facts,
14 and operations of its Hipster App.

15 WHERE:

16 89. The representations were made, *inter alia:* in the Apple App store which
17 advertised and promoted the Hipster App; on Hipster’s home page website which advertised and
18 promoted its Hipster App; and throughout the internet as promoted and propagated by Defendant
19 on numerous web pages located on third-party websites.

20 WHO:

21 90. Defendant Hipster, acting through its employees and/or agents, created, reviewed,
22 approved, and published each of the above-identified statements. The individual employees at
23 Hipster who had responsibility for the statements are unknown at this time, however internal
24 records of the corporation will permit specific individuals to be identified through discovery.
25 The specific employees of Hipster who had specific responsibility can be identified as those
26 individuals who created, reviewed, approved, and directed or participated in the publication of
27 the statements, and those individuals who had authority to correct, retract, amend the statements,
28 and/or disclose additional information, but did not.

1 HOW:

2 91. Defendant's written material misrepresentations were published in the Apple App
3 Store which advertised and promoted the Hipster App; on Hipster's home page website which
4 advertised and promoted its Hipster App; and throughout the internet as promoted and
5 propagated by Defendant on numerous web pages located on third-party websites. Any
6 information published and promoted by Hipster was misleading because none of it told the whole
7 truth. Any person researching information on the Hipster App would not have been able to
8 discover the true nature of the App because Hipster never disclosed the true nature of the App in
9 any of its advertising or statements about its product. The most minimal research on Hipster's
10 App invariably exposes the prospective downloader to the App statements listed above, which
11 were identical in all iterations.

12 WHY:

13 92. Defendant engaged in the material misrepresentation detailed herein for the
14 express purpose of inducing Plaintiffs and other reasonable iPhone owners to download the
15 Hipster App from the Apple store. By prominently touting the free nature of the App and the
16 free download, Hipster hoped that it would distribute more copies of its App onto the iPhones of
17 more users. This strategy was successful, in that Hipster was able to boast that, in less than a
18 year after its unveiling, Hipster had surpassed 500,000 users.

19 93. As a result of this explosive growth, which could not have occurred had Hipster
20 disclosed the truth about the App download and function to its users, Hipster was shortly to be
21 valued as a multi-million dollar company. On information and belief, and Plaintiffs thereupon
22 allege, the value of the contacts and connections Hipster acquired by stealing the contact address
23 books of hundreds of thousands of its customers was instrumental in achieving that multi-million
24 dollar valuation.

25 MATERIALITY

26 94. Defendant Hipster's representations and omissions regarding its Hipster App led
27 users to believe that the App was free, was a way to "Easily share where you are and what you're
28 doing with postcards of your photos." This resulted in users making the decision to download

1 the App onto their iPhones and thereby exposing the user's contact address book to Hipster's
2 software program which then copied, uploaded, and retained a copy of the contact address book
3 on Hipster's servers. These statements hid the true cost and functionality of the Hipster App.
4 Class members would not have downloaded the App had they known these facts. Defendant
5 profited by promoting its App to hundreds of thousands of unsuspecting users.

6 95. Had Plaintiffs and the members of the Class known that the Hipster App would
7 act as it actually did, they would not have downloaded it.

8 Plaintiffs' Experiences

9 96. Plaintiffs Espitia, Zendejas, and Fraire each store contact address data that
10 contains information related to one (1) or more personal contacts, personal associations, business
11 contacts, and professional contacts.

12 97. Plaintiffs Espitia, Zendejas, and Fraire each downloaded and used Defendant's
13 App during the Class Period.

14 98. Plaintiffs Espitia, Zendejas, and Fraire each used their iPhones to access
15 Defendant's App to use its services, including uploading and sharing digital content, such as
16 photos.

17 99. Plaintiffs Espitia, Zendejas, and Fraire each were subjected to the unauthorized
18 access, use, dissemination, collection, and storage of personal information by Defendant.

19 100. Plaintiffs Espitia, Zendejas, and Fraire were each unaware of the harm that would
20 be imposed on them by Defendant, including use, retention and storage of their iPhone contact
21 address books, the misappropriation of their iPhone resources and bandwidth, as well the
22 exploitation of their personal information.

23 101. Plaintiffs Espitia, Zendejas, and Fraire did not consent to having their data
24 collected by Defendant. Had Plaintiffs known of Defendant's practices, they would not have
25 downloaded and used its App. Plaintiffs were induced to download and use Defendant's App and
26 the promise of a free safe, and reliable App; Defendant induced Plaintiffs to download and use
27 its Hipster App by offering a service as a "free" App. However, Defendant failed to disclose to
28 Plaintiffs that its "free" App would obtain and store their mobile device contact address book on

1 it servers.

2 102. Plaintiffs Espitia, Zendejas, and Fraire were not aware that Defendant would
3 allow information transmitted through Defendant’s App in an unreasonably insecure manner—
4 contrary to accepted standards—and in a way that is well-recognized to be easily intercepted by
5 even an unsophisticated hacker sitting near a wireless hotspot.

6 103. Plaintiffs Espitia, Zendejas, and Fraire considered his or her personal information
7 to be private property and/or a confidential asset.

8 104. Plaintiffs Espitia, Zendejas, and Fraire had no means to avoid the data collection
9 by Defendant: Defendant controls its ecosystem and what its App can and cannot transmit and
10 Defendant controls the fact that its customers are kept oblivious about the contact address book
11 collection and storage process built into its ecosystem.

12 105. Plaintiffs Espitia, Zendejas, and Fraire could not learn about copying, uploading
13 and storage of their contact address book data except through unreasonably burdensome efforts,
14 such as those required in the investigations underlying these allegations.

15 106. Plaintiffs’ explicit privacy settings to the contrary, on information and belief,
16 Defendant continues to store information about Plaintiffs, ignoring as a result that Plaintiffs
17 could not prevent Defendant from collecting data. Defendant’s representations to the contrary
18 were false and/or misleading, and likely to deceive consumers targeted by such conduct.

19 107. Plaintiffs Espitia, Zendejas, and Fraire each have standing to bring this case under
20 Article III of the United States Constitution by virtue of alleging concrete, tangible and non-
21 speculative injuries in fact, arising from violations of Federal statutes and the California
22 Constitution. The statutes and Constitutional provisions at issue herein create legal rights, the
23 invasion of which creates standing.

24 **VII. CLASS ALLEGATIONS**

25 108. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3) on
26 behalf of themselves and the following class:

27 All persons residing in the United States that downloaded Defendant
28 Hipster’s App to their mobile computing devices from January 2011 to

First Amended Class Action Complaint

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February 28, 2012.
Excluded from the Class are Defendant, its legal representatives, assigns, and successors, and any entity in which Defendant has a controlling interest. Also excluded is the judge to whom this case is assigned and the judge's immediate family.

109. Plaintiffs reserve the right to revise this class definition based on facts they learn as litigation progresses.

110. Plaintiffs reserve the right to establish sub-classes as appropriate.

111. The Class consists of hundreds of thousands of individuals and other entities, making joinder impractical.

112. The claims of Plaintiffs are typical of the claims of all other Class Members.

113. Plaintiffs will fairly and adequately represent the interests of the other Class Members. Plaintiffs have retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class Members, and have the financial resources to do so. Neither Plaintiffs nor their counsel have any interests adverse to those of the other Class Members.

114. Absent a class action, most Class Members would find the cost of litigating their claims to be prohibitive and will have no effective remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication.

115. Defendant has acted, and failed to act, on grounds generally applicable to Plaintiffs and the other Class Members, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the Class Members.

116. The factual and legal bases of Defendant's liability to Plaintiffs and to the other Class Members are the same, resulting in injury to Plaintiffs and all of the other Class Members. Plaintiffs and the other Class Members have all suffered harm and damages as a result of Defendant's wrongful conduct.

117. There are many questions of law and fact common to Plaintiffs and the Class Members, and those questions predominate over any questions that may affect individual Class

1 Members. Common questions for the Class include, but are not limited to the following:

- 2 a. whether Defendant's conduct described herein violates the federal Computer
3 Fraud And Abuse Act; 18 U.S.C. §§ 1030(a)(2)(C) & (a)(5);
- 4 b. whether Defendant's conduct described herein violates the California
5 Computer Crime Law, Cal. Penal Code § 502;
- 6 c. whether Defendant's conduct described herein violates California's
7 Consumers Legal Remedies Act, Cal. Civil Code §§ 1750 *et seq.*;
- 8 d. whether Defendant's conduct described herein violates California's Unfair
9 Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*;
- 10 e. whether Defendant's conduct described herein has resulted in acts of
11 Conversion;
- 12 f. whether Defendant's conduct described herein has resulted in an Invasion of
13 Privacy and Seclusion and Public Disclosure of Private Facts;
- 14 g. whether Defendant's conduct described herein has resulted in Trespass to
15 Personal Property/ Chattels;
- 16 h. whether Defendant's conduct described herein has resulted in acts of Unjust
17 Enrichment;
- 18 i. whether, as a result of Defendant's conduct, Plaintiffs and the Class have
19 suffered damages; and if so the appropriate amount thereof; and
- 20 j. whether, as a result of Defendant's conduct, Plaintiffs and the Class are
21 entitled to equitable relief, and/or other relief, and, if so, the nature of such
22 relief.

23 118. The questions of law and fact common to Class Members predominate over any
24 questions affecting only individual members and a class action is superior to all other available
25 methods for the fair and efficient adjudication of this controversy.
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28

Count I

VIOLATION OF FEDERAL COMPUTER FRAUD AND ABUSE ACT

18 U.S.C. §§ 1030(a)(2)(C) & (a)(5)

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4 119. Plaintiffs incorporate the above allegations by reference as if set forth herein at
5 length.

6 120. Plaintiffs assert this claim on behalf of themselves and the Class.

7 121. Plaintiffs and Class Members have used their iPhones in interstate and/or foreign
8 commerce.

9 122. Defendant has violated the Computer Fraud and Abuse Act, 18 U.S.C. §
10 1030(a)(2)(C), by intentionally accessing a computer used for interstate commerce or
11 communication, without authorization or by exceeding authorized access to such a computer, and
12 by obtaining information from such a protected computer.

13 123. Defendant has violated the Computer Fraud and Abuse Act, 18 U.S.C. §
14 1030(a)(5)(A)(i) by knowingly causing the transmission of a program, information, code, or
15 command and as a result causing a loss to one or more persons during any one-year period
16 aggregating at least \$5,000 in value.

17 124. Plaintiffs and Class Members have suffered loss by reason of these violations.

18 125. Plaintiffs and Class Members lost their copyright -- the actual, exclusive and
19 personally-owned right to make a copy thereof, and to prevent others from making a copy.
20 Hipster took that right away from iPhone users when it stole a copy of the contact address book
21 and uploaded that data to its servers, where it enjoyed access to that copy as it pleased. This loss
22 of the exclusive right to make and control rights over a copy of a copyrighted work is tangible,
23 and subject to valuation, but in no case is the loss of this right worth less than \$5.00 for each of
24 the iPhone owners who had their contact address book copied without their permission by
25 Hipster.

26 126. Plaintiffs and Class Members lost any compensation for their investment of time,
27 effort, skill, and creative energy used to build the user's unique contact address book, which has
28 independent value as a result of the investment of time, effort, skill, and creative energy by

1 Plaintiffs and the members of the Class. The investment made by a user to create their contact
2 address book is substantial, and capable of valuation, based upon the time spent learning and
3 building the contact address book, time spent creating and inputting data and information, the
4 number of entries in the contact address book, and time spent modifying and updating the contact
5 address book.

6 127. Plaintiffs and Class Member are forced to retain an expert in order to obtain
7 removal of the Hipster App from their iPhones. The costs to hire a technician who can
8 knowledgeably, effectively, completely, and permanently remove the Hipster App, and all its
9 code, both disclosed and undisclosed, is substantial. The knowledge required from such an
10 operation is not easily obtained outside of Apple itself. Thus, the false pretenses under which the
11 Hipster App was downloaded, installed, and run on the user's iPhone caused actual harm to users
12 in necessitating expert removal of the Hipster App and all of its code, both disclosed and
13 undisclosed, from the iPhone in order to restore the iPhone to its previously secure state.

14 128. Within the first year of its operation, Hipster's conduct similarly affected and
15 caused the losses described above to hundreds of thousands of users.

16 129. Defendant's unlawful access to Plaintiffs' and Class Members' computers and
17 computer communications also have caused Plaintiffs and Class members irreparable injury.
18 Unless restrained and enjoined, Defendants will continue to commit such acts. Plaintiffs' and
19 Class members' remedy at law is not adequate to compensate them for these inflicted and
20 threatened injuries, entitling Plaintiffs and Class Members to remedies including injunctive relief
21 as provided by 18 U.S.C. § 1030(g).

22 130. In addition, Plaintiffs and Class Members suffered economic damages.
23 Specifically, iPhone users lost value in what they paid for their iPhones, including but not limited
24 to lost battery life, lost memory, lost storage space, lost bandwidth, and lost valuation to the
25 iPhone itself in that Hipster's conduct impaired the functionality of the iPhone, rendering data
26 stored thereon accessible and insecure. Plaintiffs and Class Members seek a minimum recovery
27 of \$10.00 per iPhone for losses incurred by virtue of Hipster's conduct as described herein.
28 Plaintiffs and Class Members also seek, in addition to the economic losses described above, a

1 minimum recovery of \$5.00 for their loss of copyright.

2 **COUNT II**

3 **VIOLATIONS OF CAL. PENAL CODE § 502,**

4 **The California Computer Crime Law (“CCCL”)**

5 131. Plaintiffs incorporate the above allegations by reference as if set forth herein at
6 length.

7 132. Plaintiffs assert this claim on behalf of themselves and the Class.

8 133. Defendant accessed, copied, used, made use of, interfered, and/or altered, data
9 belonging to Class members: (1) in and from the State of California; (2) in the home states of the
10 Plaintiffs; and (3) in the state in which the servers that provided the communication link between
11 Plaintiffs and the App were located.

12 134. Cal. Penal Code § 502(j) states: “For purposes of bringing a civil or a criminal
13 action under this section, a person who causes, by any means, the access of a computer,
14 computer system, or computer network in one jurisdiction from another jurisdiction is deemed to
15 have personally accessed the computer, computer system, or computer network in each
16 jurisdiction.”

17 135. Defendant has violated California Penal Code § 502(c)(1) by knowingly and
18 without permission, altering, and making use of data from Plaintiffs and Class members iPhones
19 in order to wrongfully obtain valuable private data from Plaintiffs.

20 136. Defendant has violated California Penal Code § 502(c)(1) by knowingly and
21 without permission, altering, and making use of data from Plaintiffs and Class members iPhones
22 in order to: (1) deceive Plaintiffs into surrendering unknowing control over their contact address
23 book and the information contained therein for Defendant’s financial gain; and (2) deceive
24 Plaintiffs into accepting and downloading and using the Hipster App that contained undisclosed
25 code that would circumvent protections on the iPhone that were designed to keep information
26 therein safe, secure and private.

27 137. Defendant has violated California Penal Code § 502(c)(2) by knowingly and
28 without permission, accessing and taking data from Plaintiffs’ iPhones.

1 138. Defendant has violated California Penal Code § 502(c)(6) by knowingly and
2 without permission providing, or assisting in providing, a means of accessing Plaintiffs' and
3 Class member's iPhones.

4 139. Defendant has violated California Penal Code § 502(c)(7) by knowingly and
5 without permission accessing, or causing to be accessed, Plaintiffs' and Class member's iPhones.

6 140. Pursuant to California Penal Code § 502(b)(10) a "Computer contaminant"
7 means any set of computer instructions that are designed to . . . record, or transmit information
8 within a computer, computer system, or computer network without the intent or permission of
9 the owner of the information."

10 141. The iPhone qualifies as and constitutes a computer.

11 142. Defendant has violated California Penal Code § 502(c)(8) by knowingly and
12 without permission introducing a computer contaminant into the iPhones of Plaintiffs class
13 members, which transmitted the contact address book to Defendant's servers.

14 143. As a direct and proximate result of Defendant's unlawful conduct within the
15 meaning of California Penal Code § 502, Defendant has caused loss to Plaintiffs and Class
16 Members in an amount to be proven at trial.

17 144. Plaintiffs lost their copyright -- the actual, exclusive and personally-owned right
18 to make a copy thereof, and to prevent others from making a copy. Hipster took that right away
19 from iPhone users when it stole a copy of the contact address book and uploaded that data to its
20 servers, where it enjoyed access to that copy as it pleased. This loss of the exclusive right to
21 make and control rights over a copy of a copyrighted work is tangible, and subject to valuation,
22 but in no case is the loss of this right worth less than \$5.00 for each of the iPhone owners who
23 had their contact address book copied without their permission by Hipster.

24 145. Plaintiffs lost any compensation for their investment of time, effort, skill, and
25 creative energy used to build the user's unique contact address book, which has independent
26 value as a result of the investment of time, effort, skill, and creative energy by Plaintiffs and the
27 members of the Class. The investment made by a user to create their contact address book is
28 substantial, and capable of valuation, based upon the time spent learning and building the contact

1 address book, time spent creating and inputting data and information, the number of entries in
2 the contact address book, and time spent modifying and updating the contact address book.

3 146. Plaintiffs are forced to retain an expert in order to obtain removal of the Hipster
4 App from their iPhones. The costs to hire a technician who can knowledgeably, effectively,
5 completely, and permanently remove the Hipster App, and all its code, both disclosed and
6 undisclosed, is substantial. The knowledge required from such an operation is not easily
7 obtained outside of Apple itself. Thus, the false pretenses under which the Hipster App was
8 downloaded, installed, and run on the user's iPhone caused actual harm to users in necessitating
9 expert removal of the Hipster App and all of its code, both disclosed and undisclosed, from the
10 iPhone in order to restore the iPhone to its previously secure state.

11 147. Within the first year of its operation, Hipster's conduct similarly affected and
12 caused the losses described above to over 500,000 users.

13 148. Plaintiffs are also entitled to recover their reasonable attorneys' fees pursuant to
14 California Penal Code § 502(e).

15 149. Plaintiffs and the Class Members seek compensatory damages: specifically,
16 Plaintiffs and class members seek to recover the costs to retain an expert to insure the complete
17 removal of all code installed by the Hipster App, while insuring that no data belonging to the
18 iPhone user was not altered, damaged, or deleted by the Hipster's access, or will be placed at risk
19 by the Hipster App's removal. In no case will this cost be less than \$5.00 per iPhone.

20 150. Plaintiffs and Class Members have suffered irreparable and incalculable harm and
21 injuries from Defendant's violations. The harm will continue unless Defendant is enjoined from
22 further violations of this section. Plaintiffs and Class Members have no adequate remedy at law.

23 151. Plaintiffs and the Class Members are entitled to punitive or exemplary damages
24 pursuant to Cal. Penal Code § 502(e)(4) because Defendant's violations were willful and, on
25 information and belief, Defendant is guilty of oppression, fraud, or malice as defined in Cal.
26 Civil Code § 3294.

COUNT III

TRESPASS TO PERSONAL PROPERTY / CHATTELS

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3 152. Plaintiffs incorporate the above allegations by reference as if set forth herein at
4 length.

5 153. Plaintiffs assert this claim on behalf of themselves and the Class.

6 154. The common law prohibits the intentional intermeddling with personal property,
7 including an iPhone, in possession of another which results in the deprivation of the use of the
8 personal property or impairment of the condition, quality, or usefulness of the personal property.

9 155. When users purchased their iPhones, it was with the understanding that the
10 iPhone came with certain safeguards for privacy and security, both internal to the iPhone, and
11 external, through the control of the Apple server, and Apple's strict control over its App Store.
12 These protections were designed into the physical makeup of the iPhone, the programming and
13 software the iPhone utilized, and the servers that supported the iPhone. These protections
14 extended to the Apps available through the Apple App Store, and Apple's control of the
15 functionality of the apps offered.

16 156. These safeguards for privacy and security are fundamental to the operation and
17 functionality of the iPhone.

18 157. The Hipster App, in circumventing all of these protections, and thereafter
19 copying, transmitting, and retaining a copy of the contact address book "broke" these safeguards.

20 158. Following the download and use of the Hipster App, the iPhone no longer
21 functioned as it was designed.

22 159. The iPhone was transformed from a secure device which would hold safe, and
23 confidential the private and personal information related to the user's contacts, associations,
24 relationships, and communications. Once the Hipster App became part of the iPhone, the
25 iPhone's use as a secure device which would hold safe, secure, and confidential the private and
26 personal information related to the user's contacts, associations, relationships and
27 communications was destroyed.

28 160. The destruction of this aspect of the iPhone's operation and functionality left

1 user's iPhones in an impaired condition, quality, and usefulness.

2 161. The taking of the contact address book information constituted an irreparable
3 injury, in that information that the user had created, compiled, and assembled within the secure
4 parameters of their single-owner iPhone was not for public distribution or for sharing with third
5 parties. The breach Hipster made in these walls of protection by and through code it
6 surreptitiously inserted into its App permitted private and sensitive information which was
7 securely ensconced within the built-in protections of the iPhone to become public, or publicly
8 available, once transmitted by Defendant "in the clear" and without any encryption. Information
9 which was formerly for the "eyes only" of the iPhone owner thereafter became information
10 available not only to the iPhone user, but also anyone at Hipster who cared to peruse the
11 uploaded data or had access to it; as well as anyone who had access to open and unsecured web
12 transmissions.

13 162. Hipster's conduct directly and intentionally interfered with the intended function
14 of the iPhone.

15 163. Users would not have purchased Apple's iPhone, or alternatively, would not have
16 paid as much for it, had they known that the Hipster App would be able to circumvent and impair
17 both internal and external safeguards designed for the protection of their private and personal
18 information residing on the iPhone.

19 164. Without Plaintiffs' and Class Members' consent, or in excess of any consent
20 given, Defendant knowingly and intentionally accessed Plaintiffs' and Class Members' property,
21 thereby intermeddling with Plaintiffs' and Class Members' right to possession of the property
22 and causing injury to Plaintiffs and the members of the Class.

23 165. Defendant engaged in deception and concealment in order to gain access to
24 Plaintiffs' and Class Members' iPhones.

25 166. Defendant undertook the following actions with respect to Plaintiffs' and Class
26 Members' iPhones:

- 27 a. Defendant accessed and obtained control over the user's iPhone;
- 28 b. Defendant caused the installation of a new code onto the memory of the user's

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iPhone;

- c. Defendant programmed the operation of its code to function and operate without notice or consent on the part of the owner of the iPhone, and outside of the control of the owner of the iPhone.

167. All these acts described above were acts in excess of any authority any user granted when they downloaded the Defendant’s application and none of these acts was in furtherance of users viewing the Defendant application. By engaging in deception and misrepresentation, whatever authority or permission Plaintiffs and Class Members may have granted to Defendant was voided.

168. Defendant’s installation and operation of its program used, interfered, and/or intermeddled with Plaintiffs’ and Class Members’ iPhones. Such use, interference and/or intermeddling was without Plaintiffs’ and Class Members’ consent or, in the alternative, in excess of Plaintiffs’ and Class Members’ consent.

169. Defendant’s installation and operation of its program constitutes trespass, nuisance, and an interference with Plaintiffs’ and Class Members’ chattels, to wit, their iPhones.

170. Defendant’s trespass to chattels, nuisance, and interference caused real and substantial damage to Plaintiffs and Class Members.

171. As a direct and proximate result of Defendant’s trespass to chattels, nuisance, interference, unauthorized access of and intermeddling with Plaintiffs’ and Class Members’ property, Defendant has injured and impaired in the condition and value of Plaintiffs’ and Class Members’ iPhones.

172. Plaintiffs and Class Members suffered economic damages as a result of Hipster’s trespass. Specifically, iPhone users lost value in what they paid for their iPhones, including but not limited to lost battery life, lost memory, lost storage space, lost bandwidth, and lost valuation to the iPhone itself in that Hipster’s conduct impaired the functionality of the iPhone, rendering data stored thereon accessible and insecure. Plaintiffs and Class Members seek a minimum recovery of \$10.00 per iPhone for losses incurred by virtue of Hipster’s conduct as described herein. Plaintiffs and Class Members also seek, in addition to the economic losses described

1 above, a minimum recovery of \$5.00 for their loss of copyright.

2 173. Plaintiffs and the Class Members seek compensatory damages to recover the costs
3 to retain an expert to insure the complete removal of all code installed by the Hipster App, while
4 insuring that no data belonging to the iPhone user was not altered, damaged, or deleted by the
5 Hipster’s access, or will be placed at risk by the Hipster App’s removal. Based on information
6 and belief, in no case will this cost be less than \$5.00 per iPhone.

7 **COUNT IV**

8 **VIOLATIONS OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**

9 **Civil Code §§ 1750, et seq.**

10 174. Plaintiffs incorporate the above allegations by reference as if set forth herein at
11 length.

12 175. Plaintiffs assert this claim on behalf of themselves and the Class.

13 176. The California Consumers Legal Remedies Act (“CLRA”) applies to Hipster’s
14 actions and conduct described herein because it extends to transactions that are intended to
15 result, or which have resulted, in the sale of a service to consumers.

16 177. Hipster’s App constituted a “service” under Section 1761(b) in that the Hipster
17 App permitted iPhone users to “Easily share where you are and what you’re doing with postcards
18 of your photos.” This sharing (web hosting of user’s photographs, with accompanying
19 information, on Hipster’s social website) was a service for purposes and within the meaning of
20 the CLRA.

21 178. The utilization of this service was for personal, family, or household purposes,
22 and Plaintiffs and the members of the Class are “consumers” under Civil Code section 1761(d).

23 179. Defendant Hipster has violated the CLRA in at least the following respects:

- 24 a. In violation of Section 1770(a)(5), Defendant Hipster represented that the
25 Hipster App had characteristics, uses, and benefits it does not have.
26 Specifically, Hipster offered a service to “Easily share where you are and
27 what you’re doing with postcards of your photos.” Hipster did not disclose
28 that there were undisclosed costs to the use of the service, including the

1 copying, transmission, and retention of the user’s contact address book.

2 Hipster engaged in a misrepresentation regarding the true nature of the App;

3 b. In violation of Section 1770(a)(9), Defendant Hipster represented that the
4 Hipster App was “free,” when in fact, Hipster imposed an additional price
5 which users were required to pay, but it did not disclose that this additional
6 price was part of the transaction, and indeed, took steps to conceal the theft of
7 the contact address book in “payment” for the Hipster service;

8 c. In violation of Section 1770(a)(13), Defendant Hipster represented that the
9 Hipster App was “free,” which constitutes a price reduction, but in fact, the
10 price was not “reduced.” Users were required to pay, but Hipster took steps to
11 conceal the “payment” for the Hipster service;

12 d. In violation of Section 1770(a)(14), Defendant Hipster represented that the
13 transaction with Hipster involved rights, remedies, or obligations which it
14 does not have. Specifically, by representing that the App was “free,” users
15 were led to believe that they had all rights to use the Hipster App without
16 further payment. Users were also led to believe that no further obligations
17 would be necessary. Hipster unilaterally imposed these additional terms and
18 obligations on the transaction, all without disclosure to consumers.

19 180. Defendant Hipster concealed material facts regarding the services it was
20 providing. Had Defendant Hipster disclosed the information it concealed, it would have been
21 made known to Plaintiffs and members of the Class.

22 181. Defendant Hipster’s failure to disclose the truth about the Hipster App, its hidden
23 function, concealed operations, and undisclosed costs, and Defendant’s conscious concealment
24 of those facts, are unfair, misleading, and deceptive trade practices under the provisions of the
25 CLRA, California Civil Code §§ 1770 (a)(5), (9), (13), and (14).

26 182. Defendant’s deceptive acts and omissions occurred in the course of selling a
27 consumer product.

28 183. Plaintiffs and the members of the Class relied upon Defendant Hipster to provide

1 them with full and complete disclosure of the true facts concerning the services Hipster was
2 providing. Defendant Hipster intentionally failed to inform Plaintiffs and the members of the
3 Class of the true nature of its services to their detriment. Plaintiffs and the members of the Class
4 have all been directly and proximately injured by Defendant's conduct, and such injury includes
5 the losses described herein. Plaintiffs and the members of the Class would not have downloaded
6 the Hipster App had they known the truth about its true costs.

7 184. Plaintiffs, on behalf of themselves and each member of the Class, seek restitution,
8 injunctive relief, and other equitable relief allowed under section 1750, et seq.

9 185. On information and belief, or about March 2012, Hipster was purchased by AOL
10 for a sum in excess of one million dollars. This million dollar plus valuation was due, in whole
11 or in part, to Hipster's theft and acquisition of hundreds of thousands of user's contact address
12 books, which included millions of email addresses. Hipster did not disclose to iPhone owners
13 that it was taking this information, and Hipster never compensated users for the taking of this
14 data.

15 186. It would be inequitable to permit Hipster to retain its ill-gotten gains, or the
16 profits it realized by engaging in this unlawful conduct.

17 187. Plaintiffs, on behalf of themselves and the Class, seek restitution in the form of all
18 Hipster valuation that may be attributable to Hipster's theft and acquisition of hundreds of
19 thousands of user's contact address books.

20 188. Plaintiffs, on behalf of themselves and the Class, seek disgorgement in the form
21 of all Hipster benefits and profits such as may be necessary to deter future violations of the
22 unfair trade practice statute.

23 189. Plaintiffs expressly disclaim at this time any damages pursuant to this Civil Code
24 section.

25 **COUNT V**

26 **VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL"),**

27 **Cal. Business and Professions Code §§ 17200, et seq.**

28 190. Plaintiffs incorporate the above allegations by reference as if set forth herein at
First Amended Class Action Complaint

1 length.

2 191. Plaintiffs bring this cause of action on behalf of themselves, and in their capacity
3 as private attorneys general.

4 192. Defendant Hipster's actions, as complained of herein, constitute unfair, deceptive,
5 and/or unlawful practices committed in violation of the Unfair Competition Law, Bus. & Prof.
6 Code §§ 17200 et seq.

7 193. Defendant Hipster engaged in unlawful business practices by, among other things:

- 8 a. Engaging in conduct, as alleged herein, that violates Cal. Penal Code § 502;
9 b. Engaging in conduct, as alleged herein, that violates California Civil Code §§
10 1750 et seq., which seeks to protect consumers against unfair and sharp
11 business practices and to promote a basic level of honesty and reliability in the
12 marketplace;
13 c. Engaging in conduct, as alleged herein, that violates Article I, Section 1 of the
14 California Constitution; and
15 d. Engaging in conduct, as alleged herein, that violates the federal Computer
16 Fraud and Abuse Act: 18 U.S.C. §§ 1030(a)(2)(C) & (a)(5).

17 194. Defendant Hipster engaged in unfair business practices by, among other things:

- 18 a. Engaging in conduct where the utility of that conduct is outweighed by the
19 gravity of the consequences to Plaintiffs and Class members;
20 b. Engaging in conduct that is immoral, unethical, unscrupulous or substantially
21 injurious to Plaintiffs and Class members;
22 c. Engaging in conduct that undermines or violates the stated policies underlying
23 the CLRA, which seeks to protect consumers against unfair and sharp
24 business practices and to promote a basic level of honesty and reliability in the
25 marketplace; and
26 d. Engaging in conduct that undermines or violates the stated policies underlying
27 Cal. Penal Code § 502; Article I, Section 1 of the California Constitution; and
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1 the federal Computer Fraud and Abuse Act: 18 U.S.C. §§ 1030(a)(2)(C) &
2 (a)(5).

3 195. Defendant Hipster engaged in fraudulent business practices by engaging in
4 conduct that was and is likely to deceive consumers acting reasonably under the circumstances.
5 Defendant's fraudulent business practices include, but are not limited to:

- 6 a. Failing to disclose the truth about what the Hipster App was, how it worked,
7 and what it would do. What was portrayed by Hipster as an App to share
8 pictures, in fact, concealed what was essentially a Trojan horse which engaged
9 in surreptitious data collection practices immediately upon being downloaded
10 upon a user's iPhone. Users who sought to obtain a photo sharing App ended
11 up with a program on their iPhones that undertook actions that were never
12 disclosed to the iPhone users. Users were never informed that the App would
13 make a copy of their contact address book, upload that address book to
14 Hipster's servers, and that Hipster would retain and use a copy of that secretly
15 acquired information;
- 16 b. When Hipster represented that the app was "free," it was engaging in a
17 misrepresentation. The App was designed to hide the true price users would
18 pay. In exchange for the Hipster App, users were required to relinquish a
19 copy, and surrender their copyright of their contact address book, a transaction
20 to which they would not have permitted had they been informed of the truth
21 about the real cost of the Hipster App;
- 22 c. When Hipster represented that the download was "free," it was engaging in a
23 misrepresentation. The download included within it a mechanism for
24 extracting a price from the user (the user's contact address book). All of this
25 was undisclosed and the user was not given all information necessary to fairly
26 and honestly evaluate whether the App was really worth the download. Thus,
27 the download was not free. The download was specifically designed to hide
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1 the fact that a price was being extracted from the user without the user's
2 knowledge or consent.

3 196. As a direct and proximate result of Defendant Hipster's unlawful, unfair, and
4 fraudulent acts, business practices, and conduct, Plaintiffs and Class members have suffered
5 injury in fact and lost money as a result of Defendants Hipster's practices in that, among other
6 things:

- 7 a. Plaintiffs lost their copyright -- the actual, exclusive and personally-owned
8 right to make a copy thereof, and to prevent others from making a copy.
9 Hipster took that right away from iPhone users when it stole a copy of the
10 contact address book and uploaded that data to its servers, where it enjoyed
11 access to that copy as it pleased. This loss of the exclusive right to make and
12 control rights over a copy of a copyrighted work is tangible, and subject to
13 valuation, but in no case is the loss of this right worth less than \$5.00 for each
14 of the iPhone owners who had their contact address book copied without their
15 permission by Hipster.
- 16 b. Plaintiffs lost any compensation for their investment of time, effort, skill, and
17 creative energy used to build the user's unique contact address book, which
18 has independent value as a result of the investment of time, effort, skill, and
19 creative energy by Plaintiffs and the members of the Class. The investment
20 made by a user to create their contact address book is substantial, and capable
21 of valuation, based upon the time spent learning and building the contact
22 address book, time spent creating and inputting data and information, the
23 number of entries in the contact address book, and time spent modifying and
24 updating the contact address book.
- 25 c. Plaintiffs are forced to retain an expert in order to obtain removal of the
26 Hipster App from their iPhones. The costs to hire a technician who can
27 knowledgeably, effectively, completely, and permanently remove the Hipster
28 App, and all its code, both disclosed and undisclosed, is substantial. The

1 knowledge required from such an operation is not easily obtained outside of
2 Apple itself. Thus, the false pretenses under which the Hipster App was
3 downloaded, installed, and run on the user's iPhone caused actual harm to
4 users in necessitating expert removal of the Hipster App and all of its code,
5 both disclosed and undisclosed, from the iPhone in order to restore the iPhone
6 to its previously secure state.

7 197. All of the conduct alleged herein occurred in the course of Defendant's business.
8 Defendant's wrongful conduct was part of a pattern or generalized course of conduct repeated on
9 hundreds of thousands of occasions.

10 198. Plaintiffs, on behalf of themselves and each member of the Class, seek restitution,
11 injunctive relief, rescission, and other relief allowed under section 17200, et seq.

12 199. On information and belief, or about March 2012, Hipster was purchased by AOL
13 for a sum in excess of one million dollars. This million dollar plus valuation was due, in whole
14 or in part, to Hipster's theft and acquisition of hundreds of thousands of user's contact address
15 books, which included millions of email addresses. Hipster did not disclose to iPhone owners
16 that it was taking this information, and Hipster never compensated users for the taking of this
17 data.

18 200. It would be inequitable to permit Hipster to retain its ill-gotten gains, or the
19 profits it realized by engaging in this unlawful conduct.

20 201. Plaintiffs, on behalf of themselves and the Class, seek restitution in the form of all
21 Hipster valuation that may be attributable to Hipster's theft and acquisition of hundreds of
22 thousands of user's contact address books.

23 202. Plaintiffs, on behalf of themselves and the Class, seek disgorgement in the form
24 of all Hipster benefits and profits such as may be necessary to deter future violations of the
25 unfair trade practice statute.

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COUNT VI
CONVERSION

203. Plaintiffs incorporate the above allegations by reference as if set forth herein at length.

204. Plaintiffs assert this claim behalf of themselves and the Class.

205. Plaintiffs and Class Members are owners of the exclusive right to access, copy, modify, and/or transmit their contact address book information. Their contact address book information was compiled, organized, built, maintained, and updated by each iPhone owner individually. Each iPhone owner had both a copyright and an ownership interest in their contact address book as a result of their having compiled, organized, built, maintained, and updated the contact address book. They alone had exclusive discretion and control over access and use of the contact address book. Such property, owned by the Plaintiffs and Class Members, is valuable to the Plaintiffs and Class Members.

206. When Hipster, without notification or permission, accessed, copied, modified, and/or transmitted the contact address book information belonging to iPhone users, it destroyed the exclusive rights of possession that the iPhone users formerly held.

207. Defendant unlawfully exercised dominion over said property and thereby converted Plaintiffs' and Class Members' property, by a copy of that which exclusively belonged to the iPhone users.

208. Plaintiffs and Class Members were damaged thereby.

209. Plaintiffs and Class Members suffered economic damages as a result of Hipster's trespass. Specifically, iPhone users lost value in what they paid for their iPhones, including but not limited to lost battery life, lost memory, lost storage space, lost bandwidth, and lost valuation to the iPhone itself in that Hipster's conduct impaired the functionality of the iPhone, rendering data stored thereon accessible and insecure. Plaintiffs and Class Members seek a minimum recovery of \$10.00 per iPhone for losses incurred by virtue of Hipster's conduct as described herein. Plaintiffs and Class Members also seek, in addition to the economic losses described above, a minimum recovery of \$5.00 for their loss of copyright.

1 210. Plaintiffs and the Class Members seek compensatory damages to recover the costs
2 to retain an expert to insure the complete removal of all code installed by the Hipster App, while
3 insuring that no data belonging to the iPhone user was not altered, damaged, or deleted by the
4 Hipster's access, or will be placed at risk by the Hipster App's removal. In no case will this cost
5 be less than \$5.00 per iPhone.

6 **COUNT VII**
7 **INVASION OF PRIVACY AND SECLUSION AND**
8 **PUBLIC DISCLOSURE OF PRIVATE FACTS**

9 211. Plaintiffs incorporate the above allegations by reference as if set forth herein at
10 length.

11 212. Plaintiffs assert this claim on behalf of themselves and the Class.

12 213. Plaintiffs have a legally protected privacy interest in their contacts, their
13 communications, their relationships, and their associations. Plaintiffs have a reasonable
14 expectation of privacy with respect to their contacts, their communications, their relationships,
15 and their associations.

16 214. Each of these legally protected privacy interests are contained within their contact
17 address books in their iPhones. Contact address book information may include, for purposes of
18 illustration, an iPhone user's contacts, connections, associations, and relationships with:
19 psychiatrists; plastic surgeons; abortion clinics; AIDS treatment centers; strip clubs; criminal
20 defense attorneys; motels; unions; mosques; synagogues or churches; dating services, etc.

21 215. An outsider's acquisition of an iPhone user's contact address book results in the
22 direct exposure of a user's contacts, communications, relationships, and associations. In fact, the
23 contact address book is their contacts, communications, relationships, and associations. Plaintiffs
24 and the Class have the right to conduct their contacts, communications, relationships, and
25 associations without observation, intrusion, oversight, or interference.

26 216. Defendant Hipster acquired the contacts, communications, relationships, and
27 associations of Plaintiffs and the Class when Hipster acquired their contact address books.
28 Hipster effectuated this acquisition without knowledge or consent on the part of the iPhone

1 owner.

2 217. Hipster’s conduct, which by design allowed Hipster to steal a copy of the personal
3 information of Plaintiffs and the Class, is not a standard, legitimate commercial practice. Rather
4 it is an egregious breach of industry standards, social norms, and is prohibited by law.

5 218. Plaintiffs’ and the Class Members' private contact address book data is not a
6 matter of legitimate public concern. Therefore, publicizing, disseminating, exposing or
7 surreptitiously obtaining Plaintiffs’ and Class Members' private contact address book data from
8 their iPhones is and will continue to be regarded as highly offensive and objectionable to
9 reasonable people, especially where, as here, the commission of a crime (i.e., the illegal and
10 unauthorized accessing of a computer and copying and use of its data) was necessary for
11 Defendant to first acquire the contact address book data.

12 219. As a direct and proximate result of Defendant’s wrongful conduct, Plaintiffs and
13 Class Members have suffered harm as a result of their personal information being copied,
14 acquired, and stored without consent.

15 220. Plaintiffs and the Class Members were, and continue to be, damaged as a direct
16 and/or proximate result of Defendant's invasion of their privacy by the public disclosure
17 (transmission “in the clear”) of their private facts – the contents of their private contact address
18 books from their iPhones. Plaintiffs and the Class members are entitled to recover actual and
19 nominal damages. Such damages include: recovery for the losses alleged above; expenses for
20 securing their iPhones from another similar invasion of privacy, costs associated with re-securing
21 the data and their iPhones and computing devices, and procuring and verifying the removal,
22 deletion and scrubbing of the data and data points from the Defendant's records, computers and
23 systems, out-of-pocket expenses, and other economic and non- economic harm, for which they
24 are entitled to compensation. In no case will this cost be less than \$5.00 per iPhone.

25 221. Plaintiffs and Class Members lost value in what they paid for their iPhones,
26 including but not limited to lost battery life, lost memory, lost storage space, lost bandwidth, and
27 lost valuation to the iPhone itself in that Hipster’s conduct impaired the functionality of the
28 iPhone, rendering data stored thereon accessible and insecure. Plaintiffs and Class Members

1 seek a minimum recovery of \$10.00 per iPhone for losses incurred by virtue of Hipster's conduct
2 as described herein. Plaintiffs and Class Members also seek, in addition to the economic losses
3 described above, a minimum recovery of \$5.00 for their loss of copyright.

4 222. Plaintiffs and Class Members additionally seek declaratory and injunctive relief to
5 prevent Defendants from continuing to track and expose their information.

6 **COUNT XIII**

7 **COMMON LAW COUNTS OF UNJUST ENRICHMENT**

8 **ASSUMPSIT, AND RESTITUTION**

9 223. Plaintiffs incorporate the above allegations by reference as if set forth herein at
10 length.

11 224. Plaintiffs assert this claim on behalf of themselves and the Class.

12 225. A benefit has been conferred upon Defendant by Plaintiffs and the Class.
13 Defendant received and retained information regarding Plaintiffs and the Class, specifically their
14 contact address book data, which includes valuable and personal contact, connection,
15 relationship, and association information amounting to millions of entries.

16 226. This information is otherwise private, confidential, and not of public record.

17 227. Hipster has profited from the theft of this information.

18 228. On information and belief, and Plaintiffs thereupon alleges, the value of the
19 contacts and connections Hipster acquired by stealing the contact address books of hundreds of
20 thousands of its customers was instrumental in achieving a multi-million dollar valuation of the
21 company. AOL paid in excess of \$1 million to purchase the company. On information and
22 belief, and Plaintiffs thereupon alleges, the value of the contacts and connections Hipster
23 acquired by stealing the contact address books of millions of its customers was instrumental in
24 achieving that \$1 million plus valuation.

25 229. Defendant appreciates and has knowledge of said benefit.

26 230. As a direct result of the misconduct alleged herein, Hipster has been unjustly
27 enriched and has obtained a substantial monetary benefit which, in fairness and equity, Hipster
28 was not entitled to receive or retain.

1 231. It would be unfair and inequitable to allow Hipster to retain the benefits derived
2 from theft of the contact address book information from Plaintiffs and the Class and therefore
3 Plaintiffs and the Class are entitled to be paid and to receive those benefits.

4 232. Under principles of equity and good conscience, Defendant should not be
5 permitted to retain the information and/or revenue which they acquired by virtue of their
6 unlawful conduct. All funds, revenues, and benefits received by Defendant rightfully belong to
7 Plaintiffs and the Class, which Defendant has unjustly received as a result of its actions.

8 233. Plaintiffs request that judgment be granted against Hipster in an amount that is
9 equivalent to the sum total amount that AOL paid to purchase Hipster, together with
10 prejudgment interest as provided by law, and that Plaintiffs receive such other relief as the Court
11 deems proper and just under the circumstances, payment of costs and expenses' incurred in filing
12 this suit, and reasonable attorney's fees.

13 234. Under common law principles recognized in claims of common counts, unjust
14 enrichment, restitution and/or assumpsit, Defendant should not be permitted to retain the benefits
15 conferred upon it based on the taking of such data from Plaintiffs and Class Members and
16 converting it into revenues and profits without providing compensation therefore.

17 235. Under principles of equity and good conscience, Defendant should not be
18 permitted to retain the information and/or revenue that it acquired by virtue of its unlawful
19 conduct. All funds, revenues, and benefits received by Defendant rightfully belong to Plaintiffs
20 and the Class, which Defendant has unjustly received as a result of its actions.

21 236. On information and belief, or about March 2012, Hipster was purchased by AOL
22 for a sum in excess of one million dollars. This million dollar plus valuation was due, in whole
23 or in part, to Hipster's theft and acquisition of hundreds of thousands of user's contact address
24 books, which included millions of email addresses. Hipster did not disclose to iPhone owners
25 that it was taking this information, and Hipster never compensated users for the taking of this
26 data.

27 237. It would be inequitable to permit Hipster to retain its ill-gotten gains, or the
28 profits it realized by engaging in this unlawful conduct.

1 238. Plaintiffs, on behalf of themselves and the Class, seek restitution in the form of all
2 Hipster valuation that may be attributable to Hipster’s theft and acquisition of hundreds of
3 thousands of user’s contact address books.

4 239. Plaintiffs, on behalf of themselves and the Class, seek disgorgement in the form
5 of all Hipster benefits and profits such as may be necessary to deter future violations of the
6 unfair trade practice statute.

7 240. Plaintiffs, on behalf of themselves and the Class, seek damages and restitutionary
8 disgorgement of all profits or monies generated from such illegal acts, and the establishment of a
9 constructive trust from which Plaintiffs may seek restitution as to all such funds, revenues and
10 benefits that Defendant has unjustly received as a result of its actions that rightfully belong to
11 Plaintiffs.

12 241. Plaintiffs also seek declaratory relief as to the rights and responsibilities of all
13 parties to such implied-at-law agreements.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs, on behalf of themselves and the Class and, where applicable,
16 the Sub-Classes, pray for judgment against Defendant granting the following relief:

- 17 a. An order certifying this case as a class action and appointing Plaintiffs’ counsel to
18 represent the Class;
- 19 b. On the First Count:
- 20 i. \$10.00 per each of Class Members’ affected iPhone in compensatory
21 damages and losses sustained to the iPhone by Hipster’s conduct;
- 22 ii. \$5.00 per iPhone in compensatory damages for loss and theft of copyright;
- 23 c. On the Second Count:
- 24 i. \$10.00 per iPhone in compensatory damages and losses sustained to the
25 iPhone by Hipster’s conduct;
- 26 ii. \$5.00 per iPhone in compensatory damages for removal of the offending
27 App;
- 28 iii. \$5.00 per iPhone in compensatory damages for loss and theft of copyright;

- 1 iv. Punitive and/or exemplary damages;
- 2 d. On the Third Count:
 - 3 i. \$10.00 per iPhone in compensatory damages and losses sustained to the
 - 4 iPhone by Hipster's conduct;
 - 5 ii. \$5.00 per iPhone in compensatory damages for removal of the offending
 - 6 App;
 - 7 iii. \$5.00 per iPhone in compensatory damages for loss and theft of copyright;
- 8 e. On the Fourth Count:
 - 9 i. Disgorgement of all amounts obtained by Hipster, its owners and investors
 - 10 as a result of its misconduct, but no amount less than the total valuation
 - 11 Paid by AOL for the Hipster purchase or acquisition;
- 12 f. On the Fifth Count:
 - 13 i. Disgorgement of all amounts obtained by Hipster, its owners and investors
 - 14 as a result of its misconduct, but no amount less than the total valuation
 - 15 Paid by AOL for the Hipster purchase or acquisition;
- 16 g. On the Sixth Count:
 - 17 i. \$10.00 per iPhone in compensatory damages and losses sustained to the
 - 18 iPhone by Hipster's conduct;
 - 19 ii. \$5.00 per iPhone in compensatory damages for removal of the offending
 - 20 App;
 - 21 iii. \$5.00 per iPhone in compensatory damages for loss and theft of copyright;
- 22 h. On the Seventh Count:
 - 23 i. \$10.00 per iPhone in compensatory damages and losses sustained to the
 - 24 iPhone by Hipster's conduct;
 - 25 ii. \$5.00 per iPhone in compensatory damages for removal of the offending
 - 26 App;
 - 27 iii. \$5.00 per iPhone in compensatory damages for loss and theft of copyright;
- 28 i. On the Eighth Count:

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i. Disgorgement of all amounts obtained by Hipster, its owners and investors as a result of its misconduct, but no amount less than the total valuation Paid by AOL for the Hipster purchase or acquisition;

j. On All Counts:

- i. Restitution and disgorgement of all amounts obtained by Hipster as a result of its misconduct, together with interest thereon from the date of payment, to the victims of such violations;
- ii. All recoverable compensatory and other damages sustained by Plaintiffs and the Class;
- iii. Actual and/or statutory damages for injuries suffered by Plaintiffs and the Class in the maximum amount permitted by applicable law;
- iv. An order (1) requiring Hipster to immediately cease its wrongful conduct as set forth above; (2) enjoining Hipster from continuing to conceal material information and conduct business via the unlawful, unfair and deceptive business acts and practices complained of herein; (3) ordering Hipster to engage in a corrective notice campaign; and (4) requiring Hipster to refund to Plaintiffs and all members of the Class the funds Hipster derived, direct or indirect, as a result of its unlawful conduct;
- v. Statutory pre-judgment and post-judgment interest on any amounts;
- vi. Payment of reasonable attorneys' fees and costs as may be allowable under applicable law; and
- vii. Such other relief as the Court may deem just and proper.

Dated: May 24, 2013

Respectfully submitted,

By: 

DAVID C. PARISI

One of the Attorneys for Plaintiff, individually and on behalf of Class of similarly situated individuals

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JURY DEMAND

Plaintiffs request trial by jury of all claims that can be so tried.

Dated: May 24, 2013

Respectfully submitted,

By: 

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One of the Attorneys for Plaintiff, individually and
on behalf of Class of similarly situated individuals

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