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(pro hac vice application pending)

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

CHARLIE AUGHENBAUGH, TONY
WEBER, BROOKE STAFFORD, on behalf
of themselves and all others similarly
situated,

Plaintiffs,

v.

RINGLEADER DIGITAL, Inc., CABLE
NEWS, NETWORK, Inc.,
SURFLINE/WAVETRAK, Inc.,
WHITEPAGES.COM, Inc., TRAVEL
CHANNEL, L.L.C., ACCUWEATHER,
Inc., GO2 MEDIA, Inc., MERRIAM-
WEBSTER, INC., and MEDIALETS, Inc.

Cause No. SACV 10-1407
Judge: CJC (RNB)

COMPLAINT – CLASS ACTION

JURY TRIAL DEMAND

1. Violation of Computer
Fraud and Abuse Act, 18
U.S.C. § 1030;

2. Violation of California's
Computer Crime Law,
Penal Code § 502;

FILED

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

1 Defendants.

3. Violation of California's Consumer
Legal Remedies Act, California Civil
Code § 1750

4. Violation of California's Unfair
Competition Law, California Business
and Professions Code § 17200

5. Violation of California's
Invasion Of Privacy Act,
California Penal Code §630;

6. Trespass to Personal Property

7. Unjust Enrichment

10
11 **COMPLAINT – CLASS ACTION**

12 Plaintiffs, Charlie Aughenbaugh, Tony Weber, Brooke Stafford (collectively
13 "Plaintiffs"), on behalf of themselves and all others similarly situated, on information and belief,
14 sue Defendants, Ringleader Digital, Inc. ("Ringleader Digital"), Cable News Network, Inc.
15 ("CNN"), Surfline/Wavetrak, Inc. ("Surfline"), Whitepages, Inc. ("WhitePages"), Travel
16 Channel, L.L.C. ("Travel Channel"), Accuweather, Inc. ("Accuweather"), Go2 Media, Inc. ("Go2
17 Media"), Merriam-Webster, Inc. ("Merriam-Webster") and Medialets, Inc ("Medialets."), and in
18 support thereof, state:

19 1. This is a class action. Plaintiffs bring this action on their own behalf and on behalf of all
20 similarly situated individuals.

21 **I.**
22 **PARTIES**

23 2. Charlie Aughenbaugh is a resident of Santa Monica in Los Angeles County, CA.

24 3. Tony Weber is a resident of Newport Beach in Orange County, CA.

25 4. Brooke Stafford is a resident of Aliseo Viejo in Orange County, CA.

26 5. Defendant Ringleader Digital, Inc., is a Delaware Corporation with its principal place of
27 business at 286 Fifth Avenue, New York, NY 10001. Service of Process can be made on
28

1 Defendant through its registered agent, Corporation Service Company located at 2711
2 Centerville Road Suite 400, Wilmington DE 19808.

3 6. Cable News Network, Inc. owns and/or operates "cnnmoney.mobi," which is
4 CNNMoney's mobile website. CNN is a Delaware Corporation with its principal place of
5 business at One CNN Center, Atlanta, GA 30303. Process can be served on Defendant through
6 its registered agent, The Corporation Trust Company, located at 1209 Orange Street,
7 Wilmington, DE 19801.

8 7. Surfline/Wavetrak, Inc. owns and or operates "mobile.surfline.com," which is
9 Surfline/Wavetrak's mobile website. Surfline/Wavetrak, Inc. is a Delaware corporation with its
10 principal place of business at 300 Pacific Coast HWY, Suite 300, Huntington Beach, CA 92648.
11 Process can be served through its registered agent, Jonno Wells, located at 1706 Highland Drive,
12 Newport Beach, CA, 92660.

13 8. WhitePages, Inc. owns and/or operates "m.whitepages.com," which is WhitePages
14 mobile website. WhitePages is a Delaware Corporation with its principal place of business at
15 1301 Fifth Avenue, Seattle, WA 98101. Process can be served on Defendant through its
16 registered agent, CT Corporation, located at 818 W. 7th St, Los Angeles, CA 90017.

17 9. Travel Channel, L.L.C. owns and/or operates "m.travelchannel.com," which is Travel
18 Channel's mobile website. Travel Channel is a Delaware Limited Liability Company with its
19 principal place of business at 5425 Wisconsin Avenue, Suite 500, Chevy Chase, MD 20815.
20 Process can be served on the Defendant through its registered agent, The Corporation Trust
21 Company, located at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801

22 10. Accuweather, Inc. owns and/or operates www.accuweather.com, which is Accuweather's
23 mobile website. Accuweather is a Pennsylvania Corporation with its principal place of business
24 at 385 Science Park Road, State College, PA 16803. Process can be served on the Defendant
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1 through its registered agent Joel N. Myers located at 385 Science Park Road, State College, PA
2 16803.

3 11. Go2 Media, Inc. owns and/or operates www.go2.com, which is Go 2Media's mobile
4 website. Go2 Media is a Delaware Corporation with its principal place of business at 10 High
5 Street, Tenth Floor, Boston, MA 02110. Process can be served on the Defendant through its
6 registered agent, CT Corporation System, located at 8181 W. 7th Street, Los Angeles, CA 90017.

7
8 12. Merriam-Webster, Inc. owns and/or operates i.word.com, which is their mobile site.
9 Merriam-Webster, Inc. is a Massachusetts, Corporation with its principal place of business
10 located at 47 Federal St., Springfield, Massachusetts 01102. Defendant Merriam-Webster can
11 be served with process through its registered agent, CT Corporate System, 155 Federal Street, Ste
12 700, Boston, MA 02110

13 13. Medialets, Inc. is a Delaware corporation with its principal place of business at 15 East
14 26th Street, Suite 802, New York, NY 10010. Process can be served on the Defendant through its
15 registered agent, Corporation Service Company, located at 2711 Centerville Road, Suite 400,
16 Wilmington, DE 19808.

18 II.

19 JURISDICTION AND VENUE

20 14. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332 (federal diversity
21 jurisdiction) as one or more members of the proposed class are residents of a different state from
22 Defendant and the amount in controversy likely exceeds the jurisdictional amount required by
23 that code section. This Court also has jurisdiction pursuant to 28 U.S.C. §1332 (federal question
24 jurisdiction) as this action concerns a law of the United States.

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26 15. Venue is appropriate in this District because members of the proposed class are residents
27 of the District and Defendants have committed torts within the Central District of California.

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IV.

FACTS APPLICABLE TO ALL COUNTS

16. This is a consumer Class Action lawsuit pursuant to Federal Rules of Civil Procedure 23(a), (b)(1), (b)(2), and (b)(3).

17. The claims in this matter concern Defendants' intentional exploitation of software on Plaintiffs' mobile device for the purpose of tracking Plaintiffs' internet activities. Considering that mobile advertising will soon be a \$3 billion a year industry, it is no surprise that Defendants are looking for every advantage to capture their share of this growing market. Indeed, advertisers, website publishers, and ad networks are constantly seeking ways to better track their web users and present them with targeted advertising relevant to their users' interests as expressed through their browsing habits. Browser cookies are the traditional method that advertisers track web users' preferences. Because cookies are not as useful for tracking user movements on handheld mobile devices as they are on traditional non-hand held computers, website publishers, advertisers, and ad networks had to come up with a way to better track the browser movements of handheld device users.

18. Defendants found the solution to their problem with HTML5. A large number of hand held mobile devices, such as the iPhone, use HTML5 software to operate the mobile browsers on these devices. The HTML5 software contains local storage databases that allow websites to store information on these devices, which when used appropriately enhance internet browsing on mobile devices. Defendants, specifically Ringleader Digital, found a way to exploit these databases for their own advantage.

19. According to its own website, Defendant Ringleader Digital, Inc. is "focused on being the world's premier ad serving solution provider, delivering the online equivalent of ad serving technology and functionality to the mobile and new media markets." Ringleader Media's

1 “solution” at issue in this case is Ringleader Digital’s “Media Stamp.” Ringleader Digital
2 describes its Media Stamp as “the mobile equivalent of an online ‘cookie.’” Ringleader goes on
3 to describe its Media Stamp as follows:

4
5 Media Stamp™ lets you identify and track unique mobile and new media users to
6 leverage ad-server functionality such as:

- 7 • Frequency Capping
- 8 • Unique Reporting
- 9 • Acquisition tracking

10 How does Media Stamp™ work? It captures a large number of attributes that identify the
11 environment in which a user’s advertising experience will occur. These attributes are
12 collected from a variety of Ringleader Digital advertising systems. Collected attributes
13 are weighted in terms of their discriminating capabilities, and used to determine if that
14 device is unique

15 20. As unclear as the preceding language may be, the way the Media Stamp program works
16 is deceptively simple. When a mobile website that uses Media Stamp is accessed, Ringleader’s
17 own databases collect information from the mobile device and the Media Stamp technology
18 assigns Plaintiff’s mobile device a “unique” identifying number. Ringleader stores this number
19 on its data base and also uses the HTML5 storage databases on the users’ hand held mobile
20 device to store the assigned “unique” identifying number. This HTML5 database is titled
21 “RLGUID,” which stands for Ringleader Global Unique ID. With a unique identifying number
22 that is assigned to a specific mobile device, Media Stamp allows Ringleader Digital, advertisers,
23 ad agencies and website publishers to track a user’s web browsing movements across the entire
24 internet and not just one particular website. The benefit for purposes of advertising is obvious-
25 by tracking all the internet movements on the mobile device, advertisers and website publishers
26 now have a detailed picture of Plaintiffs’ interests and likes, thereby allowing them to target
27 mobile advertising specific to Plaintiffs’ interests.

28 21. Recognizing the potential of its Media Stamp program, Ringleader sought to license this

1 program to website publishers, advertisers, and ad agencies. Unsurprisingly, Ringleader Digital
2 is having little difficulty selling its product. The owners and/or operators of Surfline, CNN,
3 Travel Channel, go2.com, Whitepages.com, Accuweather, i.word.com, and Medialets contracted
4 with Ringleader to use the Media Stamp technology on their websites and, in the case of
5 Medialets, in their advertising services. What this means for Plaintiffs is that, unbeknownst to
6 him, when he visited a mobile web site through his mobile device that contracted to use
7 Ringmaster's Media Stamp technology, Ringmaster Digital's Media Stamp acquired information
8 from Plaintiffs' phone and assigned a unique ID to their mobile device. At the same time or
9 shortly thereafter- a matter of seconds at most- a new RLGUID database was created in the
10 mobile device's HTML5 software assigned to "a.ringleaderdigital.com," which now allows
11 Ringleader Digital to use the unique ID assigned by Media Stamp to track Plaintiffs' mobile
12 activities across all mobile websites. Companies that associate with Ringleader Digital are now
13 able to determine what targeted advertising best suits Plaintiffs' interests based on the
14 information gathered from Plaintiffs' mobile searches and browsing.

17 22. In addition to the "a.ringleaderdigital.com" database, when individuals use their mobile
18 devices to visit Surfline.com, CNNMoney.com, Travel Channel, Accuweather, Whitepages,
19 Merriam-Webster's i.word.com, and go2.com's mobile websites, RLGUID HTML5 databases
20 are created on their mobile devices and assigned to "mobile.surfline.com," "cnmmoney.mobi,"
21 "m.travelchannel.com," "www.accuweather.com," "m.go2.com," "i.word.com," and
22 "m.whitepages.com," respectively. This allows Ringleader Digital and each of these mobile
23 website operators to track the mobile device's internet activities over multiple websites based on
24 the unique ID assigned to the mobile device and the HTML5 databases created on the mobile
25 devices as assigned and created by Defendants.

27 23. For a company like Medialets, the benefit of having access to a program like Media
28

1 Stamp is immense. Medialets is an advertising company that focuses on rich format mobile
2 advertising and analytics. As such, the ability to identify and track mobile device users over
3 multiple websites makes for a strong pitch to Medialets' potential clients. Or as better stated by a
4 representative of Medialets, with the Media Stamp technology, "[Medialets] is able to make the
5 process even more lucrative for publishers and advertisers by allowing them to tap into any of
6 Ringleader's participating clients." The reason it is more lucrative is because Media Stamp will
7 allow Medialets' clients to "achieve full visibility into their mobile web and application
8 campaigns for the first time." In other words, by contracting to bring Media Stamp into its
9 advertising and analytic services, Medialets is able to tell its clients that they will make more
10 money because Media Stamp allows Medialets, advertisers, and web publishers to track the
11 movements of mobile device users over multiple mobile websites, which provides better
12 information for targeted advertising efforts. This explains why in October of 2009, Medialets
13 proudly announced its decision to "integrate" Ringleader's Media Stamp technology into its
14 advertising and analytics services. From that point forward Medialets engaged in the
15 impermissible tracking of mobile users and assisted its clients, including CNNMoney and
16 Whitepages, in their tracking of visitors to their mobile sites. Thus, individuals that went to either
17 CNNMoney or Whitepages on their mobile device unknowingly had their actions on their mobile
18 browser tracked by Medialets, Ringleader Digital, CNN and Whitepages.

21 24. There are many obvious privacy concerns that arise from Defendants' actions described
22 above. The first obvious issue is the fact that a random third party, Ringleader Digital: (1)
23 unknowingly accessed and created databases on Plaintiffs' mobile devices as well as placed
24 information on Plaintiffs' mobile devices without Plaintiffs' knowledge or consent (2) assigned
25 Plaintiffs' mobile devices unique identification numbers for the purpose of tracking these devices,
26 and (3) stored information they acquired about Plaintiffs' phone and mobile browsing activities
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1 on Ringleader Digital's databases. Plaintiffs' have no relationship with Ringleader that would
2 have in any way formed a basis to argue that Plaintiffs consented to the listed actions by
3 Ringleader.

4 25. Second, Plaintiffs' actions are being tracked by Defendants without Plaintiffs'
5 permission. If Plaintiffs' cleaned their cookies folder and deleted their browser history, this
6 would have no affect on Defendants' ability to continue to track Plaintiffs because the
7 information necessary to track Plaintiffs, the unique ID, is stored in the HTML5 databases.
8 Considering that cookies are the traditional way to track information across the internet,
9 Plaintiffs would have no reason to even consider looking elsewhere to determine if they are
10 being tracked. So, even if Plaintiffs were to take the traditional step to block advertisers and
11 websites from tracking their movements, Ringleader Digital's Media Stamp, as licensed and used
12 by the other Defendants, thwarted those efforts.

13
14 26. Third, to assign a unique ID to each mobile device and make its program worthwhile to
15 potential customers, Media Stamp needs to collect information from Plaintiffs' mobile devices to
16 distinguish it from other mobile devices. As such, Ringleader Digital, at a minimum, collected
17 "browser identifiers, session information, device type, carrier provider, IP addresses, unique
18 device ID, carrier user ID and web sites visited." While it is unclear if they collect telephone
19 numbers and specific names, piecing this information together makes it easier to personally
20 identify the mobile device owners. More to the point, however, is that Ringleader acquired
21 important information about Plaintiffs and their mobile devices without Plaintiffs' permission or
22 knowledge.
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25 27. Fourth, even if a mobile device user, such as Plaintiffs, is able to locate the HTML5
26 databases on their mobile device created by Defendants, Plaintiffs are unable to delete the
27 databases. That is because if a database is deleted from a phone it simply recreates itself only
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1 moments later. In other words, if a mobile device user is able to find the RLGUID database
2 assigned to “cnnmoney.mobi” and deletes the database from his device, the “cnnmoney.mobi”
3 database will recreate itself on the mobile device. This is clear evidence of Defendants attempt
4 to further thwart the efforts of mobile device users to protect their privacy.

5 28. Fifth, once a mobile device is given a unique identification number by Ringleader
6 Digital’s Media Stamp technology and a RLDGUID database assigned to
7 “a.ringleaderdigital.com” is created on the mobile device, neither can be removed for the life of
8 the device. This allows Ringleader Digital continual access to the mobile devices and the
9 continual ability to track Plaintiffs’ movements on the internet. As such, once Ringleader Digital
10 “stamps” a mobile device, that unique number and the database assigned for that number are
11 forever a part of the device without ever requesting the Plaintiffs’ permission to do so.

12 29. Sixth, CNN, Surflin, Accuweather, go2.com, Whitepages, Merriam-Webster’s and
13 Travel Channel’s privacy policies inadequately inform Plaintiffs of the extent in which they are
14 being tracked by an unidentified third party, Ringleader Digital, and how Media Stamp works.
15 In fact, most of the Defendants’ sites fail to address or identify Ringleader and Media Stamp at
16 all. Accuweather, Surflin, Go2.com and CNNmoney.mobile do not even have a privacy policy
17 on their mobile webpage. Even on Surflin, Merriam-Webster’s, and CNNMoney.com’s full
18 webpage there is no mention of the use of Media Stamp or any type of data collection other than
19 standard cookies and web beacons, which are not at issue here. Whitepages’ policies refer to
20 advertising agencies that may collect information, but when you choose to opt out of their
21 advertisers’ services, the only mention is cookies. All these privacy policies have something in
22 common- no mention of Ringleader Digital, Media Stamp, or HTML5 databases.

23 30. The only mobile site that even mentions Ringleader.com is Travel Channel. However, all
24 they do is link to Ringleader Digital’s policies without even spending a sentence to truthfully
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1 explain what type of company Ringleader Digital is and to describe how Ringleader collects data
2 from the mobile device. Ringleader's own policies are not much more forthcoming. The words
3 "HTML5 database" are conspicuously absent, and there is no explanation of the unique ID
4 assigned to the mobile device. Instead, what you see is a constant reference to cookies and
5 vague references to other technologies. After reading the policy, mobile Plaintiffs are left to
6 believe that Ringleader Digital's monitoring techniques are no different than the good old
7 cookies people are familiar with and know how to block. Ringleader Digital's policies leave
8 Plaintiffs in the dark as to how their browsing habits are being monitored and the permanence of
9 the monitoring. So even if a Plaintiffs take the time to track down and read these convoluted
10 privacy policies written in legalese, they still have no idea that a database has been created on
11 their mobile device, that their device has now been assigned a unique ID number, that neither can
12 be removed for the life of the phone, and that their entire browsing habits are being monitored by
13 the Defendants.
14

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16 31. The reality is that even a well written privacy policy is woefully inadequate in this
17 circumstance. Before Plaintiffs can get to and read the lengthy privacy policy on the
18 Defendants' website, Ringleader Digital has already scanned the device for relevant information
19 that is downloaded to Ringleader Digital's database, created a permanent unique identification
20 number for that mobile device that exists as long as the mobile device exists, and created a
21 database on the mobile device that cannot be removed from the mobile device. As such, even if
22 the Plaintiffs read the privacy policy on the mobile sites webpage, is able to comprehend from
23 that policy that the website and Ringleader Digital are tracking the Plaintiffs' activities on the
24 mobile device, and decides to no longer go to that website, the damage is already done. The
25 Defendants have already impermissibly hacked into Plaintiffs' mobile device, began tracking the
26 Plaintiffs, and acquired the necessary information and tools to continue tracking the Plaintiffs'
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1 activities. All of this happens before Plaintiffs even have the chance to say “no thank you.”
2 This wrong cannot be overcome no matter how well written the privacy agreement is. As such,
3 all the Defendants need to be held accountable for their actions.

4 **IV.**

5 **CAUSE OF ACTIONS**

6 **COUNT 1 – COMPUTER FRAUD AND ABUSE ACT, 18 U.S.C. § 1030**

7
8 32. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though
9 set forth fully at length herein.

10 33. By placing creating HTML5 databases on the computers of Plaintiffs and members of the
11 class, Defendants acting individually or in concert have accessed Plaintiffs’ computers, in the
12 course of interstate commerce and/or communication, in excess of the authorization provided by
13 Plaintiffs as described in 18 U.S.C. § 1030(a)(2)(C).

14 34. Defendants acting individually or in concert violated 18 U.S.C. § 1030(a)(2)(C) by
15 intentionally accessing Plaintiffs’ and members of the class’s computers without authorization
16 and/or by exceeding the scope of that authorization.

17
18 35. Plaintiffs computers, and those of the class, are protected computers pursuant to 18
19 U.S.C. § 1030(e)(2)(B).

20 36. Defendants acting individually or in concert thus further violated the Act by causing the
21 transmission of a program, information, code or command and as a result causing harm to the
22 protected computer aggregating at least \$5,000 in value.

23
24 37. Defendants actions were knowing and/or reckless and caused harm to Plaintiffs and
25 members of the proposed class.

26 38. Plaintiffs seek recovery for these damages, as well as injunctive relief, to prevent future
27 harm.

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1 **COUNT II – CALIFORNIA’S COMPUTER CRIME LAW**

2 **CALIFORNIA PENAL CODE § 502**

3 39. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though
4 set forth fully at length herein.

5 40. Defendant’s actions, individually or in concert, constitute a violation of California Penal
6 Code § 502 as Defendants knowingly accessed data belonging to Plaintiffs and members of the
7 proposed class in the State of California and/or through servers located in the State of California.
8

9 41. Such access was without authorization and caused damage to Plaintiffs and members of
10 the proposed class.

11 42. Plaintiffs have suffered irreparable injury from this unauthorized access to their
12 computers.

13 43. Plaintiffs seek all remedies available under the Act, including injunctive relief and
14 recovery of reasonable attorneys’ fees.
15

16 **COUNT III - CONSUMER LEGAL REMEDIES ACT**
 CALIFORNIA CIVIL CODE § 1750 (“CLRA”).

17 44. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though
18 set forth fully at length herein.

19 45. Defendants, acting individually or in concert, failed to disclose the fact that they were
20 placing an HTML5 database on Plaintiffs’ and members of the Class’s computers. Plaintiffs, and
21 members of the class, would not ordinarily expect for HTML5 databases to be used for anything
22 other than their intended purposes and would not expect that they would be used to track their
23 mobile online web browsing behavior.
24

25 46. Plaintiffs and members of the Class would certainly not expect anything to be placed on
26 their computers that were designed to thwart their will by replacing databases that had been
27 deleted by Plaintiffs and members of the class.
28

1 47. Such actions by Defendants constitute deceptive and unfair acts and practices pursuant to
2 CLRA.

3 48. Defendants' actions were intended to, and in fact, likely resulted in sales to Plaintiffs and
4 members of the class.

5 49. Plaintiffs and members of the proposed class are consumers under the CLRA.

6 50. Defendants, acting individually or in concert, violated the act in at least the following
7 ways: 1) representing that their services have characteristics, uses, and benefits that they do not
8 have; 2) representing that their services are of a particular standard, grade, quality which they are
9 not; and/or 3) advertising their services with the intent to not sell them as advertised.

10 51. Such actions have caused harm to the Plaintiffs and the Class. Plaintiffs and the proposed
11 class seek to remedy this harm by appropriate injunctive relief.
12

13 **COUNT IV – UNFAIR COMPETITION LAW,**

14 **CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200**

15 52. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though
16 set forth fully at length herein.
17

18 53. Defendants' above-described actions constitute unlawful and unfair competition within
19 the meaning of the Unfair Competition Law.

20 54. Defendants' actions constitute false advertising in that they failed to disclose to Plaintiffs
21 and members of the proposed class the precise nature of the information which was being placed
22 on Plaintiffs' computers and those of the proposed class.
23

24 55. Furthermore, as described in the other counts in this Complaint, Defendants' actions were
25 in violation of several statutes and therefore unlawful.

26 56. Plaintiffs and members of the proposed class have been harmed by Defendants' actions.

27 57. Plaintiffs and the proposed class seek damages for this harm as well as injunctive relief to
28

1 remedy this harm.

2 **COUNT V – CALIFORNIA INVASION OF PRIVACY ACT,**
3 **CALIFORNIA PENAL CODE § 630**

4 58. Plaintiffs incorporate by reference each proceeding and succeeding paragraph as though
5 set forth fully at length herein.

6 59. Defendants' actions, individually or in concert, of intercepting and monitoring Plaintiffs'
7 and members of the proposed class web surfing activities through the use of HTML5 databases
8 constitutes an intentional attempt to intercept or to learn the contents of any message, report or
9 communication which is in transit passing over a telephone cable, line or wire instrument.

10 60. Plaintiffs and members of the proposed class did not consent to such interception or
11 attempted interceptions.

12 61. Defendants were not justified under the Statute to attempt to intercept or to intercept
13 Plaintiffs' and members of the class's communications.

14 62. Plaintiffs and the proposed class seek damages for this harm as well as injunctive relief to
15 remedy this harm.

16 **COUNT VI – TRESPASS TO PERSONAL PROPERTY**

17 63. Plaintiffs incorporate by reference each proceeding and succeeding paragraph as though
18 set forth fully at length herein.

19 64. By placing an HTML5 database on Plaintiffs' and members of the Class's computers
20 without their consent or knowledge, Defendants have improperly exercised dominion and control
21 over Plaintiffs' and members of the Class's personal property – their computer.

22 65. Defendants' actions were done knowingly and intentionally.

23 66. Defendants' actions caused harm to Plaintiffs and members of the proposed class.

24 67. Plaintiffs and the proposed class seek damages for this harm as well as injunctive relief to
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1 remedy this harm.

2 **COUNT VI – UNJUST ENRICHMENT**

3 68. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though
4 set forth fully at length herein.

5 69. Defendants, acting individually or in concert, have improperly and illegally profited from
6 the obtainment and/or sale of Plaintiffs' and members of the class's personal, private data.
7 Defendants' actions have been done knowingly and secretly with the intent that Plaintiffs not
8 realize what was being done.
9

10 70. These actions constitute violations of both statutory as well as common law obligations
11 as outlined above.

12 71. Defendants' actions caused harm to Plaintiffs and members of the proposed class.

13 72. Plaintiffs and the proposed class seek damages for this harm as well as injunctive relief to
14 remedy this harm.

15 73. Defendants should not, in equity, be allowed to retain their ill begotten gains. Plaintiffs
16 therefore seek recovery under the equitable theory of unjust enrichment.
17

18 **I.**

19 **CLASS ACTION ALLEGATIONS**

20 74. Pursuant to Fed. R. Civ. P. 23(b)(3), and 23(b)(2) Plaintiffs bring this action on behalf of
21 themselves, and all others similarly situated, as representatives of the following class (the
22 "Class"):
23

24 U.S. Resident Class: Each and every individual who owns or
25 owned a mobile hand held computer, including but limited to
26 mobile phones and laptops, that had a "RLDGUID" database or
any other identifying tag or mark placed on that device by any of
the Defendants through the use of the HTML5 database feature.

27 California Resident Class: All residents of California that own or
28 owned a mobile hand held computer, including but limited to

1 mobile phones and laptops, that had a "RLDGUID" database or
2 any other identifying tag or mark placed on that device by any of
the Defendants through the use of the HTML5 database feature.

3 Injunctive Class: All persons after the date of the filing of this
4 complaint, residing in the United States, that own or owned a
5 mobile hand held computer, including but limited to mobile phones
6 and laptops, that had a "RLDGUID" database or any other
identifying tag or mark placed on that device by any of the
Defendants through the use of the HTML5 database feature.

7 The Class action period, (the "Class Period"), pertains to the date, two
8 years preceding the date of this filing to the date of Class
9 certification, that an individual that owned or owns owned a
10 mobile hand held computer, including but limited to mobile phones
and laptops, had a "RLDGUID" database or any other identifying
tag or mark placed on that device by any of the Defendants
through the use of the HTML5 database feature.

11 Excluded from the class are Defendants as well as all employees of
12 this Court, including, but not limited to, Judges, Magistrate Judges,
13 clerks and court staff and personnel of the United States District
14 Courts of the Central District of California, the United States Court
of Appeals for the Ninth Circuit and the United States Supreme
15 Court; their spouses and any minor children living in their
households and other persons within a third degree of relationship
16 to any such Federal Judge; and finally, the entire jury venire called
for jury service in relation to this lawsuit. Also excluded from the
17 class are any attorneys or other employees of any law firms hired,
retained and/or appointed by or on behalf of the named Plaintiffs to
18 represent the named Plaintiffs and any/or any proposed class
members or proposed class in this lawsuit.

19 Furthermore, to the extent that undersigned counsel has any legal
20 interest to damages or other monetary relief, or other relief due to
21 the putative class (or any other rights as potential putative class
members), arising as a result of the causes of action asserted in this
22 litigation, such interest is hereby disclaimed by undersigned
counsel.

23
24 75. The requirements of Fed. R. Civ. P. 23 are met in this case. The Class, as defined, is so
25 numerous that joinder of all members is impracticable. Although discovery will be necessary to
26 establish the exact size of the class, it is likely, based on the nature of Defendants' business, that it
27 numbers in the millions.
28

1 76. There are questions of fact and law common to the Class as defined, which common
2 questions predominate over any questions affecting only individual members. The common
3 questions include:

- 4 a. whether Defendants, as a regular practice, placed "RLDGUID" databases on
5 members of the class's hand held mobile computers; and
6 b. whether Defendants failed to disclose material terms regarding the placing
7 of "RLDGUID" databases on members of the class's hand held mobile
8 computers; and
9 c. what use was made of such "RLDGUID" databases, including whether they
10 were used for purposes of tracking individuals web surfing and whether
11 personal information was obtained regarding members of the class; and
12 d. whether "RLDGUID" databases were designed to recreate even after they
13 were deleted from class members' hand held mobile computers so as to
14 thwart the class members' attempt to not be tracked by Defendants.

15 77. Plaintiffs can and will fairly and adequately represent and protect the interests of the
16 Class as defined and have no interests that conflict with the interests of the Class. This is so
17 because:

- 18 a. All of the questions of law and fact regarding the liability of the Defendants
19 are common to the class and predominate over any individual issues that
20 may exist, such that by prevailing on their own claims, Plaintiffs will
21 necessarily establish the liability of the Defendants to all class members;
22 b. Without the representation provided by Plaintiffs, it is unlikely that any
23 class members would receive legal representation to obtain the remedies
24 specified by relevant statutes and the common law;
25 c. Plaintiffs have retained competent attorneys who are experienced in the
26 conduct of class actions. Plaintiffs and their counsel have the necessary
27 resources to adequately and vigorously litigate this class action, and
28 Plaintiffs and their counsel are aware of their fiduciary responsibility to the

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class members and are determined to diligently discharge those duties to obtain the best possible recovery for the Class.

78. Defendants' actions have affected numerous consumers in a similar way. The class action is superior to any other method for remedying Defendants' actions given that common questions of fact and law predominate. Class treatment is likewise indicated to ensure optimal compensation for the Class and limiting the expense and judicial resources associated with thousands of potential claims.

WHEREFORE, Plaintiffs demand judgment on their behalf and on behalf of the other members of the Class to the following effect:

- a. declaring that this action may be maintained as a class action;
- b. granting judgment in favor of Plaintiffs and the other members of the Class against the Defendants;
- c. treble and/or punitive damages should be the Court find that the Defendants acted in willful or reckless disregard of the law;
- d. injunctive relief preventing Defendant from further using "Flash Cookies" and/or requiring more detailed disclosure and informed consent from the class regarding their use; and
- e. such other relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury of all issues so triable.

Respectfully submitted,

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(pro hac vice application pending)

DECLARATION OF DANIEL R. TAMEZ

I, DANIEL R. TAMEZ, hereby declare on oath as follows:

1. I am an attorney licensed to practice law in the state of California. I am over the age of 18 years and I have personal knowledge of the matters attested to herein. If called upon to testify, I would and could competently do so.

2. I make this declaration pursuant to California Civil Code section 1780(c) on behalf of my clients, plaintiffs, Charlie Aughenbaugh, Tony Weber, and Brooke Stafford on behalf of themselves and all others similarly situated.

3. Defendant Ringleader Digital, Inc.'s principle executive offices and headquarters are located at 286 Fifth Avenue, New York, NY 10001.

4. Defendant CNN is a Delaware Corporation with its principal place of business at One CNN Center, Atlanta, GA 30303.

5. Defendant Surfline/Wavetrak, Inc, is a Delaware corporation with its principal place of business at 300 Pacific Coast HWY, Suite 300, Huntington Beach, CA 92648.

6. Defendant WhitePages is a Delaware Corporation with its principal place of business at 1301 Fifth Avenue, Seattle, WA 98101.

7. Defendant Travel Channel is a Delaware Limited Liability Company with its principal place of business at 5425 Wisconsin Avenue, Suite 500, Chevy Chase, MD 20815.

8. Defendant Accuweather is a Pennsylvania Corporation with its principal place of business at 385 Science Park Road, State College, PA 16803.

9. Defendant Go2 Media is a Delaware Corporation with its principal place of business at 10 High Street, Tenth Floor, Boston, MA 02110.

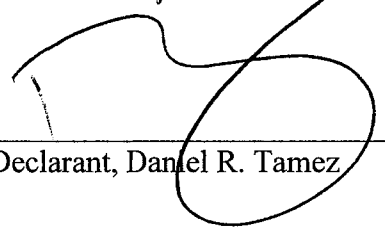
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10. Merriam-Webster, Inc. is a Massachusetts, Corporation with its principal place of business located at 47 Federal St., Springfield, Massachusetts 01102.

11. Defendant Medialets, Inc. is a Delaware corporation with its principal place of business at 15 East 26th Street, Suite 802, New York, NY 10010.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 15th day of September 2010 at SAN Diego, California.

By: 
Declarant, Daniel R. Tamez

