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Superior Court of California,
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David W. Slayton,
Executive Officer/Clerk of Court,
By S. Trinh, Deputy Clerk

5 Attorneys for Plaintiff
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8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

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11 MILTITA CASILLAS, individually and on behalf
of all others similarly situated,

Case No. **23STCV28343**

12 Plaintiffs,

**CLASS ACTION COMPLAINT FOR
VIOLATION OF CALIFORNIA PENAL
CODE SECTION 638.51**

13 v.

14 ZAPPOS.COM LLC, a Delaware entity
15 d/b/a WWW.ZAPPOS.COM,

16 Defendant.
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1 **I. INTRODUCTION**

2 To learn the identity of anonymous visitors to www.zappos.com (the “Website”) and monetize
3 its knowledge of those visitor and their online habits, Defendant has secretly deployed spyware that
4 accesses visitor devices, installs tracking software, and surveils their browsing habits.

5 Plaintiff visited Defendant’s website in 2023 using a mobile device. Without Plaintiff’s
6 knowledge or consent, Defendant secretly used “pen register” software to access Plaintiff’s device and
7 install tracking software in violation of California law.

8 **II. JURISDICTION AND VENUE**

9 1. Defendant is subject to jurisdiction in this state under Penal Code section 502(j), which
10 provides that a person who accesses a computer from another jurisdiction is deemed to have personally
11 accessed the computer in California. Plaintiff was in California when Defendant accessed Plaintiff’s
12 device and installed tracking code.

13 2. Defendant is also subject to jurisdiction under California’s “long-arm” statute found at
14 California Code of Civil Procedure section 410.10 because the exercise of jurisdiction over Defendant
15 is not “inconsistent with the Constitution of this state or the United States.” Indeed, Plaintiff believes
16 that Defendant generates a minimum of eight percent of revenues from its website based upon
17 interactions with Californians (including instances in which the website operates as a “gateway” to
18 sales), such that the website “is the equivalent of a physical store in California.” Since this case involves
19 illegal conduct emanating from Defendant’s operation of its website targeting Californians, California
20 courts can “properly exercise personal jurisdiction” over the Defendant in accordance with the Court of
21 Appeal opinion in *Thurston v. Fairfield Collectibles of Georgia*, 53 Cal.App.5th 1231 (2020).

22 3. Venue is proper in this County pursuant to California Code of Civil Procedure section
23 394(b) because “none of the defendants reside in the state”, such that venue is proper “in any county
24 that the plaintiff may designate.”

25 **III. PARTIES**

26 4. Plaintiff is a resident of California. Plaintiff is also a consumer privacy advocate who
27 works as a “tester” to ensure that companies abide by the privacy obligations imposed by California
28 law. As an individual who advances important public interests at the risk of vile personal attacks,

1 Plaintiff should be “praised rather than vilified.” *See Murray v. GMAC Mortgage Corp.*, 434 F.3d 948,
2 954 (7th Cir. 2006). Indeed, the Ninth Circuit recently made exceptionally clear that it is “necessary
3 and desirable for committed individuals to bring serial litigation” to enforce and advance consumer
4 protection statutes, and that Courts must not make any impermissible credibility or standing inferences
5 against them. *Langer v. Kiser*, 57 F.4th 1085, 1095 (9th Cir. 2023).

6 5. Defendant is an online fashion retailer based in Nevada that sells products throughout
7 California and in this County.

8 **IV. FACTUAL ALLEGATIONS**

9 **A. The Right to Privacy Has Always Been a Legally Protected Interest in the United States.**

10 6. Since America’s founding, privacy has been a legally protected interest at the local, state,
11 and federal levels. *See Patel v. Facebook, Inc.*, 932 F.3d 1264, 1271–72 (9th Cir. 2019) (quoting *Spokeo,*
12 *Inc. v. Robins*, 578 U.S. 330, 341 (2016)) (“Privacy rights have long been regarded ‘as providing a basis
13 for a lawsuit in English or American courts.’”); and *Eichenberger v. ESPN, Inc.*, 876 F.3d 979, 983 (9th
14 Cir. 2017) (“Violations of the right to privacy have long been actionable at common law.”).

15 7. More specifically, privacy protections against the disclosure of personal information are
16 embedded in California statutes and at common law. *See e.g., U.S. Dep’t of Justice v. Reporters Comm.*
17 *for Freedom of the Press*, 489 U.S. 749, 763 (1989) (“The Ninth Circuit has repeatedly held that privacy
18 intrusions may constitute “concrete injury” for purposes of Article III standing); *Van Patten v. Vertical*
19 *Fitness Grp., LLC*, 847 F.3d 1037, 1041–43 (9th Cir. 2017) (finding “concrete injury” where plaintiffs
20 claimed that unsolicited telemarketing calls “invade the privacy and disturb the solitude of their
21 recipients”); *In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 599 (9th Cir. 2020) (finding
22 “concrete injury” where Facebook allegedly tracked users’ “personally identifiable browsing history”
23 on third party websites); *Patel*, 932 F.3d at 1275 (finding “concrete injury” where plaintiffs claimed
24 Facebook’s facial-recognition technology violated users’ privacy rights).

25 8. In short, the privacy of personal information is—and has always been—a legally
26 protected interest in many contexts. Thus, a defendant whose acts or practices violate consumer privacy
27 inflicts an actionable “injury” upon an individual.

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1 **B. Defendant Secretly Installs Tracking Software on the Devices of All Visitors To Its Website**
2 **In Violation of California Law.**

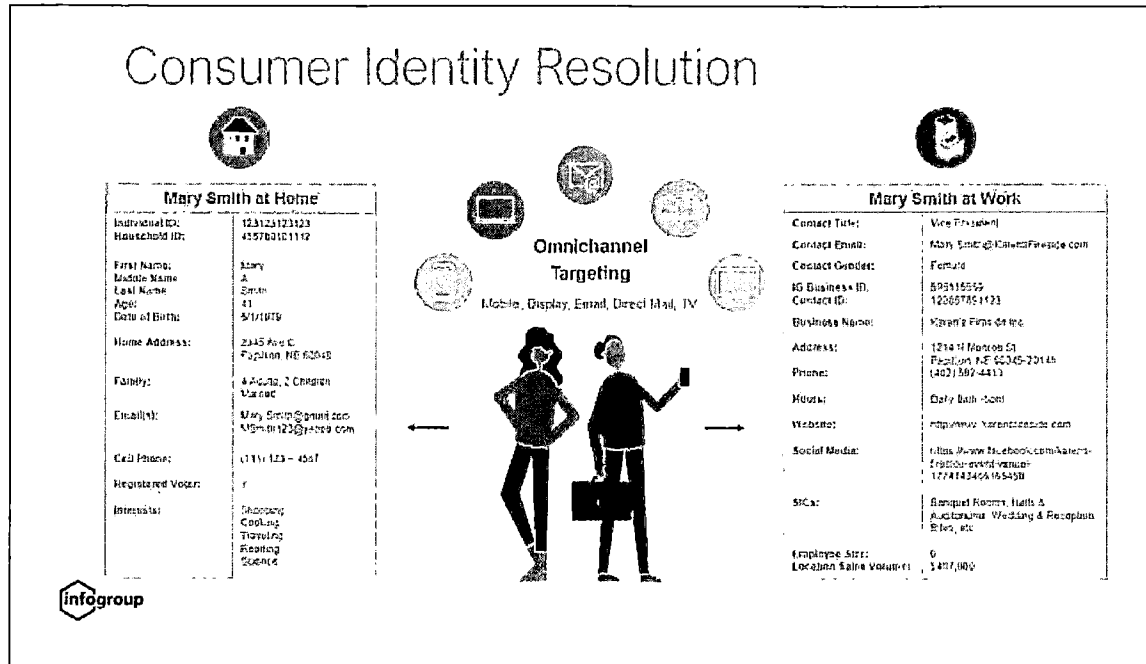
3 9. Every device connected to the internet has a unique IP address, typically consisting of a
4 sequence of numbers. *See United States v. Cairra*, 833 F.3d 803, 805 (7th Cir. 2016). An IP address “is
5 used to route information between devices.” *United States v. Ulbricht*, 858 F.3d 71, 84 (2d Cir. 2017).

6 10. Once linked to a particular individual, a unique IP address can be used to compile a
7 detailed picture of an individual's online activities, including: the online services for which an individual
8 has registered; personal interests based on websites visited; organizational affiliations; where the
9 individual has been physically; a person’s political and religious affiliations; individuals with whom
10 they have leanings and with whom they associate; and where they travel, among other things. *See*
11 https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2013/ip_201305/ (last
12 downloaded November 2023).

13 11. For the preceding reasons, the ability to link an IP address to a particular individual is of
14 great monetary value and has created an entire industry known as “identity resolution.” Identity
15 resolution is generally defined as “the ability to recognize an individual person, in real-time, by
16 connecting various identifiers from their digital interactions across devices and touchpoints.” *See*
17 <https://www.fullcontact.com/identity-resolution/> (last visited November 2023).

18 12. The technical means by which an IP address is linked to a particular individual is via
19 deployment of “pen register” software. Traditionally, law enforcement used “pen registers” in
20 investigations to record all numbers called from a particular telephone, and “pen registers” required
21 physical machines. Today, pen registers take the form of software. *See In re Order Authorizing*
22 *Prospective & Continuous Release of Cell Site Location Recs.*, 31 F.Supp.3d 889, 898 n.46 (S.D. Tex.
23 2014) (citing Susan Freiwald, *Uncertain Privacy: Communication Attributes After the Digital*
24 *Telephony Act*, 69 S. Cal. L. Rev. 949, 982-89 (1996) (describing the evolution of the pen register from
25 mechanical device to computer code)).

26 13. The following graphic shows how a website deploying pen register software to capture
27 the IP address of visitors can identify anonymous website visitors and a great deal of personal
28 information about their lives and habits:



14. In the above example, a “pen register” has been used to capture an anonymous user’s IP address and compare it to previously aggregated “touchpoints” to reveal the following details about a website visitor:

- (a) Full name (*Mary Smith*)
- (b) Date of birth (*May 1, 1979*)
- (c) Gender (*female*)
- (d) Home address (*2345 Avenue C, Papillion Nebraska*)
- (e) Marital Status and Family (*Married with two children*)
- (f) E-mail address (*Mary.Smith@gmail.com*)
- (g) Personal Cell Phone: (*111) 123-4567*)
- (h) Voter Registration Status (*Registered*)
- (i) Interests (*Shopping, Cooking, Traveling, Reading, Science*)
- (j) Employer (*Karen’s Fireside, Inc.*)
- (k) Title (*Vice President*)
- (l) Work Hours (*Daily 9-5*)

15. Because of the massive privacy implications, California law prohibits the deployment of pen register software without first obtaining a court order. Cal. Penal Code § 638.51 (“CIPA Section

1 638.51”). CIPA defines a “pen register” broadly to include “a device or process that records or decodes
2 dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which
3 a wire or electronic communication is transmitted, but not the contents of a communication.” *Id.* §
4 638.50(b). *See Greenley v. Kochava*, 2023 WL 4833466, at *15-*16 (S.D. Cal. July 27, 2023) (“the
5 Court rejects the contention that a private company’s surreptitiously embedded software installed in a
6 telephone cannot constitute a “pen register.”). CIPA imposes civil liability and statutory penalties for
7 the installation of pen register software without a court order. *Id.*

8 16. Defendant knowingly and intentionally deployed “pen register” software on its website
9 to decode routing, addressing, and signaling information to obtain the IP address of each visitor as part
10 of Defendant’s identity resolution efforts in violation of California law. In response to an appropriate
11 request, Plaintiff will share with Defendant proof of the deployment and activity of the pen register.

12 17. Defendant used the pen register software to access Plaintiff’s device and install tracking
13 code on Plaintiff’s device in violation of California law. *See Greenley v. Kochava*, 2023 WL 4833466,
14 at *15-*16 (S.D. Cal. July 27, 2023). Defendant did not obtain Plaintiff’s knowing and informed consent
15 to do so, nor did Defendant obtain a court order authorizing it to do so.

16 **V. CLASS ACTION ALLEGATIONS**

17 18. Plaintiff brings this action individually and on behalf of all others similarly situated (the
18 “Class”) defined as follows:

19 **All persons within the state of California who visited Defendants website**
20 **within the statute of limitations period and whose privacy was violated as**
21 **described above.**

22 19. NUMEROSITY: Plaintiff does not know the number of Class Members but believes the
23 number to be at least 100. The exact identities of Class Members may be ascertained by the records
24 maintained by Defendant.

25 20. COMMONALITY: Common questions of fact and law exist as to all Class Members,
26 and predominate over any questions affecting only individual members of the Class.

27 21. TYPICALITY: As a person who visited Defendant’s Website and whose privacy was
28 invaded, Plaintiff is asserting claims that are typical of the Class.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendant as follows:

- a. An order certifying the class and making appropriate case management orders therewith;
- b. For statutory damages, punitive damages, attorneys' fees; and
- c. For any and all other relief at law that may be appropriate.

Dated: November 17, 2023

PACIFIC TRIAL ATTORNEYS, APC

By: 

Scott. J. Ferrell
Attorneys for Plaintiff