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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SHELLY ROBINSON, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

THE HOME DEPOT, INC.,
Defendant.

Case No.:

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Shelly Robinson, on behalf of herself and all others similarly situated
2 (“Plaintiff”), by and through her undersigned counsel, hereby sue Home Depot, Inc.,
3 (“Defendant” or “Home Depot”) and, upon information and belief and investigation
4 of counsel, alleges as follows:

5 **I. INTRODUCTION**

6 1. “Since the advent of online behavioral advertising (‘OBA’) in the late
7 1990s, businesses have become increasingly adept at tracking users visiting their
8 websites.” *Popa v. Harriet Carter Gifts, Inc.*, 426 F. Supp. 3d 108, 111 (W.D. Pa.
9 2019) (citations omitted).

10 2. This is a class action suit brought against Home Depot for wiretapping
11 the electronic communications of visitors to Defendant Home Depot’s website,
12 homedepot.com (the “Website”). By doing so, Defendant has violated the California
13 Invasion of Privacy Act (“CIPA”), Cal Penal Code §§ 631 and 635, and invaded
14 Plaintiff’s and Class Members’ privacy rights in violation of the California
15 Constitution.

16 3. As discussed in detail below, Defendant utilized “session replay”
17 software to intercept Plaintiff’s and the Class Members’ electronic computer-to-
18 computer data communications with Defendant’s Website, including website
19 visitors’ keystrokes, mouse clicks¹, shipping and billing address, and other electronic
20 communications, including the entry of Personally Identifiable Information (“PII”),
21 in real time while visiting the Website. Defendant intercepted, stored, and recorded
22 electronic communications regarding the webpages visited by Plaintiff and the Class
23 members, as well as everything Plaintiff and the Class Members did on those pages,
24 e.g., what they searched for, what they looked at, the information they inputted, and
25 what they clicked on.

26 _____
27 ¹ As used herein, the term “mouse clicks” also refers to “touch gestures” such as the
28 “tab,” “swipe,” and similar gestures used on touchscreen devices.

1 4. The “session replay” software utilized by Defendant is not a traditional
2 website cookie, tag, web beacon, or analytics tool. It is a sophisticated computer
3 code that allows Defendant to contemporaneously intercept, capture, read, observe,
4 re-route, forward, redirect, and receive incoming electronic communications to its
5 Website. Plaintiff’s and the Class members’ electronic communications are then
6 stored by Defendant using an outside vendor’s services and can later be viewed and
7 utilized by Defendant to create a session replay, which is essentially a video of a
8 Class member’s entire visit to Defendant’s website.

9 5. “Technological advances[,]” such as Defendant’s use of session replay
10 technology, “provide ‘access to a category of information otherwise unknowable’
11 and ‘implicate privacy concerns’ in a manner different from traditional intrusions as
12 a ‘ride on horseback’ is different from ‘a flight to the moon.’” *Patel v. Facebook,*
13 *Inc.*, 932 F.3d 1264, 1273 (9th Cir. 2019) (quoting *Riley v. California*, 573 U.S. 373,
14 393 (2014)).

15 6. Unlike typical website analytics services that provide aggregate
16 statistics, the session replay technology utilized by Defendant is intended to record
17 and playback individual browsing sessions, as if someone is looking over a Class
18 members’ shoulder when visiting Defendant’s Website. The technology also permits
19 companies like Defendant to view the interactions of visitors on their website in real-
20 time.

21 7. In or about January 2021, and during this past year, Ms. Robinson
22 visited the Website. During the visits, Defendant recorded Plaintiff’s electronic
23 communication in real time, including Plaintiff’s mouse clicks, keystrokes, scrolls,
24 mouse movements, shipping and billing address, and information about web pages
25 viewed on the Website.

26 8. Plaintiff brings this action on behalf of herself and a class of all persons
27 whose electronic communications were intercepted through the use of Defendant’s
28 wiretap on the Website.

1 **II. JURISDICTION AND VENUE**

2 9. This Court has subject matter jurisdiction over this action pursuant to
3 28 U.S.C. § 1332(d)(2)(A), because at least one member of the class, as defined
4 below is a citizen of a different state than Defendant, there are more than 100
5 members of the class, and the aggregate amount in controversy exceeds \$5,000,000
6 exclusive of interest and costs.

7 10. The Court has personal jurisdiction over Defendant because Defendant
8 has purposefully availed itself of the laws and benefits of doing business in this State,
9 and Plaintiff’s claims arise out of Defendant’s forum-related activities. Furthermore,
10 a substantial portion of the events giving rise to Plaintiff’s claims occurred in this
11 District.

12 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2)
13 because the injury in this case substantially occurred in this District.

14 12. Defendant also purposefully directed its activities in California, and the
15 wiretapping at issue here arises from or relates to Defendant’s activities. As alleged
16 more fully below, Defendant intentionally installed the wiretap at issue here on
17 homedepot.com. The conduct also was expressly aimed at California residents.
18 California is the largest market in the United States—indeed, if California were its
19 own nation, California would have the fifth largest economy in the world. Defendant
20 knew that a significant number of Californians would visit Home Depot’s website,
21 because they form a significant portion of Home Depot’s target market. By
22 intercepting the transmissions of the Website’s users, Defendant targeted its
23 wrongful conduct at customers, some of whom Defendant’s knew, at least
24 constructively, were residents of California. It was foreseeable that Defendant’s
25 interceptions and wiretapping would harm Plaintiff and similarly-situated
26 individuals, and that at least some of this harm would occur in California—where
27 Defendant knew many customers and prospective customers resided.

28 13. The Website has a national viewership and scope, which appeals to, and

1 profits from, an audience in one particular state above most others: California.
2 Because of the substantial California market, Defendant anticipated, desired, and
3 achieved a substantial California viewer base.

4 **III. PARTIES**

5 14. Plaintiff Shelly Robinson (“Robinson”) is a resident of Brentwood,
6 California.

7 15. Defendant Home Depot, is a legal corporation established under the
8 laws of the State of Delaware with its headquarters in Atlanta, Georgia.

9 16. Home Depot is a home improvements retailer that sells building
10 materials and home improvement products in brick-and-mortar stores as well as
11 online through its Website.

12 17. Home Depot operates throughout the United States (including
13 California), Canada, China, and Mexico.

14 18. Home Depot owns and operates homedepot.com. Home Depot
15 conducts substantial and not isolated activity and business in California.

16 19. At all times material to this Complaint, Defendant has advertised,
17 marketed, distributed and sold products online to consumers throughout the United
18 States.

19 **IV. STATEMENT OF FACTS**

20 **Wiretapping Via Session Reply Software**

21 20. At all relevant times herein, Home Depot has engaged Quantum Metric,
22 Inc. (“QM”), a marketing software-as-a-service (“SaaS”) company, to provide
23 marketing analytics software for its Website.

24 21. QM is a Delaware corporation with its principal place of business in
25 Colorado Springs, Colorado.

26 22. QM develops, owns, and markets a software of the same name that
27 provides marketing analytics, which is used by Home Depot on its Website.

28 23. QM software provides a feature called session replay which purports to

1 help businesses improve their website design and customer experience. QM
2 operates on both desktop and mobile devices.

3 24. According to QM, “Session replay is the reproduction of a user’s
4 interactions on web or native mobile applications. Session replay captures things
5 like mouse movements, clicks, typing, scrolling, swiping, tapping, etc.”
6 <https://www.quantummetric.com/product-analytics/session-replay/>; (last visited
7 July 16, 2021). Session replay allows companies “to pull up any user who ha[s]
8 visited [a] website and watch their journey as if [the company] was standing over
9 their shoulder.” A company can “see every click, every tap and exactly what the
10 website responded with – an error, a success message, or nothing.” *Id.*

11 25. QM says its session replay feature “capture[s] all the metadata the
12 replay – like user platform, API calls, and network details – as well as dozens of out
13 of the box events and errors, plus the custom one you’ll configure in our UI.” *Id.*

14 26. QM’s product demo allows a preview of the session replay interface
15 and demonstrates how the software works, highlighting that the software allows a
16 company to see each website visitor’s electronic communications, including what a
17 visitor clicked on, when a visitor reloaded a page, and where a visitor’s mouse
18 pointer is located at any given moment.

19 27. QM notes that “[o]nce data is captured, it’s sent encrypted via a forward
20 secrecy SSL connection, to the Quantum Metric cloud service, hosted in a secured
21 Google Compute cloud.” *Id.*

22 28. QM’s website includes a marketing video that discusses the session
23 replay feature. The video touts that companies can “[s]ee actual customer interaction.”
24 The marketing presentation then shows a mock mobile user visiting and interacting
25 with a website. The video shows what items the visitor viewed and added to their
26 cart. The presentation then proceeds to show where exactly the mock visitor clicked
27 on the website.

28 29. The purported use of session replay technology is to monitor and

1 discover broken website features. However, the extent and detail of the data
2 collected by users of the technology, including Defendant, far exceeds the stated
3 purpose and Plaintiff's and the Class members' expectations when visiting websites
4 like Defendant's. The technology not only allows the recording and viewing of a
5 visitor's electronic communications with a website, but also allows the user to create
6 a detailed profile for each visitor to the site. Indeed, in a pending patent dispute, a
7 well-known session replay provider openly admitted that this type of technology is
8 utilized by companies like Defendant to turn a profit: "[the] software computes
9 billions of touch and mouse movements and transforms this knowledge into
10 profitable actions that increase engagement, reduce operational costs, and maximize
11 conversion rates (i.e., the percentage of users who take desired actions on a website,
12 such as purchasing a product offered for sale)." *Content Square SAS v. Quantum*
13 *Metric, Inc.*, Case No. 1:20-cv-00832-LPS, Compl. at ¶8, [DE 1] (D. Del. Jun. 22,
14 2020).

15 30. Moreover, the collection and storage of page content by such session
16 replay scripts may cause sensitive information and other personal information
17 displayed on a page to leak to third parties. This may expose website visitors to
18 identity theft, online scams, and other unwanted behavior.

19 31. Technology like QM's is not only highly intrusive, but dangerous. A
20 2017 study by Princeton University found that session recording technologies like
21 QM's Session Reply were collecting sensitive user information such as passwords
22 and credit card numbers. The research notes that this was not simply the result of a
23 bug, but rather insecure practices. Thus, technologies such as QM's leave users
24 vulnerable to data leaks and the harm resulting therefrom.

25 32. In 2019, Apple warned application developers using session replay
26 technology that they were required to disclose such tracking and recording to their
27 users, or face being immediately removed from the Apple Store: "Protecting user
28 privacy is paramount in the Apple ecosystem. Our App Store Review Guidelines

1 require that apps request explicit user consent and provide a clear visual indication
2 when recording, logging, or otherwise making a record of user activity.”
3 <https://techcrunch.com/2019/02/07/apple-glassbox-apps/>; (last visited July 12,
4 2021).

5 33. Consistent with Apple’s concerns, countless articles have been written
6 about the privacy implications of recording user interactions during a visit to a
7 website, including the following examples:

8 (a) *The Dark Side of ‘Replay Sessions’ That Record Your Every Move*
9 *Online*, located at [https://www.wired.com/story/the-dark-side-of-replay-](https://www.wired.com/story/the-dark-side-of-replay-sessions-that-record-your-every-move-online/)
10 [sessions-that-record-your-every-move-online/](https://www.wired.com/story/the-dark-side-of-replay-sessions-that-record-your-every-move-online/); (last visited July 12, 2021);

11 (b) *Are Session Recording Tools a Risk to Internet Privacy?*, located at
12 <https://mopinion.com/are-session-recording-tools-a-risk-to-internet-privacy/>;
13 (last visited July 12, 2021);

14 (c) *Session Replay is a Major Threat to Privacy on the Web*, located at
15 [https://www.itnews.com.au/news/session-replay-is-a-major-threat-to-](https://www.itnews.com.au/news/session-replay-is-a-major-threat-to-privacy-on-the-web-477720)
16 [privacy-on-the-web-477720](https://www.itnews.com.au/news/session-replay-is-a-major-threat-to-privacy-on-the-web-477720); (last visited on July 12, 2021);

17 (d) *Session Replay Scripts Could be Leaking Sensitive Data*, located at
18 [https://medium.com/searchencrypt/session-replay-scripts-could-be-leaking-](https://medium.com/searchencrypt/session-replay-scripts-could-be-leaking-sensitive-data-5433364b2161)
19 [sensitive-data-5433364b2161](https://medium.com/searchencrypt/session-replay-scripts-could-be-leaking-sensitive-data-5433364b2161); (last visited on July 12, 2021); and

20 (e) *Website Owners can Monitor Your Every Scroll and Click*, located at
21 [https://www.digitalinformationworld.com/2020/02/top-brands-and-websites-](https://www.digitalinformationworld.com/2020/02/top-brands-and-websites-can-monitor-your-every-scroll-and-click.html)
22 [can-monitor-your-every-scroll-and-click.html](https://www.digitalinformationworld.com/2020/02/top-brands-and-websites-can-monitor-your-every-scroll-and-click.html); (last visited July 12, 2021);

23 (f) *No Boundaries: Exfiltration of Personal Data By Session-Reply Scripts*,
24 located at [https://freedom-to-tinker.com/2017/11/15/no-boundaries-](https://freedom-to-tinker.com/2017/11/15/no-boundaries-exfiltration-of-personal-data-by-session-replay-scripts/)
25 [exfiltration-of-personal-data-by-session-replay-scripts/](https://freedom-to-tinker.com/2017/11/15/no-boundaries-exfiltration-of-personal-data-by-session-replay-scripts/); (last visited July 12,
26 2021);

27 (g) *Session Replay: Great CRO Tool Or Privacy Nightmare*, located at
28 <https://systemtrap.org/503>; (last visited July 12, 2021).

1 34. QM's business model involves entering into voluntary partnerships
2 with various companies and providing their software to their partners.

3 35. One of QM's partners is Home Depot.

4 36. Home Depot has installed and utilizes QM's software on its Website
5 for the purpose of capturing information about the visitors on its Website.

6 37. Home Depot knows that QM's software captures keystrokes, mouse
7 clicks, and other communications of visitors to its Website, and pays QM to supply
8 that information.

9 38. Pursuant to an agreement with QM, Home Depot enabled QM's
10 software by intentionally embedding QM's software code on the Website.

11 39. As currently deployed, QM's software, as employed by Home Depot,
12 functions as a wiretap.

13 **Defendant Wiretapped or Facilitated the Wiretap of Plaintiff's and**
14 **Class Members' Electronic Communications**

15 40. On or around January 12, 2021, and during the past year, Plaintiff
16 visited homedepot.com.

17 41. During Plaintiff's January 12, 2021 visit to the Website, Plaintiff placed
18 items in her cart, however, did not place an order.

19 42. During that visit, and upon information and belief, the session replay
20 feature in QM's software as embedded on Defendant's Website created a video
21 capturing each of Plaintiff's keystrokes and mouse clicks on the Website. The QM
22 wiretap used by Defendant also captured the date and time of the visit, the duration
23 of the visit, Plaintiff's IP address, her location at the time of the visit, her browser
24 type, and the operative system on her device.

25 43. Class Members share a similar narrative, and each experienced the
26 interception of their electronic communications while visiting Defendant's Website
27 as a result of the WM software acting as a wiretap.

28 44. Defendant's and QM's tracking and recording of keystrokes, mouse

1 clicks, data entry, and other electronic communications begins the moment a visitor
2 first accesses or interacts with Defendant's Website.

3 45. When visitors access the Website and make a purchase, they enter PII.
4 QM's software captures these electronic communications throughout each step of
5 the process.

6 46. QM's software captures, among other things:

7 (a) The visitor's mouse clicks;

8 (b) The visitor's keystrokes;

9 (c) The visitors' email address;

10 (d) The visitors shipping and billing address;

11 (e) The visitors' payment card information, including card number,
12 expiration date, and CVV code;

13 (f) The visitor's IP address;

14 (g) The visitor's location at the time of the visit; and

15 (h) The visitors' browser type and the operating system on their devices.

16 47. Crucially, Defendant Home Depot does not ask visitors, including
17 Plaintiff and Class Members, whether they consent to being wiretapped by
18 Defendant and QM. Visitors are never actively told that their electronic
19 communications are being wiretapped by Defendant and QM.

20 48. Further, Home Depot's privacy policy is located at the very bottom of
21 the Website's home page with no notice directing visitors to the privacy policy, i.e.,
22 the hyperlink to the privacy policy functions as a browsewrap. Additionally,
23 Defendant began recording visitors before any purported disclosure was made *after*
24 the wiretap had already begun.

25 49. Moreover, visitors are not on notice of the hyperlink to the privacy
26 policy when they select to place an order, or at any other time during their visit to
27 the Website.

28 50. Therefore, visitors like Plaintiff and Class Members never agree or are

1 never given the option to agree to the privacy policy when using the Website, nor
2 are they on notice of the privacy policy.

3 51. Even if visitors do agree to the privacy policy by using the Website or
4 otherwise- and they do not for the reasons stated above – Home Depot does not
5 mention QM or its session replay software (such as by disclosing that visitors will
6 have their mouse clicks and keystrokes recorded in real time) in the Website’s
7 privacy policy. As such, visitors do not agree to be wiretapped even if they agree to
8 the privacy policy.

9 52. Plaintiff and Class Members did not consent to being wiretapped on the
10 Website, nor to having their communications recorded and shared with QM and
11 Defendant. Any purported consent that was obtained was ineffective because (i) the
12 wiretapping began from the moment Plaintiff and Class Members accessed the
13 Website; (ii) the privacy policy did not explicitly disclose the wiretapping or QM;
14 and (iii) the hyperlink the privacy policy is inconspicuous and therefore insufficient
15 to provide notice.

16 VII. CLASS ALLEGATIONS

17 53. Plaintiff brings this class action lawsuit individually and on behalf of
18 the proposed class under Rule 23 of the Federal Rules of Civil Procedure.

19
20 California residents who visited the Website, and whose
21 electronic communications were intercepted or recorded
22 by QM on behalf of Defendant, without their prior consent
23 (the “Class” or “Class Members”).

24 54. Excluded from the class are the following individuals: officers and
25 directors of Defendant and its parents, subsidiaries, affiliates, and any entity in which
26 Defendant has a controlling interest; and all judges assigned to hear any aspect of
27 this litigation, as well as their immediate family members.

28 55. Plaintiff reserves the right to modify or amend the definitions of the

1 proposed class before the Court determines whether certification is appropriate.

2 56. Numerosity. The members of the class are so numerous that a joinder
3 of all members is impracticable. While the exact number of Class Members is
4 unknown to Plaintiff at this time, Plaintiff believes the Class numbers in the tens of
5 thousands, if not more.

6 57. Typicality. Plaintiff's claims are typical of the claims of the class
7 members because, among other things, Plaintiff sustained similar injuries to that of
8 Class Members as a result of Defendant's uniform wrongful conduct, and their legal
9 claims all arise from the same events and wrongful conduct by Defendant.

10 58. Adequacy. Plaintiff will fairly and adequately protect the interests of
11 the Class Members. Plaintiff's interests do not conflict with the interests of the Class
12 Members and Plaintiff has retained counsel experienced in complex class action
13 cases to prosecute this case on behalf of the class.

14 59. Commonality. Common questions of law and fact exist as to all Class
15 Members and predominate over any questions solely affecting individual members
16 of the class, including the following:

- 17 i. Whether Defendant has violated the California Invasion of Privacy Act
18 ("CIPA"), Cal. Penal Code §§ 631 and 635;
- 19 ii. Whether Defendant has invaded Plaintiff's privacy rights in violation
20 of the California Constitution;
- 21 iii. Whether, as a result of Defendant's conduct, Plaintiffs and the class
22 members suffered injury; and
- 23 iv. The nature of the relief, including equitable relief, to which Plaintiff
24 and Class Members are entitled.

25 60. Ascertainability. Class Members can easily be identified by an
26 examination and analysis of the business records maintained by Defendant, among
27 other records within Defendant's possession, custody, or control.

28 61. Predominance. The common issues of law and fact identified above

1 predominate over any other questions affecting only individual members of the class.
2 The class issues fully predominate over any individual issue because no inquiry into
3 individual conduct is necessary; all that is required is a narrow focus on Defendant's
4 conduct.

5 62. Superiority. A class action is superior to all other available methods for
6 the fair and efficient adjudication of this controversy since a joinder of all members
7 is impracticable. Furthermore, as damages suffered by Class Members may be
8 relatively small, the expense and burden of individual litigation make it impossible
9 for Class Members to individually redress the wrongs done to them. Individualized
10 litigation also presents a potential for inconsistent or contradictory judgments, and
11 increases the delay and expense presented by the complex legal and factual issues of
12 the case to all parties and the court system. By contrast, the class action device
13 presents far fewer management difficulties and provides the benefits of a single
14 adjudication, economy of scale, and comprehensive supervision by a single court.

15 63. Accordingly, this class action is properly brought and should be
16 maintained as a class action because questions of law or fact common to class
17 members predominate over any questions affecting only individual members, and
18 because a class action is superior to other available methods for fairly and efficiently
19 adjudicating this controversy.

20 64. This class action is also properly brought and should be maintained as
21 a class action because Plaintiff seeks injunctive relief and declaratory relief on behalf
22 of the Class Members on grounds generally applicable to the proposed class.
23 Certification is appropriate because Defendant has acted or refused to act in a manner
24 that applies generally to the proposed class, making final declaratory or injunctive
25 relief appropriate.

26 **FIRST CAUSE OF ACTION**

27 **Violation Of The California Invasion of Privacy Act,**

28 **Cal. Penal Code § 631**

1 65. Plaintiff re-alleges and incorporate by reference each and every
2 allegation contained elsewhere in this Complaint as if fully set forth herein.

3 66. Plaintiff brings this claim individually and on behalf of the members of
4 the proposed Class.

5 67. To establish liability under section 631(a), Plaintiff need only establish
6 that Defendant, “by means of any machine, instrument, contrivance, or in any other
7 manner,” did any of the following:

8 Intentionally taps, or makes any unauthorized connection, whether physically,
9 electrically, acoustically, inductively or otherwise, with any telegraph or
10 telephone wire, line, cable, or instrument, including the wire, line, cable, or
11 instrument of any internal telephonic communication system,

12 Or

13 Willfully and without the consent of all parties to the communication, or in
14 any unauthorized manner, reads or attempts to read or learn the contents or
15 meaning of any message, report, or communication while the same is in transit
16 or passing over any wire, line or cable or is being sent from or received at any
17 place within this state,

18 Or

19 Uses, or attempts to use, in any manner, or for any purpose, or to communicate
20 in any way, any information so obtained,

21 Or

22 Aids, agrees with, employs, or conspires with any person or persons to
23 unlawfully do, or permit, or cause to be done any of the acts or things
24 mentioned above in this section.

25 68. Section 631(a) is not limited to phone lines, but also applies to “new
26 technologies” such as computers, the Internet, and email. *See Matera v. Google Inc.*,
27 No. 15-CV-04062-LHK, 2016 WL 8200619, at *21 (N.D. Cal. Aug. 12, 2016)
28 (CIPA applies to “new technologies” and must be construed broadly to effectuate its

1 remedial purpose of protecting privacy); *Bradley v. Google, Inc.*, No. C 06-05289
2 WHA, 2006 WL 3798134, at *5 (N.D. Cal. Dec. 22, 2006) (CIPA governs
3 “electronic communications”); *In re Facebook, Inc. Internet Tracking Litig.*, 956
4 F.3d 589, 611 (9th Cir. 2020) (reversing dismissal of CIPA and common law privacy
5 claims based on Facebook’s collection of consumers’ Internet browsing history).

6 69. QM’s software, including its session replay feature, is a “machine,
7 instrument, contrivance, or ... other manner” used to engage in the prohibited
8 conduct at issue here.

9 70. At all relevant times, by using QM’s technology, Defendant
10 intentionally tapped, electrically or otherwise, the lines of internet communication
11 between Plaintiff and Class Members on the one hand, and Home Depot’s Website
12 on the other hand.

13 71. At all relevant times, by using QM’s technology, Defendant willfully
14 and without the consent of all parties to the communication, or in any unauthorized
15 manner, read or attempted to read or learn the contents or meaning of electronic
16 communications of Plaintiff and putative Class Members, while the electronic
17 communications were in transit or passing over any wire, line or cable or were being
18 sent from or received at any place within California.

19 72. QM’s technology provides real-time visibility into all behavioral,
20 technical, and segment data.

21 73. Home Depot employed QM to accomplish the wrongful conduct at
22 issue.

23 74. Plaintiff and Class Members did not consent to any of Defendant’s
24 actions in implementing QM’s wiretaps on the Website. Nor have Plaintiff nor Class
25 Members consented to Defendant’s intentional access, interception, reading,
26 learning, recording, and collection of Plaintiff and Class members’ electronic
27 communications.

28 75. The violation of section 631(a) constitutes an invasion of privacy

1 sufficient to confer Article III standing.

2 76. Unless enjoined, Defendant will continue to commit the illegal acts
3 alleged here. Plaintiff continue to be at risk because she frequently uses the internet
4 to shop for home improvement products, and she continues to desire to use the
5 internet for that purpose. QM provides its software, including the session replay
6 feature, to many other website operators who offer a wide array of services. For
7 many websites that Plaintiff may or is likely to visit in the future, she has no practical
8 way to know if her website communications will be monitored or recorded by QM.

9 77. Plaintiff and Class Members seek all relief available under Cal. Penal
10 Code § 637.2, including injunctive relief and statutory damages of \$5,000 per
11 violation.

12 **SECOND CAUSE OF ACTION**

13 **Violation Of The California Invasion Of Privacy Act,**

14 **Cal. Penal Code § 635**

15 78. Plaintiff re-alleges and incorporate by reference each and every
16 allegation contained elsewhere in this Complaint as if fully set forth herein.

17 79. Plaintiff brings this claim individually and on behalf of the members of
18 the proposed Class against Defendant.

19 80. California Penal Code § 635 provides, in pertinent part:

20 Every person who manufactures, assembles, sells, offers for sale, advertises
21 for sale, possesses, transports, imports, or furnishes to another any device
22 which is primarily or exclusively designed or intended for eavesdropping
23 upon the communication of another, or any device which is primarily or
24 exclusively designed or intended for the unauthorized interception or
25 reception of communications between cellular radio telephones or between a
26 cellular radio telephone and a landline telephone in violation of Section 632.5,
27 or communications between cordless telephones or between a cordless
28

1 telephone and a landline telephone in violation of Section 632.6 , shall be
2 punished by a fine not exceeding two thousand five hundred dollars.

3 81. At all relevant times, by implementing QM's wiretaps, Defendant
4 intentionally possessed, transported, imported, and/or furnished a wiretap device that
5 is primarily or exclusively designed or intended for eavesdropping upon the
6 communication of another.

7 82. QM's code is a "device" that is "primarily or exclusively designed" for
8 eavesdropping. That is, the QM's code is designed to gather PII, including
9 keystrokes, mouse clicks, and other electronic communications

10 83. Plaintiff and Class Members did not consent to any of Defendant's
11 actions in implementing QM's wiretaps.

12 84. Unless enjoined, Defendant will continue to commit the illegal acts
13 alleged here. Plaintiff continues to be at risk because she frequently uses the internet
14 to shop for home improvement products, and she continues to desire to use the
15 internet for that purpose. QM provides its software, including the session replay
16 feature, to many other website operators who offer a wide array of services. For
17 many websites that Plaintiff may or is likely to visit in the future, she has no practical
18 way to know if her website communications will be monitored or recorded by QM.

19 85. Plaintiff and Class Members seek all relief available under Cal. Penal
20 Code § 637.2, including injunctive relief and statutory damages of \$5,000 per
21 violation.

22 **THRID CAUSE OF ACTION**

23 **Invasion Of Privacy Under California Constitution**

24 86. Plaintiff re-alleges and incorporate by reference each and every
25 allegation contained elsewhere in this Complaint as if fully set forth herein.

26 87. Plaintiff brings this claim individually and on behalf of the members of
27 the proposed Class against Defendant.

28 88. Plaintiff and Class members have an interest in: (1) precluding the

1 dissemination and/or misuse of their sensitive, confidential PII; and (2) making
2 personal decisions and/or conducting personal activities without observation,
3 intrusion or interference, including, but not limited to, the right to visit and interact
4 with various Internet sites without being subjected to wiretaps without Plaintiff's
5 and Class members' knowledge or consent.

6 89. At all relevant times, by implementing QM's wiretaps on its Website,
7 Defendant intentionally invaded Plaintiff's and Class Members' privacy rights under
8 the California Constitution.

9 90. Plaintiff and Class Members had a reasonable expectation that their PII
10 and other data would remain confidential and that Defendant would not install
11 wiretaps on the Website.

12 91. This invasion of privacy is serious in nature, scope and impact.

13 92. This invasion of privacy alleged here constitutes an egregious breach
14 of the social norms underlying the privacy right.

15 93. Plaintiff and Class Members seek all relief available for invasion of
16 privacy claims under California's Constitution.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, individually and on behalf of all Class Members
19 proposed in this Complaint, respectfully request that the Court enter a judgment in
20 their favor and against Defendant, as follows:

21 (a). For an order certifying the Classes under Rule 23 and naming Plaintiff as
22 the representative of the Class and Plaintiff's attorneys as Class Counsel to represent
23 the Class;

24 (b) For an order declaring that the Defendants' conduct violates the statutes
25 referenced herein;

26 (c) For an order finding in favor of Plaintiff and the Class on all counts
27 asserted herein;

28

1 (d) For compensatory, punitive, and statutory damages in amounts to be
2 determined by the Court and/or jury;

3 (e) For prejudgment interest on all amounts awarded;

4 (f) For an order of restitution and all other forms of equitable monetary relief;

5 (g) For injunctive relief as pleaded or as the Court may deem proper; and

6 (h) For an order awarding Plaintiff and the Class her reasonable attorneys'
7 fees and expenses and costs of suit.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demand a trial by jury of all issues so triable.

10
11 DATED: July 16, 2021 Respectfully submitted,

12 */s/ Ronald A. Marron*

13 Ronald A. Marron

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