

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANCES T. GRUNDER
Senior Assistant Attorney General
3 CATHERINE Z. YSRAEL
Supervising Deputy Attorney General
4 State Bar No. 162498
110 West A Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266

7 [REDACTED]
8 *Attorneys for Plaintiff*
People of the State of California
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO
12

13 **THE PEOPLE OF THE STATE OF**
14 **CALIFORNIA,**
15
16 **v.**
17 **LIFELOCK, INC., A DELAWARE**
18 **CORPORATION,**
19 **DEFENDANT.**

Case No. _____
COMPLAINT FOR INJUNCTION, CIVIL
PENALTIES AND OTHER EQUITABLE
RELIEF
Date: _____
Time: _____
Dept: _____
Judge: _____
Trial Date: _____
Action Filed: _____

20
21
22 **COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

23 Plaintiff, the People of the State of California (“the People” or “Plaintiff”), by and through
24 Edmund G. Brown Jr., Attorney General of the State of California, brings this action against
25 Defendant, LIFELOCK, INC., a Delaware corporation (hereinafter referred to as “Defendant”),
26 and alleges the following on information and belief:
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. JURISDICTION AND PARTIES

1. This action is brought for, and on behalf of, the People of the State of California, by Edmund G. Brown Jr., Attorney General of the State of California, pursuant to California Business and Professions Code Sections 17200 *et seq.* and 17500 *et seq.*

2. Defendant at all relevant times has transacted business in the City and County of San Diego and elsewhere in the State of California. The violations of law alleged herein have been and are being carried out within the City and County of San Diego and elsewhere in California.

3. Defendant, LIFELOCK, INC., is a Delaware corporation that is not registered as a foreign corporation, doing business in California.

4. Whenever reference is made in this complaint to an act or transaction of the Defendant, such allegation shall be deemed to mean that the Defendant and its owners, officers, directors, agents, employees, or representatives, did or authorized such acts while engaged in the management, direction, or control of the affairs of the Defendant and while acting within the scope of their duties.

II. DEFENDANT’S BUSINESS PRACTICES

A. Defendant’s Services Offered

5. Since at least July 4, 2005, Defendant has engaged in trade or commerce by advertising, soliciting, offering for sale, and selling identity theft protection services to California consumers.

6. Defendant charges consumers \$10.00 per month, or \$110.00 per year, for its identity theft protection services.

7. Prior to September 2009, Defendant took the following steps for each consumer upon enrollment in its identity theft protection services:

A. Requested that credit reporting agencies place a fraud alert on the consumer’s

1 credit record – a free service available to every consumer under the Fair Credit
2 Reporting Act; and,

3 B. Renewed fraud alerts that it placed with credit reporting agencies on behalf of
4 its consumers every 90 days until instructed otherwise by the consumer.

5
6 8. After September 2009, Defendant discontinued the services specified in paragraph 7,
7 but continued to offer identity theft protection services to consumers.

8 9. After a customer enrolls in the identity theft protection service, Defendant orders each
9 customer’s free annual credit reports from each of the credit reporting agencies – a free service
10 available to every consumer under the Fair Credit Reporting Act.

11 10. After a customer enrolls in the identity theft protection service, Defendant sends opt-
12 out requests to credit reporting agencies requesting that customer’s removal from pre-approved
13 credit offer lists.

14 11. According to its Web site, Defendant’s eRecon™ service “scours thousands of known
15 criminal websites for illegal selling or trading of your personal information.”

16 12. According to its Web site, Defendant’s TrueAddress™ service “proactively detect[s]
17 any new address information in address databases nationwide.”

18 13. Defendant offers identity theft protection services for children.

19
20
21 **B. Defendant’s Representations Concerning the Effectiveness of Services**

22 14. A full page advertisement in the Chicago Tribune, dated September 16, 2006, offered
23 a promotion for Chicago residents and stated “[o]ur company makes your personal information
24 useless to any criminal immediately. We guarantee it.”

25 15. A full page advertisement in The Wall Street Journal dated June 30, 2008 that
26 appeared to be a news article about identity theft stated, “LifeLock became the nation’s leader in
27
28

1 identity theft protection by taking a proactive approach to protecting consumers from identity
2 theft.”

3 16. That same full page advertisement in The Wall Street Journal dated June 30, 2008,
4 stated, “I’m Todd Davis, CEO of LifeLock, and 457-55-5462 is my real Social Security number.
5 I give it out to show how confident I am in LifeLock’s proactive identity theft protection.”
6

7 17. A full page advertisement in the Chicago Tribune dated September 24, 2009, contains
8 a picture of Todd Davis displaying his Social Security number and the caption reads in part,
9 “Todd Davis, CEO of identity theft protection company LifeLock, demonstrates his confidence in
10 his company by sharing his Social Security number.”

11 18. As of July 24, 2008, Defendant’s Web site stated “LifeLock, the industry leader in
12 proactive identity theft protection, offers a proven solution that prevents your identity from being
13 stolen before it happens.”
14

15 19. As of July 23, 2008, Defendant’s Web site stated, with respect to identity theft
16 protection for minor children that “[w]e were the first company in the country that makes sure
17 that kids are protected from Identity thieves.”

18 20. The Wall Street Journal advertisement dated June 30, 2008 quotes Defendant’s CEO
19 Todd Davis describing the Defendant’s service that searched for information in criminal chat
20 rooms: “We’re working around the clock monitoring criminal web sites for the illegal selling and
21 trading of our member’s information....”
22

23 21. Defendant does not remove information found on criminal web sites, but rather
24 notifies customers that such information has been compromised.

25 **C. Defendant’s Representations about Fraud Alerts**

26 22. As of July 7, 2008, Defendant’s Web site stated that after a fraud alert was placed,
27 “[i]f someone is trying to use your personal information, you will be contacted by the creditor that
28

1 is issuing the line of credit. If you receive a call and you are not the one applying for credit, the
2 transaction should be stopped immediately.”

3 23. As of July 7, 2008, Defendant’s Web site further stated that when a fraud alert is in
4 place, “[e]very time you apply for new credit or someone tries to do something with your credit:
5 You should receive a phone call from the bank asking if you are actually the person applying for
6 credit in your name. If you are, great. If not, the transaction stops.”

7
8 24. As of June 11, 2009, Defendant’s Web site stated, “LifeLock places fraud alert
9 requests at the three credit bureaus and automatically renews the requests every 90 days. It does
10 not freeze your credit, rather; it safeguards your credit from unauthorized use.”

11 **D. Defendant’s Representations Concerning Risk of Identity Theft**

12 25. In February 2009, Defendant caused to be mailed to consumers in Illinois a direct
13 marketing solicitation that stated: “You’re receiving this because you may be at risk of identity
14 theft,” when in fact Defendant could not substantiate that any particular consumer was at risk for
15 identity theft.
16

17 26. The February 2009 direct mail solicitation also stated: “WARNING: If you have used
18 a credit or debit card before January 2009 YOU MAY BE AT RISK.”

19 **E. Representations Concerning Defendant’s Service Guarantee**

20 27. Defendant offers a \$1 million total service guarantee for its services.

21
22 28. The September 16, 2006 advertisement in the Chicago Tribune states, “We are so sure
23 that our service works, we are backing it up with a \$1 Million Guarantee. If your identity is ever
24 stolen while you are our client, we will fix the problem, repair your credit, and replace every dime
25 you lost from the theft up to \$1,000,000.”

26 29. Defendant’s Web site states “[w]e will do whatever it takes to help you recover your
27 good name and we will spend up to \$1,000,000 to do it.”
28

1 30. As of July 7, 2008, Defendant’s Web site claimed, “[i]f you lose money as a result of
2 the theft, we’re going to give it back to you...”

3 31. In fact, Defendant’s \$1 million total service guarantee does not replace out of pocket
4 expenses, but covers the cost of lawyers, investigators, and case managers for customers who
5 become victims of identity theft due to a failure in Defendant’s service.
6

7 **F. Defendant’s Terms and Conditions**

8 32. As of November 17, 2009, Defendant’s terms and conditions contained a clause
9 requiring each customer to “agree that any dispute, controversy or claim arising out of, or relating
10 to, this Agreement or the Services shall be settled by confidential arbitration in Maricopa County,
11 Arizona, in accordance with the American Arbitration Association’s (“AAA”) Commercial
12 Arbitration Rules (including without limitation the Supplementary Procedures for Consumer-
13 Related Disputes) then in effect.”
14

15 **III. FIRST CAUSE OF ACTION AGAINST DEFENDANT FOR**
16 **FALSE OR MISLEADING STATEMENTS**
17 **(Violations of Business and Professions Code section 17500)**

18 33. Paragraphs 1 through 32 of this complaint are incorporated herein as though set forth
19 in full.

20 34. Defendant has made, in violation of Business and Professions Code section 17500,
21 numerous untrue or misleading statements before the public in the City and County of San Diego
22 and elsewhere in the State of California in that Defendant:

23 A. represented to consumers, expressly or by implication, that Defendant’s
24 services protect against all types of identity theft, including criminal and
25 employment identity theft, when in fact Defendant’s services did not protect
26 against all types of identity theft;

27 B. represented to consumers, expressly or by implication that Defendant’s
28

1 services fully protect children from identity theft, when in fact Defendant's
2 services do not fully protect children from identity theft;

3 C. represented to consumers by implication that the Defendant removes its
4 customer's personal information from Web sites where criminals post
5 fraudulently obtained personal information, when in fact Defendant only
6 notifies consumers when their information appears on such Web sites;
7

8 D. represented to consumers, expressly or by implication, that customers with
9 fraud alerts will always receive a phone call prior to new credit being issued,
10 when in fact a phone call is not required by the Fair Credit Reporting Act and
11 many times is not placed by the potential creditor;
12

13 E. represented to consumers by implication that a security freeze or a credit freeze
14 provide weaker proactive protection against unauthorized use of credit than a
15 90-day fraud alert, when in fact they can be even more effective;

16 F. represented to consumers, through direct mail marketing, that those consumers
17 were at high risk for identity theft, when Defendant had no knowledge or facts
18 to substantiate such a warning to those consumers;

19 G. represented to consumers expressly that it will reimburse customers for losses
20 incurred, when in fact it only covers losses resulting from a failure or defect in
21 Defendant's services;
22

23 H. represented to consumers, expressly or by implication, that Defendant will pay
24 customers back for expenses incurred as a result of identity theft, when in fact
25 Defendant will pay a professional to restore losses and expenses only where
26 the loss is due to a failure or defect in Defendant's services; and
27

28 I. failed in print, television, radio advertisements and on its Web site to disclose

1 that fraud alerts are not meant to act as a proactive measure for all consumers.

2 35. Defendant knew, or should have known, that the statements or omissions set forth in
3 paragraph 34 were untrue or misleading at the time such statements were made.

4 **IV. SECOND CAUSE OF ACTION AGAINST DEFENDANT FOR**
5 **UNLAWFUL, UNFAIR OR DECEPTIVE BUSINESS PRACTICES**
6 **(Violations of Business and Professions Code section 17200)**

7 36. Paragraphs 1 through 35 of this complaint are incorporated herein as though set forth
8 in full.

9 37. Defendant has engaged in unfair competition as defined in California Business and
10 Professions Code section 17200, in the City and County of San Diego and elsewhere in the State
11 of California. Such unfair competition includes, but is not limited to the following acts or
12 practices:
13

14 A. Violating Business and Professions Code section 17500 as alleged in paragraphs 34
15 and 35 of the above First Cause of Action.

16 **V. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for judgment as follows:

18 A. That an injunction be issued pursuant to Business and Professions Code sections
19 17203 and 17535 restraining and enjoining Defendant and its agents, employees, and all other
20 persons and entities, corporate or otherwise, in active concert or participation with any of them,
21 from engaging in acts of unfair competition or deceptive conduct or making any untrue or
22 misleading representations.
23

24 B. That pursuant to Business and Professions Code sections 17203 and 17535,
25 Defendant be ordered to make full and complete restitution to each person injured by Defendant's
26 acts of unfair competition or deceptive conduct or making any untrue or misleading
27 representations.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

C. That pursuant to Business and Professions Code sections 17206 and 17536, Defendants be assessed a civil penalty of Two Thousand Five Hundred Dollars (\$2,500) for each violation of Business and Professions Code sections 17200 and 17500, as proved at trial.

D. That the Court order Defendants to pay the Plaintiff's attorneys' fees and costs.

E. That Plaintiff be given such other and further relief as the nature of this case may require and that this court deems equitable and proper to fully and successfully dissipate the effects of the alleged violations of Business and Professions Code sections 17200 and 17500.

Dated: March __, 2010

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
CATHERINE Z. YSRAEL
Supervising Deputy Attorney General

CATHERINE Z. YSRAEL
Supervising Deputy Attorney General
Attorneys for Plaintiff

SD2009602810
80420888.doc