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[Handwritten Signature]
FILED
DEC - 1 2011
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CV 11 5772

CAROL HILL CASTAGNOLA, an individual, individually and on behalf of a class of similarly situated persons,

Plaintiff,

vs.

HEWLETT-PACKARD COMPANY dba SNAPFISH.COM, a California corporation, and
REGENT GROUP, INC. dba ENCORE MARKETING INTERNATIONAL, INC., a Delaware corporation,

Defendants.

Case No.

JCS

CLASS ACTION

COMPLAINT FOR VIOLATION OF: 1) BUS. & PROF. C. §17200 AND 2) CIVIL CODE §1750 ET SEQ.

DEMAND FOR JURY TRIAL

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1 Plaintiff Carol Hill Castagnola, individually and on behalf of a class of similarly
2 situated persons, brings this action, by and through her undersigned counsel, and
3 alleges as follows:

4 INTRODUCTION

5 1. Defendant Hewlett-Packard Company *dba* Snapfish.com ("Snapfish") has
6 stolen money from its own customers by transferring its customers' credit card information
7 to third party Regent Group, Inc. *dba* Encore Marketing International, Inc. ("Regent").
8 Regent then used the customers' credit card information, along with a misleading website,
9 to deceive Snapfish's customers into enrolling in a fee-based membership.

10 2. Snapfish markets and sells photograph-related goods and services on its
11 Internet website, located at <www.snapfish.com> (the "Snapfish Website"). Primarily,
12 Snapfish allows consumers to publish their personal photographs on various tangible
13 goods.

14 3. When purchasing a Snapfish product through the Snapfish Website, a
15 consumer selects the product, and then proceeds through several checkout screens,
16 where the consumer enters his or her billing information.

17 4. Defendants have used this checkout process to deceive consumers into
18 enrolling in a fee-based membership.

19 5. After consumers completed the checkout process on the Snapfish Website,
20 and without the consumers' knowledge or consent, Snapfish transferred consumers'
21 contact and billing information to Regent.

22 6. At the same time, the Snapfish Website sent the consumers to a different
23 website, operated by Regent. Neither Snapfish nor Regent informed the consumers that
24 they had been taken to another company's website. To the contrary, Regent designed its
25 website to deceive consumers into believing they were still viewing the Snapfish Website
26 by displaying the Snapfish trademark and using the Snapfish layout and color scheme
27 (the "Regent Website").

28 //

1 7. The Regent Website invited consumers to join the Snapfish Valuepass
2 program, which Regent advertised would allow the consumers to get a \$10 gift code or
3 other perk.

4 8. The Regent Website asked consumers to enter their email address and zip
5 code to enroll in the Snapfish Valuepass program. However, the Regent Website did not
6 ask consumers to enter any payment information or other contact information before
7 enrolling the consumers in the Snapfish Valuepass program.

8 9. Only in small print, on the far left side of the Regent Website, designed not
9 to be noticed by the consumer, did the Regent Website disclose that consumers would be
10 charged a \$1.95 activation fee and then billed \$14.95 per month thereafter for the
11 Snapfish Valuepass program.

12 10. As a result of Snapfish's disclosure of consumers' billing information to
13 Regent, and as a result of Regent's deceptive website, Plaintiff and numerous other
14 consumers similar to Plaintiff were involuntarily enrolled in the Snapfish Valuepass
15 program and were wrongfully charged membership fees.

16 11. Defendants' misconduct has harmed Plaintiff and those similarly situated to
17 Plaintiff.

18 **JURISDICTION AND VENUE**

19 12. This Court has subject matter jurisdiction over this matter under 28 U.S.C.
20 §1332(d)(2) because this is a civil action in which the matter in controversy exceeds the
21 sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which
22 a member of the class of plaintiffs is a citizen of a State different from Defendants.

23 13. This Court has personal jurisdiction over Defendants because a substantial
24 part of Defendants' misconduct that gave rise to this action occurred in California,
25 including because Plaintiff resides in California and was harmed in California. Moreover,
26 Defendant Snapfish is a corporation registered with the California Secretary of State and
27 based in Palo Alto, California.

28 //

1 14. Venue is proper under 28 U.S.C. §1391(a)(2) because this is a judicial
2 district in which a substantial part of the events or omissions giving rise to the claim
3 occurred. To wit, Snapfish is located in this district, Snapfish's terms and conditions
4 specify California as the appropriate forum to resolve disputes relating to its services,
5 Plaintiff resides in this district and was harmed in this district, and on information and
6 belief, numerous other Class members reside in this district.

7 **INTRADISTRICT ASSIGNMENT**

8 15. Pursuant to Local Civil Rule 3-2(c), this action should be assigned to the
9 San Francisco Courthouse because a substantial part of the events or omissions that
10 gave rise to the claims occurred in Sonoma County, California.

11 **PARTIES**

12 16. Plaintiff Carol Hill Castagnola is an individual over the age of 65 residing in
13 Monte Rio, California.

14 17. Defendant Hewlett-Packard Company is a Delaware corporation based in
15 Palo Alto, California. On information and belief, Hewlett-Packard Company conducts
16 business using the fictitious business name Snapfish.com.

17 18. On information and belief, Defendant Regent Group, Inc. is a Delaware
18 corporation based in Lanham, Maryland. On information and belief, in December 2010,
19 Regent changed its name from Encore Marketing International, Inc. to Regent Group,
20 Inc. On information and belief, despite this name change, Regent has continued to
21 conduct business under the name Encore Marketing International, Inc. and various
22 permutations and combinations thereof.

23 19. On information and belief, Defendants conspired with each other to commit
24 the misconduct described in this complaint.

25 **FACTUAL ALLEGATIONS**

26 20. Snapfish markets and sells photograph-related goods and services on its
27 Internet website, located at <www.snapfish.com>.

28 //

1 21. Primarily, Snapfish allows consumers to publish their personal photographs
2 on various tangible goods.

3 22. To use this Snapfish service, consumers first select the tangible product
4 they are interested in purchasing, such as a greeting card, calendar, photo book, mouse
5 pad, or poster. Consumers next upload their personal photographs to the Snapfish
6 Website, so that Snapfish can integrate the photographs onto the tangible product. For
7 example, consumers can upload photographs to be integrated into a holiday greeting
8 card. In some situations, the Snapfish Website enables consumers to tailor the product
9 further, for example, by adding text, altering the layout, or adding a background color.

10 23. When a consumer has finished uploading photographs and tailoring the
11 product, he or she proceeds through a sequence of typical website checkout screens.

12 24. A consumer begins the checkout process by clicking on the "Check out"
13 button on the last product configuration webpage.

14 25. When a consumer clicks on the "Check out" button, he or she is taken to the
15 Delivery & Coupon webpage of the Snapfish Website. On this webpage, the consumer is
16 asked to insert any coupon code and to select a method for shipping the product.

17 26. Nothing on the Delivery & Coupon webpage discloses that Snapfish will
18 transfer consumers' billing information to Regent or that Regent will use that information to
19 enroll consumers in the Snapfish Valuepass program. In fact, nothing on the Delivery &
20 Coupon webpage mentions Regent or Snapfish Valuepass at all. A screenshot of the
21 Delivery & Coupon webpage is set forth below.

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2 snap

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4 Pick up or Ship?

Delivery & Coupon

Pick up your prints today! You can pick up your prints at a store near you, or have your entire order shipped directly to your [home](#).

Chat with us Live!

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Ship my order | Pick-up orders

Coupon code: **50%OFF**

Limit one per order
If you have a gift certificate, [click here to redeem it](#)

Credits applied to this order
1 Credit 4x4 prints

Shipping
standard 3-5 bus. days + production time \$0.99

Ship to my address
150 Post Street
Suite 520
San Francisco, CA 94108
US
[edit my address](#)

Ship to a different address

Cancel **Continue**

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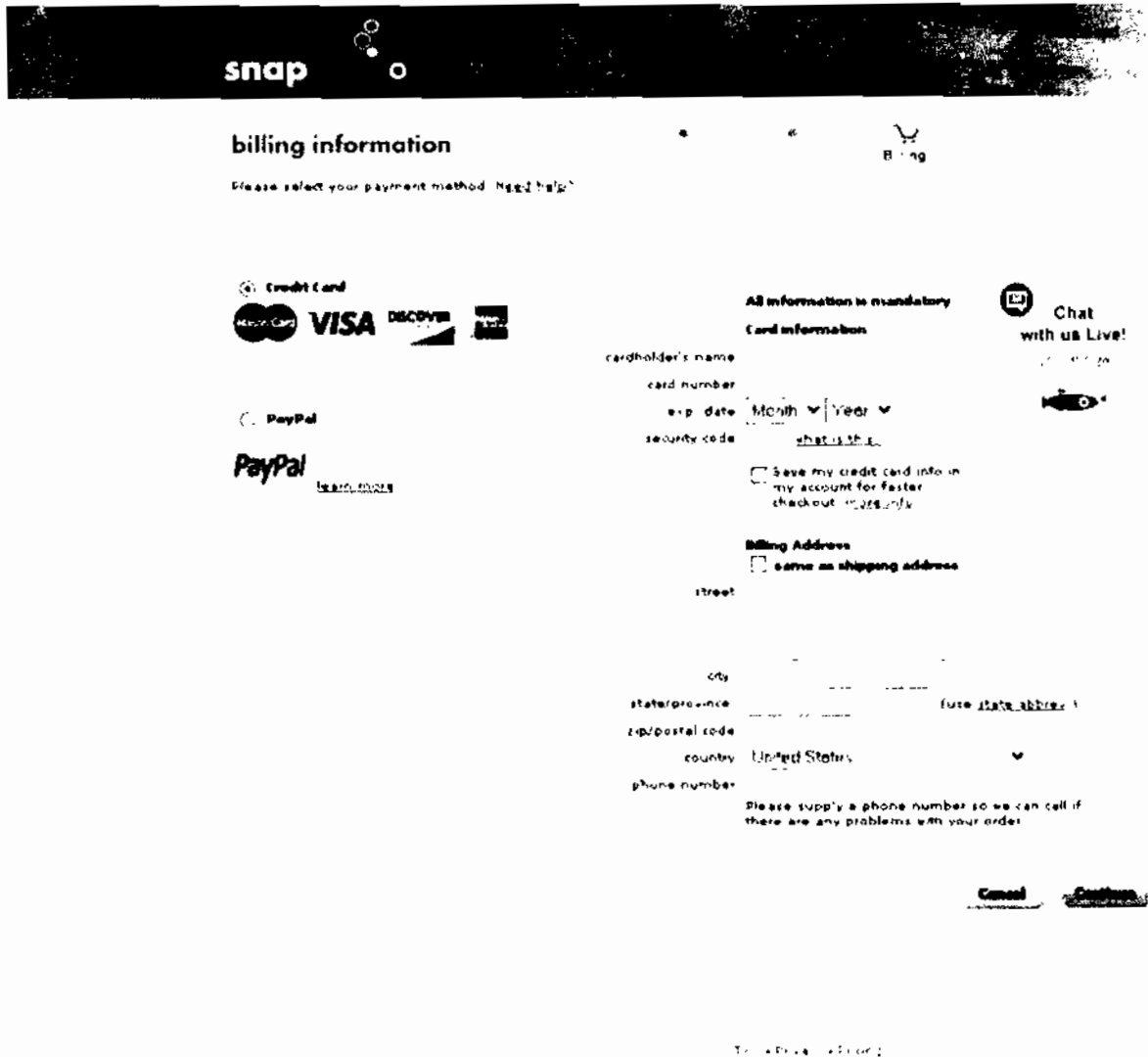
19 27. As displayed above, the Delivery & Coupon webpage contains hyperlinks to
20 "T&C," "Privacy," and "Pricing." None of these linked documents refers to Regent or
21 Snapfish Valuepass.

22 28. After a consumer has selected the shipping method on the Delivery &
23 Coupon webpage, the consumer is invited to click on the "Continue" button.

24 29. Upon clicking the "Continue" button, the consumer is taken to the Billing
25 webpage of the Snapfish Website. The Billing webpage is a typical e-commerce
26 webpage, which asks the consumer to enter his or her name, credit card information,
27 phone number, and address.

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1 30. Nothing on the Billing webpage discloses that Snapfish will transfer
2 consumers' billing information to Regent or that Regent will use that information to enroll
3 consumers in the Snapfish Valuepass program. In fact, nothing on the Billing webpage
4 mentions Regent or Snapfish Valuepass at all. A screenshot of the Billing webpage is set
5 forth below.



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24 31. When a consumer enters the requested information on the Billing webpage,
25 the consumer is invited to click on the "Continue" button.

26 32. Upon clicking the "Continue" button, the consumer is taken to the Review
27 webpage on the Snapfish Website. The Review webpage provides a summary of the
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1 consumer's purchase, identifying the products to be purchased, the amount of those
2 products, the shipping address, the billing address, and the order total.

3 33. Nothing on the Review webpage discloses that Snapfish will transfer
4 consumers' billing information to Regent or that Regent will use that information to enroll
5 consumers in the Snapfish Valuepass program. In fact, nothing on the Review webpage
6 mentions Regent or Snapfish Valuepass at all. A screenshot of the Review webpage is
7 set forth below.

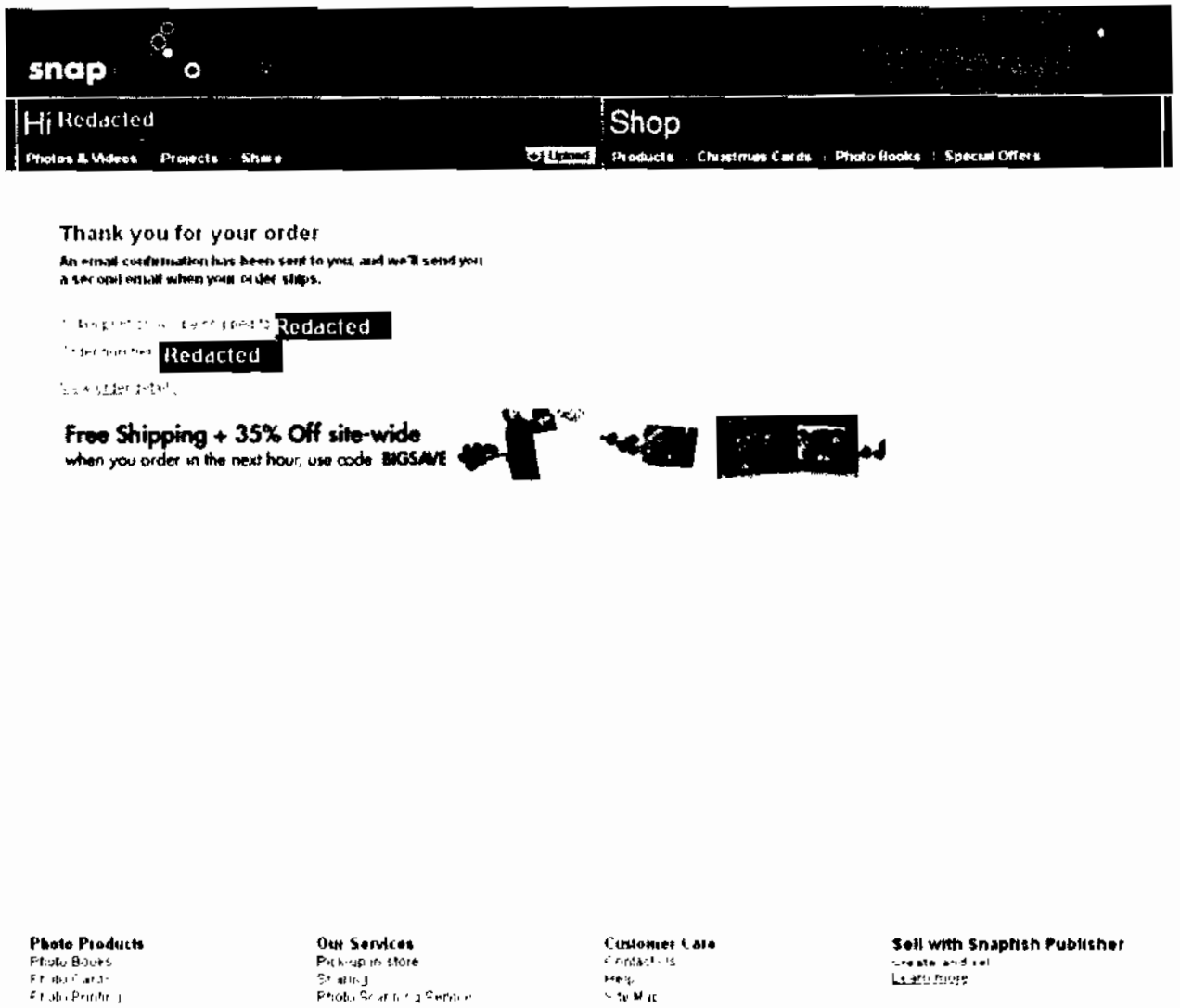


25 34. The Review webpage invites the consumer to click on the "buy now" button.

26 35. Upon clicking the "buy now" button, Snapfish completes the purchase and
27 charges the consumer's credit card or other payment method. The Snapfish website then
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1 takes the consumer to a Receipt webpage on the Snapfish Website. The Receipt
2 webpage confirms and summarizes the consumer's purchase.

3 36. Nothing on the Receipt webpage discloses that Snapfish will transfer
4 consumers' data to Regent or that Regent will use that data to enroll consumers in the
5 Snapfish Valuepass program. In fact, nothing on the Review webpage mentions Regent
6 or Snapfish Valuepass at all. A screenshot of the Review webpage is set forth below.



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25 37. From the Receipt webpage, the Snapfish Website presents consumers with
26 a new website, operated by Regent.

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1 38. While the Regent Website is not operated by Snapfish, it looks like a
2 continuation of the Snapfish Website where it prominently displays the Snapfish
3 trademark and uses the same layout, color scheme, and font as the Snapfish Website.

4 39. Based on the continuity from the Snapfish Website to the Regent Website,
5 and based on the similar looks of the Snapfish Website and the Regent Website, a
6 reasonable consumer would think that the Regent Website is operated by Snapfish, and
7 that Snapfish is marketing and offering the Snapfish Valuepass program on this website.

8 40. Prominent text at the top of the Regent Website identifies the webpage as
9 "Snapfish ValuepassSM." Next to this title, the Regent Website states in prominent text,
10 "Claim your \$10 \$5 off gift code now!" In the center of the Regent Website, prominent text
11 states: "Claim your gift code below! JUST ENTER YOUR EMAIL ADDRESS AND ZIP
12 CODE AS YOUR ELECTRONIC SIGNATURE AND CLICK THE YES BUTTON BELOW
13 TO ACTIVATE YOUR SNAPPISH VALUEPASSSM MEMBERSHIP AS DESCRIBED IN
14 OFFER DETAILS ON THIS PAGE."

15 41. Below this text, the Regent Websites states, "Click 'yes' to join Snapfish
16 ValuepassSM and claim your savings! I want my \$10 gift code now!"

17 42. The Regent Website invites consumers to enter their email address and zip
18 code and to click on the bright yellow "yes" button.

19 43. A screenshot of the Regent Website is set forth below.

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snapfish®valuepass™

Claim your \$10 \$5 off gift code now!
*SEE OFFER DETAILS

Program benefits include:

✓ \$10 off your next order

Cash-back on gift cards

Cruises-vacations-spas

Movie tickets & dining

Concierge/event tickets

and so much more!

OFFER DETAILS

Activate your membership in Snapfish Valuepass™ to claim your \$10 gift code good for your next Snapfish® order and start saving and enjoying all the benefits and access for the next 30 days for just a \$1.95 activation fee billed by Snapfish Valuepass™ to the credit card you used today on your Snapfish order. Please note, by entering your e-mail address and zip code ("Enrollment Details") and clicking the "YES" Button, your Enrollment Details as well as the following information from your most recent Snapfish order will be transmitted securely through POP and SSL encryption to EMI, the Snapfish Valuepass™ Administrator, to be stored and to secure and administer your membership: your name, credit card information, billing address, billing telephone number and order ID number. To continue after the introductory trial period, do nothing and all the great benefits and savings will automatically continue for just \$14.95 per month, billed by Snapfish Valuepass™ to the same credit card. You may cancel at anytime, with no further obligation, just by calling the toll-free number contained in the membership information provided to you. And, you keep the \$10 Gift Code just for trying Snapfish Valuepass™ for 30 days.

[Membership Terms](#) [Privacy Policy](#)

Thank you for your order!

receive **\$10 \$5 off your next order!**



complement of Snapfish Valuepass™

Claim your gift code below!

JUST ENTER YOUR EMAIL ADDRESS AND ZIP CODE AS YOUR ELECTRONIC SIGNATURE AND CLICK THE YES BUTTON BELOW TO ACTIVATE YOUR SNAPFISH VALUEPASS™ MEMBERSHIP AS DESCRIBED IN OFFER DETAILS ON THIS PAGE.

Email Address:

Zip:

Click "yes" to join Snapfish Valuepass™ and claim your savings!

I want my \$10 gift code now!

By entering my email address and zip code and clicking the yes button above, I am activating my membership in Snapfish Valuepass™ and authorizing Snapfish® to securely send my name, address and credit card information to Snapfish Valuepass™ in accordance with the OFFER DETAILS on this page.

ENCORE MARKETING INTERNATIONAL (EMI) IS THE OFFERER AND ADMINISTRATOR OF SNAPFISH VALUEPASS™, A BRANDED MEMBERSHIP PROGRAM OFFERED TO SNAPFISH® CUSTOMERS.

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44. Unbeknownst to consumers, by the time they are shown the Regent Website, Snapfish has transferred their billing information (including their credit card numbers and addresses) to Regent. Defendants engaged in this data transfer so that Regent could use consumers' billing information to enroll consumers in the fee-based Snapfish Valuepass membership. Neither Snapfish nor Regent notified the consumers about the transfer of their billing information.

45. Regent also hides the fact that the Snapfish Valuepass program is a fee-based membership, only disclosing this fact inconspicuously on the Regent Website. Specifically, in much smaller text than used to present the Snapfish Valuepass offer, and

1 below the bright yellow "yes" button used to draw-in the consumer's attention, the Regent
2 Website states:

3 By entering my email address and zip code and clicking the yes button
4 above, I am activating my membership in Snapfish ValuepassSM and
5 authorizing Snapfish® to securely send my name, address and credit
6 card information to Snapfish ValuepassSM in accordance with the OF-
7 FER DETAILS on this page.

8 Encore Marketing International (EMI) is the offerer and administrator of
9 Snapfish ValuepassSM, A BRANDED MEMBERSHIP PROGRAM OF-
10 FERRED TO SNAPFISH® CUSTOMERS.

11 46. On the left side of the Regent Website, again in much smaller text than
12 used to present the Snapfish Valuepass offer, the Regent Website states if the consumer
13 clicks on the "yes" button and enrolls in Snapfish Valuepass, Regent will charge the
14 consumer a \$1.95 activation fee and then bill the consumer \$14.95 per month thereafter.

15 47. The Regent Website was designed to draw the consumer's attention to the
16 marketing of the perks, and to distract the consumer from the statements that he or she
17 will be charged for the Snapfish Valuepass program

18 48. Thus, the Regent Website uses large bold fonts, bright colors, and vibrant
19 pictures to advertise the perks of the Snapfish Valuepass program.

20 49. By comparison, the Regent Website obscures the fact that the Regent
21 Website is operated by Regent and not Snapfish, that the Snapfish Valuepass program is
22 offered by Regent and not Snapfish, and that Regent will charge consumers a monthly
23 fee to enroll in the Snapfish Valuepass program. To wit, the billing terms for the Snapfish
24 Valuepass program are in small black text against a gray background. The terms are
25 presented on the far left side and in the bottom-center of the Regent Website, below
26 where the Regent Website uses bright colors and large texts to distract the consumer
27 from these payment terms.

28 50. When a consumer clicks on the bright yellow "yes" button, Regent enrolls
the consumer in the Snapfish Valuepass program and charges the consumer a \$1.95
activation fee and then \$14.95 per month thereafter.

1 60. After Castagnola finished her purchase on the Snapfish Website, she was
2 taken to a webpage that appeared to be a continuation of the Snapfish Website, as it
3 used the same colors and layout, and prominently displayed the Snapfish trademark. On
4 information and belief, this webpage was part of the Regent Website.

5 61. The Regent Website advertised to Castagnola that she could receive a gift
6 card or other perk if she enrolled in the Snapfish Valuepass program. The Regent
7 Website invited Castagnola to enroll in the Snapfish Valuepass program by entering her
8 email address and zip code and clicking on the "yes" button.

9 62. At no time did the Regent Website ask for Castagnola to enter any billing
10 information or other contact information.

11 63. Castagnola did not see any disclosures that the Regent Website was not
12 affiliated with Snapfish or that the Snapfish Valuepass program was offered by Regent
13 and not Snapfish. Nor did Castagnola see any disclosures that she would be charged for
14 her enrollment in the Snapfish Valuepass program.

15 64. A reasonable customer in Castagnola's position would not have understood
16 that the Snapfish Valuepass program was offered by Regent and not Snapfish, that
17 Regent had obtained the customer's billing information from Snapfish, or that there were
18 any payment obligations associated with the program.

19 65. Castagnola clicked on the "yes" button on the Regent Website to enroll in
20 the Snapfish Valuepass program, believing that the program was provided by Snapfish,
21 and believing that there were no payment obligations associated with the program.

22 66. From January 2010 through September 2010, Regent charged Castagnola
23 \$14.95 per month for a total of \$134.95.

24 67. While, on information and belief, Regent charged Castagnola's credit card,
25 the billing descriptor on Castagnola's credit card statement referred to Snapfish and did
26 not mention Regent.

27 68. Castagnola did not notice these unauthorized charges until late 2010, in
28 part because Castagnola regularly made purchases on Snapfish and in part because

1 Regent used a billing descriptor incorporating the Snapfish mark. Thus, these charges
2 did not stand out to Castangola as unauthorized.

3 69. As a result of Defendants' misconduct, Castagnola has been harmed.

4 **CLASS ACTION ALLEGATIONS**

5 70. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff brings this action
6 on her own behalf and as a representative of all persons who were enrolled in the
7 Snapfish Valuepass program after December 1, 2007 (the "Class").

8 71. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff Castagnola brings
9 this action on her own behalf and as a representative of all persons: a) who were
10 enrolled in the Snapfish Valuepass program after December 1, 2007, and b) who are
11 senior citizens as defined in California Civil Code section 1761(f) (the "Senior Subclass").

12 72. A class action is appropriate here because there exists an ascertainable
13 class and a well-defined community of interest in the questions of law and fact involved.

14 73. The Class is readily ascertainable from Defendants' records.

15 74. A class action is the superior method for adjudicating this controversy
16 because: a) the Class is so numerous that the joinder of all members is impracticable, b)
17 questions of law and fact common to the Class predominate over any question affecting
18 only individual Class members, and c) the claims of the representative Plaintiff are typical
19 of the claims of the Class, and the representative Plaintiff will fairly and adequately
20 protect the interests of the Class.

21 75. The common questions of law and fact include:

- 22 • Whether Snapfish, as an initial merchant, disclosed billing
23 information that had been used to charge Snapfish customers, to
24 Regent, a post-transaction third party seller, for Regent to use in an
25 Internet-based sale of goods or services, in violation of 15 U.S.C.
26 §8402(b).
- 27 • Whether Regent, as a post-transaction third party seller, charged
28 consumers for goods or services in an Internet transaction without

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clearly and conspicuously disclosing all material terms of the transaction before obtaining the consumers' billing information, including by failing to clearly and conspicuously disclose: a) a description of the goods or services being offered, b) the fact that Regent was not affiliated with Snapfish, and c) the cost of the goods or services being sold by Regent, in violation of 15 U.S.C. §8402(a).

- Whether Regent, as a post-transaction third party seller, charged consumers for goods or services in an Internet transaction without receiving the express informed consent for the charge from the consumer, including by: a) failing to obtain the consumer's full account number to be charged, b) failing to obtain the consumer's name and address, and c) failing to require the consumer to perform an additional affirmative action demonstrating the consumer's consent, in violation of 15 U.S.C. §8402(a).
- Whether Regent failed to disclose the terms of the Snapfish Valuepass program in a clear and conspicuous manner in visual proximity to the request for consent to the offer in violation of California Business and Professions Code section 17602(a)(1).
- Whether Regent charged consumers for the Snapfish Valuepass program without first obtaining consumers' affirmative consent to the offer terms in violation of California Business and Professions Code section 17602(a)(2).
- Whether Defendants' conduct constitutes a fraudulent, unfair, and/or unlawful practice in violation of California Business and Professions Code section 17200.
- Whether Snapfish violated the California Consumer Legal Remedies Act, Civil Code section 1750 *et seq.* by: a) representing that transactions conferred or involved rights, remedies or obligations

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which they did not have or involve, or which were prohibited by law;
b) by inserting an unconscionable provision in contracts with
consumers; and/or c) misrepresenting the affiliation, connection, or
association with Regent.

- Whether Regent violated the California Consumer Legal Remedies Act, Civil Code section 1750 *et seq.* by: a) passing off goods or services as those of another; b) misrepresenting the source, sponsorship, approval, or certification of goods or services; c) misrepresenting the affiliation, connection, or association with, or certification by, another; d) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have; d) representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; and/or e) representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

76. Plaintiff can and will fairly and adequately represent and protect the interests of the Class because:

- All of the questions of law and fact regarding the liability of Defendants are common to the Class and predominate over any individual issues that may exist, such that by prevailing on her own claim, Plaintiff will necessarily establish the liability of Defendant as to all Class members;
- Without the representation provided by Plaintiff, it is unlikely that any Class members would receive legal representation and/or obtain

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recourse for the misconduct carried out by Defendants; and

- Plaintiff has retained competent attorneys who are experienced both in the conduct of class actions and the law governing online advertising, negative options and e-commerce, and online payment systems. Plaintiff and her counsel have the necessary resources to litigate this class action, and Plaintiff and her counsel are aware of their fiduciary responsibility to the Class members and are determined to discharge those duties to obtain the best possible recovery for the Class.

FIRST CLAIM FOR RELIEF

(Violation of California Business and Professions Code section 17200)

77. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 76.

78. Plaintiff and the other Class members purchased a product or service from Snapfish through the Snapfish Website.

79. During this purchase process on the Snapfish Website, Snapfish collected and transferred Plaintiff's and the other Class members' billing and contact information to Regent, without disclosing this data transfer to the Class members.

80. After Plaintiff and the other Class members completed their purchases on the Snapfish Website, the Snapfish Website presented the Class members with the Regent Website, which appeared to be a continuation of the Snapfish Website.

81. The Regent Website invited Plaintiff and the other Class members to enroll in the Snapfish Valuepass program, which each Class member did.

82. Once Plaintiff and the other Class members enrolled in the Snapfish Valuepass program, Regent charged each Class member a \$1.95 activation fee and then billed each Class member \$14.95 per month thereafter.

1 83. Snapfish acted as an "initial merchant" in the above-described transactions,
2 as that term is defined in 15 U.S.C. §8402(d). Regent acted as a "post-transaction third
3 party seller" in the above-described transactions, as that term is defined in 15 U.S.C.
4 §8402(d).

5 84. Defendants' above-described misconduct is a fraudulent business practice,
6 as that term is used in Business and Professions Code section 17200, because a
7 reasonable person would have been deceived and wrongfully charged as a result of
8 Defendants' failure to disclose Snapfish's transfer of Plaintiff's and the other Class
9 members' billing information to Regent, Defendants' failure to explain the lack of
10 affiliation between Snapfish and Regent, and Regents' failure to clearly and
11 conspicuously disclose the material terms of the Snapfish Valuepass program.

12 85. Defendants' above-described misconduct is an unfair business practice, as
13 that term is used in Business and Professions Code section 17200, because Defendants'
14 conduct offends established public policies and is immoral, unethical, oppressive,
15 unscrupulous and substantially injurious to consumers.

16 86. Defendants' above-described misconduct is an unlawful business practice,
17 as that term is used in Business and Professions Code section 17200, because
18 Defendants' misconduct violates 15 U.S.C. §8402 and Business and Professions Code
19 section 17602.

20 87. Snapfish's misconduct is an unlawful business practice in violation of 15
21 U.S.C. §8402(b) because Snapfish disclosed Plaintiff's and the other Class members'
22 billing information, which Snapfish had used to charge the Class members for their initial
23 purchases, to Regent for use in an Internet-based sale of goods or services by Regent.

24 88. Regent's misconduct is an unlawful business practice in violation of 15
25 U.S.C. §8402(a)(1) because Regent charged Plaintiff and the other Class members for
26 goods or services sold in an Internet transaction without clearly and conspicuously
27 disclosing all material terms of the transaction before obtaining the Class members'
28 billing information, including by failing to clearly and conspicuously disclose: a) a

1 description of the goods or services being offered, b) the fact that Regent was not
2 affiliated with Snapfish, and c) the cost of the goods or services being sold by Regent.

3 89. Regent's misconduct is an unlawful business practice in violation of 15
4 U.S.C. §8402(a)(2) because Regent charged Plaintiff and the other Class members for
5 goods or services in an Internet transaction without receiving the express informed
6 consent for the charge from the Class members, including by: a) failing to obtain the
7 Class members' full account numbers to be charged, b) failing to obtain the Class
8 members' names and addresses, and c) failing to require the Class members to perform
9 an additional affirmative action demonstrating their consent.

10 90. Regent's misconduct is an unlawful business practice in violation of
11 California Business and Professions Code section 17602(a)(1) because Regent failed to
12 disclose the terms of the Snapfish Valuepass program to Plaintiff and the other Class
13 members in a clear and conspicuous manner in visual proximity to Regent's request for
14 consent to the offer.

15 91. Regent's misconduct is an unlawful business practice in violation of
16 California Business and Professions Code section 17602(a)(1) because Regent charged
17 Plaintiff and the other Class members for the Snapfish Valuepass program without first
18 obtaining the Class members' affirmative consent to the offer terms.

19 92. By engaging in the above-described misconduct, Defendants have
20 engaged in an unlawful, unfair, and fraudulent business practice in violation of California
21 Business and Professions Code section 17200.

22 93. As a result of Defendants' misconduct, Plaintiff and the other Class
23 members were harmed.

24 **SECOND CLAIM FOR RELIEF**

25 **(Violation of the Consumer Legal Remedies Act, Civil Code section 1750 et seq.)**

26 94. Plaintiff incorporates by reference the allegations contained in Paragraphs
27 1 through 93.
28

1 95. Plaintiff and the other Class members purchased a product or service from
2 Snapfish through the Snapfish Website.

3 96. During this purchase process on the Snapfish Website, Snapfish collected
4 and transferred Plaintiff's and the other Class members' billing and contact information to
5 Regent, without disclosing this data transfer to the Class members.

6 97. During this purchase process, Snapfish presented consumers with a small
7 hyperlink to Snapfish's terms and conditions and privacy policy. The Snapfish privacy
8 policy contains extremely vague descriptions about how and to whom Snapfish is
9 supposedly permitted to share consumers' personal information, including consumers'
10 billing information. To the extent Snapfish's privacy policy purports to allow Snapfish to
11 transfer consumers' billing information to Regent, no reasonable consumer would
12 understand such a term or agree to it, and it would be procedurally and substantively
13 unconscionable.

14 98. After Plaintiff and the other Class members completed their purchases on
15 the Snapfish Website, the Snapfish Website presented the Class members with the
16 Regent Website, which appeared to be a continuation of the Snapfish Website.

17 99. The Regent Website invited Plaintiff and the other Class members to enroll
18 in the Snapfish Valuepass program, which each Class member did.

19 100. The Regent Website did not conspicuously disclose any fees associated
20 with the Snapfish Valuepass program. Nor did the Regent Website conspicuously
21 disclose that it was not operated by or affiliated with Snapfish.

22 101. Once Plaintiff and the other Class members enrolled in the Snapfish
23 Valuepass program, Regent charged them a \$1.95 activation fee and then billed the
24 Class members \$14.95 per month thereafter.

25 102. By engaging in the above-described misconduct, Snapfish represented that
26 Plaintiff and the other Class members' purchase of Snapfish's goods and services
27 involved rights or obligations that the transactions did not involve and which were
28 prohibited by law. To wit, Snapfish failed to disclose to the Class members that a

1 purchase of Snapfish's goods and services would result in the disclosure of the Class
2 members' billing and contact information to Regent, though Snapfish intended for Regent
3 to use that information to enroll Class members in the Snapfish Valuepass program.

4 103. By engaging in the above-described misconduct, Snapfish inserted an
5 unconscionable provision into its contract with Plaintiff and the other Class members. To
6 wit, Snapfish inserted an unconscionable provision regarding the disclosure of the Class
7 members' billing information to third parties such as Regent, and failed to provide the
8 Class members with adequate notice of this provision.

9 104. By engaging in the above-described misconduct, Snapfish misrepresented
10 its affiliation, connection, or association with Regent.

11 105. By engaging in the above-described misconduct, Regent passed off its
12 goods or services as those of Snapfish.

13 106. By engaging in the above-described misconduct, Regent has
14 misrepresented the source, sponsorship, approval, or certification of goods or services.
15 To wit, Regent has misrepresented that its services are provided by, sponsored by,
16 approved by, or certified by Snapfish.

17 107. By engaging in the above-described misconduct, Regent has
18 misrepresented the affiliation, connection, or association with, or certification by, another.
19 To wit, Regent has misrepresented that its services are provided by, sponsored by,
20 approved by, or certified by Snapfish.

21 108. By engaging in the above-described misconduct, Regent has represented
22 that goods or services have sponsorship, approval, characteristics, ingredients, uses,
23 benefits, or quantities which they do not have. To wit, Regent has misrepresented that
24 its Snapfish Valuepass service is provided by, sponsored, approved, or certified by
25 Snapfish. Regent has also failed to conspicuously disclose that its Snapfish Valuepass
26 program involves an activation fee and a monthly membership fee.

27 109. By engaging in the above-described misconduct, Regent has represented
28 that a transaction confers or involves rights, remedies, or obligations which it does not

1 have or involve, or which are prohibited by law. To wit, Regent has failed to
2 conspicuously disclose that its Snapfish Valuepass program involves an activation fee
3 and a monthly membership fee.

4 110. By engaging in the above-described misconduct, Regent has
5 misrepresented that the consumer will receive a rebate, discount, or other economic
6 benefit, if the earning of the benefit is contingent on an event to occur subsequent to the
7 consummation of the transaction. To wit, Regent represented that consumers would
8 receive a \$10 gift code, though receipt of this gift code was contingent on consumers
9 enrolling in and paying for the Snapfish Valuepass program.

10 111. Defendants' misconduct violates the Consumer Legal Remedies Act, Civil
11 Code section 1750 *et seq.*

12 112. As a result of Defendants' misconduct, Plaintiff and the other Class
13 members have suffered harm, for which there is no adequate remedy at law.

14 113. Plaintiff brings this claim under the Consumer Legal Remedies Act for
15 injunctive relief only.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiff respectfully request judgment as follows:

18 1. That the Court enter a judgment finding that Defendant has violated
19 California Business and Professions Code section 17200 and the California Consumer
20 Legal Remedies Act, Civil Code section 1750 *et seq.*;

21 2. That the Court enter a preliminary and permanent injunction restraining
22 Snapfish from disclosing consumers' billing information to post-transaction third party
23 sellers, including Regent;

24 3. That the Court enter a preliminary and permanent injunction restraining
25 Regent from enrolling consumers in the Snapfish Valuepass program without the
26 consumers' express informed consent;

27 4. That the Court award damages and monetary relief as follows:

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- a. Damages in an amount to be determined at trial in the form of restitution of the money wrongfully charged to Plaintiff and the other Class members;
 - b. Plaintiff's costs;
5. Such other relief that the Court determines is just and proper.

Respectfully Submitted,

DATED: December 1, 2011

KRONENBERGER ROSENFELD, LLP

By: 
Jeffrey M. Rosenfeld

Attorneys for Plaintiff

REQUEST FOR JURY TRIAL

Plaintiff hereby demands a trial of this action by jury.

DATED: December 1, 2011

KRONENBERGER ROSENFELD, LLP

By: 
Jeffrey M. Rosenfeld

Attorneys for Plaintiff

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