

1 SEAN P. REIS - SBN 184004
sreis@edelson.com
2 EDELSON MCGUIRE LLP
30021 Tomas Street, Suite 300
3 Rancho Santa Margarita, California 92688
Telephone: (949) 459-2124
4 Facsimile: (949) 459-2123

5 RAFEY S. BALABANIAN*
rbalabanian@edelson.com
6 CHRISTOPHER L. DORE*
cdore@edelson.com
7 BENJAMIN H. RICHMAN*
brichman@edelson.com
8 EDELSON MCGUIRE LLC
9 350 North LaSalle Street, Suite 1300
Chicago, Illinois 60654
10 Telephone: (312) 589-6370
11 Facsimile: (312) 589-6378

12 *Pro hac vice application to be filed

13 *Attorneys for Plaintiff and the putative class*

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

16 **KIMBERLY YORDY, on behalf of herself and**
17 **all others similarly situated,**

18 *Plaintiff,*

19 v.

20 **PLIMUS, INC., a California corporation and**
21 **GREAT HILL PARTNERS, LLC, a**
22 **Massachusetts limited liability company,**

23 *Defendants.*

Case No.

CV 12 0229

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CLASS ACTION COMPLAINT

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1 **CLASS ACTION COMPLAINT**

2 Plaintiff Kimberly Yordy brings this class action complaint against Defendants Plimus, Inc.
3 and Great Hill Partners, LLC (collectively "Defendants") based upon Plimus's practice of
4 deceptively marketing to and billing consumers for websites allegedly offering unlimited access to
5 online digital goods, such as unlimited downloads of eBooks, movies, and videogames. Plaintiff,
6 for her Class Action Complaint, alleges as follows upon personal knowledge as to herself and her
7 own acts and experiences and, as to all other matters, upon information and belief, including
8 investigation conducted by her attorneys:

9 **NATURE OF THE ACTION**

10 1. Defendants, in conjunction with third parties, actively promote and profit from an
11 array of websites that purport to offer unlimited access to downloadable digital goods, such as
12 eBooks, movies, TV shows, and video games, all for a low one-time fee. For this one time fee,
13 Plimus represents that consumers will receive lifetime access to thousands of digital goods,
14 including bestselling books, newly released movies, current TV shows, and brand new video
15 games. In reality, these websites do not, in any manner, offer products in the manner advertised.

16 2. Defendant Plimus, which is a wholly owned subsidiary of Defendant Great Hill
17 Partners, facilitates both the affiliate marketing and payment processing for these websites. In
18 those roles, Plimus aids in the creation of marketing campaigns, drives consumer Internet traffic,
19 helps increase sales conversions, and accepts and processes payments for those websites, in
20 exchange for a percentage based fee.

21 3. The marketing campaigns include the mass production of fabricated consumer
22 reviews, testimonials, and fake blogs that are all intended to deceive consumers seeking a
23 legitimate product and induce them to pay. Yet, after consumers pay for access to any of these
24 digital goods websites, they quickly realize that the promotional materials and representations were
25 blatantly false.

1 **PARTIES**

2 4. Plaintiff Kimberly Yordy is a natural person domiciled in the State of Minnesota.

3 5. Plimus, Inc. is a corporation incorporated and existing under the laws of the State of
4 California, with its principal place of business located at 49016 Milmont Drive, Fremont,
5 California 94538. Plimus does business throughout the United States, the State of California, and
6 this District.

7 6. Great Hill Partners, LLC, is a limited liability company incorporated and existing
8 under the laws of the State of Massachusetts, with its principal place of business located at One
9 Liberty Square, Boston, Massachusetts 02109. Defendant Plimus is a direct and wholly owned
10 subsidiary of Great Hill Partners. Great Hill Partners does business throughout the United States,
11 the State of California, and this District.

12 **JURISDICTION AND VENUE**

13 7. The Court has subject matter jurisdiction over this action pursuant to 28
14 U.S.C. § 1332(d), because (a) at least one member of the putative class is a citizen of a state
15 different from Defendants, (b) the amount in controversy exceeds \$5,000,000, exclusive of interest
16 and costs, and(c) none of the exceptions under that subsection apply to this action.

17 8. Venue is proper in this District under 28 U.S.C. § 1391(a) as Defendant Plimus
18 resides in this District and the injuries of which Plaintiff complains arose here. Venue is
19 additionally proper because Defendants transact significant business in this District, including
20 soliciting consumer business, and entering into consumer and business transactions.

21 **FACTS COMMON TO ALL COUNTS**

22 **The Growth of Downloadable Online Media & Defendants Deceptive Marketing**
23 **Tactics.**

24 9. With the rise of electronic readers such as the Amazon Kindle, media devices such
25 as the Apple iPhone and iPad, and the continued boom of video game consoles, consumers have
26 increasingly sought out new ways to purchase digital goods such as eBooks, movies, and games to
27 use on these devices. However, matching the demand for digital goods is a plethora of illegal or
28

1 fraudulent retailers selling access to allegedly exclusive digital goods that are in fact already
2 available to consumers for free, selling access to pirated versions of popular books, movies and
3 games under the direct representations that the products are genuine and legal, and in some
4 instances, simply selling access to nothing at all. Defendant Plimus operates and actively
5 promotes an online marketplace that allows for these fraudulent retailers to flourish.

6 10. Plimus operates a website that provides marketing assistance and payment
7 processing to many fraudulent sellers of digital goods, along with a robust marketplace for those
8 retailers to connect with thousands of third party affiliates who work to promote the retailers
9 websites by any and all means. Plimus's "50,000 Affiliate" marketplace allows online retailers to
10 rapidly flood the Internet with sham product reviews, fake blog posts, videos, and other
11 advertisements intended to draw consumers to fraudulent websites offering "unlimited" downloads
12 of digital goods for a low one-time fee.

13 11. The "Unlimited Download Websites" operating with the direct involvement of, and
14 solely through, Defendant Plimus, include but are not limited to:

15	www.mypadmedia.com	www.youripaddownloads.com
16	www.allwiigamesdownloads.com	www.thereadingsite.com
17	www.ereaderslibrary.com	www.unlimitedpspmovies.com
18	www.360downloadcenter.com	www.thedroidlibrary.com
19	www.flickrmusic.com	www.downloadmoviesonipad.com
20	www.wiidownloadbay.net	www.ps2gamesdownloads.com
21	www.allconsoledownloads.com	www.unlimitedpspmovies.com
22	www.thenovelnetwork.com	www.youripodmovies.com
23	www.themoviehome.com	www.unlimitedps3downloads.com
24	www.downloadanimevideos.com	www.unlimitedps3games.com
25	www.yourpadcenter.com	www.pspgodownloadcenter.com
26	www.downloadipadmovies.com	www.tvshowexpress.com

1 www.musicflickr.com

www.epadmedia.com

2 www.pocketdownloadcenter.com

www.wiidownloadhub.com

3 www.full-tv-downloads.com

www.gamestationbay.com

4 www.cinema-on-demand.net

www.moviesforipad.info

5 www.unlimitedddsdownload.com

6 12. In an effort to increase the number of consumer registrations on the Unlimited
7 Download websites, Defendant Plimus works in concert with affiliates to distribute paid text
8 advertisements, graphic banner advertisements, fake testimonials, and fake blog posts, all
9 promising access to such things as “BESTSELLING eBooks” for “No monthly or ‘Pay Per
10 Download’ fees.” These advertisements and other marketing materials represent that bestselling
11 books, such as *Dreams From My Father* by President Obama and *Twilight* by Stephenie Meyer,
12 will be available to members along with other “unlimited free Novels, Comics, Newspapers &
13 more!”

14 13. Likewise, other promotional material for the Unlimited Download Websites state
15 “Download Unlimited iPad 2 Movies, Music, Games, App& and more!,” “No Pay Per Download!
16 Download All Your Favorite Movies NOW!,” and “for just one payment you are able to download
17 limitless movies for a lifetime!” These advertisements and other marketing materials represent
18 that newly released movies such as *Star Trek*, *Cars 2*, *Harry Potter*, *Up* and *District 9* will be
19 available as part of the unlimited downloads.

20 14. For example, the following advertisements—which misrepresent the products and
21 services actually offered by one of the Unlimited Download Websites, MyPadMedia and its related
22 eBook websites¹—appear in numerous locations across the Internet:

23 Unlimited **free** Novels, Comics.. No monthly, “Pay Per **Download**”
24 fees!

25
26
27 ¹ www.mypadmedia, www.thenovelnetwork.com, www.thereadingsite.com,
28 www.thedroidlibrary.com, www.thereadingsite.com, and www.epadmedia.com.

1 Download UNLIMITED eBooks, Novels, Magazines, and Newspapers
2 Straight To Your iPad, Kindle, Nook or e-reader! Compatible with ANY
3 device!

3 DOWNLOAD AS MANY EBOOKS AS YOU LIKE FOR FREE!
4 [Stated along side photos of international bestsellers, including *The Help*
5 by Kathryn Stockett, *The Girl with the Dragon Tattoo* by Stieg Larson,
6 *Water for Elephants* by Sara Gruen, *Twilight* by Stephenie Meyer, *The*
7 *Hidden Reality* by Brian Greene, and *Unbroken* by Laura Hillenbrand].²

6 15. Defendant Plimus's code and URLs are provided by Plimus and built into the
7 banner advertisements promoting the Unlimited Download Websites. Examples of such code for
8 banner advertisements include:

9 <a
10 href="http://www.plimus.com/jsp/redirect.jsp?contractId=2895906&referrer
11 =YOURUSERNAME">
14 <a
15 href="http://www.plimus.com/jsp/redirect.jsp?contractId=2960306&referrer
16 =YOURUSERNAME">

18 16. In addition, the following book covers appear in various advertisements: *Harry*
19 *Potter* [various books in the series] by J.K. Rowling, *The Girl Who Played With Fire* by Stieg
20 Larson, *Eat Pray Love* by Elizabeth Gilbert, *Dreams From My Father* by Barack Obama, *Catching*
21 *Fire* by Suzanne Collins, *Diary of a Wimpy Kid* by Jeff Kinney, *Maximum Ride* by James
22 Patterson, and *127 Hours: Between A Rock And A Hard Place* by Aron Ralston.

23 17. In yet another example of the deceptive nature of Plimus's marketing materials,
24 affiliate partners of Plimus create fake review websites to promote the Unlimited Download
25

26
27 ² To purchase the eBooks pictured in this advertisement alone would cost approximately \$60 at
28 Amazon.com.

1 Websites. For example, the novelnetworkreviews.info—a self-proclaimed independent writer
2 offering an “Unbiased Review” of the Novel Network—purportedly “spent hours searching for a
3 trust free download site” and “guarantee[s] that [the Novel Network] does much more for the
4 money you pay.” The advertisement continues, supposedly comparing the Novel Network to its
5 own sister website, The Reading Site (as if they were competitors but in reality they are one and
6 the same): “I personally checked if The Reading Site really offers the best sellers of different genre
7 which it boasts of offering members. It has quite many novels like “The Harry Potter Series”,
8 Elizabeth Gilbert’s “Eat, Pray, Love”, “Twilight Series”, the controversial “Oprah Biography”,
9 “Sex And the City”, “Da Vinci Code” and on and on.” Once again, this blog is operated by a paid
10 affiliate of Plimus.³

11 18. Similarly, www.downloadmoviestoipad.com purports to be a review of Download
12 iPad Movies, an Unlimited Download Website allegedly offering unlimited movie downloads for a
13 one-time fee. The website states “The best program I have found for download movies to ipad is
14 ‘download ipad movies’ for one fee you can download unlimited movies for life!” Additionally,
15 under a frequently asked questions section, it states: “I have heard programs like this only offer old
16 movies, is that correct? No, members have access to just released movies in about 2 weeks after
17 first release, so that you can download movies to ipad,” and goes on to state that five of the top ten
18 movies downloaded were *Straw Dogs*, *Rise of the Planet of the Apes*, *The Help*, *Warrior*, and
19 *Colombiana*. As before, this website is operated in direct concert with Plimus by a paid affiliate of
20 Plimus.⁴

21
22 ³ Other fabricated affiliate websites promoting eBooks include, but are not limited to:
23 thenovelnetwork.org, novelnetworkexposed.com, thenovelnetwork.net,
24 www.bookdownloadsites.com/sites/novel-network.html, ebooksfor-ipad.com/the-novel-network-independent-review,
25 mypadmediascam.com, themypadmedia.com, books-for-ipad.net,
mypadmedia.org, www.mypadmediareviewed.org, ipadownloadnews.net,
thereadingsitescam.com, www.thereadingsite.net, www.thereadingsiteebooks.com.

26 ⁴ Other fabricated affiliate websites promoting movies include, but are not limited to:
27 downloadmoviesforipad.com, ipadownloadmovies.org, downloadipadmovies.info,
downloadmovietoipad.com, downloadmoviestoipad.com.

1 19. The fake blogs and reviews additionally contain fabricated “consumer reviews”
2 touting the products and services available through the Unlimited Download Websites:

3 Your site is truly MIND-BLOWING! My Kindle is now filled with over
4 150+ novels that would have usually cost me \$10 each, but thanks to you
5 guys, it cost me nothing! Just this week I downloaded the entire Twilight
6 series. I love it! Carol R. Vasquez, San Diego, CA

7 This site is truly MIND-BLOWING! My Android smartphone is now filled
8 with over 150+ eBooks that would have usually cost me \$20 each, but
9 thanks to you guys, it cost me nothing! Just this week, I downloaded the
10 whole Harry Potter series. I love it! Nadine A. Spears, Seattle, WA

11 The Novel Network rocks! I have been able to download all my favorite
12 comic books straight to my iPad! I just tap on the title I want, and its on my
13 iPad, free for me to read! You have saved me so much time and money.
14 Thanks guys! Michael J. Payne, Houston, TX

15 20. Similar fabricated testimonials can be found for the Unlimited Download Websites
16 offering movies:

17 Incredible Database! “I was pleasantly surprised by the amount of iPad
18 movies available. Downloading was simple and transferring the movies to
19 my iPad was easy too. The movies are great, with no loss of quality.”
20 Margaret Bergmann, UK

21 Fast Downloads & The Largest Networks! “I have rediscovered my iPad!
22 DownloadiPadMovies is definitely a service I would recommend. The
23 service is excellent and downloading is easy and fast. Thank you!” Sharon
24 Dafish, Finland

25 Easy and Fun! “My son has found so many new utilities that he wasn’t
26 aware of that I’ve had to take the iPad away from him! Your fault!” Ron
27 Kuzorski, USA

28 21. In reality, these so-called “consumer reviews” are not written by actual consumers
or members of the Unlimited Download Websites, but instead, are entirely fabricated by Plimus or
affiliate partners working in conjunction with Plimus. Indeed, as seen above, reviews containing
identical, word-for-word content appear across the Internet, with only the name of the reviewing
“consumer” and the product having been changed.

 22. As part of its affiliate marketing, Defendant Plimus provides marketing materials
including falsified consumer reviews. For example, on the Unlimited Download Website

1 www.themoviehome.com, there is page labeled "Affiliates." At the top of this page appears the
2 following image:



8 Among various other content on this page, there is a section titled "Articles and Reviews," which
9 states: "Here are some articles and reviews you can use you promote The Movie Home. Feel free
10 to write some of your own." Headings include "Looking for legal movie downloads? Find the
11 right site to use" and "Stop renting! Download your movies in HD quality today!," each with their
12 own lengthy and allegedly neutral third party discussion of The Movie Home. The section
13 marked "The Movie Home Review" includes such statements as:

14 Is Netflix not working out because the download speeds are too slow or you
15 just can't get your money's worth per month? Now there is another option.
16 You can download unlimited movies and television shows legally at The
17 Movie Home with just a one-time fee of \$49.95 . . . What types of movies
18 and shows are available? With over one million titles to choose from, you
19 have access to a range of genres . . . They include movies produced from
20 major studios like Universal Pictures, Dreamworks, Paramount Pictures, and
21 20th Century Fox . . . With a deal as good as this, what are you waiting for?
22 This download site is completely legal. It is not a peer-to-peer sharing site.
23 There are no copyright infringements. You just get the option to download
24 as many shows as you want from the database selection with a small one-
25 time fee.

26 23. Likewise, other Unlimited Download Websites like TheNovelNetwork.com provide
27 falsified consumer reviews on the Plimus affiliate page. Under the heading "Casual Review (Nook
28 user)" is a "review" from Christy C. Stipe of Apple Springs, Texas. It includes such statements as:

As a mom of two kids, I found it quite expensive to pay \$15 for every book
downloaded, especially when you read as many books as I do! . . . After
checking out the features The Novel Network claimed to offer, I signed up
in a heartbeat! . . . I was tingling with excitement. My dreams of having an
entire portable library with me wherever I went could soon be possible . . .
The Novel Network database was gigantic! They had over 30,000 titles
available for me to download. And these weren't books by authors I've
never heard of. They were bestsellers like The Girl with the Dragon Tattoo,

1 Breaking Dawn (The Twilight Saga), The Rembrandt Affair (Gabriel
2 Allon), The Passage, The Obama Diaries, and Lost Symbol by Dan Brown.
3 Basically, any book I wanted to read, or would have to spend \$15 to
4 download from Barnes & Noble or Amazon, I could find at The Novel
Network, and download for free . . . One of the most fabulous features of
The Novel Network is that they also allow me to download the daily
newspaper to my Nook! Any paper in the world, I can have it straight on
Nook!

5 24. The Plimus affiliate page also contains instructions and links for banner
6 advertisements, screenshots, promotional ideas (e.g., "Write articles or reviews which compare The
7 Novel Network to myPadMedia.com. Include a ranking, a star rating, a recommendation etc."),
8 how to use "exit pop ups" to keep a consumer from leaving the page, keywords to use for search
9 engine marketing (e.g., "free movies watch online," "play movie for free"), and instructions for
10 sending mass amounts of spam email promoting an Unlimited Download Website. Under the
11 heading "Email Marketing," the Plimus affiliate page states, "A fast and easy way to make sales is
12 to send mass emails to potential customers. You may already have a list of subscribers, or are in
13 the process of building one. We recommend that you use a service like Streamsend to send your
14 mass emails."

15 25. Consumers are also driven to the Unlimited Download Websites by deceptive video
16 advertisements found on the popular video sharing website, YouTube.com. These video
17 advertisements supposedly highlight the "benefits" of registering as a member of such websites as
18 The Novel Network and Download iPad Movies; namely, gaining "access to thousands of eBooks
19 with no additional payment" and "the largest database [for movies] the internet has ever seen."
20 Not surprisingly, the videos are produced and published by Plimus's paid affiliate advertisers.

21 26. When consumer clicks on a banner advertisement or a link in a fake blog, the
22 consumer is routed directly through Plimus's servers, as is apparent by the tracking links which
23 appear in a consumer's browser after clicking on the banner advertisement, but before being routed
24 to any of the Unlimited Download Websites. Examples of such tracking links include:

25 [directing to TheNovelNetwork.com]

26 <https://www.plimus.com/jsp/redirect.jsp?contractId=2895906&referrer=easyreader>

1 [directing to MyPadMedia.com]

2 <https://www.plimus.com/jsp/redirect.jsp?contractId=2895416&referrer=franco86>

3 [directing to DownloadiPadMovies.com]

4 <https://www.plimus.com/jsp/redirect.jsp?contractId=2894760&referrer=download1>

5 The notation “easyreader” and “franco86” at the end of the URLs designates the identity of
6 the affiliate so that, if a consumer is deceived by that affiliate’s marketing and makes a
7 purchase at an Unlimited Download Website, Defendant Plimus will know which affiliate
8 to pay for his or her valuable service.

9 27. All of Plimus’s deceptive marketing materials are created, published and exist for
10 one purpose: to drive unsuspecting consumers to the Unlimited Download Websites, where they
11 are further induced to submit their confidential contact and payment information to Plimus for
12 what they have been led to believe is—but in reality, is not—unlimited access to a vast library of
13 digital goods.

14 **The Unlimited Download Websites Contain Further Misrepresentations**
15 **Designed to Induce Consumers to Register for Access by Providing Their Confidential**
16 **Contact and Billing Information.**

17 28. After clicking through advertisements promoting the Unlimited Download
18 Websites, and being directed through Plimus’s servers, consumers reach one of the Unlimited
19 Download Websites, where Plimus once again falsely represents that registered members of the
20 website will receive unlimited access to popular eBooks (*Game of Thrones*, the *Twilight* series,
21 and the *Harry Potter* collection), movies (*In Time*, *Moneyball*, *Paranormal Activity 3*, and *The*
American) and video games (*Assassins Creed*, *Call of Duty*, and *Battlefield*).

22 29. The covers of bestselling books, movies, and video games cycle across the
23 webpages in colorful animations, along with the images of numerous other well known eBooks,
24 movies, and video games that are displayed across the bottom of the webpage. The book, movie,
25 and video game covers change every time a new customer enters the website to showcase the vast
26 array of digital goods available to members. Additionally, many of the Unlimited Download
27
28

1 Websites provide the option to see the “top downloaded” items for each specific website. When a
2 user clicks this option on any of the Unlimited Download Websites, an identical graphic appears,
3 showing a flashing progress bar and the words “Please wait, establishing connection,” after which
4 it will produce a supposed list of the current most downloaded movies, games, or books.
5 However, this is a static list that has nothing to do with any customers actually downloading digital
6 goods, as can be seen from the following code from www.downloadipadmovies.com:

```
7         <h1>Top Download iPad Movies</h1>  
8         <div id="top">  
9             <a href='access' class='lista_top'>  
10                Puss in Boots</a>  
11                <a href='access' class='lista_top'>  
12                Tower Heist</a>  
13                <a href='access' class='lista_top'>  
14                A Very Harold & Kumar 3D Christmas</a>  
15                <a href='access' class='lista_top'>  
16                Paranormal Activity 3</a>  
17                <a href='access' class='lista_top'>  
18                In Time</a>  
19                <a href='access' class='lista_top'>  
20                Footloose</a>  
21                <a href='access' class='lista_top'>  
22                Real Steel</a>  
23                <a href='access' class='lista_top'>  
24                The Rum Diary</a>  
25                <a href='access' class='lista_top'>  
26                The Ides of March</a>  
27                <a href='access' class='lista_top'>  
28                Moneyball</a>  
                </div>  
</div>
```

30. In the end, the only things provided to registered members of any of the Unlimited
Download Websites include access to digital goods that are already available for free elsewhere on
the internet, such as eBooks found at Project Gutenberg,⁵ or else, simply provides links to torrent
search engines that allow a consumer to download already publically shared digital goods.

⁵ Project Gutenberg is located at www.gutenberg.org. It is a repository of over 36,000
eBooks that exist in the public domain. Any consumer can visit the site and has free and unlimited
access to download any available book. Bestselling books, such as the *Harry Potter* series, are not
available at Project Gutenberg.

1 Importantly, all torrent search engine links provided thorough the Unlimited Download Websites
2 are all available on the Internet and are free for anyone to access. Even more importantly,
3 however, accessing and downloading files through a torrent search engine is illegal and constitutes
4 copyright infringement of the digital goods acquired. Accordingly, Defendants and the Unlimited
5 Download Websites are promoting and profiting by directing consumers to illegal means of
6 obtaining digital goods, all the while taking affirmative steps to give consumers the distinct
7 impression that their conduct is legal.

8 **Defendants Charging and Collecting of Registration Fees**

9 31. After agreeing to register on an Unlimited Download Website, the consumers are
10 re-directed to a "Secure Order Form" located on a landing page owned and operated by Defendant
11 Plimus (e.g., www.plimus.com/jsp/buynow.jsp?contractId=2894766 [directing to a purchase page
12 for DownloadiPadMovies.com]). Consumers are instructed to input their contact and payment
13 information into the appropriate submission fields in order to pay for the registration fee. After
14 submitting the requested information, the consumer may complete their registration by clicking the
15 appropriate button.

16 32. At no point does Plimus direct consumers to read or accept any terms and
17 conditions applicable to registration with Plimus or any Unlimited Download Website.

18 33. Payment for the all Unlimited Download Websites goes directly to Defendant
19 Plimus, who then pays the affiliate marketer responsible for creating the misleading advertisements
20 that drove the consumer to the Unlimited Download Website. After making that payment, and
21 keeping a share for itself, Defendant Plimus pays the remainder to the operator of the Unlimited
22 Download Website.

23 **The Unlimited Download Websites are Purposefully Designed and Continue to** 24 **Operate in a Deceptive Manner Because They Profit Significantly As a Result**

25 34. Defendants and the Unlimited Download Websites knowingly and purposefully
26 designed their affiliate marketing and websites, and continue to widely promote them, in an effort
27 to deceive consumers and to induce them to provide their confidential contact and billing
28

1 information.⁶ Defendants are fully knowledgeable of the Unlimited Download Websites, their
2 content, their illegal business models, and the fact that consumers are deceived by them and
3 subsequently submit complaints about them. Defendants actively promote, market, and encourage
4 the widespread distribution of the Unlimited Download Websites, and provide the Plimus brand
5 name in an effort to induce consumers' trust and reliance in submitting payment information.
6 Defendants are incentivized to continue their unlawful conduct and allow the fraudulent conduct of
7 the Unlimited Download Websites to flourish through Plimus, because they have received and
8 continue to receive significant revenues as a result. The more deceptive the Unlimited Download
9 Websites, the better those websites will convert sales, and the more profit Defendants will receive.

10 35. Many of the Unlimited Download Websites are among Plimus's top performing
11 affiliate offers and in fact Plimus recommends many of the Unlimited Download Websites to its
12 affiliates.

13 **Great Hill Partners's Role**

14 36. In or around August 8, 2011, Defendant Great Hill Partners acquired Defendant
15 Plimus as a wholly owned subsidiary for approximately \$115 million. As is customary, Great Hill
16 Partners conducted due diligence in the acquisition of Plimus, including reviewing its business
17 model and primary revenue streams.

18 37. In so doing, Great Hill Partners became fully aware of the fraudulent nature of the
19 Unlimited Download Websites and the significant role they played in generating revenue for
20 Plimus.

21 _____
22 ⁶ As a result of their practices described herein, Defendants and the Unlimited Download
23 Websites have received numerous complaints from consumers and requests for refunds. The
24 Unlimited Download Websites actively discourage consumer complaints or simply ignore them
25 altogether. For example, on one of the Unlimited Download Websites' Frequently Asked
26 Questions pages, consumers are warned against contacting their credit card companies and banks
27 to request a "charge back" of their registration fees—a legitimate recourse for consumers who
28 have been defrauded or otherwise charged without their authorization. According to Defendants,
"charge backs are widely considered by online retailers as a form of theft by customers."
Defendant Plimus additionally receives numerous complaints directly from consumers, no doubt
putting it on notice of the true nature of the Unlimited Download Websites.

1 38. Despite this fact, Great Hill Partners still acquired Plimus.

2 39. Now, fully aware that Plimus continues to promote the Unlimited Download
3 Websites, Great Hill Partners and Plimus both profit from the fraudulent conduct carried out by the
4 Unlimited Download Websites.

5 **Plimus's Subsequent Banning of a Limited Number of Unlimited Download Websites**

6 40. Prior to filing this Complaint, Plaintiff's Counsel contacted Defendants in or around
7 October 2011 to notify them of Plaintiff's problems with TheNovelNetwork.com, one of Plimus's
8 Unlimited Download Websites.

9 41. Shortly thereafter, attorneys representing Defendants contacted Plaintiff's counsel.
10 Plaintiff's counsel and attorneys representing Defendants subsequently had a phone conference on
11 or around November 18, 2011. On November 21, 2011, attorneys for the parties attended a
12 meeting at the Chicago office of Edelson McGuire LLC, whereupon a presentation was made
13 regarding the conduct alleged in this Complaint, and specifically regarding the websites:
14 www.thenovelnetwork.com, www.thereadingsite.com, www.mypadmedia.com,
15 www.thedroidlibrary.com, and www.themoviehome.com.

16 42. Following the meeting, additional email communications took place between
17 Plaintiff's counsel and attorneys for Defendant, the last of which took place on December 2.

18 43. In or around December 31, 2011, Defendants banned TheNovelNetwork.com and
19 four other Unlimited Download Websites maintained by the same merchant, including
20 MyPadMedia.com and TheMovieHome.com. The stated reason for banning this merchant was
21 that the refund rate was too high.

22 44. However, Plimus continues to market and profit from twenty-seven other Unlimited
23 Download Websites still in operation at the time of filing this Complaint.

24 45. In the days following Plimus banning the TheNovelNetwork and related sites, the
25 merchant behind those sites attempted to sell the websites, and in so doing, made the following
26 statements:

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- 1 • *Do these sites infringe on copyright/use P2P?* No, these websites DO NOT offer p2p
2 programs. They provide users with access to public domain content databases (movies and
3 ebooks) that do not have copyright and are therefore free to provide. We also provide
4 instructional guides in our members areas on how they can put this content on their
5 portable devices. I have had ZERO legal problems running these sites. They are completely
6 legal. Our websites contain no copyright content and all images are used in fair-use and for
7 demonstrative/example purposes.
- 8 • The Novel Network, myPadMedia, and TheReadingSite were all ranked within Plimus's #5
9 bestselling products of all time, with the most affiliates. Due to the super large number of
10 sales for all these products, a private account manager was assigned by Plimus to deal with
11 any issue I might have with my account. Very convenient!
- 12 • Our websites provide access to millions of open source public domain books which are free
13 for us to provide and have no copyright issues. The images you see on the websites are for
14 illustrative/example purposes only (they may or may not be in database), however if
15 customer can't find that book for free, they can purchase it from an external source in the
16 members area at a cost (however we do not receive revenue for that.)

FACTS RELATING TO PLAINTIFF KIMBERLY YORDY

17 46. In or around July 2011, Plaintiff Kimberly Yordy arrived at one of the Unlimited
18 Download Websites directly promoted by Plimus, specifically TheNovelNetwork.com, after
19 clicking on and being directed through a paid advertisement promoting unlimited downloads of
20 bestselling eBooks substantially similar to those described herein.

21 47. Upon reaching TheNovelNetwork.com, Plaintiff was presented with consumer
22 testimonials, several images of popular eBooks supposedly available, and Plimus's representations
23 of the benefits of registering to access TheNovelNetwork.com, as described above.

24 48. As a result, Defendant Plimus represented and Plaintiff understood that she could
25 gain unlimited access to numerous bestselling eBooks in exchange for a one-time membership fee
26 of \$49.95.

27 49. Accordingly, Plaintiff followed the necessary steps to become a registered member
28 of TheNovelNetwork.com, including submitting her contact and billing information to Plimus
through the Plimus payment page (*e.g.*, www.plimus.com/jsp/buynow.jsp?contractId=2895906).

50. After submitting her payment information to Plimus, Plaintiff was directed to the
TheNovelNetwork.com membership page, where she discovered that the site did not contain any

1 eBooks at all, and merely linked to eBooks that were already publicly available for free. Had this
2 fact been disclosed to Plaintiff, she would not have registered to become a member of
3 TheNovelNetwork.com nor agreed to pay \$49.95 to do so.

4 51. Shortly thereafter, Plaintiff contacted customer support for TheNovelNetwork.com
5 via e-mail and requested that her membership be canceled and that a refund of all fees Plimus
6 charged to and collected from her be issued.

7 52. Plaintiff has yet to receive a response or a refund of any of the monies Plimus
8 collected from her.

9 **CLASS ALLEGATIONS**

10 53. Plaintiff brings this action pursuant to Federal Rules of Civil Procedure 23(b)(2)
11 and (b)(3) on behalf of herself and a class (the "Class") defined as follows:

12 All persons in the United States who paid a fee through Plimus to access any of the
13 Unlimited Download Websites.

14 The following persons are excluded from the Class: 1) any Judge or Magistrate presiding over this
15 action and members of their families; 2) Defendants, Defendants' subsidiaries, parents, successors,
16 predecessors, and any entity in which the Defendants or their parents have a controlling interest
17 and their current or former employees, officers and directors; 3) Defendants' Counsel; 4) persons
18 who properly execute and file a timely request for exclusion from the Class; 5) Plaintiff's counsel;
19 (6) any person who has had their claims fully and finally adjudicated or otherwise released; and (7)
20 the legal representatives, successors or assigns of any such excluded persons.

21 54. **Numerosity:** The exact number of the members of the Class is unknown and not
22 available to Plaintiff at this time, but it is clear that individual joinder is impracticable. Defendants
23 have deceived and profited from thousands of consumers who fall into the definition set forth
24 above. Members of the Class can be identified through Defendants' records.

25 55. **Typicality:** Plaintiff's claims are typical of the claims of other members of the
26 Class, as Plaintiff and other members sustained damages arising out of the wrongful conduct of
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1 Defendants, based upon the same transactions that were made uniformly with Plaintiff and the
2 public.

3 **56. Adequate Representation:** Plaintiff will fairly and adequately represent and
4 protect the interests of the Class, and have retained counsel competent and experienced in complex
5 litigation and class actions. Plaintiff has no interest antagonistic to those of the Class, and
6 Defendants have no defenses unique to Plaintiff.

7 **57. Predominance and Superiority:** Class proceedings are superior to all other
8 available methods for the fair and efficient adjudication of this controversy, as joinder of all
9 members is impracticable. The damages suffered by the individual members of the Class will
10 likely be relatively small, especially given the burden and expense of individual prosecution of the
11 complex litigation necessitated by Defendants' actions. It would be virtually impossible for the
12 members of the Class to obtain effective relief from Defendants' misconduct on an individual
13 basis. Even if members of the Class themselves could sustain such individual litigation, it would
14 not be preferable to a class action, because individual litigation would increase the delay and
15 expense to all parties due to the complex legal and factual controversies presented in this
16 Complaint. By contrast, a class action presents far fewer management difficulties and provides the
17 benefits of single adjudication, economy of scale, and comprehensive supervision by a single
18 court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be
19 ensured.

20 **58. Commonality:** There are many questions of law and fact common to the claims of
21 Plaintiff and the Class, and those questions predominate over any questions that may affect
22 individual members of the Class. Common questions for the Class include, but are not limited to
23 the following:

- 24 (a) Whether Defendants' conduct alleged herein constitutes violations of Cal.
25 Bus. & Prof. Code §§ 17500, *et seq.*;
- 26 (b) Whether Defendants' conduct alleged herein constitutes violations of Cal.
27 Civ. Code §§ 1750, *et seq.*;

- 1 (c) Whether Defendants' conduct alleged herein constitutes violations of Cal.
2 Bus. & Prof. Code §§ 17200, *et seq.*;
- 3 (d) Whether Defendants' conduct alleged herein constitutes fraud in the
4 inducement;
- 5 (e) Whether Defendants' conduct alleged herein constitutes fraud by omission;
- 6 (f) Whether Defendants' conduct alleged herein constitutes negligent
7 misrepresentation;
- 8 (g) Whether Defendants' conduct alleged herein constitutes breach of contract;
9 and
- 10 (h) Whether Defendants' conduct alleged herein constitutes unjust enrichment.

11 **COUNT I**
12 **Violation of California's False Advertising Law**
13 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***
14 **(On Behalf of Plaintiff and the Class)**

15 59. Plaintiff incorporates by reference the foregoing allegations.

16 60. It is unlawful for a corporation to knowingly make, by means of any advertising
17 device or otherwise, any untrue or misleading statement with the intent to sell a product or service,
18 or to induce the public to purchase a product or service. Any statement in advertising that is likely
19 to deceive members of the public constitutes false and misleading advertising under Cal. Bus. &
20 Prof. Code §§ 17500, *et seq.*

21 61. As alleged herein, Defendants facilitate and disseminate advertising that they know
22 or should reasonably know is false and misleading because it misrepresents the actual nature and
23 content of the digital goods available through the Unlimited Download Websites. This conduct
24 includes, but it is not limited to, promoting and advertising access to the Unlimited Download
25 Websites through online banner advertisements and recruiting and paying affiliates to promote the
26 Unlimited Download Websites.

27 62. Defendants actively misrepresent, and/or have knowledge that misrepresentations
28 are being made, about the specific digital goods that are available to paid members on the
Unlimited Download Websites. These false representations act to enhance the apparent legitimacy

1 of the Unlimited Download Websites, thereby inducing consumers to submit their payment
2 information to Plimus for a paid membership to an Unlimited Download Website.

3 63. Defendants also falsely advertise through, and/or have direct knowledge of, the use
4 of fake “consumer reviews” of the Unlimited Download Websites. Although these “reviews” are
5 represented as coming from real-life customers, they are actually created by or through, or in
6 coordination with, Defendant Plimus as part of their marketing and advertising scheme. The
7 creators and operator of the fake review websites are in direct contract with and paid for their
8 services by Defendant Plimus. These untrue statements induce consumers into purchasing
9 memberships from the Unlimited Download Websites by falsely suggesting that consumers will
10 have an experience similar to the satisfied “consumers” who provide such “reviews.” Consumers,
11 however, do not have the same experience as recounted in the fake reviews.

12 64. Additionally, Defendants share profits with third party “affiliates” who, *en mass*,
13 create fake blogs, videos, and reviews of the Unlimited Download Websites. These “affiliates” are
14 matched with the Unlimited Download Websites through Plimus’s “affiliate” marketplace. The
15 fake blogs, videos, and reviews are knowingly created to inundate search engines, such as Google,
16 with false experiences so that any true information is buried when a consumer performs a web
17 search about the Unlimited Download Websites.

18 65. By committing the acts alleged in this Complaint, Defendants have disseminated
19 untrue and/or misleading statements through online advertising, and/or had direct knowledge of the
20 falsity of the advertising done on their behalf, in order to sell products and services on the
21 Unlimited Download Websites, in violation of the proscriptions of Cal. Bus. & Prof. Code §
22 17500.

23 66. Plaintiff and members of the Class were all charged monies by Plimus for the
24 Unlimited Download Websites memberships, and they would not have purchased any membership
25 had they known the actual content (or lack thereof) provided on the Unlimited Download
26 Websites. Accordingly, Plaintiff and members of the Class have suffered injury in fact and lost
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1 money as a result of Defendant Plimus's and the Unlimited Download Websites' acts of false
2 advertising.

3 67. Plaintiff seeks an order requiring Defendants to (1) immediately cease the unlawful
4 practices stated in this Complaint; (2) make full restitution of all funds wrongfully obtained; and
5 (3) pay interest, attorneys' fees, and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

6
7 **COUNT II**
8 **Violation of the Consumers Legal Remedies Act**
9 **Cal. Civ. Code §§ 1750, et seq.**
10 **(On Behalf of Plaintiff and the Class)**

11 68. Plaintiff incorporates by reference the foregoing allegations.

12 69. The Consumers Legal Remedies Act ("CLRA") prohibits the act, use or
13 employment by any person of any deception, fraud, false pretense, false promise,
14 misrepresentation, concealment, suppression or omission of any material fact with intent that
15 others rely upon such act in connection with the sale or advertisement of any merchandise whether
16 or not any person has in fact been misled, deceived or damaged thereby.

17 70. As alleged herein, Defendants have engaged in and had and continue to have direct
18 knowledge of deceptive practices, unlawful methods of competition, and/or unfair acts as defined
19 by Cal. Civ. Code §§ 1750, et seq., to the detriment of Plaintiff and the Class.

20 71. Defendants utilize and had and continue to have knowledge of false and deceptive
21 advertising that both conceals the actual digital goods offered by the Unlimited Download
22 Websites and widely and willfully misrepresents testimonial support for the Unlimited Download
23 Websites.

24 72. The Unlimited Download Websites' offers contain unconscionable terms by falsely
25 stating the characteristics of the digital goods and are unfair and inequitable in that the material
26 terms of the offers are hidden and actively misrepresented.

27 73. Defendant Plimus, acting with knowledge, intentionally and unlawfully brought
28 harm upon Plaintiff and the Class by aiding in the inducement of Plaintiff and the members of the
Class to purchase a product, and thereafter charging them for that product, through the use of

1 deceptive and misleading advertisements that fail to clearly and conspicuously disclose the actual
2 characteristics of the goods and services provided. Defendant Great Hill Partners has full and
3 complete knowledge of the misleading conduct, and knowingly profited from the deceptive
4 conduct. Specifically, Defendants violated Cal. Civ. Code § 1750 in at least the following
5 respects:

6 (a) In violation of § 1770(a)(2) by using and allowing the use of false testimonials to
7 misrepresent the source, sponsorship, approval, or certification of Unlimited Download Websites'
8 goods or services;

9 (b) In violation of § 1770(a)(3) by misrepresenting, paying for, and facilitating the
10 affiliation, connection, or association with, or certification by, third party blogs, websites and
11 others in relation to Unlimited Download Websites' goods or services;

12 (c) In violation of § 1770(a)(9) by advertising and charging for the Unlimited
13 Download Websites' goods or services with the intent not to sell them as advertised.

14 74. Plaintiff and the Class relied upon Defendant Plimus's and the Unlimited Download
15 Websites' false and deceptive advertising described herein, including fake blogs, fake testimonials,
16 and deceptive landing pages, all of which conceal the actual content provided to paying members
17 of the Unlimited Download Websites.

18 75. The injuries of which Plaintiff and members of the Class complain are a direct and
19 proximate result of Defendants' violations of law and wrongful conduct described herein.

20 76. Under Cal. Civ. Code § 1780(a) and (b), Plaintiff and the Class seek injunctive
21 relief requiring Defendants to cease and desist the illegal conduct alleged in this Complaint, and
22 any other appropriate remedy for violations of the CLRA. For the sake of clarity, Plaintiff
23 explicitly disclaims any claim for damages under the CLRA at this time.

24 **COUNT III**
25 **Violation of California's Unfair Competition Law**
26 **Cal. Bus. & Prof. §§ 17200, *et seq.***
27 **(On Behalf of Plaintiff and the Class)**

28 77. Plaintiff incorporates by reference the foregoing allegations.

1 78. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et*
2 *seq.*, protects both consumers and competitors by promoting fair competition in commercial
3 markets for goods and services.

4 79. The UCL prohibits any unlawful, unfair, or fraudulent business act or practice. A
5 business practice need only meet one of the three criteria to be considered unfair competition. An
6 unlawful business practice is anything that can properly be called a business practice and that at
7 the same time is forbidden by law. A fraudulent business practice is one in which members of the
8 public are likely to be deceived.

9 80. As alleged herein, Defendants' continued utilization and/or knowledge of unlawful
10 and unconscionable marketing practices constitute unlawful and unfair business practices in
11 violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

12 81. In deceiving Plaintiff and the Class by taking part in, and having full knowledge of,
13 the creation, distribution, and dissemination of advertising that misrepresents the benefits of being
14 a member of an Unlimited Download Website, and inducing Plaintiff and members of the Class to
15 proffer payment information to Plimus based on those misrepresentations and omissions,
16 Defendants have engaged in deceptive trade practices in violation of Cal. Bus. & Prof. Code §§
17 17200, *et seq.*

18 82. The characteristics of a product or service are material terms of any transaction
19 because it is likely to affect a consumer's choice of, or conduct regarding, whether to purchase a
20 product. Any deception related to characteristics of a consumer product or service is materially
21 misleading.

22 83. The misrepresentation of the digital goods or services provided through the
23 Unlimited Download Websites is likely to mislead a reasonable consumer who is acting reasonably
24 under the circumstances.

1 without disclosing the actual characteristics and content of the goods or services, which are
2 material terms of any transaction. Defendant Plimus promoted and charged for the Unlimited
3 Download Websites' memberships with full knowledge that consumers were acting in reliance on
4 false statements, and Defendant Great Hill Partners knowingly profited from Plimus's
5 dissemination of false statements.

6 91. Through a series of advertisements, representations, omissions, and false statements
7 regarding the Unlimited Download Websites, Defendant Plimus acted in concert with the
8 Unlimited Download Websites to misrepresent and obscure the actual digital goods a consumer
9 receives upon purchasing a membership to any of the Unlimited Download Websites. Defendant
10 Great Hill Partners had full knowledge that Plimus worked in concert with the Unlimited
11 Download Websites to misrepresent and obscure the actual digital goods a consumer receives upon
12 purchasing a membership to any of the Unlimited Download Websites.

13 92. Defendant Plimus, in conjunction with the Unlimited Download Websites, took
14 concrete and intentional steps to misrepresent the actual content Class members would ultimately
15 receive upon purchasing a membership.

16 93. Defendant Plimus and the Unlimited Download Websites actively took part in
17 optimizing the Unlimited Download Websites' landing and checkout pages so as to increase the
18 rate of conversions (sales), and they had full knowledge and visibility of the content of the
19 Unlimited Download Websites and each transaction, including knowledge of the unavailability of
20 promised digital goods.

21 94. By committing the acts alleged in this Complaint, Defendants have disseminated
22 and/or had and continue to have knowledge of the dissemination of untrue and misleading
23 statements through fraudulent advertising in order to sell or induce members of the public to
24 purchase paid memberships to the Unlimited Download Websites.

1 95. The content being paid for is a material term of any transaction because it directly
2 affects a consumer's choice of, or conduct regarding, whether to purchase a product. Any
3 deception or fraud related to the content of a consumer product is materially misleading.

4 96. The misrepresentation or omission of the contents of a product is likely to mislead a
5 reasonable consumer who is acting reasonably under the circumstances.

6 97. Defendants knew or should have known of the falsity of the representations made
7 regarding the Unlimited Download Websites they marketed and charged for.

8 98. Defendants intended that the deceptive and fraudulent misrepresentations and
9 omissions made by Plimus and the Unlimited Download Websites would induce a consumer to
10 rely and act based on those false representations and omissions.

11 99. Plaintiff and members of the Class were all charged monies for a sham product.
12 Accordingly, Plaintiff and members of the Class have suffered injury in fact and lost money in
13 justifiable reliance on Defendants' misrepresentations and omissions of material fact.

14 100. In deceiving Plaintiff and the Class by creating and supporting advertising that fails
15 to clearly and conspicuously disclose, and in fact actively misrepresents, the actual content
16 included in the membership to the Unlimited Download Websites, and inducing Plaintiff and the
17 Class to proffer payment based on those misrepresentations, Defendants have engaged in and had
18 and/or continue to have direct knowledge of fraudulent practices designed to mislead and deceive
19 consumers.

20 101. Plaintiff and the Class have suffered harm as a proximate result of Defendants'
21 violations of law and wrongful conduct.

22 102. Plaintiff, on behalf of herself and the Class, seeks damages for Defendants'
23 unlawful conduct.

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COUNT V
Fraud By Omission
(On Behalf of Plaintiff and the Class)

103. Plaintiff incorporates by reference the foregoing allegations.

104. Based on Defendant Plimus's misrepresentations and omissions, Plaintiff and the Class reasonably expected the paid membership to the Unlimited Download Websites to contain unlimited and exclusive access to digital goods including eBooks, movies, and video games.

105. Defendants knew that the membership did not include unlimited and exclusive access to legal and genuine digital goods, or any access other than that which is generally available to the public at no cost. The business model put forth on all of the Unlimited Download Websites is fraudulent on its face, and is apparent and known to Defendants. Any sophisticated business such as Defendants' would have no choice but to be aware of the fraudulent nature of the Unlimited Download Websites even upon cursory review of any of the Unlimited Download Websites.

106. Defendant Plimus concealed from and failed to disclose to Plaintiff and the Class the true nature of a paid membership to the Unlimited Download Websites and the total lack of any valuable digital goods.

107. Defendant Great Hill Partners had full and complete knowledge that Plimus concealed from and failed to disclose to Plaintiff and the Class the true nature of a paid membership to the Unlimited Download Websites and the total lack of any valuable digital goods. Defendant Great Hill Partners knowingly and willingly profited from Plimus's concealment of material facts.

108. Defendants were under a duty to Plaintiff and the Class to disclose the true contents of a paid membership to the Unlimited Download Websites because:

a. Defendants were in a superior position to know the true state of facts about the actual digital goods provided to paid members of the Unlimited Download Websites.

b. Plaintiff and the Class members could not reasonably have been expected to learn

1 or discover that Defendant Plimus was concealing the actual content provided through the
2 membership, or that Defendant Great Hill Partners had knowledge of the concealment.

3 c. Defendants knew that Plaintiff and the Class Members could not reasonably have
4 been expected to learn or discover the actual content provided through the membership.

5 109. The facts concealed or not disclosed by Defendants to Plaintiff and the Class, and
6 the facts that Defendants knew or should have known were concealed by the Unlimited Download
7 Websites, are material in that a reasonable consumer would have considered them to be important
8 in deciding whether to purchase a paid membership. Had Plaintiff and the Class known of the
9 actual digital goods or services provided to paid members, they would not have purchased a
10 membership.

11 110. Defendants concealed or failed to disclose the true content available to members in
12 order to induce Plaintiff and the Class to act thereon and proffer payment. Plaintiff and the Class
13 justifiably relied on the omission to their detriment by paying for a membership. The detriment is
14 evident from Plaintiff's and the Class Members' purchase of memberships.

15 111. As a direct and proximate result of Defendants' misconduct, Plaintiff and the Class
16 have suffered actual damages in the form of monies paid to purchase a membership.

17 **COUNT VI**
18 **Negligent Misrepresentation**
19 **(On Behalf of Plaintiff and the Class)**

20 112. Plaintiff incorporates by reference the foregoing allegations.

21 113. Through their online advertisements, marketing, and testimonials, Defendant
22 Plimus represented to Plaintiffs and the members of the Class that the Unlimited Download
23 Websites' membership would allow for the unlimited download of digital goods including eBooks,
24 movies, and video games.

25 114. Defendant Plimus, throughout their online marketing and advertisements and
26 through the use of affiliate marketers, consistently made representations as to the unlimited
27 availability of thousands of digital goods upon purchase of a membership with the Unlimited
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1 Download Websites. Additionally, Defendant Plimus marketed the Unlimited Download Websites
2 by displaying the covers of popular eBooks, movies, and video games, representing the unlimited
3 availability of those titles upon purchase of a membership.

4 115. Those representations were false, and at the time such false representations were
5 made, Defendants either knew or should have known of their falsity or, at the very least, they acted
6 with negligence and carelessness in ascertaining the truth of the false statements. Contrary to
7 Defendant Plimus's representations, Defendants knew or should have known that the actual digital
8 content provided to Members did not contain unlimited and exclusive access to any genuine or
9 legal digital goods. Defendants did not have any reasonable ground for believing Plimus's or the
10 Unlimited Download Websites' representations to be true.

11 116. Defendants intended that Plaintiff and members of the Class rely on Plimus's and
12 the Unlimited Download Websites' misrepresentations and omissions by purchasing a
13 membership.

14 117. Plaintiff and Class Members justifiably relied on Plimus's and the Unlimited
15 Download Websites' misrepresentations by purchasing memberships and were unaware of the
16 falsity of Defendants' assertions at the time they were made, and Defendants were fully aware that
17 Plaintiff and Class Members relied on those misrepresentations.

18 118. As a direct and proximate result of Defendant Plimus's misrepresentations, Plaintiff
19 and members of the Class suffered damages in the form of monies paid to purchase a membership.

20 **COUNT VII**
21 **Breach of Contract**
22 **(On behalf of Plaintiff and the Class as Against Defendant Plimus Only)**

23 119. Plaintiff incorporates by reference the foregoing allegations.

24 120. In reliance upon Defendant's misrepresentations and deceptive advertising, Plaintiff
25 entered into a contract with Plimus to purchase a membership with one of the Unlimited Download
26 Websites (thenovelnetwork.com). A material inducement and term of the contract was
27 Defendant's representation that thousands of digital goods were available for unlimited access
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1 through the membership, that were legal and genuine, and not otherwise available for free.

2 121. Because of the deceptive misrepresentations stated in this Complaint, Plaintiff and
3 the Class paid for memberships through Defendant Plimus with the understanding that they would
4 receive unlimited access to thousands of genuine digital goods, including eBooks, movies, and
5 video games, that were not otherwise available for free.

6 122. Defendant Plimus failed to provide unlimited access to recent bestsellers and other
7 newly released digital goods in exchange for a membership fee paid by Plaintiff and the Class,
8 thereby breaching its contract with Plaintiff and the other members of the Class.

9 123. At all times relevant to this action, Defendants acted willfully and with intent to
10 breach contracts entered into with Plaintiff and the Class.

11 124. Plaintiff and the Class have fully performed their contractual obligations.

12 125. Plaintiff and the Class have suffered damages as a direct result of Defendants' and
13 the Unlimited Download Websites' practices in the form of monies paid and lost.

14 126. Plaintiff, on her own behalf, and on behalf of the Class, seeks damages for
15 Defendants' breach of contract, as well as interest and attorneys' fees and costs.

16 **COUNT VIII**
17 **Unjust Enrichment**
18 *(in the alternative to breach of contract)*
19 **(On behalf of Plaintiff and the Class as Against Defendant Plimus Only)**

20 127. Plaintiff incorporates by reference the foregoing allegations, excluding paragraphs
21 117 through 124.

22 128. If the Court finds Plaintiff's contract with Defendant Plimus invalid or
23 unenforceable, Plaintiff and members of the Class have no valid contractual relationship with
24 Defendant Plimus.

25 129. Defendant Plimus knowingly profited from charges it placed on Plaintiff's and
26 Class Members' accounts for membership in the Unlimited Download Websites.

27 130. Plaintiff and the Class have conferred a benefit upon Defendant Plimus. Defendant
28 Plimus has received and retained money belonging to Plaintiff and the Class as a result of its

1 unlawful and deceptive practices.

2 131. Defendant Plimus appreciates or has knowledge of the benefit conferred by Plaintiff
3 and the Class.

4 132. Under principles of equity and good conscience, Defendant Plimus should not be
5 permitted to retain money belonging to Plaintiff and the Class that it unjustly received as a result of
6 its actions.

7 133. Plaintiff and the Class have suffered financial loss as a direct result of Defendant
8 Plimus's conduct.

9 134. Plaintiff, on her own behalf and on behalf of the Class, seeks restitution of the
10 proceeds Defendant Plimus received as a result of its conduct described herein, as well as
11 attorneys' fees and costs pursuant to Cal. Civ. Proc. Code § 1021.5.

12 **COUNT IX**
13 **Unjust Enrichment**
14 **(On behalf of Plaintiff and the Class as Against Defendant Great Hill Partners Only)**

15 135. Plaintiff incorporates by reference the foregoing allegations.

16 136. Plaintiff and members of the Class have no valid contractual relationship with
17 Defendant Great Hill Partners.

18 137. As a result, and despite having no valid or legal basis to do so, Defendant Great Hill
19 Partners unjustly received and continues to receive monetary benefits in the form of membership
20 fees charged to Plaintiff and the Class.

21 138. Plaintiff and the Class have conferred a benefit upon Defendant Great Hill Partners.
22 Defendant Great Hill Partners has received and retained money belonging to Plaintiff and the Class
23 as a result of its unlawful and deceptive practices.

24 139. Defendant Great Hill Partners appreciates or has knowledge of the benefit conferred
25 by Plaintiff and the Class.

26 140. Defendant Great Hill Partners had full and complete knowledge at the time that it
27 purchased Plimus that Plimus marketed and profited from fraudulent conduct, including the
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1 promotion and facilitation of the Unlimited Download Websites. Following the purchase of
2 Plimus, Defendant Great Hill Partners continued to have knowledge that it and Plimus profited
3 from the fraudulent conduct related to the Unlimited Download Websites.

4 141. Under principles of equity and good conscience, Defendant Great Hill Partners
5 should not be permitted to retain money belonging to Plaintiff and the Class that it unjustly
6 received as a result of its actions.

7 142. Plaintiff and the Class have suffered financial loss as a direct result of Defendant
8 Great Hill Partners's conduct.

9 143. Plaintiff, on her own behalf and on behalf of the Class, seeks restitution of the
10 proceeds Defendant Great Hill Partners received as a result of its conduct described herein, as well
11 as attorneys' fees and costs pursuant to Cal. Civ. Proc. Code § 1021.5.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff Kimberly Yordy, individually and on behalf of the Class, requests
14 that the Court enter an Order providing for the following relief:

15 A. Certify this case as a class action on behalf of the Class defined above, appoint
16 Plaintiff as Class Representative, and appoint her counsel as Class Counsel;

17 B. Declare that Defendants' actions, as set out above, violate Cal. Bus. & Prof. Code
18 §§ 17500 *et seq.*, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, Cal. Civ. Code §§ 1750 *et seq.*, and
19 constitute fraud in the inducement, fraud by omission, negligent misrepresentation, breach of
20 contract, and unjust enrichment;

21 C. Award all economic, monetary, actual, consequential, statutory and compensatory
22 damages caused by Defendants' conduct, and if their conduct is proven to be willful, award
23 Plaintiff and the Class exemplary damages;

24 D. Award restitution against Defendants for all money to which Plaintiff and the Class
25 are entitled in equity;

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E. Award Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;

F. Award Plaintiff and the Class pre- and post-judgment interest, to the extent allowable;

G. Enter injunctive and/or declaratory relief as is necessary to protect the interests of Plaintiff and the Class; and

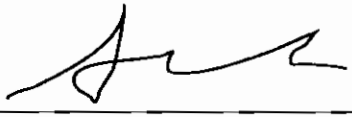
H. Award such other and further relief as equity and justice may require.

JURY TRIAL

Plaintiff demands a trial by jury for all issues so triable.

Respectfully submitted,

KIMBERLEY YORDY, individually and on behalf of all others similarly situated,



By: _____

Dated: January 13, 2012

RAFEY S. BALABANIAN*
rbalabanian@edelson.com
CHRISTOPHER L. DORE*
cdore@edelson.com
BENJAMIN H. RICHMAN*
brichman@edelson.com
EDELSON MCGUIRE LLC
350 North LaSalle Street, Suite 1300
Chicago, Illinois 60654
Telephone: (312) 589-6370
Facsimile: (312) 589-6378

SEAN P. REIS - SBN 184004
sreis@edelson.com
EDELSON MCGUIRE LLP
30021 Tomas Street, Suite 300
Rancho Santa Margarita, California 92688
Telephone: (949) 459-2124
Facsimile: (949) 459-2123

**pro hac vice* application to be filed