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and the proposed class
12

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOUR THE COUNTY OF LOS ANGELES —**

15 TOM LAMBOTTE, individually and
16 on Behalf of All Others Similarly
Situating,

17 Plaintiff,

18 vs.

19 IAC/INTERACTIVECORP., a
20 Delaware corporation;
TICKETMASTER, a Delaware
21 corporation, d/b/a
CITYSEARCH.COM;
22 CITYSEARCH.COM, an entity
unknown; and DOES 1 through 20,
23 inclusive,

24 Defendants.
25

Case No. BC391463

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

26
27 Plaintiff, Tom Lambotte ("Plaintiff"), individually and on behalf of the Class
28 described below, by his attorneys, makes the following allegations based upon

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

MAY 27 2008

John A. Clarke, Executive Officer/Clerk
By B.M. SWAIN Deputy

1 information and belief, except as to allegations specifically pertaining to Plaintiff
2 and his counsel, which are based on personal knowledge. Plaintiff brings this
3 action for damages and injunctive relief against defendants IAC/InterActiveCorp,
4 Ticketmaster, doing business as Citysearch.com, and Citysearch.com demanding a
5 trial by jury.

6 7 NATURE OF THE ACTION

8 1. Plaintiff brings this class action against IAC/InterActiveCorp,
9 Ticketmaster, doing business as Citysearch.com, and Citysearch.com (collectively
10 "Citysearch") to recover damages and other relief available at law and in equity on
11 behalf of himself as well as on behalf of the members of the following class:

12 *All persons or entities in the United States who paid*
13 *money for pay-per-click advertising through*
14 *Citysearch.com.*

15 2. Citysearch charges its customers for an advertising service which in
16 fact it does not provide. By looking the other way and adopting policies which
17 encourage abuse of its advertising service, Citysearch customers are improperly
18 charged for "fraudulent clicks."

19 3. This action arises from the Citysearch's deceptive business practices
20 of failing to properly guard against "click-fraud" or detection of invalid clicks on
21 ads purchased by the customer. This failure forces customers to pay for
22 advertising services which will never lead to any benefit.

23 24 THE PARTIES

25 4. Plaintiff Tom Lambotte ("Plaintiff") is a citizen of California.
26 Plaintiff paid for pay-per-click advertising through Citysearch.com.

27 5. Plaintiff is informed and believes and thereon alleges that defendant
28 IAC/InterActiveCorp ("IAC") is a corporation organized under the laws of the

1 state of Delaware with its principal place of business in New York, New York.
2 IAC is, and at all times relevant hereto was, authorized to do business in
3 California.

4 6. Plaintiff is informed and believes and thereon alleges that defendant
5 Ticketmaster ("Ticketmaster") is a corporation organized under the laws of the
6 state of Delaware with its principal place of business in West Hollywood,
7 California. Ticketmaster is, and at all times relevant hereto was, authorized to do
8 business in California. Ticketmaster is an operating business of defendant IAC,
9 doing business as Citysearch.com.

10 7. Plaintiff is informed and believes and thereon alleges that defendant
11 Citysearch.com ("Citysearch") is an entity unknown with its principal place of
12 business in West Hollywood, California. Citysearch is, and at all times relevant
13 hereto was, authorized to do business in California. Citysearch is an operating
14 business of defendant IAC.

15 8. Plaintiff is informed and believes and thereon alleges that defendant
16 IAC owns and has financial control over the operations of defendant Ticketmaster
17 and Citysearch, exercising power and control over the specific activities upon
18 which the claims herein are based.

19 9. As used herein, "Citysearch" shall include defendants IAC and
20 Ticketmaster.

21 10. Plaintiffs do not know the true names or capacities of the persons or
22 entities sued herein as DOES 1 to 20, inclusive, and therefore sues such defendants
23 by such fictitious names. Plaintiffs are informed and believe and thereon allege
24 that each of the DOE defendants is in some manner legally responsible for the
25 damages suffered by plaintiffs and the members of the class as alleged herein.
26 Plaintiffs will amend this complaint to set forth the true names and capacities of
27 these defendants when they have been ascertained, along with appropriate charging
28 allegations, as may be necessary.

11. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned each of the defendants was the agent, servant and/or employee or occupied other relationships with each of the other named defendants and at all times herein mentioned acted within the course and scope of said agency and/or employment and/or other relationship and each other defendant has ratified, consented to, and approved the acts of his agents, employees, and representatives, and that each actively participated in, aided and abetted, or assisted one another in the commission of the wrongdoing alleged herein.

JURISDICTION AND VENUE

12. Plaintiff brings this class action pursuant to the California Unfair Competition Law (Cal. Business and Professions Code sections 17200, et seq.) and other provisions of California statutory and nationwide common law, as identified herein, to recover damages, to seek equitable relief, and to seek restitution and other relief available at law or in equity on behalf of Plaintiff and the members of the class as defined below.

13. Venue as to each defendant is proper in this judicial district pursuant to California Code of Civil Procedure sections 395(a) and 395.5, and other provisions of law. Each defendant maintains an office, transacts business, advertises or offers products or services for sale, has an agent or is found in the County of Los Angeles. Plaintiff's causes of action arose in part within the County of Los Angeles and each defendant is subject to the jurisdiction of this Court. The wrongful acts described herein have had a direct effect on consumers within the State of California, including the County of Los Angeles, and the trade and commerce described below has been carried on within the State of California, including the County of Los Angeles.

FACTUAL BACKGROUND

A. Citysearch's Advertising Model

14. Citysearch is a local online search service, allowing visitors to its website to search for and obtain information about local businesses. Although Citysearch, not unlike a phonebook, provides listing information (such as address and telephone numbers) for local businesses, it also provides its visitors with maps, driving directions, as well as editorial and user reviews for many of the businesses that it lists.

15. Citysearch touts that it "helps people make informed decisions about where to spend their time and money by delivering trusted content, local expertise, and useful tools...." For most, Citysearch is just that: a source of information about local businesses. For Citysearch, however, providing information about local businesses is just the platform for its actual product: advertising.

16. Practically all of Citysearch's revenues are generated from its sale of advertising and the great bulk of that advertising is sold to small, local businesses – the same business which Citysearch lists and frequently reviews on its website.

17. Citysearch presently offers its customers the choice of two "packages." Citysearch charges a flat monthly fee for its "Basic Package" which includes a "customized business profile page" for the local business as well as "enhanced search results." The "Performance Package" offers everything that the "Basic Package" does but also includes "pay-per-click" advertising.

18. "Pay-per-click" ("PPC") advertising is unique to the internet, since advertisers only pay when a user actually clicks on an ad thereby indicating that the user wishes to visit the advertiser's website or (in the case of Citysearch) profile page. Thus, while thousands of people may see an advertisement, if that viewing did not result from a click on the ad, the advertiser will not be charged anything.

19. An advertiser who signs-up for Citysearch's "Performance Package" sets a monthly budget, representing the maximum amount that the advertiser is willing to spend over the course of a month for clicks. Citysearch sets the amount that it will charge per click based on an algorithm that it does not disclose to its customers but which appears to take factors such as the location and type of the business into account.

20. Because the monthly budget set by an advertiser represents the most that an advertiser is willing to pay and because Citysearch only charges the advertiser for clicks, it is quite feasible that the advertiser may spend much less than its budget in any given month.

B. Citysearch's Agreement with Plaintiff and the Class and Its Promise to Proactively Search for and Prevent "Invalid" Clicks

21. Customers who wish to advertise with Citysearch are presented with a "Local Listings/TPS Terms and Conditions" agreement (the "Agreement") to which they must indicate their consent. A true and correct copy of the Agreement is attached as Exhibit "A."

22. The Agreement provides in regard to the Performance Package the following:

The Performance Package is Citysearch's pay for performance advertising program where businesses set a monthly advertising budget (the "CAP") and pay for Click-Throughs or Program Calls (defined below) up to the CAP. On a monthly basis, Business shall pay to Citysearch a monthly listing fee and the cost per click and/or cost per call for each Click-Through and/or for each Program Call, up to the CAP set forth on the Enrollment Form. "Click-Throughs" are defined as (i)

clicks on Business' advertising located on the Citysearch website or a Citysearch distribution partner website, which directs users to Business' website or Business' profile page on the Citysearch website, (ii) clicks directing users to Citysearch partner web pages containing Business' enhanced content, or (iii) clicks on certain content links located on Business' Citysearch profile page. [...] You may increase your CAP amount in MyAccount, or you may instruct your Citysearch account manager to make such an increase; however, you understand and agree that during the Term you may not decrease your CAP.

23. On its "About Us" page, Citysearch states the following to potential customers: "We connect you to more customers. *You only pay for results. Advertise on Citysearch today and only pay for clicks to your Website or business profile page.*" (Emphasis added.) A true and correct copy of the "About Us" page as download from <http://www.aboutcitysearch.com/> on May 15, 2008 is attached as Exhibit "B."

24. The "FAQ" (Frequently Asked Questions) page that Citysearch makes available to potential customers during the sign-up process states the following:

Q: How do I know that clicks to my website are legitimate?

A: Citysearch *proactively* researches and develops processes, policies, and technologies to identify invalid click activity with regard to our customers' advertising. Citysearch employs advanced security filters and blocks out clicks from spiders and robots.

(Emphasis added.) A true and correct copy of the "FAQ" page as download from

1 <https://selfenroll.citysearch.com/newfaq.do> on May 15, 2008 is attached as Exhibit
2 “C.”

3 25. Citysearch devotes an entire webpage to explain its “Invalid Click
4 Policy” to potential customers. A true and correct copy of the “Invalid Click
5 Policy” as download from [https://selfenroll.citysearch.com/web/images/set/fraud-](https://selfenroll.citysearch.com/web/images/set/fraud-policy.gif)
6 [policy.gif](https://selfenroll.citysearch.com/web/images/set/fraud-policy.gif) on May 15, 2008 is attached as Exhibit “D.” On its “Invalid Click
7 Policy” page, Citysearch states in part:

8 As a leader in Local Pay for Performance advertising one
9 of *Citysearch’s key concerns is detection of invalid*
10 *clicks*. Citysearch proactively researches and develops
11 processes policies and technologies to identify invalid
12 click activity with regard to our customers' advertising.
13 We are committed to protecting our customers'
14 investment in Local Pay for Performance Advertising
15 with us

16 *Citysearch actively monitors and analyzes clicks to our*
17 *customers' advertising to try to detect any abuse of Our*
18 *Local Pay for Performance advertising program.*

19 Citysearch attempts to prevent clicks that are caused by
20 automated robots or spiders, clicks generated from within
21 the Citysearch organization, or clicks which show a
22 pattern of fraudulent use.

23 (Emphasis added.)
24

25 **C. Click Fraud**

26 26. “Click fraud” is the term the industry uses to describe clicks on a
27 search advertisement with no intention of doing business with the advertiser and
28 for some purpose other than that contemplated by the ad. The use of the word

1 “fraud” can be a bit misleading, since the word is not used as is understood at
2 common law. Instead the industry uses the term “click fraud” colloquially to
3 simply describe purposeful clicks on advertisements by someone other than a
4 potential customer. Citysearch refers to such clicks as “invalid clicks.”

5 27. The perpetrators of fraudulent (or invalid) clicks – those that actually
6 click an online advertisement with no intention of doing business with the
7 advertiser – can be categorized into two groups. The first group consists of direct
8 “real world” competitors of the advertiser, who simply wish to exploit the nature of
9 PPC advertising in order to increase the fees that their competitor is paying for
10 advertising and/or to boost the effectiveness of their own ads (given that
11 Citysearch employs a monthly budgeting system, “using-up” a competitor’s budget
12 in the beginning of the month means that the competitor’s ads will not be
13 competing with yours).

14 28. The second group of click fraud perpetrators do not compete with the
15 advertiser in the “real world,” their incentive to engage in click fraud is much more
16 direct: they get a share of the fees that the advertiser is paying.

17 29. Click fraud can be prevented by tracking the use of a pay-per-click
18 advertisement, including the identity and/or source of those clicking on the
19 advertisement/link and the frequency of such activity. Such tracking can be
20 accomplished by computer programs that count the number and timing of clicks
21 originating from a single source and whether or not those clicks result in a sale.
22 Indeed, Citysearch asserts that it has such programs, stating: “Citysearch also has
23 sophisticated algorithms to track sessions and user behavior on our site to assist us
24 in identifying click patterns that would indicate invalid clicks. In the event we
25 identify a click as invalid, our customers are not charged for such clicks.” [Exhibit
26 “D.”]

27 30. Most experts in the industry believe that the best, and perhaps only
28 way, to track and identify fraudulent clicks is at the source – that is, the website on

1 which the advertisement that was clicked on appeared.

2
3 **D. Although Citysearch Promised Plaintiff and the Class that it Would**
4 **Prevent Click Fraud, Citysearch Has Created an Environment that**
5 **Fosters Click Fraud**

6 31. Although Citysearch represents to its customers that it has a system in
7 place to prevent click through fraud and to ensure that advertisers are not charged
8 for “invalid clicks,” it has failed to take any significant measures to track or
9 prevent click through fraud, and fails to adequately warn its existing and potential
10 customers about the existence, and prevalence, of click fraud.

11 32. When its customers become the victims of click fraud, Citysearch
12 fails to (a) adequately advise them that they have been victimized, and (b) refund
13 them the excess charges that they have incurred as a result of the fraudulent click
14 activity. Citysearch’s indifference is not entirely surprising given it that derives
15 the same amount of income from a fraudulent click as it does from a legitimate
16 click.

17 33. Citysearch’s unwillingness – in violation of the Agreement and
18 contrary to its representations to its customers – to police and prevent click fraud is
19 especially egregious given that it is uniquely in a position to exercise that function.
20 More egregious still, is the fact that Citysearch’s complicity in click fraud is not
21 limited to inaction. Citysearch has actually purposefully created a corporate
22 environment which encourages and fosters the commission of click fraud against
23 its customers.

24 34. Citysearch assigns each of its customers to an “account manager” who
25 is either an “internal sales representative” or an “external sales representative.”
26 Part of the compensation to these account managers is in the form of a commission
27 that is tied to the number of clicks their accounts receive. Therefore, these account
28 managers have an incentive to make sure that their accounts are clicked, regardless

1 of whether those clicks are valid or not.

2
3 **E. Plaintiff, Just Like Thousands of Others, Is a Victim of Citysearch's**
4 **Unwillingness to Police and Fostering of Click Fraud**

5 35. On or around December 10, 2007, Plaintiff Tom Lambotte entered
6 into a written form contract with Citysearch for the placement of a pay-per-click
7 advertisement. Following two weeks with no increase in business or even traffic to
8 his website, Plaintiff Lambotte decided to cancel his account.

9 36. On or about December 22, 2007, Plaintiff Lambotte sent his
10 Citysearch account manager an email requesting that his account be canceled.
11 Plaintiff Lambotte did not receive a response from his Citysearch account manager
12 until December 26, 2007, when he received an email telling him that in order to
13 cancel his account he would have to call customer service.

14 37. According to Citysearch own "account management" page, Plaintiff
15 Lambotte received a total of nine clicks on his ad between December 11, 2007 –
16 when his account was started – and December 25, 2007 – the day before Plaintiff
17 Lambotte received the email from his Citysearch account manager. Further,
18 Plaintiff Lambotte could account for two of the nine clicks (one was his and one
19 was from a client of his). However, between December 26, 2007 – the day that
20 Citysearch's account manager sent Plaintiff Lambotte an email about canceling his
21 account – and the end of December, plaintiff's ad suddenly received between 12 to
22 16 purported clicks per day. This sudden and unexplained influx of clicks over the
23 span of 5 days resulted in a total of 69 purported clicks –nearly 10 times the
24 number of unaccounted for clicks that his ad had received during previous 15 days.

25 38. Plaintiff contested the charges for these clicks with Citysearch and
26 repeatedly requested that the charges be reversed. Citysearch refused.

CLASS ACTION ALLEGATIONS

39. Description of the Class: Plaintiff brings this nationwide class action pursuant to the provisions of Code of Civil Procedure section 382 on behalf of himself and a Class defined as follows:

All persons or entities in the United States who paid money for pay-per-click advertising through Citysearch.com.

40. Excluded from the Class are governmental entities, Defendants, any entity in which Defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

41. Plaintiff reserves the right to modify the Class description and the Class period based on the results of discovery.

42. The proposed class fulfills the certification criteria of Code of Civil Procedure section 382.

43. Numerosity: The proposed Class is so numerous that individual joinder of all its members is impracticable. Plaintiff cannot presently know the exact number of class members because such information is in the exclusive control of defendants. Due to the nature of the trade and commerce involved, however, Plaintiff believes that the total number of Class members is at least in the thousands. Further, members of the class are so numerous and geographically dispersed across the United States – and even within the State of California – that joinder of all members is impracticable. While the exact number and identities of the Class members are unknown at this time, such information can be ascertained through appropriate investigation and discovery. The disposition of the claims of the Class members in a single class action will provide substantial benefits to all

parties and to the Court.

44. Common Questions of Law and Fact Predominate: Citysearch has acted, with respect to the Class, in a manner generally applicable to each class member. There is a well-defined community of interest in the questions of law and fact involved in the action, which affect all class members. There are many questions of law and fact common to the representative Plaintiff and the Class, and those questions substantially predominate over any questions that may affect individual Class members. The questions of law and fact common to the Class – and which predominate over any questions affecting only individual members – include, but are not limited to, the following:

- a. the construction of the Agreement between Citysearch and the class;
- b. whether Citysearch breached its agreement with the class;
- c. whether Citysearch breached the covenant of good faith and fair dealing;
- d. whether Citysearch has taken adequate measures to prevent “click fraud”;
- e. whether Citysearch has properly accounted and for and refunded fees it has wrongfully collected from identified victims of “click fraud; and
- f. whether Plaintiff and the members of the Class have been damaged by the wrongs complained of herein, and if so, the measure of those damages and the nature and extent of other relief that should be afforded.

45. Typicality: Plaintiff’s claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have been similarly affected by Defendants’ common course of conduct since they were all forced to pay for fraudulent clicks and thus were all harmed in substantially the same way by

1 Defendants' actions.

2 46. Adequacy of Representation: Plaintiff will fairly and adequately
3 represent and protect the interests of the Class. Plaintiff is committed to
4 prosecuting this action and has retained competent counsel with substantial
5 experience in prosecuting complex and class action litigation. Plaintiffs and their
6 counsel are committed to vigorously prosecuting this action on behalf of the Class,
7 and have the financial resources to do so. Neither Plaintiff nor their counsel has
8 any interests adverse to those of the Class.

9 47. Superiority of a Class Action: Plaintiff and the members of the Class
10 suffered, and will continue to suffer, harm as a result of defendants' unlawful and
11 wrongful conduct. A class action is superior to other available methods for the
12 fair and efficient adjudication of the present controversy. Individual joinder of all
13 members of the class is impractical. Even if individual class members had the
14 resources to pursue individual litigation, it would be unduly burdensome to the
15 courts in which the individual litigation would proceed. Individual litigation
16 magnifies the delay and expense to all parties in the court system of resolving the
17 controversies engendered by Defendants' common course of conduct. The class
18 action device allows a single court to provide the benefits of unitary adjudication,
19 judicial economy, and the fair and equitable handling of all class members' claims
20 in a single forum. The conduct of this action as a class action conserves the
21 resources of the parties and of the judicial system, and protects the rights of the
22 class member. Furthermore, for many, if not most, class members, a class action is
23 the only feasible mechanism that allows them an opportunity for legal redress and
24 justice.

25 48. Adjudication of individual class members' claims with respect to the
26 Defendant would, as a practical matter, be dispositive of the interests of other
27 members not parties to the adjudication, and could substantially impair or impede
28 the ability of other class members to protect their interests.

FIRST CAUSE OF ACTION

BREACH OF CONTRACT

49. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

50. Citysearch entered into a contract with Plaintiff and the members of the Class.

51. The Agreement contains and contained an implied covenant of good faith and fair dealing that Citysearch would not do anything that would have the effect of injuring the right of Plaintiff and the Class to receive the benefits of the contract.

52. Citysearch breached its contracts with Plaintiff and the Class, and the covenant of good faith and fair dealing, by collecting fees from Plaintiff and the Class for click fraud even though Citysearch knew, or should have reasonably known, that the clicks were not "actual clicks" but rather purposeful clicks made for an improper purpose. City Search further breached its contract with Plaintiff and the Class by failing to implement effecting oversight, investigating oversight and prevention of click fraud.

53. As a direct and proximate result of Citysearch's breach of the covenant of good faith and fair dealing, Plaintiff and the Class have been damaged in an amount to be determined at trial.

WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS

CODE §§ 17200 et seq.

54. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

55. Plaintiff has standing to pursue this claim as Plaintiff has suffered

1 injury in fact and has lost money or property as a result of Citysearch's actions as
2 delineated herein.

3 56. Citysearch's actions as alleged in this complaint constitute an unfair
4 or deceptive practice within the meaning of California Business and Professions
5 Code section 17200 in that Citysearch's actions are unfair, unlawful and/or
6 fraudulent.

7 57. Citysearch's business practices, as alleged herein, are unfair because
8 they offend established public policy and/or are immoral, unethical, oppressive,
9 unscrupulous and/or substantially injurious to its customers in that Citysearch: (a)
10 fails to employ any method to track fraudulent clicks, including clicks originating
11 from its own employees and/or agent and clicks originating from Citysearch's
12 "partner sites"; (b) fails inform its to customers that it does not employ a method
13 to track fraudulent clicks, including clicks originating from its own; and (c)
14 charges customers for invalid clicks.

15 58. Citysearch's business practices, as alleged herein, are unlawful
16 because the conduct constitutes a breach of the Agreement.

17 59. Citysearch's business practices are fraudulent because they are likely
18 to deceive its customers into believing that they will not be charged for "invalid"
19 clicks, when in fact, Citysearch routinely charges its customers for clicks that it
20 knows, or by the exercise of reasonable care, should know are not clicks that
21 originate from potential customers who actively and legitimately chose the
22 advertiser's link.

23 60. Citysearch's alleged wrongful business acts constituted, and
24 constitute, a continuing course of conduct of unfair competition.

25 61. Citysearch's business acts and practices, as alleged herein, have
26 caused injury to Plaintiff and the Class.

27 62. Pursuant to section 17203 of the California Business and Professions
28 Code, Plaintiff and the Class seek an order of this court enjoining Citysearch from

1 continuing to engage in unlawful, unfair, or deceptive business practices and any
2 other act prohibited by law, including those acts set forth in the complaint.

3 63. Plaintiff and the Class also seek an order requiring Citysearch to
4 disgorge all ill-gotten games and full restitution of all moneys it wrongfully
5 obtained from Plaintiff and the Class.

6 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.
7

8 **THIRD CAUSE OF ACTION**

9 **NEGLIGENCE**

10 64. Plaintiff realleges the preceding paragraphs as if fully set forth herein
11 and, to the extent necessary, pleads this cause of action in the alternative.

12 65. Citysearch owed a duty to Plaintiff and the Class to monitor its pay-
13 per-click advertising program for click fraud and to protect Plaintiff and the Class
14 from this unscrupulous practice by utilizing appropriate software and other
15 measures to track fraudulent clicks so that Plaintiff would not be charged for them.
16 Citysearch also owed Plaintiff and the Class a duty to not create incentives for
17 click fraud.

18 66. Citysearch breached its duty to Plaintiff by failing to employ
19 reasonable methods for detecting and preventing click fraud by creating incentives
20 for click fraud and by billing Plaintiff and the Class for fraudulent clicks.

21 67. Citysearch's breach of this duty was the proximate and direct cause of
22 damage to Plaintiff and the Class.

23 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.
24

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff and members of the Class request that the Court
27 enter an order or judgment against the Defendants as follows:

28 1. Certification of the proposed class and notice thereto to be paid by

1 Defendant;

2 2. Adjudge and decree that Defendants have engaged in the conduct
3 alleged herein;

4 3. For restitution and disgorgement on certain causes of action;

5 4. For an injunction ordering Defendants to cease and desist from
6 engaging in the unfair, unlawful, and/or fraudulent practices alleged in the
7 Complaint;

8 5. For compensatory and general damages according to proof on certain
9 causes of action;

10 6. For special damages according to proof on certain causes of action;

11 7. For both pre and post-judgment interest at the maximum allowable
12 rate on any amounts awarded;

13 8. Costs of the proceedings herein;

14 9. Reasonable attorneys fees as allowed by statute; and

15 10. Any and all such other and further relief that this Court may deem just
16 and proper.

17
18 DATED: May 27, 2008

KABATECK BROWN KELLNER LLP

19
20 By


Brian S. Kabateck

Joshua H. Haffner

Alfredo Torrijos

Counsel for Plaintiff and the Proposed Class

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24 **PICK & BOYDSTON, LLP**

Erik S. Syverson

Counsel for Plaintiff and the Proposed Class

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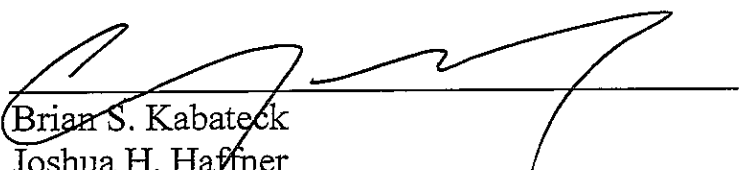
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury in the instant action.

DATED: May 27, 2008

KABATECK BROWN KELLNER LLP

By



Brian S. Kabateck

Joshua H. Haffner

Alfredo Torrijos

Counsel for Plaintiff and the Proposed Class

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Local Listings/TPS Advertiser Terms and Conditions

These Local Listings/TPS Terms and Conditions (the "Agreement") governs your relationship with Citysearch.com ("Citysearch"). By advertising with Citysearch, you (the "Business," "your" or "you") hereby agree to be bound by the terms and conditions of the Agreement set forth below.

1. Term and Termination

This Agreement shall begin on the date set forth on your Enrollment Form and continue for the term identified therein (the "Term"). Thereafter the Term shall renew for successive one (1) month periods (each a "Renewal Term"). In the event you terminate the Agreement prior to the expiration of the Term, or Citysearch terminates the Agreement due to your breach thereof, you shall pay Citysearch the full CAP (defined below) amount (for Performance Package and Multimedia Package customers) or the monthly price (for Basic Package customers), whichever is applicable, that would have been due for the remainder of the Term had you not terminated the Agreement or had Citysearch not terminated the Agreement due to your breach. Such payment is due and payable immediately upon termination. Notice of Business' termination of this Agreement will not be effective unless (a) delivered in writing via email to citysearchcancellations@citysearch.com or via fax to (213) 351-7066, and in either case you must identify your business name and contact phone number, or (b) communicated to a Citysearch customer service representative during the hours of 8:30am 7pm Eastern Daylight Time at (800) 611-4827. Any such termination will require a minimum of five (5) business days for processing during which time Business' advertising may remain on the Citysearch website. Citysearch may terminate the Agreement at any time for any or no reason by providing Business written notice of such termination in accordance with the terms of this Agreement.

2. Business' Advertising with Citysearch

Citysearch reserves the right to modify any elements of Business' advertising, including placement, size, format, text or any other elements and to move the listing within the directory listing categories on Citysearch's website. Citysearch also reserves the right not to display, or to remove, any of Business' advertising on the Citysearch website or a Citysearch distribution partner website, in accordance with Citysearch's advertising guidelines, and subject to inventory availability and Citysearch's normal course of business. Citysearch may at its sole discretion (i) distribute Business' advertising through Citysearch's third party distribution partners and (ii) include Business' advertising in Citysearch's search engine marketing program. Citysearch reserves the right to include an image, from Citysearch's proprietary image gallery, into Business' advertising. Business may elect to remove such image at any time by notifying Citysearch and/or accessing Business' MyAccount. Business also grants Citysearch an irrevocable (during the term of this Agreement) right and license to copy, display and modify Business' logo and/or trademark for inclusion on Business' advertising on the Citysearch website and the websites of Citysearch's distribution partners, as well as for use in Citysearch's marketing or promotional materials, online postings, emails, or any other media, and you agree that you shall not be entitled to payment associated with Citysearch's use of the foregoing.

3. Advertising Packages and Related Fees

- a. **Performance Package.** The Performance Package is Citysearch's pay for performance advertising program where businesses set a monthly advertising budget (the "CAP") and pay for Click-Throughs or Program Calls (defined below) up to the CAP. On a monthly basis, Business shall pay to Citysearch a monthly listing fee and the cost per click and/or cost per call for each Click-Through and/or for each Program Call, up to the CAP set forth on the Enrollment Form. "Click-Throughs" are defined as (i) clicks on Business' advertising located on the Citysearch website or a Citysearch distribution partner website, which directs users to Business' website or Business' profile page on the Citysearch website, (ii) clicks directing users to Citysearch partner web pages containing Business' enhanced content, or (iii) clicks on certain content links located on Business' Citysearch profile page. A "Program Call" occurs when (iv) a user calls the Citysearch-assigned number, wherever displayed, and is redirected to that phone number provided by Business, (v) a user clicks on Business' Click To Talk icon and is presented with a web page into which the user types the user's phone number, or (vi) Citysearch facilitates the connection of a phone call between a user and Business through a third party telephone directory partner. Each month you agree to pay the monthly listing fee identified on your Enrollment Form. You may increase your CAP amount in MyAccount, or you may instruct your Citysearch account manager to make such an increase; however, you understand and agree that during the Term you may not decrease your CAP.
- b. **Basic Package.** The Basic Package includes a customized business profile page, ad writing service, and enhanced search results. Basic Package advertising does not include distribution through Citysearch's partner network. You agree to pay to Citysearch the listing fee set forth in the Enrollment Form on a monthly basis.
- c. **Multimedia Package.** If you are a Performance Package advertiser (in which case the terms in Section 3a above apply to your advertising, in addition to the terms in this Section 3c), you may choose to have Citysearch, through its contractors, shoot and produce a video commercial of your business (a "Pro Video") for inclusion into your advertising. Alternatively, if you are a Performance Package or a Basic Package advertiser, you may submit to Citysearch raw footage of your business for Citysearch to edit and produce a video commercial (a "Starter Video"), or you may submit a previously edited and produced video commercial of your business (a "Pre-Produced Video") for inclusion into your advertising (Pro Video, Starter Video, and Pre-Produced Video collectively referred to herein as "Merchant Videos" and individually as a "Merchant Video"). Business represents and warrants that the video content and any portions thereof submitted to Citysearch for the creation of a Starter Video or Pre-Produced Video (1) does not contain any content that is

vulgar, obscene, pornographic, or otherwise offensive in nature and (2) does not infringe on a third parties' intellectual property rights. Business further represents and warrants that it has secured any and all necessary rights and authority from third parties (including but not limited to any persons appearing in any video content submitted to Citysearch, and any music or audio included in such video content) to transfer ownership (or grant a license) of such video content to Citysearch, as described below, and for Citysearch's use of such video content. Business understands and agrees that Citysearch has sole and complete discretion as to the final edited version of the Pro Video or Starter Video that will be displayed as part of Business' advertising. Business further understands and agrees that it is not entitled to any fees or compensation at any time for Citysearch's use of a Merchant Video or any derivative works thereof. Upon Citysearch's prior written consent, and in Citysearch's sole discretion, Business may link to and/or display the Merchant Video on Business' website solely in the manner directed by Citysearch while the Agreement remains in effect.

- i. **Pro Video.** The terms in this section only apply to Businesses who choose to have Citysearch, through its contractors, create a Pro Video. Prior to filming the Pro Video, Business shall be required and agrees to execute a Location Release Agreement. If you cancel the filming less than 72 hours prior to the scheduled appointment time, you will be subject to a Two Hundred Dollar (\$200) cancellation fee, immediately due and payable to Citysearch. Business understands and agrees that Citysearch shall be the sole and exclusive owner of any and all Pro Videos created for Business, and Business agrees that Citysearch may use such Pro Videos in any manner and media now known or hereafter devised throughout the world for any and all purposes. Business shall have no right or claim to the Pro Video, or any part thereof, nor any right or claim to any compensation for any use of the Pro Video by Citysearch, and Business may not use the Pro Video, or any part thereof, in any manner whatsoever or through any medium, online or offline, without the prior written consent of an authorized Citysearch representative.
- ii. **Starter Video.** The terms in this section only apply to Businesses who choose to have Citysearch create a Starter Video. Any raw footage submitted to Citysearch for the purpose of creating a Starter Video must be less than 30 minutes in length (or as otherwise specified by Citysearch). Citysearch shall not be responsible for any damage to the video submitted to Citysearch, and Business understands and agrees that it will be required to submit the raw footage to Citysearch in a manner, format (digital or otherwise), and size specified by Citysearch. Business understands and agrees that Citysearch shall be the sole and exclusive owner of any and all Starter Videos created for Business, and Business agrees that Citysearch may use such Starter Videos in any manner and media now known or hereafter devised throughout the world for any and all purposes. Business shall have no right or claim to the Starter Video or any part thereof, nor any right or claim to any compensation for any use of the Starter Video by Citysearch, and Business may not use the Starter Video, or any part thereof, in any manner whatsoever or through any medium, online or offline, without the prior written consent of an authorized Citysearch representative.
- iii. **Pre-Produced Video.** The terms in this section only apply to Businesses who choose to have Citysearch include a Pre-Produced Video in its Citysearch advertising. Business hereby grants to Citysearch an irrevocable, transferable, sublicensable, royalty-free right and license during the Term to use and display the Pre-Produced Video, or any portion thereof, in connection with Business' advertising on the Citysearch website or Citysearch partner websites, Citysearch's marketing activities, or as Citysearch may otherwise desire. Business agrees that Citysearch may use the Pre-Produced Video in any manner and media now known or hereafter devised, and Business shall have no right or claim to any compensation for any use of the Pre-Produced Video by Citysearch. Citysearch may reject any Pre-Produced video in Citysearch's sole discretion.
- d. **Priority Listing.** The Priority Listing product enables advertisers to associate their ad exclusively to a particular sales category (e.g., plumbers, banks, etc.) and have their ad displayed at the top of search results pages relevant to that category on the Citysearch website. Priority Listing advertising may include distribution through Citysearch's partner network. During the Term, Citysearch shall display Business' Priority Listing advertising on the Citysearch website in accordance with and as specified in the Enrollment Form. You agree to pay to Citysearch the listing fee set forth in the Enrollment Form on a monthly basis in accordance with the terms of this Agreement.
- e. **Targeted Profile Sponsorship.** The Targeted Profile Sponsorship ("TPS") product enables advertisers to have their ad displayed on certain non-customer profile pages on the Citysearch website. TPS advertising may include distribution through Citysearch's partner network. During the Term, Citysearch shall display Business' TPS advertising on the Citysearch website in accordance with and as specified in the Enrollment Form. You agree to pay to Citysearch the listing fee set forth in the Enrollment Form on a monthly basis in accordance with the terms of this Agreement.
- f. **Billing.** Your charges will occur monthly at the end of each thirty (30) day billing cycle, and you agree that Citysearch reserves the right to charge your method of payment for the first month's CAP amount and any applicable fees on the date you sign up to advertise with Citysearch. You agree that payment will be made by Citysearch initiating an ACH transfer or processing your credit card. Business will be responsible for any charges or other commitments set forth in the Enrollment Form or that you otherwise agree to. The above fees shall continue to accrue during the Term of the Agreement. Accounts more than thirty (30) days past due may, at Citysearch's discretion, incur a \$25 late fee and Business shall be liable for its entire outstanding balance and shall reimburse Citysearch for all costs incurred related

to any attempted recovery thereof, including but not limited to reasonable attorneys fees, and any costs of collection agencies. In addition, Citysearch may charge Business interest on a monthly basis equal to twelve percent (12%) per annum for invoices not paid within sixty (60) days from the date thereof. Business understands and agrees that non-payment of invoices in two consecutive billing periods will be deemed to be a breach of this Agreement allowing Citysearch to cancel Business' account at its sole discretion and requiring Business to pay the amounts that would have been due for the remainder of the Term as further described above.

4. Business' Representations and Warranties

Business represents and warrants to Citysearch that (i) Business owns all artwork, text, trademarks, business names and/or other materials that it provides to Citysearch ("Business' Content"), and none of the Business' Content shall infringe upon the intellectual property rights of any third party; (ii) Business' performance hereunder will not cause a material breach of any agreement to which it is a party; (iii) Business has the right and authority to enter into this Agreement and perform the obligations herein; (iv) Business will at all times comply with all applicable laws and regulations; and (v) Business will not provide to Citysearch, and Business' website does not contain, any content that is obscene, pornographic or otherwise offensive in nature. If Business represents on the Enrollment Form that it is not enrolled in a search engine marketing campaign with a third party, Business agrees that it will not enroll with a third party's search engine marketing program during the Term of the Agreement.

5. Indemnification

Business shall fully protect, indemnify and defend Citysearch and all of its agents, officers, directors, shareholders, suppliers, partners, employees and each of their successors and assigns ("Indemnified Parties") and hold each of them harmless from and against any and all claims, demands, liens, damages, causes of action, liabilities of any and every nature whatsoever, including but not limited to personal injury, intellectual property infringement, fraud, deceptive advertising, violation of any state or federal laws or regulations, property damage, attorneys' fees and court costs, based upon or arising in any manner, directly or indirectly, out of or in connection with or in the course of or incidental to (i) any breach of Business' representations, warranties, or obligations as provided in this Agreement, and (ii) Business' advertising, products or services, or the provision thereof to consumers, Business' website, and any Business Content and any video or audio content submitted to Citysearch by Business, REGARDLESS OF CAUSE OR OF ANY FAULT OR NEGLIGENCE OF CITYSEARCH OR THE INDEMNIFIED PARTIES AND WITHOUT REGARD TO CAUSE OR TO ANY CONCURRENT OR CONTRIBUTING FAULT, STRICT LIABILITY OR NEGLIGENCE, WHETHER SOLE, JOINT OR CONCURRENT, ACTIVE OR PASSIVE BY CITYSEARCH OR THE INDEMNIFIED PARTIES.

6. Agencies

If Business executes an Enrollment Form on behalf of a third party advertiser as an agency, Business hereby represents and warrants to Citysearch that such third party advertiser ("Third Party Advertiser") is contractually bound by the terms of this Agreement and as such is subject to all obligations and restrictions applicable to Business hereunder and all representations and warranties made by Business hereunder. In furtherance of the foregoing, Business agrees to indemnify, defend and hold harmless Citysearch, its subsidiaries, affiliates, agents, partners, officers, directors, employees, and vendors and suppliers from and against any loss, cost, claim, injury or damage (including reasonable attorneys' fees) resulting from claims or actions arising out of or in connection with a breach of this Agreement by any Third Party Advertiser.

7. Limitation of Liability

IN NO EVENT WILL CITYSEARCH BE LIABLE TO BUSINESS FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES, LOST REVENUE, LOST PROFITS OR LOSS OF GOODWILL. IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF CITYSEARCH TO BUSINESS EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY BUSINESS TO CITYSEARCH DURING THE PRECEDING SIX (6) MONTHS, REGARDLESS OF THE BASIS OR FORM OF CLAIM.

8. Disclaimer of Warranties and Guarantees

BUSINESS ACKNOWLEDGES AND AGREES THAT CITYSEARCH'S SERVICES ARE PROVIDED TO BUSINESS ON AN "AS IS" BASIS, AND CITYSEARCH DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW. FURTHERMORE, TO THE FULLEST EXTENT PERMITTED BY LAW, CITYSEARCH DISCLAIMS ALL WARRANTIES AND GUARANTEES REGARDING AN ADVERTISEMENT'S POSITIONING OR THE NUMBER OF IMPRESSIONS ON THE CITYSEARCH WEBSITE OR A CITYSEARCH PARTNER WEBSITE, THE QUALITY OR TIMING OF CLICK-THROUGHS, CLICK-THROUGH RATES, CONVERSIONS OR OTHER PERFORMANCE OR RESULTS FOR ANY ADVERTISING.

9. Other Terms

The terms of this Agreement and the Enrollment Form may be changed by Citysearch from time to time, and any notices hereunder shall be made, by providing you with email or written notice, or by posting any such changes on the Citysearch website, and you agree to be bound by any changes. Business acknowledges and agrees that Citysearch may from time to time send surveys and other marketing-related correspondence to Business via electronic or standard mail, and that Business may opt-out from receiving such correspondence in the future. In addition, Business agrees that it is required to maintain a current and operational email address on file with Citysearch. Business will be liable for any attorneys' fees and costs if Citysearch takes any legal action to enforce this Agreement. The laws of the State of California (excluding the laws and principles with respect to conflicts of law) govern this Agreement. You hereby consent and agree that the state or federal courts in Los Angeles, California are the exclusive forum for litigation of any claim by you arising under this Agreement, and you submit to sole and exclusive jurisdiction in Los Angeles, California, and hereby irrevocably waive and relinquish any right to bring, or cause to be brought, any such action, or to have any such action brought, in any judicial or administrative forum outside Los Angeles, California.

About Us



Citysearch is a leading online lifestyle guide with the most up-to-date information on businesses, from restaurants and spas, to hotels and retail. Citysearch helps people make informed decisions about where to spend their time and money by delivering trusted content, local expertise, and useful tools -- including 14.5 million business listings, over 600,000 user reviews, and ratings on over 2 million business locations nationwide.

In March 2007, Citysearch expanded its coverage of local businesses by acquiring Insider Pages. With over 600,000 customer reviews from members across the U.S. and over two and half million people, InsiderPages.com was created to help people find the best local businesses through recommendations from their friends and neighbors.

Executive Staff

Jay Herratti - CEO

Neil Salvage - Executive Vice President, Sales & Service

Khalid "Hal" Oreif - Executive Vice President, Technology

John Cherry - Vice President, Finance

Dena Grablowsky - Vice President, Human Resources

Robert Rhoden - Vice President, Search Engine Marketing & Optimization

Michael Phillips - Vice President, Consumer Product

Rob Angel - Vice President, Media and Advertising

Robert Moritz - Vice President & Editor-in-Chief

Lee Spiegler - Vice President & General Counsel

Eric Peacock - General Manager, Insider Pages

Advertise on Citysearch

We connect you to more customers. You only pay for results. Advertise on Citysearch today and only pay for clicks to your Website or business profile page. [Learn more](#)

Career Opportunities

For specific career opportunities at Citysearch, please see the Citysearch Careers page on the IAC site.

To submit a résumé for general consideration, please send an email to jobs@citysearch.com.

Connect With all the Right Customers

Create your ultimate web ad on Citysearch, and get premium placement on the Web's top sites



Customize Your Message
Create your own Citysearch page and share an in-depth view of your business



Reach Millions
Get exposure on Citysearch as well as top websites like Yahoo & Google



Watch Your Business Grow
Enjoy instant credibility with new, local customers who are ready to buy



Learn more by clicking the links below

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[PACKAGES](#)

[SUCCESS STORIES](#)

[FAQ](#)

[CONTACT US](#)



Already an advertiser? Click here

Questions? We have answers

Q: How long does it take for my business listing to go live on Citysearch?
A: It usually takes 72 hours for a completed new listing to go live on Citysearch.com.

Q: Do I need a website to advertise with Citysearch?
A: No. When you sign up, you can use your Citysearch profile page to give consumers an in-depth view to your business, with no need for a website. If you do have a website, you can place a link to your website on your Citysearch page.

Q: How do I edit and manage my online advertising?
A: Citysearch provides access to the "MyAccount" tool (www.myaccount.citysearch.com) where customers can update their ad, make changes to their account and respond to user reviews 24 hours/day, 7 days/week.

Q: Can I check to see how my listing is performing?
A: Yes, using MyAccount, advertisers with a Performance Package can access key account information including how many connections your ad is generating.

Q: When I make changes to my advertisement in MyAccount, when can I see them online?
A: Changes take 24-48 hours to be posted online.

Q: How do I know that clicks to my website are legitimate?
A: Citysearch proactively researches and develops processes, policies, and technologies to identify invalid click activity with regard to our customers' advertising. Citysearch employs advanced security filters and blocks out clicks from spiders and robots.

Q: I've lost my password or can't log into MyAccount. What do I do?
A: Please email customer service at myaccount@citysearch.com, and they will send you your log-in information.

Q: When do I get billed?
A: We bill every 30 days from the date you sign up (at the end of your 30-day billing cycle).

Ready to get started? Save \$30 off your first month. Sign Up >

Invalid Click Policy

As a leader in Local Pay for Performance advertising, one of Citysearch's key concerns is detection of invalid clicks. Citysearch proactively researches and develops processes, policies, and technologies to identify invalid click activity with regard to our customers' advertising. We are committed to protecting our customers' investment in Local Pay for Performance Advertising with us.

Citysearch actively monitors and analyzes clicks to our customers' advertising to try to detect any abuse of our Local Pay for Performance advertising program. Citysearch attempts to prevent clicks that are caused by automated robots or spiders, clicks generated from within the Citysearch organization, or clicks which show a pattern of fraudulent use.

1. How does Citysearch monitor to detect invalid clicks?

Citysearch uses both click and search data to create pattern recognition-based inferences about which clicks are valid and which are not. We use both the user session information and the user cookie information to attempt to identify any invalid clicks that may be artificially driving up an advertiser's clicks.

2. What kind of clicks can Citysearch detect and remove?

Citysearch works to detect and filter out spiders or robots. Most spiders or robots follow the directives we put in the code on our site instructing them not to spider our search listings, however, third parties may employ spiders, robots or other similar web crawling technology designed to circumvent our filters and detection mechanisms.

Citysearch also has sophisticated algorithms to track sessions and user behavior on our site, to assist us in identifying click patterns that would indicate invalid clicks. In the event we identify a click as invalid, our customers are not charged for such clicks.

3. What can I do if I feel I have been charged for unwarranted clicks?

While we endeavor to charge customers solely for valid clicks, we cannot ensure that all invalid clicks will be detected. Therefore, please contact Citysearch Customer Service at 800-614-4827 if you have any questions or concerns about clicks charged to your account, and a customer service specialist will investigate your account.

At Citysearch, we strive to develop better ways to protect your advertising investment and to ensure an exceptional experience with us.