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IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF ARIZONA

Heather Knight, individually and on behalf of all others similarly situated,

Plaintiff,

v.

Patagonia, Inc.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Heather Knight, individually and on behalf of all others similarly  
2 situated, as set forth herein, alleges as follows:

3 **NATURE OF THE ACTION**

4 1. This is a class action on behalf of persons in the State of Arizona that  
5 opened emails sent to them by Defendant Patagonia, Inc. (“Defendant” or  
6 “Patagonia”) due to Defendant’s violations of Arizona’s Telephone, Utility and  
7 Communication Service Records Act, A.R.S. § 44-1376 *et seq.*

8 2. Defendant is one of the nation’s premier retailers of outdoor recreation  
9 clothing. To maximize sales, Defendant solicits customers to sign up for its email  
10 marketing list.

11 3. Plaintiff and Class members are subscribers to Defendant’s email  
12 marketing list.

13 4. Defendant embeds hidden spy pixel trackers within its emails. These  
14 trackers capture and log sensitive information including the time and place  
15 subscribers open and read their messages, how long the subscriber’s read the email,  
16 subscribers’ location, subscribers’ email client type, subscribers’ IP address,  
17 subscribers’ device information and whether and to whom the email was forwarded  
18 to. Defendant never received subscribers’ consent to collect this private  
19 information.

20 5. Defendant’s invasive surveillance of Plaintiff’s sensitive reading habits  
21 and clandestine collection of her confidential email records invaded her privacy and  
22 intruded upon her seclusion.

23 6. By failing to receive consent from Plaintiff and Class members,  
24 Defendant is violating Arizona’s Telephone, Utility and Communication Service  
25 Records Act, a statute that prohibits procuring or attempting to procure the  
26 communication service records of email recipients without their authorization.

27 **THE PARTIES**

28 7. Plaintiff is a resident of Arizona, residing in Tucson, Arizona. Within

1 the past two years, Plaintiff has received promotional emails from Defendant.

2 8. From approximately 2014, Plaintiff frequently opened emails from  
3 Defendant to review promotional materials. Plaintiff most recently opened one of  
4 Defendant's emails in March 2024.

5 9. Each time Plaintiff opened an email from Defendant, Defendant  
6 procured her sensitive email information including the time and place she opened  
7 and read the messages, how long she read the email, her location, her email client  
8 type, her IP address, her device information and whether and to whom the email  
9 was forwarded to.

10 10. Defendant never received consent from Plaintiff to procure her private  
11 email records.

12 11. Defendant Patagonia, Inc. is a California corporation with its principal  
13 place of business in Ventura, California.

14 **JURISDICTION AND VENUE**

15 12. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §  
16 1332(d)(2)(A), as amended by the Class Action Fairness Act of 2005 ("CAFA"),  
17 because this case is a class action where the aggregate claims of all members of the  
18 proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, and  
19 there are over 100 members of the putative class, and Plaintiffs, as well as most  
20 members of the proposed class, are citizens of different states than Defendant.

21 13. The Court has personal jurisdiction over Defendant because Defendant  
22 has purposefully availed itself of the laws and benefits of doing business in this  
23 State, and Plaintiff's claims arise out Defendant's forum-related activities.  
24 Furthermore, a substantial portion of the events giving rise to Plaintiff's claims  
25 occurred in this District.

26 14. Venue is proper in this District because a substantial part of the events,  
27 omissions, and acts giving rise to the claims herein occurred in this District.  
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## FACTS SUPPORTING PLAINTIFF'S CLAIM

### A. The HP Spying Scandal and A.R.S. § 44-1376

15. In 2001, Hewlett-Packard “embark[ed] on one of the largest and most difficult mergers in American business history.”<sup>1</sup> Spearheaded by then-CEO Carly Fiorina, HP sought to acquire a rival company, Compaq, Inc., in a deal valued at \$25 billion.<sup>2</sup>

16. “Widely considered one of the worst tech mergers in history,”<sup>3</sup> the economic fallout from the acquisition began immediately.<sup>4</sup> By 2004, “Hewlett-Packard’s stock had dropped below seventeen dollars, from a high of more than sixty dollars, in 2000.”<sup>5</sup> Industry insiders took note, with a “consensus” believing that “the new HP, the tech industry’s most sprawling conglomerate, ha[d] lost its focus and [was] being squeezed between two formidable rivals with much clearer business models, Dell and IBM.”<sup>6</sup>

17. In January 2005, a few days before HP’s annual retreat, two board members, Patricia Dunn and George Keyworth, met with Fiorina to discuss their

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<sup>1</sup> Michael Malone, *The H-P-Compaq Mess Isn’t All Carly’s Doing*, WALL. ST. J. (May 21, 2002), <https://www.wsj.com/articles/SB1021933260918245440>.

<sup>2</sup> Andrew Ross Sorkin, *Hewlett-Packard in Deal to Buy Compaq for \$25 Billion in Stock*, N.Y. TIMES (Sept. 4, 2001), <https://www.nytimes.com/2001/09/04/business/hewlett-packard-in-deal-to-buy-compaq-for-25-billion-in-stock.html>.

<sup>3</sup> PCMag Staff, *The Biggest Tech Mergers and Acquisitions of All Time*, PCMAG (Apr. 12, 2021), <https://www.pcmag.com/news/the-biggest-tech-mergers-and-acquisitions-of-all-time>.

<sup>4</sup> Mike Musgrove, *HP Posts \$2 Billion Loss in First Full Quarter with Compaq*, WASH. POST (Aug. 28, 2002), <https://www.washingtonpost.com/archive/business/2002/08/28/hp-posts-2-billion-loss-in-first-full-quarter-with-compaq/2486859a-b55c-4247-9f0a-cb1d839b68d8/>.

<sup>5</sup> James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007), <https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

<sup>6</sup> The Economist Staff, *Losing the HP way*, THE ECONOMIST (Aug. 19, 2004), <https://www.economist.com/business/2004/08/19/losing-the-hp-way>.

1 concerns about the company’s direction.<sup>7</sup> Fiorina sought to placate Dunn and  
2 Keyworth, “agree[ing] to tear up her agenda for the board’s strategy retreat ... and  
3 focus instead on the directors’ concerns.”<sup>8</sup> But shortly after the retreat, “a reporter  
4 for the *Wall Street Journal*, Pui-Wing Tam, called to confirm details that Tam had  
5 learned about the retreat, including assertions that Fiorina had lost the confidence of  
6 the board and that operating responsibilities would soon be shifted away from her.”<sup>9</sup>  
7 “Clearly, someone at the retreat, which was attended only by board members and  
8 top executives, had leaked proprietary information.”<sup>10</sup>

9 18. Fiorina responded with fury. After “call[ing] the board members  
10 together on the phone,” Fiorina “dressed them down for giving details of the  
11 meeting.”<sup>11</sup> But that response only further inflamed tensions between Fiorina and  
12 the board, and less than two weeks after the retreat, the board met again, this time  
13 without Fiorina, and voted to dismiss her.<sup>12</sup>

14 19. Despite Fiorina’s departure, board members remained perturbed by the  
15 disclosures to the press, and so when elevating Patricia Dunn to nonexecutive  
16 chairwoman and tasking her with choosing Fiorina’s successor, the board also  
17 provided Dunn with another mandate: “stop the board leaks.”<sup>13</sup>

18 20. Dunn promptly initiated an investigation, code-naming it “Project  
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21 <sup>7</sup> James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007),  
22 <https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

23 <sup>8</sup> Alan Murray, H-P Board Clash Over Leaks Triggers Angry Resignation, WALL  
24 ST. J. (Sept. 6, 2006), <https://www.wsj.com/articles/SB115749453036454340>.

25 <sup>9</sup> James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007),  
26 <https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

27 <sup>10</sup> *Id.*

28 <sup>11</sup> Alan Murray, H-P Board Clash Over Leaks Triggers Angry Resignation, WALL  
ST. J. (Sept. 6, 2006), <https://www.wsj.com/articles/SB115749453036454340>.

<sup>12</sup> *Id.*

<sup>13</sup> James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007),  
<https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

1 Kona.”<sup>14</sup> But before Project Kona could get off the ground, another more damaging  
2 leak came to light.<sup>15</sup> In the months after Fiorina’s removal, Dunn selected Mike  
3 Hurd, a CEO at a competitor company, to serve as HP’s new CEO.<sup>16</sup> However,  
4 before the board could make an announcement, a reporter from *Business Week*  
5 reached out, asking for comment on Hurd’s selection.<sup>17</sup> Because Hurd had not yet  
6 left the other company, revealing his candidacy before he resigned could potentially  
7 derail the process.<sup>18</sup> Although Hurd would go on to become HP’s CEO without  
8 issue, the new disclosure added urgency to determining who was behind the leaks.<sup>19</sup>  
9 For Dunn, Project Kona was the way to find out.<sup>20</sup>

10 21. To staff Project Kona, Dunn turned to a security manager at HP, Kevin  
11 Huska, who, in turn, “referred Dunn to an outside investigator named Ronald R.  
12 DeLia, whose firm, Security Outsourcing Solutions, based in Boston, had been  
13 under contract to Hewlett-Packard for some ten years.”<sup>21</sup> Throughout the summer  
14 of 2005, Dunn received regular updates from DeLia, including one call where he  
15 “revealed that his investigators had obtained private phone records of reporters.”<sup>22</sup>  
16 DeLia received these records through “pretexting,” which, in his own words,  
17 “involved investigators requesting information from [telephone] operators orally,  
18 over the phone, pretending to be someone else if necessary.”<sup>23</sup> Notwithstanding this  
19 invasion of privacy, Project Kona failed to pinpoint a leaker, and as the year winded  
20 down, so too did the investigation.<sup>24</sup>

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21 <sup>14</sup> *Id.*

22 <sup>15</sup> *Id.*

23 <sup>16</sup> *Id.*

24 <sup>17</sup> *Id.*

25 <sup>18</sup> *Id.*

26 <sup>19</sup> *Id.*

27 <sup>20</sup> *Id.*

28 <sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

1           22. Then, in January 2006, a reporter from CNET named Dawn  
2 Kawamoto published an “inside account of the company’s retreat, held two weeks  
3 earlier.”<sup>25</sup> The substance of the article was innocuous, but at HP, “the story was  
4 met with alarm.”<sup>26</sup> In response to the leak, “[a] new investigation was immediately  
5 launched, which Dunn called Kona II.”<sup>27</sup> HP’s general counsel, Ann Baskins,  
6 “asked an employment lawyer at the company, Kevin Hunsaker, to head the  
7 renewed investigation.”<sup>28</sup> “With Hunsaker in day-to-day charge, the investigators  
8 undertook their mission with extraordinary zeal,” pretexting phone companies to  
9 obtain records for reporters, directors, and employees.<sup>29</sup>

10           23. In addition to pretexting, the investigators also took a new approach.<sup>30</sup>  
11 Posing as a disgruntled employee, they emailed Kawamoto with the promise of  
12 revealing damaging information about the company.<sup>31</sup> Unbeknownst to Kawamoto,  
13 the investigators utilized “ReadNotify,” a tracker that, once embedded into an  
14 email, allowed them to “track the path [the] message takes, including whether [the]  
15 recipient opens the message.”<sup>32</sup> “[A] technique also employed by some e-mail  
16 marketers,”<sup>33</sup> the investigators hoped that Kawamoto would “forward the e-mail to  
17 her source,” thereby revealing who had leaked the confidential information.<sup>34</sup>

18           24. ReadNotify failed to yield results, with Kawamoto declining to  
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20 <sup>25</sup> *Id.*

21 <sup>26</sup> *Id.*

22 <sup>27</sup> *Id.*

23 <sup>28</sup> *Id.*

24 <sup>29</sup> *Id.*

25 <sup>30</sup> *Id.*

26 <sup>31</sup> *Id.*

27 <sup>32</sup> Robert McMillan, *HP’s e-mail tracer in widespread use*, COMPUTERWORLD (Oct.  
28 10, 2006), <https://www.computerworld.com/article/2820287/hp-s-e-mail-tracer-in-widespread-use.html>

<sup>33</sup> *Id.*

<sup>34</sup> Joris Evers, *How HP bugged e-mail*, CNET (Sept. 29, 2006),  
<https://www.cnet.com/news/privacy/how-hp-bugged-e-mail/>.

1 forward the email.<sup>35</sup> But this time around, after combing through the phone  
2 records, investigators discovered that a board member, George Keyworth, had a  
3 short conversation with Kawamoto right before the article was published.<sup>36</sup> After  
4 the revelation, the board confronted Keyworth, who admitted to having lunch with  
5 the reporter and “say[ing] some nice things about Mike Hurd.”<sup>37</sup> The board  
6 responded by voting on a motion to request Keyworth’s resignation.<sup>38</sup> After the  
7 motion passed, a board member who dissented, Mark Perkins, quit in protest.<sup>39</sup>  
8 Keyworth, for his part, refused to step aside, “saying the shareholders had elected  
9 him, and he felt the punishment was out of proportion to the offense.”<sup>40</sup>

10 25. Perkins did not go quietly.<sup>41</sup> After resigning from the board, Perkins  
11 retained a lawyer, Viet Denh, who “contacted the S.E.C., the U.S. Attorney’s  
12 offices in Manhattan and San Francisco, the California Attorney General, the  
13 F.C.C., and the F.T.C.”<sup>42</sup>

14 26. Once HP’s tactics were made public, the reaction was swift and  
15 overwhelming. In September 2006, Congress held a hearing on the scandal, asking  
16 Dunn and other witnesses to answer two questions: “Exactly what did they know  
17 about the use of pretexting,” and “[w]hat did they know about planting spyware on  
18 an email to a journalist.”<sup>43</sup> The witnesses verified that investigators employed both  
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20 <sup>35</sup> James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007),  
21 <https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

22 <sup>36</sup> *Id.*

23 <sup>37</sup> *Id.*

24 <sup>38</sup> *Id.*

25 <sup>39</sup> *Id.*

26 <sup>40</sup> *Id.*

27 <sup>41</sup> *Id.*

28 <sup>42</sup> *Id.*

<sup>43</sup> Hewlett-Packard's Pretexting Scandal: Hearing Before the Subcomm. on  
Oversight and Investigations of the H. Comm. on Energy and Commerce, 109th  
Cong. 45 (2006), <https://www.govinfo.gov/content/pkg/CHRG-109hhr31472/html/CHRG-109hhr31472.htm>.



1 methods to gather evidence, but they maintained that their conduct was lawful.<sup>44</sup>  
2 Throughout the hearing, members of Congress called for a law that would prohibit  
3 these practices, with one member remarking that “[t]he growing market for  
4 personal information is enormous, and many of us have seen this, and that is why  
5 we need to pass legislation to stop this.”<sup>45</sup> When another member asked Dunn  
6 whether it “strike[s] you as a permissible tactic to use, attaching a tracking device  
7 onto an e-mail,” Dunn replied, “[i]t is kind of surprising that it is legal, isn’t it?”<sup>46</sup>  
8 Still another member lamented that email trackers were “equivalent to going  
9 through the mail in my mailbox.”<sup>47</sup>

10 27. Six days after the hearing, the California Attorney General indicted  
11 Dunn, Hunsaker, DeLia, and two private investigators involved in both iterations of  
12 Project Kona.<sup>48</sup> A few months after that, Congress passed the Telephone Records  
13 and Privacy Protection Act of 2006, a law that criminalizes “knowingly and  
14 intentionally obtain[ing], or attempt[ing] to obtain, confidential phone records  
15 information of a covered entity, by making false or fraudulent statements or  
16 representations to an employee of a covered entity.” 18 U.S.C. § 1039(a)(1). That  
17 law, as the text suggests, only prohibits pretexting, not the use of email trackers.

18 28. After Congress enacted the Telephone Records and Privacy Protection  
19 Act of 2006, the Arizona legislature went a step further, passing a law that  
20 addressed *both* methods used by HP’s investigators. Like the federal law, this new  
21 Arizona law prohibits any person from procuring or conspiring with another to  
22 procure “a telephone record” of residents without consent. But, in addition, the  
23 new law also prohibits procurement of any “communication service record”

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24 \_\_\_\_\_  
25 <sup>44</sup> *Id.*

26 <sup>45</sup> *Id.*

27 <sup>46</sup> *Id.*

28 <sup>47</sup> *Id.*

<sup>48</sup> James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007),  
<https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

1 (including email records) of “any resident of this state without the authorization of  
2 the customer to whom the record pertains, or by fraudulent, deceptive, or false  
3 means.” Ariz. Rev. Stat. Ann. § 44-1376.01. And while Congress declined to  
4 include a private right of action in the federal law, the Arizona legislature allowed  
5 residents to pursue civil remedies. Ariz. Rev. Stat. Ann. § 44-1376.04(2).

### 6 **B. Email Pixels**

7 29. Despite Arizona law prohibiting the practice, companies still embed  
8 trackers within emails without first obtaining consumers’ consent. Indeed, “[a]  
9 2018 Princeton study on email tracking tested over 12,000 emails from 900 senders  
10 offering mailing list subscriptions and found that 70% contained trackers.”<sup>49</sup>

11 30. These trackers, known as “spy pixels,” enable companies to learn  
12 information about the email transfer, including when and where the email was  
13 opened. Pixel are used to log when the recipient accesses the email and can record  
14 the number of times an email is opened, the IP address linked to a user’s location,  
15 and device usage.<sup>50</sup>

16 31. The use of spy pixels is a “grotesque invasion of privacy” according to  
17 industry advocates.<sup>51</sup>

18 32. To activate a spy pixel, recipients only need to open the email. The  
19 recipient does not need to directly engage with the pixel—when an email is opened  
20 the tracking pixel is automatically downloaded.<sup>52</sup>

21 33. A spy pixel is typically a 1x1 (one pixel high by one pixel long) image.

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23 <sup>49</sup> Mikael Berner, *The Business of Email Tracking: What To Know About Spy Pixels*  
24 *In Your Inbox*, FORBES (Jun 9, 2022),  
25 <https://www.forbes.com/sites/forbestechcouncil/2022/06/09/the-business-of-email-tracking-what-to-know-about-spy-pixels-in-your-inbox/?sh=2084ee793fec>.

26 <sup>50</sup> Charlie Osborne, *Tracker pixels in emails are now an ‘endemic’ privacy concern*,  
27 ZDNET (Feb. 17, 2021), <https://www.zdnet.com/article/spy-pixels-in-emails-to-track-recipient-activity-are-now-an-endemic-privacy-concern/>.

28 <sup>51</sup> *Id.*

<sup>52</sup> *Id.*

1 “The spy pixel is so small it is basically impossible to see with the naked eye.”<sup>53</sup>

2 34. The spy pixel used by marketers today operate the way as the spy  
3 pixels in the HP pretexting scandal—email activity including who accessed an  
4 email, when, and where an email was accessed is procured through the same  
5 technology, an invisible pixel embedded in the email code which allows the sender  
6 to log and track that information.

### 7 C. Defendant’s Spy Pixel Tracking

8 35. Defendant uses its own spy pixel to track when customers open their  
9 emails, as pictured in the example below. That tracker records the email address,  
10 the subject of the email, when the email is opened and read, the recipient’s location,  
11 how long the recipient spends reading an email, whether it is forwarded, whether it  
12 is printed, and what kind of email server the recipient uses, among other sensitive  
13 information:

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14 <img src=3D"https://trk.na.patagonia.com/wf/open?upn=[REDACTED]"
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] 3D" alt=3D"" width=3D"1" height=3D"1" border=
19 =3D"0" style=3D"height:1px !important;width:1px !important;border-width:0 !=
20 !important;margin-top:0 !important;margin-bottom:0 !important;margin-right:0=
!important;margin-left:0 !important;padding-top:0 !important;padding-botto-
21 m:0 !important;padding-right:0 !important;padding-left:0 !important;"/></bo-
22 dy></html>
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21 36. Defendant embedded spy tracking pixels in marketing emails  
22 Defendant sent to Plaintiff and Class Members in order to collect the above-listed  
23 sensitive information, unbeknownst to email recipients.

24 37. Plaintiff was unaware that tracking pixels were embedded in the  
25 emails as Defendant does not inform users it embeds tracking pixels in its  
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27 <sup>53</sup> Becky Willeke, *Spy pixels are hiding in your emails; so what can you do about*  
28 *it?*, Fox 2 Now (Mar. 15, 2021), <https://fox2now.com/news/tech-talk/spy-pixels-are-hiding-in-your-emails-so-what-can-you-do-about-it/>.

1 marketing emails. Defendant never received consent from Plaintiff and Class  
2 Members to use these spy pixels.

3 **CLASS ACTION ALLEGATIONS**

4 38. Plaintiff seeks to represent a class (the “Class”) defined as: All persons  
5 within Arizona who have opened a marketing email containing a tracking pixel  
6 from Defendant.

7 39. Excluded from the Class are Defendant, its subsidiaries, affiliates,  
8 officers, directors, assigns and successors, and any entity in which it has a  
9 controlling interest, and the Judge to whom this case is assigned and any member of  
10 his or her immediate family.

11 40. Members of the Class are so numerous that their individual joinder  
12 herein is impracticable. On information and belief, members of the Class number  
13 in the hundreds of thousands. The precise number of Class members and their  
14 identities are unknown to Plaintiff at this time but will be determined through  
15 discovery. Class members may be notified of the pendency of this action by mail  
16 and/or publication through the distribution records of Defendant and third-party  
17 retailers and vendors.

18 41. Common questions of law and fact exist as to all Class members and  
19 predominate over questions affecting only individual Class members. Common  
20 legal and factual questions include, but are not limited to:

- 21 a) whether Defendant “[k]nowingly procure[d], attempt[ed] to procure,  
22 solicit[ed] or conspire[d] with another to procure a ... communication  
23 service record of any resident of this state without the authorization of  
24 the customer to whom the record pertains or by fraudulent, deceptive or  
25 false means” in violation of A.R.S. § 44-1376 *et seq.*;
- 26 b) whether Plaintiff’s and the Class’s “communication service records”  
27 were procured, sold or received in violation of A.R.S. § 44-1376, *et seq.*
- 28 c) whether Defendant’s conduct violates A.R.S. § 44-1376, *et seq.* or any  
other applicable laws; and

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d) whether, as a result of Defendant’s misconduct as alleged herein, Plaintiff and Class members are entitled to restitution, injunctive, and/or monetary relief and, if so, the amount and nature of such relief.

42. Plaintiff’s claims are typical of the claims of Class members because Plaintiff, like all Class members, had her communication service records procured, sold, or received by Defendant.

43. Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the Class members she seeks to represent, she has retained counsel competent and experienced in prosecuting class actions, and she intends to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and her counsel.

44. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff and Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant’s liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant’s liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

**COUNT I**

**Violation of A.R.S. § 44-1376.01**

45. Plaintiff hereby incorporates by reference the allegations contained in

1 all preceding paragraphs of this complaint.

2 46. Plaintiff brings this claim individually and on behalf of the members of  
3 the proposed Class against Defendant.

4 47. Defendant embeds spy pixels in its marketing emails sent to Plaintiff  
5 and Class members.

6 48. The spy pixels are designed to extract “communication service  
7 records” related to the delivery of the email the spy pixel is embedded in. This  
8 includes, but is not limited to, time logs of email access, logs of associated email  
9 addresses, logs of email client type, logs of email path data, logs of recipient  
10 location, logs of IP address, logs of email forwarding data, and logs of device  
11 information.

12 49. Defendant “procures” Plaintiff’s and Class members’ “communication  
13 service records” because they “obtain by any means, including electronically”  
14 Plaintiff and Class member’s “communication service records” as defined in A.R.S.  
15 § 44-1376.

16 50. In contravention of A.R.S. § 44-1376.01, Defendant knowingly  
17 procures “subscriber information, including name, billing or installation address,  
18 length of service, payment method, telephone number, electronic account  
19 identification and associated screen names, toll bills or access logs, records of the  
20 path of an electronic communication between the point of origin and the point of  
21 delivery and the nature of the communication service provided, such as ...  
22 electronic mail ...,” which constitute “communication service records” under  
23 A.R.S. § 44-1376, from Plaintiff and Class members.

24 51. Plaintiff and Class members were never informed by Defendant, and  
25 thus never knew, that Defendant would be procuring sensitive information  
26 including, but not limited to, time logs of email access, associated email addresses,  
27 email client type, email path data, IP addresses, and device information.

28 52. Plaintiff and Class members never gave lawful consent to Defendant to

1 procure the communication service records.

2 53. Each time Defendant sent an email containing a spy pixel, Defendant  
3 procured a communication service record, thus committing a separate violation of  
4 A.R.S. § 44-1376.01.

5 54. Defendant invaded Plaintiff's and Class members' right to privacy by  
6 its invasive surveillance of Plaintiff's and Class members' sensitive reading habits  
7 including on when they opened and read an email. This clandestine collection of  
8 their confidential email records also intruded upon their seclusion.

9 55. Accordingly, Plaintiff, individually and on behalf of the proposed  
10 Class, prays for the relief set forth by the statute, including actual damages, profits  
11 made by Defendant as a result of the violation, \$1,000 for each violation,  
12 reasonable attorneys' fees and other litigation costs reasonably incurred, and such  
13 other equitable relief as the court determines to be appropriate.

14 **REQUEST FOR RELIEF**

15 WHEREFORE, Plaintiff, individually and on behalf of all others similarly  
16 situated, seeks judgment against Defendant, as follows:

- 17 a. For an order certifying the Class under Fed. R. Civ. P 23 and naming  
18 Plaintiff as representative of the Class and Plaintiff's attorneys as Class  
19 Counsel to represent the Class members;
- 20 b. For an order declaring that Defendant's conduct, as set out above, violates  
21 A.R.S. § 44-1376.01;
- 22 c. For an order finding in favor of Plaintiff and the Class on all counts asserted  
23 herein;
- 24 d. For actual damages or damages of \$1,000.00 for each of Defendant's  
25 violations, whichever is more, pursuant to A.R.S. § 44-1376.04;
- 26 e. For damages equal to the sum of any profits Defendant made for each of  
27 Defendant's violations, pursuant to A.R.S. § 44-1376.04;
- 28

- 1 f. For injunctive and other equitable relief as is necessary to protect the  
2 interests of the Class, including, inter alia, an order requiring Defendant to  
3 comply with A.R.S. § 44-1376, *et seq.*
- 4 g. For an order awarding Plaintiff and the Class their reasonable attorneys’  
5 fees and expenses and costs of suit;
- 6 h. For pre- and post-judgment interest on all amounts awarded, to the extent  
7 allowable; and
- 8 i. For such other and further relief as the Court may deem proper.

9 **JURY DEMAND**

10 Plaintiff demands a trial by jury on all causes of action and issues so triable.

11 Dated: May 20, 2024

Respectfully submitted,

12 **WARD, KEENAN & BARRETT, P.C.**

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28 \**pro hac vice forthcoming*

*Attorneys for Plaintiff*