

The Honorable Richard A. Jones

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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE CLASSMATES.COM) No. CV09-45RAJ
CONSOLIDATED LITIGATION)
) AMENDED CONSOLIDATED CLASS
) ACTION COMPLAINT FOR
) VIOLATIONS OF THE WASHINGTON
COMMERCIAL ELECTRONIC MAIL
ACT AND WASHINGTON CONSUMER
PROTECTION ACT

JURY TRIAL DEMANDED

I. INTRODUCTION

Plaintiffs Anthony Michaels and David Catapano, individually and on behalf of a class of similarly situated parties, complain and allege the following:

1. Classmates Online, Inc. (“Classmates Online”) owns and operates the website www.classmates.com, which is a subscription-based website that purports to reunite “classmates, friends and family, teachers, co-workers, and military personnel.” The Classmates.com database contains millions of records of people from schools, places of work and the military. Classmates.com boasts having up to 50 million registered users, who register with the website at no cost, and approximately 3.8 million subscribers who pay varying subscription fees to access various tools and content.

1 2. Classmates Online’s revenue stream relies heavily on its automated marketing
2 scheme, which it developed with the assistance of its parent companies and Co-Defendants,
3 United Online and Classmates Media Corporation.

4 3. Through this automated marketing scheme, “free” subscribers to the
5 Classmates.com website are required to provide Classmates with personal data, including year of
6 birth, high school name, graduation year, current zip code, and e-mail address, in order to access
7 the Classmates website. Defendants then link their aggressive marketing tactics with computer
8 programming designed to mine and circulate this new data contributed by unsuspecting new
9 Classmates.com “members.”

10 4. Classmates Online and the other Defendants named herein use members’
11 biographical data to generate a series of materially misleading and deceptive electronic mail (“e-
12 mail”) messages to its free and paid subscribers. This ongoing, automated marketing effort is
13 designed to create more hype and draw more traffic – from free or paying subscribers – to the
14 Classmates website. More web traffic means more revenue for Classmates Online, in the form
15 of paying subscribers, advertising revenue, and other “click-based” promotion or payment
16 systems.

17 5. Because of these financial incentives, Defendants are highly motivated to send
18 deceptive e-mails to their subscription base that entice users to open e-mails, click on active
19 hyperlinks, and become routed to the Classmates.com website. Every website visit that
20 Classmates.com receives translates into advertising revenue, a growing subscription base, and
21 greater visibility for Classmates Online and its Co-Defendants named herein.

22 6. Classmates Online and its Co-Defendants named herein intentionally develop,
23 refine, and continue to rely upon this integrated marketing scheme to increase their business. As
24

1 a critical component of their marketing plan, Defendants routinely transmit to their subscribers e-
2 mails with false, materially misleading, and deceptive information in the e-mails' subject lines
3 and bodies. The materially false, misleading, and deceptive information transmitted by
4 Defendants in their e-mails, and the deceptive business practices underlying the transmission of
5 these e-mails, are the subject of this Complaint, as set forth in more detail herein.

6 7. Plaintiffs Anthony Michaels and David Catapano bring this action individually,
7 and on behalf of all others similarly situated, who have received or continue to receive from
8 Defendants false, materially misleading, or deceptive information in the subject line of e-mail
9 messages, after which they purchase subscription services from Defendants based on the
10 reasonable understanding that past acquaintances from school, work or military service are trying
11 to contact them through the www.classmates.com website.

12 8. However, it is not until a class member pays for a premium membership
13 subscription that he or she learns that the misleading e-mails are a deceptive marketing scam.
14 Defendants' actions and inactions injure Plaintiffs and the Class because Plaintiffs do not learn
15 until after paying for a subscription that, despite the reasonable interpretation of Defendants' e-
16 mail subject lines, *none of the people Classmates has identified* have been trying to contact them
17 through the Classmates website. As further set forth below, this action seeks the greater of
18 statutory or actual damages from all Defendants for these practices, as well as injunctive and
19 declaratory relief.
20

21 9. Plaintiffs also challenge Defendants' business practice of sending materially
22 misleading e-mails in order to induce non-refundable paid subscriptions and to otherwise
23 enhance Defendants' businesses as constituting unfair or deceptive acts or practices under
24 chapter 19.86 RCW.
25
26

1 and costs. *See* 28 U.S.C. § 1332(d)(2), (6) (2006). This Court has supplemental jurisdiction over
2 the state law claims pursuant to 28 U.S.C. § 1367.

3 15. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) and (c) in
4 that Defendant Classmates Online, Inc. resides in this district and a substantial part of the events
5 or omissions giving rise to the claims occurred in this district.

6 **III. PARTIES**

7 **A. Plaintiffs**

8 16. **Plaintiff Anthony Michaels** is a resident of San Diego County California.
9 Plaintiff Michaels registered for a free subscription to www.classmates.com on about November
10 15, 2006. At some point soon thereafter, Plaintiff Michaels began receiving numerous e-mails
11 transmitted from Classmates.com and Defendants herein. Although he did not know when he
12 received them that the e-mails were deceptive or omitted material information, the subject lines
13 of the e-mails he received from Defendants routinely conveyed the reasonable impression that
14 former classmates of his were actively trying to contact him through the Classmates.com
15 website. As a result of receiving these e-mails that provided him with the reasonable expectation
16 that others were looking for him, Plaintiff Michaels paid approximately \$9.95 for a “Gold”
17 membership subscription to www.classmates.com on about December 24, 2007. Shortly after
18 paying for a “Gold” membership, Plaintiff Michaels tried to learn which “classmates” had
19 “signed” his “guestbook,” or “visited his profile.” However, Defendants failed to inform
20 Plaintiff Michaels prior to his paying for a “Gold” membership subscription that in fact no past
21 acquaintances of his are trying to contact him.
22
23
24

25 17. **Plaintiff David Catapano** is a resident of Clark County Nevada. Plaintiff
26 Catapano registered for a free subscription to www.classmates.com at some point prior to August

1 2008. As a free member of Classmates.com, Plaintiff Catapano received numerous e-mails
2 transmitted from Classmates.com and Defendants herein. As with Plaintiff Michaels,
3 Defendants used words and phrases in the subject lines of the e-mails it sent Plaintiff Catapano
4 which, together with material omissions, indicated that former classmates of Plaintiff Catapano
5 were actively trying to contact him. After receiving these e-mails, in about August 2008,
6 Plaintiff Catapano paid for a “Gold” membership subscription to Classmates.com. As with
7 Plaintiff Michaels, Defendants failed to inform Plaintiff Catapano prior to his paying for a
8 “Gold” membership subscription that in fact no past acquaintances of his were trying to contact
9 him.
10

11 **B. Defendants**

12 18. **Defendant Classmates Online, Inc.** (“Classmates Online”) is a privately held
13 corporation organized pursuant to the laws of Washington, with a former principal address of
14 2001 Lind Ave SW, Ste 500, Renton, Washington, 98055 and a current principal address of 333
15 Elliott Ave. W., Seattle, WA 98119. Classmates Online owns and operates the website
16 www.classmates.com and is the wholly owned subsidiary of Classmates Media Corp. Every e-
17 mail challenged in this action was sent from a return e-mail of “Classmates.com,” with the web
18 site address of “ClassmatesE-mail@classmates.com.” Accordingly, for the relevant period
19 alleged in this Complaint, Defendant Classmates Online has initiated the transmission of e-mails
20 and assisted in transmitting e-mails that contain false or misleading information in the subject
21 line. Separately, and in addition, Defendant Classmates Online’s actions and inactions as alleged
22 herein also violate the Washington Consumer Protection Act, chapter 19.86 RCW.
23

24 19. **Defendant United Online, Inc.** is a publicly traded corporation organized
25 pursuant to the laws of Delaware, with a principal address of 21301 Burbank Blvd., Woodland
26

1 Hills, California, 91367. United Online, Inc. is the sole owner of Classmates Media Corporation,
2 which in turn, wholly owns Classmates Online. United Online, Inc. is an Internet Service
3 Provider and through its subsidiary, Classmates Media Corporation, offers social networking
4 services under the Classmates brand name. When a first-time user browses to the
5 Classmates.com website, she is prompted to either sign up for a new Classmates.com
6 membership or to log into a prior account. *See* Ex. 1 ¶ 6. The webpage established to accept a
7 new member's personal information bears the name and logo of both Classmates.com and
8 "United Online," and states in all caps, "CLASSMATES ONLINE IS A UNITED ONLINE
9 COMPANY." *See* Ex. 1 at attached Ex. B pp. 23-24; *id.* Ex. C pp. 25-30. Beginning in June
10 2009, the name and logo of "United Online" also regularly appears in the body of e-mails
11 received by Plaintiffs Michaels and Catapano and challenged in this action. *See, e.g.,* Ex. 2A at
12 MICH00183, CATA00003; Ex. 2B at MICH00189. The United Online website,
13 <http://www.unitedonline.net> (visited Aug. 26, 2009), reveals a banner advertisement for
14 Classmates.com, as well as a link to a June 15, 2009 press release from Classmates.com. United
15 Online's home page also sponsors an active link to the Classmates.com website. Given its direct
16 promotion and sponsorship of Classmates.com, as well as its overlapping branding on the
17 Classmates.com website from at least December 2008 to the present, Defendant United Online
18 has initiated the transmission of e-mails and assisted in transmitting e-mails that contain false or
19 misleading information in the subject line. Separately, and in addition, Defendant United
20 Online's actions and inactions as alleged herein also violate the Washington Consumer
21 Protection Act, chapter 19.86 RCW.

22
23
24
25 20. **Defendant Classmates Media Corporation** ("Classmates Media") is a privately
26 held corporation organized pursuant to the laws of Delaware, with a principal address of 21301

1 Burbank Blvd., Woodland Hills, California, 91367. Classmates Media is a wholly owned
2 subsidiary of United Online. According to Defendants, Classmates Media does not have any
3 employees or operational facilities, and thus operates merely as a holding shell in an attempt to
4 insulate Defendant United Online from the liabilities of Classmates Online. However,
5 Classmates Media touts its relationship to Classmates.com on its website, declaring that it
6 “operates leading online social networking and online loyalty marketing services under the
7 Classmates . . . brand[.]” Classmates Media’s website also sells advertising services that display
8 on the Classmates.com website. According to the website for Classmates Media Corporation,
9 <http://www.classmatesmedia.com/company/info.jsp> (visited Aug. 27, 2009):

11 The company’s success is driven by its expertise in growing and monetizing large
12 audiences in a cost effective manner and enabling advertisers to reach online
13 consumers effectively. Large membership bases and rich databases of member
14 information provide Classmates Media with a significant competitive advantage.

14 . . .

15 Led by its flagship Classmates Web site in the United States
16 (www.classmates.com), [Classmates Media Corporation] serves more than 40
17 million registered accounts, including 3.5 million pay accounts as of March 31,
18 2008. Members have contributed to the company’s social networking Web sites a
19 substantial amount of distinct, relevant pieces of content that help attract new
20 social networking members and returning Web site visits from existing members.

19 Accordingly, Classmates Media advertises its close connection to Classmates.com and the “large
20 membership base and rich databases of member information” that this connection provides.
21 Classmates Media’s website also claims responsibility for “*its* flagship Classmates Web site”
22 (emphasis added) and the “substantial amount of distinct, relevant pieces of content” that
23 Classmates.com members offer advertisers through new and returning Web site visits. Based on
24 these representations, its own actions and inactions, as well as the actions and inactions of its
25 parent company, United Online, and its wholly owned subsidiary, Classmates Online, Defendant
26

1 Classmates Media has, from at least October 2004 through the present, initiated the transmission
2 of e-mails and assisted in transmitting e-mails that contain false or misleading information in the
3 subject line. Separately, and in addition, Defendant Classmates Media Corporation's actions and
4 inactions as alleged herein also violate the Washington Consumer Protection Act, chapter 19.86
5 RCW.

6 21. At all times herein mentioned, Classmates Online and Classmates Media
7 Corporation were acting as the agents, ostensible agents, servants, partners, aiders and abettors,
8 joint venturers, and/or employees of United Online, Inc., and in doing the acts and following the
9 course of conduct set forth herein, Classmates Online, Inc. and Classmates Media Corporation
10 were acting within the course and scope of such agency or employment. Defendant United
11 Online, Inc. has approved, ratified, permitted, condoned, and affirmed the marketing and sales
12 practices associated with the website www.classmates.com.

13 22. There exists, and at all times herein mentioned, there existed, a unity of interest in
14 ownership between Defendants, such that any individuality and separateness between
15 Defendants has ceased and Defendants Classmates Media Corporation and United Online, Inc.
16 are the alter-egos of Classmates Online, and exerted control over Classmates Online. Adherence
17 to the fiction of the separate existence of Defendant Classmates Online as an entity distinct from
18 Defendants Classmates Media Corporation and United Online will permit an abuse of the
19 corporate privilege and would promote injustice. Defendant Classmates Online and Defendants
20 Classmates Media Corporation and United Online, Inc. are alter egos and comprise a single
21 enterprise. Classmates Online is a wholly owned subsidiary of Classmates Media Corporation,
22 which in turn, is a wholly owned subsidiary of United Online, Inc.

1 23. There is a complete unity of interests and ownership among Defendants, their
2 parents, and their subsidiaries, such that there is no corporate separateness and independence
3 among said corporations and each of said corporations is merely the agent and instrumentality of
4 each other. By reason of the above facts, recognition of the independent identity of Defendants
5 would unfairly limit Plaintiffs and the putative class in seeking the relief sought herein, such that
6 each of said Defendants should be regarded as the alter ego of each other and held responsible
7 for its obligations and liabilities.
8

9 IV. FACTUAL BACKGROUND

10 A. As Part of Their Regular Marketing Plan, Defendants Routinely Transmit E- 11 mails with False or Misleading Information in the Subject Lines.

12 24. As alleged more fully below, Defendants have transmitted to Plaintiffs, members
13 of the putative class, and the public at large, commercial e-mails with false or materially
14 misleading information in the e-mail subject lines. These commercial e-mails are sent from
15 computers or servers at Defendants' Washington-based headquarters or data centers, and are
16 used to entice "free" members of Classmates.com to upgrade to the status of "paid" subscribers.

17 25. Defendants rely on a misleading system of automated "guestbook signatures," and
18 other purported networking features to actively create and transmit false or misleading e-mails to
19 Plaintiffs and the class. The false or misleading subject lines of the e-mail messages that
20 Defendants generate and transmit to subscribers on an ongoing, regular basis create the
21 impression that individuals of interest to Plaintiffs or the class are trying to contact them through
22 the www.classmates.com website. As Greg Ott, Senior Vice President of Marketing of
23 Classmates Online stated in a declaration dated December 12, 2008, the computer program
24 underlying Defendants' marketing approach was developed by Classmates Online's developers
25 and marketing staff. A copy of Mr. Ott's Declaration ("Ott Decl.") is attached as Exhibit 1.
26

1 26. However, a subscriber is not provided access to the identity of who has
2 supposedly “signed their guestbook,” or purportedly taken advantage of other Classmates
3 networking features, without registering for a paid subscription. In the end, this misleading
4 marketing scheme based on deceptive e-mail subject lines is nothing more than a ruse to get
5 Plaintiffs to purchase a subscription to www.classmates.com to find out who has purportedly
6 been trying to contact them.

7 27. At all times relevant hereto, Defendants owned and operated
8 www.classmates.com, a website in which visitors to the website complete a free profile
9 registration in order to view the profiles of other registrants. The advertised purpose of the free
10 registration is to allow the user to view the profile of alumni from their respective school.

11 28. In order to register for free and view other user profiles, the visitor must provide
12 the following: Class/Graduation Year, Year of Birth, Title, Name, E-mail Address, and Current
13 Zip/Postal Code. According to the website, free members are limited to the functions of “find
14 friends and post a profile.”

15 29. As a paid subscriber, referred to as the “Gold Membership,” members are able to
16 “Find out who’s visited and signed your profile.” In addition, Classmates.com advertises that
17 after paying for a subscription, “Gold” members are able to “See where friends live now on
18 Classmates Maps,” “Chat on your school’s message board,” and “Send Classmates E-mail to
19 friends from your school.” The Gold Membership has varying price points depending on the
20 desired duration of membership.

21 30. Without a paid subscription, such as a Gold Membership, free members cannot
22 find out who has “visited” them online or “signed” their “guestbook” online. Free members of
23

1 www.Classmates.com are precluded from sending messages to or receiving messages from other
2 “classmates” through the website.

3 **1. Defendants Transmit the Challenged E-Mails from Computers Located in**
4 **Washington.**

5 31. As of December 12, 2008, Classmates Online maintained most of its business
6 records and operational equipment at its Renton, Washington facility. Ott Decl., Ex 1 ¶ 15.

7 32. Classmates Online’s developers and marketing employees are “directed out of”
8 Classmates Online’s Renton, Washington offices. *Id.* ¶ 12.

9 33. Much of the management and operation of the Classmates.com website and the
10 Classmates.com online business, including the location of significant facilities, employees, and
11 operation support, is also located in Washington. *Id.* ¶¶ 11, 12.

12 34. Classmates Online also maintains an online data center in Kent, Washington. *Id.*
13 ¶¶ 16, 17. The servers at the Kent facility contain virtually all of the data Classmates Online has
14 concerning its members. *Id.* ¶ 17(a). As of December 12, 2008, any data not stored at the Kent
15 data center is located at Classmates Online headquarters in Renton. *Id.* ¶ 17(b).

16 35. The primary function hardware, servers, and personal computers used to maintain
17 and operate the Classmates.com website are primarily located in Washington. In addition,
18 Classmates Online’s marketing tools related to the marketing of paid subscriptions at issue in this
19 litigation were primarily developed and made in Washington. The physical evidence relating to
20 the e-mail marketing practices of Classmates Online – including the computers or servers from
21 which these automated e-mails were transmitted – is also located in Washington. *Id.* ¶¶ 17(c),
22 18, 19.

23 36. In addition to Mr. Ott, the following current and former employees of Classmates
24 Online either work or formerly worked out of Defendants’ Washington-based headquarters, and
25
26

1 were also involved in developing and implementing the computer programs, marketing schemes,
2 and deceptive e-mail practices alleged in this Complaint:

3 a. Shawn Davis is the Vice President of Marketing for Classmates Online, and has
4 held this position from July 2005 to the present. Mr. Davis is responsible for the “types of
5 communications” received by Plaintiffs and the putative class. *See* Ex. 1 ¶ 13(a).

6 b. Robert Rebholz is the Vice President of Product Management for Classmates
7 Online, and has held this position from July 2008 to the present. Mr. Rebholz is also responsible
8 for the “types of communications” received by Plaintiffs and the putative class. *See id.* ¶ 13(b).

9 c. Robert O’Keefe was the Vice President of Creative Services for Classmates
10 Online from March 2004 through October 2008. Mr. O’Keefe developed the Classmates
11 marketing programs, such as its subscription services, and the alleged deceptive automated e-
12 mail communications that were sent to Classmates.com members. *See id.* ¶ 14. Mr. O’Keefe led
13 the team that drafted and designed all of the marketing for the website and e-mail
14 communications to Classmates.com subscribers. *Id.* ¶ 14(a).

15 d. Rita Spangler was the Vice President of Consumer Marketing for Classmates
16 Online from April 2003 through June 2008. Ms. Spangler developed Classmates’ marketing
17 programs, such as its subscription services, and the alleged deceptive e-mail communications
18 that were sent to Classmates.com members. *See id.* ¶ 14. Ms. Spangler was also responsible for
19 all marketing to Classmates.com subscribers through e-mails sent to subscribers. *Id.* ¶ 14(b). As
20 the Vice President of Consumer Marketing, Ms. Spangler managed all online and marketing and
21 retention activities at Classmates.com, including e-mail marketing, onsite promotions, customer
22 service, and market research.
23
24
25
26

1 e. Scott Scazafavo was the Director of Product Management at Classmates Online
2 from August 2005 through June 2008. Mr. Scazafavo implemented Classmates.com’s
3 “guestbook” feature and other marketing policies and practices that result in the transmission of
4 the e-mail subject lines and e-mail messages at issue in this Complaint.

5 **2. Defendants Sent E-Mails to Plaintiffs Michaels and Catapano That Included**
6 **False or Deceptive Information in the E-mail Subject Line.**

7 37. Plaintiff Anthony Michaels registered for a free membership to
8 www.classmates.com on or around November 15, 2006. Plaintiff Catapano registered for a free
9 membership to www.classmates.com prior to August 2008. During the course of their free
10 memberships, Plaintiffs received e-mails from Defendants’ computers or servers located in
11 Washington indicating that former classmates of Plaintiffs Michaels and Catapano were viewing
12 their profiles, “signing” their “guestbooks,” or otherwise trying to contact them through
13 www.classmates.com.
14

15 38. Plaintiffs continued to receive e-mails with deceptive and misleading subject lines
16 during the course of their paid membership subscription.

17 39. After Plaintiffs’ paid subscription memberships expired, Plaintiffs continued –
18 and continue to this day – to receive e-mails from Defendants that include deceptive and
19 materially misleading information in their subject lines and bodies.
20

21 40. Specifically, Plaintiffs Michaels and Catapano allege that Defendants routinely
22 transmit e-mails with subject lines that revolve around at least five different categories of
23 materially misleading and deceptive key words and phrases. These key words and phrases are
24 intended to mislead Plaintiffs and members of the class about whether past acquaintances are
25 trying to contact them through Classmates.com. The five categories, and one sample of a
26 deceptive e-mail subject line from each category, are listed below. Each of the e-mails

1 referenced below and attached hereto as Exhibit 2 were sent by “Classmates.com” to either
 2 Plaintiff Michaels’ or Plaintiff Catapano’s e-mail address, and have been previously produced to
 3 Defendants. To protect their privacy, Plaintiffs’ personal e-mail addresses have been redacted
 4 from the copies of the e-mails attached hereto.

Deceptive E-Mail Category	Key Words or Phrases	Sample Subject Line of E-Mail Alleged to Support Statutory Violation (Bates No.; E-mail Date)
A	Guestbook signatures	“6 guestbook signatures – and counting” (MICH00014; July 31, 2007)
B	Profile visits & signatures	“A friend visited your profile, Anthony” (MICH00009; March 26, 2007)
C	Friends’ birthdays	“Anthony, find out which friends have birthdays next month” (MICH00092; Aug. 26, 2008)
D	New stories waiting for you	“New from Garinger High School: 11 stories are waiting for you, Anthony” (MICH00149; Jan. 28, 2009)
E	Friends’ profiles	“Anthony: Have your 5 friends jazzed up their profiles? Don’t be the last to see” (MICH00170; March 25, 2009)

19 41. Attached to this Complaint as Exhibits 2A through 2E are representative copies of
 20 the e-mails transmitted by Defendants which Plaintiffs challenge as having deceptive or
 21 materially misleading information in the subject line.

22 42. After receiving these and substantially similar e-mails from Defendants, and
 23 based on the reasonable belief generated by these e-mails that past acquaintances were actively
 24 trying to contact them, Plaintiffs Michaels and Catapano each separately registered for a “Gold”
 25 membership subscription with Classmates.com by submitting a membership fee for the
 26

1 advertised “Gold” membership services. These advertised “Gold” membership services included
2 the ability to “Find out who’s visited and signed your profile.”

3 43. Plaintiffs Michaels and Catapano paid the “Gold” membership fee in order to
4 learn the identities of the individuals whom Defendants had reasonably led them to believe had
5 been actively trying to contact them. However, Defendants failed to inform Plaintiffs prior to
6 their payment of the membership fee that none of the individuals whom Defendants had
7 discussed in the e-mail subject lines challenged in this action were actively trying to contact
8 Plaintiffs Michaels or Catapano.

9
10 44. Defendants’ Terms of Service provide that “[p]ayment for joining Classmates is
11 non-refundable.” *See* Ex. 1 (Ott Decl.) at attached Ex. A p. 17; attached Ex. D p. 43.

12 45. Plaintiffs and the Class have been injured and suffered financial losses, and
13 continue to suffer injury and financial losses, as a result of Defendants’ false, deceptive and
14 materially misleading e-mail subject lines and underlying business practices which lead to the
15 reasonable belief that friends and classmates are actively trying to contact them through
16 www.classmates.com. Plaintiffs and members of the class suffer injury when they purchase a
17 paid membership to uncover the identities of these “friends” via Classmates.com and only then
18 learn that Defendants have failed to inform them that no one has been trying to contact them.

19
20 **B. Defendants Have Substantially Profited From Their False and Misleading**
21 **Marketing Practices.**

22 46. According to a December 5, 2008 declaration filed in this action by Chris Burke,
23 the Director, Financial Planning and Analysis of Classmates Online, Inc., Classmates Online,
24 Inc. offers various types of subscription memberships with corresponding fees. In its ordinary
25 course of business, Classmates keeps records of the number and type of subscriptions sold each
26 year.

1 47. According to the December 5, 2008 declaration from Mr. Burke, “the most
2 conservative weighted average price paid per new Classmates.com subscription[s] for the period
3 between November 2004 through November 2008 is \$26.43.”

4 48. By failing to disclose material facts required to make its subject lines not false or
5 misleading, including that the “guestbook signatures” touted by Classmates may have been
6 unintentionally left, or left by people whom Plaintiffs do not know or with whom Plaintiffs do
7 not share any prior history, Defendants have included false, materially misleading, or deceptive
8 information in the e-mail subject lines sent to Classmates subscribers.

9 49. Defendants have profited tremendously from their false or deceptive e-mail
10 subject lines and related marketing tactics. A May 6, 2008 article in the *Seattle Post-*
11 *Intelligencer* reports that in the first quarter of 2008, for example, Defendant Classmates Online
12 experienced record net growth of over 355,000 paid accounts.

13 50. According to other published reports, Defendant Classmates Online’s revenues
14 for the second quarter of 2008 were \$57 million, an increase of 19% compared to the same
15 quarter for the prior year. Similarly, in the first quarter of 2008, Classmates Online’s revenues
16 grew 22% to \$51.9 million, compared to the same quarter for the prior year.

17 51. Based in whole or in part on its false and misleading e-mail subject lines as
18 alleged herein, Defendants’ “paid” subscriber base to Classmates.com grew by 41 percent from
19 June 30, 2007 to June 30, 2008.

20
21
22 **C. Classmates’ “Terms of Service” Is An Adhesion Contract Whose Purported
23 One-Year Statute of Limitations is Substantively Unconscionable.**

24 52. The Declaration of Greg Ott (Exhibit 1 hereto) describes the “Terms of Service”
25 that Classmates.com offers to all its members. Defendant Ott attaches two versions of
26 Classmates’ “Terms of Service” to his Declaration at Exhibits A and D, respectively. Exhibit A

1 purports to be the version of the Terms of Service that was in effect on December 24, 2007.

2 Exhibit D purports to be the version of the Terms of Service that was in effect on November 15,
3 2006.

4 53. Both versions of the “Terms of Service” attached to the Declaration of Greg Ott
5 are standard form printed contracts. In addition, the “Terms of Service” currently available on
6 the Classmates.com website, <http://www.classmates.com/cmo/terms.jsp>? (visited Aug. 26, 2009),
7 which reflects a “last update” of December 2, 2008, is also a standard form printed contract.
8

9 54. Each of these versions of the Classmates’ “Terms of Service” was prepared by
10 Classmates Online and, as Greg Ott’s Declaration makes clear, was presented to Classmates
11 subscribers on a “take it or leave it” basis. Ex. 1 ¶ 7 (confirming that a user cannot access either
12 a free or paid subscription to Classmates.com without clicking a “Submit” button that indicates a
13 user’s acceptance of the Classmates’ Terms of Service).
14

15 55. Because the Terms of Service were prepared by Classmates Online unilaterally,
16 and presented to individual users of the website on a “take it or leave it” basis, there is no true
17 equality of bargaining power between the parties with respect to the Terms of Service.
18 Accordingly, the Classmates’ “Terms of Service” is an adhesion contract.

19 56. Classmates’ “Terms of Service” purports to limit any claim or cause of action
20 arising out of the Classmates website or terms of use to one year after such claim or cause of
21 action arises.

22 57. Under the Washington Consumer Protection Act, there is a four-year statute of
23 limitations.
24
25
26

1 automated e-mail communications to its members with alleged deceptive information in the e-
2 mail subject lines affects most – if not all – of its 50 million free members, and has likely injured
3 most, if not all, of its 3.8 million paid subscribers. The members of the class include Washington
4 residents and are so numerous and geographically dispersed across the United States that joinder
5 of all class members is impracticable.

6 66. Defendants have acted with respect to the Class in a manner generally applicable
7 to each class member. There is a well-defined community of interest in the questions of law and
8 fact involved in the action, which affect all class members. The questions of law or fact common
9 to the Class predominate over any questions affecting only individual members and include, but
10 are not limited to, the following:
11

12 a. Whether the e-mails Plaintiffs and the Class have received and continue to
13 receive from Defendants that are the same or substantially similar to those attached as
14 Exhibit 2A through 2E include false or materially misleading information in the subject
15 line;
16

17 b. Whether Defendants' actions and inactions in transmitting the e-mails
18 such as those attached as Exhibits 2A through 2E violate CEMA;

19 c. Whether Defendants' actions and inactions in transmitting the e-mails
20 such as those attached as Exhibits 2A through 2E constitute a per se violation of the
21 Washington CPA;

22 d. Whether Defendants' actions and inactions alleged herein separately and
23 in addition to a per se violation of the Washington CPA also constitute an independent
24 violation of the Washington CPA;
25
26

1 e. Whether Plaintiffs and the members of the Class have been damaged by
2 Defendants' wrongs complained of herein, and if so, whether Plaintiffs and the Class are
3 entitled to injunctive relief;

4 f. Whether Plaintiffs and the members of the Class have been damaged by
5 Defendants' wrongs complained of herein, and if so, the measure of those damages and
6 the nature and extent of other relief that should be afforded;

7 g. Whether statutory damages should be awarded to Plaintiffs and the
8 members of the Class for Defendants' CEMA violations, as alleged herein;

9 h. Whether treble damages should be awarded to Plaintiffs and the members
10 of the Class for Defendants' violations of the Washington CPA, as alleged herein;

11 i. Whether Plaintiffs and the members of the Class should be awarded
12 attorneys' fees and the costs of suit for Defendants' violations of the Washington CPA, as
13 alleged herein; and

14 j. Whether Plaintiffs and the members of the Class are entitled to declaratory
15 relief for Defendants' statutory violations alleged herein.

16
17 67. Plaintiffs' claims are typical of the claims of the other members of the Class in
18 that all members of the Class have been harmed in substantially the same way by Defendants'
19 actions and inactions.

20
21 68. Plaintiffs are committed to prosecuting this action and have retained competent
22 counsel experienced in litigation of this nature. Plaintiffs are each an adequate representative of
23 the Class. Plaintiffs seek no relief that is antagonistic or adverse to other members of the Class.

24
25 69. A class action is superior to other available methods for the fair and efficient
26 adjudication of the controversy. The prosecution of separate actions by individual members of

1 the Class would create the risk of inconsistent or varying adjudications with respect to individual
2 members of the Class which would establish incompatible standards of conduct for Defendants,
3 or adjudications with respect to individual members of the Class which would, as a practical
4 matter, be dispositive of the interests of the other members not parties to the adjudications or
5 substantially impair or impede their ability to protect their interests.

6 70. In view of the complexity of the issues and the expense that an individual plaintiff
7 would incur if he or she attempted to obtain relief from large corporations such as Classmates
8 Online, Classmates Media Corporation and United Online, Inc., the separate claims of individual
9 class members are monetarily insufficient to support separate actions. Because of the size of the
10 individual class members' claims, few, if any, class members could afford to seek legal redress
11 for the wrongs complained of in this Complaint.

12 71. Plaintiffs do not anticipate any difficulty in managing this action as a class action
13 because the evidence proving Defendants' violations of CEMA and the Washington CPA is
14 ascertainable through discovery. The identities of the Class members are known by Defendants,
15 and the measure of monetary damages can be calculated from Defendants' records. This action
16 poses no unusual difficulties that would impede its management by the Court as a class action.

17
18
19 **VI. CLAIMS FOR RELIEF**

20 **FIRST CAUSE OF ACTION**

21 **Violation of chapter 19.190 RCW, Washington Commercial Electronic Mail Act**
22 **(Against All Defendants)**

23 72. Plaintiffs and the Class reallege the preceding paragraphs as if fully set forth
24 herein.

25 73. This cause of action is asserted on behalf of Plaintiffs and the Class against all
26 Defendants.

1 74. The Washington Commercial Electronic Mail Act (“CEMA”), RCW 19.190, *et*
2 *seq.*, provides remedies for individual citizens to challenge the receipt of commercial electronic
3 mail that includes false or misleading information in the subject line. RCW 19.190.020(1)(b),
4 19.190.040(1).

5 75. CEMA prohibits any “person,” as defined in the Act, from transmitting from a
6 computer located in Washington any commercial electronic mail message that “contains false or
7 misleading information in the subject line.” RCW 19.190.020(1)(b); RCW 19.190.030(1)(b).
8

9 76. CEMA defines “person” to include an individual, corporation, and various other
10 legal or commercial entities. RCW 19.190.010(11).

11 77. CEMA defines “commercial electronic mail message” as an electronic mail
12 message sent for the purpose of promoting, *inter alia*, services for sale or lease. RCW
13 19.190.010(2).
14

15 78. Defendants transmitted e-mails from computers in Washington to Plaintiffs and
16 the members of the Class that contained false or materially misleading information in the subject
17 line.

18 79. The e-mails transmitted by Defendants and challenged in this action are
19 commercial electronic mail messages because they are sent for the purpose of promoting services
20 for sale via paid subscriptions to the Classmates.com website, including social networking
21 services and other promotions and offers.

22 80. Defendants’ actions and inactions alleged herein are designed, through the use of
23 false or deceptive information in the subject lines, to mislead recipients as to whether, who, and
24 how many people are actively attempting to contact them through the Classmates.com website.
25
26

1 81. For example, Defendants’ use of common, every day terms – such as
2 “guestbook,” “signature,” “visit,” “friends’ birthdays,” “new stories,” and “friends’ profiles,” –
3 represents a strategic choice to mislead Classmates subscribers. By failing to define these
4 common terms or indicate that they are being given any special meaning in the context of the
5 Classmates.com website, Defendants intend that their e-mail recipients will reasonably interpret
6 these words based on their common, every day definitions. Defendants fail to inform Plaintiffs
7 and the members of the Class that despite their use of these terms, no one has taken active steps
8 to contact them via Classmates.com.
9

10 82. For example, the every day term “guestbook” refers to a paper-based journal or
11 ledger traditionally available in churches, at weddings, funerals, museums, bed and breakfasts, or
12 other private facilities open to the public. When a visitor is present at one of these events or
13 sites, she may take affirmative action – by picking up a pen and signing her name in a guestbook
14 – to acknowledge her visit and to leave a comment or note, if desired, reflecting her impressions
15 of the site or the experience, or her purpose for the visit. By using the term “guestbook
16 signature” in its e-mail headings, as in, “Who signed your guestbook, Anthony?” (Ex. 2A at
17 MICH00005) or “4 guestbook signatures, Anthony” (Ex. 2A at MICH00010), Defendants
18 reasonably convey and intend to reasonably convey to the e-mail recipient that a visitor has taken
19 affirmative action to seek out the Classmates member and to record their name, leave a comment
20 or note, or otherwise acknowledging the fact and purpose of their virtual visit. *See also* Ex. 2B
21 at MICH00189 (“45 people visited your profile and left their signatures, Anthony.”).
22
23

24 83. At no point prior, during or after a Classmates member registers for a free or paid
25 membership do Defendants define or attempt to define the scope of user activity that would
26 constitute a “guestbook signature” or “profile signature.” Accordingly, Defendants take no steps

1 to inform Classmates members of the manner in which a “guestbook signature” or “profile
2 signature” is created or registered.

3 84. Plaintiffs also challenge as materially misleading Defendants’ use of the every
4 day word “friend” in e-mail subject lines sent to Plaintiffs and members of the Class. For
5 example, Defendants’ e-mail subject lines state, “A friend visited your profile, Anthony” (Ex. 2B
6 at MICH00009), or “Anthony, find out which friends have birthdays next month” (Ex. 2C at
7 MICH00092). Defendants’ use of the word “friend” in this context confers the reasonable belief
8 that someone who has self-identified as the e-mail recipient’s friend, or who is actively trying to
9 contact the e-mail recipient, has taken the steps or actions ascribed to them in Defendants’ e-mail
10 subject line. *See also* Ex. 2E at MICH 00170 (“Anthony: Have your 5 friends jazzed up their
11 profiles? Don’t be the last to see.”). Defendants do not disclose that the so-called “friend”
12 referred to in its e-mail subject lines is someone whom Plaintiff does not know, and is not
13 someone who is trying to establish contact with Plaintiff.

14
15 85. Plaintiffs also challenge as materially misleading Defendants’ transmission of e-
16 mail subject lines indicating that “stories are waiting for you, Anthony,” as in Ex. 2D at
17 MICH00149. By stating that stories are “waiting” for a particular e-mail recipient, and using a
18 recipient’s first name in the e-mail subject line, Defendants imply that other Classmates members
19 have messages they seek to convey to that e-mail recipient. By omitting to disclose that the so-
20 called “stories” are not specifically directed toward the individual receiving the e-mail,
21 Defendants’ e-mail subject lines contain information that is false or materially misleading, in
22 violation of CEMA.

23
24 86. Defendants’ tactics in using every day terms – which in fact either have
25 specialized, but undisclosed technical meanings, or which are simply materially misleading or
26

1 deceptive – cause Defendants to regularly and routinely transmit e-mails with subject lines that
2 include false or materially misleading information. Defendants’ actions and inactions in carrying
3 out these practices are intentional and deceptive and based on omissions of material fact.

4 87. The Washington legislature has found that “the practices covered by [CEMA] are
5 matters vitally affecting the public interest,” and that “a violation of this chapter is not reasonable
6 in relation to the development and preservation of business and is an unfair or deceptive act in
7 trade or commerce and an unfair method of competition for the purpose of applying the
8 consumer protection act.” RCW 19.190.100.

9
10 88. Defendants’ violations of RCW 19.190.020 and RCW 19.190.030 alleged herein
11 are also per se violations of the Washington Consumer Protection Act.

12 89. CEMA imposes statutory violations for each violation of the Act of five hundred
13 dollars per violation, or actual damages, whichever is greater. RCW 19.190.040(1).

14 90. Based on their overlapping corporate relationships as alleged above, and their
15 direct sponsorship of the challenged e-mails, Defendants Classmates Online, Classmates Media
16 Corporation, and United Online, Inc. initiated the transmission of and assisted in the transmission
17 of commercial electronic mail messages from computers located in Washington that contained
18 false or materially misleading information in the subject line, in violation of RCW
19 19.190.020(1)(b).

20
21 91. Defendants’ actions and inactions as alleged herein have injured Plaintiffs and the
22 Class in an amount to be proven at trial. Defendants’ actions and inactions as alleged herein
23 have deceptively led Plaintiffs and the members of the Class to believe, based on the reasonable
24 interpretation of the information contained in Defendants’ deceptive e-mail subject lines, that if
25 Plaintiffs purchased a paid subscription to Classmates.com, they would be able to learn the
26

1 identities of the numerous people whom Defendants misled them to believe had been actively
2 trying to contact them through the Classmates.com website. However, it is only after Plaintiffs
3 and members of the Class pay for a membership fee that they learn no past acquaintances are
4 trying to contact them.

5 **SECOND CAUSE OF ACTION**

6 **Per Se Violation of chapter 19.86 RCW, Washington Consumer Protection Act**
7 **(Against All Defendants)**

8 92. Plaintiffs and the Class reallege the preceding paragraphs as if fully set forth
9 herein.

10 93. This cause of action is asserted on behalf of Plaintiffs and the Class.

11 94. The Washington Consumer Protection Act, RCW 19.86 *et seq.*, provides
12 consumers with a comprehensive procedure for redressing Defendants' violations of applicable
13 law.
14

15 95. RCW 19.86.090 provides a private right of action to any person injured in his
16 property by an "unfair or deceptive act or practice."

17 96. As alleged herein, Defendants' actions and inactions in transmitting, initiating the
18 transmission, or assisting in the transmission of commercial e-mails to Plaintiffs and the
19 members of the Class that contain false or misleading information in the subject line constitute
20 per se violations of the Washington Consumer Protection Act. RCW 19.190.020; RCW
21 19.190.100.
22

23 97. By their actions and inactions alleged herein, Defendants have transmitted,
24 initiated the transmission, or assisted in the transmission of commercial e-mails from a computer
25 in Washington that violate CEMA. Accordingly, Defendants either know or have consciously
26

1 avoided knowing that during the relevant period alleged herein, they have assisted in the
2 transmission of commercial e-mails from a computer in Washington that violate the Washington
3 Consumer Protection Act, chapter 19.86 RCW. Separately, and in addition, Defendants have
4 violated the Washington CPA based on their CEMA violations by operation of law under RCW
5 19.190.100 and RCW 19.190.030.

6 98. Defendants' actions and inactions as alleged herein have injured Plaintiffs and the
7 Class in an amount to be proven at trial.

8 99. Pursuant to RCW 19.86.090, Plaintiffs seek damages on behalf of themselves and
9 each class member against all Defendants for Plaintiffs' actual damages sustained as a result of
10 Defendants' actions and inactions alleged herein, in an amount to be determined at trial but not
11 less than \$5,000,000, as well as the costs of this suit and reasonable attorneys' fees.

12 100. Further, pursuant to RCW 19.86.090, Plaintiffs seek treble damages on behalf of
13 themselves and each class member for their actual damages sustained as a result of Defendants'
14 unfair and deceptive acts in an amount to be determined at trial but not less than \$15,000,000.

15 101. Plaintiffs and the Class seek recovery of attorneys' fees and costs pursuant to the
16 Washington CPA.

17 **THIRD CAUSE OF ACTION**

18 **Independent Violation of chapter 19.86 RCW, Washington Consumer Protection Act** 19 **(Against All Defendants)**

20 102. Plaintiffs and the Class reallege the preceding paragraphs as if fully set forth
21 herein.

22 103. This cause of action is asserted on behalf of Plaintiffs and the Class.

1 104. The Washington Consumer Protection Act, RCW 19.86 *et seq.*, provides
2 consumers with a comprehensive procedure for redressing Defendants’ unfair or deceptive
3 business practices.

4 105. RCW 19.86.090 provides a private right of action to any person injured in his
5 property by an “unfair or deceptive act or practice.”

6 106. Defendants’ actions and inactions as alleged herein in sending false or deceptive
7 e-mails to Plaintiffs and the members of the Class violate the Washington CPA because they: (1)
8 are unfair or deceptive acts or practices; (2) are committed in the course of Defendants’ business;
9 (3) have a pervasive public interest impact (Defendants’ actions affect most – if not all – of its 50
10 million free members, and have injured, at a minimum, all of its 3.8 million paid subscribers);
11 and (4) have caused economic injury to Plaintiffs and the members of the Class.

12 107. As a result of Defendants’ deceptive acts and practices as alleged herein,
13 Plaintiffs and the members of the Class purchased paid memberships to Classmates.com.
14 However, Defendants failed to inform Plaintiffs prior to their paid membership that none of the
15 individuals whom Defendants had represented as actively trying to contact Plaintiffs were in fact
16 trying to do so. As a result of Defendants’ deceptive business practices and material omissions
17 of fact, it is only after Plaintiffs and the members of the Class pay for a subscription to
18 Classmates.com that they learn that no past acquaintances are trying to contact them.

19 108. Defendants’ business strategy is to send Plaintiffs and the members of the Class
20 deceptive and materially misleading e-mail messages in an effort to induce Plaintiffs to open e-
21 mails, click on hyperlinks that enhance Defendants’ consumer database, and to purchase non-
22 refundable subscriptions to Classmates.com.
23
24
25
26

1 109. As alleged *supra*, Defendants' Terms of Service do not provide for any refunds
2 for subscription services.

3 110. Representative e-mail communications reflecting Defendants' unfair and
4 deceptive business acts and practices and which Plaintiffs and the Class separately challenge in
5 this action as violations of the Washington CPA are attached hereto as Exhibits 2A through 2E.

6 111. Defendants' actions and inactions as alleged herein are the proximate cause of
7 injury to Plaintiffs and the Class in an amount to be proven at trial.

8 112. Pursuant to RCW 19.86.090, Plaintiffs seek damages on behalf of themselves and
9 each class member against all Defendants for Plaintiffs' actual damages sustained as a result of
10 Defendants' actions and inactions alleged herein, in an amount to be determined at trial but not
11 less than \$5,000,000, as well as the costs of this suit and reasonable attorneys' fees.

12 113. Further, pursuant to RCW 19.86.090, Plaintiffs seek treble damages on behalf of
13 themselves and each class member for their actual damages sustained as a result of Defendants'
14 unfair and deceptive acts in an amount to be determined at trial but not less than \$15,000,000.

15 114. Plaintiffs and the Class seek recovery of attorneys' fees and costs pursuant to the
16 Washington CPA.

17
18 **FOURTH CAUSE OF ACTION**

19 **Declaratory Relief Under the Declaratory Judgments Act, 28 U.S.C. § 2201**
20 **(Against All Defendants)**

21 115. Plaintiffs and the Class reallege the preceding paragraphs as if fully set forth
22 herein.

23 116. Defendants have transmitted and continue to transmit from one or more
24 computers located in Washington commercial e-mails to Plaintiffs and members of the Class that
25
26

1 include false or misleading information in the e-mail subject line and body, in violation of
2 CEMA and the Washington CPA.

3 117. After receiving these e-mails, Plaintiffs and the members of the Class purchased
4 from Defendants paid subscriptions providing greater access to the website at Classmates.com,
5 causing injury to Plaintiffs and the members of the Class, as alleged herein.

6 118. Plaintiffs are entitled to have this Court establish by declaration their rights and
7 legal relations under CEMA and the Washington CPA relating to Defendants' transmittal of
8 these false and materially misleading e-mails.
9

10 **VII. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs request for themselves and the members of the Class that the
12 Court enter an order and judgment against Defendants as follows:

- 13 1. Allowing this action to be brought as a class action pursuant to Fed. R. Civ. P.
14 23(b)(2) or 23(b)(3);
- 15 2. Adjudging and decreeing that Defendants, and each of them, have engaged in the
16 conduct alleged herein;
17
- 18 3. Declaring that Defendants have violated CEMA by transmitting from one or more
19 computers located in Washington commercial e-mails with false or materially misleading
20 information in the subject line;
21
- 22 4. Declaring that Defendants' CEMA violations constitute a per se violation of the
23 Washington CPA;
- 24 5. Separately, and in addition, declaring that Defendants have violated the
25 Washington CPA by their unfair and deceptive business acts or practices that have caused injury
26 to Plaintiffs and the members of the Class;

1 6. Awarding Plaintiffs and the Class statutory and actual damages for Defendants'
2 violations of CEMA, including judgment in the amount of \$500 to Plaintiffs and each member of
3 the Class as incidental statutory damages for each e-mail transmitted by Defendants that includes
4 false or materially misleading information in the subject line;

5 7. Awarding Plaintiffs and the Class actual damages for Defendants' violations of
6 the Washington CPA;

7 8. Awarding Plaintiffs and the class treble damages under the Washington CPA;

8 9. Awarding Plaintiffs and the Class injunctive and declaratory relief against all
9 Defendants for violations of CEMA and the Washington CPA;

10 10. Awarding Plaintiffs and the Class injunctive and declaratory relief against all
11 Defendants to ensure that Defendants will not continue to transmit e-mails with false or
12 materially misleading information in the subject line;

13 11. Awarding Plaintiffs and the Class injunctive and declaratory relief against all
14 Defendants to ensure that Defendants will not continue to engage in unfair or deceptive business
15 acts or practices;

16 12. Awarding Plaintiffs and the Class restitution damages for Defendants' unfair and
17 deceptive acts and practices in violation of CEMA and the Washington CPA;

18 13. Awarding Plaintiffs and the Class pre- and post-judgment interest at the highest
19 allowable rate;

20 14. Awarding Plaintiffs and the Class their costs and expenses;

21 15. Awarding Attorneys' fees pursuant to the Washington CPA, the Common Fund
22 Doctrine, as set forth by statute, or as otherwise allowed by law; and
23
24
25
26

