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CASE NUMBER: 08-2-43407-9 KNT

SUPERIOR COURT OF WASHINGTON

KING COUNTY

*Payment Reference #*

*3508562798*

XAVIER VASQUEZ, individually and  
on behalf of all others similarly situated,

Plaintiff,

vs.

CLASSMATES ONLINE, INC.,  
a Washington corporation,  
CLASSMATES MEDIA CORPORATION,  
a Delaware corporation,  
UNITED ONLINE, INC.,  
a Delaware corporation, and  
DOES 1 through 100, corporations,

Defendants.

CLASS ACTION

Case No.

COMPLAINT

Plaintiff, by his attorneys, alleges as follows upon personal knowledge as to himself and his own acts and, as to all other matters, upon information and belief based on investigation of counsel.

NATURE OF THE ACTION

1. Plaintiff Xavier Vasquez brings this class action complaint against Classmates Online, Inc., headquartered in Renton, Washington, Classmates Media Corporation, and their parent company, United Online, Inc., providers of *www.classmates.com*, an online gathering

1 place described as a “social networking web site.” Plaintiff’s complaint is based on the conse-  
2 quences for plaintiff and class members chiefly arising from defendants’ incorrect and/or mis-  
3 leading representations in defendants’ (i) e-mail advertisements that encourage consumers to  
4 visit *classmates.com* and (ii) privacy-policy assurances that promise handling of consumers’  
5 personal information in a secure environment.

6 2. Defendants’ main sources of revenue on *classmates.com* are member subscrip-  
7 tions and advertising fees. In pursuit of subscription revenues, defendants have engaged in an  
8 ongoing campaign of sending consumers e-mail messages claiming that long-lost acquaintances  
9 are seeking contact on *www.classmates.com*. In fact, defendants’ messages constitute a cam-  
10 paign of misinformation to mislead consumers into paying to find out who is seeking contact—  
11 even when no one is.

12 3. To help drive up traffic levels—leading to more subscriptions and advertising  
13 fees from the display of targeted web ads—defendants make it extremely easy for people to  
14 access *classmates.com*. Defendants do so by dispensing with basic web-technology safeguards  
15 that protect consumers’ login credentials and personal information—despite that defendants post  
16 a privacy policy promising to protect privacy and security.

17 **PARTIES**

18 4. Plaintiff Xavier Vasquez is a resident of California.

19 5. Defendant United Online, Inc. (“UOL”) is a publicly traded, Delaware corpora-  
20 tion headquartered at 21301 Burbank Boulevard, Woodland Hills, California 91367. It com-  
21 menced operations in 2001 following the merger of dial-up Internet access providers NetZero,  
22 Inc. and Juno Online Services, Inc. UOL’s subsidiaries comprising its “suite of media proper-  
23 ties” include Classmates (online social networking through *www.classmates.com*); MyPoints  
24

1 (online loyalty marketing programs); MySite (web-hosting services); and Netzero and Juno (in-  
2 ternet service providers).

3           6. Defendant Classmates Online, Inc. ("Classmates Online") is a Washington cor-  
4 poration headquartered at 2001 Lind Avenue SW, Suite 500, Renton, Washington 98055. It was  
5 acquired by UOL in November 2004. On the web pages of *www.classmates.com* (or "*class-*  
6 *mates.com*"), a web site accessible by the public and targeted to consumers, Classmates Online  
7 represents itself as the owner and operator of the site. Classmates Online enters into relation-  
8 ships with consumers who use *www.classmates.com* and those who register as members. The  
9 Terms of Service posted on *www.classmates.com* (the "Terms of Service") state:

10                   By accessing and using the Classmates website, . . . you are agreeing to the  
11                   following Terms of Use [*sic*]. We encourage you to review the Terms of  
12                   Use, along with the Privacy Policy ([http://www.classmates.com/-](http://www.classmates.com/-cmo/privacy.jsp)  
13                   *cmo/privacy.jsp*), which is incorporated by reference, as they form a binding  
14                   agreement between Classmates and you.

15 <http://www.classmates.com/cmo/terms.jsp>.

16           7. Defendant Classmates Media Corporation ("Classmates Media") is a Delaware  
17 corporation headquartered at 21301 Burbank Boulevard, Woodland Hills, California 91367. It  
18 was formed in August 2007 by UOL to consolidate Classmates Online, Inc. and other business  
19 units for a public equity offering.

20           8. UOL, Classmates Media, and Classmates Online (collectively, "Classmates" or  
21 "defendants") do business throughout the States of Washington, California, and the nation.

22           9. UOL and Classmates Media, each acting alone, through, or jointly with the other,  
23 control and/or direct the actions of Classmates Online or act as its agent. For example:

1           a.       On UOL's "About United Online" web page, UOL refers to itself as the  
2 entity responsible for *classmates.com*'s service, with no reference to the Classmates Online, Inc.  
3 subsidiary. UOL states: "Led by its flagship Classmates Web site in the United States  
4 ([www.classmates.com](http://www.classmates.com)), [UOL] serves more than 50 million registered accounts across its social  
5 networking Web sites, including 3.8 million pay accounts as of June 30, 2008." See  
6 <http://www.unitedonline.net/companyinfo/about.html>.

7           b.       UOL manages the display of advertisements on *classmates.com* and uses  
8 personal information about *classmates.com* members to target the advertisements. See  
9 [http://www.unitedonline.net/advertisers/revamp\\_2008/adsolutions.html](http://www.unitedonline.net/advertisers/revamp_2008/adsolutions.html), downloaded Nov. 21,  
10 2008; see also <http://www.uolmediagroup.com>, downloaded Dec. 12, 2008. On each of *class-*  
11 *mates.com*'s web pages, clicking on the "Advertisers" link results in the display of a UOL web  
12 page, not a Classmates Online web page, further confirming UOL's control of this activity.

13           c.       Classmates Media asserts that it, too, has a direct role in the conduct of  
14 *classmates.com*'s business affairs, stating, "Classmates Media Corporation operates leading on-  
15 line social networking and online loyalty marketing services under the Classmates and My-  
16 Points brands." See <http://www.classmatesmedia.com/company/info.jsp>. Other examples of  
17 Classmates Media's role in the operation of *classmates.com* include the fact that Classmates  
18 Media identifies the president of Classmates Online as a member of its management team, see  
19 <http://www.classmatesmedia.com/company/management.jsp>, and lists the Classmates Online  
20 corporate office and *classmates.com* web address as one of its office locations, see  
21 <http://www.classmatesmedia.com/company/officelocations.jsp>. Further, each page of the *class-*  
22 *mates.com* web site includes a hyperlink labeled, "About Classmates Online" which, when  
23 clicked, results in the display of company information about Classmates Media, not Classmates  
24 Online.

1 **JURISDICTION AND VENUE**

2 10. This Court has jurisdiction over the subject matter of this action pursuant to the  
3 RCW § 2.08.010.

4 11. Jurisdiction and venue are proper because Classmates Online, Inc. is a corpora-  
5 tion headquartered in King County, Washington, and/or because defendants' improper conduct  
6 alleged in this complaint occurred in, was directed from, and/or emanated from the State of  
7 Washington.

8 12. In addition, the Terms of Service assert choice of Washington law and venue in  
9 courts of the State of Washington with the following language:

10 The Terms of Use [*sic*], your access and use of the Website and Services and  
11 the relationship between you and Classmates is governed by the laws of the  
12 State of Washington, without giving effect to its conflict of law provisions.  
13 Classmates and you both agree to submit to the personal and exclusive  
14 jurisdiction of the courts of the State of Washington.

15 Terms of Service, ¶ 14, <http://www.classmates.com/cmo/terms.jsp>, downloaded Nov. 24, 2008.

16 **CONDUCT COMPLAINED OF**

17 13. The social networking web site, *classmates.com*, is targeted to individual con-  
18 sumers. Classmates' ability to make money from the web site depends on their ability to drive  
19 consumer traffic to *classmates.com*. Classmates' primary route for generating traffic is e-mail  
20 messages to consumers. According to Classmates: "Our businesses are highly dependent upon  
21 email. Our emails generate the majority of the traffic on our social networking Web sites . . . ."  
22 United Online, Inc., SEC Form 10-K for the period ending Dec. 31, 2007 ("UOL 10-K") at 19.

23 14. On or about mid-summer of 2008, plaintiff received an e-mail advertisement stat-  
24 ing that a former classmate was attempting to contact plaintiff through *classmates.com*. When

1 plaintiff visited the *classmates.com* web site, he learned that Classmates, in addition to requiring  
2 him to register as a member, required him to pay for a Gold membership to view his former  
3 classmate's inquiry.

4 15. To become a Gold member of *classmates.com*, Classmates requires payment of a  
5 nonrefundable subscription fee of \$15 for a three-month membership, \$39 for a 12-month  
6 membership, or \$59 for a 24-month membership. In an online transaction at *classmates.com*,  
7 plaintiff paid a subscription fee of \$15. When plaintiff then clicked on the indicated link to  
8 view information about the former classmate who was supposedly trying to contact him, he  
9 found that there was no such communication.

10 16. Classmates continued sending e-mails to plaintiff, including messages stating  
11 that other Classmates members had signed his online Classmates "guestbook." Plaintiff received  
12 e-mails with messages such as:

13 1 person was thinking of you yesterday  
14 Someone Signed your **Guestbook** yesterday  
15 **Your guestbook received 1 new signature yesterday!**  
16 Who's thinking of you?  
17 **Take a look >>**

18 and

19 You received **4 guestbook signatures** in the last month.  
20 **Your Guestbook Activity**  
21 **People are curious about you!** Check out your action in the last month.  
22 **Open your guestbook >>**

23 17. Classmates rely heavily on such guestbook-related e-mail messages to induce ex-  
24 isting members to return to the *classmates.com* site. United Online's year-end SEC filing stated:

1 "We believe that most of our pay accounts elect to purchase our services as a result of a limited  
2 number of features. For example, we believe that our Classmates digital guestbook feature is  
3 responsible for a significant portion of the increase in our new pay accounts since the end of  
4 2006." UOL 10-K at 18.

5 18. Classmates' e-mail messages regarding guestbook activity do not disclose the  
6 true nature of digital guestbook "signatures." By default, when a Classmates member clicks on  
7 another member's profile, Classmates automatically records the viewer's name in the guestbook  
8 associated with that profile being viewed. Other than the exceptional case of a member who has  
9 explicitly overridden Classmates' defaults, guestbook signatures merely log who has viewed a  
10 profile. A guestbook entry is not a signature that a member affirmatively chooses to leave in  
11 another member's guestbook web page.

12 19. Even the *classmates.com* Help Center description of guestbooks employs word-  
13 ing to suggest that a guestbook signature represents a member's decision to leave a signed  
14 record of having viewed a profile. The Help Center page states, "Whenever Classmates mem-  
15 bers visit your profile, they can let you know they were thinking of you by leaving their names"  
16 and "Guestbook names lists the people who chose [*sic*] to leave their names when they visit."  
17 Only by scrolling further down to a section entitled, "How do I sign someone else's guest-  
18 book?" does Classmates admit that guestbook signatures are a simply log entries that Class-  
19 mates' software automatically generates anytime one member clicks on another members' pro-  
20 file.

21 20. Classmates' e-mail messages described in paragraphs 14 through 18, above (the  
22 "E-mail Ads") were misleading and/or incorrect and, as alleged in paragraphs 41 through 46,  
23 "Consequences of Classmates' Conduct," below, have caused injury to plaintiff and the Class.  
24

1 **Classmates' Deception regarding Privacy, Security, and Confidentiality**

2 Classmates' Representations regarding Members' Personal Information

3 21. As a condition of membership at *classmates.com*, consumers must provide per-  
4 sonal registration information and grant Classmates substantial license and ownership rights to  
5 use their information, photographs, and identities for Classmates' commercial purposes. Class-  
6 mates, for their part, represents that members' information will be maintained in a secure envi-  
7 ronment which, in fact, they fail to provide. These allegations are further detailed, below.

8 22. Consumers provide two forms of personal information to Classmates: (i) regis-  
9 tration information that consumers provide for membership; and (ii) user-generated content  
10 created by members and posted by them on the *classmates.com* site. Classmates relies on this  
11 registration information and user-generated content as a critical component in the Classmates  
12 business model:

13 a. Members' personal information promotes increased site traffic and new  
14 memberships. As Classmates tells potential investors and advertisers, "Members have contri-  
15 buted to the company's social networking Web sites a substantial amount of distinct, relevant  
16 pieces of content that helps attract new social networking members and returning Web site visits  
17 from existing members."

18 b. Members' personal information is also a key asset supporting Classmates'  
19 ability to generate advertising revenue. Touting the value of Classmates' intelligence about their  
20 members, UOL tells advertisers, "Think of us as a bridge; on one side is your product or service,  
21 on the other side are our 50 million members waiting for you. And we know how to make them  
22 listen and what makes them tick." [http://www.unitedonline.net/advertisers/revamp\\_2008/adsolu-](http://www.unitedonline.net/advertisers/revamp_2008/adsolu-)  
23 [tions.html](http://www.unitedonline.net/advertisers/revamp_2008/adsolutions.html). UOL cites its ability to target advertisements based on members' personal attributes,  
24 such as age, employment status, past and present employers, education level, educational insti-



1 tution, military service, gender, marital status, children in the home, income range, vehicle own-  
2 ership category, geographic location, and frequency of user visits to the Classmates site. See  
3 [http://www.unitedonline.net/advertisers/revamp\\_2008/targeting.html](http://www.unitedonline.net/advertisers/revamp_2008/targeting.html).

4 23. The Terms of Service state Classmates' requirement, as a condition of their ser-  
5 vices, that consumers furnish complete and accurate registration information and keep their reg-  
6 istration information up to date. If Classmates determines that the information furnished by a  
7 consumer is "or appears to be" inconsistent with this requirement, the Terms of Service give  
8 Classmates the option to terminate services without refund.

9 24. In addition to member registration data, Classmates persistently urges members  
10 to provide user-generated content and post messages and photos on *classmates.com*'s web pag-  
11 es. Web pages on *classmates.com* include statements from Classmates such as:

12 Share the (not so) little things that make you tick.

13 Who are you really?

14 Tell them here, then share some personal factoids in your Q&A.

15 and

16 Let friends see your face.

17 **Post your photo >>**

18 With a detailed, check-box Q&A form, Classmates prompts members to disclose personal de-  
19 tails such as relationship status, number of children and voting choices and further encourages  
20 members to describe themselves with the help of a "Story Wizard."

21 25. Regarding this user-generated content, which Classmates defines as "including  
22 but not limited to [members'] biographical information, photographs and stories," Classmates  
23 requires that consumers grant it extensive license rights, ownership rights, and warranty protec-  
24 tions, as follows:

1 When you participate in the Classmates community you are granting  
2 Classmates certain rights to use the Content you submit or post through the  
3 Website. By submitting Content you grant us a royalty-free, worldwide,  
4 non-terminable, non-exclusive license to use, reproduce, modify, adapt, edit,  
5 market, publish, store, distribute, have distributed, publicly and privately  
6 display, communicate, publicly and privately perform, transmit, have  
7 transmitted, create derivative works based upon, and promote such Content  
8 (in whole or in part) in any medium now known or hereafter devised, for  
9 editorial, commercial, promotional and all other purposes including, without  
10 limitation, the right to publish your name in connection with your Content;  
11 and the right to sublicense any or all of these rights. You acknowledge that  
12 Classmates owns all right, title, and interest in any compilation, collective  
13 work or other derivative work created using or incorporating the Content.  
14 Please remember that you are ultimately responsible for all Content that you  
15 provide and you warrant and represent that: (i) the Content does not and will  
16 not infringe on any copyright or any other third party right nor violate any  
17 applicable law or regulation; and (ii) you have the right to grant any and all  
18 necessary rights and licenses provided in this Section 3, including without  
19 limitation, all necessary copyright and other related rights to the Content,  
20 free and clear of all claims and encumbrances without violating the rights of  
21 any person or entity, including any right to privacy or publicity; and (iii) that  
22 each person depicted in any picture or photograph that you submit as part of  
23 the Content, if any, has provided consent to the use of the photograph. No  
24

1 compensation will be paid for the use of your Content, including, without  
2 limit, any photograph you may provide.

3 Terms of Service, ¶ 3, "Submitting or Posting Content," <http://www.classmates.com/cmo/->  
4 [terms.jsp](http://www.classmates.com/cmo/-terms.jsp), downloaded Nov. 24, 2008.

5 26. For Classmates' part, the *classmates.com* Privacy Policy (the "Privacy Policy")  
6 articulates affirmative commitments to members regarding Classmates' handling of the personal  
7 information that members provide in the course of registering for and using *classmates.com*:

8 Classmates Online, Inc. ("Classmates") is committed to protecting the  
9 privacy of our members' personal information. The purpose of this Privacy  
10 Policy is to inform you of Classmates' information practices related to the  
11 personal information that you provide, when using our services ("Your  
12 Information") . . . .

13 **SHARING YOUR INFORMATION**

14 **[ ] Confidentiality**

15 Classmates only shares Your Information with others when we have your  
16 permission or under the types of circumstances described in this Privacy  
17 Policy.

18 . . .

19 **THE SECURITY OF YOUR INFORMATION**

20 We have instituted physical, electronic and procedural safeguards to store  
21 and maintain Your Information in a secure environment.

22 See <http://www.classmates.com/cmo/privacy.jsp>.

1 Materiality of Web Site Representations regarding Personal Information Safeguards

2 27. As a general matter, a web site's representations regarding its handling of con-  
3 sumers' personal information are material to consumers' decisions when they distinguish among  
4 web sites and decide to patronize or decline to patronize a particular site. For example:

5 a. The materiality of a site's information practices may evidenced by the  
6 site's own statements stressing the importance of privacy, confidentiality, and security of con-  
7 sumers' information as essential elements of the level, character, and quality of services pro-  
8 vided by the site.

9 b. Many consumers review privacy policies and many consumer advocates  
10 survey and critique web site privacy policies. In addition, web browsers such as Microsoft In-  
11 ternet Explorer now include functions that automatically inspect machine-readable versions of  
12 web sites' privacy policies (utilizing Platform for Privacy Preference, or P3P policy statements);  
13 the browser flashes an alert if a user attempts to access a web site on which the privacy  
14 attributes fail to meet the user's privacy criteria. By the same token, if a well-known web site  
15 were silent regarding its privacy, security, and confidentiality practices, the absence of its com-  
16 mitments would attract the attention and comment of the Internet community and would affect  
17 traffic on the site. Therefore, through manual or automated inspection, many consumers con-  
18 sider web sites' representations about their handling of personal information when those con-  
19 sumers decide whether to visit and do business with web sites.

20 c. A site's procedures for handling access and transactions serve as indica-  
21 tors of the importance of the site's information safeguards, such as the fact that the site requires  
22 consumers to register before initially gaining entry or use a logon ID with a confidential pass-  
23 word for each visit. Functions and services offered at a site—such as e-mail functionality, ca-  
24 pability to process credit card payments, or sharing of personal information with other visitors

1 to the site in a protected environment—provide indicators of the materiality of the site’s privacy  
2 representations.

3 Insecure Login Credentials Cookies

4 28. At *classmates.com*, for a member to register, provide profile information, or view  
5 others’ user-generated content, the member must be identified by his or her “Login ID” (mem-  
6 ber registration number or e-mail address) plus password (collectively, “Login Credentials”).  
7 Classmates assert that maintaining password security is important.

8 29. Classmates’ web site offers a member the option to “remember” these Login  
9 Credentials, which it accomplishes by storing Login Credentials information in a cookie on the  
10 member’s computer (the “Login Cookie”). Classmates explain that “storing a cookie on your  
11 computer allows you to login without typing the registered e-mail address or registration num-  
12 ber and password.” However, while Classmates urges their members to safeguard the security of  
13 their Login Credentials (“[n]otify us immediately if you believe that someone has used your  
14 registration or password without your authorization”), Classmates itself exposes Login Creden-  
15 tials to interception, theft, and use by unauthorized third parties.

16 a. Since at least 2000, it has been standard practice when programming web  
17 pages to use the *secure* attribute in programming statements that store security-sensitive data in  
18 cookies on users’ computers. Failure to use the *secure* attribute exposes a cookie to eavesdrop-  
19 ping and access by intruders, even in supposedly secure communications. In contrast to Class-  
20 mates’ claims of safeguarding personal information, Classmates’ fails to take the simple step of  
21 setting the *secure* attribute when creating Login Cookies on members’ computers. Classmates,  
22 in choosing to ignore this security standard, fails to implement reasonable electronic safeguards  
23 appropriate to maintain members’ account and personal information in a secure environment.

1           b.     In the design of *classmates.com*'s login and logoff processes, Classmates  
2 compounds this failure. When members enter and leave the *classmates.com* web site, Class-  
3 mates' web page makes it unwieldy for a member to avoid storing a Login Cookie: at three or  
4 more points during every visit to *classmates.com*, Classmates asks the member whether to re-  
5 member the member's Login Credentials and, at each of those three prompts, the "remember  
6 me" option is pre-checked as the default value. Thus, unless a Classmates member affirmative-  
7 ly unchecks the "remember me" option at least three times during every visit to Classmates'  
8 web site, the member's Login Cookie will be stored on the computer being used by the member.  
9 No matter how often a member affirmatively unchecks the "remember me" option, the option  
10 will be checked again the next time the member encounters a "remember me" prompt.

11           c.     The insecure characteristics of Login Cookies take on even greater signi-  
12 ficance when members access Classmates from locations known to be frequented by users but  
13 prone to unauthorized interception, including public computers and unsecured wireless access  
14 points, such as those available in Internet cafés, airports, and hotels.

15           30.    The importance of privacy representations to consumers has become apparent.  
16 Entire industries have developed in markets for products to secure consumers' personal comput-  
17 ers from unwanted intrusion, to secure commercial servers from intruders seeking to capture  
18 consumers' personal information, to inform consumers after intrusions occur, and to attempt to  
19 mitigate post-intrusion effects on consumers. Regulatory and advocacy groups routinely and  
20 urgently warn consumers to exercise vigilance online, and the need for businesses to protect  
21 consumers' information is the subject of numerous regulations, industry standards, and private  
22 consumer protection initiatives.

1 E-Mail Messages Containing Login Bypass Hyperlinks

2 31. To encourage members to visit *classmates.com*, Classmates sends its members e-  
3 mail messages that contain embedded hyperlinks (“Login Links”) to *classmates.com* web pages.  
4 (For example, in E-mail Ads cited in paragraph 16, above, Login Links are shown in bold and  
5 underscored typeface.) Login Links are web hyperlinks coded with the recipient’s Login Cre-  
6 dentials—clicking on a Login Link causes the member’s web browser to bypass the *class-*  
7 *mates.com* login process and open a Classmates web page personal to the member, such as the  
8 member’s digital guestbook, membership profile, or message in-box. Once there, the member  
9 can navigate to other pages intended only for that member to access, such as areas in which the  
10 member can provide information about his or her family, income level, and other personal de-  
11 tails.

12 32. Login Links are designed to encourage members to visit *classmates.com* by mak-  
13 ing it easy to do with one click. Clicking on a Login Link bypasses the login process, even for  
14 security-conscious members who have specifically instructed Classmates to prompt them for  
15 their Login Credentials each time they access the Classmates site instead of retaining their Lo-  
16 gin Credentials on their computers.

17 33. Classmates’ practice of transmitting e-mail messages containing Login Links vi-  
18 olates industry security standards designed to prevent malicious interception compromise of  
19 Login Credentials.

20 34. Classmates’ erosion of members’ security protections extends further: Even  
21 without malicious compromise, if a member forwards a Classmates e-mail message to someone  
22 else, the member is unwittingly sending his or her Login Credentials, unencrypted, to the reci-  
23 pient of the forwarded messages.





1 37. Classmates do not provide members the right to cancel their Classmates mem-  
2 berships within three days of their membership agreements.

3 38. Classmates do not provide members written copies of signed membership agree-  
4 ments, and Classmates membership agreements do not contain an appropriately conspicuous  
5 display of Classmates' name and address for transmittal of cancellation notice. Further, Class-  
6 mates' member agreement lacks this statutorily required language:

7 You, the buyer, may cancel this agreement, without any penalty or  
8 obligation, at any time prior to midnight of the original contract seller's  
9 third business day following the date of this contract, excluding Sundays  
10 and holidays. To cancel this agreement, mail or deliver a signed and  
11 dated notice, or send a telegram which states that you, the buyer, are  
12 canceling this agreement, or words of similar effect.

13 39. Classmates further fail to observe the requirements of Cal. Civ. Code section  
14 1694.3 regarding the effect of a consumer's death, disability, or relocation on the consumer's  
15 contract rights.

16 40. Classmates' conduct and practices in operating as a provider of dating services,  
17 as defined under California statute, while failing to fulfill their statutory obligations constitute  
18 conduct and practices through which Classmates have caused injury to plaintiff and the Class, as  
19 alleged in paragraphs 41 through 46, "Consequences of Classmates' Conduct," immediately  
20 following.

#### 21 Consequences of Classmates' Conduct

22 41. Plaintiff incorporates the above allegations by reference.

23 42. As generally described above, including the specific allegations of paragraphs 5  
24 through 9 and 13, above, Classmates offers and performs services in the course of trade and

1 commerce for the personal, family, household purposes of members of the consuming public.  
2 Through transactions that Classmates intend to result in the sales of Gold memberships to such  
3 consumers and increased advertising revenue, Classmates mislead consumers to enter into obli-  
4 gations relating to their services.

5 43. Regarding Classmates' E-mail Ads:

6 a. As specifically alleged in paragraphs 14 through 20, above, Classmates'  
7 E-mail Ads contain representations that other members have endorsed, approved, or otherwise  
8 affirmatively acted to communicate with a member, when that is not the case.

9 b. Classmates' representations regarding contact being sought by former ac-  
10 quaintances are material to consumers' decisions to visit *classmates.com*, to register for *class-*  
11 *mates.com*, and to pay to become Gold members.

12 44. Regarding Classmates' privacy, confidentiality, and security practices:

13 a. As specifically alleged in paragraphs 28 through 35, above, Classmates  
14 implementation of Login Cookies and e-mail messages containing Login Links fail to adequate-  
15 ly or reasonably secure members' Login Credentials and personal information. Accordingly,  
16 Classmates' services are not of the standard and quality and do not have the characteristics and  
17 benefits identified in the Privacy Policy representations alleged in paragraph 26.

18 b. Following from the general allegations of paragraph 27, if Classmates  
19 were to (i) publicize accurately the privacy, security, and confidentiality aspects (or lack thereof)  
20 of their services or (ii) remain silent on the subject, Classmates would attract unwanted public  
21 notice and negative public comments regarding those practices; and a significant number of  
22 consumers would have considered the information material to their decision to patronize Class-  
23 mates by visiting the *classmates.com* site, registering as *classmates.com* members, contributing  
24 user-generated content, and paying to become Gold members.

1           45.     Plaintiff and the Class members have been injured in their business and property  
2 as follows:

3           a.     Because Classmates' statements and/or omissions in the E-mail Ads and  
4 in the Privacy Policy were misleading and/or incorrect, Classmates deprived consumers of ma-  
5 terial and critical information that the consumers were reasonably entitled to consider in their  
6 decisions to patronize *classmates.com* by registering as members, subscribe as Gold members,  
7 and post user-generated content that included their personal information.

8           b.     Plaintiff and members of the Class have been injured by their payment of  
9 money to Classmates for subscription fees without having received the affirmatively promised  
10 content, character, and quality of services.

11          c.     Plaintiff and members of the Class have been injured in that they have  
12 provided Classmates with their property—in particular, personal information in the form of reg-  
13 istration data and user-generated content and, as set forth in the Terms of Service language cited  
14 in paragraph 26, have in perpetuity granted defendants valuable intellectual property rights in  
15 such property and undertaken liabilities regarding defendants' uses of such property.

16          d.     Plaintiff and members of the Class have, in perpetuity, been diminished in  
17 their abilities to protect their personal information because Classmates, through their misleading  
18 and/or incorrect representations and omissions, is in possession of such information and is fail-  
19 ing to maintain it under the conditions and with the standard of care Classmates led plaintiff and  
20 the Class members to reasonably expect.

21          46.     Meanwhile, even as plaintiff and the Class members' have been disadvantaged in  
22 their ability to make informed choices in the marketplace and diminished in their rights in their  
23 personal information:



1           51. Plaintiff will fairly and adequately represent and protect the interests of the other  
2 Class members. Plaintiff has retained counsel with substantial experience in prosecuting com-  
3 plex litigation and class actions of this sort. Plaintiff and his counsel are committed to vigorous-  
4 ly prosecuting this action on behalf of the Class members and have the financial resources to do  
5 so. Neither plaintiff nor his counsel has any interest adverse to those of the other Class mem-  
6 bers.

7           52. Classmates have acted and failed to act on grounds generally applicable to plain-  
8 tiff and the other Class members, requiring the Court's imposition of uniform injunctive and  
9 corresponding declaratory relief with respect to the Class as a whole.

10           53. Many questions of law and fact are common to the claims of plaintiff and the  
11 other Class members, and those questions predominate over any questions that may affect indi-  
12 vidual Class members. Common questions for the Class include but are not limited to the fol-  
13 lowing:

14           a. whether Classmates' conduct regarding the representations in their e-mail  
15 messages to consumers constitutes unfair and/or deceptive acts or practices;

16           b. whether Classmates' conduct regarding the security of Login Credentials  
17 cookies they place on consumers' computers constitutes unfair and/or deceptive acts or  
18 practices;

19           c. whether Classmates' conduct regarding the e-mail transmission of Login  
20 Links constitutes unfair and/or deceptive acts or practices;

21           d. whether Classmates' agreements with members constitute void and  
22 unenforceable dating services contracts; and

23           e. whether Classmates' conduct described herein resulted in unjust enrich-  
24 ment.

1           54.    Class treatment of common questions of law and fact is also superior to individu-  
2 al actions or piecemeal litigation in that it conserves the resources of the courts and the litigants,  
3 and promotes consistency and efficiency of adjudication.

4           55.    A class action is superior to all other available methods for the fair and efficient  
5 adjudication of this controversy since joinder of all members is impracticable.

6           56.    Furthermore, as the damages suffered by individual Class members may be rela-  
7 tively small, the expense and burden of individual litigation make it impossible for members of  
8 the Class to redress individually the wrongs done to them. Absent a class action, many or most  
9 Class members would find the cost of litigating their claims to be prohibitive and would have no  
10 effective remedy.

11          57.    There will be no difficulty in the management of this case as a class action.

12          58.    In the alternative, the Class may be certified because (a) the prosecution of sepa-  
13 rate actions by the individual members of the Class would create a risk of inconsistent or vary-  
14 ing adjudications with respect to individual Class members which would establish incompatible  
15 standards of conduct for defendant; (b) the prosecution of separate actions by individual Class  
16 members would create a risk of adjudication with respect to them which would, as a practical  
17 matter, be dispositive of the interests of other Class members not parties to the adjudications, or  
18 substantially impair or impede their ability to protect their interests; and (c) defendants have  
19 acted or refused to act on grounds generally applicable to the class, thereby making appropriate  
20 final and injunctive relief with respect to the members of the Class as a whole.

21          59.    Unless a class-wide injunction is issued, defendants may continue to deceive  
22 consumers in the states of Washington, California, and all other states of these United States.

1 **FIRST CAUSE OF ACTION**

2 **Violations of Washington Consumer Protection Act, RCW § 19.86.010 *et seq.***

3 **on behalf of plaintiff and the Class**

4 60. Plaintiff incorporates the above allegations by reference.

5 61. The Washington Consumer Protection Act, RCW § 19.86.010 *et seq.* ("CPA")  
6 declares unlawful (a) an unfair or deceptive act or practice, (b) occurring in trade or commerce,  
7 (c) with a public-interest impact, (d) that causes injury to plaintiff.

8 62. At all relevant times, Classmates have engaged in unfair and deceptive business  
9 acts and practices that have a capacity to deceive the public, including but not limited to trans-  
10 mitting misleading and/or incorrect e-mail messages to consumers and by posting misleading  
11 and/or incorrect statements and assurances regarding defendants' privacy, security, and confi-  
12 dentiality practices.

13 63. As a result of defendants' unfair and deceptive acts and practices in the conduct  
14 of their business, plaintiff and the other Class members have been injured in their business  
15 and/or property.

16 64. The State of Washington has an important interest in regulating the business ac-  
17 tivities of companies headquartered in Washington state, including activities that have effect  
18 outside of the state. The practices complained of herein, that are the basis of the statutory claim  
19 in this cause of action, were developed or set in, and/or emanated from, Washington state.

20 65. Unless Classmates are enjoined from their unfair and deceptive acts and practices  
21 as alleged herein, Classmates will continue to cause harm to consumers.

22 66. Such unfair or deceptive practices affected and continue to affect the public in-  
23 terest in that defendant committed the unfair and deceptive acts and practices described herein  
24 in the course of their business as part of a pattern and generalized course of conduct. Also, de-

1 defendants' unfair and deceptive business acts and practices have affected, and continue to affect,  
2 a great many members of the public in Washington state and nationwide, in the context of a  
3 business activity—operation of a leading social networking web site—available to the public at  
4 large.

5 **SECOND CAUSE OF ACTION**

6 **Violations of California's Unfair Competition Law**

7 **Cal. Business and Professions Code § 17200, *et seq.***

8 **on behalf of plaintiff and the Class**

9 67. Plaintiff incorporates the above allegations by reference.

10 68. In violation of California Business and Professions Code section 17200 *et seq.*  
11 ("UCL"), defendants' conduct in this regard is ongoing and includes, but is not limited to,  
12 statements made by defendants in their E-mail Ads and Privacy Policy regarding defendants'  
13 possession of communications about specific members from other specific members and defen-  
14 dants' information privacy, security, and confidentiality practices.

15 69. By engaging in the above-described acts and practices, defendants have commit-  
16 ted one or more acts of unfair competition within the meaning of the UCL and, as a result, plain-  
17 tiff and the Class have suffered injury-in-fact and have lost money and/or property—  
18 specifically, personal information and/or registration fees.

19 70. Defendants' business acts and practices are unlawful, in part, because they vi-  
20 olate California Business and Professions Code section 17500, *et seq.*, which prohibits false ad-  
21 vertising, in that they were untrue and misleading statements relating to defendants' perfor-  
22 mance of services and with the intent to induce consumers to enter into obligations relating to  
23 such services, and regarding which statements defendants knew or which, by the exercise of  
24 reasonable care defendants should be known, to be untrue and misleading. Defendants' busi-



1 ness acts and practices are also unlawful in that they violate the Washington CPA and the Cali-  
2 formia Consumer Legal Remedies Act, California Civil Code section 1750 *et seq.* Defendants  
3 are therefore in violation of the “unlawful” prong of the UCL.

4 71. Defendants’ business acts and practices are unfair because they cause harm and  
5 injury in fact to plaintiff and members of the Class and for which defendants have no justifica-  
6 tion other than to increase, beyond what defendants would have otherwise realized, their profit  
7 in member subscriptions and fees from advertisers and their information assets through the ac-  
8 quisition of consumers’ personal information. Defendants’ conduct lacks reasonable and legiti-  
9 mate justification in that defendants have benefited from such conduct and practices while  
10 plaintiff and the Class members have been misled as to the nature and integrity of defendants’  
11 services and have, in fact, suffered material disadvantage regarding their interests in the privacy,  
12 security, and confidentiality of their personal information. Defendants’ conduct offends public  
13 policy in California tethered to the Consumer Legal Remedies Act, the state constitutional right  
14 of privacy, and California statutes recognizing the need for consumers to obtain material infor-  
15 mation that enables them to safeguard their own privacy and security interests, including Cal.  
16 Civ. Code section 1798.80. In addition, defendants’ *modus operandi* constitutes a sharp practice  
17 in two ways: (i) Defendants know, or should know, that consumers care about the status of per-  
18 sonal-information safeguards but are unlikely to be aware of the manner in which defendants  
19 fail to fulfill their commitments to safeguard personal information; and (ii) to the extent mem-  
20 bers do become aware of defendants’ conduct and practices, defendants’ business model is de-  
21 signed to generate high traffic volume to make up for the loss of revenue from members disaf-  
22 fected by defendants’ misleading messages. Defendants are therefore in violation of the “un-  
23 fair” prong of the UCL.





1 their use of personal information to generate subscription and advertising revenue, and their cost  
2 savings by failing to implement privacy, confidentiality, and security safeguards.

3 81. Classmates appreciate or have knowledge of said benefit.

4 82. Classmates unjustly gained money from plaintiff and the Class as a direct result  
5 of Classmates' conduct.

6 83. Under principles of equity and good conscience, Classmates should not be per-  
7 mitted to retain the sums belonging to plaintiff and the Class and which Classmates have unjust-  
8 ly received as a result of Classmates' wrongful actions.

9 **FIFTH CAUSE OF ACTION**

10 **Violations of California's Law on Dating Services Contracts, Cal. Civil Code § 1694, et seq.**  
11 **on behalf of plaintiff and the Class**

12 84. Plaintiff incorporates the above allegations by reference.

13 85. Classmates have provided and continues to provide dating services as defined by  
14 California Civil Code section 1694 and has and continues to provide such services in violation  
15 of section 1694. Classmates Gold members have paid for such services, have been damaged as  
16 a proximate cause of Classmates' violations, and should be permitted to recover the relief speci-  
17 fied in section 1694.4.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, plaintiff Xavier Vasquez, on behalf of himself and the Class, prays for  
20 the following relief:

21 A. Certify this matter as a class action.

22 B. Enter judgment in favor of plaintiff and the Class.

23 C. Enter injunctive and/or declaratory relief as is necessary to protect the interests  
24 of plaintiff and the Class.

- 1 D. Award damages to Class members, in amounts to be proved.
- 2 E. Award treble damages to Class members, to the extent allowable
- 3 F. Award punitive damages to Class members, to the extent allowable under Cali-
- 4 fornia law.
- 5 G. Award additional damages of up to \$5,000 to each senior citizen or disabled per-
- 6 son whom defendants victimized under California Civil Code section 1770, according to proof.
- 7 H. Award restitution against defendants in amounts to be proved.
- 8 I. Award disgorgement of monies obtained through and as a result of unfair and/or
- 9 deceptive acts and/or practices, in amounts to be proved.
- 10 J. Award plaintiff and the Class pre- and post-judgment interest, to the extent al-
- 11 lowable.
- 12 K. Award plaintiff and the Class their reasonable litigation expenses and attorneys'
- 13 fees.
- 14 L. Award such other and further relief as equity and justice may require.

15 Dated: Dec. 19, 2008

Respectfully submitted,

LAW OFFICES OF CLIFFORD A. CANTOR, P.C.

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*Attorneys for Plaintiff*

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Case Number: 08-2-43407-9  
Case Title: Xavier Vasquez vs Classmates Online, Inc., Classmates Media  
Corp., United Online, Inc., and Does 1-100  
Document Title: SUMMONS & COMPLAINT  
User's Name: Clifford Cantor  
Filed Date: 12/19/2008 2:09:36 PM

User Signed

Signed By: Clifford Cantor  
WSBA #: 17893  
Date: 12/19/2008 2:03:29 PM

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SUPERIOR COURT OF WASHINGTON  
KING COUNTY

XAVIER VASQUEZ, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

CLASSMATES ONLINE, INC.,  
a Washington corporation,  
CLASSMATES MEDIA CORPORATION,  
a Delaware corporation,  
UNITED ONLINE, INC.,  
a Delaware corporation, and  
J. DOES 1 through 100, corporations,

Defendants.

Case No.

**SUMMONS—20-day**

**TO CLASSMATES ONLINE, INC.:**

A lawsuit has been started against you in the above-entitled court by Xavier Vasquez,  
plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you  
with this Summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your  
defense in writing, and by serving a copy upon the person signing this summons within 20 days  
after the service of this summons, excluding the day of service, or a default judgment may be en-

1 tered against you without notice. A default judgment is one where plaintiff is entitled to what it  
2 asks for because you have not responded. If you serve a notice of appearance on the undersigned  
3 person, you are entitled to notice before a default judgment may be entered.

4 You may demand that the plaintiff file this lawsuit with the court. If you do so, the de-  
5 mand must be in writing and must be served upon the person signing this summons. Within 14  
6 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service  
7 on you of this summons and complaint will be void.

8 If you wish to seek the advice of an attorney in this matter, you should do so promptly so  
9 that your written response, if any, may be served on time.

10 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State  
11 of Washington.

12 Dated: Dec. 18, 2008

Respectfully submitted,

13 LAW OFFICES OF CLIFFORD A. CANTOR, P.C.

14 By: s/ Clifford A. Cantor (WSBA # 17893)

627 208th Avenue SE

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21 *Attorneys for Plaintiff*



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SUPERIOR COURT OF WASHINGTON  
KING COUNTY

XAVIER VASQUEZ, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

CLASSMATES ONLINE, INC.,  
a Washington corporation,  
CLASSMATES MEDIA CORPORATION,  
a Delaware corporation,  
UNITED ONLINE, INC.,  
a Delaware corporation, and  
J. DOES 1 through 100, corporations,

Defendants.

Case No.

**SUMMONS—60-day**

**TO CLASSMATES MEDIA CORP.:**

A lawsuit has been started against you in the above-entitled court by Xavier Vasquez,  
plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you  
with this Summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your  
defense in writing, and by serving a copy upon the person signing this summons within 60 days  
after the service of this summons, excluding the day of service, or a default judgment may be en-

1 tered against you without notice. A default judgment is one where plaintiff is entitled to what it  
2 asks for because you have not responded. If you serve a notice of appearance on the undersigned  
3 person, you are entitled to notice before a default judgment may be entered.

4 You may demand that the plaintiff file this lawsuit with the court. If you do so, the de-  
5 mand must be in writing and must be served upon the person signing this summons. Within 14  
6 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service  
7 on you of this summons and complaint will be void.

8 If you wish to seek the advice of an attorney in this matter, you should do so promptly so  
9 that your written response, if any, may be served on time.

10 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State  
11 of Washington.

12 Dated: Dec. 18, 2008

Respectfully submitted,

13 LAW OFFICES OF CLIFFORD A. CANTOR, P.C.

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21 *Attorneys for Plaintiff*

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SUPERIOR COURT OF WASHINGTON  
KING COUNTY

XAVIER VASQUEZ, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

CLASSMATES ONLINE, INC.,  
a Washington corporation,  
CLASSMATES MEDIA CORPORATION,  
a Delaware corporation,  
UNITED ONLINE, INC.,  
a Delaware corporation, and  
J. DOES 1 through 100, corporations,

Defendants.

Case No.

**SUMMONS—60-day**

**TO UNITED ONLINE, INC.:**

A lawsuit has been started against you in the above-entitled court by Xavier Vasquez,  
plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you  
with this Summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your  
defense in writing, and by serving a copy upon the person signing this summons within 60 days  
after the service of this summons, excluding the day of service, or a default judgment may be en-

1 tered against you without notice. A default judgment is one where plaintiff is entitled to what it  
2 asks for because you have not responded. If you serve a notice of appearance on the undersigned  
3 person, you are entitled to notice before a default judgment may be entered.

4 You may demand that the plaintiff file this lawsuit with the court. If you do so, the de-  
5 mand must be in writing and must be served upon the person signing this summons. Within 14  
6 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service  
7 on you of this summons and complaint will be void.

8 If you wish to seek the advice of an attorney in this matter, you should do so promptly so  
9 that your written response, if any, may be served on time.

10 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State  
11 of Washington.

12 Dated: Dec. 18, 2008

Respectfully submitted,

13 LAW OFFICES OF CLIFFORD A. CANTOR, P.C.

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21 *Attorneys for Plaintiff*