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E-FILING

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14 ATTORNEYS FOR PLAINTIFF

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

17 LINDSEY ABRAMS, individually and on )  
18 behalf of a class of similarly situated )  
19 individuals, )  
20 Plaintiff, )  
21 v. )  
22 FACEBOOK, INC., a Delaware corporation, )  
23 Defendant. )

Case No.

**C07 05378**

**PVT**

) **COMPLAINT FOR DAMAGES**  
) **AND INJUNCTIVE RELIEF**  
) **DEMAND FOR JURY TRIAL**  
) **CLASS ACTION**

**BY FAX**

24 **CLASS ACTION COMPLAINT**

25 Plaintiff Lindsey Abrams brings this class action complaint against defendant  
26 Facebook, Inc. ("Facebook") to stop defendant's practice of transmitting or permitting to be  
27 transmitted unauthorized text messages to the wireless devices of consumers nationwide, and  
28 to obtain redress for all persons injured by its conduct. For her class action complaint,

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

**Filed**  
OCT 22 2007  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

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*SI*

1 Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and  
2 experiences, and, as to all other matters, upon information and belief, including investigation  
3 conducted by her attorneys.

4 **NATURE OF THE CASE**

5 1. In an on-going effort to attract users to its website, Facebook, a self-described  
6 “social utility” that has gained popularity by linking students and other groups through its  
7 website, engaged in a mobile marketing service called “Facebook Mobile.” Through  
8 Facebook Mobile, members can, with a few clicks of the computer mouse, send text  
9 messages -- often containing adult content -- to the mobile phone numbers associated with  
10 other members.

11 2. However, through either intentional design or gross negligence, Facebook’s  
12 system has a significant flaw: the system sends text messages to the cell phone numbers  
13 entered by a particular member, without regard to whether that member actually still uses  
14 that cell phone number. Because cell phone numbers are reassigned to new users after the  
15 previous user closes her or her account, Facebook’s flaw has resulted in the transmission of  
16 thousands of unauthorized text messages to the wireless phones of consumers across the  
17 nation.

18 3. Facebook’s system has created a number of significant problems. First,  
19 individuals’ privacy rights are being compromised. New cell phone users are now being  
20 assailed with invitations to parties by people they do not know, requests to be designated a  
21 “friend” on Facebook’s website, and other often obscure and graphic messages. These  
22 messages can come during all times of the day or night and, because the senders are often  
23 hard to identify, can be seen as intimidating or unsettling.

24 4. This issue is all the more pronounced because children are among those who  
25 receive phone numbers previously associated with Facebook’s members. As such, adults  
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1 seeking sexual encounters or other types of adult activities end up inadvertently text  
2 messaging young children.

3 5. Additionally, recipients of these text messages often have to pay to receive  
4 these text messages, even though they are completely unauthorized and unwelcome.  
5 In order to redress these injuries, Abrams, on behalf of herself and a nationwide class, brings  
6 suit under the California Computer Crime Law, Cal. Pen. Code § 502, California's Unfair  
7 Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, and the common law and seeks  
8 an immediate injunction against Facebook.

9 **PARTIES**

10 6. Plaintiff Lindsey Abrams is a mother of a young child. She is a citizen of  
11 Indiana.

12 7. Defendant Facebook, Inc. is a self-described social networking company  
13 located in California. It is a Delaware company with its principal place of business in  
14 California, and it conducts business throughout the United States.

15 **JURISDICTION**  
16 **VENUE AND JURISDICTION**

17 8. This Court has subject matter jurisdiction over this action pursuant to 28  
18 U.S.C. § 1332. The aggregate claims of plaintiffs and the proposed class members exceed  
19 the sum or value of \$5,000,000.00.

20 9. This Court also has personal jurisdiction over defendants because (a) a  
21 substantial portion of the wrongdoing alleged in this complaint took place in this state, (b)  
22 defendant Facebook Inc.'s principle place of business is located in this state, and (c)  
23 defendant is authorized to do business here, has sufficient minimum contacts with this state,  
24 and/or otherwise intentionally avails itself of the markets in this state through the promotion,  
25 marketing and sale of its products in this state, to render the exercise of jurisdiction by this  
26 Court permissible under traditional notions of fair play and substantial justice.

27 10. Venue is proper in this District under 28 U.S.C. §1391(b) and (c). A  
28 substantial portion of the events and conduct giving rise to the violations of law complained

1 of herein occurred in this District, defendant Facebook Inc.'s principle executive offices and  
2 headquarters are located in this District at 156 University Avenue, Palo Alto, CA 94301.

3 **INTRADISTRICT ASSIGNMENT**

4 11. Intra district assignment to the San Jose Division is proper because the  
5 principal offices of defendant Facebook Inc, is located in Santa Clara County.

6 **THE CONDUCT COMPLAINED OF**

7 12. In recent years, as social-networking has grown increasingly popular on the  
8 internet, many companies in the social-networking industry have released mobile versions of  
9 their service ("Mobile Service") which involve the transmission of user-created content in the  
10 form of text messages to fellow users exclusively through their wireless devices.

11 13. In or about April 2006, Defendant Facebook and its partner cellular telephone  
12 carriers ("carriers") jointly released a "Mobile Service" for Facebook's users called  
13 Facebook Mobile.

14 14. Defendant's Mobile Service employs technology known as Short Message  
15 Services ("SMS"), which is a content delivery system that allows owners of wireless devices,  
16 such as cell phones, to send and receive short text messages, usually limited to 160 or so  
17 characters.

18 15. Defendant's Mobile Service works primarily by converting messages posted  
19 by users on the Facebook website into commercial SMS text messages which are then  
20 automatically transmitted to the wireless devices of other Facebook users.

21 16. In order to obtain the necessary technical expertise and billing relationships  
22 required to operate its Mobile Service, Facebook, by itself or through its agents, partnered  
23 with traditional cellular telephone carriers.

24 17. Facebook and/or its partners profit from the Mobile Service by charging the  
25 recipient a fee for the transmission of each item of wireless content. Such fee varies in  
26 amounts but ranges around \$0.15 that the recipient must pay for the receipt of each text  
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1 message sent by Facebook. Recipients are charged such fee even if they did not consent to  
2 receive such text messages.

3 18. As a part of their normal business practice, Facebook's carrier partners  
4 routinely reissue (or "recycle") wireless phone numbers assigned to the wireless devices of  
5 former customers to new customers who open new cellular telephone accounts. Because it  
6 and its partners would lose valuable revenue, Facebook has knowingly permitted its system  
7 to operate in a way so as to ensure that unauthorized content is transmitted to the wireless  
8 devices of consumers who have received a wireless device encumbered with Facebook  
9 Mobile.

10 19. The instant lawsuit flows from what happens when Facebook cooperates with  
11 its wireless carrier partners when a wireless number of a Facebook user is recycled to a non-  
12 Facebook user, resulting in Facebook's transmission of unauthorized content to the wireless  
13 devices of consumers nationwide.

14 20. Wireless phone number recycling is a serious problem that is not limited to a  
15 small group of customers. Indeed, it has been a well known and recurring problem that  
16 companies at all levels within the wireless industry have conveniently ignored to their benefit  
17 for several years. According to publicly available information from the Federal  
18 Communications Commission, millions of cell phone numbers were recycled in 2006 alone.

19 21. As a consequence, due in part to its vast user base (in excess of 34 million),  
20 Facebook has transmitted mass amounts of unauthorized content to the nation's cellular  
21 telephone consumers since instituting its Mobile Service in 2006.

22 22. If Facebook wanted this practice to stop, it could do so immediately by  
23 instituting a regular communication policy with its carrier partners to ensure that the wireless  
24 numbers Facebook has on file for its users stay current and have not been recycled by its  
25 carrier partners to a new cellular telephone consumer who has not consented to receive  
26 Facebook content.

1           23. On information and belief, Facebook transmits tens of thousands, if not  
2 hundreds of thousands, of text messages to consumers' wireless devices throughout the  
3 nation every day.

4           24. Beginning in or about April, 2006, and continuing through to the present,  
5 Facebook and/or its authorized partners, agents, vendors, or contractors, knowingly and  
6 intentionally accessed and charged the wireless devices of consumers nationwide without  
7 authorization, including the repeated delivery of and charging for unauthorized content to the  
8 cellular telephone owned by Plaintiff.

9           25. On or about November 26, 2006, Plaintiff Lindsey Abrams opened a new  
10 wireless telephone account with Verizon Wireless, a Facebook Mobile carrier partner. At that  
11 time, Plaintiff was assigned wireless phone number which, it was later determined, was  
12 encumbered with Facebook's Mobile Service.

13           26. Beginning shortly after opening her cell phone account and continuing  
14 through February 2007, Plaintiff's cell phone received approximately 20 unauthorized text  
15 messages from Facebook.

16           27. The "from" field of such transmissions contained only the following cryptic  
17 term: "32665," which was later confirmed to belong to Facebook's Mobile Service. The  
18 bodies of a sampling of those text messages read as follows:

- 19           a. "Jacob [last name redacted] (Purdue) wrote on your wall: Hey not much , ,  
20           just the same ol SH\*\* [expletive redacted in part] yeah you haven't poked me  
21           in a whole! lol . . . what are you up to?"
- 22           b. "Lauren [last name redacted] wrote on your wall: well i see, u want to teach  
23           me? Reply to msg Lauren back."
- 24           c. "Zeph [last name redacted] has requested to add you as a friend. Reply 'a' to  
25           add, or 'info' to get profile."
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1 d. "Facebook msg from Damon [last name redacted] (Indianapolis, IN) Subj; re:  
2 hey hey you..well just haven't talked to u in like awhile...thought i'd drop in  
3 a...(n' for next)"

4 28. At no time did Plaintiff consent to receive such text messages from Facebook.

5 29. Plaintiff's cellular service provider, Verizon Wireless, a partner in  
6 Defendant's Mobile Service, charged Abrams \$0.10 for each such Facebook transmission,  
7 causing her wireless phone account to slip into arrears, thereby requiring Plaintiff to deposit  
8 additional funds with Verizon Wireless in order to prevent deactivation of her cell phone  
9 service. When Plaintiff asked a Verizon representative how she could stop the receipt of such  
10 Facebook transmissions, Verizon informed Plaintiff that her only option was to deactivate all  
11 text message functionality on her phone. Because Plaintiff did not want to lose the ability to  
12 send and receive text messages that she authorized, she declined to discontinue such part of  
13 her cell phone service.

14 30. Facebook knowingly accessed and obtained information from Plaintiff's  
15 wireless device through its transmission of such unauthorized content.

16 31. Upon information and belief, the unauthorized content transmitted to  
17 Plaintiff's wireless device was one of thousands delivered to the wireless devices of persons  
18 around the United States, in the same fashion and by the same means as those received by  
19 Plaintiff.

20 **Damage Caused by Defendant's Unlawful Conduct**

21 32. In addition to the fees discussed above and other related fees assessed by  
22 carriers, Facebook's text message content causes wireless devices to slow down, takes up  
23 bandwidth over a wireless connection, uses up the memory of the device, and frustrates cell  
24 phone users. The unauthorized text messages decrease productivity by requiring that hours be  
25 spent on figuring out how to stop the content from being placed on one's wireless device and  
26 how to get the content off one's cell phone. The cumulative impact of not only multiple  
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1 unwanted text messages, but also the threat of their continued receipt, impedes the use of  
2 wireless devices.

3 33. More significantly, Facebook's misconduct invades the privacy rights of  
4 potentially hundreds of thousands of people. Such persons are receiving unwanted text  
5 messages at all times of the day and night. As experienced by Ms. Abrams, these text  
6 messages can contain adult or graphic language or requests for intimate encounters.

7 34. This problem is all the more serious because, as Facebook knows, many of the  
8 recipients of these graphic text messages are young children. Receiving solicitations to  
9 "teach me," reminders that the sender has not been "poked" in awhile, invitations to college  
10 parties, or requests to be added to the sender's list of "friends," can be both frightening and  
11 dangerous.

12 **CLASS ALLEGATIONS**

13  
14 35. Plaintiff brings this action pursuant to Rule 23(b)(2) and (b)(3) of the Federal  
15 Rules of Civil Procedure, on behalf of herself and a class defined as follows:

- 16 a. All persons or entities residing in the United States  
17 who, at any time since April 2006, received a text  
18 message on their mobile telephone through Facebook  
19 Mobile, who did not authorize Facebook Mobile to  
20 send messages to their telephone number.

21 Excluded from the class are defendant, any entity in which defendant has a controlling  
22 interest or which has a controlling interest in defendant, and defendant's legal  
23 representatives, predecessors, successors, assigns, and employees. Also excluded from the  
24 class are the judge and staff to whom this case is assigned, and any member of the judge's  
25 immediate family.

26 36. Plaintiff reserves the right to revise this definition of the class based on facts  
27 she learns during discovery.

28 37. Plaintiff is a member of the class that she seeks to represent. Members of the

1 class can be identified using defendant's records of Facebook Mobile services and other  
2 information that is kept by defendant in the usual course of business and/or in the control of  
3 defendant. Class members can also be notified of the class action through publication and  
4 direct mailings to address lists maintained in the usual course of business by defendant.

5 38. **Numerosity**: Class members are so numerous that their individual joinder is  
6 impracticable. It is estimated that the Class consists of thousands of members. The precise  
7 number of class members is unknown to plaintiff, but it is clear that the number greatly  
8 exceeds the number to make joinder impossible.

9 39. **Existence and predominance of common questions**: Common questions of  
10 law and fact predominate over the questions affecting only individual class members. Some  
11 of the common legal and factual questions include:

- 12 a. Whether defendant profits from Facebook Mobile messages sent to mobile  
13 telephones;
- 14 b. Whether defendant knew or should have known that the Facebook Mobile  
15 messages were being sent to mobile telephone users who had not authorized  
16 such messages;
- 17 c. Whether Defendant's conduct described herein violates Cal. Pen. Code §  
18 502(c)(3), California's Computer Crime Law.
- 19 d. Whether Defendant has unjustly received money belonging to Plaintiff and the  
20 Class and whether under principles of equity and good conscience, it should  
21 not be permitted to retain it;
- 22 e. Whether Defendant's conduct described herein amounted to trespass to  
23 chattels on behalf of Plaintiff and the Class;
- 24 f. Whether Defendant's conduct described herein violates California Cal. Bus. &  
25 Prof. Code § 17200, California's Unfair Competition Law; and  
26

1 g. The nature and extent of damages and other remedies to which the conduct of  
2 defendant entitles the class members.

3 40. Defendant engaged in a common course of conduct giving rise to the legal  
4 rights sought to be enforced by the class members. Similar or identical statutory and  
5 common law violations, business practices, and injuries are involved. Individual questions, if  
6 any, pale by comparison to the numerous common questions that dominate.

7 41. The injuries sustained by the class members flow, in each instance, from a  
8 common nucleus of operative facts. In each case defendant caused or permitted unauthorized  
9 text messages to be delivered to the telephone of a user who did not authorize receipt of such  
10 services.

11 42. The class members have been damaged by defendant's' misconduct. Class  
12 members must pay for receipt of text messages, even messages they do not want.

13 43. **Typicality:** Plaintiff's claims are typical of the claims of the other proposed  
14 class members. Plaintiff obtained a telephone capable receiving text messages. Plaintiff  
15 released her telephone number to those persons to whom she provided authorization to send  
16 her text messages. She did not authorize Facebook Mobile to send, either from itself or from  
17 its members, any text messages to her telephone. To the extent that text messages were  
18 received on her telephone by Facebook and/or any of it members via its Facebook Mobile  
19 service, such messages were unauthorized, and a violation of the rights of plaintiff.

20 44. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the  
21 class. Plaintiff is familiar with the basic facts that form the bases of the proposed class  
22 members' claims. Plaintiff's interests do not conflict with the interests of the other class  
23 members that she seeks to represent. Plaintiff has retained counsel competent and  
24 experienced in class action litigation and intends to prosecute this action vigorously.  
25 Plaintiff's counsel has successfully prosecuted complex actions including consumer  
26 protection class actions. Plaintiff and Plaintiff's counsel will fairly and adequately protect  
27 the interests of the class members.

28 45. **Superiority:** The class action device is superior to other available means for  
the fair and efficient adjudication of the claims of Plaintiff and the proposed class members.

1 The relief sought per individual member of the class is small given the burden and expense of  
2 individual prosecution of the potentially extensive litigation necessitated by the conduct of  
3 defendants. Furthermore, it would be virtually impossible for the class members to seek  
4 redress on an individual basis. Even if the class members themselves could afford such  
5 individual litigation, the court system could not.

6 46. Individual litigation of the legal and factual issues raised by the conduct of  
7 defendant would increase delay and expense to all parties and to the court system. The class  
8 action device presents far fewer management difficulties and provides the benefits of a  
9 single, uniform adjudication, economies of scale and comprehensive supervision by a single  
10 court.

11 47. Given the similar nature of the class members' claims and the absence of  
12 material differences in the state statutes and common laws upon which the class members'  
13 claims are based, a nationwide class will be easily managed by the Court and the parties.

14 48. The court may be requested to also incorporate subclasses of Plaintiffs,  
15 defendants, or both, in the interest of justice and judicial economy.

16 49. In the alternative, the class may be certified because:

- 17 a. the prosecution of separate actions by the individual members of the  
18 class would create a risk of inconsistent or varying adjudication with  
19 respect to individual class members which would establish  
20 incompatible standards of conduct by defendant;
- 21 b. the prosecution of separate actions by individual class members  
22 would create a risk of adjudications with respect to them which  
23 would, as a practical matter, be dispositive of the interests of other  
24 class members not parties to the adjudications, or substantially  
25 impair or impede their ability to protect their interests; and
- 26 c. defendant has acted or refused to act on grounds generally applicable  
27 to the class, thereby making appropriate final and injunctive relief  
28 with respect to the members of the class as a whole.

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**FIRST CAUSE OF ACTION**  
**(California Computer Crime Law**  
**Cal. Pen. Code § 502)**

50. Abrams incorporates by reference the foregoing allegations.

51. The cellular phones used and owned by Abrams and the other class members are sophisticated electronic devices which are programmable and capable of being used in conjunction with external files, and contain many (if not most) of the same capabilities and equipment as traditional desktop computers (as well as cellular radio signal processing technology). These cellular phones are computer systems under the definition of Cal. Pen. Code § 502(b)(5).

52. The delivery of SMS messages to cellular phones is performed according to industry standards (specifically, the Short Message Service standard). The technical protocols of these standards requires that transmission of mobile content to a cellular phone (and the subsequent billing of that account) is not complete until the cellular phone transmits a confirmation signal. Thus, the unauthorized charges to recycled phone numbers attributable to Facebook Mobile require interactivity and access to the cellular phones of Plaintiff and the other class members. SMS messages contain brief communications from other SMS users, and are data under the definition of Cal. Pen. Code § 502(b)(6).

53. The receipt of SMS messages to cellular phones consumes computer services as defined by Cal. Pen. Code § 502(b)(4), including computer time, data processing, and storage capacity. Moreover, Abrams and the other class members frequently must pay for the receipt of SMS messages, whether those messages are authorized or not. If the unauthorized charges to recycled phone numbers attributable to Facebook Mobile are not eventually paid, Verizon Wireless (and any other cellular carrier) would discontinue all services (including cellular service) to the affected cellular accounts.



1           60. Further, these communications are unlawful because they violate the  
2 Electronic Funds Transfer Act with respect to pre-paid cellular accounts. Pre-paid cellular  
3 accounts are credits against future charges through a cellular carrier, are established primarily  
4 for personal, family, or household purposes. 12 C.F.R. § 205.2(b)(1). Cellular carriers which  
5 offer pre-paid accounts are “financial institutions” under the EFTA, because they directly or  
6 indirectly hold an account belonging to the class members. 12 C.F.R. § 205.2(i). The SMS  
7 messages sent through Facebook Mobile are initiated when Facebook users post messages on  
8 the Facebook website and are initiated by computer; when the SMS messages are sent, funds  
9 corresponding to the charges for these SMS messages are transferred from the pre-paid  
10 cellular accounts. The transfer of these funds is an electronic fund transfer under the  
11 definition in 12 C.F.R. § 205.3(b). As the electronic fund transfers are set to occur whenever  
12 Facebook users post messages, they were purportedly authorized to recur at substantially  
13 regular intervals, and are preauthorized electronic fund transfers under the definition in 12  
14 C.F.R. § 205.2(k). Facebook violates 15 U.S.C. § 1693e(a) and 12 C.F.R. § 205.2(b) when it  
15 initiates the transfer of funds through Facebook Mobile without the written authorization of  
16 Plaintiff and the other class members.

17           61. The acts alleged above are unlawful, unfair or fraudulent business acts or  
18 practices and constitute unfair competition under Cal. Bus. & Prof. Code § 17200.

19           62. These UCL violations have damaged the Plaintiff and other class members by  
20 causing them to pay falsely inflated cellular service bills to their cellular carriers, as well as  
21 the lost time required to sort, read, discard and attempt to prevent future charges for  
22 unwanted mobile content services, and lost storage space, connectivity, and computing  
23 resources on the cellular phones.

24           63. Plaintiff, on her own behalf and behalf of the other class members, seeks an  
25 order enjoining Defendant’s unfair competition alleged herein, and restitution of property  
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1 gained by such unfair competition under the UCL (Cal. Bus. & Prof. Code § 17203), as well  
2 as interest and attorney's fees and costs pursuant to, in part, Cal. Code Civ. Proc. § 1021.5.

3  
4 **THIRD CAUSE OF ACTION**

5 **(Unjust Enrichment)**

6 64. Plaintiff incorporates by reference the foregoing allegations.

7 65. A benefit has been conferred upon Defendant by Plaintiff and the Class. On  
8 information and belief, Defendant, directly or indirectly, has received and retains money  
9 belonging to Plaintiff and the Class resulting from its causing them to be billed for  
10 unauthorized content charges, and in particular, its practice of systematically, repeatedly and  
11 without authorization, causing Plaintiff and the Class of wireless handset owners to be billed  
12 by Defendant's wireless carriers partners for mobile content services authorized to be  
13 purchased by the previous subscriber assigned such telephone numbers.

14 66. Defendant appreciates or has knowledge of said benefit.

15 67. Under principles of equity and good conscience, Defendant should not be  
16 permitted to retain the money belonging to Plaintiff and the Class which Defendant has  
17 unjustly received as a result of its actions.

18 **FOURTH CAUSE OF ACTION**

19 **(Trespass to Chattels)**

20 68. Plaintiff incorporates by reference the foregoing allegations.

21 69. At all relevant times, Defendant and/or their agents intentionally and without  
22 consent, gained access to Plaintiff's wireless handset and the handsets of the class, used  
23 Plaintiff's wireless handset and the handsets of the class, occupied memory of these handsets,  
24 and/or dispossessed Plaintiff and the members of class of unencumbered access to their  
25 wireless handsets.

deprived Plaintiff and the class of their wireless handsets, or a portion thereof.

WHEREFORE, Plaintiff Lindsey Abrams, on behalf of herself and the Class, prays  
for the following relief:


1. An order certifying the Class as defined above;
2. An injunction requiring Defendant to cease all unauthorized wireless activities and restraining Defendant from altering, erasing, changing, deleting, destroying or otherwise removing or disposing of any documents, records, databases, computer systems and the like currently in its possession or control or in the possession or control of its agents and contractors which are used or useful in identifying all persons, corporations or other entities to whom Defendant has transmitted its text messages;
3. An award of actual and/or statutory damages;
4. Reasonable attorney's fees and costs; and
5. Such further and other relief the Court deems appropriate.

**JURY DEMAND**

Plaintiff requests trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: October 22, 2007

By:   
 Alan Himmelfarb  
 KAMBEREDELSON, LLC  
 One of the Attorneys for Lindsey  
 Abrams, individually and on behalf of a  
 class of similarly situated individuals

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