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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 NAPOLEON EBARLE, JEANNE
16 STAMM, BRIAN LITTON, and REINER
JEROME EBARLE on behalf of
17 themselves and all other similarly situated,

18 Plaintiffs,

19 v.

20 LIFELOCK, INC.,

21 Defendant.
22
23
24

Case No. 3:15-cv-258

SECOND AMENDED CLASS ACTION COMPLAINT

1. VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT (ARIZ. REV. STAT. § 44-1522(A))
2. BREACH OF CONTRACT
3. DECLARATORY JUDGMENT
4. UNJUST ENRICHMENT

25 COMES NOW, Plaintiffs Napoleon Ebarle, Jeanne Stamm, Brian Litton, and Reiner
26 Jerome Ebarle (“Plaintiffs”), who bring this Complaint against Defendant LifeLock, Inc.
27 (“Defendant” or “LifeLock” or the “Company”), and allege as follows:
28

INTRODUCTION

1
2 1. In today’s technologically driven and connected world, the fear of identity theft
3 preys on American consumers. Notably, however, there is a significant divide between an
4 average consumer’s sensitivities to this fear and his or her comprehension of the practical tools
5 necessary to combat the threat of identity theft in a realistic manner. This chasm between phobia
6 and comprehension has created an opportunity for unscrupulous companies to exploit concerned
7 American consumers.

8 2. Capitalizing on this disconnect between fear and knowledge, LifeLock falsely
9 represents and/or misleads consumers into believing its subscription based services will thwart
10 criminals from stealing their personal information. This consumer class action is brought to
11 redress LifeLock’s false, misleading and deceptive activities.

12 3. In a nutshell, LifeLock’s material misrepresentations and omissions fall into two
13 broad categories: (a) LifeLock’s promise to provide services that the Company cannot provide as
14 either a practical or a legal matter, and (b) LifeLock’s promise to provide specific services and/or
15 results which it falls short in delivering. Indeed, far from its claim that the Company provides
16 services that banks and credit card companies cannot, LifeLock does an inferior job of providing
17 redundant services that these entities provide, oftentimes for free.

18 4. At its core, LifeLock represents that it is the “leading provider” of
19 “comprehensive” and “proactive identity theft protection services for consumers and identity risk
20 and credit worthiness assessment for enterprise.” The foundation of its purported
21 “comprehensive” and “proactive” services, and its representations to its customers in both
22 marketing and contractual materials, includes 6 pillars. Yet, each of these 6 pillars is flawed:

- 23 i. “comprehensive” network, which is in reality miniscule in comparison to the
24 number of banking and financial institutions;
- 25 ii. timely and continuous 24/7/365 “alert” services, which, in truth, were so fraught
26 with wide-scale problems that the Company instituted a code freeze policy;
- 27 iii. patented alert technology that purports to “*stop thieves before they do damage,*”
28 which, in the simplest terms, overstates the benefits of and the results achieved by
LifeLock;
- iv. protection that “watches out for you in ways banks and credit card companies just

1 can't;" however, in truth, other banks and credit card companies provide a superior
2 product and they provide it for free;

3 v. statistical analyses on the rising trends in identity theft; however, a closer review
4 of current data reveals that the incidence of new account fraud-the mainstay of
LifeLock's services- had actually declined in 2013, meaning LifeLock's use of
such data amounts to nothing more than a scare tactic;

5 vi. \$1 Million Total Service Guarantee; which is in actuality a clever marketing ploy
6 that is essentially worthless.

7 5. In short, LifeLock purports to provide sweeping and superior identity theft
8 protection services, when, in fact, its services are limited in scope and effectiveness and inferior
9 to services offered by other credit card companies for free.

10 6. LifeLock's unsavory and deceptive practices are nothing new. Indeed, as recent as
11 2010, the Federal Trade Commission ("FTC") and 35 Attorneys General brought an action (the
12 "FTC Action") alleging that LifeLock made material misrepresentations and/or omissions of
13 material fact in violation of Section 5(a) of the FTC Act by representing and/or creating the
14 impression, among others, that (a) LifeLock stops identity theft before it happens, (b) LifeLock
15 offers a proven solution to identity theft, and (c) LifeLock guarantees identity-theft from ever
16 happening. As a result of the FTC Action LifeLock was permanently enjoined from
17 "misrepresenting, in any manner, expressly or by implication" that its product prevents misuse of
18 personal data, the effectiveness or scope of its services, and the risk of identity theft to consumers,
19 among other things. In addition, LifeLock was forced to pay out approximately \$12 million.
20 Notwithstanding, LifeLock continues, 5 years later, to engage in the same fundamental, deceptive
21 practices in marketing to new customers and in inducing existing customers to renew the service
22 on a monthly or annual basis.

23 7. LifeLock's subscription-based services are governed by, among other things,
24 LifeLock's Service Terms and Conditions ("Service Terms"), which specifically provides that

25 The Service Terms and any Services provided hereunder will be governed by the
26 laws of the State of Arizona, without regard to any laws that would direct the
choice of another state's laws and, where applicable, will be governed by the
federal laws of the United States.

27 As such, class-wide application of Arizona law is appropriate.
28

1 8. Generally, this class action alleges that Defendant has engaged, on an ongoing and
2 continuous basis, in deceptive marketing and sales practices in connection with its subscription
3 based membership plans in violation of the Arizona Consumer Fraud Act, Ariz. Rev. Stat. § 44-
4 1522 (A), as well as breached its contract with its consumers. As customers who have paid
5 LifeLock’s periodic subscription fees (“Membership Fees”) at all relevant times hereto, Plaintiffs
6 bring this action on behalf of a national class of consumers who paid Membership Fees after
7 January 19, 2009.

8 9. More particularly, Plaintiffs allege that LifeLock has engaged in a fraudulent
9 and/or misleading course of conduct by making material misrepresentations and/or omissions that
10 LifeLock’s services (i) are “comprehensive,” (ii) provide timely and continuous “alert” services,
11 (iii) are founded on patented alert technology that purports to “*stop thieves before they do*
12 *damage,*” (iv) provide protection that “watches out for you in ways banks and credit card
13 companies just can’t;” and (v) \$1 Million Total Service Guarantee. In addition, LifeLock falsely
14 and/or misleadingly represents the risk of identity theft to consumers. Contrary to LifeLock’s
15 representations and/or omissions, LifeLock’s network covers an estimated 3% of reported
16 banking institutions; LifeLock’s “alert” services are teeming with wide-scale problems, such that
17 the Company instituted regular code freezes; LifeLock’s services cannot as a practical or legal
18 matter fulfill and/or achieve the benefits promised; LifeLock’s services provide an inferior
19 product that, in substance, offer little to no value; the risk of new account fraud was less than 1%,
20 meaning LifeLock’s principle service is inapplicable to 99% of American consumers; and
21 LifeLock’s \$1 Million Total Service Guarantee is essentially worthless.

22 10. Upon information and belief, as a result of LifeLock’s contractual breach and its
23 unfair, deceptive, and unconscionable practices, Defendant has amassed, to the detriment of its
24 customers, substantial sums of money from the monthly fees paid by consumers (“Membership
25 Fees”), including Plaintiffs, for these Membership Plans. Accordingly, Plaintiffs seek damages,
26 which at a minimum include payments of monthly or annual charges for services that were not as
27 represented and payments for a service that is either illegal or infeasible for a company such as
28 LifeLock to perform.

PARTIES

1
2 11. Plaintiff Napoleon Ebarle is a resident of California and subscriber, during all
3 relevant times hereto, to LifeLock.

4 12. Plaintiff Jeanne Stamm is a resident of California and subscriber, during all
5 relevant times hereto, to LifeLock.

6 13. Plaintiff Brian Litton is a resident of California and subscriber, during all relevant
7 times hereto, to LifeLock.

8 14. Plaintiff Reiner Jerome Ebarle is a resident of California and subscriber, during all
9 relevant times hereto, to LifeLock.

10 15. Defendant LifeLock is a Delaware corporation with its principal executive offices
11 at 60 East Rio Salado Parkway, Suite 400, Tempe, Arizona 85281. LifeLock conducts business
12 throughout California and the United States. It is currently estimated that LifeLock provides
13 identity theft services to over 3 million subscribers.

14 **JURISDICTION AND VENUE**

15 16. This Court has subject matter jurisdiction over this action under the Class Action
16 Fairness Act of 2005, which, inter alia, amends 28 U.S.C. § 1332 to add subsection (d), which
17 confers jurisdiction over class actions where, as here, “any member of a class is a citizen of a
18 State different from any other Defendant,” and the aggregated amount in controversy exceeds five
19 million dollars. *See* 28 U.S.C. § 1332(d)(2) and (6).

20 17. This Court has jurisdiction over Defendant because it does business in California
21 and upon information and belief Defendant’s conduct that gives rise to this complaint, as further
22 described below, occurred within and/or was implemented, authorized, or ratified in California.

23 18. In accordance with 28 U.S.C. § 1391, venue is proper in this district because a
24 substantial part of the conduct complained of herein occurred in this District.

COMMON FACTUAL ALLEGATIONS

I. LifeLock’s Relationship With Its Subscribers

19. LifeLock markets, offers, and sells the following fee-based membership plans to consumers (collectively referred to as the “Membership Plans”): LifeLock Standard, LifeLock Advantage, and LifeLock Ultimate Plus.

20. LifeLock Standard purports to offer identity theft detection and alerts within its network, lost wallet protection, address change verification, black market website surveillance, reduced pre-approved credit card offers, and a \$1 million total service guarantee for \$9.99/mo.

21. LifeLock Advantage purports to offer LifeLock Standard services plus fictitious identity monitoring, court records scanning, data breach notifications, credit reports and scores, financial account activity alerts, and a \$1 million total service guarantee for \$19.99/mo.

22. LifeLock Ultimate Plus protection purports to provide LifeLock Advantage services plus bank account takeover alerts, enhanced credit application alerts, file-sharing network searches, sex offender registry reports, credit reports and scores, monthly credit score tracking, and a \$1 million total service guarantee for \$29.99.

23. As an add-on service, a subscriber of one of these three Membership Plans can enroll in LifeLock Junior, which is marketed and sold as providing monitoring services for the member’s children’s personal information. LifeLock Junior protection purportedly provides identity theft detection and alert notifications, credit file detection, black market website surveillance, file-sharing network searches, and a \$1 million total service guarantee. According to LifeLock, “LifeLock Junior – it’s relentless protection for your kids and peace of mind for you.”

24. Each of LifeLock’s Membership Plans is governed by LifeLock’s Service Terms and Conditions, which specifically provide that

These LifeLock Service Terms and Conditions (the “Service Terms”) are a legally binding agreement between LifeLock, Inc. (“LifeLock,” “we” “our” or “us”) and you (“you,” “your” or “yours”), and describe the terms under which you agree to use the LifeLock identity programs, including any applicable Stolen Identity Insurance (the “Protection Programs”), credit monitoring service (the “Credit Monitoring Service”) and any other service or product which may be made available to you by us for which you have registered or enrolled or have been

1 registered or enrolled by an authorized third party (collectively the “Services” and
2 individually a “Service”).

3 25. In addition, the Service Terms provide as follows:

4 The Service Terms and any Services provided hereunder will be governed by the
5 laws of the State of Arizona, without regard to any laws that would direct the
6 choice of another state’s laws and, where applicable, will be governed by the
7 federal laws of the United States.

8 26. In sum, LifeLock customers are charged and pay between \$10 and \$30 dollars a
9 month in Membership Fees for the Company to monitor their identities, but as discussed,
10 LifeLock falsely and misleadingly advertises and sells its services and does not provide the
11 protections against identity theft as promised.

12 **II. Defendant’s Products are Marketed, Offered, and Sold to Consumers in an Unfair,
13 Misleading, and Deceptive Manner.**

14 A. LifeLock’s Claim of “Comprehensive” Services Misrepresents the Scope and
15 Effectiveness of Its Network

16 27. As previously noted, in 2008, the FTC filed suit against LifeLock alleging that the
17 Company’s services did not prevent identity theft, as represented, and did not provide many of the
18 protections claimed by LifeLock. Indeed, commenting on the lawsuit, then FTC Chairman Jon
19 Leibowitz had this to say: “The protection [LifeLock] actually provided left enough holes that
20 you could drive a truck through it.” See [https://www.truthinadvertising.org/lifelocks-protection-
21 leaves-much-to-be-desired/](https://www.truthinadvertising.org/lifelocks-protection-leaves-much-to-be-desired/).

22 28. In resolution of the claims brought by the FTC, LifeLock and the FTC entered into
23 a Final Stipulated Judgment and Order for Permanent Injunction and Other Equitable Relief as to
24 Defendants LifeLock and Davis (the “FTC Order”), wherein LifeLock and Davis and “their
25 officers, agents, servants, and employees and all persons in active concert of participation with
26 any of them . . .” were “permanently restrained and enjoined” from the following:

27 A. in connection with the advertising, distributing, promoting, offering for
28 sale, or sale of any product, service, or program designed for the purpose of
preventing, mitigating, or recovering from any form of identity theft as
defined in 18 U.S.C. § 1028, misrepresenting in any manner, expressly or
by implication:

1. that such product, service, or program provides complete protection
against all forms of identity theft by making customers’ personal
information useless to identity thieves;

- 1 2. that such product, service, or program prevents unauthorized
- 2 changes to customers' address information;
- 3 3. that such product, service, or program constantly monitors activity
- 4 on each of its customers' consumer reports;
- 5 4. that such product, service, or program ensures that a customer will
- 6 always receive a phone call from a potential creditor before a new
- 7 credit account is opened in the customer's name;
- 8 5. the means, methods, procedures, effects, effectiveness, coverage, or
- 9 scope of such product, service, or program;
- 10 6. the risk of identity theft to consumers;
- 11 7. whether a particular consumer has become or is likely to become a
- victim of identity theft; and/or
- 12 8. the opinions, beliefs, findings, or experiences of an individual or
- 13 group of consumers related in any way to any such product, service,
- 14 or program.

12 Such products, services, or programs include, but are not limited to, the placement
13 of fraud alerts on behalf of consumers, searching the internet for consumers'
14 personal data, monitoring commercial transactions for consumers' personal data,
15 identity theft protection for minors, and guarantees of any such product, services,
16 or programs.

15 B. misrepresenting in any manner, expressly or by implication, the manner or
16 extent to which they maintain and protect the privacy, confidentiality, or
17 security of any personal information collected from or about consumers.

17 29. Despite the permanent injunction, LifeLock has continued to market and sell its
18 products using the same and/or substantially similar marketing ploys, promising customers
19 "comprehensive" and "relentless" protection.

20 30. Despite promising "comprehensive" protection, LifeLock's network only provides
21 limited protection against only some forms of identity theft.

22 31. To begin with, LifeLock makes misleading declarations, via its advertisements and
23 website, that "[e]nrollment takes just minutes and our 24/7 identity theft protection starts
24 immediately." In truth, however and as buried in the fine print in LifeLock's Service Terms it
25 can take up to four (4) weeks from the date of a customer's acceptance of the Service Terms to
26 complete the enrollment process and for all services to be fully activated. As such, LifeLock's
27 claims of "immediate" protection do not adequately portray the enrollment process or the scope
28 and effectiveness of LifeLock's services and/or operations.

1 32. In addition to its false and/or misleading claims of “immediate” protection,
2 LifeLock falsely and/or misleadingly portrays LifeLock’s “comprehensive” service as trolling “a
3 trillion data points.” In reality, LifeLock’s services do not cover some of the largest credit card
4 companies and/or businesses, or car loans. Indeed, upon information and belief, LifeLock’s
5 network consists of approximately 250 institutions *collectively*. By way of comparison, there
6 were 6,891 active banking institutions reported at the end of the third quarter in 2013, meaning
7 LifeLock’s network has access to only 3% of these entities, and that is being generous because it
8 does not account for the hundreds of thousands of retail outlets in the United States.

9 33. The limitations of LifeLock’s network are chronicled on various outlets. For
10 example, as recounted by one LifeLock customer on a January 4, 2014 post on LifeLock’s
11 Facebook page, the customer applied for a credit card at Best Buy but never received an alert that
12 someone was using her personal information to get a credit card. To the contrary, she received an
13 automatic email from LifeLock stating that they had checked her information and “LifeLock
14 found no fraudulent activity associated with your personal information within our extensive
15 network. LifeLock monitors over a trillion data points and is relentlessly protecting your identity
16” When the customer contacted LifeLock to question the Company, she was informed that
17 Best Buy was not in LifeLock’s network.

18 34. Similarly, and further demonstrative of LifeLock’s misrepresentations and/or
19 concealments, another customer complaint posted on April 1, 2014 on the Better Business
20 Bureau’s website, reveals that despite subscribing to LifeLock the previous year under the
21 impression “that, as advertised, the company would notify me if there was activity using my
22 personal information in order to detect possible identity fraud,” LifeLock failed to send her a
23 single alert when she moved, changed her address on her credit card accounts, purchased a
24 vehicle, and had credit approved for a lease on a rental property. Moreover, when she contacted
25 LifeLock on the matter, she was told that the particular banks she used were not in LifeLock’s
26 network and car loans aren’t always counted.

27 35. Similarly, in a March 2013 special report, KTVU-TV in Oakland reported that
28 LifeLock completely missed not one, but two, identity theft incidents because the two firms

1 involved, Sprint and USAA, were not part of LifeLock's network. *See*
2 [http://www.ktvu.com/news/news/special-reports/industry-leader-identity-theft-protection-](http://www.ktvu.com/news/news/special-reports/industry-leader-identity-theft-protection-recently/nWf9P/)
3 [recently/nWf9P/](http://www.ktvu.com/news/news/special-reports/industry-leader-identity-theft-protection-recently/nWf9P/).

4 36. Thus, LifeLock's proclaimed "comprehensive" network that purportedly trolls "a
5 trillion data points" is misleading and/or fails to inform customers that LifeLock's services do not
6 cover some of the largest credit card companies and/or businesses, or car loans.

7 37. In addition to falsely and/or misleadingly representing LifeLock's diminished
8 network, LifeLock misrepresents the value of its services, many of which are available for free.
9 For example, LifeLock's black market website monitoring is essentially worthless. With regard
10 to this service, LifeLock has no authority or power to prevent personal information from being
11 posted or shared on these websites, and any "threat" is detected after the theft has already
12 occurred -- not "before it happens." As such, this service provides limited to zero value to
13 LifeLock's customers, and it misleads LifeLock's customers about the quality and characteristics
14 of LifeLock's services. Indeed, upon information and belief, even if LifeLock sends a "black
15 market" alert, it does not have the ability to inform customers about the specific information on
16 the website, how it was obtained, or who obtained it, heightening the potential for incorrect
17 and/or unreliable information from LifeLock in this context.

18 38. LifeLock also fails to adequately inform its customers that it does not provide 3-
19 bureau credit monitoring to subscribers of its Standard package. Most consumers understand
20 LifeLock's representations to include this service in each of its Membership Plans. However, this
21 is not the case, and, upon information and belief, when consumers call LifeLock to inquire
22 about the disparity between the services advertised and those actually provided by LifeLock, they
23 are told they must increase their Membership Plan and Membership Fees to be covered, despite
24 the fact that customers can obtain their own credit data for free.

25 39. Thus, LifeLock only provides credit monitoring to subscribers of LifeLock's
26 Ultimate Plan, those paying the highest monthly premium of \$30 a month. However, credit
27 monitoring is an antiquated service that is not very effective, and not worth the heightened
28 premium. Indeed, a 2013 Department of Justice study found that less than 1% of existing account

1 fraud was discovered from a credit monitoring service or credit report. Similarly, *Consumer*
2 *Reports* advises that “credit monitoring is a primitive defense against ID theft that can scare you
3 with lots of alerts for day-to-day nonfraudulent changes in your credit report – only 1 in 20 alerts
4 is actual illicit activity – and that can ultimately train you to ignore the alerts.”

5 [http://www.consumerreports.org/cro/news/2014/02/expect-less-and-pay-more-with-target-credit-](http://www.consumerreports.org/cro/news/2014/02/expect-less-and-pay-more-with-target-credit-monitoring/index.htm)
6 [monitoring/index.htm](http://www.consumerreports.org/cro/news/2014/02/expect-less-and-pay-more-with-target-credit-monitoring/index.htm).

7 40. Further, LifeLock fails to inform customers that it does not monitor transactions on
8 existing accounts. Indeed, as noted below, approximately 90% of current identity theft incidents
9 consist of fraudulent transactions on existing accounts. However, upon information and belief,
10 LifeLock does not monitor charges on a customer’s existing accounts. Thus, LifeLock provides
11 zero protection against credit card and bank fraud.

12 41. In this same vein, LifeLock’s alleged reduction of pre-approved credit card offers
13 is similarly of limited to no value. The essence of this so-called service is simply LifeLock
14 entering its members’ information at the Consumer Credit Reporting industry at
15 optoutprescreen.com, a process that takes less than five minutes and that the customer can do by
16 himself or herself for free. Notwithstanding, LifeLock charges its customers approximately \$10
17 to \$30 month for this service.

18 42. Upon further information and belief, LifeLock does not have direct access to
19 financial information. Accordingly, it is dependent on electronic transfers of data from partners
20 and has no ability to monitor paper forms.

21 43. In sum, LifeLock’s network does not cover major financial and business
22 institutions and several of the services offered provide zero value to customers. As such,
23 LifeLock falsely and/or misleadingly advertises its services, as well as charges customers for
24 services that they are not receiving and/or that are essentially worthless.

25 B. LifeLock Conceals Wide-Scale Problems of Its “Alert” Services and Regular Code
26 Freezes

27 44. LifeLock represents that it will keep its customers timely informed through use of
28 its patented “Identity Alert System”. According to its website, LifeLock promises the following:

1 **Alerts When You Need Them**

2 With our patented LifeLock Identity Alert system, as soon as we detect a threat to
3 your identity, you'll be notified by text, phone, or email, to help *stop thieves*
4 *before they do damage*. So while you're out there connecting to the world, we'll
5 be here helping to keep your personal information safe. (emphasis added)

6 45. Defendant represents that it provides continuous "alert" services, maintaining that
7 its team works 24 hours a-day, 7 days a week, 365 days a year. Specifically, Defendant touts:

8 **Need Help? We're Here all the Time.**

9 Our award-winning Member Services agents are on the job every minute of every
10 day, including holidays. Call or contact us online whenever you need help or have
11 questions. If you do become a victim, our Certified Resolution Specialists know
12 exactly what to [do]. That's why millions trust LifeLock with their identity theft
13 protection.

14 46. However, LifeLock's representations falsely and/or misleadingly conveyed the
15 scope and effectiveness of its "alert" services. Indeed, in a complaint filed on July 8, 2013 for
16 wrongful termination (*see Burke v. LifeLock, Inc.*, No. 13-CV-1355 (D. Ariz.)), insider Stephen P.
17 Burke ("Burke"), a Senior Financial Analyst with LifeLock from February 1, 2010 to March
18 2013, revealed that during the period of his employment, LifeLock

19 had and continues to have widespread system problems in processing [] alerts and
20 sending them out to the customers as promised in its national marketing
21 campaigns. The problem of timely informing customers that their credit
22 information was accessed is so widespread that Defendant instituted a code freeze.
23 In essence, Defendant is deliberately 'stepping on the brakes' with regard to
24 sending this critical information to customers on a timely basis, and worse, often
25 choosing not to send these alerts out at all. This practice has been referred to as
26 "throttling."

27 *See Ex. 2: Burke Compl.*, ¶ 13.

28 47. Burke further revealed that he "first learned of an issue with LifeLock's alert
notification services to customers through an e-mail chain forwarded to him in late November
2012 by John Lenstrohm ("Lenstrohm"), [LifeLock's] Director, Direct Response. *Id.* at ¶ 15.

48. Burke further recounted that he reported the problems of delayed alerts,
diminished alert notification service, and "throttling" of alerts with the following LifeLock
officers and employees, among others: Lenstrohm, Director, Direct Response; Erick Dickens,

1 Vice President of Marketing; Amanda Mellon, Senior Manager; Brent Hazel, Manager; Melinda
2 Keels, Finance; and Gregory Lim, Burke's immediate supervisor. According to Burke, he raised
3 concerns to these officers and employees about the effects of not sending out alerts, specifically
4 addressing that "throttling" might violate the FTC Order. Burke also recommended that LifeLock
5 "adjust its marketing messaging to reflect this diminished service." *Id.* at ¶¶ 16, 19.

6 49. In February 2014, LifeLock settled Burke's wrongful termination suit for an
7 undisclosed amount.

8 50. To further put all this into perspective, a LifeLock website reports that LifeLock
9 "members receive over 20,000 alerts for potential identity fraud on a weekly basis." *See*
10 <http://www.lifelockbusinesssolutions.com/why-lifelock/trust-lifelock/>. With an estimated three
11 million members, this means that the typical LifeLock member receives one alert every 150
12 weeks.

13 C. LifeLock Falsely Touts Its Patented Technology to Mislead Customers into
14 Believing It Will "Stop Thieves Before They Do Damage"

15 51. In addition to the already described misdeeds, LifeLock falsely and/or
16 misleadingly leads customers to believe that its patented technology will "stop thieves before they
17 do damage." However, this is a guarantee that LifeLock cannot back, as either a legal or practical
18 matter.

19 52. Via its website, LifeLock purports to "review each attempt to misuse your identity,
20 and proactively contact you anytime we detect an exposure or threat." However, LifeLock's
21 representation gives customers a false sense of security because LifeLock's technology, systems,
22 and personnel are inadequate to provide this level of protection.

23 53. First, and as previously noted, LifeLock's network is far more limited than
24 LifeLock represents and LifeLock's "alert" services were so riddled with problems that the
25 Company instituted a code freeze, meaning that members did not receive notification of potential
26 exposures or threats because LifeLock routinely turned these services off. Thus, LifeLock's
27 technology cannot, as a practical matter, guarantee to "stop thieves before they do damage."
28

1 54. Second, LifeLock’s systems and personnel are not equipped to handle the level of
2 administrative, technical, and physical safeguards that is necessary to provide the promised
3 protections.

4 55. More specifically, all Lifelock subscribers, including Plaintiffs and all members of
5 the proposed Class, provide Lifelock with sensitive personal data, including credit card, social
6 security and bank account numbers. The FTC Order, in addition to what has previously been
7 listed, ordered LifeLock (as well as any business entity controlled by Davis that collects,
8 maintains, or stores personal information from or about consumers) to “establish and implement,
9 and thereafter maintain, a comprehensive information security program that is designed to protect
10 the security, confidentiality, and integrity of personal information collected from or about
11 consumers. Such program, the content and implementation of which must be fully documented in
12 writing, shall contain administrative, technical, and physical safeguards appropriate to the entity’s
13 size and complexity, the nature and scope of the entity’s activities, and the sensitivity of the
14 personal information collected from or about consumers” In this same vein, the FTC Order
15 required LifeLock to (1) make an initial assessment and biennial assessments for twenty years on
16 the effectiveness of its safeguards, and (2) distribute a copy of the FTC order to all principals,
17 officers, directors, managers, employees, agents, and representatives for a period of five years, or
18 until February 23, 2015.

19 56. Despite the obligations imposed by the FTC Order, LifeLock continued to use
20 ineffective administrative, technical, and physical safeguards, failed to routinely assess and report
21 the adequacy of the effectiveness of its safeguards, and failed to distribute the FTC Order to
22 required personnel. All the while, however, LifeLock falsely and/or misleadingly represented
23 that it would “stop thieves before they do damage.”

24 57. The deficiencies in LifeLock’s systems and staffing have been documented by a
25 Company insider. Indeed, on the heels of the Burke settlement, insider Michael D. Peters
26 (“Peters”), LifeLock’s Chief Information Security Officer from approximately May 24, 2013
27 through July 29, 2013, corroborated Burke’s allegations of wide-scale problems and himself filed
28

1 a complaint against LifeLock for wrongful termination and violation of whistleblower protection
2 laws, a suit that remains ongoing.

3 58. In his complaint against LifeLock, Peters alleges that upon commencing work at
4 LifeLock, he immediately began an initial risk assessment of the Company. Peters states that
5 prior to his risk assessment, the Company had never conducted a bona fide risk assessment.
6 Ex. 3: Peters Compl. ¶ 17.

7 59. Peters further alleges that the risk assessment uncovered that LifeLock's
8 technology and security were ineffective to deliver the protections LifeLock promised.
9 Specifically, Peters determined that

- 10 • LifeLock's internal capacity for governance implemented (policies, audit plan,
11 change controls, architecture review, etc.) was at 47% of the minimum to protect
12 LifeLock's customers and their sensitive information." (*Id.* at ¶ 18);
- 13 • "LifeLock's technological security readiness (intrusion prevention, data leakage,
14 data encryption, access controls, physical security, etc.) was only at 27% of the
15 minimum to protect LifeLock's customers and their sensitive information." (*Id.* at
16 ¶ 19); and
- 17 • "LifeLock's security vigilance (vulnerability testing, auditing, monitoring,
18 awareness education, event logging, incident management, etc.) was at 0% of the
19 minimum to protect LifeLock's customers and their sensitive information." (*Id.* at
20 ¶ 20).

21 60. According to Peters, these deficiencies were due, in large part, to deficient
22 staffing. LifeLock only had two people responsible for security. One individual lacked technical
23 skill and only had minimal security experience. While the other had technical skills, he was newly
24 out of college and lacked experience. Peters determined that millions of consumers were at risk,
25 which led Peters to advise LifeLock Chief Financial Officer, Chris Power, and LifeLock Chief
26 Information Officer, Rich Stebbins, that LifeLock should immediately hire 12 information
27 security professionals. Peters reports that in response, LifeLock fired Peters, resulting in Peters
28 filing suit. (*Id.* at ¶¶ 20-25.)

1 61. Peters further states that the findings of his assessment included discovery of
2 multiple examples of LifeLock's misleading, unfair, and/or deceptive practices, including, among
3 others, the following:

- 4 • LifeLock's director of internal audits, Tony Valentine, had collected evidence
5 from the information security team that existed prior to Peters's arrival related to
6 access logging, audit logging, audit log reviews, network security controls, and
7 data leakage controls that either (1) did not truly exist because the technology
8 was still in boxes; or (2) LifeLock lacked the staff to keep track of everything; or
9 (3) such reviews were not actually conducted.
- 10 • LifeLock employee Dave Bridgman reported that LifeLock's current practice was
11 to manipulate the customer alerts sent to its elderly customers. LifeLock would
12 turn off or reduce the services alerting elderly customers to reduce the call
13 volume received by LifeLock's customer support center.
- 14 • LifeLock was in the process of finalizing a new product offering called PassLock.
15 This system was designed to allow customers to include their passwords for up to
16 ten accounts. PassLock would then crawl through hundreds of internet sites to
17 check the username and password supplied by the customer and report back to
18 the customer. The problem was that the database was not being protected with
19 industry-grade encryption. The database was predicted to contain millions of
20 customer credentials that would be devastating to consumers if a breach occurred.
21 Moreover, the system was going to utilize third-party cloud hosting business
22 without that third party's knowledge or consent. Technically, the PassLock
23 crawling would be identified by most service providers as intrusive, illegal,
24 illegitimate, and then blacklist the source address.

25 *Id.*

26 62. Accordingly, company insiders have confirmed that LifeLock intentionally misled
27 its customers concerning the scope and effectiveness of its services.
28

1 63. Moreover, the Consumer Product Advisor reports that LifeLock’s products and
2 services are marketed in a confusing and convoluted way, masking their limitations, exclusions,
3 and restrictions, and making it impossible for consumers to knowingly determine what these
4 products cover and whether they provide a worthwhile benefit.

5 64. LifeLock is able to perpetuate its maze-like services through use of its “affiliates.”
6 As part of its marketing campaign, LifeLock uses an affiliate program whereby people and/or
7 businesses create websites and blogs that link to LifeLock.com. The affiliates receive a
8 commission on each enrollment generated from their site or review. Thus, LifeLock’s affiliates
9 are incentivized to perpetuate LifeLock’s advertising and marketing scheme and mislead
10 consumers.

11 65. Moreover, even though the FTC Order requires LifeLock to distribute a copy of
12 the FTC Order to LifeLock’s affiliates, upon information and belief, LifeLock fails to provide its
13 affiliates a copy of the FTC Order. Failure to do so is itself a violation of the FTC Order.

14 66. In addition, upon information and belief, LifeLock fails to adequately inform its
15 members that the Company only runs a credit report once a year and that the Sex Offender list
16 maintained by LifeLock is not updated on a daily or weekly basis.

17 67. Upon further information and belief, Defendant’s customer service representatives
18 employ an array of deceptive tactics to thwart members’ ability to cancel their Membership Plans,
19 such as putting customers on hold for lengthy amounts of time, citing misleading identity theft
20 statistics, and telling consumers that without LifeLock’s services their identity will be stolen.

21 68. Indeed, various customer complaints posted on
22 www.consumeraffairs.com/privacy/lifelock.html report that LifeLock does not timely respond to
23 cancellation requests and/or uses scare tactics to bully or mislead customers into believing that
24 they are unsafe without LifeLock. Moreover, customers report that even after canceling their
25 accounts, or at least a portion thereof, they continued to be billed by LifeLock for the canceled
26 services.

27 69. In sum, LifeLock’s marketing and sales representations misrepresent that
28 Defendant’s services have many hidden, variable, and narrow restrictions; that Defendant’s alert

1 notification services are substantially diminished because of the Company's practice of
2 "throttling" alerts; and that Defendant's monitoring services were not equipped to handle and
3 protect a customer's personal information as represented by LifeLock. Consequently, LifeLock's
4 promise to "stop thieves before they do damage" is a falsehood.

5 D. LifeLock Promises Protection That It Purports Other Banks and Credit Card
6 Companies Cannot Provide

7 70. In 2008, Experian Information Solutions, Inc. ("Experian"), a credit reporting
8 agency, filed suit against LifeLock alleging that LifeLock's practice of placing and renewing
9 "fraud alerts" under consumers' names violated the federal Fair Credit Reporting Act ("FCRA")
10 because the statutory language excludes corporations such as LifeLock from placing "fraud
11 alerts". According to court documents, LifeLock called Experian's fraud hotline up to 15,000
12 times a day to request "fraud alerts."

13 71. In an order granting partial Summary Judgment in favor of Experian, the
14 Honorable Andrew J. Guilford agreed with Experian, finding that under the language of the
15 statute and its legislative history, "the FCRA embodies an established public policy against
16 companies like LifeLock placing fraud alerts on behalf of consumers." *See Experian Information*
17 *Solutions, Inc. v. LifeLock Inc.* (Case No. SACV08-00165 AG), Order Granting Motion for
18 Partial Summary Judgment, attached hereto as Ex. 1. Accordingly, the very premise of
19 LifeLock's promised protections, *i.e.* the Company setting fraud alerts on behalf of its consumers,
20 was declared unlawful.

21 72. Despite the court's ruling in *Experian*, LifeLock's business model and services
22 have remained substantially unchanged since 2005. *See*
23 <http://consumerproductadvisor.com/lifelock-review/>. Indeed, on the website
24 www.lifelockblog.com/why-lifelock/, which upon information and belief is owned by LifeLock,
25 has a 2015 copyright and was last visited by Plaintiffs' counsel on January 14, 2015, LifeLock
26 continues to represent that "LifeLock will request on your behalf that fraud alerts be placed on
27 your accounts – By doing these, creditors will use extra care to identify who you are to
28 investigate the validity of any transaction."

1 73. On this same website, LifeLock further represents that “If a child has a credit
2 report, LifeLock will request that fraud alerts be placed on the child’s accounts.” *See*
3 www.lifelockblog.com/why-lifelock/.

4 74. However, at no time does LifeLock inform consumers that under the statutory
5 language of the FCRA, only an individual is allowed to place a “fraud alert,” either for
6 themselves, or acting on behalf of or as a personal representative to another individual.

7 75. Likewise, LifeLock fails to inform consumers that a federal court has previously
8 ruled that placement of fraud alerts by LifeLock with any credit reporting agency violates public
9 policy.

10 76. As set forth above in ¶27the FTC Order enjoins LifeLock from misrepresenting,
11 expressly or by implication, “the means, methods, procedures, effects, effectiveness, coverage, or
12 scope” of LifeLock’s services. Thus, LifeLock had an ongoing duty throughout the Class Period
13 to provide accurate and non-misleading information with regard to “the means, methods,
14 procedures, effects, effectiveness, coverage, or scope” of its services. Notwithstanding this duty,
15 throughout the Class Period, Defendant made, and continues to make, material misrepresentations
16 and omissions.

17 77. Moreover, as set forth above, LifeLock’s technology and personnel were deficient
18 and incapable of protecting the security, confidentiality, and integrity of personal information
19 collected from or about consumers as promised. Thus, in reality, LifeLock provides an inferior
20 service to that offered by other banks and credit card companies for free.

21 78. Notably, at around the same time Peters filed his wrongful termination suit against
22 LifeLock in federal court, Peters filed a whistleblower complaint with the FTC. As a result, in or
23 about August 2013, the FTC opened an investigation into LifeLock’s current policies, procedures,
24 and practices. Upon information and belief, the FTC investigation remains ongoing.

25 79. Thus, Defendant’s representations that LifeLock offers protection that other banks
26 and credit companies can’t are misleading, at best.

27
28

1 E. LifeLock Uses Statistical Analyses and Testimonials to Mislead Consumers of the
2 Risk of Identity Theft and the Benefits and Results of LifeLock's Services

3 80. Upon information and belief, the foundation of LifeLock's marketing strategy is
4 the use of misleading statistics and testimonials, as well as other scare tactics.

5 81. More specifically, on its website, LifeLock proclaims that "according to the
6 Department of Justice, approximately 16.6 million Americans were victims of identity theft in
7 2012, sustaining more than \$24 billion of economic losses." (citing "Victims of Identity Theft,
8 2012," Department of Justice, 2012).

9 82. At the same time, LifeLock assures that "[w]ith approximately 3 million LifeLock
10 members, we're committed to providing our consumers peace of mind amid the growing threat of
11 identity theft."

12 83. However, LifeLock's statistics are misleading at best. In point of fact, in a 2014
13 report on industry statistics, Javelin Research reported that 88% of all U.S. fraud loss was related
14 to fraud on existing accounts and that new account fraud has fallen to "historic lows." In this
15 same report, Javelin found that the incidence of new account fraud was only 0.5% in 2013, down
16 from 1.2% in 2012. Javelin further determined that new account fraud is rapidly declining
17 because financial institutions have made it more difficult for criminals to open fraudulent
18 accounts.

19 84. However, LifeLock makes no differentiation in its marketing. This is undoubtedly
20 because LifeLock does not monitor charges on customers' existing accounts, only on new
21 accounts. Stated another way, LifeLock does not protect against those instances where someone
22 steals your credit-card number and begins making purchases with that information. Thus,
23 LifeLock's services only pertain to a fraction of a percent of current identity theft trends.

24 85. Notwithstanding the small umbrella of protection actually provided by LifeLock,
25 LifeLock's use of such statistics falsely and misleadingly conveys the message that the scope of
26 LifeLock's network is more expansive than it actually is, as well as falsely and/or misleadingly
27 conveying the characteristics of LifeLock's Membership Plans and its \$1 Million Guarantee. In
28 truth, and as further discussed below, LifeLock's services and purported patented technology

1 regularly fail to notify customers of new account openings, auto loans, and/or wireless account
2 activity. In reality, it simply does not provide the promised “comprehensive” protection that it
3 purports other banks and credit companies cannot offer.

4 86. Moreover, LifeLock’s use of such statistics fails to inform consumers that
5 LifeLock does not protect against tax and wage-related fraud, which the FTC listed as the most
6 common type of identity theft in 2012. See [https://www.truthinadvertising.org/lifelocks-
7 protection-leaves-much-to-be-desired/](https://www.truthinadvertising.org/lifelocks-protection-leaves-much-to-be-desired/).

8 87. LifeLock is able to further perpetuate its commercial deception and mask the true
9 scope of its network through use of false and/or misleading testimonials. These testimonials are
10 used to aid in the appearance of legitimacy; however, they falsely and misleading present the
11 scope and effectiveness of LifeLock’s services.

12 88. For example, a testimonial from Gene Z. on LifeLock’s website states that Gene Z.
13 was contacted by a company that sold large computer equipment and asked if he had purchased a
14 computer, which he had not. Gene Z. states that while he was in the process of looking up his
15 credit card information, he received a call from LifeLock informing him that someone had tried to
16 use his social security number to open a phone account. Gene Z. further states that he informed
17 LifeLock of the potential credit card fraud and asked LifeLock what he needed to do. Gene Z.
18 states that LifeLock told him “Don’t worry, we’ll take care of everything.” First, this testimonial
19 falsely and/or misleadingly conveys the message that LifeLock protects against any and all credit
20 card fraud, which it does not. Second, this testimonial falsely and/or misleadingly conveys the
21 message that LifeLock handles every aspect of a customer’s ordeal while the customer has zero
22 responsibility to take any action. In reality, LifeLock mandates a list of exclusions and
23 preconditions that substantially limit the applicability of LifeLock’s services and its \$1 Million
24 Total Service Guarantee. Third, this testimonial falsely and/or misleadingly conveys the message
25 that LifeLock’s services will prevent identity theft, a representation that LifeLock cannot
26 guarantee.

27 89. Similarly, a second testimonial from Justin L., also on LifeLock’s website,
28 recounts how Justin L. was contacted by several credit card companies to verify credit

1 applications, which he did not in fact apply for. Justin L. further states that whoever was
2 attempting to open these new accounts in his name, also got into his bank account. Justin L. then
3 states that he signed up for LifeLock and has had no problems since. This testimonial falsely
4 and/or misleadingly leads consumers to believe that the result a customer can expect after signing
5 up with LifeLock is a complete reduction in identity theft threats, *i.e.* that LifeLock's services
6 will prevent identity theft. Further, this testimonial falsely and/or misleadingly conveys the
7 message that LifeLock's services provide complete protection and/or greater protection than
8 credit card companies provide. Also, this testimonial falsely and/or misleadingly conveys the
9 message that when someone tries to misuse a customer's information LifeLock automatically
10 kicks in.

11 90. Another testimonial used by LifeLock, and found at
12 <http://www.reviewsonlife.com/life-reviews/life-testimonial.html>, states, "As the owner of a small
13 business my employees are an extension of my family. I looked into LifeLock and immediately
14 paid to sign everyone up." This testimonial is false and/or misleading because it conveys the
15 message that LifeLock provides protection for all business activities, when, in fact, it does not.
16 *See below.*

17 91. The testimonials described above are unsubstantiated and/or falsely and/or
18 misleadingly overstate the services provided by LifeLock and the benefits and results achieved by
19 utilizing LifeLock's services. In truth, LifeLock's network is extremely limited and is dependent
20 upon the exchange of electronic information, meaning it does not have the capacity to monitor
21 paper applications. Moreover, the scope, quality, and characteristics of its services do not provide
22 the protections promised because LifeLock's safety protocols are not sufficient, LifeLock's
23 suffers from lack of adequate personnel, and many of LifeLock's services are available to a
24 consumer for free.

25 92. In this same vein, celebrity endorsements from Rush Limbaugh, Rudy Guiliani,
26 Montel Williams, and others falsely and misleadingly convey the effectiveness of LifeLock's
27 services. Indeed, each of these paid advertisers give LifeLock customers a false sense of security
28

1 because, as described herein, LifeLock’s services are predicated on illusory, worthless, and/or
2 misleading promises.

3 F. LifeLock’s \$1 Million Total Service Guarantee is Nothing More Than a Clever
4 Marketing Ploy That Is Essentially Worthless

5 93. Through its website and advertisements, LifeLock makes the blanket statement
6 “Sign up for any LifeLock membership and you’re immediately backed by our \$1 Million Total
7 Service Guarantee.”

8 94. LifeLock further proclaims, “If you become a victim of identity theft while a
9 LifeLock member, we’ll spend up to \$1 million to hire experts, lawyers, investigators, consultants
10 and whomever else it takes to help your recovery. Benefits under the Service Guarantee are
11 provided under a zero deductible identity theft insurance policy.” Also promising, “Our U.S.
12 based recovery agents work closely with you to evaluate your specific situation and provide the
13 support you need to recover quickly. When necessary, a Certified Resolution Specialist will
14 handle your case step by step.”

15 95. Broken down, LifeLock’s \$1 Million Identity Theft Guarantee has two
16 components: (1) identity theft insurance, and (2) a service guarantee.

17 96. The first part of LifeLock’s \$1 Million Guarantee, *i.e.* the identity theft insurance,
18 is described by LifeLock as follows: “Identity theft insurance included with your LifeLock
19 membership – with zero deductible – reimburses you for certain out-of-pocket expenses.”

20 97. Notably, LifeLock is not an insurance company. Accordingly, the insurance
21 component of the guarantee is provided by a third-party insurance company called State National
22 Insurance Company (“State National”).

23 98. However, the insurance policy provided by State National contains an exhaustive
24 list of restrictive provisions and exclusions, rendering the policy less than the premiums paid for
25 it. More specifically, the Master Policy provides the following exclusions:

- 26 • Any loss arising from dishonest acts;
- 27 • Any loss arising from bodily injury;
- 28 • Any loss arising from war or terrorism;

- 1 • Any loss arising from pollution;
- 2 • Any loss arising from radioactive Contamination;
- 3 • Any loss arising from contract frustration business;
- 4 • Any loss arising from failure to or delay in delivery or supply of any form of
- 5 property whatsoever;
- 6 • Any loss arising from any form of financial guarantee, surety, or credit indemnity;
- 7 • Any loss arising from fraudulent withdrawals by immediate family members;
- 8 • Any loss not reported within 90 days;
- 9 • Any loss arising from any business activity;
- 10 • Any loss resulting from or arising out of the destruction, confiscation, or seizure
- 11 by order of any government of public authority; and
- 12 • Any loss arising from a voluntary disclosure of any code or other security
- 13 information.

14 In addition, the Master Policy has an exhaustive list of conditions precedent. These limitations
 15 and restrictions prevent consumers from being able to decipher what is covered and what is not
 16 and/or the true value of the Master Policy.

17 99. The second component, the service guarantee, is described by LifeLock as follows:
 18 “If you become a victim of identity theft while you are a LifeLock member we will spend up to
 19 \$1 million to hire experts, lawyers, investigators, consultants, and whoever else it takes to help
 20 your recovery.” Thus, the service guarantee is supposed to cover legal costs, remediation, service
 21 costs, and case management costs in the event of an identity theft.

22 100. However, LifeLock’s service guarantee is limited by the Master Policy, which
 23 provides as follows:

24 Remediation Service Cost. The amount of reasonable and necessary expenses paid
 25 to investigators and other third-party business providers who are retained by
 26 LifeLock and provide any services that are reasonably necessary, **viewed in the**
 27 **context of LifeLock’s business and Membership Programs**, to restore the good
 name and identity of the Insured, or to recover Losses of the Insured in accordance
 with any Membership Program. (emphasis added)

28 Consequently, because the service guarantee is given in the context of “LifeLock’s business and

1 Membership Programs” and, as described herein, LifeLock’s network and services are severely
2 limited and/or restricted, LifeLock’s service guarantee does not cover a variety of identity theft
3 instances and/or losses incurred by LifeLock’s customers.

4 101. Thus, upon information and belief, LifeLock’s \$1 Million Service Guarantee is
5 illusory. Demonstrating the illusory nature of LifeLock’s guarantee, LifeLock Senior Vice
6 President Mike Prusinski reported that as of September 27, 2011, the largest payout under the
7 service guarantee was approximately \$2,500 (a fraction of 1% of the \$1 Million Total Service
8 Guarantee).

9 **III. LifeLock Breached Its Contractual Obligations**

10 102. Through its advertising, website, and Service Terms, LifeLock made analogous
11 offers to Plaintiffs and the members of the Class to protect their identity by, among other things,
12 providing “comprehensive” protection that “banks and credit card companies” cannot provide,
13 “up-to-the-minute” alerts, adequate safeguards and personnel, and a \$1 Million Total Service
14 Guarantee. *See* Ex. 4 (LifeLock client agreement).

15 103. Plaintiffs and the Class accepted LifeLock’s offer and provided consideration
16 through payment of Membership Fees.

17 104. Upon information and belief, all relevant contracts contain a clause stating:

18 ...any Services provided hereunder will be governed by the laws of the State of
19 Arizona, without regard to any laws that would direct the choice of another state’s
20 laws and, where applicable, will be governed by the federal laws of the United
States.

21 Accordingly, class-wide application of Arizona law is appropriate.

22 105. LifeLock breached its contract with Plaintiffs and the members of the Class by
23 making material misrepresentations about the agreement and its services.

24 106. Up to 3 million people paid on average between \$10.00 and \$30.00 for a service
25 LifeLock promised, but did not – and could not – provide. In reliance on that promise, those
26 who subscribed to LifeLock’s products at worst were left unprotected and suffered further harm,
27 and at best were paying for a service that they were not receiving.
28

1 107. LifeLock’s first contractual promise to its subscribers is that it provides
2 “comprehensive” identity theft protection. Subscribers rely on LifeLock’s promise of
3 “comprehensive” monitoring to mean that LifeLock does in fact have the capability of providing
4 such a service. As stated above, LifeLock’s services do not cover some of the largest credit card
5 companies and businesses, nor does it cover car loans. Instead, LifeLock only monitors 250
6 institutions in total, less than 3% of entities that would require monitoring.

7 108. Failure to monitor the remaining 97% of entities which could be the source of
8 identity theft for subscribers is a clear breach of LifeLock’s contractual obligation to provide
9 comprehensive monitoring.

10 109. LifeLock’s second contractual promise is that it provides timely and continuous
11 24/7/265 “alert” services. Subscribers rely on this service to notify them of any suspicious
12 activity related to their identities. Not only does LifeLock lack the resources and personnel to
13 follow through on this service, but also, LifeLock has actually suspended this service entirely
14 both because of system failures and as a way of deflecting customer service calls.

15 110. This is an example not simply of failure to comply with a contractual obligation,
16 but rather a failure to perform the contractual obligation at all. Subscribers rely on notifications
17 of suspicious activity so that they may proactively take next steps in protecting themselves. By
18 throttling or shutting down the alert system entirely, LifeLock fails to meet its contractual
19 obligation of keeping its subscribers informed of suspicious activity.

20 111. LifeLock’s third contractual promise is that it employs a patented alert system
21 which stops identity theft before it does damage. This was an obligation that LifeLock did not
22 meet, and could not as a practical or legal matter. Numerous audits and recommendations were
23 presented to LifeLock regarding its products and policy that brought to light deficiencies in
24 LifeLock’s ability to deliver on this particular promise. (See ¶ 45 through 60). Despite having
25 notice that they did not have the technology, personnel, and expertise to deliver this service,
26 LifeLock nevertheless promised to provide it to subscribers and charged them for it. Moreover,
27 as described in ¶ 60 above, some of the technology which LifeLock intended to use to sweep the
28

1 web first left its subscribers' personally identifiable information entirely unencrypted and second
2 was arguably illegal.

3 112. LifeLock's fourth contractual promise is that it provides a monitoring service that
4 banks and credit card companies cannot provide. Subscribers rely on this promise and pay
5 LifeLock to provide a superior service than their banks or credit card companies. As discussed
6 above, LifeLock's lack of technology, personnel, and expertise has made it impossible for them to
7 deliver even a substandard level of care in credit monitoring, let alone provide a service superior
8 to that provided by banks and credit card companies for free.

9 113. Finally, LifeLock's fifth contractual obligation is that it will use statistical analyses
10 on rising trends in identity theft to better protect its subscribers. Subscribers rely on this promise
11 by trusting that LifeLock will stay up-to-date and adjust its monitoring accordingly. Data over
12 the past three years has clearly shown that the incidence of new account fraud accounts for the
13 clear minority of fraud, and instead that the vast majority of fraud is related to existing accounts.
14 And yet, LifeLock fails to provide for this exact type of identity theft – if someone steals your
15 credit card number and uses it to make purchases, LifeLock won't help you.

16 114. In sum, LifeLock fails to deliver on any of the above contractual obligations it
17 promises to provide. And in exchange, up to 3 million subscribers pay LifeLock up to \$30.00 a
18 month, believing they are protected when in fact they are getting nothing in return.

19 **FACTUAL ALLEGATIONS SPECIFIC TO NAMED PLAINTIFFS**

20 115. Plaintiff Napoleon Ebarle has been a member of LifeLock since at least 2012. In
21 addition, Plaintiff Napoleon Ebarle enrolled his wife and two minor children. Since his
22 enrollment and based on LifeLock's representations and promises, Plaintiff Napoleon Ebarle has
23 paid LifeLock a fee of approximately \$40 a month for LifeLock's services.

24 116. Based on LifeLock's advertisements and representations, as identified herein,
25 Plaintiff Napoleon Ebarle understood and/or had the impression that LifeLock would protect
26 against any attempt to steal his identity or fraudulently procure credit under his name, would
27 contact him in the event his personal data was used, and send him "up-to-the-minute" alerts. In
28

1 accord with Plaintiff Ebarle's understanding, he submitted his, his wife's, and his children's
2 personal information to LifeLock.

3 117. In or around August of 2014, Plaintiff Ebarle opened a Discover account;
4 however, Plaintiff Ebarle did not receive an alert from LifeLock in connection with this new
5 account opening.

6 118. Similarly, in or around October 2014, Plaintiff Ebarle opened a new account with
7 US bank and Wells Fargo. Yet again, however, Plaintiff Ebarle did not receive any notifications
8 from LifeLock in connection with these account openings.

9 119. In comparison to LifeLock's inability and/or failure to detect and report these
10 activities, each of the three (3) instances described above was detected and reported to Plaintiff
11 Ebarle through his alternative account with Protect My ID, a LifeLock competitor.

12 120. Consequently, it is clear that Plaintiff Ebarle did not receive the services and/or
13 support promised by LifeLock and paid for by Plaintiff Ebarle, and that LifeLock does not
14 provide the superior "comprehensive" services promised.

15 121. Additionally, during the period from March through December 2014, while
16 Plaintiff Ebarle received approximately six alerts pertaining to his wife's personal information
17 from Protect My ID, he did not receive a single alert from LifeLock. Upon contacting LifeLock,
18 Plaintiff Ebarle learned that despite paying for services for himself and his wife, LifeLock was
19 not servicing the account for his wife, even though Plaintiff Ebarle had been charged for and paid
20 for these services.

21 122. Plaintiff Jeanne Stamm subscribed to LifeLock in 2008. Since that time, Plaintiff
22 Stamm has paid LifeLock a fee of \$9 per month, or \$108 a year.

23 123. Based on LifeLock's advertisements and representations, Plaintiff Stamm
24 understood and/or had the impression that LifeLock would protect against any attempt to steal her
25 identity or fraudulently procure credit under her name and send her timely alert notifications.
26 Based on her understanding, Plaintiff Stamm submitted her personal information to LifeLock.

27 124. At no time relevant hereto was Plaintiff Stamm aware that LifeLock was not
28 permitted to submit fraud alerts on her behalf; that LifeLock's consumer alert notification

1 services were routinely disabled by the Company; or that LifeLock's technology and personnel
2 were deficient and incapable of protecting the security, confidentiality, and integrity of personal
3 information collected from or about consumers as promised.

4 125. Plaintiff Brian Litton has been a member of LifeLock since 2007. In addition,
5 Plaintiff Litton enrolled his wife and minor child. Since his enrollment and based on LifeLock's
6 representations and promises, Plaintiff Litton has paid LifeLock a fee of approximately \$30 a
7 month for LifeLock's services.

8 126. Based on LifeLock's advertisements and representations, Plaintiff Litton
9 understood and/or had the impression that LifeLock would protect against any attempt to steal his
10 identity or fraudulently procure credit under his name, would contact him in the event his
11 personal data was used, and send him timely alerts. In accord with Plaintiff Litton's
12 understanding, he submitted his, his wife's, and his child's personal information to LifeLock.

13 127. In or around late February 2015, Mr. Litton received correspondence from a credit
14 company that someone was attempting to open a credit account in his name. He informed the
15 company that it was not him, and the credit card company closed the account. Mr. Litton never
16 received an alert from LifeLock.

17 128. Shortly after this incident, someone did open a Sears account in Mr. Litton's name,
18 charging approximately \$750.00. Mr. Litton called and canceled the credit card. Again,
19 Mr. Litton never received a notification from LifeLock. When Mr. Litton called LifeLock to
20 inquire why the Company was not sending him notifications on these account openings, LifeLock
21 instructed him that he needed a different plan for LifeLock to monitor these activities and to assist
22 him in restoring his name.

23 129. Based on LifeLock's representations, Mr. Litton enrolled in LifeLock's Ultimate
24 Plan and was told that a service representative would contact him within 24 to 72 hours. In the
25 meantime, through its free service, Citibank assisted Mr. Litton in contacting the credit unions
26 and sending out affidavits to put a lock on his credit. Mr. Litton was only contacted by LifeLock
27 after he had already handled the problems, meaning he received none of the promised protections
28 and/or assistance that LifeLock represented it would provide.

1 130. Plaintiff Reiner Jerome Ebarle subscribed to LifeLock in mid-2012. Since that
2 time, Plaintiff Reiner Ebarle has paid LifeLock a fee of \$9 per month, or \$108 a year.

3 131. Based on LifeLock's advertisements and representations, Plaintiff Reiner Ebarle
4 understood and/or had the impression that LifeLock would protect against any attempt to steal his
5 identity or fraudulently procure credit under his name and send him timely alert notifications.
6 Based on his understanding, Plaintiff Reiner Ebarle submitted his personal information to
7 LifeLock.

8 132. At no time relevant hereto was Plaintiff Reiner Ebarle aware that LifeLock was not
9 permitted to submit fraud alerts on her behalf; that LifeLock's consumer alert notification
10 services were routinely disabled by the Company; or that LifeLock's technology and personnel
11 were deficient and incapable of protecting the security, confidentiality, and integrity of personal
12 information collected from or about consumers as promised.

13 133. As such, Plaintiffs were charged and paid fees for services that were not as
14 represented, were illegal for the Company to perform, were non-existent, and/or virtually
15 worthless.

16 **FRAUDULENT CONCEALMENT AND TOLLING**

17 134. The applicable statutes of limitations are tolled by virtue of Defendant's knowing
18 and active concealment of the facts alleged above. Plaintiffs and class members were ignorant of
19 the information essential to the pursuit of these claims, without any fault or lack of diligence on
20 their own part.

21 135. At the time this action was filed, Defendant was under a duty to disclose the true,
22 character, quality, and nature of LifeLock's services to Plaintiffs and the Class. Defendant is
23 therefore estopped to rely on any statute of limitations.

24 136. Defendant's fraudulent concealment is common to the Class.

25 **CLASS ACTION ALLEGATIONS**

26 137. Plaintiffs bring this action against LifeLock as a class action pursuant to the
27 Federal Rules of Civil Procedure 23(a) and 23(b)(2) and (b)(3).
28

1 138. Plaintiffs seek certification of this action on behalf of the following class (the
2 “Class”): all persons in the United State who are or were, during January 19, 2009, through the
3 resolution of this matter (the “Class Period”) subscribers of LifeLock’s fee-based theft protection
4 services. Excluded from the Class are Defendant, any parent, subsidiary, affiliate, or controlled
5 person of Defendant, as well as the officers, directors, agents, servants or employees of Defendant
6 and the immediate family members of any such person. Also excluded is any judge who may
7 preside over this cause of action.

8 139. The exact number of the Class, as herein identified and described, is not known,
9 but it is estimated to number in the thousands. The Class is so numerous that joinder of
10 individual members herein is impracticable.

11 140. There are common questions of law and fact in the action that relate to and affect
12 the rights of each member of the Class and the relief sought is common to the entire Class. In
13 particular, the common questions of fact and law include:

- 14 (A) Whether Defendant’s alert notification services were subject to regular
15 delays and/or shut-downs;
16 (B) Whether Defendant failed to maintain compliance with the FTC Order;
17 (C) Whether Defendant’s technology and safeguards were deficient to deliver
18 the protections as promised;
19 (D) Whether Arizona law applies to the putative Class; and
20 (E) Whether members of the Class have sustained damages, and, if so, in what
21 amount.

22 141. The claims of the Plaintiffs, who are representative of the Class herein, are typical
23 of the claims of the proposed Class, in that the claims of all members of the proposed Class,
24 including the Plaintiffs, depend on a showing of the acts of Defendant giving rise to the right of
25 Plaintiffs to the relief sought herein. There is no conflict between the individually named
26 Plaintiffs and other members of the proposed Class with respect to this action, or with respect to
27 the claims for relief set forth herein.
28

1 142. The named Plaintiffs are the representative parties for the Class, and are able to,
2 and will fairly and adequately protect the interests of the Class. The attorneys for Plaintiffs and
3 the Class are experienced and capable in complex civil litigation, consumer fraud litigation and
4 class actions.

5 143. The class action procedure is superior to all other available methods for the fair
6 and efficient adjudication of this controversy. This action would permit a large number of injured
7 persons to prosecute their common claims in a single forum simultaneously, efficiently, and
8 without unnecessary duplication of evidence and effort. Class treatment also would permit the
9 adjudication of claims by class members whose claims are too small and complex to individually
10 litigate against a large corporate defendant.

11 ***COUNT I***
12 ***VIOLATION OF THE ARIZONA CONSUMER FRAUD ACT***

13 144. Plaintiffs repeat and reallege all preceding paragraphs contained herein.

14 145. LifeLock's acts and omissions constitute material misrepresentations and
15 concealments in connection with the sale or advertisement of its services in violation of the
16 Arizona Consumer Fraud Act, Ariz. Rev. Stat. § 44-1522(A).

17 146. Specifically, LifeLock used false, deceptive and misleading statements, concerning
18 the scope and effectiveness of its services; LifeLock's ability to provide continuous alerts and
19 services; LifeLock's ability to place fraud alerts under the FCRA; and the limitations, exclusions,
20 and restrictions on LifeLock's services.

21 147. Likewise, LifeLock's advertisements and website were misleading, false, and/or
22 deceptive regarding the efficacy of LifeLock's technology and safeguards.

23 148. LifeLock further omitted and/or concealed material facts. For example, LifeLock
24 concealed the fact that the Company was regularly engaged in the practice of throttling, that
25 LifeLock's network and safety protocols were not and/or could not function at the level promised.
26 In addition, LifeLock also failed to disclose the effects of not sending out alerts.

27 149. LifeLock's advertisements, marketing, and customer service representatives
28 purposely used inconsistent and confusing terms and/or high pressure sales tactics so as to

1 confuse customers and prevent them from bringing legitimate claims and/or canceling their
2 services.

3 150. Upon information and belief, LifeLock knowingly violated the terms of the FTC
4 Order and used false, misleading, and deceptive representations and/or omissions in the
5 advertising, marketing, and sales of its services.

6 151. As a result of LifeLock's misrepresentations and omissions, LifeLock's members
7 paid substantial fees, were injured and sustained damages in an amount to be proven at trial.
8 These damages include, at a minimum, payments of monthly charges for services that were not as
9 represented and payments for a service that is illegal for a company such as LifeLock to perform.

10 ***COUNT II***
11 ***BREACH OF CONTRACT***

12 152. Plaintiffs repeat and reallege all preceding paragraphs contained herein.

13 153. By contract, LifeLock agreed to provide Plaintiffs and the members of the Class
14 Membership Plans and protections as advertised.

15 154. LifeLock breached its contracts with Plaintiffs and the members of the Class by
16 failing to provide the benefits and/or protections as promised.

17 155. As a direct and proximate result of Defendant's breach, Plaintiffs and the Class are
18 entitled to all damages arising from the breach of contract.

19 ***COUNT III***
20 ***UNJUST ENRICHMENT***

21 156. Plaintiffs repeat and reallege all preceding paragraphs contained herein.

22 157. Plaintiffs and the Class conferred benefits upon the Defendant by paying
23 Membership Fees for the promised identity theft protections and services.

24 158. Although LifeLock received earnings and benefits from the sale of its Membership
25 Plans and the collection of Membership Fees, LifeLock retained these revenues under conditions
26 that would constitute an unjust enrichment of those revenues.

1 159. As a direct and proximate result of Defendant’s actions, Plaintiffs and the Class
2 are entitled to restitution on the full amount by which the Defendant has been unjustly enriched
3 and should be required to disgorge same to Plaintiffs and the Class.

4 **COUNT IV**
5 **DECLARATORY JUDGMENT**

6 160. Plaintiffs hereby repeat and reallege all preceding paragraphs contained herein.

7 161. An actual case and controversy within the meaning of the Federal Declaratory
8 Judgment Act, 28 U.S.C. §§ 2201 and 2202, which may be adjudicated by this Court exists
9 between Plaintiffs and proposed class members, and the Defendant.

10 162. Plaintiffs and all members of the proposed class have, had, or were subscribers of
11 one of Defendant’s fee-based Membership Plans. Defendant’s Terms and Conditions provide that
12 its insureds are treated consistent with the requirements of the laws and regulations of
13 Arizona. Thus, per the governing contract, Arizona law controls how the Defendant’s customers
14 must be treated by Defendant.

15 163. At the same time, the relationship between Defendant and its customers was
16 subject to the FTC Order entered between Defendant and the FTC in 2010, which specifically
17 enjoins LifeLock from misrepresenting, expressly or by implication, “the means, methods,
18 procedures, effects, effectiveness, coverage, or scope” of LifeLock’s services.

19 164. Defendant, as a general policy and business practice, represented or created the
20 impression that LifeLock’s Membership Plans provide: (a) protection from fraud or unauthorized
21 account charges or “peace of mind”; (b) a solution to financial security; (c) live member support
22 24/7/365 and up-to-the-minute “alerts” of any threat of identity theft; and (d) a \$1 million total
23 service guarantee.

24 165. Accordingly, Defendant has violated, and continues to violate, Arizona law and
25 the FTC Order and Plaintiffs are entitled to declaratory relief.

26 **RELIEF**

27 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated,
28 respectfully request that this Court:

- 1 a) determine that this action may be maintained as a class action under Rule 23 of the
2 Federal Rules of Civil Procedure, that Plaintiffs are proper class representatives,
3 and approve Plaintiffs' Counsel as counsel for the Class;
4 b) enter an order demanding that Defendant pay monetary damages to the Plaintiffs,
5 and all proposed Class members;
6 c) enter an order declaring that Defendant's actions are unlawful; and
7 d) grant such other legal and equitable relief as the Court may deem appropriate,
8 including costs and attorneys' fees.

9 **JURY DEMAND.**

10 Plaintiffs and the Class members hereby request a trial by jury.

11 Dated: October 15, 2015

Respectfully submitted,

12 By: /s/ Joseph H. Bates

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