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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

LIFELOCK, INC., a Delaware
Corporation,

Defendant.

NO.

COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF

COMES NOW, Plaintiff, State of Washington, by and through its attorneys Robert M. McKenna Attorney General; and Paula Selis, Senior Counsel, and brings this action against Defendant named herein. The state alleges the following on information and belief:

I. JURISDICTION AND VENUE

1.1 This Complaint is filed and these proceedings are instituted under the provisions of The Consumer Protection Act, RCW 19.86.

1.2 Jurisdiction of the Attorney General to commence this action is conferred by RCW 19.86.080.

1.3 The violations alleged herein have been and are being committed in whole or in part in King County, in the state of Washington by Defendant named herein or its agents.

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II. DEFENDANT

2.1 Defendant, LIFELOCK, INC., is a Delaware corporation that is not registered as a foreign corporation, doing business in Washington.

2.2 Defendant is in competition with others in the State of Washington engaged in similar business.

III. NATURE OF TRADE OR COMMERCE

3.1 Defendant was at all times relevant hereto, engaged in trade and commerce in the state of Washington, to wit: advertising, soliciting, offering for sale and selling of identity theft protection services, and accepting monies from Washington consumers for the same.

Defendant's Services Offered

- a. Since at least July 4, 2005, Defendant has engaged in trade or commerce by advertising, soliciting, offering for sale, and selling identity theft protection services to Washington consumers.
- b. Defendant charges consumers \$10.00 per month or \$110.00 per year, for its identity theft protection services.
- c. Prior to September 2009, Defendant took the following steps for each consumer upon enrollment in its identity theft protection services:
 - 1) Requested that credit reporting agencies place a fraud alert on the consumer's credit record – a free service available to every consumer under the Fair Credit Reporting Act; and
 - 2) Renewed fraud alerts that it placed with credit reporting agencies on behalf of its consumers every ninety (90) days until instructed otherwise by the consumer.
- d. After September 2009, Defendant discontinued the services specified in Paragraphs 3.1(c)(1) and (2) but continued to offer identity theft protection services to consumers.

- 1 e. After a customer enrolls in the identity theft protection service,
2 Defendant orders each customer's free annual credit reports from each
3 of the credit reporting agencies – free service available to every
4 consumer under the Fair Credit Reporting Act.
- 5 f. After a customer enrolls in the identity theft protection service,
6 Defendant sends opt-out requests to credit reporting agencies requesting
7 that customer's removal from pre-approved credit offer lists.
- 8 g. According to its Web site, Defendant's eRecon™ service "scours
9 thousands of known criminal websites for illegal selling or trading of
10 your personal information."
- 11 h. According to its Web site, Defendant's TrueAddress™ service
12 "proactively detect[s] any new address information in address databases
13 nationwide."
- 14 i. Defendant offers identity theft protection services for children.

15 Defendant's Representations Concerning the Effectiveness of Services

- 16 a. A full page advertisement in The Wall Street Journal dated June 30,
17 2008, that appeared to be a news article about identity theft stated,
18 "LifeLock became the nation's leader in identity theft protection by
19 taking a proactive approach to protecting consumers from identity theft."
- 20 b. That same full page advertisement in The Wall Street Journal dated
21 June 30, 2008, stated, "I'm Todd Davis, CEO of LifeLock, and 457-55-
22 5462 is my real Social Security number. I give it out to show how
23 confident I am in LifeLock's proactive identity theft protection."
- 24 c. As of July 24, 2008, Defendant's Web site stated "LifeLock, the
25 industry leader in proactive identity theft protection, offers a proven
26 solution that prevents your identity from being stolen before it happens."

- 1 d. As of July 23, 2008, Defendant's Web site stated, with respect to
2 identity theft protection for minor children that "[w]e were the first
3 company in the country that makes sure that kids are protected from
4 Identity thieves."
- 5 e. The Wall Street Journal advertisement dated June 30, 2008, quotes
6 Defendant's CEO Todd Davis describing the Defendant's service that
7 searched for information in criminal chat rooms: "We're working
8 around the clock monitoring criminal web sites for the illegal selling and
9 trading of our member's information...."
- 10 f. Defendant does not remove information found on criminal web sites, but
11 rather notifies customers that such information has been compromised.

12 Defendant's Representations about Fraud Alerts

- 13 a. As of July 7, 2008, Defendant's Web site stated that after a fraud alert
14 was placed, "[i]f someone is trying to use your personal information,
15 you will be contacted by the creditor that is issuing the line of credit. If
16 you receive a call and you are not the one applying for credit, the
17 transaction should be stopped immediately."
- 18 b. As of July 7, 2008, Defendant's Web site further stated that when a
19 fraud alert is in place, "[e]very time you apply for new credit or
20 someone tries to do something with your credit: You should receive a
21 phone call from the bank asking if you are actually the person applying
22 for credit in your name. If you are, great. If not, the transaction stops."
- 23 c. As of June 11, 2009, Defendant's Web site stated, "LifeLock places
24 fraud alert requests at the three credit bureaus and automatically renews
25 the requests every 90 days. It does not freeze your credit, rather; it
26 safeguards your credit from unauthorized use."

1 Representations Concerning Defendant's Service Guarantee

- 2 a. Defendant offers a \$1 million total service guarantee for its services.
- 3 b. Defendant's Web site states "[w]e will do whatever it takes to help you
- 4 recover your good name and we will spend up to \$1,000,000 to do it."
- 5 c. As of July 7, 2008, Defendant's Web site claimed, "[i]f you lose money
- 6 as a result of the theft, we're going to give it back to you..."
- 7 d. In fact, Defendant's \$1 million total service guarantee does not replace
- 8 out of pocket expenses, but covers the cost of lawyers, investigators, and
- 9 case managers for customers who become victims of identity theft due
- 10 to a failure in Defendant's service.

11 Defendant's Terms and Conditions

- 12 a. As of November 17, 2009, Defendant's terms and conditions contained a
- 13 clause requiring each customer to "agree that any dispute, controversy or
- 14 claim arising out of, or relating to, this Agreement or the Services shall
- 15 be settled by confidential arbitration in Maricopa County, Arizona, in
- 16 accordance with the American Arbitration Association's ("AAA")
- 17 Commercial Arbitration Rules (including without limitation the
- 18 Supplementary Procedures for Consumer-Related Disputes) then in
- 19 effect."

20 **IV. FIRST CAUSE OF ACTION – MISREPRESENTATIONS**

21 **4.1.** Plaintiff realleges Paragraphs 1.1 through 3.1 and incorporates them herein as if

22 set forth in full.

23 **4.2** In the context of its marketing and sale of services, Defendant makes the

24 following misrepresentations, in that Defendant:

- 25 a. represented to consumers, expressly or by implication, that Defendant's
- 26 services protect against all types of identity theft, including criminal and

1 employment identity theft, when in fact Defendant's services did not
2 protect against all types of identity theft.

3 b. represented to consumers, expressly or by implication that Defendant's
4 services fully protect children from identity theft, when in fact
5 Defendant's services do not fully protect children from identity theft.

6 c. represented to consumers by implication that the Defendant removes its
7 customer's personal information from Web sites where criminals post
8 fraudulently obtained personal information, when in fact Defendant only
9 notifies consumers when their information appears on such Web sites.

10 d. represented to consumers, expressly or by implication, that customers
11 with fraud alerts will always receive a phone call prior to new credit
12 being issued, when in fact a phone call is not required by the Fair Credit
13 Reporting Act and many times is not placed by the potential creditor.

14 e. represented to consumers by implication that a security freeze or a credit
15 freeze provide weaker proactive protection against unauthorized use of
16 credit than a 90-day fraud alert, when in fact they can be even more
17 effective.

18 f. represented to consumers, through direct mail marketing, that those
19 consumers were at high risk for identity theft, when Defendant had no
20 knowledge or facts to substantiate such a warning to those consumers.

21 g. represented to consumers expressly that it will reimburse customers for
22 losses incurred, when in fact it only covers losses resulting from a
23 failure or defect in Defendant's services.

24 h. represented to consumers, expressly or by implication, that Defendant
25 will pay customers back for expenses incurred as a result of identity
26 theft, when in fact Defendant will pay a professional to restore losses

1 and expenses only where the loss is due to a failure or defect in
2 Defendant's services.

3 4.3 The conduct described above constitutes unfair or deceptive acts or practices in
4 trade or commerce and unfair methods of competition in violation of RCW 19.86.020.

5 **V. SECOND CAUSE OF ACTION – MATERIAL OMISSION OF FACT**

6 5.1. Plaintiff realleges paragraphs 1.1 through 4.3 and incorporates them as if set
7 forth herein in full.

8 5.2 Defendant failed in print, television, radio advertisements and on its Web site to
9 disclose that fraud alerts are not meant to act as a proactive measure for all consumers.

10 5.3 The conduct described above constitutes unfair or deceptive acts or practices in
11 trade or commerce and unfair methods of competition in violation of RCW 19.86.020.

12 **VI. PRAYER FOR RELIEF**

13 **WHEREFORE**, plaintiff, **STATE OF WASHINGTON**, prays for relief as follows:

14 6.1 That the Court adjudge and decree that Defendant has engaged in the conduct
15 complained of herein.

16 6.2 That the Court adjudge and decree that the conduct complained of in
17 Paragraphs 8.1 through 10.4 constitutes violations of RCW 19.158, the Commercial Telephone
18 Solicitation Act, and, pursuant to RCW 19.158.030, also constitutes per se violations of
19 RCW 19.86, the Consumer Protection Act.

20 6.3 That the Court adjudge and decree that the conduct complained of in
21 Paragraphs 4.1 through 5.3 constitutes unfair or deceptive acts or practices and unfair methods of
22 competition in violation of the Consumer Protection Act, Chapter 19.86 RCW.

23 6.4 That the Court issue a permanent injunction enjoining and restraining Defendant
24 and its representatives, successors, assigns, officers, agents, servants, employees, and all other
25 persons acting or claiming to act for, on behalf of, or in active concert or participation with
26 Defendant from continuing or engaging in the unlawful conduct complained of herein.

