

1 BILL LOCKYER
Attorney General of the State of California
2 ALBERT NORMAN SHELDEN
Senior Assistant Attorney General
3 DAVID M. TIEDE, State Bar No. 167008
Deputy Attorney General
4 110 West A Street, Suite 1100
San Diego, CA 92101
5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2093
Fax: (619) 645-2062
7 E-mail: David.Tiede@doj.ca.gov
Attorneys Plaintiff People of the State of California

8
9
10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12
13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA,
15
Plaintiff,
16
v.
17 DATA TRACE USA, INC., a Florida Corporation,
ILIA S. NICHOLAS a/k/a NICK SCOTT a/k/a
18 NICHOLAS I. SCOTT a/k/a SCOTT NICHOLAS
a/k/a I.S. NICHOLAS, an Individual, DOES 1-
19 100, inclusive, and XYZ CORPS. 1-100, inclusive,
20
Defendants.

CASE NO.:

**COMPLAINT FOR INJUNCTION,
CIVIL PENALTIES AND OTHER
EQUITABLE RELIEF**

21
22 Plaintiff the People of the State of California (“People” or “Plaintiff”), by and through Bill
23 Lockyer, Attorney General of the State of California, is informed and believes and thereupon
24 alleges as follows:

25 **VENUE AND JURISDICTION**

26 1. Defendants at all times mentioned herein have advertised and transacted business in the
27 County of San Diego and elsewhere within the State of California. The violations of law
28 described herein have been and are now being committed in the County of San Diego and

1 elsewhere in the State of California. Unless enjoined and restrained by an order of the Court,
2 defendants will continue to engage in the unlawful acts and conduct set forth in this complaint.

3 **PARTIES**

4 2. At all relevant times, defendant DATA TRACE USA, INC. (“Data Trace”), was and is
5 an Florida Corporation doing business in California, including in San Diego County.

6 3. At all relevant times, defendant ILIA S. NICHOLAS a/k/a NICK SCOTT a/k/a
7 NICHOLAS I. SCOTT a/k/a SCOTT NICHOLAS a/k/a I..S. NICHOLAS (Nicholas), a resident
8 of New York and/or Florida, was and is the principal of Data Trace and as such operates,
9 controls, manages, supervises, and directs the operations and activities of Data Trace.

10 4. Plaintiff is not aware of the true names and capacities of the defendants sued as Does 1
11 through 100, inclusive, and therefore sues these defendants by such fictitious names. Each of
12 these fictitiously named defendants is responsible in some manner for the activities alleged in
13 this Complaint. Plaintiff will amend this Complaint to add the true names of the fictitiously
14 named defendants once they are discovered.

15 5. Plaintiff is not aware of the true names and capacities of the defendants sued as XYZ
16 Corps. 1-100, inclusive, and therefore sues these defendants by such fictitious names. Each of
17 these fictitiously named defendants is responsible in some manner for the activities alleged in
18 this Complaint. Plaintiff will amend this Complaint to add the true names of the fictitiously
19 named defendants once they are discovered.

20 6. Whenever reference is made in this Complaint to any act of defendants, that allegation
21 shall mean that each defendant acted individually and jointly with the other defendants.

22 7. Whenever reference is made in this complaint to any act or transaction of any
23 corporation, partnership, business or other organization, that allegation shall be deemed to mean
24 that the corporation, partnership, business or other organization did or authorized the acts alleged
25 in this complaint through its principals, officers, directors, employees, members, agents and
26 representatives while they were acting within the actual or ostensible scope of their authority.

27 ///

28 ///

1 8. Defendants have engaged in a conspiracy, common enterprise, and common course of
2 conduct the purpose of which was to commit acts and practices of unfair competition and make
3 untrue or misleading statements as alleged in this complaint.

4 9. Defendants each knew or realized that others, including the other defendants, were
5 engaging in or planned to engage in the violations of law alleged in this Complaint. Knowing or
6 realizing that others, including the other defendants, were engaging in such unlawful conduct,
7 each defendant nevertheless facilitated and continued to facilitate the commission of those
8 unlawful acts. Each defendant intended to encourage and facilitate the commission of the
9 unlawful acts, and did encourage, facilitate, aid, promote or instigate the commission of unlawful
10 acts, and thereby, aided and abetted others, including the other defendants, in unlawful conduct.
11 The unlawful acts alleged in this Complaint were those acts defendants intended to and did
12 facilitate or were the natural and reasonable consequences of the acts defendants intended to and
13 did facilitate.

14 10. All the defendants described in paragraphs 1 through 9 above, including DOES 1
15 through 100, inclusive, and XYZ Corps. 1-100, inclusive, shall collectively hereafter be referred
16 to as "Defendants."

17 **DEFENDANTS' BUSINESS PRACTICES**

18 11. Section 2891 of the California Public Utility Code in pertinent part provides that: "(a)
19 No telephone or telegraph corporation shall make available to any other person or corporation,
20 without first obtaining the residential subscriber's consent, in writing, any of the following
21 information: (1) The subscriber's personal calling patterns, including any listing of the telephone
22 or other access numbers called by the subscriber . . ." The federal Telecommunications Act of
23 1996 similarly requires that telecommunications carriers maintain the confidentiality of customer
24 proprietary network information, including records of customer call activity and generally
25 prohibits telecommunications carriers from disclosing a customer's call records to third parties
26 without the customer's express consent. (42 U.S.C. Section 222.)

27 12. Defendants have together engaged in the practice of unlawfully obtaining from
28 telecommunications companies and selling the confidential account information of

1 telecommunications consumers. Through an Internet website, defendants offer to obtain the
2 confidential and private account information of telecommunications consumers, such as records
3 of their recent wireless phone activity, in return for payment of a fee. Defendants then
4 deceptively obtain consumer account information by various means, including misrepresenting
5 themselves to the consumer's telecommunications carrier as an agent of the consumer, as
6 someone calling on the consumer's behalf or at times even as the consumer. Defendants then
7 release and disseminate the private and confidential information they obtain from the
8 telecommunication carriers to third parties, without the consent or authorization of the account
9 holder.

10 13. Defendants, either individually or in concert with one or more other defendants,
11 own and/or operate the website www.datatraceusa.com (the "website").

12 14. Defendants' website advertises, among other things, the service of obtaining for a
13 fee the confidential and private account information of telecommunications consumers, such as
14 records of their recent wireless phone activity. The website provides that in order to obtain these
15 records, a person need only provide the telephone number, name, and address of the consumer
16 whose records are requested.

17 15. In response to orders placed on defendants' website, defendants do and have
18 deceptively obtained telecommunications consumer account information by various means,
19 sometimes termed "pretexting" and/or "social engineering," which includes misrepresenting
20 themselves as the consumer, an agent of the consumer, or someone calling on the consumer's
21 behalf to the consumer's telecommunications carrier customer service representatives, or on the
22 telecommunications carrier's websites. Defendants then do and have obtained, released and
23 disseminated this private and confidential information, without the consent or authorization of
24 the consumer, to third parties.

25 ///

26 ///

27 ///

28 ///

1 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**

2 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500**

3 **(UNTRUE OR MISLEADING REPRESENTATIONS)**

4 16. The People incorporate by reference paragraphs 1 through 15 of this Complaint as
5 though they were set forth fully in this cause of action.

6 17. Beginning at an exact date unknown to plaintiff, and continuing to the
7 present, defendants made, disseminated, or caused to be made and disseminated before the public
8 in the State of California certain untrue or misleading statements which defendants knew, or by
9 the exercise of reasonable care should have known, were untrue or misleading at the time the
10 statements were made or disseminated, in violation of Business and Professions Code section
11 17500. Defendants' untrue or misleading statements include, but are not limited to, the
12 following:

13 a. The allegations set forth in Paragraphs 12 through 15.

14 b. Representing, expressly or by implication, that the services defendants
15 offer are legal when in fact they are not.

16 18. Unless enjoined and restrained by order of the Court, defendants will continue to
17 engage in such violations.

18 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**

19 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

20 **(UNFAIR COMPETITION)**

21 19. The People incorporate by reference paragraphs 1 through 15, and 17 of this
22 Complaint as though they were set forth fully in this cause of action.

23 20. Beginning at an exact date unknown to plaintiff and continuing to the present,
24 defendants have engaged in and continue to engage in unfair competition as defined in Business
25 and Professions Code section 17200. Defendants' acts of unfair competition include, but are not
26 limited to, the following:

27 a. Defendants have violated and are still violating Business and Professions
28 Code section 17500, as set forth in Paragraph 17, above.

1 b. Defendants, in the course of obtaining telephone call records from
2 telecommunications carriers, call a telecommunications carrier and represent, expressly or
3 by implication, that the caller is the consumer or agent of the consumer whose telephone
4 call records are being requested, or is an employee or agent of the telecommunications
5 carrier when, in fact, the caller is not the consumer, an agent of the consumer, or an
6 employee or agent of the telecommunications carrier, and defendants have no legal right
7 to obtain such information because they are making the request for such information
8 without the knowledge or consent of the consumer whose records are being requested.

9 c. Defendants, in the course of obtaining telephone call records from
10 telecommunications carriers, access or attempt to access online telephone records by
11 representing, expressly or by implication, that the individual attempting to access the
12 consumer's online telephone records is actually the consumer when, in fact, the
13 individual accessing or attempting to access the consumer's online telephone records is
14 not the consumer or an agent of the consumer and is accessing or attempting to access the
15 consumer's online telephone records when defendants have no legal right to access such
16 telephone records because they are seeking such records without the knowledge or
17 consent of the consumer whose records are being requested.

18 d. Defendants by representing, expressly or by implication, that the services
19 defendants offer are legal when in fact they are not have engaged in the following
20 violations of the Consumer Legal Remedies Act (Civil Code section 1750, et seq.):

- 21 (1) Misrepresenting the source, sponsorship, approval, or certification
22 of goods or services, in violation of Civil Code section 1770(a)(2);
- 23 (2) Representing that goods or services have characteristics or benefits
24 which they do not have or that a person has a status, affiliation, or
25 connection which he or she does not have, in violation of Civil
26 Code section 1770(a)(5);
- 27 (3) Representing that a transaction confers or involves rights,
28 remedies, or obligations which it does not have or involve, or

1 which are prohibited by law, in violation of Civil Code section
2 1770(a)(14).

3 21. Unless enjoined and restrained by order of the Court, defendants will continue to
4 engage in such violations.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, plaintiff prays for judgment as follows:

7 1. Pursuant to Business and Professions Code section 17535, that all defendants, their
8 successors, agents, representatives, employees, and all persons who act in concert with them be
9 permanently enjoined from making any untrue or misleading statements in violation of Business
10 and Professions Codes section 17500, including the untrue or misleading statements alleged in
11 the First Cause of Action.

12 2. Pursuant to Business and Professions Code section 17203, that all defendants,
13 their successors, agents, representatives, employees, and all persons who act in concert with them
14 be permanently enjoined from committing any acts of unfair competition, including the
15 violations alleged in the Second Cause of Action.

16 3. Pursuant to Business and Professions Code sections 17535 and 17203, that the
17 Court make such orders or judgments as may be necessary to restore to any person in interest any
18 money or property which may have been acquired by means of false or misleading advertising or
19 unfair competition.

20 4. Pursuant to Business and Professions Code section 17536, that defendants, and
21 each of them, be ordered to pay a civil penalty in the amount of Two Thousand Five Hundred
22 Dollars (\$2,500) for each violation of Business and Professions Code section 17500 by
23 defendants, according to proof, but in an amount not less than five million dollars
24 (\$5,000,000.00).

25 ///

26 ///

27 ///

28 ///

