

1 PACIFIC TRIAL ATTORNEYS
A Professional Corporation
2 Scott J. Ferrell, Bar No. 202091
sferrell@pacifictrialattorneys.com
3 David W. Reid, Bar No. 267382
dreid@pacifictrialattorneys.com
4 Victoria C. Knowles, Bar No. 277231
vknowles@pacifictrialattorneys.com
5 4100 Newport Place Drive, Ste. 800
Newport Beach, CA 92660
6 Tel: (949) 706-6464
Fax: (949) 706-6469

Electronically FILED by
Superior Court of California,
County of Los Angeles
10/14/2024 9:43 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By C. Vega, Deputy Clerk

7 Attorneys for Plaintiff
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 SILVIA GARCIA, individually and on behalf of
12 all others similarly situated,

Case No. **24STCV26796**

13 Plaintiff,

**CLASS ACTION COMPLAINT FOR
VIOLATION OF CALIFORNIA INVASION
OF PRIVACY ACT**

14 v.

15 AETREX, INC., a New Jersey corporation d/b/a
WWW.AETREX.COM,

16 Defendant.
17

1 **I. INTRODUCTION**

2 1. Defendant markets footwear directly and indirectly to consumers like Plaintiff. As part
3 of Defendant’s marketing regime, Defendant has partnered with TikTok to install sophisticated
4 software on its website landing page at aetrex.com (the “Website”). This enables Defendant, TikTok,
5 and others to learn the location, source, and identity of consumers who happen to land on their
6 website.

7 2. Plaintiff visited Defendant’s website several times, most recently in mid-2024.
8 Without Plaintiff’s or class members’ knowledge or consent, Defendant deployed a de-anonymization
9 process to identify Plaintiff using electronic impulses generated from Plaintiff’s device, as further
10 described herein. Defendant’s installation of the TikTok tracing process violates California’s Trap
11 and Trace Law, codified at California Penal Code § 638.51.

12 **II. JURISDICTION AND VENUE**

13 3. As a Court of general jurisdiction, This Court has jurisdiction over all matters
14 presented to it per the mandates of the California Constitution.

15 4. Venue is proper in this County because some of the class members’ claims arose in this
16 county.

17 5. Defendant is subject to jurisdiction under California’s “long-arm” statute found at
18 California Code of Civil Procedure Section 410.10 because the exercise of jurisdiction over Defendant
19 is not “inconsistent with the Constitution of this state or the United States.” Indeed, Plaintiff believes
20 that Defendant generates a minimum of eight percent of its national website sales to Californians, such
21 that the website “is the equivalent of a physical store in California.” Since this case involves illegal
22 conduct emanating from Defendant’s operation of its website targeting Californians, California courts
23 can “properly exercise personal jurisdiction” over the Defendant in accordance with the Court of
24 Appeal opinion in *Thurston v. Fairfield Collectibles of Georgia*, 53 Cal.App.5th 1231 (2020).

25 **III. PARTIES**

26 6. Plaintiff is a resident and citizen of California.

27 7. Defendant is a company based in New Jersey that sells footwear.

28

IV. FACTUAL ALLEGATIONS

A. Defendant’s Website and the Tik Tok Software Spies on Activists Like Plaintiff.

8. Defendant operates the Website. Defendant has installed on its Website software created by TikTok in order to identify website visitors (the “TikTok Software”).

9. The TikTok Software acts via a process known as “fingerprinting.” Put simply, the TikTok Software collects as much data as it can about an otherwise anonymous visitor to the Website and matches it with existing data TikTok has acquired and accumulated about hundreds of millions of Americans.

10. The TikTok Software gathers device and browser information, geographic information, referral tracking, and url tracking by running code or “scripts” on the Website to send user details to TikTok.

11. The TikTok Software begins to collect information the moment a user lands on the Website before any pop-up or cookie banner advises users of the invasion or seeks their consent.

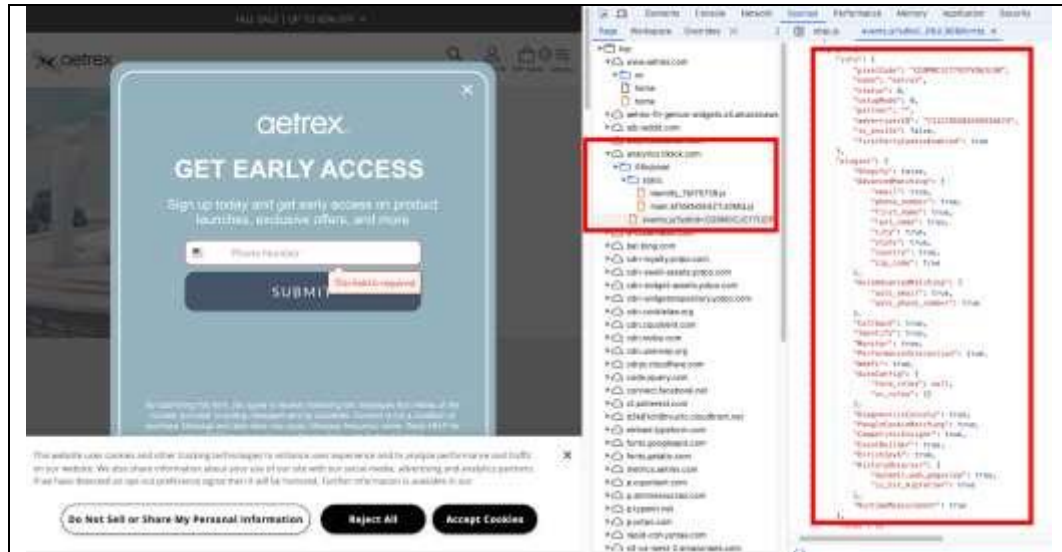
12. The TikTok Software also requests, validates, and transmits other identifying information, including a website visitor’s phone numbers and email addresses.

13. By sharing plaintiff’s and class members’ personal and de-anonymized data with TikTok, Defendant effectively “doxed” them to America’s most formidable geopolitical adversary. See <https://www.cnn.com/2023/06/08/tech/tiktok-data-china/index.html>, *Analysis: There is now some public evidence that China viewed TikTok data* (quoting sworn testimony from former employee But Yu that Chinese Communist Party officials “used a so-called ‘god credential’ to bypass any privacy protections to spy on civil rights activists’ ‘unique user data, locations, and communications.’”) (last accessed October 2024).

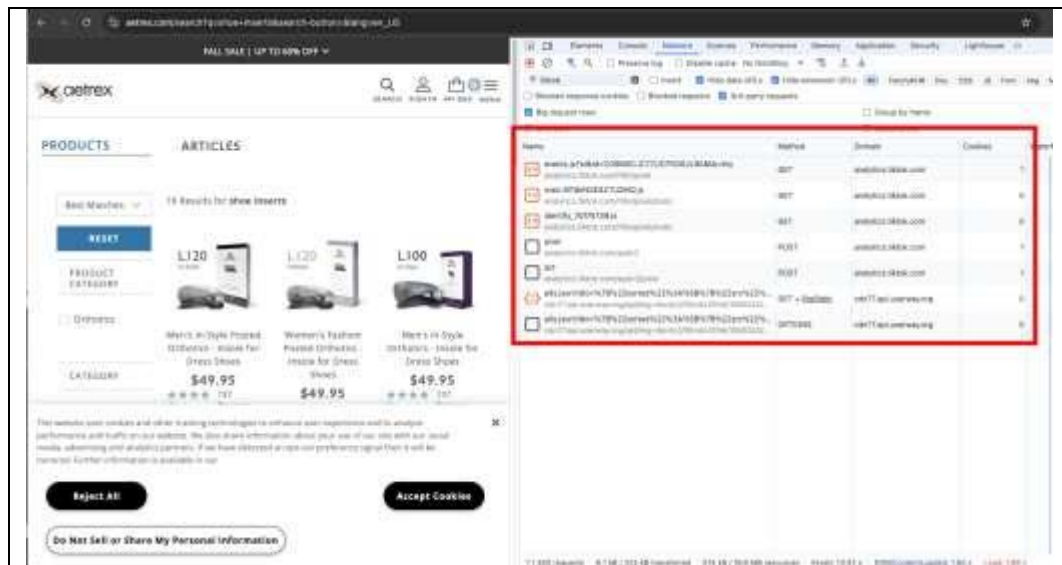
14. Plaintiff is both (1) genuinely interested in the goods, services, and information available on Defendant’s website, and (2) a consumer privacy advocate who works as a “tester” to ensure that companies abide by the privacy obligations imposed by California law. As the Ninth Circuit recently made exceptionally clear that it is “necessary and desirable for committed individuals to bring serial litigation” to enforce and advance consumer protection statutes, and that Courts must not make any impermissible credibility or standing inferences against them. *Langer v. Kiser*, 57 F.4th

1 1085, 1095 (9th Cir. 2023). In other words, Plaintiff is exactly the type of person who the Chinese
2 Communist Party has used TikTok to spy upon in the past.

3 15. An image of the invasive TikTok code can be seen here:



14 16. The website instantly sends communications to TikTok when a user views the page and
15 track page interactions. In the example below, the right side of the image shows the various TikTok
16 scripts being run by Defendant, and the electronic impulses being sent to TikTok to add to their
17 collection of user behavior:



1 **B. The TikTok Software is a Trap and Trace Device.**

2 17. California Penal Code § 638.50(c). California law defines a “trap and trace device” as
3 “a device or process that captures the incoming electronic or other impulses that identify the
4 originating number or other dialing, routing, addressing, or signaling information reasonably likely to
5 identify the source of a wire or electronic communication, but not the contents of a communication.”

6 California Penal Code § 638.50(c).

7 18. The TikTok Software is a process to identify the source of electronic communication
8 by capturing incoming electronic impulses and identifying dialing, routing, addressing, and signaling
9 information generated by users, who are never informed that the website is collaborating with the
10 Chinese government to obtain their phone number and other identifying information.

11 19. The TikTok Software is “reasonably likely” to identify the source of incoming
12 electronic impulses. In fact, it is designed solely to meet this objective.

13 20. Defendant did not obtain Plaintiff’s express or implied consent to be subjected to data
14 sharing with TikTok for the purposes of fingerprinting and de-anonymization.

15 21. CIPA imposes civil liability and statutory penalties for the installation of trap and trace
16 software without a court order. California Penal Code § 637.2; see also, *Greenley v. Kochava*, 2023
17 WL 4833466, at *15-*16 (S.D. Cal. July 27, 2023).

18 22. Defendant did not obtain Plaintiff’s or class members’ express or implied consent to be
19 subjected to data sharing with TikTok for the purposes of fingerprinting and de-anonymization.

20 **V. CLASS ALLEGATIONS**

21 23. Plaintiff brings this action individually and on behalf of all others similarly situated
22 (the “Class”) defined as follows:

23 **All California citizens whose personal information was shared with TikTok**
24 **or other third parties by Defendant without their effective and informed**
25 **prior consent.**

26 24. NUMEROSITY: Plaintiff does not know the number of Class Members but believes
27 the number to be in the tens of thousands. The exact identities of Class Members may be ascertained
28 by the records maintained by Defendant.

1 30. CIPA was enacted to curb “the invasion of privacy resulting from the continual and
2 increasing use of” certain technologies determined to pose “a serious threat to the free exercise of
3 personal liberties.” CIPA extends civil liability for various means of surveillance using technology,
4 including the installation of a trap and trace device.

5 31. A “trap and trace device” as “a device or process that captures the incoming electronic
6 or other impulses that identify the originating number or other dialing, routing, addressing, or
7 signaling information reasonably likely to identify the source of a wire or electronic communication,
8 but not the contents of a communication.” California Penal Code § 638.50(c).

9 32. California Penal Code §638.51 provides that “a person may not install or use...a trap
10 and trace device without first obtaining a court order...” § 638.51(a).

11 33. Defendant uses a trap and trace process on its Website by deploying the TikTok
12 Software on its Website, because the software is designed to capture the phone number, email,
13 routing, addressing and other signaling information of website visitors. As such, the TikTok Software
14 is solely to identify the source of the incoming electronic and wire communications to the Website.

15 34. Defendant did not obtain consent from Plaintiff and class members before using trap
16 and trace technology to identify users of its Website, and has violated Section 638.51.

17 35. CIPA imposes civil liability and statutory penalties for violations of §638.51.

18 36. Therefore, Plaintiff and class members are entitled to the relief set forth below.

19 **PRAYER**

20 WHEREFORE, Plaintiff prays for the following relief against Defendant:

- 21 1. An order certifying the class and making all appropriate class management orders;
22 2. Statutory damages pursuant to CIPA;
23 3. Reasonable attorneys’ fees and costs; and
24 4. All other relief that would be just and proper as a matter of law or equity, as determined
25 by the Court.

1 Dated: October 14, 2024

PACIFIC TRIAL ATTORNEYS, APC

2 By: 
3 Scott. J. Ferrell
4 Attorneys for Plaintiff

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Footwear Retailer Aetrex Illegally Shares Website Users' Private Data with TikTok, Class Action Lawsuit Alleges](#)
