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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

KAREN SPECTOR, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

LANDS' END, INC.,

Defendant.

Case No. CV2024-024984

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Karen Spector, individually and on behalf of all others similarly
2 situated, as set forth herein, alleges as follows:

3 **NATURE OF THE ACTION**

4 1. This is a class action on behalf of persons in the State of Arizona that
5 opened emails sent to them by Defendant Lands' End, Inc. ("Defendant" or "Lands'
6 End") due to Defendant's violations of Arizona's Telephone, Utility and
7 Communication Service Records Act, A.R.S. § 44-1376 *et seq.*

8 2. Defendant is a national clothing and home decor retailer. To entice
9 consumers to purchase their products and maximize sales, Defendant disseminates
10 marketing emails and uses spy pixels to track its recipients' reading habits.
11 Defendant exploits this data to build customer profiles so it can sell and market
12 more products to them. Its recipients may be aware that they receive marketing
13 emails, but they are not aware of, nor do they consent to, Defendant's surreptitious
14 means of tracking their sensitive reading behavior.

15 3. Plaintiff and Class members receive marketing emails from Defendant.

16 4. Defendant embeds hidden spy pixel trackers within its emails. These
17 trackers capture and log sensitive information including the time and place
18 subscribers open and read their messages, how long it takes the subscriber to read
19 the email, subscribers' location, subscribers' email client type, subscribers' IP
20 address, subscribers' device information and whether and to whom the email was
21 forwarded to. Defendant never received subscribers' consent to collect this private
22 information.

23 5. Defendant's invasive surveillance of Plaintiff's sensitive reading habits
24 and clandestine collection of her confidential email records invaded her privacy and
25 intruded upon her seclusion.

26 6. By failing to receive consent from Plaintiff and Class members,
27 Defendant is violating Arizona's Telephone, Utility and Communication Service
28 Records Act, a statute that prohibits procuring or attempting to procure the

1 communication service records of email recipients without their authorization.

2
3 **THE PARTIES**

4 7. Plaintiff is a resident of Arizona, residing in Scottsdale, Arizona.
5 Within the past two years, Plaintiff has received promotional emails from
6 Defendant.

7 8. Plaintiff has frequently opened emails from Defendant to review
8 promotional materials. Plaintiff most recently opened one of Defendant's emails
9 within the last three months.

10 9. Each time Plaintiff opened an email from Defendant, Defendant
11 procured her sensitive email information including the time and place she opened
12 and read the messages, how long she read the email, her location, her email client
13 type, her IP address, her device information and whether and to whom the email
14 was forwarded to.

15 10. Defendant never received consent from Plaintiff to procure her private
16 email records.

17 11. Defendant Lands' End, Inc. is a Delaware corporation with its
18 principal place of business in Dodgeville, Wisconsin. Defendant Lands' End, Inc.
19 is registered to do business in the state of Arizona as a foreign corporation.
20 Defendant Lands' End has a statutory agent authorized to accept service in Arizona.

21 12. Defendant markets and sells its products throughout Arizona and the
22 entire United States.

23 **JURISDICTION AND VENUE**

24 13. This Court has jurisdiction over the subject matter of this complaint
25 because Plaintiff is a resident of Maricopa County.

26 14. The Court has personal jurisdiction over Defendants because, pursuant
27 to the Arizona Constitution article XIV, section 8, by filing their articles of
28 incorporation with the Arizona Corporation Commission and by having an

1 authorized agent to accept service, Defendants have consented to accept service of
2 suits that arise in this County.

3 15. The Court also has personal jurisdiction over Defendant because
4 Defendant has purposefully availed itself of the laws and benefits of doing business
5 in this State, and Plaintiff's claims arise out of Defendant's forum-related activities.
6 Furthermore, a substantial portion of the events giving rise to Plaintiff's claims
7 occurred in this County.

8 16. Venue is proper in this Court pursuant to A.R.S. §§ 12-401(1) and (18)
9 because a substantial part of the events, omissions, and acts giving rise to the claims
10 herein occurred in this County.

11 **FACTS SUPPORTING PLAINTIFF'S CLAIM**

12 **A. The HP Spying Scandal and A.R.S. § 44-1376**

13 17. In 2001, Hewlett-Packard "embark[ed] on one of the largest and most
14 difficult mergers in American business history."¹ Spearheaded by then-CEO Carly
15 Fiorina, HP sought to acquire a rival company, Compaq, Inc., in a deal valued at
16 \$25 billion.²

17 18. "Widely considered one of the worst tech mergers in history,"³ the
18 economic fallout from the acquisition began immediately.⁴ By 2004, "Hewlett-

20 ¹ Michael Malone, *The H-P-Compaq Mess Isn't All Carly's Doing*, WALL. ST. J.
21 (May 21, 2002), <https://www.wsj.com/articles/SB1021933260918245440>.

22 ² Andrew Ross Sorkin, *Hewlett-Packard in Deal to Buy Compaq for \$25 Billion in*
23 *Stock*, N.Y. TIMES (Sept. 4, 2001),
[https://www.nytimes.com/2001/09/04/business/hewlett-packard-in-deal-to-buy-](https://www.nytimes.com/2001/09/04/business/hewlett-packard-in-deal-to-buy-compaq-for-25-billion-in-stock.html)
[compaq-for-25-billion-in-stock.html](https://www.nytimes.com/2001/09/04/business/hewlett-packard-in-deal-to-buy-compaq-for-25-billion-in-stock.html).

24 ³ PCMag Staff, *The Biggest Tech Mergers and Acquisitions of All Time*, PCMAG
25 (Apr. 12, 2021), [https://www.pcmag.com/news/the-biggest-tech-mergers-and-](https://www.pcmag.com/news/the-biggest-tech-mergers-and-acquisitions-of-all-time)
[acquisitions-of-all-time](https://www.pcmag.com/news/the-biggest-tech-mergers-and-acquisitions-of-all-time).

26 ⁴ Mike Musgrove, *HP Posts \$2 Billion Loss in First Full Quarter with Compaq*,
27 WASH. POST (Aug. 28, 2002),
[https://www.washingtonpost.com/archive/business/2002/08/28/hp-posts-2-billion-](https://www.washingtonpost.com/archive/business/2002/08/28/hp-posts-2-billion-loss-in-first-full-quarter-with-compaq/2486859a-b55c-4247-9f0a-cb1d839b68d8/)
28 [loss-in-first-full-quarter-with-compaq/2486859a-b55c-4247-9f0a-cb1d839b68d8/](https://www.washingtonpost.com/archive/business/2002/08/28/hp-posts-2-billion-loss-in-first-full-quarter-with-compaq/2486859a-b55c-4247-9f0a-cb1d839b68d8/).

1 Packard’s stock had dropped below seventeen dollars, from a high of more than
2 sixty dollars, in 2000.”⁵ Industry insiders took note, with a “consensus” believing
3 that “the new HP, the tech industry’s most sprawling conglomerate, ha[d] lost its
4 focus and [was] being squeezed between two formidable rivals with much clearer
5 business models, Dell and IBM.”⁶

6 19. In January 2005, a few days before HP’s annual retreat, two board
7 members, Patricia Dunn and George Keyworth, met with Fiorina to discuss their
8 concerns about the company’s direction.⁷ Fiorina sought to placate Dunn and
9 Keyworth, “agree[ing] to tear up her agenda for the board’s strategy retreat ... and
10 focus instead on the directors’ concerns.”⁸ But shortly after the retreat, “a reporter
11 for the *Wall Street Journal*, Pui-Wing Tam, called to confirm details that Tam had
12 learned about the retreat, including assertions that Fiorina had lost the confidence of
13 the board and that operating responsibilities would soon be shifted away from her.”⁹
14 “Clearly, someone at the retreat, which was attended only by board members and
15 top executives, had leaked proprietary information.”¹⁰

16 20. Fiorina responded with fury. After “call[ing] the board members
17 together on the phone,” Fiorina “dressed them down for giving details of the
18 meeting.”¹¹ But that response only further inflamed tensions between Fiorina and
19

20 ⁵ James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007),
21 <https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

22 ⁶ The Economist Staff, *Losing the HP way*, THE ECONOMIST (Aug. 19, 2004),
23 <https://www.economist.com/business/2004/08/19/losing-the-hp-way>.

24 ⁷ James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007),
25 <https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

26 ⁸ Alan Murray, H-P Board Clash Over Leaks Triggers Angry Resignation, WALL
27 ST. J. (Sept. 6, 2006), <https://www.wsj.com/articles/SB115749453036454340>.

28 ⁹ James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007),
<https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

¹⁰ *Id.*

¹¹ Alan Murray, H-P Board Clash Over Leaks Triggers Angry Resignation, WALL
ST. J. (Sept. 6, 2006), <https://www.wsj.com/articles/SB115749453036454340>.

1 the board, and less than two weeks after the retreat, the board met again, this time
2 without Fiorina, and voted to dismiss her.¹²

3 21. Despite Fiorina's departure, board members remained perturbed by the
4 disclosures to the press, and so when elevating Patricia Dunn to nonexecutive
5 chairwoman and tasking her with choosing Fiorina's successor, the board also
6 provided Dunn with another mandate: "stop the board leaks."¹³

7 22. Dunn promptly initiated an investigation, code-naming it "Project
8 Kona."¹⁴ But before Project Kona could get off the ground, another more damaging
9 leak came to light.¹⁵ In the months after Fiorina's removal, Dunn selected Mike
10 Hurd, a CEO at a competitor company, to serve as HP's new CEO.¹⁶ However,
11 before the board could make an announcement, a reporter from *Business Week*
12 reached out, asking for comment on Hurd's selection.¹⁷ Because Hurd had not yet
13 left the other company, revealing his candidacy before he resigned could potentially
14 derail the process.¹⁸ Although Hurd would go on to become HP's CEO without
15 issue, the new disclosure added urgency to determining who was behind the leaks.¹⁹
16 For Dunn, Project Kona was the way to find out.²⁰

17 23. To staff Project Kona, Dunn turned to a security manager at HP, Kevin
18 Huska, who, in turn, "referred Dunn to an outside investigator named Ronald R.
19 DeLia, whose firm, Security Outsourcing Solutions, based in Boston, had been
20 under contract to Hewlett-Packard for some ten years."²¹ Throughout the summer

21 ¹² *Id.*

22 ¹³ James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007),
23 <https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

24 ¹⁴ *Id.*

25 ¹⁵ *Id.*

26 ¹⁶ *Id.*

27 ¹⁷ *Id.*

28 ¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

1 of 2005, Dunn received regular updates from DeLia, including one call where he
2 “revealed that his investigators had obtained private phone records of reporters.”²²
3 DeLia received these records through “pretexting,” which, in his own words,
4 “involved investigators requesting information from [telephone] operators orally,
5 over the phone, pretending to be someone else if necessary.”²³ Notwithstanding this
6 invasion of privacy, Project Kona failed to pinpoint a leaker, and as the year winded
7 down, so too did the investigation.²⁴

8 24. Then, in January 2006, a reporter from CNET named Dawn
9 Kawamoto published an “inside account of the company’s retreat, held two weeks
10 earlier.”²⁵ The substance of the article was innocuous, but at HP, “the story was
11 met with alarm.”²⁶ In response to the leak, “[a] new investigation was immediately
12 launched, which Dunn called Kona II.”²⁷ HP’s general counsel, Ann Baskins,
13 “asked an employment lawyer at the company, Kevin Hunsaker, to head the
14 renewed investigation.”²⁸ “With Hunsaker in day-to-day charge, the investigators
15 undertook their mission with extraordinary zeal,” pretexting phone companies to
16 obtain records for reporters, directors, and employees.²⁹

17 25. In addition to pretexting, the investigators also took a new approach.³⁰
18 Posing as a disgruntled employee, they emailed Kawamoto with the promise of
19 revealing damaging information about the company.³¹ Unbeknownst to Kawamoto,
20 the investigators utilized “ReadNotify,” a tracker that, once embedded into an
21

22 ²² *Id.*

23 ²³ *Id.*

24 ²⁴ *Id.*

25 ²⁵ *Id.*

26 ²⁶ *Id.*

27 ²⁷ *Id.*

28 ²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

1 email, allowed them to “track the path [the] message takes, including whether [the]
2 recipient opens the message.”³² “[A] technique also employed by some e-mail
3 marketers,”³³ the investigators hoped that Kawamoto would “forward the e-mail to
4 her source,” thereby revealing who had leaked the confidential information.³⁴

5 26. ReadNotify failed to yield results, with Kawamoto declining to
6 forward the email.³⁵ But this time around, after combing through the phone
7 records, investigators discovered that a board member, George Keyworth, had a
8 short conversation with Kawamoto right before the article was published.³⁶ After
9 the revelation, the board confronted Keyworth, who admitted to having lunch with
10 the reporter and “say[ing] some nice things about Mike Hurd.”³⁷ The board
11 responded by voting on a motion to request Keyworth’s resignation.³⁸ After the
12 motion passed, a board member who dissented, Mark Perkins, quit in protest.³⁹
13 Keyworth, for his part, refused to step aside, “saying the shareholders had elected
14 him, and he felt the punishment was out of proportion to the offense.”⁴⁰

15 27. Perkins did not go quietly.⁴¹ After resigning from the board, Perkins
16 retained a lawyer, Viet Denh, who “contacted the S.E.C., the U.S. Attorney’s
17 offices in Manhattan and San Francisco, the California Attorney General, the
18

19
20 ³² Robert McMillan, *HP’s e-mail tracer in widespread use*, COMPUTERWORLD (Oct.
21 10, 2006), <https://www.computerworld.com/article/2820287/hp-s-e-mail-tracer-in-widespread-use.html>

22 ³³ *Id.*

23 ³⁴ Joris Evers, *How HP bugged e-mail*, CNET (Sept. 29, 2006),
<https://www.cnet.com/news/privacy/how-hp-bugged-e-mail/>.

24 ³⁵ James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007),
<https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

25 ³⁶ *Id.*

26 ³⁷ *Id.*

27 ³⁸ *Id.*

28 ³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

1 F.C.C., and the F.T.C.”⁴²

2 28. Once HP’s tactics were made public, the reaction was swift and
3 overwhelming. In September 2006, Congress held a hearing on the scandal, asking
4 Dunn and other witnesses to answer two questions: “Exactly what did they know
5 about the use of pretexting,” and “[w]hat did they know about planting spyware on
6 an email to a journalist.”⁴³ The witnesses verified that investigators employed both
7 methods to gather evidence, but they maintained that their conduct was lawful.⁴⁴
8 Throughout the hearing, members of Congress called for a law that would prohibit
9 these practices, with one member remarking that “[t]he growing market for
10 personal information is enormous, and many of us have seen this, and that is why
11 we need to pass legislation to stop this.”⁴⁵ When another member asked Dunn
12 whether it “strike[s] you as a permissible tactic to use, attaching a tracking device
13 onto an e-mail,” Dunn replied, “[i]t is kind of surprising that it is legal, isn’t it?”⁴⁶
14 Still another member lamented that email trackers were “equivalent to going
15 through the mail in my mailbox.”⁴⁷

16 29. Six days after the hearing, the California Attorney General indicted
17 Dunn, Hunsaker, DeLia, and two private investigators involved in both iterations of
18 Project Kona.⁴⁸ A few months after that, Congress passed the Telephone Records
19 and Privacy Protection Act of 2006, a law that criminalizes “knowingly and
20 intentionally obtain[ing], or attempt[ing] to obtain, confidential phone records

21 ⁴² *Id.*

22 ⁴³ Hewlett-Packard's Pretexting Scandal: Hearing Before the Subcomm. on
23 Oversight and Investigations of the H. Comm. on Energy and Commerce, 109th
24 Cong. 45 (2006), [https://www.govinfo.gov/content/pkg/CHRG-
24 109hhr31472/html/CHRG-109hhr31472.htm](https://www.govinfo.gov/content/pkg/CHRG-109hhr31472/html/CHRG-109hhr31472.htm).

25 ⁴⁴ *Id.*

26 ⁴⁵ *Id.*

27 ⁴⁶ *Id.*

28 ⁴⁷ *Id.*

⁴⁸ James Stewart, *The Kona Files*, THE NEW YORKER (Feb. 11, 2007),
<https://www.newyorker.com/magazine/2007/02/19/the-kona-files>.

1 information of a covered entity, by making false or fraudulent statements or
2 representations to an employee of a covered entity.” 18 U.S.C. § 1039(a)(1). That
3 law, as the text suggests, only prohibits pretexting, not the use of email trackers.

4 30. After Congress enacted the Telephone Records and Privacy Protection
5 Act of 2006, the Arizona legislature went a step further, passing a law that
6 addressed *both* methods used by HP’s investigators. Like the federal law, this new
7 Arizona law prohibits any person from procuring or conspiring with another to
8 procure “a telephone record” of residents without consent. But, in addition, the
9 new law also prohibits procurement of any “communication service record”
10 (including email records) of “any resident of this state without the authorization of
11 the customer to whom the record pertains, or by fraudulent, deceptive, or false
12 means.” Ariz. Rev. Stat. Ann. § 44-1376.01. And while Congress declined to
13 include a private right of action in the federal law, the Arizona legislature allowed
14 residents to pursue civil remedies. Ariz. Rev. Stat. Ann. § 44-1376.04(2).

15 **B. Email Pixels**

16 31. Despite Arizona law prohibiting the practice, companies still embed
17 trackers within emails without first obtaining consumers’ consent. Indeed, “[a]
18 2018 Princeton study on email tracking tested over 12,000 emails from 900 senders
19 offering mailing list subscriptions and found that 70% contained trackers.”⁴⁹

20 32. These trackers, known as “spy pixels,” enable companies to learn
21 information about the email transmission, including when and where the email was
22 opened. Pixels are used to log when the recipient accesses the email and can record
23 the number of times an email is opened, the IP address linked to a user’s location,
24 and device usage.⁵⁰

25 ⁴⁹ Mikael Berner, *The Business of Email Tracking: What To Know About Spy Pixels*
26 *In Your Inbox*, FORBES (Jun 9, 2022),
27 <https://www.forbes.com/sites/forbestechcouncil/2022/06/09/the-business-of-email-tracking-what-to-know-about-spy-pixels-in-your-inbox/?sh=2084ee793fec>.

28 ⁵⁰ Charlie Osborne, *Tracker pixels in emails are now an ‘endemic’ privacy concern*,

1 33. Spy pixels can also monitor how long the recipient spends reading the
2 email, whether the email was forwarded, and whether the recipient prints the
3 email.⁵¹

4 34. The use of spy pixels is a “grotesque invasion of privacy” according to
5 industry advocates.⁵²

6 35. To activate a spy pixel, recipients only need to open the email. The
7 recipient does not need to directly engage with the pixel—when an email is opened
8 the tracking pixel is automatically downloaded.⁵³

9 36. A spy pixel is typically a 1x1 (one pixel high by one pixel long) image.
10 “The spy pixel is so small it is basically impossible to see with the naked eye.”⁵⁴

11 37. The spy pixels used by marketers today operate the same way as the
12 spy pixels in the HP pretexting scandal—email activity including who accessed an
13 email, as well as when and where an email was accessed, is procured through the
14 same technology, an invisible pixel embedded in the email code that allows the
15 sender to log and track that information.

16 **C. Defendant’s Spy Pixel Tracking**

17 38. Defendant uses its own spy pixels to track when customers open their
18 emails, as pictured in the example below. That tracker records the email address,
19 the subject of the email, when the email is opened and read, the recipient’s
20 geographic location, how long the recipient spends reading an email, whether it is

21 _____
22 ZDNET (Feb. 17, 2021), <https://www.zdnet.com/article/spy-pixels-in-emails-to-track-recipient-activity-are-now-an-endemic-privacy-concern/>.

23 ⁵¹ https://knowledge.validity.com/s/articles/Everest-Engagement-Playbook-Beginner?language=en_US

24 ⁵² *Charlie Osborne, Tracker pixels in emails are now an ‘endemic’ privacy concern, ZDNET (Feb. 17, 2021),* <https://www.zdnet.com/article/spy-pixels-in-emails-to-track-recipient-activity-are-now-an-endemic-privacy-concern/>.

25 ⁵³ *Id.*

26 ⁵⁴ *Becky Willeke, Spy pixels are hiding in your emails; so what can you do about it?, FOX 2 Now (Mar. 15, 2021),* <https://fox2now.com/news/tech-talk/spy-pixels-are-hiding-in-your-emails-so-what-can-you-do-about-it/>.

1 forwarded, whether it is printed, and what kind of email server the recipient uses,
 2 among other sensitive information. This information is then transmitted to third
 3 parties such as Google, Oracle, Pippio, AtData, and Rubicon Project for advertising
 4 and/or marketing purposes. An example of Defendant's spy pixel is pictured
 5 below:

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6 
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9 39. Defendant also hides trackers within images embedded within emails
 10 through the use of spy tracking pixels from LiveIntent:

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11 55</sup>

16 41. Through LiveIntent, Defendant shares its email recipients' email  
 17 viewing activity data through LiveIntent's exchange.<sup>56</sup> “From there, [Defendant]  
 18 can build unique segments, track campaign results, and gather key audience  
 19 insights.”<sup>57</sup> “Basically, [LiveIntent is] a one-stop shop for making the most of your  
 20 customer information and launching email advertising campaigns across the  
 21 funnel.”<sup>58</sup>

22 42. Defendant embedded spy tracking pixels in marketing emails  
 23 Defendant sent to Plaintiff and Class Members in order to collect the above-listed  
 24

25 <sup>55</sup> <https://www.liveintent.com/advertiser-solutions/>

26 <sup>56</sup> <https://www.liveintent.com/blog/how-to-build-mothers-day-campaigns-that-drive-sales/>

27 <sup>57</sup> *Id.*

28 <sup>58</sup> *Id.*

1 sensitive information, unbeknownst to and without the consent of email recipients.

2 43. Plaintiff was unaware that tracking pixels were embedded in the  
3 emails as Defendant does not inform users it embeds tracking pixels in its  
4 marketing emails. Defendant never received consent from Plaintiff and Class  
5 Members to use these spy pixels.

6 **CLASS ACTION ALLEGATIONS**

7 44. Plaintiff seeks to represent a class (the “Class”) defined as: All persons  
8 within Arizona who have opened a marketing email containing a tracking pixel  
9 from Defendant.

10 45. Excluded from the Class is Defendant, its subsidiaries, affiliates,  
11 officers, directors, assigns and successors, and any entity in which it has a  
12 controlling interest, and the Judge to whom this case is assigned and any member of  
13 his or her immediate family.

14 46. Members of the Class are so numerous that their individual joinder  
15 herein is impracticable. On information and belief, members of the Class number  
16 in the hundreds of thousands. The precise number of Class members and their  
17 identities are unknown to Plaintiff at this time but will be determined through  
18 discovery. Class members may be notified of the pendency of this action by mail  
19 and/or publication through the distribution records of Defendant and third-party  
20 retailers and vendors.

21 47. Common questions of law and fact exist as to all Class members and  
22 predominate over questions affecting only individual Class members. Common  
23 legal and factual questions include, but are not limited to:

- 24 a) whether Defendant “[k]nowingly procure[d], attempt[ed] to procure,  
25 solicit[ed] or conspire[d] with another to procure a ... communication  
26 service record of any resident of this state without the authorization of  
27 the customer to whom the record pertains or by fraudulent, deceptive or  
28 false means” in violation of A.R.S. § 44-1376 *et seq.*;

- 1           b) whether Plaintiff’s and the Class’s “communication service records”  
2           were procured, sold or received in violation of A.R.S. § 44-1376, *et seq.*
- 3           c) whether Defendant’s conduct violates A.R.S. § 44-1376, *et seq.* or any  
4           other applicable laws; and
- 5           d) whether, as a result of Defendant’s misconduct as alleged herein,  
6           Plaintiff and Class members are entitled to restitution, injunctive, and/or  
7           monetary relief and, if so, the amount and nature of such relief.

8           48. Plaintiff’s claims are typical of the claims of Class members because  
9           Plaintiff, like all Class members, had her communication service records procured,  
10          sold, or received by Defendant.

11          49. Plaintiff is an adequate representative of the Class because her  
12          interests do not conflict with the interests of the Class members she seeks to  
13          represent, she has retained counsel competent and experienced in prosecuting class  
14          actions, and she intends to prosecute this action vigorously. The interests of Class  
15          members will be fairly and adequately protected by Plaintiff and her counsel.

16          50. The class mechanism is superior to other available means for the fair  
17          and efficient adjudication of the claims of Plaintiff and Class members. Each  
18          individual Class member may lack the resources to undergo the burden and expense  
19          of individual prosecution of the complex and extensive litigation necessary to  
20          establish Defendant’s liability. Individualized litigation increases the delay and  
21          expense to all parties and multiplies the burden on the judicial system presented by  
22          the complex legal and factual issues of this case. Individualized litigation also  
23          presents a potential for inconsistent or contradictory judgments. In contrast, the  
24          class action device presents far fewer management difficulties and provides the  
25          benefits of single adjudication, economy of scale, and comprehensive supervision  
26          by a single court on the issue of Defendant’s liability. Class treatment of the  
27          liability issues will ensure that all claims and claimants are before this Court for  
28          consistent adjudication of the liability issues.

**COUNT I**

**Violation of A.R.S. § 44-1376.01**

1  
2  
3 51. Plaintiff hereby incorporates by reference the allegations contained in  
4 all preceding paragraphs of this complaint.

5 52. Plaintiff brings this claim individually and on behalf of the members of  
6 the proposed Class against Defendant.

7 53. Defendant embeds spy pixels in its marketing emails sent to Plaintiff  
8 and Class members.

9 54. The spy pixels are designed to extract “communication service  
10 records” related to the delivery of the email in which the spy pixel is embedded.  
11 This includes, but is not limited to, time logs of email access, logs of associated  
12 email addresses, logs of email client type, logs of email path data, logs of recipient  
13 location, logs of IP address, logs of email forwarding data, and logs of device  
14 information.

15 55. Defendant “procures” Plaintiff’s and Class members’ “communication  
16 service records” because they “obtain by any means, including electronically”  
17 Plaintiff and Class member’s “communication service records” as defined in A.R.S.  
18 § 44-1376.

19 56. In contravention of A.R.S. § 44-1376.01, Defendant knowingly  
20 procures “subscriber information, including name, billing or installation address,  
21 length of service, payment method, telephone number, electronic account  
22 identification and associated screen names, toll bills or access logs, records of the  
23 path of an electronic communication between the point of origin and the point of  
24 delivery and the nature of the communication service provided, such as ...  
25 electronic mail ...,” which constitute “communication service records” under  
26 A.R.S. § 44-1376, from Plaintiff and Class members.

27 57. Plaintiff and Class members were never informed by Defendant, and  
28

1 thus never knew, that Defendant would be procuring sensitive information  
2 including, but not limited to, time logs of email access, associated email addresses,  
3 email client type, email path data, IP addresses, and device information.

4 58. Plaintiff and Class members never gave lawful consent to Defendant to  
5 procure the communication service records.

6 59. Each time Defendant sent an email containing a spy pixel, Defendant  
7 procured a communication service record, thus committing a separate violation of  
8 A.R.S. § 44-1376.01.

9 60. Defendant invaded Plaintiff's and Class members' right to privacy by  
10 its invasive surveillance of Plaintiff's and Class members' sensitive reading habits,  
11 including when they opened and read an email. This clandestine collection of their  
12 confidential email records also intruded upon their seclusion.

13 61. Accordingly, Plaintiff, individually and on behalf of the proposed  
14 Class, prays for the relief set forth by the statute, including actual damages, profits  
15 made by Defendant as a result of the violation, \$1,000 for each violation,  
16 reasonable attorneys' fees and other litigation costs reasonably incurred, and such  
17 other equitable relief as the court determines to be appropriate.

18 **REQUEST FOR RELIEF**

19 WHEREFORE, Plaintiff, individually and on behalf of all others similarly  
20 situated, seeks judgment against Defendant, as follows:

- 21 a. For an order certifying the Class under Ariz. R. Civ. P. 23 and naming  
22 Plaintiff as representative of the Class and Plaintiff's attorneys as Class  
23 Counsel to represent the Class members;
- 24 b. For an order declaring that Defendant's conduct, as set out above, violates  
25 A.R.S. § 44-1376.01;
- 26 c. For an order finding in favor of Plaintiff and the Class on all counts asserted  
27 herein;
- 28



- 1 d. For actual damages or damages of \$1,000.00 for each of Defendant's  
2 violations, whichever is more, pursuant to A.R.S. § 44-1376.04, which  
3 exceeds \$300,000 in aggregate;
- 4 e. For damages equal to the sum of any profits Defendant made for each of  
5 Defendant's violations, pursuant to A.R.S. § 44-1376.04;
- 6 f. For injunctive and other equitable relief as is necessary to protect the  
7 interests of the Class, including, inter alia, an order requiring Defendant to  
8 comply with A.R.S. § 44-1376, *et seq.*
- 9 g. For an order awarding Plaintiff and the Class their reasonable attorneys'  
10 fees and expenses and costs of suit;
- 11 h. For pre- and post-judgment interest on all amounts awarded, to the extent  
12 allowable; and
- 13 i. For such other and further relief as the Court may deem proper.

13 **JURY DEMAND**

14 Plaintiff demands a trial by jury on all causes of action and issues so triable.

15 Dated: September 10, 2024

Respectfully submitted,

16 **WARD, KEENAN & BARRETT, P.C.**

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18 Gerald Barrett

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This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lands' End Hit with Class Action Lawsuit Over Alleged Use of Tracking Tech in Marketing Emails](#)

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