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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY (Trenton)**

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NR MEDIA, INC. individually and as Class	
Representative of those similarly situated,	:
and NAKED RHINO MEDIA, LLC,	
individually,	:
	SECOND AMENDED AND
	SUPPLEMENTAL COMPLAINT
Plaintiffs,	:
v.	JURY TRIAL DEMANDED
	:
TOO MUCH MEDIA, LLC, JOHN	
ALBRIGHT, Individually and CHARLES	:
BERREBBI, Individually, Fred Schank,	
Individually, and John Doe Defendants 1	:
through 30,	<u>Document Electronically Filed</u>
	:
Defendants.	
and	:
TOO MUCH MEDIA, LLC,	:
Counterclaimant,	:
v.	
	:
NR MEDIA, INC., NAKED RHINO MEDIA,	
LLC, CHRISTOPHER PETOSKI,	:
Individually, and JASON TUCKER,	
Individually,	:
Counterclaim	:
Defendants.	
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Plaintiffs NR MEDIA, INC. and NAKED RHINO MEDIA, LLC

(“Plaintiffs”) for their First Supplemental and Amended Complaint (the “FSAC”), brings this

hybrid action against defendants Too Much Media, LLC, John Albright, and Charles Berrebbi, Fred Schank and John Does 1-30, on knowledge as to Plaintiffs and their own acts, and as to other matters on information and belief, on behalf of NR Media, LLC and the proposed class defined herein, and in support thereof alleges the following:

NATURE OF THE ACTION

This is a proposed “hybrid” action brought pursuant to F.R.C.P. 23(c)(4). Specifically, NR Media, Inc. (“NRM”) seeks damages and equitable relief on behalf of itself and on behalf all persons and entities that operate Affiliate Programs, and that suffered harm as a result purchasing information processing services from Too Much Media, LLC (“TMM”) based on NATS, a software program designed for, by and owned by TMM, and/or John Albright and/or Charles Berrebbi (collectively, the “TMM Defendants”). In addition, Plaintiffs seek relief based on the tortious conduct that the TMM Defendants specifically directed at Plaintiffs and which resulted in the destruction of NRM’s profitable and popular on-line Internet business and sabotaged NR LCC from its inception.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1337 since in connection with acts alleged herein, defendants directly and/or indirectly used the means of interstate commerce including but not limited to the mails, interstate telephone calls, interstate computer communications and access.

2. In addition, or alternatively, jurisdiction is properly based on diversity pursuant to 28 U.S.C. §1332 (a), as amended by the Class Action Fairness Act of 2005, 28

U.S.C. Sections 1332(d), 1453, and 1711-1715.

3. The amount in controversy exceeds \$ 5 million, exclusive of interests and costs.

4. This Court has supplemental jurisdiction over all other claims within this action pursuant to 28 U.S.C. §1367.

5. Venue is proper in this district under 28 U.S.C. §1391(b) because the individually named defendants reside within this District and a substantial part of the events or omissions giving rise to this action occurred in this District.

THE PARTIES

6. NR Media, Inc. (“NRM”) is a North corporation with its principal place of business located in Wake County, Raleigh, North Carolina. At all relevant times NRM was engaged in the business of providing entertainment through popular Internet websites that it owns and operates, and which NRM marketed in part, through XclusiveCash, a sale-incentive program based on a well established referred as an Affiliate Program.

7. Plaintiff Naked Rhino Media, LLC (“NR LLC”) is a limited liability company organized in the State of North Carolina on or about July 20, 2006.

8. Defendant Too Much Media LLC (“TMM”) is a New Jersey Limited liability Company located in Monmouth County, Freehold, New Jersey.

9. Upon information and belief, Defendant John Albright (“Albright”) resides and/or works within this Court’s jurisdiction. Albright is one of two members of TMM.

10. Upon information and belief, Defendant Charles Berrebbi (“Berrebbi”) resides and/or works within this Court’s jurisdiction. Berrebbi is one of two members of

TMM.

11. TMM, as directed by Albright and Berrebbi, develops, markets and supports a line of Internet-related products through interstate commerce, including a software system that it sells and/or licenses and which is referred to as Next-Generation Administration & Tracking System (“NATS”).

12. Upon information and belief, Fred Schank is an agent, employee and/or representative of TMM and resides and/or works within this Court’s jurisdiction.

13. Doe Defendants 1 – 15 are persons unlawfully trafficking in personal, consumer, and business confidential information, whose true names are yet unknown, and as to whom leave will be sought to amend to state their names upon discovery.

14. Doe Defendants 16 – 30 are persons and business entities acting as the agents, servants, alter-egos, confederates and co-conspirators of TMM, Albright and Berrebbi for purposes of suppressing honest criticism of TMM’s products and discrediting TMM’s critics by posting defamatory and discrediting statements regarding TMM’s critics in public message forums.

CLASS ACTION ALLEGATIONS

15. Pursuant to Federal Rules of Civil Procedure 23 (a) and 23(b)(2) and/or (3), NRM brings this action and seeks certification on behalf of a class (the “Class”), consisting of:

All persons and entities who operate Affiliate Programs and who purchased information processing services for such purpose from TMM based on NATS, a software program owned, designed and sold by TMM and/or Albright and/or Berrebbi in interstate commerce from 2004 to date. Excluded from this Class are the TMM Defendants,

TMM's officers, directors, and employees, Doe Defendants 1 through 30, and any judicial official to whom this matter is assigned.

16. The Class is so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to NRM at this time and may only be ascertained through discovery, NRM believes there are several hundreds of members in the proposed class.

17. The claims of NRM are typical of the claims of the members of the Class, because NRM and all Class members sustained damages out of defendants' wrongful conduct complained of herein.

18. NRM will fairly and adequately protect the interests of the Class. NRM has no interests antagonistic to those of the Class, and has retained counsel and consultants experienced in consumer class action litigation and who are further familiar with the technical aspects of the Affiliate Program business model.

19. A class action is superior to other available methods for the fair and efficient adjudication of the claims asserted herein, because the expense and burden of litigation, and the power to deny members of the Class vital information-processing services that would lead to the collapse of their business, make it virtually impossible for the Class members to pursue individual redress for the wrongs they have suffered and continue to suffer. The likelihood of individual members of the Class prosecuting individual, separate claims is remote.

20. In addition, members of the Class reside in many states throughout the United States and in foreign countries and are so numerous that it will be impracticable to join them each individually. However, it will be highly practicable to ascertain their identities and to

communicate with them because TMM has a list of all members of the Class.

21. NRM does not anticipate serious difficulties in the management of this action as a class action because NRM and all other Class members are highly skilled in efficient electronic communications that can greatly simplify class communications and reduce the expense of the litigation.

22. The questions of law and fact common to the members of the Class predominate over any questions affecting individual members of the Class because: all Class members operate under the same business model, offer the same services, have contracted with TMM for NATS-based information-processing services according to the same or similar financial arrangements, and have been similarly aggrieved by the wrongful acts of defendants as further alleged herein. Among the questions of law and fact common to the Class are:

- a. Whether the TMM Defendants misrepresented the reliability and accuracy of NATS-based information processing services to record Signups, Rebills, and calculate Affiliate commissions;
- b. Whether the TMM Defendants misrepresented the security of NATS-based information processing services to protect confidential business data and personal information from misappropriation;
- c. Whether the TMM Defendants exploited the confidential business data and personal information to which NATS-based information processing services gave them access;
- d. Whether, as a result of TMM's information processing services, commissions to Affiliates in connection with each Class member's respective Affiliate Program have been miscalculated as a result of which the Class members have underpaid their Affiliates, and if so, in what amounts and to identity of the Affiliates to whom payments are yet owed;
- e. Whether the TMM Defendants were aware that its information processing services were inaccurate, resulting in the underpayment of

Affiliates, and failed to disclose or otherwise suppressed such information;

- f. Whether the TMM Defendants should be required to indemnify the Class members for any liabilities incurred to Affiliates for under-payments of commissions;
- g. Whether Defendant violated the New Jersey Consumer Fraud Act, New Jersey Statutes Annotated, Title 56, Chapter 8;
- h. Whether Defendant violated the New Jersey Identity Theft Protection Act;
- i. Whether the TMM Defendants should be required to disgorge and restore any money or property obtained from the unlawful use and trafficking in personal information and confidential business information acquired through lapses in NATS security, or the unlawful use of such information for any purpose.
- j. Whether a receiver should be appointed under Section 56:8-9 of New Jersey's Consumer Fraud Act to preserve the assets of TMM in order to satisfy any monetary judgment entered against TMM in this action, and to operate TMM's business in order to eliminate the threat of injury to the Class Plaintiffs by preventing the continuance of the unconscionable and unlawful practices alleged herein.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

BACKGROUND

23. At all relevant times, NRM and all members of the Class operate or own websites and/or market services on the Internet.

24. At all relevant times, NRM and all members of the Class were in the business of selling to Internet users monthly memberships to such sites and/or for such services ("Members" and "Memberships").

25. At all relevant times, NRM and all members of the Class fostered such Membership sales through Affiliate Programs. Through Affiliate Programs, the Class

Plaintiffs, as “Sponsors,” promote their respective website and services to Internet users through independent contractors, as “Affiliates,” who direct such traffic to the Class Plaintiffs.

26. At all relevant times, NRM and all members of the Class each pay the Affiliates a commission for each new Member who, as a result of the Affiliates’ efforts, purchase a monthly Membership (hereafter a “Signup”) and any Membership that is renewed thereafter (hereafter a “Rebill”).

27. In addition, at all relevant times NRM and all members of the Class provide Affiliates with media materials and online advertising banners to aid their sales efforts.

28. As Internet-based businesses, NRM and all members of the Class rely on credit cards to effectuate transactions with their customers, and to secure payments for themselves and their Affiliates. Credit card payments and information are processed by third-party credit card processors (“Processors”).

29. In order to track the sales attributable to an Affiliate’s marketing efforts and the commissions so earned, NRM and all members of the Class assigned to each Affiliate in its Affiliate Program a unique code.

30. It is fundamental to the success of any Affiliate Program that Affiliates are trust, are confident in, and secure with, the accuracy of sales information collected and recorded, including but not limited to Signup, Rebill and commissions payments data. Affiliates know that inaccurate data may result in commission under-payments to them, a

consequence generally referred as “shaving.”¹ The mere rumor of “shaving” can prompt Affiliates to stop sending traffic to the Sponsor’s site, leaving it without sales or revenues.

31. To operate and manage their Affiliate Programs, NRM and all members of the Class required at all relevant times specialized information processing services that, among other services: (1) provide consumer credit card processing services; (2) transmit consumer information to Processors; (3) conclude and record sales; (4) credit each sale to the account of the Affiliate that generated it; (5) calculate the commissions due to each Affiliate; (6) provide such information to Sponsor in order to enable them to issue commission payments; and (7) provide Affiliates with an online report of their sales and commissions earned.

32. TMM, Albright and Berrebbi (collectively, the “TMM Defendants”) promote NATS to Affiliate Programs as a full-service, solution to their specialized information processing service needs.

33. The TMM Defendants warrant and represent on TMM’s website, located at www.toomuchmedia.com, and in other on-line venues and forums, that TMM’s information processing services and NATS software are accurate and reliable, and intended to be used to manage and operate Affiliate Programs.

34. At all relevant times, the TMM Defendants represented, among other matters, that:

- a. “NATS handles the affiliate signup, affiliate stats, traffic and sales tracking, administration functions, administration reporting, fraud

¹ The term appears to date back to the early days of currency-exchange, when royal coinage was literally “shaved” by unscrupulous banks that would daily scrape a thin layer of gold from coins in their control, returning them to the marketplace slightly lighter than when received.

detection, and all of the other various needs of an online affiliate program.”

- b. “There is absolutely no programming knowledge required to run an affiliate program with the NATS system.”
- c. “There is no backlog of data or delay in reporting. The only data which may be delayed is transaction data such as rebills or credits which are made live as soon as they are reported to NATS by the processor.”
- d. “Affiliate payments are issued via a centralized Payments Admin which allows you to access pending, stored, and sent payments. Having all payments in one spot and easily accessible allows you to quickly access historical payment data.”
- e. “The billers admin is the interface within NATS where you will inform NATS which payment processors you have accounts with and the details of those accounts. Here you will also configure your cascades and indicate which sites those cascades should be used for.”
- f. “With over 100 and growing active installations NATS is extensively tested under a wide array of situations.”

35. In addition, at all relevant times the TMM Defendants further warranted that NATS is “100% Shave Proof” and pledged to terminate TMM services and to revoke the NATS’s “license” of any Affiliate Program that TMM determined was shaving.

36. The TMM Defendants offered to provide NAT-based services in exchange for an installation fee, and payment of a monthly “licensing” fee thereafter.

37. As set forth above, the accuracy of the sales information reported to Sponsors and Affiliates is critical to the success of any Affiliate Program. As such, TMM’s representations as set forth above, were material to the Class Plaintiffs (as well as Affiliates) and generated substantial sales for TMM.

38. In reliance upon the TMM Defendants’ assurances, representations and warranties concerning the accuracy, reliability and invulnerability of NATS, NRM and all

members of the Class entered into oral agreements with TMM for information processing services and for use of its NATS program by payment of the aforesaid fees.

39. NRM and all members of the Class provided the TMM Defendants with access to their respective computer servers onto which the TMM Defendants installed the NATS program.

40. Upon installation of NATS, NRM and all members of the Class began transmitting large amounts of personal information to TMM through NATS for processing, including Affiliate and Member social security numbers, account numbers, user names, passwords, and email addresses (hereafter “Personal Information”).

41. At all relevant times, NRM and all members of the Class relied upon TMM to manage their Affiliate Programs, maintain the security of Personal Information, and upon the TMM Defendants’ representations that NATS would accurately report the amount of Signups, Rebills and Commissions to be credited to their Affiliates.

42. Notwithstanding the TMM Defendants’ representations concerning the accuracy, reliability and suitability of the NATS program, at all relevant times the TMM Defendants knew or should have known that NATS was defective.

43. In addition, upon information and belief, at all relevant times when directly questioned regarding the security of the information processed by TMM and the existence of problems with NATS, Albright (with Berrebbi’s approval and knowledge, or subsequent ratification), specifically denied that TMM had sustained any security breaches and that NATS was in any way defective.

44. The TMM Defendants’ denials as aforesaid were false and, upon information and belief, made with knowledge of their falsity inasmuch as TMM’s security had in fact

been breached and the NATS was and is defective.

45. Moreover, not only were the TMM Defendants aware that TMM's security had been breached and the NATS program is otherwise defective, upon information and belief, they intentionally concealed those facts from the public, including particularly NRM and all members of the Class.

46. Upon information and belief, in furtherance of their efforts to suppress the truth concerning TMM and NATS's security vulnerabilities and breaches, the TMM Defendants applied financial pressure to those who would criticize TMM and NATS by threatening to withdraw advertising revenues and/or to bring litigation.

47. Moreover, TMM's pledge to terminate NATS services to any Affiliate Program it determines has engaged in shaving is a cudgel by which the TMM Defendants are able to stifle open and honest discussion concerning TMM and NATS.

48. TMM's NATS-based information processing services are critical to the Affiliate Programs operated by NRM and all members of the Class who have contracted with TMM to provide same. If deprived of such services, the Affiliate Programs that rely upon NATS would be rendered inoperable.

49. Further, upon information and belief, all of TMM's agreements to provide information processing services are oral; as such, Sponsors who have entered into agreements with TMM for NATS-based information processing services have no reasonable means of ascertaining the true scope of their legal rights.

50. As a result of the dependency of NATS-supported Affiliate Programs upon TMM to provide the NATS based information processing services for which they have contracted,, as well as the vagueness of the their contractual relationship with TMM, the

Sponsors of such Affiliate Programs are able to risk having the TMM Defendants carry out their standing threat to terminate services to any Affiliate Programs that it has determined, in said defendants' sole discretion, to have engaged in shaving.

51. Since, at all relevant times, Sponsors of NATS-supported Affiliate Programs could not afford individually to risk the wrath of TMM, or test TMM's threats legally, the TMM Defendants are able to silence any criticisms the Sponsors may have with respect to NATS and in effect hold Affiliate Programs hostage with the threat of license revocation.

TMM'S SECURITY IS "BREACHED"

52. As alleged hereinabove, NRM and all members of the Class relied on TMM to act as their agent and through NATS, administer and coordinate the Personal information provided by Class Plaintiff's Processors, Affiliates, and Members.

53. In the performance of TMM's contractual services for NRM and all members of the Class, the TMM Defendants had access to the Personal Information of Class Plaintiffs and/or their Affiliates and/or their Members, as well as other confidential information that is proprietary to Class Plaintiffs, and the power to direct it to various digital storage locations.

54. Upon information and belief, the TMM Defendants directed and/or were aware and/or should have been aware that certain design features (hereafter, "Security Vulnerabilities") had intentionally been incorporated in the NATS program that would render the information transmitted by or through NATS accessible to anyone with knowledge of their existence of such Security Vulnerabilities.

55. Upon information and belief, the Security Vulnerabilities enabled the TMM Defendants to access, copy and distribute the Personal Information of NRM and all members

of the Class and/or their Affiliates and/or Members, as well as other proprietary and confidential information of NRM and members of the Class.

56. At all relevant times prior to December 2007 the TMM Defendants, upon information and belief, concealed the existence of the above alleged Security Vulnerabilities.

57. Ultimately, the TMM Defendants were forced to acknowledge the existence of such vulnerabilities when they were publically revealed in December 2007 on the Internet message board located at www.gfy.com (hereafter the “GFY Board”).²

58. The story that unfolded during the three day period from December 21, 2007 until December 24, 2007 as set forth in the messages posted on the GFY Board, was as follows:

a. Beginning in and around August 2007, a web hosting company known as OC3, which operated a NATS-supported, Affiliate Program similar to those of Class Plaintiffs, noticed that its Members’s e-mail addresses, which were recorded in the NATS system, were attracting large volumes of unsolicited bulk e-mail (“spam”) from OC3 competitors.

b. As a result, OC3 commenced an investigation in effort to determine the source of the spam plaguing its Members

c. In the course of such investigation, OC3’s information technology specialists discovered that OC3's servers had been invaded by an intruder whose computer identity was fred.schank@toomuchmedia.com.

² Upon information and belief, “Milan” and “Dale,” acting as agents for OC3, alerted TMM to security breaches NATS-users were suffering, and thereafter waited until late December before disclosing the problem publicly.

d. OC3 technicians further discovered that this intruder was using an automation script that enabled him to upload and copy without authorization – that is, “steal” -- OC3's Membership list, which was recorded in the NATS system.

e. In addition, OC3's technicians further discovered that its servers were being accessed based on their review of an “Admin activity log” that was recorded by a module that TMM had installed on OC3's sever without its knowledge.

f. OC3's technicians immediately took action to prevent further invasions and notified TMM, in August, 2007, what they had discovered. Notwithstanding such notification, upon information and belief the TMM Defendants did nothing to remedy the problem.

g. Contemporaneously, several other NATS-based Affiliate Program operators whose Members' e-mails were being targeted by spam launched their own independent investigations.

h. On December 21, 2007 such operators revealed on the GFY Board that based on their investigations they had determined an intruder using the computer identity fred.schank@toomuchmedia.com had accessed their servers and stolen their Membership lists.

i. Within nine hours of the aforesaid disclosure, three additional Affiliate Program Sponsors whose Members had also been spammed revealed that they too had discovered that the “fred guy” had been stealing information from their servers.

j. Thereafter, in response to “many e-mails” urging them to speak out, employees and/or agents of OC3 posted the following bombshell: “Intruder is using an automation script that dumps the NATS members list. In some cases he is doing this every

hour on the hour.”

k. It was not until the following day that TMM, through Albright, publicly admitted the existence of a security problem by posting the following message on the GFY Board:

It appears at this point that a number of the non-unique admin usernames & passwords we maintain for support were compromised.

All passwords were had changed were charged to a random string and we have destroyed our list and our mechanism of keeping it which resided on a local server in the office.

We are still investigating whether or not someone accessed them from there and if so, how someone may have accessed that server.

We have implemented a policy change in that we will no longer maintain any NATS admin accounts.

We had become aware over the past few months that a few clients were being accessed wrongly using the account we maintain.

We believed we had a way of knowing which clients were affected and we contacted them immediately.

Apparently we were wrong.

59. The foregoing admission shook the foundation of the Affiliate Program community. In wake of the said admission, the GFY Board was riddled with inquiries, comments and concerns, regarding, among other matters, the scope of security breach and when TMM first learned of same, and the identity of fred.schank@toomuchmedia.com and his relationship, if any, to TMM.

60. Other messages posted on the GFY Board included questions directed to TMM regarding TMM's recommendation as to whether Sponsors should advise their Affiliate and Members of the security breach; suggestions that TMM had violated New

Jersey's Identity Theft Protection Act; and accusations that TMM had acted with a wanton and willful disregard to its customers by failing to disclose the security breach earlier.

61. Further, specifically, in response to one message inquiring whether TMM had "threatened" to sue OC3 if it made its discovery that its servers had been invaded as hereinabove alleged publically known, Albright, on behalf of the TMM Defendants, essentially admitted that TMM had indeed made such threat, which he dismissively characterized as "simply an advisement of sending them a letter from our attorneys to clarify things."

62. Upon information and belief, at all relevant times TMM Defendants intentionally, and with a wanton and wilful disregard to those affected, elected not to report the intrusion of NATS users' servers to those whose persons and entities who information may have been compromised nor to law enforcement agency.

63. Upon information and belief, the TMM Defendants have not conducted an investigation to determine the identity of the persons responsible for conduct that appears to have originated directly inside TMM.

COUNT 1

VIOLATIONS OF NEW JERSEY CONSUMER FRAUD ACT

(On behalf of NRM and all Class members as against the TMM Defendants)

64. NRM, on behalf of itself and all Class members, repeats and realleges each and every allegation set forth above as if fully set forth herein at length.

65. New Jersey's Consumer Fraud Act (hereafter the "CFA") prohibits any person from engaging in:

any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise ... or with the subsequent performance of such person as aforesaid

N.J.S.A. §56:8-2.

66. For purposes of the CFA, NATS and TMM's information processing services constitute merchandise.

67. Upon information and belief, in connection with the promotion and sale of NATS and TMM's information processing services, the TMM Defendants have at all relevant times, misrepresented the accuracy and reliability of NATS, failed to disclose that the program is defective, and concealed the Security Vulnerabilities incorporated in the program's design as hereinabove alleged.

68. Specifically, upon information and belief, at all relevant times in connection with the sale and advertisement of TMM's information processing services and NATS, the TMM Defendants falsely promised, among other material matters, that: (a) NATS will "handle[] the ... fraud detection and all of the other various needs of an online affiliate program;" (b) "there is no backlog of data or delay in reporting;" (c) NATS' administration section is not "completely confidential."

69. In addition, upon information and belief, at all relevant times in connection with the sale and advertisement of TMM's information processing services and NATS, the TMM Defendants failed to disclose and indeed concealed, among other material matters, that: (a) NATS does not calculate commissions reliably and accurately; (b) the NATS' "Biller Admin" does not interface effectively with all Processors, resulting in the under-

reporting of Sign-ups and Rebills; (c) under-reporting of Rebills has been a chronic problem with CCBill, Electracash, Netbilling, and other Processors; (d) the existence of Security Vulnerabilities integrated in NATS program; and (e) the TMM Defendants facilitated and/or participated in the theft of Class Plaintiffs' confidential and proprietary information from said plaintiffs servers as hereinabove alleged.

70. Upon information and belief, as hereinabove alleged, the TMM Defendants have used unconscionable pressure-tactics, such as the threats of reprisal litigation, NATS license revocation, and/or the withdrawal of advertising revenues, to silence critics of NATS, and to suppress the disclosure of NATS' defects and Security Vulnerabilities.

71. The TMM Defendants' conduct as alleged hereinabove constitutes an "unconscionable commercial practice" under the New Jersey Consumer Fraud Act.

72. TMM Defendants' above-alleged "false promises" and "misrepresentations," and "omissions," and "concealments" of material facts were made and committed with the intent by the TMM Defendants that NRM and Class Plaintiffs rely thereon in connection with the purchase of NATS software and TMM's information processing services.

73. NRM and all members of the Class relied upon the aforesaid material "false promises," "misrepresentations," "omissions," and "concealments" of material facts of the TMM Defendants when they purchased TMM's information processing services and NATS.

74. As a result of the TMM Defendants' misrepresentation, concealment and abuses as aforesaid, upon information and belief, NRM and all members of the Class have been specifically injured. For example, NRM and all Class members have incurred unknown liabilities to their Affiliate based on under-reported Rebills and miscalculated and uncredited commission payments. Additionally, the relationships between NRM and the

members of the Class, and their respective Affiliate, was damaged due to lost confidence in the accuracy of the NATS reports. Further, Members failed to renew their subscriptions to the sites operated by NRM and members of the Class in anger over being spammed while and other Members abandoned their Membership subscriptions in order to sign up for those websites promoted by such spam.

75. In addition, as a further result of the TMM Defendants' violations of the Consumer Fraud Act, said defendants have been unjustly enriched by the fees paid to TMM by NRM and the members of the Class for TMM's NATS-based services.

76. By virtue of the TMM Defendants' violation of the New Jersey Consumer Fraud Act, said defendants are individually, jointly and severally liable to NRM and the member of the Class, all of whom have been damaged as a direct and proximate result of such violations, in amount to be determined at trial but in no event less than the sum of \$75,000.00.

COUNT 2

NEGLIGENT MISREPRESENTATION

(On behalf of NRM and all Class members as Against the TMM Defendants)

77. NRM, on behalf of itself and all Class members, repeats and realleges each and every allegation set forth above as if fully set forth herein at length.

78. As hereinabove alleged, NRM's Affiliate Contracts provided, inter alia, that each Affiliate would promote NRM's websites and products in return for a commission paid for each Sign-up and Rebill resulting from such Affiliate's efforts.

79. NRM, on behalf of itself and all Class members, repeats and realleges each and every allegation set forth above as if fully set forth herein at length.

80. Due to the TMM Defendants' expertise and superior knowledge with regard to information processing services, and the functionality of NATS, said defendants individually and collectively, had a duty to exercise due care when making statements intended to induce purchases of its services and NATS software, and to disclose, and refrain from suppressing or concealing, any and all facts material to the decision of NRM and the members of the Class whether to purchase and utilize NATS-based information processing services.

81. Upon information and belief the TMM Defendants knew, or should have known that their representations regarding the accuracy, reliability, security and performance of NATS and TMM's information processing services, were false and inaccurate.

82. Upon information and belief the TMM Defendants knew, or should have known that their omissions of material fact as hereinabove alleged regarding NATS and TMM's information processing services, were creating false impressions with respect to the accuracy, reliability, security and performance of NATS and TMM's services.

83. Upon information and belief, the TMM Defendant's false and inaccurate representations and omissions of material facts regarding NATS and TMM's information as processing services as hereinabove alleged, were negligently made without regard to the potential consequences to NRM and the members of the Class.

84. In reasonable and justifiable reliance upon the TMM Defendants' false and inaccurate representations, and material omissions as hereinabove alleged, NRM and each member of the Class purchased TMM's NAT-s based information processing services.

85. In reasonable and justifiable reliance upon the TMM Defendants' false and inaccurate representations, and material omissions as hereinabove alleged, NRM and each

member of the Class purchased TMM's NATS- based information processing services and justifiably relied upon NATS to perform as warranted.

86. As a direct and proximate result of the TMM Defendants' negligent misrepresentations and omission of material facts, NRM and the members of the Class sustained security incursions and thefts of business data and of personal, consumer information; damage to their business reputation with their respective Affiliates and Members; and have been exposed to unknown liabilities to third parties as a result of the aforesaid data theft.

87. As a result TMM Defendants' negligent misrepresentations and omission of material facts as hereinabove alleged, said defendants have been unjustly enriched by the fees paid to TMM by NRM and the members of the Class for TMM's NAT-based services.

88. By virtue of the TMM Defendants' violation of the New Jersey Consumer Fraud Act, said defendants are individually, jointly and severally liable to NRM and the member of the Class, all of whom have been damaged as a direct and proximate result of such violations, in amount to be determined at trial but in no event less than the sum of \$75,000.00.

COUNT 3

MISAPPROPRIATION/CONVERSION OF CONFIDENTIAL AND PROPRIETARY INFORMATION

(On behalf of NRM and all Class members as Against the TMM Defendants, Schank and Doe Defendants 1-15)

89. NRM, on behalf of itself and all Class members, repeats and realleges each and every allegation set forth above as if fully set forth herein at length.

90. At all relevant times, NRM and all Class members in the operation of their

businesses stored on, and transmitted through, their servers confidential information, including but not limited to credit card numbers, Social Security Numbers, usernames, passwords, and other personal and consumer information of their Affiliate and Members (hereafter “Personal Information”).

91. At all relevant times, NRM and all Class members have collected and created and stored on their respective computer servers proprietary information relating to their own businesses, including but not limited to customer lists, EIN and Social Security Numbers, Affiliate information, Member information, financial transaction data, marketing strategies, banking information, and other financial and business-related information (hereinafter collectively “Proprietary Information”). Such Proprietary Information is the exclusive property of NRM and each Class member.

92. NRM and all Class members granted TMM access to their respective computer servers for exclusive purpose of installing NATS and performing the information processing services for which TMM had been contracted.

93. NRM and all Class members granted TMM limited access to the Personal Information and Proprietary Information resident on and/or being transferred through their respective servers for the exclusive purpose of performing the information processing services for which TMM had been contracted.

94. At no time did NRM or any of the Class members authorize the TMM Defendants to access, copy, distribute, or use Personal Information or Proprietary Information resident and/or transferred through their servers for any purpose other than providing the information processing services for which TMM had been retained.

95. Upon information and belief the TMM Defendants maliciously, intentionally

and wantonly abused TMM's limited authority to access the computer servers of NRM and the Class members, and the Personal Information and Proprietary Information stored thereon and/or transferred through, by accessing, copying, distributing such information for the TMM Defendants' own purposes.

96. Upon information and belief the TMM Defendants intentionally and maliciously abused TMM's limited authority to access the computer servers of NRM and the Class members, and the Personal Information and Proprietary Information stored thereon, by facilitating and/or participating in the misappropriation and conversion of such confidential and proprietary information by third parties, with a wanton disregard to those affected.

97. Upon information and belief, at all relevant times defendant Fred Schank ("Schank"), was an agent, employee and/or representative of the TMM Defendants.

98. Upon information and belief, Schank, either in his individual capacity or as an agent, employee and/or representative of the TMM Defendants, unlawfully accessed, copied, and misappropriated and converted the Personal Information and Proprietary Information stored on the servers of NRM and the members of the Class for benefit of himself and/or the TMM Defendants.

99. Upon information and belief, the TMM Defendants and/or Schank, either in his individual capacity or as an agent, employee and/or representative of the TMM Defendants, sold, assigned, and/or transferred for unknown consideration, the Personal Information and Proprietary Information misappropriated and converted from the servers of NRM and the members of the Class to unknown third parties named herein as Doe Defendants¹ through 15.

100. Upon information and belief, Doe Defendants 1 through 15 are engaged in the

business of illegal trafficking of proprietary and confidential information, including the buying, selling and supplying of such information, for profit.

101. Upon information and belief, as a result of foregoing misappropriation, conversion and conversion of the Proprietary Information of NRM and the class members, monies have been transferred from the financial accounts of NRM and the members of Class Plaintiffs, without said plaintiffs knowledge.

102. Upon information and belief, the wrongful conduct of the TMM Defendants and/or Schank and/or Doe Defendants 1 through 15 as hereinabove alleged is on-going.

103. Upon information and belief, the TMM Defendants and/or Schank and/or Doe Defendants 1 through 15 have been and continue to be enriched by the on-going misappropriation, conversion and unlawful trafficking in the Personal Information and Proprietary Information as aforesaid, in an amount to be established according to proof.

104. NRM and the members of the Class have sustained and continue to sustain damages as a result of the conversion and misappropriation of their Proprietary Information by the TMM Defendants, Schank and/or Doe Defendants 1 through 15 as aforesaid.

105. NRM and the members of the Class have sustained and continue to incur liabilities in an amount unknown based on conversion by the TMM Defendants, Schank and/or Doe Defendants 1 through 15 of the Personal Information that had been resident on and/or transferred through NRM and the Class members' respective servers.

106. By virtue of the TMM Defendants' violation of the New Jersey Consumer Fraud Act, said defendants are individually, jointly and severally liable to NRM and the member of the Class, all of whom have been damaged as a direct and proximate result of such violations, in amount to be determined at trial but in no event less than the sum of

\$75,000.00.

COUNT 4
BREACH OF CONTRACT
(On behalf of all NRM and all Class members as Against TMM)

107. NRM, on behalf of itself and all Class members, repeats and realleges each and every allegation set forth above as if fully set forth herein at length.

108. NRM and each Class member entered into an oral contract with TMM to provide NATS-based information processing services for their respective Affiliate Programs and paid to TMM the requisite fees therefor.

109. NRM's contract, and the contracts of all members of the Class with TMM, contain substantially the same provisions which are derived from the description of TMM's services and NATS as set forth on TMM's website located at www.toomuchmedia.com and by the parties' subsequent course of conduct.

110. NRM pleads the terms of its own oral agreement on behalf of all member of the Class.

111. As set forth on TMM's website, in exchange for an installation fee and monthly license fee, TMM offered, inter alia, the following: (a) to provide uninterrupted, information processing services critical to the financial and operational administration of its Affiliate Program; (b) to provide software support to manage and administer an Affiliate Program; (c) to record, report and calculate accurately all Sign-Ups, Rebills and Affiliate commissions due (d) to maintain all such records and reports on behalf of Sponsors; (e) to credit the appropriate Affiliate for all Sign-Ups and Rebills generated; (f) to provide all other related NATS services which were warranted to be "100% share proof."

112. In addition, based on the nature of TMM's services and the type of confidential and proprietary data and computer access TMM required to perform such services, a reasonably implied term of TMM's offer was that it would not abuse such access and that installation of NATS software on a client's server would not compromise the security of that server and the Personal Information and Proprietary Information located thereon.

113. In breach of its agreement with NRM and each Class member, TMM failed (a) to provide uninterrupted services in that there were back logs in the Sign-Up and Rebill information it provided; (b) to record, report and calculate accurately all Sign-Ups, Rebills and Affiliate commissions due; (c) to credit the appropriate Affiliate for all Sign-Ups and Rebills generated; and (d) failed to maintain the security of the Personal Information and Proprietary Information resident on and transmitted through NRM and each Class members' servers.

114. In addition, in further breach of its agreement with NRM and each Class member, upon information and belief TMM abused its access to the Personal and Proprietary Information resident on and transmitted through NRM and each Class members' servers, by converting same for its own purposes.

115. In addition, the foregoing conduct of TMM as hereinabove alleged constituted a breach of the covenant of good faith and fair dealing implied in its agreement with NRM and each Class member.

116. By virtue of the TMM breach of its agreement with NRM and each Class member, NRM and each Class member Plaintiffs has been damaged in amount to be determined at trial but in no event less than the sum of \$75,000.00.

COUNT 5
BREACH OF CONTRACT
(On behalf of NRM individually as Against TMM)

117. NRM, on its own behalf, repeats and realleges each and every of the foregoing allegations as if fully set forth herein at length.

118. In and around April 2004, entered into an oral agreement (hereafter the “NRM-TMM Agreement”) pursuant to which TMM's agreed to provide NATS-based information processing services on the terms hereinabove alleged.

119. Pursuant to the NRM-TMM Agreement, NRM paid to TMM a fee for the installation of NATS on its server and thereafter continued to pay a monthly license fee to TMM until approximately September 2006 at which time NRM's Affiliate Program, XclusiveCash, was destroyed by the TMM Defendants' wrongful conduct and breach of the parties' agreement.

120. NRM never missed a license fee payment and the TMM never suspended TMM's information processing services or disabled the NATS program until August 10, 2006.

121. Subsequently, on August 10, 2006 in breach of TMM's contract with NRM, the TMM unilaterally suspended, without notice, the information processing services it had contracted to provided and suspended NRM's NATS license.

122. The unilateral suspension of NRM's NATS license and TMM's information processing services without notice or justification, constituted a breach of the covenant of good faith and fair dealing implicit in the NRM-TMM contract.

123. The unilateral suspension of NRM's NATS license and TMM's information

processing services without notice or justification, and in breach of the contract with NRM, deprived NRM of its ability to operate its XclusiveCash Affiliate program, has prevented NRM from paying its Affiliates, and has resulted in the destruction of NRM business.

124. By virtue of the TMM's breach of the NRM-TMM agreement with NRM and each Class member, NRM and each Class member Plaintiffs has been damaged in amount to be determined at trial but in no event less than the sum of \$75,000.00.

COUNT 6

INTENTIONAL INTERFERENCE WITH EXISTING AFFILIATE CONTRACTS AND MEMBERSHIPS (On behalf of all NRM and all Class members as Against the TMM Defendants)

125. NRM, on behalf of itself and all Class members, repeats and realleges each and every allegation set forth above as if fully set forth herein at length.

126. At all relevant times, NRM and each Class member had existing contractual relationships with their respective Affiliates and Members.

127. As hereinabove alleged, the Affiliate agreements provided, inter alia, that Affiliates would promote NRM and each Members' websites, products and services in return for a commission paid for each Sign-up and Rebill resulting from such Affiliate's efforts.

128. Members who signed up for NRM and each Members websites, or purchased each such plaintiffs products and services paid to NRM and each Class member a fee therefor.

129. At all relevant times, the TMM Defendants knew of the existence of the Affiliate agreements and Memberships since it is was their own NATS software that

administered the NRM and each Class members' Affiliate Program and recorded all Sign-ups and Rebills.

130. Defendant TMMs' intentional and malicious actions, as previously alleged herein, including but not limited to the under-reporting of Signups, Rebills, and Affiliate commissions, the conversion and conversion of Affiliate and Member Personal Information, and the Proprietary Information of NRM and each Class member, the suppression, concealment and misrepresentations of facts concerning defects in the NATS-based information processing services, intentionally interfered with the prospective business and economic advantage that would have accrued to NRM and each Class member from their respective Affiliate relationships and Memberships.

131. By the aforesaid wrongful conduct, the TMM Defendants intentionally and without justification or excuse, interfered with NRM and each Class members relationships with is Affiliates and Memberships by, inter alia, causing Affiliates to mistrust said plaintiffs as Sponsors of their respective Affiliate programs, causing Affiliates to discontinue or limit their efforts to promote the websites, services and products of NRM and each Class member, causing Members to cancel or fail to renew their Memberships, providing other website owners and/or operators with an unfair competitive advantage over NRM and each Class member by furnishing to such website owners and/or operators the NRM and each Class members' Proprietary Information and the Personal Information of their Members.

132. By virtue of the TMM Defendants intentional interference with the prospective economic advantage of NRM and each Class members, said plaintiffs have been damaged in amount to be determined at trial but in no event less than the sum of \$75,000.00.

COUNT 7

INTENTIONAL INTERFERENCE WITH EXISTING AFFILIATE CONTRACTS
(NRM as Against the TMM Defendants)

133. NRM, on its own behalf, repeats and realleges each and every of the foregoing allegations as if fully set forth herein at length.

134. At all relevant times, NRM was a profitable and otherwise successful business that had an excellent reputation among Affiliates of its XclusiveCash Affiliate Program

135. At all relevant times, NRM had existing and on-going contractual relationships with its Affiliate (hereafter collectively, "NRM's Affiliate Contracts"), pursuant to which, inter alia, each Affiliate promoted NRM's websites, services and products in return for a commission for each resulting Sign-up and Rebill.

136. At all relevant times, the TMM Defendants knew of the existence of NRM's Affiliate Contracts since it is was their own NATS software that administered the XclusiveCash Affiliate Program and controlling the interactions between NRM its Affiliate.

137. In addition to the wrongful conduct by the TMM Defendants that interfered with NRM's Affiliate Contracts as hereinabove alleged, on August 10, 2006, the TMM Defendants further intentionally and maliciously interfered with such contracts by publishing the following statement (hereafter the "August 10 Statement") on the GFY Board:

This is a notification that Too Much Media, makers of NATS affiliate system, have been forced to temporarily suspend the NATS license belonging to N.R. Media, owners and operators of XclusiveCash.com

There was a discrepancy between the number of rebills reported to the NATS system from the rebills reported by CCBill. Upon attempting to rectify the situation with executives of N.R. Media Too Much Media was met with full resistance and profanity as well as an abruptly terminated phone call. At which point N.R. media agrees to fully repopulate the CCBill rebill data to represent the correct figures Too Much Media will reinstate the NATS

license.

138. The August 10 Statement was posted by a person using the online moniker “PBucksJohn.” PBucksJohn is the online moniker of defendant Albright.

139. Albright posted the August 10 Statement within the scope of his agency and/or employment and/or as a representative of the TMM Defendants.

140. The August 10 Statement was understood by those who read it to mean that NRM had engaged in shaving in a fraudulent effort to cheat Affiliates of its XclusiveCash program.

141. The TMM Defendants knew or should have known that the August 10 Statement was false.

142. The August 10 Statement was immediately re-printed on various other Internet bulletin boards.

143. In addition to posting August 10 Statement, the TMM Defendants simultaneously suspended NRM’s NATS’ license and all information processing services to NRM, such that such NRM was unable to track the activity of its Affiliates or to pay them.

144. By the aforesaid wrongful conduct, the TMM Defendants intentionally and without justification or excuse, interfered with NRM’s Affiliate Contracts a destroyed NRM’s XclusiveCash Affiliate Program by sabotaging NRM’s relationship with its XclusiveCash Affiliates and by shattering the Affiliates’ trust in NRM and by rendering it impossible for NRM to track and pay their commissions.

145. In addition, as a result of the intentional malicious, wrongful actions of the TMM Defendants as aforesaid NRM’s Affiliates immediately ceased directing traffic to NRM’s websites, depriving NRM of all revenues.

146. By virtue of the TMM Defendants' interference with NRM's Affiliate Contracts as aforesaid, said defendants are individually, jointly and severally liable to NRM for all damages sustained by NRM as direct and foreseeable result in amount to be determined at trial but in no event less than the sum of \$75,000.00.

COUNT 8

**INTENTIONAL INTERFERENCE WITH PROSPECTIVE
BUSINESS AND ECONOMIC ADVANTAGE
(On behalf of NRM and all Class Members as Against the TMM Defendants)**

147. NRM, on behalf of itself and all Class members, repeats and realleges each and every allegation set forth above as if fully set forth herein at length.

148. The Affiliate agreements and Memberships of NRM and each Class member, were a source of on-going and prospective business and economic advantage.

149. The Defendant TMMs' actions, as previously alleged, including but not limited to the under-reporting of Signups, Rebills, and Affiliate commissions, the misappropriation and conversion of Affiliate and Member Personal Information and the Proprietary Information of NRM and each Class member, the suppression, concealment, omissions and misrepresentations of facts concerning defects in the NATS-based information processing services, intentionally interfered with the prospective business and economic advantage that would have accrued to NRM and each Class member from their respective Affiliate relationships and Memberships.

150. The foregoing wrongful conduct interfered with NRM and each Class members prospective economic expectations by, inter alia, causing Affiliates to mistrust said

plaintiffs as Sponsors of their respective Affiliate programs, causing Affiliates to discontinue or limit their efforts to promote the websites, services and products of NRM and each Class member, causing Members to cancel or fail to renew their Memberships, providing other website owners and/or operators with an unfair competitive advantage over NRM and each Class member by furnishing to such website owners and/or operators the NRM and each Class members' Proprietary Information and the Personal Information of their Members.

151. The TMM Defendants knew that their malicious and wrongful acts would interfere with the prospective economic benefits that would have accrued to NRM and each Class members, based on their respective relationships with Affiliates and Members and/or committed such acts with a reckless a wanton and willful disregard to the consequences to and impact upon NRM and each Class member.

152. By virtue of the TMM Defendants' intentional interference with the prospective economic advantage of NRM and each Class members, each said plaintiff has been damaged in an amount to be determined at trial but in no event less than the sum of \$75,000.00.

COUNT 9

INTENTIONAL INTERFERENCE WITH PROSPECTIVE BUSINESS AND ECONOMIC ADVANTAGE (On behalf of NRM and NR LLC as Against the TMM Defendants)

153. NRM and NR LLC repeat and reallege each and every allegation set forth above as if fully set forth herein at length.

154. As set forth above, at all relevant times NRM's was a profitable, on-going

business enterprise that enjoyed an excellent reputation among Affiliates of its XclusiveCash. Due to the success of XclusiveCash and NRM's media content, its websites were popular and attracted its Membership base continuously increased.

155. As further set forth above, NRM's Affiliate agreements and Memberships were a source of on-going and prospective business and economic advantage.

156. In part, as a result of the success of XclusiveCash and the excellence of NRM's media content, plaintiff NR LLC was formed on or about July 20, 2006 for the purpose of creating a new Affiliate Program that would exploit a consolidated media catalog intended to include content owned by NRM and content owned by Falcon Foto, LLC.

157. By August 10, 2006, the respective capital contributions of NR LLC's members had been established, and the transfer of asset licenses and other capital was proceeding.

158. In addition to the malicious act of the TMM Defendants by which they intentionally interfered with the prospective business and economic advantage that would have accrued to NRM from its Affiliate Contracts and Memberships, the TMM Defendants further maliciously and intentionally interfered with NRM's prospective business, by suspending NRM's NATS license and all TMM information processing services, thereby leaving it without any means by which to operate, and by publicly announcing that said services had been terminated because NRM had been under-reporting Affiliate commissions on CCBill Rebills.

159. The TMM Defendants' intentional and malicious conduct as aforesaid destroyed NRM's business hence depriving it the economic advantages that would have accrued to it through its XclusiveCash Affiliate Program and sale of its website Memberships,

services and products.

160. Further, based on the similarity of NRM and NR LLC's names and their known association, the TMM Defendants' wrongful and malicious publication of the August 10 Statement was understood by virtually all who read it to refer or relate to both NRM and NR LLC.

161. Thus TMM Defendants' malicious publication of the August 10 Statement deprived NR LLC of the economic advantages that would have accrued to it as a result of its association with NRM and its operation of a new Affiliate Program.

162. The TMM Defendants knew that their malicious and wrongful acts would interfere with the prospective economic benefits that would have accrued to NRM and NR LLC and/or committed such acts with a wanton and wilful disregard to the consequences of its statement.

163. By virtue of the TMM Defendants intentional interference with the prospective economic advantage of NRM and NR LLC, said plaintiffs have been damaged in amount to be determined at trial but in no event less than the sum of \$75,000.00.

COUNT 10

BREACH OF FIDUCIARY DUTY

(On behalf of NRM and all Class Members as against the TMM Defendants)

164. NRM, on behalf of itself and all Class members, repeats and realleges each and every allegation set forth above as if fully set forth herein at length.

165. By virtue of the oral agreements entered into by NRM and each Class member, TMM became an agent of each such plaintiff since, acting on behalf of NRM and

each Class member, it communicated with and obtained information from their Processors and calculated and reported to each of their Affiliates the commissions earned, and the Sign-ups and Rebills that each Affiliate had generated.

166. NRM and each Class member placed their trust and confidence in the TMM Defendants to manage their respective Affiliate Programs.

167. In order to enable the TMM Defendants to manage their Affiliate programs as aforesaid, NRM and each Class member permitted TMM to access their Proprietary Information and the Personal Information stored on each such plaintiffs servers for the purpose of performing the information processing services for which it had been contracted and which were critical to the operations of their respective Affiliate Programs.

168. In view of (a) the agency relationship, (b) the trust and confidence that NRM and each Class member placed upon the TMM Defendants, (d) the confidentiality and sensitivity of the information to which TMM was given access, (e) the dependency of NRM and each Class member upon TMM's services, (f) the TMM Defendants' greater knowledge of and familiarity with NATS, and (g) the TMM Defendants' ability to destroy any Affiliate Program by merely shutting NATS down, and the implicit control that gave the TMM Defendants over NRM and each Class member; the TMM Defendants, individually and collectively, stood in a confidential relationship to the Class Plaintiffs, and owed to them a fiduciary duty to refrain from self-dealing.

169. As fiduciaries of NRM and the Class members, the TMM Defendants individually and collectively owed to said plaintiffs duties of confidentiality and undivided loyalty.

170. NRM and each Class member reasonably expected that the TMM Defendants

would honor their obligations to them by among other matters, honoring the representations made on the TMM website regarding NATS and TMM's services, and to avoid self-dealing.

171. The TMM Defendants breached their duties of confidentiality, loyalty, and fiduciary care to its principals by, as hereinabove alleged, failing to ensure that all Signups, Rebills and commissions due to Affiliates were accurately recorded so that NRM and the Class members were able to pay same; by damaging NRM and the Class members' relationships with their respective Affiliates as a result of TMM's inaccurate calculations; by failing to advise NRM and each Class member that NATS was defective; by failing to advise NRM and each Class members of the Security Vulnerabilities incorporated in NATS design; by failing to ensure the confidentiality of Personal Information and Proprietary Information located on NRM and each Class members' servers; by facilitating, aiding and/or actively participating in the misappropriation and conversion of such information and/or the exploitation of same for their own benefit.

172. The TMM Defendants, aided and abetted by other co-conspirators named herein as Doe Defendants 1 through 30, acted in bad-faith, for personal gain, and in furtherance of their own respective financial advantage by the wrongful conduct alleged herein.

173. Each of the TMM Defendants was an active participant in the breach by each other defendant of their individual and collective fiduciary duty to NRM and each Class member.

174. By virtue of the TMM Defendants' breach of fiduciary duty, NRM and each Class member, has been damaged in an amount to be determined at trial but in no event less than the sum of \$75,000.00.

COUNT 11

VIOLATION OF NEW JERSEY IDENTITY THEFT PROTECTION ACT
(On behalf of NRM and all Class Members as against TMM)

175. NRM, on behalf of itself and all Class members, repeats and realleges each and every allegation set forth above as if fully set forth herein at length.

176. As a New Jersey company, TMM is subject to the New Jersey Identity Theft Prevention Act (the “ITPA”), codified as N.J.S.A. § 56:8-161 et seq. The ITPA protects “personal information” contained in “customer records.” Under the Act, “personal information” is defined as “an individuals’s first name or first initial and last name linked with anyone or more of the following data elements: (1) Social Security number; (2) driver’s license number or State identification card number; or (3) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account. For purposes of the ITPA, “Individual” means any natural person and “Customer” is broadly defined as “any individual who provides personal information to a business.”

177. Pursuant to §56-163(12)(b),

Any business ... that compiles or maintains computerized records that include personal information on behalf of another business ... shall notify that business ... who shall notify its New Jersey customers, as provided in subsection a. of this section, of any breach of security of the computerized records immediately following discovery, if the personal information was, or is reasonably believed to have been, accessed by an unauthorized person.

178. The forgoing requirement dove-tails with §56-163(c)(1) which requires that any business required to disclose any a breach of security of a customers’ personal information also advise (a) any Customer who resides in New Jersey; and (b) the Division of

State Police in the Department of Law and Public Safety. N.J.S.A. § 56:8-163 (12)(a) and (c)(1).

179. A violation of the ITPA requires that the business restore any moneys or property unlawfully acquired as a result of the breach to the Customer, and imposes a civil penalty of \$10,000.00 for the first offense, and \$20,000.00 for each subsequent offense. N.J.S.A. § 56:8-163 et seq.

180. As hereinabove alleged, NATS system was defective and/or intentionally designed to include Security Vulnerabilities.

181. As a result of such Security Vulnerabilities, upon information and belief, NRM and each Class member's computer servers have been invaded and the security of the Personal Information, as defined by the ITPA, contained on and/or transferred through such servers was breached.

182. Upon information an belief, that with respect to Affiliate Programs that continue to use NATS, such breach is on-going.

183. As evidenced by the TMM Defendants December 2007 statement published on the GFY Board, the TMM Defendants are aware that the security of the Personal Information, as defined by the ITPA, contained on and/or transferred through the servers of NATS users was breached.

184. Upon information an belief, the TMM Defendants are aware that the security of the Personal Information maintained and/or transferred through the servers of Affiliate Programs that continue to use NATS, continues to be breached.

185. Upon information an belief, the TMM Defendants have and continue to participate and/or facilitated the breach of security of the Personal Information maintained

and/or transferred through the servers of Affiliate Programs that continue to use NATS, continues to be breached, and have exploited the information so obtained for their own purposes.

186. Upon information and belief, the TMM has violated the ITPA by intentionally and/or recklessly and/or willfully failing to disclose to NRM and each Class member, the scope of the security breach breached referred to in the TMM Defendants' December 2007 statement, and the fact that fact that the security incursions are continuing and on-going, with a wanton disregard of the consequences to those persons affected.

187. Upon information and belief, the TMM has violated the ITPA by intentionally and/or recklessly and/or willfully failing to disclose to NRM and each Class member, the scope of the security breach breached referred to in the TMM Defendants' December 2007 statement, and the fact that fact that the security incursions are continuing and on-going, with a wanton disregard to those persons who information was accessed.

188. TMM's violation of the ITPA as aforesaid, has prevented NRM and each Member of the Class from determining to what extent their own Proprietary Information has been invaded and/or misappropriated and/or converted.

189. Further, TMM's violation of the ITPA as aforesaid, has prevented NRM and each Member of the Class from advising their New Jersey Members and Affiliates of such breaches as required under § 56:8-163 (12)(a), thus subjecting NRM and each Member of the Class to penalties mandated by the statute.

190. By virtue of TMM violation of the ITPA, NRM and each Class member, has been damaged in an amount to be determined at trial but in no event less than the sum of \$75,000.00.

COUNT 12

INDEMNITY/CONTRIBUTION

(On behalf of NRM and all Class Members as against the TMM Defendants)

191. NRM, on behalf of itself and all Class members, repeats and realleges each and every allegation set forth above as if fully set forth herein at length.

192. NRM, on behalf of itself and Class Plaintiffs, repeats and realleges each and every allegation set forth above as if fully set forth herein at length.

193. As a result of the wrongful conduct of the TMM Defendants as hereinabove alleged, including but not limited to, their failure to advise NRM and each Class member that NATS is defective, and fails to perform as warranted, NRM and each Class member has incurred liabilities for the underpayment of commissions to Affiliates.

194. As a further result of the wrongful conduct of the TMM Defendants as hereinabove alleged, including directing and/or designing Security Vulnerabilities in NATS, deploying the program knowing of the existence of such Security Vulnerabilities, actively participating in and/or knowingly facilitating the misappropriation and conversion of Personal Information of Affiliates and Members maintained and/or transferred through the computer servers of NRM and each Class member and exploiting same, and/or TMM's violation of the ITPA, NRM and each Class member may have incurred liabilities for breaches in the security of the Personal Information of its Affiliates and Members, and may be subject to civil penalty under the ITPA.

195. The liability of NRM and Class Plaintiffs for such damages, if any, was due to their passive conduct in relying upon the NATS program to perform as warranted, and the integrity of the TMM Defendants.

196. The TMM Defendants' conduct as hereinabove an active character, and generated substantial profits for said defendants.

197. By virtue of the foregoing, if NRM or any member of the Class is found to be liable for any damages to any third party and/or any subject to penalties, arising from the wrongful conduct of the TMM Defendants as aforesaid, the TMM Defendants are bound to indemnify NRM and each Class member for all such damages and penalties, and any costs incurred as a result.

198. Alternatively, by virtue of the foregoing, if NRM or any member of the Class is found to be liable for any damages to any third party and/or any subject to penalties, arising from the wrongful conduct of the TMM Defendants as aforesaid, the TMM Defendants, jointly and severally, are to the extent that their conduct is determined to be the basis of any such liability or assessed penalties, liable to NRM and each Class member under the principles of contribution.

COUNT 13

TRADE LIBEL

(On behalf of NRM and NR LLC as against the TMM Defendants and Doe Defendants 16 through 30)

199. NRM and NR LCC repeats and realleges each and every allegation set forth above as if fully set forth herein.

200. As hereinabove alleged, at all relevant times NRM was a profitable and successful business that had an excellent reputation among Affiliates of its XclusiveCash Affiliate Program. Due the success of XclusiveCash and NRM's media content, its websites

were popular and attracted its Membership base continuously increased.

201. As hereinabove alleged, it was well known in the adult entertainment industry that NR LCC was associated with NR Media.

202. On August 10, 2006, TMM Defendants intentionally and maliciously posted the August 10 Statement on the GFY Board which was of and concerning NRM and its business and services, and was so understood by all those to whom it had been published, who were persons engaged in the same business and profession as NRM.

203. The August 10 Statement was tantamount to accusing NRM of the fraudulent act of shaving and was, upon information and belief, calculated to discredit and financially ruin NRM, and thereby suppress the fact that the TMM Defendants knew that a defect in NATS was causing, and continues to cause, a chronic under-reporting of Rebills processed by CCBill as well as other Processors.

204. The TMM Defendants publication of the August 10 Statement was done with malice and knowledge of its falsity, and/or a wanton and wilful disregard of the truth, and constitutes trade libel.

205. The August 10 Statement was false, in that (a) TMM was not “forced” to terminate information processing services to NRM; (b) the “discrepancy,” if any, was due to upon information and belief to the defects in NATS and TMM Defendants’ failure to remedy same, or alternatively to a “bug” that TMM had previously advised NRM it had detected in NATS, and not due to under-reporting by NRM, as such statement implied; (c) TMM had never attempted to “rectify the situation,” but rather concealed all Rebill reporting problems from NRM for many months, and failed to report the problem to NRM’s officers.

206. The TMM Defendants’ malicious and false August 10 Statement caused

irreparable damage to NRM's reputation and business, and in conjunction with the termination of TMM's services to NRM, resulted in the complete collapse of the company.

207. Due to the similarity of NRM and NR LLC's names, the TMM Defendants' malicious publication of the August 10 Statement was so understood by virtually all of those to whom it had been published, to refer to both NRM and NR LLC.

208. Upon information and belief, Doe Defendants 16 - 30, with knowledge of the falsity of the August 10 Statement and acting as agents of the TMM Defendants, republished the defamatory statement a multitude of other Internet bulletin boards.

209. The TMM Defendants' malicious and false August 10 Statement and others subsequently made by the TMM Defendants and their agents, Doe Defendants 16-30, caused Affiliates of NRM's XclusiveCash program to abandon NRM and to discontinue all efforts to promote NRM's websites, products and services, thereby depriving NRM of revenues.

210. Due to TMM Defendants' malicious publication of the above-alleged defamatory statements, and others subsequently made by the TMM Defendants and their agents, Doe Defendants 16-30, each of which occurrences is hereby alleged as a separate defamatory act, probative of malice and cumulating damages, NRM and NR LLC suffered special damages in the form of the complete cessation of all income from its Affiliate Program and destruction of the goodwill and reputation associated with their names.

211. By virtue of the TMM Defendants's libelous August 10 Statement, NRM and NR LCC have been damaged in amount to be determined at trial but in no event less than the sum of \$75,000.00.

COUNT 14

DECLARATORY RELIEF

(On behalf of NRM and all Class Members as Against the TMM Defendants)

212. NRM, on behalf of itself and all Class members, repeats and realleges each and every allegation set forth above as if fully set forth herein at length.

213. An actual controversy has arisen between NRM and all Class members, on the one hand, and the TMM Defendants and Doe Defendants 1–15, on the other.

214. NRM and all members of the Class contend as follows:

- a. TMM is responsible for all liabilities accruing to NRM and all Class members for the under-reporting of Affiliate commissions as a result of TMM's NATS-based information processing services;
- b. The TMM Defendants have no legal right to disable the operation of NATS on the computer servers of any Member of the Class, provided any such member has paid to TMM all applicable fees;
- c. The TMM Defendants and Doe Defendants 1-15, have no right to exploit for their own purposes any information stored on the servers of NRM or any Class member, regardless of whether such data is confidential, proprietary, constitutes a trade secret or is otherwise protected under any applicable privacy law;
- d. TMM must immediately notify all persons and entities whose personal and consumer records were disclosed as a result of the security vulnerabilities incorporated in and/or due to the defects in NATS, of such security breaches;
- e. TMM is required to provide NRM and all Class members with a copy of the NATS source code, so that NRM may repair the damage to its reputation, and the Class member may remove features that facilitate, enable, or permit intrusions and data theft;
- f. The TMM Defendants are required to disclose the identities of Doe Defendants 1–15, to wit, all persons and/or entities who participated in the invasion of NRM and each Class member's computer server, the misappropriation and conversion of the personal and/or consumer information therefrom, and the subsequent trafficking and/or

commercial exploitation of such information; and

- g. The TMM Defendants are each individually and collectively, required to maintain in constructive trust, and to disgorge all funds obtained from conversion, misappropriation and/or exploitation of the personal and/or consumer information from the servers of NRM and each Class member.

215. The TMM Defendants dispute all of the foregoing contentions, and have:

- a. Refused to acknowledge its responsibility for any liabilities accruing to NRM or any Class Member for the under-reporting of Affiliate commissions due to NATS-based information processing services;
- b. Maintained that TMM has the right to disable the operation of NATS on the computer servers of any Class members in its own discretion;
- c. Maintained that the TMM Defendants have not misappropriated, converted, transferred or exploited for their own use, any information stored on the servers of NRM and Class member;
- d. Denied that they have failed to notify all persons and entities whose personal and consumer records were disclosed as a result of the security vulnerabilities incorporated in and/or defects of NATS, of such security breaches;
- e. Claimed the right to keep secret the NATS source code;
- f. Denied the existence of Doe Defendants 1–15; and
- g. Denied receiving funds obtained from unlawful transactions involving the sale or exploitation of stolen personal and consumer information.

216. By virtue of the foregoing, NRM and each Class Member seek a declaration of their respective rights and other legal relations concerning the foregoing matters in this controversy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff NRM on behalf of itself and all Class members, and NR LLC individually pray for relief and judgment as follows:

a. Upon the FIRST COUNT for violation of New Jersey's Consumer Fraud Act, awarding NRM and all Class members judgment as against the TMM Defendants, individually, jointly and severally, for compensatory damages, consequential damages, treble damages, reasonable attorneys fees and costs and pre-judgment interest thereon, together with such other and further relief that this Court deems just, proper and equitable;

b. Upon the SECOND COUNT for Negligent Misrepresentation, (a) awarding NRM and all Class members judgment as against the TMM Defendants, individually, jointly and severally, for compensatory damages, consequential damages, punitive damages, reasonable attorneys fees and costs and pre-judgment interest thereon, and (b) directing that TMM disgorge to NRM and all Class members all fees paid to they paid to TMM for NATS based information processing; (c) together with such other and further relief that this Court deems just, proper and equitable;

c. Upon the THIRD COUNT for Misappropriation/Conversion of Confidential Information: (a) awarding NRM and all Class members judgment against the TMM Defendants, Schank and Doe Defendants 1-15, individually, jointly and severally, for compensatory damages, consequential damages, punitive damages, reasonable attorneys fees and costs and pre-judgment interest thereon; (b) directing said defendants to disgorge to NRM and each Class Member all profits that they have earned as a result of their misappropriation/conversion of each respective plaintiffs information; (c) directing said defendants to return to NRM and each Class member all information that was misappropriated from each such plaintiff; and (d) together with such other and further relief that this Court deems just, proper and equitable;

d. Upon the FOURTH COUNT for Breach of Contract, awarding NRM and all

Class members, judgment against TMM for compensatory damages, consequential damages, punitive damages, reasonable attorneys fees and costs and pre-judgment interest thereon, together with such other and further relief that this Court deems just, proper and equitable;

e. Upon the FIFTH COUNT for Breach of Contract, awarding NRM, judgment against TMM for compensatory damages, consequential damages, punitive damages, reasonable attorneys fees and costs and pre-judgment interest thereon, together with such other and further relief that this Court deems just, proper and equitable;

f. Upon the SIXTH COUNT for Intentional Interference with Contract, awarding NRM and all Class members, judgment against the TMM Defendants, jointly and severally, for compensatory damages, consequential damages, punitive damages, reasonable attorneys fees and costs and pre-judgment interest thereon, together with such other and further relief that this Court deems just, proper and equitable;

g. Upon the SEVENTH COUNT for Intentional Interference with Contract, awarding NRM, judgment against the TMM Defendants, jointly and severally, for compensatory damages, consequential damages, punitive damages, reasonable attorneys fees and costs and pre-judgment interest thereon, together with such other and further relief that this Court deems just, proper and equitable;

h. Upon the EIGHTH COUNT for Intentional Interference with Prospective Business and Economic Advantage, awarding NRM and all Class members, judgment against the TMM Defendants, jointly and severally, for compensatory damages, consequential damages, punitive damages, reasonable attorneys fees and costs and pre-judgment interest thereon, together with such other and further relief that this Court deems just, proper and equitable;

i. Upon the NINTH COUNT for Intentional Interference with Prospective Business and Economic Advantage, awarding NRM and NR LCC, judgment against the TMM Defendants, jointly and severally, for compensatory damages, consequential damages, punitive damages, reasonable attorneys fees and costs and pre-judgment interest thereon, together with such other and further relief that this Court deems just, proper and equitable;

j. Upon the TENTH COUNT for Breach of Fiduciary Duty, awarding NRM and all Class members, judgment against the TMM Defendants, jointly and severally, for compensatory damages, consequential damages, punitive damages, reasonable attorneys fees and costs and pre-judgment interest thereon, together with such other and further relief that this Court deems just, proper and equitable;

k. Upon the ELEVENTH COUNT for Violation of New Jersey's Identity Theft Protection Act, awarding NRM and all Class members, judgment against the TMM Defendants, jointly and severally, for compensatory damages, consequential damages, punitive damages, reasonable attorneys fees and costs and pre-judgment interest thereon, together with such other and further relief that this Court deems just, proper and equitable;

l. Upon the TWELFTH COUNT for INDEMNITY/CONTRIBUTION, Ordering that in the event that NRM or any member of the Class is found to be liable for damages to any third party and/or any subject to penalties, arising from the wrongful conduct of the TMM Defendants as aforesaid, that the TMM Defendants are bound to indemnify NRM and each Class member for all such damages and penalties, and any costs incurred as a result; or in the alternative, that the TMM Defendants, jointly and severally, are to the extent that their conduct is determined to be the basis of any such liability or assessed penalties, liable to NRM and each Class member under the principles of contribution.

m. Upon the THIRTEENTH COUNT for Trade Libel, awarding NRM and NR LCC, judgment against the TMM Defendants, jointly and severally, for compensatory damages, consequential damages, punitive damages, reasonable attorneys fees and costs and pre-judgment interest thereon, together with such other and further relief that this Court deems just, proper and equitable;

n. Upon the FOURTEENTH COUNT for declaratory judgment, declaring the rights and legal relations of the parties.

JURY DEMAND

Pursuant to F.R.C.P. 38(b), all plaintiffs demand a jury trial on all issues triable to a jury.

Dated: _____

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