

ORIGINAL

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8 Attorneys for Plaintiff
 and the proposed class
 9

2009 MAY 19 PM 3:53
 CLERK OF DISTRICT COURT
 CENTRAL DISTRICT OF CALIF.
 BY: [Signature]

FILED

10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 **RANDE BRONSTER and ROBERT**
 13 **NACHSHIN, on behalf of themselves**
 and all others similarly situated,

Case No.
CV 09-03568 CAS (AGRx)

14 Plaintiff,

CLASS ACTION COMPLAINT

15 vs.

JURY TRIAL DEMANDED

16 **AOL, LLC, a Delaware Limited**
 17 **Liability Company; and DOES 1**
 through 10, inclusive;

18 Defendants.

19
 20 Plaintiffs, Rande Bronster and Robert Nachshin ("Plaintiffs"), individually
 21 and on behalf of the Class described below, by their attorneys, makes the following
 22 allegations based upon information and belief, except as to allegations specifically
 23 pertaining to Plaintiffs and their counsel, which are based on personal knowledge.
 24 Plaintiffs bring this action for damages and injunctive relief against Defendant,
 25 demanding a trial by jury.

26 **NATURE OF THE ACTION**

27 1. Plaintiffs bring this class action against Defendant AOL, LLC
 28 ("AOL") to recover damages and other relief available at law and in equity on

CLASS ACTION COMPLAINT

1/5
20

1 behalf of themselves as well as on behalf of the members of the following class:

2 *All current AOL members in the United States who paid*
3 *for an AOL account from February 1, 2006.*

4 2. AOL offers email services. Approximately 20% of its email account
5 holders pay a monthly fee for premium email service.

6 3. This action arises from the fact that AOL failed to inform its paid
7 email subscribers that it would insert advertisements into all emails sent from the
8 paid AOL email account.

9 **THE PARTIES**

10 2. Plaintiff Rande Bronster is a resident of Los Angeles, California. She is
11 a paid subscriber to AOL's email services.

12 3. Plaintiff Robert Nachshin is a resident of Los Angeles, California. He is
13 a paid subscriber to AOL's email services.

14 4. Plaintiffs are informed and believe and thereon allege that defendant
15 AOL, LLC is a subsidiary of Time Warner. AOL is a global Internet and
16 advertising service provider that offers users access to a community of benefits
17 and the opportunity to browse the World Wide Web. Defendant AOL, LLC, is a
18 Delaware limited liability company with its principal place of business in New
19 York.

20 5. Plaintiffs do not know the true names or capacities of the persons or
21 entities sued herein as DOES 1 to 10, inclusive, and therefore sue such defendants
22 by such fictitious names. Plaintiffs are informed and believe and thereon allege
23 that each of the DOE defendants is in some manner legally responsible for the
24 damages suffered by plaintiffs and the members of the class as alleged herein.
25 Plaintiffs will amend this complaint to set forth the true names and capacities of
26 these defendants when they have been ascertained, along with appropriate charging
27 allegations, as may be necessary.

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JURISDICTION AND VENUE

6. This Court has original jurisdiction over Plaintiffs' claim for violation of the Electronic Communications Privacy Act, 18 U.S.C. § 2510 et seq.

7. This Court has supplemental jurisdiction over Plaintiffs' remaining claims pursuant to 28 U.S.C. § 1367 as they form part of the same case or controversy under Article III of the United States Constitution.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, as a substantial part of the events giving rise to the claims asserted herein occurred in the Central District of California.

FACTUAL BACKGROUND

9. AOL is a global Internet services company that provides its users with access to websites, email, and instant messaging and other Internet services.

10. Some features of the AOL website are free for all users. However, other types of services provided by AOL require users to register for an AOL account and pay a monthly fee.

11. AOL provides email services to approximately 10 million people in the United States. Of this number, roughly 20% pay a fee for enhanced email services.

12. Providers of free email services routinely place advertisements in the emails of its subscribers. To avoid this annoyance, some people choose to pay for email service.

13. Prior to becoming a paid subscriber to AOL's premium email service, the potential customer must agree to AOL's Terms of Service.

14. Nowhere in its Terms of service does AOL disclose the fact that AOL will insert advertisements into the emails of its paid subscribers. In fact, nowhere on AOL's vast website does it disclose the fact that it would insert advertisements into the emails of its paid subscribers.

15. Beginning around February 2006, AOL began inserting text

1 advertisements at the end of all emails sent from its paid email accounts. These
2 advertisements promote commercial goods and services or other AOL services.

3 16. Until April 2008, AOL did not provide a method for its paid email
4 subscribers to opt-out of the ad placements. After implementing an opt-out
5 procedure, AOL never affirmatively disclosed to its paid subscribers that they
6 could choose not to have ads placed in the footers of their emails.

7 17. Plaintiffs are both subscribers to AOL's paid email services and have
8 had advertisements placed in their emails.

9 CLASS ACTION ALLEGATIONS

10 18. Description of the Class: Plaintiffs bring this nationwide class action
11 on behalf of themselves and a Class defined as follows:

12 *All current AOL members in the United States who paid*
13 *for an AOL account from February 1, 2006.*

14 19. Excluded from the Class are governmental entities, Defendants, any
15 entity in which Defendants have a controlling interest, and Defendants' officers,
16 directors, affiliates, legal representatives, employees, co-conspirators, successors,
17 subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or
18 judicial officer presiding over this matter and the members of their immediate
19 families and judicial staff.

20 20. Plaintiffs reserve the right to modify the Class description and the
21 Class period based on the results of discovery.

22 21. Plaintiffs and the Class bring this action for equitable, injunctive and
23 declaratory relief pursuant to subdivisions (b)(1), (b)(2) and (b)(3) of rule 23 of the
24 Federal Rules of Civil Procedure.

25 22. Numerosity: The proposed Class is so numerous that individual
26 joinder of all its members is impracticable. The total number of Class members is
27 at least in the hundreds of thousands and members of the class are geographically
28 dispersed across the United States. While the exact number and identities of the

1 Class members are unknown at this time, such information can be ascertained
2 through appropriate investigation and discovery. The disposition of the claims of
3 the Class members in a single class action will provide substantial benefits to all
4 parties and to the Court.

5 23. Common Questions of Law and Fact Predominate: There are
6 questions of law and fact common to the representative Plaintiffs and the Class,
7 and those questions substantially predominate over any questions that may affect
8 individual Class members. Common questions of fact and law include, but are not
9 limited to, the following:

- 10 a. Whether AOL inserts advertisements into the emails of its paid
11 subscribers;
- 12 b. Whether AOL was unjustly enriched;
- 13 c. Whether AOL engaged in unfair, unlawful and/or fraudulent
14 business practices;
- 15 d. Whether AOL's conduct violated the Electronic
16 Communications Privacy Act;
- 17 e. Whether AOL breached its contracts with Plaintiff and the
18 Class; and
- 19 f. Whether AOL violated the Consumers Legal Remedies Act.

20 24. Typicality: Plaintiffs' claims are typical of the claims of the
21 members of the class. Plaintiffs and all members of the class have been similarly
22 affected by Defendant's common course of conduct since their printers acted in
23 exactly the same way.

24 25. Adequacy of Representation: Plaintiffs will fairly and adequately
25 represent and protect the interests of the Class. Plaintiffs have retained counsel
26 with substantial experience in prosecuting complex and class action litigation.
27 Plaintiffs and their counsel are committed to vigorously prosecuting this action on
28 behalf of the Class, and have the financial resources to do so. Neither Plaintiffs

1 nor their counsel have any interests adverse to those of the Class.

2 26. Superiority of a Class Action: Plaintiffs and the members of the
3 Class suffered, and will continue to suffer, harm as a result of Defendant's
4 unlawful and wrongful conduct. A class action is superior to other available
5 methods for the fair and efficient adjudication of the present controversy.
6 Individual joinder of all members of the class is impractical. Even if individual
7 class members had the resources to pursue individual litigation, it would be unduly
8 burdensome to the courts in which the individual litigation would proceed.
9 Individual litigation magnifies the delay and expense to all parties in the court
10 system of resolving the controversies engendered by Defendant's common course
11 of conduct. The class action device allows a single court to provide the benefits of
12 unitary adjudication, judicial economy, and the fair and equitable handling of all
13 class members' claims in a single forum. The conduct of this action as a class
14 action conserves the resources of the parties and of the judicial system, and
15 protects the rights of the class member. Furthermore, for many, if not most, class
16 members, a class action is the only feasible mechanism that allows therein an
17 opportunity for legal redress and justice.

18 27. Adjudication of individual class members' claims with respect to the
19 Defendant would, as a practical matter, be dispositive of the interests of other
20 members not parties to the adjudication, and could substantially impair or impede
21 the ability of other class members to protect their interests.

22 **FIRST CAUSE OF ACTION**

23 **VIOLATION OF THE ELECTRONIC COMMUNICATIONS PRIVACY**

24 **ACT**

25 **18 U.S.C. § 2510 et seq.**

26 28. Plaintiffs reallege the preceding paragraphs as if fully set forth herein
27 and, to the extent necessary, plead this cause of action in the alternative.

28 29. Plaintiffs and the putative class have been, and continue to be, harmed

1 by AOL's unlawful interception and use of their private email communication, in
2 violation of 18 U.S.C. § 2510 et seq.

3 30. AOL's conduct is in violation of 18 U.S.C. § 2511(1)(a) in that it has
4 unlawfully and intentionally intercepted, endeavored to intercept, or procured other
5 persons to intercept electronic communications sent by Plaintiff and the Class.

6 31. AOL's conduct is also in violation of 18 U.S.C. § 2511(1)(d) in that is
7 has unlawfully and intentionally used, or endeavored to use, the contents of
8 Plaintiffs' and the Class' electronic communications, while knowing, or having
9 reason to know, that the communication was obtained through an unlawful
10 interception of electronic communications.

11 WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

12 **SECOND CAUSE OF ACTION**

13 **UNJUST ENRICHMENT**

14 32. Plaintiffs reallege the preceding paragraphs as if fully set forth herein
15 and, to the extent necessary, plead this cause of action in the alternative.

16 33. Through the scheme described above, AOL has received money
17 belonging to Plaintiffs and the Class through the placement of advertisements in
18 the email of their paid subscribers.

19 34. AOL has reaped substantial profits by inserting advertisements into
20 the emails of its paid subscribers. Ultimately, this resulted in AOL's wrongful
21 receipt of profits and injury to Plaintiffs and the Class. AOL has benefited from
22 the receipt of such money that it would not have received but for its concealment.

23 35. As a direct and proximate result of AOL's misconduct as set forth
24 above, AOL has been unjustly enriched.

25 36. Under principles of equity and good conscience, AOL should not be
26 permitted to keep the full amount of money belonging to Plaintiffs and the Class
27 which AOL has unjustly received as a result of its actions.

28 WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

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THIRD CAUSE OF ACTION
VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE
SECTION 17200 ET SEQ.

37. Plaintiffs reallege the preceding paragraphs as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

38. Plaintiffs have standing to pursue this claim because they has suffered injury in fact and has lost money or property as a result of AOL's actions as set forth above.

39. Class members have lost money or property as a result of AOL's actions as delineated herein.

40. AOL's actions as alleged in this complaint constitute "unfair" conduct within the meaning of California Business and Professions Code section 17200 *et seq.*

41. AOL's business practices, as alleged herein, are "unfair" because they offend established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or substantially injurious to its customers. AOL's conduct is "unfair" because AOL inserts advertisements into the emails of its paid subscribers.

42. AOL's actions as alleged in this complaint constitute "unlawful" conduct within the meaning of California Business and Professions Code section 17200 *et seq.*

43. AOL's business practices, as alleged herein, are unlawful because they amount to a violation of the Electronic Communications Privacy Act, the CLRA, breach of contract, and unjust enrichment.

44. AOL's actions as alleged in this complaint constitute "fraudulent" conduct within the meaning of California Business and Professions Code sections 17200 *et seq.*

45. AOL's business practices, as alleged herein, are fraudulent because

1 they are likely to deceive consumers, including Plaintiffs and the members of the
2 Class. AOL fails to disclose that it will insert advertisements in to the emails of its
3 paid subscribers.

4 46. As a result of AOL's "unfair," "unlawful" and "fraudulent" conduct,
5 Plaintiffs and the members of the class expended money paying monthly fees for
6 email service.

7 47. AOL's wrongful business practices allege herein constituted, and
8 constitute, a continuing course of unfair competition since AOL continues to
9 market and sell its products in a manner that offends public policy, is immoral,
10 unethical, oppressive, unscrupulous and/or substantially injurious to its customers,
11 and that is likely to deceive the public.

12 48. Pursuant to section 17203 of the California Business and Professions
13 Code, Plaintiffs and the Class seek an order of this court enjoining AOL from
14 continuing to engage in unlawful, unfair, and deceptive business practices and any
15 other act prohibited by law, including those acts set forth in this complaint.

16 49. Plaintiffs and the Class also seek an order requiring AOL to make full
17 restitution of all moneys it wrongfully obtained from Plaintiffs and the Class, along
18 with all other relief allowable under California Business and Professions Code
19 section 17200 *et seq.*

20 WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

21 **FOURTH CAUSE OF ACTION**

22 **BREACH OF CONTRACT**

23 50. Plaintiffs reallege the preceding paragraphs as if fully set forth herein
24 and, to the extent necessary, plead this cause of action in the alternative.

25 51. Plaintiffs and the Class entered into a contract with AOL for AOL's
26 services.

27 52. The contract contains and contained an implied covenant of good faith
28 and fair dealing that AOL would not do anything that would have the effect of

1 injuring the right of Plaintiffs and the Class to receive the benefits of the contract.

2 53. AOL breached its contracts with Plaintiffs and the Class, and the
3 covenant of good faith and fair dealing, by inserting advertisements into the emails
4 of its paid subscribers.

5 54. As a direct and proximate result of AOL's breach of contract,
6 Plaintiffs and the Class have been damages in an amount to be determined at trial.

7 WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

8 **FIFTH CAUSE OF ACTION**
9 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**

10 55. Plaintiffs reallege the preceding paragraphs as if fully set forth herein
11 and, to the extent necessary, plead this cause of action in the alternative.

12 56. This cause of action is brought pursuant to the California Consumers
13 Legal Remedies Act, California Civil Code sections 1750-1784 ("CLRA").

14 57. AOL's acts and practices described herein were intended to result in
15 the sale of AOL Internet services to the consuming public.

16 58. AOL is a "person" as defined by California Civil Code section
17 1761(c). Plaintiffs and the members of the class are "consumers" within the
18 meaning of California Civil Code section 1761(d). The products sold by AOL are
19 "services" within the meaning of California Civil Code Section 1761(b).


20 59. Venue is proper pursuant to Civil Code § 1780(c) because the
21 transaction or a substantial portion thereof occurred in Los Angeles County.
22 Declarations of the Plaintiffs establishing this Court as the proper venue for this
23 action are attached hereto as Exhibit A.

24 60. AOL violated, and continues to violate, the CLRA by inserting
25 advertisements into the emails of its paid customers. AOL represented that its
26 service had a specific characteristic, i.e., that, as a paid service it would be free of
27 advertisements. AOL made this representation in violation of Civil Code section
28 1770(a)(5).

- 1 1. Certification of the proposed class and notice thereto to be paid by
- 2 Defendant;
- 3 2. Adjudge and decree that Defendant has engaged in the conduct
- 4 alleged herein;
- 5 3. For restitution and disgorgement on certain causes of action;
- 6 4. For an injunction ordering Defendant to cease and desist from
- 7 engaging in the unfair, unlawful, and/or fraudulent practices alleged in the
- 8 Complaint;
- 9 5. For compensatory and general damages according to proof on certain
- 10 causes of action;
- 11 6. For special damages according to proof on certain causes of action;
- 12 7. For both pre and post-judgment interest at the maximum allowable
- 13 rate on any amounts awarded;
- 14 8. Costs of the proceedings herein;
- 15 9. Reasonable attorneys fees as allowed by statute; and
- 16 10. Any and all such other and further relief that this Court may deem just
- 17 and proper.

18
19 DATED: May 19, 2009

KABATECK BROWN KELLNER LLP

20
21 By 

22 Brian S. Kabateck
 23 Richard L. Kellner
 24 Alfredo Torrijos
 25 Michael V. Storti
 26 *Counsel for Plaintiff and the class*

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury in the instant action.

DATED: May 19, 2009

KABATECK BROWN KELLNER LLP

By 

Brian S. Kabateck
Richard L. Kellner
Alfredo Torrijos
Michael V. Storti
Counsel for Plaintiff and the class

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8 Attorneys for Plaintiffs
 and the proposed class

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

13 **RANDE BRONSTER and ROBERT
 NACHSHIN, on behalf of themselves
 14 and all others similarly situated,**

15 **Plaintiff,**

16 **vs.**

17 **AOL, LLC, a Delaware Limited Liability
 Company; and DOES 1 through 10,
 18 inclusive;**

19 **Defendants.**

Case No.

CLASS ACTION

DECLARATION OF RANDE
 BRONSTER

Judge:
 Courtroom:

21 I, Rande Bronster, hereby declare and state as follows:

22 1. I am over the age of 18, and a Plaintiff in this action. The facts
 23 contained in this declaration are based on my personal knowledge, and if called
 24 upon to do so, I could and would testify competently hereto.

25 2. The complaint in this action, filed concurrently with this
 26 declaration, is filed in the proper place for trial under Civil Code § 1780(c), because
 27 the Defendant does business in the Central District of California.
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I declare under penalty of perjury under the laws of the United States
and the State of California that the foregoing is true and correct.

Executed on May 18, 2009, in Los Angeles, California.

Rande Bronster
Rande Bronster

1 BRIAN S. KABATECK, SBN 152054
 (bsk@kbklawyers.com)
 2 RICHARD L. KELLNER, SBN 171416
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 Telephone: (213) 217-5000
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8 Attorneys for Plaintiffs
 and the proposed class
 9

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12

13 **RANDE BRONSTER and ROBERT**
NACHSHIN, on behalf of themselves
and all others similarly situated,
 14
 15 Plaintiff,
 16 vs.
 17 **AOL, LLC, a Delaware Limited Liability**
Company; and DOES 1 through 10,
 18 **inclusive;**
 19 **Defendants.**
 20

Case No.
 CLASS ACTION
DECLARATION OF ROBERT
NACHSHIN
 Judge:
 Courtroom:

21 I, Robert Nachshin, hereby declare and state as follows:
 22
 23 1. I am over the age of 18, and a Plaintiff in this action. The facts
 24 contained in this declaration are based on my personal knowledge, and if called
 25 upon to do so, I could and would testify competently hereto.
 26 2. The complaint in this action, filed concurrently with this
 27 declaration, is filed in the proper place for trial under Civil Code § 1780(c), because
 28 the Defendant does business in the Central District of California.

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I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on May 18, 2009, in Los Angeles, California.


Robert Nachshin

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p style="text-align: center;">Mark D. Litvack Reed Smith LLP 1901 Avenue of the Stars Suite 700 Los Angeles, CA 90067-6078</p>		<p>B. Received by (Printed Name) _____</p> <p>C. Date of Delivery 4-27-09</p>	
<p>2. Article Number (transfer from service label) 7006 2150 0003 1859 0928</p>		<p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>PS Form 3811, February 2004</p>		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
		102595-02-M-1840	

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APR 28 2009

By _____



Kabateck Brown Kellner LLP

April 23, 2009

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mark D. Litvack
Reed Smith LLP
1901 Avenue of the Stars
Suite 700
Los Angeles, CA 90067-6078

RE: *Notice and Demand Letter Re: Email Footer Ads*

Dear Mr. Litvack:

We represent Rande Bronster and Robert Nachshin. Pursuant to the California Consumer Legal Remedies Act ("CLRA"), California Civil Code § 1750, et seq. (specifically, §§ 1782(a)(1) and (2)), Ms. Bronster and Mr. Nachshin, on behalf of themselves and all other similarly situated consumers nationwide, (collectively, the "Class"), through their undersigned counsel, hereby notify you that AOL, LLC ("AOL") is alleged to have violated the CLRA by inserting advertisements into the emails of its paid email subscribers.

Ms. Bronster and Mr. Nachshin are subscribers to AOL's paid email service. Beginning in about March 2006, AOL began inserting text advertisements into the footer of all of Ms. Bronster's and Mr. Nachshin's emails. While this is to be expected from a free email service, subscribers to AOL's paid email service pay a monthly fee, in part, to be free from the annoyance of ads strewn throughout their emails.

AOL's unfair business practices have caused significant financial consequences for Ms. Bronster, Mr. Nachshin, and consumers throughout the country. AOL's insertion of advertisements into the emails of its paid subscribers is violative of the CLRA in the following ways:

Mark D. Litvack
April 23, 2009
Page 2 of 2



Kabateck Brown Kellner LLP

1. AOL violated § 1770(a)(5) by misrepresenting that, as a paid service, its email would be free of advertisement.
2. AOL violated § 1770(a)(9) by advertising a paid email service that was free of advertising without the intent to sell the service as advertised.

Pursuant to § 1782 of the CLRA, and based on the foregoing, we hereby demand within thirty days of receiving this letter, AOL agrees to refund monies paid by Ms. Bronster and Mr. Nachshin and others like them for an email service that was represented to be free of advertisements.

Please be advised that should AOL refuse this demand, Ms. Bronster and Mr. Nachshin will seek monetary damages for themselves and the Class, as well as an award of injunctive relief, restitution, punitive damages, attorneys' fees and costs, and any other relief a court deems proper.

If you have any questions regarding this notice and demand, feel free to contact me at (213) 217-5000.

Very truly yours,

KABATECK BROWN KELLNER LLP

A handwritten signature in black ink, appearing to read 'R. Kellner'.

Richard L. Kellner

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> Rande Bronster and Robert Nachshin, on behalf of themselves and all others similarly situated	DEFENDANTS AOL, LLC, a Delaware Limited Liability Company; and Does 1 through 10, inclusive;
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Kabateck Brown Kellner LLP 644 South Figueroa Street Los Angeles, CA 90017 Tel. (213) 217-5000	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: **JURY DEMAND:** Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Class action alleging unjust enrichment, breach of contract and violations of the CLRA, Bus. & Prof. Code 17200 et seq, and 18 USC 2510 et seq.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Rackteer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Vetran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lcase & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Scizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number: **CV09-03568**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): SA CV 08-06845

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	New York

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date May 19, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))