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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14 JEREMIAH REVITCH, individually and  
15 on behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 NEW MOOSEJAW, LLC and  
19 NAVISTONE, INC.,

20 Defendants.

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Jeremiah Revitch (“Plaintiff”), individually and on behalf of himself and all others  
2 similarly situated, by and through his attorneys, makes the following allegations pursuant to the  
3 investigation of his counsel and based upon information and belief, except as to allegations  
4 specifically pertaining to himself and his counsel, which are based on personal knowledge.

### 5 NATURE OF THE ACTION

6 1. This is a class action suit brought against Defendants New Moosejaw, LLC  
7 (“Moosejaw”) and NaviStone, Inc. (“NaviStone”) (collectively, “Defendants”) for wiretapping the  
8 computers of visitors to Defendant Moosejaw’s website, Moosejaw.com. The wiretaps, which are  
9 secretly embedded in the computer code on Moosejaw.com, are used by Defendants to scan the  
10 user’s computer in search of files that can be used to de-anonymize and identify the user, and also to  
11 observe visitors’ keystrokes, mouse clicks,<sup>1</sup> and other electronic communications in real time for the  
12 purpose of gathering Personally Identifiable Information (“PII”) to de-anonymize those visitors –  
13 that is, to match previously unidentifiable website visitors to obtain their names and home  
14 addresses, along with detailed data concerning their browsing habits. These wiretaps enable  
15 Defendants to immediately, automatically, and secretly observe the keystrokes, mouse clicks, and  
16 other electronic communications of visitors regardless of whether the visitor ultimately makes a  
17 purchase from Moosejaw. By doing so, Defendants have violated the California Invasion of  
18 Privacy Act (“CIPA”), Cal. Penal Code §§ 631, 632, and 635; have invaded Plaintiff’s privacy  
19 rights in violation of the California Constitution; have intruded upon the seclusion of Plaintiff; have  
20 violated California’s Consumers Legal Remedies Act, Civil Code §§ 1750, *et seq.*; have violated  
21 California’s Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et seq.*, and have committed  
22 other tortious acts as described herein.

23 2. On several occasions prior to the filing of this lawsuit, Plaintiff Revitch visited  
24 Moosejaw.com. During each of Plaintiff’s visits Defendants scanned his device for files that could  
25 be used to de-anonymize and identify him, captured his electronic communications and redirected  
26 them to NaviStone in real time, and used the intercepted data to attempt to learn his identity, postal

27 \_\_\_\_\_  
28 <sup>1</sup> As used herein, the term “mouse clicks” also refers to “touch gestures” such as the “tap,” “swipe,”  
and similar gestures used on touchscreen devices.

1 address, and other PII.

2 3. Plaintiff brings this action on behalf of himself and a class of all persons whose  
3 electronic communications were intercepted through the use of NaviStone’s wiretap on  
4 Moosejaw.com.

5 **THE PARTIES**

6 4. Plaintiff Jeremiah Revitch is a natural person and citizen of the State of California who  
7 resides in Mill Valley, California. Several times prior to the filing of this lawsuit, Mr. Revitch  
8 browsed Defendant Moosejaw’s website at Moosejaw.com while shopping for outerwear. Although  
9 Mr. Revitch never consented to any interception, disclosure or use of his electronic  
10 communications, Mr. Revitch’s keystrokes, mouse clicks, and other electronic communications  
11 were intercepted in real time and were disclosed to NaviStone through Moosejaw’s use of  
12 NaviStone’s wiretap. Mr. Revitch was unaware at the time that his keystrokes, mouse clicks, and  
13 other electronic communications were being intercepted and disclosed to a third party.

14 5. Defendant New Moosejaw, LLC is a Delaware limited liability company with its  
15 principal place of business at 32200 North Avis Suite 100, Madison Heights, Michigan. Moosejaw  
16 does business throughout California and the entire United States. “Moosejaw is a leading online  
17 active outdoor retailer with a large web presence as well at 10 physical stores.”<sup>2</sup> “Moosejaw carries  
18 more than 400 brands, including Patagonia, The North Face, Marmot, Arc’teryx and more.  
19 [Moosejaw] ha[s] an extensive assortment of apparel and gear for climbing, hiking, camping, snow  
20 sports, yoga, swimming and biking.”<sup>3</sup>

21 6. Defendant NaviStone, Inc. is a Delaware corporation with its principal place of  
22 business at 1308 Race Street, Cincinnati, Ohio 45202. NaviStone does business throughout  
23 California and the entire United States. NaviStone is an online marketing company and data broker  
24 that deals in U.S. consumer data.

25  
26  
27 <sup>2</sup> <https://news.walmart.com/2017/02/15/walmart-announces-the-acquisition-of-moosejaw-a-leading-online-outdoor-retailer>

28 <sup>3</sup> *Id.*

1 **JURISDICTION AND VENUE**

2 7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A)  
3 because this case is a class action where the aggregate claims of all members of the proposed class  
4 are in excess of \$5,000,000.00, exclusive of interest and costs, and Plaintiff, together with most  
5 members of the proposed class, are citizens of states different from Defendants.

6 8. This Court has personal jurisdiction over Defendants because they have continuous  
7 and systematic contacts with the State of California as to essentially render them “at home” in this  
8 State. Moreover, each of the Defendants have purposefully availed themselves of the laws and  
9 benefits of doing business in this State, and Plaintiff’s claims arise out of each of the Defendants’  
10 forum-related activities. Furthermore, a substantial portion of the events giving rise to Plaintiff’s  
11 claims occurred in this District.

12 9. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because a  
13 substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this  
14 District. Moreover, Plaintiff resides in this District.

15 **FACTS COMMON TO ALL CLAIMS**

16 **Overview Of NaviStone’s Wiretaps**

17 10. Defendant NaviStone is a marketing company and data broker that deals in U.S.  
18 consumer data. NaviStone’s business model involves entering into voluntary partnerships with  
19 various e-commerce websites. Upon partnering with NaviStone, these e-commerce websites will  
20 agree to insert a small parcel of computer code into their websites, which is provided by NaviStone  
21 (and is written by NaviStone). This small parcel of computer code serves as a so-called “back  
22 door” in computer terminology – its function is to retrieve and execute a much larger portion of  
23 JavaScript code that is remotely hosted on NaviStone’s servers. As NaviStone explains on  
24 navistone.com, “[a]dding a simple line of code to each page of your website enables a wealth of  
25 new marketing data.”

26 11. This “back door” code permits NaviStone to execute its own computer code on the  
27 websites of its e-commerce partners. Stated otherwise, the “simple line of code” that NaviStone  
28 requests its partners add “to each page of [their] website[s]” serves to call and execute remote

1 computer code that is: (i) provided by NaviStone, (ii) written by NaviStone, and (iii) hosted on a  
2 remote server by NaviStone.

3 12. As currently deployed, NaviStone's remote code functions as a wiretap. That is,  
4 when connecting to a website that runs this remote code from NaviStone, a visitor's IP address and  
5 other PII is sent to NaviStone in real-time. NaviStone's code also scans the visitor's computer for  
6 data files that could reveal the visitor's identity. NaviStone's code will also spy on the visitor as he  
7 or she browses the website, capturing and redirecting the visitor's keystrokes, mouse clicks and  
8 other electronic communications to NaviStone. This real-time interception and transmission of  
9 visitors' electronic communications begins as soon as the visitor loads Moosejaw.com into their  
10 web browser. The intercepted communications include, among other things, information typed on  
11 forms located on Moosejaw.com, regardless of whether the user completes the form or clicks  
12 "Submit." NaviStone then uses this information to attempt to de-anonymize website visitors.

13 13. NaviStone maintains a back-end database containing data and profiles on consumers  
14 across the U.S., which includes consumers' names and mailing addresses. As users browse the  
15 various e-commerce websites that deploy NaviStone code, NaviStone attempts to "match" elements  
16 of the intercepted data with records of real-life people maintained in its back-end database. Once a  
17 match is found, NaviStone de-anonymizes the user and updates its back-end database with the  
18 user's current browsing activities and PII.

19 14. NaviStone has partnered with hundreds e-commerce websites since beginning its  
20 operations. By combining and correlating its data, NaviStone can watch consumers as they browse  
21 hundreds of participating e-commerce sites, in real-time.

22 15. Pursuant to an agreement with NaviStone, Moosejaw intentionally embedded  
23 NaviStone's software coded wiretaps on Moosejaw.com in order to scan visitors' computers for  
24 files that could be used to identify them, and also to intercept visitors' communications to obtain de-  
25 anonymized PII of visitors to Moosejaw's website.

26 16. NaviStone obfuscates the wiretap codes through dummy domains to attempt to  
27 conceal its activities. For example, part of NaviStone's remote code running on the Moosejaw  
28 website was located at <http://code.murdoog.com/onetag/C1DFC24D045BDD.js>.

1           17.     On June 20, 2017, a leading tech news website, gizmodo.com, published an exposé  
 2 on NaviStone’s wiretaps entitled “Before You Hit ‘Submit,’ This Company Has Already Logged  
 3 Your Personal Data.”<sup>4</sup> The Gizmodo article describes NaviStone as “a company that advertises its  
 4 ability to unmask anonymous website visitors and figure out their home addresses.”<sup>5</sup> The article  
 5 revealed that NaviStone is “in the business of identifying ‘ready to engage’ customers and matching  
 6 ‘previously anonymous website visitors to postal names and addresses.’ [NaviStone] says it can  
 7 send postcards to the homes of anonymous website shoppers within a day or two of their visit, and  
 8 that it’s capable of matching ‘60-70% of your anonymous site traffic to Postal names and  
 9 addresses.”<sup>6</sup>

10           18.     Indeed, on its own website, NaviStone boasts that it “invented progressive website  
 11 visitor tracking technology,” which allows it to “reach [] previously unidentifiable website  
 12 visitors.”<sup>7</sup> According to NaviStone, “[b]y simply adding one line of code to each website page, you  
 13 can unlock a new universe of ‘ready to engage’ customers.”<sup>8</sup>

14           19.     NaviStone also explains how to implement this software wiretaps on its clients’  
 15 webpages:

- 16                   1:     Insert One Line Of Code On Each Webpage.  
 17                             We’ll provide you and your IT team with a short tracking code  
 18                             (and instructions) to insert on *each page* of your website.  
 19                             Data collection begins immediately and is reviewed for quality  
 20                             by our staff.
- 21                   2:     Identify Engaged Website Visitors.  
 22                             Data is stored in a secure environment specifically dedicated  
 23                             to your company’s information. Website visitors are  
 24                             identified as direct marketing prospects or reactivation targets  
 25                             based on their level of engagement on your site, as identified  
 26                             by unique algorithms developed by our data scientists.

25 <sup>4</sup> <https://gizmodo.com/before-you-hit-submit-this-company-has-already-logge-1795906081>

26 <sup>5</sup> *Id.*

27 <sup>6</sup> *Id.*

28 <sup>7</sup> <https://www.navistone.com/>

<sup>8</sup> *Id.*

1           3:     Identify Verified Names and Addresses.  
2                 When unidentified website visitors show an intent to purchase  
3                 based on the modeling process described above, NaviStone®  
4                 will secure postal names and addresses to include in your  
5                 direct marketing prospecting and reactivation programs. ...

6           4:     Use, Expand, Repeat.  
7                 NaviStone® will continue to track website behavior to identify  
8                 new, unique prospects and reactivation targets so you can  
9                 expand and optimize this unique process for success time and  
10                time again.<sup>9</sup>

11           20.    NaviStone’s wiretaps intercept communications in real time. As *Gizmodo* put it,  
12           “before you hit ‘submit,’ this company has already logged your personal data.”<sup>10</sup> *Consumerist* also  
13           shared the same concern: “these forms collect your data even if you don’t hit ‘submit.’”<sup>11</sup>

14           21.    NaviStone’s wiretaps are engaged as soon as the visitor arrives at Moosejaw.com.  
15           By merely loading the main page on Moosejaw.com, with no other action, the visitor is connected  
16           to NaviStone’s wiretaps, which scan visitors’ computers for identifying information, and also  
17           intercept and monitor their communications.

18           22.    As the visitor interacts with Moosejaw.com, for example, by adding an item to a  
19           shopping cart, typing information onto a form, viewing an item, etc., all of these communications  
20           are captured and redirected to NaviStone in real time, through the wiretaps. Indeed, as will be  
21           demonstrated below, when NaviStone’s code is deployed on a webpage that contains an online  
22           form – such as a “sign up” page or an “account registration” page – the data is captured and  
23           redirected to NaviStone as it is typed. Visitors do not need click “Submit” on the form, or take any  
24           other action, for their communications to be intercepted and disclosed to NaviStone.

25           23.    NaviStone’s wiretaps are deployed on hundreds of e-commerce websites. Upon  
26           information and belief, NaviStone maintains and correlates its back-end database of User Data and  
27           PII across these hundreds of websites. For example, assume that Site X and Site Y are both running  
28           NaviStone’s wiretaps. Now, assume that a user provides her name and phone number to Site X, but

<sup>9</sup> <https://www.navistone.com/how-it-works>

<sup>10</sup> <https://gizmodo.com/before-you-hit-submit-this-company-has-already-logge-1795906081>

<sup>11</sup> <https://consumerist.com/2017/06/29/these-forms-collect-your-data-even-if-you-dont-hit-submit/>

1 not to Site Y. Through the use of NaviStone’s wiretaps and back-end database, NaviStone can de-  
 2 anonymize the user on Site Y and know her name and phone number, even though she never  
 3 provided that information to Site Y.

#### 4 **NaviStone’s Wiretaps In Action On Moosejaw.com**

5 24. Some aspects of the operation of NaviStone’s wiretaps on the Moosejaw.com  
 6 website can be observed using the Developer Tools Window in the Google Chrome browser. In the  
 7 images below, the Moosejaw.com website, as it appears normally through the browser is shown in  
 8 the left-hand side of the window, while the Developer Tools Network View, showing incoming and  
 9 outgoing transmissions, is shown in the right-hand window.

10 25. When Moosejaw.com is loaded into a browser, the website automatically retrieves a  
 11 computer file located on a remote server. One such example is the computer file named  
 12 “C1DFC24D045BDD.js,” which was hosted at <http://code.murdoog.com/onetag/>

The screenshot shows a web browser window with the URL <https://www.moosejaw.com/moosejaw/shop/home>. The page content includes a search bar, a large red banner for "50% BACK IN MOOSEJAW REWARD DOLLARS" with a "SHOP NOW" button, and a SOREL "25% OFF" banner. Below that is a THE NORTH FACE banner. The Developer Tools Network View is open, showing a list of requests. The first request is for "C1DFC24D045BDD.js" with a status of 200, type of script, and a size of 24.9 KB. The initiator is "home" and the time taken is 35 ms. The URL for this request is <https://code.murdoog.com/onetag/C1DFC24D045BDD.js>. The status bar at the bottom indicates "3 / 330 requests | 26.9 KB / 3.2 MB transferred | Finish: 3.1 min | DOMContentLoaded: 1.22 s | Load: 1.4...

26. The file “C1DFC24D045BDD.js” is 24.9 KB in size and contains computer code

1 written in a language called JavaScript. It appears as such:

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/*! MGX v2 [(c) 2015 MeLasa Group, llc. | melasagroup.com | moosejaw.com | origin onetag 10/19/2017 1:40:08 AM */
/*! 1.05 */
(function(n,t,i){n._MGX_LU=function(n){this.url=n;this.addParam=function(n,t){return typeof t=="undefined"||t==null||t=="?"?this:(this.url+this.url.indexOf("?")
<0?"?":"&"+this.url+"="+encodeURIComponent(t),this)};n._MGX_LG=function(n,i,r,u,f,e){try{var o=t.createElement("img"),s=t.getElementsByTagName("body")[0],h=new
_MGX_LU("https://apis.murdoog.com/mgx_2/visitation/pxLog?message");h.addParam("k",n).addParam("v",i).addParam("p",r).addParam("ms",f).replace(/(\r\n|\n|\r|
&[a-z]+);/g," ").replace(/[\s\uFEFF\uA0]+/g," ").addParam("st",e.replace(/(\r\n|\n|\r|&[a-z]+);/g," ").replace(/[\s\uFEFF\uA0]+/g,"
"));o.style="display:none";o.src=h.url;s&&s.appendChild(o)}catch(c){};try{if(/(googlebot|bingbot)/i.test(n.navigator.userAgent))return;i(n,t)}catch(r)
{[_MGX_LG("DFC24D045BDD",null,null,"100",r.message,r.stack)}]}(window,document,function(n,t){if(t.cookie.indexOf("_MGX_Dev=")>>1&&typeof n._MGX_Dev=="undefined")
n._MGX_Dev=unescape(t.cookie.split("_MGX_Dev=")[1].split(";")[0]);var i=_MGX_Dev.split(";"),u=new
n._MGX_LU("/api2.murdoog.com/dev/C1DFC24D045BDD.js").addParam("seq",typeof i[0]=="undefined"?i[0]:"").addParam("ver",typeof i[1]=="undefined"?
i[1]: "").addParam("wrp",typeof i[2]=="undefined"?i[2]: "");r=t.createElement("script");r.type="text/javascript";r.src=u.url;t.body.appendChild(r);console.log("Loading MGX
Dev Library "+_MGX_Dev)}else(function(n,t,i){typeof t[n]=="undefined"&&t[n]=new i(n,t,document)})(typeof
MGXNamespace=="undefined"?MGX:MGXNamespace,n,function(n,t,i,r){var u;returnInfo:{"MGX_Version":2.04,xxx(see MGX_Version for
subversion)},Timeout:1e4,Delay:1e3,ProspectingInterval:3e3,LoopInterval:1e3,CommitType:"jsonp",BaseApi:"https://apis.murdoog.com/mgx_2/C/RawData/",PixelApi:"https://apis.m
urdoog.com/mgx_2/C/Pixel/","ProspectingString":"","Debug":1,FrameRef:1,OverrideHost:1,Synchor:1,SyncUrl:1,Def:{"pageLoad":{"Label":"PageLoad"}},EmailParams:
{"RestrictedFields":"","RestrictedValues":"","Version":"2.04.023","AccessKey":"DFC24D045BDD","Prospecting":"B29260","BulkParam":{"cohcId","BaseUrl":["moosejaw.com"]},SuppressUrl:
[],PageLoadId:"",VisitorId:"",MgXVisitorId:"",SessionId:"",NewSession:"",Sequence:1,VisitSequence:1,RunOnce:0,KeyCode:"",Cid:"",Uid:"",Eid:"",Sid:"",Kid:"",Csi:"",JSON:t.t.J
SON,Title:i.title,Domain:t.location.hostname.split(".").length==2?"":t.location.hostname,t.location.hostname.slice(t.location.hostname.indexOf(".")),Url:t.location.href,
Protocol:t.location.protocol,Host:t.location.hostname,Path:t.location.pathname,Search:t.location.search,Hash:t.location.hash,Referrer:i.referrer,EmSent:
[],Em:"",UtmSource:"",UtmMedium:"",UtmCampaign:"",regex:{"Guid":["0-9a-f]{8}-[0-9a-f]{4}-[1-5][0-9a-f]{3}-[89ab][0-9a-f]{3}-[0-9a-f]{12}$/i,Email:/{[\\w-\\.]+@[\\w-\\.]+.[a-z]
{1,3}/i,Money:/\\$(\\d{1,3},)?\\.?\\d{2}/i},ev:{"cl:0, ch:0, su:0, sc:0},pg:{"pageLoad",restrict:
["identifier","priority","altFunction","preProcess","postProcess","waitFor"],procs:
["setPageType","setUid","setEid","setCsi","handleEm","handlePageLoad","handleProspecting","handleEvents","handleLoops"],cd:[],rs:[],main:function(n){var t=this;t.RunOnce||
t.RunOnce=1,t.FrameRef&&t.setFrame(),t.pg="pageLoad",(t.checkHost)||t.OverrideHost&&t.Delay?setTimeout(function()
{t._main(n),t.Delay:t._main(n)});_main:function(n){var r=this;_.each(n,function(n,i){try{r.log.add("BEGIN["+i+"]",r.Debug);[i]
();r.log.add("END["+i+"]",r.Debug)}catch(u){t._MGX_LG(r.AccessKey,r.VisitorId,r.PageLoadId,"200",u.message,u.stack);r.log.add("ERROR["+i+"]":
"+u.message,r.getCallStack(u),r.Debug)});typeof r.completed=="function"&&r.completed();typeof
t._MGX_Ready=="function"&&t._MGX_Ready();r.getCookie("MGX_Analyze")!=""&&setTimeout(function(){if(typeof t._MGXA=="undefined"){var
n=i.createElement("script");n.src="https://code.murdoog.com/js/mgxa.js";n.type="text/javascript";i.body.appendChild(n)}else t._MGXA(),2e3}},init:function()
{this.log.add("INFO[init]: Start MGX Init function",this.Debug);var
t=this.getCookie("MGX_P"),i=this.getCookie("MGX_U"),n=this.getCookie("MGX_PX"),r=this.getCookie("MGX_CID");this.NewSession=n=="?"?"1":"0";this.regex.Guid.test(t)||
(t=this.uid());this.setCookie("MGX_P",t,365);this.VisitorId=t;this.regex.Guid.test(i)||
(i=this.uid());this.setCookie("MGX_U",i,365);this.MgXVisitorId=i;this.regex.Guid.test(n)||
(n=this.uid());this.setCookie("MGX_PX",n);this.SessionId=n;this.regex.Guid.test(r)||
(r=this.uid());this.setCookie("MGX_CID",r,365);this.Cid=r;this.setUid();this.log.add("INFO[init]: End MGX Init
function",this.Debug);run:function(){var n=this;n.RunOnce?
(n.RunOnce=0,n.Referrer=n.Url,n.Url=t.location.href,n.Protocol=t.location.protocol,n.Host=t.location.hostname,n.Path=t.location.pathname,n.Search=t.location.search,n.Hash=
t.location.hash,n.Sequence=1,n.VisitSequence=1,n.setCookie("MGX_E",n.stringify({p:n.PageLoadId,d:n.ev}),null,10),n.ev=
{"cl:0, ch:0, su:0, sc:0"},n.init(),n.main(["setPageType","handleEm","handlePageLoad","handleEvents"]);n.main(n.procs);error:function(){return typeof
n=="string"?n.replace(/[\s\uFEFF\uA0]+/g,""):n;return this.getText(i.getElementsByTagName("body")[0]),cleanText:function(n)
{return typeof n=="string"?n.replace(/(\r\n|\n|\r|&[a-z]+);/g," ").replace(/[\s\uFEFF\uA0]+/g," "):""},getText:function(n){if(typeof n=="undefined"return"";var
i=this,t="";try{t=n.innerText||n.textContent}catch(n){this.log.add("ERROR[getText]: "+n.message,this.getCallStack(n),this.Debug)}return
this.trim(this.cleanText(t)),getValue:function(n){var t="";if(typeof n=="undefined"return t;switch(n.nodeName){case"INPUT":switch(n.type)
{case"text":case"hidden":case"password":case"button":case"reset":case"submit":case"color":case"date":case"datetime":case"datetime-
local":case"month":case"week":case"time":case"email":case"number":case"range":case"search":case"tel":case"url":t=n.value;break;case"checkbox":case"radio":n.checked&&
(=n.value)}break;case"TEXTAREA":t=n.value;break;case"SELECT":switch(n.type){case"select-one":t=n.value;break;case"select-multiple":for(j=n.options.length-1;j>=0;j=j-
1)n.options[j].selected&&(t+=t1+"": "+n.options[j].value)}break;case"BUTTON":switch(n.type){case"reset":case"submit":case"button":t=n.value}return
this.trim(t);getRegex:function(n,t){if(typeof t!="string"return"";var i=n.exec(t);return i==null?this.isDefned(i[0]):""},elems:function(n,t){var i=this;return typeof
n=="string"?i.$(n,t):i.type(n)=="array"?i.$(n,t):i.type(n)=="htmlcollection"?n:[n]},sText:function(n,t){var i=this,r="";u=i.elems(n,t);return u.length&&_.each(u,function(n,t){var
u=i.getText(t);u!=""&&(r+=r1+"": "+u)}),r},sRegex:function(n,t,i){var r=this,u="",f=r.elems(t,i);return f.length&&_.each(f,function(t,i){var

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15 The top line of the code contains a comment indicating that it is to be used on “Moosejaw.com.”

16 However, the remainder of the code lacks comments, explanations, proper indenting, or intelligible  
17 names for variables. Essentially, this code is obfuscated.

18 27. The domain “code.murdoog.com,” which deploys this code, is owned and operated  
19 by NaviStone.

20 28. Next, the code in C1DFC24D045BDD.js is executed, with no further actions by the  
21 user, or prompting by Moosejaw or NaviStone. This immediately begins intercepting the visitors’  
22 electronic communications and transmitting them to https://apis.murdoog.com/

The screenshot shows a web browser window with the URL <https://www.moosejaw.com/moosejaw/shop/home>. The page features a 'CYBER MONDAY DEAL' banner for SOREL with a 25% OFF discount and a 'SHOP NOW' button. Below it is another banner for THE NORTH FACE with a 40% OFF discount. On the right side, a network developer tool is open, showing a list of intercepted requests. The first request is a script from 'home' with a size of 24.9 KB and a time of 35 ms. The second request is a script from 'home' with a size of 1.0 KB and a time of 92 ms. The third request is a script from 'home' with a size of 1.0 KB and a time of 12 ms. The tool also shows a waterfall chart and a summary of 3/390 requests, 26.9 KB / 3.2 MB transferred, and a finish time of 7.5 min.

29. The domain “apis.murdoog.com” is also owned and operated by NaviStone.

30. The intercepted communications are encoded in a format called Base64. When decoded, they appear as such:

```
{
  "v": "4d27f1a2-866c-4a6e-8dff-0e25babe177b",
  "m": "08ec4766-4a7a-464d-a6c8-0b021c10124e",
  "csi": "2003644151",
  "se": "86d1748b-f3ea-48e2-9cf0-5a45c85d699b",
  "p": "e6cb9e61-fa6c-4e44-83eb-58f9ee2d5e6a",
  "u": "https://www.moosejaw.com/moosejaw/shop/home",
  "pn": "/moosejaw/shop/home",
  "t": "North Face Jackets | Patagonia Jackets | Arcteryx Jackets | Mountain Hardwear",
  "c": "https://www.moosejaw.com/moosejaw/shop/home",
  "pr": "B2926D",
  "eid": "ns_seg_100",
  "sid": "30594e2641630c11abd0dd73b8c4061e",
  "s": 2,
  "vs": 1,
  "l": "Action",
  "v01": "Eid",
  "v02": "ns_seg_100"
}
```

Based on information and belief, other portions of these intercepted data (which are obfuscated such that they are machine-readable but are not readable by humans) include a timestamp, an ID number, the user’s IP address, and other PII.



duct\_Moosejaw-Men-s-The-Jack-Pullover-Hoody\_10273018\_10208\_10000001\_-1\_","pr":"B2926D","eid":"ns\_seg\_100","sid":"30594e2641630c11abd0dd73b8c4061e","s":3,"vs":7,"l":"Action","v01":"AddToCart","v03":"CartClick","v04":"/moosejaw/shop/product\_Moosejaw-Men-s-The-Jack-Pullover-Hoody\_10273018\_10208\_10000001\_-1\_"}qem\$g

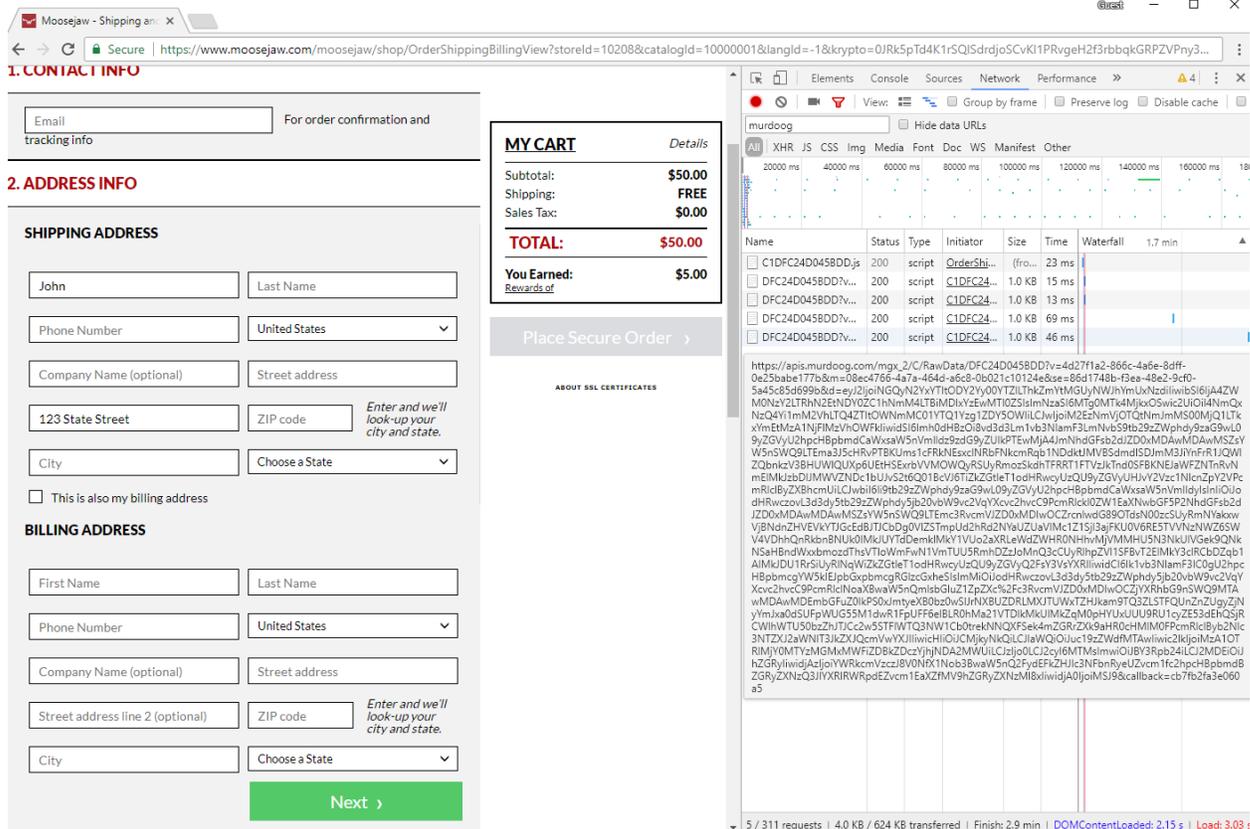
33. When filling out forms, any PII the user provides is immediately, automatically, and secretly transmitted to NaviStone in real-time. Here, the user has just arrived on the “Checkout” page, and has not entered any information yet:

The screenshot shows the Moosejaw checkout page. The page includes a sign-in section, contact information, address information, and a shopping cart summary. The shopping cart summary shows a subtotal of \$50.00, free shipping, and a total of \$50.00. The user has earned \$5.00 in rewards. The network developer tool is open, showing a list of requests including C1DFC24D045BDD7v... and DFC24D045BDD7v... with details on status, type, initiator, size, and time.

Name	Status	Type	Initiator	Size	Time	Waterfall
C1DFC24D045BDD7v...	200	script	OrderShi...	(fro...	23 ms	
DFC24D045BDD7v...	200	script	C1DFC24...	1.0 KB	15 ms	
DFC24D045BDD7v...	200	script	C1DFC24...	1.0 KB	13 ms	

34. Now, the user has entered his name “John.” A transmission is automatically, immediately, and secretly made to NaviStone:

35. Now, the user has entered his address at “123 State Street.” Again, another transmission is automatically, immediately, and secretly made to NaviStone:



36. By intercepting these communications, NaviStone is able to learn the identity of the visitor. As NaviStone boasts, it is capable of matching “60-70% of your anonymous site traffic to Postal names and addresses.”<sup>12</sup>

**Other Allegations Common To All Claims**

37. Defendants, as corporations, are “persons.”

38. Plaintiff’s and Class Members’ keystrokes, mouse clicks, and other interactions with Moosejaw.com are “electronic communications.”

39. For at least some of the communications at issue, neither Moosejaw nor NaviStone was an intended recipient of the communication. For example, Mr. Revitch has never made any purchase from Moosejaw. Thus, any datafiles retrieved from his device, or any information he may have typed onto forms without clicking submit, or any keystrokes, mouse clicks, or similar touch gestures intercepted through the wiretaps, were communications with Mr. Revitch’s Internet service provider for the purpose of accessing web content, and were not communications with Moosejaw or

<sup>12</sup> *Id.*

1 NaviStone. They were not communications to which Moosejaw or NaviStone were intended to be  
2 parties.

3 40. At the time Defendants implemented the wiretaps on Moosejaw.com, they intended  
4 to commit tortious acts including disclosures of the intercepted information which violated the  
5 California Invasion of Privacy Act, Cal. Penal Code §§ 631, 632, and 635; violated the privacy  
6 rights under the California Constitution; violated California's Consumers Legal Remedies Act,  
7 Civil Code §§ 1750, *et seq.*; and violated California's Unfair Competition Law, Bus. & Prof. Code  
8 §§ 17200, *et seq.*

9 41. Defendants' actions complained of herein, including secretly and instantaneously  
10 capturing and redirecting the keystrokes, mouse clicks, and other electronic communications of  
11 website visitors, are not necessary practices for owners, operators, and developers of Internet  
12 websites, nor are they incidental to the act of facilitating a website or e-commerce transactions.  
13 None of these actions was undertaken in the ordinary course of business. On the contrary, these  
14 actions are contrary to the legitimate expectations of website visitors, and are contrary to established  
15 industry norms. So much so that they were the subject of multiple exposés in industry publications,  
16 as discussed above.

17 42. Defendants' actions are and have been intentional as evidenced by, *inter alia*, their  
18 design and implementation of the software wiretaps on Moosejaw.com, their use of wiretaps to  
19 access files on visitors' computers that are unrelated to the Moosejaw.com website, and their  
20 disclosures and uses of the intercepted data files and communications for profit.

### 21 **CLASS ACTION ALLEGATIONS**

22 43. Plaintiff seeks to represent a class all persons in the State of California whose  
23 electronic or stored communications were intercepted through the use of NaviStone's wiretaps on  
24 Moosejaw.com (the "Class").

25 44. Members of the Class are so numerous that their individual joinder herein is  
26 impracticable. On information and belief, members of the Class number in the millions. The  
27 precise number of Class members and their identities are unknown to Plaintiff at this time but may  
28 be determined through discovery. Class members may be notified of the pendency of this action by

1 mail and/or publication through the distribution records of Defendants.

2           45. Common questions of law and fact exist as to all Class members and predominate  
3 over questions affecting only individual Class members. Common legal and factual questions  
4 include, but are not limited to, whether Defendants have violated the California Invasion of Privacy  
5 Act (“CIPA”), Cal. Penal Code §§ 631, 632, and 635; have invaded Plaintiff’s privacy rights in  
6 violation of the California Constitution; have intruded upon the seclusion of Plaintiff; have violated  
7 California’s Consumers Legal Remedies Act, Civil Code §§ 1750, *et seq.*; have violated  
8 California’s Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et seq.*, and have committed  
9 other tortious acts as described herein.

10           46. The claims of the named Plaintiff are typical of the claims of the Class because the  
11 named Plaintiff, like all other class members, visited Moosejaw.com and had his electronic  
12 communications intercepted and disclosed to NaviStone through the use of NaviStone’s wiretaps.

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

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

28           49. Plaintiff brings all claims in this action individually and on behalf of members of the

1 Class against Defendants.

2 **COUNT I**  
3 **Violation Of The California Invasion Of Privacy Act,**  
4 **Cal. Penal Code § 631**

5 50. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set  
6 forth herein.

7 51. Plaintiff brings this claim individually and on behalf of the members of the proposed  
8 Class against Defendants.

9 52. California Penal Code § 631(a) provides, in pertinent part:

10 Any person who ... willfully and without the consent of all parties to  
11 the communication, or in any unauthorized manner, reads, or attempts  
12 to read, or to learn the contents or meaning of any message, report, or  
13 communication while the same is in transit or passing over any wire,  
14 line, or cable, or is being sent from, or received at any place within  
15 this state; or who uses, or attempts to use, in any manner, or for any  
16 purpose, or to communicate in any way, any information so obtained,  
17 or who aids, agrees with, employs, or conspires with any person or  
18 persons to lawfully do, or permit, or cause to be done any of the acts  
19 or things mentioned above in this section, is punishable by a fine not  
20 exceeding two thousand five hundred dollars ....

21 53. At all relevant times, by implementing NaviStone's wiretaps on Moosejaw.com,  
22 each Defendant intentionally accessed, intercepted, read, learned, and/or collected the electronic  
23 communications of Plaintiff and Class Members, and procured the other Defendant to do so.

24 54. When visiting Moosejaw.com, Plaintiff and Class Members had an objectively  
25 reasonable expectation of privacy. Plaintiff and Class Members did not reasonably expect that  
26 Defendants would intentionally access, intercept, read, learn, and collect Plaintiff and Class  
27 Members' electronic communications.

28 55. Plaintiff and Class Members did not consent to any of Defendants' actions in  
implementing NaviStone's wiretaps on Moosejaw.com. Nor have Plaintiff or Class Members  
consented to Defendants' intentional access, interception, reading, learning, and collection of  
Plaintiff and Class Members' electronic communications.



1 Defendants would intentionally use an electronic amplifying or recording device to eavesdrop upon  
2 and record the confidential communications of Plaintiff and Class Members.

3 65. Plaintiff and Class Members did not consent to any of Defendants' actions in  
4 implementing NaviStone's wiretaps on Moosejaw.com. Nor have Plaintiff or Class Members  
5 consented to Defendants' intentional use of an electronic amplifying or recording device to  
6 eavesdrop upon and record the confidential communications of Plaintiff and Class Members.

7 66. Plaintiff and Class Members have suffered loss by reason of these violations,  
8 including, but not limited to, violation of the right of privacy and loss of value in their PII.

9 67. Unless restrained and enjoined, Defendants will continue to commit such illegal acts.

10 68. Pursuant to Cal. Penal Code § 637.2, Plaintiff and Class Members have been injured  
11 by the violations of Cal. Penal Code § 632, and each seek damages for the greater of \$5,000 or three  
12 times the amount of actual damages, as well as injunctive relief.

13  
14 **COUNT III**  
**Violation Of The California Invasion Of Privacy Act,**  
**Cal. Penal Code § 635**

15 69. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set  
16 forth herein.

17 70. Plaintiff brings this claim individually and on behalf of the members of the proposed  
18 Class against Defendants.

19 71. California Penal Code § 635 provides, in pertinent part:

20  
21 Every person who manufactures, assembles, sells, offers for sale,  
22 advertises for sale, possesses, transports, imports, or furnishes to  
23 another any device which is primarily or exclusively designed or  
24 intended for eavesdropping upon the communication of another, or  
25 any device which is primarily or exclusively designed or intended for  
26 the unauthorized interception or reception of communications  
27 between cellular radio telephones or between a cellular radio  
28 telephone and a landline telephone in violation of Section 632.5, or  
communications between cordless telephones or between a cordless  
telephone and a landline telephone in violation of Section 632.6 ,  
shall be punished by a fine not exceeding two thousand five hundred  
dollars ....





**COUNT VI**  
**Violation Of California’s Consumers Legal Remedies Act,**  
**Civil Code §§ 1750, et. seq.**  
**(Injunctive Relief Only)**

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3       93.     Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set  
4 forth herein.

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

7       95.     CLRA § 1770(a)(5) prohibits “[r]epresenting that goods or services have  
8 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not  
9 have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she  
10 does not have.” Defendants violated this provision by representing that their website and online  
11 services have characterics, uses, and benefits which they do not have.

12       96.     At the time Defendants made their misrepresentations and omissions, they were  
13 aware that they had installed a wiretap on Moosejaw.com.

14       97.     Plaintiff and Class members suffered injuries caused by Defendants’  
15 misrepresentations and omissions because: (a) Plaintiff suffered an invasion of his privacy as a  
16 result of Defendants’ wiretap on Moosejaw.com, and (b) Plaintiff was deprived of any income that  
17 Defendants generated through their unauthorized use or sale of Plaintiff’s data.

18       98.     Prior to the filing of this Complaint, a pre-suit notice letter was served on Defendants  
19 that complied in all respects with California Civil Code § 1782(a). On November 9, 2018, Plaintiff  
20 Revitch, by and through his counsel, sent Defendants letters via certified mail, return receipt  
21 requested, advising Defendants they were in violation of the CLRA and must correct, repair,  
22 replace, or otherwise rectify the goods alleged to be in violation of § 1770.

23       99.     Pursuant to California Civil Code § 1780(d), attached is an affidavit showing this is  
24 the proper forum.

25       100.    Wherefore, Plaintiff seeks injunctive relief only under the CLRA in the form of a  
26 Court order requiring Defendants to immediately cease their wiretap activity and purge their extant  
27 data acquired through the wiretaps on Moosejaw.com.  
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**COUNT VII**  
**Violation Of California's Unfair Competition Law,**  
**Cal. Bus. & Prof. Code §§ 17200-17210**

101. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

102. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Defendants.

103. By committing the acts and practices alleged herein, Defendants violated California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200-17210 by engaging in unlawful, fraudulent, and unfair conduct.

104. Defendants violated the UCL's proscription against engaging in unlawful conduct as a result of: (a) their violations of the CLRA, Cal. Civ. Code § 1770(a)(5), as alleged above; (b) their violations of the California Invasion of Privacy Act, as alleged above; (c) their intrusion upon the seclusion of Plaintiff, as alleged above; and (d) their violation of the privacy rights of Plaintiff under the California Constitution, as alleged above.

105. Defendants' acts and practices described above also violate the UCL's proscription against engaging in fraudulent conduct. As more fully described above, Defendants' statements and omissions about the wiretaps on Moosejaw.com was likely to deceive reasonable consumers. Said acts are fraudulent business practices.

106. Defendants' acts and practices described above also violate the UCL's proscription against engaging in unfair conduct.

107. Plaintiff and Class members suffered injuries caused by Defendants' misrepresentations because: (a) Plaintiff suffered an invasion of their privacy as a result of Defendants' wiretap on Moosejaw.com, and (b) Plaintiff was deprived of any income that Defendants generated through their unauthorized use or sale of Plaintiff's data.

108. There is no benefit to consumers or competition from installing wiretaps on Moosejaw.com.

1 109. Plaintiff and the other Class members had no way of reasonably knowing that  
2 Defendants had installed wiretaps on Moosejaw.com. Thus, they could not have reasonably  
3 avoided the injury each of them suffered.

4 110. The gravity of the consequences of Defendants' conduct as described above  
5 outweighs any justification, motive, or reason therefore, particularly considering the available legal  
6 alternatives which exist in the marketplace, and such conduct is immoral, unethical, unscrupulous,  
7 offends established public policy, or is substantially injurious to Plaintiff and other Class members.

8 111. Pursuant to California Business and Professional Code § 17203, Plaintiff and the  
9 Class seek an order of this Court that includes, but is not limited to, an order requiring Defendants  
10 to: (a) provide compensation to Plaintiff and the Class for their invasion of privacy; (b) disgorge all  
11 revenues obtained as a result of violations of the UCL; and (c) pay Plaintiff's attorneys' fees and  
12 costs.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks  
15 judgment against Defendants, as follows:

- 16 a. For an order certifying the Class under Rule 23 and naming Plaintiff as the  
17 representative of the Class and Plaintiff's attorneys as Class Counsel to represent the  
18 Class;
- 19 b. For an order declaring that the Defendants' conduct violates the statutes referenced  
20 herein;
- 21 c. For an order finding in favor of Plaintiff and the Class on all counts asserted herein;
- 22 d. For compensatory, punitive, and statutory damages in amounts to be determined by  
23 the Court and/or jury;
- 24 e. For prejudgment interest on all amounts awarded;
- 25 f. For an order of restitution and all other forms of equitable monetary relief;
- 26 g. For injunctive relief as pleaded or as the Court may deem proper; and
- 27 h. For an order awarding Plaintiff and the Class their reasonable attorneys' fees and  
28 expenses and costs of suit.

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**DEMAND FOR TRIAL BY JURY**

Plaintiff demands a trial by jury of all issues so triable.

Dated: November 9, 2018

Respectfully submitted,

**BURSOR & FISHER, P.A.**

By: /s/ L. Timothy Fisher  
L. Timothy Fisher

L. Timothy Fisher (State Bar No. 191626)  
Joel D. Smith (State Bar No. 244902)  
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*Attorneys for Plaintiff*

**CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

I, L. Timothy Fisher, declare as follows:

1. I am counsel for Plaintiff, and I am a partner at Bursor & Fisher, P.A. I make this declaration to the best of my knowledge, information, and belief of the facts stated herein.

2. The complaint filed in this action is filed in the proper place for trial because a substantial portion of the transaction occurred in this District, in that Plaintiff alleges that each of the Defendants have purposefully availed themselves of the laws and benefits of doing business in this State, and Plaintiff's claims arise out of each of the Defendants' forum-related activities. Moreover, Plaintiff resides in this District.

3. Plaintiff alleges that he browsed Defendant Moosejaw's website at Moosejaw.com while shopping for outerwear. Plaintiff further alleges that his keystrokes, mouse clicks, and other electronic communications were intercepted in real time and were disclosed to NaviStone through Moosejaw's use of NaviStone's wiretaps. Plaintiff alleges that he was unaware at the time that his keystrokes, mouse clicks, and other electronic communications were being intercepted and disclosed to a third party. Plaintiff alleges that in all reasonable probability, he would not have browsed or visited Moosejaw's website at Moosejaw.com, or would have visited the site on materially different terms, had he known the truth about Defendants' wiretaps.

4. Plaintiff alleges that Defendants' omissions concerning its wiretaps played a substantial part, and so had been a substantial factor, in his decision to browse and visit Moosejaw's website at Moosejaw.com.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on November 9, 2018 at Walnut Creek, California.

*/s/ L. Timothy Fisher*

L. Timothy Fisher



**BURSOR & FISHER**  
P.A.

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November 9, 2018

**Via Certified Mail – Return Receipt Requested**

New Moosejaw, LLC  
32200 North Avis, Suite 100  
Madison Heights, MI 48071

NaviStone, Inc.  
1308 Race Street  
Cincinnati, OH 45202

*Re: Demand Letter Pursuant to California Civil Code § 1782*

To Whom It May Concern:

This letter serves as a preliminary notice and demand for corrective action by New Moosejaw, LLC (“Moosejaw”) and NaviStone, Inc. (“NaviStone”), pursuant to the provisions of California Civil Code § 1782, on behalf of our client, Jeremiah Revitch, and a class of all similarly persons in the State of California whose electronic or stored communications were intercepted through the use of NaviStone’s wiretaps on Moosejaw.com (the “Class”).

Mr. Revitch alleges that Moosejaw and NaviStone have wiretapped visitors to Moosejaw’s website, Moosejaw.com. The wiretaps, which are secretly embedded in the computer code on Moosejaw.com, are used by Moosejaw and NaviStone to scan the user’s computer in search of files that can be used to de-anonymize and identify the user, and also to observe visitors’ keystrokes, mouse clicks, and other electronic communications in real time for the purpose of gathering Personally Identifiable Information (“PII”) to de-anonymize those visitors – that is, to match previously unidentifiable website visitors to obtain their names and home addresses, along with detailed data concerning their browsing habits. These wiretaps enable Moosejaw and NaviStone to immediately, automatically, and secretly observe the keystrokes, mouse clicks, and other electronic communications of visitors regardless of whether the visitor ultimately makes a purchase from Moosejaw.

Mr. Revitch browsed Moosejaw’s website at Moosejaw.com while shopping for outerwear. Although Mr. Revitch never purchased anything from Moosejaw or NaviStone and never consented to any interception, disclosure, or use of his electronic communications, Mr. Revitch’s keystrokes, mouse clicks, and other electronic communications were intercepted in real time and were disclosed to NaviStone through Moosejaw’s use of NaviStone’s wiretaps.

Mr. Revitch was unaware at the time that his keystrokes, mouse clicks, and other electronic communications were being intercepted and disclosed to a third party.

By misrepresenting the characteristics of the Moosejaw website, Moosejaw and NaviStone have violated and continue to violate subsections (a)(5) of the California Consumers Legal Remedies Act, Civil Code § 1770.

On behalf of our client and the Class, we hereby demand that Moosejaw and NaviStone immediately (1) purge their extant user data acquired through these wiretaps; (2) uninstall and cease their extant wiretaps; and (3) make full restitution to all users whose data have been collected through their wiretaps.

We also demand that Moosejaw and NaviStone preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to, the following:

1. All documents concerning the research, development, design, and/or testing of the alleged wiretaps;
2. All documents concerning the advertisement and marketing of the alleged wiretaps;
3. All documents concerning privacy disclosures for Moosejaw.com;
4. All documents concerning the collection of user data from visitors of Moosejaw.com; and
5. All documents concerning the total revenue derived from the monetization of user data from visitors of Moosejaw.com, for the State of California.

If you contend that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents immediately upon receipt of this letter.

This letter also serves as a thirty (30) day notice and demand requirement under Cal. Civ. Code § 1782 for damages. Accordingly, should you fail to rectify the situation on a class-wide basis within 30 days of receipt of this letter, we will seek actual damages, plus punitive damages, interest, attorneys' fees and costs.

Please contact me right away if you wish to discuss an appropriate way to remedy this matter. If I do not hear from you promptly, I will take that as an indication that you are not interested in doing so.

Very truly yours,

A handwritten signature in blue ink, appearing to read "L. Timothy Fisher". The signature is written in a cursive style with a large, sweeping flourish at the end.

L. Timothy Fisher