

IN THE CIRCUIT COURT OF MILLER COUNTY, ARKANSAS

LANE'S GIFTS AND COLLECTIBLES,
L.L.C., U.S. CITIZENS FOR FAIR CREDIT
CARD TERMS, INC., SAVINGS 4
MERCHANTS, INC., AND MAX CAULFIELD
d/b/a CAULFIELD INVESTIGATIONS,
INDIVIDUALLY AND AS
CLASS REPRESENTATIVES ON BEHALF
OF ALL SIMILARLY SITUATED PERSONS,

Plaintiffs,

Vs.

YAHOO! INC., OVERTURE SERVICES,
INC., TIME WARNER INC., AMERICA
ONLINE, INC., NETSCAPE
COMMUNICATIONS CORPORATION,
ASK JEEVES, INC., BUENA VISTA INTERNET
GROUP D/B/A GO.COM, GOOGLE INC.,
LYCOS, INC., LOOKSMART, LTD., and
FINDWHAT.COM, INC.

Defendants.

CASE NO. CV-2005-52-1

NATIONAL CLASS ACTION

PLAINTIFFS' SECOND AMENDED CLASS COMPLAINT

COME NOW, Plaintiffs Lane's Gifts and Collectibles, L.L.C., U.S. Citizens for Fair Credit Card Terms, Inc. Savings 4 Merchants, Inc. and Max Caulfield d/b/a Caulfield Investigations, Individually and as Class Representatives on Behalf of All Similarly Situated Persons, and submit the following First Amended Class Complaint against Yahoo! Inc., Overture Services, Inc., Time Warner Inc., America Online, Inc., Netscape Communications Corporation, Ask Jeeves, Inc., Buena Vista Internet Group d/b/a Go.com, Google Inc., Lycos, Inc., Looksmart, Ltd., and FindWhat.com, Inc. (hereinafter referred to as "Defendants").

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JUDY C. LANGLEY, CLERK
BY *[Signature]* DEPUTY
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INTRODUCTION AND NATURE OF CASE

1. Defendants are internet search engines and/or corporate entities providing web search capabilities and sell Pay Per Click (hereinafter referred to as "PPC") advertising.
2. Defendants collected and or shared revenues for the PPC advertising charged to Plaintiffs.
3. In 2004, PPC advertising revenues were approximately \$4 billion dollars nationwide.
4. Defendants charged and/or collected revenue for PPC advertising from Plaintiffs and Class which was not generated by actual consumer click through advertising.
5. Accordingly, Plaintiffs and all other similarly situated persons and/or members of the Class were charged for services which were not provided by Defendants.

PARTIES

6. Plaintiff, Lane's Gifts and Collectibles, L.L.C. is an Arkansas Corporation.
7. Plaintiff U.S. Citizens for Fair Credit Card Terms, Inc. is an Arkansas Corporation.
8. Plaintiff Savings 4 Merchants, Inc. is a California Corporation.
9. Plaintiff Max Caulfield d/b/a Caulfield Investigations is an individual d/b/a Caulfield Investigations and is a Florida resident.
10. Defendant Yahoo! Inc. is a Delaware Corporation that has done business in the State of Arkansas in the past and has not appointed a registered agent for service in the State of Arkansas. Accordingly, service may be made by serving its Registered Agent for service of process at Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.
11. Defendant Overture Services, Inc. is a Delaware Corporation that has done business in the State of Arkansas in the past and has not appointed a registered agent for service in the State of Arkansas. Accordingly, service may be made by serving its Registered Agent for service of

process at Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808.

12. Defendant Time Warner, Inc. is a Delaware Corporation that has done business in the State of Arkansas in the past and has not appointed a registered agent for service in the State of Arkansas. Accordingly, service may be made by serving its Registered Agent for service of process at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801.

13. Defendant America Online, Inc. is a Delaware Corporation that has done business in the State of Arkansas in the past and has not appointed a registered agent for service in the State of Arkansas. Accordingly, service may be made by serving its Registered Agent for service of process at The Prentice-Hall Corporation System, Inc., 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808.

14. Defendant Netscape Communications Corporation is a Delaware Corporation that has done business in the State of Arkansas in the past and has not appointed a registered agent for service in the State of Arkansas. Accordingly, service may be made by serving its Registered Agent for service of process at Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808.

15. Defendant Ask Jeeves, Inc. is a Delaware Corporation that has done business in the State of Arkansas in the past and has not appointed a registered agent for service in the State of Arkansas. Accordingly, service may be made by serving its Registered Agent for service of process at National Registered Agents, Inc., 9 East Loockerman Street, Suite 1B, Dover, Delaware, 19901.

16. Defendant Buena Vista Internet Group d/b/a Go.com is a California Corporation that has done business in the State of Arkansas in the past and has not appointed a registered agent for service in the State of Arkansas. Accordingly, service may be made by serving its Registered

Agent for service of process at Marsha L. Reed, 500 S. Buena Vista Street, Burbank, California 91521.

17. Defendant Google Inc. is a Delaware Corporation that has done business in the State of Arkansas in the past and has not appointed a registered agent for service in the State of Arkansas. Accordingly, service may be made by serving its Registered Agent for service of process at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801.

18. Defendant Lycos, Inc. is a Delaware Corporation that has done business in the State of Arkansas in the past and has not appointed a registered agent for service in the State of Arkansas. Accordingly, service may be made by serving its Registered Agent for service of process at The Prentice-Hall Corporation System, Inc., 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808.

19. Defendant Looksmart, Ltd. is a Delaware Corporation that has done business in the State of Arkansas in the past and has not appointed a registered agent for service in the State of Arkansas. Accordingly, service may be made by serving its Registered Agent for service of process at Corporate Agents, Inc., 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808.

20. Defendant FindWhat.com, Inc. is a Delaware Corporation that has done business in the State of Arkansas in the past and has not appointed a registered agent for service in the State of Arkansas. Accordingly, service may be made by serving its Registered Agent for service of process at Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808.

JURISDICTION AND VENUE

21. This is a Class Action lawsuit seeking monetary damages and equitable relief pursuant to Arkansas Rule of Civil Procedure 23. Plaintiffs file this lawsuit for the purpose of certifying a nationwide class of Plaintiffs pursuant to A.R.C.P. 23.

22. This Court has personal jurisdiction over Defendants by virtue of the extensive amount of business each Defendant regularly conducts within the State of Arkansas and, further, because of the specific conduct at issue relating to Plaintiff and the Class. Defendants are amenable to service under the Arkansas long-arm statute and the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.

23. Plaintiff Lane's Gifts and Collectibles, L.L.C., the proposed Class Representative, is a citizen of Arkansas and resident of Miller County. Venue is proper in Miller County, Arkansas, pursuant to Ark. Code Ann. Section 16-55-213(b) as Miller County is the residence of this properly joined named Class Representative.

24. Plaintiff Savings 4 Merchants, Inc. is a California Corporation. Defendant Buena Vista is a California Corporation. In addition, Defendants Yahoo! Inc., Overture Services, Inc., Netscape Communications Corporation, Ask Jeeves, Inc., Google Inc., and Looksmart, Ltd. have their principal place of business in California. As a result, one or more Defendants are California residents. Further, Max Caulfield d/b/a Caulfield Investigations, an individual d/b/a Caulfield Investigations, is a Florida resident. Defendant Findwhat.com, Inc. is likewise a Florida Corporation with its principal place of business in that same state. Because there are citizens of the same state who are both Plaintiffs and Defendants, complete diversity of citizenship does not exist for purposes of federal jurisdiction. As such, removal to federal court by one or more Defendants would be patently frivolous and constitute additional acts in furtherance of the conspiracy alleged in this complaint.

RELEVANT FACTUAL BACKGROUND

25. At all times relevant to this cause of action, Defendants have been providing online PPC advertising for Plaintiffs and all other similarly situated members of the Class.
26. At all times relevant to this cause of action, Defendants have billed and/or collected revenue for PPC advertising from Plaintiffs and all other members of the putative Class.
27. Defendants have collected revenue for illegitimate PPC advertising traffic which was not made by or generated by bona fide consumers. As a result, Defendants billed and collected fees for PPC advertising which was not provided to Plaintiffs.
28. Further, Defendants overcharged Plaintiffs for PPC advertising.

CLASS ALLEGATIONS

29. Plaintiffs bring this cause of action individually and on behalf all other similarly situated individuals and/or persons, pursuant to A.R.C.P. 23.
30. Plaintiffs define this Class as any and all persons and/or entities who:
 - a. were overcharged for PPC advertising by Defendants.
31. The following persons and/or entities are excluded from the Class:
 - a. Persons and/or entities who timely opt-out of this proceeding using the correct protocol for opting-out that will be formally established by this Court;
 - b. Any and all federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels and/or subdivisions; and
 - c. Any currently sitting Arkansas state court judge and/or justice in the current style and/or any persons within the third degree of consanguinity to such judge and/or justice.
 - d. Any person or entity who had filed a lawsuit against Defendants for overcharging for PPC advertising.

32. In the unlikely event that the Court should determine not to certify a nationwide Class, then in the alternative, Plaintiffs seek certification of an Arkansas only Class. Based upon information and belief, the Class is comprised of hundreds of thousands of individuals who are geographically disbursed across the United States and tens of thousands disbursed across Arkansas. As a result, joinder of individual Plaintiffs is impracticable. The disposition of Plaintiffs' claim will provide a substantial benefit to the persons and the court system by using Rule 23 as the vehicle to adjudicate the rights of hundreds of thousands of individuals and/or entities in one cause of action. Joining and naming each Class Member as a co-Plaintiff is unreasonable and unpracticable. Such a requirement would only result in Defendants' retention of money which is necessary to compensate the Class to remedy and/or remediate the damage caused by Defendants' defective product.

33. There is a well defined commonality of interests in common questions of law and fact that affect Class Members. As to the Class, there are common questions of law and fact which predominate over any questions affecting individual Class Members which include, but are not limited to:

- a. Whether Defendants overcharged Plaintiffs for internet PPC advertising;
- b. Whether Defendants knowingly and intentionally overcharged Plaintiffs;
- c. Whether restitution is the appropriate remedy for Class Members;
- d. Whether Defendants and all others in the chain of advertising and/or revenue sharing scheme are liable for the overcharging which may have been committed in whole or in part by third parties;
- e. Whether Defendants were complicit in the overcharging;
- f. Whether Class Members are entitled to monetary damages for Defendants wrongful collection of PPC advertising revenues and/or charges;

- g. Whether Class Members are entitled to an injunction requiring Defendants to cease and desist from collecting illegal and/or illegitimate PPC advertising revenue;
- h. Whether Defendants are required to pay reasonable and necessary attorneys' fees and costs associated with prosecuting this lawsuit.

34. Claims asserted by the Plaintiffs are typical of the claims of the Class. The Class and Plaintiffs have all been charged by Defendants for internet PPC advertising which should not have been collected and/or charged.

35. Plaintiffs will fairly and adequately represent the interest of the Class. The interest of the Class is not antagonistic with those of the individual Plaintiffs. The Plaintiffs have the ability to assist and adequately protect the rights of the Class during the litigation. Further, the Plaintiffs are represented by legal counsel who are competent and experienced in this type of Class Action litigation.

36. This Class Action is not only the appropriate method for the fair and efficient adjudication of the controversy, but is, in fact, superior method to all other available cause of action because:

- a. The joinder of hundreds of thousands of geographically diverse individual Class Members is impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;
- b. There is no special interest by Class Members and individually controlling prosecution of separate causes of action;
- c. Class Members' individual claims now may be relatively modest compared with the expense of litigating the claim, thereby making it impracticable, unduly burdensome, expensive, if not totally impossible, to justify individual Class Members addressing their loss;
- d. When Defendants' liability has been adjudicated, claims of all Class Members can be determined by the court and administered efficiently in a manner which is far

less erroneous, burdensome, and expensive than if it were attempted through filing, discovery, and trial of all individual cases;

- e. This Class Action will promote orderly, efficient, expeditious, and appropriate adjudication and administration of class claims to promote economies of time, resources, and limited pool of recovery;
- f. This Class Action will assure uniformity of decisions among Class Members;
- g. Without the Class Action, Class Members will go without restitution or money damages;
- h. Without this Class Action, the restitution will not be ordered and Defendants will reap the benefits or profits of overcharging the Plaintiffs for services which were not provided;
- i. The resolution of this controversy through this Class Action presents fewer management difficulties than individual claims filed in which the parties may be subject to varying indifferent adjudications of their rights;

FRAUDULENT CONCEALMENT/ DISCOVERY RULE

37. Defendants had a duty to disclose to Plaintiffs notice and/or knowledge that they were overcharging the Plaintiffs

38. Rather than disclosing this information to Plaintiffs, Defendants actively and fraudulently concealed that the overcharges and improper collection of revenue from Plaintiffs.

39. Defendants' fraudulent concealment tolls the running of any applicable statute of limitations.

40. In the alternative, Plaintiffs could not have, with the exercise of real caution, prudence, or diligence, discovered the defect within the applicable statute of limitations. As a result, the statute of limitations is tolled making all Plaintiffs' claims timely filed.

MISCELLANEOUS

41. Any conditions preceding the institution of this lawsuit have been performed, have occurred, and/or have been waived.

42. By filing the lawsuit, Plaintiffs neither intend to, nor in fact do, waive or release any right, claim, action, cause of action, defense and/or election of remedy that they may now or ever have.

CAUSE OF ACTION

Breach of Contract

43. Plaintiffs hereby incorporate by reference the allegations contained in the Original Complaint as if set forth herein verbatim.

44. Defendants either expressly and/or implicitly, contractually agreed to provide internet PPC advertising and/or services to Plaintiffs and only charge for the actual click through advertising from actual consumers. Defendants breached that contract by collecting revenues for services which were not provided. Accordingly, Plaintiffs seeks a refund of all improper and/or illicit charges.

Restitution/Unjust Enrichment/Money Had and Received

45. Plaintiffs hereby incorporate by reference the allegations contained in the Original Complaint as if set forth herein verbatim.

46. The additional sums of money charged to Plaintiffs and all other similarly situated individuals for PPC advertising which was illegitimate and/or improper must be refunded. These amounts of money constitute money which, in equity in good conscience, should be returned by Defendants to Plaintiffs and members of the Class pursuant to the equitable doctrine of restitution/unjust enrichment/money had and received because such money was collected in violation of applicable law.

Civil Conspiracy

47. Defendants engaged in a conspiracy to bill and/or collect advertising revenue for services which were not actually and/or legitimately provided to Plaintiffs and all other similarly situated members of the Class. Defendants conspired to conceal the fact that they were

overcharging and/or over-collecting revenue for advertisements which were not actually provided to the Plaintiffs from bona fide consumers. Defendants worked in conjunction with one another to promote the use of internet and/or PPC advertising and actively concealed their collective attempts to overcharge and/or collect revenue for advertising which was not usually provided to consumers. This is an industry wide conspiracy in which all search engines have worked together to develop and/or create a market which allows for over billing and/or overcharging of businesses and/or entities which purchase online PPC advertising.

48. As a result of this conspiracy, scheme, and/or agreement, Defendants have attempted to create a larger market for internet and/or online PPC advertising which has been growing each and every year.

49. Defendants have refused to disclose all known or suspected overcharges to Plaintiffs and/or members of the Class. Defendants have grown the internet PPC advertising market while failing to disclose that they have routinely and systematically overcharged and/or over collected for PPC advertising revenues from their customers. Defendants have engaged in a pattern, practice, and/or scheme to achieve a common goal and/or purpose of increasing the market and cost of PPC advertising throughout Arkansas and the United States while overcharging customers and hiding the overcharges from Plaintiffs and/or all members of the Class.

JOINT VENTURE / JOINT ENTERPRISE

50. At all times relevant to this cause of action, the Defendants were engaged in a joint enterprise as the parties have: (1) an agreement, either express or implied, with respect to the enterprise or endeavor; (2) a common purpose; (3) a community of interest in that purpose, among the members; and (4) a right of control in the direction of the enterprise.

51. At all times relevant to this cause of action, the Defendants entered into a joint venture as they had an agreement which included: (1) a community of interest in the venture; (2) an

agreement to share profits; (3) an express agreement to share losses; and (4) a mutual right to control or management of the venture. This joint venture and/or enterprise allowed for a seamless PPC advertising web in which Defendants share revenues for improper charges levied against Plaintiffs and members of the Class.

RELIEF REQUESTED

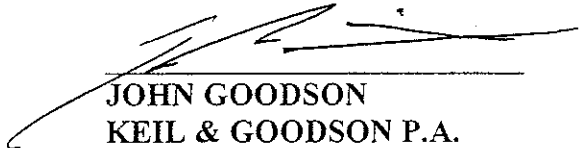
52. Plaintiffs Lane's Gifts and Collectibles, L.L.C., U.S. Citizens for Fair Credit Card Terms, Inc., Savings 4 Merchants, Inc. and Max Caulfield d/b/a Caulfield Investigations, Individually and as Class Representatives on behalf of all similarly situated persons and/or entities, respectfully request that the Court grant the following relief and/or enter judgment against the Defendants, jointly and severally for the following:

- a. Certify this cause of action as a class action pursuant to A.R.C.P. 23 and appoint Plaintiffs as Class Representatives and Plaintiffs' counsel as Class counsel;
- b. Award appropriate monetary damages to Plaintiffs and the proposed Class in an amount equal to provide restitution for the overcharges to Plaintiffs;
- c. Alternatively, an amount equal to the overcharges and/or surcharges above the contracted PPC advertising amounts which Plaintiffs had contracted with Defendants to provide;
- d. Awarding prejudgment interest to prevent Defendants from receiving unjust enrichment for their improper conduct;
- e. Awarding reasonable and necessary attorneys' fees and costs to Class counsel;
- f. Awarding such other and further relief in law or in or equity as the Court determines fair, reasonable, appropriate, and/or just deems just.

Whether by restitution and/or money damages or any combination thereof, Plaintiffs seek a recovery from all Defendants, jointly and severally, including all interests and costs, including prejudgment interest, post-judgment interest, court costs, and attorneys fees. Therefore, Plaintiffs

contend that Defendants are jointly and severally liable for all damages and relief owed to the Plaintiffs and/or individual Class Members.

Respectfully submitted,



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