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FILED

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RICHARD W. WELLS
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

9 ATTORNEYS FOR PLAINTIFF AND THE PUTATIVE CLASS

10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13)
14 PETER DEACON, individually and on)
15 behalf of all others similarly)
16 situated,)

16 Plaintiff,

17 v.

18 PANDORA MEDIA, INC., a)
19 Delaware corporation,)

20 Defendant.)

) Case No.

) **11**)
) **COMPLAINT FOR:**

4674

-) (1) Violations of Michigan's Video Rental Privacy Act, M.C.L. § 445.1712
-) (2) Violations of the Michigan Consumer Protection Act, M.C.L. § 445.903

) **DEMAND FOR JURY TRIAL**

) **CLASS ACTION**

FAXED
FIRST LEGAL SERVICES CENTER

1 Plaintiff Deacon ("Plaintiff"), by and through his attorneys, upon personal knowledge as
2 to himself and his own acts, and upon information and belief as to all other matters, complains
3 and alleges as follows:

4 NATURE OF THE ACTION

5 1. Plaintiff Deacon brings this Class Action Complaint against Defendant Pandora
6 Media, Inc. ("Defendant" or "Pandora") for the intentional disclosure of its users' private music
7 listening histories in violation of Michigan's Video Rental Privacy Act, M.C.L. § 445.1712
8 ("VRPA"), and the Michigan Consumer Protection Act, M.C.L. § 445.903 ("MCPA").

9 2. Pandora owns and operates the website www.Pandora.com. Pandora's business
10 model is essentially that of a massive for-profit sound recording library. Through its website,
11 Pandora allows users to borrow digital sound recordings for the duration of song(s). This online
12 system is monetized through third party advertisements and the option to purchase sound
13 recordings from business partners such as Amazon.com and Apple, Inc.

14 3. After creating an account, Pandora users build customized "stations" based upon
15 inputted musical preferences, *i.e.* artist, specific song, and genre of music. Pandora then lends a
16 continuous stream of songs tailored to the individual's tastes. For instance, a user could build a
17 station based on a preference for the Rolling Stones, or the song "Paint it Black," or the genre
18 "Rock & Roll," and receive songs containing similar musical attributes.

19 4. Pandora catalogues past "stations" created by a user and stores them in
20 conjunction with the individual's personalized profile page. Users may access their profile pages
21 with login credentials via the Internet through a variety of media including computers, smart-
22 phones, tablet computers, and other mobile devices.¹

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25 ¹ See, Pandora Media, Inc., Registration Statement (Form S-1) (Feb. 11, 2011), available
26 at <http://www.sec.gov/Archives/edgar/data/1230276/000119312511032963/ds1.htm> (Pandora
27 "uses intrinsic qualities of music to initially create stations and then adapts playlists in real-time
28 based on the individual feedback of each listener").

1 5. Recognizing the sensitivity of the information that it stores about its customers,
2 Pandora had at all relevant times a governing Privacy Policy, which promised to safeguard users'
3 private music listening histories. Unfortunately, Pandora has willfully violated its users' privacy
4 rights in at least two (2) primary ways.

5 6. First, Pandora asserted that users' profile pages—containing information such as user
6 name, musical preferences, favorite songs, and listening history—would be available solely to
7 other registered Pandora users, *and* obtainable only to those registered users with knowledge of
8 an individual's unique-mail address. Instead, Pandora made these records publicly available and
9 searchable on the World Wide Web for anyone to view.

10 7. Second, in April of 2010, Pandora unilaterally integrated its users' profile pages
11 with their Facebook accounts. As a result, Pandora released sensitive listening records to all of
12 its users' Facebook "friends." Moreover, any privacy afforded to individuals using
13 pseudonymous e-mail addresses was destroyed, as the Facebook integration automatically
14 correlated users' existing user names with their actual names, and automatically made users'
15 musical preferences immediately available to all of their Facebook contacts.

16 8. The VRPA protects Michigan citizens from the very type of disclosures described
17 herein by prohibiting, *inter alia*, companies from releasing records containing information about
18 a person's music listening history.

19 9. Pandora's intentional disclosure of its Michigan users' personal music listening
20 history records demonstrates a fundamental disregard for their legal rights to privacy. Because of
21 Pandora's reckless decision to disclose this information, Plaintiff and the Classes are entitled to
22 statutory damages of \$5,000 per person under the VRPA. M.C.L. § 445.1715(a).

PARTIES

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24 10. Plaintiff Deacon is a natural person and citizen of Michigan.
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1 11. Defendant Pandora Media, Inc. is a Delaware corporation with its principal place
2 of business at 2101 Webster Street, Suite 1650, Oakland, California, 94612. Pandora does
3 business throughout California and the United States.

4 JURISDICTION AND VENUE

5 12. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28
6 U.S.C. § 1332.

7 13. This Court has personal jurisdiction over Pandora because it maintains its
8 corporate headquarters in this District. Venue is proper under 28 U.S.C. § 1391(a) because
9 Pandora is headquartered in this District.

10 INTRADISTRICT ASSIGNMENT

11 14. Pursuant to Civil Local Rule 3-2(d), this case shall be assigned to the Oakland
12 Division.

13 FACTUAL BACKGROUND

14 I. Michigan's Video Rental Privacy Act

15 15. In 1988, members of the United States Senate warned that business records
16 containing information about consumers' purchase and rental of audiovisual materials offer "a
17 window into our loves, likes, and dislikes," and that "the trail of information generated by every
18 transaction that is now recorded and stored in sophisticated record-keeping systems is a new,
19 more subtle and pervasive form of surveillance." S.Rep. No. 100-599 at 7-8 (1988) (Statements
20 of Sens. Simon and Leahy, respectively).

21 16. While the statements of Sens. Simon and Leahy above were accurate at the time
22 they were made, in hindsight, they were nothing short of prescient. During the past 23 years, the
23 practice of digitally storing highly sensitive consumer data has grown exponentially.

24 17. Recognizing the need to protect its citizens' privacy rights from companies
25 entrusted to store their private information, the Michigan legislature enacted the VRPA to
26 prohibit the disclosure of certain kinds of customer records. Section 2 of the VRPA states:
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1 Except as provided in section 3 or as otherwise
2 provided by law, a person, or an employee or agent
3 of the person, engaged in the business of selling at
4 retail, renting, or lending books or other written
5 materials, sound recordings, or video recordings
6 shall not disclose to any person, other than the
customer, a record or information concerning the
purchase, lease, rental, or borrowing of those
materials by a customer that indicates the identity of
the customer.

M.C.L. § 445.1712.

7 18. Despite the fact that legions of Michigan citizens use Pandora's services, and that
8 Pandora profits from each Michigan resident added to its user-base, Pandora has chosen to
9 ignore its legal obligation to comply with the VRPA.

10 **II. Pandora is Governed by the VRPA**

11 19. Although Pandora's business practices fall within the purview of the VRPA, it has
12 nonetheless chosen to ignore its legal responsibility to comply with the statute. Pandora is
13 "engaged in the business of selling at retail, renting, or lending ... sound recordings" under the
14 VRPA, M.C.L. § 445.1712, because it maintains an online library of sound recordings and rents,
15 sells, and/or lends digital sound recording files to its users through its online services.

16 20. Indeed, when an individual listens to music through Pandora, Defendant allows
17 the user to temporarily store a digital copy of the song currently playing on their computer. Upon
18 completion of the track, Pandora removes the track from the user's computer. In this way,
19 Pandora "lends" and/or "rents" the song to the user. M.C.L. § 445.1712.

20 21. Pandora is also engaged in selling sound recordings to consumers through its
21 website. While listening to a song on Pandora.com, a display screen is presented to the user that
22 offers immediate purchase of the current track through Apple Inc.'s iTunes service or
23 Amazon.com. On information and belief, Pandora financially benefits from each transaction
24 consummated through this process through a profit-sharing arrangement.

1 22. For the same reasons described more fully above, Pandora users are also
2 “customers” within the meaning of the VRPA, M.C.L. § 445.1711 because they purchase, rent,
3 or borrow sound recordings through Pandora’s website.

4 **III. Pandora Intentionally Discloses its Users’ Listening Histories to the Public**

5 23. Pandora automatically creates a “Personal Page” for each user containing the
6 person’s full name, profile information, most recent “station,” recent activity, listening history,
7 bookmarked tracks, and bookmarked artists (collectively referred to as “Protected Information”).

8 24. Users who agreed to Pandora’s Terms of Service and Privacy Policy before
9 August 8, 2010 consented to allow only those Pandora registrants who knew their e-mail
10 addresses to locate and view their Personal Pages containing Protected Information.
11 Accordingly, Pandora users could protect their privacy by using pseudonymous user names
12 and/or e-mail addresses.²

13 25. However, in clear contradiction to its stated policies, Pandora discloses users’
14 Personal Pages and accompanying Protected Information publicly on the World Wide Web.³

15 26. Worse still, on April 21, 2010, Pandora unilaterally and without consent
16 correlated its users’ Pandora accounts with their Facebook accounts, making users’ Protected
17 Information accessible to their Facebook contacts.

18 27. By automatically associating a person’s real name listed on Facebook with that
19 person’s Pandora account, users who attempted to remain anonymous by using pseudonymous e-
20 mail addresses and/or usernames had all of their listening history exposed in conjunction with
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23 ² In fact, many users attempted to protect their anonymity when using Pandora’s
24 services—a privacy protection subsequently eliminated when Pandora unilaterally integrated its
25 users accounts with Facebook, discussed *infra*. See Jason Brookman, *Closing Pandora’s Box*,
<http://www.cdt.org/blogs/justin-brookman/closing-pandora%E2%80%99s-box> (last visited
September 19, 2011).

26 ³ See, Ryan Singel, *FYI, Pandora Makes Your Music Public*,
27 <http://www.wired.com/epicenter/2010/05/pandora-privacy/> (last visited September 19, 2011).
28 Additionally, Pandora users’ Personal Pages appear in Google Search results.

1 their real names. At no time did Pandora ever receive consent to disclose its users' Protected
2 Information to their Facebook contacts.

3 28. Responding to public outcry from its decision to integrate individuals' accounts
4 with Facebook without permission, Pandora mass-notified its users in August of 2010 that their
5 Protected Information was publicly available, and provided instruction on how to make that data
6 private.⁴ Unfortunately for its users, Pandora's notice was too little too late, as their Protected
7 Information had already been disclosed to their Facebook contacts and the public at-large.
8 By and through these actions, Pandora has intentionally disclosed its Michigan users' Protected
9 Information without consent, in direct violation of the VRPA.

10 **FACTS RELATING TO PLAINTIFF DEACON**

11 29. Plaintiff Deacon is a resident of the State of Michigan.

12 30. Deacon created an account with Pandora during or before 2008.

13 31. At the time Deacon registered with Pandora, its Terms of Service and Privacy
14 Policy failed to indicate that Pandora would disclose his Protected Information.

15 32. However, at all relevant times, Pandora disclosed Deacon's Protected Information
16 to the public through its website,⁵ without Deacon's consent.

17 33. Additionally, on or about April 21, 2010, Pandora integrated its services with
18 Facebook, and made Deacon's Protected Information available to his Facebook network, without
19 his consent.

20 34. These disclosures violate the express language of the VRPA, as well as Pandora's
21 own Terms of Use and Privacy Policy.

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26 ⁴ See, Brookman *supra* note 2.

27 ⁵ See, Singel *supra* note 3.

1 **CLASS ALLEGATIONS**

2 35. **Definition of the Class and Subclass:** Plaintiff Deacon brings this action
3 pursuant to Fed. R. Civ. P. 23(b)(2) and (3) on behalf of himself and a Class and Subclass of
4 similarly situated individuals, defined as follows:

5 **The Disclosure Class:** A class consisting of all Michigan residents who
6 registered as users or subscribers of Pandora's services before August 5, 2010.

7 **The Facebook Disclosure Subclass:** A subclass consisting of all Michigan
8 residents whose Pandora account was automatically integrated with a Facebook
9 account before August 5, 2010.

10 Excluded from the Class and Subclass are 1) Defendant, Defendant's agents, subsidiaries,
11 parents, successors, predecessors, and any entity in which the Defendant or their parents
12 have a controlling interest and their current and former employees, officers, and directors,
13 2) the Judge or Magistrate Judge to whom this case is assigned and the Judge's or
14 Magistrate Judge's immediate family, 3) persons who execute and file a timely request
15 for exclusion, and 4) the legal representatives, successors, or assigns of any such
16 excluded person.

17 36. **Numerosity:** The exact number of the members of the Class and Subclass is
18 unknown and is not available to Plaintiff at this time, but individual joinder in this case is
19 impracticable. The Class and Subclass consist of millions of individuals and other entities. Class
20 and Subclass members can be easily identified through Defendant's records and public records.

21 37. **Commonality:** There are many questions of law and fact common to the claims
22 of Plaintiff and the other members of the Class and Subclass, and those questions predominate
23 over any questions that may affect individual members of the Class and Subclass. Common
24 questions for the Class and Subclass include but are not limited to the following:

- 25 (a) whether Pandora's disclosure of its users' Protected Information violates
26 the Video Rental Privacy Act, M.C.L. § 445.1712;
- 27 (b) whether Pandora's integration of its users' accounts with Facebook
28 violates the Video Rental Privacy Act, M.C.L. § 445.1712;

1 (c) whether Pandora's conduct violates the Michigan Consumer Protection
2 Act, M.C.L. § 445.903.

3 38. **Typicality:** The factual and legal bases of Pandora's liability to Plaintiff and to
4 the other members of the Class and Subclass are the same and resulted in injury to Plaintiff and
5 all of the other members of the Class and Subclass. Plaintiff and the other members of the Class
6 and Subclass have all suffered harm as a result of Pandora's wrongful conduct

7 39. **Adequate Representation:** Plaintiff will fairly and adequately represent and
8 protect the interests of the Class and Subclass members, and have retained counsel competent
9 and experienced in complex class actions. Plaintiff has no interest antagonistic to those of the
10 Class and Subclass and Defendant has no defenses unique to Plaintiff.

11 40. **Predominance and Superiority:** This class action is appropriate for certification
12 because class proceedings are superior to all other available methods for the fair and efficient
13 adjudication of this controversy, since joinder of all members is impracticable. The damages
14 suffered by the individual members of the Class and Subclass will likely be relatively small,
15 especially given the burden and expense of individual prosecution of the complex litigation
16 necessitated by the actions of Defendant. It would be virtually impossible for the individual
17 members of the Class and Subclass to obtain effective relief from the misconduct of Defendant.
18 Even if members of the Class and Subclass themselves could sustain such individual litigation, it
19 would still not be preferable to a class action, because individual litigation would increase the
20 delay and expense to all parties due to the complex legal and factual controversies presented in
21 this Complaint. By contrast, a class action presents far fewer management difficulties and
22 provides the benefits of single adjudication, economy of scale, and comprehensive supervision
23 by a single court. Economies of time, effort, and expense will be fostered and uniformity of
24 decisions will be ensured.

25 41. **Policies Generally Applicable to the Class and Subclass:** This class action is
26 also appropriate for certification because Defendant has acted or refused to act on grounds
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1 generally applicable to the Class and Subclass, thereby making appropriate final injunctive relief
2 or corresponding declaratory relief with respect to the Class and Subclass as a whole. The
3 policies of the Defendant challenged herein apply to and affect all members of the Class and
4 Subclass uniformly, and Plaintiff's challenge of these policies hinges on Defendant's conduct,
5 not on facts or law applicable only to Plaintiff.

6
7 **FIRST CAUSE OF ACTION**
8 **Violations of the Video Rental Privacy Act**
9 **(M.C.L. § 445.1712.)**
10 **(On Behalf of Plaintiff, the Class, and Subclass)**

11 42. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

12 43. Pandora users' Protected Information, including full names, Personal Pages,
13 profile information, most recent "station," recent activities, listening histories, bookmarked
14 tracks, and bookmarked artists constitute "record[s] or information concerning the purchase,
15 lease, rental, or borrowing of [sound recordings] by a customer that indicates the identity of the
16 customer" within the meaning of the VRPA, M.C.L. § 445.1712.

17 44. Despite the fact that Pandora's Privacy Policy stated that it would **only** disclose
18 users' "stations" to other registered Pandora users, it discloses, without consent, users': full
19 names, Personal Pages, profile information, most recent "station," recent activities, listening
20 histories, bookmarked tracks, and bookmarked artists.

21 45. Also, despite the fact that Pandora's Privacy Policy stated that it would **only**
22 disclose users' "stations" when another registered Pandora user requests such information by
23 email address search, it discloses users' Protected Information on a far greater scope, without
24 users' consent, including to: non-users of Pandora, members of users' Facebook networks, users
25 of social network aggregation services, and Google search users.

26 46. Pandora's disclosures of its users' Protected Information are disclosures of
27 records or information concerning the purchase, lease, rental, or borrowing of sound recordings
28 indicating the identities of the customers, to persons other than the customers, in violation of the
VRPA, M.C.L. § 445.1712.

1 47. None of the exceptions provided by the VRPA apply in this case. M.C.L. §
2 445.1713.

3 48. On behalf of himself and the Class and Subclass, Plaintiff Deacon seeks: (1)
4 injunctive relief to remedy the unlawful conduct described herein; (2) statutory damages of
5 \$5,000 per Class and Subclass member; and (3) costs and reasonable attorneys' fees.

6 **SECOND CAUSE OF ACTION**
7 **Violations of the Michigan Consumer Protection Act**
8 **(M.C.L. § 445.903.)**
9 **(On Behalf of Plaintiff, the Class, and Subclass)**

10 49. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

11 50. Under the Michigan Consumer Protection Act, "unfair, unconscionable, or
12 deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful." M.C.L.
13 § 445.903(1).

14 51. By selling, renting and/or lending sound recordings to users, Pandora engages in
15 trade or commerce.

16 52. By claiming that Deacon's Protected Information would be available solely to
17 other registered Pandora users with Deacon's e-mail address, but disclosing such information to
18 the public at-large and to his Facebook contacts, Pandora "[f]ail[ed] to reveal facts that [were]
19 material to the transaction in light of representations of fact made in a positive matter." M.C.L. §
20 445.903(1)(cc).

21 53. Because Pandora indicated that Deacon's Protected Information would only be
22 available to other Pandora users with Deacon's e-mail address, Pandora "[f]ail[ed] to reveal a
23 material fact"—that the information was available to the public at-large and to Deacon's
24 Facebook contacts—"the omission of which tend[ed] to mislead or deceive the consumer, and
25 which fact could not reasonably be known by the consumer." M.C.L. § 445.903(1)(s).

26 54. In the alternative to Paragraphs 52 and 53, by implying that Deacon's Protected
27 Information was only available to other registered Pandora users with his e-mail address, while
28 disclosing that information to the public at-large and Deacon's Facebook contacts, Pandora made

1 “a representation of fact or statement of fact material to the transaction such that [Deacon]
2 reasonably believe[d] the represented or suggested state of affairs to be other than it actually
3 [was].” M.C.L. § 445.903(1)(bb).

4 55. On behalf of himself and the Class and Subclass, Plaintiff Deacon seeks: (1) an
5 order declaring that Pandora’s conduct alleged above violates the Michigan Consumer Protection
6 Act, M.C.L. § 445.903; (2) an injunction requiring Pandora to cease its unlawful conduct; and (3)
7 costs and reasonable attorneys’ fees.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff Peter Deacon, individually and on behalf of the Class and
10 Subclass, prays for the following relief:

11 A. Certify the Class and Subclass as defined above, appoint Plaintiff as Class
12 representative, and designate his counsel as Class Counsel;

13 B. Declare that Pandora’s conduct as described herein violates the Video Rental
14 Privacy Act, M.C.L. § 445.1712, and the Michigan Consumer Protection Act, M.C.L. § 445.903;

15 C. Award statutory damages of \$5,000 per Class and Subclass member, as provided
16 by the Video Rental Privacy Act, M.C.L. § 445.1715(a);

17 D. Award injunctive and equitable relief as is necessary to protect the interests of the
18 Plaintiff, the Class and Subclass by requiring Pandora to cease the unlawful disclosures and
19 misrepresentations discussed herein;

20 E. Award Plaintiff and the Class and Subclass their reasonable litigation expenses
21 and attorneys’ fees as provided by the Video Rental Privacy Act, M.C.L. § 445.1715(b);

22 F. Award Plaintiff and the Class and Subclass pre- and post-judgment interest, to the
23 extent allowable; and

24 G. Award such other and further relief as equity and justice may require.

25 **JURY TRIAL**

26 Plaintiff demands a trial by jury for all issues so triable.
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1 Dated: September 20, 2011

Respectfully submitted,

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4 By: 

Sean Reiss

One of the Attorneys for Plaintiff

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