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16 DK HOLDINGS d/b/a DotCOM 17 HOST, 18 19 Plaintiff, 20 21 v. 22 MIVA, INC. and MIVA 23 MERCHANT, INC., 24 25 Defendants. 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500) Case No. <u>'16CV0580 W RBB</u>)) COMPLAINT FOR) COMPUTER FRAUD AND ABUSE;) FALSE ADVERTISING;) DECLARATION OF COPYRIGHT) UNENFORCEABILITY;) COMPUTER DATA ACCESS AND) FRAUD; INTERFERENCE WITH) CONTRACTUAL RELATIONS;) AND UNFAIR COMPETITION.
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1 **INTRODUCTION**

2 Defendants wanted to leverage their experience selling e-commerce
3 software to enter the market for internet hosting services. Uninterested or
4 unwilling to compete fairly, Defendants engaged in a nefarious and multi-stage
5 scheme to illegally, unfairly, and fraudulently compete with Plaintiff dotCOM
6 host, as well as other hosting companies, through a series of discrete and
7 independently wrongful acts.

8 Defendants' wrongful acts included inducing dotCOM host and its
9 customers, through false promises of future features and compatibility, to pay
10 monthly license fees for using Defendants' software that dotCOM host already
11 owned the perpetual right to use, and continuing to host, maintain, and build e-
12 commerce websites using Defendants' software. Investing time, money, and
13 effort in building e-commerce websites using Defendants' software made it
14 difficult to switch to other software when Defendants later failed to provide the
15 promised features and compatibility.

16 Instead of providing the promised features and compatibility, Defendants
17 raised prices, and improperly exploited their knowledge of, and contacts with,
18 dotCOM host's customers to mislead customers into leaving dotCOM host for
19 Defendants. Defendants used unfair price discrimination to coerce dotCOM
20 host customers to leave dotCOM host for Defendants. Defendants charged non-
21 compliance fees for using versions of Defendants' software that lacked the very
22 features Defendants had promised but failed to provide. Defendants also
23 illegally accessed dotCOM host's computers, computer systems, and data to
24 induce dotCOM host's clients to leave dotCOM host for Defendants and to
25 withhold payment due dotCOM host.

26 In support of this Complaint and the causes of action asserted herein, DK
27 HOLDINGS d/b/a DotCOM HOST alleges as follows:

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JURISDICTION AND VENUE

1
2 1. This is an action for: (1) Computer Fraud and Abuse arising under
3 18 U.S.C. § 1030; (2) False Advertising under 15 U.S.C. § 1125;
4 (3) Declaration of Copyright Misuse and Unenforceability; (4) Computer Data
5 Access and Fraud under Cal. Penal Code. § 502; (5) Interference with
6 Contractual Relations; and (6) California Statutory Unfair Competition.

7 2. This Court has original subject matter jurisdiction over at least the
8 claims for Computer Fraud and Abuse, False Advertising, and Declaration of
9 Copyright Misuse and Unenforceability, pursuant to 28 U.S.C. §§ 1331 and
10 1338, 15 U.S.C. § 1116, and 28 U.S.C. §§ 2201 and 2202, because these claims
11 arise under the laws of the United States, and acts of Congress relating to
12 copyrights, and claims of unfair competition joined with substantial and related
13 claims under copyright.

14 3. The Court has at least supplemental jurisdiction pursuant to
15 28 U.S.C. § 1367(a) over the claims that arise under California state statutory
16 and common law because they are so related to the federal claims that they form
17 part of the same case or controversy and derive from a common nucleus of
18 operative facts.

19 4. Venue is proper in this Court at least pursuant to 28 U.S.C. § 1391
20 because a substantial part of the events giving rise to the claim occurred in this
21 district, a substantial part of property that is the subject of the action is situated
22 in this district, and this Court has personal jurisdiction over the defendants.

THE PARTIES

23
24 5. Plaintiff DK HOLDINGS d/b/a dotCOM HOST (“dotCOM host”)
25 is a California partnership, having a place of business at 9305 Lightwave
26 Avenue, San Diego, CA, 92123.

27 6. dotCOM host is informed and believes, and thereon alleges, that
28 Defendant Miva, Inc. is a corporation organized and existing under the laws of

1 the State of California, having a place of business at 16745 W. Bernardo Dr.,
2 Suite 400, San Diego, CA 92127.

3 7. dotCOM host is informed and believes, and thereon alleges, that
4 Defendant Miva Merchant, Inc. is a corporation organized and existing under
5 the laws of the State of Florida, having a place of business at 3250 Parkside
6 Center Circle, Tampa, Florida 33619.

7 8. Defendants Miva, Inc. and Miva Merchant, Inc. are believed to
8 have acted jointly and in concert with each other (in some cases potentially
9 through their predecessors-in-interest) with respect to all of the acts alleged
10 herein, and are jointly referred to as "Defendants."

11 **GENERAL ALLEGATIONS**

12 9. Plaintiff dotCOM host offers internet hosting solutions to online
13 businesses.

14 10. Defendants offer ecommerce software, including Miva Merchant
15 software, for use on internet websites.

16 11. For years, dotCOM Host purchased fully paid-up perpetual licenses
17 for customers to use Defendants' Miva Merchant ecommerce software on
18 websites hosted by dotCOM host for a one-time license fee.

19 12. On information and belief, Defendants sold similar perpetual, fully
20 paid-up licenses to other third party website hosting companies for use by their
21 customers.

22 13. After years of selling these fully paid-up licenses, Defendants
23 announced they would no longer be offering perpetual, fully paid-up licenses to
24 their ecommerce software, and would be transitioning to a monthly license fee
25 model.

26 14. Defendants made a number of representations to dotCOM host, and
27 on information and belief, to other hosting companies, regarding alleged
28 benefits of switching to a monthly fee model. These representations included

1 that Defendants would provide new features at no additional cost and would
2 continuously upgrade features and services without additional costs.

3 15. dotCOM host made monthly license payments going forward, even
4 for Miva Merchant licenses already paid for in full under the previous terms and
5 agreements, in reliance on Defendants' assertions. dotCOM host never would
6 have paid monthly license fees for the right to continue to use copies of software
7 to which dotCOM host already had fully paid up perpetual licenses if dotCOM
8 host had known Defendants would not follow through on their representations.

9 16. On information and belief, other hosting companies also made
10 monthly license payments, even for licenses already paid for in full under the
11 previous terms and agreements, in reliance on Defendants' assertions. On
12 information and belief, other hosting companies never would have paid monthly
13 license fees for the right to continue to use copies of software to which they
14 already had fully paid up perpetual licenses if they had known Defendants
15 would not follow through on their representations.

16 17. On information and belief, Defendants falsely told dotCOM host
17 customers, including when those customers contacted Defendants for support
18 and/or development projects, that Defendants could only offer support and
19 development if the client moved their hosting to Defendants, with the intent to
20 deceive those customers into switching hosting providers.

21 18. On information and belief, Defendants falsely told dotCOM host
22 customers, including when those customers contacted Defendants for support
23 and/or development projects, that dotCOM host would not be able to offer
24 support or provide hosting using Defendants' software in the very near future.

25 19. On information and belief, Defendants told dotCOM host
26 customers, including when those customers contacted Defendants for support
27 and/or development projects, that those customers had no choice but to switch
28 to Defendants' hosting services if they wanted to remain in business.

1 20. On information and belief, Defendants knew these statements were
2 false at the time they were made, Defendants intended that dotCOM host's
3 customers would rely on them, and dotCOM host's customers did rely on them
4 in terminating or not renewing relationships with dotCOM host and instead
5 using Defendants' hosting services.

6 21. Defendants began assessing escalating non-compliance fees for
7 dotCOM host customers using Defendants' software who did not upgrade to the
8 latest version of Defendants' software, and assessed those fees even for
9 continued use of copies of Miva Merchant for which dotCOM host owned a
10 perpetual, fully paid up license.

11 22. Defendants also announced dramatic increases in the monthly
12 license fees on very short notice that was far less than the time it would take
13 dotCOM host's customers to rebuild their on-line stores using other software.

14 23. Defendants falsely told dotCOM host, potential dotCOM host
15 customers, and actual dotCOM host customers, that the escalating non-
16 compliance fees applied to all users of Miva Merchant, whether their websites
17 were hosted by others or by Defendants, when, in fact, Defendants were
18 charging significantly lower non-compliance fees to users whose websites were
19 hosted by Defendants.

20 24. Defendants improperly used their knowledge of dotCOM host's
21 customers to contact dotCOM host's customers and offer the same software
22 licenses at far less than Defendants are charging on their website or through
23 dotCOM host.

24 25. Defendants assessed the improper non-compliance fees in an unfair
25 and discriminatory manner by asserting that compliant domains running the
26 latest version of Miva Merchant were non-compliant, and by not providing a
27 reasonable identification of which domains or license numbers Defendants
28 contended were non-compliant. dotCOM host had to expend significant

1 resources to rebut Defendants’ incorrect assertions regarding allegedly non-
2 compliant domains hosted by dotCOM host .

3 26. Defendants improperly began assessing an end of life fee for
4 continued use of older version of Miva Merchant, and assessed those fees even
5 for continued use of copies of Miva Merchant for which dotCOM host owned a
6 perpetual, fully paid up license.

7 27. Defendants improperly used their knowledge of dotCOM host’s
8 customers to contact dotCOM host’s customers and falsely assert that dotCOM
9 host was somehow “blocking” dotCOM host’s customers from calling
10 Defendants.

11 28. Defendants improperly used their knowledge of dotCOM host’s
12 customers to contact dotCOM host’s customers and falsely assert that dotCOM
13 host would no longer be offering hosting very soon.

14 29. Defendants improperly used their knowledge of dotCOM host’s
15 customers to contact dotCOM host’s customers and falsely assert that dotCOM
16 host would no longer offer use of Defendants’ software.

17 30. Defendants improperly used their knowledge of dotCOM host’s
18 customers to contact dotCOM host’s customers and falsely assert that dotCOM
19 host’s customers had to switch to using Defendants’ hosting service if they
20 wanted to ensure their stores remained active and their businesses unaffected.

21 31. Defendants improperly used their knowledge of dotCOM host’s
22 customers to contact dotCOM host’s customers and falsely assert that dotCOM
23 host maliciously turned off domains for two very large clients – effectively
24 putting them out of business.

25 32. These statements were false and misleading because dotCOM host
26 properly suspended the accounts for non-payment of hosting service fees and
27 Defendants’ license fees. dotCOM host disabled the licenses to Defendants’
28 software on these clients’ domains, and, as a courtesy to the customers, left the

1 websites fully operational. This allowed the customers' online stores to stay
2 online (despite lack of payment), the stores could continue accepting traffic and
3 new orders, and all customer email was still fully enabled so the dotCOM host
4 customers could communicate with their customers. Disabling Defendants'
5 software license keys only disabled administrative access to the stores'
6 administrative interfaces.

7 33. Even though these licenses were validly disabled by dotCOM host
8 for non-payment, Defendants improperly and without authorization accessed
9 dotCOM host's computers, computer networks, and data to circumvent the
10 suspensions of the delinquent accounts. Defendants improperly and without
11 authorization re-enabled licenses associated with the suspended accounts of
12 these dotCOM host customers, and issued new keys so dotCOM host had no
13 way to control the copies of Miva Merchant software that dotCOM host had
14 paid for. Defendants improperly re-enabled these licenses to improperly and
15 without authorization access, copy and allow others to access and copy files and
16 databases from dotCOM host's computers and computer systems to enable
17 Defendants to take clients from dotCOM host.

18 34. Defendants were never authorized to make any changes to any
19 license keys that were assigned to dotCOM host. Defendants' actions
20 circumvented dotCOM host's internal billing policies and procedures, gave
21 unauthorized access to others, and gave Defendants back-door access to
22 dotCOM host's customers' stores for the purpose of transferring data to
23 Defendants' in-house hosting.

24 35. Defendants also unfairly and falsely advertise how they calculate
25 the price of the license fee for users of Miva Merchant software. Defendants
26 publicly assert that the license fee is based on yearly gross sales of the store
27 using the Miva Merchant software. On information and belief, Defendants
28 actually charge license fees based on an undisclosed model for estimating sales

1 that is often wildly inaccurate. For example, Defendants provided dotCOM host
2 with reports that overstated the sales of dotCOM host customers' stores by
3 millions of dollars and up to 10,000%. Defendants refused to adjust the license
4 fee charges based on these incorrect numbers.

5 36. On information and belief, Defendants are intentionally
6 overcharging and refusing to correct the license fees for dotCOM host
7 customers using Miva Merchant software, but not users hosted by Defendants,
8 in an improper and unfair attempt to force dotCOM host's customers to switch
9 to Defendants' hosting services.

10 **FIRST CAUSE OF ACTION**

11 **(COMPUTER FRAUD AND ABUSE – 18 U.S.C. § 1030)**

12 37. dotCOM host hereby realleges and incorporates by reference the
13 allegations set forth in paragraphs 1 through 36.

14 38. This is a cause of action for violation of the Computer Fraud and
15 Abuse Act under 18 U.S.C. § 1030.

16 39. Defendants intentionally accessed dotCOM host computers used
17 for interstate commerce or communication, without authorization and by
18 exceeding authorized access to such a computers and by obtaining information
19 from such a protected computers, and so causing significant damage.

20 40. Defendants knowingly, and with intent to defraud dotCOM host,
21 accessed protected dotCOM host computers, without authorization or by
22 exceeding authorized access to such computers, and, by means of such conduct,
23 furthered their intended fraud and obtained one or more things of value,
24 including, but not limited to, access to dotCOM host customer websites and
25 dotCOM host customer information.

26 41. Defendants intentionally accessed protected dotCOM host
27 computers beyond the scope of the authorization granted, causing damage to
28 dotCOM host, recklessly or without due regard for their actions.

1 42. The computer system or systems that Defendants accessed as
2 described above constitute a “protected computer” within the meaning of 18
3 U.S.C. § 1030.

4 43. dotCOM host is informed and believes, and thereon alleges, that
5 Defendants knowingly and without permission enabled dotCOM host customers
6 to access administrative aspects of websites on dotCOM host computers to
7 which access had been disabled by dotCOM host due to non-payment, and
8 transferred or assisted in transferring data from these computer, including to
9 Defendants’ computers.

10 44. dotCOM host has been harmed by these violations, and its harm
11 includes, without limitation, the loss of past-due and future revenues from
12 hosting the improperly accessed websites; harm to dotCOM host’s data,
13 programs, and computer systems and impairment of the integrity and
14 availability of data, programs, systems, or information; and the cost of
15 responding to the offenses, including conducting damage assessments and
16 restoring data, programs, systems, and or information to its condition prior to
17 the offenses. These, as well as other losses and damages in an amount to be
18 determined at trial, amount to over \$5,000 aggregated over a one-year period.

19 45. Defendants’ unlawful access to, and misappropriations from,
20 dotCOM host computers also have caused dotCOM host irreparable injury.
21 Unless restrained and enjoined, defendants will continue to commit such acts.
22 Damages are not adequate to compensate dotCOM host for these actual and
23 threatened injuries; dotCOM host is therefore entitled to injunctive relief as
24 provided by 18 U.S.C. § 1030(g).

25 **SECOND CAUSE OF ACTION**

26 **(FALSE ADVERTISING – 15 U.S.C. § 1125)**

27 46. dotCOM host hereby realleges and incorporates by reference the
28 allegations set forth in paragraphs 1 through 45.

1 47. This is a cause of action for False Advertising under 15 U.S.C.
2 § 1125(a).

3 48. Defendants engaged in false advertising by, in connection with the
4 goods and services of dotCOM host and Defendants, making statements in
5 commercial advertising or promotion in U.S. commerce that contained false or
6 misleading descriptions of fact, and false or misleading representations of fact,
7 that misrepresented the nature, characteristics, and qualities, the goods, services,
8 and commercial activities of dotCOM host and Defendants.

9 49. Defendants' actions are causing a likelihood of confusion, mistake,
10 or deception as to the nature and qualities of dotCOM Host and Defendants'
11 commercial activities.

12 50. Defendants' statements are false and misleading and are intended
13 to confuse, mislead or deceive consumers and potential consumers.

14 51. Defendants' false statements have been made in interstate
15 commerce, including over the Internet and through Defendants' emails and
16 telephone calls.

17 52. Upon information and belief, consumers rely upon Defendants'
18 false statements, including by not paying amounts due to dotCOM Host,
19 cancelling or not renewing relationships with dotCOM Host, and by licensing
20 and purchasing Defendants' goods and services.

21 53. Defendants' false statements have been willful and deliberate.

22 54. dotCOM host is informed and believes, and on that basis alleges,
23 that Defendants acted with the intent to compete unfairly against dotCOM host,
24 and to deceive the public into believing that dotCOM host would not or could
25 not be offering certain goods or services in the future and that Defendants would
26 be the exclusive provider of those goods and services.

27 55. Defendants' aforementioned acts have damaged dotCOM host in
28 an amount to be determined at trial.

1 56. Defendants have irreparably injured dotCOM host. Such
2 irreparable injury will continue unless Defendants are preliminarily and
3 permanently enjoined by this Court from further violation of dotCOM host
4 rights, for which dotCOM host has no adequate remedy at law.

5 57. Defendants' willful and intentional acts of false advertising entitle
6 dotCOM host to enhanced damages.

7 **THIRD CAUSE OF ACTION**
8 **(DECLARATION OF COPYRIGHT MISUSE AND**
9 **UNENFORCEABILITY)**

10 58. dotCOM host hereby realleges and incorporates by reference the
11 allegations set forth in paragraphs 1 through 57.

12 59. This is a cause of action for a Declaration of Copyright Misuse and
13 Unenforceability under 28 U.S.C. §§ 2201 and 2202.

14 60. dotCOM host and its customers currently pay license fees to
15 Defendants for use of Defendants' Miva Merchant software on dotCOM host's
16 servers.

17 61. There is an immediate, real, and substantial controversy between
18 the parties regarding whether Defendants have misused their copyrights in their
19 Miva Merchant software, whether Defendants' copyrights in their Miva
20 Merchant software are unenforceable, whether dotCOM host has any obligation
21 to continue paying license fees or royalties for use of Miva Merchant software,
22 and whether dotCOM host's customers have any obligation to continue paying
23 license fees or royalties for use of Miva Merchant software in connection with
24 websites hosted by dotCOM host.

25 62. Defendants have misused their copyrights in their Miva Merchant
26 software through the acts described herein, including by using those copyrights
27 to secure exclusive rights and limited monopolies not granted by the Copyright
28 Office.

1 63. For example, Defendants used their copyrights in their Miva
2 Merchant software to coerce dotCOM host's customers to exclusively use
3 Defendants' website hosting services.

4 64. Defendants used their copyrights in their Miva Merchant software
5 to take advantage of the time and effort dotCOM host's customers invested in
6 building and developing their own websites to coerce them to use Defendants'
7 website hosting services.

8 65. Defendants used their copyrights in their Miva Merchant software
9 to induce dotCOM host and, on information and belief, other licensees, to pay
10 ongoing monthly licenses for software for which they already had a perpetual,
11 fully paid up license, based on knowingly false promises of future benefits that
12 bestowed no benefit on dotCOM host or, on information and belief, other
13 licensees.

14 66. Defendants explicitly or effectively conditioned the license to use
15 the Miva Merchant software on dotCOM host's customers also agreeing not to
16 use the website hosting products and services of dotCOM host and other
17 competitors.

18 67. Defendants also improperly used their copyrights in their Miva
19 Merchant software to induce dotCOM host and, on information and belief, other
20 licensees, to pay escalating non-compliance and end of life fees in order to
21 continue to use copies of software for which dotCOM host had already
22 purchased a fully paid-up perpetual license.

23 68. These acts constituted a misuse of the copyright by Defendants that
24 renders Defendants' copyrights unenforceable.

25 **FOURTH CAUSE OF ACTION**
26 **(COMPUTER DATA ACCESS AND FRAUD –**
27 **CAL. PENAL CODE. § 502)**

28 69. dotCOM host hereby realleges and incorporates by reference the

1 allegations set forth in paragraphs 1 through 68.

2 70. This is a cause of action for violation of the California
3 Comprehensive Computer Data Access and Fraud Act, Cal. Penal Code. § 502

4 71. Defendants knowingly accessed and without permission altered and
5 used dotCOM host data, computers, computer systems, and computer networks,
6 in order to execute a scheme to defraud.

7 72. Defendants knowingly accessed and without permission altered and
8 used dotCOM host data, computers, computer systems, and computer networks,
9 in order to wrongfully control or obtain money, property, or data.

10 73. Defendants knowingly accessed and without permission took,
11 copied, or made use of data from a dotCOM host computers, computer systems,
12 or computer networks.

13 74. Defendants knowingly and without permission used or caused to be
14 used dotCOM host computer services.

15 75. Defendants knowingly accessed and without permission added,
16 altered, damaged, deleted, or destroyed dotCOM host data, computer software,
17 or computer programs that reside or exist internal or external to dotCOM host
18 computers, computer systems, or computer networks.

19 76. Defendants knowingly and without permission disrupted or caused
20 the disruption of computer services or denied or caused the denial of computer
21 services to an authorized user of dotCOM host computers, computer systems, or
22 computer networks.

23 77. Defendants knowingly and without permission interfered with
24 dotCOM's control of or access to dotCOM host computers, computer systems,
25 or computer networks.

26 78. Defendants knowingly and without permission provided or assisted
27 in providing a means of accessing dotCOM host computers, computer systems,
28 or computer networks.

1 79. Defendants knowingly and without permission accessed or caused
2 to be accessed dotCOM host computers, computer systems, or computer
3 networks.

4 80. dotCOM host is informed and believes, and thereon alleges, that
5 Defendants knowingly and without permission enabled dotCOM host customers
6 to access administrative aspects of websites on dotCOM host computers to
7 which access had been disabled by dotCOM host due to non-payment, and
8 transferred or assisted in transferring data from these computer, including to
9 Defendants' computers.

10 81. dotCOM host has been harmed by these violations, and its harm
11 includes, without limitation, the loss of past-due and future revenues from
12 hosting the improperly accessed websites; harm to dotCOM host's data,
13 programs, and computer systems and impairment of the integrity and
14 availability of data, programs, systems, or information; and the cost of
15 responding to the offenses, including conducting damage assessments and
16 restoring data, programs, systems, and or information to its condition prior to
17 the offenses. These, as well as other losses and damages in an amount to be
18 determined at trial, amount to over \$5,000 aggregated over a one-year period.

19 82. Defendants' unlawful access to, and misappropriations of and
20 from, dotCOM host computers and data, have caused dotCOM host irreparable
21 injury. Unless restrained and enjoined, Defendants will continue to commit
22 such acts. Damages are not adequate to compensate dotCOM host for these
23 actual and threatened injuries; dotCOM host is therefore entitled to injunctive
24 relief as provided by Cal. Penal Code. § 502(e).

25 83. Defendants' unlawful access to, and misappropriations of and
26 from, dotCOM host computers and data, was willful, and Defendants were
27 guilty of oppression, fraud, or malice as defined in Cal. Civil Code. § 3294(c),
28 and dotCOM host is therefore entitled to punitive or exemplary damages as

1 provided by Cal. Penal Code. § 502(e).

2 **FIFTH CAUSE OF ACTION**

3 **(INTERFERENCE WITH CONTRACTUAL RELATIONS)**

4 84. dotCOM host hereby realleges and incorporates by reference the
5 allegations set forth in paragraphs 1 through 83.

6 85. dotCOM host had valid contracts with its customers to host their
7 ecommerce websites.

8 86. Defendants knew about those contracts.

9 87. Defendants' intentional acts, including Defendants' false and
10 misleading telephone calls with and emails to dotCOM host's clients described
11 above, were intended and designed to induce breach or disruption of those
12 contractual relationships.

13 88. Defendants' intentional acts, including Defendants false and
14 misleading telephone calls with and emails to dotCOM host's clients described
15 above, made dotCOM host's performance under those contracts more expensive
16 and more difficult, and actually induced breach or disruption of those
17 contractual relationships.

18 89. The breach or disruption of dotCOM host's contractual
19 relationships with its customers caused dotCOM host significant and irreparable
20 damage, including loss of current and future revenue, and inability to collect
21 past-due amounts.

22 90. The aforementioned acts of Defendants in interfering with dotCOM
23 host's contractual relationships, were willful and Defendants were guilty of
24 oppression, fraud, or malice as defined in Cal. Civil Code. § 3294(c) and
25 dotCOM host is therefore entitled to punitive or exemplary damages as provided
26 by Civ. Code § 3294(a).

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SIXTH CAUSE OF ACTION

SIXTH CAUSE OF ACTION(UNFAIR COMPETITION – CAL. BUS. & PROF. CODE § 17200)

91. dotCOM host hereby realleges and incorporates by reference the allegations set forth in paragraphs 1 through 90.

92. This is a cause of action for Statutory Unfair Competition under California Bus. & Prof. Code § 17200, *et seq.*

93. Defendants’ acts of unlawful, unfair and/or fraudulent business acts or practices, and unfair, deceptive, untrue and/or misleading advertising, as complained of herein, constitute unfair competition with dotCOM Host under the statutory laws of the State of California, particularly California Business and Professions Code § 17200, *et seq.*

94. dotCOM Host has suffered injury in fact and has lost money or property, including past and future revenue, as a result of Defendants’ aforementioned intentional and willful acts.

95. dotCOM host is entitled to equitable relief, including an injunction for the aforesaid unfair acts and the disgorgement of any money or other property that Defendants acquired through the aforesaid unlawful acts, and restitution of all money or other property that dotCOM host lost through the aforesaid unlawful acts.

PRAYER FOR RELIEF

WHEREFORE, dotCOM host prays for judgment in its favor against Defendants for the following relief:

A. That Defendants be adjudged to have violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, and that Defendants’ acts in doing so be adjudged willful, malicious, oppressive, fraudulent, and done knowingly;

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1 B. That Defendants be adjudged to have violated the False Advertising
2 provisions of the Lanham Act, 15 U.S.C. § 1125, and that Defendants' acts in
3 doing so be adjudged willful, malicious, oppressive, fraudulent, and done
4 knowingly;

5 C. That Defendants be adjudged to have misused their copyrights, and
6 that those copyrights be adjudged to be unenforceable;

7 D. That Defendants be adjudged to have violated the California
8 Comprehensive Computer Data Access and Fraud Act, Cal. Penal Code § 502,
9 and that Defendants' acts in doing so be adjudged willful, malicious, oppressive,
10 fraudulent, and done knowingly;

11 E. That Defendants be adjudged to have interfered with dotCOM host's
12 contractual relationships, and that Defendants' acts in doing so be adjudged
13 willful, malicious, oppressive, fraudulent, and done knowingly;

14 F. That Defendants be adjudged to have competed unfairly with
15 dotCOM host under California Business and Professions Code § 17200, *et seq.*
16 and that Defendants' acts in doing so be adjudged willful, malicious, oppressive,
17 fraudulent, and done knowingly;

18 G. That Defendants, their respective agents, servants, employees and
19 attorneys, and all those persons in active concert or participation with them, be
20 forthwith temporarily, preliminarily and thereafter permanently enjoined, pursuant
21 to Federal Rule Civil Procedure 65, 18 U.S.C. § 1030 (g), Cal Penal Code
22 § 502(e), California Business and Professions Code § 17200, and the common law
23 of the State of California from further: accessing dotCOM host's data, computers,
24 or computer systems; acts of false advertising regarding the nature or quality of
25 the goods or services of dotCOM host or Defendants; interfering with dotCOM
26 host's contractual relationships; defrauding dotCOM host; or unfairly competing
27 with dotCOM host in any manner.

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1 H. That Defendants be directed to file with this Court and serve on
2 Plaintiff within thirty (30) days after the service of the injunction, a report in
3 writing, under oath, setting forth in detail the manner and form in which
4 Defendants have complied with the injunction;

5 I. That Defendants be required to account to dotCOM host for any and
6 all gains, profits and advantages derived by them, and all damages sustained by
7 dotCOM host, by reason of Defendants' acts complained of herein;

8 J. That the Court award punitive or exemplary damages under one or
9 more of Cal. Penal Code §502(e), Cal. Civ. Code §3294(a), and the common
10 law of the State of California;

11 K. That the Court deem this case exceptional under 15 U.S.C. § 1117
12 and award dotCOM host its reasonable attorneys' fees;

13 L. That Defendants be required to disgorge all gains, profits and
14 advantages derived by them, by reason of Defendants' acts complained of herein;

15 M. That Defendants be required to provide restitution for any and all
16 gains, profits and advantages derived by them, and all damages sustained by
17 dotCOM host, by reason of Defendants' acts complained of herein;

18 N. An order imposing a constructive trust for the benefit of dotCOM
19 host over any and all gains, profits and advantages derived by Defendants by
20 reason of Defendants' acts complained of herein;

21 O. An order providing similar and comparable relief on behalf of all
22 others similarly situated who were similarly harmed by Defendants' acts
23 complained of herein; and

24 P. Such other and further relief as this Court may deem just and
25 proper.

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Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 7, 2016

By: /s/ Ali S. Razai
Michael K. Friedland
Benjamin A. Katzenellenbogen
Ali S. Razai
Nicholas A. Belair

Attorneys for Plaintiff
DK HOLDINGS d/b/a dotCOM HOST

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DEMAND FOR TRIAL BY JURY

dotCOM Host hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 7, 2016

By: /s/ Ali S. Razai

Michael K. Friedland
Benjamin A. Katzenellenbogen
Ali S. Razai
Nicholas A. Belair

Attorneys for Plaintiff
DK HOLDINGS d/b/a dotCOM HOST

22682392

From: efile_information@casd.uscourts.gov [mailto:efile_information@casd.uscourts.gov]
Sent: Tuesday, March 08, 2016 9:41 AM
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Subject: Activity in Case 3:16-cv-00580-W-RBB DK Holdings v. Miva, Inc. et al Complaint

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U.S. District Court

Southern District of California

Notice of Electronic Filing

The following transaction was entered on 3/8/2016 at 9:40 AM PST and filed on 3/7/2016

Case Name: DK Holdings v. Miva, Inc. et al

Case Number: [3:16-cv-00580-W-RBB](#)

Filer: DK Holdings

Document Number: [1](#)

Docket Text:

COMPLAINT with Jury Demand against All Defendants (Filing fee \$ 400 receipt number 0974-8863707.), filed by DK Holdings. (Attachments: # (1) Cover Sheet)

The new case number is 3:16-cv-580-W-RBB. Judge Thomas J. Whelan and Magistrate Judge Ruben B. Brooks are assigned to the case. (Razai, Ali)(acc)

3:16-cv-00580-W-RBB Notice has been electronically mailed to:

Ali S. Razai ali.razai@kmob.com, litigation@kmob.com

3:16-cv-00580-W-RBB Electronically filed documents must be served conventionally by the filer to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1106146653 [Date=3/8/2016] [FileNumber=9732048-0]
[28fc3c4868433a612e8cc4c7c5947329f0ba99cce1e5ba1fa849cbc66f39cdc2f278
0ffc9700d3579bfedbec080f5c3606460034c917132f01096d8d73e69568]]

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