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BOMBORA, INC.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SANTA CLARA

15 BOMBORA, INC., a Delaware
corporation,

16 Plaintiff,

17 v.

18 ZOOM INFO DATA, D/B/A ZOOMINFO
19 LLC, a Delaware Limited Liability
Company, and DOES 1-50, inclusive,

20 Defendants.
21
22
23
24

CASE NO. 20CV365858

FIRST AMENDED COMPLAINT FOR

1) UNFAIR COMPETITION;

**2) INTENTIONAL INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE;**

**3) INTENTIONAL
MISREPRESENTATION;**

**4) NEGLIGENT MISREPRESENTATION;
AND**

5) UNJUST ENRICHMENT.

1 Plaintiff Bombora, Inc. (“Bombora” or “Plaintiff”) brings this Complaint against
2 ZoomInfo Data, doing business as ZoomInfo LLC (“ZoomInfo”). Plaintiff alleges as follows.

3 **INTRODUCTION**

4 Defendant ZoomInfo claims to be a leading go-to-market intelligence platform for sales
5 and marketing teams. ZoomInfo collects, stores and sells personal information, e.g., email
6 addresses, physical addresses, business and mobile phone numbers and other information about
7 people. One of the ways that ZoomInfo collects this personal information is by using what it calls
8 its “Community Edition.” This is a purportedly “free” tool that is installed on individual users’
9 email, such as Microsoft’s Outlook or Google’s Gmail business suite of tools. In exchange for
10 the “free” product and access to some limited services, ZoomInfo accesses and/or collects all of
11 the information stored in the user’s contact list and email files, including metadata. ZoomInfo
12 then takes the personal information that it collects, combines it with other information from other
13 sources and creates its own form of intent data. Intent data includes insights into internet users’
14 interests and creates predictions about their potential to take certain actions based on their web
15 content consumption.

16 Plaintiff Bombora brings this action because ZoomInfo’s collection, storage and sale of
17 personal information allows ZoomInfo to compete unfairly in violation of California law.
18 ZoomInfo has also been misleading and fraudulently inducing its customers into believing they
19 are receiving Bombora data when they are not. ZoomInfo also misrepresented its intentions to
20 enter into a contract with Bombora when in fact ZoomInfo was simply buying time to launch an
21 inferior product. Bombora has been harmed by, among other things, ZoomInfo’s unfair
22 competition and has suffered injury in fact from lost customers and revenue that would have been
23 derived therefrom. ZoomInfo’s conduct is unlawful under the California Consumer Privacy Act
24 (Cal. Civ. Code § 1798.100, *et seq.*) (“CCPA”) and constitutes unfair competition under
25 California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200). ZoomInfo is also liable
26 for intentionally interfering with Bombora’s relationships and misrepresenting its intentions to the
27 detriment of Bombora.

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1 **PARTIES**

2 1. Plaintiff Bombora is a Delaware Corporation with its principal place of business in
3 419 Park Ave. S., 12th Floor, New York, NY, with offices in San Francisco, California.

4 2. Defendant ZoomInfo is a Delaware LLC with its principal place of business in 805
5 Broadway St Suite 900, Vancouver, WA. On information and belief, ZoomInfo has operated in
6 California through its website and has many active customers and partners in California, such as
7 DemandBase, Zendrive, Productboard and Salesforce. ZoomInfo also operates in California
8 through its wholly owned subsidiary, Datanyze, whose principal place of business is San Mateo
9 California.

10 3. Defendant DOES 1-50, inclusive, are sued herein pursuant to the provisions of the
11 California Code of Civil Procedure § 474. Plaintiff is ignorant of the true names and capacities of
12 defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by
13 such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the
14 fictitiously named defendants is in some way responsible for each of the occurrences as herein
15 alleged and that Plaintiff's damages as herein alleged were proximately caused by the conduct of
16 each said fictitiously named defendant.

17 4. Plaintiff is informed and believes and thereon alleges that each of the defendants
18 was the agent, partner, and/or employee of one or more of the remaining defendants and, in doing
19 the things herein alleged, was acting within the course and scope of said agency, partnership,
20 and/or employment. ZoomInfo and DOES 1-50, inclusive, are hereinafter collectively referred to
21 as "Defendants."

22 **FACTS GIVING RISE TO THIS COMPLAINT**

23 5. Bombora is a technology company that analyzes business content consumption of
24 millions of business-to-business ("B2B") organizations and informs its customers when target
25 organizations are indicating active demand for products or services that the customers offer. To
26 gather data, Bombora established a data cooperative ("data co-op") that includes many different
27 publishers, e.g., web site owners, marketers, technology providers, research firms and event
28 firms. From the largest businesses and media organizations on the planet to the most niche

1 special interest destinations, data co-op members provide data into and receive direct access to a
2 massive pooled data set that details business buyer intent across the B2B web at a massive scale.
3 In return, data co-op members contribute privacy compliant, brand anonymous, visitor
4 consumption data.

5 6. Bombora sells its intent data to its customers, who in turn tailor their sales and
6 marketing efforts based upon the correlation with content consumption and intent to purchase
7 goods and services. Bombora sells intent data under the trade name “Company Surge®
8 Analytics.” A Company Surge® Score (0-100) informs the customer when target organizations
9 are indicating active demand for the products or services that Bombora’s customers offer. A
10 Company Surge® Score of 60 or above is indicative of an increase in the purchase intent of the
11 target organization.

12 7. Bombora also sells its Company Surge® Analytics to what it calls “Channel
13 Partners” that offer a variety of other services such as Sales Enablement, Digital Advertising,
14 Content Marketing and Marketing Automation, among others. For example, Marketo, an Adobe
15 company, the leading provider of engagement marketing software and solutions, partners with
16 Bombora to offer all of Marketo’s clients Company Surge® data.

17 8. Bombora competes with many purveyors of intent data that is derived from
18 sources outside of its data co-op. Some of Bombora’s competitors use AddThis or Bidstream
19 data¹ to create intent data. Many of these competitors (some of which are also known as “data
20 brokers”) gather data in ways that do not comply with applicable privacy laws, such as the CCPA
21 and the European Union’s General Data Protection Regulation.

22 9. In February 2019, ZoomInfo announced it was acquired by DiscoverOrg. At the
23 time of the acquisition, DiscoverOrg was a Bombora Channel Partner obtaining its intent data

24 _____
25 ¹ Bidstream data is information that is gleaned from real-time bidding that occurs in milliseconds
26 before every webpage loads. Most webpage views include an offer to sell advertising space on
27 that webpage, e.g., banner ads that populate on the side of the user’s screen. Advertisers and their
28 proxies get information such as publisher (the webpage) and URL, device type, IP address and ad
format. There may be other pieces of information such as location or audience. Most auction
participants use the information to formulate a bid to place the advertisement; however, there are
unscrupulous users that participate and make fake, unrealistically low bids just to gather the data.

1 from Bombora’s data co-op. As a Channel Partner, DiscoverOrg, now ZoomInfo, received all the
2 legally and ethically gathered data from Bombora’s data co-op and the Company Surge® that it
3 was then able to offer to its own clients. Through its relationship as a Channel Partner,
4 DiscoverOrg gained access to Bombora’s confidential business strategies, including sales
5 trainings and pricing strategies based on Bombora’s experience as the leading B2B intent data
6 provider, and Bombora’s intellectual property. Bombora provided access to enable DiscoverOrg
7 to sell Company Surge® in the DiscoverOrg platform.

8 10. In September 2019, the merged companies announced their respective platforms
9 were integrated into a new platform to be named ZoomInfo powered by DiscoverOrg. At that
10 point, it is clear that ZoomInfo decided to forgo the numerous benefits of Bombora’s Company
11 Surge® and instead rely upon its own, unlawfully obtained data to create an inferior intent
12 product. On or about March 2, 2020, ZoomInfo announced to its then Company Surge®
13 customers:

14 **Welcome to our new, proprietary ZoomInfo Intent!**

15 The functionality is the same, but we made a few UI changes.

16 **Surge Score is now Signal Score.**

17 This indicates the intensity in consumption of that topic.

18 **Signal Strength is now Audience Strength.**

19 This indicates the volume of consumption of a topic across an organization.

20 Don’t forget, you can set up alerts to get notified of new Intent signals,
21 automatically.

22 Conveniently, ZoomInfo failed to mention its intention to swap out customers’ trusted source of
23 intent data, Company Surge®, with a new, unreliable and unlawfully gathered intent data source.

24 11. ZoomInfo’s advertising is deceiving the public.

25 (a) As to the companies that were receiving Company Surge® and are now
26 receiving ZoomInfo Intent data, ZoomInfo goes out of its way to make those companies believe
27 that they are still receiving the same reliable, accurate and lawfully gathered Company Surge®.
28 For example, ZoomInfo still uses the term Surge when describing ZoomInfo Intent signals
29 (“when they are Surging or not,” “Surging on these Topics”) and ZoomInfo Intent uses the
30 Company Surge® Score methodology of 0 -100 with 60 indicating intent of the target
31 organization.

1 (b) As to would-be new customers, ZoomInfo passes off *Bombora*'s successful
2 client results as *ZoomInfo Intent* clients. ZoomInfo claims the following successes were achieved
3 using ZoomInfo Intent data:

4 Marketo improved email open rates by 107%
5 Veristor's email open rate increased 2X
6 OneLogin increased outbound sales pipeline by 10%

7 In reality, these are the results of companies using Company Surge®, not ZoomInfo intent data.
8 These companies, and any other company, could not have achieved these results or any other
9 results at the time ZoomInfo advertised them because the ZoomInfo Intent product was not
10 launched until March 2, 2020 (when existing Company Surge® customers were transferred to
ZoomInfo Intent, without their knowledge).

11 12. When ZoomInfo announced ZoomInfo Intent, they encouraged Company Surge®
12 customers to transition away from the DiscoverOrg legacy platform to ZoomInfo Intent, stating

13 what you're getting with the new platform, ZoomInfo powered by
14 DiscoverOrg, is really the combination, the best of DiscoverOrg's legacy
15 platform, the best of ZoomInfo's legacy platform, but on top of that you're
16 getting intent, right that was a big thing, and the coverage, there's is so
much more data . . . it is all backed by the contact info . . . intent data just
keeps getting better and better.

17 13. One of the various tools and products that ZoomInfo offers is what it calls its free
18 "Community Edition." The Community Edition tool gathers personal information from and about
19 the users who register and download the tool ("Community Edition Users"), and, importantly,
20 about and from *unknowing third parties* whose names, contact information and other personal
21 information is stored in the Community Edition Users' files. In exchange, the Community
22 Edition User receives access to a small number of ZoomInfo's databases and information.

23 14. ZoomInfo's Community Edition Terms of Use state "[i]n exchange for your use of
24 Community Edition, you agree to let us access information in your email inbox, specifically the
25 information in signature blocks of emails you have received and your contacts." Specifically, by:

26 accepting this Agreement and registering for Community Edition,
27 and as a condition to accessing and using the Services, you
28 authorize the Application to access the information in your email
account (e.g. Gmail, Microsoft Outlook), including your contacts,
metadata, and email content. You acknowledge, understand, and

1 agree that after this permission is granted and until it is revoked, the
2 Application will automatically parse this information and extract
3 certain information regarding business and business people
4 (collectively “Contact Data”) that may be stored in your email
5 account both locally or on a remote server. The Application uses
6 automated algorithms to parse email messages, headers, and
7 signatures to collect and verify, with respect to business
8 professionals, information such as company, job title, email
9 address, phone number, and office location, and with respect to
10 businesses, business address, phone number, website, email
11 address, fax number, and similar information.

12 15. ZoomInfo uses the Contact Data that it accesses and collects from the Community
13 Edition Users to augment the personal information already contained in its databases, which
14 databases are then shared with Defendants customers. This is clear from ZoomInfo’s “Privacy
15 FAQ,” which provides additional information on how ZoomInfo uses the information that it
16 accesses from Community Edition Users. Notably, ZoomInfo states “ZoomInfo Community
17 Edition is a program that gives you free, ongoing access to the ZoomInfo Database of millions of
18 B2B profiles and contact information for the people you want to reach — in return for sharing
19 your business contacts. Community members automatically contribute their contacts to the
20 ZoomInfo Database....”

21 16. In addition to accessing and collecting Contact Data, ZoomInfo forces Community
22 Edition Users to give ZoomInfo an “irrevocable license” to Contact Data in the Community
23 Edition User’s possession that allows ZoomInfo to “reproduce, distribute, publish, perform, make
24 derivative works of, or display the Contact Data or any portion thereof, and sell, transfer, assign,
25 sublicense, disclose, or make available the Contact Data or any portion thereof to any third party,
26 including ZoomInfo’s customers, contractors, strategic partners, agents, and service providers.
27 The foregoing license grants to ZoomInfo are worldwide, non-exclusive, perpetual, fully paid-up,
28 and royalty-free, and ZoomInfo shall have the right to sublicense, assign, or transfer such licenses
in its sole and absolute discretion.” In other words, once ZoomInfo has your information – and
your contacts’ personal information – it keeps all of it, *even after you unsubscribe from the
service*. As ZoomInfo explains to Community Edition Users, after a user unsubscribes, “you are
not able to ‘unshare’ the information you had already shared up to that point, and ZoomInfo will
retain that previously shared information.” There is literally no way to get it back from

1 ZoomInfo, and, more importantly, ZoomInfo can also keep using and selling all of your data,
2 including third party data, indefinitely.

3 17. Ironically, the terms of service prohibit the user from “scraping” any data from
4 ZoomInfo’s site using the same type of tool (i.e., a web crawler) that ZoomInfo also uses to
5 gather data from the Internet, and forces the user to indemnify ZoomInfo for any breaches of any
6 law, including privacy laws.

7 18. Notably, in ZoomInfo’s “Privacy FAQ,” in response to the question, “Will my
8 contacts know ZoomInfo received their information from me?” ZoomInfo states emphatically:
9 “***Absolutely not. ZoomInfo does not identify the source of the information in the ZoomInfo***
10 ***Database.***” (emphasis added). Thus, ZoomInfo itself admits that the unknowing contacts whose
11 personal information is accessed, collected and/or disclosed in connection with the Community
12 Edition are never even informed – let alone given a chance to opt-out – of ZoomInfo’s access to,
13 use and/or subsequent disclosure of their personal information.

14 19. While ZoomInfo claims that its services are “not a violation of privacy,” its public
15 filings tell a very different story. In its recently filed S-1, ZoomInfo admits that its activities
16 regarding the collection and use of personal data under the CCPA could be noncompliant.
17 Without question, application of – and actual proper compliance with – the CCPA would
18 significantly affect ZoomInfo’s ability to gather relevant data, including personal information,
19 and reduce the demand for its services. ZoomInfo admits that a slowdown in the use of
20 Community Edition could occur because users might feel that the “potential harm from sharing”
21 their data, could “outweigh any benefits.” ZoomInfo admits that it collects “personal data” from
22 its users, and also admits that the third parties whose personal information is collected are not
23 provided notice thereof, and thus do not have an opportunity to “opt out” or restrict the sale of
24 their personal information.

25 20. Even if ZoomInfo’s website contains a link enabling visitors to opt-out of the sale
26 of personal information, it serves an extremely limited purpose as it de facto is only provided to
27 visitors of the website. As such, any individuals who are completely unaware that ZoomInfo has
28 collected and sells their personal information (i.e., every single contact whose information is

1 collected and sold via the Community Edition tool) would never even know, in the first place, to
2 visit the website. ZoomInfo knows that Community Edition data collection is unlawful.

3 21. After Bombora provided ZoomInfo with a copy of the original Complaint in this
4 matter, it attempted to fix its unlawful personal information collection process. As described
5 above, an earlier edition of the “Privacy FAQ” emphatically stated that the unknowing third
6 parties whose data was being harvested by Community Edition would never know how ZoomInfo
7 collected their data. In a new, post-Complaint “Privacy FAQ”, ZoomInfo stated that they would
8 send an email to third parties explaining, “how the person can control what we publish or opt out
9 of the database if that is what they prefer.” This updated “Privacy FAQ,” however, did nothing to
10 provide notice and opportunity to opt-out *at the time of collection*, as required by law. In fact,
11 shortly after posting the updated “Privacy FAQ,” ZoomInfo removed this “new” process from its
12 “Privacy FAQ,” presumably, because it knew that its band-aid solution did nothing to cure the
13 unlawful collection of third party data and more importantly would likely cripple the Community
14 Edition’s apparently critical data collection.

15 22. ZoomInfo admits that it competes with Bombora, stating that its competitors
16 include “other providers of online content consumption data for predictive sales and marketing
17 analytics.” Bombora is informed and believes, and thereupon alleges, that it has lost a significant
18 number of actual and potential customers because ZoomInfo competes unfairly. Bombora is
19 informed and believes, and thereupon alleges that it has lost significant revenue from ZoomInfo’s
20 unfair competition.

21 23. “Collecting” is defined in the CCPA as “buying, renting, gathering, obtaining,
22 receiving, or accessing any personal information pertaining to a consumer by any means.” (Civ.
23 Code, § 1798.140, subd. (e).) Based upon the materials provided by ZoomInfo on its website,
24 ZoomInfo accesses personal information about Community Edition users’ contacts, and after
25 parsing through the contacts files, collects and stores information in its database(s), which is in
26 turn sold to Defendants’ customers.

27 24. Defendants cannot, and make no effort to, inform the individuals whose data is
28 being collected from Community Edition Users’ files that ZoomInfo is collecting, storing, and/or

1 selling their personal information at the time of collection. Such individuals include
2 “consumers,” or natural persons who are California residents, as defined in the CCPA. (Civ.
3 Code, § 798.140, subd. (g).)

4 25. ZoomInfo is a “business” that is subject to the CCPA.

5 26. The “personal information” that ZoomInfo collects via the Community Edition
6 tool includes information that falls within the purview of the CCPA, including but not limited to:
7 names; aliases; email addresses; internet or other electronic network activity information; location
8 information; professional or employment-related information; and inferences drawn from the
9 foregoing to create a profile about a consumer reflecting the consumer’s preferences,
10 characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities
11 and aptitudes. (Civ. Code, § 1798.140, subd. (o).)

12 27. Defendants sell, as such term is defined in CCPA (Civ. Code, § 1798.140, subd.
13 (t)), consumers’ personal information that ZoomInfo collects by, without limitation, selling,
14 releasing, disclosing, disseminating, making available, transferring, or otherwise communicating
15 the information to another business or a third party for monetary or other valuable consideration,
16 as defined by the CCPA.

17 28. Defendants do not, either at or before the point of collecting consumers’ personal
18 information from Community Edition Users’ files, inform consumers whose information is
19 contained therein as to the categories of personal information to be collected and the purposes for
20 which the categories of personal information shall be used, in violation of the CCPA. (Civ. Code,
21 § 1798.100, subd. (b).) Further, Defendants do not provide notice to those consumers that they
22 are selling consumers’ personal information and/or notify consumers or give consumers the right
23 opt-out of the sale of their personal information, in violation of the CCPA. (Civ. Code,
24 § 1798.120, subd. (b).)

25 **FIRST CAUSE OF ACTION**

26 **(Unfair Competition)**

27 29. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1-28
28 set forth above.

1 30. Defendants violated California Business and Professions Code section 17200, *et*
2 *seq.*, by engaging in unlawful business acts and practices that constitute acts of “unfair
3 competition” as defined therein with respect to violating the CCPA (Civ. Code, §1798.140, *et*
4 *seq.*) by collecting, using, and/or selling third-party personal information collected by using its
5 Community Edition.

6 31. Defendants’ business practices also constitute unfair competition in violation of
7 Business and Professions Code section 17200, *et seq.*, as they are likely to deceive and mislead
8 the public. Those practices include, without limitation: making ZoomInfo customers believe they
9 are receiving superior Company Surge® data when in fact they are not; claiming customers have
10 achieved success using ZoomInfo Intent data when in fact those successes were achieved using
11 Company Surge®; offering Company Surge® to lure in new customers, inducing them to into a
12 contract that purports to allow ZoomInfo to swap out Company Surge® data at any time and
13 replace it with ZoomInfo’s substantially inferior intent data without informing its customers and
14 then doing just that; relying on the same fraudulently induced contract to refuse to refund
15 customers’ money when customers discover the foregoing facts.

16 32. As a direct and proximate result of Defendants’ unlawful practices and acts, they
17 have obtained customers, revenue and profits from those customers that rightfully belong to
18 Bombora, and Defendants have been unjustly enriched.

19 33. Bombora seeks relief under California Business & Professions Code section
20 17200, *et seq.*, including, but not limited to: i) restitution of Bombora’s money or property that
21 Defendants may have acquired by means of its unlawful business practices; ii) restitutionary
22 disgorgement of all revenues accruing to Defendants because of its unlawful practices; and iii) an
23 injunction prohibiting Defendants from collecting, using, and/or selling consumer personal
24 information collected through the use of ZoomInfo’s Community Edition.

SECOND CAUSE OF ACTION

(Intentional Interference with Prospective Economic Advantage)

25
26 34. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1-33
27 set forth above.
28

1 35. Bombora had preexisting business and economic relationships with companies that
2 received Bombora’s premier intent data through their ZoomInfo subscriptions, many of which
3 purchased their ZoomInfo subscriptions specifically to receive Bombora’s premier intent data.
4 There was a probability of future economic benefit for Bombora from those relationships because
5 many of those companies renewed their annual subscriptions on a regular ongoing basis and
6 purchased other Bombora products.

7 36. Defendants knew of this preexisting relationship. ZoomInfo was in part
8 responsible for creating the relationships because it used Bombora’s product as a way to get the
9 customers to purchase ZoomInfo subscriptions.

10 37. ZoomInfo intentionally interfered with the foregoing relationships by, without
11 limitation: making ZoomInfo customers believe they are receiving superior Company Surge®
12 data when in fact they are not; using Company Surge® data to lure in new customers, inducing
13 them to into a contract that purports to allow ZoomInfo to swap out Company Surge® data at any
14 time and replace it with ZoomInfo’s substantially inferior data without informing its customers,
15 and then doing just that. The foregoing are independently wrongful acts in that they violate unfair
16 competition laws and amount to fraudulent inducement, intentional misrepresentation, and
17 negligent misrepresentation as to the customers.

18 38. Bombora’s relationships with those companies were actually disrupted as a result
19 of ZoomInfo’s conduct. ZoomInfo swapped out Bombora’s intent data for its own inferior intent
20 data so that the customers are no longer receiving Bombora’s data, and Bombora is no longer
21 receiving the subscription fees as a result.

22 39. Bombora suffered damages as a result of ZoomInfo’s conduct through lost profits
23 and diminution in value as a result of lost customers of at least \$18,000,000, in an amount to be
24 proven at trial.

25 **THIRD CAUSE OF ACTION**

26 **(Intentional Misrepresentation)**

27 40. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1-39
28 set forth above.

1 41. As the contract between Bombora and ZoomInfo was coming to an end on
2 February 1, 2020, ZoomInfo’s agent, General Counsel Anthony Stark informed Bombora on or
3 about December 31, 2019 that ZoomInfo was “formally” not going to renew the existing contract,
4 but that ZoomInfo wanted to and intended to negotiate a new contract with Bombora.

5 42. Bombora is informed and believes, and thereon alleges, that the representations
6 referenced immediately above were and are false. ZoomInfo, through its agents, Mr. Stark and
7 Mr. Chris Hays, pretended to negotiate the terms of a new contract up to and including the
8 weekend of March 1, 2020. To Bombora’s surprise, ZoomInfo launched its new product on
9 March 2, 2020 that was intended to be a substitute for Company Surge®, and then ghosted
10 Bombora.

11 43. Bombora is informed and believes, and thereon alleges, the true facts were that
12 ZoomInfo had been working on its own intent data product for more than a year and did not have
13 any intention of entering into a new contract with Bombora. ZoomInfo intentionally misled
14 Bombora with respect to its intentions so that it could secure an extension until its inferior
15 product was ready to launch. During that time period, ZoomInfo accelerated its efforts to get new
16 customers in the door using Company Surge® as the inducement and failed to tell those
17 customers that they would stop receiving Company Surge® data in February and instead would
18 be forced to take ZoomInfo intent data as a replacement. Had those customers known that they
19 would not be able to receive Company Surge®, they would not have purchased a ZoomInfo
20 subscription and instead would have signed up with Bombora.

21 44. Bombora is informed and believes, and thereon alleges, that Mr. Stark and
22 Mr. Hays made the misrepresentations above knowingly and intentionally and in the course and
23 scope of their employment with ZoomInfo.

24 45. At the time ZoomInfo made these misrepresentations and Bombora agreed to
25 continue providing ZoomInfo with Bombora’s intent data, Bombora was ignorant of the falsity of
26 ZoomInfo’s representations and believed them to be true.

27 46. In reliance on those misrepresentations, Bombora agreed to continue providing
28 ZoomInfo with Bombora data between February 1, 2020 and March 1, 2020. Had Bombora

1 known the actual facts, it would not have taken such action. Bombora's reliance was justified
2 because ZoomInfo had never lied to Bombora in the past (to the best of Bombora's knowledge)
3 and had purchased Bombora data in the past.

4 47. As a direct and proximate result of ZoomInfo's intentional misrepresentations,
5 Bombora was damaged by losing the customers who would have purchased Bombora products
6 after February 1, 2020 and instead signed up for a new ZoomInfo subscription. Those damages
7 are at least \$1,590,000, according to proof at trial.

8 48. ZoomInfo's aforementioned conduct was done willfully, intentionally, and
9 maliciously and with an express intent to harm Bombora. As a result, Bombora requests that
10 punitive damages be assessed against ZoomInfo.

11 **FOURTH CAUSE OF ACTION**

12 **(Negligent Misrepresentation)**

13 49. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1-48
14 set forth above.

15 50. As the contract between Bombora and ZoomInfo was coming to an end on
16 February 1, 2020, ZoomInfo's agent, General Counsel Anthony Stark informed Bombora on or
17 about December 31, 2019 that ZoomInfo was "formally" not going to renew the existing contract,
18 but that ZoomInfo wanted to and intended to negotiate a new contract with Bombora.

19 51. Bombora is informed and believes, and thereon alleges, that the representations
20 referenced immediately above were and are false. ZoomInfo, through its agents, Mr. Stark and
21 Mr. Chris Hays, pretended to negotiate the terms of a new contract up to and including the
22 weekend of March 1, 2020. To Bombora's surprise, ZoomInfo launched its new product on
23 March 2, 2020 that was intended to be a substitute for Company Surge®, and then ghosted
24 Bombora.

25 52. Bombora is informed and believes, and thereon alleges, the true facts were that
26 ZoomInfo had been working on its own intent data product for more than a year and did not have
27 any intention of entering into a new contract with Bombora. ZoomInfo misled Bombora with
28 respect to its intentions so that it could secure an extension until its inferior product was ready to

1 launch. During that time, ZoomInfo accelerated its efforts to get new customers in the door using
2 Company Surge® as the inducement, failing to tell those customers that they would stop
3 receiving Company Surge® data in February and instead would be forced to take ZoomInfo
4 Intent data as a replacement. Had those customers known that they would not be able to receive
5 Company Surge®, they would not have purchased a ZoomInfo subscription and instead would
6 have signed up with Bombora.

7 53. Bombora is informed and believes, and thereon alleges that, at the time ZoomInfo
8 made the statements above, ZoomInfo had no reasonable ground for believing said
9 representations to be true, as ZoomInfo knew or should have known that the representations were
10 false.

11 54. At the time, ZoomInfo made these misrepresentations and Bombora agreed to
12 continue providing ZoomInfo with Bombora's data, Bombora was ignorant of the falsity of
13 ZoomInfo's representations and believe them to be true.

14 55. In reliance on those misrepresentations, Bombora agreed to continue providing
15 ZoomInfo with Bombora data between February 1, 2020 and March 1, 2020. Had Bombora
16 known the actual facts, it would not have taken such action. Bombora's reliance was justified
17 because ZoomInfo had never lied to Bombora in the past (to the best of Bombora's knowledge)
18 and had purchased Bombora data in the past.

19 56. As a direct and proximate result of ZoomInfo's negligent misrepresentations,
20 Bombora was damaged by losing the customers who would have purchased Bombora products
21 after February 1, 2020 and instead signed up for a new ZoomInfo subscription. Those damages
22 are at least \$1,590,000, according to proof at trial.

FIFTH CAUSE OF ACTION

(Unjust Enrichment)

25 57. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1-56
26 set forth above.

27 58. Defendants are: i) making untold millions of dollars in profits by violating
28 consumers' privacy rights; ii) inducing customers into contracts to purchase what the customers'

1 believed was Bombora's product, and then swapping out their own inferior product and refusing
2 to refund customers their money when they discover the scheme; and iii) they are fraudulently
3 misrepresenting their intentions to cover up this business scheme.

4 59. Defendants have been unjustly enriched from their fraudulent, unlawful, and
5 negligent acts. Defendants' benefit has come at the expense of Plaintiff, that has lost sales,
6 profits, value, customers, goodwill and reputation as a direct and proximate result of having to
7 compete with Defendants on unfair terms.

8 60. Plaintiff is therefore entitled to recover at least the value of the unjust enrichment
9 that Defendants obtained through their bad acts and conduct, in an amount according to proof at
10 trial.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for judgment against all Defendants as follows:

13 ON THE FIRST CAUSE OF ACTION:

14 1. An order enjoining the unlawful collection of third-party information using the
15 Community Edition tool;

16 2. An order enjoining Defendants from collecting, using, and/or selling third-party
17 personal information that it collected through the use of its Community Edition tool since January
18 1, 2020;

19 3. An order enjoining Defendants from using deceptive practices to advertise to
20 customers, including use of materials and statements that infer ZoomInfo Intent includes
21 Company Surge®;

22 4. An award for equitable relief requiring restitution and disgorgement of the
23 revenues wrongfully obtained as a result of Defendants' unfair competition with Bombora;

24 5. For costs of suit herein;

25 6. An award of reasonable attorneys' fees, costs, and litigation expenses, as allowable
26 by law; and

27 7. Such other and further relief as this Court may deem just and proper.

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1 ON THE SECOND CAUSE OF ACTION

2 8. For damages in an amount in excess of \$18,000,000 and according to proof at trial;

3 9. For punitive damages in an amount appropriate to punish Defendants for their
4 conduct;

5 10. For costs of suit herein;

6 11. An award of reasonable attorneys' fees, costs, and litigation expenses, as allowable
7 by law; and

8 12. Such other and further relief as this Court may deem just and proper.

9 ON THE THIRD CAUSE OF ACTION

10 13. For compensatory damages according to proof at trial in an amount in excess of
11 the minimum jurisdiction of this Court;

12 14. For punitive damages in an amount appropriate to punish Defendants for their
13 conduct;

14 15. For costs of suit herein;

15 16. An award of reasonable attorneys' fees, costs, and litigation expenses, as allowable
16 by law; and

17 17. Such other and further relief as this Court may deem just and proper.

18 ON THE FOURTH AND FIFTH CAUSES OF ACTION

19 18. For compensatory damages according to proof at trial in an amount in excess of
20 the minimum jurisdiction of this Court;

21 19. For costs of suit herein;

22 20. An award of reasonable attorneys' fees, costs, and litigation expenses, as allowable
23 by law; and

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

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ON THE FIFTH CAUSE OF ACTION

- 22. For recovery of the value of Defendant's unjust enrichment obtained through its bad acts and conduct;
- 23. For costs of suit herein; and
- 24. Such other and further relief as this Court may deem just and proper.

Dated: May 19, 2020

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