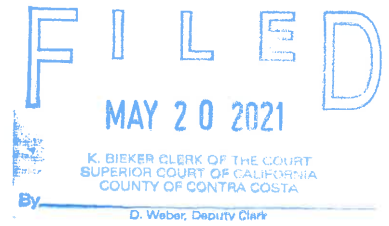


1 DIANA BECTON, SBN 124333
2 County of Contra Costa District Attorney
3 Gary E. Koepfel, SBN: 104596
4 Deputy District Attorney
5 900 Ward Street, 4th Floor
6 Martinez, California 94553-0150
7 Telephone: (925) 957-8789



8 (For list of additional Plaintiff's counsel,
9 See attached Exhibit 1)

10 Attorneys for Plaintiff

11 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA**

C21-01045

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,

14 Plaintiff,

15 v.

16 THEODORE FARNSWORTH AND
17 MITCHELL LOWE, as Individuals,

18 Defendants.

COURT NO.

**COMPLAINT FOR INJUNCTION,
RESTITUTION, CIVIL
PENALTIES AND OTHER
EQUITABLE RELIEF**

19
20
21 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, by and through its Attorneys,
22 DIANA BECTON, Contra Costa County District Attorney, TORI VERBER SALAZAR, San
23 Joaquin County District Attorney, JILL RAVITCH, Sonoma County District Attorney and ERIK
24 NASARENKO, Ventura County District Attorney, the ("District Attorneys"), allege the
25 following on information and belief:
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1 **JURISDICTION AND VENUE**

2 1. The District Attorneys, acting to protect the public from unlawful and unfair
3 business practices, bring this action in the public interest in the name of the People of the
4 State of California (hereinafter “the People”).

5
6 2. The authority of the District Attorneys is derived from the statutory law of the
7 State of California, specifically Business and Professions Code sections 17203, 17204,
8 17206, 17535, and 17536.

9 3. Defendants, Theodore Farnsworth, and Mitchell Lowe (hereafter
10 “Defendants” or “Defendant Farnsworth” or “Defendant Lowe”) have transacted business in
11 the Counties of Contra Costa, Sonoma, San Joaquin, and Ventura, and elsewhere throughout
12 the State of California. The violations of law described in this Complaint were carried out,
13 wholly or in part, within the Counties of Contra Costa, Sonoma, San Joaquin, and Ventura,
14 and elsewhere throughout the State of California. The actions of Defendants as set forth
15 below are in violation of the laws and public policy of the State of California and are
16 inimical to the rights and interests of the general public as consumers and competitors.
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19 **OVERVIEW**

20 4. MoviePass, Inc. (MoviePass) was an American subscription-based movie
21 ticket service headquarter in New York City. Founded in 2011, the service initially allowed
22 subscribers to purchase up to three movie tickets per month for a discounted monthly
23 fee. The service utilized a mobile phone app where users check into a theater and choose a
24 movie and showtime, which resulted in the cost of the ticket being loaded by MoviePass to a
25 prepaid MoviePass debit card, which was then used to purchase the ticket from the movie
26 theater.
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ACTS OF DEFENDANTS

8. On or about August of 2017 HMNY purchased a controlling share of MoviePass and reshaped its basic operating model. At that time, the reshaping of the MoviePass business model was designed and implemented by Defendants Farnsworth and Lowe. Thereafter, they personally designed and implement all changes to the subscription service.

A. FALSE ADVERTISING

9. After HMNY’s acquisition, MoviePass consistently misled consumers by advertising plans that were “unlimited,” or “uncapped,” or that a consumer could see “any movie, any time, any theater” when in fact, consumers could never watch more than a single movie per day and nine percent of movie theaters did not support MoviePass. The words “unlimited,” “uncapped,” and “any” have simple and easily understood definitions. They describe things without limits or boundaries.

10. From August of 2017 to September of 2019, MoviePass had eight different Terms of Service agreements. Up until March 13, 2019, the published Terms of Service limited subscribers to a single movie per day. Yet, MoviePass, through its website and social media accounts on Facebook, Instagram, and Twitter continuously advertised variations of “unlimited” plans from August 15, 2017 to August 15, 2018, and again from March 20, 2019, to its ultimate demise in September 2019.

11. There is a significant difference between “unlimited” and one movie per day. While certainly there are practical bounds—as there are only 24 hours in a day, the idea of “unlimited” and “uncapped” certainly suggest, if not directly state, that a consumer could watch as many movies as he or she wished. Coupled with “any theater, any movie, any

1 day,” MoviePass appeared to offer consumers a buffet for movies. Moreover, MoviePass
2 was available at 91% of theaters, leaving nine percent of theaters unavailable. Also, for a
3 short while in January 2018, MoviePass subscribers were unable to use their subscriptions
4 at AMC theaters. Nine out of ten theaters are not “any.” It is certainly a very substantial
5 amount, but it is not “any.”
6

7 12. Up until April 27, 2018, MoviePass subscribers could watch one 2D movie per
8 day. After the Terms of Service change on April 27, subscribers could no longer watch a
9 movie more than once. Yet, MoviePass continued to advertise its unlimited plan: “What
10 are you waiting for? Unlimited movies in theaters for \$9.95 a month is BACK” and that
11 subscriber could see any movie, any theater, any day. This Tweet is doubly misleading.
12 First, as described above, the original MoviePass “unlimited” plan was deceiving in that it
13 offered a movie per day at 91% of theaters. Second, the plan that was offered was not the
14 original “unlimited” plan—as the new plan did not allow subscribers to repeat films. The
15 emphasis on “back” implied that MoviePass was offering the original plan—when in fact,
16 there was now a significant difference. Once a subscriber saw a movie, he or she was no
17 longer entitled to see “any movie.”
18

19
20 13. From August 15, 2018 until March 20, 2019, MoviePass did not offer or
21 advertise an unlimited plan. However, on December 6, 2018, MoviePass rolled out a three-
22 tiered subscription model that offered three movies a month. Consumers could opt for an
23 “all access” plan that offered “all movies, all showtimes, no **restrictions**” or a “red carpet
24 plan” that offered “all movies, all show times, 1 premium screening.” Although there were
25 asterisks in advertisement, they simply noted price differences in certain markets. The
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1 actual Terms of Service prohibited “all access” and “red carpet” subscribers from watching
2 repeat movies. That is a **restriction**. The advertisements would likely deceive the public.

3 14. On March 20, 2019, MoviePass rolled out its “uncapped” plan. MoviePass’
4 website blared out “GO SEE IT ALL” and then “ALL ACCESS.” Although described as
5 “uncapped” and in social media posts on March 22, 2019 “unlimited,” this plan again
6 prohibited subscribers from watching repeat movies. Furthermore, the plan limited
7 subscribers to the movies in the application, not any movie. This plan lasted until
8 MoviePass’ shutter on September 13, 2019.

10 **B. FAILURE TO DELIVER CARDS**

11 15. Business and Professions Code section 17538 requires that the delivery of
12 items ordered over the internet occur within thirty days, unless otherwise advertised. If the
13 item cannot be delivered within the required time frame, the seller must: 1) refund the
14 moneys paid, or 2) notify the consumer of the duration of the delay and offer either a refund
15 within a week or a substitute good of equal or greater value.

16 16. At various points in time, MoviePass represented that upon sign up, a
17 subscriber would receive his or her MoviePass card within 5-7 business day or up to 2-3
18 weeks. While many MoviePass subscribers received their cards in a timely manner, a
19 significant number of subscribers did not receive their cards until substantially outside of
20 the delivery window. MoviePass failed to notify these purchases of the duration of the
21 delay and failed to offer and/or provide refunds.

22 **C. UNCONSCIONABILITY AND AUTO RENEWAL**

23 17. A change in terms provision of a contract of adhesion may not in itself be an
24 unconscionable provision. MoviePass could have used its change in terms provisions in a

1 perfectly reasonable manner. However, MoviePass did not. MoviePass changed material
2 terms of its contract with its subscribers. MoviePass' change in terms of service affected
3 two classes of subscribers: those who paid upfront for multiple months plans and those who
4 paid monthly.

5
6 18. The consumers who purchased annual, three-month, or six-month subscriptions
7 were entitled to the terms of service that they agreed to at the time of purchase. As an
8 example, a California consumer who purchased an annual plan in November 2017 paid
9 between \$89.95 and \$120.00 to watch a movie, of his or her choice, per day at 91% of
10 theaters. The points below track the changes that occurred with his or her plan:

- 11 • On January 26, 2018, MoviePass changed Term 2.4 to allow MoviePass to change the
12 terms of service without prior notice. The previous version allowed MoviePass to
13 change the terms but gave the consumer notice and that the change would not occur
14 until the next cycle.
- 15 • On April 27, 2018, MoviePass changed the terms of service to prohibit repeat
16 screenings of the same movie.
- 17 • Then in July 2018, subscribers were unable to watch *Mission Impossible* unless they
18 went to an e-ticket theater, and they were completely unable to watch *The Meg* or
19 *Christopher Robin*.
- 20 • In August 2018, MoviePass implemented a tripwire that capped the amount of money
21 that MoviePass could spend per day on tickets.
- 22 • On August 13, 2018, MoviePass restricted the movies available to subscribers—this
23 was not in the terms of service.
- 24 • On August 24, 2018, MoviePass converted all plans to 3 movies a month—this was
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1 not in the terms of service.

2 19. Thus, two months into the subscription, MoviePass made a material change in
3 the terms of service that allowed it to do whatever it wanted, whenever it wanted, without
4 notice to the consumer. Subsequently, due to this change, nine months into the annual
5 subscription, this consumer's plan lost more than ninety percent of its value. The consumer
6 went from thirty movies per month to three. The consumer could not watch repeats. The
7 tripwire meant that if a consumer wanted to watch a movie on a weekend, he or she would
8 have to compete for one of the available tickets. Each of these modifications to the terms of
9 service is a unilateral material change to the agreement between the consumer and
10 MoviePass. The consumer lived up to his or her side of the bargain by paying MoviePass
11 an upfront fee. Basic contract law bound MoviePass to provide the material terms of the
12 service to the consumer: 1) the ability to watch one movie per day, 2) that the movie be of
13 the consumer's choice, including repeat screenings of the same movie, and 3) that the
14 consumer could use their card at 91% of the theaters in the country. Not only did
15 MoviePass improperly unilaterally modify the terms of service, but it also made material
16 changes that were not in the contractual agreement. The August changes were not in the
17 terms of service. MoviePass essentially made up its own rules and imposed its will upon its
18 subscribers.
19

20 20. Business and Professions Code section 17602(d) requires that if a material
21 change is made to an autorenewal contract, that the consumer must be given clear and
22 conspicuous notice of the change and information on how to cancel the subscription.
23 Business and Professions Code section 17602(e)(2) requires that such notice be given prior
24 to the implementation of the material change. As discussed above, on January 26, 2018,
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1 MoviePass changed term 2.4. Prior to this change, MoviePass agreed that it would not
2 make changes to a subscriber's plan until the next billing cycle. MoviePass also had a
3 fourteen-day notice provision and gave the subscriber the option to cancel his or her
4 service. This provision followed the requirements of section 17602. However, the January
5 26, 2018 change removed this provision and allowed MoviePass to make changes without
6 notice. This provision itself violated Business and Professions Code section 17602.

8 21. On April 27, 2018, MoviePass implemented the no-repeat policy and gave
9 notice of the change the very same day. On August 15, 2018, MoviePass instituted the new
10 3 movie per month plan. The very next day, Defendant Lowe sent out an email to
11 subscribers notifying them that effective immediately, the service would limit subscribers to
12 a rotating selection of six movies. In both situations, not only did MoviePass make a
13 unilateral and material change mid billing cycle, but it also failed to properly notify the
14 consumer of the change. The California Legal Remedies Act (CLRA) specifically prohibits
15 the use of unconscionable terms in contracts under California Civil Code section
16 1770(a)(19). The above contract provisions, which allows MoviePass to make unilateral
17 changes to the contract during the term of the contract, are unconscionable. Thus, these
18 incidents are both unconscionable contract modifications and violations of the automatic
19 renewal law.
20
21

22 **D. UNAUTHORIZED BILLING AFTER CANCELLATION**

23
24 22. Penal Code section 502(c)(1)(B) prohibits the unauthorized access to electronic
25 information to control or obtain money. Consumers are entitled to the reasonably prompt
26 cancellation of their recurring services. Beginning in October 2017, consumers complained
27 to the Better Business Bureau and other consumer protection agencies that they were unable
28

1 **FIRST CAUSE OF ACTION**

2 Business and Professions Code Section 17500
3 (False and Misleading Statements)

4 25. Plaintiff re-alleges and incorporates by reference as though set forth in full herein
5 Paragraphs 1 through 24, inclusive, of this Complaint. Plaintiff is informed and believes and
6 on such information, and belief alleges that Defendants have engaged in acts which are in
7 violation of Business and Professions Code section 17500. Said section provides in part that:
8

9 "It is unlawful for any person, firm, corporation, or association, or any
10 employee thereof with the intent directly or indirectly to...perform
11 services...or to induce the public to enter into an obligation relating
12 thereto, to make or cause to be made or disseminated before the public in
13 this state...in any newspaper or other publication, or any advertising
14 device...any statement, concerning such...services...or concerning any
15 circumstance or matter of fact connected with the proposed performance
16 or disposition thereof, which is untrue or misleading, and which by the
17 exercise of reasonable care should be known, to be untrue or
18 misleading..."

15 Defendants' conduct as set forth in Paragraphs 9 through 14 above constitutes violations of
16 Business and Professions Code section 17500 *et. Seq.* in that Defendants misled customers
17 into believing, *inter alia*, that they would have access to "unlimited" movies, at "any" theater
18 when in fact they did not.
19

20 **SECOND CAUSE OF ACTION**

21 Business and Professions Code Section 17200
22 (Unlawful Business Practice)

23 26. Plaintiff re-alleges and incorporates by reference as though set forth in full herein
24 Paragraphs I through 25, inclusive, of this Complaint. In that the conduct as set forth in
25 Paragraphs 9 through 14 above constitutes unlawful conduct under Business and Professions
26 Code section 17500, said conduct is also in violation of Business and Professions Code
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1 section 17200 which proscribes, in part, any act prohibited by Chapter 1 (commencing with
2 section 17500) of Part 3 Division 7 of the Business and Professions Code and any unlawful,
3 unfair, or fraudulent business act or practice....

4 **THIRD CAUSE OF ACTION**

5 Business & Professions Code Section 17200 et seq.
6 (Unlawful Business Practices)

7
8 27. The People re-allege and incorporate by reference as though set forth in full
9 herein Paragraphs 1 through 26, inclusive. The People are informed and believe and, on
10 such information and belief, allege that Defendants have engaged in acts which are in
11 violation of Business and Professions Code section 17528. Said section requires that the
12 delivery of items ordered over the internet occur within thirty days, unless otherwise
13 advertised. If the item cannot be delivered within the required time frame, the seller must:
14 1) refund the moneys paid, or 2) notify the consumer of the duration of the delay and offer
15 either a refund within a week or a substitute good of equal or greater value.
16

17 28. In that Defendants conduct as set forth in Paragraphs 15 and 16 above
18 constitutes violations of Business and Professions Code section 17528, said conduct is also
19 in violation of Business and Professions Code section 17200 which proscribes, in part, any
20 unlawful, unfair, or fraudulent business act or practice....
21

22 **FORTH CAUSE OF ACTION**

23 Business & Professions Code Section 17200 et seq.
24 (Unlawful Business Practices)

25 29. The People re-allege and incorporate by reference as though set forth in full
26 herein Paragraphs 1 through 28, inclusive. The People are informed and believe and, on
27 such information and belief, allege that Defendants have engaged in acts which are in
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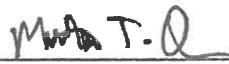
Dated: _____, 2021

TORI VERBER SALAZAR
District Attorney of San Joaquin County

By: _____
Desiree Fairly
Deputy District Attorney

Dated: May 12, 2021

JILL RAVITCH
District Attorney of Sonoma County

By: 
Matthew Cheever
Deputy District Attorney

Dated: May 13, 2021

ERIK NASARENKO
District Attorney of Ventura County

By: 
Andrew Reid
Deputy District Attorney

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Dated: May 13, 2021

TORI VERBER SALAZAR
District Attorney of San Joaquin County
By: *Desiree Fairly*
Desiree Fairly
Deputy District Attorney

Dated: May 12, 2021

JILL RAVITCH
District Attorney of Sonoma County
By: *Matthew T. Cheever*
Matthew Cheever
Deputy District Attorney

Dated: _____, 2021

ERIK NASARENKO
District Attorney of Ventura County
By: _____
Andrew Reid
Deputy District Attorney

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EXHIBIT 1

Additional Counsel for the Plaintiff

ERIK NASARENKO, District Attorney
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5720 Ralston Street, Suite 300
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Matthew Cheever, SBN 191783
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TORI VERBER SALAZAR, District Attorney
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Scott Drexel, SBN 254645
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222 E. Weber Street, #202
Stockton, CA 95202
Telephone: (209) 468-2400

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DIANA BECTON, SBN 124333
County of Contra Costa District Attorney
Gary E. Koepfel, SBN: 104596
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Telephone: (925) 957-8789

FILED
MAY 20 2021
K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By _____
D. Weber, Deputy Clerk

(For list of additional Plaintiff's counsel,
See attached Exhibit 1)

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

THEODORE FARNSWORTH AND
MITCHELL LOWE, as Individuals,

Defendants.

COURT NO. 21-01045 -
**STIPULATED FINAL JUDGMENT
AND PERMANENT INJUNCTION**

Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, by and through its
Attorneys, DIANA BECTON, Contra Costa County District Attorney, and Gary Koepfel and
John Ortiz, Deputy District Attorneys, TORI VERBER SALAZAR, San Joaquin County
District Attorney, and Desiree Fairly, Deputy District Attorney, JILL RAVITCH, Sonoma
County District Attorney, and Matthew Cheever, Deputy District Attorney, and ERIK
NASARENKO, Ventura County District Attorney, and Andrew Reid, Deputy District
Attorney; and Defendants, THEODORE FARNSWORTH and MITCHELL LOWE, by and
through their attorneys Nixon Peabody LLP, by Matthew A. Richards, Esq. and Tina

1 Sciocchetti, Esq. having stipulated to the entry of this Stipulated Final Judgment (the
2 “Judgment”) without taking any evidence, without any admission of liability whatsoever, and
3 without the trial or adjudication of any issue of law or fact. The parties have waived their rights
4 of appeal and have approved this Stipulated Final Judgment as to form and content.

5 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

6 1. The above-entitled Court has jurisdiction of the subject matter and the parties
7 hereto.

8 **APPLICABILITY**

9 2. The injunctive provisions of this Stipulated Final Judgment shall be applicable
10 to each Defendant, and to any present or future business that either Defendant owns more than
11 50% of, has more than 50% of the available voting rights of, or serves as Chief Executive
12 Officer, Chief Financial Officer, or Chief Technology Officer of.

13 **INJUNCTION**

14 3. Pursuant to Business and Professions Code sections 17203 and 17535, and under
15 the Court’s inherent equitable powers, each Defendant, and all persons and entities set forth in
16 Paragraph 2, are permanently restrained and enjoined from engaging in or performing, directly,
17 or indirectly, any and all of the following acts:

- 18 a. False advertising in violation of Business and Professions Code section 17500,
- 19 b. Failing to deliver products or services in a timely manner in violation of
20 Business and Professions Code section 17538,
- 21 c. Changing Terms of Service or Terms of Use Agreements in an unconscionable
22 manner in violation of Civil Code sections 1670.5(a) or 1770(a)(19),
- 23 d. Failing to notify autorenewal consumers of material changes in violation of
24 Business and Professions Code sections 17602,
- 25 e. Continuously charging a customer’s credit card and/or debiting a customer’s
26 bank account after receiving the customer’s notice of cancellation, in violation
27 of Penal Code section 502,

28

- 1 f. Failing to protect consumer privacy in violation of Article 1 section 1 of the
2 California Constitution,
3 g. Failing to implement and maintain reasonable security practices to protect
4 consumer information in violation of Civil Code section 1798.81.5, and
5 h. Failing to notify the California Attorney General after a data breach in violation
6 of Civil Code section 1798.82.
- 7 4. Additionally, pursuant to Business and Professions Code sections 17203 and
8 17535, and under the Court's inherent equitable powers, each Defendant, and all
9 persons and entities set forth in Paragraph 2, are permanently enjoined from
10 acquiring, using, or otherwise accessing any consumer data that was collected,
11 stored, or otherwise used by MoviePass, except to the extent such usage or access is
12 necessary in connection with any litigation or regulatory inquiry related to
13 MoviePass.

14 **MONETARY RELIEF**

- 15 5. Pursuant to Business and Professions Code sections 17203, 17206, 17535, and 17536,
16 Defendants shall pay to Plaintiff, a total monetary settlement amount of FOUR
17 HUNDRED THOUSAND DOLLARS (\$400,000), as follows:
18
- 19 a. Defendant Lowe shall pay:
- 20 i. As a civil penalty, the sum of One Hundred and Seventy-Five Thousand
21 Dollars (\$175,000) in the form of four checks in the equal amounts of
22 Forty-Three Thousand Seven Hundred and Fifty Dollars (\$43,750),
23 payable to the "Contra Costa County District Attorney's Office,"
24 "Ventura County District Attorney's Office," "Sonoma County District
25 Attorney's Office," and "San Joaquin County District Attorney's
26 Office", on or before the entry of this Final Stipulated Judgment.

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ii. As *cy pres* restitution, the sum of Twenty-Five Thousand Dollars (\$25,000) in the form of one check payable to the **Consumer Protection Prosecution Trust Fund** created by Stipulated Final Judgment and Permanent Injunction in the case of *People v. ITT Consumer Financial Corporation, et. al. (Alameda County Superior Court No. 656038-0, filed on September 21, 1989)*. Said payment shall be made on or before the entry of this Stipulated Final Judgment.

b. Defendant Farnsworth shall pay:

i. As a civil penalty, the sum of One Hundred Thousand Dollars (\$100,000) in the form of four checks in the equal amounts of Twenty-Five Thousand Dollars (\$25,000), payable to the “Contra Costa County District Attorney’s Office,” “Ventura County District Attorney’s Office,” “Sonoma County District Attorney’s Office,” and “San Joaquin County District Attorney’s Office,” respectively, on or before the entry of this Final Stipulated Judgment.

ii. As an additional civil penalty, the sum of Fifty Thousand Dollars (\$50,000), in the form of four checks in the equal amounts of Twelve Thousand Five Hundred Dollars (\$12,500), payable to the “Contra Costa County District Attorney’s Office,” “Ventura County District Attorney’s Office,” “Sonoma County District Attorney’s Office,” and “San Joaquin County District Attorney’s Office,” respectively, on or before October 1, 2021.

iii. As a final civil penalty, the sum of Twenty-Five Thousand Dollars (\$25,000), in the form of four checks in the equal amounts of Six Thousand Two Hundred and Fifty Dollars (\$6,250), payable to the “Contra Costa County District Attorney’s Office,” “Ventura County District Attorney’s Office,” “Sonoma County District Attorney’s

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Office,” and “San Joaquin County District Attorney’s Office,”
respectively, on or before April 1, 2022.

iv. As *cy pres* restitution, the sum of Twenty-Five Thousand Dollars
(\$25,000) in the form of one check payable to the **Consumer Protection
Prosecution Trust Fund** created by Stipulated Final Judgment and
Permanent Injunction in the case of *People v. ITT Consumer Financial
Corporation, et. al. (Alameda County Superior Court No. 656038-0, filed
on September 21, 1989)*. Said payment shall be made on or before April
1, 2022.

7. All checks shall be delivered to Deputy District Attorney Gary Koeppel at the Office
of the Contra Costa District Attorney, Consumer Protection Unit, 900 Ward Street, Martinez,
California, 94553.

8. In the event of default by Defendant Farnsworth, as to any amount due hereunder,
the whole amount due hereunder shall be deemed immediately due and payable by Defendant
Farnsworth as penalties and/or *cy pres* restitution, to the Counties of Contra Costa, Ventura,
Sonoma, and San Joaquin, and/or the Consumer Protection Trust Fund; and Plaintiff shall be
entitled to pursue all remedies provided by law for the enforcement of this Judgment. Further,
any amount in default shall bear interest at the prevailing legal rate from the date of default until
paid.

NOTICE

9. All notices, reports and correspondence required by or in conjunction with this
Stipulated Final Judgment shall be in writing and shall be deemed served when personally
delivered to the office of the receiving party if during normal business hours, upon
confirmation of email receipt to the receiving party if during business hours, and if either

1 service is not during normal business hours, then said notice shall be deemed received the next
2 regular business day at 9:00 a.m. and sent to:

3 FOR PLAINTIFF:

4 Office of the District Attorney
5 County of Contra Costa
6 Attention: Gary Koeppel, DDA
7 900 Ward Street
8 Martinez, California 94553
9 Facsimile: (925) 646-4683

10 FOR THEODORE FARNSWORTH AND MITCHELL LOWE:

11 Nixon Peabody LLP
12 Attn: Tina Sciocchetti
13 677 Broadway, 10th Floor
14 Albany, NY 12207-2996
15 Tel: (518) 427-2677
16 Email: tsciocchetti@nixonpeabody.com

17

18 RETENTION OF JURISDICTION AND FINALITY

19 6. The Court retains jurisdiction for such further orders and directions as may be
20 necessary or appropriate for carrying out of this Final Judgment or for enforcement of its
21 terms.

22 7. The clerk shall enter this Final Judgment forthwith, which shall take effect
23 immediately upon entry hereof.

24

25 DATED: MAY 20 2021

26 NANCY STARK
27 JUDGE OF THE SUPERIOR COURT

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EXHIBIT 1

Additional Counsel for the Plaintiff

ERIK NASARENKO, District Attorney
Ventura County District Attorney's Office
Andrew Reid, SBN 268351
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Deputy District Attorney
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Stockton, CA 95202
Telephone: (209) 468-2400

1 DIANA BECTON, SBN 124333
County of Contra Costa District Attorney
2 Gary E. Koeppel, SBN: 104596
Deputy District Attorney
3 900 Ward Street, 4th Floor
4 Martinez, California 94553-0150
Telephone: (925) 957-8789

FILED
MAY 20 2021
K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By _____
D. Weber, Deputy Clerk

5 (For list of additional Plaintiff's counsel,
6 See attached Exhibit 1)

7 Attorneys for Plaintiff
8

9 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA**

10
11
12 THE PEOPLE OF THE STATE OF
CALIFORNIA,

13 Plaintiff,

14 v.

15
16 THEODORE FARNSWORTH AND
MITCHELL LOWE, as Individuals,

17 Defendants.
18
19

COURT NO. **C21-01045-**

**STIPULATION FOR ENTRY OF
FINAL JUDGMENT AND
PERMANENT INJUNCTION**

20 IT IS HEREBY STIPULATED between Plaintiff, THE PEOPLE OF THE STATE OF
21 CALIFORNIA, by and through its Attorneys, DIANA BECTON, Contra Costa County District
22 Attorney, and Gary Koeppel and John Ortiz, Deputy District Attorneys, TORI VERBER
23 SALAZAR, San Joaquin County District Attorney, and Desiree Fairly, Deputy District
24 Attorney, JILL RAVITCH, Sonoma County District Attorney, and Matthew Cheever, Deputy
25 District Attorney, and ERIK NASARENKO, Ventura County District Attorney, and Andrew
26 Reid, Deputy District Attorney; and Defendants, THEODORE FARNSWORTH and
27
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1 MITCHELL LOWE, by and through their attorneys Nixon Peabody LLP, by Matthew A.
2 Richards and Tina Sciocchetti, Esq., STIPULATE AS FOLLOWS:

3 1. The Final Judgment and Permanent Injunction (herein "Final Judgment"), a copy
4 of which is attached hereto as Exhibit 2, and by this reference made a part hereof, may be entered
5 in the above-entitled matter, and that said entry of judgment may be ordered by a Judge of the
6 Superior Court.

7 2. The signatories to this Stipulation certify that they are fully authorized by the
8 Defendants to enter into this Stipulation, to execute it on behalf of the Defendants and to legally
9 bind Defendants. Defendants acknowledge that they have been represented by legal counsel
10 throughout all of the negotiations which preceded the execution of this Stipulation, and that they
11 have executed this Stipulation with the consent and on the advice of such counsel.

12 3. The People and Defendants (hereinafter the "Parties") waive the right to appeal,
13 to attempt to set aside or vacate except in accordance with the terms of the Final Judgment
14 and/or applicable law, or otherwise to attack, directly or collaterally the Final Judgment.

15 4. The Final Judgment may be entered without trial or adjudication of any issue of
16 fact or law. The Parties offer this Final Judgment pursuant to a settlement of certain disputed
17 claims as alleged in the Complaint. Nothing in this Final Judgment shall be construed as an
18 admission or denial by Defendants of any fact, issue of law or violations of law alleged generally
19 or specifically in the Complaint.

20 5. The filing of this Stipulation and the Final Judgment may be made by the ex-parte
21 appearance of the People without further notice to Defendants.

22 6. This Stipulation may be executed in counterparts and signed on multiple signature
23 pages and the signatures may be presented by facsimile or computer scanning.

24 7. Defendants agree to be bound by the provisions of the Final Judgment as though
25 entered by the Court as of the date of their signatures on this Stipulation.

26 8. Defendants waive formal service of the Notice of Entry of Judgment.
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FOR THE PEOPLE:

Dated: May 12, 2021

DIANA BECTON
District Attorney of Contra Costa County

By: *Gary E. Koeppe* *John A. Ortiz*
Gary E. Koeppe
John A. Ortiz
Deputy District Attorneys

Dated: _____, 2021

TORI VERBER SALAZAR
District Attorney of San Joaquin County

By: _____
Desiree Fairly
Deputy District Attorney

Dated: May 12, 2021

JILL RAVITCH
District Attorney of Sonoma County

By: *Matthew T. Cheever*
Matthew Cheever
Deputy District Attorney

Dated: May 13, 2021

ERIK NASARENKO
District Attorney of Ventura County

By: *Andrew Reid*
Andrew Reid
Deputy District Attorney

FOR DEFENDANTS THEODORE FARNSWORTH and MITCHELL LOWE:

Dated: May 11, 2021

NIXON PEOBODY LLP

By: *Matthew A. Richards*
Matthew A. Richards, Esq.
Attorneys for Defendants

Dated: May 11, 2021

NIXON PEOBODY LLP

By: *Tina Sciocchetti*
Tina Sciocchetti, Esq.
Attorneys for Defendants

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FOR THE PEOPLE:

Dated: May 12, 2021

DIANA BECTON
District Attorney of Contra Costa County

By: Gary E. Koepfel John A. Ortiz
Gary E. Koepfel
John A. Ortiz
Deputy District Attorneys

Dated: _____, 2021

TORI VERBER SALAZAR
District Attorney of San Joaquin County

By: _____
Desiree Fairly
Deputy District Attorney

Dated: May 12, 2021

JILL RAVITCH
District Attorney of Sonoma County

By: Matthew T. Cheever
Matthew Cheever
Deputy District Attorney

Dated: May 13, 2021

ERIK NASARENKO
District Attorney of Ventura County

By: Andrew Reid
Andrew Reid
Deputy District Attorney

FOR DEFENDANTS THEODORE FARNSWORTH and MITCHELL LOWE:

Dated: May 11, 2021

NIXON PEOBODY LLP

By: Matthew A. Richards
Matthew A. Richards, Esq.
Attorneys for Defendants

Dated: May 11, 2021

NIXON PEOBODY LLP

By: Tina Sciocchetti
Tina Sciocchetti, Esq.
Attorneys for Defendants

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FOR THE PEOPLE:

Dated: May 12, 2021

DIANA BECTON
District Attorney of Contra Costa County

By: Gary E. Koepfel John A. Ortiz
Gary E. Koepfel
John A. Ortiz
Deputy District Attorneys

Dated: May 13, 2021

TORI VERBER SALAZAR
District Attorney of San Joaquin County

By: Desiree Fairly
Desiree Fairly
Deputy District Attorney

Dated: May 12, 2021

JILL RAVITCH
District Attorney of Sonoma County

By: Matthew T. Cheever
Matthew Cheever
Deputy District Attorney

Dated: _____, 2021

ERIK NASARENKO
District Attorney of Ventura County

By: _____
Andrew Reid
Deputy District Attorney

FOR DEFENDANTS THEODORE FARNSWORTH and MITCHELL LOWE:

Dated: May 11, 2021

NIXON PEOBODY LLP

By: Matthew A. Richards
Matthew A. Richards, Esq.
Attorneys for Defendants

Dated: May 11, 2021

NIXON PEOBODY LLP

By: Tina Sciocchetti
Tina Sciocchetti, Esq.
Attorneys for Defendants

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Dated: _____, 2021

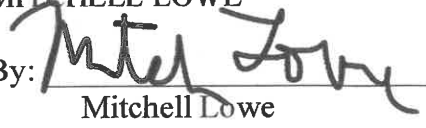
Apr 27, 2021

Dated: _____, 2021

THEODORE FARNSWORTH

By: _____
Theodore Farnsworth
As an Individual


MITCHELL LOWE

By: 
Mitchell Lowe
As an Individual

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Dated: April 30, 2021

THEODORE FARNSWORTH

By: 
Theodore Farnsworth
As an Individual

Dated: _____, 2021

MITCHELL LOWE

By: _____
Mitchell Lowe
As an Individual

EXHIBIT 1

Additional Counsel for the Plaintiff

ERIK NASARENKO, District Attorney
Ventura County District Attorney's Office
Andrew Reid, SBN 268351
Deputy District Attorney
5720 Ralston Street, Suite 300
Ventura, CA 93003
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San Joaquin County District Attorney's office
Desiree Fairly, SBN 307991
Deputy District Attorney
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EXHIBIT 2

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County of Contra Costa District Attorney
Gary E. Koepfel, SBN: 104596
Deputy District Attorney
900 Ward Street, 4th Floor
Martinez, California 94553-0150
Telephone: (925) 957-8789

(For list of additional Plaintiff's counsel,
See attached Exhibit 1)

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

THEODORE FARNSWORTH AND
MITCHELL LOWE, as Individuals,

Defendants.

COURT NO.

**STIPULATED FINAL JUDGMENT
AND PERMANENT INJUNCTION**

Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, by and through its
Attorneys, DIANA BECTON, Contra Costa County District Attorney, and Gary Koepfel and
John Ortiz, Deputy District Attorneys, TORI VERBER SALAZAR, San Joaquin County
District Attorney, and Desiree Fairly, Deputy District Attorney, JILL RAVITCH, Sonoma
County District Attorney, and Matthew Cheever, Deputy District Attorney, and ERIK
NASARENKO, Ventura County District Attorney, and Andrew Reid, Deputy District
Attorney; and Defendants, THEODORE FARNSWORTH and MITCHELL LOWE, by and
through their attorneys Nixon Peabody LLP, by Matthew A. Richards, Esq. and Tina

1 Sciocchetti, Esq. having stipulated to the entry of this Stipulated Final Judgment (the
2 “Judgment”) without taking any evidence, without any admission of liability whatsoever, and
3 without the trial or adjudication of any issue of law or fact. The parties have waived their rights
4 of appeal and have approved this Stipulated Final Judgment as to form and content.

5 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

6 1. The above-entitled Court has jurisdiction of the subject matter and the parties
7 hereto.

8 **APPLICABILITY**

9 2. The injunctive provisions of this Stipulated Final Judgment shall be applicable
10 to each Defendant, and to any present or future business that either Defendant owns more than
11 50% of, has more than 50% of the available voting rights of, or serves as Chief Executive
12 Officer, Chief Financial Officer, or Chief Technology Officer of.

13 **INJUNCTION**

14 3. Pursuant to Business and Professions Code sections 17203 and 17535, and under
15 the Court’s inherent equitable powers, each Defendant, and all persons and entities set forth in
16 Paragraph 2, are permanently restrained and enjoined from engaging in or performing, directly,
17 or indirectly, any and all of the following acts:

- 18 a. False advertising in violation of Business and Professions Code section 17500,
19 b. Failing to deliver products or services in a timely manner in violation of
20 Business and Professions Code section 17538,
21 c. Changing Terms of Service or Terms of Use Agreements in an unconscionable
22 manner in violation of Civil Code sections 1670.5(a) or 1770(a)(19),
23 d. Failing to notify autorenewal consumers of material changes in violation of
24 Business and Professions Code sections 17602,
25 e. Continuously charging a customer’s credit card and/or debiting a customer’s
26 bank account after receiving the customer’s notice of cancellation, in violation
27 of Penal Code section 502,

- 1 f. Failing to protect consumer privacy in violation of Article 1 section 1 of the
2 California Constitution,
3 g. Failing to implement and maintain reasonable security practices to protect
4 consumer information in violation of Civil Code section 1798.81.5, and
5 h. Failing to notify the California Attorney General after a data breach in violation
6 of Civil Code section 1798.82.

- 7 4. Additionally, pursuant to Business and Professions Code sections 17203 and
8 17535, and under the Court's inherent equitable powers, each Defendant, and all
9 persons and entities set forth in Paragraph 2, are permanently enjoined from
10 acquiring, using, or otherwise accessing any consumer data that was collected,
11 stored, or otherwise used by MoviePass, except to the extent such usage or access is
12 necessary in connection with any litigation or regulatory inquiry related to
13 MoviePass.

14 **MONETARY RELIEF**

- 15 5. Pursuant to Business and Professions Code sections 17203, 17206, 17535, and 17536,
16 Defendants shall pay to Plaintiff, a total monetary settlement amount of FOUR
17 HUNDRED THOUSAND DOLLARS (\$400,000), as follows:

- 18 a. Defendant Lowe shall pay:

- 19 i. As a civil penalty, the sum of One Hundred and Seventy-Five Thousand
20 Dollars (\$175,000) in the form of four checks in the equal amounts of
21 Forty-Three Thousand Seven Hundred and Fifty Dollars (\$43,750),
22 payable to the "Contra Costa County District Attorney's Office,"
23 "Ventura County District Attorney's Office," "Sonoma County District
24 Attorney's Office," and "San Joaquin County District Attorney's
25 Office", on or before the entry of this Final Stipulated Judgment.
26

1 ii. As *cy pres* restitution, the sum of Twenty-Five Thousand Dollars
2 (\$25,000) in the form of one check payable to the **Consumer Protection**
3 **Prosecution Trust Fund** created by Stipulated Final Judgment and
4 Permanent Injunction in the case of *People v. ITT Consumer Financial*
5 *Corporation, et. al. (Alameda County Superior Court No. 656038-0, filed*
6 *on September 21, 1989)*. Said payment shall be made on or before the
7 entry of this Stipulated Final Judgment.

8 b. Defendant Farnsworth shall pay:

9 i. As a civil penalty, the sum of One Hundred Thousand Dollars
10 (\$100,000) in the form of four checks in the equal amounts of Twenty-
11 Five Thousand Dollars (\$25,000), payable to the “Contra Costa County
12 District Attorney’s Office,” “Ventura County District Attorney’s Office,”
13 “Sonoma County District Attorney’s Office,” and “San Joaquin County
14 District Attorney’s Office,” respectively, on or before the entry of this
15 Final Stipulated Judgment.

16 ii. As an additional civil penalty, the sum of Fifty Thousand Dollars
17 (\$50,000), in the form of four checks in the equal amounts of Twelve
18 Thousand Five Hundred Dollars (\$12,500), payable to the “Contra Costa
19 County District Attorney’s Office,” “Ventura County District Attorney’s
20 Office,” “Sonoma County District Attorney’s Office,” and “San Joaquin
21 County District Attorney’s Office,” respectively, on or before October 1,
22 2021.

23 iii. As a final civil penalty, the sum of Twenty-Five Thousand Dollars
24 (\$25,000), in the form of four checks in the equal amounts of Six
25 Thousand Two Hundred and Fifty Dollars (\$6,250), payable to the
26 “Contra Costa County District Attorney’s Office,” “Ventura County
27 District Attorney’s Office,” “Sonoma County District Attorney’s
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Office,” and “San Joaquin County District Attorney’s Office,”
respectively, on or before April 1, 2022.

iv. As *cy pres* restitution, the sum of Twenty-Five Thousand Dollars
(\$25,000) in the form of one check payable to the **Consumer Protection
Prosecution Trust Fund** created by Stipulated Final Judgment and
Permanent Injunction in the case of *People v. ITT Consumer Financial
Corporation, et. al. (Alameda County Superior Court No. 656038-0, filed
on September 21, 1989)*. Said payment shall be made on or before April
1, 2022.

7. All checks shall be delivered to Deputy District Attorney Gary Koeppel at the Office
of the Contra Costa District Attorney, Consumer Protection Unit, 900 Ward Street, Martinez,
California, 94553.

8. In the event of default by Defendant Farnsworth, as to any amount due hereunder,
the whole amount due hereunder shall be deemed immediately due and payable by Defendant
Farnsworth as penalties and/or *cy pres* restitution, to the Counties of Contra Costa, Ventura,
Sonoma, and San Joaquin, and/or the Consumer Protection Trust Fund; and Plaintiff shall be
entitled to pursue all remedies provided by law for the enforcement of this Judgment. Further,
any amount in default shall bear interest at the prevailing legal rate from the date of default until
paid.

NOTICE

9. All notices, reports and correspondence required by or in conjunction with this
Stipulated Final Judgment shall be in writing and shall be deemed served when personally
delivered to the office of the receiving party if during normal business hours, upon
confirmation of email receipt to the receiving party if during business hours, and if either

1 service is not during normal business hours, then said notice shall be deemed received the next
2 regular business day at 9:00 a.m. and sent to:

3 FOR PLAINTIFF:

4 Office of the District Attorney
5 County of Contra Costa.
6 Attention: Gary Koeppel, DDA
7 900 Ward Street
8 Martinez, California 94553
9 Facsimile: (925) 646-4683

10 FOR THEODORE FARNSWORTH AND MITCHELL LOWE:

11 Nixon Peabody LLP
12 Attn: Tina Sciocchetti
13 677 Broadway, 10th Floor
14 Albany, NY 12207-2996
15 Tel: (518) 427-2677
16 Email: tsciocchetti@nixonpeabody.com

17

18 **RETENTION OF JURISDICTION AND FINALITY**

19 6. The Court retains jurisdiction for such further orders and directions as may be
20 necessary or appropriate for carrying out of this Final Judgment or for enforcement of its
21 terms.

22 7. The clerk shall enter this Final Judgment forthwith, which shall take effect
23 immediately upon entry hereof.

24

25 DATED: _____ JUDGE OF THE SUPERIOR COURT

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Additional Counsel for the Plaintiff

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Andrew Reid, SBN 268351
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