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David W. Slayton,
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By N. Alvarez, Deputy Clerk

6 *Attorneys for Plaintiff,jf*
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8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10
11 LILLIAN JURDI, an individual

12 Plaintiff,

13 v.

14 MASSAGE ENVY FRANCHISING, LLC, an
Arizona limited liability company; DOES 1
15 through 25, inclusive

16 Defendant.
17

Case No. **24STCV14469**

**COMPLAINT FOR
VIOLATIONS OF THE CALIFORNIA
TRAP AND TRACE LAW**

(CAL. PENAL CODE § 638.51)

1 **I. INTRODUCTION**

2 1. Defendant Massage Envy Franchising, LLC (“Massage Envy” or “Defendant”) is a
3 franchisor providing skin care and massage services. As part of Defendant’s marketing regime,
4 Massage Envy has partnered with TikTok to install sophisticated software on its landing page to learn
5 the location, source, and identity of consumers who happen to land on their website.

6 2. Plaintiff Lillian Jurdi (“Plaintiff”) visited Defendant’s website on February 29, 2024.
7 Without Plaintiff’s knowledge or consent, Defendant deployed a de-anonymization process to identify
8 Plaintiff using electronic impulses generated from Plaintiff’s device, as further described herein.
9 Defendant’s installation of the TikTok tracing process violates California’s Trap and Trace Law,
10 codified at California Penal Code § 638.51.

11 **II. JURISDICTION AND VENUE**

12 3. Subject matter jurisdiction is proper in this Court because the amount in controversy is
13 within this Court’s jurisdictional limit.

14 4. Defendant has sufficient minimum contacts in the State of California or otherwise
15 purposefully avails itself of the California market. Exercising jurisdiction over Defendant would be
16 consistent with traditional notions of fair play and substantial justice.

17 5. Defendant is also subject to jurisdiction under California’s “long-arm” statute found at
18 California Code of Civil Procedure section 410.10 because the exercise of jurisdiction over Defendant
19 is not “inconsistent with the Constitution of this state or the United States.”

20 6. Venue is proper in this County pursuant to California Code of Civil Procedure section
21 394(b) because the Defendant is not a resident of California.

22 **III. PARTIES**

23 7. Plaintiff is a citizen of California residing within Los Angeles County.

24 8. Defendant Massage Envy Franchising, LLC is an Arizona limited liability company with
25 its principal place of business at 14350 North 87th Street, Suite 200, Scottsdale, AZ 85260.

26 9. The above-named Defendant, along with its affiliates and agents, are collectively referred
27 to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE
28 DEFENDANTS 1 through 25, inclusive, are currently unknown to Plaintiff, who therefore sues such

1 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally
2 responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
3 Complaint to reflect the true names and capacities of the DOE Defendants when such identities become
4 known.

5 10. Plaintiff is informed and believes that at all relevant times, every Defendant was acting
6 as an agent and/or employee of each of the other Defendants and was acting within the course and scope
7 of said agency and/or employment with the full knowledge and consent of each of the other Defendants,
8 and that each of the acts and/or omissions complained of herein was ratified by each of the other
9 Defendants.

10 **IV. FACTUAL ALLEGATIONS**

11 **A. Defendant's Website and the Tik Tok Software.**

12 11. Defendant is a franchisor providing skin care and massage services. Defendant operates
13 <https://www.massageenvy.com> (the "Website"). Defendant has installed on its Website software created
14 by TikTok in order to identify website visitors (the "TikTok Software").

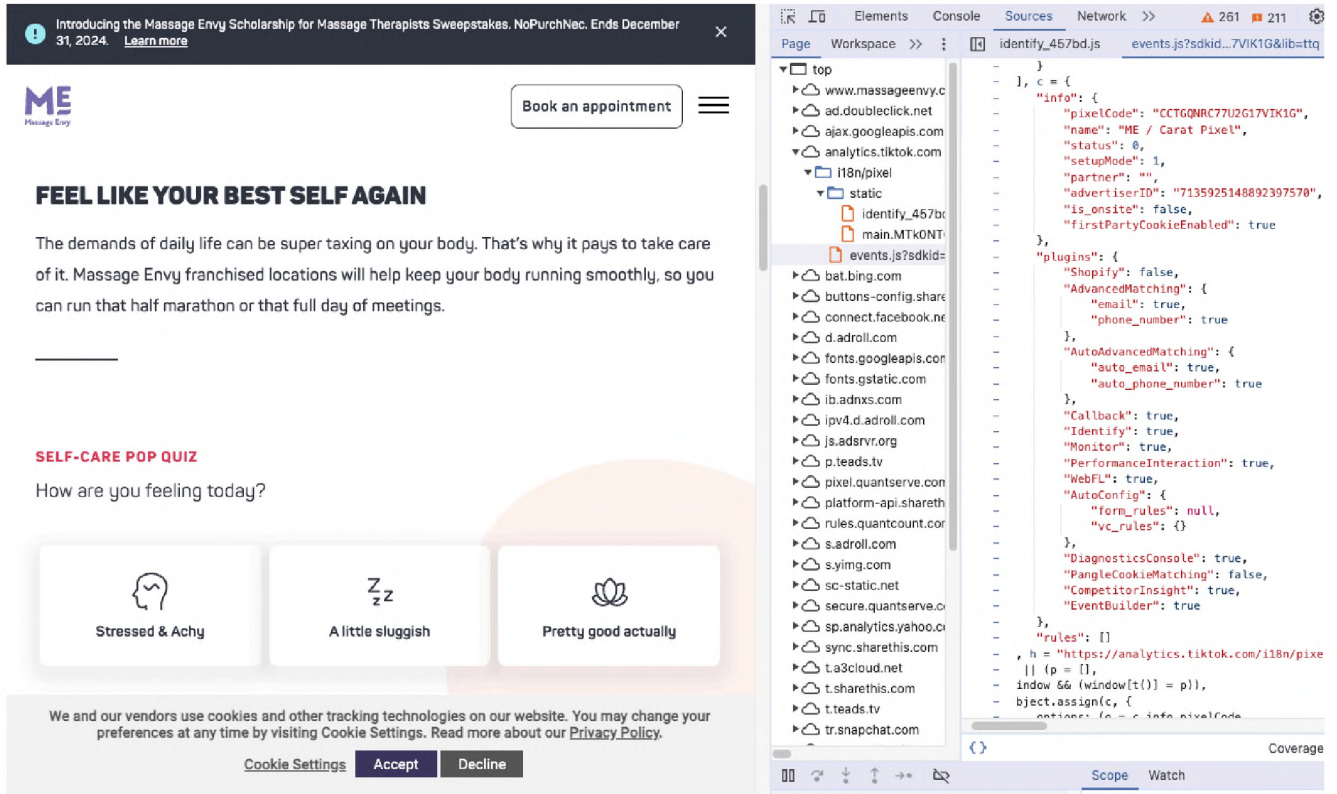
15 12. The TikTok Software acts via a process known as "fingerprinting." Put simply, the
16 TikTok Software collects as much data as it can about an otherwise anonymous visitor to the Website
17 and matches it with existing data TikTok has acquired and accumulated about hundreds of millions of
18 Americans.

19 13. The TikTok Software gathers device and browser information, geographic information,
20 referral tracking, and url tracking by running code or "scripts" on the Website to send user details to
21 TikTok.

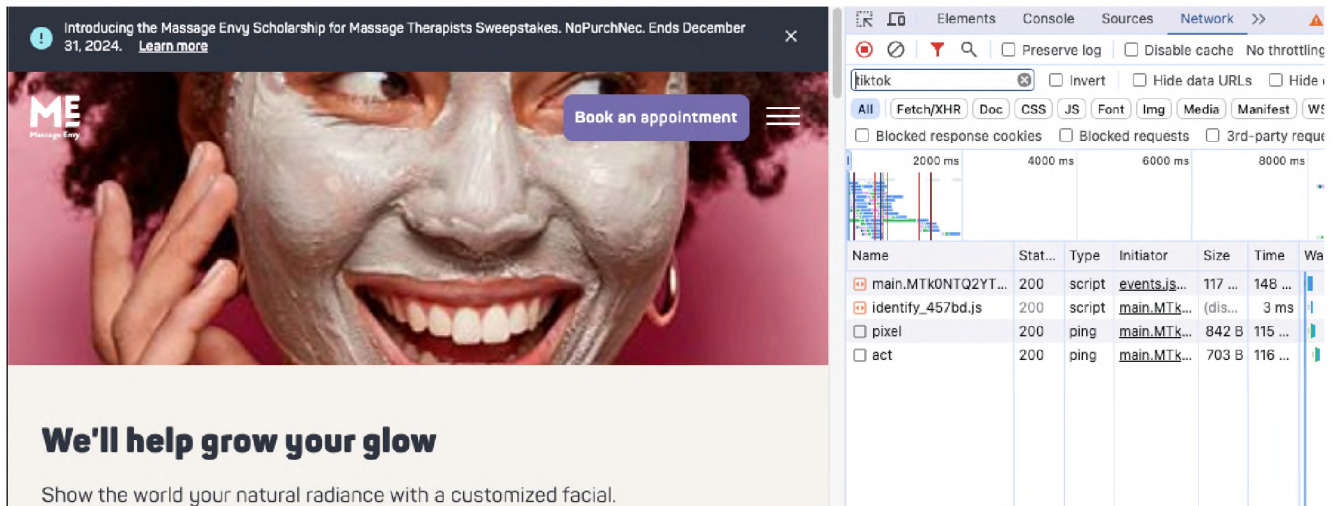
22 14. The TikTok Software begins to collect information the moment a user lands on the
23 Website. Thus, even though the Website has a "cookie banner" the information has already been sent
24 to TikTok regarding the user's visit.

25 15. Additionally, since Massage Envy has decided to use TikTok's "AutoAdvanced
26 Matching" technology, TikTok scans every website for information. Thus, when the website asks for
27 information, such as name, date of birth, and address, the information is sent simultaneously to TikTok,
28 so that TikTok can isolate with certainty the individual to be targeted.

1 16. The TikTok Software runs on virtually every page of Message Envy's website, sending
2 to TikTok images of website user's interests. An image of the code, as it appears side by side (and
3 simultaneously) with the TikTok AutoAdvanced Matching tracking code Message Envy has placed on
4 the page, can be seen here:



17. The Message Envy website instantly sends communications to TikTok when a user
lands, and every time a user clicks on a page. In the example below, the right side of the image shows
the various TikTok scripts being run by Defendant, and the electronic impulses being sent to TikTok
to add to their collection of user behavior:



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2 **B. The TikTok Software is a Trap and Trace Device.**

3 18. California Penal Code § 638.50(c). California law defines a “trap and trace device” as “a
4 device or process that captures the incoming electronic or other impulses that identify the originating
5 number or other dialing, routing, addressing, or signaling information reasonably likely to identify the
6 source of a wire or electronic communication, but not the contents of a communication.” California
7 Penal Code § 638.50(c).

8 19. The TikTok Software is a process to identify the source of electronic communication by
9 capturing incoming electronic impulses and identifying dialing, routing, addressing, and signaling
10 information generated by users, who are never informed that the website is collaborating with the
11 Chinese government to obtain their phone number and other identifying information.

12 20. The TikTok Software is “reasonably likely” to identify the source of incoming electronic
13 impulses. In fact, it is designed solely to meet this objective.

14 21. Defendant did not obtain Plaintiff’s express or implied consent to be subjected to data
15 sharing with TikTok for the purposes of fingerprinting and de-anonymization.

16 22. CIPA imposes civil liability and statutory penalties for the installation of trap and trace
17 software without a court order. California Penal Code § 637.2; see also, *Greenley v. Kochava*, 2023 WL
18 4833466, at *15-*16 (S.D. Cal. July 27, 2023).

19 23. Defendant did not obtain Plaintiff’s express or implied consent to be subjected to data
20 sharing with TikTok for the purposes of fingerprinting and de-anonymization.

21 **FIRST CAUSE OF ACTION**

22 **Violations of the California Trap and Trace Law**

23 **Cal. Penal Code § 638.51**

24 24. California’s Trap and Trace Law is part of the California Invasion of Privacy Act
25 (“CIPA”) codified at Cal. Penal Code 630, *et. seq.*

26 25. CIPA was enacted due to curb “the invasion of privacy resulting from the continual and
27 increasing use of” certain technologies determined to pose “a serious threat to the free exercise of
28

1 personal liberties.” CIPA extends civil liability for various means of surveillance using technology,
2 including the installation of a trap and trace device.

3 26. A “trap and trace device” as “a device or process that captures the incoming electronic
4 or other impulses that identify the originating number or other dialing, routing, addressing, or signaling
5 information reasonably likely to identify the source of a wire or electronic communication, but not the
6 contents of a communication.” California Penal Code § 638.50(c).

7 27. California Penal Code §638.51 provides that “a person may not install or use... a trap and
8 trace device without first obtaining a court order...” § 638.51(a).

9 28. Defendant uses a trap and trace process on its Website by deploying the TikTok Software
10 on its Website, because the software is designed to capture the phone number, email, routing, addressing
11 and other signaling information of website visitors. As such, the TikTok Software is solely to identify
12 the source of the incoming electronic and wire communications to the Website.

13 29. Defendant did not obtain consent from Plaintiff before using trap and trace technology
14 to identify users of its Website, and has violated Section 638.51.

15 30. CIPA imposes civil liability and statutory penalties for violations of §638.51.

16 31. Therefore, Plaintiff is entitled to injunctive relief and statutory damages under California
17 Penal Code § 637.2 and the equitable relief prayed for herein.

18 **PRAYER**

19 WHEREFORE, Plaintiff prays for the following relief against Defendant:

- 20 1. An order enjoining Defendant’s conduct as alleged herein and ordering disgorgement
21 of data provided to TikTok through the TikTok Software;
22 2. Statutory damages pursuant to CIPA;
23 3. Punitive damages;
24 4. Reasonable attorneys’ fees and costs; and
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1 5. All other relief that would be just and proper as a matter of law or equity, as determined
2 by the Court.

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5 DATED: June 10, 2024

TAULER SMITH LLP

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7
8 By: /s/ Robert Tauler
9 Robert Tauler, Esq.
10 Attorneys for Plaintiff
11 Lillian Jurdi
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: June 10, 2024

TAULER SMITH LLP

By: /s/ Robert Tauler
Robert Tauler, Esq.
Attorney for Plaintiff
Lillian Jurdi

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