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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 Federal Trade Commission,

14 Plaintiff,

15 v.

16 ERG Ventures, LLC and d/b/a ERG Ventures,
17 LLC2, Media Motor, Joysticksavers.com, and
PrivateinPublic.com; Elliott S. Cameron,
18 individually and d/b/a ERG Ventures, LLC2,
Media Motor, Joysticksavers.com, and
19 PrivateinPublic.com; Robert A. Davidson, II,
individually and d/b/a ERG Ventures, LLC2,
20 Media Motor, Joysticksavers.com, and
PrivateinPublic.com; Garry E. Hill,
21 individually and d/b/a ERG Ventures, LLC2,
Media Motor, Joysticksavers.com, and
22 PrivateinPublic.com; and Timothy P. Taylor,
individually and d/b/a Team Taylor Made,

23 Defendants.

CIVIL NO. 3:06-CV-00578-HDM-VPL

24
25 **First Amended Complaint for Injunctive and Other Equitable Relief**

26 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its complaint
27 alleges as follows:

1 1. The Commission brings this action under Section 13(b) of the Federal Trade Commission
2 Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain preliminary and permanent injunctive
3 relief against the defendants to prevent them from engaging in deceptive and unfair acts
4 or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and to obtain
5 other equitable relief, including rescission, restitution, and disgorgement, as is necessary
6 to redress injury to consumers and the public interest resulting from the defendants’
7 violations of the FTC Act.

8 **JURISDICTION AND VENUE**

- 9 2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a), 53(b), and
10 28 U.S.C. §§ 1331, 1337(a), and 1345.
- 11 3. Venue in the United States District Court for the District of Nevada is proper under 15
12 U.S.C. § 53(b), as amended by the FTC Act Amendments of 1994, Pub. L. No. 103-312,
13 108 Stat. 1691, *codified at* 28 U.S.C. §§ 1391(b) and (c).

14 **PLAINTIFF**

- 15 4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States
16 government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission enforces
17 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits deceptive or unfair acts
18 or practices in or affecting commerce. The Commission is authorized to initiate federal
19 district court proceedings by its own attorneys to enjoin violations of the FTC Act to
20 secure such equitable relief as may be appropriate in each case, including restitution for
21 injured consumers, consumer redress, and disgorgement. 15 U.S.C. § 53(b).

22 **DEFENDANTS**

- 23 5. Defendant ERG Ventures, LLC (“ERG”) is a limited liability company registered in
24 Nevada. Its registered agent is located at 4231 Dant Blvd., Reno, NV 89509, and its
25 management company is located at 237 Tramway Drive, Stateline, NV 89449. Defendant
26 ERG does or has done business as “ERG Ventures, LLC2,” “ERG,” “www.media-

1 motor.com,” “www.media-motor.net,” “Media Motor,” “www.joysticksavers.com,” and
2 “www.privateinpublic.com.” Defendant ERG transacts or has transacted business in this
3 District.

4 6. Defendant Elliott S. Cameron (“Cameron”) is or has been an officer and/or director of
5 ERG. Individually or in concert with others, he has formulated, directed, controlled, or
6 participated in the acts and practices of ERG, including the acts and practices set forth in
7 this complaint, and has done so at all times pertinent to this action. Defendant Cameron
8 does or has done business as “ERG Ventures, LLC2,” “ERG,” “www.media-motor.com,”
9 “www.media-motor.net,” “Media Motor,” “www.joysticksavers.com,” and
10 “www.privateinpublic.com.” Defendant Cameron resides or has resided and transacts or
11 has transacted business in this District.

12 7. Defendant Robert A. Davidson, II (“Davidson”) is or has been an officer and/or director
13 of ERG. Individually or in concert with others, he has formulated, directed, controlled, or
14 participated in the acts and practices of ERG, including the acts and practices set forth in
15 this complaint, and has done so at all times pertinent to this action. Defendant Davidson
16 does or has done business as “ERG Ventures, LLC2,” “ERG,” “www.media-motor.com,”
17 “www.media-motor.net,” “Media Motor,” “www.joysticksavers.com,” and
18 “www.privateinpublic.com.” Defendant Davidson resides or has resided in Arkansas and
19 transacts or has transacted business in this District.

20 8. Defendant Garry E. Hill (“Hill”) is or has been an officer and/or director of ERG.
21 Individually or in concert with others, he has formulated, directed, controlled, or
22 participated in the acts and practices of ERG, including the acts and practices set forth in
23 this complaint, and has done so at all times pertinent to this action. Defendant Hill does
24 or has done business as “ERG Ventures, LLC2,” “ERG,” “www.media-motor.com,”
25 “www.media-motor.net,” “Media Motor,” “www.joysticksavers.com,” and
26 “www.privateinpublic.com.” Defendant Hill resides or has resided in California and
27

1 transacts or has transacted business in this District.

2 9. Defendant Timothy P. Taylor (“Taylor”), individually or in concert with others, has
3 formulated, directed, controlled, or participated in the acts and practices set forth in this
4 complaint, and has done so at all times pertinent to this action. Defendant Taylor does or
5 has done business as “www.teamtaylormade.com” and “Team Taylor Made.” Defendant
6 Taylor resides or has resided in Tennessee and transacts or has transacted business in this
7 District.

8 **COMMERCE**

9 10. At all times relevant to this complaint, the defendants have maintained a substantial
10 course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the
11 FTC Act, 15 U.S.C. § 44.

12 **COMMON ENTERPRISE**

13 11. Defendant ERG and individual defendants Cameron, Davidson, and Hill have operated as
14 a common enterprise while engaging in the deceptive acts and practices alleged herein.

15 **DEFENDANTS’ BUSINESS PRACTICES**

16 **Overview**

17 12. Since at least April 2004, defendants ERG, Cameron, Davidson and Hill (collectively the
18 “ERG defendants”) have surreptitiously distributed and installed exploitive software
19 programs onto consumers’ computers through a sophisticated and expansive network of
20 affiliates.

21 13. Operating under the name “Media Motor,” the ERG defendants assemble a package of
22 exploitive software programs from other software developers. These developers pay the
23 ERG defendants to install their software onto consumers’ computers.

24 14. In order to maximize the number of installations – and their resulting profits – the ERG
25 defendants utilize deception to trick consumers into downloading and installing the
26 package of exploitive software programs they have assembled.

- 1 15. The ERG defendants operate websites that offer consumers “free” software, such as
2 screensavers and video files, to induce consumers into downloading the package of
3 exploitive software programs. Hidden within this purportedly free software is code (the
4 “Media Motor Application”) that, once installed, silently activates itself on the
5 consumer’s computer and proceeds covertly to download and install the package of
6 exploitive software programs assembled and generally maintained by the ERG
7 defendants.
- 8 16. The ERG defendants also utilize an expansive affiliate network to trick consumers into
9 downloading the Media Motor Application. Affiliates are typically webmasters who
10 operate websites that offer free content to consumers. These affiliates, including
11 defendant Timothy P. Taylor, hide the Media Motor Application within the “free”
12 software they offer the public in return for a commission from the ERG defendants.
- 13 17. Although the malicious programs retrieved by the Media Motor Application may vary
14 depending on the date and source of the download, the effects of the programs are
15 generally consistent. These effects include, inter alia: 1) changing consumers’ default
16 home pages; 2) adding a difficult-to-remove toolbar to consumers’ Internet browser that
17 displays advertising; 3) tracking consumers’ Internet activity; 4) generating repeated and
18 occasionally pornographic pop up advertising; 5) adding advertising icons to consumers’
19 desktops; 6) altering consumers’ Internet browser settings; 7) degrading computer
20 performance; and 8) attacking and disabling consumers’ anti-spyware software. By
21 design, these exploitive software programs are extremely difficult for consumers to
22 uninstall.

23 **The ERG Defendants’ Deceptive Distribution Practices**

- 24 18. The ERG defendants utilize two primary vehicles for the distribution of the Media Motor
25 Application. First, the ERG defendants maintain and operate a series of websites that
26 offer consumers “free” software such as screensavers, icons, movie files, and the like.
27
28

1 These websites trick consumers into downloading the Media Motor Application that is
2 hidden within the purportedly free software offered by the ERG defendants.

3 19. For example, the ERG defendants operate Joysticksavers.com, a website that purports to
4 offer consumers innocuous free screensavers. In numerous instances, the screensavers
5 offered by the ERG defendants' Joysticksavers.com website are surreptitiously bundled
6 with the exploitive Media Motor Application. Once consumers download and open the
7 screensaver they receive from Joysticksavers.com, consumers are instantly infected with
8 the Media Motor Application that immediately and covertly installs the bundle of
9 exploitive software programs assembled by the ERG defendants.

10 20. In numerous instances, Joysticksavers.com makes no disclosure of any kind that its
11 screensavers are bundled with additional exploitive code, nor does Joysticksavers.com
12 display an End User License Agreement ("EULA") or other types of terms and conditions
13 during the installation process. Consumers simply click a button to download a
14 screensaver, open the downloaded file, and are instantly infected with the Media Motor
15 Application.

16 21. In some instances, Joysticksavers.com does display a EULA. Although the EULA
17 purports to give consumers the option to accept or reject the terms, the choice is illusory.
18 In fact, consumers are infected with the Media Motor Application as soon as the ERG
19 defendants' software is opened and the EULA is displayed to the consumer to review.
20 Clicking on the button, "Cancel" on the Joysticksavers.com EULA does not remove or
21 otherwise prevent the Media Motor Application and the resulting infection from being
22 silently downloaded and installed onto the consumer's computer.

23 22. Another example of the ERG defendants' deceptive distribution practices is
24 Privateinpublic.com, a website operated by the ERG defendants. The
25 Privateinpublic.com website purports to offer free adult videos featuring hidden camera
26 footage of women changing clothes in private dressing rooms. Consumers who attempt
27

1 to download the free videos promised by Privateinpublic.com do not receive the videos
2 they anticipated, but rather are silently infected with the Media Motor Application.

3 23. While Privateinpublic.com does display a EULA, in numerous instances, the EULA does
4 not disclose that consumers will receive the Media Motor Application or the
5 accompanying exploitive programs. Furthermore, the EULA falsely indicates that
6 consumers will receive the IM Giant browser and IM Giant Instant Messenger service
7 owned and operated by the ERG defendants.

8 24. The ERG defendants also distribute the Media Motor Application through their affiliate
9 program that is advertised on their www.media-motor.com website. Through this
10 website, the ERG defendants provide their registered affiliates, including, but not limited
11 to, defendant Taylor, with the means to infect consumers with the Media Motor
12 Application, including providing affiliates with code that can be inserted directly into any
13 Internet webpage.

14 25. In numerous instances, once inserted, the code created by the ERG defendants causes an
15 installation box automatically to “pop up” as soon as a consumer lands on the affiliate
16 webpage. The ERG defendants’ installation box requests that the consumer agree to
17 install a free ActiveX control that purportedly will provide the consumer with free icons
18 and allow the consumer to view the webpage for free. Consumers who agree to install the
19 free ActiveX control receive only the Media Motor Application.

20 26. In numerous instances, depending on the consumer’s computer security settings, the ERG
21 defendants do not display a EULA, let alone require a consumer to view it and agree to it,
22 and do not indicate that there are terms and conditions for a consumer to review within
23 the installation box described in Paragraph 25.

24 **Defendant Taylor’s Deceptive Distribution Practices**

25 27. Defendant Taylor is an example of an ERG affiliate. Taylor operates a website,
26 www.teamtaylormade.com, that offers “free” software such as screensavers and computer
27

1 games. Much of the purportedly free software offered by defendant Taylor is covertly
2 bundled with the Media Motor Application.

3 28. Taylor was recruited to be a Media Motor affiliate in or about 2004 by Danny Sanchez, an
4 employee of the ERG Defendants. Defendant Taylor subsequently signed a "Media
5 Motor Exclusive Agreement" with the ERG Defendants, in which defendant Taylor
6 pledged to generate "installs" of the Media Motor Application for the ERG Defendants in
7 return for compensation.

8 29. When a consumer downloads and opens the free software from defendant Taylor, a
9 EULA is displayed. In some instances this EULA states that his software includes "free
10 utilities." In other instances the EULA states that consumers will receive "free utilities"
11 from "Motor-Media."

12 30. In numerous instances, although defendant Taylor displays a EULA and the EULA
13 purports to give consumers the option to accept or reject his terms, the choice is illusory.
14 In fact, consumers are infected with the Media Motor Application as soon as defendant
15 Taylor's software is opened and the EULA is displayed to the consumer to review.
16 Clicking on the button, "I do not agree to the terms of this license agreement," on the
17 Team Taylor Made EULA does not remove or otherwise prevent the Media Motor
18 Application and the resulting infection from being silently downloaded and installed onto
19 the consumer's computer.

20 **The Impact Of The Media Motor Application**

21 31. Once installed, the Media Motor Application covertly retrieves and installs the bundle of
22 exploitive software programs assembled and primarily maintained by the ERG
23 defendants. These exploitive software programs interfere with the functionality of
24 consumers' computers. Although the bundle of exploitive software programs varies
25 somewhat depending on the date and source of the download, the disruptive and
26 damaging impact of these programs has remained essentially unchanged.

- 1 32. First, the exploitive software programs change consumers' preferred or default
2 homepages opened by their Internet browser, sometimes to the ERG defendants' own
3 advertising website.
- 4 33. Second, the exploitive software programs insert a new advertising toolbar. For example,
5 in some instances, an exploitive software program installs the "Mirar toolbar" onto
6 consumers' Internet browser. This toolbar contains text along the entire bar, and when a
7 consumer rolls over the toolbar with a mouse, the toolbar displays advertising pop up
8 boxes that stay open for several seconds, block a portion of the consumer's browser
9 window, and cannot be closed by consumers.
- 10 34. Third, the exploitive software programs track consumers' Internet activity. Consumers'
11 Internet browsing behavior is monitored, and repeated advertisements corresponding to
12 search terms typed into a search bar are displayed.
- 13 35. Fourth, the exploitive software programs display pop up advertisements that advertise
14 various products, including, but not limited to, online pharmacies, cellphones, ringtones,
15 screensavers, and gambling, as well as sexually explicit advertisements for pornography.
16 These pop up advertisements appear on consumers' computers even when their Internet
17 browsers are not activated. The pop up advertising also includes a pop up generated by a
18 website operated by the ERG defendants that does not display on its face any means to
19 close the pop up. A consumer is forced to scroll through the pop up several pages to the
20 right in order to find an "X" to click on to close the pop up.
- 21 36. Fifth, the exploitive software programs insert advertising icons onto consumers'
22 Windows desktops.
- 23 37. Sixth, the exploitive software programs alter Internet Explorer browser settings, including
24 but not limited to, adding websites that are controlled by or associated with the ERG
25 defendants to the computers' "trusted zone" thereby creating a security hole within
26 Internet Explorer that permits the ERG defendants greater access to the consumer's
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1 infected computer.

2 38. Seventh, the exploitive software programs degrade the infected computer's performance
3 such that other programs cannot function and will not respond to user commands. For
4 example, in numerous instances, consumers' computers "freeze," and they are unable to
5 activate and use existing programs.

6 39. Eighth, the exploitive software programs disable at least two popular anti-spyware
7 software programs: Lavasoft's Ad-Aware SE ("Ad-Aware") and Microsoft's Windows
8 Defender.

9 40. For example, in numerous instances, after being infected with the exploitive software
10 programs, when a consumer attempts to run Ad-Aware, the computer shuts down prior to
11 completion of the Ad-Aware scan. As a result, a consumer is unable to fully execute the
12 Ad-Aware spyware scan, and consequently cannot use Ad-Aware as a tool to remove any
13 of the exploitive software programs on the computer.

14 41. Similarly, when a consumer attempts to run Microsoft's Windows Defender, some of the
15 exploitive software programs installed on consumers' computers are added to the
16 "Allow" list. As a result, Windows Defender ignores those files while scanning for
17 adware and spyware.

18 42. The effects of the exploitive software programs on an infected computer constitute
19 substantial harm.

20 **The Harm Is Not Reasonably Avoidable**

21 43. The substantial harm caused by the Media Motor Application cannot be reasonably
22 avoided by consumers.

23 44. First, consumers do not know that the Media Motor application is bundled with the "free"
24 software they download or its effects.

25 45. For example, in numerous instances, the ERG defendants' affiliated websites do not
26 display a EULA or other terms and conditions for consumers to view, and consumers
27

1 never have to agree to anything prior to downloading the Media Motor Application. In
2 some instances, the ERG defendants' affiliated websites do display a EULA, but the
3 Media Motor Application installs itself regardless of whether a consumer accepts or
4 declines the terms of the EULA.

5 46. In other instances, depending on the computer's security settings, the ERG defendants'
6 EULA is buried in highlighted text that does not always display that there are terms and
7 conditions for a consumer to review. Furthermore, the ERG defendants do not require,
8 let alone encourage, consumers to review the EULA prior to downloading and installing
9 the Media Motor Application. For example, when a consumer clicks "Yes" on the ERG
10 defendants' installation box, the Media Motor Application is automatically installed, with
11 no requirement that a consumer agree to any terms and conditions.

12 47. Defendant Taylor utilizes a EULA, but his EULA fails to disclose the nature and effects
13 of the Media Motor Application. Moreover, as discussed in paragraph 30, defendant
14 Taylor's EULA forces consumers to install the Media Motor Application whether or not
15 they agree to the terms of the EULA.

16 48. Second, consumers, having installed the Media Motor Application, cannot reasonably
17 avoid its effects by uninstalling or removing it. Some of the exploitive software programs
18 installed by the Media Motor Application do not appear anywhere in the Windows
19 operating system Add/Remove utility. Other exploitive software programs, although
20 listed in Add/Remove, are listed under names that disingenuously resemble core
21 operating system software or applications or that do not otherwise adequately describe the
22 software program. Often, all or some of the programs installed by the Media Motor
23 Application remain on consumers' computers even after attempts to uninstall them.

24 49. The Media Motor Application and its accompanying exploitive software programs offer
25 no benefit to consumers or competition.

1 **VIOLATIONS OF THE FTC ACT**

2 **COUNT ONE**

3 **AS TO THE ERG DEFENDANTS**

4 **(Defendants ERG Ventures, LLC, Cameron, Davidson, and Hill)**

5 **Failure to Disclose the Presence and Nature of Bundled Exploitive Software**

6 50. In numerous instances, in connection with marketing and distributing code, files, or
7 content to consumers, the ERG defendants have represented, expressly or by implication,
8 that the code, files, or content function as standalone innocuous free programs, including,
9 but not limited to, screensavers or icons.

10 51. In numerous instances, the ERG defendants have failed to disclose that their code, files,
11 or content contain additional code, files, or content that, among other things, cause a
12 stream of multiple advertisements to appear on consumers' computers, track consumers'
13 Internet activity, alter browser settings, and alter existing software products.

14 52. This additional information, described in Paragraph 51, would be material to consumers
15 in deciding to download and install the code, files, or content that the ERG defendants
16 distribute.

17 53. The ERG defendants' failure to disclose the material information described in Paragraph
18 51, above, in light of the representations described in Paragraph 50, above, constitutes a
19 deceptive act or practice in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

20 **COUNT TWO**

21 **AS TO THE ERG DEFENDANTS**

22 **(Defendants ERG Ventures, LLC, Cameron, Davidson, and Hill)**

23 **Deceptive Representations Regarding the End User License Agreement**

24 54. In numerous instances, in connection with marketing and distributing code, files, or
25 content to consumers, the ERG defendants have represented, expressly or by implication,
26 that the code, files, or content include third party software ("the ERG defendants'
27

1 software package”), and that consumers have the option to decline the terms and
2 conditions of their End User License Agreement (“EULA”) and thereby prevent the
3 installation of their code, files, or content.

4 55. In truth and in fact, in numerous instances, consumers cannot prevent the installation of
5 the ERG defendants’ software package. Rather, even if consumers reject the terms of the
6 EULA, the ERG defendants’ software package – including their bundle of additional
7 code, files, or content – is downloaded and installed onto consumers’ computers. This
8 additional code, file, or content, among other things, causes a stream of multiple
9 advertisements to appear on consumers’ computers, tracks consumers’ Internet activity,
10 alters browser settings, and alters existing software products.

11 56. Therefore, the ERG defendants’ representations, as described in Paragraph 54, above, are
12 false and misleading, and the making of those representations constitutes a deceptive act
13 or practice in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

14 **COUNT THREE**

15 **AS TO THE ERG DEFENDANTS**

16 **(Defendants ERG Ventures, LLC, Cameron, Davidson, and Hill)**

17 **Unfair Installation of Exploitive Software**

18 57. In numerous instances, in connection with marketing and distributing code, files, or
19 content to consumers, the ERG defendants have downloaded and installed, or caused to
20 be downloaded and installed additional code, files, or content that, among other things,
21 cause a stream of multiple advertisements to appear on consumers’ computers, track
22 consumers’ Internet activity, alter browser settings, and alter existing software products.
23 When this additional code, file, or content is installed on consumers’ computers, in some
24 cases, it: 1) changes consumers’ default home pages; 2) adds a difficult-to-remove
25 toolbar to consumers’ Internet browser that displays advertising; 3) tracks consumers’
26 Internet activity; 4) generates repeated and occasionally pornographic pop up advertising;

1 5) adds advertising icons to consumers' Windows desktop; 6) alters consumers' Internet
2 browser settings; 7) degrades computer performance; or 8) attacks and disables
3 consumers' anti-spyware software.

4 58. The ERG defendants' actions are likely to cause substantial injury to consumers that
5 cannot be reasonably avoided and are not outweighed by countervailing benefits to
6 consumers or competition.

7 59. Therefore, the ERG defendants' actions, as described in Paragraph 57, above, constitute
8 an unfair act or practice in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

9 **COUNT FOUR**

10 **AS TO DEFENDANT TAYLOR**

11 **Deceptive Representations Regarding the End User License Agreement**

12 60. In numerous instances, in connection with marketing and distributing code, files, or
13 content to consumers, defendant Taylor has represented, expressly or by implication, that
14 the code, files, or content include "free utilities" or "free utilities from Motor Media,"
15 ("defendant Taylor's software package"), and that consumers have the option to decline
16 the terms and conditions of his End User License Agreement ("EULA") and thereby
17 prevent the installation of defendant Taylor's software package.

18 61. In truth and in fact, in numerous instances, consumers cannot prevent the installation of
19 defendant Taylor's software package. Rather, even if consumers reject the terms of the
20 EULA, defendant Taylor's software package – including the ERG defendants' bundle of
21 additional code, files, or content – is downloaded and installed onto consumers'
22 computers. This additional code, file, or content, among other things, causes a stream of
23 multiple advertisements to appear on consumers' computers, tracks consumers' Internet
24 activity, alters browser settings, and alters existing software products.

25 62. Therefore, defendant Taylor's representations, as described in Paragraph 60, above, are
26 false and misleading, and the making of those representations constitutes a deceptive act
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1 or practice in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

2 **COUNT FIVE**

3 **AS TO DEFENDANT TAYLOR**

4 **Failure to Disclose the Presence and Nature of Bundled Exploitive Software**

5 63. In numerous instances, in connection with marketing and distributing code, files, or
6 content to consumers, defendant Taylor has represented, expressly or by implication, that
7 the code, files, or content function as standalone innocuous free programs including, but
8 not limited to, screensavers or computer games.

9 64. In numerous instances, defendant Taylor has failed to disclose that the code, files, or
10 content contain additional code, files, or content that, among other things, cause a stream
11 of multiple advertisements to appear on consumers' computers, track consumers' Internet
12 activity, alter browser settings, and alter existing software products.

13 65. This additional information, described in Paragraph 64, would be material to consumers
14 in deciding to download and install the code, files, or content that defendant Taylor
15 distributes.

16 66. Defendant Taylor's failure to disclose the material information described in Paragraph 64,
17 above, in light of the representations described in Paragraph 63, above, constitutes a
18 deceptive act or practice in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

19 **COUNT SIX**

20 **AS TO DEFENDANT TAYLOR**

21 **Unfair Installation of Exploitive Software**

22 67. In numerous instances, in connection with marketing and distributing code, files, or
23 content to consumers, defendant Taylor has downloaded and installed, or caused to be
24 downloaded and installed additional code, files, or content that, among other things, cause
25 a stream of multiple advertisements to appear on consumers' computers, track
26 consumers' Internet activity, alter browser settings, and alter existing software products.

1 When this additional code, file, or content is installed on consumers' computers, in some
2 cases, it: 1) changes consumers' default home pages; 2) adds a difficult-to-remove
3 toolbar to consumers' Internet browser that displays advertising; 3) tracks consumers'
4 Internet activity; 4) generates repeated and occasionally pornographic pop up advertising;
5 5) adds advertising icons to consumers' Windows desktop; 6) alters consumers' Internet
6 browser settings; 7) degrades computer performance; or 8) attacks and disables
7 consumers' anti-spyware software.

8 68. Defendant Taylor's actions are likely to cause substantial injury to consumers that cannot
9 be reasonably avoided and are not outweighed by countervailing benefits to consumers or
10 competition.

11 69. Therefore, defendant Taylor's actions, as described in Paragraph 67, above, constitute an
12 unfair act or practice in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

13 CONSUMER INJURY

14 70. The defendants' violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a), as set forth
15 above, have caused and continue to cause substantial injury to consumers. Absent
16 injunctive relief by this Court, the defendants are likely to continue to injure consumers
17 and harm the public interest.

18 THIS COURT'S POWER TO GRANT RELIEF

19 71. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive
20 and other ancillary relief, including consumer redress, disgorgement and restitution, to
21 prevent and remedy any violations of any provision of law enforced by the FTC.

22 PRAYER FOR RELIEF

23 WHEREFORE, plaintiff, the Federal Trade Commission, requests that this Court, as
24 authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own
25 equitable powers:

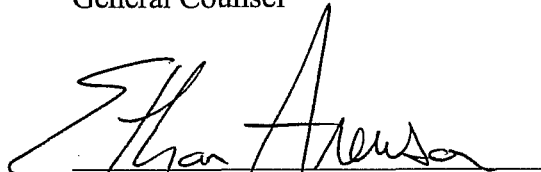
26 1. Award plaintiff such preliminary injunctive and ancillary relief as may be necessary to
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1 avert the likelihood of consumer injury during the pendency of this action and to preserve
2 the possibility of effective final relief, including, but not limited to, temporary and
3 preliminary injunctions, an order freezing assets, and a financial accounting;

- 4 2. Enter a permanent injunction to prevent future violations of the FTC Act by defendants;
- 5 3. Award such relief as the Court finds necessary to redress injury to consumers resulting
6 from the defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),
7 including, but not limited to, rescission of contracts, restitution, the refund of monies
8 paid, and the disgorgement of ill-gotten monies; and
- 9 4. Award Plaintiff the costs of bringing this action, as well as any other equitable relief that
10 the Court may determine to be just and proper.

11
12 Dated: May 23, 2007

13
14 Respectfully submitted:
15 WILLIAM BLUMENTHAL
16 General Counsel

17
18 

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25 (202) 326-2548 (Robbins)
26 (202) 326-3395 *facsimile*

1 CERTIFICATE OF SERVICE

2 I, Ethan Arenson, am over 18 years old and am one of the attorneys representing Plaintiff,
3 Federal Trade Commission ("FTC" or "Commission"), an agency of the United States government,
4 in this action against defendants ERG Ventures, LLC, Elliott S. Cameron, Robert A. Davidson, II,
5 Garry E. Hill and Timothy P. Taylor. My business address is FTC, 600 Pennsylvania Ave., N.W.,
6 Room H-286, Washington, D.C. 20580. On May 23, 2007, I served the foregoing Notice of Filing
7 of Amended Complaint via the Court's electronic filing system and via First Class Mail, postage
8 prepaid to:

9 Dennis Kennedy
10 Leah Ayala
11 Kimberly McGhee
12 Bailey Merrill
13 8691 West Sahara Avenue, Suite 200
14 Las Vegas, Nevada 89117-5830
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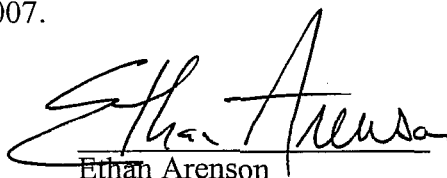
Pro Se

20 *Attorneys for Defendants ERG Ventures,
21 LLC, Robert Davidson, and Garry Hill*

22 Elliott S. Cameron
23 15180 Western Springs Drive
24 Reno, Nevada 89521

Pro Se

25 Executed on May 23, 2007.

26 
27 Ethan Arenson
28