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7 Attorneys for Defendants
DAVE YONAMINE, JOHN LIBBY, and
8 MOBILITYWARE, LLC

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

11 RONA KOMINS, on behalf of herself, her
12 children, B.K. and M.K., and all others similarly
situated,

13 Plaintiff,

14 vs.

15 DAVE YONAMINE, JOHN LIBBY,
16 MOBILITYWARE, LLC; DOES 1-100,
inclusive, and ROES Software Development Kit
17 Business Entities 1-100, inclusive,

18 Defendants.

Case No. 19STCV24865

**DEFENDANTS' ANSWER TO THIRD
AMENDED CLASS ACTION
COMPLAINT**

Judge: Honorable Kenneth R. Freeman

Action Filed: July 17, 2019

Trial Date: None Set

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21 Pursuant to Cal. Civ. Proc. Code § 431.30, defendants MobilityWare, LLC
22 (“MobilityWare”), Dave Yonamine, and John Libby (collectively, “Defendants”) answer the Third
23 Amended Class Action Complaint (the “TAC”) filed by plaintiff Rona Komins (“Plaintiff”) on
24 March 1, 2021 by admitting, denying, and alleging as follows:

25 **GENERAL DENIAL**

26 Pursuant to Cal. Civ. Proc. Code § 431.30(d), Defendants deny, generally and specifically,
27 each and every allegation in Plaintiff’s unverified TAC.
28

1 **AFFIRMATIVE DEFENSES**

2 Without waiving the foregoing general and specific denial, Defendants, as and for their
3 separate affirmative defenses to the TAC, allege as follows:

4 **FIRST AFFIRMATIVE DEFENSE**

5 **(Failure to State a Claim)**

6 1. The TAC and the causes of action therein fail to state a claim for which relief can be
7 granted.

8 **SECOND AFFIRMATIVE DEFENSE**

9 **(Consent)**

10 2. The TAC and the causes of action therein are barred in whole or in part because
11 Plaintiff and members of the putative class consented to the conduct alleged in the TAC by agreeing
12 to MobilityWare’s Privacy Policy, which discloses the precise collection and use of information that
13 is alleged in the TAC, by expressly accepting the Privacy Policy and/or by installing or continuing to
14 play MobilityWare’s games.

15 **THIRD AFFIRMATIVE DEFENSE**

16 **(Waiver and Acquiescence)**

17 3. The TAC and the causes of action therein are barred in whole or in part by the
18 doctrines of waiver and acquiescence because Plaintiff and putative class members continued to play
19 MobilityWare’s games with knowledge of MobilityWare’s Privacy Policy, which discloses the
20 precise collection and use of information that is alleged in the TAC.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 **(Estoppel)**

23 4. The TAC and the causes of action therein are barred in whole or in part by the
24 doctrine of estoppel because Plaintiff and putative class members represented to MobilityWare that
25 they accepted MobilityWare’s Privacy Policy, which discloses the precise collection and use of
26 information that is alleged in the TAC, and they are estopped from contradicting that representation
27 by bringing claims that are contrary to the Privacy Policy.

1 **FIFTH AFFIRMATIVE DEFENSE**

2 **(Unclean Hands)**

3 5. The TAC and the causes of action therein are barred in whole or in part by the
4 doctrine of unclean hands to the extent that MobilityWare’s games were played by, or downloaded
5 for use by, children under the age of 13, in violation of: (a) the warranty set forth in the versions of
6 MobilityWare’s Privacy Policy in effect prior to March 17, 2017 that the user was 13 years or older
7 when establishing the account; and/or (b) the prohibition in the versions of MobilityWare’s Privacy
8 Policy in effect on or after March 17, 2017 against the playing of MobilityWare’s games by children
9 under the age of 13.

10 **SIXTH AFFIRMATIVE DEFENSE**

11 **(Comparative Fault / Fault of Another)**

12 6. Plaintiff and the putative class members are responsible, in part or in full, for any
13 injuries allegedly suffered by their children because: (a) they knew or should have known of
14 MobilityWare’s collection and use of certain information, as expressly disclosed in MobilityWare’s
15 Privacy Policy, yet they either put MobilityWare’s games onto their children’s devices and/or
16 allowed their children to put MobilityWare’s games onto their devices; and/or (b) they knew or
17 should have known that many apps collect some information from users, yet they failed to take
18 reasonable steps to limit the information collected from their children’s devices by, for example,
19 disabling ad tracking or geolocation on their children’s devices.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 **(Lack of Standing)**

22 7. Plaintiff and the putative class members lack standing to assert these claims because
23 they have sustained no damages.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 **(Lack of Standing – Section 17200 Claim)**

26 8. Plaintiff and the putative class members lack standing to assert claims under Cal. Bus.
27 Prof. Code §§ 17200 *et seq.* to the extent that they have not lost money or property as a result of the
28 conduct alleged in the TAC.

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NINTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

9. The TAC and the causes of action therein are barred in whole or in part by the applicable statute of limitations, including Cal. Civ. Proc. Code §§ 337, 338, 339, and 343.

TENTH AFFIRMATIVE DEFENSE

(Laches)

10. The TAC and the causes of action therein are barred in whole or in part by the doctrine of laches.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

11. If Plaintiff or the putative class members sustained any damages by reasons of the acts or omissions alleged in the TAC, they have failed to mitigate such damages.

TWELFTH AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses Reserved)

12. Defendants cannot fully anticipate at this time all defenses that may be applicable. Accordingly, Defendants reserve the right to assert additional affirmative defenses if, and to the extent, such affirmative defenses are later discovered and found to be applicable.

WHEREFORE, Defendants pray as follows:

1. That judgment be awarded in favor of Defendants and against Plaintiff on the TAC and that the TAC be dismissed in its entirety with prejudice;
2. That class certification be denied;
3. That Plaintiff and members of the putative class take nothing by way of the TAC;
4. For costs of suit herein; and

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5. For such other and further relief as this Court deems just and proper.

DATED: July 7, 2021

**PILLSBURY WINTHROP SHAW
PITTMAN LLP**

By: /s/ Carolyn S. Toto
Robert L. Wallan
Carolyn S. Toto
Jeffrey D. Wexler

Attorneys for Defendants Dave Yonamine,
John Libby, and MobilityWare, LLC

PROOF OF SERVICE VIA CASE ANYWHERE

I, Inga De La Rosa, the undersigned, hereby declare as follows:

I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in the City of Los Angeles, California.

My business address is 725 South Figueroa Street, Suite 2800, Los Angeles, CA 90017-5406.

On July 7, 2021, I serve a true copy of the attached document titled **DEFENDANTS' ANSWER TO THIRD AMENDED CLASS ACTION COMPLAINT** on counsel of record in this action, as listed on attached Service List.

I cause such document described herein to be uploaded electronically onto the Case Anywhere website at <https://secure.caseanywhere.com> pursuant to the Court's January 10, 2020 Order Authorizing Electronic Service.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 7, 2021, at Brea, California.



Inga De La Rosa

Service List
Case No. 19STCV24865

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LAW OFFICES OF RONALD A. MARRON Ronald A. Marron, Esq. Alexis Wood, Esq. Michael T. Houchin, Esq. Lilach Halperin, Esq. Elisa Pineda, Esq. 651 Arroyo Drive San Diego, CA 92103 Telephone: (619) 696-9006 Facsimile: (619) 564-6665 Email: ron@consumersadvocates.com lilach@consumersadvocates.com alexis@consumersadvocates.com mike@consumersadvocates.com elisa@consumersadvocates.com	Attorneys for: Plaintiff and the Proposed Class
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