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13 THE PEOPLE OF THE STATE OF CALIFORNIA

14 [NO FEE – Cal. Govt. Code § 6103]

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF LOS ANGELES**

17 THE PEOPLE OF THE STATE OF
18 CALIFORNIA,

19 Plaintiff,

20 v.

21 TWC PRODUCT AND TECHNOLOGY, LLC,
22 a Delaware corporation; and DOES 1-50,
23 inclusive,

24 Defendants.

Case No.: _____

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES FOR
VIOLATIONS OF THE UNFAIR
COMPETITION LAW (CALIFORNIA
BUSINESS & PROFESSIONS CODE
§§ 17200, ET SEQ.)**

25 **INTRODUCTION**

26 1. Plaintiff People of the State of California (“the People”), by and through
27 Michael N. Feuer, the City Attorney of Los Angeles, bring this civil law enforcement action
28 against Defendants TWC Product and Technology, LLC and Does 1 through 50, inclusive
(collectively “TWC” or “Defendant”). For years, TWC has deceptively used its Weather
Channel App to amass its users’ private, personal geolocation data—tracking minute details
about its users’ locations throughout the day and night, all the while leading users to believe
that their data will only be used to provide them with “personalized local weather data, alerts
and forecasts.” TWC has then profited from that data, using it and monetizing it for purposes
entirely unrelated to weather or the Weather Channel App. In fact, unbeknownst to its users,
TWC’s core business is amassing and profiting from user location data. Indeed, it has been

1 reported that TWC considers itself “a location data company powered by weather.”¹ TWC’s
2 failure to alert its users that their personal information will be transferred to others for profit is
3 no mere oversight. As the General Manager of TWC’s Consumer Division admitted, “[i]f a
4 consumer is using your product and says ‘hey wait a minute, why do they want to know where
5 I am?’ . . . , you are going to have some problems.”² The People seek injunctive relief to put
6 an end to TWC’s unfair business practices and civil penalties both to punish TWC for its
7 egregious conduct and to deter TWC from engaging in the same or similar conduct in the
8 future.

9 2. TWC, a subsidiary of International Business Machines Corporation (“IBM”),
10 owns and operates the Weather Channel App, a mobile application (“app”) that provides users
11 with real-time weather information and alerts, hourly and daily weather forecasts, and on-
12 demand video coverage of major weather stories.

13 3. TWC markets the Weather Channel App as “[t]he world’s most downloaded
14 weather app,”³ with approximately 45 million users monthly.⁴ Indeed, according to at least
15 one organization, the Weather Channel App was the most downloaded weather app from 2014
16 to 2017.⁵

17 4. Unfortunately, TWC takes advantage of its app’s widespread popularity by
18 using it as an intrusive tool to mine users’ private geolocation data, which TWC then sends to
19 IBM affiliates and other third parties for advertising and other commercial purposes entirely
20 unrelated to either weather or the Weather Channel App’s services.

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22 ¹ Stephanie Miles, *Weather Company Continues Data Expansion with First-Party Location-Targeting Platform*,
23 Street Fight (Oct. 13, 2016), available at <https://streetfightmag.com/2016/10/13/weather-company-continues-data-expansion-with-first-party-location-targeting-platform/>.

24 ² Michelle Manafy, *The Weather Company’s JOURNEYfx Location-Based Ads See the Bigger Picture*, Digital
25 Content Next (Oct. 18, 2016), available at <https://digitalcontentnext.org/blog/2016/10/18/the-weather-companys-journeyfx-location-based-ads-see-the-bigger-picture/>.

26 ³ <https://weather.com/apps>

27 ⁴ *The Weather Channel App, Reimagined*, Weather.com (Dec. 5, 2018), available at
28 <https://weather.com/news/news/2018-08-25-the-weather-channel-app-update>.

⁵ *Id.*

1 5. The geolocation data collected by TWC is not limited to general information
2 about the state, city, or zip code in which users operate the Weather Channel App. Rather, the
3 app tracks users’ movements in minute detail, even when users are not actively using it. As
4 detailed in a recent New York Times exposé, apps such as the Weather Channel App can trace
5 users’ second-by-second movements with startling precision—tracking where users live, work,
6 and visit throughout the day and night (and how much time they spend at each location).⁶ This
7 geolocation information can then be analyzed to determine users’ daily habits, consumer
8 preferences, and even their identities—valuable data that serves as the basis of an
9 approximately \$21 billion location-targeted advertising industry.

10 6. TWC purports to obtain users’ consent for geolocation tracking by deceiving
11 users about how it will use that data. When seeking users’ permission to track geolocation
12 data, the app does *not* disclose to users that TWC will transmit that data to third parties, nor
13 that the data will be used for advertising and other commercial purposes bearing no relation to
14 weather or the services provided by the app. To the contrary, the app misleadingly suggests
15 that such data will be used only to provide users with “personalized local weather data, alerts
16 and forecasts.”

17 7. When seeking consent for geolocation tracking, the app does not reference or
18 link to any other sections of the app for more information on that topic, or give users any
19 reason to believe that their location data will be used for anything other than personalized local
20 weather data, alerts and forecasts. Users therefore have no reason to seek such information by
21 combing through the app’s lengthy “Privacy Policy” and “Privacy Settings” sections—buried
22 within which are opaque discussions of TWC’s potential transmission of geolocation data to
23 third parties and use for additional commercial purposes. Indeed, on information and belief,
24 the vast majority of users do not read those sections at all.

25 8. Unbeknownst to many users, the Weather Channel App has tracked users’
26 detailed geolocation data *for years*, analyzing and/or transferring that data to third parties for a
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28 ⁶ Jennifer Valentino-DeVries, Natasha Singer, Michael H. Keller, and Aaron Krolik, *Your Apps Know Where You Were Last Night, and They’re Not Keeping It Secret*, New York Times (Dec. 10, 2018), available at <https://www.nytimes.com/interactive/2018/12/10/business/location-data-privacy-apps.html>.

1 variety of commercial and advertising purposes, including for targeted advertisements based on
2 locations users frequent, and for hedge funds interested in analyzing consumer behavior. In
3 fact, maximizing the amount of geolocation data the Weather Channel App tracks is at the core
4 of TWC’s business model. According to TWC executives, that data is one of the primary
5 reasons IBM acquired TWC.⁷

6 9. The People bring this action to end TWC’s unfair and fraudulent business
7 practices—namely, its practice of deceiving users into allowing TWC to track intrusive, personal
8 geolocation data through misleading statements and omissions regarding what that data will be
9 used for and to whom it will be sent. The People seek civil penalties and injunctive relief barring
10 TWC from engaging in these prohibited business practices.

11 **PARTIES**

12 10. Plaintiff People is the sovereign power of the State of California designated by
13 the Unfair Competition Law (California Business and Professions Code §§ 17200 *et seq.*) (the
14 “UCL”) to be the complaining party in civil law enforcement actions brought under that
15 statute. *See* Bus. & Prof. Code § 17204. The People have an interest in ensuring that the
16 individuals and entities doing business in this state do not deceive consumers, particularly with
17 respect to the uses of their personal data.

18 11. Defendant TWC is a Delaware Corporation with its principal place of business
19 in Atlanta, Georgia. Established in or around 2015, TWC owns and operates the Weather
20 Channel App, which is available for download and use on both Apple products and Android
21 products. TWC is a subsidiary of IBM.

22 12. The true names and capacities of the defendants sued herein as Does 1 through
23 50, inclusive, are unknown to the People. The People therefore sue these Defendants by such
24 fictitious names. When the true names and capacities of these Defendants have been
25 ascertained, the People will seek leave of this Court to amend this Complaint to insert, in lieu
26 of such fictitious names, the true names and capacities of the fictitiously-named Defendants.

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⁷ Manafy, *supra*.

1 The People are informed and believe, and thereon allege, that these Defendants participated in,
2 and in some part are responsible for, the fraudulent and unfair acts alleged herein. Does 1
3 through 50 include unknown individuals that conspired with one or more Defendants
4 concerning the fraudulent and unfair acts alleged herein. Does 1 through 50 also include
5 agents of Defendants acting within the course and scope of their duties. Each reference in this
6 Complaint to TWC or Defendant is also a reference to all Defendants sued as Does.

7 13. The People allege that, in addition to acting on its own behalf, all of the acts and
8 omissions described in this Complaint by any Defendant were duly performed by, and
9 attributable to, all Defendants, each acting as agent, employee, alter ego, joint enterprise and/or
10 under the direction and control of the others, and such acts and omissions were within the
11 scope of such agency, employment, alter ego, joint enterprise, direction, and/or control. Any
12 reference in this Complaint to any acts of Defendants shall be deemed to be the acts of each
13 Defendant acting individually, jointly, or severally. At all relevant times, each Defendant had
14 knowledge of and agreed to both the objectives and course of action, and took the acts
15 described in this Complaint pursuant to such agreements, resulting in the unfair and fraudulent
16 acts described herein.

17 **JURISDICTION AND VENUE**

18 14. This Court has subject matter jurisdiction over this action pursuant to Article
19 VI, section 10 of the California Constitution.

20 15. This Court has personal jurisdiction over Defendant because TWC purposefully
21 avails itself of California markets. The Weather Channel App is available for download and
22 use throughout California and, on information and belief, many hundreds of thousands of
23 Californians (if not more) have downloaded and used the Weather Channel App.

24 16. Venue is proper in this Court pursuant to Code of Civil Procedure § 393
25 because violations of law that occurred in the City and County of Los Angeles are part of the
26 cause upon which the People seek recovery of penalties imposed by statute.

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1 **LEGAL BACKGROUND**

2 17. The UCL prohibits “unfair competition,” which is broadly defined as including
3 “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or
4 misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500)
5 of Part 3 of Division 7 of the Business and Professions Code.” Bus. & Prof. Code § 17200.
6 The purpose of the UCL “is to protect both consumers and competitors by promoting fair
7 competition in commercial markets for goods and services.” *Kasky v. Nike, Inc.*, 27 Cal.4th
8 939, 949 (2002).

9 18. Because Section 17200 is written in the disjunctive, a business act or practice
10 need only be unlawful, unfair, *or* fraudulent to be considered “unfair competition” prohibited
11 by the UCL. *Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal.4th 163, 180
12 (1999).

13 19. Under the “fraudulent” prong, a business practice is prohibited if it is likely to
14 mislead or deceive a reasonable consumer or, where the business practice is aimed at a
15 particularly susceptible audience, a reasonable member of that target audience. *See Lavie v.*
16 *Procter & Gamble Co.*, 105 Cal.App.4th 496, 506-07 (2003).

17 20. Under the “unfair” prong, “a practice may be deemed unfair even if not
18 specifically proscribed by some other law.” *Cel-Tech*, 20 Cal.4th at 180.

19 21. The UCL authorizes the City Attorney to bring a civil enforcement action
20 against “[a]ny person who engages, has engaged, or proposes to engage in unfair competition.”
21 Bus. & Prof. Code § 17203. “[P]erson” includes “natural persons, corporations, firms,
22 partnerships, joint stock companies, associations and other organizations of persons.” *Id.*
23 § 17201.

24 22. The remedies for a violation of the UCL include injunctive relief and restitution.
25 Bus. & Prof. Code §§ 17203, 17204. In addition, when a UCL action is brought by the City
26 Attorney in the name of the People, the City Attorney may seek civil penalties of up to \$2,500
27 for each violation of the UCL. *Id.* § 17206(a). Where an act of unfair competition is
28 perpetrated against senior citizens or disabled persons, the City Attorney may seek an

1 additional civil penalty of \$2,500 for each such violation. *Id.* § 17206.1(a). “Unless otherwise
2 expressly provided, the remedies or penalties provided by [the UCL] are cumulative to each
3 other and to the remedies or penalties available under all other laws of this state.” *Id.* § 17205.

4 **GENERAL ALLEGATIONS**

5 **I. TWC Leads Users to Believe Geolocation Data Will Be Used Exclusively for**
6 **Weather-Related Purposes.**

7 23. The Weather Channel App provides users with a variety of weather-related
8 services and data: current weather conditions; hourly and daily weather forecasts; weather alerts
9 and safety tips; interactive radar; and on-demand video coverage of major weather stories.

10 24. The Weather Channel App does *not* provide users with any functions or services
11 unrelated to weather data, weather forecasting, or weather news. On information and belief,
12 TWC has not advertised or marketed the Weather Channel App to users as providing any
13 functions or services unrelated to weather data, weather forecasting, or weather news.

14 25. Users can download the Weather Channel App onto Apple products (including
15 iPhones, iPads, and Apple watches) or onto Android products (including Android cellphones,
16 Android tablets, and Android smartwatches). The app is free to download, although users can
17 purchase an ad-free version of the app for \$3.99.

18 26. The description of the Weather Channel App in both the Apple App Store and the
19 Android Google Play App Store—from which the app may be downloaded—does not disclose
20 the purposes for which the app tracks geolocation data.

21 27. Once a user downloads the Weather Channel App, the user receives a prompt
22 seeking permission for the app to access the user’s location, for example:

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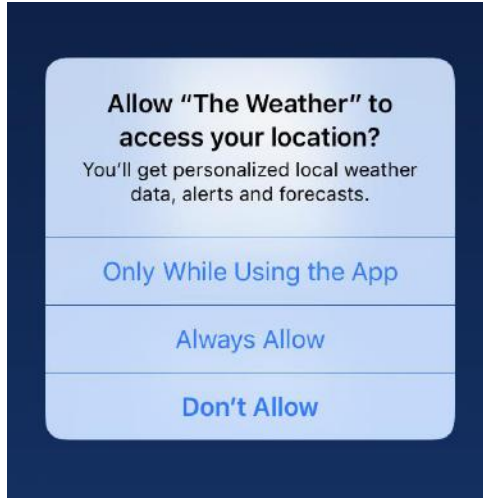
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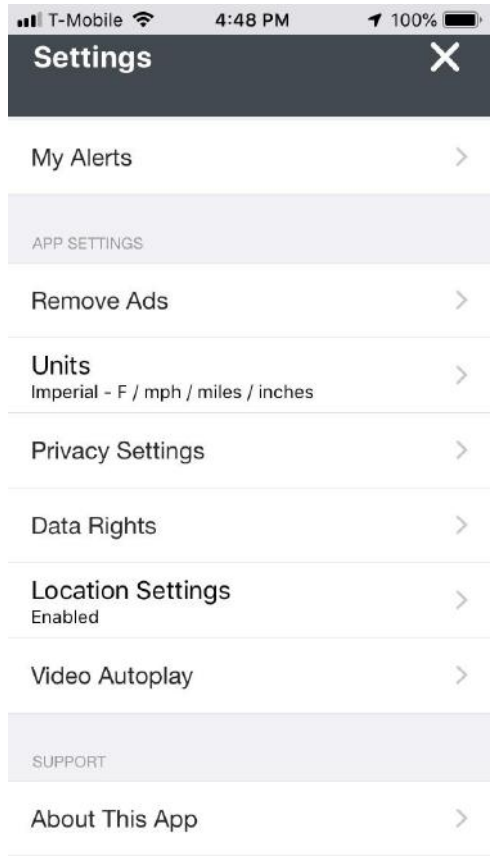


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10 28. The permission prompt does *not* disclose that TWC will share geolocation data
11 with third parties, nor that geolocation information will be used for advertising or other
12 commercial purposes unrelated to weather or to the services the app provides. The permission
13 prompt also fails to reference or link to any other source containing more detailed information
14 about what users' geolocation information will be used for. Users therefore have no reason to
15 believe that their geolocation information will be used for anything other than providing them
16 with "personalized local weather data, alerts and forecasts," or other services directly relating to
17 the app.

18 29. Once the app has been installed and opened—*after* the user has initially decided
19 whether or not to grant geolocation access—the user can access additional information via the
20 "Settings" tab of the app:

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30. However, based on the permission prompt, a reasonable user has no reason to believe the Settings tab would contain additional information regarding TWC’s uses of geolocation data.

31. Moreover, the most apparent section of the Settings tab in which additional geolocation details may be contained—the “Location Settings” section—does not contain any further information about users’ geolocation data:

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12. In fact, only by combing through the “Privacy Settings” and “Privacy Policy” sections of the app can users learn that their geolocation may be tracked for purposes other than “personalized local weather data, alerts and forecasts.” On information and belief, the vast majority of users of the Weather Channel App do not read those sections, as TWC provides users no reason to believe that their location data will be used for anything other than personalized local weather data, alerts and forecasts.

33. Furthermore, the Privacy Settings and Privacy Policy sections of the app are less than forthcoming regarding TWC’s uses of geolocation data. The Privacy Settings section vaguely states that geolocation data may be used for “geographically relevant ads and content” and may be shared with “partners” for “the provision of services such as business operations, advertising solutions or promotions.” Scattered through various sections of the nearly 10,000-word Privacy Policy, TWC states that it may use geolocation data to “provide advertisements that are relevant to your geographic location,” to conduct undefined “analytics to improve the Services,” and for other undefined “research or commercial purposes (e.g., analyzing trends based on foot traffic).”

34. On information and belief, TWC intentionally obscures this information because it recognizes that many users would not permit the Weather Channel App to track their

1 geolocation if they knew the true uses of that data. In fact, according to the General Manager of
2 TWC’s Consumer Division, discussing the Weather Channel App: “If a consumer is using your
3 product and says ‘hey wait a minute, why do they want to know where I am?’ . . . , you are going
4 to have some problems.”⁸

5 **II. TWC Utilizes and Transmits Geolocation Data to Third Parties for Purposes**
6 **Entirely Unrelated to Weather.**

7 35. Based on the misleading statements and omissions described above, TWC is able
8 to convince approximately 80% of the Weather Channel App’s users to grant access to their
9 geolocation data. TWC then proceeds to track those users’ movements in minute detail.

10 36. Indeed, TWC executives state that they track consumers’ movements “throughout
11 the day, week and year” with “uber-precise” geolocation monitoring⁹—collecting data that is
12 “accurate down to 5 decimal places.”¹⁰ According to TWC, it collects more than *one billion*
13 pieces of location data *per week*, thus tracking users’ personal data with “unmatched accuracy
14 and precision.”¹¹ TWC contends that it possesses the “world’s largest continuous set of 1st party
15 place data [*i.e.*, geolocation data].”¹² Through this massive data-collection scheme, TWC is able
16 to track users’ precise daily movements and analyze where they choose to spend their time
17 throughout the day and night.

18 37. TWC transmits this personal geolocation data to a variety of third parties,
19 including advertising and marketing companies. According to researchers, the Weather Channel
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22 ⁸ Manafy, *supra*.

23 ⁹ David Kaplan, *The Weather Company Rolls Out Location Marketing Platform to Anticipate Consumers’*
24 *Movements*, GeoMarketing (Oct. 13, 2016), available at [https://geomarketing.com/the-weather-company-rolls-out-
location-marketing-platform-to-anticipate-consumers-movements](https://geomarketing.com/the-weather-company-rolls-out-location-marketing-platform-to-anticipate-consumers-movements).

25 ¹⁰ David Kaplan, *The Weather Company Brings in Digital Ad Vet Carrie Seifer to Head Sales*, GeoMarketing
26 (March 30, 2017), available at [https://geomarketing.com/the-weather-company-brings-in-digital-ad-vet-carrie-
seifer-to-head-sales](https://geomarketing.com/the-weather-company-brings-in-digital-ad-vet-carrie-seifer-to-head-sales).

27 ¹¹ Kaplan, *The Weather Company Rolls Out Location Marketing Platform to Anticipate Consumers’ Movements*,
28 *supra*.

¹² *Id.*

1 App transferred users’ geolocation data to at least a dozen third party websites over the past 19
2 months.¹³

3 38. In addition, TWC and/or its affiliates have developed their own “audience-derived
4 location targeting platform” called “JOURNEYfx” to take advantage of and monetize this trove
5 of personal geolocation data.¹⁴ Through JOURNEYfx, TWC and/or its affiliates analyze that
6 data to ascertain a slew of personal information about users—to “understand rituals, consumers’
7 patterns of behavior, and the best time to market in order to influence that behavior.”¹⁵

8 39. For example, as described in one JOURNEYfx case study, TWC and/or its
9 affiliates “leverag[ed] . . . 1st party location data” generated by the Weather Channel App to
10 target McDonald’s McCafé coffee offerings toward millennials who—according to that
11 geolocation data— frequented “breakfast-style diners.”¹⁶

12 40. TWC’s uses of geolocation data for commercial purposes even went beyond
13 advertising. Until recently, TWC and/or its affiliates maintained a program through which they
14 analyzed Weather Channel App users’ geolocation data for *hedge funds* interested in consumer
15 behavior.

16 41. Indeed, TWC’s business model is dependent on this massive data-collection
17 scheme. According to reports, TWC considers itself “a location data company powered by
18 weather.”¹⁷ TWC’s “wealth of weather and location data is the main reason that IBM acquired”
19 it.¹⁸

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23 ¹³ <https://www.appcensus.mobi/app/com.weather.Weather/814000166>

24 ¹⁴ <https://www.ibm.com/watson-advertising/solutions/data>

25 ¹⁵ Manafy, *supra*.

26 ¹⁶ <https://www.ibm.com/case-studies/mcdonalds-watson-advertising>

27 ¹⁷ Miles, *supra*.

28 ¹⁸ Manafy, *supra*.

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF UNFAIR COMPETITION LAW**

3 **(Bus. & Prof. Code §§ 17200 et seq.)**

4 42. The People incorporate by reference all preceding allegations as though fully set
5 forth herein.

6 43. California’s Unfair Competition Law (Bus. & Prof. Code §§ 17200-17210)
7 prohibits any person from engaging in “any unlawful, unfair, or fraudulent business act or
8 practice.” (Bus. & Prof. Code § 17200.)

9 44. TWC is a “person” subject to the Unfair Competition Law, pursuant to Business
10 and Professions Code § 17201.

11 45. TWC has violated (and continues to violate) the Unfair Competition Law by
12 engaging in the following **fraudulent and deceptive** business acts and practices:

13 a) Failing to disclose—either on the Weather Channel App’s permission
14 prompt, or in any other conspicuous location that reasonable consumers are likely to read—that
15 TWC collects users’ geolocation information for transmission to third parties.

16 b) Failing to disclose—either on the Weather Channel App’s permission
17 prompt, or in any other conspicuous location that reasonable consumers are likely to read—that
18 TWC collects and analyzes users’ geolocation information for purposes unrelated to weather or
19 the services offered by the Weather Channel App, including advertising and other commercial
20 purposes.

21 c) Misleading reasonable consumers into believing that TWC collects
22 users’ geolocation information exclusively in order to provide users with “personalized local
23 weather data, alerts and forecasts,” when in fact TWC collects such data for advertising and
24 other commercial purposes unrelated to weather data, alerts, and forecasts.

25 46. Defendant has violated (and continues to violate) the Unfair Competition Law
26 by engaging in the following **unfair** business acts and practices:

27 a) Failing to disclose—either on the Weather Channel App’s permission
28 prompt, or in any other conspicuous location that reasonable consumers are likely to read—that

1 TWC collects users' geolocation information for transmission to third parties.

2 b) Failing to disclose—either on the Weather Channel App's permission
3 prompt, or in any other conspicuous location that reasonable consumers are likely to read—that
4 TWC collects and analyzes users' geolocation information for purposes unrelated to weather or
5 the services offered by the Weather Channel App, including advertising and other commercial
6 purposes.

7 c) Misleading reasonable consumers into believing that TWC collects
8 users' geolocation information exclusively to provide users with “personalized local weather
9 data, alerts and forecasts,” when in fact TWC collects such data for advertising and other
10 commercial purposes.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, the People pray that:

3 1. TWC be enjoined from engaging in the unfair and fraudulent business acts and
4 practices, as described herein, in violation of the Unfair Competition Law;

5 2. TWC be assessed a civil penalty up to \$2,500 for each violation of the Unfair
6 Competition Law, pursuant to Business & Professions Code § 17206(a);

7 3. TWC be assessed an additional civil penalty up to \$2,500 for each violation of
8 the Unfair Competition Law perpetrated against senior citizens or disabled persons, pursuant to
9 Business & Professions Code § 17206.1(a);

10 4. The People recover the costs of this action; and

11 5. The People be granted such other and further relief as the Court deems just and
12 proper.

13 Dated: January 3, 2019

Respectfully submitted,

14 MICHAEL N. FEUER, City Attorney
15 JAMES P. CLARK, Chief Deputy City Attorney
16 THOMAS H. PETERS, Chief Assistant City Attorney
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