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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JEFFREY S. CHIESA, Attorney General of the
State of New Jersey, and ERIC T. KANEFSKY,
Acting Director of the New Jersey Division of
Consumer Affairs,

Plaintiffs,

v.

24 x 7 DIGITAL, LLC,

MARK YAMASHITA and REI YOSHIOKA,
individually and as officers of 24 x 7
DIGITAL, LLC; and

Defendants.

Hon. _____

Civil No. _____

COMPLAINT

Plaintiffs Jeffrey S. Chiesa, Attorney General of the State of New Jersey ("Attorney General") and Eric T. Kanefsky, Acting Director of the New Jersey Division of Consumer Affairs (collectively "Plaintiffs" or "State of New Jersey"), with offices located at 124 Halsey

St., Newark, New Jersey, as and for their Complaint against defendants 24 x 7 Digital, LLC (“24 x 7”), Mark Yamashita, and Rei Yoshioka (collectively, “Defendants”) with offices located at 8024 Georgetown Avenue, Los Angeles, California 90045-2607, allege as follows:

INTRODUCTION

1. Plaintiffs bring this action on behalf of the State of New Jersey under Section 6505 of the Children’s Online Privacy Protection Act of 1998 (“COPPA”), 15 U.S.C. §§ 6501 et seq., to enjoin Defendants, the developers of certain children’s mobile device applications (“Apps”), from violating COPPA by transmitting to third parties the personal information about the users of those Apps. In connection with their business, Defendants collect and transmit the names and unique device identification numbers (“UDID”) specific to the mobile devices used by children, without providing notification of this policy on their website and without obtaining consent from parents to collect and use the personal information of their children in this manner. As demonstrated below, Defendants’ conduct violates COPPA and the Children’s Online Privacy Protection Rule (“Rule” or “COPPA Rule”) promulgated by the Federal Trade Commission (the “FTC”), 16 C.F.R. 312.1 et seq.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355.

3. Venue is proper in the District of New Jersey in that Defendant is subject to this court’s personal jurisdiction pursuant to 28 U.S.C. § 1391(c)(2) and therefore resides in this District pursuant to 28 U.S.C. § 1391(b)(1) and that a substantial part of the events or omissions giving rise to Plaintiffs’ claim occurred in this District pursuant to 28 U.S.C. §§ 1391(b)(2). In

the operation of its business, including the advertisement and sale of children's Apps, 24 x 7 transacts business in the District of New Jersey.

THE CHILDREN'S ONLINE PRIVACY PROTECTION ACT

4. COPPA was enacted in 1998 in response to Congressional concern that commercial websites were collecting and disseminating the personal information of children without disclosing that activity and obtaining parental consent. Congress found that those collection practices unlawfully invaded the privacy of children.

5. The sponsors of COPPA were concerned that a growing number of companies were using personal information collected from the children without adult approval to build profiles about the children and their families, to target them for commercial purposes, and to entice children to want to purchase a range of products.

6. In introducing COPPA to the Senate Commerce Committee, Senator Richard Bryan acknowledged that, as of 1998, three million children under the age of 18 were online. Today, according to the United States Census, approximately 61.7 million children under the age of 18 have access to the internet.

7. Prior to COPPA, a report by the FTC had found that 89 percent of children's websites included in an FTC survey collected the personal information of children. The report also found that less than ten percent of those websites provided for parental control over the collection and use of this personal information.

8. To address the growing and ever-changing concerns of children's online privacy, Congress directed the FTC to promulgate rules to implement COPPA. 15 U.S.C. § 6502(b). On November 3, 1999, the Commission promulgated the COPPA Rule.

9. The COPPA Rule governs the collection, use, and/or disclosure of personal information from and about children online. Under the COPPA Rule, an operator of a website or online service directed at children must:

- (a) Post a privacy policy informing parents as to the types of information it collects from children, how it uses such information, and its disclosure practices of such information;
- (b) Obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children;
- (c) Provide a reasonable means for a parent to review the personal information collected from a child;
- (d) Provide a reasonable means for a parent to refuse to permit the further collection, use, or maintenance of such personal information;
- (e) Not condition a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity; and
- (f) Establish and maintain reasonable procedures to protect the confidentiality, security and integrity of personal information collected from children.

10. Since the enactment of COPPA, a growing amount of personal information collected on children by companies has been collected through the use of mobile devices connected to the internet. A February 2012 FTC report on "Mobile Apps for Kids" found that both Apple's iOS and Google's Android operating systems for mobile devices offer powerful capabilities to monitor the behavior and location of their child users. For example, the report found that some mobile devices enabled Apps to determine a user's precise geographic location and to communicate with other devices via the internet. Such functionality allows children to identify and connect with other children playing the same game nearby. It also, however, creates the possibility for Apps to access, what the FTC found to be "sensitive information such as a

user's call logs, contacts, unique device identifiers, or enable the app to use the phone service on the mobile device to make or answer calls or send text messages.”

11. Where the Attorney General has reason to believe that an interest of the residents of his State is being threatened or adversely affected by a practice in violation of COPPA, he may, as *parens patriae*, bring a civil action to enjoin that practice, enforce compliance with COPPA, and obtain injunctive and other relief pursuant to 15 U.S.C. § 1305(a).

DEFENDANTS

12. Defendant 24 x 7 is a California limited liability company with its principal place of business located at 8024 Georgetown Avenue, Los Angeles, California 90045-2607. 24 x 7 develops, markets, distributes, and/or sells software Apps to consumers throughout the United States, including consumers in New Jersey, and provides online services to users of its Apps.

13. At all relevant times, Defendant Mark Yamashita was a member, officer and App developer of 24 x 7, including the following children's Apps: Teach Me: Toddler; Teach Me: Kindergarten; Teach Me: First Grade; and Teach Me: Second Grade (collectively, the “Teach Me Apps.”)

14. At all relevant times, Defendant Rei Yoshioka was a member, officer and App developer of 24 x 7, including the Teach Me Apps.

DEFENDANTS' COURSE OF CONDUCT IN VIOLATION OF THE COPPA RULE

15. Since at least January 7, 2009, Defendants have offered for download from the App Store approximately 21 Apps for the iPhone, iPod Touch, and iPad that are directed specifically to children under the age of 13. Defendants' Apps include the four Teach Me Apps.

16. Defendants' Teach Me Apps are directed to toddlers, kindergarteners, first graders, and second graders. The Teach Me Apps are designed to send information to and

receive information from children over the internet. Thus, Defendants' Teach Me Apps are online services directed to children pursuant to COPPA.

17. Defendants maintain a website located at www.24x7digital.com/apps/Home.html ("Teach Me Website"). Defendants' Teach Me Website advertises that its "popular TeachMe: educational apps contain age-appropriate learning topics and motivational reward activities to help your youngsters learn quickly and effectively."

18. Defendants Teach Me Apps are directed to children in that they test children's knowledge of the following "learning subjects" for toddlers: letters, ABC phonics, numbers, shapes, colors, and counting. Kindergarten learning subjects include: sight words, addition, subtraction, and spelling. First grade learning subjects include: sight words, addition, subtraction, and spelling. Second grade learning subjects include: sight words, spelling, "fast addition," "fast subtraction," "long addition," and "long subtraction." To keep children engaged, Defendants' Teach Me Apps reward children with virtual stickers for answering questions correctly. Children are then able to place their stickers on various themed backgrounds.

19. Defendants advertise their Teach Me Apps as having a "simple and intuitive user interface" that is designed to be child friendly and that "allows children to play without help from an adult." This further demonstrates that the Teach Me Apps are directed to children.

20. To play Defendants' Teach Me Apps, children or their parents are encouraged to create "player" profiles. For each profile, children are able to enter their first and last name along with a picture of themselves.

21. Through the Teach Me Apps, 24 x 7 transmits the personal information of children, including their first and last name and the UDID associated with the mobile device they are using, to a third-party data analytics company known as Flurry, Inc. ("Flurry").

22. 24 x 7 transmits the personal information of its' child users to Flurry without: (a) providing notice on its website or its Apps that it is collecting this personal information, to whom this personal information is being disclosed, or how this personal information is being used; (b) providing direct notice to parents of its data collection, transmission, and disclosure policies; and (c) obtaining verifiable parental consent to Defendants' collection, use, and transmission of the personal information of children.

23. Defendants are capable of creating functional children's games without the transmission of children's first and last name to third-parties. Indeed, other Apps developed by Defendants also encourage users to create "player" profiles but do not similarly transmit the names of children to third-parties.

COUNT I

DEFENDANTS' VIOLATIONS OF COPPA AND THE COPPA RULE

24. Plaintiffs repeat the allegations of paragraphs 1 through 23 of this Complaint with the same force and effect as though set forth in full herein.

25. Defendants operate online services directed to children, including through their Teach Me Apps, which collect personal information in violation of COPPA and the COPPA Rule.

26. Defendants violated COPPA and the COPPA Rule by:

- a. Failing to provide notice on its website or its Apps the types of personal information they collect from children, how they use such information, whether they disclose such information to third parties, and all other content required in a notice, in violation of 15 U.S.C. §6502 and 16 C.F.R. 312.4(b);
- b. Failing to provide direct notice to parents of the types of personal information Defendants collect from children, how they use such information, whether they disclose such information to third parties, and

all other content required in a notice, in violation of 15 U.S.C. §6502 and 16 C.F.R. 312.4(c); and

- c. Failing to obtain verifiable parental consent before the collection, use, and/or disclosure of personal information from children, in violation of 15 U.S.C. §6502 and 16 C.F.R. 312.5(a)(1).

27. Defendants' transmission of personal information about the users of their children's Apps to third parties in violation of COPPA poses a risk of irreparable harm warranting equitable and injunctive relief pursuant to COPPA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pursuant to 15 U.S.C. § 6505(a) and the Court's own equitable powers, requests that the Court:

- (1) Enter preliminary and permanent injunctive relief to prevent future violation of COPPA and the COPPA Rule by Defendants;
- (2) Enjoin Defendants from creating, developing, operating, maintaining, or otherwise using Apps which collect the personal information of children without complying with COPPA and the COPPA Rule;
- (3) Order Defendants to permanently destroy all personal information of children collected in violation of COPPA and the COPPA Rule; and
- (4) Grant such other and additional relief as the Court may determine to be just and proper.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

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Dated: June 4, 2012
Newark, New Jersey

RULE 11.2 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the Children's Online Privacy Protection Act of 1998 ("COPPA"), 15 U.S.C. §§ 6501 et seq., is not the subject of any other action pending in any other court, or of any pending arbitration or administrative proceeding.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: s/ Jah-Juin Ho
Jah-Juin Ho
Deputy Attorney General

Dated: June 4, 2012
Newark, New Jersey