

1 Nicholas W. Armstrong (Cal. Bar No. 270963)
2 Oscar M. Price, IV (*pro hac vice*)
3 Garrett Owens (*pro hac vice*)
4 PRICE ARMSTRONG LLC
5 1919 Cahaba Road
6 Birmingham, AL 35223
7 Phone: 205.706.7517
8 nick@pricearmstrong.com
9 oscar@pricearmstrong.com
10 garrett@pricearmstrong.com

11 John K. Landay (Cal Bar No. 257573)
12 LANDAY ROBERTS LLP
13 600 W. Broadway, Suite 700
14 San Diego, CA 92101
15 Phone: 619.230.5712
16 jlanday@landayroberts.com

17 *Attorneys for Plaintiffs*

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 JON HART, ALEX DANIELS, and
21 JOSHUA DUNLAP

22 Plaintiffs,

23 v.

24 TWC PRODUCT AND TECHNOLOGY
25 LLC,

26 Defendant.

27 Case No. 4:20-cv-3842-JST

**FIRST AMENDED
CLASS ACTION COMPLAINT**

CLASS ACTION

1. Violation of Article I, Section 1 of the California Constitution (Cal. Const. art I, § 1)
2. Unjust Enrichment
3. Declaratory Judgment (28 U.S.C. § 2201, *et seq.*)

1 **FIRST AMENDED CLASS ACTION COMPLAINT**

2 COME NOW Plaintiffs, Jon Hart, Alex Daniels, and Joshua Dunlap, individually and on
3 behalf of a class of all persons and entities in California who are similarly situated, and file this
4 class action complaint against the Defendant TWC Product and Technology LLC (“TWC” or
5 “Defendant”).

6 **NATURE OF THE CASE**

7 1. The location targeting industry in America is a \$21 billion business. Personal and
8 private information about where consumers live, enjoy recreational activities, shop, and dine, and
9 the specific hours at which they do each of those activities is of almost immeasurable value to
10 marketers and advertisers. Under the guise of providing precise and real-time weather information
11 through a mobile weather application, or “App”, Defendant in this case has for years been involved
12 in a multi-million dollar scheme to collect, maintain and then profit of consumers geolocation data,
13 all without their knowledge.

14 2. TWC Product and Technology, LLC is the internet, mobile, and cloud based arm
15 of the popular “The Weather Channel” television station. TWC is owned and operated by IBM.
16 A significant part of TWC’s business is its Weather Channel App, which is used by tens of millions
17 of American consumers every month. Defendants boast that the Weather Channel App is most
18 downloaded weather app in the world.

19 3. For years now, TWC has been collecting and maintaining Weather Channel App
20 users’ private and personal geolocation data.

21 4. Until recently, TWC never did anything at all to disclose to App users the
22 specificity with which it tracked users’ geolocation, that it maintained this data, or that it directly
23 profited from App user’s geolocation data by transmitting or selling that data to affiliates and third
24 parties for advertising and marketing purposes. Instead, TWC told users that their data would only
25 be used for the user’s benefit to provide them with personalized local weather information. Nothing
26 in the description of the App or prompts to allow geolocation tracking alerted users to the extent
27

1 and purpose of the location tracking function of the App. As a result of lawsuits and in an attempt
2 to correct its past misrepresentations and deceptions, TWC has drastically changed the disclosures
3 it makes to App users regarding the purpose for which it collects geolocation data.

4 5. Before recent changes, TWC fraudulently and deceptively induced Weather
5 Channel App users to grant Defendant access to their personal geolocation data under the guise of
6 providing better weather information, TWC then tracked users' locations at all times, day and
7 night, 365 days a year. TWC did not disclose to users that it maintains this data, much less that it
8 directly profits from user's geolocation data by transmitting or selling that data to third parties for
9 advertising and marketing purposes. By TWC's own admission, TWC's primary revenue source
10 comes from collecting, maintaining and then profiting from user location data. In short,
11 unbeknownst to Weather Channel App user's, TWC considers itself "a location data company
12 powered by the weather."

13 6. This case seeks to hold TWC accountable for its years-long practice of tracking
14 and selling the physical locations of the users of its mobile weather application, without those
15 users' permission. Under the guise of providing precise and real-time weather information through
16 a mobile weather application, or "app", TWC instead tracked and collected data on its users'
17 locations—from their homes to their places of work, their schools, their daycares, and their
18 churches—in a multimillion-dollar scheme to sell that data to third parties and business partners, all
19 without its users' knowledge.

20 7. TWC's conduct in fraudulently collecting, maintaining, and then profiting off of
21 users' valuable geolocation data constitutes a violation of Article I, Section 1 of the California
22 Constitution, California Civil Code § 1750 *et seq.*, and constitutes unjust enrichment. Finally,
23 because of TWC's conduct, Plaintiffs and the class members are entitled to declaratory judgment.

24 **PARTIES**

25 8. Plaintiff Jon Hart is an adult resident of California. He downloaded the App prior
26 to 2019 and has been damaged by TWC's unlawful, unfair, and fraudulent acquisition and use of
27

1 his geolocation data.

2 9. Plaintiff Alex Daniels is an adult resident of California. He downloaded the App
3 prior to 2019 and has been damaged by TWC's unlawful, unfair, and fraudulent acquisition and
4 use of his geolocation data.

5 10. Plaintiff Joshua Dunlap is an adult resident of California. He downloaded the App
6 prior to 2019 and has been damaged by TWC's unlawful, unfair, and fraudulent acquisition and
7 use of his geolocation data.

8 11. Defendant TWC is a Delaware corporation with its headquarters in Atlanta,
9 Georgia. TWC owns and operates the Weather Channel App, which is available for download and
10 use on all major mobile platforms, including Apple and Android. TWC does business in the State
11 of California and in this judicial district, having provided its Weather Channel App for download
12 for California consumers like Plaintiffs. TWC is owned by IBM.

13 **JURISDICTION AND VENUE**

14 12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d).
15 Diversity jurisdiction exists as Defendant is a citizen of a state other than the state of which all the
16 Plaintiffs are citizens, and Plaintiffs on behalf of themselves and the putative class seeks more than
17 \$5,000,000, exclusive of interest and costs. More than one hundred members are included in the
18 putative class.

19 13. Venue in this case is proper under 28 U.S.C. § 1391 and 28 U.S.C. § 1441 in the
20 United States Court for the Northern District of California, in that a substantial portion of TWC's
21 conduct which forms the basis of this action occurred in this judicial district. TWC does business
22 in this judicial district and has received and continues to receive substantial revenue and profits
23 from the unlawful, unfair, and fraudulent acquisition and use of location data in this judicial
24 district. TWC's conduct directly damaged individuals and entities which reside in this judicial
25 district, including Plaintiff Jon Hart, and TWC did, or reasonably should have, anticipated that this
26 conduct would subject them to the jurisdiction of this Court. TWC was subject to personal
27

1 jurisdiction in this judicial district at the time this action was commenced and are deemed to reside
2 in this judicial district.

3 **CLASS ACTION ALLEGATIONS**

4 14. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules
5 of Civil Procedure. Plaintiffs assert a class of individuals and entities throughout California who
6 were harmed by TWC's deceptive conduct. That class is defined as:

7 All persons and entities who reside in California who (1) downloaded the
8 Weather Channel App and (2) granted TWC access to the user's geolocation
data before January 25, 2019.

9 15. Excluded from the class are any person or entity currently in bankruptcy, any
10 person or entity whose obligations have been discharged in bankruptcy, any employee or affiliate
11 of TWC, and any judicial officer who has presided over this case.

12 16. Plaintiffs maintain the right to create additional subclasses or classes, if necessary,
13 and to revise this definition to maintain a cohesive class which does not require individual inquiry
14 to determine liability.

15 17. All information necessary to identify the class members and the damages class
16 members incurred is in TWC's possession or control.

17 **NUMEROSITY**

18 18. The exact number of class members is unknown to Plaintiffs at this time, but is in
19 excess of one thousand and can be ascertained through appropriate discovery.

20 **EXISTENCE AND PREDOMINANCE OF
21 COMMON QUESTIONS OF LAW AND FACT**

22 19. There are common questions of law and fact of general interest to the class. These
23 common questions of law and fact predominate over any questions affecting only individual
24 members of the classes. Among these common questions are the following:

- 25 a. Whether TWC disclosed to Weather Channel App users that it would collect,
26 maintain, and sell their geolocation data.

- 1 b. Whether TWC’s process for inducing Weather Channel App users to grant
2 TWC permission to access their geolocation data was deceptive and unfair;
- 3 c. Whether TWC’S representations to Weather Channel App users that the
4 purpose for accessing users’ geolocation data was to provide users with
5 personalized and local weather information is deceptive and unfair;
- 6 d. Whether TWC’S representations to Weather Channel App users that the
7 purpose for accessing users’ geolocation data was to provide users with
8 personalized and local weather information is fraudulent;
- 9 e. Whether TWC disclosed to Weather Channel App users that TWC is “a location
10 data company powered by the weather;”
- 11 f. Whether TWC disclosed to Weather Channel App users that it sells or otherwise
12 profits from disseminating users’ geolocation data to affiliates and third parties;
- 13 g. Whether TWC violated Article I, Section 1 of the California Constitution.
- 14 h. Whether TWC was unjustly enriched through its conduct.
- 15 i. Whether declaratory judgment is proper.

16 **TYPICALITY**

17 20. The claims of the named Plaintiffs are typical of the claims of the class. They were
18 subject to, and harmed by, the same uniform conduct that each and every member of the class was
19 subject to and harmed by.

20 **ADEQUATE REPRESENTATION**

21 21. Plaintiffs will fairly and adequately protect the interests of the members of the class
22 and have no interest antagonistic to those of other class members. Plaintiffs have retained class
23 counsel competent to prosecute class actions, and such class counsel are financially able to
24 represent the classes.

25 **SUPERIORITY**

1 28. As demonstrated herein, the Weather Channel App’s actual purpose was, and
2 remains, to collect, maintain, and then provides or sells users’ geolocation data to affiliates and
3 other third parties, all without notifying users that it was doing so.

4 29. Plaintiffs and class members, who allowed TWC to collect, maintain, and share
5 their geolocation data before changes to disclosures, were harmed by TWC’s conduct. Their data
6 was collected, maintained and shared without their consent. To this day TWC continues to
7 maintain this ill-gotten data and continues to share it with third parties.

8 **Defendant Did Not Disclose To Users That It Collects Their Geolocation Data And Did Not**
9 **Obtain Their Consent To Give That Data To Third Parties**

10 30. Immediately upon opening the Weather Channel App for the first time, the app
11 asked the user for permission to access the user’s “location.” Regardless of the device being used,
12 this request did not inform the user that TWC would be tracking the users every move or that this
13 information will be used for any purpose other than providing the user information about the
14 weather. Specifically, the request to access the user’s location on Apple devices simply stated that
15 granting access will result in “personalized local weather data, alerts, and forecasts.” The request
16 on Android devices simply said “Allow The Weather Channel to access this device’s location?”
17 with the option to “Deny” or “Allow.”

18 31. The consent process employed by the Weather Channel App made absolutely no
19 reference to any additional information the user should read or review prior to providing consent
20 to geolocation tracking. Nowhere in the consent process was the user confronted with the
21 information that their minute-by-minute geolocation data will be broadly disseminated by TWC
22 and that TWC would make millions disseminating users’ geolocation data. Importantly, the
23 consent process did not direct users to any “Privacy Policy” or “Privacy Settings”, so users had no
24 reason to search those voluminous documents for any vague discussions of geolocation data that
25 might be buried within those documents.
26
27

1 permission and continues to do so. Some of those third parties are indirectly affiliated with TWC,
2 while others are not, but in both circumstances, TWC financially benefited and continues to
3 benefit, either directly or indirectly, from the sale or other dissemination of this valuable
4 information. TWC has even gone as far as to sell this information to hedge funds, who used the
5 data to monitor certain areas of consumer spending. TWC, along with its parent IBM, has even
6 developed its own location driven marketing platform, "JOURNEYfx," through which TWC, IBM,
7 and others further exploit the inherent value of this data.

8 **Defendant's Conduct Has Resulted In Damages**

9 39. As alleged above, Plaintiffs' and the class members' geolocation data is extremely
10 valuable to TWC. That data also has value to Plaintiffs and members of the putative class and by
11 capturing it, transferring it to third parties, and maintaining it without the consent of Plaintiffs and
12 the members of the class, Defendant has decreased that value in several ways.

13 Damage To Plaintiffs' and Class Members' Legally-Protected Privacy Interests

14 40. Plaintiffs and the class members, like any other persons, have an interest in the
15 privacy of their affairs. Their given location at every minute of the day is something that generally
16 is free from disclosure to non-present third parties. Plaintiffs' privacy interests include a reasonable
17 expectation that they will be free from targeted and manipulative marketing based upon their
18 current and constantly-updated location information without receiving sufficient disclosures and
19 consenting to such marketing. This interest is enshrined in Article I, Section 1 of the California
20 Constitution and cases interpreting it creating a freedom to conduct personal activities without
21 constant observation.

22 41. By collecting and transferring the geolocation data of Plaintiffs and the class
23 members to third parties, TWC has intruded on these interests in a way that cannot be undone; the
24 bell to advertisers as to the user's exact, constantly-updated location has been forever rung. This
25 permanent invasion on the privacy interests of Plaintiffs and the class members, without their
26 consent, is a cognizable, compensable injury.

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF ARTICLE I SECTION 1 OF THE CALIFORNIA CONSTITUTION**

3 **(Cal. Const. art. I, § 1)**

4 48. Article I, Section 1 of the California Constitution creates a privacy right protecting
5 individuals from invasions of their privacy from state and private parties.

6 49. Plaintiffs and class members had a legally protected privacy interest in their exact
7 location 24 hours per day, 365 days per year as well as their historical location. They, as individuals
8 have a legally protected interest in conducting personal activities without observation within the
9 confines of social norms. It is not generally accepted that, after receiving disclosures that your
10 geolocation information would be used to provide “personalized local weather data, alerts and
11 forecasts,” a person would expect to be tracked constantly, wherever they go. It is also not
12 generally accepted that, given that disclosure, a person would be subject to having their
13 geolocation information maintained for an indefinite period. Further, it is not generally accepted
14 that, given that disclosure, a person’s geolocation information would be shared or otherwise
15 transmitted to third parties or TWC affiliates.

16 50. Plaintiffs and class members had a reasonable expectation of privacy under the
17 circumstances. Given the disclosure that the geolocation tracking was to provide “personalized
18 local weather data, alerts and forecasts” on Apple devices and the total lack of description of any
19 other material facts on Android devices, it was reasonable and within broadly accepted community
20 norms to believe that such information would only be gathered in a general manner to provide
21 weather forecasts for the area. Instead, the location information collected was disturbingly precise.
22 Additionally, given the disclosure, it was reasonable and within broadly accepted community
23 norms to believe that geolocation information would not be stored and maintained indefinitely as
24 such maintenance would not be needed to provide weather forecasts. Further, given the disclosure,
25 it was reasonable and within broadly accepted community norms to believe that the location
26 information would not be shared because that is not necessary for providing weather forecasts.

1 66. The Court should also order corresponding injunctive relief requiring TWC to cease
2 maintaining, and sharing Plaintiffs' and class members' geolocation data for which it did not
3 receive consent. This injunction should direct TWC to alter the geolocation data collection
4 practices in regard to Plaintiffs and class members.

5 67. If an injunction is not issued, Plaintiffs and class members will suffer irreparable
6 injury and lack an adequate legal remedy in the event of TWC's ongoing conduct in that their
7 valuable geolocation data will continue to be maintained, and shared with affiliates and third
8 parties without their consent.

9 68. The California Constitution and California law prohibits the constant tracking of
10 persons without their consent. Given that TWC continues to maintain, and share the geolocation
11 data of Plaintiffs and class members without their consent renders the risk of continued violations
12 of California law real, immediate, and substantial in that TWC will continue to maintain and share
13 this data with third parties. Plaintiffs and class members do not have an adequate remedy at law
14 because many of the resulting injuries are reoccurring and Plaintiffs will be forced to bring multiple
15 lawsuits to rectify the same conduct.

16 69. The hardship to Plaintiffs and class members if an injunction is not issued exceeds
17 the hardship to TWC if an injunction is issued. On the other hand, the cost to TWC of complying
18 with an injunction by complying with California law and by ceasing to collect, maintain, and share
19 the geolocation data of Plaintiffs and the class members is relatively minimal, and TWC has a pre-
20 existing legal duty to avoid invading the legally-protected privacy rights of consumers.

21 70. Issuance of the requested injunctive relief will serve the public interest by
22 preventing ongoing collection, maintenance, and sharing of Plaintiffs' and class members'
23 geolocation data without their consent. This would eliminate the injuries that would result to
24 Plaintiffs and class members.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs on behalf of themselves and the proposed Class respectfully
3 request that the Court enter an order:

- 4 a. Certifying this case as a class action on behalf of the Class defined above,
5 appointing Plaintiffs as the representative of the Class, and appointing their
6 counsel as class counsel;
- 7 b. Declaring that TWC’s actions, as set out above, violate Article I, Section 1 of the
8 California Constitution;
- 9 c. Declaring that TWC’s actions, as set out above, have unjustly enriched TWC;
- 10 d. Requiring TWC to cease collecting the geolocation data of Plaintiffs and the class
11 members;
- 12 e. Requiring TWC to cease maintaining the geolocation data of Plaintiffs and the
13 class members;
- 14 f. Requiring TWC to cease sharing the geolocation data of Plaintiffs and the class
15 members with affiliates and third parties;
- 16 g. Awarding damages, including nominal, statutory, and punitive damages where
17 applicable, to Plaintiffs and the class members in the amount to be determined at
18 trial;
- 19 h. Awarding Plaintiffs and the class members the gains realized by TWC from its
20 improper conduct;
- 21 i. Awarding Plaintiffs and the class members their costs of suit, as well as
22 reasonable attorneys’ fees;
- 23 j. Awarding Plaintiffs and the class members pre- and post-judgment interest, to the
24 extent allowable;
- 25 k. Awarding such other further injunctive and declaratory relief as is necessary to
26 protect the interests of Plaintiffs and the class members; and
27

