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SAN FRANCISCO COUNTY SUPERIOR COURT
2012 MAR 21 AM 1:10
CLERK OF THE COURT
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. **ARBITRON INC.** Defendant.	Case No. CGC-12-519349 **COMPLAINT FOR EQUITABLE RELIEF AND CIVIL PENALTIES (BUSINESS AND PROFESSIONS CODE SECTIONS 17200, ET SEQ. AND 17500, ET SEQ.; CIVIL CODE SECTION 51.5, ET SEQ.)** Dept: Judge: Trial Date: Action Filed:

Plaintiff, The PEOPLE OF THE STATE OF CALIFORNIA ("PEOPLE"), by and through Attorney General Kamala Harris, Los Angeles City Attorney Carmen A. Trutanich, and San Francisco City Attorney Dennis J. Herrera, alleges the following on information and belief:

NATURE OF THE ACTION

1. Defendant ARBITRON INC. ("ARBITRON") is the primary provider of radio ratings data in the United States. It collects, analyzes, and distributes estimates of the size and composition of radio audiences, akin to the service provided by Nielsen Media Research for television broadcasters. Defendant ARBITRON contracts with radio stations to provide a personal, limited license to receive and use data and audience estimates for defined geographic areas. The stations must pay an annual fee for the license.

2. This action arises from Defendant ARBITRON's implementation (referred to in the ratings industry as the "commercialization") of a new system for gathering ratings data in California. This system involves use of a newly developed electronic device, the Portable People Meter ("PPM"), for measuring radio listenership in the following Arbitron markets: Los Angeles; Riverside-San Bernardino; San Diego; San Francisco and San Jose (which is a fully embedded market within the San Francisco market), and Sacramento.

3. As described further below, Defendant ARBITRON has violated California's Unfair Competition Law (Business and Professions Code section 17200, et seq.), False Advertising Law (Business and Professions Code section 17500, et seq.) and Unruh Civil Rights Act (Civil Code section 51, et seq.) in commercializing the PPM ratings system in California by: (A) making and causing others to make untrue, misleading, unfair and deceptive statements in the promotion of the PPM ratings system; and (B) knowingly and intentionally persisting in the commercialization of the PPM ratings system knowing that the PPM ratings methodology discriminated against radio stations with predominantly African-American and Hispanic listeners.

4. As a result of Defendant ARBITRON's unlawful, unfair, and fraudulent business acts and practices, deceptive advertising and discriminatory conduct, radio stations that serve African-American and Hispanic audiences lost a disproportionately large segment of rated radio

listenership, resulting in a decline in advertising revenue to those radio stations, layoffs, and potential bankruptcy.

DEFENDANTS AND VENUE

5. Defendant ARBITRON is a publicly traded Delaware corporation, listed as "ARB" on the New York Stock Exchange, with its principal place of business at 9705 Patuxent Woods Drive, Columbia, Maryland 21046. It is the primary, and in many markets the only, provider of radio ratings data in the United States.

6. Defendant ARBITRON has a regional office at 6080 Center Drive, 6th Floor, Los Angeles, California 90045, and conducts substantial business throughout the state. Additionally, some or all of Defendant ARBITRON's unlawful, unfair and fraudulent business acts and practices, deceptive advertising and discriminatory conduct occurred in California.

GENERAL ALLEGATIONS

Defendant ARBITRON's Radio Listenership Rating Systems

7. The ratings reports provided by Defendant ARBITRON indicate the audience share for all the participating radio stations throughout the day. Radio stations and advertisers negotiate the terms of long-term advertisement contracts based on this data. Individual retailers also procure on-air advertising time based on the station's audience share.

8. Pursuant to their contracts with Defendant ARBITRON, radio stations must agree to encode their broadcasts to be measured by Defendant ARBITRON. Defendant ARBITRON reserves the right not to publish data or reports whenever it judges insufficient data is available to meet its minimum research standards, or any event has jeopardized the reliability of the data.

9. A valid and reliable ratings methodology based on samples representative of their communities is especially indispensable to African-American and Hispanic radio stations, which occupy a unique position in California by serving demographics not normally accessible by mainstream radio stations. In addition to providing talk and music entertainment programming, these stations are an important platform for discussion and dissemination of public information. Samples that are not reflective of California's diverse population artificially diminish the ratings for these radio stations, thus reducing advertising revenue and diminishing the voice of these

communities throughout California.

10. For years, Defendant ARBITRON has recruited laypersons, known as "panelists," for the purposes of recording their listening preferences. If the household members agreed to participate, they were requested to manually record their radio listening habits in written diaries and then forward the results to Defendant ARBITRON for tabulation.

11. In 2006, Defendant ARBITRON announced a schedule for the implementation of the PPM, a small electronic device that panelists would carry on their person and that would automatically detect signals embedded by the radio stations into their broadcasts. As advertised, the PPM would function by recording information about radio broadcasts that panelists listened to throughout the day, including the frequency and duration of the panelists' exposure to those broadcasts. Then, when the PPM was docked in the Base Station at night, the data would be downloaded into the Station and transmitted to Defendant ARBITRON for tabulation.

12. As described further below, in September 2008, Defendant ARBITRON released PPM derived radio ratings data in several markets nationwide, including Los Angeles and San Francisco/San Jose. The PPM derived ratings replaced diary-based ratings as the exclusive radio audience data provided by Defendant ARBITRON that could be used to negotiate advertising contracts between advertisers and radio stations.

The Importance of Accreditation

13. The Media Rating Council ("MRC") is a trade association of broadcasters and advertisers, founded in 1964 at the behest of Congress, to evaluate the accuracy, reliability and fairness of audience rating systems. Accreditation by the MRC is voluntary but is widely considered the industry standard. Defendant ARBITRON has sought MRC accreditation for all of its media measurement products and services.

14. When determining whether to accredit media ratings for a given market, the MRC undertakes an exhaustive evaluation of the technology used to gather the data, tabulation software, panel recruitment methodology, sample performance and statistical analysis, among other variables that can affect the accuracy of the ratings. The purpose of accreditation is to identify "audience measurement products" that are "valid, reliable and effective." Despite the

importance of MRC accreditation, Arbitron commercialized its PPM system in five California markets prior to accreditation, and continues to use the PPM system in four California markets where it is still unaccredited.

The Problematic PPM Roll-Out

15. Defendant ARBITRON initiated development of the PPM in 1992 and later announced plans to commercialize the PPM ratings system by designating PPM derived data as the official radio audience estimate, as a replacement to the diary system, for subscribers and advertisers in the country's top fifty media markets by 2010.

16. In late 2000, Defendant ARBITRON commenced testing of the PPM in Wilmington, Delaware, which is part of the greater Philadelphia media market. Testing was expanded to other areas of the Philadelphia market in 2002. As was the case with several other large markets, Defendant ARBITRON implemented the "Radio First" methodology in Philadelphia, whereby potential panelists were identified from home telephone number listings and recruited over the telephone.

17. The Radio First methodology's reliance on land-line telephone numbers to identify potential panelists is significant because a growing number of American households are abandoning telephone land lines and have instead adopted cellular telephones as their primary or exclusive means of telephonic communications. According to a recent Center for Disease Control's National Health Interview Survey, 17.5% of Americans do not have home landlines and rely exclusively on cellular telephones. Importantly, the demographics of cellular phone only households differ significantly from those who regularly use land lines and are more likely to be male, non-white and younger.

18. In 2004, Defendant ARBITRON began testing the PPM ratings system in the Houston market. Unlike with the Radio First methodology subsequently followed in other large media markets, the Houston trial was based on a combination of telephone and in-home recruitment of potential panelists, who were identified from listings of home addresses. Because of reservations concerning the reliability of the PPM ratings system, some radio broadcasting companies, including Radio One and Cox Radio, declined to participate in the initial Houston

testing.

19. Defendant ARBITRON requested and received MRC accreditation for PPM derived ratings data in the Houston-Galveston radio market in January 2007.

20. The MRC denied accreditation for the PPM Radio First methodology in New York and Philadelphia in January 2008. The denial was based on exhaustive, external audits of both markets. Defendant ARBITRON regularly failed to disclose this denial of accreditation for the New York and Philadelphia markets when touting the MRC accreditation of the PPM ratings system in the Houston market as evidence of the validity of the PPM ratings system. In addition, when touting the MRC accreditation of the PPM ratings system in the Houston market, Defendant ARBITRON also failed to disclose that the Houston market recruited panelists through address based panelist recruitment, unlike the telephone based Radio First methodology used in the markets that were denied accreditation.

21. The Spanish Radio Association ("SRA"), comprised of major Spanish-language radio broadcasters, was formed in direct response to doubts about the reliability of the PPM ratings system. During a meeting between representatives of the SRA and Defendant ARBITRON in June 2008, SRA representatives and supporters emphasized the need for accurate radio audience data and voiced concerns over specific elements of the PPM methodology, including panel sample sizes and response rates. The SRA also warned Defendant ARBITRON of widespread devastating effects to both the radio stations and Hispanic audiences.

22. Notwithstanding the extensive evidence described above that the Radio First methodology was generating biased and distorted ratings data, and the accompanying chorus of criticism from various sources, Defendant ARBITRON continued in its efforts, announced in June 2008, to commercialize the PPM ratings system in several markets, including the Los Angeles and San Francisco/San Jose markets, starting Fall 2008.

23. On September 2, 2008, the PPM Coalition, an association of radio stations with predominantly minority audiences that was formed to address problems associated with the PPM ratings system, filed a petition with the FCC alleging specific deficiencies with the PPM methodology. Among the primary flaws noted was the size of the PPM panel samples, which

contained only about two-thirds of the number of panelists used in the diary process.

24. Defendant ARBITRON's own data revealed glaring contrasts between diary and PPM derived estimates, particularly for minority-audience radio stations. For example, in comparison with the diary ratings, some Spanish-language radio stations in New York lost as much as two-thirds of their audience under the unaccredited PPM ratings system.

The Commercialization of the PPM Ratings System in California

25. Despite its awareness of the problems with the PPM methodology, Defendant ARBITRON proceeded with the commercialization of the PPM ratings systems in California as follows:

- Los Angeles market, beginning in September 2008;
- Riverside-San Bernardino, beginning in September 2008;
- San Francisco and San Jose, beginning in September 2008;
- San Diego, beginning in June 2009;
- Sacramento, beginning in December 2009.

26. Defendant ARBITRON proceeded with commercialization of the PPM rating systems notwithstanding the fact that it was not accredited by the MRC in the markets at the time of commercialization.

27. Defendant ARBITRON also acted notwithstanding the aforementioned evidence of the discriminatory nature and impact of the PPM ratings system, including criticism and warnings from radio stations and industry groups, reports substantiating that criticism, pleas from public officials to delay commercialization until the flaws in the PPM ratings system were adequately addressed, and the failure to obtain MRC accreditation for the PPM radio ratings system in New York and Philadelphia.

28. Defendant ARBITRON continues to use the PPM rating systems throughout California, despite the fact that MRC accreditation for Riverside-San Bernardino was withdrawn in 2012 and it remains unaccredited in all California markets in which it has been commercialized.

29. As feared and predicted, reported African-American and Hispanic radio audiences

declined dramatically according to the newly released PPM ratings. For example, KLVE, a Los Angeles Univision-owned radio station had remained ranked number one in the overall Los Angeles radio market from Fall 2007 through Spring 2008 under the diary-based ratings system. In fact, between those two periods, the station saw an increase in its audience share by 11.6%. However, when the September 2008 PPM ratings were published, KLVE ratings plummeted by 50.4%, dropping the station to third in the overall market. Of the 18 Los Angeles stations serving minority audiences, 16 experienced ratings decreases in excess of 30%. Three of these fell by over 70%. In comparison, of the seven general market stations, only one experienced a decrease of more than 30% from the Spring diary derived ratings to the September PPM derived ratings.

30. African-American and Hispanic radio stations were disproportionately affected by the PPM derived ratings as they eliminated most of the reported rated radio listenership overnight. For example, Los Angeles radio station KJLH, whose audience is mostly African-American, was rated 0.0 for a significant portion of the day immediately after implementation of the new PPM ratings.

Defendant ARBITRON's False and Misleading Representations Regarding the Reliability of the PPM Ratings System

31. Leading up to and around the time that the PPM ratings system was commercialized in various radio media markets, including markets in California, Defendant ARBITRON made and caused others to make untrue, misleading, unfair and deceptive representations concerning the fairness and accuracy of the PPM ratings system and its adherence to industry standards.

32. In addition, Defendant ARBITRON regularly made untrue, misleading, unfair and deceptive public statements in downplaying and dismissing criticisms that the Radio First PPM methodology did not adequately represent minority radio audiences and consequently had a discriminatory effect on some radio stations.

FIRST CAUSE OF ACTION

(Discrimination in Violation of Civil Code section 51.5, subdivision (a))

33. The PEOPLE incorporate as though realleged herein each and every allegation set

forth in paragraphs 1 through 32 above.

34. Civil Code section 51, et seq., commonly known as the Unruh Civil Rights Act (the "Act"), prohibits discrimination by business establishments on the basis of, among other things, a person's race, color, religion, ancestry, or national origin.

35. Defendant ARBITRON has violated Civil Code section 51.5(a) by knowingly and intentionally discriminating against the residents of California on account of their race, religion, ancestry, or national origin in connection with the commercialization of the PPM ratings system in the California markets, by, among other things, knowingly and intentionally persisting in commercializing the PPM ratings system knowing that it had resulted in, and would continue to result in, diminished radio services to listeners based on their race and/or ethnicity.

SECOND CAUSE OF ACTION

(Dissemination of Untrue and Misleading Public Statements in Violation of Business and Professions Code section 17500, et seq.)

36. The PEOPLE incorporate as though realleged herein each and every allegation set forth in paragraphs 1 through 35 above.

37. Defendant ARBITRON violated Business and Professions Code section 17500 by making or disseminating, or causing to be made or disseminated, before the public in this State, untrue or misleading statements in connection with the sale of goods or services, that Defendant ARBITRON knew or should have known were untrue or misleading, including but not limited to statements concerning the reliability, fairness, and accuracy of the PPM methodology and the resulting radio audience data.

THIRD CAUSE OF ACTION

(Unfair Competition in Violation of Business and Professions Code section 17200, et seq.)

38. The PEOPLE incorporate as though realleged herein each and every allegation set forth in paragraphs 1 through 37 above.

39. Business and Professions Code section 17200 et seq. (the Unfair Competition Law

or UCL) prohibits any unlawful, unfair or fraudulent business act or practice, any unfair, deceptive, untrue or misleading advertising, and any violation of Business and Professions Code section 17500 et seq.

40. Defendant ARBITRON violated the UCL by engaging in unlawful, unfair, and fraudulent business acts or practices, including but not limited to: (a) knowingly and intentionally discriminating against radio stations with predominantly African-American and Hispanic audiences and the audiences themselves and denying them full and equal treatment on the basis of their race and/or ethnicity; and (b) making and/or disseminating false, misleading, and deceptive statements to the public.

PRAYER FOR RELIEF

Wherefore, the PEOPLE pray for judgment and relief as follows:

1. Under Business and Professions Code, sections 17203, 17204 and 17535 and the equitable powers of this Court, Defendant ARBITRON, together with its successors and assigns and all persons who act in concert with them or on their behalf, be permanently enjoined from engaging in any of the unlawful, unfair and fraudulent business acts and practices and deceptive advertising described in this Complaint, and be required to take such actions and adopt such measures as are necessary to prevent Defendant ARBITRON from engaging in any further such acts, practices and advertising.

2. Under Civil Code, section 52, subdivision (c)(3) and the equitable powers of this Court, Defendant ARBITRON, together with its successors and assigns and all persons who act in concert with them or on their behalf, be permanently enjoined from engaging in conduct that deprives any citizen of California of the full enjoyment of his or her rights guaranteed under Civil Code section 51, et seq., and be required to take such actions and adopt such measures as are necessary to prevent Defendant ARBITRON from further engaging in any such conduct.

3. Under Business and Professions Code, sections 17203, 17204 and 17535 and the equitable powers of this Court, Defendant ARBITRON, together with its successors and assigns and all persons who act in concert with or on their behalf, be ordered to restore to any person any money or property that Defendant ARBITRON may have acquired by means of the unlawful,

unfair and fraudulent business acts and practices and deceptive advertising described in this Complaint.

4. Under Business and Professions Code section 17206, Defendant ARBITRON be assessed a civil penalty in the amount of $2,500 for each violation of the UCL, according to proof.

5. Under Business and Professions Code, section 17536, Defendant ARBITRON be assessed a civil penalty in the amount of $2,500 for each violation of Business and Professions Code, section 17500, according to proof.

6. For the costs of suit.

7. For such other and further relief as the Court may deem to be just and proper.

Dated: March 21, 2012

Respectfully Submitted,

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