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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 BURHAAN SALEH, individually and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 NIKE, INC. and FULLSTORY, INC.,

18 Defendants.
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Case No. 2:20-cv-9581

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Burhaan Saleh (“Plaintiff”), individually and on behalf of all others
2 similarly situated, by and through his attorneys, makes the following allegations
3 pursuant to the investigation of his counsel and based upon information and belief,
4 except as to allegations specifically pertaining to himself and his counsel, which are
5 based on personal knowledge.

6 **NATURE OF THE ACTION**

7 1. This is a class action suit brought against Defendants Nike, Inc.’s
8 (“Nike”) and FullStory, Inc. (“FullStory”) (collectively, “Defendants”) for
9 wiretapping the electronic communications of visitors to Defendant Nike’s website,
10 Nike.com (the “Website”).¹ The wiretaps, which are embedded in the computer code
11 on the Website, are used by Defendants to secretly observe and record website
12 visitors’ keystrokes, mouse clicks,² and other electronic communications, including
13 the entry of Personally Identifiable Information (“PII”), in real time. By doing so,
14 Defendants have violated the California Invasion of Privacy Act (“CIPA”), Cal. Penal
15 Code §§ 631 and 635, and invaded Plaintiff’s and Class Members’ privacy rights in
16 violation of the California Constitution.

17 2. In May 2020, Mr. Saleh visited the Website. During the visit,
18 Defendants recorded Plaintiff’s electronic communications in real time, including
19 Plaintiff’s mouse clicks, keystrokes, and payment card information.

20 3. Plaintiff brings this action on behalf of himself and a class of all persons
21 whose electronic communications were intercepted through the use of Defendants’
22 wiretap on the Website.

23 **THE PARTIES**

24 4. Plaintiff Burhaan Saleh is a California resident who lives in Glendale,
25 California. Mr. Saleh resides in Glendale and has an intent to remain there, and is

26 _____
27 ¹ NIKE, <https://www.nike.com/>.

28 ² As used herein, the term “mouse clicks” also refers to “touch gestures” such as the
“tap,” “swipe,” and similar gestures used on touchscreen devices.

1 therefore a domiciliary of California. In May 2020, prior to the filing of this lawsuit,
2 Mr. Saleh visited the Website and purchased shoes from the Website. Mr. Saleh was
3 in Glendale when he visited the website. During the visit, Mr. Saleh’s keystrokes,
4 mouse clicks, and other electronic communications—including the entry of his
5 payment card information—were intercepted in real time and were disclosed to
6 Defendants Nike and FullStory through the wiretap. Mr. Saleh was unaware at the
7 time that his keystrokes, mouse clicks, and other electronic communications,
8 including the information described above, were being intercepted in real-time and
9 would be disclosed to FullStory, nor did Mr. Saleh consent to the same.

10 5. Defendant Nike, Inc. is a company incorporated under the laws of
11 Oregon with its principal place of business at One Bowerman Drive, Beaverton,
12 Oregon 97005.

13 6. Nike does business throughout California and the entire United States.

14 7. Nike owns and operates the Website.

15 8. Defendant FullStory is a Delaware corporation with its principal place of
16 business at 1745 Peachtree Street Northwest, Suite G, Atlanta, Georgia 30309.

17 9. FullStory is a marketing software-as-a-service (“SaaS”) company.

18 10. FullStory provides a feature called “Session Replay,” which is at issue
19 here and described more fully below. At all relevant times here, Nike has used
20 FullStory’s “Session Replay” product on the Website.

21 **JURISDICTION AND VENUE**

22 11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
23 1332(d)(2)(A) because this case is a class action where the aggregate claims of all
24 members of the proposed class are in excess of \$5,000,000.00, exclusive of interest
25 and costs, and at least one member of the proposed class is citizen of state different
26 from at least one Defendant.

27 12. This Court has personal jurisdiction over Defendants because each of the
28 Defendants have purposefully availed themselves of the laws and benefits of doing

1 business in this State, and Plaintiff’s claims arise out of each of the Defendants’
2 forum-related activities. Furthermore, a substantial portion of the events giving rise
3 to Plaintiff’s claims occurred in this District.

4 13. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this
5 action because a substantial part of the events, omissions, and acts giving rise to the
6 claims herein occurred in this District.

7 **STATEMENT OF FACTS**

8 **I. Overview Of The Wiretaps**

9 14. Defendant FullStory develops a software of the same name that provides
10 marketing analytics.

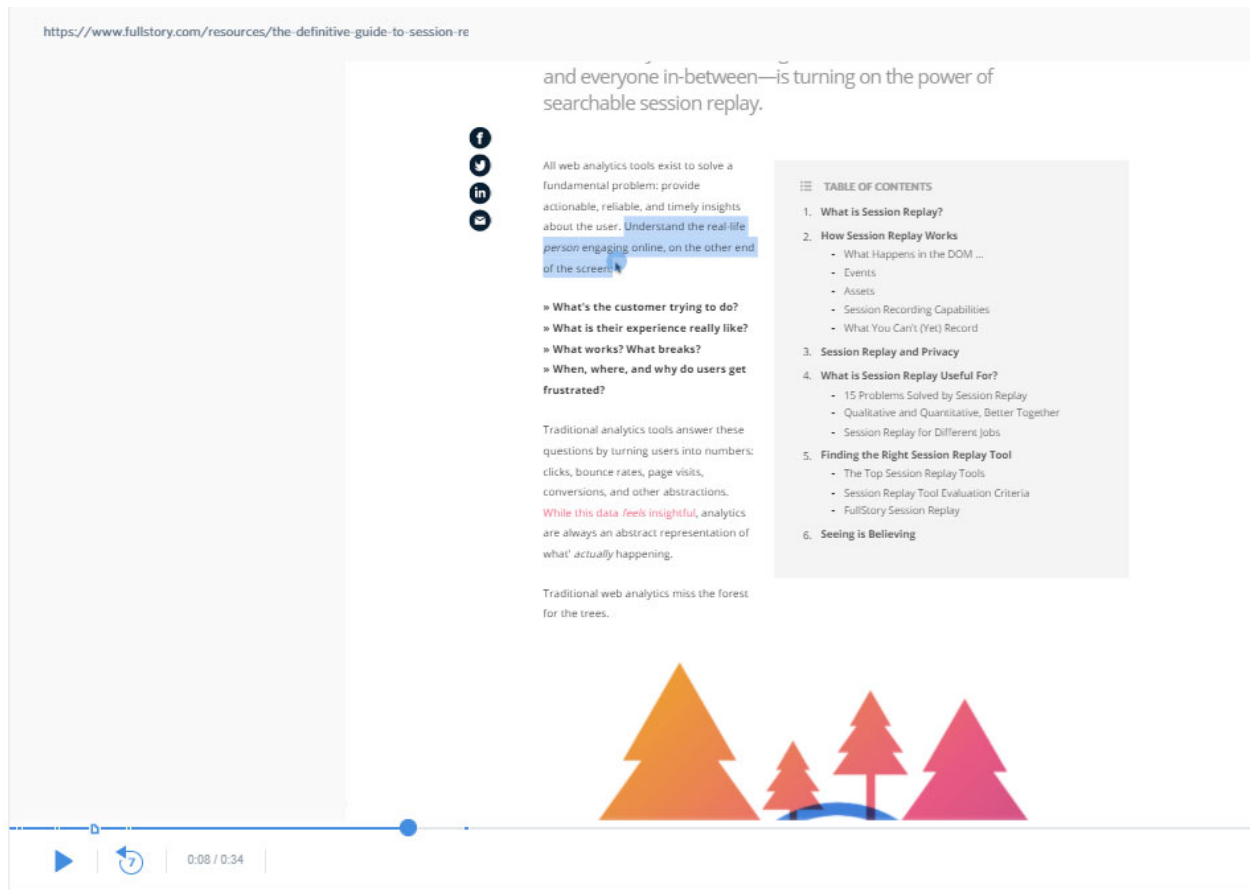
11 15. One of FullStory’s features is called “Session Replay,” which purports to
12 help businesses improve their website design and customer experience.

13 16. Session Replay provides a real-time recording of a user’s interactions on
14 a website. FullStory says that “Session replay tools capture things like mouse
15 movements, clicks, typing, scrolling, swiping, tapping, etc.”

16 17. FullStory touts that Session Replay relies on real video of a user’s
17 interactions with a website, or, in another words, a “recorded session.”³

18 18. To demonstrate how Session Replay works, FullStory displays the
19 “recorded session of a fictional user interacting with th[e] [Session Replay] Guide”:
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28 ³ <https://www.fullstory.com/resources/the-definitive-guide-to-session-replay/>



19. FullStory describes the above video as follows:

Here you can watch a FullStory session replay of a user—Daniel Falko—flipping through *The Definitive Guide to Session Replay*. **Notice how you can see interactions, mouse movements, clicks, interactions with overlays, and more**—and everything is listed in order in a stream at the right side of the replay. This is what a session replay looks like in the FullStory app.⁴

20. FullStory's promotional video shows the behind-the-scenes features of the software. First, FullStory lets you view a list of users who visited the website, as well as the time they spent on the website:

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⁴ <https://www.FullStory.com/resources/the-definitive-guide-to-session-replay/#finding-the-right-session-replay-tool> (emphasis added)

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