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10 **SUPERIOR COURT OF ARIZONA**
11 **IN MARICOPA COUNTY**

12 STATE OF ARIZONA, *ex rel.* MARK
13 BRNOVICH, Attorney General,

14 Plaintiff,

15 v.

16 IHEARTMEDIA, INC., a corporation,

17 Defendant.

Case No.

COMPLAINT

18
19 Plaintiff, State of Arizona *ex rel.* Mark Brnovich, the Attorney General (the “State”),
20 alleges the following for its Civil Complaint (the “Complaint”) against IHEARTMEDIA, INC., a
21 corporation (“iHeart”).

22 **JURISDICTION AND VENUE**

23 1. The State brings this action pursuant to the Arizona Consumer Fraud Act, Arizona
24 Revised Statutes (“A.R.S.”) §§ 44-1521 to -1534 to obtain injunctive relief to enjoin and prevent
25 the unlawful acts and practices alleged in this Complaint, and to obtain other relief, including civil
26 penalties.

27 2. This Court has subject-matter jurisdiction.

28 . . .

1 3. iHeart caused events to occur in this state out of which the claims which are the
2 subject of this Complaint arose.

3 4. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

4 **PARTIES**

5 5. Plaintiff is the State of Arizona *ex rel.* Mark Brnovich, the Attorney General of
6 Arizona, who is authorized to bring this action under the Arizona Consumer Fraud Act (the
7 “CFA”), A.R.S. §§ 44-1521 to -1534.

8 6. Defendant iHeart is a Delaware corporation with its principal office or place of
9 business at 20880 Stone Oak Parkway, San Antonio, Texas 78258.

10 **ALLEGATIONS**

11 7. Through its media buying agent, in October 2019, Google LLC (“Google”) hired
12 iHeart to have iHeart’s on-air radio personalities (“Radio Personalities”) record advertisements
13 endorsing the Google Pixel 4 smartphone and to disseminate those ads in ten markets in the
14 United States, including the Phoenix market. Google hired Radio Personalities at iHeart as well as
15 smaller radio networks.

16 8. iHeart owns more than 850 full-power AM and FM radio stations in the United
17 States, making it the country’s largest owner of radio stations. It also streams its content over
18 Internet radio. Its radio network is known as iHeartRadio.

19 9. iHeart employs numerous Radio Personalities throughout the United States,
20 including in Arizona. iHeart gives select Radio Personalities the option to receive additional
21 compensation for recording advertisements for specific clients that are played on-air.

22 10. In October 2019, Google provided iHeart with scripts (in both English and Spanish)
23 for Radio Personalities to use in recording advertisements endorsing the Pixel 4.

24 11. The typical English-language script began:

25 The only thing I love more than taking the perfect photo? Taking the perfect photo
26 at night. With Google Pixel 4 both are a cinch. It’s my favorite phone camera out
27 there, especially in low light, thanks to Night Sight Mode. I’ve been taking studio-
28 like photos of everything... my son’s football game... a meteor shower... a rare
spotted owl that landed in my backyard. Pics or it didn’t happen, am I right? Pixel

1 4 is more than just great pics. It's also great at helping me get stuff done, thanks to
2 the new voice activated Google Assistant that can handle multiple tasks at once. I
3 can read up on the latest health fads, ask for directions to the nearest goat yoga
4 class (yes, that's a thing), and text the location to mom hands-free....

5 12. An approximate translation of an excerpt from the typical Spanish-language script
6 for the Pixel 4 radio advertisements is:

7 Pixel 4 is my favorite camera in low light. Its Night Sight mode opened up a
8 galaxy of possibilities for my photos, like the Milky Way! No, really! I just point
9 the camera at the sky and take Instagram-ready photos of the stars! It's easy. I
10 don't have to learn anything new or do any fancy editing to obtain studio-quality
11 photos at any time and anywhere, like birthday parties, low-light concerts, my
12 mom and dad's 50th birthdays. And with the continuous zoom feature, I didn't
13 miss a second of my daughter's school play even though I was in the last row.

14 13. In October 2019, an iHeart employee wrote in an email to Google's media buying
15 agent that the company would like to have its Radio Personalities "customize certain parts of the
16 script pending what's relevant to their personal lives (i.e. if they have kids, involved in certain
17 activities/hobbies, etc.)." Google's media buying agent approved this request.

18 14. Before the first advertisements by iHeart's Radio Personalities were recorded, an
19 iHeart employee wrote an email to Google's media buying agent requesting Pixel 4s for the Radio
20 Personalities:

21 I know this has been something that we have brought up numerous times, but it's
22 something that we really need to get to our voicing talent, especially if we want
23 them to use their own first person tense when voicing. We ... cannot require talent
24 to use "I" in voiced spots when they have not physically used the product.... For
25 this reason, we may receive spots from stations that adjust the tense slightly to
26 remove the personalization of "I."

27 15. The iHeart employee also wrote that "a few markets" had raised concerns about the
28 personalization without actually having the smartphones. Google's media buying agent checked
with Google and wrote back:

Just heard back from [Google] in regards to sending Pixels to your talent.
Unfortunately, this is not feasible for Google at this time as the product is not on
shelves yet. It would take over a week to ship all of these phones out resulting in a
loss of airtime.

1 16. In October 2019, forty-three iHeart Radio Personalities at different stations in ten
2 markets—Atlanta, Boston, Chicago, Dallas/Ft. Worth, Denver/Boulder, Houston, Los Angeles,
3 New York, Phoenix, and San Francisco—each recorded advertisements for the Pixel 4 using first-
4 person language identical or substantially similar to that in the scripts described in Paragraphs 11
5 and 12. Approximately five of these Radio Personalities were at radio stations in the Phoenix
6 market.

7 17. Most, if not all, of the Radio Personalities in Arizona personalized what they said
8 they did with the Pixel 4. However, these Radio Personalities did not own or regularly use a Pixel
9 4 and had not used a Pixel 4 to take pictures at night. These ads aired in Phoenix, Arizona, 960
10 times between October and December 2019.

11 18. In October 2019, fifty-four different non-iHeart Radio Personalities at fifty-eight
12 radio stations in ten markets—Atlanta, Boston, Chicago, Dallas/Fort Worth, Denver/Boulder,
13 Houston, Los Angeles, New York, Phoenix, and San Francisco—each recorded advertisements
14 endorsing the Pixel 4 using first-person language identical or substantially similar to that in the
15 scripts described in Paragraphs 11 and 12. Approximately six of these non-iHeart Radio
16 Personalities were at radio stations in the Phoenix market.

17 19. Most, if not all, of the non-iHeart personalities personalized what they said they did
18 with the Pixel 4. Google did not provide those Radio Personalities with a Pixel 4. In most, if not
19 all instances, the Radio Personalities did not own or possess a Pixel 4 and had not used a Pixel 4
20 to take pictures at night. These ads aired in Phoenix, Arizona over 1,123 times between October
21 and December 2019.

22 **CLAIM FOR RELIEF**

23 **VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT, A.R.S. §§ 44-1521 to -1534**

24 20. The State realleges all prior allegations of this Complaint as though fully set forth
25 herein.

26 21. The conduct described in the preceding paragraphs of this Complaint constitutes
27 deception, deceptive or unfair acts or practices, fraud, false pretenses, false promises,
28 misrepresentations, or concealment, suppression or omission of material facts with intent that

1 others rely on such concealment, suppression or omission, in connection with the sale or
2 advertisement of merchandise in violation of A.R.S. §§ 44-1521 to -1534, including, but not
3 limited to:

4 a. iHeart engaged in deceptive and unfair acts and practices by causing ads in
5 which the radio personalities made false statements about their experience with the Google Pixel 4
6 to be aired; and

7 b. iHeart engaged in deceptive and unfair acts and practices by concealing,
8 suppressing, or omitting the material fact that radio personalities were making false statements
9 about their experience with the Google Pixel 4, and iHeart did so with intent that others rely on
10 such concealments, suppressions, or omissions.

11 27. While engaging in the acts and practices alleged in this Complaint, iHeart knew or
12 should have known that that its conduct was of the nature prohibited by A.R.S. § 44-1522,
13 subjecting itself to enforcement and penalties as provided in A.R.S. §§ 44-1528 and 1531(A).

14 28. With respect to the concealments, suppressions, or omissions of material fact
15 described above, iHeart did so with intent that others rely on such concealments, suppressions, or
16 omissions.

17 29. With respect to the unfair acts and practices described above, these acts and
18 practices caused or were likely to cause substantial injuries to consumers that were not reasonably
19 avoidable by consumers and were not outweighed by countervailing benefits to consumers or to
20 competition.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, the State respectfully requests that the Court:

23 30. Pursuant to A.R.S. § 44-1528(A)(1), issue a permanent injunction in accordance
24 with Ariz. R. Civ. P. 65(d)(1), enjoining and restraining (a) iHeart, (b) its officers, agents,
25 servants, employees, attorneys, and (c) all persons in active concert or participation with anyone
26 described in part (a) or (b) of this paragraph, directly or indirectly, from engaging in deceptive,
27 misleading, or unfair acts or practices, or concealments, suppressions, or omissions, that violate

28 . . .

1 the CFA, A.R.S. § 44-1522(A), including specific injunctive relief barring iHeart from engaging
2 in the unlawful acts and practices set forth above;


3 32. Pursuant to A.R.S. § 44-1531, order iHeart to pay to the State of Arizona civil
4 penalties for its willful violations of A.R.S. § 44-1522;

5 33. Pursuant to A.R.S. § 44-1534, order iHeart to reimburse the State for its costs and
6 attorneys' fees incurred in the investigation and prosecution of iHeart's activities alleged in this
7 Complaint; and

8 34. Provide any such other relief the Court deems appropriate.

9
10 DATED this ____ day of _____, 20____.

11 MARK BRNOVICH
12 Attorney General

13 By: 
14 _____
15 Joseph Hubble
16 Assistant Attorney General
17 *Attorneys for the State of Arizona*

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