

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

SUZANNE BOELTER, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

HEARST COMMUNICATIONS, INC.,  
Defendant.

No. 1:15-cv-03934-AT-JLC

**JURY TRIAL REQUESTED**

JOSEPHINE JAMES EDWARDS, individually  
and on behalf of all others similarly situated,

Plaintiff,

v.

HEARST COMMUNICATIONS, INC.,  
Defendant.

No. 1:15-cv-09279-AT-JLC

**JURY TRIAL REQUESTED**

**ANSWER TO CONSOLIDATED CLASS ACTION COMPLAINT**

Defendant Hearst Communications, Inc. (“Hearst”), by and through its undersigned attorneys, hereby answers the Consolidated Class Action Complaint, dated February 26, 2016, ECF No. 67 (the “Consolidated Complaint”) of plaintiffs Suzanne Boelter (“Boelter”) and Josephine James Edwards (“Edwards”) (each a “Plaintiff” and together the “Plaintiffs”) as follows:

Except as expressly admitted below, Hearst denies each and every allegation in Plaintiffs’ Consolidated Complaint.

**NATURE OF THE CASE**

1. Hearst denies the allegations contained in Paragraph 1, except admits that Hearst, together with its direct and indirect subsidiaries and their joint venture partners, publishes 21

magazine titles in the United States and various international editions, including the magazines set forth in paragraph 1.

2. Hearst denies the allegations contained in paragraph 2.

3. Hearst denies the allegations contained in paragraph 3.

4. Hearst denies the allegations contained in paragraph 4.

5. The allegations contained in paragraph 5 state legal conclusions to which no response is required. To the extent that a response is required, Hearst refers the Court to the Michigan Video Rental Privacy Act (“VRPA”), M.C.L. § 445.1711, *et seq.*, and the 2016 amendment thereto, S.B. 490, 98th Leg., Reg. Sess. P.A. No. 92 (Mich. 2016) (to be codified at M.C.L. § 445.1711 *et seq.*) (“Amended VRPA”) for a complete and accurate statement of its contents. Hearst denies the remaining allegations contained in this paragraph.

6. Hearst states that Plaintiffs’ Consolidated Complaint speaks for itself. Hearst denies the remaining allegations contained in paragraph 6.

### **PARTIES**

7. Hearst admits that it publishes *Country Living* magazine. To the extent the allegations in paragraph 7 pertain to facts or information exclusively within Plaintiff Boelter’s control, Hearst denies knowledge and information sufficient to form a belief as to the truth of such allegations. The allegations in the sentence beginning “Because Plaintiff Boelter is entitled by law...” state legal conclusions to which no response is required. Hearst denies the remainder of the allegations contained in paragraph 7.

8. Hearst admits that it publishes *Good Housekeeping* magazine. To the extent the allegations in paragraph 8 pertain to facts or information exclusively within Plaintiff Edwards’s control, Hearst denies knowledge and information sufficient to form a belief as to the truth of

such allegations. The allegations in the sentence beginning “Because Plaintiff Edwards is entitled by law...” state legal conclusions to which no response is required. Hearst denies the remainder of the allegations contained in paragraph 8.

9. Hearst admits it is a Delaware corporation with its principal place of business at 300 West 57th Street, New York, New York 10019. Hearst admits that it does business in the States of Michigan and New York and in certain other States in the United States, and otherwise denies the allegations contained in paragraph 9.

### **JURISDICTION AND VENUE**

10. The allegations in paragraph 10 state legal conclusions to which no response is required. To the extent a response is required, Hearst denies this Court has subject matter jurisdiction over these lawsuits because Plaintiffs lacks standing, and further denies that Plaintiffs satisfy the requirements of 28 U.S.C. § 1332(d) and/or the Class Action Fairness Act. Hearst denies the remaining allegations in paragraph 10.

11. The allegations in paragraph 11 state legal conclusions to which no response is required. To the extent a response is required, Hearst admits that it does business in the State of New York and that its principal place of business is in the State of New York. Hearst denies the remaining allegations contained in paragraph 11.

12. The allegations contained in paragraph 12 state legal conclusions to which no response is required. To the extent a response is required, Hearst admits that it does business in this District and that its principal place of business is in this District. Hearst denies the remaining allegations contained in paragraph 12.

**FACTUAL BACKGROUND**  
***Michigan's Video Rental Privacy Act***

13. Hearst refers to the document referenced in paragraph 13, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 13.

14. Hearst refers to the document referenced in paragraph 14, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 14.

15. The allegations contained in paragraph 15 state legal conclusions to which no response is required. To the extent that a response is required, Hearst refers the Court to the Michigan VRPA and the Amended VRPA for a complete and accurate statement of their contents.

16. Hearst refers to the document referenced in paragraph 16, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 16.

17. Hearst refers to the document referenced in paragraph 17, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 17.

18. Hearst refers to the document referenced in paragraph 18, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 18.

19. The allegations contained in paragraph 19 state legal conclusions to which no response is required. To the extent that a response is required, Hearst refers to the document referenced in paragraph 19, which speaks for itself, and denies all characterizations thereof, and

otherwise denied knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 19.

20. Hearst denies the allegations contained in paragraph 20.

***The Personal Information Market: Consumers' Personal Information Has Real Value***

21. Hearst refers to the document referenced in paragraph 21, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 21.

22. Hearst refers to the document referenced in paragraph 22, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 22.

23. Hearst refers to the document referenced in paragraph 23, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 23.

24. Hearst refers to the document referenced in paragraph 24, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 24.

25. Hearst refers to the document referenced in paragraph 25, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 25.

26. Hearst refers to the document referenced in paragraph 26, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 26.

27. Hearst refers to the document referenced in paragraph 27, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 27.

28. Hearst refers to the document referenced in paragraph 28, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 28.

29. To the extent that the allegations in paragraph 29 pertain to Hearst, Hearst denies such allegations; otherwise Hearst refers to the documents referenced in paragraph 29, which speak for themselves, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 29.

30. To the extent that the allegations in paragraph 30 pertain to Hearst, Hearst denies such allegations; otherwise Hearst refers to the documents referenced in paragraph 30, which speak for themselves, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 30.

31. To the extent that the allegations in paragraph 31 pertain to Hearst, Hearst denies such allegations; otherwise Hearst refers to the document referenced in paragraph 31, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 31.

32. To the extent that the allegations in paragraph 32 pertain to Hearst, Hearst denies such allegations; otherwise Hearst denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 32.

33. Hearst denies knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 33.

***Consumers Place Monetary Value on their Privacy and Consider Privacy Practices When Making Purchases***

34. Hearst denies knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 34.

35. Hearst refers to the document referenced in paragraph 35, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 35.

36. Hearst denies knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 36.

37. Hearst refers to the document referenced in paragraph 37, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 37.

38. Hearst refers to the document referenced in paragraph 38, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 38.

39. The allegations contained in paragraph 39 state legal conclusions to which no response is required. To the extent that a response is required, Hearst refers to the document referenced in paragraph 39, which speaks for itself, and denies all characterizations thereof, and otherwise denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 39.

***Hearst Unlawfully Sells Its Subscribers' Personal Reading Information***

40. Hearst denies the allegations contained in paragraph 40.

41. Hearst denies the allegations contained in paragraph 41.

42. Hearst denies the allegations contained in paragraph 42.

43. Hearst denies the allegations contained in paragraph 43.

44. Hearst denies the allegations contained in paragraph 44, except admits that during the relevant time period there have been various ways to purchase a subscription to a Hearst magazine.

45. Hearst refers to the document referenced in paragraph 45, which speaks for itself, and denies all characterizations thereof, and denies the remainder of the allegations contained in paragraph 45.

46. The allegations contained in paragraph 46 state legal conclusions to which no response is required. To the extent that a response is required, Hearst denies the allegations in this paragraph.

#### **CLASS ACTION ALLEGATIONS**

47. Hearst admits Plaintiffs purport to bring these lawsuits as class actions on behalf of the class described in paragraph 47, but denies these actions meet class certification requirements.

48. The allegations contained in paragraph 48 state legal conclusions to which no response is required. To the extent that a response is required, Hearst denies the allegations contained in paragraph 48, and specifically denies these actions meet class certification requirements.

49. The allegations contained in paragraph 49 state legal conclusions to which no response is required. To the extent that a response is required, Hearst denies the allegations contained in paragraph 49, and specifically denies these actions meet class certification requirements.

50. The allegations contained in paragraph 50 state legal conclusions to which no response is required. To the extent that a response is required, Hearst denies the allegations contained in paragraph 50, and specifically denies these actions meet class certification requirements.

51. The allegations contained in paragraph 51 state legal conclusions to which no response is required. To the extent that a response is required, Hearst denies the allegations contained in paragraph 51, and specifically denies these actions meet class certification requirements.

52. The allegations contained in paragraph 52 state legal conclusions to which no response is required. To the extent that a response is required, Hearst denies the allegations contained in paragraph 52, and specifically denies these actions meet class certification requirements.

**COUNT I**  
**Violation of the Video Rental Privacy Act**  
**(M.C.L. § 445.1712)**

53. Hearst incorporates its responses to paragraph 1-52 as if fully set forth herein.

54. Hearst admits Plaintiffs purport to bring these lawsuits as class actions on behalf of the class described in paragraphs 54 and 47, but denies these actions meet class certification requirements.

55. The allegations contained in paragraph 55 state legal conclusions to which no response is required. To the extent that a response is required, Hearst denies the allegations in this paragraph.

56. The allegations contained in paragraph 56 state legal conclusions to which no response is required. To the extent that a response is required, Hearst denies the allegations in this paragraph.

57. The allegations contained in paragraph 57 state legal conclusions to which no response is required. To the extent that a response is required, Hearst denies the allegations in this paragraph.

58. Hearst denies the allegations contained in paragraph 58.

59. Hearst denies the allegations contained in paragraph 59.

60. Hearst denies the allegations contained in paragraph 60.

61. Hearst denies the allegations contained in paragraph 61.

62. The allegations contained in paragraph 62 state legal conclusions to which no response is required. To the extent that a response is required, Hearst denies the allegations in this paragraph.

63. The allegations contained in paragraph 63 state legal conclusions to which no response is required. To the extent that a response is required, Hearst denies the allegations in this paragraph.

64. Hearst denies the allegations contained in paragraph 64.

65. Hearst denies the allegations contained in paragraph 65.

66. Hearst denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 66.

67. Hearst denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 67.

68. Hearst denies the allegations contained in the first sentence of paragraph 68. The allegations contained in the second sentence of paragraph 68 state a legal conclusion to which no response is required. To the extent that a response is required, Hearst denies the allegations in the second sentence of this paragraph.

69. The allegations contained in paragraph 69 state legal conclusions to which no response is required. To the extent that a response is required, Hearst denies the allegations in this paragraph.

70. Hearst denies the allegations contained in paragraph 70.

71. Hearst denies the allegations contained in paragraph 71.

72. Hearst denies the allegations contained in paragraph 72.

73. Hearst denies the allegations contained in paragraph 73.

74. Hearst admits Plaintiffs purport to seek the relief indicated in paragraph 74, but denies that Plaintiffs are entitled to such relief. Hearst denies the remainder of the allegations contained in paragraph 74.

**COUNT II**  
**Unjust Enrichment**

75. Hearst incorporates its responses to paragraphs 1-74 as if fully set forth herein.

76. Hearst admits Plaintiffs purport to bring these lawsuits as class actions on behalf of the class described in paragraphs 76 and 47, but denies these actions meet class certification requirements.

77. Hearst denies the allegations contained in paragraph 77.

78. Hearst denies the allegations contained in paragraph 78.

79. The allegations contained in paragraph 79 state legal conclusions to which no response is required. To the extent that a response is required, Hearst denies the allegations in this paragraph.

80. The allegations contained in paragraph 80 state legal conclusions to which no response is required. To the extent that a response is required, Hearst denies the allegations in this paragraph.

81. Hearst denies the allegations contained in paragraph 81.

82. Hearst denies the allegations contained in paragraph 82.

83. The allegations contained in paragraph 83 state legal conclusions to which no response is required. To the extent that a response is required, Hearst denies the allegations in this paragraph.

84. Hearst denies the allegations contained in paragraph 84.

85. Hearst admits Plaintiffs purport to seek the relief indicated in paragraph 85, but denies that Plaintiffs are entitled to such relief. Hearst denies the remainder of the allegations contained in paragraph 85.

Hearst denies any factual allegations contained in any paragraph of the Consolidated Complaint except as expressly admitted above. Hearst further denies all of the titles or headings contained throughout the Consolidated Complaint, which are set forth in this Answer solely for clarity of reference. Hearst also denies that Plaintiffs, on behalf of themselves and the purported class, are entitled to any of the relief requested in the Prayer for Relief in the Consolidated Complaint or to any other relief.

#### **AFFIRMATIVE DEFENSES**

Hearst asserts the following affirmative defenses and reserves the right to amend its answer to assert any additional affirmative defenses when and if, in the course of its investigation, discovery or preparation for trial it becomes appropriate to assert such affirmative defenses. In asserting these defenses, Hearst does not assume the burden of proof for any issue that would otherwise rest on Plaintiffs.

#### **FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiffs and/or others alleged to be members of the putative class lack standing under U.S. Const. art. III, § 2 to assert the claims stated in the Consolidated Complaint and to seek some and/or all of the relief requested.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiffs and/or others alleged to be members of the putative class lack standing under the VRPA to assert the claims stated in the Consolidated Complaint and to seek some and/or all of the relief requested.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs and/or others alleged to be members of the putative class lack standing under the Amended VRPA to assert the claims stated in the Consolidated Complaint and to seek some and/or all of the relief requested.

**FIFTH AFFIRMATIVE DEFENSE**

This Court lacks requisite jurisdiction to hear Plaintiffs' claims pursuant to Michigan Court Rule 3.501(A)(5).

**SIXTH AFFIRMATIVE DEFENSE**

Hearst is not “engaged in the business of selling at retail”, and neither Plaintiffs nor others alleged to be members of the putative class, purchased a magazine subscription at “retail” as required under the VRPA. M.C.L. § 445.1712.

**SEVENTH AFFIRMATIVE DEFENSE**

Any complained of disclosures meet the VRPA and/or the Amended VRPA's marketing exception. M.C.L. § 455.1713(d).

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs and/or others alleged to be members of the putative class consented to the disclosure of the complained of information.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs and/or others alleged to be members of the putative class were informed that they could “remove his or her name at any time by written notice.” M.C.L. § 445.1713(d).

**TENTH AFFIRMATIVE DEFENSE**

The VRPA, and all relief requested in these lawsuits, violates the First Amendment of the United States Constitution.

**ELEVENTH AFFIRMATIVE DEFENSE**

The VRPA, and all relief requested in these lawsuits, violates Article I Section 5 of the Constitution of Michigan.

**TWELFTH AFFIRMATIVE DEFENSE**

The claims of Plaintiffs and/or others alleged to be members of the putative class are barred, in whole or in part, by the applicable statute of limitations.

**THIRTEENTH AFFIRMATIVE DEFENSE**

These actions cannot properly be brought as class actions because the requirements of Fed. R. Civ. P. 23 for certification of a class are not met and cannot be met in these actions.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Awarding Plaintiffs and/or others alleged to be members of the putative class the relief sought in the Complaint would violate Hearst’s rights to due process of law under the United States Constitution.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' equitable claims and/or request for equitable relief are barred in whole or in part because Plaintiffs have an adequate remedy at law.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred in whole or in part by the doctrine of laches.

Hearst has not knowingly or intentionally waived any applicable affirmative defenses and reserves the right to assert and rely on such other applicable affirmative defenses as may become available by law, or pursuant to statute, or appear during the proceedings in this action. Hearst reserves the right to amend its answer and/or affirmative defenses accordingly and assert any such defense.

**PRAYER FOR RELIEF**

WHEREFORE, Hearst requests that the Court dismiss Plaintiffs' claims, enter judgment in Hearst's favor and against Plaintiffs on their Consolidated Complaint, and grant to Hearst such other relief as this Court deems just and proper, including:

- (i) denial of class certification;
- (ii) dismissal of Plaintiffs' claims with prejudice;
- (iii) denial of all relief required by Plaintiffs;
- (iv) all further relief to which Hearst may be entitled in law or in equity.

Dated: July 1, 2016

Respectfully submitted,

By: /s/ Jonathan R. Donnellan  
Jonathan R. Donnellan  
Kristina E. Findikyan  
Stephen H. Yuhan

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*Attorneys for Defendant Hearst  
Communications, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing on July 1, 2016.

/s/ Jonathan R. Donnellan  
Jonathan R. Donnellan