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FILED
Superior Court of California
County of San Francisco

AUG 13 2015

CLERK OF THE COURT
BY: DENNIS TOYAMA
Deputy Clerk

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)**

18 NICOLE MORTON, an individual;
19 MATT BARRETT, an individual;
20 HEATHER BYRNES, an individual,
21 FENWICK CRECY, an individual; and
22 CYNTHIA HECKER, an individual;

23 Plaintiffs,

24 v.

25 REAL BRIGHT MEDIA INC., a California
26 corporation;
27 AD TRUST MARKETING LLC, a Texas
28 limited liability company;
29 APEX ADS INC., a New York corporation;
30 ROBERT BALLARD, an individual;
31 CLEAR COMPASS DIGITAL GROUP, a
business entity of unknown organization;
EWAYDIRECT INC., a Delaware
corporation;
NET TANGERINE INC., a California
corporation;
NEW VENTURES SERVICES CORP., a
business entity of unknown organization; and

) Case No. **CGC-15-547362**

) **COMPLAINT FOR DAMAGES**

) **1. VIOLATIONS OF CALIFORNIA
RESTRICTIONS ON UNSOLICITED
COMMERCIAL E-MAIL (Cal. Bus. &
Prof. Code § 17529.5)**

1 DOES 1-500;)
2)
3 Defendants.)

4 COME NOW PLAINTIFFS NICOLE MORTON *et al* and file this Complaint for one cause of
5 action against Defendants REAL BRIGHT MEDIA INC. *et al* and allege as follows:
6

7 **I. INTRODUCTION AND SUMMARY OF THE COMPLAINT**

8 1. Plaintiffs bring this Action against professional spammers REAL BRIGHT MEDIA
9 INC. (“RBM”) and some of its third party advertising networks and affiliates (aka “publishers”),
10 including but not limited to the other named Defendants, for advertising in and sending at least
11 522 unlawful spams to Plaintiffs.

12 2. A representative sample spam (*Figure 1*) appears on the next page. (Plaintiffs are
13 informed and believe and thereon allege that the entity named at the bottom of the page (“CC
14 Matcher”) does not exist and the address shown at the bottom of the spam (8872 Market Street,
15 Santa Cruz, California) does not exist.)

16 3. No Plaintiff gave direct consent to, or had a preexisting or current business relationship
17 with, RBM.

18 4. The spams all violated California Business & Professions Code § 17529.5 (“Section
19 17529.5”) because they contained: a) materially misrepresented or falsified information
20 contained in or accompanying the email headers (including Subject Lines); and/or b) Subject
21 Lines misleading relative to the content or subject matter of the emails. The unlawful elements
22 of these spams represent willful acts of falsity and deception, rather than clerical errors.

23 5. RBM is strictly liable for advertising in spams sent by its third party marketing agents.

24 6. Spam recipients are not required to allege or prove reliance or actual damages to have
25 standing. *See* Bus. & Prof. Code § 17529(b)(1)(A)(iii). Nevertheless, Plaintiffs did suffer
26 damages by receiving the spams. *See, e.g.*, Bus. & Prof. Code § 17529(d), (e), (g), (h).

27 However, Plaintiffs elect to recover statutory damages only and forego recovery of any actual
28 damages.

29 //

30 //

31 //

Subject: Esignature is on File for 1000
From: Customer Service (bzidd@securedmi.com)
To: [REDACTED]@yahoo.com;
Date: Tuesday, January 20, 2015 2:11 AM

[View On Web](#) | [Remove Me](#)

We have great news, your Advance Funding Application was [Accepted!](#)
If your Ready to E-Sign and Verify your advance deposit.

>>> [You May E-Sign It Today!](#) <<<

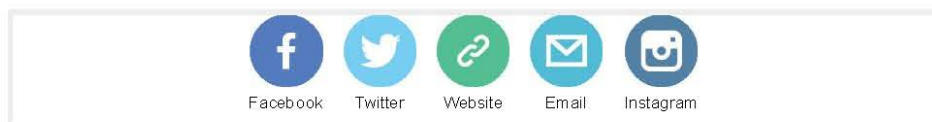
Deposit Amount** will be disclosed upon verification of your Application.
We are always online and available to assist you, follow us [here](#).

Want Instant Results?

We can link you to the latest related offers, deals and information for almost anything. Try it now.

Search Results For:

- | | |
|-------------------------------------|---|
| Personal Loans » | Mortgage Relief » |
| Auto Loan Options » | Local Cable Discounts » |
| Cruise Specials » | Local Auto Repair » |



Copyright © 2015 CC Matcher, All rights reserved.
You are receiving this email because you opted in at our website...

Our Privacy Policy can be found [here](#) and our T&C's can be found [here](#)

Our mailing address is:

2014 CC Matcher | 8872 Market St | Santa Cruz, CA 90077

[Remove Me](#)

Figure 1

1 7. RBM continues to advertise in unlawful spams despite: a) having notice since at least
2 January 13, 2014 of its “spam problem,” and b) another lawsuit filed against RBM over unlawful
3 spamming: *O’Shea et al v. Real Bright Media Inc. et al*, No. CGC-14-540862 (Super. Ct. Cal.
4 Cty. San Francisco filed Aug. 14, 2014).

5 8. This Court should award liquidated damages of \$1,000 per email as provided by
6 Section 17529.5(b)(1)(B)(ii), and not consider any reduction in damages, because RBM failed to
7 implement reasonably effective systems designed to prevent the sending of unlawful spam in
8 violation of the statute.

9 9. This Court should award Plaintiffs their attorneys’ fees pursuant to Section
10 17529.5(b)(1)(C). *See also* Code of Civil Procedure § 1021.5, providing for attorneys fees when
11 private parties bear the costs of litigation that confers a benefit on a large class of persons; here,
12 by reducing the amount of false and deceptive spam received by California residents.

13 14 **II. PARTIES**

15 **A. Plaintiffs**

16 10. NICOLE MORTON (“MORTON”) was domiciled in and a citizen of the State of
17 California, when she received RBM’s spams at issue. The spams at issue were sent to
18 MORTON’s email address(es) that she ordinarily accesses from computer(s) located in
19 California.

20 11. MATT BARRETT (“BARRETTM”) was domiciled in and a citizen of the State of
21 California, when he received RBM’s spams at issue. The spams at issue were sent to
22 BARRETTM’s email address(es) that he ordinarily accesses from computer(s) located in
23 California.

24 12. HEATHER BYRNES (“BYRNES”) was domiciled in and a citizen of the State of
25 California, when she received RBM’s spams at issue. The spams at issue were sent to BYRNES’
26 email address(es) that she ordinarily accesses from computer(s) located in California.

27 13. FENWICK CRECY (“CRECY”) was domiciled in and a citizen of the State of
28 California, when he received RBM’s spams at issue. The spams at issue were sent to CRECY’s
29 email address(es) that he ordinarily accesses from computer(s) located in California.

30 14. CYNTHIA HECKER (“HECKER”) was domiciled in and a citizen of the State of
31 California, when she received RBM’s spams at issue. The spams at issue were sent to

1 HECKER's email address(es) that she ordinarily accesses from computer(s) located in
2 California.

3 15. Plaintiffs' joinder in this Action is proper because Plaintiffs seek relief based on the same
4 series of transactions or occurrences: all received similar spams in the same general time period
5 advertising RBM's websites, and all of those spams were sent by RBM or its marketing agents.
6 The same questions of law (e.g., violations of Section 17529.5, strict liability) and fact (e.g.,
7 direct consent, practices and procedures to prevent advertising in unlawful spam) will arise in
8 this Action. The fact that each Plaintiff does not sue for *exactly* the same spams does not bar
9 joinder: "It is not necessary that each plaintiff be interested as to every cause of action or as to all
10 relief prayed for. Judgment may be given for one or more of the plaintiffs according to their
11 respective right to relief." Code Civ. Proc. § 378(b).

12 **B. Defendants**

13 16. Plaintiffs are informed and believe and thereon allege that Defendant REAL BRIGHT
14 MEDIA INC. ("RBM") is now, and was at all relevant times (except when its status was
15 suspended by the Secretary of State from December 2014-August 2015 for failure to pay taxes),
16 a California corporation with a primary place of business in San Francisco, California, doing
17 business as *CapitolCashLoan.com* and *rbmleads.com*, among other domain names/websites.

18 17. Plaintiffs are informed and believe and thereon allege that RBM is the successor in
19 interest to Real Bright Media LLC, a California limited liability company with a primary place of
20 business in San Francisco, California, whose name appears in some of the spams at issue.

21 18. Plaintiffs are informed and believe and thereon allege that Defendant AD TRUST
22 MARKETING LLC ("AD TRUST") is now, and was at all relevant times, a Texas limited
23 liability company doing business as "Popular Marketing" and *PMClicks.com*, and claiming its
24 primary place of business to be a box at a branch of The UPS Store (a commercial mail receiving
25 agency) in Austin, Texas. Plaintiffs are informed and believe and thereon allege that AD
26 TRUST also has an office in El Segundo, California, although AD TRUST is not registered with
27 the California Secretary of State. Plaintiffs are informed and believe and thereon allege that AD
28 TRUST sent, or conspired with others to send, some of the spams at issue, in an amount to be
29 determined by proof.

30 19. Plaintiffs are informed and believe and thereon allege that Defendant APEX ADS INC.
31 ("APEX") is now, and was at all relevant times, a New York corporation doing business as

1 *APATracker.com*, and with a primary place of business in East Hills, New York. Plaintiffs are
2 informed and believe and thereon allege that APEX sent, or conspired with others to send, some
3 of the spams at issue, in an amount to be determined by proof.

4 20. Plaintiffs are informed and believe and thereon allege that Defendant ROBERT
5 BALLARD (“BALLARD”) is now, and was at all relevant times, an individual doing business as
6 *JamesWants.com*, *JaneSolution.com*, *JohnSolution.com*, *LucysWants.com*, *SallysWants.com*, and
7 *TimsWants.com*, among other domain names/websites, and residing in or near Davie, Florida.
8 Plaintiffs are informed and believe and thereon allege that BALLARD sent, or conspired with
9 others to send, some of the spams at issue, in an amount to be determined by proof.

10 21. Plaintiffs are informed and believe and thereon allege that Defendant CLEAR
11 COMPASS DIGITAL GROUP (“CLEAR COMPASS”) is now, and was at all relevant times, a
12 business entity of unknown organization doing business as *MyPayDayMail.com*, among other
13 domain names/websites, and with a primary place of business in Encino, California. Plaintiffs
14 are informed and believe and thereon allege that CLEAR COMPASS may be a successor in
15 interest to ClickXChange Media LLC, whose status is cancelled according to the California
16 Secretary of State, but which had the same physical address and telephone number as CLEAR
17 COMPASS. Plaintiffs are informed and believe and thereon allege that CLEAR COMPASS
18 sent, or conspired with others to send, some of the spams at issue, in an amount to be determined
19 by proof.

20 22. Plaintiffs are informed and believe and thereon allege that Defendant EWAYDIRECT
21 INC. (“EWAYDIRECT”) is now, and was at all relevant times, a Delaware corporation doing
22 business as *eWayDirect.com*, *CertainSource.com*, and *Securedmi.com*, among other domain
23 names/websites, and with a primary place of business in Southport, Connecticut. Plaintiffs are
24 informed and believe and thereon allege that EWAYDIRECT sent, or conspired with others to
25 send, some of the spams at issue, in an amount to be determined by proof.

26 23. Plaintiffs are informed and believe and thereon allege that Defendant NET TANGERINE
27 INC. (“NET TANGERINE”) is now, and was at all relevant times, a California corporation
28 doing business as *FirstUSASource.com*, *MyDailyCreditFinder.com*, and
29 *TrueFinancialNews.com*, among other domain names/websites, and with a primary place of
30 business in Palo Alto or Mountain View, California. Plaintiffs are informed and believe and
31

1 thereon allege that NET TANGERINE sent, or conspired with others to send, some of the spams
2 at issue, in an amount to be determined by proof.

3 24. Plaintiffs are informed and believe and thereon allege that Defendant NEW VENTURES
4 SERVICES CORP. (“NEW VENTURES”) is now, and was at all relevant times, a business
5 entity of unknown organization doing business as *AdvertiseMedia1.com*, *GreenCactus4.com*,
6 *IronDart5.com*, *WildScent1.com*, and *NewVCorp.com*, among other domain names/websites, and
7 claiming its address to be a U.S. Post Office Box in Drums, Pennsylvania, even though no such
8 entity is registered with the Pennsylvania Department of State. Plaintiffs are informed and
9 believe and thereon allege that NEW VENTURES sent, or conspired with others to send, some
10 of the spams at issue, in an amount to be determined by proof.

11 25. Each of AD TRUST, APEX, BALLARD, CLEAR COMPASS, EWAYDIRECT, NET
12 TANGERINE, and NEW VENTURES is jointly and severally liable with RBM for the spams
13 that it sent or conspired to send to Plaintiffs. Joinder in this Action is proper pursuant to Code of
14 Civil Procedure § 379.

15 26. Plaintiffs do not know the true names or legal capacities of the Defendants designated
16 herein as DOES 1 through 500, inclusive, and therefore sue said Defendants under the fictitious
17 name of “DOE.” Plaintiffs are informed and believe and thereon allege that each of the
18 Defendants designated herein as a DOE is legally responsible in some manner for the matters
19 alleged in this complaint, and is legally responsible in some manner for causing the injuries and
20 damages of which Plaintiffs complain. Plaintiffs are informed and believe and thereon allege
21 that each of the Defendants designated herein as a DOE Defendant was, at all times relevant to
22 the matters alleged within this complaint, acting in conjunction with the named Defendants,
23 whether as a director, officer, employee, agent, affiliate, customer, participant, or co-conspirator.
24 When the identities of DOE Defendants 1-500 are discovered, or otherwise made available,
25 Plaintiffs will seek to amend this Complaint to allege their identity and involvement with
26 particularity.

27 28 **III. JURISDICTION AND VENUE**

29 **A. Jurisdiction is Proper in a California Court**

30 27. This Superior Court has jurisdiction over the Action for the following reasons: a) all
31 Plaintiffs are domiciled in and citizens of the State of California and received the unlawful spams

1 at their California email addresses; b) the amount in controversy is more than \$25,000; c) RBM
2 is a California corporation and its primary place of business is in California.

3 **B. Venue is Proper in San Francisco County**

4 28. Venue is proper in San Francisco County because Defendant RBM’s primary place of
5 business is in San Francisco County. *See* Code Civ. Proc. § 395.

6
7 **IV. MORE THAN 500 UNLAWFUL SPAMS**

8 29. Plaintiffs allege that Defendants engaged in tortious conduct: “wrongful act[s] other than
9 a breach of contract for which relief may be obtained in the form of damages or an injunction.”
10 *See* Merriam-Webster, www.merriam-webster.com/dictionary/tort (last viewed Nov. 5, 2013).

11 30. California’s False Advertising Law, Business & Professions Code § 17500
12 prohibits “not only advertising which is false, but also advertising which[,]
13 although true, is either actually misleading or which has a capacity, likelihood or
14 tendency to deceive or confuse the public.” . . . [T]he UCL and the false
advertising law prohibit deceptive advertising even if it is not actually false.

15 *Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 226-27 (2d Dist. 2013) (citation omitted).

16 **A. The Emails at Issue are “Spams”; Recipients and Counts**

17 31. The emails at issue are “commercial email advertisements”¹ because they were initiated
18 for the purpose of advertising and promoting the sale of RBM’s services of providing cash loans.

19 32. The emails are “unsolicited commercial email advertisements”² because no Plaintiff gave
20 “direct consent”³ to, or had a “preexisting or current business relationship”⁴ with, RBM.

21
22
23 ¹ “‘Commercial e-mail advertisement’ means any electronic mail message initiated for the
24 purpose of advertising or promoting the lease, sale, rental, gift offer, or other disposition of any
25 property, goods, services, or extension of credit.” Bus. & Prof. Code § 17529.1(c).

26 ² “‘Unsolicited commercial e-mail advertisement’ means a commercial e-mail advertisement sent
27 to a recipient who meets both of the following criteria: (1) The recipient has not provided direct
28 consent to receive advertisements from the advertiser. (2) The recipient does not have a
29 preexisting or current business relationship, as defined in subdivision (l), with the advertiser
promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services,
or extension of credit.” Bus. & Prof. Code § 17529.1(o).

30 ³ “‘Direct consent’ means that the recipient has expressly consented to receive e-mail
31 advertisements *from the advertiser*, either in response to a clear and conspicuous request for the
consent or at the recipient’s own initiative.” Bus. & Prof. Code § 17529.1(d) (emphasis added).

1 33. Plaintiffs did not consent or acquiesce to receive the RBM spams at issue. Plaintiffs did
2 not waive or release any rights or claims related to the RBM spams at issue.

3 34. RBM sent and/or advertised in at least 522 unlawful spams that Plaintiffs received at their
4 “California email addresses”⁵ within one year prior to the filing of this Action, as shown below:

PLAINTIFF	SPAMS RECEIVED	PLAINTIFF	SPAMS RECEIVED
BARRETTM	26	HECKER	72
BYRNES	78	MORTON	270
CRECY	76		

5
6
7
8 35. Plaintiffs’ email addresses play no part in determining whether or not the emails have
9 falsified, misrepresented, forged, misleading, or otherwise deceptive information contained in or
10 accompanying the email headers.

11 36. The spams are all unlawful because the spams have materially falsified, misrepresented,
12 and/or forged information contained in or accompanying the email headers, and/or Subject Lines
13 that are misleading as to the contents or subject matter of the emails, as described in more detail
14 below.

15 **B. Spams With Generic From Names Misrepresent Who is Advertising in the Spams and**
16 **Violate Business & Professions Code § 17529.5(a)(2)**

17 37. Section 17529.5(a)(2) prohibits misrepresented information contained in or
18 accompanying email headers.

19 38. The From Name field is part of email headers. The From Name does *not* include the
20 Sender Email Address. So, for example, if an email’s From Line says: “John Doe
21 <johndoe@yahoo.com>”, the From Name is *just* “John Doe.”

22 39. The From Name in an email’s headers is, not surprisingly, supposed to identify who the
23 email is *from*; it is not supposed to be an advertising message. Because computers must use
24

25
26 ⁴ “‘Preexisting or current business relationship,’ as used in connection with the sending of a
27 commercial e-mail advertisement, means that the recipient has made an inquiry and has provided
28 his or her e-mail address, or has made an application, purchase, or transaction, with or without
29 consideration, regarding products or services offered by the advertiser. [.]” Bus. & Prof. Code
30 § 17529.1(I).

31 ⁵ “‘California e-mail address’ means 1) An e-mail address furnished by an electronic mail service
provider that sends bills for furnishing and maintaining that e-mail address to a mailing address
in this state; 2) An e-mail address ordinarily accessed from a computer located in this state; 3)
An e-mail address furnished to a resident of this state.” Bus. & Prof. Code § 17529.1(b).

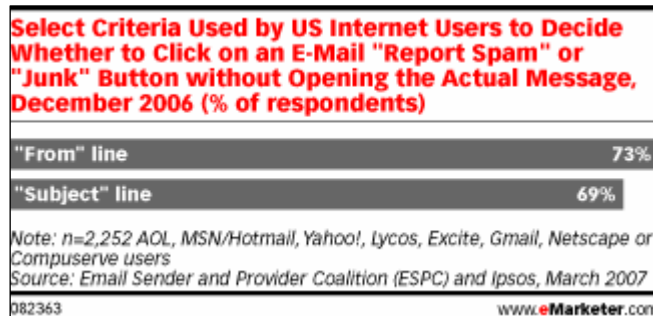
1 standard protocols in order to communicate, the Internet Engineering Task Force created a
2 collection of “Requests for Comment” (“RFCs”) that define the rules that enable email to work.
3 According to RFC 5322 at ¶ 3.6.2 (emphasis in original):

4 The “From:” field specifies the author(s) of the message, that is, the mailbox(es)
5 of the person(s) or system(s) responsible for the writing of the message. . . . In all
6 cases, the “From:” field SHOULD NOT contain any mailbox that does not belong
7 to the author(s) of the message.

7 40. Plaintiffs do not insist on any *particular* label (e.g., “Real Bright Media,” “Real Bright
8 Media Inc.,” “Capitol Cash,” “CapitolCashLoan.com,” etc.) in the From Name field. Rather,
9 Plaintiffs contend that the text, whatever it is, cannot misrepresent *who* is advertising in the
10 email.

11 41. The From Name is important to an email user, because in almost all email programs, the
12 inbox view only displays a list of emails, showing the From Name, Subject Line, and Send Date.
13 Therefore, even *if* the body of the email identifies the advertiser, the recipient will not know that
14 until s/he has already clicked to open the email.

15 42. Indeed, empirical evidence has
16 demonstrated that the From Name is the
17 *most* important factor email recipients use
18 to determine whether or not an email is
19 spam. See eMarketer, E-Mail Open Rates
20 Hinge on ‘Subject’ Line, *available at*



21 <http://www.emarketer.com/Article/E-Mail-Open-Rates-Hinge-on-Subject-Line/1005550> (Oct.
22 31, 2007). Thus, a From Name that misrepresents who a spam is from is *not* a mere technical
23 error; rather, it is a material misrepresentation of the most important part of the email header.

24 43. Although Plaintiffs do *not* sue under the federal CAN-SPAM Act, Plaintiffs note that the
25 Federal Trade Commission has also identified the From Name as the first item in misleading
26 header information in its guide to CAN-SPAM compliance when it stated:

27 1. Don't use false or misleading header information. Your “From,” “To,”
28 “Reply-To,” and routing information – including the originating domain name
29 and email address – *must be accurate and identify the person or business who*
30 *initiated the message.*

1 Federal Trade Commission, CAN-SPAM ACT: A COMPLIANCE GUIDE FOR BUSINESS, *available*
2 *at* <http://www.business.ftc.gov/documents/bus61-can-spam-act-compliance-guide-business>
3 (emphasis added).

4 44. In *Balsam v. Trancos Inc.*, the unlawful spams were sent from generic From Names that
5 did not *identify* anyone. The trial court ruled, and the court of appeal affirmed in all respects,
6 that generic From Names violate the statute because they misrepresent *who* the emails are from:

7 ... The seven [] emails do not truly reveal who sent the email The []
8 “senders” identified in the headers of the [] seven emails do not exist or are
9 otherwise misrepresented, namely Paid Survey, Your Business, Christian Dating,
10 Your Promotion, Bank Wire Transfer Available, Dating Generic, and Join Elite. .
11 . . . Thus the sender information (“from”) is misrepresented.

12 203 Cal. App. 4th 1083, 1088, 1090-91, 1093 (1st Dist. 2012), *petition for review denied*, 2012
13 Cal. LEXIS 4979 (Cal. May 23, 2012), *petition for certiori denied*, 2012 U.S. LEXIS 8423 (U.S.
14 Oct. 29, 2012), *petition for rehearing denied*, 2013 U.S. LEXIS 243 (U.S. Jan. 7, 2013). More
15 specifically, *Balsam* confirmed that generic From Names that “do not exist or are otherwise
16 misrepresented when they do not represent any real company and cannot be readily traced back
17 to the true owner/sender” violate the statute. *Id.* at 1093. The Court affirmed the award of
18 \$1,000 liquidated damages for the seven emails with misrepresented information in the From
19 Name field, even though most of the spams identified the advertiser in the body. *Id.* at 1091,
20 1093. Therefore, truthful information in the body of a spam does not cure misrepresented
21 information contained in or accompanying the headers.

22 45. All of the spams that Plaintiffs received advertising RBM’s websites had generic “From
23 Names” that misrepresented *who* the spams were from, and therefore violated Section 17529.5.
24 For example: “Customer Service,” “Account Services,” “Daily Alert,” “Fast Cash,” “Quick
25 Deposit.”

26 46. Plaintiffs also received other spams advertising RBM’s websites with From Names that
27 went beyond merely generic text and affirmatively and falsely suggest that RBM has a
28 preexisting relationship with the recipient and/or that the recipient has already applied for a loan.
29 For example: “2nd Attempt,” “Verification Status,” “Processing Department,” “eSignature
30 Notice.”

31 47. In *Rosolowski v. Guthy-Renker LLC*, the court permitted From Names that were not the
sender’s official corporate name as long as the identify of the sender was readily ascertainable in

1 the body. 230 Cal. App. 4th 1403, 1407, 1416 (2d Dist. 2014). However, the From Names in
2 that case (Proactiv and Wen Hair Care) were the advertiser’s fanciful trademarks, well-known
3 brands with their own websites. But here, unlike the spams in *Rosolowski*, none of the From
4 Names identify RBM. All of the From Names are generic and misrepresent who the spams are
5 from; they are not brands or trademarks and there is no way an ordinary consumer could readily
6 associate them with RBM. Many of the From Names – e.g., “Daily Alert,” “Customer Service”
7 – do not even inherently relate to loans.

8 48. Moreover, in many of the spams at issue, neither the sender nor the advertiser is readily
9 ascertainable in the body of the spams.

10 **C. Spams Sent From Domain Names Registered So As To Not Be Readily Traceable to the**
11 **Sender Violate Business & Professions Code § 17529.5(a)(2)**

12 49. Section 17529.5(a)(2) prohibits falsified, misrepresented, or forged information contained
13 in or accompanying in email headers.

14 50. Registration information for the domain names used to send spams is information
15 contained in or accompanying email headers.

16 51. “[H]eader information in a commercial e-mail is falsified or misrepresented for purposes
17 of section 17529.5(a)(2) when it uses a sender domain name that *neither* identifies the actual
18 sender on its face *nor* is readily traceable to the sender using a publicly available online database
19 such as WHOIS.” *Balsam v. Trancos Inc.*, 203 Cal. App. 4th 1083, 1101 (1st Dist. 2012)
20 (emphasis in original).

21 52. Plaintiffs received spams advertising RBM sent from domain names that:

- 22 • Did not identify RBM (or their websites) or the sender on their face, and
- 23 • Were deliberately registered so as to not be readily traceable to the sender by
24 querying the Whois database,

25 in violation of Section 17529.5. *See Balsam*, 203 Cal. App. 4th at 1097-1101. For example:

- 26 • *WelcomeToGoodFreshness1.com*, *BravePussyCat.com*, *CashCaffe.com*,
27 *ExclusiveMediaTime.com*, *SimplestWay2ForMoney.com*, and
28 *UpgradeYourDream.com* were all proxy-registered using WhoisGuard in Panama
29 City, Panama when the spams were sent.

- *FirstAmericanAdvance.com*, *FirstCentralAdvance.com*, and *FirstUSANews.com* were all proxy-registered using Direct Privacy in Metairie, Louisiana when the spams were sent.
- *CashLoan.com* was proxy-registered using Domain Privacy Service in Burlington, Massachusetts when the spams were sent.

53. Plaintiffs could not identify RBM or its spamming affiliates who sent many of the spams at issue by querying the Whois database for the domain names used to send many of the spams at issue.

D. Spams With False/Misrepresented Subject Lines Violate Business & Professions Code § 17529.5(a)(2); Spams With Misleading Subject Lines Relative to the Subject Matter or Contents of the Spams Violate Business & Professions Code § 17529.5(a)(3)

54. Section 17529.5(a)(2) prohibits falsified, misrepresented, or forged information in email headers.

55. The Subject Line is part of email headers.

56. Section 17529.5(a)(3) prohibits Subject Lines likely to mislead a reasonable recipient about the contents or subject matter or the email.

57. Many of the RBM spams that Plaintiffs received contain Subject Lines with falsified and/or misrepresented information, and/or are misleading. For example:

- BARRETT received RBM spams with the Subject Line “Transfer Request Received: December 24, 2014.” This Subject Line contains false and misrepresented information because BARRETT never made a request to RBM in the first place. This Subject Line is also misleading relative to the contents of the email, because nothing in the body indicates that BARRETT made any kind of request to RBM. In fact, the body expressly notes that Barrett has *not* completed an application.
- BYRNES received RBM spams with the Subject Line “Esignature is on File for 1000.” This Subject Line contains false and misrepresented information because RBM does *not* have BYRNES e-signature on file. This Subject Line is also misleading relative to the contents of the email, because nothing in the body indicates that RBM has BYRNES’ e-signature on file. In fact, the body expressly states that “If your [sic] Ready to E-Sign . . . You May E-Sign It Today!”

- 1 • CRECY received RBM spams with the Subject Lines “urgent Application
2 Update.” These Subject Lines contains false and misrepresented information
3 because CRECY never applied for anything from RBM, so by definition there can
4 be no urgent updates. The Subject Line is also misleading relative to the contents
5 of the email, because nothing in the body indicates that there are any updates, let
6 alone urgent updates, to any CRECY applications. In fact, the body expressly
7 states that RBM *needs* his completed application, which is an admission that
8 CRECY has not applied for anything.
- 9 • HECKER received RBM spams with the Subject Line “Your application has been
10 received.” This Subject Line contains false and misrepresented information
11 because Hecker never applied for anything from RBM.
- 12 • MORTON received RBM spams with the Subject Lines “Processing Update for
13 Your App.” This Subject Line contains false and misrepresented information
14 because Morton never applied for anything from RBM, so by definition there can
15 be no updates on processing any application. The Subject Line is also misleading
16 relative to the contents of the email, because nothing in the body indicates that
17 RBM is processing MORTON’s application. In fact, the body expressly states
18 that RBM *needs* her completed application, which is an admission that it does not
19 have a completed application.

20 **E. RBM is Strictly Liable for Spams Sent By its Affiliates**

21 58. Plaintiffs are informed and believe and thereon allege that RBM contracted with third
22 party advertising networks and affiliates (a/k/a “publishers”), including but not limited to the
23 other named Defendants, to advertise its websites for the purpose of making a profit.

24 59. No one forced RBM to outsource any of its advertising to third party spammers.

25 60. Advertisers such as RBM are liable for advertising in spams, even if third parties hit the
26 Send button.

27 There is a need to regulate the advertisers who use spam, as well as the actual
28 spammers because the actual spammers can be difficult to track down due to
29 some return addresses that show up on the display as “unknown” and many others
being obvious fakes and they are often located offshore.

30 The true beneficiaries of spam are the advertisers who benefit from the marketing
31 derived from the advertisements.

1 Bus. & Prof. Code § 17529(j)(k).

2 It is unlawful [] to advertise in a commercial email advertisement [] under any of
3 the following circumstances...

4 Bus. & Prof. Code § 17529.5 (emphasis added). Of course, the affiliates are also liable for
5 sending unlawful spams. See *Balsam*, generally.

6 61. In *Hypertouch Inc. v. ValueClick Inc. et al*, the court of appeal held that advertisers are
7 *strictly liable* for advertising in false and deceptive spams, even if the spams were sent by third
8 parties.

9 [S]ection 17529.5 makes it unlawful for a person or entity “to advertise in a
10 commercial e-mail advertisement” that contains any of the deceptive statements
11 described in *subdivisions (a)(1)-(3)*. Thus, by its plain terms, the statute is not
12 limited to entities that actually send or initiate a deceptive commercial e-mail, but
13 applies more broadly to any entity that advertises in those e-mails.

14 Thus, like other California statutes prohibiting false or misleading business
15 practices, the statute makes an entity *strictly liable* for advertising in a
16 commercial e-mail that violates the substantive provisions described in section
17 17529.5, subdivision (a) *regardless of whether the entity knew that such e-mails*
18 *had been sent* or had any intent to deceive the recipient.

19 192 Cal. App. 4th 805, 820-21 (2d Dist. 2011) (emphasis added). The court did not find that this
20 was an arbitrary requirement; rather, the court identified sound policy reasons behind the
21 California Legislature’s decision to create a strict liability statute. *Id.* at 829.

22 **F. Plaintiffs Sue for Statutory Liquidated Damages; No Proof of Reliance or Actual**
23 **Damages is Necessary**

24 62. The California Legislature defined liquidated damages to be \$1,000 per spam. Bus. &
25 Prof. Code § 17529.5(b)(1)(B)(ii).

26 63. Plaintiffs are informed and believe and thereon allege that the \$1,000 per spam figure is
27 comparable with damages in other areas of consumer protection law, e.g., \$500-\$1,500 statutory
28 damages per junk fax, pursuant to Business & Professions Code § 17538.43(b).

29 64. Plaintiffs’ rightful and lawful demand for liquidated damages in the amount of \$1,000 per
30 email is necessary to further the California Legislature’s objective of protecting California
31 residents from unlawful spam.

65. Section 17529.5 does not require Plaintiffs to quantify their actual damages, allege or
prove reliance on the advertisements contained in the spams, or purchase the goods and services
advertised in the spams. *Recipients* of unlawful spam have standing to sue and recover

1 liquidated damages. Bus. & Prof. Code § 17529.5(b)(1)(A)(iii); *Hypertouch*, 192 Cal. App. 4th
2 at 820, 822-23, 828.

3 66. However, Plaintiffs did suffer damages by receiving the unlawful spams advertising
4 RBM's services in the state of California, at their California email addresses. Bus. & Prof. Code
5 § 17529(d), (e), (g), (h). Regardless, Plaintiffs do not seek actual damages in this Action, only
6 liquidated damages.

7 **G. Defendants' Actions Were Willful and Preclude any Reduction in Statutory Damages**

8 67. Section 17529.5 authorizes this Court to reduce the statutory damages to \$100 per spam.
9 Bus. & Prof. Code § 17529.5(b)(2). But, to secure the reduction, Defendants have the burden of
10 proof to demonstrate not only that they have established and implemented practices and
11 procedures to prevent unlawful spamming, but also that those practices and procedures are
12 *effective*.

13 68. Plaintiffs are informed and believe and thereon allege that Defendants have not
14 established and implemented, with due care, practices and procedures reasonably designed to
15 effectively prevent unsolicited commercial e-mail advertisements that are in violation of
16 Section 17529.5.

17 69. Even if Defendants had any practices and procedures to prevent advertising in unlawful
18 spam, such practices and procedures were not reasonably designed so as to be effective.

19 70. Even if Defendants reasonably designed practices and procedures to prevent advertising
20 in unlawful spam, such practices and procedures were not implemented so as to be effective.

21 71. In the *O'Shea v. Real Bright Media Inc.* lawsuit, RBM admitted in the deposition of its
22 Person Most Knowledgeable that the content of approximately half of the spams do not meet
23 RBM's own purported standards. RBM admitted that the frequency of the spams was far more
24 than what RBM would consider reasonable. RBM admitted that its compliance person did not
25 enforce its practices and procedures on RBM's marketing agents.

26 72. Moreover, Plaintiffs are informed and believe and thereon allege that Defendants
27 intended to deceive recipients of their spam messages through the use of falsified and/or
28 misrepresented information contained in or accompanying the email headers, and false and
29 misleading Subject Lines, as described herein.

30 73. Subject Lines and From Names do not write themselves and domain names do not
31 register themselves; the misrepresented information contained in and accompanying the email

1 headers are not “clerical errors.” Plaintiffs are informed and believe and thereon allege that
2 Defendants went to great lengths to create misrepresented information contained in and
3 accompanying the email headers in order to deceive recipients, Internet Service Providers, and
4 spam filters.

5 74. RBM continued to advertise in unlawful spams even though it was on notice since at least
6 January 13, 2014 of its “spam problem” and since August 14, 2014, when *O’Shea et al* filed a
7 lawsuit against RBM for unlawful spamming.

8 75. Plaintiffs are informed and believe and thereon allege that Defendants intended to profit,
9 actually profited, and continue to profit, and were unjustly enriched by, their wrongful conduct
10 as described herein.

11 76. Punitive damages under Civil Code § 3294 are appropriate to punish malicious,
12 oppressive, and/or fraudulent conduct by Defendants, and to deter others from engaging in such
13 conduct.

14
15 **FIRST CAUSE OF ACTION**

16 **[Violations of California Restrictions on Unsolicited Commercial Email,**
17 **California Business & Professions Code § 17529.5]**
18 **(Against All Defendants)**

19 77. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

20 78. Plaintiffs received all of the spams at issue within one year prior to filing this Complaint.

21 79. Defendants advertised in, sent, and/or caused to be sent at least 522 unsolicited
22 commercial emails to Plaintiffs’ California electronic mail addresses that contained: a) materially
23 misrepresented or falsified information contained in or accompanying the email headers
24 (including Subject Lines); and/or b) Subject Lines misleading relative to the content or subject
25 matter of the emails, in violation of Section 17529.5. The unlawful elements of these spams
26 represent willful acts of falsity and deception, rather than clerical errors.

27 80. Defendants have not established and implemented, with due care, practices and
28 procedures to effectively prevent advertising in unlawful spams that violate Section 17529.5.

29 81. The California Legislature set liquidated damages at One Thousand Dollars (\$1,000) per
30 email.

1 82. Plaintiffs seek reimbursement of attorneys' fees and costs as authorized by Section
2 17529.5(b)(1)(C).

3 83. The attorneys' fees provision for a prevailing spam recipient is typical of consumer
4 protection statutes and supported by Code of Civil Procedure § 1021.5. By prosecuting this
5 action, Plaintiffs expect to enforce an important right affecting the public interest and thereby
6 confer a significant benefit on the general public or a large class of persons. The necessity and
7 financial burden of private enforcement is such as to make the award appropriate, and the
8 attorneys' fees should not, in the interest of justice, be paid out of the recovery of damages.
9

10 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set forth.
11

12 **PRAYER FOR RELIEF**

13 **(Against All Defendants)**

14 A. An Order from this Court declaring that Defendants violated California Business &
15 Professions Code § 17529.5 by advertising in and sending unlawful spams.

16 B. Liquidated damages against RBM in the amount of \$1,000 for each of at least 522
17 unlawful spams, as authorized by Section 17529.5(b)(1)(B)(ii), for a total of at least
18 \$522,000, as set forth below:

19

PLAINTIFF	SPAMS RECEIVED	PLAINTIFF	SPAMS RECEIVED
BARRETTM	\$26,000	HECKER	\$72,000
BYRNES	\$78,000	MORTON	\$270,000
CRECY	\$76,000		

20
21
22

23 C. Liquidated damages against AD TRUST, jointly and severally with RBM, in an amount
24 to be determined by proof based on the number of spams advertising RBM that AD
25 TRUST sent, or conspired with others to send, to Plaintiffs.

26 D. Liquidated damages against APEX, jointly and severally with RBM, in an amount to be
27 determined by proof based on the number of spams advertising RBM that APEX sent, or
28 conspired with others to send, to Plaintiffs.

29 E. Liquidated damages against BALLARD, jointly and severally with RBM, in an amount
30 to be determined by proof based on the number of spams advertising RBM that
31 BALLARD sent, or conspired with others to send, to Plaintiffs.

- 1 F. Liquidated damages against CLEAR COMPASS, jointly and severally with RBM, in an
2 amount to be determined by proof based on the number of spams advertising RBM that
3 CLEAR COMPASS sent, or conspired with others to send, to Plaintiffs.
- 4 G. Liquidated damages against EWAYDIRECT, jointly and severally with RBM, in an
5 amount to be determined by proof based on the number of spams advertising RBM that
6 EWAYDIRECT sent, or conspired with others to send, to Plaintiffs.
- 7 H. Liquidated damages against NET TANGERINE, jointly and severally with RBM, in an
8 amount to be determined by proof based on the number of spams advertising RBM that
9 NET TANGERINE sent, or conspired with others to send, to Plaintiffs.
- 10 I. Liquidated damages against NEW VENTURES, jointly and severally with RBM, in an
11 amount to be determined by proof based on the number of spams advertising RBM that
12 NEW VENTURES sent, or conspired with others to send, to Plaintiffs.
- 13 J. Attorneys' fees as authorized by Section 17529.5(b)(1)(C) and Code of Civil Procedure
14 § 1021.5 for violations of Section 17529.5.
- 15 K. Disgorgement of all profits derived from unlawful spams directed to California residents;
16 monies to be turned over to the Unfair Competition Law Fund – *not* to Plaintiffs – and
17 used by the California Attorney General to support investigations and prosecutions of
18 California's consumer protection laws. *See* Business & Professions Code § 17206(d).
- 19 L. Punitive damages, in an amount to be determined by this Court.
- 20 M. Costs of suit.
- 21 N. Such other and further relief as the Court deems proper.

22
23 THE LAW OFFICES OF DANIEL BALSAM

24
25 Date: August 13, 2015

BY: 

26 DANIEL L. BALSAM
27 Attorneys for Plaintiffs
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