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12 Tel: (415) 869-2873
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15 Attorneys for Plaintiffs

ENDORSED
FILED
Superior Court of California
County of San Francisco

SEP 09 2016

CLERK OF THE COURT
BY: ARLENE RAMOS
Deputy Clerk

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

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

18 MIRA BLANCHARD, an individual;)
19 HEATHER BYRNES, an individual;)
20 FENWICK CRECY, an individual;)
21 JAY FINK, an individual;)
22 JAMES JOBE, an individual;)
23 SERGIO SANTOS, an individual; and)
24)
25 Plaintiffs,)
26 v.)

27 AFFAIRFANTASY.COM, a business of)
28 unknown formation;)
29 FREEHOOKUPS.COM, a business of)
30 unknown formation;)
31 FREESWINGERADS.COM, a business of)
unknown formation;)
YOUFIND-LOCALSINGLES.COM, a)
business of unknown formation;)
OFFERIT, LLC, a New Jersey limited liability)
company; and)
DOES 1-1,000;)

Defendants.)

Case No.:

CGC -16-554165

COMPLAINT FOR DAMAGES

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

1 COME NOW PLAINTIFFS MIRA BLANCHARD *et al* and file this Complaint for one cause of
2 action against Defendants AFFAIRFANTASY.COM *et al* and allege as follows:

3
4 **I. INTRODUCTION AND SUMMARY OF THE COMPLAINT**

5 1. Plaintiffs MIRA BLANCHARD *et al* bring this Action against professional spammers
6 AFFAIRFANTASY.COM, FREEHOOKUPS.COM, FREESWINGERADS.COM,
7 YOUFIND-LOCALSINGLES.COM, its related individual(s) and companies (collectively
8 "AFFAIR FANTASY"), OFFERIT, LLC ("OFFERIT") and their third party advertising
9 networks and affiliates (aka "publishers"), for sending over 1,000 unlawful unsolicited
10 commercial emails ("spams") to Plaintiffs. A representative sample appears on the next page
11 (*see* Figure 1).

12 2. No Plaintiff gave direct consent to receive commercial email advertisements from, or had
13 a preexisting or current business relationship with, the entities advertised in the spams.

14 3. The spams all materially violated California Business & Professions Code § 17529.5
15 ("Section 17529.5") due to: a) materially false and deceptive information contained in or
16 accompanying the email headers (i.e. From Name, Sender Email Address, and Subject Line),
17 and/or b) Subject Lines misleading relative to the contents of the emails.

18 4. AFFAIR FANTASY is strictly liable for advertising in spams sent by its third party
19 marketing agents.

20 5. Spam recipients are not required to allege or prove reliance or actual damages to have
21 standing. *See* Bus. & Prof. Code § 17529.5(b)(1)(A)(iii). Nevertheless, Plaintiffs did suffer
22 damages by receiving the spams. *See, e.g.*, Bus. & Prof. Code § 17529(d), (e), (g), (h).
23 However, Plaintiffs elect to recover statutory damages only and forego recovery of any actual
24 damages. *See* Bus. & Prof. Code § 17529.5(b)(1)(B).

25 6. This Court should award liquidated damages of \$1,000 per email as provided by
26 Section 17529.5(b)(1)(B)(ii), and not consider any reduction in damages, because AFFAIR
27 FANTASY and its marketing agents failed to implement reasonably effective systems to prevent
28 advertising in unlawful spams. The unlawful elements of these spams represent willful acts of
29 falsity and deception, rather than clerical errors.

30 7. This Court should award Plaintiffs their attorneys' fees pursuant to Section
31 17529.5(b)(1)(C). *See also* Code of Civil Procedure § 1021.5, providing for attorneys fees when

1 private parties bear the costs of litigation that confers a benefit on a large class of persons; here,
2 by reducing the amount of false and deceptive spam received by California residents.

3
4 Print <https://us-mg4.mail.yahoo.com/neo/launch?.rand=c0d60j1qscufs#7587615986>

5 **Subject:** Lolla22 wants a booty call
6 **From:** Lonely Local Chicks (ZuiPrj2Pr0o08lkATEuX3zb6jhqe6dBe9DPTJLmkyM0@hall.boxandfitnez.com)
7 **To:** jaystheone44@yahoo.com;
8 **Date:** Thursday, February 18, 2016 2:37 AM

9 jaystheone44@yahoo.com, Flirt Live with Sexy Girls

10

11 No nonsense...just sex dating!
12 Swap nude selfies and hookup for free!

13 <http://hall.boxandfitnez.com/HdAMzuA1BFZMHAAtqYXlzdGhIb25INDRAeWFob28uY29tHnNleA>

14
15
16
17
18
19

20 To Stop getting our newsletters click at the link:
21 <http://hall.boxandfitnez.com/dSd1an1dbD4kcGNqYXlzdGhIb25INDRAeWFob28uY29t>

22 Click this link, and stop getting emails from us

23
24
25
26
27
28
29
30
31

Figure 1

1 of 1 2/28/2016 7:41 PM

1 **II. PARTIES**

2 **A. Plaintiffs**

3 8. MIRA BLANCHARD (“BLANCHARD”) was domiciled in and a citizen of the State of
4 California, when she received the spams at issue. The spams at issue were sent to
5 BLANCHARD’s email address mira.blanchard@yahoo.com that she ordinarily accesses from
6 California.

7 9. HEATHER BYRNES (“BYRNES”) was domiciled in and a citizen of the State of
8 California, when she received the spams at issue. The spams at issue were sent to BYRNES’
9 email address heather_33b@yahoo.com that she ordinarily accesses from California.

10 10. FENWICK CRECY (“CRECY”) was domiciled in and a citizen of the State of
11 California, when he received the spams at issue. The spams at issue were sent to CRECY’s
12 email address facsanfran@yahoo.com that he ordinarily accesses from California.

13 11. JAY FINK (“FINK”) was domiciled in and a citizen of the State of California, when he
14 received the spams at issue. The spams at issue were sent to FINK’s email address
15 jaystheone44@yahoo.com that he ordinarily accesses from California.

16 12. JAMES JOBE (“JOBE”) was domiciled in and a citizen of the State of California, when
17 he received the spams at issue. The spams at issue were sent to JOBE’s email address
18 jamesjobe14@yahoo.com that he ordinarily accesses from California.

19 13. SERGIO SANTOS (“SANTOS”) was domiciled in and a citizen of the State of
20 California, when he received the spams at issue. The spams at issue were sent to SANTOS’
21 email address segiofelipe@yahoo.com that he ordinarily accesses from California.

22 14. Plaintiffs’ joinder in this Action is proper pursuant to Code of Civil Procedure § 378
23 because Plaintiffs seek relief based on the same series of transactions or occurrences: all received
24 similar spams in the same general time period advertising AFFAIR FANTASY’s websites, and
25 all of those spams were sent by AFFAIR FANTASY or their marketing agents. The same
26 questions of law (e.g., violations of Section 17529.5, strict liability) and fact (e.g., direct consent,
27 practices and procedures to prevent advertising in unlawful spam) will arise in this Action. The
28 fact that each Plaintiff does not sue for *exactly* the same spams does not bar joinder: “It is not
29 necessary that each plaintiff be interested as to every cause of action or as to all relief prayed for.
30 Judgment may be given for one or more of the plaintiffs according to their respective right to
31 relief.” Code Civ. Proc. § 378(b).

1 **B. Defendants**

2 15. Plaintiffs are informed and believe and thereon allege that Defendant
3 AFFAIRFANTASY.COM is now, and was at all relevant times, an entity of unknown
4 organization with an unknown primary place of business.

5 16. Plaintiffs are informed and believe and thereon allege that Defendant
6 FREEHOOKUPS.COM is now, and was at all relevant times, an entity of unknown organization
7 with an unknown primary place of business.

8 17. Plaintiffs are informed and believe and thereon allege that Defendant
9 FREESWINGERADS.COM is now, and was at all relevant times, an entity of unknown
10 organization with an unknown primary place of business.

11 18. Plaintiffs are informed and believe and thereon allege that Defendant YOUFIND-
12 LOCALSINGLES.COM is now, and was at all relevant times, an entity of unknown organization
13 with an unknown primary place of business.

14 19. Plaintiffs are informed and believe and thereon allege that Defendant OFFERIT, LLC, is
15 now and at all relevant times, a New Jersey limited liability company doing business as
16 *uptrck.com, uptracker.com, offerit.com, clickhunter.com, and Click Hunter*, with a primary place
17 of business in Morganville, New Jersey.

18 20. Plaintiffs do not know the true names or legal capacities of the Defendants designated
19 herein as DOES 1 through 1,000, inclusive, and therefore sue said Defendants under the
20 fictitious name of "DOE." Plaintiffs allege that certain Defendant(s) designated herein as DOES
21 registered the following domain names, which were used to send the spams at issue, in a manner
22 so as to prevent email recipients from discovering those DOE Defendants' true identities:

23 3seconddiet.com, 7k-style.com, abc-newpotential.com, abcprovelocity.com, abricecoin.com,
24 abcservercoach.com, absolutenewcastle.com, acrossyhooin.com, ahkeske.com, amirafikry.com,
25 amred-listz.com, andoboloyanponzische.com, aphdproofread.com, arbuckels.com,
26 athleticsportnewsbook.com, aulademarcela.com, axl-crew.com, bardoselenium.com, beerandnuts-
27 brewers.com, bemyvalenot.com, beonmypark.com, bilojix.com, bmwcasualcarserv.com,
28 bombeynewhouses.com, bookcretehotels.com, booksandslavery.com, botlerscrewlands.com,
29 boxandfitnez.com, brentwoodtngaragedoorrepair.com, broncoparints.com, bumerfirmsilfer.com,
30 caresuniverse.com, cashflouss.com, caterforcritterz.com, cavitelowcosthousing.com,
31 chairyogaworkzgood.com, chinagoodstonez.com, coastal-suppli.com, cometpagslife.com,

1 connectbracerightnow.com, connectnewwifihere.com, consoropikciocsis.com,
2 contestandshows.com, cpdub.com, crearealestate.com, cyprusataproperties.com,
3 davecameacross.com, deadsea-israel-tour.com, deciderise.com, delete-on-live.com,
4 dermancicekcilik.com, devisionurlmark.com, dinter-seaview.com, docmechanic.com,
5 dontfmyminde.com, doubleshirtgoray.com, ei-tn.com, evolucionpr.com, fantasysoldier.com, fgn-
6 xml-list.com, foamsforuandi.com, fortim-stars.com, foxytex.com, freepzychicread.com,
7 froutz.com, garageplaygroundz.com, geonewatlass.com, getu-menow.com, go4bike-
8 trialcrew.com, goforbestlife.com, graffiti10ft.com, greatcloudebooks.com,
9 greattopcarlistingz.com, hamburg-gratis.com, hans-mymusic.com, healthhearts.com,
10 hermanoscurto.com, hitjointstudio.com, hivevodka.com, hk-pim.com, homocars-reviews.com,
11 houselendstroy.com, howworksthistechnicz.com, icanframe.com, identityspain.com,
12 idreamsaboutafrica.com, internetgoprofit.com, internetlicentiez.com, iprezzclub.com,
13 irst.rooftopoasiz.com, itrawlers.com, ix.com, ixpectra.com, jaiyebuka.com,
14 johnniechompers.com, joomla-vorlagen.com, julienlaframboise.com, kcing.com,
15 keyboardescz.com, kfz-bleicher.com, kingsdentalprods.com, kingsstarusa.com,
16 knightandwerz.com, kolumbusopenamerica.com, kunstaffe.com, labinproductions.com,
17 laquintagolfproptiez.com, lifestyleboomboom.com, lisakesh.com, loped.rim-ware.com,
18 louismolinarises.com, luckyabe.com, maaiers.com, magneseumcureone.com,
19 makemegoonliner.com, makeoversee.com, manhattanloftz.com, marietasicod.com,
20 massdelivercloud.com, microraces.com, millerzcrossing.com, mohrwritingsletter.com,
21 monasgenu.com, morning-avantagez.com, moveyoursalemy.com, mozebrealtyz.com,
22 mroczkacrews.com, mrsortedinvoi.com, mshoucang.com, musclecrampptreatments.com,
23 mycityfunonline.com, mynewteenkitchens.com, nanopixian.com, navosink-estatehomes.com,
24 nco.com, neovatuz.com, newageleader.com, newkine.com, newligaderabadez.com, new-opulent-
25 gaming.com, newserenityriders.com, no-waiteit-now.com, nowresntcardspain.com, nuren-
26 bangsnearyou.com, occasiorama.com, oitacafenearyou.com, oldcarlogosfast.com,
27 oldneatmasterfag.com, operatrips.com, oreoladesign.com, ossiachherseez.com, ottenludi.com,
28 outdoor-prestige-wear.com, outofbulkfilt.com, owenas.titi-service.com, oykusari.com, passive-
29 hotel.com, passokidsbikesnear.com, pathwaysandspacez.com, pethotel-lacity.com,
30 philheatelectrical.com, phoenixonesteptohell.com, phoneandways.com, pinehollowright.com,
31 platin-coach.com, pocoloranchosnear.com, podelsingo.com, poecarpetsnear.com,

1 poppyfoodznearyou.com, portalforjuvenils.com, primetimeandbirds.com,
2 proanemsiereportingz.com, prod-world.com, programmetalscrew.com, purpleredleader.com,
3 putitinyourhands.com, pwcrepaircost.com, questexetplan.com, rackybertschool.com,
4 ramirosiguraripoff.com, rapidxmoverz.com, rastroadzteco.com, realestateagentz-nevada.com,
5 reasontabreathe.com, renoviirennachmass.com, reportingsmsfast.com, resbuildlocation.com,
6 richanddrogerz.com, rim-ware.com, rocktawngallery.com, rooftopoasiz.com,
7 roundtripsolutionz.com, sacasesgorilaz.com, schematechub.com, seattlehrjobs.com,
8 seconddiet.com, seechangedealer.com, ser-electronic.com, serverpigz.com, servers-
9 adminhelps.com, servvertrampz.com, shapezglue.com, sharpe-motars.com,
10 shelleykaderaponzische.com, shoeplaceznearu.com, shower.tri-book.com, showsnailtail.com,
11 signet-zale.com, sigris-systems.com, sky-datacenterz.com, sleephelpforyou.com,
12 snakebitephotography.com, snowboarderzabc.com, solarindustrioper.com, solarleethiopiaz.com,
13 solarsourceclubs.com, solzduartecrew.com, sparreiseclub.com, spie-roissy.com,
14 spongedryer.com, stillness-riders.com, strengths-discovery-club.com, sunandsolarwave.com,
15 super-expert-comptables.com, supertrender.com, swedoogole.com, sweetdealspittsburgh.com,
16 switchcodez.com, systemdowngroups.com, szmus.com, tabaste.com, tamibissophatography.com,
17 tammerlandsbetter.com, tangcrewclubs.com, techgek3gmodems.com, teddyadventuretour.com,
18 ten-design.com, theamazingdevilz.com, thecheleapply.com, thecollegezguess.com,
19 thecommercioldictatorship.com, theelectronicandgiks.com, theferranewway.com,
20 thegasprophit.com, thehumanzquotient.com, thelastpatrician.com, theoutdoorpricez.com,
21 theprincissandpea.com, theroadspace.com, thesidingprosloc.com, thethomasgroupz.com,
22 thetopclasslimoz.com, thetruefanfantazyfootball.com, theuniversdelconnectique.com,
23 theunofficialsarashine.com, thewelfare-studioz.com, thewheel popcorn.com,
24 thibodeauxproductionz.com, tinonlinegame.com, titi-service.com, tmboender.com, tommy-
25 seacretz.com, tomorraw-is-now.com, toothpastedadz.com, topadspotz.com, top-expertinusa.com,
26 toscanajewelry.com, travis3d.com, treasuritoptv.com, treatme-likea queens.com, tri-book.com,
27 trishafrauenzigs.com, true-streamz.com, tumejoreshostings.com, turquoesechina.com,
28 turuarte.com, uasalo-company.com, ugo-torrini.com, ultheropie-bordeaux.com, unboune.com,
29 uneednow.com, unext-star.com, uniqueor.com, univiseonviva.com, unpixel8.com, unuversal-
30 warz.com, upisurs.com, usautoschoolz.com, vacacianescoastals.com, vegasbackdirection.com,
31 villahammerstein.com, vintageradioz.com, vizionreality.com, volta7.com, vrcipropertyz.com,

1 wadalawor-groups.com, walkinfootball-club.com, wast.foxytex.com, web-lifes-online.com,
2 wecollectcalendarz.com, whocares-aboutit.com, wholeearthtravelz.com, wise-gatez.com,
3 wynrvd.org, xfactsandpray.com, xyz-globalteam.com, you-animal-friend.com, youngedge.com,
4 yourquitpal.com, zinitdesign.com, zoneofnewconference.com, and zonggaiqu.com. Plaintiffs are
5 informed and believe and thereon allege that each of the Defendants designated herein as a DOE
6 is legally responsible in some manner for the matters alleged in this complaint, and is legally
7 responsible in some manner for causing the injuries and damages of which Plaintiffs complain.
8 Plaintiffs are informed and believe and thereon allege that each of the Defendants designated
9 herein as a DOE Defendant was, at all times relevant to the matters alleged within this complaint,
10 acting in conjunction with the named Defendants, whether as a director, officer, employee, agent,
11 affiliate, customer, participant, or co-conspirator. When the identities of DOE Defendants 1-
12 1,000 are discovered, or otherwise made available, Plaintiffs will seek to amend this Complaint
13 to allege their identity and involvement with particularity.

14 21. Defendants' joinder in this Action is proper pursuant to Code of Civil Procedure § 379
15 because Plaintiffs seek relief jointly and severally from Defendants arising from the same series
16 of transactions and occurrences, and because common questions of law and fact as to Defendants
17 will arise in the Action. The fact that all Defendants may not be implicated in all spams does not
18 bar joinder: "It is not necessary that each defendant be interested as to every cause of action or as
19 to all relief prayed for. Judgment may be given against one or more defendants according to
20 their respective liabilities." Code Civ. Proc. § 379.

21 22 **III. JURISDICTION AND VENUE**

23 **A. Jurisdiction is Proper in a California Superior Court**

24 22. This California Superior Court has jurisdiction over the Action because all Plaintiffs are
25 located in California, and the amount in controversy is more than \$25,000.

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

27 23. Venue is proper in San Francisco County (or indeed, *any* county in California of
28 Plaintiffs' choosing) because AFFAIR FANTASY and OFFERIT are foreign corporations that
29 have not designated the location and address of a principal office in California or registered to do
30 business in California with the California Secretary of State. *See Easton v. Superior Court of*
31 *San Diego (Schneider Bros. Inc.)*, 12 Cal. App. 3d 243, 246 (4th Dist. 1970).

1 24. Also, “A corporation or association may be sued in the county where . . . the obligation or
2 liability arises.” Code Civ. Proc. § 395.5.

3 For purposes of laying venue, a liability ‘arises’ where the injury occurs. . . . The
4 ‘obligation or liability’ provision of section 395.5 does *not* require that the
5 defendant perform any act inside the county for venue to be proper; it merely
6 requires that *the obligation arise there*.

7 *Black Diamond Asphalt Inc. v. Superior Court of San Joaquin County*, 109 Cal. App. 4th 166,
8 172, 173 (3d Dist. 2003) (internal citations omitted) (emphasis added). Here, Defendants’
9 obligations arose in San Francisco County, where Plaintiff CRECY received the spams and was
10 damaged.

11 **IV. OVER 1,000 UNLAWFUL SPAMS**

12 25. Plaintiffs allege that Defendants engaged in tortious conduct: “wrongful act[s] other than
13 a breach of contract for which relief may be obtained in the form of damages or an injunction.”

14 *See Merriam-Webster*, www.merriam-webster.com/dictionary/tort (last viewed Nov. 5, 2013).

15 26. California’s False Advertising Law, Business & Professions Code § 17500

16 prohibits “not only advertising which is false, but also advertising which[,]
17 although true, is either actually misleading or which has a capacity, likelihood or
18 tendency to deceive or confuse the public.” [T]he UCL and the false
19 advertising law prohibit deceptive advertising even if it is not actually false.

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

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

22 27. The emails at issue are “commercial email advertisements”¹ because they were initiated
23 for the purpose of advertising and promoting AFFAIR FANTASY’S products and services.

24 28. The emails are “unsolicited commercial email advertisements”² because no Plaintiff gave
25 “direct consent”³ to, or had a “preexisting or current business relationship”⁴ with any Defendant.

26
27 ¹ “‘Commercial e-mail advertisement’ means any electronic mail message initiated for the
28 purpose of advertising or promoting the lease, sale, rental, gift offer, or other disposition of any
29 property, goods, services, or extension of credit.” Bus. & Prof. Code § 17529.1(c).

30 ² “‘Unsolicited commercial e-mail advertisement’ means a commercial e-mail advertisement sent
31 to a recipient who meets both of the following criteria: (1) The recipient has not provided direct
consent to receive advertisements from the advertiser. (2) The recipient does not have a
preexisting or current business relationship, as defined in subdivision (I), with the advertiser

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

3 30. Defendants advertised in, sent, and/or conspired to send at least 1,002 unlawful spams
4 that Plaintiffs received at their "California email addresses"⁵ as shown below:

PLAINTIFF	SPAMS RECEIVED	PLAINTIFF	SPAMS RECEIVED
BLANCHARD	113	FINK	105
BYRNES	257	JOBE	11
CRECY	114	SANTOS	402
		TOTAL	1,002

5
6
7
8
9
10 31. The spams are all unlawful because there is materially false and deceptive information
11 contained in or accompanying the email headers as described in more detail below.

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

14 32. Section 17529.5(a)(2) prohibits falsified or misrepresented information contained in or
15 accompanying email headers.

16 33. The From Name field is part of email headers. The From Name does *not* include the
17 Sender Email Address. So, for example, if an email's From Line says: "John Doe
18 <johndoe@yahoo.com>", the From Name is *just* "John Doe."
19

20
21 promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services,
22 or extension of credit." Bus. & Prof. Code § 17529.1(o).

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

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(l).

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).

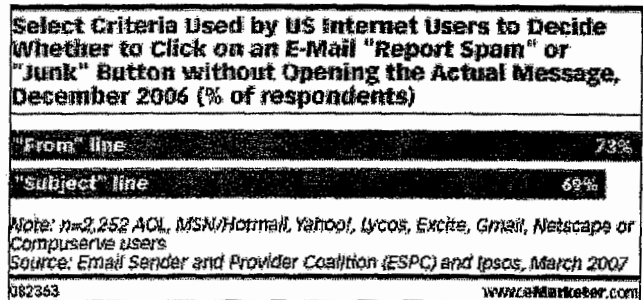
1 34. The From Name in an email's headers is, not surprisingly, supposed to identify who the
2 email is *from*; it is not supposed to be an advertising message. Because computers must use
3 standard protocols in order to communicate, the Internet Engineering Task Force created a
4 collection of "Requests for Comment" ("RFCs") that define the rules that enable email to work.
5 According to RFC 5322 at ¶ 3.6.2 (emphasis in original):

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

10 35. Plaintiffs do not insist on any *particular* label (e.g., "Affair Fantasy," "Offerit," etc.) in
11 the From Name field. Rather, Plaintiffs contend that the text, whatever it is, cannot misrepresent
12 *who* the emails are from.

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

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



23 <http://www.emarketer.com/Article/E-Mail-Open-Rates-Hinge-on-Subject-Line/1005550> (Oct.
24 31, 2007). Thus, a From Name that misrepresents who a spam is from is *not* a mere technical
25 error; rather, it is a material misrepresentation of the most important part of the email header.

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

29 1. Don't use false or misleading header information. Your "From," "To,"
30 "Reply-To," and routing information – including the originating domain name
31 and email address – *must be accurate and identify the person or business who*
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 39. 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 40. Almost all of the spams that Plaintiffs received advertising Defendant’s websites show
23 generic text in the From Name field that misrepresents *who* the spams are from, e.g. “Lonely
24 Local Chicks,” “Naked Locals,” “Hookup Hot Chick,” and “Try Local Wives [sic].” These
25 generic From Names could just as easily refer to Defendant’s competitors.

26 41. Some of the spams list from names that purport to be from real people, e.g. “Lily,”
27 “Maya,” and “Zoey.” On information and belief, no real people with those names sent or are in
28 any way associated with the sending of the spams at issue in this action.

29 42. These From Names, like those in *Balsam*, misrepresent *who* was advertising in the spams,
30 and therefore violate Section 17529.5(a)(2).

31 43. Plaintiffs are informed and believe and thereon allege that Defendants knowingly choose
to advertise using generic From Names and fake names precisely so the recipients will *not* know

1 who the emails were really from when viewing the spams in the inbox view. This forces
2 recipients to open the emails to see if the emails might actually be from someone with whom the
3 recipient has had dealings, or if the emails are in fact, as is the case here, nothing but spams from
4 a for-profit lead-generator.

5 44. In *Rosolowski v. Guthy-Renker LLC*, the court permitted From Names that were not the
6 sender's official corporate name as long as the identify of the sender was readily ascertainable in
7 the body. 230 Cal. App. 4th 1403, 1407, 1416 (2d Dist. 2014). However, the From Names in
8 that case (Proactiv and Wen Hair Care) were the advertiser's fanciful trademarks and well-
9 known brands with their own websites. But here, unlike the spams in *Rosolowski*, almost of the
10 From Names are generic or, on information and belief, names of non-existent people; they are
11 not well-known trademarks and/or brands readily associated with Defendants. There is no way
12 an ordinary consumer, looking at the emails in his/her inbox, could readily associate them with
13 Defendants.

14 45. Moreover, in all or almost all of the spams at issue, neither the sender nor the advertiser
15 is readily ascertainable in the body of the spams, so *Balsam* would control, not *Rosolowski*.

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

18 46. Section 17529.5(a)(2) prohibits falsified, misrepresented, or forged information contained
19 in or accompanying in email headers.

20 47. Registration information for the domain names used to send spams is information
21 contained in or accompanying email headers.

22 48. “[H]eader information in a commercial e-mail is falsified or misrepresented for purposes
23 of section 17529.5(a)(2) when it uses a sender domain name that *neither* identifies the actual
24 sender on its face *nor* is readily traceable to the sender using a publicly available online database
25 such as WHOIS.” *Balsam*, 203 Cal. App. 4th at 1101 (emphasis in original).

26 49. Many of the spams that Plaintiffs received advertising Defendants were sent from domain
27 names that:

- 28 • Did not identify Defendants or the sender on their face, and
- 29 • Were registered to nonexistent entities so as to not be readily traceable to the
30 sender by querying the Whois database,

1 in violation of Section 17529.5. *Balsam*, 203 Cal. App. 4th at 1097-1101. For example,
2 Blanchard received a spam advertising Defendants' products and services from a domain name
3 registered to "FlintsCrew LLC" claiming an address in Birmingham Alabama. On information
4 and belief, there is no business FlintsCrew LLC registered in Alabama or any other state.

5 50. Plaintiffs could not identify Defendants or its spamming affiliates who sent most of the
6 spams at issue by querying the Whois database for the domain names used to send all or almost
7 all of the spams at issue.

8 **D. Spams With False and Misrepresented Subject Lines Violate Business & Professions**
9 **Code § 17529.5(a)(2)**

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

12 52. The Subject Line is part of email headers.

13 53. Many of the spams that Plaintiffs received contain Subject Lines with falsified and/or
14 misrepresented information. Plaintiffs allege that these Subject Lines are *absolutely* false and/or
15 misrepresented and violate Section 17529.5(a)(2), as opposed to misleading *relative* to the
16 contents/body of the spams, which would be a violation of Section 17529.5(a)(3).

17 54. Example of falsified/misrepresented Subject Lines include:

- 18 • "2 new messages" is false because no Plaintiff ever had an account with
19 Defendants.
- 20 • "let's get together soon" is misrepresented because it implies that there is an
21 actual person with whom the recipient could meet. Plaintiffs allege that there is
22 no such person, and that Defendants' database is full of nonexistent "women"
23 designed to engage consumers in fake conversations about impossible meetings,
24 so that consumers will continue to pay Defendants monthly subscription fees.
- 25 • "Am I your dream love" is false because it implies that there is an actual person
26 who is sending the spam. Plaintiffs allege that there is no such person, and that
27 Defendants' database is full of nonexistent "women" designed to engage
28 consumers in fake conversations about impossible meetings, so that consumers
29 will continue to pay Defendants monthly subscription fees.
- 30
- 31

1 **E. Spams With Subject Lines Misleading Relative to the Contents of the Spams Violate**
2 **Business & Professions Code § 17529.5(a)(3)**

3 55. Section 17529.5(a)(3) prohibits Subject Lines misleading relative to the contents or
4 subject matter of the emails.

5 56. Some of the spams that Plaintiffs received contain Subject Lines misleading relative to
6 the contents of subject matter of the emails, which violate Section 17529.5(a)(3).

7 57. Examples of misleading Subject Lines include:

- 8 • “Why won’t you respond to my messages,” is misleading because the body says,
9 “Find horny women to hook up within 5 miles of you.” There is no mention of an
10 actual person who actually sent messages to the recipient.
- 11 • “Serious Inquiries Only: Olesia, 23, Ukraine” is misleading because it implies that
12 there is a person named Olesia who is interested in “serious inquiries” but, the
13 body says “. . . Janell Snavelly sent you a private message . . .” with no mention
14 of “Olesia.”

15 **F. Defendants are Strictly Liable for Spams Sent By their Marketing Agents**

16 58. Plaintiffs are informed and believe and thereon allege that AFFAIR FANTASY and
17 OFFERIT contracted with third party advertising networks and affiliates, including but not
18 limited to the other Defendants, to advertise its websites for the purpose of selling products and
19 services for a profit.

20 59. No one forced AFFAIR FANTASY and OFFERIT to outsource any of their advertising
21 to third party spam networks and spammers.

22 60. Advertisers are liable for advertising in spams, even if third parties hit the Send button.

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

26 The true beneficiaries of spam are the advertisers who benefit from the marketing
27 derived from the advertisements.

28 Bus. & Prof. Code § 17529(j)(k).

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

1 Bus. & Prof. Code § 17529.5 (emphasis added). Of course, AFFAIR FANTASY's agents are
2 also liable for sending unlawful spams. See *Balsam*, generally.

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

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

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

16 192 Cal. App. 4th 805, 820-21 (2d Dist. 2011) (emphasis added). The court did not find that this
17 was an arbitrary requirement; rather, the court identified sound policy reasons behind the
18 Legislature's decision to create a strict liability statute. *Id.* at 829.

19 **G. Plaintiffs Sue for Statutory Liquidated Damages; No Proof of Reliance or Actual**
20 **Damages is Necessary**

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

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

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

29 65. Section 17529.5 does not require Plaintiffs to quantify their actual damages, allege or
30 prove reliance on the advertisements contained in the spams, or purchase the goods and services
31 advertised in the spams. *Recipients* of unlawful spam have standing to sue and recover
liquidated damages. Bus. & Prof. Code § 17529.5(b)(1)(A)(iii); *Hypertouch*, 192 Cal. App. 4th
at 820, 822-23, 828.

1 66. However, Plaintiffs did suffer damages by receiving the unlawful spams advertising
2 Defendant's products and services in the state of California, at their California email addresses.
3 Bus. & Prof. Code § 17529(d), (e), (g), (h). Regardless, Plaintiffs do not seek actual damages in
4 this Action, only liquidated damages. Bus. & Prof. Code § 17529.5(b)(1)(B).

5 **H. Defendants' Actions Were Willful and Preclude any Reduction in Statutory Damages**

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

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

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

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

19 71. Moreover, Plaintiffs are informed and believe and thereon allege that Defendants
20 intended to deceive recipients of their spam messages through the use of falsified and/or
21 misrepresented information in From Names, domain name registrations, and Subject Lines, as
22 described herein.

23 72. Subject Lines and From Names do not write themselves. Domain names do not register
24 themselves. The false and misrepresented information contained in and accompanying the email
25 headers are not "clerical errors." Plaintiffs are informed and believe and thereon allege that
26 Defendants went to great lengths to create falsified and misrepresented information contained in
27 and accompanying the email headers in order to deceive recipients, Internet Service Providers,
28 and spam filters.

29 73. Plaintiffs are informed and believe and thereon allege that Defendants intended to profit,
30 actually profited, and continue to profit, and were unjustly enriched by, their wrongful conduct
31 as described herein.

1
2
3 **FIRST CAUSE OF ACTION**

4 **[Violations of California Restrictions on Unsolicited Commercial Email,**
5 **California Business & Professions Code § 17529.5]**
6 **(Against All Defendants)**

7 74. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

8 75. Plaintiffs received the spams at issue within one year prior to filing this Complaint.

9 76. Defendants advertised in, sent, and/or caused to be sent at least 1,002 unsolicited
10 commercial email advertisements to Plaintiffs' California electronic mail addresses that had
11 materially falsified and/or misrepresented information contained in or accompanying the email
12 headers, misleading Subject Lines relative to the bodies of the emails, in violation of Section
13 17529.5. The unlawful elements of these spams represent willful acts of falsity and deception,
14 rather than clerical errors.

15 77. The California Legislature set liquidated damages at One Thousand Dollars (\$1,000) per
16 email.

17 78. Defendants have not established and implemented, with due care, practices and
18 procedures to effectively prevent advertising in unlawful spams that violate Section 17529.5 that
19 would entitle them to a reduction in statutory damages.

20 79. Plaintiffs seek reimbursement of attorneys' fees and costs as authorized by Section
21 17529.5(b)(1)(C).

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

28
29 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set forth.
30
31

1 **PRAYER FOR RELIEF**

2 **(Against All Defendants)**

- 3 A. An Order from this Court declaring that Defendants violated California Business &
4 Professions Code § 17529.5 by advertising in and sending unlawful spams.
5 B. Liquidated damages against Defendants in the amount of \$1,000 for each of at least 1,002
6 unlawful spams, as authorized by Section 17529.5(b)(1)(B)(ii), for a total of at least
7 \$1,002,000, as set forth below:

8

PLAINTIFF	DAMAGES SOUGHT	PLAINTIFF	DAMAGES SOUGHT
BLANCHARD	\$113,000	FINK	\$105,000
BYRNES	\$257,000	JOBE	\$820,000
CRECY	\$114,000	SANTOS	\$402,000
		TOTAL	\$1,002,000

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- 13 C. Liquidated damages against AFFAIR FANTASY in the amount of \$1,002,000 based on
14 1,002 spams that it sent, hired others to send, or otherwise conspired with others to send,
15 to Plaintiffs.
16 D. Liquidated damages against OFFERIT in the amount of \$1,002,000 based on 1,002
17 spams that it sent, hired others to send, or otherwise conspired with others to send, to
18 Plaintiffs.
19 E. Liquidated damages against DOES 1-1,000 (when their true names are learned) in the
20 amount of \$1,002,000 based on 1,002 spams that it sent, hired others to send, or
21 otherwise conspired with others to send, to Plaintiffs.
22 F. Attorneys' fees as authorized by Section 17529.5(b)(1)(C) and Code of Civil Procedure
23 § 1021.5 for violations of Section 17529.5.
24 G. Costs of suit.
25 H. Such other and further relief as the Court deems proper.

26 THE LAW OFFICES OF JACOB HARKER

27
28
29 Date: September 9, 2016

BY: 

JACOB HARKER
Attorneys for Plaintiffs