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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
08/30/2018
Clerk of the Court
BY: EDNALEEN ALEGRE
Deputy Clerk

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

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

18 CARMEN SORIANO, an individual;)	Case No.:	CGC-17-561185
19 MARY JOYCE VALLARTA, an individual;)		
20 MOLLY VONGCHAN, an individual;)		
)	FIRST AMENDED COMPLAINT FOR	
)	DAMAGES	
21 Plaintiffs,)		
22 v.)	1. VIOLATIONS OF CALIFORNIA	
)	RESTRICTIONS ON UNSOLICITED	
23 LENDINGTREE, LLC, a Delaware limited)	COMMERCIAL E-MAIL (Cal. Bus. &	
24 liability company; and)	Prof. Code § 17529.5)	
25 DOES 1-100;)		
)		
26 Defendants.)		

27 COME NOW PLAINTIFFS CARMEN SORIANO, *et al.* and file this First Amended Complaint
28 for one cause of action against Defendants LENDINGTREE, LLC *et al.* and allege as follows:

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

30 1. Plaintiffs CARMEN SORIANO *et al* bring this Action against professional
31 “spamvertiser” LENDINGTREE, LLC (“LENDINGTREE”) and its third party Marketing

1 Partners for advertising in/conspiring to advertise in 138 unlawful unsolicited commercial emails
2 (“spams”) that Plaintiffs received. A representative sample is attached to this Complaint as
3 **Exhibit A.**

4 2. Plaintiffs neither gave direct consent to receive commercial email advertisements from,
5 nor had a preexisting or current business relationship with, the entities who advertised in the
6 spams.

7 3. The spams all materially violated California Business & Professions Code § 17529.5
8 (“Section 17529.5”) due to: a) materially false and deceptive information contained in or
9 accompanying the email headers (i.e. Subject Line), and/or b) Subject Lines misleading relative
10 to the contents of the emails.

11 4. LENDINGTREE is strictly liable for advertising in spams sent by its third party
12 Marketing Partners. Even *if* LENDINGTREE’s Marketing Partners are not directly liable under
13 Section 17529.5 for advertising in the spams, they are still liable on the basis of civil conspiracy,
14 as discussed herein.

15 5. Spam recipients are not required to allege or prove reliance or actual damages to have
16 standing. *See* Bus. & Prof. Code § 17529.5(b)(1)(A)(iii). Plaintiffs elect to recover statutory
17 damages only and forego recovery of any actual damages. *See* Bus. & Prof. Code
18 § 17529.5(b)(1)(B).

19 6. This Court should award liquidated damages of \$1,000 per email as provided by
20 Section 17529.5(b)(1)(B)(ii), and not consider any reduction in damages, because
21 LENDINGTREE and its Marketing Partners failed to implement reasonably effective systems to
22 prevent advertising in unlawful spams. The unlawful elements of these spams represent willful
23 acts of falsity and deception, rather than clerical errors.

24 7. This Court should award Plaintiffs their attorneys’ fees pursuant to Section
25 17529.5(b)(1)(C). *See also* Code of Civil Procedure § 1021.5, providing for attorneys fees when
26 private parties bear the costs of litigation that confers a benefit on a large class of persons; here,
27 by reducing the amount of false and deceptive spam received by California residents.

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1 **II. PARTIES**

2 **A. Plaintiffs**

3 8. CARMEN SORIANO (“SORIANO”) 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 SORIANO’s
5 email address livewpeace@yahoo.com that she ordinarily accesses from California.

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

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

13 11. Plaintiffs’ joinder in this Action is proper pursuant to Cal. Code of Civil Procedure § 378
14 because Plaintiffs seek relief based on the same series of transactions or occurrences: all received
15 similar spams in the same general time period advertising LENDINGTREE’s websites, and all of
16 those spams were sent by LENDINGTREE or its Marketing Partners. The same questions of law
17 (e.g., violations of Section 17529.5, strict liability) and fact (e.g., direct consent, practices and
18 procedures to prevent advertising in unlawful spam) will arise in this Action. The fact that each
19 Plaintiff does not sue for *exactly* the same spams does not bar joinder: “It is not necessary that
20 each plaintiff be interested as to every cause of action or as to all relief prayed for. Judgment
21 may be given for one or more of the plaintiffs according to their respective right to relief.” Cal.
22 Code Civ. Proc. § 378(b).

23 **B. Defendants**

24 12. Plaintiffs are informed and believe and thereon allege that Defendant LENDINGTREE,
25 LLC (“LENDINGTREE”) is now, and was at all relevant times, a Delaware limited liability
26 company with a principal place of business in Charlotte, North Carolina.

27 13. Plaintiffs are informed and believe and thereon allege that LENDINGTREE entered into
28 various contracts (“Marketing Partner Contracts”) with third-party spam networks and publishers
29 (“Marketing Partners”) who sent some, if not all, of the spams at issue. Pursuant to the terms of
30 the Marketing Partner Contracts, LENDINGTREE and each respective Marketing Partner agreed
31 to share in the benefits and risks derived from email advertising campaigns advertising

1 LENDINGTREE's websites/products and the Marketing Partners' services. Plaintiffs further
2 allege, on information and belief, that pursuant to the terms of the Marketing Partner Contracts,
3 the Marketing Partner Defendants who sent the spams used their own lists of email addresses (as
4 opposed to lists provided by LENDINGTREE) as the source of intended recipients for the
5 spams. Plaintiffs further allege, on information and belief, that in some cases, the Marketing
6 Partners (as opposed to LENDINGTREE) created the unlawful content in the emails, such as the
7 From Names, Subject Lines, sending email addresses, and clickthrough hyperlinks. Just as
8 Valpak also advertises its own mailing services when sending advertisements for its partners, so
9 did LENDINGTREE's Marketing Partners advertise their own emailing services when they sent
10 these spams for LENDINGTREE.

11 14. Plaintiffs do not know the true names or legal capacities of the Defendants designated
12 herein as DOES 1 through 100, inclusive – LENDINGTREE's Marketing Partners – and
13 therefore sue said Defendants under the fictitious name of "DOE." Plaintiffs are informed and
14 believe and thereon allege that each of the Defendants designated herein as a DOE is legally
15 responsible in some manner for the matters alleged in this complaint, and is legally responsible
16 in some manner for causing the injuries and damages of which Plaintiffs complain. Plaintiffs are
17 informed and believe and thereon allege that each of the Defendants designated herein as a DOE
18 Defendant was, at all times relevant to the matters alleged within this complaint, acting in
19 conjunction with the named Defendants, whether as a director, officer, employee, agent, affiliate,
20 customer, participant, or co-conspirator. When the identities of DOE Defendants 1-100 are
21 discovered, or otherwise made available, Plaintiffs will seek to amend this Complaint to allege
22 their identity and involvement with particularity.

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

1 **III. JURISDICTION AND VENUE**

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

3 16. This California Superior Court has jurisdiction over the Action because Plaintiffs are
4 located in California, the amount in controversy is more than \$25,000, and – in remanding this
5 Action – the Northern District of California ruled that Plaintiffs lack standing under Article III of
6 the United States Constitution to maintain this Action in federal court.

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

8 17. Venue is proper in San Francisco County (or indeed, *any* county in California of
9 Plaintiffs’ choosing) because LENDINGTREE is a foreign company that has not designated the
10 location and address of a principal office in California. *See Easton v. Superior Court of San*
11 *Diego (Schneider Bros. Inc.)*, 12 Cal. App. 3d 243, 246 (4th Dist. 1970).

12 **IV. 138 UNLAWFUL SPAMS**

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

16 19. California’s False Advertising Law, Business & Professions Code § 17500
17 prohibits “not only advertising which is false, but also advertising which[,]
18 although true, is either actually misleading or which has a capacity, likelihood or
19 tendency to deceive or confuse the public.” . . . [T]he UCL and the false
20 advertising law prohibit deceptive advertising even if it is not actually false.
21 *Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 226-27 (2d Dist. 2013) (citation omitted).

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

23 20. The emails at issue are “commercial email advertisements”¹ because they were initiated
24 for the purpose of advertising and promoting LENDINGTREE’s products and services.

25 21. The emails are “unsolicited commercial email advertisements”² because Plaintiffs did not
26 give “direct consent”³ to, and did not have a “preexisting or current business relationship”⁴ with
27 any Defendant.

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

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

23. LENDINGTREE advertised in at least 138 unlawful spams that Plaintiffs received at their “California email addresses”⁵ as shown below:

PLAINTIFF	SPAMS RECEIVED	PLAINTIFF	SPAMS RECEIVED
SORIANO	53 (9/7-11/17/16)	VALLARTA	26 (9/20-10/2/16)
VONGCHAN	59 (9/7-11/17/16)	TOTAL	138

24. The spams are all unlawful because there is materially false and deceptive information contained in or accompanying the email headers as described in more detail below. Plaintiffs do not bring a cause of action for fraud and are not required to plead facts with particularity.⁶

² “‘Unsolicited commercial e-mail advertisement’ means a commercial e-mail advertisement sent 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 (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).

³ “‘Direct consent’ means that the recipient has expressly consented to receive e-mail 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).

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

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).

⁶ *See Day v. AT&T Corporation*, 63 Cal. App. 4th 325, 332 (1st Dist. 1998) (“Actual deception or confusion caused by misleading statements is not required The term ‘fraudulent’ as used in the section ‘does not refer to the common law tort of fraud’ but only requires a showing members of the public ‘are likely to be deceived.’ No proof of direct harm from a defendant’s unfair business practice need be shown, such that ‘[a]llegations of actual deception, reasonable reliance, and damage are unnecessary.”) (citations omitted). *See also Buller v. Sutter Health*, 160 Cal. App. 4th 981, 986 (1st Dist. 2008) (“In order to state a cause of action under the fraud

1 **B. Spams With Absolutely False and Misrepresented Subject Lines Violate Business &**
2 **Professions Code § 17529.5(a)(2)**

3 25. Section 17529.5(a)(2) prohibits falsified or misrepresented information contained in or
4 accompanying email headers.

5 26. The Subject Line is part of email headers.⁷

6 27. Many of the spams that Plaintiffs received contain Subject Lines with falsified and/or
7 misrepresented information. Plaintiffs allege that these Subject Lines are *absolutely* false and/or
8 misrepresented and violate Section 17529.5(a)(2), as well as being misleading *relative* to the
9 contents/body of the spams, which violates Section 17529.5(a)(3) (discussed below).

10 28. All of the spams contain the same false or misrepresented subject line: “[recipient]
11 Confirm Your Personal Loan #987.” In reality, there was no Personal Loan #987 (or any other
12 number), or even an application for a loan, to confirm.

13 29. These Subject Lines are materially false because they communicate that the recipient
14 already applied for, and in fact is about to receive, a loan from LENDINGTREE. These Subject

15 prong of the [Unfair Competition Law] a plaintiff need not show that he or others were actually
16 deceived or confused by the conduct or business practice in question. The ‘fraud prong of [the
17 UCL] is unlike common law fraud or deception. A violation can be shown even if no one was
18 actually deceived, relied upon the fraudulent practice, or sustained any damage. Instead, it is
19 only necessary to show that members of the public are likely to be deceived”).

20 ⁷ The Internet Engineering Task Force’s RFC 5322 – which essentially defines how email works
21 – includes Subject Lines as part of email headers at ¶ 3.6. Network Working Group, *RFC 5322*
22 (Oct. 2008), <https://tools.ietf.org/html/rfc5322>. So does Wikipedia, LifeWire.com (a website
23 about technology), IBM, WhatIsMyIPAddress.com, and many other sources. Congress may be
24 one of the few, if not the only, entity that believes that Subject Lines are not part of email
25 headers. (*See* 15 U.S.C. § 7702(8), defining “header information” as “the source, destination,
and routing information attached to an electronic mail message, including the originating domain
name and originating electronic mail address, and any other information that appears in the line
identifying, or purporting to identify, a person initiating the message.”)

26 But California is not bound by federal definitions. In fact, in *Kleffman v. Vonage*
27 *Holdings Inc.*, the California Supreme Court acknowledged the existence of the federal
28 definition, and then immediately stated that “A similar definition was proposed, *but not adopted*,
29 during the legislative process that culminated in section 17529.5(a)(2)’s enactment.” 49 Cal. 4th
30 334, 340 n.5 (2010) (emphasis added). Thus, it is not as though the California Legislature were
31 unaware of the question of Subject Lines, for *Kleffman* expressly states that the Legislature
rejected a definition similar to the federal definition. And by rejecting that definition, the
California Legislature demonstrated its knowledge and understanding that Subject Lines are in
fact part of email headers. Every spammer and court who cites *Kleffman* (and its progeny) for
the proposition that Subject Lines are not part of email headers is incorrect.

1 Lines exploit the fact that the personal loan category is rife with “lead generation” websites who
2 sell consumer data to third parties. *See e.g.* Tamara E. Holmes, *Online Loan Lead-Generation*
3 *Sites May Open Door to Fraud*, CreditCards.com (Jan. 15, 2016), [https://www.creditcards.com/](https://www.creditcards.com/credit-card-news/online-loan-lead-generation-sites-fraud-1282.php)
4 [credit-card-news/online-loan-lead-generation-sites-fraud-1282.php](https://www.creditcards.com/credit-card-news/online-loan-lead-generation-sites-fraud-1282.php). Therefore, the fact that
5 Plaintiffs disclaim any direct consent or preexisting relationship with LENDINGTREE does not
6 conflict with the allegation that the Subject Lines are materially false.

7 **C. Spams With Subject Lines Misleading Relative to the Contents of the Spams Violate**
8 **Business & Professions Code § 17529.5(a)(3)**

9 30. Section 17529.5(a)(3) prohibits Subject Lines that are misleading relative to the contents
10 or subject matter of the emails.

11 31. All or most of the spams that Plaintiffs received contain Subject Lines misleading relative
12 to the contents of subject matter of the emails, which violates Section 17529.5(a)(3).

13 32. All of the spams contain subject line: “[recipient] Confirm Your Personal Loan #987,”
14 which implies: a) a preexisting relationship exists between LENDINGTREE and the recipient; b)
15 based on the preexisting relationship, the recipient has been approved for a loan; c) the loan has a
16 unique number; and d) the only step the recipient must take to finalize the loan is to confirm it.

17 33. However, once the recipient opens the email, he/she learns that: a) there is no preexisting
18 relationship between LENDINGTREE and the recipient; b) there is no loan approval; c) there is
19 no unique loan number; and d) the recipient *cannot* finalize the loan by confirming it – because
20 no loan exists. Rather, the recipient discovers that the email is an advertisement offering the
21 recipient an opportunity to *apply* for a loan. Therefore, although the Subject Line (confirming a
22 specific loan) broadly reflects the subject matter of the spams – loans – the Subject Line is
23 nevertheless misleading as to the contents of the spams (a solicitation to apply for a loan).

24 **D. LENDINGTREE is Strictly Liable for Spams Sent By its Marketing Partners;**
25 **LENDINGTREE’s Marketing Partners are Also Liable on the Basis of Civil**
26 **Conspiracy**

27 34. Plaintiffs are informed and believe and thereon alleges that LENDINGTREE contracted
28 with third party advertising networks and affiliates, including but not limited to the other
29 Defendants, to advertise its websites for the purpose of selling products and services for a profit.

30 35. No one forced LENDINGTREE to outsource any of its advertising to third party spam
31 networks and spammers.

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

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

5 The true beneficiaries of spam are the advertisers who benefit from the marketing
6 derived from the advertisements.

7 Bus. & Prof. Code § 17529(j), (k).

8 It is unlawful [] *to advertise in* a commercial email advertisement [] under any of
9 the following circumstances...

10 Bus. & Prof. Code § 17529.5 (emphasis added). Of course, LENDINGTREE’s Marketing
11 Partners are also liable for conspiring with LENDINGTREE to advertise in unlawful spams.

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

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

20 Thus, like other California statutes prohibiting false or misleading business
21 practices, the statute makes an entity *strictly liable* for advertising in a
22 commercial e-mail that violates the substantive provisions described in section
23 17529.5, subdivision (a) *regardless of whether the entity knew that such e-mails*
24 *had been sent* or had any intent to deceive the recipient.

25 192 Cal. App. 4th 805, 820-21 (2d Dist. 2011) (emphasis added). The court did not find that this
26 was an arbitrary requirement; rather, the court identified sound policy reasons behind the
27 Legislature’s decision to create a strict liability statute. *Id.* at 829.

28 38. Plaintiffs are informed and believe and thereon allege that LENDINGTREE and its
29 Marketing Partners agreed to share the benefits and the risks of the marketing venture.

30 39. Plaintiffs are informed and believe and thereon allege that LENDINGTREE and its
31 Marketing Partners formed a conspiracy (or conspiracies) to advertise LENDINGTREE’s
websites and LENDINGTREE’s Marketing Partners’ email advertising services by virtue of
signing contracts with LENDINGTREE. Defendants operated the conspiracy by sending and
advertising in spams pursuant to the contracts. Defendants committed wrongful acts pursuant to

1 the conspiracy by advertising in unlawful spams, and Plaintiffs were damaged by receiving those
2 unlawful spams.

3 40. Plaintiffs are informed and believe and thereon allege that LENDINGTREE may have
4 provided some of the content to its Marketing Partners, and LENDINGTREE and its Marketing
5 Partners explicitly or tacitly agreed to use such content to send and advertise in unlawful spams,
6 and LENDINGTREE's Marketing Partners directed themselves towards those wrongful goals by
7 using that content in the spams that were sent. But, to the extent that LENDINGTREE's
8 Marketing Partners may have created certain false and misrepresented elements of the spams,
9 LENDINGTREE's Marketing Partners must be held liable for violations of Section 17529.5
10 because such wrongful acts were committed in accordance with the general conspiracy to
11 advertise LENDINGTREE's websites and the Marketing Partners' emailing services.

12 **E. LENDINGTREE'S Marketing Partners Also Advertised in the Spams, Making them**
13 **Directly Liable Under the Statute**

14 41. Many of the spams also contain the name of the Marketing Partner in the body of the
15 email. Plaintiffs are informed and believe and thereon allege that the Marketing Partners
16 included their name in the emails, in part, to advertise their own services as email marketers.

17 42. All of the spams contain hyperlinked "click-through" domain names owned and
18 controlled by whatever Marketing Partner sent or was responsible for sending any particular
19 spam. Because the Marketing Partners' domain names appear in the source code of the spams,
20 the Marketing Partners are advertising in the spams. Plaintiffs are informed and believe and
21 thereon allege that the Marketing Partners did this, in part, to advertise their own services as
22 email marketers.

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

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

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

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

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

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

8 47. 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 *established* practices and procedures to prevent unlawful
11 spamming, but also that they *implemented* those practices and procedures, and that the practices
12 and procedures are *effective*.

13 48. 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 49. Even if Defendants had established any practices and procedures to prevent advertising in
18 unlawful spam, such practices and procedures were not reasonably designed so as to be effective.

19 50. 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 51. Moreover, Plaintiffs are informed and believe and thereon allege that Defendants
22 intended to deceive recipients of their spam messages through the use of falsified and/or
23 misrepresented information in Subject Lines as described herein.

24 52. Subject Lines do not write themselves. The false and misrepresented information
25 contained in and accompanying the email headers are not "clerical errors."

26 53. Plaintiffs are informed and believe and thereon allege that Defendants went to great
27 lengths to create falsified and misrepresented information in the Subject Lines in order to deceive
28 recipients. Plaintiffs are informed and believe and thereon allege that Defendants intended to
29 profit, actually profited, and continue to profit, and were unjustly enriched by, their wrongful
30 conduct as described herein.

1 **FIRST CAUSE OF ACTION**

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

5 54. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

6 55. Plaintiffs received the spams at issue from September 7-November 17, 2016 – within one
7 year prior to filing this Complaint on September 7, 2017.

8 56. LENDINGTREE advertised in at least 138 unsolicited commercial email advertisements
9 that Plaintiffs received at their California electronic mail addresses that had materially falsified
10 and/or misrepresented Subject Lines, and Subject Lines misleading as to the contents of the
11 email, in violation of Section 17529.5. The unlawful elements of these spams represent willful
12 acts of falsity and deception, rather than clerical errors.

13 57. The California Legislature set liquidated damages at One Thousand Dollars (\$1,000) per
14 email.

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

18 59. Plaintiffs seek reimbursement of attorneys' fees and costs as authorized by Section
19 17529.5(b)(1)(C).

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

26 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set forth.
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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 unlawful spams.
- 5 B. Liquidated damages against Defendants in the amount of \$1,000 for each of at least 138
6 unlawful spams, as authorized by Section 17529.5(b)(1)(B)(ii), for a total of at least
7 \$138,000 as set forth below:

8

PLAINTIFF	DAMAGES SOUGHT	PLAINTIFF	DAMAGES SOUGHT
SORIANO	\$53,000	VALLARTA	\$26,000
VONGCHAN	\$59,000	TOTAL	\$138,000

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- 11
- 12 C. Liquidated damages against LENDINGTREE in the amount of \$1,000 for each of 138
13 unlawful spams (\$138,000) that it advertised in that Plaintiffs received, according to
14 proof.
- 15 D. Liquidated damages against each DOE 1-100 (when their true names are learned), jointly
16 and severally with LENDINGTREE, in the amount of \$1,000 for each of the unlawful
17 spams that it advertised in and/or conspired to advertise in that Plaintiffs received,
18 according to proof.
- 19 E. Attorneys' fees as authorized by Section 17529.5(b)(1)(C) and Code of Civil Procedure
20 § 1021.5 for violations of Section 17529.5.
- 21 F. Costs of suit.
- 22 G. Such other and further relief as the Court deems proper.

23 THE LAW OFFICES OF DANIEL BALSAM

24

25 Date: August 30, 2018

26 BY: 
27 DANIEL BALSAM
28 Attorneys for Plaintiffs

29

30

31

EXHIBIT A

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