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County of San Francisco

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DEPARTMENT 212

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)

11 DANIEL L. BALSAM, an individual,
12)
13 Plaintiff,)

14 vs.)

15 STARTUP CONSULTANTS LLC, a Florida)
16 limited liability ~~corporation~~, Company; (DS))
17 RDC CONSULTING INC., a Florida)
18 corporation;)
19 DARREN CLEVELAND, an individual;)
20 GREGOIRE GASPARINI, an individual;)
21 CARDSERVICE INTERNATIONAL INC., a)
22 California corporation;)
23 SCOTT FRASER, an individual;)
24 FREE-CD SOFTWARE.COM INC., an)
Arizona corporation;)
PAGewise.COM INC., a Delaware)
corporation;)
TRAVELFLEAMARKET.COM INC., a New)
York corporation;)
and)
DOES 1-100,)
Defendants.)

Case No.:

88008 - 473382

) **VERIFIED COMPLAINT FOR**
) **DAMAGES, INJUNCTIVE RELIEF, AND**
) **DECLARATORY RELIEF**

1. **VIOLATIONS OF CALIFORNIA RESTRICTIONS ON UNSOLICITED COMMERCIAL E-MAIL ADVERTISERS (Cal. Bus. & Prof. Code § 17529.5)**
2. **VIOLATIONS OF CONSUMERS LEGAL REMEDIES ACT (Cal. Civ. Code § 1750 et seq.)**
3. **VIOLATIONS OF STIPULATED JUDGMENT**
4. **DECLARATORY RELIEF**

1 COMES NOW PLAINTIFF DANIEL L. BALSAM and files this Verified Complaint for causes
2 of action against Defendants STARTUP CONSULTANTS LLC, RDC CONSULTING INC.,
3 DARREN CLEVELAND, GREGOIRE GASPARINI, CARDSERVICE INTERNATIONAL
4 INC., SCOTT FRASER, FREE-CD SOFTWARE.COM INC., PAGEWISE.COM INC.,
5 TRAVELFLEAMARKET.COM INC., and DOES 1 through 100, inclusive, and alleges as
6 follows:

7
8 **I. SUMMARY OF THE COMPLAINT**

9 1. Plaintiff DANIEL L. BALSAM (“BALSAM”) brings this action against Defendants for
10 sending and advertising in twenty one (21) unlawful Unsolicited Commercial Email (“UCE” or
11 “spam”) messages to BALSAM between September 20, 2005 and December 26, 2005, inclusive.

12 2. The headers of the spams contain or are accompanied by numerous elements of falsified,
13 misrepresented, or forged header information, in violation of Cal. Bus. & Prof. Code § 17529.5.
14 The spams also contain various types of deceptive information prohibited by Cal. Civ. Code
15 § 1750 *et seq.* (the Consumers Legal Remedies Act).

16 3. This Court should award statutory damages of \$1,000 per spam, as provided by Cal. Bus.
17 & Prof. Code § 17529.5(b)(1)(B)(ii), and not consider any reduction, because Defendants failed
18 to implement reasonably effective systems designed to prevent the sending of unlawful spam in
19 violation of the statute. BALSAM is informed and believes and thereon alleges that Defendants’
20 actions were knowing, willful, and blatant, and *not* “clerical” mistakes.

21 4. This Court should grant injunctive relief to prohibit Defendants from engaging in
22 deceptive marketing practices, as authorized by Civ. Code § 1780(a)(2), because no Defendant
23
24

1 has identified all consumers similarly situated to BALSAM and notified them that they would no
2 longer be engaging in deceptive marketing practices.

3 5. Additionally, by advertising in unlawful spam sent to BALSAM, Defendant
4 Travelfleamarket.com Inc. is in violation of a stipulated judgment/injunction.

5
6 **II. PARTIES**

7 **A. Plaintiff Daniel L. Balsam**

8 6. BALSAM is now, and at all times relevant herein has been, an individual residing in the
9 State of California, in the City and County of San Francisco.

10 7. BALSAM is a consumer because BALSAM seeks and acquires, by purchase or lease,
11 goods and services for personal, family, or household purposes.

12 8. BALSAM owns and at all relevant times herein owned a computer with an Internet
13 connection. BALSAM ordinarily uses this computer to access his email accounts. This
14 computer is located in the State of California, in the City and County of San Francisco.

15 BALSAM received all of the spams over his Internet Service Provider's and email service
16 provider's equipment, located in the State of California, in the City and County of San Francisco.
17 Regardless of the location(s) from which the commercial emails were sent, a substantial portion
18 of each advertising transaction – the *receipt* of the emails – occurred in San Francisco County.

19 **B. "IRL Defendants" (Startup Consultants LLC, RDC Consulting Inc., Darren Cleveland,
and Gregoire Gasparini)**

20 9. BALSAM is informed and believes and thereon alleges that Defendant STARTUP
21 CONSULTANTS LLC is now, and was at all times relevant herein, a limited liability company
22 duly organized and recognized under the laws of the State of Florida with a principal place of
23 business in Delray Beach, Florida.

1 10. BALSAM is informed and believes and thereon alleges that Defendant RDC
2 CONSULTING INC. does business as *DigitalDiets.com* and is now, and was at all times relevant
3 herein, a corporation duly organized and recognized under the laws of the State of Florida with a
4 principal place of business in Delray Beach, Florida.

5 11. BALSAM is informed and believes and thereon alleges that Defendant DARREN
6 CLEVELAND is now, and was at all times relevant herein, an individual and the principal
7 officer of both STARTUP CONSULTANTS LLC and RDC CONSULTING INC.

8 12. BALSAM is informed and believes and thereon alleges that Defendant GREGOIRE
9 GASPARINI was at all times relevant herein an individual and an officer of STARTUP
10 CONSULTANTS LLC.

11 13. BALSAM is informed and believes and thereon alleges that Defendants STARTUP
12 CONSULTANTS LLC, RDC CONSULTING INC., DARREN CLEVELAND, and GREGOIRE
13 GASPARINI have done business as *TheAdDoctors.com* and under the unregistered fictitious
14 business name of “IRL Technet.” BALSAM conducted a search on the Florida Department of
15 State’s website *www.sunbiz.org* for “IRL Technet Ltd.” as any kind of company, trademark, or
16 fictitious business name, and found no listings. BALSAM also conducted a 50-state search on
17 *KnowX.com* for “IRL Technet” and found no listings. BALSAM is informed and believes and
18 thereon alleges that there is no such entity “IRL Technet Ltd.” in Florida or any other state.

19 14. BALSAM is informed and believes and thereon alleges that there exists, and at all times
20 since incorporation of the entities has existed, a unity of interest and ownership between
21 STARTUP CONSULTANTS LLC, RDC CONSULTING INC., DARREN CLEVELAND, and
22 GREGOIRE GASPARINI (hereinafter referred to collectively as “IRL” or “IRL Defendants”)
23 such that any separateness between them has ceased to exist. BALSAM is informed and believes
24

1 and thereon alleges that IRL Defendants caused assets to be transferred to other entities without
2 adequate consideration in order to evade payment of lawful obligations, and each of the IRL
3 Defendants has completely controlled, dominated, managed and operated each of the other IRL
4 Defendants since incorporation. BALSAM is informed and believes and thereon alleges that
5 IRL Defendants are, and at all times mentioned were, mere shells, instrumentalities and conduits
6 through which other Defendants carried on activities in the corporate name exactly as they would
7 have in their own name. BALSAM is informed and believes and thereon alleges that IRL
8 Defendants exercised and exercises such complete control and dominance of such activities that
9 any individuality or separateness of IRL Defendants does not, and at all relevant times did not,
10 exist. BALSAM is informed and believes and thereon alleges that adherence to the fiction of the
11 separate existence of each of the IRL Defendants as an entity distinct from any other IRL
12 Defendant would permit an abuse of the corporate privilege, with the intention of preventing
13 BALSAM from obtaining monetary relief from IRL Defendants pursuant to the liquidated
14 damages specified by statute.

15 15. BALSAM is informed and believes and thereon alleges that IRL took significant steps to
16 hide its true identity, by: 1) Deceptively citing a P.O. Box address in Lantana, Florida in the
17 bodies of the spams that does not identify IRL and that was registered to Defendant GREGOIRE
18 GASPARINI personally, and 2) Deceptively registering domain names it used to send spam to
19 an address in Lake Worth, Florida that is really an Irish pub, unrelated to IRL.

20 16. BALSAM was only able to identify IRL with the assistance of some of IRL's advertisers.
21 Three such advertisers – Experian Inc., VistaPrint Inc., and BGE Ltd. dba *CollectiblesToday.com*
22 – each *independently* identified IRL as the actual sender of the spams. Attachment A shows true
23
24

1 and correct copies of emails from Experian Inc., VistaPrint Inc., and BGE Ltd. dba
2 CollectiblesToday.com to BALSAM identifying IRL as the sender.

3 **C. Other Defendants**

4 17. BALSAM is informed and believes and thereon alleges that Defendant CARDSERVICE
5 INTERNATIONAL INC. (“CARDSERVICE”) does business as *CardService.com* and is now,
6 and was at all times relevant herein, a corporation duly organized and recognized under the laws
7 of the State of California with a principal place of business in Simi Valley, California.

8 18. BALSAM is informed and believes and thereon alleges that Defendant SCOTT FRASER
9 INTERNATIONAL INC. (“FRASER”) does business as *NaturalContrarian.com* and is now,
10 and was at all times relevant herein, an individual with a primary place of business in Del Mar,
11 California.

12 19. BALSAM is informed and believes and thereon alleges that Defendant FREE-CD
13 SOFTWARE.COM INC. (“FREE-CD”) does business as *FCDsoft.com* and is now, and was at
14 all times relevant herein, a corporation duly organized and recognized under the laws of the State
15 of Arizona with a principal place of business in Flagstaff, Arizona.

16 20. BALSAM is informed and believes and thereon alleges that Defendant
17 PAGEWISE.COM INC. (“PAGEWISE”) does business as *SantaMail.org* and is now, and was at
18 all times relevant herein, a corporation duly organized and recognized under the laws of the State
19 of Delaware with a principal place of business in Round Rock, Texas.

20 21. BALSAM is informed and believes and thereon alleges that Defendant
21 TRAVELFLEAMARKET.COM INC. (“TRAVELFLEAMARKET”) does business as
22 *TravelFleaMarket.com* and is now, and was at all times relevant herein, a corporation duly
23 organized and recognized under the laws of the State of New York with a principal place of
24 business in Oceanside, New York.

1 **III. TWENTY ONE UNLAWFUL SPAMS**

2 22. From September through December 2005, Defendants advertised in and sent twenty one
3 (21) Unsolicited Commercial Email advertisements (“UCEs” or “spams”) to BALSAM.

4 “Commercial e-mail advertisement” means any electronic mail message initiated
5 for the purpose of advertising or promoting the lease, sale, rental, gift offer, or
6 other disposition of any property, goods, services, or extension of credit.

6 Cal. Bus. & Prof. Code § 17529.1(c). IRL sent these spams on behalf of 14 different advertisers.

7 23. True and correct copies of six sample spams are included in Attachment B, redacted only
8 to remove BALSAM’s email address(es) and uniquely identifying information.

9 24. For all spams described below:

- 10 • BALSAM is informed and believes and thereon alleges that although the sending
11 domain names were registered to “IRL Technet Ltd.” at 621 Lake Avenue, Suite 43,
12 Lake Worth, Florida 33460 (the “Lake Worth Address”) – true and correct copies of
13 three domain registrations are shown in Attachment C – none of the IRL Defendants
14 have any business connection to that address. BALSAM sent a certified return-
15 receipt letter to “IRL Technet Ltd. Legal Department” at the Lake Worth Address,
16 which was returned to BALSAM by the U.S. Postal Service undeliverable as
17 addressed. Attachment D shows a true and correct copy of the returned letter that
18 BALSAM sent to the Lake Worth Address. Someone wrote on the envelope “no
19 suites at this bar / no legal dept.” BALSAM subsequently learned that the Lake
20 Worth Address is really “Brogues on the Avenue,” an Irish pub. Attachment E shows
21 a true and correct copy of a page from the website *www.PalmBeachPost.com* naming
22 Brogues on the Avenue and providing the address of 621 Lake Avenue, Lake Worth,
23 FL 33460.

- BALSAM is informed and believes and thereon alleges that although the spams claim that the sender's physical mailing address is P.O. Box 3692, Lantana, Florida 33465-3692 (the "Lantana P.O. Box Address"), the certified return-receipt letter that BALSAM sent to that address was returned to BALSAM by the U.S. Postal Service as unclaimed. Attachment F is a true and correct copy of the returned letter that BALSAM sent to the Lantana P.O. Box Address. According to the U.S. Post Office in Lantana, Florida, P.O. Box 3692 was registered to Defendant GREGOIRE GASPARINI. Attachment G shows a true and correct copy of the U.S. Postmaster's response to BALSAM's inquiry as to the ownership of the Lantana P.O. Box.

A. Spam Advertising Defendant Cardservice International Inc. (1)

25. Defendants IRL and CARDSERVICE advertised in a spam that IRL sent to BALSAM on November 22, 2005. The Sender Name was "employment@csicareersite.com." IRL sent the spam from the domain name and mailserver *unitedwesterns.com*, which is registered to the false Lake Worth address. The body of the spam provided only FCDS's physical address, but no address for IRL.

B. Spam Advertising Defendant Scott Fraser (1)

26. Defendants IRL and FRASER advertised in a spam that IRL sent to BALSAM on December 19, 2005, which promoted Tornado Gold, a penny stock. The Sender Name was "The Natural Contrarian" and the subject line read "TOGI- Your triple profit leverage to Surging Gold prices." IRL sent the spam from the domain name and mailserver *mastermchnics.com*, which is registered to the false Lake Worth address. The body of the spam provided the Lantana P.O. Box Address.

1 **C. Spam Advertising Defendant Free-CD Software.com Inc. (2)**

2 27. Defendants IRL and FREE-CD advertised in a spam that IRL sent to BALSAM on
3 December 5, 2005. The Sender Name was “Classic games for kids.” IRL sent the spam from
4 the domain name *kickitnows.com* and mailserver *univstycrdt.com*, which are registered to the
5 false Lake Worth address. The body of the spam provided only FCDS’s physical address, but no
6 address for IRL.

7 28. Defendants IRL and FREE-CD advertised in a spam that IRL sent to BALSAM on
8 December 5, 2005. The Sender Name was “Classic games for kids.” IRL sent the spam from
9 the domain name *opriondst.com* and mailserver *samplegoodsfirst.com*, which are registered to
10 the false Lake Worth address. The body of the spam provided only FCDS’s physical address,
11 but no address for IRL.

12 **D. Spam Advertising Defendant Pagewise.com Inc. (3)**

13 29. Defendants IRL and PAGEWISE advertised in a spam that IRL sent to BALSAM on
14 November 30, 2005. The Sender Name was “Santa And friends.” IRL sent the spam from the
15 domain name *opriondst.com* and mailserver *samplegoodsfirst.com*, which are registered to the
16 false Lake Worth address. The body of the spam provided the Lantana P.O. Box Address.

17 30. Defendants IRL and PAGEWISE advertised in a spam that IRL sent to BALSAM on
18 December 2, 2005. The Sender Name was “Santa And friends.” IRL sent the spam from the
19 domain name and mailserver *queenlnd.com*, which is registered to the false Lake Worth address.
20 The body of the spam provided the Lantana P.O. Box Address.

21 31. Defendants IRL and PAGEWISE advertised in a spam that IRL sent to BALSAM on
22 December 5, 2005. The Sender Name was “Santa And friends.” IRL sent the spam from the
23 domain name and mailserver *trustinusandwin.com*, which is registered to the false Lake Worth
24 address. The body of the spam provided the Lantana P.O. Box Address.

1 **E. Spam Advertising Defendant RDC Consulting Inc. (1)**

2 32. In this spam, Defendant IRL also owns the destination website. IRL sent a spam to
3 BALSAM on December 26, 2005, which advertised the website *DigitalDiets.com*. The Sender
4 Name was “DigitalDiet.” A Whois query on the domain name *DigitalDiets.com* identifies
5 Defendant RDC CONSULTING INC. as the registrant. IRL sent the spam from the domain
6 name and mailserver *leskites.com*, which is registered to the false Lake Worth address. The body
7 of the spam provided the Lantana P.O. Box Address.

8 **F. Spam Advertising Defendant TravelFleaMarket.com Inc. (4)**

9 33. Defendants IRL and TRAVELFLEAMARKET advertised in a spam that IRL sent to
10 BALSAM on September 20, 2005. The Sender Name was “Travel Flea Market.” IRL sent the
11 spam from the domain name and mailserver *mostbyfast.com*, which is registered to the false Lake
12 Worth address. The body of the spam provided the Lantana P.O. Box Address.

13 34. Defendants IRL and TRAVELFLEAMARKET advertised in a spam that IRL sent to
14 BALSAM on October 13, 2005. The Sender Name was “Travel Flea Market.” IRL sent the
15 spam from the domain name *nowstimeto.com* and mailserver *univstycrdt.com*, which are
16 registered to the false Lake Worth address. The body of the spam provided the Lantana P.O.
17 Box Address.

18 35. Defendants IRL and TRAVELFLEAMARKET advertised in a spam that IRL sent to
19 BALSAM on October 14, 2005. The Sender Name was “Travel Flea Market.” IRL sent the
20 spam from the domain name and mailserver *joytowardswrd.com*, which is registered to the false
21 Lake Worth address. The body of the spam provided the Lantana P.O. Box Address.

22 36. Defendants IRL and TRAVELFLEAMARKET advertised in a spam that IRL sent to
23 BALSAM on November 17, 2005. The Sender Name was “Travel w/The Flea.” IRL sent the
24 spam from the domain name *keepitcleans.com* and mailserver *quietaskept.com*, which are

1 registered to the false Lake Worth address. The body of the spam provided the Lantana P.O.
2 Box Address.

3 **G. Spam Advertising Other Advertisers**

4 **1. Boca Java Corp. dba BocaJava.com (1)**

5 37. Defendant IRL advertised in a spam that IRL sent to BALSAM on November 25, 2005,
6 which advertised Boca Java Corp. dba *BocaJava.com*. The Sender Name was “BocaJava.”
7 IRL sent the spam from the domain name *opriondst.com* and mailserver *samplegoodsfirst.com*,
8 which are registered to the false Lake Worth address. The body of the spam provided the
9 Lantana P.O. Box Address.

10 **2. BGE Ltd. dba CollectiblesToday.com (2)**

11 38. Defendant IRL advertised in a spam that IRL sent to BALSAM on December 16, 2005,
12 which advertised BGE Ltd. dba *CollectiblesToday.com*. The Sender Name was
13 “CollectablesToday” [sic]. IRL sent the spam from the domain name *kickitnows.com* and
14 mailserver *univstycrdt.com*, which are registered to the false Lake Worth address. The body of
15 the spam provided the Lantana P.O. Box Address.

16 39. Defendant IRL advertised in a spam that IRL sent to BALSAM on December 19, 2005,
17 which advertised BGE Ltd. dba *CollectiblesToday.com*. The Sender Name was
18 “CollectiblesToday.” IRL sent the spam from the domain name *nowstimeto.com* and mailserver
19 *univstycrdt.com*, which are registered to the false Lake Worth address. The body of the spam
20 provided the Lantana P.O. Box Address.

21 **3. Communicate.com Inc. dba Perfume.com (1)**

22 40. Defendant IRL advertised in a spam that IRL sent to BALSAM on November 27, 2005,
23 which advertised Communicate.com Inc. dba *Perfume.com*. The Sender Name was
24 “Perfume.com.” IRL sent the spam from the domain name and mailserver *unitedwesterns.com*,

1 which is registered to the false Lake Worth address. The body of the spam provided the Lantana
2 P.O. Box Address.

3 **4. Experian Inc. dba TheRewardsDepot.com (1)**

4 41. Defendant IRL advertised in a spam that IRL sent to BALSAM on December 1, 2005,
5 which advertised Experian Inc. dba *TheRewardsDepot.com*. The Sender Name was “Incentive
6 Program.” IRL sent the spam from the domain name *keepitcleans.com* and mailserver
7 *mastermchnics.com*, which are registered to the false Lake Worth address. The body of the spam
8 provided only Experian Inc.’s physical address, but no address for IRL.

9 **5. Lake Group Media Inc. (1)**

10 42. Defendant IRL advertised in a spam that IRL sent to BALSAM on December 9, 2005,
11 which advertised Lake Group Media Inc. and promoted Callisto Pharmaceuticals, a penny stock.
12 The Sender Name was “FinancialNewsJournal” and the subject line read “Callisto Forms New
13 Intellectual Property Unit.” IRL sent the spam from the domain name and mailserver
14 *kickitnows.com*, which is registered to the false Lake Worth address. The body of the spam
15 provided the Lantana P.O. Box Address.

16 **6. PersonalizationMall.com Inc. (1)**

17 43. Defendant IRL advertised in a spam that IRL sent to BALSAM on November 27, 2005,
18 which advertised PersonalizationMall.com Inc. dba *PersonalizationMall.com*. The Sender Name
19 was “X-mas Early.” IRL sent the spam from the domain name *unitedwesterns.com* and
20 mailserver *mastermchnics.com*, which are registered to the false Lake Worth address. The body
21 of the spam provided the Lantana P.O. Box Address.

22 **7. Ronco Inc. (1)**

23 44. Defendant IRL advertised in a spam that IRL sent to BALSAM on December 17, 2005,
24 which advertised Ronco Inc. dba *Ronco.com*. The Sender Name was “ron Popeil @ Ronco.”

1 IRL sent the spam from the domain name and mailserver *joytowardswr.com*, which is
2 registered to the false Lake Worth address. The body of the spam provided the Lantana P.O.
3 Box Address.

4 **8. VistaPrint.com Inc. (I)**

5 45. Defendant IRL advertised in a spam that IRL sent to BALSAM on December 5, 2005,
6 which advertised VistaPrint.com Inc. dba *VistaPrint.com*. The Sender Name was “SO Direct.”
7 IRL sent the spam from the domain name *nowstimeto.com* and mailserver *univstycrdit.com*,
8 which are registered to the false Lake Worth address. The body of the spam provided the
9 Lantana P.O. Box Address.

10
11 **III. SPECIFIC ALLEGATIONS**

12 **A. BALSAM’s Email Usage**

13 46. BALSAM’s email addresses at which BALSAM received the spams at issue in this
14 action are “California email addresses.”

15 “California e-mail address” means 1) An e-mail address furnished by an
16 electronic mail service provider that sends bills for furnishing and maintaining
17 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.

18 Cal. Bus. & Prof. Code § 17529.1(b). All three conditions apply: The email addresses at which
19 BALSAM received the commercial email is furnished by Yahoo! Inc. and Yahoo! Inc. sends
20 bills for furnishing and maintaining those e-email addresses to a mailing address in California;
21 BALSAM ordinarily accesses those email addresses from a computer located in California; and
22 BALSAM is a resident of California.

1 47. BALSAM's email addresses play no part in determining whether or not Defendants
2 included falsified, misrepresentative, forged, or otherwise deceptive information in the email
3 headers or bodies.

4 48. BALSAM's email addresses are confidential for numerous reasons, including, but not
5 limited to, avoiding the risk of retaliation by "mail bombing" (sending massive amounts of email
6 to BALSAM's email addresses), "joe jobbing" (sending unlawful email as if it were coming
7 from BALSAM's email addresses as a means of harassment), or sharing of BALSAM's email
8 addresses with other unknown parties who might in turn send spam or mail bombs to BALSAM
9 or as if from BALSAM.

10 49. BALSAM uses filters to attempt to block spam. These filters identify spam by the
11 sender's domain name, among other criteria.

12 **B. Defendants' Computer and Email Usage**

13 50. BALSAM is informed and believes and thereon alleges that Defendants intended to
14 deceive recipients of their spam messages through the extensive use of falsified, misrepresented,
15 and/or forged information contained in or accompanying the email headers, as described herein.
16 BALSAM is informed and believes and thereon alleges that Defendants went to great lengths to
17 falsify the email headers in order to deceive recipients and spam filters, and to mask their
18 identities.

19 51. BALSAM is informed and believes and thereon alleges that for every spam he received
20 sent or caused to be sent by or advertising Defendants, thousands or even millions of other
21 California residents received the same spams.

22 52. IRL Defendants advertised in the spams because domain names registered by IRL appear
23 in the body of the spams, and the Lantana P.O. Box Address registered to Defendant
24 GREGOIRE GASPARINI appears in the body of the spams.

1 53. BALSAM is informed and believes and thereon alleges that Defendants actually profited
2 and continue to profit and were unjustly enriched by their wrongful conduct.

3 54. Punitive damages are appropriate to deter IRL Defendants' malicious, oppressive, and/or
4 fraudulent conduct, and to deter others from engaging in such conduct.

5 55. BALSAM is informed and believes and thereon alleges that Defendants will continue to
6 advertise in this wrongful and unlawful fashion unless otherwise enjoined by this Court. This
7 Court has jurisdiction to issue a permanent injunction because restraint is necessary to prevent a
8 multiplicity of judicial proceedings.

9 **C. BALSAM Never Gave IRL or Any Advertiser Direct Consent to Send Him**
10 **Commercial Email**

11 56. The *commercial email advertisements* at issue are all *unsolicited* because BALSAM did
12 not provide *direct consent* to receive advertisements from IRL or from any *advertiser*, nor did
13 BALSAM have a *preexisting or current business relationship* with IRL or any *advertiser*. Cal.
14 Bus. & Prof. Code § 17529.1(c), (o), (d), (a), (l).

15 57. BALSAM could not have given direct consent because BALSAM had never even *heard*
16 of IRL before IRL began sending spams to BALSAM.

17 **D. IRL Sends Spam as an Agent of the Other Defendants; The Other Defendants are the**
18 **Advertisers in the Spams**

19 58. BALSAM alleges that IRL engaged in fraudulent and deceptive actions by initiating (as
20 defined by Cal. Bus. & Prof. Code § 17529.1(i)) the sending of 21 unlawful spams on behalf of
21 the other Defendants and advertisers between September 20, 2005 and December 26, 2005,
22 inclusive.

23 59. Defendants in this action are *advertisers* because they are persons or entities that
24 advertise through the use of commercial e-mail advertisements. Advertisers are liable for
advertising in the spams, even if IRL actually hit the send button.

1 The true beneficiaries of spam are the advertisers who benefit from the marketing
2 derived from the advertisements.

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

7 Cal. Bus. & Prof. Code § 17529(k), (j).

8 60. BALSAM is informed and believes and thereon alleges that all Defendants and
9 advertisers caused the spams to be transmitted.

10 61. BALSAM is informed and believes and thereon alleges that no Defendant was required
11 to employ any other Defendant for the actions described in this complaint.

12 **E. Damages**

13 62. The California Legislature defined liquidated damages to be \$1,000 per spam.
14 § 17529.5(b)(1)(B)(ii). This figure is comparable with damages in other areas of consumer
15 protection law, e.g., \$500-\$1,500 statutory damages per junk fax, 47 U.S.C. § 227(b)(3).
16 BALSAM’s rightful and lawful assertion of the California Legislature’s liquidated damages
17 amount of \$1,000 per email is necessary to further the Legislature’s objective of protecting
18 California residents from unlawful spam.

19 63. BALSAM was also injured by Defendants’ violation of BALSAM’s right to *not* receive
20 deceptive advertising that violates the Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et*
21 *seq.*

22 64. BALSAM suffered damages as a result of Defendants’ wrongful conduct. BALSAM was
23 damaged by each unlawful spam when BALSAM received each unlawful spam, in the State of
24 California, in the City and County of San Francisco.

1 **F. Unlawful Content Contained In or Accompanying Email Headers**

2 65. BALSAM is informed and believes and thereon alleges that an email “header” includes
3 the sender email address and domain name (and any other information purporting to identify the
4 person initiating the message), subject line, recipient name and email address, sending Internet
5 Protocol address, and date/time stamp, as well as other routing information.

6 66. BALSAM is informed and believes and thereon alleges that Defendants’ spams include
7 multiple elements of falsified, misrepresented, and forged information contained in or
8 accompanying the email headers:

- 9 • Misleading subject lines
- 10 • Misrepresented sender names
- 11 • Multiple sending domain names
- 12 • Falsely registered sending domain names

13 67. A commercial email advertisement is unlawful if it “contains or is accompanied by
14 falsified, misrepresented, or forged header information.” Cal. Bus. & Prof. Code
15 § 17529.5(a)(2).

16 68. BALSAM is informed and believes and thereon alleges that the falsified, misrepresented,
17 and forged content in the spams at issue constitutes *material* falsity and deception, and represents
18 *willful* and *deliberate* acts, *not* mere “clerical” mistakes.

19 **1. Misleading Subject Lines**

20 69. Four of the spams at issue have subject lines that are likely to mislead a recipient, acting
21 reasonably under the circumstances, about a material fact regarding the contents or subject
22 matter of the message. Cal. Bus. & Prof. Code § 17529.5(a)(3).

23 70. IRL’s spam advertising Experian Inc. had a subject line: “Would you like \$1000 worth in
24 Gift Cards from us.” This subject line is misleading because it suggests that IRL and/or
Experian Inc. is giving away gift cards worth \$1,000, without clearly specifying in the subject

1 lines that there are conditions attached, as required by 16 C.F.R. § 251.1(c). *See also Balsam v.*
2 *DSG Direct Inc.*, No. CGC-05-441630, slip op. at 1 (Cal. Super. Ct. Cty. of San Francisco Feb.
3 27, 2008) (“The Court finds that commercial email subject lines that advertise goods/services as
4 being free without clearly disclosing in the subject lines that there are conditions attached are
5 deceptive and violate Cal. Bus. & Prof. Code § 17529.5(a)(3) and the Consumers Legal
6 Remedies Act (Civil Code § 1750 *et seq.*”). Attachment H shows a true and correct copy of the
7 slip opinion from *Balsam v. DSG Direct Inc.* BALSAM is informed and believes and thereon
8 alleges that the Florida Attorney General recently settled disputes with World Avenue USA LLC
9 and Azoogles U.S. Inc. for \$1 million each for deceptive use of the word “free” in spam
10 advertising, *McCollum v. World Avenue U.S.A. LLC*, No. L06-3-1089 (Fla. filed Aug. 23, 2007);
11 *In the Matter of Azoogles US Inc.*, No. L07-3-1044 (Fla. Nov. 7, 2007). BALSAM is
12 informed and believes and thereon alleges that Adteractive Inc., located in San Francisco,
13 recently agreed to a stipulated judgment for \$650,000 for its deceptive use of “free” in spam
14 advertising. *U.S.A. v. Adteractive Inc.*, No. CV-07-5940 SI (N.D. Cal. Nov. 27, 2007) (stipulated
15 final judgment for civil penalties and permanent injunctive relief).

16 71. IRL’s spam advertising Ronco Inc. had a subject line: “I will give you \$912.75 FREE!*
17 See inside!” Even though the subject line included an asterisk and “See inside,” the subject line
18 nevertheless states that IRL and/or Ronco Inc. would *give* the recipient \$912.75, which is not the
19 same thing as *reducing the price* of knives and accessories by \$912.75.

20 72. IRL’s spam advertising Defendant FRASER had a subject line: “TOGI- Your triple profit
21 leverage to Surging Gold prices.” This subject line is deceptive because it is confusing and does
22 not clearly state that the purpose of the spam is merely to promote the stock of Tornado Gold.
23
24

1 73. IRL’s spam advertising Lake Media Group Inc. had a subject line: “Callisto Forms New
2 Intellectual Property Unit.” This subject line is deceptive because it purports to be a statement of
3 news, when in fact the purpose of the spam is merely to promote the stock of Callisto
4 Pharmaceuticals.

5 **2. Misrepresented Sender Names**

6 74. Internet Protocol RFC 1312 requires that the Sender Name field identify the sender of the
7 email. Russell Nelson and Geoff Arnold, RFC 1312 – Message Send Protocol 2, *available at*
8 <http://www.faqs.org/rfcs/rfc1312.html>. Ten of the spams at issue, which were sent by IRL on
9 behalf of various advertisers, fail to actually identify IRL or the advertiser in the Sender Name
10 field.

11 75. “Incentive Program” does not identify Experian Inc. (or its dba *TheRewardsDepot.com*),
12 or Defendant IRL (1 spam).

13 76. “Classic games for kids” does not identify Defendant FREE-CD or Defendant IRL (2
14 spams.)

15 77. “Santa And friends” does not identify Defendant PAGEWISE or Defendant IRL (3
16 spams).

17 78. “X-mas Early” does not identify PersonalizationMall.com Inc. or Defendant IRL (1
18 spam).

19 79. “FinancialNewsJournal” does not identify Lake Media Group Inc. or Defendant IRL (1
20 spam).

21 80. “Travel w/The Flea” does not identify Defendant TRAVELFLEAMARKET or
22 Defendant IRL (1 spam).

23 81. “SO Direct” does not identify VistaPrint Inc. or Defendant IRL (1 spam).
24

1 **3. Multiple Sending Domain Names**

2 82. BALSAM is informed and believes and thereon alleges that hundreds of thousands of
3 individuals, corporations, and other organizations use Internet services and successfully pursue a
4 wide variety of business, pleasure, non-profit, and academic pursuits on a daily basis while never
5 availing themselves of a second, third, or fourth domain name, let alone the 14 domain names
6 that IRL created to send 21 spams to BALSAM: *joytowardswrd.com, keepitcleans.com,*
7 *kickitnows.com, leskites.com, mastermchnics.com, mostbyfast.com, nowstimeto.com,*
8 *opriondst.com, queenlnd.com, quietaskept.com, samplegoodsfirst.com, trustinusandwin.com,*
9 *unitedwesterns.com, univstycrdit.com.*

10 **Sending Spam from Multiple Domain Names Makes it**
11 **Harder for ISPs to Identify a Spammer and Block its Spam**

12 83. BALSAM is informed and believes and thereon alleges that if IRL sent all its spam from
13 a single domain name and represented itself as the single entity that it really is, then an Internet
14 Service Provider (“ISP”) would be more likely to identify IRL as a spammer and block all of its
15 spam before it even reached consumers’ computers. BALSAM is informed and believes and
16 thereon alleges that IRL incurred the expense and effort of purchasing and using multiple
17 domains to send its spam for the sole reason of deceptively misrepresenting the actual (single)
18 source of all its spam in order to trick the ISPs; in other words, IRL created multiple identities, as
19 represented by the multiple domain names, in order to “spread out” the total volume of spam and
20 reduce the volume sent via *each* domain name, a strategy deliberately calculated to deceive the
21 ISPs into *not* blocking its spam.

22 84. The California Legislature must have known the true importance of accurate header
23 information. With accurate header information, ISPs can quickly and easily compile a global list
24 of all spammers and summarily block their email transmissions, delivering spam-free service to

1 their business and consumer customers. But, so long as inaccurate, misleading and
2 misrepresentative headers remain, ISPs are forced to try to decipher truth from fact, fiction and
3 subterfuge at great expense.

4 85. BALSAM is informed and believes and thereon alleges that the Federal Trade
5 Commission, various courts, and Internet security experts have all found the use of multiple
6 domain names to be deceptive.

7 86. “An ISP [Internet Service Provider] may block a message because... a[] domain name is
8 associated with the sending of high volumes of spam.” FEDERAL TRADE COMMISSION,
9 EFFECTIVENESS AND ENFORCEMENT OF THE CAN-SPAM ACT: A REPORT TO CONGRESS 12 (Dec.
10 2005).

11 87. After identifying spammers’ domain names, “ISPs have responded to spam by attempting
12 to filter out the domain names that are the apparent source of the [spam].” *Verizon Online*
13 *Services Inc. v. Ralsky*, 203 F. Supp. 2d 601, 606 (E.D. Va. 2002). More specifically:

14 ISPs employ a number of tactics to block spam from reaching users. One major
15 tactic is to identify domain names or IP addresses that have sent unwanted e-mail
16 in the past and to automatically prevent the delivery of any messages coming
17 from those senders People sending spam (“spammers”), then, respond by
18 masking their true identities to evade the protective measures. They create false
19 routing information or transmission information, making messages appear as if
20 they come from hundreds or thousands of different domain names and IP
21 addresses. Thus, spammers can ensure that the ISP cannot detect and block every
22 e-mail they send and can evade detection because the thousands of messages
23 appear to come from hundreds of different sources.

24 *Jaynes v. Commonwealth of Virginia*, 48 Va. App. 673, 681-82 (2006).

88. This deceptive technique is simple, inexpensive, and – unfortunately – effective. A spam
email survives a filter so long as the filter does not recognize it as a spam. Since ISPs rely, in
part, on the sending domain name to identify spam, once the ISPs learn to identify a spamming
domain name, the ISP can block all incoming spam from that domain name. All a spammer has

1 to do to work around the filter-block is to create a new identity – i.e., a new domain name – and
2 keep sending spam.

3 Spammers chew through domain names very quickly; large spammers have
4 thousands of names registered at any given time. Spammers promote from these
5 domains until every filter knows them as a prolific spamming domain, at which
6 time spammers discard the domain and register a new one. Each DNS name costs
7 only a few dollars so registering 1,000 to 2,000 is not a big deal considering the
8 potential returns you’ll earn.

9 SPAMMER-X, INSIDE THE SPAM CARTEL 173 (Jeffrey Posluns ed., Syngress Publishing 2004).

10 89. BALSAM is informed and believes and thereon alleges that according to Barracuda
11 Networks, in 90-95% of all email in 2007 was spam, and

12 the majority of spam emails in 2007 utilized identify obfuscation techniques, in
13 which spammers send email from diverse sources throughout the Internet, thus
14 hiding their own identity . . . Further, by registering new domains . . . spammers
15 can effectively hide their identities from traditional reputation checks that profile
16 spam Web domains.

17 BARRACUDA NETWORKS, BARRACUDA NETWORKS SPAM REPORT at 4 (2007), *available at*
18 http://www.barracudanetworks.com/ns/news_and_events/index.php?nid=232.

19 90. Even *if* the domain names were properly registered, which they are *not* (discussed *infra*),
20 the use of *multiple* domain names to send spam is still a *misrepresentation* and violates
21 California law, because it indicates that there are multiple senders and it is a deceptive means of
22 evading spam filters. *See, e.g., Balsam v. DSG Direct Inc.*, No. CGC-05-441630, slip op. at 2
23 (Cal. Super. Ct. Cty. of San Francisco Feb. 27, 2008) (“The Court finds that a domain name is
24 analogous to an identity on the Internet. The Court finds that sending commercial emails from
multiple domain names, when there is no justifiable business rationale for doing so: 1) is a
deceptive means for the sender to portray itself as if it were actually multiple entities, and 2) is a
deceptive means of evading spam filters, and therefore 3) violates Cal. Bus. & Prof. Code
§ 17529.5(a)(2)”). Attachment H. *See also Balsam v. TLM Enterprises Group Inc.*, No. 1-06-

1 CV-066259 (Cal. Super. Ct. Cty. of Santa Clara Feb. 11, 2008) (“Defendant TLM Enterprises
2 Group intentionally created multiple domain names and sent unsolicited commercial emails from
3 these multiple domain names with the express intent of avoiding spam filters, many of which use
4 the sending domain name as an indicator of unsolicited commercial email . . . Defendant knew
5 sending unsolicited commercial email would result in misrepresented and misleading headers in
6 those email messages...”). Attachment I shows a true and correct copy of the stipulated
7 judgment in *Balsam v. TLM Enterprises Group Inc.* See also *U.S.A. v. Kilbride*, 507 F. Supp. 2d
8 1051, 1064, 1067 (D. Ariz. 2007) (“The email software enabled Clason frequently to change the
9 domain names from which the emails were sent. . . . The goal was to develop several hundred
10 domain names that could be rotated frequently in the sending of the pornographic emails.”)

11 91. A lawful, legitimate business should want to use a *consistent* domain name in its
12 marketing efforts for “branding” purposes and so that customers can more easily recognize the
13 sender and “whitelist” the domain name, if necessary, to ensure that emails are *not* caught by
14 spam filters and deleted. There are no *lawful* reasons why IRL would want to create *so many*
15 domain names.

16 92. However, there are *fraudulent and deceptive* reasons why IRL would use so many
17 domain names – to make it appear as though many *different* entities were sending the spam when
18 in fact IRL was sending *all* of the spam. And, of course, IRL actually registered the sending
19 domain names under false business names and addresses.

20 93. Because IRL created 14 domain names to send the spams at issue in this lawsuit, every
21 single spam sent by IRL contains misrepresented header information.

1 Sending Spam from Multiple Domain Names Makes it
2 Harder for Recipients to Identify a Spammer and Block its Spam

3 94. Similarly, if the *ISPs* did not catch and delete IRL’s spam and the spam reached the email
4 account of a recipient (like BALSAM), IRL’s use of multiple domain names also makes it more
5 difficult for *recipients* to block IRL’s spam using their own spam filters.

6 95. For example, a recipient could block spam originating from the domain name
7 *joytowardswrd.com*, but that filter would not stop spam originating from the domain name
8 *keepitcleans.com*. The recipient could block *keepitcleans.com* too, but that would not stop spam
9 originating from the domain name *kickitnows.com*... or from any of the other domain names that
10 IRL used to send spam.

11 96. BALSAM is informed and believes and thereon alleges that if IRL used a single domain
12 name, recipients could easily block *all* of IRL’s spam with only a few clicks of the mouse, which
13 is precisely what IRL was trying to avoid by using multiple domain names.

14 97. The California Legislature considered the effect of spammers’ actions as to deceiving
15 spam filters, as well as to individuals, by noting that “spam filters have not proven effective.”
16 Cal. Bus. & Prof. Code § 17529(f). Spam filters have not proven effective mainly due to
17 spammers’ deliberate attempts to evade and deceive the filters, as demonstrated here by the use
18 of multiple domain names.

19 Sending Spam from Multiple Domain Names is Analogous to a
20 Telemarketer Who Calls from Multiple Telephone Numbers

21 98. As an analogy, consider a telemarketer who calls one night during dinner from, e.g., 415-
22 563-1284. Caller ID can identify the originating telephone number. Suppose the recipient had
23 the ability to block all calls from that number, but the same telemarketer calls the next day –
24 selling the same product(s) – from 617-398-2449. The recipient could block that number too,

1 but the same telemarketer calls the next day from 312-691-2929. And then from dozens of other
2 telephone numbers.

3 99. All calls are from the same telemarketer, but the use of multiple originating numbers to
4 defeat the recipient's ability to block the telemarketer's calls is deceptive and misrepresentative
5 in that it suggests that the caller from each telephone number is a different entity... which makes
6 it harder for the consumer to block the unwanted commercial intrusions.

7 100. BALSAM is informed and believes and thereon alleges that many spammers
8 purposefully create multiple sender email address/domain names in a similar manner to evade
9 filters. A spammer can create a domain name for relatively little money (less than \$8), and
10 sometimes can even "taste" domain names (i.e., use them for an extremely short period of time)
11 for no cost at all.

12 No Systematic Matching of Domain Name to Advertiser

13 101. IRL used multiple domain names to send spam for a given advertiser. E.g., IRL sent
14 spam advertising Defendant FREE-CD from domain names *kickitnows.com* and *opriondst.com*,
15 and IRL sent spam advertising Defendant TRAVELFLEAMARKET from domain names
16 *mostbyfast.com*, *nowstimeto.com*, and *joytowardswrd.com*,

17 102. At the same time, IRL sent spam for multiple advertisers using the same domain names.
18 E.g., IRL sent spam advertising Ronco Inc. and Defendant TRAVELFLEAMARKET from
19 domain name *joytowardswrd.com*, and IRL sent spam advertising BGE Ltd. dba
20 *CollectiblesToday.com*, Defendant FREE-CD, and Lake Media Group Inc. from domain name
21 *kickitnows.com*.

22 **4. Falsely Registered Sending Domain Names**

23 103. A commercial email advertisement is unlawful if it "contains *or is accompanied by*
24 falsified, misrepresented, or forged header information." Cal. Bus. & Prof. Code § 17529.5(a)(2)

1 (emphasis added). The California Legislature must have intended “accompanied by” to mean
2 information that is *not* directly contained within the email headers. If “accompanied by” were
3 the same as “contained” then the inclusion of the “accompanied by” term would be superfluous.
4 Therefore, this Court must conclude that a spam can violate the prohibition against
5 misrepresented header information through information *not directly contained* within the
6 headers.

7 104. Email headers typically include a sending domain name, so registration information for
8 the sending domain name is information *accompanying* the email headers.

9 105. IRL registered all 14 domain names it used to send the spams in the name of a business
10 entity that does not exist, and using an address that is in fact “Brogues on the Avenue,” an Irish
11 pub. Attachments C, D, E.

12 106. *Not one* of the domain names was properly registered to the actual IRL Defendants; *every*
13 *single one* contained materially false information.

14 107. IRL’s pattern and practice of registering domain names so as to conceal its true identity
15 thus makes it difficult for the recipient of a spam to identify IRL as the actual spammer, and in
16 fact BALSAM would not have been able to identify IRL if not for the assistance of three of
17 IRL’s advertisers. The California Legislature expressly identified this sort of fake registration
18 information as materially false: “... the actual spammers can be difficult to track down due to
19 some return addresses that show up on the display as “unknown” *and many others being obvious*
20 *fakes* and they are often located offshore.” Cal. Bus. & Prof. Code § 17529(j) (emphasis added).

21 108. Although BALSAM is suing under California law, BALSAM points out sending spam
22 from two or more domain names that were registered so as to conceal the registrant’s true
23 identity is an *express* violation of the federal CAN-SPAM Act. 18 U.S.C. § 1037(a)(4), (d)(2).

1 **FIRST CAUSE OF ACTION**

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

5 109. BALSAM hereby incorporates by reference Paragraphs 1 to 108, inclusive, as if the same
6 were fully set forth herein.

7 110. The statute of limitations for a Cal. Bus. & Prof. Code cause of action is four years. Cal.
8 Bus. & Prof. Code § 17208. BALSAM brings this action within the statute of limitations.

9 111. Defendants sent or caused to be sent and advertised in unsolicited commercial emails to
10 California electronic mail addresses, including 21 to BALSAM, containing or accompanied by
11 falsified, misrepresentative, or forged header information, including:

- 12 • Misleading subject lines
- 13 • Misrepresented sender names
- 14 • Multiple sending domain names
- 15 • Falsely registered sending domain names

16 112. BALSAM is informed and believes and thereon alleges that Defendants profited from
17 their wrongful conduct.

18 113. BALSAM suffered damages as a result of Defendants' wrongful conduct. The California
19 Legislature has set liquidated damages at One Thousand Dollars (\$1,000) per email.

20 114. BALSAM seeks reimbursement of attorneys' fees and costs as authorized by statute.

21 WHEREFORE, BALSAM prays for judgment against Defendants, and each of them, as
22 hereinafter set forth.

23 //

24 //

//

1 **SECOND CAUSE OF ACTION**

2 **[Violations of Consumers Legal Remedies Act, California Civil Code § 1750 *et seq.*]**
3 **(Against STARTUP CONSULTANTS LLC, RDC CONSULTING INC., DARREN**
4 **CLEVELAND, GREGOIRE GASPARINI, FREE-CD SOFTWARE.COM INC.,**
5 **PAGEWISE.COM INC., TRAVELFLEAMARKET.COM INC., and DOES 1-20)**

6 115. BALSAM hereby incorporates by reference Paragraphs 1 to 108, inclusive, as if the same
7 were fully set forth herein.

8 116. The statute of limitations for a Consumers Legal Remedies Act (“CLRA”) cause of
9 action is three years. Cal. Civ. Code § 1783. BALSAM brings this action within the statute of
10 limitations.

11 117. The CLRA is a *general* consumer protection statute that is not specific to email. In fact,
12 the CLRA does not even mention the word “email” or “Internet.” The CAN-SPAM Act, by its
13 own plain language, does *not* preempt state laws that are *not* specific to commercial email. 15
14 U.S.C. § 7707(b)(2).

15 118. Venue is proper in San Francisco County because, regardless of the location(s) from
16 which the commercial emails were sent, a substantial portion of each advertising transaction –
17 the *receipt* of the emails – occurred in San Francisco County.

18 **A. Liberal Construction to Protect Consumers**

19 119. The California Legislature enacted the CLRA, Cal. Civ. Code § 1750 *et seq.*, in order to
20 protect consumers against unfair and deceptive business practices and to provide efficient and
21 economical procedures to secure such protection. To that end, the CLRA “shall be liberally
22 construed.” Cal. Civ. Code § 1760.
23
24

1 **B. The CLRA Applies to Transactions, Such as Spam Advertisements, Intended to Result**
2 **in a Purchase**

3 120. The CLRA applies to deceptive acts *intended* to result in the sale or lease of goods or
4 services as well as acts that actually result in the sale or lease of goods or services. Cal. Civ.
5 Code § 1770(a) (emphasis added).

6 121. Here, Defendants' wrongful conduct occurred in the context of transactions which
7 BALSAM is informed and believes and thereon alleges that Defendants intended would result in
8 the sale or lease of goods or services.

9 122. Nothing in the CLRA states that a plaintiff/consumer bringing a suit under the CLRA
10 must have purchased and be a consumer *of the items advertised via the allegedly false and*
11 *deceptive means*. Cal. Civ. Code § 1761(d) merely differentiates consumers from, for example,
12 businesses. The former can bring actions under the CLRA, the latter cannot.

13 123. A consumer who receives false and deceptive advertising is *per se* damaged, even if the
14 consumer does not make a purchase as the result of that advertising. *Kagan v. Gibraltar Savings*
15 *and Loan Assoc.*, 35 Cal. 3d 582, 593 (1984).

16 **C. Defendants Named in this Cause of Action Were Notified of Their Violations of the**
17 **CLRA; None Responded in a Timely Manner**

18 124. BALSAM sent letters by certified mail, return-receipt requested, to each Defendant (or its
19 registered agent) named in this cause of action more than 30 days prior to filing this lawsuit,
20 alleging specific violations of the CLRA, as required by Cal. Civ. Code § 1782(a).

21 125. No Defendant responded within 30 days of their receipt of notice, as required by Cal.
22 Civ. Code § 1782, and identified all consumers similarly situated as BALSAM and notified those
23 consumers that it would remedy its marketing practices, as required by Cal. Civ. Code § 1782(c).

24 126. BALSAM seeks equitable relief, pursuant to Cal. Civ. Code § 1782(a)(2), in the form of
an injunction prohibiting Defendants, either directly or through agents, servants, and employees,

1 and all persons acting under, in concert with, or for them, from sending unlawful commercial
2 email advertising.

3 **D. Specific Violations of the CLRA**

4 127. The CLRA is explicitly cumulative – each unlawful spam is a separate violation.

5 128. Defendants violated the CLRA, Civ. Code § 1770(a)(2), (a)(3), and (a)(5), by
6 misrepresenting the source of the goods and services. Specifically, Defendants represented that
7 the source of the spams was “IRL Technet Ltd.,” and that Defendants had a connection with
8 “IRL Technet Ltd.,” and that “IRL Technet Ltd” has the status of existing, when in fact no such
9 entity exists.

10 129. Defendants violated the CLRA, Civ. Code § 1770(a)(4), by making deceptive
11 representations of geographic origin in connection with goods and services. All but three of the
12 spams provide the Lantana P.O. Box Address as the source of the spams, but BALSAM’s letter
13 to the Lantana P.O. Box Address was returned unclaimed. Therefore, BALSAM is informed and
14 believes and thereon alleges that IRL does not really use the Lantana P.O. Box Address.

15 130. Defendants violated the CLRA, Civ. Code § 1770(a)(4), by making deceptive
16 representations of geographic origin in connection with goods and services. All 14 domain
17 names were registered to the false Lake Worth address, but BALSAM’s letter to the Lake Worth
18 address was returned undeliverable. BALSAM subsequently learned that 621 Lake Avenue,
19 Lake Worth, Florida is “Brogue’s on the Avenue,” an Irish pub. BALSAM is informed and
20 believes and thereon alleges that these spams did not originate from an Irish pub, and therefore
21 the domain registrations contain materially false information designed to make it difficult for a
22 recipient of IRL’s spam to identify IRL as the true source of the spams.

1 131. Defendants violated the CLRA, Civ. Code § 1770(a)(5) and (a)(9), by representing that
2 goods have a characteristic – that of being free – that is not true, and by advertising goods and
3 services within intent not to provide them for free as advertised.

4
5 WHEREFORE, BALSAM prays for judgment against Defendants STARTUP CONSULTANTS
6 LLC, RDC CONSULTING INC., DARREN CLEVELAND, GREGOIRE GASPARINI, FREE-
7 CD SOFTWARE.COM INC., PAGEWISE.COM INC., TRAVELFLEAMARKET.COM INC.,
8 and each of them, as hereinafter set forth.

9
10 **THIRD CAUSE OF ACTION**

11 **[Violations of Stipulated Judgment]**
12 **(Against Defendant TRAVELFLEAMARKET.COM INC. and DOES 10-30)**

13 132. BALSAM hereby incorporates by reference Paragraphs 1 to 108, inclusive, as if the same
14 were fully set forth herein.

15 133. BALSAM previously sued Defendant TRAVELFLEAMARKET for sending unlawful
16 UCE. *Balsam v. Ultimate Corner et al.*, No. 1-04-CV-020000 (Cal. Super. Ct. Cty. of Santa
17 Clara filed June 23, 2004).

18 134. Defendant TRAVELFLEAMARKET entered into a stipulated judgment to comply with
19 all laws and regulations pertaining to Internet advertising.

20 135. Defendant TRAVELFLEAMARKET violated the injunction four times by advertising in
21 false and deceptive spams sent by Defendant IRL.

1 WHEREFORE, BALSAM prays for judgment against Defendant TRAVELFLEAMARKET.
2 COM INC. as hereinafter set forth.

3
4 **FOURTH CAUSE OF ACTION**

5 **[Declaratory Relief]**
6 **(Against All Defendants)**

7 136. BALSAM hereby incorporates by reference Paragraphs 1 to 108, inclusive, as if the same
8 were fully set forth herein.

9 137. An actual controversy has arisen between BALSAM and Defendants as to the nature of
10 their email advertising.

11 138. BALSAM respectfully requests this Court to make a judicial declaration and
12 determination that Defendants sent and/or advertised in false and deceptive spam, in violation of
13 Cal. Bus. & Prof. Code § 17529.5 and the CLRA.

14 WHEREFORE, BALSAM prays for judgment against Defendants, and each of them, as
15 hereinafter set forth.

16
17 **PRAYER FOR RELIEF ON FIRST CAUSE OF ACTION**

18 **(Against All Defendants)**

19 A. Liquidated damages in the amount of One Thousand Dollars (\$1,000) for each of 21 spams,
20 as authorized by Cal. Bus. & Prof. Code § 17529.5(b)(1)(B)(ii), less Two Thousand Eight
21 Hundred Sixty Seven Dollars (\$2,867) credit from settlements with other involved entities,
22 for a total of Eighteen Thousand One Hundred Thirty Three Dollars (\$18,133), as follows:
23
24

- 1 • \$1,000 jointly and severally against Defendants STARTUP CONSULTANTS LLC,
2 RDC CONSULTING INC., DARREN CLEVELAND, GREGOIRE GASPARINI,
3 and CARDSERVICE (1 spam);
- 4 • \$1,000 jointly and severally against Defendants STARTUP CONSULTANTS LLC,
5 RDC CONSULTING INC., DARREN CLEVELAND, GREGOIRE GASPARINI,
6 and FRASER (1 spam);
- 7 • \$2,000 jointly and severally against Defendants STARTUP CONSULTANTS LLC,
8 RDC CONSULTING INC., DARREN CLEVELAND, GREGOIRE GASPARINI,
9 and FCDS (2 spams);
- 10 • \$3,000 jointly and severally against Defendants STARTUP CONSULTANTS LLC,
11 RDC CONSULTING INC., DARREN CLEVELAND, GREGOIRE GASPARINI,
12 and PAGEWISE (3 spams);
- 13 • \$4,000 jointly and severally against Defendants STARTUP CONSULTANTS LLC,
14 RDC CONSULTING INC., DARREN CLEVELAND, GREGOIRE GASPARINI,
15 and TRAVELFLEAMARKET (4 spams);
- 16 • \$10,000 against Defendants STARTUP CONSULTANTS LLC, RDC
17 CONSULTING INC., DARREN CLEVELAND, and GREGOIRE GASPARINI for
18 spam advertising other advertisers, less \$2,867 credits from settlements with other
19 advertisers, for a total of \$7,133.

20 B. Punitive damages as to Defendants STARTUP CONSULTANTS LLC, RDC CONSULTING
21 INC., DARREN CLEVELAND, and GREGOIRE GASPARINI in an amount determined by
22 the Court;

23 C. Attorneys' fees as allowed by law (Cal. Bus. & Prof. Code § 17529.5(b)(1)(C));
24

- 1 D. Costs of suit; and
- 2 E. Such other and further relief as the Court deems proper.

3

4 **PRAYER FOR RELIEF ON SECOND CAUSE OF ACTION**

5 **(Against STARTUP CONSULTANTS LLC, RDC CONSULTING INC., DARREN**
6 **CLEVELAND, GREGOIRE GASPARINI, FREE-CD SOFTWARE.COM INC.,**
7 **PAGEWISE.COM INC., TRAVELFLEAMARKET.COM INC., and DOES 1-20)**

- 8 A. Equitable relief in the form of an injunction prohibiting Defendants, either directly or through
9 agents, servants, and employees, and all persons acting under, in concert with, or for them,
10 from sending and advertising in unlawful commercial email advertising;
- 11 B. Punitive damages in an amount determined by the Court;
- 12 C. Attorneys' fees as allowed by law (Cal. Civ. Code § 1780(d));
- 13 D. Costs of suit; and
- 14 E. Such other and further relief as the Court deems proper.

15 **PRAYER FOR RELIEF ON THIRD CAUSE OF ACTION**

16 **(Against Defendant TRAVELFLEAMARKET.COM INC. and DOES 10-30)**

- 17 A. Statutory damages of \$10,000 as to Defendant TRAVELFLEAMARKET for four violations
18 of an injunction (\$2,500 per incident pursuant to Cal. Bus. & Prof. Code § 17500);
- 19 B. Costs of suit; and
- 20 C. Such other and further relief as the Court deems proper.

21 //

22 //

23 //

24 //

1 **PRAYER FOR RELIEF ON FOURTH CAUSE OF ACTION**

2 **(Against All Defendants)**

- 3 A. An Order from this Court that Defendants have violated Cal. Bus. & Prof. Code § 17529.5
- 4 and the Consumer Legal Remedies Act (Cal. Civ. Code § 1750 et seq.).
- 5 B. Costs of suit; and
- 6 C. Such other and further relief as the Court deems proper.

7
8
9 WALTON & ROESS LLP

10 Date: _____

10 BY: _____

11 TIMOTHY J. WALTON
11 Attorneys for DANIEL L. BALSAM

12
13 **VERIFICATION**

14 The undersigned for himself declares:

15 I am the plaintiff in the above-entitled action. I have read the forgoing Complaint and
16 know the contents thereof. With respect to the causes of action alleged by me, the same is true
17 by my own knowledge, except as to those matters which are therein stated on information and
18 belief, and, as to those matters, I believe them to be true. I declare under penalty of perjury
19 under the laws of the State of California that the forgoing is true and correct.

20
21 Date: _____

21 _____
22 DANIEL L. BALSAM

ATTACHMENT A

**Emails from Experian Inc., VistaPrint Inc., and BGE
Ltd. to Balsam Identifying IRL Defendants as the
Sender of the Emails**

Dan Balsam

From: Joseph Eustermann [Joseph.Eustermann@ExperianInteractive.com]
Sent: Friday, January 13, 2006 10:48 AM
To: Dan Balsam
Subject: FW: New Spam Report

Dan, please see below information regarding the affiliate who sent you email last month.

I hope this is of some assistance.

By the way, this individual has been blocked by Azoogole.

Joe

-----Original Message-----

From: Runa Chatterji
Sent: Friday, January 13, 2006 9:55 AM
To: Joseph Eustermann
Cc: Bill Choi
Subject: FW: New Spam Report

Hi Joe,

Listed below is the info on the Azoogole affiliate who sent email to Dan Balsam. Please let me know if you need anything else.

Thanks
Runa

From: Bill Choi
Sent: Friday, January 13, 2006 8:46 AM
To: 'Runa Chatterji'
Subject: FW: New Spam Report

Runa, here is the spam report from AzoogoleAds, thank you.

From: Paul Cook
Sent: Friday, January 13, 2006 8:21 AM
To: Bill Choi
Subject: RE: New Spam Report

He has been blocked from our network. Here are his details:

Darren Cleveland
Start Up Consultants, LLC
75 North East 6th Ave Suite 110
Delray Beach, FL 33483
dcleveland@startupconsultants.com

From: Bill Choi
Sent: Thu 1/5/2006 3:52 PM
To: Paul Cook
Subject: FW: New Spam Report

Paul,

As requested, this is the email that was sent by an Azoogole affiliate. We only have the pdf version of this.

We need to know who the affiliate is, please let us asap, thank you

Bill

--
No virus found in this incoming message.
Checked by AVG Free Edition.
Version: 7.1.362 / Virus Database: 267.13.10/189 - Release Date: 11/30/2005

--
No virus found in this outgoing message.
Checked by AVG Free Edition.
Version: 7.1.371 / Virus Database: 267.14.11/219 - Release Date: 1/2/2006

--
Internal Virus Database is out-of-date.
Checked by AVG Free Edition.
Version: 7.1.371 / Virus Database: 267.14.11/219 - Release Date: 1/2/2006

--
Internal Virus Database is out-of-date.
Checked by AVG Free Edition.
Version: 7.1.371 / Virus Database: 267.14.11/219 - Release Date: 1/2/2006

Dan Balsam

From: Timothy Walton [timothy@computerconsult.com]
Sent: Thursday, January 12, 2006 1:12 PM
To: Dan Balsam
Subject: [Fwd: VIST: IRL Technet]

----- Original Message -----

Subject: VIST: IRL Technet
Date: Thu, 12 Jan 2006 12:41:46 -0800
From: Tim Hale <thale@computerlaw.com>
To: <timothy@computerconsult.com>

Timothy,

Vistaprint has determined that the following affiliate of an affiliate sent the Dec. 5, 2005 UCE that you forwarded to us:

The affiliate who sent the December 5, 2005 e-mail is:

Darren Cleveland
Start Up Consultants
75 North East Sixth Avenue
Suite 110
Delray Beach, Florida 33483
Phone number: 561-330-2531
dcleveland@startupconsultantscom

...

Tim Hale

This e-mail is confidential and may be privileged.
It may be read and used only by the intended recipient.
If you have received it in error, please contact the sender immediately.

--
Timothy J. Walton
<http://www.timothywalton.com>

This email is intended for the named recipient(s), and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by replying to error@netatty.com. Thank you.

Dan Balsam

From: Susan Henderson [shenders@bgeltd.com]
Sent: Tuesday, February 14, 2006 3:37 PM
To: Dan Balsam
Subject: Re: ... Information

...

FYMC has advised us that the following is the firm that provided the mailing lists used for the two mailings and contracted with IRL TechNet, as a service provider to transmit the emails:

Name: Darren Cleveland
Email: drdarren@theaddoctors.com
Company: Start Up Consultants, LLC
Phone: 561.330.2531
Fax: 561.330.2533
Address: 75 NE 6th Avenue
City: Delray Beach
State: Florida
Country: USA
ZIP: 33483

Start Up Consultants was unwilling to provide any information to us about the incident or IRL Technet, except to claim that IRL is now out of business.

...

So it appears that Start Up Consultants has not been forthcoming with either us or FYMC.

ATTACHMENT B

Six Sample Spams

Dan Balsam

From: employment@csicareersite.com [noreply@unitedwesterns.com]

To: XXXX@yahoo.com

Subject: Opportunity for employment.

Categories: Spam



Hello,

You have been referred to us as someone who may be qualified for a position that we are seeking to fill. My company is CardService International. CardService International is a 17-year debt free corporation. Between CardService Internatic and our parent company, First Data Corporation, we are the largest provider of electronic payment services and produc the world. Last year, CardService International processed more than 125 million transactions and over \$12 billion dollar the United States.

Some of our accounts include AT&T, Johns Hopkins University, Le Petit Academy, Papa John's Pizza, GTE, Kentucky Chicken, Anthony Robbins, The Tiger Woods Foundation, and The Bank of New York.

We are seeking to fill a position in your area. We are offering the following:

An above average \$60,000 - \$80,000 annual income based on location and performance
Insurance Benefits
Comprehensive Training
Outstanding Advancement and Growth Potential

If you are interested in pursuing this opportunity further please fill out the online application on our site (link below) and contact you with more details.

[Click here to apply.](#)

Sincerely,
Rick Steinberg
CardService International

Click [here](#) to be removed from this list.
Send all correspondence to:
PO Box #3692 Lantana, FL 33465-3692

X-Apparently-To: XXXX@yahoo.com via 68.142.200.120; Tue, 22 Nov 2005 11:42:06 -0800

X-YahooFilteredBulk: 63.251.159.117

X-Originating-IP: [63.251.159.117]

Authentication-Results: mta228.mail.re2.yahoo.com

from=unitedwesterns.com; domainkeys=neutral (no sig)

Received: from 63.251.159.117 (HELO unitedwesterns.com) (63.251.159.117)

by mta228.mail.re2.yahoo.com with SMTP; Tue, 22 Nov 2005 11:42:06 -0800

Received: (qmail 4199 invoked by uid 0); 22 Nov 2005 19:42:53 -0000

From: "employment@csicareersite.com" <noreply@unitedwesterns.com>

Subject: Opportunity for employment.

To: XXXX@yahoo.com

MIME-Version: 1.0

Content-Type: MULTIPART/alternative; BOUNDARY="XXXX"

X-bounce-to: bounce-XXXX=yahoo.com@unitedwesterns.com

Dan Balsam

From: The Natural Contrarian [noreply@mastermchnics.com]
To: XXXX@yahoo.com
Subject: TOGI- Your triple profit leverage to Surging Gold prices.
Categories: Spam

If the images or content below are not being displayed, please visit
http://www.investorabcs.us/tnc/TOGI/2005_12_19.html

Urgent Gold Stock Report

2nd Week – December

Tornado Gold (TOGI):

?Stunning Gold-Property Victory!?

Ensures BIG PROFITS for Tornado (TOGI) Shareholders

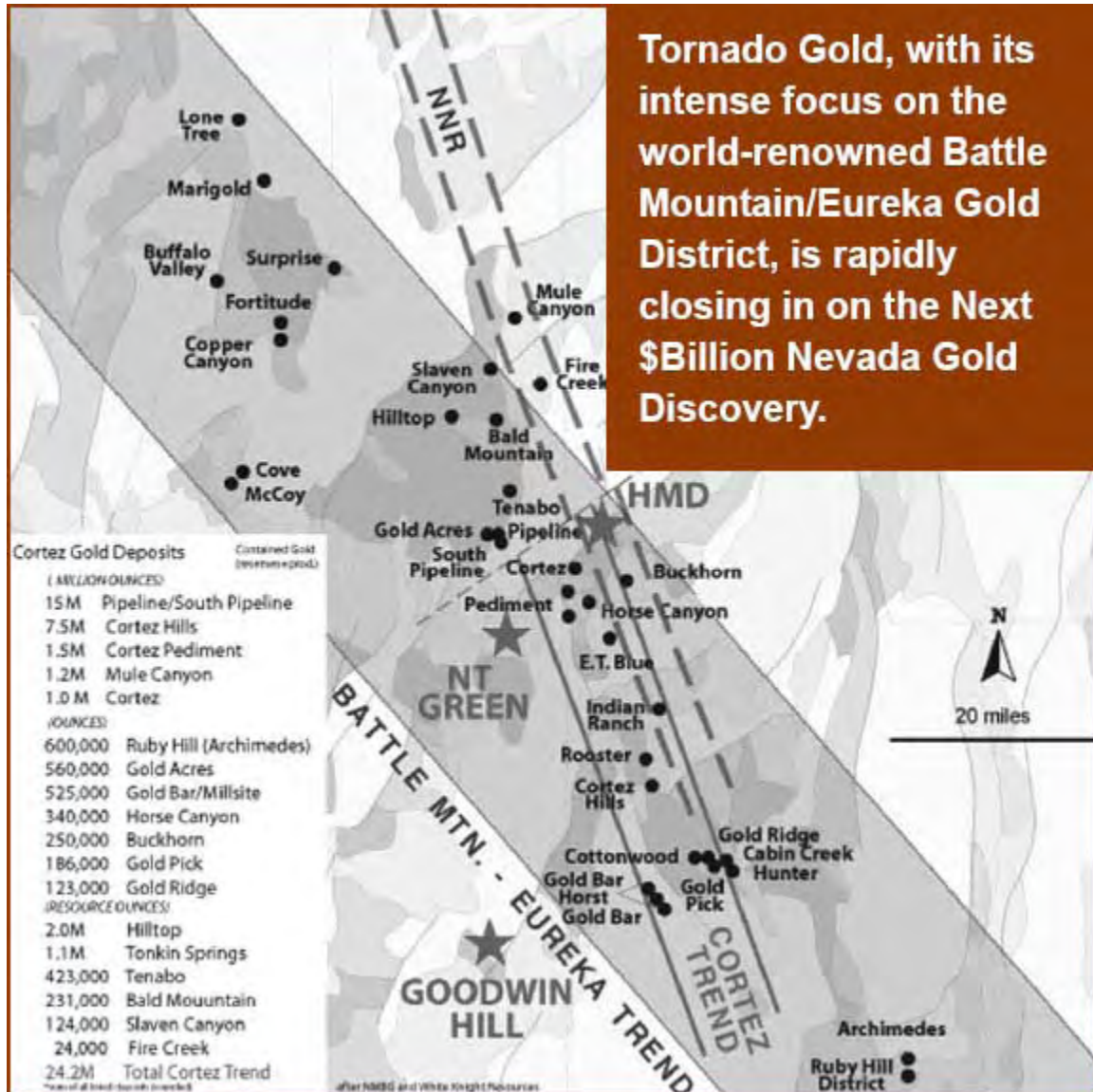
Buy TOGI immediately under \$1 per share — and expect a quick DOUBLE to TRIPLE in share value

BREAKING NEWS: My profit-proven system has determined that Tornado Gold (stock symbol TOG) set to move from under \$1 to as high as \$3 per share within three market weeks.

Tornado Gold now holds the dominant position in the **New Nevada Gold Rush** after its latest round of gold-property acquisitions – all of which are literally surrounded by BIG-MONEY gold finds including Placer Dome's (PDG: NYSE) giant Cortez Hills discovery.

- ❖ Tornado Gold now holds the prime development position in one of the hottest gold area-plays on the planet – Nevada's Battle Mountain/Eureka Gold Trend.

- ❖ TOGI's highly adept geologic team has amassed an unparalleled track record of pinpointing the locations to drill in pursuit of mammoth gold discoveries.
- ❖ I project that early TOGI shareholders will experience a longer-term gain of at least 500% within 18 months.



Tornado Gold (TOGI – OTCBB) is an IMMEDIATE BUY below \$1 with profit-protect points \$3.

TOGI Will Pay the Lion's Share of Profits in the Nevada Gold Rush

Most investors don't yet realize that a *gold region of unprecedented wealth* lies right in our own backy

The mineral rich state of Nevada ranks as the 3rd largest gold producer on the planet – trailing on countries of South Africa and Australia. In 2004, Nevada's gold production compared to its size was the greatest in the world—even greater than South Africa.

Simply stated...if you're looking for gold, there's no better place in the Western Hemisphere than Nevada *more specifically, right where Tornado Gold has secured its 5 primary prospects.*

As you know, the best place to find a large, economically recoverable gold deposit is right next door to a producing mine. It's a geologically proven fact that massive gold mines typically occur in clusters known as **gold districts** containing several — sometimes dozens — of world-class ore deposits.

Here's one point that could make you rich. Tornado Gold's savvy geologic team has focused its initial acquisition activities on the world-renowned Battle Mountain/Eureka Gold District — the site of numerous legendary gold deposits.

Everywhere you look on the map, Tornado Gold (TOGI) is surrounded by large-scale gold deposits valued in the **\$BILLIONS**.

Everything is in place for Tornado Gold to uncover the NEXT major Nevada gold deposit – and TOGI shareholders are sitting in the prime profit position.

Tornado Gold's Next Bonanza Discovery to Deliver Epic Profits to TOGI Shareholders

Tornado Gold, with its primary focus on the Battle Mountain/Eureka Gold Trend, is in hot pursuit of the **Mother Lode** of Nevada gold deposits.

If you follow the gold sector, you know that the Battle Mountain/Eureka Gold District lays host to several MAJOR gold deposits including:

Newmont's recent Phoenix discovery (+8 million ounces), Twin Creeks (+20 million ounces), Lone Tree (+10 million ounces), Cove/McCoy (+4.4 million ounces), Fortitude (+2 million ounces), Marigold (+3 million ounces), Preble (+1 million ounces), Getchell (+5 million ounces), and Pinson (+1 million ounces) — among others.

5 Year Gold (\$USD)



Gold just blasted through the \$540 an ounce barrier for the first time in nearly a quarter century.

– Now, the Sky's the Limit!

Buy Tornado Gold (TOGI) Now Below \$1

Tornado Gold: FANTASTIC 5 Gold Properties — just the start of YOUR profitable future

NT Green Property

- Battle Mountain/Eureka Gold Trend, Nevada
- Approx. 5,300 acres
- Located 4 miles southwest of Placer Dome's (NYSE) recently discovered Cortez Hills Pediment deposits (**over 10 million ounces of Gold**) and about 8 miles south of Placer Dome's operating Pipeline group of mines (**over 15 million ounces of Gold**).

At current gold prices, the combined value of these neighboring world-class gold deposits is over **\$25 BILLION!**

Tornado Gold's upcoming drilling campaign will soon reveal your path to immense shareholder riches. Begin accumulating shares of Tornado Gold (TOGI) now up to my initial buy ceiling of \$1.00 per share.

Here's the bottom line: **Tornado Gold (TOGI – OTCBB)** is going after elephant-size gold deposits – and the company's operating team has the expertise to pinpoint the very best locations to drill. You need to own this stock now – **BEFORE** the company announces the next major discovery.

And there's more. Tornado Gold's **NT Green Prospect** is situated approximately 8 miles south of Placer Dome's enormous Pipeline deposits (**+15 million ounces gold**) and about 4 miles west-southwest of the world-class deposits at Cortez Hills and Pediment that together are reported at over **10 million ounces of gold.**

This key area of intense mineralization is reported by Placer Dome (PDG: NYSE) to contain a **"gold endowment"** of at least 34 million ounces. Speculation is that the next major discovery in the region will be of monumental proportions – and it may well go to Tornado Gold (TOGI – OTCBB).

The Surging Gold Price Will Greatly Enhance Your Near-Term TOGI Profit Margin

The present bull market in gold is just getting started. And frankly, all astute investors should be purchasing the gold stock sector right now. **Keep it simple.** We're in the early stages of a major, prolonged uptrend in the price of the yellow metal.

Since posting an interim low of \$255 an ounce in April 2001, the price of gold recently hit a 24-year high above the \$540 level — a jump in value of more than 111 percent.

And that's just the very beginning of where gold is heading in the near-term.

There is considerable agreement throughout the

HMD Property

- Battle Mountain/Eureka Gold Trend, Nevada
- Approx. 640 acres
- Situated 16 miles southeast of Klondex Mine's Creek deposit (**resource of 580,000 ounces Gold**) — geologic setting is similar to Fire Creek and other known gold discoveries along Northern Nevada Rift

Goodwin Hill Property

- Battle Mountain/Eureka Gold Trend, Nevada
- Approx. 1,800 acres
- Exploration work to date indicates the possibility of a **large Carlin-type mineral system** — geologic setting is similar to that seen to the north at the well-known Cortez Hills deposits

Jack Creek Property

- Elko County, Nevada
- Approx. 5,000 acres
- Situated 3 miles to the southwest of Galena Gold's Big Springs and Dorsey Creek properties currently being explored at a **budget of \$10 million for 2005**

Wilson Peak Property

- Elko County, Nevada
- Approx. 1,200 acres
- This gold prospect is situated 10 miles north of the company's Jack Creek gold prospect. Previous exploration produced anomalous **samples up to 0.20 ounces per ton**

Tornado Gold – through incredible foresight and unmatched geologic expertise – is advantageously positioned alongside the elite, large-cap producers in this prolific gold area-play. It's truly remarkable that

world's financial elite that gold is about to scream, possibly blowing through \$700 an ounce and beyond. All of the typical catalysts – including falling crude prices and strength in the dollar – that would generally cause gold prices to fall have had no negative impact on the gold price.

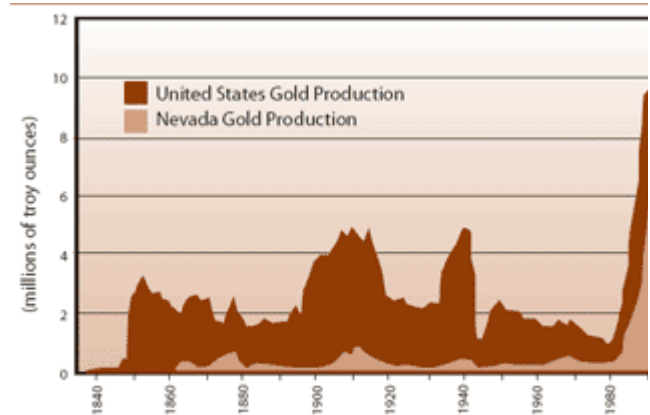
right now – YOU can buy shares of TOGI below share. Just imagine what a single “drill hit” will do to the TOGI share-price.

Tornado Gold (TOGI – OTCBB) is my #1 gold stock pick – the rest is up to you.

Translation: Gold will continue its dramatic rise – and YOU will have a lot more money as an early shareholder.

Demand for gold may so completely outstrip the world's yearly production on the supply side that many experts believe there is a growing, pent-up undersupply of gold to the tune of several thousand tons. *That is truly impressive.*

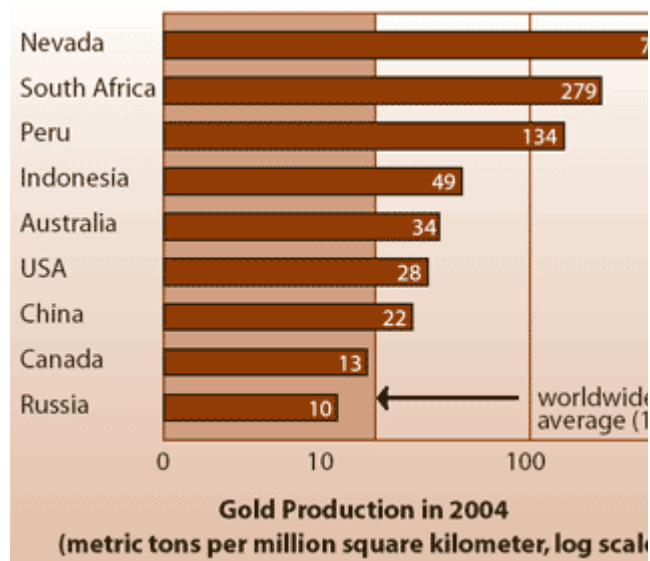
That virtually guarantees that the current gold price upswing will continue to be dramatic and explosive. Remember what happened in 1980 when gold blew through \$800 an ounce? I believe a similar scenario is about to happen again.



U.S. Nevada gold production from 1835 through 2003. Data from The U.S. Gold Industry (NBMG Special Publication 25) by J.L. Dobra and from the U.S. Geological Survey

The massive demand-supply gap in the worldwide market for gold has resulted in a “coiled spring” — waiting to expand dramatically to far higher levels. And the most exciting action will be in small-cap stocks like **Tornado Gold (TOGI – OTCBB)**.

Speculators who bet on decreasing gold prices were dead wrong and are being caught with their pants down. They are racing to cover their short positions, resulting in expansive buying. That, combined with the enormous demand-supply gap in the worldwide gold market, is about as close to a guaranteed price-escalation in gold that you will ever get.



And if you look at the chart for gold for the last 24 months, you'll see what I am talking about.

Yet, instead of putting a large chunk of cash into gold bullion, there's a far better way to play the gold-price bull market, as you will soon see. When the price of gold surges forcibly ahead, the share-prices of elite small-cap mining companies rise much faster and much farther than the gold price itself.

That is simply a fact. These companies will skyrocket as gold continues to charge higher.

Establishing an immediate strategic position in Tornado Gold (TOGI – OTCBB) is a sound strategy and the upside may be a once-in-a-life

Do you know what usually happens to gold mining shares during a gold bull market? They typically catapult 2 to 4 times gold's price rise. Better still – some of the smaller companies, like Tornado Gold, rise 5 to 10 times gold's price rise as positive exploration results are announced. **opportunity.**

Action Alert: At this very moment, gold is starting to make a historic move to the upside; buy gold stocks now if you want to profit from this unmistakable uptrend. The soaring price of gold will continue to drive gold-stock prices to new heights.

In short, I am telling you right now how to grow during the current gold price uptrend: Buy Tornado Gold (TOGI – OTCBB).

I like the small-cap exploration companies like Tornado Gold – this is a company that I project will deliver a return of well over 500% in less than 18 months.

The upside on Tornado Gold is phenomenal — Buy TOGI now under \$1 before it shoots above \$1 and keeps going.

Upward Price-Surge on TOGI is Set to Happen at A Moment

Astute investors are purchasing shares of **Tornado Gold (TOGI – OTCBB)** right now – BEFORE the company announces the next \$BILLION Nevada gold find. I am projecting a major portfolio win for those who follow my urgent buy recommendation at current price levels below \$1 per share.

Plan on protecting initial profits within weeks – then get ready for **500% returns** and HIGHER as Tornado Gold releases a steady stream of exciting phase-one exploration results from its 5 key gold prospects.

Some of you ask — “Is Tornado Gold going to double, triple...or quadruple?” Others ask if it will be a bagger. Consider this — there are **3 TRIGGERS** that will take this stock much higher:

1. Tornado Gold (TOGI) holds the prime development position in one of the hottest gold areas on the planet – Nevada's Battle Mountain/Eureka Gold Trend
2. Tornado Gold has a short-term “exploration trigger” that could immediately send its shares into orbit
3. Gold just hit a 24-year high above \$540 an ounce and is now on the fast-track to \$700.

With a current share-price below \$1, the market capitalization of Tornado Gold is less than \$25 million. Exciting exploration results will soon be released. All indicators point to Tornado Gold being a value much higher multiple in the near-term.

At that point, Tornado Gold will be climbing the ladder of gold-industry leaders, and early investors will be in the enviable position of deciding what to do with their profits.

Tornado Gold represents a viable opportunity to multiply equity value. If you want to capture the tremendous potential from current levels – **Buy Tornado Gold (TOGI – OTCBB) now!**

IMPORTANT: I insist that you take partial profits when the share price of Tornado Gold surges high and the remainder of your position ride the reactive wave of Wall Street buying.

Get YOUR Arsenal of Automatic-Profit Weapons

Following this report is an offer for you to obtain my proprietary stock-selection system – *The Arsenal of Automatic-Profit Weapons*. This system contains the exact tools I have used for over a decade to compile a list of legendary profit-stocks. Once you own this system, you'll be able to deploy it forever for your profitable reward.

Sincerely on the Contrary,



Scott S. Fraser

PS - For more information on Tornado Gold and to receive a corporate information package, dial the company's investor relations department at 866-931-1694. On the web visit www.tornadogold.com

[Click here for more information on *The Natural Contrarian*.](#)

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www.NaturalContrarian.com • E-mail: info@NaturalContrarian.com

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or Fax this form to:
1-760-454-1653

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Enclosed is my check or money order for U.S. \$99.00, payable to *The Natural Contrarian*
Charge my VISA MasterCard Amex

Name _____

Mailing Address _____

Credit Card # _____ Exp. Date _____

Credit Card Billing Address (if different from mailing address) _____

Signature _____ Phone _____

Fax _____ E-mail Address _____

Mail To: The Natural Contrarian
1155 Camino Del Mar, No. 468
Del Mar CA 92014

This stock profile should be viewed as an advertisement. In order to enhance public awareness of Tornado Gold and its securities through the distribution of this report, Mass Media Advertising provided a budget in the amount of \$105,000. The Natural Contrarian applied this budget to cover costs associated with printing and distribution of this report and will retain any excess funds as profit. The Natural Contrarian and Scott Fraser may receive additional revenue, the amount of which cannot be determined to any degree of certainty, from sales of the Arsenal of Automatic-Profit Weapons in connection with the accompanying offer. No such additional revenue, however, will be paid by Mass Media Advertising. This publication, its publisher, and its editors do not purport to provide a complete analysis of any company's financial position, do not constitute an offer to buy or sell securities, do not purport to provide personalized investment advice, and are not registered investment advisors. Any investment should be made only after consulting a professional investment advisor and only after reviewing the financial statements and pertinent corporate information about the company. Investing in securities is speculative and carries a high degree of risk. Past performance does not guarantee future results. All the information used to compile this report was obtained from sources believed to be reliable—nevertheless, the publisher cannot guarantee the accuracy or completeness of this information. The information contained herein contains forward-looking information within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, including statements regarding expected continual growth of the featured company. In accordance with the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, the featured company notes that statements contained herein that look forward in time, which are everything other than historical information, involve risks and uncertainties that may affect the company's actual results of operations. Factors that may cause actual results to differ include the size and growth of the market for the company's products and services, the company's ability to fund its operations, requirements in the near term and in the long term; pricing pressures, etc. In addition, New Millennium receives and advertises for a fee ranging from \$25,000 for the distribution of this Update. This

Click [here](#) to be removed from this list.
Send all correspondence to:
PO Box #3692 Lantana, FL 33465-3692

X-Apparently-To: XXXX@yahoo.com via 68.142.200.72; Mon, 19 Dec 2005 08:28:30 -0800

X-YahooFilteredBulk: 63.251.159.103

X-Originating-IP: [63.251.159.103]

Authentication-Results: mta134.mail.dcn.yahoo.com

from=mastermchnics.com; domainkeys=neutral (no sig)

Received: from 63.251.159.103 (HELO mastermchnics.com) (63.251.159.103)

by mta134.mail.dcn.yahoo.com with SMTP; Mon, 19 Dec 2005 08:28:30 -0800

Received: (qmail 28223 invoked by uid 0); 19 Dec 2005 16:33:29 -0000

From: The Natural Contrarian <noreply@mastermchnics.com>

Subject: TOGI- Your triple profit leverage to Surging Gold prices.

To: XXXX@yahoo.com

MIME-Version: 1.0

Content-Type: MULTIPART/alternative; BOUNDARY="XXXX"

X-bounce-to: bounce-XXXX=yahoo.com@mastermchnics.com

Dan Balsam

From: Classic games for kids [noreply@KICKITNOWS.COM]
To: XXXX@yahoo.com
Subject: Candy Land, Mr Potato Head and more for your pc.
Categories: Spam



10 CHILDREN'S GAME SOFTWARE TITLES

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CLICK HERE

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IF YOU HAVE ANY QUESTIONS OR CONCERNS, YOU MAY CONTACT US AT THE FOLLOWING ADDRESS:
FREE-CDSOFTWARE.COM INC., 207 N. PHOENIX AVE, FLAGSTAFF, AZ 86001
TO UNSUBSCRIBE FROM FUTURE MAILINGS FROM CHILDRENS GAME PACK [CLICK HERE](#).
SHOULD YOU WISH TO UNSUBSCRIBE FROM THE LIST OWNER WHO SENT YOU THIS EMAIL, PLEASE FOLLOW THE UNSUBSCRIPTION INFORMATION BELOW:

X-Apparently-To: XXXX@yahoo.com via 68.142.200.121; Mon, 05 Dec 2005 23:34:18 -0800

X-YahooFilteredBulk: 63.251.159.118

X-Originating-IP: [63.251.159.118]

Authentication-Results: mta228.mail.re2.yahoo.com

from=KICKITNOWS.COM; domainkeys=neutral (no sig)

Received: from 63.251.159.118 (HELO UNIVSTYCRDT.COM) (63.251.159.118)

by mta228.mail.re2.yahoo.com with SMTP; Mon, 05 Dec 2005 23:34:18 -0800

Received: (qmail XXXX invoked by uid 0); 6 Dec 2005 06:50:59 -0000

From: Classic games for kids <noreply@KICKITNOWS.COM>

Subject: Candy Land, Mr Potato Head and more for your pc.

To: XXXX@yahoo.com

MIME-Version: 1.0

Content-Type: MULTIPART/alternative; BOUNDARY="XXXX"

X-bounce-to: bounce-XXXX=yahoo.com@KICKITNOWS.COM

<center><table border="0" width="482" cellspacing="0" cellpadding="0">

<tr>

<td width="100%" colspan="3">

</td>

</tr>

<tr>

<td width="45">

</td>

<td width="313">Candy Land Adventure, Chutes and Ladders, Mr. Potato Head Activity Pack, Tonka Construction, Tonka Monster Truck, Tonka Raceway, Tonka Search and Rescue, Play-Doh Creations, Putt Putt Saves the Zoo</small></small></td>

<td width="124">

</td>

</tr>

</table>

</td></tr></table>

Dan Balsam

From: Santa And friends [noreply@OPRTIONDST.COM]

To: XXXX@yahoo.com

Subject: Send the kids a letter from Santa!

Categories: Spam

The ORIGINAL and still the BEST! Over 100,000 letters sent!

Get a Letter From Santa!

Written personally to your child!

Postmarked from the North Pole, Alaska!

Signed by Santa himself!

Over 100,000 letters sent!

Available in both Traditional and Christian versions!

Order Now! Just \$9.95 (Free Shipping!)

Click to Order!

THE ABOVE IS AN ADVERTISEMENT SENT BY A SANTA MAIL AFFILIATE.
 IF YOU HAVE ANY QUESTIONS OR CONCERNS, YOU MAY CONTACT US AT THE FOLLOWING ADDRESS:
 JJ KENT, 2000 S. IH 35, SUITE 011, ROUND ROCK, TX 78681
 TO UNSUBSCRIBE FROM ANY FUTURE MAILINGS FROM SANTA MAIL, [CLICK HERE](#)
 SHOULD YOU WISH TO UNSUBSCRIBE FROM THE LIST OWNER WHO SENT YOU THIS
 EMAIL, PLEASE FOLLOW THE UNSUBSCRIPTION INFORMATION BELOW:

Click [here](#) to be removed from this list.
 Send all correspondence to:
 PO Box #3692 Lantana, FL 33465-3692

X-Apparently-To: XXXX@yahoo.com via 68.142.201.243; Wed, 30 Nov 2005 21:33:22 -0800
X-YahooFilteredBulk: 63.251.159.113
X-Originating-IP: [63.251.159.113]
Authentication-Results: mta102.mail.re2.yahoo.com
from=OPRTIONDST.COM; domainkeys=neutral (no sig)
Received: from 63.251.159.113 (HELO SAMPLEGOODSFIRST.COM) (63.251.159.113)
by mta102.mail.re2.yahoo.com with SMTP; Wed, 30 Nov 2005 21:33:22 -0800
Received: (qmail 1472 invoked by uid 0); 1 Dec 2005 05:27:25 -0000
From: Santa And friends <noreply@OPRTIONDST.COM>
Subject: Send the kids a letter from Santa!
To: XXXX@yahoo.com
MIME-Version: 1.0
Content-Type: MULTIPART/alternative; BOUNDARY="XXXX"
X-bounce-to: bounce-A2B54F0BCF-XXXX@yahoo.com@OPRTIONDST.COM

```
<html><body><center>
<TABLE cellSpacing=0 cellPadding=0 align=center border=0>
  <TR>
    <TD>
      <a
href="http://OPRTIONDST.COM/track.php/A2B54F0BCF/fast/2?email=XXXX%40yahoo.com
"></a>
    </TD>
  </TABLE>
<br><br><map name="Map">
  <area shape="rect" coords="282,27,358,38"
href="http://OPRTIONDST.COM/track.php/A2B54F0BCF/fast/1?email=XXXX%40yahoo.com
">
</map>
</center><br><br><div>
<p style="margin-top: 0; margin-bottom: 0" align="center">
<font face="Verdana" size="1">
Click <a
href="http://OPRTIONDST.COM/unsub.php?email=XXXX%40yahoo.com&cid=A2B54F0BCF
">here</a> to be removed from this list.</font></p>
<p style="margin-top: 0; margin-bottom: 0" align="center">
<font face="Verdana" size="1">
Send all correspondence to:
</font>
```

</p>
<p style="margin-top: 0; margin-bottom: 0" align="center">

PO Box #3692 Lantana, FL 33465-3692

</p>
</div></body></html>

Dan Balsam

From: DigitalDiet [noreply@LESKITES.COM]
To: XXXX@yahoo.com
Subject: Increase energy while reducing appetite with this suppliment.
Categories: Spam

EPHEDRA Weightloss

Looking Trim



Clinically Shown to:

- ✓ Dramatically and safely increase fat loss
- ✓ Speed up your metabolism
- ✓ Increase your energy
- ✓ Decrease your appetite

ACT NOW

Look Great, Feel Great

ORDER NOW

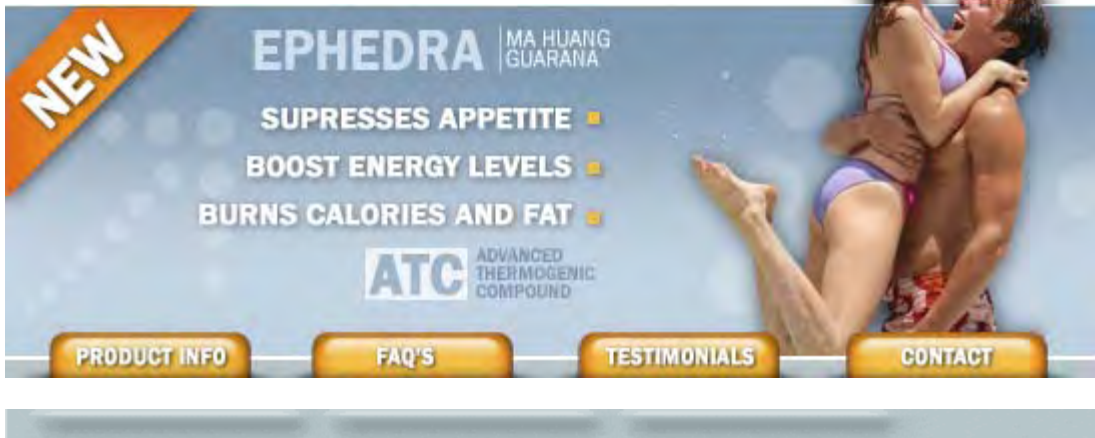
Scientificallly formulated with other all natural fat burning ingredients to increased effectiveness!

Click [here](#) to be removed from this list.
Send all correspondence to:
PO Box #3692 Lantana, FL 33465-3692

X-Apparently-To: XXXX@yahoo.com via 68.142.201.214; Mon, 26 Dec 2005 10:15:50 -0800
X-YahooFilteredBulk: 63.251.159.101
X-Originating-IP: [63.251.159.101]
Authentication-Results: mta211.mail.re2.yahoo.com
 from=LESKITES.COM; domainkeys=neutral (no sig)
Received: from 63.251.159.101 (HELO LESKITES.COM) (63.251.159.101)
 by mta211.mail.re2.yahoo.com with SMTP; Mon, 26 Dec 2005 10:15:50 -0800
Received: (qmail 20347 invoked by uid 0); 26 Dec 2005 18:19:07 -0000
From: DigitalDiet <noreply@LESKITES.COM>
Subject: Increase energy while reducing appetite with this suppliment.
To: XXXX@yahoo.com
MIME-Version: 1.0
Content-Type: MULTIPART/alternative; BOUNDARY="XXXX"
X-bounce-to: bounce-XXXX@yahoo.com@LESKITES.COM

```
<html>
<head>
<title>Digital Diets</title>
<meta http-equiv="Content-Type" content="text/html; charset=iso-8859-1">
</head>
<body bgcolor="#FFFFFF" text="#000000">
<div align="center"><a
href="http://LESKITES.COM/track.php/XXXX/fast/1?email=XXXX%40yahoo.com"></a>
</div>
<br><br><div>
<p style="margin-top: 0; margin-bottom: 0" align="center">
<font face="Verdana" size="1">
Click <a
href="http://LESKITES.COM/unsub.php?email=XXXX%40yahoo.com&cid=XXXX">here</a
> to be removed from this list.</font></p>
<p style="margin-top: 0; margin-bottom: 0" align="center">
<font face="Verdana" size="1">
Send all correspondence to:
</font>
</p>
<p style="margin-top: 0; margin-bottom: 0" align="center">
<font face="Verdana" size="1">
PO Box #3692 Lantana, FL 33465-3692
</font>
</p>
</div></body>
</html>
```

DigitalDiets.com



NEW

EPHEDRA | MA HUANG
GUARANA

- SUPPRESSES APPETITE
- BOOST ENERGY LEVELS
- BURNS CALORIES AND FAT

ATC ADVANCED THERMOGENIC COMPOUND

PRODUCT INFO FAQ'S TESTIMONIALS CONTACT



Now you can say goodbye to diets, cravings, mood swings, self doubts, and overpriced weight loss programs that don't work...

“Finally, the forbidden fat-burning herb banned for being ‘too effective’

- EPHEDRA

(Ma Huang)

— is available to the public again”

- ✓ Frees you from dieting
- ✓ Boosts energy levels
- ✓ Wakes you up feeling energized
- ✓ Suppresses your appetite, so you eat less naturally – without feeling deprived
- ✓ Gives you increased stamina, so it's easy to exercise even after a long workday
- ✓ Works equally well for men and women
- ✓ Burns calories and fat

Travel Flea Mkt - Message (HTML)



File Edit View Insert Format Tools Actions Help

Reply Reply to All Forward PDF Converter 4.1

From: Travel Flea Market [noreply@mostbyfast.com]

Sent: None

To:

Cc:

Subject: Travel Flea Mkt



FALL TRAVEL SPECIALS

Expedia	Fall Air Sale Fly Roundtrip From Only - \$83
Travelocity	Last Minute Vacations w/ Airfare Under - \$250
Expedia	Bahamas-Cruise 7 nts On Norwegian Dawn-\$499.00
Travel By Jen.com	Cancun, Air, 7 Nts Hotel, All - Inclusive - \$499
OurCruiseCo.com	Hawaii, Air, 7 Nt Hotel, & More Only - \$399
FlyCheapAbroad.com	Paris Fall Sale, Fly Roundtrip From - \$310
Cruise Value Centers	Last Minute Cruise - 7 Night Mediterranean - \$799
7BlueSeas	Cruise 4 Nt Bahamas on Majesty of the Seas - \$209
Gate 1 Travel	Italy, Two Cities w/ Airfare Only - \$599
Travelocity.ca	Los Cabos- Royal Solaris-1 week All Incl-C\$1113-
Venere.com	Low Price Hotels all over Europe from - \$65
Expedia	Orlando Hotels- Maingate- Theme Parks- From \$42
Expedia	Rent a Midsize Car From Hertz-Weekly- Only - \$179

[Click Here: To Book On Line and Save](#)

Click [here](#) to be removed from this list.
Send all correspondence to:
PO Box #3692 Lantana, FL 33465-3692

X-Apparently-To: XXXX@yahoo.com via 68.142.200.119; Tue, 20 Sep 2005 22:55:20 -0700
X-YahooFilteredBulk: 63.251.159.104
X-Originating-IP: [63.251.159.104]
Return-Path: <bounce-XXXX@mostbyfast.com>
Authentication-Results: mta301.mail.scd.yahoo.com
 from=mostbyfast.com; domainkeys=neutral (no sig)
Received: from 63.251.159.104 (HELO mostbyfast.com) (63.251.159.104)
 by mta301.mail.scd.yahoo.com with SMTP; Tue, 20 Sep 2005 22:55:20 -0700
Received: (qmail 28228 invoked by uid 0); 21 Sep 2005 05:55:26 -0000
From: Travel Flea Market <noreply@mostbyfast.com>
Subject: Travel Flea Mkt
To: XXXX@yahoo.com
MIME-Version: 1.0
Content-Type: MULTIPART/alternative; BOUNDARY="XXXX"
X-bounce-to: bounce-XXXX=yahoo.com@mostbyfast.com

ATTACHMENT C

**Three Sample Domain Registrations Naming “IRL
Technet Ltd.” as the Registrant at 621 Lake Avenue,
Suite 43, Lake Worth, Florida 33460**



WHOIS Search Results

GET A FREE DOMAIN

for the life of any annual Web Hosting Package [» LEARN MORE](#)

[Join Us in Supporting Those Affected by Hurricane Katrina](#)

WHOIS Record For

joytowardswr.com

- [Certified Offer Service](#) - Make an offer on this domain
- [Backorder](#) - Try to get this name when it becomes available
- [SSL Certificates](#) - Make this site secure
- [Site Confirm Seals](#) - Become a trusted Web Site

Moniker.Com Whois Server Version 2.1

The Data in Moniker.Com's WHOIS database is provided for information purposes only, and is designed to assist persons in obtaining information related to domain name registration records. Moniker.Com does not guarantee its accuracy. By submitting a WHOIS query, you agree that you will use this Data only for lawful purposes and that, under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail (spam); or (2) enable high volume, automated, electronic processes that apply to Moniker.Com (or its systems). Moniker.Com reserves the right to modify these terms at any time. By submitting this query, you agree to abide by this policy.

Domain Name: JOYTOWARDSWRD.COM

Registrant [51962]:
 IRL Tech irltechnet@hotmail.com
 IRL Technet, Ltd.

[View Order](#)

BUY THE AVAILABLE EXTENSIONS FOR THIS DOMAIN NA

- joytowardswr... .n
- joytowardswr... .c
- joytowardswr... .ii
- joytowardswr... .b
- joytowardswr... .t
- joytowardswr... .u
- joytowardswr... .c
- joytowardswr... .v
- joytowardswr... .b
- joytowardswr... .v
- joytowardswr... .g
- joytowardswr... .t
- joytowardswr... .n

[Continue](#)

SEARCH AGAIN

Enter a search term:

e.g. networksolutions.cc

Search by:

- [Domain Name](#)
- [NIC Handle](#)

621 Lake Avenue
Suite 43
lake worth
FLORIDA
33460
US

Administrative Contact [12317]:

Role Moniker Privacy Services support@moniker.com
Moniker Privacy Services
20 SW 27 Avenue
Suite 201
Pompano Beach
FL
33069
US
Phone: +1.9549848445

Billing Contact [12317]:

Role Moniker Privacy Services support@moniker.com
Moniker Privacy Services
20 SW 27 Avenue
Suite 201
Pompano Beach
FL
33069
US
Phone: +1.9549848445

Technical Contact [12317]:

Role Moniker Privacy Services support@moniker.com
Moniker Privacy Services
20 SW 27 Avenue
Suite 201
Pompano Beach
FL
33069
US
Phone: +1.9549848445

Domain servers in listed order:

NS3.MONIKER.COM 64.49.213.233
NS4.MONIKER.COM 64.49.213.241

Record created on: 2005-05-19 00:00:00.0
Database last updated on: 2005-05-20 12:55:44.263
Domain Expires on: 2006-05-19 16:40:12.0

IP Address





BobParsons.com
"Not so polite"
time saving tips -- that work!

Protect
your privacy
Just \$4⁹⁵/yr

Is this really GoDaddy.com?

[Verify the site for your protection!](#)

[My Account](#) [Support](#) [My Cart](#) [Check](#)

[Domains](#) [Hosting & Servers](#) [Site Builders](#) [Email](#) [SSL Certificates](#) [Business](#) [Domain Auctions](#) [Reselle](#)
[Logout](#) [My Account](#) [Company Info](#) [Why our prices are so low](#) [Our Values](#) [What's New!](#) [FAQ](#) [Our Commercials](#) [XML](#) **NEW! RS**

WHOIS Search Results for: OPRTIONDST.COM

Moniker.Com Whois Server Version 2.1

The Data in Moniker.Com's WHOIS database is provided for information purposes only, and is designed to assist persons in obtaining information related to domain name registration records. Moniker.Com does not guarantee its accuracy. By submitting a WHOIS query, you agree that you will use this Data only for lawful purposes and that, under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail (spam); or (2) enable high volume, automated, electronic processes that apply to Moniker.Com (or its systems). Moniker.Com reserves the right to modify these terms at any time. By submitting this query, you agree to abide by this policy.

Domain Name: OPRTIONDST.COM

Registrant [51962]:
IRL Tech irltechnet@hotmail.com
IRL Technet, Ltd.
621 Lake Avenue
Suite 43
lake worth
FLORIDA
33460
US

Administrative Contact [12317]:
Role Moniker Privacy Services support@moniker.com
Moniker Privacy Services
20 SW 27 Avenue
Suite 201
Pompano Beach
FL
33069
US
Phone: +1.9549848445

Billing Contact [12317]:
Role Moniker Privacy Services support@moniker.com
Moniker Privacy Services
20 SW 27 Avenue
Suite 201
Pompano Beach
FL
33069
US
Phone: +1.9549848445

Technical Contact [12317]:
Role Moniker Privacy Services support@moniker.com

► Buy these available domains:

- OPRTIONDST.US
- OPRTIONDST.BIZ
- OPRTIONDST.INFO
- OPRTIONDST.NET
- OPRTIONDST.ORG
- OPRTIONDST.WS
- OPRTIONDST.NAME
- OPRTIONDST.TV

► You might also consider:

- OPRTIONDSTONLINE.COM
- OPRTIONDSTHOME.COM
- OPRTIONDSTSITE.COM
- OPRTIONDSTWEB.COM
- OPRTIONDSTLIVE.COM
- BESTOPRTIONDST.COM
- NEWOPRTIONDST.COM
- MYOPRTIONDST.COM
- THEOPRTIONDST.COM
- OFFICIALOPRTIONDST.COM

BUY NOW!

► Search Again

Enter a domain name:

.com

[FREE Domain Extras!](#)

[Search](#)

More About Domains

- [Compare our prices](#)
- [Why our prices are so low](#)
- [Transfer your domain](#) to GoDaddy.com just \$6.95! Includes a 1-year extens

NEW! Sell your domain name. Bid on that already exists. The Domain Name Aftermarket is the Internet's new auction the HOT domains, all backed by proven GoDaddy.com systems and support. [Joi](#)



BobParsons.com
"Not so polite"
time saving tips -- that work!

Protect
your privacy
Just \$4⁹⁵/yr

Is this really GoDaddy.com?

[Verify the site for your protection!](#)

[My Account](#) [Support](#) [My Cart](#) [Check](#)

[Domains](#) [Hosting & Servers](#) [Site Builders](#) [Email](#) [SSL Certificates](#) [Business](#) [Domain Auctions](#) [Reselle](#)
[Logout](#) [My Account](#) [Company Info](#) [Why our prices are so low](#) [Our Values](#) [What's New!](#) [FAQ](#) [Our Commercials](#) [XML](#) **NEW! RS**

WHOIS Search Results for: UNITEDWESTERNS.COM

Moniker.Com Whois Server Version 2.1

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Domain Name: UNITEDWESTERNS.COM

Registrant [51962]:
IRL Tech irltechnet@hotmail.com
IRL Technet, Ltd.
621 Lake Avenue
Suite 43
lake worth
FLORIDA
33460
US

Administrative Contact [12317]:
Role Moniker Privacy Services support@moniker.com
Moniker Privacy Services
20 SW 27 Avenue
Suite 201
Pompano Beach
FL
33069
US
Phone: +1.9549848445

Billing Contact [12317]:
Role Moniker Privacy Services support@moniker.com
Moniker Privacy Services
20 SW 27 Avenue
Suite 201
Pompano Beach
FL
33069
US
Phone: +1.9549848445

Technical Contact [12317]:
Role Moniker Privacy Services support@moniker.com

Buy these available domains:

- UNITEDWESTERNS.US
- UNITEDWESTERNS.BIZ
- UNITEDWESTERNS.INFO
- UNITEDWESTERNS.NET
- UNITEDWESTERNS.ORG
- UNITEDWESTERNS.WS
- UNITEDWESTERNS.NAME
- UNITEDWESTERNS.TV

You might also consider:

- UNITEDWESTERNSONLINE.COM
- UNITEDWESTERNSHOME.COM
- UNITEDWESTERNSSITE.COM
- UNITEDWESTERNSWEB.COM
- UNITEDWESTERNSLIVE.COM
- BESTUNITEDWESTERNS.COM
- NEWUNITEDWESTERNS.COM
- MYUNITEDWESTERNS.COM
- THEUNITEDWESTERNS.COM
- OFFICIALUNITEDWESTERNS.COI

BUY NOW!

Search Again

Enter a domain name:

.com

[FREE Domain Extras!](#)

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More About Domains

- [Compare our prices](#)
- [Why our prices are so low](#)
- [Transfer your domain](#) to GoDaddy.com just \$6.95! Includes a 1-year extens

NEW! Sell your domain name. Bid on that already exists. The Domain Name Aftermarket is the Internet's new auction the HOT domains, all backed by proven GoDaddy.com systems and support. [Joi](#)

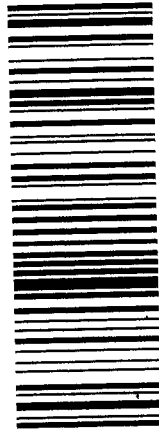
ATTACHMENT D

**Balsam's Letter to the Lake Worth Address, Returned
as Undeliverable**

DANIEL BALSAM
3145 GEARY BLVD. #225
SAN FRANCISCO, CA 94118



CERTIFIED MAIL™



7005 0390 0002 6741138250

U.S. POSTAGE
\$4.42
FCM
94118
Date of sale
11/23/05
02 1P00
02315058



Sender Attempted Not Known

ATT
unknown
no suites in
this bot.
no legal dept.


Legal Department
IRL Technet, Ltd.
621 Lake Avenue, Suite 43
Lake Worth, FL 33460



Return Receipt
Requested


ATTACHMENT E


**621 Lake Avenue, Lake Worth, Florida is “Brogues on
the Avenue,” an Irish Pub**



Enjoy many delicious entrees, salads, vegetables and other freshly-prepared foods.

Free wireless internet





PalmBeachPost.com **entertainment** Bars & Clubs

80°
Radar & Forecasts



Traffic I-95 Cams

PostPix
Post YOUR pics on PostPix!

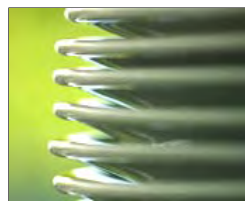
- HOME EVENTS RESTAURANTS MUSIC RECREATION GETAWAYS TGIF MOVIES BARS & CLUBS ARTS POSTPIX TV
- Palm Beach County • Treasure Coast • Broward & Dade Counties

RESTAURANTS

Search Restaurants [Advanced Search](#)



Neighborhood Bar , Live Music , Pub/Tavern

Brogues on the Avenue



621 Lake Ave
Lake Worth, FL 33460  [Map](#)
Phone: (561) 585-1885
Cuisine: Irish/English Pubs
American
Price: \$ = \$15 and less
[Email to a Friend](#)
[Print](#)

User Rating:  (5 ratings)

-  [Nearby Movies](#)
-  [Nearby Events](#)

- More Like This**
-  Reviewed
 -  Irish/English Pubs
 -  American
 -  Neighborhood Bar
 -  Live Music
 -  Pub/Tavern

Own this business?

Contact us to enhance your listing

DESCRIPTION

The quaint open patio that gives way to an appropriately green entrance doesn't do justice to this gigantic neighborhood hangout. The wooden floors and tables are nicely complemented by the textured walls and wrought-iron lighting fixtures. Even if you aren't related to one of the Irish employees, you will feel right at home with the friendly staff and regulars. Huge is the only way to describe the wrap-around bar that's prominently placed in the center of the pub. Another good-sized bar hides in the back, known as the Banshee Room, for busier nights. Brogues caters to a hardy drinking crowd,.... [Read More](#)

MORE INFORMATION

Hours
11 a.m.-2 a.m. Monday-Saturday; noon-2 a.m. Sunday

Meals Served
Lunch
Dinner
Open Sunday
Open Monday

Payment Accepted
Major Credit Cards

Dress Code
Casual


Entertainment
Indie
Local
Rock
Alternative
Various
Americana

- Amenities**
- Outdoor dining
 - Parties/private room
 - Credit cards
 - Full bar
 - Live Music

See something wrong? [Suggest a correction.](#)

CRITIC REVIEW

Spacious, clean. Authentic Irish decor; live entertainment, often imported.

Food: Potato-leek soup with homemade brown bread (\$2.50 cup, \$3.75 bowl), pureed but lively flavor; fish and chips (\$11.95) crispy batter, fries thick — not greasy; shepherd's pie (beef) deep dish (\$10.95). Daily specials. 

... [More](#)

Nicole Janok
Palm Beach Post Staff Writer
njanok@pbpost.com

Brogues



The atmosphere: The quaint open patio that gives way to an appropriately green entrance doesn't do justice to this gigantic neighborhood hangout. The wooden floors and tables are nicely complemented by the textured walls and wrought-iron lighting fixtures. Eve.... [More](#)

USER REVIEWS

Overall User Rating: 
Food/Drink: 
Ambience: 

advertisement



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▶ [Schedule A Vacation Stop](#)

[Place An Ad 24/7](#)
Build your classified ad with color photos

[Shopping](#)
Search 20,000+ local goods & services

[Advertise With Us:](#) In print and online



"Three Cups of Tea is one of the most remarkable adventure stories of our time" - Tom Brkaw
Click here to learn more about the book
www.threecupsoftea.com

advertisement

**Nothing down.
No closing costs*.**



Only available through January 31, 2008.

Distinctive floor plans.
Elegant design.
A renowned builder.

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Verolago



Sunterra



PROVENCE BAY



Morningside

CENTEX HOMES

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Value\$aver

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FLORIDA FLOORING
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FREE APPETIZER W/2 ENTREE'S
RJ GATORS
561-746-9660

<http://www.palmbeachpost.com/barsandclubs/restaurants/101161/DetailedList.jspd?activit...> 1/14/2008

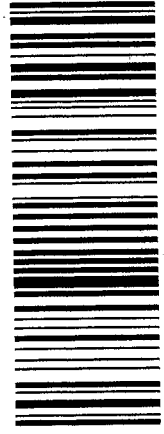
ATTACHMENT F

Balsam's Letter to Lantana, Florida Address,

Returned Unclaimed

DANIEL BALSAM
3145 GEARY BLVD. #225
SAN FRANCISCO, CA 94118

CERTIFIED MAIL™



U.S. POSTAGE
\$4.42
FCM
94118
DEC 20 2005
02313058

7005 0370 0002 6 747 754 67

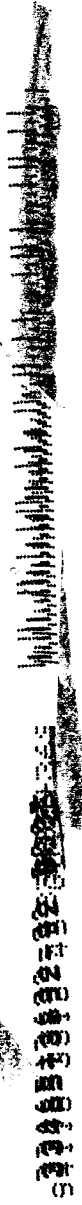
 **UNCLAIMED**

223

12-10
12-16
12-27

*Return Receipt
Requested*

Mr. Gregoire Gasparini dba
IRL Technet Ltd.
PO Box 3692
Lantana, FL 33465-3692



ATTACHMENT G

**U.S. Postmaster Shows Gregoire Gasparini as Owner
of the Lantana P.O. Box**

(LETTERHEAD OPTIONAL)

Postmaster
Lantana, FL 33465-3692
City, State, ZIP Code

Date 11/28/05

**Request for Change of Address or Boxholder
Information Needed for Service of Legal Process**

Please furnish the new address or the name and street address (if a boxholder) for the following:

Name: Boxholder is using false identity; MAY be "IRL Tech" or "IRL Technet LTD"

Address: P.O. Box 3692, Lantana, FL 33465-3692

NOTE: The name and last known address are required for change of address information. The name, if known, and post office box address are required for boxholder information.

The following information is provided in accordance with 39 CFR 265.6(d)(6)(ii). There is no fee for providing boxholder information. The fee for providing change of address information is waived in accordance with 39 CFR 265.6(d)(1) and corresponding Administrative Support Manual 352.44a.

1. Capacity of requester (e.g., process server, attorney, party representing himself): Party representing myself
2. Statute or regulation that empowers me to serve process (not required when requester is an attorney or a party acting pro se - except a corporation acting pro se must cite statute): _____
3. The names of all known parties to the litigation: Plaintiff: Daniel L. Balsam
Defendant: John Doe dba IRL Technet
4. The court in which the case has been or will be heard: _____
Superior Court of California, County of Santa Clara
5. The docket or other identifying number if one has been issued: _____
6. The capacity in which this individual is to be served (e.g. defendant or witness): Defendant

WARNING

THE SUBMISSION OF FALSE INFORMATION EITHER (1) TO OBTAIN AND USE CHANGE OF ADDRESS INFORMATION OR BOXHOLDER INFORMATION FOR ANY PURPOSE OTHER THAN THE SERVICE OF LEGAL PROCESS IN CONNECTION WITH ACTUAL OR PROSPECTIVE LITIGATION OR (2) TO AVOID PAYMENT OF THE FEE FOR CHANGE OF ADDRESS INFORMATION COULD RESULT IN CRIMINAL PENALTIES INCLUDING A FINE OF UP TO \$10,000 OR IMPRISONMENT OF NOT MORE THAN 5 YEARS, OR BOTH (TITLE 18 U.S.C. SECTION 1001).

I certify that the above information is true and that the address information is needed and will be used solely for service of legal process in connection with actual or prospective litigation.

[Signature]

Signature
Daniel L. Balsam
Printed Name

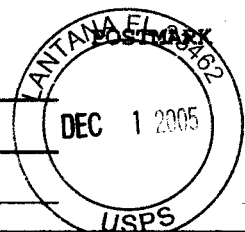
3145 Geary Blvd. #225
Address
San Francisco, CA 94118
City, State, ZIP Code

FOR POST OFFICE USE ONLY

- No change of address order on file.
- Moved, left no forwarding address.
- No such address.

NEW ADDRESS or BOXHOLDER'S
NAME and STREET ADDRESS

*No info. available for this
"false identity." Box is rented
to Gregoire Gasparini*



ATTACHMENT H

Balsam v. DSG Direct Inc. (slip opinion)

1 Timothy J. Walton (State Bar No. 184292)
2 WALTON & ROESS LLP
3 407 South California
4 Suite 8
5 Palo Alto, CA 94306

6 Phone (650) 566-8500
7 Fax: (650) 618-8687

8 Attorneys for Plaintiff
9 DANIEL L. BALSAM

FILED
San Francisco County Superior Court

FEB 28 2008

GORDON PARK-LI, Clerk

BY: [Signature]
Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)**

12 DANIEL L. BALSAM,) Case No.: 441630
13)
14 Plaintiff,) **JUDGMENT OF COURT**
15 vs.)
16 DSG DIRECT, INC., et al.,)
17)
18 Defendants.)

- 19 1. Defendants DSG DIRECT, INC., YOUR-INFO, INC. and DIABETIC PLUS, INC. were
20 each properly served with a copy of the summons and complaint.
21 2. Defendants DSG DIRECT, INC., YOUR-INFO, INC. and DIABETIC PLUS, INC., filed
22 an answer but failed to appear at trial call.
23 3. The Court considered Plaintiff's oral testimony, heard on February 25, 2008.
24 4. The Court finds that commercial email subject lines that advertise goods/services as
25 being free without clearly disclosing in the subject lines that there are conditions attached
26 are deceptive and violate Cal. Bus. & Prof. Code § 17529.5(a)(3) and the Consumers
27 Legal Remedies Act (Civil Code § 1750 *et seq.*)

1 5. The Court finds that a domain name is analogous to an identity on the Internet. The
2 Court finds that sending commercial emails from multiple domain names, when there is
3 no justifiable business rationale for doing so: 1) is a deceptive means for the sender to
4 portray itself as if it were actually multiple entities, and 2) is a deceptive means of
5 evading spam filters, and therefore 3) violates Cal. Bus. & Prof. Code § 17529.5(a)(2).
6

7 6. Judgment is entered as follows by the Court:

8 7. Judgment is for Plaintiff DANIEL L. BALSAM and against Defendants DSG DIRECT,
9 INC., YOUR-INFO, INC. and DIABETIC PLUS, INC.

10 8. Defendants DSG DIRECT, INC. and YOUR-INFO, INC. are jointly and severally liable
11 to Plaintiff on the complaint: \$169,167.00 in damages, \$26,000.00 in attorneys' fees, and
12 \$4,000.00 in costs, for a total ~~money judgment of \$200,167.00.~~
of \$199,167

13 *In addition JRG.*
14 ~~9.~~ Defendant DIABETIC PLUS, INC. is liable to Plaintiff on the complaint: \$1,000.00 in
15 *JRG.* damages, for a total money judgment of ~~\$1,000.00.~~
JRG. \$200,167.00

16 ~~10.~~ Defendants DSG DIRECT, INC., YOUR-INFO, INC. and DIABETIC PLUS, INC. and
17 each of them, are prohibited from sending unlawful commercial email advertising either
18 directly or through agents, servants, and employees. All persons acting under, in concert
19 with, or for Defendants DSG DIRECT, INC., YOUR-INFO, INC. and DIABETIC PLUS,
20 INC. are similarly prohibited from sending unlawful commercial email advertising.
21

22
23 IT IS SO ORDERED:

24 Date: *2-27-08*

William R. Gargano

Judge of the Superior Court

25 **WILLIAM R. GARGANO**
26 **Commissioner**
27

ATTACHMENT I

***Balsam v. TLM Enterprises Group Inc. (stipulated
judgment)***

1 Timothy J. Walton, Esq. (State Bar No. 184292)
WALTON & ROESS LLP
2 407 South California
Suite 8
3 Palo Alto, CA 94306
4 Phone (650) 566-8500
5 Fax: (650) 618-8687

6 Attorneys for Plaintiff
DANIEL L. BALSAM

ENDORSED Santa Clara
02/11/08 12:23pm
Kiri Torre
Chief Executive Office
By: Juditha DISCIVOL
#2008000115
TL #320.00
Case: 1-06-CV-066259

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SANTA CLARA (UNLIMITED JURISDICTION)

11 DANIEL L. BALSAM,) Case No.: 1-06-CV-066259
12)
13 Plaintiff,) **STIPULATED JUDGMENT OF COURT**
14) **NUNC PRO TUNC**
15 v.)
16 TLM ENTERPRISES GROUP, INC., *et al.*,)
Defendants.)

- 17 1. Defendant TLM ENTERPRISES GROUP, INC. was properly served with a copy of the
18 summons and complaint.
- 19 2. Defendant TLM ENTERPRISES GROUP, INC. failed to appear and defend the action
20 within the time allowed by law.
- 21 3. Judgment was entered by the Court upon plaintiff's application.
- 22 4. The parties stipulate to amend the judgment as follows:
- 23 5. Judgment is for Plaintiff DANIEL L. BALSAM and against Defendant TLM
24 ENTERPRISES GROUP, INC.
25

1 6. Defendant TLM ENTERPRISES GROUP, INC named in item 5 above may satisfy the
2 judgment by paying \$ 2,500.00 (US) before October 31, 2007, with 10% interest per
3 annum accruing from the original date of entry of judgment.

4 7. Defendant TLM ENTERPRISES GROUP, INC. sent unsolicited commercial email
5 advertising.
6

7 8. Defendant TLM ENTERPRISES GROUP, INC. intentionally created multiple domain
8 and sent unsolicited commercial emails from these multiple domain names with the
9 express intent of avoiding spam filters, many of which use the sending domain name as
10 an indicator of unsolicited commercial email. Defendant TLM ENTERPRISES GROUP,
11 INC. understood that sending unsolicited commercial email from multiple domain names
12 signals to recipients and Internet Service Providers, and their spam filters, that multiple
13 entities sent the unsolicited commercial email messages, when in fact all unsolicited
14 commercial emails were sent by the singular entity, Defendant TLM ENTERPRISES
15 GROUP, INC. Defendant knew sending unsolicited commercial email from multiple
16 domain names would result in misrepresented and misleading headers in those email
17 messages in violation of California Business & Professions Code §§ 17529 and 17529.5.
18

19 9. Defendant TLM ENTERPRISES GROUP, INC. is hereby enjoined for purposes the
20 Unfair Business Practices Act and the Unfair Advertising Practices Act and required to
21 henceforth use only a single domain name and a single Internet Protocol address when
22 sending email advertising.
23

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WALTON & ROESS LLP

Date: 1-7-08

By: Timothy Walton
Timothy Walton
Attorneys for Plaintiff DANIEL L. BALSAM

TLM ENTERPRISES GROUP, INC.

Date: 1/2/08

By: Scott Carrabis
Scott Carrabis
President

IT IS SO ORDERED, ADJUDGED AND DECREED.

Date: JAN 15 2008

JAMES C. EMERSON
Judge of the Superior Court