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7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 DANIEL L. BALSAM, an individual,)
12 Plaintiff,)
13 v.)
14 ANGELES TECHNOLOGY INC., a Nevada)
corporation;)
15 FUTURECAST MEDIA LLC, a New Mexico)
limited liability corporation;)
16 ONE WORLD MEDIA LLC, a New Mexico)
limited liability corporation;)
17 CAROLYNNE TILGA, an individual;)
GRANT SIMMONS, an individual;)
18 JOHN SOLAMITO, an individual;)
BELVEDERE ST. JAMES LTD., a Maltese)
19 corporation;)
LUCINA S.L., a Spanish business entity of)
20 unknown organization;)
JHON [sic] BROWN, an individual;)
21 ROSIE BEER, an individual;)
SAM VAN, an individual;)
22 DANIEL MARCUS, an individual;)
JASON SMITH, an individual;)
23 MARY JAMESON, an individual;)
BRIAN LONG, an individual;)
24

Case No.: C06 04114 JF
VERIFIED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF
1. VIOLATIONS OF CALIFORNIA
RESTRICTIONS ON UNSOLICITED
COMMERCIAL E-MAIL
ADVERTISERS (Cal. Bus. & Prof.
Code § 17529.5)
2. CONSUMERS LEGAL REMEDIES
ACT (Cal. Civ. Code § 1750 et seq.)
DEMAND FOR JURY TRIAL

1 ROD HEATHER, an individual;)
 ELLE JANE, an individual;)
 2 JOSE BEFF, an individual;)
 CARL SEYMORE, an individual;)
 3 ROBERT SMITH, an individual;)
 and)
 4 DOES 1-100,)
)
 5 Defendants.)

6 COMES NOW PLAINTIFF DANIEL L. BALSAM and files this Verified Complaint for causes
 7 of action against Defendants ANGELES TECHNOLOGY INC.; FUTURECAST MEDIA LLC;
 8 ONE WORLD MEDIA LLC; CAROLYNNE TILGA; GRANT SIMMONS; JOHN
 9 SOLAMITO; BELVEDERE ST. JAMES LTD.; LUCINA S.L.; JHON [sic] BROWN; ROSIE
 10 BEER; SAM VAN; DANIEL MARCUS; JASON SMITH; MARY JAMESON; BRIAN LONG;
 11 ROD HEATHER; ELLE JANE; JOSE BEFF; CARL SEYMORE; ROBERT SMITH and DOES
 12 1 through 100, inclusive, and alleges as follows:

13 **GENERAL ALLEGATIONS**

- 14 1. Plaintiff DANIEL L. BALSAM (“BALSAM”) is now, and at all times relevant herein,
 15 has been a resident of the State of California.
- 16 2. BALSAM is informed and believes and thereon alleges that at all times herein
 17 mentioned, each of the Defendants was the agent or employee of other Defendants and was at all
 18 times herein mentioned acting within the scope of said agency or employment.

19 **A. Corporate Defendants and Individual (Corporate Officer) Defendants**

- 20 3. BALSAM is informed and believes and thereon alleges that Defendant ANGELES
 21 TECHNOLOGY INC. is now, and was at all times relevant herein, a corporation duly organized
 22 and recognized under the laws of the State of Nevada with a registered agent in Las Vegas,
 23
 24

1 Nevada. BALSAM is informed and believes and thereon alleges that Defendant ANGELES
2 TECHNOLOGY goes to considerable lengths to disguise its principal place of business.

3 4. BALSAM is informed and believes and thereon alleges that Defendant FUTURECAST
4 MEDIA LLC is now, and was at all times relevant herein, a limited liability corporation duly
5 organized and recognized under the laws of the State of New Mexico with a principal place of
6 business in Santa Fe, New Mexico.

7 5. BALSAM is informed and believes and thereon alleges that Defendant ONE WORLD
8 MEDIA LLC is now, and was at all times relevant herein, a limited liability corporation duly
9 organized and recognized under the laws of the State of New Mexico with a principal place of
10 business in Santa Fe, New Mexico.

11 6. BALSAM is informed and believes and thereon alleges that Defendants CAROLYNNE
12 TILGA, GRANT SIMMONS, and JOHN SOLAMITO are the corporate officers responsible for
13 the actions of Defendants ANGELES TECHNOLOGY INC., FUTURECAST MEDIA LLC, and
14 ONE WORLD MEDIA LLC.

15 7. BALSAM is informed and believes and thereon alleges that Defendant CAROLYNNE
16 TILGA refers to herself as General Manager of Defendant FUTURECAST MEDIA LLC in her
17 own profile on the Cornell University alumni database.

18 8. BALSAM is informed and believes and thereon alleges that Defendant CAROLYNNE
19 TILGA and Defendant GRANT SIMMONS are President and Media Director, respectively, of
20 Defendant ONE WORLD MEDIA LLC. *See Adobe Case Study: DateCam.com, viewable at*
21 [http://www.adobe.com/cfusion/showcase/index.cfm?event=casestudyprint&casestudyid2879&](http://www.adobe.com/cfusion/showcase/index.cfm?event=casestudyprint&casestudyid2879&loc=en_us)
22 [loc=en_us](http://www.adobe.com/cfusion/showcase/index.cfm?event=casestudyprint&casestudyid2879&loc=en_us).

1 9. BALSAM is informed and believes and thereon alleges that Defendant CAROLYNNE
2 TILGA is President and Co-Founder of DateCam. *See* Lisa M. Bowman, *Net Matchmaking with*
3 *a Real-Time Twist*, CNET NEWS.COM, October 9, 2002,
4 http://news.com.com/Net+matchmaking+with+a+real-time+twist/2100-1023_3-961420.html.

5 10. BALSAM is informed and believes and thereon alleges that DateCam is a subsidiary of
6 Defendant ONE WORLD MEDIA LLC, and Defendant JOHN SOLAMITO is the contact name
7 for Defendant ONE WORLD MEDIA LLC. *See DateCam.com Empowers Online Dating Users*
8 *With Launch of Real-Time Video*, PR WEB, January 4, 2003, [http://www.prweb.com/releases/](http://www.prweb.com/releases/2003/1/prweb53763.htm)
9 [2003/1/prweb53763.htm](http://www.prweb.com/releases/2003/1/prweb53763.htm).

10 11. BALSAM is informed and believes and thereon alleges that Defendant GRANT
11 SIMMONS is Business Director of Defendant ONE WORLD MEDIA LLC. *See* Nell Porter
12 Brown. *The Road to Romance*, HARVARD MAGAZINE, March-April 2003, at 28F.

13 12. The websites for DateCam.com and AdultActionCam.com have the identical look and
14 feel including graphics, fonts, layout, colors, etc.

15 13. As recently as September 22, 2006, ADULTACTIONCAM webpages are live within the
16 DateCam.com website. *See* e.g., [http://www.datecam.com/index.php?-t%236Cgjbgo](http://www.datecam.com/index.php?-t%236Cgjbgo%2443nmgd)
17 [%2443nmgd](http://www.datecam.com/index.php?-t%236Cgjbgo%2443nmgd).

18 14. The AdultActionCam.com website names Defendant FUTURECAST MEDIA LLC as
19 the copyright holder, but the domain name AdultActionCam.com is registered to Defendant
20 ANGELES TECHNOLOGY INC., a Nevada Corporation.

21 15. BALSAM is informed and believes and thereon alleges that some or all of Defendants
22 ANGELES TECHNOLOGY INC., FUTURECAST MEDIA LLC, and ONE WORLD MEDIA
23 LLC are undercapitalized and therefore sues the corporate officers as individuals as well.

24

1 16. BALSAM is informed and believes and thereon alleges that there exists, and at all times
2 since incorporation of the entities has existed, a unity of interest and ownership between
3 ANGELES TECHNOLOGY INC., FUTURECAST MEDIA LLC, ONE WORLD MEDIA LLC,
4 CAROLYNNE TILGA, GRANT SIMMONS, and JOHN SOLAMITO (hereinafter referred to
5 collectively as “ADULTACTIONCAM Defendants”) such that any separateness between them
6 has ceased to exist. BALSAM is informed and believes and thereon alleges that
7 ADULTACTIONCAM Defendants caused assets to be transferred to other entities without
8 adequate consideration in order to evade payment of lawful obligations, and each of the
9 ADULTACTIONCAM Defendants has completely controlled, dominated, managed and
10 operated each of the other ADULTACTIONCAM Defendants since incorporation. BALSAM is
11 informed and believes and thereon alleges that ADULTACTIONCAM Defendants are, and at all
12 times mentioned were, mere shells, instrumentalities and conduits through which other
13 Defendants carried on activities in the corporate name exactly as they would have in their own
14 name. BALSAM is informed and believes and thereon alleges that ADULTACTIONCAM
15 Defendants exercised and exercises such complete control and dominance of such activities that
16 any individuality or separateness of ADULTACTIONCAM Defendants does not, and at all
17 relevant times did not, exist. BALSAM is informed and believes and thereon alleges that
18 adherence to the fiction of the separate existence of each of the ADULTACTIONCAM
19 Defendants as an entity distinct from any other ADULTACTIONCAM Defendant would permit
20 an abuse of the corporate privilege, with the intention of preventing BALSAM from obtaining
21 legal relief from ADULTACTIONCAM Defendants pursuant to the law.

1 17. BALSAM is informed and believes, and thereon alleges, that at times the
2 AdultActionCam.com website has identified the copyright holder and operator to be Defendant
3 LUCINA S.L.

4 18. BALSAM is informed and believes, and thereon alleges, that at times the
5 AdultActionCam.com website has identified the copyright holder and operator to be Defendant
6 BELVEDERE ST. JAMES LTD.

7 **B. California Defendants**

8 19. Some of the unsolicited commercial email at issue in this complaint ("UCE") advertising
9 ADULTACTIONCAM contained links to the website www.4-guys-n-gals.com. A consumer
10 who enters a username, password, etc. on this website is redirected to the ADULTACTIONCAM
11 website. The domain name 4-guys-n-gals.com is registered to "Jhon [sic] Brown" with a zip code
12 of 90210 (Beverly Hills, California).

13 20. Some of the ADULTACTIONCAM UCE contained links to the website
14 www.afunfakes.com. A consumer who enters a username, password, etc. on this website is
15 redirected to the ADULTACTIONCAM website. The domain name afunfakes.com is registered
16 to "rosie beer" with city/state of "la, ca."

17 21. Some of the ADULTACTIONCAM UCE contained links to the website
18 www.ballbeatings.com. A consumer who enters a username, password, etc. on this website is
19 redirected to the ADULTACTIONCAM website. The domain name ballbeatings.com is
20 registered to "sam van" with city/state of "la, ca."

21 22. Some of the ADULTACTIONCAM UCE contained links to the website
22 www.datehotgirls.net. A consumer who enters a username, password, etc. on this website is
23 redirected to the ADULTACTIONCAM website. The domain name datehotgirls.net is
24

1 registered to “Daniel Marcus” with an address of “29371 Harvey Drive, Los Angeles, CA
2 91020” and telephone number “8182413244” (the San Fernando Valley).

3 23. Some of the ADULTACTIONCAM UCE contained links to the website [www.date-hot-](http://www.date-hot-girls.net)
4 [girls.net](http://www.date-hot-girls.net). A consumer who enters a username, password, etc. on this website is redirected to the
5 ADULTACTIONCAM website. The domain name date-hot-girls.net is registered to “Jason
6 Smith” with an address of “1230 Mulholland Drive, Los Angeles, CA 91020” and telephone
7 number “8183324423” (the San Fernando Valley).

8 24. Some of the ADULTACTIONCAM UCE contained links to the website [www.find-the-](http://www.find-the-right-one.net)
9 [right-one.net](http://www.find-the-right-one.net). A consumer who enters a username, password, etc. on this website is redirected to
10 the ADULTACTIONCAM website. The domain name find-the-right-one.net is registered to
11 “Mary Jameson” with an address of “4562 Mulholland Drive, Los Angeles, CA 91111” and
12 telephone number “(818) 651-8686” (the San Fernando Valley).

13 25. Some of the ADULTACTIONCAM UCE contained links to the website
14 www.floppyfive.com. A consumer who enters a username, password, etc. on this website is
15 redirected to the ADULTACTIONCAM website. The domain name floppyfive.com is registered
16 to “rosie beer” with city/state of “la, ca.”

17 26. Some of the ADULTACTIONCAM UCE contained links to the website
18 www.gaydatecamz.com. A consumer who enters a username, password, etc. on this website is
19 redirected to the ADULTACTIONCAM website. The domain name gaydatecamz.com is
20 registered to “brian long” with city/state of “la, ca.”

21 27. Some of the ADULTACTIONCAM UCE contained links to the website
22 www.girlsonfire.net. A consumer who enters a username, password, etc. on this website is
23
24

1 redirected to the ADULTACTIONCAM website. The domain name girlsonfire.net is registered
2 to “Rod Heather” with city/state of “LA, CA.”

3 28. Some of the ADULTACTIONCAM UCE contained links to the website
4 www.inedu2nite.com. A consumer who enters a username, password, etc. on this website is
5 redirected to the ADULTACTIONCAM website. The domain name inedu2nite.com is
6 registered to “Elle jane” with city/state of “broke hills, CA.”

7 29. Some of the ADULTACTIONCAM UCE contained links to the website
8 www.jollybranchers.com. A consumer who enters a username, password, etc. on this website is
9 redirected to the ADULTACTIONCAM website. The domain name jollybranchers.com is
10 registered to “jose beff” with city/state of “l.a, ca” and telephone number “5104728492” (East
11 Bay).

12 30. Some of the ADULTACTIONCAM UCE contained links to the website
13 www.luvbynight.com. A consumer who enters a username, password, etc. on this website is
14 redirected to the ADULTACTIONCAM website. The domain name luvbynight.com is
15 registered to “Rod Heather” with city/state/zip of “LA, CA 90210.”

16 31. Some of the ADULTACTIONCAM UCE contained links to the website
17 www.sockedsingers.com. A consumer who enters a username, password, etc. on this website is
18 redirected to the ADULTACTIONCAM website. The domain name sockedsingers.com is
19 registered to “brian long” with city/state of “la, ca.”

20 32. Some of the ADULTACTIONCAM UCE contained links to the website
21 www.stinkyfleet.com. A consumer who enters a username, password, etc. on this website is
22 redirected to the ADULTACTIONCAM website. The domain name stinkyfleet.com is
23 registered to “carl seymore” with city/state of “la, ca.”

1 33. Some of the ADULTACTIONCAM UCE contained links to the website www.they-need-
2 much.net. A consumer who enters a username, password, etc. on this website is redirected to the
3 ADULTACTIONCAM website. The domain name they-need-much.net is registered to “Robert
4 Smith” with an address of “3826 Harvey Drive, Los Angeles, CA 91020” and telephone number
5 “8183124224” (the San Fernando Valley).

6 34. Some of the ADULTACTIONCAM UCE contained links to the website
7 www.umakemecrawl.com. A consumer who enters a username, password, etc. on this website is
8 redirected to the ADULTACTIONCAM website. The domain name umakemecrawl.com is
9 registered to “Elle jane” with city/state of “broke hills, CA.”

10 35. Some of the ADULTACTIONCAM UCE contained links to the website
11 www.umakemecrawl.org. A consumer who enters a username, password, etc. on this website is
12 redirected to the ADULTACTIONCAM website. The domain name umakemecrawl.org is
13 registered to “Elle jane” with city/state of “broke hills, CA.”

14 36. Some of the ADULTACTIONCAM UCE contained links to the website
15 www.umakemesweat.com. A consumer who enters a username, password, etc. on this website is
16 redirected to the ADULTACTIONCAM website. The domain name umakemesweat.com is
17 registered to “Elle jane” with city/state of “broke hills, CA.”

18 37. Some of the ADULTACTIONCAM UCE contained links to the website
19 www.vallneedbreaks.com. A consumer who enters a username, password, etc. on this website is
20 redirected to the ADULTACTIONCAM website. The domain name vallneedbreaks.com is
21 registered to “Elle jane” with city/state of “broke hills, CA.”

22 38. Some of the ADULTACTIONCAM UCE contained links to the website
23 www.vallneedbreaks.net. A consumer who enters a username, password, etc. on this website is
24

1 redirected to the ADULTACTIONCAM website. The domain name vallneedbreaks.net is
2 registered to “Elle jane” with city/state of “broke hills, CA.”

3 39. Some of the ADULTACTIONCAM UCE contained links to the website
4 www.vronaholiday.net. A consumer who enters a username, password, etc. on this website is
5 redirected to the ADULTACTIONCAM website. The domain name vronaholiday.net is
6 registered to “Elle jane” with city/state of “broke hills, CA.”

7 40. Some of the ADULTACTIONCAM UCE contained links to the website www.want-
8 hotties.com. A consumer who enters a username, password, etc. on this website is redirected to
9 the ADULTACTIONCAM website. The domain name want-hotties.com is registered to “Jason
10 Smith” with an address of “1234 Waltonia Drive, Los Angeles, CA 91020” and telephone
11 number “(818) 827-7737” (the San Fernando Valley).

12 41. Some of the ADULTACTIONCAM UCE contained links to the website www.you-crave-
13 much.net. A consumer who enters a username, password, etc. on this website is redirected to the
14 ADULTACTIONCAM website. The domain name you-crave-much.net is registered to “Jason
15 Smith” with an address of “115 W Sierra Madre Blvd, Sierra Madre, CA 91024” and telephone
16 number “8181232134” (the San Fernando Valley).

17 42. Some of the ADULTACTIONCAM UCE contained links to the website www.you-need-
18 much.net. A consumer who enters a username, password, etc. on this website is redirected to the
19 ADULTACTIONCAM website. The domain name you-need-much.net is registered to “Jason
20 Smith” with an address of “115 W Sierra Madre Blvd, Sierra Madre, CA 91024” and telephone
21 number “8181232134” (the San Fernando Valley).

1 **C. DOE Defendants**

2 43. BALSAM does not know the true names or legal capacities of the Defendants sued herein
3 as DOES 1 through 100, inclusive, and therefore sues said Defendants by such fictitious names.

4 44. BALSAM is informed and believes and thereon alleges that each of the Defendants
5 designated herein as a DOE is legally responsible in some manner for the matters herein alleged,
6 and is legally responsible in some manner for causing the injuries and damages to BALSAM as
7 alleged herein.

8 **JURISDICTION**

9 45. Defendants or their agents sent 1,125 unsolicited commercial emails ("UCEs") to
10 BALSAM, a California resident, seeking to establish a commercial relationship with him. This
11 Court has specific jurisdiction over Defendants because BALSAM's claims arise from
12 Defendants' purposeful contacts with California.

13 46. For purposes of analysis, BALSAM visited the AdultActionCam.com website, entered a
14 username, password, etc., and clicked the link as if he were going to pay to join
15 ADULTACTIONCAM – it is *not* free. The webpage where BALSAM – or any consumer –
16 would actually enter his or her credit number contains a Terms and Conditions link. When
17 BALSAM clicked the link, a new web browser launched to a webpage titled "TERMS AND
18 CONDITIONS OF SUBSCRIPTION." Near the end of the contract, the following text appears:

19 This Agreement contains the entire agreement between the Subscriber and
20 Company regarding Subscribers' use of this site, Materials and all materials
21 directly and indirectly related thereto. This Agreement supersedes all prior written
22 and oral understandings, writings, and representations and may only be amended
23 upon notice by Company. *This Agreement shall be governed by and construed
under the laws of the State of California* and the United States as applied to
24 agreements between California state residents entered into and to be performed
within the State of California, except as governed by Federal law (emphasis
added).

1 [https://wnu.com/secure/jsp/common/terms.jsp? pi_name=Belvedere+St.+James%2C+Ltd.&](https://wnu.com/secure/jsp/common/terms.jsp? pi_name=Belvedere+St.+James%2C+Ltd.& pi_code=aaceu160m3)
2 [pi_code=aaceu160m3](https://wnu.com/secure/jsp/common/terms.jsp? pi_name=Belvedere+St.+James%2C+Ltd.& pi_code=aaceu160m3). Thus, ADULTACTIONCAM Defendants have voluntarily submitted to
3 to jurisdiction under the laws of the State of California.

4 47. Some of ADULTACTIONCAM Defendants' agents are located in California. Agents
5 that are in *and* outside of California targeted 1,125 separate UCE messages at California
6 residents.

7 48. Balsam is informed and believes and thereon alleges that Carolynne Tilga as President
8 understood the marketing strategy and approved it.

9 49. Defendants' actions satisfy the continuous and systematic criteria necessary to establish
10 minimum contacts. "Due process requires only that in order to subject a defendant to a judgment
11 in personam, if he be not present within the territory of the forum, he have certain minimum
12 contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair
13 play and substantial justice.'" *International Shoe Co. v. State of Washington*, 326 U.S. 310, 316
14 (1945).

15 50. Defendants purposefully availed themselves of the privileges of conducting activities in
16 California by sending UCE to BALSAM, a California resident, and thus should expect to be
17 haled into court in California. *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223
18 (1957); *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 297 (1980).

19 51. Even if Defendants did not have actual knowledge that BALSAM is a California resident,
20 Defendants still sent UCE to California, and thus are subject to liability in California for their
21 actions. Sending email in bulk does not relieve Defendants of liability for targeting advertising
22 to California. *Ferguson v. Friendfinders Inc.*, 94 Cal. App. 4th 1255, 1265 (1st Dist. 2002).

1 Defendants, even though located outside of California, are equally subject to California law as
2 would be parties within California who send UCE. *Id.* at 1262.

3 52. In *Calder v. Jones*, 465 U.S. 783, 791 (1984), the Supreme Court affirmed the ruling of
4 the California Court of Appeals and held that it was proper for a California Court to exercise
5 jurisdiction over two Florida newspapermen in a libel action arising out of their intentional
6 conduct in Florida which was allegedly calculated to cause injuries to plaintiff in California.
7 Similarly, a person committing a tort using the Internet should expect to be subject to jurisdiction
8 in the state at which the tort is directed.

9 53. In *Hall v. LaRonde*, 56 Cal. App. 4th 1342, 1347 (2d Dist. 1997), the Court confirmed
10 that the growing role of electronic communications in business transactions makes a Defendant's
11 physical presence in California unnecessary to establish jurisdiction; systematic electronic
12 communication may satisfy minimum contact requirements.

13 VENUE

14 54. BALSAM is informed and believes, and thereon alleges, that no Defendant has qualified
15 to do business in California by filing a statement with the California Secretary of State
16 designating the county in which it maintains its principal local office, in accordance with Cal.
17 Corp. Code § 2105(a)(3).

18 55. Because BALSAM is informed and believes and thereon alleges that Defendants have not
19 filed such a statement, venue is proper in any county in California. *See Easton v. Sup. Ct. of San*
20 *Diego Cty. (Schneider Bros., Inc.)*, 12 Cal. App. 3d 243, 246-247 (4th Dist. 1970); *Hobson v.*
21 *The Metropolitan Casualty Ins. Co. of N.Y., Inc.*, 114 Cal. App. 349, 353, 355 (3rd Dist. 1931);
22 *Waechter v. Atchison etc. Railway Co.*, 10 Cal. App. 70, 73 (2d Dist. 1909).

SPECIFIC ALLEGATIONS

A. BALSAM and Defendants' Computer Usage

56. BALSAM owns and at all relevant times herein owned a computer with an Internet connection capable of receiving email at many email addresses.

57. BALSAM has two email addresses that are substantially more affected by unsolicited commercial email messages (“UCEs” or “spam”) than all of BALSAM’s other email addresses combined. BALSAM’s email addresses are confidential for numerous reasons, including, but not limited to, avoiding the risk of retaliation by “mail bombing” (sending massive amounts of email to BALSAM’s email addresses), “joe jobbing” (sending unlawful email as if it were from BALSAM’s email addresses as a means of harassment), or sharing of BALSAM’s email addresses with other unknown parties who might in turn send UCE or mail bombs to BALSAM or as if from BALSAM. BALSAM will seek a protective order that will allow sharing of the email addresses with Defendants for purposes limited to this litigation.

58. Between October 4, 2005 and June 1, 2006, Defendants or Defendants’ agents sent 1,125 UCEs to BALSAM, frequently as many as 20-30 in a single day.

59. BALSAM received all of the email messages described below over his Internet Service Provider’s equipment, located in the State of California.

60. BALSAM did not request any email messages from Defendants.

61. BALSAM did not consent to receive any email messages from Defendants.

62. Defendants’ email messages were commercial in nature.

63. BALSAM is informed and believes and thereon alleges that Defendants actually profit and continue to profit and are unjustly enriched from their wrongful conduct.

1 64. BALSAM is informed and believes and thereon alleges that Defendants have sent or
2 caused to be sent millions of such UCEs to California residents.

3 65. BALSAM is informed and believes and thereon alleges that Defendants intended to
4 deceive recipients of their email messages through the use of falsified, deceptive,
5 misrepresentative, and/or forged header information, including false sender names, invalid
6 sender email addresses, multiple sender domains, multiple sender Internet Protocol addresses,
7 deceptive subject lines, and falsified date/time stamps.

8 66. BALSAM is informed and believes and thereon alleges that Defendants intended to
9 deceive recipients of their email messages by making materially false representations in the body
10 of the emails, including false statements that Defendants' services are free, false statements as to
11 the number of people online, and false statements as to the number of new members that day.

12 67. BALSAM suffered damages as a result of Defendants' wrongful conduct.

13 68. Punitive damages are appropriate to deter Defendants' conduct and to deter others from
14 engaging in such conduct in that the Defendants' conduct was fraudulent. Defendants' actions
15 were fraudulent in that Defendants falsified the sender names and sender email addresses in their
16 UCEs, sent UCEs from multiple domains and IP addresses, failed to include required labeling in
17 the email subject lines, falsified date/time stamps, failed to include a physical mailing address
18 pursuant to 15 U.S.C. § 7704(a)(5)(A)(iii), made false statements in the UCEs regarding the cost
19 of services, the number of members online using Defendants' website, and the number of new
20 members each day, and included random text for no apparent reason other than to confuse
21 software filters. ADULTACTIONCAM Defendants also falsely claim their website is operated
22 by a Spanish entity.

1 69. BALSAM is informed and believes and thereon alleges that Defendants will continue to
2 advertise in this wrongful and unlawful fashion unless otherwise enjoined by this Court. This
3 Court has jurisdiction to issue a permanent injunction because restraint is necessary to prevent a
4 multiplicity of judicial proceedings.

5 ***B. Fraudulent Content in Email Headers – Sender Identity***

6 70. “The term ‘[email] header information’ means the source, destination, and routing
7 information attached to an electronic mail message, including the originating domain name and
8 originating electronic mail address, and any other information that appears in the line identifying,
9 or purporting to identify, a person initiating the message.” 15 U.S.C. § 7702 (8).

10 71. The majority of Defendants’ UCEs purport to come from actual people. For example, on
11 January 16, 2006 alone, Defendants sent emails with the following names in the “from” field of
12 the email headers: “Cassandra David,” “Dora Grimes,” “Elijah Norton,” “Erma Gomez,”
13 “Esteban Gutierrez,” “Frieda Kirkpatrick,” Gina Carlton,” “Israel Minor,” “Maria Lara,” “Mary
14 McNair,” “Millard Forrest,” “Randell [sic] Gregg,” “Roy Kurtz,” “Sarah Jaramillo,” and
15 “Willard Hancock.” BALSAM is informed and believes, and thereon alleges, that none of these
16 people actually exist, or at least, do not exist in any connection with Defendants.

17 72. Other UCEs show in the “from” field of the email headers include such deceptive and
18 misrepresentative “names” as: “The Experts,” “The Prospector,” “The Advisors,” “Men of
19 Focus,” “Rate Tracker,” “Good Advice,” “Out of Liabilities.”

20 73. Regardless of whether a UCE purports to be from an actual person or another “name”
21 such as “The Experts,” the vast majority of the email addresses from which the emails purport to
22 have been sent are forged. BALSAM sent test email messages to the “from” email addresses in
23 each incoming UCE, and almost always received an “error bounceback” message. BALSAM is
24

1 informed and believes and thereon alleges that Internet Service Providers send such error
2 bouncebacks to alert the sender of an email that the email could not be delivered because the
3 recipient email address, as entered, does not exist.

4 74. BALSAM is informed and believes, and thereon alleges, that Defendants created
5 hundreds of false sender names and hundreds of fake sender email addresses for three purposes.
6 First, to make it difficult for an Internet Service Provider or recipient to *identify* the email as
7 UCE, since Defendants make it appear that different “people” are sending the UCE. Second, to
8 make it difficult for an Internet Service Provider or recipient to *block* Defendants’ UCE. If an
9 ISP or recipient receives too much email from a single sender email address, the ISP is more
10 likely to determine that the email is UCE. (Contrast: If Defendants sent all UCE from the same
11 sender email address; an Internet Service Provider or recipient could easily block all UCE from
12 that sender email address.) Third, to avoid burdening Defendants’ own email accounts and
13 computer servers with complaints from recipients and error-bouncebacks, as described below.

14 75. BALSAM is informed and believes and thereon alleges that when BALSAM sent a test
15 email to the sender email address of a UCE and did *not* receive an error bounceback message,
16 that indicates that the sender email address is most likely valid, and most likely that a third party
17 unrelated to Defendant is receiving BALSAM’s test email. When Defendants send such UCEs
18 with valid email addresses in the “from” and “reply-to” field, any replies/complaints sent by
19 recipients, or any message from an ISP stating that the UCEs was undeliverable (as described
20 above), would thus be sent to the third party listed in the “reply-to” portion of the spam. Internet
21 users whose email addresses were placed in the “from” or “reply-to” lines of Defendants’ UCE
22 without their authorization may have suffered injury and damage to their computer systems from
23 the unexpected influx of email messages to them.

1 76. For example, BALSAM is informed and believes that Chris Astrella, a resident of
2 Madison, Wisconsin, had to change his personal email address after receiving a large quantity of
3 error bouncebacks/consumer complaints when Defendants falsely inserted Astrella's personal
4 email address into the sender email and reply-to fields, without his knowledge or permission.

5 **C. Fraudulent Content in Email Headers – Subject Lines**

6 77. While some UCEs' subject lines were quite explicit in their intent – e.g., “Meet someone
7 for a one night stand now with the Internet” (December 10, 2005) – other UCEs used subject
8 lines that disguised the contents of the underlying message – e.g., “Lets give this a try” (March
9 25, 2006) and “Achieve your Extreme visions” (March 9, 2006).

10 78. Defendants represented that their services have characteristics and benefits which they do
11 not have – specifically through false (and inconsistent) subject lines such as “64% of members
12 got laid” (April 2, 2006), “67% of our members got laid” (March 20, 2006), “Assured happyness
13 [sic] right away” (March 3, 2006), “We promiss [sic] to get you laid” (March 6, 2006), “Date for
14 Assured love!” (February 11, 2006), “Guaranteed Dates Now” (November 10, 2005).

15 **D. Fraudulent Content in Email Headers – Date/Time Stamps**

16 79. For most of the 36 UCEs sent between May 13, 2006 and May 16, 2006, Defendants
17 falsified the sending date/time stamp of the UCE by forcing a false future date/time into the
18 header information, sometimes by a difference of as much as three days. For example,
19 BALSAM *actually received* a UCE (purportedly from an “Isabel Kendall”) on Saturday May 13,
20 2006 at 11:14 pm, but the UCE headers *claim that it was sent* on Tuesday, May 16, 2006 at 1:13
21 am. It *is* possible that an email could be received before it was sent... because of time zones, it
22 is later in New York than California at any given moment, so an email sent from New York at
23 3 pm might arrive in California at 12:01 pm, “before it was sent.” However, the maximum
24

1 possible amount of this discrepancy is 23 hours. There is no place on the planet where a
2 difference of 50 hours is possible, as was the case here.

3 80. Balsam is informed and believes, and thereon alleges, that spammers often falsify
4 date/time stamps because most email programs display the most recent email at the top, and by
5 setting the clocks on their computers fifty hours ahead of the real time and thereby falsely
6 forcing a future date/time into the email headers, spammers deceive recipients' email programs
7 into displaying their UCE at the top of the inbox... making it less likely that the UCE will be
8 buried somewhere in a long list of emails.

9 **E. Violations of Federal Law Create Violations of California Law**

10 81. In addition to violations of California law prohibiting false headers, Defendants' UCEs
11 also violate the Federal CAN-SPAM Act (15 U.S.C. § 7701 *et seq.*) through the use of falsified
12 header information and by failing to start the subject lines with the mark "SEXUALLY-
13 EXPLICIT:" as required by the Federal Trade Commission's final rule 16 CFR Part 316
14 (effective May 19, 2004) because the UCEs display sexually oriented materials. By failing to
15 use the mark "SEXUALLY-EXPLICIT:" as required, the subject lines are inherently misleading
16 and thus violate California law as well.

17 **F. Fraudulent Content in Body of Emails**

18 82. For each and every UCE sent to BALSAM between January 13, 2006 and April 25, 2006
19 for which graphics were visible (in some cases the images were "broken" and did not display
20 anything, and in a few cases the UCEs were text-based with no graphics at all), the UCE falsely
21 advertised "100% Free Membership." In fact, when a recipient of an ADULTACTIONCAM
22 UCE clicks on the links in the email in order to register for membership,
23
24

1 ADULTACTIONCAM's website states that a membership costs \$34.61 for one month, \$39.95
2 for two months of "Gold" membership, or \$68.34 for three months of "Gold" membership.

3 83. For each and every of the 645 UCEs sent to BALSAM between January 13, 2006 and
4 April 25, 2006 for which graphics were visible (in some cases the images were "broken" and did
5 not display anything, and in a few cases the UCEs were text-based with no graphics at all), the
6 UCEs falsely claimed that ADULTACTIONCAM has "18 MILLION ACTIVE MEMBERS"
7 and that there are "28,594 PEOPLE ONLINE *RIGHT NOW*," [emphasis added] and that there
8 are "4337 NEW PROFILES *TODAY*" [emphasis added].

9 84. BALSAM alleges that it is statistically impossible that *at the precise moment* each of the
10 hundreds of emails sent between January 13, 2006 and April 25, 2006, *exactly* 28,594 people
11 were online on the ADULTACTIONCAM website. BALSAM alleges that it is statistically
12 impossible that ADULTACTIONCAM gained *exactly* 4,337 new profiles *each and every day*
13 (on which a UCE was sent) between January 13, 2006 and April 25, 2006.

14 85. Defendants' UCEs sent to BALSAM between January 13, 2006 and April 25, 2006
15 contain random text, different in each UCE, that has no relevance whatsoever to the actual
16 content of the UCE. Defendants also use different – and extremely unclear – wording regarding
17 opt-out. BALSAM is informed and believes and thereon alleges that this is a common practice
18 among spammers; attempting to make each UCE "unique" through the inclusion of random text
19 misrepresents the actual nature of the UCE and is deliberately intended to deceive Internet
20 Service Providers and recipients and their spam filters into treating the UCE as legitimate email.
21 (One means by which ISPs and recipients' spam filters determine that email is UCE is the
22 frequency of receiving the *same* text in an email.) For example, on April 17, 2006 alone,
23 Defendants' UCE contained the following text:

1 “especially in the King's own house - the Captain coolly proceeds to wash his and
2 then shoulders the barrow and marches up the wharf. "Why," said I, its head
3 above the surface. But owing to his marked internal structure which
4 This mail was transported to your-person because you quested to be informed of
5 biddings from either us or one of us partners,
6 if you do not need to acquire offers from us once again do not hesitate interact
7 with us at this location.”

8 “prodigious commotion, the water cascading all around him. And if at such times
9 heavenly; this combination makes neither believer nor infidel, but makes a man
10 capable of being done; those on deck rushed towards the bows, and stood eyeing
11 The mail was transported to you because you called for to be educated of extends
12 from either our-person or one of us cooperators,
13 if you do not need to acquire biddings from us again do not hesitate interact with
14 us at this address.”

15 “saying, that when he so strangely rumbles, he talks through his nose. But then
16 his, Lavater not only treats of the various faces of men, but also attentively that in
17 different individuals these rates are different; but in any one they are
18 This mail was committed to you because your-person bespoke to be educated of
19 offers from either us or one of us associates,
20 if you do not wish to get biddings from us once more have the will to get in touch
21 with us here.”

22 “mild head overhung by a canopy of vapor, engendered by his incommunicable
23 At last, passage paid, and luggage safe, we stood on board the schooner. In
24 thought a fine human brow is like the east when troubled with the morning. in
25 This message was directed to you because your-person quested to be educated of
26 extends from either us or one of our-person collaborators,
27 if yourself do not wish to receive extends from us once again do not hesitate get in
28 touch with us at this point.”

29 “snuffed that Tartar air! - how I spurned that turnpike earth! - that common But as
30 the strange captain, leaning over the pallid bulwarks, was in the act of you should
31 think that you really perceived drops of moisture in the spout, how
32 This message was sent to you because you inquired for to be educated of biddings
33 from either ourselves or one of ourselves partners,
34 if you do not want to receive offers from our-person once again please contact us
35 at this location.”

36 **G. Other Fraudulent Business Practices**

37 86. BALSAM is informed and believes, and thereon alleges, that Doe Defendants register
38 domain names with false physical mailing address and/or “privacy protect” their true physical
39

1 mailing addresses in order to make it more difficult to identify Defendants, in violation of
2 18 USC § 1037(a)(3) and (a)(4).

3 87. BALSAM is informed and believes that ADULTACTIONCAM Defendants are the true
4 owners and operators of the www.adultactioncam.com website, even though the website claims
5 that it is operated by Defendant LUCINA S.L. and Defendant BELVEDERE ST. JAMES LTD.

6 **FIRST CAUSE OF ACTION**

7 **[Violations Of California Restrictions On Unsolicited Commercial E-mail Advertisers,**
8 **California Business and Professions Code § 17529.5]**
9 **(Against All Defendants)**

10 88. BALSAM hereby incorporates by reference Paragraphs 1 to 87, inclusive, as if the same
11 were fully set forth herein.

12 89. Defendants sent unsolicited commercial emails to California electronic mail addresses,
13 including 1,125 to BALSAM's email addresses, containing or accompanied by falsified,
14 misrepresented, or forged header information, including invalid sender names and sender email
15 addresses, multiple domains and IP addresses, lack of required labeling in the email subject lines,
16 and falsified date/time stamps.

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

19 91. BALSAM suffered damages as a result of Defendants' wrongful conduct. The California
20 Legislature has set liquidated damages at \$1,000.00 per email.

21 92. BALSAM seeks reimbursement of attorneys' fees and costs as authorized by statute.

22 93. WHEREFORE, BALSAM prays for judgment against Defendants, and each of them, as
23 hereinafter set forth.
24

SECOND CAUSE OF ACTION

**[Violations of Consumers Legal Remedies Act]
(Against Defendants ANGELES TECHNOLOGY INC., FUTURECAST MEDIA LLC., and
ONE WORLD MEDIA LLC)**

94. BALSAM hereby incorporates by reference Paragraphs 1 to 87, inclusive, as if the same were fully set forth herein.

95. The California Legislature enacted the Consumers Legal Remedies Act, California Civil Code § 1750 *et seq.*, in order to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection.

96. The Consumers Legal Remedies Act is explicitly cumulative.

97. Defendants violated the Consumers Legal Remedies Act, Civ. Code § 1770(a)(3), by representing an affiliation they do not have, namely that Defendants have an affiliation with the recipient of email advertising, and thereby implying that Defendants do not have to comply with laws regulating unsolicited email advertising.

98. Defendants violated the Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(2), (a)(3), and (a)(5) by creating false identities and claiming these “people” sent the UCEs. Defendants violate (a)(2) because people who do not exist cannot possibly approve of the sending of the email or of ADULTACTIONCAM’s services. Defendants violate (a)(3) because ADULTACTIONCAM cannot have a connection or association with people who do not exist. Defendants violate (a)(5) because ADULTACTIONCAM’s services cannot be approved by people who do not exist, and because people who do not exist cannot have an affiliation or connection with ADULTACTIONCAM or with the sending of the UCE.

1 99. Defendants violated the Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(3) by
2 falsely implying that BALSAM opted-in or subscribed to receive such sexually-oriented email
3 and thus BALSAM has an affiliation, connection, or association with Defendants.

4 100. Defendants violated the Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5)
5 and (a)(9) by representing that ADULTACTIONCAM's services have a particular characteristic
6 – that services are “100% free” – with no intention of providing free services as advertised. In
7 fact, ADULTACTIONCAM charges for membership at the rate of \$34.61 for one month, \$39.95
8 for two months of “Gold” membership, or \$68.34 for three months of “Gold” membership.

9 101. Defendants violated the Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5)
10 and (a)(9) by representing that ADULTACTIONCAM's services has characteristics and
11 quantities which they do not have – specifically, that there are 18 million active members – with
12 intent not to sell services as advertised.

13 102. Defendants violated the Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5)
14 and (a)(9) by representing that ADULTACTIONCAM's services has characteristics and
15 quantities which they do not have – specifically, that on every day between January 13, 2006 and
16 April 25, 2006 on which BALSAM received a UCE with visible graphics, that there were 4,337
17 new profiles on ADULTACTIONCAM's services – with intent not to sell services as advertised.

18 103. Defendants violated the Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5)
19 and (a)(9) by representing that ADULTACTIONCAM's services has characteristics and
20 quantities which they do not have – specifically, that on every day between January 13, 2006 and
21 April 25, 2006 on which BALSAM received a UCE with visible graphics, and at various times
22 on each day, that there were exactly 28,594 people online on ADULTACTIONCAM's website –
23 with intent not to sell services as advertised.

1 104. Defendants violated the Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5) by
2 representing that the goods or services have characteristics and benefits which they do not have
3 specifically through false (and inconsistent) subject lines such as “64% of members got laid”
4 (April 2, 2006), “67% of our members got laid” (March 20, 2006), “Assured happyness [sic]
5 right away” (March 3, 2006), “We promiss [sic] to get you laid” (March 6, 2006), “Date for
6 Assured love!” (February 11, 2006), “Guaranteed Dates Now” (November 10, 2006).

7 105. Defendants violated the Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(4) by
8 registering domain names with false addresses, thereby deceptively representing the geographic
9 origins of the emails.

10 106. ADULTACTIONCAM Defendants violated the Consumers Legal Remedies Act, Cal.
11 Civ. Code § 1770(a)(4), by claiming that the ADULTACTIONCAM website is operated by
12 “Lucina S.L.,” an entity in Spain.

13 107. Defendants’ commercial email solicitations requested an agreement from the recipient
14 that the recipient take some action intended to commercially benefit the senders, and BALSAM
15 is informed and believes and thereon alleges that Defendants intended that the recipients of the
16 spam actually take the requested action.

17 108. BALSAM sent a letter by certified mail, return-receipt requested, to Defendant
18 ANGELES TECHNOLOGY INC., Defendant FUTURECAST MEDIA LLC, and Defendant
19 ONE WORLD MEDIA LLC, alleging violations of the Consumers Legal Remedies Act. The
20 letter requested equitable relief in the form of a stipulated judgment and a response within 30
21 days. No Defendant has agreed to the proposed equitable relief nor offered any other suitable
22 equitable relief instead. Actually, no Defendant has responded *at all*.

1 109. BALSAM now seeks equitable relief in the form of an Order of this Court requiring that
2 Defendants comply with applicable advertising laws and refrain from using misleading
3 advertising.

4 110. BALSAM seeks reimbursement of attorneys' fees and costs as authorized by statute.

5 111. WHEREFORE, BALSAM prays for judgment against Defendants, and each of them, as
6 hereinafter set forth.

7 **PRAYER FOR RELIEF**

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 using unlawful commercial email advertising;

11 B. Liquidated damages in the amount of One Thousand Dollars (\$1,000.00) for each of 1,125
12 email messages;

13 C. Punitive damages in an amount determined by the Court;

14 D. Attorneys' fees as allowed by law;

15 E. Costs of suit; and

16 F. Such other and further relief as the Court deems proper.

17
18 WALTON & ROESS LLP

19
20 DATED: September 25, 2006

21 BY: /s/ Timothy J. Walton
TIMOTHY J. WALTON
Attorneys for BALSAM

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial as provided in Federal Rule of Civil Procedure § 38(b).

WALTON & ROESS LLP

DATED: September 25, 2006

BY: /s/ Timothy J. Walton
TIMOTHY J. WALTON
Attorneys for BALSAM

VERIFICATION

The undersigned for himself declares:

I am the plaintiff in the above-entitled action. I have read the foregoing First Amended Complaint and know the contents thereof. With respect to the causes of action alleged by me, the same is true by my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

DATED: September 25, 2006

/s/ Daniel L. Balsam
DANIEL L. BALSAM