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15 Attorneys for Plaintiffs

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

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

18 MARY O'SHEA, an individual;	)	Case No.: CGC-14-540862
19 MARGIE BARR, an individual,	)	
20 DANIEL BARRETT, an individual;	)	
21 BRIAN GREGOR, an individual;	)	<b>SECOND AMENDED COMPLAINT FOR</b>
22 ERIK HELLMAN, an individual;	)	<b>DAMAGES</b>
23 LINDA HERNANDEZ, an individual;	)	
24 CAROLE MEINER, an individual;	)	<b>1. VIOLATIONS OF CALIFORNIA</b>
25	)	<b>RESTRICTIONS ON UNSOLICITED</b>
26 Plaintiffs,	)	<b>COMMERCIAL E-MAIL (Cal. Bus. &amp;</b>
27 v.	)	<b>Prof. Code § 17529.5)</b>
28	)	
29 REAL BRIGHT MEDIA INC., a California	)	
30 corporation;	)	
31 JOSHUA BASS, an individual;	)	
AD TRUST MARKETING LLC, a Texas	)	
limited liability company;	)	
REACH X LLC, a Texas limited liability	)	
company;	)	
NWHIZ MEDIA LLC, a dissolved Florida	)	
limited liability company;	)	
BZI PROCESSING LLC, a dissolved Florida	)	
limited liability company;	)	
APEX ADS INC., a New York corporation;	)	

**ELECTRONICALLY**  
**FILED**  
*Superior Court of California,*  
*County of San Francisco*  
**03/16/2016**  
**Clerk of the Court**  
BY: CAROL BALISTRERI  
Deputy Clerk

1 212 MEDIA MARKETING INC., a New York )  
corporation; )  
2 212 MEDIA GROUP INC., a New York )  
corporation; )  
3 212 MEDIA GRP INC., a New York )  
corporation; )  
4 JASON RUBIN a/k/a/ TRAVIS )  
COTILLETTA a/k/a JASON BROWN a/k/a )  
5 JOHN ELWAY a/k/a ROBERT BALLARD, )  
an individual; )  
6 FLEX MARKETING GROUP LLC, a New )  
York limited liability company, and )  
7 DOES 15-500; )  
8 )  
9 )  
10 )  
Defendants. )  
11

12 COME NOW PLAINTIFFS MARY O’SHEA *et al* and file this Second Amended Complaint for  
13 one cause of action against Defendants REAL BRIGHT MEDIA INC. *et al* and allege as  
14 follows:  
15

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

17 1. Plaintiffs bring this Action against professional spammers REAL BRIGHT MEDIA  
18 INC. (“RBM”) and its principal JOSHUA BASS, and some of its third party advertising  
19 networks and affiliates (aka “publishers”), including but not limited to the other named  
20 Defendants, for advertising in and sending at least 1,312 unlawful spams to Plaintiffs. A  
21 representative sample (*Figure 1*) appears on the next page.

22 2. No Plaintiff gave direct consent to receive commercial emails from RBM, or had a  
23 preexisting or current business relationship with RBM.

24 3. The spams all violated California Business & Professions Code § 17529.5 (“Section  
25 17529.5”) because they contained: a) third parties’ domain names without their permission; b)  
26 materially misrepresented or falsified information contained in or accompanying the email  
27 headers (including Subject Lines); and/or c) Subject Lines misleading relative to the content or  
28 subject matter of the emails. The unlawful elements of these spams represent willful acts of  
29 falsity and deception, rather than clerical errors.  
30  
31

**Subject:** Re: Congratulations joe - \$7,500 Available For You!

**From:** Your Confirmation (ebay@reply1.ebay.com)

**To:** [redacted]@yahoo.com;

**Date:** Wednesday, December 11, 2013 3:49 PM

joe, Get up to \$5000.00 Right Now!



**FAST ONLINE CASH LOANS  
\$250-\$7,500 WITH QUICK APPROVAL!**

- Fast Cash - Made Easy
- Secure and Safe
- Immediate Pre-Approval!  
From \$200 - \$7,500
- Bad Credit Accepted



**APPLY NOW!**

Safe & Secure  
Personal Loans

The above offer was sent by Real Bright Media, LLC. If you would like to remove yourself from this list or update your email preferences, click [here](#).

2345 Mariposa St #2  
San Francisco, CA 94110

Four Seasons Travels  
To Manage Your Subscription, please [click here](#)   
or write us at: PO Box 85073 NUMB 56774 Richmond, VA 23285-5073 US

Figure 1

1 4. RBM is strictly liable for advertising in spams sent by its third party affiliates.  
2 Spam recipients are not required to allege or prove reliance or actual damages to have standing.  
3 *See* Bus. & Prof. Code § 17529(b)(1)(A)(iii). Nevertheless, Plaintiffs did suffer damages by  
4 receiving the spams. *See, e.g.*, Bus. & Prof. Code § 17529(d), (e), (g), (h).

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

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

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

## 15 16 **II. PARTIES**

### 17 **A. Plaintiffs**

18 8. MARGIE BARR ("BARR") was domiciled in and a citizen of the State of California,  
19 when she received RBM's spams at issue. The spams at issue were sent to BARR's email  
20 address(es) that she ordinarily accesses from computer(s) located in California.

21 9. DANIEL BARRETT ("BARRETT") was domiciled in and a citizen of the State of  
22 California, when he received RBM's spams at issue. The spams at issue were sent to  
23 BARRETT's email address(es) that he ordinarily accesses from computer(s) located in  
24 California.

25 10. BRIAN GREGOR ("GREGOR") was domiciled in and a citizen of the State of  
26 California, when he received RBM's spams at issue. The spams at issue were sent to  
27 GREGOR's email address(es) that he ordinarily accesses from computer(s) located in California.

28 11. ERIK HELLMAN ("HELLMAN") was domiciled in and a citizen of the State of  
29 California, when he received RBM's spams at issue. The spams at issue were sent to  
30 HELLMAN's email address(es) that he ordinarily accesses from computer(s) located in  
31 California.

1 12. LINDA HERNANDEZ (“HERNANDEZ”) was domiciled in and a citizen of the State of  
2 California, when she received RBM’s spams at issue. The spams at issue were sent to  
3 HERNANDEZ’s email address(es) that she ordinarily accesses from computer(s) located in  
4 California.

5 13. CAROLE MEINER (“MEINER”) was domiciled in and a citizen of the State of  
6 California, when she received RBM’s spams at issue. The spams at issue were sent to  
7 MEINER’s email address(es) that she ordinarily accesses from computer(s) located in California.

8 14. MARY O’SHEA (“O’SHEA”) was domiciled in and a citizen of the State of California,  
9 when she received RBM’s spams at issue. The spams at issue were sent to O’SHEA’s email  
10 address(es) that she ordinarily accesses from computer(s) located in California.

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

20 **B. Defendants**

21 16. Plaintiffs are informed and believe and thereon allege that Defendant REAL BRIGHT  
22 MEDIA INC. (“RBM”) was at all relevant times (except when its status was suspended by the  
23 Secretary of State from December 2014-August 2015 for failure to pay taxes), a California  
24 corporation with a primary place of business in San Francisco, California, doing business as  
25 *CapitolCashLoan.com* and *rbmleads.com*, among other domain names/websites. Plaintiffs are  
26 informed and believe and thereon allege that RBM began winding up/dissolving in November  
27 2015 – without declaring bankruptcy – and concluded winding up in January 2016.

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

1 18. Plaintiffs are informed and believe and thereon allege that JOSHUA BASS (“BASS”) –  
2 formerly identified as DOE 6 – was at all relevant times the sole shareholder and officer of  
3 RBM. Plaintiffs are informed and believe and thereon allege that RBM and BASS shared  
4 physical assets, addresses, finances, and intellectual property such that they failed to follow  
5 proper corporate formalities, and each is an alter ego of the other. Moreover, this Court already  
6 made a finding of fact that RBM was undercapitalized. Additionally, Plaintiffs are informed and  
7 believe and thereon allege that BASS was personally involved with the unlawful actions at issue  
8 in this lawsuit.

9 19. Plaintiffs are informed and believe and thereon allege that Defendant AD TRUST  
10 MARKETING LLC (“AD TRUST”) – formerly identified as DOE 1 – is now, and was at all  
11 relevant times, a Texas limited liability company doing business as “Popular Marketing” and  
12 *PMClicks.com*, and claiming its primary place of business to be a box at a branch of The UPS  
13 Store (a commercial mail receiving agency) in Austin, Texas. Plaintiffs are informed and believe  
14 and thereon allege that AD TRUST also has an office in El Segundo, California, although AD  
15 TRUST is not registered with the California Secretary of State.

16 20. Plaintiffs are informed and believe and thereon allege that Defendant REACH X LLC  
17 (“REACH X”) – formerly identified as DOE 8 – is now, and was at all relevant times, a Texas  
18 limited liability company doing business as “Popular Marketing,” *reach-x.com*, and  
19 *PMClicks.com*, and claiming its primary place of business to be a residential address in Austin,  
20 Texas. This Court granted Plaintiffs’ ex parte application for an order amending the FAC to add  
21 REACH X LLC on December 28, 2015.

22 21. Plaintiffs are informed and believe and thereon allege that AD TRUST and REACH X  
23 share intellectual property, physical assets, management, personnel, financial assets, and the  
24 obligations and benefits of contracts with third parties (including but not limited to RBM), such  
25 that any distinction between the two is a sham. Plaintiffs hereafter refer to AD TRUST and  
26 REACH X collectively as “POPULAR MARKETING.” Based on RBM’s discovery responses,  
27 Plaintiffs are informed and believe and thereon allege that POPULAR MARKETING sent, or  
28 conspired with others to send, 762 of the spams at issue.

29 22. Plaintiffs are informed and believe and thereon allege that Defendant NWHIZ MEDIA  
30 LLC (“NWHIZ”) – formerly identified as DOE 9 – dissolved in 2015 but was at all relevant  
31 times a Florida limited liability company with a primary place of business in Saint Petersburg,

1 Florida. Based on RBM and POPULAR MARKETING’s discovery responses, Plaintiffs are  
2 informed and believe and thereon allege that NWHIZ sent, or conspired with others to send, 762  
3 of the spams at issue.

4 23. Plaintiffs are informed and believe and thereon allege that Defendant BZI PROCESSING  
5 LLC (“BZI”) – formerly identified as DOE 10 – dissolved in 2015 but was at all relevant times a  
6 Florida limited liability company claiming that its primary place of business is a “virtual box” at  
7 a commercial mail receiving agency (Mailbox Forwarding) in Grandville, Michigan. Plaintiffs  
8 are informed and believe and thereon allege that BZI sent, or conspired with others to send, 607  
9 of the spams at issue.

10 24. Plaintiffs are informed and believe and thereon allege that Defendant APEX ADS INC.  
11 (“APEX”) – formerly identified as DOE 4 – is now, and was at all relevant times, a New York  
12 corporation doing business as *APATracker.com*, and with a primary place of business in East  
13 Hills, New York or New York, New York.

14 25. Plaintiffs are informed and believe and thereon allege that Defendant 212 MEDIA  
15 MARKETING INC. – formerly identified as DOE 7 – is now, and was at all relevant times, a  
16 New York corporation doing business as *APATracker.com*, and with a primary place of business  
17 in New York, New York. This Court granted Plaintiffs’ ex parte application for an order  
18 amending the FAC to add 212 MEDIA MARKETING INC. on December 28, 2015.

19 26. Plaintiffs are informed and believe and thereon allege that Defendant 212 MEDIA  
20 GROUP INC. – formerly identified as DOE 11 – is now, and was at all relevant times, a New  
21 York corporation doing business as *APATracker.com*, and with a primary place of business in  
22 East Hills, New York or New York, New York.

23 27. Plaintiffs are informed and believe and thereon allege that Defendant 212 MEDIA GRP  
24 INC. – formerly identified as DOE 12 – was created in July 2015 as the successor to Defendants  
25 APEX ADS INC., 212 MEDIA MARKETING INC., and 212 MEDIA GROUP INC., and is now  
26 a New York corporation doing business as *APATracker.com*, and with a primary place of  
27 business in New York, New York.

28 28. Plaintiffs are informed and believe and thereon allege that Defendant JASON RUBIN  
29 a/k/a TRAVIS COTILLETTA a/k/a JASON BROWN a/k/a JOHN ELWAY a/k/a ROBERT  
30 BALLARD (“RUBIN”) – formerly identified as DOE 13 – was at all relevant times the sole  
31

1 shareholder and officer of Defendants APEX ADS INC., 212 MEDIA MARKETING INC., 212  
2 MEDIA GROUP INC., and 212 MEDIA GRP INC.

3 29. Plaintiffs are informed and believe and thereon allege that APEX ADS INC., 212  
4 MEDIA MARKETING INC., 212 MEDIA GROUP INC., 212 MEDIA GRP INC., and RUBIN  
5 shared physical assets, addresses, finances, and intellectual property such that they failed to  
6 follow proper corporate formalities, and each is an alter ego of the other. Plaintiffs further allege  
7 that all of the APATRACKER entities are undercapitalized. Additionally, Plaintiffs are  
8 informed and believe and thereon allege that RUBIN was personally involved with the unlawful  
9 actions at issue in this lawsuit. Plaintiffs hereafter refer to Defendants APEX ADS INC., 212  
10 MEDIA MARKETING INC., 212 MEDIA GROUP INC., 212 MEDIA GRP INC., and TRAVIS  
11 COTILLETTA a/k/a JASON RUBIN a/k/a JASON BROWN a/k/a JOHN ELWAY a/k/a  
12 ROBERT BALLARD collectively as “APATRACKER.”

13 30. Plaintiffs are informed and believe and thereon allege that APATRACKER sent, or  
14 conspired with others to send, 531 of the spams at issue.

15 31. Plaintiffs are informed and believe and thereon allege that Defendant FLEX  
16 MARKETING GROUP LLC (“FLEX”) – formerly identified as DOE 14 – is now, and was at all  
17 relevant times, a New York limited liability company doing business as *adgracker.com*, and  
18 with a primary place of business in New York, New York. Plaintiffs are informed and believe  
19 and thereon allege that FLEX sent, or conspired with others to send, 13 of the spams at issue.

20 32. Each of POPULAR MARKETING, NWHIZ, BZI, APATRACKER, and FLEX is jointly  
21 and severally liable with RBM for the spams that it sent or conspired to send. Joinder of  
22 POPULAR MARKETING, NWHIZ, BZI, APATRACKER, and FLEX in this Action is proper  
23 pursuant to Code of Civil Procedure § 379 because Defendants are jointly and severally liable to  
24 Plaintiffs for the series of spams at issue, and common questions of law and fact will arise in this  
25 Action. Joinder does not require that every Defendant is liable for every spam; judgment may be  
26 given against one or more Defendants according to their respective liabilities.

27 33. Plaintiffs do not know the true names or legal capacities of the Defendants designated  
28 herein as DOES 15 through 500, inclusive, and therefore sue said Defendants under the fictitious  
29 name of “DOE.” Plaintiffs are informed and believe and thereon allege that each of the  
30 Defendants designated herein as a DOE is legally responsible in some manner for the matters  
31 alleged in this complaint, and is legally responsible in some manner for causing the injuries and



1 damages of which Plaintiffs complain. Plaintiffs are informed and believe and thereon allege  
2 that each of the Defendants designated herein as a DOE Defendant was, at all times relevant to  
3 the matters alleged within this complaint, acting in conjunction with the named Defendants,  
4 whether as a director, officer, employee, agent, affiliate, customer, participant, or co-conspirator.  
5 When the identities of DOE Defendants 15-500 are discovered, or otherwise made available,  
6 Plaintiffs will seek to amend this Complaint to allege their identity and involvement with  
7 particularity.

### 8 9 **III. JURISDICTION AND VENUE**

#### 10 **A. Jurisdiction is Proper in a California Court**

11 34. This Superior Court has jurisdiction over the Action for the following reasons: a) all  
12 Plaintiffs are domiciled in and citizens of the State of California and received the unlawful spams  
13 at their California email addresses; b) the amount in controversy is more than \$25,000; c) RBM  
14 is a California corporation and its primary place of business is in California.

#### 15 **B. Venue is Proper in San Francisco County**

16 35. Venue is proper in San Francisco County because Defendant RBM's primary place of  
17 business is in San Francisco County. *See* Code Civ. Proc. § 395.

### 18 19 **IV. MORE THAN 1,300 UNLAWFUL SPAMS**

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

23 37. California's False Advertising Law, Business & Professions Code § 17500

24 prohibits "not only advertising which is false, but also advertising which[,]  
25 although true, is either actually misleading or which has a capacity, likelihood or  
26 tendency to deceive or confuse the public." . . . [T]he UCL and the false  
advertising law prohibit deceptive advertising even if it is not actually false.

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

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

2 38. The emails at issue are “commercial email advertisements”<sup>1</sup> because they were initiated  
3 for the purpose of advertising and promoting the sale of RBM’s services of providing cash loans.

4 39. The emails are “unsolicited commercial email advertisements”<sup>2</sup> because – as this Court  
5 already found – no Plaintiff gave “direct consent”<sup>3</sup> to, or had a “preexisting or current business  
6 relationship”<sup>4</sup> with, RBM.

7 40. Plaintiffs did not consent or acquiesce to receive the RBM spams at issue. Plaintiffs did  
8 not waive or release any rights or claims related to the RBM spams at issue.

9 41. RBM sent and/or advertised in at least 1,312 unlawful spams that Plaintiffs received at  
10 their “California email addresses”<sup>5</sup> within one year prior to the filing of this Action, as shown  
11 below:

---

12  
13  
14  
15 <sup>1</sup> “‘Commercial e-mail advertisement’ means any electronic mail message initiated for the  
16 purpose of advertising or promoting the lease, sale, rental, gift offer, or other disposition of any  
17 property, goods, services, or extension of credit.” Bus. & Prof. Code § 17529.1(c).

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

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

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

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

PLAINTIFF	SPAMS RECEIVED	PLAINTIFF	SPAMS RECEIVED
BARR	18	HERNANDEZ	25
BARRETT	134	MEINER	52
GREGOR	9	O'SHEA	455
HELLMAN	619	<b>TOTAL</b>	<b>1,312</b>

42. Plaintiffs' email addresses play no part in determining whether or not the emails have falsified, misrepresented, forged, misleading, or otherwise deceptive information contained in or accompanying the email headers.

43. The spams are all unlawful because the spams include third party domain names without permission, and/or have materially falsified, misrepresented, and/or forged information contained in or accompanying the email headers, and/or Subject Lines that are misleading as to the contents or subject matter of the emails, as described in more detail below.

**B. Spams Containing Third Parties' Domain Names Without Their Permission Violate Business & Professions Code § 17529.5(a)(1)**

44. Section 17529.5(a)(1) prohibits spams containing or accompanied by a third party's domain name without the permission of the third party.

45. All Plaintiffs use Yahoo! or AT&T/Yahoo! as their email service providers. Yahoo! and AT&T/Yahoo! provide a function whereby an email recipient can view the full headers of an email, including the sending domain name, without opening the email.

46. Some of the spams that Plaintiffs received advertising RBM's websites sent by, or with the assistance of, or in conspiracy with, POPULAR MARKETING, NWHIZ and/or BZI, contained third parties' domain names without their permission, and therefore violated Section 17529.5(a)(1). For example:

- BARR received a spam advertising RBM showing @*starbucks.com* in the Sender Email Address. Plaintiffs are informed and believe and thereon allege that this spam did not originate from Starbucks' servers, and that Starbucks did not give anyone permission to include its domain name *starbucks.com* in this spam.
- MEINER received a spam advertising RBM showing @*containerstore.com* in the Sender Email Address. Plaintiffs are informed and believe and thereon allege that this spam did not originate from Container Store Group Inc.'s servers, and that The Container Store Inc. did not give anyone permission to include its domain name *containerstore.com* in this spam.

- 1           • GREGOR received a spam advertising RBM showing @yahoo.com in the Sender  
2           Email Address. Yahoo! Inc., owner of the yahoo.com domain name, expressly  
3           prohibits use of its services for spamming. See Universal Anti-Spam Policy,  
4           <https://info.yahoo.com/legal/us/yahoo/guidelines/spam> (last visited June 16,  
5           2014). Therefore, since Yahoo! Inc. prohibits all spamming using its services,  
6           Yahoo! Inc. did not and could not have given permission for anyone to use its  
7           domain name in conjunction with this spam.

8 47. In total, Plaintiffs received spams advertising RBM with the following domain names in  
9 the Sender Email Address: *1-day.co.nz*, *AutoCarIndia.com*, *Badoo.com*, *BaubleBar.com*,  
10 *BlueIllusion.com*, *CollectionsEtc.com*, *ContainerStore.com*, *CostaDelMar.com*, *Digipark.com*,  
11 *eBay.com*, *eBay.com.au*, *eBay.com.hk*, *eBay.com.sg*, *e-CreativeAge.com*, *Fidelity.com*,  
12 *HenriBendel.com*, *Hyatt.com*, *InstantService.com*, *InternationalLiving.com*, *InvestmentU.com*,  
13 *JCPenneyem.com*, *JockeyComfort.com*, *KeepCalling.net*, *LaSenza.com*, *Lowes.com*, *Meetic.omc*,  
14 *NationalReview.com*, *NYMag.com*, *Oprah.com*, *ovh.ca*, *ovh.com*, *Princess.com*, *pvh.com*,  
15 *SecuredMI.com*, *ShopBonton.com*, *Skype.com*, *SoccerSavings.com*, *SonyEntertainmentNetwork*.  
16 *com*, *StarBucks.com*, *TheGuardian.com*, *Toms.com*, *WellsFargoEmail.com*, *Yahoo.com*. On  
17 information and belief, none of the third parties who own these domain names gave permission  
18 for their domain names to appear in these spams.

19 48. Plaintiffs have declarations from some of these third parties confirming that they did not  
20 give permission for their domain names to appear in RBM spams, including a declaration from  
21 the Founder and Chief Executive Officer of eWayDirect Inc., which owns the domain name  
22 *securedmi.com*, stating that the domain name appears in 607 of these spams without  
23 eWayDirect's permission.

24 49. Plaintiffs are informed and believe and thereon allege that NWHIZ and/or BZI caused the  
25 spams to show third parties' domain names in the From Lines so that recipients would not be  
26 able to identify it as the sender. Indeed, Plaintiffs were unable to identify NWHIZ until RBM  
27 identified POPULAR MARKETING through discovery, Plaintiffs added POPULAR  
28 MARKETING to the Action, and PLAINTIFFS sent discovery to POPULAR MARKETING.  
29 And Plaintiffs were unable to identify BZI until they sued (former Defendant) eWayDirect Inc.

30 50. Furthermore, assuming that these spams were *not* actually sent from the domain names  
31 that appear in the Sender Email Addresses, which Plaintiffs believe to be the case, then the

1 spams also contained falsified and forged information, which violates Section 17529.5(a)(2),  
2 *infra*.

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

5 51. Section 17529.5(a)(2) prohibits misrepresented information contained in or  
6 accompanying email headers.

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

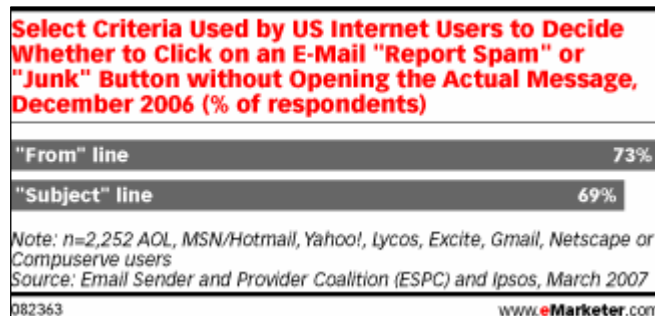
10 53. The From Name in an email's headers is, not surprisingly, supposed to identify who the  
11 email is *from*; it is not supposed to be an advertising message. Because computers must use  
12 standard protocols in order to communicate, the Internet Engineering Task Force created a  
13 collection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

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

18 54. Plaintiffs do not insist on any *particular* label (e.g., "Real Bright Media," "Real Bright  
19 Media Inc.," "Capitol Cash," "CapitolCashLoan.com," etc.) in the From Name field. Rather,  
20 Plaintiffs contend that the text, whatever it is, cannot misrepresent *who* is advertising in the  
21 email.

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

26 56. Indeed, empirical evidence has  
27 demonstrated that the From Name is  
28 the *most* important factor email  
29 recipients use to determine whether or  
30 not an email is spam. *See* eMarketer,  
31 E-Mail Open Rates Hinge on 'Subject'



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

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

8 1. Don't use false or misleading header information. Your "*From,*" "*To,*"  
9 "*Reply-To,*" and routing information – including the originating domain name  
10 and email address – *must be accurate and identify the person or business who*  
11 *initiated the message.*

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

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

18 ... The seven [ ] emails do not truly reveal who sent the email . . . . The [ ]  
19 "senders" identified in the headers of the [ ] seven emails do not exist or are  
20 otherwise misrepresented, namely Paid Survey, Your Business, Christian Dating,  
21 Your Promotion, Bank Wire Transfer Available, Dating Generic, and Join Elite. .  
22 . . . Thus the sender information ("from") is misrepresented.

23 203 Cal. App. 4th 1083, 1088, 1090-91, 1093 (1st Dist. 2012), *petition for review denied*, 2012  
24 Cal. LEXIS 4979 (Cal. May 23, 2012), *petition for certiori denied*, 2012 U.S. LEXIS 8423 (U.S.  
25 Oct. 29, 2012), *petition for rehearing denied*, 2013 U.S. LEXIS 243 (U.S. Jan. 7, 2013). More  
26 specifically, *Balsam* confirmed that generic From Names that "do not exist or are otherwise  
27 misrepresented when they do not represent any real company and cannot be readily traced back  
28 to the true owner/sender" violate the statute. *Id.* at 1093. The Court affirmed the award of  
29 \$1,000 liquidated damages for the seven emails with misrepresented information in the From  
30 Name field, even though most of the spams identified the advertiser in the body. *Id.* at 1091,  
31 1093. Therefore, truthful information in the body of a spam does not cure misrepresented  
information contained in or accompanying the headers.

1 59. All of the spams that Plaintiffs received advertising RBM’s websites had generic “From  
2 Names” that misrepresented *who* the spams were from, and therefore violated Section 17529.5.  
3 For example: “Confirm Now,” “Congratulations,” “Credit Check 2013,” “Customer Service,”  
4 “Daily Digest,” “Express Saving,” “holiday Cash,” “Lender Services,” “Loan Manager,”  
5 “Membership Network,” “Quick Deposit,” “Rewards Department,” “Urgent Deposit.”

6 60. Plaintiffs also received other spams advertising RBM’s websites with From Names that  
7 went beyond merely generic text and affirmatively and falsely suggest that RBM has a  
8 preexisting relationship with the recipient and that the recipient has already applied for a loan.  
9 For example: “Approval Department,” “Confirmation Dept,” “Direct Deposit 9/05/13,”  
10 “E Signature Request,” “Funding Activation,” “Pending Deposit,” “Your Confirmation.”

11 61. In *Rosolowski v. Guthy-Renker LLC*, the court permitted From Names that were not the  
12 sender’s official corporate name as long as the identify of the sender was readily ascertainable in  
13 the body. 230 Cal. App. 4th 1403, 1407, 1416 (2d Dist. 2014). However, the From Names in  
14 that case were the advertiser’s fanciful trademarks, well-known brands with their own websites.  
15 But here, unlike the spams in *Rosolowski*, none of the From Names identify RBM. All of the  
16 From Names are generic – they are not brands or trademarks and there is no way an ordinary  
17 consumer could readily associate them with RBM. Many of the From Names – e.g.,  
18 “Congratulations,” “Your Confirmation” – do not even inherently relate to loans.

19 62. Moreover, in many of the spams at issue, neither the sender nor the advertiser is readily  
20 ascertainable in the body of the spams.

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

23 63. Section 17529.5(a)(2) prohibits falsified, misrepresented, or forged information contained  
24 in or accompanying in email headers.

25 64. Registration information for the domain names used to send spams is information  
26 contained in or accompanying email headers.

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

1 66. Plaintiffs received at least 186 spams advertising RBM, sent via APATRACKER, that  
2 were sent from domain names that:

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

6 in violation of Section 17529.5. *See Balsam*, 203 Cal. App. 4th at 1097-1101. More  
7 specifically:

8 67. Plaintiffs received spams advertising RBM with forged email addresses in the Sender  
9 Email Address field, so that the spams are not readily traceable to the real sender. For example:

10 *1-day.co.nz, AutoCarIndia.com, Badoo.com, BaubleBar.com, BlueIllusion.com,*  
11 *CollectionsEtc.com, ContainerStore.com, CostaDelMar.com, Digipark.com, eBay.com,*  
12 *eBay.com.au, eBay.com.hk, eBay.com, sg, e-CreativeAge.com, Fidelity.com, HenriBendel.com,*  
13 *Hyatt.com, InstantService.com, InternationalLiving.com, InvestmentU.com, JCPenneyem.com,*  
14 *JockeyComfort.com, KeepCalling.net, LaSenza.com, Lowes.com, Meetic.omc,*  
15 *NationalReview.com, NYMag.com, Oprah.com, ovh.ca, ovh.com, Princess.com, pvh.com,*  
16 *SecuredMI.com, ShopBonton.com, Skype.com, SoccerSavings.com, SonyEntertainmentNetwork.*  
17 *com, StarBucks.com, TheGuardian.com, Toms.com, WellsFargoEmail.com, Yahoo.com.*

18 68. Plaintiffs received spams advertising RBM with domain names in the Sender Email  
19 Address field that are registered to non-existent entities, so that the spams are not readily  
20 traceable to the sender. For example:

- 21 • *Premium-advance.com* is registered to “Tekmodus” at a P.O. Box in Babylon,  
22 New York. No such entity is registered with the New York Secretary of State.
- 23 • *Primerpower.com* is registered to “BillJonesMedia” at 1234 Main Street, New  
24 York, New York. The address does not exist, and no such entity is registered with  
25 the New York Secretary of State.

26 Indeed, this Court already made a finding of fact that at least one of the sending domain names  
27 was registered to a non-existent entity.

28 69. Plaintiffs could not identify RBM, APATRACKER, or their spamming affiliates who  
29 sent at least 186 of the spams at issue by querying the Whois database for the domain names  
30 used to send the spams issue.



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

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

6 71. The Subject Line is part of email headers.

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

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

- 11 • BARR received a spam advertising RBM with the Subject Line: “Re mbarr54275,  
12 \$5000 Overnight Cash Loan for YOU, Don't wait for payday.” This Subject  
13 Line is false and misleading because California limits payday loans to \$300. *See*  
14 *Fin. Code § 23035.*
- 15 • HELLMAN received spams advertising RBM with the Subject Lines: “E-  
16 signature is required to Finish your Loan process,” “Transfer Request Received:  
17 July 17th 2014,” and “Continue your application.” These Subject Lines are all  
18 false and misleading because they claim that RBM has a preexisting relationship  
19 with HELLMAN, that HELLMAN made a request to RBM to transfer monies on  
20 July 17, 2014, and that HELLMAN has completed prior steps towards applying  
21 for a loan – none of which are true.
- 22 • MEINER received spams advertising RBM with the Subject Line: “meiner100,  
23 You have received Your New \$7500 Cash deposited.” This Subject Line is false  
24 and misleading because Meiner did *not* receive \$7,500 from RBM.
- 25 • O’SHEA received a spam advertising RBM with the Subject Line: “\$1,000 in 1  
26 Hour.” This Subject Line is false and misleading because California limits  
27 payday loans to \$300. *See Fin. Code § 23035.* O’SHEA received spams  
28 advertising RBM with the Subject Lines: “Your E-signature is required for the  
29 final step,” “Your request has been accepted,” and “Approved.” These Subject  
30 Lines are all false because they claim that RBM has a preexisting relationship  
31 with O’SHEA, that O’SHEA made a request to RBM, that O’SHEA has  
completed prior steps towards applying for a loan, and that O’SHEA is approved,

1 none of which are true. The Subject Lines' falsity is also shown by the  
2 contradictions: How can she already be approved if her signature is still required  
3 for the final step?

4 Indeed, this Court already made a finding of fact that 11 representative Subject Lines are false.

5 **F. RBM is Strictly Liable for Spams Sent By its Third Party Marketing Agents**

6 74. Plaintiffs are informed and believe and thereon allege that RBM contracted with third  
7 party advertising networks and affiliates (a/k/a "publishers"), including but not limited to the  
8 other named Defendants to advertise its websites for the purpose of selling services for a profit.

9 75. No one forced RBM to outsource any of its advertising to third party spammers.

10 76. Advertisers such as RBM are liable for advertising in spams, even if third parties hit the  
11 Send button.

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

15 The true beneficiaries of spam are the advertisers who benefit from the marketing  
16 derived from the advertisements.

17 Bus. & Prof. Code § 17529(j)(k).

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

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

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

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

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

1 192 Cal. App. 4th 805, 820-21 (2d Dist. 2011) (emphasis added). The court did not find that this  
2 was an arbitrary requirement; rather, the court identified sound policy reasons behind the  
3 California Legislature’s decision to create a strict liability statute. *Id.* at 829.

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

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

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

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

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

19 82. However, Plaintiffs did suffer damages by receiving the unlawful spams advertising  
20 RBM’s services in the state of California, at their California email addresses. Bus. & Prof. Code  
21 § 17529(d), (e), (g), (h). Regardless, Plaintiffs do not seek actual damages in this Action, only  
22 liquidated damages.

23 **H. Defendants’ Actions Were Willful and Preclude any Reduction in Statutory Damages**

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

29 84. This Court has already made a finding of fact that RBM did not have practices and  
30 procedures to warrant the reduction in liquidated damages.

31 85. Plaintiffs are informed and believe and thereon allege that the other Defendants (other  
than RBM) have not established and implemented, with due care, practices and procedures

1 reasonably designed to effectively prevent unsolicited commercial e-mail advertisements that are  
2 in violation of Section 17529.5.

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

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

7 88. Moreover, Plaintiffs are informed and believe and thereon allege that Defendants  
8 intended to deceive recipients of their spam messages through the use of third parties' domain  
9 names without permission, falsified and/or misrepresented information contained in or  
10 accompanying the email headers, and false and misleading Subject Lines, as described herein.

11 89. Subject Lines and From Names do not write themselves and domain names do not  
12 register themselves; the misrepresented information contained in and accompanying the email  
13 headers are not "clerical errors." Plaintiffs are informed and believe and thereon allege that  
14 Defendants went to great lengths to create misrepresented information contained in and  
15 accompanying the email headers in order to deceive recipients, Internet Service Providers, and  
16 spam filters.

17 90. Furthermore, some Plaintiffs continued to receive spams advertising RBM months after  
18 their attorneys provided their email addresses to RBM's attorneys. In fact, Plaintiffs BARRETT  
19 and HELLMAN continued to receive hundreds of RBM spams, even after filing this Action.  
20 Obviously, even if RBM and the other Defendants have practices and procedures to prevent  
21 unlawful spamming, they do not work.

22 91. Plaintiffs are informed and believe and thereon allege that Defendants intended to profit,  
23 actually profited, and continue to profit, and were unjustly enriched by, their wrongful conduct  
24 as described herein.

25 92. Punitive damages are appropriate to punish malicious, oppressive, and/or fraudulent  
26 conduct by Defendants, and to deter others from engaging in such conduct.

27  
28 **FIRST CAUSE OF ACTION**

29 **[Violations of California Restrictions on Unsolicited Commercial Email,**  
30 **California Business & Professions Code § 17529.5]**  
31 **(Against All Defendants)**

1 93. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.  
 2 94. Plaintiffs received the spams at issue within one year prior to filing this Complaint.  
 3 95. Defendants advertised in, sent, and/or caused to be sent at least 1,312 unsolicited  
 4 commercial emails to Plaintiffs' California electronic mail addresses: a) containing third parties'  
 5 domain names without permission; b) containing or accompanied by falsified and/or  
 6 misrepresented header information; and/or c) containing misleading Subject Lines, in violation  
 7 of Section 17529.5.  
 8 96. The California Legislature set liquidated damages at One Thousand Dollars (\$1,000) per  
 9 email.  
 10 97. Plaintiffs seek reimbursement of attorneys' fees and costs as authorized by Section  
 11 17529.5(b)(1)(C).  
 12 98. The attorneys' fees provision for a prevailing spam recipient is typical of consumer  
 13 protection statutes and supported by Code of Civil Procedure § 1021.5. By prosecuting this  
 14 action, Plaintiffs expect to enforce an important right affecting the public interest and thereby  
 15 confer a significant benefit on the general public or a large class of persons. The necessity and  
 16 financial burden of private enforcement is such as to make the award appropriate, and the  
 17 attorneys' fees should not, in the interest of justice, be paid out of the recovery of damages.

18  
 19 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set forth.

20  
 21 **PRAYER FOR RELIEF**  
 22 **(Against All Defendants)**

- 23 A. An Order from this Court declaring that Defendants violated California Business &  
 24 Professions Code § 17529.5 by advertising in and sending unlawful spams.  
 25 B. Liquidated damages against RBM in the amount of \$1,000 for each of at least 1,312  
 26 unlawful spams, as authorized by Section 17529.5(b)(1)(B)(ii), for a total of at least  
 27 \$1,312,000, as set forth below:

<b>PLAINTIFF</b>	<b>DAMAGES</b>	<b>PLAINTIFF</b>	<b>DAMAGES</b>
BARR	\$18,000	HERNANDEZ	\$25,000
BARRETT	\$134,000	MEINER	\$52,000
GREGOR	\$9,000	O'SHEA	\$455,000
HELLMAN	\$619,000	<b>TOTAL</b>	\$1,312,000

- 1 C. Liquidated damages against POPULAR MARKETING and NWHIZ, jointly and
- 2 severally with RBM, in the amount of \$155,000.
- 3 D. Liquidated damages against POPULAR MARKETING, NWHIZ, and BZI, jointly and
- 4 severally with RBM, in the amount of \$607,000.
- 5 E. Liquidated damages against APATRACKER, jointly and severally with RBM, in the
- 6 amount of \$531,000.
- 7 F. Liquidated damages against FLEX, jointly and severally with RBM, in the amount of
- 8 \$13,000.
- 9 G. Attorneys' fees as authorized by Section 17529.5(b)(1)(C) and Code of Civil Procedure
- 10 § 1021.5 for violations of Section 17529.5.
- 11 H. Punitive damages, in an amount to be determined by this Court.
- 12 I. Costs of suit.
- 13 J. Such other and further relief as the Court deems proper.

14 THE LAW OFFICES OF DANIEL BALSAM

15  
16 Date: Feb. 18, 2016

15  
16 BY: 

17 DANIEL L. BALSAM  
18 Attorneys for Plaintiffs