

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement"), by and between Daniel L. Balsam, "Plaintiff," and Trifecta Advertising, LLC, "Defendant," is based upon the following recitals of facts:

- A. Plaintiff has alleged that Defendant sent 1,353 email advertisements to Plaintiff over the course of approximately nine months.
- B. Plaintiff sent a Demand letter to Defendant requesting resolution of the dispute prior to filing a complaint in the Superior Court of the State of California, County of Santa Clara, Case No. 1-04-CV-020000. Defendant has not responded to the Complaint.
- C. It is the mutual wish and desire of all of the parties hereto that a full and final settlement of all their rights, duties, interests and claims, if any, arising out of the Action, which may exist now or in the future, be had on the terms and conditions set forth herein.

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND COVENANTS SET FORTH HEREIN BELOW, THE PARTIES HERETO MUTUALLY AGREE AS FOLLOWS:

1. Incorporation of Recitals: The foregoing recitals are incorporated by reference herein, and by this reference, expressly made a part of this Agreement.
2. Payment of Settlement Funds: In full and final settlement of the Action, the parties have agreed to the following:
- (a) Defendant will pay Plaintiff the sum of [REDACTED] five (5) days after execution of this Agreement. Upon receipt of such funds, Plaintiff will cause to be filed a Request for Dismissal with prejudice and will forward a conformed copy of a Request for Dismissal with prejudice upon receipt.
- (b) Defendant agrees that it will ever after comply with all Internet marketing laws .
3. Release: Except for the obligations set forth in this Agreement, Plaintiff on behalf of himself and Defendant on behalf of itself hereby release and absolutely forever discharge each other of and from any and all debts, claims, obligations, damages, liabilities, demands, costs, expenses (including attorney fees), indebtedness and causes of action of every kind and nature whatsoever, whether now known or unknown, suspected or unsuspected, fixed, conditional or contingent, which they ever had, may now have, or may hereafter have, against each other for any injury, damage, loss or expense, arising or accruing from the beginning of time to the Effective Date of this Agreement, including, without limitation, all claims that have been or could have been asserted in the Action.
4. Continuing Duty to Cooperate: Each of the parties hereto shall, at any time hereafter, make, execute and deliver, any and all papers or documents, as any party hereto may reasonably require, for the purpose of giving full effect to this Agreement and each of its provisions.
5. Section 1542 Waiver: Each of the parties to this Agreement expressly waives the protection of Section 1542 of the California Civil Code, and expressly waives and releases any rights or benefits arising thereunder.

Section 1542 of the California Civil Code states:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

The parties hereto acknowledge that she/he/it is aware that the parties may hereafter discover facts different from, or in addition to, those which she/he/it or her/his/its attorneys now know or believe to be true with respect to the matters released in Paragraph 3 above, and agree that the releases so given in Paragraph 3 above shall be and remain in effect as full and complete releases of the respective claims, notwithstanding any such different or additional facts.

6. Entire Agreement: This Agreement contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and no other agreement, oral or written, shall be deemed to exist or to bind any of the parties hereto.

7. Waiver, Modification and Amendment: No provision hereof may be waived unless in writing signed by all parties hereto. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein. This Agreement may be modified or amended only by a written agreement executed by the parties affected thereby.

8. Successors and Assigns: This Agreement shall inure to the benefit of and shall be binding upon the predecessors, successors and assigns of the parties hereto, and each of them. This Agreement is not intended to constitute a third-party beneficiary contract.

9. Attorneys' Fees: The parties hereto agree to bear their own costs and attorneys' fees, including but not limited to, those incurred in the negotiation and drafting of this Agreement, or otherwise incurred in connection with the Action, or prior to the date of execution hereof. If any action at law or in equity, including an action for declaratory relief or any motion pursuant to C.C.P. Section 664.6, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover actual attorneys' fees, which may be determined by the court in the same action or in a separate action brought to that purpose in addition to any other relief to which that party may be entitled. The attorneys' fees award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorneys' fees actually incurred in good faith, regardless of the size of the judgment, since it is the intention of all parties to compensate fully the prevailing party for all attorneys' fees paid or incurred in good faith.

10. Severability: In the event that any of the terms or provisions of this Agreement are found to be legally unenforceable, then the remaining terms and conditions shall nevertheless be fully enforceable without regard to any such provision or terms that are found to be legally unenforceable.

11. Governing Law: The terms and provisions of this Agreement shall be construed, interpreted and governed, by the laws of the State of California.

12. Headings: Titles and headings of this Agreement are for convenience and identification only, and shall not be deemed to limit, amplify or define, the contents of the respective sections or paragraphs to which they pertain.

13. Drafting of Agreement: The parties hereto represent, warrant and agree, that the terms set forth in this Agreement are the result of all parties' discussion and input, and thus all parties shall be deemed to be equal drafters of this Agreement.

14. Execution: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all which together, shall be deemed to constitute a single document. Each person who signs below acknowledges that he, she or it, has received a copy of the agreement containing three (3) pages, and agrees to each of its terms and conditions. Each person acknowledges that he, she or it, has carefully read this Agreement, and knows the contents thereof, and executes the same of his, her or its, own free will. Each person acknowledges that he, she or it, has the ability to sign and to bind himself, herself or itself, by signing this document.

15. Effective Date: This Agreement is effective and enforceable on the date of execution of this Agreement by all parties ("Effective Date").

Dated: _____

TRIFECTA ADVERTISING, INC.

By: _____

Title: _____

Dated: 12-9-04



DANIEL BALSAM

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15. Effective Date: This Agreement is effective and enforceable on the date of execution of this Agreement by all parties ("Effective Date").

Dated: 12-10-04

TRIFECTA ADVERTISING, INC.

By: D. C. Caseoff

Title: President

Dated: _____

DANIEL BALSAM