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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA (UNLIMITED JURISDICTION)**
10

11 DANIEL L. BALSAM, an individual,)	Case No.:
)	
12 Plaintiff,)	VERIFIED COMPLAINT FOR
)	DAMAGES AND INJUNCTIVE RELIEF
13 vs.)	
)	1. CALIFORNIA RESTRICTIONS ON
)	UNSOLICITED COMMERCIAL E-
14 USGUIDES.NET, INC., a Texas corporation;)	MAIL ADVERTISERS (Cal. Bus. &
15 and)	Prof. Code § 17529.5)
16 DOES 1-10,)	
)	2. CONSUMERS LEGAL REMEDIES
17 Defendants.)	ACT (Cal. Civ. Code § 1750 et seq.)
)	

18 COMES NOW PLAINTIFF DANIEL L. BALSAM for causes of action against Defendants
19 USGUIDES.NET INC. and DOES 1 through 10, inclusive, and alleges as follows:

20 **GENERAL ALLEGATIONS**

21
22 1. Plaintiff DANIEL L. BALSAM is now, and at all times relevant herein, has been a
23 resident of the State of California.

1 2. Plaintiff is informed and believes and thereon alleges that Defendant USGUIDES.NET
2 INC. is now, and was at all times relevant herein, a corporation duly organized and recognized
3 under the laws of the State of Texas with a principal place of business in The Colony, Texas.

4 3. Plaintiff is informed and believes and thereon alleges that Defendant USGUIDES.NET
5 INC. is not qualified to do business in California.

6 4. Venue in this County is appropriate because Defendants have not qualified to do business
7 in any County in California. (*See Easton v. Superior Court (Schneider Bros. Inc.)* (1970) 12
8 Cal. App.3d 243, 246 (citing *Bohn v. Better Biscuits, Inc.*, 26 Cal. App.2d 61, 64-65 *Hobson v.*
9 *Metropolitan Casualty Ins. Co.*, 114 Cal.App. 349, 351; *Warren v. Ritter*, 61 Cal.App.2d 403,
10 405-406).)

11
12 5. Plaintiff does not know the true names or legal capacities of the defendants sued herein as
13 DOES 1 through 10, inclusive, and therefore sues said Defendants by such fictitious names.

14 6. Plaintiff is informed and believes and thereon alleges that each of the Defendants
15 designated herein as a DOE is legally responsible in some manner for the matters herein alleged,
16 and is legally responsible in some manner for causing the injuries and damages to Plaintiff as
17 alleged herein.

18 7. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned,
19 each of the Defendants was the agent or employee of other Defendants and was at all times
20 herein mentioned acting within the scope of said agency or employment.
21

22
23 **SPECIFIC ALLEGATIONS**

24 8. Plaintiff owns and at all relevant times herein owned a computer with an Internet
25 connection capable of receiving email at many email addresses.

1 9. At all times relevant herein, Defendants sent commercial email advertising messages to
2 Plaintiff.

3 10. Plaintiff received 25 email messages from Defendants between May 31, 2004 and May 9,
4 2005. Plaintiff received all of the email messages over his Internet Service Provider's
5 equipment, located in the State of California.

6 11. Plaintiff had no existing business or personal relationship with any Defendant, and
7 Plaintiff neither requested nor consented to receive commercial email advertisements from
8 Defendants.

9 12. Plaintiff is informed and believes and thereon alleges that Defendants intended to deceive
10 recipients of their email messages through the use of falsified header information.

11 13. Plaintiff is informed and believes and thereon alleges that Defendants' email messages
12 were commercial in nature.

13 14. Plaintiff is informed and believes and thereon alleges that Defendants actually profit and
14 continue to profit from their wrongful conduct.

15 15. Plaintiff suffered damages as a result of Defendants' wrongful conduct.

16 16. Punitive damages are appropriate to deter Defendants' conduct and to deter others from
17 engaging in such conduct in that the Defendants' conduct was malicious, fraudulent and/or
18 oppressive. Punitive damages are appropriate because Defendants use multiple domain names,
19 email addresses and personal names of people who do not exist. Plaintiff is informed and
20 believes and thereon alleges that Defendants engage in the subterfuge as a means of avoid spam
21 filters.

22 17. Plaintiff is informed and believes and thereon alleges that Defendants will continue to
23 advertise in this wrongful and unlawful fashion unless otherwise enjoined by this Court. This
24
25

1 Court has jurisdiction to issue a permanent injunction because restraint is necessary to prevent a
2 multiplicity of judicial proceedings.

3
4
5 **FIRST CAUSE OF ACTION**

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

9 18. Plaintiff hereby incorporates by reference Paragraphs 1 to 17 inclusive, as if the same
10 were fully set forth herein.

11 19. Defendants sent commercial electronic mail to California electronic mail addresses,
12 including Plaintiff's email address, containing or accompanied by falsified, misrepresented, or
13 forged header information.

14 20. Defendants sent commercial electronic mail using multiple domain names, including but
15 not limited to: freeupdate.net, forva.com, m3p.org, netva.org, and updatesplus.com.

16 21. The "From" fields of Defendants' commercial electronic email contained names of
17 persons who do not in fact exist at Defendants' organization, including: Samantha Jones, Melissa
18 Roberts, Andrea Hurst, Katie Taylor, Anna Thomas, Melanie Adams, Stacy Smith, Kelly Clark,
19 Jeri Hurst, Missy Thomas, Emily Schwan, Nadine Walker, and Nicole Peters.

20 22. Defendants' commercial electronic mail contained subject lines intended to, and likely to,
21 mislead recipients, acting reasonably under the circumstances, about a material fact regarding the
22 contents or subject matter of the message. Examples of such misleading subject lines include
23 "Your loan is approved" and "Job Search Results".

24 23. Plaintiff is informed and believes and thereon alleges that Defendants profited from their
25 wrongful conduct.

1 24. Plaintiff suffered damages as a result of Defendants' wrongful conduct.

2 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as hereinafter
3 set forth.

4
5 **SECOND CAUSE OF ACTION**
6 **[Consumers Legal Remedies Act]**
7 **(Against All Defendants)**

8 25. Plaintiff hereby incorporates by reference Paragraphs 1 to 17, inclusive, as if the same
9 were fully set forth herein.

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

13 27. The Consumers Legal Remedies Act is explicitly cumulative.

14 28. Defendants violated the Consumers Legal Remedies Act by representing an affiliation the
15 Defendants did not have, namely that Defendants had an affiliation with the recipient of email
16 advertising.

17
18 29. Defendants violated the Consumers Legal Remedies Act by representing an affiliation the
19 Defendants did not have, namely that Defendants had an affiliation with Samantha Jones,
20 Melissa Roberts, Andrea Hurst, Katie Taylor, Anna Thomas, Melanie Adams, Stacy Smith,
21 Kelly Clark, Jeri Hurst, Missy Thomas, Emily Schwan, and Nadine Walker, and that these
22 individuals were authorized to send commercial electronic mail on Defendants' behalf.

23
24 30. Defendants violated the Consumers Legal Remedies Act by using deceptive
25 representations in connection with offers of goods or services or both.

1 31. Defendants' commercial email solicitation requested a transaction (as defined by
2 California Civil Code § 1761(e)), and Plaintiff is informed and believes and thereon alleges that
3 Defendants intended that such a transaction result.

4 32. Plaintiff seeks equitable relief in the form of an Order of this Court requiring that
5 Defendants comply with applicable advertising laws and refrain from using misleading
6 advertising.
7

8 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as hereinafter
9 set forth.

10 **PRAYER FOR RELIEF**

- 11 A. An Order of this Court enjoining Defendants, and each of them, and their agents,
12 servants, and employees, and all persons acting under, in concert with, or for them, from
13 using unlawful email solicitations;
14
15 B. General damages in an amount according to proof;
16
17 C. Special damages in an amount according to proof;
18
19 D. Statutory damages in the amount of One Thousand Dollars (\$1,000.00) per email
20 message;
21
22 E. Attorneys' fees as allowed by law;
23
24 F. Costs of suit; and
25
G. Such other and further relief as the Court deems proper.

WALTON & ROESS LLP

Date: _____

BY: _____

TIMOTHY J. WALTON
Attorney for Plaintiff

VERIFICATION

The undersigned for himself declares:

I am the Plaintiff in the above-entitled action. I have read the forgoing 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.

Date: _____

DANIEL L. BALSAM