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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SAN DIEGO (UNLIMITED JURISDICTION)**

17	ALTHEA SMITH, an individual;)	Case No.:
18	MARGIE BARR, an individual,)	
19	DANIEL BARRETT, an individual;)	
20	JASON BISHOP, an individual;)	COMPLAINT FOR DAMAGES
21	KRISTEN CLARK, an individual;)	
22	LISA CLARK-SCHMELING, an individual;)	1. VIOLATIONS OF CALIFORNIA
23	LOUISA GILDEA, an individual;)	RESTRICTIONS ON UNSOLICITED
24	DANIEL HANNEGAN, an individual;)	COMMERCIAL E-MAIL (Cal. Bus. &
25	PENNY HICKS, an individual;)	Prof. Code § 17529.5)
26	DEREK HILL, an individual;)	
27	GARET HILL-HANSON, an individual;)	
28	SCOTT KAIL, an individual;)	
29	BONNIE LEPORIERE, an individual;)	
30	ANGELA NEILSEN, an individual;)	
31	NICK OLIVERES, an individual;)	
	MORGAN REEVES, an individual;)	
	KRISTEN RIDLEY, an individual;)	
	LUCI SEED, an individual;)	
	SHANE SEEFELDT, an individual;)	
	JOAN SMITH, an individual;)	
	PHILIP SMITH, an individual;)	
	SEAN SMITH, an individual; and)	

1 NEIL TRACHY, an individual;)
 2)
 3 Plaintiffs,)
 4 v.)
 5 ANASTASIA INC., a Kentucky corporation;)
 6 and DOES 1-500;)
 7 Defendants.)

8 COME NOW PLAINTIFFS ALTHEA SMITH *et al* and file this Complaint for one cause of
 9 action against Defendants ANASTASIA INC. *et al* and allege as follows:

10
 11 **I. INTRODUCTION AND SUMMARY OF THE COMPLAINT**

12 1. Plaintiffs bring this Action against professional spammers ANASTASIA INC. and its
 13 third party affiliates (aka “publishers”), for advertising in and sending at least 600 unlawful
 14 spams to Plaintiffs. A representative sample (*Figure 1*) appears on the next page.

15 2. No Plaintiff gave direct consent to, or had a preexisting or current business relationship
 16 with, any Defendant.

17 3. The spams all violated California Business & Professions Code § 17529.5 (“Section
 18 17529.5”) because they contained: a) third parties’ domain names without their permission; b)
 19 materially misrepresented or falsified information contained in or accompanying the email
 20 headers; and/or c) misleading Subject Lines. The unlawful elements of these spams represent
 21 willful acts of falsity and deception, rather than clerical errors.

22 4. ANASTASIA INC. is strictly liable for advertising in spams sent by its third party
 23 affiliates.

24 5. Spam recipients are not required to allege or prove reliance or actual damages to have
 25 standing. *See* Bus. & Prof. Code § 17529(b)(1)(A)(iii). Nevertheless, Plaintiffs did suffer
 26 damages by receiving the spams. *See, e.g.*, Bus. & Prof. Code § 17529(d), (e), (g), (h).

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

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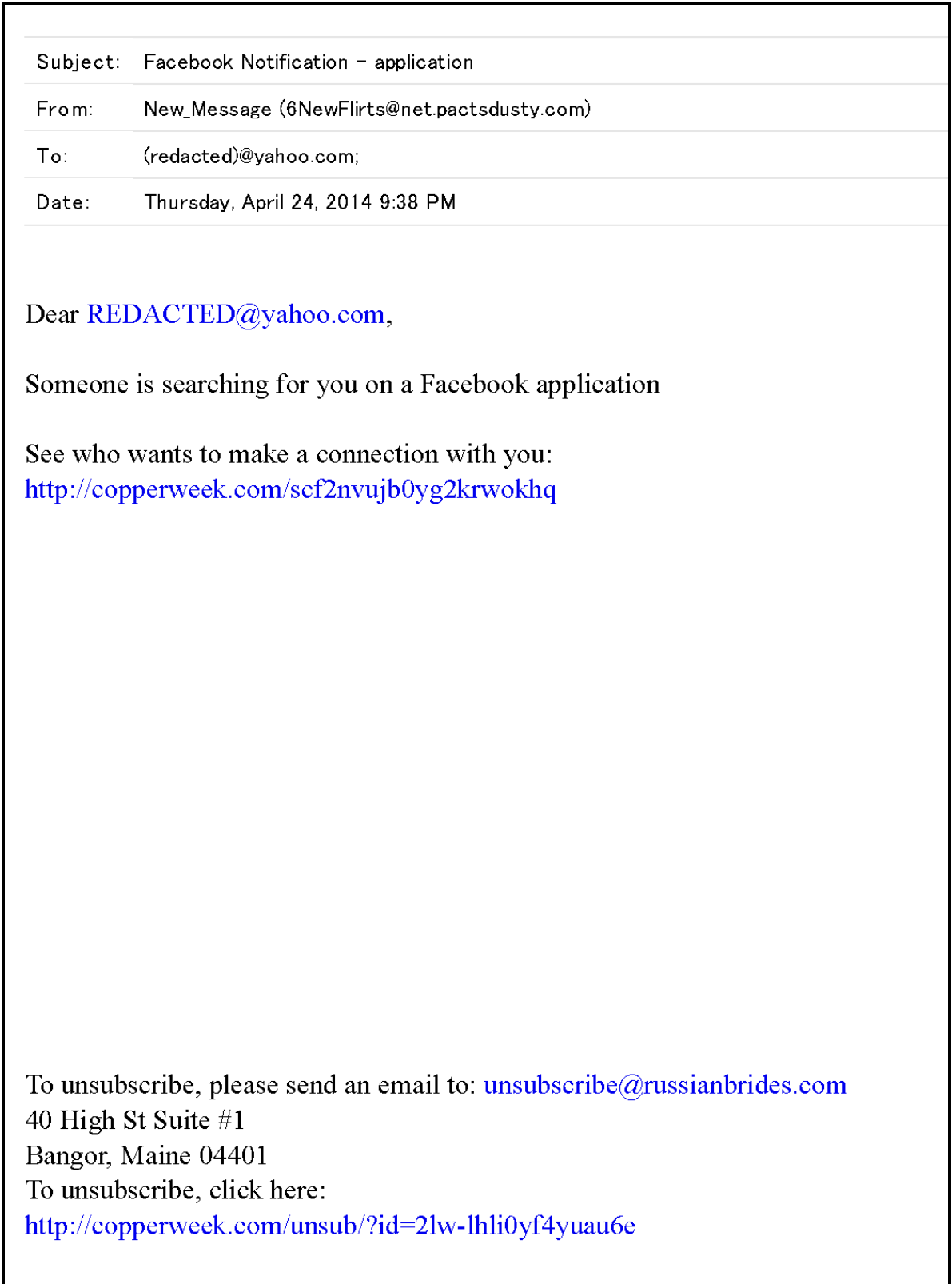


Figure 1

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

5 7. This Court should award Plaintiffs their attorneys' fees pursuant to Section
6 17529.5(b)(1)(C). *See also* Code of Civil Procedure § 1021.5, providing for attorneys fees when
7 private parties bear the costs of litigation that confers a benefit on a large class of persons; here,
8 by reducing the amount of false and deceptive spam received by California residents.

9
10 **II. PARTIES**

11 **A. Plaintiffs**

12 8. MARGIE BARR ("BARR") was domiciled in and a citizen of the State of California,
13 when she received Defendants' spams at issue. BARR ordinarily accesses her email address(es)
14 from California.

15 9. DANIEL BARRETT ("BARRETT") was domiciled in and a citizen of the State of
16 California, when he received Defendants' spams at issue. BARRETT ordinarily accesses his
17 email address(es) from California.

18 10. JASON BISHOP ("BISHOP") was domiciled in and a citizen of the State of California,
19 when he received Defendants' spams at issue. BISHOP ordinarily accesses his email address(es)
20 from California.

21 11. KRISTEN CLARK ("CLARK") was domiciled in and a citizen of the State of California,
22 when she received Defendants' spams at issue. CLARK ordinarily accesses her email
23 address(es) from California.

24 12. LISA CLARK-SCHMELING ("CLARK-SCHMELING") was domiciled in and a citizen
25 of the State of California, when she received Defendants' spams at issue. CLARK-
26 SCHMELING ordinarily accesses her email address(es) from California.

27 13. LOUISA GILDEA ("GILDEA") was domiciled in and a citizen of the State of California,
28 when she received Defendants' spams at issue. GILDEA ordinarily accesses her email
29 address(es) from California.

1 14. DANIEL HANNEGAN (“HANNEGAN”) was domiciled in and a citizen of the State of
2 California, when he received Defendants’ spams at issue. HANNEGAN ordinarily accesses his
3 email address(es) from California.

4 15. PENNY HICKS (“HICKS”) was domiciled in and a citizen of the State of California,
5 when she received Defendants’ spams at issue. HICKS ordinarily accesses her email address(es)
6 from California.

7 16. DEREK HILL (“HILL”) was domiciled in and a citizen of the State of California, when
8 he received Defendants’ spams at issue. HILL ordinarily accesses his email address(es) from
9 California.

10 17. GARET HILL-HANSON (“HILL-HANSON”) was domiciled in and a citizen of the
11 State of California, when he received Defendants’ spams at issue. HILL-HANSON ordinarily
12 accesses his email address(es) from California.

13 18. SCOTT KAIL (“KAIL”) was domiciled in and a citizen of the State of California, when
14 he received Defendants’ spams at issue. MYERS ordinarily accesses his email address(es) from
15 California.

16 19. BONNIE LEPORIERE (“LEPORIERE”) was domiciled in and a citizen of the State of
17 California, when she received Defendants’ spams at issue. LEPORIERE ordinarily accesses her
18 email address(es) from California.

19 20. ANGELA NEILSEN (“NEILSEN”) was domiciled in and a citizen of the State of
20 California, when she received Defendants’ spams at issue. NEILSEN ordinarily accesses her
21 email address(es) from California.

22 21. NICK OLIVERES (“OLIVERES”) was domiciled in and a citizen of the State of
23 California, when he received Defendants’ spams at issue. OLIVERES ordinarily accesses his
24 email address(es) from California.

25 22. MORGAN REEVES (“REEVES”) was domiciled in and a citizen of the State of
26 California, when she received Defendants’ spams at issue. REEVES ordinarily accesses her
27 email address(es) from California.

28 23. KRISTEN RIDLEY (“RIDLEY”) was domiciled in and a citizen of the State of
29 California, when she received Defendants’ spams at issue. RIDLEY ordinarily accesses her
30 email address(es) from California.

1 24. LUCI SEED (“SEED”) was domiciled in and a citizen of the State of California, when
2 she received Defendants’ spams at issue. SEED ordinarily accesses her email address(es) from
3 California.

4 25. SHANE SEEFELDT (“SEEFELDT”) was domiciled in and a citizen of the State of
5 California, when he received Defendants’ spams at issue. SEEFELDT ordinarily accesses his
6 email address(es) from California.

7 26. ALTHEA SMITH (“SMITH-A”) was domiciled in and a citizen of the State of
8 California, when she received Defendants’ spams at issue. SMITH-A ordinarily accesses her
9 email address(es) from California.

10 27. JOAN SMITH (“SMITH-J”) was domiciled in and a citizen of the State of California,
11 when she received Defendants’ spams at issue. SMITH-J ordinarily accesses her email
12 address(es) from California.

13 28. PHILIP SMITH (“SMITH-P”) was domiciled in and a citizen of the State of California,
14 when he received Defendants’ spams at issue. SMITH-P ordinarily accesses his email
15 address(es) from California.

16 29. SEAN SMITH (“SMITH-S”) was domiciled in and a citizen of the State of California,
17 when he received Defendants’ spams at issue. SMITH-S ordinarily accesses his email
18 address(es) from California.

19 30. NEIL TRACHY (“TRACHY”) was domiciled in and a citizen of the State of California,
20 when he received Defendants’ spams at issue. TRACHY ordinarily accesses his email
21 address(es) from California.

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

1 **B. Defendants**

2 32. Plaintiffs are informed and believe and thereon allege that Defendant ANASTASIA INC.
3 (“ANASTASIA”) is now, and was at all relevant times, a Kentucky corporation located in
4 Bangor, Maine, operating various “foreign bride” websites such as *AmoLatina.com*, *Colombia-*
5 *Women.com*, *ChinaWomenDating.asia*, *RussianBride.info* and *RussianBrides.info*, among others.

6 33. Plaintiffs do not know the true names or legal capacities of the Defendants designated
7 herein as DOES 1 through 500, inclusive, and therefore sue said Defendants under the fictitious
8 name of “DOE.” Plaintiffs are informed and believe and thereon allege that each of the
9 Defendants designated herein as a DOE is legally responsible in some manner for the matters
10 alleged in this complaint, and is legally responsible in some manner for causing the injuries and
11 damages of which Plaintiffs complain. Plaintiffs are informed and believe and thereon allege
12 that each of the Defendants designated herein as a DOE Defendant was, at all times relevant to
13 the matters alleged within this complaint, acting in conjunction with the named Defendants,
14 whether as a director, officer, employee, agent, affiliate, customer, participant, or co-conspirator.
15 When the identities of DOE Defendants 1-500 are discovered, or otherwise made available,
16 Plaintiffs will seek to amend this Complaint to allege their identity and involvement with
17 particularity.

18
19 **III. JURISDICTION AND VENUE**

20 **A. Jurisdiction is Proper in a California Court**

21 34. This Superior Court has jurisdiction over the Action for all of the following independent
22 reasons: a) all Plaintiffs are domiciled in and citizens of the State of California and received the
23 unlawful spams at their California email addresses; b) the amount in controversy is more than
24 \$25,000; c) Plaintiffs’ claims are individual, *not* joint and several, and no Plaintiff’s amount in
25 controversy exceeds \$75,000 as of the time of filing this Complaint.

26 **B. Venue is Proper in San Diego County**

27 35. Venue is proper in San Diego County because many of the Plaintiffs, including SMITH-
28 A, received the spams at issue in San Diego County. Venue is also proper in Alameda County
29 because a company can be sued where the cause of action arises. *See* Code Civ. Proc. §§ 395(b),
30 395.5.

1 36. Venue is also proper San Diego County because ANASTASIA is a foreign corporation
2 that has not designated the location and address of a principal office in California or registered to
3 do business in California with the California Secretary of State. *See Easton v. Superior Court of*
4 *San Diego (Schneider Bros. Inc.)*, 12 Cal. App. 3d 243, 246 (4th Dist. 1970).

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6 **IV. AT LEAST 600 UNLAWFUL SPAMS**

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

11 38. California’s False Advertising Law, Business & Professions Code § 17500
12 prohibits “not only advertising which is false, but also advertising which[,]
13 although true, is either actually misleading or which has a capacity, likelihood or
14 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.

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

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

17 39. The emails at issue are “commercial email advertisements”¹ because they were initiated
18 for the purpose of advertising and promoting the sale of Defendants’ “foreign bride” services.

19 40. The emails are “unsolicited commercial email advertisements”² because no Plaintiff gave
20 “direct consent”³ to, or had a “preexisting or current business relationship”⁴ with, ANASTASIA
21 or its affiliates.

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25 ¹ “‘Commercial e-mail advertisement’ means any electronic mail message initiated for the
26 purpose of advertising or promoting the lease, sale, rental, gift offer, or other disposition of any
property, goods, services, or extension of credit.” Bus. & Prof. Code § 17529.1(c).

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

41. Defendants sent and/or advertised in at least 600 unlawful spams that Plaintiffs received at their “California email addresses”⁵ within one year prior to the filing of this Action, as set forth below:

PLAINTIFF	SPAMS RECEIVED	PLAINTIFF	SPAMS RECEIVED
BARR	18	NEILSEN	9
BARRETT	43	OLIVERES	70
BISHOP	27	REEVES	50
CLARK	32	RIDLEY	68
CLARK-SCHMELING	8	SEED	1
GILDEA	5	SEEFELDT	53
HANNEGAN	40	SMITH-A	35
HICKS	2	SMITH-J	5
HILL	3	SMITH-P	5
HILL-HANSON	40	SMITH-S	40
KAIL	8	TRACHY	30
LEPORIERE	8	TOTAL	600

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 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.

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

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

⁵ “‘California e-mail address’ means 1) An e-mail address furnished by an electronic mail service 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).

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

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

5 45. Some of the spams that Plaintiffs received advertising Defendants' websites contained
6 third parties' domain names without their permission, and therefore violated Section
7 17529.5(a)(1). To name but two examples:

- 8 • LEPORIERE received a spam advertising ANASTASIA showing @*ymail.com* in
9 the sending email address. Yahoo! Inc., owner of the *ymail.com* domain name,
10 expressly prohibits use of its services for spamming. See Universal Anti-Spam
11 Policy, <https://info.yahoo.com/legal/us/yahoo/guidelines/spam> (last visited June
12 16, 2014). Therefore, since Yahoo! Inc. prohibits all spamming using its services,
13 Yahoo! Inc. did not and could not have given permission for anyone to use its
14 domain name in conjunction with this spam.
- 15 • CLARK-SCHMELING received a spam advertising ANASTASIA showing
16 @*aol.com* in the sending email address. AOL Inc., owner of the *aol.com* domain
17 name, expressly prohibits use of its services for spamming. See AOL Terms of
18 Service, <http://legal.aol.com/terms-of-service/full-terms> (last visited May 22,
19 2014). Therefore, since AOL prohibits all spamming using its services, AOL did
20 not and could not have given permission for anyone to use its domain name in
21 conjunction with this spam.

22 46. Furthermore, if the spams that LEPORIERE and CLARK-SCHMELING received, which
23 showed @*ymail.com* and @*aol.com*, respectively, in the sending email address, were *not* actually
24 sent from *ymail.com* and *aol.com*, then the spams contained falsified and forged information,
25 which violates Section 17529.5(a)(2), *infra*.

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

28 47. Section 17529.5(a)(2) prohibits misrepresented information contained in or
29 accompanying email headers.

30 48. The From Name field is part of email headers. The From Name field does *not* include the
31 sending email address.

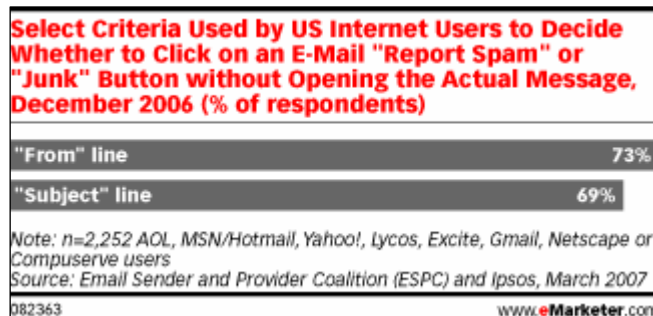
1 49. The From Name field in an email’s headers is, not surprisingly, supposed to identify who
2 the email is *from*; it is not supposed to be an advertising message. Because computers must use
3 standard protocols in order to communicate, the Internet Engineering Task Force created a
4 collection of “Requests for Comment” (“RFCs”) that define the rules that enable email to work.
5 According to RFC 5322 at ¶ 3.6.2 (emphasis in original):

6 The “From:” field specifies the author(s) of the message, that is, the mailbox(es)
7 of the person(s) or system(s) responsible for the writing of the message. . . . In all
8 cases, the “From:” field SHOULD NOT contain any mailbox that does not belong
to the author(s) of the message.

9 50. Plaintiffs do not insist on any *particular* label (e.g., “Anastasia,” “RussianBrides.info,”
10 etc.) in the From Name field. Rather, Plaintiffs contend that the text, whatever it is, cannot
11 misrepresent *who* is advertising in the email.

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

16 52. Indeed, empirical evidence has
17 demonstrated that the From Name is the
18 *most* important factor email recipients use
19 to determine whether or not an email is
20 spam. See eMarketer, E-Mail Open Rates
21 Hinge on ‘Subject’ Line, *available at*



22 <http://www.emarketer.com/Article/E-Mail-Open-Rates-Hinge-on-Subject-Line/1005550> (Oct.
23 31, 2007). Thus, a From Name that misrepresents who a spam is from is *not* a mere technical
24 error; rather, it is a material violation of the most important part of the email header.

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

28 1. Don’t use false or misleading header information. Your “*From*,” “*To*,”
29 “*Reply-To*,” and routing information – including the originating domain name
30 and email address – *must be accurate and identify the person or business who*
31 *initiated the message*.

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

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

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

11 203 Cal. App. 4th 1083, 1088, 1090-91, 1093 (1st Dist. 2012), *petition for review denied*, 2012
12 Cal. LEXIS 4979 (Cal. May 23, 2012), *petition for certiori denied*, 2012 U.S. LEXIS 8423 (U.S.
13 Oct. 29, 2012), *petition for rehearing denied*, 2013 U.S. LEXIS 243 (U.S. Jan. 7, 2013). More
14 specifically, *Balsam* confirmed that generic From Names that “do not exist or are otherwise
15 misrepresented when they do not represent any real company and cannot be readily traced back
16 to the true owner/sender” violate the statute. *Id.* at 1093. The Court affirmed the award of
17 \$1,000 liquidated damages for the seven emails with misrepresented information in the From
18 Name field, even though most of the spams identified the advertiser in the body. *Id.* at 1091,
19 1093. Therefore, truthful information in the body of a spam does not cure misrepresented
20 information contained in or accompanying the headers.

21 55. All of the spams that Plaintiffs received advertising Defendants’ websites had From
22 Names that misrepresented *who* the spams were from, and therefore violated Section
23 17529.5(a)(2). To name but three examples:

- 24 • OLIVERES received a spam advertising ANASTASIA with the From Name
25 “Facebook Request Notification.”
- 26 • LEPORIERE received a spam advertising ANASTASIA with the From Name
27 “Chinese Dating.”
- 28 • BARRETT received a spam advertising ANASTASIA with the From Name “New
29 Message.”

30 56. The From Name “Facebook Request Notification” contains misrepresented information
31 because the spam is not from Facebook.

1 57. The From Name “Chinese Dating” contains misrepresented information because the
2 spam is not *from* “Chinese Dating.” “Chinese Dating” could just as easily refer to numerous
3 dating websites such as *Chinese-Lady.com*, *AsianDating.com*, or *ChnLove.com* – some of
4 ANASTASIA’s competitors.

5 58. The From Name “New Message” is utterly ambiguous as to *who* the spam is from.

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

8 59. Section 17529.5(a)(2) prohibits falsified, misrepresented, or forged information contained
9 in or accompanying in email headers.

10 60. Registration information for the domain names used to send spams is information
11 contained in or accompanying email headers.

12 61. In *Balsam*, the Court of Appeal held:

13 [W]here, as in this case, the commercial e-mailer intentionally uses . . . domain
14 names in its headers that neither disclose the true sender’s identity on their face
15 nor permit the recipient to readily identify the sender, . . . such header information
16 *is* deceptive and *does* constitute a falsification or misrepresentation of the sender's
17 identity. . . .

18 Here, the domain names were *not* traceable to the actual sender. The header
19 information is “falsified” or “misrepresented” because Trancos deliberately
20 created it to prevent the recipient from identifying who actually sent the message.
21 an e-mail with a made-up *and untraceable* domain name affirmatively *and*
22 *falsely* represents the sender has no connection to Trancos.

23 Allowing commercial e-mailers like Trancos to conceal themselves behind
24 untraceable domain names amplifies the likelihood of Internet fraud and abuse--
25 the very evils for which the Legislature found it necessary to regulate such e-
26 mails when it passed the Anti-spam Law.

27 We therefore hold, consistent with the trial court’s ruling, that header information
28 in a commercial e-mail is falsified or misrepresented for purposes of section
29 17529.5(a)(2) when it uses a sender domain name that *neither* identifies the actual
30 sender on its face *nor* is readily traceable to the sender using a publicly available
31 online database such as WHOIS.

203 Cal. App. 4th at 1097-1101 (emphasis in original).

62. Plaintiffs received spams advertising ANASTASIA sent from domain names that:

- Did not identify ANASTASIA (or its websites) or the sender on their face, and

- Were deliberately registered so as to not be readily traceable to the sender by querying the Whois database,

in violation of Section 17529.5(a)(2). More specifically:

63. Many of the spams that Plaintiffs received advertising Defendants were sent from domain names that were proxy registered to prevent the recipient from tracing the domain name to the actual sender using a Whois query. To name but two examples:

- BARRETT received a spam advertising ANASTASIA sent from the domain name *BeefGarlic.com*, which was proxy-registered using Whois Privacy Protection Service Inc. in Kirkland, Washington.
- OLIVERES received a spam advertising ANASTASIA sent from the domain name *YellBeet.com*, which was proxy-registered using Whois Privacy Protection Service Inc. in Kirkland, Washington.

64. Some of the spams that Plaintiffs received advertising Defendants were sent from domain names that were deceptively registered to generic terms, often claiming false addresses or boxes at the U.S. Postal Service or commercial mail receiving agencies, to prevent the recipient from tracing the domain name to the actual sender using a Whois query. To name but one example:

- BISHOP received a spam advertising ANASTASIA sent from the domain name *VividGo.com*, which was deceptively registered to the generic term “Domain Admin” claiming its address to be 3665 South Highway 1792 #402, Orlando, Florida 32773. According to the U.S. Postal Service, no such address exists.

65. Some of the spams that Plaintiffs received advertising Defendants were sent from domain names that were deceptively registered to nonexistent entities, often claiming boxes at the U.S. Postal Service or commercial mail receiving agencies, to prevent the recipient from tracing the domain name to the actual sender using a Whois query. To name but two examples:

- SMITH received a spam advertising ANASTASIA sent from the domain name *GoldHighProductions.com*, which was deceptively registered to “Amaretti Direct LLC,” claiming its address to be a box at a branch of The UPS Store in Sparks, Nevada. According to the Nevada Secretary of State’s website, no such entity exists.
- BARR received a spam advertising ANASTASIA sent from the domain name *RedCapsConsoles.com*, which was deceptively registered to “CPGX Holdings

1 Inc.” in Concord, Ontario, Canada. According to the Government of Canada’s
2 Industry Canada website, no such entity exists.

3 66. Plaintiffs could not identify ANASTASIA or its spamming affiliates who sent many of
4 the spams at issue by querying the Whois database for the domain names used to send many of
5 the spams at issue.

6 **E. Spams With False Subject Lines Violate Business & Professions Code § 17529.5(a)(2);**
7 **Spams With Misleading Subject Lines Violate Business & Professions Code**
8 **§ 17529.5(a)(3)**

9 67. Section 17529.5(a)(2) prohibits falsified, misrepresented, or forged information in email
10 headers.

11 68. The Subject Line is part of email headers.

12 69. Section 17529.5(a)(3) prohibits Subject Lines likely to mislead a reasonable recipient
13 about the contents or subject matter or the email.

14 70. Many of the spams that Plaintiffs received contain Subject Lines with falsified and/or
15 misrepresented information, and/or are misleading, in violation of Section 17529.5(a)(2) and
16 (a)(3). To name but two examples:

- 17 • BARRETT received spams advertising ANASTASIA with the Subject Line:
18 “Someone is trying to FLIRT with you on Facebook.”
- 19 • BISHOP received a spam advertising ANASTASIA with the Subject Line:
20 “Nanushka has responded to your post.”

21 71. The Subject Line of the spam BARRETT received (“Someone is trying to FLIRT with
22 you on Facebook.”) is false and misleading because no one associated with Defendants is trying
23 to flirt with BARRETT on Facebook.

24 72. The Subject Line of the spam BISHOP received (“Nanushka has responded to your
25 post”) is false and misleading because even if “Nanushka” exists, BISHOP made no posting to
26 which “Nanushka” could have responded.

27 **F. ANASTASIA is Strictly Liable for Spams Sent By its Affiliates**

28 73. Plaintiffs are informed and believe and thereon allege that ANASTASIA contracted with
29 third party advertising networks and affiliates (a/k/a “publishers”) to advertise their websites for
30 the purpose of selling services for a profit.

31 74. No one forced ANASTASIA to outsource any of its advertising to third party spammers.

1 75. Advertisers such as ANASTASIA are strictly liable for advertising in unlawful spams,
2 even if third parties hit the Send button.

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

7 The true beneficiaries of spam are the advertisers who benefit from the marketing
8 derived from the advertisements.

9 Bus. & Prof. Code § 17529(j)(k).

10 It is unlawful [] to advertise in a commercial email advertisement [] under any of
11 the following circumstances...

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

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

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

22 Thus, like other California statutes prohibiting false or misleading business
23 practices, the statute makes an entity strictly liable for advertising in a
24 commercial e-mail that violates the substantive provisions described in section
25 17529.5, subdivision (a) regardless of whether the entity knew that such e-mails
26 had been sent or had any intent to deceive the recipient.

27 192 Cal. App. 4th 805, 820-21 (2d Dist. 2011) (emphasis added). The court did not find that this
28 was an arbitrary requirement; rather, the court identified sound policy reasons behind the
29 Legislature’s decision to create a strict liability statute. *Id.* at 829.

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

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

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

4 79. Plaintiffs' rightful and lawful assertion of the California Legislature's liquidated damages
5 amount of \$1,000 per email is necessary to further the Legislature's objective of protecting
6 California residents from unlawful spam.

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

12 81. However, Plaintiffs did suffer damages by receiving the unlawful spams advertising
13 Defendants' products in the state of California, at their California email addresses. Bus. & Prof.
14 Code § 17529(d), (e), (g), (h). That said, Plaintiffs do not seek actual damages in this Action,
15 only liquidated damages.

16 **H. Defendants' Actions Were Willful and Preclude any Reduction in Statutory Damages**

17 82. Section 17529.5 authorizes this Court to reduce the statutory damages to \$100 per spam.
18 Bus. & Prof. Code § 17529.5(b)(2). But, to secure the reduction, Defendants have the burden of
19 proof to demonstrate not only that they have practices and procedures to prevent unlawful
20 spamming, but also that the practices and procedures are *effective*.

21 83. Plaintiffs are informed and believe and thereon allege that Defendants have not
22 established and implemented, with due care, practices and procedures reasonably designed to
23 effectively prevent unsolicited commercial e-mail advertisements that are in violation of
24 Section 17529.5.

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

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

29 86. Moreover, Plaintiffs are informed and believe and thereon allege that Defendants
30 intended to deceive recipients of their spam messages through the use of third parties' domain
31

1 names without permission, falsified and/or misrepresented information contained in or
2 accompanying the email headers, and false and misleading Subject Lines, as described herein.

3 87. Subject Lines and From Names do not write themselves and domain names do not
4 register themselves; the misrepresented information contained in and accompanying the email
5 headers are not “clerical errors.” Plaintiffs are informed and believe and thereon allege that
6 Defendants went to great lengths to create misrepresented information contained in and
7 accompanying the email headers in order to deceive recipients, Internet Service Providers, and
8 spam filters.

9 88. Plaintiffs are informed and believe and thereon allege that Defendants intended to profit,
10 actually profited, and continue to profit, and were unjustly enriched by, their wrongful conduct
11 as described herein.

12 89. Punitive damages are appropriate to punish malicious, oppressive, and/or fraudulent
13 conduct by Defendants, and to deter others from engaging in such conduct.

14
15 **FIRST CAUSE OF ACTION**

16 **[Violations of California Restrictions on Unsolicited Commercial Email,**
17 **California Business & Professions Code § 17529.5]**
18 **(Against All Defendants)**

19 90. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

20 91. Plaintiffs received the spams at issue within one year prior to filing this Complaint.

21 92. Defendants advertised in, sent, and/or caused to be sent at least 600 unsolicited
22 commercial emails to Plaintiffs’ California electronic mail addresses: a) containing third parties’
23 domain names without permission; b) containing or accompanied by falsified and/or
24 misrepresented header information; and/or c) containing misleading Subject Lines, in violation
25 of Section 17529.5.

26 93. The California Legislature set liquidated damages at One Thousand Dollars (\$1,000) per
27 email.

28 94. Each Defendant *other* than ANASTASIA, including DOE Defendants, is jointly and
29 severally liable along with ANASTASIA for each spam that that Defendant sent to Plaintiffs.

30 95. Plaintiffs seek reimbursement of attorneys’ fees and costs as authorized by Section
31 17529.5(b)(1)(C).

96. The attorneys' fees provision for a prevailing spam recipient is typical of consumer protection statutes and supported by Code of Civil Procedure § 1021.5. By prosecuting this action, Plaintiffs expect to enforce an important right affecting the public interest and thereby confer a significant benefit on the general public or a large class of persons. The necessity and financial burden of private enforcement is such as to make the award appropriate, and the attorneys' fees should not, in the interest of justice, be paid out of the recovery of damages.

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

PRAYER FOR RELIEF

(Against All Defendants)

- A. An Order from this Court declaring that Defendants violated California Business & Professions Code § 17529.5 by advertising in and sending unlawful spams.
- B. Liquidated damages against Defendants in the amount of \$1,000 for each of at least 600 unlawful spams, as authorized by Section 17529.5(b)(1)(B)(ii), for a total of at least \$600,000, as set forth below:

PLAINTIFF	PRAYER	PLAINTIFF	PRAYER
BARR	\$18,000	NEILSEN	\$9,000
BARRETT	\$43,000	OLIVERES	\$70,000
BISHOP	\$27,000	REEVES	\$50,000
CLARK	\$32,000	RIDLEY	\$68,000
CLARK-SCHMELING	\$8,000	SEED	\$1,000
GILDEA	\$5,000	SEEFELDT	\$53,000
HANNEGAN	\$40,000	SMITH-A	\$35,000
HICKS	\$2,000	SMITH-J	\$5,000
HILL	\$3,000	SMITH-P	\$5,000
HILL-HANSON	\$40,000	SMITH-S	\$40,000
KAIL	\$8,000	TRACHY	\$30,000
LEPORIERE	\$8,000	TOTAL	\$600,000

- C. Attorneys' fees as authorized by Section 17529.5(b)(1)(C) and Code of Civil Procedure § 1021.5 for violations of Section 17529.5.
- D. Disgorgement of all profits derived from unlawful spams directed to California residents; monies to be turned over to the Unfair Competition Law Fund and used by the California

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Attorney General to support investigations and prosecutions of California’s consumer protection laws.

E. Costs of suit.

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

MANN ORLANSKY & POLLAK

Date: June 17, 2014

BY: _____

Jeffrey A. Pollak
Attorneys for Plaintiffs