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

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

18 JAY FINK, an individual;  
19 Plaintiff,  
20 v.

21 CLICKSYNDICATE.COM, LLC Delaware  
22 limited liability company;  
23 EDGE BIOACTIVES, a business of unknown  
24 formation;  
25 FAIRLIGHT SCIENTIFIC, LLC a Nevada  
26 limited liability company;  
27 BESTMAILER, a business of unknown  
28 formation,  
29 FLYLEAF NEWS, a business of unknown  
30 formation, and  
31 DOES 1-1,000;  
Defendants.

) Case No.:

CGC 16-555317

) **COMPLAINT FOR DAMAGES**

1. **VIOLATIONS OF CALIFORNIA  
RESTRICTIONS ON UNSOLICITED  
COMMERCIAL E-MAIL (Cal. Bus. &  
Prof. Code § 17529.5)**

COMES NOW PLAINTIFF JAY FINK and files this Complaint for one cause of action against Defendants CLICKSYNDICATE.COM, LLC *et al* and allege as follows:

ENDORSED  
FILED  
San Francisco County Superior Court  
NOV 10 2016  
CLERK OF THE COURT  
BY: \_\_\_\_\_ Deputy Clerk  
DE LA VEGA-NAVARRO, Rosalyn

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

2 Plaintiff JAY FINK brings this Action against professional spammers  
3 CLICKSYNDICATE.COM, LLC (“CLICK”), EDGE BIOACTIVES (“EDGE”), and  
4 FAIRLIGHT SCIENTIFIC, LLC (“FAIRLIGHT”), (collectively “DEFENDANTS”), and their  
5 third party advertising networks and affiliates (aka “publishers”), for sending 70 unlawful  
6 unsolicited commercial emails (“spams”) to Plaintiff. A representative sample appears on the  
7 next page (*see* Figure 1).

8 1. Plaintiff neither gave direct consent to receive commercial email advertisements from,  
9 nor had a preexisting or current business relationship with, the entities advertised in the spams.

10 2. The spams all materially violated California Business & Professions Code § 17529.5  
11 (“Section 17529.5”) due to: a) materially false and deceptive information contained in or  
12 accompanying the email headers (i.e. From Name, Sender Email Address, and Subject Line),  
13 and/or b) Subject Lines misleading relative to the contents of the emails.

14 3. DEFENDANTS are strictly liable for advertising in spams sent by their third party  
15 marketing agents.

16 4. Spam recipients are not required to allege or prove reliance or actual damages to have  
17 standing. *See* Bus. & Prof. Code § 17529.5(b)(1)(A)(iii). Nevertheless, Plaintiff did suffer  
18 damages by receiving the spams. *See, e.g.*, Bus. & Prof. Code § 17529(d), (e), (g), (h).  
19 However, Plaintiff elects to recover statutory damages only and forego recovery of any actual  
20 damages. *See* Bus. & Prof. Code § 17529.5(b)(1)(B).

21 5. This Court should award liquidated damages of \$1,000 per email as provided by  
22 Section 17529.5(b)(1)(B)(ii), and not consider any reduction in damages, because  
23 DEFENDANTS and their marketing agents failed to implement reasonably effective systems to  
24 prevent advertising in unlawful spams. The unlawful elements of these spams represent willful  
25 acts of falsity and deception, rather than clerical errors.

26 6. This Court should award Plaintiff his attorneys’ fees pursuant to Section  
27 17529.5(b)(1)(C). *See also* Code of Civil Procedure § 1021.5, providing for attorneys fees when  
28 private parties bear the costs of litigation that confers a benefit on a large class of persons; here,  
29 by reducing the amount of false and deceptive spam received by California residents.  
30  
31

**Subject:** ADULT CONTENT: Customer, meet the wind of changes

**From:** Your X News (info@yourxnews.com)

**To:** jaystheone44@yahoo.com;

**Date:** Wednesday, January 27, 2016 1:45 AM

## CHANGE ALL AT ONCE

# WATCH THIS VIDEO



# AND ALL GIRLS WILL BE AT YOUR HANDS

If you watch this video, your life would not be the same. Girls will react differently,

*Figure 1*

and, of course, all is gonna change for the best :)

[WAY TO BE BETTER →](#)

**More sites for you:**



Your X News • 1580 Drainer Avenue • Jacksonville, FL 32202

<http://yourxnews.com/>

[Subscribe](#) • [Preferences](#) • [Send to a Friend](#) • [Unsubscribe](#) • [Report Spam](#)

Powered by [MyNewsletterBuilder](#)



1 **II. PARTIES**

2 **A. Plaintiff**

3 7. JAY FINK (“FINK”) was domiciled in and a citizen of the State of California, when he  
4 received the spams at issue. The spams at issue were sent to FINK’s email address  
5 jaystheone44@yahoo.com that he ordinarily accesses from California.

6 **B. Defendants**

7 8. Plaintiff is informed and believes and thereon alleges that Defendant  
8 CLICKSYNDICATE.COM, LLC (“CLICK”) is now, and was at all relevant times, a Delaware  
9 limited liability company.

10 9. Plaintiff is informed and believes and thereon alleges that Defendant EDGE  
11 BIOACTIVES (“EDGE”) is a business of unknown formation with an unknown place of  
12 business;

13 10. Plaintiff is informed and believes and thereon alleges that Defendant FAIRLIGHT  
14 SCIENTIFIC, LLC (“FAIRLIGHT”) is now, and was at all relevant times, a Nevada limited  
15 liability company.

16 11. Plaintiff is informed and believes and thereon alleges that Defendant BESTMAILER  
17 (“BEST”) is now, and was at all relevant times, a business of unknown formation, doing business  
18 as mailerbest.com, with a principal place of business in La Palma, California.

19 12. Plaintiff is informed and believes and thereon alleges that Defendant FLYLEAF NEWS  
20 (“FLYLEAF”), is now and at all relevant times, a business of unknown formation, doing  
21 business as flyleafnews.com, with a principal place of business in Costa Mesa, California.

22 13. Plaintiff does not know the true names or legal capacities of the Defendants designated  
23 herein as DOES 1 through 1,000, inclusive, and therefore sues said Defendants under the  
24 fictitious name of “DOE.” Plaintiff alleges that certain Defendant(s) designated herein as DOES  
25 registered the following domain names, which were used to send the spams at issue, in a manner  
26 so as to prevent email recipients from discovery those DOE Defendants’ true identities:

27 xdeals4u.net, xfreshnews.com, x-rest.com, xxvenus.com, xxxjoys.com, almamzer.com, bed-  
28 news.com, bestideas4u.com, bestxsales.com, buhoodle.com, cogizu.com, genuinelust.com,  
29 gomband.net, inboxhard.com, inboxsweet.com, matcachan.com, moardoor.com,  
30 ohdontyaknow.com, policehelper.com, profficult.com, relaxfinder.net, sign-news.com,  
31 tousell.com, x-dealdaily.com, xdeals4u.net, x-digest.com, xfreshnews.com, xnewsfeed.com, x-

1 newsletter.com, x-rest.com, xxvenus.com, xxxjoys.com, yourxnews.com. Plaintiff is informed  
2 and believes and thereon alleges that each of the Defendants designated herein as a DOE is  
3 legally responsible in some manner for the matters alleged in this complaint, and is legally  
4 responsible in some manner for causing the injuries and damages of which Plaintiff complains.  
5 Plaintiff is informed and believes and thereon alleges that each of the Defendants designated  
6 herein as a DOE Defendant was, at all times relevant to the matters alleged within this complaint,  
7 acting in conjunction with the named Defendants, whether as a director, officer, employee, agent,  
8 affiliate, customer, participant, or co-conspirator. When the identities of DOE Defendants 1-  
9 1,000 are discovered, or otherwise made available, Plaintiff will seek to amend this Complaint to  
10 allege their identity and involvement with particularity.

11 14. Defendants' joinder in this Action is proper pursuant to Code of Civil Procedure § 379  
12 because Plaintiff seeks relief jointly and severally from Defendants arising from the same series  
13 of transactions and occurrences, and because common questions of law and fact as to Defendants  
14 will arise in the Action. The fact that all Defendants may not be implicated in all spams does not  
15 bar joinder: "It is not necessary that each defendant be interested as to every cause of action or as  
16 to all relief prayed for. Judgment may be given against one or more defendants according to  
17 their respective liabilities." Code Civ. Proc. § 379.

### 18 19 **III. JURISDICTION AND VENUE**

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

21 15. This California Superior Court has jurisdiction over the Action because Plaintiff is  
22 located in California, and the amount in controversy is more than \$25,000.

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

24 16. Venue is proper in San Francisco County (or indeed, *any* county in California of  
25 Plaintiff's choosing) because CLICK and EDGE are foreign corporations that have not  
26 designated the location and address of a principal office in California or registered to do business  
27 in California with the California Secretary of State. *See Easton v. Superior Court of San Diego*  
28 (*Schneider Bros. Inc.*), 12 Cal. App. 3d 243, 246 (4th Dist. 1970).

1 **IV. 83 UNLAWFUL SPAMS**

2 17. Plaintiff alleges that Defendants engaged in tortious conduct: “wrongful act[s] other than  
3 a breach of contract for which relief may be obtained in the form of damages or an injunction.”

4 See Merriam-Webster, [www.merriam-webster.com/dictionary/tort](http://www.merriam-webster.com/dictionary/tort) (last viewed Nov. 5, 2013).

5 18. California’s False Advertising Law, Business & Professions Code § 17500

6 prohibits “not only advertising which is false, but also advertising which[,]  
7 although true, is either actually misleading or which has a capacity, likelihood or  
8 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.

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

10 **A. The Emails at Issue are “Spams”**

11 19. The emails at issue are “commercial email advertisements”<sup>1</sup> because they were initiated  
12 for the purpose of advertising and promoting DEFENDANTS’ products and services.

13 20. The emails are “unsolicited commercial email advertisements”<sup>2</sup> because Plaintiff did not  
14 give “direct consent”<sup>3</sup> to, and did not have a “preexisting or current business relationship”<sup>4</sup> with  
15 any Defendant.

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

21 <sup>2</sup> “‘Unsolicited commercial e-mail advertisement’ means a commercial e-mail advertisement sent  
22 to a recipient who meets both of the following criteria: (1) The recipient has not provided direct  
23 consent to receive advertisements from the advertiser. (2) The recipient does not have a  
24 preexisting or current business relationship, as defined in subdivision (l), with the advertiser  
25 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).

26 <sup>3</sup> “‘Direct consent’ means that the recipient has expressly consented to receive e-mail  
27 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).

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

1 21. Plaintiff did not consent or acquiesce to receive the spams at issue. Plaintiff did not  
2 waive or release any rights or claims related to the spams at issue.

3 22. Defendants advertised in, sent, and/or conspired to send at least 83 unlawful spams that  
4 Plaintiff received at his “California email address.”<sup>5</sup>

5 23. The spams are all unlawful because there is materially false and deceptive information  
6 contained in or accompanying the email headers as described in more detail below.

7 **B. Spams With Generic or False From Names Misrepresent Who is Advertising in the**  
8 **Spams and Violate Business & Professions Code § 17529.5(a)(2)**

9 24. Section 17529.5(a)(2) prohibits falsified or misrepresented information contained in or  
10 accompanying email headers.

11 25. The From Name field is part of email headers. The From Name does *not* include the  
12 Sender Email Address. So, for example, if an email’s From Line says: “John Doe  
13 <johndoe@yahoo.com>”, the From Name is *just* “John Doe.”

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

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

23 27. Plaintiff does not insist on any *particular* label (e.g., “Affair Fantasy.” “Offerit,” etc.) in  
24 the From Name field. Rather, Plaintiff contends that the text, whatever it is, cannot misrepresent  
25 *who* the emails are from.

26 28. The From Name is important to an email user, because in almost all email programs, the  
27 inbox view only displays a list of emails, showing the From Name, Subject Line, and Send Date.

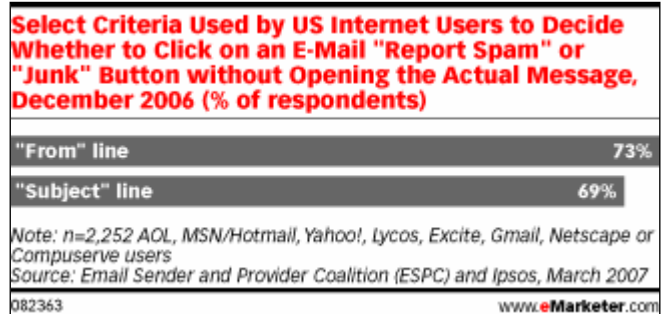
---

28  
29  
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).



1 Therefore, even *if* the body of the email identifies the advertiser, the recipient will not know that  
2 until s/he has already clicked to open the email.

3 29. Indeed, empirical evidence has  
4 demonstrated that the From Name is the  
5 *most* important factor email recipients use  
6 to determine whether or not an email is  
7 spam. See eMarketer, E-Mail Open Rates  
8 Hinge on ‘Subject’ Line, *available at*



9 <http://www.emarketer.com/Article/E-Mail-Open-Rates-Hinge-on-Subject-Line/1005550> (Oct.  
10 31, 2007). Thus, a From Name that misrepresents who a spam is from is *not* a mere technical  
11 error; rather, it is a material misrepresentation of the most important part of the email header.

12 30. Although Plaintiff does *not* sue under the federal CAN-SPAM Act, Plaintiff notes that the  
13 Federal Trade Commission has also identified the From Name as the first item in misleading  
14 header information in its guide to CAN-SPAM compliance when it stated

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

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

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

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

28 203 Cal. App. 4th 1083, 1088, 1090-91, 1093 (1st Dist. 2012), *petition for review denied*, 2012  
29 Cal. LEXIS 4979 (Cal. May 23, 2012), *petition for certiori denied*, 2012 U.S. LEXIS 8423 (U.S.  
30 Oct. 29, 2012), *petition for rehearing denied*, 2013 U.S. LEXIS 243 (U.S. Jan. 7, 2013). More  
31 specifically, *Balsam* confirmed that generic From Names that "do not exist or are otherwise

1 misrepresented when they do not represent any real company and cannot be readily traced back  
2 to the true owner/sender” violate the statute. *Id.* at 1093. The Court affirmed the award of  
3 \$1,000 liquidated damages for the seven emails with misrepresented information in the From  
4 Name field, even though most of the spams identified the advertiser in the body. *Id.* at 1091,  
5 1093. Therefore, truthful information in the body of a spam does not cure misrepresented  
6 information contained in or accompanying the headers.

7 32. Almost all of the spams that Plaintiff received advertising Defendant’s websites show  
8 generic text in the From Name field that misrepresents *who* the spams are from, e.g. “That’s not  
9 a race,” “Genuine Lust,” “Bed News,” and “Mature Relax.” These generic From Names could  
10 just as easily refer to Defendant’s competitors.

11 33. These From Names, like those in *Balsam*, misrepresent *who* was advertising in the spams,  
12 and therefore violate Section 17529.5(a)(2).

13 34. Plaintiff is informed and believes and thereon alleges that Defendants knowingly choose  
14 to advertise using generic From Names and fake names precisely so the recipients will *not* know  
15 who the emails were really from when viewing the spams in the inbox view. This forces  
16 recipients to open the emails to see if the emails might actually be from someone with whom the  
17 recipient has had dealings, or if the emails are in fact, as is the case here, nothing but spams from  
18 a for-profit company.

19 35. In *Rosolowski v. Guthy-Renker LLC*, the court permitted From Names that were not the  
20 sender’s official corporate name as long as the identify of the sender was readily ascertainable in  
21 the body. 230 Cal. App. 4th 1403, 1407, 1416 (2d Dist. 2014). However, the From Names in  
22 that case (Proactiv and Wen Hair Care) were the advertiser’s fanciful trademarks and well-  
23 known brands with their own websites. But here, unlike the spams in *Rosolowski*, almost of the  
24 From Names are generic or, on information and belief, names of non-existent entities; they are  
25 not well-known trademarks and/or brands readily associated with Defendants. There is no way  
26 an ordinary consumer, looking at the emails in his/her inbox, could readily associate them with  
27 Defendants.

28 36. Moreover, in all or almost all of the spams at issue, neither the sender nor the advertiser  
29 is readily ascertainable in the body of the spams, so *Balsam* would control, not *Rosolowski*.

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

3 37. Section 17529.5(a)(2) prohibits falsified, misrepresented, or forged information contained  
4 in or accompanying in email headers.

5 38. Registration information for the domain names used to send spams is information  
6 contained in or accompanying email headers.

7 39. “[H]eader information in a commercial e-mail is falsified or misrepresented for purposes  
8 of section 17529.5(a)(2) when it uses a sender domain name that *neither* identifies the actual  
9 sender on its face *nor* is readily traceable to the sender using a publicly available online database  
10 such as WHOIS.” *Balsam*, 203 Cal. App. 4th at 1101 (emphasis in original).

11 40. All of the spams that Plaintiff received advertising Defendants were sent from domain  
12 names that:

- 13 • Did not identify Defendants or the sender on their face, and
- 14 • Were “proxy-registered” so as to not be readily traceable to the sender by  
15 querying the Whois database

16 in violation of Section 17529.5. *Balsam*, 203 Cal. App. 4th at 1097-1101.

17 41. Plaintiff could not identify Defendants or its spamming affiliates who sent all of the  
18 spams at issue by querying the Whois database for the domain names used to send all of the  
19 spams at issue.

20 **D. DEFENDANTS are Strictly Liable for Spams Sent By their Marketing Agents**

21 42. Plaintiff is informed and believes and thereon alleges that CLICK, EDGE and  
22 FAIRLIGHT contracted with third party advertising networks and affiliates, including but not  
23 limited to the other Defendants, to advertise their websites for the purpose of selling products  
24 and services for a profit.

25 43. No one forced CLICK, EDGE and FAIRLIGHT to outsource any of their advertising to  
26 third party spam networks and spammers.

27 44. Advertisers are liable for advertising in spams, even if third parties hit the Send button.

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

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

1 Bus. & Prof. Code § 17529(j)(k).

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

4 Bus. & Prof. Code § 17529.5 (emphasis added). Of course, CLICK, EDGE and FAIRLIGHT's  
5 agents are also liable for sending unlawful spams. See Balsam, generally.

6 45. In fact, in *Hypertouch Inc. v. ValueClick Inc. et al*, the court of appeal held that  
7 advertisers are *strictly liable* for advertising in false and deceptive spams, even if the spams were  
8 sent by third parties.

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

14 Thus, like other California statutes prohibiting false or misleading business  
15 practices, the statute makes an entity *strictly liable* for advertising in a  
16 commercial e-mail that violates the substantive provisions described in section  
17 17529.5, subdivision (a) regardless of whether the entity knew that such e-mails  
18 had been sent or had any intent to deceive the recipient.

19 192 Cal. App. 4th 805, 820-21 (2d Dist. 2011) (emphasis added). The court did not find that this  
20 was an arbitrary requirement; rather, the court identified sound policy reasons behind the  
21 Legislature's decision to create a strict liability statute. *Id.* at 829.

22 **E. Plaintiff Sues for Statutory Liquidated Damages; No Proof of Reliance or Actual**  
23 **Damages is Necessary**

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

26 47. Plaintiff is informed and believes and thereon alleges that the \$1,000 per spam figure is  
27 comparable with damages in other areas of consumer protection law, e.g., \$500-\$1,500 statutory  
28 damages per junk fax, pursuant to Business & Professions Code § 17538.43(b).

29 48. Plaintiff's rightful and lawful demand for liquidated damages in the amount of \$1,000 per  
30 email is necessary to further the California Legislature's objective of protecting California  
31 residents from unlawful spam.

49. Section 17529.5 does not require Plaintiff to quantify his actual damages, allege or prove  
reliance on the advertisements contained in the spams, or purchase the goods and services  
advertised in the spams. *Recipients* of unlawful spam have standing to sue and recover

1 liquidated damages. Bus. & Prof. Code § 17529.5(b)(1)(A)(iii); *Hypertouch*, 192 Cal. App. 4th  
2 at 820, 822-23, 828.

3 50. However, Plaintiff did suffer damages by receiving the unlawful spams advertising  
4 Defendant's products and services in the state of California, at his California email addresses.  
5 Bus. & Prof. Code § 17529(d), (e), (g), (h). Regardless, Plaintiff does not seek actual damages in  
6 this Action, only liquidated damages. Bus. & Prof. Code § 17529.5(b)(1)(B).

7 **F. Defendants' Actions Were Willful and Preclude any Reduction in Statutory Damages**

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

13 52. Plaintiff is informed and believes and thereon alleges that Defendants have not  
14 established and implemented, with due care, practices and procedures reasonably designed to  
15 effectively prevent unsolicited commercial e-mail advertisements that are in violation of  
16 Section 17529.5.

17 53. Even if Defendants had established any practices and procedures to prevent advertising in  
18 unlawful spam, such practices and procedures were not reasonably designed so as to be effective.

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

21 55. Moreover, Plaintiff is informed and believes and thereon alleges that Defendants intended  
22 to deceive recipients of their spam messages through the use of falsified and/or misrepresented  
23 information in From Names and domain name registrations as described herein.

24 56. From Names do not write themselves. Domain names do not register themselves. The  
25 false and misrepresented information contained in and accompanying the email headers are not  
26 "clerical errors." Plaintiff is informed and believes and thereon alleges that Defendants went to  
27 great lengths to create falsified and misrepresented information contained in and accompanying  
28 the email headers in order to deceive recipients, Internet Service Providers, and spam filters.  
29 Plaintiff is informed and believes and thereon alleges that Defendants intended to profit, actually  
30 profited, and continue to profit, and were unjustly enriched by, their wrongful conduct as  
31 described herein.

1 **FIRST CAUSE OF ACTION**

2 **[Violations of California Restrictions on Unsolicited Commercial Email,**  
3 **California Business & Professions Code § 17529.5]**  
4 **(Against All Defendants)**

5 57. Plaintiff hereby incorporates the foregoing paragraphs as though set forth in full herein.

6 58. Plaintiff received the spams at issue within one year prior to filing this Complaint.

7 59. Defendants advertised in, sent, and/or caused to be sent at least 83 unsolicited  
8 commercial email advertisements to Plaintiff's California electronic mail address that had  
9 materially falsified and/or misrepresented information contained in or accompanying the email  
10 headers, in violation of Section 17529.5. The unlawful elements of these spams represent willful  
11 acts of falsity and deception, rather than clerical errors.

12 60. The California Legislature set liquidated damages at One Thousand Dollars (\$1,000) per  
13 email.

14 61. Defendants have not established and implemented, with due care, practices and  
15 procedures to effectively prevent advertising in unlawful spams that violate Section 17529.5 that  
16 would entitle them to a reduction in statutory damages.

17 62. Plaintiff seeks reimbursement of attorneys' fees and costs as authorized by Section  
18 17529.5(b)(1)(C).

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

25  
26 WHEREFORE, Plaintiff prays for judgment against Defendants as hereinafter set forth.

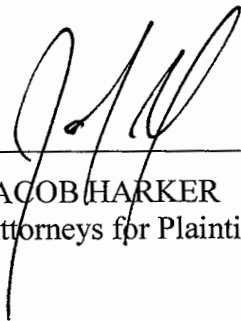
27 **PRAYER FOR RELIEF**

28 **(Against All Defendants)**

29 A. An Order from this Court declaring that Defendants violated California Business &  
30 Professions Code § 17529.5 by advertising in and sending unlawful spams.  
31

- 1 B. Liquidated damages against Defendants in the amount of \$1,000 for each of at least 83
- 2 unlawful spams, as authorized by Section 17529.5(b)(1)(B)(ii), for a total of at least
- 3 \$83,000 as set forth below.
- 4 C. Liquidated damages against CLICK in the amount of \$83,000 based on 83 spams that it
- 5 sent, hired others to send, or otherwise conspired with others to send, to Plaintiff.
- 6 D. Liquidated damages against EDGE in the amount of \$83,000 based on 83 spams that it
- 7 sent, hired others to send, or otherwise conspired with others to send, to Plaintiff.
- 8 E. Liquidated damages against FAIRLIGHT in the amount of \$83,000 based on 83 spams
- 9 that it sent, hired others to send, or otherwise conspired with others to send, to Plaintiff.
- 10 F. Liquidated damages against BESTMAILER in the amount of \$2,000 based on 2 spams
- 11 that it sent, hired others to send, or otherwise conspired with others to send, to Plaintiff.
- 12 G. Liquidated damages against FLYLEAF in the amount of \$1,000 based on 1 spam that it
- 13 sent, hired others to send, or otherwise conspired with others to send, to Plaintiff.
- 14 H. Liquidated damages against DOES 1-1,000 (when their true names are learned) in the
- 15 amount of \$83,000 based on 83 spams that it sent, hired others to send, or otherwise
- 16 conspired with others to send, to Plaintiff.
- 17 I. Attorneys' fees as authorized by Section 17529.5(b)(1)(C) and Code of Civil Procedure
- 18 § 1021.5 for violations of Section 17529.5.
- 19 J. Costs of suit.
- 20 K. Such other and further relief as the Court deems proper.

21 THE LAW OFFICES OF JACOB HARKER

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23  
24 Date: November 10, 2016 BY: 

JACOB HARKER  
Attorneys for Plaintiff