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Superior Court of California  
County of San Francisco

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BY: MARY A. MORAN  
Deputy Clerk

Jacob Harker (State Bar No. 261262)  
LAW OFFICES OF JACOB HARKER  
582 Market Street, Suite 1007  
San Francisco, CA 94104  
Tel: (415) 624-7602  
Fax: (415) 684-7757  
E-Mail: jacob@harkercounsel.com

Daniel L. Balsam (State Bar No. 260423)  
THE LAW OFFICES OF DANIEL BALSAM  
2601C Blanding Avenue #271  
Alameda, CA 94501  
Tel: (415) 869-2873  
Fax: (415) 869-2873  
Email: legal@danbalsam.com

Attorneys for Plaintiff  
Markus Freidlin

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)**

MARKUS FREIDLIN,

Plaintiff,

v.

CPA FUEL MARKETING LLC,  
VERIFYPEERS.COM,  
MAGNIFYCHECK.COM,  
BACKGROUNDREP.COM,  
INTELIREPORTS.COM, ANCELET, and  
DOES 1-250,

Defendants

) Case No.: **CGC - 15 - 545269**

) **COMPLAINT FOR DAMAGES**

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

COMES NOW PLAINTIFF MARKUS FREIDLIN and files this Complaint for one cause of  
action against Defendants CPA FUEL MARKETING, LLC *et al.* and alleges as follows:

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

2       1.       Plaintiff brings this Action against professional spammers CPA FUEL MARKETING,  
3       LLC, its third party affiliates (aka “publishers”), VERIFYPEERS.COM,  
4       MAGNIFYCHECK.COM, BACKGROUNDREP.COM, and INTELIREPORTS.COM for  
5       advertising in and/or sending at least 255 unlawful spams advertising background check services  
6       to Plaintiff.

7       2.       Plaintiff never gave any Defendant “direct consent” (as required by law) to advertise in  
8       commercial email sent to him.

9       3.       The spams all violate California Business & Professions Code § 17529.5 (“Section  
10      17529.5”) because they contain: a) third parties’ domain names without their permission; b)  
11      materially misrepresented or falsified information contained in or accompanying the email  
12      headers (including Subject Lines); and/or c) Subject Lines misleading relative to the content or  
13      subject matter of the emails. . The unlawful elements of these spams represent willful acts of  
14      falsity and deception, rather than clerical errors.

15      4.       CPA FUEL MARKETING, LLC is strictly liable for advertising in and/or sending  
16      spams sent by its third party affiliates.

17      5.       Spam recipients are not required to allege or prove reliance or actual damages to have  
18      standing. *See* Bus. & Prof. Code § 17529(b)(1)(A)(iii). Plaintiff elects to recover statutory  
19      damages only and forego recovery of any actual damages.

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

24      7.       This Court should award Plaintiff his attorneys’ fees pursuant to Section  
25      17529.5(b)(1)(C). *See also* Cal. Code Civ. Proc. § 1021.5, providing for attorneys fees when  
26      private parties bear the costs of litigation that confers a benefit on a large class of persons; here  
27      by reducing the amount of false and deceptive spam received by California residents.

28      //

1 **II. PARTIES**

2 **A. Plaintiff**

3 8. MARKUS FREIDLIN (“FREIDLIN”) is now, and at all times relevant has been, an  
4 individual domiciled in and a citizen of the State of California. FREIDLIN ordinarily accesses  
5 his email address from California.

6 **B. Defendants**

7 9. Plaintiff is informed and believes and thereon alleges that Defendant CPA FUEL  
8 MARKETING, LLC (“CPA FUEL”) is now, and was at all relevant times, a Nevada limited  
9 liability company headquartered in Las Vegas, Nevada, doing business as *cpafuel.com*, among  
10 other domain names.

11 10. Plaintiff is informed and believes and thereon alleges that Defendant  
12 VERIFYPEERS.COM (“VERIFYPEERS”) is now, and was at all relevant times, a business of  
13 unknown formation, doing business as *verifypeers.com*, among other domain names.

14 11. Plaintiff is informed and believes and thereon alleges that Defendant  
15 BACKGROUNDREP.COM (“BACKGROUNDREP”) is now and was at all relevant times, a  
16 business of unknown formation, doing business as *backgroundrep.com*, among other domain  
17 names.

18 12. Plaintiff is informed and believes and thereon alleges that Defendant  
19 MAGNIFYCHECK.COM (“MAGNIFYCHECK”) is now, and was at all relevant times, a  
20 business of unknown formation, doing business as *magnifycheck.com*, among other domain  
21 names.

22 13. Plaintiff is informed and believes and thereon alleges that Defendant INTELIREPORTS  
23 (“INTELIREPORTS”) is now, and was at all relevant times, a business of unknown formation,  
24 doing business as *intelireports.com*, among other domain names.

25 14. Plaintiff is informed and believes and thereon alleges that Defendant ANCELET is  
26 now, and was at all relevant times, a business of unknown formation, doing business as *Ancelet*,  
27 among other domain names. Plaintiff is informed and believes and thereon alleges that  
28 Defendant ANCELET uses the business address 8730 Cross Pointe Loop, Anchorage, AK  
29 99504.

30  
31 ///

1 15. Plaintiff does not know the true names or legal capacities of the Defendants designated  
2 herein as DOES 1 through 250, inclusive, and therefore sue said Defendants under the fictitious  
3 name of "DOE." Plaintiff is informed and believes and thereon alleges that each of the  
4 Defendants designated herein as a DOE is legally responsible in some manner for the matters  
5 alleged in this complaint, and is legally responsible in some manner for causing the injuries and  
6 damages of which Plaintiff complains. Plaintiff is informed and believes and thereon alleges that  
7 each of the Defendants designated herein as a DOE Defendant was, at all times relevant to the  
8 matters alleged within this complaint, acting in conjunction with the named Defendants, whether  
9 as a director, officer, employee, agent, affiliate, customer, participant, or co-conspirator. When  
10 the identities of DOE Defendants 1-250 are discovered, or otherwise made available, Plaintiff  
11 will seek to amend this Complaint to allege their identity and involvement with particularity.  
12 Plaintiff alleges that all Defendants are jointly and severally liable for all injuries and damages of  
13 which Plaintiff complains.

### 14 15 **III. JURISDICTION AND VENUE**

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

17 16. This Court has jurisdiction over the Action because: a) Plaintiff is domiciled in and  
18 citizens of the State of California and received the unlawful spams at his California email  
19 addresses, and b) the amount in controversy is more than \$25,000.

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

21 17. Venue is proper in San Francisco County because CPA FUEL, VERIFYPEERS.COM,  
22 MAGNIFYCHECK.COM, BACKGROUNDREP.COM, INTELIREPORTS.COM, and  
23 ANCELET are foreign companies that have not designated the location and address of a  
24 principal office in California or registered to do business in California with the California  
25 Secretary of State, and Plaintiff may designate any county in California for the action to be tried.  
26 *See Code Civ. Proc. § 395(a); Easton v. Superior Court of San Diego (Schneider Bros. Inc.), 12*  
27 *Cal. App. 3d 243, 246 (4th Dist. 1970).*

### 28 29 **IV. AT LEAST 255 UNLAWFUL SPAMS**

30 18. Plaintiff alleges that Defendants engaged in tortious conduct: "wrongful act[s] other  
31 than a breach of contract for which relief may be obtained in the form of damages or an

1 injunction.” See Merriam-Webster, www.merriam-webster.com/dictionary/tort (last viewed  
2 Nov. 5, 2013).

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

4 19. The emails at issue are “commercial email advertisements”<sup>1</sup> because they were initiated  
5 for the purpose of advertising and promoting the sale of DEFENDANTS’ goods or services.

6 20. The emails are “unsolicited commercial email advertisements”<sup>2</sup> because Plaintiff never  
7 gave any Defendant “direct consent”<sup>3</sup> to send him commercial emails, nor did Plaintiff have a  
8 “preexisting or current business relationship”<sup>4</sup> with any Defendant.

9 21. Defendants sent and/or advertised in at least 255 unlawful spams that Plaintiff received  
10 at his “California email addresses”<sup>5</sup> within one year prior to the filing of this Action.

11 22. Plaintiff’s email address plays no part in determining whether or not the emails have  
12 falsified, misrepresented, forged, misleading, or otherwise deceptive information contained in or  
13 accompanying the email headers.

14  
15 \_\_\_\_\_  
16 <sup>1</sup> “‘Commercial e-mail advertisement’ means any electronic mail message initiated for the  
17 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).

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  
30 § 17529.1(l).

31 <sup>5</sup> “‘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 23. Plaintiff's email address is confidential for numerous reasons, including, but not limited  
2 to, avoiding the risk of retaliation by "mail bombing" (sending massive amounts of email to  
3 Plaintiff's email addresses), "joe jobbing" (sending unlawful email using Plaintiff's email  
4 addresses in the Sender Email Address field as a means of harassment), or sharing of Plaintiff's  
5 email addresses with other unknown parties who might in turn send spam or mail bombs to  
6 Plaintiff or as if from Plaintiff.

7 24. The spams are all unlawful because the spams have materially falsified, misrepresented,  
8 and/or forged information contained in or accompanying the email headers, and/or Subject Lines  
9 that are misleading as to the contents or subject matter of the emails, as described in more detail  
10 below.

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

13 25. Section 17529.5(a)(2) prohibits misrepresented information contained in or  
14 accompanying email headers.

15 26. The From Name field is part of email headers.

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

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

25 28. Plaintiff does not insist on any *particular* label (e.g., "CPA Fuel Marketing, LLC,"  
26 "CPA Fuel," "cpafuel.com," etc. in the From Name field. Rather, Plaintiff contends that the text,  
27 whatever it is, cannot misrepresent *who* is advertising in the email.

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

30. Indeed, empirical evidence has demonstrated that the From Name is the most important factor email recipients use to determine whether or not an email is spam. See eMarketer, E-Mail Open Rates Hinge on 'Subject' Line, available at <http://www.emarketer.com/Article/E-Mail-Open-Rates-Hinge-on-Subject-Line/1005550> (Oct. 31, 2007).

Select Criteria Used by US Internet Users to Decide Whether to Click on an E-Mail "Report Spam" or "Junk" Button without Opening the Actual Message, December 2006 (% of respondents)	
"From" line	73%
"Subject" line	69%
Note: n=2,252 AOL, MSN/Hotmail, Yahoo!, Lycos, Excite, Gmail, Netscape or Compuserve users	
Source: Email Sender and Provider Coalition (ESPC) and Ipsos, March 2007	
082363	www.emarketer.com

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

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

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

32. The From Names of the instant spams comprise many similarly generic terms such as "NegativePost," "Post.about-you," "(2) Damaging Posts," etc. All of these generic From Names, like those in *Trancos*, misrepresent who was advertising in the spams, and therefore violate Section 17529.5(a)(2).

33. These From Names could just as easily refer to DEFENDANTS' competitors.

34. Plaintiff is informed and believes and thereon alleges that DEFENDANTS may have registered some of the generic phrases in the From Names as fictitious business names (FBNs).

1 However, even if this is true, the generic From Names still misrepresent *who* the spams are from.  
2 Looking at a list of emails in the inbox, the recipient still cannot identify DEFENDANTS from  
3 the From Name. Nor is there any means for the recipient to know the state/county in which the  
4 FBNs were registered.

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

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

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

11 37. In *Balsam v. Trancos Inc.*, the Court of Appeal held:

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

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

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

26 We therefore hold, consistent with the trial court's ruling, that header information  
27 in a commercial e-mail is falsified or misrepresented for purposes of section  
28 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  
30 online database such as WHOIS.

31 203 Cal. App. 4th at 1097-1101 (emphasis in original).

38. Plaintiff received unlawful spams advertising DEFENDANTS' products and services,  
sent from domain names that: in violation of Section 17529.5. For example:

- Did not identify DEFENDANTS or the sender on their face, and



1           • Were deliberately registered so as to not be readily traceable to the sender by  
2           querying the Whois databse,  
3           in violation of Section 17529.5. For example:

4 39.       Several of the spams at issue were sent from domain names that were proxy registered  
5           to prevent the recipient from tracing the domain name to the actual sender using a Whois query.

6           For example:

- 7           • PLAINTIFF received a spam advertising DEFENDANTS sent from the domain  
8           name *leeremic.com*, which was proxy-registered using Whois Privacy Protection  
9           Service, Inc. in Washington.
- 10          • PLAINTIFF received a spam advertising DEFENDANTS sent from the domain  
11          name *exposgiron.com*, which was also proxy-registered using Whois Privacy  
12          Protection Service, Inc. in Washington.

13

14 40.       Some of the spams at issue were sent from domain names that were deceptively  
15           registered to generic terms, often claiming boxes at the U.S. Postal Service or commercial mail  
16           receiving agencies to prevent the recipient from tracing the domain name to the actual sender  
17           using a Whois query<sup>6</sup>. For example:

- 18          • PLAINTIFF received a spam advertising DEFENDANTS sent from the domain  
19          name *antegift.com*, which was deceptively registered to an entity called Corp New  
20          Ventures Services using a Post Office Box in Drums, Pennsylvania. A search of  
21          the Pennsylvania Secretary of State's website demonstrates that Corp New  
22          Ventures Services is not an entity registered in Pennsylvania.

23 41.       Plaintiff could not identify DEFENDANTS or its spamming affiliates who sent the  
24           spams at issue by querying the Whois database for the domain names used to send the spams.

25 **D. Spams With False Subject Lines Violate Business & Professions Code § 17529.5(a)(2);**  
26 **Spams With Misleading Subject Lines Violate Business & Professions Code**  
27 **§ 17529.5(a)(3)**

28 42.       Section 17529.5(a)(2) prohibits falsified, misrepresented, or forged information in email  
29           headers.

30

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31 <sup>6</sup>“... a domain name is ‘traceable’ to the sender if the recipient of an email could ascertain the sender's identity and **physical address** through the use of a publicly available database such as WHOIS.” *Trancos*, 203 Cal. App. 4th at 1098.

1 43. The Subject Line is part of email headers.

2 44. Many of the spams at issue contain Subject Lines with falsified and/or misrepresented  
3 information. For example:

- 4 • PLAINTIFF received a spam advertising DEFENDANTS with the Subject Line:  
5 “FREIDLIN – Harmful post dealing with your past has been published.”

6 45. The fact that these advertisements were sent *directly* to Plaintiff, as opposed to inclusion  
7 in a mass-media television advertisement, misrepresents the status of the Plaintiff’s online  
8 reputation at the time the spams were sent.

9 46. Section 17529.5(a)(3) prohibits Subject Lines likely to mislead a reasonable recipient  
10 about the contents or subject matter or the email.

11 47. Although the Subject Line referenced above relates to the *subject matter* of the emails –  
12 Plaintiff’s online reputation – it is misleading as to the *contents*, because the Subject Line refers  
13 to warnings and is likely to mislead reasonable recipients into believing that the bodies of the  
14 emails would contain specific information about their online reputation, when in fact, the bodies  
15 merely contain generic advertisements for DEFENDANTS’ services.

16 **E. Advertisers are Strictly Liable for Spams Sent By Affiliates**

17 48. Plaintiff is informed and believes and thereon alleges that DEFENDANTS contracted  
18 with third party advertising networks and affiliates (a/k/a “publishers”) to advertise its websites  
19 for the purpose of selling goods and services for a profit.

20 49. No one forced DEFENDANTS to outsource any of its advertising to third party  
21 spammers.

22 50. Advertisers such as DEFENDANTS are liable for advertising in spams, even if third  
23 parties hit the Send button.

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

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

29 Bus. & Prof. Code § 17529(j)(k).

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

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

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

6 [S]ection 17529.5 makes it unlawful for a person or entity “to advertise in a  
7 commercial e-mail advertisement” that contains any of the deceptive statements  
8 described in *subdivisions (a)(1)-(3)*. Thus, by its plain terms, the statute is not  
9 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.

10 Thus, like other California statutes prohibiting false or misleading business  
11 practices, the statute makes an entity *strictly liable* for advertising in a  
12 commercial e-mail that violates the substantive provisions described in section  
13 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.

14 192 Cal. App. 4th 805, 820-21 (2d Dist. 2011) (emphasis added). The court did not find that this  
15 was an arbitrary requirement; rather, the court identified sound policy reasons behind the  
16 Legislature’s decision to create a strict liability statute:

17 [I]mposing strict liability on the advertisers who benefit from (and are the  
18 ultimate cause of) deceptive e-mails, forces those entities to take a more active  
19 role in supervising the complex web of affiliates who are promoting their  
products.

20 *Id.* at 829. Nor was *Hypertouch* an anomaly; it confirmed the general trend in anti-spam  
21 litigation in California and federal courts.

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

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

26 53. 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 Bus. & Prof. Code § 17538.43(b).

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

1 55. Section 17529.5 does not require Plaintiff to quantify his actual damages, allege or  
2 prove reliance on the advertisements contained in the spams, or purchase the goods and services  
3 advertised in the spams. *Recipients* of unlawful spam have standing to sue and recover  
4 liquidated damages. *See* Bus. & Prof. Code § 17529.5(b)(1)(A)(iii); *Hypertouch*, 192 Cal. App.  
5 4th at 820, 822-23, 828.

6 **G. Defendants' Actions Were Willful and Preclude any Reduction in Statutory Damages**

7 56. Section 17529.5 authorizes this Court to award reduced statutory damages:

8 If the court finds that the defendant established and implemented, with due care,  
9 practices and procedures reasonably designed to effectively prevent unsolicited  
10 commercial e-mail advertisements that are in violation of this section, the court  
11 shall reduce the liquidated damages recoverable under paragraph (1) to a  
12 maximum of one hundred dollars (\$100) for each unsolicited commercial e-mail  
13 advertisement, or a maximum of one hundred thousand dollars (\$100,000) per  
14 incident.

15 Bus. & Prof. Code § 17529.5(b)(2). But, to secure the reduction, Defendants have the burden of  
16 proof to demonstrate not only that they have practices and procedures to prevent unlawful  
17 spamming, but also that the practices and procedures are *effective*.

18 57. Plaintiff is informed and believes and thereon alleges that Defendants have not  
19 established and implemented, with due care, practices and procedures reasonably designed to  
20 effectively prevent unsolicited commercial e-mail advertisements that are in violation of Section  
21 17529.5.

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

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

26 60. Moreover, Plaintiff is informed and believes and thereon alleges that Defendants  
27 intended to deceive recipients of their spam messages through the use of falsified and/or  
28 misrepresented information contained in or accompanying the email headers, as described  
29 herein.

30 61. Subject Lines and From Names do not write themselves and domain names do not  
31 register themselves; the misrepresented information in the email headers are not "clerical errors."  
Plaintiff is informed and believes and thereon alleges that Defendants went to great lengths to

1 create misrepresented information contained in and accompanying the email headers in order to  
2 deceive recipients, Internet Service Providers, and spam filters.

3 62. Plaintiff is informed and believes and thereon alleges that Defendants intended to profit,  
4 actually profited, and continue to profit, and were unjustly enriched by, their wrongful conduct  
5 as described herein.

6 63. Punitive damages are appropriate to punish malicious, oppressive, and/or fraudulent  
7 conduct by Defendants, and to deter others from engaging in such conduct.

8  
9 **FIRST CAUSE OF ACTION**

10 **[Violations of California Restrictions on Unsolicited Commercial Email,**  
11 **California Business & Professions Code § 17529.5]**  
12 **(Against All Defendants)**

13 64. Plaintiff hereby incorporates the foregoing paragraphs as though set forth in full herein.

14 65. Plaintiff received the spams at issue within one year prior to filing this Complaint.

15 66. Defendants advertised in, sent, and/or caused to be sent unsolicited commercial emails  
16 to Plaintiff's California electronic mail addresses: a) containing or accompanied by falsified  
17 and/or misrepresented header information, and/or b) containing falsified and/or misleading  
18 Subject Lines.

19 67. The California Legislature set liquidated damages at One Thousand Dollars (\$1,000) per  
20 email.

21 68. Plaintiff seeks reimbursement of attorneys' fees and costs as authorized by Section  
22 17529.5(b)(1)(C).

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

29  
30 WHEREFORE, Plaintiff prays for judgment against Defendants as hereinafter set forth.  
31

**PRAYER FOR RELIEF**

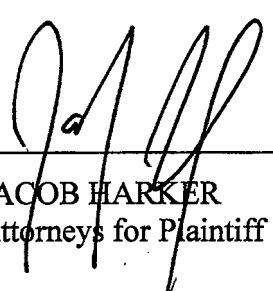
**(Against All Defendants)**

- 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 per unlawful spam, as authorized by Section 17529.5(b)(1)(B)(ii), as detailed below, for a total of at least \$255,000 for two hundred fifty five (255) unlawful spams.
- 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 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.

THE LAW OFFICES OF JACOB HARKER

Date: April 10, 2015

BY: \_\_\_\_\_

  
JACOB HARKER  
Attorneys for Plaintiff