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

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

18 MIRA BLANCHARD, an individual;
19 JAMES JOBE, an individual;
20 DEBRA KOTTONG, an individual;
21 OGEN LAMA, an individual;
22 VANESSA POWERS, an individual; and
23 Plaintiffs,
24 v.

25 FLUENT, INC., a Delaware corporation;
26 REWARD ZONE USA, LLC, a Delaware
27 limited liability company;
28 REWARDSFLOW, LLC, a Delaware limited
29 liability company;
30 AMERICAN PRIZE CENTER, LLC, a
31 Delaware limited liability company;
MOHIT SINGLA, an individual;
PANDA MAIL, a business of unknown
formation;
ADREACTION, a business of unknown
formation;
ANGLO IDITECH, a business of unknown
formation;

**ENDORSED
FILED**
Superior Court of California
County of San Francisco
SEP 16 2016
CLERK OF THE COURT
BY: ROSSALY DE LA VEGA
Deputy Clerk

) Case No.: **CGC 16-554299**

) **COMPLAINT FOR DAMAGES**

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

1 FORTANALYSIS8 DEVELOP, a business of)
2 unknown formation;)
3 CONCEPT NETWORK, a business of)
4 unknown formation;)
5 DIEGO RUFINO, an individual;)
6 PRISCILA AREKELIAN, an individual;)
7 ANDRES MARY, an individual; and)
8 DOES 1-1,000;)
9 Defendants.)

10 COME NOW PLAINTIFFS MIRA BLANCHARD *et al* and file this Complaint for one cause of
11 action against Defendants FLUENT, INC. *et al* and allege as follows:

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

13 1. Plaintiffs MIRA BLANCHARD *et al* bring this Action against professional spammers
14 FLUENT, INC. and related companies, and their third party advertising networks and affiliates
15 (aka “publishers”), for sending almost 600 unlawful unsolicited commercial emails (“spams”) to
16 Plaintiffs. A representative sample appears on the next page.

17 2. No Plaintiff gave direct consent to receive commercial email advertisements from, or had
18 a preexisting or current business relationship with, the entities advertised in the spams.

19 3. The spams all materially violated California Business & Professions Code § 17529.5
20 (“Section 17529.5”) due to: a) materially false and deceptive information contained in or
21 accompanying the email headers (i.e. From Name, Sender Email Address, and Subject Line); b)
22 Subject Lines misleading relative to the contents of the emails; and/or c) the use of third parties’
23 domain names without permission.

24 4. FLUENT, INC. and the other ADVERTISER DEFENDANTS are strictly liable for
25 advertising in spams sent by their third party marketing agents, as are the marketing agents
26 themselves.

27 5. Spam recipients are not required to allege or prove reliance or actual damages to have
28 standing. *See* Bus. & Prof. Code § 17529.5(b)(1)(A)(iii). Nevertheless, Plaintiffs did suffer
29 damages by receiving the spams. *See, e.g.*, Bus. & Prof. Code § 17529(d), (e), (g), (h).

30 However, Plaintiffs elect to recover statutory damages only and forego recovery of any actual
31 damages. *See* Bus. & Prof. Code § 17529.5(b)(1)(B).

1 **Subject:** Get a \$100 Walmart Gift Card FREE!

2 **From:** SavingcenterUsa (service@mondadress.com)

3 **To:**

4 **Date:** Wednesday, December 31, 1969 4:00 PM

5 **vsp0930.PLEASE READ THIS: Walmart Gift Card Pending**

6 **LIMITED TIME OFFER**

7 **GET A \$100 Walmart**
8 **GIFT CARD**



20 Enter your ZIP CODE for availability

21 **CLAIM NOW!**



25 Upon completion of purchase requirements. See offer for details*

26 This advertisement was sent to you by a third party. If you are not interested in receiving future RewardZoneUsa
27 advertisement, please [Click Here](#). Alternatively, you can opt out by sending a letter to:
28 RewardsFlow, LLC., 128 Court Street, 3rd FL White Plains, NY 10601
29 Upon completion of purchase requirements. See offer for details*

30 **INVESTOR TIMES**

31 If you no longer wish to receive our promotional mailings please, [Unsubscribe here](#)
or write us at: 5300 Fairfield Shopping Center #V110 Virginia Beach, Virginia 23464 US

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 FLUENT,
3 INC. and the other ADVERTISER DEFENDANTS, and their third party marketing agents,
4 failed to implement reasonably effective systems to prevent advertising in unlawful spams. The
5 unlawful elements of these spams represent willful acts of falsity and deception, rather than
6 clerical errors.

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

11 **II. PARTIES**

12 **A. Plaintiffs**

13 8. MIRA BLANCHARD ("BLANCHARD") was domiciled in and a citizen of the State of
14 California, when she received the spams at issue. The spams at issue were sent to
15 BLANCHARD's email address mira.blanchard@yahoo.com that she ordinarily accesses from
16 California.

17 9. JAMES JOBE ("JOBE") was domiciled in and a citizen of the State of California, when
18 he received the spams at issue. The spams at issue were sent to JOBE's email address
19 jamesjobe14@yahoo.com that he ordinarily accesses from California.

20 10. DEBRA KOTTONG ("KOTTONG") was domiciled in and a citizen of the State of
21 California, when she received the spams at issue. The spams at issue were sent to KOTTONG's
22 email address fadedjeens@yahoo.com that she ordinarily accesses from California.

23 11. OGEN LAMA ("LAMA") was domiciled in and a citizen of the State of California, when
24 he received the spams at issue. The spams at issue were sent to LAMA's email address
25 aaturu05@yahoo.com that he ordinarily accesses from California.

26 12. VANESSA POWERS ("POWERS") was domiciled in and a citizen of the State of
27 California, when she received the spams at issue. The spams at issue were sent to POWERS'
28 email address vsp0930@yahoo.com that she ordinarily accesses from California.

29 13. Plaintiffs' joinder in this Action is proper pursuant to Code of Civil Procedure § 378
30 because Plaintiffs seek relief based on the same series of transactions or occurrences: all received
31

1 similar spams in the same general time period advertising FLUENT, INC. and the other
2 ADVERTISER DEFENDANTS' websites, and all of those spams were sent by FLUENT, INC.,
3 the other ADVERTISER DEFENDANTS, or their marketing agents. The same questions of law
4 (e.g., violations of Section 17529.5, strict liability) and fact (e.g., direct consent, practices and
5 procedures to prevent advertising in unlawful spam) will arise in this Action. The fact that each
6 Plaintiff does not sue for *exactly* the same spams does not bar joinder: "It is not necessary that
7 each plaintiff be interested as to every cause of action or as to all relief prayed for. Judgment
8 may be given for one or more of the plaintiffs according to their respective right to relief." Code
9 Civ. Proc. § 378(b).

10 **B. Defendants**

11 ***1. Advertiser Defendants***

12 14. Plaintiffs are informed and believe and thereon allege that Defendant FLUENT, INC.
13 ("FLUENT") is now, and was at all relevant times, a Delaware corporation with its principal
14 place of business in New York, New York. Plaintiffs are informed and believe and thereon
15 allege that FLUENT is responsible for advertising in some or all of the spams at issue in this
16 lawsuit.

17 15. Plaintiffs are informed and believe and thereon allege that Defendant REWARD ZONE
18 USA, LLC ("REWARD ZONE"), is now, and was at all relevant times, a Delaware limited
19 liability company affiliated with FLUENT. Plaintiffs are informed and believe and thereon
20 allege that REWARD ZONE is responsible for advertising in some or all of the spams at issue in
21 this lawsuit. Plaintiffs are informed and believe and thereon allege that REWARD ZONE
22 registered the following domain names corresponding to the "landing websites" hyperlinked
23 from certain spams at issue in this Action: webpromotionsusa.com, retailusapromo.com,
24 promotionsusaweb.com, promotionalretail.com, and electronicpromotionscenter.com.

25 16. Plaintiffs are informed and believe and thereon allege that Defendant REWARDSFLOW,
26 LLC ("REWARDSFLOW"), is now, and was at all relevant times, a Delaware limited liability
27 company affiliated with FLUENT. Plaintiffs are informed and believe and thereon allege that
28 REWARDSFLOW is responsible for advertising in some or all of the spams at issue in this
29 lawsuit.

30 17. Plaintiffs are informed and believe and thereon allege that Defendant AMERICAN
31 PRIZE CENTER, LLC ("AMERICAN PRIZE CENTER"), is now, and was at all relevant times,

1 a Delaware limited liability company affiliated with FLUENT. Plaintiffs are informed and
2 believe and thereon allege that AMERICAN PRIZE CENTER is responsible for advertising in
3 some or all of the spams at issue in this lawsuit. Plaintiffs are informed and believe and thereon
4 allege that AMERICAN PRIZE CENTER registered the following domain names corresponding
5 to the “landing websites” hyperlinked from certain spams at issue in this Action:
6 surveysandpromotionsonline.com, electronics-sweepstakes.com, and
7 retailpromotionsonline.com.

8 18. Plaintiffs are informed and believe and thereon allege that Defendant MOHIT SINGLA
9 (“SINGLA”), is now, and was at all relevant times, an individual who resides in New York State
10 and who is affiliated with FLUENT, REWARD ZONE, REWARDSFLOW, and/or AMERICAN
11 PRIZE CENTER. Plaintiffs are informed and believe and thereon allege that SINGLA is
12 responsible for advertising in some or all of the spams at issue in this Action. Plaintiffs are
13 informed and believe and thereon allege that SINGLA personally registered the following
14 domain names corresponding to the “landing websites” hyperlinked from certain spams at issue
15 in this Action: restaurantpromotionsusa.com, onlineretailpromotion.com,
16 onlinepromotionscenter.com, promotionalsurveys.com, electronicpromotion.com,
17 nationalconsumercenter.com, retailpromotionusa.com, consumersrvycnter.com,
18 surveysandpromotions.com.

19 19. Plaintiffs are informed and believe and thereon allege that FLUENT, REWARD ZONE,
20 REWARDSFLOW, and AMERICAN PRIZE CENTER are interrelated entities. Plaintiffs do
21 not know the exact nature of the relationship between these entities. Plaintiffs are also informed
22 and believe and thereon allege that there is an interrelationship between SINGLA and FLUENT,
23 REWARD ZONE, REWARDSFLOW, and AMERICAN PRIZE CENTER. Plaintiffs
24 hereinafter refer to FLUENT, REWARD ZONE, REWARDSFLOW, AMERICAN PRIZE
25 CENTER, and SINGLA collectively as “ADVERTISER DEFENDANTS.”

26 **2. *Publisher Defendants***

27 20. Plaintiffs are informed and believe and thereon allege that Defendant PANDA MAIL
28 (“PANDA”) is now, and was at all relevant times, a business of unknown formation with its
29 principal place of business in Las Vegas, Nevada. Plaintiffs are informed and believe and
30 thereon allege that PANDA sent at least 40 of the spams at issue in this Action using the
31 following domain names: badbizbulletin.com, bangappletime.com, beggarsblog.com,

1 blogconnections.com, blogdater.com, bloggaro.com, hothotclick2.com, hitinternet.com,
2 homechurchblog.com, liquidbulletin.com, meetingsitevisit.com, newsbookonline.com,
3 propertysupersite.com, quickclickweb.com, sendbookbasket.com, sendnewsrelease.com,
4 softarinoclick.com, superemailnews.com, superglobalnews.com, and usamoblog.com.

5 21. Plaintiffs are informed and believe and thereon allege that Defendant ADREACTION is
6 now, and was at all relevant times, a business of unknown formation with a principal place of
7 business in Dubai, United Arab Emirates. Plaintiffs are informed and believe and thereon allege
8 that ADREACTION sent at least 39 of the spams at issue in this Action using the following
9 domain names: aluckeec.com, aneuil.com, balkalike.com, booshidr.com, cheesteh.com,
10 chivoods.com, cleotidxzz.com, culrehoz.com, deeftung.com, eengimpy.com, eglolels.com,
11 ezytophosts.com, launcedb.com, megaduoponet.com, odensyxa.com, oghadsyf.com,
12 oolroard.com, oossugne.com, othatcha.com, pitulationa.com, porequill.com, psunsird.com,
13 tregill.com, uchussux.com, urimpygh.com, voaptads.com, weapoll.com, woopsamt.com,
14 xoogleem.com, ychempac.com, and zaltyboa.com.

15 22. Plaintiffs are informed and believe and thereon allege that Defendant ANGLO IDITECH
16 (“ANGLO”) is now, and was at all relevant times, a business of unknown formation, with a
17 principal place of business in Bloomfield, New Jersey. Plaintiffs are informed and believe and
18 thereon allege that ANGLO is neither registered with the New Jersey Secretary of State nor *any*
19 Secretary of State (or its equivalent) in the United States. Plaintiffs are informed and believe and
20 thereon allege that ANGLO uses the address 590 Bloomfield Ave. #376, Bloomfield, New Jersey
21 7003 to register its domain names used in spamming. Plaintiffs are informed and believe and
22 thereon allege that ANGLO’s address is a box at a branch of The UPS Store and that ANGLO
23 does not actually conduct any business from that address. Plaintiffs are informed and believe
24 and thereon allege that ANGLO uses a UPS Store box as its address for the specific purpose of
25 being “untraceable” by recipients of its spam emails. Plaintiffs are informed and believe and
26 thereon allege that ANGLO sent at least 16 of the spams at issue in this Action using the
27 following domain name: apdantag.com.

28 23. Plaintiffs are informed and believe and thereon allege that Defendant FORTANALYSIS8
29 DEVELOP (“FORTANALYSIS8”) is now, and was at all relevant times, a business of unknown
30 formation, with a principal place of business in Slidell, Louisiana. Plaintiffs are informed and
31 believe and thereon allege that FORTANALYSIS8 is neither registered with the Louisiana

1 Secretary of State nor *any* Secretary of State (or its equivalent) in the United States. Plaintiffs
2 are informed and believe and thereon allege that FORTANALYSIS8 uses the address 857
3 Brownsitch Road. #308, Slidell, Louisiana 70458 to register its domain names used in
4 spamming. Plaintiffs are informed and believe and thereon allege that FORTANALYSIS8's
5 address is a box at a branch of The UPS Store and that FORTANALYSIS8 does not actually
6 conduct any business from that address. Plaintiffs are informed and believe and thereon allege
7 that FORTANALYSIS8 uses a UPS Store box as its address for the specific purpose of being
8 "untraceable" by recipients of its spam emails. Plaintiffs are informed and believe and thereon
9 allege that FORTANALYSIS8 sent at least 13 of the spams at issue in this Action using the
10 following domain name: cleachowlicort.com.

11 24. Plaintiffs are informed and believe and thereon allege that Defendant CONCEPT
12 NETWORK ("CONCEPT") is now, and was at all relevant times, a business of unknown
13 formation, with a principal place of business in Seattle, Washington. Plaintiffs are informed and
14 believe and thereon allege that CONCEPT is neither registered with the Washington Secretary of
15 State nor *any* Secretary of State (or its equivalent) in the United States. Plaintiffs are informed
16 and believe and thereon allege that CONCEPT NETWORK uses the address 228 Park Avenue S.
17 #31190, Seattle, Washington 98104-2818 to register its domain names used in spamming.
18 Plaintiffs are informed and believe and thereon allege that CONCEPT's alleged address is
19 nonexistent. Plaintiffs are informed and believe and thereon allege that CONCEPT uses a
20 nonexistent address for the specific purpose of being "untraceable" by recipients of its spam
21 emails. Plaintiffs are informed and believe and thereon allege that CONCEPT sent at least 9 of
22 the spams at issue in this Action using the following domain name: conceptnetworkgroup.com.

23 25. Plaintiffs are informed and believe and thereon allege that Defendant DIEGO RUFINO
24 ("RUFINO"), is now, and was at all relevant times, an individual with a principal place of
25 business in Atlanta, Georgia. Plaintiffs are informed and believe and thereon allege that DIEGO
26 RUFINO uses the address P.O. Box 105603 #31190, Atlanta, Georgia 30348-5603 to register his
27 domain names used in spamming. Plaintiffs are informed and believe and thereon allege that
28 RUFINO uses a P.O. Box for the specific purpose of being "untraceable" by recipients of his
29 spam emails. Plaintiffs are informed and believe and thereon allege that RUFINO sent at least 7
30 of the spams at issue in this Action using the following domain names: aliveandsmartclub.com,
31

1 findmeonmyweb.com, findyourfavoriteteam.com, justirresistibleweb.com,
2 moreservices4less.com, myfuturebusyness.com, and visitandjustenjoy.com.

3 26. Plaintiffs are informed and believe and thereon allege that Defendant PRISCILA
4 AREKELIAN (“AREKELIAN”) is now, and was at all relevant times, an individual, with a
5 principal place of business in Las Vegas, Nevada. Plaintiffs are informed and believe and
6 thereon allege that AREKELIAN uses the address P.O. Box 29502 #31190, Las Vegas, Nevada
7 89126-9502 to register her domain names used in spamming. Plaintiffs are informed and believe
8 and thereon allege that AREKELIAN uses a P.O. Box for the specific purpose of being
9 “untraceable” by recipients of his spam emails. Plaintiffs are informed and believe and thereon
10 allege that AREKELIAN sent at least 7 of the spams at issue in this Action using the following
11 domain names: espchatsocial.com and wtxeres.com.

12 27. Plaintiffs are informed and believe and thereon allege that Defendant ANDRES MARY
13 (“MARY”), is now, and was at all relevant times, an individual with a principal place of business
14 in San Francisco, California. Plaintiffs are informed and believe and thereon allege that MARY
15 uses the address 548 Market St. #85748, San Francisco, California 94104 to register his domain
16 names used in spamming. Plaintiffs are informed and believe that MARY’s address is a virtual
17 box at Earth Class Mail, a commercial mail receiving agency (“CMRA”). Plaintiffs are informed
18 and believe and thereon allege that MARY uses a CMRA box for the specific purpose of being
19 “untraceable” by recipients of his spam emails. Plaintiffs are informed and believe and thereon
20 allege that MARY sent at least 6 of the spams at issue in this Action using the following domain
21 names: moreservices4less.com, onlinedatinglovers.com, superdicountcoupon.com, vocational-
22 test.com, wantcouplnow.com.

23 **3. DOE Defendants**

24 28. Plaintiffs do not know the true names or legal capacities of the Defendants designated
25 herein as DOES 1 through 1,000, inclusive, and therefore sue said Defendants under the
26 fictitious name of “DOE.” Plaintiffs allege that certain Defendant(s) designated herein as DOES
27 registered the following domain names used to send some of the spams at issue in a manner so as
28 to prevent email recipients from discovering those DOE Defendants’ true identities:
29 99quality.net, 99tard.com, 9stylishheet.net, aassurance.net, accessrun.com, additionalbook.com,
30 adenalgy.com, advancedactivities.net, affectiveevaluation.com, agent-pays.sortcom.net,
31 alwayslivenetshop.com, anecdotalreports.net, angularea.com, antipaschool.com, areamage.com,

1 areassist.com, asiandate.com, asianmarkets.net, astronomyprogram.net, atework.com,
2 autopricebit.com, autosolutionprograms.com, baseaffiliteog.com, basesamum.com,
3 beamsmanager.com, beautifulmkt.com, becentre.net, bestofoperation.com, bestofsshope.com,
4 bestupmarkt.com, betamarkt.com, betax24offre.com, betharnolder.com, bharatmatrimony.com,
5 bigcentralmediamkt.com, bisnulsion.com, bookcity.ro, booksontheknob.org, boutiqueak.com,
6 brandmake.net, broadcastoutlets.com, brunsonian.com, buildingdoorstep.com,
7 c0nsumerism.com, calmklein.net, cardcommitteeweb.com, castoffrly.com, chamarekt.com,
8 chamarekt0.com, chosend.com, chron.com, climbtap.com, company24x7.com,
9 consciouslyselecting.com, copingstrategies.net, cwjobsmail.com, dailymshop-send.eu,
10 data0ffre1.com, dataforevers.com, datamarketingcorp.com, datateama.com, datingfocus.net,
11 dazeddigital.com, dealwebzine.com, defervescentre.com, digihelpsell.com, digioffres.com,
12 dilleplasa.org, donpornogratis.com, earsorehands.com, edu.gm, efficientsolution.net, eidjc.com,
13 eiserance.net, embermight.com, emiaterc.com, emsc.net, entrepreneurialgeneration.net,
14 entrepzoom.com, epik.com, eslite.com, existingproduct.com, expressez.com, f64mail.eu,
15 fatparadox.net, filesleya.com, foroffre.com, france-discount.fr, francetvinfo.fr, fruition.net,
16 funspage.com, generationretails.com, globalmarketteam.com, grandstanddreams.com,
17 groupyorkshiretalk.com, harlemshakeoffers.com, hh.ru, hitprodu.com, hopefind.net,
18 housefarms.net, hoymanager.com, iceages.net, identicalterms.net, inboxdollars.com,
19 inboxpounds.com, indicatingericssoncalled.com, innateability.net, inquirecanyonlands.com,
20 instaoffre.com, insurancious.net, instrumentalworks.net, internalorgan.net, iranfile.ir,
21 jobenvironments.com, jobonrole.com, justoffre.com, juvela.com, kaplanced.com, keepplace.net,
22 kotak.com, kupiskidku.com, laborpractices.net, landhistory.net, leboncoin.fr, legislatiamuncii.ro,
23 lifestyleshield.com, liquidbulletin.com, loadingimages.net, logdater.com, mail-
24 cidbotanicals.com, mailsamolatina.com, mainoffre.com, majorpublication.com,
25 manageroofres.com, managerridae.com, manmemory.net, marektal.com, marektsofl.admin,
26 marektstore.com, meetic.com, mermanager.com, metalovers.com, metaoffre.com, mi-horoscopo-
27 del-dia.com, mondaydress.com, monsoon.co.uk, myplaycity.com, naruko.com, nepmanger.com,
28 nero-emea.com, nero-us.com, netmainshop.com, nightmarekt.com, nouncil.com,
29 officialmarketweb.com, offreddie.com, offresender.com, offresetter.com, offreshen.com,
30 olivegasvalues.com, onlinecardcommitteehost.com, operationindicator.com, optimusoz.com,
31 orderdelivered.net, organfeedback.com, organisationt.org, ownanyplace.com, ownbet.net,

1 particularimes.com, patrioticfervor.com, performancetargets.net, personaldetails.net,
2 personalizedchoices.net, platediscipline.net, portalcodulmuncii.ro, positiveface.net,
3 powerrealm.com, procardcommittee.com, prod-mix.net, productreportcard.com,
4 propertysupersite.com, provedright.com, pseudocostandar.com, racked.com,
5 rainbowcontrol.com, realuses.net, regesterintel.com, registen.com, residentialcommunity.net,
6 reviewjournal.com, rootsweb.com, roughagence.com, runningaerobic.com, samoblog.com,
7 sbingo.eu, sendaze.com, senderbylite.com, senderdaita.com, sendermostosis.com,
8 shopbonton.com, shoppingexperiencemedia.com, shopletterwriter.com, simpleoperations.net,
9 sknspo.com, slothasheville.net, softindeswik.com, sortcom.net, specificcompanies.com,
10 subminindex.com, sysage.com, techwebreview.com, telbros.com, testmethod.net,
11 theintermrktcorp.com, thelomographer.com, thewinesociety.com, toothmegadelivery.com,
12 traditionalforms.com, u-mall.com, undertosionsc.com, usadirectdemocracy.com, utensilcad.com,
13 valuableproducts.net, vivarise.net, waytravel.net, wearn.com, webmailbyte.com,
14 webofferanalysts.com, weekendings.net, westernsuburbs.net, windowsphone.com, worq1.com,
15 xsh0pe.com, yearsuniverse.net, yearswatch.net, youoffreup.com, yourextictravelguide.com,
16 yourintermarket.com.

17 29. Plaintiffs are informed and believe and thereon allege that each of the Defendants
18 designated herein as a DOE is legally responsible in some manner for the matters alleged in this
19 complaint, and is legally responsible in some manner for causing the injuries and damages of
20 which Plaintiffs complain. Plaintiffs are informed and believe and thereon allege that each of the
21 Defendants designated herein as a DOE Defendant was, at all times relevant to the matters
22 alleged within this complaint, acting in conjunction with the named Defendants, whether as a
23 director, officer, employee, agent, affiliate, customer, participant, or co-conspirator. When the
24 identities of DOE Defendants 1-1,000 are discovered, or otherwise made available, Plaintiffs will
25 seek to amend this Complaint to allege their identity and involvement with particularity.

26 30. Defendants' joinder in this Action is proper pursuant to Code of Civil Procedure § 379
27 because Plaintiffs seek relief jointly and severally from Defendants arising from the same series
28 of transactions and occurrences, and because common questions of law and fact as to Defendants
29 will arise in the Action. The fact that all Defendants may not be implicated in all spams does not
30 bar joinder: "It is not necessary that each defendant be interested as to every cause of action or as
31

1 to all relief prayed for. Judgment may be given against one or more defendants according to
2 their respective liabilities.” Code Civ. Proc. § 379.

3
4 **III. JURISDICTION AND VENUE**

5 **A. Jurisdiction is Proper in a California Superior Court**

6 31. This California Superior Court has jurisdiction over the Action because all Plaintiffs are
7 located in California, and the amount in controversy is more than \$25,000.

8 **B. Venue is Proper in San Francisco County**

9 32. Venue is proper in San Francisco County (or indeed, *any* county in California of
10 Plaintiffs’ choosing) because the ADVERTISER DEFENDANTS (other than the individual
11 SINGLA) are foreign corporations that have not designated the location and address of a
12 principal office in California or registered to do business in California with the California
13 Secretary of State. *See Easton v. Superior Court of San Diego (Schneider Bros. Inc.)*, 12 Cal.
14 App. 3d 243, 246 (4th Dist. 1970). Additionally, Defendant MARY resides and/or has a
15 principal place of business in San Francisco. Code Civ. Proc. 395(a).

16
17 **IV. ALMOST 600 UNLAWFUL SPAMS**

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

21 34. California’s False Advertising Law, Business & Professions Code § 17500

22 prohibits “not only advertising which is false, but also advertising which[,]
23 although true, is either actually misleading or which has a capacity, likelihood or
24 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.

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

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

2 35. The emails at issue are “commercial email advertisements”¹ because they were initiated
3 for the purpose of advertising and promoting the ADVERTISER DEFENDANTS’ products and
4 services.

5 36. The emails are “unsolicited commercial email advertisements”² because no Plaintiff gave
6 “direct consent”³ to, or had a “preexisting or current business relationship”⁴ with any of the
7 ADVERTISER DEFENDANTS.

8 37. Plaintiffs did not consent or acquiesce to receive the spams at issue. Plaintiffs did not
9 waive or release any rights or claims related to the spams at issue.

10 38. Defendants advertised in, sent, and/or conspired to send at least 577 unlawful spams that
11 Plaintiffs received at their “California email addresses”⁵ as shown below:
12
13
14

15 _____
16 ¹ “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
18 property, goods, services, or extension of credit.” Bus. & Prof. Code § 17529.1(c).

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

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

28 ⁴ “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).

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).

| PLAINTIFF | SPAMS RECEIVED | PLAINTIFF | SPAMS RECEIVED |
|-----------|----------------|--------------|----------------|
| BLANCHARD | 66 | JOBE | 91 |
| LAMA | 111 | POWERS | 199 |
| KOTTONG | 110 | TOTAL | 577 |

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

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

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

41. The From Name field is part of email headers. The From Name does *not* include the Sender Email Address. So, for example, if an email's From Line says: "John Doe <johndoe@yahoo.com>", the From Name is *just* "John Doe."

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

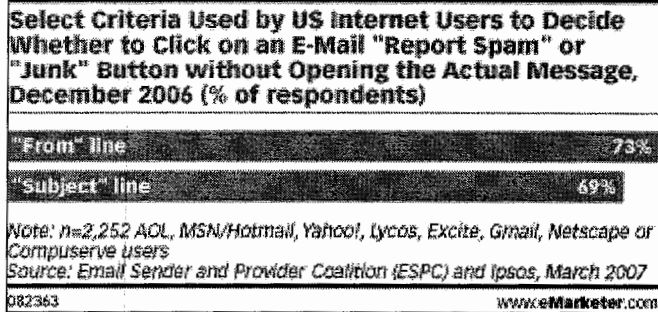
The "From:" field specifies the author(s) of the message, that is, the mailbox(es) of the person(s) or system(s) responsible for the writing of the message. . . . In all cases, the "From:" field SHOULD NOT contain any mailbox that does not belong to the author(s) of the message.

43. Plaintiffs do not insist on any *particular* label (e.g., "FLUENT," "FLUENT, INC.," "REWARD ZONE USA," etc.) in the From Name field. Rather, Plaintiffs contend that the text, whatever it is, cannot misrepresent *who* the emails are from.

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

45. 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->

1 Open-Rates-Hinge-on-Subject-
2 Line/1005550 (Oct. 31, 2007). Thus, a
3 From Name that misrepresents who a spam
4 is from is *not* a mere technical error; rather,
5 it is a material misrepresentation of the
6 most important part of the email header.



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

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

13 Federal Trade Commission, CAN-SPAM Act: A Compliance Guide for Business, available at
14 <http://www.business.ftc.gov/documents/bus61-can-spam-act-compliance-guide-business>
15 (emphasis added).

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

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

23 203 Cal. App. 4th 1083, 1088, 1090-91, 1093 (1st Dist. 2012), *petition for review denied*, 2012
24 Cal. LEXIS 4979 (Cal. May 23, 2012), *petition for certiori denied*, 2012 U.S. LEXIS 8423 (U.S.
25 Oct. 29, 2012), *petition for rehearing denied*, 2013 U.S. LEXIS 243 (U.S. Jan. 7, 2013). More
26 specifically, *Balsam* confirmed that generic From Names that "do not exist or are otherwise
27 misrepresented when they do not represent any real company and cannot be readily traced back
28 to the true owner/sender" violate the statute. *Id.* at 1093. The Court affirmed the award of
29 \$1,000 liquidated damages for the seven emails with misrepresented information in the From
30 Name field, even though most of the spams identified the advertiser in the body. *Id.* at 1091,
31

1 1093. Therefore, truthful information in the body of a spam does not cure misrepresented
2 information contained in or accompanying the headers.

3 48. Almost all of the spams that Plaintiffs received, advertising the ADVERTISER
4 DEFENDANTS' websites, show generic text in the From Name field that misrepresents *who* the
5 spams are from, e.g. "Gift Card Rewards," "Thank You," "Congratulations," "Thank You
6 Facebook Survey Rewards," and "Promotional Survey." These generic From Names could just
7 as easily refer to the ADVERTISER DEFENDANTS' competitors.

8 49. Some of the spams have From Names that go beyond merely generic and are actively
9 false, claiming that the spams are from third-party companies (or products) that have nothing to
10 do with Defendants, e.g. "Sams," "Samsung Galaxy S5," "Target," and "Walmart." On
11 information and belief, those third parties are not in any way associated with the sending of the
12 spams at issue in this action.

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

15 51. Plaintiffs are informed and believe and thereon allege that Defendants knowingly choose
16 to advertise using generic From Names and unrelated third-parties names precisely so the
17 recipients will *not* know who the emails were really from when viewing the spams in the inbox
18 view. This forces recipients to open the emails to see if the emails might actually be from
19 someone with whom the recipient has had dealings, or if the emails are in fact, as is the case
20 here, nothing but spams from for-profit entities.

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

29 53. Moreover, in many of the spams at issue, the sender is not identified in the body of the
30 spams, so *Balsam* would control, not *Rosolowski*.

31

1 54. In those instances where the sender is identified in the body of the spams, the sender is an
2 “untraceable” entity, so the recipient doesn’t actually know who sent the spam. For example,
3 JOBE received a spam that says in the body that it was sent by ANGLO. However, as discussed
4 above, ANGLO uses a mailbox at a UPS store as its address and it is not registered with *any*
5 Secretary of State (or its equivalent). Therefore, the “identification” of the sender in the body of
6 the email is merely another misrepresentation as to who actually sent the spam, because
7 “ANGLO IDITECH” is meaningless. In another instance, KOTTONG received a spam that said
8 it was sent from CONCEPT. However, as discussed above, CONCEPT uses a nonexistent
9 address and is not registered with *any* Secretary of State (or its equivalent). Again, the purported
10 “identification” of the sender in the body of the email is misleading, misrepresented, and
11 meaningless.

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

14 55. Section 17529.5(a)(2) prohibits falsified, misrepresented, or forged information contained
15 in or accompanying in email headers.

16 56. Registration information for the domain names used to send spams is information
17 contained in or accompanying email headers.

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

22 58. Many of the spams that Plaintiffs received advertising Defendants were sent from domain
23 names that:

- 24 • Did not identify Defendants or the sender on their face, or
- 25 • Were “proxy” registered, or
- 26 • Were registered to nonexistent entities (corporations, LLC’s, individuals, etc.) so
27 as to not be readily traceable to the sender by querying the Whois database,

28 in violation of Section 17529.5. *Balsam*, 203 Cal. App. 4th at 1097-1101. For example,
29 Blanchard received a spam advertising ADVERTISER DEFENDANTS’ products and services
30 from the domain name betharnholder.com. That domain name was proxy-registered when the
31 spam was sent. The *Balsam* court held that sending a spam from a domain name that is proxy-

1 registered is a misrepresentation as to *who* the sender actually is. The *Balsam* court held that
2 such proxy-registration is a violation of section 17529.5. At least 167 of the 577 spams at issue
3 in this Action were sent from proxy-registered domain names.

4 59. JOBE received an email from a domain name registered to CONCEPT, which is not
5 registered with *any* Secretary of State (or its equivalent) and uses a false and nonexistent address.
6 Like in *Balsam*, spams sent from domains registered to nonexistent entities using P.O. boxes,
7 CMRA's, and nonexistent addresses misrepresent *who* actually sent the spams.

8 60. Plaintiffs could not identify Defendants or its spamming affiliates who sent most of the
9 spams at issue by querying the Whois database for the domain names used to send all or almost
10 all of the spams at issue.

11 **D. Spams With False and Misrepresented Subject Lines Violate Business & Professions**
12 **Code § 17529.5(a)(2)**

13 61. Section 17529.5(a)(2) prohibits falsified, misrepresented, or forged information in email
14 headers.

15 62. The Subject Line is part of email headers.

16 63. Many of the spams that Plaintiffs received contain Subject Lines with falsified and/or
17 misrepresented information. Plaintiffs allege that these Subject Lines are *absolutely* false and/or
18 misrepresented and violate Section 17529.5(a)(2), as opposed to misleading *relative* to the
19 contents/body of the spams, which would be a violation of Section 17529.5(a)(3).

20 64. Example of falsified/misrepresented Subject Lines include:

- 21 • "Being Cleared: \$350 Check" is false because no such check exists.
- 22 • "You Won \$100 From CVS Pharmacy" is false because the recipient, LAMA, did
23 *not* win \$100 from CVS Pharmacy.
- 24 • "Congratulations, Here's Your \$1,000 Walmart Gift Card" is false because there
25 was no Walmart gift card.

26 **E. Spams With Subject Lines Misleading Relative to the Contents of the Spams Violate**
27 **Business & Professions Code § 17529.5(a)(3)**

28 65. Section 17529.5(a)(3) prohibits Subject Lines misleading relative to the contents or
29 subject matter of the emails.

30 66. Some of the spams that Plaintiffs received contain Subject Lines misleading relative to
31 the contents of subject matter of the emails, which violate Section 17529.5(a)(3).

67. Examples of misleading Subject Lines include:

- 1 • “Get A \$100 Walmart Gift Card Free!” is misleading because the body says, “Get
2 a \$100 Walmart Gift Card . . . upon completion of purchase requirements.” So,
3 the Subject Line would lead the recipient to believe a free gift card is available,
4 which is belied by the body disclosing that there is no free gift card available.
- 5 • “Ogen, Your Name Was Drawn April 6th For A Kohl’s Gift Card” is misleading
6 because it implies that there is a Kohl’s gift card available for LAMA, but the
7 body says “. . . enter your zip for availability . . .” implying that there is *not* a
8 Kohl’s gift card available and that LAMA’s name could not have been drawn
9 because the body admits that it is questionable whether he is even eligible to
10 receive the gift card, based on his ZIP code.

11 **F. Spams Containing a Third Party’s Domain Name Without Permission Violate Business**
12 **& Professions Code § 17529.5(a)(1)**

13 68. Section 17529.5(a)(1) prohibits spams containing or accompanied by a third party’s
14 domain name without the permission of the third party.

15 69. Plaintiffs are informed and believe and thereon allege that at least 140 of the spams at
16 issue in this Action contain third parties’ domain names without permission of the third parties.
17 For example, some of the domain names appearing in the sending email addresses are:
18 *sephora.com, toysrus.com, walgreens.com, ebay.com, ebates.com, osh.com, olivegarden.com,*
19 *clubmed.com, lancome.com, pfizer.com, nissanusa.com, amazon.co.uk, dell.com, nytimes.com,*
20 *nfl.com, shopbonton.com.*

21 70. Such unauthorized use of third parties’ domain names is materially false and deceptive.
22 There can be no dispute that these spams were *not* sent from eBay, The New York Times
23 Company, etc. Plaintiffs are informed and believe and thereon allege that the ADVERTISER
24 DEFENDANTS and/or their marketing agents forged the Sender Email Addresses to include
25 domain names belonging to legitimate third party businesses in order to:

- 26 • Falsely lend an air of legitimacy to the spams by leveraging the brand equity of
27 legitimate advertisers, making the recipients believe that eBay, The New York
28 Times Company, etc. endorse the ADVERTISER DEFENDANTS, and
- 29 • Trick spam filters as to the source of the spams. If the ADVERTISER
30 DEFENDANTS and their marketing agents used their *own* domain names, it
31 would be more likely that spam filters would be able to automatically identify the

1 domain names as being associated with spammers, and block the spams. On the
2 other hand, emails purportedly sent by *ebay.com*, *nytimes.com*, etc. are more
3 likely to be treated as legitimate emails and not spams.

4 71. Furthermore, assuming that these spams were *not* actually sent from the domain names
5 that appear in the Sender Email Addresses, which Plaintiffs are informed and believe and thereon
6 allege to be the case, then the spams also contained falsified and forged information, which
7 violates Section 17529.5(a)(2).

8 **G. The ADVERTISER DEFENDANTS are Strictly Liable for Spams Sent By Their**
9 **Marketing Agents**

10 72. Plaintiffs are informed and believe and thereon allege that the ADVERTISER
11 DEFENDANTS contracted with third party advertising networks and affiliates, including but not
12 limited to the other named Defendants, to advertise their websites for the purpose of selling
13 products and services for a profit.

14 73. No one forced the ADVERTISER DEFENDANTS to outsource any of their advertising
15 to third party spam networks and spammers.

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

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

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

22 Bus. & Prof. Code § 17529(j)(k).

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

25 Bus. & Prof. Code § 17529.5 (emphasis added). Of course, the ADVERTISER DEFENDANTS’
26 agents are also liable for sending unlawful spams. *See Balsam*, generally.

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

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

1 limited to entities that actually send or initiate a deceptive commercial e-mail, but
2 applies more broadly to any entity that advertises in those e-mails.

3 Thus, like other California statutes prohibiting false or misleading business
4 practices, the statute makes an entity *strictly liable* for advertising in a
5 commercial e-mail that violates the substantive provisions described in section
6 17529.5, subdivision (a) *regardless of whether the entity knew that such e-mails*
7 *had been sent* or had any intent to deceive the recipient.

8 192 Cal. App. 4th 805, 820-21 (2d Dist. 2011) (emphasis added). The court did not find that this
9 was an arbitrary requirement; rather, the court identified sound policy reasons behind the
10 Legislature's decision to create a strict liability statute. *Id.* at 829.

11 **H. Plaintiffs Sue for Statutory Liquidated Damages; No Proof of Reliance or Actual**
12 **Damages is Necessary**

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

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

18 78. Plaintiffs' rightful and lawful demand for liquidated damages in the amount of \$1,000 per
19 email is necessary to further the California Legislature's objective of protecting California
20 residents from unlawful spam.

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

26 80. However, Plaintiffs did suffer damages by receiving the unlawful spams advertising
27 Defendant's products and services in the state of California, at their California email addresses.
28 Bus. & Prof. Code § 17529(d), (e), (g), (h). Regardless, Plaintiffs do not seek actual damages in
29 this Action, only liquidated damages. Bus. & Prof. Code § 17529.5(b)(1)(B).

30 **I. Defendants' Actions Were Willful and Preclude any Reduction in Statutory Damages**

31 81. Section 17529.5 authorizes this Court to reduce the statutory damages to \$100 per spam.
Bus. & Prof. Code § 17529.5(b)(2). But, to secure the reduction, Defendants have the burden of
proof to demonstrate not only that *established* practices and procedures to prevent unlawful

1 spamming, but also that they *implemented* those practices and procedures, and that the practices
2 and procedures are *effective*.

3 82. Plaintiffs are informed and believe and thereon allege that Defendants have not
4 established and implemented, with due care, practices and procedures reasonably designed to
5 effectively prevent unsolicited commercial e-mail advertisements that are in violation of
6 Section 17529.5.

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

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

11 85. Moreover, Plaintiffs are informed and believe and thereon allege that Defendants
12 intended to deceive recipients of their spam messages through the use of falsified and/or
13 misrepresented information in From Names, domain name registrations, and Subject Lines, and
14 use of third parties' domain names without permission, as described herein.

15 86. Subject Lines and From Names do not write themselves. Domain names do not register
16 themselves. Third parties' domain names (e.g. nytimes.com) do not insert themselves into spams
17 on their own. The false and misrepresented information contained in and accompanying the
18 email headers are not "clerical errors." Plaintiffs are informed and believe and thereon allege
19 that Defendants went to great lengths to create falsified and misrepresented information
20 contained in and accompanying the email headers in order to deceive recipients, Internet Service
21 Providers, and spam filters.

22 87. Plaintiffs are informed and believe and thereon allege that Defendants intended to profit,
23 actually profited, and continue to profit, and were unjustly enriched by, their wrongful conduct
24 as described herein.

25
26 **FIRST CAUSE OF ACTION**

27 **[Violations of California Restrictions on Unsolicited Commercial Email,**
28 **California Business & Professions Code § 17529.5]**
29 **(Against All Defendants)**

30 88. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

31 89. Plaintiffs received all of the spams at issue within one year prior to filing this Complaint.

1 90. Defendants advertised in, sent, and/or caused to be sent at least 577 unsolicited
2 commercial email advertisements to Plaintiffs' California electronic mail addresses that had
3 materially falsified and/or misrepresented information contained in or accompanying the email
4 headers, contained Subject Lines that were misleading in relation to the bodies of the emails,
5 and/or contained third parties' domain names without permission, in violation of Section
6 17529.5. The unlawful elements of these spams represent willful acts of falsity and deception,
7 rather than clerical errors.

8 91. The California Legislature set liquidated damages at One Thousand Dollars (\$1,000) per
9 email.

10 92. Defendants have not established and implemented, with due care, practices and
11 procedures to effectively prevent advertising in unlawful spams that violate Section 17529.5 that
12 would entitle them to a reduction in statutory damages.

13 93. Plaintiffs seek reimbursement of attorneys' fees and costs as authorized by Section
14 17529.5(b)(1)(C).

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

21
22 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set forth.

23
24 **PRAYER FOR RELIEF**

25 **(Against All Defendants)**

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

28 B. Liquidated damages against Defendants in the amount of \$1,000 for each of at least 577
29 unlawful spams, as authorized by Section 17529.5(b)(1)(B)(ii), for a total of at least
30 \$577,000, as set forth below:
31

| PLAINTIFF | DAMAGES SOUGHT | PLAINTIFF | DAMAGES SOUGHT |
|------------------|-----------------------|------------------|-----------------------|
| BLANCHARD | \$66,000 | JOBE | \$91,000 |
| LAMA | \$111,000 | POWERS | \$199,000 |
| KOTTONG | \$110,000 | TOTAL | \$577,000 |

- C. Liquidated damages against each of the ADVERTISER DEFENDANTS, jointly and severally, in the amount of \$577,000 based on 577 unlawful spams that they sent, hired others to send, or otherwise conspired with others to send to Plaintiffs, according to proof.
- D. Liquidated damages against PANDA MAIL, jointly and severally with each of the ADVERTISER DEFENDANTS, in the amount of \$1,000 for each of 40 unlawful spams it sent, hired others to send, or otherwise conspired to send to Plaintiffs, according to proof.
- E. Liquidated damages against ADREACTION, jointly and severally with each of the ADVERTISER DEFENDANTS, in the amount of \$1,000 for each of 39 unlawful spams it sent, hired others to send, or otherwise conspired to send to Plaintiffs, according to proof.
- F. Liquidated damages against ANGLO, jointly and severally with each of the ADVERTISER DEFENDANTS, in the amount of \$1,000 for each of 16 unlawful spams it sent, hired others to send, or otherwise conspired to send to Plaintiffs, according to proof.
- G. Liquidated damages against FORTANALYSIS8, jointly and severally with each of the ADVERTISER DEFENDANTS, in the amount of \$1,000 for each of 13 unlawful spams it sent, hired others to send, or otherwise conspired to send to Plaintiffs, according to proof.
- H. Liquidated damages against CONCEPT, jointly and severally with each of the ADVERTISER DEFENDANTS, in the amount of \$1,000 for each of 9 unlawful spams it sent, hired others to send, or otherwise conspired to send to Plaintiffs, according to proof.
- I. Liquidated damages against RUFINO, jointly and severally with each of the ADVERTISER DEFENDANTS, in the amount of \$1,000 for each of 7 unlawful spams he sent, hired others to send, or otherwise conspired to send to Plaintiffs, according to proof.

- 1 J. Liquidated damages against AREKELIAN, jointly and severally with each of the
2 ADVERTISER DEFENDANTS, in the amount of \$1,000 for each of 7 unlawful spams
3 she sent, hired others to send, or otherwise conspired to send to Plaintiffs, according to
4 proof.
- 5 K. Liquidated damages against MARY, jointly and severally with each of the
6 ADVERTISER DEFENDANTS, in the amount of \$1,000 for each of 6 unlawful spams
7 he sent, hired others to send, or otherwise conspired to send to Plaintiffs, according to
8 proof.
- 9 L. Liquidated damages against each DOE 1-1,000 (when their true names are learned),
10 jointly and severally with each of the ADVERTISER DEFENDANTS, in the amount of
11 \$1,000 for each of the unlawful spams it sent, hired others to send, or otherwise conspired
12 to send to Plaintiffs, according to proof.
- 13 M. Attorneys' fees as authorized by Section 17529.5(b)(1)(C) and Code of Civil Procedure
14 § 1021.5 for violations of Section 17529.5.
- 15 N. Costs of suit.
- 16 O. Such other and further relief as the Court deems proper.

17
18 THE LAW OFFICES OF JACOB HARKER

19
20
21
22 Date: September 16, 2016

BY: 

JACOB HARKER
Attorneys for Plaintiffs