

ENDORSED  
FILED  
San Francisco County Superior Court

SEP 17 2009

GORDON PARK-LI, Clerk  
BY: ~~KEVIN R. DOUGHERTY~~  
Deputy Clerk

1 Timothy J. Walton (State Bar No. 184292)  
2 LAW OFFICES OF TIMOTHY WALTON  
3 801 Woodside Road, Suite 11  
4 Redwood City, CA 94061  
5 Phone (650) 216-9800  
6 Fax: (650) 618-8687

7 Daniel L. Balsam (State Bar No. 260423)  
8 THE LAW OFFICES OF DANIEL BALSAM  
9 3145 Geary Blvd. #225  
10 San Francisco, CA 94118  
11 Phone: (415) 276-3067  
12 Fax: (415) 373-3783

13 Attorneys for Plaintiff  
14 DANIEL L. BALSAM

15 **SUPERIOR COURT OF CALIFORNIA**

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

17 DANIEL L. BALSAM,	) Case No.:	CGC-08-473383
18	)	
19 Plaintiff,	) <b>JUDGMENT OF COURT AS TO</b>	
20	) <b>DEFENDANT AMANDA GREINER, AN</b>	
21 v.	) <b>INDIVIDUAL</b>	
22	)	
23 AMANDA GREINER,	)	
24	) Date:	September 17, 2009
25 Defendant.	) Time:	9:00 a.m.
26	) Department:	218

- 27 1. Defendant AMANDA GREINER, an individual, was properly served with a copy of
- 28 the summons and complaint.
- 29 2. Defendant AMANDA GREINER, an individual, failed to timely respond to the
- 30 complaint.
- 31 3. The default of Defendant AMANDA GREINER, an individual, was entered on May 22,

1 4. The Court considered Plaintiff DANIEL BALSAM's oral testimony, heard on  
2 September 1, 2009 and September 17, 2009.

3  
4 **I. VIOLATIONS OF CAL. BUSINESS & PROFESSIONS CODE § 17529.5**

5 5. The Court finds that Defendant AMANDA GREINER, an individual, advertised in and  
6 sent twenty (20) unsolicited commercial emails ("UCEs" or "spams") to Plaintiff with  
7 falsified, misrepresented, or forged information contained in or accompanying the  
8 email headers in violation of Cal. Business & Professions Code ("B&P") § 17529.5  
9 between November 22-December 17, 2007, inclusive.

10 6. The Court notes that B&P § 17529.5 authorizes standing and liquidated damages for  
11 recipients of unsolicited commercial email and does not require that the recipients have  
12 purchased goods/services advertised in the emails.

13 **A. Misleading Subject Lines**

14 7. The Court finds that 11 of the 20 spams sent by Defendant AMANDA GREINER, an  
15 individual, had Subject Lines likely to mislead a recipient, acting reasonably under the  
16 circumstances, about a material fact regarding the contents or subject matter of the  
17 emails, in violation of B&P § 17529.5(a)(3).

18 8. The Court finds that the spams sent by Defendant AMANDA GREINER, an individual,  
19 with Subject Lines that described goods or services as "free" without clearly disclosing  
20 purchase requirements in the immediate proximity of the word "free" as required by 16  
21 C.F.R. § 251.1(c) were misleading and violated B&P § 17529.5(a)(3).

- 22 • 6 Bottles of \*F ree Holiday Wine, Happy Thanksgiving-22 Nov 2007 22:26:01
- 23 +0000
- 24 • Your Most Recent F ree Credit Score Has Arrived-08 Dec 2007 23:43:24 -0500
- 25 • Check Your Updated Credit Score Instantly for F\* ree-14 Dec 2007 12:55:56 -0500
- 26 • Print Your Recent F\* ree Credit Score-17 Dec 2007 05:48:36 -0500

27 9. The Court finds that the spams sent by Defendant AMANDA GREINER, an individual,  
28 with Subject Lines that included deliberate misspellings (e.g. "\*F ree," "F ree",  
29 "F\* ree," and "Credt"), were designed to evade and mislead spam filters that use key  
30

1 words, among other criteria, as indicators of spam, and therefore were misleading and  
2 violated B&P § 17529.5(a)(3).

- 3 • 6 Bottles of \*F ree Holiday Wine, Happy Thanksgiving-22 Nov 2007 22:26:01
- 4 +0000
- 5 • Your Most Recent F ree Credit Score Has Arrived-08 Dec 2007 23:43:24 -0500
- 6 • Check Your Updated Credit Score Instantly for F\* ree-14 Dec 2007 12:55:56 -0500
- 7 • Re: Your Upgraded Credit Score is waiting to Print-13 Dec 2007 12:27:15 -0500
- 8 • Print Your Recent F\* ree Credit Score-17 Dec 2007 05:48:36 -0500

9 10. The Court finds that the spams sent by Defendant AMANDA GREINER, an individual,  
10 with Subject Lines that included the word “Re:” when the emails were *not* sent in  
11 response to a prior communication from the recipient were misleading and violated  
12 B&P § 17529.5(a)(3).

- 13 • Re: Your Upgraded Credit Score is waiting to Print-13 Dec 2007 12:27:15 -0500
- 14 • Re: Your Approved, Approval # 89136-05 Dec 2007 04:44:59 -0500

15 11. The Court finds that the spams sent by Defendant AMANDA GREINER, an individual,  
16 with Subject Lines that included the phrase “Your [*sic*] Approved” and a purported  
17 approval number, when Plaintiff did not previously contact the sender and apply for  
18 something (e.g., a credit card) for which approval was required, were misleading and  
19 violated B&P § 17529.5(a)(3).

- 20 • Re: Your Approved, Approval # 89136-05 Dec 2007 04:44:59 -0500
- 21 • Your Approved, Approval # 772507-12 Dec 2007 05:24:16 -0500

22 12. The Court finds that the spams sent by Defendant AMANDA GREINER, an individual,  
23 with Subject Lines that included “Google,” “google,” and “Amazon,” when Google and  
24 Amazon had nothing to do with vaguely-defined “make money at home on the Internet”  
25 schemes described in the body of the emails, were misleading and violated B&P  
26 § 17529.5(a)(3).

- 27 • Type and Form fill for Google, Data Entry Positions Available-27 Nov 2007
- 28 04:34:21 -0500
- 29 • Type and Form fill with google Today-04 Dec 2007 00:35:08 -0500
- 30 • Have You Started Working With Amazon Yet?11 Dec 2007 07:05:37 -0500
- 31

- 1           • Google Typeists and Form Fillers Needed ASAP-13 Dec 2007 11:51:03 -0500

2 **B. Misrepresented From Names**

3 13. The Court finds that all 20 spams sent by Defendant AMANDA GREINER, an  
4 individual, with From Names that did not clearly identify the sender and/or advertiser  
5 contained misrepresented information in violation of B&P § 17529.5(a)(2).

- 6           • Complimentary International Wines  
7           • D\*ebtEliminator  
8           • CredtStressRelief  
9           • Holidays Fat relief  
10          • F\* reeCredtScores  
11          • F\* reeCredtReports  
12          • CredtScoresHelp  
13          • F\* reeCredtReports  
14          • C0mplimentryCredtScores  
15          • Holiday Approval Dept.  
16          • Approvals Confirmation#45687  
17          • Holiday Approval Dept  
18          • Holiday Warranty Programs  
19          • Holiday Warranty Help  
20          • Holiday Warranty Help  
21          • Holiday Warranty Help  
22          • Help Wanted  
23          • Google Business Center  
24          • AmazonCareerCenter  
25          • Google Online Careers  
26          • HolidaySales

27 14. The Court finds that the spams sent by Defendant AMANDA GREINER, an individual,  
28 with From Names that described goods or services as “free” without clearly disclosing  
29 purchase requirements as required by 16 C.F.R. § 251.1(c) contained misrepresented  
30 information and violated B&P § 17529.5(a)(2).

- 31           • Complimentary International Wines

- 1 • F\* reeCredtScores
- 2 • F\* reeCredtReports
- 3 • C0mplimentaryCredtScores

4 15. The Court finds that the spams sent by Defendant AMANDA GREINER, an individual,  
5 with From Names that contain deliberate misspellings (e.g. “F\* ree,” “Credt,”  
6 “D\*ebtEliminator,” and “C0mplimentaryCredtScores” (with the number 0 instead of the  
7 letter o)) were designed to evade and mislead spam filters that use key words, among  
8 other criteria, as indicators of spam; these From Names contained misrepresented  
9 information and violated B&P § 17529.5(a)(2).

- 10 • D\*ebtEliminator
- 11 • CredtStressRelief
- 12 • F\* reeCredtScores
- 13 • F\* reeCredtReports
- 14 • CredtScoresHelp
- 15 • C0mplimentaryCredtScores

16 16. The Court finds that the spams sent by Defendant AMANDA GREINER, an individual,  
17 with From Names that included “Google” and “Amazon,” when Google and Amazon  
18 had nothing to do with vaguely-defined “make money at home on the Internet” schemes  
19 described in the body of the emails, contained misrepresented information and violated  
20 B&P § 17529.5(a)(2).

- 21 • Google Business Center
- 22 • AmazonCareerCenter
- 23 • Google Online Careers

24 **C. Deceptive Sending Domain Names**

25 17. The Court finds that all 20 spams sent by Defendant AMANDA GREINER, an  
26 individual, with nonsensical domain names that had nothing to do with the  
27 goods/service being advertised in the emails contained misrepresented information and  
28 violated B&P § 17529.5(a)(2).

- 29 • *coolfunhairstyles.com* to advertise wine
- 30 • *professionalhairtips.com* to advertise auto warranties
- 31

- 1 • *davidscustomfishingrods.com* to advertise online data entry
- 2 • *searchforyourperfectmatch.com* to advertise auto warranties
- 3 • *barbiescakeandcookies.com* to advertise online data entry
- 4 • *barbiescakeandcookies.com* to advertise credit cards
- 5 • *onedayshippingonyourdvdrental.com* to advertise auto warranties
- 6 • *chिकासclothingoutlet.com* to advertise credit cards
- 7 • *dannysbaitandtackle.com* to advertise credit reports
- 8 • *frankiesconcertickets.com* to advertise credit reports
- 9 • *marlinaschristmasclothes.com* to advertise personalized Christmas ornaments
- 10 • *bennyandsonscarpetcleaning.com* to advertise debt consolidation
- 11 • *fancychristmasornaments.com* to advertise online data entry
- 12 • *theperfectpromgowns.com* to advertise credit cards
- 13 • *juliesantiquechina.com* to advertise data entry
- 14 • *marlinaschristmasclothes.com* to advertise debt management
- 15 • *signuptodayforfreegifts.com* to advertise colon cleansing
- 16 • *frankiestoymakingclasses.com* to advertise credit reports
- 17 • *sexyblackdressesyoucanafford.com* to advertise credit reports
- 18 • *pauliesonlinebusinesshelp.com* to advertise credit reports

19 **D. Multiple Sending Domain Names**

20 18. The Court finds that a domain name is analogous to an identity on the Internet. The  
21 Court finds that sending commercial emails from multiple domain names, when there is  
22 no justifiable business rationale for doing so: a) is a deceptive means for the sender to  
23 portray itself as if it were actually multiple entities, and b) is a deceptive means of  
24 evading spam filters, and therefore c) violates B&P § 17529.5(a)(2).

25 19. The Court finds that the 20 spams sent by Defendant AMANDA GREINER, an  
26 individual, from 18 different domain names all violated B&P § 17529.5(a)(2).

27 **E. Falsely Registered Sending Domain Names**

28 20. The Court finds that the registration information for a domain name that appears in  
29 email headers is properly considered information accompanying the email headers.  
30

1 The Court finds that domain names registered to nonexistent people, companies, and/or  
2 addresses contain materially false information in violation of B&P § 17529.5(a)(2).

3 21. The Court finds that all 20 spams sent by Defendant AMANDA GREINER, an  
4 individual, were sent from domain names registered to nonexistent people, companies,  
5 and/or addresses. Therefore, all 20 spams violated B&P § 17529.5(a)(2).

- 6 • The domain names *coolfunhairstyles.com* and *professionalhairtips.com* were  
7 registered to Brittany Marks, Love Business Inc., 65 Long Drive, Old Field, NY  
8 11733. No such person, business, or address exist.
- 9 • The domain names *barbiescakeandcookies.com*, *bennyandsonscarpetcleaning.com*,  
10 *dannysbaitandtackle.com*, *marlinaschristmasclothes.com*,  
11 *onedayshippingonyourdvdrental.com*, *searchforyourperfectmatch.com*, and  
12 *theprecfepromgowns.com* were registered to Cynthia Ryan, Compliment mktg, 291  
13 Park Drive, West Hampton, NY 11977. No such person, business, or address exist.
- 14 • The domain names *chicasclothingoutlet.com*, *davidscustomfishingrods.com*,  
15 *fancychristmasornaments.com*, *frankiesconcerttickets.com*,  
16 *sexyblackdressesyoucanafford.com*, and *signuptodayforfreegifts.com* were  
17 registered to Corinne Michaels, Buyers Marketing, 21 Main Street, Philadelphia,  
18 PA 19019. No such person, business, or address exist.
- 19 • The domain names *frankiestoymakingclasses.com* and *juliesantiquechina.com* were  
20 registered to Davin Mitchell, Barnes Vehicles, 21 Barns Road, Manorville, NY  
21 11949. No such person, business, or address exist.
- 22 • The domain name *pauliesonlinebusinesshelp.com* was registered to Jennie Smith,  
23 Smith Antiques, 17 Flintlock Drive, Shirley, NY 11967. No such person or  
24 business exist.

25 **F. Plaintiff's Cause of Action Pursuant to B&P § 17529.5 is Not Preempted by the Federal**  
26 **CAN-SPAM Act**

27 22. The Court finds that the plain language of the CAN-SPAM Act states that federal law  
28 preempts state anti-spam laws except to the extent that state laws prohibit *falsity* or  
29 deception, not *fraud* or deception. The Court notes that false advertising is an area  
30 traditionally regulated by the States. The Court is not bound by decisions of the lower  
31 federal Courts, and declines to follow certain federal cases, including *Gordon v.*

1           *Virtumundo*, No. 07-35487, 2009 U.S. App. LEXIS 17518 (9th Cir. Aug. 6, 2009) and  
2           *Omega World Travel Inc. v. Mummagraphics Inc.*, 469 F.3d 348 (4th Cir. 2006), which  
3           fail to consider that “falsity” and “deception” can give rise to claims other than just  
4           common law fraud, such as false advertising or unfair competition. The Court finds the  
5           reasoning of *Asis Internet Services v. ConsumerBargainGiveaways LLC et al*,  
6           622 F. Supp. 2d 935 (N.D. Cal. 2009) (order re Rule 12 motion) more persuasive.  
7           Further, the courts in *Virtumundo* and *Omega* repeatedly noted that the “falsity” at issue  
8           was “immaterial error” or “technical errors,” in contrast to the instant spams which  
9           demonstrate various types of material falsity.

### 10 11           **III. PLAINTIFF WAS DAMAGED BY RECEIVING THESE SPAMS**

- 12           23. The Court notes that the California Legislature found that the *receipt* of unlawful spams  
13           causes damage, B&P § 17529(d), (e), (g), and (h), whether or not a recipient clicks a  
14           link in a spam and makes a purchase.  
15           24. The Court finds that Plaintiff was damaged by the receipt of the instant spams.  
16           25. The Court notes that B&P § 17529.59b)(1)(B) allows Plaintiff to claim a remedy of  
17           liquidated damages without needing to prove up actual damages.  
18

### 19 20           **IV. VIOLATIONS OF CAL. CIVIL CODE § 1750** 21           **(CONSUMERS LEGAL REMEDIES ACT)**

- 22           26. The Court finds that Plaintiff is a consumer.  
23           27. The Court finds that nothing in the CLRA states that a plaintiff/consumer must have  
24           purchased and be a consumer of the items advertised via the allegedly false and  
25           deceptive means.  
26           28. The Court notes that the CLRA applies to transactions intended such as advertisements  
27           that are *intended* to result in the sale/lease of goods or services, Cal. Civ. Code  
28           § 1770(a), and that CLRA remedies are available to consumers who suffer *any*  
29           damages, Cal. Civ. Code § 1780(a).  
30           29. The Court notes that the California Legislature has found that recipients of unlawful  
31           spam suffer damages. B&P § 17529(d), (e), (g), (h).



1 30. The Court holds that *Meyer v. Sprint Spectrum L.P.*, 45 Cal. 4th 634, 638 (2009), does  
2 not bar Plaintiff from bringing a CLRA cause of action, because *Meyer* was a  
3 preemptive lawsuit in which there was no dispute and the plaintiffs were not claiming  
4 that they had been damaged. In contrast, in the instant action there is a real dispute and  
5 Plaintiff has sufficiently pled damages.

6 31. The Court finds that Plaintiff sent a certified, return receipt letter to Defendant  
7 AMANDA GREINER, an individual, alleging specific violations of the CLRA.

8 32. The Court finds that Defendant AMANDA GREINER, an individual, did not respond  
9 within 30 days as required by Civ. Code § 1782(c).

10 33. The Court finds that Defendant AMANDA GREINER, an individual, violated the  
11 CLRA, Civ. Code § 1770(a)(5) and (a)(9) in six spams, by representing that goods and  
12 services have a characteristic – that of being “free” – that is not true, and by advertising  
13 goods and services within intent not to sell them free as advertised.

14 34. The Court finds that Defendant AMANDA GREINER, an individual, violated Civ.  
15 Code § 1770(a)(2), (a)(3), and (a)(5) in all 20 spams, by misrepresenting the source of  
16 the goods and services. Specifically, GREINER misrepresented that other parties were  
17 the actual source of the spams; GREINER misrepresented the connection between  
18 herself and the nonexistent names and business entities to whom the 18 domain names  
19 were registered, GREINER misrepresented the connection between herself and the  
20 nonexistent company “Madd Roi LLC,” and GREINER used “From Names” that did  
21 not identify herself or the advertised entities.

22 35. The Court finds that Defendant AMANDA GREINER, an individual, violated the  
23 CLRA, Civ. Code § 1770(a)(4), by making deceptive representations of geographic  
24 origin in connection with goods and services. Specifically, the purported addresses to  
25 which she registered the domain names do not exist, and the second address in each  
26 spam (Brooklyn, NY, Locust Grove, GA, Mastic Beach, NY, Center Moriches, NY,  
27 and Saint Louis, MO) have no connection to the goods and services advertised.

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**V. DECLARATORY RELIEF**

36. The Court determined and declares that Defendant AMANDA GREINER, an individual, violated B&P § 17529.5 in each of 20 spams sent to Plaintiff.
37. The Court determined and declares that Defendant AMANDA GREINER, an individual, violated the CLRA, Civ. Code § 1770, in each of 20 spams sent to Plaintiff.

**VI. JUDGMENT**

38. Judgment is entered as follows by the Court: *ADG*  
DANIEL L. BALSAM
39. Defendant AMANDA GREINER, an individual, is liable to Plaintiff on the complaint in the amount of \$20,000.00 liquidated damages for 20 unlawful spams pursuant to B&P 17529.5(b)(1)(B)(ii), less \$1,000.00 credit, for a net liability of \$19,000.00.
40. Defendant AMANDA GREINER, an individual, is liable to Plaintiff for attorneys' fees in the amount of ~~\$6,082.00~~ *ADG \$5574.06* pursuant to B&P § 17529.5(b)(1)(C), Civ. Code § 1780(d), and Code Civ. Proc. § 1021.5.
41. Defendant AMANDA GREINER, an individual, is liable to Plaintiff on the complaint in the amount of \$585.00 for recoverable costs of suit.
42. The Court finds that Defendant AMANDA GREINER took extraordinary steps to hide her identity when sending unlawful unsolicited commercial emails, by registering domain names to nonexistent people, nonexistent business entities, and nonexistent addresses.
43. ~~Defendant AMANDA GREINER, an individual, is liable to Plaintiff for \$56,000.00 for punitive damages due to malicious, oppressive, and fraudulent conduct, pursuant to Civ. Code § 3294.~~ *ADG*
44. The total monetary judgment amount is \$ *ADG \$25,159.06*.
45. Defendant AMANDA GREINER, an individual, is also liable to Plaintiff for interest at 10% per year beginning September 17, 2009.
46. Defendant AMANDA GREINER, an individual, is prohibited from advertising in or sending unlawful commercial email advertising either directly or through agents, servants, and employees. All persons acting under, in concert with, or for Defendant AMANDA GREINER, an individual, are similarly prohibited from sending unlawful

1 commercial email advertising. Any violations of this injunction shall subject  
2 Defendant AMANDA GREINER, an individual, to damages in the amount of  
3 \$2,500.00 per violation, pursuant to B&P § 17206.  
4

5 IT IS SO ORDERED.

6  
7 Date:

9-17-09

William R. Gargano

~~Judge~~ of the Superior Court

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10 WILLIAM R. GARGANO  
11 Commissioner  
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