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ENDORSED
FILED
Superior Court of California
County of San Francisco

JUN 05 2014

CLERK OF THE COURT
BY: VICTORIA GONZALEZ
Deputy Clerk

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Attorneys for Plaintiff
Timothy Myers

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

TIMOTHY MYERS, an individual,)	Case No.:	CGC-14-539695
)		
Plaintiff,)		
)	COMPLAINT FOR DAMAGES	
v.)		
)	1. VIOLATIONS OF CALIFORNIA	
PANAMERICAN CAPITAL ADVISORS,)	RESTRICTIONS ON UNSOLICITED	
LLC, a Delaware Limited Liability Company,)	COMMERCIAL E-MAIL (Cal. Bus. &	
THE PLAN TO ORGANIC FOOD, a business)	Prof. Code § 17529.5)	
entity of unknown organization, and)		
DOES 1-100,)		
)		
Defendants.)		

COMES NOW PLAINTIFF TIMOTHY MYERS and files this Complaint for one cause of action against Defendants PANAMERICAN CAPITAL ADVISORS, LLC *et al* and alleges as follows:

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

2 1. Plaintiff TIMOTHY MYERS (“MYERS”) brings this Action against professional
3 spammers PANAMERICAN CAPITAL ADVISORS, LLC dba *CashMojo.com*
4 (“PANAMERICAN”) and its third party affiliates (aka “publishers”) for advertising in and
5 sending at least 27 unlawful spams to MYERS.

6 2. MYERS never gave any PANAMERICAN or any other Defendant “direct consent” (as
7 required by law) to advertise in commercial emails sent to him.

8 3. The spams all had materially misrepresented or falsified information contained in or
9 accompanying the email headers, and/or misleading Subject Lines, and/or used third party
10 domain names without permission in violation of California Business & Professions Code
11 § 17529.5 (“Section 17529.5”). The unlawful elements of these spams represent willful acts of
12 falsity and deception, rather than clerical errors.

13 4. PANAMERICAN is strictly liable for advertising in spams sent by its third party
14 affiliates.

15 5. Spam recipients are not required to allege or prove reliance or actual damages to have
16 standing. *See* Bus. & Prof. Code § 17529(b)(1)(A)(iii). Nevertheless, MYERS did suffer
17 damages by receiving the spams. *See, e.g.*, Section 17529(d), (e), (g), (h). That said, MYERS
18 does not seek actual damages in this Action, only liquidated damages.

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

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

1 **II. PARTIES**

2 **A. Plaintiff**

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

6 **B. Defendants**

7 9. MYERS is informed and believes and thereon alleges that Defendant PANAMERICAN
8 CAPITAL ADVISORS, LLC (“PANAMERICAN”) is now, and was at all relevant times, a
9 Delaware limited liability company headquartered in New York, New York, doing business as
10 *CashMojo.com*, among other domain names.

11 10. MYERS is informed and believes and thereon alleges that Defendant THE PLAN TO
12 ORGANIC FOOD is a business entity of unknown organization located in San Francisco,
13 California.

14 11. MYERS does not know the true names or legal capacities of the Defendants designated
15 herein as DOES 1 through 100, inclusive, and therefore sues said Defendants under the fictitious
16 name of “DOE.” MYERS is informed and believes and thereon alleges that each of the
17 Defendants designated herein as a DOE is legally responsible in some manner for the matters
18 alleged in this complaint, and is legally responsible in some manner for causing the injuries and
19 damages of which MYERS complains. MYERS is informed and believes and thereon alleges
20 that each of the Defendants designated herein as a DOE Defendant was, at all times relevant to
21 the matters alleged within this complaint, acting in conjunction with the named Defendants,
22 whether as a director, officer, employee, agent, affiliate, customer, participant, or co-conspirator.
23 When the identities of DOE Defendants 1-100 are discovered, or otherwise made available,
24 MYERS will seek to amend this Complaint to allege their identity and involvement with
25 particularity. MYERS alleges that all Defendants are jointly and severally liable for all injuries
26 and damages of which MYERS complains.

27
28 **III. JURISDICTION AND VENUE**

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

30 12. This Court has jurisdiction over the Action because: a) MYERS is domiciled in and a
31 citizen of the State of California and received the unlawful spams at his California email address,

1 and b) the amount in controversy at the time of filing is more than \$25,000 and not greater than
2 \$75,000.

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

4 13. Venue is proper in San Francisco County because PANAMERICAN is a foreign
5 company that has not designated the location and address of a principal office in California or
6 registered to do business in California with the California Secretary of State, and MYERS may
7 designate any county in California for the action to be tried. *See* Code Civ. Proc. § 395(a);
8 *Easton v. Superior Court of San Diego (Schneider Bros. Inc.)*, 12 Cal. App. 3d 243, 246 (4th
9 Dist. 1970).

10 14. Venue is also proper in San Francisco because THE PLAN TO ORGANIC FOOD is
11 located in San Francisco, California.

12
13 **IV. AT LEAST 27 UNLAWFUL SPAMS**

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

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

18 16. The emails at issue are “commercial email advertisements”¹ because they were initiated
19 for the purpose of advertising and promoting the sale of PANAMERICAN’s goods or services.

20 17. The emails are “unsolicited commercial email advertisements”² because MYERS never
21 gave any Defendant “direct consent”³ to send him commercial emails, nor did any MYERS have
22 a “preexisting or current business relationship”⁴ with any Defendant.

23
24
25 ¹ “‘Commercial e-mail advertisement’ means any electronic mail message initiated for the
26 purpose of advertising or promoting the lease, sale, rental, gift offer, or other disposition of any
27 property, goods, services, or extension of credit.” Bus. & Prof. Code § 17529.1(c).

28 ² “‘Unsolicited commercial e-mail advertisement’ means a commercial e-mail advertisement sent
29 to a recipient who meets both of the following criteria: (1) The recipient has not provided direct
30 consent to receive advertisements from the advertiser. (2) The recipient does not have a
31 preexisting or current business relationship, as defined in subdivision (1), with the advertiser
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).

1 18. Defendants sent and/or advertised in at least 27 unlawful spams that MYERS received at
2 his "California email addresses"⁵ within one year prior to the filing of this Action.

3 19. MYERS' email address plays no part in determining whether or not the emails have
4 falsified, misrepresented, forged, misleading, or otherwise deceptive information contained in or
5 accompanying the email headers.

6 20. MYERS' email address is confidential for numerous reasons, including, but not limited
7 to, avoiding the risk of retaliation by "mail bombing" (sending massive amounts of email to
8 MYERS' email addresses), "joe jobbing" (sending unlawful email using MYERS' email address
9 in the Sender Email Address field as a means of harassment), or sharing of MYERS' email
10 addresses with other unknown parties who might in turn send spam or mail bombs to MYERS or
11 as if from MYERS.

12 21. The spams are all unlawful because the spams have materially falsified, misrepresented,
13 and/or forged information contained in or accompanying the email headers, and/or Subject Lines
14 that are misleading as to the contents or subject matter of the emails, and/or use a third party's
15 domain name without permission from those third parties as described in more detail below.

16 **B. Spams that Use a Third Party's Domain Name Without Their Consent Violate Business**
17 **and Professions Code 17529.5(a)(1)**

18 22. Section 17529.5(a)(1) prohibits the use of a third-party's domain name without the
19 permission of the third party.

20 23. Many of the spams at issue claim that they were sent from email addresses
21 @microsoft.com, @apple.com, and @aexp.com. Thus, the spams contain domain names
22 belonging to third parties Microsoft Inc., Apple Inc., and American Express Inc.

23 ³ "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 ⁴ "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. [I]" Bus. & Prof. Code
30 § 17529.1(I).

31 ⁵ "California e-mail address' means 1) An e-mail address furnished by an electronic mail service
provider that sends bills for furnishing and maintaining that e-mail address to a mailing address
in this state; 2) An e-mail address ordinarily accessed from a computer located in this state; 3)
An e-mail address furnished to a resident of this state." Bus. & Prof. Code § 17529.1(b).

1 24. MYERS is informed and believes and thereon alleges that Defendants did not have the
2 consent of Microsoft, Apple, and American Express to use their domain names to advertise
3 PANAMERICAN's websites and services. Therefore, the spams violate Section 17529.5(a)(1).

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

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

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

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

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

18 28. MYERS does not insist on any *particular* label (e.g., "PANAMERICAN, LLC,"
19 "PANAMERICAN," "CashMojo.com," etc. in the From Name field. Rather, MYERS contends
20 that the text, whatever it is, cannot misrepresent *who* is advertising in the email.

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

25 30. Indeed, empirical evidence has
26 demonstrated that the From Name is the
27 *most* important factor email recipients use
28 to determine whether or not an email is
29 spam. See eMarketer, E-Mail Open Rates
30 Hinge on 'Subject' Line, available at
31 <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	
082343	www.emarketer.com

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

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

9 203 Cal. App. 4th 1083, 1088, 1090-91, 1093 (1st Dist. 2012), *petition for review denied*, 2012
10 Cal. LEXIS 4979 (Cal. May 23, 2012), *petition for certiorari denied*, 2012 U.S. LEXIS 8423 (U.S.
11 Oct. 29, 2012), *petition for rehearing denied*, 2013 U.S. LEXIS 243 (U.S. Jan. 7, 2013). More
12 specifically, *Balsam* confirmed that generic From Names that “do not exist or are otherwise
13 misrepresented when they do not represent any real company and cannot be readily traced back
14 to the true owner/sender” violate the statute. *Id.* at 1093. The Court affirmed the award of
15 \$1,000 liquidated damages for the seven spams with misrepresented information in the From
16 Name field, even though most of the spams identified the advertiser in the body. *Id.* at 1091,
17 1093.

18 32. The From Names of the instant spams are all similarly generic terms such as
19 “CONGRATULATIONS” and “APPROVAL DEPARTMENT,” etc. These generic From
20 Names, like those in *Balsam*, misrepresent *who* was advertising in the spams, and therefore
21 violate Section 17529.5(a)(2).

22 33. These From Names could just as easily refer to PANAMERICAN’s competitors, such as
23 *checkintocash.com*, *advanceamerica.com*, or *acecashexpress.com*.

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

26 34. Section 17529.5(a)(2) prohibits falsified, misrepresented, or forged information contained
27 in or accompanying email headers.

28 35. Registration information for the domain names used to send spams is information
29 contained in or accompanying email headers.

30 36. In *Balsam v. Trancos Inc.*, the Court of Appeal held:

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

1 identity. . . .

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

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

11 We therefore hold, consistent with the trial court’s ruling, that header information
12 in a commercial e-mail is falsified or misrepresented for purposes of section
13 17529.5(a)(2) when it uses a sender domain name that *neither* identifies the actual
14 sender on its face *nor* is readily traceable to the sender using a publicly available
15 online database such as WHOIS.

16 203 Cal. App. 4th at 1097-1101 (emphasis in original).

17 37. Many if not all of the spams that MYERS received advertising Defendants were sent
18 from domain names that violated Section 17529.5 because they:

- 19 • Did not identify PANAMERICAN or the sender on their face, and
- 20 • Were deliberately registered so as to not be readily traceable to the sender by
21 querying the Whois database.

22 38. At least one of the spams at issue was sent from a domain name (*freecycle.org*) that was
23 proxy registered to prevent the recipient from tracing the domain name to the actual sender using
24 a Whois query.

25 39. Some of the spams at issue were sent from domain names that were deceptively
26 registered to nonexistent entities, such as “Alliance Infrastructure” in Herriman, Utah and
27 “Universal Fincorp” in Fairfield, Connecticut, neither of which is registered with the
28 Utah/Connecticut Secretary of State. These non-existent entities often claim boxes at the U.S.
29 Postal Service or commercial mail receiving agencies to prevent the recipient from tracing the
30 domain name to the actual sender using a Whois query.⁶

31 ⁶ “. . . 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.” *Balsam*, 203 Cal. App. 4th at 1098.

1 40. As described above, many of the spams contain false information in the headers because
2 the spams were *not* sent from Microsoft, Apple, and American Express, even though those third
3 parties' domain names appear in the purported sender email addresses.

4 41. MYERS could not identify PANAMERICAN or its spamming affiliates who sent the
5 spams at issue by querying the Whois database for the domain names used to send the spams.

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

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

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

12 44. Many of the spams at issue contain Subject Lines with falsified and/or misrepresented
13 information. To name but two examples:

- 14 • MYERS received a spam advertising PANAMERICAN with the Subject Line:
15 "tim, You've received \$2,500 Cash deposited."
- 16 • MYERS received a spam advertising PANAMERICAN with the Subject Line:
17 "shhhh! Your check may have finally arrived !"

18 45. Although the second Subject Line above included the word "may," the fact that these
19 advertisements were sent *directly* to MYERS, as opposed to inclusion in a mass-media television
20 advertisement, misrepresents the status of MYERS' alleged check and PANAMERICAN and its
21 affiliates' knowledge of the recipients' alleged check at the time the spams were sent.

22 46. The Subject Lines referenced above are patently false. They indicate that MYERS has
23 \$2,500 in an account (he does not) and that MYERS has a check that arrived (he does not).

24 47. Section 17529.5(a)(3) prohibits Subject Lines likely to mislead a reasonable recipient
25 about the contents or subject matter or the email.

26 48. Many of the Subject Lines are misleading as to the contents or subject matter of the
27 emails. To name but two examples:

- 28 • MYERS received a spam advertising PANAMERICAN with the Subject Line:
29 "ATTN: Your \$100 - \$1000 Application is ready: Please Confirm!" However,
30 the body of the spam states that MYERS can "Get up to \$2,500!"

- MYERS received a spam advertising PANAMERICAN with the Subject Line: “Results: You’re Approved \$1500!” However, the body of the spam states that MYERS can “Get up to \$2,500 It’s Magic!”

49. The Subject Lines referenced above are patently misleading as to the contents of the spams. The Subject Lines refer to \$1,000 and \$1,500, but the bodies of the spams offer \$2,500.

F. PANAMERICAN is Strictly Liable for Spams Sent By Its Affiliates

50. MYERS is informed and believes and thereon alleges that PANAMERICAN contracted with third party advertising networks and affiliates (a/k/a “publishers”) to advertise its websites for the purpose of selling goods and services for a profit.

51. No one forced PANAMERICAN to outsource any of its advertising to third party spammers.

52. Advertisers such as PANAMERICAN are liable for advertising in spams, even if third parties hit the Send button.

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

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

Bus. & Prof. Code § 17529(j)(k).

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

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

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

[S]ection 17529.5 makes it unlawful for a person or entity “to advertise in a 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 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.

Thus, like other California statutes prohibiting false or misleading business

1 practices, the statute makes an entity *strictly liable* for advertising in a
2 commercial e-mail that violates the substantive provisions described in section
3 17529.5, subdivision (a) *regardless of whether the entity knew that such e-mails*
4 *had been sent* or had any intent to deceive the recipient.

5 192 Cal. App. 4th 805, 820-21 (2d Dist. 2011) (emphasis added). The court did not find that this
6 was an arbitrary requirement; rather, the court identified sound policy reasons behind the
7 Legislature's decision to create a strict liability statute:

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

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

14 **G. MYERS Sues for Statutory Liquidated Damages; No Proof of Reliance or Actual**
15 **Damages is Necessary**

16 54. The California Legislature defined liquidated damages to be \$1,000 per spam. Section
17 17529.5(b)(1)(B)(ii).

18 55. MYERS is informed and believes and thereon alleges that the \$1,000 per spam figure is
19 comparable with damages in other areas of consumer protection law, e.g., \$500-\$1,500 statutory
20 damages per junk fax, pursuant to Bus. & Prof. Code § 17538.43(b).

21 56. MYERS' rightful and lawful assertion of the California Legislature's liquidated damages
22 amount of \$1,000 per spam is necessary to further the Legislature's objective of protecting
23 California residents from unlawful spam.

24 57. Section 17529.5 does not require MYERS to quantify his actual damages, allege or prove
25 reliance on the advertisements contained in the spams, or purchase the goods and services
26 advertised in the spams. *Recipients* of unlawful spam have standing to sue and recover
27 liquidated damages. *See* Section 17529.5(b)(1)(A)(iii); *Hypertouch*, 192 Cal. App. 4th at 820,
28 822-23, 828.

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

30 58. Section 17529.5(b)(2) authorizes this Court to reduce the statutory damages to \$100 per
31 spam. But, to secure the reduction, Defendants have the burden of proof to demonstrate not only
that they have practices and procedures to prevent unlawful spamming, but also that the practices
and procedures are *effective*.

1 59. MYERS is informed and believes and thereon alleges that Defendants have not
2 established and implemented, with due care, practices and procedures reasonably designed to
3 effectively prevent unsolicited commercial e-mail advertisements that are in violation of Section
4 17529.5.

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

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

9 62. Moreover, MYERS is informed and believes and thereon alleges that Defendants
10 intended to deceive recipients of their spam messages through the use of falsified and/or
11 misrepresented information contained in or accompanying the email headers, as described
12 herein.

13 63. Subject Lines and From Names do not write themselves and domain names do not
14 register themselves or magically appear in emails without the sender's knowledge; the
15 misrepresented information contained in and accompanying the email headers are not "clerical
16 errors." MYERS is informed and believes and thereon alleges that Defendants went to great
17 lengths to create misrepresented information contained in and accompanying the email headers
18 in order to deceive recipients, Internet Service Providers, and spam filters.

19 64. MYERS is informed and believes and thereon alleges that Defendants intended to profit,
20 actually profited, and continue to profit, and were unjustly enriched by, their wrongful conduct
21 as described herein.

22 65. Punitive damages are appropriate to punish malicious, oppressive, and/or fraudulent
23 conduct by Defendants, and to deter others from engaging in such conduct.

24
25 **FIRST CAUSE OF ACTION**

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

29 66. MYERS hereby incorporate the foregoing paragraphs as though set forth in full herein.

30 67. MYERS received the spams at issue within one year prior to filing this Complaint.
31

1 68. Defendants advertised in, sent, and/or caused to be sent unsolicited commercial email
2 advertisements to MYERS' California email address: a) containing third parties' domain names
3 without their permission, b) containing or accompanied by falsified and/or misrepresented header
4 information, and/or c) containing misleading Subject Lines.

5 69. The California Legislature set liquidated damages at One Thousand Dollars (\$1,000) per
6 spam.

7 70. MYERS seeks reimbursement of attorneys' fees and costs as authorized by Section
8 17529.5(b)(1)(C).

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

15
16 WHEREFORE, MYERS prays for judgment against Defendants as hereinafter set forth.

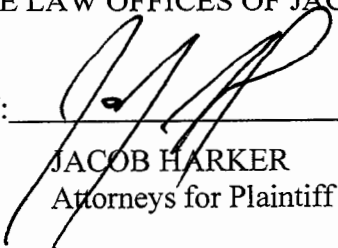
17
18 **PRAYER FOR RELIEF**

19 **(Against All Defendants)**

- 20 A. An Order from this Court declaring that Defendants violated California Business &
21 Professions Code § 17529.5 by advertising in and sending unlawful spams.
- 22 B. Liquidated damages against Defendants in the amount of \$1,000 per unlawful spam, as
23 authorized by Section 17529.5(b)(1)(B)(ii), for a total of at least \$27,000.
- 24 C. Attorneys' fees as authorized by Section 17529.5(b)(1)(C) and Code of Civil Procedure
25 § 1021.5 for violations of Section 17529.5.
- 26 D. Disgorgement of all profits derived from unlawful spams directed to California residents;
27 monies to be turned over to the Unfair Competition Law Fund and used by the California
28 Attorney General to support investigations and prosecutions of California's consumer
29 protection laws.
- 30 E. Costs of suit.
- 31 F. Such other and further relief as the Court deems proper.

THE LAW OFFICES OF JACOB HARKER

Date: June 5, 2014

BY:  _____

JACOB HARKER
Attorneys for Plaintiff

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