

JUN 13 2014

CLERK OF THE SUPERIOR COURT

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

17 **COUNTY OF ALAMEDA (UNLIMITED JURISDICTION)**

18 JAMES PATTERSON, an individual;
19 JOSHUA ALLEN, an individual,
20 MARGIE BARR, an individual,
21 JASON BISHOP, an individual;
22 ERIK HELLMAN, an individual;
23 TIM MYERS, an individual;
24 NICK OLIVERES, an individual;
25 MARY O'SHEA, an individual;
26 OLIVER PEDRO, an individual;
27 SHANE SEEFELDT, an individual; and
28 JOAN SMITH, an individual;

29 Plaintiffs,

30 v.

31 PEOPLE MEDIA INC., a Delaware
corporation;
SPEEDDATE.COM LLC, a Delaware limited
liability company;
TIMOTHY PANIC, an individual; and
DOES 1-500;

Defendants.

) Case No.: **RG14728938**

) **COMPLAINT FOR DAMAGES**

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

1 COME NOW PLAINTIFFS JAMES PATTERSON *et al* and file this Complaint for one cause of
2 action against Defendants PEOPLE MEDIA INC. *et al* and allege as follows:

3
4 **I. INTRODUCTION AND SUMMARY OF THE COMPLAINT**

5 1. Plaintiffs bring this Action against professional spammers PEOPLE MEDIA INC.,
6 SPEEDDATE.COM LLC, and their third party affiliates (aka “publishers”), including
7 TIMOTHY PANIC, for advertising in and sending at least 171 unlawful spams to Plaintiffs. A
8 representative sample (**Figure 1**) appears on the next page.

9 2. No Plaintiff gave direct consent to, or had a preexisting or current business relationship
10 with, the Defendant(s) who sent/advertised in commercial email advertisements that s/he
11 received.

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

17 4. PEOPLE MEDIA INC. and SPEEDDATE.COM LLC are strictly liable for advertising in
18 spams sent by their third party affiliates.

19 5. Spam recipients are not required to allege or prove reliance or actual damages to have
20 standing. *See* Bus. & Prof. Code § 17529(b)(1)(A)(iii). Nevertheless, Plaintiffs did suffer
21 damages by receiving the spams. *See, e.g.*, Bus. & Prof. Code § 17529(d), (e), (g), (h).
22 However, Plaintiffs elect to recover statutory damages only and forego recovery of any actual
23 damages.

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

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

1 Subject: [REDACTED] Meet 40+ Singles Near You. Browse FREE!
2 From: 40+ Singles Online Dating (40onlinedating@nxnsservice.com)
3 To: [REDACTED]@yahoo.com,
4 Date: Wednesday, December 31, 1969 4:00 PM

5
6 **redacted 50+ Singles Online Now. See who wants to meet you!**

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Join FREE!
free membership includes:

- Browse Members
- Video/Audio/Text Chat
- Upload Photos

Join Now ▶

Meet
50+ Singles
& Find Love This Summer

SeniorPeopleMeet.com

Unsubscribe from future mailings here

2973 Harbor Blvd #460
Costa Mesa, Ca 92626

Figure 1

1 **II. PARTIES**

2 **A. Plaintiffs**

3 8. JAMES PATTERSON (“PATTERSON”) was domiciled in and a citizen of the State of
4 California, when he received Defendants’ spams at issue. PATTERSON ordinarily accesses his
5 email address(es) from California.

6 9. JOSHUA ALLEN (“ALLEN”) was domiciled in and a citizen of the State of California,
7 when he received Defendants’ spams at issue. ALLEN ordinarily accesses his email address(es)
8 from California.

9 10. MARGIE BARR (“BARR”) was domiciled in and a citizen of the State of California,
10 when she received Defendants’ spams at issue. BARR ordinarily accesses her email address(es)
11 from California.

12 11. JASON BISHOP (“BISHOP”) was domiciled in and a citizen of the State of California,
13 when he received Defendants’ spams at issue. BISHOP ordinarily accesses his email address(es)
14 from California.

15 12. ERIK HELLMAN (“HELLMAN”) was domiciled in and a citizen of the State of
16 California, when he received Defendants’ spams at issue. HELLMAN ordinarily accesses his
17 email address(es) from California.

18 13. TIM MYERS (“MYERS”) was domiciled in and a citizen of the State of California,
19 when he received Defendants’ spams at issue. MYERS ordinarily accesses his email address(es)
20 from California.

21 14. NICK OLIVERES (“OLIVERES”) was domiciled in and a citizen of the State of
22 California, when he received Defendants’ spams at issue. OLIVERES ordinarily accesses his
23 email address(es) from California.

24 15. MARY O’SHEA (“O’SHEA”) was domiciled in and a citizen of the State of California,
25 when she received Defendants’ spams at issue. O’SHEA ordinarily accesses her email
26 address(es) from California.

27 16. OLIVER PEDRO (“PEDRO”) was domiciled in and a citizen of the State of California,
28 when he received Defendants’ spams at issue. PEDRO ordinarily accesses his email address(es)
29 from California.

1 17. SHANE SEEFELDT (“SEEFELDT”) was domiciled in and a citizen of the State of
2 California, when he received Defendants’ spams at issue. SEEFELDT ordinarily accesses his
3 email address(es) from California.

4 18. JOAN SMITH (“SMITH”) was domiciled in and a citizen of the State of California,
5 when she received Defendants’ spams at issue. SMITH ordinarily accesses her email address(es)
6 from California.

7 19. Plaintiffs’ joinder in this Action is proper because Plaintiffs seek relief based on the same
8 series of transactions or occurrences: all received similar spams in the same general time period
9 advertising Defendants’ websites, and all of those spams were sent by Defendants or their
10 marketing agents. The same questions of law (e.g., violations of Section 17529.5, strict liability)
11 and fact (e.g., direct consent, practices and procedures to prevent advertising in unlawful spam)
12 will arise. The fact that each Plaintiff does not sue for *exactly* the same spams does not bar
13 joinder: “It is not necessary that each plaintiff be interested as to every cause of action or as to all
14 relief prayed for. Judgment may be given for one or more of the plaintiffs according to their
15 respective right to relief.” Code Civ. Proc. § 378(b).

16 **B. Defendants**

17 20. Plaintiffs are informed and believe and thereon allege that Defendant PEOPLE MEDIA
18 INC. (“PEOPLE MEDIA”) is now, and was at all relevant times, a Delaware corporation located
19 in Los Angeles, California, doing business as *SeniorPeopleMeet.com*, *BlackPeopleMeet.com*,
20 and *OurTime.com*, among other websites.

21 21. Plaintiffs are informed and believe and thereon allege that Defendant
22 SPEEDDATE.COM LLC (“SPEEDDATE”) is now, and was at all relevant times, a Delaware
23 limited liability company located in San Francisco, California, doing business as *SpeedDate.com*.

24 22. Plaintiffs are informed and believe and thereon allege that Defendant Timothy Panic
25 (“PANIC”) is now, and was at all relevant times, an individual residing and/or employed in or
26 near Park City, Utah.

27 23. Plaintiffs do not know the true names or legal capacities of the Defendants designated
28 herein as DOES 1 through 500, inclusive, and therefore sue said Defendants under the fictitious
29 name of “DOE.” Plaintiffs are informed and believe and thereon allege that each of the
30 Defendants designated herein as a DOE is legally responsible in some manner for the matters
31 alleged in this complaint, and is legally responsible in some manner for causing the injuries and

1 damages of which Plaintiffs complain. Plaintiffs are informed and believe and thereon allege
2 that each of the Defendants designated herein as a DOE Defendant was, at all times relevant to
3 the matters alleged within this complaint, acting in conjunction with the named Defendants,
4 whether as a director, officer, employee, agent, affiliate, customer, participant, or co-conspirator.
5 When the identities of DOE Defendants 1-500 are discovered, or otherwise made available,
6 Plaintiffs will seek to amend this Complaint to allege their identity and involvement with
7 particularity.

8 9 **III. JURISDICTION AND VENUE**

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

11 24. This Superior Court has jurisdiction over the Action for all of the following independent
12 reasons: a) all Plaintiffs are domiciled in and citizens of the State of California and received the
13 unlawful spams at their California email addresses; b) the amount in controversy is more than
14 \$25,000; c) Plaintiffs' claims are individual, *not* joint and several, and no Plaintiff's amount in
15 controversy exceeds or is anywhere near \$75,000 as of the time of filing this Complaint; and d)
16 PEOPLE MEDIA and SPEEDDATE's primary places of business are in California.

17 **B. Venue is Proper in Alameda County**

18 25. Venue is proper in Alameda County because Plaintiff PATTERSON received some of the
19 spams at issue in Alameda County. Venue is also proper in Alameda County because a company
20 can be sued where the cause of action arises. *See* Code Civ. Proc. §§ 395(b), 395.5.

21 22 **IV. AT LEAST 171 UNLAWFUL SPAMS**

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

27 27. California's False Advertising Law, Business & Professions Code § 17500

28 prohibits "not only advertising which is false, but also advertising which[,]
29 although true, is either actually misleading or which has a capacity, likelihood or
30 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.

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

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

2 28. The emails at issue are “commercial email advertisements”¹ because they were initiated
3 for the purpose of advertising and promoting the sale of Defendants’ Internet dating services.

4 29. The emails are “unsolicited commercial email advertisements”² because no Plaintiff gave
5 “direct consent”³ to, or had a “preexisting or current business relationship”⁴ with, the
6 Defendant(s) who sent/advertised in commercial email advertisements that s/he received.

7 30. Defendants sent and/or advertised in at least 171 unlawful spams that Plaintiffs received
8 at their “California email addresses”⁵ within one year prior to the filing of this Action, as set
9 forth below:

10

PLAINTIFF	PEOPLE MEDIA	SPEEDDATE	TOTAL SPAMS
ALLEN		3	3
BARR	9	1	10
BISHOP	19		19
HELLMAN		1	1
MYERS	1		1

11
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
property, goods, services, or extension of credit.” Bus. & Prof. Code § 17529.1(c).

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

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
consent or at the recipient’s own initiative.” Bus. & Prof. Code § 17529.1(d) (emphasis added).

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

29 ⁵ “‘California e-mail address’ means 1) An e-mail address furnished by an electronic mail service
30 provider that sends bills for furnishing and maintaining that e-mail address to a mailing address
31 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	PEOPLE MEDIA	SPEEDDATE	TOTAL SPAMS
OLIVERES	3	37	40
O'SHEA	6		6
PATTERSON	23	11	34
PEDRO	51		51
SEEFELDT	3		3
SMITH	3		3
TOTAL	118	53	171

31. Plaintiffs' email addresses play no part in determining whether or not the emails have falsified, misrepresented, forged, misleading, or otherwise deceptive information contained in or accompanying the email headers.

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

B. Spams Containing Third Parties' Domain Names Without Their Permission Violate Business & Professions Code § 17529.5(a)(1)

33. Section 17529.5(a)(1) prohibits spams containing or accompanied by a third party's domain name without the permission of the third party.

34. At least one of the spams that Plaintiffs received advertising Defendants' websites contained third parties' domain names without their permission, and therefore violated Section 17529.5. For example:

- MYERS received a spam advertising PEOPLE MEDIA (*SeniorPeopleMeet.com*) showing @aol.com in the sending email address. AOL Inc., owner of the aol.com domain name, expressly prohibits use of its services for spamming. See AOL Terms of Service, <http://legal.aol.com/terms-of-service/full-terms> (last visited May 22, 2014). Therefore, since AOL prohibits all spamming using its services, AOL did not and could not have given permission for anyone to use its domain name in conjunction with this spam.

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

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

1 36. The From Name field is part of email headers. The From Name field does *not* include the
2 sending email address.

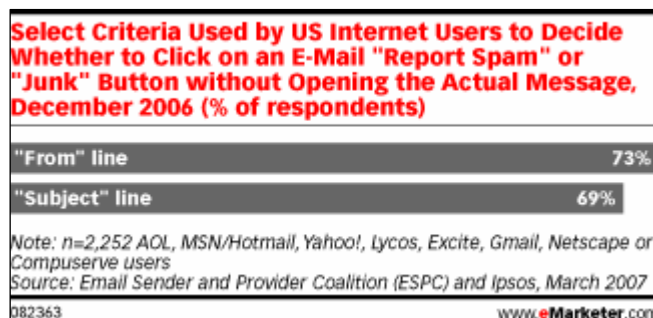
3 37. The From Name field in an email's headers is, not surprisingly, supposed to identify who
4 the email is *from*; it is not supposed to be an advertising message. Because computers must use
5 standard protocols in order to communicate, the Internet Engineering Task Force created a
6 collection of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

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

12 38. Plaintiffs do not insist on any *particular* label (e.g., "SpeedDate," "SpeedDate.com,"
13 "People Media," "SeniorPeopleMeet," "Senior People Meet," etc.) in the From Name field.
14 Rather, Plaintiffs contend that the text, whatever it is, cannot misrepresent *who* is advertising in
15 the email.

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

20 40. Indeed, empirical evidence has
21 demonstrated that the From Name is the
22 *most* important factor email recipients use
23 to determine whether or not an email is
24 spam. See eMarketer, E-Mail Open Rates
25 Hinge on 'Subject' Line, *available at*



26 <http://www.emarketer.com/Article/E-Mail-Open-Rates-Hinge-on-Subject-Line/1005550> (Oct.
27 31, 2007). Thus, a From Name that misrepresents who a spam is from is *not* a mere technical
28 error; rather, it is a material violation of the most important part of the email header.

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

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

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

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

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

16 203 Cal. App. 4th 1083, 1088, 1090-91, 1093 (1st Dist. 2012), *petition for review denied*, 2012
17 Cal. LEXIS 4979 (Cal. May 23, 2012), *petition for certiori denied*, 2012 U.S. LEXIS 8423 (U.S.
18 Oct. 29, 2012), *petition for rehearing denied*, 2013 U.S. LEXIS 243 (U.S. Jan. 7, 2013). More
19 specifically, *Balsam* confirmed that generic From Names that "do not exist or are otherwise
20 misrepresented when they do not represent any real company and cannot be readily traced back
21 to the true owner/sender" violate the statute. *Id.* at 1093. The Court affirmed the award of
22 \$1,000 liquidated damages for the seven emails with misrepresented information in the From
23 Name field, even though most of the spams identified the advertiser in the body. *Id.* at 1091,
24 1093. Therefore, truthful information in the body of a spam does not cure misrepresented
25 information contained in or accompanying the headers.

26 43. All of the spams that Plaintiffs received advertising Defendants' websites had "From
27 Names" that misrepresented *who* the spams were from, and therefore violated Section 17529.5.
28 To name but three examples:

- 29 • BARR received a spam advertising PEOPLE MEDIA (*SeniorPeopleMeet.com*)
30 with the From Name "40 Plus Online Dating."
- 31 • SEEFELDT received a spam advertising PEOPLE MEDIA (*OurTime.com*) with
 the From Name "LOCAL SINGLES."

- OLIVERES received a spam advertising SPEEDDATE with the From Name “New Message.”

44. The From Name “40 Plus Online Dating” (emphasis added) contains misrepresented information because the *SeniorPeopleMeet.com* website is for people age 55 and up.

Welcome! SeniorPeopleMeet.com is a community specially designed to cater to senior singles seeking mature dating. If you're single, and seeking over 55 dating for friendship, pen pals, romance or marriage, look beyond your regular routine and generic online dating sites. . . .

Use our senior dating service to quickly view and contact thousands of attractive and active singles over 55 in your area. . . .

Beyond typical online dating, SeniorPeopleMeet is a focused community dedicated to singles 55 years and older.

About Senior Dating, <http://www.seniorpeoplemeet.com/v3/aboutonlinedating> (last visited April 25, 2014). Furthermore, to the extent that age 40 makes a person a “senior” at all, the From Name “40 Plus Online Dating” could just as easily refer to PEOPLE MEDIA’s competitors *SeniorMatch.com*, *DatingForSeniors.com*, or *SeniorPassions.com*. Therefore, “40 Plus Online Dating” misrepresents *who* is advertising in the spams.

45. The From Name “LOCAL SINGLES” could just as easily refer to any of dozens of dating websites.

46. The From Name “New Message” has nothing inherently to do with online dating at all.

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

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

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

49. In *Balsam*, the Court of Appeal held:

[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 identity. . . .

Here, the domain names were *not* traceable to the actual sender. The header information is “falsified” or “misrepresented” because Trancos deliberately

1 created it to prevent the recipient from identifying who actually sent the message.
2 an e-mail with a made-up *and untraceable* domain name affirmatively *and*
3 *falsely* represents the sender has no connection to Trancos.

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

8 We therefore hold, consistent with the trial court's ruling, that header information
9 in a commercial e-mail is falsified or misrepresented for purposes of section
10 17529.5(a)(2) when it uses a sender domain name that *neither* identifies the actual
11 sender on its face *nor* is readily traceable to the sender using a publicly available
12 online database such as WHOIS.

13 203 Cal. App. 4th at 1097-1101 (emphasis in original).

14 50. Plaintiffs received spams advertising PEOPLE MEDIA and SPEEDDATE sent from
15 domain names that:

- 16 • Did not identify PEOPLE MEDIA or SPEEDDATE (or their websites) or the
17 sender on their face, and
- 18 • Were deliberately registered so as to not be readily traceable to the sender by
19 querying the Whois database,

20 in violation of Section 17529.5. More specifically:

21 51. Many of the spams that Plaintiffs received advertising Defendants were sent from domain
22 names that were proxy registered to prevent the recipient from tracing the domain name to the
23 actual sender using a Whois query. To name but two examples:

- 24 • ALLEN received a spam advertising SPEEDDATE sent from the domain name
25 *seempossible.com*, which was proxy-registered using WhoisGuard Inc. in
26 Panama.
- 27 • HELLMAN received a spam advertising SPEEDDATE sent from the domain
28 name *cleanpathsupply.com*, which was proxy-registered using Whois Privacy
29 Protection Service Inc. in Bellevue, Washington.

30 52. Some of the spams that Plaintiffs received advertising Defendants were sent from domain
31 names that were deceptively registered to generic terms, often claiming boxes at the U.S. Postal
Service or commercial mail receiving agencies, to prevent the recipient from tracing the domain
name to the actual sender using a Whois query. To name but one example:

- 1 • SEEFELDT received a spam advertising PEOPLE MEDIA (*OurTime.com*) sent
2 from the domain name *2very.com*, which was deceptively registered to the generic
3 term “Domain Admin” claiming its address to be a box at a branch of The UPS
4 Store in Victoria, British Columbia, Canada.

5 53. Most of the spams (111) that Plaintiffs received advertising PEOPLE MEDIA and
6 SPEEDDATE’s websites were sent from domain names registered to PANIC. If PANIC actually
7 sent these spams, then the domain names are properly registered. If, however, the spams were
8 *not* sent by PANIC, then the headers contain and are accompanied by falsified and forged
9 information. To name but two examples:

- 10 • BARR received a spam advertising PEOPLE MEDIA (*SeniorPeopleMeet.com*)
11 that claims to have been sent from an email address *@carfindnserver.com*. The
12 domain name *carfindnserver.com* is registered to PANIC, claiming his address to
13 be a box at a branch of The UPS Store in Park City, Utah.
14 • PATTERSON received a spam advertising PEOPLE MEDIA (*SeniorPeopleMeet.*
15 *com*) that claims to have been sent from an email address *@nxnsservice.com*. The
16 domain name *nxnsservice.com* is registered to PANIC, claiming his address to be
17 a box at a branch of The UPS Store in Park City, Utah.

18 54. Plaintiffs could not identify PEOPLE MEDIA, SPEEDDATE, or their spamming
19 affiliates who sent many of the spams at issue by querying the Whois database for the domain
20 names used to send many of the spams at issue.

21 **E. Spams With False Subject Lines Violate Business & Professions Code § 17529.5(a)(2);**
22 **Spams With Misleading Subject Lines Violate Business & Professions Code**
23 **§ 17529.5(a)(3)**

24 55. Section 17529.5(a)(2) prohibits falsified, misrepresented, or forged information in email
25 headers.

26 56. The Subject Line is part of email headers.

27 57. Section 17529.5(a)(3) prohibits Subject Lines likely to mislead a reasonable recipient
28 about the contents or subject matter or the email.

29 58. Many of the spams that Plaintiffs received contain Subject Lines with falsified and/or
30 misrepresented information, and/or are misleading. To name but four examples:
31

- 1 • BARR received spams advertising PEOPLE MEDIA (*SeniorPeopleMeet.com*)
2 with the Subject Line: “40+ Singles are Searching for You. Browse Pictures for
3 Free Now!”
- 4 • HELLMAN received a spam advertising SPEEDDATE with the Subject Line:
5 “Zoosk - Facebook Verified Dating App for [redacted].”
- 6 • PATTERSON received a spam advertising SPEEDDATE with the Subject Line:
7 “(1) Friend may really be interested in you :).”
- 8 • OLIVERES received a spam advertising SPEEDDATE with the Subject Line:
9 “Someone is trying to FLIRT with you on Facebook.”

10 59. The Subject Line of the spam BARR received (“40+ Singles are Searching for You.
11 Browse Pictures for Free Now!”) is false and misleading because *SeniorPeopleMeet.com* is a
12 dating website for people age 55 and over. See About Senior Dating, [http://www.seniorpeople](http://www.seniorpeoplemeet.com/v3/aboutonlinedating)
13 [meet.com/v3/aboutonlinedating](http://www.seniorpeoplemeet.com/v3/aboutonlinedating) (last visited April 25, 2014). On the other hand, the body of the
14 spam refers to 50 plus. Either way, the age appears to *not* be 40.

15 60. The Subject Line of the spam HELLMAN received (“Zoosk - Facebook Verified Dating
16 App for [redacted]”) is false and misleading because the spam is *not* from Zoosk, which is a
17 competitor of SPEEDDATE.

18 61. The Subject Line of the spam PATTERSON received (“(1) Friend may really be
19 interested in you :)”) is false and misleading because PATTERSON is married and no one on
20 *SpeedDate.com* is “really interested” in him.

21 62. The Subject Line of the spam OLIVERES received (“Someone is trying to FLIRT with
22 you on Facebook”) is false and misleading because OLIVERES has been in a relationship for
23 several years and no one is trying to flirt with him on Facebook or *SpeedDate.com*. The Subject
24 Line is further misleading because it suggests that the spam is advertising Facebook itself, as
25 opposed to SPEEDDATE.

26 **F. Spams With Falsified or Forged Send Dates Violate Business & Professions Code**
27 **§ 17529.5(a)(2)**

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

30 64. The Send Date field is part of email headers.
31

1 65. Many of the spams at issue have falsified or forged Send Date information. To name but
2 one example:

- 3 • BISHOP received spams advertising PEOPLE MEDIA (*SeniorPeopleMeet.com*)
4 claiming that they were sent from the year 1969. *See* Figure 1. However,
5 PEOPLE MEDIA did not exist in 1969 and there was no publicly accessible
6 Internet or commercial email, as we know it, in 1969.

7 These spams could not have been sent in the year 1969. Therefore, these spams violate the
8 statute.

9 **G. PEOPLE MEDIA and SPEEDDATE are Strictly Liable for Spams Sent By Their**
10 **Affiliates**

11 66. Plaintiffs are informed and believe and thereon allege that PEOPLE MEDIA and
12 SPEEDDATE contracted with third party advertising networks and affiliates (a/k/a “publishers”)
13 to advertise their websites for the purpose of selling services for a profit.

14 67. No one forced PEOPLE MEDIA and SPEEDDATE to outsource any of their advertising
15 to third party spammers.

16 68. Advertisers such as PEOPLE MEDIA and SPEEDDATE are liable for advertising in
17 spams, even if third parties hit the Send button.

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

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

23 Bus. & Prof. Code § 17529(j)(k).

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

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

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

31 *[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

1 described in *subdivisions (a)(1)-(3)*. Thus, by its plain terms, the statute is not
2 limited to entities that actually send or initiate a deceptive commercial e-mail, but
3 applies more broadly to any entity that advertises in those e-mails.

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

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

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

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

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

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

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

27 74. However, Plaintiffs did suffer damages by receiving the unlawful spams advertising
28 Defendants' products in the state of California, at their California email addresses. Bus. & Prof.
29 Code § 17529(d), (e), (g), (h). That said, Plaintiffs do not seek actual damages in this Action,
30 only liquidated damages.

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

75. 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

1 proof to demonstrate not only that they have practices and procedures to prevent unlawful
2 spamming, but also that the practices and procedures are *effective*.

3 76. 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 77. Even if Defendants had any practices and procedures to prevent advertising in unlawful
8 spam, such practices and procedures were not reasonably designed so as to be effective.

9 78. 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 79. Moreover, Plaintiffs are informed and believe and thereon allege that Defendants
12 intended to deceive recipients of their spam messages through the use of third parties' domain
13 names without permission, falsified and/or misrepresented information contained in or
14 accompanying the email headers, and false and misleading Subject Lines, as described herein.

15 80. Subject Lines and From Names do not write themselves and domain names do not
16 register themselves; the misrepresented information contained in and accompanying the email
17 headers are not "clerical errors." Plaintiffs are informed and believe and thereon allege that
18 Defendants went to great lengths to create misrepresented information contained in and
19 accompanying the email headers in order to deceive recipients, Internet Service Providers, and
20 spam filters.

21 81. Plaintiffs are informed and believe and thereon allege that PEOPLE MEDIA and
22 SPEEDDATE previously settled numerous other claims for violations of Section 17529.5 in
23 2011-2013, and yet knowingly continue to advertise in unlawful spams.

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

27 83. Punitive damages are appropriate to punish malicious, oppressive, and/or fraudulent
28 conduct by Defendants, and to deter others from engaging in such conduct.

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1 **FIRST CAUSE OF ACTION**

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

5 84. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

6 85. Plaintiffs received the spams at issue within one year prior to filing this Complaint.

7 86. Defendants advertised in, sent, and/or caused to be sent at least 171 unsolicited
8 commercial emails to Plaintiffs' California electronic mail addresses: a) containing third parties'
9 domain names without permission; b) containing or accompanied by falsified and/or
10 misrepresented header information; c) containing misleading Subject Lines; and/or d) containing
11 falsified or forged Send Dates, in violation of Section 17529.5.

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

14 88. Each Defendant *other* than PEOPLE MEDIA and SPEEDDATE, including PANIC and
15 DOE Defendants, is jointly and severally liable along with PEOPLE MEDIA and SPEEDDATE
16 for each spam that that Defendant sent to Plaintiffs. Specifically, PANIC is jointly and severally
17 liable along with PEOPLE MEDIA for 111 of the spams.

18 89. Plaintiffs seek reimbursement of attorneys' fees and costs as authorized by Section
19 17529.5(b)(1)(C).

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

26 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set forth.
27

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PRAYER FOR RELIEF

(Against All Defendants)

- A. An Order from this Court declaring that Defendants violated California Business & Professions Code § 17529.5 by advertising in and sending unlawful spams.
- B. Liquidated damages against Defendants in the amount of \$1,000 for each of at least 171 unlawful spams, as authorized by Section 17529.5(b)(1)(B)(ii), for a total of at least \$171,000, as set forth below:

PLAINTIFF	PEOPLE MEDIA	SPEEDDATE	TOTAL
ALLEN		\$3,000	\$3,000
BARR	\$9,000 (joint/several with PANIC)	\$1,000	\$10,000 (\$9,000 joint/several with PANIC)
BISHOP	\$19,000 (joint/several with PANIC)		\$19,000 (joint/several with PANIC)
HELLMAN		\$1,000	\$1,000
MYERS	\$1,000		\$1,000
OLIVERES	\$3,000	\$37,000	\$40,000
O'SHEA	\$6,000 (joint/several with PANIC)		\$6,000 (joint/several with PANIC)
PATTERSON	\$23,000 (joint/several with PANIC)	\$11,000	\$34,000 (\$23,000 joint/several with PANIC)
PEDRO	\$51,000 (joint/several with PANIC)		\$51,000 (joint/several with PANIC)
SEEFELDT	\$3,000		\$3,000
SMITH	\$3,000		\$3,000 (joint/several with PANIC)
TOTAL	\$118,000 (\$111,000 joint/several with PANIC)	\$53,000	\$171,000 (\$111,000 joint/several with PANIC)

- C. Attorneys' fees as authorized by Section 17529.5(b)(1)(C) and Code of Civil Procedure § 1021.5 for violations of Section 17529.5.
- D. Disgorgement of all profits derived from unlawful spams directed to California residents; monies to be turned over to the Unfair Competition Law Fund and used by the California Attorney General to support investigations and prosecutions of California's consumer protection laws.
- E. Costs of suit.
- F. Such other and further relief as the Court deems proper.

THE LAW OFFICES OF DANIEL BALSAM

Date: June 13, 2014

BY: *Daniel L. Balsam*

DANIEL L. BALSAM
Attorneys for Plaintiffs

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