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13 Attorneys for Plaintiffs

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)

16 CHRISTINA BOWMAN-JONES, an )  
17 individual; )  
18 MATT BARRETT, an individual; )  
19 HEATHER BYRNES, an individual, )  
20 HOON CHUNG, an individual; )  
21 MICHAEL FERNANDEZ, an individual; )  
22 BRENDA HARRIS, an individual; )  
23 JAMES JOBE, an individual; )  
24 DEBRA KOTTONG, an individual; )  
25 VANESSA POWERS, an individual; )  
26 SERGIO SANTOS, an individual; )  
27 )  
28 Plaintiffs, )  
29 v. )  
30 )  
31 AD TRUST MARKETING LLC, a Texas )  
limited liability company; )  
REACH X LLC, a Texas limited liability )  
company; )  
FLEX MARKETING GROUP LLC, a New )  
York limited liability company; )  
GLOBAL RESPONSE PARTNERS LLC, a )  
Delaware limited liability company; )

Case No.:

CGC 16-550514

COMPLAINT FOR DAMAGES

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

**FILED**  
Superior Court of California  
County of San Francisco  
FEB 19 2016  
CLERK OF THE COURT  
BY: *[Signature]*  
Deputy Clerk

**FILED**

1 NWHIZ MEDIA LLC, a dissolved Florida )  
 2 limited liability company; )  
 3 ALL AROUND THE WORLD MEDIA )  
 4 GROUP, a business entity of unknown )  
 5 organization; )  
 6 E-MATCHER, a business entity of unknown )  
 7 organization; )  
 8 RALF GANDHI, an individual; )  
 9 PROLOGIC SYSTEMS, a business entity of )  
 10 unknown organization; )  
 11 RGO MEDIA, a business entity of unknown )  
 12 organization; )  
 13 TRAFFICDIRECTOR.NET, a business entity )  
 14 of unknown organization; and )  
 15 DOES 1-500; )  
 16 )  
 17 )  
 18 )  
 19 )  
 20 )  
 21 )  
 22 )  
 23 )  
 24 )  
 25 )  
 26 )  
 27 )  
 28 )  
 29 )  
 30 )  
 31 )  
 Defendants. )

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13 COME NOW PLAINTIFFS CHRISTINA BOWMAN-JONES *et al* and file this Complaint for  
 14 one cause of action against Defendants AD TRUST MARKETING LLC, REACH X LLC, *et al*  
 15 and allege as follows:  
 16

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

18 1. Plaintiffs bring this Action against professional spammers AD TRUST  
 19 MARKETING LLC and REACH X LLC (collectively, “POPULAR MARKETING”), and some  
 20 of their advertisers and affiliates (aka “publishers”), including but not limited to the other named  
 21 Defendants, for advertising in and sending at least **2,154** unlawful spams to Plaintiffs.

22 2. A representative sample spam (**Figure 1**) appears on the next page.

23 3. No Plaintiff gave direct consent to receive commercial emails from any of the advertisers  
 24 – POPULAR MARKETING’s clients – in the spams at issue, or had a preexisting or current  
 25 business relationship with any of the advertisers in the spams at issue.

26 4. The spams all violated California Business & Professions Code § 17529.5 (“Section  
 27 17529.5”) because they contained: a) third parties’ domain names without their permission; b)  
 28 materially misrepresented or falsified information contained in or accompanying the email  
 29 headers (including Subject Lines); and/or c) Subject Lines misleading relative to the content or  
 30 subject matter of the emails. The unlawful elements of these spams represent willful acts of  
 31 falsity and deception, rather than clerical errors.

**Subject:** Become a Nurse Today!

**From:** Nursing Careers (postmaster@justapersona.com)

**To:** [REDACTED]@yahoo.com;

**Date:** Wednesday, August 5, 2015 11:01 AM

[Unsubscribe Here](#)

## Begin a healthcare career with online nursing school

Are you interested in starting **your career as a nurse?**

Be at the forefront of healthcare today. Find **online nursing programs now.**

**[View Degree Program Sponsored Ads HERE](#)**

2665 South Bay Shore Drive Suite 220 Coconut Grove FL 33133

**Figure 1**

1 5. Plaintiffs are informed and believe and thereon allege that various advertisers hired  
2 POPULAR MARKETING to advertise for them (or hired TRAFFICDIRECTOR.NET who in  
3 turn hired POPULAR MARKETING), and POPULAR MARKETING then either: a) sent the  
4 spams itself, or b) subcontracted to other third party advertising networks and/or affiliates to  
5 send the spams. The advertisers, POPULAR MARKETING, and POPULAR MARKETING's  
6 third party marketing agents are all strictly liable for the spams.

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

12 7. POPULAR MARKETING has known since at least 2011 that it has a “spam problem,”  
13 and yet continues to send or hire others to send unlawful spams.

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

18 9. This Court should award Plaintiffs their attorneys' fees pursuant to Section  
19 17529.5(b)(1)(C). *See also* Code of Civil Procedure § 1021.5, providing for attorneys fees when  
20 private parties bear the costs of litigation that confers a benefit on a large class of persons; here,  
21 by reducing the amount of false and deceptive spam received by California residents.

## 22 23 **II. PARTIES**

### 24 **A. Plaintiffs**

25 10. CHRISTINA BOWMAN-JONES (“BOWMAN-JONES”) was domiciled in and a citizen  
26 of the State of California, when she received the spams at issue. The spams were sent to  
27 BOWMAN-JONES' email address(es) that she ordinarily accesses from computer(s) located in  
28 California.

29 11. MATT BARRETT (“BARRETTM”) was domiciled in and a citizen of the State of  
30 California, when he received the spams at issue. The spams were sent to BARRETTM's email  
31 address(es) that he ordinarily accesses from computer(s) located in California.

1 12. HEATHER BYRNES (“BYRNES”) was domiciled in and a citizen of the State of  
2 California, when she received the spams at issue. The spams were sent to BYRNES’ email  
3 address(es) that she ordinarily accesses from computer(s) located in California.

4 13. HOON CHUNG (“CHUNG”) was domiciled in and a citizen of the State of California,  
5 when he received the spams at issue. The spams were sent to CHUNG’s email address(es) that  
6 he ordinarily accesses from computer(s) located in California.

7 14. MICHAEL FERNANDEZ (“FERNANDEZ”) was domiciled in and a citizen of the State  
8 of California, when he received the spams at issue. The spams were sent to FERNANDEZ’s  
9 email address(es) that he ordinarily accesses from computer(s) located in California.

10 15. BRENDA HARRIS (“HARRIS”) was domiciled in and a citizen of the State of  
11 California, when she received the spams at issue. The spams were sent to HARRIS’ email  
12 address(es) that she ordinarily accesses from computer(s) located in California.

13 16. JAMES JOBE (“JOBE”) was domiciled in and a citizen of the State of California, when  
14 he received the spams at issue. The spams were sent to JOBE’s email address(es) that he  
15 ordinarily accesses from computer(s) located in California.

16 17. DEBRA KOTTONG (“KOTTONG”) was domiciled in and a citizen of the State of  
17 California, when she received the spams at issue. The spams were sent to KOTTONG’s email  
18 address(es) that she ordinarily accesses from computer(s) located in California.

19 18. VANESSA POWERS (“POWERS”) was domiciled in and a citizen of the State of  
20 California, when she received the spams at issue. The spams were sent to POWERS’ email  
21 address(es) that she ordinarily accesses from computer(s) located in California.

22 19. SERGIO SANTOS (“SANTOS”) was domiciled in and a citizen of the State of  
23 California, when he received the spams at issue. The spams were sent to SANTOS’ email  
24 address(es) that he ordinarily accesses from computer(s) located in California.

25 20. Plaintiffs’ joinder in this Action is proper because Plaintiffs seek relief based on the same  
26 series of transactions or occurrences: all received similar spams in the same general time period  
27 that were all were sent by POPULAR MARKETING or its marketing agents. The same  
28 questions of law (e.g., violations of Section 17529.5, strict liability) and fact (e.g., direct consent,  
29 practices and procedures to prevent advertising in unlawful spam) will arise in this Action. The  
30 fact that each Plaintiff does not sue for *exactly* the same spams does not bar joinder: “It is not  
31 necessary that each plaintiff be interested as to every cause of action or as to all relief prayed for.

1 Judgment may be given for one or more of the plaintiffs according to their respective right to  
2 relief.” Code Civ. Proc. § 378(b).

3 **B. Defendants**

4 21. Plaintiffs are informed and believe and thereon allege that Defendant AD TRUST  
5 MARKETING LLC (“AD TRUST”) is now, and was at all relevant times, a Texas limited  
6 liability company doing business as “Popular Marketing” and *PMClicks.com*, and claiming its  
7 primary place of business to be a box at a branch of The UPS Store (a commercial mail receiving  
8 agency) in Austin, Texas.

9 22. Plaintiffs are informed and believe and thereon allege that Defendant REACH X LLC  
10 (“REACH X”) is now, and was at all relevant times, a Texas limited liability company doing  
11 business as “Popular Marketing,” *reach-x.com*, and *PMClicks.com*, and claiming its primary  
12 place of business to be a residential address in Austin, Texas.

13 23. Plaintiffs are informed and believe and thereon allege that AD TRUST and REACH X  
14 share intellectual property, physical assets, management, personnel, financial assets, and the  
15 obligations and benefits of contracts with third parties, such that any distinction between the two  
16 is a sham. Plaintiffs are informed and believe and thereon allege that AD TRUST may have  
17 acquired REACH X. Plaintiffs hereafter refer to AD TRUST and REACH X collectively as  
18 “POPULAR MARKETING.” Plaintiffs are informed and believe and thereon allege that  
19 POPULAR MARKETING sent, or conspired with others to send, all of the spams at issue.

20 24. Plaintiffs are informed and believe and thereon allege that Defendant FLEX  
21 MARKETING GROUP LLC (“FLEX”) is now, and was at all relevant times, a New York  
22 limited liability company doing business as *your-employment-search.net*, among other domain  
23 names, and with a primary place of business in New York, New York. Plaintiffs are informed  
24 and believe and thereon allege that FLEX sent, or conspired with POPULAR MARKETING and  
25 others to send, at least 97 of the spams at issue.

26 25. Plaintiffs are informed and believe and thereon allege that Defendant GLOBAL  
27 RESPONSE PARTNERS LLC (“GRP”) is now, and was at all relevant times, a Delaware  
28 limited liability company doing business as *memopumpkin.com*, among other domain names, and  
29 with a primary place of business in Englewood Cliffs, New Jersey. Plaintiffs are informed and  
30 believe and thereon allege that GRP sent, or conspired with POPULAR MARKETING and  
31 others to send, at least 7 of the spams at issue.

1 26. Plaintiffs are informed and believe and thereon allege that Defendant NWHIZ MEDIA  
2 LLC (“NWHIZ”) dissolved in 2015 but was at all relevant times a Florida limited liability  
3 company with a primary place of business in Saint Petersburg, Florida. Plaintiffs are informed  
4 and believe and thereon allege that NWHIZ sent, or conspired with POPULAR MARKETING  
5 and others to send, at least 232 of the spams at issue.

6 27. Plaintiffs are informed and believe and thereon allege that Defendant ALL AROUND  
7 THE WORLD MEDIA GROUP (“ALL AROUND”) is now, and was at all relevant times, a  
8 business entity of unknown organization doing business as *topcouponsweb.com*, among other  
9 domain names, and with a primary place of business in San Francisco, California. Plaintiffs are  
10 informed and believe and thereon allege that ALL AROUND sent, or conspired with POPULAR  
11 MARKETING and others to send, at least 1 of the spams at issue.

12 28. Plaintiffs are informed and believe and thereon allege that Defendant E-MATCHER (“E-  
13 MATCHER”) is now, and was at all relevant times, a business entity of unknown organization  
14 with a primary place of business in San Francisco, California. Plaintiffs are informed and  
15 believe and thereon allege that E-MATCHER sent, or conspired with POPULAR MARKETING  
16 and others to send, at least 1 of the spams at issue.

17 29. Plaintiffs are informed and believe and thereon allege that Defendant RALF GANDHI  
18 (“GANDHI”) is now, and was at all relevant times, an individual doing business as  
19 *saltsnears.com*, among other domain names, and located in San Francisco, California. Plaintiffs  
20 are informed and believe and thereon allege that GANDHI sent, or conspired with POPULAR  
21 MARKETING and others to send, at least 10 of the spams at issue.

22 30. Plaintiffs are informed and believe and thereon allege that Defendant PROLOGIC  
23 SYSTEMS (“PROLOGIC”) is now, and was at all relevant times, a business entity of unknown  
24 organization doing business as *managedright.com*, among other domain names, and with a  
25 primary place of business in San Francisco, California. Plaintiffs are informed and believe and  
26 thereon allege that PROLOGIC sent, or conspired with POPULAR MARKETING and others to  
27 send, at least 4 of the spams at issue.

28 31. Plaintiffs are informed and believe and thereon allege that Defendant RGO MEDIA  
29 (“RGO”) is now, and was at all relevant times, a business entity of unknown organization doing  
30 business as *goportals.net*, *justapersona.com*, *knotwax.com*, *lensblack.com*, *magcases.com*,  
31 *powerrealm.com*, *terakids.com*, and *toyraising.net*, among other domain names, and with a

1 primary place of business in Naples, Florida. Plaintiffs are informed and believe and thereon  
2 allege that RGO sent, or conspired with POPULAR MARKETING and others to send, at least 23  
3 of the spams at issue.

4 32. Plaintiffs are informed and believe and thereon allege that Defendant  
5 TRAFFICDIRECTOR.NET (“TRAFFIC”) is now, and was at all relevant times, a business  
6 entity of unknown organization doing business as *trafficdirector.net*, among other domain  
7 names, and with an unknown primary place of business. Plaintiffs are informed and believe and  
8 thereon allege that TRAFFIC sent, or conspired with POPULAR MARKETING and others to  
9 send, at least 1,797 of the spams at issue.

10 33. Each of FLEX, GRP, NWHIZ, ALL AROUND, E-MATCHER, GANDHI, PROLOGIC,  
11 RGO, and TRAFFIC is jointly and severally liable, along with POPULAR MARKETING and  
12 the advertised entities, for the spams that it sent or conspired to send to Plaintiffs. Defendants’  
13 joinder in this Action is proper pursuant to Code of Civil Procedure § 379 because Defendants  
14 are jointly and severally liable to Plaintiffs for the series of spams at issue, and common  
15 questions of law and fact will arise in this Action. Joinder does not require that every Defendant  
16 is liable for every spam; judgment may be given against one or more Defendants according to  
17 their respective liabilities.

18 34. Plaintiffs do not know the true names or legal capacities of the Defendants designated  
19 herein as DOES 1 through 500, inclusive, and therefore sue said Defendants under the fictitious  
20 name of “DOE.” Plaintiffs are informed and believe and thereon allege that each of the  
21 Defendants designated herein as a DOE is legally responsible in some manner for the matters  
22 alleged in this complaint, and is legally responsible in some manner for causing the injuries and  
23 damages of which Plaintiffs complain. Plaintiffs are informed and believe and thereon allege  
24 that each of the Defendants designated herein as a DOE Defendant was, at all times relevant to  
25 the matters alleged within this complaint, acting in conjunction with the named Defendants,  
26 whether as a director, officer, employee, agent, affiliate, customer, participant, or co-conspirator.  
27 When the identities of DOE Defendants 1-500 are discovered, or otherwise made available,  
28 Plaintiffs will seek to amend this Complaint to allege their identity and involvement with  
29 particularity.  
30  
31



1 **III. JURISDICTION AND VENUE**

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

3 35. This California Superior Court has jurisdiction over the Action for the following reasons:  
4 a) all Plaintiffs are domiciled in and citizens of the State of California and received the unlawful  
5 spams at their California email addresses; b) the amount in controversy is more than \$25,000; c)  
6 at least four Defendants – ALL AROUND, E-MATCHER, GANDHI, and PROLOGIC – are in  
7 California.

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

9 36. Venue is proper in San Francisco County because at least four Defendants – ALL  
10 AROUND, E-MATCHER GANDHI, and PROLOGIC – are in San Francisco County. *See* Code  
11 Civ. Proc. § 395.

12 **IV. AT LEAST 2,154 UNLAWFUL SPAMS**

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

16 38. California’s False Advertising Law, Business & Professions Code § 17500  
17 prohibits “not only advertising which is false, but also advertising which[,]  
18 although true, is either actually misleading or which has a capacity, likelihood or  
19 tendency to deceive or confuse the public.” . . . [T]he UCL and the false  
20 advertising law prohibit deceptive advertising even if it is not actually false.

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

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

23 39. The emails at issue are “commercial email advertisements”<sup>1</sup> because they were initiated  
24 for the purpose of advertising and promoting the sale of property, goods, services, or extension  
25 of credit.

26  
27  
28  
29  
30 <sup>1</sup> “‘Commercial e-mail advertisement’ means any electronic mail message initiated for the  
31 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).

1 40. The emails are “unsolicited commercial email advertisements”<sup>2</sup> because no Plaintiff gave  
2 “direct consent”<sup>3</sup> to, or had a “preexisting or current business relationship”<sup>4</sup> with, any of the  
3 advertisers in the spams (POPULAR MARKETING’s clients).

4 41. Plaintiffs did not consent or acquiesce to receive the spams at issue. Plaintiffs did not  
5 waive or release any rights or claims related to the spams at issue.

6 42. POPULAR MARKETING’s advertisers, POPULAR MARKETING, and POPULAR  
7 MARKETING’s marketing agents sent and/or advertised in at least **2,154** unlawful spams that  
8 Plaintiffs received at their “California email addresses”<sup>5</sup> within one year prior to the filing of this  
9 Action, as shown below:

<b>PLAINTIFF</b>	<b>SPAMS</b>	<b>PLAINTIFF</b>	<b>SPAMS</b>
BARRETTM	242	HARRIS	99
BOWMAN-JONES	288	JOBE	544
BYRNES	37	KOTTONG	637
CHUNG	35	POWERS	161
FERNANDEZ	46	SANTOS	65
		<b>TOTAL</b>	<b>2,154</b>

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11  
12  
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17  
18 <sup>2</sup> “‘Unsolicited commercial e-mail advertisement’ means a commercial e-mail advertisement sent  
19 to a recipient who meets both of the following criteria: (1) The recipient has not provided direct  
20 consent to receive advertisements from the advertiser. (2) The recipient does not have a  
21 preexisting or current business relationship, as defined in subdivision (l), with the advertiser  
22 promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services,  
or extension of credit.” Bus. & Prof. Code § 17529.1(o).

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

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

30 <sup>5</sup> “‘California e-mail address’ means 1) An e-mail address furnished by an electronic mail service  
31 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 43. Plaintiffs' email addresses play no part in determining whether or not the emails have  
2 falsified, misrepresented, forged, misleading, or otherwise deceptive information contained in or  
3 accompanying the email headers.

4 44. The spams are all unlawful because the spams include third party domain names without  
5 permission, and/or have materially falsified, misrepresented, and/or forged information contained  
6 in or accompanying the email headers, and/or Subject Lines that are misleading as to the contents  
7 or subject matter of the emails, as described in more detail below.

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

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

12 46. Most of the Plaintiffs use Yahoo! as their email service providers. Yahoo! provides a  
13 function whereby an email recipient can view the full headers of an email, including the sending  
14 domain name, without opening the email.

15 47. Many of the spams at issue contain a third party's domain name without permission of  
16 the third party, and therefore violated Section 17529.5(a)(1). For example:

- 17 • BARRETT received 194 spams showing @*securedmi.com* in the Sender Email  
18 Address. Plaintiffs are informed and believe and thereon allege that eWayDirect  
19 Inc., which owns the domain name *securedmi.com*, prohibits spamming using its  
20 services and did not give permission for its domain name to appear in these  
21 spams.
- 22 • CHUNG, FERNANDEZ, and BARRETT collectively received 14 spams showing  
23 @*gmail.com* in the Sender Email Address. Plaintiffs are informed and believe  
24 and thereon allege that Google Inc., which owns the domain name *gmail.com*,  
25 prohibits spamming using its services and did not give permission for its domain  
26 name to appear in these spams.

27 48. Plaintiffs are informed and believe and thereon allege that POPULAR MARKETING  
28 and/or its marketing agents caused the spams to show a third party's domain names in the From  
29 Lines so that recipients would not be able to identify them as the sender.

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

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

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

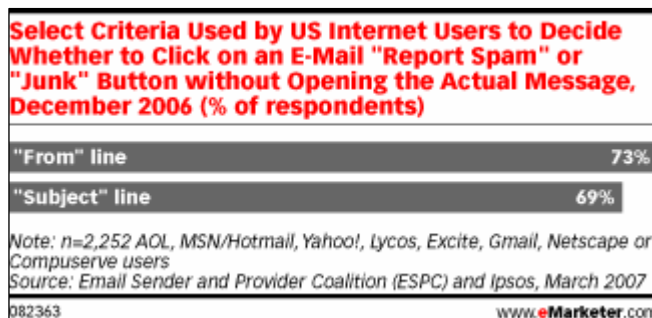
8 51. The From Name in an email's headers is, not surprisingly, supposed to identify who the  
9 email is *from*; it is not supposed to be an advertising message. Because computers must use  
10 standard protocols in order to communicate, the Internet Engineering Task Force created a  
11 collection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

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

17 52. Plaintiffs do not insist on any *particular* label (e.g., "Popular Marketing," "Reach X  
18 LLC," "Flex Marketing Group LLC," "Ralf Gandhi," etc.) in the From Name. Rather, Plaintiffs  
19 contend that the text, whatever it is, cannot misrepresent *who* is advertising in the email.

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

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



29 at <http://www.emarketer.com/Article/E-Mail-Open-Rates-Hinge-on-Subject-Line/1005550> (Oct.  
30 31, 2007). Thus, a From Name that misrepresents who a spam is from is *not* a mere technical  
31 error; rather, it is a material misrepresentation of the most important part of the email header.

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

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

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

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

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

19 203 Cal. App. 4th 1083, 1088, 1090-91, 1093 (1st Dist. 2012), *petition for review denied*, 2012  
20 Cal. LEXIS 4979 (Cal. May 23, 2012), *petition for certiori denied*, 2012 U.S. LEXIS 8423 (U.S.  
21 Oct. 29, 2012), *petition for rehearing denied*, 2013 U.S. LEXIS 243 (U.S. Jan. 7, 2013). More  
22 specifically, *Balsam* confirmed that generic From Names that "do not exist or are otherwise  
23 misrepresented when they do not represent any real company and cannot be readily traced back  
24 to the true owner/sender" violate the statute. *Id.* at 1093. The Court affirmed the award of  
25 \$1,000 liquidated damages for the seven emails with misrepresented information in the From  
26 Name field, even though most of the spams identified the advertiser in the body. *Id.* at 1091,  
27 1093. Therefore, truthful information in the body of a spam does not cure misrepresented  
28 information contained in or accompanying the headers.

29 57. All of the spams that Plaintiffs received at issue sent by POPULAR MARKETING or its  
30 marketing agents had generic "From Names" that misrepresented *who* the spams were from, and  
31 therefore violated Section 17529.5. For example: "Approval Dept," "Nursing Degrees Online,"  
"Credit Card Offer," "Thank You," "Save on Pet Food," "Online Dating," "Auto Loan Rates."

1 58. In *Rosolowski v. Guthy-Renker LLC*, the court permitted From Names that were not the  
2 sender's official corporate name as long as the identify of the sender was readily ascertainable in  
3 the body. 230 Cal. App. 4th 1403, 1407, 1416 (2d Dist. 2014). However, the From Names in  
4 that case (Proactiv and Wen Hair Care) were the advertiser's fanciful trademarks, well-known  
5 brands with their own websites. But here, unlike the spams in *Rosolowski*, none of the From  
6 Names identify POPULAR MARKETING, its advertisers, or its marketing agents. All of the  
7 From Names are generic and misrepresent who the spams are from; they are not brands or  
8 trademarks and there is no way an ordinary consumer could readily associate them with  
9 POPULAR MARKETING, its advertisers, or its marketing agents.

10 59. Moreover, the spams at issue in this Action are also distinguishable because in most if not  
11 all of the spams, neither the sender nor the advertiser is readily ascertainable in the body of the  
12 spams.

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

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

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

19 62. “[H]eader information in a commercial e-mail is falsified or misrepresented for purposes  
20 of section 17529.5(a)(2) when it uses a sender domain name that *neither* identifies the actual  
21 sender on its face *nor* is readily traceable to the sender using a publicly available online database  
22 such as WHOIS.” *Balsam v. Trancos Inc.*, 203 Cal. App. 4th 1083, 1101 (1st Dist. 2012)  
23 (emphasis in original).

24 63. Many of the spams that Plaintiffs received were sent from domain names that:

- 25 • Did not identify POPULAR MARKETING, its advertisers, or its marketing  
26 agents on their face, and
- 27 • Were deliberately registered so as to not be readily traceable to the sender by  
28 querying the Whois database,

29 in violation of Section 17529.5. See *Balsam*, 203 Cal. App. 4th at 1097-1101.

30 64. Examples of not-readily-traceable domain names include, but are not limited to, the  
31 following:

- 1 • Plaintiffs received 1 spam sent from *consumers24.com*, which is proxy-registered  
2 using WhoisGuard Inc. in Panama, to block ordinary consumers from determining  
3 who actually operates the domain name.
- 4 • Plaintiffs received 194 spams sent from *SecuredMI.com*. eWayDirect Inc., which  
5 owns the *SecuredMI.com* domain name, operates an email delivery platform.  
6 Therefore, *SecuredMi.com* does not identify and is not readily traceable to the real  
7 sender.
- 8 • Plaintiffs received 2 spams sent from *TheLeadingFinancials.com* and 1 from  
9 *yourluxury-foodweb.com*. Both domain names are registered to “Dancing at the  
10 Zombie Zoo Media Group,” at P.O. Boxes in Chicago, Illinois and Philadelphia,  
11 Pennsylvania, respectively. Neither entity is registered with the Secretary of  
12 State. A Google search finds no evidence of the existence of such entity other  
13 than as the registrant of various domain names.
- 14 • Plaintiffs received 64 spams sent from the domain names *accessrun.com*,  
15 *caldazo.com*, and *involaz.com*, and *killerkey.com*. All are registered to Steve  
16 Emerson, at 2951 Late Avenue in Clinton, Oklahoma. But according to the  
17 United States Postal Service, no such address exists.
- 18 • Plaintiffs received 21 spams sent from the nonsensical domain names  
19 *lightspeedwebber.com* and *bitandbyteconsultants.com*. The domain names are  
20 registered to Light Speed Webber and Bit and Byte Consultants, both claiming  
21 their address to be the same PO Box in Atlanta, Georgia. Neither entity actually  
22 exists.
- 23 • Plaintiffs received 73 spams sent from the *same* entity (pub=500672), according  
24 to POPULAR MARKETING’s tracking codes. However, the numerous sending  
25 domain names are registered to Mocade Media LLC in New York, New York;  
26 RGO Media in Naples, Florida; and White Star Email in Las Vegas, Nevada.  
27 None of these entities actually exist. Therefore, a reasonable recipient attempting  
28 to query the Whois database for these domain names has no way of knowing who  
29 the real entity known to POPULAR MARKETING as “pub=500672” actually is.  
30  
31

- Plaintiffs received dozens of spams that were sent from various domain names registered to “Customer Service” or “Customer Services” at an address in Toronto, Canada. None of these registrations indicate *who* the registrant really is.

65. Plaintiffs could not identify POPULAR MARKETING, its advertisers, or its marketing agents who sent many of the spams at issue by querying the Whois database for the domain names used to send the spams.

**E. Spams With False/Misrepresented Subject Lines Violate Business & Professions Code § 17529.5(a)(2); Spams With Misleading Subject Lines Relative to the Subject Matter or Contents of the Spams Violate Business & Professions Code § 17529.5(a)(3)**

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

67. The Subject Line is part of email headers.

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

69. Many of the POPULAR MARKETING spams that Plaintiffs received contain Subject Lines with falsified and/or misrepresented information, and/or are misleading. For example:

- BARRETT received spams with the Subject Line “Approved.” This Subject Line contains false and misrepresented information because none of POPULAR MARKETING, its advertisers, and its marketing agents approved him for anything. This Subject Line is also misleading relative to the contents of the email, because “Approved” could refer to anything.<sup>1</sup>
- BARRETT received spams with the Subject Line “Your request has been accepted.” This Subject Line contains false and misrepresented information because BARRETT never made a request to any of POPULAR MARKETING, its advertisers, or its marketing agents, so they could not have accepted any requests from him.

**F. POPULAR MARKETING’s Advertisers and POPULAR MARKETING are Strictly Liable for Spams Sent By Their Third Party Marketing Agents**

70. Plaintiffs are informed and believe and thereon allege that POPULAR MARKETING contracted with third party advertising networks and affiliates (a/k/a “publishers”), including but not limited to the other named Defendants, to advertise its clients’ websites for the purpose of making a profit.



1 71. No one forced POPULAR MARKETING to outsource any of its advertising to third  
2 party advertising networks and spammers.

3 72. POPULAR MARKETING's advertisers and POPULAR MARKETING are liable for  
4 advertising in spams, even if third parties hit the Send button.

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

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

11 Bus. & Prof. Code § 17529(j)(k).

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

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

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

19 [S]ection 17529.5 makes it unlawful for a person or entity "to advertise in a  
20 commercial e-mail advertisement" that contains any of the deceptive statements  
21 described in subdivisions (a)(1)-(3). Thus, by its plain terms, the statute is not  
22 limited to entities that actually send or initiate a deceptive commercial e-mail, but  
23 applies more broadly to any entity that advertises in those e-mails.

24 Thus, like other California statutes prohibiting false or misleading business  
25 practices, the statute makes an entity strictly liable for advertising in a  
26 commercial e-mail that violates the substantive provisions described in section  
27 17529.5, subdivision (a) regardless of whether the entity knew that such e-mails  
28 had been sent or had any intent to deceive the recipient.

29 192 Cal. App. 4th 805, 820-21 (2d Dist. 2011) (emphasis added). The court did not find that this  
30 was an arbitrary requirement; rather, the court identified sound policy reasons behind the  
31 California Legislature's decision to create a strict liability statute. *Id.* at 829.

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

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

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

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

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

12 78. However, Plaintiffs did suffer damages by receiving the unlawful spams at issue in this  
13 Action, in the state of California, at their California email addresses. Bus. & Prof. Code  
14 § 17529(d), (e), (g), (h). Regardless, Plaintiffs do not seek actual damages in this Action, only  
15 liquidated damages.

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

17 79. Section 17529.5 authorizes this Court to reduce the statutory damages to \$100 per spam.  
18 Bus. & Prof. Code § 17529.5(b)(2). But, to secure the reduction, Defendants have the burden of  
19 proof to demonstrate not only that they have established and implemented practices and  
20 procedures to prevent unlawful spamming, but also that those practices and procedures are  
21 *effective*.

22 80. Plaintiffs are informed and believe and thereon allege that Defendants have not  
23 established and implemented, with due care, practices and procedures reasonably designed to  
24 effectively prevent unsolicited commercial e-mail advertisements that are in violation of  
25 Section 17529.5.

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

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

30 83. Moreover, Plaintiffs are informed and believe and thereon allege that Defendants  
31 intended to deceive recipients of their spam messages through the use of third parties' domain

1 names without permission, falsified and/or misrepresented information contained in or  
2 accompanying the email headers, and false and misleading Subject Lines, as described herein.

3 84. Third parties' domain names do not insert themselves into emails, Subject Lines and  
4 From Names do not write themselves, and domain names do not register themselves. The  
5 misrepresented information contained in and accompanying the email headers are not "clerical  
6 errors." Plaintiffs are informed and believe and thereon allege that Defendants went to great  
7 lengths to create misrepresented information contained in and accompanying the email headers  
8 in order to deceive recipients, Internet Service Providers, and spam filters.

9 85. POPULAR MARKETING continues to send, advertise in, and/or conspire with others to  
10 send unlawful spams despite prior actual knowledge of its "spam problem." POPULAR  
11 MARKETING is implicated in at least two current lawsuits involving unlawful spamming:  
12 *O'Shea et al v. Real Bright Media Inc. et al*, No. CGC-14-540862 (Super. Ct. Cal. Cty. of San  
13 Francisco filed Aug. 14, 2014), and *Morton et al v. Real Bright Media Inc. et al*, No. CGC-15-  
14 547362 (Super. Ct. Cal. Cty. of San Francisco filed Aug. 13, 2015). Indeed, POPULAR  
15 MARKETING's principal, Thomas Bruck, has known since at least 2011 that POPULAR  
16 MARKETING is engaged in unlawful spamming, but continues to do so.

17 86. Plaintiffs are informed and believe and thereon allege that Defendants intended to profit,  
18 actually profited, and continue to profit, and were unjustly enriched by, their wrongful conduct  
19 as described herein.

20 87. Punitive damages under Civil Code § 3294 are appropriate to punish malicious,  
21 oppressive, and/or fraudulent conduct by Defendants, and to deter others from engaging in such  
22 conduct.

23  
24 **FIRST CAUSE OF ACTION**

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

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

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

30 90. Defendants advertised in, sent, and/or caused to be sent at least **2,154** unsolicited  
31 commercial emails to Plaintiffs' California electronic mail addresses that contained: a) third

1 parties' domain names without permission; b) materially misrepresented or falsified information  
2 contained in or accompanying the email headers (including Subject Lines); and/or c) Subject  
3 Lines misleading relative to the content or subject matter of the emails, in violation of Section  
4 17529.5. The unlawful elements of these spams represent willful acts of falsity and deception,  
5 rather than clerical errors.

6 91. Defendants have not established and implemented, with due care, practices and  
7 procedures to effectively prevent advertising in unlawful spams that violate Section 17529.5.

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

10 93. Plaintiffs seek reimbursement of attorneys' fees and costs as authorized by Section  
11 17529.5(b)(1)(C).

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

19 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set forth.  
20

21 **PRAYER FOR RELIEF**

22 **(Against All Defendants)**

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

25 B. Liquidated damages against POPULAR MARKETING in the amount of \$1,000 for each  
26 of at least **2,154** unlawful spams, as authorized by Section 17529.5(b)(1)(B)(ii), for a  
27 total of at least \$2,154,000, as set forth below:

28 //

29 //

30 //

31 //

<b>PLAINTIFF</b>	<b>DAMAGES</b>	<b>PLAINTIFF</b>	<b>DAMAGES</b>
BARRETTM	\$242,000	HARRIS	\$99,000
BOWMAN-JONES	\$288,000	JOBE	\$544,000
BYRNES	\$37,000	KOTTONG	\$637,000
CHUNG	\$35,000	POWERS	\$161,000
FERNANDEZ	\$46,000	SANTOS	\$65,000
		<b>TOTAL</b>	<b>\$2,154,000</b>

- C. Liquidated damages jointly and severally against POPULAR MARKETING, its advertisers, and FLEX in the amount of at least \$97,000.
- D. Liquidated damages jointly and severally against POPULAR MARKETING, its advertisers, and GRP in the amount of at least \$7,000.
- E. Liquidated damages jointly and severally against POPULAR MARKETING, its advertisers, and NWHIZ in the amount of at least \$232,000.
- F. Liquidated damages jointly and severally against POPULAR MARKETING, its advertisers, and ALL AROUND in the amount of at least \$1,000.
- G. Liquidated damages jointly and severally against POPULAR MARKETING, its advertisers, and E-MATCHER in the amount of at least \$1,000.
- H. Liquidated damages jointly and severally against POPULAR MARKETING, its advertisers, and GANDHI in the amount of at least \$10,000.
- I. Liquidated damages jointly and severally against POPULAR MARKETING, its advertisers, and PROLOGIC in the amount of at least \$4,000.
- J. Liquidated damages jointly and severally against POPULAR MARKETING, its advertisers, and RGO MEDIA in the amount of at least \$23,000.
- K. Liquidated damages jointly and severally against POPULAR MARKETING, its advertisers, its affiliates, and TRAFFIC in the amount of at least \$1,797,000.
- L. Attorneys' fees as authorized by Section 17529.5(b)(1)(C) and Code of Civil Procedure § 1021.5 for violations of Section 17529.5.
- M. Punitive damages, in an amount to be determined by this Court.
- N. Costs of suit.
- O. Such other and further relief as the Court deems proper.

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THE LAW OFFICES OF DANIEL BALSAM

*Daniel L Balsam*

Date: Feb. 19, 2016

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

DANIEL L. BALSAM  
Attorneys for Plaintiffs

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