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Shiva Jahan
Chief Financial Officer

November 5, 2003

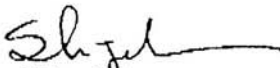
Clerk of the Superior Court
Small Claims Division
Los Angeles Superior Court - West District / Santa Monica
1725 Main Street
Santa Monica, CA 90401

Re: Daniel L. Balsam v. Unitek Information Systems, Inc.
Small Claims Case No. SM 03A02154
Trial Date: November 12, 2003
Challenge to Venue Per C.C.P. § 116.370 (b) And Request for Dismissal

Dear Sir or Madam:

The defendant in the above-captioned case, Unitek Information Systems, Inc. (hereinafter, "Unitek"), challenges the plaintiff's choice of venue in this action pursuant to Code of Civil Procedure section 116.370 (b). I am requesting that the Court dismiss this action without prejudice, as required under Code of Civil Procedure section 116.370 (c)(1), for the reasons stated in the accompanying letter by Mr. Gumina, the text of which is incorporated herein as if fully set forth below. Unitek exercises its rights not to appear at the hearing on this matter per Section 116.370 (b).

Sincerely,


Shiva Jahan
Chief Financial Officer

cc: Daniel Balsam



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Paul Gumina
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1725 Main Street
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Re: Daniel L. Balsam v. Unitek Information Systems, Inc.
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Dear Sir or Madam:

The defendant in the above-captioned case, Unitek Information Systems, Inc. (hereinafter, "Unitek"), challenges the plaintiff's choice of venue in this action pursuant to Code of Civil Procedure section 116.370 (b). The plaintiff in this action has filed suit against Unitek on the grounds that he received a single, unsolicited e-mail communication from Unitek, allegedly in violation of Business and Professions Code section 17538.4 and Civil Code section 1770, et seq. The plaintiff has prayed for damages in the amount of \$2,000.00, but offers no explanation regarding the nature of the claimed amount or how the claimed amount was determined.

Defendant Unitek is a resident of Alameda County, California. It has no offices in Los Angeles County. This is not a contract action, and there was no contract made or any obligation to be performed in Los Angeles County. Therefore, venue is proper in Los Angeles County only if the plaintiff suffered an injury to his person or property there. However, as will be discussed below, under the July 2003 holding of the California Supreme Court in Intel Corporation v. Hamidi (2003) 30 Cal.4th 1342, **the mere sending of unsolicited e-mail does not give rise to any actionable claim of consequential economic or monetary damages for trespass to property in favor of the recipient of the e-mail.** A copy of that case is enclosed for the Court's convenience.

Under the Supreme Court's holding in Intel Corporation v. Hamidi, the plaintiff is barred from claiming, and this Court is barred from awarding, any monetary damages to the plaintiff based on a claim that an unsolicited e-mail allegedly caused any injury to the plaintiff's property. In that case, defendant Hamidi was a former employee of plaintiff Intel Corporation. On six occasions, Hamidi sent unsolicited e-mails to between 8,000 to 35,000 Intel employees, in spite of Intel's demand that he cease and desist from doing so. The Supreme Court held that the tort of trespass to chattels does not encompass, and should not be extended to encompass, Hamidi's unsolicited e-mails which neither damaged nor impaired the functioning of Intel's computer

systems. In the absence of any actual damage caused by the unsolicited e-mails, the Supreme Court held that an action for damage to personal property does not lie, and it dismissed Intel's case against Mr. Hamidi.

Please note the Court's discussion on the nature of a claim for trespass to personal property on pages 1351 and 1357 - 1360 of the decision, and its holding on page 1360, explaining that some actual injury that impaired the quality or value of the recipient's computer system must have occurred before a cause of action for trespass to personal property arises, as well as the Court's holding that the tens of thousands of e-mails sent by Mr. Hamidi did not support a claim by Intel that their computer systems had been damaged or impaired, or that Intel incurred damages relating to employees' lost time from work by reading or deleting these e-mails.

Plaintiff's small claims complaint contains a declaration in support of his choice of venue, analogizing the sending of an unsolicited e-mail with vandalizing a storefront. This analogy is meritless in view of the Supreme Court's holding in the Hamidi case, that the mere receipt of unsolicited e-mail does not give rise to a cause of action for trespass to personal property. Nor does any prior determination by this Court in other cases involving Mr. Balsam suing other defendants carry any weight as a precedent binding on the Court in this action.

Because the plaintiff is barred under the Hamidi case from claiming that he suffered any injury to his property as the result of the single unsolicited e-mail he claims to have received, there is no basis for venue of this action based on damage or injury to his personal property occurring in Los Angeles County. The only proper venue for this action for the "illegal" conduct claimed by the plaintiff is in Alameda County, where the defendant resides or where the alleged "illegal" conduct occurred.

Please note that Business and Professions Code section 17538.4 does not give rise to a civil cause of action for damages in favor of the recipient of an allegedly unsolicited e-mail, nor is any civil remedy provided for violations of that section. Under Section 17538.45, Internet Service Providers ("ISPs") are the only entities that have been given standing to sue alleged violators for economic damages, injunctive relief and statutory penalties. A copy of Sections 17538.4 and 17538.45 are enclosed for the Court's convenience.

Please also note that the California Consumer Legal Remedies Act, Civil Code section 1770 et seq., provides a cause of action in favor of a consumer if, and only if, the consumer has suffered actual damages as the result of allegedly unfair, fraudulent or deceptive business practices. Plaintiff's small claims complaint does not allege that Unitek committed any of the prohibited business practices enumerated in Section 1770, but only that the plaintiff received an unsolicited e-mail, which is not a violation of Section 1770. Under the Hamidi case, having suffered no actionable damage to his personal property as the result of the alleged unsolicited e-mail, venue in this County based on alleged injury or damage to his personal property that occurred there is improper.

Consequently, because the defendant is barred from claiming venue in Los Angeles County on the basis that an injury to his property occurred in that county, the Court must dismiss this action without prejudice, as required under Code of Civil Procedure section 116.370 (c)(1), and defendant hereby makes that request, exercising its rights not to appear thereunder.

Clerk of the Court
November 5, 2003
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Finally, it should be noted that the plaintiff, Mr. Balsam, is a self-appointed crusader against unsolicited e-mail, but his methods are not altruistic. Mr. Balsam's method has been to attempt to extort payments of substantial amounts of money from any company, no matter where the company is located, if the company sends him an alleged unsolicited e-mail (regardless of whether the e-mail complies with the requirement of Section 17538.4), threatening to sue them in a distant and inconvenient forum if they do not pay him. He proudly admits doing so against 15 different companies, including Unitek, on his website, "www.danbalsam.com" entitled "Dan's 'I Hate Spam' Home Page." A copy of his website is enclosed.

In conclusion, under the California Supreme Court's holding in Hamidi, the mere receipt of an unsolicited e-mail does not give rise to a cause of action based on injury to personal property. Business and Professions Code section 17385.4 does not give rise to a civil cause of action in the plaintiff's favor. Civil Code section 1770 requires that the plaintiff plead and prove actual damages, which he cannot do under the Hamidi case. This Court is therefore required to deny the plaintiff's choice of venue based on his claim that damage to his personal property occurred in Los Angeles County, and it must dismiss this action without prejudice. By doing so, the Court will help put an end to Mr. Balsam's "cottage industry" of using the Los Angeles courts as a stick to beat money out of distant small businesses that have broken no laws and who have caused Mr. Balsam no harm, but who only have had the misfortune of crossing "electronic" paths with him.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul L. Gumina", written in a cursive style.

Paul L. Gumina
General Counsel

cc: Daniel Balsam