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SAN FRANCISCO COUNTY
SUPERIOR COURT

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22 SUPERIOR COURT OF THE STATE OF CALIFORNIA

23 COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)

24 BARR, MARGIE, an individual;) Case No.:

25 BARRETT, DAN, an individual;)

26 BISHOP, JASON, an individual;)

27 BLANCHARD, MIRA, an individual;)

28 BRENNAN, JOHN, an individual;)

29 CLARK, COLLEEN, an individual;)

30 CLARK, KRISTEN, an individual;)

31 CLARK-SCHMELING, LISA, an individual;)

COOPER, ELLIE, an individual;)

GREGOR, BRIAN, an individual;)

HELLMAN, DIANA, an individual;)

HELLMAN, ERIK, an individual;)

HERNANDEZ, LINDA, an individual;)

HICKS, PENNY, an individual;)

HILL, DEREK, an individual;)

HILL, PAUL, an individual;)

CGC-14-538266

COMPLAINT FOR DAMAGES

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

1 HILL, WALTER, an individual;)
2 HIRSCH, ITAI, an individual;)
3 JENSEN, KRISTA, an individual;)
4 KAIL, SCOTT, an individual;)
5 KARON, ELI, an individual;)
6 KIRBY, KRISTINA, an individual;)
7 LEPORIERE, BONNIE, an individual;)
8 MADICK, BEN, an individual;)
9 MEINER, CAROLE, an individual;)
10 MIHAIC, JERRY, an individual;)
11 MORTON, NICOLE, an individual;)
12 MYERS, TIM, an individual;)
13 NEILSON, ANGELA, an individual;)
14 OLIVERES, NICK, an individual;)
15 O'SHEA, KATIE, an individual;)
16 OSOTEO, MARIO, an individual;)
17 PATTERSON, JAMES, an individual;)
18 PEDRO, OLIVER, an individual;)
19 REEVES, DAVIS, an individual;)
20 REEVES, MORGAN, an individual;)
21 RESTREPO, RITA KAE, an individual;)
22 RUIZ, DEBRA, an individual;)
23 SCHMELING, DELANEY, an individual;)
24 SEED, LUCI, an individual;)
25 SEEFELDT, SHANE, an individual;)
26 SMITH, ALTHEA, an individual;)
27 SMITH, JOAN, an individual;)
28 SMITH, PHILIP, an individual; and)
29 ZAHN, TYLER, an individual;)
30)
31)
Plaintiffs,)
v.)
AUTOTEGRITY INC., a Delaware)
corporation located in Cambridge,)
Massachusetts;)
3009 MEDIA, a business entity of unknown)
organization located in Los Angeles,)
California;)
AMERICAN GARDEN CLUB, a business)
entity of unknown organization located in San)
Francisco, California;)
BEAUTY COUPONS, a business entity of)
unknown organization located in San)
Francisco, California;)

1 MASS MARKET STRATEGIES, a business)
2 entity of unknown organization located in Los)
3 Angeles, California;)
4 MOST VALUABLE CUSTOMERS, a)
5 business entity of unknown organization)
6 located in West Hollywood, California;)
7 MXPTS.COM, a business entity of unknown)
8 organization located in Oakland, California;)
9 NEWAGE CREDITS, a business entity of)
10 unknown organization located in Los Angeles,)
11 California;)
12 SOCIETY MADE, a business entity of)
13 unknown organization located in Huntington)
14 Beach, California;)
15 TOPICA INC., a Delaware corporation located)
16 in San Francisco, California;)
17 TWENTY1 MEDIA LLC, a California limited)
18 liability company located in Newport Beach,)
19 California; and)
20 DOES 1-500,)
21)
22)
23)
24)
25)
26)
27)
28)
29)
30)
31)
Defendants.)

16 COME NOW PLAINTIFFS MARGIE BARR *et al* and file this Complaint for one cause of
17 action against Defendants AUTOTEGRITY INC. *et al* and allege as follows:
18

19
20 **I. INTRODUCTION AND SUMMARY OF THE COMPLAINT**

- 21 1. Plaintiffs bring this Action against professional spammers AUTOTEGRITY INC.
22 (“AUTOTEGRITY”) and its third party affiliates (aka “publishers”) for advertising in and
23 sending at least 2,618 unlawful spams to Plaintiffs. A representative sample (*Figure 1*) is shown
24 on the next page.
- 25 2. No Plaintiff ever gave any Defendant “direct consent” (as required by law) to advertise in
26 commercial email sent to him or her.
- 27 3. The spams all violated California Business & Professions Code § 17529.5 (“Section
28 17529.5”) because they contained: a) third parties’ domain names without their permission; b)
29 materially misrepresented or falsified information in or accompanying the email headers; and/or
30 c) misleading Subject Lines. The unlawful elements of these spams represent willful acts of
31 falsity and deception, rather than clerical errors.

1 Subject: Dear [redacted] , Someone near you has sent you an amazing car deal!

2 From: CarDeals (CustomerServices892276@_barron.acceptade.net)

3 To: [redacted]@ yahoo.com;

4 Date: Thursday, December 19, 2013 8:39 AM

5
6 **We Have found a great car price**

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The advertisement is a promotional banner for a Hyundai Holiday Savings Event. It features a festive background with red and blue vertical stripes, green pine branches, and white snowflakes. In the center, the text "HYUNDAI HOLIDAY SAVINGS EVENT" is written in large, bold, white letters on a blue background. To the left is the Hyundai logo with the slogan "Drive your way". To the right is the Auto-Price-Finder.com logo. Below the text, three cars are shown: a black sedan, a white SUV, and a white sedan. At the bottom, there are three interactive elements: a blue button labeled "Get Make" with a dropdown arrow, a blue button labeled "Get Model" with a dropdown arrow, a white input field for "Zip", and a red button labeled "GET PRICES".

25 The sender of this email, identified in the From Name above, is providing this offer on behalf of Auto-Price-Finder.com.

26 To unsubscribe from receiving further e-mails from this advertiser, click [here](#)
Auto-Price-Finder Attn: 96 1770 Massachusetts Avenue, #291 Cambridge MA 02140

27 This offer is brought to you by knowledge Management.
28 To be removed from our list simply click [here](#) or write to us at :
29 knowledge Management , 1038 N. Eisenhower Dr, #116,
30 Beckley, WV, 25801
31

Figure 1

1 4. AUTOTEGRITY is strictly liable for advertising in spams sent by its third party
2 affiliates.

3 5. Spam recipients are not required to allege or prove reliance or actual damages to have
4 standing. *See* Bus. & Prof. Code § 17529(b)(1)(A)(iii). Plaintiffs elect to recover statutory
5 damages only and forego recovery of any actual damages.

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

10 7. This Court should award Plaintiffs their attorneys' fees pursuant to Section
11 17529.5(b)(1)(C). *See also* Code of Civil Procedure § 1021.5, providing for attorneys fees when
12 private parties bear the costs of litigation that confers a benefit on a large class of persons; here,
13 by reducing the amount of false and deceptive spam received by California residents.

14 **II. PARTIES**

15 **A. Plaintiffs**

16 8. MARGIE BARR ("BARR") was domiciled in and a citizen of the State of California,
17 when she received the AUTOTEGRITY spams at issue. BARR ordinarily accesses her email
18 address(es) from California.

19 9. DANIEL BARRETT ("BARRETT") was domiciled in and a citizen of the State of
20 California, when he received the AUTOTEGRITY spams at issue. BARRETT ordinarily
21 accesses his email address(es) from California.

22 10. JASON BISHOP ("BISHOP") was domiciled in and a citizen of the State of California,
23 when he received the AUTOTEGRITY spams at issue. BISHOIP ordinarily accesses his email
24 address(es) from California.

25 11. MIRA BLANCHARD ("BLANCHARD") was domiciled in and a citizen of the State of
26 California, when she received the AUTOTEGRITY spams at issue. BLANCHARD ordinarily
27 accesses her email address(es) from California.

28 12. JOHN BRENNAN ("BRENNAN ") was domiciled in and a citizen of the State of
29 California, when he received the AUTOTEGRITY spams at issue. BRENNAN ordinarily
30 accesses his email address(es) from California.
31

1 13. COLLEEN CLARK (“CLARK-C”) was domiciled in and a citizen of the State of
2 California, when she received the AUTOTEGRITY spams at issue. CLARK-C ordinarily
3 accesses her email address(es) from California.

4 14. KRISTEN CLARK (“CLARK-K”) was domiciled in and a citizen of the State of
5 California, when she received the AUTOTEGRITY spams at issue. CLARK-K ordinarily
6 accesses her email address(es) from California.

7 15. LISA CLARK-SCHMELING (“CLARK-SCHMELING”) was domiciled in and a citizen
8 of the State of California, when she received the AUTOTEGRITY spams at issue. CLARK-
9 SCHMELING ordinarily accesses her email address(es) from California.

10 16. ELLIE COOPER (“COOPER”) was domiciled in and a citizen of the State of California,
11 when she received the AUTOTEGRITY spams at issue. COOPER ordinarily accesses her email
12 address(es) from California.

13 17. BRIAN GREGOR (“GREGOR”) was domiciled in and a citizen of the State of
14 California, when he received the AUTOTEGRITY spams at issue. GREGOR ordinarily accesses
15 his email address(es) from California.

16 18. DIANA HELLMAN (“HELLMAN-D”) was domiciled in and a citizen of the State of
17 California, when she received the AUTOTEGRITY spams at issue. HELLMAN-D ordinarily
18 accesses her email address(es) from California.

19 19. ERIK HELLMAN (“HELLMAN-E”) was domiciled in and a citizen of the State of
20 California, when he received the AUTOTEGRITY spams at issue. HELLMAN-E ordinarily
21 accesses his email address(es) from California.

22 20. LINDA HERNANDEZ (“HERNANDEZ”) was domiciled in and a citizen of the State of
23 California, when she received the AUTOTEGRITY spams at issue. HERNANDEZ ordinarily
24 accesses her email address(es) from California.

25 21. PENNY HICKS (“HICKS”) was domiciled in and a citizen of the State of California,
26 when she received the AUTOTEGRITY spams at issue. HICKS ordinarily accesses her email
27 address(es) from California.

28 22. DEREK HILL (“HILL-D”) was domiciled in and a citizen of the State of California,
29 when he received the AUTOTEGRITY spams at issue. HILL-D ordinarily accesses his email
30 address(es) from California.

1 23. PAUL HILL (“HILL-P”) was domiciled in and a citizen of the State of California, when
2 he received the AUTOTEGRITY spams at issue. HILL-P ordinarily accesses his email
3 address(es) from California.

4 24. WALTER HILL (“HILL-W”) was domiciled in and a citizen of the State of California,
5 when he received the AUTOTEGRITY spams at issue. HILL-W ordinarily accesses his email
6 address(es) from California.

7 25. ITAI HIRSCH (“HIRSCH”) was domiciled in and a citizen of the State of California,
8 when he received the AUTOTEGRITY spams at issue. HIRSCH ordinarily accesses his email
9 address(es) from California.

10 26. KRISTA JENSEN (“JENSEN”) was domiciled in and a citizen of the State of California,
11 when she received the AUTOTEGRITY spams at issue. JENSEN ordinarily accesses her email
12 address(es) from California.

13 27. SCOTT KAIL (“KAIL”) was domiciled in and a citizen of the State of California, when
14 he received the AUTOTEGRITY spams at issue. KAIL ordinarily accesses his email address(es)
15 from California.

16 28. ELI KARON (“KARON”) was domiciled in and a citizen of the State of California, when
17 he received the AUTOTEGRITY spams at issue. KARON ordinarily accesses his email
18 address(es) from California.

19 29. KRISTINA KIRBY (“KIRBY”) was domiciled in and a citizen of the State of California,
20 when she received the AUTOTEGRITY spams at issue. KIRBY ordinarily accesses her email
21 address(es) from California.

22 30. BONNIE LEPORIERE (“LEPORIERE”) was domiciled in and a citizen of the State of
23 California, when she received the AUTOTEGRITY spams at issue. LEPORIERE ordinarily
24 accesses her email address(es) from California.

25 31. BEN MADICK (“MADICK”) was domiciled in and a citizen of the State of California,
26 when he received the AUTOTEGRITY spams at issue. MADICK ordinarily accesses his email
27 address(es) from California.

28 32. CAROLE MEINER (“MEINER”) was domiciled in and a citizen of the State of
29 California, when she received the AUTOTEGRITY spams at issue. MEINER ordinarily
30 accesses her email address(es) from California.

1 33. JERRY MIHAIC (“MIHAIC”) was domiciled in and a citizen of the State of California,
2 when he received the AUTOTEGRITY spams at issue. MIHAIC ordinarily accesses his email
3 address(es) from California.

4 34. NICOLE MORTON (“MORTON”) was domiciled in and a citizen of the State of
5 California, when she received the AUTOTEGRITY spams at issue. MORTON ordinarily
6 accesses her email address(es) from California.

7 35. TIM MYERS (“MYERS”) was domiciled in and a citizen of the State of California,
8 when he received the AUTOTEGRITY spams at issue. MYERS ordinarily accesses his email
9 address(es) from California.

10 36. ANGELA NEILSON (“NEILSON”) was domiciled in and a citizen of the State of
11 California, when she received the AUTOTEGRITY spams at issue. NEILSON ordinarily
12 accesses her email address(es) from California.

13 37. NICK OLIVERES (“OLIVERES”) was domiciled in and a citizen of the State of
14 California, when he received the AUTOTEGRITY spams at issue. OLIVERES ordinarily
15 accesses his email address(es) from California.

16 38. KATIE O’SHEA (“O’SHEA”) was domiciled in and a citizen of the State of California,
17 when she received the AUTOTEGRITY spams at issue. O’SHEA ordinarily accesses her email
18 address(es) from California.

19 39. MARIO OSOTEO (“OSOTEO”) was domiciled in and a citizen of the State of
20 California, when he received the AUTOTEGRITY spams at issue. OSOTEO ordinarily accessed
21 his email address(es) from California.

22 40. JAMES PATTERSON (“PATTERSON”) was domiciled in and a citizen of the State of
23 California, when he received the AUTOTEGRITY spams at issue. PATTERSON ordinarily
24 accesses his email address(es) from California.

25 41. OLIVER PEDRO (“PEDRO”) was domiciled in and a citizen of the State of California,
26 when he received the AUTOTEGRITY spams at issue. PEDRO ordinarily accesses his email
27 address(es) from California.

28 42. DAVIS REEVES (“REEVES-D”) was domiciled in and a citizen of the State of
29 California, when he received the AUTOTEGRITY spams at issue. REEVES ordinarily accessed
30 his email address(es) from California.

1 43. MORGAN REEVES (“REEVES-M”) was domiciled in and a citizen of the State of
2 California, when she received the AUTOTEGRITY spams at issue. REEVES-M ordinarily
3 accesses her email address(es) from California.

4 44. RITA KAE RESTREPO (“RESTREPO”) was domiciled in and a citizen of the State of
5 California, when she received the AUTOTEGRITY spams at issue. RESTREPO ordinarily
6 accesses her email address(es) from California.

7 45. DEBRA RUIZ (“RUIZ”) was domiciled in and a citizen of the State of California, when
8 she received the AUTOTEGRITY spams at issue. RUIZ ordinarily accesses her email
9 address(es) from California.

10 46. DELANEY SCHMELING (“SCHMELING”) was domiciled in and a citizen of the State
11 of California, when she received the AUTOTEGRITY spams at issue. SCHMELING ordinarily
12 accesses her email address(es) from California.

13 47. LUCI SEED (“SEED”) was domiciled in and a citizen of the State of California, when
14 she received the AUTOTEGRITY spams at issue. SEED ordinarily accesses her email
15 address(es) from California.

16 48. SHANE SEEFELDT (“SEEFELDT”) was domiciled in and a citizen of the State of
17 California, when he received the AUTOTEGRITY spams at issue. SEEFELDT ordinarily
18 accesses his email address(es) from California.

19 49. ALTHEA SMITH (“SMITH-A”) was domiciled in and a citizen of the State of
20 California, when she received the AUTOTEGRITY spams at issue. SMITH-A ordinarily
21 accesses her email address(es) from California.

22 50. JOAN SMITH (“SMITH-J”) was domiciled in and a citizen of the State of California,
23 when she received the AUTOTEGRITY spams at issue. SMITH-J ordinarily accesses her email
24 address(es) from California.

25 51. PHILIP SMITH (“SMITH-P”) was domiciled in and a citizen of the State of California,
26 when he received the AUTOTEGRITY spams at issue. SMITH-P ordinarily accesses his email
27 address(es) from California.

28 52. TYLER ZAHN (“ZAHN”) was domiciled in and a citizen of the State of California,
29 when he received the AUTOTEGRITY spams at issue. ZAHN ordinarily accesses his email
30 address(es) from California.

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

10 **B. Defendants**

11 54. Plaintiffs are informed and believe and thereon allege that Defendant AUTOTEGRITY is
12 now, and was at all relevant times, a Delaware corporation headquartered in Cambridge,
13 Massachusetts, doing business as *Auto-Price-Finder.com*, *Auto-Price-Saver.com*,
14 *FindaNewCarDeal.com*, and *InstantAutoPrices.com*, among other domain names.

15 55. Plaintiffs are informed and believe and thereon allege that Defendant 3009 MEDIA
16 ("3009") is now, and was at all relevant times, a business entity of unknown organization located
17 in Los Angeles, California.

18 56. Plaintiffs are informed and believe and thereon allege that Defendant AMERICAN
19 GARDEN CLUB ("AGC") is now, and was at all relevant times, a business entity of unknown
20 organization located in San Francisco, California.

21 57. Plaintiffs are informed and believe and thereon allege that Defendant BEAUTY
22 COUPONS ("BEAUTY") is now, and was at all relevant times, a business entity of unknown
23 organization located in San Francisco, California.

24 58. Plaintiffs are informed and believe and thereon allege that Defendant MASS MARKET
25 STRATEGIES ("MMS") is now, and was at all relevant times, a business entity of unknown
26 organization located in Los Angeles, California.

27 59. Plaintiffs are informed and believe and thereon allege that Defendant MOST
28 VALUABLE CUSTOMERS ("MVC") is now, and was at all relevant times, a business entity of
29 unknown organization located in West Hollywood, California.

1 60. Plaintiffs are informed and believe and thereon allege that Defendant MXPTS.COM
2 (“MXPTS”) is now, and was at all relevant times, a business entity of unknown organization
3 located in Oakland, California.

4 61. Plaintiffs are informed and believe and thereon allege that Defendant NEWAGE
5 CREDITS (“NEWAGE”) is now, and was at all relevant times, a business entity of unknown
6 organization located in Los Angeles, California.

7 62. Plaintiffs are informed and believe and thereon allege that Defendant SOCIETY MADE
8 (“SOCIETY”) is now, and was at all relevant times, a business entity of unknown organization
9 located in Huntington Beach, California.

10 63. Plaintiffs are informed and believe and thereon allege that Defendant TOPICA INC.
11 (“TOPICA”) is now, and was at all relevant times, a Delaware corporation located in San
12 Francisco, California.

13 64. Plaintiffs are informed and believe and thereon allege that Defendant TWENTY1
14 MEDIA LLC (“TWENTY1”) is now, and was at all relevant times, a California limited liability
15 company located in Newport Beach, California.

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

1 **III. JURISDICTION AND VENUE**

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

3 66. This Superior Court has jurisdiction over the Action because: a) all Plaintiffs are
4 domiciled in and citizens of the State of California and received the unlawful spams at their
5 California email addresses, and b) the amount in controversy is more than \$25,000.

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

7 67. Venue is proper in San Francisco County because Plaintiff OSOTEO received some of
8 the spams at issue in San Francisco County, and a company can be sued where the cause of
9 action arises. *See* Code Civ. Proc. §§ 395(b), 395.5.

10 68. Venue is proper in San Francisco County because Plaintiff KIRBY resides in San
11 Francisco County at the commencement of this Action. *See* Code Civ. Proc. § 395(b).

12 69. Venue is proper in San Francisco County because Defendants AGC, BEAUTY and
13 TOPICA are located in San Francisco County. *See* Code Civ. Proc. § 395(a).

14 70. Venue is also proper in San Francisco County (or indeed, *any* county in California of
15 Plaintiffs’ choosing) because AUTOTEGRITY is a foreign corporation that has not designated
16 the location and address of a principal office in California or registered to do business in
17 California with the California Secretary of State. *See Easton v. Superior Court of San Diego*
18 (*Schneider Bros. Inc.*), 12 Cal. App. 3d 243, 246 (4th Dist. 1970).

19
20 **IV. AT LEAST 2,618 UNLAWFUL SPAMS**

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

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

26 72. The emails at issue are “commercial email advertisements”¹ because they were initiated
27 for the purpose of advertising and promoting the sale of AUTOTEGRITY’s services.

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

1 73. The emails are “unsolicited commercial email advertisements”² because no Plaintiff ever
2 gave any Defendant “direct consent”³ to send him or her commercial emails, nor did any Plaintiff
3 have a “preexisting or current business relationship”⁴ with any Defendant.

4 74. In fact, some Plaintiffs received spams advertising AUTOTEGRITY even after
5 previously disclosing their email addresses to AUTOTEGRITY as part of settling claims for
6 prior spams that are *not* included in this Action.

7 75. Defendants sent and/or advertised in at least 2,618 unlawful spams that Plaintiffs
8 received at their “California email addresses”⁵ within one year prior to the filing of this Action,
9 as set forth below:

BARR: at least 238	HILL-P: at least 8	O’SHEA: at least 71
BARRETT: at least 44	HILL-W: at least 198	OSOTEO: at least 2
BISHOP: at least 129	HIRSCH: at least 38	PATTERSON: at least 130
BLANCHARD: at least 5	JENSEN: at least 18	PEDRO: at least 70
BRENNAN: at least 52	KAIL: at least 26	REEVES-D: at least 50
CLARK-C: at least 1	KARON: at least 68	REEVES-M: at least 40
CLARK-K: at least 15	KIRBY: at least 2	RESTREPO: at least 1
CLARK-SCHMELING: at least 6	LEPORIERE: at least 26	RUIZ: at least 5
COOPER: at least 51	MADICK: at least 24	SCHMELING: at least 10
	MEINER: at least 229	SEED: at least 98

17
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
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 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).

1 GREGOR: at least 103
2 HELLMAN-D: at least 3
3 HELLMAN-E: at least 62
4 HERNANDEZ: at least 53
5 HICKS: at least 6
6 HILL-D: at least 147

MIHAIC: at least 69
MORTON: at least 6
MYERS: at least 71
NEILSON: at least 9
OLIVERES: at least 73

SEEFELDT: at least 69
SMITH-A: at least 205
SMITH-J: at least 52
SMITH-P: at least 20
ZAHN: at least 15

76. Plaintiffs are informed and believe and thereon allege that Defendants sent and/or advertised in thousands or even millions of similar spams received by other California residents.

77. 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.

78. 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)

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

80. Some of the spams that Plaintiffs received advertising AUTOTEGRITY contained third parties' domain names without their permission. To name but three examples:

- MIHAIC received spams advertising AUTOTEGRITY showing @yahoo.com in the sending email address. Yahoo! Inc., owner of the yahoo.com domain name, expressly prohibits use of its services for spamming. See Yahoo Universal Anti-Spam Policy, <https://info.yahoo.com/legal/us/yahoo/guidelines/spam> (last visited Mar. 14, 2014). Therefore, since Yahoo! prohibits all spamming using its services, Yahoo! did not and could not have given permission for anyone to use its domain name in conjunction with these spams.
- SEEFELDT received spams advertising AUTOTEGRITY that claim to have been sent from an email address @att.net. AT&T Corporation, owner of the att.net domain name, expressly prohibits use of its services for spamming. See AT&T High Speed Internet Terms of Service / att.net Terms of Use, <http://www>.

1 att.com/shop/internet/att-internet-terms-of-service.html (last visited Mar. 21,
2 2014). Therefore, since AT&T prohibits all spamming using its services, AT&T
3 did not and could not have given permission for anyone to use its domain name in
4 conjunction with these spams.

- 5 • LEPORIERE received a spam advertising AUTOTEGRITY that claims to have
6 been sent from an email address @bryancave.com. The domain name
7 bryancave.com is owned by the international law firm Bryan Cave LLP.
8 Plaintiffs are informed and believe and thereon allege that Bryan Cave LLP did
9 not give permission to anyone to include its domain name bryancave.com in this
10 spam.

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

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

15 82. The From Name field is part of email headers.

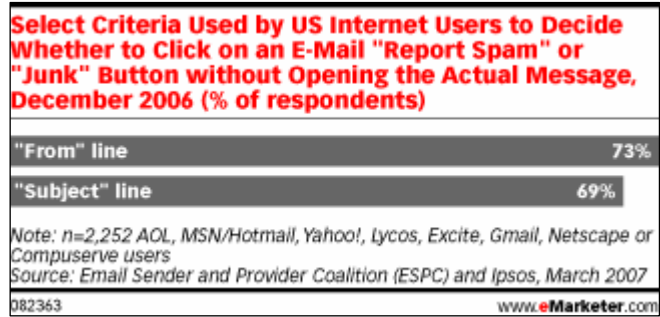
16 83. The From Name field in an email's headers is, not surprisingly, supposed to identify who
17 the email is *from*; it is not supposed to be an advertising message. Because computers must use
18 standard protocols in order to communicate, the Internet Engineering Task Force created a
19 collection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

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

24 84. Plaintiffs do not insist on any *particular* label (e.g., "Autotegrity Inc.," "Autotegrity,"
25 "Auto-Price-Finder," etc. in the From Name field. Rather, Plaintiffs contend that the text,
26 whatever it is, cannot misrepresent *who* is advertising in the email.

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

1 86. Indeed, empirical evidence has
2 demonstrated that the From Name is the
3 *most* important factor email recipients use
4 to determine whether or not an email is
5 spam. See eMarketer, E-Mail Open Rates
6 Hinge on ‘Subject’ Line, *available at*
7 <http://www.emarketer.com/Article/E-Mail-Open-Rates-Hinge-on-Subject-Line/1005550> (Oct.
8 31, 2007).



9 87. As opposed to the *generic* From Names described below, some of the spams that
10 Plaintiffs received advertising AUTOTEGRITY had From Names that *actively misrepresent* who
11 the spams are from; e.g. “Ford,” “Ford Clearance,” “MBNA,” “Kia,” “CarFinder” (a competitor
12 to AUTOTEGRITY), “VroomVroom” (prominently featured in commercials for Mazda cars).

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

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

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

30 89. The From Names of almost all of the instant spams that Plaintiffs received advertising
31 AUTOTEGRITY are similarly generic terms or random names such as “VehicleStickerPrice,”
“Car_Clearance,” “AutoPrice Deals,” “State Advisory,” “Jarred,” “Latest Clearance,” “Car

1 Auctions,” “Auctions,” “CONFIRMATION,” “AutoClearance,” “CarSavingsEvents,”
2 “AutoPriceDeals,” “Local Auto,” “2013 Auto Clearance,” “Auto Citi,” “• SmartAutoOffers,”
3 “• Auto Comparison,” “NewCarDeals,” “AutoCloseoutNotification,” “Autos,” “July4th Vehicle
4 Sale,” “CarClearanceCenter716,” “Latest Clearance,” “Liquidation Notification,” “members,”
5 “City Auction,” “Year End Closeouts,” “Platinum Credit Card,” “Cara,” “Mary,” “Jane,”
6 “Samantha,” “info,” etc. All of these generic From Names, like those in *Balsam*, misrepresent
7 *who* was advertising in the spams, and therefore violate Section 17529.5(a)(2).

8 90. These From Names could just as easily refer to AUTOTEGRITY’s competitors, such as
9 *CarFinder.com* or *TrueCar.com*.

10 91. Plaintiffs are informed and believed and thereon allege that AUTOTEGRITY may have
11 registered some of the generic phrases in the From Names as fictitious business names (“FBNs”)
12 with the City Clerk of Cambridge, Massachusetts.

13 92. However, even if AUTOTEGRITY registered generic phrases as FBNs, generic From
14 Names still misrepresent *who* the spams are from.

15 93. Looking at a list of emails in his or her inbox, the recipient still cannot identify
16 AUTOTEGRITY from the generic From Names.

17 94. Looking at a list of emails in his or her inbox, the recipient has no way of knowing what
18 state/county/city records to search for the generic text in the From Names, in order to discover
19 who registered the FBNs.

20 95. Even if the spam recipient somehow knew to research the FBNs in Cambridge,
21 Massachusetts (where AUTOTEGRITY is located), the Cambridge City Clerk’s website
22 *www.cambridgema.gov/cityclrk.aspx* does not enable people to research FBNs and determine
23 who registered the FBNs.

24 96. Plaintiffs are informed and believe and thereon allege that AUTOTEGRITY does not
25 operate websites or maintain telephone numbers or addresses corresponding to all of these FBNs;
26 AUTOTEGRITY does not truly “do business as” these domain names. Plaintiffs are informed
27 and believe and thereon allege that AUTOTEGRITY registered generic text as sham FBNs for
28 the sole purpose of advertising in spams with generic text in the From Name in an attempt to
29 evade the requirements of Section 17529.5.

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

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

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

7 99. In *Balsam*, the Court of Appeal held:

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

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

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

22 We therefore hold, consistent with the trial court’s ruling, that header information
23 in a commercial e-mail is falsified or misrepresented for purposes of section
24 17529.5(a)(2) when it uses a sender domain name that *neither* identifies the actual
25 sender on its face *nor* is readily traceable to the sender using a publicly available
26 online database such as WHOIS.

27 203 Cal. App. 4th at 1097-1101 (emphasis in original).

28 100. Most of the spams that Plaintiffs received advertising AUTOTTEGRITY were sent from
29 domain names that:

- 30 • Did not identify AUTOTTEGRITY or the sender on their face, and
- 31 • Were deliberately registered so as to not be readily traceable to the sender by
querying the Whois database,

in violation of Section 17529.5. For example:

1 101. Many of the spams that Plaintiffs received advertising AUTOTEGRITY were sent from
2 domain names that were **proxy registered** to prevent the recipient from tracing the domain name
3 to the actual sender using a Whois query. To name but three examples:

- 4 • OSOTEO received a spam advertising AUTOTEGRITY sent from the domain
5 name *latenightbrew.com*, which was proxy-registered using Domains By Proxy
6 LLC in Scottsdale, Arizona.
- 7 • KIRBY received spams advertising AUTOTEGRITY sent from the domain name
8 *paylasimadresim.com*, which was proxy-registered using Above.com Domain
9 Privacy in Australia.
- 10 • MYERS received spams advertising AUTOTEGRITY sent from the domain
11 name *boardbeach.com*, which was proxy-registered using Domains By Proxy
12 LLC in Scottsdale, Arizona.

13 102. Some of the spams that Plaintiffs received advertising AUTOTEGRITY were sent from
14 domain names that were deceptively registered to **generic terms**, often claiming boxes at the
15 U.S. Postal Service or commercial mail receiving agencies, to prevent the recipient from tracing
16 the domain name to the actual sender using a Whois query. To name but three examples:

- 17 • MEINER received a spam advertising AUTOTEGRITY sent from the domain
18 name *firless.biz*, which was deceptively registered to the generic term “csupport
19 admin” claiming its address to be a box at a branch of NY Mail (a commercial
20 mail receiving agency) in New York, New York.
- 21 • HELLMAN-D received a spam advertising AUTOTEGRITY sent from the
22 domain name *boulewe.com*, which was deceptively registered to the generic term
23 “Web Admin” claiming its address to a commercial property (without specifying
24 a suite number) in Plainview, New York.
- 25 • HELLMAN-E received a spam advertising AUTOTEGRITY sent from the
26 domain name *hedfam.info*, which was deceptively registered to the generic term
27 “Service Admin” claiming its address to be a box at a branch of NY Mail (a
28 commercial mail receiving agency) in New York, New York.

29 103. Many of the spams that Plaintiffs received advertising AUTOTEGRITY were sent from
30 domain names that were falsely registered to **nonexistent entities**, often claiming their addresses
31 to be executive suites or boxes at the U.S. Postal Service or commercial mail receiving agencies,

1 to prevent the recipient from tracing the domain name to the actual sender using a Whois query.

2 To name but three examples:

- 3 • MEINER received a spam advertising AUTOTEGRITY sent from the domain
4 name *seasonsaver.us*, which was registered to “Check Email Inbox,” claiming its
5 address to be a box at a branch of The UPS Store in Newport Beach, California.
6 No such entity is registered with the California Secretary of State.
- 7 • SMITH-A received spams advertising AUTOTEGRITY sent from the domain
8 name *debtexpedition.com*, which was registered to “Mass Market Strategies,”
9 claiming its address to be a Regus Executive Suite in Los Angeles, California. No
10 such entity is registered with the California Secretary of State.
- 11 • MYERS received a spam advertising AUTOTEGRITY sent from the domain
12 name *brillianceinlivingco.com*, which was registered to “Octave Access Group
13 LLC,” claiming its address to be a box at a branch of NY Mail (a commercial
14 mail receiving agency) in New York, New York. No such entity is registered
15 with the New York Secretary of State.

16 104. Some of the spams that Plaintiffs received advertising AUTOTEGRITY *purport* to have
17 been sent from certain domain names registered to **real entities**; however, the headers were
18 falsified and/or forged because the spams were *not* in fact sent from those domain names. To
19 name but three examples:

- 20 • LEPORIERE received a spam advertising AUTOTEGRITY that claims to have
21 been sent from an email address *@bryancave.com*. The domain name
22 *bryancave.com* is owned by the international law firm Bryan Cave LLP.
23 Plaintiffs are informed and believe and thereon allege that this spam was not sent
24 from anyone at Bryan Cave LLP, and that the spam’s headers were falsified
25 and/or forged to indicate that it was.
- 26 • MIHAIC received a spam advertising AUTOTEGRITY that claims to have been
27 sent from an email address *@aexp.com*. The domain name *aexp.com* is owned by
28 American Express Travel Related Services Company Inc. Plaintiffs are informed
29 and believe and thereon allege that this spam was not sent from anyone at
30 American Express, and that the spam’s headers were falsified and/or forged to
31 indicate that it was.

- 1 • SEEFELDT received a spam advertising AUTOTEGRITY that claims to have
2 been sent from an email address *@official.nike.com*. The domain name *nike.com*
3 is owned by Nike Inc. Plaintiffs are informed and believe and thereon allege that
4 this spam was not sent from anyone at Nike, and that the spam’s headers were
5 falsified and/or forged to indicate that it was.

6 105. Plaintiffs could not identify AUTOTEGRITY or its spamming affiliates who sent most of
7 the spams at issue by querying the Whois database for the domain names used to send most of
8 the spams.

9 106. Additionally, Plaintiffs received some spams advertising AUTOTEGRITY with falsified
10 or forged header information so that *no* sending domain name was visible at all. To name but
11 two examples:

- 12 • OLIVERES received a spam advertising AUTOTEGRITY that claims to have
13 been sent from the email address *newsletters.biz@*. There was no apparent
14 sending domain name for OLIVERES to query the Whois database to identify the
15 sender.
16 • ZAHN received a spam advertising AUTOTEGRITY that claims to have been
17 sent from the email address *Services@_Bounce_dn*. However, *_Bounce_dn* is not
18 a valid domain name. There was no sending domain name for ZAHN to query the
19 Whois database to identify the sender.

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

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

25 108. The Subject Line is part of email headers.

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

28 110. Many of the spams at issue contain Subject Lines with falsified and/or misrepresented
29 information. To name but four examples:

- 30 • PATTERSON received spams advertising AUTOTEGRITY with the Subject
31 Line: “Call me [email address redacted].”

- CLARK-K received a spam advertising AUTOTEGRITY with the Subject Line: “Kristin, Your State Invitation.”
- HILL received a spam advertising AUTOTEGRITY with the Subject Line “Lost Money Alert for Walter.”
- COOPER received a spam advertising AUTOTEGRITY with the Subject Line “ellicooper, You can get the best SUV at no price at all!”

111. These Subject Lines are false, misleading, or both. “Call me” has nothing to do car sales. “Your State Invitation” also has nothing to do with car sales, and even if it did, it somehow suggests that the *state* is selling cars, as opposed to private actors. “Lost Money Alert” also has nothing to do with car sales, and it is false because HILL did not lose any money. “You can get the best SUV at no price at all” is false because “no price” means “free” and COOPER could not get a free SUV from AUTOTEGRITY.

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

112. Plaintiffs are informed and believe and thereon allege that AUTOTEGRITY contracted with third party advertising networks and affiliates (a/k/a “publishers”) to advertise its websites for the purpose of selling goods and services for a profit.

113. No one forced AUTOTEGRITY to outsource any of its advertising to third party spammers.

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

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

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

Bus. & Prof. Code § 17529(j)(k).

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

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

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

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

9 Thus, like other California statutes prohibiting false or misleading business
10 practices, the statute makes an entity *strictly liable* for advertising in a
11 commercial e-mail that violates the substantive provisions described in section
12 17529.5, subdivision (a) *regardless of whether the entity knew that such e-mails*
13 *had been sent* or had any intent to deceive the recipient.

14 192 Cal. App. 4th 805, 820-21 (2d Dist. 2011) (emphasis added). The court did not find that this
15 was an arbitrary requirement; rather, the court identified sound policy reasons behind the
16 Legislature’s decision to create a strict liability statute. *Id.* at 829.

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

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

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

24 118. Plaintiffs’ rightful and lawful assertion of the California Legislature’s liquidated damages
25 amount of \$1,000 per email is necessary to further the Legislature’s objective of protecting
26 California residents from unlawful spam.

27 119. Section 17529.5 does not require Plaintiffs to quantify their actual damages, allege or
28 prove reliance on the advertisements contained in the spams, or purchase the goods and services
29 advertised in the spams. *Recipients* of unlawful spam have standing to sue and recover
30 liquidated damages. *See* Bus. & Prof. Code § 17529.5(b)(1)(A)(iii); *Hypertouch*, 192 Cal. App.
31 4th at 820, 822-23, 828.

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

2 120. Section 17529.5 authorizes this Court to reduce the statutory damages to \$100 per spam.
3 Bus. & Prof. Code § 17529.5(b)(2). But, to secure the reduction, Defendants have the burden of
4 proof to demonstrate not only that they have practices and procedures to prevent unlawful
5 spamming, but also that the practices and procedures are *effective*.

6 121. Plaintiffs are informed and believe and thereon allege that Defendants have not
7 established and implemented, with due care, practices and procedures reasonably designed to
8 effectively prevent unsolicited commercial e-mail advertisements that are in violation of
9 Section 17529.5.

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

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

14 124. Moreover, Plaintiffs are informed and believe and thereon allege that Defendants
15 intended to deceive recipients of their spam messages through the use of falsified and/or
16 misrepresented information contained in or accompanying the email headers, and false and
17 misleading Subject Lines, as described herein.

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

24 126. Plaintiffs are informed and believe and thereon allege that AUTOTEGRITY previously
25 settled numerous other claims under Section 17529.5 in 2012-2013, and yet knowingly continues
26 to advertise in unlawful spams.

27 127. Plaintiffs are informed and believe and thereon allege that Defendants intended to profit,
28 actually profited, and continue to profit, and were unjustly enriched by, their wrongful conduct
29 as described herein.

30 128. Punitive damages are appropriate to punish malicious, oppressive, and/or fraudulent
31 conduct by Defendants, and to deter others from engaging in such conduct.

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)**

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

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

7 131. Defendants advertised in, sent, and/or caused to be sent at least 2,618 unsolicited
8 commercial emails to Plaintiffs' California electronic mail addresses: a) containing or
9 accompanied by falsified and/or misrepresented header information, and/or b) containing
10 misleading Subject Lines.

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

13 133. Each Defendant *other* than AUTOTEGRITY, including DOE Defendants, is jointly and
14 severally liable along with AUTOTEGRITY for each spam that that Defendant sent to Plaintiffs.

15 134. Plaintiffs seek reimbursement of attorneys' fees and costs as authorized by Section
16 17529.5(b)(1)(C).

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

23
24 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set forth.

25 **PRAYER FOR RELIEF**

26 **(Against All Defendants)**

27
28 A. An Order from this Court declaring that Defendants violated California Business &
29 Professions Code § 17529.5 by advertising in and sending unlawful spams.

1 B. Liquidated damages against Defendants in the amount of \$1,000 for each of at least 2,618
2 unlawful spams, as authorized by Section 17529.5(b)(1)(B)(ii), for a total of at least
3 \$2,618,000, as set forth below:

4 BARR: at least \$238,000	HILL-P: at least \$8,000	O'SHEA: at least \$71,000
5 BARRETT: at least \$44,000	HILL-W: at least \$198,000	OSOTEO: at least \$2,000
6 BISHOP: at least \$129,000	HIRSCH: at least \$38,000	PATTERSON: at least
7 BLANCHARD: at least	JENSEN: at least \$18,000	\$130,000
8 \$5,000	KAIL: at least \$26,000	PEDRO: at least \$70,000
9 BRENNAN: at least	KARON: at least \$68,000	REEVES-D: at least
\$52,000	KIRBY: at least \$2,000	\$50,000
10 CLARK-C: at least \$1,000	LEPORIERE: at least	REEVES-M: at least
11 CLARK-K: at least \$15,000	\$26,000	\$40,000
12 CLARK-SCHMELING: at	MADICK: at least \$24,000	RESTREPO: at least \$1,000
13 least \$6,000	MEINER: at least \$229,000	RUIZ: at least \$5,000
14 COOPER: at least \$51,000	MIHAIC: at least \$69,000	SCHMELING: at least
15 GREGOR: at least	MORTON: at least \$6,000	\$10,000
\$103,000	MYERS: at least \$71,000	SEED: at least \$98,000
16 HELLMAN-D: at least	NEILSON: at least \$9,000	SEEFELDT: at least
\$3,000	OLIVERES: at least	\$69,000
17 HELLMAN-E: at least	\$73,000	SMITH-A: at least
\$62,000		\$205,000
18 HERNANDEZ: at least		SMITH-J: at least \$52,000
\$53,000		SMITH-P: at least \$20,000
HICKS: at least \$6,000		ZAHN: at least \$15,000
HILL-D: at least \$147,000		

19
20 C. Attorneys' fees as authorized by Section 17529.5(b)(1)(C) and Code of Civil Procedure
21 § 1021.5 for violations of Section 17529.5.

22 D. Disgorgement of all profits derived from unlawful spams directed to California residents;
23 monies to be turned over to the Unfair Competition Law Fund and used by the California
24 Attorney General to support investigations and prosecutions of California's consumer
25 protection laws.

26 E. Costs of suit.

27 F. Such other and further relief as the Court deems proper.

28 THE LAW OFFICES OF DANIEL BALSAM

29
30 Date: March 26, 2014

BY: 

DANIEL L. BALSAM
Attorneys for Plaintiffs