

1 Jacob Harker (State Bar No. 261262)
2 LAW OFFICES OF JACOB HARKER
3 582 Market Street, Suite 1007
4 San Francisco, CA 94104
5 Tel: (415) 624-7602
6 Fax: (415) 684-7757
7 Email: jacob@harkercounsel.com

8 Daniel L. Balsam (State Bar No. 260423)
9 THE LAW OFFICES OF DANIEL BALSAM
10 2601C Blanding Avenue #271
11 Alameda, CA 94501
12 Tel: (415) 869-2873
13 Fax: (415) 869-2873
14 Email: lcal@danbalsam.com

15 Attorneys for Plaintiffs

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

17 **COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)**

18 JAY FINK, an individual;	)	Case No.: CGC-16-555317
19 RYAN ABEL, an individual;)	
20 GINA ANDERSON, an individual;	)	[PROPOSED]
21 CAMERON BABICH, an individual;)	
22 MOLY BERLIN, an individual;	)	THIRD AMENDED COMPLAINT FOR
23 GAERAEL DEBISE, an individual;	)	DAMAGES
24 MASON FARRELL, an individual;)	
25 DAVID GREENBERG, an individual;	)	1. VIOLATIONS OF CALIFORNIA
26 ROBERT CHATFIELD, an individual;	)	RESTRICTIONS ON UNSOLICITED
27 WILLIAM KEOUGH, an individual;	)	COMMERCIAL E-MAIL (Cal. Bus. &
28 JUNG KIM, an individual;	)	Prof. Code § 17529.5)
29 DORIAN MEDINA, an individual;	)	2. VIOLATIONS OF CALIFORNIA
30 ANDREW MONROE, an individual;	)	RESTRICTIONS ON UNSOLICITED
31 ANGELA NEILSON, an individual;	)	COMMERCIAL E-MAIL (Cal. Bus. &
NICK OLIVERES, an individual;	)	Prof. Code § 17529.5)
JERRY PHILLIPS, an individual;)	
)	
Plaintiffs,)	
v.)	
)	
CLICKSYNDICATE.COM, LLC Delaware)	
limited liability company;)	
ALTARE PUBLISHING, INC., a New Jersey)	
corporation;)	

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
08/31/2018
Clerk of the Court
BY: BOWMAN LIU
Deputy Clerk

1 EDGE BIOACTIVES, a business of unknown)
 2 formation;)
 3 FAIRLIGHT SCIENTIFIC, LLC a Nevada)
 4 limited liability company;)
 5 BESTMAILER, a business of unknown)
 6 formation,)
 7 FLYLEAF NEWS, a business of unknown)
 8 formation, and)
 9 DOES 1-1,000;)
 10)
 11)
 12)
 13)
 14)
 15)
 16)
 17)
 18)
 19)
 20)
 21)
 22)
 23)
 24)
 25)
 26)
 27)
 28)
 29)
 30)
 31)

Defendants.

COME NOW PLAINTIFFS JAY FINK, *et al.* and file this Third Amended Complaint for one cause of action against Defendants CLICKSYNDICATE.COM, LLC *et al* and allege as follows:

I. INTRODUCTION AND SUMMARY OF THE COMPLAINT

Plaintiffs bring this Action against professional spammers CLICKSYNDICATE.COM, LLC (“CLICK”), EDGE BIOACTIVES (“EDGE”), ALTARE PUBLISHING, Inc. (“ALTARE”) and FAIRLIGHT SCIENTIFIC, LLC (“FAIRLIGHT”), and DOES 1-100 (collectively “CLICK DEFENDANTS”), and their third party marketing partners, for advertising in and sending 1,189 unlawful unsolicited commercial emails (“spams”) to Plaintiffs. A representative sample appears on Exhibit 1.

1. Plaintiffs neither gave direct consent to receive commercial email advertisements from, nor had a preexisting or current business relationship with, the entities advertised in the spams.
2. The spams all materially violated California Business & Professions Code § 17529.5 (“Section 17529.5”) due to: a) materially false and deceptive information contained in or accompanying the email headers (i.e. From Name, Sender Email Address, and Subject Line), and/or b) Subject Lines misleading relative to the contents of the emails.
3. CLICK DEFENDANTS are strictly liable for advertising in spams sent by their third party Marketing Partners.
4. Spam recipients are not required to allege or prove reliance or actual damages to have standing. *See* Bus. & Prof. Code § 17529.5(b)(1)(A)(iii). Plaintiffs elect to recover statutory damages only and forego recovery of any actual damages. *See* Bus. & Prof. Code § 17529.5(b)(1)(B).
5. This Court should award liquidated damages of \$1,000 per email as provided by Section 17529.5(b)(1)(B)(ii), and not consider any reduction in damages, because CLICK

1 DEFENDANTS and their Marketing Partners failed to implement reasonably effective systems
2 to prevent advertising in unlawful spams. The unlawful elements of these spams represent
3 willful acts of falsity and deception, rather than clerical errors.

4 6. This Court should award Plaintiffs their attorneys' fees pursuant to Section
5 17529.5(b)(1)(C). *See also* Code of Civil Procedure § 1021.5, providing for attorneys fees when
6 private parties bear the costs of litigation that confers a benefit on a large class of persons; here,
7 by reducing the amount of false and deceptive spam received by California residents.

8 9 10 **II. PARTIES**

11 **A. Plaintiffs**

12 7. JAY FINK ("FINK") was domiciled in and a citizen of the State of California, when he
13 received the spams at issue. The spams at issue were sent to FINK's email address
14 jaystheone44@yahoo.com that he ordinarily accesses from California.

15 8. RYAN ABEL ("ABEL") was domiciled in and a citizen of the State of California in the
16 County of San Francisco, when he received the spams at issue. The spams at issue were sent to
17 ABEL's email address roncaptain11@yahoo.com that he ordinarily accesses from California.

18 9. GINA ANDERSON ("ANDERSON") was domiciled in and a citizen of the State of
19 California, when she received the spams at issue. The spams at issue were sent to
20 ANDERSON's email address miasweet84@gmail.com that she ordinarily accesses from
21 California.

22 10. CAMERON BABICH ("BABICH") was domiciled in and a citizen of the State of
23 California, when she received the spams at issue. The spams at issue were sent to
24 ANDERSON's email address babich9@gmail.com that she ordinarily accesses from California.

25 11. MOLLY BERLIN ("BERLIN") was domiciled in and a citizen of the State of California,
26 when she received the spams at issue. The spams at issue were sent to BERLIN's email address
27 molly.berlin94@gmail.com that she ordinarily accesses from California.

28 12. ROBERT CHATFIELD ("CHATFIELD") was domiciled in and a citizen of the State of
29 California, when he received the spams at issue. The spams at issue were sent to CHATFIELD's
30 email address bnbchat@yahoo.com that he ordinarily accesses from California.

- 1 13. GAERAEL DEBISE ("DEBISE") was domiciled in and a citizen of the State of
2 California, when he received the spams at issue. The spams at issue were sent to DEBISE's
3 email address gaeraeldebise@yahoo.com that he ordinarily accesses from California.
- 4 14. MASON FARRELL ("FARRELL") was domiciled in and a citizen of the State of
5 California, when he received the spams at issue. The spams at issue were sent to BERLIN's
6 email address masebruh@gmail.com that he ordinarily accesses from California.
- 7 15. DAVID GREENBERG ("GREENBERG, D.") was domiciled in and a citizen of the State
8 of California, when he received the spams at issue. The spams at issue were sent to
9 GREENBERG, D.'s email address that he ordinarily accesses from California.
- 10 16. WILLIAM KEOUGH ("KEOUGH") was domiciled in and a citizen of the State of
11 California, when he received the spams at issue. The spams at issue were sent to KEOUGH's
12 email address hoopnwill@yahoo.com that he ordinarily accesses from California.
- 13 17. JUNG KIM ("KIM") was domiciled in and a citizen of the State of California, when he
14 received the spams at issue. The spams at issue were sent to KIM's email address
15 soloydiver@yahoo.com that he ordinarily accesses from California.
- 16 18. DORIAN MEDINA ("MEDINA") was domiciled in and a citizen of the State of
17 California, when he received the spams at issue. The spams at issue were sent to MEDINA's
18 email address fresh_n_clean10@yahoo.com that he ordinarily accesses from California.
- 19 19. ANDREW MONROE ("MONROE") was domiciled in and a citizen of the State of
20 California, when he received the spams at issue. The spams at issue were sent to MONROE's
21 email address ndr_w_monroe@yahoo.com that he ordinarily accesses from California.
- 22 20. NICK OLIVERES ("OLIVERES") was domiciled in and a citizen of the State of
23 California, when he received the spams at issue. The spams at issue were sent to OLIVERES'
24 email address nicklas.oliveres@yahoo.com that he ordinarily accesses from California.
- 25 21. ANGELA NEILSON ("NEILSON") was domiciled in and a citizen of the State of
26 California, when she received the spams at issue. The spams at issue were sent to NEILSON's
27 email address novelid@yahoo.com that she ordinarily accesses from California.
- 28 22. JERRY PHILLIPS ("PHILLIPS") was domiciled in and a citizen of the State of
29 California, when he received the spams at issue. The spams at issue were sent to PHILLIPS'
30 email address jephilli2288@gmail.com that he ordinarily accesses from California.

31

1 **B. Defendants**

2 *1. Advertiser Defendants*

3 23. Plaintiffs are informed and believe and thereon allege that Defendant
4 CLICKSYNDICATE.COM, LLC (“CLICK”) is now, and was at all relevant times, a Delaware
5 limited liability company with a principal place of business in New Jersey.

6 24. Plaintiffs are informed and believe and thereon allege that Defendant EDGE
7 BIOACTIVES (“EDGE”) is a business of unknown formation with a principal place of business
8 in New Jersey.

9 25. Plaintiffs are informed and believe and thereon allege that Defendant FAIRLIGHT
10 SCIENTIFIC, LLC (“FAIRLIGHT”) is now, and was at all relevant times, a Nevada limited
11 liability company with a principal place of business in New Jersey. Plaintiffs are informed and
12 believe that FAIRLIGHT owns many of the websites and domain names advertised in the spams
13 at issue including, but not limited to: alphalevoenergy.com, boostmydrivevideo.com,
14 peruvianbrew.com, sexdriveboost.com, sexdrivetrickvideo.com, and malehealthinfo.com.

15 26. Plaintiffs are informed and believe and thereon allege that Defendant ALTARE
16 PUBLISHING, INC. (“ALTARE”) is now, and was at all relevant times, a New Jersey limited
17 liability company with a principal place of business in New Jersey. Plaintiffs are informed and
18 believe that ALTARE owns many of the websites and domain names advertised in the spams at
19 issue including, but not limited to: geterectondemand.com, makeherapproachyou.com, your-
20 health-1st.com, and curemylimpdick.com.

21 27. Plaintiffs do not know the true names or legal capacities of the Defendants designated
22 herein as DOES 1-100 and therefore sue said Defendants under the fictitious name of “DOE.”
23 Plaintiffs are informed and believe and thereon allege that DOES 1-100 own many of the
24 websites and domain names advertised in the spams at issue including, but not limited to:
25 3simplequestions.com, jajd.gdn, and 4inches4weeks.com.

26 *2. Marketing Partner Defendants*

27 28. Plaintiffs are informed and believe and thereon allege that the CLICK DEFENDANTS
28 entered into various contracts (“Marketing Partner Contracts”) with third-party spam networks
29 and publishers (“Marketing Partners”). Pursuant to the terms of the Marketing Partner Contracts,
30 the CLICK DEFENDANTS and each respective Marketing Partner agreed to share in the
31 benefits and risks derived from email advertising campaigns advertising the CLICK

1 DEFENDANTS' websites and the Marketing Partners' services. Plaintiffs further allege, on
2 information and belief, that pursuant to the terms of the Marketing Partner Contracts, the
3 Marketing Partner Defendants used their own lists of email addresses (as opposed to lists
4 provided by the CLICK DEFENDANTS) as the source of intended recipients for the spams.
5 Plaintiffs further allege, on information and belief, that, in some cases, the Marketing Partners
6 (as opposed to the CLICK DEFENDANTS) created the unlawful content in the emails, such as
7 the From Names, Subject Lines, and sending email addresses.

8 29. Plaintiffs are informed and believe and thereon allege that Defendant BESTMAILER
9 ("BEST") is now, and was at all relevant times, a business of unknown formation, doing business
10 as mailerbest.com, with a principal place of business in La Palma, California. Plaintiffs allege
11 that BEST advertised in at least one of the emails at issue.

12 30. Plaintiffs are informed and believe and thereon allege that Defendant FLYLEAF NEWS
13 ("FLYLEAF"), is now and at all relevant times, a business of unknown formation, doing
14 business as flyleafnews.com, with a principal place of business in Costa Mesa, California.
15 Plaintiffs allege that FLYLEAF advertised in at least one of the emails at issue.

16 31. Plaintiffs do not know the true names or legal capacities of the Defendants designated
17 herein as DOES 101 through 1,000, inclusive, and therefore sue said Defendants under the
18 fictitious name of "DOE." Plaintiffs allege that certain Defendant(s) designated herein as DOES
19 registered the following domain names, which were used to send the spams at issue, in a manner
20 so as to prevent email recipients from discovering those DOE Defendants' true identities:
21 accountservicesnow.club, adnover.com, adviajar.com, akxqkokbcagw.com, almamzer.com,
22 ampatens.com, amsofter.com, anciel.com, apatens.com, aphawk.com, atomicleaksswizzling.net,
23 averasy.com, avnqxzvtyjl.com, ballstalltall.com, baryell.com, bed-news.com, be-inaffaires.com,
24 beliefmindlessshelf.com, bentold.com, bestideas4u.com, bestxsales.com, bfoumuqxnn.com,
25 bhyvssrayky.com, bigdoubtfulharbor.com, blimpridyquik28.com, blimpridyquik64.com,
26 blockingmainframesdinke.com, bnhrpqktrwf.com, bnhrpqktrwf.com,
27 bomaris.com, briesco.com, browol.com, buhoodle.com, busloca.com, cadenid.com, cakrado.com,
28 callbatt.com, carecnapanr.com, cebsrnjxbadh.com, changeniti.org, cogizu.com,
29 colorfastrun97.com, confirmedteam.club, cpnasuokzo.com, craavampeline24.com,
30 cremedelemoni15.com, cremedelemoni37.com, cremederi.date, ddaitrdots.com,
31 dddzemfufhyizqg.com, designtwosavr88.com, drollyz.date, dvulbsiquroq.com, ecnkahljy.com,

1 exonmuvevsvsnylc.com, eyrnphkencfvces.com, fashionistolike114.com,
2 faultyrobusterblock.com, fnisubwddhceysj.com, fphuzkpcfhi.com, fqmnpndcmtduy.com,
3 friendsnaptmt59.com, frozesagepeons.net, fuzzyapprovalrain.com, fykaaboriain.com,
4 gasesrootfragile.com, gdhhddvsoh.com, genuinelust.com, gftgrthouseestabbag.com,
5 glfelse.com, gomband.net, grandioserighteousthread.com, granikk.com,
6 groundchokechemist.com, guctnxtvi.com, happilycanonicaltentacle.com, highterg.com,
7 hfxuoqrkyvnf.com, hiqdycpgrlvip.com, hogsdraingsfry.net, hotlinkcheerfullyspin.net,
8 hqwnewiklpqldn.com, huhpxlmwbrpzag.com, iavvqwsbjwi.com, icldgixvwrrysvp.com,
9 idlrrokazcmtc.com, ihonorimage57.com, iilomad.com, iivbvcdffhdd.com, impredo.com,
10 inboxhard.com, inboxsweet.com, infinitememesbeamed.com, infinitypuntsidecar.com,
11 iqlapginkz.com, iumiuemkuznfju.com, jahjjdunjcsvlx.com, jaydayhaybay.com, jcameytrnb.com,
12 jnbmitaexnlqvaxu.com, jnbvctyrtgdc.com, jonnyshanblanflan.com, jwelledelllllltellhell.com,
13 jxgcdrtwgauscs.com, keltfeltbelt.com, ketchoah.com, laystayjaybay.com, lbbphmmzthgp.com,
14 lifeknifeblife.com, limpingcoosister.com, lknhwquhbmxxxi.com, lmerppediederpsmerp.com,
15 lobeside124.com, maindepend87.com, matcachan.com, mbtfkimdli.com, mccluane.com,
16 mcflcgwnmz.com, meltfeltbelt.com, mlnftivmfthij.com, moardoor.com, mukjyzgeexus.com,
17 musichardwiredspangle.com, nafuvxrgoz.com, ncbnqmgafw.com, ndzgetwcxl.com, net.com,
18 nnramrbjja.com, npbiveukvxygseaj.com, obmennik.ws, octrat.com, ofrggogzcbllxjnyq.com,
19 ohdontyaknow.com, ooceedso.com, pallstalltall.com, patchingworkaroundssoftics.com,
20 pathtextsdie.com, payoutburner.net, peekbrokenphase.net, picforces47.com,
21 pkzlwqmaisjsw.com, plastiqruntime18.com, plastiqruntime45.com, pnhpvhehkrimhyd.com,
22 policehelper.com, primetimelimedime.com, profficult.com, pxhusgynavustsz.com,
23 qemmelxvtac.com, relaxfinder.net, runbunfonday.com, rutterbugere.net, rzhilzjxdg.com,
24 saseknbhgtyaw.com, scribblequantifierswaldos.org, scribblesmunchingtawling.org,
25 sebankro.com, securellssslx15.com, sehmnrdwgy.com, sentbentsent.com, sign-news.com,
26 slurpedtoasterspush.net, smurfscompacterblocking.com, sniffstentacleblinked.com,
27 sopopsat.com, sppuydnjauzw.com, sxxlpjjhemrty.com, swelldellmelltellhell.com, tellersort.com,
28 tensestretinouszorching.com, tfmhooupaxz.com, thirstyaddictedsolid.com,
29 threadsvirusesforum.club, thudscreencripplewares.com, tisuwyhbmhhh.com, tivisiduff.com,
30 tmsanizkqjzdpq.com, tnsurnrdrrlykj.com, tousell.com, trollmangedwalk.net,
31 tuntransplink124.com, tweaksdingsspeedometers.com, udatastoressl123.com,

1 udatastoressl70.com, unasthmatic.date, uniqueiceclaim.com, urewoowlldq.com,
2 ussaofpyigoaevb.com, vdilxwgqudnzgro.com, verifiedsupport.club, vvccgkrhzs.com,
3 warmrushreflect.com, wentbentlent.com, wheelchainingmeg.com,
4 wombleswigglesuploaded.com, wrjlgmqyhv.com,
5 wrsoonbnadasugov.com, wysmbljcaojdu.com, xalfiyhdljd.com, x-dealdaily.com, xdeals4u.net, x-
6 digest.com, xeheptlimtpn.com, xfreshnews.com, xnewsfeed.com, x-newsletter.com, x-rest.com,
7 xuncyauubr.com, xwquditvhwbfbh.com, xxvenus.com, xxxjoys.com, xzkkfbeniwlajdfv.com,
8 ym0-9xq-t5g.com, yourella.com, yourxnews.com, ytheerge.com, zlctqwstbchdge.com,
9 fxgesfjzgi.com, fyxaueryzusfs.com, hbfrpasahyplunmx.com, ktgwdpubztkx.com,
10 lmzsatupefquceep.com, nfhzcdumtsht.com, nghlwrwbwv.com, nmmwvsvpexmp.com,
11 ritedogmarketing.com, switcherss.com, wakibi.nl, wzdptatwlsxn.com, ycntumgduw.com,
12 zbrogprjcz.com, fre-game.org, 2fdownloads.com, 2healthinsurance.org, 2startlife.net,
13 abilityofworking.com, accozizilt.com, aljclvdyxrho.com, ancbdtcmjy.com, apathybooks.com,
14 archusion.com, arinasandresort.com, arizonatimez.com, associationsmemorandum.com,
15 beltqcyqrt.com, bcxookmbka.com, beautifulnight.net, beautyanywhere.net, beautycod.org,
16 berpiivvnp.com, bestdealsworlds.com, bestsgamess.com, bestuniversitiesin.com,
17 bestwaytoachieveabs.com, betterast.net, bewlrnqzspbhv.com, biocculo.net, biovitamin.org,
18 biqzwijslhzjt.com, bitonnect.com, blackberrycakes.com, bliver.org, blooddiamondz.com,
19 bnalphjrdzyvhxz.com, bodyactiveagility.com, bookbytitle.com, books-for-u.com,
20 booksgeneration.com, borrebi.com, bpmhnglmoxo.com, braintorm.net, bratrix.net,
21 breaktherulez.xyz, britefirmarketing.com, bsuvfmhyjtwyjc.com, buhktshakvqss.com,
22 buildurstyle.com, busineinder.net, bvixahubzkrkaca.com, bwxwhaltbmj.com,
23 callforfreetoday.com, cardinalcareers.com, cardinallogistics.com, cftaqgdwnlgcjbxc.com,
24 cgilavqpbwdabg.com, change-moud.com, charityeverywhere.com, charityforanimals.com,
25 chocodeco.org, christiansholidays.com, cicwubefvyvmsay.com, ciibainsurance.com,
26 ciissoiwqvbghu.com, cleanpretty mind.com, clothingselegance.com, codassurance.org,
27 codlife.net, collectandgoo.com, colorspassion.com, competitiveway.net, comulsudroack.com,
28 coolnquietutility.com, coolwaterbluemoment.com, criispycream.com, ctobpsrhkz.com,
29 cuwndstodqiusrnq.com, cwmjypsacvezpinz.com, cwzonaiwqjme.com, cycjlvqmwoervhn.com,
30 date.ac, daxsdjopezatgx.com, deals17.net, delicioussummer.com, dercistic.org, dhnrrjrouk.com,
31 dhsofhsyqfyz.com, directrk.net, diyahhtxmgte.com, dkbetgdgvlzvjlq.com, dlkjavporjxgj.com,

1 dmzljqqjmbnjvmahw.com, dngichzljw.com, dnlbhijwvrez.com, doctorsdrama.com,
2 dogvkabixbx.com, dpeplvymcddbzigz.com, dreamslan17.com, dshbkkenqpav.com,
3 dublechoice.com, ebtuonfwcftplx.com, edu.se, educationopinternational.com,
4 eiwutbnmtgsakkwm.com, ejvchfsniwzzt.com, elcielopacto.com, eovifrckfck.com,
5 eqiuytffukrc.com, esfvsnepgxbllq.com, estamejor.net, esxktwfdyskcb.com, eubeautys.com,
6 evaluateyourcarprice.com, eveunty.net, exmgynwpisxh.com, explore18.club, falcterprise.net,
7 famillyholidays.com, fbhuppdwnpcaxiw.com, fdupptxvduqoj.com, feelinggoodgosport.com,
8 fenixzone.net, fgswdwihgmttp.com, fhbayngjimpme.com, fhgupszgbllj.com, findsource.org,
9 fitnessbodyboys.com, fiveyear.net, forgotpinline.com, foubexkcysm.com, fprkisxlpkt.com,
10 freesedeals.com, fre-game.org, freshtokens.com, ftygdwhsttw.com, funtastic2017.org,
11 fvzcazngkdmvov.com, fxniqsmgsfrbi.com, fyerhtrxhmjcmqvs.com, fzzeksuxjfgk.com,
12 gamingblood.club, gardenration.com, gbvptxlqpk.com, gemqukjwadvohxb.com,
13 generalless.com, gentil-girls.com, ghqopudvoqqjgx.com, giftsforalloccasionz.com,
14 gihfptufmsd.com, glorydaystour.com, glqamswyartaark.com, goldennotice.com, goodhabiits.com,
15 goodhealthz.com, good-results.org, gqhcvtbxixd.com, grand-parrent.com, greatasyouare.xyz,
16 greatideasforteamin.com, green.let-go.org, grnvhazfnksfettq.com, gsotvvyuhjh.com,
17 gtbqwbmeai.com, gvshqektndorj.com, gwxhtjwggsge.com, gygfwmsvhean.com, haematic.net,
18 hankie.org, happinessiscraziness.com, happinessmoment.com, happywomendays.com,
19 hastavidafi.com, hcnlootkxlhutco.com, heartforgivencs.com, hehynedeyqjhad.com,
20 hellodecembersurpriseme.com, helpfory.com, helpmetofindmyself.com, helpotherzfirst.com,
21 hemicknes.com, hfnvamjproeiqmw.com, hgmltpshtnpyhqiz.com, hxxvdmymudmd.com,
22 highereducationjobz.com, hight-deals.com, hipift.com, hitstion.net, hkadvoogow.com,
23 honestankind.com, hopeforthebestt.com, hopyholidays.com, horizonblackhole.com,
24 howmanywordz.com, hsefauvojjgpo.com, human70.com, hunmbwbdcunujamd.com,
25 hwihmtptctqfbc.com, hzjienbwmxf.com, idlkrubgyhziss.com, iewnhsprxyyzfnu.com,
26 ihhpaqwsufs.com, ijgrhvtmbyvw.com, imahkkghufszinw.com, informaticdevelopment.com,
27 innovativetechnologiez.com, intershop17.org, iopxlicewcrxgpr.com, iowiwbghzjbfck.com,
28 iphpxjutzlzcqzjx.com, iqeonylvutjzlc.com, irlygjdvsqxu.com, iwytkdxiqmihodl.com,
29 iyssjedxwrpg.com, jajncrhwiteoir.com, jakmpsmavck.com, jbzapoumuupf.com,
30 jgqzxsrlmitel.com, jkpesbmwgb.com, jokingwithfriends.com, jpbamhhkbktsz.com,
31 jrcekmpomtsew.com, jrhdriypc.com, jwpljieapcbq.com, kaqwvdklsgkpsp.com,

1 kcoirtcuberkye.com, kguphktfnwaqob.com, kidzvilagevernon.com, kisiprlcmkmygc.com,
2 kmdqrlrdxknxbdy.com, kmlcteisebji.com, krugxoeicqir.com, kseukkwrxaefkk.com,
3 kvhebjvlpqpx.com, kxpqnjbpyl.com, largeuniversities.com, last-mount.com,
4 learnhowtosavee.com, letslearnvocalization.com, lexndhxiesssmay.com, lifeglobalization.com,
5 liferequirementss.com, lionspower.net, lockleosge.com, lookize.com, loveseafestivals.com,
6 lptxdkouobr.com, lqmtpcwseikt.com, lrghgqktphbw.com, lspiwzenerdwwyvi.com,
7 lssmtvhfpogzmcp.com, lsxytxshvutc.com, lxfdhmvknyfe.com, magikwater.net, magikwater.net,
8 mail.com, makademiaspacy.com, makedadhappy.com, makemumhappy.com,
9 marketiingdigital.com, marketingsmartsolution.com, marketino11.com, marketino12.com,
10 marketino13.com, marketino14.com, md6odlire, menmic.net, merchaever.com, metrodeal.com,
11 metrodeal.com, metrvers.com, mgewlrwvdmgshgq.com, michlifine.com, micreannes.net,
12 mikhi.org, mpvwsobbpssspam.com, mqvqkagcam.com, msbqowsusxxwveqo.com,
13 mtutunbqmoqwazyz.com, my-birthday.net, myreallifeinsurrance.com, n.nu,
14 narniadisneyworld.com, newqrfbijfqoirrh.com, neoxose.net, netstartolo.com, newfreeparty.com,
15 newgiftnow.com, newhugeopportunity.com, newjob17.org, newpowerfulhealth.com,
16 newsandtricks.com, nextsino.net, nfjphcannbepsqu.com, niceflowerz.com,
17 nkofmzbjvdyzbjvg.com, nngojkvlirhl.com, notboundaries.com, noticeinfo.net,
18 npxuhcvxyjykhtgw.com, nrtluqegfh.com, ntbqztivotjuge.com, numhlfaryqpv.com,
19 nursingdegre.com, nxmwsnhxlew.com, occupationservices.com, ochfkwmyp.com,
20 offerscompanymedia.com, ofphdlifzvqppqi.com, ofrdngorfjlewtsz.com, ojlvpjxjqmef.com,
21 okgddqxczmzdn.com, okrnoqldvftmhw.com, onlyecord.com, ooaxwnpdirik.com,
22 oosuixuprica.com, oowbkgoysi.com, oozwkkjgpyg.com, osvdaicatrtae.com, oumi-girl.com,
23 ourcityofheroes.com, owdqjvhwsgn.com, oxlbjuwverkc.com, oxlftreklyoakgp.com,
24 oyqzslgzsj.com, ozfddpfjaseekip.com, paooeojudddt.com, passiingmoments.com,
25 passingmomentsphotography.com, pbmhhvwwivnqlro.com, pbqjvojixjs.com, pestmsgndw.com,
26 peerz2peerz.com, penseget.com, penseget.com, perfectshop17.org, pfdqcsjafefxjn.com,
27 pgafjzhuappxkhl.com, picturesworldmap.com, pihuleafikfbn.com, playtargetapps.com,
28 plphtcxqminlnvjc.com, point.my-birthday.net, power-code.net, premium-deal.com,
29 pretty2017.net, prettycatz.com, privatecompanyjob.com, projecttobusiness.com, proproces.com,
30 pumpkinpierecipehere.com, pumpnwknzjw.com, pusubmnoxsb.com, pzmdbjkxc.com,
31 qaslpwxfipbp.com, qcpkltdnzhteyni.com, qhdhqkcuuvv.com, qieucgddmvurtzz.com,

1 qihefbdendefkimd.com, qpnqhfncxkwsavl.com, qqdgupboudete.com, qtnpedpgtqowvpif.com,
2 qvyjvtrjmop.com, qwsxhnhpkjwo.com, raiseabird.com, ranspatronizing.net, reachoutforme.com,
3 reclqwgoflc.com, repaeglzvdha.com, restojob.ru, riaopqutgl.com, rlvshshzubhnrri.com,
4 mrqbcgytius.com, rockingpro.com, roots18.com, rsilujvuxaso.com, rudesheimer.org,
5 rukwalfhhe.com, rutdrmyyygyqme.com, sakuratreemagic.com, same-aptitude.com,
6 samuraishtodownanthology.com, satisfactionz.com, savepatience.com, sbrkysatra.com,
7 scrabblewordz.com, secater.com, secret-power.org, sfztaklutewwb.com,
8 shiningonthedarkness.com, shinningsky.com, shopclinical.net, shortweekendsbreaks.com,
9 signofthemoment.com, simplplies.net, smilource.net, soqephdsalif.com, sordidselection.com,
10 specialdealsforyou.net, speed-man.org, sriocjujndvo.com, ssociationsmemorandum.com,
11 stillpeace.net, store-world.org, strawberryshortcakez.com, summerbanksholiday.com,
12 svdizovapjkljb.com, svpbavmmqq.com, sweetchocolats.com, sweetmommymaternity.com,
13 sweetsuccessfruit.com, switcherss.org, syfbtklhzrpt.com, system-out.com,
14 takehappyphotos.com, tblzubzsylnqptod.com, teachingdegreeoptions.com, terrives.com,
15 tewlikhcmb.com, texdveoftjrn.com, thehappymovies.com, thenewgardian.com,
16 therealdreams.com, thesunofsilence.com, thousandyears.net, thousandyears.net, thropal.com,
17 thxzebixawxap.com, tigeifghdmml.com, tiimeinlondon.com, tjmrhxddrgpby.com,
18 tjzkgssluikap.com, tkbwgvjnbtoewgl.com, tomorrowlanddreamville.com,
19 topmarketplayed.com, topoffersformen.com, topsnursingschool.com, toptenplayers.com,
20 topvipoffers4you.com, totaldealz.net, tow-years.com, transpatronizing.net, trickplus.org,
21 tricktowin.org, trytochanges.com, tursecjgihy.com, tvifuryicyt.com, txaihehuxfcmty.com,
22 tzwlxvqgz.com, uabyxpxatafbnj.com, ubatbyvomylqu.com, uncom-fortable.com, under-line.org,
23 underqueen.org, unionsleadership.com, uniqueparentsquotes.com, universaltrading.xyz,
24 uqlatijcucupj.com, uylqsuypmk.com, vaeofhfexnbk.com, valentinedance.com,
25 vbacuidlwrhknd.com, vexrgiegpoano.com, vfnlfhgwab.com, vgdimgzkzqcsnt.com,
26 vgljqxfqhwuck.com, vgrypjxnadniew.com, vhssttwfitvfm.com, vienvenidoa.com,
27 vipoffersforyou.com, vjxvuknypyc.com, vktcdmelzlh.com, qamzfmzofappbgy.com,
28 vvhxcoghsik.com, vxdbzdgimtsngxnz.com, wakibi.nl, weddingsrequirements.com,
29 wemnimazqxjwsak.com, wenolxbqslmipnf.com, widely.gentil-girls.com, win-life.org,
30 womenagility.com, worksatisfactions.com, wxecugymuthyv.com, wxvccxllzvpprf.com,
31 wzvouchagg.com, xafyayskrn.com, xajnjgaztqk.com, xdtmqsrmtzqh.com, xfidrprtfa.com,

1 xlmarqkrqmf.com, xsazgjsdsnmvgll.com, xwdbdsfvatohzo.com, xzenihtdp.com,
2 xzytzeoqvqsguf.com, ycekdsjpevein.com, ycgepmhysyenwm.com, yehsqtjeymqxqr.com,
3 ygifephrxxaifm.com, ygjydlrqgade.com, yglyipwjnyfvtumf.com, ygoatosllggmji.com,
4 yhdlkpcqgzhgoxt.com, yhrybvjraqfzd.com, yihgzppydeo.com, ylmhhaqbvvcaa.com,
5 ymxloeapuh.com, yourelectronicmail.com, ypkcsswdrxsezebn.com, yqwcuwypkjhetr.com,
6 yqxqywsqelz.com, ytamluaouiizkb.com, ytpwddbmtg.com, zlqlsuahee.com,
7 zmhwsrurjmiaz.com, zrjwcnrvrgy.com, zumhjtboj.com, zvcjlexlgasywtp.com, and
8 zwaepibggiiq.com

9 32. Plaintiffs are informed and believe and thereon allege that each of the Defendants
10 designated herein as a DOE is legally responsible in some manner for the matters alleged in this
11 complaint, and is legally responsible in some manner for causing the injuries and damages of
12 which Plaintiff complains. Plaintiff is informed and believes and thereon alleges that each of the
13 Defendants designated herein as a DOE Defendant was, at all times relevant to the matters
14 alleged within this complaint, acting in conjunction with the named Defendants, whether as a
15 director, officer, employee, affiliate, customer, participant, partner or co-conspirator. When the
16 identities of DOE Defendants 1-1,000 are discovered, or otherwise made available, Plaintiffs will
17 seek to amend this Complaint to allege their identity and involvement with particularity.

18 33. Defendants' joinder in this Action is proper pursuant to Code of Civil Procedure § 379
19 because Plaintiffs seek relief jointly and severally from Defendants arising from the same series
20 of transactions and occurrences, and because common questions of law and fact as to Defendants
21 will arise in the Action. The fact that all Defendants may not be implicated in all spams does not
22 bar joinder: "It is not necessary that each defendant be interested as to every cause of action or as
23 to all relief prayed for. Judgment may be given against one or more defendants according to
24 their respective liabilities." Code Civ. Proc. § 379.

25
26 **III. JURISDICTION AND VENUE**

27 **A. Jurisdiction is Proper in a California Superior Court**

28 34. This California Superior Court has jurisdiction over the Action because Plaintiffs are
29 located in California, and the amount in controversy is more than \$25,000.

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

2 35. Venue is proper in San Francisco County (or indeed, *any* county in California of
3 Plaintiff's choosing) because CLICK and EDGE are foreign corporations that have not
4 designated the location and address of a principal office in California or registered to do business
5 in California with the California Secretary of State. *See Easton v. Superior Court of San Diego*
6 (*Schneider Bros. Inc.*), 12 Cal. App. 3d 243, 246 (4th Dist. 1970). Also, Plaintiff ABEL was a
7 resident of San Francisco when the spams at issue in this lawsuit were received.

8
9 **IV. 1,189 UNLAWFUL SPAMS**

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

13 37. California's False Advertising Law, Business & Professions Code § 17500
14 prohibits "not only advertising which is false, but also advertising which[,]
15 although true, is either actually misleading or which has a capacity, likelihood or
16 tendency to deceive or confuse the public." . . . [T]he UCL and the false
17 advertising law prohibit deceptive advertising even if it is not actually false.
18 *Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 226-27 (2d Dist. 2013) (citation omitted).

19 **A. The Emails at Issue are "Spams"**

20 38. The emails at issue are "commercial email advertisements"¹ because they were initiated
21 for the purpose of advertising and promoting DEFENDANTS' products and services.

22 39. The emails are "unsolicited commercial email advertisements"² because Plaintiffs did not
23 give "direct consent"³ to, and did not have a "preexisting or current business relationship"⁴ with
24 any Defendant.

25
26 ¹ "Commercial e-mail advertisement' means any electronic mail message initiated for the
27 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).

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

1 40. Plaintiffs did not consent or acquiesce to receive the spams at issue. Plaintiffs did not
2 waive or release any rights or claims related to the spams at issue.

3 41. Defendants advertised in, sent, and/or conspired to send at least 1,189 unlawful spams
4 that Plaintiffs received at their "California email address[es]"⁵ As shown below:

5

PLAINTIFF	SPAMS RECEIVED	PLAINTIFF	SPAMS RECEIVED
ABEL	10	FINK	83
CHATFIELD	119	KEOGH	26
NEILSON	66	KIM	22
BABICH	92	ANDERSON	105
DEBISE	81	BERLIN	31
GREENBERG, D.	97	FARRELL	21
MONROE	30	MEDINA	229
PHILLIPS	101	OLIVERES	76
		TOTAL	1,189

6
7
8
9
10
11
12

13 42. The spams are all unlawful because there is materially false and deceptive information
14 contained in or accompanying the email headers as described in more detail below.

15
16 **B. Spams With Generic or False From Names Misrepresent *Who* is Advertising in the
Spams and Violate Business & Professions Code § 17529.5(a)(2)**

17 43. Section 17529.5(a)(2) prohibits falsified or misrepresented information contained in or
18 accompanying email headers.
19
20
21

22
23 ³ "Direct consent' means that the recipient has expressly consented to receive e-mail
24 advertisements *from the advertiser*, either in response to a clear and conspicuous request for the
25 consent or at the recipient's own initiative." Bus. & Prof. Code § 17529.1(d) (emphasis added).

26 ⁴ "Preexisting or current business relationship,' as used in connection with the sending of a
27 commercial e-mail advertisement, means that the recipient has made an inquiry and has provided
28 his or her e-mail address, or has made an application, purchase, or transaction, with or without
29 consideration, regarding products or services offered by the advertiser. []" Bus. & Prof. Code
30 § 17529.1(f).

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

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

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

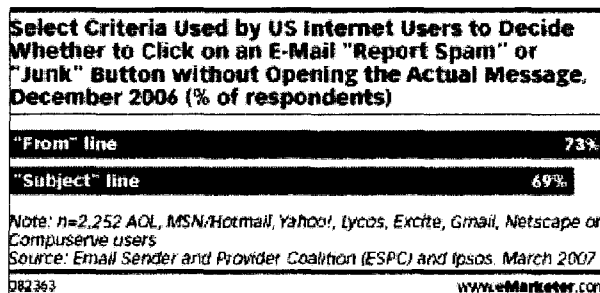
9 The "From:" field specifies the author(s) of the message, that is, the
10 mailbox(es) of the person(s) or system(s) responsible for the writing of
11 the message. . . . In all cases, the "From:" field SHOULD NOT contain
12 any mailbox that does not belong to the author(s) of the message.

13 46. Plaintiffs do not insist on any *particular* label (e.g., "Clicksyndicate" "Fairlight
14 Scientific," etc.) in the From Name field. Rather, Plaintiffs contend that the text, whatever it is,
15 cannot misrepresent *who* the emails are from.

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

21 48. Indeed, empirical evidence has
22 demonstrated that the From Name is the
23 *most* important factor email recipients use
24 to determine whether or not an email is
25 spam. See eMarketer, E-Mail Open Rates
26 Hinge on 'Subject' Line, available at [http://www.emarketer.com/Article/E-Mail-Open-Rates-
27 Hinge-on-Subject-Line/1005550](http://www.emarketer.com/Article/E-Mail-Open-Rates-Hinge-on-Subject-Line/1005550) (Oct. 31, 2007). Thus, a From Name that misrepresents who a
28 spam is from is *not* a mere technical error; rather, it is a material misrepresentation of the most
29 important part of the email header.

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



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

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

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

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

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

27 51. Almost all of the spams that Plaintiffs received advertising Defendant's websites show
28 generic text in the From Name field that misrepresents *who* the spams are from, e.g. "Big
29 Enhancements," "Genuine Lust," "ED Help," and "Warning." These generic From Names could
30 just as easily refer to Defendant's competitors.

31 52. These From Names, like those in *Balsam*, misrepresent *who* was advertising in the spams,
and therefore violate Section 17529.5(a)(2).

1 53. Plaintiffs are informed and believe and thereon allege that Defendants knowingly choose
2 to advertise using generic From Names and fake names precisely so the recipients will *not* know
3 who the emails were really from when viewing the spams in the inbox view. This forces
4 recipients to open the emails to see if the emails might actually be from someone with whom the
5 recipient has had dealings, or if the emails are in fact, as is the case here, nothing but spams from
6 a for-profit company.

7 54. In *Rosolowski v. Guthy-Renker LLC*, the court permitted From Names that were not the
8 sender's official corporate name as long as the identify of the sender was readily ascertainable in
9 the body. 230 Cal. App. 4th 1403, 1407, 1416 (2d Dist. 2014). However, the From Names in
10 that case (Proactiv and Wen Hair Care) were the advertiser's fanciful trademarks and well-
11 known brands with their own websites. But here, unlike the spams in *Rosolowski*, almost of the
12 From Names are generic or, on information and belief, names of non-existent entities; they are
13 not well-known trademarks and/or brands readily associated with Defendants. There is no way
14 an ordinary consumer, looking at the emails in his/her inbox, could readily associate them with
15 Defendants.

16 55. Moreover, in all or almost all of the spams at issue, neither the sender nor the advertiser
17 is readily ascertainable in the body of the spams, so *Balsam* would control, not *Rosolowski*.

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

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

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

24 58. “[H]eader information in a commercial e-mail is falsified or misrepresented for purposes
25 of section 17529.5(a)(2) when it uses a sender domain name that *neither* identifies the actual
26 sender on its face *nor* is readily traceable to the sender using a publicly available online database
27 such as WHOIS.” *Balsam*, 203 Cal. App. 4th at 1101 (emphasis in original).

28 59. The vast majority of the spams that Plaintiffs received advertising Defendants were sent
29 from domain names that:

- Did not identify Defendants or the sender on their face, and

- Were “proxy-registered” so as to not be readily traceable to the sender by querying the Whois database; or
- Were “unregistered” so as to not be readily traceable to the sender by querying the Whois database

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

60. Plaintiffs could not identify Defendants or its spamming affiliates who sent the spams at issue by querying the Whois database for the domain names used to send almost all of the spams at issue.

D. Spams Containing a Third Party’s Domain Name Without Permission Violate Business & Professions Code § 17529.5(a)(1)

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

62. Plaintiffs are informed and believe and thereon allege that at least 1 of the spams at issue in this Action contains a third parties’ domain name without permission of the third party. That domain name is tripadvisor.com.

63. Such unauthorized use of third parties’ domain names is materially false and deceptive. There can be no dispute that the spam was *not* sent from tripadvisor. Plaintiffs are informed and believe and thereon allege that the Defendants and/or their Marketing Partners forged the Sender Email Address to include a domain name belonging to a legitimate third party business in order to:

- Falsely lend an air of legitimacy to the spam by leveraging the brand equity of a legitimate advertiser, making the recipients believe that tripadvisor endorses the Defendants, and
- Trick spam filters as to the source of the spams. If the Defendants and their Marketing Partners used their *own* domain names, it would be more likely that spam filters would be able to automatically identify the domain names as being associated with spammers, and block the spams. On the other hand, emails purportedly sent by tripadvisor.com are more likely to be treated as legitimate emails and not spams.

64. Furthermore, assuming that these spams were *not* actually sent from the domain name that appears in the Sender Email Address, which Plaintiffs are informed and believe and thereon

1 allege to be the case, then the spam also contains falsified and forged information, which violates
2 Section 17529.5(a)(2).

3 **E. DEFENDANTS are Strictly Liable for Spams Sent By their Marketing Partners**

4 65. Plaintiffs are informed and believe and thereon allege that CLICK, EDGE, ALTARE,
5 FAIRLIGHT and DOES 1-100 (collectively "CLICK DEFENDANTS") contracted with and
6 partnered with third party networks and publishers (the Marketing Partners), including but not
7 limited to the other Defendants, to advertise their websites for the purpose of selling products
8 and services for a profit.

9 66. Plaintiffs are informed and believe and thereon allege that the CLICK DEFENDANTS
10 and their Marketing Partners agreed to share the benefits and the risks of the marketing venture.

11 67. In some cases, the CLICK DEFENDANTS' Marketing Partners also advertised their
12 email marketing services in some of the emails at issue. Also, the CLICK DEFENDANTS'
13 Marketing Partners are advertised in many of the clickthrough links of the emails. Also, some of
14 them are advertised in the bodies of the emails themselves.

15 68. The CLICK DEFENDANTS and all of their Marketing Partners are strictly liable for
16 advertising in the spams at issue even if third parties hit the Send button. Bus. & Prof. Code
17 § 17529(j)(k); *Hypertouch Inc. v. ValueClick Inc. et al* 192 Cal. App. 4th 805, 820-21 (2d Dist.
18 2011).

19 69. Plaintiffs are informed and believe and thereon allege that Defendants formed a
20 conspiracy to advertise the CLICK DEFENDANTS' websites and their Marketing Partners'
21 email advertising services by virtue of signing the Marketing Contracts. Defendants operated the
22 conspiracy by sending and advertising in spams pursuant to the Marketing Contracts.
23 Defendants committed wrongful acts pursuant to the conspiracy by advertising in unlawful
24 spams, and Plaintiffs were damaged by receiving those unlawful spams.

25 70. Plaintiffs are informed and believe and thereon allege that the CLICK DEFENDANTS
26 may have provided some of the content (e.g. Subject Lines) to its Marketing Partners and its
27 Marketing Partners explicitly or tacitly agreed to use such content to send and advertise in
28 unlawful spams, and the CLICK DEFENDANTS' Marketing Partners directed themselves
29 towards those wrongful goals by using that content in the spams that were sent. But, to the
30 extent that the CLICK DEFENDANTS' Marketing Partners may have created certain false and
31 misrepresented elements of the spams (e.g. forging headers, using unregistered domain names,

1 etc.), the CLICK DEFENDANTS' Marketing Partners must be held liable for violations of
2 Section 17529.5 because such wrongful acts were committed in accordance with the general
3 conspiracy to advertise the CLICK DEFENDANTS' websites and the Marketing Partners'
4 services.

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

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

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

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

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

20 75. However, Plaintiffs did suffer damages by receiving the unlawful spams advertising
21 Defendant's products and services in the state of California, at his California email addresses.
22 Bus. & Prof. Code § 17529(d), (e), (g), (h). Regardless, Plaintiffs do not seek actual damages in
23 this Action, only liquidated damages. Bus. & Prof. Code § 17529.5(b)(1)(B).

24 **G. Defendants' Actions Were Willful and Preclude any Reduction in Statutory Damages**

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

30 77. Plaintiffs are informed and believe and thereon allege that Defendants have not
31 established and implemented, with due care, practices and procedures reasonably designed to

1 effectively prevent unsolicited commercial e-mail advertisements that are in violation of
2 Section 17529.5.

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

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

7 80. Moreover, Plaintiffs are informed and believe and thereon allege that Defendants
8 intended to deceive recipients of their spam messages through the use of falsified and/or
9 misrepresented information in From Names and domain name registrations as described herein.

10 81. From Names do not write themselves. Domain names do not register themselves. The
11 false and misrepresented information contained in and accompanying the email headers are not
12 "clerical errors." Plaintiffs are informed and believe and thereon allege that Defendants went to
13 great lengths to create falsified and misrepresented information contained in and accompanying
14 the email headers in order to deceive recipients, Internet Service Providers, and spam filters.
15 Plaintiffs are informed and believe and thereon allege that Defendants intended to profit, actually
16 profited, and continue to profit, and were unjustly enriched by, their wrongful conduct as
17 described herein.

18 **FIRST CAUSE OF ACTION**

19 **[Violations of California Restrictions on Unsolicited Commercial Email,**
20 **California Business & Professions Code § 17529.5]**
21 **(All Plaintiffs Except FINK and NEILSON Against All Defendants)**

22 82. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

23 83. Plaintiffs ABEL, CHATFIELD, KEOUGH, and KIM received the spams at issue within
24 one year prior to filing the original Complaint in this matter. New Plaintiffs ANDERSON,
25 BABICH, BERLIN, DEBISE, FARRELL, GREENBERG, MEDINA, MONROE, OLIVERES,
26 and PHILLIPS received the spams at issue within one year prior to and including July 24, 2018.

27 84. Defendants advertised in, conspired to advertise in, sent, and/or caused to be sent at least
28 1040 unsolicited commercial email advertisements to Plaintiffs' California electronic mail
29 address that had materially falsified and/or misrepresented information contained in or
30 accompanying the email headers, in violation of Section 17529.5. The unlawful elements of
31 these spams represent willful acts of falsity and deception, rather than clerical errors.

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

3 86. Defendants have not established and implemented, with due care, practices and
4 procedures to effectively prevent advertising in unlawful spams that violate Section 17529.5 that
5 would entitle them to a reduction in statutory damages.

6 87. Plaintiffs seek reimbursement of attorneys' fees and costs as authorized by Section
7 17529.5(b)(1)(C).

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

14
15 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set forth.

16 **SECOND CAUSE OF ACTION**

17 **[Violations of California Restrictions on Unsolicited Commercial Email,**
18 **California Business & Professions Code § 17529.5]**
19 **(FINK and NEILSON Against All Defendants Except ALTARE)**

20 89. Plaintiffs FINK and NEILSON hereby incorporate the foregoing paragraphs as though set
21 forth in full herein.

22 90. Plaintiffs FINK and NEILSON received the spams at issue within one year prior to filing
23 the original Complaint in this matter.

24 91. Defendants advertised in, conspired to advertise in, sent, and/or caused to be sent at least
25 149 unsolicited commercial email advertisements to Plaintiffs' FINK and NEILSON's California
26 electronic mail addresses that had materially falsified and/or misrepresented information
27 contained in or accompanying the email headers, in violation of Section 17529.5. The unlawful
28 elements of these spams represent willful acts of falsity and deception, rather than clerical errors.

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

31

1 93. Defendants have not established and implemented, with due care, practices and
2 procedures to effectively prevent advertising in unlawful spams that violate Section 17529.5 that
3 would entitle them to a reduction in statutory damages.

4 94. Plaintiffs seek reimbursement of attorneys' fees and costs as authorized by Section
5 17529.5(b)(1)(C).

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

12
13 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set forth.

14
15 **PRAYER FOR RELIEF**

16 **(Against All Defendants)**

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

19 B. Liquidated damages against Defendants in the amount of \$1,000 for each of at least 1,189
20 unlawful spams, as authorized by Section 17529.5(b)(1)(B)(ii), for a total of at least
21 \$1,189,000 as set forth below:

22

PLAINTIFF	DAMAGES SOUGHT	PLAINTIFF	DAMAGES SOUGHT
ABEL	\$10,000	FINK	\$83,000
CHATFIELD	\$119,000	KEOGH	\$26,000
NEILSON	\$66,000	KIM	\$22,000
BABICH	\$92,000	ANDERSON	\$105,000
DEBISE	\$81,000	BERLIN	\$31,000
GREENBERG	\$97,000	FARRELL	\$21,000
MONROE	\$30,000	MEDINA	\$229,000
PHILLIPS	\$101,000	OLIVERES	\$76,000
		TOTAL	\$1,189,000

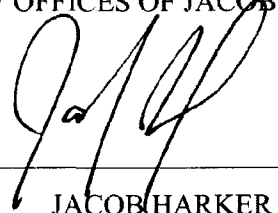
23
24
25
26
27
28
29

30 C. Liquidated damages against CLICK in the amount of \$1,189,000 based on 1,1189 spams
31 that it sent, hired others to send, or otherwise conspired with others to send, to Plaintiffs.

- 1 D. Liquidated damages against EDGE in the amount of \$1,189,000 based on 1,189 spams
- 2 that it sent, hired others to send, or otherwise conspired with others to send, to Plaintiffs.
- 3 E. Liquidated damages against FAIRLIGHT in the amount of \$1,189,000 based on 1,189
- 4 spams that it sent, hired others to send, or otherwise conspired with others to send, to
- 5 Plaintiffs.
- 6 Liquidated damages against ALTARE in the amount of \$1,040,000 based on 1,040 spams
- 7 that it sent, hired others to send, or otherwise conspired with others to send, to Plaintiffs
- 8 (besides FINK and NEILSON).
- 9 F. Liquidated damages against BESTMAILER in the amount of at least \$2,000 based on 2
- 10 spams that it sent, hired others to send, or otherwise conspired with others to send, to
- 11 FINK.
- 12 G. Liquidated damages against FLYLEAF in the amount of at least \$1,000 based on 1 spam
- 13 that it sent, hired others to send, or otherwise conspired with others to send, to FINK.
- 14 H. Liquidated damages against DOES 1-1,000 (when their true names are learned) in the
- 15 amount of \$1,189,000 based on 1,189 spams that it sent, hired others to send, or
- 16 otherwise conspired with others to send, to Plaintiffs.
- 17 I. Attorneys' fees as authorized by Section 17529.5(b)(1)(C) and Code of Civil Procedure
- 18 § 1021.5 for violations of Section 17529.5.
- 19 J. Costs of suit.
- 20 K. Such other and further relief as the Court deems proper.

21
22
23
24
25
26
27
28
29
30
31

THE LAW OFFICES OF JACOB HARKER



Date: July 24, 2018

BY: _____

JACOB HARKER
Attorneys for Plaintiffs

EXHIBIT 1

Print

<https://us-mg4.mail.yahoo.com/neo/launch?.rand=c0d60j1qscu5#450137492>

Subject: ADULT CONTENT. Customer, meet the wind of changes
From: YourX News (info@yourxnews.com)
To: jaysheone44@yahoo.com,
Date: Wednesday, January 27, 2016 1:45 AM

CHANGE ALL AT ONCE



If you watch this video, your life would not be the same. Girls will react differently.

and, of course, all is gonna change for the best :)

WAY TO BE BETTER →

More sites for you:



Your X News • 1580 Crainer Avenue • Jacksonville, FL 32202

<http://7.yournews.com/>

[Subscribe](#) • [Preferences](#) • [Send to a Friend](#) • [Unsubscribe](#) • [Report Spam](#)

Powered by [MYNewsletterBuilder](#)

