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60330 COURTHOUSE
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

FILED
Superior Court Of California,
Sacramento
07/08/2019
rnwilliams8
By _____, Deputy
Case Number:
34-2019-00260098

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO (UNLIMITED JURISDICTION)

MATTHEW BROWN, an individual;)	Case No.:
JHADA COLE, an individual;)	
SHERRI DUNNING, an individual;)	
LASHANNA GRANT, an individual;)	COMPLAINT FOR DAMAGES
STEPHANIE HELLER, an individual;)	
LENNIFER HILLIARD, an individual;)	1. VIOLATIONS OF CALIFORNIA
COQUESE HOLDEN, an individual;)	RESTRICTIONS ON UNSOLICITED
RONETTA TAYLOR, an individual; and)	COMMERCIAL E-MAIL (Cal. Bus. &
JUANITA WELLS, an individual;)	Prof. Code § 17529.5)
)	
Plaintiffs,)	
v.)	
)	
LEADPOINT, INC., a Delaware corporation)	
dba FHA RATE GUIDE; and)	
DOES 1-100;)	
)	
Defendants.)	

COME NOW PLAINTIFFS MATTHEW BROWN *et al* and file this Complaint for one cause of action against Defendants LEADPOINT, INC. *et al* and allege as follows:

1 **Subject:** Notification about your interest rate
2 **From:** Nigel, Loan Officer (news@larobycontroldictionary.com)
3 **To:** matthewdeshaunbrown@yahoo.com;
4 **Date:** Thursday, July 26, 2018 8:45 AM



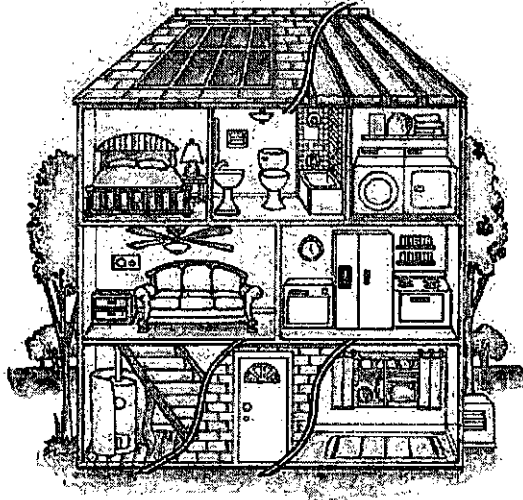
9 **FHA Cuts Refi Requirement**

10
11

Tap Your Age
Under 18
18-35
36-55
56-75

12
13
14
15
16
17

18
19 **Calculate New**
20 **House**
21 **Payment**



23 Â

24 This message has been sent to you through an affiliate of FHA Rate Guide

25 If you wish to no longer receive emails from FHA Rate Guide, click here

26 11601 Mississippi Ave., Suite 100 | Los Angeles, CA 90025

27 If you wish to no longer receive emails from our affiliate follow the instructions below.

28 This offer is brought to you by Aromats Callprovision.
29 To be removed from our List simply [click here](#) or write to us at:
30 Aromats Callprovision, 4924 Balboa Blvd # 482, Encino, CA, 91316
31

Figure 1

1 **II. PARTIES**

2 **A. Plaintiffs**

3 8. MATTHEW BROWN ("BROWN") was domiciled in and a citizen of the State of
4 California, when he received the spams at issue. The spams at issue were sent to BROWN'S
5 email address matthewdeshaunbrown@yahoo.com that she ordinarily accesses from California.

6 9. JHADA COLE ("COLE") was domiciled in and a citizen of the State of California, when
7 he received the spams at issue. The spams at issue were sent to COLE's email address
8 blakkcandle@yahoo.com that he ordinarily accesses from California.

9 10. SHERRI DUNNING ("DUNNING") was domiciled in and a citizen of the State of
10 California, when she received the spams at issue. The spams at issue were sent to DUNNING's
11 email address jsdunn50@yahoo.com that she ordinarily accesses from California.

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

15 12. STEPHANIE HELLER ("HELLER") was domiciled in and a citizen of the State of
16 California, when she received the spams at issue. The spams at issue were sent to HELLER's
17 email address smsegal1975@yahoo.com that she ordinarily accesses from California.

18 13. LENNIFER HILLIARD ("HILLIARD") 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 HILLIARD'S
20 email address lenhilliard@yahoo.com that she ordinarily accesses from California.

21 14. COQUESE HOLDEN ("HOLDEN") was domiciled in and a citizen of the State of
22 California, when she received the spams at issue. The spams at issue were sent to HOLDEN's
23 email address quesehold456@yahoo.com that she ordinarily accesses from California.

24 15. RONETTA TAYLOR ("TAYLOR") was domiciled in and a citizen of the State of
25 California, when she received the spams at issue. The spams at issue were sent to TAYLOR's
26 email address ronetta.taylor@yahoo.com that she ordinarily accesses from California.

27 16. JUANITA WELLS ("WELLS") was domiciled in and a citizen of the State of California,
28 when she received the spams at issue. The spams at issue were sent to WELLS' email address
29 bigmamaturner@yahoo.com that she ordinarily accesses from California.

30 17. Plaintiffs' joinder in this Action is proper pursuant to Cal. Code of Civil Procedure § 378
31 because Plaintiffs seek relief based on the same series of transactions or occurrences: all received

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

9 **B. Defendants**

10 ***1. Leadpoint, Inc.***

11 18. Plaintiffs are informed and believe and thereon allege that Defendant LEADPOINT, INC.
12 dba FHA Rate Guide ("LEADPOINT") is now, and was at all relevant times, a Delaware
13 corporation with its principal place of business in Los Angeles, CA, who sells home loan
14 products via its website fharateguide.com. Plaintiffs are informed and believe and thereon allege
15 that LEADPOINT is responsible for advertising its products in all of the 103 spams at issue in
16 this Action.

17 ***2. Marketing Partners***

18 19. Plaintiffs are informed and believe and thereon allege that LEADPOINT entered into
19 various contracts ("Marketing Partner Contracts") with third-party spam networks and publishers
20 ("Marketing Partners") who sent some, if not all, of the spams at issue. Pursuant to the terms of
21 the Marketing Partner Contracts, LEADPOINT and each respective Marketing Partner agreed to
22 share in the benefits and risks derived from email advertising campaigns advertising
23 LEADPOINT's websites/products and the Marketing Partners' services. Plaintiffs further allege,
24 on information and belief, that pursuant to the terms of the Marketing Partner Contracts, the
25 Marketing Partner Defendants who sent the spams used their own lists of email addresses (as
26 opposed to lists provided by LEADPOINT) as the source of intended recipients for the spams.
27 Plaintiffs further allege, on information and belief, that in some cases, the Marketing Partners
28 may have created the unlawful content in the emails, such as the From Names, registration
29 information for the sending domain names in the Sender Email Addresses, Subject Lines, and
30 registration information for the domain names in the clickthrough hyperlinks. Just as Valpak
31 also advertises its own mailing services when sending advertisements for its partners, so did

1 LEADPOINT's Marketing Partners advertise their own emailing services when they sent these
2 spams for LEADPOINT.

3 **3. DOE Defendants**

4 20. Plaintiffs do not know the true names or legal capacities of the Defendants designated
5 herein as DOES 1 through 100, inclusive – LEADPOINT's Marketing Partners – and therefore
6 sue said Defendants under the fictitious name of "DOE." Plaintiffs allege that certain
7 Defendant(s) designated herein as DOEs advertised in/conspired with LEADPOINT to advertise
8 in some or all of the spams at issue.

9 21. Plaintiffs allege that certain Defendant(s) designated herein as DOES advertised
10 in/conspired with LEADPOINT to advertise in some of the spams at issue and used the
11 following proxy-registered, falsely registered, and/or unregistered domain names to send some or
12 all of the spams at issue in a manner so as to prevent email recipients from discovering those
13 DOE Defendants' true identities: wouratillon.com, establishstandard.net, controldictionary.com,
14 borrowlead.net, mantechar.com, homegrownmodels.com, euphuism.org, diumalumna.org.uk,
15 augurinte.com, lergambelk.net, rifkitalopul.com, salimahmedsalim.com, kidstravelideas.com,
16 adventurousnatures.com, buildingsafetytests.com, cellulartherapies.net, thehealthypride.com,
17 thetrendingsites.com, onthatmoment.co.uk, abstractpen.com, superpromotions.xyz,
18 resourcesinyourarea.com, your-image-edit.com, homagetricks.com, elementsandtheme.com,
19 originalcaricatures.com, and titlecharactes.com.

20 22. Plaintiffs are informed and believe and thereon allege that each of the Defendants
21 designated herein as a DOE is legally responsible in some manner for the matters alleged in this
22 complaint, and is legally responsible in some manner for causing the injuries and damages of
23 which Plaintiffs complain. Plaintiffs are informed and believe and thereon allege that each of the
24 Defendants designated herein as a DOE Defendant was, at all times relevant to the matters
25 alleged within this complaint, acting in conjunction with the named Defendants, whether as a
26 director, officer, employee, partner, affiliate, customer, participant, or co-conspirator. When the
27 identities of DOE Defendants 1-100 are discovered, or otherwise made available, Plaintiffs will
28 seek to amend this Complaint to allege their identity and involvement with particularity.

29 **5. Joinder**

30 23. Defendants' joinder in this Action is proper pursuant to Cal. Code of Civil Procedure
31 § 379 because Plaintiffs seek relief jointly and severally from Defendants arising from the same

1 series of transactions and occurrences, and because common questions of law and fact as to
2 Defendants will arise in the Action. The fact that all Defendants may not be implicated in all
3 spams does not bar joinder: “It is not necessary that each defendant be interested as to every
4 cause of action or as to all relief prayed for. Judgment may be given against one or more
5 defendants according to their respective liabilities.” Cal. Code Civ. Proc. § 379.

6 7 **III. JURISDICTION AND VENUE**

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

9 24. This California Superior Court has jurisdiction over the Action because Defendants
10 targeted their advertisements at Plaintiffs in California and LEADPOINT has its principal offices
11 in California.

12 **B. Venue is Proper in Sacramento County**

13 1. Venue is proper in Sacramento County because “A corporation or association may be
14 sued in the county where . . . the obligation or liability arises.” Code Civ. Proc. § 395.5.

15 For purposes of laying venue, a liability ‘arises’ where the injury occurs. . . . The
16 ‘obligation or liability’ provision of section 395.5 does *not* require that the
17 defendant perform any act inside the county for venue to be proper; it merely
requires that *the obligation arise there*.

18 *Black Diamond Asphalt Inc. v. Superior Court of San Joaquin County*, 109 Cal. App. 4th 166,
19 172, 173 (3d Dist. 2003) (internal citations omitted) (emphasis added). Here, even if the
20 unlawful spams originated outside of Sacramento County, Defendants’ obligations arose in
21 Sacramento County, where all Plaintiffs besides HELLER received the spams.

22 23 **IV. 103 UNLAWFUL SPAMS**

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

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

28 prohibits “not only advertising which is false, but also advertising which[,]
29 although true, is either actually misleading or which has a capacity, likelihood or
30 tendency to deceive or confuse the public.” . . . [T]he UCL and the false
advertising law prohibit deceptive advertising even if it is not actually false.

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

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

2 27. The emails at issue are "commercial email advertisements"¹ because they were initiated
3 for the purpose of advertising and promoting LEADPOINT and its Marketing Partners' products
4 and services.

5 28. The emails are "unsolicited commercial email advertisements"² because no Plaintiff gave
6 "direct consent"³ to, or had a "preexisting or current business relationship"⁴ with LEADPOINT
7 or any of its Marketing Partners.

8 29. Plaintiffs did not consent or acquiesce to receive the spams at issue. Plaintiffs did not
9 waive any claims related to the spams at issue.

10 30. Defendants advertised in and/or conspired to advertise in at least 103 unlawful spams that
11 Plaintiffs received at their "California email addresses"⁵:

12

PLAINTIFF	SPAMS RECEIVED	PLAINTIFF	SPAMS RECEIVED
BROWN	22	COLE	11

13
14

15 ¹ "Commercial e-mail advertisement" means any electronic mail message initiated for the
16 purpose of advertising or promoting the lease, sale, rental, gift offer, or other disposition of any
17 property, goods, services, or extension of credit." Bus. & Prof. Code § 17529.1(c).

18 ² "Unsolicited commercial e-mail advertisement" means a commercial e-mail advertisement sent
19 to a recipient who meets both of the following criteria: (1) The recipient has not provided direct
20 consent to receive advertisements from the advertiser. (2) The recipient does not have a
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,
23 or extension of credit." Bus. & Prof. Code § 17529.1(o).

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

27 ⁴ "Preexisting or current business relationship," as used in connection with the sending of a
28 commercial e-mail advertisement, means that the recipient has made an inquiry and has provided
29 his or her e-mail address, or has made an application, purchase, or transaction, with or without
30 consideration, regarding products or services offered by the advertiser. []" Bus. & Prof. Code
31 § 17529.1(l).

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).

PLAINTIFF	SPAMS RECEIVED	PLAINTIFF	SPAMS RECEIVED
DUNNING	11	GRANT	14
HELLER	2	HILLIARD	20
HOLDEN	4	TAYLOR	7
WELLS	12	TOTAL	103

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

32. Although “fraud” in the context of a Cal. Business & Professions Code § 17500 action does not mean the common-law tort,⁶ Plaintiffs are not bringing claims for fraud and are not required to plead with particularity.

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

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

34. The From Name field is part of email headers. The From Name does *not* include the Sender Email Address. So, for example, if an email’s From Line says: “John Doe <johndoe@yahoo.com>”, the From Name is *just* “John Doe.”

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

The “From:” field specifies the author(s) of the message, that is, the mailbox(es)

⁶ See *Day v. AT&T Corporation*, 63 Cal. App. 4th 325, 332 (1st Dist. 1998) (“Actual deception or confusion caused by misleading statements is not required The term ‘fraudulent’ as used in the section ‘does not refer to the common law tort of fraud’ but only requires a showing members of the public ‘are likely to be deceived.’ No proof of direct harm from a defendant’s unfair business practice need be shown, such that ‘[a]llegations of actual deception, reasonable reliance, and damage are unnecessary.’”) (citations omitted). See also *Buller v. Sutter Health*, 160 Cal. App. 4th 981, 986 (1st Dist. 2008) (“In order to state a cause of action under the fraud prong of the [Unfair Competition Law] a plaintiff need not show that he or others were actually deceived or confused by the conduct or business practice in question. The ‘fraud prong of [the UCL] is unlike common law fraud or deception. A violation can be shown even if no one was actually deceived, relied upon the fraudulent practice, or sustained any damage. Instead, it is only necessary to show that members of the public are likely to be deceived”).

1 of the person(s) or system(s) responsible for the writing of the message. . . . In all
2 cases, the "From:" field SHOULD NOT contain any mailbox that does not belong
3 to the author(s) of the message.

4 36. Plaintiffs do not insist on any *particular* label (e.g., "Leadpoint," "FHA Rate Guide,"
5 etc.) in the From Name field. Rather, Plaintiffs contend that the text, whatever it is, cannot
6 misrepresent *who* the emails are from.

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

11 38. Indeed, empirical evidence has
12 demonstrated that the From Name is the
13 *most* important factor email recipients use
14 to determine whether or not an email is
15 spam. See eMarketer, E-Mail Open Rates
16 Hinge on 'Subject' Line, *available at*

**Select Criteria Used by US Internet Users to Decide
Whether to Click on an E-Mail "Report Spam" or
"Junk" Button without Opening the Actual Message,
December 2006 (% of respondents)**

From" line	73%
Subject" line	69%

Note: n=2,252 AOL, MSN/Hotmail, Yahoo!, Lycos, Excite, Gmail, Netscape or
CompuServe users
Source: Email Sender and Provider Coalition (ESPC) and Ipsos, March 2007
002363 www.emarketer.com

17 <http://www.emarketer.com/Article/E-Mail-Open-Rates-Hinge-on-Subject-Line/1005550> (Oct.
18 31, 2007). Thus, a From Name that misrepresents who a spam is from is *not* a mere technical
19 error; rather, it is a material misrepresentation of the most important part of the email header.

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

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

26 Federal Trade Commission, CAN-SPAM Act: A Compliance Guide for Business, available at
27 <http://www.business.ftc.gov/documents/bus61-can-spam-act-compliance-guide-business>
28 (emphasis added).

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

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

6 203 Cal. App. 4th 1083, 1088, 1090-91, 1093 (1st Dist. 2012), *petition for review denied*, 2012
7 Cal. LEXIS 4979 (Cal. May 23, 2012), *petition for certiori denied*, 2012 U.S. LEXIS 8423 (U.S.
8 Oct. 29, 2012), *petition for rehearing denied*, 2013 U.S. LEXIS 243 (U.S. Jan. 7, 2013). More
9 specifically, *Balsam* confirmed that generic From Names that “do not exist or are otherwise
10 misrepresented when they do not represent any real company and cannot be readily traced back
11 to the true owner/sender” violate the statute. *Id.* at 1093. The Court affirmed the award of
12 \$1,000 liquidated damages for the seven emails with misrepresented information in the From
13 Name field, even though most of the spams identified the advertiser in the body. *Id.* at 1091,
14 1093. Therefore, truthful information in the body of a spam does not cure misrepresented
15 information contained in or accompanying the headers.

16 41. Here, all of the spams have fake names for nonexistent people in the From Name, such as
17 “Nigel, Loan Officer” and “Jessica.” On information and belief, there is no person named Nigel
18 or Jessica who sent any of these spams nor is there a loan officer who sent any of these spams.
19 This misrepresents *who* the spam is really from.

20 42. In *Rosolowski v. Guthy-Renker LLC*, the court permitted From Names that were not the
21 sender’s official corporate name when the identity of the sender was readily ascertainable in the
22 body. 230 Cal. App. 4th 1403, 1407, 1416 (2d Dist. 2014). However, the From Names in that
23 case (Proactiv and Wen Hair Care) were the advertiser’s fanciful trademarks and well-known
24 brands with their own websites. But here, unlike the spams in *Rosolowski*, all of the From
25 Names are false and/or generic; they are not well-known trademarks and/or brands readily
26 associated with Defendants. There is no way an ordinary consumer, looking at the emails in
27 his/her inbox, could readily associate “Nigel” or “Jessica” with Defendants, as opposed to
28 LEADPOINT’s many competitors. Moreover, none of the spams at issue identify the sender in
29 the body, so *Balsam* would control, not *Rosolowski*.

30 43. In many instances, the spams state that they were sent by a nonexistent entity. Using the
31 sample spam in Figure 1 as an example, it states that it was sent by “Aromats Callprovision” and
uses the address 4924 Balboa Blvd. #482, Encino, CA 91316. On information and belief, the

1 name "Aromats Callprovision" is not registered with the California Secretary of State.
2 Furthermore, a web search of that name does not yield any results. The address is a mailbox
3 store called Encino Mailboxes. On information and belief, Encino Mailboxes will not provide
4 any information regarding its customers – even confirming that a certain box belongs to an
5 identified person or entity. On information and belief, there is no such entity called Aromats
6 Callprovision and that name was used instead of the real sender's name for the specific purpose
7 of misrepresenting the identity of the spam's true sender.

8 44. In many instances, there is no entity identified as the sender (real or fake) in the spams'
9 bodies.

10 45. Even if a spam purports to identify the sender in the body, using that information alone as
11 described in *Rosolowski*, an ordinary consumer can still never be sure that the information is
12 true, because spammers can and often do make false claims. For example, a "phishing" spam
13 might appear to come from Bank of America, even including BofA's logo and address in the
14 body of the spam, although the spam was not in fact sent from BofA. *See e.g.* Federal Trade
15 Commission, *Phishing*, <https://www.consumer.ftc.gov/articles/0003-phishing>. As another
16 example, in 2017 the Federal Trade Commission sued Daniel Croft for unlawful spamming.
17 Press Release, FTC Halts Imposter Scheme that Falsely Claimed Connection to the Agency
18 (Apr. 11, 2017), available at [https://www.ftc.gov/news-events/press-releases/2017/04/ftc-halts-](https://www.ftc.gov/news-events/press-releases/2017/04/ftc-halts-imposter-scheme-falsely-claimed-connection-agency)
19 [imposter-scheme-falsely-claimed-connection-agency](https://www.ftc.gov/news-events/press-releases/2017/04/ftc-halts-imposter-scheme-falsely-claimed-connection-agency). Among other false and misleading
20 representations, the body of the spams led consumers to believe that certain other parties had
21 been shut down by the FTC for putting spyware on their computers, that Croft was affiliated with
22 the FTC, and that the FTC had appointed Croft to contact consumers to inform them of the
23 lawsuit and to remove the spyware from their computers. *FTC v. Daniel L. Croft*, No. 9:17-cv-
24 80425 (S.D. Fl. filed Apr. 3, 2017), complaint at ¶¶ 22-28 (Docket #1). *Rosolowski* cannot stand
25 for the assumption that whatever appears on the face of a spam must be true. *See e.g.* Cal.
26 Business & Professions Code § 17529.1(i) ("Many spammers have become so adept at masking
27 their tracks that they are rarely found") and (j) ("actual spammers can be difficult to track down
28 due to some return addresses that show up on the display as 'unknown' and many others being
29 obvious fakes"). As shown by the above examples, an ordinary consumer can never ascertain
30 the true identity of the sender of a spam simply by looking at the body of the email, so
31 *Rosolowski* is inapplicable.

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

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

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

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

11 49. Most of the spams were sent from domain names that were proxy-registered when they
12 were sent. All of the others were sent from domain names registered to nonexistent companies
13 using mailboxes at stores such as the UPS Store.

14 50. Thus, for all of the spams at issue, Plaintiffs could not identify LEADPOINT’s Marketing
15 Partner who actually sent the spams by querying the Whois database or any other public
16 database.

17 **D. Spams With False and Misrepresented Subject Lines Violate Cal. Business &**
18 **Professions Code § 17529.5(a)(2)**

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

21 52. The Subject Line is part of email headers.⁷

22 ⁷ The Internet Engineering Task Force’s RFC 5322 – which essentially defines how email works
23 – includes Subject Lines as part of email headers at ¶ 3.6. Network Working Group, *RFC 5322*
24 (Oct. 2008), <https://tools.ietf.org/html/rfc5322>. So does Wikipedia, LifeWire.com (a website
25 about technology), IBM, WhatIsMyIPAddress.com, and many other sources. Congress may be
26 one of the few, if not the only, entity that believes that Subject Lines are not part of email
27 headers. (See 15 U.S.C. § 7702(8), defining “header information” as “the source, destination,
28 and routing information attached to an electronic mail message, including the originating domain
29 name and originating electronic mail address, and any other information that appears in the line
30 identifying, or purporting to identify, a person initiating the message.”) But California is not
31 bound by federal definitions. In fact, in *Kleffman v. Vonage Holdings Inc.*, the California
Supreme Court acknowledged the existence of the federal definition, and then immediately
stated that “A similar definition was proposed, *but not adopted*, during the legislative process
that culminated in section 17529.5(a)(2)’s enactment.” 49 Cal. 4th 334, 340 n.5 (2010)
(emphasis added). Thus, it is not as though the California Legislature were unaware of the
question of Subject Lines, for *Kleffman* expressly states that the Legislature rejected a definition

1 53. Many of the spams that Plaintiffs received contain Subject Lines with falsified and/or
2 misrepresented information. Plaintiffs allege that these Subject Lines are *absolutely* false and/or
3 misrepresented and violate Section 17529.5(a)(2), as opposed to misleading *relative* to the
4 contents/body of the spams, which would be a violation of Section 17529.5(a)(3).

5 54. The Subject Lines include:

- 6 • “notification about your interest rate”
- 7 • “your pending approval”

8 These Subject Line falsely infer a preexisting business relationship that does not in fact exist, for
9 the purpose of inducing the recipient into believing that the email is from an entity with whom
10 the recipient has done business, which is designed to lure the recipient into clicking and opening
11 the spam, and ultimately, sending money to LEADPOINT.

12 **E. LEADPOINT is Strictly Liable for Advertising in Spams Sent By its Marketing**
13 **Partners; LEADPOINT’s Marketing Partners are Also Liable on the Basis of Civil**
14 **Conspiracy**

15 55. LEADPOINT is strictly liable for advertising in the spams at issue even if third parties hit
16 the Send button. Cal. Bus. & Prof. Code § 17529(j), (k); *Hypertouch Inc. v. ValueClick Inc. et al*
17 192 Cal. App. 4th 805, 820-21 (2d Dist. 2011). Of course, LEADPOINT’s Marketing Partners
18 are also liable for conspiring with LEADPOINT to advertise in unlawful spams.

19 56. Plaintiffs are informed and believe and thereon allege that no one forced LEADPOINT to
20 outsource any of its advertising to third party spam networks and spammers, but LEADPOINT
21 chose to contract with and partner with them (the Marketing Partners), including but not limited
22 to the other named Defendants, to advertise its websites for the purpose of selling its products
23 and services for a profit.

24 57. Plaintiffs are informed and believe and thereon allege that LEADPOINT and its
25 Marketing Partners agreed to share the benefits and the risks of the marketing venture.

26 58. Plaintiffs are informed and believe and thereon allege that LEADPOINT and its
27 Marketing Partners formed a conspiracy (or conspiracies) to advertise LEADPOINT’s websites
28 and products, by virtue of signing the Marketing Contracts. Defendants operated the conspiracy
29 by sending and advertising in spams pursuant to the Marketing Contracts. Defendants

30 similar to the federal definition. And by rejecting that definition, the California Legislature
31 demonstrated its knowledge and understanding that Subject Lines are in fact part of email
headers. Every spammer and court that cites *Kleffman* (and its progeny) for the proposition that
Subject Lines are not part of email headers is incorrect.

1 committed wrongful acts pursuant to the conspiracy by advertising in unlawful spams, and
2 Plaintiffs were damaged by receiving those unlawful spams.

3 59. Plaintiffs are informed and believe and thereon allege that LEADPOINT may have
4 provided some of the content (i.e. From Names and Subject Lines) to its Marketing Partners, and
5 LEADPOINT and its Marketing Partners explicitly or tacitly agreed to use such content to send
6 and advertise in unlawful spams, and LEADPOINT's Marketing Partners directed themselves
7 towards those wrongful goals by using that content in the spams that were sent. But, to the
8 extent that LEADPOINT's Marketing Partners may have created certain false and
9 misrepresented elements of the spams (e.g. putting generic text in the From Name field and
10 including false and misrepresented Subject Lines), LEADPOINT's Marketing Partners must be
11 held liable for violations of Section 17529.5 because such wrongful acts were committed in
12 accordance with the general conspiracy to advertise LEADPOINT's websites and the Marketing
13 Partners' services.

14 60. To the extent that some of the Marketing Partners (e.g. the spam networks) did not
15 actually send the spams, and their domain names appear in the redirect links, they are still liable
16 for conspiring with LEADPOINT to advertise its products. But for these Marketing Partners'
17 actions, the spams would not have happened because these Marketing Partners provided codes
18 and links for other Marketing Partners to use to effectuate the sending of the spams and to
19 ultimately enable the recipients to buy LEADPOINT's products.

20 **F. Some of LEADPOINT's Marketing Partners Also Advertised in the Spams, Making**
21 **them Directly Liable Under the Statute**

22 61. Plaintiffs allege that LEADPOINT's Marketing Partners both sent *and* advertised in the
23 spams at issue. Each spam contains domain names owned and controlled by whatever Marketing
24 Partner sent or was responsible for sending any particular spam. Because the Marketing
25 Partners' domain names appear in the headers and source code of the spams, the Marketing
26 Partners are advertising in the spams. Plaintiffs are informed and believe and thereon allege that
27 the Marketing Partners did this, in part, to advertise their own services as email marketers.

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

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

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

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

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

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

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

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

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

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

27 70. Moreover, Plaintiffs are informed and believe and thereon allege that Defendants
28 intended to deceive recipients of their spam messages through the use of generic/misrepresented
29 information in From Names, falsely-registered domain names used to send the spams, and
30 false/misrepresented Subject Lines, as described herein.

31

1 71. Subject Lines and From Names do not write themselves. Domain names do not register
2 themselves. The false and misrepresented information contained in and accompanying the email
3 headers are not "clerical errors." Plaintiffs are informed and believe and thereon allege that
4 Defendants went to great lengths to create falsified and misrepresented information contained in
5 and accompanying the email headers in order to deceive recipients, Internet Service Providers,
6 and spam filters.

7 72. Plaintiffs are informed and believe and thereon allege that Defendants intended to profit,
8 actually profited, and continue to profit, and were unjustly enriched by, their wrongful conduct
9 as described herein.

10
11 **FIRST CAUSE OF ACTION**

12 **[Violations of California Restrictions on Unsolicited Commercial Email,**
13 **California Business & Professions Code § 17529.5]**
14 **(Against All Defendants)**

15 73. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

16 74. Plaintiffs received all of the spams within one year prior to filing the Complaint.

17 75. Defendants advertised in at least 103 unsolicited commercial email advertisements that
18 Plaintiffs received at their California electronic mail addresses that had materially falsified
19 and/or misrepresented information contained in or accompanying the email headers, in violation
20 of Section 17529.5. The unlawful elements of these spams represent willful acts of falsity and
21 deception, rather than clerical errors.

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

24 77. Defendants have not established and implemented, with due care, practices and
25 procedures to effectively prevent advertising in unlawful spams that violate Section 17529.5 that
26 would entitle them to a reduction in statutory damages.

27 78. Plaintiffs seek reimbursement of attorneys' fees and costs as authorized by Section
28 17529.5(b)(1)(C).

29 79. The attorneys' fees provision for a prevailing spam recipient is typical of consumer
30 protection statutes and supported by Cal. Code of Civil Procedure § 1021.5. By prosecuting this
31 action, Plaintiffs expect to enforce an important right affecting the public interest and thereby

1 confer a significant benefit on the general public or a large class of persons. The necessity and
2 financial burden of private enforcement is such as to make the award appropriate, and the
3 attorneys' fees should not, in the interest of justice, be paid out of the recovery of damages.
4

5 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set forth.
6

7 **PRAYER FOR RELIEF**

8 **(Against All Defendants)**

- 9 A. An Order from this Court declaring that Defendants violated California Business &
10 Professions Code § 17529.5 by advertising in unlawful spams.
11 B. Liquidated damages against Defendants in the amount of \$1,000 for each of at least 103
12 unlawful spams, as authorized by Section 17529.5(b)(1)(B)(ii), for a total of at least
13 \$103,000, as follows:

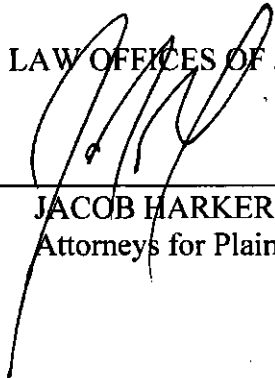
14

PLAINTIFF	DAMAGES SOUGHT	PLAINTIFF	DAMAGES SOUGHT
BROWN	\$22,000	COLE	\$11,000
DUNNING	\$11,000	GRANT	\$14,000
HELLER	\$2,000	HILLIARD	\$20,000
HOLDEN	\$4,000	TAYLOR	\$7,000
WELLS	\$12,000	TOTAL	\$103,000

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- 20 C. Liquidated damages against LEADPOINT, in the amount of \$1,000 for each of the 103
21 unlawful spams (\$103,000) that it advertised in that Plaintiffs received, according to
22 proof.
23 D. Liquidated damages against each DOE 1-100 (when their true names are learned and they
24 are added to the Action), jointly and severally with LEADPOINT, in the amount of
25 \$1,000 for each of the unlawful spams they advertised in and/or conspired to advertise in
26 that Plaintiffs received, according to proof.
27 E. Attorneys' fees as authorized by Section 17529.5(b)(1)(C) and Cal. Code of Civil
28 Procedure § 1021.5 for violations of Section 17529.5.
29 F. Costs of suit.
30 G. Such other and further relief as the Court deems proper.
31

THE LAW OFFICES OF JACOB HARKER



Date: July 5, 2019

BY: _____

JACOB HARKER
Attorneys for Plaintiffs

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