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ALAMEDA COUNTY

JUL 17 2017

CLERK OF THE SUPERIOR COURT
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15 Attorneys for Plaintiffs

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

17 **COUNTY OF ALAMEDA (UNLIMITED JURISDICTION)**

18 DAVID BOMBERGER, an individual;
19 MARK DAVIS, an individual;
20 BETTY DUNCAN, an individual;
21 AMBER FOWLER, an individual;
22 JAYSON GREENBERG, an individual;
23 TIMOTHY MYERS, an individual;
24 CHRISTINE PEDONE, an individual;
25 JERRY PHAM, an individual;
26 OGYEN RANGJUNG, an individual;
27 CARMEN SORIANO, an individual;
28 GAIL TAYLOR, an individual;
29 MARY JOYCE VALLARTA, an individual;
30 and MOLLY VONGCHANH, an individual;

31 Plaintiffs,

v.

ASIA MARITUS LIMITED, a Marshall
Islands limited company;
ADREACTION, a business entity of unknown
organization;
NORTH ISLAND MARKETING CORP., a
British Columbia, Canada corporation;

) Case No.: **RG17867846**

) **COMPLAINT FOR DAMAGES**

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

1 BURKE OLIVER CONCEPTS INC., a)
 California corporation;)
 2 CHARTERCAST.COM, a business entity of)
 3 unknown organization;)
 4 GLOBAL LEADS FOUNDATION, a business)
 entity of unknown organization;)
 5 INTERNET RETAIL BILLING INC., a)
 (revoked) Nevada corporation;)
 6 LUNA MEDIA GROUP, a business entity of)
 7 unknown organization;)
 8 SAUPHTWARE INC., a Nevada corporation;)
 and DOES 1-1,000;)
 9)
 10 Defendants.)

11 COME NOW PLAINTIFFS DAVID BOMBERGER *et al* and file this Complaint for one cause
 12 of action against Defendants ASIA MARITUS LIMITED *et al* and allege as follows:
 13

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

15 1. Plaintiffs DAVID BOMBERGER *et al* bring this Action against professional spammers
 16 ASIA MARITUS LIMITED doing business as “Qpid Network” (“QPID”) and its third party
 17 advertising networks and affiliates (aka “publishers”), for advertising in/sending at least 1,154
 18 unlawful Unsolicited Commercial Emails (“spams”) to Plaintiffs. A representative sample
 19 appears on the next two pages.

20 2. No Plaintiff gave direct consent to receive commercial email advertisements from, or had
 21 a preexisting or current business relationship with, QPID.

22 3. The spams all materially violated California Business & Professions Code § 17529.5
 23 (“Section 17529.5”) due to: a) materially false and deceptive information contained in or
 24 accompanying the email headers (i.e. From Name, Sender Email Address, and Subject Line),
 25 and/or b) Subject Lines misleading relative to the contents of the emails.

26 4. QPID is strictly liable for advertising in spams sent by its third party marketing agents, as
 27 are the marketing agents themselves.

28 //
 29 //
 30 //
 31 //

1 [New SMS] You Got a Wink from Katya (near Krasnodar, Russia)

2
3 **Subject:** [New SMS] You Got a Wink from Katya (near Krasnodar, Russia)
4 **From:** "Katya" <shade.ruda1gmco24078@benParROdXADD.W57a6-3A9c.iLTiuT.us>
5 **Date:** 10/13/2016 5:05 AM
6 **To:** jasgreen81@gmail.com

7 **[New SMS] You Got a Wink from Katya (near Krasnodar, Russia)**



8 **RussianBeautyOnline.com**



9
10
11
12
13
14
15
16
17
18
19 **Hello,**

20
21 [Check out](#) the profiles of over 30,000 Russian babes and connect on [RussianBeautyOnline.com](#). Make these
22 Russian girls fall for your charm. It's fun, easy, and privacy guaranteed! In one second, you will have complete
23 access to thousands of verified profiles! Just ignite your passion here...

24
25
26
27
28
29 1 of 2

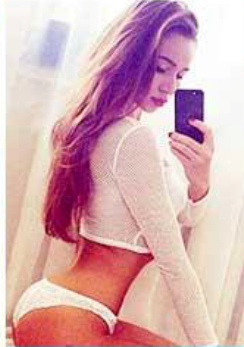
1/5/2017 8:35 PM

[New SMS] You Got a Wink from Katya (near Krasnodar, Russia)

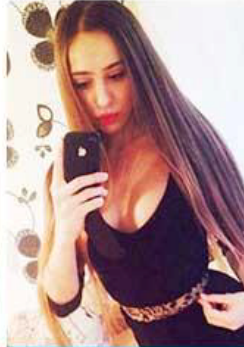
Go Find My Love



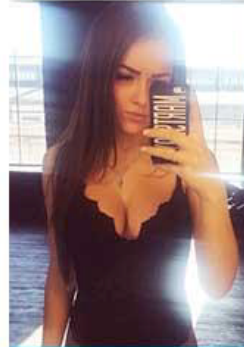
Tori



July



Leyla



Maria

Become a Member
and START COMMUNICATING



Browse Profiles

To unsubscribe from all of our offers, [click here](#).
Or write: IRB, Inc., 2756 N Green Valley Pkwy #830, Henderson, NV 89014

2 of 2

1/5/2017 8:35 PM

1 5. Spam recipients are not required to allege or prove reliance or actual damages to have
2 standing. *See* Bus. & Prof. Code § 17529.5(b)(1)(A)(iii). Nevertheless, Plaintiffs did suffer
3 damages by receiving the spams. *See, e.g.*, Bus. & Prof. Code § 17529(d), (e), (g), (h).
4 However, Plaintiffs elect to recover statutory damages only and forego recovery of any actual
5 damages. *See* Bus. & Prof. Code § 17529.5(b)(1)(B).

6 6. This Court should award liquidated damages of \$1,000 per email as provided by
7 Section 17529.5(b)(1)(B)(ii), and not consider any reduction in damages, because QPID and its
8 third party marketing agents failed to implement reasonably effective systems to prevent
9 advertising in unlawful spams. The unlawful elements of these spams represent willful acts of
10 falsity and deception, rather than clerical errors.

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

15 **II. PARTIES**

16 **A. Plaintiffs**

17 8. DAVID BOMBERGER ("BOMBERGER") was domiciled in and a citizen of the State of
18 California when he received the spams at issue. The spams at issue were sent to his email
19 address maximadave2@yahoo.com that he ordinarily accesses from California.
20

21 9. MARK DAVIS ("DAVIS") was domiciled in and a citizen of the State of California
22 when he received the spams at issue. The spams at issue were sent to his email address
23 mark.a.davis.1994@gmail.com that he ordinarily accesses from California.

24 10. BETTY DUNCAN ("DUNCAN") 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 her email
26 address betty25boop2000@yahoo.com that she ordinarily accesses from California.

27 11. AMBER FOWLER ("FOWLER") was domiciled in and a citizen of the State of
28 California when she received the spams at issue. The spams at issue were sent to her email
29 address afowler1183@yahoo.com that she ordinarily accesses from California.
30
31

1 12. JAYSON GREENBERG (“GREENBERG”) was domiciled in and a citizen of the State
2 of California when he received the spams at issue. The spams at issue were sent to his email
3 address jasgreen81@gmail.com that he ordinarily accesses from California.

4 13. TIMOTHY MYERS (“MYERS”) 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 his email
6 address timotheus8383@gmail.com that he ordinarily accesses from California.

7 14. CHRISTINE PEDONE (“PEDONE”) was domiciled in and a citizen of the State of
8 California when she received the spams at issue. The spams at issue were sent to her email
9 address christinepedone33@yahoo.com that she ordinarily accesses from California.

10 15. JERRY PHAM (“PHAM”) was domiciled in and a citizen of the State of California when
11 he received the spams at issue. The spams at issue were sent to his email address
12 jerry_oaktown@yahoo.com that he ordinarily accesses from California.

13 16. OGYEN RANGJUNG (“RANGJUNG”) was domiciled in and a citizen of the State of
14 California when he received the spams at issue. The spams at issue were sent to his email
15 address ronjoe37@yahoo.com that he ordinarily accesses from California.

16 17. CARMEN SORIANO (“SORIANO”) was domiciled in and a citizen of the State of
17 California when she received the spams at issue. The spams at issue were sent to her email
18 address livewpeace@yahoo.com that she ordinarily accesses from California.

19 18. GAIL TAYLOR (“TAYLOR”) was domiciled in and a citizen of the State of California
20 when she received the spams at issue. The spams at issue were sent to her email address
21 cgailb1@gmail.com that she ordinarily accesses from California.

22 19. MARY JOYCE VALLARTA (“VALLARTA”) was domiciled in and a citizen of the
23 State of California when she received the spams at issue. The spams at issue were sent to her
24 email address fernjoy@yahoo.com that she ordinarily accesses from California.

25 20. MOLLY VONGCHANH (“VONGCHANH”) was domiciled in and a citizen of the State
26 of California when she received the spams at issue. The spams at issue were sent to her email
27 addresses msouvan@yahoo.com and mvong44@gmail.com that she ordinarily accesses from
28 California.

29 21. Plaintiffs’ joinder in this Action is proper pursuant to Code of Civil Procedure § 378
30 because Plaintiffs seek relief based on the same series of transactions or occurrences: all received
31 similar spams in the same general time period advertising QPID’s websites, and all of those

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

8 **B. Defendants**

9 ***1. Asia Maritus Limited***

10 22. Plaintiffs are informed and believe and thereon allege that Defendant ASIA MARITUS
11 LIMITED dba “Qpid Network” (“QPID”) is now, and was at all relevant times, a Marshall
12 Islands limited company with a primary place of business in Hong Kong, China. Plaintiffs are
13 informed and believe and thereon allege that QPID advertised in all of the spams at issue in this
14 lawsuit using various websites, including but not limited to adoreasia.com, asiaeurodate.com,
15 asianladiesonline.com, asianwomanonline.com, chinese womendate.com, daterussianguirl.com,
16 exploreasianguirl.com, kissasianbeauties.com, latinwomendate.com, meetasianbeauty.com,
17 meetrussianbeauty.com, qpidaffiliate.com, russianbeautyonline.com, russianladydate.com,
18 russiawomenonline.com, ukrainebrides4you.com. Plaintiffs are informed and believe and
19 thereon allege that QPID is responsible for and liable for advertising in all of the spams at issue
20 in this Action.

21 ***2. Advertising Network and Publisher Defendants***

22 23. Plaintiffs are informed and believe and thereon allege that Defendant ADREACTION is
23 now, and was at all relevant times, a business entity of unknown formation with a principal place
24 of business in Dubai, United Arab Emirates. Plaintiffs are informed and believe and thereon
25 allege that ADREACTION sent at least 514 of the spams at issue in this Action using at least 98
26 different domain names: akykoowh.com, asulrack.com, beksoorgy.com, beneficzaait.com,
27 boardisu.com, bugneenge.com, cagedudse.com, cleotidxzz.com, cuwhoaghu.com, disgrung.com,
28 eenoagho.com, eertoarg.com, eeshalteet.com, egnempiz.com, emurseng.com, etsyvoogn.com,
29 fethiguts.com, foptansip.com, fostitch.com, gefishoa.com, glaltuck.com, glaptughi.com,
30 grignargus.com, groodeem.com, grughoan.com, gurdyfte.com, hecmoams.com, hysoansy.com,
31 impumpem.com, iropsamtov.com, itholsygho.com, izeitseekez.com, jardoats.com,

1 karsyreepa.com, ketchoah.com, lecylltoo.com, leftacmoa.com, literacted.com, mangimsi.com,
2 nangilri.com, oagruthy.com, oagruthy.com, oangyshe.com, oastootsej.com, oathyckoal.com,
3 oazalroom.com, ohokogri.com, ohugnygic.com, onsotsos.com, oocmodsi.com, oodroaks.com,
4 ookreewh.com, ookroarga.com, oomargop.com, oomsoock.com, ooroalogh.com, oossordu.com,
5 pensoargom.com, phoonigna.com, phuteeck.com, psejygheer.com, psekrekra.com,
6 psyghorse.com, pteregoal.com, roaftuftyh.com, sooghuloo.com, steegnee.com, steetchi.com,
7 styrtirsu.com, stysteghyl.com, theeglee.com, theftaghaw.com, thijeezool.com, toaltissof.com,
8 ukreshyrt.com, ulrareetsu.com, ulsudroack.com, urgoardyms.com, uwhumpyr.com,
9 votsoasto.com, wilmative.com, xidryrgers.com, xoackedyt.com, xoassympee.com,
10 yboardsam.com, yckootch.com, yckysoftov.com, ydsassee.com, yghathoodr.com, yhocmagh.com,
11 yjooghock.com, ykinsempa.com, ympoaftow.com, yneetsewhe.com, yreephoa.com,
12 ytsoamub.com, yzesteghy.com, zitsydse.com.

13 24. Plaintiffs are informed and believe and thereon allege that Defendant NORTH ISLAND
14 MARKETING CORP (“NORTH ISLAND”) is now, and was at all relevant times, a British
15 Columbia, Canada corporation with a principal place of business in Victoria, British Columbia,
16 Canada. Plaintiffs are informed and believe and thereon allege that ADREACTION and
17 NORTH ISLAND MARKETING CORP. are related, although they do not know the nature of
18 the relationship, and hereafter refer to them collectively as “ADREACTION.”

19 25. Plaintiffs are informed and believe and thereon allege that Defendant BURKE
20 OLIVER CONCEPTS INC. dba “Concise Media Group” (“CONCISE”) is now, and was at all
21 relevant times, a California corporation with a principal place of business in Laguna Niguel,
22 California. Plaintiffs are informed and believe and thereon allege that CONCISE assisted in
23 sending, conspired to send, and/or contracted with other Defendants to send at least 254 of the
24 spams at issue in this Action.

25 26. Plaintiffs are informed and believe and thereon allege that Defendant
26 CHARTERCAST.COM (“CHARTERCAST”) is now, and was at all relevant times, a business
27 entity of unknown organization with an unknown principal place of business. Plaintiffs are
28 informed and believe and thereon allege that CHARTERCAST assisted in sending, conspired to
29 send, and/or contracted with other Defendants to send at least 23 of the spams at issue in this
30 Action.

1 27. Plaintiffs are informed and believe and thereon allege that Defendant GLOBAL LEADS
2 FOUNDATION (“GLOBAL”) is now, and was at all relevant times, a business entity of
3 unknown organization with a principal place of business in Panama City, Panama. Plaintiffs are
4 informed and believe and thereon allege that GLOBAL sent at least 31 of the spams at issue in
5 this Action using at least 21 different domain names: acmilsys.com, akardeeb.com,
6 eedsemsa.com, eefoaxoa.com, eezickoa.com, eglooshe.com, egupunsu.com, ewoompyt.com,
7 fyceetha.com, goofymsi.com, gritchax.com, oacoogha.com, oopoacmi.com, psyrtify.com,
8 ptawughe.com, ptypseed.com, roacmurg.com, thoassys.com, wajoaxyz.com, xoadregh.com,
9 xoadregh.com.

10 28. Plaintiffs are informed and believe and thereon allege that Defendant INTERNET
11 RETAIL BILLING INC. (“IRB”) is now, and was at all relevant times, a Nevada corporation
12 whose status was revoked in 2012 but who continued to operate anyway, claiming its principal
13 place of business to be a box at a branch of The UPS Store in Henderson, Nevada. Plaintiffs are
14 informed and believe and thereon allege that IRB sent at least 404 of the spams at issue in this
15 Action using at least 404 different domain names (although many of them appear to have been
16 forged): abyiza.top, aermos.men, aeuywt.men, akbeuh.men, amurue.top, aoepsy.men, arayo.top,
17 aseyot.top, athopi.top, aunray.top, aveghs.xyz, awgaj.top, bahaay.us, beobu.men, bgeaos.men,
18 bootan.top, boqsu.top, bqgjny.us, bubwi.top, buwto.top, bwuuye.top, caybi.top, cekki.top,
19 cetfe.top, copmo.top, corwu.top, coybo.top, cuvwu.men, dakem.top, dakoas.top, daylu.top,
20 demiyepi.top, doiumt.men, douksu.top, edaqu.top, efika.top, efmeb.top, efune.top, egexe.top,
21 egiqu.top, egude.top, eiskap.top, ekbuh.top, eknob.top, ekucould.men, elymsu.us, emeyod.top,
22 emisa.top, enami.top, enewi.top, eowtek.top, epayi.top, epayuy.top, eqipi.top, eqoqe.top,
23 ereke.top, erespe.us, erine.top, erine.top, erine.top, esayo.top, esewu.top, euetwh.men, evemi.top,
24 evohe.top, evowug.us, ewawe.top, ewomve.us, ewuji.top, exupa.top, eyful.top, eyketu.top,
25 eyogo.top, eyosoz.top, fabiki.top, fadeuk.top, fagava.us, faxe.top, faxva.top, fefgo.top, fefgo.top,
26 fichu.men, fifqi.top, fitwe.top, fohwa.top, fueyir.top, fukopi.top, gabwu.top, gatikogu.top,
27 geixa.men, gemidi.us, gesiof.us, ggenei.top, ggtohy.men, gijhe.top, gimul.top, girya.top,
28 givelook.top, golyne.top, gvpsfh.us, hajug.top, hakme.to, heawke.us, hefya.top, hgiahi.top,
29 hivib.top, hliwut.top, hlybet.top, hocej.top, hojpe.top, hsiyla.men, huggu.men, huhssu.us,
30 ibelew.top, ibohve.us, icufa.top, idnoev.us, idodag.top, ifahev.top, ifeje.top, ifosho.top, ifraon.us,
31 igeva.top, igoso.top, ikeku.top, ikexe.top, ikiji.top, iknoy.top, iliwi.top, iliwi.top, iltedu.top,

1 iltiut.us, inaju.top, ipaefh.men, ipemo.top, irawa.top, iviceg.top, ivifu.top, ivusat.top, iwedta.top,
2 ixgwuu.top, izdeat.us, izevpo.us, japufa.top, jho.top, kavax.top, kavhi.top, kayxa.top,
3 kdfiua.men, kedi.top, keepbo.top, kessi.men, kevinwi.men, kifu.top, kucwu.top, kuexa.men,
4 kugode.men, kuwpe.top, l1threeafter.gdn, lacme.top, ldeavu.top, lediku.top, legso.top, leithu.top,
5 lezzoi.men, loqiq.top, lusabi.us, lutugh.xyz, lyleek.us, mahte.top, meethi.top, megawhen.top,
6 mekpu.top, mftplx.us, mocwi.top, mojte.top, mshaza.top, muokuzne.top, mutosi.men, nalom.top,
7 nalom.top, nalom.top, naosbo.xyz, neestomi.top, nehak.top, nehak.top, nesac.top, nicah.top,
8 nocic.top, noikuno.top, noley.top, nomyaa.men, novlo.top, novpa.top, novpa.top, nuduq.top,
9 nuduq.top, oashsh.top, odafo.top, odafo.top, odfox.top, odumi.top, ogomo.top, oheba.top,
10 ohtene.top, oishep.top, ojira.top, okali.top, okixa.top, okula.top, olcow.top, olecu.top, olomo.top,
11 olota.top, onixi.top, onuli.top, onyan.top, opsoh.top, orilog.top, ormab.top, oroji.top, oruxe.top,
12 osatni.top, oside.top, osuri.top, otherlike.top, othermonkey.top, ovuyi.top, owaba.top, owaba.top,
13 owaxo.top, oworu.top, owove.top, owyoth.us, oxako.top, oxdec.top, oyika.top, oyika.top,
14 oyocu.top, oyythi.top, payloo.top, pesig.top, peyuvo.us, pezien.us, pijvo.men, pobdo.top,
15 podgma.men, pokagi.top, potna.top, preegy.top, puivoh.top, pupif.top, puqsi.men, qepne.top,
16 qivfa.top, qobri.top, qobri.top, qogyo.top, qokwe.top, quneb.top, rabti.top, rabti.top, rabti.top,
17 ralge.top, ralpu.top, raowta.us, replu.top, rhgaoc.us, riagmu.us, robertgu.men, ropme.top,
18 rtdodoo.men, rudfo.top, ruhge.top, s3three.top, saaje.men, sagnea.men, salohh.men, seyib.top,
19 shewim.top, shezo.top, shitof.top, shugiero.top, simxa.top, sioide.top, sirop.top, sivaxe.top,
20 siyho.top, siyho.top, soardo.us, soefe.men, sovnu.men, sthnae.men, suruha.top, suuvas.top,
21 svedum.us, tawcu.top, tedxal.men, teguhy.men, tepyo.top, thakej.top, thesecold.top, thises.us,
22 thuwuk.top, tijosu.top, timeq3eother.us, tmaahe.men, tmeoho.men, tomse.men, tonla.top,
23 topgiftptknlk.us, totoye.us, toxhe.top, trieay.men, tuyu.top, ubluir.men, ubobogno.top,
24 ubyguudu.top, ucehe.top, ucuyu.top, udege.top, udegu.top, udpezy.top, udzila.top, ufugth.top,
25 uhegyt.men, uhpeb.top, ujiqi.top, ujiti.top, ukola.top, uluash.top, umeqe.top, umeqe.top,
26 umisi.top, umluh.top, umsiq.top, upiifw.men, upilow.top, upoqe.top, upoqu.top, upoqu.top,
27 upoqu.top, urofoz.men, urojo.top, urojo.top, userout.top, ushere.top, ushga.us, usiath.top,
28 uthemo.us, uthibe.top, utoji.top, uwaayg.men, uweko.top, uwisu.top, uwopel.top, uyimu.top,
29 uyimu.top, vaqos.top, vbiuth.top, vbliua.men, vekeal.us, vifu.top, vigoto.top, vimaya.top,
30 vokro.men, vowoop.us, vurne.top, vuwnu.top, vuwnu.top, w7five.top, wahayo.top, wasla.top,
31 wavvu.top, wejet.top, wejet.top, wiuyak.top, wivit.top, wiyoq.top, wotva.top, wunok.top,

1 wunok.top, xamwa.top, xaqre.top, xexyi.top, xifhi.top, xulus.top, yapero.top, yeqti.top,
2 yeyilo.top, yimow.top, yivpi.top, ymuuth.top, yoburo.top, yogwi.top, yshaip.top, yudane.us,
3 yunjo.to, yuoshkeh.top, yupib.top, yuyed.top, zasehu.us, zimiya.top, zuruth.top.

4 29. Plaintiffs are informed and believe and thereon allege that Defendant LUNA MEDIA
5 GROUP (“LUNA”) is now, and was at all relevant times, a business entity of unknown
6 organization with a principal place of business in Newport Beach, California. Plaintiffs are
7 informed and believe and thereon allege that LUNA sent at least 12 of the spams at issue in this
8 Action using at least nine different domain names: deucefayummedeacutes.com,
9 guideoakumhabithomes.com, hospatoppolisutenetworks.com, guideoakumhabithomes.com,
10 loftwareabiulowlies.com, guideoakumhabithomes.com, shkodancientresources.com,
11 upisthorpsleetblues.com, guideoakumhabithomes.com.

12 30. Plaintiffs are informed and believe and thereon allege that Defendant SAUPHTWARE
13 INC. dba “Panda Mail” (“PANDA”) is now, and was at all relevant times, a Nevada corporation
14 with a principal place of business in Las Vegas, Nevada. Plaintiffs are informed and believe and
15 thereon allege that PANDA sent at least 104 of the spams at issue in this Action using at least
16 one domain name: phgzandfgz.com.

17 **3. DOE Defendants**

18 31. Plaintiffs do not know the true names or legal capacities of the Defendants designated
19 herein as DOES 1 through 100, inclusive, and therefore sue said Defendants under the fictitious
20 name of “DOE.” Plaintiffs allege that certain Defendant(s) designated herein as DOES assisted
21 in sending, conspired to send, and/or contracted with other Defendants to send many of the
22 spams at issue using the following domain names: amazingbluesky.com (1 spam), atolnkrkr.com
23 (304 spams), bladder.com (74 spams), cascadettime.com (74 spams), cmgtrk.com (44 spams),
24 coolwaterbluemoment.com (5 spams), crazysnowman.com (1 spam), dayafterdaysong.com (2
25 spams), elephantinsider.com (7 spams), eleven1215.com (217 spams), interactivebookz.com (1
26 spam), nametrkk.com (51 spams), newlookmagazines.com (1 spam), reachcustomer2016.com
27 (49 spams), redhearts.xyz (1 spam), relaxationinterface.com (9 spams), smallfootcompany.net (1
28 spam), sweeterfaster.com (2 spams), trkcnv.com (168 spams).

29 32. Plaintiffs do not know the true names or legal capacities of the Defendants designated
30 herein as DOES 101 through 200, inclusive, and therefore sue said Defendants under the
31 fictitious name of “DOE.” Plaintiffs allege that certain Defendant(s) designated herein as DOES

1 proxy-registered the following domain names used to send 13 of the spams at issue in this Action
2 so as to prevent email recipients from discovering those DOE Defendants' true identities:
3 baronetwork.com (1 spam), comparetopnursingschool.com (1 spam), datingeventz.com (2
4 spams), glorydaystour.com (1 spam), goodhealths.xyz (1 spam), growinwin.com (1 spam),
5 mygreatday.org (1 spam), newpartynow.com (1 spam), offerscompanymedia.com (1 spam),
6 playitagainsportz.com (1 spam), spyvsspygame.com (1 spam), trytochanges.com (1 spam).

7 33. Plaintiffs do not know the true names or legal capacities of the Defendants designated
8 herein as DOES 201 through 300, inclusive, and therefore sue said Defendants under the
9 fictitious name of "DOE." Plaintiffs allege that certain Defendant(s) designated herein as DOES
10 sent three of the spams at issue in this Action using the following domain names:

11 uhivkymigq.com (1 spam), ultradnssl868.com (1 spam), ultradnssl132.com (1 spam).

12 34. Plaintiffs do not know the true names or legal capacities of the Defendants designated
13 herein as DOES 301 through 500, inclusive, and therefore sue said Defendants under the
14 fictitious name of "DOE." Plaintiffs allege that certain Defendant(s) designated herein as DOES
15 sent 74 of the spams at issue in the Action and forged the sending domain names to make it
16 appear as though the spams were sent from the following domain names, when in fact they were
17 not sent from such domain names: bcuhskazaqbnten.com, bduodftfspb.com,

18 bmsjjgcqtqjrfqwj.com, bvrzkdtagoav.com, bwqmtvdgzkv.com, bzrtzhqsji.com,
19 deezdekijamwav.com, dlqhbzmtrb.com, dmmmwunzdbwos.com, dsoqpsmojpkiih.com,
20 dtbbonszreyfvkhf.com, dxdzhhrknn.com, eonwizepnybugvu.com, erqgvugktle.com,
21 exugyylsvwgptk.com, fbpltwqaqqdg.com, fjpvafovzvwkl.com, fkphyvlvulhlzy.com,
22 fkzsbqkeycjck.com, flmjhnvpqe.com, fpskvaovgtvybia.com, fymumjamzrghent.com,
23 fzksgcydywmqbxby.com, gcjylkiqshxfsjgz.com, gqcdveaiym.com, hbgyptriqsze.com,
24 ieqrjhofthwswodr.com, igsjshshzwtju.com, iilslpqlqsys.com, ikokxscepln.com,
25 jsvdepszrmxtrhi.com, jyzxdzquhtku.com, kgxrhyuzjhzgms.com, kkfkznyzgc.com,
26 krazwkiczaetucy.com, kteimkyedywmztc.com, lgzilhesgonlo.com, lvzcewtkckbnt.com,
27 lzzzycobcpnqjbd.com, mkeeaudbhsq.com, nmmkyyktwyvqenzr.com, nraysxunkaceczjt.com,
28 nrgaurwacpconq.com, obftpetdiuczjt.com, rehepiumno.com, rgnsxqxfjatbv.com,
29 rttngemelmhmwqwq.com, sexvyahqslsps.com, shgptkmlesfueuse.com, sjmmfgycmml.com,
30 spsnxlwwyrbtpr.com, thzfdwdtngfhqc.com, tkqcurstswzwpqr.com, tswebcnirdvjn.com,
31 ttyxydsibxzoef.com, ubaqmurwwhfk.com, uggyuewfdvzks.com, uhivkymigq.com,

1 umsfctrahlbqy.com, urupekbelcfkarl.com, uxyrcghgty.com, wbydfkqdlbuyvk.com,
2 wirotohoooovbhem.com, xipncwmjlhww.com, xyinfcdwnnam.com, yaepobuaabiy.com,
3 yaetqhtsmi.com, yfglrotlnvjwlgsg.com, yhgkuvezfgc.com, yllwxraiyxdivoq.com,
4 yphlpgkldsah.com, zuignocxmyk.com, zusvlzgxmeazcvg.com, zwhtubhfnzneme.com.

5 35. Plaintiffs do not know the true names or legal capacities of the Defendants designated
6 herein as DOES 501 through 1,000, inclusive, and therefore sue said Defendants under the
7 fictitious name of "DOE." Plaintiffs allege that certain Defendant(s) designated herein as DOES
8 are somehow involved in the spams at issue.

9 36. 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 Plaintiffs complain. Plaintiffs are informed and believe and thereon allege 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, agent, affiliate, customer, participant, 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 37. 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 38. This Court has jurisdiction over the Action because all Plaintiffs are located in California,
29 there are several California Defendants, and the amount in controversy is more than \$25,000.
30
31

1 **B. Venue is Proper in Alameda County**

2 39. Venue is proper in Alameda County because Plaintiff DUNCAN received some of the
3 spams at issue in Alameda County, and a company can be sued where the cause of action arises.
4 *See* Code Civ. Proc. §§ 395(b), 395.5.

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

8 *Black Diamond Asphalt Inc. v. Superior Court of San Joaquin County*, 109 Cal. App. 4th 166,
9 172, 173 (3d Dist. 2003) (internal citations omitted) (emphasis added). Here, Defendants’
10 obligations arose in Alameda County, where DUNCAN received the spams.

11
12 **IV. MORE THAN 1,100 UNLAWFUL SPAMS**

13 40. Plaintiffs allege that Defendants engaged in tortious conduct: “wrongful act[s] other than
14 a breach of contract for which relief may be obtained in the form of damages or an injunction.”

15 *See* Merriam-Webster, www.merriam-webster.com/dictionary/tort (last viewed Nov. 5, 2013).

16 41. California’s False Advertising Law, Business & Professions Code § 17500

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

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

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

22 42. The emails at issue are “commercial email advertisements”¹ because they were initiated
23 for the purpose of advertising and promoting QPID’s products and services.

24 //
25 //
26 //
27 //
28 //
29 //

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

1 43. The emails are “unsolicited commercial email advertisements”² because no Plaintiff gave
2 “direct consent”³ to, or had a “preexisting or current business relationship”⁴ with QPID. Even if
3 Plaintiffs had opted in to receive emails from QPID’s marketing agents – which they deny – that
4 would not constitute *direct* consent to QPID, the advertiser in the spams. *See Balsam v. Trancos*
5 *Inc.*, 203 Cal. App. 4th 1083, 1099-1100 (1st Dist. 2012), *petition for review denied*, 2012 Cal.
6 LEXIS 4979 (Cal. May 23, 2012), *petition for certiori denied*, 2012 U.S. LEXIS 8423 (U.S. Oct.
7 29, 2012), *petition for rehearing denied*, 2013 U.S. LEXIS 243 (U.S. Jan. 7, 2013).

8 44. 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 45. Defendants advertised in, sent, and/or conspired to send at least 1,154 unlawful spams
11 that Plaintiffs received at their “California email addresses”⁵ as shown below:

12 //

13 //

14 //

15 //

16 //

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

23 ³ “‘Direct consent’ means that the recipient has expressly consented to receive e-mail
24 advertisements *from the advertiser*, either in response to a clear and conspicuous request for the
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
§ 17529.1(l).

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

PLAINTIFF	SPAMS RECEIVED	PLAINTIFF	SPAMS RECEIVED
BOMBERGER	71	PHAM	93
DAVIS	67	RANGJUNG	90
DUNCAN	9	SORIANO	123
FOWLER	53	TAYLOR	114
GREENBERG	206	VALLARTA	92
MYERS	24	VONGCHANH	177
PEDONE	35	TOTAL	1,154

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

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

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

48. 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.”

49. 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):

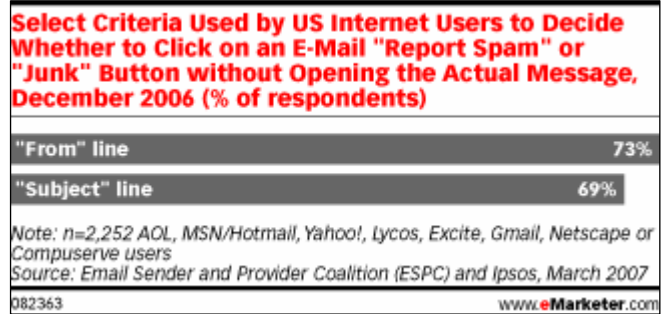
The “From:” field specifies the author(s) of the message, that is, the mailbox(es) of the person(s) or system(s) responsible for the writing of the message. . . . In all cases, the “From:” field SHOULD NOT contain any mailbox that does not belong to the author(s) of the message.

50. Plaintiffs do not insist on any *particular* label (e.g., “QPID,” “QPID NETWORK,” “ASIA MARITUS LTD.,” etc.) in the From Name field. Rather, Plaintiffs contend that the text, whatever it is, cannot misrepresent *who* the emails are from.

51. The From Name is important to an email user, because in almost all email programs, the inbox view only displays a list of emails, showing the From Name, Subject Line, and Send Date.

1 Therefore, even *if* the body of the email identifies the advertiser, the recipient will not know that
2 until s/he has already clicked to open the email.

3 52. Indeed, empirical evidence has
4 demonstrated that the From Name is the
5 *most* important factor email recipients use
6 to determine whether or not an email is
7 spam. See eMarketer, E-Mail Open Rates
8 Hinge on ‘Subject’ Line, *available at*



9 <http://www.emarketer.com/Article/E-Mail-Open-Rates-Hinge-on-Subject-Line/1005550> (Oct.
10 31, 2007). Thus, a From Name that misrepresents who a spam is from is *not* a mere technical
11 error; rather, it is a material misrepresentation of the most important part of the email header.

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

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

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

21 54. In *Balsam*, the unlawful spams were sent from generic From Names that did not *identify*
22 anyone. The trial court ruled, and the court of appeal affirmed in all respects, that generic From
23 Names violate the statute because they misrepresent *who* the emails are from:

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

28 203 Cal. App. 4th at 1088, 1090-91, 1093. More specifically, *Balsam* confirmed that generic
29 From Names that "do not exist or are otherwise misrepresented when they do not represent any
30 real company and cannot be readily traced back to the true owner/sender" violate the statute. *Id.*
31 at 1093. The Court affirmed the award of \$1,000 liquidated damages for the seven emails with

1 misrepresented information in the From Name field, even though most of the spams identified
2 the advertiser in the body. *Id.* at 1091, 1093. Therefore, truthful information in the body of a
3 spam does not cure misrepresented information contained in or accompanying the headers.

4 55. Almost all of the spams that Plaintiffs received, advertising QPID’s websites, show
5 women’s first names in the From Name field: “Adelina,” “Adelina,” “Anastasiya,” “Anna,”
6 “Helena,” “Inna,” “Irene,” “Karina,” “Katreeya,” “Kia,” “Kourtney,” “Laura,” “Lei,” “Natalia,”
7 “Olga,” “Raiya,” “Sonya,” “Sumiko,” “Tai,” “Tedy,” “Thuy,” “Wen,” “Xiaoling,” “Xiulan,”
8 “Yuke,” “Yumiko,” and dozens of others. Plaintiffs are informed and believe and thereon allege
9 that the women shown in the bodies of the spams are not named as such, and in fact no such
10 women sent the spams at all, and therefore these From Names misrepresent who the spams are
11 actually from.

12 56. For example, PEDONE received spams claiming to be from “Helena” and “Laura,” but
13 the same woman appeared in both spams. PEDONE also received spams claiming to be from
14 “Adelina” and “Adrianna,” but the same woman appeared in both spams.

15 57. A small number of the spams that Plaintiffs received, advertising QPID’s websites, show
16 generic text in the From Name field that misrepresents *who* the spams are from, e.g. “Asian-
17 Beauty,” “BabesfromRussia,” “FromRussianWomen,” and “Love.” These generic From Names
18 also misrepresent who the spams are actually from, and could just as easily refer to QPID’s
19 Russian/Asian/Latin dating website competitors.

20 58. All of these From Names, like those in *Balsam*, misrepresent *who* was advertising in the
21 spams, and therefore violate Section 17529.5(a)(2).

22 59. Plaintiffs are informed and believe and thereon allege that Defendants knowingly choose
23 to advertise using women’s names and generic From Names precisely so the recipients will *not*
24 know who the emails were really from when viewing the spams in the inbox view. This forces
25 recipients to open the emails to see if the emails might actually be from someone with whom the
26 recipient has had dealings, or if the emails are in fact, as is the case here, nothing but spams.

27 60. In *Rosolowski v. Guthy-Renker LLC*, the court permitted From Names that were not the
28 sender’s official corporate name as long as the identity of the sender was readily ascertainable in
29 the body. 230 Cal. App. 4th 1403, 1407, 1416 (2d Dist. 2014). However, the From Names in
30 that case (Proactiv and Wen Hair Care) were the advertiser’s fanciful trademarks and well-
31 known brands with their own websites. But here, unlike the spams in *Rosolowski*, the From

1 Names are false women’s names or generic; they are not well-known trademarks and/or brands
2 readily associated with Defendants. There is no way an ordinary consumer, looking at the emails
3 in his/her inbox, could readily associate them with Defendants.

4 61. Moreover, in most of the spams at issue, the sender is falsely identified in the body (e.g.
5 there is no such entity IRB Inc. in Nevada), or not identified in the body of the spams at all, so
6 *Balsam* would control, not *Rosolowski*.

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

9 62. Section 17529.5(a)(2) prohibits falsified, misrepresented, or forged information contained
10 in or accompanying in email headers.

11 63. Registration information for the domain names used to send spams is information
12 contained in or accompanying email headers.

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

17 65. Many of the spams that Plaintiffs received advertising Defendants were sent from domain
18 names that:

- 19 • Did not identify Defendants or the sender on their face, or
- 20 • Were “proxy” registered, or
- 21 • Were registered to nonexistent entities (corporations, LLC’s, individuals, etc.) so
22 as to not be readily traceable to the sender by querying the Whois database, or
- 23 • Did not even exist – the headers were forged to show these domain names – so
24 they were not readily traceable to the sender by querying the Whois database,

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

26 66. VONGCHANH received a spam advertising QPID that was sent from the domain name
27 datingeventz.com. That domain name was proxy-registered when the spam was sent. The
28 *Balsam* court held that sending a spam from a domain name that is proxy-registered is a
29 misrepresentation as to *who* the sender actually is, and violates Section 17529.5.

30 67. DAVIS received a spam advertising QPID that was sent from the domain name
31 elymsu.us. That domain name is registered to “Domain Holder,” which does not identify the

1 owner, particularly since the domain name's registered address is a box at a branch of The UPS
2 Store in Los Angeles, California and the address shown in the body of the spam is a box at a
3 branch of The UPS Store in Henderson, Nevada.

4 68. BOMBERGER received spams advertising QPID showing the domain names
5 nraysxunkaceczjt.com, jsvdepszrmxtrhi.com, rgnsxqxfjatbvx.com, and dozens of other in the
6 sending email addresses. But, these domain names do not really exist; the headers were forged
7 to show these domain names, and therefore BOMBERGER could not use the Whois database to
8 determine the identity of the sender(s).

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

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

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

16 71. The Subject Line is part of email headers.

17 72. Most of the spams that Plaintiffs received contain Subject Lines with falsified and/or
18 misrepresented information. Plaintiffs allege that these Subject Lines are *absolutely* false and/or
19 misrepresented and violate Section 17529.5(a)(2), as opposed to misleading *relative* to the
20 contents/body of the spams, which would be a violation of Section 17529.5(a)(3). *For example:*

21 73. The Subject Line “[New Message] You Received a Private SMS from Wen (from
22 China)” is false because even assuming that “Wen (from China)” exists, the recipient –
23 TAYLOR – received an *email*, not a SMS (short message service a/k/a “text message). The
24 Subject Line is materially false because it implies that there is a preexisting relationship between
25 “Wen (from China)” and TAYLOR such that “Wen (from China)” has TAYLOR’s cell phone
26 number and could send her a text message, and it is designed to trick TAYLOR into opening the
27 email based on that nonexistent connection.

28 74. The Subject Line “[ALERT] You Got a Glance from Yukiko (from Sapporo)” is false
29 because even assuming that “Yukiko (from Sapporo)” exists, *she* did not and could not have
30 glanced at the recipient – GREENBERG – because neither “Yukiko (from Sapporo)” nor QPID
31 sent the email, one of its QPID’s marketing agents did, so “Yukiko (from Sapporo)” does not
even know who GREENBERG is. The Subject Line is materially false because it implies that

1 GREENBERG is part of the same dating website as “Yukiko (from Sapporo)” such that she
2 could have sent him a “Glance,” and it is designed to trick GREENBERG into opening the email
3 based on that nonexistent connection.

4 75. The Subject Line “You have (3) New Messages” is false because the recipients –
5 VALLARTA and VONGCHANH – did not and could not have received messages from “Xin”
6 (as show in the From Name) because VALLARTA and VONGCHANH were not members of
7 the advertised website asianwomanonline.com. The Subject Line is materially false because it
8 claims that the emails are from websites of which VALLARTA and VONGCHANH are
9 members, and it is designed to trick them opening the email based on that nonexistent
10 connection.

11 76. The Subject Line “Hi Jerry, I’m in San Rafael” is false because – even if “Maeko” (as
12 shown in the From Name field) exists on the asianwomenonline.com website – on information
13 and belief, “Maeko” was not in San Rafael when PHAM received QPID spams with that Subject
14 Line. The Subject Line is materially false because by stating that “Maeko” is very close to
15 PHAM, it is designed to trick him into opening the email.

16 77. The Subject Line “Hey? It’s been a while” is false because it claims that there was a
17 previous interaction between the recipient – PHAM – and both “Emma” and “Anastasiya” (as
18 shown in the From Name field) when no such interactions took place. The Subject Line is
19 materially false because it is designed to trick PHAM into opening the email based on that
20 nonexistent previous interaction.

21 78. The Subject Line “Why Didn’t You Call Me Back?” is false because the purported sender
22 “Xin” never previously called SORIANO such that SORIANO *could* “call her back.” The
23 Subject Line is materially false because it is designed to trick SORIANO into opening the email
24 based on that nonexistent previous interaction.

25 **E. Spams With Subject Lines Misleading Relative to the Contents of the Spams Violate**
26 **Business & Professions Code § 17529.5(a)(3)**

27 79. Section 17529.5(a)(3) prohibits Subject Lines that are misleading relative to the contents
28 or subject matter of the emails.

29 80. Some of the spams that Plaintiffs received contain Subject Lines misleading relative to
30 the contents of subject matter of the emails, which violate Section 17529.5(a)(3). For example:

31 81. The Subject Lines “Message me quick” and “Hi Amber” in spams that FOWLER
received are materially misleading because they are vague and could apply to anything; they do

1 not even hint that the real subject matter of the spams is advertising a website for dating Asian
2 women.

3 82. The Subject Line “TITS (.)(!),” “Look at all these boobs!,” and “TITS
4 EVERYWHERE!” in spams that PEDONE and VONGCHANH received are materially
5 misleading because they are likely to mislead the recipient into believing that the contents and
6 true subject matter of the spams is pornography, when in fact the spams are advertising websites
7 where recipients can supposedly *actually meet and date* beautiful Russian and Latin women..

8 **F. QPID is Strictly Liable for Spams Sent By Its Marketing Agents**

9 83. Plaintiffs are informed and believe and thereon allege that QPID contracted with third
10 party advertising networks and affiliates, including but not limited to the other named
11 Defendants, to advertise their websites for the purpose of selling products and services for a
12 profit.

13 84. No one forced QPID to outsource any of its advertising to third party spam networks and
14 spammers.

15 85. Advertisers are liable for advertising in spams, even if third parties hit the Send button.

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

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

22 Bus. & Prof. Code § 17529(j)(k).

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

25 Bus. & Prof. Code § 17529.5 (emphasis added). Of course, FLUENT’s agents are also liable for
26 sending unlawful spams. *See Balsam*, generally.

27 86. In fact, in *Hypertouch Inc. v. ValueClick Inc. et al*, the court of appeal held that
28 advertisers are *strictly liable* for advertising in false and deceptive spams, even if the spams were
29 sent by third parties.

30 *[S]ection 17529.5* makes it unlawful for a person or entity “to advertise in a
31 commercial e-mail advertisement” that contains any of the deceptive statements
described in *subdivisions (a)(1)-(3)*. Thus, by its plain terms, the statute is not

1 limited to entities that actually send or initiate a deceptive commercial e-mail, but
2 applies more broadly to any entity that advertises in those e-mails.

3 Thus, like other California statutes prohibiting false or misleading business
4 practices, the statute makes an entity *strictly liable* for advertising in a
5 commercial e-mail that violates the substantive provisions described in section
6 17529.5, subdivision (a) *regardless of whether the entity knew that such e-mails
7 had been sent* or had any intent to deceive the recipient.

8 192 Cal. App. 4th 805, 820-21 (2d Dist. 2011) (emphasis added). The court did not find that this
9 was an arbitrary requirement; rather, the court identified sound policy reasons behind the
10 Legislature's decision to create a strict liability statute. *Id.* at 829.

11 87. Of course, QPID's marketing agents are fully liable for sending the unlawful spams too.
12 *See Balsam*, generally.

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

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

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

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

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

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

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

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

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

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

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

15 97. Moreover, Plaintiffs are informed and believe and thereon allege that Defendants
16 intended to deceive recipients of their spam messages through the use of falsified,
17 misrepresented, and/or misleading information in From Names, domain name registrations, and
18 Subject Lines, as described herein.

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

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

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1 **FIRST CAUSE OF ACTION**

2 **[Violations of California Restrictions on Unsolicited Commercial Email,**
3 **California Business & Professions Code § 17529.5]**
4 **(Against All Defendants)**

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

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

7 102. Defendants advertised in, sent, assisted others in sending, conspired to send, contracted
8 with others to send, and/or otherwise caused to be sent at least 1,154 unsolicited commercial
9 email advertisements to Plaintiffs' California electronic mail addresses that had materially
10 falsified and/or misrepresented information contained in or accompanying the email headers,
11 and/or contained Subject Lines that were misleading in relation to the bodies of the emails, in
12 violation of Section 17529.5. The unlawful elements of these spams represent willful acts of
13 falsity and deception, rather than clerical errors.

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

16 104. Defendants have not established and implemented, with due care, practices and
17 procedures to effectively prevent advertising in unlawful spams that violate Section 17529.5 that
18 would entitle them to a reduction in statutory damages.

19 105. Plaintiffs seek reimbursement of attorneys' fees and costs as authorized by Section
20 17529.5(b)(1)(C).

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

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

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1 **PRAYER FOR RELIEF**

2 **(Against All Defendants)**

- 3 A. An Order from this Court declaring that Defendants violated California Business &
4 Professions Code § 17529.5 by advertising in and sending unlawful spams.
- 5 B. Liquidated damages against Defendants in the amount of \$1,000 for each of at least 1,154
6 unlawful spams, as authorized by Section 17529.5(b)(1)(B)(ii), for a total of at least
7 \$1,154,000, as set forth below:

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PLAINTIFF	DAMAGES SOUGHT	PLAINTIFF	DAMAGES SOUGHT
BOMBERGER	\$71,000	PHAM	\$93,000
DAVIS	\$67,000	RANGJUNG	\$90,000
DUNCAN	\$9,000	SORIANO	\$123,000
FOWLER	\$53,000	TAYLOR	\$114,000
GREENBERG	\$206,000	VALLARTA	\$92,000
MYERS	\$24,000	VONGCHANH	\$177,000
PEDONE	\$35,000	TOTAL	\$1,154,000

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- 15 C. Liquidated damages against QPID in the amount of \$1,000 for each of the 1,154 unlawful
16 spams (\$1,154,000) that it advertised in, sent, assisted others in sending, conspired to
17 send, contracted with others to send, and/or otherwise caused to be sent to Plaintiffs,
18 according to proof.
- 19 D. Liquidated damages jointly and severally against ADREACTION, QPID, and all other
20 involved parties in the amount of \$1,000 for each of the 514 unlawful spams (\$514,000)
21 that they advertised in, sent, assisted others in sending, conspired to send, contracted with
22 others to send, and/or otherwise caused to be sent to Plaintiffs, according to proof.
- 23 E. Liquidated damages jointly and severally against CONCISE, QPID, and all other
24 involved parties in the amount of \$1,000 for each of the 254 unlawful spams (\$254,000)
25 that they advertised in, sent, assisted others in sending, conspired to send, contracted with
26 others to send, and/or otherwise caused to be sent to Plaintiffs, according to proof.
- 27 F. Liquidated damages jointly and severally against GLOBAL, QPID, and all other involved
28 parties in the amount of \$1,000 for each of the 31 unlawful spams (\$31,000) that they
29 advertised in, sent, assisted others in sending, conspired to send, contracted with others to
30 send, and/or otherwise caused to be sent to Plaintiffs, according to proof.

- 1 G. Liquidated damages jointly and severally against IRB, QPID, and all other involved
2 parties in the amount of \$1,000 for each of the 404 unlawful spams (\$404,000) that they
3 advertised in, sent, assisted others in sending, conspired to send, contracted with others to
4 send, and/or otherwise caused to be sent to Plaintiffs, according to proof.
- 5 H. Liquidated damages jointly and severally against LUNA, QPID, and all other involved
6 parties in the amount of \$1,000 for each of the 12 unlawful spams (\$12,000) that they
7 advertised in, sent, assisted others in sending, conspired to send, contracted with others to
8 send, and/or otherwise caused to be sent to Plaintiffs, according to proof.
- 9 I. Liquidated damages jointly and severally against PANDA, QPID, and all other involved
10 parties in the amount of \$1,000 for each of the 104 unlawful spams (\$104,000) that they
11 advertised in, sent, assisted others in sending, conspired to send, contracted with others to
12 send, and/or otherwise caused to be sent to Plaintiffs, according to proof.
- 13 J. Liquidated damages against each DOE 1-1,000 (when their true names are learned),
14 jointly and severally with QPID and the other involved Defendants in the amount of
15 \$1,000 for each of the unlawful spams that it advertised in, sent, assisted others in
16 sending, conspired to send, contracted with others to send, and/or otherwise caused to be
17 sent to Plaintiffs, according to proof.
- 18 K. Attorneys' fees as authorized by Section 17529.5(b)(1)(C) and Code of Civil Procedure
19 § 1021.5 for violations of Section 17529.5.
- 20 L. Costs of suit.
- 21 M. Such other and further relief as the Court deems proper.

22
23 THE LAW OFFICES OF DANIEL BALSAM

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25 Date: July 17, 2017

BY: /s/ Daniel L. Balsam

26 DANIEL BALSAM
27 Attorneys for Plaintiffs
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