

ENDORSED
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Superior Court of California
County of San Francisco

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15 Attorneys for Plaintiffs

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)

18 MARY O'SHEA, an individual;)
19 MARGIE BARR, an individual,)
20 DANIEL BARRETT, an individual;)
21 JASON BISHOP, an individual;)
22 MIRA BLANCHARD, an individual;)
23 JOHN BRENNAN, an individual;)
24 BRIAN GREGOR, an individual;)
25 ERIK HELLMAN, an individual;)
26 LINDA HERNANDEZ, an individual;)
27 DEREK HILL, an individual;)
28 CAROLE MEINER, an individual)
29 LUCI SEED, an individual; and)
30 TYLER ZAHN, an individual;)

31 Plaintiffs,

v.

REAL BRIGHT MEDIA INC., a California)
corporation; and)
DOES 1-500;)
Defendants.)

Case No.: **CGC-14-540862**

COMPLAINT FOR DAMAGES

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

1 COME NOW PLAINTIFFS MARY O'SHEA *et al* and file this Complaint for one cause of
2 action against Defendants REAL BRIGHT MEDIA INC. *et al* and allege as follows:

3
4 **I. INTRODUCTION AND SUMMARY OF THE COMPLAINT**

5 1. Plaintiffs bring this Action against professional spammers REAL BRIGHT MEDIA
6 INC. ("RBM") and its third party affiliates (aka "publishers"), for advertising in and sending at
7 least 671 unlawful spams to Plaintiffs. A representative sample (*Figure 1*) appears on the next
8 page.

9 2. No Plaintiff gave direct consent to, or had a preexisting or current business relationship
10 with, RBM.

11 3. The spams all violated California Business & Professions Code § 17529.5 ("Section
12 17529.5") because they contained: a) third parties' domain names without their permission; b)
13 materially misrepresented or falsified information contained in or accompanying the email
14 headers; and/or c) misleading Subject Lines. The unlawful elements of these spams represent
15 willful acts of falsity and deception, rather than clerical errors.

16 4. RBM is strictly liable for advertising in spams sent by its third party affiliates.

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

22 6. This Court should award liquidated damages of \$1,000 per email as provided by
23 Section 17529.5(b)(1)(B)(ii), and not consider any reduction in damages, because REAL
24 BRIGHT MEDIA INC. failed to implement reasonably effective systems designed to prevent the
25 sending of unlawful spam in violation of the statute.

26 7. This Court should award Plaintiffs their attorneys' fees pursuant to Section
27 17529.5(b)(1)(C). *See also* Code of Civil Procedure § 1021.5, providing for attorneys fees when
28 private parties bear the costs of litigation that confers a benefit on a large class of persons; here,
29 by reducing the amount of false and deceptive spam received by California residents.

30 //

31 //

Print

<https://us-mg6.mail.yahoo.com/neo/launch?rand=fsnfgas69bg5o#mail>

Subject: Re: Congratulations joe - \$7,500 Available For You!

From: Your Confirmation (ebay@reply1.ebay.com)

To: [REDACTED]@yahoo.com;

Date: Wednesday, December 11, 2013 3:49 PM

joe, Get up to \$5000.00 Right Now!



The advertisement features the Capitol Cash Loan logo at the top, which consists of a stylized 'C' icon and the text 'capitol CASH LOAN'. Below the logo, the main headline reads 'FAST ONLINE CASH LOANS \$250-\$7,500 WITH QUICK APPROVAL!'. To the left of a cartoon dollar character, there is a list of four benefits, each preceded by a checkmark icon: 'Fast Cash - Made Easy', 'Secure and Safe', 'Immediate Pre-Approval! From \$200 - \$7,500', and 'Bad Credit Accepted'. Below this list is a prominent yellow button with the text 'APPLY NOW!'. At the bottom left of the ad, there is a shield icon and the text 'Safe & Secure Personal Loans'.

The above offer was sent by Real Bright Media, LLC. If you would like to remove yourself from this list or update your email preferences, click [here](#).

2345 Mariposa St #2
San Francisco, CA 94110



A teal-colored rectangular box containing the text: 'Four Seasons Travels', 'To Manage Your Subscription, please click here' with a calendar icon, and 'or write us at: PO Box 85073 NUMB 56774 Richmond, VA 23285-5073 US'.

Figure 1

1 **II. PARTIES**

2 **A. Plaintiffs**

3 8. MARGIE BARR (“BARR”) was domiciled in and a citizen of the State of California,
4 when she received RBM’s spams at issue. The spams at issue were sent to BARR’s email
5 address(es) that she ordinarily accesses from computer(s) located in California.

6 9. DANIEL BARRETT (“BARRETT”) was domiciled in and a citizen of the State of
7 California, when he received RBM’s spams at issue. The spams at issue were sent to
8 BARRETT’s email address(es) that he ordinarily accesses from computer(s) located in
9 California.

10 10. JASON BISHOP (“BISHOP”) was domiciled in and a citizen of the State of California,
11 when he received RBM’s spams at issue. The spams at issue were sent to BISHOP’s email
12 address(es) that he ordinarily accesses from computer(s) located in California.

13 11. MIRA BLANCHARD (“BLANCHARD”) was domiciled in and a citizen of the State of
14 California, when she received RBM’s spams at issue. The spams at issue were sent to
15 BLANCHARD’s email address(es) that she ordinarily accesses from computer(s) located in
16 California.

17 12. JOHN BRENNAN (“BRENNAN”) was domiciled in and a citizen of the State of
18 California, when he received RBM’s spams at issue. The spams at issue were sent to
19 BRENNAN’s email address(es) that he ordinarily accesses from computer(s) located in
20 California.

21 13. BRIAN GREGOR (“GREGOR”) was domiciled in and a citizen of the State of
22 California, when he received RBM’s spams at issue. The spams at issue were sent to
23 GREGOR’s email address(es) that he ordinarily accesses from computer(s) located in California.

24 14. ERIK HELLMAN (“HELLMAN”) was domiciled in and a citizen of the State of
25 California, when he received RBM’s spams at issue. The spams at issue were sent to
26 HELLMAN’s email address(es) that he ordinarily accesses from computer(s) located in
27 California.

28 15. LINDA HERNANDEZ (“HERNANDEZ”) was domiciled in and a citizen of the State of
29 California, when she received RBM’s spams at issue. The spams at issue were sent to
30 HERNANDEZ’s email address(es) that she ordinarily accesses from computer(s) located in
31 California.

1 16. DEREK HILL (“HILL”) was domiciled in and a citizen of the State of California, when
2 he received RBM’s spams at issue. The spams at issue were sent to HILL’s email address(es)
3 that he ordinarily accesses from computer(s) located in California.

4 17. CAROLE MEINER (“MEINER”) was domiciled in and a citizen of the State of
5 California, when she received RBM’s spams at issue. The spams at issue were sent to
6 MEINER’s email address(es) that she ordinarily accesses from computer(s) located in California.

7 18. MARY O’SHEA (“O’SHEA”) was domiciled in and a citizen of the State of California,
8 when she received RBM’s spams at issue. The spams at issue were sent to O’SHEA’s email
9 address(es) that she ordinarily accesses from computer(s) located in California.

10 19. LUCI SEED (“SEED”) was domiciled in and a citizen of the State of California, when
11 she received RBM’s spams at issue. The spams at issue were sent to SEED’s email address(es)
12 that she ordinarily accesses from computer(s) located in California.

13 20. TYLER ZAHN (“ZAHN”) was domiciled in and a citizen of the State of California,
14 when he received RBM’s spams at issue. The spams at issue were sent to ZAHN’s email
15 address(es) that he ordinarily accesses from computer(s) located in California.

16 21. Plaintiffs’ joinder in this Action is proper because Plaintiffs seek relief based on the same
17 series of transactions or occurrences: all received similar spams in the same general time period
18 advertising RBM’s websites, and all of those spams were sent by RBM or its marketing agents.
19 The same questions of law (e.g., violations of Section 17529.5, strict liability) and fact (e.g.,
20 direct consent, practices and procedures to prevent advertising in unlawful spam) will arise in
21 this Action. The fact that each Plaintiff does not sue for *exactly* the same spams does not bar
22 joinder: “It is not necessary that each plaintiff be interested as to every cause of action or as to all
23 relief prayed for. Judgment may be given for one or more of the plaintiffs according to their
24 respective right to relief.” Code Civ. Proc. § 378(b).

25 **B. Defendants**

26 22. Plaintiffs are informed and believe and thereon allege that Defendant REAL BRIGHT
27 MEDIA INC. (“RBM”) is now, and was at all relevant times, a California corporation with a
28 primary place of business in San Francisco, California, doing business as *CapitolCashLoan.com*
29 and *rbmleads.com*, among other domain names/websites.

1 23. Plaintiffs are informed and believe and thereon allege that RBM is the successor in
2 interest to Real Bright Media LLC, a California limited liability company with a primary place of
3 business in San Francisco, California, whose name appears in some of the spams at issue.

4 24. Plaintiffs do not know the true names or legal capacities of the Defendants designated
5 herein as DOES 1 through 500, inclusive, and therefore sue said Defendants under the fictitious
6 name of "DOE." Plaintiffs are informed and believe and thereon allege that each of the
7 Defendants designated herein as a DOE is legally responsible in some manner for the matters
8 alleged in this complaint, and is legally responsible in some manner for causing the injuries and
9 damages of which Plaintiffs complain. Plaintiffs are informed and believe and thereon allege
10 that each of the Defendants designated herein as a DOE Defendant was, at all times relevant to
11 the matters alleged within this complaint, acting in conjunction with the named Defendants,
12 whether as a director, officer, employee, agent, affiliate, customer, participant, or co-conspirator.
13 When the identities of DOE Defendants 1-500 are discovered, or otherwise made available,
14 Plaintiffs will seek to amend this Complaint to allege their identity and involvement with
15 particularity.

16 17 **III. JURISDICTION AND VENUE**

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

19 25. This Superior Court has jurisdiction over the Action for the following reasons: a) all
20 Plaintiffs are domiciled in and citizens of the State of California and received the unlawful spams
21 at their California email addresses; b) the amount in controversy is more than \$25,000; c) RBM
22 is a California corporation and its primary place of business is in California.

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

24 26. Venue is proper in San Francisco County because Defendant RBM's primary place of
25 business is in San Francisco County. *See* Code Civ. Proc. § 395.

26 27 **IV. AT LEAST 671 UNLAWFUL SPAMS**

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

31 28. California's False Advertising Law, Business & Professions Code § 17500

1 prohibits “not only advertising which is false, but also advertising which[,]
2 although true, is either actually misleading or which has a capacity, likelihood or
3 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.

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

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

6 29. The emails at issue are “commercial email advertisements”¹ because they were initiated
7 for the purpose of advertising and promoting the sale of RBM’s services of providing cash loans.

8 30. The emails are “unsolicited commercial email advertisements”² because no Plaintiff gave
9 “direct consent”³ to, or had a “preexisting or current business relationship”⁴ with, RBM.

10 31. RBM sent and/or advertised in at least 671 unlawful spams that Plaintiffs received at their
11 “California email addresses”⁵ within one year prior to the filing of this Action, as shown below:
12
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,
or extension of credit.” Bus. & Prof. Code § 17529.1(o).

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

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

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

PLAINTIFF	SPAMS RECEIVED	PLAINTIFF	SPAMS RECEIVED
BARR	18	HERNANDEZ	25
BARRETT	2	HILL	9
BISHOP	2	MEINER	52
BLANCHARD	1	O'SHEA	473
BRENNAN	9	SEED	7
GREGOR	9	ZAHN	4
HELLMAN	60	TOTAL	671

32. Plaintiffs' email addresses play no part in determining whether or not the emails have falsified, misrepresented, forged, misleading, or otherwise deceptive information contained in or accompanying the email headers.

33. The spams are all unlawful because the spams have materially falsified, misrepresented, and/or forged information contained in or accompanying the email headers, and/or Subject Lines that are misleading as to the contents or subject matter of the emails, as described in more detail below.

B. Spams Containing Third Parties' Domain Names Without Their Permission Violate Business & Professions Code § 17529.5(a)(1)

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

35. Some of the spams that Plaintiffs received advertising RBM's websites contained third parties' domain names without their permission, and therefore violated Section 17529.5. For example:

- BARR received a spam advertising RBM showing @starbucks.com in the Sender Email Address. Plaintiffs are informed and believe and thereon allege that this spam did not originate from Starbucks' servers, and that Starbucks did not give anyone permission to include its domain name starbucks.com in this spam.
- BRENNAN received a spam advertising RBM showing @jcpennyem.com in the Sender Email Address. Plaintiffs are informed and believe and thereon allege that this spam did not originate from J.C. Penny Corporation Inc.'s servers, and that J.C. Penny did not give anyone permission to include its domain name jcpennyem.com in this spam.
- GREGOR received a spam advertising RBM showing @yahoo.com in the Sender Email Address. Yahoo! Inc., owner of the yahoo.com domain name, expressly

1 prohibits use of its services for spamming. See Universal Anti-Spam Policy,
2 <https://info.yahoo.com/legal/us/yahoo/guidelines/spam> (last visited June 16,
3 2014). Therefore, since Yahoo! Inc. prohibits all spamming using its services,
4 Yahoo! Inc. did not and could not have given permission for anyone to use its
5 domain name in conjunction with this spam.

6 36. Plaintiffs also received spams advertising RBM with the following domain names in the
7 Sender Email Address: *ContainerStore.com, eBay.com, Fidelity.com, HugoBoss.com, Hyatt.com,*
8 *iaea.org* (International Atomic Energy Agency), *Lowes.com, NationalReview.com, Oprah.com,*
9 *Princess.com, ShopBonton.com, Skype.com, SonyEntertainmentNetwork.com, TheGuardian.com,*
10 *Toms.com, WellsFargoEmail.com.* Plaintiffs similarly believe that none of the third parties who
11 own these domain names gave permission for their domain names to appear in these spams.

12 37. Furthermore, assuming that these spams were *not* actually sent from the domain names
13 that appear in the Sender Email Addresses, which Plaintiffs believe to be the case, then the
14 spams also contained falsified and forged information, which violates Section 17529.5(a)(2),
15 *infra.*

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

18 38. Section 17529.5(a)(2) prohibits misrepresented information contained in or
19 accompanying email headers.

20 39. The From Name field is part of email headers. The From Name does *not* include the
21 Sender Email Address.

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

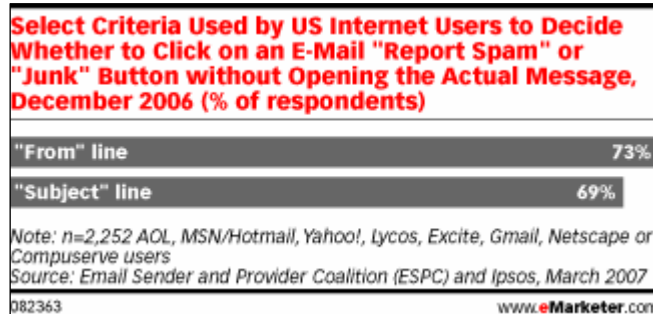
27 The "From:" field specifies the author(s) of the message, that is, the mailbox(es)
28 of the person(s) or system(s) responsible for the writing of the message. . . . In all
29 cases, the "From:" field SHOULD NOT contain any mailbox that does not belong
to the author(s) of the message.

30 41. Plaintiffs do not insist on any *particular* label (e.g., "Real Bright Media," "Real Bright
31 Media Inc.," "Capitol Cash," "CapitolCashLoan.com," etc.) in the From Name field. Rather,

1 Plaintiffs contend that the text, whatever it is, cannot misrepresent *who* is advertising in the
2 email.

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

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



13 <http://www.emarketer.com/Article/E-Mail-Open-Rates-Hinge-on-Subject-Line/1005550> (Oct.
14 31, 2007). Thus, a From Name that misrepresents who a spam is from is *not* a mere technical
15 error; rather, it is a material misrepresentation of the most important part of the email header.

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

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

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

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

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

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

11 46. All of the spams that Plaintiffs received advertising RBM’s websites had generic “From
12 Names” that misrepresented *who* the spams were from, and therefore violated Section 17529.5.
13 For example: “Confirm Now,” “Congratulations,” “Credit Check 2013,” “Customer Service,”
14 “Daily Digest,” “Express Saving,” “holiday Cash,” “Lender Services,” “Loan Manager,”
15 “Membership Network,” “Quick Deposit,” “Rewards Department,” “Urgent Deposit.”

16 47. Plaintiffs also received other spams advertising RBM’s websites with From Names that
17 went beyond merely generic text and affirmatively and falsely suggest that RBM has a
18 preexisting relationship with the recipient and that the recipient has already applied for a loan.
19 For example: “Approval Department,” “Confirmation Dept,” “Direct Deposit 9/05/13,”
20 “E Signature Request,” “Funding Activation,” “Pending Deposit,” “Your Confirmation.”

21 48. None of the From Names identify RBM. All of the From Names are generic, and many –
22 e.g., “Congratulations,” “Your Confirmation” – do not even inherently relate to loans.

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

25 49. Section 17529.5(a)(2) prohibits falsified, misrepresented, or forged information contained
26 in or accompanying in email headers.

27 50. Registration information for the domain names used to send spams is information
28 contained in or accompanying email headers.

29 51. In *Balsam*, the Court of Appeal held:

30 [W]here, as in this case, the commercial e-mailer intentionally uses . . . domain
31 names in its headers that neither disclose the true sender’s identity on their face
nor permit the recipient to readily identify the sender, . . . such header information

1 *is* deceptive and *does* constitute a falsification or misrepresentation of the sender's
2 identity. . . .

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

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

12 We therefore hold, consistent with the trial court’s ruling, that header information
13 in a commercial e-mail is falsified or misrepresented for purposes of section
14 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
16 online database such as WHOIS.

17 203 Cal. App. 4th at 1097-1101 (emphasis in original).

18 52. Plaintiffs received spams advertising RBM sent from domain names that:

- 19 • Did not identify RBM (or their websites) or the sender on their face, and
- 20 • Were deliberately registered so as to not be readily traceable to the sender by
21 querying the Whois database,

22 in violation of Section 17529.5. More specifically:

23 53. Plaintiffs received spams advertising RBM with forged email addresses in the Sender
24 Email Address field, so that the spams are not readily traceable to the sender. For example:
25 *ContainerStore.com, eBay.com, Fidelity.com, HugoBoss.com, Hyatt.com, iaea.org* (International
26 Atomic Energy Agency), *JCPenney.com, Lowes.com, NationalReview.com, Oprah.com,*
27 *Princess.com, ShopBonton.com, Skype.com, SonyEntertainmentNetwork.com, Starbucks.com,*
28 *TheGuardian.com, Toms.com, WellsFargoEmail.com, Yahoo.com.*

29 54. Plaintiffs received spams advertising RBM with domain names in the Sender Email
30 Address field that are registered to non-existent entities, so that the spams are not readily
31 traceable to the sender. For example:

- *Premium-advance.com* is registered to “Tekmodus” at a P.O. Box in Babylon,
 New York. No such entity is registered with the New York Secretary of State.

- 1 • *Primerpower.com* is registered to “BillJonesMedia” at 1234 Main Street, New
2 York, New York. The address does not exist, and no such entity is registered with
3 the New York Secretary of State.
- 4 • *Americanapprovalnews.com* is registered to “Network Operations” at 3824 Cedar
5 Springs Road in Dallas, Texas. The address is a branch of The UPS Store, and no
6 such entity is registered with the Texas Secretary of State.

7 55. Plaintiffs could not identify RBM or its spamming affiliates who sent many of the spams
8 at issue by querying the Whois database for the domain names used to send many of the spams at
9 issue.

10 **E. Spams With False Subject Lines Violate Business & Professions Code § 17529.5(a)(2);**
11 **Spams With Misleading Subject Lines Violate Business & Professions Code**
12 **§ 17529.5(a)(3)**

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

15 57. The Subject Line is part of email headers.

16 58. Section 17529.5(a)(3) prohibits Subject Lines likely to mislead a reasonable recipient
17 about the contents or subject matter or the email.

18 59. Many of the spams that Plaintiffs received contain Subject Lines with falsified and/or
19 misrepresented information, and/or are misleading. For example:

- 20 • BARR received a spam advertising RBM with the Subject Line: “Re mbarr54275,
21 \$5000 Overnight Cash Loan for YOU, Don't wait for payday.” This Subject
22 Line is false and misleading because California limits payday loans to \$300. *See*
23 *Fin. Code § 23035.*
- 24 • BARRETT received a spam advertising RBM with the Subject Line: “Get the
25 help you need.” This Subject Line has nothing inherently to do with loans; it
26 misrepresents the subject matter of the email and is likely to mislead a reasonable
27 person about the subject matter of the email.
- 28 • HELLMAN received spams advertising RBM with the Subject Lines: “Your E-
29 signature is required for the final step,” “Response Needed: Financial request
30 received,” and “Continue your application.” These Subject Lines are all false and
31 misleading because they claim that RBM has a preexisting relationship with
HELLMAN, that HELLMAN made a financial request to RBM, and that

1 HELLMAN has completed prior steps towards applying for a loan, none of which
2 are true.

- 3 • MEINER received spams advertising RBM with the Subject Line: “meiner100,
4 You have received Your New \$7500 Cash deposited.” This Subject Line is false
5 and misleading because Meiner did *not* receive \$7,500 from RBM.
- 6 • O’SHEA received a spam advertising RBM with the Subject Line: “\$1,000 in 1
7 Hour.” This Subject Line is false and misleading because California limits
8 payday loans to \$300. *See* Fin. Code § 23035. O’SHEA received spams
9 advertising RBM with the Subject Lines: “Your E-signature is required for the
10 final step,” “Your request has been accepted,” and “Approved.” These Subject
11 Lines are all false because they claim that RBM has a preexisting relationship
12 with O’SHEA, that O’SHEA made a request to RBM, that O’SHEA has
13 completed prior steps towards applying for a loan, and that O’SHEA is approved,
14 none of which are true. The Subject Lines’ falsity is also shown by the
15 contradictions: How can she already be approved if her signature is still required
16 for the final step?

17 **F. RBM is Strictly Liable for Spams Sent By its Affiliates**

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

21 61. No one forced RBM to outsource any of its advertising to third party spammers.

22 62. Advertisers such as RBM are liable for advertising in spams, even if third parties hit the
23 Send button.

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

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

29 Bus. & Prof. Code § 17529(j)(k).

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

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

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

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

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

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

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

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

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

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

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

1 68. However, Plaintiffs did suffer damages by receiving the unlawful spams advertising
2 RBM's services in the state of California, at their California email addresses. Bus. & Prof. Code
3 § 17529(d), (e), (g), (h). Regardless, Plaintiffs do not seek actual damages in this Action, only
4 liquidated damages.

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

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

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

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

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

18 73. Moreover, Plaintiffs are informed and believe and thereon allege that Defendants
19 intended to deceive recipients of their spam messages through the use of third parties' domain
20 names without permission, falsified and/or misrepresented information contained in or
21 accompanying the email headers, and false and misleading Subject Lines, as described herein.

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

28 75. Furthermore, some Plaintiffs continued to receive spams advertising RBM months after
29 their attorneys provided their email addresses to RBM's attorneys. Obviously, even if RBM has
30 practices and procedures to prevent unlawful spamming, they do not work.

1 76. Plaintiffs are informed and believe and thereon allege that Defendants intended to profit,
2 actually profited, and continue to profit, and were unjustly enriched by, their wrongful conduct
3 as described herein.

4 77. Punitive damages are appropriate to punish malicious, oppressive, and/or fraudulent
5 conduct by Defendants, and to deter others from engaging in such conduct.

6
7 **FIRST CAUSE OF ACTION**

8 **[Violations of California Restrictions on Unsolicited Commercial Email,**
9 **California Business & Professions Code § 17529.5]**
10 **(Against All Defendants)**

11 78. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

12 79. Plaintiffs received the spams at issue within one year prior to filing this Complaint.

13 80. Defendants advertised in, sent, and/or caused to be sent at least 671 unsolicited
14 commercial emails to Plaintiffs' California electronic mail addresses: a) containing third parties'
15 domain names without permission; b) containing or accompanied by falsified and/or
16 misrepresented header information; and/or c) containing misleading Subject Lines, in violation
17 of Section 17529.5.

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

20 82. Plaintiffs seek reimbursement of attorneys' fees and costs as authorized by Section
21 17529.5(b)(1)(C).

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

28
29 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set forth.
30
31

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 671
6 unlawful spams, as authorized by Section 17529.5(b)(1)(B)(ii), for a total of at least
7 \$671,000, as set forth below:

8

PLAINTIFF	LIQUIDATED DAMAGES	PLAINTIFF	LIQUIDATED DAMAGES
BARR	\$18,000	HERNANDEZ	\$25,000
BARRETT	\$2,000	HILL	\$9,000
BISHOP	\$2,000	MEINER	\$52,000
BLANCHARD	\$1,000	O'SHEA	\$473,000
BRENNAN	\$9,000	SEED	\$7,000
GREGOR	\$9,000	ZAHN	\$4,000
HELLMAN	\$60,000	TOTAL	\$671,000

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- 15 C. Attorneys' fees as authorized by Section 17529.5(b)(1)(C) and Code of Civil Procedure
16 § 1021.5 for violations of Section 17529.5.
- 17 D. Disgorgement of all profits derived from unlawful spams directed to California residents;
18 monies to be turned over to the Unfair Competition Law Fund and used by the California
19 Attorney General to support investigations and prosecutions of California's consumer
20 protection laws.
- 21 E. Punitive damages, in an amount to be determined by this Court.
- 22 F. Costs of suit.
- 23 G. Such other and further relief as the Court deems proper.

24
25 THE LAW OFFICES OF DANIEL BALSAM

26
27 Date: August 1, 2014

BY: 

28 DANIEL L. BALSAM
29 Attorneys for Plaintiffs
30
31