

1 Timothy J. Walton (State Bar No. 184292)  
2 Jim C. Twu (State Bar No. 175032)  
3 WALTON TWU LLP  
4 9515 Soquel Drive, Suite 207  
5 Aptos, CA 95003-4137  
6 Phone (831) 685-9800  
7 Fax: (650) 618-8687

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

14 Attorneys for Plaintiffs

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **COUNTY OF SAN JOAQUIN (UNLIMITED JURISDICTION)**

17 DANIEL BARRETT, an individual, ) Case No.: 39-2013-00298275-CU-STK  
18 JAMIE CARPER, an individual, )  
19 STEPHEN FALLS, an individual, )  
20 JAY FINK, an individual, and ) **VERIFIED THIRD AMENDED**  
21 WALTER HILL, an individual, ) **COMPLAINT FOR DAMAGES**

22 Plaintiffs, )

23 v. )

24 ALLAN HENNING, an individual, )  
25 DENIRO MARKETING LLC, a California )  
26 limited liability company, )  
27 LIVE CHANNELS LLC, a California limited )  
28 liability company, and )  
29 DOES 1-100, )

30 Defendants. )  
31

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

COME NOW PLAINTIFFS DANIEL BARRETT, JAMIE CARPER, STEPHEN FALLS, JAY FINK, and WALTER HILL and file this Verified Third Amended Complaint for one cause of

1 action against Defendants ALLAN HENNING, DENIRO MARKETING LLC, LIVE  
2 CHANNELS LLC, and DOES 1-100 and allege as follows:

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

5 1. Plaintiffs DANIEL BARRETT, JAMIE CARPER, STEPHEN FALLS, JAY FINK, and  
6 WALTER HILL bring this Action against ALLAN HENNING, DENIRO MARKETING LLC,  
7 and LIVE CHANNELS LLC dba *AdsForSex.com*, *AmateurMatch.com*, *Cheaters.net*,  
8 *CheatingHouseWife.com*, *DatingAffair.com*, *FindCheaters.com*, *HookUpBBW.com*,  
9 *LocalCheaters.com*, *SpeedBoink.com*, *SpiceOrNice.com*, *Untrue.com*, and *XXXDating.com* for  
10 advertising in unlawful Unsolicited Commercial Email Advertisements (aka “spams”) sent to  
11 Plaintiffs, as follows:

- 12 • ALLAN HENNING, DENIRO MARKETING LLC, and LIVE CHANNELS  
13 LLC advertised in at least 21 unlawful spams sent to BARRETT.
- 14 • ALLAN HENNING, DENIRO MARKETING LLC, and LIVE CHANNELS  
15 LLC advertised in at least 409 unlawful spams sent to CARPER.
- 16 • ALLAN HENNING, DENIRO MARKETING LLC, and LIVE CHANNELS  
17 LLC advertised in at least 4 unlawful spams sent to FALLS.
- 18 • ALLAN HENNING, DENIRO MARKETING LLC, and LIVE CHANNELS  
19 LLC advertised in at least 498 unlawful spams sent to FINK.
- 20 • ALLAN HENNING, DENIRO MARKETING LLC, and LIVE CHANNELS  
21 LLC advertised in at least 26 unlawful spams sent to HILL.

22 2. No Plaintiff ever gave any Defendant “direct consent” (as defined by California law) to  
23 receive commercial email advertisements.

24 3. The spams all had materially falsified, misrepresented, and/or forged information in  
25 violation of California Business & Professions (“B&P”) Code § 17529.5. The unlawful elements  
26 of these spams represent willful acts of falsity and deception, rather than clerical errors.

27 4. Plaintiffs suffered damages by receiving the spams. *See, e.g.*, B&P Code § 17529(d), (e),  
28 (g), (h).

29 5. This Court should award liquidated damages of \$1,000 per email as provided by B&P  
30 Code § 17529.5(b)(1)(B)(ii), and not consider any reduction in damages, because Defendants  
31

1 failed to implement reasonably effective systems designed to prevent the sending of unlawful  
2 spam in violation of the statute.

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

## 7 8 **II. PARTIES**

### 9 **A. Plaintiffs**

10 7. DANIEL BARRETT ("BARRETT") is now, and at all times relevant has been, an  
11 individual residing in the State of California, County of Marin, and a citizen of California.  
12 BARRETT ordinarily accesses his email address from California.

13 8. JAMIE CARPER ("CARPER") is now, and at all times relevant has been, an individual  
14 residing in the State of California, County of San Bernardino, and a citizen of California.  
15 CARPER ordinarily accesses his email address from California.

16 9. STEPHEN FALLS ("FALLS") is now, and at all times relevant has been, an individual  
17 residing in the State of California, County of Contra Costa, and a citizen of California. FALLS  
18 ordinarily accesses his email address from California.

19 10. JAY FINK ("FINK") is now, and at all times relevant has been, an individual residing in  
20 the State of California, County of Marin, and a citizen of California. FINK ordinarily accesses  
21 his email address from California.

22 11. WALTER HILL ("HILL") is now, and at all times relevant has been, an individual  
23 residing in the State of California, County of Solano, and a citizen of California. HILL  
24 ordinarily accesses his email address from California.

### 25 **B. Defendants Deniro Marketing LLC, Live Channels LLC, and Allan Henning**

26 12. Plaintiffs are informed and believe and thereon allege that Defendant DENIRO  
27 MARKETING LLC is currently, and was at all relevant times, a California limited liability  
28 company headquartered in Stockton, San Joaquin County, California.

29 13. Plaintiffs are informed and believe and thereon allege that Defendant LIVE CHANNELS  
30 LLC is currently, and was at all relevant times, a California limited liability company  
31 headquartered in Stockton, San Joaquin County, California.

1 14. Plaintiffs are informed and believe and thereon allege that Defendant ALLAN  
2 HENNING is currently, and was at all relevant times, an individual and the sole Member of both  
3 DENIRO MARKETING LLC and LIVE CHANNELS LLC, residing in or near Stockton, San  
4 Joaquin County, California.

5 15. Plaintiffs are informed and believe and thereon allege that ALLEN HENNING, DENIRO  
6 MARKETING LLC, and LIVE CHANNELS LLC share physical assets, personnel, addresses,  
7 finances, and intellectual property such that they failed to follow proper corporate formalities,  
8 and each is an alter ego of the other. To name but three examples:

- 9 • Plaintiffs are informed and believe and thereon allege that the numerous “front-  
10 end” websites all display information from a common database. Nevertheless,  
11 DENIRO MARKETING LLC has previously admitted to owning  
12 *AmateurMatch.com*, while at the same time the terms & conditions from  
13 *FindCheaters.com* and *LocalCheaters.com* both refer to LIVE CHANNELS LLC.
- 14 • Plaintiffs are informed and believe and thereon allege that the numerous websites’  
15 18 U.S.C. § 2257 disclosure statements all referred to the same address in  
16 Stockton (before they were changed to an address in Cyprus to make it more  
17 difficult for spam recipients to identify them).
- 18 • ALLAN HENNING is the sole Member of both DENIRO MARKETING LLC  
19 and LIVE CHANNELS LLC.

20 16. Plaintiffs are informed and believe and thereon allege that ALLAN HENNING controlled  
21 the corporate entities of DENIRO MARKETING LLC and LIVE CHANNELS LLC and any and  
22 all other nominal companies that purport to own and/or operate the pornographic “adult dating”  
23 websites *AdsForSex.com*, *AmateurMatch.com*, *Cheaters.net*, *CheatingHouseWife.com*,  
24 *DatingAffair.com*, *FindCheaters.com*, *HookUpBBW.com*, *LocalCheaters.com*, *SpeedBoink.com*,  
25 *SpiceOrNice.com*, *Untrue.com*, and *XXXDating.com*, such that the separate personalities of the  
26 individual and the business entities no longer exist, and the companies are merely alter-egos of  
27 ALLAN HENNING. Plaintiffs are informed and believe that ALLAN HENNING makes  
28 decisions on all matters of import to the companies and that the companies exist merely to do his  
29 will. Plaintiffs are informed and believe and thereon allege that ALLAN HENNING personally  
30 made the decision to utilize the email advertising at issue in this Action.

1 17. Plaintiffs are informed and believe and thereon allege that ALLAN HENNING controlled  
2 the corporate entities of DENIRO MARKETING LLC and LIVE CHANNELS LLC and any and  
3 all other nominal companies that purport to own and/or operate the pornographic “adult dating”  
4 websites *AdsForSex.com*, *AmateurMatch.com*, *Cheaters.net*, *CheatingHouseWife.com*,  
5 *DatingAffair.com*, *FindCheaters.com*, *HookUpBBW.com*, *LocalCheaters.com*, *SpeedBoink.com*,  
6 *SpiceOrNice.com*, *Untrue.com*, and *XXXDating.com*, to such an extent that failure to disregard  
7 their separate identities would result in fraud or injustice to Plaintiffs. Plaintiffs are informed  
8 and believe and thereon allege that ALLAN HENNING has taken steps to move some or all of  
9 the companies (and their assets) offshore, for the purpose of evading liability for any court  
10 order/judgment that might result from this Action.

11 18. Plaintiffs are informed and believe and thereon allege that ALLAN HENNING  
12 personally, either on his own or with others, registered or re-registered the domain names for his  
13 various websites to foreign addresses to make it more difficult for spam recipients to identify  
14 him, DENIRO MARKETING LLC, and/or LIVE CHANNELS LLC as the entities who really  
15 control the websites *AdsForSex.com*, *AmateurMatch.com*, *Cheaters.net*,  
16 *CheatingHouseWife.com*, *DatingAffair.com*, *FindCheaters.com*, *HookUpBBW.com*,  
17 *LocalCheaters.com*, *SpeedBoink.com*, *SpiceOrNice.com*, *Untrue.com*, and *XXXDating.com*.

18 19. Plaintiffs are informed and believe and thereon allege that ALLAN HENNING  
19 undercapitalized Defendants DENIRO MARKETING LLC and LIVE CHANNELS LLC and  
20 any and all other nominal companies that purport to own and/or operate the pornographic “adult  
21 dating” websites *AdsForSex.com*, *AmateurMatch.com*, *Cheaters.net*, *CheatingHouseWife.com*,  
22 *DatingAffair.com*, *FindCheaters.com*, *HookUpBBW.com*, *LocalCheaters.com*, *SpeedBoink.com*,  
23 *SpiceOrNice.com*, *Untrue.com*, and *XXXDating.com*, relative to the potential liability that could  
24 result from sending thousands, if not millions, of unlawful spams.

25 20. Plaintiffs are informed and believe and thereon allege that ALLAN HENNING used  
26 DENIRO MARKETING LLC and LIVE CHANNELS LLC to deceptively advertise in and/or  
27 send millions of unlawful spams containing misleading headers.

28 21. Plaintiffs hereafter refer to ALLEN HENNING, DENIRO MARKETING LLC, and  
29 LIVE CHANNELS LLC and any and all other nominal companies that purport to own and/or  
30 operate the pornographic “adult dating” websites *AdsForSex.com*, *AmateurMatch.com*,  
31 *Cheaters.net*, *CheatingHouseWife.com*, *DatingAffair.com*, *FindCheaters.com*,

1 *HookUpBBW.com, LocalCheaters.com, SpeedBoink.com, SpiceOrNice.com, Untrue.com, and*  
2 *XXXDating.com, collectively as “HENNING.”*

3 22. Plaintiffs are informed and believe and thereon allege that HENNING owns and operates  
4 the *AdsForSex.com* website, which describes itself as follows:

5 **AdsForSex.com is the top Adult Personal Ads Website**

6 AdsForSex is adult personals at their absolute best! Search our database of  
7 thousands of sex personals and find a date with thousands of hot singles tonight!  
8 Adult dating is the most entertaining form of internet dating and you can easily  
9 find women and hookup tonight! If you are looking for no-strings-attached  
10 relationships, then you need a sex dating site that will allow you to search for  
11 local singles in your area. AdsForSex does just that and more. Our video chat  
12 room and live webcam shows add to the fun. Post your personal ad and get  
13 noticed right away on AdsForSex. We also have a mobile dating website which  
14 you can access from your smartphone. Join now!

15 Home Page, *AdsForSex.com* (last visited Jan. 22, 2013).

16 23. Plaintiffs are informed and believe and thereon allege that HENNING owns and operates  
17 the *AmateurMatch.com* website, which describes itself as follows:

18 **AmateurMatch.com is the hottest adult dating site on the net!**

19 The number one site for adult dating allows you to search through thousands of  
20 sex personal ads in order to find a date quickly. Meet hot singles fast and easy  
21 with just a few clicks using our advanced search feature. Contact hundreds of  
22 local singles in your area and hookup tonight! Users are able to verify their  
23 identity so that you have the greatest chance to find girls looking to get laid  
24 tonight. Sex dating is the ultimate way for singles, swingers, and even cheaters to  
25 find sex using our adult personal ads.

26 Home Page, *AmateurMatch.com* (last visited Jan. 22, 2013).

27 24. Plaintiffs are informed and believe and thereon allege that HENNING owns and operates  
28 the *Cheaters.net* website, which describes itself as follows:

29 **Cheaters.net is the Ultimate Discreet Dating Site for Cheaters**

30 If you are looking to add some adventure to your social life, you have come to the  
31 right place. Cheaters.net provides anonymous dating for those looking to have  
discreet encounters or one night stands. Married dating is more popular than  
anyone knows because discreet dating is possible through Cheaters.net. Cheaters  
can find a discreet relationship and have an affair by searching through thousands  
of profiles local to your area. We also have a mobile cheaters site for users with  
smart phones, a gay dating website for those leaning that way, and adult personal

1 ads. Find your no-strings-attached relationship and hookup tonight by creating  
2 your profile on Cheaters.net now!

3 Home Page, *Cheaters.net* (last visited Jan. 22, 2013).

4 25. Plaintiffs are informed and believe and thereon allege that HENNING owns and operates  
5 the *CheatingHouseWife.com* website, which describes itself as follows:

6 **LOOKING FOR A NAUGHTY EXPERIENCE?** Join  
7 **CHEATINGHOUSEWIFE.COM**, the #1 place to find a *discreet online fantasy*

8 Home Page, *CheatingHouseWife.com* (last visited Mar. 12, 2014).

9 26. Plaintiffs are informed and believe and thereon allege that HENNING owns and operates  
10 the *DatingAffair.com* website, which describes itself as follows:

11 **Having an affair made easy at DatingAffair.com!**

12 Whether you are stuck in a relationship you don't want to be in, are in an open  
13 relationship, or are just looking for no-strings-attached, DatingAffair can help you  
14 find the discreet encounters you are looking for. Have an affair, experience  
15 married dating, or simply find a one-night-stand by searching through our  
16 database of thousands of users in your area. Anonymous dating and discreet  
17 relationships are accessible with just a few clicks. We also have a dating affair  
18 mobile site when you are not at your computer and a gay dating site for those  
19 interested. We also offer sex personals on our adult dating site. Join DatingAffair  
20 and have an affair tonight!

19 Home Page, *DatingAffair.com* (last visited Jan. 22, 2013).

20 27. Plaintiffs are informed and believe and thereon allege that HENNING owns and operates  
21 the *FindCheaters.com* website, which describes itself as follows:

22 **Discreet Dating at FindCheaters.com**

23 Looking for excitement, forbidden romance or an anonymous relationship? The  
24 best place to find it is FindCheaters.com. Search through thousands of cheaters  
25 like yourself looking for a discreet relationship or to have an affair. If you are  
26 searching for a one-night stand or a no-strings-attached relationship, you have  
27 come to the right place. We use complete discretion and are judgment free.  
28 Relationships are complicated but you can find happiness and entertainment  
29 through married dating. Search for your discreet encounter tonight! And try our  
30 cheaters mobile site in order to keep your browser history clean. You can also  
31 take part in the hottest adult personals site on the net.

Home Page, *FindCheaters.com* (last visited Jan. 22, 2013).

1 28. Plaintiffs are informed and believe and thereon allege that HENNING owns and operates  
2 the *HookupBBW.com* website, which describes itself as follows:

3           LOOKING TO HOOKUP TONIGHT? Join HookupBBW The #1 Place to Find  
4           Your BBW Partner.

5 Home Page, *HookupBBW.com* (last visited Jan. 22, 2013).

6 29. Plaintiffs are informed and believe and thereon allege that HENNING owns and operates  
7 the *LocalCheaters.com* website, which describes itself as follows:

8           **Cheaters in Your Area at LocalCheaters.com**

9           Add some spice to your life and search for an anonymous date close to your  
10           location (but not too close!) Search through thousands of cheaters looking for  
11           some on the side. If you are interested in trying a one-night-stand or finding a no-  
12           strings-attached discreet relationship, this is the site for you. Find your discreet  
13           encounter tonight! And don't forget to try our cheaters mobile site to keep your  
14           affairs in your pocket. Also feel free to try the hottest adult webcam shows on the  
15           net!

16 Home Page, *LocalCheaters.com* (last visited Jan. 22, 2013).

17 30. Plaintiffs are informed and believe and thereon allege that HENNING owns and operates  
18 the *SpeedBoink.com* website, which describes itself as follows:

19           SpeedBoink.com is adult dating gone wild! Meet singles, couples, or groups in  
20           your area who are willing and waiting to explore erotic fantasies with you.

21 Home Page, *SpeedBoink.com* (last visited Jan. 22, 2013).

22 31. Plaintiffs are informed and believe and thereon allege that HENNING owns and operates  
23 the *SpiceOrNice.com* website, which describes itself as follows:

24           LOOKING FOR THAT UNIQUE PARTNER? Join SpiceOrNice.com The #1  
25           Place to Meet Singles in Your Area

26 Home Page, *SpiceOrNice.com* (last visited Jan. 22, 2013).

27 32. Plaintiffs are informed and believe and thereon allege that HENNING owns and operates  
28 the *Untrue.com* website, which describes itself as follows:

29           untrue – HAVE AN AFFAIR. WE WON'T TELL.

30 Home Page, *Untrue.com* (last visited Jan. 22, 2013).

31 33. Plaintiffs are informed and believe and thereon allege that HENNING owns and operates  
the *XXXDating.com* website, which describes itself as follows:





1 **IV. ALMOST ONE THOUSAND UNLAWFUL SPAMS**

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

3 38. The emails at issue are “commercial email advertisements”<sup>1</sup> because they advertise goods  
4 and services.

5 39. The emails are “unsolicited commercial email advertisements”<sup>2</sup> because no Plaintiff ever  
6 gave any Defendant “direct consent”<sup>3</sup> to advertise in commercial emails sent to him, nor did any  
7 Plaintiff have a “preexisting or current business relationship”<sup>4</sup> with any Defendant.

8 40. BARRETT received 21 spams advertising HENNING at his “California email address.”<sup>5</sup>

9 41. CARPER received 409 spams advertising HENNING at his “California email addresses.”

10 42. FALLS received 4 spams advertising HENNING at his “California email address.”

11 43. FINK received 498 spams advertising HENNING at his “California email addresses.”

12 44. HILL received 26 spams advertising HENNING at his “California email address.”

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13  
14  
15 <sup>1</sup> “‘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.” B&P Code § 17529.1(c).

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

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

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

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

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

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

6 47. Plaintiffs' email addresses are confidential for numerous reasons, including, but not  
7 limited to, avoiding the risk of retaliation by "mail bombing" (sending massive amounts of email  
8 to Plaintiffs' email addresses), "joe jobbing" (sending unlawful email using Plaintiffs' email  
9 addresses in the Sender Email Address field as a means of harassment), or sharing of Plaintiffs'  
10 email addresses with other unknown parties who might in turn send spam or mail bombs to  
11 Plaintiffs or as if from Plaintiffs.

12 48. The spams are unlawful because they include third parties' domain names without  
13 permission of the third parties; and/or contain falsified, misrepresented, or forged information in  
14 the headers; and/or contain Subject Lines likely to mislead a recipient about the contents or  
15 subject matter of the spams, as described in more detail below.

16 49. Exhibit A is a representative HENNING spam and the clickthrough/redirect links to the  
17 landing page at *AmateurMatch.com*.

18 **B. Spams Containing a Third Party's Domain Name Without Permission Violate Business**  
19 **& Professions Code § 17529.5(a)(1)**

20 50. It is unlawful to advertise in spams that contains a third party's domain name without  
21 permission. B&P Code § 17529.5(a)(1).

22 51. The Sender Email Address is part of email headers.

23 52. Some of the spams were sent from email addresses @*yahoo.com*, such that Yahoo! Inc.'s  
24 domain name *yahoo.com* appears in the spams. For example, FINK received a spam on May 17,  
25 2012 advertising HENNING that purports to have been sent from "Sandra" using the email  
26 address *jordan.doukasjiym@yahoo.com*.<sup>6</sup>

27 53. Yahoo! Inc. prohibits the use of its "computer systems to facilitate the transmission of  
28 unsolicited or unauthorized material." Yahoo! Universal Anti-Spam Policy, <http://info.yahoo>.

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29  
30 <sup>6</sup> Of course, if the spam were *not* actually sent from *jordan.doukasjiym@yahoo.com* as it appears  
31 in the spam, in violation of B&P Code § 17529.5(a)(1), then by definition the headers would  
contain falsified and forged information in violation of § 17529.5(a)(2).

1 *com/legal/us/yahoo/guidelines/spam* (last visited Jan. 23, 2013). Therefore, Plaintiffs are  
2 informed and believe and thereon allege that Yahoo! Inc. did not and could not have given  
3 permission to HENNING or his affiliates to send this spam to FINK.

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

6 54. It is unlawful to advertise in spams that contain or are accompanied by falsified,  
7 misrepresented, or forged header information. B&P Code § 17529.5(a)(2).

8 55. The From Name field is part of email headers.

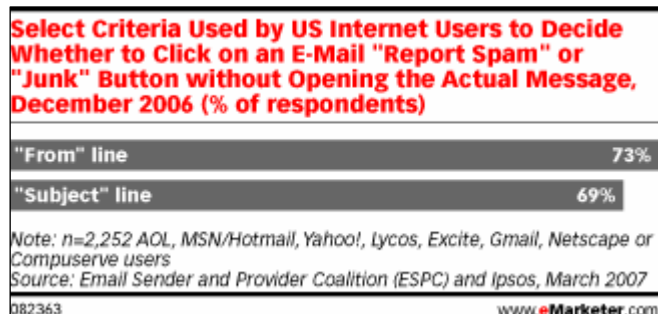
9 56. The From Name field, not surprisingly, is supposed to identify who the email is *from*; it is  
10 not supposed to be an advertising message. Because computers must use standard protocols in  
11 order to communicate, the Internet Engineering Task Force created a collection of “Requests for  
12 Comment” (“RFCs”) that define the rules that enable email to work. According to RFC 5322 at  
13 ¶ 3.6.2 (emphasis in original):

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

17 57. Plaintiffs do not insist on any *particular* label (e.g., “Deniro Marketing LLC,” “Allan  
18 Henning,” “Amateur Match,” “AmateurMatch.com,” etc.) in the From Name field. Rather,  
19 Plaintiffs contend that the text, whatever it is, cannot misrepresent *who* is advertising in the  
20 email.

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

25 59. Indeed, empirical evidence has  
26 demonstrated that the From Name is the  
27 *most* important factor email recipients use  
28 to determine whether or not an email is  
29 spam. See eMarketer, E-Mail Open Rates  
30 Hinge on ‘Subject’ Line, *available at*



1 <http://www.emarketer.com/Article/E-Mail-Open-Rates-Hinge-on-Subject-Line/1005550> (Oct.  
2 31, 2007).

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

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

11 203 Cal. App. 4th 1083, 1088, 1090-91, 1093 (1st Dist. 2012), *petition for review denied*, 2012  
12 Cal. LEXIS 4979 (Cal. May 23, 2012), *petition for certiori denied*, 2012 U.S. LEXIS 8423 (U.S.  
13 Oct. 29, 2012), *petition for rehearing denied*, 2013 U.S. LEXIS 243 (U.S. Jan. 7, 2013). More  
14 specifically, *Trancos* confirmed that generic From Names that “do not exist or are otherwise  
15 misrepresented when they do not represent any real company and cannot be readily traced back  
16 to the true owner/sender” violate the statute. *Id.* at 1093. The Court affirmed the award of  
17 \$1,000 liquidated damages for the seven emails with misrepresented information in the From  
18 Name field, even though most of the spams identified the advertiser in the body. *Id.* at 1091,  
19 1093.

20 61. The From Names of the instant spams that Plaintiffs received are all generic or false  
21 terms such as:

- 22 • “cassandra4u” (in an email advertising HENNING’s website *AdsForSex.com*).
- 23 • “New MILF Postings” (in an email advertising HENNING’s website  
24 *AmateurMatch.com*).
- 25 • “One Night Stands” (in an email advertising HENNING’s website *Cheaters.com*).
- 26 • “Fucbook” (in an email advertising HENNING’s website *SpeedBoink.com*).
- 27 • “Lonely Wife” (in an email advertising HENNING’s website *Untrue.com*).
- 28 • “Amber” (in an email advertising HENNING’s website  
29 *CheatingHouseWife.com*).
- 30 • “Stacey” (in an email advertising HENNING’s website *CheatingHouseWife.com*).

31 All of these generic From Names, like those in *Trancos*, misrepresent *who* was advertising in the  
spams, and therefore violate B&P Code § 17529.5(a)(2).

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

3 62. It is unlawful to advertise in spams that contain or are accompanied by falsified,  
4 misrepresented, or forged header information. B&P Code § 17529.5(a)(2).

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

7 64. In *Balsam v. Trancos Inc.*, the Court of Appeal held:

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

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

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

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

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

28 65. Plaintiffs received unlawful spams advertising HENNING, sent from gibberish domain  
29 names that:

- 30 • Did not identify HENNING or the sender on their face, and
- 31 • Were sent from domain names deliberately registered so as to not be readily  
traceable to the sender,

in violation of B&P Code § 17529.5.

66. For many of the instant spams, the domain names are either proxy-registered or falsely  
registered such that the domain names are not readily traceable to HENNING or his affiliates.

1 To name but one example: FINK received a spam advertising HENNING’s website  
2 *AmateurMatch.com*, sent from the domain name *BeachWindy.com*, which is proxy-registered  
3 through Contact Privacy Inc.

4 **E. Spams With False and Misleading Subject Lines Violate Business & Professions Code**  
5 **§ 17529.5(a)(2) and (a)(3)**

6 67. It is unlawful to advertise in spams that contain or are accompanied by falsified,  
7 misrepresented, or forged header information. B&P Code § 17529.5(a)(2).

8 68. It is unlawful to advertise in spams with Subject Lines likely to mislead the recipient  
9 about a material fact regarding the contents or subject matter of the email. B&P Code  
10 § 17529.5(a)(3).

11 69. Plaintiffs received spams advertising HENNING’s websites, many of which have Subject  
12 Lines that are misleading as to the subject matter of the spams. For example, a reasonable  
13 recipient would not know, based on Subject Lines “I found you” and “RE: RE: craigs list post,”  
14 that the emails are actually advertising HENNING’s purported “adult dating” websites.

15 70. Plaintiffs received spams advertising HENNING’s websites, many of which have Subject  
16 Lines that are false and likely to mislead a recipient into believing that there are actual women in  
17 HENNING’s database that the recipients could meet by paying to sign up for HENNING’s  
18 websites. For example:

- 19 • “Looking for a MILF in your area?”
- 20 • “Too Many Hot Girls...Single Guys Needed ASAP”
- 21 • “She Wants a One Night Stand”
- 22 • “These women are looking to have a Discreet Affair”
- 23 • “Meet Real Desperate Housewives That Need Your Help”
- 24 • “We can’t make it ANY EASIER toget [sic] LAID tonight”
- 25 • “Want to Date Real Cheating Wives?”

26 71. In fact, Plaintiffs are informed and believe and thereon allege that HENNING’s database  
27 is mostly, and perhaps entirely, filled with fake profiles that HENNING calls “Online Cupids.”  
28 These “Online Cupids” are designed to “stimulate conversation with users, in order to encourage  
29 further and broader participation in all of our Site’s services” – i.e., to trick consumers into  
30 believing that they might actually meet (and have sex), when this is literally impossible. In fact,  
31 HENNING discloses, buried in small print in the middle of a lengthy Terms and Conditions  
document, that

1 [O]ur site, while built in the form of a personals service, is an entertainment  
2 service. All profiles are provided for the amusement and entertainment of our  
3 members and our users.

4 Member User Agreement for AmateurMatch, [http://www.amateurmatch.com/pop.php?page=](http://www.amateurmatch.com/pop.php?page=terms)  
5 terms (last visited Jan. 22, 2013). However, there are no disclosures in the initial advertising –  
6 the spams – of the true nature of HENNING’s websites and its use of “Online Cupids.”

7 **F. Defendants are Strictly Liable for Unlawful Spams Sent By Their Affiliates**

8 72. Plaintiffs are informed and believe and thereon allege that HENNING contracts with  
9 third party “affiliates” (a/k/a “publishers”) to advertise *AmateurMatch.com* and his other  
10 websites.

11 73. No one forced HENNING to outsource any of his advertising to third party spammers.

12 74. Advertisers such as HENNING are liable for advertising in spams, even if third parties  
13 hit the Send button.

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

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

20 Bus. & Prof. Code § 17529(j)(k).

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

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

25 75. In *Hypertouch Inc. v. ValueClick Inc. et al*, the court held that advertisers are *strictly*  
26 *liable* for advertising in false and deceptive spams, even if the spams were sent by third parties.

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

Thus, like other California statutes prohibiting false or misleading business  
practices, the statute makes an entity *strictly liable* for advertising in a  
commercial e-mail that violates the substantive provisions described in section



1 17529.5, subdivision (a) *regardless of whether the entity knew that such e-mails*  
2 *had been sent* or had any intent to deceive the recipient.

3 192 Cal. App. 4th 805, 820-21 (2d Dist. 2011) (emphasis added). The court did not find that this  
4 was an arbitrary requirement; rather, the court identified sound policy reasons behind the  
5 Legislature's decision to create a strict liability statute:

6 [I]mposing strict liability on the advertisers who benefit from (and are the  
7 ultimate cause of) deceptive e-mails, forces those entities to take a more active  
8 role in supervising the complex web of affiliates who are promoting their  
9 products.

9 *Id.* at 829. Nor was *Hypertouch* an anomaly; it confirmed the general trend in anti-spam  
10 litigation in California and federal courts.

11 **G. Recipients of Unlawful Spam Have Standing to Sue Under B&P Code § 17529.5 and**  
12 **Recover \$1,000 Per Spam Liquidated Damages**

13 76. Each and every spam at issue contained:

- 14 • Third parties' domain names without permission,
- 15 • Materially false or misrepresented information in or accompanying the headers,  
16 and/or
- 17 • Subject Lines likely to mislead a reasonable recipient about the contents or  
18 subject matter of the spams,

18 in violation of B&P Code § 17529.5.

19 77. B&P Code § 17529.5 does not require Plaintiffs to quantify their actual damages, allege  
20 or prove reliance on the advertisements contained in the spams, or purchase the goods and  
21 services advertised in the spams. *Recipients* of unlawful spam have standing to sue and recover  
22 liquidated damages. *See* Bus. & Prof. Code § 17529.5(b)(1)(A)(iii).

23 78. The California Legislature set liquidated damages at One Thousand Dollars (\$1,000) per  
24 email in violation of the statute. *See* B&P Code § 17529.5(b)(1)(B)(ii).

25 79. Plaintiffs are informed and believe and thereon allege that the \$1,000 per spam figure is  
26 comparable with damages in other areas of consumer protection law, e.g., \$500-\$1,500 statutory  
27 damages per junk fax, pursuant to B&P Code § 17538.43(b).

28 80. Plaintiffs' rightful and lawful assertion of the California Legislature's liquidated damages  
29 amount of \$1,000 per email is necessary to further the Legislature's objective of protecting  
30 California residents from unlawful spam.

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

2 81. California law authorizes this Court to award reduced statutory damages:

3 If the court finds that the defendant established and implemented, with due care,  
4 practices and procedures reasonably designed to effectively prevent unsolicited  
5 commercial e-mail advertisements that are in violation of this section, the court  
6 shall reduce the liquidated damages recoverable under paragraph (1) to a  
7 maximum of one hundred dollars (\$100) for each unsolicited commercial e-mail  
advertisement, or a maximum of one hundred thousand dollars (\$100,000) per  
incident.

8 B&P Code § 17529.5(b)(2). Thus, to secure the reduction, Defendants have the burden of proof  
9 to demonstrate not only that they have practices and procedures to prevent unlawful spamming,  
10 but also that the practices and procedures are *effective*.

11 82. Plaintiffs are informed and believe and thereon allege that Defendants have not  
12 established and implemented, with due care, practices and procedures reasonably designed to  
13 effectively prevent unsolicited commercial e-mail advertisements that are in violation of B&P  
14 Code § 17529.5.

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

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

19 85. Moreover, Plaintiffs are informed and believe and thereon allege that Defendants  
20 intended to deceive recipients of their spam messages through the use of falsified and/or  
21 misrepresented information contained in or accompanying the email headers, as described  
22 herein.

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

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

1 88. Plaintiffs are informed and believe and thereon allege that DENIRO MARKETING LLC  
2 is an adjudged spammer, and has been advertising in unlawful spam for *years*. Plaintiffs are  
3 informed and believe and thereon allege that their counsel Daniel Balsam filed at least four small  
4 claims lawsuits on his own behalf against DENIRO MARKETING LLC for unlawful spamming  
5 in violation of B&P Code § 17529.5. Balsam won every trial and appeal.

- 6 • *Balsam v. Deniro Marketing LLC*, No. CSM-07-820194 (Super. Ct. Cal. Cty. of  
7 San Francisco, June 22, 2007).
- 8 • *Balsam v. Deniro Marketing LLC*, No. CSM-09-830095 (Super. Ct. Cal. Cty. of  
9 San Francisco, Aug. 13, 2009), *aff'd* (Nov. 6, 2009).
- 10 • *Balsam v. Deniro Marketing LLC*, No. CSM-10-832549 (Super. Ct. Cal. Cty. of  
11 San Francisco, Apr. 12, 2010), *aff'd* (July 13, 2010)
- 12 • *Balsam v. Deniro Marketing LLC*, No. CSM-10-833262 (Super. Ct. Cal. Cty. of  
13 San Francisco, June 21, 2010), *aff'd* (Aug. 11, 2010).

14 89. Plaintiffs do *not* attempt to argue collateral estoppel from these small claims judgments.

15 90. However, Plaintiffs point to these judgments as evidence that HENNING has been  
16 advertising in unlawful spam for years, and that HENNING has had actual knowledge that it has  
17 been advertising in unlawful spam for years, and yet it continues to do so. Therefore,  
18 HENNING cannot meet its burden of proof to show that it has effective practices and procedures  
19 to prevent advertising in unlawful spam, and HENNING is not entitled to the reduction in  
20 statutory damages.

### FIRST CAUSE OF ACTION

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

21 91. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

22 92. Plaintiffs received the spams at issue within one year prior to filing the original  
23 Complaint.

24 93. HENNING advertised in, sent, and/or caused to be sent at least 958 unsolicited  
25 commercial emails to Plaintiffs' California email addresses, containing third parties' domain  
26 names without permission, and/or falsified or misrepresentative information in or accompanying  
27 the headers.  
28  
29  
30  
31

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

3 95. Plaintiffs seek reimbursement of attorneys' fees and costs as authorized by B&P Code  
4 § 17529.5(b)(1)(C).

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

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

14 **PRAYER FOR RELIEF**

15 A. An Order from this Court declaring that Defendants violated B&P Code § 17529.5 by  
16 advertising in and sending unlawful spams.

17 B. Liquidated damages against Defendants in the amount of \$1,000 per unlawful spam, as  
18 authorized by B&P Code § 17529.5(b)(1)(B)(ii), as detailed below:  
19

- 20 1. \$21,000 against ALLAN HENNING, DENIRO MARKETING LLC, and LIVE  
21 CHANNELS LLC, jointly and severally, for 21 spams received by DANIEL  
22 BARRETT.
- 23 2. \$409,000 against ALLAN HENNING, DENIRO MARKETING LLC, and LIVE  
24 CHANNELS LLC, jointly and severally, for 409 spams received by JAMIE  
25 CARPER.
- 26 3. \$4,000 against ALLAN HENNING, DENIRO MARKETING LLC, and LIVE  
27 CHANNELS LLC, jointly and severally, for 4 spams received by STEPHEN FALLS.
- 28 4. \$498,000 against ALLAN HENNING, DENIRO MARKETING LLC, and LIVE  
29 CHANNELS LLC, jointly and severally, for 498 spams received by JAY FINK.
- 30 5. \$26,000 against ALLAN HENNING, DENIRO MARKETING LLC, and LIVE  
31 CHANNELS LLC, jointly and severally, for 26 spams received by WALTER HILL.



**VERIFICATIONS**

The undersigned for himself declares:

I am one of the Plaintiffs in the above-entitled Action. I have read the foregoing Third Amended Complaint and know the contents thereof. With respect to the facts and causes of action alleged by me, the same is true by my own knowledge, except as to those matters which are therein stated on information and belief and those paragraphs specifically attributed to other Plaintiffs, and, as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

DANIEL BARRETT

The undersigned for himself declares:

I am one of the Plaintiffs in the above-entitled Action. I have read the foregoing Third Amended Complaint and know the contents thereof. With respect to the facts and causes of action alleged by me, the same is true by my own knowledge, except as to those matters which are therein stated on information and belief and those paragraphs specifically attributed to other Plaintiffs, and, as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

JAMIE CARPER

The undersigned for himself declares:

I am one of the Plaintiffs in the above-entitled Action. I have read the foregoing Third Amended Complaint and know the contents thereof. With respect to the facts and causes of action alleged by me, the same is true by my own knowledge, except as to those matters which are therein stated on information and belief and those paragraphs specifically attributed to other Plaintiffs, and, as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

STEPHEN FALLS

1 The undersigned for himself declares:

2 I am one of the Plaintiffs in the above-entitled Action. I have read the foregoing Third  
3 Amended Complaint and know the contents thereof. With respect to the facts and causes of  
4 action alleged by me, the same is true by my own knowledge, except as to those matters which  
5 are therein stated on information and belief and those paragraphs specifically attributed to other  
6 Plaintiffs, and, as to those matters, I believe them to be true. I declare under penalty of perjury  
7 under the laws of the State of California that the foregoing is true and correct.

8

9 Date: \_\_\_\_\_

10

JAY FINK

11

12 The undersigned for himself declares:

13 I am one of the Plaintiffs in the above-entitled Action. I have read the foregoing Third  
14 Amended Complaint and know the contents thereof. With respect to the facts and causes of  
15 action alleged by me, the same is true by my own knowledge, except as to those matters which  
16 are therein stated on information and belief and those paragraphs specifically attributed to other  
17 Plaintiffs, and, as to those matters, I believe them to be true. I declare under penalty of perjury  
18 under the laws of the State of California that the foregoing is true and correct.

19

20 Date: \_\_\_\_\_

21

WALTER HILL

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# Exhibit A