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5 TRANCOS, INC., doing business as COREGMEDIA
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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN MATEO

10 DANIEL L. BALSAM, an individual,
11
12 Plaintiff,

) Case No. CIV471797

13 vs.

) **VERIFIED ANSWER OF BRIAN
NELSON, LAURE MAJCHERCZYK
AND TRANCOS, INC. TO VERIFIED
COMPLAINT**

14 TRANCOS INC., a California corporation;
15 LEWIS J. WRIGHT, an Individual; BRIAN
NELSON, an Individual; LAURE
16 MAJCHERCZYK, an Individual; AD
SPONSORS LLC, an Oklahoma limited
17 liability company;
18 CASHONLINEAMERICA.COM LLC, a New
York limited liability company;
19 AFFILIATENETWORK.COM MARKETING
20 LLC, a New York limited liability company;
EHARMONY.COM INC., a California
21 corporation; QUINSTREET INC., a California
corporation; STRATEGIC FINANCIAL
22 PUBLISHING INC., an Indiana corporation;
23 and DOES 1-100,

24 Defendants.

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26 Come now Defendants BRIAN NELSON, LAURE MAJCHERCZYK and TRANCOS,
27 INC., in the above-entitled action and, answering the verified complaint on file therein, jointly
28 and severally admit, deny, and allege as follows:

1 6. In answer to Paragraph 10 of the verified complaint, Defendants admit that
2 Defendant Brian Nelson is an individual and is, and at all times relevant was, the Chief Executive
3 Officer of Trancos, Inc. Defendants allege that they have no information or belief sufficient to
4 enable them to answer the allegations of Paragraph 10 at 4:5, commencing with the word
5 “BALSAM,” and ending at 4:6 with the word “herein” as the actions are not identified with
6 sufficient particularity to enable Defendants to admit or deny such allegations. Accordingly,
7 placing their denial on that ground, Defendants deny each and every allegation of Paragraph 10 at
8 4:5, commencing with the word “BALSAM,” and ending at 4:6 with the word “herein.”

9 7. In answer to Paragraph 11 of the verified complaint, Defendants admit that
10 Defendant Laure Majcherczyk is an individual and is, and at all times relevant was, the Chief
11 Operations Officer of Trancos, Inc. Defendants allege that they have no information or belief
12 sufficient to enable them to answer the allegations at Paragraph 11 at 4:9, commencing with the
13 word “BALSAM,” and ending at 4:11 with the word “herein” as the actions are not identified
14 with sufficient particularity to enable Defendants to admit or deny such allegations. Accordingly,
15 placing their denial on that ground, Defendants deny each and every allegation of Paragraph 10 at
16 4:9, commencing with the word “BALSAM,” and ending at 4:11 with the word “herein.”

17 8. In answer to Paragraph 12 of the verified complaint, Defendants allege that they
18 have no information or belief sufficient to enable them to answer the allegations of Paragraph 12,
19 at 4:12, commencing with the word “BALSAM,” and ending at 4:13 with the word “publishers”
20 as Plaintiff does not provide the context for the purported allegation. Accordingly, placing their
21 denial on that ground, Defendants deny each and every allegation of Paragraph 12, at 4:12,
22 commencing with the word “BALSAM,” and ending at 4:13 with the word “publishers.”
23 Defendants admit the allegations contained in Paragraph 12 at 4:13, commencing with the word
24 “According,” and ending at 4:16 ending with the word “worldwide.” Defendants deny each and
25 every matter, fact and allegation contained therein, and each and every part thereof, both
26 generally and specifically, in Paragraph 12 at 4:17, commencing with the word “However,” and
27 ending at 4:18 with the word “itself.”

28 9. In answer to Paragraphs 13, 14, 19, 25, and 27 of the verified complaint,

1 Defendants deny each and every matter, fact and allegation contained therein, and each and every
2 part thereof, both generally and specifically.

3 10. In answer to Paragraph 15 of the verified complaint, Defendants allege that they
4 have no information or belief sufficient to enable them to answer the allegations of Paragraph 15
5 of the verified complaint herein, and placing their denial on that ground, deny each and every
6 allegation thereof.

7 11. In answer to Paragraph 16 of the verified complaint, Defendants admit that
8 USAProductsonline.com was privately registered though GoDaddy Inc., but denies each and
9 every other matter, fact and allegation, and each and every part thereof, both generally and
10 specifically, as set forth in Paragraph 16 of the verified complaint.

11 12. In answer to Paragraph 17 of the verified complaint, Defendants admit that
12 USAProductsOnline.com has not been registered as a fictitious business name in the County of
13 San Mateo, but is a registered domain name. Defendants allege that they have no information or
14 belief sufficient to enable them to answer the remaining allegations of Paragraph 17 of the
15 verified complaint herein, and placing their denial on that ground, deny each and every other
16 allegation contained therein.

17 13. In answer to Paragraph 18 of the verified complaint, Defendants admit that
18 USAProductsOnline.com has not been registered as a fictitious business name in the County of
19 Los Angeles, but is a registered domain name. Defendants allege that they have no information
20 or belief sufficient to enable them to answer the remaining allegations of Paragraph 18 of the
21 verified complaint herein, and placing their denial on that ground, deny each and every other
22 allegation contained therein.

23 14. In answer to Paragraphs 20 and 21 of the verified complaint, Defendants assert
24 that the forms completed for the opening of the private mailbox speak for themselves.

25 15. In answer to Paragraph 22 of the verified complaint, Defendants assert that they
26 have no information or belief as to whether Exhibit "A" to the verified complaint is a true and
27 correct copy of the "application materials" until such time as Defendants are given an
28 opportunity to review the original of same. Accordingly, based on such information and belief

1 and placing their denial on that ground, Defendants deny the authenticity of Exhibit "A."

2 16. In answer to Paragraph 23 of the verified complaint, Defendants admit that
3 Trancos, Inc. privately registered the domain names of minecyclic.com, minuteprovenance.com,
4 misstepoutcome.com, modalworship.com, moussetogether.com, mucousmarquise.com,
5 mythicaldumbwaiter.com and nationalukulele.com. Defendants deny each and every other
6 matter, fact and allegation contained in Paragraph 23 at 6:17-7:1, ending with the word
7 "TRANCOS," and each and every part thereof, both generally and specifically, set forth in
8 Paragraph 23, 6:17-7:1, ending with the word "TRANCOS." Defendants allege that they have no
9 information or belief sufficient to enable them to answer the allegations of Paragraph 23 at 7:1,
10 commencing with the word "Attachment," and ending at 7:2 ending with the word "names," and
11 placing their denial on that ground, deny each and every allegation thereof.

12 17. In answer to Paragraphs 24 and 26 of the verified complaint, Defendants allege
13 that they have no information or belief sufficient to enable them to answer the allegations of
14 Paragraphs 24 and 26 of the verified complaint herein, and placing their denial on that ground,
15 deny each and every allegation thereof.

16 **Other Defendants**

17 18. In answer to Paragraphs 28 through 32, inclusive, Defendants allege that these
18 paragraphs are not directed against these answering Defendants. Accordingly, Defendants have
19 no information or belief sufficient to enable them to answer the allegations of Paragraphs 28
20 through 32, inclusive, of the verified complaint herein, and placing their denial on that ground,
21 deny each and every allegation thereof.

22 **EIGHT UNLAWFUL SPAMS**

23 19. In answer to Paragraph 33, Defendants allege that they have no information or
24 belief sufficient to enable them to answer the allegations of Paragraph 33 of the verified
25 complaint herein, and placing their denial on that ground, deny each and every allegation thereof.

26 20. In answer to Paragraphs 34 through 45, inclusive, Defendants allege that they
27 have no information or belief sufficient to enable them to answer the allegations of said
28 paragraphs, including the authenticity of Attachments C and D to the verified complaint, and

1 placing their denial on that ground, deny each and every allegation thereof.

2 **SPECIFIC ALLEGATIONS**

3 21. In answer to Paragraphs 46 through 49, inclusive, Paragraphs 55 through 56,
4 inclusive, Paragraph 58, (as it is unclear whether Plaintiff is asserting that Trancos, Inc. is an
5 advertiser contemplated by said Paragraph 58), Paragraphs 64 and 70, Paragraphs 71 through 79,
6 inclusive, Paragraphs 81 through 93, inclusive, Paragraph 95 through 97, inclusive, and
7 Paragraph 99, including the authenticity of Attachments E and F to the verified complaint,
8 Defendants allege that they have no information or belief sufficient to enable them to answer the
9 allegations of said Paragraphs, and placing their denial on that ground, deny each and every
10 allegation thereof.

11 22. In answer to Paragraphs 50 through 54, inclusive, Paragraphs 57, 59, 60, 62, 63,
12 65, 67, 69, 90, and 100 of the verified complaint, Defendants deny each and every matter, fact
13 and allegation contained therein, and each and every part thereof, both generally and specifically.

14 23. In answer to Paragraph 61 of the verified complaint, Defendants assert that the
15 wording of the statutes set forth in said paragraph speak for themselves. Additionally,
16 Defendants allege that they have no information or belief sufficient to enable them to answer the
17 allegations set forth in Paragraph 61 at 15:7, commencing with the word "BALSAM," and
18 ending at 15:9 with the word "spam." Accordingly, placing their denial on that ground,
19 Defendants deny each and every allegation set forth in Paragraph 61 at 15:7, commencing with
20 the word "BALSAM," and ending at 15:9 with the word "spam."

21 24. In answer to Paragraphs 66 and 68 of the verified complaint, Defendants assert
22 that the statutes speak for themselves.

23 25. In answer to Paragraph 80 of the verified complaint, Defendants allege that they
24 have no information and belief sufficient to enable them to answer the allegations set forth in
25 Paragraph 80 at 18:14, commencing with the word "BALSAM," and ending at 18:17 at the word
26 "computers," and placing denial on that ground, deny each and every allegation set forth in
27 Paragraph 80 at 18:14, commencing with the word "BALSAM," and ending at 18:17 at the word
28 "computers." Defendants deny each and every other matter, fact and allegation contained

1 principal place of business of Trancos, Inc. is in the County of San Mateo.

2 32. In answer to Paragraphs 115, 120, 122, 123, 124, and 125 of the verified
3 complaint, Defendants deny each and every matter, fact and allegation contained therein, and
4 each and every part thereof, both generally and specifically.

5 33. In answer to Paragraphs 117, 118, and 119 of the verified complaint, Defendants
6 allege that they have no information or belief sufficient to enable them to answer the allegations
7 set forth in said Paragraphs, and placing their denial on that ground, deny each and every
8 allegation set forth in said paragraphs.

9 34. In answer to Paragraph 121 of the verified complaint, the statutes making up the
10 California Legal Remedies Act speak for themselves.

11 **THIRD CAUSE OF ACTION**

12 35. In answer to Paragraph 126 of the verified complaint, Defendants incorporate by
13 reference each and every admission, denial, and allegation contained in each and every paragraph
14 of Defendants verified answer to Paragraphs 1 through 102, inclusive, of the verified complaint.

15 36. In answer to Paragraphs 127 and 128 of the verified complaint, Defendants allege
16 that they have no information or belief sufficient to enable them to answer the allegations set
17 forth in said paragraphs, and placing their denial on that ground, deny each and every allegation
18 set forth in said paragraphs.

19 **AFFIRMATIVE DEFENSES**

20 **FIRST AFFIRMATIVE DEFENSE**
21 **(Failure to State Cause of Action)**

22 1. Each of the purported causes of action set forth in the verified complaint does not
23 state facts sufficient to constitute a cause of action against these answering Defendants.

24 **SECOND AFFIRMATIVE DEFENSE**
25 **(Laches)**

26 2. Each of the purported causes of action set forth in the verified complaint is barred
27 by the doctrine of laches.

1 attorney's fees and other costs incurred in retaining counsel to defend this lawsuit.

2 **NINTH AFFIRMATIVE DEFENSE**
3 **(Preemption by Federal Law)**

4 9. The claims set forth in the verified complaint are preempted by federal law,
5 including but not limited to the Federal CAN-SPAM Act, 15 U.S.C. §§7701-7713, and the extent
6 of the duties, if any, of Defendants to Plaintiff with regard to the subject matter of the verified
7 complaint are governed exclusively by federal law.

8 **TENTH AFFIRMATIVE DEFENSE**
9 **(Privilege)**

10 10. Defendants' speech and conduct, as alleged in Plaintiff's verified complaint, is
11 protected by the First Amendment to the Constitution of the United States, and/or privileged
12 pursuant to law.

13 **ELEVENTH AFFIRMATIVE DEFENSE**
14 **(No Immediate Harm)**

15 11. No threat of immediate harm exists sufficient to support a grant of injunctive
16 relief.

17 **TWELFTH AFFIRMATIVE DEFENSE**
18 **(Uncertain Complaint)**

19 12. The purported causes of action in the verified complaint are uncertain, ambiguous
20 and /or unintelligible.

21 **THIRTEENTH AFFIRMATIVE DEFENSE**
22 **(No Falsified, Misrepresented or Forged Information)**

23 13. Defendants allege that the representations contained in the headers and/or subject
24 lines of the electronic mail messages allegedly sent by Defendant Trancos, Inc. to Plaintiff did
25 not contain falsified, misrepresented or forged information.

26 **FOURTEENTH AFFIRMATIVE DEFENSE**
27 **(Good Faith Belief)**

28 14. Defendants allege that any representations contained in the headers and/or subject

1 lines of the electronic mail messages allegedly sent by Defendant Trancos, Inc. to Plaintiff, if
2 actually made, were made with an honest, good-faith belief in their truth and, in doing so,
3 Defendant Trancos, Inc. was either lawfully authorized by an advertiser to use that information or
4 was provided with that information by an advertiser.

5 **FIFTEENTH AFFIRMATIVE DEFENSE**
6 **(No Intent to Deceive)**

7 15. Defendants allege that any representations contained in the headers and/or subject
8 lines of the electronic mail messages allegedly sent by Defendant Trancos, Inc. to Plaintiff, if
9 actually made, were not made by said Defendant for the purpose of misleading Plaintiff, inducing
10 Plaintiff to rely upon them or to act or refrain from acting in reliance thereon.

11 **SIXTEENTH AFFIRMATIVE DEFENSE**
12 **(Due Care)**

13 16. Defendant Trancos, Inc. established and implemented, with due care, practices
14 and procedures reasonably designed to effectively prevent unsolicited commercial electronic mail
15 messages and advertisements that may be in violation of Business and Professions Code
16 §17529.5, and, to the extent that this Court finds Defendant Trancos, Inc. liable for liquidated
17 damages, such damages must be reduced pursuant to the provisions of Business and Professions
18 Code §17529.5(b)(2).

19 **SEVENTEENTH AFFIRMATIVE DEFENSE**
20 **(Reservation of Affirmative Defenses)**

21 17. Defendants presently have insufficient knowledge or information on which to
22 form a belief with respect to whether they may have additional, as yet undetermined, defenses
23 available. Defendants therefore reserve their rights to certain additional defenses in the event
24 discovery indicates that they would be appropriate.

25 **EIGHTEENTH AFFIRMATIVE DEFENSE**
26 **(Attorney's Fees)**

27 18. Defendants have engaged attorneys to represent them in defense of Plaintiff's
28 frivolous, unfounded and unreasonable action, and upon prevailing herein, Defendants will be,

1 and are, entitled to an award of reasonable attorneys' fees and costs as Plaintiff has sought said
2 fees and costs, and by virtue of Code of Civil Procedure §§ 128.5 and/or 128.7.


3 WHEREFORE, Defendants pray for judgment as follows:

- 4 1. That Plaintiff take nothing from Defendants by reason of his complaint;
- 5 2. That the complaint be dismissed;
- 6 3. That Defendants be awarded their reasonable attorneys' fees and costs of suit; and

7 ///

- 8 4. That Defendants have such further and other relief as this court deems proper.

9
10 Dated: June 26, 2008

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13 ROBERT L. NELSON
14 Attorney for Defendants,
15 Brian Nelson, Laure Majcherczyk, and Trancos, Inc.

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1 **VERIFICATION**

2 I, Robert L. Nelson, declare:

3 I am an attorney at law duly admitted and licensed to practice before all courts of this State
4 and I have my professional office at 35 Mitchell Boulevard, Suite 15, San Rafael, Marin County,
5 California.

6 I am the attorney of record for Defendants, Brian Nelson, Laure Majcherczyk, and Trancos,
7 Inc., in the above-entitled action.

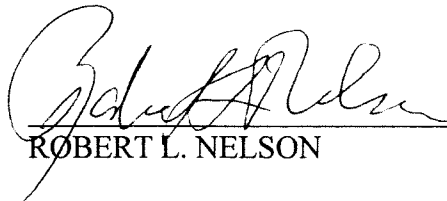
8 Defendants are absent from the county in which I have my office.

9 For that reason I am making this verification on their behalf.

10
11 I have read the foregoing **VERIFIED ANSWER OF BRIAN NELSON, LAURE**
12 **MAJCHERCZYK AND TRANCOS, INC. TO VERIFIED COMPLAINT** and know the
13 contents thereof. I am informed and believe the matters therein to be true and on that ground
14 allege that the matters stated therein are true.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing
16 is true and correct.

17 Dated: June 26, 2008

18 
19 _____
20 ROBERT L. NELSON
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PROOF OF SERVICE BY MAIL
(CCP Sec. 1013a)

EXACT TITLE OF DOCUMENT(S) SERVED:

1. **VERIFIED ANSWER OF BRIAN NELSON, LAURE MAJCHERCZYK AND TRANCOS, INC. TO VERIFIED COMPLAINT**

I, Linda L. Peacher, declare that I am a citizen of the United States, over 18 years of age and not a party to the within action. I am employed in Marin County, California and my business address is 35 Mitchell Boulevard, Suite 15, San Rafael, California 94903.

On the date this declaration is signed below, I served the above described document(s):

- By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses below and:
 - Deposited in the sealed envelope with the United States Postal Service, with the postage fully prepaid; or
 - Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

NAME AND ADDRESS OF PERSON(S) SERVED:

Timothy J. Walton, Esq.
WALTON & ROESS LLP
407 South California, Suite 8
Palo Alto, CA 94306

Attorney for:
DANIEL L. BALSAM

Stephan A. Barber, Esq.
Ropers, Majeski, Kohn & Bentley
80 North First Street
San Jose, CA 95113

Attorney for:
Quinstreet, Inc.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Dated: June 26, 2008


LINDA L. PEACHER