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San Francisco County Superior Court
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5 Attorneys for Plaintiff Daniel L. Balsam **CASE MANAGEMENT CONFERENCE SET**

6 **JUL 25 2008 -9⁰⁰AM**

7 **DEPARTMENT 212**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)**

10
11 DANIEL L. BALSAM, an individual,

12 Plaintiff,

13 vs.

14 SMS MEDIA CORPORATION, a Florida
corporation (successor in interest to Teramedia)
15 Corporation, a Florida corporation);)
STEVE HARDIGREE, an individual;)
16 SCOTT HARDIGREE, an individual;)
MICHAEL BARNES, an individual;)
17 BRUCE HAMMER, an individual;)
KAREN PFLUEGER, an individual;)
18 AMANDA WHITE, an individual;)
ADAM KESSLER, an individual;)
19 MICHAEL HUCKABA, an individual;)
JASON MARCUS, an individual;)
20 BOSLEY HEALTHY HAIR INC., a)
California corporation;)
21 BUY THE BEACH REALTY INC., a Florida)
corporation;)
22 SEAN GRECO, an individual;)
CELLULAR ONE PROPERTIES LLC, an)
23 Oklahoma limited liability corporation;)
PETFOODDIRECT.COM INC., a)

) Case No.:

) **CGC -08 -472544**

) **VERIFIED COMPLAINT FOR
DAMAGES**

-) **1. VIOLATIONS OF CALIFORNIA
RESTRICTIONS ON UNSOLICITED
COMMERCIAL E-MAIL
ADVERTISERS (Cal. Bus. & Prof.
Code § 17529.5)**
) **2. VIOLATIONS OF CONSUMERS
LEGAL REMEDIES ACT (Cal. Civ.
Code § 1750 et seq.)**
) **3. DECLARATORY RELIEF**

1 Pennsylvania corporation;)
REDF MARKETING LLC, a North Carolina)
2 limited liability corporation;)
SAGE SOFTWARE INC., a Virginia)
3 corporation;)
4 and)
DOES 1-100,)
6 Defendants.)

7 COMES NOW PLAINTIFF DANIEL L. BALSAM and files this Verified Complaint for causes
8 of action against Defendants SMS MEDIA CORPORATION (formerly known as Teramedia
9 Corporation), STEVE HARDIGREE, SCOTT HARDIGREE, MICHAEL BARNES, BRUCE
10 HAMMER, KAREN PFLUEGER, AMANDA WHITE, ADAM KESSLER, MICHAEL
11 HUCKABA, JASON MARCUS, BOSLEY HEALTHY HAIR INC., BUY THE BEACH
12 REALTY INC., SEAN GRECO, CELLULAR ONE PROPERTIES LLC,
13 PETFOODDIRECT.COM INC., REDF MARKETING LLC, SAGE SOFTWARE INC., and
14 DOES 1 through 100, inclusive, and alleges as follows:

16
17 **I. SUMMARY OF THE COMPLAINT**

18 1. Plaintiff DANIEL L. BALSAM (“BALSAM”) brings this action against Defendants for
19 sending and advertising in thirty two (32) unlawful Unsolicited Commercial Email (“UCE” or
20 “spam”) messages to BALSAM between September 10, 2006 and October 12, 2007, inclusive.

21 2. The headers of the spams contain or are accompanied by numerous elements of falsified,
22 misrepresented, or forged header information, in violation of Cal. Bus. & Prof. Code § 17529.5.
23 The spams also contain various types of deceptive information prohibited by Cal. Civ. Code
24 § 1750 *et seq.* (the Consumers Legal Remedies Act).

1 3. This Court should award statutory damages of \$1,000 per spam, as provided by Cal. Bus.
2 & Prof. Code § 17529.5(b)(1)(B)(ii), and not consider any reduction, because Defendants failed
3 to implement reasonably effective systems designed to prevent the sending of unlawful spam in
4 violation of the statute. BALSAM is informed and believes and thereon alleges that Defendant
5 SMS Media Corporation’s actions were knowing, willful, and blatant, and *not* “clerical”
6 mistakes.

7 4. This Court should grant injunctive relief to prohibit Defendants from engaging in
8 deceptive marketing practices, as authorized by Civ. Code § 1780(a)(2), because no Defendant
9 has identified all consumers similarly situated to BALSAM and notified them that it would no
10 longer be engaging in deceptive marketing practices.

11
12 **II. PARTIES**

13 **A. Plaintiff Daniel L. Balsam**

14 5. BALSAM is now, and at all times relevant herein has been, an individual residing in the
15 State of California.

16 6. BALSAM is a consumer because BALSAM seeks and acquires, by purchase or lease,
17 goods and services for personal, family, or household purposes.

18 7. BALSAM owns and at all relevant times herein owned a computer with an Internet
19 connection. This computer is located in the State of California, in the City and County of San
20 Francisco. BALSAM ordinarily uses this computer to access his email accounts. BALSAM
21 received all of the spams over his Internet Service Provider’s and email service provider’s
22 equipment, located in the State of California, in the City and County of San Francisco.

1 **B. Defendant SMS Media Corporation and its Officers/Employees**

2 8. BALSAM is informed and believes and thereon alleges that Defendant SMS MEDIA
3 CORPORATION (formerly known as Teramedia Corporation) (“SMS”) does business as
4 *Teramedia.com*. SMS or its predecessor Teramedia Corporation are now, and were at all times
5 relevant herein, corporations duly organized and recognized under the laws of the State of
6 Florida with a principal place of business in Orlando, Florida.

7 9. BALSAM is informed and believes and thereon alleges that SMS/Teramedia Corporation
8 had a place of business at 760 8th Avenue, Suite 101 in San Diego, California as recently as
9 2006, as shown in Attachment A (the “contact us” web page from Teramedia Corporation’s own
10 website), although Teramedia Corporation never registered with the California Secretary of
11 State.

12 10. BALSAM is informed and believes and thereon alleges that Defendant STEVE
13 HARDIGREE is an individual, currently President (and formerly President and Chief Executive
14 Officer) of SMS in Orlando, Florida. BALSAM is informed and believes and thereon alleges
15 that Defendant STEVE HARDIGREE was a knowing and active participant in aspects of the
16 sending of unlawful spam as described in this complaint.

17 11. BALSAM is informed and believes and thereon alleges that Defendant SCOTT
18 HARDIGREE is an individual, currently Chief Marketing Officer (and formerly President, Vice
19 President and Chief Marketing Officer) of SMS in Orlando, Florida. BALSAM is informed and
20 believes and thereon alleges that Defendant SCOTT HARDIGREE was a knowing and active
21 participant in aspects of the sending of unlawful spam as described in this complaint.

22 12. BALSAM is informed and believes and thereon alleges that Defendant MICHAEL
23 BARNES is an individual, currently Chief Information Officer of SMS in Orlando, Florida.
24 BALSAM is informed and believes and thereon alleges that Defendant MICHAEL BARNES

1 was a knowing and active participant in aspects of the sending of unlawful spam as described in
2 this complaint.

3 13. BALSAM is informed and believes and thereon alleges that Defendant BRUCE
4 HAMMER is an individual, currently Vice President of List Services of SMS in Harrison, New
5 York. BALSAM is informed and believes and thereon alleges that Defendant BRUCE
6 HAMMER was a knowing and active participant in aspects of the sending of unlawful spam as
7 described in this complaint.

8 14. BALSAM is informed and believes and thereon alleges that Defendant KAREN
9 PFLUEGER is an individual, currently Senior List Manager of SMS in Orlando, Florida.
10 BALSAM is informed and believes and thereon alleges that Defendant KAREN PFLUEGER
11 was a knowing and active participant in aspects of the sending of unlawful spam as described in
12 this complaint.

13 15. BALSAM is informed and believes and thereon alleges that Defendant AMANDA
14 WHITE is an individual, currently Senior List Manager of SMS in Orlando, Florida. BALSAM
15 is informed and believes and thereon alleges that Defendant AMANDA WHITE was a knowing
16 and active participant in aspects of the sending of unlawful spam as described in this complaint.

17 16. BALSAM is informed and believes and thereon alleges that Defendant ADAM
18 KESSLER is an individual, currently Senior List Broker of SMS Media Corporation in Orlando,
19 Florida. BALSAM is informed and believes and thereon alleges that Defendant ADAM
20 KESSLER was a knowing and active participant in aspects of the sending of unlawful spam as
21 described in this complaint.

22 17. BALSAM is informed and believes and thereon alleges that Defendant MICHAEL
23 HUCKABA is an individual, currently Chief Technology Officer of SMS in Orlando, Florida.

1 BALSAM is informed and believes and thereon alleges that Defendant MICHAEL HUCKABA
2 was a knowing and active participant in aspects of the sending of unlawful spam as described in
3 this complaint.

4 18. BALSAM is informed and believes and thereon alleges that Defendant JASON
5 MARCUS is an individual, currently Senior Database Specialist of SMS in Orlando, Florida.

6 BALSAM is informed and believes and thereon alleges that Defendant JASON MARCUS was a
7 knowing and active participant in aspects of the sending of unlawful spam as described in this
8 complaint.

9 19. SMS registered most of the domain names it used to send spam using “private domain
10 registration” services so as to hide its true identity. Other domain names were purportedly
11 registered by an individual: “Aaron Bodes.” BALSAM is informed and believes and thereon
12 alleges that no such individual is or has ever been employed by SMS.

13 20. In some spams, instead of identifying itself as the sender, SMS claims to be “BMVN
14 Management” or “TBN Management” with an address at a commercial mail receiving agency
15 (CMRA): 848 North Rainbow Blvd. #2147 in Las Vegas, Nevada. The Nevada Secretary of
16 State has no listing for either such entity. SMS also claims to be “TeraResponse” and “Business
17 Life” and uses two deceptively similar CMRA addresses in Orlando, Florida – 24 East Central
18 Blvd. #217 and 424 East Central Blvd. #217. Domain names registered to this address show
19 identify “Aaron Bodes,” and similarly do not identify SMS.

20 **C. Other Defendants**

21 21. BALSAM is informed and believes and thereon alleges that Defendant BOSLEY
22 HEALTHY HAIR INC. (“BOSLEY”) does business as *Bosley.com* and is now, and was at all
23 times relevant herein, a corporation duly organized and recognized under the laws of the State of
24 California with a principal place of business in Beverly Hills, California.

1 22. BALSAM is informed and believes and thereon alleges that Defendant BUY THE
2 BEACH REALTY INC. (“BEACH”) does business as *BuyBeach.com* and is now, and was at all
3 times relevant herein, a corporation duly organized and recognized under the laws of the State of
4 Florida with a principal place of business in Miami Beach, Florida.

5 23. BALSAM is informed and believes and thereon alleges that Defendant SEAN GRECO
6 (“GRECO”) is now, and was at all times relevant herein, a Realtor-Associate employed by
7 BEACH in Miami Beach, Florida.

8 24. BALSAM is informed and believes and thereon alleges that Defendant CELLULAR
9 ONE PROPERTIES LLC (“CELLULAR”) does business as *CellularOne.com* and is now, and
10 was at all times relevant herein, a limited liability corporation duly organized and recognized
11 under the laws of the State of Oklahoma with a principal place of business in Oklahoma City,
12 Oklahoma.

13 25. BALSAM is informed and believes and thereon alleges that Defendant
14 PETFOODDIRECT.COM INC. (“PETFOOD”) does business as *PetFoodDirect.com* and is now,
15 and was at all times relevant herein, a limited liability corporation duly organized and recognized
16 under the laws of the State of Pennsylvania with a principal place of business in Harleysville,
17 Pennsylvania.

18 26. BALSAM is informed and believes and thereon alleges that Defendant REDF
19 MARKETING LLC (“REDF”) does business as *DirectStarTV.com* and is now, and was at all
20 times relevant herein, a limited liability corporation duly organized and recognized under the
21 laws of the State of North Carolina with a principal place of business in Charlotte, North
22 Carolina.

1 27. BALSAM is informed and believes and thereon alleges that Defendant SAGE
2 SOFTWARE INC. (“SAGE”) does business as *SageSoftware.com* and is now, and was at all
3 times relevant herein, a corporation duly organized and recognized under the laws of the State of
4 Virginia (doing business in California as Sage MMD Inc.), with a principal place of business in
5 Irvine, California.

6 28. BALSAM does not know the true names or legal capacities of the Defendants sued herein
7 as DOES 1 through 100, inclusive, and therefore sues said Defendants by such fictitious names.

8 29. BALSAM is informed and believes and thereon alleges that each of the Defendants
9 designated herein as a DOE is legally responsible in some manner for the matters herein alleged,
10 and is legally responsible in some manner for causing the injuries and damages to BALSAM as
11 alleged herein.

12 30. BALSAM is informed and believes and thereon alleges that at all times herein
13 mentioned, each of the Defendants was the agent or employee of other Defendants and was at all
14 times herein mentioned acting within the scope of said agency or employment.

15
16 **III. THIRTY-TWO UNLAWFUL SPAMS**

17 31. Between September 10, 2006 and October 12, 2007, inclusive, Defendants advertised in
18 and/or sent thirty-two (32) Unsolicited Commercial Email advertisements (“spams”) to
19 BALSAM, for 19 different advertisers.

20 “Commercial e-mail advertisement” means any electronic mail message initiated
21 for the purpose of advertising or promoting the lease, sale, rental, gift offer, or
other disposition of any property, goods, services, or extension of credit.

22 Cal. Bus. & Prof. Code § 17529.1(c).

1 32. SMS was hired by the other Defendants to act as their marketing agent and send spams
2 on their behalf. SMS was also hired by other advertisers, who are not named as Defendants in
3 this action, to act as their marketing agent and send spams on their behalf.

4 33. True and correct copies of six of the spams – one each for BOSLEY, BEACH/GRECO,
5 CELLULAR, PETFOOD, REDF, SAGE – are included in Attachment B, redacted only to
6 remove BALSAM’s email address(es).

7 **A. Spam Advertising Defendant BOSLEY (2)**

8 34. Defendant BOSLEY advertised in, and is also responsible for, a spam sent by Defendant
9 SMS on August 15, 2007 to BALSAM. Subject line: “Learn the facts about hair loss.” The
10 spam purported to have been sent from “Bosley” and from email address *a@postzonetwo.com*.
11 (The sending domain name, *postzonetwo.com*, was privately registered so as to not identify the
12 registrant at all.) The spam purported to have been sent from IP address 203.223.135.125 and
13 mailserver “203.223.135.125.” BALSAM received the spam at 9:52 pm (GMT -7 hours), an
14 hour *before* it was purportedly sent at 9:43 am (GMT +4 hours) on August 16. Defendant SMS
15 identified itself at the bottom of the spam as “BMVN Management” and claimed an address at a
16 CMRA in Las Vegas, Nevada. When BALSAM sent an email message to the purported sending
17 email address, *a@postzonetwo.com*, he received an “error bounceback” message indicating that
18 there is no such email address.

19 35. Defendant BOSLEY advertised in, and is also responsible for, a spam sent by Defendant
20 SMS on August 16, 2007 to BALSAM. Subject line: “Learn the facts about hair loss.” The
21 spam purported to have been sent from “Bosley” and from email address *a@postzonetwo.com*.
22 (The sending domain name, *postzonetwo.com*, was privately registered so as to not identify the
23 registrant at all.) The spam purported to have been sent from IP address 203.223.135.125 and
24 mailserver “203.223.135.125.” BALSAM received the spam at 12:01 am (GMT -7 hours); it

1 was purportedly sent at 4:54 am (GMT -3 hours). Defendant SMS identified itself at the bottom
2 of the spam as “BMVN Management” and claimed an address at a CMRA in Las Vegas,
3 Nevada. When BALSAM sent an email message to the purported sending email address,
4 *a@postzonetwo.com*, he received an “error bounceback” message indicating that there is no such
5 email address.

6 **B. Spam Advertising Defendants BEACH and GRECO (2)**

7 36. Defendants BEACH and GRECO advertised in, and are also responsible for, a spam sent
8 by Defendant SMS on February 20, 2007 to BALSAM. Subject line: “Mondarin South Beach:
9 Partner with the Best.” The spam purported to have been sent from “Mr. Sean Greco” and from
10 email address *buybeach@consumeroffers.net*. (The sending domain name, *consumeroffers.net*,
11 was registered to a nonexistent individual, Aaron Bodes, at 424 East Central Blvd., Suite 217,
12 Orlando, Florida... *not* to SMS.) The spam purported to have been sent from IP address
13 216.75.2.179 and mailserver “66.196.97.250.” BALSAM received the spam at 07:55 am (GMT
14 -8 hours); it was purportedly sent at 8:54 am (GMT -7 hours). SMS identified itself at the
15 bottom of the spam as “TBN Management” and claimed an address at a CMRA in Las Vegas,
16 Nevada. SMS also included four lines of random words at the bottom of the spam that have no
17 connection to the contents of the spam.

18 37. Defendants BEACH and GRECO advertised in, and are also responsible for, a second
19 spam sent by Defendant SMS on February 20, 2007 to BALSAM. Subject line: “Mondarin
20 South Beach.” The spam purported to have been sent from “Sean” and from email address
21 *buybeach@consumeroffers.net*. (The sending domain name, *consumeroffers.net*, was registered
22 to a nonexistent individual, Aaron Bodes, at 424 East Central Blvd., Suite 217, Orlando,
23 Florida... *not* to SMS.) The spam purported to have been sent from IP address 216.75.2.179 and
24 mailserver “66.196.97.250.” BALSAM received the spam at 07:55 am (GMT -8 hours); it was

1 purportedly sent at 9:50 am (GMT -6 hours). BALSAM was blind-copied on the email; the
2 email address in the “To:” field, *dan_edwards_1966@yahoo.com* does not and has never
3 belonged to BALSAM. The opt-out link at the bottom of the spam was coded to
4 *dan_edwards_1966@yahoo.com*; the spam did not offer BALSAM any means to opt out *his*
5 email address. SMS identified itself at the bottom of the spam as “TBN Management” and
6 claimed an address at a CMRA in Las Vegas, Nevada. SMS also included two lines of random
7 words at the bottom of the spam that have no connection to the contents of the spam.

8 **C. Spam Advertising Defendant CELLULAR (1)**

9 38. Defendant CELLULAR advertised in, and is also responsible for, a spam sent by
10 Defendant SMS on May 7, 2007. Subject line: “Phone Deals for Mom with No Activation Fee.”
11 The spam purported to have been sent from “Cellular One” and from email address
12 *Cellular_One@blue-mailer.com*. (The sending domain name, *blue-mailer.com*, was registered
13 to a nonexistent individual, Aaron Bodes, at 424 East Central Blvd., Suite 217, Orlando,
14 Florida... *not* to SMS.) The spam purported to have been sent from IP address 67.19.152.3 and
15 mailserver “tp3.truehome.net.” (The sending mailserver domain name, *truehome.net*, was
16 privately registered so as to not identify the registrant at all.) BALSAM received the spam at
17 4:08 pm (GMT -7 hours); eight hours *before* it was purportedly sent at 1:34 pm (GMT +4 hours).
18 SMS identified itself at the bottom of the spam as “TeraResponse” and claimed an address at a
19 CMRA in Orlando, Florida. When BALSAM sent an email message to the purported sending
20 email address, *Cellular_One@blue-mailer.com*, he received an “error bounceback” message
21 indicating that there is no such email host *blue-mailer.com*.

22 **D. Spam Advertising Defendant PETFOOD (1)**

23 39. PETFOOD advertised in, and is also responsible for, a spam sent by SMS on October 11,
24 2007 to BALSAM. Subject line: “Savvy Pet Shoppers can save 22% Today.” The spam

1 purported to have been sent from “PetFoodDirect” and from email address
2 *PetFoodDirect@i2iii.com*. (The sending domain name, *i2iii.com*, was privately registered so as
3 to not identify the registrant at all.) The spam purported to have been sent from IP address
4 203.223.135.221 and mailserver “216.39.53.3.” BALSAM received the spam at 6:03 pm (GMT
5 -7 hours), an hour *before* it was purportedly sent at 8:56 pm (GMT -5 hours). SMS identified
6 itself at the bottom of the spam as “TeraResponse” and claimed an address at a CMRA in
7 Orlando, Florida. When BALSAM sent an email message to the purported sending email
8 address, *PetFoodDirect@i2iii.com*, he received an “error bounceback” message indicating that
9 there is no such email address.

10 **E. Spam Advertising Defendant REDF (1)**

11 40. Defendant REDF advertised in, and is also responsible for, a spam sent by Defendant
12 SMS on February 20, 2007. Subject line: “A DIRECTV deal you can’t pass up.” The spam
13 purported to have been sent from “Direct Star TV” and from email address
14 *Direct@consumeroffers.net*. (The sending domain name, *consumeroffers.net*, was registered to a
15 nonexistent individual, Aaron Bodes, at 424 East Central Blvd., Suite 217, Orlando, Florida...
16 *not* to SMS.) The spam purported to have been sent from IP address 216.75.2.179 and
17 mailserver “66.196.97.250.” BALSAM received the spam at 8:57 am (GMT -8 hours); it was
18 purportedly sent at 8:48 pm (GMT +4 hours). BALSAM was blind-copied on the email; the
19 email address in the “To:” field, *dan_husk@yahoo.com* does not and has never belonged to
20 BALSAM. The opt-out link at the bottom of the spam was coded to *dan_husk@yahoo.com*; the
21 spam did not offer BALSAM any means to opt out *his* email address. SMS identified itself at
22 the bottom of the spam as “TBN Management” and claimed an address at a CMRA in Las
23 Vegas, Nevada. SMS also included two lines of random words at the bottom of the spam that
24 have no connection to the contents of the spam. When BALSAM sent an email message to the

1 purported sending email address, *Direct@consumeroffers.net*, he received an “error bounceback”
2 message indicating that there is no such email address.

3 **F. Spam Advertising Defendant SAGE (1)**

4 41. Defendant SAGE advertised in, and is also responsible for, a spam sent by Defendant
5 SMS on December 15, 2006. Subject line: “Sage is your answer to reduce benefits management
6 costs.” The spam purported to have been sent from “Sage” and from email address
7 *Sage@apostfour.com*. (The sending domain name, *apostfour.com*, was privately registered so as
8 to not identify the registrant at all.) The spam purported to have been sent from IP address
9 64.239.234.200 and mailserver “exfast308.” BALSAM received the spam at 2:04 pm (GMT -8
10 hours); it was purportedly sent at 4:03 pm (GMT -6 hours). SMS identified itself at the bottom
11 of the spam as “TeraResponse” and claimed an address at a CMRA in Orlando, Florida. When
12 BALSAM sent an email message to the purported sending email address, *Sage@apostfour.com*,
13 he received an “error bounceback” message indicating that there is no such mail exchanger.

14 **G. Spam Advertising Other Companies (Not Defendants)**

15 **1. Spam Advertising Avaya Inc. (1)**

16 42. BALSAM received a spam sent by Defendant SMS on October 12, 2007 advertising
17 Avaya Inc. Subject line: “Two bonuses for IT people concerned about contact center
18 performance.” The spam purported to have been sent from “Avaya” and from email address
19 *Avaya@i2iii.com*. (The sending domain name, *i2iii.com*, was privately registered so as to not
20 identify the registrant at all.) The spam purported to have been sent from IP address
21 203.223.135.221 and mailserver “66.196.97.250.” BALSAM received the spam at 8:27 am
22 (GMT -7 hours), an hour *before* it was purportedly sent at 9:21 am (GMT -7 hours). SMS
23 identified itself at the bottom of the spam as “TeraResponse” and claimed an address at a CMRA
24 in Orlando, Florida. When BALSAM sent an email message to the purported sending email

1 address, *Avaya@i2iii.com*, he received an “error bounceback” message indicating that there is no
2 such email address.

3 **2. Spam Advertising BizCirc.com/Biz-Circ.com (2)**

4 43. BALSAM is informed and believes and thereon alleges that *bizcirc.com* and *biz-circ.com*,
5 which appear to be identical websites, are really owned and operated by SMS. The “About
6 BizCirc” web page, *www.bizcirc.com/aboutus.html* and *www.biz-circ.com/aboutus.html*,
7 expressly states: “List Rental Opportunities: Looking for great multi-channel marketing lists?
8 Contact Teramedia at (407) 420-1108 or visiting *Teramedia.com*.” Additionally, the spam
9 advertising Larstan Business Reports from September 10, 2006, *infra*, identifies the sender as
10 “BizCirc.com” at the same CMRA address also associated with “TeraResponse.”

11 44. BALSAM received a spam sent by Defendant SMS on December 28, 2006 advertising
12 the websites *bizcirc.com* and *biz-circ.com*. Subject line: “Knowledge is power.” The spam
13 purported to have been sent from “Business Magazines” and from email address
14 *frbupu@holidaydeal4you.com*. (The sending domain name, *holidaydeal4you.com*, was privately
15 registered so as to not identify the registrant at all.) The spam purported to have been sent from
16 IP address 216.75.2.179 and mailserver “206.190.53.191.” BALSAM received the spam at
17 11:09 am (GMT -8 hours); it was purportedly sent at 6:07 pm (GMT -1 hour, somewhere over
18 the Atlantic Ocean). SMS identified itself at the bottom of the spam as “TeraResponse” and
19 claimed an address at a CMRA in Orlando, Florida. SMS also included one line of random
20 words at the bottom of the spam that have no connection to the contents of the spam. When
21 BALSAM sent an email message to the purported sending email address,
22 *frbupu@holidaydeal4you.com*, he received an “error bounceback” message indicating that there
23 is no such mail address.

1 45. BALSAM received a spam sent by Defendant SMS on December 28, 2006 advertising
2 the websites *bizcirc.com* and *biz-circ.com*. Subject line: “Biz Circ has the mags you need.” The
3 spam purported to have been sent from “Business Mags” and from email address
4 *bizpubs@holidaydeal4you.com*. (The sending domain name, *holidaydeal4you.com*, was
5 privately registered so as to not identify the registrant at all.) The spam purported to have been
6 sent from IP address 216.75.2.179 and mailserver “216.39.53.1.” BALSAM received the spam
7 at 3:23 pm (GMT -8 hours); it was purportedly sent at 4:18 pm (GMT -7 hours). SMS identified
8 itself at the bottom of the spam as “TeraResponse” and claimed an address at a CMRA in
9 Orlando, Florida. SMS also included two lines of random words at the bottom of the spam that
10 have no connection to the contents of the spam. When BALSAM sent an email message to the
11 purported sending email address, *bizpubs@holidaydeal4you.com*, he received an “error
12 bounceback” message indicating that there is no such mail address.

13 **3. Spam Advertising “BT Publishing LLC” (3)**

14 46. BALSAM received a spam sent by Defendant SMS on December 21, 2006 advertising an
15 entity purporting to be “BT Publishing LLC” and promoting penny stocks in a what appears to
16 be a “pump and dump” scheme. Subject line: “Check this out.” The spam purported to have
17 been sent from “John Mille” and from email address *Investors@holidaydeal4you.com*. (The
18 sending domain name, *holidaydeal4you.com*, was privately registered so as to not identify the
19 registrant at all.) The spam purported to have been sent from IP address 216.75.2.179 and
20 mailserver “206.190.53.191.” BALSAM received the spam at 5:04 am (GMT -8 hours); it was
21 purportedly sent at 6:57 am (GMT -6 hours). SMS identified itself at the bottom of the spam as
22 “TeraResponse” and claimed an address at a CMRA in Orlando, Florida. SMS also included
23 three lines of random words at the bottom of the spam that have no connection to the contents of
24 the spam.

1 47. BALSAM received a spam sent by Defendant SMS on December 21, 2006 advertising an
2 entity purporting to be “BT Publishing LLC” and promoting penny stocks in a what appears to
3 be a “pump and dump” scheme. Subject line: “Bloodhound Search Engine.” The spam
4 purported to have been sent from “ST Picker” and from email address
5 *AITWWKSPZYM@t3ramail.com*. (The sending domain name, *t3ramail.com*, was privately
6 registered so as to not identify the registrant at all.) The spam purported to have been sent from
7 IP address 64.239.234.105 and mailserver “64.239.234.105.” BALSAM received the spam at
8 1:06 pm (GMT -8 hours); it was purportedly sent at 1:58 pm (GMT -7 hours). The opt-out link
9 at the bottom of the spam was coded to BALSAM’s email address; the other two recipients who
10 were copied on the spam were given no means to opt out *their* email addresses. SMS identified
11 itself at the bottom of the spam as “TeraResponse” and claimed an address at a CMRA in
12 Orlando, Florida. SMS also included three lines of random words at the bottom of the spam that
13 have no connection to the contents of the spam. When BALSAM sent an email message to the
14 purported sending email address, *AITWWKSPZYM@t3ramail.com*, he received an “error
15 bounceback” message indicating that there is no such mail address.

16 48. BALSAM received a spam sent by Defendant SMS on December 21, 2006 advertising an
17 entity purporting to be “BT Publishing LLC” and promoting penny stocks in a what appears to
18 be a “pump and dump” scheme. Subject line: “This is one to watch.” The spam purported to
19 have been sent from “Garth Trooks” and from email address *Investors@holidaydeal4you.com*.
20 (The sending domain name, *holidaydeal4you.com*, was privately registered so as to not identify
21 the registrant at all.) The spam purported to have been sent from IP address 216.75.2.179 and
22 mailserver “109.191.118.103.” BALSAM received the spam at 2:11 pm (GMT -8 hours); it was
23 purportedly sent at 9:05 pm (GMT -1 hour, somewhere over the Atlantic Ocean). SMS
24

1 identified itself at the bottom of the spam as “TeraResponse” and claimed an address at a CMRA
2 in Orlando, Florida. SMS also included two lines of random words at the bottom of the spam
3 that have no connection to the contents of the spam.

4 **4. Spam Advertising Hartford Casualty Insurance Company (3)**

5 49. BALSAM received a spam sent by Defendant SMS on January 17, 2007 advertising
6 Hartford Casualty Insurance Co. Subject line: “The Hartford Auto Quote Challenge is for you.”
7 The spam purported to have been sent from “The Hartford Co” and from email address *Hartford*
8 *@shopperoffers.com*. (The sending domain name, *shopperoffers.com*, was privately registered
9 so as to not identify the registrant at all.) The spam purported to have been sent from IP address
10 216.75.2.179 and mailserver “206.190.53.191.” BALSAM received the spam at 6:40 pm (GMT
11 -8 hours); it was purportedly sent at 12:31 am (GMT -2 hours, somewhere over the Atlantic
12 Ocean) on January 18. BALSAM’s email address was the third of five in the “To:” field. The
13 opt-out link at the bottom of the spam was coded to the first email address,
14 *dallasdog52@yahoo.com*; the spam did not offer BALSAM or the users of the second, fourth,
15 and fifth email addresses any means to opt out *their* email addresses. SMS identified itself at the
16 bottom of the spam as “TeraResponse” and claimed an address at a CMRA in Orlando, Florida.
17 SMS also included a line of random words at the bottom of the spam that have no connection to
18 the contents of the spam. When BALSAM sent an email message to the purported sending email
19 address, *Hartford @shopperoffers.com*, he received an “error bounceback” message indicating
20 that there is no such email address.

21 50. BALSAM received a spam sent by Defendant SMS on January 19, 2007 advertising
22 Hartford Casualty Insurance Co. Subject line: “The Hartford Auto Quote Challenge.” The spam
23 purported to have been sent from “The Hartford Company” and from email address
24 *thehartford@officialconsumeroffers.com*. (The sending domain name,

1 *officialconsumeroffers.com*, was privately registered so as to not identify the registrant at all.)
2 The spam purported to have been sent from IP address 216.75.2.179 and mailserver
3 “209.191.88.239.” BALSAM received the spam at 9:31 am (GMT -8 hours); it was purportedly
4 sent at 9:22 pm (GMT +4 hours). BALSAM’s email address was the fourth of five in the “Cc:”
5 field. The opt-out link at the bottom of the spam was coded to the email address in the “To:”
6 field, *danatsams@yahoo.com*; the spam did not offer BALSAM or the users of the four other
7 email address in the “Cc:” field any means to opt out *their* email addresses. SMS identified itself
8 at the bottom of the spam as “TBN Management” and claimed an address at a CMRA in Las
9 Vegas, Nevada. SMS also included a line of random words at the bottom of the spam that have
10 no connection to the contents of the spam. When BALSAM sent an email message to the
11 purported sending email address, *thehartford@officialconsumeroffers.com*, he received an “error
12 bounceback” message indicating that there is no such email address.

13 51. BALSAM received a spam sent by Defendant SMS on January 19, 2007 advertising
14 Hartford Casualty Insurance Co. Subject line: “Take The Hartford Auto Quote Challenge.” The
15 spam purported to have been sent from “Hartford” and from email address
16 *thehartfordco@officialconsumeroffers.com*. (The sending domain name,
17 *officialconsumeroffers.com*, was privately registered so as to not identify the registrant at all.)

18 The spam purported to have been sent from IP address 216.75.2.179 and mailserver
19 “68.142.202.247.” BALSAM received the spam at 9:31 am (GMT -8 hours); it was purportedly
20 sent at 12:30 pm (GMT -5 hours). BALSAM’s email address was the fourth of six in the “To:”
21 field. The opt-out link at the bottom of the spam was coded to first email address,
22 *dan_gauger@yahoo.com*; the spam did not offer BALSAM or the users of the four other email
23 address any means to opt out *their* email addresses. SMS identified itself at the bottom of the
24

1 spam as “TBN Management” and claimed an address at a CMRA in Las Vegas, Nevada. SMS
2 also included three lines of random words at the bottom of the spam that have no connection to
3 the contents of the spam. When BALSAM sent an email message to the purported sending email
4 address, *thehartfordco@officialconsumeroffers.com*, he received an “error bounceback” message
5 indicating that there is no such email address.

6 **5. Spam Advertising Hotstepper.net (1)**

7 52. BALSAM received a spam sent by Defendant SMS on November 21, 2006 advertising
8 *HotStepper.net*. Subject line: “Coupon for 20% off.” The spam purported to have been sent
9 from “Hotstepper.net” and from email address *Hotstepper@apostfour.com*. (The sending
10 domain name, *apostfour.com*, was privately registered so as to not identify the registrant at all.)
11 The spam purported to have been sent from IP address 64.239.234.215 and mailserver
12 “exfast308.” BALSAM received the spam at 2:14 am (GMT -8 hours); it was purportedly sent at
13 4:13 am (GMT -6 hours). SMS identified itself at the bottom of the spam as “TeraResponse”
14 and claimed an address at a CMRA in Orlando, Florida. When BALSAM sent an email message
15 to the purported sending email address, *Hotstepper@apostfour.com*, he received an “error
16 bounceback” message indicating that there is no such email address.

17 **6. Spam Advertising Larstan Business Reports (3)**

18 53. Larstan Business Reports is in the business of publishing industry-specific market
19 research reports. BALSAM is informed and believes and thereon alleges that Larstan wanted to
20 compile survey responses from Information Technology (IT) Managers, and hired SMS based on
21 SMS’s promise that it could target IT Managers. Plaintiff is informed and believes and thereon
22 alleges that after LARSTAN complained about the low response rate, SMS “fixed” the problem
23 by re-sending the spams to *non-* IT Managers. BALSAM is not and has never been an IT
24 Manager.

1 54. BALSAM received a spam sent by Defendant SMS on September 10, 2006 advertising
2 Larstan Business Reports. Subject line: "10 Quick Questions for a Porsche 375266." The spam
3 purported to have been sent from "Larstan" and from email address *Larstan@teraopt1.com*.
4 (The sending domain name, *teraopt1.com*, was registered to a nonexistent individual, Aaron
5 Bodes, at 424 East Central Blvd., Suite 217, Orlando, Florida... *not* to SMS.) The spam
6 purported to have been sent from IP address 64.145.179.180 and mailserver "vmhost1."
7 BALSAM received the spam at 11:54 pm (GMT -7 hours); it was purportedly sent at 2:54 am
8 (GMT -4 hours) on September 11. SMS identified itself at the bottom of the spam as
9 "BizCirc.com" at the same CMRA address in Orlando, Florida also associated with
10 "TeraResponse." When BALSAM sent an email message to the purported sending email
11 address, *Larstan@teraopt1.com*, he received an "error bounceback" message indicating that
12 there is no such email address.

13 55. BALSAM received a spam sent by Defendant SMS on January 15, 2007 advertising
14 Larstan Business Reports. Subject line: "A few short minutes for a big prize." The spam
15 purported to have been sent from "The.Monkey" and from email address
16 *SurveyMonkey@shopperoffers.com*. (The sending domain name, *shopperoffers.com*, was
17 privately registered so as to not identify the registrant at all.) The spam purported to have been
18 sent from IP address 216.75.2.179 and mailserver "216.39.53.1." BALSAM received the spam
19 at 7:28 am (GMT -8 hours); it was purportedly sent at 11:22 am (GMT -4 hours) on September
20 11. SMS identified itself at the bottom of the spam as "TeraResponse" and claimed an address at
21 a CMRA in Orlando, Florida. SMS also included three lines of random words at the bottom of
22 the spam that have no connection to the contents of the spam. When BALSAM sent an email
23
24

1 message to the purported sending email address, *SurveyMonkey@shopperoffers.com*, he received
2 an “error bounceback” message indicating that there is no such email address.

3 56. BALSAM received a spam sent by Defendant SMS on January 18, 2007 advertising
4 Larstan Business Reports. Subject line: “Would you take a second to look at this?” The spam
5 purported to have been sent from “Mr.Larston” [*sic*] and from email address
6 *jlarston@shopperoffers.com*. (The sending domain name, *shopperoffers.com*, was privately
7 registered so as to not identify the registrant at all.) The spam purported to have been sent from
8 IP address 216.75.2.179 and mailserver “66.196.97.250.” BALSAM received the spam at 5:55
9 am (GMT -8 hours); it was purportedly sent at 6:46 am (GMT -7 hours) on September 11.
10 BALSAM’s email address was the last of five in the “To:” field. The opt-out link at the bottom
11 of the spam was coded to the first email address, *danb2214@yahoo.com*; the spam did not offer
12 BALSAM or the users of the second, third, and fourth email addresses any means to opt out *their*
13 email addresses. SMS identified itself at the bottom of the spam as “TeraResponse” and claimed
14 an address at a CMRA in Orlando, Florida. SMS also included two lines of random words at the
15 bottom of the spam that have no connection to the contents of the spam. When BALSAM sent
16 an email message to the purported sending email address, *jlarston@shopperoffers.com*, he
17 received an “error bounceback” message indicating that there is no such email address.

18 57. The second and third spams sent by SMS advertising Larstan Business Reports include
19 links to a survey hosted at *SurveyMonkey.com*. Plaintiff is informed and believes and thereon
20 alleges that these spams also violate Survey Monkey’s Terms of Use, which expressly prohibit
21 the use of spamming. Survey Monkey Terms of Use, <http://surveymonkey.com> (follow “Terms
22 of Use” hyperlink at the bottom of the page) (last visited January 2, 2008).

1 **7. Spam Advertising Mutual of Omaha Insurance Company (1)**

2 58. BALSAM received a spam sent by Defendant SMS on June 10, 2007 advertising Mutual
3 of Omaha Insurance Company. Subject line: “Mutual of Omaha Insurance Company offers
4 Accidental Death Insurance Online.” The spam purported to have been sent from “John J.
5 Power” and from email address *John@bestnewoffer.com*. (The sending domain name,
6 *bestnewoffer.com*, was privately registered so as to not identify the registrant at all.) The spam
7 purported to have been sent from IP address 203.223.159.118 and mailserver “209.191.118.103.”
8 BALSAM received the spam at 7:39 pm (GMT -7 hours); an hour *before* it was purportedly sent
9 at 9:30 am (GMT +6 hours) on June 11. SMS identified itself at the bottom of the spam as
10 “BMVN Management” and claimed an address at a CMRA in Las Vegas, Nevada. When
11 BALSAM sent an email message to the purported sending email address,
12 *John@bestnewoffer.com*, he received an “error bounceback” message indicating that there is no
13 such email address.

14 59. Notwithstanding the privately-registered domain name and the deceptive identifier of
15 “BMVN Management” in Las Vegas, BALSAM has a written statement from the Assistant
16 General Counsel of Mutual of Omaha confirming that the spam was in fact sent by SMS.

17 **8. Spam Advertising North Carolina Department of Commerce (1)**

18 60. BALSAM received a spam sent by Defendant SMS on May 15, 2007 advertising the
19 North Carolina Department of Commerce, Division of Tourism, Film and Sports Development.
20 Subject line: “Enter the North Carolina Crystal Coast Sweepstakes.” The spam purported to
21 have been sent from “NC Division of Tourism Film and Sports Development” and from email
22 address *NC@green-mailer.com*. (The sending domain name, *green-mailer.com*, was registered
23 to a nonexistent individual, Aaron Bodes, at 424 East Central Blvd., Suite 217, Orlando,
24 Florida... *not* to SMS.) The spam purported to have been sent from IP address 202.71.111.71

1 and mailserver “68.142.237.182.” BALSAM received the spam at 12:29 pm (GMT -7 hours); it
2 was purportedly sent at 2:27 pm (GMT -5 hours). SMS did not identify itself at all in the spam;
3 there is a “broken” graphic in the space where SMS usually provides one of its identities. When
4 BALSAM sent an email message to the purported sending email address, *NC@green-*
5 *mailer.com*, he received an “error bounceback” message indicating that there is no such email
6 address.

7 **9. Spam Advertising Pitney Bowes Inc. (1)**

8 61. BALSAM received a spam sent by Defendant SMS on May 15, 2007 advertising Pitney
9 Bowes Inc. Subject line: “Tired of trips to the post office?” The spam purported to have been
10 sent from “Pitney_Bowes” and from email address *PitneyBowes@consumeroffers.net*. (The
11 sending domain name, *consumeroffers.net*, was registered to a nonexistent individual, Aaron
12 Bodes, at 424 East Central Blvd., Suite 217, Orlando, Florida... *not* to SMS.) The spam
13 purported to have been sent from IP address 66.155.112.15 and mailserver “216.39.53.1.”
14 BALSAM received the spam at 1:56 am (GMT -8 hours); 25 hours *before* it was purportedly sent
15 at 11:55 am (GMT +1 hour) on February 20. SMS identified itself at the bottom of the spam as
16 “TBN Management” and claimed an address at a CMRA in Las Vegas, Nevada. SMS also
17 included two lines of random words at the bottom of the spam that have no connection to the
18 contents of the spam. When BALSAM sent an email message to the purported sending email
19 address, *PitneyBowes@consumeroffers.net*, he received an “error bounceback” message
20 indicating that there is no such email address.

21 **10. Spam Advertising Plaza Resorts Inc. and Imperial Majesty Cruise Vacations LLC**
22 **(3)**

23 62. BALSAM received a spam sent by Defendant SMS on January 2, 2007 advertising Plaza
24 Resorts Inc. and Imperial Majesty Cruise Vacations LLC. Subject line: “Cruise with us.” The

1 spam purported to have been sent from “Cruise Tyme” and from email address
2 *NYC@holidaydeal4you.com*. (The sending domain name, *holidaydeal4you.com*, was privately
3 registered so as to not identify the registrant at all.) The spam purported to have been sent from
4 IP address 216.75.2.179 and mailserver “209.191.118.103.” BALSAM received the spam at
5 10:47 am (GMT -8 hours); it was purportedly sent at 11:44 am (GMT -7 hours). SMS identified
6 itself at the bottom of the spam as “TeraResponse” and claimed an address at a CMRA in
7 Orlando, Florida. SMS also included a line of random words at the bottom of the spam that have
8 no connection to the contents of the spam. When BALSAM sent an email message to the
9 purported sending email address, *NYC@holidaydeal4you.com*, he received an “error
10 bounceback” message indicating that there is no such email address.

11 63. BALSAM received a spam sent by Defendant SMS on February 16, 2007 advertising
12 Plaza Resorts Inc. and Imperial Majesty Cruise Vacations LLC. Subject line: “Take a
13 Cruise...with us.” The spam purported to have been sent from “Imperial Majesty” and from
14 email address *ImperialMajesty@consumeroffers.net*. (The sending domain name,
15 *consumeroffers.net*, was registered to a nonexistent individual, Aaron Bodes, at 424 East Central
16 Blvd., Suite 217, Orlando, Florida... *not* to SMS.) The spam purported to have been sent from
17 IP address 216.75.2.179 and mailserver “66.196.97.250.” BALSAM received the spam at 8:11
18 am (GMT -8 hours); it was purportedly sent at 8:03 pm (GMT +4 hours). BALSAM was blind-
19 copied on the email; the email address in the “To:” field, *dallasdeegan@yahoo.com* does not and
20 has never belonged to BALSAM. The opt-out link at the bottom of the spam was coded to
21 *dallasdeegan@yahoo.com*; the spam did not offer BALSAM any means to opt out *his* email
22 address. SMS identified itself at the bottom of the spam as “TBN Management” and claimed an
23 address at a CMRA in Las Vegas, Nevada. SMS also included two lines of random words at the
24

1 bottom of the spam that have no connection to the contents of the spam. When BALSAM sent
2 an email message to the purported sending email address, *ImperialMajesty@consumeroffers.net*,
3 he received an “error bounceback” message indicating that there is no such email address.

4 64. BALSAM received a spam sent by Defendant SMS on February 16, 2007 advertising
5 Plaza Resorts Inc. and Imperial Majesty Cruise Vacations LLC. Subject line: “Take a
6 Cruise...on us.” The spam purported to have been sent from “Majesty” and from email address
7 *Imperial@consumeroffers.net*. (The sending domain name, *consumeroffers.net*, was registered
8 to a nonexistent individual, Aaron Bodes, at 424 East Central Blvd., Suite 217, Orlando,
9 Florida... *not* to SMS.) The spam purported to have been sent from IP address 216.75.2.179 and
10 mailserver “66.196.97.250.” BALSAM received the spam at 10:03 am (GMT -8 hours); it was
11 purportedly sent at 9:56 pm (GMT +4 hours). BALSAM was blind-copied on the email; the
12 email address in the “To:” field, *danbaca@yahoo.com* does not and has never belonged to
13 BALSAM. The opt-out link at the bottom of the spam was coded to *danbaca@yahoo.com*; the
14 spam did not offer BALSAM any means to opt out *his* email address. SMS identified itself at
15 the bottom of the spam as “TBN Management” and claimed an address at a CMRA in Las
16 Vegas, Nevada. SMS also included two lines of random words at the bottom of the spam that
17 have no connection to the contents of the spam. When BALSAM sent an email message to the
18 purported sending email address, *Imperial@consumeroffers.net*, he received an “error
19 bounceback” message indicating that there is no such email address.

20 **11. Spam Advertising Spark Networks PLC (1)**

21 65. BALSAM received a spam sent by Defendant SMS on June 30, 2007 advertising Spark
22 Networks PLC dba ChristianMingle.com. Subject line: “Meet 1000s of Christian singles today.”
23 The spam purported to have been sent from “ChristianMingle” and from email address
24 *Christian@bizdeals.biz*. (The sending domain name, *bizdeals.biz*, was privately registered so as

1 to not identify the registrant at all.) The spam purported to have been sent from IP address
2 209.190.29.130 and mailserver “216.39.53.2.” BALSAM received the spam at 10:07 am (GMT
3 -7 hours); an hour *before* it was purportedly sent at 11:04 am (GMT -7 hours). BALSAM was
4 blind-copied on the email; the email address in the “To:” field, *dan_husk@yahoo.com* does not
5 and has never belonged to BALSAM. The opt-out link at the bottom of the spam was coded to
6 *dan_husk@yahoo.com*; the spam did not offer BALSAM any means to opt out *his* email address.
7 SMS identified itself at the bottom of the spam as “BMVN Management” and claimed an
8 address at a CMRA in Las Vegas, Nevada. When BALSAM sent an email message to the
9 purported sending email address, *Christian@bizdeals.biz*, he received an “error bounceback”
10 message indicating that there is no such email address.

11 **12. Spam Advertising Taxback Opportunities LLC and Tanya Graham (1)**

12 66. BALSAM received a spam sent by Defendant SMS on February 19, 2007 advertising
13 Taxback Opportunities LLC and Tanya Graham, an employee or independent contractor of
14 Taxback Opportunities LLC. Subject line: “Recover Lost Profits.” The spam purported to have
15 been sent from “Graham” and from email address *TanyaGraham@consumeroffers.net*. (The
16 sending domain name, *consumeroffers.net*, was registered to a nonexistent individual, Aaron
17 Bodes, at 424 East Central Blvd., Suite 217, Orlando, Florida... *not* to SMS.) The spam
18 purported to have been sent from IP address 216.75.2.179 and mailserver “66.196.97.250.”
19 BALSAM received the spam at 07:55 am (GMT -8 hours); it was purportedly sent at 8:54 am
20 (GMT -7 hours). BALSAM was blind-copied on the email; the email address in the “To:” field,
21 *danbalber@yahoo.com* does not and has never belonged to BALSAM. The opt-out link at the
22 bottom of the spam was coded to *danbalber@yahoo.com*; the spam did not offer BALSAM any
23 means to opt out *his* email address. Defendant SMS identified itself at the bottom of the spam as
24 “Business Life” and claimed an address at a CMRA in Orlando, Florida. SMS also included

1 three lines of random words at the bottom of the spam that have no connection to the contents of
2 the spam. When BALSAM sent an email message to the purported sending email address,
3 *TanyaGraham@consumeroffers.net*, he received an “error bounceback” message indicating that
4 there is no such email address.

5 **13. Spam Advertising ValueClick Inc. (3)**

6 67. BALSAM received a spam sent by Defendant SMS on January 12, 2007 advertising
7 ValueClick Inc. dba *giveawaycafe.com*. Subject line: “Get the new iPod Nano plus music
8 downloads on us! Participate now.” The spam purported to have been sent from “iPod Nano
9 Incentives Group” and from email address *Ipod@shopperoffers.com*. (The sending domain
10 name, *shopperoffers.com*, was privately registered so as to not identify the registrant at all.) The
11 spam purported to have been sent from IP address 216.75.2.179 and mailserver “216.39.53.3.”
12 BALSAM received the spam at 8:53 pm (GMT -8 hours); it was purportedly sent at 9:46 am
13 (GMT +5 hours) on January 13. The opt-out link at the bottom of the spam was coded to
14 BALSAM’s email address; the other recipient of the spam whose email address appeared in the
15 “Cc:” field was given no means to opt out *her* email. SMS identified itself at the bottom of the
16 spam as “TeraResponse” and claimed an address at a CMRA in Orlando, Florida. SMS also
17 included two lines of random words at the bottom of the spam that have no connection to the
18 contents of the spam. When BALSAM sent an email message to the purported sending email
19 address, *Ipod@shopperoffers.com*, he received an “error bounceback” message indicating that
20 there is no such email address.

21 68. BALSAM received a spam sent by Defendant SMS on January 13, 2007 advertising
22 ValueClick Inc. dba *giveawaycafe.com*. Subject line: “Want some music downloads plus a new
23 iPod Nano? Participate now.” The spam purported to have been sent from “Slick iPod Nano
24 Source” and from email address *IPOD@shopperoffers.com*. (The sending domain name,

1 *shopperoffers.com*, was privately registered so as to not identify the registrant at all.) The spam
2 purported to have been sent from IP address 216.75.2.179 and mailserver “68.142.237.182.”
3 BALSAM received the spam at 9:09 am (GMT -8 hours); it was purportedly sent at 4:03 pm
4 (GMT -1 hour, somewhere over the Atlantic Ocean) on January 13. The opt-out link at the
5 bottom of the spam was coded to BALSAM’s email address; the other three recipients of the
6 spam were given no means to opt out *their* email addresses. SMS identified itself at the bottom
7 of the spam as “TeraResponse” and claimed an address at a CMRA in Orlando, Florida. SMS
8 also included three lines of random words at the bottom of the spam that have no connection to
9 the contents of the spam. When BALSAM sent an email message to the purported sending email
10 address, *IPOD@shopperoffers.com*, he received an “error bounceback” message indicating that
11 there is no such email address.

12 69. BALSAM received a spam sent by Defendant SMS on January 14, 2007 advertising
13 ValueClick Inc. dba *giveawaycafe.com*. Subject line: “Get the new iPod Nano plus music
14 downloads on us! Participate now.” The spam purported to have been sent from “iPod Nano
15 Incentives Group” and from email address *zip@shopperoffers.com*. (The sending domain name,
16 *shopperoffers.com*, was privately registered so as to not identify the registrant at all.) The spam
17 purported to have been sent from IP address 216.75.2.179 and mailserver “216.39.53.2.”
18 BALSAM received the spam at 6:48 pm (GMT -8 hours); it was purportedly sent at 6:46 am
19 (GMT +4 hours) on January 15. SMS identified itself at the bottom of the spam as
20 “TeraResponse” and claimed an address at a CMRA in Orlando, Florida. SMS also included two
21 lines of random words at the bottom of the spam that have no connection to the contents of the
22 spam. When BALSAM sent an email message to the purported sending email address,
23
24

1 zip@shopperoffers.com, he received an “error bounceback” message indicating that there is no
2 such email address.

4 **III. SPECIFIC ALLEGATIONS**

5 **A. BALSAM’s Email Addresses**

6 70. BALSAM’s email addresses at which BALSAM received the spams at issue in this
7 action are “California email addresses.”

8 “California e-mail address” means 1) An e-mail address furnished by an
9 electronic mail service provider that sends bills for furnishing and maintaining
10 that e-mail address to a mailing address in this state; 2) An e-mail address
11 ordinarily accessed from a computer located in this state; 3) An e-mail address
12 furnished to a resident of this state.

13 Cal. Bus. & Prof. Code § 17529.1(b). All three conditions apply: The email addresses at which
14 BALSAM received the commercial email is furnished by Yahoo! Inc. and Yahoo! Inc. sends
15 bills for furnishing and maintaining those e-email addresses to a mailing address in California;
16 BALSAM ordinarily accesses those email addresses from a computer located in California; and
17 BALSAM is a resident of California.

18 71. BALSAM’s email addresses play no part in determining whether or not the
19 Defendants/advertisers included falsified, misrepresentative, forged, or otherwise deceptive
20 information in the email headers or bodies.

21 72. BALSAM’s email addresses are confidential for numerous reasons, including, but not
22 limited to, avoiding the risk of retaliation by “mail bombing” (sending massive amounts of email
23 to BALSAM’s email addresses), “joe jobbing” (sending unlawful email as if it were coming
24 from BALSAM’s email addresses as a means of harassment), or sharing of BALSAM’s email
addresses with other unknown parties who might in turn send spam or mail bombs to BALSAM
or as if from BALSAM.

1 **B. Defendants' Computer and Email Usage**

2 73. BALSAM is informed and believes and thereon alleges that Defendants intended to
3 deceive recipients of their spam messages through the extensive use of falsified, misrepresented,
4 and/or forged information contained in or accompanying the email headers, as described herein.

5 BALSAM is informed and believes and thereon alleges that Defendants went to great lengths to
6 falsify the email headers in order to deceive spam filters and, in many cases, mask their identity.

7 74. BALSAM is informed and believes and thereon alleges that for every spam he received
8 sent or caused to be sent by or advertising Defendants, thousands or even millions of other
9 California residents received the same spams.

10 75. BALSAM is informed and believes and thereon alleges that Defendants actually profited
11 and continue to profit and are unjustly enriched from their wrongful conduct.

12 76. Punitive damages are appropriate to deter Defendants' fraudulent conduct and to deter
13 others from engaging in such conduct.

14 77. BALSAM is informed and believes and thereon alleges that Defendants will continue to
15 advertise in this wrongful and unlawful fashion unless otherwise enjoined by this Court. This
16 Court has jurisdiction to issue a permanent injunction because restraint is necessary to prevent a
17 multiplicity of judicial proceedings.

18 **C. BALSAM Never Gave SMS or Any Other Defendant Direct Consent to Send Him**
19 **Commercial Email**

20 78. The *commercial email advertisements* at issue are all *unsolicited* because BALSAM did
21 not provide *direct consent* to receive advertisements from any *advertiser* or sender, nor did
22 BALSAM have a *preexisting or current business relationship* with any *advertiser* or sender.
23 Cal. Bus. & Prof. Code § 17529.1(c), (o), (d), (a), (l).

1 79. BALSAM could not have given direct consent because BALSAM had never even *heard*
2 of SMS (or Teramedia), or most of SMS's advertisers, until SMS began sending spams to
3 BALSAM.

4 80. BALSAM's email addresses are already on ValueClick Inc.'s suppression lists.
5 Although BALSAM brings this action strictly under California law and not the federal CAN-
6 SPAM Act, BALSAM points out that SMS also violated the federal CAN-SPAM Act by causing
7 spam advertising ValueClick Inc. to be sent to BALSAM even after he had opted out from
8 receiving email advertising ValueClick Inc. 15 U.S.C. § 7704(a)(4).

9 **D. SMS Sends Spam as an Agent of the Other Defendants; The Other Defendants are the**
10 **Advertisers in the Spams**

11 81. BALSAM alleges that SMS engaged in fraudulent and deceptive actions by initiating (as
12 defined by Cal. Bus. & Prof. Code § 17529.1(i)) the sending of 32 unlawful spams on behalf of
13 the other Defendants and advertisers between September 10, 2006 and October 12, 2007,
14 inclusive.

15 82. Defendants in this action other than SMS are *advertisers* because they are persons or
16 entities that advertise through the use of commercial e-mail advertisements. The advertisers are
17 also liable for advertising in the spams.

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

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

24 Cal. Bus. & Prof. Code § 17529(k), (j).

1 83. BALSAM is informed and believes and thereon alleges that all Defendants and
2 advertisers other than SMS caused the spams to be transmitted by contracting with and
3 compensating SMS to act as their marketing agent and transmit the spams on their behalf.

4 84. BALSAM is informed and believes and thereon alleges that no Defendant was required
5 to employ any other Defendant for the actions described in this complaint.

6 **E. Damages**

7 85. The California Legislature defined liquidated damages to be \$1,000 per spam.
8 § 17529.5(b)(1)(B)(ii). This figure is comparable with damages in other areas of consumer
9 protection law, e.g., \$500-\$1,500 statutory damages for junk faxes. 47 U.S.C. § 227(b)(3).
10 BALSAM's rightful and lawful assertion of the California Legislature's liquidated damages
11 amount – \$1,000 per email – is necessary to further the Legislature's objective of protecting
12 California residents from misleading spam.

13 86. BALSAM was also injured by Defendants' violation of BALSAM's right to *not* receive
14 deceptive advertising that violates the Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et*
15 *seq.*

16 87. BALSAM suffered damages as a result of Defendants' wrongful conduct. BALSAM was
17 damaged by each unlawful spam when BALSAM received each unlawful spam, in the State of
18 California, in the City and County of San Francisco.

19 88. For each spam, the advertised Defendant is jointly liable with SMS to BALSAM for
20 statutory damages.

21 It is unlawful for any person or entity to advertise in a commercial e-mail
22 advertisement either sent from California or sent to a California electronic mail
address under any of the following circumstances...

23 Cal. Bus. & Prof. Code § 17529.5(a).

1 89. BALSAM has settled his claims with some advertisers and released them – but *not* SMS
2 – from their liability to BALSAM arising from advertising in unlawful spam. These settlements
3 were always in an amount *less* than the statutory amount of \$1,000 per spam. In total, BALSAM
4 has received \$6,665 in settlements from these advertisers.

5 **F. Unlawful Content Contained In or Accompanying Email Headers**

6 90. BALSAM is informed and believes and thereon alleges that an email “header” includes
7 the sender email address and domain name (and any other information purporting to identify the
8 person initiating the message), subject line, recipient name and email address, sending Internet
9 Protocol address, mailserver, and date/time stamp, as well as other routing information.

10 91. BALSAM is informed and believes and thereon alleges that Defendants’ spams include
11 multiple elements of falsified, misrepresented, and forged information contained in or
12 accompanying the email headers:

- 13 • Misleading subject lines
- 14 • Falsified sender email addresses
- 15 • Multiple sending email addresses/domain names
- 16 • Privately registered sending domain names
- 17 • Forged and/or multiple sending Internet Protocol (“IP”) addresses
- 18 • Forged mailserver names
- 19 • Falsified sending date/time stamps

20 92. A commercial email advertisement is unlawful if it “contains or is accompanied by
21 falsified, misrepresented, or forged header information.” Cal. Bus. & Prof. Code
22 § 17529.5(a)(2).

23 93. BALSAM is informed and believes and thereon alleges that the falsified, misrepresented,
24 and forged content in the spams at issue constitutes *material* falsity and deception, and represents
willful and *deliberate* acts, *not* mere clerical mistakes.

1 **1. Misleading Subject Lines**

2 94. Almost half of the spams at issue – 14 of 32 – have subject lines that are likely to mislead
3 a recipient, acting reasonably under the circumstances, about a material fact regarding the
4 contents or subject matter of the message. Cal. Bus. & Prof. Code § 17529.5(a)(3).

5 95. One of the spams advertising BEACH and GRECO from February 20, 2007 has a subject
6 line that reads “Mondarin South Beach.” This subject line is misleading because it does not
7 clearly communicate *anything* about the contents of the email, which is to sell condominium-
8 hotel properties in Miami. A reasonable consumer who has never been to South Beach (such as
9 BALSAM) would likely not even know that “Mondarin South Beach” is the name of a building.

10 96. The spam advertising Taxback Opportunities LLC and Tanya Graham has a subject line
11 that reads “Recover Lost Profits.” This subject line is misleading because the content of the
12 email is advertising the services of reducing tax payments and recovering overpaid taxes. But,
13 even assuming that a person did overpay taxes, recovering *overpaid taxes* is not the same thing
14 as recovering *lost profits*. First, individuals do not really have “profits.” IRS forms for
15 individuals refer to income, expenses, deductions, etc. *Businesses* have profits, but this spam
16 seems to be targeting *individuals*: “Are you one of the millions of Americans who overpays their
17 taxes every year?” Second, even if this spam were targeting businesses, profit is calculated by
18 subtracting costs from revenues, and businesses are *then* taxed on their profits. Put simply,
19 profits and taxes are two totally separate things, and it is misleading to suggest that reducing a
20 tax burden is the same as recovering “lost” profits.

21 97. One of the spams advertising *BizCirc.com* (really SMS) from December 28, 2006 has a
22 subject line that reads: “Knowledge is power.” This subject line is misleading because it does
23 not clearly communicate *anything* about the contents of the email, which is to sell magazines.

1 98. All three “pump and dump” spams advertising “BT Publishing LLC” have misleading
2 subject lines: “Check this out,” “This is the one to watch,” and “Bloodhound Search Engine.”
3 None of these subject lines clearly communicates that the subject matter of the emails is
4 convincing the recipient to purchase shares of BLDH stock.

5 99. The spam advertising Larstan Business Reports from September 10, 2006 has a subject
6 line that reads: “10 Quick Questions for a Porsche 375266.” This subject line does not clearly
7 communicate that “10 quick questions” refers to an online survey, nor does it clearly
8 communicate that the Porsche is a prize that the recipient *might win*. The subject line could
9 easily be interpreted as stating that the recipient who answers the 10 questions *will receive* a
10 Porsche. The spam advertising Larstan Business Reports from January 18, 2007 has a subject
11 line that reads: “Would you take a second to look at this?” This subject line is misleading
12 because it does not communicate *anything* about the contents of the email, which is to convince
13 recipients to take an online survey.

14 100. The spam advertising Pitney Bowes from May 15, 2007 has a subject line that reads
15 “Tired of trips to the post office?” This subject line is misleading because it does not clearly
16 communicate that the content of the email is designed to sell mailstation digital postage meters.
17 The subject line could have been used, with equal validity, to sell fax machines, FedEx courier
18 pickup services, or other print-postage-from-computer solutions such as Stamps.com.

19 101. Two of the three spams advertising ValueClick Inc. dba *giveawaycafe.com* (January 12,
20 2007 and January 14, 2007) have the same subject line, which reads: “Get the new iPod Nano
21 plus music downloads on us! Participate now.” This subject line is misleading because is the
22 phrase “on us,” with no other conditions in the subject line as required by 16 C.F.R. § 251.1(c),
23 indicates that the iPod and music downloads are *free* to the consumer. Specifically, there are no
24

1 qualifiers in the subject line – or even in the body of the email – clearly communicating that
2 “participating” means that the consumer will have to spend significant amounts of money to
3 receive the “free” iPod and music downloads. BALSAM is informed and believes and thereon
4 alleges that the Florida Attorney General recently settled disputes with World Avenue USA LLC
5 and AzoogleAds U.S. Inc. for \$1 million each for deceptive use of the word “free” in spam
6 advertising, *McCollum v. World Avenue U.S.A. LLC*, No. L06-3-1089 (Fla. filed Aug. 23, 2007);
7 *In the Matter of AzoogleAds US Inc.*, No. L07-3-1044 (Fla. Nov. 7, 2007). BALSAM is
8 informed and believes and thereon alleges that Adteractive Inc., located in San Francisco,
9 recently agreed to a stipulated judgment for \$650,000 for its deceptive use of “free” in spam
10 advertising. *U.S.A. v. Adteractive Inc.*, No. CV-07-5940 SI (N.D. Cal. Nov. 27, 2007) (stipulated
11 final judgment for civil penalties and permanent injunctive relief).

12 **2. Falsified Sender Email Addresses**

13 102. Of the 32 spams at issue, 28 were purportedly sent from email addresses that do not
14 actually exist. BALSAM sent “test” emails to the purported sending email address, and received
15 error bounceback messages indicating that his email could not be delivered to the purported
16 sending email addresses. Attachment C shows a true and correct copy of one such error
17 bounceback message, redacted only to remove BALSAM’s email address. The sending email
18 address field, part of the headers, therefore contains patently falsified information.

19 103. BALSAM is informed and believes and thereon alleges that falsifying the sending email
20 address is a common spammer strategy because spammers’ lists often include “dead” email
21 addresses that would generate error bounceback messages to the spammer. By falsifying the
22 sending email address, spammers ensure that *their* computer systems do not have to process the
23 error bouncebacks, instead passing the burden of handling the “fallout” of their spam to various
24 Internet Service Providers (“ISPs”).

1 104. The Federal Trade Commission, a generally acknowledged expert on deceptive
2 marketing practices, considers falsified sender email addresses to be materially deceptive. See,
3 e.g., FEDERAL TRADE COMMISSION, SPAM SUMMIT: THE NEXT GENERATION OF THREATS AND
4 SOLUTIONS 8 (Nov. 2007).

5 **3. Multiple Sending Domain Names**

6 105. BALSAM is informed and believes and thereon alleges that hundreds of thousands of
7 individuals, corporations, and other organizations use Internet services and successfully pursue a
8 wide variety of business, pleasure, non-profit, and academic pursuits on a daily basis while never
9 availing themselves of a second, third, or fourth domain name, let alone the number – at least 14
10 – that SMS used to send spam: *apostfour.com*, *bestnewoffer.com*, *bizdeals.biz*, *blue-mailer.com*,
11 *consumeroffers.net*, *green-mailer.com*, *holidaydeal4you.com*, *i2iii.com*,
12 *officialconsumeroffers.com*, *postzonetwo.com*, *shopperoffers.com*, *t3ramail.com*, *teraopt1.com*,
13 *truehome.net*. (SMS also uses other domain names for its websites and mailservers: *bizcirc.com*,
14 *biz-circ.com*, *teramedia.com*.)

15 **Sending Spam from Multiple Domain Names Makes it**
16 **Harder for ISPs to Identify a Spammer and Block its Spam**

17 106. BALSAM is informed and believes and thereon alleges that if SMS sent all its spam from
18 a single domain name and represented itself as the single entity that it really is, then an ISP
19 would be more likely to identify SMS as a spammer and block all of its spam before it even
20 reached consumers' computers. BALSAM is informed and believes and thereon alleges that
21 SMS incurred the expense and effort of purchasing and using multiple domains to send its spam
22 for the sole reason of deceptively misrepresenting the actual (single) source of all its spam in
23 order to trick the ISPs; in other words, SMS created multiple identities, as represented by the
24 multiple domain names, in order to "spread out" the total volume of spam and reduce the volume

1 sent via *each* domain name, a strategy deliberately calculated to deceive the ISPs into *not*
2 blocking its spam.

3 107. The Legislature must have known the true importance of accurate header information.
4 With accurate header information, ISPs can quickly and easily compile a global list of all
5 spammers and summarily block their email transmissions, delivering spam-free service to their
6 business and consumer customers. But, so long as inaccurate, misleading and misrepresentative
7 headers remain, ISPs are forced to try to decipher truth from fact, fiction and subterfuge at great
8 expense.

9 108. The Federal Trade Commission and various courts have found the use of multiple domain
10 names to be deceptive, as do Information Technology security experts.

11 109. “An ISP [Internet Service Provider] may block a message because... a[] domain name is
12 associated with the sending of high volumes of spam.” FEDERAL TRADE COMMISSION,
13 EFFECTIVENESS AND ENFORCEMENT OF THE CAN-SPAM ACT: A REPORT TO CONGRESS 12 (Dec.
14 2005).

15 110. After identifying spammers’ domain names, “ISPs have responded to spam by attempting
16 to filter out the domain names that are the apparent source of the [spam].” *Verizon Online*
17 *Services Inc. v. Ralsky*, 203 F. Supp. 2d 601, 606 (E.D. Va. 2002). More specifically:

18 ISPs employ a number of tactics to block spam from reaching users. One major
19 tactic is to identify domain names or IP addresses that have sent unwanted e-mail
20 in the past and to automatically prevent the delivery of any messages coming
21 from those senders People sending spam (“spammers”), then, respond by
22 masking their true identities to evade the protective measures. They create false
23 routing information or transmission information, making messages appear as if
24 they come from hundreds or thousands of different domain names and IP
addresses. Thus, spammers can ensure that the ISP cannot detect and block every
e-mail they send and can evade detection because the thousands of messages
appear to come from hundreds of different sources.

Jaynes v. Commonwealth of Virginia, 48 Va. App. 673, 681-82 (2006).

1 111. This deceptive technique is simple, inexpensive, and – unfortunately – effective. A spam
2 email survives a filter so long as the filter does not recognize it as a spam. Since ISPs rely, in
3 part, on the sending domain name to identify spam, once the ISPs learn to identify a spamming
4 domain name, the ISP can block all incoming spam from that domain name. All a spammer has
5 to do to work around the filter-block is to create a new identity – i.e., a new domain name – and
6 keep sending spam.

7 Spammers chew through domain names very quickly; large spammers have
8 thousands of names registered at any given time. Spammers promote from these
9 domains until every filter knows them as a prolific spamming domain, at which
10 time spammers discard the domain and register a new one. Each DNS name costs
11 only a few dollars so registering 1,000 to 2,000 is not a big deal considering the
12 potential returns you’ll earn.

13 SPAMMER-X, INSIDE THE SPAM CARTEL 173 (Jeffrey Posluns ed., Syngress Publishing 2004).

14 112. SMS sent BALSAM spam from at least 14 unique domain names. SMS does not have 14
15 divisions in the company. Nor are domain names uniquely matched to advertisers (discussed in
16 more detail *infra*).

17 113. Even assuming the domain names were properly registered, the use of *multiple* domain
18 names to send spam, even if not a falsity or forgery, is still a *misrepresentation*, because it
19 indicates that there are multiple senders instead of just one, and thereby violates California law.
20 *See, e.g., Balsam v. TLM Enterprises Group Inc.*, No. 1-06-CV-066259 (Super. Ct. Cal., Cty. of
21 Santa Clara filed June 27, 2006 (stipulated judgment entered Feb. 11, 2008) (“Defendant TLM
22 Enterprises Group intentionally created multiple domain names and sent unsolicited commercial
23 emails from these multiple domain names with the express intent of avoiding spam filters, many
24 of which use the sending domain name as an indicator of unsolicited commercial email
Defendant knew sending unsolicited commercial email would result in misrepresented and
misleading headers in those email messages...”); *see also U.S.A. v. Kilbride*, 507 F. Supp. 2d

1 1051, 1064, 1067 (2007) (“The email software enabled Clason frequently to change the domain
2 names from which the emails were sent. . . . The goal was to develop several hundred domain
3 names that could be rotated frequently in the sending of the pornographic emails.”)

4 114. A lawful, legitimate business should want to use a *consistent* domain name in its
5 marketing efforts for “branding” purposes and so that customers can more easily recognize the
6 sender and “whitelist” the domain name, if necessary, to ensure that emails are *not* caught by
7 spam filters and deleted. There are no *lawful* reasons why SMS would want to create *so many*
8 domain names.

9 115. However, there are *fraudulent and deceptive* reasons why SMS would use so many
10 domain names – to make it appear as though many *different* entities are sending the spam when
11 in fact SMS is sending *all* of the spam.

12 116. Because SMS created at least 13 domain names to send the spam at issue in this lawsuit,
13 every single spam sent by SMS contains misrepresented header information.

14 Sending Spam from Multiple Domain Names Makes it
15 Harder for Recipients to Identify a Spammer and Block its Spam

16 117. Similarly, if the *ISPs* did not catch and delete SMS’s spam and the spam reached the
17 email account of a recipient (like BALSAM), SMS’s use of multiple domain names also makes it
18 more difficult for *recipients* to block SMS’s spam using their own spam filters.

19 118. For example, a recipient could block spam originating from the domain name
20 *apostfour.com*, but that filter would not stop spam originating from the domain name
21 *bestnewoffer.com*. The recipient could block *bestnewoffer.com* too, but that would not stop spam
22 originating from the domain name *i2iii.com*... or from any of the other domain names that SMS
23 uses to send spam.
24

1 119. BALSAM is informed and believes and thereon alleges that if SMS used a single domain
2 name, recipients could easily block *all* of SMS's spam with only a few clicks of the mouse,
3 which is precisely what SMS is trying to avoid by using multiple domain names.

4 120. The Legislature considered the effect of spammers' actions as to deceiving spam filters,
5 as well as to individuals, by noting that "spam filters have not proven effective," Cal. Bus. &
6 Prof. Code § 17529(f), which is due in part to spammers' deliberate attempts to evade and
7 deceive the filters, as demonstrated here by the use of multiple domain names.

8 Sending Spam from Multiple Domain Names is Analogous to a
9 Telemarketer Who Calls from Multiple Telephone Numbers

10 121. As an analogy, consider a telemarketer who calls one night during dinner from, e.g., 415-
11 563-1284. Caller ID can identify the originating telephone number. Suppose the recipient had
12 the ability to block all calls from that number, but the same telemarketer calls the next day –
13 selling the same product(s) – from 617-398-2449. The recipient could block that number too,
14 but the same telemarketer calls the next day from 312-691-2929. And then from dozens of other
15 telephone numbers.

16 122. All calls are from the same telemarketer, but the use of multiple originating numbers to
17 defeat the recipient's ability to block the telemarketer's calls is deceptive and misrepresentative
18 in that it suggests that the caller from each telephone number is a different entity... which makes
19 it harder for the consumer to block the unwanted commercial intrusions.

20 123. BALSAM is informed and believes and thereon alleges that many spammers
21 purposefully create multiple sender email address/domain names in a similar manner to evade
22 filters. A spammer can create a domain name for relatively little money (less than \$8), and
23 sometimes can even "taste" domain names (i.e., use them for an extremely short period of time)
24 for no cost at all.

1 No Systematic Matching of Domain Name to Advertiser

2 124. BALSAM is informed and believes, and thereon alleges, that since SMS uses multiple
3 domain names for each advertiser, and sends emails for multiple advertisers from each domain
4 name, there cannot be any sort of “tracking analysis” that would measure email delivery rate or
5 response rate for an advertiser as a function of the domain name.

6 125. For example, SMS sent spams advertising Larstan Business Reports from
7 *shopperoffers.com* and *teraopt1.com*, and SMS sent spams advertising Plaza Resorts Inc. and
8 Imperial Majesty Cruise Vacations LLC from *consumeroffers.net* and *holidaydeal4you.com*. At
9 the same time, SMS used the domain name *shopperoffers.com* to send spam advertising Larstan
10 Business Reports, Hartford Casualty Insurance Company, and ValueClick Inc., and SMS used
11 the domain name *i2iii.com* to send spam advertising Avaya Inc. and PETFOOD.

12 **4. Privately Registered Sending Domain Names**

13 126. A commercial email advertisement is unlawful if it “contains *or is accompanied by*
14 *falsified, misrepresented, or forged header information.*” Cal. Bus. & Prof. Code § 17529.5(a)(2)
15 (emphasis added). The Legislature must have intended “accompanied by” to mean information
16 that is *not* directly contained within the email headers. *If* “accompanied by” were the same as
17 “contained” then the inclusion of the “accompanied by” term would be superfluous. Therefore,
18 this Court must conclude that a spam can violate the prohibition against misrepresented header
19 information through information *not directly contained* within the headers.

20 127. Because email headers include a sending domain name, the registration information for
21 that domain name is *accompanying* information.

22 128. BALSAM is informed and believes, and thereon alleges, that many domain registrars
23 (entities that enable a party to create and purchase a domain name) offer “domain privacy
24

1 protection services” that enable the registrant of a domain name to conceal – and thus
2 misrepresent – its identity.

3 129. BALSAM does not allege that the mere act of privately registering a domain name is
4 unlawful. How a *passive website* owner chooses to register a domain name is his/her own
5 business. However, BALSAM alleges that it violates California law to privately register a
6 domain name *and* send spam from that domain name, because it misrepresents (by concealing)
7 the true identity of the domain registrant that is sending the spam.

8 130. SMS privately registered and sent spam from the following domain names:

9 *apostfour.com, bestnewoffer.com, bizdeals.biz, holidaydeal4you.com, i2iii.com,*
10 *officialconsumeroffers.com, postzonetwo.com, shopperoffers.com, t3ramail.com, truehome.net.*

11 SMS registered the following domain names to a nonexistent individual, Aaron Bodes, citing an
12 address at a CMRA that is not SMS’s actual address: *blue-mailer.com, consumeroffers.net,*
13 *green-mailer.com, teraopt1.com.* SMS also uses the domain names *bizcirc.com, biz-circ.com,*
14 *teramedia.com,* and *truhome.net*, which are all either privately registered or registered to the
15 nonexistent Aaron Bodes. *Not one of the domain names actually identifies SMS.*

16 131. Although BALSAM is suing under California law, BALSAM points out that sending
17 spam from two or more domain names that were privately registered so as to conceal the
18 registrant’s true identity is an *express* violation of the CAN-SPAM Act. 18 U.S.C. § 1037(a)(4),
19 (d)(2).

20 132. SMS’s pattern and practice of registering domain names so as to conceal its true identity
21 is exacerbated by the fact that many of the spams sent from these domain names assert that the
22 sender is really “BMVN Management” or “TBN Management,” operating from a CMRA in Las
23
24

1 Vegas, Nevada. Neither of these names is registered with the Nevada Secretary of State. SMS
2 thus makes it difficult for the recipient of a spam to identify SMS as the actual spammer.

3 **5. Multiple Sending Internet Protocol (“IP”) Addresses and Internet Service**
4 **Providers**

5 133. In a one year period, SMS Defendant EXPEDITE sent spams originating from eight
6 different Internet Protocol (“IP”) addresses belonging to eight different Internet Service
7 Providers (“ISPs”).

8 134. Even assuming the IP addresses were valid and not forged, there is still no reason to send
9 spam from multiple IP addresses, other than to deceive and evade spam filters.

10 135. “An ISP [Internet Service Provider] may [also] block a message because . . . an IP
11 address . . . is associated with the sending of high volumes of spam.” FEDERAL TRADE
12 COMMISSION, EFFECTIVENESS AND ENFORCEMENT OF THE CAN-SPAM ACT: A REPORT TO
13 CONGRESS 12 (Dec. 2005). BALSAM is informed and believes and thereon alleges that
14 spammers send email from multiple ISPs and IP addresses for the same reason that they send
15 email from multiple domain names – reducing the amount of spam sent from an IP address
16 makes it less likely that ISPs will identify and block spam.

17 136. SMS sent the first spam to BALSAM on September 10, 2006 from IP address
18 64.145.179.180. Plaintiff is informed and believes and thereon alleges that this IP address is
19 located in San Jose, California and assigned to ISP DSL Net Inc. Source: www.ip2location.com.

20 137. SMS sent three spams to BALSAM on November 21, 2006, December 15, 2006, and
21 December 21, 2006 from IP addresses 64.239.234.215, -.200, and -.105. Plaintiff is informed
22 and believes and thereon alleges that these IP addresses are located in Iowa and assigned to ISP
23 SDI Inc. Source: www.ip2location.com.

1 138. SMS sent 19 spams to BALSAM between December 21, 2006 and February 20, 2007
2 from IP address 216.75.2.179. Plaintiff is informed and believes and thereon alleges that these
3 IP addresses are located in New York, New York and assigned to ISP Cal Regional Intranet.
4 Source: www.ip2location.com.

5 139. SMS sent a spam to BALSAM on May 7, 2007 from IP address 67.19.152.3. Plaintiff is
6 informed and believes and thereon alleges that this IP address is located in Dallas, Texas and
7 assigned to ISP The Planet. Source: www.ip2location.com.

8 140. SMS sent a spam to BALSAM on May 15, 2007 from IP address 66.155.112.15.
9 Plaintiff is informed and believes and thereon alleges that this IP address is located in Georgia
10 and assigned to ISP Via Networks USA. Source: www.ip2location.com.

11 141. SMS sent a spam to BALSAM on June 10, 2007 from IP address 209.190.29.130.
12 Plaintiff is informed and believes and thereon alleges that this IP address is located in Minnesota
13 and assigned to ISP Robert Westbury. Source: www.ip2location.com.

14 142. Most recently, SMS has been sending spam from Malaysia. SMS sent a spam to
15 BALSAM on May 15, 2007 from IP address 202.71.111.71. Plaintiff is informed and believes
16 and thereon alleges that this IP address is located in Malaysia and assigned to ISP Infrastructure
17 IP. SMS also sent five spams from June 10, 2007 to October 12, 2007 from IP addresses
18 203.223.159.118, 203.223.135.125, and 203.223.135.221. Plaintiff is informed and believes and
19 thereon alleges that these IP addresses are located in Malaysia and assigned to ISP Aims-My-
20 Dia-Net. Source: www.ip2location.com.

21 143. BALSAM is informed and believes and thereon alleges that even if SMS properly
22 purchases internet bandwidth from the U.S. ISPs, SMS may be using “bot nets” (computers
23 infected with viruses) in Malaysia to send its spam.

1 **6. Forged Mailserver Names**

2 144. Most of SMS's spams have false or forged information in the mailserver field.
3 BALSAM is informed and believes and thereon alleges that this type of false and forged
4 information is material because when a computer "misidentifies" itself to Internet Service
5 Providers, the sender is acting intentionally to bypass filters designed to block spam coming
6 from their computers.

7 145. Two spams identify the sending mailserver as "exfast308." One spam identifies the
8 sending mailserver as "truehome.net." One spam identifies the sending mailserver as
9 "vmhost1." Plaintiff is informed and believes and thereon alleges that these are invalid names
10 for mailservers.

11 146. Twenty four spams purport to originate from mailservers that do not match the purported
12 sending Internet Protocol address. E.g., the three spams advertising Plaza Resorts Inc. and
13 Imperial Majesty Cruise Vacations LLC purport to have originated from IP address
14 216.75.2.179, but two of them actually originated from a mailserver named "66.196.97.250" and
15 one originated from a mailserver named "209.191.118.103."

16 **7. Falsified Sending Date/Time Stamps**

17 147. SMS falsified the email headers by causing the headers to show time zones/locations
18 indicating that SMS is sending spam from a 15-time zone range – more than half the planet.

19 GMT +6 – Bangladesh, Kazakhstan, Russia
20 GMT +5 – Turkmenistan, Maldives, Uzbekistan
21 GMT +4 – Armenia, Russia, United Arab Emirates
22 GMT +1 – Western Europe, Libya, Morocco, Nigeria, Algeria
23 GMT -1 – Atlantic Ocean
24 GMT -2 – Atlantic Ocean
 GMT -3 – Eastern Brazil and Argentina
 GMT -4 – Eastern Canada, Caribbean islands, Venezuela
 GMT -5 – Eastern U.S., Caribbean islands, Colombia, Peru
 GMT -6 – Central U.S., Mexico, Belize, Costa Rica
 GMT -7 – Mountain U.S.

1 GMT -8 – Pacific U.S.

2 148. BALSAM is informed and believes and thereon alleges that SMS falsified the sending
3 date/time stamps in eight of the nine spams sent since May 2007 so that, even *after* factoring the
4 supposed origination of the spams in time zones across the world, BALSAM received the spams
5 *before* they were purportedly even sent!

6 149. BALSAM is informed and believes and thereon alleges that most email programs,
7 including Microsoft Outlook and web-based Yahoo! Mail, to name but two, usually display the
8 most recent email received at the top of the list. A send date that is falsified to show a *future*
9 date is materially false because it is a deceptive means of forcing the spam to appear at the top of
10 the list – where it is more visible – in the recipients’ email inboxes.

11
12 **FIRST CAUSE OF ACTION**

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

16 150. BALSAM hereby incorporates by reference Paragraphs 1 to 149, inclusive, as if the same
17 were fully set forth herein.

18 151. The statute of limitations for a Cal. Bus. & Prof. Code cause of action is four years. Cal.
19 Bus. & Prof. Code § 17208. BALSAM brings this action within the statute of limitations.

20 152. Defendants sent or caused to be sent unsolicited commercial emails to California
21 electronic mail addresses, including 32 to BALSAM, containing or accompanied by falsified,
22 misrepresentative, or forged header information, including:

- 23 • Misleading subject lines
- 24 • Falsified sender email addresses
- Multiple sending email addresses/domain names
- Privately registered sending domain names

- Forged and/or multiple sending Internet Protocol (“IP”) addresses
- Forged mailserver names
- Falsified sending date/time stamps

153. BALSAM is informed and believes and thereon alleges that Defendants profited from their wrongful conduct.

154. BALSAM suffered damages as a result of Defendants’ wrongful conduct. The California Legislature has set liquidated damages at One Thousand Dollars (\$1,000) per email.

155. BALSAM seeks reimbursement of attorneys’ fees and costs as authorized by statute.

WHEREFORE, BALSAM prays for judgment against Defendants, and each of them, as hereinafter set forth.

SECOND CAUSE OF ACTION

**[Violations of Consumers Legal Remedies Act, California Civil Code § 1750 *et seq.*]
(Against Defendants SMS MEDIA CORPORATION, BOSLEY HEALTY HAIR INC.,
BUY THE BEACH REALTY INC., CELLULAR ONE PROPERTIES LLC,
PETFOODDIRECT.COM INC., REDF MARKETING LLC, SAGE SOFTWARE INC.)**

156. BALSAM hereby incorporates by reference Paragraphs 1 to 149, inclusive, as if the same were fully set forth herein.

157. The statute of limitations for a Consumers Legal Remedies Act (“CLRA”) cause of action is three years. Cal. Civ. Code § 1783. BALSAM brings this action within the statute of limitations.

158. The CLRA is a *general* consumer protection statute that is not specific to email. In fact, the CLRA does not even mention the word “email” or “Internet.” The CAN-SPAM Act, by its own plain language, does *not* preempt state laws that are *not* specific to commercial email. 15 U.S.C. § 7707(b)(2).

1 **A. The CLRA Applies to Transactions, Such as Spam Advertisements, Intended to Result**
2 **in a Purchase**

3 159. The CLRA applies to deceptive acts *intended* to result in the sale or lease of goods or
4 services as well as acts that actually result in the sale or lease of goods or services. Cal. Civ.
5 Code § 1770(a) (emphasis added).

6 160. Here, Defendants' wrongful conduct occurred in the context of transactions which
7 BALSAM is informed and believes and thereon alleges that Defendants intended would result in
8 the sale or lease of goods or services.

9 161. Nothing in the CLRA states that a plaintiff/consumer bringing a suit under the CLRA
10 must have purchased and be a consumer *of the items advertised via the allegedly false and*
11 *deceptive means*. Cal. Civ. Code § 1761(d) merely differentiates consumers from, for example,
12 businesses. The former can bring actions under the CLRA, the latter cannot.

13 162. A consumer who receives false and deceptive advertising is *per se* damaged, even if the
14 consumer does not make a purchase as the result of that advertising. *Kagan v. Gibraltar Savings*
15 *and Loan Assoc.*, 35 Cal. 3d 582, 593 (1984).

16 **B. Defendants Named in this Cause of Action Were Notified of Their Violations of the**
17 **CLRA; None Responded in a Timely Manner**

18 163. BALSAM sent letters by certified mail, return-receipt requested, to each Defendant or its
19 registered agent more than 30 days prior to filing this action, alleging specific violations of the
20 CLRA, as required by Cal. Civ. Code § 1782(a).

21 164. BALSAM received green postcards back from all recipients demonstrating that the letters
22 had been received.

23 165. All Defendants except SAGE failed to respond in any manner within 30 days of their
24 receipt of notice, as required by Cal. Civ. Code § 1782. SAGE responded, but denied there was
any falsity and deception in the spam. SAGE has not identified all consumers similarly situated

1 as BALSAM and notified those consumers that SAGE would remedy its marketing practices, as
2 required by Cal. Civ. Code § 1782(c).

3 166. BALSAM seeks equitable relief, pursuant to Cal. Civ. Code § 1782(a)(2), in the form of
4 an injunction prohibiting Defendants, either directly or through agents, servants, and employees,
5 and all persons acting under, in concert with, or for them, from sending unlawful commercial
6 email advertising.

7 **C. Specific Violations of the CLRA**

8 167. The CLRA is explicitly cumulative – each unlawful spam is a separate violation.

9 168. Defendants violated the CLRA, Civ. Code § 1770(a)(2), by misrepresenting the source of
10 some of the spams to be “TBN Management” or “BMVN Management” or “TeraResponse” or
11 “Business Life.”

12 169. Defendants violated the CLRA, Civ. Code § 1770(a)(2), by misrepresenting the source of
13 the spams by privately registering the domain names from which the spams were sent, so as to
14 hide the identity of the registrant.

15 170. Defendants violated the CLRA, Civ. Code § 1770(a)(2), by misrepresenting the source of
16 the spams by sending spams purporting to come from particular email addresses that do not exist.

17 171. Defendants violated the CLRA, Civ. Code § 1770(a)(2), (a)(3), and (a)(5) by
18 misrepresenting that the source of some of the spams was the nonexistent “Aaron Bodes,” that
19 SMS has a connection with the nonexistent “Aaron Bodes,” and that a person – “Aaron Bodes” –
20 has the status of existence which he does not have.

21 172. Defendants violated the CLRA, Civ. Code § 1770(a)(4), by misrepresenting the
22 geographical origin of spams advertising various goods and services. The spams purport to
23 originate from locations in time zones covering more than half of the planet, including the
24 middle of the Atlantic Ocean.

1 173. Defendants violated the CLRA, Civ. Code § 1770(a)(5), by representing that goods have
2 characteristics which they do not have – the characteristic of having *anything* to do with the
3 random words at the bottom of many of the spams.

4 174. Defendants violated the CLRA, Civ. Code § 1770(a)(5), by representing that services
5 have characteristics which they do not have – Taxback Opportunities LLC and Tanya Graham’s
6 ability to *recover lost profits* when, at best, they may be able to *reduce taxes*, which is not the
7 same thing.

8 175. Defendants violated the CLRA, Civ. Code § 1770(a)(5) and (a)(9), by representing that
9 goods have characteristics which they do not have (“free”) and by advertising goods or services
10 with intent not to sell them as advertised – two spams advertising ValueClick deceptively state
11 that the iPod and music downloads are “on us.”

12 176. BALSAM is informed and believes and thereon alleges that Defendant SMS violated the
13 CLRA, Civ. Code § 1770(a)(16), by representing to its clients that BALSAM has been involved
14 with call centers (Avaya Inc.), has expressed interest in business publications (BizCirc.com), has
15 expressed interest in hair transplants (Defendant BOSLEY), has expressed interest in buying and
16 selling stocks (“BT Publishing LLC”), has expressed interest in Miami real estate (Defendants
17 BEACH and GRECO), has expressed interest in cellular telephones or service plans (Defendant
18 CELLULAR), has expressed interest in auto insurance (Hartford Casualty Insurance Company),
19 has been an Information Technology professional (Larstan Business Reports), has expressed
20 interest in accidental death insurance (Mutual of Omaha Insurance Company), has expressed
21 interest in traveling to North Carolina (North Carolina Department of Commerce), has expressed
22 interest in pet food (Defendant PETFOOD), has expressed interest in mailstation digital postage
23 meters (Pitney Bowes Inc.), has expressed interest in Caribbean cruises, has expressed interest in
24

1 satellite television (Defendant REDF), has been involved in benefits management (Defendant
2 SAGE), has expressed interest in meeting thousands of Christian singles online (Spark Networks
3 PLC), has expressed interest in professional tax advice (Taxback Opportunities LLC and Tanya
4 Graham), and has expressed interest in Ipods and downloadable music (ValueClick Inc.).
5 WHEREFORE, BALSAM prays for judgment against Defendants, and each of them, as
6 hereinafter set forth.

7
8 **THIRD CAUSE OF ACTION**

9 **[Declaratory Relief]**
10 **(Against All Defendants)**

11 177. BALSAM hereby incorporates by reference Paragraphs 1 to 149, inclusive, as if the same
12 were fully set forth herein.

13 178. An actual controversy has arisen between BALSAM and Defendants as to the nature of
14 their email advertising. BALSAM respectfully requests this Court to make a judicial declaration
15 and determination that Defendants sent and/or advertised in false and deceptive spam, in
16 violation of Cal. Bus. & Prof. Code § 17529.5 and the CLRA.

17 **PRAYER FOR RELIEF**

- 18 A. Equitable relief in the form of an injunction prohibiting Defendants and each of them, either
19 directly or through agents, servants, and employees, and all persons acting under, in concert
20 with, or for them, from sending unlawful commercial email advertising;
21 B. Liquidated damages in the amount of One Thousand Dollars (\$1,000) for each of 32 spams,
22 as authorized by Cal. Bus. & Prof. Code § 17529.5(b)(1)(B)(ii), less Six Thousand Six
23

1 Hundred Sixty Five Dollars (\$6,665) credit from settlements with other advertisers, for a
2 total of Twenty Five Thousand Three Hundred Thirty Five Dollars (\$25,335);

3 C. Punitive damages as to Defendants SMS MEDIA CORPORATION (successor in interest to
4 Teramedia Corporation), STEVE HARDIGREE, SCOTT HARDIGREE, MICHAEL
5 BARNES, BRUCE HAMMER, KAREN PFLUEGER, AMANDA WHITE, ADAM
6 KESSLER, MICHAEL HUCKABA, JASON MARCUS, jointly and severally, in an amount
7 determined by the Court;

8 D. Attorneys' fees as allowed by law;

9 E. Costs of suit; and

10 F. Such other and further relief as the Court deems proper.

11 WALTON & ROESS LLP

12 Date: _____

BY: _____

13 TIMOTHY J. WALTON

Attorneys for DANIEL L. BALSAM

14
15 **VERIFICATION**

16 The undersigned for himself declares:

17 I am the plaintiff in the above-entitled action. I have read the forgoing Complaint and
18 know the contents thereof. With respect to the causes of action alleged by me, the same is true
19 by my own knowledge, except as to those matters which are therein stated on information and
20 belief, and, as to those matters, I believe them to be true. I declare under penalty of perjury
21 under the laws of the State of California that the forgoing is true and correct.

22
23 Date: _____

24 DANIEL L. BALSAM

ATTACHMENT A



LISTS

SERVICES

COMPANY

CONTACT

OUR OFFERINGS

Mailing Lists

Email Lists

Telemarketing Lists

List Management

List Brokerage

Lead Brokerage

Email Marketing

Email & Data Appends

List Hygiene & Correction

List Suppression

revenueBOOSTER

Database Licensing

Request More Information

Phone: 407-420-1108

Fax: 407-420-1124

Email: info@teramedia.com

Tools & Resources

» [Search Online Datacards](#)

» [Request Counts & Usage](#)

» [View Current Promotions](#)



Contact

Orlando

Phone: (407) 420-1108

Fax: (407) 420-1124

Email: info@teramedia.com

Address: 801 N. Magnolia Ave., Suite 402

Orlando FL 32803 ([map](#))

Boca Raton

Phone: (561) 477-7562

Address: N.W. Corporate Blvd., Suite 241

Boca Raton, FL 33431 ([map](#))

Connecticut

Phone: (203) 746-7390

Address: 24 Ridge Road

New Fairfield, CT 06812 ([map](#))

San Diego

Address: 760 8th Ave., Suite 101

San Diego, CA 92101 ([map](#))

Request More Information

First Name:

Last Name:

Phone: - -

Email:

Company Name:

Street Address:

Suite #:

Zip/Postal Code:

URL:

Additional Questions?

407-420-1108 | info@teramedia.com | 801 N. Magnolia Avenue, Suite 402. Orlando FL 32803

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ATTACHMENT B



Print - Close Window

From Bosley Wed Aug 15 22:43:32 2007

X-Apparently-To:	XXXX@yahoo.com via 68.142.207.108; Wed, 15 Aug 2007 21:52:24 -0700
X-YahooFilteredBulk:	203.223.135.125
X-Originating-IP:	[203.223.135.125]
Return-Path:	<a@postzonetwo.com>
Authentication-Results:	mta286.mail.re4.yahoo.com from=postzonetwo.com; domainkeys=neutral (no sig)
Received:	from 203.223.135.125 (203.223.135.125) by mta286.mail.re4.yahoo.com with SMTP; Wed, 15 Aug 2007 21:52:24 -0700
Received:	from VPS110.postzonetwo.com; Thu, 16 Aug 2007 10:44:32 +0500
Message-ID:	<XXXX@yahoo.com@postzonetwo.com>
From:	"Bosley" <a@postzonetwo.com>
Reply-to:	"Bosley" <a@postzonetwo.com>
To:	XXXX@yahoo.com
Subject:	Learn the facts about hair loss
Date:	Thu, 16 Aug 2007 09:43:32 +0400
X-Mailer:	mailer 3.123a
Content-Type:	text/html
Content-Length:	3768

Learn how modern hair transplantation can restore your hair

before
hair restoration

after
hair restoration

Get the facts from Bosley
The Worlds Most Experienced Hair Restoration Expert

Contact us today!

BOSLEY®

*all patients before and after hair restoration. Individual results may vary.

We may use third-party advertising companies to serve ads on our behalf. These companies may employ cookies and action tags (also known as single pixel gifs or web beacons) to measure advertising effectiveness. Any information that these third parties collect via cookies and action tags is completely anonymous. To unsubscribe from any further e-mail from this advertiser, please [<click here>](#).

The confidentiality of all Bosley patients is strictly protected. The patients featured on this Web site are volunteers who have given Bosley their permission to appear. Testimonial statements and photographs of Bosley patients do not constitute a warranty or prediction of the outcome of your individual hair restoration. Not all patients can achieve the results depicted herein. Ask your Bosley doctor about your individual case. Professional services provided by the licensed medical doctors of Bosley Medical Group.

In some states in the USA (e.g., in Illinois, New York and Texas) testimonial advertising is not allowed in medicine, regardless of the truth or accuracy of the testimony. In those states this testimonial section is void. If you live in a jurisdiction which does not allow testimonial advertising in medicine, please skip this section.

Bosley
9100 Wilshire Blvd. East Tower, Penthouse
Beverly Hills, CA 90212

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You are receiving this advertising or promotional email because you are on the BMVN management list. If you have received this message in error or no longer wish to receive email [click here](#) to opt-out.

BMVN management is located at 848 N Rainbow Blvd #2147 Las Vegas NV 89107 and is not responsible for the products or services presented in this message.

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From Sean Tue Feb 20 07:50:58 2007

X-Apparently-To:	XXXX@yahoo.com via 68.142.207.110; Tue, 20 Feb 2007 07:55:05 -0800
X-YahooFilteredBulk:	216.75.2.179
X-Originating-IP:	[216.75.2.179]
Return-Path:	<buybeach@consumeroffers.net>
Authentication-Results:	mta141.mail.re3.yahoo.com from=consumeroffers.net; domainkeys=neutral (no sig)
Received:	from 216.75.2.179 (HELO 66.196.97.250) (216.75.2.179) by mta141.mail.re3.yahoo.com with SMTP; Tue, 20 Feb 2007 07:55:05 -0800
Received:	from 216.75.2.179 by ; Tue, 20 Feb 2007 12:54:58 -0300
Message-ID:	<XXXX@consumeroffers.net>
From:	"Sean" <buybeach@consumeroffers.net>
Reply-to:	"Sean" <buybeach@consumeroffers.net>
To:	dan_edwards_1966@yahoo.com
Subject:	Mondarin South Beach
Date:	Tue, 20 Feb 2007 09:50:58 -0600
X-Mailer:	QUALCOMM Windows Eudora Version 5.1
MIME-Version:	1.0
Content-Type:	multipart/alternative; boundary="--"
X-Priority:	3
X-MSMail-Priority:	Normal
Content-Length:	2323

Hello:

My name is Sean Greco and I am the condo-hotel specialist here at Buy the Beach Realty. Some folks love mansions, some folks go nuts for bungalows, I really love working top-tier condo-hotel property. Something about getting paid to own a vacation pad really appeals to me. Anyway, if you've read this far let me tell you about the best condo-hotel opportunity in South Beach, [Mondrian South Beach](#).



Miami Beach has been a pioneer in the condo-hotel concept and there are many that have been in business for over a decade now. I have been fortunate to deal with all of them here at Buy the Beach Realty. I have learned what to and what **not** to look for. **I firmly believe a condo-hotel can only be as good as it's hotel management company/program.** If you buy in the right one it's an amazing way to get a lot of bang for your buck in an upscale building with incredible amenities, use it for personal use a couple times a year, all the while making a good amount of income from the rental program and steady appreciation.

Don't miss this incredible opportunity to become business partners with the premiere hotel company in the market in one of the hottest areas in the world. If you've ever set foot in Morgan's, Royalton, or Hudson in New York; Clift in San Francisco; Sanderson or St. Martins Lane in London; or the Delano or Shore Club in South Beach, then you know these are hotels that are pioneers that set the trends in style, fashion, elegance, and service. [Mondrian South Beach](#) is destined to be the next place to be seen. So when you have an opportunity to essentially become business partners with such a place you act quickly knowing you are alleviating your risks and securing your investment with the basic laws of supply and demand.

The views of Biscayne Bay and downtown Miami are incredible, the location is perfect right in the heart of South

Beach amongst the locals, and top-notch amenities and customer service make this a sound real estate project. Partner with the best when buying into a condo-hotel as they are only as good as their management program. All the stars stay in the Delano or Shore Club in South Beach, so **Mondrian South Beach** will be the next high-caliber hotel right on the waterfront in South Beach, with the sort of star-power that will attract guests wishing for pure luxury. This can enable your unit to pay for itself in rental income as well as to be a solid investment from an appreciation perspective.

Please click the link below for more detailed information and pricing, and feel free to call me at 786-877-9220 to discuss in more detail or check the status, pricing and availability.

<http://www.buybeach.com/mondrian>

Regards,

Sean Greco
Realtor

Buy the Beach Realty, Inc.
800 West Avenue
Miami Beach, FL 33139

786-877-9220 (Cell)
305-531-6929 (Office)
305-531-6742 (Fax)
Email: mondrian@buybeach.com

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TBN MANAGEMENT IS LOCATED AT 848 N. RAINBOW BLVD. #2147 LAS VEGAS, NV 89107 AND IS NOT RESPONSIBLE FOR THE PRODUCTS OR SERVICES PRESENTED IN THIS MESSAGE. ">

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□

.nicety rico expensive jay i'll typo inflicter bellboy bunny horsehair anhydrite charisma screwbean tomato basilisk allusive command dizzy naomi veal .

[Print - Close Window](#)

From Cellular One Mon May 7 14:34:23 2007

X-Apparently-To: XXXX@yahoo.com via 68.142.207.101; Mon, 07 May 2007 16:08:11 -0700

X-YahooFilteredBulk: 67.19.152.3

X-Originating-IP: [67.19.152.3]

Return-Path: <cellular_one@blue-mailer.com>

Authentication-Results: mta235.mail.re4.yahoo.com from=blue-mailer.com; domainkeys=neutral (no sig)

Received: from 67.19.152.3 (EHLO tp3.truehome.net) (67.19.152.3) by mta235.mail.re4.yahoo.com with SMTP; Mon, 07 May 2007 16:08:11 -0700

Return-Path: <Cellular_One@blue-mailer.com>

Received: from [74.208.15.191] ([74.208.15.191:4886] helo=tp2.truehome.net) by tp1.truehome.net (ecelerity 2.1.1.16 r(16457)) with ESMTP id XXXX for <XXXX@yahoo.com>; Mon, 07 May 2007 15:34:48 -0500

Received: from XXXX Mon, 07 May 2007 15:38:23 -0600

Message-ID: <XXXX@yahoo.com@blue-mailer.com>

From: "Cellular One" <Cellular_One@blue-mailer.com>

Reply-to: "Cellular One" <Cellular_One@blue-mailer.com>

To: XXXX@yahoo.com

Subject: Phone Deals for Mom with No Activation Fee

Date: Tue, 08 May 2007 01:34:23 +0400

X-Mailer: Microsoft Outlook Express 5.50.4522.1200

x-binding: server3

MIME-Version: 1.0

Content-Type: multipart/alternative; boundary="--"

X-Priority: 3

X-MSMail-Priority: Normal

Content-Length: 6069



LIMITED TIME OFFER

give mom a seriously cool phone

because there's nothing funny about a bad Mother's day gift



Motorola Pink RAZR
\$29.99

\$29.99 after \$50 mail-in rebate for the first activation on the account.
 FREE after \$50 mail-in rebate for each additional line.

camera ~ video ~ 3-D graphics ~ Bluetooth® technology
 also available in black and silver



PLUS, add up to 4 partner lines and get up to 4 FREE RAZRs and FREE Activation. Free RAZR and free activation offer expires May 13th.



Motorola KRZR
\$99.99

after \$50 mail-in rebate
 2 megapixel camera
 sleek design
 MP3 player

Find out more!



BlackBerry® Pearl™
\$199.99

after \$50 mail-in rebate
 with the purchase of voice and
 BlackBerry data plan

BlackBerry email capability
 1.3 Megapixel Camera ~ MP3 Player
 Bluetooth® technology

Find out more!

Visit your nearest Cellular One location or call 1.800.CELLONE For Business Sales and Information, [click here.](#)

Phone offers expire May 24th, 2007.

There's nothing funny about a dumb calling plan.

That's why our unlimited statewide plan is truly unlimited.

- ~ anytime
- ~ day or night
- ~ from anywhere in the state

Find out more.



Extend the power of your BlackBerry device - without worries!

\$30 Unlimited Email with the BlackBerry consumer plan send, receive, and reply to messages while on the go!

Retail voice plan \$9.99 and over required.



Customize Mom's phone with an accessory from Cellular One!

Get great deals on the latest accessories for her phone like Bluetooth headsets, leather and fashion cases and more!

Find out more.

Free activation and Free RAZR offers available until May 13th. Phone offers available until May 24th, 2007. \$50 mail in rebate and 2-year agreement required for phone pricing. Allow 8 -10 weeks for rebate. Must be a customer for 30 consecutive days. Rebate must be post marked by June 24, 2007. No more than 5 rebates per household. See rebate form for complete rebate details. Promotion may vary by location and may not be available at all authorized dealer locations. Pearl handheld device good with \$30 Blackberry Consumer plan, retail voice plan and a minimum of a 6 month commitment to the \$30 Blackberry Consumer plan. Termination before 6 months results in \$100 termination fee. Retrieve e-mail from up to 10 ISP accounts with a BlackBerry Wireless Handheld. Service is not available at all times in all places. View Map and Coverage Limitations. Does not include connectivity to a corporate BlackBerry Enterprise Server. Stop Counting Minutes statewide provides unlimited anytime minutes, anywhere your phone works within the state borders. Coverage cannot be guaranteed everywhere in the state. Customers may be charged roaming minutes on in-state calls when near a state border and using coverage originating from another state. Free long distance is applicable on calls made from the home calling area to anywhere in the U.S. Service is contingent upon credit approval and annual agreement at which time a deposit may be required. An early cancellation fee of \$20 per remaining month of agreement applies if service is cancelled after the first 14 days of service. Activation fees may be up to \$45 to activate service. Other fees may range from \$2.50 – \$3.75 per month. These fees may include but are not limited to compliance fee, network service fee, or roamer administration fee. Cellular One approved phone is required for all rate plans. Airtime is billed in one minute increments and from SEND to END. Long distance, roaming, taxes, surcharges and other terms and conditions may apply. Not all features, service options or offers are available on all devices, on all rate plans or available for purchase or use in all areas. All promotional offers may be extended or terminated at any time without notice. See sales representative for more details. © 2007 Cellular One

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TERARESPONSE IS LOCATED AT 24 EAST CENTRAL BLVD. #217 ORLANDO, FL 32801 AND IS NOT RESPONSIBLE FOR THE PRODUCTS OR SERVICES PRESENTED IN THIS MESSAGE.

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From PetFoodDirect Thu Oct 11 18:56:55 2007

X-Apparently-To: XXXX@yahoo.com via 68.142.207.108; Thu, 11 Oct 2007 18:03:14 -0700

X-YahooFilteredBulk: 203.223.135.221

X-Originating-IP: [203.223.135.221]

Return-Path: <petfooddirect@i2iii.com>

Authentication-Results: mta303.mail.re4.yahoo.com from=i2iii.com; domainkeys=neutral (no sig)

Received: from 203.223.135.221 (HELO 216.39.53.3) (203.223.135.221) by mta303.mail.re4.yahoo.com with SMTP; Thu, 11 Oct 2007 18:03:13 -0700

Received: from vps112.i2iii.com; Fri, 12 Oct 2007 00:59:55 -0100

From: "PetFoodDirect" <PetFoodDirect@i2iii.com>

Reply-to: "PetFoodDirect" <PetFoodDirect@i2iii.com>

To: XXXX@yahoo.com

Subject: Savvy Pet Shoppers can save 22% Today

Date: Thu, 11 Oct 2007 20:56:55 -0500

MIME-Version: 1.0

Content-Type: text/html

Content-Transfer-Encoding: 7BIT

Message-ID: <XXXX@yahoo.com@i2iii.com>

Return-Path: PetFoodDirect@i2iii.com

Content-Length: 11180

Savvy Shopper Savings!

CLICK NOW! CLICK NOW! CLICK NOW!

SAVE 22% CLICK NOW!

EVERYTHING* is on ON SALE for Savvy Shoppers TODAY!

CLICK NOW! CLICK NOW!





Don't Wait! **Save 22%** on Your Pet's Favorites. **ORDER TODAY!!!**

www.PetFoodDirect.com



1-800-865-1333



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Innova contains only fresh, natural, wholesome ingredients from each of the five major food groups providing a balanced, nutritious and varied diet for your pet.

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Greenies Dog & Cat Chews

One Greenies dental chew a day helps control harmful plaque, tartar build up and freshens breath!



[Click Here](#)



Fancy Feast Cat Food

Largest Selection On The Web!

[Click Here](#)

You can also place your order by telephone!
Simply call us toll-free at **1-800-865-1333**.
Be sure to mention promotion code **SALE70**
for your savings!



P.S. Just a quick note.

Next time you come to our store, take a look at our [Auto Ship Program](#). Never run out of pet supplies again. You set the schedule, we guarantee the delivery.

Best Regards,
The Customer Service Staff at PetFoodDirect.com

IMPORTANT NOTES:

Offer ends 11:59 PM, October 15, 2007!

‡**Our 100% Guarantee** - PetFoodDirect.com guarantees your complete satisfaction. If you are not satisfied with any of our products for any reason, PetFoodDirect.com will refund every cent of your purchase price. No questions asked!

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YAHOO! MAIL[Print - Close Window](#)

From Direct Star TV Tue Feb 20 08:48:06 2007

X-Apparently-To: XXXX@yahoo.com via 68.142.207.108; Tue, 20 Feb 2007 08:57:10 -0800

X-YahooFilteredBulk: 216.75.2.179

X-Originating-IP: [216.75.2.179]

Return-Path: <direct@consumeroffers.net>

Authentication-Results: mta186.mail.re3.yahoo.com from=consumeroffers.net; domainkeys=neutral (no sig)

Received: from 216.75.2.179 (HELO 66.196.97.250) (216.75.2.179) by mta186.mail.re3.yahoo.com with SMTP; Tue, 20 Feb 2007 08:57:10 -0800

Received: from 216.75.2.179 by ; Tue, 20 Feb 2007 14:57:06 -0200

Message-ID: <XXXX@consumeroffers.net>

From: "Direct Star TV" <Direct@consumeroffers.net>

Reply-to: "Direct Star TV" <Direct@consumeroffers.net>

To: dan_husk@yahoo.com

Subject: A DIRECTV deal you can't pass up

Date: Tue, 20 Feb 2007 20:48:06 +0400

X-Mailer: Internet Mail Service (5.5.2650.21)

MIME-Version: 1.0

Content-Type: multipart/alternative; boundary="--"

X-Priority: 3

X-MSMail-Priority: Normal

Content-Length: 1838

Call 1-8665577183 to Get 3 Months Free HBO and CINEMAX with DIRECTV
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The advertisement banner features the Direct TV logo on the left, which includes a stylized 'D' and the text 'DIRECTV. SATELLITE TELEVISION'. In the center, the phone number '1-8665577183' is displayed in large, bold, yellow-green digits. Below the phone number, the text 'DIRECT * STARTV' is shown, with a small asterisk between the words, and 'An Authorized DIRECTV Dealer' in smaller text underneath. On the right side of the banner, there is a red ribbon graphic with the text 'LIMITED TIME OFFER' written diagonally in white.

Call now!
ORDER DIRECTV TODAY AND GET
 Over 185 Channels, DVR Service and
3 Months FREE


7 Channels

and


3 Channels

with THE PLUS PACKAGE
 New customers only - on approved credit.

PLUS FREE
DVR or HD RECEIVER UPGRADE and MORE
After \$100 instant rebate. Programming, DVR and HD Access fee commitments required.

CLICK FOR DETAILS

Call for full offer details or click to see why DIRECTV is...

- > the BEST CHOICE in entertainment
- > SUPERIOR to cable
- > a BETTER VALUE than DISH



Packages
Start at

\$29⁹⁹
mo.

everyday low price

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prescription alberta sculptural thud bremsstrahlung coast husband courtney brickbat .

Dan Balsam

From: Sage [Sage@apostfour.com]
Sent: Friday, December 15, 2006 2:03 PM
To: XXXX@yahoo.com
Subject: Sage is your answer to reduce benefits management costs
Categories: Spam

SAGE ABRA

Introducing Sage Abra Benefits Connect — see for yourself how paperless benefits management all comes together in one low cost solution



Learn more from our
complimentary Webcast:

“Paperless Benefits Management Strategies: Containing Costs and Complexity on a Budget”

December 18, 2006 at 2:00 p.m. (ET)

[Click here](#) and enter priority code
AADZ7 to register today

Sage Abra Benefits Connect is your cost-reducing solution to communicating benefits enrollment data to your carriers

Abra Benefits Connect is a new electronic service that automates the communication of employee benefits enrollment data with virtually all your insurance and benefits carriers — reducing your costs because it securely delivers your data online.

It’s your complete paperless benefits management solution — see how it works at the complimentary Webcast

Abra Benefits Connect is part of the Sage Abra HRMS end-to-end benefits management solution, virtually eliminating the need for paper handling throughout the benefits administration process. With Abra HR, Abra Benefits Enrollment and Abra Benefits Connect you’ll have the most complete, integrated benefits management software solution.

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ATTACHMENT C

