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**BRYAN CAVE LEIGHTON PAISNER LLP**

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Attorneys for Specially Appearing Defendants  
Ruby Corp., Ruby Life Inc., and ADL Media Inc.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ASHLEY NICHOLS, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

RUBY CORP., a Canadian corporation;  
RUBY LIFE INC., d/b/a  
AshleyMadison.com, a Canadian  
corporation; ADL MEDIA INC., a  
Delaware corporation; and DOES 1-100,  
inclusive,

Defendants.

Case No. '20CV0491 BAS KSC

CLASS ACTION

(San Diego County Superior Court  
Case No. 37-2019-00057112-CU-MC-  
CTL)

**NOTICE OF REMOVAL BY  
DEFENDANTS PURSUANT TO 28  
U.S.C. § 1441(a)**

(CLASS ACTION FAIRNESS ACT)

BRYAN CAVE LEIGHTON PAISNER LLP  
120 BROADWAY, SUITE 300  
SANTA MONICA, CALIFORNIA 90401-2386

1 PLEASE TAKE NOTICE that specially appearing Defendants Ruby Corp.,  
2 Ruby Life Inc. d/b/a AshleyMadison.com, and ADL Media Inc. (“Removing  
3 Defendants”)<sup>1</sup>, hereby remove the state-court action entitled *Ashley Nichols*,  
4 *individually and on behalf of all others similarly situated v. Ruby Corp., et al.*, Case  
5 No. 37-2019-00057112-CU-MC-CTL, filed in the Superior Court of California, San  
6 Diego County, to the United States District Court for the Southern District of  
7 California. This removal is made pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and  
8 1453. The grounds for removal are as follows:

9 **STATEMENT OF JURISDICTION**

10 This is a civil action for which this Court has original jurisdiction under 28  
11 U.S.C. § 1332, *et seq.*, as amended by the Class Action Fairness Act of 2005, Pub.  
12 L. No. 109-2, 119 Stat. 4, and is one that may be removed to this Court, pursuant to  
13 28 U.S.C. § 1441 and for the below reasons.

14 **THE REMOVED ACTION**

15 1. Plaintiff initially filed this action on October 28, 2019, on behalf of  
16 herself alone, in the Superior Court of the State of California, San Diego County.  
17 On February 13, 2020 Plaintiff filed a First Amended Class Action Complaint,  
18 reclassifying the case as a class action.<sup>2</sup>

19 2. Plaintiff served ADL Media Inc. with the summons and original  
20 complaint on November 27, 2019. *See* Ex. A at p. 9. Plaintiff served Ruby Corp.  
21 with the summons and original complaint on January 15, 2020. *See* Ex. A at p. 11.  
22 Plaintiff has not filed a proof of service of the summons and complaint on Ruby Life  
23 Inc. *See* Ex. C. On February 13, 2020, Plaintiff sent Ruby Corp. and Ruby Corp.’s  
24 counsel the First Amended complaint by mail (*see* Ex. A at p. 13), even though  
25

26 <sup>1</sup> Removing Defendants are specially appearing for removal purposes only. Removing Defendants  
27 otherwise reserve all rights, including to challenge personal jurisdiction and service of process.

28 <sup>2</sup> All references to the “Complaint” are to Plaintiff’s First Amended Class Action Complaint.

1 Removing Defendants did not appear or answer the complaint in the San Diego  
2 County Superior Court prior to removal, and are not aware of further proceedings  
3 regarding this action in that court. This notice of removal is accompanied by the  
4 following documents (Ex. A-D):

- 5 • All executed process on Removing Defendants in this case (Ex. A);
- 6 • All pleadings asserting causes of action (*i.e.*, the Complaint) (Ex. B);
- 7 • The docket sheet and court documents (Ex. C); and
- 8 • A list of all counsel of record, including address, telephone numbers, and  
9 parties represented (Ex. D).

10 3. Other than the documents attached as Exhibits, no pleadings, process,  
11 orders or other documents in the case have been served or otherwise received by  
12 Removing Defendants or, to Removing Defendants’ knowledge, are presently on  
13 file in the state court. In the event that such filings come to the Removing  
14 Defendants’ attention, they will immediately file copies in this Court.

15 4. The Complaint seeks to certify a California class of “[a]ll California  
16 residents who received a false or deceptive unsolicited commercial e-mail . . . which  
17 advertised ashleymadison.com, since one year prior to the filing of this Action.”  
18 (Compl. ¶ 125).

19 5. The Complaint alleges such “spam” emails were unlawful solicitations  
20 of commercial e-mail in violation of Cal. Bus. & Prof. Code § 17529.5 and seeks  
21 statutory damages of \$1,000 per email, disgorgement, as well as attorneys’ fees and  
22 costs. (Compl. ¶¶ 6-10; 135-146; Prayer For Relief, p. 25).

23 **PROCEDURAL ISSUES**

24 6. Removal is timely under 28 U.S.C. § 1446(b). This case was not a  
25 putative class action until Plaintiff filed her First Amended Complaint, reclassifying  
26 the case. Plaintiff sent Ruby Corp. and Ruby Corp.’s counsel the First Amended  
27 Complaint by mail on February 13, 2020. Accordingly, this removal is timely as it  
28 is “filed within 30 days after receipt by the defendant, through service or otherwise,

1 of a copy of an amended pleading . . . from which it may first be ascertained that the  
2 case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3).

3 7. The San Diego County Superior Court is located within the Southern  
4 District of California. Therefore, venue is proper pursuant to 28 U.S.C. § 84(d)  
5 because it is the “district and division embracing the place where such action is  
6 pending.” See 28 U.S.C. § 1441(a).

7 8. While the Class Action Fairness Act (“CAFA”) does not require the  
8 joinder of other defendants for removal (see *Abrego Abrego v. The Dow Chemical*  
9 *Co.*, 443 F.3d 676, 682 (9th Cir. 2006)) and, moreover, the consent of fictitious  
10 “doe” defendants is never required for removal, Removing Defendants nonetheless  
11 note that all non-fictitious defendants join this removal.

12 **JURISDICTION IS PROPER UNDER THE CLASS ACTION FAIRNESS**  
13 **ACT**

14 9. The Court has jurisdiction over this action pursuant to Section 4 of  
15 CAFA, 28 U.S.C. § 1332(d), which grants federal district courts jurisdiction over  
16 putative class actions with more than 100 class members where the aggregate  
17 amount in controversy exceeds \$5 million, and any member of the class of plaintiffs  
18 is a citizen of a state different from any defendant. As set forth below, this action  
19 satisfies each of the requirements of § 1332(d)(2) for original jurisdiction under  
20 CAFA.

21 10. **This is a Covered Class Action.** This action meets CAFA’s definition  
22 of a class action, which is “any civil action filed under rule 23 of the Federal Rules  
23 of Civil Procedure or similar State statute or rule of judicial procedure authorizing  
24 an action to be brought by 1 or more representative persons as a class action.” 28  
25 U.S.C. § 1332(d)(1)(B). Plaintiff purports to bring this action “individually and on  
26 behalf of the putative class,” and identifies a putative class of “[a]ll California  
27 residents who received a false or deceptive unsolicited commercial e-mail . . . which  
28

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1 advertised ashleymadison.com, since one year prior to the filing of this Action.”  
2 (Compl. ¶¶ 1, 125).

3 **11. The Putative Class Consists of More than 100 Members.** The  
4 Complaint alleges that the purported class is “so numerous that individual joinder of  
5 all members is impracticable.” (Compl. ¶ 129). Further, it alleges that the putative  
6 class size is “in the thousands.” (*Id.*) Accordingly, the Complaint alleges that the  
7 aggregate number of putative class members is greater than 100 persons, as required  
8 by 28 U.S.C. § 1332(d)(5)(B).

9 **12. The Parties are Minimally Diverse.** CAFA requires minimal  
10 diversity. That is, at least one putative class member must be a citizen of a state  
11 different from any one defendant. 28 U.S.C. §1332(d)(2)(A).

12 **13.** Defendants Ruby Corp. and Ruby Life Inc. are organized under the  
13 laws of Canada and are headquartered in Toronto, Ontario, from where Ruby Corp.  
14 and Ruby Life Inc.’s officers direct, control, and coordinate the companies’  
15 activities. ADL Media Inc. is organized under Delaware law and has its  
16 headquarters in Toronto, Ontario, from where ADL Media’s officers direct, control,  
17 and coordinate the company’s activities.

18 **14.** The named Plaintiff, Ashley Nichols, is a citizen and resident of San  
19 Diego County, California. (Compl. ¶ 28). Further, the putative class is limited to  
20 California residents. (Compl. ¶ 125). Accordingly, the requisite diversity of  
21 citizenship under 28 U.S.C. § 1332(d)(2) is met.

22 **15. The Amount in Controversy Exceeds \$5 Million.** Under CAFA, the  
23 claims of the individual class members are aggregated to determine if the amount in  
24 controversy exceeds the required “sum or value of \$5,000,000, exclusive of interest  
25 and costs.” 28 U.S.C. § 1332(d)(2), (d)(6). A defendant’s notice of removal “need  
26 include only a plausible allegation that the amount in controversy exceeds the  
27 jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S.  
28 81, 89 (2014).

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1           16.    Though the Complaint is silent as to the amount of damages sought, it  
2 is apparent from the allegations that, given the size of the putative class and the  
3 nature of the statutory damages sought, the amount in controversy here exceeds the  
4 jurisdictional threshold.

5           17.    The Complaint seeks to certify a statewide class of “[a]ll California  
6 residents who received a false or deceptive unsolicited commercial e-mail . . . which  
7 advertised ashleymadison.com, since one year prior to the filing of this Action.”  
8 (Compl. ¶¶ 1, 125).

9           18.    Plaintiff and the putative class assert claims for money damages for  
10 violation of Cal. Bus. & Prof. Code § 17529.5, allegedly as a result of receiving  
11 unsolicited commercial e-mails from defendants, advertising ashleymadison.com.  
12 (Compl. ¶¶ 125, 135-146).

13           19.    The Complaint alleges that Cal. Bus. & Prof. Code § 17529.5  
14 authorizes liquidated damages in the amount of \$1,000 per email received. Plaintiff  
15 individually alleges she received “*at least four* (4) unsolicited commercial emails,”  
16 making her individual claim for damages, at minimum, \$4,000. (Compl. ¶ 6)  
17 (emphasis original).

18           20.    Using Plaintiff’s minimum estimate of 4 emails as a baseline, and  
19 calculating the damages at \$1,000 per email as alleged in the Complaint, the actual  
20 size of the class would only need to be 1,250 members to reach \$5,000,000.

21           21.    Here, the Complaint alleges that the size of the putative class is “in the  
22 thousands,” which is greater than 1,250 members. (Compl. ¶ 129).

23           22.    Accordingly, the alleged statutory damages place the amount in  
24 controversy at an amount greater than \$5,000,000. This sum also does not take into  
25 account Plaintiff’s purported request for disgorgement (Compl., Prayer For Relief,  
26 p. 25), which are aggregated to determine the amount in controversy. *See* 28  
27 U.S.C. §§ 1332(d)(2) and 1332(d)(6) (“In any class action, the claims of the  
28 individual class members shall be aggregated to determine whether the matter in

1 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and  
2 costs.”)

3 23. Accordingly, it is apparent from a plain reading of the Complaint that  
4 the amount in controversy here exceeds \$5,000,000.

5 **NOTICE TO ADVERSE PARTY AND STATE COURT**

6 24. Pursuant to 28 U.S.C. § 1446(d), Removing Defendants are serving  
7 written notification of the removal of this case on Plaintiff’s counsel (identified  
8 below):

9 Kazerouni Law Group, APC  
10 Abbas Kazerounian  
11 Clark R. Conforti  
12 245 Fischer Ave., Unit D1  
13 Costa Mesa, CA 92626

14 David J. McGlothlin, Esq.  
15 2633 E. Indian School Rd., Ste. 460  
16 Phoenix, AZ 85016

17 25. Pursuant to 28 U.S.C. § 1446(d), Removing Defendants promptly will  
18 file a Notification of Removal, attaching a copy of this Notice of Removal, with the  
19 Clerk of the Superior Court, San Diego County.

20 **CONCLUSION**

21 Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Removing Defendants  
22 hereby remove this action from the Superior Court of the State of California, San  
23 Diego County, to the United States District Court for the Southern District of  
24 California.

25 Dated: March 16, 2020

**BRYAN CAVE LEIGHTON PAISNER LLP**

26 By: /s/ Linda C. Hsu  
Linda C. Hsu

27 Attorneys for Defendants RUBY CORP.; RUBY  
28 LIFE INC., and ADL MEDIA INC.

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# **EXHIBIT B**



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Fax: (602) 230-4482

*Attorneys for Plaintiff,*  
Ashley Nichols

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO (UNLIMITED JURISDICTION)**

**ASHLEY NICHOLS, individually and  
on behalf of all others similarly situated,**

Plaintiff,

v.

**RUBY CORP., a Canadian corporation;  
RUBY LIFE INC., d/b/a  
AshleyMadison.com, a Canadian  
corporation; ADL MEDIA INC., a  
Delaware corporation; and DOES 1-100,  
inclusive,**

Defendants.

Case No.: 37-2019-00057112-CL-MC-CTL

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR VIOLATIONS OF  
CALIFORNIA RESTRICTIONS ON  
UNSOLICITED COMMERCIAL E-  
MAIL (Bus. & Prof. Code § 17529.5)**

[LIMITED CIVIL CASE TO BE  
RECLASSIFIED BY THIS PLEADING]

**JURY TRIAL DEMANDED**

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**I. INTRODUCTION**

1. Plaintiff ASHLEY NICHOLS (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Defendant RUBY CORP., a Canadian corporation, RUBY LIFE INC., doing business as *AshleyMadison.com*, a Canadian corporation, and ADL MEDIA INC., a Delaware corporation and DOES 1-100 (collectively, “Defendant”), its related entities, subsidiaries and agents in knowingly, and/or willingly engaging in the unlawful practice of advertising in false and deceptive unsolicited commercial e-mails (“spams”) in violation of California Business & Professions (“Bus. & Prof.”) Code § 17529.5 (“Section 17529.5”).
2. In 2003, the California Legislature found that “[r]oughly 40 percent of all e-mail traffic in the United States is comprised of unsolicited commercial e-mail advertisements [] and industry experts predict that by the end of 2003 half of all e-mail traffic will be comprised of spam.” *See* Bus. & Prof. Code § 17529(a).
3. The California Legislature also found that spam e-mails do cause damage and acknowledged the cost of spam in the United States in 2003: “According to Ferris Research Inc., a San Francisco consulting group, spam will cost United States organizations more than ten billion dollars (\$10,000,000,000), including lost productivity and the additional equipment, software, and manpower needed to combat the problem. California is 12 percent of the United States population with an emphasis on technology business, and it is therefore estimated that spam costs California organizations well over 1.2 billion dollars (\$1,200,000,000).” Bus. & Prof. Code § 17529(d).
4. However, since the California Legislature declared its findings regarding the cost of spam in 2003, the actual cost has increased dramatically. In 2012, the Journal of Economic Perspectives published an academic paper which estimated that e-mail spam cost American businesses and consumers roughly \$20 billion annually. *Rao, Justin M., and David H. Reiley*. 2012. "The Economics of Spam." *Journal of Economic Perspectives*, 26 (3): 87-110.

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1 5. As of November of 2018, spam e-mail messages accounted for 54.3 percent of the total e-  
2 mail traffic worldwide. *Symantec Corporation*, Monthly Threat Report (December 2018).

3 **II. SUMMARY OF THE COMPLAINT**

4 6. Plaintiff brings this Complaint, individually and on behalf of the putative class, against  
5 Defendant for advertising in *at least* four (4) unsolicited commercial emails<sup>1</sup> (*i.e.*, “spams”)   
6 sent to Plaintiff’s California email address beginning on or about October 2018.

7 7. The spam e-mails sent by Defendant and Defendant’s marketing agents materially violated  
8 Bus. & Prof. Code § 17529.5 because there was materially false and deceptive information  
9 contained in or accompanying the e-mail headers, specifically the use of third-party domain  
10 names in the Sender E-mail Address of each of the spam e-mails.

11 8. Specifically, the spam e-mails violate Section 17529.5(a)(1) because they contain or are  
12 accompanied by a third-party domain name without the permission of the third party. The  
13 third-party domain names used are *wsj.com* and *target.com*.

14 9. Moreover, the spam emails violate Section 17529.5(a)(2) because the emails contain or are  
15 accompanied by falsified, misrepresented, or forged header information in violation of  
16 Section 17529.5(a)(2) because the emails were sent from a generic “From Name” (*e.g.*,  
17 “SecretAffair”, “AM Promotions”, “Ashley”, “Jillian”), which all have untraceable domain  
18 names, and the sender’s identity is not readily ascertainable from the emails.

19 10. Further, the spam emails violate Section 17529.5(a)(3) because they contain Subject Lines  
20 that are likely to mislead a recipient, acting reasonably under the circumstances, about a  
21 material fact regarding the content or subject matter of the email.

22 11. While many violations are described below with specificity, this Complaint alleges  
23 violations of the statutes in their entirety.  
24  
25

26 <sup>1</sup> “Unsolicited commercial e-mail advertisement” means that the recipient has not provided direct  
27 consent to receive advertisements from the advertiser and does not have a preexisting or current  
28 business relationship, as defined by subdivision (l), with the advertiser promoting the lease, sale,  
rental, gift, offer or other disposition of any property, goods, services, or extension of credit. *See*  
Bus. & Prof. Code § 17529.1(o)(1)-(2).

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- 1 12. All of the offending spam e-mails were sent to a California e-mail address.<sup>2</sup>
- 2 13. Plaintiff never gave “direct consent”<sup>3</sup> as required by Bus. & Prof. Code § 17529.1(d) to  
3 receive commercial e-mail advertisements from, or had a “preexisting or current business  
4 relationship”<sup>4</sup> pursuant to Bus. & Prof. Code § 17529.1(l) with Defendant.
- 5 14. Defendant is strictly liable for advertising in spams sent by its third-party marketing agents,  
6 as are the marketing agents themselves. Third-party marketing agents are also liable.
- 7 15. Spam recipients are not required to allege or prove reliance or actual damages to have  
8 standing. *See* Bus. & Prof. Code § 17529.5(b)(1)(A)(iii). Nevertheless, Plaintiff did suffer  
9 damages by receiving the spams. *See, e.g.*, Bus. & Prof. Code § 17529(d), (e), (g), (h).  
10 However, Plaintiff elects to recover statutory damages only and forego recovery of any  
11 actual damages. *See* Bus. & Prof. Code § 17529.5(b)(1)(B).
- 12 16. The unlawful elements of these spams represent willful acts of falsity and deception, rather  
13 than clerical errors.
- 14 17. This Court should award Plaintiff and the members of the proposed Class liquidated  
15 statutory damages against Defendant in the amount of \$1,000 per unlawful spam e-mail,  
16 as authorized by Bus. & Prof. Code § 17529.5(b)(1)(B)(ii).
- 17 18. This Court should award Plaintiff attorneys’ fees pursuant to Bus. & Prof. Code  
18 § 17529.5(b)(1)(C).

19 //

20

21 \_\_\_\_\_

22 <sup>2</sup> “California electronic mail address” or “California e-mail address” means any of the following:  
23 (1) an e-mail address furnished by an electronic mail service provider that sends bills for  
24 furnishing and maintaining that e-mail address in this state; (2) an e-mail address ordinarily  
25 accessed from a computer located in this state; or (3) an e-mail address furnished to a resident of  
26 this state. *See* Bus. & Prof. Code § 17529.1(b).

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

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

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**III. JURISDICTION AND VENUE**

19. This Court has jurisdiction over the Action because Plaintiff and the proposed class are located in California where the unlawful emails were received, and this is a civil action wherein the matter in controversy, exclusive of interest and costs, exceeds \$25,000.

20. This Court has jurisdiction over the Action because Plaintiff is domiciled in and a citizen of California, and Plaintiff received the unlawful spams in California.

21. Plaintiff is a California resident who received the emails in California and has thus been harmed in California.

22. Defendant transacts or has transacted business in California and throughout the United States and has created an ongoing relationship in California related to the distribution of the spam emails.

23. Plaintiff is informed and believes and thereon alleges that Defendant advertised in numerous spam emails sent to California residents, including Plaintiff.

24. Plaintiff is informed and believes and thereon alleges that Defendant hired, conspired, partnered or joint ventured with unknown third parties to send these spam emails to California residents, including Plaintiff, in order to advertise its products and/or services.

25. Plaintiff is informed and believes and thereon alleges that Defendant was aware or should have been aware that its agents, co-conspirators, partners, joint venturers were sending spam emails advertising their services to California residents.

26. Plaintiff is informed and believes and thereon alleges that Defendant created and engaged in an ongoing relationship in California related to the distribution of the spam emails.

27. Plaintiff is informed and believes and thereon alleges that Defendant caused to be sent numerous spam emails to the email servers of Yahoo! Inc. Yahoo! Inc. is a Delaware Corporation with email servers in Sunnyvale, California.

**IV. PARTIES**

**A. Plaintiff ASHLEY NICHOLS**

28. Plaintiff is now, and at all times relevant has been, an individual domiciled in the State of California, County of San Diego.

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1 29. Plaintiff owns and at all relevant times herein owned a computer with an Internet  
2 connection. This computer is located in the State of California.

3 30. Plaintiff ordinarily uses this computer to access Plaintiff’s e-mail address  
4 *anichols\*\*\*\*@yahoo.com* and *ashley.\*\*\*\*\*@yahoo.com*.<sup>5</sup>

5 31. Plaintiff ordinarily accesses these e-mail accounts from California.

6 32. Plaintiff is a “recipient”<sup>6</sup> as defined by Bus. & Prof. Code § 17529.1(m) of “unsolicited  
7 commercial e-mail advertisements” as defined by Bus. & Prof. Code § 17529.1(o).

8 33. Plaintiff received unlawful unsolicited commercial emails (defined above as “spams”)   
9 linking to Defendant’s web page at *AshleyMadison.com*. Plaintiff did not give direct  
10 consent to any of the Defendants to send Plaintiff any commercial email advertising.

11 **B. Defendant RUBY CORP.**

12 34. Defendant RUBY CORP., formerly known as Avid Life Media Inc., is a privately-held  
13 corporation with its principal place of business at 2300 Yonge St., #1400, Toronto, ON  
14 M4R 1K8.

15 35. At all times material to this Complaint, RUBY CORP. has acted as a holding company for  
16 a number of entities that operate dating websites. RUBY CORP. transacts or has transacted  
17 business in California and throughout the United States and has created an ongoing  
18 relationship in California related to the distribution of the spam emails.

19 36. RUBY CORP. is an “advertiser” as defined by Bus. & Prof. Code § 17529.1(a) in each of  
20 the e-mails received by Plaintiff.

21 **C. Defendant RUBY LIFE INC.**

22 37. Defendant RUBY LIFE INC., doing business as *AshleyMadison.com*, and formerly known  
23  
24

25 <sup>5</sup> Plaintiff’s e-mail address has been partially redacted for privacy and will be made available to  
26 Defendant(s) when an appearance is made in this matter.

27 <sup>6</sup> “Recipient” means the addressee of an unsolicited commercial e-mail advertisement. If an  
28 addressee of an unsolicited commercial e-mail advertisement has one or more e-mail addresses  
to which an unsolicited commercial e-mail advertisement is sent, the addressee shall be deemed  
to be a separate recipient for each e-mail address to which the e-mail advertisement is sent. *See*  
Bus. & Prof. Code § 17529.1(m).

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1 as Avid Dating Life Inc., is a Canadian corporation with its principal place of business at  
2 20 Eglinton Avenue West, Toronto, Ontario M4R 1K8.

3 38. At all times material to this Complaint, RUBY LIFE INC. has owned and operated the  
4 Ashley Madison website. RUBY LIFE INC. transacts or has transacted business in  
5 California and throughout the United States and has created an ongoing relationship in  
6 California related to the distribution of the spam emails.

7 39. RUBY LIFE INC. is an “advertiser” as defined by Bus. & Prof. Code § 17529.1(a) in each  
8 of the e-mails received by Plaintiff.

9 **D. Defendant ADL MEDIA INC.**

10 40. Defendant ADL Media Inc. (“ADL Media”) is a Delaware corporation with its principal  
11 place of business at 1209 Orange Street, Wilmington, Delaware 19801. At all times  
12 material to this Complaint, ADL Media has collected U.S. revenue for *AshleyMadison.com*  
13 from various payment processors. ADL Media transacts or has transacted business in  
14 California and throughout the United States and has created an ongoing relationship in  
15 California related to the distribution of the spam emails.

16 41. RUBY CORP. is a privately-held holding company for various wholly-owned subsidiaries,  
17 including RUBY LIFE. INC. and ADL MEDIA INC., that together operate a number of  
18 dating websites including *AshleyMadison.com*, *CougarLife.com*, and *EstablishedMen.com*

19 42. ADL MEDIA INC. is an “advertiser” as defined by Bus. & Prof. Code § 17529.1(a) in  
20 each of the e-mails received by Plaintiff.

21 **E. DOE Defendants**

22 43. Plaintiff does not know the true names or legal capacities of the Defendants designated  
23 herein as DOES 1 through 100, inclusive, and therefore sue said Defendants under the  
24 fictitious name of “DOE.”

25 44. Plaintiff is informed and believes and thereon alleges that each of the Defendants  
26 designated herein as a DOE is legally responsible in some manner for the matters alleged  
27 in this Complaint, and is legally responsible in some manner for causing the injuries and  
28 damages of which Plaintiff complains.

1 45. Plaintiff is informed and believes and thereon alleges that each of the Defendants  
2 designated herein as a DOE Defendant was, at all times relevant to the matters alleged  
3 within this Complaint, acting in conjunction with the named Defendants, whether as a  
4 director, officer, employee, agent, affiliate, customer, participant, or co-conspirator. When  
5 the identities of DOE Defendants 1-100 are discovered, or otherwise made available,  
6 Plaintiff will seek to amend this Complaint to allege their identity and involvement with  
7 particularity.

#### 8 **IV. TECHNICAL BACKGROUND**

9 46. “A ‘domain name’ is defined by an ‘alphanumeric designation that is registered with or  
10 assigned by any domain name registrar as part of an electronic address on the Internet.”  
11 *Balsam v. Trancos, Inc.*, 203 Cal.App.4th 1083, 1090 fn. 6 (quoting Bus. & Prof. Code §  
12 17529.1 subd. (e).)

13 47. “WHOIS” refers to the means of determining the identity of a domain registrant.  
14 “Technically, WHOIS is not the database, itself, but a protocol for submitting a query to a  
15 database in order to find contact information for the owner of a domain name.” *Solid Host*  
16 *NL v. NameCheap, Inc.*, 652 F.Supp. 2d 1092, 1095 fn. 3 (citing Matthew Bierlin &  
17 Gregory Smith, *Privacy Year in Review: Growing Problems with Spyware and Phishing,*  
18 *Judicial and Legislative Developments in Internet Governance, and the Impacts on*  
19 *Privacy*, 1 I/S: J.L. & POL'Y FOR INFO. SOC'Y 279, 313 (2005).)

20 “To secure the creation, registration, and use of a domain name, one must first assent to  
21 the registrar's contract. In addition to the payment of a small fee, the contract requires a  
22 potential registrant to agree to (1) provide and maintain current and accurate identifying  
23 information...” *In re Forchion*, 198 Cal.App.4th 1284, 1308-09 (2011).

#### 24 **V. THE UNLAWFUL SPAM E-MAILS**

25 48. Plaintiff hereby incorporates the foregoing paragraphs as though set forth in full herein.

26 49. Plaintiff received *at least* four (4) spams advertising Defendant’s websites at Plaintiff’s  
27 California e-mail address.  
28



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1 50. The e-mails at issue are “commercial e-mail advertisements”<sup>7</sup> because they advertise  
2 Internet dating services provided by Defendant at the website *AshleyMadison.com* and  
3 were initiated for the purpose of advertising and promoting Defendant’s products or  
4 services.

5 51. The e-mails are “unsolicited commercial e-mail advertisements” because Plaintiff never  
6 gave “direct consent” to Defendant, or any of its affiliates to send commercial e-mails.

7 52. Plaintiff has never had a “preexisting or current business relationship” with Defendant, or  
8 its affiliates.

9 53. Plaintiff did not opt-in to receive e-mails from Defendant’s marketing agents. Even if  
10 Plaintiff had opted in to receive e-mails from Defendant’s marketing agents—which  
11 Plaintiff denies—that would not constitute *direct* consent to Defendant, the advertiser in  
12 the spams. See *Balsam v. Trancos Inc.*, 203 Cal. App. 4th 1083, 1099-1100 (1st Dist. 2012).

13 54. Plaintiff did not consent or acquiesce to receive the spams at issue. Plaintiff did not waive  
14 any claims related to the spams at issue.

15 55. Defendant advertised in, sent, and/or conspired to send *at least* four (4) unlawful spams  
16 that Plaintiff received at Plaintiff’s “California e-mail address.”

17 56. The spams are all unlawful because the spams contain or are accompanied by materially  
18 false and deceptive information, such as the use of third-party domain names without the  
19 third party’s permission, and/or falsified, misrepresented, or forged information contained  
20 in or accompanying the e-mail headers, and/or misleading Subject Lines, as described in  
21 more detail below.

22 **A. The Spam E-mails Contain or Are Accompanied By Third-Party Domain Names**  
23 **Without The Permission of the Third Party in Violation of Business & Professions**  
24 **Code § 17529.5(a)(1)**

25 57. Section 17529.5(a)(1) prohibits spams containing or accompanied by a third party’s  
26 domain name without the permission of the third party.

27 \_\_\_\_\_  
28 <sup>7</sup> “Commercial e-mail advertisement” means any electronic mail message initiated for the purpose  
of advertising or promoting the lease, sale, rental, gift offer, or other disposition of any property,  
goods, services, or extension of credit. Bus. & Prof. Code § 17529.1(c).

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1 58. Two of the four spam e-mails received by Plaintiff contain third-party domain names in  
2 the From field of the spam e-mails. These From fields were all forged to falsely include  
3 the third-party domain names in the Sender E-mail Addresses. The forged Sender E-mail  
4 Addresses are *orders@oe.target.com* and *access@interactive.wsj.com*.

5 59. These third-party domain names were contained in the Sender E-mail Address field in each  
6 of the spam e-mail headers.

7 60. The “From” line field is part of e-mail headers. The From line has two distinctive parts: (1)  
8 the From Name, and (2) the Sender E-mail Address. For example, if an e-mail’s “From”  
9 ‘line states: “John Doe <johndoe@yahoo.com>”, the From Name is “John Doe” and the  
10 Sender E-mail Address is “<johndoe@yahoo.com>.”

11 61. The From Name in an e-mail’s header is designed to identify *who* the e-mail is from. The  
12 Internet Engineering Task Force created a collection of “Requests for Comment” (“RFCs”)  
13 that define the rules and standard protocols that enable e-mail to work. According to RFC  
14 5322 at ¶ 3.6.2 (emphasis in original):

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

20 62. The only content of a “From” line visible before an e-mail is opened is the “From Name.”  
21 Therefore, a From Name that misrepresents *who* a spam is from is a deliberate and material  
22 misrepresentation of the most important part of the e-mail header—not a mere clerical  
23 error.

24 63. Although Plaintiff *does not* bring any claims under the federal CAN-SPAM Act, the  
25 Federal Trade Commission (“FTC”) identified the From Name as the first item in  
26 misleading header information in its guide to CAN-SPAM compliance when it stated:  
27 “Don’t use false or misleading header information. Your “*From*,” “*To*,” “*Reply-To*,” and  
28 routing information – including the originating domain name and e-mail address – *must be*

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1 *accurate and identify the person or business who initiated the message.”* Federal Trade  
2 Commission, CAN-SPAM Act: A Compliance Guide for Business (emphasis added).<sup>8</sup>

3 64. Plaintiff does not insist on any particular label (*e.g.*, “Ashley Madison,” “Ruby Life,”  
4 “Ruby Corp.,” etc.) in the From Name field. Rather, Plaintiff contends that the text of a  
5 From Name field, whatever it is, cannot misrepresent *who* the e-mails are from.

6 65. Plaintiff is informed and believes and thereon alleges that the emails at issue here falsely  
7 list domain names owned by third parties without the permission of the third parties.

8 66. Plaintiff is informed and believes and thereon alleges that Defendant uses third-party  
9 domain names to deceive recipients into believing that these third parties have endorsed or  
10 approved of Defendant’s products and/or services.

11 67. Plaintiff is informed and believes and thereon alleges that Defendant uses these third-party  
12 domain names to use the good will of these third parties to trick the recipients into opening  
13 the emails and purchasing Defendant’s products and/or services.

14 68. The third-party domain name *target.com* is contained in one of the spam e-mails at issue.  
15 Plaintiff is informed and believes and thereon alleges that third party Target Brands Inc. is  
16 the true owner of the domain name and did not give permission for its domain to appear in  
17 or accompany any of the spams at issue in this complaint.

18 69. The third-party domain name *wsj.com* is contained in one of the spam e-mails at issue.  
19 Plaintiff is informed and believes and thereon alleges that third party Dow Jones &  
20 Company, Inc. is the true owner of the domain name and did not give permission for its  
21 domain to appear in or accompany any of the spams at issue in this complaint.

22 70. Plaintiff could see the third parties’ domain names when Plaintiff viewed the spam e-mails  
23 on Plaintiff’s computer.

24 71. There is no readily discernible connection between the above entities and Defendant and  
25 no evidence that these entities consented to Defendant’s use of their domain names in  
26 connection with the sending of the emails at issue, in violation of Section 17529.5(a)(1).  
27

28 \_\_\_\_\_  
<sup>8</sup> See <http://www.business.ftc.gov/documents/bus61-can-spam-act-compliance-guide-business>.

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1 Nothing indicates that these third parties use affiliate marketers or have an affiliate program  
2 for advertising business for other websites, such as Defendant’s websites.

3 72. Such unauthorized use of third parties’ domain names without permission is materially  
4 false and deceptive. Plaintiff is informed and believes and thereon alleges that Defendant  
5 and/or its marketing agents included the third-party domain names in order to: falsely lend  
6 an air of legitimacy to the spams by leveraging the brand equity of legitimate advertisers,  
7 making the recipients believe that the third-party endorses Defendant; and trick recipients  
8 and e-mail filters as to the source of the spam e-mails. If Defendant and its marketing agents  
9 used their own domain names, it would be more likely that spam filters and recipients  
10 would be able to identify the domain names as being associated with spammers, and block  
11 or disregard the spams. On the other hand, e-mails purportedly sent by the third party are  
12 more likely to be treated as legitimate e-mails and not spams, and therefore not blocked by  
13 e-mail filters or disregarded by recipients.

14 73. The unsolicited commercial emails Plaintiff received from Defendant violate Section  
15 17529.5(a)(1) because the e-mail advertisements contain or are accompanied by a third-  
16 party’s domain name without the permission of the third party, which misrepresents the  
17 identity of the sender, misappropriates the identity of the true owner of the third-party  
18 domain name, and falsely represents that the sender has a legitimate relationship with the  
19 third-party domain name’s true owner.

20 74. Moreover, the emails Plaintiff received did not actually come from the purported domain  
21 names, and thus contain materially false, forged, deceptive, or misleading information in  
22 violation of Section 17529.5. *See Silverstein v. Keynetics, Inc.*, 2016 U.S. Dist. LEXIS  
23 180174 (N.D. Cal. 2016).

24 75. The emails Plaintiff received were also materially false and deceptive because they were  
25 falsified, forged, or misrepresented to indicate that the sender was an actual person or entity  
26 known to Plaintiff, when the emails were, in fact, nothing but advertisements sent by  
27 Defendant or its agents. *See Hoang v. Reunion.com, Inc.*, 2010 U.S. Dist. LEXIS 34466  
28 (N.D. Cal. 2010).

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1 76. Furthermore, since these spam e-mails were not actually sent from the domain names that  
2 appear in the Sender E-mail Addresses, the spam e-mails misrepresented the sender of the  
3 spam e-mails through the use of falsified and forged information.

4 **B. The Spam E-mails Contain Header Information That Is Materially Falsified or**  
5 **Misrepresented Because They Use Sender Domain Names That Neither Identify the**  
6 **Actual Sender Nor Are Readily Traceable to the Sender in Violation of Business &**  
7 **Professions Code § 17529.5(a)(2)**

8 77. In addition to the two emails that contained forged third-party domain names that  
9 misrepresented the sender of the spam emails, the spam emails Plaintiff received included  
10 e-mail advertisements that contained or were accompanied by materially falsified,  
11 misrepresented, or forged header information in violation of Section 17529.5(a)(2) because  
12 they include a generic From Name, an untraceable sending domain name, and no  
13 information in the body which could be used to identify the sender or advertiser.

14 78. Plaintiff received spam e-mails from sender domain names that did not identify the actual  
15 sender and which were not readily traceable to the sender from the body of the spam e-  
16 mails or by using a publicly available online database, such as WHOIS.

17 79. Defendant engaged in acts of material falsity and deception by deliberately using  
18 untraceable, privately and/or “proxy” registered domain names to conceal its identity from  
19 the recipients of its spams.

20 80. The senders of the spam e-mails deliberately registered the domain names in a manner that  
21 prevents recipients from identifying who actually sent the e-mail, and are materially false  
22 and deceptive.

23 81. Thus, the untraceable domain names used in the spam e-mails advertising Defendant  
24 affirmatively and falsely represent both the identity of the sender and that the sender has  
25 no connection to Defendant. *See Balsam v. Trancos, Inc.*, 203 Cal. App. 4th 1083, 1098.

26 82. Furthermore, since these spam e-mails were not actually sent from the domain names that  
27 appear in the Sender E-mail Addresses, the spam e-mails misrepresented the sender of the  
28 spam e-mails through the use of falsified, misrepresented, and forged information.

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1           i. **The Spam E-mails Contain or Are Accompanied By Generic or False “From**  
2           **Names” That Do Not Identify the Sender and Misrepresent *Who* Is Advertising in**  
3           **the Spams in Violation of Business & Professions Code § 17529.5(a)(2)**

4 83. Section 17529.5(a)(2) prohibits spams containing or accompanied by falsified,  
5 misrepresented, or forged header information.

6 84. All of the spam e-mails that Plaintiff received advertising Defendant’s websites contained  
7 forged, falsified, or misrepresented header information and had From Names that  
8 misrepresented *who* the spams were from, and therefore violated Section 17529.5(a)(2).

9 85. Here, all the spam emails at issue include generic From Names (*e.g.* “SecretAffair”, “AM  
10 Promotions”, “Jillian”, and “Ashley”). These generic From Names misrepresent *who* is  
11 advertising in the email, and therefore violate Section 17529.5(a)(2).

12 86. The use of these generic From Names is false and misleading because they do not identify  
13 the sending party or advertiser and cannot be readily traced back to the true owner/sender.  
14 The use of these From Names is also intended to prevent recipients from being able to  
15 identify Defendant as the true source of the emails.

16 87. Plaintiff is informed and believes and thereon alleges that Defendant knowingly choose to  
17 advertise using generic From Names precisely so the recipients will *not* know who the  
18 emails are really from when viewing the spams in the inbox view. This forces recipients to  
19 open the emails to see if the emails might actually be from someone with whom the  
20 recipient has had dealings, or if the emails are in fact, as is the case here, nothing but spams.

21 88. Defendant intentionally used privately registered, proxy-registered, or fraudulently  
22 registered domain names in order to prevent spam e-mail recipients from being able to  
23 identify Defendant as the sender or to contact Defendant regarding the unsolicited  
24 commercial e-mail advertisements.

25 89. There is no way that ordinary, reasonable consumers, looking at the same or similar emails,  
26 could readily associate them with Defendant, the true advertiser and beneficiary of the  
27 spam emails, and the sender’s identity is not readily ascertainable from the body or content  
28

1 of the spam emails, which did not readily identify the actual sender of the e-mails or  
2 Defendant.

3 90. These generic, forged, falsified, or misrepresented From Names are utterly ambiguous as  
4 to *who* the spam e-mails are from, and contain misrepresented information because the  
5 spams are not from these purported senders. In fact, the spams could just as easily have  
6 come from Defendant's competitors or some other entity or individual.

7 91. In *Rosolowski v. Guthy-Renker LLC*, the court permitted From Names that were not the  
8 sender's official corporate name as long as the identity of the sender was readily  
9 ascertainable in the body. 230 Cal. App. 4th 1403, 1407, 1416 (2d Dist. 2014). However,  
10 the From Names in that case (Proactiv and Wen Hair Care) were the advertiser's fanciful  
11 trademarks and well-known brands with their own websites. But here, unlike the spams in  
12 *Rosolowski*, the From Names are generic and are not well-known trademarks or brands  
13 readily associated with Defendant. There is no way an ordinary consumer, looking at the  
14 same or similar email From Name in their inbox, could readily associate them with  
15 Defendant.

16 **ii. The Spam E-mails Contain or Are Accompanied By Generic or False "From**  
17 **Names" That Do Not Identify the Sender and Misrepresent *Who* Is Advertising in**  
18 **the Spams in Violation of Business & Professions Code § 17529.5(a)(2)**

19 92. Section 17529.5(a)(2) prohibits falsified, misrepresented, or forged information contained  
20 in or accompanying e-mail headers.

21 93. Registration information for the domain names used to send spams is information  
22 contained in or accompanying e-mail headers.

23 94. "[H]eader information in a commercial e-mail is falsified or misrepresented for purposes  
24 of Section 17529.5(a)(2) when it uses a sender domain name that *neither* identifies the  
25 actual sender on its face *nor* is readily traceable to the sender using a publicly available  
26 online database such as WHOIS" and the sender's identity is not readily ascertainable from  
27 the body of the e-mail. *See Balsam*, 203 Cal. App. 4th at 1101 (emphasis in original);  
28 *Rosolowski*, 230 Cal. App. 4th at 1417.

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1 95. All of the spams that Plaintiff received advertising Defendant were sent from domain  
2 names that were “proxy” registered, fraudulently registered, or unregistered, and thus were  
3 not readily traceable to the sender by querying the WHOIS database, in violation of Section  
4 17529.5. *See Balsam*, 203 Cal. App. 4th at 1097-1101.

5 96. Plaintiff could not identify Defendant or its spamming affiliates who sent the spams at issue  
6 by querying the WHOIS database for the domain names used to send the spam e-mails at  
7 issue.

8 97. Plaintiff is informed and believes and thereon alleges that there is no database online where  
9 an email recipient could find any Defendant by searching for or tracing the From Names.

10 98. Thus, the spam e-mails received by Plaintiff advertising Defendant were not readily  
11 traceable to the sender by querying the WHOIS database, in violation of Section 17529.5.  
12 *Balsam*, 203 Cal. App. 4th at 1097-1101.

13 99. Here, the From Name fields in the headers of the spam e-mails contained or were  
14 accompanied by generic From Names that neither disclose the true sender’s identity nor  
15 permit the recipient to readily identify the sender. Therefore, such header information *is*  
16 deceptive and *does* constitute a falsification or misrepresentation of the sender’s identity  
17 in violation of Section 17529.5(a)(2). *See Balsam*, 203 Cal. App. 4th at 1097.

18 **C. The Spam Emails Have Subject Lines That Are Materially Misleading Relative to the**  
19 **Contents of the Emails in Violation of Business & Professions Code § 17529.5(a)(3)**

20 100. Section 17529.5(a)(3) prohibits Subject Lines that are likely to mislead a reasonable  
21 recipient relative to the contents or subject matter of the e-mails.

22 101. Defendant advertised in spam e-mails that had Subject Lines that are likely to mislead a  
23 recipient acting reasonably under the circumstances about a material fact regarding the  
24 contents or subject matter of the e-mails.

25 102. All of the spams that Plaintiff received contain misleading Subject Lines. Examples  
26 include: “Talk to bored women who want to meet!”; “send me a message if u want to  
27 hangout...”; “Hey!\_are\_u\_still\_looking\_for\_a\_f\*ckbuddy?”; and “You have been given  
28 something special”. These Subject Lines were misleading relative to the subject matter of



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1 the emails, in violation of Section 17529.5(a)(3).

2 103. The spams received by Plaintiff are materially false and likely to mislead a recipient into  
3 believing that an actual person sent the spams, when they are nothing but commercial  
4 advertisements sent by Defendant and/or its marketing affiliates.

5 104. The Subject Line “send me a message if u want to hangout...” is found in one of the spam  
6 e-mails. The completely blank body of the same e-mail contains no visible text or remote  
7 image. This Subject Line is materially misleading because it is written in the first person—  
8 inferring that a person desires to “hangout” with the e-mail recipient and that all the  
9 recipient must do to “hangout” is to send a message. However, the truth is that the sender  
10 is a marketing agent that is not sending the recipient a friendly message to which the  
11 recipient could respond—but rather attempting to drive internet traffic to Defendants’  
12 website with a motive to make a profit.

13 105. The Subject Line “You have been given something special” is found in one of the spam e-  
14 mails. Additionally, the only text found in the e-mail body is “Browse and meet new  
15 women right now!”. No remote image is visible in the e-mail body. This Subject Line is  
16 materially misleading because it implies that the sender knows the recipient personally—  
17 which the sender does not. Further, the Subject Line implies that a free gift or special offer  
18 is available to the recipient, however nothing special has been given or offered to the  
19 recipient—at least nothing that the sender is aware of. Additionally, when the hyperlinked  
20 text is clicked and followed to the Defendants’ website, there is no “special” gift offer.

21 106. The Subject Line “You have been given something special” implies that the recipient has  
22 received a gift or promotion when no such offer actually exists.

23 107. The Subject Line “Hey!\_are\_u\_still\_looking\_for\_a\_f\*ckbuddy?” and “send me a message  
24 if u want to hangout...” implies that Plaintiff has submitted a request when no such  
25 submission or relationship ever existed and no such solicitation was ever made by Plaintiff.  
26 Moreover, these emails were not sent by actual women seeking relationships with Plaintiff,  
27 but rather were sent by Defendant and/or its marketing affiliates.

28 108. Thus, each of the Subject Lines, even when viewed in conjunction with the body of the e-

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1 mail, is materially false and deceptive and likely to mislead a recipient acting reasonably  
2 about a material fact regarding the content or subject matter of the message.

3 **D. Defendant is Strictly Liable for the Spam E-mails Sent By its Marketing Agents**

4 109. Plaintiff is informed and believes and thereon alleges that Defendant contracted with third-  
5 party advertising networks and affiliates to advertise its websites for the purpose of selling  
6 products and services for a profit.

7 110. Defendant knowingly, intentionally, and voluntarily chose to outsource their advertising to  
8 third-party spam networks and spammers.

9 111. Advertisers are liable for advertising in spam e-mails, even if third parties sent the e-mails:

10 “There is a need to regulate the advertisers who use spam, as well as  
11 the actual spammers because the actual spammers can be difficult to  
12 track down due to some return addresses that show up on the display  
13 as ‘unknown’ and many others being obvious fakes and they are  
14 often located offshore. The true beneficiaries of spam are the  
15 advertisers who benefit from the marketing derived from the  
16 advertisements.” (Bus. & Prof. Code § 17529(j)(k).) “It is unlawful  
17 [ ] to advertise in a commercial e-mail advertisement [ ] under any  
18 of the following circumstances...”

19 Bus. & Prof. Code § 17529.5 (emphasis added). Thus, Defendant’s agents are also liable  
20 for sending the unlawful spams.

21 112. Section 17529.5(a) “makes an entity *strictly liable* for advertising in a commercial e-mail  
22 . . . regardless of whether the entity knew that such e-mails had been sent or had any intent  
23 to deceive the recipient.” *Hypertouch Inc. v. ValueClick Inc.*, 192 Cal. App. 4th 805, 820-  
24 21 (2011) (emphasis added).

25 113. In fact, in *Hypertouch*, the court of appeal held that advertisers are *strictly liable* for  
26 advertising in false and deceptive spams, even if the spams were sent by third-parties.

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

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

*Id.* at 820-21. The court did not find that this was an arbitrary requirement; rather, the court identified sound policy reasons behind the Legislature’s decision to create a strict liability statute. *Id.* at 829.

114. Moreover, Plaintiff is informed and believes and thereon alleges that Defendant and/or Defendant's affiliates and/or Defendant's marketing agents intended to deceive recipients of their spam messages through the use of falsified, misrepresented, and/or misleading information in third-party domain names, From Names, domain name registrations, and Subject Lines, as described herein.

115. Forged Sender E-mail Addresses do not write themselves. The false and misrepresented information contained in and accompanying the e-mail headers are not “clerical errors.” Plaintiff is informed and believes and thereon alleges that Defendant and/or Defendant's affiliates and/or Defendant's marketing agents went to great lengths to create falsified and misrepresented information contained in and accompanying the e-mail headers in order to materially deceive recipients, Internet Service Providers, and spam filters.

116. Plaintiff is informed and believes and thereon alleges that Defendant has knowledge that its affiliates/marketing agents engage in the sending of false and deceptive spam.

117. Plaintiff is informed and believes and thereon alleges that Defendant and its marketing agents intended to profit, actually profited, and continue to profit, and were unjustly enriched by, their wrongful conduct as described herein.

**D. No Proof of Reliance or Actual Damages is Necessary Because Plaintiff Sues for Statutory Liquidated Damages**

118. The California Legislature set liquidated damages as \$1,000 per spam. Bus. & Prof. Code § 17529.5(b)(1)(B)(ii).

119. Plaintiff is informed and believes and thereon alleges that the \$1,000 per spam figure is

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1 comparable with damages in other areas of consumer protection law, e.g., \$500-\$1,500  
2 statutory damages per junk fax, pursuant to Business & Professions Code § 17538.43(b).

3 120. Plaintiff’s rightful and lawful demand for liquidated damages in the amount of \$1,000 per  
4 e-mail is necessary to further the California Legislature’s objective of protecting California  
5 residents from unlawful spam.

6 121. Section 17529.5 does not require Plaintiff to quantify their actual damages, allege or prove  
7 reliance on the advertisements contained in the spams, or purchase the goods and services  
8 advertised in the spams. Recipients of unlawful spam have standing to sue and recover  
9 liquidated damages. Bus. & Prof. Code § 17529.5(b)(1)(A)(iii); *Hypertouch*, 192 Cal. App.  
10 4th at 820, 822-23, 828.

11 122. However, Plaintiff did suffer damages by receiving the unlawful spams advertising  
12 Defendant’s products and services in the state of California, at their California e-mail  
13 addresses. Bus. & Prof. Code § 17529(d), (e), (g), (h). Regardless, Plaintiff does not seek  
14 actual damages in this Action, only liquidated damages. Bus. & Prof. Code §  
15 17529.5(b)(1)(B).

16 123. Plaintiff is informed and believes and thereon alleges that Defendant has not established  
17 and implemented, with due care, practices and procedures reasonably designed to  
18 effectively prevent unsolicited commercial e-mail advertisements that are in violation of  
19 Section 17529.5.

20 **VI. CLASS ACTION ALLEGATIONS**

21 124. Plaintiff hereby incorporates the foregoing paragraphs as though set forth in full herein.

22 125. Plaintiff bring this action for statutory liquidated damages on behalf of herself and all other  
23 similarly situated individuals. Plaintiff seek to represent a statewide Class defined as  
24 follows:

25 *All California residents who received a false or deceptive*  
26 *unsolicited commercial e-mail that (1) contains or is accompanied*  
27 *by a third-party domain name without the third-party’s permission,*  
28 *(2) contains or is accompanied by falsified, misrepresented, or*  
*forged header information, or (3) has a subject line likely to mislead*  
*a recipient, which advertised ashleymadison.com, since one year*  
*prior to the filing of this Action.*

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1  
2 126. Excluded from the Class are (1) Defendant's officers, directors, legal representatives,  
3 employees, co-conspirators, successors, subsidiaries, and assigns; and (2) any judge,  
4 justice, or judicial officer presiding over this matter and the members of their immediate  
5 families and judicial staff.

6 127. **Ascertainability.** At this time, Plaintiff does not know the exact number of members of  
7 the Class, but believes that there are thousands of members of the Class within the State of  
8 California.

9 128. Upon information and belief, Defendant and Defendant's agents/affiliates maintain records  
10 of the e-mails they send and the Internet traffic derived from the e-mail advertising at issue.  
11 Moreover, members of the Class who received e-mails with the alleged advertisements  
12 may be self-identified through their own e-mail records. Thus, the members of the Class  
13 are ascertainable through Defendant's records and/or the records of Defendant's  
14 agents/affiliates, as well as through public notice. This matter should therefore be certified  
15 as a Class action to assist in the expeditious litigation of this matter.

16 129. **Numerosity.** The proposed Class is so numerous that individual joinder of all its members  
17 is impracticable. Due to the nature of the trade and commerce involved, however, Plaintiff  
18 believes that the total number of the members of the Class is in the thousands. Members of  
19 the Class are numerous and geographically dispersed across the state of California. While  
20 the exact number and identities of the Class's members are unknown at this time, such  
21 information can be ascertained through appropriate investigation and discovery.

22 130. **Existence and Predominance of Common Questions of Law and Fact.** There is a well-  
23 defined community of interest in the questions of law and fact involved affecting the Class  
24 and these common questions predominate over any questions that may affect individual  
25 Class members. Common questions of fact and law include, but are not limited to, the  
26 following:

- 27 a. Whether Class members received unsolicited commercial e-mail advertising the  
28 website *ashleymadison.com*.

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- b. Whether Defendant obtained direct consent to send commercial e-mail to Class members.
- c. Whether Defendant had no preexisting or current business relationship with Class members.
- d. Whether the unsolicited commercial e-mails received by Class members contain or are accompanied by a third-party domain name without the permission of the third party.
- e. Whether the unsolicited commercial e-mails received by Class members contain or are accompanied by falsified, forged, or misrepresented header information.
- f. Whether the manner in which the domain names used to send the emails received by Class Members prevents members of the public from knowing the true ownership of the domain.
- g. Whether the unsolicited commercial e-mails received by Class members have subject lines likely to mislead a recipient acting reasonably under the circumstances.
- h. Whether the information contained in the e-mail received by Class members is forged, falsified, misrepresented, deceptive, or misleading in violation of Bus. & Prof. Code § 17529.5.
- i. Whether Defendant is liable under Bus. & Prof. Code § 17529.5 for the actions of its affiliates, advertisers, employees or agents, who sent unlawful spams advertising *ashleymadison.com*.

131. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have been similarly affected by Defendant's common course of conduct since they all received unlawful, unsolicited spam e-mails that contain third-party domain names without the third party's permission and advertise *ashleymadison.com*.

132. **Adequacy.** Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has no interests adverse to that of the Class. Plaintiff has retained counsel with substantial experience in handling complex class action litigation and prosecuting actions related to consumer protection—including anti-spam litigation.

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1 133. **Superiority.** A class action is superior to other available methods for the fair and efficient  
2 adjudication of the present controversy. Individual joinder of all members of the Class is  
3 impracticable. Even if individual Class members had the resources to pursue individual  
4 litigation, it would be unduly burdensome to the courts in which the individual litigation  
5 would proceed. Individual litigation magnifies the delay and expense to all parties in the  
6 court system of resolving the controversies engendered by Defendant’s common course of  
7 conduct. The class action device allows a single court to provide the benefits of unitary  
8 adjudication, judicial economy, and the fair and efficient handling of all Class members’  
9 claims in a single forum. The conduct of this action as a class action conserves the resources  
10 of the parties and of the judicial system and protects the rights of the Class members.  
11 Furthermore, for many, if not most, a class action is the only feasible mechanism that  
12 allows an opportunity for legal redress and justice. Adjudication of individual Class  
13 members’ claims with respect to the Defendant would, as a practical matter, be dispositive  
14 of the interests of other members not parties to the adjudication, and could substantially  
15 impair or impede the ability of other Class members to protect their interests.

16 134. Defendant has acted or refused to act on grounds that are generally applicable to the Class  
17 so that relief is appropriate to the Class as a whole, making class certification appropriate  
18 pursuant to California Code of Civil Procedure § 382.

19 **FIRST CAUSE OF ACTION**

20 **Violations of California Restrictions on Unsolicited Commercial E-mail,**  
21 **California Business & Professions Code § 17529.5**  
22 **(Against All Defendants)**

23 135. Plaintiff hereby incorporates the foregoing paragraphs as though set forth in full herein.

24 136. Plaintiff received the spam e-mails within one year prior to filing this Complaint.

25 137. Defendant advertised in, sent, assisted others in sending, conspired to send, contracted with  
26 others to send, and/or otherwise caused to be sent *at least* four (4) unsolicited commercial  
27 e-mail advertisements to Plaintiff’s California electronic mail addresses and California  
28 Class members’ e-mail addresses that had materially falsified, forged and/or  
misrepresented information contained in or accompanying the e-mail headers, and third-

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1 party domain names without the permission of the third party, in violation of Bus. & Prof.  
2 Code § 17529.5.

3 138. Plaintiff is informed and believes and thereon alleges that all of the emails use hypertext  
4 markup language (“HTML”) in the body which reference remote images, which are not  
5 part of the email body but rather a link to a web server that could be anywhere on the  
6 Internet and controlled by any unknown third party. Many email clients automatically  
7 block remote images preventing recipients from seeing the sender upon initially opening  
8 the email.

9 139. Remote images are not actually part of the email body, but rather a link to a web server  
10 that could be anywhere on the Internet and controlled by Defendant or an unknown third  
11 party. *See ZooBuh, Inc. v. Better Broadcasting, LLC* 2013 U.S. Dist. LEXIS 77033 \*22 n.  
12 29 (D. Utah 2013).

13 140. Some spammers use remote hosted images to detect when emails are opened to detect  
14 active email addresses so that the spammer can either resell the email address and/or direct  
15 more emails to active email addresses which open emails.

16 141. Plaintiff is informed and believes and thereon alleges that most email clients, including  
17 Plaintiff’s, automatically block remote hosted images in spam as a security measure to  
18 prevent spammers from detecting active email addresses.

19 142. The use of remote hosted images permits the senders to make the emails “self-destructing”  
20 in order to hide the identities of the Defendant and to avoid responsibility for Defendant’s  
21 deliberately misleading unsolicited email advertisements and illegal activities.

22 143. The unlawful elements of these spam e-mails represent willful acts of falsity and deception,  
23 rather than clerical errors.

24 144. The California Legislature set liquidated damages at One Thousand Dollars (\$1,000) per  
25 e-mail.

26 145. Plaintiff seeks reimbursement of reasonable attorneys’ fees and costs as authorized by  
27 Section 17529.5(b)(1)(C).  
28



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

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff prays that judgment be entered against Defendant for:

- 10 • An Order from this Court declaring that Defendant violated Bus. & Prof. Code § 17529.5,
- 11 by advertising in and sending unlawful spam e-mails.
- 12 • Liquidated damages against Defendant in the amount of \$1,000 per unlawful spam e-mail,
- 13 as authorized by Bus. & Prof. Code § 17529.5(b)(1)(B)(ii) for each unlawful email
- 14 received by Plaintiff and members of the Class.
- 15 • Reasonable attorneys’ fees and costs as authorized by Bus. & Prof. Code
- 16 § 17529.5(b)(1)(C).
- 17 • Disgorgement of all profits derived from unlawful spams directed to California residents;
- 18 monies to be turned over to the Unfair Competition Law Fund and used by the California
- 19 Attorney General to support investigations and prosecutions of California’s consumer
- 20 protection laws.
- 21 • Costs of suit.
- 22 • Such other and further relief as the Court deems proper.

23 **DEMAND FOR JURY TRIAL**

24 147. Pursuant to the California Constitution and California Code of Civil Procedure § 631,  
25 Plaintiff is entitled to, and demands, a trial by jury.

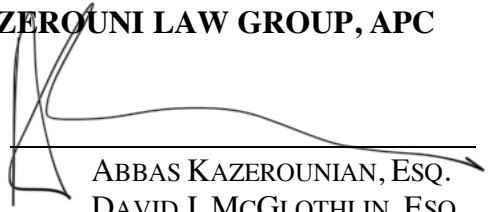
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1 Dated: February 12, 2020

Respectfully submitted,

2 **KAZEROUNI LAW GROUP, APC**

3  
4 By:

5   
6 ABBAS KAZEROUNIAN, ESQ.  
7 DAVID J. MCGLOTHLIN, ESQ.  
8 CLARK R. CONFORTI, ESQ.  
9 *Attorneys for Plaintiff*

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [AshleyMadison.com Operators Hit with Class Action Over Alleged Spam Emails](#)

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