

1 William Silverstein
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5 *In Propria Personum*

6
7 CALIFORNIA SUPERIOR COURT
8 COUNTY OF LOS ANGELES
9 CENTRAL DISTRICT - UNLIMITED CIVIL

10 William Silverstein,
11 Plaintiff,

12 vs.

13 ALIVEMAX, NAUDER KHAZAN, MELISSA
14 KHAZAN, STIFORP, NameCheap, Inc., and DOES
15 3-50 inclusive;
16 Defendants,

CASE NO.: BC480994

**FIRST AMENDED VERIFIED
COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

1. Violations of Business and Professions Code § 17529.5 (Against All Defendants, Except NameCheap, Inc.)
2. Violations of Business and Professions Code § 17529.5 (Against NameCheap, Inc.)

JURY TRIAL DEMANDED

17 Pursuant to California Code of Civil Procedure § 472 , Plaintiff amends his complaint
18 to read as:

PARTIES

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22 1. Plaintiff WILLIAM SILVERSTEIN is an individual operating as a sole
23 proprietor under the laws of the State of California and qualified and doing business as
24 "WILLIAM SILVERSTEIN" with a principal place of business in Los Angeles, California.
25 Plaintiff provides registered users the ability to send or receive electronic mail through
26 equipment located in the State of California, and operates equipment that acts as an
27 intermediary in sending and receiving electronic mail.

28 2. Plaintiff owns, leases, and maintains computers and other equipment that process

1 electronic mail messages and allow for exchange of electronic mail messages by registered
2 users with others. Electronic mail sent to and from Plaintiff's registered users is processed
3 though and stored on equipment located within the State of California.

4 3. Plaintiff is an "electronic mail service provider" as defined by California
5 Business and Professions Code § 17529.1(h).

6 4. Plaintiff's e-mail addresses are California e-mail addresses as defined by
7 California Business and Professions Code § 17529.1(b).

8 5. Plaintiff is a professional software developer with over twenty-five years of
9 experience.

10 6. Plaintiff has professional experience writing electronic mail ("email") client and
11 server programs as well as other internet software.

12 7. Plaintiff has operated web sites and Internet accessible bulletin boards for more
13 than ten years.

14 8. Plaintiff is informed and believes and thereon alleges that at all times relevant
15 Defendant Alivemax is an entity of unknown type that holds out to the public that it is
16 located in Anaheim Hills, California.

17 9. Plaintiff was searched the State of California's business portal for corporate
18 record of an entity named Alivemax registered to do business in California, but was unable
19 to find any.

20 10. Plaintiff was searched the Orange County State of California's Fictitious
21 Business Name database, but was unable to find any registration for "AliveMax."

22 11. Plaintiff is informed and believes and therefore alleges that Alivemax is not a
23 legally recognized entity.

24 12. Plaintiff is informed and believes and therefore alleges that Alivemax is not a
25 properly registered fictitious business name.

26 13. Plaintiff is informed and believes and thereon alleges that at all times relevant
27 Defendant Stiforp is an entity of unknown type that holds out to the public that it is located
28 in Anaheim Hills, California.

14. Plaintiff was searched the State of California's business portal for corporate
record of an entity named Stiforp registered to do business in California, but was unable to
find any.

1 the herein DOE Defendants were the agents, servants, employees, and the co-conspirators of
2 the named Defendants and all Defendants are doing the things hereinafter mentioned were
3 acting within the course and scope of their authority as such agents, servants, and employees
4 with the permission, consent, and encouragement of their co-Defendants.

5 27. Plaintiff is informed and believes and thereon alleges that Defendants have a
6 high degree of control over any agents that have been contracted and paid to send
7 advertising through email.

8 28. Plaintiff is informed and believes and thereupon alleges that named Defendants
9 hired some of the DOE Defendants for the express purpose of sending unsolicited
10 commercial email (“spam”). These defendants will be referred to as “affiliates.”

11 **JURISDICTION AND VENUE**

12 29. Plaintiff brings this action pursuant to Section 17529.5 of the California Business
13 and Professions Code,

14 30. The harm occurred within the jurisdiction of this Court as the email messages
15 complained of herein were received by Plaintiff in Los Angeles, California.

16 31. The harm occurred within the jurisdiction of this Court as the emails complained
17 of herein were unlawfully relayed through Plaintiff’s servers located in Los Angeles,
18 California.

19 32. Plaintiff is informed and believes and thereon alleges that all Defendants
20 regularly solicit business from residents of the State of California.

21 33. Plaintiff is informed and believes and thereon alleges that all Defendants
22 regularly conduct business with residents of the State of California and businesses
23 domiciled within the State of California.

24 34. Plaintiff is informed and believes and thereon alleges that all Defendants are
25 located within California.
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1 **FACTS COMMON TO ALL CLAIMS**

2 35. Plaintiff is informed and believes and thereupon alleges that at all times relevant,
3 the herein mentioned Defendants knew that their activities were in violation of the law.

4 36. Plaintiff is complaining of at least 77 unsolicited commercial e-mails received by
5 Plaintiff since March 25, 2011, hereinafter referred to as the “Complained of e-mails.”
6 Plaintiff expects to

7 37. Plaintiff alleges that each of the complained of e-mails either violates Cal. Bus.
8 & Prof. Code § 17529.5(a)(2) or Cal. Bus. & Prof. Code § 17529.5(a)(3).

9 38. Plaintiff is informed and believes, and therefore alleges that each of the
10 complained of e-mails contained deceptive headers in violation of Cal. Bus. & Prof. Code §
11 17529.5(a)(2).

12 39. Defendants are “advertisers” pursuant to Cal. Bus. & Prof. Code § 17529.1(a)
13 because they are persons or entities that advertise through the use of commercial e-mail
14 advertisements.

15 40. “Spam” is a term commonly used to refer to unsolicited commercial e-mail,
16 which is a method of Internet advertising that involuntarily shifts the cost onto the ISP, the
17 email service provider, and the recipient.

18 41. The practice of sending spam, also known as spamming, is so reviled on the
19 Internet that the people sending spam (“spammers”) go to great lengths to hide their
20 identities to avoid complaints made by recipients, Internet service providers, and
21 government agencies.

22 42. Defendants are “advertisers” pursuant to Bus & Prof. Code § 17529.1(a) because
23 they are entities that advertise through the use of commercial email advertisements.

24 43. Defendants are strictly liable for the spam as it advertised their web sites. See
25 Hypertouch, Inc. v. ValueClick, Inc., 192 Cal. App. 4th 805.

26 44. The e-mail address that Defendant used to send e-mail to Plaintiff was only used
27 once for communications between Plaintiff and an entity unrelated to Defendants.

28 45. Prior to Defendants sending, or causing spam to be, sent to Plaintiff, he did not
have a preexisting or current business relationship with Defendants.

46. Plaintiff sent multiple e-mails to Defendants to complaining of their illegal spam,
but received no response.

1 complained of e-mails contained e-mail advertisement has a subject line that a person knows
2 would be likely to mislead a recipient, acting reasonably under the circumstances, about a
3 material fact regarding the contents or subject matter of the message in violation of Cal.
4 Bus. & Prof. Code § 17529.5(a)(3).

5 60. One of the complained of e-mails contained a subject line of “Your Check is
6 Waiting.” Plaintiff is informed and believes, and therefore alleges that Plaintiff did not have
7 a check waiting from the Defendant.

8 61. One of the complained of e-mails contained a subject line of “URGENT Friend,
9 Your position will be DELETED in 24 Hours.” Plaintiff never had a position with
10 Defendant.

11 62. Six the complained of e-mails contained subject lines of “URGENT Friend, Lock
12 In Your Position ASAP.” Plaintiff never had a position with Defendant.

13 63. Two of the complained of e-mails contained subject lines of “This AMAZING
14 Online movie mentions YOUR NAME Friend !! Get a check NEXT Wed.. 4 SIMPLE
15 STEPS.” Plaintiff watched Defendants’ advertised video, but did not hear his name
16 mentioned once making this subject lines likely to deceive the recipient.

17 64. Ten of the complained of e-mails contained subject lines of “Here you go Friend,
18 we put Friend under you.” Plaintiff is informed and believes, and therefore alleges that
19 Defendants did not place anyone named “Friend” under Plaintiff making this subject lines
20 likely to deceive the recipient.

21 65. Fourteen of the complained of e-mails contained subject lines of “Another One
22 Friend - Friend just joined YOUR Powerline.” Plaintiff is informed and believes, and
23 therefore alleges that anyone named “Friend” joined Plaintiff’s powerline making this
24 subject line likely to deceive the recipient. Furthermore, Plaintiff does not have a powerline,
25 which makes these subject lines likely to deceive the recipient.

26 66. Most of the complained of e-mails contained a subject lines that referred to my
27 “Powerline.” Plaintiff never had a “Powerline” or anything else with Defendants.

28 67. Defendants profited from their wrongful conduct.

68. Plaintiff suffered damages as a result of Defendants’ wrongful conduct.

69. Plaintiff is informed and believes and thereon alleges that Defendants have
willfully engaged in, and are willfully engaging in, the acts complained of with oppression,

1 fraud, and malice, and in conscious disregard of the rights of Plaintiff. Plaintiff therefore is
2 entitled to and demands exemplary damages in an amount sufficient to deter the Defendants,
3 and others, from behaving in such egregious behavior.

4 WHEREFORE, Plaintiff prays for judgment against all Defendants herein for damages as
5 set forth in the Prayer for relief.

6 **SECOND CAUSE OF ACTION**

7 (VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17529.5)

8 (Against Defendant NameCheap)

9 70. Plaintiff hereby incorporates by reference paragraphs 1 through 45, 70, inclusive,
10 as if the same were fully set forth herein.

11 71. Several of the complained of e-mails advertised the domain name "stiforp.com"
12 hereto referred as to the "NameCheap e-mails."

13 72. The domain names are owned by Defendant NameCheap.

14 73. Defendant NameCheap admits that they own the name, as they hold out to the
15 public, via the "Whois database."

16 74. The Whois database which indicates that NameCheap owns "stiforp.com" is
17 owned and maintained by NameCheap.

18 75. Some of the NameCheap e-mails subject lines of "*RESEND: This is an*
19 *important message from your upline in the new home biz program, Stiforp.*"

20 76. Plaintiff does not have an upline or any position in the "home biz program,
21 Stiforp" which makes the subject line likely to deceive the recipient.

22 77. The NameCheap e-mails have "From:" lines of "'Gold Team"
23 <followups@goldteamfollowups.com>."

24 78. Plaintiff is informed and believes, and therefore alleges that there is no such
25 entity as "Gold Team" which makes the from line described in paragraph 78.

26 79. The domain name, goldteamfollowups.com, referred to in paragraph 78 is
27 registered through an Australian anonymous proxy service which makes the domain names
28 untraceable to the sender. This makes the headers deceptive or falsified and in violation of
Cal. Bus. & Prof. Code § 17529.5(a)(2). See Balsam v. Trancos, Inc., (2012) 203 Cal. App.
4th 1083.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them
3 as follows:

- 4 A. An Order of this Court enjoining Defendants, and each of them, and their agents,
5 affiliates, servants, employees, and all persons acting under, in concert with them,
6 from sending misleading commercial e-mail to Plaintiff or to Plaintiff's servers;
7 B. Statutory damages, under Cal. Bus. & Prof. Code § 17529.5 of \$1,000 each for the
8 spam e-mails received from Defendants;
9 C. General damages in an amount to be determined at trial;
10 D. Disgorgement of all profits obtained as a result of Defendants' unlawful
11 spamming;
12 E. Attorney's fees and costs as allowed by law; and
13 F. For such other and further relief as the Court may deem just and proper.

14 Dated: April 4, 2012

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16 Plaintiff,

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18 _____
19 William Silverstein
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VERIFICATION

The undersigned, for himself, declares:

I am Plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. With respect the causes of action alleged by me, the same is true of my own knowledge, except as those matters which are therein stated on information and belief, and, to those matters, I believe them to be true.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Dated: April 4, 2012

William Silverstein

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