

1 William Silverstein
2 XXX
3 XXX
4 in propria persona

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

8 WILLIAM SILVERSTEIN,
9 Plaintiff,

CASE NO.: BC326033

10 vs.

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

11
12 WORLD WIDE WEB ENTERPRISES, LC,
13 ROBERT SMOLEY, DARIN GREY,
14 ICOM GROUP LLC,
15 PRIORITY RESPONSE GROUP
16 INTERNATIONAL, LLC,
17 AND DOES 1-48,
18 Defendants,

1. Violation of the can spam act (15 U.S.C. § 7703 et seq)
2. Violation of Business and Professions Code § 17538.45
3. Violation of Business and Professions Code § 17529.5
4. Trespass to chattels
5. Libel Per Se
6. Breach of Contract

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

21 **SUMMARY**

22 1. This is a case where the Defendants caused more than 800 pieces of unsolicited
23 commercial e-mail (“spam”) to be relayed through Plaintiff’s servers and received by
24 Plaintiff, all of which contains falsified header information and are unwanted. After the
25 Plaintiff complained to the defendants of their activities, the defendants sent thousands of
26 spams to others, using the plaintiff’s domain as part of the return address – falsely giving
27 the impression that Plaintiff either sent or endorsed them. Defendant sent these e-mails using
28 Plaintiff’s domain name with the intent of causing harm to the Plaintiff’s systems and
reputation.

1 **PARTIES**

2 2. Plaintiff WILLIAM SILVERSTEIN is an individual operating as a sole
3 proprietor under the laws of the State of California and qualified and doing business as
4 "WILLIAM SILVERSTEIN" with a principal place of business in Los Angeles, California.
5 Plaintiff provides registered users the ability to send or receive electronic mail through
6 equipment located in the State of California, and operates equipment that acts as an
7 intermediary in sending and receiving electronic mail.

8 3. Plaintiff owns, leases, and maintains computers and other equipment that process
9 electronic mail messages and allow for exchange of electronic mail messages by registered
10 users with others. Electronic mail sent to and from Plaintiff's registered users is processed
11 though and stored on equipment located within the State of California.

12 4. Plaintiff is a provider of "Internet access service" as defined by 15 U.S.C. §
13 7702(11) and "electronic mail service provider" as defined by California Business and
14 Professions Code §§ 17529.1(h) and 17538.45(3).

15 5. Plaintiff is a professional software developer with over twenty years of
16 experience.

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

19 7. Plaintiff has been operating web sites and Internet accessible bulletin boards for
20 more than ten years.

21 8. Plaintiff is a computer consultant who bills hourly for his consulting services.

22 9. Plaintiff only is paid when he is consulting for a client.

23 10. Plaintiff is informed and believes and thereon alleges that at all times relevant
24 hereto Defendant World Wide Web Enterprises, LC, was and is a limited liability company
25 duly organized and recognized under the laws of the State of Florida.

26 11. Plaintiff is informed and believes and thereon alleges that at all times relevant
27 hereto Defendant Icom Group, LLC, was and is a limited liability company duly organized
28 and recognized under the laws of the State of Florida.

12. Plaintiff is informed and believes and thereon alleges that at all times relevant
hereto Defendant Priority Response Group International, LLC, was and is a limited liability
company duly organized and recognized under the laws of the State of Florida.

1 13. Plaintiff is informed and believes and thereon alleges that at all times relevant
2 that corporate defendants are both located at the same address – 1455 North Park Drive,
3 Weston Florida.

4 14. Plaintiff is informed and believes and thereon alleges that at all times relevant
5 that the corporate defendants are all mere alter-egos of each other and of Defendants Darin
6 Grey and Robert Smoley.

7 15. Plaintiff is informed and believes and thereon alleges that at all times relevant
8 hereto, Defendant Robert Smoley is an individual with a place of business in Weston,
9 Florida.

10 16. Plaintiff is informed and believes and thereon alleges that at all times relevant
11 hereto, Defendant Darin Grey, is an individual that resides in Hallandale Florida.

12 17. Plaintiff is informed and believes and thereon alleges that at all times relevant
13 hereto, Defendants went to great lengths in hiding their identities.

14 18. Plaintiff is informed and believes and thereon alleges that at all times relevant
15 hereto, Defendants created multiple corporate shells in an effort to hide their identities and
16 to evade liability for their illegal actions.

17 19. Plaintiff is informed and believes and thereon alleges that at all times relevant
18 hereto, that individual Defendants do not operate the Corporate Defendants as separate and
19 distinct entities.

20 20. Plaintiff is ignorant of the true names and capacity of Defendants sued herein as
21 DOES 1-48, inclusive, and therefore sue those Defendants by such fictitious names. Plaintiff
22 will amend this complaint to allege their true names and capacities when ascertained.

23 21. Plaintiff is informed and believes and thereon alleges that each of the fictitiously
24 named Defendants is responsible in some manner for the occurrences herein. These
25 occurrences are the proximate cause of damages to Plaintiff.

26 22. Plaintiff is informed and believes and thereupon alleges that at all times relevant,
27 the herein mentioned Defendants were the agents, servants, employees, and the co-
28 conspirators of the named Defendants and all defendants are doing the things hereinafter
mentioned were acting within the course and scope of their authority as such agents,
servants, and employees with the permission, consent, and encouragement of their
co-Defendants.

1 government agencies.

2 34. Defendants “initiated” the emails complained of herein as that term is defined by
3 Bus & Prof. Code § 17529.1(I) and 15 U.S.C. § 7702(9).

4 35. Defendants are “advertisers” pursuant to Bus & Prof. Code § 17529.1(a) because
5 they are persons or entities that advertise through the use of commercial e-mail
6 advertisements.

7 36. The emails initiated by Defendants and sent to Plaintiff and to the general public
8 are unsolicited commercial e-mail advertisements.

9 37. Prior to Defendants sending spam to Plaintiff, Plaintiff did not have a preexisting
10 or current business relationship with Defendants.

11 38. Plaintiff provided Defendants, on multiple occasions, actual notice that Plaintiff
12 is a California mail service provider using servers in California which prohibits unsolicited
13 commercial e-mail.

14 39. Plaintiff owns, leases, and maintains several computers systems which Plaintiff
15 uses to provide e-mail and other internet services as part of Plaintiff’s business.

16 40. Plaintiff is informed and believes and therefore alleges that Defendants’
17 knowingly and willfully transmits e-mail advertisements in a manner specifically designed
18 to bypass filters intended to identify and/or delete e-mail advertising (“spam filters”).

19 41. Defendants intentionally created and sent e-mails consisting of commercial
20 advertising that are designed to deceive the recipient as to the actual origin and contents, so
21 that the recipient must open, decode, and read the e-mail determine the true nature of the
22 e-mail.

23 42. Defendants sent the complained of spam knowing that the spam were not
24 welcome, not wanted, and in violation of the law.

25 43. Plaintiff is informed and believe that and therefore alleges that each and every of
26 spam e-mails sent by the Defendants and received by the Plaintiff:

- 27 a. failed to contain defendants’ physical postal address;
- 28 b. contained Deceptive header and routing information;
- c. contained deceptive subject lines;
- d. and was transmitted through the Plaintiff’s computer facilities without
authorization.

1 44. Plaintiff tracked more than 83 spams sent directly to Plaintiff from Defendant
2 between January 1, 2004 and September 30, 2004.

3 45. Plaintiff is informed and believe that and therefore alleges that on or about
4 October 15, 2004, Defendants sent more than 2,100 spams to other internet users, using
5 Plaintiff's domain for the return address::

- 6 a. each of these e-mails contained deceptive header information;
- 7 b. each of these spams contained Plaintiff's domain name, without
8 permission of the Plaintiff;
- 9 c. each of these e-mails used randomly generated e-mail addresses on the
10 Plaintiff's domain as a return addresses, giving the false impression that
11 Plaintiff had initiated and endorsed the sending of these illegal e-mails.

12 46. Plaintiff is informed and believes that and therefore alleges that Defendants knew
13 that the sending the spam described in paragraph 45 would cause harm to the plaintiff.

14 47. Plaintiff is informed and believe that and therefore alleges that defendants sent
15 spam described in paragraph 45 with the intent of causing damage to Plaintiff.

16 48. As a result of the spam described in paragraph 45, Plaintiff personally received
17 over 700 "bounce backs," that were relayed through Plaintiff's servers.

18 49. A "Bounce back" is an e-mail notification sent to the originator of an e-mail, that
19 the original e-mail did not reach the intended recipient.

20 50. Plaintiff spent more than 30 hours identifying the bounce backs and removing the
21 above described bounce backs Plaintiff's inbox.

22 51. Plaintiff is informed and believe that and therefore alleges that defendants will
23 continue to advertise in this unlawful manner unless enjoined by this court. This court has
24 jurisdiction to issue a permanent injunction because restraint is necessary to prevent a
25 multiplicity of judicial proceedings.

26 **FIRST CAUSE OF ACTION**
27 (VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17538.45)

28 52. Plaintiff hereby incorporates by reference paragraphs 1 through 51, inclusive, as
if the same were fully set forth herein.

53. Plaintiff is informed and believe that and therefore alleges that Defendants sent

1 more than 42 spams through Plaintiff's servers in 2003.

2 54. Plaintiff is informed and believe that and therefore alleges that Defendants
3 initiated spam causing Plaintiff's equipment, located in California, to be used in violation of
4 Plaintiff's policy prohibiting spam to be relayed Plaintiff's systems.

5 55. Plaintiff suffered damages as a result of Defendants' wrongful conduct.
6 WHEREFORE, Plaintiff prays for judgment against all Defendants herein for damages as
7 set forth in the Prayer for relief.

8 **SECOND CAUSE OF ACTION**

9 (Violation of CAN-SPAM Act of 2003 – 15 U.S.C. §7705)

10 56. Plaintiff hereby incorporates by reference paragraphs 1 through 51, inclusive, as
11 if the same were fully set forth herein.

12 57. Defendants are each a "Sender" of commercial electronic mail messages because
13 they are person who initiates such a message and whose product, service, or Internet Web
14 site is advertised or promoted by the message." 15 U.S.C. § 7702(16)(B).

15 58. Plaintiff's servers and personal computers are "protected computers" as that term
16 is defined in section 18 U.S.C. 1030(e)(2)(B).

17 59. Plaintiff further alleges that each of the 700 bounce backs were sent to the
18 Plaintiff at addresses generated using automated means.

19 60. Plaintiff suffered damages as a result of Defendants' wrongful conduct.

20 61. Plaintiff is informed and believes and thereon alleges that Defendants have
21 willfully engaged in, and are willfully engaging in, the acts complained of with oppression,
22 fraud, and malice, and in conscious disregard of the rights of Plaintiff. Plaintiff therefore is
23 entitled to and demands exemplary damages in an amount sufficient to deter the Defendants,
24 and others, from behaving in such egregious behavior.

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

27 **THIRD CAUSE OF ACTION**

28 (Violation of California Business and Professional Code § 17529.5)

62. Plaintiff hereby incorporates by reference paragraphs 1 through 51, inclusive, as

1 if the same were fully set forth herein.

2 63. Pursuant to Bus & Prof. Code § 17529.1(m), Plaintiff is a “recipient” of
3 unsolicited commercial email advertisements initiated by Defendants.

4 64. Plaintiff’s email addresses are “California email addresses” pursuant to Bus &
5 Prof. Code § 17529.1(b).

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

7 66. Plaintiff is informed and believes and thereon alleges that Defendants have
8 willfully engaged in, and are willfully engaging in, the acts complained of with oppression,
9 fraud, and malice, and in conscious disregard of the rights of the Plaintiff. Plaintiff therefore
10 is entitled to and demands exemplary damages in an amount sufficient to deter the
11 Defendants, and others, from behaving in such egregious behavior.

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

14 **FOURTH CAUSE OF ACTION**
15 **(TRESPASS TO CHATTEL)**

16 67. Plaintiff hereby incorporates by reference paragraphs 1 through 51, inclusive, as
17 if the same were fully set forth herein.

18 68. Plaintiff is informed and believes and therefore alleges that Defendants took
19 control of Plaintiff’s servers and work stations.

20 69. Plaintiff further alleges that during the periods that Plaintiff’s systems were
21 following the instructions sent by the defendants, Plaintiff was unable to access, read, or
22 send e-mail.

23 70. Plaintiff further alleges, as a result of the defendants sending the spam e-mails
24 using Plaintiff’s domain name – described in paragraph 45, the Plaintiff was unable to use
25 his workstation for one week for the purpose of sending or receiving e-mail.

26 71. During Defendants’ unauthorized possession and control of Plaintiff’s computers
27 and e-mail accounts, Plaintiff was unable to send or receive any internet e-mail.

28 72. The Defendants’ unlawful use of Plaintiff’s of e-mail servers has the potential of
preventing the Plaintiff from receiving desired e-mail communications.

73. Defendants’ alleged actions requires Plaintiff to perform significantly more

1 computer system maintenance and increased monitoring of Plaintiff's systems to reduce the
2 risk of data loss.

3 74. Plaintiff suffered damages as a result of Defendants' wrongful conduct.

4 75. Plaintiff is informed and believes and thereon alleges that Defendants have
5 willfully engaged in, and are willfully engaging in, the acts complained of with oppression,
6 fraud, and malice, and in conscious disregard of the rights of the Plaintiff. Plaintiff therefore
7 is entitled to and demands exemplary damages in an amount sufficient to deter the
8 Defendants, and others, from behaving in such egregious behavior.

9 76. Plaintiff is informed and believes and therefore alleges that the Defendants will
10 continue to trespass on Plaintiff's systems in this unlawful manner unless enjoined by this
11 court. This court has legal authority to issue a permanent injunction because injunction is
12 necessary to prevent a multiplicity of judicial proceedings.

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

15 **FIFTH CAUSE OF ACTION**
16 **(LIBEL and LIBEL PER SE)**

17 77. Plaintiff hereby incorporates by reference paragraphs 1 through 51, inclusive, as
18 if the same were fully set forth herein.

19 78. Plaintiff is personally associated with the sorehands.com domain.

20 79. Plaintiff is a professional software engineer.

21 80. Plaintiff, as a business, hosts websites, e-mail services, and builds web sites.

22 81. Plaintiff further alleges that Defendants sending e-mails using the Plaintiff's
23 domain name is a statement that Plaintiff was responsible for or endorsed the sending of
24 these aforementioned spam e-mails – stating that the Plaintiff is a spammer.

25 82. Plaintiff never has, does not, and never endorsed the sending of spam – **Plaintiff
26 is not a spammer!**

27 83. Plaintiff further alleges that the methods used in sending the spam e-mails
28 violated criminal laws – California Penal Code § 502, Computer Fraud and Abuse Act (18
U.S.C. § 1030), and the criminal provisions of the CAN-SPAM Act.

84. Plaintiff further alleges that sending Defendants sending of spam e-mail harmed

1 Plaintiff in his profession and business.

2 85. Plaintiff further alleges that people who send spam are hated and reviled.

3 86. Plaintiff further alleges that the published statements, in the spam e-mails,
4 exposed the Plaintiff to public hatred, ridicule or contempt in a considerable and respectable
5 class in the community.

6 87. These statements have been made and published recklessly or with actual malice.

7 88. Plaintiff further alleges that defendants' actions constitutes libel.

8 89. Plaintiff further alleges that defendants' actions constitutes libel per se.

9 90. Plaintiff suffered damages as a result of Defendants' wrongful conduct.

10 91. Plaintiff is informed and believes and thereon alleges that Defendants have
11 willfully engaged in, and are willfully engaging in, the acts complained of with oppression,
12 fraud, and malice, and in conscious disregard of the rights of the Plaintiff. Plaintiff therefore
13 is entitled to and demands exemplary damages in an amount sufficient to deter the
14 Defendants, and others, from behaving in such egregious behavior.

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

17 **SIXTH CAUSE OF ACTION**
18 **(BREACH OF CONTRACT)**

19 92. Plaintiff hereby incorporates by reference paragraphs 1 through 51, inclusive, as
20 if the same were fully set forth herein.

21 93. Defendants were notified of the terms of the contract.

22 94. Defendants agreed to the terms of the contract by the continued use of the
23 Plaintiff's servers.

24 95. Paragraph 2 of the aforementioned contracts specifies that the jurisdiction shall
25 be in Los Angeles California.

26 96. Paragraph 11 of the aforementioned contract specifies that there shall be a
27 payment of \$1,500 per unsolicited commercial e-mail and \$3,000 per e-mail when the
28 sender conceals, misrepresents, or fails to fully disclose their identity.

97. Defendants intentionally concealed their identities when sending the unsolicited
commercial e-mails.

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- G. General damages in an amount to be determined at trial.
- H. Punitive damages in an amount to be determined at trial, for an amount not to be less than \$4,000,000.
- I. Attorney fees and costs as allowed by law.
- J. For other and further relief as the Court may deem just and proper.

Dated: July 11, 2005

Plaintiff,

William Silverstein

VERIFICATION

The undersigned, for himself, declares:

I am the 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.

Dated: July 11, 2005

By _____
William Silverstein

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