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INFINITE MONKEYS & CO. LLC

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA (UNLIMITED JURISDICTION)**

11 INFINITE MONKEYS & CO. LLC, a
California limited liability company,

12 Plaintiff,

13 vs.

14 OPTINREALBIG.COM, LLC, a Nevada
15 limited liability company,
16 SCOTT ALLEN RICHTER, an individual,
17 MEDIA GOLD MINE, INC., a Nevada
18 corporation,
19 REALBIGCASH, INC., a Nevada
20 corporation,
21 NOVA POINTE, LLC, a California limited
22 liability company,
23 PETCARERX, INC., a New York
corporation,
NATIONAL ASSOCIATION CREDIT
SERVICES, INC., a Florida corporation,
DEBTERASER, LLC, a California limited
liability company, and
DOES 1-175,

24 Defendants.

Case No.: 1-05-CV-039919

**VERIFIED COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

1. **California Restrictions On Unsolicited Commercial Email Advertisers (Cal. Bus. & Prof § 17529.5(a)(2))**
2. **California Restrictions On Unsolicited Commercial Email Advertisers (Cal. Bus. & Prof § 17529.5(a)(3))**
3. **California Restrictions On Unsolicited Commercial Email Advertisers (Cal. Bus. & Prof § 17529.4(b))**
4. **Trespass To Chattel**
5. **Unfair Business Practices Act (Cal. Bus. & Prof. § 17200)**
6. **Unfair Advertising Practices Act (Cal. Bus. & Prof. § 17500)**

25 PLAINTIFF ALLEGES AS FOLLOWS:

1 1. Plaintiff INFINITE MONKEYS & CO. LLC is a California limited liability company,
2 conducting business in Roseville, California, in the County of Placer.

3 2. Plaintiff INFINITE MONKEYS & CO. LLC was preceded by INFINITE MONKEYS
4 & CO., a sole proprietorship, and sole proprietor Ronal F. Guilmette assigned all causes of action
5 relating to receipt of commercial email from INFINITE MONKEYS & CO. to Plaintiff
6 INFINITE MONKEYS & CO. LLC.

7 3. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto
8 Defendant OPTINREALBIG.COM, LLC is and was a limited liability corporation with offices
9 in Westminster, Colorado. Plaintiff is informed and believes and thereon alleges that Defendant
10 OPTINREALBIG.COM, LLC has used a postal address of 1333 W 120th Avenue, Suite 101,
11 WESTMINSTER, CO 80234.

12 4. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto,
13 Defendant SCOTT ALLEN RICHTER, is now, and was at all times relevant herein, an
14 individual living in the State of Colorado, and that he is now, and was at all times relevant
15 herein, directly or indirectly, the majority shareholder in, and Chief Operating Officer of
16 Defendants OPTINREALBIG.COM, LLC, MEDIA GOLD MINE, INC., and REALBIGCASH,
17 INC.

18 5. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto
19 Defendant MEDIA GOLD MINE, INC, is and was a corporation duly organized and recognized
20 under the laws of the State of Nevada. Plaintiff is informed and believes and thereon alleges that
21 Defendant MEDIA GOLD MINE, INC. has used a postal address of 311 West Third Street,
22 Carson City, NV, 89703.
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1 6. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto
2 Defendant REALBIGCASH, INC., is and was a corporation duly organized and recognized
3 under the laws of the State of Nevada. Plaintiff is informed and believes and thereon alleges that
4 Defendant REALBIGCASH, INC. has used a postal address of 311 West Third Street, Suite C,
5 Carson City, NV, 89703.

6 7. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto
7 Defendant NOVA POINTE, LLC is and was a limited liability company with offices in Ontario,
8 California. Plaintiff is informed and believes and thereon alleges that Defendant NOVA
9 POINTE, LLC has used a postal address at 2060 E Francis Street, Ontario, CA 91761.

10 8. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto
11 Defendant PETCARERX, INC, is and was a corporation duly organized and recognized under
12 the laws of the State of New York with principal offices in Merrick, New York. Plaintiff is
13 informed and believes and thereon alleges that PETCARERX INC. has used a postal address at
14 2936 Judith Drive, Merrick, New York 11566.

15 9. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto
16 Defendant NATIONAL ASSOCIATION CREDIT SERVICES, INC., is and was a corporation
17 duly organized and recognized under the laws of the State of Florida with a principal place of
18 business in Clearwater, Florida. Plaintiff is informed and believes and thereon alleges that
19 Defendant NATIONAL ASSOCIATION CREDIT SERVICES, INC. has used a postal address
20 of 2841 Executive Drive, Suite 120, Clearwater, FL, 33762.

21 10. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto
22 Defendant DEBTERASER, LLC is and was a limited liability company with offices in Ojai,
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1 California. Plaintiff is informed and believes and thereon alleges that Defendant NOVA
2 POINTE, LLC has used a postal address of 402 W Ojai Avenue, Ste 444, Ojai, CA 93023.

3 11. Plaintiff is informed and believes and thereon alleges that defendants REALBIGCASH,
4 INC., NOVA POINTE, LLC, PETCARERX, INC., NATIONAL ASSOCIATION CREDIT
5 SERVICES, INC. and DEBTASER, LLC are all advertising customers of Defendant
6 OPTINREALBIG.COM, LLC, either directly or through one or more intermediaries.

7 12. Plaintiff does not know the true names or legal capacities of the Defendants sued herein
8 as DOES 1 through 175, inclusive, and therefore sues said Defendants by such fictitious names.

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

13 13. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto,
14 Defendants OPTINREALBIG.COM, LLC, SCOTT ALLEN RICHTER, and MEDIA GOLD
15 MINE, INC. were the direct or indirect agents, servants, and employees of Defendants
16 REALBIGCASH, INC., NOVA POINTE, LLC, PETCARERX, INC., NATIONAL
17 ASSOCIATION CREDIT SERVICES, INC., and DEBTASER, LLC, and in doing the things
18 hereinafter mentioned were acting within the course and scope of their authority as agents,
19 servants, and employees with the permission and consent of Defendants REALBIGCASH, INC.,
20 NOVA POINTE, LLC, PETCARERX, INC., NATIONAL ASSOCIATION CREDIT
21 SERVICES, INC., and DEBTASER, LLC.
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1 14. Plaintiff is informed and believes and thereon alleges that at the times herein mentioned
2 Defendants agreed to, and did, take specific actions for the purpose of deriving commercial profit
3 from unlawful activities.

4 15. Plaintiff is informed and believes and hereon alleges that each Defendant knew that
5 Defendant OPTINREALBIG.COM, LLC was and is in the business of sending large amounts of
6 email advertising.

7 16. Plaintiff is informed and believes and thereon alleges that each Defendant either knew
8 or consciously avoided knowing that certain state laws exist which regulate email advertising.

9 17. Plaintiff is informed and believes and thereon alleges that each Defendant either knew
10 or consciously avoided knowing that Defendant OPTINREALBIG.COM, LLC has violated state
11 laws which regulate email advertising.

12 18. Plaintiff owns several computers with Internet connections capable of receiving email at
13 many email addresses.

14 19. Plaintiff is informed and believes and thereon alleges that at least since February 6,
15 2005, Defendants sent, or caused to be sent, deceptive and misleading advertising by means of
16 Internet email to the email addresses of Plaintiff and Plaintiff's predecessor, Infinite Monkeys &
17 Co., a sole proprietorship.

18 20. Examples of Defendants' deceptive and misleading advertising include, but are not
19 limited to: use of multiple domain names and Internet protocol addresses, as discussed *infra*, and
20 misleading subject lines such as: "Guilt-Free Eating -- Try it FREE", "You are approved for a
21 NEW Computer and 10,000 USD", "What plasma TV would you choose?", "Are they talking
22 behind your back, Friend?", "Ever wondered what they're saying?", "Ronald, your credit card
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1 debt legally cancelled!", "JANET ! -- Here's Money You Never Knew You Had.", "Claim Money
2 You Never Knew You Had.", and "Authorization for #32-179932."

3 21. Plaintiff is informed and believes and thereon alleges that the term "email header"
4 includes the sender email address and domain name (and any other information purporting to
5 identify the person initiating the message,) subject line, recipient name and email address, as
6 well as email envelope information and "Received:" headers showing the sending Internet
7 protocol addresses and transfer/receipt date/time stamps.

8 22. Plaintiff is informed and believes and thereon alleges that Defendants could have easily
9 arranged to send all of their unsolicited commercial email using a single domain name and a
10 small range of IP addresses.

11 23. Plaintiff is informed and believes and thereon alleges that hundreds of thousands of
12 individuals, corporations, and other organizations use Internet services and successfully pursue a
13 wide variety of business, pleasure, non-profit, and academic pursuits on a daily basis while never
14 availing themselves of a second, third, or fourth domain name or IP address, let alone the much
15 larger number of different domain names and IP addresses that Defendants used to send their
16 unsolicited commercial email.

17 24. "An ISP [Internet Service Provider] may block a message because... an IP [Internet
18 Protocol] address or domain name is associated with the sending of high volumes of spam."
19 Federal Trade Commission, *Effectiveness and Enforcement of the CAN-SPAM Act: A Report to*
20 *Congress* 12 (December 2005). Thus, Plaintiff is informed and believes and thereon alleges that
21 if Defendants sent all their unsolicited commercial email from a single domain name and IP
22 address and each represented itself as the single entity that it really is, then then ISPs, small and
23 large businesses, academic institutions, non-profit organizations, and government offices and
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1 installations would be able to easily, correctly, accurately, and automatically identify the Internet
2 sources of Defendants' commercial email messages, and to block or reject said messages,
3 according to the tastes, preferences, and needs of the local email user population.

4 25. Plaintiff is informed and believes and thereon alleges that the sole reason that
5 Defendants use multiple domain names and IP addresses to send their unsolicited commercial
6 email is to deceptively misrepresent the actual (single) source of all such unsolicited commercial
7 email so as to deceive both the staffs and mail servers of ISPs, small and large businesses,
8 academic institutions, non-profit organizations, and government offices and installations,
9 together with any e-mail filters that these entities may use.; i.e., Defendants essentially create
10 multiple identities, as represented by the multiple domain names and IP addresses, in order to
11 "spread out" the total volume of unsolicited commercial email and reduce the volume sent via
12 *each* domain name and IP address, a strategy deliberately calculated to deceive all or most of the
13 recipients of Defendants commercial email advertising into *not* blocking Defendants' unsolicited
14 commercial email.
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16 26. Plaintiff and Plaintiff's predecessor received the vast majority of the commercial email
17 advertisements through servers located within the County of Santa Clara.

18 27. Neither Plaintiff nor Plaintiff's predecessor has ever had any existing business or
19 personal relationship with any Defendant, and and neither Plaintiff nor Plaintiff's predecessor
20 ever requested nor consented to receive commercial email advertisements from Defendants.
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22 28. Plaintiff is informed and believes and thereon alleges that Defendants conduct and have
23 conducted business in California by selling or offering for sale consumer goods or services.

24 29. Plaintiff received Twenty Seven Thousand Four Hundred (27,400) commercial email
25 advertisements that advertised the products and/or services and/or Internet web sites of

1 Defendants. Plaintiff is informed and believes and thereon alleges that the aforementioned email
2 advertisements were all sent either by or at the behest of Defendant OPTINREALBIG.COM,
3 LLC, or by or at the behest of Defendant OPTINREALBIG.COM's various "affiliates" while
4 operating in their capacities as agents of OPTINREALBIG.COM, and/or by or the behest of the
5 other Defendants named herein.

6 30. Plaintiff and Plaintiff's predecessor received and stored the commercial email
7 advertisements described in Paragraph 29, *supra*, in or on computer equipment located in
8 California.

9 31. Of the email messages described in paragraph 29, *supra*, Five Thousand Two Hundred
10 (5,200) advertised the products and/or services and/or Internet web sites of
11 OPTINREALBIG.COM, LLC.

12 32. Of the email messages described in paragraph 29, *supra*, One Thousand Five Hundred
13 (1,500) advertised the products and/or services and/or Internet web sites of REALBIGCASH,
14 INC.

15 33. Of the email messages described in paragraph 29, *supra*, One Thousand Four Hundred
16 (1,400) advertised the products and/or services and/or Internet web sites of NOVA POINTE,
17 LLC.

18 34. Of the email messages described in paragraph 29, *supra*, Sixteen Thousand Two
19 Hundred (16,200) advertised the products and/or services and/or Internet web sites of
20 PETCARERX, INC.

21 35. Of the email messages described in paragraph 29, *supra*, One Thousand Three Hundred
22 (1,300) advertised the products and/or services and/or Internet web sites of NATIONAL
23 ASSOCIATION CREDIT SERVICES, INC.
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1 36. Of the email messages described in paragraph 29, *supra*, One Thousand Eight Hundred
2 (1,800) advertised the products and/or services and/or Internet web sites of DEBTASER,
3 LLC.

4 37. The email envelope information attached to many or all of the relevant email messages
5 materially misrepresented the source of the message.

6 38. Plaintiff is informed and believes and thereon alleges that Defendant
7 OPTINREALBIG.COM, LLC either directly or via its various partners, agents, and affiliates,
8 has used at least Fifty (50) separate and distinct "second level" Internet domain names when
9 advertising products and/or services and/or Internet web sites.

10 39. Plaintiff is informed and believes and thereon alleges that Defendant REALBIGCASH,
11 INC., either directly or via its various partners, agents, and affiliates, has used at least Twenty
12 Five (25) separate and distinct "second level" Internet domain names when advertising products
13 and/or services and/or Internet web sites.

14 40. Plaintiff is informed and believes and thereon alleges that Defendant NOVA POINTE,
15 LLC either directly or via its various partners, agents, and affiliates, has used at least One
16 Hundred (100) separate and distinct "second level" Internet domain names when advertising
17 products and/or services and/or Internet web sites.

18 41. Plaintiff is informed and believes and thereon alleges that Defendant PETCARERX,
19 INC. either directly or via its various partners, agents, and affiliates, has used at least Fifteen
20 (15) separate and distinct "second level" Internet domain names when advertising products
21 and/or services and/or Internet web sites.

22 42. Plaintiff is informed and believes and thereon alleges that Defendant NATIONAL
23 ASSOCIATION CREDIT SERVICES, INC., either directly or via its various partners, agents,
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1 and affiliates, has used at least Twenty Five (25) separate and distinct "second level" Internet
2 domain names when advertising products and/or services and/or Internet web sites.

3 43. Plaintiff is informed and believes and thereon alleges that Defendant DEBTERASER
4 LLC., either directly or via its various partners, agents, and affiliates, has used at least Sixty (60)
5 separate and distinct "second level" Internet domain names when advertising products, services,
6 or Internet web sites.

7 44. Plaintiff is informed and believes and thereon alleges that the Defendants' sole purpose
8 in using multiple "second level" Internet domain names is and was to circumvent email filters,
9 both personal recipient filters and ISP server level filters.

10 45. Plaintiff is informed and believes and thereon alleges that the principal purpose of the
11 aforementioned commercial email advertising messages was to promote, directly or indirectly,
12 the sale or other distribution of goods or services to recipients of the messages.

13 46. Plaintiff is informed and believes and thereon alleges that Defendants owned and/or
14 operated and/or controlled, directly or indirectly, the stream of commercial advantage that
15 flowed from the aforementioned email advertising.

16 47. Plaintiff is informed and believes and thereon alleges that Defendants actually profit
17 and continue to profit from their wrongful conduct.

18 48. Plaintiff is informed and believes, and thereon alleges that at some time or times during
19 2005 or 2006, Defendants SCOTT ALLEN RICHTER and MEDIA GOLD MINE, INC. were
20 together the sole owners of Defendant OPTINREALBIG.COM, LLC.

21 49. Plaintiff is informed and believes, and thereon alleges that at some time or times during
22 2005 or 2006, Defendant SCOTT ALLEN RICHTER was the sole owner of Defendant MEDIA
23 GOLD MINE, INC.
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1 50. Plaintiff is informed and believes, and thereon alleges that at some time or times during
2 2005 or 2006, Defendant SCOTT ALLEN RICHTER was the sole owner of Defendant
3 REALBIGCASH, INC.

4 51. Plaintiff is informed and believes, and thereon alleges that at some time or times during
5 2005 or 2006, Defendant REALBIGCASH, INC. was a client or customer of Defendant
6 OPTINREALBIG.COM, LLC.

7 52. Plaintiff is informed and believes, and thereon alleges that at some time or times during
8 2005 or 2006, Defendant REALBIGCASH, INC. paid money or provided other compensation to
9 Defendant OPTINREALBIG.COM, LLC in consideration for one or more of (a) commercial
10 advertising services, or (b) the generation or aquisition of of new orders or new customers or
11 activities leading thereto, or (c) generation of World Wide Web "clicks" or activities leading
12 thereto, or (d) generation of World Wide Web "impressions" or activities leading thereto.

13 53. Plaintiff is informed and believes, and thereon alleges that at some time or times during
14 2005 or 2006, Defendant REALBIGCASH, INC. used some or all of the Internet email servers
15 of Defendant OPTINREALBIG.COM, LLC while sending commercial email advertising
16 messages.
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18 54. Plaintiff is informed and believes, and thereon alleges that at some time or times during
19 2005 or 2006, Defendant REALBIGCASH, INC. used some or all of the Internet domain names
20 of Defendant OPTINREALBIG.COM, LLC while sending commercial email advertising
21 messages.
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23 55. Plaintiff is informed and believes, and thereon alleges that at some time or times during
24 2005 or 2006, Defendant REALBIGCASH, INC. used some or all of the Internet bandwidth of
25 Defendant OPTINREALBIG.COM, LLC while sending commercial email advertising messages.

1 56. Plaintiff is informed and believes, and thereon alleges that at some time or times during
2 2005 or 2006, Defendant NOVA POINTE, LLC was a client or customer of Defendant
3 OPTINREALBIG.COM, LLC.

4 57. Plaintiff is informed and believes, and thereon alleges that at some time or times during
5 2005 or 2006, Defendant NOVA POINTE, LLC paid money or provided other compensation to
6 Defendant OPTINREALBIG.COM, LLC in consideration for one or more of (a) commercial
7 advertising services, or (b) the generation or acquisition of of new orders or new customers or
8 activities leading thereto, or (c) generation of World Wide Web "clicks" or activities leading
9 thereto, or (d) generation of World Wide Web "impressions" or activities leading thereto.
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11 58. Plaintiff is informed and believes, and thereon alleges that at some time or times during
12 2005 or 2006, Defendant PETCARERX, INC. paid money or provided other compensation to
13 Defendant OPTINREALBIG.COM, LLC in consideration for one or more of (a) commercial
14 advertising services, or (b) the generation or aquisition of of new orders or new customers or
15 activities leading thereto, or (c) generation of World Wide Web "clicks" or activities leading
16 thereto, or (d) generation of World Wide Web "impressions" or activities leading thereto.

17 59. Plaintiff is informed and believes, and thereon alleges that at some time or times during
18 2005 or 2006, Defendant PETCARERX, INC. was a client or customer of Defendant
19 OPTINREALBIG.COM, LLC.
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21 60. Plaintiff is informed and believes, and thereon alleges that at some time or times during
22 2005 or 2006, Defendant NATIONAL ASSOCIATION CREDIT SERVICES, INC. was a client
23 or customer of Defendant OPTINREALBIG.COM, LLC.

24 61. Plaintiff is informed and believes, and thereon alleges that at some time or times during
25 2005 or 2006, Defendant NATIONAL ASSOCIATION CREDIT SERVICES, INC. paid money

1 or provided other compensation to Defendant OPTINREALBIG.COM, LLC in consideration for
2 one or more of (a) commercial advertising services, or (b) the generation or aquisition of of new
3 orders or new customers or activities leading thereto, or (c) generation of World Wide Web
4 "clicks" or activities leading thereto, or (d) generation of World Wide Web "impressions" or
5 activities leading thereto.

6 62. Plaintiff is informed and believes, and thereon alleges that at some time or times during
7 2005 or 2006, Defendant DEBTERASER, LLC was a client or customer of Defendant
8 OPTINREALBIG.COM, LLC.

9 63. Plaintiff is informed and believes, and thereon alleges that at some time or times during
10 2005 or 2006, Defendant DEBTERASER, LLC paid money or provided other compensation to
11 Defendant OPTINREALBIG.COM, LLC in consideration for one or more of (a) commercial
12 advertising services, or (b) the generation or aquisition of of new orders or new customers or
13 activities leading thereto, or (c) generation of World Wide Web "clicks" or activities leading
14 thereto, or (d) generation of World Wide Web "impressions" or activities leading
15 thereto.

16 64. Plaintiff is informed and believes, and thereon alleges that at some time or times during
17 2005 or 2006, V&R Media, Inc., a California corporation, was an affiliate of Defendant
18 OPTINREALBIG.COM, LLC and/or its "CPA Empire" division or subsidiary.

19 65. Plaintiff is informed and believes, and thereon alleges that at some time or times during
20 2005 or 2006, V&R Media, Inc. was paid money or provided other compensation by Defendant
21 OPTINREALBIG.COM, LLC in consideration for one or more of (a) commercial advertising
22 services, or (b) the generation or acquisition of new orders or new customers or activities leading
23 thereto, or (c) generation of World Wide Web "clicks" or activities leading thereto, or (d)
24 generation of World Wide Web "impressions" or activities leading thereto.
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1 66. Plaintiff is informed and believes, and thereon alleges that at some time or times during
2 2005 or 2006, V&R Media, Inc. sent or caused to be sent commercial email advertising messages
3 which advertised the goods, services, or web sites of Defendant NOVA POINTE, LLC.

4 67. Plaintiff is informed and believes, and thereon alleges that at some time or times during
5 2005 or 2006, V&R Media, Inc. sent or caused to be sent commercial email advertising messages
6 which advertised the goods, services, or web sites of Defendant PETCARERX, INC.

7 68. Plaintiff is informed and believes, and thereon alleges that at sometime or times during
8 2005 or 2006, Dustin C. Parker, an individual and resident of Colorado, was an affiliate of
9 Defendant OPTINREALBIG.COM, LLC and/or its "CPA Empire" division or subsidiary.

10 69. Plaintiff is informed and believes, and thereon alleges that at some time or times during
11 2005 or 2006, Dustin C. Parker was paid money or provided other compensation by Defendant
12 OPTINREALBIG.COM, LLC in consideration for one or more of (a) commercial advertising
13 services, or (b) the generation or acquisition of new orders or new customers or activities leading
14 thereto, or (c) generation of World Wide Web "clicks" or activities leading thereto, or (d)
15 generation of World Wide Web "impressions" or activities leading thereto.

16 70. Plaintiff is informed and believes, and thereon alleges that at some time or times during
17 2005 or 2006, Dustin C. Parker used some or all of the Internet email servers of Defendant
18 OPTINREALBIG.COM, LLC while sending commercial email advertising messages.

19 71. Plaintiff is informed and believes, and thereon alleges that at some time or times during
20 2005 or 2006, Dustin C. Parker used some or all of the Internet domain names of Defendant
21 OPTINREALBIG.COM, LLC while sending commercial email advertising messages.
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1 72. Plaintiff is informed and believes, and thereon alleges that at some time or times during
2 2005 or 2006, Dustin C. Parker used some or all of the Internet bandwidth of Defendant
3 OPTINREALBIG.COM, LLC while sending commercial email advertising messages.

4 73. Plaintiff is informed and believes, and thereon alleges that at some time or times during
5 2005 or 2006, Dustin C. Parker sent or caused to be sent commercial email advertising messages
6 which advertised the goods, services, or web sites of Defendant OPTINREALBIG.COM, LLC.

7 74. Plaintiff is informed and believes, and thereon alleges that at some time or times during
8 2005 or 2006, Advertrax, LLC, a Georgia Limited Liability Company, was an affiliate of
9 Defendant OPTINREALBIG.COM, LLC an/or its "CPA Empire" division or subsidiary.

10 75. Plaintiff is informed and believes, and thereon alleges that at some time or times during
11 2005 or 2006, Advertrax, LLC was paid money or provided other compensation by Defendant
12 OPTINREALBIG.COM, LLC in consideration for one or more of (a) commercial advertising
13 services, or (b) the generation or acquisition of new orders or new customers or activities leading
14 thereto, or (c) generation of World Wide Web "clicks" or activities leading thereto, or (d)
15 generation of World Wide Web "impressions" or activities leading thereto.

16 76. Plaintiff is informed and believes, and thereon alleges that at some time or times during
17 2005 or 2006, Advertrax, LLC sent or caused to be sent commercial email advertising messages
18 which advertised the goods, services, or web sites of Defendant OPTINREALBIG.COM, LLC.

19 77. Plaintiff is informed and believes, and thereon alleges that at some time or times during
20 2005 or 2006, Advertrax, LLC sent or caused to be sent commercial email advertising messages
21 which advertised the goods, services, or web sites of Defendant NOVA POINTE, LLC.

22 78. Plaintiff is informed and believes, and thereon alleges that at some time or times during
23 2005 or 2006, Advertrax, LLC sent or caused to be sent commercial email advertising messages
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1 which advertised the goods, services, or web sites of Defendant NATIONAL ASSOCIATION
2 CREDIT SERVICES, INC.

3 79. Plaintiff is informed and believes, and thereon alleges that at some time or times during
4 2005 or 2006, Advertrax, LLC sent or caused to be sent commercial email advertising messages
5 which advertised the goods, services, or web sites of Defendant DEBT ERASER, LLC.

6 80. Plaintiff is informed and believes, and thereon alleges that at some time or times during
7 2005 or 2006, MRC Marketing, Inc., a Minnesota corporation, was an affiliate of Defendant
8 OPTINREALBIG.COM, LLC and/or its "CPA Empire" division or subsidiary.

9 81. Plaintiff is informed and believes, and thereon alleges that at some time or times during
10 2005 or 2006, MRC Marketing, Inc., was paid money or provided other compensation by
11 Defendant OPTINREALBIG.COM, LLC in consideration for one or more of (a) commercial
12 advertising services, or (b) the generation or acquisition of new orders or new customers or
13 activities leading thereto, or (c) generation of World Wide Web "clicks" or activities leading
14 thereto, or (d) generation of World Wide Web "impressions" or activities leading thereto.

15 82. Plaintiff is informed and believes, and thereon alleges that at some time or times during
16 2005 or 2006, MRC Marketing, Inc. sent or caused to be sent commercial email advertising
17 messages which advertised the goods, services, or web sites of Defendant
18 OPTINREALBIG.COM, LLC.

19 83. Plaintiff is informed and believes, and thereon alleges that at some time or times during
20 2005 or 2006, MRC Marketing, Inc. sent or caused to be sent commercial email advertising
21 messages which advertised the goods, services, or web sites of Defendant NOVA POINTE,
22 LLC.
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1 84. Plaintiff is informed and believes, and thereon alleges that at some time or times during
2 2005 or 2006, MRC Marketing, Inc. sent or caused to be sent commercial email advertising
3 messages which advertised the goods, services, or web sites of Defendant NATIONAL
4 ASSOCIATION CREDIT SERVICES, INC.

5 85. Plaintiff is informed and believes, and thereon alleges that at some time or times during
6 2005 or 2006, MRC Marketing, Inc. sent or caused to be sent commercial email advertising
7 messages which advertised the goods, services, or web sites of Defendant DEBT ERASER, LLC.

8 86. Plaintiff is informed and believes, and thereon alleges that at some time or times during
9 2005 or 2006, Imperium Strategies Inc., a New York corporation, was an affiliate of Defendant
10 OPTINREALBIG.COM, LLC, an/or its "CPA Empire" division or subsidiary.

11 87. Plaintiff is informed and believes, and thereon alleges that at some time or times during
12 2005 or 2006, Imperium Strategies Inc. was paid money or provided other compensation by
13 Defendant OPTINREALBIG.COM, LLC in consideration for one or more of (a) commercial
14 advertising services, or (b) the generation or acquisition of new orders or new customers or
15 activities leading thereto, or (c) generation of World Wide Web "clicks" or activities leading
16 thereto, or (d) generation of World Wide Web "impressions" or activities leading thereto.

17 88. Plaintiff is informed and believes, and thereon alleges that at some time or times during
18 2005 or 2006, Imperium Strategies, Inc. sent or caused to be sent commercial email advertising
19 messages which advertised the goods, services, or web sites of Defendant PETCARERX, INC.

20 89. Plaintiff is informed and believes, and thereon alleges that at some time or times during
21 2005 or 2006, Adspyre, Ltd., a New York corporation, was an affiliate of Defendant
22 OPTINREALBIG.COM, LLC, an/or its "CPA Empire" division or subsidiary.
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1 90. Plaintiff is informed and believes, and thereon alleges that at some time or times during
2 2005 or 2006, Adspyre, Ltd. was paid money or provided other compensation by Defendant
3 OPTINREALBIG.COM, LLC in consideration for one or more of (a) commercial advertising
4 services, or (b) the generation or acquisition of of new orders or new customers or activities
5 leading thereto, or (c) generation of World Wide Web "clicks" or activities leading thereto, or (d)
6 generation of World Wide Web "impressions" or activities leading thereto.

7 91. Plaintiff is informed and believes, and thereon alleges that at some time or times during
8 2005 or 2006, Adspyre, Ltd. used some or all of the Internet email servers of Defendant
9 OPTINREALBIG.COM, LLC while sending commercial email advertising messages.

10 92. Plaintiff is informed and believes, and thereon alleges that at some time or times during
11 2005 or 2006, Adspyre, Ltd. used some or all of the Internet domain names of Defendant
12 OPTINREALBIG.COM, LLC while sending commercial email advertising messages.

13 93. Plaintiff is informed and believes, and thereon alleges that at some time or times during
14 2005 or 2006, Adspyre, Ltd. used some or all of the Internet bandwidth of Defendant
15 OPTINREALBIG.COM, LLC while sending commercial email advertising messages.

16 94. Plaintiff is informed and believes, and thereon alleges that at some time or times during
17 2005 or 2006, Adspyre, Ltd. sent or caused to be sent commercial email advertising messages
18 which advertised the goods, services, or web sites of Defendant OPTINREALBIG.COM, LLC.
19 commercial email advertising messages.
20

21 95. Plaintiff is informed and believes, and thereon alleges that at some time or times during
22 2005 or 2006, Adspyre, Ltd. sent or caused to be sent commercial email advertising messages
23 which advertised the goods, services, or web sites of Defendant NOVA POINTE, LLC.
24
25

1 96. Plaintiff is informed and believes, and thereon alleges that at some time or times during
2 2005 or 2006, Web Clients, Inc., a Delaware corporation, was an affiliate of Defendant
3 OPTINREALBIG.COM, LLC, and/or its "CPA Empire" division or subsidiary.

4 97. Plaintiff is informed and believes, and thereon alleges that at some time or times during
5 2005 or 2006, Web Clients, Inc., was paid money or provided other compensation by Defendant
6 OPTINREALBIG.COM, LLC in consideration for one or more of (a) commercial advertising
7 services, or (b) the generation or acquisition of new orders or new customers or activities leading
8 thereto, or (c) generation of World Wide Web "clicks" or activities leading thereto, or (d)
9 generation of World Wide Web "impressions" or activities leading thereto.
10

11 98. Plaintiff is informed and believes, and thereon alleges that at some time or times during
12 2005 or 2006, Web Clients, Inc. used some or all of the Internet email servers of Defendant
13 OPTINREALBIG.COM, LLC while sending commercial email advertising messages.

14 99. Plaintiff is informed and believes, and thereon alleges that at some time or times during
15 2005 or 2006, Web Clients, Inc. used some or all of the Internet domain names of Defendant
16 OPTINREALBIG.COM, LLC while sending commercial email advertising messages.

17 100. Plaintiff is informed and believes, and thereon alleges that at some time or times during
18 2005 or 2006, Web Clients, Inc. used some or all of the Internet bandwidth of Defendant
19 OPTINREALBIG.COM, LLC while sending commercial email advertising messages.
20

21 101. Plaintiff is informed and believes, and thereon alleges that at some time or times during
22 2005 or 2006, Web Clients, Inc. sent or caused to be sent commercial email advertising messages
23 which advertised the goods, services, or web sites of Defendant OPTINREALBIG.COM, LLC.
24
25

1 102. Plaintiff is informed and believes, and thereon alleges that at some time or times during
2 2005 or 2006, Peake Digital, Inc., a California corporation, was an affiliate of Defendant
3 OPTINREALBIG.COM, LLC, and/or its "CPA Empire" division or subsidiary.

4 103. Plaintiff is informed and believes, and thereon alleges that at some time or times during
5 2005 or 2006, Peake Digital, Inc., was paid money or provided other compensation by Defendant
6 OPTINREALBIG.COM, LLC in consideration for one or more of (a) commercial advertising
7 services, or (b) the generation or acquisition of new orders or new customers or activities leading
8 thereto, or (c) generation of World Wide Web "clicks" or activities leading thereto, or (d)
9 generation of World Wide Web "impressions" or activities leading thereto.
10

11 104. Plaintiff is informed and believes, and thereon alleges that at some time or times during
12 2005 or 2006, Peake Digital, Inc. sent or caused to be sent commercial email advertising
13 messages which advertised the goods, services, or web sites of Defendant
14 OPTINREALBIG.COM, LLC.

15 105. Plaintiff is informed and believes, and thereon alleges that at some time or times during
16 2005 or 2006, Peake Digital, Inc. sent or caused to be sent commercial email advertising
17 messages which advertised the goods, services, or web sites of Defendant NATIONAL
18 ASSOCIATION CREDIT SERVICES, INC.

19 106. Plaintiff has licensed software which performs network security vulnerability scanning.

20 107. Plaintiff suffered damages as a result of the commercial email advertising described
21 above.
22

23 108. Plaintiff has spent time, effort and resources handling the commercial email advertising
24 described above.
25

1 109. Plaintiff has been directly damaged by the commercial email advertising described
2 above, through increased load on its email servers.

3 110. Plaintiff is informed and believes and thereon alleges that Defendants will continue to
4 advertise in this wrongful and unlawful fashion unless otherwise enjoined by this Court. This
5 Court has jurisdiction to issue a permanent injunction because restraint is necessary to prevent a
6 multiplicity of judicial proceedings.

7
8 **FIRST CAUSE OF ACTION**
9 **[Violation of California Business & Professions Code § 17529.5(a)(2)]**
10 **(Against All Defendants)**

11 111. Plaintiff hereby incorporates by reference Paragraphs 1 through 114, inclusive, as if the
12 same were fully set forth herein.

13 112. Plaintiff is informed and believes and thereon alleges that Defendants sent or caused to
14 be sent commercial email advertising to California email addresses containing, or accompanied
15 by, materially misrepresented header information.

16 113. Plaintiff is informed and believes and thereon alleges that Defendants' commercial
17 email advertising messages contained or was accompanied by falsified, misrepresented, or
18 forged header information not including truthful information used by Defendants who have been
19 lawfully authorized by the advertiser to use that information.

20 114. Plaintiff is informed and believes and thereon alleges that Defendants *did not* establish
21 and implement, with due care, practices and procedures reasonably designed to effectively
22 prevent unsolicited commercial e-mail advertisements that are in violation of section 17529.5 of
23 the California Business and Professions Code.

24 115. Plaintiff is informed and believes and thereon alleges that Defendants profited from
25 their wrongful conduct.

1 116. Plaintiff is informed and believes and thereon alleges that Plaintiff suffered damages as
2 a result of Defendants' wrongful conduct.

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

5 **SECOND CAUSE OF ACTION**

6 **[Violation of California Business & Professions Code § 17529.5(a)(3)]**
7 **(Against Defendants OPTINREALBIG.COM, LLC, SCOTT ALLEN RICHTER,**
8 **REALBIGCASH, INC., NOVA POINTE, LLC, NATIONAL ASSOCIATION CREDIT**
9 **SERVICES, INC., DEBTASER, LLC, and DOES 1-175)**

10 117. Plaintiff hereby incorporates by reference Paragraphs 1 through 114, inclusive, as if the
11 same were fully set forth herein.

12 118. Plaintiff is informed and believes and thereon alleges that Defendants' commercial
13 email advertising messages contained subject lines intended to, and likely to, mislead recipients,
14 acting reasonably under the circumstances, about a material fact regarding the contents or subject
15 matter of the respective associated email messages.

16 119. Plaintiff is informed and believes and thereon alleges that Defendants profited from
17 their wrongful conduct.

18 120. Plaintiff is informed and believes and thereon alleges that Plaintiff suffered damages as
19 a result of Defendants' wrongful conduct.

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

22 **THIRD CAUSE OF ACTION**

23 **[Violation of California Business & Professions Code § 17529.4(b)]**
24 **(Against All Defendants)**

25 121. Plaintiff hereby incorporates by reference Paragraphs 1 through 114, inclusive, as if the
same were fully set forth herein.

1 122. Plaintiff is informed and believes and thereon alleges that Defendants used electronic
2 mail addresses obtained by using automated means based on a combination of names, letters, or
3 numbers to send or cause to be sent unsolicited commercial email advertising messages.

4 123. Plaintiff is informed and believes and thereon alleges that Defendants profited from
5 their wrongful conduct.

6 124. Plaintiff is informed and believes and thereon alleges that Plaintiff suffered damages as
7 a result of Defendants' wrongful conduct.

8
9 WHEREFORE, Plaintiff prays for judgment against all Defendants herein for damages as
set forth in the Prayer for relief.

10 **FOURTH CAUSE OF ACTION**
11 **[Trespass To Chattel]**
(Against Defendant All Defendants)

12 125. Plaintiff hereby incorporates by reference Paragraphs 1 through 114, inclusive, as if the
13 same were fully set forth herein.

14 126. Plaintiff owns computers that serve as Internet email servers.

15 127. Plaintiff is informed and believes and thereon alleges that Defendants interfered with
16 Plaintiff's ownership rights in the email servers by causing Plaintiff's computers to process a
17 massive amount of commercial email advertising.

18 128. Plaintiff is informed and believes and thereon alleges that Defendants' interference was
19 intentional.

20 129. Plaintiff is informed and believes and thereon alleges that Defendants' interference was
21 substantial in that it utilized more than One Hundred Twenty (120) megabytes of Plaintiff's
22 network bandwidth and disk storage space since February 6, 2005.

23 130. Plaintiff suffered damages in an amount to be proven at trial.

24
25 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
hereinafter set forth.

FIFTH CAUSE OF ACTION
[Unlawful Business Practices]
(Against All Defendants)

1
2
3
4 131. Plaintiff realleges and incorporates the allegations of paragraphs 1 through 130,
5 inclusive, as though fully set forth herein.

6 132. Plaintiff complains on behalf of the general public.

7 133. Plaintiff is informed and believes and thereon alleges that Defendants or their agents
8 caused the Internet email transmissions of commercial advertisements with misleading text in the
9 headers or body of the messages, or both, in an attempt to deceive and mislead recipients into
10 believing that the email was not unsolicited and so that the recipient would be more likely to read
11 the commercial advertisements.

12 134. Plaintiff is informed and believes and thereon alleges that Defendants or their agents
13 caused the Internet email transmissions of commercial email advertisements with deliberately
14 misrepresentative email envelope information attached, in an attempt to deceive and mislead
15 recipients, and/or their personal or corporate mail filters, as to the actual origin of the Internet
16 email transmissions.

17
18 135. Plaintiff is informed and believes and thereon alleges that Defendants or their agents
19 have registered multiple separate and distinct domain names as an integral part of an overall
20 scheme to materially misrepresent the source of the mass email transmissions.

21 136. Plaintiff is informed and believes and thereon alleges that Defendants or their agents
22 supplied to domain name registrars, when they registered their multiple Internet domain names,
23 materially inaccurate and misleading information.

24 137. Plaintiff is informed and believes and thereon alleges that Defendants' or their agents'
25 transmissions of Internet email advertisements were unlawful as violations of numerous statutes

1 and common law, including, but not limited to, California Business and Professions Code §§
2 17529.4, 17529.5, 17538.45 and 17910.

3 138. Plaintiff is informed and believes and thereon alleges that Defendants' or their agents'
4 Internet email transmissions were misleading advertising and members of the public were likely
5 to be deceived.

6 139. Plaintiff is informed and believes and thereon alleges that Defendants intended to
7 mislead recipients of email transmissions and profit thereby.

8 140. Plaintiff seeks relief as prayed herein.

9
10 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as hereinafter
set forth.

11 **SIXTH CAUSE OF ACTION**
12 **[Unlawful Advertising Practices]**
13 **(Against All Defendants)**

14 141. Plaintiff realleges and incorporates the allegations of paragraphs 1 through 130,
15 inclusive, as though fully set forth herein.

16 142. Plaintiff complains on behalf of the general public.

17 143. Plaintiff is informed and believes and thereon alleges that Defendants or their agents
18 caused the Internet email transmissions of commercial advertisements with misleading text in the
19 headers or body of the messages, or both, in an attempt to deceive recipients and mislead
20 recipients into believing that the email was not unsolicited and so that the recipient would be
21 more likely to read the commercial advertisements.

22 144. Plaintiff is informed and believes and thereon alleges that Defendants or their agents
23 caused the Internet email transmissions of commercial email advertisements with deliberately
24 misrepresentative email envelope information attached, in an attempt to deceive recipients and
25

1 mislead recipients, and/or their personal or corporate mail filters, as to the actual origin of the
2 Internet email transmissions.

3 145. Plaintiff is informed and believes and thereon alleges that Defendants or their agents
4 have registered multiple separate and distinct domain names as an integral part of an overall
5 scheme to materially misrepresent the source of their mass email transmissions.

6 146. Plaintiff is informed and believes and thereon alleges that Defendants or their agents
7 supplied to domain name registrars, when they registered their numerous Internet domain names,
8 materially inaccurate and misleading information.

9 147. Plaintiff is informed and believes and thereon alleges that Defendants' or their agents'
10 transmissions of Internet email advertisements were unlawful as violations of numerous statutes
11 and common law, including, but not limited to, California Business and Professions Code §§
12 17529.4, 17529.5, 17538.45 and 17910.

13 148. Plaintiff is informed and believes and thereon alleges that Defendants' or their agents'
14 Internet email transmissions were misleading advertising and members of the public were likely
15 to be deceived.

16 149. Plaintiff is informed and believes and thereon alleges that Defendants intended to
17 mislead recipients of their email transmissions and profit thereby.

18 150. Plaintiff seeks relief as prayed herein.

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

21 //

22 //

23 //

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays for judgment against Defendants as follows:

- a. An Order of this Court enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from sending commercial email advertisements from more than one second-level Internet domain name each;
- b. Statutory damages in the amount of One Thousand Dollars (\$1,000.00) per electronic mail advertisement that was received by Plaintiff or Plaintiff's predecessor and that was transmitted or caused to be transmitted in violation of California Business and Profession Code § 17529.5 by the Defendants;
- c. General damages in an amount to be determined at trial;
- d. Special damages in an amount to be determined at trial;
- e. Attorneys' fees and costs as allowed by law;
- f. Such other and further relief as the Court may deem just and proper.

WALTON & ROESS LLP

DATED: _____

BY: _____
TIMOTHY J. WALTON
Attorneys for Plaintiff

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VERIFICATION

The undersigned for himself declares:

I am managing member of INFINITE MONKEYS & CO. LLC, Plaintiff in the above-entitled action and was the owner of INFINITE MONKEYS & CO., a sole proprietorship which is the predecessor of INFINITE MONKEYS & CO. LLC. I am authorized to make this verification for and on behalf of Plaintiff, and I make this verification for that reason. I have read the forgoing complaint and know the contents thereof. With respect to the facts and causes of action alleged by Plaintiff, the same is true by my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

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

INFINITE MONKEYS & CO. LLC

DATED: _____

BY: _____
RONAL F. GUILMETTE