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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ROBERT TAULER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

RECORD PRESS, INC., a New York
domestic business corporation; and DOES
1 to 10, inclusive,

Defendants.

CASE NO.

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

(JURY TRIAL DEMANDED)

1 **NATURE OF ACTION**

2 1. Plaintiff Robert Tauler (“Plaintiff”) brings this Class Action Complaint for
3 damages, injunctive relief, and any other available legal or equitable remedies, due to the
4 illegal actions of Defendant Record Press, Inc. (“Defendant”) in knowingly and/or
5 willingly engaging in the unlawful practice of advertising in false and deceptive unsolicited
6 commercial e-mails (“spams”) in violation of California Business & Professions (“Bus. &
7 Prof.”) Code § 17529.5 (“Section 17529.5”).

8 2. In 2003, the California Legislature found that “[r]oughly 40 percent of all e-
9 mail traffic in the United States is comprised of unsolicited commercial e-mail
10 advertisements [] and industry experts predict that by the end of 2003 half of all e-mail
11 traffic will be comprised of spam.” Bus. & Prof. Code § 17529, subd. (a).

12 3. The California Legislature also found that spam e-mails do cause damage and
13 acknowledged the cost of spam in the United States in 2003: “According to Ferris Research
14 Inc., a San Francisco consulting group, spam will cost United States organizations more
15 than ten billion dollars (\$10,000,000,000) this year, including lost productivity and the
16 additional equipment, software, and manpower needed to combat the problem. California
17 is 12 percent of the United States population with an emphasis on technology business, and
18 it is therefore estimated that spam costs California organizations well over 1.2 billion
19 dollars (\$1,200,000,000).” *Id.*, subd. (d).

20 4. However, since the California Legislature declared its findings regarding the
21 cost of spam in 2003, the actual cost has increased dramatically. In 2012, for example, the
22 Journal of Economic Perspectives published an academic paper which estimated that e-
23 mail spam cost American businesses and consumers roughly \$20 billion annually. *See*
24 Rao, Justin M., and David H. Reiley. 2012. “*The Economics of Spam.*” Journal of
25 Economic Perspectives, 26 (3): 87–110.

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

1 6. Plaintiff brings this Complaint, individually and on behalf of the putative
2 Class, against Defendant for advertising in at least two unsolicited commercial e-mails¹
3 (i.e., “spams”) sent to Plaintiff’s California e-mail address beginning on or about August
4 15, 2024.

5 7. The spam e-mails sent by Defendant materially violated Bus. & Prof. Code §
6 17529.5, subd. (a)(3) because they contain subject lines that are likely to mislead a
7 recipient, acting reasonably under the circumstances, about a material fact regarding the
8 content or subject matter of the e-mail. *See, e.g., Balsam v. Trancos, Inc.*, 203 Cal.App.4th
9 1083, 1102–03 (2012) (California’s “anti-spam” legislation is not preempted by the federal
10 CAN-SPAM Act of 2003 where the communication is deceptive in nature). The spams
11 involve deception as to a material matter—the actual purpose of the e-mail (i.e., to
12 convince attorneys like Plaintiff to hire Defendant for its “superior appellate consulting,
13 printing, and litigation support,” *see* <https://recordpress.com/>).

14 8. Defendant sent each of its illegal spam e-mails to a California e-mail address.²

15 9. Plaintiff never gave “direct consent”³ as required by Bus. & Prof. Code §
16 17529.1, subd. (d) to receive commercial e-mail advertisements from, nor did he have a
17
18

19
20 ¹ “Unsolicited commercial e-mail advertisement” means that the recipient has not provided
21 direct consent to receive advertisements from the advertiser and does not have a preexisting
22 or current business relationship, as defined by subdivision (l), with the advertiser
23 promoting the lease, sale, rental, gift, offer or other disposition of any property, goods,
24 services, or extension of credit. *See* Bus. & Prof. Code § 17529.1, subd. (o)(1)–(2).

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

³ “Direct consent” means that the recipient has expressly consented to receive e-mail
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, subd. (d).

1 “preexisting or current business relationship”⁴ pursuant to Bus. & Prof. Code § 17529.1,
2 subd. (l), with Defendant.

3 10. Spam recipients are not required to allege or prove reliance or actual damages
4 to have standing. *See* Bus. & Prof. Code § 17529.5, subd. (b)(1)(A)(iii). Nevertheless,
5 Plaintiff did suffer damages by receiving the spams. *See, e.g.*, Bus. & Prof. Code § 17529,
6 subds. (d), (e), (g) & (h). However, Plaintiff elects to recover statutory damages only and
7 forego recovery of any actual damages. *See* Bus. & Prof. Code § 17529.5, subd. (b)(1)(B).

8 11. The unlawful elements of these spams represent willful acts of falsity and
9 deception, rather than clerical errors.

10 12. This Court should award Plaintiff and the members of the proposed Class
11 liquidated statutory damages against Defendant in the amount of \$1,000 per unlawful spam
12 e-mail, as authorized by Bus. & Prof. Code § 17529.5, subd. (b)(1)(B)(ii).

13 13. This Court should award Plaintiff attorneys’ fees pursuant to Bus. & Prof.
14 Code § 17529.5, subd. (b)(1)(C) (“The recipient, an electronic mail service provider, or the
15 Attorney General, if the prevailing plaintiff, may also recover reasonable attorney's fees
16 and costs.”).

17 **JURISDICTION AND VENUE**

18 14. This Court has subject matter jurisdiction over this action pursuant to the
19 Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because the total matter in
20 controversy exceeds \$5,000,000 and there are over 100 members of the proposed class.
21 Further, at least one member of the proposed class is a citizen of a State within the United
22 States and at least one defendant is the citizen or subject of a foreign state.

23 15. The Central District of California has specific personal jurisdiction over
24

25 _____
26 ⁴ “Preexisting or current business relationship,” as used in connection with the sending of
27 a commercial e-mail advertisement, means that the recipient has made an inquiry and has
28 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, subd. (l).

1 Defendant.

2 16. Specific jurisdiction over a non-resident defendant exists where: (1) “[t]he
3 non-resident defendant . . . purposefully direct[s] [it]s activities or consummate[s] some
4 transaction with the forum or resident thereof; or perform[s] some act by which [it]
5 purposefully avails [it]self of the privilege of conducting activities in the forum, thereby
6 invoking the benefits and protections of its laws;” (2) the claim is one that “arises out of or
7 relates to” the defendant’s activities in the forum state; and (3) the exercise of jurisdiction
8 comports with “fair play and substantial justice, i.e. it must be reasonable.”
9 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). The
10 plaintiff need only establish the first two prongs, while it is the defendant’s burden to
11 “present a compelling case” that the exercise of jurisdiction would not be reasonable. *Id.*

12 17. **Purposeful Availment.** Under the first prong of the three-part test,
13 “purposeful availment” includes both purposeful availment and purposeful direction,
14 which are two distinct concepts. *Id.* Where a case sounds in tort, as here, courts employ
15 the purposeful direction test. Purposeful direction requires the defendant have “(1)
16 committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that
17 the defendant knows is likely to be suffered in the forum state.” *Morrill v. Scott Fin. Corp.*,
18 873 F.3d 1136, 1142 (9th Cir. 2017) (citing *Schwarzenegger*, 374 F.3d at 802).

19 18. In determining whether electronic communications are sufficient contacts
20 with the forum state, district courts focus on whether the defendant “knew or should have
21 known” that its communications were sent into California. *Washington Shoe Co. v. A–Z*
22 *Sporting Goods Inc.*, 704 F.3d 668, 678 (9th Cir. 2012), *abrogated on other grounds by*
23 *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064 (9th Cir. 2017) (“Where
24 [defendant] knew or should have known that [plaintiff] is a Washington company,
25 [defendant’s] intentional acts were expressly aimed at the state of Washington.”);
26 *Fabricant v. Fast Advance Funding, LLC*, No. 2:17-cv-05753-AB (JCx), 2018 WL
27 6920667, at *3 (C.D. Cal. Apr. 26, 2018) (finding the plaintiff sufficiently alleged personal
28 jurisdiction where the defendant made unsolicited phone calls to the plaintiff’s cell phone

1 that had a California area code); *Luna v. Shac, LLC*, No. C14-00607 HRL, 2014 WL
2 3421514, at *3 (N.D. Cal. July 14, 2014) (finding that the defendant expressly aimed its
3 conduct at California where some of the “thousands of similar unsolicited text messages”
4 to the “general public” were sent to cell phones with California based area codes).

5 19. Here, Defendant purposely directed its conduct toward residents of California
6 by advertising in numerous spam emails sent to California residents, including Plaintiff.
7 At the same time, on information and belief, Defendant transacts or has transacted business
8 in the Central District of California (and throughout the United States). Defendant has
9 created an ongoing relationship in California related to its distribution of spam emails, in
10 order to market its litigation-support services. On further information and belief,
11 Defendant knew or should have known that it was sending spam email advertisements to
12 California residents, including Plaintiff.

13 20. ***Claim Arising Out of Action in the Forum Prong.*** Under the second prong
14 of the three-part specific jurisdiction test, personal jurisdiction exists where, as here, the
15 claim “arises out of or relates to” the defendant’s activities in the forum state. Courts in
16 the Ninth Circuit use a “but for” test to determine whether the claim “arises out of” the
17 nonresident’s forum-related activities. In other words, the test is satisfied if the plaintiff
18 would not have suffered loss “but for” the defendant’s activities. *Ballard v. Savage*, 65
19 F.3d 1495, 1500 (9th Cir. 1995).

20 21. Here, Defendant’s contact with the forum—directing unsolicited spam email
21 advertisements to recipients (including Plaintiff) in California (and elsewhere)—is the
22 basis of its Section 17529.5 violations. But for Defendant’s contact with the forum,
23 Plaintiff (and the thousands of other individuals who received Defendant’s unsolicited
24 messages) would not have suffered harm.

25 22. ***Venue.*** Venue is proper in the United States District Court for the Central
26 District of California pursuant to 28 U.S.C. § 1391 because Defendant:

- 27 a) is authorized to conduct business in this District and has intentionally
28 availed itself of the laws and markets within this District;

1 sued as DOES 1 to 10, inclusive, and therefore sues such Defendants by such fictitious
2 names. Plaintiff is informed and believes, and upon such information and belief alleges,
3 that each of the DOE Defendants is in some manner legally responsible for the damages
4 suffered by Plaintiff and the Class members as alleged in this Complaint. When the
5 identities of DOES 1 to 10 are discovered, or otherwise made available, Plaintiff will seek
6 leave to amend this Complaint to allege their identity and involvement with particularity.

7 **THE UNLAWFUL SPAM E-MAILS**

8 33. Plaintiff received at least two spam emails advertising Defendant’s website
9 and “superior appellate consulting, printing, and litigation support” at his California e-mail
10 address.

11 34. The e-mails at issue are “commercial e-mail advertisements” because they
12 advertise business insurance products provided by Defendant at its website,
13 <https://recordpress.com/>. The e-mails were initiated for the purpose of advertising and
14 promoting Defendant’s products or services.

15 35. The e-mails are “unsolicited commercial e-mail advertisements” because
16 Plaintiff never gave “direct consent” to Defendant to send commercial e-mails.

17 36. Plaintiff has never had a “preexisting or current business relationship” with
18 Defendant. Nor did Plaintiff “opt-in” to receive e-mails from Defendant.

19 37. Plaintiff did not consent or acquiesce to receive the spams at issue. Plaintiff
20 did not waive any claims related to the spams at issue.

21 38. Defendant advertised in, sent, and/or conspired to send at least two unlawful
22 spams that Plaintiff received at his “California e-mail address.”

23 39. The spams are all unlawful because the spams contain misleading Subject
24 Lines, as described in more detail below.

25 **The Spams Have Subject Lines That Are Materially Misleading Relative to the**
26 **Contents of the e-Mails, in Violation of Bus. & Prof. Code § 17529.5, subd. (a)(3)**

27 40. Section 17529.5, subd. (a)(3) prohibits Subject Lines that are likely to mislead
28 a reasonable recipient relative to the contents or subject matter of the e-mails.

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

4 42. Each of the spams that Plaintiff received contain misleading Subject Lines in
5 violation of Section 17529.5, subd. (a)(3). More specifically, Defendant offers “superior
6 appellate consulting, printing, and litigation support.” Plaintiff is the managing partner of
7 a Los Angeles-based litigation boutique called Tauler Smith LLP. Plaintiff has a number
8 of active litigations, including a case entitled *Nora Gutierrez v. Converse Inc.*, 2:23-cv-
9 06547 (C.D. Cal.) (the “*Converse Case*”). The *Converse Case* is now on appeal, which is
10 reflected as Ninth Circuit Appeal Docket No. 24-4797. Given that the *Converse Case* is
11 an active appeal, it is reasonable to expect that Plaintiff—as an attorney handling the
12 appeal—would pay close attention to any emails whose subject line refers to the *Converse*
13 Case (e.g., reasonably believing the e-mail relates to the active litigation).

14 43. On information and belief, Defendant found Plaintiff’s information online and
15 sent at least two spam e-mails with Subject Lines that read “Gutierrez v. Converse Inc.,
16 No. 24-4797 (9th Cir)” as demonstrated by the following screenshots:

17 From: **Natasha R. Monell, Esq.** <nmonell@recordpress.com>
18 Date: Tue, Sep 24, 2024 at 9:00 AM
19 Subject: RE: Gutierrez v. Converse Inc., No. 24-4797 (9th Cir)
20 To: rtauler@taulersmith.com <rtauler@taulersmith.com>

21 Counsel,

22 I am reaching out about the pending appeal. We handle successful filings & e*filings in the
23 Ninth Circuit for firms nationwide.

24 Our appellate team takes care of these tasks:

- 25 • Prepare cover pages for the Record Excerpts and Appellant’s Brief
- 26 • Prepare paginated proof of Record Excerpts with Table of Contents
- 27 • Review of Brief for compliance with the court’s rules
- 28 • Generate brief Table of Contents & Authorities
- Verify word count and draft Certificate of Compliance
- Prep and E*file Record Excerpts and Brief
- Print and bind all copies with appropriate color covers
- File 6 Brief and 3 Record Excerpts paper copies with Ninth Circuit
- Provide office copies for your records

1 From: recordpress@quickbaseemail.com <recordpress@quickbaseemail.com>

2 Sent: Thursday, August 15, 2024 7:39 AM

3 To: rtauler@taulersmith.com

4 Subject: Gutierrez v. Converse Inc., No. 24-4797 (9th Cir)

5 **[CAUTION - EXTERNAL EMAIL]** This email originated outside of Record Press, Inc. Please do not respond, click links or open attachments unless you recognize the source of this email and know the content is safe.

6 Hello Robert,

7 Gutierrez v. Converse Inc.

8 Docket No. 24-4797 (9th Cir)

9 We would welcome the opportunity to assist with your pending Appeal.

10 With over 65 years of industry experience, we provide complete appellate printing and management services.

11
12 44. As shown from the screenshots, the e-mails' Subject Line read "*Gutierrez v.*
13 *Converse Inc.*, No. 24-4797 (9th Cir)," which is materially misleading: it is designed to
14 make the recipient—whom Defendant knows is an attorney of record in the ongoing
15 *Converse* Case—believe they are receiving an e-mail about the active litigation (e.g., from
16 the Court or opposing counsel). Indeed, when Plaintiff received Defendant's e-mail, he
17 reasonably believed it was an update about, or something related to, the *Converse* Case.

18 45. Instead, these e-mails are nothing but commercial advertisements sent by
19 Defendant, solely so that Defendant can drive Internet traffic to its website with a motive
20 to make a profit. In other words, the spams involve deception as to a material matter—the
21 actual purpose of the e-mail. That is, Defendant sends these e-mails in order to deceive
22 attorneys like Plaintiff into believing they are receiving an important update about ongoing
23 litigation (here, the *Converse* Case). In reality, Defendant is attempting to sell its "superior
24 appellate consulting, printing, and litigation support" to attorneys. The e-mails have
25 *nothing to do with* the recipient attorney's ongoing litigation. See <https://recordpress.com/>.

26 46. In other words, the spams involve deception as to a material matter—the
27 actual purpose of the e-mail (i.e., to convince attorneys like Plaintiff to hire Defendant for
28 its "superior appellate consulting, printing, and litigation support").

1 47. These Subject Lines, even when viewed in conjunction with the body of the
2 e-mail, are materially false and deceptive. As a result, they are likely to mislead a recipient
3 acting reasonably about a material fact regarding the content or subject matter of the
4 message.⁵

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

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

9 49. Plaintiff is informed and believes, and on that basis alleges, that the \$1,000
10 per spam figure is comparable with damages in other areas of consumer protection law
11 (e.g., \$500 to \$1,500 in statutory damages per junk fax, pursuant to Business & Professions
12 Code § 17538.43, subd. (b)).

13 50. Plaintiff's rightful and lawful demand for liquidated damages in the amount
14 of \$1,000 per e-mail is necessary to further the California Legislature's objective of
15 protecting California residents from unlawful spam.

16 51. Section 17529.5 does not require Plaintiff to quantify his actual damages,
17 allege or prove reliance on the advertisements contained in the spams, or purchase the
18 goods and services advertised in the spams. Recipients of unlawful spam have standing to
19 sue and recover liquidated damages. *See* Bus. & Prof. Code § 17529.5, subd. (b)(1)(A)(iii);
20 *Hypertouch, supra*, 192 Cal.App.4th at 820, 822–23 & 828.

21
22 ⁵ Regardless of whether Defendant or a third-party marketing firm (e.g., an advertisement
23 agency) sent the spams, Defendant is strictly liable. *See* Bus. & Prof. Code § 17529, subs.
24 (j) & (k) (“There is a need to regulate the advertisers who use spam, as well as the actual
25 spammers, because the actual spammers can be difficult to track down due to some return
26 addresses that show up on the display as ‘unknown’ and many others being obvious fakes
27 and they are often located offshore. The true beneficiaries of spam are the advertisers who
28 benefit from the marketing derived from the advertisements.”); *Hypertouch Inc. v.*
ValueClick Inc., 192 Cal.App.4th 805, 820–21 (2011) (holding Section 17529.5(a) “makes
an entity strictly liable for advertising in a commercial e-mail . . . regardless of whether the
entity knew that such e-mails had been sent or had any intent to deceive the recipient.”).

1 52. However, Plaintiff did suffer damages by receiving the unlawful spams
2 advertising Defendant's products and services in the State of California, at his California
3 e-mail address. Bus. & Prof. Code § 17529, subd. (d), (e), (g) & (h). Regardless, Plaintiff
4 does not seek actual damages in this action, but instead, only liquidated damages. Bus. &
5 Prof. Code § 17529.5, subd. (b)(1)(B).

6 53. Plaintiff is informed and believes, and on that basis alleges, that Defendant
7 has not established and implemented, with due care, practices and procedures reasonably
8 designed to effectively prevent unsolicited commercial e-mail advertisements that are in
9 violation of Section 17529.5.

10 **CLASS ACTION ALLEGATIONS**

11 54. As authorized by Rule 23 of the Federal Rules of Civil Procedure, Plaintiff
12 brings this action on behalf of the following classes of persons or entities similarly situated
13 throughout the United States.

14 55. Plaintiff brings this action for statutory liquidated damages on behalf of
15 himself and all persons similarly situated and seeks certification of the following class:

16 All California residents who received a false or deceptive unsolicited
17 commercial e-mail that has a Subject Line likely to mislead a recipient, which
18 advertised Defendant's products or services, since the one year prior to the
19 filing of this action.

20 56. The above-described class of persons shall hereafter be referred to as the
21 "Class." Excluded from the Class are any and all past or present officers, directors, or
22 employees of Defendant, any judge who presides over this action, and any partner or
23 employee of Class Counsel. Plaintiff reserves the right to expand, limit, modify, or amend
24 this class definition, including the addition of one or more subclasses, in connection with
25 his motion for class certification, or at any other time, based upon, *inter alia*, changing
26 circumstances and/or new facts obtained during discovery.

27 57. **Numerosity**. The potential Class members as defined are so numerous and
28 so diversely located throughout California, that joinder of all the Class members is

1 impracticable. Class members are dispersed throughout California. Joinder of all members
2 of the proposed Class is therefore not practicable. Although Plaintiff does not know the
3 precise number of Class members, due to the nature of the trade and commerce involved,
4 Plaintiff believes that the total number of the members of the Class is in the thousands
5 (e.g., on information and belief, Defendant sends similar spams to thousands of practicing
6 attorneys throughout California).

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

15 59. **Typicality.** Plaintiff's claims are typical of the claims of the members of the
16 Class. Plaintiff and all members of the Class have been similarly affected by Defendant's
17 common course of conduct because they all received unlawful, unsolicited spam e-mails
18 that contain subject lines likely to mislead a recipient.

19 60. **Adequacy of Representation.** Plaintiff is an adequate representative of the
20 Class and will fairly and adequately protect the interests of the Class. Plaintiff has retained
21 attorneys who are experienced in the handling of complex litigation and class actions, and
22 Plaintiff and his counsel intend to prosecute this action vigorously. Plaintiff has no
23 antagonistic or adverse interests to those of the Class.

24 61. **Existence and Predominance of Common Questions of Law or Fact.**
25 Common questions of law and fact exist as to all members of the Class that predominate
26 over any questions affecting only individual members of the Class. These common legal
27 and factual questions, which do not vary among members of the Class, and which may be
28 determined without reference to the individual circumstances of any member of the Class,

1 include, but are not limited to, the following:

- 2 a) Whether Class members received unsolicited commercial e-mail
3 advertising the website <https://recordpress.com/>.
- 4 b) Whether Defendant obtained direct consent to send commercial e-mail to
5 Class members.
- 6 c) Whether Defendant had no preexisting or current business relationship with
7 Class members.
- 8 d) Whether the unsolicited commercial e-mails received by Class members
9 have subject lines likely to mislead a recipient acting reasonably under the
10 circumstances.
- 11 e) Whether the information contained in the e-mail received by Class
12 members is forged, falsified, misrepresented, deceptive, or misleading in
13 violation of Bus. & Prof. Code § 17529.5.
- 14 f) Whether Defendant is liable under Bus. & Prof. Code § 17529.5 for the
15 actions of its affiliates, advertisers, employees or agents, who sent unlawful
16 spams advertising the website <https://recordpress.com/>.

17 62. **Superiority.** A Class Action is superior to other available means for the fair
18 and efficient adjudication of this controversy. Individual joinder of all Class members is
19 not practicable, and questions of law and fact common to the Class predominate over any
20 questions affecting only individual members of the Class. Plaintiff and the Class members
21 have suffered or may suffer loss in the future by reason of Defendant's illegal practices.
22 Certification of this case as a class action will allow those similarly situated persons to
23 litigate their claims in the manner that is most efficient and economical for the parties and
24 the judicial system. Certifying this case as a class action is superior because it allows for
25 efficient relief to Class members, and will thereby effectuate California's strong public
26 policy of protecting the California consumer from violations of its laws.

27 63. By contrast, the conduct of this action as a class action, with respect to some
28 or all of the issues presented, presents no management difficulties, conserves the resources

1 of the parties and of the court system, and protects the rights of the members of the Class.
2 Plaintiff anticipates no difficulty in the management of this action as a class action. The
3 prosecution of separate actions by individual members of the Class may create a risk of
4 adjudications with respect to them that would, as a practical matter, be dispositive of the
5 interests of the other members of the Class who are not parties to such adjudications, or
6 that would substantially impair or impede the ability of such non-party Class members to
7 protect their interests.

8 64. Defendant has acted or refused to act on grounds that are generally applicable
9 to the Class so that relief is appropriate to the Class as a whole, making class certification
10 appropriate pursuant.

11 **FIRST CAUSE OF ACTION**

12 **Violations of California’s Restrictions on Unsolicited Commercial e-Mail –**
13 **California Business & Professions Code § 17529.5 (Against All Defendants)**

14 65. Plaintiff hereby incorporates the foregoing paragraphs as though set forth in
15 full herein.

16 66. Plaintiff received the spam e-mails within the one year prior to filing this
17 Complaint.

18 67. Defendant advertised in, sent, assisted others in sending, conspired to send,
19 contracted with others to send, and/or otherwise caused to be sent at least two unsolicited
20 commercial e-mail advertisements to Plaintiff’s California electronic mail address that
21 contained subject lines likely to mislead a recipient, in violation of Bus. & Prof. Code §
22 17529.5.

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

25 69. The California Legislature set liquidated damages at \$1,000 per e-mail.

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

28 71. The attorneys’ fees provision for a prevailing spam recipient is typical of

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

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff Robert Tauler prays for relief and judgment in favor of
9 himself and the Class as follows:

10 **On the First Cause of Action for Violations of Bus. & Prof. Code § 17529.5**

11 A. For an order certifying that the action be maintained as a class action, that
12 Plaintiff be designated the class representative, and that undersigned counsel be designated
13 as class counsel.

14 B. For an order declaring that Defendant violated Bus. & Prof. Code § 17529.5,
15 by advertising in and sending unlawful spam e-mails.

16 C. Liquidated damages against Defendant in the amount of \$1,000 per unlawful
17 spam e-mail, as authorized by Bus. & Prof. Code § 17529.5, subd. (b)(1)(B)(ii) for each
18 unlawful e-mail received by Plaintiff and members of the Class.

19 D. Reasonable attorneys' fees and costs as authorized by Bus. & Prof. Code §
20 17529.5, subd. (b)(1)(C).

21 E. Disgorgement of all profits derived from unlawful spams directed to
22 California residents; and monies to be turned over to the Unfair Competition Law Fund
23 and used by the California Attorney General to support investigations and prosecutions of
24 California's consumer protection laws.

25 F. For such other and further relief as the Court may deem just and proper.

26 **DEMAND FOR JURY TRIAL**

27 Plaintiff, on behalf of himself and the Class, hereby demands a trial by jury pursuant
28 to Federal Rule of Civil Procedure 38(b) on all claims so triable.

1 DATED: October 12, 2024

Respectfully submitted,

2 **KJC LAW GROUP, A.P.C.**

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4 By: /s/ Kevin J. Cole

5 Kevin J. Cole

6 *Attorneys for Plaintiff and the Proposed Class*

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