John Brosnan dba Apex ISP Services
3321 Vincent Road
Pleasant Hill, California 94523
Telephone: 510.779.1006
Facsimile: 650.745.2723

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NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

JOHN BROSNAN DBA APEX ISP SERVICES Plaintiff Vs. ALKI MORTGAGE, BRIAN MCKEE, DYLAN REIDT And DOES 1-100	Case No. C 07 4339 JL COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF - VIOLATION OF 2003 CAN-SPAM ACT [15 U.S.C. §7701, *et seq.*] DEMAND FOR JURY TRIAL Date : - Time : - Place : - Trial Date : None Set

JOHN BROSNAN alleges as follows:

JURISDICTION, VENUE, AND PARTIES

1. This Court has original jurisdiction of the causes of action herein which are brought under the CAN-SPAM Act of 2003 - 15 U.S.C. §7701, et seq., 15 U.S.C. §7707(g)(1).

2. The unlawful actions of the defendants were committed in the State of California and in the judicial district of this Court.

3. Plaintiff is a California business located in Pleasant Hill, California, and provides Internet access service within the meaning of 15 U.S.C. §7703(11).

4. Plaintiff is informed and believes that Brian McKee ("MCKEE") is a Washington resident.

5. Plaintiff is informed and believes that Dylan Reidt ("REIDT") is a Washington resident.

6. Plaintiff is informed and believes that Alki Mortgage "ALKI". is a Washington Corporation.

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FIRST CAUSE OF ACTION

(Violation of CAN-SPAM Act of 2003 - 15 U.S.C. §7704(a)(1))

ALL DEFENDANTS

7. Plaintiff refers to the allegations of the preceding paragraphs of this complaint, and incorporates the same herein by this reference as though set forth in full.

8. From August 1, 2007 forward, plaintiff received electronic mail from defendants to its mail server located in California that violated the CAN-SPAM Act of 2003.

9. Attached as Exhibit 1 is an example of one of the electronic mail communications received by plaintiff.

10. Of the first 1,067 relevant electronic mails sent by the defendants beginning August 1, 2007, all contained header information that was materially false or materially misleading. Specifically, the identities provided by the defendants of the machines delivering mail to plaintiff's mail server did not match the purported sender. Therefore, the electronic mail violated U.S.C. §7704(a)(1).

SECOND CAUSE OF ACTION

(Violation of CAN-SPAM Act of 2003 - 15 U.S.C. §7704(a)(2))

ALL DEFENDANTS

11. Plaintiff refers to the allegations of the preceding paragraphs of this complaint, and incorporates the same herein by this reference as though set forth in full.

12. Of the first 1,067 relevant electronic mails sent [Exhibit 1] by the defendants beginning August 1, 2007, all contained Subject Heading information that was materially false or materially misleading. Specifically, the subject line was misleading and in no way related to the content of the email. Therefore, the electronic mail violated U.S.C. §7704(a)(2).

THIRD CAUSE OF ACTION

(Violation of CAN-SPAM Act of 2003 - 15 U.S.C. §7704(a)(3))

ALL DEFENDANTS

13. Plaintiff refers to the allegations of the preceding paragraphs of this complaint, and incorporates the same herein by this reference as though set forth in full.

14. Of the first 1,067 relevant electronic mails sent [Exhibit 1] by the defendants beginning August 1, 2007, none contained a valid return email address. Therefore, the electronic mail violated U.S.C. §7704(a)(3).

FOURTH CAUSE OF ACTION

(Violation of CAN-SPAM Act of 2003 - 15 U.S.C. §7704(a)(5))

ALL DEFENDANTS

15. Plaintiff refers to the allegations of the preceding paragraphs of this complaint, and incorporates the same herein by this reference as though set forth in full.

16. Of the first 1,067 relevant electronic mails sent [Exhibit 1] by the defendants beginning August 1, 2007, none contained a Opt-Out email address or Physical Address. Therefore, the electronic mail violated U.S.C. §7704(a)(5).

17. As a proximate result of said unlawful conduct by said defendants, plaintiff is entitled to damages for the actual monetary loss incurred or statutory damages in the amount of up to $100.00 in the case of violation of Section 5(a)(1) or up to $25.00 in the case of each violation of the other subsections of Section 5 in the form of statutory damages as set forth in 15 U.S.C. §7707(g)(1) and (3)(A).

18. Plaintiff furthermore seeks a preliminary and permanent injunction against the defendants for their current and future violations of the CAN-SPAM Act of 2003 as it and members of the general public will continue to incur damages as a result of the unlawful conduct of said defendants. The seeking of injunctive relief by the plaintiff is specifically authorized by 15 U.S.C. §7707(g)(1)(A).

19. Plaintiff furthermore seeks its attorney fees and costs against the defendants pursuant to 15 U.S.C. §7707(g)(4).

WHEREFORE, plaintiff prays judgment against the defendants and each of them as follows:

1. For actual monetary damages according to proof, or in the alternative, statutory damages for up to $100.00 for each violation of said Section 7006(a)(1) and up to $25.00 in the case of any other violation of said Section 7006;
2. For aggravated damages under 15 U.S.C. §7707(g)(3)(C) of up to three times the amount above for these violations committed by the defendants willfully and knowingly, and for

defendants' unlawful activity which includes aggravated violations of section 7005(b);

3. For a preliminary and permanent injunction preventing the defendants and all person acting in concert with them from the violation of the Can-Spam Act of 2003;
4. For an award of reasonable attorneys' fees and costs according to proof;
5. For costs of suit; and
6. For such other and further relief as this Courts deems just and proper.

DATED: August 21, 2007

John Brosnan DBA Apex ISP Services

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial in the above-entitled matter.

DATED: August 21, 2004

John Brosnan for Apex ISP Services