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CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 PETER D. KEISLER
Assistant Attorney General
2
3 EUGENE M. THIROLF
Director,
4 KENNETH L. JOST
Deputy Director,
Office of Consumer Litigation
5
6 JOHN W. BURKE (VA BAR NO. 72780)
Trial Attorney, Office of Consumer Litigation
Civil Division
7 United States Department of Justice
P.O. Box 386
8 Washington, D.C. 20044
Telephone: 202-353-2001
9 Facsimile: 202-514-8742
Email: josh.burke@usdoj.gov
10 Attorneys for Plaintiff United States of America

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12 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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SI

1 7(a) of the Controlling the Assault of Non-Solicited Pornography
2 and Marketing Act of 2003 ("CAN-SPAM" or the "CAN-SPAM Act"),
3 15 U.S.C. § 7706(a), to obtain monetary civil penalties, a
4 permanent injunction, and other equitable relief for defendant's
5 ~~violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and~~

[REDACTED]

1. List the various small address 15 X 0 0 8 7500 (C)

1 United States. 15 U.S.C. § 7702(13); 18 U.S.C. § 1030(e)(2)(B).

2 13. "Sender" means a person who initiates a commercial

1 Defendant or its affiliates. The landing page recapitulates and
2 expands upon Defendant's initial promised free merchandise offer.
3 For example, the landing page for Defendant's email offer
4 soliciting consumers to become "secret shoppers" by testing and

1 that it never reached the consumer's inbox.

2 21 Once the consumer has submitted his or her personal

1.

1.

1 the promised free merchandise. For example, one of Defendant's
2 third-party "platinum" promotions (within a "level 6" promised
3 free merchandise offer) requires the consumer to subscribe to a
4 year of satellite television at a cost of almost \$600. Other
5 third-party promotions include DVD deliveries, CDs and music

1 purpose by Defendant.

2 29. Defendant is an "initiator" with respect to an email
3 message when it has either originated or transmitted a message
4 itself or has procured the origination or transmission of a
5 message through payments or other consideration, or inducements,
6 to others.

7 30. Defendant is a "sender" with respect to an email

consideration to participate in Defendant's

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 39. Section 7(a) of the CAN-SPAM Act, 15 U.S.C. § 7706(a),
2 states:

3 [T]his chapter shall be enforced by the [FTC]

~~if the violation of this chapter were an~~

1 amended, and as implemented by 16 C.F.R. § 1.98(d) (1997),
2 authorizes this Court to award monetary civil penalties of not
3 more than \$11,000 for each violation of CAN-SPAM. Defendant's
4 violations of CAN-SPAM were committed with the knowledge required
5 by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

6 45. This Court, in the exercise of its equitable
7 jurisdiction, may award ancillary relief to remedy injury caused
8 by Defendant's violations of CAN-SPAM and the FTC Act.

9 **PRAYER FOR RELIEF**

10 WHEREFORE Plaintiff requests that this Court as authorized

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2 Dated: November 20, 2007

Respectfully submitted,

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FOR THE UNITED STATES OF AMERICA