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Press Release

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FOR IMMEDIATE RELEASE
12 PM October 1, 2009

SAATCHI & SAATCHI AND TOYOTA SUED OVER DECEITFUL INTERNET ADVERTISING CAMPAIGN

LOS ANGELES, CALIFORNIA: The advertising firm of Saatchi & Saatchi has been sued along with Toyota North America for an internet advertising campaign designed to make email recipients believe they were being stalked by criminals. A copy of the Complaint filed in the Los Angeles Superior Court on September 28, 2009 is attached.

" Advertising is the rattling of a stick inside a swill bucket."

--George Orwell

-End-

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Attorneys for PLAINTIFF AMBER DUICK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES—CENTRAL DISTRICT

BC422701

AMBER DUICK, an individual,

Plaintiff,

vs.

TOYOTA MOTOR SALES, USA, INC. a
corporation; SAATCHI & SAATCHI, INC., a
corporation; SAATCHI & SAATCHI
NORTH AMERICA, INC., a corporation;
and DOES 1-50, inclusive,

DEFENDANTS.

CASE NO.

VERIFIED COMPLAINT FOR DAMAGES
FOR:

1. INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;
2. NEGLIGENCE INFLICTION OF
EMOTIONAL DISTRESS;
3. NEGLIGENCE;
4. UNFAIR, UNLAWFUL AND
DECEPTIVE TRADE PRACTICES
(BUS. & PROF. CODE § 17200 ET
SEQ.);
5. FALSE, DECEPTIVE AND/OR
MISLEADING ADVERTISING (BUS.
& PROF. CODE § 17500 ET SEQ.);
6. VIOLATION OF CONSUMER
LEGAL REMEDIES ACT (CIVIL
CODE § 1750 ET SEQ.);
7. FRAUD;
8. NEGLIGENT
MISREPRESENTATION.

DEMAND EXCEEDS \$25,000

JURY TRIAL DEMANDED

COME NOW PLAINTIFF AMBER DUICK for causes of action against all

1
COMPLAINT FOR DAMAGES

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

SEP 29 2008

John A. Blaine, Executive Officer/Clerk
By: DOROTHY SWAIN

DEFENDANTS, and each of them, as follows:

VENUE AND JURISDICTION

1. Plaintiff AMBER DUICK ("AMBER") is and at all times mentioned herein was a resident of the State of California, County of Los Angeles.

2. Defendant TOYOTA MOTOR SALES, USA, INC. ("TOYOTA") is and at all times mentioned herein was a corporation qualified to conduct business in the State of California and does conduct significant, substantial and continuous business in the County of Los Angeles.

3. Defendants SAATCHI & SAATCHI, INC. and SAATCHI & SAATCHI NORTH AMERICA, INC. (collectively "SAATCHI") are and at all times mentioned herein were corporations qualified to conduct business in the State of California and do conduct significant, substantial and continuous business in the County of Los Angeles.

4. Defendants Doe 1 through Doe 50, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to PLAINTIFF. When their true names and capacities are ascertained PLAINTIFF will amend this complaint by inserting their true names and capacities herein.

5. PLAINTIFF is informed and believes and on that basis allege that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that PLAINTIFF' damages as herein alleged were proximately caused by those defendants. Each reference in this complaint to "DEFENDANT" "DEFENDANTS" or a specifically named defendant refers also to all defendants sued under fictitious names.

6. PLAINTIFF is informed and believes and on that basis allege DEFENDANTS, and each of them, are, and at all times herein mentioned were, the agents, joint venturers, officers, members, representatives, servants, consultants and or employees of their co-defendants, and in committing the acts herein alleged, were acting within the scope of such affiliation and or

2
VERIFIED COMPLAINT FOR DAMAGES

1 employment with the knowledge, permission, consent and or subsequent ratification of their co-
2 defendants.

3 7. All acts herein alleged unless otherwise specified occurred in the County of Los
4 Angeles, State of California. As such, the court has personal jurisdiction over the defendants in
5 this matter pursuant to California *Code of Civil Procedure* Section 410.10.

6 GENERAL ALLEGATIONS

7
8 8. PLAINTIFF, without her knowledge or consent, either implied or express, became
9 the subject of a car sales promotion sponsored by TOYOTA. Said same promotion was entitled
10 "The Other You".

11 9. The Other You consisted of sending an unwitting recipient emails from an
12 unknown individual.

13 10. Plaintiff is informed and believes, and thereupon alleges, that The Other You
14 promotion was created, designed and implemented by Defendant SAATCHI on behalf of
15 Defendant TOYOTA.

16 11. In this case, AMBER was contacted by email by an individual identifying himself
17 as Sebastian Bowler with an email of sebastianbowler1978@yahoo.co.uk. ("Mr. Bowler")

18 12. On March 29, 2008 Mr. Bowler emailed to AMBER and AMBER received and
19 read a message reading: "Amber mate! Coming 2 Los Angeles Gonna lay low at your place for a
20 bit. Till it all blows over. Bringing Trigger."

21 13. AMBER had never met Mr. Bowler and was mystified by this email.

22 14. AMBER was in a serious long-term romantic relationship and lived with her
23 boyfriend at the time she received the first email from Mr. Bowler. AMBER showed these emails
24 to her boyfriend immediately upon receipt.

25 15. The next day, on March 30, 2008, Mr. Bowler emailed to AMBER and AMBER
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1 received and read a message reading: "Amber this is your gaff, right? 2003 ½ Hillcrest Rd Los
2 Angeles, CA 90068 Looks all right mate! Nice place to hide out. We don't need much though.
3 Just a couch and a telly. Trigger don't throw up much anymore, but put some newspaper down in
4 case."

5 16. The address listed in Mr. Bowler's second email was, in fact, a residential address
6 where PLAINTIFF resided.

7 17. As a result of these emails identifying PLAINTIFF's prior home address,
8 PLAINTIFF contacted several of their neighbors at this prior address to warn them about Mr.
9 Bowler. She advised the residents at AMBER's prior home address (i.e. 2003 ½ Hillcrest Rd Los
10 Angeles, CA 90068) that they should call the police immediately should they see Mr. Bowler
11 whom AMBER described as a stalker. One of the individuals advised about this apparent stalker
12 was a single woman living alone.

13 18. The second email from Mr. Bowler also listed a MYSPACE account of
14 "www.myspace.com/bowlerbowler". At the date of filing of this suit said MYSPACE page is still
15 up and running.

16 19. Mr. Bowler's MYSPACE page included videos and photographs of him. It
17 identified him as a single, 25 year old Englishman. The pictures and videos depicted Mr. Bowler
18 as a fanatical English soccer fan who enjoyed drinking alcohol to excess. The page also had
19 pictures of a pitbull dog. The page had a photograph with an interlineated arrow with the word
20 "Me" depicted and with the caption: "My mate took this photo which shows me right before the
21 riot..."

22 20. Mr. Bowler also had the following description of his life on said same MYSPACE
23 page: "Living the dream. Love it here in the states but it's still all about England. The homeland. I
24 could never live forever in a place that don't appreciate the beautiful game. I mean, yeah, they
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1 have some teams, but no old firm derbys, no crowds, no sport as far as I'm concerned. Other than
2 that, no real complaints."

3 21. Nowhere in Mr. Bowler's MYSPACE page did it identify him as an agent or
4 employee of TOYOTA. Nowhere in Mr. Bowler's MYSPACE page did it identify him as a
5 fictitious, non-existent character invented by TOYOTA to market their automotive products,
6 which in fact was the truth.

7 22. At all times and instances mentioned herein Plaintiff is informed and believes and
8 thereon allege both TOYOTA, and SAATCHI knew Mr. Bowler's MYSPACE page was fictitious
9 and that it was designed and published for the sole and exclusive purpose of helping TOYOTA
10 market their automotive products.

11 23. AMBER received another email from Mr. Bowler on March 30, 2008 reading:
12 "Alright Amber, I'm on the road. Having a right old laugh. Getting some football in. Meeting a
13 few birds. I seem to have lost the coppers for now, so I'm all good, mate. See you soon. PS Just
14 posted a new video on my blog. Check out my skills, plus watch this mad scouser nearly break his
15 neck on the concrete."

16 24. Attached to this March 30, 2008 email was a link to a video depicting Mr. Bowler
17 and another male yelling and arguing with each other with a pitbull dog in tow.

18 25. AMBER next received an email from Mr. Bowler on March 31, 2008 reading:
19 "checking in here. They better have the match on."

20 26. AMBER received another email from Mr. Bowler on March 31, 2008 reading:
21 "Amber, ran into a little problem at the hotel. Anyway, me and Trigger had to spend the night in
22 the car. Can you believe it? After I'm done visiting you I'm going to go back and sort out that
23 front desk muppet. -Seb"

24 27. Attached to this second March 31, 2008 email was a link that took the PLAINTIFF
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1 to a link showing pictures of Mr. Bowler on top the roof of a motel and gesturing obscenely,
2 pictures showing a broken television set on the ground outside the motel, pictures of an elderly
3 gentleman with a raised golf club over his head, and pictures of Mr. Bowler climbing over the
4 fence surrounding the motel pool.

5 28. AMBER next received an email from Mr. Bowler on April 1, 2008 reading: "Have
6 a butcher's at this, mate. I don't believe it! Do you own this place? If you don't you should.
7 Check out this video --Seb PS I should be with you soon." The sentence "Check out this video"
8 was a hyperlink to a video.

9 29. The video linked to Mr. Bowler's April 1, 2008 email to AMBER depicts Mr.
10 Bowler driving in his car and pulling off the road while he is holding the video camera. Mr.
11 Bowler points the camera to a large roadside restaurant sign which states: "Funny Amber's
12 Honky Tonk Café." Then Mr. Bowler is shown on video in front of the sign stating: "I am out of
13 my skull. I love it." Throughout this video Mr. Bowler yells excitedly and appears to be in an
14 agitated state.

15 30. AMBER next received an email from one Jimmy Citro with an email address of
16 jimmy@coronettmotel.com. The email was sent April 1, 2008. The email read: "REGARDING:
17 TV Damage. Yesterday, one of our guest rooms was damaged by someone we understand is a
18 friend of yours. He provided your name as a reference and instructed us to redirect the bill to you.
19 The problem stemmed from a misunderstanding regarding the "Television set policy" which led to
20 damage to the room and television set as well as an unfortunate confrontation with management,
21 after which he fled the premises in his car. Fortunately, the incident was caught on our forecourt
22 security camera: <http://www.coronettmotel.com/surveillance/> Please remit on return \$23.48 One
23 Night's Stay \$5.98 Duct tape repair to TV \$10.00 Inconvenience fee \$39.46 We appreciate your
24 prompt payment. We hope to end this matter amicably. Regards, Jimmy Citro Manager, Coronett
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1 Motel, "The One with the Two T's!! 1(866) 899-8366"

2 31. The email from Mr. Citro had attached to it a scan of the bill, as well as
3 photographs depicting a television screen broken with glass on the floor as well as a picture frame
4 lying on the floor with broken glass frame.

5 32. This emailed invoice with attached pictures caused PLAINTIFF serious distress in
6 that it showed Mr. Bowler to be an unstable and very likely violent individual recklessly damaging
7 the property of others. Prior emails from Mr. Bowler had already shown him to know
8 PLAINTIFF' address and other personal information and that he had some computer and internet
9 skills. Therefore, PLAINTIFF not only feared personal physical harm to themselves but also
10 believed that he could compromise their finances and credit or even subject them to some form of
11 identity theft.

12 33. If you called the phone number for the Coronett Motel specified on the invoice, you
13 received the following automated message: "For reservations press 1, accounting press 2, to learn
14 about our world famous green light pool please press 3, to lodge a complaint at our call center
15 press 4, to speak to the owner please press 5, please press 0 at any time to speak to the operator."

16 34. If you pressed 1 the main menu message would just repeat. This was also the case
17 if you pressed 4, 5 or 0.

18 35. If you pressed 2 you were directed to another message which promoted you to
19 leave a recorded message about any billing dispute. No person would ever answer the phone and
20 no person ever returned messages complaining about any billing dispute.

21 36. If you pressed 3 there was a message giving the hours of the pool operation as well
22 as identifying Richard Lendeti as the head lifeguard who gives private lessons.

23 37. The telephone number identified herein above for the Coronett Motel was still
24 operative as of the date of the filing of this lawsuit.

1 38. The next email received by AMBER came to her on April 2, 2008 from Mr. Bowler
2 titled "Be there soon." It read: "Amber Mate. Had a brush with the law last night. Anyway,
3 hopefully I'll have lost them by the time I get to your place. Can't wait to see you! Check out this
4 movie I just saw—the actor looks like that bloke we know."

5 39. Attached to the April 2, 2008 email to AMBER was a link to a video. It showed
6 Mr. Bowler driving into a drive-in movie theater where a film entitled "Imbecile" was playing.
7 This strange and out-of-focus film showed an older man at a desk eating and played disconcerting
8 horror movie music in the background. On the man's desk was a picture of one of AMBER'S
9 friends. The intent of the film was to disturb and unsettle the viewer, which effect it did have
10 upon PLAINTIFF.

11 40. In the film, the old man laughs continuously and reveals to PLAINTIFF that the
12 entirety of Mr. Bowler's emails and the attached videos and pictures were, in fact, untrue in total.
13 PLAINTIFF was thereby made aware that she had been "punked" (i.e. pranked) and that the days
14 of harassment by Mr. Bowler had been part of Defendants' advertising campaign for a TOYOTA
15 car called a "Matrix".

16 41. Between March 30, 2008 and April 2, 2008 Mr. Bowler also emailed AMBER
17 links to maps showing PLAINTIFF' residence.

18 42. Between March 30, 2008 and April 2, 2008 PLAINTIFF became convinced as a
19 result of the various emails sent to AMBER from Mr. Bowler ("Emails") that Mr. Bowler was a
20 violent criminal on the run from the police both in England and the United States.

21 43. The Emails convinced PLAINTIFF to believe Mr. Bowler thought he knew
22 AMBER when, in fact, PLAINTIFF did not ever know Mr. Bowler.

23 44. The Emails convinced PLAINTIFF that Mr. Bowler and his pit bull dog were
24 driving his car down the California coast to rendezvous with them at their residence. PLAINTIFF
25

1 was unsure if Mr. Bowler's friend, depicted in video, was also coming down to meet PLAINTIFF.
 2 This apprehension about Mr. Bowler's possible travel companion was reasonable in that various
 3 videos depicting him were shot by a third party.

4 45. The Emails convinced PLAINTIFF that if they refused to help Mr. Bowler upon his
 5 arrival at her house that Mr. Bowler would enact physical harm to her and her property.

6 46. PLAINTIFF did not know if Mr. Bowler was truthfully representing his own
 7 identity, but PLAINTIFF wondered why he was so intent on stalking and harassing AMBER.
 8

9 47. As a result of the Emails PLAINTIFF could rarely if ever sleep between March 30,
 10 2008 and April 2, 2008. AMBER's boyfriend was forced to sleep with weapons such as a club
 11 and mace next to his bed for the protection of both himself and AMBER from their apparent
 12 stalker(s).

13 48. As a result of the Emails PLAINTIFF found it extremely difficult to work and her
 14 job performance suffered. PLAINTIFF was unable to perform her job duties at standard levels.

15 49. As a result of the Emails PLAINTIFF felt unsafe in her own home between March
 16 30, 2008 and April 2, 2008. As a result of Defendants' actions as detailed herein, ETHAN was
 17 required to always walk AMBER to and from her vehicle when leaving the house in order to
 18 protect her from her apparent stalker(s). PLAINTIFF also started keeping personal protection
 19 weapons in her vehicle for protection. PLAINTIFF dog who normally slept in her house to sleep
 20 outside of her house between March 30, 2008 and April 2, 2008 in order to gain further protection
 21 from the menacing individuals intentionally crafted by DEFENDANTS to disturb PLAINTIFF's
 22 peace of mind and emotional well being.
 23

24 50. As a result of the Emails PLAINTIFF became physically ill.

25 51. As a result of the Emails PLAINTIFF's eating was disrupted, i.e. her appetite was
 26 suppressed and she did not feel like eating and in fact did not eat normally.
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1 52. As a result of the Emails AMBER was constantly in tears and shaking and sobbing
 2 in emotional distress between March 30, 2008 and April 30, 2008.

3 53. As a result of the Emails PLAINTIFF and her boyfriend both contacted various
 4 friends and neighbors to warn them about Mr. Bowler, the emails he sent to AMBER and the
 5 threat they perceived him to be to her, her boyfriend and their personal property.
 6

7 54. When PLAINTIFF found out they had been "punked," they suffered from and
 8 continue to suffer from shame, humiliation and embarrassment based upon the fact they had
 9 urgently contacted their friends and neighbors about an emergency that was later revealed to be a
 10 hoax.

11 55. PLAINTIFF sent emails to other parties, including an elderly lady who ran an
 12 email list to find homes for lost dogs, advising them of the seriousness of this threat and asking
 13 that they investigate whether or not the stalker Mr. Bowler had come from their email list.
 14

15 56. All of the Emails sent by or on behalf of TOYOTA to AMBER were part of
 16 DEFENDANTS' advertising campaign to market and sell their automotive products, including the
 17 model Matrix car ("Terror Marketing Campaign"). However, it was the specific intent of all
 18 DEFENDANTS to hide this fact from all recipients, including but not limited to PLAINTIFF. All
 19 of the Emails sent by or on behalf of TOYOTA to AMBER were commercial electronic mail
 20 messages which had as their primary purpose the commercial advertisement or promotion of
 21 TOYOTA's commercial products, i.e. their automobiles.
 22

23 57. DEFENDANTS' actual intent behind their Terror Marketing Campaign was to
 24 terrorize and embarrass recipients, including PLAINTIFF, in the hope such terrorization and
 25 embarrassment would create a "buzz" for their automotive product at PLAINTIFF's emotional
 26 expense.
 27

28 58. PLAINTIFF's reaction to TOYOTA's Terror Marketing Campaign was reasonable.

59. TOYOTA's Terror Marketing Campaign was unreasonable.

60. TOYOTA's Terror Marketing Campaign was not reasonably designed to increase sales of its cars by those who were subject to it. Rather, it was designed to create publicity and "buzz" at the expense of those subject to it, including PLAINTIFF.

61. Each and every communication sent to AMBER as a result of TOYOTA's Terror Marketing Campaign was false, misleading and deceptive.

62. Each and every communication sent to AMBER as a result of TOYOTA's Terror Marketing Campaign was a fraudulent, unsolicited, commercial electronic mail message.

63. PLAINTIFF never gave TOYOTA or any TOYOTA agent affirmative consent to receive any of the unsolicited commercial electronic mail messages associated with TOYOTA's Terror Marketing Campaign.

64. TOYOTA never provided PLAINTIFF with a clear and conspicuous request of consent for TOYOTA or any TOYOTA agent to send PLAINTIFF any of the emails they sent to AMBER as part of their Terror Marketing Campaign.

FIRST CAUSE OF ACTION
Intentional Infliction of Emotional Distress
(Against All Defendants)

65. The allegations of paragraphs 1 through 64 are re-alleged and incorporated herein by this reference as though set out fully herein.

66. Defendants knowingly and willfully engaged in the above described conduct concerning their Terror Marketing Campaign.

67. Defendants' actions as alleged herein were outrageous and exceeded all bounds usually tolerated by a civilized society and community.

68. As a result of the foregoing acts and omissions of Defendants, PLAINTIFF suffered severe mental and emotional distress and anguish, all to PLAINTIFF' damage in an amount not known which shall be proved at trial.

69. Defendants had knowledge at the time they engaged in the above described acts and omissions that such acts and omissions would cause PLAINTIFF or any reasonable person, to suffer damages, and Defendant intended by such conduct to cause PLAINTIFF to suffer damage.

70. The conduct of Defendants described above was knowing, willful and intentional and engaged in for the purpose of causing, and in fact caused, PLAINTIFF to suffer. As a result, Plaintiff is entitled to an award of punitive damages.

SECOND CAUSE OF ACTION
Negligent Infliction of Emotional Distress
(Against All Defendants)

71. The allegations of paragraphs 1 through 70 are re-alleged and incorporated herein by this reference as though set out fully herein.

72. Defendants owed PLAINTIFF a duty to avoid causing them harm. Defendants, by the conduct as alleged herein above, breached the duty owed to PLAINTIFF. As a direct, proximate, and foreseeable result of said breach, PLAINTIFF suffered, and continue to suffer, severe emotional distress. As a direct, proximate and foreseeable result of the conduct alleged hereinabove, PLAINTIFF suffered damages as previously alleged in this complaint.

THIRD CAUSE OF ACTION
Negligence
(Against All Defendants)

73. The allegations of paragraphs 1 through 72 are re-alleged and incorporated herein by this reference as though set out fully herein.

74. Defendants owed PLAINTIFF a duty of care to avoid foreseeable injury. Defendants in creating and executing their Terror Marketing Campaign failed to exercise due care such as to avoid foreseeable injury to PLAINTIFF.

75. Defendants therefore breached their respective duties owed to PLAINTIFF.

76. Defendants' failure to exercise due care with PLAINTIFF directly, foreseeably and legally caused PLAINTIFF to suffer damages.

77. As a direct, proximate, foreseeable and legal result of Defendants' acts as alleged herein, PLAINTIFF has been damaged as heretofore set forth in the proceeding paragraphs, in an

amount to be proven at trial.

FOURTH CAUSE OF ACTION
Unfair Competition: Unfair, Unlawful and Deceptive Trade Practices
[Cal. Bus. & Prof. Code § 17200 et seq.]
(Against All Defendants)

78. The allegations of paragraphs 1 through 77 are re-alleged and incorporated herein by this reference as though set out fully herein.

79. The Unfair Competition Law authorizes private lawsuits to enjoin acts of "unfair competition," which includes unlawful, unfair, or fraudulent business practices. "This section was intentionally framed in its broad, sweeping language, precisely to enable judicial tribunals to deal with the innumerable new schemes which the fertility of man's invention would contrive." (*Schnall v. Hertz Corp.*, 78 Cal. App. 4th 1144, 1153-54 (2000) (citations omitted)).

80. Section 17200 imposes strict liability; the plaintiff need not prove that the defendant intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices - but only that such practices occurred. (*Podolsky v. First Healthcare Corp.*, 50 Cal. App. 4th 632, 647 (1996)).

81. Within the four years immediately preceding the filing of this action, the Defendants received revenue and/or profited from, and/or deprived consumers of money by means of, unfair business practices in violation of *Bus. & Prof.* §17200 *et seq.* as alleged herein. Unsuspecting consumers including PLAINTIFF were exposed to intentionally and extremely distressing advertising, as set forth more fully hereinabove, so that Defendants could force those consumers to become aware of vehicles they were trying to sell. Defendants' deceptive advertising allowed the Defendants to reap profits they otherwise would not have enjoyed by using terror and emotional distress to force consumers to become aware of their vehicles.

82. "Protection of unwary consumers from being duped by unscrupulous sellers is an exigency of the utmost priority in contemporary society Frequently numerous consumers are

exposed to the same dubious practice by the same seller so that proof of the prevalence of the practice as to one consumer would provide proof for all." (*Vasquez v. Superior Court*, 4 Cal. 3d 800 (1971)). Plaintiff is informed and believes that their experience is typical of many other consumers who, due to the purposefully deceptive and terrifying advertising, were in fact terrified and distressed for the sole purpose of making them aware of Defendants' vehicles for sale.

83. To state a cause of action under the fraud prong of § 17200, "it is necessary only to show that members of the public are likely to be deceived." (*Committee on Children's Television, Inc. v. General Foods Corp.*, 35 Cal. 3d 197, 211 (1983)). Likelihood of public deception is measured against a "reasonable consumer" standard. (*See Lavie v. Procter & Gamble*, 105 Cal. App. 4th 496, 504-07 (2003)).

84. A reasonable consumer who receives emails from an apparently disturbed, violent and aggressive individual en route to their home, as in this case, would more likely be subject to distress than believe they are subject to an advertising campaign for automobiles. Defendants' fake Terror Marketing Campaign is inherently deceptive because it is not what a reasonable consumer would believe it to be based upon the apparent emails, videos and links sent to that consumer and it was not what PLAINTIFF believed it to be when she received said information from DEFENDANTS.

85. In addition to the "fraudulent" prong of § 17200 discussed above, PLAINTIFF is entitled to relief under the "unlawful" prong. The coverage of the unlawful prong "is sweeping, embracing anything that can properly be called a business practice and that at the same time is forbidden by law." (*E.g., Wilner v. Sunset Life Ins. Co.*, 78 Cal. App. 4th 952, 964 (2000) (citations omitted)).

86. The DEFENDANTS' Terror Marketing Campaign was not only deceptive, it was illegal. California law prohibits the use of any "advertising device" to disseminate claims about a

1 product for sale that are "untrue or misleading." (*Cal. Bus. & Prof. § 17500; see, e.g., Day v.*
2 *AT&T Corp.*, 63 Cal. App. 4th 325, 329-32 (holding that PLAINTIFF alleging misleading
3 statements on prepaid telephone card packaging had stated a cause of action under §§ 17200 and
4 17500)).

5 87. For the foregoing reasons, the Defendants' violation of § 17500 constitutes a
6 violation of the unlawfulness prong of § 17200. (*See Committee on Children's Television, Inc. v.*
7 *General Foods Corp.*, 35 Cal. 3d 197, 210 ("[A]ny violation of the false advertising law...
8 necessarily violates the unfair competition law."))

9 88. Even were the DEFENDANTS' actions not otherwise in violation of § 17200, they
10 are also forbidden by the "unfair" prong of the statute. An unfair practice occurs when the practice
11 "offends an established public policy or when the practice is immoral, unethical, oppressive,
12 unscrupulous, or substantially injurious to consumers." (*People v. Casa Blanca Convalescent*
13 *Homes, Inc.*, 159 Cal.App.3d 509, 530 (1984); *Diaz v. Allstate Ins. Group*, 185 F.R.D. 581, 995
14 (Cal. C.D. 1998)). Unfair practices may be actionable under §17200 even if they fit no pattern
15 previously condemned by statute or case law. (*Allied Grape Growers v. Bronco Wine Co.*, Cal.
16 App. 3d 432, 450 (1988)).

17
18
19 **FIFTH CAUSE OF ACTION**
20 **False, Deceptive and/or Misleading Advertising**
21 **[Cal. Bus. & Prof. Code § 17500 et seq.]**
22 **(Against All Defendants)**

23 89. The allegations of paragraphs 1 through 88 are re-alleged and incorporated herein
24 by this reference as though set out fully herein.

25 90. Beginning at an exact date unknown to PLAINTIFF, but within three (3) years
26 preceding the filing of this Complaint, Defendants have made, and continue to make, untrue, false,
27 deceptive or misleading statements and material omissions in connection with the advertising, sale
28 and marketing of their automobiles throughout the nation and the State of California, as set forth

1 more fully above.

2 91. DEFENDANTS have made, and continue to make untrue, false, deceptive or
3 misleading statements and misrepresentations, misstatements and material omissions regarding
4 their Terror Marketing Campaign as set forth more fully above.

5 92. Specifically, DEFENDANTS represented that troubled and aggressive individuals
6 were en route to the homes of innocent consumers like PLAINTIFF, resulting in great distress to
7 those consumers, without disclosing that the entire Terror Marketing Campaign was merely to
8 force consumers to become aware of DEFENDANTS automobiles for sale.

9 93. At all times mentioned herein, DEFENDANTS knew, or by the exercise of
10 reasonable care, should have known that these and other statements and omissions were false,
11 deceptive, untrue or misleading.

12 94. By engaging in the foregoing acts and practices with the intent to induce
13 PLAINTIFF and members of the general public to purchase their automobiles, DEFENDANTS
14 have committed, and continue to commit, false, deceptive and misleading advertising, as defined
15 by the *California Business and Professions Code*, section 17500, *et seq.*

16 95. PLAINTIFF and other members of the general public are in current and ongoing
17 need of protection from the untrue, false, deceptive or misleading advertisements of
18 DEFENDANTS.

19 96. The aforementioned practices, which DEFENDANTS have used, and continue to
20 use, to their significant financial gain, also constitute unlawful competition and provide an
21 unlawful advantage over Defendants' competitors as well as injury in fact to the general public and
22 the loss of money and property to PLAINTIFF and the general public.

23 97. PLAINTIFF is informed and believes, and thereupon alleges, that the general
24 public is likely to be deceived by DEFENDANTS' practices set forth above.

1 98. PLAINTIFF seek, on behalf of the general public and those similarly situated, full
2 restitution and disgorgement of monies, as necessary and according to proof, to restore any and all
3 monies acquired by Defendants by means of the unfair and/or deceptive trade practices
4 complained of herein.

5 99. PLAINTIFF seek, on behalf of the general public and those similarly situated, an
6 injunction to prohibit Defendants from continuing to engage in the unfair trade practices
7 complained of herein. The restitution includes all amounts, paid and unpaid, obtained by
8 Defendants using the tactics described herein, including interest thereon. The acts complained of
9 herein occurred, at least in part, within three (3) years preceding the filing of this Complaint.

10 100. PLAINTIFF and other members of the general public are further entitled to and do
11 seek both a declaration that the above-described trade practices are unfair, unlawful and/or
12 fraudulent and injunctive relief restraining DEFENDANTS from engaging in any of such
13 deceptive, unfair and/or unlawful trade practices in the future. Such misconduct by
14 DEFENDANTS, unless and until enjoined and restrained by order of this Court, will continue to
15 cause injury in fact to the general public and the loss of money and property in that the
16 DEFENDANTS will continue to violate these California laws, unless specifically ordered to
17 comply with the same. This expectation of future violations will require current and future
18 customers to repeatedly and continuously seek legal redress in order to recoup monies paid to
19 DEFENDANTS to which Defendant DEFENDANTS ants are not entitled. PLAINTIFF and other
20 members of the general public have no other adequate remedy at law to ensure future compliance
21 with the *California Business and Professions Code* alleged to have been violated herein.

22 101. As a direct and proximate result of such actions, PLAINTIFF and other members of
23 the general public have suffered, and continue to suffer, injury in fact and have lost money and or
24 property as a result of such deceptive, unfair and/or unlawful trade practices and unfair
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1 competition in an amount which will be proven at trial, but which is in excess of the jurisdictional
2 minimum of this Court.

3 102. As a direct and proximate result of such actions, Defendants have enjoyed, and
4 continue to enjoy, significant financial gain in an amount which will be proven at trial, but which
5 is in excess of the jurisdictional minimum of this Court.

6 **SIXTH CAUSE OF ACTION**
7 **Violation of the Consumer Legal Remedies Act [Civ. Code §1750 et. seq.]**
8 **(Against All Defendants)**

9 103. The allegations of paragraphs 1 through 102 are re-alleged and incorporated herein
10 by this reference as though set out fully herein.

11 104. The Consumer Legal Remedies Act (CLRA) creates a non-exclusive statutory
12 remedy for unfair or deceptive acts or business practices. (*See Reveles v. Toyota by the Bay*, 57
13 Cal. App. 4th 1139, 1164 (1997)). Its self-declared purpose is to protect consumers against unfair
14 and deceptive business practices, and to provide efficient and economical procedures to secure
15 such protection. (*Cal. Civil Code* §1760.) The CLRA was designed to be liberally construed and
16 applied in favor of consumers to promote its underlying purposes. (*Id.*)

17 105. The DEFENDANTS' herein-alleged deceptive business practices were and are
18 willful, malicious, oppressive, fraudulent, despicable, knowing, and intentional, entitling
19 PLAINTIFF to punitive damages. The DEFENDANTS know that their "Terror Marketing
20 Campaign" would terrorize and cause distress to parties like PLAINTIFF. The DEFENDANTS
21 purposely lie to and deceive California consumers by leading them to believe that they are being
22 terrorized by an unstable and belligerent individual merely to promote their automobiles.

23 106. The DEFENDANTS' conduct was and is undertaken in transactions with
24 consumers that were and are intended to result or that did result in the purchase and sale of the
25 DEFENDANTS automobiles to consumers. The DEFENDANTS have thus violated the CLRA.
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On information and belief, the DEFENDANTS' conduct violates other and further provisions of the CLRA.

107. As a result of the DEFENDANTS' herein alleged unfair and/or deceptive business practices, PLAINTIFF and the public at large have suffered damage and lost money in that they were terrorized and distressed due to the false impression that a disturbed and aggressive individual was en route to their home. PLAINTIFF is accordingly entitled to damages.

108. The DEFENDANTS' unscrupulous Terror Marketing Campaign is illegal and the Court can and should immediately end it by enjoining the DEFENDANTS from continuing to "advertise" their products in this manner.

109. The DEFENDANTS' herein-alleged deceptive business practices were and are willful, malicious, oppressive, fraudulent, despicable, knowing, and intentional, entitling PLAINTIFF to punitive damages. The DEFENDANTS know that their Terror Marketing Campaign creates the false impression that disturbed and aggressive strangers are en route to consumers' homes. The DEFENDANTS purposely lied to and deceive California consumers by leading them to believe that this is true merely to promote their automobiles.

110. PLAINTIFF have incurred and continue to incur legal expenses and attorneys' fees, and seek an award of same in an amount subject to proof at the appropriate time.

SEVENTH CAUSE OF ACTION
Fraud
(Against All Defendants)

111. The allegations of paragraphs 1 through 110 are re-alleged and incorporated herein by this reference as though set out fully herein.

112. As hereinabove alleged, DEFENDANTS represented as a fact that an apparently unstable and aggressive stranger was en route to the home of PLAINTIFF. These descriptions and/or affirmations of fact are false and were false when made, and constitute fraud.

113. The elements of common law fraud are a misrepresentation, knowledge of its

falsity, intent to defraud, justifiable reliance, and resulting damage. (*Gil v. Bank of America, Nat. Ass'n*, 138 Cal.App.4th 1371, 1381 (2006)). Section 1572 of California Civil Code further defines fraud to include (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true; (2) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true; (3) The suppression of that which is true, by one having knowledge or belief of the fact; (4) a promise made without any intention of performing it; or (5) any other act fitted to deceive.

114. PLAINTIFF suffered damages due to DEFENDANTS' material, false, and fraudulent misrepresentations that they were subject to danger. PLAINTIFF was deliberately led to believe that a disturbed and aggressive stranger was en route to their home.

115. DEFENDANTS intended to and did defraud the public by designing and executing their Terror Marketing Campaign. DEFENDANTS intentionally engaged a deceptive scheme in which they put PLAINTIFF and consumers in distress and terror merely to promote their automobiles.

116. PLAINTIFF justifiably relied on DEFENDANTS' false representations that a disturbed and aggressive stranger was en route to their home. All consumers would believe that an individual who knows their name and home address has personal information about them that would enable him to travel to their home. PLAINTIFF believes that this stranger had committed violent and aggressive acts and attempted to charge them for it, and that this stranger was fleeing from the police and was en route to their home, was reasonable on its face given that it was based on the representations they received from DEFENDANTS via email.

117. PLAINTIFF suffered damages due to the fraudulent conduct of DEFENDANTS. PLAINTIFF were deceived into believing that they were in danger from an unknown but belligerent stranger who had their private personal information and was fleeing from the police,

1 resulting in great emotional distress to them as set forth above. PLAINTIFF has suffered
2 monetary damages as a result and such other and further damages as may be proven at trial.

3 118. PLAINTIFF further seeks an award of punitive damages appropriate to deter,
4 punish, and make an example of DEFENDANTS. DEFENDANTS intentionally pursued and
5 continue to pursue the herein-alleged fraudulent course of action designed to make money at the
6 expense of consumers. They did so knowing it was misleading. Such conduct is reprehensible, and
7 is malicious, oppressive, and fraudulent within the meaning of *Civil Code* § 3294. We do not
8 tolerate fraud like this from street hustlers. We cannot tolerate it from Defendants.

10 **EIGHTH CAUSE OF ACTION**
11 **Negligent Misrepresentation**
12 **(Against All Defendants)**

13 119. The allegations of paragraphs 1 through 118 are re-alleged and incorporated herein
14 by this reference as though set out fully herein.

15 120. As hereinabove alleged, DEFENDANTS have affirmed as a fact that an unknown
16 and aggressive stranger in trouble with the law was en route to the home of PLAINTIFF. If not
17 deliberately fraudulent, and in the alternative to that theory, these false descriptions and
18 affirmations of fact, if not intentional and fraudulent, constitute negligent misrepresentation.

19 121. DEFENDANTS made these false statements without reasonable grounds for
20 believing them to be true.

21 122. PLAINTIFF relied on DEFENDANTS' misstatements of fact made as part of the
22 Terror Marketing Campaign.

23 123. PLAINTIFF was damaged in that they were deceived into terror and extreme
24 emotional distress due to DEFENDANTS' misrepresentations that they were subject to danger
25 from this individual.

26 124. PLAINTIFF is entitled to damages and punitive damages. DEFENDANTS'
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1 conduct was and is malicious, oppressive, and/or fraudulent within the meaning of *Civil Code*
2 §3294.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF prays for judgment as follows:

5 1. For compensatory damages of not less than \$10,000,000 and in an amount to be
6 determined at trial;

7 2. For an award of damages as authorized under all applicable statutes;

8 3. For restitution and disgorgement pursuant to, without limitation, *Business and*
9 *Professions Code* section 17200 et seq.;

10 4. Pursuant to *Business and Professions Code* section 17535, that all DEFENDANTS,
11 their employees, agents, representatives, successors, assigns, and all persons who act in concert
12 with them be permanently enjoined from making any untrue or misleading statements in violation
13 of *Business and Professions Codes* section 17500, including those specified in the Fifth Cause of
14 Action;

15 5. Pursuant to *Business and Professions Code* section 17203, that all DEFENDANTS,
16 their employees, agents, representatives, successors, assigns, and all persons who act in concert
17 with them be permanently enjoined from committing any acts of unfair competition, including the
18 violations alleged in the Fourth Cause of Action;

19 6. Pursuant to *Business and Professions Code* section 17535, that the Court make
20 such orders or judgments as may be necessary to prevent the use or employment by any
21 DEFENDANTS of any practices which violate section 17500 of the *Business and Professions*
22 *Code*, or which may be necessary to restore to any person in interest any money or property, real
23 or personal, which may have been acquired by means of any such practice;

24 7. Pursuant to *Business and Professions Code* section 17203, that this Court make
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such orders or judgments as may be necessary to prevent the use or employment by any DEFENDANT of any practice which constitutes unfair competition or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition;

8. Pursuant to *Business and Professions Code* section 17536, that Defendants, and each of them, be ordered to pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500) for each violation of *Business and Professions Code* section 17500 by DEFENDANTS, in an amount according to proof;

9. Pursuant to *Business and Professions Code* section 17206, that DEFENDANTS, and each of them, be ordered to pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500) for each violation of *Business and Professions Code* section 17200 by DEFENDANTS, in an amount according to proof;

10. For restitution and injunctive relief pursuant to *Civil Code* section 1780;

11. For an award of reasonable attorney's fees as provided by law under all applicable statutes, including but not limited to *Civil Code* section 1780(d);

12. For punitive damages as allowed by law;

13. For interest upon such damages as permitted by law;

14. That PLAINTIFF recover their costs of suit, including costs of investigation.

15. For such other and further relief that the Court deems just, proper, and equitable.

DEMAND FOR JURY TRIAL

PLAINTIFF demands a jury trial in this action of all issues so triable.

Dated:

Nicholas Tepper, Esq.
Attorney for PLAINTIFF

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing COMPLAINT FOR DAMAGES

and know its contents

X CHECK APPLICABLE PARAGRAPHS

X I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true

I am an Officer a partner a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for

a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on AUGUST 22, 2009 at LOS ANGELES, California.

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

AMBER DUICK

Type or Print Name

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/08

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of State of California

I am over the age of 18 and not a party to the within action; my business address is:

On, I served the foregoing document described as

on in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

"I deposited such envelope in the mail at California

The envelope was mailed with postage thereon fully prepaid

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at

California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit

Executed on at California

*(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee

Executed on at California

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

*(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

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