

**IN THE CIRCUIT COURT FOR THE 17th JUDICIAL DISTRICT  
IN AND FOR BROWARD COUNTY, FLORIDA**

\_\_\_\_\_  
GOLF CLUBS AWAY LLC, Individually and )  
On Behalf of a Class of Persons Similarly )  
Situating, )

Plaintiff, )

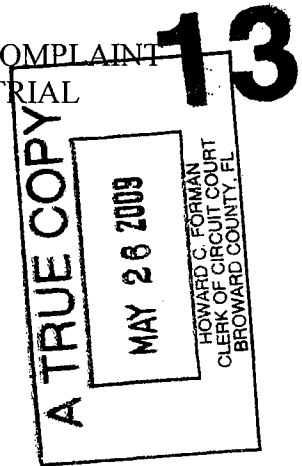
vs. )

HOSTWAY CORPORATION, HOSTWAY )  
SERVICES, INC., and VALUEWEB, )

Defendants. )  
\_\_\_\_\_ )

Case No. 09-29596

CLASS REPRESENTATION COMPLAINT  
AND DEMAND FOR JURY TRIAL



Plaintiff Golf Clubs Away LLC, on behalf of itself and all others similarly situated (“Plaintiff”), by its undersigned attorneys, alleges as follows:

1. This is a class action on behalf of Plaintiff and all other similarly situated persons who subscribe(d) to Defendants’ ValueMail and/or ValueWeb e-mail services and whose e-mail addresses were “blacklisted” between November 1, 2008 to present (“Class Period”) against Hostway Corporation, Hostway Services, Inc., and ValueWeb (a Hostway company) (collectively, “Hostway” or “Defendants”) for violation of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fla. Stat. §§ 501.201, *et seq.*; Breach of Contract; Breach of Implied Covenant of Good Faith and Fair Dealing; and Unjust Enrichment. This class action seeks: (i) compensation for the damage caused by Defendants’ illegal and wrongful acts and (ii) declaratory and injunctive relief to end the Defendants’ improper practices.

## NATURE OF THE CASE

2. During the Class Period, Plaintiff subscribed to Defendants' ValueMail Pro services under which Defendants provided the technological underpinnings for Plaintiff's internal and external e-mail communications capabilities. In or around November 2008, Defendants' e-mail servers were hacked by one or more spammers, who sent unauthorized e-mails from e-mail accounts of the Plaintiff and members of the Class. As a result of the hacking and spam activity, Plaintiff's and Class members' e-mail addresses were blacklisted and their legitimate e-mail transmissions were blocked. Defendants failed to notify Plaintiffs and the Class of that: (a) their e-mail servers were breached; (b) their e-mail addresses were blacklisted; and (c) their e-mail transmissions were blocked. As a result, Plaintiff's and Class members' personal and business communications were obstructed. Defendants failed to notify Plaintiff and the Class of these issues and have yet to fully rectify the resulting e-mail transmission problems.

3. If Defendants had disclosed that its ValueMail and/or ValueWeb e-mail services would be susceptible to hackers, who would send unauthorized e-mail communications from Plaintiff's accounts resulting in Plaintiff's domain name and/or Internet protocol ("IP") address being labeled as an Internet spammer, or that Defendants would knowingly withhold information that Plaintiff's e-mail accounts had been hacked and blacklisted, Plaintiff would have not subscribed to Defendants' services and/or would have maintained redundant or contingency e-mail systems to maintain e-mail communications in the event of a breakdown. Further, Defendants did not disclose to Plaintiff that Defendants would interfere with his Internet e-mail communications and systems without his permission. Plaintiff has been damaged as a result of Defendants' willful misrepresentations

and omissions and Defendants' complicity in the continued blocking of his legitimate e-mails from reaching his customers and other recipients.

### **JURISDICTION AND VENUE**

4. This is an action for money damages in which the amount in controversy exceeds the sum of \$15,000 exclusive of interest, costs and attorneys' fees. This Court has jurisdiction over the subject matter.

5. The court has personal jurisdiction over Defendants and due process because Defendants have, at all times relevant to this cause of action, individually or through their agents, subsidiaries, officers and/or representatives, operated, conducted, engaged in and carried on a business venture in this State and/or maintained an office or agency in this State, committed a statutory violation within this State related to the allegations made in this Complaint, and caused injuries to Plaintiff and Class members herein, which arose out of the acts or omissions which occurred inside the State of Florida and Broward County, during the relevant time period, at which time Defendants were engaged in business activities in the State of Florida, resulting in injuries to the Plaintiff and the Class members.

6. Venue is proper in the Circuit Court for Broward County because the principal office of Defendants ValueWeb and Hostway Services, Inc. are located in Fort Lauderdale, Broward County, Florida and the causes of action alleged herein accrued in Broward County, Florida.

7. Additionally, this Court has jurisdiction and venue is proper because, upon information and belief, the Web Hosting Services Agreement (the "Agreement"), executed between Plaintiff (as well as Class members) and Defendants states that the Agreement is to be interpreted under the laws of the State of Florida without regard to any conflict of laws

provisions and that Plaintiff has consented to the exclusive jurisdiction and venue of the state courts sitting in Broward County, Florida to resolve any disputes arising under the Agreement.

### PARTIES

8. Plaintiff Golf Clubs Away LLC (“Plaintiff”), which conducts business as [golfclubsaway.com](http://golfclubsaway.com), is a New York limited liability corporation located at 77 Spruce Street, Suite 206, Cedarhurst, New York and is registered to transact business in the State of Florida. Plaintiff has been a ValueWeb subscriber since 2007.

9. Defendant ValueWeb is a self-described “Hostway Company” with its principal place of business and corporate address located at 3250 W. Commercial Boulevard, Suite 200, Fort Lauderdale, Florida 33309. Upon information and belief, ValueWeb is part of the Hostway Services, Inc. family of companies and shares the same business address as Hostway Services Inc. Further, ValueWeb’s website (<http://www.valuweb.com>) claims that it “merged with Hostway”. ValueWeb provides e-mail tools, Web hosting, Web design, online marketing and shopping tools and technology solutions to small and medium size businesses for e-commerce and other business needs.

10. Defendant Hostway Services, Inc. is a subsidiary of Hostway Corporation. Defendant Hostway Services, Inc., formerly known as Affinity Internet, Inc. prior to its April 2007 acquisition by Hostway Corp., is a Delaware corporation with its principal place of business located at 3250 W. Commercial Boulevard, Suite 200, Fort Lauderdale, Florida 33309. Founded in 1996, Hostway Services Inc. has approximately 300 employees and, according to its description of itself, provides more than 200,000 Web professionals and small businesses the tools to develop, maintain, market and support their Web presence through its ValueWeb business for Web design, ecommerce hosting and online marketing solutions and Gate.com, a UNIX and Windows Web hosting service.

11. Defendant Hostway Corporation is the parent of Hostway Services, Inc. and is located/headquartered at 425 West Randolph Street, 8<sup>th</sup> Floor, Chicago, Illinois 60606 and 100 N Riverside, Suite 800, Chicago, IL 60606. Hostway Corp., founded in 1998, is a global leader in providing services over the Internet, and one of the three largest independent hosting providers in the world. Hostway Corp. maintains a direct presence in 11 countries, 15 worldwide operation centers and has more than 700 employees. Hostway Corp. provides domain name registration, Web hosting and ecommerce, colocation, managed dedicated hosting, SaaS hosting, Web design and online marketing services to more than 600,000 customers and over 2 million Web sites worldwide. It claims that it operates state-of-the-art data centers that reduce the complexity and cost of Web-based technologies for small businesses and large enterprises.

#### **SUBSTATIVE ALLEGATIONS**

12. Plaintiff is a New York limited liability corporation engaged in the business of golf club and golf equipment rentals, maintains a Web site (golfclubsaway.com) marketing its services, and utilizes approximately ten e-mail accounts to maintain its business.

13. Plaintiff's business practices have, at all relevant times to the allegations in this Complaint, complied with, and continue to comply with all federal and state requirements, laws and standards pertaining to the sending of commercial e-mail, including the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, 15 U.S.C. § 7701 (2003) ("CAN-SPAM").

14. Plaintiff delivers its electronic mail messages to its customers and other business partners at e-mail addresses provided by its customers and business partners.

15. Plaintiff does not engage in “spamming,” which is the digital equivalent of sending junk mail that is not requested. Plaintiff employs a variety of permission processes that it controls to obtain permission from, and provide notice to, customers that receive its e-mails.

16. In or around 2007, Plaintiff began and continues to subscribe to Defendants’ ValueMail Pro e-mail services, which includes up to twenty mailboxes, fifty megabytes of storage per mailbox, unlimited e-mail aliases, POP3/IMAP/SMTP/Webmail access, and antispy and virus filtering technologies. Monthly subscriptions fees are \$9.95 per month plus \$6.95 for a domain name if the customer does not already have one.

17. Plaintiff subscribed to ValueMail Pro for \$9.95 per month.

18. ValueWeb also packages more advanced e-mail services in three additional tiers — Express, Advanced, and Professional. All three tiers include, among other things, e-mail, disk storage, data transfer, SQL database storage and capabilities, on-line shopping cart tools, statistical Web site usage analysis, on-line marketing credits, and 24-hour, seven-day per week technical phone support. The tiered services are differentiated generally by the number of allowed e-mail addresses, amount of disk storage space, data transfer amounts, and SQL database space available to the subscriber. Monthly subscription fees for the Express, Advanced, and Professional tiers are \$14.95 per month, \$39.95 per month, and \$79.95 per month, respectively.

19. On or about November 1, 2008, Gary Miller, Plaintiff’s Chief Executive Officer, became aware that not all of the e-mails being sent through ValueMail Pro were making it to their final destination and that e-mails that should have been received by Plaintiff were not arriving in Plaintiff’s e-mail inboxes.

20. In or around November 2008, Mr. Miller contacted Defendants to complain about the aforementioned e-mail communication issues and problems and was told that Defendants would look into the issues and problems.

21. On or about December 15, 2008, after noticing that the e-mail communication issues had not yet been rectified, Mr. Miller contacted the Defendants' customer service phone support center and complained to Bill Daly, one of Defendants' customer service representatives, that the e-mail transmission issues persisted.

22. On or about December 15, 2008, Mr. Daly told Mr. Miller that: (a) Defendants were aware of the e-mail transmission problems; (b) Plaintiff's and other subscriber e-mail communications were being blocked by other Internet Service Providers ("ISPs"), including AOL, Yahoo!, and other private domain names; (c) the e-mail blocking was due to internal difficulties related to a breach of Defendants' e-mail security systems by a "spammer," who sent unauthorized e-mails under Plaintiff's domain name and/or Internet Protocol ("IP") address and used Defendants' servers to do so; (d) Defendants were trying to correct the e-mail communication problems plaguing their systems; and (e) Defendants did not have an estimated time frame in which the problem would be resolved.

23. Upon further inquiry, Mr. Daly told Mr. Miller that: (a) it was not Defendants' responsibility to notify its subscribers that Defendants' servers had been hacked; (b) customer domain names has been improperly used by spammers; and (c) as a result of the activity, customer e-mail transmissions were blocked.

24. As a result of Defendants' e-mail servers being hacked, and the hackers abusing customer domain names and accounts for spam purposes, Defendants' ValueMail and/or ValueWeb e-mail accounts and domain names were "blacklisted" by various ISPs.

25. Domain Name System (“DNS”) “blackhole lists” or blacklists are anti-spam measures implemented by ISPs to filter spam e-mail communications by using a DNS record database to identify actual or suspected spam e-mails by an IP address or domain name. The e-mail filtering protocols implemented by the ISP dictate which e-mails, from which domain names and IP addresses, can be sent or received and which e-mails are blocked.

26. DNS blacklisting companies accumulate lists of IP addresses from Internet e-mail servers which they believe produce spam. The blacklists are then made available to ISPs, who, optionally, use the blacklists to filter their e-mail systems and prevent anyone on the blacklist from sending or receiving an e-mail communication.

27. A large number of ISPs filter or block e-mail communications using blacklists without returning an “undeliverable message” or a “bounce message” and the e-mail disappears into a “blackhole.”

28. ISPs and Portals such as Yahoo!, MSN, Google and other providers of free e-mail services, as part of their spam filtering systems, do not return “undeliverable” or “bounce” messages.

29. Defendants were aware that its ValueMail and/or ValueWeb customers’ domain names and IP addresses were breached by a spammer and that as a result, ValueWeb customers’ domain names and IP addresses were placed on one or more blacklists resulting in the customers’ inability to send or receive e-mail through various ISPs that utilized the blacklist(s) on which the customers domain name and IP address appeared.

30. Defendants did not alert Plaintiff and the Class that their DNS and IP addresses had possibly been compromised by a spammer and that, as a result their domain



names and IP addresses were placed on a spam blacklist and their e-mails were being blocked by ISPs that used the blacklists.

31. Plaintiff and the Class through no fault of their own have been mistakenly placed on various blacklists as a result of the breach of Defendants' computer systems, the use of hacked DNS and IP addresses for spamming by the hacker and resulting placement on a DNS blacklist which prevented Plaintiff and the Class from sending and receiving e-mail communications.

32. Plaintiff and the Class have lost clients and/or business opportunities as a result of the breach of Defendants' systems, the subsequent spamming by the hacker, the resulting placement on a DNS blacklist which prevented Plaintiff and the Class from sending and receiving e-mail communications, and Defendants' failure to notify their customers of the e-mail transmission issues.

33. Plaintiff cannot reasonably ascertain how many of its e-mails were blocked by ISPs using the blacklist(s) on which Plaintiff's domain name and IP appeared. However, a search of domain name blacklisting services by dnsstuff.com reveals that Plaintiff is still on at least two spam "blacklist" as of May 15, 2009.

34. Upon information and belief, the process of delisting a domain name and/or IP address from multiple blacklists is a lengthy and burdensome process.

35. Defendants' misrepresentations, acts of concealment, failures to disclose and breaches of its agreement with its e-mail subscribers were knowing and intentional and/or reckless, and made for the purpose of deceiving Plaintiff and the members of the Class to maximize Defendants' gain and minimize an adverse costs associated with remedying its e-mail systems.

36. Upon information and belief, the e-mail addresses of the Plaintiff and the Class remain blocked due to the mistaken blacklisting of their domain names and IP addresses.

37. It is against equity and good conscience to permit Defendants to retain all the ill-gotten benefits it receives from its subscribers who are promised secure and reliable e-mail communications by the way of Defendants' network and systems.

### **CLASS REPRESENTATION ALLEGATIONS**

38. Plaintiff and Class members incorporate and reallege the above paragraphs.

39. This class action is brought pursuant to: (a) Fla. R. of Civ. P. 1.220(b)(1)(B) in that "adjudications concerning individual members of the class which would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the adjudications, or substantially impair or impede the ability of other members of the class who are not parties to the adjudications to protect their interests"; and (b) Rule 1.220(b)(2) in that the Defendants have "acted or refused to act on grounds generally applicable to all the members of the class, thereby making final injunctive relief or declaratory relief concerning the class as a whole appropriate."

40. Class Definition – Fla. R. Civ. P. 1.220(c)(2)(D)(ii): Plaintiff sues on his own behalf and on behalf of a nationwide Class defined as:

All resident and nonresident persons who paid subscription fees for Defendants' ValueMail and/or ValueWeb e-mail services and were blacklisted between November 1, 2008 to the date of Class certification, or the date upon which Defendants remedied the "blacklisting" problems for the Class, which ever event comes earliest.

Included in the Class are nonresident claimants whose: (a) claims are recognized within the claimant's state of residence; (b) claim is not time-barred; and (c) rights cannot be asserted because the claimant's state of residence lacks personal jurisdiction over the Defendants. The

Class also includes nonresidents because the conduct giving rise to the claim “occurred in or emanated from” the State of Florida. Excluded from the Class are Defendants, their officers, directors, employees, subsidiaries, divisions, units, and affiliates as well as any judge, justice or judicial office assigned to hear any proceeding in relation to this case.

41. Numerosity – Fla. R. Civ. P. 1.220(c)(2)(D)(i): The Class consists of numerous individuals and entities throughout Florida and the United States, making individual joinder impractical, in satisfaction of Rule 1.220. Plaintiff does not know the exact size or identities of the proposed Class, since such information is in the exclusive control of Defendants. Plaintiff, however, believes that the Class encompasses hundreds, if not thousands, of individuals who are geographically dispersed throughout the United States. The disposition of the claims of the Class members in a single class action will provide substantial benefits to all parties and the Court.

42. Common Questions of Law and Fact – Fla. R. Civ. P. 1.220(c)(2)(B): All members of the Class have been subject to and affected by the same practices and policies and common thread of misconduct resulting in injury to Plaintiff and all members of the Class as described herein. There are numerous questions of law and fact that are common to the Class, and predominate over any questions affecting only individual members of the Class. These questions include, but are not limited to the following:

- The nature, scope and operations of Defendants’ wrongful practices;
- Whether Defendants knew that its ValueMail and/or ValueWeb subscribers’ domain names and IP addresses were “hacked” by a spammer, who sent unauthorized spam e-mails from ValueWeb accounts;
- Whether Defendants were aware that its ValueMail and/or ValueWeb subscribers’ domain names and IP addresses were placed on Internet blacklists designed to prevent e-mail spam;

- Whether Defendants were aware that its ValueMail and/or ValueWeb subscribers' legitimate e-mails were being blocked as a result of being mistakenly blacklisted;
- Whether Defendants notified its ValueMail and/or ValueWeb subscribers' that legitimate e-mail transmissions were being blocked;
- Whether Defendants' practices breached its contract with its subscribers;
- Whether Defendants' practices breached its implied covenant of good faith and fair dealing with its subscribers;
- Whether Defendants have been unjustly enriched;
- Whether the Court can enter declaratory and injunctive relief; and
- The proper measure of damages.

43. Typicality - Fla. R. Civ. P. 1.220(c)(2)(C): The claims of the named Plaintiff are typical of the claims of the Class and do not conflict with the interests of any other members of the Class in that both the Plaintiff and the other members of the Class are subject to Defendants' same wrongful practices.

44. Adequacy – Fla. R. Civ. P. 1.220(c)(2)(D)(iii): Plaintiff will fairly and adequately represent and protect the interests of the Class. It is committed to the vigorous prosecution of the Class' claims and has retained competent and experienced attorneys who are qualified to pursue this litigation and have significant experience in Class actions. Further, Plaintiff's interests are aligned with the Class and it is unlikely that there will be a divergence of viewpoint.

45. Predominance: The common questions of law and fact relating to the claims of the class representative Plaintiff and the claims of each Class member predominate over any question of law or fact affecting only individual members of the Class. Plaintiff is not aware of any individual claims covering the issues raised in this Complaint, nor is it aware of the expressed interest of any other individual in controlling this litigation. Each Class member will be identified through discovery from the Defendants, and will be notified and given an

opportunity to opt out of the class in the event he/she/it has no interest in being represented by this action, or if for any reason, he/she/it prefers to be excluded from the class. The judgment will not be binding on those members who opt out of the class. Consequently, any potential Class members who have an interest in prosecuting separate claims and controlling their own litigation against Defendants will not be prejudiced by this action.

46. Manageability: There are no difficulties likely to be encountered in the management of this action as a class action that could not be managed by this Court: (a) The advantages of maintaining the action as a class action far outweigh the expense and waste of judicial effort that would result in hundreds of thousands of separate adjudications of these issues for each class member; and (b) Class treatment further insures uniformity and consistency in results.

47. Superiority: A Class action is superior to other available methods for the fair and efficient adjudication of the controversies herein in that:

- Individual claims by the Class members are impractical as the costs of pursuit far exceed what any one individual Plaintiff or Class member has at stake;
- As a result, individual members of the Class have no interest in prosecuting and controlling separate actions;
- It is desirable to concentrate litigation of the claims herein in this forum; and
- The proposed Class action is manageable.

Further, the prosecution of separate actions by individual members of the Class would create a risk of adjudications with respect to individual members of the Class, which would, as a practical matter, be dispositive of the interests of other members of the Class who are not parties to the action, or could substantially impair or impede their ability to protect their interests. The prosecution of separate actions by individual members of the Class would create a risk of

inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the parties opposing the Class. Such incompatible standards and inconsistent or varying adjudications, on what would necessarily be the same essential facts, proof and legal theories, would also create and allow to exist inconsistent and incompatible rights within the Class.

48. Plaintiff's counsel are entitled to reasonable attorneys' fees from Plaintiff, Class members, and/or a common fund for the handling of this action.

### **CAUSES OF ACTION**

#### **CLAIM 1**

#### **VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**

49. Plaintiff and Class members incorporate and reallege the above paragraphs.

50. Plaintiff brings this claim based upon Florida's Deceptive and Unfair Trade Practices Act (the "Act") found in Chapter 501 of the Florida Statutes.

51. Plaintiff and the Class are Consumers under the Act: Plaintiff and members of the Class are "consumer[s]" and/or "interested party[ies] or persons" within the meaning of § 501.203(6) and (7), Florida Statutes (2009).

52. Trade or Commerce: In marketing, selling and providing e-mail communication services, Defendants are engaged in "trade or commerce" within the meaning of § 501.203(8), Florida Statutes (2009).

53. Willful Violation: Defendants' conduct as set forth herein was "willful" and constitutes a "violation" under the Act. *See* § 501.2075, Florida Statutes (2009); and § 501.203(3), Florida Statutes (2009).

54. Unfair Acts or Practices: As defined by § 501.204, Defendants' conduct is unlawful as it constitutes, "unfair methods of competition," "unconscionable acts or practices," and/or "unfair or deceptive acts or practices in the conduct of any trade or commerce." See § 501.204, Florida Statutes (2009).

55. As a direct and proximate cause of Defendants' violation of the Act, Plaintiff and all others similarly situated have been damaged in an amount that will be proven at trial.

56. Equitable Relief: Plaintiff, individually and as a representative of members of the Class seeks the entry of a declaratory judgment enjoining Defendants' unlawful conduct and mandating corrective measures pursuant to § 501.211, Florida Statutes (2009).

57. Money Damages: Plaintiff, individually and as a representative of the members of the Class further requests this Court require Defendants to repay monies acquired by the distribution, marketing and sale of its ValueMail and/or ValueWeb e-mail communications services during the time Defendants were engaging in unlawful conduct, and statutory damages as prescribed by §§ 501.211(2) and 501.2075, Florida Statutes (2009).

## **CLAIM 2**

### **BREACH OF CONTRACT**

58. Plaintiff and Class members incorporate and reallege the above paragraphs.

59. Plaintiff and Class members entered into a written or implied contract with Defendants to pay monthly fees in exchange for its ValueMail and/or ValueWeb services.

60. The aforementioned contracts were identical or substantially identical with respect to their material provisions which form the basis of this action.

61. Plaintiff and Class members performed their obligations under the contract by paying their monthly fees.

62. Defendants unjustifiably breached the contract failing to deliver access and use of Defendants' ValueMail and/or ValueWeb service.

63. Defendants' breach directly and proximately resulted in, or substantially contributed to, damages to Plaintiff and Class members as set forth more fully herein. Compliance with the contracts would have prevented the damages sustained by Plaintiff and the Class members.

64. Defendants knew or should have known that their breach would result in damages to Plaintiff and Class members.

65. As a direct and proximate result of Defendants' breach, Plaintiff and the Class have suffered, and are entitled to, damages subject to proof at trial.

**CLAIM 3**

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

66. Plaintiff and Class members incorporate and reallege the above paragraphs.

67. Defendants, through their advertising and marketing of their ValueMail and/or ValueWeb service, made uniform representations and offers regarding the quality of its hosting and e-mail communication systems.

68. Plaintiff and Class members accepted Defendants' offer based upon Defendants' promises regarding the quality of its ValueMail and/or ValueWeb service and gave consideration to Defendants by paying their monthly fees. Plaintiff and Class members thus entered into an implied-in-fact contract with Defendants, which was thereby breached by Defendants' failure to adequately secure its system from hackers, its practice of permitting companies to blacklist its ValueMail and/or ValueWeb subscribers' domain names and IP addresses, and impairing access to legitimate e-mail communications.



69. Plaintiff and Class members performed all their obligations under the contracts by paying for their service.

70. Defendants breached its implied covenant of good faith and fair dealing by knowingly failing to provide Plaintiff and Class members with the service they desired, paid consideration for and thought they were receiving.

71. Plaintiff and Class members had the legal capacity to enter into the aforementioned implied agreements.

72. As a direct and proximate result of the breaches set forth herein, Plaintiff and Class members have suffered, and continue to suffer, damages in an amount which will be proven at trial, but which are in excess of the jurisdictional minimum of this Court.

#### **CLAIM 4**

#### **UNJUST ENRICHMENT**

73. Plaintiff and Class members incorporate and reallege the above paragraphs as if fully set out herein.

74. Defendants' deceptive scheme unjustly enriched Defendants, to the detriment of the Class, by causing Defendants to receive payments for ValueMail and/or ValueWeb services, which it did not fulfill.

75. Plaintiff and Class members have been injured by paying for ValueMail and/or ValueWeb services which they did not fully receive.

76. Defendants' retention of funds paid by Plaintiff's and Class members violates the fundamental principles of justice, equity, and good conscience.

77. Defendants, therefore, should be ordered to return any funds obtained as a result of their deceptive scheme to the Class.

78. As a result of Defendants' deceptive, fraudulent and misleading practices, advertising, marketing and sales of its high speed Internet service, Defendants are enriched at the expense of its subscribers. Defendants actively interfered with its ValueMail and/or ValueWeb subscribers' e-mail communications in violation of public policy of rejecting spam e-mail and allowing the transmission of legitimate e-mails. It is thus against equity and good conscience to permit Defendants to retain the ill-gotten benefits it receives from its subscribers who are promised unfettered, high-speed access to the Internet.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of itself and the Class, demands judgment against Defendants as follows:

(a) Certification of the Class pursuant to Fla. R. Civ. P. 1.220, certifying Plaintiff as the representative of the Class, and designating its counsel, Milberg LLP, as counsel for the Class;

(b) A Declaration that Defendants have committed the violations alleged herein;

(c) Permanently enjoining Defendants, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the injunction, from engaging in unfair and deceptive acts and practices, in violation of Chapter 501, Part II, Fla. Stat.(2009) and the additional claims alleged herein;

(d) Awarding Plaintiff and the Class actual damages on behalf of consumers injured by the deceptive and unfair acts or practices of Defendants, in accordance with § 501.207(1)(c), Fla. Stat. (2009);

(e) Ordering reimbursement to Plaintiff and Class members in accordance with § 501.207(3), Fla. Stat. (2009); or ordering restitution for Defendants' unjust enrichment to consumers in accordance with the equitable powers of the court;

(f) Ordering Defendants to disgorge of ill-gotten revenues, profits or other remunerations they wrongfully obtained at the expense of the Plaintiff and Class members in accordance with § 501.207(3), Fla. Stat. (2009) and the additional claims alleged herein;

(g) Assessing Defendants civil penalties in the amount of ten thousand dollars (\$10,000) for each violation of Chapter 501, Part II, pursuant to § 501.2075, Fla. Stat. (2009), and fifteen thousand dollars (\$15,000) for each violation of Chapter 501, Part II, pursuant to § 501.207, Fla. Stat. (2009);

(h) Awarding reasonable attorney's fees, filing fees, expert fees and costs to Plaintiff and the Class members, pursuant to §§ 501.2105 and 501.2075, Fla. Stat. (2009) and the additional claims alleged herein;

(i) Ordering that an accounting be made by Defendants of its wrongfully obtained payments and profits;

(j) Awarding Plaintiffs and the Class compensatory damages and pre-judgment and post-judgment interest as a result of Defendants' wrongful conduct alleged herein; and

(k) Any such other and further relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all claims so triable as a matter of right.

DATED: May 15, 2009

Respectfully submitted,

**MILBERG LLP**

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