

THIS CASE HAS BEEN ASSIGNED TO CIVIL CASE MANAGEMENT. EACH
PLEADING MUST INCLUDE THE ASSIGNED JUDGE AND DEPARTMENT
DESIGNATION AS SHOWN UNDER THE CASE NUMBER. ALL PARTIES MUST
COMPLY WITH THE ORANGE COUNTY SUPERIOR COURT RULES.

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

OCT 21 2003

ALAN SLATER, Clerk of the Court

BY: R. MUGICA, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

03CC12794

11 PALLORIUM, INC., A Texas)
12 Corporation,)

13 Plaintiff,)

14 vs.)

15 STEPHEN J. JARED, also known)
16 JOE JARED, individually, and)
17 doing business as OSIRUSOFT)
18 RESEARCH AND ENGINEERING and)
19 OSIRUSOFT; and DOES 1 to 50,)
20 inclusive,)

21 Defendants.)
22)
23)
24)
25)
26)
27)
28)

Case No.:

COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF FOR:

1. Negligence;
2. Negligent Interference
With Economic Advantage
And Prospective Economic
Advantage;
3. Intentional Interference
With Economic Advantage
And Prospective Economic
Advantage; and
4. Unfair Business Practices.

JUDGE DAVID R. CHAFFEE
DEPT. C25

For its complaint for damages and equitable relief, plaintiff
Pallorium, Inc. alleges as follows:

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1 1. Plaintiff Pallorium, Inc. ("plaintiff" or "Pallorium")
2 is a corporation existing and operating under the laws of the
3 State of Texas, which does business throughout the United States,
4 including without limitation, California, and throughout the
5 world.

6 2. Defendant Stephen J. Jared, also known as Joe Jared,
7 ("Jared" or "defendant") is an individual who resides in Orange
8 County, California.
9

10 3. Defendants Osirusoft Research and Engineering and
11 Osirusoft are fictitious business names of defendant Jared.

12 4. The true names and capacities, whether individual,
13 corporate, associate or otherwise, of Defendants herein named as
14 Does 1 through 50, inclusive, are unknown to plaintiff who,
15 therefore, sues said defendants by such fictitious names.
16 Plaintiff will seek to amend this complaint to state the true
17 names and capacities of these Doe defendants when they have been
18 ascertained. At the time of the wrongful acts described in this
19 complaint, the named defendants and Does 1 through 50,
20 participated in some or all of the acts herein alleged, whether as
21 principal, agent, alter ego, employer, employee, successor or
22 representative of some or all of the other defendants, acting
23 within the course and scope of said agency and employment.
24

25 5. Defendants have a business service that intentionally
26 obstructs the delivery of e-mail correspondence from certain e-
27 mail servers that defendants list on their "blacklists." The
28

1 service is designed to limit or prevent unwanted, mass-market
2 solicitations via e-mail, known as SPAM, by "exposing" mail
3 servers that allow SPAM e-mail to be transmitted. These
4 "blacklists" are distributed to all major Internet Service
5 Providers ("ISPs"), and the ISPs are urged to block all mail
6 originating from any "blacklisted" e-mail server.
7

8 6. Unfortunately, defendants' business has a high error
9 rate, whereby genuine SPAM servers are not listed on the
10 "blacklists" and, more importantly, legitimate, desired mail is
11 obstructed because non-SPAM web servers which in fact do not allow
12 the transmission of SPAM are incorrectly listed on the
13 "blacklists". The effect of this high error rate is SPAM is not
14 blocked, so that it is delivered to e-mail recipients who do not
15 want the SPAM, and legitimate mail is instead blocked, so that
16 intended and desired communications cannot be delivered or
17 received.
18

19 7. Even though the error rate is high, defendants make it
20 difficult, in fact nearly impossible, for legitimate businesses to
21 cause defendants to correct errors that block their e-mail
22 messages. As a result, legitimate businesses are deprived of e-
23 mail service, for no good reason, and they have no reasonable way
24 to cause defendants to correct the errors.
25

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1 First Cause of Action

2 Negligence

3 [By Plaintiff Against All Defendants]

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5 8. Plaintiff realleges and incorporates by this reference
6 each of the allegations contained in the paragraphs alleged above.
7

8 9. As a result of defendants' business activities, and
9 their possible effect on third parties, defendants have and have
10 had a duty to exercise reasonable care in the selection of e-mail
11 servers to list on their blacklists and in creating a process for
12 legitimate businesses to have their e-mail identities and/or
13 servers removed from the blacklists.

14 10. Defendants breached each of these duties. Defendants
15 improperly, and without cause, reason or justification, black
16 listed plaintiff's e-mail server so that its legitimate
17 correspondence was blocked by ISPs that mistakenly took
18 defendants' blacklists' accuracy at face value. Then, defendants
19 made it impossible for plaintiff to have its e-mail address
20 removed from defendants' blacklists. Defendants' webpage contains
21 a link for complaints about improper blacklisting, however, that
22 link has not worked, or has not worked consistently at any
23 relevant time. At times, defendants' web page could not be
24 accessed to complain about an improper listing. Plaintiff further
25 sent an e-mail message to defendants to complain about being
26 improperly blacklisted, and defendants did not even respond.
27
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1 Finally, plaintiff's representatives placed a telephone call to
2 defendant Jared, who refused to listen to the complaint and rudely
3 hung up the phone as soon as he was informed of the improper
4 listing. To date, plaintiff's mail server has not been removed
5 from defendants' blacklists.

6 11. As a result of defendants' negligence, plaintiff has
7 suffered economic damages, including without limitation,
8 consultation fees, computer costs, loss of business, and loss of
9 clients. Damages have not been fully calculated, however,
10 plaintiff is informed and believes and based thereon alleges that
11 damages exceed the \$25,000 jurisdictional minimum of this Court.
12

13
14 **Second Cause of Action**

15 *Negligent Interference With Economic Advantage*

16 *And Prospective Economic Advantage*

17 [By Plaintiff Against All Defendants]
18
19

20 12. Plaintiff realleges and incorporates by this reference
21 each of the allegations contained in the paragraphs alleged above.

22 13. At the times herein mentioned, plaintiff had various
23 economic relationships with clients and prospective clients who
24 were ready, willing, and able to do business with plaintiff, which
25 would have resulted in the continuation of economic benefits and
26 future economic benefits.
27
28

1 14. Defendants knew or should have known about these
2 relationships and prospective relationships at all relevant times.

3 15. Defendants acted negligently in relation to plaintiff's
4 efforts to communicate with its clients and prospective clients in
5 that defendants (a) prevented e-mail communications between
6 plaintiff and its clients, (b) then made it impossible for
7 plaintiff to complain about the blacklisting on defendants' web
8 page, (c) then failed to effectively respond to e-mail
9 communications complaining about the blacklisting, and (d) then
10 failed to listen and appropriately respond when plaintiff's
11 representatives called Jared on the telephone to complain about
12 improper blacklisting.
13

14 16. As a direct and legal result of defendants' intentional
15 acts to disrupt Plaintiff's continuing and prospective economic
16 relationships with its clients, knowing the error rate, as well as
17 defendants' negligence in arranging and maintaining a complaint
18 process, plaintiff has suffered actual and consequential damages,
19 including the loss of business, business opportunities, revenues,
20 good will, and profits, and plaintiff will continue to suffer
21 similar losses after the filing of the complaint. Plaintiff has
22 not yet calculated or ascertained its damages, however, those
23 damages far exceed the \$25,000 jurisdictional minimum of this
24 Court. Plaintiff has not yet calculated or ascertained its
25 damages, however, those damages far exceed the \$25,000
26 jurisdictional minimum of this Court.
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1 Third Cause of Action

2 Intentional Interference With Economic Advantage

3 And Prospective Economic Advantage

4 [By Plaintiff Against All Defendants]

5
6 17. Plaintiff realleges and incorporates by this reference
7 each of the allegations contained in the paragraphs alleged above.

8
9 18. Plaintiff has had continuing economic relationships with
10 its clients, as well as prospective economic relationships
11 reasonably anticipated to all defendants.

12 19. Defendants knew or should have known about these
13 relationships and prospective relationships at all relevant times.

14 20. Defendants intentionally acted to disrupt the
15 relationships between plaintiff and its clients by doing the
16 things herein alleged.

17
18 21. As a direct and legal result of defendants' intentional
19 acts that disrupted plaintiff's continuing and prospective
20 economic relationships with its clients, plaintiff has suffered
21 actual and consequential damages, including the loss of business,
22 business opportunities, revenues, good will, and profits, and
23 plaintiff will continue to suffer similar losses after the filing
24 of the complaint. Plaintiff has not yet calculated or ascertained
25 its damages, however, those damages far exceed the \$25,000
26 jurisdictional minimum of this Court. Plaintiff has not yet
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1 calculated or ascertained its damages, however, those damages far
2 exceed the \$25,000 jurisdictional minimum of this Court.

3 22. Plaintiff is informed and believes and based thereon
4 allege that in doing the acts identified above, defendants were
5 guilty of oppression, fraud and malice. As a result of this
6 misconduct, plaintiff is entitled to recover damages for the sake
7 of example and by way of punishing defendants in an amount to be
8 determined at trial.
9

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11 **Fourth Cause of Action**

12 *Unfair Business Practices*

13 [By Plaintiff Against All Defendants]
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15 23. Plaintiff realleges and incorporates by this reference
16 each of the allegations contained in the paragraphs alleged above
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18 24. Starting in about July 2003, or earlier, and continuing
19 to the present, defendants have engaged in a systematic course of
20 conduct that has had the wrongful purpose and effect of precluding
21 and preventing e-mail correspondence from, between and among
22 legitimate individuals and businesses.

23 25. In furtherance of the wrongful course of conduct and
24 with the intent described above, defendants have done the
25 following things, among others:

26 a. Defendants created an Internet product whereby e-
27 mail messages are obstructed and prevented from delivery if the e
28

1 messages originate from e-mail servers that are listed on
2 defendants' blacklists; and

3 b. Defendants have created complaint formats that do
4 not function and/or are totally ineffective, so that e-mail
5 servers erroneously listed on defendants' blacklists cannot
6 effectively, efficiently or rapidly be removed from the
7 blacklists.
8

9 26. By reason of the foregoing, defendants, and each of
10 them, have engaged in acts of unfair business practices within the
11 meaning of Business and Professions Code § 17200, et seq.

12 27. Pallorium is informed and believes, and on that basis
13 alleges, that defendants have derived and received, and will
14 continue to derive and receive, substantial sums and profits from
15 the foregoing wrongful acts and conduct. Pallorium is unaware of
16 the exact amount of such sums and profits derived and received,
17 and to be derived and received by defendants, however, Pallorium
18 alleges that the amount exceeds the jurisdictional minimum of this
19 Court. As a result of the foregoing, defendants have been
20 unjustly enriched at Pallorium' expense, and Pallorium is entitled
21 to an accounting of all sums and profits derived and received by
22 defendants from the foregoing acts and conduct, to an order that
23 they are the constructive trustees of all such sums and profits,
24 and to restitution thereof.
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26 ///

1 28. The acts, conduct, and failures to act of defendants, as
2 alleged hereinabove, have caused and are causing, and unless
3 enjoined and restrained by this Court will continue to cause,
4 Pallorium great and irreparable injury which cannot be adequately
5 compensated or measured in money. Pallorium has no adequate
6 remedy at law and will suffer immediate and irreparable injury,
7 loss and damage unless an appropriate temporary restraining order
8 and preliminary injunction are issued to prevent ongoing and
9 further wrongful acts.
10

11 29. As a result of defendants' wrongful conduct, as alleged
12 above, plaintiff has been forced to and has retained the services
13 of counsel and is, therefore, entitled to recover its reasonable
14 attorney's fees and costs pursuant to Business and Professions
15 Code § 17200, et seq.
16
17

18 WHEREFORE, plaintiff Pallorium, Inc., prays for a judgment in
19 its favor and against defendants, and each of them, as follows:
20

21 1. On each appropriate cause of action, for actual special
22 damages according to proof at trial;

23 2. On each appropriate cause of action, for exemplary and
24 punitive damages according to proof at trial;

25 3. On each cause of action, for equitable relief, including
26 without limitation, an accounting of all sums and profits derived
27 and received by defendants from the foregoing acts and conduct, an
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1 order that they are the constructive trustees of all such sums and
2 profits, and to restitution thereof.

3 4. On each cause of action, for an appropriate temporary
4 restraining order and preliminary injunction are issued to prevent
5 ongoing and further wrongful acts.

6 5. For reasonable attorney's fees and costs pursuant to
7 Business and Professions Code § 17200, et seq.

8 6. For interest allowed as a matter of law.

9 7. For costs or suit.

10 8. For any further and additional relief as the Court deems
11 just and proper.
12

13
14 Dated: October 16, 2003

15 Law Office of Gary Kurtz
A Professional Law Corporation

16
17 By: 

18 Gary Kurtz, Esq.

19 Attorney for Plaintiff
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