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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Lila Behr, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION
UNLIMITED CIVIL**

SMS.AC, INC., a Delaware corporation
Plaintiff,

v.

JOHN DOE and DOES 1 to 100,
Defendants.

CASE NO.: 37-2015-00025687-CU-DF-CTL
Judge:
Dept.:

COMPLAINT FOR:

- 1. LIBEL**
- 2. BREACH OF CONTRACT**
- 3. INTERNATIONAL INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE**

Plaintiff SMS.AC, INC. ("Plaintiff") alleges as follows:

I. PARTIES AND VENUE

1. Plaintiff is, and at all times mentioned in this Complaint was, a corporation duly organized and existing under the laws of Delaware and qualified to do business under the laws of California. Plaintiff owns and operates the website www.fanbox.com.

2. Defendants DOES 1 through 100, inclusive are sued under fictitious names. Their true names and capacities are unknown to Plaintiff. When their true names and capacities are ascertained,

1 Plaintiff will amend this complaint by inserting their true names and capacities. Plaintiff is informed
2 and believes and thereon alleges that each of the fictitiously named defendants is responsible in some
3 manner for the injuries alleged in this Complaint, and that Plaintiff's damages were proximately caused
4 by those defendants.

5 3. Plaintiff is informed and believes and thereon alleges that at all times herein, defendants and
6 each of them, were the agents, representatives, partners, employees or principals for each other, and in
7 doing the things hereinafter alleged, were acting within the scope of their authority as such agent,
8 representative, partner, employee, or principal, and with the permission and consent of each of the other
9 defendants or with their ratification.

10 4. Venue is proper in that, upon information and belief, one or more Defendants resides in the
11 County of San Diego. Venue is further proper in that the County of San Diego is the county in which
12 the subject contract was entered into and in which it was to be performed.

13 **II. CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION**

15 **LIBEL**

16 [Against All Defendants]

17 5. Plaintiff refers to and incorporates Paragraphs 1 through 4 as though fully set forth herein.

18 6. At all times herein mentioned, SMS has enjoyed a good business reputation.

19 7. However, numerous false and derogatory statements about SMS have been published by
20 Defendants and/or republished by Defendants and/or foreseeably republished by third parties, on various
21 websites, including but not limited to:

22 a. <http://www.glassdoor.com/Reviews/Employee-Review-Fanbox-RVW1923627.htm>

23 b. <http://www.glassdoor.com/Reviews/Employee-Review-Fanbox-RVW3517304.htm>

24 c. <http://www.glassdoor.com/Reviews/Employee-Review-Fanbox-RVW3526270.htm>

25 d. <http://www.glassdoor.com/Reviews/Employee-Review-Fanbox-RVW3569690.htm>

26 e. <http://www.glassdoor.com/Reviews/Employee-Review-Fanbox-RVW5711910.htm>

27 f. <http://www.glassdoor.com/Reviews/Employee-Review-Fanbox-RVW6766207.htm>

28 g. <https://iscribbleanything.wordpress.com/2014/04/17/fanbox-is-back-again/>

- h. <http://www.waystomakemoney.eu/is-fanbox-a-scam/>
- i. <http://adorio-research.org/wordpress/?p=13663>
- j. <http://blogs.technet.com/b/steriley/archive/2008/01/07/fanbox-the-latest-in-password-scams.aspx>
- k. <http://lookavirus.blogspot.com/2008/05/how-to-stop-receiving-fanbox-spam.html>
- l. <http://liteleaf.blogspot.com/2011/01/fanbox-scam-spam-fraud-payment-blogs.html>
- m. <http://www.internationalskeptics.com/forums/showthread.php?t=248104>
- n. <http://recreateyourfinances.com/fanbox-scam>
- o. <http://fanboxscamreview.blogspot.com/2014/04/what-is-fanbox.html>

8. Defendants' statements contain various untrue and defamatory assertions about SMS and refer directly to SMS or can be understood by those reading the statements, when read in conjunction with the entire posting that they pertain to SMS. Examples of Defendants' statements, include but are not limited to, the following:

- a. "[E]xtremely unprofessional working environment, unethical business practices, no work/life balance, cult like devotion required of all employees.";
- b. "Lawsuits lefts and right, company never ended up paying half of their employees, and terrible upper management.";
- c. "Definite unsavory practices.";
- d. "Highly unethical company that scams its customers and asks employees to join in on that"; "Fanbox email scam is back...";
- e. "However, this is nothing but another way of Fanbox spammers to attract and lure gullible people.";
- f. "Fanbox tricks people into giving up their email addresses, passwords and cell phone numbers by offering earning opportunities. After taking all details from users, they spam them relentlessly along with everyone in the contact list as well.";
- g. "Looks like spammers have found yet another way to worm (ha ha) themselves into the computers of the unsuspecting.";
- h. "Fanbox is SPAM. They will phish your password and SPAM your friends.";

- 1 i. "[P]roduct is more like a pyramid scheme.";
- 2 j. "I have found a lot of complains [sic] all over the internet from different people that tal
- 3 about fanbox being a spam engine that sends people lots of emails trying to make them
- 4 sign up for a fanbox.com account.";
- 5 k. "But what they [Fanbox] [does] with your data is anything but legitimate;"
- 6 l. "I would stay away from fanbox! It is a scam and uses very deceptive tactics!";
- 7 m. "This article now includes every [sic] information you'll ever need to battle Fanbox and
- 8 to protect yourself from one of the sleaziest scam the internet has known."

9 9. These statements are false. At all times relevant herein, Defendants knew them to be false

10 and/or failed to use reasonable care to determine the truth or falsity of the statements.

11 10. The statements made by Defendants are libelous on their face. They clearly injure SMS's

12 business reputation, expose SMS to hatred, contempt, and ridicule and discourage others from

13 associating or dealing with SMS because they charge SMS with committing criminal acts such as theft

14 and fraud and they charge SMS with other improper and immoral conduct, including improper,

15 unethical, and/or illegal business practices. Defendants' statements have caused SMS to be shunned and

16 avoided by employees, vendors, investors and customers. SMS is informed and believes, and thereon

17 alleges, that based upon these false statements, SMS's business reputation and goodwill have been

18 damaged among its key business customers and contacts, vendors, financial investors, consultants and

19 others who have seen Defendants' statements.

20 11. The statements about SMS have been seen and read by individuals in and around the United

21 States, including the State of California and the County of San Diego.

22 12. The false statements made by Defendants have injured SMS in respect to SMS's profession,

23 trade and business reputation by falsely claiming that SMS engages in improper, unethical, and/or illegal

24 business practices. As a result of Defendants' actions, SMS has suffered damages in an amount not yet

25 ascertained but, in any event, greater than \$25,000.

26 13. In doing the things herein alleged, Defendants acted willfully towards SMS, with malice, in

27 conscious disregard of SMS's rights, and with intent to cause injury to SMS. SMS is therefore entitled

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1 to punitive or exemplary damages in an amount appropriate to punish Defendants and to deter
2 Defendants and others from engaging in similar misconduct.

3 **SECOND CAUSE OF ACTION**

4 **BREACH OF CONTRACT**

5 [Against All Defendants]

6 14. Plaintiff refers to and incorporates Paragraphs 1 through 13 as fully set forth herein.

7 15. On information and belief, Defendants, or some of them, are former employees of SMS.

8 16. On information and belief, during the course of their employment with SMS, Defendants
9 executed written "Nondisclosure, Confidentiality, and Innovations Assignment Agreements"
10 ("Agreements") pursuant to which Defendants agreed "not to make any statements that disparage the
11 Company or its respective affiliates, employees, officers, directors, products, or services."

12 17. Defendants have breached their Agreements by publishing the above-referenced statements
13 which state, for instance, that SMS engages in improper, unethical, and/or illegal business practices.

14 18. As a direct and proximate result of Defendants' breaches, SMS has suffered damages in an
15 amount to be determined at trial but in no event less than \$25,000.

16 **THIRD CAUSE OF ACTION**

17 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

18 [Against All Defendants]

19 19. Plaintiff refers to and incorporates Paragraphs 1 through 18 as fully set forth herein.

20 20. SMS had valid and existing business relationships with its customers and investors that were
21 likely to result in economic benefit to SMS.

22 21. Defendants knew of the relationship between SMS and its customers and investors.

23 22. Defendants intentionally disrupted the relationship between SMS and its customers and
24 investors by engaging in wrongful conduct described above including, among other things, publishing
25 false statements that SMS engages in improper, unethical, and/or illegal business practices, wrongfully
26 encouraging customers to terminate their accounts with SMS, and wrongfully warning investors not to
27 invest money in SMS.

1 23. The above wrongful conduct in fact disrupted the economic relationship between SMS and
2 its customers and investors.

3 24. As a proximate cause of Defendants' wrongful actions, SMS has suffered damages in an
4 amount not yet ascertained but, in any event, greater than \$25,000.

5 25. SMS's remedy at law is not by itself sufficient to compensate SMS for the irreparable
6 injuries inflicted and threatened by Defendants, and SMS is therefore entitled to injunctive relief
7 prohibiting Defendants from continuing their unlawful actions.

8 26. The aforementioned conduct of Defendants was malicious and oppressive conduct with the
9 intention on the part of Defendants of thereby depriving SMS of profits, business, and/or legal rights and
10 of otherwise causing injury, and was despicable conduct that subjected SMS to a cruel and unjust
11 hardship in conscious disregard of SMS's rights, so as to justify an award of exemplary and punitive
12 damages.

13 WHEREFORE, Plaintiff respectfully requests the following relief:

- 14 1. For damages, in an amount to be proven at trial but in no event less than \$25,000.00;
15 2. For an injunction restraining Defendants, their agents, servants, employees, and all
16 persons acting in concert or participation with them from perpetuating the wrongful acts and conduct as
17 set forth above;
18 3. For an Order awarding Plaintiff punitive damages in a sum to be determined at trial, on
19 the basis of Defendants' malicious conduct;
20 4. For pre-judgment and post-judgment interest on all damages awarded;
21 5. For reasonable attorney's fees and other reasonable costs of suit and expenses herein as
22 may be permitted by law or statute;
23 6. For such other and further relief as the court may deem proper.

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DATED: July 30, 2015

NAVIGATO & BATTIN, LLP

By: s/Michael W. Battin

Michael W. Battin

Attorneys for Plaintiff SMS.AC, INC.