

EXHIBIT B

In Re: Webloyalty.com, Inc., Marketing and Sales Practices Litigation

Doc. 12 Att. 4

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21
22 **IN THE UNITED STATES DISTRICT COURT**
23 **CENTRAL DISTRICT OF CALIFORNIA**
24 **WESTERN DIVISION**

BY FAX

25 **ALCIDES MELO**, on behalf of
26 himself and all others similarly
27 situated,

28 Plaintiff,

v.

29 **WEBLOYALTY.COM, INC.**, a
30 Connecticut corporation; and
31 **VALUECLICK, INC.**, a Delaware
32 corporation, d/b/a
33 **123INKJETS.COM**;

34 Defendants.

Case No. **CV 06-06329**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

FILED
2006 OCT -4 AM 11:08
CENTRAL DISTRICT COURT
LOS ANGELES, CALIF.

1/5
20 days

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(JCK)

1 Plaintiff Alcides Melo ("Plaintiff"), individually and on behalf of all others
2 similarly situated, alleges by and through his attorneys, upon information and
3 belief, as follows:

4 **NATURE OF CASE**

5 1. Plaintiff brings this consumer class action on behalf of himself and a
6 class of consumers and entities who were charged any fees, or paid interest, as a
7 result of becoming subscribed to Defendant Webloyalty's "Reservation Rewards"
8 membership, along with all those whose personal credit or bank debit card
9 information was improperly used to create such subscriptions.

10 2. Through partnerships it creates with online retailers, Webloyalty sells
11 memberships in a sham program known as "Reservation Rewards" for which it
12 charges members a monthly fee, typically \$9.00 per month. Reservation Rewards
13 is a program that purportedly provides discounts on dining and tourist attractions,
14 along with so-called "travel protection" such as roadside assistance, hotel
15 overbooking and baggage insurance. The process by which Webloyalty and its
16 partners sell Reservation Rewards is deceptive, unfair and unlawful. Worse, this
17 process compromises the confidential billing information of unsuspecting
18 consumers who are tricked into clicking a Reservation Rewards advertisement.

19 3. The process is simple. Prior to completion of an online retail
20 transaction with a Webloyalty retail partner, a pop-up advertisement appears on the
21 consumer's computer screen, offering a \$10.00 next purchase discount or coupon
22 reward. All the consumer needs to do is click on a button to redeem it. When she
23 does, however, her confidential credit card or bank debit card information is
24 secretly transmitted from the online retailer to Webloyalty. Webloyalty then uses
25 this confidential information to enroll her in a Reservation Rewards membership for
26 which it collects monthly charges after the expiration of an alleged 30-day "free
27 trial" basis. The enrollment is on a "negative option" basis, meaning she is
28 continuously billed the monthly charge until she discovers it and manages to

1 cancel. The only reference to the charges on a consumer's bank or credit card
2 statement is typically "WLI*RESERVATION REWARDS."

3 4. With ready access to their customers' confidential billing information,
4 Webloyalty's online retail partners, like Defendants herein, exploit this confidential
5 information to generate additional revenue for themselves by obtaining a fee from
6 Webloyalty for Reservation Rewards membership accounts, generated through the
7 pop-up advertising that the retail partners facilitate through their retail websites.

8 **JURISDICTION AND VENUE**

9 5. The Court has original jurisdiction over this class action pursuant to 28
10 U.S.C. § 1332(d)(2). This action asserts claims for violations of the Electronic
11 Funds Transfer Act ("EFTA"), 15 U.S.C. § 1693e; violations of the Electronic
12 Communications Privacy Act ("ECPA"), 18 U.S.C. § 2510; for violations of
13 California's Consumers Legal Remedies Act, Cal. Civil Code § 1750; for violations
14 of California's Unfair Competition Law, Business and Professions Code § 17200;
15 for money had and received; for conversion; and for unjust enrichment. This Court
16 has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question),
17 15 U.S.C. § 1693m(g) (EFTA) and 18 U.S.C. § 2510, *et seq* (ECPA). This Court
18 has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §
19 1367.

20 6. Venue in this judicial district is proper pursuant to 28 U.S.C. §
21 1391(a)(1) because Defendants ValueClick, Inc. and 123inkjets.com maintain their
22 principal places of business in this judicial district. Venue is also proper pursuant
23 to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions
24 giving rise to the claim occurred in this judicial district.

25 7. The members of the putative Class have suffered aggregate damages
26 exceeding \$5,000,000, exclusive of interest and costs.

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PARTIES

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8. Plaintiff Alcides Melo is an individual citizen and resident of Selden, New York.

9. Defendant Webloyalty.com, Inc. ("Webloyalty") is a corporation organized and existing under the laws of Connecticut with its principal executive offices located at 101 Merritt Seven, 7th Floor, Norwalk, Connecticut 06851. According to the Connecticut Better Business Bureau, Webloyalty.com also does business as "travelvalueplus.com", "reservationrewards.com" "buyerassurance.com", "walletshield.com" and "memberspecials.com."

10. Defendant ValueClick, Inc. ("ValueClick") is a corporation organized and existing under the laws of Delaware with its principal executive offices located at 30699 Russell Ranch Road, Suite 250, Westlake Village, California, 91362.

11. Defendant 123inkjets.com. is owned by Defendant ValueClick, with its principal executive offices located at 25 East Easy Street, Simi Valley, California, 93065.

12. Unless otherwise stated, Defendants Webloyalty, ValueClick and 123inkjets.com are referred to collectively herein as "Defendants."

13. At all times herein mentioned, Defendants were the agents, principals, employees, servants, partners, joint venturers, and representatives of each other. In doing the acts hereinafter alleged, they each were acting within the scope and course of their authority as such agents, principals, employees, servants, partners, joint venturers, and representatives, and were acting with the permission and consent of the other Defendant.

14. Plaintiff alleges on information and belief Defendants had knowledge of and agreed to the unlawful conduct alleged herein. Defendants conspired with each other to engage in the common course of unlawful conduct alleged herein, or aided and abetted that common course of unlawful conduct, for the purpose of enriching themselves at the expense of Plaintiff and the Class, resulting in damages

1 to Plaintiff and all others similarly situated.

2 **FACTUAL ALLEGATIONS**

3 **Defendants' Practice of Creating and Charging for "Reservation Rewards"**
4 **Unauthorized Membership Accounts**

5 15. Webloyalty and its online retail co-conspirators, like ValueClick,
6 create unauthorized membership accounts through misleading and deceptive "pop-
7 up" screens or advertisements which purport to offer \$10 next purchase coupons or
8 discounts. These unsolicited pop-up advertisements appear on-screen immediately
9 after a consumer attempts to complete an online transaction, such as purchasing an
10 ink refill. Webloyalty and its online retail partners constructed and employ the pop-
11 up advertisements in a manner which automatically enrolls the consumer in the
12 Reservation Rewards membership without the consumer's permission, knowledge,
13 or consent.

14 16. Webloyalty's online retail partners, like ValueClick, use the
15 confidential billing information they collect when customers complete an online
16 retail transaction (e.g., an ink refill). Webloyalty, in turn, uses this confidential
17 billing information, without the consumer's authorization, to enroll the consumer in
18 its Reservation Rewards product. Webloyalty engages in this practice, with the
19 knowing aid of its online retail partners, like ValueClick, although customers do not
20 agree, nor have they ever agreed, to pay separate charges of approximately \$9 per
21 month for Reservation Rewards by credit card, by electronic fund transfers from
22 debit cards or bank accounts.

23 17. Because of the automatic billing structure employed by Webloyalty
24 (pursuant to which Webloyalty customers do not receive any bill or invoice
25 notifying them of charges prior to Webloyalty assessing the charges), customers
26 often do not realize for months or years that they are being charged for unauthorized
27 memberships with Reservation Rewards.
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1 18. When Webloyalty customers discover that they have been charged for
2 unauthorized Reservation Rewards membership accounts and attempt to contact
3 Webloyalty's customer service, Webloyalty discourages and frustrates members
4 from cancelling or terminating such accounts, and advises the customers that they
5 freely and voluntarily signed up for the service.

6 19. Defendants profit from this scheme by collecting fees for unauthorized
7 Reservation Rewards membership accounts, by refusing to reimburse members for
8 such fees, and by obstructing and delaying members from cancelling unauthorized
9 Reservation Rewards membership accounts. Webloyalty reportedly earns
10 approximately \$100 million in annual revenue.

11 20. Webloyalty's online retail partners, including Defendants ValueClick,
12 Inc. and 123injets.com, profit from this scheme because they receive compensation
13 from Webloyalty for "sales" of Reservation Rewards to their customers. In addition
14 to ValueClick and 123inkjets.com, Webloyalty has partnered with up to 100 other
15 Internet retailers, such as Priceline.com, Fandango.com, Hotels.com, FTD.com,
16 Classmates.com, Allposters.com, and Half.com.

17 21. Defendants, and Webloyalty in particular, have received scores of
18 complaints from consumers who have been charged for unauthorized Reservation
19 Rewards membership accounts. More complaints can be found at hundreds of
20 Internet postings at consumer protection websites and blogs such as
21 www.ripoffreport.com, www.investorial.com, www.complaints.com,
22 www.consumerwebwatch.org, [http://adam.rosi-
23 kessel.org/weblog/the_man/webloyalty_aka_wli_reservations_is_a_scam.html](http://adam.rosi-
23 kessel.org/weblog/the_man/webloyalty_aka_wli_reservations_is_a_scam.html)
24 (consumer blog containing over 1,000 consumer complaints regarding Webloyalty).

25 22. The complaints found throughout the Internet each contain the same
26 common theme of consumers who were unwittingly enrolled in the Reservation
27 Rewards program, and then at some later time discovered charges of \$9 to \$11 per
28 month on their credit or debit statement with no disclosure as to the origin of those

1 charges.

2 23. The scores of consumer complaints regarding Defendants' business
3 practices are further reflected in Webloyalty's "unsatisfactory" rating by the
4 Connecticut Better Business Bureau:

5 Based on Better Business Bureau files, [Webloyalty] has an
6 unsatisfactory record with the Bureau due to a pattern of complaints
7 concerning deceptive marketing/selling practices and unauthorized
8 charges on consumers' credit cards. Although the company has
9 resolved all complaints brought to its attention by the BBB by
10 canceling consumers' program memberships and by providing refunds,
11 the firm has failed to correct the underlying reasons for the complaints.

* * * * *

12 To date, the BBB continues to receive the same patterns of complaint
13 activity.

14 **Plaintiff Melo is Charged for an
15 Unauthorized Reservation Rewards Membership Account**

16 24. In or about March 2006, Plaintiff Alcides Melo noticed that a \$9
17 charge associated with "Reservation Rewards" appeared on his bank card
18 statement. Plaintiff Melo investigated the origin of the charge through his bank and
19 determined that Webloyalty obtained his confidential bank account information
20 from a transaction with Defendants ValueClick and 123inkjets.com. Plaintiff Melo
21 also discovered that his bank account had been charged the \$9 fee each month since
22 in or about November 2005.

23 **CLASS ACTION ALLEGATIONS**

24 25. Plaintiff brings this action as a class action pursuant to Federal Rule of
25 Civil Procedure 23(a) and 23(b) on behalf of himself and all others similarly
26 situated as members of the following classes (collectively, the "Class"):

- 27 (a) All persons and entities who were charged fees or interest by
28 Webloyalty for a "Reservation Rewards" membership in an online
transaction with ValueClick and/or 123inkjets.com;
- (b) All persons and entities whose personal credit or bank debit card
information was accessed by Webloyalty through an online transaction
with ValueClick and/or 123inkjets.com; and

1 (c) All persons and entities who were charged fees or interest by
2 Webloyalty for a "Reservation Rewards" membership in an online
3 transaction with ValueClick and/or 123inkjets.com and whose bank
4 debit cards or bank accounts were charged without their prior
5 expressed request or consent (the "EFTA Subclass").

6 26. Subject to additional information obtained through further
7 investigation and discovery, the foregoing definition of the Class may be expanded
8 or narrowed by amendment or amended complaint. Specifically excluded from the
9 proposed Class are Defendants, their officers, directors, agents, trustees, parents,
10 children, corporations, trusts, representatives, employees, principals, servants,
11 partners, joint venturers, or entities controlled by Defendants, and their heirs,
12 successors, assigns, or other persons or entities related to or affiliated with
13 Defendants and/or their officers and/or directors, or any of them; the Judge assigned
14 to this action, and any member of the Judge's immediate family.

15 27. **Numerosity.** The members of the Class are so numerous that their
16 individual joinder is impracticable. Plaintiff is informed and believes, and on that
17 basis alleges, that the proposed class contains tens of thousands of members. The
18 precise number of Class members is unknown to Plaintiff. The true number of
19 Class members are known by Defendants, however, and thus, may be notified of
20 the pendency of this action by first class mail, electronic mail, and by published
21 notice.

22 28. **Existence and Predominance of Common Questions of Law and**
23 **Fact.** Common questions of law and fact exist as to all members of the Class and
24 predominate over any questions affecting only individual Class members. These
25 common legal and factual questions include, but are not limited to, the following:

- 26 a. Whether Defendants developed and implemented a scheme to
27 intentionally create unauthorized Reservation Rewards membership
28 accounts and to charge consumers and entities for such accounts;
- b. Whether Defendants conspired with or aided and abetted each other to

- 1 intentionally create unauthorized Reservation Rewards membership
2 accounts and to charge consumers and entities for such accounts;
- 3 c. Whether Defendants systematically refused to cancel unauthorized
4 Reservation Rewards membership accounts and obstructed and
5 delayed members of the Class from seeking refunds for charges for
6 such accounts.
- 7 e. Whether pursuant to the policies and practices described above,
8 Defendants made "preauthorized electronic fund transfers" from the
9 debit card accounts of EFTA Subclass members without first obtaining
10 the EFTA Subclass members' written authorization;
- 11 f. Whether Defendants violated 15 U.S.C. § 1693e with respect to the
12 EFTA Subclass members;
- 13 g. Whether Defendants violated 18 U.S.C. § 2510;
- 14 h. Whether Defendants' conduct constituted unlawful, unfair, or
15 fraudulent business practices in violation of Cal. Bus. & Prof. Code
16 §§ 17200, et seq., as alleged herein;
- 17 i. Whether Defendants' conduct constituted conversion, as alleged
18 herein;
- 19 j. Whether Defendants have been unjustly enriched as a result of their
20 conduct, as alleged herein;
- 21 k. Whether Plaintiff and members of the Class have sustained damages as
22 a result of Defendants' conduct, and, if so, what is the appropriate
23 measure of damages; and
- 24 l. Whether Plaintiff and members of the Class are entitled to punitive
25 damages, and, if so, in what amount.
- 26 29. **Typicality.** Plaintiffs' claims are typical of the claims of the members
27 of the Class in that Plaintiff and each member of the Class were charged without his
28 or her prior expressed request or consent for a Reservation Rewards membership

1 account.

2 30. **Adequacy of Representation.** Plaintiff will fairly and adequately
3 protect the interests of the members of the Class. Plaintiff has retained counsel
4 highly experienced in complex consumer class action litigation, and Plaintiff
5 intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic
6 interests to those of the Class.

7 31. **Superiority.** A class action is superior to all other available means for
8 the fair and efficient adjudication of this controversy. The damages or other
9 financial detriment suffered by individual Class members is relatively small
10 compared to the burden and expense that would be entailed by individual litigation
11 of their claims against the Defendants. It would thus be virtually impossible for
12 Class, on an individual basis, to obtain effective redress for the wrongs done to
13 them. Furthermore, even if Class members could afford such individualized
14 litigation, the court system could not. Individualized litigation would create the
15 danger of inconsistent or contradictory judgments arising from the same set of facts.
16 Individualized litigation would also increase the delay and expense to all parties
17 and the court system from the issues raised by this action. By contrast, the class
18 action device provides the benefits of adjudication of these issues in a single
19 proceeding, economies of scale, and comprehensive supervision by a single court,
20 and presents no unusual management difficulties under the circumstances here.

21 32. In the alternative, the Class may be certified because:
22 a. the prosecution of separate actions by individual Class members
23 would create a risk of inconsistent or varying adjudication with respect
24 to individual Class members that would establish incompatible
25 standards of conduct for the Defendants;
26 b. the prosecution of separate actions by individual Class members would
27 create a risk of adjudications with respect to them that would, as a
28 practical matter, be dispositive of the interests of other Class members

1 not parties to the adjudications, or substantially impair or impede their
2 ability to protect their interests; and/or

3 c. Defendants have acted or refused to act on grounds generally
4 applicable to the Class thereby making appropriate final and injunctive
5 relief with respect to the members of the Class as a whole.

6 33. The claims asserted herein are applicable to all individuals and entities
7 throughout the United States who became enrolled in Webloyalty's Reservation
8 Rewards membership program through an online transaction with ValueClick (dba
9 123inkjets.com). The State of California has sufficient state interest through a
10 significant contact or aggregation of contacts to the claims asserted by each
11 member of the Class so that the choice of California law is not arbitrary or unfair.
12 Defendants sell Reservation Rewards membership in California and engage in
13 marketing activities in California. In addition ValueClick and 123inkjets.com
14 reside in California.

15 34. Adequate notice can be given to Class members directly using
16 information maintained in Defendants' records, or through notice by publication.

17 35. Damages may be calculated from the sales information maintained in
18 Defendants' records, so that the cost of administering a recovery for the Class can
19 be minimized. The amount of damages is known with precision from Defendants'
20 records.

21 36. Defendants benefited from the sale of Reservation Rewards
22 memberships at issue to Plaintiff and the Class. The benefit to Defendants can be
23 identified from the sale of such memberships to Plaintiff and the Class and that
24 such monies can be restored to Plaintiff and the Class. Such monies are the
25 property of the Plaintiff and the Class. All or a portion of this benefit retained by
26 Defendants is money in which Plaintiff and the Class have an ownership interest.
27 Plaintiff and the Class were injured and lost money as a result of Defendants'
28 unfair, unlawful and fraudulent business practices described herein.

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FIRST CLAIM FOR RELIEF

(For Violations of the Electronic Funds Transfer Act, 15 U.S.C. § 1693e)

37. Plaintiff hereby realleges and incorporates by reference all paragraphs previously alleged herein. Plaintiff asserts this claim against Defendant Webloyalty on behalf of himself and the EFTA Subclass.

38. Webloyalty has initiated electronic transfers of funds for unauthorized Webloyalty "Reservation Rewards membership accounts from the debit card accounts of Plaintiff and EFTA Subclass members on a recurring basis, at substantially regular intervals, without first obtaining written authorization from them or providing them with a copy of any such purported authorization.

39. Therefore, Webloyalty has violated 15 U.S.C. § 1693e.

40. Plaintiff and members of the EFTA Subclass have suffered damages by reason of Webloyalty's violations of 15 U.S.C. § 1693e. Accordingly, under 15 U.S.C. § 1693m, Plaintiff, on behalf of the EFTA Subclass, seeks actual damages, statutory damages, costs of suit, attorneys' fees and an injunction against further violations.

SECOND CLAIM FOR RELIEF

(For Violations of the Electronic Communications Privacy Act)

41. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein. Plaintiff asserts this claim against each and every Defendant on behalf of himself and the Class.

42. The transfer of data by Plaintiff and the Class between their computers and Defendants, including but not limited to electronic funds transfer information stored by a financial institution, constitute "electronic communications" within the meaning of 18 U.S.C. § 2510.

43. Defendants have intentionally intercepted, and have aided and abetted one another in intercepting, by device or otherwise, these electronic

1 communications without Plaintiff's or Class members' knowledge, consent or
2 authorization.

3 44. Defendants have intentionally disclosed to another person, and have
4 otherwise used, such electronic communications, with knowledge, or having reason
5 to know, that the electronic communications were obtained through interception.

6 45. Plaintiff and the Class, pursuant to 18 U.S.C. § 2520, are entitled to
7 preliminary, equitable and declaratory relief, in addition to statutory damages of the
8 greater of \$10,000 or \$100 a day for each day of violation, actual and punitive
9 damages, reasonable attorneys' fees, and Defendants' profits obtained from the
10 above-described violations.

11 **THIRD CLAIM FOR RELIEF**

12 **[Violation of Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*]**

13 46. Plaintiff hereby incorporates by reference each of the preceding
14 allegations as though fully set forth herein. Plaintiff asserts this claim against each
15 and every Defendant on behalf of itself and the Class.

16 47. This cause of action is brought against Defendant pursuant to the
17 Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750, *et seq.*

18 48. Defendants are each a "person" as defined by Cal. Civ. Code §
19 1761(c).

20 49. Plaintiff and the proposed Class members are "consumers" within the
21 meaning of Cal. Civ. Code § 1761(d).

22 50. Plaintiff's on-line purchase as well as the Defendants' enrollment of
23 Plaintiff and Class members in the Reservation Reward program constitutes a
24 "transaction" within the meaning of Civil Code section 1761(e) and 1770.

25 51. Defendants' conduct violated and continues to violate the CLRA in at
26 least the following respects:

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- 1 a. In violation of Section 1770(a)(1) of the CLRA, Defendants
- 2 misrepresented the source, sponsorship, approval or certification of
- 3 goods or services;
- 4 b. In violation of Section 1770(a)(2) of the CLRA, Defendants
- 5 misrepresented the affiliation, connection, or association with, or
- 6 certification by another;
- 7 c. In violation of Section 1770(a)(5) of the CLRA, Defendants
- 8 represented that its goods or services sponsorship, approval,
- 9 characteristics, uses or benefits which they do not have;
- 10 d. In violation of Section 1770(a)(9) of the CLRA, Defendants advertised
- 11 goods or services with the intent not to sell them as advertised;
- 12 e. In violation of Section 1770(a)(13) of the CLRA, Defendants made
- 13 false or misleading statements of fact concerning reasons for, existence
- 14 of, or amounts or price reductions;
- 15 f. In violation of Section 1770(a)(14) of the CLRA, Defendants
- 16 advertised that a transaction confers or involves, rights, remedies, or
- 17 obligations which it does not have or involve;
- 18 g. In violation of Section 1770(a)(16) of the CLRA, Defendants
- 19 represented that the subject of the transaction has been supplied in
- 20 accordance with a previous representation when it has not; and/or
- 21 h. In violation of Section 1770(a)(16) of the CLRA, Defendants
- 22 represented that the consumer will receive a rebate, discount, or other
- 23 economic benefit, if the earning of the benefit is contingent on an
- 24 event to occur subsequent to the consummation of the transaction.

25 52. Defendants engaged in these unfair or deceptive acts and practices
26 with the intent that they result, and which did result, in the sale of memberships in
27 the Reservation Rewards program to Plaintiff and the Class.
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1 **59. Defendants' conduct violates the public policy principles espoused in**
2 **both federal and state statutes and federal regulations. For example:**

3 **a. The Electronic Funds Transfer Act was designed to ensure basic**
4 **protections for consumers against unauthorized electronic funds**
5 **transfers, 15 U.S.C. § 1693e;**

6 **b. The Electronic Communications Privacy Act was enacted to**
7 **ensure the privacy of electronic communications, and prohibit**
8 **access to those communications by third parties without**
9 **authorization, 15 U.S.C. §§ 2510 *et seq.*;**

10 **c. The Federal Trade Commission Act, Section 5, recognizes the**
11 **public policy that companies must not misrepresent the nature of**
12 **their goods and services, and must take precautions to protect**
13 **consumers' personal information; and**

14 **d. The underlying purpose of the CLRA is to "protect consumers**
15 **against unfair and deceptive business practices[.]" Cal. Civ.**
16 **Code §1760.**

17 **60. These stated policies seeking to protect consumers against unfair**
18 **practices, including those pleaded in this Complaint, provide a sufficient predicate**
19 **for Plaintiff's claims.**

20 **61. Plaintiff and the Class have suffered harm as a proximate result of the**
21 **wrongful conduct of the Defendants alleged herein, and therefore bring this claim**
22 **for relief for restitution and disgorgement. Plaintiff is a person who has suffered**
23 **injury in fact and has lost money or property as a result of such unfair competition.**

24 **62. Pursuant to Business and Professions Code sections 17200 and 17203,**
25 **Plaintiff, on behalf of himself and the Class, seeks an order of this Court: enjoining**
26 **Defendants from the continued Reservation Rewards membership sales and billing**
27 **practices in an unfair, unlawful and fraudulent manner, and an order enjoining**
28 **Defendants from collecting money from the Class from the sale of such**

1 memberships, and enjoining the further disclosure and use of confidential billing
2 information. Plaintiff further requests an order awarding Plaintiff and the Class
3 restitution and disgorgement of profits acquired by Defendants by means of such
4 unlawful acts and practices, so as to deter Defendants and to rectify Defendants'
5 unfair and unlawful practices and to restore any and all monies to Plaintiff and the
6 Class, which are still retained by Defendants, plus interest and attorneys' fees and
7 costs pursuant to, *inter alia*, Code of Civil Procedure section 1021.5.

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9 **FIFTH CLAIM FOR RELIEF**
(For Money Had and Received)

10 63. Plaintiff hereby incorporates by reference each of the preceding
11 allegations as though fully set forth herein. Plaintiff asserts this claim against each
12 and every Defendant on behalf of itself and the Class.

13 64. Defendants have imposed the above-described improper, unfair and
14 fraudulent practices on Plaintiff and the Class in violation of statutory and common
15 law. Plaintiff and the members of the Class have suffered harm as a proximate
16 result of the violations of law and wrongful conduct of the Defendants alleged
17 herein.

18 65. Defendants are legally obligated to pay over and remit those sums paid
19 by the Class. Plaintiff therefore seeks an order requiring Defendants to pay
20 damages, according to proof, full restitution of all monies wrongfully obtained, and
21 to disgorge all ill-gotten revenues and profits.

22
23 **SIXTH CLAIM FOR RELIEF**
(For Unjust Enrichment)

24 66. Plaintiff hereby realleges and incorporates by reference all paragraphs
25 previously alleged herein. Plaintiff asserts this claim against each and every
26 Defendant on behalf of himself and the Class.

27 67. Defendants have received, and continue to receive, a benefit at the
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1 expense of Plaintiff and members of the Class. Defendants have knowledge of this
2 benefit.

3 68. Defendants have charged and collected from consumers, including
4 Plaintiff and members of the Class, money for unauthorized Reservation Rewards
5 membership accounts. Defendants thus have received benefits that they have
6 unjustly retained at the expense of Plaintiff and members of the Class.

7 69. As a direct and proximate result of Defendants' unlawful acts and
8 conduct, Plaintiff and members of the Class were deprived of the use of their
9 monies that was unlawfully charged and collected by Defendants, and are therefore
10 entitled to restoration of their monies.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff, on behalf of himself and all others similarly
13 situated, prays for judgment against Defendants as follows:

- 14 1. For an order certifying the Class under Rule 23 of the Federal Rules of
15 Civil Procedure and appointing Plaintiff and his counsel of record to
16 represent the Class;
- 17 2. For restitution, disgorgement and/or other equitable relief as the Court
18 deems proper;
- 19 3. That pursuant to sections 17203 and 17204 of the Business and
20 Professions Code, Defendants be permanently enjoined from
21 performing or proposing to perform any of the aforementioned acts of
22 unfair, unlawful and fraudulent business practices;
- 23 4. For compensatory damages sustained by Plaintiff and all others
24 similarly situated as a result of Defendants' unlawful acts and conduct;
- 25 5. For statutory damages under 15 U.S.C. § 1693m;
- 26 6. For statutory damages under 18 U.S.C. § 2520(b)(2) and (c), including
27 punitive damages;
- 28 7. For a permanent injunction prohibiting Defendants from engaging in

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- the conduct and practices complained of herein;
- 8. For pre-judgment and post-judgment interest;
- 9. For reasonable attorneys' fees and costs of suit, including expert witness fees; and
- 10. For such other and further relief as this Court may deem just and proper.

JURY DEMAND

To the full extent available, Plaintiff demands a trial by jury.

Dated: October 3, 2006.

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By 
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Attorneys for Plaintiff and the Class

**DECLARATION OF ALCIDES MELO
PURSUANT TO CALIFORNIA CIVIL CODE § 1780(C)**

I, Alcides Melo, declare as follows:


1. I submit this declaration pursuant to section 1780(c) of the California Consumers Legal Remedies Act. I have personal knowledge of the matters set forth below and if called as a witness could and would be competent to testify thereto.

2. Webloyalty.com, Inc. does business in California.

3. ValueClick, Inc. maintains its principal executive office in Los Angeles County, California.

4. 123injects.com maintains its principal executive office in Ventura County, California.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this declaration was executed on October 3, 2006 in Selden, New York.


ALCIDES MELO

(JCx), DISCOVERY

**U.S. District Court
CENTRAL DISTRICT OF CALIFORNIA (Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:06-cv-06329-DSF-JC**

Alcides Melo v. Webloyalty.com Inc et al
Assigned to: Judge Dale S. Fischer
Referred to: Magistrate Judge Jacqueline Chooljian
Cause: 28:1331 Fed. Question

Date Filed: 10/04/2006
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory
Actions
Jurisdiction: Federal Question

Plaintiff

Alcides Melo
*on behalf of himself and all others
similarly situated*

represented by **Kenneth A Wexler**
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V.

Defendant

Webloyalty.com Inc
a Connecticut corporation

represented by **Nathan L Walker**
Wilmer Cutler Pickering Hale and Dorr
1117 California Avenue
Palo Alto, CA 94304
650-858-6000
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Defendant

Valueclick Inc
a Delaware corporation
doing business as
 123Inkjets.com

represented by **Nathan L Walker**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/04/2006	1	COMPLAINT against defendants Webloyalty.com Inc, Valueclick Inc. (Filing fee \$ 350) Jury Demanded. , filed by plaintiff Alcides Melo. (rrey,) (Entered: 10/10/2006)
10/04/2006		20 Day Summons Issued re Complaint - (Discovery)[1] as to Webloyalty.com Inc, Valueclick Inc. (rrey,) (Entered: 10/10/2006)
10/04/2006	2	CERTIFICATION AS TO Interested Parties filed by Plaintiff Alcides Melo. (rrey,) (Entered: 10/10/2006)
10/04/2006		FAX number for Attorney Mark J Tamblyn is 916-568-7890. (rrey,) (Entered: 10/10/2006)
10/04/2006		FAX number for Attorney Mark R Miller, Kenneth A Wexler is 312-346-0022. (rrey,) (Entered: 10/10/2006)
10/10/2006	3	STANDING ORDER regarding newly assigned cases to Judge Dale S Fischer by Judge Dale S. Fischer (lc,) (Entered: 10/11/2006)
10/10/2006	4	FAXED COPY OF PROOF OF SERVICE Executed by plaintiff Alcides Melo, upon Webloyalty.com Inc served on 10/6/2006, answer due 10/26/2006. The Summons and Complaint were served by personal service, by CCP statute, upon Nicole Edwards, person authorized to accept service of process, Original Summons not returned. (lc,) (Entered: 10/11/2006)
10/13/2006	5	PROOF OF SERVICE Executed by Plaintiff Alcides Melo, upon Webloyalty.com served on 10/11/2006, answer due 10/31/2006. The Summons and Complaint were served by Substituted service and by Mail on 10/11/2006, by under CCP 415.20 statute, upon Shane Spitzer, Person authorized to accept service of process by leaving copies with Liz Kraus, Business. Develop Manager, Person in Charge of Office. Due Dilligence declaration ATTACHED. Original Summons NOT returned. (jp) (Entered: 10/16/2006)
10/17/2006	6	CERTIFICATE OF SERVICE Executed by Plaintiff Alcides Melo, upon defendant Webloyalty.com served on 10/11/2006. Answer due 10/31/2006. The Summons and Calss Action Complaint were served by Substituted service and by Mail on 10/11/2006, by under CCP 415.20 statute, upon Shane Spitzer, Person authorized to accept service of process by leaving copies with Liz Kraus, Business. Develop Manager, Person in charge of Office. Due Dilligence declaration ATTACHED.

		Original Summons NOT returned. (FILED BY FAX.) (jp) (Entered: 10/18/2006)
10/17/2006	8	NOTICE of issuance of standing order filed by plaintiff Alcides Melo. (lc,) (Entered: 10/27/2006)
10/26/2006	7	FIRST STIPULATION Extending Time to Answer the complaint. Webloyalty.com Inc answer due 11/21/2006; Valueclick Inc answer due 11/21/2006. filed by defendant Webloyalty.com Inc; Valueclick Inc. (lc,) (Entered: 10/27/2006)
10/26/2006		FAX number for Attorney Nathan L Walker is 650-858-6100. (lc,) (Entered: 10/27/2006)

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10/30/2006 12:06:17			
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