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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 MARIO CISNEROS and MICHAEL )  
13 VOIGHT, On Behalf of Themselves, All )  
Others Similarly Situated, and/or the General )  
14 Public, )

Plaintiffs, )

15 vs. )

16 YAHOO!, INC.; )  
17 GOOGLE, INC.; )  
OVERTURE SERVICES, INC.; )  
18 ASK JEEVES, INC.; )  
LOOKSMART, LTD., )  
19 ALTAVISTA, INC.; )  
TERRA LYCOS INC.; )  
20 JUPITERMEDIA CORPORATION; )  
21 CNET NETWORKS, INC.; )  
FINDWHAT.COM; )  
22 KANOODLE.COM, INC.; )  
BUSINESS.COM INC; )  
23 SEX.COM INC.; )  
24 and DOES 1-100, inclusive, )

Defendants. )

Case No. )

CLASS ACTION )

MEMORANDUM OF POINTS AND )  
AUTHORITIES IN SUPPORT OF )  
PLAINTIFFS' MOTION FOR A )  
PRELIMINARY INJUNCTION )  
PROHIBITING DEFENDANTS' )  
ADVERTISEMENT OF UNLICENSED )  
INTERNET GAMBLING IN CALIFORNIA )

DATE: TBD )  
TIME: TBD )  
DEPT.: TBD )

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1 **I. INTRODUCTION**

2 Since the mid-1990s, Internet gambling operators have established approximately 1,800  
3 gambling website locations. By 2003, these websites were securing approximately \$5 billion in revenue  
4 annually. The majority of this revenue is derived from illegal gambling transactions with U.S.  
5 residents.

6 Illegal Internet gambling is made possible only by the cooperation and participation of various  
7 companies which conspire with these gambling web services to provide intermediary roles. In  
8 particular, for Internet gambling facilities to function in California they need to attract California  
9 gamblers to their websites. Their primary means of attracting gamblers is through a Internet search  
10 engine “click-through” advertising. This advertising is provided to persons in California by Internet  
11 search engines in hopes of enticing customers to respond to illegal gambling advertising lures. Internet  
12 search engines know the locations of potential gamblers by use of geo-tracking technologies. Indeed,  
13 Internet search engines, such as Google, sell these advertisement lures by region including “California.”  
14 *See* Declaration of Shana E. Scarlett in Support of Plaintiffs’ Motion for a Preliminary Injunction  
15 Prohibiting Defendants’ Advertisement of Unlicensed Internet Gambling in California (“Scarlett  
16 Decl.”), Ex. Google 12. Search returns on Sex.com include “(US)” indicating the location of the  
17 searcher. Scarlett Decl., Exs. Sex.com 1-4. When the Internet search engines succeed, they are richly  
18 rewarded by the gambling websites with a direct payment for the user’s “click-through” to the illegal  
19 services. That is, the search engines are not paid unless they succeed in enticing users to visit the illegal  
20 gambling services. In this way, defendants violate California’s gambling laws by drawing persons in  
21 California to illegal gambling sites and profit directly as a result of this illegal gambling activity.

22 This is a private Attorney General action brought on behalf of the California general public to  
23 stop these illegal practices. In particular, plaintiffs’ Complaint seeks broad relief for the general public  
24 against the major Internet search engine websites which promote and advertise illegal internet gambling  
25 services in California. By this motion, plaintiffs seek a preliminary injunction prohibiting defendants,  
26 the major Internet search engine websites, from promoting illegal Internet gambling in California by  
27 advertising Internet gambling websites to people in California. The action is brought by plaintiffs on  
28 behalf of the general public under Cal. Bus. & Prof. Codes §§17200, *et seq.*, the Unfair Competition

1 Law (“UCL”). This motion for preliminary injunction is based upon defendants’ violations of the UCL  
2 and California’s gambling provisions of the Penal Code and pursuant to Cal. Bus. & Prof. Code §17203  
3 and California Code of Civil Procedure (“C.C.P.”) §§526, *et seq.*

4 **II. FACTUAL BACKGROUND**

5 Plaintiffs Mario Cisneros (“Cisneros”) and Michael Voight (“Voight”) bring this action to  
6 remedy defendants’ illegal advertising activity. Plaintiff Voight has engaged in Internet gambling in  
7 California, plaintiff Cisneros has not engaged in any of the Internet gambling activities described in the  
8 Complaint. Plaintiffs have brought this suit pursuant to California’s private attorney general provision  
9 Cal. Bus. & Prof. Code §17204.

10 Defendants in this action are: Yahoo!, Inc. (“Yahoo”); Google, Inc. (“Google”); Overture  
11 Services, Inc. (“Overture”); Ask Jeeves, Inc. (“Ask Jeeves”); LookSmart, Ltd. (“LookSmart”);  
12 AltaVista, Inc. (“AltaVista”); Terra Lycos Inc. (“Lycos”); JupiterMedia Corporation (“Jupiter”); CNET  
13 Networks, Inc. (“CNET”); FindWhat.com (“FindWhat”); Kanoodle.com, Inc. (“Kanoodle”);  
14 Business.com Inc. (“Business.com”); Sex.com Inc. (“Sex.com”); and Does 1-100 (hereinafter referred  
15 to collectively as “defendants”). Defendants are Internet search engine websites which obtain profits  
16 from this activity by creating, co-creating, and publishing advertisements, paid for by the advertisers, on  
17 the same page as the search results. These advertisements are usually given a premium location on the  
18 page and are sometimes highlighted and colored. Sometimes they are referred to as “sponsored  
19 matches” or “sponsored links.” Often these advertisements are not revealed to be paid advertisement in  
20 which case the industry refers to them as “paid inclusion.” Despite the illegality of regulated gambling  
21 in California, each of the defendants knowingly - and for large profits - promoted, advertised, and  
22 facilitated illegal Internet gambling in California. Scarlett Decl., Exs. Yahoo 3-6; Google 2-11;  
23 Overture 4-9; Ask Jeeves 2-11; Lycos 2-9; LookSmart 2-12; Jupiter 2-7; CNET 2-15; FindWhat 2-12;  
24 Kanoodle 1-11; Business 1-5; Sex.com 1-4. Defendants did this by providing targeted advertisements  
25 containing links to the websites of unlicensed Internet gambling businesses on which persons located in  
26 California can illegally gamble. For example, when the search phrase “California gambling” is typed  
27 into CNET’s search engine page, advertising links for several illegal gambling websites including  
28 [www.sportsinteraction.com](http://www.sportsinteraction.com) and [www.888.com](http://www.888.com) appear. Scarlett Decl., Ex. CNET 7.

1 Defendants also deceptively advertise numerous illegal Internet gambling casinos when an  
2 Internet searcher types in phrases such as “legal gambling.” For example, on AskJeeve’s website the  
3 phrase “legal gambling” recently returned a number of illegal advertisements for Internet gambling  
4 websites. Scarlett Decl., Ex. Ask Jeeves 3. None of defendants’ websites provide any disclosure that  
5 gambling on these websites is illegal in California. Similarly, on Google’s search engine a request of  
6 “legal gambling” recently returned as its top sponsored link the illegal Internet gambling website  
7 [www.GoldenPalace.com](http://www.GoldenPalace.com). Scarlett Decl., Ex. Overture 1. Again, there is no disclosure that gambling on  
8 this website is illegal in California.

9 These paid search results are targeted at specific locations using geo-tracking technologies such  
10 that companies may purchase advertising for a particular country, state and region. Companies that  
11 wish to advertise to users located in the United States or California may purchase that right from the  
12 defendants at a considerable premium. Many defendants provide even more localized geo-tracking  
13 technologies so that ads can be focused on a particular region within a state. For example, Google  
14 segregates business advertisements by regional areas such as the “State of California” or sub-regions in  
15 the state. Scarlett Decl., Ex. Google 12. Sex.com informs the searcher of their awareness of the  
16 searcher’s location by noting “(US)” in the search returns. Scarlett Decl., Exs. Sex.com 1-4.

17 As such, the defendants directly violate California gambling laws and aid and abet, and  
18 conspire, with the Internet gambling websites to provide Internet gambling advertisements to people in  
19 California, with the purpose of persuading persons in California to visit these illegal gambling websites  
20 so as to illegally gamble in California. By this motion, plaintiffs seek to preliminarily enjoin defendants  
21 from advertising unlicensed Internet gambling businesses in California and seek to preliminarily enjoin  
22 the placement of such paid advertisements on defendants’ websites.

### 23 **III. ARGUMENT**

#### 24 **A. This Court Has the Power to Enjoin Defendants’ Unlawful Business** 25 **Practices**

26 The Complaint alleges and plaintiffs have provided substantial declaratory evidence, that  
27 defendants have committed and continue to commit unlawful business acts and practices in violation of  
28 Cal. Bus. & Prof. Code §§17200, *et seq.* based upon defendants’ violations of California’s Penal Code

1 gambling provisions. By virtue of the wrongful conduct herein demonstrated, defendants have engaged  
2 in “unlawful” conduct proscribed by Cal. Bus. & Prof. Code §17200. *See Barquis v. Merchants*  
3 *Collection Ass’n*, 7 Cal. 3d 94, 110 (1972); *People v. McKale*, 25 Cal. 3d 626, 632 (1979); *Consumers*  
4 *Union of United States, Inc. v. Fisher Dev., Inc.*, 208 Cal. App. 3d 1433, 1438 (1989).

5 Section 17203 of the California Business and Professions Code also specifically grants trial  
6 courts the power to issue preliminary and permanent injunctive relief for violations of California law, as  
7 this statute is intended to permit courts to enjoin on-going wrongful business conduct in whatever  
8 context such activity might occur. *Cal. Serv. Station etc. Ass’n v. Union Oil Co.*, 232 Cal. App. 3d 44,  
9 56 (1991). For example, in *People v. Mobile Magic Sales, Inc.*, 96 Cal. App. 3d 1, 12 (1979), the trial  
10 court issued a preliminary injunction under Cal. Bus. & Prof. Codes §§17200, *et seq.* The Court of  
11 Appeal affirmed, noting:

12 [The preliminary injunction] merely requires that defendants conform  
13 their conduct to the standards of honest and fair dealing under the Unfair  
14 Practices Act. (Bus. & Prof. Code, § 17200.) The trial court validly  
exercised its statutorily granted injunctive powers in this regard. (Bus.  
& Prof. Code, § 17203.)

15 *Id.*

16 A violation of law constitutes an obvious choice for injunctive relief. Defendants’ actions in this  
17 case are subject to the injunctive powers of this Court, since their conduct is a business practice that is  
18 forbidden by law and is therefore a per se violation of Cal. Bus. & Prof. Code §17200. *Barquis*, 7 Cal.  
19 3d at 110; *People v. James*, 122 Cal. App. 3d 25, 39-40 (1981). For example, in *Comm. on Children’s*  
20 *Television, Inc. v. Gen. Foods Corp.*, 35 Cal. 3d 197 (1983), our Supreme Court stated in emphatic  
21 terms in upholding the validity of bringing an §17200 injunction for an unlawful practice:

22 “Furthermore, the section 17200 proscription of ‘unfair competition’ is  
23 not restricted to deceptive or fraudulent conduct but extends to any  
24 **unlawful** business practice. The Legislature apparently intended to  
permit courts to **enjoin** ... [such] conduct in whatever context such  
activity might occur.”

25 *Id.* at 209-10 (citations omitted, emphasis in original and added).

26 Here, plaintiffs seek injunctive relief to compel defendants to do nothing more than the obey  
27 California’s Penal Code gambling provisions by refraining from advertising, conspiring with, and  
28 aiding and abetting illegal gambling websites. *See Mobile Magic Sales*, 96 Cal. App. 3d at 12

1 (temporary injunction appropriate enjoin illegal tying arrangement); *People v. Columbia Research*  
2 *Corp.*, 71 Cal. App. 3d 607, 611 (1977) (preliminary injunction appropriate to prevent continued  
3 violation of Business & Professions Code concerning advertisements).

4 **B. Preliminary Injunction Is Justified Where: (1) There Is a Reasonable**  
5 **Probability Plaintiffs Will Win on the Merits and (2) Defendants’**  
6 **Actions Are Illegal or Plaintiffs Are Likely to Suffer Greater Injury from**  
7 **Denial than Defendants Are Likely to Suffer from Its Granting**

8 The defendants are engaged in an unlawful business practice by advertising illegal gambling in  
9 California. A court may grant a preliminary injunction at any time before judgment is rendered based  
10 upon declarations. C.C.P. §§526, 527(a). The courts have uniformly distilled the inquiry appropriate  
11 for a preliminary injunction to two interrelated questions: (1) Is there a reasonable probability that the  
12 plaintiffs will prevail on the merits? (2) Are the plaintiffs likely to suffer greater injury from a denial of  
13 the injunction than the defendants are likely to suffer from its grant? *See Robbins v. Superior Court*, 38  
14 Cal. 3d 199, 206 (1985); *IT Corp. v. County of Imperial*, 35 Cal. 3d 63, 69-70 (1983); *Gardner v.*  
15 *County of Los Angeles*, 34 Cal. App. 4th 200, 207-08 (1995). The trial court’s determination must be  
16 guided by a “‘mix’ of the potential-merit and interim harm factors”; the greater the plaintiffs’ showing  
17 on one factor, the less need be shown on the other to support an injunction. *See Butt v. State*, 4 Cal. 4th  
18 668, 677-73 (1992) (citations omitted) (State’s argument that plaintiffs failed to make a sufficient  
19 showing of irreparable harm was not persuasive because the mix of both of the interrelated factors was  
20 enough to warrant a preliminary injunction); *see also Soroka v. Dayton Hudson Corp.*, 18 Cal. App. 4th  
21 1200 (1991) (balance of harm weighed in favor of plaintiff who was likely to prevail on the merits of  
22 his privacy and discrimination claims).

23 If the party seeking the injunction can make a sufficiently strong showing of the likelihood of  
24 success on the merits, the trial court may issue the injunction even if the moving party cannot show that  
25 the balance of harm tips in its favor. *See Pleasant Hill Bayshore Disposal, Inc. v. Chip-It Recycling,*  
26 *Inc.*, 91 Cal. App. 4th 678, 696 (2001) (“complete likelihood” that the plaintiff would prevail on the  
27 merits was by itself sufficient to warrant the injunction). California Code of Civil Procedure.  
28 §526(a)(1) states that an injunction may be granted where “it appears by the complaint that the plaintiff

1 is entitled to the relief demanded.” Notably, a preliminary injunction is not an ultimate determination.  
2 Rather, California courts have granted preliminary injunctions mindful that:

3 “The granting or denial of a preliminary injunction does not  
4 amount to an adjudication of the ultimate rights in controversy. It  
5 merely determines that the court, balancing the respective equities of the  
6 parties, concludes that, pending a trial on the merits, the defendant  
7 should or that he should not be restrained from exercising the right  
8 claimed by him.”

9 *Cont’l Baking Co. v. Katz*, 68 Cal. 2d 512, 528 (1968) (citation omitted).

10 Here, plaintiffs’ request to permanently enjoin defendants from advertising illegal Internet  
11 gambling should be granted. As described in detail below, defendants have no legitimate defense in this  
12 case. This practice by defendants has continued only because their practices are extremely profitable,  
13 and thus far, have gone unchallenged. On the merits, it is highly likely that the Court will conclude that  
14 defendants’ practice must give way to the California Penal Code provisions prohibiting the  
15 advertisement of, aiding and abetting, and conspiracy to commit, gambling activities.

16 Balancing the injuries in this action will also largely turn on the legality of defendants’ actions.  
17 Here the public at large is likely to suffer greater injury from continued advertisement of illegal Internet  
18 gambling than defendants might suffer if such advertisement were permitted. If this injunction is not  
19 granted, the public at large will continue to suffer the huge social costs associated with Internet  
20 gambling. By contrast, it is extremely unlikely that defendants will be able to establish any legally  
21 cognizable harm if they are not permitted to continue advertising illegal gambling opportunities except  
22 that they would not be able to continue reaping unlawful revenues and profits generated by this illegal  
23 activity.

24 **C. There Is More than a Reasonable Probability that Plaintiffs Will Prevail  
25 on the Merits Because Defendants’ Advertising Is Unquestionably  
26 Unlawful**

27 **1. It Is Uncontestable that Defendants Advertise Internet Gambling  
28 Websites Which Are Illegal Under the California Penal Code**

Defendants advertise a vast number of Internet websites which offer gambling that is illegal  
under a number of California Penal Code sections. For example, pursuant to Cal. Penal Code §§319-  
321, unlicensed lotteries are expressly illegal in California. The scope of this lottery prohibition is  
extremely broad:

1 A lottery is any scheme for the disposal or distribution of  
2 property by chance, among persons who have paid or promised to pay  
3 any valuable consideration for the chance of obtaining such property or a  
4 portion of it, or for any share or any interest in such property, upon any  
agreement, understanding, or expectation that it is to be distributed or  
disposed of by lot or chance, whether called a lottery, raffle, or gift  
enterprise, or by whatever name the same maybe known.

5 Cal. Penal Code §319. California courts have noted that “[a] game is not to be regarded as one of skill  
6 merely because that element enters into the result in some degree, or as one of chance solely because  
7 chance is a factor in producing the result. The test of the character of a game or scheme as one of  
8 chance or skill is, which of these factors is dominant in determining the result?” *People v. Settles*, 29  
9 Cal. App. 2d Supp. 781, 787 (App. Dep’t Super. Ct. 1938). Hence, almost all gambling games in which  
10 chance plays a primary role fall within the broad ambit of a “lottery.”

11 All aspects of unlicensed lotteries are expressly illegal under California law. For example, Cal.  
12 Penal Code §320 states that:

13 Every person who contrives, prepares, sets up, proposes, or  
14 draws any lottery, is guilty of a misdemeanor.

15 Further, Cal. Penal Code §321 states:

16 Every person who sells, gives, or in any manner whatever,  
17 furnishes or transfers to or for any other person any ticket, chance, share,  
18 or interest, or any paper, certificate, or instrument purporting or  
understood to be or to represent any ticket, chance, share, or interest in,  
or depending upon the event of any lottery, is guilty of a misdemeanor.

19 Finally, Cal. Penal Code §322 makes aiding, assisting, or **advertising** a lottery prohibited in California:

20 Every person who **aids or assists**, either by printing, writing,  
21 **advertising**, publishing, or otherwise in setting up, managing, or drawing  
any lottery, or in selling or disposing of any ticket, chance, or share  
therein, is guilty of a misdemeanor.

22 (Emphasis added.)

23 Defendants extensively advertise illegal lottery websites to California residents. In particular,  
24 the following exhibits are examples of defendants’ recent advertisement of illegal lotteries: Scarlett  
25 Decl., Exs. Yahoo 3-7; Google 2-12; Overture 2-9; LookSmart 2-12; AltaVista 1-2; Ask Jeeves 2-11;  
26 Lycos 2-9; Jupiter 2-7; CNET 2-15; FindWhat 2-12; Kanoodle 1-11; Business 1-5; Sex.com 1-4. As  
27 such, defendants advertise illegal Internet gambling websites in violation of Cal. Penal Code §322.

28 Similarly, Cal. Penal Code §330 makes casino games illegal:

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Every person who deals, *plays*, or carries on, opens, or *causes to be opened*, or *who conducts*, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansque net, rouge et noire, rondo, tan, fan-tan, seven-and-a-half, twenty-one, hokey-pokey, *or any banking or percentage game played with cards, dice, or any device*, for money, checks, credit, or other representative of value, and every person *who plays or bets* at or against any of those prohibited games, is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars (\$ 100) nor more than one thousand dollars (\$ 1,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.

A banking game is one in which the “house” or “bank” is the principal participant in the game, taking on all players, paying all winners and collecting from all losers. A percentage game is one in which the “house” does not directly participate in the game, but collects a percentage from the game which may be computed from the amount of bets made, winnings collected, or the amount of money changing hands. *Sullivan v. Fox*, 189 Cal. App. 3d 673, 678-79 (1987).

As noted in the Complaint, defendants extensively advertise illegal banking, percentage, casino, and card and dice games websites to California residents. *See* Complaint, ¶¶67-81. The following exhibits demonstrate defendants’ advertisement of these illegal games in which the websites were operating either as a “house” or “bank”: Scarlett Decl., Exs. Yahoo 3-5; Google 4, 6, 8-10; Overture 1, 9; AltaVista 1-2; Ask Jeeves 2-11; Lycos 6-9; LookSmart 8-12; Jupiter 2-6; CNET 2-8; FindWhat 5-6, 11-12; Kanoodle 1-5; Business 2-5; Sex.com 1-4. As such, defendants advertise gambling websites that violate Cal. Penal Code §330.

Likewise, sports bookmaking, bets or wagers are clearly prohibited in California under Cal. Penal Code §337a:

- Every person,
  1. Who engages in pool selling or bookmaking, with or without writing, at any time or place; or
    - \* \* \*
  6. Who lays, makes, offers or accepts any bet or bets, or wager or wagers, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of man or beast, or between men, beasts, or mechanical apparatus, is punishable by imprisonment in the county jail for a period of not more than one year or in the state prison.

1 Defendants extensively advertised illegal sports bookmaking, sports betting and sport wagering  
2 websites to California residents. The following exhibits demonstrate defendants' advertisement of  
3 illegal lotteries: Scarlett Decl., Exs. Google 5-9; Overture 1; AltaVista 1; Ask Jeeves 10-11; Lycos 2-  
4 5; LookSmart 3-7; Jupiter 7; CNET 9-10; FindWhat 2-4, 7-10; Kanoodle 6-10; Business 1. As such,  
5 defendants advertise gambling websites that violate Cal. Penal Code §337a.

6 Similarly, a "controlled" gambling game may not be conducted without a license under Cal.  
7 Penal Code §337j, which provides:

8 (a) It is unlawful for any person, as owner, lessee, or employee,  
9 whether for hire or not, either solely or in conjunction with others, to do  
10 any of the following without having first procured and thereafter  
11 maintained in effect all federal, state, and local licenses required by law:

(1) To deal, operate, carry on, conduct, maintain, or expose for  
play in this state any controlled game.

\* \* \*

(d) Any person who violates, attempts to violate, or conspires to  
violate this section shall be punished by imprisonment in a county jail  
for not more than one year, or by a fine of not more than five thousand  
dollars (\$ 5,000), or by both that imprisonment and fine.

12  
13  
14  
15 The statute defines a controlled game as any poker game, pai gow, or any other game played with cards,  
16 and any game of chance, including any gambling device, played for currency, check, credit, or any  
17 other thing of value. Cal. Penal Code §337j(e)(1).

18 Defendants advertise unlicensed controlled games. *See* Scarlett Decl., Exs. Yahoo 3-5; Google  
19 4, 6, 8, 10; Overture 1, 4-9; AltaVista 1-2; Ask Jeeves 2-11; Lycos 6-9; LookSmart 8-12; Jupiter 2-6;  
20 CNET 2-8; FindWhat 5-6, 11-12; Kanoodle 1-5; Business 2-5; Sex.com 1-4. As such, defendants  
21 advertise gambling websites that violate Cal. Penal Code §337j.

22  
23 **2. Defendants' Aiding and Abetting of Illegal Internet Gambling  
Websites and Conspiracy with These Websites Is Unlawful**

24 As noted above, Cal. Penal Code §322 expressly proscribes the advertising of an unlicensed  
25 lottery. As described herein, defendants' advertisement of all forms of illegal gambling also constitutes  
26 aiding and abetting and makes defendants liable as principals for the illegal gambling website activity in  
27 question.

1 The California Penal Code classifies parties to a crime as either principals or accessories. Under  
2 Cal. Penal Code §30, one commits a crime by either committing the underlying act constituting the  
3 offense, or by aiding and abetting in its commission. As detailed by Cal. Penal Code §31, one who aids  
4 or abets another in the commission of a crime may be held criminally liable for the acts of the other  
5 person:

6 All persons concerned in the commission of a crime, whether it  
7 be felony or misdemeanor, and whether they directly commit the act  
8 constituting the offense, or aid and abet in its commission, or, not being  
9 present, have advised and encouraged its commission, and all persons  
10 counseling, advising, or encouraging children under the age of fourteen  
11 years, lunatics or idiots, to commit any crime, or who, by fraud,  
12 contrivance, or force, occasion the drunkenness of another for the  
13 purpose of causing him to commit any crime, or who, by threats,  
14 menaces, command, or coercion, compel another to commit any crime,  
15 are principals in any crime so committed.

16 Furthermore, Cal. Penal Code §31 expressly provides for principal liability for any party that “advised  
17 and encouraged its commission.” Therefore, anyone who offers advice on how to commit a crime or  
18 simply lends someone the tools with which to commit the crime may be equally liable under the Cal.  
19 Penal Code. Notably, there is no requirement under California law that an aider and abettor be present  
20 at the ultimate illegal act. *People v. Beeman*, 35 Cal. 3d 547, 554-55 (1984). Instead, one may be liable  
21 as an aider and abettor “when he or she *aids* the perpetrator of an offense, knowing of the perpetrator’s  
22 unlawful purpose and intending, by his or her act of aid, to commit, encourage, or *facilitate commission*  
23 *of the offense.*” *People v. Montoya*, 7 Cal. 4th 1027, 1039 (1994) (emphasis added). Further, aiding  
24 and abetting “does not require participation in an agreement to commit an offense, but merely  
25 *assistance* in committing the offense.” *People v. Morante*, 20 Cal. 4th 403, 433 (1999) (emphasis  
26 added). The general test is whether the accused “in any way, directly or indirectly, *aided the*  
27 *perpetrator by acts* or encouraged him by words or gestures.” *People v. Villa*, 156 Cal. App. 2d 128,  
28 134 (1957) (emphasis added).

Defendants’ knowing of advertisement of unregulated Internet gambling constitutes aiding or  
abetting, or at a minimum advising and encouraging, the commission of illegal gambling. In particular,  
defendants knowingly sell advertising to California residents based upon search terms such as “illegal  
gambling,” “Internet gambling,” and “California gambling” and premise their receipt of advertising

1 revenues upon the condition that these users *actually visit* these illegal gambling websites. *See, e.g.,*  
2 Scarlett Decl., Exs. Yahoo 4; Overture 1; Ask Jeeves 4, 7; Lycos 7; LookSmart 10; Jupiter 3; CNET 3,  
3 7, 15; FindWhat 6; Kanoodle 11. Knowledge with regards to criminal intent can be inferred from the  
4 excessive and unusual pricing of goods used to perform the crime. *People v. Etie*, 119 Cal. App. 2d 23  
5 (1953). Here defendants, such as Overture, receive super-profits for their involvement with this  
6 criminal activity. *See, e.g.,* Scarlett Decl., Exs. Overture 1, 4-8. As such, defendants’ advertisement of  
7 illegal Internet gambling is unlawful.

8 Similarly, defendants can be enjoined for their conspiracy to perform a wrongful act. The  
9 California Supreme Court has stated clearly that “[a]s long as two or more persons agree to perform a  
10 wrongful act, the law places civil liability for the resulting damage on all of them regardless of whether  
11 they actually commit the tort themselves.” *Wyatt v. Union Mortgage Co.*, 24 Cal. 3d 773, 784 (1979).  
12 Here, defendants have all agreed with illegal gambling websites to advertise and promote illegal  
13 gambling in California. As such, defendants’ actions constitute an enjoined civil conspiracy.

14 **D. No Irreparable Injury Need Be Shown Where Injunctive Relief Is**  
15 **Specifically Authorized by Statute**

16 California courts have adopted the reasoning of the federal courts that irreparable injury *need*  
17 *not* be shown where a *statute that authorizes injunctive relief has been violated*. These circumstances,  
18 by themselves, present “good and sufficient cause” for issuance of a preliminary injunction. *See IT*  
19 *Corp.*, 35 Cal. 3d at 70 (where the legislation has specifically provided for injunctive relief showing that  
20 the government is likely to prevail gives rise to a presumption of public harm); *Paul v. Wadler*, 209 Cal.  
21 App. 2d 615, 625 (1962) (applying these principles to order a temporary restraining order to prevent  
22 consumer milk price violations) (citing *Porter v. Fiske*, 74 Cal. App. 2d 332, 338 (1946) (violation of a  
23 statute supported issuance of preliminary injunction); *Wind v. Herbert*, 186 Cal. App. 2d 276 (1960)  
24 (same)). Here, C.C.P. §17203 provides for injunctive relief. The very substantial likelihood that  
25 plaintiffs’ claims for violation of C.C.P. §17200 will be borne out on the merits provides a presumption  
26 of public harm.

1           **E.       The General Public Will Suffer Greater Injury from a Denial of the**  
2           **Injunction than Defendants Would Incur if the Injunction Is Granted**

3           Even if a balancing of equities is required, this balance weighs heavily in the general public’s  
4 interest in preventing illegal gambling. *See Robbins*, 38 Cal. 3d at 206. Under this analysis, an  
5 injunction should be issued where the plaintiffs, here the general public, will suffer greater injury from a  
6 denial of the injunction than defendants would incur if the injunction is granted. *See id.* at 205.

7           Here, the equities weigh heavily in plaintiffs’ favor. If the injunction is granted, the only  
8 “injury” that defendants can claim to suffer is that they will not be able to collect the revenues for  
9 advertising unregulated gambling websites in California. They simply have no legal claim to the  
10 continued fruits of their illegal behavior. By contrast, if the injunction is not granted, the general public  
11 will continue to bear the burden of the huge social costs associated with illegal gambling activity.

12           In particular,

- 13           •       Internet gambling is addictive to our youth. Complaint, ¶¶23-31; Scarlett Decl., Exs. 4  
14           and 5. On-line gambling also makes it far more difficult to prevent minors from  
15           gambling. Unlike traditional physical casinos and off-track-betting parlors, the  
16           operators of gambling websites cannot look at their customers to assess their age and  
17           request photo identification. Complaint, ¶22; Scarlett Decl., Ex. 3.
- 18           •       Internet gambling preys on our senior citizens. ¶¶32-34. Scarlett Decl., Exs. 6 and 7.  
19           Complaint Unlike on-site gambling, on-line gambling is readily available to anyone  
20           with an Internet connection at all hours of the day or night. This presents a particular  
21           danger for compulsive gamblers. As was recently pointed out by the American  
22           Psychiatric Society: “Internet gambling, unlike many other forms of gambling activity,  
23           is a solitary activity, which makes it even more dangerous; people can gamble  
24           uninterrupted and undetected for unlimited periods of time.” Indeed, the problems  
25           associated with pathological and problem gamblers, a frighteningly- large percentage of  
26           which are young people, are well-established and can be measured in the ruined lives of  
27           both the gamblers themselves and their families. Complaint, ¶23; Scarlett Decl., Ex. 3.
- 28           •       The potential for fraud connected with casinos and bookmaking operations in the virtual  
            world is far greater than in the physical realm. On-line casinos and bookmaking  
            establishments operate in many countries where effective regulation and law  
            enforcement is minimal or non-existent. Start-up costs are relatively low, and cheap  
            servers and unsophisticated software are readily available. Like scam telemarketing  
            operations, on-line gambling establishments appear and disappear with regularity,  
            collecting from losers and not paying winners, and with little fear of being apprehended  
            and prosecuted. Through slight alterations of the software, unscrupulous gambling  
            operations can manipulate the odds in their favor, make unauthorized credit card charges  
            to the accounts of unsuspecting gamblers, or alter their own accounts to skim money.  
            Complaint, ¶24; Scarlett Decl., Ex. 3.
- By violating California law, Internet gambling websites, their co-conspirators and  
            abettors, transfer funds out of California, without paying fees and taxes to California.

1 Plaintiffs believe that this amounts to tens if not hundreds of millions per year.  
2 Complaint, ¶¶36-44; Scarlett Decl., Ex. 8.

- 3 • In addition, the California Indian Tribes are denied their exclusivity to operate gambling  
4 in California causing them substantial losses. Complaint, ¶¶45-46; Scarlett Decl., Ex. 9.

#### 5 **F. No Bond Should Be Required**

6 Upon the grant of an injunction, under certain circumstances the applicable statute allows for the  
7 posting of a bond. C.C.P. §529(a). The amount of the bond is fixed by the court, exercising sound  
8 discretion, based on the probable damage that the enjoined party may sustain because of the injunction.  
9 *Greenly v. Cooper*, 77 Cal. App. 3d 382, 390 (1978). Plaintiffs submit that no bond should be required.  
10 Indeed, the California Supreme Court recognizes the appropriateness in certain circumstances of  
11 waiving that portion of C.C.P. §529 calling for an undertaking upon the issuance of an injunction. In so  
12 holding, the court has underscored that “several Court of Appeal decisions have addressed the question  
13 and all have concluded that under proper circumstances California courts do have the power to dispense  
14 with bond requirements intended to protect an adversary’s financial interest.” *Conover v. Hall*, 11 Cal.  
15 3d 842, 851 (1974). One such circumstance is where it would be financially infeasible. Here, plaintiffs  
16 are bringing this action as a private attorney general and it would be entirely unjust to impose any  
17 significant financial burden upon these plaintiffs.

18 Regardless, in determining whether a bond is required, courts should weigh the equities between  
19 the parties. Here, the probable damage to defendants due to the issuance of a preliminary injunction  
20 should be de minimis, since they should undeniably refrain from violating the California Penal Code.  
21 The amount of any bond is within the court’s discretion, based on the evidence of harm that an  
22 injunction would cause. *Hummell v. Republic Fed. Sav. & Loan Ass’n*, 133 Cal. App. 3d 49, 51 (1982).  
23 The enjoined party must present admissible, competent, qualitative and quantitative evidence of harm  
24 that an injunction would cause. Defendants cannot do that here. As discussed above, the proposed  
25 injunction requires defendants to comply with California law. There is simply no harm in requiring  
26 defendants to do what they are required to do by law.

27 Moreover, public policy greatly favors the bringing of citizen and consumer rights class action  
28 litigation and such litigation “is an essential tool for the protection of consumers against exploitative  
business practices.” *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 471 (1986). To impose a substantial

1 bond requirement would discourage consumers from seeking injunctive relief to protect vital citizen and  
2 consumer interests. Indeed, in cases like this it is extremely likely that no private attorney general could  
3 ever be found to obtain an injunction if courts were not to waive such bonds. Therefore, this Court  
4 should not require a bond or, in the alternative, a nominal bond.

5 **IV. CONCLUSION**

6 For all of the foregoing reasons, plaintiffs respectfully request that the Court issue a preliminary  
7 injunction prohibiting defendants from advertising and collecting advertising fees related to Internet  
8 gambling websites until the merits of this action have been determined. Plaintiffs further request that  
9 defendants be ordered to provide a substantial notice of the issuance and terms of the preliminary  
10 injunction on their websites as set forth in the proposed order submitted herewith.

11 DATED: August 3, 2004

Respectfully submitted,

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