

1 LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
2 REED R. KATHREIN (139304)
STANLEY S. MALLISON (184191)
3 SHANA E. SCARLETT (217895)
100 Pine Street, 26th Floor
4 San Francisco, CA 94111
Telephone: 415/288-4545
5 415/288-4534 (fax)

6 and
WILLIAM S. LERACH (68581)
7 401 B Street, Suite 1700
San Diego, CA 92101
8 Telephone: 619/231-1058
619/231-7423 (fax)

9 Attorneys for Plaintiffs

THE ROTHKEN LAW FIRM
IRA P. ROTHKEN (160029)
1050 Northgate Drive, Suite 520
San Rafael, CA 94309
Telephone: 415/924-4250
415/924-2905 (fax)

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)

COMPLAINT FOR VIOLATIONS OF)
CALIFORNIA BUSINESS AND)
PROFESSIONS CODE SECTIONS 17200, *ET*)
SEQ.; UNLAWFUL BUSINESS ACTS AND)
PRACTICES; UNFAIR BUSINESS ACTS)
AND PRACTICES; FOR AIDING AND)
ABETTING; CONSPIRACY;)
DECLARATORY RELIEF PURSUANT TO)
CALIFORNIA CODE OF CIVIL)
PROCEDURE SECTION 1060; INJUNCTIVE)
RELIEF PURSUANT TO CALIFORNIA)
CODE OF CIVIL PROCEDURE SECTION)
526; INJUNCTION ON USE AND)
EMPLOYMENT OF ILL-GOTTEN)
PROCEEDS; RESTITUTION; AND)
ACCOUNTING)

TABLE OF AUTHORITIES

	Page
1	
2	
3 I. INTRODUCTION AND SUMMARY OF FACTS	1
4 II. JURISDICTION AND VENUE	4
5 III. PARTIES	4
6 A. Plaintiffs	4
7 B. Defendants	5
8 IV. RELEVANT TIME PERIOD	18
9 V. FACTUAL BACKGROUND.....	19
10 A. Internet Gambling Is a Pervasive and Growing Problem.....	19
11 B. Internet Gambling Is Addictive to Our Youth.....	23
12 C. Internet Gambling Preys on Seniors	25
13 D. Internet Gambling Deprives Local Governments of License and Tax 14 Revenues	26
15 E. Internet Gambling Deprives California Indian Tribes of Exclusivity and the 16 State of California Revenues.	30
17 F. Internet Gambling Is Illegal Under California Law	31
18 1. Lotteries Are Prohibited Under California Law	31
19 2. Casino, Card and Dice Games Are Prohibited in California	32
20 3. Sports Betting and Wagering Is Prohibited in California	32
21 4. Conducting or Carrying on a Controlled Game Without a License Is 22 Prohibited in California	33
23 5. Aiding and Abetting Illegal Gambling Violates California Law.....	33
24 6. Co-Conspiring to Gamble Violates California Law	34
25 VI. DEFENDANTS' WRONGFUL CONDUCT.....	35
26 A. Defendants Posted Sponsored Advertisements In California for Unlicensed 27 Gambling Websites.....	35
28 B. Defendants' Advertising Is Expressly Directed at California Locations Where Gambling Is Illegal	36
C. Specific Examples of Defendants' Wide-Scale Illegal Advertising Services in California for Internet Gambling Websites.	37

1 VII. CLASS ACTION ALLEGATIONS47

2 VIII. NON-APPLICABILITY OF THE COMMUNICATIONS DECENCY ACT.....48

3 first cause of action.....49

4 Unlawful Business Acts and Practices (Against All Defendants)49

5 SECOND CAUSE OF ACTION Unfair Business Acts And Practices (Against All

6 Defendants)51

7 THIRD CAUSE OF ACTION For Aiding And Abetting (Against All Defendants)53

8 FOURTH CAUSE OF ACTION Conspiracy (Against All Defendants)54

9 FIFTH CAUSE OF ACTION Declaratory Relief Pursuant to California Code of Civil

10 Procedure Section 1060 (Against All Defendants).....54

11 SIXTH CAUSE OF ACTION Injunctive Relief Pursuant to California Code of Civil

12 Procedure Section 526 (Against All Defendants).....55

13 SEVENTH CAUSE OF ACTION (Injunction on Use and Employment of Ill-Gotten

14 Proceeds).....56

15 EIGHTH cause of action Restitution (Against All Defendants)56

16 NINTH cause of action Accounting (Against All Defendants)57

17 PRAYER FOR RELIEF58

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Plaintiffs, Mario Cisneros and Michael Voight bring this action on behalf of themselves, all
2 others similarly situated and/or the general public. The allegations pertaining to plaintiffs are made
3 upon personal knowledge. The allegations pertaining to defendants Yahoo!, Inc. (“Yahoo”); Google,
4 Inc. (“Google”); Overture Services, Inc. (“Overture”); Ask Jeeves, Inc. (“Ask Jeeves”); LookSmart,
5 Ltd. (“LookSmart”); AltaVista Inc. (“AltaVista”); Terra Lycos Inc. (“Lycos”); JupiterMedia
6 Corporation (“Jupiter”); CNET Networks, Inc. (“CNET”); FindWhat.com (“FindWhat”);
7 Kanoodle.com, Inc. (“Kanoodle”); Business.com Inc. (“Business.com”); Sex.com Inc. (“Sex.com”) and
8 Does 1-100 (hereinafter referred to collectively as “defendants”) are made upon information and belief,
9 and formed after an inquiry reasonable under the circumstances.

10 I. INTRODUCTION AND SUMMARY OF FACTS

11 1. This is a private Attorney General action brought as a class action and on behalf of the
12 California general public against the major Internet search engine websites which advertise illegal
13 Internet gambling in California.

14 2. Internet gambling is a growing business. Since the mid-1990s, Internet gambling
15 operators have established approximately 1,800 gambling website locations with revenue in 2003
16 estimated to be \$5.0 billion. *See* GAO Report, Internet Gambling, an Overview of the Issues,
17 December 2002 attached as Exhibit (“Ex.”) 1 to the Declaration of Shana E. Scarlett in Support of
18 Plaintiffs’ Motion for a Preliminary Injunction Prohibiting Defendants’ Advertisements of Unlicensed
19 Internet Gambling in California (“Scarlett Decl.”), filed herewith. The websites at issue in this
20 complaint are leading Internet gambling websites which have been in operation for many years and are
21 large operations involving numerous employees, agents, and owners, which make millions of dollars
22 annually conducting illegal gambling in California.

23 3. The longstanding public policy of the State of California prohibits the unregulated
24 business of gambling as noted in Cal. Bus. & Prof. Code §19801:

25 The Legislature hereby finds and declares all of the following:

26 (a) The longstanding public policy of this state disfavors the
27 business of gambling. State law prohibits commercially operated
28 lotteries, banked or percentage games, and gambling machines, and
strictly regulates pari-mutuel wagering on horse racing. To the extent
that state law categorically prohibits certain forms of gambling and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

prohibits gambling devices, nothing herein shall be construed, in any manner, to reflect a legislative intent to relax those prohibitions.

(b) Gambling can become addictive and is not an activity to be promoted or legitimized as entertainment for children and families.

(c) (1) Unregulated gambling enterprises ***are inimical to the public health, safety, welfare, and good order.*** Accordingly, no person in this state has a right to operate a gambling enterprise except as may be expressly permitted by the laws of this state and by the ordinances of local governmental bodies.

So too, Article IV, Legislative Section 19 of the California Constitution provides:

(a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.

* * *

(e) The Legislature has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey;

(f) Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

These principles are enforced through a myriad of California Penal Code provisions including §§320-322, 330, 337 and 337(a). These provisions make the advertisement of gambling a principal crime in California.

4. Notably, lawful gambling establishments in California are heavily regulated to ensure that any gambling that occurs in California is beneficial to the citizens of California. Defendants and the Internet gambling businesses at issue in this complaint are not licensed in California to provide legal gambling services in the state of California as required by the Gambling Control Act, Cal. Bus. & Prof. Code §§19800, *et seq.*, and therefore, have no right to conduct a gambling business in the state of California.

5. Defendants are the major Internet search engines and advertising information content providers who generate revenues and profits by creating, co-creating, targeting, positioning, formatting,

1 highlighting, publishing, distributing and giving premium advertisements to other websites. In most
2 cases, defendants earn advertising fees only when an enduser “clicks-through” to gambling websites.

3 6. Despite the illegal nature of unlicensed Internet gambling in California, and the United
4 States in general, each of the defendants actively and knowingly advertise and facilitate illegal Internet
5 gambling by advertising illegal Internet gambling businesses. Each of the defendants actively and
6 knowingly accepts payment to produce advertisements and paid links for websites of unlicensed
7 Internet gambling businesses. This advertising revenue is determined by the search term input by the
8 user. Hence, defendants expressly sell rights to advertise based on such search terms as “illegal
9 gambling,” “Internet gambling,” and “California gambling.” Further, each of the defendants either
10 expressly uses, or has access to, geo-tracking software which permits defendants to be able to target
11 illegal gambling advertisements to particular locations such as California.

12 7. Defendants’ advertisements have resulted in substantial illegal Internet gambling in
13 California during the past four years, substantial unlawful profits by defendants and their co-
14 conspirators, and substantial gambling losses to California residents. Defendants’ conduct has also
15 resulted in the depletion of substantial tax resources for the State of California, as Internet gambling
16 evades California regulation and taxation contrary to the laws and public policy of this state. The
17 general public has also been harmed, as the net effect of defendants’ illegal actions has been to extract
18 resources out of the legitimate sectors of the California economy and has created financial ruin with its
19 attendant social costs for Californians.

20 8. By this action, plaintiffs seek to have defendants’ paid advertisement of Internet
21 gambling in California declared illegal, seek to enjoin defendants from advertising unlicensed Internet
22 gambling businesses to persons in California, and seek to have defendants disgorge and forfeit all
23 revenues and profits from such illegal activity to a fund to be used for purposes to be directed by the
24 court, to be given in restitution to California Indian Tribes or other licensed gambling businesses in
25 California, to be given in restitution to the spouses of gamblers who have had community property
26 improperly taken from them as a result of illegal gambling, or to be given to the state treasury as
27 forfeited gambling proceeds in the form of restitution for unpaid license fees, gambling taxes, and/or as
28

1 an escheat directly to the State of California of disgorged profits or unclaimed, or unclaimable common
2 funds created by this action.

3 **II. JURISDICTION AND VENUE**

4 9. This Court has jurisdiction over all causes of action asserted herein pursuant to
5 California Constitution, Article VI, §10, because this case involves causes of action not given by statute
6 to other trial courts or administrative agencies.

7 10. This Court has jurisdiction over defendants because each defendant is a corporation that
8 conducts substantial business in the State of California. Defendants Yahoo, Google, Overture, Ask
9 Jeeves, LookSmart, AltaVista, Lycos, Jupiter, CNET, Business.com, and Sex.com have their
10 headquarters or have substantial offices in California, and all defendants have significant business
11 contacts with this state. Each of the defendants have sufficient minimum contacts with California or
12 otherwise intentionally avail themselves of the consumer markets within California through their
13 advertising and marketing activities in California, so as to render the exercise of jurisdiction by
14 California courts and the application of California law to the claims of the plaintiffs and the general
15 public permissible under traditional notions of fair play and substantial justice.

16 11. Venue is proper in this county as the acts upon which this action is based occurred in
17 part in this county. The principal place of business of some of the defendants, at the commencement of
18 this action, is in this county. The general public was damaged and subjected to irreparable harm in this
19 venue due to defendants' unfair and unlawful business activities and advertising of illegal activities in
20 this county. Further, defendants received substantial compensation and profits in this county and
21 defendants' liability arose through the illegal Internet gambling, advertising, and related activity which
22 occurred in this county.

23 **III. PARTIES**

24 **A. Plaintiffs**

25 12. (a) Plaintiff Mario Cisneros resides in Marin County, California and has not engaged
26 in any of the Internet gambling activities described in this complaint.

1 (b) Plaintiff Michael Voight resides in Scotts Valley, California and used search
2 engines in California to find Internet gambling websites, and as a result, lost over \$100,000 in Internet
3 gambling in California.

4 (d) Plaintiffs bring this action on behalf of themselves, all others similarly situated,
5 and/or the general public and assert claims against defendants in this complaint under the provisions of
6 California Unfair Business Practices Statute (“UCL”), Cal. Bus. & Prof. Code §§17200, *et seq.*, and
7 Cal. Civ. Code §§17500, *et seq.* Plaintiffs seek to enjoin defendants from participating in, and
8 continuing to market, sell, and display advertising for illegal Internet gambling establishments that
9 violate the California UCL and California gambling laws. Plaintiffs seek restitution, forfeiture, and
10 disgorgement of illegal gambling proceeds.

11 **B. Defendants**

12 13. Defendants are Internet content providers who create, co-create, target, position, format,
13 publish, distribute and give premium placement of paid advertisements to other websites in conjunction
14 with Internet search engine results requested by persons in California. Defendants obtain substantial
15 revenues from this activity by producing and creating advertisements, paid placement listings,
16 sponsored matches, sponsored links, paid inclusion services, click through links, and other types of paid
17 advertising to its Internet users which are individually tailored and based upon the search term entered
18 by the end user. The advertising rates and conditions are tied to these precise search terms and the
19 advertisements are prominently displayed to Internet users along side “editorial” or bulk search results.
20 Defendants obtain revenue from these websites when they convince users to “click-through” to the
21 advertisers’ websites. In the case of illegal gambling, this “click-through” directs California users to
22 Internet gambling websites where persons in California are enticed to gamble away their hard-earned
23 savings using their home and work computers. As such, each defendant knowingly advertises in
24 California, to California residents, California gambling activities which encourage illegal gambling in
25 California. Defendants knowingly and willfully conspired with Internet gambling websites and others
26 to carry out these illegal gambling activities through the use of defendants’ advertising capabilities and,
27 in fact, carried out these advertising activities in furtherance of the conspiracy, thereby lending aid and
28

1 encouragement to illegal gambling websites. Defendants distribute these advertisements to millions of
2 consumers and to affiliate websites.

3 **a. Yahoo**

4 (i) Defendant Yahoo is an Internet search engine and advertiser. Yahoo's
5 headquarters is located at 710 First Avenue, Sunnyvale, California. At all relevant times, defendant
6 Yahoo has exercised dominion and control over its subsidiaries and divisions, including, but not limited
7 to: Overture, AltaVista, Inktomi, and AllTheWeb (collectively, "Yahoo"). Yahoo is liable for the acts
8 of such subsidiaries under the facts set forth herein.

9 (ii) In 2003, Yahoo's revenue for Internet marketing services was \$1.2
10 billion. Scarlett Decl., Ex. Yahoo 1 at 27. This accounted for approximately 74 percent of Yahoo's
11 total revenue. Scarlett Decl., Ex. Yahoo 1 at 13. As noted by Yahoo, "[m]arketing services revenue is
12 primarily generated from the sale of rich media advertisements (banner and other media
13 advertisements), sponsorship and text-link advertisements, (including pay-for-performance search
14 advertisements), paid inclusion, algorithmic searches and transactions revenue." Scarlett Decl., Ex.
15 Yahoo 1 at 51. Much of this income is derived from its wholly owned subsidiary, Overture, which is
16 headquartered in Pasadena, California and has offices in Palo Alto, California. Scarlett Decl., Ex.
17 Yahoo 1 at 23. As described in Yahoo's recent Report on Form 10-K, Overture's pay-for-performance
18 search service is comprised of advertiser-generated listings, which are accessed by users and businesses
19 through the Yahoo properties and through Overture's affiliates, a network of web properties that have
20 integrated Overture's search service into their sites or that direct user traffic to Overture's sites. Scarlett
21 Decl., Ex. Yahoo 1 at 10.

22 (iii) Yahoo provides pay-for-performance search results called "Precision
23 Match." As described in Yahoo's Report on Form 10-K:

24
25
26 Precision Match or keyword search prioritizes search results by
27 the amount the advertiser has bid for placement. Advertisers are listed in
28 the search results on our network and also on our affiliates' networks in
descending order of their bid, with the highest bidder appearing as the

1 first search listing in the search results. Bids may be expressed either as
2 the amount the advertiser pays each time there is a click on the
3 advertiser's search listing or as the maximum amount the advertiser is
4 willing to pay for a click on the advertiser's search listing.

5 Scarlett Decl., Ex. Yahoo 1 at 6. Notably, advertisers must specify the key word search term or phrase
6 upon which they wish their advertisements to appear. Yahoo sells advertising for such terms as,
7 "Internet casino," "casino gambling online," and "lottery." Yahoo has actual and/or constructive
8 knowledge of its advertising of illegal Internet gambling to persons in California.

9 (iv) Yahoo also utilizes geo-tracking technology which permits Yahoo to
10 control advertising so that search term advertising is sold on a geographical basis. As such, Yahoo
11 expressly sells the advertising rights to terms such as, "Internet gambling" for searches conducted in
12 areas in which Internet gambling is illegal. Notably, Yahoo's Overture website has expressly barred
13 advertising for gambling websites on its Australian service since at least 2002, demonstrating Yahoo's
14 ability to prevent illegal gambling advertising to particular locales and markets when Yahoo sees fit to
15 do so.

16 (v) Yahoo recognizes the potential liability that they face by deriving
17 revenue from illegal gambling activities by noting in their recent Report on Form 10-Q that:

18 We are subject to general business regulations and laws, as well
19 as regulations and laws directly applicable to the Internet. As we
20 continue to expand the scope of our properties and service offerings, the
21 application of existing laws and regulations to Yahoo! relating to issues
22 such as ... gambling ... can be unclear.... Any existing or new legislation
23 applicable to us could expose us to substantial liability, including
24 significant expenses necessary to comply with such laws and
25 regulations....

26 Scarlett Decl., Ex. Yahoo 2 at 39.

27 Plaintiffs' action in this case is designed to ensure this compliance and to expose Yahoo to the above
28 notes liability consistent with its illegal actions in California.

b. Google

(i) Defendant Google is an Internet search engine and advertiser. Google
has its headquarters at 1600 Amphitheatre Parkway, Mountain View, California. Google's net revenues

1 for 2003 were \$962 million dollars of which approximately 95% was obtained from its advertisers.
2 Scarlett Decl., Ex. Google 1 at 6.

3 (ii) Google's advertising program consists of two basic services
4 "Adwords" and "Adsense." Adwords are "sponsor link" advertisements that are imposed upon users
5 based upon the precise search phrase typed by a user. Google obtains revenue from these
6 advertisements only if these advertisements are effective in luring consumers to go to the advertiser's
7 websites ("cost-per-click"). As described by Google in its April 29, 2004 Registration Statement:

9 In the fourth quarter of 2000, we launched Google AdWords, an online
10 self-service program that enables advertisers to place targeted text-based
11 ads on our web sites. AdWords customers originally paid us based on
12 the number of times their ads appeared on users' search results pages. ***In the first quarter of 2002, we began offering AdWords exclusively on a cost-per-click basis, so that an advertiser pays us only when a user clicks on one of its ads.***

13 Scarlett Decl., Ex. Google 1 at 37 (emphasis added).

14 (iii) Similarly, Adsense is a service whereby Google places each
15 advertiser's links on "Google Network members" web pages and thereby obtains "cost-per-click"
16 revenues for actions that occur on these third party websites. *Id.* As described in the Registration
17 Statement:

18 Google AdSense is the program through which we distribute our
19 advertisers' text-based ads for display on the web sites of our Google
20 Network members. Our AdSense program includes AdSense for search
21 and AdSense for content. AdSense for search, launched in the first
22 quarter of 2002, is our service for distributing relevant ads from our
23 advertisers for display with search results on our Google Network
24 members' sites. AdSense for content, launched in the first quarter of
25 2003, is our service for distributing ads from our advertisers that are
26 relevant to content on our Google Network members' sites. Our
27 advertisers pay us a fee each time a user clicks on one of our advertisers'
28 ads displayed on Google Network members' web sites.

Scarlett Decl., Ex. Google 1 at 38. Google Network members include AOL, Ask Jeeves, Lycos,
HotBot, Netscape, and Teoma. As noted in its Registration Statement, Google Network members
account for "approximately 15% of [Google's] net revenues in 2003, and approximately 21% of

1 [Google's] net revenues for the three months ended March 31, 2004" Scarlett Decl., Ex. Google 1 at
2 7.

3 (iv) For either AdSense or Adwords, advertisers pay Google a fee each time
4 a user clicks on one of the advertisements displayed on a Google or Google Network members'
5 websites. Notably, advertisers must specify the relevant search term or phrase for which they wish to
6 advertise. Scarlett Decl., Ex. Google 1 at 57. Google sells advertising for such search terms as "Texas
7 hold 'em," "hockey bet," "baseball bet," and "facebook." Google obtains no revenue for these
8 advertising services unless Google is successful in prevailing upon users to actually visit these
9 advertised websites. Google has actual and/or constructive knowledge of its advertising of illegal
10 Internet gambling to persons in California.

12 (v) Google also utilizes IP geo-tracking technology so that advertising
13 terms are sold to particular geographical areas. As noted by Google, "[a]dvertisers can also target their
14 campaigns by neighborhood, city, country, region or language." *Id.* Google explains on its website the
15 advantage to advertisers is that they "have more control over [their] ads so [advertisers] can be sure they
16 are only shown to a highly targeted audience." *Id.* Google sells the advertising rights to terms such as
17 "Internet gambling" for search results conducted *in California* –where these activities are illegal. In
18 sum, Google participates in "highly targeting" persons in California for illegal Internet gambling
19 advertisements.

21 (vi) Recognizing the potential legal liability of these actions, Google
22 recently stated in its 2003 Report on Form 10-K filed with the Securities and Exchange Commission
23 ("SEC") that:

25 The application to us of existing laws regulating or requiring
26 licenses for certain businesses of our advertisers ... can be unclear.
27 Existing ... legislation could expose us to substantial liability ... and
28 cause us to incur significant expenses in order to comply with such laws
and regulations.

Id.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

c. Overture

(i) Defendant Overture is an Internet search engine and “PAC” advertisers and is a wholly-owned subsidiary of Yahoo. Overture’s headquarters is located at 74 North Pasadena Avenue, 3rd Floor, Pasadena, California. Overture claims to reach over 80% of active United States Internet users and claims to have more than 100,000 active, paying advertisers and distribution partners. In a recent review of Overture’s website taken at the end of March 2004, Overture’s Internet advertisers include approximately 40 Internet gaming websites including: SBG Global – Internet Gambling, (www.Betsbg.com, Planetluck Casino (www.Planetluck.com), GoldenPalace.com (www.GoldenPalace.com). Scarlett Decl., Ex. Overture 1. Indeed, Overture had bids of as much as \$12.97 from “SBG Global – Internet Gambling” for each click through by an Internet user using the search phrase “Internet gambling.” *Id.* By contrast, prevailing click-through bids for such terms as “pet supplies” and “grocery stores” are well under a dollar. Scarlett Decl., Ex. Overture 2, 3.

(ii) Overture utilizes geo-tracking technology which permits Overture to control advertising so that search-term advertising is sold on a geographic basis. Overture sells the advertising rights to terms such as “Internet gambling” for searches conducted in areas such as California where Internet gambling is illegal. Overture has actual and/or constructive knowledge that it is advertising illegal gambling in the state of California to persons in California.

d. Ask Jeeves

(i) Defendant Ask Jeeves is an Internet search engine and an advertisers. Ask Jeeves is headquartered at 5858 Horton Street, Suite 350, Emeryville, California and has offices in Los Angeles, California and Los Gatos, California. According to the Company’s March 31, 2004, Report of Form 10-Q, Ask Jeeves operates a number of proprietary websites including: Ask Jeeves, Ask Jeeves for Kids, Teoma, Excite, iWon, My Way and others. Scarlett Decl., Ex. Ask Jeeves 1 at 12. On or about March 4, 2004, Ask Jeeves purchased Interactive Search Holding, Inc. which is commonly known as the Excite Network. Since this time, defendant Ask Jeeves has exercised dominion and control over the Excite Network and is liable for its acts. Ask Jeeves also provides search technology and advertising products to approximately 50 network sites, including portals, infomediaries, and content and destination websites. *Id.* As noted in its Report on Form 10-Q, Ask Jeeves provides:

1 [S]earch results and/or advertising for those websites to display in
2 response to their users' search queries. We refer to these third-party
websites as our syndication network....

3 Scarlett Decl., Ex. Ask Jeeves at 6. All told, Ask Jeeves keyword network reaches some 64,000,000
4 unique users monthly on 468,600,000 search queries.

5 (ii) According to Ask Jeeves's Report on Form 10-Q, Ask Jeeves obtained
6 approximately \$39.2 million in revenues during the first three months of this year of which \$31.2
7 million was derived from paid placement advertising. Scarlett Decl., Ex. Ask Jeeves at 15. As noted in
8 the Report on Form 10-Q:

9
10 We generate advertising revenue every time users click on the paid
11 listings, or as a result of graphic advertising and other advertising
12 products we deliver in response to their queries. In this way, we
monetize a portion of our Web traffic. Some of the advertisements are
sold by our direct sales force while others are supplied to us by our paid
listings provider, which currently is Google, Inc.

13 Scarlett Decl., Ex. Ask Jeeves at 12.

14 (iii) Advertisers pay Ask Jeeves a fee each time a user clicks on one of the
15 advertisements displayed on a website controlled by Ask Jeeves or its affiliates. Notably, advertisers
16 must specify the key word search term or phrase upon which they wish the advertisements to appear.
17 Ask Jeeves sells advertising for such terms as "gambling" or "online gambling." Ask Jeeves has actual
18 and/or constructive knowledge that it is advertising illegal gambling in California to persons in
19 California.
20

21 (iv) Ask Jeeves also has access to Internet protocol geo-tracking
22 technologies which permit Ask Jeeves to control advertising so that advertising terms are sold on a
23 geographical basis. As such, Ask Jeeves could refuse to advertise illegal Internet gambling to
24 California residents while permitting this advertisement in regions where this activity was legal, if Ask
25 Jeeves chose to do so.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

e. AltaVista

(i) Defendant AltaVista is an Internet search engine and an advertisers and AltaVista’s headquarters is located at 1070 Arastradero Road, Palo Alto, California. AltaVista is a wholly-owned subsidiary of Overture which in turn is a wholly-owned subsidiary of Yahoo. Users that conduct searches on AltaVista’s search engine are confronted with search results as well as “sponsored matches” which AltaVista admits are sites that pay for placement in search results on terms that are relevant to their business. Scarlett Decl., Ex. Alta Vista 1. AltaVista admits that these listings are provided by Overture Services, a wholly-owned subsidiary of Yahoo, and appear on AltaVista Search results pages. *Id.* For the reasons described herein, Yahoo and Overture are liable for AltaVista’s actions in providing illegal Internet gambling advertisements to persons in California. AltaVista has actual and/or constructive knowledge that it is advertising illegal gambling in the state of California to persons in California.

f. Lycos

(i) Defendant Lycos is an Internet search engine and an advertiser for Lycos’ corporate headquarters is in Barcelona, Spain, and Lycos maintains offices in San Francisco, California at 660 Third Street, Fourth Floor and in El Segundo, California at 840 Apollo Street, Suite 251. Lycos has exercised dominion and control over its subsidiaries and their web pages, including, but not limited to, Lycos, HotBot Inc., and Terra, Inc. and is therefore liable for its acts.

(ii) According to Lycos’ fiscal year 2003 Annual Report, Lycos’ United States operation had total fiscal year 2003 operating revenues of \$142 million and Lycos obtained 27% of its worldwide operating revenues from advertising. Scarlett Decl., Ex. Lycos 1 at 26, 29. According to the report, in the United States, “the market is clearly evolving to performance advertising” Scarlett Decl., Ex. Lycos 1 at 29. Under the performance advertising program, advertisers pay Lycos a fee each time a user clicks on an advertisement displayed on websites controlled by Lycos or their affiliates. Lycos sells advertising for such terms as “facebook,” “Internet gambling,” and “Internet casino.” Lycos has actual and/or constructive knowledge that it is illegal advertising gambling in California to persons in California.

1 (iii) Lycos also has access to Internet protocol geo-tracking technologies
2 which would permit Lycos to control advertising so that advertising terms can be sold on a geographical
3 basis. As such, Lycos's sale of advertising based upon the search term "Internet gambling" could be
4 sold in jurisdictions where Internet gambling is legal while preventing this advertisement in California.

5 **g. LookSmart**

6 (iv) Defendant LookSmart is an Internet search engine and an advertiser for
7 LookSmart's corporate headquarters is located at 625 Second Street, San Francisco, California. At all
8 relevant times, defendant LookSmart has exercised dominion and control over its subsidiaries and
9 divisions. Defendants are liable according to the law for the acts of such subsidiaries under the facts set
10 forth herein.

11 (v) According to LookSmart's Report on Form 10-K, advertising revenue
12 from LookSmart's "Looklisting" program and other sources accounted for \$140.9 million or 90.2% of
13 LookSmart's total revenues in 2003 and is likely to account for "substantially all" of LookSmart's
14 revenues in 2004. Scarlett Decl., Ex. LookSmart 1 at 9. Of this, approximately 64% of LookSmart's
15 advertising revenues for this time period were derived from its relationship with Microsoft.

16 (vi) According to LookSmart's 10-K:

17
18
19 Our LookListings products provide businesses of all sizes the
20 opportunity to include listings for their company and product pages in
21 relevant search results, which are distributed across our network of
22 distribution partners. LookSmart delivered a total of 852 million paid
23 clicks, or clicks to a customer's web site for which LookSmart receives
24 payment, for its customers in 2003.

25 * * *

26 Our LookListings products include both inclusion-targeted
27 listings and keyword-targeted listings. For maximum convenience, our
28 customers may include both inclusion-targeted listings and keyword-
targeted listings in a single, unified campaign. Keyword-targeted
listings allow advertisers to select specific keywords, or search terms
that are relevant to their specific web pages. Upon selecting relevant
keywords, advertisers can choose a maximum price they are willing to
pay for clicks, thereby controlling the position of their listings in the
Sponsored Search section of the search results page. Placement of
keyword-targeted listings within the Sponsored Search results depends

1 on the click-through-rate and the maximum CPC, or cost-per-click, the
2 advertiser is willing to pay for the listing's campaign.

3 Scarlett Decl., Ex. LookSmart 1 at 2.

4 (vii) Advertisers must pay LookSmart a fee each time a user clicks on one of
5 the advertisements displayed on websites controlled by LookSmart. LookSmart sells advertising for
6 such terms as "gambling," "racebook," and "Internet gambling." LookSmart has actual and/or
7 constructive knowledge that it is advertising illegal gambling in California to persons in California.

8 (viii) LookSmart has access to Internet protocol geo-tracking technologies
9 which permits LookSmart to control advertising on a geographic basis. As such, LookSmart could
10 block illegal Internet gambling advertisements to California.

11 **h. Jupiter**

12 (i) Jupiter is an Internet search engine and an advertiser. Jupiter is
13 headquartered in Connecticut and has offices in San Francisco, California at 150 Executive Park
14 Boulevard. Jupiter provides Internet users with an Internet search engine and advertising content under
15 numerous websites including, www.Internet.com, www.Earthweb.com, and the Clicks.com Network.
16 At all relevant times, defendant Jupiter has exercised dominion and control over its subsidiaries and
17 divisions and is therefore liable for such subsidiaries' acts under the facts set forth herein.

18 (ii) One of Jupiter's primary sources of revenue derives from sponsors in
19 return for Jupiter's customized advertising results included with each patron's web search. For the
20 quarter ended March 31, 2004, Jupiter reported revenues of \$7.2 million in online advertising revenues.

21 Scarlett Decl., Ex. Jupiter 1 at 15.

22 (iii) Advertisers pay Jupiter a fee each time a user clicks on one of the
23 advertisements displayed on websites controlled by Jupiter or its affiliates. Jupiter sells advertising for
24 such search terms as "gambling," "online gaming," and "Blackjack." Jupiter has actual and/or
25 constructive knowledge that it is advertising illegal gambling in California to persons in California.

26 (iv) Jupiter also has access to Internet protocol geo-tracking technologies
27 which permits Jupiter to control advertising so that advertising terms can be sold on a geographical
28

1 basis. As such, Jupiter could block illegal Internet gambling advertising from California residents if it
2 chose to do so.

3 **i. CNET**

4 (i) Defendant CNET and its business divisions mySimon, Search.com and
5 ZDNet (collectively, “CNET”) are Internet search engines advertiser. CNET’s headquarters is located
6 at 235 Second Street, San Francisco, California. CNET provides Internet users with Internet search
7 engine pages and advertising results under several web pages, including, the www.mySimon.com,
8 www.ZDNet.com, www.Techrepublic.com, www.builder.com, and www.Search.com websites. At all
9 relevant times, defendant CNET has exercised dominion and control over its subsidiaries and divisions
10 and is therefore liable for its acts.

11 (ii) Marketing services, which includes impression-based advertising, is
12 one of CNET’s primary sources of revenue, accounting for 69% of CNET’s total revenue in 2003.
13 Scarlett Decl., Ex. CNET 1 at 14. CNET’s activity based services require that, advertisers pay CNET a
14 fee each time a user clicks an advertisement displayed on websites controlled by CNET or its affiliates.
15 Scarlett Decl., Ex. CNET 1 at 13. Advertisers must specify the key word search term or phrase upon
16 which they wish these advertisements to appear and CNET sells advertising for such terms as “illegal
17 gambling” or “California gambling.” CNET has actual and/or constructive knowledge that it is
18 advertising illegal gambling in California to persons in California.

19 (iii) CNET also has access to Internet protocol geo-tracking technologies
20 which permit CNET to control advertising so that advertising can be distributed on a geographical basis.
21 As such, CNET’s sale of advertising based upon the search term “Internet gambling” could block illegal
22 Internet gambling advertising from being imposed upon California residents if CNET chose to do so.

23 **j. FindWhat**

24 (i) Defendant FindWhat is an Internet search engine advertiser. FindWhat
25 is incorporated in Nevada and headquartered in Fort Myers, Florida. FindWhat has an extensive
26 presence in California due to its 100% ownership of Miva Corporation headquartered in San Diego,
27 California. According to its SEC Report on Form 10-K, FindWhat leases office space in California and
28 is currently litigating a patent dispute in the Federal District Court of the Central District of California.

1 Scarlett Decl., Ex. FindWhat 1 at F-13. At all relevant times, defendant FindWhat has exercised
2 dominion and control over its subsidiaries and divisions and therefore is liable for its acts.

3 (ii) In 2003, FindWhat had revenues of \$72.2 million. Scarlett Decl., Ex.
4 FindWhat 1 at 27. FindWhat primarily derives its revenue from click-throughs on keyword
5 advertisements on the FindWhat Network, and from management fees generated from click-throughs
6 from FindWhat's private label agreements. Scarlett Decl., Ex. FindWhat at 35. FindWhat distributes
7 keyword text advertisements throughout a partner network of hundreds of websites – including large
8 California based search engines such as CNET's Search.com and Excite. Advertisers pay for each
9 keyword through a bid for position system. Scarlett Decl., Ex. FindWhat at F-8. Advertisements from
10 the FindWhat Network are rank-ordered through a competitive bidding process in which each
11 advertiser's bid represents the amount it will pay FindWhat for each customer "click-through" that
12 FindWhat sends to the advertiser's website. Scarlett Decl., Ex. FindWhat at 5. As noted by FindWhat:

13 Because advertisers must pay for each click-through to their website, we
14 believe that they select and bid only on those keywords or phrases which
15 are most relevant to their business offerings. We also employ relevancy
16 algorithms that consist of an automated editing program and review by
17 our editorial staff to ensure that advertisers do not bid on irrelevant
18 keywords.

19 *Id.* The advertiser with the highest bid is listed first in the search results, with the remaining advertisers
20 appearing in descending order of their bids.

21 (iii) Advertisers must pay Find What this fee each time a user clicks on one
22 of the advertisers' advertisements displayed on websites controlled by FindWhat or its affiliates.
23 FindWhat directly sells advertising for such terms as "sportsbook," "Internet gambling," and "casino
24 gambling." FindWhat has actual and/or constructive knowledge that it is advertising illegal gambling in
25 California to persons in California.

26 (iv) FindWhat has access to Internet protocol geo-tracking technologies
27 which permits FindWhat to control advertising on a geographical basis. As such, FindWhat could
28 easily block illegal Internet gambling advertising from California residents if FindWhat chose to do so.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

k. Kanoodle

(i) Defendant Kanoodle is an Internet search engine and an advertiser. Kanoodle has offices located in New York. Kanoodle’s search product is utilized by numerous affiliated search engines across the Internet including, CNET’s California-based Search.com. Kanoodle exercises dominion and control over its subsidiaries and divisions and is therefore liable for its acts.

(ii) Kanoodle provides three primary advertising products: KeywordTarget – for search-targeted sponsored links, ContextTarget – for content-targeted sponsored links and Behavior Target – for behavior-targeted sponsored links. Scarlett Decl., Ex. Kanoodle 1. Under KeywordTarget, Kanoodle sells advertisements based on a bidding system where an advertiser’s bid determines the rank of the advertisement throughout Kanoodle’s Network. *Id.* ContextTarget featured on MSNBC.com and CBS MarketWatch “puts control back in [advertiser’s] hands” by placing graphical advertisements alongside regular search results. *Id.* BehaviorTarget places advertising listings based upon users’ exhibited behavior using user tracking tactics such as cookies. *Id.*

(iii) Advertisers must pay Kanoodle a fee each time a user clicks on one of the advertisements displayed on websites controlled by Kanoodle or its affiliates. Kanoodle sells advertising for such terms as “Internet gambling,” “online gambling,” and “online gaming.” Kanoodle has actual and/or constructive knowledge that it is advertising illegal gambling in California to persons in California.

(iv) Kanoodle also has access to Internet protocol geo-tracking technologies which permits Kanoodle to control advertising so that advertising terms can be sold on a geographical basis. As such, Kanoodle could block illegal Internet gambling advertising to California residents.

l. Business.com

(i) Defendant Business.com is an Internet search engine and advertiser. Business.com’s headquarters is located at 2120 Colorado Avenue, Santa Monica, California. Business.com advertises for Internet gambling sites on its website and on dozens of website partners and has control over these listings such that Business.com is liable for the acts of such subsidiaries.

1 (ii) Business.com provides advertisers with pay per click advertising.
2 Under this system advertisers must specify the key word search term or phrase upon which it wishes its
3 advertisements to appear including, terms such as “facebook.” Business.com has actual and/or
4 constructive knowledge of its advertising of illegal Internet gambling in California to persons in
5 California.

6 (iii) Business.com also has access to geo-tracking technology which permits
7 Business.com to control its advertising by geographic area.

8 **m. Sex.com**

9 14. Defendant Sex.com is an Internet search engine and advertising information content
10 provider. Sex.com’s headquarters is located at 2544 Third Street, San Francisco, California. Sex.com
11 advertises Internet gambling casinos to persons in California. Sex.com has actual and/or constructive
12 knowledge of its advertising of illegal Internet gambling in California to persons in California.
13 Sex.com has access to geo-tracking technology which permits Sex.com to control its advertising to
14 prevent advertising illegal gambling websites to persons in California.

15 15. The true names and capacities of the defendants sued herein under California Code of
16 Civil Procedure (“C.C.P.”) §474 as Does 1 through 100, inclusive, are presently unknown to plaintiff
17 who, therefore, sues these defendants by such fictitious names. Plaintiff will seek to amend this
18 complaint and include these Doe defendants’ true names and capacities when they are ascertained.
19 Each of the fictitiously-named defendants is responsible in some manner, including, *inter alia*, as aiders
20 and abettors and co-conspirators, for the conduct alleged herein and for the injuries suffered by the
21 general public.

22 **IV. RELEVANT TIME PERIOD**

23 16. The relevant time period upon which plaintiffs seek relief on behalf of themselves, the
24 classes and/or the general public for violations of the California UCL is four years from the filing of this
25 complaint alleging violations of the California UCL against each defendant in this action.

1 **V. FACTUAL BACKGROUND**

2 **A. Internet Gambling Is a Pervasive and Growing Problem**

3 17. In a March 29, 2002 article written by Kevin McCoy, *USA Today* reported when the new
4 champion of the final four college basketball tournament is crowned Monday night, one top Internet
5 bookmaker projects his website will have rung up as much as \$2 million in bets – for each day of the
6 tourney. Scarlett Decl., Ex. 2. Even the Super Bowl, another major draw for sports gamblers, “is sort
7 of a non-event in comparison,” quoted Steve Schillinger, a co-founder of World Sports Exchange. *Id.*
8 According to *USA Today*, in less than a decade, the online gambling industry has morphed from
9 unheralded walk-on to a multibillion-dollar-a-year powerhouse. Interactive websites instantly
10 accommodate gamblers betting on sports teams or playing such casino games as poker and roulette.
11 ““Online sports gambling is clearly illegal today,”” “says Sebastian Sinclair, CFO of Christiansen
12 Capital Advisors, a New York consulting firm that studies the gaming industry.” *Id.* ““But how
13 effective has that prohibition been so far? Not very!”” *Id.* Roughly 1,400 websites run by about 300
14 companies have launched since 1995, according to Christiansen Capital. The firm projected that gross
15 online sports wagering for 2003 will reach \$63.5 billion. In 2001, gamblers worldwide lost about \$3
16 billion on online sites. By comparison, gamblers at Nevada and New Jersey casinos lost \$13.8 billion.
17 During February 2002, SportingbetUSA.com registered more than 14.4 million impressions – potential
18 viewings of the firm’s Internet advertisements – according to an analysis conducted for *USA Today* by
19 Jupiter Media Metrix.

20 18. According to the March 29, 2002, *USA Today* article, sports fans eager to bet on their
21 favorite team simply establish a personal account. About 30,000 people, almost all from the United
22 States, have become regular bettors with World Sports Exchange, Schillinger says. *Id.* Each customer
23 sends the company \$300, payable by credit card or bank check. In return, the company assigns account
24 holders a password used to place bets, check account balances and review transactions. Winning bets
25 are deposited in the accounts. ““*If you want to withdraw money, we’ll FedEx you a check*
26 *overnight,*”” Schillinger says. *Id.*

27 19. According to the March 29, 2002, *USA Today* article, federal prosecutors have “huge
28 concerns about online gambling”” and advertisements that help expand the industry, says Justice

1 Department spokeswoman Jill Stillman. Investigators say, however, they don't have the financial
2 resources or personnel to target online gambling in a comprehensive manner. *Id.* Internal Revenue
3 Services spokesman Tim Harms similarly acknowledged his agency is "not doing anything specifically
4 about Internet gambling." *Id.* "He does note that while it "may sound Pollyanna-ish," gamblers are
5 still required to report winnings on tax returns." *Id.*

6 20. The number of Internet gambling sites has increased substantially in recent years. While
7 there were approximately 700 Internet gambling sites in 1999, it is estimated that by the end of 2003,
8 there were approximately 1,800 such sites generating around \$4.2 billion in revenues. In addition to on-
9 line casino-style gambling sites, there are numerous off-shore sports books operations that take bets
10 both over the Internet and via the telephone. These developments are of great concern to the United
11 States Department of Justice, particularly because many of these operations are currently accepting bets
12 from United States citizens, when it is illegal to do so. Scarlett Decl., Ex. 3.

13 21. The Internet and other emerging technologies, such as interactive television, have made
14 possible many types of gambling that were not feasible a few years ago. For example, a United States
15 citizen can now, from his or her home at any hour of the day or night, participate in an interactive
16 Internet poker game. *Id.*

17 22. **Gambling by Minors.** On-line gambling also makes it far more difficult to prevent
18 minors from gambling. Unlike traditional physical casinos and Off-Track-Betting parlors, the operators
19 of gambling websites cannot look at their customers to assess their age and request photo identification.
20 Currently, Internet gambling businesses have no reliable way of confirming that gamblers on their
21 website are not minors who have gained access to a credit card. *Id.*

22 23. **Compulsive Gambling.** Unlike on-site gambling, on-line gambling is readily available
23 to anyone with an Internet connection at all hours of the day or night. This presents a particular danger
24 for compulsive gamblers. As was recently pointed out by the American Psychiatric Society: "Internet
25 gambling, unlike many other forms of gambling activity, is a solitary activity, which makes it even
26 more dangerous; people can gamble uninterrupted and undetected for unlimited periods of time." *Id.*
27 Indeed, the problems associated with pathological and problem gamblers, a frighteningly-large
28

1 percentage of which are young people, are well-established and can be measured in the ruined lives of
2 both the gamblers themselves and their families. *Id.*

3 24. **Fraud.** The potential for fraud connected with casinos and bookmaking operations in
4 the virtual world is far greater than in the physical realm. Start-up costs are relatively low, and cheap
5 servers and unsophisticated software are readily-available. Like scam telemarketing operations, on-line
6 gambling establishments appear and disappear with regularity, collecting from losers and not paying
7 winners, and with little fear of being apprehended and prosecuted. Through slight alterations of the
8 software, unscrupulous gambling operations manipulate the odds in their favor, make unauthorized
9 credit card charges to the accounts of unsuspecting gamblers, or alter their own accounts to skim
10 money. *See, e.g.,* www.wizardofodds.com/casinos/blacklist.html (describing proof of fraud at
11 numerous Internet casinos). There is also a danger that hackers can manipulate the online games in
12 their favor or can steal credit card or other information about other gamblers using the site. *Id.*

13 25. **Potential for Organized Crime.** The Department of Justice is concerned about the
14 potential involvement of organized crime in Internet gambling. Traditionally, gambling has been one of
15 the staple activities in which organized crime has been involved, and many indictments brought against
16 organized crime members have included gambling charges. The Department of Justice has now seen
17 evidence that organized crime is moving into Internet gambling. *Id.*

18 26. **Money Laundering and Internet Gambling.** On-line gambling businesses provide
19 criminals with an easy and excellent vehicle for money laundering. This is due in large part to the cash-
20 intensive nature of the industry, and the volume, speed, and reach of Internet transactions. (It is a fact
21 that money launderers have to go to financial institutions to conceal their illegal funds and to recycle
22 those funds back into the economy for their use. Because criminals are well aware of the fact that banks
23 are now subject to greater scrutiny and regulation, they have – not surprisingly – turned to other non-
24 bank financial institutions to launder their money). On-line casinos are a particularly inviting target
25 because, in addition to using the gambling that on-line casinos offer as a way to hide or transfer money,
26 on-line casinos offer a broad array of financial services to their customers, such as providing credit card
27 accounts, fund transmittal services, check cashing services, and currency exchange services.
28 Individuals wanting to launder ill-gotten gains through an on-line casino can do so in a variety of ways.

1 For example, a customer could establish an account with a casino using illegally-derived proceeds,
2 conduct a minimal amount of betting or engage in offsetting bets, and then request repayment from the
3 casino, thereby providing a new “source” of the funds. If a gambler wants to transfer money to an
4 inside source in the casino, he can just play until he loses the requisite amount. Similarly, if an insider
5 wants to transfer money to the gambler, perhaps as payment for some illicit activity, he can rig the game
6 so the bettor wins. The anonymous nature of the Internet and the use of encryption make it difficult to
7 trace the transactions. Further, the gambling business may not maintain the transaction records, in
8 which case tracing may be impossible. While regulators (in the United States) can visit physical
9 casinos, observe their operations, and examine their books and records to ensure compliance with
10 regulations, this is far more difficult, if not impossible, with virtual casinos. *Id.*

11 27. **Advertising for Internet Gambling.** In addition to on-line gambling itself, the United
12 States government is also concerned about the substance and scope of advertising for on-line gambling.
13 Such advertisements are omnipresent on the Internet, in print advertisements, and over the radio. The
14 United States Federal Trade Commission (“Federal Trade Commission”) recently looked at this issue
15 and found, not surprisingly, that advertisements for gambling over the Internet appear even on websites
16 oriented towards children. The sheer volume of advertisements for Internet sports books and online
17 casinos is troubling because it misleads the public to believe that such gambling is legal, when in fact, it
18 is not. Many of these advertisements affirmatively foster that erroneous belief. Some states which
19 outlaw the promotion of gambling have taken action to curtail these advertisements. For instance, in
20 December 2001, the Colorado Attorney General and the Colorado Limited Gaming Control
21 Commission sent notices to certain radio operators asking them to stop broadcasting advertisements for
22 Internet casinos and sports bookmaking operations. Similarly, in February 2002, the California Horse
23 Racing Board and the California Broadcasters Association sent notices to every radio and television
24 station in California to stop running advertisements for illegal off-shore wagering services. Scarlett
25 Decl., Ex. 3.

1 **B. Internet Gambling Is Addictive to Our Youth**

2 28. In an article written by Tom Weir and published in *USA Today* on August 22, 2003, the
3 addictive threat of Internet gambling to teenagers and college students was discussed. Scarlett Decl.,
4 Ex. 4. According to Arnie Wexler, who runs a national hotline for problem gamblers:

5 “Internet gambling is probably the most dangerous thing we’ve
6 got going at this time “[It’s] available 24 hours a day. You can do it
7 in your pajamas or your birthday suit.”

8 *Id.* According to Ed Looney, director of the New Jersey Council on Compulsive Gambling: ““The No.
9 1 form of problem gambling for college students is Internet betting on sports.”” *Id.* At the Algamus
10 Recovery Center in Anna Maria, Florida director Rick Benson says that the treatment facility for
11 gambling addicts has seen a 25% increase in Internet-related cases in the last two years. Benson says
12 the majority are white, college-educated males, ““with some high level of competitive sports
13 participation in their background.”” *Id.*

14 29. The August 22, 2003 *USA Today* article also points to the growing concern that online
15 gambling may create more gambling addicts. It’s very easy for a young person to take a parent’s credit
16 or debit card and open an account to bet online. The Federal Trade Commission last year reported an
17 informal survey of 100 gambling websites found young people could gain easy access, that warnings on
18 underage gambling generally were hard to find and that 20% of the websites had no warnings. Internet
19 gambling is ““so new that even if there were a whole bunch of pathological (Internet) gamblers, we
20 wouldn’t know about them”” says Christine Reilly of Harvard University’s Institute for Research on
21 Pathological Gambling and Related Disorders. Scarlett Decl., Ex. 4. A 2001 study by Harvard
22 University Institute suggests young computer users have an increased risk of becoming problem
23 gamblers. The study found that 5% to 6% of college-age and younger people are “pathological” in their
24 betting – gambling to recoup losses, spending money they don’t have, unable to stop – compared with
25 1% to 2% of the general population. That same unknowing attitude is prevalent among young Internet
26 gamblers, says Pat Fowler (“Fowler”), executive director of the Florida Council on Compulsive
27 Gambling. ““A lot don’t even realize it’s illegal to do it,”” Fowler says of the rarely prosecuted crime of
28 sports betting. ““They go into it thinking that, because it’s available on the Internet, it must be legal. It
tends to be the primary source of wagering for college students, especially for sports wagers. Online

1 they don't have the fear of placing bets with a bookie, which most know is illegal!" *Id.* Of the nearly
2 7,000 callers to the helpline of Fowler's organization last year, 7% from all age groups said their
3 gambling debts were \$175,000 or more, presumably including Internet gambling. Identification of
4 people with Internet gambling problems is so new, there aren't many statistics solely pertaining to that
5 form of betting. *Id.*

6 30. Also, according to the August 22, 2003 *USA Today* article, the secrecy and accessibility
7 of Internet gambling also make it easier for athletes to gamble on events they participate in. In 1998, a
8 University of Michigan study found 35% of 758 student-athletes surveyed had gambled on sports and
9 that 5% of the males had either provided inside information for gambling purposes, bet on their own
10 games or accepted money to play poorly. In 2000 a University of Cincinnati study found 25.5% of the
11 648 Division I basketball and football players surveyed had gambled on college sports events, 3.7% on
12 their games, and 0.5% had accepted money to play poorly. *Id.*

13 31. According to a February 6, 2002 article written by Sameh Fahmy of the *Gannett News*
14 *Service* in *USA Today*, Internet gambling is growing in popularity, raising the odds that people –
15 especially the young and women – might become addicted. Scarlett Decl., Ex. 5. A 2002 report issued
16 this month by The River City Group, a St. Charles, Mo., consulting firm, estimates the number of
17 Americans gambling on the Internet will more than triple by 2004, from 4 million to 15 million. *Id.*
18 What's more, gambling sites will generate \$6.3 billion in 2003, up from \$651 million in 1998. *Id.* Roy
19 Baas ("Baas"), state coordinator for northeast Louisiana's gambling services, said Internet gambling is
20 particularly dangerous because of its continuous availability and solitary nature. "It's mesmerizing,"
21 Baas said, "and anybody can get caught in it." *Id.* Also according to the February 6, 2002 article, The
22 American Psychiatric Association ("APA") warned in January 2002 that in virtually all studies of
23 gambling, high school and college-aged people show the highest rates of problems. *Id.* Dr. Sheila
24 Blume, chair of the APA committee that issued the advisory on Internet gambling, said young people –
25 many of whom have access to credit cards – are particularly susceptible because they use the Internet
26 more than any other age group. "This is a new kind of availability of gambling, which has no age
27 restriction, no time restriction and no fairness restriction in many cases." *Id.* According to the APA,
28

1 10% to 15% of young people surveyed reported having significant gambling problems. The APA notes
2 that 1% to 6% of young people can be classified as pathological gamblers. *Id.*

3 **C. Internet Gambling Preys on Seniors**

4 32. Gambling addiction is a significant problem in the United States impacting adults of all
5 ages and their families. Until recently, legal casino and sports betting were limited to two states. The
6 traditional game of chance for seniors is bingo, a pastime that serves as a recreational event in many
7 communities. The growth of riverboat and Indian casinos, state and national lotteries, and Internet
8 access to off-shore sports and parlor betting, has dramatically increased access for all adults including
9 seniors. Older adults are, perhaps, more vulnerable than other age groups given their greater
10 dependence on fixed incomes and more limited ability to recover to secure debt or recover from
11 gambling losses.

12 33. According to an April 2, 2001 article by the *Associated Press* published in the *St.*
13 *Petersberg Times*, experts on compulsive gambling are alarmed. Scarlett Decl., Ex. 6. They worry that
14 senior gamblers, many of them on fixed incomes, are more vulnerable to financial devastation than
15 younger gamblers and less willing to seek timely help for addiction. *Id.* “A 30-year-old can make it
16 back. If a 75-year-old loses everything, they’re dead in the water,” said Ron Karpin, a specialist in
17 senior gambling with the Council on Compulsive Gambling of New Jersey. *Id.* “I know the pain
18 associated with this disorder in this age group,” Pat Fowler, executive director of the Florida Council
19 on Compulsive Gambling said. *Id.* “They are thinking, ‘How could this happen to me? I did
20 everything right. I worked, I saved, I took care of my family.’” “The shame associated with what they
21 see as failure of an entire life is so devastating for them,” Fowler added. *Id.* “No one should have that
22 legacy after a productive, well-spent life, simply because they fall prey to an addiction.” *Id.* Experts
23 like Karpin and Fowler think senior gamblers merit special attention because the consequences of
24 compulsive gambling can be so severe.

25 34. Internet casinos are preying on our older citizens. For example, one website which
26 comes up third on the list of websites when one searches under the word “gambling” on Google’s
27 search engine, gamblingtimes.com, promotes Internet gambling as good for seniors in an article
28 entitled: For Senior Citizens: - Why Gambling On The Internet is Good For You. Scarlett Decl., Ex. 7.

1 The article, published alongside dozens of advertisements and links to unlicensed Internet gambling
2 businesses, states:

3 So What Does This Have to Do With the Internet?

4 We have shown that *gambling can be good for your mental and*
5 *physical health*. This holds true wherever you gamble, whether in a
6 casino, in a friend's home, or over the Internet. So what are the unique
7 benefits of gambling over the Internet for senior citizens?

8 *For senior citizens, there are many reasons for turning to the*
9 *Internet to gamble*. Today, using the Internet, seniors can enjoy various
10 games without having to drive long miles to reach a casino. They don't
11 have to endure the hassle of airport parking and lugging luggage to a Las
12 Vegas or Atlantic City hotel. Indeed, the dollars saved on the cost of
13 airfare and hotel rooms alone, can be a good stake for gambling on the
14 Internet.

15 *Internet gambling is especially attractive to handicapped senior*
16 *citizens*. For those who require a wheelchair, or suffer other disabilities,
17 there is a certain "luxury" and comfort in being able to participate in
18 your own home or retirement facility. Everything you need is close at
19 hand and it's easy to leave the game when you need to tend to your
20 personal needs.

21 The noise of the casino can be disturbing to many senior citizens.
22 (Sometimes I think some casinos have an ulterior motive in making the
23 casino as noisy as possible). Instead, in the comfort of your own home,
24 you can select your own choice of background music from a stereo or
25 radio. Want to take a break, have a snack? No problem; it's easy in your
26 own home. These are amenities that are particularly appealing to us
27 senior citizens.

28 While the size and numbers of gambling casinos have been
growing throughout the world, on-line casinos have been literally
exploding! All you need is a computer with access to the World Wide
Web, and you can tune in to a variety of on-line casinos.

35. Online casinos offer virtually every form of gambling; betting on sporting events,
blackjack, slots, video poker, and roulette. There are Internet card rooms that specialize in poker; Texas
hold'em, 7-card stud (both hi and hi-lo), and Omaha (hi and hi-lo). Limits range from as low as \$0.25-
\$0.50 to as high as \$20-\$40. On many of the online sites you can practice for free, and participate in
discussions in a chat room for poker players.

D. Internet Gambling Deprives Local Governments of License and Tax Revenues

36. Internet gambling also drains tax revenues from properly licensed and regulated
California Indian casinos and the California State Lottery tax revenues that would otherwise accrue to

1 state educational facilities, or could be used to cover the costs of dealing with the social ills caused by
2 gambling.

3 37. In February 2004, the California Legislative Analyst's Office ("LAO") analyzed
4 revenues expected to be received, and funds to be spent from such revenues, from taxes and licensing
5 fees on legitimate, legal controlled gambling within the State of California set out in the 2004-2005
6 Budget Bill. *See* Scarlett Decl., Ex. 8. According to the LAO, the California Gambling Control
7 Commission ("CGCC") (i) monitors and enforces the terms of tribal-state gaming compacts (including
8 the administration and distribution of funds received by the state as a result of Indian gaming activities),
9 (ii) licenses and regulates card rooms, and (iii) provides oversight for specified aspects of horse track
10 betting. The Governor's budget proposed \$52 million in expenditures (\$46 million from the Indian
11 Gaming Revenue Sharing Trust Fund, \$4 million from the Indian Gaming Special Distribution Fund,
12 and \$2 million from the Gambling Control Fund) and 46 positions for support of the commission and its
13 activities. In anticipation of renegotiated revenue sharing agreements with tribes, the Governor's
14 budget also assumed \$500 million in new revenues to the General Fund. *Id.*

15 38. **Tribal-State Gaming Compacts.** As a result of the passage of Proposition 1A in March
16 2000, Class III gambling (such as slot machines and banked or percentage card games) became legal on
17 California Indian land for those tribes that enter into a tribal-state compact approved by the Legislature,
18 the Governor, and the federal government. These compacts lay out the legal relationship between the
19 tribes and the state with respect to Indian gambling. According to the CGCC, there are currently 109
20 federally recognized tribes in California, and 64 of these tribes have tribal-state gaming compacts that
21 last until at least 2020. Of those 64 tribes, 51 are currently operating casinos in California. In March
22 2003, the Gray Davis administration entered renegotiations with the gaming tribes in an effort to
23 generate \$680 million in new General Fund revenues in California. No tribes with existing compacts
24 agreed to renegotiate arrangements. The prior administration, however, did come to new agreements
25 with three tribes. The Legislature approved these agreements last year. Unlike the prior compacts, the
26 new compacts *require the payments of up to five percent of the tribes' winnings* to the General Fund.
27 Scarlett Decl., Ex. 8.

28

1 39. **Existing Revenue Payments.** Currently, pursuant to all, but the three most recent
2 compacts, tribes pay more than \$130 million annually to the state for the right to offer Class III
3 gambling. These revenues are not deposited into the General Fund. Instead, the use of the revenues is
4 restricted to specified uses: Revenue Sharing Trust Fund. This includes \$46 million annually in
5 licensing fees to operate gaming machines. These funds are distributed to tribes with no gaming or
6 those operating less than 350 slot machines, (Special Distribution Fund). This includes \$86 million in
7 fees, based on the average net win of machines in operation as of September 1, 1999.

8 40. Revenues to the Special Distribution Fund are dependent on the number of slot machines
9 in operation as of September 1, 1999. Tribes contribute revenues each quarter to the fund, *up to 13*
10 *percent of the average net win from these machines.* Tribes are expected to contribute \$86 million to
11 the Special Distribution Fund in the budget year. The fund is subject to legislative appropriation for the
12 following statewide purposes: Reimbursement for state regulatory costs associated with implementation
13 of the compacts; Grants for *gambling addiction programs.* Grants to state and local agencies affected
14 by tribal government gaming; payment of shortfalls that may occur in the Revenue Sharing Trust Fund,
15 and any other purpose specified by the Legislature. Courts have ruled that, since this broad statement
16 follows four specific statements related to gambling, all of the funds must be used for gambling-related
17 activities. In 2003-2004, the Legislature appropriated \$94 million from the Special Distribution Fund in
18 2003-2004 as follows: About \$15 million was spent on gambling regulatory activities. Chapter 210,
19 Statutes of 2003 (AB 673, Horton), transferred \$51 million on a one-time basis from the Special
20 Distribution Fund to the Revenue Sharing Trust Fund to ensure that eligible Indian tribes received the
21 maximum payments allowed (\$1.1 million). Chapter 210 also established the Office of Problem and
22 Pathological Gambling in the Department of Alcohol and Drug Programs (“DADP”) to develop a
23 problem gambling prevention program. The DADP was provided \$3 million for the program. The
24 administration proposes trailer bill language to repeal Chapter 210 and eliminate a scheduled \$3 million
25 appropriation for the same purpose in the budget year. Chapter 858, Statutes of 2003 (SB 621, Battin),
26 appropriated \$25 million from the Special Distribution Fund to local government agencies affected by
27 tribal gaming. The Special Distribution Fund must make up the difference between the \$1.1 million
28 maximum and the actual amount paid to each eligible tribe from the Revenue Share Trust Fund. *Id.*

1 41. Based on then current information, total resources in the Special Distribution Fund in
2 2004-2005 would be roughly \$150 million (\$86 million in payments from tribes and revenues from past
3 years). The budget proposes expenditures of \$13 million for Indian gaming regulatory activities. The
4 administration, however, does not propose expenditures for the remaining \$137 million in the fund. In
5 reviewing the options for spending the fund balance, there are many possible uses. *The impacts of*
6 *gambling are widespread, even in communities without casinos. Costs related to public safety, road*
7 *maintenance, and gambling addiction, for instance, affect many cities, counties, and the state. The*
8 *costs of addressing even one of these areas would easily exceed the Special Distribution Fund’s*
9 *funding. Id.*

10 42. Given the budget situation and broad parameters of the fund, the LAO recommended
11 using the \$137 million for spending which both meets the requirements of the fund and helps the budget
12 situation. For instance, funds currently spent by the General Fund on gambling-related expenses could
13 be replaced with Special Distribution Fund revenues – generating General Fund savings. The LAO
14 outlined two such possible uses for the fund revenues as illustrative examples: Public Safety Demands.
15 Gambling activities increase the needs for law enforcement services throughout the state. We therefore
16 believe the Special Distribution Fund could appropriately be used to address these public safety
17 demands. In total, cities and counties spend billions of dollars annually on public safety. The state
18 contributes a small amount of this total annually (\$100 million from the General Fund) through the
19 Citizens’ Option for Public Safety (“COPS”) program. If the Legislature continues to fund the COPS
20 program, a portion of the funding could be directed from the Special Distribution Fund. Given the large
21 amounts of money being spent, it is reasonable to assume that such a small COPS-related portion of
22 total public safety expenditures is already spent on gambling-related activities.

23 43. **Treat Gambling Addiction.** There are currently many individuals with gambling
24 problems. It is reasonable to assume that some individuals that suffer from this problem seek mental
25 health services. Currently, several hundreds of millions in General Fund dollars are allocated to
26 counties to provide mental health services at the local level. As with the public safety example above, a
27 portion of these General Fund expenditures could be replaced with Special Distribution revenues.
28 Scarlett Decl., Ex. 8.

1 44. Internet gambling avoids these licensing fees and revenues, and thus deprives California
2 of funds that otherwise would be available for the purposes set forth above.

3 **E. Internet Gambling Deprives California Indian Tribes of Exclusivity and**
4 **the State of California Revenues.**

5 45. On June 21, 2004, Governor Arnold Schwarzenegger signed new deals with five
6 California Indian tribes that give them the right to operate an unlimited number of slot machines. ““The
7 new agreement respects the tribes’ sovereignty,”” he said. ““It protects their exclusive gaming rights,
8 and it begins a new financial partnership between the tribes, local communities and the great state of
9 California.”” Scarlett Decl., Ex. 9. The five tribes are the Rumsey Band of Wintun Indians in Yolo
10 County, the United Auburn Indian Community in Placer County and three San Diego County tribes.
11 The deals, which must be approved by the Legislature and the federal Department of the Interior, would
12 replace the 20-year compacts the tribes signed in 1999. Under the deals, the current limit of 2,000 slot
13 machines per tribe in the compacts would be lifted, allowing the tribes to have as many machines as
14 they think their markets will support. In return, the tribes would underwrite a \$1 billion bond, making
15 payments to the state totaling \$100 million a year for the next 18 years, when the bonds would be
16 retired. In the last seven years of the new compacts, which expire in 2030, the tribes would continue to
17 pay \$100 million a year. Bond proceeds would be used for transportation projects around the state. In
18 addition, tribes would pay a per-machine license fee on any new slots they install, ranging from \$11,000
19 to \$25,000. The additional money could amount to \$150 million a year if each of the five tribes added
20 2,000 machines. That amount, which officials estimated would come to approximately **15 percent** of
21 the tribe’s revenue on the new slots. *Id.*

22 46. Internet gambling websites, their co-conspirators and abettors, illegally take money from
23 California citizens, without paying 15% of their revenues to the state of California. Plaintiffs believe
24 that this amounts to tens if not hundreds of millions per year. In addition, the California Indian Tribes
25 are denied their exclusivity to operate gambling in California. Local governments also lose local taxes
26 generated from the California Tribes as well as visitors to the Indian Casinos. Therefore, the general
27 public is deprived of the protections of the gambling laws and the revenues generated from legal
28 gambling, as well as being saddled with the social and economic costs of gambling.

1 **F. Internet Gambling Is Illegal Under California Law**

2 47. California law bans conducting, playing or betting on (i) most lotteries; (ii) a few
3 specific games such as faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan-tan, seven-and-
4 a-half, twenty-one and hokey-pokey; (iii) any banking or percentage game played with cards, dice or
5 any device; and (iv) most sports bookmaking bets and wagers. The basic California gambling
6 provisions are in §§319-322 (Lotteries) and 330-337 (Other Gamblings) of the California Penal Code.

7 **1. Lotteries Are Prohibited Under California Law**

8 48. Article IV, §19 of the California Constitution bans most private lotteries. The drawing
9 of a lottery is also specifically prohibited by California statute:

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

12 California Penal Code §320. The selling of lottery tickets or chance is prohibited in California:

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

18 California Penal Code §321. So too, aiding or assisting or advertising a lottery is prohibited in
19 California:

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

24 California Penal Code §322.

25 49. California Penal Code §319 defines a lottery:

26 A lottery is any scheme for the disposal or distribution of
27 property by chance, among persons who have paid or promised to pay
28 any valuable consideration for the chance of obtaining such property or a
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 or by lot or chance, whether called a lottery, raffle, or gift
enterprise, or by whatever name the same may be known.

49. A game is not to be regarded as one of skill merely because that element enters into the
result in some degree, or as one of chance solely because chance is a factor in producing the result. The

1 test of the character of a game or scheme as one of chance or skill is, which of these factors is dominant
2 in determining the result?" *People v. Settles*, 29 Cal. App. 2nd Supp. 781, 787 (1938).

3 **2. Casino, Card and Dice Games Are Prohibited in California**

4 51. Casino, card and dice games are prohibited in California. California Penal Code §330
5 states:

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

17 52. A banking game is one in which the "house" or "bank" is the principal participant in the
18 game, taking on all players, paying all winners and collecting from all losers. A percentage game is one
19 in which the "house" does not directly participate in the game, but collects a percentage from it which
20 may be computed from the amount of bets made, winnings collected, or the amount of money changing
21 hands. *Sullivan v. Fox*, 189 Cal. App. 3d 673, 678-679 (1987). A controlled game does not include
22 games played with cards in private homes or residences, in which no person makes money for operating
23 the game except as a player. California Penal Code §337j(c) (2)(D).

24 **3. Sports Betting and Wagering Is Prohibited in California**

25 53. Sports bookmaking, bets or wagers are prohibited in California:

26 Every person, 1. Who engages in pool selling or bookmaking,
27 with or without writing, at any time or place; or ... 6 who lays, makes,
28 offers or accepts any bet or bets, or wages 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 state prison.

California Penal Code §337a.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. Conducting or Carrying on a Controlled Game Without a License Is Prohibited in California

54. A controlled game may not be conducted or played, in the privacy of one’s home, without a license. California Penal Code §337j provides:

(a) It is unlawful for any person, as owner, lessee, or employee, whether for hire or not, either solely or in conjunction with others, to do any of the following without having first procured and thereafter 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 or not more than five thousand dollars (\$5,000), or by both that imprisonment and fine.

55. The statute defines a controlled game as any poker as PaiGow, and any other game played with cards as tiles, or both, approved by the Division of Gambling control, and any game of chance, including any gambling device, played for currency, check, credit, or any other thing of value that is not prohibited or made unlawful by statute or local ordinance. California Penal Code §337j(i)(c).

5. Aiding and Abetting Illegal Gambling Violates California Law

56. Aiders and abettors to illegal gambling are guilty of violating the California’s gambling prohibitions. California Penal Code classifies parties to a crime as either principals or accessories. Under the California Penal Code, one commits a crime whether one directly commits the act constituting the offense, or aids and abets in its commission. One who aids or abets another in the commission of a crime may be criminally liable for the acts of the other person. Therefore, anyone who offers advice on how to commit a crime or simply lends someone the tools with which to commit the crime may be equally liable under the California Penal Code. California Penal Code §§30 and 31 provide:

- 30. The parties to crimes are classified as:
 - 1. Principals; and,
 - 2. Accessories.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

57. The act of advertising or knowingly providing information to assist in the commission of illegal Internet gambling is a commission of the illegal act itself.

6. Co-Conspiring to Gamble Violates California Law

58. Conspiring with others to commit illegal Internet gambling violates California law. A conspiracy to commit a crime is akin to aiding and abetting in that it applies to a wide array of criminal offenses. Conspiracy rises to the level of criminal activity when there is an agreement between two or more people to commit a crime and at least one of them takes action in furtherance of the crime. Even if a conspirator backs out of the plan to commit the crime, but the other conspirators continue, the one who backed out is still liable under the California Penal Code (PC §§182-185). California Penal Code §§182-184 provide, in part:

182. (a) If two or more persons conspire:

(1) To commit any crime.

* * *

(5) To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

* * *

They are punishable as follows:

* * *

When they conspire to commit any other felony, they shall be punishable in the same manner and to the same extent as is provided for the punishment of that felony.

* * *

When they conspire to do any of the other acts described in this section, they shall be punishable by imprisonment in the county jail for

1 not more than one year, or in the state prison, or by a fine not exceeding
2 ten thousand dollars (\$10,000), or by both that imprisonment and fine.

3 184. No agreement amounts to a conspiracy, unless some act, beside
4 such agreement, be done within this state to effect the object thereof, by
one or more of the parties to such agreement and the trial of cases of
conspiracy may be had in any county in which any such act be done.

5 59. Thus, where one agrees to and does advertise, promote or otherwise facilitate illegal
6 online gambling, with the online gambling business, and that advertisement or promotion or
7 encouragement takes place within California, then the agreement amounts to a conspiracy.

8 **VI. DEFENDANTS' WRONGFUL CONDUCT**

9 **A. Defendants Posted Sponsored Advertisements In California for
10 Unlicensed Gambling Websites**

11 60. According to ComScore Network's qSearch analysis for April 2004, the AdFocus
12 ranking of Internet search engines web pages is as follows:

13	Yahoo sites	113,190,000 unique users
14	Google sites	65,996,000 unique users
15	Terra Lycos	38,390,000 unique users
16	Excite Network	29,047,000 (now owned by Ask Jeeves)
17	CNET	24,041,000 unique users
18	Ask Jeeves	17,247,000 unique users

19 61. Search results on these websites generally consist of two major types: "Editorial results"
20 or bulk search engine results (which sometimes includes advertising because of the use of "paid
21 inclusion" programs at *e.g.*, Yahoo and Business.com), and "Paid" or "Sponsored" results which
22 represent the basic paid advertising content provided by the search engine defendants. Sponsored
23 results ensure top placement in a special section of the search page results. Internet search engines have
24 additional types of advertising programs which may include banner advertising content and other
25 graphical devices designed to attract consumer interest. The ultimate goal for defendants is for
26 consumers to "click-through" – that is to read the advertisement and to click on the advertisement so as
27 to draw the consumer to a particular website where the advertisers can sell the consumer goods and
28 services. As explained on Overture's website:

Pay-For-Performance Search allows you to effectively connect with
customers searching online for your products and services. You select
words that relate to your business and your Website appears in search
results on Overture's partner sites when search users enter those words.

1 You pay for each sales lead, not each impression, leading to a high
2 return on your advertising investment. You also control your costs by
3 determining the price you are willing to pay per lead - the more you pay,
4 the higher your listings appear within the search results and the greater
5 the number of potential customers that see your listing.

6 62. For most legitimate legal products, defendants' price per lead or click-through fee is
7 relatively modest. For example, under the search term "grocery stores" the highest price bid on
8 Overture was recently 23 cents. Scarlett Decl., Ex. Overture 3. For "pet supplies" the highest price per
9 lead was recently \$0.89. Scarlett Decl., Ex. Overture 2.

10 63. Illegal Gambling is very different. Under the search term "Internet gambling," the
11 highest price per lead on Overture.com was recently an astounding \$12.97 per click through for SBG
12 Global Internet Gambling (www.betsbg.com). Scarlett Decl., Ex. Overture 1. That is, for every time an
13 Internet user clicks on SBG Global Internet to go to that website after using this search term, SBG is
14 willing to pay Overture \$12.97. This is not a spurious result as the next four highest price click-through
15 rates for this search, including "planetluck.com," "cyberbingo.com," "goldenpalace.com,"
16 "cystalpalacecasino.com," were all at or above \$12.00 per click-through. *Id.*

17 64. Defendants Advertise and deceptively list numerous advertisements for Internet
18 gambling when an Internet searcher types in the phrase "legal gambling." For example, on Ask Jeeve's
19 search engine a request of "legal gambling" returns the illegal gambling website www.allslots.com.
20 Scarlett Decl., Ex. Ask Jeeves 3. None of the defendants provide any disclosure that gambling is in fact
21 illegal in California.

22 **B. Defendants' Advertising Is Expressly Directed at California Locations**
23 **Where Gambling Is Illegal**

24 65. These paid search results are targeted at specific locations using geo-tracking and other
25 information technologies such that companies purchase advertising for *a particular country and/or*
26 *region*. Companies that wish to advertise on computers located in the United States or California *must*
27 *purchase that right* from the defendants at a considerable premium over advertisements in other
28 jurisdictions. Many defendants provide even more localized geo-tracking technologies so that
advertisements can be focused on a particular region within a state. For example, Google permits

1 advertisers to select regional areas such as the “State of California” or sub-regions in the state. Scarlett
2 Decl., Ex. Google 11.

3 66. The defendants conspired with the Internet gambling websites to create and provide
4 Internet advertisements to areas such as California in which Internet gambling is illegal with the
5 knowledge and intention of persuading and directing California residents to visit these illegal gambling
6 websites so as to illegally gamble in California.

7 **C. Specific Examples of Defendants’ Wide-Scale Illegal Advertising**
8 **Services in California for Internet Gambling Websites.**

9 67. As described in detail below, each of the defendants provides substantial illegal
10 advertising services for Internet gambling websites. In particular, each of the defendants provided
11 sponsored search results to Californians which included a myriad of Internet gambling websites as
12 follows:

13 68. Yahoo advertises illegal Internet gambling on its www.Yahoo.com and affiliated search
14 engine pages. For example, attached as Ex. Yahoo 2 to the Scarlett Decl., is a printout of Yahoo search
15 taken for the term “legal gambling” taken on June 1, 2004. This search returned paid “Sponsor Results”
16 including “Casino On Net: Up to \$200 Sign-Up Bonus.” Clicking on this link takes your browser to
17 www.888Casino.com which is an Internet gambling website with links to additional Internet gambling
18 websites. The following chart provides additional examples of the Yahoo Networks illegal
19 advertisement of Internet gambling websites:
20

21

Search Term	Search Date	Illegal Internet Gambling Site	Exhibit
Internet Casino	June 2, 2004	www.freewebs.com	Yahoo 4
Casino Gaming Online	June 25, 2004	www.entercasino.com www.888Casino.com	Yahoo 5
Lottery	July 2, 2004	www.dollarluck.com	Yahoo 6

22
23
24
25

26 69. Google advertises illegal Internet gambling on its www.Google.com and affiliated search
27 engine pages. Attached as Ex. Google 2 to the Scarlett Decl., is a print out of the Google search results
28

1 for “Texas Hold’em” taken on June 25, 2004. This search includes numerous paid advertisements or
 2 (“Sponsored Links”) including as the top listing “Play Texas Hold’em” with an address of www.texas-
 3 holdem-poker-strategies.com which is the portal and homepage for numerous illegal Internet gambling
 4 websites including “Casino on Net.” This search also returned advertisements for the website
 5 www.pacificpoker.com which is an illegal gambling website. The following chart provides additional
 6 examples of Google’s illegal advertisement of Internet gambling websites as demonstrated by the
 7 attached exhibits:
 8

9 Search Term	Search Date	Illegal Internet Gambling Site	Exhibit Number
10 7 card stud	June 25, 2004	www.partypoker.com	Google 3
11 Casino Downloads	June 2, 2004	www.DailyCasinoWinner.com	Google 4
12 MLB Bet	July 1, 2004	www.tradebetx.com	Google 5
13 Hockey Bet	June 25, 2004	www.Wagerstreet.com	Google 6
14 Tennis Bet	June 25, 2004	www.tcbets.com	Google 7
15 Racebook	June 24, 2004	www.racebook.com	Google 8
16 Baseball bet	June 25, 2004	www.tradebetx.com	Google 9
17 Casino	July 12, 2004	www.Best-on-net.com	Google 10

18
 19 70. Overture has made massive profits advertising illegal gambling websites on Yahoo,
 20 Overture and other Yahoo affiliates’ and subsidiaries’ web pages. For example, on March 30, 2004, the
 21 top Overture bids for “Keno” was \$10.06 (Scarlett Decl., Ex. Overture 4); “Bingo” was \$5.24 (Scarlett
 22 Decl., Ex. Overture 5); “Poker” was \$7.01 (Scarlett Decl., Ex. Overture 6); “Craps” was \$12.00
 23 (Scarlett Decl., Ex. Overture 7); and “Slot Machines” was \$6.67 (Scarlett Decl., Ex. Overture 8).
 24 Attached as Ex. Overture 9 to the Scarlett Decl., is an example of a search result for the term “Internet
 25 gaming” demonstrating Overture’s advertisement of dozens of ads including Casino-on-net’s banner ad.

26 71. Ask Jeeves advertises illegal Internet gambling on its www.ask.com and affiliated search
 27 engine pages. Ask Jeeves obtains advertising revenue from a wide variety of Internet gambling casinos
 28 by use of its sponsor link program and other advertising revenue sources designed to promote illegal

1 Internet gambling in California. Attached as Ex. Ask Jeeves 2 to the Scarlett Decl., is a print out of a
 2 June 29, 2004, Ask Jeeves search under the term “Gambling.” This search returned a “Featured
 3 Sponsor” of “Online Casino Gambling for Real \$ NOW” with an address of www.allslots.com.
 4 Clicking on this web page leads to a website entitled “All Slots Casino – “Biggest Jackpot Casino on
 5 the Web” which is an illegal Internet gambling website. The following chart provides additional
 6 examples of Ask Jeeves’ illegal advertisement of Internet gambling websites:

7 Search Term	8 Search Date	9 Illegal Internet Gambling Site Advertiser	10 Exhibit
11 Legal Gambling	June 25, 2004	www.allslots.com	Ask Jeeves 3
12 Internet Gambling	June 25, 2004	www.allslots.com	Ask Jeeves 4
13 Online Gambling	June 25, 2004	www.888.com	Ask Jeeves 5
14 Online Gaming	June 2, 2004	www.allslots.com	Ask Jeeves 6
15 California Gambling	June 25, 2004	www.allslots.com	Ask Jeeves 7
16 Online Casino	June 25, 2004	www.gamblehouse.com www.planetluckcasino.com	Ask Jeeves 8
17 Internet Casino	June 25, 2004	www.gamblehouse.com www.allslots.com	Ask Jeeves 9
18 NFL Wager	June 25, 2004	www.sportsbook911.com www.sportingbet.usa	Ask Jeeves 10
19 TennisWager	June, 25, 2004	www.sportingbet.usa	Ask Jeeves 11

20 72. AltaVista, a wholly owned subsidiary of Overture, also advertises illegal Internet
 21 gambling on the www.AltaVista.com and affiliated search engine pages using advertisements obtain
 22 from Yahoo and Overture. For example, attached as Ex. AltaVista 1 to the Scarlett Decl., is a print out
 23 of the AltaVista search for “Racebook” taken on June 24, 2004. This search returned Sponsor Results
 24 including the listing for www.racebook.org which is an illegal Internet gambling site. Similarly, a
 25 recent search on the term “Internet Casino” returned an advertisement for www.freewebs.com an illegal
 26 Internet gambling site. Scarlett Decl., Ex. AltaVista 2.

27 73. Defendant Lycos obtains illegal advertising revenue from a wide variety of Internet
 28 gambling casinos. For example, attached as Ex. Lycos 2 to the Scarlett Decl., is a print out of the Lycos

1 search results for the search term “racebook” conducted on June 24, 2004. This search returned
 2 Sponsor Results including the listing www.racebook.com which is in illegal Internet sports gambling
 3 site. The following chart provides additional samples of Lyco’s illegal advertisement of Internet
 4 gambling websites:

Search Term	Search Date	Illegal Internet Gambling Site	Exhibit Number
Golf Bet	June 24, 2004	www.sportsbetting.com	Lycos 3
Football Bet	June 24, 2004	www.sportsbetting.com	Lycos 4
Football Wager	June 24, 2004	www.sportsbetting.com	Lycos 5
Gambling	June 29, 2004	www.starluckcasino.com www.7sultans.com www.vegaspalms.com www.desertdollar.com	Lycos 6
Internet Gambling	June 29, 2004	www.platinumpoker.com www.starluckcasino.com	Lycos 7

14 Similar illegal advertising results were recently obtained for the following search terms: Internet
 15 Gaming (Scarlett Decl., Ex. Lycos 8); and Online gambling (Scarlett Decl., Ex. Lycos 9).

16 74. Defendant LookSmart obtains illegal advertising revenue from a wide variety of Internet
 17 gambling casinos. Attached as Ex. LookSmart 2 to the Scarlett Decl., is the search result for the search
 18 term “Texas hold ‘em” conducted on June 28, 2004. This search returned paid advertisements
 19 (“Sponsor Results”), which included the listing “Pacific Poker: Live Online Gaming” with an address
 20 of www.pacificpoker.com. Clicking on this link takes your browser to an illegal Internet gambling
 21 website as provided in Ex. LookSmart 2 to the Scarlett Decl. The following chart provides additional
 22 examples of LookSmart’s illegal advertisement of Internet gambling websites:

Search Term	Search Date	Illegal Internet Gambling Site	Exhibit Number
Sportbook	June 24, 2004	www.tcbets.com www.sportsinteraction.com	LookSmart 3
Racebook	June 24, 2004	www.tcbets.com	LookSmart 4
Golf Bet	June 24, 2004	www.sportsandcardsonline.com www.sportsinteraction.com	LookSmart 5

Search Term	Search Date	Illegal Internet Gambling Site	Exhibit Number
Golf Wager	June 24, 2004	www.sportsinteration.com	LookSmart 6
Football bet	June 24, 2004	www.sportsinaction.com www.tcbets.com	LookSmart 7
Gambling	June 29, 2004	www.sportsinteraction.com www.planetrockcasino.com www.sportsbooknow.com	LookSmart 8
Legal Gambling	June 14, 2004	www.casinobonus4u.com	LookSmart 9

Similar illegal advertising results were recently obtained for the search terms Internet Gambling (Scarlett Decl., Ex. LookSmart 10); Internet Gaming (Scarlett Decl., Ex. LookSmart 11); and Online Gaming (Scarlett Decl., Ex. LookSmart 12).

75. Defendant Jupiter, through its Internet.com and other websites, obtains illegal advertising revenue from a wide variety of Internet gambling casinos. For example, attached as Ex. Jupiter 2 to the Scarlett Decl., is a print out of the Internet.com search results for the search term “Gambling” conducted on June 29, 2004. This search returned paid advertisements for the illegal Internet gambling website www.spinpalace.com. The following chart provides additional examples of Jupiter’s illegal advertisement of Internet gambling websites on its Internet.com website.

Search Term	Search Date	Illegal Internet Gambling Sites	Exhibit Number
Internet Gambling	June 23, 2004	www.winnersonlinecasino.com www.planetluck.com www.partypoker.com www.starluckcasino.com www.casinocashjourney.com www.platinumpower.com	Jupiter 3
Internet Gaming	June 23, 2004	www.winnersonlinecasino.com www.planetluck.com www.partypoker.com www.starluckcasino.com www.casinocashjourney.com www.platinumpoker.com www.888.com www.pacificpoker.com	Jupiter 4

Search Term	Search Date	Illegal Internet Gambling Sites	Exhibit Number
Online Gambling	June 23, 2004	www.winnersonlinecasino.com www.planetluck.com www.partypoker.com www.starluckcasino.com www.casinocashjourney.com www.platinumpoker.com www.888.com www.pacificpoker.com	Jupiter 5
Casino Games	June 23, 2004	www.winnersonlinecasino.com www.starluckcasino.com www.partypoker.com www.planetluck.com www.casinocashjourney.com www.888.com www.pacificpoker.com	Jupiter 6
Sportsbook	June 24, 2004	www.i-sportsbook.com www.dimeplayer.com www.sportsfanatik.com www.youwager.com	Jupiter 7

76. CNET advertises illegal Internet gambling on its www.mysimon.com, www.search.com and affiliated search engine pages. Attached as Ex. CNET 2 to the Scarlett Decl., is a print out of the mySimon.com search results for “Gambling” conducted on June 30, 2004. This search returned “Sponsor Matches” including the listing “Spin Palace: Casino & Gaming.” Clicking on this link takes your browser to an illegal Internet gambling website www.spinpalace.com. Similarly, on July 13, 2004, search under the phrase “Illegal Gambling” returned advertisements for www.sportsinteraction.com, www.888.com, and www.casinobonusonline.com, all illegal Internet gambling websites. Scarlett Decl., Ex. CNET 2. The following chart provides additional samples of CNET’s illegal advertisement of Internet gambling websites on its Internet.com website:

Search Term	Search Date	Illegal Internet Gambling Site	Exhibit Number
Internet Gambling	June 30, 2004	www.starluckcasino.com www.partypoker.com www.planetluck.com www.spinpalace.com www.winnersonlinecasino.com	CNET 3
Internet Gaming	June 30, 2004	www.starluckcasino.com www.partypoker.com www.planetluck.com	CNET 4
Online Gambling	June 30, 2004	www.CasinoCashJourney www.888.com	CNET 5
Online Gaming	June 30, 2004	www.starluckcasino.com www.partypoker.com www.planetluck.com	CNET 6
California Gambling	June 30, 2004	www.allslots.com	CNET 7
California Gaming	June 30, 2004	www.GoldenTiger Casino.com	CNET 8
Sportsbook	June 24, 2004	www.i-sportsbook.com	CNET 9
Racebook	June 24, 2004	www.tcbets.com	CNET 10

77. CNET also obtains substantial advertising revenue from its Search.com website. The following chart provides additional samples of CNET's illegal advertisement of Internet gambling websites on its Search.com website:

Search Term	Search Date	Illegal Internet Gambling Site	Exhibit Number
Internet Gambling	June 30, 2004	www.starluckcasino.com www.partypoker.com	CNET 11
Internet Gaming	June 30, 2004	www.starluckcasino.com www.partypoker.com	CNET 12
Online Gambling	June 30, 2004	www.starluckcasino.com www.partypoker.com	CNET 13
Online Gaming	June 30, 2004	www.starluckcasino.com	CNET 14
California Gambling	June 30, 2004	www.allslots.com	CNET 15

1 78. Defendant FindWhat obtains illegal advertising revenue from a wide variety of Internet
 2 gambling websites. For example, attached as Ex. FindWhat 2 to the Scarlett Decl., is a print out of the
 3 FindWhat search results for the search term “sportsbook” conducted on June 24, 2004. This search
 4 returned paid advertisements (“Sponsor Results”) listings for www.Dimeplay.com;
 5 www.youwager.com; www.sportsfanatik.com; www.5dimes.com; www.sportsinteraction.com;
 6 www.probets.com; www.vipsports.com; and www.ladbrokes.com – all of which are illegal Internet
 7 gambling sites. The following chart provides additional examples of FindWhat’s illegal advertisement
 8 of Internet gambling websites:
 9

Search Term	Search Date	Illegal Internet Gambling Site	Exhibit Number
Racebook	June 24, 2004	www.racebook.com www.viphorses.com www.greenbaycasino.com	FindWhat 3
Horse Racing	June 24, 2004	www.sportingbetusa.com www.youwager.com www.ladbrokes.com www.5dimes.com www.racebook.com www.bet365.com www.viphorses.com www.sportsinteraction.com www.fastfreecash.com	FindWhat 4
Gambling	July 2, 2004	www.pokerroom.com www.888.com www.firstwebcasino.com	FindWhat 5
Internet Gambling	June 24, 2004	www.firstwebcasino.com www.allslots.com www.casinocashjourney.com	FindWhat 6

10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24 Similar illegal advertising results were recently obtained for the following searches: Football Bet
 25 (Scarlett Decl., Ex. FindWhat 7); Football Wager (Scarlett Decl., Ex. FindWhat 8); Golf Bet (Scarlett
 26 Decl., Ex. FindWhat 9); Golf Wager (Scarlett Decl., Ex. FindWhat 10); Internet Gaming (Scarlett Decl.,
 27 Ex. FindWhat 11); and Online Gambling (Scarlett Decl., Ex. FindWhat 12).
 28

79. Kanoodle advertises illegal Internet gambling on its www.Kanoodle.com and affiliated search engine pages. Attached as Ex. Kanoodle 1 to the Scarlett Decl., is a print out of the Kanoodle search results for the search term “Gambling” conducted on July 1, 2004. This search returned “Sponsor Links,” which included the listing “Gambling from PokerRoom” with an address of www.poker.com. Clicking on this link takes your browser to an illegal Internet gambling website. Scarlett Decl., Ex. Kanoodle 1. The following chart provides additional examples of Kanoodle’s illegal advertisement of Internet gambling websites on its Kanoodle website:

Search Term	Search Date	Illegal Internet Gambling Site	Exhibit Number
Internet Gaming	July 1, 2004	www.goldenpalace.com www.sportfanatik.com www.allslots.com	Kanoodle 2
Online Gambling	July 1, 2004	www.goldenpalace.com www.sportfanatik.com www.allslots.com www.pokerroom.com www.platinumplay.com www.pacificpoker.com	Kanoodle 3
Online Gaming	July 1, 2004	www.goldenpalace.com www.sportfanatik.com	Kanoodle 4
Online Casino	July 1, 2004	banner.goldenpalace.com www.pokerroom.com www.allslots.com	Kanoodle 5

Similar illegal advertising results were recently obtained for the search terms: Sportsbook (Kanoodle 6); Horse Racing (Scarlett Decl., Ex. Kanoodle 7); Golf Bet (Scarlett Decl., Ex. Kanoodle 8); Football Bet (Scarlett Decl., Ex. Kanoodle 9); Football Wager (Scarlett Decl., Ex. Kanoodle 10); Internet Gambling (Scarlett Decl., Ex. Kanoodle 11).

80. Defendant Business.com obtains illegal advertising revenue from a wide variety of Internet gambling casinos. For example, a July 16, 2004 search in the term “Racebook” returns sponsor link advertising for www.Racebook.com which advertises illegal horse race, casino, and sport book website. Business.com misleadingly lists this site as “Racebook (official site) suggesting some non-existent legitimacy to the site. Scarlett Decl., Ex. Business.com 1. Similarly, Business.com provides sponsored listings for its search listing for “Casinos & Gaming.” Scarlett Decl., Ex. Business.com 2.

1 This search returned “32Red Online Casino” an illegal internet casino and “Online Gambling” (*Id.*)
 2 both illegal Internet gambling websites. The following chart provides additional samples of
 3 Business.com’s illegal advertisement of Internet gambling websites:

4 Search Term	5 Search Date	6 Illegal Internet Gambling Site	7 Exhibit Number
8 Blackjack	9 July 27, 2004	10 Vegas Tower Casino www.casinocashjourney.com	11 Business.com 3
12 Gaming	13 July 27, 2004	14 32Red online casino	15 Business.com4
16 Casino	17 July 27, 2004	18 7 Sultans Casino	19 Business.com 5

20 81. Defendant Sex.com obtains illegal advertising revenue from a wide variety of Internet
 21 gambling websites. For example, attached as Ex. Sex.com 1 to the Scarlett Decl., is a print out of the
 22 Sex.com search results for the search term “gambling” conducted on July 28, 2004. This search
 23 returned paid advertisement listings for Casino Tropez, Showdown online casino, Lucky Nugget Casino
 24 all of which are illegal Internet gambling websites. Sex.com also operates a directory service with
 25 special websites especially for casinos called Casino.sex.com. This site provides paid advertising
 26 content for numerous Internet gambling sites. Notably, results from Sex.com note that search is being
 27 conducted in the United States by using the notation “(US)” with its search results. The following chart
 28 provides additional examples of FindWhat’s illegal advertisement of Internet gambling websites:

19 Search Term	20 Search Date	21 Illegal Internet Gambling Site	22 Exhibit Number
23 Online Casino	24 July 28, 2004	25 Casino Tropez Aces High online	26 Sex.com 2
27 Blackjack	28 July 28, 2004	Lucky Nuggett River Belle Casino	Sex.com 3
Poker	July 28, 2004	Party Poker Home Casino	Sex.com 4

1 **VII. CLASS ACTION ALLEGATIONS**

2 82. Plaintiffs bring this action on their own behalf, on behalf of all other persons similarly
3 situated, and/or (the “Class”) in addition to the general public pursuant to the provisions of C.C.P. §382,
4 Cal. Civ. Code §1781. The Class that plaintiff Michael Voight seeks to represent is defined as:

5 All California residents who visited on an illegal Internet gambling
6 website and incurred losses therein each found these websites as a result
7 of advertisements contained on defendants and their affiliates web pages
8 or search results.

9 83. The Classes are composed of tens of thousands of persons, the joinder of which would be
10 impracticable. The identities of the individual members are ascertainable through defendants’ records
11 or by public notice.

12 84. There is a well-defined community of interest in the questions of law and fact involved
13 affecting the members of the Classes. The questions of law and fact common to the Class predominate
14 over questions affecting only individual class members, and include, but are not limited, to the
15 following:

16 (a) Whether defendants’ actions in directly advertising the defendants’ gambling
17 websites constitutes aiding and abetting of illegal gambling activities;

18 (b) Whether a conspiracy existed between the Gambling Advertisers and the
19 Gambling websites;

20 (c) Whether a conspiracy to advertise illegal gambling in California constitutes
21 unlawful or unfair business practices under Cal. Bus. & Prof. Code §§17200, *et seq.*;

22 (d) Whether the Class is entitled to restitutionary relief;

23 (e) Whether the Class is entitled to injunctive relief;

24 (f) Whether the Class is entitled to declaratory relief; and

25 (g) Whether the Class is entitled to an award of reasonable attorneys’ fees, pre-
26 judgment interest and costs of suit.

27 85. Plaintiffs are adequate representatives of the Classes above because their interests do not
28 conflict with the interests of the class members they seek to represent and they are similarly situated
with members of their Classes. Plaintiffs will fairly and adequately represent and protect the interests

1 of the Classes and plaintiffs’ interests are not antagonistic to the Classes. Plaintiffs have retained
2 counsel who is competent and experienced in the prosecution of class action litigation.

3 86. A class action is superior to other available means for the fair and efficient adjudication
4 of plaintiffs’ and class members’ claims. Plaintiffs and the members of the Classes have suffered
5 irreparable harm as a result of defendants’ unfair and unlawful conduct. Because of the size of the
6 individual class members’ claims, few, if any, class members could afford to seek legal redress for the
7 wrongs complained herein. Absent the class action, the members of the Classes will continue to suffer
8 losses and the violations of law described herein will continue without remedy and defendants will be
9 permitted to retain the proceeds of their misdeeds. Defendants continue to deny wrongdoing and to
10 engage in the unlawful and unfair conduct that is the subject of this complaint.

11 **VIII. NON-APPLICABILITY OF THE COMMUNICATIONS DECENCY ACT**

12 87. Defendants, by virtue of their activities of which plaintiffs complain and for which they
13 seek relief, do not qualify as providers of a “interactive computer services” as that term is used under
14 the Communications Decency Act (“CDA”), 47 U.S.C. §230(f)(2). No defendant requires any persons
15 located in California to enter into any agreement for the provision of interactive computer services as
16 contemplated by C.D.D. §230(d). Defendants are businesses which, through websites controlled and/or
17 operated by them, act as advertisers. At best, defendants are “information content provider[s]” by
18 providing paid-for advertisements which they create, co-create, target, position, format, highlight,
19 publish, distribute and give premium placement. Defendants earn substantial profits as a result of this
20 activity.

21 88. Alternatively, defendants know or have reason to know that they distribute
22 advertisements for unregulated Internet gambling to persons in California who use the advertisement to
23 gain access to the Internet gambling site to gamble, can and do control which advertisements are sent to
24 persons using computers in California, know or have reason to know that the advertisements are for
25 websites offering unregulated Internet gambling in California, and can and do control which
26 advertisements are sent to persons using computers in California.

27 89. Advertising unregulated gambling in California to people in California for play in
28 California is illegal under California criminal law.

1 90. For each of these reasons, the CDA does not provide immunity to defendants for their
2 acts alleged herein.

3 **FIRST CAUSE OF ACTION**

4 **Unlawful Business Acts and Practices**
5 **(Against All Defendants)**

6 91. Plaintiffs, on behalf of themselves, all others similarly situated and/or on behalf of the
7 general public as appropriate, reallege, as if fully set forth herein, each and every allegation contained in
8 ¶¶1-90 herein, and further alleges as follows:

9 92. The acts and practices of defendants as alleged herein constitute unlawful business acts
10 and practices under Cal. Bus. & Prof. Code §§17200, *et seq.* Defendants have engaged in “unlawful”
11 business acts and practices as noted above but in particular by their violations of California Penal Code
12 §320 (lotteries); §321 (sale of chances or lotteries); 322 (advertising lotteries); §330 (casino and card
13 games); §337(a) (sports bookmaking); §337 (unlicensed controlled games).

14 93. In particular, defendants, by their actions above in ¶¶13, 60-82, directly committed, or
15 aided and abetted in the commission, or not being present, advised and encouraged the commission of
16 the following unlawful acts:

17 (a) Contriving, preparing, setting up, proposing or drawing on unlicensed or
18 authorized lotteries to California residents in the State of California (Penal Code §320);

19 (b) Selling, giving, or in any manner whatsoever furnishing or transferring to
20 California residents in California, tickets, chances, shares, or interest or paper, certificates, or
21 instruments purporting or understood to be or to represent tickets, chances, shares, or interests in, or
22 depending on the event of lotteries (California Penal Code §321);

23 (c) Aiding or assisting, either by printing, writing, advertising, publishing, or
24 otherwise in setting up, managing, or drawing lotteries, or in selling or disposing of tickets, chances, or
25 shares therein (California Penal Code §322);

26 (d) Dealing, playing, or carrying on, opening, or causing to be opened, or conducting
27 games of faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan-tan, seven-and-a-half, twenty-

1 one, hokey pokey, or any banking or percentage game played with cards, dice, or any device, for
2 money, checks, credit, or other representatives of value (California Penal Code §330);

3 (e) Playing or betting against games prohibited by California Penal Code §330;

4 (f) Engaging in pool selling or book making (California Penal Code §337(a));

5 (g) Laying, offering, or accepting bets or wages or wagers, upon the result, or
6 purported results of trials or purported trials or contests or purported contests of skill, speed or power of
7 endurance of men or beast, or between men, beasts, or mechanical apparatus (California Penal Code
8 §337a); or

9 (h) Dealing, operating, carrying on, conducting, maintaining or exposing for play in
10 California controlled games without first procuring and thereafter maintaining in effect all state and
11 local licenses required by law (California Penal Code §337); and

12 (i) The acts of defendants also constitute unlawful business acts within the meaning
13 of Cal. Bus. & Prof. Code §§17200, *et seq.* as they violate California Penal Code §318 which states:

14 Whoever, through invitation or device, prevails upon any person
15 to visit any room, building, or other places kept for the purpose of illegal
gambling or prostitution, is guilty of a misdemeanor....

16 Defendants, by their above actions, prevailed upon persons in California through “invitation or device”
17 to visit Internet gambling websites which constitute “other places kept for the purpose of illegal
18 gambling.”

19 94. Defendants have conspired and aided and abetted and/or advised and encouraged the
20 commission of violations of the above noted sections of the California Penal Code. California Penal
21 Code §31 states:

22 All persons concerned in the commission of a crime, whether it
23 be felony or misdemeanor, and whether they directly commit the act
24 constituting the offense, or aid and abet in its commission, or, not being
present, have advised and encouraged its commission ... are principals in
any crime so committed.

25 As such, the advertising defendants are guilty as principals in the violation of California Penal Code
26 §330 for millions of illegal gambling transactions in California.

27 95. As such, defendants are liable for the California Penal Code gambling violations in this
28 state.

1 96. The above-described unlawful and unfair business acts and practices continue to this
2 day. Defendants have received illegal proceeds and have failed to provide full restitution and
3 disgorgement of all ill-gotten monies either acquired or retained by defendants as a result thereof, as
4 appropriate under California law.

5 97. Plaintiffs, and to the extent permitted under California law, the general public, therefore
6 seeks an order of this Court for appropriate available remedies under Cal. Bus. & Prof. Code §17203.

7 **SECOND CAUSE OF ACTION**
8 **Unfair Business Acts And Practices**
9 **(Against All Defendants)**

10 98. The defendants' practices in connection with the advertisement of illegal gambling
11 activities in California constitutes an unfair business practices under Cal. Bus. & Prof. Code §§17200,
12 *et seq.*, in that it is contrary to public policy as demonstrated in, but not limited to, Cal. Bus. & Prof.
13 Code §19801.

14 99. In particular, Section 19801 of the "Gambling Control Act" provides that the
15 "Legislature hereby finds and declares" all of the following:

16 (a) The longstanding public policy of this state disfavors the business of
17 gambling. State law prohibits commercially operated lotteries, banked or
18 percentage games, and gambling machines, and strictly regulates
19 parimutuel wagering on horse racing. To the extent that state law
20 categorically prohibits certain forms of gambling and prohibits gambling
21 devices, nothing herein shall be construed, in any manner, to reflect a
22 legislative intent to relax those prohibitions.

23 (b) Gambling can become addictive and is not an activity to be promoted
24 or legitimized as entertainment for children and families.

25 (c) (1) Unregulated gambling enterprises are inimical to the public
26 health, safety, welfare, and good order. Accordingly, ***no person in this
27 state has a right to operate a gambling enterprise except as may be
28 expressly permitted by the laws of this state and by the ordinances of
local governmental bodies.***

(2) Gambling establishments currently employ more than twenty
thousand people in the State of California, ***and contribute more than
one hundred million dollars in taxes and fees to California's
government.***

* * *

(f) Public trust that permissible gambling will not endanger public
health, safety, or welfare requires that comprehensive measures be
enacted to ensure that such gambling is free from criminal and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

corruptive elements, *that it is conducted honestly and competitively, and that it is conducted in suitable locations.*

(g) Public trust and confidence can only be maintained by strict and comprehensive regulation of all persons, locations, practices, associations, and activities related to the operation of lawful gambling establishments and the manufacture or distribution of permissible gambling equipment.

(h) All gambling operations, all persons having a significant involvement in gambling operations, all establishments where gambling is conducted, and all manufacturers, sellers, and distributors of gambling equipment must be licensed and regulated to protect the public health, safety, and general welfare of the residents of this state as an exercise of the police powers of the state.

* * *

(j) In order to effectuate state policy as declared herein, it is necessary that gambling establishments, activities, and equipment be licensed, that persons participating in those activities be licensed or registered, that certain transactions, events, and processes involving gambling establishments and owners of gambling establishments be subject to prior approval or permission, that unsuitable persons not be permitted to associate with gambling activities or gambling establishments, and that gambling activities take place only in suitable locations. Any license or permit issued, or other approval granted pursuant to this chapter, is declared to be a revocable privilege, and no holder acquires any vested right therein or thereunder.

(k) The location of lawful gambling premises, the hours of operation of those premises, the number of tables permitted in those premises, and wagering limits in permissible games conducted in those premises are proper subjects for regulation by local governmental bodies. However, consideration of those same subjects by a state regulatory agency, as specified in this chapter, is warranted when local governmental regulation respecting those subjects is inadequate or the regulation fails to safeguard the legitimate interests of residents in other governmental jurisdictions.

(l) The exclusion or ejection of certain persons from gambling establishments is necessary to effectuate the policies of this chapter and to maintain effectively the strict regulation of licensed gambling.

100. So too, Article IV, Legislative §19 of the California Constitution provides:

(a) The Legislature has no power to authorize lotteries, and shall prohibit the sale of lottery tickets in the State.

* * *

(e) The Legislature has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey.

* * *

1 (f) Notwithstanding subdivisions (a) and (e), and any other provision of
2 state law, the Governor is authorized to negotiate and conclude
3 compacts, subject to ratification by the Legislature, for the operation of
4 slot machines and for the conduct of lottery games and banking and
5 percentage card games by federally recognized Indian tribes on Indian
lands in California in accordance with federal law. Accordingly, slot
machines, lottery games, and banking and percentage card games are
hereby permitted to be conducted and operated on tribal lands subject to
those compacts.

6 101. Defendants, by their actions above in ¶¶13, 60-82, committed unfair business practices
7 by acting contrary to the public policies described above.

8 102. The above-described unfair business acts and practices continue to this day. Defendants
9 have received illegal proceeds and have failed to provide full restitution and disgorgement of all ill-
10 gotten monies either acquired or retained by defendants as a result thereof, as appropriate under
11 California law.

12 103. Plaintiff, and to the extent permitted under California law, the general public, therefore
13 seeks an order of this Court for appropriate available remedies under Cal. Bus. & Prof. Code §17203.

14 **THIRD CAUSE OF ACTION**
15 **For Aiding And Abetting**
(Against All Defendants)

16 104. Plaintiffs incorporate by reference into this cause of action all of the allegations
17 contained in the preceding paragraphs of the complaint.

18 105. The advertising defendants, and each of them, aided and abetted in the operation of
19 illegal gambling enterprise by knowingly providing advertising of the defendants' gambling websites to
20 persons in California. The advertising defendants knew about the content of the gambling website
21 defendants' activities and knowingly sold advertising to the gambling website defendants an illegal act
22 in the State of California.

23 106. The advertising defendants' provision of advertising services constitutes the primary
24 means of obtaining customers for illegal gambling websites.

25 107. The advertising defendants advertised the illegal gambling website information with full
26 knowledge of illegal character and in bad faith therein.

27
28

1 **FOURTH CAUSE OF ACTION**
2 **Conspiracy**
3 **(Against All Defendants)**

4 108. Plaintiffs incorporate by reference into this cause of action all of the allegations
5 contained in the preceding paragraphs of the complaint.

6 109. The advertising defendants, and each of them, conspired in the operation of illegal
7 gambling enterprise by knowingly and purposefully providing advertising in California to the website
8 defendants to advertise and promote and carry out illegal gambling in California with persons in
9 California. The advertising defendants knew about the content of the gambling website defendants'
10 activities and knowingly conspired to provide advertising to the gambling website defendants – an
11 illegal act in the State of California.

12 110. The advertising defendants advertised the illegal gambling website information with full
13 knowledge of illegal character and in bad faith therein.

14 **FIFTH CAUSE OF ACTION**
15 **Declaratory Relief Pursuant to California Code of Civil Procedure Section 1060**
16 **(Against All Defendants)**

17 111. Plaintiffs incorporate by reference into this cause of action all of the allegations
18 contained in the preceding paragraphs of the complaint.

19 112. As alleged in this complaint, Internet casino-style gambling is a growing and lucrative
20 business activity with direct impact upon all of the citizens of the State of California who have the
21 potential of using the Internet. Internet casino-style gambling directed to persons residing and located
22 in the State of California and constitutes gambling in the State of California which is illegal, against
23 public policy, and violates the California Unfair Business Practices Act.

24 113. Advertising defendants have for several years advertised illegal Internet gambling in
25 California and have not taken any steps to alleviate the harm caused by this activity. Although two of
26 the advertising defendants, Yahoo and Google, have suggested intention to withdraw some or all of
27 their illegal Internet advertising, as of the time of the filing of this complaint this advertising continues.

28 114. Illegal gambling websites have for several years conducted illegal Internet gambling in
California and have not taken any steps to alleviate the harm caused to gamblers, their spouses,
guardians, the State of California or other parties.

1 115. Therefore, an actual and present controversy exists concerning the legality of the
2 advertising defendants' Internet advertisement of illegal gambling websites in the State of California.

3 116. For this reason, plaintiffs seek a declaration of this court that the Internet gambling
4 transactions and the Internet advertisement of gambling websites in California carried on by defendants,
5 and each of them, are illegal (Penal Code §§230, 321, 322, 330, 337(a) and 337), and constitute illegal
6 unfair business practices under Cal. Bus. & Prof. Code §17200.

7 **SIXTH CAUSE OF ACTION**
8 **Injunctive Relief Pursuant to California Code of Civil Procedure Section 526**
9 **(Against All Defendants)**

10 117. Plaintiffs incorporate by reference into this cause of action all of the allegations
11 contained in the preceding paragraphs of the complaint.

12 118. As alleged in this complaint, Internet casino-style gambling is a growing and lucrative
13 business activity with direct impact upon all of the citizens of the State of California who have the
14 potential of using the Internet. Internet casino-style gambling directed to persons residing and located
15 in the State of California constitutes unlicensed gambling in the State of California. This unlicensed
16 gambling is illegal, against public policy, and violates the California Unfair Business Practices Act.

17 119. Advertising defendants have for several years advertised illegal gambling in California
18 and have not taken any steps to alleviate the harm caused by this activity. Although two of the
19 advertising defendants, Yahoo and Google, have announced an intention to withdraw some or all of
20 their illegal Internet advertising in the near future, as of the time of the filing of this complaint no
21 effective actions had been taken. Further, Yahoo and Google would have no constraint, other than an
22 injunction, in restarting this practice and have announced their intention to curtail the practice only
23 under the implicit threat of regulatory action.

24 120. Defendant gambling websites have for several years conducted illegal gambling in
25 California and have not taken any steps to alleviate the harm caused to gamblers, their spouses,
26 guardians, the State of California or other parties. Without injunctive relief, this harm will continue
27 unabated.

28 121. Plaintiffs and the public at large have no adequate remedy at law for the injuries
currently being suffered or which will result in the future from defendants', and each of their, continued

1 wrongful conduct unless and until such conduct is restrained by the order of this court. Plaintiffs,
2 therefore, seek an injunction against defendants' illegal gambling advertising in the State of California.

3 **SEVENTH CAUSE OF ACTION**
4 **(Injunction on Use and Employment of Ill-Gotten Proceeds)**

5 122. Plaintiffs incorporate by reference into this cause of action all of the allegations
6 contained in the preceding paragraphs of the complaint.

7 123. By their conduct, defendants have violated, and continue to violate, Cal. Bus. & Prof.
8 Code §§17200, *et seq.* and have acquired substantial revenues by means of these unlawful practices.

9 124. Section 17203 of the Cal. Bus. & Prof. Code entitled "Injunctive Relief – Court Orders"
10 authorizes courts to provide injunctive relief. This relief permits the court to make such orders and
11 judgments” *to prevent the use or employment by any person* of any practice which constitutes unfair
12 competition.

13 125. Representative plaintiffs seek to enjoin defendants pursuant to Cal. Bus. & Prof. Code
14 §17200 to prevent defendants from using or employing the proceeds of their illegal advertising of
15 unregulated Internet gambling in California. Furthermore, plaintiffs seek to enjoin defendants from
16 controlling any of the monies or property acquired by means of this illegal advertising and set-aside or
17 deposit this money into a *cy pres* fund to be used in a manner consistent with the laws of the State of
18 California prohibiting unregulated gambling.

19 126. Absent such relief, defendants will continue the practice and will continue to enjoy the
20 fruits of their illegal activity in conflict with the public policy of California.

21 **EIGHTH CAUSE OF ACTION**
22 **Restitution**
23 **(Against All Defendants)**

24 127. Plaintiffs incorporate by reference into this cause of action all of the allegations
25 contained in the preceding paragraphs of the complaint.

26 128. By their conduct, defendants have violated Cal. Bus. & Prof. Code §§17200, *et seq.*

27 129. Representative plaintiffs Michael Voight and Mario Cisernos, seek to recover from
28 defendants on behalf of the general public and to restore to all licensed gambling operators, such as
licensed Indian Tribes:

1 (a) All revenues and profits acquired by Internet gambling websites, who purchased
2 sponsored links and advertisements with defendants, from persons using computers in California who
3 gambled on their websites; and

4 (b) All revenues and profits acquired by defendants from providing sponsored links
5 of gambling websites advertising online Internet gambling in California.

6 130. By law, only certain licensed businesses and Indian Tribes are allowed to accept
7 revenues and profits from gambling activities in the State of California, and therefore are the rightful
8 owner and or have an interest in the gambling proceeds.

9 131. Representative plaintiffs Michael Voight and Mario Cisernos, seek to recover from
10 defendants on behalf of the general public and restore to the State of California, all revenues, taxes, and
11 fees, wrongfully avoided or withheld from the state acquired by Internet gambling websites who
12 purchased advertisements with defendants, from persons using computers in California who gambled on
13 their websites, which proceeds belong to the State of California by virtue of Penal Code §325 (“[a]ll
14 moneys and property offered for sale or distribution in violation of any provisions of this chapter are
15 forfeited to the state”). In the alternative, plaintiffs seek for the establishment of a common fund, which
16 to the extent to which this fund cannot be provided to the Class as restitution is escheated directed to the
17 state.

18 132. Class plaintiff Michael Voight, seeks to recover on behalf of the Class, all money
19 acquired by Internet gambling operations, advertised by defendants through paid advertisements, from
20 persons using computers in California who gambled on their websites, and to have that money restored
21 to them, or, distributed in accordance with California public policy as is in the best legal interests of the
22 Class.

23 **NINTH CAUSE OF ACTION**
24 **Accounting**
(Against All Defendants)

25 133. Plaintiffs incorporate by reference into this cause of action all of the allegations
26 contained in the preceding paragraphs of the complaint.

27 134. As set forth above, by their conduct, defendants have violated California Penal Code
28 §§320-322 (Chapter 9 lotteries).

1 135. Plaintiffs seek to have defendants account for these proceeds and to recover them on
2 behalf of the parties set forth above.

3 **PRAYER FOR RELIEF**

4 WHEREFORE plaintiffs, on behalf of themselves, all others similarly situated and/or on behalf
5 of the general public as appropriate under California law, pray for judgment against defendants as
6 appropriate for the particular Causes of Action:

7 A. For the declaratory, equitable, preliminary and permanent injunctive relief;

8 B. For restitution and on accounting for all illegal gambling proceeds received by
9 defendants and/or the Internet gambling operations for which they provided advertisements and
10 sponsored hyperlinks;

11 C. For disgorgement or forfeiture of defendants' profits consisting of all illegal advertising
12 revenues;

13 D. For attorneys' fees pursuant to, *inter alia*, C.C.P. §1021.5, and for costs of suit; and

14 E. For such other and further relief as this Court may deem just and proper.

15 DATED: August 3, 2004

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
REED R. KATHREIN
STANLEY S. MALLISON
SHANA E. SCARLETT

18
19
20
21
22
23
24
25
26
27
28

REED R. KATHREIN

100 Pine Street, 26th Floor
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

WILLIAM S. LERACH
401 B Street, Suite 1700
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THE ROTHKEN LAW FIRM
IRA P. ROTHKEN
1050 Northgate Drive, Suite 520
San Rafael, CA 94309
Telephone: 415/924-4250
415/924-2905 (fax)

Attorneys for Plaintiffs

T:\CptDraft\Other\CPT Internet Gambling.doc