

San Francisco Superior Courts  
Information Technology Group

## Document Scanning Lead Sheet

Aug-06-2007 8:45 am

Case Number: CGC-07-465845

Filing Date: Aug-06-2007 8:06

Juke Box: 001 Image: 01846004

COMPLAINT

VALUECLICK, INC. VS. DANIEL BALSAM et al

001C01846004

**Instructions:**

Please place this sheet on top of the document to be scanned.

**SUMMONS  
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**  
Daniel Balsam and DOES 1 through 50, inclusive

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
ValueClick, Inc.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is:  
(El nombre y dirección de la corte es):  
San Francisco Superior Court  
400 McAllister Street

CASE NUMBER:  
(Número del caso) **65C-07-465845**

San Francisco, CA 94102  
Central Branch

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

John H. Ernster, SBN 59338 626-844-8800  
Phil J. Montoya, Jr., SBN 124085  
Ernster Law Offices, P.C.  
Pasadena, California 91101

DATE: **(AUG 06 2007)**  
(Fecha)

**Gordon Park-Li**

Clerk, by Jun P. Panelo, Deputy  
(Secretario) Jun Panelo (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

- 1.  as an individual defendant.
- 2.  as the person sued under the fictitious name of (specify):
- 3.  on behalf of (specify):

- under:  CCP 416.10 (corporation)  CCP 416.60 (minor)
- CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)
- other (specify):

- 4.  by personal delivery on (date):



FOR COURT USE ONLY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

John H. Ernster, SBN 59338  
Phil J. Montoya, Jr., SBN 124085  
Ernster Law Offices, P.C.  
70 So. Lake Avenue, Suite 750  
Pasadena, California 91101

TELEPHONE NO.: 626-844-8800 FAX NO.:

ATTORNEY FOR (Name): Plaintiff, ValueClick, Inc.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco

STREET ADDRESS: 400 McAllister Street

MAILING ADDRESS:

CITY AND ZIP CODE: San Francisco, CA 94102

BRANCH NAME: Central Branch

CASE NAME: ValueClick v. Balsam, et al

**FILED**  
San Francisco County Superior Court

AUG 06 2007

GORDON PARK-LI, Clerk

BY: *Jan P. P...*  
Deputy Clerk

CASE NUMBER:

CGC-07-465845

JUDGE:

DEPT:

**CIVIL CASE COVER SHEET**

**Complex Case Designation**

Unlimited (Amount demanded exceeds \$25,000)  Limited (Amount demanded is \$25,000 or less)

Counter  Joinder  
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

**Auto Tort**

Auto (22)  
 Uninsured motorist (46)

**Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort**

Asbestos (04)  
 Product liability (24)  
 Medical malpractice (45)  
 Other P/PI/D/W/D (23)

**Non-P/PI/D/W/D (Other) Tort**

Business tort/unfair business practice (07)  
 Civil rights (08)  
 Defamation (13)  
 Fraud (16)  
 Intellectual property (19)  
 Professional negligence (25)  
 Other non-P/PI/D/W/D tort (35)

**Employment**

Wrongful termination (36)  
 Other employment (15)

**Contract**

Breach of contract/warranty (06)  
 Collections (09)  
 Insurance coverage (18)  
 Other contract (37)

**Real Property**

Eminent domain/Inverse condemnation (14)  
 Wrongful eviction (33)  
 Other real property (26)

**Unlawful Detainer**

Commercial (31)  
 Residential (32)  
 Drugs (38)

**Judicial Review**

Asset forfeiture (05)  
 Petition re: arbitration award (11)  
 Writ of mandate (02)  
 Other judicial review (39)

**Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)**

Antitrust/Trade regulation (03)  
 Construction defect (10)  
 Mass tort (40)  
 Securities litigation (28)  
 Environmental/Toxic tort (30)  
 Insurance coverage claims arising from the above listed provisionally complex case types (41)

**Enforcement of Judgment**

Enforcement of judgment (20)

**Miscellaneous Civil Complaint**

RICO (27)  
 Other complaint (not specified above) (42)

**Miscellaneous Civil Petition**

Partnership and corporate governance (21)  
 Other petition (not specified above) (43)

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a.  Large number of separately represented parties
- b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c.  Substantial amount of documentary evidence
- d.  Large number of witnesses
- e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f.  Substantial postjudgment judicial supervision

3. Type of remedies sought (check all that apply):

- a.  monetary
- b.  nonmonetary, declaratory or injunctive relief
- c.  punitive

4. Number of causes of action (specify): 1

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 12, 2007

Phil J. Montoya, Jr.

(TYPE OR PRINT NAME)

*Phil J. Montoya, Jr.*

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

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**ERNSTER LAW OFFICES, P.C.**  
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**FILED**  
San Francisco County Superior Court  
AUG 06 2007  
GORDON PARK-LI, Clerk  
BY: Jan P. P...  
Deputy Clerk

**Scott Patrick Barlow, Esq., State Bar No. 182295**  
General Counsel  
ValueClick, Inc.  
30699 Russell Ranch Road  
Westlake Village, California 91361  
Telephone: (818) 575-4500  
Facsimile: (818) 575-4505

**CASEMANAGEMENT CONFERENCE SET**  
  
JAN 25 2008 -9<sup>00</sup>AM  
  
**DEPARTMENT 212**

Attorneys for Plaintiff  
ValueClick, Inc.

**SIIMMONS ISSUED**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION**

**VALUECLICK, INC.,**  
  
Plaintiff,  
  
v.  
  
**DANIEL BALSAM; and DOES 1  
through 50, inclusive,**  
  
Defendants.

**CASE NO.: C88-07-465845**  
  
**COMPLAINT FOR DAMAGES FOR  
BREACH OF CONTRACT**  
  
**[FILED UNDER SEAL]**  
  
**[Unlimited]**

Plaintiff ValueClick, Inc. alleges as follows:

**GENERAL ALLEGATIONS**

1. At all times relevant herein, plaintiff ValueClick, Inc. ("ValueClick"), was a corporation organized and existing under the laws of the State of California with its principal place of business in the County of Los Angeles, State of California.

1           2.     ValueClick is informed and believes that at all times relevant herein  
 2 defendant Daniel Balsam ("Balsam") was a law student and publisher of  
 3 DanHatesSpam.com who currently resides in San Francisco, California. Balsam's  
 4 principal business is as an anti-spam crusader who has filed and/or threatened to file over  
 5 fifty lawsuits (at least some of which were frivolous) against advertisers and marketers  
 6 using commercial email. On information and belief, the majority of Balsam's income is  
 7 generated from such settlements and judgments from email marketers and advertisers.  
 8 While Balsam generates substantial income from the obligation of marketers to pay  
 9 liquidated damages to him under various settlement agreements, he continues to show little  
 10 regard for his own obligations under these agreements as this is the second action filed by  
 11 ValueClick against Balsam to enforce a settlement agreement.

12           3.     Said obligation is commercial in nature and not based on a retail installment,  
 13 sales contract, or a conditional sales contract and is not to subject the provisions of *Civil*  
 14 *Code* §1812.10 and/or §2984.4.

15           4.     ValueClick is ignorant of the true names and capacities of defendants sued  
 16 herein as DOES 1 through 50, inclusive, and therefore sues said defendants by such  
 17 fictitious names. ValueClick will amend this Complaint to allege the true names and  
 18 capacities of said defendants when they are ascertained. ValueClick is informed and  
 19 believes and thereon alleges that each of the fictitiously named defendants is responsible in  
 20 some manner to pay the obligation described herein and that ValueClick's losses as alleged  
 21 herein were proximately caused by said defendants' conduct.

22           5.     ValueClick is informed and believes and thereupon alleges that each of the  
 23 defendants herein are principals, agents, and employees of the other(s), acting at all time  
 24 herein mentioned within the course and scope of their agency and employment and with the  
 25 consent and permission of the other co-defendants.

26     ///  
 27     ///  
 28     ///

**C** **C**

**BACKGROUND**

*First Settlement Agreement*

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3           6.     On December 10, 2003, Balsam contacted Hi-Speed Media, Inc. ("HSM")  
4 alleging that he had received a single email that contained a link to an HSM website which  
5 allegedly violated California Business & Professions Code Section 17538.4 and demanded  
6 payment of one-thousand dollars (\$1,000.00), "otherwise I will file suit against" HSM.

7           7.     HSM disputed liability but entered into a settlement agreement with Balsam  
8 (the "First Settlement Agreement") in which the Parties agreed to "keep strictly  
9 confidential the circumstances of this claim and terms of this Agreement. . . . [and] agree  
10 not to make any comments, including disparaging comments, to third parties or to the  
11 public (including through or on any media [or] website . . .) regarding one another. . . ."  
12 Balsam acknowledged that this provision was a material term of the Agreement and that  
13 HSM would not have entered into the Agreement without it.

14           8.     HSM was acquired by ValueClick in December 2003 and ValueClick was  
15 made a party to the First Settlement Agreement in 2005.

*eSolutions Media Dispute*

16  
17           9.     On Christmas 2005, Balsam contacted ValueClick's Associate General  
18 Counsel, Bennet Kelley ("Kelley"), to claim that he was entitled to liquidated damages  
19 under the First Settlement Agreement for emails he received that included a link to a web  
20 property owned by eSolutions Media, Inc. ("eSolutions") which, after June 24, 2005 was a  
21 third tier subsidiary of ValueClick.

22           10.    On May 5, 2006, Balsam filed an action in San Francisco County Small  
23 Claims Court against ValueClick for claims having nothing to do with ValueClick but  
24 instead involved emails containing links to eSolutions's properties that were sent prior to it  
25 becoming part of ValueClick ("Small Claims Action"). Despite repeated efforts by Kelley  
26 to explain to Balsam that eSolutions was and remained a separate legal entity (and public  
27 corporations and securities filings to that effect), Balsam was immalleable and argued  
28 without any basis in fact that ValueClick was a successor in interest to eSolutions.



1 this complaint on ValueClick,” while handing Winders a copy of a third party Small  
2 Claims Court Complaint (Cannon v. Opt-in Real Big, LLC and ValueClick, Inc., Santa  
3 Clara County Small Claims Court Nos. 207-SC04385-386) (“Cannon Complaint”). In  
4 doing so, Balsam, DOES 1-50, and each of them, acted vexatiously and in willful disregard  
5 of their duties under the Second Settlement Agreement.

6  
7 **FIRST CAUSE OF ACTION**

8 (Breach of Contract Against All Defendants)

9 15. ValueClick incorporates by reference the allegations of paragraphs 1  
10 through 14 above as though fully set forth herein.

11 16. Balsam, DOES 1-50, and each of them, breached the Second Settlement  
12 Agreement by, at least, the following: (a) serving the Cannon Complaint as they were  
13 providing assistance to a party in litigation with ValueClick; (b) extracting money from  
14 ValueClick and others through threats of litigation and/or embarrassment and assurances of  
15 confidentiality under a settlement agreement he had no intention of honoring;  
16 (c) publishing false and disparaging statements about ValueClick and/or others; (d) and  
17 pursuing frivolous litigation.

18 16. In addition, defendants Balsam, DOES 1-50, and each of them, breached the  
19 implied covenant of good faith and fair dealing by, *inter alia*, the aforementioned actions.

20 17. As a direct and proximate result of the breach by defendants Balsam,  
21 DOES 1-50, and each of them, ValueClick is entitled to compensatory and special damages  
22 accordingly to proof as well as an order of disgorgement of any profits and/or other  
23 compensation or benefits received and realized as a result of breaching the Second  
24 Settlement Agreement.

25 18. As a further result of the breach by defendants Balsam, DOES 1-50, and each  
26 of them, ValueClick has retained counsel and has incurred, and will incur, attorneys’ fees  
27 and expenses in an amount according to proof, which it is entitled to recover pursuant to  
28 the Second Settlement Agreement.


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WHEREFORE, ValueClick prays for judgment against defendants Balsam, DOES 1-50, and each of them, as follows:

1. For compensatory and special damages accordingly to proof;
2. For disgorgement of any profits and/or other compensation or benefits received and realized as a result of breaching the agreement;
3. For reasonable attorneys' fees, costs, and expenses incurred in prosecution hereof; and
4. For such further relief as the Court may deem just.

Dated: July 12, 2007

ERNSTER LAW OFFICES, P.C.

By:   
Phil J. Montoya, Jr.  
Attorneys for Plaintiff  
ValueClick, Inc.