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U.S. DISTRICT COURT
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DIST. OF UTAH
BY: [Signature]

Counsel for Defendant Unspam Registry Services, Inc.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

FREE SPEECH COALITION, INC., A
California Not-For-Profit Trade Association,
On Its Own Behalf and On Behalf of Its
Members,

Plaintiff,

vs.

MARK SHURTLEFF in his official capacity
as Utah Attorney General of the State of Utah;
THAD LEVAR, in his official capacity as the
Director of the Division of Consumer
Protection in the Utah Department of
Commerce, UNSPAM REGISTRY
SERVICES, INC., a Delaware corporation

Defendants.

**ANSWER TO SECOND AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Case No. 2:05-cv-00949DAK

Defendant Unspam Registry Services, Inc. ("Unspam"), by and through its undersigned counsel, hereby files its Answer to the Second Amended Complaint filed by Plaintiff Free Speech Coalition, Inc. ("FSC").

ANSWER

Unspam answers the numbered allegations in the First Amended Complaint as follows:

Nature of the Case

1. With respect to the allegations of paragraph 1 of the Second Amended Complaint, Unspam admits that plaintiffs are attempting to maintain this action to question the validity of a Utah statute, its associated administrative regulations, and a contract by which the challenged statutory scheme is allegedly implemented. Unspam also admits that plaintiffs seek declaratory and injunctive relief. Unspam further admits the existence of the Utah Child Protection Act (“CPR Act”). Unspam asserts that the CPR Act was recently amended, rendering moot plaintiffs’ claims and relief sought. Unspam admits that it runs a service for “scrubbing” email lists. Unspam also admits that the state charges a 0.5 cent per email address fee for this service, and that Unspam is directed by the state to collect 0.5 cents. To the extent that plaintiffs’ allegations regarding such a fee are directed toward all Defendants, no other response is required of Unspam. Unspam asserts that it is possible to comply with the CPR Act without using the Registry Compliance website, or agreeing to the terms of service on that page. Unspam also asserts that actual, personally identifiable, email addresses or lists of email addresses from senders complying with the law are never revealed or provided by senders to Unspam, the State of Utah or the State of Utah’s functionaries. Unspam asserts that its technology was specifically designed to prevent such identity disclosure. Unspam further asserts that the CPR Act and its provisions speak for themselves and denies plaintiffs’ characterization thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. To the extent that the allegations in paragraph 1 contain legal conclusions regarding the CPR Act, its associated

regulations, and methods of its implementation, no response is required. Unspam is without knowledge and/or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 1, and on that basis denies those allegations.

2. With respect to the allegations of paragraph 2 of the Second Amended Complaint, Unspam admits that the claims asserted by plaintiffs purportedly arise under the referenced statutory and constitutional provisions, but denies that plaintiffs have stated a claim under those provisions. Unspam denies the remaining allegations of paragraph 2.

Jurisdiction and Venue

3. With respect to the allegations of paragraph 3 of the Second Amended Complaint, Unspam admits that this Court has subject matter jurisdiction over this action to the extent that those claims asserted by plaintiffs purportedly arise under the referenced statutory and constitutional provisions, but denies that plaintiffs have stated a claim under those provisions. Unspam denies the remaining allegations in paragraph 3.

4. With respect to the allegations of paragraph 4 of the Second Amended Complaint, Unspam admits that venue is proper in this district, and admits that Unspam resides in this district. Unspam is without knowledge and/or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 4, and on that basis denies those allegations.

Parties

5. With respect to the allegations of paragraph 5 of the Second Amended Complaint, Unspam is without knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5, and on that basis denies those allegations.

6. With respect to the allegations of paragraph 6 of the Second Amended Complaint, Unspam admits that the Attorney General of the State of Utah is Mr. Mark Shurtleff. However, to the extent that the allegations of paragraph 6 are not directed to Unspam, no response is required of Unspam. To the extent that the allegations in paragraph 6 contain legal conclusions, no response is required of Unspam. Unspam denies all other allegations contained in paragraph 6.

7. With respect to the allegations of paragraph 7 of the Second Amended Complaint, to the extent that the allegations of paragraph 7 are not directed to Unspam, no response is required of Unspam. To the extent that the allegations in paragraph 7 contain legal conclusions, no response is required of Unspam. Unspam is without knowledge and/or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 7, and on that basis denies those allegations.

8. With respect to the allegations of paragraph 8 of the Second Amended Complaint, Unspam admits that it is a for-profit corporation incorporated in the State of Delaware with its principal place of business located at 1901 Prospector Avenue Ste. 200, Park City, Utah. Unspam further admits that its principals formulated and published ideas underlying computer do-not-email-registries, and that they have sought to profit from those ideas. Unspam admits that it was involved in formulating legislation that became the basis for the CPR Act. Unspam admits that it runs a website under contract with the State of Utah which enables persons to comply with the CPR Act. Unspam denies all other allegations contained in paragraph 8.

General Allegations

9. With respect to the allegations of paragraph 9 of the Second Amended Complaint, to the extent that the allegations in paragraph 9 contain legal conclusions, no response is required of Unspam. Unspam is without knowledge and/or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 9, and on that basis denies those allegations.

10. With respect to the allegations of paragraph 10 of the Second Amended Complaint, to the extent that the allegations in paragraph 10 contain legal conclusions, no response is required of Unspam. Unspam is without knowledge and/or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 10, and on that basis denies those allegations.

11. With respect to the allegations of paragraph 11 of the Second Amended Complaint, Unspam admits that the Internet is a world-wide network of computers which are configured to communicate information between one another. Unspam admits that the Internet allows persons to send identical messages to large numbers of people. Unspam also admits that the use of email to send messages is in some ways convenient, but denies that it is inexpensive. Unspam denies that Internet email permits anyone with a personal computer to become a town crier with a worldwide voice. Unspam admits that email addresses commonly consist of strings of alphanumeric characters. Unspam is without knowledge and/or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 11, and on that basis denies those allegations.

12. With respect to the allegations of paragraph 12 of the Second Amended Complaint, Unspam admits that the Child Protection Registry is available to parents and guardians of minor children, and that the Child Protection Registry permits the registration of email addresses to which minors have access. Unspam also admits that the Child Protection Registry permits schools with minor students to register entire blocks of email addresses under the school's control. Unspam admits that it is currently operating a web site through which these registrations may be, and are being, made. Paragraph 12 states legal conclusions to which no response is necessary, and Unspam denies the same on that basis. Unspam asserts that the CPR Act and its provisions speak for themselves and denies plaintiffs' characterization thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. To the extent that the allegations of paragraph 12 are not directed to Unspam, no response is required of Unspam. Unspam denies all other allegations contained in paragraph 12.

13. With respect to the allegations of paragraph 13 of the Second Amended Complaint, Unspam admits that emailers may register to participate in the registry's scrubbing services, but deny that emailers must provide financial data when registering. Unspam also denies that senders themselves must register, as they may have a proxy (such as an ESP) register on their behalf. Unspam also admits that it compares hash values of submitted and registered addresses and thereafter advises emailers of registered addresses. Unspam also denies that hashing is encryption, as encryption can be undone. Unspam admits that it provides free software for prospective emailers so that they may perform hashing. Unspam also admits that the state charges a 0.5 cent per email address fee for this service, that Unspam is directed by the state to collect 0.5 cents, and that, as a consequence, Unspam collects 0.5 cents per submitted

email hash value for the comparison and scrubbing service. Unspam denies all other allegations contained in paragraph 13.

14. With respect to the allegations of paragraph 14 of the Second Amended Complaint, Unspam admits that parents, guardians and schools may register email addresses without a fee. Unspam denies that its easy-to-use and free software requires expertise beyond that of a typical personal computer or Internet user. Unspam also asserts that the free software it offers is not the only mechanism or method available for complying with the CPR Act. Unspam is without knowledge and/or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 14, and on that basis denies those allegations.

15. With respect to the allegations of paragraph 15 of the Second Amended Complaint, Unspam denies that the scrubbing process causes unconstrained delays or that emailers must forego their anonymity in any way to comply with the CPR Act. Unspam denies that hashing functions can be “cracked.” Unspam is without knowledge and/or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 15, and on that basis denies those allegations.

16. With respect to the allegations of paragraph 16 of the Second Amended Complaint, Unspam is without knowledge and/or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 16, and on that basis denies those allegations.

17. With respect to the allegations of paragraph 17 of the Second Amended Complaint, to the extent that the allegations of paragraph 17 are not directed to Unspam, no response is required of Unspam. To the extent that the allegations in paragraph 17 contain legal

conclusions, no response is required of Unspam. Unspam denies all other allegations contained in paragraph 17.

18. With respect to the allegations of paragraph 18 of the Second Amended Complaint, to the extent that the allegations of paragraph 18 are not directed to Unspam, no response is required of Unspam. To the extent that the allegations in paragraph 18 contain legal conclusions, no response is required of Unspam. Unspam is without knowledge and/or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 18, and on that basis denies those allegations.

19. With respect to the allegations of paragraph 19 of the Second Amended Complaint, to the extent that the allegations of paragraph 19 are not directed to Unspam, no response is required of Unspam. To the extent that the allegations in paragraph 19 contain legal conclusions, no response is required of Unspam. Unspam denies all other allegations contained in paragraph 19.

FIRST CAUSE OF ACTION

(For Preemption Under Section 7707 of the CAN-SPAM Act)

20. Unspam incorporates by reference its responses herein to paragraphs 1-19 of the Second Amended Complaint.

21. With respect to the allegations of paragraph 21 of the Second Amended Complaint, Unspam admits that, in 2003, Congress passed and the President signed into law the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the "CAN-SPAM Act"). Unspam asserts that the CAN-SPAM Act, its provisions and legislative history,

speak for themselves and denies plaintiffs' characterization thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. To the extent that the allegations in paragraph 21 contain legal conclusions regarding the CAN-SPAM Act, its associated regulations, methods of its implementation, and the legal import of the CAN-SPAM Act's legislative history, no response is required. Unspam denies all other allegations contained in paragraph 21.

22. With respect to the allegations of paragraph 22 of the Second Amended Complaint, Unspam denies that the CPR Act regulates only email. However, Unspam asserts that the CPR Act and its provisions speak for themselves and denies plaintiffs' characterization thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. To the extent that the allegations in paragraph 22 contain legal conclusions regarding the CPR Act, its associated regulations, and methods of its implementation, no response is required. Unspam further asserts that the CAN-SPAM Act, its provisions and legislative history, speak for themselves and denies plaintiffs' characterization thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. To the extent that the allegations in paragraph 22 contain legal conclusions regarding the CAN-SPAM Act, its associated regulations, methods of its implementation, and the legal import of the CAN-SPAM Act's legislative history, no response is required. Unspam denies all other allegations contained in paragraph 22.

23. With respect to the allegations of paragraph 23 of the Second Amended Complaint, Unspam asserts that the Federal Trade Commission ("FTC") reports and regulations speak for themselves and denies plaintiffs' characterization thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. To the extent that the

allegations in paragraph 23 contain legal conclusions regarding the FTC reports and regulations, no response is required. Unspam further asserts that the CAN-SPAM Act, its provisions and legislative history, speak for themselves and denies plaintiffs' characterization thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. To the extent that the allegations in paragraph 23 contain legal conclusions regarding the CAN-SPAM Act, its associated regulations, methods of its implementation, and the legal import of the CAN-SPAM Act's legislative history, no response is required. Unspam is without knowledge and/or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 23, and on that basis denies those allegations.

24. With respect to the allegations of paragraph 24 of the Second Amended Complaint, Unspam asserts that the Supremacy Clause of the United States Constitution, the CAN-SPAM Act and its provisions, associated regulations and legislative history, and the CPR Act and its implementing regulations, all speak for themselves, and Unspam denies plaintiffs' characterization thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. To the extent that the allegations in paragraph 24 contain legal conclusions regarding the United States Constitution, as well as federal and state statutory and administrative provisions, no response is required. Unspam denies all other allegations contained in paragraph 24.

SECOND CAUSE OF ACTION
(For Violation of the Commerce Clause of the United States Constitution)

25. Unspam incorporates by reference its responses herein to paragraphs 1-24 of the Second Amended Complaint.

26. With respect to the allegations of paragraph 26 of the Second Amended Complaint, Unspam admits that it seeks profit, as it is a for-profit corporation. Unspam asserts that emailers need only comply with the CPR Act if they are doing business in Utah. Unspam denies that the State of Utah's laws and associated fees and the State of Michigan's laws and associated fees are allied, as each state sovereign requires compliance, and each sovereigns' statutory schemes do not contemplate each other. Unspam further asserts that it does not charge a fee, as each state charges the fee, and Unspam collects the fee as it is required by the states. Unspam asserts that the Commerce Clause of the United States Constitution, and the CPR Act and its implementing regulations, speaks for themselves, and Unspam denies plaintiffs' characterizations thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. To the extent that the allegations in paragraph 26 contain legal conclusions, no response is required. Unspam is without knowledge and/or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 26, and on that basis denies those allegations.

27. With respect to the allegations of paragraph 27 of the Second Amended Complaint, to the extent that the allegations in paragraph 27 contain legal conclusions, no response is required. Unspam denies the remaining allegations of paragraph 27.

28. With respect to the allegations of paragraph 28 of the Second Amended Complaint, to the extent that the allegations in paragraph 28 contain legal conclusions, no response is required. Unspam denies the remaining allegations of paragraph 28.

29. With respect to the allegations of paragraph 29 of the Second Amended Complaint, to the extent that the allegations in paragraph 29 contain legal conclusions, no response is required. Unspam denies the remaining allegations of paragraph 29.

30. With respect to the allegations of paragraph 30 of the Second Amended Complaint, to the extent that the allegations in paragraph 30 contain legal conclusions, no response is required. Unspam denies the remaining allegations of paragraph 30.

31. With respect to the allegations of paragraph 31 of the Second Amended Complaint, Unspam denies the allegations of paragraph 31.

THIRD CAUSE OF ACTION
(Prior Restraint)

32. Unspam incorporates by reference its responses herein to paragraphs 1-31 of the Second Amended Complaint.

33. With respect to the allegations of paragraph 33 of the Second Amended Complaint, Unspam asserts that the First and Fourteenth Amendments to the United States Constitution, and Article 1, Section 15, of the Utah Constitution, speak for themselves, and Unspam denies plaintiffs' characterization thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. Unspam also asserts the CPR Act and its implementing regulations speak for themselves, and Unspam denies plaintiffs' characterizations thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. To the extent that the allegations in paragraph 33 contain legal conclusions, no response is required. Unspam denies the remaining allegations of paragraph 33.

34. With respect to the allegations of paragraph 34 of the Second Amended Complaint, to the extent that the allegations in paragraph 34 contain legal conclusions, no response is required. Unspam denies the remaining allegations of paragraph 34.

35. With respect to the allegations of paragraph 35 of the Second Amended Complaint, to the extent that the allegations in paragraph 35 contain legal conclusions, no response is required. Unspam denies the remaining allegations of paragraph 35.

36. With respect to the allegations of paragraph 36 of the Second Amended Complaint, Unspam denies the allegations of paragraph 36.

FOURTH CAUSE OF ACTION
(Expressive Privacy)

37. Unspam incorporates by reference its responses herein to paragraphs 1-36 of the First Amended Complaint.

38. With respect to the allegations of paragraph 38 of the Second Amended Complaint, Unspam asserts that the First and Fourteenth Amendments to the United States Constitution, and Article 1, Section 15, of the Utah Constitution, speak for themselves, and Unspam denies plaintiffs' characterization thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. Unspam also asserts the CPR Act and its implementing regulations speak for themselves, and Unspam denies plaintiffs' characterizations thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. To the extent that the allegations in paragraph 38 contain legal conclusions, no response is required. Unspam denies the remaining allegations of paragraph 38.

39. With respect to the allegations of paragraph 39 of the Second Amended Complaint, to the extent that the allegations in paragraph 39 contain legal conclusions, no response is required. Unspam denies that it ever receives actual lists of email addresses from users of its services, and asserts that any such lists remain private and secure on the user/senders' computers and that therefore such lists are never publicly disclosed. Unspam also denies that it is able to determine actual email addresses from the information that its user/subscribers submit to them. Unspam is without knowledge and/or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 39, and on that basis denies those allegations.

40. With respect to the allegations of paragraph 40 of the Second Amended Complaint, Unspam denies the allegations of paragraph 40.

FIFTH CAUSE OF ACTION
(Burden on Protected Expression)

41. Unspam incorporates by reference its responses herein to paragraphs 1-40 of the First Amended Complaint.

42. With respect to the allegations of paragraph 42 of the Second Amended Complaint, Unspam asserts that the First and Fourteenth Amendments to the United States Constitution, and Article 1, Section 15, of the Utah Constitution, speak for themselves, and Unspam denies plaintiffs' characterization thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. To the extent that the allegations in paragraph 42

contain legal conclusions, no response is required. Unspam denies the remaining allegations of paragraph 42.

43. With respect to the allegations of paragraph 43 of the Second Amended Complaint, Unspam also asserts the CPR Act and its implementing regulations speak for themselves, and Unspam denies plaintiffs' characterizations thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. Unspam asserts that the CAN-SPAM Act and its provisions, speak for themselves and denies plaintiffs' characterization thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. To the extent that the allegations in paragraph 43 contain legal conclusions, no response is required. To the extent that the allegations of paragraph 43 are not directed to Unspam, no response is required of Unspam. Unspam denies the remaining allegations of paragraph 43.

44. With respect to the allegations of paragraph 44 of the Second Amended Complaint, Unspam also asserts the CPR Act and its implementing regulations speak for themselves, and Unspam denies plaintiffs' characterizations thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. To the extent that the allegations in paragraph 44 contain legal conclusions, no response is required. To the extent that the allegations of paragraph 44 are not directed to Unspam, no response is required of Unspam. Unspam denies the remaining allegations of paragraph 44.

45. With respect to the allegations of paragraph 45 of the Second Amended Complaint, Unspam asserts that the First and Fourteenth Amendments to the United States Constitution, and Article 1, Section 15, of the Utah Constitution, speak for themselves, and Unspam denies plaintiffs' characterization thereof to the extent those characterizations are

inaccurate, incomplete and/or contrary to law. Unspam also asserts the CPR Act and its implementing regulations speak for themselves, and Unspam denies plaintiffs' characterizations thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. To the extent that the allegations in paragraph 45 contain legal conclusions, no response is required. Unspam denies the remaining allegations of paragraph 45.

46. With respect to the allegations of paragraph 46 of the Second Amended Complaint, Unspam asserts that the First and Fourteenth Amendments to the United States Constitution, and Article 1, Section 15, of the Utah Constitution, speak for themselves, and Unspam denies plaintiffs' characterization thereof to the extent those characterizations are inaccurate, incomplete and/or contrary to law. To the extent that the allegations in paragraph 46 contain legal conclusions, no response is required. Unspam denies the remaining allegations of paragraph 46.

47. With respect to the allegations of paragraph 47 of the Second Amended Complaint, Unspam denies the allegations of paragraph 47.

48. Unspam denies that FSC is entitled to any of the relief sought in the Second Amended Complaint.

FIRST ADDITIONAL DEFENSE

Unspam denies all allegations in the Second Amended Complaint not expressly admitted herein.

SECOND ADDITIONAL DEFENSE

FSC is barred from receiving declaratory, injunctive or any other relief because FSC has failed to state a claim upon which relief can be granted.

THIRD ADDITIONAL DEFENSE

FSC does not have standing to bring this action on its own behalf and therefore FSC's claims are barred.

FOURTH ADDITIONAL DEFENSE

FSC does not have standing to bring this action on behalf of its members or others and therefore FSC's claims are barred.

FIFTH ADDITIONAL DEFENSE

FSC's claims are barred on the ground that they moot.

SIXTH ADDITIONAL DEFENSE

FSC's claims are barred because this Court lacks subject matter jurisdiction over the claims against Unspam.

SEVENTH ADDITIONAL DEFENSE

FSC's claims are barred because FSC has failed to join an indispensable party.

EIGHTH ADDITIONAL DEFENSE

FSC's claims are barred by the doctrines of waiver, estoppel and laches.

NINTH ADDITIONAL DEFENSE

Unspam reserves the right to amend their Answer to assert such other or further defenses as may be applicable in this lawsuit, and include defenses that will or may be discovered as a result of future discovery in this lawsuit.

WHEREFORE Unspam prays:

A. that FSC's Second Amended Complaint be dismissed with prejudice and that FSC not be granted any of the relief sought in its Second Amended Complaint; and

B. that the Court declare that FSC is not entitled to any declaratory or injunctive relief to which FSC alleged it is entitled in its Second Amended Complaint; and

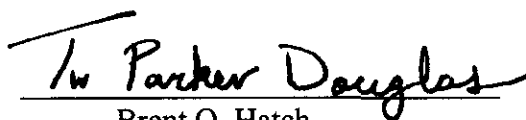
C. that the Court order FSC to pay Unspam its reasonable attorneys' fees and costs necessitated in defending this action; and

D. for such and other and further relief as the Court deems just, proper, and equitable.

DATED this 31st day of March, 2006.

Respectfully submitted,

By:

A handwritten signature in black ink that reads "Brent O. Hatch". The signature is written in a cursive style with a prominent horizontal line above the first few letters.

Brent O. Hatch
Parker Douglas
HATCH, JAMES & DODGE, P.C.
Counsel for Defendant
Unspam Registry Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this on the 31st day of March, 2006, a true and correct copy of the foregoing ANSWER TO SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTION RELIEF was mailed, postage prepaid, to:

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By: *Karina Chavez*