

1 KENNETH E. KELLER (SBN 71450) (kkeller@kksrr.com)  
2 CHRISTOPHER T. HOLLAND (SBN 164053) (cholland@kksrr.com)  
3 LORI L. BEHUN (SBN 202309) (lbehun@kksrr.com)  
4 KRIEG, KELLER, SLOAN, REILLEY & ROMAN LLP  
5 114 Sansome Street, 4<sup>th</sup> Floor  
6 San Francisco, CA 94104  
7 Telephone: (415) 249-8330  
8 Facsimile: (415) 249-8333

9 Attorneys for Defendants  
10 DIRECTREVENUE LLC, THE BEST OFFERS NETWORK, LLC  
11 (formerly known as and named in the complaint as BETTERINTERNET, LLC),  
12 CHRIS DOWHAN and JOSHUA ABRAM

13 UNITED STATES DISTRICT COURT

14 FOR THE EASTERN DISTRICT OF CALIFORNIA

15 CONSUMER ADVOCATES RIGHTS ) Case No.:  
16 ENFORCEMENT SOCIETY, INC. (CARES, )  
17 Inc.), a California not for Profit Corporation, )  
18 PETER MARTIN, an individual for himself )  
19 and all those similarly situated, MATINA ) **NOTICE OF REMOVAL**  
20 DIANE BATTAGLIA, an individual for )  
21 herself and all those similarly situated, )  
22 Plaintiffs, )  
23 v. )  
24 180SOLUTIONS, INC., a Washington )  
25 Corporation, METRICS DIRECT, a )  
26 Washington Corporation, KEITH SMITH; )  
27 DANIEL TODD; KENNETH SMITH; )  
28 DIRECTREVENUE, LLC, a Washington )  
Limited Liability Corporation; CHRIS )  
DOWHAN; JOSHUA ABRAM; BYRON )  
UDELL; BETTERINTERNET, LLC; EXACT )  
ADVERTISING, Does 1 through 50 )  
inclusive, )  
Defendants. )

Defendants DirectRevenue LLC, The Best Offers Network, LLC (formerly known as and named in the complaint as BetterInternet, LLC), Chris Dowhan, and Joshua Abram (collectively,

1 "Defendants"), pursuant to 28 U.S.C. § 1453, hereby remove this action to this Court, respectfully  
2 stating the following in support:

3 1. Defendants are named defendants in a civil action pending in the Superior Court of  
4 the State of California in and for the County of San Joaquin, Stockton Branch, captioned *Consumer*  
5 *Advocates Rights Enforcement Society, Inc. (CARES, Inc.) et al. v. 180Solutions, Inc., et al.*, Case  
6 No. CV027141.

7 2. The action is removable to this Court pursuant to 28 U.S.C. § 1453 in that, as shown  
8 below, it is one over which the district courts of the United States have original jurisdiction under 28  
9 U.S.C § 1332(d)(2), because it is filed as a class action under the California rule similar to Federal  
10 Rule of Civil Procedure 23, the Plaintiffs and Defendants are citizens of different states, and  
11 Defendants have a good faith belief, as discussed below, that Plaintiffs contend that the amount in  
12 controversy exceeds the sum or value of \$5,000,000.

13 3. Plaintiffs Peter Martin and Matina Diane Battaglia are alleged to be individuals who  
14 reside in the State of California. Plaintiff Consumer Advocates Rights Enforcement Society, Inc. is  
15 alleged to be a California corporation, with a principal place of business in California.

16 4. Defendants DirectRevenue, LLC and BetterInternet, LLC are Delaware limited  
17 liability companies with principal places of business in New York, New York. Defendants Chris  
18 Dowhan and Joshua Abram are individuals who reside in the State of New York.

19 5. Defendant 180Solutions, Inc. is alleged to be a Washington corporation with its  
20 principal place of business in the State of Washington. Defendant Metrics Direct is alleged to be an  
21 assumed name of 180Solutions, Inc. Although the complaint in this action (the "Complaint") makes  
22 no allegations as to the citizenship of defendants Keith Smith, Daniel Todd, or Kenneth Smith, these  
23 individuals are all alleged to be officers, directors, or employees of 180Solutions, Inc., which, as  
24 noted above, is alleged to have its principal place of business in the State of Washington.

25 6. Though Plaintiffs name Byron Udell and Exact Advertising in the caption of the  
26 action, the Complaint makes no allegations whatsoever regarding these defendants or their  
27 citizenship. Upon information and belief, neither of these defendants is a California citizen.

1           7. Defendants have a good faith belief, based on the allegations in the Complaint, that  
2 the amount in controversy exceeds \$5,000,000 as follows: Plaintiff alleges that the defendants have  
3 installed software on the computers of putative class members that adversely affects those computers  
4 in “many different ways.” While Plaintiffs have conspicuously failed to specifically allege a  
5 monetary amount of damages, Plaintiffs have suggested that each putative class member suffers  
6 \$35.00 in damages. (See Complaint ¶ 23.) In addition, Plaintiffs seek \$100,000 in punitive damages.  
7 Thus, in order to reach the \$5,000,000 minimum required amount in controversy, Plaintiffs need  
8 only be alleging damages to 140,000 users in the State of California. Upon information and belief,  
9 more than 140,000 users in California have installed the software of DirectRevenue, LLC or The  
10 Best Offers Network, LLC, and/or of codefendants 180Solutions, Inc. and eXact Advertising during  
11 the relevant period.

12           8. Defendants deny the Complaint’s allegations of any wrongdoing, and further deny  
13 that their software has damaged anyone’s computer, in California or elsewhere. Nonetheless,  
14 according to the United States Census Bureau, in 2003 approximately 7,657,000 households in  
15 California had computers with internet access. (See U.S. Census Bureau, *Computer and Internet Use*  
16 *in the United States: October 2003*, Table 1B, available at  
17 <http://www.census.gov/population/socdemo/computer/2003/tab01B.xls>.) If Plaintiffs allege  
18 damages to only 1.8% of all such households, then the amount in controversy meets the minimum  
19 required for federal jurisdiction.

20           9. Plaintiff attempted to serve the summons in this action (the “Summons”) and the  
21 Complaint upon Defendants by certified mail on November 7, 2005. While Defendants do not  
22 concede that the Summons and Complaint were properly served, under California Code of Civil  
23 Procedure § 415.40, assuming *arguendo* that service was properly thus effected, such service would  
24 have been complete less than 30 days prior to the filing hereof, on or about November 17, 2005.  
25 Therefore, this Notice of Removal is timely under 28 U.S.C. § 1446.

26           10. Annexed hereto as Exhibit A are copies of the Summons and Complaint, which are  
27 the only process, pleadings, or orders served upon Defendants.  
28

1           11. Pursuant to 28 U.S.C. § 1446(d), Defendants are serving Plaintiffs with written notice  
2 of this removal, and Defendants will file a copy of this Notice with the Superior Court of the State of  
3 California in and for the County of San Joaquin, Stockton Branch. As of the date of this filing, no  
4 other parties have appeared in this action.

5           WHEREFORE, Defendants DirectRevenue LLC, The Best Offers Network, LLC f/k/a  
6 BetterInternet, LLC, Chris Dowhan, and Joshua Abram request that this action proceed as an action  
7 removed to this Court.

8  
9 Dated: December 14, 2005

KRIEG, KELLER, SLOAN, REILLEY & ROMAN LLP

10  
11  
12 By: \_\_\_\_\_ /s/  
13           KENNETH E. KELLER  
14           Attorneys for Defendants  
15           DIRECTREVENUE LLC, THE BEST OFFERS  
16           NETWORK, LLC (formerly known as and named  
17           in the complaint as BETTERINTERNET, LLC),  
18           CHRIS DOWHAN and JOSHUA ABRAM  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT A**

**SUMMONS  
(CITACION JUDICIAL)**

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

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

180SOLUTIONS, INC., a Washington Corporation, METRICS DIRECT, a Washington Corporation, KEITH SMITH, DANIEL TODD; KENNETH SMITH; DIRECTREVENUE, LLC, a Washington Limited Liability Corporation; CHRIS DOWHAN; JOSHUA ABRAM; BYRON UDELL; BETTERINTERNET, LLC.; EXACT ADVERTISING, DOES 1 through 50 inclusive

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CONSUMER ADVOCATES RIGHTS ENFORCEMENT SOCIETY, INC. (CARES, INC.), a California not for Profit Corporation, PETER MARTIN, an individual for himself and all those similarly situated, MATINA DIANE BATTAGLIA, an individual for herself and all those similarly situated

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), 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), the California Courts Online Self-Help Center (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), 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), en el Centro de Ayuda de las Cortes de California, (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 JOAQUIN COUNTY SUPERIOR COURT  
222 EAST WEBER STREET, STOCKTON, CA. 95207

CASE NUMBER:  
(Número del Caso):

CV 05 7714

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

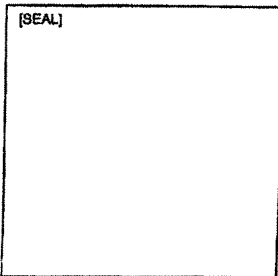
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
BRONSON & ASSOCIATES - Attorneys at Law . 209-830-0400  
15 WEST 8TH STREET, SUITE A - TRACY, CA 95376

DATE:  
(Fecha) OCT 27 2005

RECEIVED

Clerk, by LORETTA PARSONS, Deputy  
(Secretario) (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):

1 **BRONSON & ASSOCIATES**  
2 ATTORNEYS AT LAW  
3 **MARTHA BRONSON, ESQ. #133396**  
4 15 West 8<sup>th</sup> Street, Suite A  
5 Tracy, CA 95376  
6 209-830-0400 Fax: 209-832-5000  
7 Dedicated website: <http://www.thelaw.bz/popups>

8 Attorneys for Plaintiffs

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **IN AND FOR THE COUNTY OF SAN JOAQUIN**  
11 **STOCKTON BRANCH**

12 **CONSUMER ADVOCATES RIGHTS**  
13 **ENFORCEMENT SOCIETY, INC. (CARES,**  
14 **INC.), a California not for Profit Corporation,**  
15 **PETER MARTIN, an individual for himself and all**  
16 **those similarly situated, MATINA DIANE**  
17 **BATTAGLIA, an individual for herself and all**  
18 **those similarly situated,**

19 Plaintiffs,

20 vs.

21 **180SOLUTIONS, INC., a Washington Corporation,**  
22 **METRICS DIRECT, a Washington Corporation, KEITH**  
23 **SMITH; DANIEL TODD; KENNETH SMITH;**  
24 **DIRECTREVENUE, LLC, a Washington Limited Liability**  
25 **Corporation; CHRIS DOWHAN; JOSHUA ABRAM;**  
26 **BYRON UDELL; BETTERINTERNET, LLC.; EXACT**  
27 **ADVERTISING, DOES 1 through 50 inclusive,**

28 Defendants.

FILED  
SUPERIOR COURT - TRACY

05 OCT 27 PM 4:10

ROSA JUNQUEIRO, CLERK

BY LORETTA PARSONS  
DEPUTY

CASE NO. **CV 027141**

**COMPLAINT FOR DAMAGES AND**  
**INJUNCTIVE RELIEF**

**THE CASE HAS BEEN ASSIGNED TO**  
**JUDGE CARTER P. HOLLY IN**  
**DEPARTMENT 42 FOR ALL PURPOSES,**  
**INCLUDING TRIAL**

**CLASS ACTION**

**DEMAND FOR JURY**

Warning - Spyware Notice



If your computer has been running slower than usual, it may be infected with Adware or Spyware. To scan your computer, click yes below.

Yes

No

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

## INTRODUCTION

This action is brought to obtain preliminary and permanent injunctive relief, restitution, disgorgement and other equitable relief against the Defendants for their unfair acts and practices in connection with their unlawful marketing and their unlawful distribution of software programs to consumers that causes an invasion of privacy, trespass to chattels, unlawful drive-by computer software downloads, interference with use and enjoyment of personal property; nuisance, computer malfunction and destruction of personal property, in violation of California Civil Code §1770 et seq. and California Business and Professions Codes §17200, 17500 and 22947.

This class action is to benefit the public welfare and end further injury through obtaining an order enjoining Defendants from deceptive business practices as herein alleged and through entry of a judgment for punitive and compensatory relief for the harm suffered by plaintiffs and class members.

## PARTIES

15  
16  
17  
18  
19

1. Class Representative, PETER MARTIN, is an individual residing in San Joaquin County, State of California. PETER MARTIN is a victim of defendants' unlawful business practices as herein alleged. PETER MARTIN is willing, able, and here seeks to serve as representative of the Class of like recipients of defendants' unlawful acts as more particularly described herein below.

20  
21  
22  
23  
24  
25  
26  
27  
28

2. MATINA DIANE BATTAGLIA is an individual residing in San Joaquin County, State of California, and sues individually and as the secretary of CONSUMER ADVOCATES RIGHTS ENFORCEMENT SOCIETY, INC., (hereafter referred to as "CARES, INC.") a nonprofit California Corporation, with its principal place of business in San Joaquin county. CARES, INC. connects to the Internet with a computer in conducting its business affairs. CARES, INC. has been and is victimized by defendants' wrongful conduct alleged herein, including, but not limited to, defendants' trespassing onto CARES, INC.'S computer by covertly placing its software code into CARES, INC.'s computer and thereby causing it to malfunction and be infested with popup ads that interfere with the users' daily use



1 and business. MATINA DIANE BATTAGLIA brings this action individually and on behalf of CARES,  
2 INC.

3           3.     180SOLUTIONS, INC. is a Corporation organized and existing under the laws of the  
4 State of Washington with its principal place of business in Washington. KEITH SMITH, DANIEL  
5 TODD AND KENNETH SMITH are officers/directors and/or employees of 180SOLUTIONS, INC. and  
6 are sued individually and in their capacity as officers/directors/employees of 180SOLUTIONS, INC.  
7 Acting individually or in concert with others, KEITH SMITH, DANIEL TODD AND KENNETH  
8 SMITH have formulated, directed, controlled, or participated in the acts and practices of  
9 180SOLUTIONS, INC. including the acts and practices complained of below. Upon information and  
10 belief, 180SOLUTIONS, INC. does business under the name of METRICS DIRECT. These defendants  
11 will be referred to hereafter collectively as '180SOLUTIONS, INC.'. In the course of trade and  
12 commerce, 180SOLUTIONS, INC. and its officers/directors/employees caused to be, or in fact,  
13 unlawfully disseminated advertisements and other communications, via unauthorized download of  
14 computer software/code, through the Internet and throughout the United States, including San Joaquin  
15 County, California. The advertisements and communications are displayed through pop up windows on  
16 computer users' screens and include advertisements for "anti-spyware" and "anti-adware" software,  
17 such as the one shown on page one above. On information and belief plaintiffs allege that  
18 180SOLUTIONS, INC., through itself and its agent, DEALHELPER.COM, a California company,  
19 downloads to and installs on consumers' computers advertising and other software code/programs such  
20 as BargainBuddy, CoolWebsearch, ISTbar, WinAD, PowerScan, Booked Space, EbatesMoneyMaker,  
21 EliteToolbar, XXXtoolbar and Webrebates (aka Toprebates, Inc.), among others.

22           4     BetterInternet, LLC, is a Delaware limited liability corporation with its principal place of  
23 business located 107 Grand Street, 3<sup>rd</sup> Floor, New York, New York 10013. DIRECTREVENUE, LLC.,  
24 upon information and belief, is the sole member and manager of BetterInternet, LLC. Defendant,  
25  
26  
27  
28

1 DirectRevenue Holding, LLC, is a holding company for DirectRevenue, LLC and BetterInternet, LLC.  
2 DirectRevenue uses the name BetterInternet for its spyware product as referred to herein.  
3 DirectRevenue is also known as mypctuneup.com, Aurora and ABI NETWORK, among others.  
4 Collectively these defendants will be referred to hereinafter as "DirectRevenue". DirectRevenue  
5 unlawfully disseminated advertisements and other communications through the Internet and throughout  
6 the United States, including San Joaquin County, California. Upon information and belief,  
7 DirectRevenue unlawfully distributes and downloads various software programs/codes into consumers'  
8 computers, including, but not limited to, the AURORA software, since at least April, 2004 and has been  
9 and continues to unlawfully distribute into consumers' computers. DirectRevenue's software damages  
10 computers, unilaterally installs third party software without the knowledge and consent of consumers, it  
11 alters consumers' URL'S, it redirects consumers' intended viewing web pages (aka "high jacking"),  
12 tracks computer users' internet use and causes frequent interference with consumers use of their own  
13 computers, among other detrimental effects.

14  
15  
16 5. Upon information and belief, Defendants, acting individually or in concert with others,  
17 CHRIS DOWHAN and JOSHUA ABRAM have formulated, directed, controlled, or participated in the  
18 acts and practices of 180SOLUTIONS, INC. including the acts and practices complained of below  
19 CHRIS DOWHAN and JOSHUA ABRAM are officers, employees and/or directors of DirectRevenue  
20 and are sued individually as well as in their capacity as employees, officers/directors of DirectRevenue.  
21

22 6. The true names and capacities of the defendants sued herein as Does 1 through 50,  
23 inclusive, are unknown to plaintiffs at this time, and plaintiffs sue the said defendants by such fictitious  
24 names. Plaintiffs will ask leave of court to amend this complaint to show their true names and capacities  
25 when the same have been ascertained. Each of the fictitiously named defendants is responsible in some  
26 manner for the conduct alleged herein  
27  
28

1 7. Defendants DOES 1 through 50, are additional parties and/or co-conspirators of named  
2 defendants, including, but not limited to, directors, officers, and employees affiliates, parent or  
3 subsidiary corporations or of other legal entitles, and third party agents of and/or principals of named  
4 defendants. With respect to all allegations in this Complaint, one or more DOE defendants knowingly  
5 participated in, approved, cooperated in, directed, and/or had actual or constructive knowledge of all  
6 activities alleged, acted in concert with all other named and unnamed defendants pursuant to a common  
7 design with them, and/or gave substantial assistance or encouragement to other defendants in carrying  
8 out all alleged activities. One or more DOE defendants profiteered through false advertising and  
9 unlawful dissemination of software and actual fraud, and willfully caused injury to the property interest  
10 of plaintiffs and Class members.  
11

#### 12 JURISDICTION

13 8. The court has personal jurisdiction over the parties and subject matter jurisdiction in this  
14 action as the defendants do business in the State of California.  
15

#### 16 VENUE

17 9. Venue is proper in San Joaquin County, California as the defendants do business in the  
18 County of San Joaquin and the acts complained of were received in this County.  
19

#### 20 DEFENDANTS' UNLAWFUL BUSINESS PRACTICES

##### 21 *Overview:*

22 10. Since at least August, 2003, defendants, have manipulated the Microsoft Internet  
23 Explorer Browser and other browsers (hereafter "Browser") to reconfigure consumers' computers by  
24 installing software code onto their computers without their knowledge or authorization. Defendants  
25 have installed their software by other means such as by bundling it with other software, tricky download  
26 drive-bys and by inducing the download through false misrepresentations. The software code affects  
27 computers by, among other things: (a) redirecting home pages; (b) installing numerous advertising and  
28 other software programs/code including, but not limited to Aurora, AdDestroyer, BargainBuddy,

1 DealHelper, FizzleBar, Searachsquire, ExactSearchBar, eBatesMoneyMaker, PowerScan, ISTbar,  
2 XXXtoobar, VirtualBouncer, SahAgent, Alexa, Zango, Bullseye Network, Webrebates (aka Toprebates),  
3 VX2; (c) installing icons onto computer desktop screens, including some that are sexually explicit icons;  
4 (d) installing tool bars in the browser window; (e) computer slow down; (f) computer crashes (g) loss of  
5 computer data; (h) continuous pop up advertisements that interfere with the use and enjoyment of the  
6 computer and some which interfere with the user's typing on an intended web page by popping up in  
7 front of the screen intended, thereby causing the user to involuntarily click on the pop up which in turn  
8 redirects the user to the defendants' intended web page or unknowingly triggers a download; (i)  
9 monitoring the computer users' web browsing activity and reporting that use back to defendants to use  
10 for advertising purposes. Defendants generally do not disclose the risks involved in downloading their  
11 software and they generally do not obtain permission before downloading it.

12  
13 ***Unauthorized Software Code Download:***

14  
15 11. A web browser, which is used by a computer to locate and view Internet web pages,  
16 serves as a liaison between a computer and the information delivered to the computer through the  
17 Internet. Most web browsers, including the Microsoft Internet Explorer (IE) web browser, generate an  
18 informative message to the user whenever software code is being downloaded to the user's computer  
19 from the Internet. The informative message gives the user the option to authorize or not authorize the  
20 download. By eliminating the informative message normally triggered in web browsers, Defendants have  
21 been able to download and install software code without consumers authorization or knowledge. For  
22 example, on July 17, 2005, 180SearchAssistant software code was unknowingly downloaded onto  
23 Plaintiffs' computer. No informative window of any type, no warning, no disclosure of risks, or request  
24 to accept the download was offered beforehand.

25  
26 12. On many occasions Defendants bundle the software code with other software which is  
27 available for free over the internet. When the computer user downloads the free software they  
28

1 unknowingly also download the defendants' software along with it. For example, ABI Network Aurora  
2 software During all times relevant herein, the software downloaded was done so without the knowledge  
3 or consent of the plaintiffs.

4  
5 13. On other occasions defendants have installed the software through unauthorized "drive by  
6 downloads". Using this method the software is unknowingly downloaded when a computer user  
7 browses a particular website where the computer code automatically downloads and installs by virtue of  
8 browsing the website.

9 14. Once defendants' software is installed, computers are adversely affected in many different  
10 ways as hereinabove set forth and users are plagued with pop up advertisements that invade and obstruct  
11 users' web browsing experience.

12 ***Defendants' failure to provide reasonable means to remove software***

13  
14 15. Defendants prevent its software from being listed in the commonly accessed "All  
15 Programs" or "Programs" list, accessible through the "Start" button on Microsoft Windows. In addition,  
16 Defendants often hide programs in the unlikely "Common Files" folder within Windows (as opposed  
17 to the appropriate and more commonly accessed "Programs Files" folder).

18 16. When users uninstall the program with which the spyware was bundled (e.g., a free desk  
19 top theme), defendant's spyware products remain installed and fully operational. Defendants also  
20 prevent its adware and spyware programs from being listed in the commonly accessed  
21 "Add/Remove Programs" utility in the Microsoft Windows operating system, making  
22 removal even more difficult. Microsoft's "Add/Remove Programs" feature is intended to be used to, and  
23 is the most common mechanism used by consumers, uninstall programs from their computers.

24  
25 17. Defendants have also distributed its programs without also providing its own uninstall  
26 program, again making it difficult, if not impossible, for the average computer user to uninstall the  
27  
28

1 offensive software. Providing an uninstall program with the software is the usual and customary practice  
2 in the software industry, but on many occasions it has not been a practice utilized by defendants.

3 In the rare instance where defendants do allow for the uninstallation of its software, the uninstall often  
4 does not work properly, leaving files and functionality installed. As an example, WEBREBATES (AKA  
5 TOPREBATES) uninstall is located in the Microsoft Add/Remove Directory, but when the user clicks  
6 on it to remove a program an error message comes up stating "Could not find the main class. Program  
7 will exit". The uninstall program is then exited and the average computer user is unable to uninstall the  
8 offensive program. The uninstall never works and the program remains on the user's computer.  
9

10 18. Defendants software code further obstructs removal efforts by defendants' inclusion of  
11 software code that automatically rewrites installation programs that is automatically triggered when the  
12 uninstall program is utilized.

13 19. Defendants further obstruct user software deletion by requiring the user to go to the  
14 defendants' website and download "uninstall" software. As an example, defendant  
15 DIRECTREVENUE'S ABI NETWORK uninstall programs are listed in user's Microsoft Add/Remove  
16 directory. However, when the user clicks on the uninstall button, instead of the program uninstalling,  
17 the user is confronted with a pop up message that instructs the user to go to Defendants' website at  
18 <http://www.mypctuneup.com>, where the user is then told to INSTALL more of defendants' software to  
19 UNINSTALL defendants' offensive programs. Further, before installing defendants' uninstallation  
20 software, the computer user is forced to be bound by defendants' "terms of use" which include various  
21 self serving disclaimers and unfavorable contractual terms .  
22

23 ***Defendants' failure to disclose the risks inherent in downloading their software and failure to obtain  
24 knowing consent from users' before unilaterally downloading software***  
25

26 20. In downloading software it is customary in the industry for the software provider to  
27 provide full risk and use disclosures. It is also customary in the software industry for the provider to  
28 obtain the user's knowing consent to download the software. This is normally achieved before

1 installation of the software by presenting the user with a window that discloses the software provider's  
2 terms of use. In order for the user to proceed to the installation a button must be clicked acknowledging  
3 that the user has read and agrees to the terms of use which includes agreeing to the risks and  
4 consequences of using the software. Defendants do not generally follow the foregoing important  
5 customs and as a result many users end up downloading the offensive software without having any idea  
6 of the risks involved and the nuisances that it causes. Further, in some instances defendants  
7 misrepresent the nuisances and dangers that the software cause. For example, defendants advertise that  
8 their product will not cause any interference with normal daily usage of the computer because only a  
9 "few" pop up messages occur "per day" on the users' screen when, in fact, there are hundreds of pop ups  
10 per day.

11  
12 ***Defendants' false advertising and software product misrepresentations***  
13

14 21. In the event a user finds and reads defendants' terms of use of software, they are falsely  
15 told by defendants that defendants' software will cause occasional (described as only a few a day)  
16 advertisements, to pop up on users' screens. In fact, the pop ups occur as frequently as every minute and  
17 sometimes as quick as simultaneously following the close of another pop up.  
18

19 22. In many of defendants' terms of use they falsely state that users' conduct is not tracked  
20 when, in fact, users' keyboard strokes and web site visits are tracked and reported to defendants for  
21 advertising purposes. Defendants further falsely represent that the software does not cause conflict with  
22 other software, that it does not slow down computer use and that it can be easily uninstalled.  
23

24 ***Defendants unfair and deceptive methods of inducing users to purchase their spyware software***

25 23. Defendants' software and specifically, DIRECTREVENUE'S spyware software, causes  
26 consumers' computer screens to be bombarded with never ending SPYWARE ALERTS that are meant  
27 to and in fact do resemble the legitimate internal Microsoft warnings that would occur if something was  
28 wrong with the users' computer. Defendants warn that if the consumer's computer is slower than usual

1 or if they have never ending pop ups on the screen that their computers may be infected with spyware.  
2 These imitation ALERTS many times cause users to click on the alert intending to correct what is falsely  
3 believed to be something that needs to be corrected. At times the software displays false ALERTS that  
4 WARN the consumer they "may" be being watched and their conduct monitored and they are further  
5 falsely told that purchase of defendants' software will eliminate those problems. In fact, it is defendants  
6 that are watching and tracking consumers' conduct and purchase of the product does not eliminate the  
7 problem. In fact, it is defendants that are causing consumers' computers to slow, crash and be  
8 bombarded with their own advertisements so that the consumer is induced into purchasing defendant's  
9 anti-spyware product to rid the computer of the very problem defendants created. Many consumers are  
10 induced into purchasing defendants' anti-spyware software and other spyware removal software, the cost  
11 of which is estimated per consumer to be approximately \$35.00 and more.  
12

13  
14 ***Defendants unauthorized changes to users' computer browsers***

15 24. Through the use of the web sites, bundling and pop-up advertisements referred to above,  
16 Defendants download and install or have downloaded and installed, without consumers' knowledge or  
17 authorization, software code, which changes users' web browser home page to different web pages that  
18 are either owned by defendants or their clients. While at these web pages Defendants cause more pops  
19 up advertisements to appear and interfere with plaintiffs' computer use by hiding the intended web page  
20 with a barrage of pop up advertisements, some of which are full-page advertisements that require the  
21 user to click on it in order to eliminate it from the screen. In cases where the user is typing into an  
22 intended web page, the pop up advertisement can cause the user to unintentionally type into the pop up  
23 advertisement that can unintentionally cause an unknown offensive download.  
24

25 25. Defendants, through the use of the web sites, pop-up advertisements and unauthorized  
26 software downloads referred to above, cause users' search engines to be replaced by defendants  
27  
28



1 browser search engine, including a search engine known as 7Search.com. Once this type of software is  
2 loaded onto the users' computers, their own search engine is no longer functional because the new  
3 search engine, controlled by defendants, now conducts the searches and superimposes its own results  
4 over the intended search conducted by the computer user. This is sometimes referred to as a hijacking  
5 of the web browser because defendants unauthorized installation of search engine software code caused  
6 the web browser to search defendants' search engine. By hijacking these Internet searches, the new  
7 search engine controls the results that are sent to consumers' computers, including any hyperlinks or  
8 pop-up advertisements.  
9

### 10 CLASS ACTION ALLEGATIONS

11 26. Plaintiffs complain on behalf of themselves and all other persons in the class described  
12 as follows: All computer users with computers who have unknowingly had some of defendants' software  
13 downloaded and installed into the computer. The members of the class are readily ascertainable, but are  
14 so numerous as to make joinder impracticable. There is a well-defined community of interest in the  
15 questions of law and fact involved affecting the parties to be represented. The claims of the  
16 representative parties are typical of the claims of the class. The representative parties will fairly and  
17 adequately protect the interest of the class. Absent a class action, the defendants will continue to  
18 perpetuate these wrongs and will retain the benefits of their wrongdoing.  
19

### 20 FIRST CAUSE OF ACTION 21 UNFAIR, DECEPTIVE ACTS AND PRACTICES 22 Business and Professions Code §17200

23 27. Plaintiffs repeat, reallege and incorporate all paragraphs above as though fully set forth  
24 herein.

25 28. By engaging in the acts and practices described above, Defendants repeatedly and  
26 persistently have engaged in deceptive business practices in violation of Business and Professions Code  
27 §17200.  
28

1           29. Defendants' deceptive business practices mislead a substantial portion of the public,  
2 including named plaintiffs and members of the Class.

3           30. Defendants' deceptive business practices impact the public interest.

4           31. Defendants' unfair and deceptive acts and practices proximately caused injury to  
5 plaintiffs and members of the Class.

6           32. Defendants refuse to discontinue said uses and threaten to and will, unless restrained,  
7 continue to so use plaintiffs' computers as aforesaid, to the irreparable damage of plaintiffs.  
8

9  
10   **SECOND CAUSE OF ACTION**  
11   **Against All Defendants**  
12   **FALSE AND DECEPTIVE ADVERTISING**  
13   **Business and Professions Code§17500**

14           33. Plaintiffs repeat, reallege and incorporate all paragraphs above as though fully set forth  
15 herein.

16           34. By engaging in the acts and practices described above, including those described in each  
17 of the causes of action herein, particularly defendants' false ALERTS and WARNINGS and statements  
18 that their software will cause only a few advertisements a day and that they do not track users' conduct,  
19 and 180SOLUTIONS' false statement that "Our programs are only downloaded with user consent and  
20 opt-in", defendants repeatedly and persistently have engaged in false and deceptive advertising in  
21 violation of Business and Professions Code §17500.  
22

23           35. As a direct result of defendants' conduct plaintiffs and class members were damaged.  
24 Defendants refuse to discontinue said uses and threaten to and will, unless restrained, continue to  
25 so use plaintiffs' computers as alleged herein, to the irreparable damage of plaintiffs.  
26  
27  
28

1  
2  
3 **THIRD CAUSE OF ACTION**  
4 **Against all defendants**  
5 **Public and Private Nuisance**

6  
7 36. Plaintiffs repeat, reallege and incorporate all paragraphs above as though fully set forth  
8 herein.

9 37. Defendants' unauthorized intentional use of plaintiffs' computers interfere with plaintiffs'  
10 use of computer as alleged above and constitute a nuisance, both private and public.

11 38. Defendants refuse to discontinue said uses and threaten to and will, unless restrained,  
12 continue to so use plaintiffs' computers as aforesaid, to the irreparable damage of plaintiffs.

13 39. As a direct result of defendants' conduct as alleged herein, plaintiff and proposed class  
14 members have been damaged by the loss of use of their computers, cost of software to rid their  
15 computers of defendants' offensive downloads and frequent irritating interference with use of their  
16 computers due to nonstop pop up advertisements.

17 **FOURTH CAUSE OF ACTION**  
18 **Against all Defendants**  
19 **Trespass to Chattels**

20 40. Defendants' unauthorized intentional use of plaintiffs' computers interfere with plaintiffs'  
21 use of computer as alleged above and constitute a trespass to chattels.

22 41. By reason of the conduct of the defendants, plaintiffs have been deprived of the use of  
23 their computers and has resulted in damage to the plaintiffs' computers, including, but not limited to  
24 crashing, slowing, nonstop pop up advertisements, and other interfering incidents and also to the extent  
25 that plaintiffs must purchase ant-spyware and anti-adware software to eliminate defendants' offensive  
26 software downloads.  
27  
28

1 42. In making unauthorized downloads on plaintiffs' computers, as herein alleged, defendants  
2 have acted maliciously and they are guilty of wanton disregard of the rights of plaintiffs and by reason  
3 thereof, plaintiffs demand punitive and exemplary damages against defendants.  
4

5 **FIFTH CAUSE OF ACTION**  
6 **Against all Defendants**  
7 **Unjust Enrichment**

8 43. Plaintiffs repeat, reallege and incorporate all paragraphs above as though fully set forth  
9 herein.

10 44. By reason of Defendants' conduct, Defendants have been unjustly enriched at the  
11 detriment of plaintiffs and defendants should be disgorged of all such unjust enrichment.

12 **SIXTH CAUSE OF ACTION**  
13 **Against all Defendants**  
14 **Violation of Civil Code Section 1750 et seq.**

15 45. Plaintiffs repeat, reallege and incorporate all paragraphs above as though fully set forth  
16 herein.

17 46. This cause of action is brought pursuant to the Consumers Legal Remedies Act,  
18 California Civil Code §1750, et seq. (CLRA).

19 **Notice Pursuant to Civil Code Section 1782**

20 47. In compliance with the provisions of California Civil Code section 1782, Plaintiffs  
21 hereby give notice to each Defendant named in and served with this Complaint of their intention to  
22 pursue their claim set forth in this Sixth Cause of Action under California Civil Code section 1750 et  
23 seq. unless Defendants, within 30 days, "correct, repair, replace or otherwise rectify" the consumer fraud  
24 resulting from the misrepresentations, unlawful downloading of software and other unlawful conduct as  
25 herein alleged.

26 48. By reason of defendants conduct as herein alleged, Defendants have violated the  
27 following portions of Civil Code Section 1770(a):  
28

- 1 (1) Passing off goods or services as those of another.  
2 (2) Misrepresenting the source, sponsorship, approval, or  
3 certification of goods or services.  
4 (3) Misrepresenting the affiliation, connection, or association  
5 with, or certification by, another.

6 (5) Representing that goods or services have sponsorship,  
7 approval, characteristics, ingredients, uses, benefits, or quantities  
8 which they do not have or that a person has a sponsorship, approval,  
9 status, affiliation, or connection which he or she does not have.

10 (7) Representing that goods or services are of a particular  
11 standard, quality, or grade, or that goods are of a particular style  
12 or model, if they are of another.

13 (9) Advertising goods or services with intent not to sell them as  
14 advertised.

15 (14) Representing that a transaction confers or involves rights,  
16 remedies, or obligations which it does not have or involve, or which  
17 are prohibited by law.

18 (15) Representing that a part, replacement, or repair service is  
19 needed when it is not.

20 (16) Representing that the subject of a transaction has been  
21 supplied in accordance with a previous representation when it has  
22 not.

23 49. Pursuant to California Civil Code §1780(a)(3), plaintiffs and members of the  
24 proposed class seek restitution of all amounts they have paid to defendants for software to remedy the  
25 problems that defendants' software has caused. Plaintiffs and members of the proposed class further  
26 request this court to award them their costs and reasonable attorneys' fees, pursuant to California Civil  
27 Code §1780 (d). Plaintiffs and members of the proposed class further request this court to enjoin  
28 defendants from continuing to employ the unlawful methods, acts and practices alleged herein, pursuant  
to §1780(a)(2).

50. If, within thirty (30) days after receipt of the Civil Code section 1782 notice  
contained herein above, Defendants have not adequately addressed the misconduct alleged herein,

1 Plaintiffs will seek, by this Cause of Action, relief in the form of a claim for damages and other  
2 appropriate relief under Civil Code § 1780.

3 51. Defendants refuse to cease their unlawful conduct, and threaten to and will, unless  
4 restrained, continue to engage in said unlawful conduct, as aforesaid, to the irreparable damage of  
5 plaintiffs.  
6

7 **SEVENTH CAUSE OF ACTION**  
8 **Against all Defendants**  
9 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE §§22947**

10 52. Plaintiffs repeat, reallege and incorporate all paragraphs above as though fully set  
11 forth herein.

12 53. This cause of action concerns defendants' violations of California's Consumer  
13 Protection Against Computer Spyware Act, cited as Business and Professions §22947.

14 54. By reason of the defendants' conduct as hereinabove alleged, defendants have  
15 violated California's Consumer Protection Against Computer Spyware Act, and particularly Business  
16 and Professions Code § 22947.2 which states, in pertinent part: A person or entity that is not an  
17 authorized user, as defined in Section 22947.1, shall not, with actual knowledge, with conscious  
18 avoidance of actual knowledge, or willfully, cause computer software to be copied onto the computer of  
19 a consumer in this state and use the software to do any of the following: (a) Modify, through  
20 intentionally deceptive means, any of the following settings related to the computer's access to, or use of,  
21 the Internet: (1) The page that appears when an authorized user launches an Internet browser or similar  
22 software program used to access and navigate the Internet. (2) The default provider or Web proxy the  
23 authorized user uses to access or search the Internet. (3) The authorized user's list of bookmarks used  
24 to access Web pages.  
25

26 **And Business and Professions Code §22947.3 sections as follows:**  
27  
28

1 (4) Opening multiple, sequential, stand-alone advertisements in the consumer's Internet browser without  
2 the authorization of an authorized user and with knowledge that a reasonable computer user cannot close  
3 the advertisements without turning off the computer or closing the consumer's Internet browser.

4 (b) Modify any of the following settings related to the computer's access to, or use of, the Internet:

5 (1) An authorized user's security or other settings that protect information about the authorized user for  
6 the purpose of stealing personal information of an authorized user.

7 (2) The security settings of the computer for the purpose of causing damage to one or more computers.

8 (c) Prevent, without the authorization of an authorized user, an authorized user's reasonable efforts to  
9 block the installation of, or to disable, software, by doing any of the following:

10 (1) Presenting the authorized user with an option to decline installation of software with knowledge  
11 that, when the option is selected by the authorized user, the installation nevertheless  
12 proceeds.

13 (2) Falsely representing that software has been disabled.

14 **And Business and Professions Code § 22947.4, as follows:**

15 (a) A person or entity, who is not an authorized user, as defined in Section 22947.1, shall not do any of  
16 the following with regard to the computer of a consumer in this state:

17 (1) Induce an authorized user to install a software component onto the computer by intentionally  
18 misrepresenting that installing software is necessary for security or privacy reasons or in order to  
19 open, view, or play a particular type of content.

20 (2) Deceptively causing the copying and execution on the computer of a computer software component  
21 with the intent of causing an authorized user to use the component in a way that violates any other  
22 provision of this section.

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

**EIGHTH CAUSE OF ACTION**  
**Against all Defendants**  
**INVASION OF PRIVACY AND RIGHT OF ASSOCIATION**

55. Plaintiffs repeat, reallege and incorporate all paragraphs above as though fully set forth herein.

56. By reason of Defendants' conduct as herein alleged, Defendants intentionally and wrongfully intruded upon Plaintiffs' and class members' solitude, seclusion, and private affairs. Plaintiffs and class members had a legitimate and reasonable expectation of privacy and right of association and non-association in commerce with their use of their computers and use of the Internet.

57. Defendants' intrusion upon plaintiffs and class members' privacy and right of association is offensive to the reasonable person and proximately caused injury to plaintiffs and class members.

**NINTH CAUSE OF ACTION**  
**Against all Defendants**  
**EQUITABLE RELIEF**

58. Plaintiffs repeat, reallege and incorporate all paragraphs above as though fully set forth herein.

59. Plaintiffs and class members have no complete, speedy and adequate remedy at law with respect to the continuing trespass to chattels, invasion of privacy and other unlawful conduct perpetrated upon them as herein alleged. Plaintiffs, class members and the general public will suffer continuing immediate, and irreparable injury absent injunctive and equitable relief by this Court.

**TENTH CAUSE OF ACTION**  
**Against all Defendants**  
**FRAUD AND MISREPRESENTATION**

60. Plaintiffs repeat, reallege and incorporate all paragraphs above as though fully set forth herein.

61. Defendants knowingly and /or negligently made and continue to make false



1 statements of material fact. As an example, Defendant, 180 Solutions Privacy Pledge falsely states:  
2 “Our programs are only downloaded with user consent and opt-in” and, in fact, 180SearchAssist is  
3 downloaded before the user is ever given a warning of it being downloaded and it does not provide the  
4 user with any notice or terms of use and it does not allow the user to agree to it being downloaded.  
5 When presented with installing zango (a 180solutions product) the user is presented with a big red  
6 “FREE DOWNLOAD” (see below) and yet no terms of use, privacy policy and no consent form.  
7



19 180SOLUTIONS falsely claims that the user is shown an “average 2-3 targeted ads  
20 per day ...” when the “targeted ads” are more in the neighborhood of 2-3 ads every time the browser  
21 window is changed to a new web page. 180SOLUTIONS and the other defendants install software code  
22 that reads what a user types into the web address bar and returns that information so that it can deliver to  
23 the user a pop ad for advertising purposes.  
24  
25  
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

**PRAYER FOR RELIEF**

WHEREFORE, plaintiffs, on behalf of themselves and all those similarly situated, respectfully request the following relief:

1. That this court certify the proposed class, or such other class or subclasses as the court deems just and proper, appoint named plaintiffs, MATINA DIANE BATTAGLIA and CARES, INC, as Co-representatives of the class, appoint plaintiffs' counsel as class counsel, and order defendants to provide for notice to the class.

2. That this court enters an order disgorging defendants with all monies received as a result of the wrongful conduct as herein alleged;

3. That this court award damages, including, but not limited to, damages for loss of use and enjoyment, diminution in value, and all other damages in an amount to be proven at trial;

4. That this court enters a final order enjoining Defendants from engaging in the wrongful conduct alleged herein;

5. That this court enters a preliminary order enjoining Defendants from engaging in the wrongful conduct alleged herein;

6. That this court enters an award of punitive damages in the amount of \$100,000.00;

7. That this court enter an order awarding attorneys' fees, costs and expenses of suit incurred as provided by applicable law; and,

8. That this court grant such other and further relief as the court deems just and proper.

Dated: Thursday, September 22, 2005

**BRONSON & ASSOCIATES**  
Attorneys for Plaintiffs and Class Members

By:   
MARTHA BRONSON, ESQ.

# **EXHIBIT B**

1 KENNETH E. KELLER (SBN 71450) (kkeller@kksrr.com)  
2 CHRISTOPHER T. HOLLAND (SBN 164053) (cholland@kksrr.com)  
3 LORI L. BEHUN (SBN 202309) (lbehun@kksrr.com)  
4 KRIEG, KELLER, SLOAN, REILLEY & ROMAN LLP  
5 114 Sansome Street, 4<sup>th</sup> Floor  
6 San Francisco, CA 94104  
7 Telephone: (415) 249-8330  
8 Facsimile: (415) 249-8333

9 Attorneys for Defendants  
10 DIRECTREVENUE LLC, THE BEST OFFERS NETWORK, LLC  
11 (formerly known as and named in the complaint as BETTERINTERNET, LLC),  
12 CHRIS DOWHAN and JOSHUA ABRAM

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN JOAQUIN

15 STOCKTON BRANCH

16 CONSUMER ADVOCATES RIGHTS ) Case No.: CV027141  
17 ENFORCEMENT SOCIETY, INC. (CARES, )  
18 Inc.), a California not for Profit Corporation, )  
19 PETER MARTIN, an individual for himself )  
20 and all those similarly situated, MATINA )  
21 DIANE BATTAGLIA, an individual for )  
22 herself and all those similarly situated, )

23 **NOTICE OF FILING OF NOTICE OF**  
24 **REMOVAL**

25 Plaintiffs, )  
26 )  
27 )

28 v. )

180SOLUTIONS, INC., a Washington )  
Corporation, METRICS DIRECT, a )  
Washington Corporation, KEITH SMITH; )  
DANIEL TODD; KENNETH SMITH; )  
DIRECTREVENUE, LLC, a Washington )  
Limited Liability Corporation; CHRIS )  
DOWHAN; JOSHUA ABRAM; BYRON )  
UDELL; BETTERINTERNET, LLC; EXACT )  
ADVERTISING, Does 1 through 50 )  
inclusive, )

Defendants. )  
)  
)

1 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

2 **PLEASE TAKE NOTICE** that Defendants DirectRevenue, LLC, The Best Offers Network,  
3 LLC f/k/a BetterInternet, LLC, Chris Dowhan and Joshua Abram (“Defendants”) filed a Notice of  
4 Removal with the United States District Court for the Eastern District of California. A copy of the  
5 removal notice is attached hereto. Pursuant to 28 U.S.C. § 1446(d), this effects the removal of the  
6 case, and the State Court may proceed no further unless the case is remanded.

7

8 Dated: December 14, 2005

KRIEG, KELLER, SLOAN, REILLEY & ROMAN LLP

9

10

11 By: 

12

LORI L. BEHUN  
Attorneys for Defendants  
DIRECTREVENUE LLC, THE BEST OFFERS  
NETWORK, LLC (formerly known as and named  
in the complaint as BETTERINTERNET, LLC),  
CHRIS DOWHAN and JOSHUA ABRAM

13

14

15

16

17

18

19

20

21

22

23

24

25

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

**PROOF OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am employed in the City and County of San Francisco, State of California, in the office of a member of the bar of this court, at whose direction the service was made. I am over the age of eighteen (18) years and not a party to or interested in the within-entitled action. I am an employee of KRIEG, KELLER, SLOAN, REILLEY & ROMAN LLP, and my business address is 114 Sansome Street, 4th Floor, San Francisco, California 94104.

On November 4, 2005, I caused to be served in the manner indicated below the following documents:

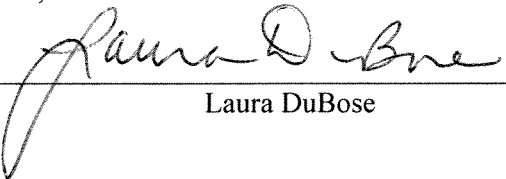
**NOTICE OF FILING OF NOTICE OF REMOVAL**

by:

	<b>MAIL</b> being familiar with the practice of this office for the collection and the processing of correspondence for mailing with the United States Postal Service, and deposited in the United States Mail copies of same to the addresses set forth below, in a sealed envelope, with postage fully prepaid.
	<b>FACSIMILE</b> by personally transmitting same via an electronic facsimile machine between the hours of 9:00 A.M. and 5:00 P.M. to the facsimile number(s) set forth below and the transmission was reported as complete and without error.
<b>X</b>	<b>PERSONAL DELIVERY</b> and personally delivered, or caused to be delivered, same to each of the persons at the addresses listed below or, in the absence of the attorneys named below, by personally delivering the envelope(s) to his/her clerk or the person in charge of the office.
	<b>FEDERAL EXPRESS</b> for delivery the following business day by placing same for collection in the nearest Federal Express Deposit Box or Federal Express Office to the business addresses set forth below.

Martha Bronson  
Bronson & Associates  
15 West 8<sup>th</sup> Street  
Stockton, CA 95207  
Fax: 209-832-5000

Executed on December 14, 2005 at San Francisco, California.

  
\_\_\_\_\_  
Laura DuBose

**PROOF OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am employed in the City and County of San Francisco, State of California, in the office of a member of the bar of this court, at whose direction the service was made. I am over the age of eighteen (18) years and not a party to or interested in the within-entitled action. I am an employee of KRIEG, KELLER, SLOAN, REILLEY & ROMAN LLP, and my business address is 114 Sansome Street, 4th Floor, San Francisco, California 94104.

On November 4, 2005, I caused to be served in the manner indicated below the following documents:

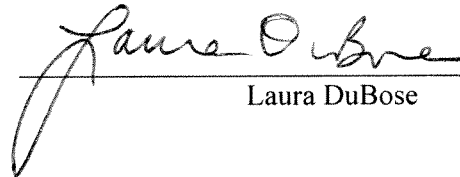
**NOTICE OF REMOVAL**

by:

	<b>MAIL</b> being familiar with the practice of this office for the collection and the processing of correspondence for mailing with the United States Postal Service, and deposited in the United States Mail copies of same to the addresses set forth below, in a sealed envelope, with postage fully prepaid.
	<b>FACSIMILE</b> by personally transmitting same via an electronic facsimile machine between the hours of 9:00 A.M. and 5:00 P.M. to the facsimile number(s) set forth below and the transmission was reported as complete and without error.
<b>X</b>	<b>PERSONAL DELIVERY</b> and personally delivered, or caused to be delivered, same to each of the persons at the addresses listed below or, in the absence of the attorneys named below, by personally delivering the envelope(s) to his/her clerk or the person in charge of the office.
	<b>FEDERAL EXPRESS</b> for delivery the following business day by placing same for collection in the nearest Federal Express Deposit Box or Federal Express Office to the business addresses set forth below.

Martha Bronson  
Bronson & Associates  
15 West 8<sup>th</sup> Street  
Stockton, CA 95207  
Fax: 209-832-5000

Executed on December 14, 2005 at San Francisco, California.

  
\_\_\_\_\_  
Laura DuBose