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 15 Class

16 UNITED STATES DISTRICT COURT
 17 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

18 CARL WALDREP, On Behalf of
 19 Himself and All Others Similarly
 20 Situated,

21 Plaintiff,

22 vs.

23 VALUECLICK, INC., JAMES R.
 24 ZARLEY and SAMUEL J. PAISLEY,

25 Defendants.

) Case No. 2:07-cv-05411
)
) CLASS ACTION
)
) FIRST AMENDED CONSOLIDATED
) CLASS ACTION COMPLAINT FOR
) VIOLATIONS OF THE FEDERAL
) SECURITIES LAWS
)
) JURY TRIAL DEMANDED

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 U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIF.
 LOS ANGELES

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1 Lead Plaintiffs Laborers' International Union of North America National
2 (Industrial) Pension Fund and LIUNA Staff & Affiliates Pension Fund (the
3 "LIUNA Funds" or "Lead Plaintiffs") allege the following based upon the
4 investigation by Lead Counsel, which included, among other things, a review of
5 the defendants' public documents, records from litigation of other claims,
6 documents produced by the Federal Trade Commission ("FTC"), including FTC
7 press releases, conference calls and announcements made by defendants, United
8 States Securities and Exchange Commission ("SEC") filings, wire and press
9 releases published by and regarding ValueClick, Inc. ("ValueClick" or the
10 Company"), and securities analysts' reports and advisories about the Company.

11 Lead Plaintiffs bring this federal securities law class action on behalf of
12 themselves and all other persons and entities, other than defendants and their
13 affiliates as specified below, who purchased or acquired the shares of
14 ValueClick between June 13, 2005 and July 27, 2007, inclusive (the "Class
15 Period"), and were damaged by the conduct asserted herein.

16 **NATURE OF THE ACTION AND OVERVIEW**

17 1. This is a complaint for securities fraud against ValueClick –
18 which provides online advertising campaigns and programs for advertisers
19 and advertising agency customers in the United States and Europe – as well
20 as its Executive Chairman and former Chief Executive Officer, and its Chief
21 Administrative Officer (collectively "Defendants"). As a direct result of the
22 Company's fraudulent actions, ValueClick was required to pay a record **\$2.9**
23 ***million fine*** and subjected to a permanent injunction requiring it to change
24 the manner in which it conducted its online advertising business.

25 2. These claims are based upon Defendants' dissemination of
26 materially false and misleading statements concerning the Company's
27 compliance with laws and standards applicable to its business, and

1 accompanying statements about its business operations, financial results and
2 growth prospects. Specifically, from at least the beginning of the Class
3 Period in June 2005, Defendants have perpetrated multiple illegal and
4 fraudulent practices that created a false impression concerning ValueClick's
5 robust financial results throughout the Class Period.

6 3. The injuries of Lead Plaintiffs and the other members of the
7 Class arise from Defendants' affirmative misrepresentations and knowing
8 concealment from prospective investors of the willful and ongoing violations
9 of federal law governing the conduct of the advertising and promotion
10 business that lie at the heart of ValueClick's business operation. ValueClick
11 earns a substantial part of its income by generating and selling "leads,"
12 including names, email addresses, and other contact information, to
13 customers seeking to market their goods or services. This is what has been
14 generally referred to as the "lead generation" business.

15 4. Using such tricks as false and misleading computer trailer and
16 "pop-up" ads, ValueClick promises "free" gifts to induce innocent victims to
17 complete forms disclosing personal information, such as email and home
18 addresses and telephone numbers. However, rather than provide the "free"
19 gifts, consumers are required, in clear violation of federal law, to make
20 purchases of promoted products before they receive any gift.

21 5. In an even more egregious violation of the law, victims are
22 enticed to provide this information to enter contests offering fantastic prizes,
23 such as cars, trucks and college scholarships, where no prizes are ever
24 awarded. Instead, after the victims' personal information is extracted, the
25 entries are thrown out without any prizes being awarded. The trusting
26 victims assume that someone else won the contests while ValueClick, which
27 does not even bother to purchase these highly touted prizes because they are

1 never awarded, uses their personal information and laughs all the way to the
2 bank.

3 6. In their securities filings and other public statements, Defendants
4 have consistently misrepresented or knowingly failed to disclose the fact that
5 their success has been predicated upon such unlawful actions. Defendants
6 concealed this critical information from the investing public, despite the fact
7 that they knew that the government was viewing their industry with
8 increasing concern and had commenced an investigation of such practices.
9 And as events later proved, the mere existence of such an inquiry, let alone
10 the assertion of a violation, placed the business at risk of both serious
11 government sanctions and abandonment by business customers, who do not
12 want the risk or stigma associated with doing business with such a company.

13 7. Defendants engaged in these illegal and fraudulent practices in
14 order to create the false impression that ValueClick was a healthy, profitable
15 and growing company. Defendants were also motivated by the fact that other
16 companies in the lead generation business had become attractive takeover
17 targets that were acquired for billions of dollars. By concealing their
18 violation of the laws governing their business, they were able to maintain the
19 Company's appeal as a potential acquisition and thereby gain from the
20 resulting inflation in its stock price as investors sought to gain a piece of this
21 attractive business. By perpetrating this fraud, ValueClick was able to
22 consistently increase previous guidance and regularly report financial results
23 that matched or exceeded Wall Street's estimates, fueling a rapid increase of
24 nearly 244% in the Company's stock price during the Class Period. On May
25 18, 2007, after nearly two years of using multiple illegal and fraudulent
26 marketing mechanisms to inflate its earnings, ValueClick's corrupt practices
27 ***began*** to come to light when ValueClick was forced to announce that the

1 Federal Trade Commission ("FTC") was conducting an inquiry to determine
2 whether the Company had violated the FTC Act, 15 U.S.C. § 45(a), and the
3 Controlling the Assault of Non-Solicited Pornography and Marketing Act of
4 2003 ("CAN-SPAM Act"), 15 U.S.C. § 7701 *et seq.* Specifically, the FTC
5 was investigating certain of ValueClick's websites which promised
6 consumers a free gift of substantial value and the manner in which the
7 Company diverted traffic to such websites, in particular, through its use of
8 email. However, the reality was that ValueClick had knowingly and willfully
9 disregarded the mandates of the FTC and the CAN-SPAM Acts, even though
10 Defendants knew that the entire lead generation industry was under
11 increasing suspicion, that the FTC had taken steps to aggressively enforce
12 these statutes against other businesses, and that the FTC had already been in
13 communication with ValueClick for months as part of an existing
14 investigation of other aspects of the Company's operations. Thus,
15 Defendants either knew or were willfully reckless in disregarding that their
16 actions would draw critical scrutiny by the FTC once it examined
17 ValueClick's practices in sending deceptive emails and web advertisements
18 offering bogus contests and "free" gifts that were not free in order to elicit
19 personal consumer information and sell products to unsuspecting consumers
20 trying to collect their "free" gifts.

21 8. Then, on May 22, 2007, the Company filed a Form 8-K
22 disclosing that its lead generation segment accounted for more than 60
23 percent of the Company's Media segment revenue for the quarter ended
24 March 31, 2007, and that the promotion-based sub-category of lead
25 generation, which was the subject of the FTC inquiry, accounted for
26 approximately 30 percent of its Media segment revenue for the quarter ended
27 March 31, 2007.

1 9. Defendants' fraudulent conduct did not end with the public
2 disclosure of the FTC investigation. Upon disclosing this information,
3 beginning with its announcement of the FTC investigation on May 18, 2007,
4 Defendants kicked off a deliberate misinformation campaign – as well as an
5 effort to silence any critics – all designed to conceal ValueClick's past
6 reliance on illicit revenues from illegal practices, including claiming that the
7 Company was "compliant with all current state and federal regulations
8 pertaining to its lead generation activities" as well as "best industry practices"
9 and that the FTC investigation would not negatively impact the Company's
10 forward financial performance. In fact, the Company's promotional lead
11 generation business dropped off dramatically during May and June of 2007,
12 significantly impacting the Company's ability to achieve its inflated earnings
13 targets. Even though Defendants later admitted that they believed that this
14 steep decline was caused, at least in part, by the disclosure of the FTC's
15 investigation, this drop in business was not timely disclosed to the market
16 before the close of the Class Period.

17 10. Then on July 30, 2007 — a month after the end of the second
18 quarter of 2007 — the Company announced quarterly financial results that
19 fell short of what Defendants had forecast and had led the investment
20 community, and through it, the market, to expect. The Company stated that
21 its revenue results were negatively impacted by the Company's promotion-
22 based business, which ValueClick's new CEO, Tom Vadnais, admitted
23 "suffered a downturn that began in late May and became more pronounced in
24 June." *Infra* at ¶ 124. His predecessor, Defendant Zarley, admitted, "We
25 have experienced the publisher fallout. I think some of it is related to just
26 fear on the publisher side to be involved in anything related to the FTC." *Id.*
27 at ¶ 127. As a result, the Company was forced to lower its yearly revenue

1 guidance from a range of \$655 million to \$665 million, down to a range of
2 \$645 million to \$660 million. Additionally, the Company was forced to
3 lower its earnings-per-share ("EPS") guidance for the year, from a range of
4 \$0.79 to \$0.81, down to \$0.74 to \$0.76. On this news, ValueClick's stock
5 plummeted *over \$6 per share* — falling below \$20 per share in intraday
6 trading and wiping out all of its gains for the year. Billions of dollars in
7 market value simply vanished as analysts slashed ValueClick's stock ratings
8 and the Company's *stock price declined precipitously by 42%* from its Class
9 Period high on very high volume.

10 **JURISDICTION AND VENUE**

11 11. The claims asserted herein arise under and pursuant to Sections
12 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and
13 Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

14 12. This Court has jurisdiction over the subject matter of this action
15 pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C.
16 § 1331.

17 13. Venue is proper in this Judicial District pursuant to Section 27 of
18 the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Many of the
19 acts and transactions alleged herein, including the preparation and
20 dissemination of materially false and misleading information, occurred in
21 substantial part in this Judicial District. Additionally, ValueClick's principal
22 place of business is located within this Judicial District.

23 14. In connection with the acts, conduct and other wrongs alleged in
24 this Amended Complaint, Defendants, directly or indirectly, used the means
25 and instrumentalities of interstate commerce, including but not limited to, the
26 United States mails, interstate telephone communications and the facilities of
27 the national securities exchange.

PARTIES

1
2 15. Lead Plaintiff LIUNA Staff & Affiliates Pension Fund (formerly
3 known as Local Union and District Council Pension Fund) purchased
4 ValueClick's securities at artificially inflated prices during the Class Period
5 and has been damaged thereby. During the Class Period, LIUNA Staff &
6 Affiliates Pension Fund purchased 14,400 ValueClick shares for a total price
7 of approximately \$409,316. It sold only 300 ValueClick shares during the
8 Class Period for a slight profit of \$696, and by the end of the Class Period its
9 remaining holdings had declined in value to approximately \$284,226. It sold
10 its remaining holdings in ValueClick after the end of the Class Period and
11 experienced a net loss on the sum of all of its ValueClick transactions.

12 16. Lead Plaintiff Laborers' International Union of North America
13 National (Industrial) Pension Fund purchased ValueClick's securities at
14 artificially inflated prices during the Class Period and has been damaged
15 thereby. During the Class Period, Laborers' International Union of North
16 America National (Industrial) Pension Fund purchased 13,000 ValueClick
17 shares for a total price of approximately \$369,483. It sold no ValueClick
18 shares during the Class Period, and by the end of the Class Period its holdings
19 had declined in value to approximately \$262,063. It sold all of its holdings in
20 ValueClick after the end of the Class Period and experienced a net loss on the
21 sum of all of its ValueClick transactions.

22 17. Defendant ValueClick is a Delaware corporation with its
23 principal place of business located at 30699 Russell Ranch Road, Suite 250,
24 Westlake Village, California. As of May 3, 2007, the Company had more
25 than 99 million shares of its common stock traded on the NASDAQ National
26 Market under the ticker symbol "VCLK."
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18. Defendant James R. Zarley ("Zarley") was, at relevant times, the Company's Chief Executive Officer ("CEO") and Chairman of the Board of Directors. On May 30, 2007, only two weeks after the announcement of the FTC investigation, the Company's Board of Directors elected a replacement CEO. Defendant Zarley currently serves as the Company's Executive Chairman.

19. Defendant Samuel J. Paisley ("Paisley") was, at all relevant times, the Company's Chief Administrative Officer ("CAO"). Prior to being named CAO, Paisley had served in various capacities at ValueClick, including as an Executive Vice President, as Chief Operating Officer-Media, and as Chief Financial Officer.

20. Defendants Zarley and Paisley are collectively referred to hereinafter as the "Individual Defendants." The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of ValueClick's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, i.e., the market. Each Individual Defendant was provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of these Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and misleading. The Individual Defendants are also liable for the false statements

1 pleaded herein, as those statements were each "group-published" information,
2 the result of the collective actions of the Individual Defendants.

3 **I. BACKGROUND FACTS AND THE NATURE OF VALUECLICK'S**
4 **ILLEGAL PRACTICES**

5 21. ValueClick's so-called "lead generation" business was operated
6 through ValueClick's Media segment, which included its WebClients
7 division, and accounted for at least 60% of the segment's revenues and a
8 materially higher portion of its gross profits during the Class Period. The
9 Company's promotion-based sub-category of lead generation, which
10 accounted for almost 30% of its Media segment revenue, utilizes email and
11 Web sites to attract online traffic for the Company's advertising customers
12 by, among other things, promising users "free" gifts of substantial value.

13 22. ValueClick's lead generation business was significantly
14 bolstered by its June 2005 acquisition of the Harrisburg, Pennsylvania-based
15 company WebClients, which became a wholly-owned subsidiary of
16 ValueClick and part of ValueClick's Media segment and merged with
17 ValueClick's pre-existing, smaller lead generation business.

18 23. Given the small number of employees at WebClients, it was not
19 difficult after the acquisition for ValueClick's management to absorb its staff
20 or direct and supervise the conduct of the now combined lead generation
21 business. Reference USA reported in 2006 that WebClients had only 100
22 corporate employees. Hoover's, Inc., a well-known reference source on
23 business accessible on Lexis-Nexis, does not currently state the number of
24 employees at WebClients during the Class Period, but around the time of the
25 filing of this amended complaint it reported that WebClients had only 56
26 employees.

27 24. Likewise, the underlying conduct at issue here – running ad
campaigns involving deceptive and misleading email and web promotions

1 that violated federal law – was *not* the result of the actions of a group of
2 rogue employees from either WebClients or ValueClick acting in defiance of
3 the decisions or instructions of senior management. Instead, it was the
4 product of the course of action embraced by Defendants for managing the
5 Company’s lead generation business, which constituted part of its core
6 operations.

7 25. WebClients quickly became an integral part of the ValueClick
8 business and assumed leadership of its lead generation business. On
9 February 27, 2006, after the acquisition of WebClients, Defendant Zarley
10 publicly stated:

11 *The Webclients team now lead the ValueClick Media lead generation*
12 *business.* And we are consolidating our Media lead generation campaigns
13 into the Webclients technology platform. We believe our lead generation
14 business, which includes Webclients and high speed Media, has become a
15 leader and a major player in this space. Generating millions of leads per
16 month. (Emphasis added.)

17 Less than three months later on May 8, 2006, Defendant Zarley reported, "[i]n
18 the [first] quarter [of 2006], we made excellent progress integrating our
19 offerings, including *completing the full integration [of] WebClients, [and]*
20 *FastClick into ValueClick media*" and by August 1, 2006, Defendant Zarley
21 stated, "[i]n the second quarter [of 2006], *the U.S. media division was working*
22 *as a single unit.*" (Emphasis added.) On February 21, 2007, Defendant Zarley
23 indicated that ValueClick had been "bringing the lead generation products in and
24 having a single sales force assisting in selling those products," and described
25 how all or almost all of ValueClick's lead generation business had been placed
26 under the WebClients' umbrella:
27

1 I think that the success of WebClients has been A) due to the fact that they
2 have a phenomenal technology capability and when we came together we
3 did two things. Well, three actually. We did have some additional
4 inventory that we could pass on to them from other divisions but *we also*
5 *were able to take the current lead generation business that ValueClick*
6 *had and pulled it over to WebClients technology.* The third component
7 was that *we were able to take our 25 – 30 sales reps that we had in*
8 *ValueClick Media display side and have them sell, assist at selling the*
9 *WebClients product.* And what happened as a result is we had very good
10 deal flow. We've been able to, to go out and either build or acquire the
11 content and then the outstanding team that we have in Harrisburg
12 [WebClients' headquarters] along with their technology really executed
13 marvelously on delivering those campaigns that were being sold.
14 (Emphasis added.)

15 26. Confidential Witness ("CW") 1, who was subsequently
16 unmasked by Defendants as Shayne Mihalka ("Mihalka"),¹ has stated that
17 ValueClick's promotional lead generation business involved advertisers
18 paying the Company for its securing of email addresses and other identifiers
19 (or profile information) obtained through various types of ads run by
20 WebClients, including those that flash on the screen, pop-ups and email
21 campaigns.

22 27. In announcing the acquisition, ValueClick touted WebClients as
23 a "leading provider" of online lead-generation marketing services with a
24

25 ¹ Mihalka was employed as an Executive Vice President of Operations from the
26 time of ValueClick's acquisition of Fastclick in September 2005 until at least
27 November 2006. Mihalka designed and operated email and other advertising
media campaigns, including running ads created by the lead generation
department.

1 focus on helping advertisers generate leads using the cost-per-acquisition and
2 cost-per-lead pricing models. ValueClick has also touted WebClients as
3 developing online content that focuses on lead-generation, including more
4 than 100 promotional websites such as
5 www.americanbeautysweepstakes.com, www.hartfordopiniongroup.com,
6 www.designerbag4free.com and guardyourpc.com, as well as industry
7 focused websites such as www.directscholar.com, www.ezrefinance.net and
8 www.opportunity247.com.

9 28. ValueClick's acquisition of WebClients was part of a strategy to
10 control its own internet traffic, and was described by ValueClick's CEO as
11 being synergistic and "a great fit" with ValueClick's existing ValueClick
12 Media, Hi-Speed Media, Commission Junction, Search123 and Pricerunner
13 businesses. ValueClick touted WebClients' promotional online content as
14 something that could be leveraged across its product portfolio and advertiser
15 base, as well as providing a greater scale for its existing lead-generation and
16 email products.

17 29. The acquisition of WebClients was consummated for an
18 aggregate purchase price of approximately \$142.5 million, consisting of cash
19 of \$122.2 million, approximately 1.8 million shares of ValueClick common
20 stock valued at approximately \$18.4 million, stock options valued at
21 approximately \$1.5 million and transaction costs of approximately \$408,000.
22 Over \$109 million of the purchase constituted goodwill. WebClients' Chief
23 Executive Officer, Josh Gray ("Gray"), joined ValueClick's senior
24 management team following the merger and continued to lead the
25 WebClients business after the closing of the transaction along with Vice
26 President of Operations Scott Piotroski ("Piotroski"). Both Gray and
27 Piotroski reported directly to Defendant Zarley.

1 30. According to ValueClick's Form 10-K filed on March 31, 2006,
2 for the three-month period ending September 30, 2005, after ValueClick's
3 acquisition of WebClients, ValueClick reported revenue of \$81,414,000
4 compared to \$43,492,000 for the three-month period ending September 30,
5 2004, an increase of over 87%. Similarly, for the three-month period ending
6 December 31, 2005, the first full quarter after ValueClick's acquisition of
7 WebClients, ValueClick reported revenue of \$116,607,000 compared to
8 \$54,371,000 for the three-month period ending December 31, 2004, an
9 increase of over 114%. Before ValueClick's acquisition of WebClients,
10 ValueClick had never reported a quarterly revenue figure higher than
11 \$54,572,000.

12 31. ValueClick's yearly revenue figure also skyrocketed after its
13 acquisition of WebClients. According to ValueClick's Form 10-K filed on
14 March 1, 2007, for the year ended December 31, 2005, ValueClick reported
15 revenue of \$304,007,000 compared to revenue of \$169,178,000 for the year
16 ending December 31, 2004, an increase of nearly 80%. Similarly, for the
17 year ended December 31, 2006, ValueClick's first full year after its
18 acquisition of WebClients, ValueClick reported a staggering increase in
19 revenue to \$545,616,000. Before ValueClick's acquisition of WebClients,
20 ValueClick had never reported an annual revenue figure higher than
21 \$169,178,000.

22 32. The importance of the addition of WebClients to ValueClick's
23 Media segment revenue, which drove ValueClick's amazing revenue growth
24 detailed above, cannot be understated. According to ValueClick's Form 10-K
25 filed on March 31, 2007, ValueClick reported Media segment revenue of
26 \$64,143,000 for the year ending December 31, 2004, before its acquisition of
27 WebClients. After its acquisition of WebClients, however, ValueClick

1 reported Media segment revenue of \$164,835,000 for the year ending
2 December 31, 2005, and Media segment revenue of \$382,973,000 for the
3 year ending December 31, 2006. In only two short years, ValueClick's
4 Media segment revenue had grown nearly 500%.

5 33. Fueled by these strong financial results, the price of ValueClick
6 stock increased dramatically during the Class Period, from around \$10 at the
7 beginning of the Class Period to nearly \$30 in April 2007, an increase of
8 approximately 200% in less than two years. By all outward appearances,
9 during the Class Period ValueClick was performing extremely well — the
10 Company was reporting that it was consistently meeting or exceeding analyst
11 targets while consistently raising its guidance and reporting record earnings.
12 As was ultimately revealed to unsuspecting investors, however, the
13 Company's strong financial results were premised on illicit marketing
14 practices and, thus, the financial picture of the Company painted during the
15 Class Period was a sham.

16 **II. DETAILS OF VALUECLICK'S FRAUDULENT PRACTICES**

17 34. During the Class Period, ValueClick, through its lead generation
18 business, engaged in a host of illicit marketing practices, including: (1)
19 offering "free" products to consumers that were not actually "free" because
20 the consumer, in order to obtain the "free" product, had to make at least one,
21 and usually, several purchases to acquire the "free" item; (2) running various
22 sham "sweepstakes" offers in order to obtain personal information from
23 entrants for resale to ValueClick's customers, only to throw away all
24 sweepstakes entries without awarding any promised prize; and (3) failing to
25 timely process email "opt-out" requests when consumers asked that their
26 personal information be deleted from the Company's databases, and instead
27 continuing to sell this personal information to advertisers. These practices

1 were designed to, and did, boost ValueClick's revenue and profitability in
2 order to create the false impression that the Company was strong, healthy and
3 growing.

4 **A. Sham Sweepstakes**

5 35. CW2, who was subsequently unmasked by Defendants as
6 Gabriele Bennett ("Bennett"),² told Plaintiffs' representative that part and
7 parcel of the Company's business was its "sweepstakes" campaigns, offering
8 winners major prizes which included a Ford F-150 pick-up truck, a Hummer
9 and even a college scholarship. Entrants in these sweepstakes could mail in
10 forms, or fill out forms online which would supposedly be reviewed and
11 processed by the Company. Copies of sample promotions are attached as
12 Exhibit A.

13 36. Information included on the entrants' forms included names,
14 addresses, and email addresses. These sweepstakes generated a great deal of
15 interest and resulted in at least several hundred thousand entries, which
16 greatly enhanced ValueClick's business.

17 37. An example of a contest promoted on one of the Company's
18 websites is a web page it created for its site DirectScholar.com, which simply
19 states: "Complete the search form and enter your e-mail address below and be
20 automatically entered into our **\$10,000 Scholarship Sweepstakes** from
21 DirectScholar.com." A true and correct copy of this web page is attached as
22 Exhibit B.

23 38. Bennett has stated that, unbeknownst to sweepstakes entrants, as
24 well as ValueClick's investors, the sweepstakes campaigns were phony. No
25

26 ² Bennett was employed as a copywriter at from February 2004 through October
27 2005. Bennett wrote the ads for the Company's marketing campaigns, including
those that offered consumers "free" gifts for clicking on certain ads.

1 drawings were held, and there were no procedures for selecting a winner.
2 Bennett stated that sweepstakes prizes were not purchased or secured by the
3 Company for the winner, as these campaigns were nothing more than a phony
4 gimmick designed to gain the entrants' personal information for resale to
5 ValueClick's advertising customers. Bennett stated that all entry forms
6 received by the Company went into large bags that were not segregated by
7 sweepstakes campaign, and these bags were ultimately disposed of by the
8 Company.

9 39. CW3, who was subsequently unmasked by Defendants as David
10 Rose ("Rose"),³ recalled that the Company conducted a large sweepstakes
11 campaign for consumers to enter to win a free lawn tractor and that
12 employees around the Company laughed about how nobody would ever win
13 such an item. Jordan Rohan, an analyst for RBC Capital Markets, has
14 confirmed that Defendants maintained a number of websites as part of its ad
15 campaigns, including www.freelawntractor.com.

16 40. During Bennett's initial interview by Plaintiffs' representative,
17 she volunteered to look at the Company's current campaigns and to identify
18 which ones were still active without ever having had a winner. Bennett did
19 that and subsequently contacted Plaintiffs' representative to advise that she
20 had reviewed the Company's current ad campaigns in order to provide
21 additional information she considered important. Bennett stated that
22 although she left the Company in October 2005, she was able to confirm that
23 the Company was continuing to post "phony" sweepstakes campaigns in
24 2008 that have been running for several years, by continuing to move the

25
26
27 ³ Rose was employed as a data business manager in ValueClick's WebClients
division during part of 2006. Rose had responsibility for all third-party email
platforms and consulted on internal email platforms.

1 closing dates for these contests forward so as to never hold a drawing or
2 otherwise choose a winner. Bennett voluntarily reviewed the Company's
3 websites and identified at least five sweepstakes campaigns have been
4 running perpetually since the time that Bennett was with the Company: (1)
5 "Remodel4Free"; (2) "Direct Scholar"; (3) "Lenders Avenue"; (4) "College
6 Information Direct"; and (5) "Consumer Opinion Group." Bennett confirmed
7 that, for all five of these sweepstakes campaigns, there has never been a
8 drawing or selection of a winner, the dates of initial and final entry have
9 simply been moved forward, and by moving the entry dates forward all
10 entries submitted before the new entry date were automatically eliminated.
11 On its websites, ValueClick lists the "Start Date" of all five of these
12 campaigns as "1/1/07" and each has an "End Date" of "12/31/08." Each also
13 has a sweepstakes "Prize Value" ranging from \$4,500 to \$10,000. Bennett
14 noted at least two contests that had been running since even before she started
15 working for WebClients in February 2004 and their entry and drawing dates
16 had been moved forward. Bennett also confirmed that a link in the
17 "Sweepstakes Rules" section on the web pages that purported to identify
18 sweepstakes winners and invite users to "click here" for winner information
19 was never operative as there were never any winners.

20 41. Bennett stated that these phony sweepstakes campaigns were
21 conceived of, and directed by, the top managers of WebClients, including
22 Gray, WebClients' former CEO, and Piotroski. As previously noted, Gray
23 and Piotroski both reported directly to Defendant Zarley.

24 **B. Bogus Offers of "Free" Merchandise**

25 42. Perhaps ValueClick's most appalling marketing scam is its
26 promises of "free" gifts that induce innocent victims to complete forms
27

1 disclosing personal information, such as email and home addresses and
2 telephone numbers. Rather than provide these "free" gifts, however,
3 consumers are required, in clear violation of federal law, to make purchases
4 of promoted products before they receive any gift. Such practices are also in
5 violation of the state consumer protection law of ValueClick's home state of
6 California, Cal. Bus. & Prof. Code § 17537, as well as the laws of other
7 states, such as New Jersey's, which provides, "The notification to any person
8 by any means, as a part of an advertising plan or scheme, that he has won a
9 prize and requiring him to do any act, purchase any other item or submit to a
10 sales promotion effort is an unlawful practice and a violation of the
11 [Consumer Fraud] act to which this act is a supplement." N.J. Stat. Ann. §
12 56:8-2.3.

13 43. Rose provided background on the "free" gift promotions at
14 ValueClick. Specifically, Rose stated that ValueClick would advertise such
15 products as flat screen televisions, iPods, iPod Nanos, or other items in
16 demand with substantial value as "free" so long as the consumer provided
17 certain personal information, usually an email address, and answered a
18 number of survey questions. Rose stated, however, that this type of
19 promotion was "basically a scam" to collect consumer information and sell it
20 to advertisers, while making promises that those who clicked on the
21 campaigns would receive the gifts just by completing the survey. Instead of
22 finding that they receive the free gift, Rose stated that consumers would
23 eventually find that they had to make purchases, sometimes even multiple
24 purchases, to qualify for the "free" item being offered. These mandatory
25 purchases often involved magazine subscriptions⁴ or credit card applications
26

27 ⁴ Mihalka confirmed that when consumers opened an email or clicked on an
ad, they were typically put through several stages in which they had to provide

1 requiring both acceptance *and use* of the credit card. Rose stated that, for
2 example, in order to get a "free" plasma television, a consumer was required
3 to sign up with as many as 10 or 12 advertising partners in about 20 steps or
4 pages, and each page required the consumer to input more personal
5 information such as that consumers' name, email address, home address,
6 and/or phone number. Samples of the screen shots for the offer of a "free"
7 plasma television that confirm the multiple transactions that consumers were
8 required to make to get this "free" gift are attached as Exhibit C.

9 44. CW5, who was subsequently unmasked by Defendants as Mary
10 Kate Lawlor ("Lawlor"),⁵ stated that once a new customer was acquired, she
11 prepared information concerning their desired ad campaign and financial
12 requirements, and then forwarded this information to designers, who worked
13 directly with the customers to prepare the ads. Lawlor stated that it was a
14 regular, if not standard practice for consumers to be required to make one or
15 more purchases in order to receive any type of "free" gift from one of the
16 Company's advertising campaigns. Lawlor stated that this was true in both
17 email campaigns where the Company sent thousands of emails to consumers
18 with "free" gift offers in the subject line, as well as in website ads that enticed
19 consumers to click on "free" product offers. Lawlor stated that most of the
20 clients on the accounts she managed were customers who paid on a per-click
21

22
23 information and usually had to buy something — oftentimes a magazine
24 subscription — before they qualified for any "free" gift. A similar claim was
25 asserted against ValueClick by both the Federal Trade Commission and by Wal-
26 Mart, which reported numerous complaints about this from frustrated
27 consumers. *See infra* at 46-47.

⁵ Lawlor was employed as an account executive in ValueClick's WebClients division from October 2006 to May 2007.

1 basis, and in addition the Company derived extra revenue from information
2 provided by the consumer while negotiating through a particular campaign.

3 45. For example, Lawlor stated that she worked on a "free" gift
4 advertising campaign for Applebee's. Consumers fulfilling all of the
5 requirements along the campaign's path would receive a \$500 gift certificate.
6 Lawlor stated that this was one campaign that required consumers to make
7 multiple purchases, and there were so many pages to go through that Lawlor
8 could not understand how anyone would be such an Applebee's fan to endure
9 the campaign let alone make purchases in order to qualify for the "free" gift.
10 A copy of the Applebee's promotion is attached as Exhibit D.

11 46. ValueClick's offers of "free" gift cards were not all made with
12 prior approval or consent of the card issuer whose product was used as the
13 "bait" for these solicitations. The nation's largest retailer, Wal-Mart, sued
14 ValueClick and one of its subsidiaries in 2006. Its amended complaint
15 alleged in part:

16 12. *Defendants send email solicitations containing false or*
17 *misleading phrases in the subject lines* that lead consumers to believe
18 that the email solicitation originates from or is sponsored by Wal-Mart or
19 Sam's Club. *Specifically, Defendants send emails using "Wal-Mart-*
20 *Offer Confirmation" or "Sam's Club / Costco – Offer Confirmation"*
21 *(hereafter "the Email Offers") in the subject line. The prominence of*
22 *the Wal-Mart Marks in the subject line of the Email Offers deceptively*
23 *lures customers into believing that* they have already made a new
24 purchase with Wal-Mart or Sam's Club or *have otherwise qualified for*
25 *something as per the "Offer Confirmation."* (see Exhibit 3). Given that
26 millions of Americans shop at Wal-Mart stores and Sam's Club stores on a
27

1 daily basis, *the Email Offers are a deceptive hook for the unknowing*
2 *consumer.*

3 13. Within the Email Offers, consumers are invited to click on a
4 hyperlink in order to get their "Free" gift card. Consumers, upon clicking
5 through one of the Email Offers or otherwise finding Defendants' Internet
6 Sites, are presented with an image of a shopping card that prominently
7 displays the Wal-Mart Marks (*see* Exhibit 4). This shopping card image,
8 however, was created by Defendants and does not represent any style of
9 gift card that is offered by Wal-Mart. Consumers are thus fraudulently
10 and deceptively confused into thinking that it is an image of an actual
11 Shopping Card offered by Wal-Mart, and that Defendants are somehow
12 affiliated with or related to Wal-Mart.

13 14. *Consumers, upon seeing the Wal-Mart Marks on the fake*
14 *shopping card at Defendants' Internet Sites, are likely to assume that*
15 *Wal-Mart is somehow affiliated with Defendants.* Now hooked and
16 trusting the goodwill of the Wal-Mart Marks, *the consumer must click*
17 *through a series of online promotions that do not lead to a "Free" Wal-*
18 *Mart® store or Sam'sClub® Shopping Card. In order to obtain a*
19 *"Free" Gift Card for Wal-Mart® or Sam's Club® stores, consumers*
20 *must sign-up for no less than six (6) promotions* from companies such as
21 BMG Music, Columbia House®, and others and purchase such products
22 as music CDs, videotapes, or DVDs and other items, *all the while being*
23 *assured that their gift card is on the way.*

24 15. Numerous frustrated consumers have contacted Wal-Mart
25 believing it to be responsible for the "Free" gift card that never
26 materialized from Defendants. These consumers have complained about
27

1 their inability to get a "Free" card and are dismayed and surprised to hear
2 that Defendants are responsible for their consternation and not Wal-Mart.
3 *Wal-Mart Stores, Inc. v. ValueClick, Inc., et al.*, Case No. 05-5189 (W.D. Ark.
4 filed March 9, 2006) (emphasis added).

5 47. Shortly after the filing of Wal-Mart's amended complaint,
6 ValueClick agreed to the entry of a consent judgment and permanent
7 injunction, which was filed on March 24, 2006. However, ValueClick never
8 disclosed in its SEC filings during the Class Period that Wal-Mart, the
9 nation's largest retailer, had charged it with sending misleading emails.

10 48. Other retailers also sued ValueClick or its subsidiaries and
11 marketing affiliates for sending emails that falsely represented or implied that
12 it was the retailer that had sent an email offering "free" goods or services.
13 *See Bed Bath & Beyond Inc. et al. v. Generous Genie, Reward Amazon, VC*
14 *E-Commerce Solutions Network, Namecheap.com, Webbyte Solutions,*
15 *Eyelynx, Inc. and Does 1-10*, Civil Action No. 07-cv-02105-JLL-CCC
16 (D.N.J. filed May 4, 2007). A copy of a sample deceptive email that was
17 attached to that complaint is attached as Exhibit E, and states in relevant part:

18 Subject: Attention Members: Your Bed Bath & Beyond RewardsCard
19 Has Arrived.

20 Bed Bath & Beyond is happy to bring you the best in:

21 Trendy Housewares, High-Quality Towels, Comfortable Bedding,
22 Kitchen Supplies, Techy Gadgets, Bath Luxuries -- And so much more,
23 all your needs available to outfit the modern home.

24 Bed Bath & Beyond appreciates your time and would like to offer you the
25 *MemberRewards* Card! When you signup you get \$1000 in Bed Bath
26 & Beyond exclusive merchandise.

27 Confirm your Email Address to Pickup your BB&B Card.

1 * * *

2 Thank You,
3 Bed Bath & Beyond Member Rewards

4 49. The maker of Louis Vuitton handbags brought suit on November
5 20, 2006 against various entities, including ValueClick's WebClients
6 subsidiary and Gray, for various business torts arising from Defendants'
7 fraudulent practices, alleging in part:

8 Defendants are engaged in the unauthorized use and exploitation of Louis
9 Vuitton trademarks for their own pecuniary gain. *They lure unwitting*
10 *consumers to their websites using the famous Louis Vuitton trademarks*
11 *and, in exchange for the promise of a "free" Louis Vuitton handbag,*
12 *Defendants receive valuable, personal information from the consumer,*
13 *as well as fees.*

14 * * *

15 Plaintiff has demanded that Defendants cease their infringing conduct.
16 *Defendants' typical response is to agree to terminate their infringement*
17 *on one website, while clandestinely opening new websites that engage in*
18 *similar, if not identical, infringements. The new websites are opened*
19 *under different names, thereby making it difficult to trace the new*
20 *website to the Defendants.*

21 * * *

22 *Consumers are likely to be misled* into believing that Defendants'
23 Infringing Activities are authorized by, licensed by, sponsored by or
24 otherwise approved by the Plaintiff.

25 *Louis Vuitton Malletier, S.A. v. WebClients, Inc., et al.*, No. 1:06-cv-12084-RCL
26 (D. Mass. filed Nov. 20, 2006) at 2, 11 (emphasis added). Defendants settled the
27

1 *Louis Vuitton* litigation and joined in a stipulation of dismissal with prejudice
2 filed June 29, 2007.

3 50. This allegation that Defendants were shifting names and
4 corporate affiliations for their websites was borne out by Rose, who stated
5 that in order to conceal the origin of these bogus "free" offers, the Company
6 would set up a "shell corporation" in Delaware or Nevada for each of its
7 "free" gift and sweepstakes websites. Each of the websites was operated
8 under the shell corporation in order to shield the Company's involvement in
9 the scam, as any consumer looking for who was responsible would only be
10 able to track down the name of the shell corporation, and not ValueClick or
11 its WebClients division.

12 51. Bennett stated that there was also a "free" gift campaign tied to a
13 sweepstakes where a consumer could obtain a \$25 Home Depot gift card.
14 Bennett stated that, in the last page of the campaign, after an already
15 exhaustive process, the consumer had to accept at least two out of six offers
16 in order to receive the free gift card. Bennett stated that if one of the offers
17 was for a credit card, the consumer would not only have to obtain the credit
18 card, but would also have to make a purchase with it, and that the credit card
19 would have to be obtained and the purchase made within a certain time
20 period in order to qualify for the "free" gift. According to Bennett, most of
21 the "free" items offered in these advertising campaigns had values that could
22 not justify the rigors of obtaining the items, nor did the value of the "free"
23 item exceed what a consumer would have to spend in order to receive it.

24 52. Rose also stated that it was a common "joke" around the
25 company that "no one was ever getting it," meaning no consumer would ever
26 receive the "free" item promised in the ad campaign because of everything
27 the consumer would have to go through, including everything they would

1 have to sign up for or buy to finally get the "free" gift. Lawlor stated that the
2 Company's "free" gift ad campaigns were "ridiculous" and that Lawlor could
3 not see how consumers would participate in more than one or two campaigns
4 without becoming disillusioned and realizing that there were simply too
5 many things they had to do and buy in order to get to the "free" gift. The fact
6 that these "free" gift offers were designed to elicit personal consumer
7 information for resale, and not to provide the promised gifts, is borne out by
8 the fact that at each stage in the process the Company extracted and
9 immediately sold the information provided by the consumers, and that the
10 percentage of consumers who actually reached the final stage of receiving the
11 promised gifts was infinitesimally small. *See infra* at ¶ 105.

12 53. As further evidence of the defendants' knowledge of this illegal
13 scheme, Rose told Plaintiffs' representative that no campaign, including these
14 campaigns that offered "free" merchandise but actually required multiple
15 purchases, was ever launched by ValueClick's WebClients division without
16 approval from Gray and Piotroski, (As previously noted, both Gray and
17 Piotroski reported directly to Defendant Zarley.) Rose stated that Gray
18 showed Rose how ValueClick's WebClients division would sell the same lead
19 generated by one free product campaign to several advertiser customers for
20 completely different products. According to Rose, Gray's "claim to fame"
21 was taking a 30 cent lead and turning it into \$2.00 or more. Rose repeatedly
22 warned Gray and Piotroski that eventually there would be a sharp drop in
23 revenue because the Company was selling the same leads to the same people,
24 but he was consistently told that as long as the numbers "were good" then
25 "we aren't going to fix what ain't broke."

26 **C. Refusals to Honor Opt-Out Requests**

1 54. ValueClick also refused to honor explicit requests by users to
2 opt-out of the Company's advertising campaigns. Rose stated that, contrary
3 to its legal mandate, and unlike his prior experience working for two other
4 companies in the same industry, ValueClick was not "scrubbing" its emailing
5 lists against any "unsubscribed list" and the Company had no procedure in
6 place to provide its customers with "unsubscribed" lists. Therefore, users that
7 tried to unsubscribe from one of ValueClick's advertising campaigns were
8 unable to do so. Rose stated that while ValueClick did accumulate list of
9 consumers who were seeking to "unsubscribe" from ValueClick's email
10 advertising campaigns, there was no procedure or practice employed to
11 remove those consumers from active emailing lists used for ongoing email
12 advertising campaigns. This allowed ValueClick to continue using these
13 consumers as "leads," even though the consumers had specifically requested
14 to be excluded from further contact.⁶

16
17 ⁶ CW4, who was subsequently unmasked by Defendants as Jason Nab
18 ("Nab"), was a media buyer working for ValueClick in its Westlake Village,
19 California office, from September 2005 until June 2007. After ValueClick
20 acquired WebClients, Nab continued to work out of the California headquarters
21 and worked with the WebClients' team, which was located in Harrisburg,
22 Pennsylvania. Nab worked with publishers that ran advertisements for
23 ValueClick customers. Nab told Plaintiffs' representative that ValueClick was
24 not honoring opt-out requests that it received. Instead, ValueClick continued to
25 "broker out" the consumers' email addresses for a variety of other advertising
26 promotions, forcing the consumer to have to separately attempt to opt-out after
27 receiving each new promotion. Moreover, because ValueClick was not
honoring opt-outs, it was essentially impossible for consumers to "unsubscribe"
from any promotion or terminate further solicitations. Nab further told
Plaintiffs' representative that he was personally familiar with the issue of failing
to honor opt-out requests, explaining that his wife had clicked on a travel
advertisement and provided her email address and received voluminous email
advertisements as a result.

1 55. There can be no bona fide dispute that the leadership of
2 ValueClick was aware of the failure to honor opt-out requests. Rose told
3 Plaintiffs' representative that he specifically raised this compliance issue
4 several times with both Gray and Piotroski. Gray, however, told Rose that
5 the Company made more money from not scrubbing its lists or reporting
6 unsubscribes to its customers, so therefore "we don't really care." Piotroski
7 also indicated to Rose that he "did not care at all." Rose stated that
8 ValueClick's WebClients division was basically a "data collection agency" —
9 collecting large volumes of consumer data en mass and, without scrubbing,
10 giving the data to as many customers as possible as a lead-generator.

11 **III. INCREASING CONCERN ABOUT THE APPLICATION OF THE** 12 **FTC AND CAN-SPAM ACTS TO MISLEADING MARKETING** 13 **AND AGGRESSIVE EMAIL TACTICS**

14 **A. Requirements of the FTC and CAN-SPAM Acts**

15 56. Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. §
16 45(a), makes it unlawful to use unfair methods of competition in or affecting
17 commerce, and unfair or deceptive acts or practices in or affecting commerce.
18 This Section of the FTC Act requires that, in connection with a company's
19 advertising, offering, marketing, and promoting of promised "free"
20 merchandise, that company must *clearly and conspicuously* disclose to
21 consumers the material terms and conditions of its program, including (1)
22 that consumers must pay money or other consideration to participate in the
23 program and (2) the costs and obligations for participating in the program.
24 This Act is enforced by the FTC. In order for the FTC to maintain an action
25 in district court for violation of Section 5, it must establish that the defendant
26 acted "with *actual knowledge* or *knowledge fairly implied* on the basis of
27 objective circumstances that such act is unfair or deceptive." 15 U.S.C. §
45(m) (Emphasis added).

1 57. FTC regulations, specifically 16 C.F.R. § 251.1, provide
2 parameters for use of the word “free” in connection with advertisements. As
3 stated in the regulations, all offers of “free” merchandise “must be made with
4 extreme care so as to avoid any possibility that consumers will be misled or
5 deceived.” When making such “free” offers, the FTC requires that
6 “conditions and obligations upon which receipt and retention of the ‘Free’
7 item are contingent should be set forth *clearly and conspicuously* at the
8 outset of the offer so as to leave no reasonable probability that the terms of
9 the offer might be misunderstood.” (Emphasis added.) As set forth below,
10 the Company’s offer of “free” goods did not comply with the requirement to
11 set forth clearly and conspicuously the terms of all obligations and conditions
12 upon these offers of “free” gifts because the disclaimers used by ValueClick
13 during the Class Period failed to adequately disclose that the Company’s
14 offer of “free” merchandise was actually contingent on the consumer making
15 several purchases or assuming other obligations before receiving any of this
16 purportedly “free” merchandise.

17 58. The CAN-SPAM Act establishes requirements for those who
18 send commercial email, sets forth penalties for spammers and companies
19 whose products are advertised in spam if they violate the law, and gives
20 consumers the right to demand that emailers stop spamming them. The
21 CAN-SPAM Act covers email whose primary purpose is advertising or
22 promoting a commercial product or service, including content on a Web site.
23 The CAN-SPAM Act is enforced by the FTC, the States, certain other federal
24 agencies and internet service providers. 15 U.S.C. § 7706.

25 59. The CAN-SPAM Act specifically prohibits initiating
26 commercial email messages where a subject heading of the message is likely
27 to mislead a recipient. 15 U.S.C. § 7704(a)(2). However, a commercial

1 email message with a misleading subject heading is *not* unlawful unless it is
2 shown that the person initiating that commercial email message "has *actual*
3 *knowledge, or knowledge fairly implied* on the basis of objective
4 circumstances, *that a subject heading of the message would be likely to*
5 *mislead a recipient*, acting reasonably under the circumstances, about a
6 material fact regarding the contents or subject matter of the message." 15
7 U.S.C. § 7704(a)(2) (Emphasis added).

8 **B. Other Enforcement Actions Under the CAN-SPAM and FTC**
9 **Acts for Offers of "Free" Gifts, Misleading Emails, and Failing**
10 **to Honor Opt Out Requests**

11 60. The CAN-SPAM Act went into effect on January 1, 2004. By
12 the beginning of the Class Period in June 2005, Defendants knew or were
13 willfully reckless in disregarding the fact that the government was actively
14 enforcing the FTC and CAN-SPAM Acts – against individuals and
15 companies that offered "free" gifts that were not, in fact, free or sent other
16 misleading emails for business purposes – such that Defendants' practices
17 were likely to generate unfavorable scrutiny.

18 61. For example, in April 2005, the FTC and the State of California
19 sued a group of defendants who since January 1, 2004 – the effective date of
20 the CAN-SPAM Act – initiated hundreds of thousands of commercial email
21 messages. *Federal Trade Comm'n and People of the State of California v.*
22 *Optin Global, Inc.*, CV No. 05-1502-SC (N.D. Cal. filed April 12, 2005). A
23 true and correct copy of that complaint is attached as Exhibit F. A summary
24 of the alleged course of conduct in violation of the CAN-SPAM Act in that
25 case closely paralleled the Defendants' actions here:

26 In numerous instances, Defendants' commercial email messages violate
27 Section 5 of the CAN-SPAM Act, 15 U.S.C. § 7704 (2004). The
messages contain false header information, *fail to notify recipients of*

1 *their opt-out rights, fail to include functioning opt-out mechanisms,*
2 *contain deceptive subject headings,* fail to identify that they are
3 advertisements, and/or fail to include the sender's valid postal address. In
4 addition, *Defendants often continue to send commercial email to*
5 *recipients even after the recipients have requested not to receive any*
6 *future commercial email messages from Defendants.*

7 *Id.* at 7 (Emphasis added).

8 62. On April 13, 2005, the day after the FTC and the State of
9 California filed suit against Optin Global, the FTC issued a press release
10 announcing that it had brought suit and sought an injunction and specifically
11 listing a number of alleged violations under the CAN-SPAM Act, including
12 the use of deceptive subject headings, the failure to notify consumers that
13 they had a right to opt out of receiving the emails and failure to provide an
14 opt-out mechanism, and a failure to provide a valid physical postal address.
15 A true and correct copy of the FTC April 13, 2005 press release is attached as
16 Exhibit G.

17 63. On April 6, 2006, the parties in *Optin Global* filed a stipulation
18 for entry of final judgment and preliminary injunction that consented to entry
19 of a final judgment and permanent injunction that permanently restrained and
20 enjoined the *Optin Global* defendants from violating the CAN-SPAM Act by
21 initiating a commercial email that, *inter alia*, contains a misleading subject
22 heading, fails to include a clear and conspicuous notice of the recipient's
23 opportunity to decline to receive further commercial email messages from the
24 sender, fails to include the sender's valid physical postal address or fails to
25 provide clear and conspicuous identification that the message is an
26 advertisement or solicitation, and imposed \$2,400,000 in statutory and
27 liquidated damages, part of which was conditionally suspended. A true and

1 correct copy of the Stipulation for Entry of Final Judgment and Permanent
2 Injunction and the Final Judgment and Permanent Injunction is attached as
3 Exhibit H.

4 64. When the *Optin Global* consent decree was issued, the FTC
5 issued another press release stating in part:

6 The Federal Trade Commission and the Attorney General of California
7 have brought a permanent halt to an operation that sent millions of spam
8 messages that violated federal and state laws. The settlement will bar
9 future violations of the spam laws, will require the operators to monitor
10 affiliates closely to assure that they are not violating state and federal
11 laws, and requires that they give up approximately \$475,000 in ill-gotten
12 gains.

13 * * *

14 The FTC and California charged that the defendants email:

15 * * *

16 — *included deceptive subject headings;*

17 * * *

- 18 — failed to notify consumers they had a right to opt out of
- 19 receiving more e-mail;
- 20 — failed to provide an opt-out mechanism;
- 21 — failed to include a valid physical postal address.

22 At the agencies' request, the court ordered a temporary halt to the illegal
23 spamming, pending trial, and froze the defendants' assets. The settlement
24 announced today ends that litigation.

25 The settlement bars future violations of the CAN-SPAM Act.
26 Specifically, it *prohibits the defendants from sending commercial e-mail*
27 *that* contains false or misleading headers; *contains misleading subject*

1 defendant from sending emails with deceptive subject headings and failed to
2 include a clear and conspicuous notice of the opportunity to decline to
3 receive further email from the sender. A true and correct copy of the consent
4 decree and order is attached as Exhibit K.

5 67. On March 23, 2006, the FTC issued a press release on the
6 *Jumpstart Technologies* consent decree, which stated in part:

7 An Internet marketer will pay a \$900,000 civil penalty for violating the
8 CAN-SPAM Act, the largest penalty yet for illegal spam, according to the
9 Federal Trade Commission. The company also is permanently prohibited
10 from its unlawful practices, according to a consent decree signed by the
11 company.

12 * * *

13 According to the complaint, Jumpstart *violated provisions of the CAN-*
14 *SPAM* (Controlling the Assault of Non-Solicited Pornography and
15 Marketing) *Act by sending commercial e-mails with false or misleading*
16 *subject and "from" lines*, sending e-mails more than 10 business days
17 after receiving an opt-out request from consumers, not clearly identifying
18 messages as advertising or solicitations, and *not clearly informing*
19 *recipients that they could opt out of receiving more e-mails*. Its unfair or
20 deceptive marketing also violated the FTC Act.

21 (Emphasis added.) A true and correct copy of the March 23, 2006 FTC press
22 release is attached as Exhibit L.

23 68. The FTC was also actively enforcing Section 5 of the FTC Act
24 against businesses making false offers of "free" gifts. For example, in
25 August 2005, the FTC filed suit under Section 5(a) of the FTC Act, 15 U.S.C.
26 § 45(a), and obtained a stipulated final judgment and order for permanent
27 injunction, against a business *offering "free" credit reports that did not*

1 *adequately disclose the associated costs.* *Federal Trade Comm'n v.*
2 *Consumerinfo.com, Inc. d/b/a Experian Consumer Direct, et al.*, CV
3 SACV05-801 AHS(MLGx) (C.D. Cal. filed Aug. 15, 2005). Under the
4 original final judgment, defendants were ordered to make adequate
5 disclosures, *including specifying the size of the font and location of the*
6 *disclosures*, ordered to make full refunds to qualifying consumers, and also
7 make a \$950,000 payment to the government.

8 69. On the day after the complaint and original final judgment were
9 filed, the FTC issued a press release stating that the defendant's "failure to
10 *adequately* disclose" the terms and conditions of its "free" offer constituted a
11 violation of federal law and that the defendant was required "to give up
12 \$950,000 in ill-gotten gains." (Emphasis added.) A true and correct copy of
13 the press release is attached as Exhibit M.

14 70. When the FTC subsequently determined that the defendants later
15 ran television advertisements for two months that the FTC claimed violated
16 the original final judgment, it secured a supplemental stipulated judgment and
17 order for permanent injunction and monetary relief that required an additional
18 \$300,000 payment by defendants. True and correct copies of the complaint,
19 stipulated final judgment and order for permanent injunction, and
20 supplemental stipulated judgment and order for permanent injunction and
21 monetary relief are attached as Exhibits N, O and P, respectively.

22 71. When the supplemental final judgment was filed, the FTC issued
23 another press release stating that the defendants were responsible for "the
24 failure to *clearly* disclose" that persons accepting its "free" offer would be
25 automatically enrolled in a credit-monitoring program and charged \$79.95,
26 and that the defendant was required to pay an additional \$300,000 to settle
27

1 these charges. (Emphasis added). A true and correct copy of this press
2 release is attached as Exhibit Q.

3 **IV. RELEVANT INDUSTRY "BEST PRACTICES"**

4 72. Throughout the Class Period, ValueClick has been a member of
5 the Direct Marketing Association ("DMA"), which adopted a series of
6 standards for business practices entitled "Do the Right Thing: A Guide from
7 the DMA Ethics & Consumer Affairs Department" ("DMA Guide"). A true
8 and correct copy of the DMA Guide is attached as Exhibit R.

9 73. The requirements of the DMA Guide include Article 17, which
10 states in relevant part "If a product or service is offered as 'free,' all
11 qualifications and conditions should be clearly and conspicuously disclosed,
12 in close conjunction with the use of the term 'free' or other similar phrase."
13 Other relevant requirements include Article 8, which states: "A marketing
14 contacts should disclose the name of the sponsor and each purpose of the
15 contact. No one should make offers or solicitations in the guise of one
16 purpose when the intent is a different purpose," and Article 31, which
17 provides in part: "All individual opt-out requests should be honored promptly
18 and as required by law. Marketers should maintain and use their own
19 systems, policies and procedures, including in-house suppression and opt-out
20 lists, and at no cost to consumers refrain from using or transferring such data,
21 as the case may be, as requested by consumers."

22 74. In addition, the DMA Guide sets forth "minimum standards
23 DMA members are required to follow when marketing online" as well as
24 providing examples of "Best practices" "for those marketers wishing to
25 exceed the basic standards." These *minimum* industry standards for online
26 practices include the requirement that an organization maintaining a website
27 should be properly identified, disclose its postal address and provide specific

1 contact information so a visitor can contact the organization for service or
2 information, DMA Guide at 51. The minimum industry standards for email
3 solicitations provide:

4 Solicitations sent via e-mail should disclose the marketer's identity and
5 street address. The *subject and "from" lines should be clear, honest,*
6 *and not misleading*, and the subject line should reflect the actual content
7 of the message so that recipients understand that the e-mail is an
8 advertisement A marketer should also provide specific contact
9 information at which the individual can obtain service or information.

10 DMA Guide at 66 (Emphasis added).

11 75. As set forth below, ValueClick knowingly and consistently
12 disregarded the DMA Guide, including these minimum industry standards, all
13 the while touting its consistent application of "best industry practices."

14 **V. VALUECLICK CONCEALS ITS ILLICIT PRACTICES**

15 76. During the Class Period, ValueClick described its lead
16 generation marketing services in its public filings with the SEC as
17 "manag[ing] online campaigns that generate *qualified* customer inquiries for
18 an advertiser's product or service." ValueClick stated that an "online
19 consumer generates a qualified customer inquiry when he or she responds to
20 the advertiser's offer by providing some personal information (such as their
21 email address, phone number and/or mailing address) and requesting to be
22 contacted by the advertiser." Defendants also stated that "[I]ead generation
23 advertiser customers only pay us *when an online consumer opts in to being*
24 *contacted by the advertiser.*" (Emphasis added.)

25 77. ValueClick's lead generation revenues and profits were reported
26 as part of its Media segment and were not separately broken out. Based on
27 Defendants' representations, the market was misled into believing throughout

1 the Class Period that ValueClick's escalating Media segment revenues and
2 profits were the result of synergies between ValueClick's ad network business
3 and lead generation business, strong demand for its ad network based on a
4 purportedly superior reach and attractive return on investment, and solid
5 business fundamentals.

6 78. As a result of Defendants' false and misleading Class Period
7 statements concerning ValueClick's sales growth, record reported revenues
8 and earnings, strong business fundamentals, upward earnings guidance and
9 compliance with regulatory standards and industry best practices,
10 ValueClick's stock rose precipitously, reaching a Class Period high of over
11 \$35 per share by May 2007. Meanwhile, Defendants concealed from
12 investors that ValueClick's stellar financial performance was due in large part
13 to illegal practices, which when halted (voluntarily or through a regulatory
14 enforcement action), would adversely impact ValueClick's lead generation
15 business, revenues and profits. This was especially material to investors as
16 Defendants knew the lead generation business produced significantly higher
17 gross margins than other components of the Company's Media segment
18 revenue.

19 79. Defendants knew that the Company's practices were illegal and
20 in violation of best industry practices, but represented that all of its practices
21 were consistent with best practices and assumed they would not get caught or
22 prosecuted.

23 80. Throughout the Class Period, Defendants failed to disclose
24 material adverse facts about the Company's financial well-being, business
25 relationships, and prospects. Specifically, Defendants failed to disclose or
26 indicate that: (1) the Company's lead generation practices violated the CAN-
27 SPAM Act and FTC Guidelines; (2) a significant part of the Company's

1 revenues were derived from phony sweepstakes and/or the failure to process
2 consumer opt-out requests in violation of the CAN-SPAM Act; (3) the
3 Company's use of the word "free" in its lead generation emails when multiple
4 purchases were, in fact, required violated FTC Guideline 251.1; (4) the
5 Company's actions violated the terms of the DMA Guide and minimum
6 industry standards, despite defendants' representation that the Company was
7 in full compliance with applicable regulations and industry "best practices";
8 (5) ValueClick made false and misleading representations regarding its lead
9 generation capabilities to investors and potential investors, industry analysts,
10 and customers to increase sales and stock prices during the Class Period; and
11 (6) ValueClick's false, deceptive, and misleading representations were
12 material in that they had a natural tendency to influence, or were capable of
13 influencing, purchasing decisions, and related to the essential characteristics,
14 quality, and/or nature of competing products and commercial activities.

15 81. As a result of Defendants' wrongful acts and omissions, and the
16 precipitous decline in the market value of the Company's securities, Lead
17 Plaintiffs and other class members have suffered significant losses and
18 damages.

19 **VI. FALSE AND MISLEADING STATEMENTS DURING THE CLASS** 20 **PERIOD**

21 82. The Defendants' Class Period statements, which are set forth in
22 ¶¶ 83-103, ¶¶ 109-113 and ¶ 115, *infra*, were materially false and misleading
23 when made because Defendants failed to disclose that the lead generation
24 business, which generated a significant share of the Company's revenues and
25 an even greater proportion of its profits, was predicated upon the intentional
26 or willfully reckless disregard of the legal duties and obligations governing
27 the conduct of this business under the FTC and CAN-SPAM Acts, as well as

1 even minimum industry practices. Defendants' failure to disclose included
2 the following:

3 a. Defendants knew but failed to disclose that the Company's
4 lead-generation practices violated Section 5(a) of the FTC Act, 15 U.S.C.
5 § 45(a), because, among other things, in advertising, offering, marketing
6 and promoting promised "free" merchandise, Defendants failed to clearly
7 and conspicuously disclose to consumers the material terms and
8 conditions of its programs including (1) the costs and obligations for
9 participating in Defendants' program and (2) that consumers must pay
10 money or other consideration to participate in Defendants' program.
11 Defendants' statements were also materially false and misleading in
12 failing to disclose that the Company solicited entries in contests to award
13 prizes in which those prizes were not awarded.

14 b. Defendants' statements were also materially false and
15 misleading because Defendants knew but failed to disclose that they were
16 violating Section 5(a)(2) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(2),
17 because Defendants, with actual or fairly implied knowledge or with
18 deliberate or conscious recklessness, caused ValueClick to initiate email
19 messages with subject headings that were likely to mislead recipients
20 about material facts regarding the contents or subject matter of the
21 message. In addition, Defendants failed to disclose that, in violation of
22 the CAN-SPAM Act, the Company was failing to timely honor opt out
23 requests to avoid receiving further solicitations. Defendants also failed to
24 disclose that the Company's lead-generation practices violated various
25 state statutes regulating falsity or deception in any portion of a
26 commercial email message, such as Cal. Bus. & Prof. Code §
27 17529.5(a)(3) (unlawful for commercial email advertisement message to

1 have "a subject line that a person knows would be likely to mislead a
2 recipient, acting reasonably under the circumstances, about a material fact
3 regarding the contents or subject matter of the message.")

4 c. Defendants' statements were also materially false or
5 misleading because they also failed to disclose that, contrary to their
6 express representation of compliance with both applicable statutory and
7 regulatory requirements and industry "best practices," they violated
8 industry standards, including DMA Guide articles 8, 17 and 31 as well as
9 its minimum industry standards for online and email solicitations.

10 d. Defendants' statements were materially false or misleading
11 because they failed to disclose that they made false and misleading
12 representations regarding ValueClick's lead generation capabilities to
13 investors and potential investors, industry analysts, and customers to
14 increase sales and stock prices during the Class Period and that
15 ValueClick's false, deceptive, and misleading representations were
16 material in that they had a natural tendency to influence, or were capable
17 of influencing, purchasing decisions, and they related to the essential
18 characteristics, quality, and/or nature of competing products and
19 commercial activities.

20 e. Before and during the Class Period, the FTC and other
21 government entities were actively investigating and prosecuting similar
22 violations of these statutes by other individuals and entities, and publicly
23 announcing that they were doing so, including announcing significant
24 consent orders and fines imposed upon suspect businesses. Defendants
25 also knew by November 2006 that the FTC had already contacted the
26 Company in connection with an existing investigation of other matters,
27 which increased the risk that the FTC would choose to expand its inquiry

1 to investigate the Company's compliance with the FTC and CAN-SPAM
2 Acts. Defendants also knew, or were willfully and deliberately reckless in
3 disregarding, that the Company was at great risk of losing clients and
4 resulting revenues when the existence of a government investigation of
5 the Company for violation of these statutes was revealed, regardless of the
6 ultimate outcome of the investigation.

7 83. On June 13, 2005, in a press release entitled "ValueClick to
8 Acquire Web Clients Adding Promotional Websites to Its Product Suite;
9 Company Also Announces Agreement to Acquire E-Babylon to Expand its
10 Printer Cartridge Business and E-Commerce Infrastructure," ValueClick
11 announced that it had agreed to acquire privately held WebClients, a
12 performance-based marketing services company that generated leads for
13 advertisers through its own online content, affiliate network and opt-in
14 database, for approximately \$141 million. ValueClick, which had engaged in
15 due diligence concerning WebClients' business before agreeing to the
16 acquisition, and which kept on its senior management after the acquisition,
17 certainly knew or acted with deliberate or conscious recklessness, that
18 WebClients' lead generation business was predicated upon aggressive and
19 deceptive practices that would violate statutory requirements, let alone fall
20 short of meeting industry "best practices." However, unable to bear close
21 government scrutiny, the Company made no such disclosures to the market.
22 Instead, its press release touted the value, not the inherent risk, presented by
23 this acquisition:

24 Web Clients will give ValueClick immediate scale in promotional
25 and industry-focused online content and will expand the
26 Company's existing lead-generation and opt-in email channels.
27 Web Clients' websites complement ValueClick's Media,

1 Commission Junction, Hi-Speed Media, Search123, and
2 Pricerunner businesses, and can be leveraged across the
3 Company's online marketing services portfolio and advertiser
4 based.

5
6 Web Clients also generates leads for its clients through an affiliate
7 network of more than 1,500 active Website publishers and a
8 database of more than 30 million opt-in email profiles. In 2004,
9 Web Clients served more than 190 clients and generated revenue
10 of approximately \$59 million, was profitable, and generated cash
11 flow from operations. ValueClick anticipates that this acquisition
12 will be accretive on an EBITDA(1) basis.

13 * * *

14 "These transactions are consistent with our strategy to begin to
15 control some of our own traffic. Web Clients' lead-generation
16 products, driven primarily through traffic from its own websites,
17 will be synergistic and a great fit with our ValueClick Media, Hi-
18 Speed Media, Commission Junction, Search123, and Pricerunner
19 businesses," said James Zarley, chairman and chief executive
20 officer of ValueClick. "Web Clients offers promotional online
21 content that we can leverage across our product portfolio and
22 advertiser base, as well as greater scale for our existing lead
23 generation and email products. We look forward to closing Web
24 Clients and capitalizing on the synergies and additional scale they
25 will provide the Company."

26 84. Subsequent to the consummation of the Web Clients'
27 acquisition, on June 27, 2005, ValueClick issued a press release entitled

1 "ValueClick closes Web Clients and E-Babylon Acquisitions and Raises
2 2005 Guidance," stating in relevant part:

3 Web Clients gives ValueClick immediate scale in promotional
4 and industry-focused online content and expands the Company's
5 existing lead-generation and opt-in email channels. Web Client's
6 websites complement ValueClick's Media, Commission Junction,
7 Hi-Speed Media, Search 123, and Pricerunner businesses, and can
8 be leveraged across the Company's advertiser base.

9 * * *

10 "Through a combination of organic growth and prudent
11 acquisitions like Web Clients and E-Babylon, ValueClick is
12 becoming an even larger and more profitable player in online
13 marketing services," said James Zarley, chairman and chief
14 executive officer of ValueClick. "We remain confident about our
15 ability to deliver on our 2005 financial goals and *long-term*
16 *strategy*, and we welcome Web Clients and E-Babylon to the
17 ValueClick family" (Emphasis added.)

18 85. On August 4, 2005, ValueClick hosted a earnings conference
19 call with analysts and investors during which Defendant Zarley stated in
20 relevant part:

21 Also in the news was our acquisition of Web Clients. As we said
22 in prior calls, adding our own traffic and content has been one of
23 our strategic initiatives. Our first move was PriceRunner. We
24 looked for some time to add promotional oriented content and
25 Web Client serviced as the premiere company in this space.
26 We're very excited about this acquisition because we expect
27 strong synergies among our other Divisions, like Commission

1 Junction, and Hi-Speed Media, and our Media Division, as well.
2 Jeff Gray, the leader of Web Clients, is driving the initiatives to
3 work the other Divisional managers in an effort to realize these
4 opportunities.

5 * * *

6 Web Clients, in particular, was a meaningful acquisition because
7 it creates a whole new channel of revenue for our Company.

8 86. On November 1, 2005, Defendants issued a press release entitled
9 "ValueClick Announces Third Quarter 2005 Results; Results Exceed
10 Revenue and Profitability Guidance; 2005 Guidance Raised and Preliminary
11 2006 Guidance Issued." The press release stated in relevant part:

12 ValueClick, Inc. (Nasdaq: VCLK) today reported financial results
13 for the third quarter ended September 30, 2005. Performance in
14 the quarter exceeded the Company's previously issued guidance
15 for revenue, net income per fully diluted common share, and net
16 income before interest, taxes, depreciation, and amortization
17 (EBITDA).

18 * * *

19 "Through execution in our operations and corporate development
20 program, ValueClick has become a true leader in its three
21 principal businesses of display ad networks, lead-generation
22 networks, and affiliate marketing solutions," said James Zarley,
23 chairman and chief executive officer of ValueClick. "Our unique
24 breadth and scale positions us to capitalize on the industry's
25 secular growth, and our new guidance demonstrates our
26 confidence in generating up to one-half billion dollars in revenue
27 and healthy profit margins in 2006."

1 For the quarter ended September 30, 2005, ValueClick reported
2 revenue of \$81.4 million, an increase of \$37.9 million, or
3 87 percent, from revenue of \$43.5 million for the third quarter of
4 2004. Third quarter 2005 results include a full quarter of
5 operations from PriceRunner, acquired in August 2004, and E-
6 Babylon and Webclients, both acquired in June 2005. Fastclick,
7 acquired in late September 2005, was not included in the
8 Company's reported third quarter 2005 operating results.

9
10 Third quarter 2005 income before taxes was \$18.5 million
11 compared to \$9.7 million for the third quarter of 2004. Net income
12 for the third quarter of 2005 was \$11.0 million, or \$0.13 per fully
13 diluted common share, compared to \$7.6 million, or \$0.09 per
14 fully diluted common share, for the third quarter of 2004. Third
15 quarter 2005 EBITDA was \$22.6 million, or 28 percent of
16 revenue, compared to \$11.4 million, or 26 percent of revenue, for
17 the third quarter of 2004.

18 * * *

19 Based on its third quarter results and outlook for 2005, ValueClick
20 is raising its fiscal year 2005 guidance, issued on September 30,
21 2005 in conjunction with the closing announcement of its
22 Fastclick acquisition. The Company's updated guidance is as
23 follows:

24 Fiscal Year 2005	25 Previous Guidance	26 Updated Guidance
27 Revenue	\$291-301 million	\$299-304 million
Diluted net income	\$0.41-0.43	\$0.43-0.45

1 per common share

2 EBITDA \$72.4-74.6 million \$78.0-80.0 million

3 Adjusted-EBITDA \$80.0-82.0 million

4 (EBITDA before

5 stock-based

6 compensation)

7 * * *

8 Additionally, today ValueClick is announcing preliminary guidance for
9 fiscal year 2006:

11 Fiscal Year 2006	Preliminary Guidance
12 Revenue	\$480-500 million
13 Net income per fully	\$0.53-0.59
14 diluted common share	
15 EBITDA	\$120-125 million
16 Adjusted-EBITDA	\$125-128 million

17 (Internal references omitted.)

18
19 87. On November 1, 2005, ValueClick also hosted a conference call
20 with analysts and investors. Discussing ValueClick's third quarter
21 performance, Defendant Zarley stated in relevant part:

22 Our June 2005 acquisition of Web Clients, a leading provider of
23 lead generation services contributed to the Company for the first
24 time this quarter. In addition to Web Clients, other areas of our
25 Company saw increased momentum in lead generation as well.
26 ***We believe this strength is due to our significant scale combined***
27 ***with the increasing use of performance-based online ad***

1 *campaigns by traditional brand advertisers...[a]nd for*
2 *ValueClick the sweet spot is in lead generation.* (Emphasis
3 added.)

4 88. On November 9, 2005, ValueClick filed its Quarterly Report
5 with the SEC on Form 10-Q. The Form 10-Q stated in relevant part:

6 ***Revenue.*** Consolidated net revenue for the three-month period ended
7 September 30, 2005 was \$81.4 million, representing an 87.2% increase
8 over the same period in 2004 of \$43.5 million.

9
10 Media segment revenue increased to \$58.6 million for the three-month
11 period ended September 30, 2005 compared to \$25.0 million for the same
12 period in 2004. The increase of \$33.7 million, or 134.7%, in Media
13 segment revenue was primarily attributable to the acquisitions of
14 Pricerunner in August 2004, E-Babylon in June 2005, and Webclients in
15 June 2005, accounting for \$28.2 million of the increase, and the remaining
16 increase was due to growth in our other U.S. and European media
17 operations...***With the recent acquisitions and the overall growth in***
18 ***online marketing, we expect our Media segment revenue to continue to***
19 ***increase.*** (Emphasis added.)

20 89. On February 27, 2006, Defendants issued a press release entitled
21 "ValueClick Announces Record Revenue And Operating Profitability, Raises
22 2006 Guidance; Company Will Restate Previously Reported Results for 2004
23 Income Tax Adjustment; No Impact on Previously Reported Revenue,
24 Income from Operations, EBITDA or Adjusted-EBITDA." The press release
25 stated in relevant part:

26 ValueClick, Inc. (Nasdaq: VCLK) today reported financial results
27 for the fourth quarter and fiscal year ended December 31, 2005,

1 which included Adjusted-EBITDA and diluted net income per
2 common share performance that exceeded the Company's
3 previously issued guidance.

4 * * *

5 "Our strong fourth quarter capped another successful year for
6 ValueClick," said James Zarley, chairman and chief executive
7 officer of ValueClick. "We generated growth and realized
8 synergies within our Media segment, which includes our recently-
9 acquired Fastclick and Webclients businesses. Additionally, our
10 Affiliate Marketing segment continued to benefit from its market-
11 leading position and strength in online commerce. While we are
12 disappointed that it is necessary to restate previously reported
13 results due to the 2004 income tax adjustment, the fundamentals
14 of our businesses are not impacted and remain strong."

15 * * *

16 For the quarter ended December 31, 2005, ValueClick reported
17 revenue of \$116.6 million, an increase of \$62.2 million, or
18 114 percent, from revenue of \$54.4 million for the fourth quarter
19 of 2004. Fourth quarter 2005 results include a full quarter of
20 operations from: E-Babylon and Webclients, both acquired in
21 June 2005; and Fastclick, acquired in September 2005.

22
23 Fourth quarter 2005 income before taxes was \$24.7 million
24 compared to \$15.9 million for the fourth quarter of 2004. Fourth
25 quarter 2005 Adjusted-EBITDA was \$33.7 million compared to
26 \$17.7 million for the fourth quarter of 2004. Net income for the
27

1 fourth quarter of 2005 was \$13.6 million, or \$0.13 per diluted
2 common share.

3 For the fiscal year ended December 31, 2005, ValueClick reported
4 revenue of \$304.0 million, an increase of \$134.8 million, or
5 80 percent, from revenue of \$169.2 million for fiscal year 2004.
6 Fiscal year 2005 results include seven months of operations from
7 E-Babylon, acquired in June 2005, six months of operations from
8 Webclients, acquired in late June 2005, and three months of
9 operations from Fastclick, acquired in late September 2005. Fiscal
10 year 2004 results include five months of operations from
11 PriceRunner.com, acquired in August 2004, and three months of
12 operations from ValueClick Japan, which was sold in late
13 March 2004.

14
15 Fiscal year 2005 income before taxes and minority interest was
16 \$69.5 million compared to \$47.2 million for fiscal year 2004.
17 Fiscal year 2005 Adjusted-EBITDA was \$85.6 million compared
18 to \$54.7 million for fiscal year 2004. Excluding the one-time gain
19 on the sale in March 2004 of the Company's ownership interest in
20 ValueClick Japan, fiscal year 2004 Adjusted-EBITDA would
21 have been \$46.7 million. Net income for fiscal year 2005 was
22 \$39.7 million, or \$0.44 per diluted common share.

23 * * *

24 Based on its fourth quarter results and outlook for 2006,
25 ValueClick is raising its fiscal year 2006 guidance ranges, issued
26 previously on November 1, 2005:

27

Fiscal Year 2006	Previous Guidance	Updated
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		Guidance
Revenue	\$480-\$500 million	\$490-\$500 million
Adjusted-EBITDA (EBITDA before stock-based compensation)	\$123-128 million	\$125-\$130 million

Additionally, ValueClick is announcing guidance for the first quarter of 2006:

First Quarter 2006	Guidance
Revenue	\$110-\$112 million
Adjusted-EBITDA	\$27-\$28 million

(Internal references omitted.)

90. On February 27, 2006, ValueClick also hosted a conference call with analysts and investors. Discussing ValueClick's fourth quarter full-year 2005 performance, Defendant Zarley stated in relevant part:

This was another strong quarter for the Company in virtually every segment of our businesses. Revenue increased 114% year-over-year to \$116.6 million, at the high end of our guidance range of \$112 to \$117 million. *Our Media segment had strengthened display ads and lead generation campaigns, which was driven in part by synergies related to our most recent acquisitions of Webclients and FastClick.* (Emphasis added.)

* * *

The Media segment had another successful quarter with 177% year-over-year growth...*our lead generation business performed*

1 *well and made good progress on capturing the synergies among*
2 *our Media businesses.* (Emphasis added.)

3 Zarley also stated that Web Clients was now leading ValueClick's Media lead
4 generation business:

5 Webclients has gotten off to a fast start and is leveraging our
6 Media sales force and publisher networks to fulfill their lead
7 generation campaigns. In the quarter we began consolidating the
8 U.S. Media and legacy lead generation business into Webclients.

9
10 The Webclients team now lead the ValueClick Media lead
11 generation business. And we are consolidating our Media lead
12 generation campaigns into the Webclients technology platform.
13 We believe our lead generation business, which includes
14 Webclients and high speed Media, has become a leader and a
15 major player in this space. Generating millions of leads per
16 month.

17 91. On March 31, 2006, ValueClick filed its Annual Report with the
18 SEC on Form 10-K. The Form 10-K stated in relevant part:

19 *Lead Generation Marketing*

20 In our lead generation marketing services, we manage online
21 campaigns that generate qualified customer inquiries for an
22 advertiser's product or service. *An online consumer generates a*
23 *qualified customer inquiry when he or she responds to the*
24 *advertiser's offer by providing some personal information (such*
25 *as their email address, phone number and/or mailing address)*
26 *and requesting to be contacted by the advertiser. Lead*
27

1 *generation advertiser clients only pay us when an online*
2 *consumer opts in to being contacted by the advertiser.*

3 We utilize a number of methods to distribute advertiser lead
4 generation offers, including:

- 5 • Opt-in email lists—where online consumers have agreed to
6 receive advertiser offers through email messages;
- 7 • Co-registration—where online consumers visiting or
8 registering to use a publisher's website are also invited to
9 register for advertisers' offers;
- 10 • Display ads—where publisher partners agree to display online
11 ads focused on generating customer leads for specific offers;
12 and
- 13 • ValueClick owned and operated websites — where we manage
14 websites that host advertiser offers from which users can
15 choose. ValueClick lead generation websites include survey
16 websites, gift card and prize-related websites, and vertical
17 industry category websites such as online continuing education
18 and financial services.

19 * * *

20 **Revenue.** Consolidated net revenue for the year ended
21 December 31, 2005 was \$304.0 million, representing a 79.7%
22 increase over the prior year total of \$169.2 million.

23
24 Media segment revenue increased to \$210.6 million for the year
25 ended December 31, 2005 compared to \$93.3 million for 2004.
26 The increase of \$117.3 million, or 125.7%, in Media segment
27 revenue was primarily attributable to the acquisitions of

1 Pricerunner in August 2004, E-Babylon in June 2005, Webclients
2 in June 2005, and Fastclick in September 2005, accounting for
3 \$86.6 million of the increase.

4 92. On May 8, 2006, Defendants issued a press release entitled
5 "ValueClick Exceeds First Quarter Revenue and Increases 2006 Guidance."
6 The press release stated in relevant part:

7 ValueClick, Inc. (Nasdaq: VCLK) today reported financial results
8 for the first quarter ended March 31, 2006.

9
10 "We began the year on a strong note, as our leadership in the key
11 online marketing areas of media and affiliate marketing translated
12 into year-over-year pro-forma revenue growth of 25 percent," said
13 James Zarley, chairman and chief executive officer of ValueClick.
14 "We are positioned well to benefit from continued growth in
15 online ad spending, and our increased 2006 guidance illustrates
16 our optimism about the industry and our ability to execute
17 throughout the year."

18
19 Reported revenue for the first quarter of 2006 was \$117.3 million,
20 above the Company's previously issued guidance range of \$110-
21 \$112 million and an increase of \$65.9 million, or 128 percent,
22 from revenue of \$51.4 million for the first quarter of 2005. First
23 quarter 2006 results include a full quarter of operations from: E-
24 Babylon and Webclients, both acquired in June 2005; and
25 Fastclick, acquired in September 2005.

1 Income before taxes for the first quarter of 2006 was
2 \$18.1 million, compared to \$14.1 million for the first quarter of
3 2005. First quarter 2006 income before taxes includes
4 approximately \$3.3 million of stock-based compensation expense
5 due primarily to the Company's adoption of Statement of
6 Financial Accounting Standards (SFAS) 123R on January 1, 2006.
7 First quarter 2006 income before taxes also includes
8 approximately \$2.6 million of unanticipated professional service
9 fees, including those associated with the Company's recently-
10 completed restatement of its financial statements as of and for the
11 year ended December 31, 2004 to reflect tax-related corrections.
12 None of these unanticipated expenses were included in the
13 Company's original guidance.

14
15 Adjusted-EBITDA for the first quarter of 2006 was \$27.4 million,
16 an increase of \$11.8 million, or 76 percent, compared to
17 \$15.6 million for the first quarter of 2005. Adjusted-EBITDA was
18 within the Company's previously issued guidance range of \$27-
19 \$28 million, despite the \$2.6 million of unanticipated expenses
20 discussed above.

21
22 Net income for the first quarter of 2006 was \$9.8 million, or \$0.09
23 per diluted common share, compared to \$8.7 million, or \$0.10 per
24 diluted common share, for the first quarter of 2005. First quarter
25 2006 net income includes approximately \$2.4 million of stock-
26 based compensation expense, net of tax, largely due to the
27 Company's adoption of SFAS 123R. This stock-based

1 compensation expense reduced diluted net income per common
2 share by approximately \$0.02.

3 * * *

4 Based on its first quarter results and outlook for 2006, ValueClick
5 is raising its fiscal year 2006 guidance ranges, issued previously
6 on February 27, 2006:

7 Fiscal Year 2006	8 Previous Guidance	9 Updated 10 Guidance
11 Revenue	12 \$490-\$500 million	13 \$495-\$505 14 million
15 Adjusted-EBITDA	16 \$125-130 million	17 \$128-\$131 18 million
19 Diluted net income 20 per common share		21 \$0.46-\$0.48

22 * * *

23 Additionally, ValueClick is announcing guidance for the second
24 quarter of 2006:

25 Second Quarter 2006	26 Guidance
27 Revenue	\$118-\$120 million
Adjusted-EBITDA	\$29-\$31 million
Diluted net income per common share	\$0.11

(Internal references omitted.)

1 the acquisitions of E-Babylon and Webclients in June 2005 and
2 Fastclick in September 2005, and growth in our other U.S. and
3 European media operations.

4 95. On August 1, 2006, Defendants issued a press release entitled
5 "ValueClick Announces Second Quarter 2006 Results; Revenue, Adjusted-
6 EBITDA & Diluted Net Income per Common Share Exceed Guidance;
7 Company Raises 2006 Guidance." The press release stated in relevant part:

8 ValueClick, Inc. (Nasdaq: VCLK) today reported financial results
9 for the second quarter ended June 30, 2006. Revenue, adjusted-
10 EBITDA, and diluted net income per common share for the
11 quarter exceeded previously issued guidance and included record
12 levels of revenue and adjusted-EBITDA. Based on its second
13 quarter performance and outlook, ValueClick also raised its
14 guidance for fiscal year 2006.

15
16 "ValueClick's scale and leadership in key performance-based
17 online marketing services generated another successful quarter of
18 growth and profitability, including 35 percent year-over-year
19 organic revenue growth," said James Zarley, chairman and chief
20 executive officer of ValueClick. "Our increased 2006 guidance
21 and the year-to-date repurchase of close to seven percent of the
22 Company's total shares outstanding illustrate our confidence in
23 ValueClick's competitive position and growth opportunity."
24

25 Revenue for the second quarter of 2006 was a record
26 \$130.0 million, \$10 million above the Company's previously
27 issued guidance range of \$118-\$120 million and an increase of

1 \$75.4 million, or 138 percent, from \$54.6 million for the second
2 quarter of 2005. Second quarter 2006 results include a full quarter
3 of operations from: E-Babylon and Webclients, both acquired in
4 June 2005; and Fastclick, acquired in September 2005. Second
5 quarter 2005 results include one month of operations from E-
6 Babylon.

7
8 Income before income taxes for the second quarter of 2006 was a
9 record \$27.2 million, compared to \$12.1 million for the second
10 quarter of 2005. Second quarter 2006 income before income taxes
11 includes \$3.2 million of stock-based compensation expense, due
12 primarily to the Company's adoption of Statement of Financial
13 Accounting Standards (SFAS) 123R on January 1, 2006,
14 compared to \$45,000 for the second quarter of 2005. Second
15 quarter 2006 income before income taxes also includes net
16 proceeds of \$1.9 million related to a favorable legal settlement.

17
18 Adjusted-EBITDA for the second quarter of 2006 was a record
19 \$36.0 million, above the Company's previously issued guidance
20 range of \$29-\$31 million and an increase of \$22.3 million, or 163
21 percent, from \$13.7 million for the second quarter of 2005.

22
23 Net income for the second quarter of 2006 was \$14.4 million, or
24 \$0.14 per diluted common share, compared to \$6.8 million, or
25 \$0.08 per diluted common share, for the second quarter of 2005.
26 Second quarter 2006 net income includes \$2.3 million of stock-
27 based compensation expense, net of tax, largely due to the

1 Company's adoption of SFAS 123R. This stock-based
2 compensation expense reduced second quarter 2006 diluted net
3 income per common share by \$0.02.

4 * * *

5 Based on its second quarter results and outlook for 2006,
6 ValueClick is raising its fiscal year 2006 guidance ranges, issued
7 previously on May 8, 2006:

8 Fiscal Year 2006	9 Previous Guidance	10 Updated 11 Guidance
12 Revenue	13 \$495-505 million	14 \$519-\$529 15 million
16 Adjusted-EBITDA	17 \$28-\$131 million	18 \$133-\$137 19 million
20 Diluted net income 21 per common share	22 \$0.46-\$0.48	23 \$0.48-0.54

24 * * *

25 Additionally, ValueClick is announcing guidance for the third
26 quarter of 2006:

27 Third Quarter 2006	Guidance
Revenue	\$133-\$135 million
Adjusted-EBITDA	\$33-\$35 million
Diluted net income per common share	\$0.14

(Internal references omitted.)

1 96. On August 1, 2006, ValueClick also hosted a conference call
2 with analysts and investors. Discussing ValueClick's second quarter
3 performance, Defendant Zarley stated in relevant part:

4 In media we had another successful quarter with 231% year-over-
5 year revenue growth...[s]o as you can see, *we're getting good*
6 *traction from the acquisitions we made in 2005. We're clearly*
7 *building on the momentum of an integrated sales force for*
8 *display ads and lead generation products.* (Emphasis added.)

9 Responding to one analyst's question concerning why ValueClick maintained
10 growth when other lead generation companies had been hurting for the first half
11 of 2006, Defendant Zarley attributed the Company's continued lead generation
12 growth to differentiation and WebClients' technology:

13 I think primarily, it would be attributable to the significant sales
14 force that we have in the field that is going in and sitting down
15 with advertisers and designing with them what the best play is for
16 them and how they are going to get the best result; and even
17 putting together campaigns whereby we provide a combination of
18 lead generation display. But I think the differentiating factor is
19 that for one. And in second, I think it's the technology that we
20 acquired when we came together with Webclients. We believe
21 that that's a world class technology and it is actually beating the
22 competition out in the marketplace.

23 97. On August 9, 2006, ValueClick filed its Quarterly Report with
24 the SEC on Form 10-Q. The Form 10-Q stated in relevant part:

25 **Revenue.** Consolidated revenue for the three-month period ended
26 June 30, 2006 was \$130.0 million, representing a 138.3% increase
27 over the revenue in the same period of 2005 of \$54.6 million.

1
2 Media segment revenue increased to \$107.2 million for the three-
3 month period ended June 30, 2006 compared to \$32.9 million for
4 the same period in 2005. *The increase of \$74.3 million, or*
5 *226.2%, in Media segment revenue was primarily attributable to*
6 *the acquisitions of E-Babylon and Webclients in June 2005 and*
7 *Fastclick in September 2005, and growth in our other U.S. and*
8 *European media operations.* (Emphasis added.)

9 98. On November 1, 2006, Defendants issued a press release entitled
10 "ValueClick Announces Third Quarter 2006 Results; Results Exceed
11 Previously Issued Guidance; 2006 Guidance Increased." The press release
12 stated in relevant part:

13 ValueClick, Inc. (Nasdaq: VCLK) today reported financial results
14 for the third quarter ended September 30, 2006. Revenue,
15 adjusted-EBITDA and diluted net income per common share for
16 the quarter exceeded previously issued guidance. *Based on its*
17 *third quarter performance and outlook for the fourth quarter,*
18 *ValueClick increased its guidance for fiscal year 2006.*

19
20 "Our core businesses delivered another strong quarter, as our
21 expertise in monetizing online traffic drove 37 percent year-over-
22 year organic revenue growth and financial performance that
23 exceeded all of our guidance metrics," said James Zarley,
24 chairman and chief executive officer of ValueClick. "Our large-
25 scale network solutions enable our advertiser and publisher clients
26 to benefit from the continued fragmentation of online media
27

1 consumption, and our increased 2006 guidance illustrates our
2 confidence in finishing 2006 on a strong note."

3
4 Revenue for the third quarter of 2006 was a record \$137.9 million,
5 well above the high-end of the Company's previously issued
6 guidance and a 69 percent increase from the third quarter of 2005.
7 Third quarter 2006 results include a full quarter of operations
8 from Fastclick, acquired on September 29, 2005.

9 * * *

10 Adjusted-EBITDA for the third quarter of 2006 was
11 \$35.6 million, above the high-end of the Company's previously
12 issued guidance and an increase of 57 percent from the third
13 quarter of 2005.

14 Net income for the third quarter of 2006 was \$16.8 million, or
15 \$0.17 per diluted common share, compared to \$11.0 million, or
16 \$0.13 per diluted common share, for the third quarter of 2005.
17 Third quarter 2006 diluted net income per common share
18 exceeded the Company's previously issued guidance of \$0.14.

19 * * *

20 Based on its third quarter results and outlook for 2006, ValueClick
21 is raising its fiscal year 2006 guidance ranges, issued previously
22 on August 1, 2006:

23 Fiscal Year 2006	24 Previous 25 Guidance	26 Updated 27 Guidance
Revenue	\$519 - \$529 million	\$531 - \$533 million
Adjusted-EBITDA	\$133 - \$137	\$137 - \$139

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	million	million
Diluted net income	\$0.48 - \$0.54	\$0.57 - \$0.58
per common share		

* * *

Additionally, ValueClick is announcing guidance for the fourth quarter of 2006:

Fourth Quarter 2006	Guidance
Revenue	\$146 - \$148 million
Adjusted-EBITDA	\$38 - \$40 million
Diluted net income	\$0.17 - \$0.18
per common share	

(Internal references omitted.)

99. On November 1, 2006, ValueClick also hosted a conference call with analysts and investors. Discussing ValueClick's third quarter performance, Defendant Zarley stated in relevant part:

ValueClick's third quarter performance was another strong statement about the Company's competitive position. Pro forma organic growth was strong. Reported revenue, adjusted EBITDA and EPS were all above the high end of their respective guidance ranges. Having a broad suite of marketing solutions that monetize online traffic through scale, technological innovation and industry expertise positions our Company to take advantage of the growth opportunities in our industry.

1 Responding to one analyst's question, Defendant Zarley attributed margin
2 growth in lead generation to the Company's ability to exploit synergies, stating
3 in relevant part:

4 I think we've done a pretty good job of integrating and getting
5 basically, I would guess, say the low-hanging fruit. From what
6 we've done in the case of Fastclick, we have been able to increase
7 the gross margins, we've been able to better utilize the traffic. *In*
8 *the case of Webclients, we've gotten great synergy at Webclients*
9 *out of moving all of our CPA lead generation into their*
10 *technology platform and allowing the people in Harrisburg to*
11 *really run all of those campaigns. They have done a wonderful*
12 *job with that.* (Emphasis added.)

13 100. On November 9, 2006, ValueClick filed its Quarterly Report
14 with the SEC on Form 10-Q. The Form 10-Q stated in relevant part:

15 ***Revenue.*** Consolidated revenue for the three-month period ended
16 September 30, 2006 was \$137.9 million, *representing a 69.3%*
17 *increase over total revenue in the same period of 2005 of \$81.4*
18 *million.* (Emphasis added.)

19
20 Media segment revenue increased to \$113.2 million for the three-
21 month period ended September 30, 2006 compared to \$58.6
22 million for the same period in 2005. *The increase of \$54.6*
23 *million, or 93.1%, in Media segment revenue was attributable to*
24 *the organic growth in our U.S. and European media operations,*
25 *primarily from our lead generation business,* and the acquisition
26 of Fastclick in September 2005. The operating results of Fastclick,
27 acquired at the end of September 2005, have not been included in

1 the results of operations for the three-month period ended
2 September 30, 2005. As a result of the integration activities that
3 have occurred subsequent to the acquisition date, we are unable to
4 quantify the revenue directly attributable to Fastclick for the three-
5 month period ended September 30, 2006. (Emphasis added.)
6

7 101. On February 21, 2007, Defendants issued a press release entitled
8 "ValueClick Announced Record Results for Fourth Quarter 2006; Results
9 Exceed Previously Issued Guidance; Company Provides Initial 2007
10 Guidance." The press release stated in relevant part:

11 ValueClick, Inc. (Nasdaq: VCLK) today reported financial results
12 for the fourth quarter and fiscal year ended December 31, 2006.
13 Revenue, adjusted-EBITDA and diluted net income per common
14 share for the quarter exceeded previously issued guidance.

15 *"The successful integration of our 2005 acquisitions helped us*
16 *generate another year of strong performance in 2006, including*
17 *a fourth quarter with 38 percent year-over-year revenue growth*
18 *and record revenue, net income and adjusted-EBITDA," said*
19 *James Zarley, chairman and chief executive officer of*
20 *ValueClick. "The leadership positions we have built in*
21 *performance-based marketing solutions and value-added online*
22 *networks give us confidence to anticipate continued strong*
23 *growth and healthy margins in 2007."* (Emphasis added.)

24 **Fourth Quarter and Fiscal Year 2006 Results**

25 * * *

26 Revenue for the fourth quarter of 2006 was a record
27 \$160.4 million, above the high end of the Company's previously

1 issued guidance and an increase of \$43.8 million, or 38 percent,
2 from \$116.6 million for the fourth quarter of 2005. Fourth quarter
3 2006 results include one month of operations from Shopping.net,
4 acquired in December 2006, which was immaterial.

5 Income before income taxes for the fourth quarter of 2006 was a
6 record \$38.5 million compared to \$24.7 million for the fourth
7 quarter of 2005. Adjusted-EBITDA for the fourth quarter of 2006
8 was a record \$46.1 million, above the high end of the Company's
9 previously issued guidance and an increase of \$12.4 million, or
10 37 percent, from \$33.7 million for the fourth quarter of 2005.

11
12 Net income for the fourth quarter of 2006 was \$22.1 million, or
13 \$0.22 per diluted common share, compared to \$14.2 million, or
14 \$0.14 per diluted common share, for the fourth quarter of 2005.
15 Fourth quarter 2006 diluted net income per common share
16 exceeded the high end of the Company's previously issued
17 guidance range by \$0.04.

18
19 For the fiscal year ended December 31, 2006, ValueClick reported
20 revenue of \$545.6 million, an increase of \$241.6 million, or
21 79 percent, from revenue of \$304.0 million for fiscal year 2005.
22 Assuming acquisitions in 2005 and 2006 had been completed on
23 January 1, 2005, year-over-year organic revenue growth was
24 34 percent for fiscal year 2006.

25 * * *

26 Today, ValueClick is providing its initial fiscal year 2007
27 guidance ranges:

Fiscal Year 2007	Initial Guidance
Revenue	\$645 - \$665 million
Adjusted-EBITDA	\$175 - \$180 million
Diluted net income per common share	\$0.78 - \$0.80

* * *

Additionally, ValueClick is announcing guidance for the first quarter of 2007:

First Quarter 2007	Guidance
Revenue	\$148 - \$149 million
Adjusted-EBITDA	\$38 - \$39 million
Diluted net income per common share	\$0.17

(Internal references omitted.)

102. On February 21, 2007, ValueClick also hosted a conference call with analysts and investors. Discussing ValueClick's fourth quarter and full-year 2006 performance, Defendant Zarley stated in relevant part:

The Fourth Quarter was another strong year for the Company. Fourth Quarter revenue, adjusted EBITDA, and EPS all beat the high end of our guidance ranges. *We continued to benefit from the integration of our 2005 acquisitions, execution, and leadership positions in performance marketing solutions.*

(Emphasis added.)

Responding to one analyst's question, Defendant Zarley continued to attribute the Company's success in lead generation to the Company's ability to exploit synergies, stating in relevant part:

1 ...I think the success of WebClients has been A) due to the fact
2 that they have a phenomenal technology capability and when we
3 came together we did two things. Well, three actually. We did
4 have some additional inventory that we could pass on to them
5 from other divisions *but we also were able to take the current*
6 *lead generation business that ValueClick had and pulled it over*
7 *to WebClients technology.* The third key component was that we
8 were able to take our 25-30 sales reps that we had in ValueClick
9 Media display side and have them sell, assist at selling the
10 WebClients product. *And what happened as a result is we had*
11 *very good deal flow. We've been able to, to go out and either*
12 *build or acquire the content and then the outstanding team that*
13 *we have in Harrisburg along with their technology really*
14 *executed marvelously on delivering those campaigns that were*
15 *being sold.* (Emphasis added.)

16 103. On March 1, 2007, ValueClick filed its Annual Report with the
17 SEC on Form 10-K. The Form 10-K stated in relevant part:

18 **Lead Generation Marketing**

19 Our lead generation capabilities have been developed organically
20 and through acquisitions, including the acquisitions of HiSpeed
21 Media in December 2003 and Webclients in June 2005. We
22 believe we are one of the largest providers of lead generation
23 marketing services.

24
25 In our lead generation marketing services, through our proprietary
26 technology platforms, we manage online campaigns that generate
27 qualified customer inquiries for an advertiser's product or service.

1 *An online consumer generates a qualified customer inquiry*
2 *when he or she responds to the advertiser's offer by providing*
3 *some personal information (such as their email address, phone*
4 *number and/or mailing address) and requesting to be contacted*
5 *by the advertiser. Lead generation advertiser customers only*
6 *pay us when an online consumer opts in to being contacted by*
7 *the advertiser.* (Emphasis added.)

8 We utilize a number of methods to distribute advertiser lead
9 generation offers, including:

- 10 • Opt-in email lists—where online visitors have agreed to
11 receive advertiser offers through email messages;
- 12 • Co-registration—where online parties visiting or registering to
13 use a publisher's website are also invited to register for
14 advertisers' offers;
- 15 • Display ads—where publisher partners agree to display online
16 ads focused on generating customer leads for specific offers;
17 and
- 18 • ValueClick owned and operated websites — where we manage
19 websites that host advertiser offers from which visitors can
20 choose. ValueClick lead generation websites include survey
21 websites, gift card and prize-related websites, and vertical
22 industry category websites such as online continuing education
23 and financial services.

24 * * *

25 **Revenue.** Consolidated revenue for the year ended December 31,
26 2006 was \$545.6 million, representing a 79.5% increase over the
27 prior year total of \$304.0 million.

1 Media segment revenue increased to \$383.0 million for the year
2 ended December 31, 2006 compared to \$164.8 million for 2005.
3 The increase of \$218.1 million, or 132.3%, in Media segment
4 revenue was primarily attributable to the acquisitions of E-
5 Babylon in June 2005, Webclients in June 2005, and Fastclick in
6 September 2005, and growth in our other U.S. and European
7 media operations. As a result of the integration activities related
8 to these acquisitions, we are unable to quantify the revenue
9 directly attributable to these acquired businesses for the year
10 ended December 31, 2006.

11 104. On April 26, 2007, RBC Capital Markets issued a research
12 report and ratings revision on ValueClick, raising its risk rating for
13 ValueClick to the highest level "Speculative Risk." A true and correct copy
14 of the April 26, 2007 RBC Capital Markets report is attached as Exhibit S.

15 105. The RBC Capital Markets report summarized its Company
16 Update as follows:

17 **Net:** We believe growth in VCLK's lead generation revenue is
18 unsustainable for three reasons: 1) *Increased regulatory inquiry into*
19 *highly-incentivized lead-gen techniques across the industry* at the
20 state/federal levels; 2) Advertisers are becoming smarter about lead
21 quality; 3) *VCLK's incentivized practices may run afoul of the*
22 *DMA/IAB best practices* and could be deemed improper, despite
23 complying with current regulations. The company asserts that it is not
24 currently facing investigation by any legislative groups, but we believe
25 that the entire industry could be under scrutiny in 2H07.

26 * * *

1 • **Growth from Unsustainable, Aggressive Marketing Tactics:**

2 We believe that lead-gen activities represent one-third of VCLK
3 revenue and that the following tactics may not be sustainable: 1)
4 Using the word "free" when multiple purchases are required,
5 possibly in violation of FC Guideline 251.1, 2) Using lengthy
6 surveys to generate email addresses (personally identifiable
7 information) for resale to marketers without sufficient disclosure ...
8 3) Pervasive trademark infringement, as alleged in a lawsuit by
9 Wal-Mart against VCLK's WebClients unit (settled March 2006),
10 4) Lack of fulfillment of incentives for consumers who have
11 completed eligibility requirements, which may violate Direct
12 Marketing Association rules.

13 • **Writing on the Wall – Inquiries May Drive Reform:** There are
14 ongoing investigations into companies in the incentivized lead
15 generation space by legislative/regulatory groups, including the
16 FTC, state Attorneys General, and the House Subcommittee on
17 Consumer Protection. *VCLK management maintains that it is not*
18 *under investigation, and that its general counsel ensures that*
19 *lead-gen editorial and creative assets comply with current laws.*
20 (Emphasis added.)

21 106. The RBC report continued:

22 When we expressed our concerns with the company, ValueClick
23 management claimed it is not currently the subject of any formal inquiry
24 or investigation. That said, *we believe that the Federal Trade*
25 *Commission*, the House Subcommittee on Consumer Protection, and
26 some state attorneys general *are seeking to impose fines* and legislative
27 reforms *for those companies who improperly use the word "free" in*

1 *marketing promotions, and those who aggressively re-sell personally*
2 *identifiable information such as email addresses without adequate*
3 *disclosure. We believe ValueClick's WebClients division uses these*
4 *tactics*, and have highlighted many examples of such practices in this
5 report. A final concern is the frequent unauthorized use of trademarks
6 belonging to major consumer goods and retail companies.

7 * * *

8 **Lead Generation Has Good Players and Bad Ones**

9 This report is not intended to indict the entire practice of online lead
10 generation. Rather, *we believe ValueClick has a particularly aggressive*
11 *and entrepreneurial business unit* based in Harrisburg, Pennsylvania that
12 *utilizes techniques that run afoul of the best practices promoted by the*
13 *Direct Marketing Association*, the Interactive Advertising Bureau, and
14 other organizations. We recognize that there are many other companies in
15 the industry who play by the rules.

16 * * *

17 **Highly Incentivized Lead Generation**

18 Below is a visual illustration of the highly-incentivized lead generation
19 business model. On the one side there is the unsuspecting consumer who
20 responds to an ad for a free product (a flat screen TV or a lawn tractor, for
21 instance). On the complete other side of the spectrum is the ROI-focused
22 marketer who is ultimately trying to reach the consumer. The
23 intermediaries that sit in between are earning massive margins (in the
24 +50% range in some cases) by driving traffic through incentives (that
25 generally are never achieved by the consumer) to landing pages full of
26 offers for different goods and services.

27

1 The chain of events typically flows this way:

- 2 1) A consumer sees an online advertisement that offers a free give-
3 away of some variety (iPods, plasma TVs, even washers and
4 dryers) and clicks on the ad;
- 5 2) The consumer is then taken to a landing page owned and
6 operated by a lead generation intermediary, where he/she is
7 asked to fill out personal information (name, address, email,
8 credit card information) in order to collect the free gift;
- 9 3) The consumer is then generally directed down a registration path
10 or a survey path. On a registration path, he/she must agree to
11 sign up for several different offers in order to get the free item
12 (could be products or services such as a new credit card or a trial
13 subscription), in some cases over a dozen different offers. On
14 the survey path, the same is true, but the lead generation
15 company collects more personally identifiable information
16 including an email address and credit card.
- 17 4) The lead generation intermediary then takes all the consumer's
18 information and sells it as a lead to many online marketers.

19 In some extreme cases, the user must also refer others who then complete
20 all of the eligibility requirements in order for the first consumer to receive
21 the incentive gift. The "breakage" rate, or rate at which the consumer
22 does not complete the full sign-up process, in these extreme cases is close
23 to 100%. In other words, the intermediary collects the personal
24 information, sells the leads to many different online marketers, and never
25 has to deliver any gifts back to the consumer. Obviously, the consumer
26 may feel cheated, abused, and deceived. (Emphasis added.)

27

1 107. The RBC Capital Markets research report further noted that it
2 had "found many dozens" of sites owned by ValueClick that "utilize the
3 overly-aggressive marketing practices."

4 108. The next day, April 27, 2007, another commentator, Jason Jones,
5 characterized the RBC Capital Markets report as "arguing that Valueclick's
6 WebClients business engages in sleazy practices that may violate DMA/IAB
7 guidelines and, therefore, invite regulatory scrutiny," and Jones then warned
8 "Something is going on here. This is the second time I have heard about FTC
9 inquiries into lead gen" and then listed several companies, including
10 ValueClick that this "it could potentially be bad for."

11 109. On May 2, 2007, Defendants issued a press release entitled
12 "ValueClick Announces First Quarter 2007 Results; Results Exceed
13 Previously Issued Guidance; Company Raises 2007 Outlook." Therein, the
14 Company, in relevant part, stated:

15 ValueClick, Inc. (Nasdaq: VCLK) today reported financial results
16 for the first quarter ended March 31, 2007. Revenue, adjusted-
17 EBITDA and diluted net income per common share for the quarter
18 exceeded previously issued guidance.

19
20 ***"The first quarter was a great start to 2007 for ValueClick, with***
21 ***34 percent revenue growth and all segments performing above***
22 ***plan,"*** said James Zarley, chairman and chief executive officer of
23 ValueClick. ***"We continue to differentiate ourselves through a***
24 ***unique combination of technology, process, relationships, and***
25 ***our constant focus on industry best practices. The fundamentals***
26 ***of our businesses are strong, and I am confident in our ability to***
27

1 *deliver strong growth and profitability in 2007."* (Emphasis
2 added.)

3
4 Revenue for the first quarter of 2007 was \$156.9 million, above
5 the high end of the Company's previously issued guidance and an
6 increase of \$39.6 million, or 34 percent, from \$117.3 million for
7 the first quarter of 2006. First quarter 2007 results include three
8 months of operations from Shopping.net, acquired in
9 December 2006. Year-over-year pro-forma organic revenue
10 growth was 33 percent in the first quarter of 2007.

11
12 Income before income taxes for the first quarter of 2007 was
13 \$32.1 million compared to \$18.1 million for the first quarter of
14 2006. Adjusted-EBITDA for the first quarter of 2007 was \$41.0
15 million, above the high end of the Company's previously issued
16 guidance and an increase of \$13.7 million, or 50 percent, from
17 \$27.4 million for the first quarter of 2006.

18
19 Net income for the first quarter of 2007 was \$18.6 million, or
20 \$0.18 per diluted common share, compared to \$9.8 million, or
21 \$0.09 per diluted common share, for the first quarter of 2006. First
22 quarter 2007 diluted net income per common share exceeded the
23 Company's previously issued guidance by \$0.01.

24 * * *

25 *Based on its first quarter and outlook for 2007, ValueClick is*
26 *raising its fiscal year 2007 guidance ranges,* issued previously on
27 February 21, 2007:

Fiscal Year 2007	Previous Guidance	Updated Guidance
Revenue	\$645 - \$665 million	\$655 - \$665 million
Adjusted-EBITDA	\$175 - \$180 million	\$177 - \$182 million
Diluted net income per common share	\$0.78 - \$0.80	\$0.79 - \$0.81

* * *

Additionally, ValueClick is announcing guidance for the second quarter of 2007:

Second Quarter	Guidance
Revenue	\$157 - \$159 million
Adjusted-EBITDA	\$40 - \$42 million
Diluted net income per common share	\$0.17 - \$0.18

110. On May 2, 2007, ValueClick also hosted a conference call with analysts and investors. While the questions raised by the April 26, 2007 RBC Capital Markets research report were certainly relevant to the ensuing discussion, Defendants consistently and emphatically rejected these charges as they continued to assure the investing public that they were fully compliant with all legal requirements and best industry practices. Discussing ValueClick's first quarter 2007 performance, Defendant Zarley stated in relevant part:

ValueClick's first quarter was a strong start to the year. Q1 revenue, adjusted EBITDA and EPS all beat the high end of our

1 guidance ranges. We continue to benefit from our scale and
2 breadth in performance market solutions.

3 * * *

4 ***Lead generation continues to grow, thanks to our long-standing***
5 ***leadership position in both performance and industry practices.***
6 ***I have been saying this for over a year, but I think it's worth***
7 ***repeating, given some of the recent speculation. Our growth in***
8 ***lead generation is driven by our focus on high-quality leads.***
9 Lead generation has been a part of online advertising from the
10 very beginning. These products are driven by demand from our
11 advertisers and are paid for on a cost-per-action basis. So if we're
12 not meeting the ROI expectations, the demand would not be there.
13 Some of these products are very similar to offline direct marketing
14 offers with one key exception; our advertisers only pay when they
15 get a qualified lead. ***As in any business, there may be a few bad***
16 ***actors in the promotional area, which is only a portion of the***
17 ***sector, and I anticipate, as they're filtered out, that the overall***
18 ***opportunity in lead generation could increase.*** (Emphasis
19 added.)
20

21 We are currently members of the DMA and the IAB and we are a
22 participating member in the IAB Lead Generation Committee.
23 ***We consistently apply best practices, technology and customer***
24 ***service to deliver quality leads to our advertisers. We believe our***
25 ***disclosure and privacy policies comply with all federal and state***
26 ***guidelines, and we have a legal team and a compliance team in***
27 ***place to monitor these practices.*** (Emphasis added.)

1 111. Responding to an analyst's question concerning whether
2 ValueClick offers a product for "free" when in fact eight or ten purchases are
3 required to obtain the "free" product, Defendant Paisley stated in relevant
4 part:

5 *And all matters considered, we have concluded that we are fully*
6 *compliant in our business practices. And as Jim [Zarley]*
7 *mentioned earlier, our business continues to grow and*
8 *advertisers are pleased with our product.* (Emphasis added.)

9 112. At the same conference in responding to another analyst's
10 question about a note suggesting ValueClick was engaging in "*aggressive*
11 *lead generation practices*," Zarley flatly stated, "*we have not been involved*
12 *in that.*"

13 113. On May 8, 2007, ValueClick filed its Quarterly Report with the
14 SEC on Form 10-Q. The Form 10-Q stated in relevant part:

15 Consolidated revenue for the three-month period ended March 31,
16 2007 was \$156.9 million, representing a 33.8% increase over the
17 same period of 2006 of \$117.3 million.

18 Media segment revenue increased to \$108.4 million for the three-
19 month period ended March 31, 2007 compared to \$79.4 million
20 for the same period in 2006. The increase of \$29.0 million, or
21 36.6%, in Media segment revenue was attributable to growth in
22 our U.S. and European media operations, resulting from synergies
23 experienced throughout 2006 due to integration of our 2005
24 acquisitions of Webclients and Fastclick, and continued growth in
25 the overall online advertising industry.

26 114. The statements contained in ¶¶ 83-103 and ¶¶ 109-113, *supra*,
27 were materially false and misleading when made because Defendants failed

1 to disclose or indicate certain material facts. Defendants failed to disclose
2 that the lead generation business, which generated a significant share of the
3 Company's revenues and an even greater proportion of its profits, was
4 predicated upon the intentional or willfully reckless disregard of the legal
5 duties and obligations governing the conduct of this business under the FTC
6 and CAN-SPAM Acts, as well as even minimum industry practices. This
7 included Defendants' failure to disclose that the Company's lead-generation
8 practices violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), because, in
9 advertising, offering, marketing and promoting promised "free" merchandise,
10 Defendants failed to clearly and conspicuously disclose to consumers the
11 material terms and conditions of its programs including (1) the costs and
12 obligations for participating in Defendants' program and (2) that consumers
13 must pay money or other consideration to participate in Defendants' program.
14 Defendants' statements were also materially false and misleading in failing to
15 disclose that the Company solicited entries in contests to award prizes in
16 which those prizes were not awarded. In addition, Defendants knew but
17 failed to disclose that they were conducting ad campaigns involving sending
18 commercial email messages with misleading subject headings, and that they
19 were failing to timely honor opt out requests to avoid receiving further
20 solicitations, in violation of the CAN-SPAM Act. Defendants failed to
21 disclose that the Company's lead-generation practices violated, among other
22 things, Section 5(a)(2) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(2), as
23 well as various state statutes regulating falsity or deception in any portion of
24 a commercial email message, such as Cal. Bus. & Prof. Code § 17529.5(a)(3)
25 (unlawful for commercial email advertisement message to have "a subject
26 line that a person knows would be likely to mislead a recipient, acting
27 reasonably under the circumstances, about a material fact regarding the

1 contents or subject matter of the message.") Specifically, Defendants, with
2 actual or fairly implied knowledge or with deliberate or conscious
3 recklessness, caused ValueClick to initiate email messages with subject
4 headings that were likely to mislead recipients about material facts regarding
5 the contents or subject matter of the message. Defendants also failed to
6 disclose that, contrary to their express representation of compliance with both
7 applicable statutory and regulatory requirements and industry "best
8 practices," the Company violated industry standards, including DMA Guide
9 articles 8, 17 and 31 and its minimum industry standards for online and email
10 solicitations. Thus, Defendants knew that, contrary to their representations,
11 that the Company was not complying with the FTC and CAN-SPAM Acts
12 and was not meeting minimum, let alone "best industry" standards. Before
13 and during the Class Period, the FTC and other government entities were
14 actively investigating and prosecuting similar violations of these statutes by
15 other individuals and entities, and publicly announcing that they were doing
16 so, including announcing significant consent orders and fines imposed upon
17 suspect businesses. Defendants also knew by November 2006 that the FTC
18 had already contacted the Company in connection with an existing
19 investigation of other matters, which increased the risk that the FTC would
20 choose to expand its inquiry to investigate the Company's compliance with
21 the FTC and CAN-SPAM Acts. Defendants also knew, or were willfully and
22 deliberately reckless in disregarding, that the Company was at great risk of
23 losing clients and resulting revenues when the existence of a government
24 investigation of the Company for violation of these statutes was revealed,
25 regardless of the ultimate outcome of the investigation. Finally, Defendants
26 failed to disclose that they made false and misleading representations
27 regarding ValueClick's lead generation capabilities to investors and potential

1 investors, industry analysts, and customers to increase sales and stock prices
2 during the Class Period and that ValueClick's false, deceptive, and
3 misleading representations were material in that they had a natural tendency
4 to influence, or were capable of influencing, purchasing decisions, and they
5 related to the essential characteristics, quality, and/or nature of competing
6 products and commercial activities.

7 115. Defendants conceded the materiality of the CAN-SPAM Act to
8 their business when they made a boilerplate statement in their periodic
9 securities filings acknowledging the existence of that statute, among others
10 relating to the Internet, and the possibility that in the future regulations or
11 additional statutes could be adopted that would place greater restrictions or
12 costs on Internet communications than currently existed. However,
13 Defendants never identified any of the risks arising from the fact that the
14 Company was *already* violating the CAN-SPAM Act or even that it could
15 lose business as the result of the disclosure of an investigation into possible
16 violation of that statute, regardless of the outcome of that investigation.
17 Defendants also never identified compliance with the FTC Act as a risk
18 factor in any of their Class Period securities disclosures. Defendants'
19 statements were also false or misleading because they failed to disclose and
20 purposely concealed the fact that the Company was violating the FTC and
21 CAN-SPAM Acts to generate revenue and growth.

22 **VII. THE TRUTH BEGINS TO EMERGE**

23 116. On May 18, 2007, the Company filed a Form 8-K with the
24 SEC disclosing that the FTC was conducting an inquiry to determine whether
25 the Company had violated either the FTC Act or the CAN-SPAM Act. This
26 Form 8-K was filed just two weeks after the conference call in which
27 Defendants Zarley and Paisley painted ValueClick as a beacon of ethical lead

1 generation practices mired among other companies with questionable
2 practices, and unequivocally stated that ValueClick was compliant with best
3 industry practices as well as all federal and state requirements or guidelines.

4 In its May 18, 2007, Form 8-K, the Company stated in relevant part:

5 On May 16, 2007, ValueClick, Inc. ("ValueClick" or "the
6 Company") received a letter from the Federal Trade Commission
7 ("FTC") stating that the FTC is conducting an inquiry to
8 determine whether the Company's lead generation activities
9 violate either the Federal Trade Commission Act or the CAN-
10 SPAM Act. Specifically, *the FTC is investigating certain
11 ValueClick websites which promise consumers a free gift of
12 substantial value, and the manner in which the Company drives
13 traffic to such websites, in particular through email.* Prior to the
14 receipt of this letter on May 16, 2007, ValueClick was not aware
15 of any pending or planned FTC investigation related to the
16 Company's lead generation activities. (Emphasis added.)

17 117. The preceding quotation suggesting that ValueClick was not
18 previously aware of any investigation relating to the Company's lead
19 generation activities was misleading. The defendants knew, or were
20 intentionally reckless in disregarding, that the FTC had been aggressively
21 investigating, and bring enforcement actions for alleged violations, of the
22 FTC and CAN-SPAM Acts, including against individuals and businesses that
23 sent misleading email messages, offered "free" gifts that were not, in fact,
24 free, and failed to properly provide for opting out from further solicitations.
25 Moreover, on November 21, 2006, the FTC sent a letter to ValueClick
26 informing the Company that it was conducting an investigation to determine
27 whether it was in compliance with Section 5 of the FTC Act and requesting

1 certain information concerning certain other aspects of its practices, and that
2 investigation ultimately led in March 2008 to the filing of an FTC complaint
3 and a record \$2.9 million consent judgment involving ValueClick's lead
4 generation activities. Furthermore, Jason Nab, a former employee working
5 out of ValueClick's corporate headquarters in California, has stated that by
6 the end of 2006 or beginning of 2007 – when he was still employed by
7 Defendants – he was aware that the FTC was generally looking at the lead
8 generation industry. And in an article entitled "*Caveat emptor for investors*
9 *in ValueClick?; Controversial tactics a cause for concern: experts,*"
10 published in the National Edition of the Wall Street Journal on May 18, 2007
11 – the very day that ValueClick publicly disclosed the investigation – the
12 author stated "Linda Goodman, an attorney who represents companies
13 affected, said the investigation began at least a year ago. She expects the
14 FTC, in the next month or two, to announce settlements, penalties or
15 recommend that state attorneys general file lawsuits."

16 118. CW6, who was subsequently unmasked by Defendants as
17 Amanda Bashore ("Bashore")⁷, told Plaintiffs' representative about two
18 meetings that WebClients conducted with its employees. One was in April
19 2007 before the existence of the investigation was publicly acknowledged, in
20 which Piotroski met with the employees in its Harrisburg office, assured
21 them that the Company was not being investigated *and* was not violating any
22 FTC guidelines. A second reported meeting was in May 2007 where a
23 different employee, Rebecca Wink, instructed Bashore and the other account
24 managers what to do if customers inquired about the investigation; at that

25
26
27 ⁷ Bashore was employed as an account manager from March 2007 to July
2007 and was responsible for maintaining contact with customers for whom the
Company generated leads.

1 meeting they were told to tell customers that they did not know about any
2 FTC investigation.

3 119. On May 22, 2007, the Company filed another Form 8-K with
4 the SEC, and disclosed that its lead generation segment accounted for more
5 than 60 percent of the Company's Media segment revenue for the quarter
6 ended March 31, 2007. The Company further disclosed that the promotion-
7 based sub-category of lead generation, which was the subject of the FTC
8 inquiry, accounted for approximately 30 percent of its Media segment
9 revenue for the quarter ended March 31, 2007. The Company stated in
10 relevant part:

11 On May 18, 2007, ValueClick, Inc. ("ValueClick" or "the
12 Company") filed a Form 8-K which stated that, on May 16, 2007,
13 the Company received a letter from the Federal Trade
14 Commission ("FTC") stating that the FTC is conducting an
15 inquiry to determine whether the Company's lead generation
16 activities violate either the Federal Trade Commission Act or the
17 CAN-SPAM Act. *Specifically, the FTC is investigating certain*
18 *ValueClick websites which promise consumers a free gift of*
19 *substantial value, and the manner in which the Company drives*
20 *traffic to such websites, in particular through email.* The
21 Company defines the use of ValueClick websites which promise
22 consumers a free gift as "promotion-based" lead generation.

23
24 As a result of the Form 8-K filed on May 18, 2007, the Company
25 received several calls from analysts regarding the revenue
26 contribution of its lead generation business in general, and its
27 promotion-based sub-category of lead generation in particular, to

1 its Media segment. *In response, ValueClick stated that lead*
2 *generation accounted for more than 60 percent of its Media*
3 *segment revenue for the quarter ended March 31, 2007. In*
4 *addition, the Company stated that the promotion-based sub-*
5 *category of lead generation, which is the subject of the FTC*
6 *inquiry, accounted for less than 30 percent of its Media segment*
7 *revenue for the quarter ended March 31, 2007.*

8 ValueClick provided these financial metrics for informational
9 purposes only, and the Company does not intend to update these
10 financial metrics in future communications with the financial
11 community, including periodic reports filed by the Company.
12 (Emphasis added.)

13 120. On May 30, 2007, the Company issued a press release
14 entitled "Tom A. Vadnais Appointed Chief Executive Officer of ValueClick,
15 Succeeding James R. Zarley; Mr. Zarley Named Executive Chairman of the
16 Board of Directors." Therein, the Company, in relevant part, stated:

17 ValueClick, Inc. (Nasdaq: VCLK) today announced that its board
18 of directors has elected Tom A. Vadnais as the Company's new
19 chief executive officer. Mr. Vadnais has been a member of the
20 Company's board of directors since October 2001 and has also
21 held a number of senior management roles within ValueClick
22 during this time, including his most recent role as president of
23 U.S. operations.

24
25 Mr. Vadnais succeeds James R. Zarley, who has served as
26 ValueClick's chief executive officer since 1999. Mr. Zarley will
27 remain a full-time ValueClick employee and will continue to play

1 an active role in the Company. Mr. Zarley has been named
2 ValueClick's executive chairman of the board of directors,
3 focusing primarily on the Company's strategic direction and the
4 gradual management transition of the Company's operations.

5 121. As Defendants must have known and expected, the
6 disclosure of the FTC investigation caused customers to question
7 ValueClick's staff and withdraw their business. On the eve of the disclosure
8 of the Company's second quarter 2007 results, On the last day of the Class
9 Period, July 27, 2007 RBC Capital Markets issued another Company Update
10 on ValueClick, stating:

11 **Net:** We believe that risk to VCLK earnings in 2007/2008 remains, as the
12 lead-generation industry responds to federal probes into aggressive tactics.
13 *Heightened advertiser awareness of aggressive marketing tactics has*
14 *translated into caution and advertiser attribution for VCLK's*
15 *WebClients unit, we believe, for small and large advertisers alike....*
16 VCLK's heightened concern on the disclosure of facts relating to their
17 lead-generation practices has culminated in their filing a lawsuit in LA
18 County Court against unnamed current and former VCLK employees ...
19 alleging damages due to breaches of confidentiality agreements....

- 20 • **Lead Gen Unit Scrambles, Margins At Risk:** The FTC inquiry
21 has fostered greater awareness of aggressive tactics and poor lead
22 quality of highly-incentivized lead-generation.

23 * * *

24 **Other Industry Data Points**

25 We have learned that some advertisers have recently pulled budgets from
26 the incentivized space as a result of the now-public FTC investigation

27 * * *

1 **Advertisers Pulling Away From Incentivized Lead Gen**

2 We have learned that a number of advertisers have decided to pull
3 marketing budgets out of the incentivized lead generation area, including:

- 4 • BMG Music
- 5 • Blockbuster Online
- 6 • Classmates.com
- 7 • Gevalia Coffee
- 8 • People PC
- 9 • And many others...

10 (Emphasis added.) A true and correct copy of the July 27, 2007 RBC Capital
11 Markets report is attached as Exhibit T.

12 122. In fact, shortly after the end of the Class Period, it was noted that
13 the disclosure of the FTC investigation of ValueClick drove away advertising
14 customers, with one observer stating:

15 Fast forward to a few days ago [July 30, 2007] when Valueclick
16 announced their Q2 earnings, and Jordan [Roban of RBC Capital] was
17 proved right. The company came in at the lower end of estimates for
18 revenue and below the ranges given for profit. And, in many ways, we
19 have the FTC to thank (or blame). *Those in the online advertising space*
20 *understood that Valueclick took an aggressive stance in its promotional*
21 *lead gen.* We documented this in "Incentive Promotion Acting Badly?"
22 where we saw that a typical user had to first enter their basic information,
23 continue through a survey, and then complete the required offers. Each
24 step, though, carried with it hurdles for completion. The survey had 15
25 steps and well over a hundred questions. The offers that actually
26 subsidized the product had to be completed within 60 days, often required
27 other households to participate, and mailing in a redemption form within a

1 certain amount of time upon completing the offers. If .01% of the users
2 that started the path finished, that would come as a surprise, on the high
3 side. In other words, it wasn't easy.

4 * * *

5 While they may not like it, the FTC does not question the [incentive
6 promotion] model itself. Instead, they went after components of it that
7 contributed to user frustration such as the abundance of email marketing
8 that results from signing up, and the advertisers inside the path, namely
9 those in the survey that users saw first but didn't contribute towards the
10 redemption process. *The question of some of the [incentive promotion]
11 process spooked those at the end of the process*, namely the brand name
12 advertisers, many of whom were on the fence. And, *to avoid any
13 potential negative exposure, some of the larger brands pulled out*, one
14 even facing an inquiry of its own as a result of marketing incentive
15 promotion.

16 "Valueclick and the Future of Incentive Promotion,"
17 <http://www.dmconfidential.com/blogs/column/Trends/1436> (emphasis added).

18 123. Bashore also confirmed that customers had, in fact, inquired
19 about whether there was an investigation and expressed their concerns about
20 the FTC guidelines, and that ValueClick lost customers as a result. Bashore
21 also learned from another Account Manager, Kelly Fahnestock, that
22 numerous customers were "pulling out" of their advertising campaigns with
23 ValueClick.

24 124. Then on July 30, 2007, the Company issued a press release
25 entitled "ValueClick Announces Second Quarter 2007 Results; Company
26 Closes the MeziMedia Acquisition and Increases Share Repurchase
27

1 Authorization to \$100 Million." Therein, the Company, in relevant part,
2 stated:

3 ValueClick, Inc. (Nasdaq: VCLK) today reported financial results
4 for the second quarter ended June 30, 2007. Diluted net income
5 per common share of \$0.17 met the low end of the Company's
6 previously-issued guidance. *However, revenue and adjusted-*
7 *EBITDA were below the Company's previously-issued guidance.*
8 *The quarter's results were negatively impacted by the*
9 *Company's promotion-based business.*

10 * * *

11 *"The promotion-based sector suffered a downturn that began in*
12 *late May and became more pronounced in June, which*
13 *negatively impacted our quarter" said Tom Vadnais, chief*
14 *executive officer of ValueClick. "We have reassessed our*
15 *outlook on the promotion-based business and have taken*
16 *aggressive steps to bring its costs in line with the changes*
17 *occurring in this part of the industry. We expect to see the full*
18 *impact of this cost-cutting initiative in the fourth quarter."*

19 Mr. Vadnais continued, "While promotion-based lead generation
20 results were disappointing, I am pleased by the strong
21 performance in our non-promotional Media, Affiliate Marketing
22 and Technology businesses. Additionally, MeziMedia gives our
23 Comparison Shopping segment scale in the U.S. that complements
24 PriceRunner's scale in Europe. ValueClick's scale and breadth in
25 online performance marketing services and technologies
26 differentiate us from our peers, and we remain optimistic about
27 the Company's prospects for growth and profitability."

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Second Quarter 2007 Results

Revenue for the second quarter of 2007 was \$148.7 million, an increase of \$18.6 million, or 14 percent, from \$130.0 million for the second quarter of 2006. Second quarter 2007 results include three months of operations from Shopping.net, acquired in December 2006.

* * *

Based on its second quarter results, the close of the MeziMedia acquisition and revised outlook for 2007, ValueClick is updating its fiscal year 2007 guidance ranges, issued previously on May 2, 2007:

Fiscal Year 2007	Previous Guidance	Updated Guidance
Revenue	\$655 - \$665 Million	\$645 - \$660 Million
Adjusted-EBITDA	\$177 - \$182 Million	\$168 - \$172 Million
Diluted net income per Common share	\$0.79 - \$0.81	\$0.74 - \$0.76

* * *

Additionally, ValueClick is announcing guidance for the third quarter of 2007:

Third Quarter 2007	Guidance
Revenue	\$155 - \$165 million
Adjusted-EBITDA	\$38 - \$40 million
Diluted net income per Common	\$0.16 - \$0.17

1 share

2 (Emphasis added. Internal references omitted.)

3 125. Upon the release of this news, the Company's shares declined
4 **\$5.00 per share, or 19.2 percent**, to close on July 30, 2007 at \$21.01 per
5 share, on unusually heavy trading.

6 126. In a July 30, 2007 earnings call with analysts on the date the
7 second quarter 2007 results were released, ValueClick's new CEO, Tom
8 Vadnais stated:

9 *We understand there are a number of companies under FTC*
10 *investigation. This may explain why there has been a slowdown in this*
11 *sector.*

12 In the latter half of the second quarter we saw publisher traffic move away
13 from promotion-based business. We also began to see some advertiser
14 pullback. Both trends negatively impacted our revenue for the quarter."

15 (Emphasis added.)

16 127. In the same conference call, Defendant Zarley commented on
17 the impact of the FTC investigation:

18 let me take on the FTC matter first. *We have experienced the publisher*
19 *fallout. I think some of it is related to just fear on the publisher side to*
20 *be involved in anything related to the FTC*, but there is also a very large
21 publisher that has come out of the mix that we don't believe really was
22 associated to the FTC that kind of left us scrambling to replace that.

23 (Emphasis added.)

24 128. Less than two months later, Defendant Paisley also admitted that
25 the FTC investigation had an adverse impact on the Company's business,
26 stating:

27

1 We received a letter from the FTC on May 16th. *After that time period,*
2 *we did have an impact in our promotional lead generation business.*

3 (Emphasis added.) And on November 1, 2007, the new ValueClick CEO, Tom
4 Vadnais, in commenting on the Company's results for the third quarter of 2007
5 said, "[o]ur softness in the lead generation part of our Media business was
6 primarily in the promotion based segment *that is related to the ongoing FTC*
7 *investigation.*" (Emphasis added.)

8 129. These disclosures in May 2007 would have led to an even
9 greater drop in the Company's share price but for the fact that defendants'
10 announcement of the FTC investigation on May 18, 2007 coincided with an
11 announcement *on the same day* that Microsoft was buying ValueClick
12 competitor aQuantive Inc. for *\$6 billion in cash*. A May 21, 2007 news
13 article in Reuters, entitled "Microsoft-AQuantive deal portends Web video
14 fight," described the Microsoft deal as "the latest in a frenzy of Web
15 advertising acquisitions sparked when Google Inc. agreed to buy
16 DoubleClick Inc. for *\$3.1 billion* last month, followed by smaller purchases
17 by Yahoo Inc. and WPP." (Emphasis added.) Another article issued on May
18 18, 2007 in AFX News Ltd., entitled "ValueClick Under FTC Investigation,"
19 noted "ValueClick is now one of the few online advertising companies that
20 has not been bought out by a major Internet company." And on May 23,
21 2007, an article in the Wall Street Journal, entitled "ValueClick Practices
22 Under Fire," after noting the disclosure of the investigation observed:

23 At the same time, ValueClick's shares have been pushed up by an M&A
24 frenzy in the industry. Big Internet companies are snapping up online-
25 advertising businesses in a wave of takeovers, including Microsoft Corp.'s
26 deal last week to buy aQuantive Inc. for \$6 billion. The prospects of
27

1 further deals has caused the price of ValueClick stock to rocket, even after
2 it confirmed Friday that it is the subject of an FTC probe.

3 * * *

4 ValueClick's business could be hurt if government scrutiny of the industry
5 forces changes or scares away advertising clients and publishers who
6 distribute its ads....Moreover, ValueClick shareholders could be harmed if
7 questions turn off potential acquirers.

8 130. In fact, the view was expressed that *the mere pendency* of the
9 FTC investigation could keep any potential acquirers away from ValueClick
10 until there was some resolution of that probe.

11 **VIII. ADDITIONAL SCIENTER ALLEGATIONS**

12 131. As alleged herein, Defendants acted with scienter in that
13 Defendants knew with actual or fairly implied knowledge or with deliberate
14 or conscious recklessness, that the public documents and statements issued or
15 disseminated in the name of the Company were materially false and
16 misleading; knew that such statements or documents would be issued or
17 disseminated to the investing public; and knowingly and substantially
18 participated or acquiesced in the issuance or dissemination of such statements
19 or documents as primary violations of the federal securities laws. As set
20 forth elsewhere herein in detail, Defendants, by virtue of their receipt or
21 information reflecting the true facts regarding ValueClick, their control over,
22 and/or receipt and/or modification of ValueClick's allegedly materially
23 misleading misstatements and/or their associations with the Company which
24 made them privy to confidential proprietary information concerning
25 ValueClick, participated in the fraudulent scheme alleged herein.

26 132. Zarley and Paisley each acted with scienter in that, as set forth
27 herein, each acted with deliberate or conscious recklessness, that

1 ValueClick's publicly reported statements during the Class Period were
2 materially false and misleading because, among other things, they failed to
3 disclose that ValueClick's financial results were premised on the Company's
4 engagement in illicit advertising campaigns that were, and continue to
5 remain, undisclosed by these Defendants to the investing public. These
6 Defendants were the senior management of the Company and thus at all
7 times were the ones with principal responsibility for ensuring that the
8 Company's statements were accurate and truthful. There were relatively few
9 employees working in lead generation during the Class Period, as evidenced
10 by the fact that WebClients had only 100 employees in 2006 and 56
11 employees in 2008, and individuals who directly reported to them, including
12 Gray – who had been Chief Executive Officer of WebClients when it was
13 acquired by ValueClick – and Piotroski, were directly involved in approving
14 the deceptive and unlawful campaigns that placed the Company at risk of
15 government enforcement activities and client abandonment.

16 133. Zarley was, at relevant times, the Company's CEO and
17 Chairman of the Board of Directors. On May 30, 2007, only two weeks after
18 the announcement of the FTC investigation, the Company's Board of
19 Directors elected a replacement CEO, and Zarley was appointed as the
20 Company's Executive Chairman. Throughout the Class Period, Zarley
21 participated in the preparation of the false statements and repeated the
22 contents therein to the market. Specifically, Zarley signed ValueClick
23 certifications for Forms 10-Q filed on May 8, 2007, March 1, 2007,
24 November 9, 2006, August 9, 2006, May 10, 2006, April 21, 2006 (Form 10-
25 Q/A), March 31, 2006, November 9, 2005, and August 9, 2005. Zarley also
26 signed ValueClick's Forms 10-K filed on March 31, 2006, April 21, 2006
27 (Form 10-K/A), and March 1, 2007. Zarley also spoke on ValueClick's calls

1 with analysts on numerous occasions, including on August 4, 2005,
2 November 1, 2005, February 27, 2006, May 8, 2006, August 1, 2006,
3 November 1, 2006, February 21, 2007 and May 2, 2007, and was quoted in
4 numerous earnings press releases during the Class Period.

5 134. Defendant Paisley was, at all relevant times, the Company's
6 Chief Administrative Officer, who had overall responsibility for the
7 Company's Corporate development, legal, finance and investor functions.
8 Paisley was very familiar with the inner workings of ValueClick's business,
9 since before being named as the Company's CAO, Paisley had served in
10 various capacities at ValueClick, including as an Executive Vice President, as
11 Chief Operating Officer-Media, and as Chief Financial Officer. Throughout
12 the Class Period, Paisley assisted in the preparation of the false statements
13 described herein and repeated the contents therein to the market.
14 Specifically, Paisley spoke on the Company's calls with analysts on
15 numerous occasions throughout the Class Period, including on August 4,
16 2005, November 1, 2005, February 27, 2006, May 8, 2006, August 1, 2006,
17 November 1, 2006, February 21, 2007 and May 2, 2007.

18 135. The magnitude and duration of the fraud also establishes these
19 Defendants' scienter. ValueClick's use of illicit advertising practices
20 spanned, at least, a period of two years and resulted in a doubling of both
21 revenue gross profit from 2004, the year before ValueClick's acquisition in
22 June 2005, and the end of 2006, the first full year WebClients contributed to
23 ValueClick's results. According to ValueClick's Form 10-K filed March 1,
24 2007, ValueClick's revenues for the year ended December 31, 2004 were
25 \$169,178,000 and gross profit was \$118,416,000, compared to revenue of
26 \$545,616,000 and gross profit of \$377,755,000 for the year ended December
27 31, 2006, a year over year increase of 222% and 219%, respectively. As a

1 result, every single financial statement the Company publicly filed from its
2 acquisition of WebClients through the second quarter of 2007 was materially
3 false and misleading by failing to disclose that the Company's reported
4 financial results were predicated upon ongoing violations of the law,
5 especially as the FTC was focusing upon misconduct in this industry, and that
6 its performance would precipitously drop as soon as word of the FTC
7 investigation was disclosed.

8 136. The Company's issuance of its false and misleading financial
9 statements during the Class Period was very lucrative for both Defendant
10 Zarley and Defendant Paisley because the majority of their annual cash
11 compensation was directly tied to the Company's financial performance.
12 This provides a strong motive for their participation in, and concealment of,
13 the Company's illegal business practices as alleged herein.

14 137. Specifically, in 2005, Defendant Zarley and Defendant Paisley
15 both received bonuses that exceeded their base salaries. While Defendant
16 Zarley's 2005 base salary was \$375,000, he received a bonus of \$445,000.
17 Further, while Defendant Paisley's 2005 base salary was \$300,000, he
18 received a bonus of \$400,000. These bonus amounts were considerably
19 higher than the \$150,000 bonuses that Defendants Zarley and Paisley each
20 received in 2004, and these bonuses were directly tied to the Company's
21 performance. In ValueClick's proxy statement, filed with the SEC on May 1,
22 2006, the Compensation Committee noted that "[c]ash bonuses are awarded
23 to executive officers on the basis of their success in achieving designated
24 individual goals and our success in achieving specific Company-wide goals,
25 such as revenue growth, earnings targets and new business opportunities."
26 Of course, the Company's revenue growth, earnings targets and new business
27 opportunities were all artificially boosted during the Class Period by

1 Defendants' participation in, and concealment of, ValueClick's illegal
2 business practices as alleged herein.

3 138. Further, in 2006, Defendants Zarley and Paisley once again
4 received non-equity compensation tied to Company performance benchmarks
5 that exceeded their base salaries. While Defendant Zarley's 2006 base salary
6 was \$375,000, he received another \$420,000 in non-equity incentive
7 compensation. Similarly, while Defendant Paisley's 2006 base salary was
8 \$300,000, he received another \$315,000 in non-equity incentive
9 compensation. In ValueClick's proxy statement, filed with the SEC on April
10 19, 2007, the Compensation Committee stated that Defendants Zarley and
11 Paisley had to achieve "certain quarterly and annual revenue and earnings
12 targets" to receive this non-equity incentive compensation. Targets for both
13 Defendants Zarley and Paisley were "based on a measure of Adjusted-
14 EBITDA," and these Defendants earned the maximum possible payments of
15 non-equity compensation in 2006 due their participation in, and concealment
16 of, ValueClick's illegal business practices as alleged herein.

17 139. Finally, in February 2007, Defendants Zarley and Paisley each
18 received an increase in their base salary, with Defendant Zarley's new base
19 salary being set at \$450,000 and Defendant Paisley's new base salary being
20 set at \$325,000. In ValueClick's proxy statement, filed with the SEC on
21 March 20, 2008, the Compensation Committee stated that these new base
22 salaries were "determined based upon the judgment of the Compensation
23 Committee members, giving consideration to the strong financial
24 performance of the Company in the 2006 fiscal year." The Compensation
25 Committee went on to state that "Mr. Zarley received a greater percentage
26 increase...due to the operational aspect of his role, which the Compensation
27 Committee determined was a significant factor in the record operating results

1 achieved by the Company in 2006.” The “strong financial performance” and
2 “record operating results” achieved by the Company in 2006, however, were
3 the direct result of Defendants’ participation in, and concealment of,
4 ValueClick’s illegal business practices as alleged herein.

5 140. The fundamental nature of the federal laws and regulations as
6 well as the industry “minimum practices” that were violated while
7 Defendants claimed to be adhering to industry "best practices" further
8 demonstrates that Zarley and Paisley acted with scienter. Provisions in the
9 FTC Act and the CAN-SPAM Act, such as the provision that mandates the
10 processing of a consumer's opt-out request, are straightforward and easy to
11 understand and follow. Thus, ValueClick's pervasive and ongoing violations
12 of these mandates could not have been the result of a rogue employee or an
13 innocent misrepresentation. In addition, the sheer number and multiple
14 variations of illicit advertising practices, all of which had the effect of
15 increasing ValueClick's reported revenue, defeat any inference that these
16 practices were innocent mistakes.

17 141. The Company's response to rumors of a possible FTC
18 investigation and response to its announcement of an FTC investigation are
19 also strong evidence of scienter. Rather than disclose the illicit practices and
20 come clean, Zarley and Paisley engaged in a cover-up. Only two weeks
21 before announcing the FTC investigation, these Defendants falsely told
22 investors that the company was "focused" on and consistently applied
23 industry "best practices," specifically referencing the DMA. Further, the
24 Defendants distinguished ValueClick's practices from those of the "bad
25 actors" in the promotional area, when in reality, ValueClick employed many
26 illicit practices itself and continued to paint a false picture of ValueClick's
27

1 business by suggesting that ValueClick's lead generation business could even
2 increase once the "bad actors" were eliminated from the segment.

3 142. The Individual Defendants also falsely stated that ValueClick
4 had a legal and compliance team that analyzed and addressed legal and
5 regulatory issues regarding their lead generation practices. Rose told
6 Plaintiffs' representative that, unlike other companies in the same industry
7 where he had previously worked, ValueClick had no compliance officer
8 when he arrived at the Company in April 2006, nor was there any employee
9 designated to work on determining whether there were any potential areas of
10 non-compliance. Rose told Plaintiffs' representative that there were no audits
11 concerning legal and regulatory compliance conducted during Rose's tenure,
12 and Rose was explicitly told by senior management that "as long as we are
13 making our numbers we don't care how we do it." In fact, ValueClick had no
14 legal and regulatory compliance team, but made those statements anyway
15 because the Individual Defendants knew that a true, independent
16 investigation would reveal ValueClick's legal and regulatory violations.

17 143. The repeated failure by Defendants Zarley and Paisley to
18 address and correct ValueClick's obvious failure to comply with legal and
19 regulatory mandates, as well as industry "best practices," demonstrates that
20 these Defendants acted with scienter. Despite repeated warnings from
21 employees regarding ValueClick's illicit practices, as detailed above at ¶¶ 53-
22 55, these Defendants did nothing.

23
24 **IX. DEFENDANTS' CONTINUING EFFORTS TO SUPPRESS FULL
DISCLOSURE**

25 144. Under these circumstances, it is not surprising that Defendants
26 continued their efforts to suppress full disclosure of the truth concerning their
27 unlawful activities.

1 145. For example, on July 3, 2007, ValueClick filed a complaint in
2 the California Superior Court for the County of Los Angeles entitled
3 *ValueClick, Inc. v. Does 1 through 20*, Case No. BC373703. A true and
4 correct copy of the complaint is attached as Exhibit "U." The *ValueClick v.*
5 *Does* complaint said that unnamed current or former ValueClick employees
6 allegedly "disclosed ... confidential information, without permission from
7 ValueClick, to third parties, including competitors and financial analysts" and
8 that these unnamed "defendants made certain statements to the public, to
9 financial analysts, to competitors, and to others that were false." And
10 ValueClick sought to use that action as a vehicle to identify and depose
11 persons it suspected may have disclosed such information to financial
12 analysts, including Jordan Rohan, an analyst for RBC Capital Markets who
13 expressed the view that ValueClick was violating federal law in its
14 solicitations and that, as a result, the FTC was likely to be investigating and
15 would ultimately be taking action against the Company.

16 146. A related practice is to extract an agreement of silence and
17 noncooperation with any other litigants against ValueClick or its subsidiaries
18 as part of the price for the ultimate settlement of actual or threatened
19 litigation with a witness, including in cases directly relevant to this litigation.

20 147. One example of defendants' use of confidentiality agreements to
21 silence witnesses can be found in the litigation entitled *Asis Internet Services v.*
22 *ValueClick, Inc., et al.*, Case No. C-07-3261 EMC (N.D. Cal. filed June 21,
23 2007). In that matter, the complaint alleged that defendants sent or caused to
24 have sent over 5,000 commercial electronic mail messages from October 2005
25 through March 2007, containing advertisements with misleading subject lines.
26 The *Asis* complaint recited subject lines offering free gifts such as: "\$1500
27 Visa Gift Card on us"; "Joan, Let us pay for a trip to Las Vegas!"; and "All

1 expense paid trip to Chicago to see the show you love!" Copies of some of the
2 emails cited in the *Asis* complaint are attached as Exhibit V. This matter was
3 terminated by a stipulation of dismissal with prejudice on September 26, 2007,
4 and counsel for Asis has stated that Asis could not cooperate in any way due to
5 the existence of a confidentiality agreement with ValueClick.

6 148. Another example can be found in ValueClick's repeated litigation
7 with Daniel Balsam ("Balsam"), an anti-spam activist who maintains a website
8 at <http://www.DanHatesSpam.com> detailing his disputes with various alleged
9 spammers that have resulted in numerous lawsuits involving Mr. Balsam. The
10 first complaint brought by ValueClick against Balsam, entitled *ValueClick,*
11 *Inc., et al. v. Daniel Balsam, et al.*, No. LC075908, was filed in the Superior
12 Court for Los Angeles on September 27, 2006, and a request for dismissal with
13 prejudice was filed on December 12, 2006. The second entitled *ValueClick v.*
14 *Daniel Balsam*, No. LC077943, was filed on May 14, 2007, and a request for
15 dismissal without prejudice was filed on July 12, 2007. The third entitled
16 *ValueClick, Inc. v. Balsam, et al.*, No. CGC-07-465845, was filed in the
17 Superior Court for San Francisco on August 6, 2007, which claimed that as a
18 result of prior settlements with ValueClick, Balsam was contractually obligated
19 "not to make any comments, including disparaging comments, to third parties
20 or to the public." The third action was dismissed with prejudice on October
21 23, 2007. Both Balsam and his counsel have stated that he could not
22 voluntarily provide any information or assistance of any kind concerning
23 ValueClick voluntarily answer any questions or provide any assistance,
24 including even copies of his pleadings, due to a confidentiality agreement
25 entered into with ValueClick in resolution of their litigation, but would
26 otherwise be glad to do so and would comply with any subpoena to testify or
27 produce documents.

1 149. Another example is *Bennett Haselton, et al. v. ValueClick, Inc., et*
2 *al.*, No. CV7 0387B, which was an action for damages under various statutes,
3 including the CAN-SPAM Act, filed on March 14, 2007 in the United States
4 District Court for the Western District of Washington, charging ValueClick
5 with sending email messages with materially false or misleading header
6 information. On October 12, 2007, a stipulation and order of dismissal with
7 prejudice was filed with the Court. Haselton's counsel has stated that Haselton
8 cannot be interviewed or voluntarily cooperate in any other way due to the
9 terms of his settlement with ValueClick.

10 150. Yet another example is *Ferron v. VC E-Commerce Solutions, Inc.,*
11 *et al.*, Civil Action No. 2:06-cv-322 (complaint filed May 1, 2006), in which
12 Ferron, an Ohio attorney, personally charged a number of defendants,
13 including a ValueClick subsidiary, with sending him hundreds of email
14 messages in knowing violation of state law for using the word “free” but
15 failing to set forth clearly and conspicuously at the outset of the offer all terms,
16 conditions and obligations upon which the “free” goods or services were
17 contingent, and for notifying him that he has won a prize or will receive
18 anything of value, without clearly and conspicuously disclosing all conditions
19 necessary to receive them. Ferron subsequently entered into a settlement
20 agreement with the ValueClick entities (referred to as “VCES PARTIES”) that
21 obligated him to:

22 Covenant and promise not to provide any assistance or support to any
23 person who is not a client of Ferron & Associates, LPA, in regard to any
24 claim, asserted or unasserted, against any of the VCES PARTIES that
25 involves any claim arising under or in any way related to the Ohio
26 Consumer Sales Practices Act, the Ohio Electronic Mail Advertisement
27 Act, the CAN-SPAM Act, and/or any other claim relating to “SPAM” or the

1 VCES PARTIES' email marketing practices, marketing or internet
2 advertising services.

3 **X. THE CONTINUING CONSEQUENCES OF DEFENDANTS'**
4 **MISCONDUCT**

5 151. Subsequent to the end of the Class Period, the FTC continued its
6 investigation of ValueClick. The FTC investigation ultimately resulted in the
7 filing of a complaint entitled *United States v. ValueClick, et al.*, Case No.
8 CV08-01711 MMM (RZx) (C.D. Cal.), for civil penalties, permanent
9 injunction, and other equitable relief on March 13, 2008 and entry of a
10 stipulated final judgment for civil penalties and permanent injunctive relief
11 on March 17, 2008. True and correct copies of the complaint and judgment
12 are attached as Exhibits W and X, respectively.

13 152. The FTC complaint contained numerous allegations of conduct
14 that violated the FTC and CAN-SPAM Acts that were similar to the prior
15 enforcement actions brought by the government against other individuals or
16 companies under those statutes, including:

17 19. Many of the lead generation Defendants' emails and Web-based
18 ads *represent, expressly or by implication, that the consumer viewing the*
19 *message has won a contest, or has been specially selected to receive a*
20 *gift or prize.*

21 * * *

22 21. The lead generation Defendants *do not clearly and*
23 *conspicuously disclose that to obtain the promised free merchandise one*
24 *must incur expenses or other obligations.* A consumer must accept (and
25 often pay for) – in the lead generation Defendants' parlance, "complete" or
26 "participate in" – a certain number of goods or services promoted by third-
27 parties to qualify for the promised free merchandise that the lead
generation Defendants promote in their emails and Web-based ads.

1 Moreover, the lead generation Defendants do not clearly and
2 conspicuously disclose the costs and obligations associated with
3 participating in third-party promotions.

4 * * *

5 28. In many instances, the consumer stops trying to qualify for the
6 lead generation Defendants' promised free merchandise, either because of
7 the cost involved or the time and effort required. Although the consumer
8 has expended money or incurred other obligations in pursuit of the lead
9 generation Defendants' promised free merchandise, because he or she has
10 not completed all of the lead generation Defendants' required third-party
11 promotions, the consumer does not receive the promised free
12 merchandise.

13 29. In most instances, *it is impossible for the consumer to qualify*
14 *for the lead generation Defendants' promised free merchandise without*
15 *spending money.*

16 * * *

17 33. In numerous instances, to induce consumers to open and read
18 their commercial emails, *the lead generation Defendants have initiated*
19 *commercial email messages that contain subject headers that*
20 *misrepresent the content or subject matter of the message*, including, but
21 not limited to, false representations that consumers have been specially
22 selected to receive free products or services.

23 153. In addition to imposing a record fine of \$2.9 million on the
24 defendants under the CAN-SPAM Act, the stipulated judgment permanently
25 restrained and enjoined ValueClick in any email and online advertisement, or
26 on any landing page associated with such email or online advertisement, from
27 making any direct or implied representation that a product is free from

1 *"failing to disclose, in the same color, font, and size, and within close*
2 *proximity to such representation,* that a purchase is required, or that
3 purchases are required, to obtain such product" and from "failing to disclose,
4 in a clear and conspicuous manner" all monetary and nonmonetary
5 obligations a consumer is likely to incur to obtain the advertised product.
6 (Emphasis added.)

7 154. While the FTC's complaint and stipulated final judgment named
8 ValueClick and only two ValueClick subsidiaries – Hi-Speed Media, Inc. and
9 E-Babylon, Inc. – as defendants, paragraph 3 of the judgment specifically
10 states "Unless otherwise specified, 'Defendants' means ValueClick, Inc., Hi-
11 Speed Media, Inc., E-Babylon, Inc. *and their* successors, *subsidiaries*, and
12 assigns." (emphasis added). Accordingly, WebClients as a wholly-owned
13 subsidiary of ValueClick was fully bound by that judgment even though it
14 was not a named defendant.

15 155. Observers of the FTC complaint and settlement with ValueClick
16 confirmed that this enforcement action was consistent with prior enforcement
17 actions. A March 19, 2008 article by Wendy Davis noted:

18 The Federal Trade Commission's complaint against ValueClick and the
19 terms for the hefty \$2.9 million settlement, both of which were made
20 public for the first time this week, are being viewed as a *sign that the*
21 *agency intends to continue cracking down on deceptive online ads.*

22 The online lead generation space, where offers for "free" iPods abound, is
23 seen as especially problematic, with companies competing to convince
24 consumers to provide them with information that can be passed along to
25 marketers. *"It's been a little bit of a race to the bottom with these lead*
26 *gen programs,"* said Mary Ellen Callahan, a lawyer with Hogan &
27 Hartson in Washington who represents clients at the FTC. "The FTC is

1 trying to send a clear message – *if you're saying that something's free, it*
2 *better be free, otherwise you need to have clear and prominent*
3 *disclosures."*

4 A true and correct copy of the March 19, 2008 article is attached as Exhibit Y
5 (emphasis added).

6 **XI. LOSS CAUSATION**

7 156. Defendants' wrongful conduct, as alleged herein, directly and
8 proximately caused the economic loss suffered by Lead Plaintiffs and the
9 Class. As Lead Plaintiffs will establish by expert opinion, the market prices
10 of ValueClick securities were inflated by the false and misleading statements
11 made by Defendants, as identified above, and, as a result, Lead Plaintiffs and
12 the Class purchased ValueClick securities at artificially inflated prices during
13 the Class Period. The Company's ensuing disclosures, as described herein,
14 revealed to the market the fraudulent nature of these statements and the
15 extent of the misrepresentations contained in ValueClick's financial
16 statements that form the primary basis of this action.

17 157. In fact, when the full extent of the misrepresentations and
18 omissions that ValueClick concealed from the market, and their impact and
19 potential impact on ValueClick's prior and future financial results, were
20 revealed in ValueClick's press release of July 30, 2007, the prices of
21 ValueClick securities fell dramatically, causing substantial losses to
22 investors. Specifically, on July 30, 2007, Defendants disclosed that the
23 Company's financial results fell short of what Defendants had forecast and
24 led the investment community to expect because its revenue results were
25 negatively impacted by the Company's promotion-based business. This was
26 certainly in large measure the result of the disclosure of the government
27 investigation and the ensuing exodus of clients. ValueClick was forced to

1 lower its guidance for both yearly revenue and EPS for the year. As noted
2 above, this disclosure caused the Company's shares to decline \$5.00 per
3 share, or 19.2 percent, to close on July 30, 2007 at \$21.01 per share, on
4 unusually heavy trading.

5 158. In all, as a result of the disclosures of the Defendants false and
6 misleading statements concerning ValueClick's compliance with federal law
7 and industry best practices standards, the market price of ValueClick
8 common stock fell from a high of more than \$30 per share during the Class
9 Period to approximately \$21 per share on July 30, 2007.

10 159. This decline was directly related to disclosure of the previously
11 issued false and misleading statements, and establishes the loss causation
12 element of Lead Plaintiffs' Exchange Act claims.

13 **XII. UNDISCLOSED ADVERSE FACTS**

14 160. The market for ValueClick's securities was open, well-
15 developed and efficient at all relevant times. As a result of these materially
16 false and misleading statements and failures to disclose, ValueClick's
17 securities traded at artificially inflated prices during the Class Period. Lead
18 Plaintiffs and other members of the Class purchased or otherwise acquired
19 ValueClick's securities relying upon the integrity of the market price of
20 ValueClick's securities and market information relating to ValueClick, and
21 have been damaged thereby.

22 161. During the Class Period, Defendants materially misled the
23 investing public, thereby inflating the price of ValueClick's securities, by
24 publicly issuing false and misleading statements and omitting to disclose
25 material facts necessary to make Defendants' statements, as set forth herein,
26 not false and misleading. Said statements and omissions were materially
27 false and misleading in that they failed to disclose material adverse

1 information and misrepresented the truth about the Company, its business and
2 operations, as alleged herein.

3 162. At all relevant times, the material misrepresentations and
4 omissions particularized in this Complaint directly or proximately caused or
5 were a substantial contributing cause of the damages sustained by Lead
6 Plaintiffs and other members of the Class. As described herein, during the
7 Class Period, Defendants made or caused to be made a series of materially
8 false or misleading statements about ValueClick's financial well-being,
9 business relationships, prospects and compliance with applicable statutes and
10 standards. These material misstatements and omissions had the cause and
11 effect of creating in the market an unrealistically positive assessment of
12 ValueClick and its financial well-being, business relationships, and prospects,
13 thus causing the Company's securities to be overvalued and artificially
14 inflated at all relevant times. Defendants' materially false and misleading
15 statements during the Class Period resulted in Lead Plaintiffs and other
16 members of the Class purchasing the Company's securities at artificially
17 inflated prices, thus causing the damages complained of herein.

18 **XIII. APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD**
19 **ON THE MARKET DOCTRINE**

20 163. At all relevant times, the market for ValueClick's securities was
21 an efficient market for the following reasons, among others:

- 22 (a) ValueClick's securities met the requirements for listing, and
23 were listed and actively traded on the NASDAQ, a highly
24 efficient and automated market;
- 25 (b) As a regulated issuer, ValueClick filed periodic public
26 reports with the SEC and NASDAQ;
- 27 (c) ValueClick regularly communicated with public investors via
established market communication mechanisms, including

1 through regular disseminations of press releases on the
2 national circuits of major newswire services and through
3 other wide-ranging public disclosures, such as
4 communications with the financial press and other similar
5 reporting services; and

6 (d) ValueClick was followed by several securities analysts
7 employed by major brokerage firms who wrote reports which
8 were distributed to the sales force and certain customers of
9 their respective brokerage firm. Each of these reports was
10 publicly available and entered the public marketplace.

11 164. As a result of the foregoing, the market for ValueClick's
12 securities promptly digested current information regarding ValueClick from
13 all publicly-available sources and reflected such information in ValueClick's
14 securities price. Under these circumstances, all purchasers of ValueClick's
15 securities during the Class Period suffered similar injury through their
16 purchase of ValueClick's securities at artificially inflated prices and a
17 presumption of reliance applies.

18 **XIV. NO SAFE HARBOR**

19 165. The statutory safe harbor provided for forward-looking
20 statements under certain circumstances does not apply to any of the allegedly
21 false statements pleaded in this Complaint. Many of the specific statements
22 pleaded herein were not identified as "forward-looking statements" when
23 made. To the extent there were any forward-looking statements, there were
24 no meaningful cautionary statements identifying important factors that could
25 cause actual results to differ materially from those in the purportedly
26 forward-looking statements. Alternatively, to the extent that the statutory
27 safe harbor does apply to any forward-looking statements pleaded herein,

1 Defendants are liable for those false forward-looking statements because at
2 the time each of those forward-looking statements was made, the particular
3 speaker knew that the particular forward-looking statement was false, and/or
4 the forward-looking statement was authorized and/or approved by an
5 executive officer of ValueClick who knew that those statements were false
6 when made.

7 **XV. CLASS ACTION ALLEGATIONS**

8 166. Lead Plaintiffs bring this action as a class action pursuant to
9 Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class,
10 consisting of all those who purchased the securities of ValueClick during the
11 Class Period and who were damaged thereby. Excluded from the Class, at all
12 relevant times, are Defendants, the officers and directors of the Company,
13 members of their immediate families and their legal representatives, heirs,
14 successors or assigns and any entity in which Defendants have or had a
15 controlling interest.

16 167. The members of the Class are so numerous that joinder of all
17 members is impracticable. Throughout the Class Period, ValueClick's
18 securities were actively traded on the NASDAQ. While the exact number of
19 Class members is unknown to Lead Plaintiffs at this time and can only be
20 ascertained through appropriate discovery, Lead Plaintiffs believe that there
21 are hundreds or thousands of members in the proposed Class. Record owners
22 and other members of the Class may be identified from records maintained
23 by ValueClick or its transfer agent and may be notified of the pendency of
24 this action by mail, using the form of notice similar to that customarily used
25 in securities class actions.

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168. Lead Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

169. Lead Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

170. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) whether the federal securities laws were violated by Defendants' acts as alleged herein;
- (b) whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of ValueClick; and
- (c) to what extent the members of the Class have sustained damages and the proper measure of damages.

A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

FIRST CLAIM FOR RELIEF
For Violations of Section 10(b) of The Exchange Act and Rule 10b-5

1 **(Against All Defendants)**

2 171. Lead Plaintiffs repeat and reallege each and every allegation
3 contained above as if fully set forth herein.

4 172. During the Class Period, Defendant ValueClick and Defendants
5 Zarley and Paisley disseminated or approved the false statements specified
6 below, which they knew or deliberately disregarded were misleading in that
7 they contained misrepresentations and failed to disclose material facts
8 necessary in order to make the statements made, in light of the circumstances
9 under which they were made, not misleading.

10 173. These Defendants violated § 10(b) of the Exchange Act and
11 Rule 10b-5 in that they: (i) employed devices, schemes, and artifices to
12 defraud; (ii) made untrue statements of material fact and/or omitted to state
13 material facts necessary to make the statements not misleading; and/or (iii)
14 engaged in acts, practices, and a course of business which operated as a fraud
15 and deceit upon Lead Plaintiffs and others similarly situated in connection
16 with their purchases of ValueClick securities during the Class Period. All
17 Defendants are sued either as primary participants in the wrongful and illegal
18 conduct charged herein or as controlling persons as alleged below.

19 174. These Defendants, individually and in concert, directly and
20 indirectly, by the use of means or instrumentalities of interstate commerce
21 and/or of the mails, engaged and participated in a continuous course of
22 conduct that operated as a fraud and deceit upon Lead Plaintiffs and the
23 Class; made various untrue and/or misleading statements of material facts
24 and omitted to state material facts necessary in order to make the statements
25 made, in light of the circumstances under which they were made, not
26 misleading; made the above statements with a severely reckless disregard for
27 the truth; and employed devices, and artifices to defraud in connection with

1 the purchase and sale of securities, which were intended to, and did: (i)
2 deceive the investing public, including Lead Plaintiffs and the Class,
3 regarding, among other things, ValueClick's compliance with federal law and
4 industry best practices in its lead generation business; (ii) artificially inflate
5 and maintain the market price of ValueClick securities; and (iii) cause Lead
6 Plaintiffs and other members of the Class to purchase ValueClick securities at
7 artificially inflated prices.

8 175. Defendant ValueClick is liable for all materially false and
9 misleading statements made during the Class Period, as alleged above,
10 including the false and misleading statements set forth in ¶¶ 82-131.

11 176. ValueClick is further liable for the false and misleading
12 statements made by ValueClick officers in press releases and during
13 conference calls with investors and analysts, as alleged above, as the maker
14 of such statements and under the principle of respondeat superior.

15 177. Defendants Zarley and Paisley are liable for the false and
16 misleading statements they made and/or signed, including the false and
17 misleading statements set forth in ¶¶ 133-136.

18 178. Each of the Individual Defendants' primary liability, and
19 controlling person liability, arises from the following facts, among others: (i)
20 the Individual Defendants were high-level executives and/or directors at the
21 Company during the Class Period and members of the Company's
22 management team or had control thereof; (ii) each of these Defendants, by
23 virtue of his responsibilities and activities as a senior officer and/or director
24 of the Company was privy to and participated in the creation, development
25 and reporting of the Company's internal budgets, plans, projections and/or
26 reports; (iii) each of these Defendants was advised of, and had access to,
27 other members of the Company's management team, internal reports and

1 other data and information about the Company's finances, operations, and
2 sales at all relevant times; and (iv) each of these Defendants was aware of the
3 Company's dissemination of information to the investing public which they
4 knew or were deliberately reckless in disregarding the fact this was materially
5 false and misleading.

6 179. The Defendants had actual knowledge of the misrepresentations
7 and omissions of material facts set forth herein, or acted with reckless
8 disregard for the truth in that they failed to ascertain and to disclose such
9 facts, even though such facts were available to them. Such Defendants'
10 material misrepresentations and/or omissions were done knowingly or
11 recklessly and for the purpose and effect of concealing ValueClick's financial
12 well-being, business relationships, and prospects from the investing public
13 and supporting the artificially inflated price of its securities. As
14 demonstrated by Defendants' overstatements and misstatements of the
15 Company's financial well-being, business relationships, and prospects
16 throughout the Class Period, Defendants, if they did not have actual
17 knowledge of the misrepresentation and omissions alleged, were reckless in
18 failing to obtain such knowledge by deliberately refraining from taking those
19 steps necessary to discover whether those statements were false or
20 misleading.

21 180. The above allegations, as well as the allegations pertaining to the
22 overall scope and breadth of the illicit practices at ValueClick, establish a
23 strong inference that ValueClick, Zarley and Paisley acted with scienter in
24 misrepresenting the Company's financial and regulatory compliance
25 condition during the Class Period.

26 181. As a result of the dissemination of the materially false and
27 misleading information and failure to disclose material facts, as set forth

1 above, the market price of ValueClick's securities was artificially inflated
2 during the Class Period. In ignorance of the fact that market prices of
3 ValueClick's securities were artificially inflated, and relying directly or
4 indirectly on the false and misleading statements made by Defendants, or
5 upon the integrity of the market in which the securities trades, and/or in the
6 absence of material adverse information that was known to or recklessly
7 disregarded by Defendants, but not disclosed in public statements by
8 Defendants during the Class Period, Lead Plaintiffs and the other members of
9 the Class acquired ValueClick's securities during the Class Period at
10 artificially high prices and were damaged thereby.

11 182. At the time of said misrepresentations and omissions, Lead
12 Plaintiffs and other members of the Class were ignorant of their falsity, and
13 believed them to be true. Had Lead Plaintiffs and the other members of the
14 Class and the marketplace known the truth regarding the problems that
15 ValueClick was experiencing, which were not disclosed by Defendants, Lead
16 Plaintiffs and other members of the Class would not have purchased or
17 otherwise acquired their ValueClick's securities, or, if they had acquired such
18 securities during the Class Period, they would not have done so at the
19 artificially inflated prices which they paid.

20 183. By virtue of the foregoing, Defendants have violated Section
21 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

22 184. As a direct and proximate result of Defendants' wrongful
23 conduct, Lead Plaintiffs and the other members of the Class suffered
24 damages in connection with their respective purchases and sales of the
25 Company's securities during the Class Period.

26 **SECOND CLAIM FOR RELIEF**
27 **Violation of Section 20(a) of The Exchange Act**

(Against the Individual Defendants)

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2 185. Lead Plaintiffs repeat and reallege each and every allegation
3 contained above as if fully set forth herein.

4 186. During their tenures as officers and/or directors of ValueClick,
5 Defendants Zarley and Paisley were controlling persons of ValueClick within
6 the meaning of § 20(a) of the Exchange Act. By virtue of their high-level
7 positions, and their ownership and contractual rights, participation in and/or
8 awareness of the Company's operations and/or intimate knowledge of the
9 false financial statements filed by the Company with the SEC and
10 disseminated to the investing public, these Defendants had the power to
11 influence and control and did influence and control, directly or indirectly, the
12 decision-making of the Company, including the content and dissemination of
13 various statements which Lead Plaintiffs contend are false and misleading.
14 The Individual Defendants were provided with or had unlimited access to
15 copies of the Company's reports, press releases, public filings and other
16 statements alleged by Lead Plaintiffs to be misleading prior to and /or shortly
17 after these statements were issued and had the ability to prevent the issuance
18 of the statements or cause the statements to be corrected.

19 187. In their capacities as senior corporate officers of the Company,
20 and as more fully described above, Defendants Zarley and Paisley had direct
21 involvement in the day-to-day operations of the Company and in
22 ValueClick's legal and regulatory compliance functions. Each of these
23 Defendants was also directly involved in providing false information and
24 approving the false statements disseminated by ValueClick during the Class
25 Period. As a result of the foregoing, Defendants Zarley and Paisley, as a
26 group and individually, were controlling persons of ValueClick within the
27 meaning of § 20(a) of the Exchange Act.

1 188. By reason of their positions as officers and/or directors of
2 ValueClick as described above, the Individual Defendants are "control
3 persons" within the meaning of § 20(a) of the Exchange Act and had the
4 power and influence to direct the management and activities of the Company
5 and its employees, and to cause the Company to engage in the unlawful
6 conduct complained of herein. Because of their executive, officer and/or
7 director positions within ValueClick, these Defendants had access to adverse
8 non-public financial information about the Company and acted to conceal the
9 same, or knowingly or recklessly authorized and approved the concealment
10 of the same.

11 189. As set forth above, ValueClick violated Section 10(b) and Rule
12 10b-5 by its acts and omissions as alleged in this Complaint. By virtue of
13 their positions as controlling persons of ValueClick and as a result of their
14 own aforementioned conduct, Zarley and Paisley are liable pursuant to
15 Section 20(a) of the Exchange Act, jointly and severally with, and to the
16 same extent as the Company is liable under Section 10(b) of the Exchange
17 Act and Rule 10b-5 promulgated thereunder, to Lead Plaintiffs and the other
18 members of the Class who purchased or otherwise acquired ValueClick
19 securities. Moreover, as detailed above, during the respective times these
20 Defendants served as officers and/or directors of ValueClick, each of these
21 Defendants is culpable for the material misstatements and omissions made by
22 ValueClick, including such misstatements in Company press releases, Forms
23 10-K, and Forms 10-Q.

24 190. As a direct and proximate result of Defendants' wrongful
25 conduct, Lead Plaintiffs and other members of the Class suffered damages in
26 connection with their purchases of the Company's securities during the Class
27 Period.

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WHEREFORE, Lead Plaintiffs pray for relief and judgment, as follows:

- (a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedures;
- (b) Awarding compensatory damages in favor of Lead Plaintiffs and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- (c) Awarding Lead Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (d) Such additional or different relief as the interests of justice or equity may require.

JURY TRIAL DEMANDED

Lead Plaintiffs hereby demand a trial by jury on all issues so triable.

DATED: November 24, 2008

Respectfully submitted,
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Lead Counsel for Plaintiffs and the Class

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CERTIFICATE OF SERVICE

WALDREP v. VALUECLICK, INC.
Case No.: 2:07-cv-05411

I, the undersigned, state that I am employed in the City and County of Philadelphia, State of Pennsylvania; that I am over the age of eighteen (18) years and not a party to the within action; that I am employed at Barrack, Rodos & Bacine, Two Commerce Square, 2001 Market Street, Suite 3300, Philadelphia, Pennsylvania 19103; and that on November 24, 2008, I served a true copy of the attached:

**FIRST AMENDED CONSOLIDATED CLASS ACTION
COMPLAINT FOR VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

to the parties listed on the attached Service List by the following means of service:

BY E-FILE: I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Service List.

BY E-MAIL: I e-mailed a true copy addressed as indicated in the attached Service List, on the above-mentioned date.

BY FEDERAL EXPRESS: I placed a true copy in a sealed envelope and addressed to the parties listed on the attached Service List, on the above-mentioned date.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24th day of November, 2008.


SHEILA DAVIS