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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 IRA GROSSMAN, on behalf of himself
and all others similarly situated,

11 Plaintiff,

12 vs.

13 AMERICAN PSYCHOLOGICAL
ASSOCIATION, INC. and AMERICAN
PSYCHOLOGICAL ASSOCIATION
14 PRACTICE ORGANIZATION,

15 Defendants, jointly and severally.

Case No. '13CV0736 L JMA

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

16 Plaintiff Ira Grossman, Ph.D, through his undersigned attorneys, on behalf of
17 himself and all others similarly situated, complain against Defendants American
18 Psychological Association, Inc. (“APA”) and American Psychological Association
19 Practice Organization (“APAPO”) (collectively “Defendants”) as follows:
20
21

INTRODUCTION

1
2 1. This is a class action lawsuit brought on behalf of current and former
3 APA members who have paid special or practice assessment fees as part of their
4 annual dues. The APA falsely and deceitfully misled its members into thinking that
5 payment of the special or practice assessment was mandatory and required for
6 membership in the APA, when in fact that was not true.

7 2. The APA, a Washington, D.C. based non-profit corporation organized
8 under section 501(c)(3) of the Internal Revenue Code, is the world’s largest
9 association of licensed psychologists with thousands of members throughout the
10 country.

11 3. The APAPO is a separate organization operated by the same leadership
12 as APA from the same address in Washington, D.C. The APAPO conducts
13 professional advocacy and lobbying on behalf of members.

14 4. Since at least 2001, the APA had falsely represented to its members that a
15 “mandatory” practice or special assessment over and above the annual dues was
16 required for membership in the APA. In fact, payment of that assessment (which as of
17 2011 amounted to approximately \$140.00 per member per year) was completely
18 voluntary, and solely required for membership in the APA’s 501(c)(6) organization,
19 the APAPO.

20 5. The APAPO is organized under section 501(c)(6) of the Internal Revenue
21 Code, ostensibly as an organization that is separate from APA, for purposes of

1 conducting lobbying and advocacy activities. Such activities could not be lawfully
2 conducted by the APA, which is a 501(c)(3) organization.

3 6. Recognizing that many of its members would not voluntarily pay to fund
4 this lobbying and advocacy organization, APA deliberately sought to maximize
5 lobbying funds outside of the proper lawful function of a 501(c)(3) entity. The APA
6 misrepresented to its members that as part of annual membership renewal there was a
7 “mandatory” assessment, which it then allocated to the APAPO.

8 **JURISDICTION AND VENUE**

9 7. This Court has original jurisdiction over this class action pursuant to 28
10 U.S.C. § 1332(d). Plaintiff and members of the class have suffered aggregate
11 damages exceeding \$5,000,000, exclusive of interest and costs, and this a class action
12 in which any member of the class of plaintiffs is a citizen of a state different from any
13 defendant.

14 8. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because it is
15 a district in which any Defendant resides and all Defendants are residents of the State
16 in which this district is located. Pursuant to 28 U.C.S. § 1391(c)(2), the Defendants
17 are residents of this District and the State of California because they are entities with
18 the capacity to sue and be sued in their common names under applicable law and
19 because they are subject to this Court’s personal jurisdiction with respect to the civil
20 action in question. Venue is also proper in this District under 28 U.S.C. § 1391(b)(2)
21 because a substantial part of the events or omissions giving rise to this case took place

1 in this District. Specifically, the deception of Plaintiff occurred in this District.

2 Defendant made its misrepresentations and omissions to Plaintiff in this District.

3 **PARTIES**

4 9. Plaintiff Dr. Ira Grossman is a resident of San Diego County, California,
5 who during the relevant time period paid special or practice assessment fees as part of
6 his annual APA dues.

7 10. The APA and the APAPO are related Washington, D.C. nonprofit
8 corporations with their principal places of business in Washington, D.C. They
9 conduct business throughout the United States, including in this District. The APA
10 and APAPO share the same board of directors, the same physical address, the same
11 server hosting company, the same membership list, and the same accounting and
12 billing systems. The governance responsibilities for both the APA and the APAPO
13 are conducted by the Committee for the Advancement of Professional Practice
14 (“CAPP”). CAPP has responsibility to exercise general governance supervision in the
15 management of the 501(c)(6) companion organization.

16 11. At all times herein mentioned, each of the Defendants was the agent,
17 servant, representative, officer, director, partner or employee of the other. At all
18 times, each of the Defendants was acting within the scope and course of his/her/its
19 authority as such agent, servant, representative, officer, director, partner or employee,
20 and with the permission and consent of each Defendant. Additionally, at all times
21 herein mentioned, Defendants were members of, and engaged in, a joint venture,

1 partnership and common enterprise, and acting within the course and scope of, and in
2 pursuance of, the joint venture, partnership and common enterprise.

3 **FACTUAL ALLEGATIONS**

4 12. The APA is the world’s largest organization representing
5 psychologists—both clinical and teaching and research psychologists (and many other
6 types too numerous to mention here). Recognizing that it was illegal for a 501(c)(3)
7 organization like the APA to engage in lobbying and lobbying fundraising (beyond
8 certain relatively small limits), APA leadership created a 501(c)(6) lobbying entity in
9 2001 known as APAPO. However, the APA has been assessing clinicians—those
10 psychologists who actually practice clinical psychology and do psychotherapy—a
11 special fee with their annual APA dues, which is represented to those clinicians on
12 their billing statements as a mandatory practice assessment, and which is then
13 allocated by APA leadership to the APAPO. In this manner, the APA simply skirted
14 the rules applicable to tax-exempt non-profit entities.

15 13. The special or practice assessment fee came pre-printed on annual
16 membership dues statement which deceptively created the impression that the fee was
17 actually required as part of annual APA dues. Moreover, the dues statement
18 instructions disseminated to members stated that any members who provide “ANY”
19 health related services “MUST PAY” the Practice Assessment.

1 14. The APA’s website in 2002 stated that members “... must pay the
2 Special Assessment...” This wording found on the APA’s website continued for a
3 period of years.

4 15. In 2004, the APA announced that it was changing its practice of
5 exempting new practitioners from paying the practice assessment. Beginning in 2005,
6 “all APA members who are licensed psychologists will be billed the assessment,
7 regardless of their length of APA membership, albeit at a reduced fee for newly
8 licensed psychologists.” M. Greer, *Monitor*, “Practitioners’ annual assessment is
9 changing with the times”, September 2004, Vol. 35, No. 8, at 22.

10 16. Through 2010, the APA’s website never made any indication that the
11 practice assessment was voluntary, and never used any language stating or even
12 suggesting that APA members were not required to pay the assessment. Instead, the
13 website repeatedly stated that all APA members who are licensed psychologists
14 providing services in the health or mental health fields, or who supervise those who
15 do, “must pay the practice assessment.” And when APA members tried to pay their
16 dues online, the APA website did not allow them to pay the APA dues without also
17 paying the APAPO assessment.

18 17. The website likewise referred members with questions about the
19 mandatory nature of the practice assessment to the APA dues instructions, which
20 “have more comprehensive guidelines, including the exemptions that would allow
21 removal of the assessment from member dues statements.” Accordingly, the APA’s

1 website made clear that the dues statements and the instructions contained therein
2 governed whether payment of the practice assessment was required as part of a
3 member's annual APA dues. And the dues statements and instructions made clear that
4 all practicing members "MUST PAY" the practice assessment as part of their annual
5 APA dues, unless they fell within certain categories of members that were specifically
6 exempted from payment.

7 18. In April of 2010, the APAPO's "Practice Central" website
8 (www.apapracticecentral.org) published a statement entitled, "The Practice
9 Assessment: What You Need To Know." That statement purports to provide
10 "Answers to common member questions about the annual payment supporting the
11 work of the APA Practice Organization." That statement does not indicate or suggest
12 in any way that the payment of the practice assessment is voluntary. To the contrary,
13 the statement makes clear that all APA members who practice are required to pay the
14 assessment: "In addition to APA dues, members who are licensed practitioners pay the
15 annual 'Practice Assessment' that supports the Work of the APA Practice
16 Organization (APAPO)." The final question on the statement is "Why Isn't The
17 Practice Assessment Part of My APA Dues?" Instead of making clear that the
18 assessment is not part of the APA dues because it is voluntary, the statement explains
19 that the assessment is broken out from the APA dues for tax reasons: "As noted
20 earlier, the Practice Assessment monies support the work of the APA Practice
21 Organization, a legally separate entity with a different IRS status than APA. As a

1 result, Practice Assessment payments are not part of your APA membership dues,
2 although they are billed on your APA dues statement.”

3 19. The APAPO practice assessment is not trivial. It amounts to over 50%
4 of the amount of the APA dues. In 2009, for example, this assessment was \$137 per
5 person, while the total annual APA dues themselves were \$238.

6 20. Until discovered and announced by some APA members in a list-serve
7 discussion in 2010, it was unknown by the membership, and not reasonably capable of
8 being known due to fraudulent concealment by Defendants, that the purportedly
9 mandatory APAPO special or practice assessment fee was purely voluntary.

10 21. The APA board has now *admitted* to the deceptive nature of the special
11 or practice assessment fee. A newsletter issued by a division of the APA, stated:

12 The manner in which the APA, APAPO, and Division dues have
13 been combined on past due statements does not make clear that the
14 mandatory practice assessment payment is required for APAPO
15 membership but not for APA membership. The 2011 dues
16 statement instructions will be modified to clarify this point.

17 May 5, 2010 Memo from APA/APAPO Board of Directors to Members of the
18 APAPO, “The APAPO Practice Assessment.”

19 22. Days later, on May 8, 2010, one of the nine members of CAPP, Glenn
20 Ally, Psy.D., made a statement on an official APA list-serve purporting to justify the
21 imposition of a mandatory practice assessment for a lobbying arm of the APA.

According to Dr. Ally, the APA decided to make the assessment mandatory because

1 the APA members would not make sufficient voluntary contributions to fund the
2 APAPO's activities:

3 I'm assuming you know the statistics that psychologist are at the bottom
4 (AT THE BOTTOM) of the list of professions regarding voluntary
5 contributions, even political advocacy contributions. What you are
6 suggesting here is to make the primary and largest advocacy arm of our
7 organization dependent on the voluntary contributions of the cheapest
8 profession around. . . Again, I don't mean to be offensive, but try running
9 your practice on voluntary contributions and see if your family gets
10 everything they want and deserve to have. The PO is a business and they
11 are in the business of advocating for practice. WE have decided we need
12 this, and we decided long ago that we were not getting enough advocacy
13 when we had to depend on the larger "APA." We wanted our own
14 practice advocacy for a variety of reasons. That "business" has to depend
15 on a relatively stable revenue source. Would the lobbyist for your state
16 organization represent you if you told him/her that you were going to pay
17 him/her differently each year based on "voluntary donations?"

11 May 8, 2010 Post by Glenn Ally, List for APA members interested in discussing
12 practice related issues, "Re: [PRACTICE] ... and it gets nastier still. (Long)."

13 23. After making these admissions, Defendants changed the dues statement
14 in an apparent effort to be less deceptive. Originally, the dues statement described the
15 Practice Assessment in one column. In the next column, entitled "Action Required,"
16 the statement directed the members to "Pay \$137 Practice Assessment." On the 2011
17 statement, the APA removed the "Action Required" column. They also removed the
18 words "MUST PAY" from the instructions, which now state that non-payment of the
19 practice assessment does not affect membership in APA.

20 24. The APA, however, initially did not change the portion of the 2011 dues
21 statement instructions entitled "Five Year Dues Step-Down" that describes how senior

1 APA members may become eligible for a reduction in annual APA dues. That portion
2 of the 2011 statement originally contained the same language as earlier statements that
3 “payment of the Practice Assessment *is required* during the Step-Down process until
4 full Life Status is achieved.” (emphasis added). But after receiving complaints from
5 its membership regarding this false and deceptive language, the APA revised the 2011
6 dues statement to explain that: “The Step-Down reduction in payment applies to APA
7 dues. It does not apply to payment of the Practice Assessment, which is required for
8 membership in APAPO.”

9 25. Despite these changes, the APA continued to indicate that all of its
10 members must pay the practice assessment—while at the same time claiming they are
11 “voluntary.” For instance, APA Executive Director for Public and Member
12 Communications, Rhea K. Farberman, stated that “all APA members who are licensed
13 to provide health care services are billed the practice assessment.” And she confirmed
14 that, “[i]n general, licensed providers are expected to pay the assessment.” In the
15 same communication, Ms. Farberman admitted that despite the fact that the Practice
16 Assessment is billed to every APA member and payment was expected of every
17 member, it was not in fact mandatory: “Non-payment of the practice assessment will
18 not affect your APA membership status.” January 11, 2011 Letter from Rhea
19 Farberman, “Your refund request.”

20 26. In response to recent complaints that members cannot pay their APA
21 dues online without also paying the practice assessment, the APA did not change its

1 website to allow for a member to pay only their APA dues. Instead, the APA's
2 Practice Directorate issued a statement telling the members that they could opt-out of
3 paying the practice assessment "by calling the Membership Service Center." Timothy
4 Tumlin, Ph.D. and John M. Grohol, Psy.D., *APA's Practice Assessment Fee: Part II*,
5 Clinical Science, Society for the Science of Clinical Psychology, APA Division 12,
6 Winter Issue.

7 27. The wrongful conduct at issue here occurred in California, where
8 Defendants reached out and provided Plaintiff and members of the Class with the false
9 and misleading information regarding the mandatory nature of the practice assessment
10 and where, based upon this false and misleading information, Plaintiff and members
11 of the Class paid the practice assessment.

12 28. During the time frame relevant to this action, Plaintiff Dr. Ira Grossman
13 paid special or practice assessment fees as part of his annual APA dues.

14 29. In or around the Fall of each year that he was an APA member, Dr.
15 Grossman received his annual APA Membership Dues Statement. The statement was
16 sent by the APA via U.S. Mail to his office in San Diego, California. All the dues
17 statements received by Dr. Grossman contained the same misrepresentations regarding
18 the mandatory nature of the practice or special assessment mentioned above.

19 30. Dr. Grossman typically paid his annual dues, including the practice
20 assessment, with a personal check or credit card verification that he mailed back to the
21 APA in Washington, D.C. from his office in San Diego, California. In return, Dr.

1 Grossman received a membership card from the APA extending his APA membership
2 through the next year. This membership was mailed to Dr. Grossman at his office in
3 San Diego, California.

4 31. Dr. Grossman first learned that the practice assessment was not
5 mandatory after reading a December 2010 article on the website
6 www.nationalpsychologist.com entitled “APA’s practice assessment not mandatory,”
7 which cited the May 5, 2010 statement released by the APA/APAPO Board of
8 Directors.

9 32. Dr. Grossman has refused to pay the practice assessment ever since he
10 learned that it was not mandatory for membership in the APA.

11 **TOLLING**

12 33. Plaintiff and members of the proposed Class did not discover, and could
13 not have discovered through the exercise of reasonable diligence, the existence of
14 Defendants’ conduct. Because Defendants’ conduct was hidden by them, Plaintiff and
15 proposed Class members were unaware of it. The acts of Defendants alleged herein
16 were wrongfully concealed and carried out in a manner that precluded detection. A
17 reasonable person under the circumstances would not have been alerted to investigate
18 Defendants’ conduct. As a result of Defendants’ fraudulent concealment, the running
19 of any statute of limitations has been tolled with respect to Plaintiff and the Class
20 members’ claims.

1 34. The running of the statute of limitations was further tolled by the filing
2 of a putative class action alleging these same claims in the United States District Court
3 for the District of Columbia, Civil Action No. 1:10-CV-01780 (D.D.C. filed Oct. 21,
4 2010).

5 **CLASS ACTION ALLEGATIONS**

6 35. Plaintiff brings this suit as a class action, pursuant to Rule 23 of the
7 Federal Rules of Civil Procedure, on behalf of himself and a class (the “Class”)
8 composed of and defined as follows: All persons in California who paid a “special”
9 or “practice” assessment fee as part of their APA annual dues after 2000.

10 36. Subject to additional information obtained through further investigation
11 and discovery, the foregoing definitions of the Class may be expanded or narrowed by
12 amendment or amended complaint. Specifically excluded from the Class are any
13 affiliate, parent, or subsidiary of Defendants; any entity in which Defendants have a
14 controlling interest; any officer, director, or employee of Defendants; any successor or
15 assign of Defendants; and any Judge to whom this case is assigned as well as his or
16 her immediate family.

17 37. **Numerosity.** (Fed. R. Civ. P. 23(a)(1)). Members of the Class are so
18 numerous that their individual joinder is impracticable. Defendants have thousands of
19 members in the State of California who have been wrongfully charged the
20 “mandatory” fees at issue. The precise number of the class members is unknown to
21 Plaintiff. Class members are known by Defendants, however, and thus, may be

1 notified of the pendency of this action by direct mail, email, and supplemented by
2 published notice.

3 38. **Existence and Predominance of Common Questions of Law and Fact**
4 **(Fed. R. Civ. P. 23(a)(2) & (b)(3))**. Common questions of law and fact exist as to all
5 members of the Class that predominate over any questions affecting only individual
6 Class Members. These common questions of law and fact include, but are not limited
7 to:

8 a. Whether Defendants omitted, misrepresented, concealed or
9 manipulated material facts from Plaintiff and the Class regarding the special or
10 practice assessment fee.

11 b. The nature and extent of Defendants' prior knowledge of the
12 material facts relating to the manner of billing for and collection of special or
13 practice assessment fees.

14 c. Whether Plaintiff and Class members are entitled to damages
15 and/or restitution, plus costs, interest, and attorney fees.

16 d. Whether Defendants' conduct as described herein violates
17 California Business and Professions Code Sections 17200 and 17500 *et seq.*

18 e. Whether Defendants were unjustly enriched as a result of
19 misleading its members into thinking that payment of the practice or special
20 assessment was required for APA membership, when that was not true.

21

1 f. Whether Defendants should be ordered to disgorge all or part of
2 the moneys it received from the special or practice assessment paid by its
3 members.

4 g. Whether Defendants fraudulently or negligently represented that
5 payment of the practice or special assessment was required for APA
6 membership, when that was not true.

7 36. Defendants' defenses, to the extent that any such defenses apply, are
8 applicable generally to Plaintiff and the entire Class and are not distinguishable as to
9 Class members.

10 39. **Typicality (Fed. R. Civ. P. 23(a)(3))**. Plaintiff is a member of the Class
11 with claims which are typical of the claims of other Class Members. Like all Class
12 Members, Plaintiff has been injured by Defendants' common wrongful billing practice
13 of misrepresenting voluntary fees as mandatory annual dues fees and collecting these
14 fees through deceptive practices. Plaintiff and all Class members were subjected to
15 the same course of conduct.

16 40. **Adequacy of Representation (Fed. R. Civ. P. 23(a)(4))**. Plaintiff will
17 fairly and adequately represent and protect the interests of the Class. Their interests
18 are coincident and not antagonistic to those of Class Members. Plaintiff has retained
19 Counsel that are highly experienced in the prosecution of complex class action
20 litigation and have no conflicts in undertaking this litigation. Plaintiff intends to
21 prosecute this action vigorously.

1 41. **Class Certification Under Federal Rule of Civil Procedure**

2 **23(b)(1), (2), (3):**

3 **(b)(3)** Due to the uniformity of the injuries experienced by Class Members
4 (wrongful assessment of monetary fees) and the predominance over
5 individual issues of common issues of fact and law, a class action is
6 superior to all other available means for the fair and efficient adjudication
7 of the controversy;

8 **(b)(1)** Adjudication of individual claims would be prohibitively expensive for
9 individual Class Members and for the court system as a whole.

10 Individualized litigation would create the risk of inconsistent or varying
11 adjudication that could establish incompatible standards of conduct for
12 Defendants and would create the risk of adjudications that would, as a
13 practical matter, be dispositive of the interests of Class Members not
14 parties to the adjudications. By contrast, the class action device provides
15 the benefits of a single adjudication, economies of scale, and
16 comprehensive supervision by a single court; and

17 **(b)(2)** Defendants have acted on grounds generally applicable to all members of
18 the Class regarding final injunctive and declaratory relief barring future
19 improper billing practices.

20

21

COUNT I
(Unjust Enrichment and Constructive Trust)

1
2 42. Plaintiff re-alleges and incorporates each and every allegation set forth
3 above as if fully written herein.

4 43. As a direct result of their conduct set forth in this Complaint, Defendants
5 voluntarily accepted and retained the benefits of millions of dollars in total payments
6 from Plaintiff and the Class that they would not have otherwise have had. As such
7 Defendants have been unjustly enriched.

8 44. Defendants caused Plaintiff and the Class to pay additional moneys that
9 were not mandatory, despite Defendants' representations and/or misleading
10 statements, and as a direct and proximate result of Defendants' wrongful conduct,
11 Plaintiff and the Class paid special or practice assessment fees that were not
12 mandatory as part of APA membership. Plaintiff and the Class are entitled to a
13 restoration of their moneys.

14 45. Defendants voluntarily accepted and retained the benefit of Plaintiff's
15 and Class members' payments with knowledge and awareness that, as a result of their
16 wrongdoing, Plaintiff and the Class paid special or practice assessment fees they
17 would not have otherwise paid.

18 46. Plaintiff and the Class are entitled in equity to seek restitution and
19 disgorgement from Defendants' wrongful profits, revenues or other financial benefits
20 to the extent and in the amount to be proven at trial.
21

1 47. Plaintiff seeks the imposition of a constructive trust upon all unlawful or
2 inequitable sums received by Defendants identified and traceable through payment of
3 special or practice assessment fees paid by Plaintiff and the Class.

4 **COUNT II**
5 **(Violation of California’s Unfair Competition Law, Business and Professions**
6 **Code §§ 17200, *et seq.*—Commission Of Unfair Business Act Or Practice)**

7 48. Plaintiff re-alleges and incorporates each and every allegation set forth
8 above as if fully written herein.

9 49. The practice by APA of representing an assessment dedicated to APAPO
10 as being required for membership in APA when, in truth, APA membership renewal
11 did not require payment of the APAPO practice assessment was an unfair business act
12 or practice because the practice was unconscionable, immoral, deceptive, unfair,
13 illegal, unethical, oppressive, and/or unscrupulous.

14 50. Moreover, whatever utility could be associated with Defendants’ conduct
15 is outweighed by the gravity of the consequences to Plaintiff and other Class
16 members.

17 51. Plaintiff and the Class members have suffered injury in fact and have lost
18 money as a result of Defendants’ unfair business acts or practices.

19 52. The above-described unfair business acts or practices present a threat and
20 likelihood of harm and deception to members of the Class in that Defendants has
21 systematically perpetrated the unfair conduct upon members of the public by engaging
in the conduct described herein.

1 53. Pursuant to Business and Professions Code §§ 17200 and 17203 Plaintiff
2 seeks an order providing restitution and disgorgement of all profits relating to the
3 above-described unfair business acts or practices, and injunctive and declaratory relief
4 as may be appropriate.

5 **COUNT III**
6 **(Violation of California's Unfair Competition Law, Business and Professions**
7 **Code §§ 17200, et seq.—Commission Of Unlawful Business Act Or Practice)**

8 54. Plaintiff re-alleges and incorporates each and every allegation set forth
9 above as if fully written herein.

10 55. The practice by APA of representing an assessment dedicated to APAPO
11 as being required for membership in APA when, in truth, APA membership renewal
12 did not require payment of the APAPO practice assessment, was an unlawful business
13 act or practice because it was part of a subterfuge to defeat the restrictions on lobbying
14 and lobbying fund raising for a 501(c)(3) organization like APA in violation of the
15 Internal Revenue Code.

16 56. Plaintiff and the Class members have suffered injury in fact and have lost
17 money as a result of Defendants' unlawful business acts or practices.

18 57. Pursuant to Business and Professions Code §§ 17200 and 17203 Plaintiff
19 seeks an order providing restitution and disgorgement of all profits relating to the
20 above-described unlawful business acts or practices, and injunctive, and declaratory
21 relief as may be appropriate.

COUNT IV

(Violation of California’s Unfair Competition Law, Business and Professions Code §§ 17200, *et seq.*—Commission Of Fraudulent Business Act Or Practice)

1
2
3 58. Plaintiff re-alleges and incorporates each and every allegation set forth
4 above as if fully written herein.

5 59. The practice by APA of representing an assessment dedicated to APAPO
6 as being required for membership in APA, when, in truth, APA membership renewal
7 did not require payment of the APAPO practice assessment, was a fraudulent business
8 act or practice because it was likely to deceive, and did in fact deceive, Plaintiff and
9 members of the Class.

10 60. Plaintiff and the Class members have suffered injury in fact and have lost
11 money as a result of Defendants’ fraudulent business acts or practices.

12 61. The above-described fraudulent business acts or practices present a threat
13 and likelihood of harm and deception to members of the Class in that Defendants has
14 systematically perpetrated the fraudulent conduct upon members of the public by
15 engaging in the conduct described herein.

16 62. Pursuant to Business and Professions Code §§ 17200 and 17203 Plaintiff
17 seeks an order providing restitution and disgorgement of all profits relating to the
18 above-described fraudulent business acts or practices, and injunctive, and declaratory
19 relief as may be appropriate, and injunctive and declaratory relief as may be
20 appropriate.
21

1 **COUNT V**
2 **(Violation of California’s False Advertising Law, Business and Professions**
3 **Code, §§ 17500, *et seq.*)**

4 63. Plaintiff re-alleges and incorporates each and every allegation set forth
5 above as if fully written herein.

6 64. California Business and Professions Code § 17500 prohibits “unfair,
7 deceptive, untrue or misleading advertising.”

8 65. Defendants caused to be made or disseminated throughout California
9 advertising, publications, statements, and/or other materials that were untrue or
10 misleading, and which were known, or which by the exercise of reasonable care
11 should have been known to Defendants, to be untrue and misleading to consumers and
12 Plaintiff.

13 66. Defendant has violated section 17500 because the affirmative
14 misrepresentations and omissions regarding the mandatory nature of the special or
15 practice assessment fees were material and likely to deceive a reasonable consumer.

16 67. Plaintiff and the Class have suffered an injury in fact, including the loss
17 of money, as a result of Defendants’ false advertising. In paying special or practice
18 assessment fees during the relevant time period, Plaintiff relied on the
19 misrepresentations and/or omissions of Defendants regarding the mandatory nature of
20 the fees. Defendants’ material representations and/or omissions were false, as the
21 special or practice assessment fees have been voluntary throughout the relevant time

1 period. Had Plaintiff and the Class members known true facts concerning the
2 voluntary nature of the assessment fees, they would not have paid them.

3 68. Plaintiff requests that this Court enter such orders or judgments as may
4 be necessary to restore to Plaintiff and the Class all moneys Defendants acquired by
5 their false advertising, including restitution and/or disgorgement, and for such other
6 relief set forth below.

7 **COUNT VI**
8 **(Fraud & Deceit)**

9 69. Plaintiff re-alleges and incorporates each and every allegation set forth
10 above as if fully written herein.

11 70. By way of the false representations, concealment, and nondisclosure
12 described above, Defendants falsely and deceitfully represented that payment of the
13 special or practice assessment was required for membership in the APA, even though
14 that was not true.

15 71. Defendants knowingly engaged in these false representations and acts of
16 concealment and nondisclosure and with the intent to defraud Plaintiff and the Class
17 members.

18 72. Plaintiff and the Class members were induced to rely, and justifiably
19 relied, on Defendants' false representations, concealment, and nondisclosure.

20 73. Plaintiff and the Class members suffered damages as a result of
21 Defendants' false representations, concealment, and nondisclosure because they paid

1 special or practice assessments that they otherwise would not have paid had they
2 known that payment of these assessments was not required for membership in the
3 APA.

4 **COUNT V**
5 **(Negligent Misrepresentation)**

6 74. Plaintiff re-alleges and incorporates each and every allegation set forth
7 above as if fully written herein.

8 75. By way of the false representations, concealment, and nondisclosure
9 described above, Defendants misrepresented that payment of the special or practice
10 assessment was required for membership in the APA, even though that was not true.

11 76. Such misrepresentations were material and Defendants made them
12 without reasonable grounds for believing they were true.

13 77. Defendants made these misrepresentations with the intent to induce
14 Plaintiff and the Class members to rely on the misrepresentations. And Plaintiff and
15 the Class members justifiably relied on Defendants' misrepresentations.

16 78. Plaintiff and the Class members suffered damages as a result of
17 Defendants' misrepresentations because they paid special or practice assessments that
18 they otherwise would not have paid had they known that payment of these
19 assessments was not required for membership in the APA.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for the following relief:

1 A. An order certifying the Class and appointing Plaintiff and their counsel to
2 represent the Class;

3 B. Monetary relief and/or equitable relief (including without limitation
4 damages and/or restitution to Plaintiff and the Class) payable into a common fund in
5 an amount to be determined at trial;

6 C. Statutory damages, including double and/or treble damages;

7 D. Exemplary damages;

8 E. Punitive damages;

9 F. Interest;

10 G. Attorneys' fees and costs of suit, including costs of notice,
11 administration, and expert witness fees; and

12 H. Such other legal or equitable relief, including injunctive and/or
13 declaratory relief, as the Court may deem appropriate.

14 **JURY DEMAND**

15 Plaintiff demands trial by jury of all issues so triable.

16 Respectfully submitted,

17 DATED: March 27, 2013

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18 By s/ Hassan A. Zavareei
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*Attorneys for Plaintiff, individually
and on behalf of the Class*

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

'13CV0736 L JMA

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

IRA GROSSMAN, on behalf of himself and all others similarly situated

DEFENDANTS

AMERICAN PSYCHOLOGICAL ASSOCIATION, INC. and AMERICAN PSYCHOLOGICAL ASSOCIATION PRACTICE ORGANIZATION

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Hassan Zavareei, Tycko & Zavareei LLP
2000 L Street NW, Suite 808, Washington, DC 20036
(202) 973-0900

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment, & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332

Brief description of cause:

Unlawful and misleading representations made by defendants that caused plaintiffs to suffer monetary damages

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 50,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

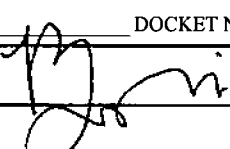
(See instructions):

JUDGE Unassigned

DOCKET NUMBER 1:10-cv-01780

DATE
03/27/2013

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____