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CENTRAL DIST. OF CALIF.
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Gregory T. Pero, an individual, *et al.*; on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

Medical Management International, Inc.,
d.b.a. Banfield Pet Hospital, a Delaware
corporation,

Defendant.

No. SACV13-01749 JLS (ANx)

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

Demand for Jury Trial

1 Plaintiff Gregory T. Pero ("Plaintiff") brings this action on behalf of himself and
2 all others similarly situated against Medical Management International, Inc., d.b.a.
3 "Banfield Pet Hospital" ("Banfield" or "Defendant"). Plaintiff's allegations against
4 Defendant are based upon information and belief and upon investigation of Plaintiff's
5 counsel, except for allegations specifically pertaining to Plaintiff, which are based upon
6 Plaintiff's personal knowledge.

7 I. OVERVIEW

8 1. Plaintiff holds these truths to be self-evident: (a) Pet care providers
9 should be honest about the true costs of their products and services, and (b) pet care
10 providers should not upsell unnecessary pet care.

11 2. Banfield is part of the multi-billion dollar Mars, Inc. conglomerate,
12 which is best known for selling branded candy products. Banfield operates hundreds
13 of pet care outlets through PetSmart stores around the country.

14 3. Banfield aggressively markets, advertises, and sells "Optimum Wellness
15 Plans" ("Wellness Plans" or "OWPs") that purportedly offer deep savings and
16 discounts for preventive pet care services and related pet care products. Banfield has
17 enrolled more than 1 million pets in its OWPs nationwide.

18 4. Banfield does not provide the promised savings and discounts under its
19 OWPs, and Banfield upsells unnecessary pet care to OWP clients. This class action
20 seeks to remedy: (a) Banfield's deceptive marketing of savings and discounts under
21 OWPs; and (b) Banfield's deceptive and coercive upselling of additional pet care
22 products and services. Banfield's conduct violates consumer protection laws in
23 California and nationwide.

24 5. In particular, Banfield's conduct violates California laws prohibiting
25 sellers from marketing savings and discounts that are false or misleading, and
26 prohibiting them from using unfair sales tactics to sell their goods and services. In
27 this regard, the challenged conduct violates: (i) California's Business & Professions
28

1 Code §§ 17500, *et seq.* (the “FAL”), (ii) the Consumers Legal Remedies Act,
2 California Civil Code §§ 1750, *et seq.* (the “CLRA”), (iii) California’s Business &
3 Professions Code §§ 17200, *et seq.* (the “UCL”), (iv) California’s common law of
4 intentional misrepresentation, (v) California’s common law of concealment, and
5 (vi) the unfair competition laws of various states that correspond to the UCL.

6 6. Banfield’s OWPs include one or more physical exams, vaccines, and
7 diagnostic tests for cats or dogs. Additional preventive care services—such as a
8 dental cleaning, urine tests, or X-rays—are included in Banfield’s higher-priced
9 OWPs. The OWPs include: 2 Puppy Plans (Early Care, and Early Care Plus),
10 3 Adult Dog Plans (Essential Wellness Adult Care, Active Prevention, and Special
11 Care), 2 Kitten Plans (Early Care, and Early Care Plus), and 3 Adult Cat Plans
12 (Essential Wellness Adult Care, Active Prevention, and Special Care). These OWPs
13 are advertised and operate in a substantially similar manner to one another, with
14 minor variations in service options.

15 7. At the check-in counters, Banfield service representatives heavily
16 promote the OWPs. At or next to each in-store check-in counter, Banfield
17 disseminates a brochure and price sheet advertising OWPs for dogs and a very
18 similar brochure and price sheet advertising OWPs for cats. Through its in-store
19 representatives and print advertising, Banfield promises deep savings and discounts
20 available under each OWP. Banfield also advertises OWP savings and discounts
21 through invoices and correspondence to clients.

22 8. For at least the past four years, however, Banfield has misrepresented—
23 and continues to misrepresent—the nature and amount of savings and discounts to be
24 realized through the purchase and use of OWPs. In this regard, for each OWP,
25 Banfield advertises a monthly payment plan that purportedly entitles clients to
26 minimum savings off of regular costs for preventive pet care products and services
27
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1 plus fixed discounts on additional products and services sought by OWP customers.
2 Banfield, however, simply does not provide the promised savings and discounts.

3 9. In particular, under the OWPs, Banfield promises substantial minimum
4 savings on preventive pet care (e.g., more than \$600/yr savings with the base-level
5 dog plan, for percentage savings of more than 50% vs. regular costs). Banfield also
6 promises that the OWP customer will receive an additional discount on Banfield's
7 other pet care products and services not covered under the plan (e.g., an additional
8 10% off with the base-level adult dog plan).

9 10. Under each OWP, Banfield promises savings and discounts in exchange
10 for a one-time membership fee (e.g., \$49.95) plus monthly payments (e.g.,
11 \$31.95/mth for a base level adult dog plan). Banfield also communicates orally and
12 in written invoices and client renewal letters that OWP clients will receive pet care
13 savings each visit and/or each month.

14 11. Nonetheless, Banfield misrepresents, conceals, and fails to fully
15 disclose the warped service assumptions and inflated pricing scheme on which the
16 purported savings and discounts are based.

17 12. Banfield promises that OWP customers always get the services they pay
18 for, and Banfield advertises deep savings at every visit and during each month that
19 the client owns an OWP. In reality, the savings begin to evaporate when the OWP
20 client does not need or cannot use one or more of the bundled products and/or
21 services under the plan. Moreover, the advertised savings cannot be achieved each
22 visit or each month, as Banfield effectively represents. Rather, the OWP client first
23 would need to use an uncertain number and variety of Banfield pet care products and
24 services *over the course of an entire plan year*. Meanwhile, Banfield overstates its
25 regular fees and tacks on miscellaneous fees and markups, which misrepresents the
26 ultimate savings and discounts earned by OWP clients.

1 13. Pet care providers should put the welfare of pets ahead of corporate
2 profits. Unfortunately, Banfield places a high priority on achieving an Average
3 Patient Charge (also known as "Average Per-Client Charge" or "APC"). In an effort
4 to increase the Average Patient Charge, Banfield uses deceptive and coercive tactics
5 to sell additional pet care products and services to OWP clients. Among other
6 things, Banfield systematically orders extra diagnostic tests and medications for
7 OWP clients in order to boost the Average Patient Charge. These upselling efforts
8 compel the OWP client to spend money he or she would not have otherwise spent
9 and wipe out the savings and discounts promised under the OWPs.

10 14. Upon information and belief, Banfield routinely markets deceptive
11 savings on OWPs and discounts under OWPs via staff representations to consumers,
12 in-store print advertising, and client invoices. Plaintiff is also informed and believes
13 that Banfield disseminates this deceptive marketing to consumers throughout
14 California and nationwide.

15 15. Banfield's marketing alters consumer perceptions regarding the nature
16 and value of the OWPs. Reasonable consumers expect that they actually will receive
17 the advertised savings on OWPs and discounts under OWPs. In reality, through
18 deceptive advertising and unfair sales tactics, Banfield induces consumers to
19 purchase and retain OWPs and to overpay for Banfield's pet care products and
20 services offered thereunder.

21 16. Upon information and belief, thousands of California and nationwide
22 consumers have been victims of Banfield's deceptive marketing of OWPs and
23 corresponding unfair sales tactics. Banfield knows or reasonably should know that
24 its marketing of OWPs (and the pet care products and services offered thereunder) is
25 and was deceptive, unfair and unlawful.

26 17. At all relevant times, Banfield has been under a duty to Plaintiff and
27 other similarly situated consumers to disclose the truth about the purported savings
28

1 and discounts offered through the purchase of OWPs, and to abstain from deceptive
2 and coercive upselling of additional pet care products and services to OWP clients.

3 18. The true facts about the value of the OWPs, and the pet care products
4 and services sold thereunder, would be material to a reasonable consumer.

5 Therefore, consumer reliance upon Banfield's misrepresentations and omissions can
6 and should be presumed as a matter of law.

7 19. At the time Plaintiff purchased and renewed OWPs from Banfield, and
8 at the time he obtained pet care products and services under the OWPs, Plaintiff
9 actually relied upon Banfield's representations about OWP savings and discounts,
10 and the value of the underlying products and services. Plaintiff and other similarly
11 situated consumers were likely to be misled, and they reasonably and justifiably
12 relied to their detriment on Banfield's misrepresentations and omissions of material
13 facts about the savings, discounts, products, and services to be provided through the
14 purchase and use of OWPs.

15 20. If Banfield had disclosed the truth about the advertised savings,
16 discounts, products, and services to be provided through the purchase and use of
17 OWPs, then Plaintiff either would not have purchased the OWPs and/or the pet care
18 products or services thereunder, or Plaintiff would not have paid as much as he did
19 for them.

20 21. As a result of its deceptive marketing and unfair sales tactics, Banfield
21 has generated substantial revenues from the sale of OWPs and the sale of additional
22 pet care products and services to OWP clients.

23 22. Plaintiff, individually and on behalf of all others similarly situated,
24 seeks damages, restitution and injunctive relief to put an end to Banfield's ongoing
25 deceptive marketing and unfair business practices.
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II. JURISDICTION

23. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because the amount in controversy for the Class exceeds \$5,000,000, and Plaintiff and other putative Class members are citizens of a different state than Defendant.

24. This Court has personal jurisdiction over Plaintiff Gregory T. Pero because he resides in California and submits to the Court's jurisdiction. This Court has personal jurisdiction over the Defendant because it conducts substantial business in the Central District and throughout the State of California.

25. Venue is proper in this Court because Defendant sold its OWPs within the Central District of California, and a substantial number of the transactions at issue in this Complaint occurred within this District.

III. PARTIES

26. Plaintiff Gregory T. Pero is and was at all relevant times a citizen of the State of California, residing in the City of Anaheim Hills.

27. Plaintiff has purchased from Banfield, and has used and renewed, several OWPs over the course of the past sixteen years, including purchases and renewals of dog and cat OWPs paid for over the past four years, and the purchase of pet care products and services under those OWPs.

28. Plaintiff purchased each OWP for personal, family, and household purposes. Plaintiff saw and heard Banfield's representations that its OWPs provided substantial savings and discounts off of the regular costs of Banfield's pet care products and services. Plaintiff relied on such representations in deciding to purchase, use, and renew his OWPs, and the pet care products and services sold thereunder, in order to care for his pets.

1 29. Plaintiff also purchased additional pet care products and services from
2 Banfield, including medications and blood tests, in response to the unfair sales
3 tactics described herein.

4 30. Plaintiff Pero either would not have purchased OWPs from Banfield,
5 and/or the pet care products or services that he obtained thereunder, had Banfield
6 properly disclosed the true nature and amount of the purported savings and
7 discounts, and properly disclosed the true facts about its upselling, and/or he would
8 not have paid as much money for the OWPs or for the products and services sold
9 thereunder.

10 31. Plaintiff does not assert any personal injury claim to his pets or himself
11 in this action as a result of using Defendant's OWPs or other products or services.

12 32. Defendant Medical Management International, Inc., d.b.a. "Banfield Pet
13 Hospital" (also known as Banfield, The Pet Hospital, and formerly known as
14 "VetSmart Pet Hospital" or "VetSmart"), is a Delaware Corporation headquartered
15 in Portland, Oregon.

16 33. Plaintiff is informed and believes that Mars, Inc. purchased a majority
17 interest in Banfield in or about 2007, and that PetSmart, Inc. acquired a minority
18 interest in Banfield.

19 34. Presently, Banfield operates more than 800 pet hospital outlets across
20 the country, with at least dozens of Banfield outlets located in PetSmart stores
21 throughout California.

22 IV. FACTUAL ALLEGATIONS

23 A. Banfield Advertises Wellness Plans as Providing Substantial Minimum 24 savings and Discounts on Pet Care Products and Services.

25 35. Banfield is one of the nation's largest pet care service providers due to
26 its partnership with PetSmart and outlet locations inside of PetSmart stores.

27 36. Banfield staff members aggressively promote the OWPs to consumers
28 who bring their pets to Banfield. In the process, staff members emphasize the

1 substantial savings and discounts to be achieved under the OWP. In fact, Banfield
2 employees are highly incentivized to push the OWPs on consumers, to pack all
3 preventive pet care into two visits per year, and to push additional products and
4 services each visit as a means to increase their internal Average Patient Charge.

5 37. Banfield provides an OWP brochure and price sheet at each in-store
6 outlet counter or “hospital” (for dogs and for cats). The brochure identifies the pet
7 care services to be provided under each OWP. “Each Plan includes: Unlimited free
8 office visits and physical exams; comprehensive exams by a licensed veterinarian;
9 high quality vaccines; early screening for serious illnesses; convenient drop-offs and
10 evening and weekend hours.”

11 38. According to the in-store brochures: “Unlike insurance, where you pay
12 for coverage you may never use, *Optimum Wellness Plans always provide the*
13 *services you pay for.*” [Emphasis added] In reality, as discussed herein, the OWPs
14 routinely fail to provide the particular services paid for at the discounted prices being
15 advertised by Banfield. Indeed, Banfield locations may not even be suited with the
16 proper supplies or equipment to provide each of the services that OWP clients pay
17 for.

18 39. According to the Banfield brochure regarding the basic OWP for dogs:
19 “Consistent preventive care is essential, even with young healthy dogs. This
20 Essential Wellness Plan establishes and manages baselines of wellness information
21 to help keep your dog healthy.”

22 40. The OWP service options for dogs are broken out as follows (See
23 *Figures 1-4*):
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Puppy Plans

Establish an early habit of preventive care for your puppies less than six months of age. Remember, dogs age 6–10 years for each one of ours. Start them off on the right paw with the right plan.

Early Care Plan

Includes:

- **Comprehensive physical exam**
This in-depth evaluation assesses your puppy's overall health and establishes important baseline information.
- **Vaccinations***
Protects against a wide variety of diseases and infections, based on your pet's individual needs.
- **Diagnostic testing including heartworm, lyme, ehrlichia and ear swab****
Identifies disease, parasites and infections. Catches issues early before they become more serious and harder to treat.
- **Fecal exams (3X) and deworming (4X)**
Detects and treats parasites and other intestinal organisms that can cause disease.
- **Free office calls/exams**
No need to delay when you have a concern about your puppy's health!

Plus:
5% OFF
most other
services

Early Care Plus Plan

Includes Early Care Plan services:

- Comprehensive physical exam
- **Vaccinations***
- **Diagnostic testing including heartworm, lyme, ehrlichia and ear swab****
- **Fecal exams (3X) and deworming (4X)**
- **Free office calls/exams**

AND:

- **Spay or neuter surgery including pre-anesthetic blood testing, blood pressure check, internal organ screens and electrolytes**
Helps your pet live a healthier, happier, longer life and minimizes dog overpopulation. Thoroughly assesses your puppy's health before anesthesia and builds baselines to guide current and future care.

Plus:
10% OFF
most other
services

[Figure 1]

Essential Wellness

Every dog needs a plan. Consistent preventive care is **essential**, even with **young, healthy dogs**. This Essential Wellness Plan establishes and manages baselines of wellness information to help keep your dog healthy.



Essential Wellness Plan Includes:

- **Comprehensive physical exam (2X)**

This in-depth evaluation assesses your dog's overall health and establishes important baseline information for you and your veterinarian.

- **Vaccinations***

Protects against a wide variety of diseases and infections, based on your pet's individual needs.

- **Diagnostic testing including bloodwork, internal organ screens, heartworm, lyme, ehrlichia and ear swab****

Identifies disease, parasites and infections. Catches issues early before they become more serious and harder to treat. Builds baselines for current and future care.

- **Fecal exams (2X) and deworming (2X)**

Detects and treats parasites and other intestinal organisms that can cause disease.

- **Unlimited free office visits**

No need to delay when you have a concern about your dog's health!



**Plus:
10% OFF
most other
SERVICES**

[Figure 2]

Active Prevention

By age three, more than 90 percent of dogs show signs of gum disease which, if left untreated, can lead to serious illness. Give your dog essential care plus active prevention. This plan provides dental cleaning and early screening for common diseases.



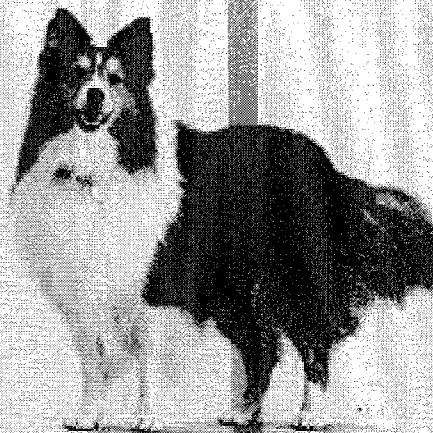
Includes Essential Wellness services

- Comprehensive physical exam (2x)
- Vaccinations*
- Diagnostic testing including bloodwork, internal organ screens, heartworm, lyme, ehrlichia and ear swab**
- Fecal exam (2x) and deworming (2x)
- Unlimited free office visits



PLUS Active Prevention services

- Dental cleaning including full pre-anesthetic work-up
Prevents serious infection, tooth loss, pain and potential for heart and kidney disease. Thoroughly assesses your dog's health before anesthesia.
- Urine testing
Detects infections, dehydration and disease.



Plus:
15% OFF
nearly all other
products and
services

*Most vaccines are included in your plan. Your veterinarian may recommend additional vaccines that are not.

[Figure 3]

Special Care

Often older dogs or those with special care needs require proactive management of chronic disease. The Special Care Plan is designed specifically for this group.



Includes Essential Wellness services:

- Comprehensive physical exam (2X)
- Vaccinations*
- Diagnostic testing including bloodwork, internal organ screens, heartworm, Lyme, ehrlichia and ear swab**
- Fecal exams (2X) and deworming (2X)
- Unlimited free office visits

Active Prevention services:

- Dental cleaning including full pre-anesthetic work-up
- Urine testing

AND Special Care services:

- Chest X-rays (3 views)
Evaluates the tissues, organs and bones in the chest cavity. Assesses potential breathing or heart issues.
- Electrocardiograms (2X)
Verifies that the electrical system in the heart is functioning normally.
- Additional urine testing
Detects infections, dehydration and disease. Important to do twice a year for chronic disease diagnosis and management.



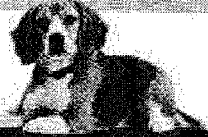
Plus:
20% OFF
most other
services

[Figure 4]

41. In particular, the OWP price-sheets set forth the purported “**Minimum Annual Savings**” on pet care services included in the OWP for dogs. *Figure 5* below reflects a price sheet for the dog OWPs printed in or about January 2013 and disseminated thereafter in Southern California:

Optimum Wellness Plan® Canine Plan Prices

Affordably priced healthcare plans that spread the cost conveniently over twelve months.




Puppy Plans		
	Early Care	Early Care Plus
One-Time Membership Fee	\$49.95	\$49.95
Monthly Payment	\$32.95	\$39.95
Annual Cost	\$395.40	\$479.40
Minimum Annual Savings	\$637.06	\$873.01
Additional discount on most products and services	5%	10%

Adult Plans			
	Essential Wellness	Active Prevention	Special Care
One-Time Membership Fee	\$49.95	\$49.95	\$49.95
Monthly Payment	\$31.95	\$39.95	\$49.95
Annual Cost	\$383.40	\$479.40	\$599.40
Minimum Annual Savings	\$700.13	\$1008.61	\$1422.94
Additional discount on most products and services	10%	15%	20%

Optimum Wellness Plans.
Your dog's prescription for good health.

Your Banfield veterinarian will recommend the right wellness plan for your dog.

For complete terms and conditions of membership, please read the Optimum Wellness Plan agreement.




© 2013 Banfield Pet Hospital. All rights reserved.
Banfield Pet Hospital 2013-01-01

[Figure 5]

42. **Figure 6** below reflects a price sheet for dog OWPs printed in or about August 2013 and disseminated in Southern California (also setting forth purported “Minimum Annual Savings” on pet care services included in the OWP for dogs):

Optimum Wellness Plan® Canine Plan Prices

Affordably priced healthcare plans that spread the cost conveniently over 12 months.




Puppy Plans		
	Early Care	Early Care Plus
One-Time Membership Fee	\$49.95	\$49.95
Monthly Payment	\$32.95	\$39.95
Annual Cost	\$395.40	\$479.40
Minimum Annual Savings	\$654.16	\$890.11
Additional discount on most products and services	5%	10%

Adult Plans			
	Essential Wellness	Active Prevention	Special Care
One-Time Membership Fee	\$49.95	\$49.95	\$49.95
Monthly Payment	\$31.95	\$39.95	\$49.95
Annual Cost	\$383.40	\$479.40	\$599.40
Minimum Annual Savings	\$618.33	\$926.81	\$1,426.16
Additional discount on most products and services	10%	15%	20%

Optimum Wellness Plans.
Your dog's prescription for good health.

Your Banfield veterinarian will recommend the right wellness plan for your dog.

For complete terms and conditions of membership, please read the Optimum Wellness Plan Agreement.



Banfield
PET HOSPITAL

Price List 17
©2013 Banfield 2013.08

[Figure 6]


1
2 43. According to the sample price sheet in *Figure 5*, a consumer purchasing
3 the Active Prevention OWP for one adult dog would pay a one-time Membership
4 Fee of \$49.95, plus a Monthly Payment of \$39.95, for an Annual Cost of \$479.40,
5 reflecting "**Minimum Annual Savings**" of \$1,008.61.

6 44. The purported minimum savings reflected on Banfield price sheets are
7 false and/or misleading. As a general practice prior to purchase, Banfield does not
8 supply consumers with retail price lists or similar information about all of the
9 individual costs used to calculate the advertised savings and discounts.

10 45. In truth, many OWP clients save nothing and others save far less than
11 promised. The savings depend on Banfield providing bundled pet care products and
12 services to OWP clients over the course of an entire plan year. Banfield, however,
13 does not actually provide all of the bundled products and services to OWP clients
14 and/or the OWP clients do not need all such products or services, and as a result, the
15 purported savings evaporate. Importantly, if the OWP client cancels during the plan
16 year, any savings may be wiped out, leaving the OWP client with little more than a
17 history of overpayments. The advertised minimum annual savings also ignore the
18 costs of unnecessary pet care products and services upsold to OWP clients as well as
19 bogus "hospitalization" and "professional service" fees that Banfield assesses on top
20 of other charges for services supposedly rendered.

21 46. The cat OWP advertising is substantially similar to the dog OWP
22 advertising. According to the Banfield brochure regarding the basic OWP for cats:
23 "Consistent preventive care is essential, even with young healthy cats. This
24 Essential Wellness Plan establishes and manages baselines of wellness information
25 to help keep your cat healthy."

26 47. The OWP service options for cats are broken out as follows (See
27 *Figures 7-10*):
28



Start your kitten off right.

Establish an early habit of preventive care for your kittens less than six months of age. Remember, cats age 6-10 years for each one of ours. Start them off on the right paw with the right plan.

Early Care Plan

- **"Introduction" comprehensive physical exam**
This in-depth evaluation assesses your kitten's overall health and establishes important baseline information.
- **"Graduation" comprehensive physical exam**
Toward the end of your plan year, we'll focus on what to expect as your kitten moves into adulthood and help you plan for the next stage of preventive care.
- **Vaccinations***
Protects against the most important infectious diseases your kitten can get.
- **Diagnostic testing including leukemia, feline immunodeficiency virus and ear swab****
Identifies disease, parasites and infections. Catches issues early before they become more serious and harder to treat.
- **Fecal exam (3x) and deworming (4x)**
Detects and treats parasites and other intestinal organisms that can cause disease.
- **Free office visits**
No need to delay when you have a concern about your kitten's health!

Plus: 5% OFF nearly all other products and services

Early Care Plus Plan

Includes Early Care Plan services:

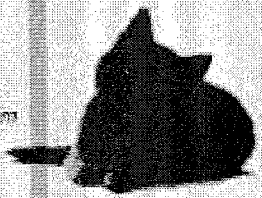
- Comprehensive physical exam (2x)
- Vaccinations*
- Diagnostic testing including leukemia, feline immunodeficiency virus and ear swab**
- Fecal exam (3x) and deworming (4x)
- Free office visits

AND:

- Spay or neuter surgery including pre-anesthetic blood testing, blood pressure check, internal organ screens and electrolytes

Helps your pet live a healthier, happier, longer life and minimizes cat overpopulation. Thoroughly assesses your kitten's health before anesthesia and builds baselines to guide current and future care.

Plus: 10% OFF nearly all other products and services



[Figure 7]

Essential Wellness

Every cat needs a plan. Consistent preventive care is essential, even with young, healthy cats. This Essential Wellness Plan establishes and manages baselines of wellness information to help keep your cat healthy.



Essential Wellness Plan

- **Comprehensive physical exam (2x)**

This in-depth evaluation assesses your cat's overall health and establishes important baseline information for you and your veterinarian.

- **Vaccinations***

Protects against the most important infectious diseases your cat can get.

- **Diagnostic testing including leukemia**, feline immunodeficiency virus**, heartworm**, bloodwork, internal organ screens and ear swab****

Identifies disease, parasites and infections. Catches issues early before they become more serious and harder to treat. Builds baselines for current and future care.

- **Fecal exam (2x) and deworming (2x)**

Detects and treats parasites and other intestinal organisms that can cause disease.

- **Unlimited free office visits**

No need to delay when you have a concern about your cat's health!




**Plus:
10% OFF**
nearly all other
products and
services

[Figure 8]

Active Prevention

By age three, more than 85 percent of cats show signs of gum disease which, if left untreated, can lead to serious illness. Give your cat essential care plus active prevention. This plan provides dental cleaning and early screening for common diseases.

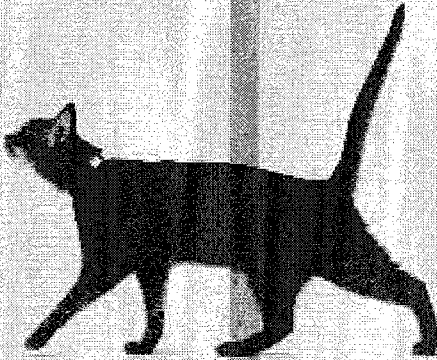


Includes Essential Wellness services

- Comprehensive physical exam (2x)
- Vaccinations*
- Diagnostic testing including leukemia**, feline immunodeficiency virus**, heartworm**, bloodwork, internal organ screens and ear swab**
- Fecal exam (2x) and deworming (2x)
- Unlimited free office visits

PLUS Active Prevention services

- Dental cleaning including full pre-anesthetic work-up
Prevents serious infection, tooth loss, pain and potential for heart and kidney disease. Thoroughly assesses your cat's health before anesthesia.
- Urine testing
Detects infections, dehydration and disease.



Plus: 15% OFF
nearly all other products and services

*Most vaccines are included in your plan. Your veterinarian may recommend additional vaccines that are not.

[Figure 9]

Special Care

Often older cats or breeds with special needs require proactive management of chronic disease. The Special Care Plan is designed specifically for this group.



Includes Essential Wellness services

- Comprehensive physical exam (2x)
- Vaccinations*
- Diagnostic testing including leukemia**, feline immunodeficiency virus**, heartworm**, bloodwork, internal organ screens and ear swab**
- Fecal exam (2x) and deworming (2x)
- Unlimited free office visits

PLUS Active Prevention services

- Dental cleaning including full pre-anesthetic work-up
- Urine testing

PLUS Special Care services

- Additional diagnostic testing including eye pressure (2x), heartworm and thyroid tests
Ensures your cat doesn't have serious issues like heartworms, thyroid disease, glaucoma or other eye problems.
- Electrocardiogram
Verifies that the electrical system in the heart is functioning normally.
- Additional urine testing
Detects infections, dehydration and disease. Important to do twice a year for chronic disease diagnosis and management.



Plus: 20% OFF
nearly all other products and services

**Leukemia, feline immunodeficiency virus, heartworm tests and ear swabs - first year only.


[Figure 10]

48. The OWP price-sheets set forth the purported “**Minimum Annual Savings**” on pet care services included in the OWP for cats, which are false or misleading in the same manner as the advertised pricing for dog OWPs. *Figure 11*

below reflects a price sheet for the cat OWPs printed in or about January 2013 and disseminated thereafter in Southern California:

Optimum Wellness Plan® Feline Plan Prices

Affordably priced healthcare plans that spread the cost conveniently over twelve months.




Kitten Plans		
	Early Care	Early Care Plus
One-Time Membership Fee	\$49.95	\$49.95
Monthly Payment	\$30.95	\$35.95
Annual Cost	\$371.40	\$431.40
Minimum Annual Savings	\$457.41	\$617.36
Additional discount on most products and services	5%	10%

Adult Plans			
	Essential Wellness	Active Prevention	Special Care
One-Time Membership Fee	\$49.95	\$49.95	\$49.95
Monthly Payment	\$22.95	\$29.95	\$39.95
Annual Cost	\$275.40	\$359.40	\$479.40
Minimum Annual Savings	\$661.88	\$982.36	\$1179.45
Additional discount on most products and services	10%	15%	20%

Optimum Wellness Plans.
Your cat's prescription for good health.

Your Banfield veterinarian will recommend the right wellness plan for your cat.

For complete terms and conditions of membership, please read the Optimum Wellness Plan agreement.



F611 Level 12
#207586 KittenPlans 2013.01

[Figure 11]

49. **Figure 12** below reflects a price sheet for the cat OWPs printed in or about August 2013 and disseminated thereafter in Southern California:

Optimum Wellness Plan® Feline Plan Prices

Affordably priced healthcare plans that spread the cost conveniently over 12 months.



Kitten Plans

	Early Care	Early Care Plus
One-Time Membership Fee	\$49.95	\$49.95
Monthly Payment	\$30.95	\$35.95
Annual Cost	\$371.40	\$431.40
Minimum Annual Savings	\$424.56	\$584.51
Additional discount on most products and services	5%	10%

Adult Plans

	Essential Wellness	Active Prevention	Special Care
One-Time Membership Fee	\$49.95	\$49.95	\$49.95
Monthly Payment	\$22.95	\$29.95	\$39.95
Annual Cost	\$275.40	\$359.40	\$479.40
Minimum Annual Savings	\$610.53	\$931.01	\$1,128.10
Additional discount on most products and services	10%	15%	20%

Optimum Wellness Plans.

Your cat's prescription for good health.

Your Banfield veterinarian will recommend the right wellness plan for your cat.



For complete terms and conditions of membership, please read the Optimum Wellness Plan Agreement.

Date: April 12, 2013
#287546 (03/01/13) 2013.05

[Figure 12]

50. Banfield also advertises and promotes purported savings on its invoices to OWP clients. A standard invoice, for instance, includes a column for “Regular Fees”, a column for “Your fees”, and a summary dollar amount of Wellness Plan discounts to date resulting in “lifetime savings” as stated therein.

1 51. The advertised savings are false or misleading in multiple ways. While
2 Banfield reports accumulated savings with each visit, no savings actually accumulate
3 until the end of a plan year, if at all. Furthermore, Banfield double counts OWP
4 membership fees and OWP monthly fees as if they were “regular fees” that would be
5 incurred without the purchase of an OWP. That is not the case. By including OWP
6 fees in the regular fee column, Banfield artificially increases the purported regular
7 fees, and thereby inflates the purported savings. Further, the advertised savings
8 ignore the costs of upsold products and services, and factor out improper charges
9 such as “hospitalization” charges and “professional service charges”, which are
10 administrative tack-on fees that should not be assessed on top of OWP fees.

11 52. Banfield also advertises and promotes purported savings via OWP client
12 renewal letters. These form letters describe a substantial percentage savings (e.g.
13 50% savings) off of regular retail costs. The advertised savings, however, are false
14 or misleading insofar as: (i) they actually accumulate at the end of a plan year, if at
15 all; (ii) they ignore the costs of unnecessary pet care products and services that
16 Banfield upsells to OWP clients, (iii) they factor out improper administrative fees
17 (including “hospitalization” and “professional service” charges), and (iv) they do not
18 take into account cancellation costs.

19 53. Plaintiff is informed and believes that substantially similar marketing
20 representations about minimum and/or percentage savings are made orally by staff
21 members and distributed in writing to OWP clients throughout California and the
22 country.

23 54. For each OWP, Banfield charges a one-time membership fee—for
24 example, \$49.95 in California for first pets—plus ongoing monthly payments.
25 Pricing may vary over time and/or according to the company’s pricing markets in the
26 United States.

1 55. In September 2013, for a first puppy dog in California (i.e., under six
2 months old), Banfield generally reported base monthly payments at \$32.95 (i.e., the
3 Early Care OWP) and monthly payments under the Early Care Plus OWP at about
4 \$39.95. For an adult dog in California, Banfield generally reported base monthly
5 payments at \$31.95 (i.e., the Essential Wellness OWP), monthly payments for the
6 mid-tier OWP at \$39.95 (i.e., the Active Prevention OWP), and monthly payments
7 for the top-tier OWP at \$49.95 (i.e., the Special Care OWP).

8 56. In September 2013, for a kitten in California (i.e., under 6 months),
9 Banfield generally reported base monthly payments at \$30.95 (i.e., the Early Care
10 OWP), and monthly payments for the Early Care Plus OWP at \$35.95. For an adult
11 cat in California, Banfield generally reported base monthly payments at \$22.95 (i.e.,
12 the Essential Wellness OWP), monthly payments for the mid-tier OWP at \$29.95
13 (i.e., the Active Prevention OWP), and monthly payments for the top-tier OWP at
14 \$39.95 (i.e., the Special Care OWP).

15 57. Banfield promotes all Wellness Plans for dogs and cats as providing
16 savings of about 45%-70% off the regular costs for preventive pet care services, plus
17 additional OWP discounts on most other Banfield pet care products and services of
18 about 5%-20%.

19 58. After credit card enrollment, Banfield may provide the new OWP client
20 with a copy of a standard OWP agreement. In the terms and conditions thereunder,
21 Banfield asserts that clients are committed to each OWP for successive one-year
22 terms that automatically renew or upgrade unless cancelled.

23 **B. Banfield Deceptively Markets Substantial Savings and Discounts under**
24 **OWPs, and Unfairly Upsells Other Pet Care Products and Services to**
25 **OWP Clients.**

26 59. In no uncertain terms, for each OWP at issue, and at least for the past
27 four years preceding the filing of the Complaint, Banfield has promised substantial
28 minimum savings and percentage savings on preventive pet care products and

1 services and significant discounts on most other pet care products and services
2 offered at Banfield.

3 60. Yet, Banfield misrepresents the purported savings and discounts under
4 each OWP in the following ways:

5 a. The promised amount of savings simply does not add up;

6 b. In addition to certain basic preventive care, Banfield charges
7 OWP clients for pet care products and services that they don't receive and/or don't
8 need;

9 c. Banfield markets the OWPs as if they provide savings and
10 discounts per visit and/or per month, when in fact, savings and discounts only
11 accumulate at the end of a plan year, if at all;

12 d. Banfield inflates the regular costs that it uses to calculate the
13 purported savings and discounts under OWPs, which costs include unjustified fees
14 and markups on top of OWP membership charges; and

15 e. Banfield conceals, obscures, and wrongly imposes cancellation-
16 related charges.

17 61. In its core advertising, Banfield promises that the OWPs provide
18 *essential preventive care* and "*always provide the services you pay for.*" In fact,
19 Banfield effectively charges OWP clients for unprovided and unneeded pet care
20 products and services.

21 62. In order to meet Average Patient Charges, Banfield routinely orders a
22 variety of diagnostic tests on OWP pets (blood tests, fecal tests, ear swabs, etc.)
23 whether the pets need those tests or not.

24 63. Over the past several years, Banfield has developed an aggressive
25 method of scheduling comprehensive exams to fit the company's business model
26 (using frequent personal contacts and/or in-person pressure tactics to schedule pet
27
28

1 exams). Banfield strives to herd enough pets together at the same time in order to
2 shuttle them through in a highly profitable manner.

3 64. Banfield attributes part of the savings advertised under the OWPs to
4 vaccinations that are not requested, appropriate, or available to OWP clients. For
5 example, Banfield bases the advertised savings in part on the cost of two (2) Lyme
6 vaccinations for an adult dog in Southern California, although Banfield normally
7 does not and/or should not provide those two vaccinations.

8 65. Banfield also attributes part of the savings advertised under the OWPs
9 to health care certificates (i.e., certificates for interstate traveling with pets). Yet,
10 Plaintiff is informed and believes that these certificates are not routinely provided
11 and often go unused. In fact, Banfield does not even meaningfully inform OWP
12 clients that it attributes part of the OWP savings to such certificates.

13 66. Banfield purportedly conditions cancellation of an OWP on payment of
14 retail fees for services used up to the cancellation date. OWP cancellations wipe out
15 prior savings and discounts. Yet, Banfield does not disclose the retail fees for OWP
16 services in its upfront advertising.

17 67. For OWPs that include a dental cleaning and pre-cleaning blood test,
18 Banfield effectively conditions the advertised savings and services on a future
19 event—namely, the blood test result must appear normal at the time of the cleaning.
20 Otherwise, Banfield will postpone the cleaning and charge the client for an
21 additional pre-cleaning blood test, or Banfield will cancel the cleaning.

22 68. Since OWPs include unprovided and/or unneeded pet care products and
23 services bundled with essential preventive care, the overall OWP savings are
24 misstated. Likewise, the savings are misstated to the extent that OWP clients cannot
25 use or otherwise do not receive all of the pet care products or services on which the
26 purported savings are based. As a general practice, Banfield does not provide
27 refunds for unused products and services.
28

1 69. Furthermore, the purported savings are deceptive insofar as they do not
2 fully take into account: (i) the true costs of owning an OWP (i.e., membership,
3 monthly fees, additional fees and markups, etc.); and/or (ii) the fact that the
4 purported savings can only be earned after the client pays OWP fees for the entire
5 plan year (rather than per visit or per month).

6 70. In order to pump up the Average Patient Charges, Banfield also charges
7 exorbitant amounts to OWP clients for common pet medications. Consequently,
8 OWP clients end up overpaying for pet medications rather than receiving
9 medications at discounts vs true retail costs. Similarly, Banfield tacks on extra fees
10 and markups to lab tests (including hospitalization charges and internal markups on
11 lab tests performed outside of Banfield), which further inflates the purported savings
12 and discounts under the OWPs.

13 71. Furthermore, when a client wants to cancel the OWP during the plan
14 year, Banfield may retroactively impose its full retail fees to date or assess a full
15 year's worth of OWP payments. The harsh cancellation provisions—*which apply*
16 *even when a pet dies during the plan year*—tend to wipe out the advertised savings.
17 The cancellation provisions are doubly problematic insofar as Banfield overstates the
18 retail fees incurred at the outset of the relationship, a fact which further locks clients
19 into ongoing OWP commitments.

20 72. Plaintiff is informed and believes that, as a matter of policy and
21 practice, Banfield trains its sales representatives and sets up its computer system to
22 enroll consumers in the OWPs before Banfield provides a copy of an OWP
23 agreement. Only after the client provides Banfield with a credit card to be charged
24 for automatic enrollment purposes does Banfield provide the OWP agreement to the
25 client, if at all. This unfair, deceptive, and unlawful sales tactic is designed to induce
26 consumers to commit to the OWP before considering restrictions that severely
27 reduce the value of the purchased services.
28

1 73. After credit card enrollment (and often after the initial exam), Banfield
2 may provide the client with the OWP agreement, including the harsh and inequitable
3 cancellation provision in fine print.

4 74. Plaintiff relied on Banfield's marketing because, unlike Banfield,
5 Plaintiff did not have access to and knowledge of the services and retail costs on
6 which Banfield purportedly based the advertised savings and discounts. Nor did
7 Plaintiff have specialized knowledge about the pet care products and services being
8 sold.

9 75. At the time Plaintiff purchased his OWPs, he did not know that
10 Banfield's advertised savings and discounts on pet care products and services were
11 false and/or misleading.

12 76. In addition to the deceptively marketed savings and discounts, and as a
13 matter of policy and practice throughout at least the four years preceding the filing of
14 this Complaint, Banfield has employed unfair sales tactics to upsell additional pet
15 care products and services to OWP clients.

16 77. Moreover, at the time Plaintiff purchased his OWPs, he did not know
17 that Banfield was engaging in sales tactics designed to push pet care products and
18 services on OWP clients in order to achieve an Average Patient Charge.

19 78. Consumers like Plaintiff must and do rely on pet care hospitals to
20 honestly describe their costs and savings, not to upsell unnecessary or overpriced
21 products and services, and to put the welfare of the pets ahead of corporate profits.

22 **C. Former Banfield Employees and Clients Reveal How Banfield Pushes**
23 **OWPs, Upsells Pet Care Products and Services to OWP Clients, and Fails**
24 **to Deliver the Advertised Products and Services for the Advertised**
25 **Discounted Prices.**

26 79. Online testimonials from former Banfield employees, including the
27 following examples, are telling:
28

- 1 a) "[Constant] pressure from corporate to sell the more
2 expensive wellness plans. At one point we were being told
3 we need to 'triple penetrate' the clients for various types of
4 preventative plans. There is constant over scheduling of
5 exams and surgeries."
- 6 b) "I was a very hardworking, dedicated employee who had
7 never received a written communication memo and
8 suddenly received two within three months time for not
9 meeting the wellness plan percentage [sic] for the quarter. I
10 had no other option but to seek employment elsewhere as I
11 was imminently facing termination."
- 12 c) "The corporate headquarters of this company only cares
13 about the bottom line. They gouge their clients, and expect
14 their employees to do the same."
- 15 d) "I felt so sorry for our relief/new hire doctors because they
16 would put together a reasonable treatment plan for a Pet
17 (reasonable being what the pet needed no extras) and then
18 get berated that their APC (Average Patient Charge) was
19 below \$140! Some would cave in after multiple nasty
20 emails and phone calls, many moved on. I felt sorry for the
21 poor pets and clients. Its hard to respect a company who
22 doesn't respect their clients."
- 23 e) "Banfield has something called APC, average patient
24 charge. This is the figure that determines the success of
25 your hospital at the end of the day. Patient care = APC.
26 Bottom line."
- 27
28

1 f) "Constantly having to upsell unnecessary products and the
2 Wellness Plans."

3 g) "You have to try and sell as many wellness plans as you
4 can and whatever monthly item corporate wants you to sell.
5 All the hospitals get ranked in their district so it's always a
6 competition. . . .Some customers get annoyed when they're
7 not on a plan and you ask them each visit if they want to
8 join. Each customer is seen as a dollar sign, your goal is to
9 make them spend more than \$100 each visit."

10 h) "I have been a vet tech with Banfield for six years. It
11 began as my dream job. . . .Then we were taken over, by all
12 things, a giant candy corporation. This made perfect sense
13 of course -- making chocolate and caring for pets is
14 obviously a natural transition. That is when it began a rapid
15 downhill slide toward the changing of priorities to the all-
16 mighty dollar in place of pet care."

17 80. These employee testimonials (which are available online at sites such as
18 glassdoor.com) reflect how Banfield upsells unnecessary pet care services (like
19 needless diagnostic tests) and costly medications (like overpriced antibiotics,
20 heartworm medications, and flea medications) at inflated prices to a captive
21 audience, while routinely failing to provide the comprehensive preventive care that
22 Banfield promised to provide in accordance with its advertising.

23 81. Plaintiff is informed and believes that the Banfield Petware computer
24 system automatically recommends extra diagnostic tests and/or medications for pets
25 such that OWP clients incur additional charges that otherwise could have been
26 reduced or avoided.

1 82. Plaintiff is also informed and believes that, as a matter of policy and
2 practice, Banfield staff are trained to achieve an Average Patient Charge (e.g., north
3 of \$100 per visit) and thus to induce OWP clients to pay for pet care products and
4 services that are not needed and/or not provided.

5 83. Plaintiff, like other OWP clients, was unfairly induced to purchase
6 unnecessary diagnostic tests and medications for his pets without receiving full
7 advance disclosures. Plaintiff could have avoided those charges entirely or gone
8 elsewhere and paid less.

9 84. Like the former Banfield employee statements, there are a huge number
10 of former client complaints about Banfield practices reflecting how Banfield upsells
11 unnecessary services and medications and fails to deliver the advertised preventive
12 care services for the advertised discounted prices. Many hundreds if not thousands of
13 client complaints are available online at consumer sites such as consumeraffairs.com,
14 consumerboard.com, and yelp.com, and at the Better Business Bureau. Several
15 examples follow:

16 a) "I've been taking my dog to Banfield for years now. I got
17 the Wellness Plan after telling me it would save money. It
18 never did. Every time I take the dog to Banfield, I'm told
19 this or that needs to be done and some of the dumbest
20 reasons why. I'm going to be honest here good people, I
21 work for Petsmart (number of years). Don't take your
22 animal to Banfield, they will take you for every penny you
23 have and try and scare you into buying everything and
24 anything."

25 b) "... I personally feel like they prey on owners who care
26 deeply for their pets by quoting high retail costs and then
27 using that as a means to get people to sign up for wellness
28

1 plans. . . . How many people REALLY make full use of the
2 plan, except annual check up, shots, emergencies? So you
3 either pay ridiculous fees for the services you DO use, or
4 you pay a seemingly less ridiculous fee for services you
5 don't fully use. The fact that they can discount everything
6 with the wellness plan should show how much they
7 overcharge in the first place."

8 c) "There have been multiple mistakes in the three years I
9 have had a wellness contract with Banfield, but this was the
10 final straw. I am done!! I cancelled my contract for both
11 my dogs with Banfield Pet Hospital, but of course they
12 would not give me any sort of refund on the remaining time
13 on the contract."

14 d) "...Banfield[] inflates their prices so they 'appear' to give
15 you a discount because you are on their wellness plan. I
16 have checked with other vets to verify this happens. Their
17 prices are out of line with others in the same business."

18 e) "...They recommended an extraction and dental cleaning. I
19 could not afford the procedure, so they suggested their
20 'wellness plan' to bring the cost down to something I could
21 afford right away. They told me it was urgent to get him in
22 right away so they 'fit him into their schedule' the next day.
23 Of course when they had him under anesthesia, they called
24 to tell me he needed two more teeth extracted at the cost of
25 another \$150. The original tooth fell out on the table, but I
26 was still charged for that extraction."

- 1 f) "[The wellness program] is a complete waste of money.
2 They encourage you to come in and then overcharge
3 everything that's not on the plan. So not worth it!"
- 4 g) "I ended up having to call the Banfield Complaint Center,
5 and was pretty much told that since I signed something, I
6 was stuck in the plan. I explained to them that I was never
7 told anything about it being renewed and that I was able to
8 cancel this. . . . Also, they up-charge like a car dealership."
- 9 h) "[E]very visit I never feel confident in their advice or
10 prescription, mostly they seem to have an agenda that I
11 leave owing them money in some way since I'm on the
12 Wellness Plan and not paying that day. Getting me to buy
13 additional services is obviously a high priority."
- 14 i) "Please, I am trying to make others aware to NOT purchase
15 the Banfield Animal Hospital Plan! I took my new puppy
16 into their hospital for his first visit to make sure he was
17 healthy and to begin his shots. They sold me their wellness
18 plan, and I signed up because I trusted they would deliver
19 those services. Unfortunately, that HAS NOT happened.
20 On both the 2nd and 3rd visits, they called me on my cell
21 to explain they had emergencies and were running terribly
22 behind. Both times, appointments were made as per the
23 wellness plan, but I ONLY saw a vet ONE time, and that
24 was on the 1st visit, when the plan was sold to me. I paid
25 based on the plan's breakdown of visits or 'exams'. The
26 only services performed were shots."
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- 1 j) "If your pet needs medications, the prices they charge are
2 inflated by 500%. I told them that I would get one of the
3 prescriptions they wanted to charge me \$53 for at my
4 pharmacy. I paid \$12 at the pharmacy. This is an ongoing
5 practice of theirs."
- 6 k) "I bought Wellness plan for my elderly dog. I specifically
7 asked if I could cancel at any time and the answer was yes.
8 This is totally untrue, as they will continue to charge you
9 until the year is up. They try to tell you that the expenses
10 you racked up for services are far more than what you owe,
11 so you will have to pay the difference. . . . The amounts
12 that they charge for their services are far and above the
13 normal rates than a neighborhood vet charges. How do I
14 know this? My dog went to a neighborhood vet for the first
15 11 years of his life, as does his sister."
- 16 l) "The wellness plans are a total sham - every visit, I've had
17 to fight to get the vet to perform the most routine tests that
18 are promised in the plan, and even then, they find
19 loopholes to charge you... They charge several times the
20 regular rate for meds, etc. so you end up paying for what
21 you would have if you'd gone to a reputable vet."
- 22 m) "Bottom line, charges that may be discounted as part of the
23 Wellness Plan and what and how they tack on fees is
24 misleading, and frankly bad business. Did you know that if
25 you bring your pet in for a free teeth cleaning, the
26 automatic blood work that they do is only covered if in fact
27 they actually do the teeth cleaning. If the blood work shows
28

1 additional potential health issues and the teeth cleaning is
2 then suggested to not be done (i.e. anesthesia may be
3 risky), the automatic blood work charges will be charged to
4 you. Even when asked what my charges were in the
5 morning when I dropped my cat off, no mention of this was
6 made. Evidently, it is in the fine print of what I signed as I
7 rushed off to work in the early morning. Regardless, the
8 principle of the matter is that it is misleading. The free teeth
9 cleaning cost me \$176.00.”

10 n) “I went in with my dog and waited for over an hour. He
11 was supposed to be seen by the vet for his wellness visit.
12 They were supposed to take his blood and do other tests for
13 his checkup. The nurse saw him, took his temperature, etc.
14 She tried to take his blood, and she was not able to do so. I
15 waited in the office for over an hour and the vet never saw
16 my dog. . . They charged my account for tests, and for a vet
17 visit. The vet never saw my dog, only the girl (nurse).”

18 o) “We currently have a Banfield wellness plan for our four
19 pets. We moved to Maine and Banfield does not provide
20 services in Maine. However, they will not allow us to
21 cancel the plan (even though two are new and two were
22 just renewed). We have to keep paying for four wellness
23 plans and we cannot even use their facilities. Also, one of
24 our pets passed away the day after Christmas. We had a
25 wellness plan for this beloved pet which we only renewed a
26 couple of months ago so we have barely benefited from the
27 plan. Unfortunately, Banfield will not cancel the plan so we
28

1 have to continue paying for the plan for a pet that is no
2 longer living and Banfield can no longer treat.”

3 p) “Be careful before you purchase this plan. They will claim
4 it saves you money over time, but it does not. First of all,
5 they mark up their medications about 400% to make up for
6 their free unlimited office visits. You can get the same RX
7 at Walmart for one-tenth of the price. Secondly, they tell
8 you they will give you a 10% discount on all other
9 services; however, my son who doesn’t have the plan took
10 his dog in and paid the same price I did for the same
11 service.”

12 q) “After my dog got heartworms, my vet suggested this plan.
13 I ended up still having to pay over \$1,000 for treatment
14 even though they swore I was getting a deal. After all the
15 treatments and they said my dog was clear, she died a week
16 later. I called to cancel the plan and you have to pay the
17 full 12 months so I’m stuck paying 6 more months for a
18 dog I don’t have.”

19 r) “I called Banfield corporate to report what I felt was bad
20 business practices and complaining about this plan they
21 sell. I also spoke with the division that sold this plan and
22 asked about the diagnostic blood work. They tried to tell
23 me it was only once, period. Nothing in the brochure and
24 contract state that. And the items that are listed that are
25 limited all specify time limits.”
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- 1 s) "I signed up for the \$28 puppy plan and it's a waste. I tried
2 to get my puppy sprayed twice and they keep giving
3 reasons why they can't."
- 4 t) "I have four dogs, all on the Wellness Scams. Every time I
5 would go there, it was a constant push to try to sell me
6 unnecessary care above and beyond the already over-
7 inflated prices on their plans. For example, somehow, the
8 only dog whose blood work was not covered on a
9 particular visit would be the one that they would have a
10 problem that needed to be looked at. Banfield is like an
11 assembly line with the only goal they have is to take more
12 money out of your pocket."
- 13 u) "[] I called Banfield and they tell me that I owe them \$400
14 for the rest of the plan. I argued with the woman and she
15 said this isn't a insurance plan but a payment plan. She said
16 they have already done over \$800 work on the dog. They
17 only gave her shots when I was there, 2 each time for a
18 total of 6. I said what were they giving her, gold in the
19 shots? This company is a total rip-off and total swindlers."
- 20 v) "Finally, I managed to cancel the plans for my animals
21 after 2 years of attempts! Even though I had the Banfield
22 plans in place, I receive better service and it was still
23 cheaper to take my animals to a local private vet practice."
- 24 w) "I was sold 3 plans for my animals. After I was sold the
25 plans, I was told that they could not clean my 2 cats' teeth
26 because of a heart murmur that was determined at the
27 initial visit. The reason I signed them up for the plans was
28

1 because they deceived me and talked me into buying 2
2 dental plans for my cats.”

- 3 x) “The Wellness Plan is a joke! The service is subpar! The
4 staff is rude! The access to care is usually unavailable or
5 hard to get! It's nothing like the promises that are made, it's
6 more like a bait and switch once you've signed up!”
7 y) “They will reel you in with "wellness plans". If only the
8 value was truly there! . . . When the time comes to count on
9 them though, the additional charges will start appearing.
10 ‘This’ is not covered, ‘that’ is not covered.”

11 85. Banfield engages in unfair upselling practices when, for example, it
12 recommends medications during a covered visit, charges grossly inflated prices for
13 those medications, and fails to make clear that the OWP client may purchase those
14 medications elsewhere (and at a fraction of the price).

15 86. Banfield also engages in unfair upselling when it sells additional
16 products and/or services during a covered office visit, but neglects to inform the
17 client in advance about the additional charges to be assessed, or when it tacks on
18 unjustified add-on fees and/or markups.

19 **D. Plaintiff's History of OWP Purchases.**

20 87. In 1997, Plaintiff had two older Golden Retrievers named “Alex” &
21 “Chelsea” and a grey tabby kitten named “Tony”. Plaintiff and his wife took Alex
22 and Chelsea to a Banfield outlet (called VetSmart at the time) inside a PetSmart store
23 in the Anaheim Hills, California area. Plaintiff was first introduced to Banfield’s
24 Optimum Wellness Plans at that time.

25 88. The OWP brochures advertised significant savings on routine services
26 as well as discounts on other services and products, while proactively maintaining
27 the health of your pets. Plaintiff purchased OWPs for Alex, Chelsea, and Tony in
28

1 light of the prospect of substantial savings on preventive pet care. Alex and Chelsea
2 passed away in 2001.

3 89. In or about 1999-2000, Plaintiff and his wife adopted a young female
4 calico cat named "Ginger" and purchased an OWP for her. That same year, they
5 also adopted a stray orange tabby named "Wiley Coyote". Plaintiff also purchased
6 an OWP for Wiley.

7 90. In the 2001-2002 timeframe, Plaintiff and his wife adopted two six
8 week old Golden Retrievers puppies about a year apart from each other named Jake
9 and Liberty. Plaintiff purchased an OWP for each puppy.

10 91. From Plaintiff's perspective, since 2007, Plaintiff has observed
11 considerable negative changes at Banfield in terms of staffing, operations, and
12 customer support. As time went by, Plaintiff also believes that the better
13 veterinarians at his local Banfield would be gone within 6 months.

14 92. Around the time that Liberty was 5-6 years old, she developed a
15 cancerous tumor. Veterinary Surgical Specialists (VCG) in Tustin, CA removed the
16 tumor. Plaintiff had to take Liberty to VCG versus Banfield because ultra sound is
17 an important method of detecting the return of cancer cells and Banfield did not have
18 ultra sound. Subsequently, Plaintiff paid out of pocket for regular visits to VCG.
19 Moreover, vaccines were not appropriate for Liberty, since they would have an
20 adverse impact on a dog's immune system.

21 93. In or about 2007, Plaintiff took Wiley to the Yorba Regional Animal
22 Hospital ("Y.R.A.H.") located next to Plaintiff's local Banfield in the City of Yorba
23 Linda, California (the Banfield outlet was closed). Y.R.A.H. conducted a course of
24 tests and found a tumor located on the outside of Wiley's heart. The tumor was at an
25 advanced stage and had gone undetected for some time.

26 94. In August 2009, Plaintiff received a letter from Banfield informing him
27 of the upcoming OWP renewal that would take effect in September 2009. The letter
28

1 identified the core benefits of OWPs including essential preventive pet care that
2 provides cost savings of more than 50%.

3 95. In January 2010, Plaintiff and his wife rescued a cat named "Emily".
4 They promptly signed her up to the OWP. The fee that day for signing her up was a
5 \$54.95 one-time Membership fee and a \$22.95 monthly fee. That day, Banfield
6 performed a comprehensive feline exam (which included an Ophthalmic exam and
7 Otoscopic exam). In March of 2010, Plaintiff took Emily in for an office visit.
8 Banfield ran a number of tests and then recommended that Plaintiff take her to an
9 eye specialist. The Banfield invoice for that appointment included a line item for
10 Ophthalmic Ointment and two other line items labeled "Professional Service Fee –
11 Per Minute". The two "Professional Service Fee" line items totaled \$222.87 and the
12 total bill was \$334.49. When Plaintiff took Emily to the eye specialist, he learned
13 that her retinas were detached and she was effectively blind and no amount of eye
14 ointment or "Professional Service Fee – Per Minute" was going to change that fact.

15 96. In December 2011, Plaintiff and his wife rescued a kitten named
16 "Petey", and Plaintiff purchased an OWP for him. At this point in time, Plaintiff had
17 six (6) pets in total each on a Banfield OWP.

18 97. In August 2012, Jake became very sick and Plaintiff brought him into
19 Banfield for an office visit. Banfield ran a number of diagnostic tests and x-rays.
20 The Banfield vets indicated that there appeared to be something around his chest on
21 the x-ray, but they couldn't identify what it was. Again, Plaintiff needed to take his
22 pet to another pet hospital where they had ultra sound equipment.

23 98. Plaintiff took Jake to Southern California Veterinary Specialty Hospital,
24 Irvine, CA. They began another round of tests (including ultra sound) and
25 determined that he was hemorrhaging near his heart. By the end of the week, Jake's
26 condition deteriorated, and he had to be euthanized. At the time, Banfield staff
27 assured Plaintiff that they would take care of the termination of the OWP as to Jake.
28

1 99. Within days, Liberty got sick too, and Plaintiff immediately brought her
2 into Banfield. Again, Banfield ran a number of diagnostic tests and x-ray. Banfield
3 confirmed there was some type of mass around her abdomen, but again, directed
4 Plaintiff to go to another hospital for additional diagnosis. Liberty's condition
5 continued to rapidly decline as Plaintiff took her to Yorba Regional Animal Hospital.
6 The vet at Yorba Regional promptly determined that she was hemorrhaging
7 internally. As with Jake only days before, Liberty needed to be euthanized.

8 100. Plaintiff's neighbor's vet had diagnosed rat poisoning as the root cause
9 of injury to the neighbor's dog who had died during the same week that both Jake
10 and Liberty had died. A few weeks later, Plaintiff's wife found remains of a green
11 brick of rat poison while gardening in their backyard.

12 101. In or about August 2012, Plaintiff and his wife adopted a couple of
13 Golden Retriever puppies named "Wilson" & "Annie". Plaintiff purchased OWPs
14 for both of them.

15 102. Banfield initially continued to bill Plaintiff for monthly charges on the
16 OWP for Jake and the OWP for Liberty after each dog had died.

17 103. After speaking with Plaintiff, Banfield corporate personnel stopped
18 charging Plaintiff for additional monthly fees for Liberty. Nevertheless, Banfield
19 continued to charge Plaintiff for the remainder of an entire year of monthly fees for
20 Jake.

21 104. Plaintiff renewed each of the OWPs that he purchased each year during
22 his pets' lives. He believed that—under the OWPs that he purchased—he was
23 providing essential health care for his pets while achieving substantial cost savings
24 from Banfield.

25 105. Over the course of his pets' lives, Plaintiff paid out of pocket for
26 numerous blood and diagnostic tests, x-rays, medications, dental cleaning, and more.

1 One or more of the Banfield vets pushed Plaintiff to pay for diagnostic tests for
2 which there was no apparent need and/or value.

3 **E. Plaintiff and Members of the Class Suffered Injury as a Result of**
4 **Banfield's Misconduct.**

5 106. Based on Banfield's deceptive marketing and unfair sales tactics,
6 Plaintiff purchased Banfield OWPs, and he paid for pet care products and services
7 thereunder believing that he would receive the savings, discounts, products and
8 services as represented by Banfield.

9 107. The OWPs did not conform, however, to Banfield's representations
10 because, in fact, purchase of the pet care products and services thereunder did not
11 provide the promised minimum savings and discounts. Furthermore, Banfield
12 induced Plaintiff and other OWP clients to purchase additional pet care products and
13 services that were not needed and/or that were provided at inflated prices.

14 108. Plaintiff and members of the Class paid more for Banfield's OWPs, and
15 for the pet care products and services purchased thereunder, than they otherwise
16 would have paid had they not been misled by Banfield's false and misleading
17 representations and material omissions, and/or had they not been induced by
18 Banfield's unfair sales tactics to purchase additional pet care products and services.

19 109. For these reasons, Banfield's OWPs and the pet care products and
20 services purchased thereunder were worth less to Plaintiff and members of the Class
21 than what they otherwise would have paid.

22 110. Based on the false statements, misrepresentations, material omissions,
23 and unfair sales tactics described herein, Plaintiff and members of the Class were
24 induced to and did purchase OWPs, and additional pet care products and services
25 thereunder, instead of saving their money or purchasing competing pet care products
26 or services.

1 111. Instead of receiving OWPs that provided the promised minimum
2 savings on comprehensive preventive pet care, Plaintiff and members of the Class
3 received restrictive plans that did not provide the advertised savings and discounts,
4 that induced clients to pay for unprovided and/or unneeded pet care products and
5 services, and that locked them into costly, year-long, automatically-renewing,
6 purchasing commitments without full and adequate disclosure or relevant terms.

7 112. Plaintiff and members of the Class lost money as a result of Banfield's
8 deception and unfair business practices insofar as: (i) OWP clients were denied
9 savings and discounts advertised under the plans; (ii) OWP clients were induced to
10 pay additional monies for unprovided and/or unneeded pet care products or services;
11 and (iii) OWP clients incurred other unjustified tack-on charges (e.g., hospitalization
12 charges) in addition to OWP membership fees and monthly payments.

13 113. Plaintiff and members of the Class altered their position to their
14 detriment and suffered injuries that include overpayments of initial OWP
15 membership fees, overpayments of monthly OWP fees, losses of advertised
16 minimum savings and discounts, payments for unprovided and/or unneeded pet care
17 products or services, and supplemental fees, markups, charges, and penalties
18 assessed on top of the OWP membership and monthly fees.

19 V. CLASS ACTION ALLEGATIONS

20 114. Plaintiff seeks certification of a Class defined as follows:

21 All consumers nationwide who: (i) purchased or renewed
22 any Optimum Wellness Plan from a Banfield Pet Hospital
23 (ii) for personal, family, or household purposes (iii) at any
24 time during the four year period preceding the filing of the
25 original complaint ("The Class"). Excluded from the Class
26 are Defendant; the officers, directors or employees of
27 Defendant; any entity in which Defendant has a controlling
28 interest; and any affiliate, legal representative, heir or
assign of Defendant. Also, excluded from the Class are any
federal, state or local governmental entities, any judicial
officer presiding over this action and the members of
his/her immediate family and judicial staff, and any juror
assigned to this action.

1 115. Plaintiff also seeks certification of a Subclass defined as follows:

2 All consumers in California who: (i) purchased or renewed
3 any Optimum Wellness Plan from a Banfield Pet Hospital
4 (ii) for personal, family, or household purposes (iii) at any
5 time during the four year period preceding the filing of the
6 original complaint ("The Subclass"). Excluded from the
7 Class are Defendant; the officers, directors or employees of
8 Defendant; any entity in which Defendant has a controlling
9 interest; and any affiliate, legal representative, heir or
assign of Defendant. Also, excluded from the Class are any
federal, state or local governmental entities, any judicial
officer presiding over this action and the members of
his/her immediate family and judicial staff, and any juror
assigned to this action.

10 116. Plaintiff does not know the exact number of Class members at the
11 present time. However, due to the nature of the trade and commerce involved, there
12 appear to be thousands of Class members and thousands of Subclass members, such
13 that joinder of all Class members and/or Subclass members is impracticable.

14 117. The Class and Subclass are ascertainable through Defendant's business
15 records and notice can be provided through techniques similar to those customarily
16 used in other consumer fraud cases and complex class actions.

17 118. There are questions of law and fact common to the Class and Subclass.
18 Defendant's marketing practices were supplied uniformly to Class and Subclass
19 members who were similarly affected by having purchased Banfield OWPs and other
20 per care products or services under the OWPs.

21 119. Plaintiff asserts claims that are typical of the Class and Subclass.
22 Plaintiff and all Class and Subclass members have been subjected to the same
23 wrongful conduct because they all have purchased and/or renewed OWPs, which
24 Banfield misrepresented as providing minimum savings and discounts and which
25 Banfield used to upsell additional pet care products and services. As a result, and
26 like other members of the Class and Subclass, Plaintiff purchased and/or renewed
27 OWPs from Banfield, and the pet care products and services sold thereunder, which
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1 he otherwise would not have paid for, and/or for which he otherwise would have
2 paid less.

3 120. Plaintiff will fairly and adequately represent and protect the interests of
4 the Class and Subclass. Plaintiff is represented by counsel competent and
5 experienced in both consumer protection and class action litigation.

6 121. Class certification is appropriate because Defendant has acted on
7 grounds that apply generally to the Class and Subclass, so that final injunctive relief
8 or corresponding declaratory relief is appropriate respecting the Class or Subclass as
9 a whole.

10 122. Class certification is also appropriate because common questions of law
11 and fact substantially predominate over any questions that may affect only individual
12 members of the Class or Subclass, including, *inter alia*, the following:

- 13 a. Whether Defendant misrepresented or omitted
14 material facts in connection with the marketing and
sale of OWPs;
- 15 b. Whether Defendant represented that its OWPs have
16 characteristics, benefits, uses or qualities that they do
not have;
- 17 c. Whether Defendant made misleading statements of
18 fact about the amount of savings and discounts
associated with its OWPs and/or the pet care
19 products and services sold thereunder;
- 20 d. Whether Defendant represented that consumers will
21 receive savings or discounts for purchasing OWPs,
or the products or services thereunder, when the
22 advertised savings were contingent on events to
occur subsequent to the purchase;
- 23 e. Whether Defendant's misrepresentations and/or
24 nondisclosures would be material to a reasonable
consumer;
- 25 f. Whether Defendant's misrepresentations and/or
26 nondisclosures were likely to deceive a reasonable
consumer in violation of the UCL;
- 27 g. Whether Defendant's misrepresentations and/or
28 nondisclosures constitute an unlawful business
practice in violation of the UCL;

- h. Whether Defendant's misrepresentations and/or nondisclosures constitute an unfair business practice in violation of the UCL;
- i. Whether Defendant's upselling of additional pet care products and services constitutes an unfair, unlawful, or deceptive practice under the UCL;
- j. Whether Defendant intentionally misrepresented the savings and discounts available under the OWPs;
- k. Whether Defendant knowingly failed to disclose material facts limiting the scope and/or value of its OWPs;
- l. Whether the challenged practices harmed Plaintiff and members of the Class or Subclass; and
- m. Whether Plaintiff and members of the Class or Subclass are entitled to damages, restitution, equitable relief, and/or injunctive relief.

123. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all the individual Class members and/or Subclass members is impracticable. Furthermore, because the restitution and/or damages suffered, and continue to be suffered, by each individual Class member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class members to redress the wrongs done to each of them individually and the burden imposed on the judicial system would be enormous.

124. The prosecution of separate actions by the individual Class members would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for Defendant. In contrast, the conduct of this action as a class action presents far fewer management difficulties, conserves judicial resources and the parties' resources, and protects the rights of each Class member.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

**VIOLATIONS OF THE FALSE ADVERTISING LAW
(CAL. BUS. & PROF CODE §§ 17500, *et seq.*)**

125. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

126. California Business & Professions Code §§ 17500, *et. seq.* (the “FAL”) broadly proscribes deceptive advertising in this State. Section 17500 makes it unlawful for any corporation intending to sell products or perform services to make any statement in advertising those products or services concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or not to sell those products or services as advertised at the price stated therein, or as so advertised.

127. In this case, Banfield has violated Sections 17500. Banfield is a corporation that intends to and does sell pet care products and perform pet care services for California consumers. Banfield makes statements in advertising those products and services concerning the savings and discounts provided to clients who pay for Banfield’s OWPs, and the nature of the pet care products and services that Banfield provides under the OWPs. These statements are made both orally by Banfield representatives and in writing in print brochures and price sheets disseminated at Banfield outlets in PetSmart stores, and invoices and correspondence disseminated to Banfield clients. The statements are false or misleading, and are known, or by the exercise of reasonable care should be known, to be false or misleading, by Banfield. Indeed, Plaintiff is informed and believes that Banfield is aware that OWP clients do not in fact receive the promised savings and discounts on pet care products and services under the OWPs.

1 128. To the contrary, the promised savings and discounts are based not only
2 on preventive pet care services actually paid for, but also on the OWP client's
3 purchase of pet care products and services from Banfield that are not provided and/or
4 not needed. The savings and discounts do not accumulate, as Banfield represents, on
5 a per-visit or per-month basis. Moreover, the underlying retail pricing scheme is
6 inflated and packed with additional fees and charges that OWP clients should not
7 have incurred. In short, Banfield does not actually sell the OWPs, or the pet care
8 products and services thereunder, as advertised or at the advertised prices.

9 129. In addition, Section 17509 of the FAL provides that any advertisement
10 soliciting the purchase of a service that requires, as a condition of sale, the purchase
11 of a different service shall conspicuously disclose in the advertisement the price of
12 all those services. Banfield purportedly conditions cancellation of the OWP on
13 payment of retail charges for each individual service used to the date of cancellation
14 (unless the client pays for a full year of OWP services). Banfield has violated
15 Section 17509 by failing to disclose in its advertisements the retail price of each
16 individual service covered by the OWP.

17 130. Moreover, Banfield purportedly requires, as a condition of sale of
18 OWPs with dental options, that clients pay for any abnormal blood tests prior to
19 dental cleanings. Once again, Banfield has violated Section 17509 by failing to
20 disclose in its advertisements the price for the blood tests.

21 131. Section 17535 effectively provides that the Court may enjoin any
22 corporation or other person who violates the FAL, and may make such orders or
23 judgments as may be necessary to prevent the use of such practices, or which may be
24 necessary to restore to any person in interest any money or property which may have
25 been acquired by means of such practices. An FAL claim may be prosecuted by any
26 person who has suffered injury in fact and has lost money or property as a result of a
27
28

1 violation of the FAL. The action may be prosecuted on a representative basis when it
2 meets the traditional class action requirements.

3 132. Plaintiff and the Class and Subclass have suffered injury in fact and lost
4 money or property as a result of Banfield's violations of the FAL because: (a) they
5 paid more for OWPs due to the false representations and material omissions about
6 OWP savings, discounts, products, and services; (b) they would not have purchased
7 the OWPs on the same terms, and/or all of the pet care products and services
8 thereunder, if the true facts concerning the OWPs and Banfield's unfair sales tactics
9 had been known; and (c) the OWPs did not provide the advertised minimum savings,
10 discounts and benefits that were promised.

11 133. As a result of these violations, Banfield has caused and continues to
12 cause damage to Plaintiff and members of the Class and Subclass and, if not stopped,
13 will continue to harm them.

14 134. Plaintiff and members of the Class and Subclass request that this Court
15 enter such orders or judgments as may be necessary to restore to any person in
16 interest any money which may have been acquired by means of such deceptive
17 advertising.

18 **SECOND CAUSE OF ACTION**

19 **VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT** 20 **(CAL. CIV. CODE § 1750, *et seq.*)**

21 135. Plaintiff realleges and incorporates by reference all paragraphs alleged
22 herein.

23 136. Defendant Banfield Pet Hospital is a "person" under Cal. Civ. Code
24 § 1761(c).

25 137. Plaintiff is a "consumer," as defined by Cal. Civ. Code § 1761(d), who
26 purchased an OWP sold by Banfield for preventive pet care services and purchased
27 pet care products and services from Banfield subject to OWP savings and discounts.
28

1 138. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or
2 *services* have sponsorship, approval, *characteristic*, ingredients, *uses*, *benefits*, or
3 quantities which they do not have or that a person has a sponsorship, approval,
4 status, affiliation, or connection which he or she does not have.” Banfield violated
5 this provision by misrepresenting that its OWPs provided savings and discounts on
6 pet care products and services, which savings and discounts were not provided or
7 were materially overstated. Banfield also violated this provision by using OWPs as a
8 tool for upselling costly additional pet care products and services.

9 139. Cal. Civ. Code § 1770(a)(9) prohibits “advertising goods or services
10 with intent not to sell them as advertised.” Banfield violated this provision by
11 intentionally and deceptively advertising that its OWPs provided savings and
12 discounts on pet care products and services, which savings and discounts were not
13 provided or were materially overstated.

14 140. Cal. Civ. Code § 1770(a)(13) prohibits “[m]aking false or misleading
15 statements of fact concerning reasons for, existence of, or amounts of price
16 reductions.” Banfield violated this provision by overstating the amount of savings
17 and discounts, if any, on pet care products and services under its OWPs.

18 141. Cal. Civ. Code § 1770(a)(17) prohibits “[r]epresenting that the
19 consumer will receive a rebate, discount, or other economic benefit, if the earning of
20 the benefit is contingent on an event to occur subsequent to the consummation of the
21 transaction.” Banfield violated this provision by representing that OWP purchasers
22 will receive savings or discounts, when the earning of the savings and discounts were
23 contingent on events to occur subsequent to the OWP purchase. Among other
24 things, the advertised savings and discounts were contingent on the consumer’s non-
25 cancellation of the OWP for a full year, use of all bundled OWP products and
26 services, and normal blood test results prior to dental cleanings.

1 142. Plaintiff and the Class suffered lost money or property as a result of
2 these violations because: (a) they paid more for OWPs due to the misrepresentations
3 about OWP savings, discounts, products, and services; (b) they would not have
4 purchased the OWPs on the same terms and/or all of the pet care products and
5 services thereunder if the true facts concerning the OWPs and Banfield's unfair sales
6 tactics had been known; and (c) the OWPs did not provide the advertised savings,
7 discounts, and benefits that were promised.

8 143. As a result of these violations, Banfield has caused and continues to
9 cause actual injury to Plaintiff and members of the Class and Subclass and, if not
10 stopped, will continue to harm them.

11 144. In accordance with Cal. Civ. Code § 1780(a), Plaintiff and members of
12 the Class seek injunctive and equitable relief for Banfield's violations of the CLRA.

13 145. While Plaintiff does not seek to recover damages under the CLRA in
14 this initial Complaint, after mailing appropriate notice and demand in accordance
15 with Civil Code § 1782(a) & (d), Plaintiff will subsequently amend this Complaint to
16 also include a request for compensatory and punitive damages.

17 146. Plaintiff includes an affidavit with this Complaint reflecting that venue
18 in this District is proper, to the extent such an affidavit is required by Cal. Civ. Code
19 § 1780(d) in federal court.

20 **THIRD CAUSE OF ACTION**

21 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW** 22 **(CAL. BUS. & PROF. CODE § 17200, *et seq.*)**

23 147. Plaintiff realleges and incorporates by reference all paragraphs alleged
24 herein.

25 148. Cal. Bus. & Prof. Code § 17200 prohibits any "unlawful, unfair, or
26 fraudulent business act or practice." Banfield has engaged in unlawful, and unfair,
27 and fraudulent business acts and practices in violation of the UCL.
28

1 149. Banfield has violated the unlawful prong by its violations of the FAL
2 and CLRA described above.

3 150. Banfield has violated the unfair prong of section 17200 because the acts
4 and practices set forth in the Complaint—including false advertising and unfair and
5 coercive upselling—offend established public policy. The harm that these acts and
6 practices cause to pet care consumers greatly outweighs any benefits associated with
7 them. Banfield's conduct has also impaired competition within the market for
8 preventive pet care services and has stopped Plaintiff from making fully informed
9 decisions about whether to purchase, renew, and retain OWPs, whether to purchase
10 additional pet care products and services as an OWP client, and/or what price to pay
11 for such products and services.

12 151. Banfield has violated the fraudulent prong of section 17200 because its
13 misrepresentations and material omissions about OWP savings, discounts, products
14 and services, and the unfair sales tactics used to sell additional pet care products and
15 services under OWPs (as set forth in this Complaint), were likely to deceive a
16 reasonable consumer and the true facts would be material to a reasonable consumer.

17 152. Plaintiff has suffered injury in fact, including the loss of money or
18 property, as a result of Banfield's unlawful, unfair, and/or deceptive practices. As
19 set forth more fully above, in purchasing and renewing Banfield OWPs and in
20 purchasing pet care products and services thereunder, Plaintiff relied on the
21 misrepresentations and omissions of Banfield. Had he known that Banfield OWPs
22 do not provide the advertised savings and discounts, or that he would be induced to
23 purchase additional pet care products and services as an OWP client and via unfair
24 sales tactics, he would not have purchased and/or renewed the OWPs that he
25 purchased and renewed, and/or he would not have paid as much for the OWPs or the
26 products and services thereunder.

1 153. All of the wrongful conduct alleged herein occurred, and continues to
2 occur, in the conduct of Banfield's business. Banfield's wrongful conduct is part of
3 a pattern or generalized course of conduct that is still perpetuated and repeated
4 throughout the State of California and nationwide.

5 154. Plaintiff requests that this Court enter such orders or judgments as may
6 be necessary to enjoin Banfield from continuing its unlawful, deceptive, and/or
7 unfair business practices and to restore to Plaintiff and members of the Class any
8 money that Banfield acquired by unfair competition, as provided in Cal. Bus. & Prof.
9 Code § 17203, and for such other relief set forth below.

10 **FOURTH CAUSE OF ACTION**

11 **FRAUD BY CONCEALMENT**

12 155. Plaintiff realleges and incorporates by reference all paragraphs alleged
13 herein.

14 156. As set forth above, Banfield concealed material facts concerning the
15 true nature, pricing, and value of its OWPs and the pet care products and services
16 sold thereunder, the nature of the tactics used to sell OWPs, and the true amount of
17 limited savings and discounts, if any, available under the OWPs (as set forth more
18 fully above). Banfield had a duty to make these disclosures based on its superior
19 knowledge of its products, services, and pricing scheme, its status as a pet care
20 hospital, and its affirmative misrepresentations about the advertised savings,
21 discounts, products, and services.

22 157. Banfield concealed these material facts, in whole or in part, with the
23 intent to induce Plaintiff and members of the Class and Subclass to purchase
24 Banfield OWPs and the pet care products and services offered thereunder.

25 158. Plaintiff and the Class and Subclass were unaware of the concealed
26 material facts described above at the time of their purchases. If they had known the
27 concealed facts at the time of their purchases, Plaintiff and the Class and Subclass
28

1 would not have purchased and/or renewed the OWPs, or purchased the pet care
2 products and services thereunder, and/or they would not have paid as much therefore
3 as they did.

4 159. As a result of Banfield's concealment of material facts, Plaintiff and the
5 Class and Subclass sustained damages in an amount to be determined at trial.

6 **FIFTH CAUSE OF ACTION**

7 **INTENTIONAL MISREPRESENTATION**

8 160. Plaintiff realleges and incorporates by reference all paragraphs alleged
9 herein.

10 161. Banfield materially and intentionally misrepresented the savings,
11 discounts, pricing, products, and services to be enjoyed by consumers under the
12 OWPs, as alleged more fully above.

13 162. Banfield's misrepresentations about the OWPs, and the the savings,
14 discounts, pricing, products, and services thereunder, were intended to influence the
15 purchasing decisions of Plaintiff and members of the Class and Subclass, who
16 justifiably relied upon Banfield's misrepresentations as set forth above.

17 163. Defendant's misrepresentations caused Plaintiff and the Class and
18 Subclass to purchase and/or renew OWPs, and to pay for pet care products and
19 services thereunder, that they would not otherwise have paid for, and/or at prices
20 above what they otherwise would have paid.

21 164. As a result of Banfield's intentional misrepresentations, Plaintiff and
22 the Class and Subclass sustained damages in an amount to be determined at trial.

23 **SIXTH CAUSE OF ACTION**

24 **VIOLATION OF THE CONSUMER PROTECTION ACTS OF THE**
25 **VARIOUS STATES**

26 165. Plaintiff realleges and incorporates the allegations elsewhere in the
27 Complaint as if set forth in full herein.
28

1 166. Plaintiff brings this claim individually, on behalf of the nationwide
2 Class, and on behalf of the California Subclass.

3 167. By deceptively marketing OWPs in the manner set forth above, and/or
4 upselling additional pet care products and services to OWP clients, Defendant
5 Banfield has engaged in unfair and/or deceptive acts in violation of the state
6 consumer statutes below:

7 168. Defendant has engaged in unfair competition or unfair or deceptive acts
8 or practices in violation of Ala. Code. §§ 8-19-1, et seq.

9 169. Defendant has engaged in unfair competition or unfair or deceptive acts
10 or practices in violation of Alaska Stat. Code §§ 45.50.471, et seq.

11 170. Defendant has engaged in unfair competition or unfair or deceptive acts
12 or practices in violation of Ariz. Rev. Stat §§ 44-1522, et seq.

13 171. Defendant has engaged in unfair competition or unfair or deceptive acts
14 or practices in violation of Ark. Code Ann. §§ 4-88-107, et seq.

15 172. Defendant has engaged in unfair competition or unfair or deceptive acts
16 or practices in violation of Colo. Rev. Stat. §§ 6-1-101, et seq.

17 173. Defendant has engaged in unfair competition or unfair or deceptive acts
18 or practices in violation of Conn. Gen. Stat. §§ 42-110b, et seq.

19 174. Defendant has engaged in unfair competition or unfair or deceptive acts
20 or practices in violation of Del. Code Ann. tit. 6, §§ 2511, et seq.

21 175. Defendant has engaged in unfair competition or unfair or deceptive acts
22 or practices in violation of D.C. Code Ann. §§ 28-3901, et seq.

23 176. Defendant has engaged in unfair competition or unfair or deceptive acts
24 or practices in violation of Fla. Stat. Ann. §§ 501.201, et seq.

25 177. Defendant has engaged in unfair competition or unfair or deceptive acts
26 or practices in violation of Ga. Code Ann. §§ 10-1-392, et seq.

1 178. Defendant has engaged in unfair competition or unfair or deceptive acts
2 or practices in violation of Haw. Rev. Stat. §§ 480, et seq.

3 179. Defendant has engaged in unfair competition or unfair or deceptive acts
4 or practices in violation of Idaho Code §§ 48-601, et seq.

5 180. Defendant has engaged in unfair competition or unfair or deceptive acts
6 or practices in violation of 815 Ill. Comp. Stat. 505/1, et seq.

7 181. Defendant has engaged in unfair competition or unfair or deceptive acts
8 or practices in violation of Ind. Code Ann. §§ 24-5-0.5-1, et seq.

9 182. Defendant has engaged in unfair competition or unfair or deceptive acts
10 or practices in violation of Iowa Code §§ 714.16, et seq.

11 183. Defendant has engaged in unfair competition or unfair or deceptive acts
12 or practices in violation of Kan. Stat. §§ 50-623, et seq.

13 184. Defendant has engaged in unfair competition or unfair or deceptive acts
14 or practices in violation of Ky. Rev. Stat. Ann. §§ 367.110, et seq.

15 185. Defendant has engaged in unfair competition or unfair or deceptive acts
16 or practices in violation of La. Rev. Stat. §§51:1404, et seq.

17 186. Defendant has engaged in unfair competition or unfair or deceptive acts
18 or practices in violation of Me. Rev. Stat. tit. 5, §§ 205-A, et seq.

19 187. Defendant has engaged in unfair competition or unfair or deceptive acts
20 or practices in violation of Md. Code. Ann., Com. Law §§ 13-101, et seq.

21 188. Defendant has engaged in unfair competition or unfair or deceptive acts
22 or practices in violation of Mass. Gen. Laws ch. 93A §§ 1, et seq.

23 189. Defendant has engaged in unfair competition or unfair or deceptive acts
24 or practices in violation of Mich. Comp. Laws §§ 445.901, et seq.

25 190. Defendant has engaged in unfair competition or unfair or deceptive acts
26 or practices in violation of Minn. Stat. §§ 8.31, et seq.

1 191. Defendant has engaged in unfair competition or unfair or deceptive acts
2 or practices in violation of Miss. Code Ann. §§ 75-24-3, et seq.

3 192. Defendant has engaged in unfair competition or unfair or deceptive acts
4 or practices in violation of Mo. Rev. Stat. §§ 407.010 et seq.

5 193. Defendant has engaged in unfair competition or unfair or deceptive acts
6 or practices in violation of Mont. Code Ann. §§ 30-14-101, et seq.

7 194. Defendant has engaged in unfair competition or unfair or deceptive acts
8 or practices in violation of Neb. Rev. Stat. §§ 59-1601, et seq.

9 195. Defendant has engaged in unfair competition or unfair or deceptive acts
10 or practices in violation of Nev. Rev. Stat. §§ 598.0903, et seq.

11 196. Defendant has engaged in unfair competition or unfair or deceptive acts
12 or practices in violation of N.H. Rev. Stat. Ann. §§ 358-A:1, et seq.

13 197. Defendant has engaged in unfair competition or unfair or deceptive acts
14 or practices in violation of N.J. Stat. Ann. §§ 56:8-1, et seq.

15 198. Defendant has engaged in unfair competition or unfair or deceptive acts
16 or practices in violation of N.M. Stat. Ann. §§ 57-12-1, et seq.

17 199. Defendant has engaged in unfair competition or unfair or deceptive acts
18 or practices in violation of N.Y. Gen. Bus. Law §§ 349, et seq.

19 200. Defendant has engaged in unfair competition or unfair or deceptive acts
20 or practices in violation of N.C. Gen. Stat §§ 75-1.1, et seq.

21 201. Defendant has engaged in unfair competition or unfair or deceptive acts
22 or practices in violation of N.D. Cent. Code §§ 51-15-01, et seq.

23 202. Defendant has engaged in unfair competition or unfair or deceptive acts
24 or practices in violation of Okla. Stat. tit. 15 §§ 751, et seq.

25 203. Defendant has engaged in unfair competition or unfair or deceptive acts
26 or practices in violation of Or. Rev. Stat. §§ 646.605, et seq.

1 204. Defendant has engaged in unfair competition or unfair or deceptive acts
2 or practices in violation of 3 PA. Cons. Stat. §§ 201-1, et seq.

3 205. Defendant has engaged in unfair competition or unfair or deceptive acts
4 or practices in violation of R.I. Gen. Laws §§ 6-13.1-1, et seq.

5 206. Defendant has engaged in unfair competition or unfair or deceptive acts
6 or practices in violation of S.C. Code §§ 39-5-10, et seq.

7 207. Defendant has engaged in unfair competition or unfair or deceptive acts
8 or practices in violation of S.D. Codified Laws §§ 37-24-1, et seq.

9 208. Defendant has engaged in unfair competition or unfair or deceptive acts
10 or practices in violation of Tenn. Code Ann. §§ 47-18-101, et seq.

11 209. Defendant has engaged in unfair competition or unfair or deceptive acts
12 or practices in violation of Tex. Bus. & Com. Code Ann. §§ 17.41, et seq.

13 210. Defendant has engaged in unfair competition or unfair or deceptive acts
14 or practices in violation of Utah Code. Ann. §§ 13-11-1, et seq.

15 211. Defendant has engaged in unfair competition or unfair or deceptive acts
16 or practices in violation of Vt. Stat. Ann. Tit. 9, §§ 2451, et seq.

17 212. Defendant has engaged in unfair competition or unfair or deceptive acts
18 or practices in violation of Va. Code Ann. §§ 59.1-196, et seq.

19 213. Defendant has engaged in unfair competition or unfair or deceptive acts
20 or practices in violation of Wash. Rev. Code §§ 19.86.010, et seq.

21 214. Defendant has engaged in unfair competition or unfair or deceptive acts
22 or practices in violation of W. Va. Code §§ 46A-6-101, et seq.

23 215. Defendant has engaged in unfair competition or unfair or deceptive acts
24 or practices in violation of Wis. Stat. §§ 100.18, et seq.

25 216. Defendant has engaged in unfair competition or unfair or deceptive acts
26 or practices in violation of Wyo. Stat. Ann. §§ 40-12-101, et seq.

1 217. The acts, practices, sales tactics, misrepresentations and omissions by
2 Banfield described above, and Banfield's dissemination of deceptive and misleading
3 marketing materials concerning Banfield OWPs and the products and services
4 offered thereunder, constitutes unfair or deceptive acts or practices within the
5 meaning of each of the above-enumerated state statutes, because each of these
6 statutes generally prohibits deceptive conduct in consumer transactions, and each
7 provides substantially similar grounds for relief as under California's FAL, CLRA,
8 and/or UCL.

9 218. Banfield violated each of these statutes by: (i) misrepresenting the
10 savings, discounts, products, and services available under its OWPs; and
11 (ii) upselling unnecessary pet care products and services to OWP clients as described
12 above.

13 219. Plaintiff, Class members and Subclass members were injured as a direct
14 and proximate result of Defendant's unfair, deceptive and/or unconscionable acts and
15 practices, because: (a) Plaintiff and the Class and Subclass were induced to purchase
16 pet care services they otherwise would not have purchased had they known the true
17 facts, and/or (b) Plaintiff and the Class and Subclass were induced to pay more for
18 Banfield pet care products and services than they would have paid if the true facts
19 alleged above had not been concealed and/or misrepresented.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, individually and on behalf all others similarly
22 situated, respectfully requests that this Court enter a judgment against Defendant and
23 in favor of Plaintiff, and grant the following relief:

24 A. Determine that this action may be maintained as a Class action with
25 respect to the Class and Subclass identified herein and certify it as such under Rules
26 23(b)(2) and/or 23(b)(3), or alternatively certify all issues and claims that are
27
28

1 appropriately certified, and designate and appoint Plaintiff as a Class Representative
2 and his counsel as Class Counsel;

3 B. Declare, adjudge and decree the conduct of the Defendant as alleged
4 herein to be unlawful, unfair and/or deceptive;

5 C. Enjoin Defendant from continuing the deceptive marketing and unfair
6 business practices alleged herein;

7 D. Notify all Class and Subclass members about the true limitations on
8 savings and discounts under Banfield's OWPs;

9 E. Authorize Class and Subclass members to exercise their right to rescind
10 the OWPs without cancellation-related charges;

11 F. Award Plaintiff and the Class and Subclass restitution of all monies paid
12 to Defendant as a result of unlawful, deceptive, and/or unfair business practices;

13 G. Award Plaintiff and the Class and Subclass actual, compensatory
14 damages, as proven at trial, except that CLRA damages will be requested after
15 CLRA notice;

16 H. Award Plaintiff and the Class and Subclass exemplary damages in such
17 amount as proven at trial, except that CLRA punitive damages will be requested after
18 CLRA notice;

19 I. Award Plaintiff and the Class reasonable attorneys' fees, costs, and pre-
20 and post-judgment interest; and


21 J. Award Plaintiff and the Class and Subclass such other further and
22 different relief as the nature of the case may require or as may be determined to be
23 just, equitable, and proper by this Court.

24 **JURY TRIAL DEMAND**

25 Plaintiff, by counsel, requests a trial by jury on his legal claims, as set forth
26 herein.

1 DATED: November 5, 2013

2 **HAGENS BERMAN SOBOL**
3 **SHAPIRO LLP**

4 By 
5 Lee M. Gordon (174168)
6 301 N. Lake Ave., Suite 203
7 Pasadena, CA 91101
8 Tel.: (213) 330-7150
9 Fax: (213) 330-7152
10 lee@hbsslaw.com

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15 Seattle, WA 98101
16 Telephone: (206) 623-7292
17 steve@hbsslaw.com

18 *Attorneys for Plaintiff and the Proposed*
19 *Class*

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15 lee@hbsslaw.com

16 *Attorneys for Plaintiff*
17 *and the Proposed Class*

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 Gregory T. Pero, an individual, *et al.*; on
21 behalf of himself and all others similarly
22 situated,

23 Plaintiff,

24 v.

25 Banfield Pet Hospital, a Delaware
26 corporation,

27 Defendant.

28 **DECLARATION RE CLRA
VENUE**

DECLARATION RE CLRA VENUE

I, Gregory T. Pero, do hereby declare and state as follows:

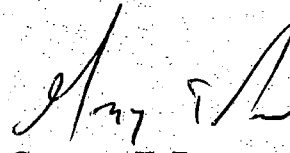
1. I am a party plaintiff in *Gregory T. Pero, et. al., on behalf of himself and all others similarly situated v. Banfield Pet Hospital, a Delaware corporation.*

Pursuant to CAL. CIV. CODE § 1780(d), I make this declaration in support of the Class Action Complaint and the claim therein for relief under CAL. CIV. CODE § 1780(a). I have personal knowledge of the facts stated herein and, if necessary, could competently testify thereto.

2. This action for relief under CAL. CIV. CODE § 1780(a) has been commenced in a county that is a proper place for trial of this action because Defendant Banfield Pet Hospital does business in this district (the Central District of California) and throughout the State of California.

This declaration is signed under penalty of perjury under the laws of the State of California and the United States this 25th day of October, 2013.

By:


Gregory T. Pero

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Gregory T. Pero, an individual, et al; on behalf of himself and all others similarly situated	DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) Medical Management International, Inc., d.b.a. Bandfield Pet Hospital, a Delaware corporation
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.) Lee M. Gordon (SBN 174168) - Hagens Berman Sobol Shapiro LLP 301 North Lake Avenue, Suite 203 Pasadena, CA 91101 (213) 330-7150	(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

II. BASIS OF JURISDICTION (Place an X in one box only.) <div style="display: flex; justify-content: space-between;"> <div style="width:48%;"> <input type="checkbox"/> 1. U.S. Government Plaintiff </div> <div style="width:48%;"> <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width:48%;"> <input type="checkbox"/> 2. U.S. Government Defendant </div> <div style="width:48%;"> <input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III) </div> </div>	III. CITIZENSHIP OF PRINCIPAL PARTIES -For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) <table style="width:100%; border: none;"> <tr> <td style="width:33%; border: none;">Citizen of This State</td> <td style="width:10%; border: none; text-align: center;">PTF</td> <td style="width:10%; border: none; text-align: center;">DEF</td> <td style="width:33%; border: none;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%; border: none; text-align: center;">PTF</td> <td style="width:10%; border: none; text-align: center;">DEF</td> </tr> <tr> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td></td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1		<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 2	<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	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF																				
<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1		<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
<input type="checkbox"/> 2	<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																				
<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. 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. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☒ Yes ☐ No **MONEY DEMANDED IN COMPLAINT:** \$ 5,000,000+

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 State law claims subject to 28 U.S.C. §1332(d).

VII. NATURE OF SUIT (Place an X in one box only).

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

FOR OFFICE USE ONLY: Case Number: SACV13-01749 JLS (ANx)

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF?	A DEFENDANT?	
	Then check the box below for the county in which the majority of DEFENDANTS reside.	Then check the box below for the county in which the majority of PLAINTIFFS reside.	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western	

Question C: Location of plaintiffs, defendants, and claims?	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies:

- ☒ 2 or more answers in Column C
☐ only 1 answer in Column C and no answers in Column D

Your case will initially be assigned to the
SOUTHERN DIVISION.
Enter "Southern" in response to Question D, below.

If none applies, answer question C2 to the right. →

C.2. Is either of the following true? If so, check the one that applies:

- ☐ 2 or more answers in Column D
☐ only 1 answer in Column D and no answers in Column C

Your case will initially be assigned to the
EASTERN DIVISION.
Enter "Eastern" in response to Question D, below.

If none applies, go to the box below. ↓

Your case will initially be assigned to the
WESTERN DIVISION.
Enter "Western" in response to Question D below.

Question D: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	Southern Division

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

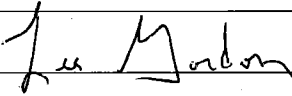
If yes, list case number(s): _____

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)
- ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. SIGNATURE OF ATTORNEY
(OR SELF-REPRESENTED LITIGANT):

DATE: November 5, 2013

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Josephine L. Staton and the assigned
Magistrate Judge is Arthur Nakazato.

The case number on all documents filed with the Court should read as follows:

SACV13-01749 JLS (ANx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

November 5, 2013

Date

By A. Gonzalez

Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

☒ Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

☐ Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.