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FILED
Superior Court Of California
County Of Los Angeles

MAR 24 2011

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15 Attorneys for Plaintiff KERRY WHITE,
16 An individual on behalf of himself, and all others
17 Similarly situated and the general public.

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

20 KERRY WHITE,
21
22 Plaintiff,
23
24 v.
25
26 HOLLISTER CO., and DOES 1
27 through 100,
28 Defendants.

Case No. BC 444368

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES;
DEMAND FOR JURY TRIAL:**

(1) DECLARATORY RELIEF
[Cal. Code Civ. P. Sec. 1060]

**(2) VIOLATION OF CONSUMERS
LEGAL REMEDIES ACT**
[Cal. Civ. Code Sec. 1770(a)(14); (a)(5)]

CLASS ACTION

Plaintiff, KERRY WHITE (“WHITE”), on behalf of himself and a class of all others

2011年3月24日

1 similarly situated, complains and alleges as follows on information and belief, except as to matters
2 pertaining directly to Plaintiff:

3 **A. JURISDICTION AND VENUE**

4 1. This court has jurisdiction over this action pursuant to Cal. Const. Art.6, Sec.10. This
5 suit seeks, *inter alia*, permanent injunctive relief. Plaintiff has not individually suffered damages of
6 more than seventy-five thousand dollars (\$75,000.00) as a result of the conduct complained of
7 herein.

8
9 2. Venue is proper in this court pursuant to California Code of Civil Procedure Sections 395
10 and 395.5, and California Civil Code Section 1780(d).

11 **B. PARTIES**

12 3. Plaintiff WHITE is an individual consumer residing in the State of California.

13
14 4. Defendant HOLLISTER CO. ("DEFENDANT") is an Ohio corporation, with its principal
15 place of business located at 6301 Fitch Path, New Albany, Ohio 43054. This Defendant transacts
16 business in the State of California.

17 5. The true names and capacities, whether individual, corporate, associate or otherwise, of
18 Defendants DOES 1 through 100, are unknown to Plaintiff, who therefore sues these Defendants by
19 such fictitious names. Plaintiff is informed and believes, and thereon alleges that each of the
20 Defendants designated as a DOE is a resident of, or business entity doing business in, the State of
21 California and is responsible in some manner for the events and happenings referred to herein.

22 **C. SUBSTANTIVE ALLEGATIONS**

23
24 6. DEFENDANT, through its retail stores, offer customer services, and casual clothing
25 products and accessories for sale to the general public.

26 7. Like many retailers, DEFENDANT offers gift cards for sale, and issues gift cards through
27 promotions, redeemable for merchandise at DEFENDANT'S retail locations. On information and
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1 belief, DEFENDANT sells and issues thousands of gift cards to California consumers annually.

2 8. On or around December 2009 DEFENDANT issued twenty-five dollar (\$25.00) gift cards
3 pursuant to a promotion to any customer whose total purchase was seventy-five dollars \$75.00 or
4 greater.

5 9. On or around December 14, 2009 Plaintiff WHITE received a twenty-five dollar (\$25.00)
6 gift card as a promotion for purchasing eighty-four dollars and eighty-two cents (\$84.82) worth of
7 merchandise from DEFENDANT at a location in the State of California,

8 10. Pursuant to California Civil Code Section 1749.5(d) and 1749.5 (d)(1) promotional gift
9 cards that expire on a certain date are required to have the expiration date appear in capital letters in
10 at least 10 point font on the front of the gift card. ¹

11 11. In this case DEFENDANT violated California Civil Code Section 1749.5(d)(1) because the
12 promotional gift cards that they issued expired on a certain date reducing the card's balance to zero
13 without expressing any expiration date on any part of the gift card whatsoever.

14 12. After WHITE received the gift card, he gave the gift card to his daughter as a Christmas gift.
15 Then on or about February 7, 2010 WHITE'S daughter attempted to use the gift card at one of
16 DEFENDANT'S retail locations in the State of California.

17 13. When WHITE'S daughter attempted to use the gift card the cashier refused to honor the
18 card indicating it had expired on February 1, 2010, and now had no funds, which meant the gift
19 card had a zero balance.

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¹ California Civil Code Section 1749.5 governs expiration dates regarding gift cards. As a general rule
25 section 1749.5(a)(1) states that "It is unlawful for any person or entity to sell a gift certificate to a purchaser
26 that contains an expiration date." However, there are exceptions to this general rule for certain gift cards
27 issued on or after January 1, 1998, provided that any gift card within the exception, which has an expiration
28 date must express that expiration date in capital letters in at least 10 point font on the front of the gift card.
Section 1749.5(d). Of relevance to this matter is the exception for gift cards that are "distributed by the
issuer to a consumer pursuant to an awards, loyalty, or promotional program without any money or other
things of value being given in exchange for the gift certificate by the consumer." Section 1749.5(d)(1).

1 14. WHITE returned to the store with his receipt and spoke with a customer service
2 representative, who identified himself as Brian. WHITE informed Brian of his daughter's failed
3 attempt to use the card because she was informed it had expired and had a zero balance with no
4 funds remaining. WHITE apprised Brian of the company's failure to have an expiration date on the
5 card when he received it and demanded that the company take appropriate action to correct the
6 problem at all California locations.
7

8 15. WHITE then wrote an email to DEFENDANT explaining his experience and reiterating the
9 company's violations of California Civil Code Section 1749.5. He also continued to urge
10 DEFENDANT to correct the problem. A Customer Service Representative, who identified himself
11 as Ted, responded to WHITE'S email. Ted indicated that the information about the expiration date
12 was communicated through the sleeve of the gift card, in-store marketing, online at
13 DEFENDANT'S homepage, and by marketing notifications through email. Ted also informed
14 WHITE that the funds were systematically removed from the cards on the expiration date and that
15 DEFENDANT could not put additional funds on the card or extend the expiration date. WHITE did
16 not receive notification of an expiration date through any of the channels Ted listed. In addition,
17 WHITE retained the sleeve of the gift card, and unlike what Ted indicated, there was no expiration
18 date located on the sleeve.
19

20 16. Thereafter, WHITE responded to Ted's email and indicated that it was unfortunate that
21 DEFENDANT had no interest in following California law especially since WHITE had been told
22 by a store manager that other people had also suffered as he did from DEFENDANT'S violation of
23 the law. Furthermore, Plaintiff informed DEFENDANT that he would file a class action lawsuit to
24 vindicate his rights and the rights of others. WHITE's response was still met with no correction of
25 DEFENDANT'S violations.
26

27 17. In addition, WHITE sent DEFENDANT written notice, by certified mail, return receipt
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1 requested, demanding that the DEFENDANT remedy the violation within 30 days from their
2 receipt of the letter. White also asked DEFENDANT to take appropriate action to notify all current
3 cardholders of their rights.

4 18. As of August 17, 2010, more than thirty days after DEFENDANTS receipt of WHITE's
5 letter and demand, no response to the same had been received, and DEFENDANT has neither made
6 nor offered to make any proper correction of the conduct complained of.

7 19. WHITE wishes to redeem his HOLLISTER gift card for cash or merchandise.

8 20. WHITE is informed and believes and thereon alleges that preceding the filing of this
9 complaint, DEFENDANT was responsible for issuing thousands of promotional gift cards that
10 failed to bear an expiration date, and resulted in damages to himself and all other similarly situated
11 individuals.
12

13 **CLASS ACTION ALLEGATIONS**

14 21. Plaintiff brings his first cause of action pursuant to California Code of Civil Procedure
15 Section 382 and his second cause of action pursuant to Civil Code Section 1781. The Class Plaintiff
16 seeks to represent is composed of and defined as follows:
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18 All persons who received or is a holder of a promotional gift card with an
19 unspecified expiration date, in violation of California Civil Code Section
20 1749.5, which was issued by the DEFENDANT pursuant to a transaction
21 occurring in the State of California on or after August 25, 2007, and which
22 expired without use, in whole or in part, due to having reached the
23 unexpressed expiration date. Excluded from the class is DEFENDANT,
24 their agents, any entity in which any DEFENDANT has or had a
25 controlling interest, its predecessors in interest or assigns.

26 22. Plaintiff reserves the right under Rule 3.765, California Rule of Court, to amend or modify
27 the Class description with greater specificity or further division into subclasses or limitation to
28 particular issues.

29 23. The precise number of persons comprising the class is as yet unknown to Plaintiff.

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1 However, based on the magnitude of DEFENDANT'S presence in California, Plaintiff is informed
2 and believes and thereon alleges the number of class members to be in the thousands. It is therefore
3 impracticable to bring all members of the class before the court.

4 24. The questions of law or fact common to the class are substantially similar and predominate
5 over the questions affecting the individual members.

6 25. Plaintiff's claims are typical of the claims of the class.

7 26. Plaintiff will fairly and adequately protect the interests of the class in that he has no interests
8 antagonistic to those of the class. Plaintiff has retained counsel experienced in consumer gift
9 certificate and gift card class action litigation.

10 27. For purposes of the proposed class pursuant to California Code of Civil Procedure Section
11 382, a class action is the superior procedure for the fair and efficient adjudicating of the claims
12 herein, and will result in substantial benefits to the litigants, the proposed class, and the Court.
13 Since the class is so numerous joinder of all members in a single action would be impracticable and
14 the repetitive testimony of each class member at trial would be unnecessary and an inefficient use
15 of judicial resources. By contract, the class action device presents far fewer management
16 difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive
17 supervision by a single court. Plaintiff is aware of no difficulty which will be encountered in the
18 administration of this action as a class action.
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22 **FIRST CAUSE OF ACTION**
23 **(Declaratory Relief – Cal. Code Civ. P. Sec. 1060)**

24 28. Plaintiff hereby restates and realleges paragraphs 1 through 26 as though fully set forth
25 herein.

26 29. An actual controversy has arisen regarding the propriety of DEFENDANT'S refusals to
27 honor the gift cards after a non specified expiration date, and the class members' rights in
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1 connection with those gift cards. An adjudication of the rights and obligations of the parties is
2 necessary to resolve this dispute.

3 30. Plaintiff and the class are entitled, ancillary to their claim for the declaratory relief, to an
4 order enjoining DEFENDANT from refusing to redeem any gift card after a non specified
5 expiration date.

6
7 31. Resolution of this claim for declaratory relief would have practical consequences for the
8 putative class, the public and DEFENDANT: More particularly, DEFENDANT would be required
9 to modify its behavior to conform to the law on a class and public-wide basis, *to wit*, DEFENDANT
10 would be compelled to cease issuing gift cards without specified expiration dates as required by law
11 and would be compelled to comply with the provisions of California Civil Code Section 1749.5,
12 and redeem all such gift cards.

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14 **SECOND CAUSE OF ACTION**
15 **(Violation of Consumers Legal Remedies Act –**
California Civil Code Section 1770 (a)(14);(a)(5))

16 32. Plaintiff hereby restates and realleges paragraphs 1 through 31 as though fully set forth
17 herein.

18 33. DEFENDANT'S sale and distribution of the subject gift cards constitutes "transaction(s)
19 intended to result... in the sale of ... goods or services" to consumers within the meaning of
20 California Civil Code Section 1770(a).

21
22 34. DEFENDANT'S practice of refusing to redeem gift cards after an unspecified expiration
23 date violates the Consumers Legal Remedies Act, Civil Code Section 1770(a)(14), for the reason
24 that the practice represents that the "transaction confers or involves rights, remedies, or obligations
25 which it does not have or involve, or which are prohibited by law."

26 35. DEFENDANT'S practice of refusing to redeem gift cards after an unspecified expiration
27 date violates the Consumers Legal Remedies Act, Civil Code Section 1770(a)(5), for the reason that
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1 the defendant wrongfully represents that "goods...have...characteristics...uses, benefits, or
2 qualities which they do not have."

3 36. On information and belief, DEFENDANT continues to engage in the above-described
4 unlawful practices, and, unless enjoined by this Court, will continue to do so, to the detriment of
5 Plaintiff and the class.

6 37. Plaintiff has suffered damages within the meaning of California Civil Code Section 1780(a),
7 because he has been denied a redemption when he was legally entitled to one.
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

11 **ON THE FIRST CAUSE OF ACTION:**

12 1. That the Court certify this cause of action as a class action pursuant to California Code of
13 Civil Procedure Section 382;

14 2. That the Court declare the rights and obligations of the parties, to wit, (a) that the
15 unspecified expiration date imposed on the consumers who have purchased or received
16 DEFENDANT'S gift cards is unlawful and void; and (b) that Plaintiff and the class have the right
17 to redeem all such gift cards;
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19 3. That DEFENDANT be enjoined and restrained from refusing redemptions on all gift cards
20 as described herein; and
21

22 4. That DEFENDANT be enjoined and restrained from continuing to sell gift cards with
23 unspecified expiration dates.
24

25 **ON THE SECOND CAUSE OF ACTION**

26 1. That the Court certify this cause of action as a class action pursuant to California Civil Code
27 Section 1781(b);

28 2. That DEFENDANT be enjoined and restrained from refusing redemptions on gift cards with

1 unspecified expiration dates, pursuant to California Civil Code Section 1780 (a)(2);

2 3. That DEFENDANT be enjoined and restrained from continuing to sell gift cards which do
3 not comply with California Civil Code Section 1749.5, pursuant to California Civil Code Section
4 1780 (a)(2);

5 4. That DEFENDANT pay nominal or actual damages, but in no event less than \$1,000,
6 pursuant to pursuant to California Civil Code Section 1780 (a)(1); and

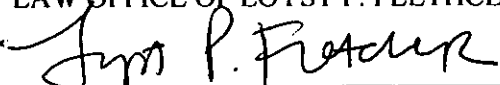
7 5. That DEFENDANT make appropriate restitution to Plaintiff and the class, pursuant to
8 California Civil Code Section 1780 (a)(3); and

9 6. The DEFENDANT pay punitive damages pursuant to California Civil Code Section
10 1780(a)(1).
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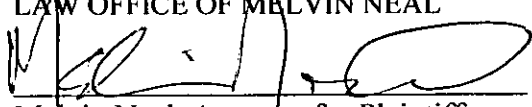
12 **ON ALL CASUES OF ACTION**

- 13 1. For costs of suit;
- 14 2. For litigation expenses;
- 15 3. For prejudgment interests
- 16 4. For attorney's fees pursuant to applicable statute, rule, theory or doctrine, including
17 without limitation, California Code of Civil Procedure Section 1021.5 and/or California
18 Civil Code Section 1780(e); and
- 19 5. For such other and further relief as the Court deems just and proper.
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22 Date: March 22, 2011

LAW OFFICE OF LOYST P. FLETCHER

Loyst P. Fletcher, Attorney for Plaintiff

23
24
25 Date: March 22, 2011

LAW OFFICE OF MELVIN NEAL

Melvin Neal, Attorney for Plaintiff

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VERIFICATION

I, Kerry White, am the Plaintiff of this action. I have read the forgoing **FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES** and am familiar with its contents. I am informed and believe that the matters stated herein are to true to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 22, 2011 at County of LOS ANGELES, California.


Kerry White

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