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Attorneys for Plaintiffs

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

**ANTHONY GEE AND JOSEPH
ANTHONY MONTEGNA SR.,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiffs,

v.

**AMERICAN AUTOMOBILE
ASSOCIATION,**

Defendant.

Case No.: '15CV0246 BAS RBB

**CLASS ACTION COMPLAINT
FOR DAMAGES, RESITUTION
AND INJUNCTIVE RELIEF FOR
VIOLATIONS OF:**

**(1) CALIFORNIA BUS. & PROF.
CODE §§ 17600, ET SEQ.**

**(2) CALIFORNIA BUS. & PROF.
CODE §§ 17200, ET SEQ.**

**(3) CALIFORNIA BUS. & PROF.
CODE §§ 17535, ET SEQ.**

JURY TRIAL DEMANDED

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INTRODUCTION

- 1
2 1. Plaintiff ANTHONY GEE (“Plaintiff Gee”) and Plaintiff JOSEPH
3 ANTHONY MONTEGNA SR. (“Plaintiff Montegna” and jointly as
4 “Plaintiffs”) bring this Class Action Complaint for damages, injunctive relief,
5 and any other available legal or equitable remedies, resulting from the
6 unlawful and deceptive business practices of the AMERICAN
7 AUTOMOBILE ASSOCIATION (“Defendant”) with regard to Defendant’s
8 practice of making automatic renewal offers and continuous service offers, as
9 those terms are defined by Cal. Bus. & Prof. Code § 17600, et seq.
10 (“California’s Automatic Purchase Renewal Statute”), to California
11 consumers and the general public in violation of California’s Unfair
12 Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") and
13 Cal. Bus. & Prof. Code § 17535.
- 14 2. This action seeks to enjoin Defendant’s practice of making automatic
15 renewal offers and continuous service offers, as those terms are defined by
16 California’s Automatic Purchase Renewal Statute, to California and the
17 general public, for Defendant’s commercial purposes and pecuniary gain.
- 18 3. Defendant’s automatic renewal and continuous service offers are a scheme
19 carried out by Defendant which involves making money from California
20 consumers through false, deceptive, and misleading means by charging
21 California consumers for automatic renewal offers as California’s Automatic
22 Purchase Renewal Statute defines that term, without the knowledge of those
23 consumers, throughout the period covered by the applicable statute of
24 limitations.
- 25 4. Defendant makes automatic renewal or continuous service offers to
26 California consumers, including Plaintiffs and putative class members, in
27 violation of California’s Automatic Purchase Renewal Statute by:
28





1 a) Failing to present Defendant’s automatic renewal offer terms or
2 continuous service offer terms in a clear and conspicuous manner
3 before the subscription or purchasing agreement is fulfilled and in
4 visual proximity, or in the case of an offer conveyed by voice, in
5 temporal proximity, to the request for consent to the offer, in violation
6 of Cal. Bus. & Prof. Code § 17600, et seq.

7 b) Charging the consumer’s credit or debit card or the consumer’s
8 account serviced by a third party for an automatic renewal or
9 continuous service without first obtaining the consumer’s affirmative
10 consent to the agreement containing the automatic renewal offer terms
11 or continuous service offer terms, in violation of Cal. Bus. & Prof.
12 Code § 17600, et seq.

13 5. Plaintiffs allege as follows based upon information and belief, with the
14 exception of those allegations that pertain to Plaintiffs, which Plaintiffs
15 allege upon personal knowledge as to themselves and their own acts and
16 experiences.

17 6. Unless otherwise indicated, the use of any Defendant’s name in this
18 Complaint includes all agents, employees, officers, members, directors, heirs,
19 successors, assigns, principals, trustees, sureties, subrogees, representatives
20 and insurers of the named Defendant.

21 **JURISDICTION AND VENUE**

22 7. This Court has jurisdiction over this matter pursuant to the Class Action
23 Fairness Act (CAFA) because the matter in controversy in this matter
24 exceeds the sum or value of \$5,000,000 as to all putative Class members,
25 exclusive of attorneys’ fees and costs. 28 U.S.C. Sections 1332(d), 1453, and
26 1711-1715.

27 8. This Court also has diversity jurisdiction over this matter pursuant to 28
28 U.S.C. § 1332 in that Plaintiffs are each a resident and citizen of the State of

1 California while Defendant is a corporation incorporated under the laws of
2 the State of Delaware.

3 9. This Court has personal jurisdiction over Defendant because Defendant
4 conducts business in the County of San Diego, State of California. Therefore,
5 Defendant has sufficient minimum contacts with this state, and otherwise
6 purposely avails itself of the markets in this state through the promotion, sale,
7 and marketing of its products in this state, to render the exercise of
8 jurisdiction by this Court permissible under traditional notions of fair play
9 and substantial justice.

10 10. Venue is proper in the United States District Court for the Southern District
11 of California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) At
12 all times mentioned herein, Plaintiffs were each resident of the County of San
13 Diego, State of California, which is within this judicial district; (ii) the
14 conduct complained of herein occurred within this judicial district; and, (iii)
15 many of the acts and transactions giving rise to this action occurred in this
16 district because Defendant:

- 17 (a) is authorized to conduct business in this district and has
18 intentionally availed itself of the laws and markets within this
19 district;
- 20 (b) does substantial business within this district;
- 21 (c) is subject to personal jurisdiction in this district because it has
22 availed itself of the laws and markets within this district; and,
- 23 (d) the harm to Plaintiffs occurred within this district.

24 **PARTIES**

25 11. At all times mentioned herein, Plaintiff Gee was a citizen and resident of the
26 County of San Diego, State of California. Plaintiff Gee is, and at all times
27 mentioned herein was, a natural person and a “consumer” for purposes of
28 Cal. Bus. & Prof. Code § 17601(d).

1 12. At all times mentioned herein, Plaintiff Montegna was a citizen and resident
2 of the County of San Diego, State of California. Plaintiff Montegna is, and at
3 all times mentioned herein was, a natural person and a “consumer” for
4 purposes of Cal. Bus. & Prof. Code § 17601(d).

5 13. Plaintiffs are informed and believe and thereon allege that Defendant is, and
6 at all times mentioned herein was, a corporation incorporated under the laws
7 of the State of Delaware, with a headquarters in Heathrow, Florida. Plaintiffs
8 further allege that all times relevant herein Defendant conducted business in
9 the State of California and in the County of San Diego, and within this
10 judicial district.

11 **FACTUAL ALLEGATIONS**

12 14. Plaintiffs reallege and incorporate by reference all of the above paragraphs of
13 this Complaint as though fully stated herein.

14 15. At all times relevant, Defendant made and continues to make automatic
15 renewal offers and continuous service offers, as those terms are defined by
16 Cal. Bus. & Prof. Code § 17600, et seq. (“California’s Automatic Purchase
17 Renewal Statute”) to Plaintiffs and other consumers similarly situated.

18 16. Sometime in 2010, Plaintiff Gee opened an account on Defendant’s website
19 and purchased a subscription for Defendant’s services.

20 17. At the time Plaintiff Gee purchased the subscription, Defendant failed to
21 present Defendant’s automatic renewal offer terms or continuous service
22 offer terms in a clear and conspicuous manner, as defined by California’s
23 Automatic Purchase Renewal Statute, before the subscription or purchasing
24 agreement was fulfilled, and in visual or temporal proximity to Defendant’s
25 request for consent to the offer.

26 18. At the time Plaintiff Gee subscribed to Defendant’s services, Plaintiff Gee
27 was subjected to Defendant’s unlawful policies and/or practices, as set forth
28 herein, in violation of Cal. Bus. & Prof. Code § 17600, et seq.





1 19. Sometime in 2014, Plaintiff Montegna opened an account on Defendant’s
2 website and purchased a subscription for Defendant’s services.

3 20. At the time Plaintiff Montegna purchased the subscription, Defendant failed
4 to present Defendant’s automatic renewal offer terms or continuous service
5 offer terms in a clear and conspicuous manner, as defined by California’s
6 Automatic Purchase Renewal Statute, before the subscription or purchasing
7 agreement was fulfilled, and in visual or temporal proximity to Defendant’s
8 request for consent to the offer.

9 21. At the time Plaintiff Montegna subscribed to Defendant’s services, Plaintiff
10 Gee was subjected to Defendant’s unlawful policies and/or practices, as set
11 forth herein, in violation of Cal. Bus. & Prof. Code § 17600, et seq.

12 22. The material circumstances surrounding these experiences by Plaintiffs was
13 the same, or nearly the same, as the other class members Plaintiffs proposes
14 to represent, and Plaintiffs and all putative class members were required to
15 pay, and did pay, money for this subscription marketed and sold by
16 Defendant.

17 **CLASS ACTION ALLEGATIONS**

18 23. Plaintiffs bring this action, on behalf of themselves and all others similarly
19 situated (“the Class”).

20 24. Plaintiffs represent, and are members of, the Class, consisting of:

21 All persons within California who purchased a subscription
22 from Defendant’s website as part of an automatic renewal plan
23 or continuous service offer for products and services from
24 Defendant within the four years prior to the filing of this
Complaint.

25 25. Defendant and its employees or agents are excluded from the Class.
26 Plaintiffs do not know the number of members in the Class, but believe the
27 Class members number in the hundreds of thousands, if not more. Thus, this
28

1 matter should be certified as a Class action to assist in the expeditious
2 litigation of this matter.

3 26. There is a well-defined community of interest in the litigation, the proposed
4 class is easily ascertainable, and Plaintiffs are each a proper representative of
5 the Class because:

6 a. **Numerosity:** The potential members of the Class as defined are so
7 numerous and so diversely located throughout California, that joinder of
8 all the members of the Class impracticable. The class members are
9 dispersed throughout California. Joinder of all members of the proposed
10 class is therefore not practicable.

11 b. **Commonality:** There are questions of law and fact common to Plaintiffs
12 and the Class that predominate over any questions affecting only
13 individual members of the Class. These common questions of law and
14 fact include, without limitation:

15 i) Whether Defendant charged Plaintiffs and class members'
16 payment method for an automatic renewal or continuous service
17 without first obtaining Plaintiffs' and class members' affirmative
18 consent to the agreement containing the automatic renewal offer
19 terms or continuous service offer terms;

20 ii) Whether Defendant's Terms and Conditions contain the
21 automatic renewal offer terms and/or continuous service offer
22 terms as defined by Cal. Bus. & Prof. Code § 17601;

23 iii) Whether Defendant failed to present the automatic renewal offer
24 terms or continuous service offer terms in a clear and
25 conspicuous manner before the subscription or purchasing
26 agreement was fulfilled, and in visual or temporal proximity to
27 the request for consent to the offer;



1 iv) Whether Cal. Bus. & Prof. Code § 17603 provides for restitution
2 for money paid by class members in circumstances where the
3 goods and services provided by Defendant are deemed an
4 unconditional gift;

5 v) Whether Plaintiffs and the Class are entitled to restitution under
6 Cal. Bus. & Prof. Code §§ 17200-17203;

7 vi) Whether Plaintiffs and class members are entitled to declaratory
8 relief, injunctive relief and/or restitution under Cal. Bus. & Prof.
9 Code § 17535, and,

10 vii) The proper formula(s) for calculating and/or restitution owed to
11 Class members.

12 c. **Typicality:** Plaintiffs' claims are typical of the claims of the Class.
13 Plaintiffs and Class members were deprived of property rightly
14 belonging to them, arising out of and caused by Defendant's common
15 course of conduct in violation of law as alleged herein, in similar ways.

16 d. **Adequacy of Representation:** Plaintiffs are members of the Class and
17 will fairly and adequately represent and protect the interests of the class
18 members. Plaintiffs' interests do not conflict with those of class
19 members. Counsel who represent Plaintiffs are competent and
20 experienced in litigating large class actions, and will devote sufficient
21 time and resources to the case and otherwise adequately represent the
22 Class.

23 e. **Superiority of Class Action:** A Class Action is superior to other
24 available means for the fair and efficient adjudication of this
25 controversy. Individual joinder of all class members is not practicable,
26 and questions of law and fact common to the Class predominate over
27 any questions affecting only individual members of the Class. Plaintiffs
28 and class members have suffered or may suffer loss in the future by



1 reason of Defendant's unlawful policies and/or practices of not
 2 complying with Cal. Bus. & Prof. Code §§ 17600-17606. Certification
 3 of this case as a class action will allow those similarly situated persons
 4 to litigate their claims in the manner that is most efficient and
 5 economical for the parties and the judicial system. Certifying this case
 6 as a class action is superior because it allows for efficient and full
 7 restitution to class members, and will thereby effectuate California's
 8 strong public policy of protecting the California public from violations
 9 of its laws. If this action is not certified as a Class Action, it will be
 10 impossible as a practical matter for many or most class members to
 11 bring individual actions to recover monies due from Defendant, due to
 12 the relatively small amounts of such individual recoveries relative to the
 13 costs and burdens of litigation.

14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17600, ET SEQ.**

16 **[CALIFORNIA'S AUTOMATIC PURCHASE RENEWAL STATUTE]**

- 17 28. Plaintiffs incorporate by reference all of the above paragraphs of this
 18 Complaint as though fully stated herein.
- 19 27. At a date presently unknown to Plaintiffs, but at least four years prior to the
 20 filing of this action, and as set forth above, Defendant has engaged in the
 21 practice of making automatic renewal offers and continuous service offers, as
 22 those terms are defined by Cal. Bus. & Prof. Code § 17600, et seq.
 23 ("California's Automatic Purchase Renewal Statute"), to California
 24 consumers and the general public.
- 25 28. Plaintiffs and members of the putative Class have suffered an "injury in fact"
 26 and have lost money and/or property as a result of Defendant's: (a) failure to
 27 present Defendant's automatic renewal offer terms or continuous service
 28 offer terms in a clear and conspicuous manner before the subscription or

1 purchasing agreement is fulfilled and in visual proximity, or in the case of an
2 offer conveyed by voice, in temporal proximity, to the request for consent to
3 the offer; (b) charges to the consumer's credit or debit card or the consumer's
4 account for an automatic renewal or continuous service without first
5 obtaining the consumer's affirmative consent to the agreement containing the
6 automatic renewal offer terms or continuous service offer terms.

7 29. As a direct and proximate result of Defendant's aforementioned conduct and
8 representations, Defendant received and continues to hold monies rightfully
9 belonging to Plaintiffs and other similarly situated consumers

10 30. As a direct and proximate result of Defendant's violations of Cal. Bus. &
11 Prof. Code § 17600, et seq., Plaintiffs and members of the Class are entitled
12 to a declaration that Defendant violated the California Automatic Purchase
13 Renewal Statute.

14 31. Plaintiffs and the Class are also entitled to and seek injunctive relief
15 prohibiting such conduct in the future.

16 **SECOND CAUSE OF ACTION**

17 **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.**

18 **[CALIFORNIA'S UNFAIR COMPETITION LAW]**

19 32. Plaintiffs incorporate by reference all of the above paragraphs of this
20 Complaint as though fully stated herein.

21 33. Plaintiffs and Defendant are each "person[s]" as defined by California
22 Business & Professions Code § 17201. California Bus. & Prof. Code
23 § 17204 authorizes a private right of action on both an individual and
24 representative basis.

25 34. "Unfair competition" is defined by Business and Professions Code Section §
26 17200 as encompassing several types of business "wrongs," two of which are
27 at issue here: (1) an "unlawful" business act or practice, (2) an "unfair"
28 business act or practice, (3) a "fraudulent" business act or practice, and (4)

1 “unfair, deceptive, untrue or misleading advertising.” The definitions in
2 § 17200 are drafted in the disjunctive, meaning that each of these “wrongs”
3 operates independently from the others.

4 35. By and through Defendant’s conduct alleged in further detail above and
5 herein, Defendant engaged in conduct that constitutes (a) unlawful and (b)
6 unfair business practices prohibited by Bus. & Prof. Code § 17200 et seq.

7 ***(a) Unlawful” Prong***

8 36. As a result of Defendant’s acts and practices in violation of California’s
9 Automatic Renewal Statute, California’s Bus. & Prof. Code § 17600, et seq.,
10 Defendant has violated California’s Unfair Competition Law, Business &
11 Professions Code §§ 17200 et seq., which provides a cause of action for an
12 “unlawful” business act or practice perpetrated on members of the California
13 public.

14 37. Defendant had other reasonably available alternatives to further its legitimate
15 business interest, other than the conduct described herein, such as adequately
16 disclosing the terms of Defendant’s automatic renewal offers and continuous
17 service offers, as set forth by Cal. Bus. & Prof. Code § 17600, et seq.

18 38. Plaintiffs and the putative class members reserve the right to allege other
19 violations of law, which constitute other unlawful business practices or acts,
20 as such conduct is ongoing and continues to this date.

21 ***(b) “Unfair” Prong***

22 39. Defendant’s actions and representations constitute an “unfair” business act or
23 practice under § 17200 in that Defendant’s conduct is substantially injurious
24 to consumers, offends public policy, and is immoral, unethical, oppressive,
25 and unscrupulous as the gravity of the conduct outweighs any alleged
26 benefits attributable to such conduct. Without limitation, it is an unfair
27 business act or practice for Defendant to knowingly or negligently fail to
28 adequately disclose the terms of Defendant’s automatic renewal offers and



1 continuous service offers, as set forth by Cal. Bus. & Prof. Code §§ 17600, et
2 seq.

3 40. At a date presently unknown to Plaintiffs, but at least four years prior to the
4 filing of this action, and as set forth above, Defendant has committed acts of
5 unfair competition as defined by Cal. Bus. & Prof. Code §§ 17200 et seq., as
6 alleged further detail above and herein.

7 41. Plaintiffs and other members of the Class could not have reasonably avoided
8 the injury suffered by each of them. Plaintiffs reserve the right to allege
9 further conduct that constitutes other unfair business acts or practices. Such
10 conduct is ongoing and continues to this date, as Defendant continues to
11 make automatic renewal offers and continuous service offers in the manner
12 described above in herein, in violation of Cal. Bus. & Prof. Code §§ 17600,
13 et seq. and Cal. Bus. & Prof. Code §§ 17200, et seq.

14 **THIRD CAUSE OF ACTION**

15 **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17535, ET SEQ.**

16 42. Plaintiffs incorporate by reference all of the above paragraphs of this
17 Complaint as though fully stated herein.

18 43. Cal. Bus. & Prof. Code § 17535, et seq. (the “UCL”) allows “any person who
19 has suffered injury in fact and has lost money or property” to prosecute a
20 civil action for violation of the UCL. Such a person may bring such an action
21 on behalf of himself and others similarly situated who are affected by the
22 unlawful, unfair, or fraudulent business practice.

23 44. Beginning at an exact date unknown to Plaintiffs, but at least four years prior
24 to the filing of this action, and continuing to the present, Defendant has
25 committed unlawful, unfair, and/or fraudulent business acts and practices as
26 defined by the UCL, by violating Cal. Bus. & Prof. Code § 17602.

27 45. As a direct and proximate result of Defendant’s unlawful, unfair, and/or
28 fraudulent acts and practices described herein, Defendant has received and





1 continues to hold unlawfully obtained property and money belonging to
2 Plaintiffs and class members in the form of payments made for subscription
3 agreements by Plaintiffs and class members. Defendant has profited from its
4 unlawful, unfair, and/or fraudulent acts and practices in the amount of those
5 business expenses and interest accrued thereon.

6 46. Plaintiffs and similarly situated class members are entitled to injunctive relief
7 under restitution pursuant to Cal. Bus. & Prof. Code § 17535 for all monies
8 paid by class members under the subscription agreements from date of
9 Plaintiffs' and class members' subscription purchase to the date of such
10 restitution, at rates specified by law. Defendant should be required to
11 disgorge all the profits and gains it has reaped and restore such profits and
12 gains to Plaintiffs and class members, from whom they were unlawfully
13 taken.

14 47. In prosecuting this action for the enforcement of important rights affecting
15 the public interest, Plaintiffs seeks the recovery of attorneys' fees, which is
16 available to prevailing plaintiffs in class action cases such as this matter.

17 48. Plaintiffs, on behalf of themselves and similarly situated class members,
18 request relief as described below.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiffs respectfully request the Court grant Plaintiffs and
21 the Class members damages against Defendant and relief as follows:

- 22 • That this action be certified as a Class Action, Plaintiffs be appointed as
23 representatives of the Class, and Plaintiffs' attorneys be appointed Class
24 counsel;
- 25 • That the Court find and declare that Defendant has violated Cal. Bus. &
26 Prof. Code § 17602(a)(2) by charging Plaintiffs and class members payment
27 method without first obtaining their affirmative consent to the agreement
28

1 containing the automatic renewal offer term or continuous service offer
2 terms prior to charging their credit cards;

- 3 • That the Court find and declare that Defendant has violated the UCL and
4 committed unfair and unlawful business practices by violating Cal. Bus. &
5 Prof. Code § 17602;
- 6 • That the Court find that Plaintiffs and class members are entitled to
7 injunctive relief and/or restitution pursuant to Cal. Bus. & Prof. Code §
8 17535;
- 9 • That the Court find that Defendant is in possession of money that belong to
10 Plaintiffs and class members that Defendant has not returned the money;
- 11 • That the Court award Plaintiffs and the Class damages and/or full restitution
12 in the amount of the subscription payments made by them pursuant to Cal.
13 Bus. & Prof. Code § 17603 in an amount to be proved at trial;
- 14 • An order requiring Defendant to pay restitution to Plaintiffs and the Class
15 due to Defendant's UCL violations, pursuant to Cal. Bus. & Prof. Code
16 §§ 17200-17205 in the amount of their subscription agreement payments;
- 17 • An order requiring imposition of a constructive trust and and/or
18 disgorgement of Defendant's ill-gotten gains and to pay restitution to
19 Plaintiffs and all members of the Class and to restore to Plaintiffs and
20 members of the Class all funds acquired by means of any act or practice
21 declared by this court to be an unlawful, fraudulent, or unfair business act
22 or practice, in violation of laws, statutes or regulations, or constituting
23 unfair competition;
- 24 • That Plaintiffs and the Class be awarded reasonable attorneys' fees and costs
25 of this suit pursuant to Code of Civil Procedure § 1021.5, and California
26 Civil Code § 1780, and/or other applicable law; and
- 27 • Any and all other relief as this Court may deem necessary or appropriate.
28

TRIAL BY JURY

49. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Dated: February 5, 2015

Respectfully submitted,

HYDE & SWIGART

By: s/ Joshua B. Swigart
JOSHUA B. SWIGART, ESQ.
SARA KHOSROABADI, ESQ.
ATTORNEYS FOR PLAINTIFFS



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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court.

I. (a) PLAINTIFFS
Anthony Gee and Joseph Anthony Montegna, Sr., individually and on behalf of all others similarly situated,
(b) County of Residence of First Listed Plaintiff San Diego
(c) Attorneys (Firm Name, Address, and Telephone Number)
Joshua B. Swigart, Esq. (225557); Sara F. Khosroabadi, Esq. (299642)
Hyde & Swigart (619) 233-7770
2221 Camino Del Rio South, Suite 101, San Diego, CA 92108

DEFENDANTS
American Automobile Association
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
'15CV0246 BAS RBB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332
Brief description of cause:
Violation of Cal. Bus. & Prof. Code §§ 17600 et seq; §§17200 et seq; §§17535 et seq.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 02/05/2015 SIGNATURE OF ATTORNEY OF RECORD s/Joshua B. Swigart

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.