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2 Including Professional Corporations
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7 Attorneys for Defendants
RADIANCY, INC. and PHOTOMEDEX, INC.

8
9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION
11

12 APRIL CANTLEY, individually and on
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 RADIANCY, INC., a New York
corporation; PHOTOMEDEX, INC., a
17 Nevada corporation; and DOES 1
through 100, inclusive,

18 Defendants.
19

Case No.

**DEFENDANTS RADIANCY, INC.'S
AND PHOTOMEDEX, INC.'S
NOTICE OF REMOVAL OF
ACTION**

Complaint Filed: March 14, 2014

1 TO THE ABOVE-CAPTIONED COURT AND TO PLAINTIFF APRIL
2 CANTLEY AND HER COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that defendants Radiancy, Inc. (“**Radiancy**”) and
4 PhotoMedex, Inc. (“**PhotoMedex**” and collectively with Radiancy “**Defendants**”)
5 hereby provide notice of the removal to the United States District Court for the
6 Eastern District of California of the following lawsuit, originally filed on March 14,
7 2014 and amended on June 24, 2014 in the Superior Court for the County of Kern:
8 *Cantley v. Radiancy, Inc. et al.*, Case No. S-1500-CV-281510 LHB. The following
9 is a short, plain statement of the grounds for removal. *See* 28 U.S.C. § 1446(a).

10 **I.**

11 **DESCRIPTION OF THE ACTION**

12 Plaintiff alleges that “Defendants manufacture, market, distribute, and sell the
13 no!no!™ Hair Product Line of hair removal products.” (First Amended Complaint
14 (“**FAC**”) ¶ 12.) She further alleges that she purchased one of Defendants’ products
15 based on “print, television, and online advertisements” that touted Defendants’
16 products and offered “a full refund of the product price, shipping and handling, and
17 return shipping within 60 days if she was unhappy with” the product. (*Id.* ¶¶ 15, 21,
18 22.) Plaintiff was unsatisfied with Defendants’ product, and alleges that they
19 engaged in false and misleading advertising. (*Id.* ¶¶ 18-20, 23.) She sought a
20 refund, but her request was denied. (*Id.* at ¶¶ 24-25.)

21 Plaintiff thus contends that she lost money as a result of Defendants’ alleged
22 actions, and asserts claims for violation of California’s (1) Unfair Competition Law,
23 Cal. Bus. & Profs. Code § 17200 (“**UCL**”); (2) False Advertising Law, Cal. Bus. &
24 Profs. Code § 17500 (“**FAL**”); and (3) Consumer Legal Remedies Act, Cal Civ.
25 Code § 1750, *et seq.* (“**CLRA**”) on behalf of a putative class. (FAC ¶¶ 26, 39-41,
26 47, 53, 55.) She seeks restitution, damages, injunctive relief, and attorneys’ fees,
27 among other things. (Prayer For Relief ¶¶ 2, 3, 5.) With regard to restitution in
28 particular, Plaintiff seeks all “amounts unjustly collected from Class Members.”

(FAC ¶ 42.) Notably, however, neither the original Complaint, the FAC, nor any other pleading or paper that Plaintiff has since served alleges entitlement to a specific amount of restitution, damages, or other monetary recovery.

II.

BASIS FOR REMOVAL (CAFA JURISDICTION)

A. Minimal Diversity Exists.

The 2005 Class Action Fairness Act provides that “[t]he district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is *a class action in which (A) any member of a class of plaintiffs is a citizen of a State different from any defendant . . .*” 28 U.S.C. § 1332(d)(2)(A) (emphasis added). Only minimal diversity is required. It is thus sufficient if the plaintiff and only one defendant are citizens of different states. *Id.* In this case, the named plaintiff and both Defendants are diverse.

Plaintiff alleges that she is a citizen of California. (FAC ¶ 5.) Plaintiff further purports to represent a class of “All persons who purchased a no!no!™ Hair Product, including: (1) no!no!™ Hair 8800; (2) no!no!™ Hair Classic; (3) no!no!™ Hair Plus; or (4) no!no!™ Hair Pro, in the state of California at any time during the time period beginning four years prior to the inception of this action through the conclusion of this action.” (*Id.* ¶ 28.) As such, both Plaintiff and likely a large portion of Plaintiff’s class are citizens of California.

Plaintiff correctly alleges that Radiancy is a New York corporation with its principal place of business in New York. (Complaint ¶ 6.) Plaintiff also correctly alleges that PhotoMedex is a Nevada corporation with its principal place of business in Pennsylvania. (*Id.* ¶ 7.) Radiancy is thus a New York citizen and PhotoMedex is both a Nevada citizen and Pennsylvania citizen. *See* 28 U.S.C. §§ 1332(c)(1) (“[A] corporation shall be deemed to be a citizen of any State by which it has been

1 incorporated and of the State where it has its principal place of business.”),
 2 1332(d)(2)(A).

3 Because Plaintiff is a citizen of California and both Defendants are citizens of
 4 other states, the requirement of minimal diversity is met, as at least one plaintiff and
 5 one defendant are citizens of different states.

6 **B. The Amount In Controversy Exceeds \$5,000,000.**

7 The assessment of whether the amount-in-controversy requirement is satisfied
 8 “is not confined to the face of the complaint.” *Valdez v. Allstate Insurance*
 9 *Company*, 372 F.3d 1115, 1117 (9th Cir. 2004). The appropriate measure of the
 10 jurisdictional amount in controversy is “the litigation value of the case assuming that
 11 the allegations of the complaint are true and assuming a jury returns a verdict for the
 12 plaintiff on all claims made in the complaint.” *Jackson v. American Bankers*
 13 *Insurance Co. of Florida*, 976 F. Supp. 1450, 1454 (S.D. Ala. 1997), citing *Burns v.*
 14 *Windsor Insurance Co.*, 31 F.3d 1092, 1096 (11th Cir. 1994). It is not determined
 15 by “the low end of an open-ended claim,” but by “a reasonable reading of the value
 16 of the rights being litigated.” *Angus v. Shiley, Inc.*, 989 F.2d 142, 146 (3d Cir.
 17 1993); *see also Hart v. Washington State Apple Advertising Commission*, 432 U.S.
 18 333, 347, 97 S. Ct. 2434, 2443 (1977). Further, to establish the amount in
 19 controversy, Defendants need not concede liability (*i.e.*, that they “unjustly
 20 collected” any money from the putative class), but must show only that the amount
 21 potentially at issue (*i.e.*, the total amount collected) is greater than \$5 million. *Lewis*
 22 *v. Verizon Communications, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010).

23 The amount-in-controversy requirement is met here because the aggregate
 24 amount in controversy for the alleged class exceeds the \$5 million threshold for
 25 diversity jurisdiction under 28 U.S.C. § 1332(d). As noted above, Plaintiff seeks to
 26 represent a class of all persons who purchased a no!no!TM Hair product in California
 27 from March 14, 2010 to the present. (FAC ¶ 28.) Plaintiff further seeks restitution
 28 of all “amounts unjustly collected” from the putative class. (*Id.* ¶42.)

Defendants—without admitting that they did anything “unjust[,]” which they are not required to do—allege that they collected more than \$5,000,000 from the putative class during the class period, *i.e.*, from March 14, 2010 to the present.¹ Defendants’ representation is sufficient, and declarations and/or other evidence are not required to prove the amount in controversy. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014) (“In sum, as specified in §1446(a), a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. Evidence establishing the amount is required by §1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant’s allegation.”).

III.

THE NOTICE OF REMOVAL IS PROCEDURALLY PROPER

Based on the foregoing, this action is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d), and is one that may be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446. In accordance with the requirements of 28 U.S.C. § 1446(a), a copy of the Complaint, FAC, and all other papers served on Defendants in the State Court Action as of the filing of this Notice of Removal are attached hereto as **EXHIBIT A**.

This Notice of Removal is also timely filed. As the Ninth Circuit explained in *Kuxhausen v. BMW Fin. Servs. NA LLC*, 28 U.S.C. §

1446(b) identifies two thirty-day periods for removing a case. The first thirty-day removal period is triggered if the case stated by the initial pleading is removable on its face. The second thirty-day removal period is triggered if the initial pleading does not indicate that the case is removable, and the defendant receives a copy of an amended pleading, motion, order or other paper from which removability may first be ascertained.

¹ This \$5,000,000 figure does not even include any damages claimed from the alleged violation of the CLRA that are not otherwise captured in the restitutionary relief, much less punitive damages or attorneys’ fees, or the value of the injunctive relief sought.

1 707 F.3d 1136, 1139 (9th Cir. 2013) (quotations omitted). Neither of the 30-day
 2 periods is triggered absent a pleading explicitly putting the defendant on notice that
 3 the case is removable to “avoid saddling defendants with the burden of investigating
 4 jurisdictional facts.” *Id.* See also *Roth v. CHA Hollywood Med. Ctr., L.P.*, 720 F.3d
 5 1121, 1125 (9th Cir. 2013) (“a defendant does not have a duty of inquiry if the
 6 initial pleading or other document is ‘indeterminate’ with respect to removability.
 7 Thus, even if a defendant could have discovered grounds for removability through
 8 investigation, it does not lose the right to remove because it did not conduct such an
 9 investigation and then file a notice of removal within thirty days of receiving the
 10 indeterminate document.”).

11 In *Roth*, the Ninth Circuit answered the additional question of what happens
 12 when *neither* 30-day period is triggered, *i.e.*, whether the defendant can remove
 13 based on its own investigation at any time. It held

14 that §§ 1441 and 1446, read together, permit a defendant to remove
 15 outside the two thirty-day periods on the basis of its own information,
 16 provided that it has not run afoul of either of the thirty-day deadlines.
 17 For good reason, § 1446(b)(1) and (b)(3) place strict limits on a
 18 defendant who is put on notice of removability by a plaintiff. A
 19 defendant should not be able to ignore pleadings or other documents
 from which removability may be ascertained and seek removal only
 when it becomes strategically advantageous for it to do so. But neither
 should a plaintiff be able to prevent or delay removal by failing to
 reveal information showing removability and then objecting to removal
 when the defendant has discovered that information on its own.

20 720 F.3d at 1125. Thus, a “CAFA case may be removed at any time, provided that
 21 neither of the two thirty-day periods under § 1446(b)(1) and (b)(3) has been
 22 triggered.” *Id.* at 1126. This CAFA removal is timely filed because no pleading—
 23 not the Complaint, the FAC, or any other pleading or paper that Plaintiff has since
 24 served—alleges entitlement to an amount of restitution, damages, or other monetary
 25 recovery of more than \$5,000,000. In fact, it was not until Defendants recently
 26 conducted their own investigation that they determined that the amount in
 27 controversy exceeded the \$5,000,000 jurisdictional threshold for CAFA.
 28

IV.

CONCLUSION AND REQUESTED RELIEF

For all of the reasons set forth above, Defendants respectfully request that this Court proceed with this matter as if it had been originally filed herein.

Dated: October 29, 2015

SHEPPARD, MULLIN, RICHTER & HAMPTON
LLP

By /s Valerie E. Alter
KENT R. RAYGOR
VALERIE E. ALTER

Attorneys for Defendants
RADIANCY, INC. and PHOTOMEDEX,
INC.

EXHIBIT A

S1500CV281510 - CANTLEY ET AL VS RADIANCY, INC., A NEW YORK CORPORATION ET AL

Case Number: S1500CV281510
File Date: 03/14/2014
Case Status: Pending

Court: B-Civil
Case Type: 35-CV Other Non PI/PD/WD Tort - Civil Unlimited

Plaintiff : CANTLEY, APRIL

Active Attorneys

Lead Attorney:

PIKE, BEVIN E A

Retained

Attorney: OZZELLO, MARK A

Retained

Plaintiff : APRIL CANTLEY, ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

Active Attorneys

Lead Attorney:

PIKE, BEVIN E A

Retained

Attorney: OZZELLO, MARK A

Retained

Plaintiff : CANTLEY, APRIL

Active Attorneys

Lead Attorney:

KHORRAMI, SHAHIN F

Retained

Attorney: OZZELLO, MARK A

Retained

Defendant : RADIANCY, INC., A NEW YORK CORPORATION

Active Attorneys

Lead Attorney:

WEISS, MICHAEL H

Retained

Defendant : PHOTOMEDEX, INC., A NEVADA CORPORATION

Active Attorneys

Lead Attorney:

WEISS, MICHAEL H

Retained

03/14/2014 Civil Case Cover Sheet (CM-010)

Comment: Document Image

03/14/2014 Complaint - Fast Track

Comment: FILED BY BEVIN ALLEN PIKE CMC 9/10/14 815AM DEPT 17

03/14/2014 Declaration

Comment: OF VENUE FILED BY BEVIN ALLEN PIKE

03/18/2014 CONV

Comment: New case created.

03/18/2014 Order to Show Cause

Comment: NOTICE OF ORDER TO SHOW CAUSE RE: CALIFORNIA RULES OF COURT, RULE 3.110 TO PLAINTIFF AND PLAINTIFF'S COUNSEL: YOU ARE ORDERED TO APPEAR ON Jun 27, 2014 AT 8:30 AM IN DEPARTMENT_17 OF THE ABOVE ENTITLED COURT TO GIVE ANY LEGAL REASON WHY SANCTIONS SHALL NOT BE IMPOSED FOR FAILURE TO SERVE THE COMPLAINT ON ALL NAMED DEFENDANTS AND FILE PROOF(S) OF SERVICE WITH THE COURT WITHIN SIXTY (60) DAYS AFTER THE FILING OF THE COMPLAINT PURSUANT TO CALIFORNIA RULES OF COURT, RULE 3.110. ALL APPEARANCES ARE MANDATORY, UNLESS FIVE (5) COURT DAYS PRIOR TO HEARING DATE THE COURT HAS RECEIVED THE REQUIRED PROOF(S) OF SERVICE, THEN NO APPEARANCE IS NECESSARY. Calendar Notes: NOTICE OF ORDER TO SHOW CAUSE RE: CALIFORNIA RULES OF COURT, RULE 3.110 TO PLAINTIFF AND PLAINTIFF'S COUNSEL: YOU ARE ORDERED TO APPEAR ON Jun 27, 2014 AT 8:30 AM IN DEPARTMENT_17 OF THE ABOVE ENTITLED COURT TO GIVE ANY LEGAL REASON WHY SANCTIONS SHALL NOT BE IMPOSED FOR FAILURE TO SERVE THE COMPLAINT ON ALL NAMED DEFENDANTS AND FILE PROOF(S) OF SERVICE WITH THE COURT WITHIN SIXTY (60) DAYS AFTER THE FILING OF THE COMPLAINT PURSUANT TO CALIFORNIA RULES OF COURT, RULE 3.110. ALL APPEARANCES ARE MANDATORY, UNLESS FIVE (5) COURT DAYS PRIOR TO HEARING DATE THE COURT HAS RECEIVED THE REQUIRED PROOF(S) OF SERVICE, THEN NO APPEARANCE IS NECESSARY.

03/18/2014 Summons Issued and Filed

Comment: RETURNED VIA ACS

03/21/2014 800Q Pmt: New Suit - Unlimited Civil GC 70611 (8/6/12)

Comment: Amount of \$435.00 for CANTLEY, APRIL (PL-1). Received from ONE LEGAL LLC, check no(s) 3342301. Receipt #769257 for amount of \$1,435.00.

03/21/2014 CONV

Comment: Amount of \$1,000.00 for CANTLEY, APRIL (PL-1). Received from ONE LEGAL LLC, check no(s) 3342301. Receipt #769257 for amount of \$1,435.00.

05/13/2014 Declaration

Comment: OF VENUE

05/13/2014 First Amended Complaint

Comment: PLTF

05/20/2014 Summons Issued

Comment: ON FIRST AMENDED

06/27/2014 4159 Order to Show Cause - (N20a - CRC 3.110)

Comment: Hearing Entered.

06/27/2014 NP1511

Comment: Department: 17 Calendar Notes: NATURE OF PROCEEDINGS: ORDER TO SHOW CAUSE RE: (N20A - CRC 3.110). HEARING BEFORE TRIAL. THE ABOVE ENTITLED CAUSE CAME ON REGULARLY AT THIS TIME TODAY FOR HEARING WITH PARTIES PRESENT AS FOLLOWS: SCOTT L TILLET APPEARS ON BEHALF OF ALL NAMED PLAINTIFFS. NO APPEARANCE BY DEFENDANTS. ***** CAUSE IS CONTINUED TO 9/10/2014 AT 8:15 AM IN DIV/DEPT 17 FOR HEARING ON CAL: ORDER TO SHOW CAUSE - (N20A - CRC 3.110) BEFORE THE HON. LORNA H BRUMFIELD OR OTHER ASSIGNED JUDICIAL OFFICER. IF PROOF OF SERVICE IS FILED, DATE TO BE VACATED BUT CASE MANAGEMENT CONFERENCE WILL REMAIN SET FOR 09/10/2014, AT 8:15 A.M., IN DEPARTMENT 17. FURTHER NOTICE WAIVED.

06/27/2014 Order to Show Cause - CRC 3.110

Judicial Officer: Brumfield, Lorna H.

Hearing Time: 08:30 AM

Result: CONV

Comment:

Parties Present

Plaintiff: CANTLEY, APRIL

Plaintiff: APRIL CANTLEY, ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

Defendant: RADIANCY, INC., A NEW YORK CORPORATION

Defendant: PHOTOMEDEX, INC., A NEVADA CORPORATION

07/14/2014 Proof of Service - Summons / Complaint

Comment: AS TO DEFENDANT PHOTOMEDEX INC

07/14/2014 Proof of Service - Summons / Complaint

Comment: AS TO DEFENDANT RADIANCY INC

07/16/2014 Notice of Change Name/Address

Comment: NOTICE OF CHANGE OF FIRM NAME FILED BY BEVIN ALLEN PIKE, ESQ

07/18/2014 Hearing Vacated

Comment: PROOFS OF SERVICE FILED ~ calid=2593475 Vacating calendar hearing. EventCode:4159, CourtDate:09/10/2014, Courtroom:17, SessionNumber:1, Sequence:4, SessionType:OSC, Judge:LHB, SystemDate:6/27/2014 1:01:11 PM

08/07/2014 Application

Comment: DEFENDANTS' UNOPPOSED APPLICATION FOR EXTENSION OF TIME TO RESPOND TO FIRST AMENDED COMPLAINT FILED BY MICHAEL H WIESS, ESQ

08/07/2014 Proof of Service

Comment: OF DEFENDANTS' UNOPPOSED APPLICATION FOR EXTENSION OF TIME TO RESPOND TO FIRST AMENDED COMPLAINT FILED BY MICHAEL H WIESS, ESQ

08/08/2014 Order

Comment: EXTENDING DEFENDANTS' TIME TO RESPOND TO FIRST AMENDED COMPLAINT *****L H BRUMFIELD*****

08/22/2014 Answer to First Amended Complaint

Comment: (DEFENDANT RADIANCY INC AND PHOTOMEDEX INC) FILED BY MICHAEL H. WEISS ESQ

08/25/2014 801N First Appearance Unlimited Civil GC 70612 8/6/12

Comment: Amount of \$435.00 for RADIANCY, INC., A NEW YORK CORPORATION (DE-1). Received from ACTIVE LEGAL, check no(s) 5614. Receipt #795512 for amount of \$870.00.

08/25/2014 801N First Appearance Unlimited Civil GC 70612 8/6/12

Comment: Amount of \$435.00 for PHOTOMEDEX, INC., A NEVADA CORPORATION (DE-2). Received from ACTIVE LEGAL, check no(s) 5614. Receipt #795512 for amount of \$870.00.

08/29/2014 Case Management Statement

Comment: FILED BY BEVIN ALLEN PIKE, COUNSEL FOR PLAINTIFF, APRIL CANTLEY

09/08/2014 Case Management Statement

Comment: FILED BY MICHAEL H. WEISS, COUNSEL FOR DEFENDANTS, RADIANCY, INC.; & PHOTOMEDEX, INC.

09/08/2014 Proof of Service

Comment: OF DEFENDANTS RADIANCY, INC.'S & PHOTOMEDEX, INC.'S CASE MANAGEMENT STATEMENT TO PLAINTIFF'S COUNSEL FILED BY MICHAEL H. WEISS, COUNSEL FOR DEFENDANTS, RADIANCY, INC.; & PHOTOMEDEX, INC.

09/09/2014 Deposit of Jury Fees

Comment: FILED BY BEVIN ALLEN PIKE, ESQ

09/10/2014 4153 Case Management Conference

Comment: Hearing Entered.

09/10/2014 NP1430

Comment: Department: 17 Calendar Notes: NATURE OF PROCEEDINGS: CASE MANAGEMENT CONFERENCE. HEARING BEFORE TRIAL. THE ABOVE ENTITLED CAUSE CAME ON REGULARLY AT THIS TIME TODAY FOR HEARING WITH PARTIES PRESENT AS FOLLOWS: APPEARANCE TELEPHONICALLY BY COURTCALL BY BEVIN ALLEN PIKE ON BEHALF OF APRIL CANTLEY (PL-1). APPEARANCE TELEPHONICALLY BY COURTCALL BY BEVIN ALLEN PIKE ON BEHALF OF APRIL CANTLEY, ON BEHALF OF ALL OTHERS SIMILARLY SITUATED (PL-2). APPEARANCE TELEPHONICALLY BY COURTCALL BY MICHAEL H WEISS ON BEHALF OF RADIANCY, INC., A NEW YORK CORPORATION (DE-1). APPEARANCE TELEPHONICALLY BY COURTCALL BY MICHAEL H WEISS ON BEHALF OF PHOTOMEDEX, INC., A NEVADA CORPORATION (DE-2). ***** THE COURT MAKES THE FOLLOWING FINDINGS AND ORDERS: CAUSE IS CONTINUED TO 12/9/2014 AT 8:15 AM IN DIV/DEPT 17 FOR HEARING ON CAL: FURTHER CASE MANAGEMENT CONFERENCE BEFORE THE HON. LORNA H BRUMFIELD OR OTHER ASSIGNED JUDICIAL OFFICER. COUNSEL TO FILE UPDATED CASE MANAGEMENT CONFERENCE STATEMENT AND/OR LETTER 15 DAYS PRIOR TO NEXT COURT DATE REGARDING STATUS OF CASE AND TIME LINE. FURTHER NOTICE WAIVED.

09/10/2014 199 Pmt: Advance Jury Fee (Non-Refundable) CCP 631(B) 8/6/12

Comment: Amount of \$150.00 for CANTLEY, APRIL (PL-1). Received from ATTORNEY'S CERTIFIED SERVICES, check no(s) 9657. Receipt #798372 for amount of \$150.00.

09/10/2014 Case Management Conference

Judicial Officer: Brumfield, Lorna H.

Hearing Time: 8:15 AM

Result: CONV

Comment:

Parties Present

Plaintiff: CANTLEY, APRIL

Plaintiff: APRIL CANTLEY, ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

Defendant: RADIANCY, INC., A NEW YORK CORPORATION

Defendant: PHOTOMEDEX, INC., A NEVADA CORPORATION

09/10/2014 Order to Show Cause

Judicial Officer: Brumfield, Lorna H.

Hearing Time: 8:15 AM

Cancel Reason: Deleted in Class Act

Result: CONV

Comment:

11/18/2014 Case Management Statement

Comment: FILED BY ROBERT H HORN, ESQ 12/9/14 8:15 D-17

11/19/2014 Case Management Statement

Comment: FILED BY BRANDON BROUILLETTE, ESQ 12/9/14 8:15 D-17

12/09/2014 4145 Further Case Management Conference

Comment: Hearing Entered.

12/09/2014 NP1435

Comment: Department: 17 Calendar Notes: NATURE OF PROCEEDINGS: FURTHER CASE MANAGEMENT CONFERENCE. HEARING BEFORE TRIAL. THE ABOVE ENTITLED CAUSE CAME ON REGULARLY AT THIS TIME TODAY FOR HEARING WITH PARTIES PRESENT AS FOLLOWS: BEVIN E A PIKE APPEARS ON BEHALF OF ALL NAMED PLAINTIFFS. VIA COURT CALL. ROBERT H. HORN APPEARS FOR MICHAEL H WEISS. VIA COURT CALL FOR DEFENDANTS.

***** CAUSE IS CONTINUED TO 3/10/2015 AT 8:15 AM IN DIV/DEPT 17 FOR HEARING ON CAL: FURTHER CASE MANAGEMENT CONFERENCE BEFORE THE HON. LORNA H BRUMFIELD OR OTHER ASSIGNED JUDICIAL OFFICER. COUNSEL TO FILE JOINT UPDATED CASE MANAGEMENT CONFERENCE STATEMENTS AND/OR LETTER 15 DAYS PRIOR TO NEXT COURT DATE REGARDING TIME LINES, DISCOVERY CERTIFICATIONS, MOTIONS, ETC. FURTHER NOTICE WAIVED.

12/09/2014 Further Case Management Conference

Judicial Officer: Brumfield, Lorna H.

Hearing Time: 08:15 AM

Result: CONV

Comment:

Parties Present

Plaintiff: CANTLEY, APRIL

Plaintiff: APRIL CANTLEY, ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

Defendant: RADIANCY, INC., A NEW YORK CORPORATION

Defendant: PHOTOMEDEX, INC., A NEVADA CORPORATION

01/09/2015 Stipulation and Order

Comment: STIPULATION FOR ENTRY OF PROTECTIVE ORDER RE CONFIDENTIAL INFORMATION *LORNA H BRUMFIELD*

01/12/2015 185C Pmt: Request, App, Stip, Motion, or Notice of

Comment: Amount of \$20.00 for CANTLEY, APRIL (PL-1). Received from NATIONWIDE LEGAL LLC, check no(s) 41799.

Receipt #817829 for amount of \$20.00.

02/23/2015 Case Management Statement

Comment: (JOINT), FILED BY BEVIN ALLEN PIKE, ESQ. 03/10/15 8:15 AM D-17

03/10/2015 4145 Further Case Management Conference

Comment: Hearing Entered.

03/10/2015 NP1435

Comment: Department: 17 Calendar Notes: NATURE OF PROCEEDINGS: FURTHER CASE MANAGEMENT CONFERENCE. HEARING BEFORE TRIAL. THE ABOVE ENTITLED CAUSE CAME ON REGULARLY AT THIS TIME TODAY FOR HEARING WITH PARTIES PRESENT AS FOLLOWS: BEVIN E A PIKE APPEARS ON BEHALF OF ALL NAMED PLAINTIFFS. VIA COURT CALL. APPEARANCE TELEPHONICALLY BY COURTCALL BY JENNIFER JONES FOR MICHAEL H WEISS ON BEHALF OF RADIANCY, INC., A NEW YORK CORPORATION (DE-1). APPEARANCE TELEPHONICALLY BY COURTCALL BY JENNIFER JONES FOR MICHAEL H WEISS ON BEHALF OF PHOTOMEDEX, INC., A NEVADA CORPORATION (DE-2).

***** CAUSE IS CONTINUED TO 5/12/2015 AT 8:15 AM IN DIV/DEPT 17 FOR HEARING ON CAL: FURTHER CASE MANAGEMENT CONFERENCE BEFORE THE HON. LORNA H BRUMFIELD OR OTHER ASSIGNED JUDICIAL OFFICER. COUNSEL TO FILE UPDATED CASE MANAGEMENT CONFERENCE STATEMENTS AND/OR JOINT LETTER 15 DAYS PRIOR TO NEXT COURT DATE REGARDING STATUS. FURTHER NOTICE WAIVED.

03/10/2015 Further Case Management Conference

Judicial Officer: Brumfield, Lorna H.

Hearing Time: 08:15 AM

Result: CONV

Comment:

Parties Present

Plaintiff: CANTLEY, APRIL

Plaintiff: APRIL CANTLEY, ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

Defendant: RADIANCY, INC., A NEW YORK CORPORATION

Defendant: PHOTOMEDEX, INC., A NEVADA CORPORATION

04/27/2015 Statement

Comment: JOINT CASE MANAGEMENT CONFERENCE STATEMENT FILED BY KHORRAMI BOUCHER, LLP AND PROSKAUER ROSE LLP

05/12/2015 4145 Further Case Management Conference

Comment: Hearing Entered.

MINUTE ORDER-FURTHER

CMC

Judicial Officer: Brumfield, Lorna H.

Hearing Time: 8:15 AM

Result: Held

Parties Present

Plaintiff

Attorney: PIKE, BEVIN E A

Plaintiff

Attorney: PIKE, BEVIN E A

Defendant

Attorney: WEISS, MICHAEL H

Defendant

Attorney: WEISS, MICHAEL H

07/24/2015 Notice

Comment: of Association of Counsel on behalf of plaintiffs

07/27/2015 Case Management Statement

08/03/2015 Notice of Lien

Comment: filed by Gary K Daglian

08/11/2015 Further Case Management Conference

cv281510

2nd MO

Judicial Officer: Brumfield, Lorna H.

Hearing Time: 8:15 AM

Result: Held

Parties Present

Plaintiff

Attorney: OZZELLO, MARK A

Plaintiff

Attorney: OZZELLO, MARK A

Plaintiff

Attorney: OZZELLO, MARK A

09/28/2015 Status Report

Comment: JOINT

10/13/2015 Further Case Management Conference

cmc mo

Judicial Officer: Brumfield, Lorna H.

Hearing Time: 8:15 AM

Result: Held

10/28/2015 Commission Issued

Judicial Officer: Brumfield, Lorna H.

Comment: **ORIGINAL GIVEN TO COUNSEL**CANNOT CERTIFY**as to Peter Body, Ropes & gray LLP 2099 Pennsylvania

Avenue NW Washington DC 20006-6807

04/13/2016 Motion (Pre-Disposition)

Judicial Officer: Brumfield, Lorna H.

Hearing Time: 8:30 AM

Comment: RE: CLASS CERTIFICATION

MINUTE ORDER-FURTHER

CMC

cv281510

2nd MO

cmc mo

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Shawn Khorrani (180411), Bevin Allen Pike (221936), Scott Tillett (275119) KHORRAMI BOUCHER SUMNER SANGUINETTI, LLP 444 S. Flower Street, 33rd Floor Los Angeles, CA 90071 TELEPHONE NO.: 213-596-6000 FAX NO.: 213-596-6010		CM-010 FILED KERN COUNTY MAR 14 2014 TERRY McNALLY, CLERK BY _____ DEPUTY
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF Kern STREET ADDRESS: 1415 Truxton Avenue MAILING ADDRESS: CITY AND ZIP CODE: Bakersfield, CA 93301 BRANCH NAME: Metropolitan Division		
CASE NAME: CANTLEY v. RADIANCY, INC., et. al.		
CIVIL CASE COVER SHEET <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) </div> <div style="width: 45%;"> Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) </div> </div>		

Items 1-8 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case.		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) Non-PIP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-PIP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|---|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|---|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): THREE (3)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 13, 2014
 Bevin Allen Pike

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CIVIL CASE COVER SHEET

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CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach—Seller
Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

FILED
KERN COUNTY
MAR 14 2014
TERRY McNALLY, CLERK
BY _____ DEPUTY

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CASE MANAGEMENT CONFERENCE:

Hearing Date: 9/10/14

Time: 8:15 AM

Department: 17

See CRC Rule 3.720 Et. Seq.

*Attorneys for Plaintiff APRIL CANTLEY,
Individually and on Behalf of All Others Similarly Situated.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN**

APRIL CANTLEY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

RADIANCY, INC., a New York corporation;
PHOTOMEDEX, INC., a Nevada corporation;
and DOES 1 through 100, inclusive,

Defendants.

S-1500-CV 281510

LHB

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

- (1) Violation of California's Unfair Competition Law [Cal. Bus. & Prof. Code §§ 17200 *et seq.*];
- (2) Violation of California's False Advertising Law [Cal. Bus. & Prof. Code §§ 17500 – 17536]; and
- (3) Violation of California's Consumer Legal Remedies Act ("CLRA") (Cal. Civ. Code §§ 1770, *et seq.*)

DEMAND FOR JURY TRIAL

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1 Plaintiff April Cantley ("Plaintiff"), individually and on behalf of all others similarly
2 situated, hereby alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action lawsuit on behalf of herself and all others
5 similarly situated against RADIANCY, INC., PHOTOMEDEX, INC., and DOES 1 through
6 100, inclusive (collectively, "Defendants"), for false and misleading advertising of no!no!™
7 Hair removal products, including (1) no!no!™ Hair 8800; (2) no!no!™ Hair Pro; (3) no!no!™
8 Hair Plus; and (4) no!no!™ Hair Classic (the "no!no!™ Hair Product Line").

9 **JURISDICTION AND VENUE**

10 2. This Court has original jurisdiction over this action pursuant to California
11 Constitution Article VI, § 10, which grants the Superior Court "original jurisdiction in all
12 causes except those given by statute to other trial courts." The statutes under which this action
13 is brought do not specify any other basis for jurisdiction.

14 3. The California Superior Court has jurisdiction over Defendants because they are
15 corporations and/or entities and/or persons with sufficient minimum contacts in California, are
16 citizens of California, or otherwise intentionally availed themselves of the California market so
17 as to render the exercise of jurisdiction over them by the California courts consistent with
18 traditional notions of fair play and substantial justice.

19 4. Venue is proper in the County of Kern because Defendants exist, transact
20 business and/or have offices in this Judicial District; and/or venue is proper in this Court
21 pursuant to California Code of Civil Procedure § 395 because certain acts and omissions
22 complained of arose in this County.

23 **PARTIES**

24 5. Plaintiff April Cantley is a citizen of the state of California, residing in Kern
25 County. Plaintiff purchased Defendants' no!no!™ Hair 8800 from Defendants' website in the
26 state of California on or about January 1, 2014.

27 6. Plaintiff is informed and believes, and based thereon alleges, that Defendant
28 RADIANCY, INC. is a corporation formed under the laws of New York with its principal

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place of business at 40 Ramland Road South, Suite 200, Orangeburg, New York 10962. Based upon information and belief, Plaintiff alleges that Defendant RADIANCY, INC. is a majority-owned subsidiary of Defendant PHOTOMEDEX, INC.

7. Plaintiff is informed and believes, and based thereon alleges, that Defendant PHOTOMEDEX, INC. is a corporation formed under the laws of Nevada with its principal place of business at 147 Keystone Drive, Montgomeryville, Pennsylvania 18936.

8. Plaintiff does not know the true names and capacities of Defendants herein sued as DOES 1 through 100, inclusive, and therefore sue said defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of DOES 1 through 100 when ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of these fictitiously-named Defendants participated or acted in concert with the named defendants, and is responsible in some manner for the acts, occurrences, and/or omissions alleged herein, and has thereby proximately caused damages to Plaintiff and the class members, and is liable to Plaintiff and the class members by reason of the facts alleged herein.

9. Plaintiff is informed and believes, and based thereon alleges, that there exists, and at all times herein mentioned existed, a unity of ownership between RADIANCY, INC., PHOTOMEDEX, INC., and DOES 1 through 100, inclusive, such that any individuality or separateness between them has ceased and each of them is the alter ego of the others. Adherence to the fiction of the separate existence of these entities would, under the circumstances set forth in this Complaint, sanction fraud or promote injustice.

10. Each of the Defendants was the agent, partner, successor, or employee of the other Defendant(s) and, in performing the acts complained of herein, was acting within the course and scope of such agency, partnership, succession or employment. All acts and omissions alleged herein were performed with the consent, knowledge, and ratification of all other Defendants.

11. In committing the wrongful acts alleged herein, Defendants planned and participated in and furthered a common scheme by means of false, misleading, deceptive and fraudulent representations to induce members of the public to purchase the no!no!™ Hair

1 Product Line. Defendants disseminated or caused to be disseminated the above-described
2 misrepresentations.

3 FACTUAL ALLEGATIONS

4 12. Defendants manufacture, market, distribute, and sell the no!no!™ Hair Product
5 Line of hair removal products.

6 13. The claims made by Defendants regarding the no!no!™ Hair Product Line seek
7 to capitalize on the laser and wax treatment hair removal trends by promising “painless,”
8 “laser-like results without the high cost,” “smooth skin without the pain,” and “the most
9 effective, long-term hair removal system ever created.” Defendants have engaged in a uniform
10 marketing campaign, saturating the market with the “no hair with no pain” claims, including in
11 the product name, product packaging, product labeling, and in print, television and online
12 advertising.

13 14. Prior to purchasing the no!no!™ Hair product, Plaintiff viewed the no!no!™
14 Hair Product Line television advertisement/infomercial and visited the no!no!™ Hair Product
15 Line website. Plaintiff was exposed to Defendants’ representations, including, but not limited
16 to, “painless,” “no hair with no pain,” “laser-like results without the high cost,” “smooth skin
17 without the pain,” and “the most effective, long-term hair removal system ever created,” in the
18 product name, on the product label (which was prominently featured in advertisements for the
19 no!no!™ Hair Product Line), as well as in product advertisements she viewed in print,
20 television and online advertisements on the www.my-no-no.com and other websites.

21 15. Prior to purchasing the no!no!™ Hair product, Plaintiff was exposed to print,
22 television and online advertisements stating that she could receive a full refund of the product
23 price, shipping and handling, and return shipping within 60 days if she was unhappy with the
24 no!no!™ Hair product. Defendants represented, through print, television and online
25 advertisements, including, but not limited to the www.my-no-no.com website, that the
26 no!no!™ Hair Product Line was backed by a “60-Day Triple Guarantee!”¹

27
28 ¹ See Exhibit A, 60-Day Triple Guarantee (https://www.trynono.com/ps_ap2/index.aspx?MID=900009b&referrer=http%3a%2f%2fwww.my-no-no.com%2fcustomerservice.aspx).

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1 16. However, Defendants' print, television and online advertisements make
 2 conflicting representations that the no!no!™ Hair Product Line "carries a 30-day money back
 3 guarantee,"² and that "If you choose to return before you've used the unit for at least 45 days
 4 then we will gladly refund your product price but the cost of postage to return is your
 5 responsibility."³

6 17. Based upon information and belief, each of the products in the no!no!™ Hair
 7 Product Line uses Defendants' "Thermicon Technology," which Defendants describe as
 8 follows:

9 no!no!™ is based on a new and exciting advancement in hair removal
 10 technology called Thermicon™. Based on the scientific principles of thermal
 11 transference, no!no!™ uses this patented technology to conduct a gentle pulse
 12 of heat to the hair. Because no!no!™ uses only heat, it is safe and effective for
 13 all skin types and hair colors.⁴

14 18. Members of the public are likely to be deceived by Defendants'
 15 misrepresentations as to the pain and efficacy associated with use of the no!no!™ Hair Product
 16 Line.

17 19. Moreover, members of the public are likely to be deceived by Defendants'
 18 misrepresentations as to the money back guarantee, Triple Guarantee, and return policy
 19 associated with the purchase of the no!no!™ Hair Product Line.

20 20. Defendants, in marketing the no!no!™ Hair Product Line, affirmatively
 21 misrepresented the products' quality, effectiveness, guarantee, and return policy in order to
 22 convince consumers to purchase them. Moreover, Defendants affirmatively misrepresented the
 23 quality, effectiveness, guarantee, and return policy associated with the no!no!™ Hair Product

24 ² See **Exhibit B**, no!no!™ Hair Product Line Return Policy (<http://www.my-no-no.com/returns.aspx>).

25 ³ See **Exhibit A**.

26 ⁴ See <http://www.my-no-no.com/technology.aspx>; See also, **Exhibit C**, comparison of no!no!™
 27 Hair 8800, no!no!™ Hair Classic, and no!no!™ Hair Plus (https://www.my-no-no.com/hair_removal.aspx) and **Exhibit D**, How It Works tab from the no!no!™ Hair Pro
 28 website (http://www.nonopro.com/PRO_D2/howitworks.aspx), indicating that each of the
 products in the no!no!™ Hair Product Line utilize the Thermicon Technology.

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1 Line in order to charge consumers an artificially high price, resulting in an unjust windfall of
2 profits to Defendants, all to the damage and detriment of the consuming public.

3 21. On or about January 1, 2014, Plaintiff purchased the no!no!™ Hair 8800 for
4 approximately \$270.00 from the www.my-no-no.com website, from her home in Bakersfield,
5 California.

6 22. Plaintiff purchased Defendants' no!no!™ Hair 8800 for personal use in reliance
7 upon the "no hair with no pain," "painless," "laser-like results without the high cost," "smooth
8 skin without the pain," and "the most effective, long-term hair removal system ever created,"
9 representations. Plaintiff was repeatedly exposed to these representations prior to purchasing
10 the no!no!™ Hair product, including in the product name, on the product label, and in print,
11 television, and online advertisements.

12 23. After using the no!no!™ Hair 8800 as directed, Plaintiff discovered that the
13 advertised claims upon which she had relied in purchasing the high-cost product were false.
14 Specifically, Plaintiff experienced pain when using the no!no!™ Hair 8800, including burn
15 marks on her skin and irritated skin, and the product did not effectively remove hair or leave
16 her skin smooth after its use as advertised.

17 24. Dissatisfied with the no!no!™ Hair 8800, Plaintiff called Defendants to take
18 advantage of the 60-Day Triple Guarantee and/or refund policy. However, Defendants'
19 telephone representative informed Plaintiff that she was required to use the product for a
20 minimum of 45 days before she would qualify for a refund of the purchase price.

21 25. Defendants fail to honor the 30-day money back guarantee contained within the
22 no!no!™ Hair Product Line Return Policy and fail to honor their representations that
23 consumers may choose to return the no!no!™ Hair products before using the unit for at least
24 45 days for a refund of the complete purchase price, less postage. In fact, Defendants' 60-Day
25 Triple Guarantee is actually a 15-day refund policy that is tolled until 45 days after the
26 consumer receives the no!no!™ Hair product.

27 26. As a proximate result of Defendants' false and misleading claims, Plaintiff and
28 other similarly situated consumers have suffered injury in fact and have lost money or property



1 as a result of Defendants' false and deceptive advertising and unfair business practices.
2 Plaintiff and other similarly situated consumers purchased no!no!™ Hair Product Line in
3 reliance upon Defendants' false and deceptive representations and assurances provided in the
4 product name, on the product label, and in print, television and online advertisements.

5 **CLASS ACTION ALLEGATIONS**

6 27. Plaintiff brings this action on behalf of herself and all others similarly situated
7 pursuant to Code of Civil Procedure § 382.

8 28. Description of the Class: The proposed class is defined as follows:

9 All persons who purchased a no!no!™ Hair Product, including: (1)
10 no!no!™ Hair 8800; (2) no!no!™ Hair Classic; (3) no!no!™ Hair Plus;
11 or (4) no!no!™ Hair Pro, in the state of California at any time during the
time period beginning four years prior to the inception of this action
through the conclusion of this action ("Class Members").

12 Plaintiff reserves the right to modify the class definition and the class period based on the results
13 of discovery.

14 29. Excluded from the Class are those individuals who received a full refund for any
15 or all purchases of the product, government entities, Defendants, any entity in which
16 Defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal
17 representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also
18 excluded from the Class is any judge, justice, or judicial officer presiding over this matter and
19 the members of their immediate families and judicial staff.

20 30. Numerosity: The exact number of potential class members is unknown to
21 Plaintiff at this time, and can only be ascertained through appropriate discovery; however,
22 Plaintiff is informed and believes that Class members are so numerous that joinder of all
23 affected persons individually would be impracticable. Class members may be identified
24 through records maintained by Defendants in the normal course of their business and can be
25 notified of the pendency of this action by mail, using a form of notice similar to that
26 customarily used in class actions.

27 31. Commonality: There are common questions of law and fact as to the Class
28 members that predominate over questions affecting only individual Class members in that the

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claims of all Class members can be established with common proof. Common questions of law or fact include, but are not limited to:

- a) Whether Defendants' conduct constitutes a fraudulent, unfair, and/or unlawful business act or practice within the meaning of Business and Professions Code §§17200, *et seq.*;
- b) Whether Defendants' advertising is false, untrue, or misleading within the meaning of Business and Professions Code §§ 17500, *et seq.*;
- c) Whether Defendants' advertisements lead reasonable consumers to believe that Defendants' products have characteristics, ingredients, uses, and/or benefits that they do not have within the meaning of Civil Code §§ 1750, *et seq.*;
- d) The appropriate amount of restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- e) Whether Plaintiff and the Class Members are entitled to injunctive relief.

32. Typicality: Plaintiff's claims are typical of the claims of the Class members, each of whom has been similarly affected by Defendants' common course of conduct in advertising and marketing the no!no!™ Hair Product Line.

33. Adequacy of Representation: Plaintiff will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in class action litigation to ensure such protection. Plaintiff has no interests antagonistic to, or in conflict with, the Class. Plaintiff and her counsel intend to prosecute this action vigorously for the benefit of the Class members.

34. Superiority of Class Action: A class action is superior to other available methods for the fair and efficient adjudication of this dispute, as joinder of all members is impracticable. Because the damages suffered by individual members may be relatively small, the expense and burden of individual litigation makes it virtually impossible for Class members to redress the wrongs done to them. The likelihood of individual Class members prosecuting separate claims is remote, and class action treatment will allow similarly-situated



1 plaintiffs to litigate their claims in the manner that is most efficient and economical for the
2 parties and judicial system.

3 **FIRST CAUSE OF ACTION**

4 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS &**

5 **PROFESSIONS CODE §§ 17200, *et seq.***

6 **(Against All Defendants)**

7 35. Plaintiff incorporates by reference the allegations in all preceding paragraphs of
8 this Complaint as though fully set forth herein.

9 36. As alleged herein above, Defendants have engaged in a systematic and uniform
10 campaign of advertising and marketing the no!no!™ Hair Product Line using the false and
11 misleading claims that the products will produce “laser-like results,” promising “smooth skin
12 without the pain,” and “effective, long-term hair removal.”

13 37. Plaintiff was exposed to these misrepresentations, purchased the product from
14 Defendants in reliance on these misrepresentations, and suffered monetary loss as a result.
15 Defendants made such misrepresentations despite the fact that they knew or should have
16 known that the claims were false, misleading, and/or deceptive.

17 38. Defendants’ business practices, as alleged herein, are fraudulent within the
18 meaning of Business and Professions Code §§ 17200, *et seq.* as the reasonable consumer is
19 likely to be deceived regarding the pain and efficacy related to the use of Defendants’ no!no!™
20 Hair Product Line.

21 39. Defendants’ business practices, as alleged herein, are unfair within the meaning
22 of Business and Professions Code §§ 17200 *et seq.* as the harm caused to the public as a result
23 of such practices far outweighs any benefit conferred thereby, in violation of the public
24 policies of this State.

25 40. Defendants’ business practices, as alleged herein, are unlawful within the
26 meaning of Business and Professions Code §§ 17200, *et seq.* as they constitute violations of
27 Business and Professions Code §§ 17500, *et seq.* and California Civil Code § 1750.
28

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 Los Angeles, CA 90071
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 Fax: (213) 596-6010

41. As a direct and proximate result of Defendants' above-mentioned conduct, each Member of the proposed Class has suffered monetary injury in amounts unjustly collected from Class Members. Plaintiff and the Class Members are entitled to restitution of such monies in amounts to be established by proof at trial.

42. Moreover, Defendants continue to engage in the above-described deceptive practices and unless enjoined from doing so by this Court, will continue to do so, all to the damage of consumers who will purchase Defendants' products on the basis of their deceptive and unlawful practices.

SECOND CAUSE OF ACTION

FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17500, et seq.

(Against All Defendants)

43. Plaintiff incorporates by reference the allegations in all preceding paragraphs of this Complaint as though fully set forth herein.

44. As alleged herein, Defendants have engaged in a systematic and uniform campaign of advertising and marketing the no!no!™ Hair Product Line using the false and misleading claims that the product line produces "painless" "laser-like results," promising "smooth skin without the pain," and "effective, long-term hair removal," despite the fact that Defendants knew or should have known that these statements were false and misleading.

45. Defendants' above-described actions constitute deceptive advertising within the meaning of California Business and Professions Code §§ 17500, et seq.

46. Plaintiff was exposed to these misrepresentations, purchased the product from Defendants in reliance on these misrepresentations, and suffered monetary loss as a result. Defendants made such misrepresentations despite the fact that they knew or should have known that the claims were false, misleading, and/or deceptive.

47. As a proximate result of Defendants' above-mentioned conduct, each Member of the proposed Class has suffered monetary injury in the amount that Defendants unjustly

1 collected from them. Plaintiff and Members of the Class are entitled to restitution of such
2 monies in an amount to be established by proof at the time of trial.

3 48. Moreover, Defendants continue to engage in the above-described deceptive
4 practices and unless enjoined from doing so by this Court will continue to do so, all to the
5 damage of consumers that purchase Defendants' no!no!™ Hair Product Line in reliance upon
6 Defendants' false and misleading claims.

7 **THIRD CAUSE OF ACTION**

8 **VIOLATION OF CALIFORNIA CIVIL CODE §§1750 *et seq.***

9 **(Against All Defendants)**

10 49. Plaintiff incorporates by reference the allegations in all preceding paragraphs of
11 this Complaint as though fully set forth herein.

12 50. This claim is brought on behalf of Plaintiff and Class Members.

13 51. Defendants' product advertising violated (and continues to violate) the California
14 Consumer Legal Remedies Act ("CLRA") (Cal. Civ. Code §§1750-1784.).

15 52. Plaintiff and the potential Class Members are "consumers," as that term is defined
16 in Civil Code §1761(d) because they purchased goods for personal, family, or household use.

17 53. Defendants represented that the no!no!™ Hair Product Line has characteristics
18 and benefits that it does not have in violation of California Civil Code Section 1770(a)(5), that
19 the no!no!™ Hair Product Line confers rights, benefits, and obligations which it does not have or
20 involve in violation of California Civil Code Section 1770(a)(14), and that the no!no!™ Hair
21 products have been supplied in accordance with a previous representation when they have not in
22 violation of California Civil Code Section 1770(a)(16).

23 54. Specifically, Plaintiff alleges that Defendants falsely and misleadingly claim that
24 the no!no!™ Hair Product Line produces "painless," "laser-like results," promising "smooth skin
25 without the pain," and "effective, long-term hair removal." Further, Defendants falsely and
26 misleadingly claim that the no!no!™ Hair Product Line "carries a 30-day money back
27 guarantee," that if consumers "are not completely satisfied with the product and are within the
28 guarantee time frame," Defendants will issue "a full product price refund upon return of the

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1 product,” that the “30-day guarantee begins the day that you got the delivery,” that “[u]pon
 2 receipt of the items, we [Defendants] will issue a full product price refund,” that “no!no! Hair is
 3 backed by our [Defendants’] 60-Day Triple Guarantee!,” that Defendants “are so confident that
 4 you’ll love your no!no! Hair device that if after using it for at least 45 days from the delivery
 5 date & no more than 60 days and you are not satisfied then we will: 1. Refund the full Product
 6 Price! 2. Refund The Shipping & Handling! 3. Pay The Cost To Ship It Back To Us!,” and that
 7 “[i]f you choose to return before you’ve used the unit for at least 45 days then we [Defendants]
 8 will gladly refund your product price but the cost of postage to return is your responsibility.”

9 55. Nature of Falsity. The false and misleading claims violated the CLRA because
 10 the no!no!™ Hair Product Line did not produce “painless,” “laser-like results,” “smooth skin
 11 without the pain,” and “effective, long-term hair removal,” but instead Plaintiff and the Members
 12 of the Class experienced severe pain when using the no!no!™ Hair Product Line, including
 13 burning and irritated skin, and did not experience “smooth skin without the pain” or “effective,
 14 long-term hair removal.” Moreover, the no!no!™ Hair Product Line was not backed by a 30-day
 15 or even a 60-day guarantee and Defendants did not honor the Return Policy, but instead required
 16 Plaintiff and the Class Members to use the no!no!™ Hair products for 45 days, despite
 17 experiencing pain with use thereof, and then purported to offer a 15-day refund period beginning
 18 45 days after consumers had received the no!no!™ Hair products.

19 56. Reliance. Plaintiff and Class Members relied on Defendants’ claims in deciding
 20 to purchase the no!no!™ Hair Product Line. Plaintiff was exposed to the misrepresentations on
 21 the television infomercial, and read the statements on the website and product advertising prior
 22 to purchasing the product. Neither Plaintiff nor any other Class Member would have reason to
 23 suspect that the statements contained in Defendants’ advertisements, guarantees, Return Policy,
 24 and/or other materials were inaccurate.

25 57. Materiality. The statements made as part of the false advertising and product
 26 advertising were material to Plaintiff and the Class Members. Had Plaintiff known the truth, that
 27 such statements were misleading, deceptive, and unfair, she would have never purchased the
 28 product. The false advertising is a material fact, because obtaining painless long-term hair



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removal was Plaintiff's main purpose for purchasing the product and Plaintiff believed that she could return the product for a full refund of the purchase price if she was dissatisfied.

58. Declaration of Venue. Plaintiff has filed contemporaneously herewith an Affidavit of Venue, as required by California Civil Code §1780(d).

59. Relief Requested. As relief for Defendants' violation of the CLRA, Plaintiff seeks an Order enjoining Defendants from engaging in the methods, acts, and practices violating the CLRA (§1782(a)(2)).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class under Code of Civil Procedure § 382, appointing Plaintiff as Class representative and her counsel as Class Counsel;
2. For an award of equitable relief as follows:
 - a. Enjoining Defendants from continuing to engage in the unlawful, unfair, and fraudulent business practices and deceptive labeling and advertising described in this Complaint;
 - b. Requiring Defendants to make full restitution of all monies wrongfully obtained as a result of the conduct described in this Complaint;
 - c. Requiring Defendants to disgorge all ill-gotten gains flowing from the conduct described in this Complaint; and
 - d. Enjoining Defendants from marketing and selling the misrepresented no!no!™ Hair Product Line.
3. For the costs to investigate Plaintiff's claims;
4. For an award of attorneys' fees and costs of suit herein, pursuant to Civil Code § 1780 and Code of Civil Procedure § 1021.5; and
5. For such other and further relief as the Court may deem just and proper.



1 Dated: March 13, 2014

**KHORRAMI BOUCHER SUMNER
SANGUINETTI, LLP**

2
3
4 By: 

5 **BEVIN ALLEN PIKE**
6 **Attorneys for Plaintiff,**
7 **APRIL CANTLEY**
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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a trial by jury on all issues so triable.

Dated: March 13, 2014

**KHORRAMI BOUCHER SUMNER
SANGUINETTI, LLP**

By: 

BEVIN ALLEN PIKE

Attorneys for Plaintiff,
APRIL CANTLEY

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EXHIBIT A

https://www.trynoino.com/js_ap2/index.aspx?Mid=900009b&referrer=http%3a%2f%2fwww.my-no-no.com%2fcustomer-service.aspx


Shape Marie Claire Ebony New YOU MetroSource

More Male Passes

no!no! Success Stories



The no!no!
Every day
back at
Erin B.




NO!NO! HAIR IS BACKED BY OUR 60-DAY TRIPLE GUARANTEE!

We are so confident that you'll love your no!no! Hair device that if after using it for at least 45 days from delivery date & no more than 60 days and you are not satisfied then we will:

1. Refund the full Product Price!
2. Refund The Shipping & Handling!
3. Pay The Cost To Ship It Back To Us!

To qualify for the triple guarantee you must have purchased directly from this website. Full guarantee details as well as the process for issuing an RMA and a prepaid return shipping label will be included with your order. If you choose to return before you've used the unit for at least 45 days then we will still gladly refund your product price but the cost of postage to return is your responsibility.



Includes \$50 Noova Hairbrush

your my mustache coming
and that's all because of

and More Success Stories

NO!NO! HAIR IS BACKED BY OUR 60-DAY TRIPLE GUARANTEE!

NO!NO! HAIR IS BACKED BY OUR 60-DAY TRIPLE GUARANTEE!

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Order Details: As part of the Special To Order - you will have the opportunity of a 60-day triple guarantee. You will be refunded \$29.95 for a prepaid shipping and handling fee of \$19.95 to \$20.95 and the same amount of \$19.95 to \$20.95. If you purchase our NO!NO! Hair device or any of our NO!NO! Hair products, the amount of \$29.95 to \$20.95 will be charged as a final payment of \$29.95 for a total of \$59.90.

Applicable taxes and the applicable shipping fees from CA, NY & NJ, and other states will also be subject to the applicable sales tax.

There is no charge for this product. The NO!NO! Hair device is a gift.

NOTE: The NO!NO! Hair device is not suitable for use on the face of the NO!NO! Hair device.

NO!NO! Hair device is not recommended for use on the face of the NO!NO! Hair device.

EXHIBIT B

3/12/2014

no!no!™ Professional hair removal, acne clearance & skin care for consumers

no!
no!
HAIR
MOD MODS**100% RISK-FREE 60 DAY TRIAL!****TRY IT NOW >**

Shopping Cart

HAIR REMOVAL

ACNE

SKINCARE

HEALTH AND BEAUTY

TECHNOLOGY

CUSTOMER SERVICE

SHOP NOW

Return Policy

Thank you for ordering the no!no!. Our product carries a 30-day money back guarantee. If you are not completely satisfied with the product and are within the guarantee time frame, we ask that you contact our customer service number 1.888.525.7580 to obtain a return authorization (RMA) number. We will then issue you a full product price refund upon return of the product. Our customer service agents and product technicians will help resolve any questions you may have and help ensure you're receiving optimal results from your no!no!™ unit. Please note that we CANNOT issue refunds for no!no!™ orders that are returned without an RMA or are returned after the Return Policy Period has expired. Your 30-day guarantee begins the day that you got the delivery. Please keep all receipts and delivery notices on file. Any orders that are returned beyond the Return Policy Period will not be returned to the customer, unless requested by the customer, and the customer agrees to pay a \$15.00 Re-Shipment Fee.

Return Shipping Method and Refunds

Refunds on no!no!™ orders cannot be issued without a Return Material Authorization number (called an RMA#) AND without returning ALL of the products from your no!no!™ order. Please be sure to include ALL of the items in your return, even if opened. Please ship your product order back to us via traceable Fedex, UPS or USPS method to insure proper crediting. Upon receipt of the items, we will issue a full product price refund. For refunds please allow up to two billing cycles for the credit to appear on your credit card statement.

Product Questions and/or Concerns

If you are returning your no!no!™ product due to allergic reactions or any skin sensitivities, or for any other reason, please call our Customer service Department first at 1.888.525.7580. Our professional customer care agents can assist you with many of your no!no!™ product inquiries and can provide you with the required return material (RMA) instructions.

GET OUR SPECIAL ONLINE-ONLY OFFER!

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EXHIBIT C

3/3/2014

no!no!™ Professional hair removal, acne clearance & skin care for consumers



no!
no!
HAIR
8800

100% RISK-FREE 60 DAY TRIAL!

TRY IT NOW >

Shopping Cart

HAIR REMOVAL

ACNE

SKINCARE

HEALTH AND BEAUTY

TECHNOLOGY

CUSTOMER SERVICE

SHOP NOW

Positively no!no!™

To Order Our Hair Removal
Products [Click Here](#)

no!no!™ is changing hair removal routines around the world by bringing home professional hair removal, like that used in spas, salons and clinics.

no!no!™ offers a solution to unwanted hair, answering the ever-growing demand for professional, pain-free hair removal that can be performed in the comfort and convenience of the home. no!no! instantly removes hair and stays away for weeks with no pain, no mess and no chemicals.

no!no! uses science, not magic, to get these great results.

Based on Thermicon™ technology, no!no! uses heat to instantly remove and crystalize the hair.

This makes it universally safe and effective for EVERYONE - no matter the skin type or hair color, including blond, grey and red hair!
Simply put, with no!no!™ there is:

- No hair
- No pain
- No ingrown hairs
- No chemicals
- No mess
- No stress

Choose your no!no!™ Hair

Because different people have different needs, no!no!™ Hair has 2 models, and they both work great for any hair or skin color.

Choose the one that's right for you.

no!no! Hair 8800



- For full facial hair removal
- For body hair
- Multiple Treatment Levels
- 2 Thermicon™ Tip Sizes - for narrow and wide areas
- Thermicon™ Tip Status indicator
- Cord-free Operation

Do not use on genitals or around the nipple area.

no!no!™ Hair Classic



- For body hair only
- 2 Types of Thermicon™ Tips - for long hair and stubble

Do not use on the face, genitals or around the nipple area

3/3/2014

no!no!™ Professional hair removal, acne clearance & skin care for consumers

no!no!™ Hair Plus



- For facial and body hair
- Multiple Treatment Levels
- Thermicon™ Tip Status indicator

Do not use on the upper lip, genitals or around the nipple area

GET OUR SPECIAL ONLINE ONLY OFFER!

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EXHIBIT D

3/3/2014

NoNoPro.com | NoNo PRO3 and PRO5 Hair Removal Systems | Official Site | 60 Day Trial - Exclusive TV Offer

For Phone Orders Call: (800) 794-5341



HOW IT WORKS

One of no!no!'s unique innovations is the development of a thermodynamic wire to transmit heat to the hair. Thermicon uses the scientific principles of thermal transference to conduct a gentle pulse of heat.

The patented thermodynamic wire and built in safety mechanisms have enabled no!no! to adapt this professional hair removal technology for safe and effective use within the comfort of your home.

Easy to Use and Pain-Free

With no!no! PRO, there's no pulling, tearing or scraping, just a slow, smooth glide that gently and easily removes hair. Designed for simplicity, familiar red and blue signal lights let you know when you're using it correctly. Compact and comfortable, no!no! is a convenient little handheld device that you can take and use almost anywhere - at home, at the office or on the road!

Click Video To Pause



**MORE EFFECTIVE THAN EVER, BUT
STILL JUST AS EASY TO USE!**

YES, I WANT TO BE HAIR FREE!

*INTERNET SPECIAL, TRIAL OFFER NOT AVAILABLE IN STORES

First Name*

Last Name*

Billing Address*

City*

State/Province*

Zip Code*

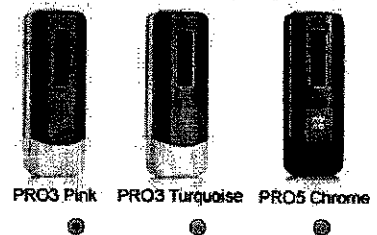
Country*

Phone*

E-mail Address*

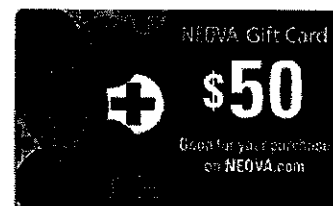
Choose Your Color*

**GET HIGHER ENERGY
BY UPGRADING TO
NO!NO! PRO5 FOR
AN ADDITIONAL \$19.99!**



PRO3 Pink PRO3 Turquoise PRO5 Chrome

TRY IT NOW >



[Learn More](#)

OFFER TERMS

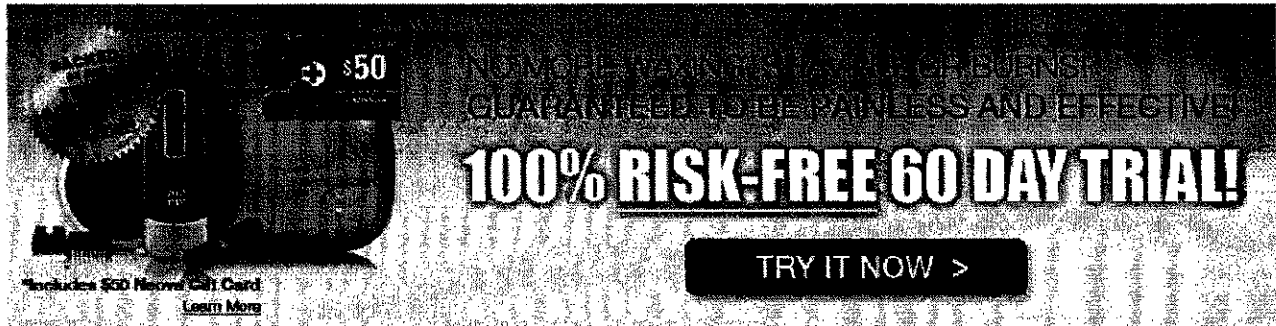
Your \$50 Neova Smart Skincare Gift Card is redeemable at www.neova.com where you will find everything you need to reduce the look of fine lines and wrinkles, reveal radiant skin, get healthy looking skin and correct

3/3/2014

NoNoPro.com | NoNo PRO3 and PRO5 Hair Removal Systems | Official Site | 60 Day Trial – Exclusive TV Offer

visible signs of sun damage!

Try no!no! PRO for 60 days with our **Money Back Triple Guarantee!** For no!no! PRO3 - only 3 monthly payments of \$96.65 + \$14.95 S/H! For no!no! PRO5 - only 2 monthly payments of \$103.31, plus an additional monthly payment of \$103.33 with a one-time S/H charge of \$14.95!



The banner features a dark, textured background. On the left, there is a stylized image of a person's head and shoulders, possibly representing a woman, with a large '\$50' and a circular arrow icon above it. To the right of this image, the text 'NO MORE PAYMENTS IF YOU DON'T' is visible. Below this, in large, bold, white letters, is '100% RISK-FREE 60 DAY TRIAL!'. At the bottom left of the banner, it says 'Includes \$50 NoNo! Gift Card' and 'Learn More'. At the bottom right, there is a black button with white text that says 'TRY IT NOW >'. The overall design is sleek and modern, emphasizing the risk-free trial offer.

[Home](#) | [How It Works](#) | [The no!no Advantage](#) | [FAQs](#) | [Success Stories](#) | [Contact Us](#) | [Press](#) | [Privacy Policy](#) | [Triple Guarantee Return Policy](#) | [Product Warranty](#)

[Order Status](#)

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*PRO3 OFFER DETAILS: If you select the no!no! PRO3, you will be initially charged \$96.65 + a one-time shipping and handling fee of \$14.95. In 30 days the same method of payment you use to make your purchase will automatically be charged the second of three payments in the amount of \$96.65. In 60 days, you will be charged a final payment of \$96.65 for a total of \$304.90.

*PRO5 OFFER DETAILS: If you select the no!no! PRO5, you will be initially charged \$103.31 + a one-time shipping and handling fee of \$14.95. In 30 days the same method of payment you use to make your purchase will automatically be charged the second of three payments in the amount of \$103.31. In 60 days, you will be charged a final payment of \$103.33 for a total of \$324.90.

Applicable taxes will be applied to orders from GA, NY & NJ. Canadian orders will also be subject to the appropriate sales tax.

The full purchase of this product has a 60 day money-back guarantee.

*no!no! Hair is not recommended for use on nipples or genitals.

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13 *Attorneys for Plaintiff APRIL CANTLEY,*
14 *Individually and on Behalf of All Others Similarly Situated.*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

29 APRIL CANTLEY, individually and on
30 behalf of all others similarly situated,

31 Plaintiff,

32 v.

33 RADIANCY, INC., a New York corporation;
34 PHOTOMEDEX, INC., a Nevada corporation;
35 and DOES 1 through 100, inclusive,

36 Defendants.

Case No. S-1500-CV-281510 LHB

CLASS ACTION

**DECLARATION OF APRIL CANTELY
REVENUE**

Complaint Filed: March 14, 2014
Trial Date: None Set

ENDORSED

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN
MAY 13 2014
BY TERRY McNALLY, CLERK
DEPUTY

FILED BY FAX

KHORRAMBOUCHER SUMNER SANGUINETTI, LLP
444 S. Flower Street, 33rd Floor
Los Angeles, CA 90071
Phone: (213) 598-6000
Fax: (213) 598-8010

1 I, April Cantley, declare as follows:

2 1. I am a Plaintiff in this action, and am a citizen of the State of California. I have
3 personal knowledge of the facts herein and, if called as a witness, could and would testify
4 competently thereto.

5 2. The complaint in this action, filed concurrently with this Declaration, is filed in
6 the proper place for trial under California Civil Code Section 1780(d) for the following reasons:

7 a. Defendants Radiance, Inc. and Photomedex, Inc. ("Defendants"), are
8 corporations doing business in Kern County, California; and

9 b. The transaction, my purchase of the no!no!™ Hair device from Defendants'
10 website, occurred in Kern County, California.

11
12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.

14 Executed on May 13, 2014, in Bakersfield, California.

15
16 By: 
17 April Cantley

ENDORSED
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN

MAY 13 2014

TERRY McNALLY, CLERK
BY _____, DEPUTY

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8 *Attorneys for Plaintiff APRIL CANTLEY,*

9 *Individually and on Behalf of All Others Similarly Situated.*

JUN 27 2014

Answer

July 27, 2014

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF KERN

12
13 APRIL CANTLEY, individually and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 RADIANCY, INC., a New York corporation;
18 PHOTOMEDEX, INC., a Nevada corporation;
19 and DOES 1 through 100, inclusive,

20 Defendants.

Case No. S-1500-CV-281510 LHB

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

- 21 (1) Violation of California's Unfair
22 Competition Law [Cal. Bus. & Prof.
23 Code §§ 17200 *et seq.*];
24 (2) Violation of California's False
25 Advertising Law [Cal. Bus. & Prof.
26 Code §§ 17500 - 17536]; and
27 (3) Violation of California's Consumer
28 Legal Remedies Act ("CLRA") (Cal.
Civ. Code §§ 1770, *et seq.*)

DEMAND FOR JURY TRIAL

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FILED BY FAX

FIRST AMENDED CLASS ACTION COMPLAINT

1 Plaintiff April Cantley ("Plaintiff"), individually and on behalf of all others similarly
2 situated, hereby alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action lawsuit on behalf of herself and all others
5 similarly situated against RADIANCY, INC., PHOTOMEDEX, INC., and DOES 1 through
6 100, inclusive (collectively, "Defendants"), for false and misleading advertising of no!no!™
7 Hair removal products, including (1) no!no!™ Hair 8800; (2) no!no!™ Hair Pro; (3) no!no!™
8 Hair Plus; and (4) no!no!™ Hair Classic (the "no!no!™ Hair Product Line").

9 **JURISDICTION AND VENUE**

10 2. This Court has original jurisdiction over this action pursuant to California
11 Constitution Article VI, § 10, which grants the Superior Court "original jurisdiction in all
12 causes except those given by statute to other trial courts." The statutes under which this action
13 is brought do not specify any other basis for jurisdiction.

14 3. The California Superior Court has jurisdiction over Defendants because they are
15 corporations and/or entities and/or persons with sufficient minimum contacts in California, are
16 citizens of California, or otherwise intentionally availed themselves of the California market so
17 as to render the exercise of jurisdiction over them by the California courts consistent with
18 traditional notions of fair play and substantial justice.

19 4. Venue is proper in the County of Kern because Defendants exist, transact
20 business and/or have offices in this Judicial District; and/or venue is proper in this Court
21 pursuant to California Code of Civil Procedure § 395 because certain acts and omissions
22 complained of arose in this County.

23 **PARTIES**

24 5. Plaintiff April Cantley is a citizen of the state of California, residing in Kern
25 County. Plaintiff purchased Defendants' no!no!™ Hair 8800 from Defendants' website in the
26 state of California on or about January 1, 2014.

27 6. Plaintiff is informed and believes, and based thereon alleges, that Defendant
28 RADIANCY, INC. is a corporation formed under the laws of New York with its principal

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 Los Angeles, CA 90071
 Phone: (213) 596-6000
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place of business at 40 Ramland Road South, Suite 200, Orangeburg, New York 10962. Based upon information and belief, Plaintiff alleges that Defendant RADIANCY, INC. is a majority-owned subsidiary of Defendant PHOTOMEDEX, INC.

7. Plaintiff is informed and believes, and based thereon alleges, that Defendant PHOTOMEDEX, INC. is a corporation formed under the laws of Nevada with its principal place of business at 147 Keystone Drive, Montgomeryville, Pennsylvania 18936.

8. Plaintiff does not know the true names and capacities of Defendants herein sued as DOES 1 through 100, inclusive, and therefore sue said defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of DOES 1 through 100 when ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of these fictitiously-named Defendants participated or acted in concert with the named defendants, and is responsible in some manner for the acts, occurrences, and/or omissions alleged herein, and has thereby proximately caused damages to Plaintiff and the class members, and is liable to Plaintiff and the class members by reason of the facts alleged herein.

9. Plaintiff is informed and believes, and based thereon alleges, that there exists, and at all times herein mentioned existed, a unity of ownership between RADIANCY, INC., PHOTOMEDEX, INC., and DOES 1 through 100, inclusive, such that any individuality or separateness between them has ceased and each of them is the alter ego of the others. Adherence to the fiction of the separate existence of these entities would, under the circumstances set forth in this Complaint, sanction fraud or promote injustice.

10. Each of the Defendants was the agent, partner, successor, or employee of the other Defendant(s) and, in performing the acts complained of herein, was acting within the course and scope of such agency, partnership, succession or employment. All acts and omissions alleged herein were performed with the consent, knowledge, and ratification of all other Defendants.

11. In committing the wrongful acts alleged herein, Defendants planned and participated in and furthered a common scheme by means of false, misleading, deceptive and fraudulent representations to induce members of the public to purchase the no!no!™ Hair

1 Product Line. Defendants disseminated or caused to be disseminated the above-described
2 misrepresentations.

3 FACTUAL ALLEGATIONS

4 12. Defendants manufacture, market, distribute, and sell the no!no!™ Hair Product
5 Line of hair removal products.

6 13. The claims made by Defendants regarding the no!no!™ Hair Product Line seek
7 to capitalize on the laser and wax treatment hair removal trends by promising “painless,”
8 “laser-like results without the high cost,” “smooth skin without the pain,” and “the most
9 effective, long-term hair removal system ever created.” Defendants also represent that after
10 using the product, hair “stays away for weeks with no pain.” Defendants have engaged in a
11 uniform marketing campaign, saturating the market with the “no hair with no pain” claims,
12 including in the product name, product packaging, product labeling, and in print, television and
13 online advertising.

14 14. Prior to purchasing the no!no!™ Hair product, Plaintiff viewed the no!no!™
15 Hair Product Line television advertisement/infomercial and visited the no!no!™ Hair Product
16 Line website. Plaintiff was exposed to Defendants’ representations, including, but not limited
17 to, “painless,” “no hair with no pain,” “laser-like results without the high cost,” “smooth skin
18 without the pain,” and “the most effective, long-term hair removal system ever created,” and
19 that hair “stays away for weeks with no pain” in the product name, on the product label (which
20 was prominently featured in advertisements for the no!no!™ Hair Product Line), as well as in
21 product advertisements she viewed in print, television and online advertisements on the
22 www.my-no-no.com and other websites.

23 15. Prior to purchasing the no!no!™ Hair product, Plaintiff was exposed to print,
24 television and online advertisements stating that she could receive a full refund of the product
25 price, shipping and handling, and return shipping within 60 days if she was unhappy with the
26 no!no!™ Hair product. Defendants represented, through print, television and online
27
28

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advertisements, including, but not limited to the www.my-no-no.com website, that the no!no!™ Hair Product Line was backed by a “60-Day Triple Guarantee!”¹

16. However, Defendants’ print, television and online advertisements make conflicting representations that the no!no!™ Hair Product Line “carries a 30-day money back guarantee,”² and that “If you choose to return before you’ve used the unit for at least 45 days then we will gladly refund your product price but the cost of postage to return is your responsibility.”³

17. Based upon information and belief, each of the products in the no!no!™ Hair Product Line uses Defendants’ “Thermicon Technology,” which Defendants describe as follows:

no!no!™ is based on a new and exciting advancement in hair removal technology called Thermicon™. Based on the scientific principles of thermal transference, no!no!™ uses this patented technology to conduct a gentle pulse of heat to the hair. Because no!no!™ uses only heat, it is safe and effective for all skin types and hair colors.⁴

18. Members of the public are likely to be deceived by Defendants’ misrepresentations as to the pain and efficacy associated with use of the no!no!™ Hair Product Line.

19. Moreover, members of the public are likely to be deceived by Defendants’ misrepresentations as to the money back guarantee, Triple Guarantee, and return policy associated with the purchase of the no!no!™ Hair Product Line.

¹ See Exhibit A, 60-Day Triple Guarantee (https://www.trynono.com/ps_ap2/index.aspx?MID=900009b&referrer=http%3a%2f%2fwww.my-no-no.com%2fcustomerservice.aspx).

² See Exhibit B, no!no!™ Hair Product Line Return Policy (<http://www.my-no-no.com/returns.aspx>).

³ See Exhibit A.

⁴ See <http://www.my-no-no.com/technology.aspx>; See also, Exhibit C, comparison of no!no!™ Hair 8800, no!no!™ Hair Classic, and no!no!™ Hair Plus (https://www.my-no-no.com/hair_removal.aspx) and Exhibit D, How It Works tab from the no!no!™ Hair Pro website (http://www.nonopro.com/PRO_D2/howitworks.aspx), indicating that each of the products in the no!no!™ Hair Product Line utilize the Thermicon Technology.

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20. Defendants, in marketing the no!no!TM Hair Product Line, affirmatively misrepresented the products' quality, effectiveness, guarantee, and return policy in order to convince consumers to purchase them. Moreover, Defendants affirmatively misrepresented the quality, effectiveness, guarantee, and return policy associated with the no!no!TM Hair Product Line in order to charge consumers an artificially high price, resulting in an unjust windfall of profits to Defendants, all to the damage and detriment of the consuming public.

21. On or about January 1, 2014, Plaintiff purchased the no!no!TM Hair 8800 for approximately \$270.00 from the www.my-no-no.com website, from her home in Bakersfield, California.

22. Plaintiff purchased Defendants' no!no!TM Hair 8800 for personal use in reliance upon the "no hair with no pain," "painless," "laser-like results without the high cost," "smooth skin without the pain," "the most effective, long-term hair removal system ever created," and that hair "stays away for weeks with no pain" representations. Plaintiff was repeatedly exposed to these representations prior to purchasing the no!no!TM Hair product, including in the product name, on the product label, and in print, television, and online advertisements.

23. After using the no!no!TM Hair 8800 as directed, Plaintiff discovered that the advertised claims upon which she had relied in purchasing the high-cost product were false. Specifically, Plaintiff experienced pain when using the no!no!TM Hair 8800, including burn marks on her skin and irritated skin, and the product did not effectively remove hair or leave her skin smooth after its use as advertised.

24. Dissatisfied with the no!no!TM Hair 8800, Plaintiff called Defendants to take advantage of the 60-Day Triple Guarantee and/or refund policy. However, Defendants' telephone representative informed Plaintiff that she was required to use the product for a minimum of 45 days before she would qualify for a refund of the purchase price.

25. Defendants fail to honor the 30-day money back guarantee contained within the no!no!TM Hair Product Line Return Policy and fail to honor their representations that consumers may choose to return the no!no!TM Hair products before using the unit for at least 45 days for a refund of the complete purchase price, less postage. In fact, Defendants' 60-Day

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1 Triple Guarantee is actually a 15-day refund policy that is tolled until 45 days after the
2 consumer receives the no!no!™ Hair product.

3 26. As a proximate result of Defendants' false and misleading claims, Plaintiff and
4 other similarly situated consumers have suffered injury in fact and have lost money or property
5 as a result of Defendants' false and deceptive advertising and unfair business practices.
6 Plaintiff and other similarly situated consumers purchased no!no!™ Hair Product Line in
7 reliance upon Defendants' false and deceptive representations and assurances provided in the
8 product name, on the product label, and in print, television and online advertisements.

9 **CLASS ACTION ALLEGATIONS**

10 27. Plaintiff brings this action on behalf of herself and all others similarly situated
11 pursuant to Code of Civil Procedure § 382.

12 28. Description of the Class: The proposed class is defined as follows:

13 All persons who purchased a no!no!™ Hair Product, including: (1)
14 no!no!™ Hair 8800; (2) no!no!™ Hair Classic; (3) no!no!™ Hair Plus;
15 or (4) no!no!™ Hair Pro, in the state of California at any time during the
time period beginning four years prior to the inception of this action
through the conclusion of this action ("Class Members").

16 Plaintiff reserves the right to modify the class definition and the class period based on the results
17 of discovery.

18 29. Excluded from the Class are those individuals who received a full refund for any
19 or all purchases of the product, government entities, Defendants, any entity in which
20 Defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal
21 representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also
22 excluded from the Class is any judge, justice, or judicial officer presiding over this matter and
23 the members of their immediate families and judicial staff.

24 30. Numerosity: The exact number of potential class members is unknown to
25 Plaintiff at this time, and can only be ascertained through appropriate discovery; however,
26 Plaintiff is informed and believes that Class members are so numerous that joinder of all
27 affected persons individually would be impracticable. Class members may be identified
28 through records maintained by Defendants in the normal course of their business and can be

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1 notified of the pendency of this action by mail, using a form of notice similar to that
2 customarily used in class actions.

3 31. Commonality: There are common questions of law and fact as to the Class
4 members that predominate over questions affecting only individual Class members in that the
5 claims of all Class members can be established with common proof. Common questions of law
6 or fact include, but are not limited to:

- 7 a) Whether Defendants' conduct constitutes a fraudulent, unfair, and/or
8 unlawful business act or practice within the meaning of Business and
9 Professions Code §§17200, *et seq.*;
- 10 b) Whether Defendants' advertising is false, untrue, or misleading within
11 the meaning of Business and Professions Code §§ 17500, *et seq.*;
- 12 c) Whether Defendants' advertisements lead reasonable consumers to
13 believe that Defendants' products have characteristics, ingredients, uses,
14 and/or benefits that they do not have within the meaning of Civil Code
15 §§ 1750, *et seq.*;
- 16 d) The appropriate amount of restitution, and/or monetary penalties
17 resulting from Defendants' violation of California law;
- 18 e) Whether Plaintiff and the Class Members are entitled to injunctive relief;
19 and
- 20 f) Whether Plaintiff and Class members are entitled to damages under Civil
21 Code §§1750, *et seq.*

22 32. Typicality: Plaintiff's claims are typical of the claims of the Class members,
23 each of whom has been similarly affected by Defendants' common course of conduct in
24 advertising and marketing the no!no!™ Hair Product Line.

25 33. Adequacy of Representation: Plaintiff will fairly and adequately represent and
26 protect the interests of the Class, and has retained counsel competent and experienced in class
27 action litigation to ensure such protection. Plaintiff has no interests antagonistic to, or in
28

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1 conflict with, the Class. Plaintiff and her counsel intend to prosecute this action vigorously for
 2 the benefit of the Class members.

3 34. Superiority of Class Action: A class action is superior to other available
 4 methods for the fair and efficient adjudication of this dispute, as joinder of all members is
 5 impracticable. Because the damages suffered by individual members may be relatively small,
 6 the expense and burden of individual litigation makes it virtually impossible for Class
 7 members to redress the wrongs done to them. The likelihood of individual Class members
 8 prosecuting separate claims is remote, and class action treatment will allow similarly-situated
 9 plaintiffs to litigate their claims in the manner that is most efficient and economical for the
 10 parties and judicial system.

11 FIRST CAUSE OF ACTION

12 FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS &

13 PROFESSIONS CODE §§ 17200, et seq.

14 (Against All Defendants)

15 35. Plaintiff incorporates by reference the allegations in all preceding paragraphs of
 16 this Complaint as though fully set forth herein.

17 36. As alleged herein above, Defendants have engaged in a systematic and uniform
 18 campaign of advertising and marketing the no!no!™ Hair Product Line using the false and
 19 misleading claims that the products will produce “laser-like results,” promising “smooth skin
 20 without the pain,” “effective, long-term hair removal,” and that hair “stays away for weeks
 21 with no pain.”

22 37. Further, Defendants falsely and misleadingly claim that the no!no!™ Hair Product
 23 Line “carries a 30-day money back guarantee,” that if consumers “are not completely satisfied
 24 with the product and are within the guarantee time frame,” Defendants will issue “a full product
 25 price refund upon return of the product,” that the “30-day guarantee begins the day that you got
 26 the delivery,” that “[u]pon receipt of the items, we [Defendants] will issue a full product price
 27 refund,” that “no!no! Hair is backed by our [Defendants’] 60-Day Triple Guarantee!,” that
 28 Defendants “are so confident that you’ll love your no!no! Hair device that if after using it for at



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1 least 45 days from the delivery date & no more than 60 days and you are not satisfied then we
 2 will: 1. Refund the full Product Price! 2. Refund The Shipping & Handling! 3. Pay The Cost To
 3 Ship It Back To Us!,” and that “[i]f you choose to return before you’ve used the unit for at least
 4 45 days then we [Defendants] will gladly refund your product price but the cost of postage to
 5 return is your responsibility.”

6 38. Plaintiff was exposed to these misrepresentations, purchased the product from
 7 Defendants in reliance on these misrepresentations, and suffered monetary loss as a result.
 8 Defendants made such misrepresentations despite the fact that they knew or should have
 9 known that the claims were false, misleading, and/or deceptive.

10 39. Defendants’ business practices, as alleged herein, are fraudulent within the
 11 meaning of Business and Professions Code §§ 17200, *et seq.* as the reasonable consumer is
 12 likely to be deceived regarding the pain and efficacy related to the use of Defendants’ no!no!™
 13 Hair Product Line.

14 40. Defendants’ business practices, as alleged herein, are unfair within the meaning
 15 of Business and Professions Code §§ 17200 *et seq.* as the harm caused to the public as a result
 16 of such practices far outweighs any benefit conferred thereby, in violation of the public
 17 policies of this State.

18 41. Defendants’ business practices, as alleged herein, are unlawful within the
 19 meaning of Business and Professions Code §§ 17200, *et seq.* as they constitute violations of
 20 Business and Professions Code §§ 17500, *et seq.* and California Civil Code § 1750.

21 42. As a direct and proximate result of Defendants’ above-mentioned conduct, each
 22 Member of the proposed Class has suffered monetary injury in amounts unjustly collected
 23 from Class Members. Plaintiff and the Class Members are entitled to restitution of such monies
 24 in amounts to be established by proof at trial.

25 43. Moreover, Defendants continue to engage in the above-described deceptive
 26 practices and unless enjoined from doing so by this Court, will continue to do so, all to the
 27 damage of consumers who will purchase Defendants’ products on the basis of their deceptive
 28 and unlawful practices.

SECOND CAUSE OF ACTION

FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS AND

PROFESSIONS CODE §§ 17500, et seq.

(Against All Defendants)

44. Plaintiff incorporates by reference the allegations in all preceding paragraphs of this Complaint as though fully set forth herein.

45. As alleged herein, Defendants have engaged in a systematic and uniform campaign of advertising and marketing the no!no!™ Hair Product Line using the false and misleading claims that the product line produces “painless” “laser-like results,” promising “smooth skin without the pain,” “effective, long-term hair removal,” and that hair “stays away for weeks with no pain” despite the fact that Defendants knew or should have known that these statements were false and misleading.

46. Further, Defendants falsely and misleadingly claim that the no!no!™ Hair Product Line “carries a 30-day money back guarantee,” that if consumers “are not completely satisfied with the product and are within the guarantee time frame,” Defendants will issue “a full product price refund upon return of the product,” that the “30-day guarantee begins the day that you got the delivery,” that “[u]pon receipt of the items, we [Defendants] will issue a full product price refund,” that “no!no! Hair is backed by our [Defendants’] 60-Day Triple Guarantee!,” that Defendants “are so confident that you’ll love your no!no! Hair device that if after using it for at least 45 days from the delivery date & no more than 60 days and you are not satisfied then we will: 1. Refund the full Product Price! 2. Refund The Shipping & Handling! 3. Pay The Cost To Ship It Back To Us!,” and that “[i]f you choose to return before you’ve used the unit for at least 45 days then we [Defendants] will gladly refund your product price but the cost of postage to return is your responsibility.”

47. Defendants’ above-described actions constitute deceptive advertising within the meaning of California Business and Professions Code §§ 17500, et seq.

48. Plaintiff was exposed to these misrepresentations, purchased the product from Defendants in reliance on these misrepresentations, and suffered monetary loss as a result.

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1 Defendants made such misrepresentations despite the fact that they knew or should have
 2 known that the claims were false, misleading, and/or deceptive.

3 49. As a proximate result of Defendants' above-mentioned conduct, each Member
 4 of the proposed Class has suffered monetary injury in the amount that Defendants unjustly
 5 collected from them. Plaintiff and Members of the Class are entitled to restitution of such
 6 monies in an amount to be established by proof at the time of trial.

7 50. Moreover, Defendants continue to engage in the above-described deceptive
 8 practices and unless enjoined from doing so by this Court will continue to do so, all to the
 9 damage of consumers that purchase Defendants' no!no!™ Hair Product Line in reliance upon
 10 Defendants' false and misleading claims.

11 THIRD CAUSE OF ACTION

12 VIOLATION OF CALIFORNIA CIVIL CODE §§1750 et seq.

13 (Against All Defendants)

14 51. Plaintiff incorporates by reference the allegations in all preceding paragraphs of
 15 this Complaint as though fully set forth herein.

16 52. This claim is brought on behalf of Plaintiff and Class Members.

17 53. Defendants' product advertising violated (and continues to violate) the California
 18 Consumer Legal Remedies Act ("CLRA") (Cal. Civ. Code §§1750-1784).

19 54. Plaintiff and the potential Class Members are "consumers," as that term is defined
 20 in Civil Code §1761(d) because they purchased goods for personal, family, or household use.

21 55. Defendants represented that the no!no!™ Hair Product Line has characteristics
 22 and benefits that it does not have in violation of California Civil Code Section 1770(a)(5), that
 23 the no!no!™ Hair Product Line confers rights, benefits, and obligations which it does not have or
 24 involve in violation of California Civil Code Section 1770(a)(14), and that the no!no!™ Hair
 25 products have been supplied in accordance with a previous representation when they have not in
 26 violation of California Civil Code Section 1770(a)(16).

27 56. Specifically, Plaintiff alleges that Defendants falsely and misleadingly claim that
 28 the no!no!™ Hair Product Line produces "painless," "laser-like results," promising "smooth skin

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1 without the pain,” “effective, long-term hair removal” and that hair “stays away for weeks with
 2 no pain.”

3 57. Further, Defendants falsely and misleadingly claim that the no!no!™ Hair Product
 4 Line “carries a 30-day money back guarantee,” that if consumers “are not completely satisfied
 5 with the product and are within the guarantee time frame,” Defendants will issue “a full product
 6 price refund upon return of the product,” that the “30-day guarantee begins the day that you got
 7 the delivery,” that “[u]pon receipt of the items, we [Defendants] will issue a full product price
 8 refund,” that “no!no! Hair is backed by our [Defendants’] 60-Day Triple Guarantee!,” that
 9 Defendants “are so confident that you’ll love your no!no! Hair device that if after using it for at
 10 least 45 days from the delivery date & no more than 60 days and you are not satisfied then we
 11 will: 1. Refund the full Product Price! 2. Refund The Shipping & Handling! 3. Pay The Cost To
 12 Ship It Back To Us!,” and that “[i]f you choose to return before you’ve used the unit for at least
 13 45 days then we [Defendants] will gladly refund your product price but the cost of postage to
 14 return is your responsibility.”

15 58. Nature of Falsity. The false and misleading claims violated the CLRA because
 16 the no!no!™ Hair Product Line did not produce “painless,” “laser-like results,” “smooth skin
 17 without the pain,” “effective, long-term hair removal,” and hair did not “stay[] away for weeks
 18 with no pain,” but instead Plaintiff and the Members of the Class experienced severe pain when
 19 using the no!no!™ Hair Product Line, including burning and irritated skin, and did not
 20 experience “smooth skin without the pain” or “effective, long-term hair removal.” Moreover, the
 21 no!no!™ Hair Product Line was not backed by a 30-day or even a 60-day guarantee and
 22 Defendants did not honor the Return Policy, but instead required Plaintiff and the Class
 23 Members to use the no!no!™ Hair products for 45 days, despite experiencing pain with use
 24 thereof, and then purported to offer a 15-day refund period beginning 45 days after consumers
 25 had received the no!no!™ Hair products.

26 59. Reliance. Plaintiff and Class Members relied on Defendants’ claims in deciding
 27 to purchase the no!no!™ Hair Product Line. Plaintiff was exposed to the misrepresentations on
 28 the television infomercial, and read the statements on the website and product advertising prior

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1 to purchasing the product. Neither Plaintiff nor any other Class Member would have reason to
2 suspect that the statements contained in Defendants' advertisements, guarantees, Return Policy,
3 and/or other materials were inaccurate.

4 60. Materiality. The statements made as part of the false advertising and product
5 advertising were material to Plaintiff and the Class Members. Had Plaintiff known the truth, that
6 such statements were misleading, deceptive, and unfair, she would have never purchased the
7 product. The false advertising is a material fact, because obtaining painless long-term hair
8 removal was Plaintiff's main purpose for purchasing the product and Plaintiff believed that she
9 could return the product for a full refund of the purchase price if she was dissatisfied.

10 61. Declaration of Venue. Plaintiff has filed contemporaneously herewith an
11 Affidavit of Venue, as required by California Civil Code §1780(d).

12 62. Plaintiff, by and through counsel, has notified Defendant in writing of the
13 particular violations of the CLRA, and has demanded that it take certain corrective actions within
14 the period prescribed by the CLRA for such demands. A copy of the letter sent to Defendant is
15 attached as **Exhibit E**.

16 63. Therefore, Plaintiff requests statutory and actual damages, as well as punitive
17 damages, interest and attorneys' fees as authorized by Section 1780(a) of the CLRA.

18 64. Regardless of an award of damages, however, Plaintiff seeks an Order enjoining
19 Defendants from engaging in the methods, acts, and practices violating the CLRA (§1782(a)(2)),
20 as well as costs, attorneys' fees and any other relief which the Court deems proper.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated,
23 prays for relief and judgment against Defendants, jointly and severally, as follows:

- 24 1. For an order certifying the proposed Class under Code of Civil Procedure § 382
25 and California Civil Code §1781, appointing Plaintiff as Class representative
26 and her counsel as Class Counsel;
27 2. For an award of equitable relief as follows:
28



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- a. Enjoining Defendants from continuing to engage in the unlawful, unfair, and fraudulent business practices and deceptive labeling and advertising described in this Complaint;
 - b. Requiring Defendants to make full restitution of all monies wrongfully obtained as a result of the conduct described in this Complaint;
 - c. Requiring Defendants to disgorge all ill-gotten gains flowing from the conduct described in this Complaint; and
 - d. Enjoining Defendants from marketing and selling the misrepresented no!no!™ Hair Product Line.
3. For an award of statutory and actual damages, as well as punitive damages, as authorized by Section 1780(a) of the CLRA damages pursuant to
 4. For the costs to investigate Plaintiff's claims;
 5. For an award of attorneys' fees and costs of suit herein, pursuant to Civil Code § 1780 and Code of Civil Procedure § 1021.5; and
 6. For such other and further relief as the Court may deem just and proper.

Dated: May 13, 2014

**KHORRAMI BOUCHER SUMNER
SANGUINETTI, LLP**

By: 

BEVIN ALLEN PIKE
Attorneys for Plaintiff,
APRIL CANTLEY

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a trial by jury on all issues so triable.

Dated: May 13, 2014

**KHORRAMI BOUCHER SUMNER
SANGUINETTI, LLP**

By: 

BEVIN ALLEN PIKE

Attorneys for Plaintiff,
APRIL CANTLEY

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EXHIBIT A

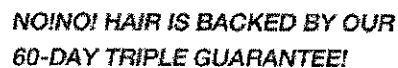


MetroSource

no!no! Success Stories



"The more
Every
back
Erin B.



CLOSE X

We are so confident that you'll love your nolnoi Hair device that if after using it for at least 45 days from delivery date & no more than 60 days and you are not satisfied then we will:

- 1. Refund the full Product Price!**
- 2. Refund The Shipping & Handling!**
- 3. Pay The Cost To Ship It Back To Us!**

To qualify for the triple guarantee you must have purchased directly from this website. Full guarantee details as well as the process for issuing an RMA and a prepaid return shipping label will be included with your order. If you choose to return before you've used the unit for at least 45 days then we will still gladly refund your product price but the cost of postage to return is your responsibility.

about my mustache coming
in and that's all because of

Read More Success Stories

TRANSFORMING AND EFFECTIVE CITY TRIAL

First Factor: Patient variability

第 2 卷 第 2 期 2015 年 6 月

*The Data: As part of the Star of TV 7000 - Star will have the opportunity of a 30-minute promotional slot "on air" or "live" - changed 100% to a 30-minute slot and handle of 100% to 100% live. The station will have the opportunity to use the slot for a 30-minute slot on the 100% live and all other stations in the market of 100% live. The station will have the opportunity to use the slot for a 30-minute slot on the 100% live and all other stations in the market of 100% live.

Applicable taxes on the applicable order. **Return to Seller:** The Seller is a U.S. domestic corporation and the applicable sales tax is

The UK purchase of F4 Phantom has a total of 10 new F4 Phantom

NOTE: The FBI is now offering a reward for information leading to the arrest of the following individuals:

*no no - artifacts and sound effects appear in audio

EXHIBIT B

3/12/2014

no!no!™ Professional hair removal, acne clearance & skin care for consumers

**100% RISK-FREE 60 DAY TRIAL!****TRY IT NOW >****Shopping Cart**[HAIR REMOVAL](#)[ACNE](#)[SKINCARE](#)[HEALTH AND BEAUTY](#)[TECHNOLOGY](#)[CUSTOMER SERVICE](#)[SHOP NOW](#)

Return Policy

Thank you for ordering the no!no!. Our product carries a 30-day money back guarantee. If you are not completely satisfied with the product and are within the guarantee time frame, we ask that you contact our customer service number 1.888.525.7580 to obtain a return authorization (RMA) number. We will then issue you a full product price refund upon return of the product. Our customer service agents and product technicians will help resolve any questions you may have and help ensure you're receiving optimal results from your no!no!™ unit. Please note that we CANNOT issue refunds for no!no!™ orders that are returned without an RMA or are returned after the Return Policy Period has expired. Your 30-day guarantee begins the day that you got the delivery. Please keep all receipts and delivery notices on file. Any orders that are returned beyond the Return Policy Period will not be returned to the customer, unless requested by the customer, and the customer agrees to pay a \$15.00 Re-Shipment Fee.

Return Shipping Method and Refunds

Refunds on no!no!™ orders cannot be issued without a Return Material Authorization number (called an RMA#) AND without returning ALL of the products from your no!no!™ order. Please be sure to include ALL of the items in your return, even if opened. Please ship your product order back to us via traceable Fedex, UPS or USPS method to insure proper crediting. Upon receipt of the items, we will issue a full product price refund. For refunds please allow up to two billing cycles for the credit to appear on your credit card statement.

Product Questions and/or Concerns

If you are returning your no!no!™ product due to allergic reactions or any skin sensitivities, or for any other reason, please call our Customer service Department first at 1.888.525.7580. Our professional customer care agents can assist you with many of your no!no!™ product inquiries and can provide you with the required return material (RMA) instructions.

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EXHIBIT C

3/3/2014

no!no!™ Professional hair removal, acne clearance & skin care for consumers

**100% RISK-FREE 60 DAY TRIAL!****TRY IT NOW >****Shopping Cart****HAIR REMOVAL****ACNE****SKINCARE****HEALTH AND BEAUTY****TECHNOLOGY****CUSTOMER SERVICE****SHOP NOW**

Positively no!no!™

To Order Our Hair Removal
Products [Click Here](#)

no!no!™ is changing hair removal routines around the world by bringing home professional hair removal, like that used in spas, salons and clinics.

no!no!™ offers a solution to unwanted hair, answering the ever-growing demand for professional, pain-free hair removal that can be performed in the comfort and convenience of the home. no!no! instantly removes hair and stays away for weeks with no pain, no mess and no chemicals.

no!no! uses science, not magic, to get these great results.

Based on Thermicon™ technology, no!no! uses heat to instantly remove and crystalize the hair.

This makes it universally safe and effective for EVERYONE - no matter the skin type or hair color, including blond, grey and red hair!
Simply put, with no!no!™ there is:

- No hair
- No pain
- No ingrown hairs
- No chemicals
- No mess
- No stress

Choose your no!no!™ Hair

Because different people have different needs. no!no!™ Hair has 2 models, and they both work great for any hair or skin color.

Choose the one that's right for you.

no!no! Hair 8800



- For full facial hair removal
- For body hair
- Multiple Treatment Levels
- 2 Thermicon™ Tip Sizes - for narrow and wide areas
- Thermicon™ Tip Status Indicator
- Cord-free Operation

Do not use on genitals or around the nipple area.

no!no!™ Hair Classic



- For body hair only
- 2 Types of Thermicon™ Tips - for long hair and stubble

Do not use on the face, genitals or around the nipple area

3/3/2014

no!no!™ Professional hair removal, acne clearance & skin care for consumers

no!no!™ Hair Plus



- For facial and body hair
- Multiple Treatment Levels
- Thermicon™ Tip Status indicator

Do not use on the upper lip, genitals or around the nipple area

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EXHIBIT D

3/3/2014

NoNoPro.com | NoNo PRO3 and PRO5 Hair Removal Systems | Official Site | 60 Day Trial – Exclusive TV Offer

For Phone Orders Call: (800) 794-5341



HOW IT WORKS

One of no!no!'s unique innovations is the development of a thermodynamic wire to transmit heat to the hair. Thermicon uses the scientific principles of thermal transference to conduct a gentle pulse of heat.

The patented thermodynamic wire and built in safety mechanisms have enabled no!no! to adapt this professional hair removal technology for safe and effective use within the comfort of your home.

Easy to Use and Pain-Free

With no!no! PRO, there's no pulling, tearing or scraping, just a slow, smooth glide that gently and easily removes hair. Designed for simplicity, familiar red and blue signal lights let you know when you're using it correctly. Compact and comfortable, no!no! is a convenient little handheld device that you can take and use almost anywhere - at home, at the office or on the road!

Click Video To Pause



**MORE EFFECTIVE THAN EVER, BUT
STILL JUST AS EASY TO USE!**

YES, I WANT TO BE HAIR FREE!

*INTERNET SPECIAL. TRIAL OFFER NOT AVAILABLE IN STORES

First Name*

Last Name*

Billing Address*

City*

State/Province*

Zip Code*

Country*

Phone*

E-mail Address*

Choose Your Color*

**GET HIGHER ENERGY
BY UPGRADING TO
NO!NO! PRO5 FOR
AN ADDITIONAL \$19.99!**



PRO3 Pink

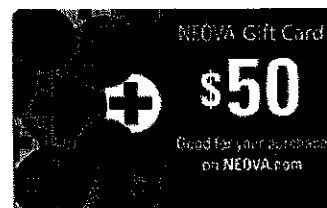


PRO3 Turquoise



PRO5 Chrome

TRY IT NOW >



[Learn More](#)

OFFER TERMS

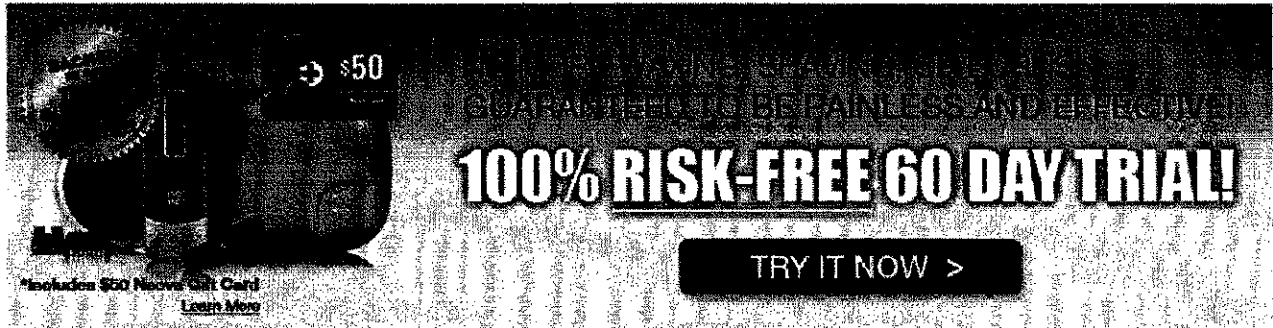
Your \$50 Neova Smart Skincare Gift Card is redeemable at www.neova.com where you will find everything you need to reduce the look of fine lines and wrinkles, reveal radiant skin, get healthy looking skin and correct

3/3/2014

NoNoPro.com | NoNo PRO3 and PRO5 Hair Removal Systems | Official Site | 60 Day Trial – Exclusive TV Offer

visible signs of sun damage!

Try no!no! PRO for 60 days with our **Money Back Triple Guarantee!** For no!no! PRO3 - only 3 monthly payments of \$96.65 + \$14.95 S/H! For no!no! PRO5 - only 2 monthly payments of \$103.31, plus an additional monthly payment of \$103.33 with a one-time S/H charge of \$14.95!



[Home](#) | [How It Works](#) | [The no!no Advantage](#) | [FAQs](#) | [Success Stories](#) | [Contact Us](#) | [Press](#) | [Privacy Policy](#) | [Triple Guarantee Return Policy](#) | [Product Warranty](#)

[Order Status](#)

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*PRO3 OFFER DETAILS: If you select the no!no! PRO3, you will be initially charged \$96.65 + a one-time shipping and handling fee of \$14.95. In 30 days the same method of payment you use to make your purchase will automatically be charged the second of three payments in the amount of \$96.65. In 60 days, you will be charged a final payment of \$96.65 for a total of \$304.90.

*PRO5 OFFER DETAILS: If you select the no!no! PRO5, you will be initially charged \$103.31 + a one-time shipping and handling fee of \$14.95. In 30 days the same method of payment you use to make your purchase will automatically be charged the second of three payments in the amount of \$103.31. In 60 days, you will be charged a final payment of \$103.33 for a total of \$324.90.

Applicable taxes will be applied to orders from GA, NY & NJ. Canadian orders will also be subject to the appropriate sales tax.

The full purchase of this product has a 60 day money-back guarantee.

*no!no! Hair is not recommended for use on nipples or genitals.

EXHIBIT E



444 South Flower Street
33rd Floor
Los Angeles, CA 90071
Tel 213.596.6000
Fax 213.596.6010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 12, 2014

Attorneys At Law

Shawn Khorrami

Raymond Boucher

Scott Sumner

Elise Sanguinetti

Launa Adolph

Akinyemi Ajayi

Shehnaz Bhujwala

Brandon Brouillette

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Michael Hugo

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Anoush Lancaster

Bevin Allen Pike

Santo Riccobono

Steven Soliman

Scott Tillet

Puneet Toor

Corina Valderrama

Of Counsel

Todd Kelly

Hernez Moreno

Radiancy, Inc.
40 Ramland Road South, Suite 200
Orangeburg, NY 10962

PhotoMedex, Inc.
147 Keystone Drive
Montgomeryville, PA 18936

RE: Ongoing Violations of the California Consumer Legal Remedies Act

To Whom it May Concern:

I am writing on behalf of April Cantley, as well as a class of similarly situated persons, to advise you that you, Radiancy, Inc. and/or PhotoMedex, Inc. ("Defendants"), have violated and continue to violate the California Consumer Legal Remedies Act. This letter is written pursuant to California Civil Code Section 1782(a).

I. Factual Background

Defendants profit from the marketing, advertising, and distribution of their no!no!TM Hair removal products, including (1) no!no!TM Hair 8800; (2) no!no!TM Hair Pro; (3) no!no!TM Hair Plus; and (4) no!no!TM Hair Classic (the "no!no!TM Hair Product Line"). Defendants make the following specific claims respecting the no!no!TM Hair Product Line:

- 1) Use of the "no!no!TM Hair products is "painless";
- 2) The "no!no!TM Hair products produce "laser-like results without the high cost";
- 3) The "no!no!TM Hair products produce "smooth skin without the pain"; and
- 4) The "no!no!TM Hair products are "the most effective, long-term hair removal system ever created."

Defendants have saturated the market with the above-referenced claims in the product name, on the product label (which is prominently featured in advertisements for the no!no!TM Hair Product Line), in product advertisements in print, television, and online through the www.my-no-no.com website, as well as through various third-party retailers that carry the no!no!TM Hair Product Line, including, but not limited to Bed Bath & Beyond, Neiman Marcus, the Home Shopping Network (www.hsn.com), Bergdorf Goodman, Nordstrom, and www.amazon.com.

kbsslaw.com



March 12, 2014
Page 2

Defendants make additional misrepresentations with respect to the ability to the “risk-free” trial and return policy advertised in connection with the no!no!™ Hair Product Line. In print, television, and online advertising of the no!no!™ Hair Product Line, Defendants make various promises on www.my-no-no.com, www.trynono.com, and other no!no!™ Hair Product Line websites respecting the ability of consumers to return the products for a refund if they are not satisfied, including:

- 1) “Our product carries a 30-day money back guarantee”;
- 2) “If you are not completely satisfied with the product and are within the guarantee time frame, we ask that you contact our customer service number 1.888.525.7580 to obtain a return authorization (RMA) number. We will then issue you a full product price refund upon return of the product”;
- 3) “Your 30-day guarantee begins the day that you got the delivery”;
- 4) “Upon receipt of the items, we will issue a full product price refund”;
- 5) “no!no! Hair is backed by our 60-Day Triple Guarantee!”;
- 6) “We are so confident that you’ll love your no!no! Hair device that if after using it for at least 45 days from the delivery date & no more than 60 days and you are not satisfied then we will: 1. Refund the full Product Price! 2. Refund The Shipping & Handling! 3. Pay The Cost To Ship It Back To Us!”; and
- 7) “If you choose to return before you’ve used the unit for at least 45 days then we will gladly refund your product price but the cost of postage to return is your responsibility.”

II. Summary of Violations

Defendants have engaged (and continue to engage) in conduct in violation of California Civil Code Section 1770(a) by, among other things, representing that the no!no!™ Hair Product Line has “characteristics..., uses, [and] benefits... which they do not have...” Specifically, Defendants have and continue to:

- 1) Falsely represent that the no!no!™ Hair Product Line has characteristics, uses, and benefits, which the products do not have;
- 2) Falsely represent that the no!no!™ Hair Product Line is of a particular standard, quality, or grade, of which the products are not;
- 3) Fraudulently induce consumers to purchase products from the no!no!™ Hair Product Line; and
- 4) Create a likelihood of confusion regarding the effectiveness and painless use of the no!no!™ Hair Product Line and the ability to return the products

Defendants also represent that purchase of the no!no!™ Hair Product Line “confers or involves rights, remedies, or obligations which it does not have or involve,” and represent that the no!no!™ Hair products have “been supplied in accordance with a



March 12, 2014
Page 3

previous representation when [they have] not. Cal. Civil Code §§ 1770(a)(14) and (16). Specifically, Defendants have and continue to:

- 1) Falsely represent that purchase of the no!no!™ Hair products confers rights to consumers and obligations on Defendants to a refund within 30 days of receipt of the no!no!™ Hair products;
- 2) Falsely represent that purchase of the no!no!™ Hair products confers rights to consumers and obligations on Defendants to a refund the product price as well as shipping and handling after use of the products for at least 45 days from the delivery date & no more than 60 days;
- 3) Create a likelihood of confusion regarding consumers' rights and Defendants' obligations to refund the purchase price within 30, 45, or 60 days of a consumer's receipt of the no!no!™ Hair products; and
- 4) Falsely represent that the no!no!™ Hair products have been supplied in accordance with Defendants' representations that Defendants will refund the purchase price if consumers choose to return the no!no!™ Hair products after using the products for less than 45 days.

III. Demand for Relief

We intend to seek damages on behalf of April Cantley, as well as a class of similarly situated persons who purchased the no!no!™ Hair Product Line over the 3-year period preceding the date that demand is due under this letter, unless within 30 days, Defendants do and/or agree to do the following within a reasonable period:

- 1) Irrevocably cease all false and misleading advertising of the no!no!™ Hair Product Line;
- 2) Irrevocably cease all false and misleading representations that the no!no!™ Hair Product Line is backed by a 30-day or 60-day money-back guarantee;
- 3) Identify or make reasonable efforts to identify all consumers who have purchased the no!no!™ Hair Product Line within the applicable period;
- 4) Notify all consumers so identified that Defendants will provide them with a refund upon request; and
- 5) Give a refund where such is requested by the consumer.

IV. Offer of Compromise

If you agree to a stipulated injunction that includes an appropriate labeling disclaimer within 30 days from the date of this letter, and offer and agree to provide the requested refunds, we will agree to take no further action in this matter.



March 12, 2014
Page 4

Should you choose not to agree to the above, we shall seek monetary damages under California's Consumer Legal Remedies Act. Please contact me at any time if you would like to discuss this matter.

Very truly yours,

KHORRAMI BOUCHER
SUMNER SANGUINETTI, LLP

By: 

Scott Tillett
Attorney

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only: No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	
Certified Fee		3.10
Return Receipt Fee (Endorsement Required)		2.55
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Postmark
Here
Sent on
3/12

Sent To PhotoMedex

Street, Apt. No.,
or PO Box No.

City, State, ZIP+4

PS Form 3801, August 2010 See Reverse for Instructions

<p>SENDER: COMPLETE THIS SECTION</p> <ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. <p>1. Article Addressed to:</p> <p style="text-align: center;">PhotoMedex, Inc. 147 Keystone Drive Montgomeryville, PA 18936</p> <p>2. Article Number (Transfer from service label)</p>	<p>ADDRESSEE: ACTION ON DELIVERY</p> <p>A. Signature x <u>Michael Poye</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)</p> <p>C. Date of Delivery <u>3/17</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
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7009 2250 0004 3633 7883

PS Form 3811, February 2004 Domestic Return Receipt 102585-02-M-1540

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$
 Certified Fee 3.10
 Return Receipt Fee (Endorsement Required) 2.55
 Restricted Delivery Fee (Endorsement Required)
 Total Postage & Fees \$

Postmark Here
 Sent on 3/12

Sent To Radiancey Inc.
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4

PS Form 3822, August 2002 See reverse for instructions

7009 2250 0004 3633 7890

SENDER, COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Radiancey, Inc.
 400 ... Road South, Suite 200
 ...rangeburg, NY 10962

2. Article Number
 (Transfer from service label) 7009 2250 0004 3633 7890

ADDRESSEE, COMPLETE THIS SECTION ON DELIVERY

A. Signature *W. J. Smith* ☐ Agent ☐ Addressee
 x

B. Received by (Printed Name)
 C. Date of Delivery 3/12

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ G.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

PS Form 3811, February 2004 Domestic Return Receipt 102505-02-M-1540

KHORRAMI BOUCHER SUMNER SANGUINETTI, LLP
444 S. Flower Street, 33rd Floor
Los Angeles, CA 90071
Phone: (213) 596-6000
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9 444 S. Flower St., Thirty-Third Floor
10 Los Angeles, California 90071
11 Telephone: (213) 596-6000
12 Facsimile: (213) 569-6010

13 *Attorneys for Plaintiff APRIL CANTLEY,*
14 *Individually and on Behalf of All Others Similarly Situated.*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

29 APRIL CANTLEY, individually and on
30 behalf of all others similarly situated,

31 Plaintiff,

32 v.

33 RADIANCY, INC., a New York corporation;
34 PHOTOMEDEX, INC., a Nevada corporation;
35 and DOES 1 through 100, inclusive,

36 Defendants.

Case No. S-1500-CV-281510 LHB

CLASS ACTION

**DECLARATION OF APRIL CANTELY
REVENUE**

Complaint Filed: March 14, 2014
Trial Date: None Set

ENDORSED

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN
MAY 13 2014
BY TERRY McNALLY, CLERK
DEPUTY

FILED BY FAX

KHORRAMBOUCHER SUMNER SANGINETTI, LLP
444 S. Flower Street, 33rd Floor
Los Angeles, CA 90071
Phone: (213) 598-6000
Fax: (213) 598-8010

1 I, April Cantley, declare as follows:

2 1. I am a Plaintiff in this action, and am a citizen of the State of California. I have
3 personal knowledge of the facts herein and, if called as a witness, could and would testify
4 competently thereto.

5 2. The complaint in this action, filed concurrently with this Declaration, is filed in
6 the proper place for trial under California Civil Code Section 1780(d) for the following reasons:

7 a. Defendants Radiance, Inc. and Photomedex, Inc. ("Defendants"), are
8 corporations doing business in Kern County, California; and

9 b. The transaction, my purchase of the no!no!™ Hair device from Defendants'
10 website, occurred in Kern County, California.

11
12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.

14 Executed on May 13, 2014, in Bakersfield, California.

15
16 By: 
17 April Cantley
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FILED
KERN COUNTY
MAR 14 2014
TERRY McNALLY, CLERK
BY _____ DEPUTY

SHAWN KHORRAMI, SBN 180411
BEVIN ALLEN PIKE, SBN 221936
SCOTT L. TILLET, SBN 275119
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444 S. Flower St., Thirty-Third Floor
Los Angeles, California 90071
Telephone: (213) 596-6000
Facsimile: (213) 569-6010

CASE MANAGEMENT CONFERENCE:

Hearing Date: 9/10/14

Time: 8:15 AM

Department: 17

See CRC Rule 3.720 Et. Seq.

Attorneys for Plaintiff APRIL CANTLEY,
Individually and on Behalf of All Others Similarly Situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN**

APRIL CANTLEY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

RADIANCY, INC., a New York corporation;
PHOTOMEDEX, INC., a Nevada corporation;
and DOES 1 through 100, inclusive,

Defendants.

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

- (1) Violation of California's Unfair Competition Law [Cal. Bus. & Prof. Code §§ 17200 *et seq.*];
- (2) Violation of California's False Advertising Law [Cal. Bus. & Prof. Code §§ 17500 – 17536]; and
- (3) Violation of California's Consumer Legal Remedies Act ("CLRA") (Cal. Civ. Code §§ 1770, *et seq.*)

DEMAND FOR JURY TRIAL

444 S. Flower Street, 33rd Floor
Los Angeles, CA 90071
Phone: (213) 596-6000
Fax: (213) 569-6010

FILED BY FAX



KHORRAMI BOUCHER SUMNER SANGUINETTI, LLP
 444 S. Flower Street, 33rd Floor
 Los Angeles, CA 90071
 Phone: (213) 596-6000
 Fax: (213) 596-6010

1 Plaintiff April Cantley ("Plaintiff"), individually and on behalf of all others similarly
 2 situated, hereby alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action lawsuit on behalf of herself and all others
 5 similarly situated against RADIANCY, INC., PHOTOMEDEX, INC., and DOES 1 through
 6 100, inclusive (collectively, "Defendants"), for false and misleading advertising of no!no!™
 7 Hair removal products, including (1) no!no!™ Hair 8800; (2) no!no!™ Hair Pro; (3) no!no!™
 8 Hair Plus; and (4) no!no!™ Hair Classic (the "no!no!™ Hair Product Line").

9 **JURISDICTION AND VENUE**

10 2. This Court has original jurisdiction over this action pursuant to California
 11 Constitution Article VI, § 10, which grants the Superior Court "original jurisdiction in all
 12 causes except those given by statute to other trial courts." The statutes under which this action
 13 is brought do not specify any other basis for jurisdiction.

14 3. The California Superior Court has jurisdiction over Defendants because they are
 15 corporations and/or entities and/or persons with sufficient minimum contacts in California, are
 16 citizens of California, or otherwise intentionally availed themselves of the California market so
 17 as to render the exercise of jurisdiction over them by the California courts consistent with
 18 traditional notions of fair play and substantial justice.

19 4. Venue is proper in the County of Kern because Defendants exist, transact
 20 business and/or have offices in this Judicial District; and/or venue is proper in this Court
 21 pursuant to California Code of Civil Procedure § 395 because certain acts and omissions
 22 complained of arose in this County.

23 **PARTIES**

24 5. Plaintiff April Cantley is a citizen of the state of California, residing in Kern
 25 County. Plaintiff purchased Defendants' no!no!™ Hair 8800 from Defendants' website in the
 26 state of California on or about January 1, 2014.

27 6. Plaintiff is informed and believes, and based thereon alleges, that Defendant
 28 RADIANCY, INC. is a corporation formed under the laws of New York with its principal



KHORRAMI BOUCHER SUMNER SANGUINETTI, LLP
 444 S. Flower Street, 33rd Floor
 Los Angeles, CA 90071
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place of business at 40 Ramland Road South, Suite 200, Orangeburg, New York 10962. Based upon information and belief, Plaintiff alleges that Defendant RADIANCY, INC. is a majority-owned subsidiary of Defendant PHOTOMEDEX, INC.

7. Plaintiff is informed and believes, and based thereon alleges, that Defendant PHOTOMEDEX, INC. is a corporation formed under the laws of Nevada with its principal place of business at 147 Keystone Drive, Montgomeryville, Pennsylvania 18936.

8. Plaintiff does not know the true names and capacities of Defendants herein sued as DOES 1 through 100, inclusive, and therefore sue said defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of DOES 1 through 100 when ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of these fictitiously-named Defendants participated or acted in concert with the named defendants, and is responsible in some manner for the acts, occurrences, and/or omissions alleged herein, and has thereby proximately caused damages to Plaintiff and the class members, and is liable to Plaintiff and the class members by reason of the facts alleged herein.

9. Plaintiff is informed and believes, and based thereon alleges, that there exists, and at all times herein mentioned existed, a unity of ownership between RADIANCY, INC., PHOTOMEDEX, INC., and DOES 1 through 100, inclusive, such that any individuality or separateness between them has ceased and each of them is the alter ego of the others. Adherence to the fiction of the separate existence of these entities would, under the circumstances set forth in this Complaint, sanction fraud or promote injustice.

10. Each of the Defendants was the agent, partner, successor, or employee of the other Defendant(s) and, in performing the acts complained of herein, was acting within the course and scope of such agency, partnership, succession or employment. All acts and omissions alleged herein were performed with the consent, knowledge, and ratification of all other Defendants.

11. In committing the wrongful acts alleged herein, Defendants planned and participated in and furthered a common scheme by means of false, misleading, deceptive and fraudulent representations to induce members of the public to purchase the no!no!™ Hair



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 444 S. Flower Street, 33rd Floor
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Product Line. Defendants disseminated or caused to be disseminated the above-described misrepresentations.

FACTUAL ALLEGATIONS

12. Defendants manufacture, market, distribute, and sell the no!no!TM Hair Product Line of hair removal products.

13. The claims made by Defendants regarding the no!no!TM Hair Product Line seek to capitalize on the laser and wax treatment hair removal trends by promising “painless,” “laser-like results without the high cost,” “smooth skin without the pain,” and “the most effective, long-term hair removal system ever created.” Defendants have engaged in a uniform marketing campaign, saturating the market with the “no hair with no pain” claims, including in the product name, product packaging, product labeling, and in print, television and online advertising.

14. Prior to purchasing the no!no!TM Hair product, Plaintiff viewed the no!no!TM Hair Product Line television advertisement/infomercial and visited the no!no!TM Hair Product Line website. Plaintiff was exposed to Defendants’ representations, including, but not limited to, “painless,” “no hair with no pain,” “laser-like results without the high cost,” “smooth skin without the pain,” and “the most effective, long-term hair removal system ever created,” in the product name, on the product label (which was prominently featured in advertisements for the no!no!TM Hair Product Line), as well as in product advertisements she viewed in print, television and online advertisements on the www.my-no-no.com and other websites.

15. Prior to purchasing the no!no!TM Hair product, Plaintiff was exposed to print, television and online advertisements stating that she could receive a full refund of the product price, shipping and handling, and return shipping within 60 days if she was unhappy with the no!no!TM Hair product. Defendants represented, through print, television and online advertisements, including, but not limited to the www.my-no-no.com website, that the no!no!TM Hair Product Line was backed by a “60-Day Triple Guarantee!”¹

¹ See Exhibit A, 60-Day Triple Guarantee (https://www.trynono.com/ps_ap2/index.aspx?MID=900009b&referrer=http%3a%2f%2fwww.my-no-no.com%2fcustomerservice.aspx).



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1 16. However, Defendants' print, television and online advertisements make
 2 conflicting representations that the no!no!™ Hair Product Line "carries a 30-day money back
 3 guarantee,"² and that "If you choose to return before you've used the unit for at least 45 days
 4 then we will gladly refund your product price but the cost of postage to return is your
 5 responsibility."³

6 17. Based upon information and belief, each of the products in the no!no!™ Hair
 7 Product Line uses Defendants' "Thermicon Technology," which Defendants describe as
 8 follows:

9 no!no!™ is based on a new and exciting advancement in hair removal
 10 technology called Thermicon™. Based on the scientific principles of thermal
 11 transference, no!no!™ uses this patented technology to conduct a gentle pulse
 12 of heat to the hair. Because no!no!™ uses only heat, it is safe and effective for
 13 all skin types and hair colors.⁴

14 18. Members of the public are likely to be deceived by Defendants'
 15 misrepresentations as to the pain and efficacy associated with use of the no!no!™ Hair Product
 16 Line.

17 19. Moreover, members of the public are likely to be deceived by Defendants'
 18 misrepresentations as to the money back guarantee, Triple Guarantee, and return policy
 19 associated with the purchase of the no!no!™ Hair Product Line.

20 20. Defendants, in marketing the no!no!™ Hair Product Line, affirmatively
 21 misrepresented the products' quality, effectiveness, guarantee, and return policy in order to
 22 convince consumers to purchase them. Moreover, Defendants affirmatively misrepresented the
 23 quality, effectiveness, guarantee, and return policy associated with the no!no!™ Hair Product

24 ² See **Exhibit B**, no!no!™ Hair Product Line Return Policy (<http://www.my-no-no.com/returns.aspx>).

25 ³ See **Exhibit A**.

26 ⁴ See <http://www.my-no-no.com/technology.aspx>; See also, **Exhibit C**, comparison of no!no!™
 27 Hair 8800, no!no!™ Hair Classic, and no!no!™ Hair Plus (https://www.my-no-no.com/hair_removal.aspx) and **Exhibit D**, How It Works tab from the no!no!™ Hair Pro
 28 website (http://www.nonopro.com/PRO_D2/howitworks.aspx), indicating that each of the
 products in the no!no!™ Hair Product Line utilize the Thermicon Technology.

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1 Line in order to charge consumers an artificially high price, resulting in an unjust windfall of
2 profits to Defendants, all to the damage and detriment of the consuming public.

3 21. On or about January 1, 2014, Plaintiff purchased the no!no!™ Hair 8800 for
4 approximately \$270.00 from the www.my-no-no.com website, from her home in Bakersfield,
5 California.

6 22. Plaintiff purchased Defendants' no!no!™ Hair 8800 for personal use in reliance
7 upon the "no hair with no pain," "painless," "laser-like results without the high cost," "smooth
8 skin without the pain," and "the most effective, long-term hair removal system ever created,"
9 representations. Plaintiff was repeatedly exposed to these representations prior to purchasing
10 the no!no!™ Hair product, including in the product name, on the product label, and in print,
11 television, and online advertisements.

12 23. After using the no!no!™ Hair 8800 as directed, Plaintiff discovered that the
13 advertised claims upon which she had relied in purchasing the high-cost product were false.
14 Specifically, Plaintiff experienced pain when using the no!no!™ Hair 8800, including burn
15 marks on her skin and irritated skin, and the product did not effectively remove hair or leave
16 her skin smooth after its use as advertised.

17 24. Dissatisfied with the no!no!™ Hair 8800, Plaintiff called Defendants to take
18 advantage of the 60-Day Triple Guarantee and/or refund policy. However, Defendants'
19 telephone representative informed Plaintiff that she was required to use the product for a
20 minimum of 45 days before she would qualify for a refund of the purchase price.

21 25. Defendants fail to honor the 30-day money back guarantee contained within the
22 no!no!™ Hair Product Line Return Policy and fail to honor their representations that
23 consumers may choose to return the no!no!™ Hair products before using the unit for at least
24 45 days for a refund of the complete purchase price, less postage. In fact, Defendants' 60-Day
25 Triple Guarantee is actually a 15-day refund policy that is tolled until 45 days after the
26 consumer receives the no!no!™ Hair product.

27 26. As a proximate result of Defendants' false and misleading claims, Plaintiff and
28 other similarly situated consumers have suffered injury in fact and have lost money or property



as a result of Defendants' false and deceptive advertising and unfair business practices. Plaintiff and other similarly situated consumers purchased no!no!™ Hair Product Line in reliance upon Defendants' false and deceptive representations and assurances provided in the product name, on the product label, and in print, television and online advertisements.

CLASS ACTION ALLEGATIONS

27. Plaintiff brings this action on behalf of herself and all others similarly situated pursuant to Code of Civil Procedure § 382.

28. Description of the Class: The proposed class is defined as follows:

All persons who purchased a no!no!™ Hair Product, including: (1) no!no!™ Hair 8800; (2) no!no!™ Hair Classic; (3) no!no!™ Hair Plus; or (4) no!no!™ Hair Pro, in the state of California at any time during the time period beginning four years prior to the inception of this action through the conclusion of this action ("Class Members").

Plaintiff reserves the right to modify the class definition and the class period based on the results of discovery.

29. Excluded from the Class are those individuals who received a full refund for any or all purchases of the product, government entities, Defendants, any entity in which Defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

30. Numerosity: The exact number of potential class members is unknown to Plaintiff at this time, and can only be ascertained through appropriate discovery; however, Plaintiff is informed and believes that Class members are so numerous that joinder of all affected persons individually would be impracticable. Class members may be identified through records maintained by Defendants in the normal course of their business and can be notified of the pendency of this action by mail, using a form of notice similar to that customarily used in class actions.

31. Commonality: There are common questions of law and fact as to the Class members that predominate over questions affecting only individual Class members in that the

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1 claims of all Class members can be established with common proof. Common questions of law
2 or fact include, but are not limited to:

- 3 a) Whether Defendants' conduct constitutes a fraudulent, unfair, and/or
4 unlawful business act or practice within the meaning of Business and
5 Professions Code §§17200, *et seq.*;
- 6 b) Whether Defendants' advertising is false, untrue, or misleading within
7 the meaning of Business and Professions Code §§ 17500, *et seq.*;
- 8 c) Whether Defendants' advertisements lead reasonable consumers to
9 believe that Defendants' products have characteristics, ingredients, uses,
10 and/or benefits that they do not have within the meaning of Civil Code
11 §§ 1750, *et seq.*;
- 12 d) The appropriate amount of restitution, and/or monetary penalties
13 resulting from Defendants' violation of California law; and
- 14 e) Whether Plaintiff and the Class Members are entitled to injunctive relief.

15 32. Typicality: Plaintiff's claims are typical of the claims of the Class members,
16 each of whom has been similarly affected by Defendants' common course of conduct in
17 advertising and marketing the no!no!™ Hair Product Line.

18 33. Adequacy of Representation: Plaintiff will fairly and adequately represent and
19 protect the interests of the Class, and has retained counsel competent and experienced in class
20 action litigation to ensure such protection. Plaintiff has no interests antagonistic to, or in
21 conflict with, the Class. Plaintiff and her counsel intend to prosecute this action vigorously for
22 the benefit of the Class members.

23 34. Superiority of Class Action: A class action is superior to other available
24 methods for the fair and efficient adjudication of this dispute, as joinder of all members is
25 impracticable. Because the damages suffered by individual members may be relatively small,
26 the expense and burden of individual litigation makes it virtually impossible for Class
27 members to redress the wrongs done to them. The likelihood of individual Class members
28 prosecuting separate claims is remote, and class action treatment will allow similarly-situated



1 plaintiffs to litigate their claims in the manner that is most efficient and economical for the
2 parties and judicial system.

3 **FIRST CAUSE OF ACTION**

4 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS &**

5 **PROFESSIONS CODE §§ 17200, *et seq.***

6 **(Against All Defendants)**

7 35. Plaintiff incorporates by reference the allegations in all preceding paragraphs of
8 this Complaint as though fully set forth herein.

9 36. As alleged herein above, Defendants have engaged in a systematic and uniform
10 campaign of advertising and marketing the no!no!™ Hair Product Line using the false and
11 misleading claims that the products will produce “laser-like results,” promising “smooth skin
12 without the pain,” and “effective, long-term hair removal.”

13 37. Plaintiff was exposed to these misrepresentations, purchased the product from
14 Defendants in reliance on these misrepresentations, and suffered monetary loss as a result.
15 Defendants made such misrepresentations despite the fact that they knew or should have
16 known that the claims were false, misleading, and/or deceptive.

17 38. Defendants’ business practices, as alleged herein, are fraudulent within the
18 meaning of Business and Professions Code §§ 17200, *et seq.* as the reasonable consumer is
19 likely to be deceived regarding the pain and efficacy related to the use of Defendants’ no!no!™
20 Hair Product Line.

21 39. Defendants’ business practices, as alleged herein, are unfair within the meaning
22 of Business and Professions Code §§ 17200 *et seq.* as the harm caused to the public as a result
23 of such practices far outweighs any benefit conferred thereby, in violation of the public
24 policies of this State.

25 40. Defendants’ business practices, as alleged herein, are unlawful within the
26 meaning of Business and Professions Code §§ 17200, *et seq.* as they constitute violations of
27 Business and Professions Code §§ 17500, *et seq.* and California Civil Code § 1750.
28

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41. As a direct and proximate result of Defendants' above-mentioned conduct, each Member of the proposed Class has suffered monetary injury in amounts unjustly collected from Class Members. Plaintiff and the Class Members are entitled to restitution of such monies in amounts to be established by proof at trial.

42. Moreover, Defendants continue to engage in the above-described deceptive practices and unless enjoined from doing so by this Court, will continue to do so, all to the damage of consumers who will purchase Defendants' products on the basis of their deceptive and unlawful practices.

SECOND CAUSE OF ACTION

FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17500, et seq.

(Against All Defendants)

43. Plaintiff incorporates by reference the allegations in all preceding paragraphs of this Complaint as though fully set forth herein.

44. As alleged herein, Defendants have engaged in a systematic and uniform campaign of advertising and marketing the no!no!™ Hair Product Line using the false and misleading claims that the product line produces "painless" "laser-like results," promising "smooth skin without the pain," and "effective, long-term hair removal," despite the fact that Defendants knew or should have known that these statements were false and misleading.

45. Defendants' above-described actions constitute deceptive advertising within the meaning of California Business and Professions Code §§ 17500, et seq.

46. Plaintiff was exposed to these misrepresentations, purchased the product from Defendants in reliance on these misrepresentations, and suffered monetary loss as a result. Defendants made such misrepresentations despite the fact that they knew or should have known that the claims were false, misleading, and/or deceptive.

47. As a proximate result of Defendants' above-mentioned conduct, each Member of the proposed Class has suffered monetary injury in the amount that Defendants unjustly

1 collected from them. Plaintiff and Members of the Class are entitled to restitution of such
2 monies in an amount to be established by proof at the time of trial.

3 48. Moreover, Defendants continue to engage in the above-described deceptive
4 practices and unless enjoined from doing so by this Court will continue to do so, all to the
5 damage of consumers that purchase Defendants' no!no!™ Hair Product Line in reliance upon
6 Defendants' false and misleading claims.

7 **THIRD CAUSE OF ACTION**

8 **VIOLATION OF CALIFORNIA CIVIL CODE §§1750 *et seq.***

9 **(Against All Defendants)**

10 49. Plaintiff incorporates by reference the allegations in all preceding paragraphs of
11 this Complaint as though fully set forth herein.

12 50. This claim is brought on behalf of Plaintiff and Class Members.

13 51. Defendants' product advertising violated (and continues to violate) the California
14 Consumer Legal Remedies Act ("CLRA") (Cal. Civ. Code §§1750-1784.).

15 52. Plaintiff and the potential Class Members are "consumers," as that term is defined
16 in Civil Code §1761(d) because they purchased goods for personal, family, or household use.

17 53. Defendants represented that the no!no!™ Hair Product Line has characteristics
18 and benefits that it does not have in violation of California Civil Code Section 1770(a)(5), that
19 the no!no!™ Hair Product Line confers rights, benefits, and obligations which it does not have or
20 involve in violation of California Civil Code Section 1770(a)(14), and that the no!no!™ Hair
21 products have been supplied in accordance with a previous representation when they have not in
22 violation of California Civil Code Section 1770(a)(16).

23 54. Specifically, Plaintiff alleges that Defendants falsely and misleadingly claim that
24 the no!no!™ Hair Product Line produces "painless," "laser-like results," promising "smooth skin
25 without the pain," and "effective, long-term hair removal." Further, Defendants falsely and
26 misleadingly claim that the no!no!™ Hair Product Line "carries a 30-day money back
27 guarantee," that if consumers "are not completely satisfied with the product and are within the
28 guarantee time frame," Defendants will issue "a full product price refund upon return of the

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product,” that the “30-day guarantee begins the day that you got the delivery,” that “[u]pon receipt of the items, we [Defendants] will issue a full product price refund,” that “no!no! Hair is backed by our [Defendants’] 60-Day Triple Guarantee!,” that Defendants “are so confident that you’ll love your no!no! Hair device that if after using it for at least 45 days from the delivery date & no more than 60 days and you are not satisfied then we will: 1. Refund the full Product Price! 2. Refund The Shipping & Handling! 3. Pay The Cost To Ship It Back To Us!,” and that “[i]f you choose to return before you’ve used the unit for at least 45 days then we [Defendants] will gladly refund your product price but the cost of postage to return is your responsibility.”

55. Nature of Falsity. The false and misleading claims violated the CLRA because the no!no!™ Hair Product Line did not produce “painless,” “laser-like results,” “smooth skin without the pain,” and “effective, long-term hair removal,” but instead Plaintiff and the Members of the Class experienced severe pain when using the no!no!™ Hair Product Line, including burning and irritated skin, and did not experience “smooth skin without the pain” or “effective, long-term hair removal.” Moreover, the no!no!™ Hair Product Line was not backed by a 30-day or even a 60-day guarantee and Defendants did not honor the Return Policy, but instead required Plaintiff and the Class Members to use the no!no!™ Hair products for 45 days, despite experiencing pain with use thereof, and then purported to offer a 15-day refund period beginning 45 days after consumers had received the no!no!™ Hair products.

56. Reliance. Plaintiff and Class Members relied on Defendants’ claims in deciding to purchase the no!no!™ Hair Product Line. Plaintiff was exposed to the misrepresentations on the television infomercial, and read the statements on the website and product advertising prior to purchasing the product. Neither Plaintiff nor any other Class Member would have reason to suspect that the statements contained in Defendants’ advertisements, guarantees, Return Policy, and/or other materials were inaccurate.

57. Materiality. The statements made as part of the false advertising and product advertising were material to Plaintiff and the Class Members. Had Plaintiff known the truth, that such statements were misleading, deceptive, and unfair, she would have never purchased the product. The false advertising is a material fact, because obtaining painless long-term hair



1 removal was Plaintiff's main purpose for purchasing the product and Plaintiff believed that she
2 could return the product for a full refund of the purchase price if she was dissatisfied.

3 58. Declaration of Venue. Plaintiff has filed contemporaneously herewith an
4 Affidavit of Venue, as required by California Civil Code §1780(d).

5 59. Relief Requested. As relief for Defendants' violation of the CLRA, Plaintiff
6 seeks an Order enjoining Defendants from engaging in the methods, acts, and practices violating
7 the CLRA (§1782(a)(2)).

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated,
10 prays for relief and judgment against Defendants, jointly and severally, as follows:

- 11 1. For an order certifying the proposed Class under Code of Civil Procedure § 382,
12 appointing Plaintiff as Class representative and her counsel as Class Counsel;
 - 13 2. For an award of equitable relief as follows:
 - 14 a. Enjoining Defendants from continuing to engage in the unlawful, unfair, and
15 fraudulent business practices and deceptive labeling and advertising
16 described in this Complaint;
 - 17 b. Requiring Defendants to make full restitution of all monies wrongfully
18 obtained as a result of the conduct described in this Complaint;
 - 19 c. Requiring Defendants to disgorge all ill-gotten gains flowing from the
20 conduct described in this Complaint; and
 - 21 d. Enjoining Defendants from marketing and selling the misrepresented
22 no!no!™ Hair Product Line.
 - 23 3. For the costs to investigate Plaintiff's claims;
 - 24 4. For an award of attorneys' fees and costs of suit herein, pursuant to Civil Code §
25 1780 and Code of Civil Procedure § 1021.5; and
 - 26 5. For such other and further relief as the Court may deem just and proper.
- 27
28

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1 Dated: March 13, 2014

**KHORRAMI BOUCHER SUMNER
SANGUINETTI, LLP**

2
3
4 By: 

5 **BEVIN ALLEN PIKE**
6 **Attorneys for Plaintiff,**
7 **APRIL CANTLEY**
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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a trial by jury on all issues so triable.

Dated: March 13, 2014

**KHORRAMI BOUCHER SUMNER
SANGUINETTI, LLP**

By: 

BEVIN ALLEN PIKE

Attorneys for Plaintiff,
APRIL CANTLEY

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EXHIBIT A

EXHIBIT B

3/12/2014

no!no!™ Professional hair removal, acne clearance & skin care for consumers

no!
no!
HAIR
MOD MODS**100% RISK-FREE 60 DAY TRIAL!****TRY IT NOW >**

Shopping Cart

[HAIR REMOVAL](#)[ACNE](#)[SKINCARE](#)[HEALTH AND BEAUTY](#)[TECHNOLOGY](#)[CUSTOMER SERVICE](#)[SHOP NOW](#)

Return Policy

Thank you for ordering the no!no!. Our product carries a 30-day money back guarantee. If you are not completely satisfied with the product and are within the guarantee time frame, we ask that you contact our customer service number 1.888.525.7580 to obtain a return authorization (RMA) number. We will then issue you a full product price refund upon return of the product. Our customer service agents and product technicians will help resolve any questions you may have and help ensure you're receiving optimal results from your no!no!™ unit. Please note that we CANNOT issue refunds for no!no!™ orders that are returned without an RMA or are returned after the Return Policy Period has expired. Your 30-day guarantee begins the day that you got the delivery. Please keep all receipts and delivery notices on file. Any orders that are returned beyond the Return Policy Period will not be returned to the customer, unless requested by the customer, and the customer agrees to pay a \$15.00 Re-Shipment Fee.

Return Shipping Method and Refunds

Refunds on no!no!™ orders cannot be issued without a Return Material Authorization number (called an RMA#) AND without returning ALL of the products from your no!no!™ order. Please be sure to include ALL of the items in your return, even if opened. Please ship your product order back to us via traceable Fedex, UPS or USPS method to insure proper crediting. Upon receipt of the items, we will issue a full product price refund. For refunds please allow up to two billing cycles for the credit to appear on your credit card statement.

Product Questions and/or Concerns

If you are returning your no!no!™ product due to allergic reactions or any skin sensitivities, or for any other reason, please call our Customer service Department first at 1.888.525.7580. Our professional customer care agents can assist you with many of your no!no!™ product inquiries and can provide you with the required return material (RMA) instructions.

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EXHIBIT C

3/3/2014

no!no!™ Professional hair removal, acne clearance & skin care for consumers

no!
no!
HAIR
8800**100% RISK-FREE 60 DAY TRIAL!**

TRY IT NOW >

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HAIR REMOVAL

ACNE

SKINCARE

HEALTH AND BEAUTY

TECHNOLOGY

CUSTOMER SERVICE

SHOP NOW

Positively no!no!™

To Order Our Hair Removal
Products [Click Here](#)

no!no!™ is changing hair removal routines around the world by bringing home professional hair removal, like that used in spas, salons and clinics.

no!no!™ offers a solution to unwanted hair, answering the ever-growing demand for professional, pain-free hair removal that can be performed in the comfort and convenience of the home. no!no! instantly removes hair and stays away for weeks with no pain, no mess and no chemicals.

no!no! uses science, not magic, to get these great results.

Based on Thermicon™ technology, no!no! uses heat to instantly remove and crystalize the hair.

This makes it universally safe and effective for EVERYONE - no matter the skin type or hair color, including blond, grey and red hair!
Simply put, with no!no!™ there is:

- No hair
- No pain
- No ingrown hairs
- No chemicals
- No mess
- No stress

Choose your no!no!™ Hair

Because different people have different needs, no!no!™ Hair has 2 models, and they both work great for any hair or skin color.

Choose the one that's right for you.

no!no! Hair 8800



- For full facial hair removal
- For body hair
- Multiple Treatment Levels
- 2 Thermicon™ Tip Sizes - for narrow and wide areas
- Thermicon™ Tip Status indicator
- Cord-free Operation

Do not use on genitals or around the nipple area.

no!no!™ Hair Classic



- For body hair only
- 2 Types of Thermicon™ Tips - for long hair and stubble

Do not use on the face, genitals or around the nipple area

3/3/2014

no!no!™ Professional hair removal, acne clearance & skin care for consumers

no!no!™ Hair Plus



- For facial and body hair
- Multiple Treatment Levels
- Thermicon™ Tip Status indicator

Do not use on the upper lip, genitals or around the nipple area

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EXHIBIT D

3/3/2014

NoNoPro.com | NoNo PRO3 and PRO5 Hair Removal Systems | Official Site | 60 Day Trial - Exclusive TV Offer

For Phone Orders Call: (800) 794-5341



HOW IT WORKS

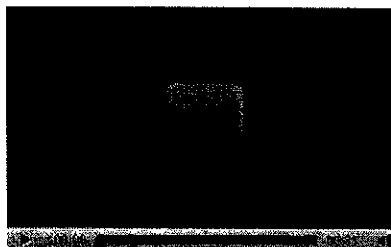
One of no!no!'s unique innovations is the development of a thermodynamic wire to transmit heat to the hair. Thermicon uses the scientific principles of thermal transference to conduct a gentle pulse of heat.

The patented thermodynamic wire and built in safety mechanisms have enabled no!no! to adapt this professional hair removal technology for safe and effective use within the comfort of your home.

Easy to Use and Pain-Free

With no!no! PRO, there's no pulling, tearing or scraping, just a slow, smooth glide that gently and easily removes hair. Designed for simplicity, familiar red and blue signal lights let you know when you're using it correctly. Compact and comfortable, no!no! is a convenient little handheld device that you can take and use almost anywhere - at home, at the office or on the road!

Click Video To Pause



**MORE EFFECTIVE THAN EVER, BUT
STILL JUST AS EASY TO USE!**

YES, I WANT TO BE HAIR FREE!

*INTERNET SPECIAL, TRIAL OFFER NOT AVAILABLE IN STORES

First Name*

Last Name*

Billing Address*

City*

State/Province*

Zip Code*

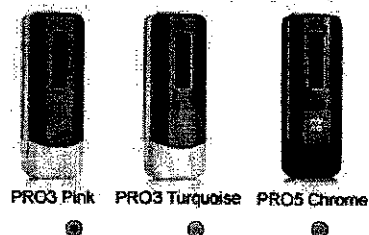
Country*

Phone*

E-mail Address*

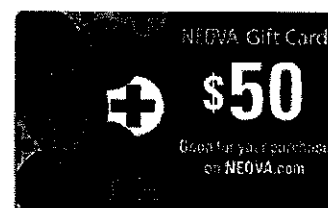
Choose Your Color*

**GET HIGHER ENERGY
BY UPGRADING TO
NO!NO! PRO5 FOR
AN ADDITIONAL \$19.99!**



PRO3 Pink PRO3 Turquoise PRO5 Chrome

TRY IT NOW >



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OFFER TERMS

Your \$50 Neova Smart Skincare Gift Card is redeemable at www.neova.com where you will find everything you need to reduce the look of fine lines and wrinkles, reveal radiant skin, get healthy looking skin and correct

3/3/2014

NoNoPro.com | NoNo PRO3 and PRO5 Hair Removal Systems | Official Site | 60 Day Trial – Exclusive TV Offer

visible signs of sun damage!

Try no!no! PRO for 60 days with our **Money Back Triple Guarantee!** For no!no! PRO3 - only 3 monthly payments of \$96.65 + \$14.95 S/H! For no!no! PRO5 - only 2 monthly payments of \$103.31, plus an additional monthly payment of \$103.33 with a one-time S/H charge of \$14.95!



NO MORE PAYMENTS IF YOU DON'T
GUARANTEE TO BE PAINLESS AND EFFECTIVE!

100% RISK-FREE 60 DAY TRIAL!

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*PRO3 OFFER DETAILS: If you select the no!no! PRO3, you will be initially charged \$96.65 + a one-time shipping and handling fee of \$14.95. In 30 days the same method of payment you use to make your purchase will automatically be charged the second of three payments in the amount of \$96.65. In 60 days, you will be charged a final payment of \$96.65 for a total of \$304.90.

*PRO5 OFFER DETAILS: If you select the no!no! PRO5, you will be initially charged \$103.31 + a one-time shipping and handling fee of \$14.95. In 30 days the same method of payment you use to make your purchase will automatically be charged the second of three payments in the amount of \$103.31. In 60 days, you will be charged a final payment of \$103.33 for a total of \$324.90.

Applicable taxes will be applied to orders from GA, NY & NJ. Canadian orders will also be subject to the appropriate sales tax.

The full purchase of this product has a 60 day money-back guarantee.

*no!no! Hair is not recommended for use on nipples or genitals.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Shawn Khorrani (180411), Bevin Allen Pike (221936), Scott Tillett (275119) KHORRAMI BOUCHER SUMNER SANGUINETTI, LLP 444 S. Flower Street, 33rd Floor Los Angeles, CA 90071 TELEPHONE NO.: 213-596-6000 FAX NO.: 213-596-6010		CM-010 FILED KERN COUNTY MAR 14 2014 TERRY McNALLY, CLERK BY _____ DEPUTY
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF Kern STREET ADDRESS: 1415 Truxton Avenue MAILING ADDRESS: CITY AND ZIP CODE: Bakersfield, CA 93301 BRANCH NAME: Metropolitan Division		
CASE NAME: CANTLEY v. RADIANCY, INC., et. al.		
CIVIL CASE COVER SHEET <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) </div> <div style="width: 45%;"> Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) </div> </div>		

Items 1-8 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case.		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) Non-PIP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-PIP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): THREE (3)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 13, 2014
 Bevin Allen Pike

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CIVIL CASE COVER SHEET

FILED BY FAX

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach—Seller
Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

Answer July 27, 2014
JUN 27 2014

1st AMENDED

1st AMENDED SUMMONS
(CITACION JUDICIAL)NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):RADIANCY, INC. a New York corporation; PHOTOMEDEX, INC.,
Nevada corporation; and DOES 1 through 100, inclusive,YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):APRIL CANTLEY, individually and on behalf of all others similarly
situated,

SUM-100

FOR COURT USE ONLY (SOLO PARA USO DE LA CORTE)	
FILED	SUPERIOR COURT, METROPOLITAN DIVISION COUNTY OF KERN
MAY 20 2014	
TERRY McNALLY, CLERK BY _____ DEPUTY	

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Kern County Superior Court
1415 Truxtun Ave., Bakersfield, CA 93301-5216

CASE NUMBER:
(Número del Caso): S-1500-CV-281510 LHB

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Bevin Allen Pike (221936), KBSS 444 S. Flower Street, 33rd Fl., Los Angeles, CA 90071 (213)596-6000

TERRY McNALLY

DATE:
(Fecha)

MAY 20 2014

Clerk, by
(Secretario)

DK RIDDLE

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]	NOTICE TO THE PERSON SERVED: You are served	
	1. <input type="checkbox"/> as an individual defendant.	
	2. <input type="checkbox"/> as the person sued under the fictitious name of (specify):	
	3. <input checked="" type="checkbox"/> on behalf of (specify): PHOTOMEDEX, INC., a Nevada corporation	
	under: <input checked="" type="checkbox"/> CCP 416.10 (corporation)	
	<input type="checkbox"/> CCP 416.20 (defunct corporation)	
	<input type="checkbox"/> CCP 416.40 (association or partnership)	
	<input type="checkbox"/> other (specify):	
4. <input checked="" type="checkbox"/> by personal delivery on (date):		

ENDORSED

FILED
SUPERIOR COURT, METROPOLITAN DIVISION
COUNTY OF KERN

JUL 16 2014

TERRY McNALLY, CLERK
BY _____ DEPUTY

FILE COPY

Shawn Khorrami [SBN 180411]
skhorrami@kbadvocates.com
Bevin Allen Pike [SBN 221936]
bpike@kbadvocates.com
KHORAMI BOUCHER, LLP
444 S. Flower St. – 33rd Floor
Los Angeles, California 90071
Telephone: (213) 596-6000;
Facsimile: (213) 596-6010

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN**

APRIL CANTLEY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

RADIANCY, INC., a New York corporation;
PHOTOMEDEX, INC., a Nevada corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: S-1500-CV-281510 LHB

*Assigned to The Honorable Lorna H.
Brumfield, Dept. 17*

NOTICE OF CHANGE OF FIRM NAME

Complaint Filed: March 14, 2014
Trial Date: None Set

TO THE CLERK OF THE COURT AND TO ALL PARTIES AND THEIR COUNSEL
OF RECORD:

PLEASE TAKE NOTICE that, effective June 20, 2014, the name of counsel of record for
Plaintiff April Cantley in the above-entitled matter has changed to KHORRAMI BOUCHER,
LLP, and that e-mail addresses in connection with Plaintiff's counsel will change as follows:

Shawn Khorrami	skhorrami@kbadvocates.com
Bevin Allen Pike	bpike@kbadvocates.com

///

///



1 All other information remains the same.

2

3 Dated: July 14, 2014

KHORRAMI BOUCHER, LLP

4

5

By: 

6

Shawn Khorrami

7

Bevin Allen Pike

8

Attorneys for Plaintiff

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PROOF OF SERVICE

CANTLEY v. RADIANCY, INC., ET. AL
Case No. **S-1500-CV-281510 LHB**

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within action. My business address is 444 S. Flower St, 33rd Floor, Los Angeles, CA 90071.

On **August 22, 2014**, I served the document described as:

NOTICE OF CHANGE OF FIRM NAME

on the interested parties in this action by sending a true copy thereof to interested parties as follows:

PROSKAUER ROSE LLP
Michael H. Weiss (SBN 118135)
mweiss@proskauer.com
Susan L. Gutierrez (SBN 273980)
sgutierrez@proskauer.com
Tracy L. Silver (SBN 287745)
tsilver@proskauer.com
2049 Century Park East, 32nd Floor
Los Angeles, CA 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193

Attorneys for Defendants

/ X / **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

/ / **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **August 22, 2014** at Los Angeles, California.

Jennifer Bell

Type or Print Name


Signature

RECEIVED

AUG 07 2014

SUPERIOR COURT
METROPOLITAN DIVISION
COUNTY OF KERN

1 PROSKAUER ROSE LLP
2 Michael H. Weiss (State Bar No. 118135)
3 mweiss@proskauer.com
4 Susan L. Gutierrez (State Bar No. 273980)
5 sgutierrez@proskauer.com
6 Tracey L. Silver (State Bar No. 287745)
7 tsilver@proskauer.com
8 2049 Century Park East, 32nd Floor
9 Los Angeles, CA 90067-3206
10 Telephone: (310) 557-2900
11 Facsimile: (310) 557-2193

12 Attorneys for Defendants
13 RADIANCY, INC. and PHOTOMEDEX, INC.

14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF KERN**
17

18 APRIL CANTLEY, individually and on behalf
19 of other members of all others similarly
20 situated,

21 Plaintiff,

22 vs.

23 RADIANCY, INC., a New York corporation;
24 PHOTOMEDEX, INC., a Nevada corporation;
25 and DOES 1 through 100, inclusive,

26 Defendants.
27
28

Case No. S-1500-CV-281510 LHB

**DEFENDANTS' UNOPPOSED
APPLICATION FOR EXTENSION OF
TIME TO RESPOND TO FIRST
AMENDED COMPLAINT**

[Proposed Order Lodged Concurrently]

Judge: Hon. Lorna H. Brumfield
Dept.: 17

First Am. Complaint Served: June 27, 2014
Trial Date: None

BY FAX
CA File # 2014-00149

Pursuant to California Rule of Court Rule 3.110(e), Defendants RADIANCY, INC. and PHOTOMEDEX, INC. (together, "Defendants"), bring this Unopposed Application to extend the time in which Defendants may answer, plead, demur, petition, or otherwise respond to the First Amended Complaint of Plaintiff April Cantley ("Plaintiff") to and including Monday, August 25, 2014, based on the following facts:

- (1) Plaintiff served the First Amended Complaint on Defendants on June 27, 2014;
- (2) Plaintiff and Defendants previously agreed to a 15-day extension of the deadline for Defendants to answer, plead, demur, petition, or otherwise respond to the First Amended Complaint (to August 11, 2014);
- (3) Plaintiff's counsel has advised counsel for Defendants that Plaintiff does not oppose an additional two-week extension of time – to August 25, 2014 – within which Defendants shall answer, plead, demur, petition, or otherwise respond to the First Amended Complaint;
- (4) Good cause exists for such an extension because, among other things, the extra time will allow Defendants the opportunity to investigate the numerous factual allegations and causes of action in the First Amended Complaint, and prepare an appropriate answer, pleading, demur, petition, or other response. This application is not brought for the purpose of delay.

Accordingly, Defendants respectfully request that this Court sign the Order submitted herewith, extending Defendants' time to answer, plead, demur, petition, or otherwise respond to the First Amended Complaint, to and including August 25, 2014.

Dated: August 7, 2014

PROSKAUER ROSE LLP
Michael H. Weiss
Susan L. Gutierrez
Tracey L. Silver

By: 
Michael H. Weiss

Attorneys for Defendants
RADIANCY, INC. and PHOTOMEDEX, INC.

RECEIVED

AUG 07 2014

SUPERIOR COURT
METROPOLITAN DIVISION
COUNTY OF KERN

PROSKAUER ROSE LLP
Michael H. Weiss (State Bar No. 118135)
mweiss@proskauer.com
Susan L. Gutierrez (State Bar No. 273980)
sgutierrez@proskauer.com
Tracey L. Silver (State Bar No. 287745)
tsilver@proskauer.com
2049 Century Park East, 32nd Floor
Los Angeles, CA 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193

Attorneys for Defendants
RADIANCY, INC. and PHOTOMEDEX, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

APRIL CANTLEY, individually and on behalf
of other members of all others similarly
situated,

Plaintiff,

vs.

RADIANCY, INC., a New York corporation;
PHOTOMEDEX, INC., a Nevada corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. S-1500-CV-281510 LHB

PROOF OF SERVICE

Judge: Hon. Lorna H. Brumfield
Dept.: 17

First Am. Complaint Served: June 27, 2014
Trial Date: None

PROOF OF SERVICE

CA Rule 2.304(a)
BY FAX

PROOF OF SERVICE

I declare that: I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is 2049 Century Park East, Suite 3200, Los Angeles, California 90067-3206.

On August 7, 2014, I served the foregoing document described as:

**DEFENDANTS' UNOPPOSED APPLICATION FOR EXTENSION OF TIME TO
RESPOND TO FIRST AMENDED COMPLAINT**

**[PROPOSED] ORDER EXTENDING DEFENDANTS' TIME TO RESPOND TO FIRST
AMENDED COMPLAINT**

☒ by placing ☐ the original ☒ true copies thereof enclosed in a sealed envelope addressed as follows:

Shawn Khorrami
Bevin Allen Pike
Scott L. Tillet
Khorrami Boucher Sumner Sanguinetti, LLP
444 S. Flower St., Thirty-Third Floor
Los Angeles, California 90071

☒ (By U.S. Mail) I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service and the fact that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business; on this date, the above-referenced correspondence was placed for deposit at Los Angeles, California and placed for collection and mailing following ordinary business practices.

☒ (By Electronic Mail) By transmitting true and correct copies thereof by electronic transmission to: skhorrami@kbsslaw.com; bpik@kbsslaw.com; stillet@kbsslaw.com

☐ (By Personal Service)

☐ By personally delivering such envelope to the addressee.

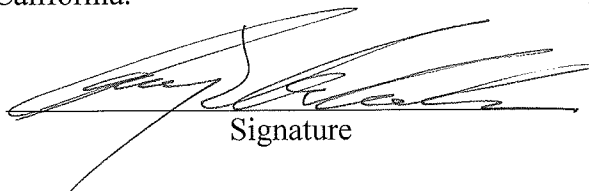
☐ By causing such envelope to be delivered by messenger to the office of the addressee.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 7, 2014, at Los Angeles, California.

Amy Richardson
Type or Print Name


Signature

RECEIVED

AUG 07 2014

SUPERIOR COURT
METROPOLITAN DIVISION
COUNTY OF KERN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

APRIL CANTLEY, individually and on behalf
of other members of all others similarly
situated,

Plaintiff,

vs.

RADIANCY, INC., a New York corporation;
PHOTOMEDEX, INC., a Nevada corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. S-1500-CV-281510 LHB

**[PROPOSED] ORDER EXTENDING
DEFENDANTS' TIME TO RESPOND
TO FIRST AMENDED COMPLAINT**

Judge: Hon. Lorna H. Brumfield
Dept.: 17

First Am. Complaint Served: June 27, 2014
Trial Date: None

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED THAT Defendants Radiancy,
Inc. and Photomedex, Inc. shall answer, plead, demur, petition, or otherwise respond to the First
Amended Complaint of Plaintiff April Cantley on or before August 25, 2014.

DATED: _____

Judge of the Superior Court

CA Rule 2.304(a)
BY FAX

Defendants Radiancy, Inc. and Photomedex, Inc. (together, “Defendants”), answer Plaintiff April Cantley’s (“Plaintiff”) First Amended Complaint (“Complaint”) as follows:

GENERAL DENIAL

Pursuant to California Code of Civil Procedure Section 431.30, Defendants generally deny each and every material allegation and purported cause of action in the Complaint. Defendants further deny that Plaintiff has been injured or damaged in the sum or sums alleged, or in any other sums at all, as a result of Defendants’ alleged actions or omissions.

AFFIRMATIVE DEFENSES

Defendants set forth their affirmative defenses below. By setting forth the below affirmative defenses, Defendants do not thereby assume the burden of proving any facts, issues, or elements of a claim where such burden properly belongs to Plaintiff. For their affirmative defenses, Defendants allege, upon information and belief, the following:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action – All Causes of Action)

The Complaint, and each claim and cause of action therein, fails to state facts sufficient to constitute a cause of action against Defendants, and further fails to state facts sufficient to entitle Plaintiff and the proposed putative class, and each of them, to the relief sought, or to any other relief whatsoever from Defendants, and each of them.

SECOND AFFIRMATIVE DEFENSE

(Lack of Standing – All Causes of Action)

Plaintiff and the putative class members, and each of them, lack standing to pursue the Complaint and each cause of action therein.

THIRD AFFIRMATIVE DEFENSE

(Statute of Limitations – First Cause of Action)

Plaintiffs and the putative class members, and each of them, are barred from bringing the First Cause of Action for violation of California Business & Professions Code §§ 17200 *et seq.*, in whole or in part, by the statute of limitations set forth in California Business & Professions Code § 17208.

FOURTH AFFIRMATIVE DEFENSE

(Statute of Limitations – Second Cause of Action)

Plaintiffs and the putative class members, and each of them, are barred from bringing the Second Cause of Action, for violation of California Business & Professions Code §§ 17500-17536, in whole or in part, by the statute of limitations set forth in California Code of Civil Procedure § 338(h).

FIFTH AFFIRMATIVE DEFENSE

(Statute of Limitations – Third Cause of Action)

Plaintiffs and the putative class members, and each of them, are barred from bringing the Third Cause of Action, for violation of California Civil Code §§ 1770 *et seq.*, in whole or in part, by the statute of limitations set forth in California Civil Code § 1783.

SIXTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages – All Causes of Action)

The Complaint, and each and every claim and cause of action therein, is barred, in whole or in part, because Plaintiff and the putative class members, and each of them, failed or refused to take reasonable, necessary, appropriate, and feasible steps to mitigate any alleged loss or damage, which efforts would have prevented their alleged injury or damages, if any.

SEVENTH AFFIRMATIVE DEFENSE

(Compliance with Law – All Causes of Action)

The Complaint, and each and every claim and cause of action therein, is barred, in whole or in part, because Defendants completely complied with applicable law.

EIGHTH AFFIRMATIVE DEFENSE

(Advertising Not Likely to Deceive – All Causes of Action)

The Complaint, and each and every claim and cause of action therein, is barred, in whole or in part, because Defendants' advertising and marketing were not false, misleading, or deceptive.

NINTH AFFIRMATIVE DEFENSE

(Good Faith – All Causes of Action)

The Complaint, and each and every claim and cause of action therein, is barred, in whole or in part, because the alleged conduct of Defendants was not unfair and was undertaken in good faith for a valid business purpose.

TENTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law – All Causes of Action)

The injury or damage suffered by Plaintiff and the putative class members, and each of them, if any, would be adequately compensated in an action at law for damages. Accordingly, Plaintiff and the putative class members, and each of them, have a complete and adequate remedy at law and are not entitled to seek equitable relief.

ELEVENTH AFFIRMATIVE DEFENSE

(Estoppel – All Causes of Action)

Plaintiffs and the putative class members, and each of them, are barred from bringing the claims set forth in the Complaint, in whole or in part, under the doctrine of estoppel.

TWELVTH AFFIRMATIVE DEFENSE

(Waiver – All Causes of Action)

Plaintiffs and the putative class members, and each of them, are barred from bringing the claims set forth in the Complaint, in whole or in part, under the doctrine of waiver.

THIRTEENTH AFFIRMATIVE DEFENSE

(Laches – All Causes of Action)

Plaintiffs and the putative class members, and each of them, are barred from bringing the claims set forth in the Complaint, in whole or in part, under the doctrine of laches.

FOURTEENTH AFFIRMATIVE DEFENSE

(Unclean Hands – All Causes of Action)

Plaintiffs and the putative class members, and each of them, are barred from bringing the claims set forth in the Complaint, in whole or in part, under the doctrine of unclean hands.

FIFTEENTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

Defendants reserve the right to assert additional affirmative defenses as discovery and investigation proceeds in this action.

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiff takes nothing by way of the Complaint;
2. That the Court enter judgment for Defendants;
3. For costs incurred in defense of this action; and
4. For such other and further relief as the Court may deem proper.

Dated: August 22, 2014

PROSKAUER ROSE LLP
Michael H. Weiss
Susan L. Gutierrez
Tracey L. Silver

By: 
Michael H. Weiss

Attorneys for Defendants
RADIANCY, INC. and PHOTOMEDEX, INC.

PROOF OF SERVICE

I declare that: I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is 2049 Century Park East, Suite 3200, Los Angeles, California 90067-3206.

On August 22, 2014, I served the foregoing document described as:

**ANSWER OF DEFENDANTS RADIANCY, INC. AND PHOTOMEDEX, INC.
TO FIRST AMENDED COMPLAINT**

☒ by placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed as follows:

Shawn Khorrami
Bevin Allen Pike
Scott L. Tillet
Khorrami Boucher Sumner Sanguinetti, LLP
444 S. Flower St., Thirty-Third Floor
Los Angeles, California 90071

☒ (By U.S. Mail) I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service and the fact that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business; on this date, the above-referenced correspondence was placed for deposit at Los Angeles, California and placed for collection and mailing following ordinary business practices.

☒ (By Electronic Mail) By transmitting a true and correct copy thereof by electronic transmission to: skhorrami@kbsslaw.com; bpik@kbsslaw.com; stillet@kbsslaw.com.

☐ (By Personal Service)

☐ By personally delivering such envelope to the addressees.

☐ By causing such envelope to be delivered by messenger to the office of the addressees.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 22, 2014, at Los Angeles, California.

Patty J. Hays
Type or Print Name


Signature

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Bevin Allen Pike, SBN 221936 Khorrami Boucher, LLP 444 S Flower Street, 33rd Floor, Los Angeles, CA 90071 TELEPHONE NO.: 213-596-6000 FAX NO. (Optional): 213-596-6010 E-MAIL ADDRESS (Optional): bpik@kbadvocates.com ATTORNEY FOR (Name): Plaintiff April Cantley SUPERIOR COURT OF CALIFORNIA, COUNTY OF Kern STREET ADDRESS: 1415 Truxtun Avenue MAILING ADDRESS: CITY AND ZIP CODE: Bakersfield, CA 93301 BRANCH NAME: Metropolitan Division PLAINTIFF/PETITIONER: April Cantley DEFENDANT/RESPONDENT: Radiancy, Inc., et al.	FOR COURT USE ONLY
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)	CASE NUMBER: S-1500-CV-281510
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: September 10, 2013 Time: 8:15 a.m. Dept.: 17 Div.: Room: Address of court (if different from the address above): <input checked="" type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): Bevin Allen Pike	

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

- Party or parties (answer one):**
 - ☒ This statement is submitted by party (name): Plaintiff April Cantley
 - ☐ This statement is submitted jointly by parties (names):
- Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - The complaint was filed on (date): March 14, 2014
 - ☐ The cross-complaint, if any, was filed on (date):
- Service (to be answered by plaintiffs and cross-complainants only)**
 - ☒ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - ☐ The following parties named in the complaint or cross-complaint
 - ☐ have not been served (specify names and explain why not):
 - ☐ have been served but have not appeared and have not been dismissed (specify names):
 - ☐ have had a default entered against them (specify names):
 - ☐ The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):
- Description of case**
 - Type of case in ☒ complaint ☐ cross-complaint (Describe, including causes of action):
 False and misleading advertising case alleging that Defendants misrepresent the efficacy and safety of their no! no! Hair removal products, as well as the refund policy and money back guarantee.

CM-110

PLAINTIFF/PETITIONER: April Cantley	CASE NUMBER:
DEFENDANT/RESPONDENT: Radiancy, Inc., et al.	S-1500-CV-281510

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
 Plaintiff alleges causes of action for violation of California's Business and Professions Code 17200, 17500 and the Consumer Legal Remedies Act related to allegations of Defendants' false and misleading advertising of the efficacy and safety of their no!no! Hair removal products, as well as the refund policy and money back guarantee.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request ☒ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

- a. ☐ The trial has been set for *(date)*:
 b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:
 Class action litigation - Plaintiff must first complete discovery and file a motion for certification
 c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:
 September 19, 2014 through January 2, 2015 - Counsel will be on maternity leave

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

- a. ☒ days *(specify number)*: 5
 b. ☐ hours *(short causes) (specify)*:

8. **Trial representation *(to be answered for each party)***

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
 b. Firm:
 c. Address:
 d. Telephone number:
 e. E-mail address:
 f. Fax number:
 g. Party represented:
☐ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference *(specify code section)*:

10. **Alternative dispute resolution (ADR)**

- a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.
 (1) For parties represented by counsel: Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.
 (2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.
 b. **Referral to judicial arbitration or civil action mediation *(if available)*.**
 (1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.
 (2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
 (3) ☒ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption)*:
 Exempt as a class action under rule 3.811(b)(2).

CM-110

PLAINTIFF/PETITIONER: April Cantley	CASE NUMBER:
DEFENDANT/RESPONDENT: Radiancy, Inc., et al.	S-1500-CV-281510

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

CM-110

PLAINTIFF/PETITIONER: April Cantley	CASE NUMBER:
DEFENDANT/RESPONDENT: Radiancy, Inc., et al.	S-1500-CV-281510

11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.

(1) Name of case:

(2) Name of court:

(3) Case number:

(4) Status:

☐ Additional cases are described in Attachment 13a.

- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- ☒ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):
Motion for class certification

16. Discovery

- a. ☐ The party or parties have completed all discovery.

- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Plaintiff intends to serve written discovery of Defendants' responses, Plaintiff will schedule depositions.	on Defendants prior to September 19, 2014. determine what additional discovery will be	Upon review required and/or

- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

CM-110

PLAINTIFF/PETITIONER: April Cantley	CASE NUMBER:
DEFENDANT/RESPONDENT: Radiancy, Inc., et al.	S-1500-CV-281510

17. Economic litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: August 22, 2014

Bevin Allen Pike

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

PROOF OF SERVICE

CANTLEY v. RADIANCY, INC., ET. AL

Case No. **S-1500-CV-281510 LHB**

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within action. My business address is 444 S. Flower St, 33rd Floor, Los Angeles, CA 90071.

On **August 22, 2014**, I served the document described as:

CASE MANAGEMENT STATEMENT

on the interested parties in this action by sending a true copy thereof to interested parties as follows:

PROSKAUER ROSE LLP

Attorneys for Defendants

Michael H. Weiss (SBN 118135)

mweiss@proskauer.com

Susan L. Gutierrez (SBN 273980)

sgutierrez@proskauer.com

Tracy L. Silver (SBN 287745)

tsilver@proskauer.com

2049 Century Park East, 32nd Floor

Los Angeles, CA 90067-3206

Telephone: (310) 557-2900

Facsimile: (310) 557-2193

/ X / **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

/ / **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **August 22, 2014** at Los Angeles, California.

Jennifer Bell

Type or Print Name


Signature

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Michael H. Weiss (SBN 110148) Proskauer Rose LLP 2049 Century Park East, Ste. 3200; Los Angeles, CA 90067 TELEPHONE NO.: 310-557-2900 FAX NO. (Optional): 310-557-2193 E-MAIL ADDRESS (Optional): mweiss@proskauer.com ATTORNEY FOR (Name): Defendants Radiancy, Inc. and Photomedex, Inc.		FOR COURT USE ONLY ENDORSED FILED SUPERIOR COURT, METROPOLITAN DIVISION COUNTY OF KERN SEP 08 2014 TERRY McNALLY, CLERK BY _____ DEPUTY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Kern STREET ADDRESS: 1415 Truxtun Avenue MAILING ADDRESS: CITY AND ZIP CODE: Bakersfield, CA 93301 BRANCH NAME: Metropolitan Division			
PLAINTIFF/PETITIONER: April Cantley DEFENDANT/RESPONDENT: Radiancy, Inc. et al.			
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		CASE NUMBER: S-1500-CV-281510 FAX FILED	
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: September 10, 2014 Time: 8:15 a.m. Dept.: 17 Div.: - Room: - Address of court (if different from the address above): <input checked="" type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): Michael H. Weiss			

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

- Party or parties (answer one):**
 - ☒ This statement is submitted by party (name): Defendants Radiancy, Inc. and Photomedex, Inc.
 - ☐ This statement is submitted jointly by parties (names):
- Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - The complaint was filed on (date):
 - ☐ The cross-complaint, if any, was filed on (date):
- Service (to be answered by plaintiffs and cross-complainants only)**
 - ☐ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - ☐ The following parties named in the complaint or cross-complaint
 - ☐ have not been served (specify names and explain why not):
 - ☐ have been served but have not appeared and have not been dismissed (specify names):
 - ☐ have had a default entered against them (specify names):
 - ☐ The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):
- Description of case**
 - Type of case in ☒ complaint ☐ cross-complaint (Describe, including causes of action):
 Plaintiff claims Defendants violated Bus. & Prof. Codes 17200 & 17500, and Civ. Code 1750 based on alleged statements re the efficacy of hair removal device and refund/guarantee policy. Defendants deny all allegations.

CM-110

PLAINTIFF/PETITIONER: April Cantley	CASE NUMBER:
DEFENDANT/RESPONDENT: Radiancy, Inc. et al.	S-1500-CV-281510

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

Plaintiff brings this putative class action for alleged false advertising, alleging Defendants misrepresented the efficacy and safety of the no!no! device (a hair removal product), as well as refund and guarantee policies. Plaintiffs seeks injunctive relief and damages.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request ☒ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

a. ☐ The trial has been set for *(date)*:

b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

a. ☒ days *(specify number)*: 10-15

b. ☐ hours *(short causes) (specify)*:

8. **Trial representation** *(to be answered for each party)*

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference *(specify code section)*:

10. **Alternative dispute resolution (ADR)**

a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.

b. **Referral to judicial arbitration or civil action mediation** *(if available)*.

(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) ☒ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption)*:
Exempt as class action pursuant to CRC 3.811(b)(2).

CM-110

PLAINTIFF/PETITIONER: April Cantley	CASE NUMBER:
DEFENDANT/RESPONDENT: Radiancy, Inc. et al.	S-1500-CV-281510

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

CM-110

PLAINTIFF/PETITIONER: April Cantley	CASE NUMBER:
DEFENDANT/RESPONDENT: Radiancy, Inc. et al.	S-1500-CV-281510

11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. ☒ There are companion, underlying, or related cases.
- (1) Name of case: Mouzon et al. v. Radiancy, Inc. et al.
- (2) Name of court: USDC for the District of Columbia
- (3) Case number: 1:14-cv-00722-CKK
- (4) Status: Motions to dismiss are pending
- ☐ Additional cases are described in Attachment 13a.
- b. ☒ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):
- Motion to Stay this action is under consideration by Defendants

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- ☒ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):
- Defendants Radiancy, Inc. and Photomedex, Inc. presently expect to file a motion for summary judgment and/or motion for summary adjudication before trial regarding Plaintiffs' claims.

16. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):
- | Party | Description | Date |
|------------|--|------------|
| Defendants | Interrogatories, RFA's and document requests | 12/15/2014 |
| Defendants | Deposition of Plaintiff April Cantley | 1/31/2015 |
- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

CM-110

PLAINTIFF/PETITIONER: April Cantley	CASE NUMBER: S-1500-CV-281510
DEFENDANT/RESPONDENT: Radiancy, Inc. et al.	

17. **Economic litigation**

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

18. **Other issues**

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

19. **Meet and confer**

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
Defendants were not contacted by Plaintiffs and only learned of this CMC upon receipt of Plaintiffs' CMC statement during the week of 9/5/2014.
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):


20. Total number of pages attached (*if any*): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: September 8, 2014

Michael H. Weiss

(TYPE OR PRINT NAME)

▶ 
(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

ENDORSED

FILED
SUPERIOR COURT, METROPOLITAN DIVISION
COUNTY OF KERN

SEP 08 2014

TERRY McNALLY, CLERK
BY _____ DEPUTY

PROSKAUER ROSE LLP
Michael H. Weiss (State Bar No. 118135)
mweiss@proskauer.com
Susan L. Gutierrez (State Bar No. 273980)
sgutierrez@proskauer.com
Tracey L. Silver (State Bar No. 287745)
tsilver@proskauer.com
2049 Century Park East, 32nd Floor
Los Angeles, CA 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193

Attorneys for Defendants
RADIANCY, INC. and PHOTOMEDEX, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

FAX FILED

APRIL CANTLEY, individually and on behalf
of other members of all others similarly
situated,

Plaintiff,

vs.

RADIANCY, INC., a New York corporation;
PHOTOMEDEX, INC., a Nevada corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. S-1500-CV-281510 LHB

PROOF OF SERVICE

Judge: Hon. Lorna H. Brumfield
Dept.: 17

First Am. Complaint Served: June 27, 2014
Trial Date: None

PROOF OF SERVICE

I declare that: I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is 2049 Century Park East, Suite 3200, Los Angeles, California 90067-3206.

On September 8, 2014, I served the foregoing document described as:

**DEFENDANTS RADIANCY, INC.'S AND PHOTOMEDEX, INC.'S CASE
MANAGEMENT STATEMENT**

☒ by placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed as follows:

Shawn Khorrami
Bevin Allen Pike
Khorrami Boucher, LLP
444 S. Flower St., 33rd Floor
Los Angeles, California 90071

☐ (By U.S. Mail) I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service and the fact that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business; on this date, the above-referenced correspondence was placed for deposit at Los Angeles, California and placed for collection and mailing following ordinary business practices.

☒ (By Electronic Mail) By transmitting a true and correct copy thereof by electronic transmission to: skhorrami@kbadvocates.com; bpike@kbadvocates.com

☒ (By Next-Day Delivery Service) By causing such envelope to be delivered to the office of the addressee by overnight delivery via FedEx or by other similar overnight delivery service.

☐ (By Personal Service)

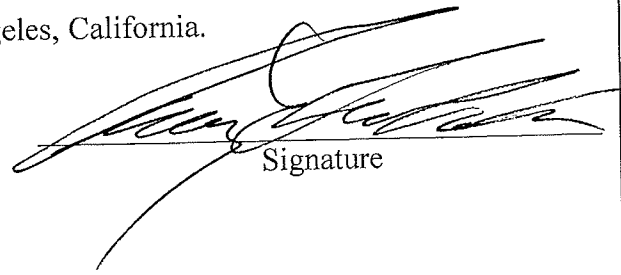
☐ By personally delivering such envelope to the addressees.

☐ By causing such envelope to be delivered by messenger to the office of the addressees.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 8, 2014, at Los Angeles, California.

Amy Richardson
Type or Print Name


Signature

SHAWN KHORRAMI, SBN 1803411
BEVIN ALLEN PIKE, SBN 221936
KHORRAMI BOUCHER, LLP
444 South Flower Street, Thirty-Third Floor
Los Angeles, California 90071
Telephone: (213) 596-6000
Facsimile: (213) 569-6010

Attorneys for Plaintiff April Cantley

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN**

APRIL CANTLEY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

RADIANCY, INC., a New York corporation;
PHOTOMEDEX, INC., a Nevada
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: S-1500-CV-281510 LHB

*Assigned to The Honorable Lorna H.
Brumfield, Dept. 17*

NOTICE OF POSTING JURY FEE

Complaint Filed: March 14, 2014
Trial Date: None set

TO THE HONORABLE COURT, ALL PARITES AND THEIR COUNSEL OF RECORD
HEREIN:

Plaintiff, April Cantley, hereby posts her jury fee deposit in the amount of \$150.00 in the
above-entitled action.

DATED: September 8, 2014

By: 
SHAWN KHORRAMI, ESQ.
BEVIN ALLEN PIKE, ESQ.
KHORRAMI BOUCHER, LLP

Attorneys for Plaintiff

PROOF OF SERVICE

CANTLEY v. RADIANCY, INC., ET. AL
Case No. S-1500-CV-281510 LHB

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within action. My business address is 444 S. Flower St, 33rd Floor, Los Angeles, CA 90071.

On **September 8, 2014**, I served the document described as:

NOTICE OF POSTING JURY FEE

on the interested parties in this action by sending a true copy thereof to interested parties as follows:

PROSKAUER ROSE LLP
Michael H. Weiss (SBN 118135)
mweiss@proskauer.com
Susan L. Gutierrez (SBN 273980)
sgutierrez@proskauer.com
Tracy L. Silver (SBN 287745)
tsilver@proskauer.com
2049 Century Park East, 32nd Floor
Los Angeles, CA 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193

Attorneys for Defendant,

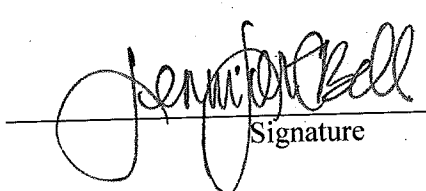
/ X / **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

/ / **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **September 8, 2014** at Los Angeles, California.

Type or Print Name



Signature

KHORAMI BOUCHER, LLP
444 S. Flower Street, 33rd Floor
Los Angeles, CA 90071
Phone: (213) 596-6000
Fax: (213) 596-6010



A schematic diagram of a single neuron. The cell body (soma) contains a nucleus and is surrounded by a cell membrane. A dendrite is shown on the left, and an axon is shown on the right. The axon is covered by a myelin sheath. The axon terminates in a terminal button. The diagram is labeled with 'Dendrite', 'Soma', 'Nucleus', 'Cell membrane', 'Axon', 'Myelin sheath', and 'Terminal button'.

-

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

- Form Adopted for Mandatory Use
Judicial Council of California
CM-110 [Rev. July 1, 2011]

Legal
Solutions
Plus

PLAINTIFF/PETITIONER: April Cantley	CASE NUMBER:
DEFENDANT/RESPONDENT: Radiancy, Inc., et al.	S-1500-CV-281510

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

Plaintiff brings this putative class action for alleged false advertising, alleging Defendants misrepresented the efficacy and safety of the no!no! device (a hair removal product), as well as refund and guarantee policies. Plaintiff seeks injunctive relief and damages.

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☒ a jury trial ☐ a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):

6. Trial date

- a. ☐ The trial has been set for (date):
- b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):
- c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

- a. ☒ days (specify number): 10-15
- b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
- b. Firm:
- c. Address:
- d. Telephone number:
- e. E-mail address:
- f. Fax number:
- g. Party represented:
- ☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative dispute resolution (ADR)

- a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

- (1) For parties represented by counsel: Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.
- (2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.

b. Referral to judicial arbitration or civil action mediation (if available).

- (1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.
- (2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
- (3) ☒ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption): Exempt as class action pursuant to CRC 3.811(b)(2).

CM-110

PLAINTIFF/PETITIONER: April Cantley	CASE NUMBER:
DEFENDANT/RESPONDENT: Radiancy, Inc., et al.	S-1500-CV-281510

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

PLAINTIFF/PETITIONER: April Cantley	CASE NUMBER:
DEFENDANT/RESPONDENT: Radiancy, Inc., et al.	S-1500-CV-281510

11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. ☒ There are companion, underlying, or related cases.
- (1) Name of case: Mouzon et al. v. Radiancy, Inc. et al.
- (2) Name of court: USDC for the District of Columbia
- (3) Case number: 1:14-cv-00722-CKK
- (4) Status: Motions to dismiss are pending
- ☐ Additional cases are described in Attachment 13a.
- b. ☒ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*): Motion to Stay this action is under consideration by Defendants

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- ☒ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*): Defendants Radiancy, Inc. and Photomedex, Inc. presently expect to file a motion for summary judgment and/or motion for summary adjudication before trial regarding Plaintiff's claims.

16. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Defendants	Interrogatories, RFA's and document requests	6/15/2015
Defendants	Deposition of April Cantley	8/31/2015

- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

CM-110

PLAINTIFF/PETITIONER: April Cantley	CASE NUMBER:
DEFENDANT/RESPONDENT: Radiancy, Inc., et al.	S-1500-CV-281510

17. Economic litigation

- a. ☒ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

18. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

19. Meet and confer


- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

20. Total number of pages attached (*if any*): 0

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: November 17, 2014

Robert H. Horn
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

PROOF OF SERVICE

I declare that: I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is 2049 Century Park East, Suite 3200, Los Angeles, California 90067-3206.

On November 17, 2014, I served the foregoing document described as:

CASE MANAGEMENT STATEMENT

☒ by placing ☐ the original ☒ true copies thereof enclosed in a sealed envelope addressed as follows:

Shawn Khorrami
Bevin Allen Pike
Brandon Brouillette
Khorrami Boucher, LLP
444 S. Flower Street, 33rd Floor
Los Angeles, CA 90071

☐ (By Fax) By transmitting a true and correct copy thereof via facsimile transmission.

☒ (By U.S. Mail) I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service and the fact that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business; on this date, the above-referenced correspondence was placed for deposit at Los Angeles, California and placed for collection and mailing following ordinary business practices.

☐ (By Electronic Mail) By transmitting true and correct copies thereof by electronic transmission

☐ (By Personal Service)

☐ By personally delivering such envelope to the addressee.

☐ By causing such envelope to be delivered by messenger to the office of the addressee.

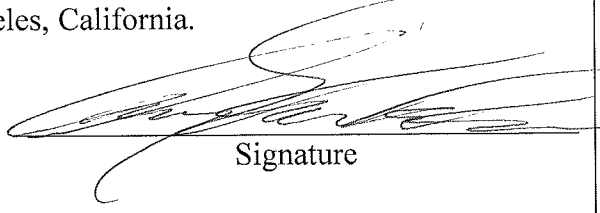
☐ (By Next-Day Delivery Service) By causing such envelope to be delivered to the office of the addressee by overnight delivery via FedEx or by other similar overnight delivery service.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 17, 2014, at Los Angeles, California.

Amy Richardson
Type or Print Name


Signature

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

- Page 1 of 5

CM-110

PLAINTIFF/PETITIONER: April Cantley	CASE NUMBER:
DEFENDANT/RESPONDENT: Radiancy, Inc., et al.	S-1500-CV-281510

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
 Plaintiff alleges causes of action for violation of California's Business and Professions Code 17200, 17500 and the Consumer Legal Remedies Act related to allegations of Defendants' false and misleading advertising of the efficacy and safety of their no!no! hair removal products, as well as the refund policy and money back guarantee.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request ☒ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

- a. ☐ The trial has been set for *(date)*:
 b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:
 c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:
 Present date through January 2, 2015 - Counsel is on maternity leave until this date.

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

- a. ☒ days *(specify number)*: 5
 b. ☐ hours *(short causes) (specify)*:

8. **Trial representation** *(to be answered for each party)*

The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☒ by the following:

- a. Attorney: Shawn Khorrami and Bevin Pike
 b. Firm: Khorrami Boucher, LLP
 c. Address: 444 S. Flower St., 33rd Floor, Los Angeles, CA 90071
 d. Telephone number: (213) 596-6000
 e. E-mail address: skhorrami@kbadvocates.com
 f. Fax number: (213) 596-6010
 g. Party represented: Plaintiff April Cantley
☐ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference *(specify code section)*:

10. **Alternative dispute resolution (ADR)**

- a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.
 (1) For parties represented by counsel: Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.
 (2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.
 b. **Referral to judicial arbitration or civil action mediation** *(if available)*.
 (1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.
 (2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
 (3) ☒ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption)*:
 Exempt as a class action under rule 3.811(b)(2)

CM-110

PLAINTIFF/PETITIONER: April Cantley	CASE NUMBER:
DEFENDANT/RESPONDENT: Radiancy, Inc., et al.	S-1500-CV-281510

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

CM-110

PLAINTIFF/PETITIONER: April Cantley	CASE NUMBER: S-1500-CV-281510
DEFENDANT/RESPONDENT: Radiancy, Inc., et al.	

11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.

(1) Name of case:

(2) Name of court:

(3) Case number:

(4) Status:

☐ Additional cases are described in Attachment 13a.

- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- ☐ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

16. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Plaintiff April Cantley	Special Interrogs., Requests for Prod., Requests for Adm., and Form Interrogs.	Initial responses due on 12/1/14
Plaintiff April Cantley	Person Most Knowledgeable Deposition	TBD

- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

CM-110

PLAINTIFF/PETITIONER: April Cantley	CASE NUMBER: S-1500-CV-281510
DEFENDANT/RESPONDENT: Radiancy, Inc., et al.	

17. Economic litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

18. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

19. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

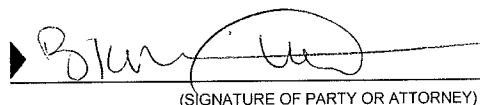
20. Total number of pages attached (*if any*): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: November 18, 2014

Brandon Brouillette

(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

PROOF OF SERVICE

CANTLEY v. RADIANCY, INC., ET. AL

Case No. **S-1500-CV-281510 LHB**

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within action. My business address is 444 S. Flower St, 33rd Floor, Los Angeles, CA 90071.

On **November 18, 2014**, I served the document described as:

CASE MANAGEMENT STATEMENT

on the interested parties in this action by sending a true copy thereof to interested parties as follows:

PROSKAUER ROSE LLP
Michael H. Weiss (SBN 118135)
mweiss@proskauer.com
Susan L. Gutierrez (SBN 273980)
sgutierrez@proskauer.com
Tracy L. Siver (SBN 287745)
tsilver@proskauer.com
2049 Century Park East, 32nd Floor
Los Angeles, CA 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193

Attorneys for Defendant,

KHORRAMI BOUCHER, LLP
444 S. Flower Street, 33rd Floor
Los Angeles, CA 90071
Phone: (213) 596-6000
Fax: (213) 596-6010

/ X / **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

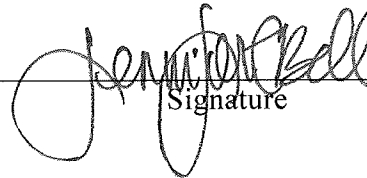
/ / **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **November 18, 2014** at Los Angeles, California.

Jennifer Bell

Type or Print Name


Signature



PROSKAUER ROSE LLP
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Attorneys for Defendants
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11355 West Olympic Boulevard
Los Angeles, CA 90064-1614
Telephone: 310.312.4000
Facsimile: 310.312.4224

Attorneys for Plaintiff
April Cantley

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

APRIL CANTLEY, individually and on behalf of all)
others similarly situated,)

Plaintiff,)

v.)

RADIANCY, INC., a New York corporation;)
PHOTOMEDEX, INC., a Nevada corporation; and)
DOES 1 through 100, inclusive,)

Defendants.)

Case No. S-1500-CV-281510 LHB

**STIPULATION TO ENTRY OF
PROTECTIVE ORDER RE
CONFIDENTIAL INFORMATION;
[PROPOSED] ORDER THEREON**

Judge: Hon. Lorna H. Brumfield
Dept.: 17

Complaint Filed: March 14, 2014
FAC Filed: May 13, 2014
Trial Date: None Set

ENDORSED

FILED
SUPERIOR COURT, METROPOLITAN DIVISION
COUNTY OF KERN

JAN 09 2015

TERRY McNALLY, CLERK
BY _____ DEPUTY

BY FAX
CA Rule 2.304(a)

1 IT IS HEREBY STIPULATED by and between plaintiff April Cantley ("Plaintiff") and
2 defendants Radiance, Inc. and PhotoMedex, Inc. ("Defendants"), through their respective
3 undersigned counsel, that the Court should enter a protective regarding confidential information
4 order on the following terms.

5 **GOOD CAUSE STATEMENT**

6 1. The parties believe that good cause exists to enter a protective order to prevent
7 public disclosure of Protected Material (as defined below). The complaint filed by plaintiff
8 alleges claims for false and misleading advertising. Discovery has involved and will continue to
9 involve production of confidential, proprietary, and/or private information which warrant special
10 protection from public disclosure and from use for any purpose other than this action. Discovery
11 has and will include the production of nonpublic business information related to defendant
12 Radiance, Inc. products and finances, and confidential information of nonparty purchasers of such
13 products. This protective order is necessary to prevent the unauthorized disclosure of Protected
14 Material.

15 2. Accordingly, the parties hereby stipulate to, and petition the Court to enter, the
16 following stipulated protective order. The parties have attempted to draft this protective order
17 narrowly and in a manner no more restrictive than necessary to protect the Protected Material from
18 public disclosure. The parties acknowledge that this protective order does not confer blanket
19 protections on all disclosures or responses to discovery and that the protection it affords extends
20 only to the limited information or items that are entitled under the applicable legal principles to
21 treatment as confidential. Any Protected Material submitted to the Court shall be submitted for
22 filing under seal subject to Court approval. Rules 2.550 and 2.551 of the California Rules of
23 Court set forth the procedures that must be followed to file Protected Material under seal.

DEFINITIONS

3. (a) Party or Parties. Any party or all parties to this action, including the party's officers, directors and employees.

(b) Discovery Material. Information and tangible things, regardless of how created, stored or maintained, produced in responses to discovery in this action. Discovery Material includes, among other things, transcripts of deposition testimony taken in this action.

(c) Producing Party. A Party that produces Discovery Material.

(d) Receiving Party. A Party that receives Discovery Material from a Producing Party.

(e) Confidential Discovery Material. Discovery Material that qualifies for protection from public disclosure under standards developed under the Code of Civil Procedure and applicable case law.

(f) Highly Confidential – Attorneys' Eyes Only Discovery Material. Highly sensitive Confidential Discovery Material, which, if disclosed to another Party or nonparty, would create a substantial risk of serious competitive, financial or other injury to the Designating Party which could not be avoided by less restrictive means.

(g) Protected Material. Discovery Material designated CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY.

(h) Designating Party. A Party or nonparty that designates Protected Material.

(i) In-House Counsel. Attorneys (and their support staffs) who are employees of a Party.

(j) Outside Counsel. Attorneys (and their support staffs) who are not employees of a Party but who are retained to represent or advise a Party in this action.

(k) Counsel (without qualifier). Outside Counsel and In-House Counsel (and their support staffs).

(l) Expert. A person with specialized knowledge or experience in a matter pertinent to the action who has been retained and designated by a Party or its Counsel to serve as

1 an expert witness. This definition includes a professional jury or trial consultant retained in
2 connection with this action.

3 (m) Professional Vendors. Persons or entities that provide litigation support
4 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations,
5 organizing, storing, retrieving data in any form or medium, etc.) and their employees and
6 subcontractors.

7 (n) Final Disposition. (i) Entry of judgment and either exhaustion of all appeals
8 or expiration of the time in which to appeal; or (ii) a settlement among all Parties and dismissal
9 such that no action remains pending.

10 SCOPE

11 4. The protections conferred by this protective order cover not only Protected
12 Material, but also any information extracted from Protected Material, including, but not limited to,
13 copies, excerpts, summaries, compilations, testimony, conversations, or presentations by a Party or
14 Counsel to or in court or in other settings that might reveal Protected Material.

15 DURATION

16 5. Even after Final Disposition, the confidentiality obligations imposed by this
17 protective order shall remain in effect until a Designating Party agrees otherwise in writing or a
18 court order otherwise directs.

19 DESIGNATING PROTECTED MATERIAL

20 6. (a) Exercise of Restraint and Care in Designating Protected Material. Each
21 Party or nonparty that designates Discovery Material for protection under this protective order
22 must take care to limit any such designation to specific material that qualifies under the
23 appropriate standards. A Designating Party must take care to designate as Protected Material only
24 those parts of Discovery Material that qualify, so that other portions of the Discovery Material for
25 which protection is not warranted are not swept unjustifiably within the ambit of this protective
26 order.

27 (b) Manner and Timing of Designations. Except as otherwise provided in this
28 protective order, or as otherwise stipulated or ordered, material that qualifies for protection under

1 this protective order must be clearly so designated before the material is disclosed or produced.

2 Designation in conformity with this protective order requires:

3 (i) For information in documentary form (apart from transcripts of
4 depositions or other pretrial or trial proceedings): that the Producing Party affix the legend
5 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY on each page
6 that contains Protected Material. If only a portion or portions of the material on a page qualifies
7 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
8 making appropriate markings in the margins). A Producing Party that makes original documents
9 or materials available for inspection need not designate them for protection until after the
10 Receiving Party has indicated which material it would like copied and produced. During the
11 inspection and before the designation, the Producing Party shall provisionally designate as
12 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY all of the
13 material made available for inspection. After the Receiving Party has identified the documents it
14 wants copied and produced, the Producing Party must determine which documents, or portions
15 thereof, qualify for protection under this protective order; then, before producing the specified
16 documents, the Producing Party must affix the legend CONFIDENTIAL or HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY at the top of each page that contains Protected
18 Material. If only a portion of the material on a page qualifies for protection, the Producing Party
19 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
20 margins) and must specify, for each portion, the level of protection being asserted, either
21 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.

22 (ii) For testimony given in deposition or other pretrial or trial
23 proceeding: that the Party or nonparty offering, sponsoring or giving the testimony identifies on
24 the record, before the close of the deposition or other proceeding, any portions of the testimony
25 that qualify as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.
26 Transcript pages (and exhibits) containing Protected Material must be separately bound by the
27 reporter, who must affix to the top of each such transcript page the legend CONFIDENTIAL or
28 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY. Failure of counsel to designate

1 testimony (or exhibits) as Protected Material at the deposition or other proceeding, however, shall
 2 not constitute a waiver of the protected status. When it is impractical to identify separately each
 3 portion of testimony (or exhibit) that is entitled to protection, and when it appears that substantial
 4 portions of the testimony (or exhibit) may qualify for protection, the Party or nonparty that offers,
 5 sponsors or gives the testimony may invoke on the record (before the deposition or other
 6 proceeding is concluded) a right to have up to 20 days after receipt of the transcript to designate
 7 specific portions of the testimony (or exhibits) CONFIDENTIAL or HIGHLY CONFIDENTIAL
 8 – ATTORNEYS’ EYES ONLY. Only those portions of the testimony (or exhibits) that are
 9 appropriately designated for protection shall be covered by the provisions of this protective order.
 10 If the Party or nonparty that offers, sponsors or gives the testimony fails to appropriately designate
 11 the transcript (or exhibits) CONFIDENTIAL and/or HIGHLY CONFIDENTIAL –
 12 ATTORNEYS’ EYES ONLY, any other Party shall be entitled to treat the transcript as non-
 13 confidential material.

14 (iii) For information produced in some form other than documentary
 15 form and for any tangible items: that the Producing Party affix in a prominent place on the
 16 exterior of the container or containers in which the Protected Material is stored the legend
 17 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY. If only a
 18 portion of the material qualifies for protection, the Producing Party, to the extent practicable, shall
 19 identify the protected portions, specifying whether they qualify as CONFIDENTIAL or as
 20 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY. To the extent that any Receiving
 21 Party prints any of the Protected Material contained in the non-paper media, such printouts will be
 22 marked as described above by the Receiving Party.

23 7. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 24 designate Protected Material does not, standing alone, waive the Designating Party’s right to
 25 secure protection under this protective order for such Discovery Material. If Discovery Material is
 26 appropriately designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’
 27 EYES ONLY after it was initially produced, the Receiving Party, on timely notification of the
 28

1 designation by the Designating Party, must make reasonable efforts to assure that such Protected
2 Material is treated in accordance with the provisions of this protective order.

3 **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 8. (a) Timing of Challenges. Unless a prompt challenge to a Designating Party's
5 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
6 economic burdens, or a later significant disruption or delay of the action, a Party does not waive
7 its right to challenge a designation of Protected Material by electing not to mount a challenge
8 promptly after the designation.

9 (b) Meet and Confer. A Party that elects to challenge the designation of
10 Discovery Material as Protected Material must do so in good faith. Outside Counsel for the
11 challenging Party shall begin the process by delivering a letter requesting a conference. Within 10
12 days after receipt of such letter, Outside Counsel for the Designating Party shall provide in writing
13 the bases for the Designating Party's contention that the Discovery Material qualifies as Protected
14 Material. The challenging Party may proceed to the next stage of the challenge process only if it
15 has engaged in this meet and confer process. A failure to respond to the challenging Party's letter
16 within the requisite time constitutes consent to the challenge.

17 (c) Judicial Intervention. A Party that elects to press a challenge to a
18 confidentiality designation may file and serve a motion in compliance with Rules 2.550 and 2.551
19 of the California Rules of Court regarding the filing of document under seal. The burden of
20 persuasion in any such challenge proceeding shall be on the Designating Party. Until the Court
21 rules on the challenge, all parties shall continue to treat the Discovery Material in question as
22 Protected Material at the level of protection to which it would be entitled under the Designating
23 Party's designation.

24 **ACCESS TO AND USE OF PROTECTED MATERIAL**

25 9. (a) Basic Principles. A Receiving Party may use designated Protected Material
26 only for prosecuting or defending this action. Protected Material may be disclosed only to the
27 categories of persons and under the conditions described in this protective order. Upon Final
28 Disposition of this action, a Receiving Party must comply with paragraph 13, below (FINAL

DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this protective order.

(b) Disclosure of Protected Material Designated CONFIDENTIAL. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose Protected Material designated CONFIDENTIAL only to:

(i) The Receiving Party's Outside Counsel of record in this action, and employees of the Receiving Party's Outside Counsel to whom disclosure is reasonably necessary for purposes of this action;

(ii) The Receiving Party's In-House Counsel to whom disclosure is reasonably necessary for purposes of this action;

(iii) The Receiving Party's officers, directors and employees to whom disclosure is reasonably necessary for purposes of this action;

(iv) The Receiving Party's disclosed and undisclosed Experts to whom disclosure is reasonably necessary for purposes of this action, and who have signed the Agreement to Be Bound by Protective Order attached hereto as Exhibit A (the signed original shall be delivered to and maintained by the Designating Party, except in respect to undisclosed Experts, in which event the signed original shall be delivered to and maintained by the Party who retained the undisclosed Expert);

(v) The Court and its personnel;

(vi) The jury for purposes of trial;

(vii) Certified stenographic reporters and videographers retained in connection with this action, and their staffs;

(viii) Professional Vendors to whom disclosure is reasonably necessary for purposes of this action;

(ix) During their depositions, witnesses in this action to whom disclosure is reasonably necessary and who have signed the Agreement to Be Bound by Protective Order attached hereto as Exhibit A (the signed original shall be delivered to and maintained by the

Designating Party). If a witness declines to sign the Agreement to Be Bound by Protective Order, the Parties shall promptly present the issue to the Court.

(x) The author of the document or the original source of the information.

(c) Disclosure of Protected Material Designated HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY only to:

(i) The Receiving Party’s Outside Counsel of record in this action, as well as employees of Receiving Party’s Outside Counsel to whom it is reasonably necessary to disclose the information for this action;

(ii) The Receiving Party’s disclosed and undisclosed Experts and their technical and clerical employees who are actively assisting with this action, to whom disclosure is reasonably necessary for this action, and who have signed the Agreement to Be Bound by Protective Order attached hereto as Exhibit A;

(iii) The Court and its personnel;

(iv) The jury for purposes of trial;

(v) Certified stenographic reporters and videographers retained in connection with this Action, their staffs;

(vi) Professional Vendors to whom disclosure is reasonably necessary for purposes of this action;

(vii) The author of the document or the original source of the information.

(d) Procedures for Disclosure of HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY Information or Items to Experts.

Documents designated as CONFIDENTIAL and/or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” may be shown to any Expert, together with his or her secretarial, technical and clerical staff who are actively assisting in the preparation of this action. Before

disclosure to any such Expert, the Expert shall execute the Agreement to Be Bound by Protective Order attached hereto as Exhibit A. Counsel making the disclosure shall maintain the original signed Agreement to Be Bound by Protective Order until sixty (60) days following Final Disposition. Notwithstanding the foregoing: (i) any such Expert who is an employee of a competitor of any Party shall not be shown or otherwise given access to documents or information designated CONFIDENTIAL and/or HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY; and (ii) any expert who is an employee of any Party shall not be shown or otherwise give access to documents or information designated HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY.

**PROTECTED MATERIAL SUBPOENAED OR
ORDERED PRODUCED IN OTHER LITIGATION**

10. If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any Protected Material, the Receiving Party must notify the Designating Party in writing (by e-mail, if possible, and U.S. Mail) within a reasonable time and in no event more than 10 days after receiving the subpoena or order. Such notification must include a copy of the subpoena or order. Within the same 10-day period the Receiving Party also must: (a) provide written notice to the person or entity who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is subject to this protective order; and (b) deliver a copy of this protective order promptly to the person or entity who caused the subpoena or order to issue in the other litigation. The purpose of imposing these duties is to alert the interested parties to the existence of this protective order and to afford the Designating Party an opportunity to protect its interests in the court from which the subpoena or order issued. The Designating Party shall bear the burden and the expense of seeking to protect its interests in the court from which the subpoena or order issued. Nothing in this paragraph should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

11. If a Receiving Party learns, by inadvertence or otherwise, that it has disclosed Protected Material to any person or entity in any circumstance not authorized under this protective order, the Receiving Party must immediately: (a) give written notice of the unauthorized disclosure to the Designating Party; (b) use its best efforts to retrieve all copies of the Protected Material from the person or entity to whom unauthorized disclosure was made; (c) provide a copy of this this protective order to the person or entity to whom unauthorized disclosure was made; and (d) request the person or entity to execute the Agreement to Be Bound by Protective Order attached hereto as Exhibit A.

FILING PROTECTED MATERIAL

12. A Party that seeks to file any Protected Material under seal must comply with Rules 2.550 and 2.551 of the California Rules of Court.

FINAL DISPOSITION

13. Unless otherwise ordered or agreed in writing by the Producing Party, within 60 days after Final Disposition, each Receiving Party must return all Protected Material to the Producing Party. "All Protected Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. With permission in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that identifies, by category, where appropriate, all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this protective order as set forth in paragraph 5 (DURATION), above.

MISCELLANEOUS

14. (a) Right to Further Relief. Nothing in this protective order abridges the right of any person to seek its modification by the Court in the future.

(b) Right to Assert Other Objections. By stipulating to the entry of this protective order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this protective order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this protective order.

(c) Production by Nonparty. Any Party may designate documents or information produced by a nonparty as Protected Information pursuant to the terms of this protective order by providing to the other Parties written notice of the designation and a copy of each page marked CONFIDENTIAL or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" that contains Protected Material.

Dated: December 5, 2014

PROSKAUER ROSE LLP
Robert H. Horn
Jennifer L. Jones
Tracey L. Silver

By: 

Robert H. Horn

Attorneys for Defendants
Radiancy, Inc. and Photomedex, Inc.

Dated: December 5, 2014

KHORRAMI BOUCHER, LLP
Shawn Khorrami
Bevin Allen Pike
Brandon Brouillette

By: 

Brandon Brouillette

Attorneys for Plaintiff
April Cantley

ORDER

Having considered the foregoing Stipulation to Proposed Protective Order Regarding Confidential Information, and good cause having been shown, the Court hereby approves and orders entry of the Stipulated Proposed Protective Order Regarding Confidential Information.

IT IS SO ORDERED.

Dated: January 9, 2015

LORNA H. BRUMFIELD

Lorna H. Brumfield
Judge of the Superior Court

EXHIBIT A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____ [print or type full name], of

_____ [address],

declare under penalty of perjury that I have read in its entirety and understand the protective order that was issued by the Superior Court of the State of California, for the County of Kern, on [date] in the case of *April Cantley v. Radiancy, Inc.*, No. S-1500-CV-281510 LHB. I agree to comply with and to be bound by all the terms of the protective order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to the protective order to any person or entity except in strict compliance with the provisions of the protective order.

I further agree to submit to the jurisdiction of the Superior Court of the State of California, for the County of Kern, for the purpose of enforcing the terms of the protective order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of

_____ [print or type full address and telephone number] as my _____ [name of state] agent for service of process in connection with this action or any proceedings related to enforcement of the protective order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

PROOF OF SERVICE

I declare that: I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is 2049 Century Park East, Suite 3200, Los Angeles, California 90067-3206.

On January 8, 2015, I served the foregoing document described as:

STIPULATION TO ENTRY OF PROTECTIVE ORDER RE CONFIDENTIAL INFORMATION; [PROPOSED] ORDER THEREON

☒ by placing ☐ the original ☒ true copies thereof enclosed in a sealed envelope addressed as follows:

Shawn Khorrami
Bevin Allen Pike
Bahar Dejban
Khorrami Boucher, LLP
444 S. Flower Street, 33rd Floor
Los Angeles, CA 90071

☐ (By Fax) By transmitting a true and correct copy thereof via facsimile transmission.

☒ (By U.S. Mail) I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service and the fact that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business; on this date, the above-referenced correspondence was placed for deposit at Los Angeles, California and placed for collection and mailing following ordinary business practices.

☐ (By Electronic Mail) By transmitting true and correct copies thereof by electronic transmission

☐ (By Personal Service)

☐ By personally delivering such envelope to the addressee.

☐ By causing such envelope to be delivered by messenger to the office of the addressee.

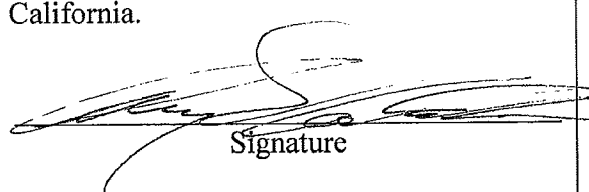
☐ (By Next-Day Delivery Service) By causing such envelope to be delivered to the office of the addressee by overnight delivery via FedEx or by other similar overnight delivery service.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 8, 2015, at Los Angeles, California.

Amy Richardson
Type or Print Name


Signature

PROOF OF SERVICE

I declare that: I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is 2049 Century Park East, Suite 3200, Los Angeles, California 90067-3206.

On January 21, 2015, I served the foregoing document described as:

STIPULATION TO ENTRY OF PROTECTIVE ORDER RE CONFIDENTIAL INFORMATION; ORDER THEREON

☒ by placing ☐ the original ☒ true copies thereof enclosed in a sealed envelope addressed as follows:

Shawn Khorrami
Bevin Allen Pike
Bahar Dejban
Khorrami Boucher, LLP
444 S. Flower Street, 33rd Floor
Los Angeles, CA 90071

☐ (By Fax) By transmitting a true and correct copy thereof via facsimile transmission.

☒ (By U.S. Mail) I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service and the fact that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business; on this date, the above-referenced correspondence was placed for deposit at Los Angeles, California and placed for collection and mailing following ordinary business practices.

☐ (By Electronic Mail) By transmitting true and correct copies thereof by electronic transmission

☐ (By Personal Service)

☐ By personally delivering such envelope to the addressee.

☐ By causing such envelope to be delivered by messenger to the office of the addressee.

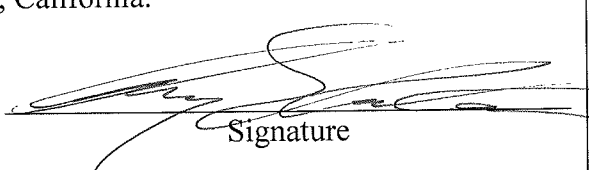
☐ (By Next-Day Delivery Service) By causing such envelope to be delivered to the office of the addressee by overnight delivery via FedEx or by other similar overnight delivery service.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 21, 2015, at Los Angeles, California.

Amy Richardson
Type or Print Name


Signature

ENDORSED
FILED
SUPERIOR COURT OF THE METROPOLITAN DIVISION
COUNTY OF KERN

FEB 23 2015

TERRY McNALLY, CLERK
Y _____ DEPUTY

1 SHAWN KHORRAMI, SBN 180411
skhorrami@kbadvocates.com
2 BEVIN ALLEN PIKE, SBN 221936
bpik@kbadvocates.com
3 **KHORRAMI BOUCHER, LLP**
444 S. Flower St., Thirty-Third Floor
4 Los Angeles, California 90071
Telephone: (213) 596-6000
5 Facsimile: (213) 569-6010

6 *Attorneys for Plaintiff APRIL CANTLEY,*
7 *Individually and on Behalf of All Others Similarly Situated.*

8 ROBERT H. HORN, SBN 134710
rhorn@proskauer.com
9 JENNIFER L. JONES, SBN 284624
jljones@proskauer.com
10 TRACEY L. SILVER, SBN 287745
tsilver@proskauer.com
11 **PROSKAUER ROSE LLP**
12 2049 Century Park East
Suite 3200
13 Los Angeles, CA 90067-3206
Telephone: (310) 284-4509
14 Facsimile: (310) 557-2193

15 *Attorneys for Defendants*
16 *Radiancy, Inc. and PhotoMedex, Inc.*

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF KERN**

19 APRIL CANTLEY, individually and on
20 behalf of all others similarly situated,

21 Plaintiff,

22 v.

23 RADIANCY, INC., a New York corporation;
24 PHOTOMEDEX, INC., a Nevada corporation;
and DOES 1 through 100, inclusive,

25 Defendants.
26
27
28

Case No. S-1500-CV-281510

CLASS ACTION

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

DATE: March 10, 2015
TIME: 8:15 a.m.
DEPT: 17

Complaint filed March 14, 2014
FAC Filed: May 13, 2014
Trial Date: None set

KHORRAMI BOUCHER, LLP
444 S. Flower Street, 33rd Floor
Los Angeles, CA 90071
Phone: (213) 596-6000
Fax: (213) 566-6010

BY FAX
CA Rule 2.304(a)



KHORRAMI BOUCHER, LLP
444 S. Flower Street, 33rd Floor
Los Angeles, CA 90071
Phone: (213) 596-6000
Fax: (213) 596-6010

SHAWN KHORRAMI, SBN 180411

skhorrami@kbadvocates.com

BEVIN ALLEN PIKE, SBN 221936

bpike@kbadvocates.com

KHORRAMI BOUCHER, LLP

444 S. Flower St., Thirty-Third Floor

Los Angeles, California 90071

Telephone: (213) 596-6000

Facsimile: (213) 569-6010

Attorneys for Plaintiff APRIL CANTLEY,

Individually and on Behalf of All Others Similarly Situated.

ROBERT H. HORN, SBN 134710

rhorn@proskauer.com

JENNIFER L. JONES, SBN 284624

jljones@proskauer.com

TRACEY L. SILVER, SBN 287745

tsilver@proskauer.com

PROSKAUER ROSE LLP

2049 Century Park East

Suite 3200

Los Angeles, CA 90067-3206

Telephone: (310) 284-4509

Facsimile: (310) 557-2193

Attorneys for Defendants

Radiancy, Inc. and PhotoMedex, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

APRIL CANTLEY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

RADIANCY, INC., a New York corporation;
PHOTOMEDEX, INC., a Nevada corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. S-1500-CV-281510

CLASS ACTION

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

DATE: March 10, 2015
TIME: 8:15 a.m.
DEPT: 17

Complaint filed March 14, 2014
FAC Filed: May 13, 2014
Trial Date: None set



TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to the Court's request, Plaintiff April Cantley, individually and on behalf of all others similarly situated ("Plaintiff") and Defendants Radiancy, Inc. and PhotoMedex, Inc. ("Defendants") submit the following Joint Case Management Conference Statement.

This is a putative class action for alleged false advertising, alleging Defendants misrepresented the efficacy and safety of the no!no! device (a hair removal product), as well as refund and guarantee policies. The parties have been actively involved in the discovery process in this matter in order for Plaintiff to proceed with her motion for class certification.

Plaintiff served Defendant with written discovery including Requests for Production of Documents, Special Interrogatories, Requests for Admission and Form Interrogatories. Defendants served their responses on January 9, 2015. The parties are currently engaged in the meet and confer process regarding some of the responses and believe that they will be able to resolve many of the issues encountered informally. Radiancy, Inc. has also served Plaintiff with written discovery including Requests for Production of Documents, Special Interrogatories, Requests for Admission, and Form Interrogatories. Plaintiff's responses are due March 3, 2015. The parties may need to meet and confer after receiving Plaintiff's responses. Upon resolution of these issues, the parties will proceed to depositions.

The parties propose the following schedule:

- Close of discovery: December 11, 2015
- Close of expert discovery: March 11, 2016
- Hearing on Class Certification: June 15, 2016
 - Class Certification Motion: April 13, 2016
 - Opposition: May 11, 2016



○ Reply: May 25, 2016

• [If the class is certified, notice must be sent by July 15, 2016, and return notice due by August 15, 2016.]

• Hearing on Motion for Summary Judgment: January 11, 2017

○ Motion for Summary Judgment Motion: September 20, 2016

○ Opposition: November 21, 2016

○ Reply: December 21, 2016

• Trial: March 13, 2017

As the parties are working to resolve any discovery disputes informally, they respectfully request the Case Management Conference be continued for a short period of sixty (60) days to enable them to resolve the disputes informally, or if required, schedule the appropriate hearings with the Court.

Dated: February 23, 2015

KHORRAMI BOUCHER, LLP

By: 

BEVIN ALLEN PIKE
Attorneys for Plaintiff,
APRIL CANTLEY

Dated: February 23, 2015

PROSKAUER ROSE LLP

By: _____

ROBERT H. HORN
JENNIFER L. JONES
TRACEY L. SILVER
Attorneys for Defendants,
RADIANCY, INC. & PHOTOMEDEX, INC.



○ Reply: May 25, 2016

- [If the class is certified, notice must be sent by July 15, 2016, and return notice due by August 15, 2016.]
- Hearing on Motion for Summary Judgment: January 11, 2017
 - Motion for Summary Judgment Motion: September 20, 2016
 - Opposition: November 21, 2016
 - Reply: December 21, 2016
- Trial: March 13, 2017

As the parties are working to resolve any discovery disputes informally, they respectfully request the Case Management Conference be continued for a short period of sixty (60) days to enable them to resolve the disputes informally, or if required, schedule the appropriate hearings with the Court.

Dated: February 23, 2015

KHORRAMI BOUCHER, LLP

By: _____
BEVIN ALLEN PIKE
Attorneys for Plaintiff,
APRIL CANTLEY

Dated: February 23, 2015

PROSKAUER ROSE LLP

By: _____
ROBERT H. HORN
JENNIFER L. JONES
TRACEY L. SILVER
Attorneys for Defendants,
RADIANCY, INC. & PHOTOMEDEX, INC.



PROOF OF SERVICE

I declare that: I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is 2049 Century Park East, Suite 3200, Los Angeles, California 90067-3206.

On February 23, 2015, I served the foregoing document described as:

JOINT CASE MANAGEMENT CONFERENCE STATEMENT

☒ by placing ☐ the original ☒ true copies thereof enclosed in a sealed envelope addressed as follows:

Shawn Khorrami
Bevin Allen Pike
Bahar Dejbani
Khorrami Boucher, LLP
444 S. Flower Street, 33rd Floor
Los Angeles, CA 90071

☐ (By Fax) By transmitting a true and correct copy thereof via facsimile transmission.

☒ (By U.S. Mail) I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service and the fact that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business; on this date, the above-referenced correspondence was placed for deposit at Los Angeles, California and placed for collection and mailing following ordinary business practices.

☐ (By Electronic Mail) By transmitting true and correct copies thereof by electronic transmission

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☐ By personally delivering such envelope to the addressee.

☐ By causing such envelope to be delivered by messenger to the office of the addressee.

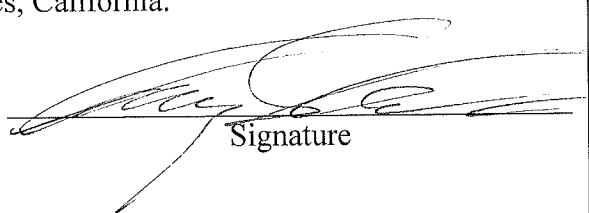
☐ (By Next-Day Delivery Service) By causing such envelope to be delivered to the office of the addressee by overnight delivery via FedEx or by other similar overnight delivery service.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 23, 2015, at Los Angeles, California.

Amy Richardson
Type or Print Name


Signature

FILED
SUPERIOR COURT, METROPOLITAN DIVISION
COUNTY OF KERN

APR 27 2015

TERRY McNALLY, CLERK
BY _____ DEPUTY

ENDORSED

SHAWN KHORRAMI, SBN 180411
skhorrami@kbadvocates.com
KHORRAMI BOUCHER, LLP
444 S. Flower St., Thirty-Third Floor
Los Angeles, California 90071
Telephone: (213) 596-6000
Facsimile: (213) 569-6010

*Attorneys for Plaintiff APRIL CANTLEY,
Individually and on Behalf of All Others Similarly Situated.*

JENNIFER L. JONES, SBN 284624
jljones@proskauer.com
TRACEY L. SILVER, SBN 287745
tsilver@proskauer.com

PROSKAUER ROSE LLP
2049 Century Park East
Suite 3200
Los Angeles, CA 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193

*Attorneys for Defendants
Radiancy, Inc. and PhotoMedex, Inc.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN**

APRIL CANTLEY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

RADIANCY, INC., a New York corporation;
PHOTOMEDEX, INC., a Nevada corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. S-1500-CV-281510

CLASS ACTION

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

DATE: May 12, 2015
TIME: 8:15 a.m.
DEPT: 17

Complaint filed March 14, 2014
FAC Filed: May 13, 2014
Trial Date: March 13, 2017

1 SHAWN KHORRAMI, SBN 180411

2 *skhorrami@kbadvocates.com*

3 **KHORRAMI BOUCHER, LLP**

4 444 S. Flower St., Thirty-Third Floor

5 Los Angeles, California 90071

6 Telephone: (213) 596-6000

7 Facsimile: (213) 569-6010

8 *Attorneys for Plaintiff APRIL CANTLEY,*

9 *Individually and on Behalf of All Others Similarly Situated.*

10 JENNIFER L. JONES, SBN 284624

11 *jljones@proskauer.com*

12 TRACEY L. SILVER, SBN 287745

13 *tsilver@proskauer.com*

14 **PROSKAUER ROSE LLP**

15 2049 Century Park East

16 Suite 3200

17 Los Angeles, CA 90067-3206

18 Telephone: (310) 557-2900

19 Facsimile: (310) 557-2193

20 *Attorneys for Defendants*

21 *Radiancy, Inc. and PhotoMedex, Inc.*

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

23 **COUNTY OF KERN**

24 APRIL CANTLEY, individually and on
25 behalf of all others similarly situated,

26 Plaintiff,

27 v.

28 RADIANCY, INC., a New York corporation;
PHOTOMEDEX, INC., a Nevada corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. S-1500-CV-281510

CLASS ACTION

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

DATE: May 12, 2015

TIME: 8:15 a.m.

DEPT: 17

Complaint filed March 14, 2014

FAC Filed: May 13, 2014

Trial Date: March 13, 2017

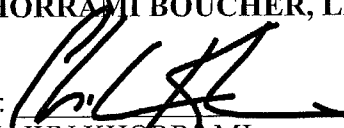
1 Pursuant to the Court's request, Plaintiff April Cantley, individually and on behalf of all
2 others similarly situated ("Plaintiff") and Defendants Radiancy, Inc. and PhotoMedex, Inc.
3 ("Defendants"), by and through their respective counsel, hereby submit the following Joint Case
4 Management Conference Statement in advance of the further Case Management Conference
5 scheduled for May 12, 2015.

6 Plaintiff and Defendants continue to engage in the discovery process. Since the last Joint
7 Case Management Conference Statement and Conference, Plaintiff responded on March 4, 2015
8 to Defendant Radiancy, Inc.'s Requests for Production of Documents, Special Interrogatories,
9 Requests for Admission, and Form Interrogatories. On April 16, 2015, the parties had a
10 telephonic meeting and conference regarding Plaintiff's responses to that written discovery, and
11 Plaintiff has agreed to supplement her responses. Defendants also responded in writing on
12 March 20, 2015 to Plaintiff's correspondence regarding the scope of Defendants' individual
13 discovery responses served on January 9, 2015.

14 As the parties continue to meet and confer regarding the scope of discovery and are
15 working to resolve any discovery disputes informally, they respectfully request the Case
16 Management Conference be continued for a period of ninety (90) days to enable them to resolve
17 the disputes informally, or if required, schedule the appropriate hearings with the Court.
18


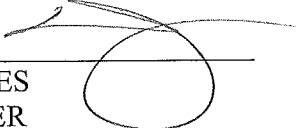
19 Dated: April 27, 2015

KHORRAMI BOUCHER, LLP

20
21 By: 
22 SHAWN KHORRAMI
23 Attorneys for Plaintiff,
24 APRIL CANTLEY

25 Dated: April 27, 2015

PROSKAUER ROSE LLP

26 By:  
27 JENNIFER L. JONES
28 TRACEY L. SILVER
Attorneys for Defendants,
RADIANCY, INC. & PHOTOMEDEX, INC.

PROOF OF SERVICE

I declare that: I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is 2049 Century Park East, Suite 3200, Los Angeles, California 90067-3206.

On April 27, 2015, I served the foregoing document described as:

JOINT CASE MANAGEMENT CONFERENCE STATEMENT

☒ by placing ☐ the original ☒ true copies thereof enclosed in a sealed envelope addressed as follows:

Shawn Khorrami
Bevin Allen Pike
Bahar Dejban
Khorrami Boucher, LLP
444 S. Flower Street, 33rd Floor
Los Angeles, CA 90071

☐ (By Fax) By transmitting a true and correct copy thereof via facsimile transmission.

☒ (By U.S. Mail) I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service and the fact that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business; on this date, the above-referenced correspondence was placed for deposit at Los Angeles, California and placed for collection and mailing following ordinary business practices.

☐ (By Electronic Mail) By transmitting true and correct copies thereof by electronic transmission

☐ (By Personal Service)

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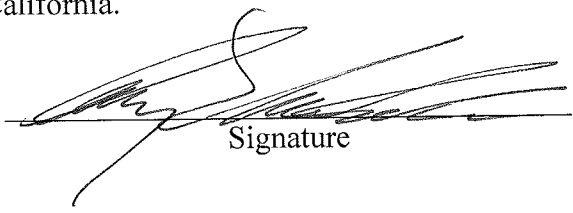
☐ (By Next-Day Delivery Service) By causing such envelope to be delivered to the office of the addressee by overnight delivery via FedEx or by other similar overnight delivery service.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 27, 2015, at Los Angeles, California.

Amy Richardson
Type or Print Name


Signature



Superior Court of California
County of Kern
Department 17

Date: May 12, 2015

Time:

8:15 AM - 12:00 PM

S1500CV281510

CANTLEY VS RADIANCY, INC.

Courtroom Staff

Honorable: Brumfield, Lorna H.

Clerk: Victoria Mullen

Court reporter:

Bailiff: Deputy Sheriff

Interpreter:

Language of:

PARTIES:

APRIL CANTLEY, Plaintiff, not present

BEVIN PIKE, Attorney, present

APRIL CANTLEY, ON BEHALF OF ALL OTHERS

BEVIN PIKE, Attorney, present

SIMILARLY SITUATED, Plaintiff, not present

PHOTOMEDEX, INC., A NEVADA CORPORATION,
Defendant, not present

MICHAEL WEISS, Attorney, present

RADIANCY, INC., A NEW YORK CORPORATION,
Defendant, not present

MICHAEL WEISS, Attorney, present

SHAWN KHORRAMI APPEARS TELEPHONICALLY BY COURTCALL FOR BEVIN A. PIKE ON BEHALF OF PLAINTIFFS.

JENNIFER JONES APPEARS TELEPHONICALLY BY COURTCALL FOR MICHAEL H. WEISS ON BEHALF OF ALL NAMED DEFENDANTS.

NATURE OF PROCEEDINGS: FURTHER CASE MANAGEMENT CONFERENCE

Hearing Start Time: 8:15 AM

The above entitled cause came on regularly on this date and time with parties and/or counsel appearing as reflected above.

Cause heard and submitted.

Cause continued to 08/11/2015 at 8:15 am in Department 17.

Parties are to file another joint case management conference statement.

FUTURE HEARINGS:

August 11, 2015 8:15 AM Further Case Management Conference, Brumfield, Lorna H., Department 17

MINUTE ORDER FINALIZED BY: VICTORIA MULLEN

ON: MAY 12, 2015

MINUTE ORDER

Page 1 of 1

CANTLEY VS RADIANCY, INC.

S1500CV281510

FILED
7/24/2015 9:43:27 AM
Kern County Superior Court
Terry McNally
By Elizabeth Garcia, Deputy

Shawn Khorrami (SBN 180411)
KHORRAMI, LLP
444 S. Flower Street, 33rd Floor
Los Angeles, California 90071
Telephone: (213) 596-6000
Facsimile: (213) 596-6010
skhorrami@kbadvocates.com

Mark A. Ozzello (SBN 116595)
Jeffrey K. Compton (SBN 142969)
**MARKUN ZUSMAN FRENIERE
& COMPTON LLP**
17383 Sunset Boulevard, Suite A-380
Pacific Palisades, California 90272
Telephone: (310) 454-5900
Facsimile: (310) 454-5970
mozzello@mzclaw.com
jcompton@mzclaw.com

*Attorneys for Plaintiff April Cantley,
Individually and on Behalf of All
Others Similarly Situated*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

APRIL CANTLEY, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

RADIANCY, INC., a New York corporation;
PHOTOMEDEX, INC., a Nevada corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. S-1500-CV-281510 LHB
Hon. Lorna H. Brumfield, Department 17

NOTICE OF ASSOCIATION OF COUNSEL

Action Filed: May 13, 2014
Trial Date: None

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

**PLEASE TAKE NOTICE THAT KHORRAMI, LLP hereby associates in as co-
counsel of record for Plaintiff, the law firm of Markun Zusman Freniere & Compton LLP,**

1 contact information is as follows:

2 Mark A. Ozzello
mozzello@mzclaw.com
3 Jeffrey K. Compton
jcompton@mzclaw.com
4 MARKUN ZUSMAN FRENIERE & COMPTON LLP
17383 Sunset Boulevard, Suite A-380
5 Pacific Palisades, California 90272
Telephone: (310) 454-5900
6 Facsimile: (310) 454-5970

7 All correspondence, pleadings, notices and other documents regarding this action
8 should now be sent to all counsel of record.

10 Respectfully submitted,

11 KHORRAMI, LLP

13 Date: 07/23/15

By: 

14 Shawn Khorrami, Esq.
15 *Attorneys for Plaintiff April Cantley*

17 MARKUN ZUSMAN FRENIERE & COMPTON LLP

19 Date: 7-22-15

By: 

20 Mark A. Ozzello, Esq.
21 Jeffrey K. Compton, Esq.
22 *Co-Counsel and Attorneys for Plaintiff April Cantley*

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 515 S. Flower St, 36th Floor, Los Angeles, CA 90071.

On **July 24, 2015**, I served the document described as:

1. Notice of Association of Counsel

on the interested parties in this action by sending a true copy to interested parties as stated on the attached service list:

PROSKAUER ROSE LLP

Michael H. Weiss (SBN 118135)

Susan L. Gutierrez (SBN 273980)

Tracy L. Siver (SBN 287745)

2049 Century Park East, 32nd Floor

Los Angeles, CA 90067-3206

Telephone: (310) 557-2900

For Defendant

RADIANCY, INC, et al

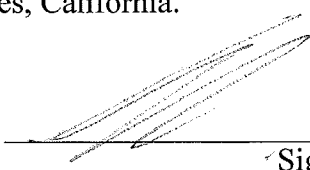
☒ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed July 24, 2015 at Los Angeles, California.

Michael Martinez

Type or Print Name



Signature

AT-180/EJ-185

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Gary K. Daglian, Esq. (SBN 232717) Daglian Law Group, APLC 701 N. Brand Blvd., Suite 610 Glendale, CA 91203 ATTORNEY FOR LIEN CLAIMANT: <u>Daglian Law Group, APLC</u>	TELEPHONE NO.: T: (818)545-7700 F: (818)545-3700	FOR COURT USE ONLY
NAME OF COURT: Kern County Superior Court STREET ADDRESS: 1215 Truxtun Ave, 3rd Floor MAILING ADDRESS: 1215 Truxtun Ave, 3rd Floor CITY AND ZIP CODE: Bakersfield, CA 93301 BRANCH NAME: Metropolitan Division		
PLAINTIFF: April Cantley, et al. DEFENDANT: Radiancy, Inc., et al.		
NOTICE OF LIEN (Attachment—Enforcement of Judgment)		CASE NUMBER: S-1500-CV-281510

ALL PARTIES IN THIS ACTION ARE NOTIFIED THAT

1. A lien is created by this notice under
 - a. ☐ Article 3 (commencing with section 491.410) of Chapter 11 of Title 6.5 of Part 2 of the Code of Civil Procedure.
 - b. ☒ Article 5 (commencing with section 708.410) of Chapter 6 of Title 9 of Part 2 of the Code of Civil Procedure.
2. The lien is based on a
 - a. ☐ right to attach order and an order permitting the creation of a lien (copies attached).
 - b. ☒ money judgment.
3. The right to attach order or the money judgment is entered in the following action:
 - a. Title of court (specify): Los Angeles Superior Court (Burbank Courthouse)
 - b. Name of case (specify): Daglian Law Group, APLC v. Khorrami, et al.
 - c. Number of case (specify): EC063628
 - d. ☒ Date of entry of judgment (specify): June 11, 2015
 - e. ☐ Dates of renewal of judgment (specify):
4. The name and address of the judgment creditor or person who obtained the right to attach order are (specify):
 Daglian Law Group, APLC 701 N. Brand Blvd., Suite 610 Glendale, CA 91203
5. The name and last known address of the judgment debtor or person whose property is subject to the right to attach order are (specify): Khorrami, LLP ; Khorrami Boucher, LLP
 515 South Flower Street, 36th Floor, Los Angeles, CA 90071
6. The amount required to satisfy the judgment creditor's money judgment or to secure the amount to be secured by the attachment at the time this notice of lien is filed is \$214,819.89
7. The lien created by this notice attaches to any cause of action of the person named in item 5 that is the subject of this action or proceeding and to that person's rights to money or property under any judgment subsequently procured in this action or proceeding.
8. No compromise, dismissal, settlement, or satisfaction of this action or proceeding or any of the rights of the person named in item 5 to money or property under any judgment procured in this action or proceeding may be entered into by or on behalf of that person, and that person may not enforce any rights to money or property under any judgment procured in this action or proceeding by a writ or otherwise, unless one of the following requirements is satisfied:
 - a. the prior approval by order of the court in this action or proceeding has been obtained;
 - b. the written consent of the person named in item 4 has been obtained or that person has released the lien; or
 - c. the money judgment of the person named in item 4 has been satisfied.

NOTICE The person named in item 5 may claim an exemption for all or any portion of the money or property within 30 days after receiving notice of the creation of the lien. The exemption is waived if it is not claimed in time.

Date: July 29, 2015

Gary K. Daglian, Esq.
 (TYPE OR PRINT NAME)

(SIGNATURE OF LIEN CLAIMANT OR ATTORNEY)

EJ-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, address, telephone number, and State Bar number, and

Recording requested by and return to:

Gary K. Daglian, Esq. (SBN 232717)
 Daglian Law Group, APLC
 701 N. Brand Blvd., Suite 610
 Glendale, California 91203
 (818)545-7700

☒ ATTORNEY FOR ☒ JUDGMENT CREDITOR ☐ ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles

STREET ADDRESS: 300 East Olive Avenue

MAILING ADDRESS: 300 East Olive Avenue

CITY AND ZIP CODE: Burbank, 91502

BRANCH NAME: Burbank Courthouse

FOR RECORDER'S USE ONLY

PLAINTIFF: Daglian Law Group, APLC

DEFENDANT: Shawn F. Khorrami, et al.

CASE NUMBER:

EC063628

ABSTRACT OF JUDGMENT—CIVIL
AND SMALL CLAIMS☐ Amended

FOR COURT USE ONLY

1. The ☒ judgment creditor ☐ assignee of record applies for an abstract of judgment and represents the following:

a. Judgment debtor's

Name and last known address

Khorrami, LLP
 444 S. Figueroa St. 33rd Floor
 Los Angeles, CA 90071

b. Driver's license no. [last 4 digits] and state:

c. Social security no. [last 4 digits]:

☒ Unknown☒ Unknown

d. Summons or notice of entry of sister-state judgment was personally served or mailed to (name and address): Khorrami LLP c/o Shawn F. Khorrami
 4255 Oakwood Avenue, La Canada Flintridge, CA 91011

2. ☒ Information on additional judgment debtors is shown on page 2.

4. ☐ Information on additional judgment creditors is shown on page 2.

3. Judgment creditor (name and address):

Daglian Law Group, APLC

701 N. Brand Blvd., Suite 610 Glendale, CA 91203

5. ☐ Original abstract recorded in this county:

a. Date:

b. Instrument No.:

Date: June 26, 2015

Gary K. Daglian

(TYPE OR PRINT NAME)

(SIGNATURE OF APPLICANT OR ATTORNEY)

6. Total amount of judgment as entered or last renewed:
 \$214,819.89

7. All judgment creditors and debtors are listed on this abstract.

8. a. Judgment entered on (date): June 11, 2015

b. Renewal entered on (date):

9. ☐ This judgment is an installment judgment.

10. ☐ An ☐ execution lien ☐ attachment lien is endorsed on the judgment as follows:

a. Amount: \$

b. In favor of (name and address):

11. A stay of enforcement has

a. ☒ not been ordered by the court.b. ☐ been ordered by the court effective until (date):

12. a. ☒ I certify that this is a true and correct abstract of the judgment entered in this action.

b. ☐ A certified copy of the judgment is attached.

This abstract issued on (date):

JUN 29 2015

SHERRI R. CARTER

Clerk, by

Deputy

ABSTRACT OF JUDGMENT—CIVIL
AND SMALL CLAIMS

PLAINTIFF: Daglian Law Group, APC

CASE NUMBER:

EC063628

DEFENDANT: Khorrami, et al.

NAMES AND ADDRESSES OF ADDITIONAL JUDGMENT CREDITORS:

13. Judgment creditor (name and address):

14. Judgment creditor (name and address):

15. ☐ Continued on Attachment 15.

INFORMATION ON ADDITIONAL JUDGMENT DEBTORS:

16. Name and last known address

Khorrami Boucher, LLP
 444 S. Flower Street, 33rd Floor
 Los Angeles, CA 90071

Driver's license no. [last 4 digits]
and state:☒ Unknown

Social security no. [last 4 digits]:

☒ Unknown

Summons was personally served at or mailed to (address):

Khorrami Boucher, LLP c/o Shawn F. Khorrami
 4255 Oakwood Avenue
 La Canada Flintridge, CA 91011

17. Name and last known address

Driver's license no. [last 4 digits]
and state:☐ Unknown

Social security no. [last 4 digits]:

☐ Unknown

Summons was personally served at or mailed to (address):

18. Name and last known address

Shawn F. Khorrami
 4255 Oakwood Avenue
 La Canada Flintridge, CA 91011

Driver's license no. [last 4 digits]
and state:☒ Unknown

Social security no. [last 4 digits]:

☒ Unknown

Summons was personally served at or mailed to (address):

4255 Oakwood Avenue
 La Canada Flintridge, CA 91011

19. Name and last known address

Driver's license no. [last 4 digits]
and state:☐ Unknown

Social security no. [last 4 digits]:

☐ Unknown

Summons was personally served at or mailed to (address):

20. ☐ Continued on Attachment 20.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I am over the age of eighteen years and not a party to the within entitled action; my business address is 701 N. Brand Blvd., Suite 610, Glendale, California 91203.

On July 29, 2015, I served the following document(s) described as **NOTICE OF LIEN & ABSTRACT OF JUDGMENT** on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

SEE ATTACHED LIST

☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Glendale, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY OVERNIGHT DELIVERY:** I caused such envelope or package to be delivered on the same day to an authorized courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier.

☐ **BY FACSIMILE:** I caused said document(s) to be transmitted by facsimile pursuant to Rule 2.306 of the California *Rules of Court*. The telephone number of the sending facsimile machine was (818) 545-3700. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error. Pursuant to Rule 2.306, a copy of that report is attached to this declaration.

☐ **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the office of the addressee(s).

☐ **BY ELECTRONIC DELIVERY:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the person(s) at the electronic service addresses as follows:
SKhorrami@kbadvocates.com.

☒ **STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ **FEDERAL:** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 29, 2015, at Glendale, California.


Lilit Davtyan

SERVICE LIST

- 1
- 2 Shawn F. Khorrami, Esq.
Khorrami, LLP
- 3 515 S. Flower Street, 36th Floor
Los Angeles, CA 90071
- 4
- 5 a/k/a
Shahin F. Khorrami
- 6 515 S. Flower Street, 36th Floor
Los Angeles, CA 90071
- 7 Khorrami, LLP
- 8 515 S. Flower Street, 36th Floor
Los Angeles, CA 90071
- 9 Khorrami Boucher, LLP
- 10 515 S. Flower Street, 36th Floor
Los Angeles, CA 90071
- 11 Mark Ozzello
- 12 Markun Zusman Freniere & Compton, LLP
- 13 17383 Sunset Blvd., Suite A-380
Pacific Palisades, CA 90272
- 14 Jennifer L. Jones
- 15 Proskauer Rose LLP
- 16 2049 Century Park East
Los Angeles, CA 90067-3206
- 17
- 18
- 19
- 20
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- 24
- 25
- 26
- 27
- 28

 **Daglian Law Group**
A PROFESSIONAL CORP CORPORATION

SHAWN KHORRAMI, SBN 180411

skhorrami@kbadvocates.com

KHORRAMI BOUCHER, LLP

444 S. Flower St., Thirty-Third Floor

Los Angeles, California 90071

Telephone: (213) 596-6000

Facsimile: (213) 569-6010

MARK A. OZZELLO, SBN 116595

mozzello@mzclaw.com

JEFFREY K. COMPTON (SBN 142969)

jcompton@mzclaw.com

**MARKUN ZUSMAN FRENIERE
& COMPTON**

17383 Sunset Boulevard, Suite A-380

Pacific Palisades, California 90272

Telephone: (310) 454-5900

Facsimile: (310) 454-5970

Attorneys for Plaintiff APRIL CANTLEY,

Individually and on Behalf of All Others Similarly Situated.

JENNIFER L. JONES, SBN 284624

jljones@proskauer.com

TRACEY L. SILVER, SBN 287745

tsilver@proskauer.com

PROSKAUER ROSE LLP

2049 Century Park East

Suite 3200

Los Angeles, CA 90067-3206

Telephone: (310) 557-2900

Facsimile: (310) 557-2193

Attorneys for Defendants

Radiancy, Inc. and PhotoMedex, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

APRIL CANTLEY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

RADIANCY, INC., a New York corporation;
PHOTOMEDEX, INC., a Nevada corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. S-1500-CV-281510

CLASS ACTION

**CASE MANAGEMENT CONFERENCE
STATEMENT OF PLAINTIFF**

DATE: August 11, 2015

TIME: 8:15 a.m.

DEPT: 17

Complaint filed March 14, 2014

FAC Filed: May 13, 2014

Trial Date: March 13, 2017

On July 24, 2015, counsel for Plaintiff associated the firm of Markun Zusman Freniere Compton, LLP [MZFC] . Associated counsel has made its best efforts to comply with the Court's directive regarding the submission of a Joint Statement. Plaintiff sought to elicit input from Defendants for this CMC Statement, and although conversations with defense counsel did take place there was insufficient time to submit a Joint Report. As such, Plaintiff, and by and through her respective counsel, hereby submits this Case Management Conference Statement in advance of the further Case Management Conference scheduled for August 11, 2015.

1. PARTIES AND COUNSEL:

RECENT ASSOCIATION OF COUNSEL

SHAWN KHORRAMI, SBN 180411
skhorrami@kbadvocates.com
KHORRAMI BOUCHER, LLP
444 S. Flower St., Thirty-Third Floor
Los Angeles, California 90071
Telephone: (213) 596-6000
Facsimile: (213) 569-6010

MARK A. OZZELLO, SBN 116595
mozzello@mzclaw.com
JEFFREY K. COMPTON (SBN 142969)
jcompton@mzclaw.com

**MARKUN ZUSMAN FRENIERE
& COMPTON, LLP**
17383 Sunset Boulevard, Suite A-380
Pacific Palisades, California 90272
Telephone: (310) 454-5900
Facsimile: (310) 454-5970
*Attorneys for Plaintiff APRIL CANTLEY,
Individually and on Behalf of All Others Similarly Situated.*

JENNIFER L. JONES, SBN 284624
jljones@proskauer.com
TRACEY L. SILVER, SBN 287745
tsilver@proskauer.com

PROSKAUER ROSE LLP
2049 Century Park East
Suite 3200
Los Angeles, CA 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193
*Attorneys for Defendants
Radiancy, Inc. and PhotoMedex, Inc.*

Associated counsel has been on this file for 4 days. The entirety of the file has not been

transmitted to MZFC however counsel will be fully knowledgeable by the time of the Status Conference.

2. DISCOVERY

It is counsel's understanding, after a brief conference with counsel for Defendants, Jennifer L. Jones, Esq., that the parties continue to address discovery disputes. As of May, 2015, Plaintiff had agreed to provide supplemental responses to various written discovery, and MZFC will further meet and confer with counsel and resolve the discovery issues forthwith.

3. CLASS CERTIFICATION MOTION

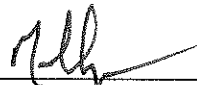
The parties remain on schedule for the filing of the Motion for Certification.

4. FURTHER CMC

Plaintiff requests a further CMC in late September or early October so that the parties can report as to the progress of written discovery and depositions.

Dated: July 24, 2015

**MARKUN ZUSMAN FRENIERE
COMPTON, LLP**

By: 
Mark A. Ozzello
Jeffrey K. Compton
Attorneys for Plaintiff,
APRIL CANTLEY

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 17383 West Sunset Boulevard, Suite A380, Pacific Palisades, California 90272.

On, July 27, 2015, I served the documents described as: **CASE MANAGEMENT CONFERENCE STATEMENT OF PLAINTIFF** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

PROSKAUER ROSE LLP

Michael H. Weiss, Esq.
Susan L. Gutierrez, Esq.
Tracy L. Siver, Esq.
2049 Century Park East, 32nd Floor
Los Angeles, California 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193
mweiss@proskauer.com
sgutierrez@proskauer.com
tsiver@proskauer.com

KHORRAMI BOUCHER, LLP

Shawn Khorrami, Esq.
444 S. Flower Street, Third-third Floor
Los Angeles, California 90071
Telephone: (213) 596-6000
Facsimile: (213) 569-6010
skhorrami@kbadvocates.com

☒ **(BY MAIL):** as follows: I deposited the envelopes for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, the sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business, with postage thereon fully prepaid at Los Angeles, California.

☐ **(BY OVERNIGHT DELIVERY):** as follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this July 27, 2015 at Los Angeles, California.

Sheila Benton
Type or Print Name

Signature

JENNIFER L. JONES, SBN 284624
jljones@proskauer.com

TRACEY L. SILVER, SBN 287745
tsilver@proskauer.com

PROSKAUER ROSE LLP

2049 Century Park East
Suite 3200
Los Angeles, CA 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193

*Attorneys for Defendants
Radiancy, Inc. and PhotoMedex, Inc.*

ENDORSED

FILED
SUPERIOR COURT, METROPOLITAN DIVISION
COUNTY OF KERN

JUL 27 2015

TERRY McNALLY, CLERK
BY _____ DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

APRIL CANTLEY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

RADIANCY, INC., a New York corporation;
PHOTOMEDEX, INC., a Nevada corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. S-1500-CV-281510

CLASS ACTION

**DEFENDANTS' SEPARATE CASE
MANAGEMENT CONFERENCE
STATEMENT**

DATE: August 11, 2015
TIME: 8:15 a.m.
DEPT: 17

Complaint filed March 14, 2014
FAC Filed: May 13, 2014
Trial Date: March 13, 2017

JENNIFER L. JONES, SBN 284624

jljones@proskauer.com

TRACEY L. SILVER, SBN 287745

tsilver@proskauer.com

PROSKAUER ROSE LLP

2049 Century Park East

Suite 3200

Los Angeles, CA 90067-3206

Telephone: (310) 557-2900

Facsimile: (310) 557-2193

Attorneys for Defendants

Radiancy, Inc. and PhotoMedex, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

APRIL CANTLEY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

RADIANCY, INC., a New York corporation;
PHOTOMEDEX, INC., a Nevada corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. S-1500-CV-281510

CLASS ACTION

**DEFENDANTS' SEPARATE CASE
MANAGEMENT CONFERENCE
STATEMENT**

DATE: August 11, 2015

TIME: 8:15 a.m.

DEPT: 17

Complaint filed March 14, 2014

FAC Filed: May 13, 2014

Trial Date: March 13, 2017

1 Pursuant to the Court's request, Defendants Radiancy, Inc. and PhotoMedex, Inc.
2 ("Defendants"), by and through their counsel, hereby submit the following separate Case
3 Management Conference Statement in advance of the further Case Management Conference
4 scheduled for August 11, 2015.

5 Defendants are unable to file a joint statement due to Plaintiff's counsel failure to
6 cooperate with Defendants' counsel in a timely fashion regarding the preparation of a joint
7 statement. On July 20, 2015, Defendants' counsel reached out to Plaintiff's counsel to
8 coordinate preparation of the joint statement. *See* Exhibit 1 (7/20/15 at 2:22 pm). Plaintiff's
9 counsel requested that Defendants' counsel prepare the joint statement and provide it to
10 Plaintiff's counsel for him to fill in his portion. *See id.* (7/21/15 at 12:08 pm). Defendants'
11 counsel objected that she had prepared the last statement and had arranged for filing of the joint
12 statement before that and requested that Plaintiff's counsel take the laboring oar with this
13 statement. (7/21/15 at 12:21 pm). Plaintiff's counsel never responded to that email. *See id.*
14 Late in the afternoon of July 24, 2015, Mark Ozzello informed Defendants' counsel that he
15 would be substituting in for Plaintiff's counsel in this action. Defendants' counsel provided Mr.
16 Ozzello with a brief summary of the status of the matter with copies of the two most recent case
17 management statements. *See* Exhibit 2 (7/24/15 at 3:09 p.m.) (without attachments). Mr.
18 Ozzello informed Defendants' counsel that he would prepare a draft joint statement template and
19 forward it to Defendants' counsel over the weekend or first thing Monday morning. Defendants'
20 counsel did not hear from Plaintiff's counsel until 10:52 a.m. on Monday. *See* Exhibit 2 (without
21 attachments). Defendants' counsel did not receive the draft joint statement until 10:56 a.m. on
22 Monday. *See* Exhibit 3 (7/24/15 at 10:56 a.m.). Upon review, Defendants' counsel could not
23 agree to statements made in the proposed draft, and due to counsel's obligation to depart early
24 for business travel (which Plaintiff's counsel had been apprised of a week prior (*see* Exhibit 1
25 (7/20/15 at 2:22 pm))), Defendants were compelled to file their own statement. *See* Exhibit 3
(7/27/15 at 11:07).

26 With respect to the status of this matter, after the exchange of initial discovery and
27 communications regarding discovery disputes as detailed in the prior joint statements submitted
28

1 to the Court, Defendants' counsel did not hear further from Plaintiff's counsel regarding
2 discovery. As the parties advised in the April 27, 2015 joint case management conference
3 statement, Plaintiff had agreed to supplement her responses to discovery served by Defendants,
4 but Plaintiff's counsel has not responded to Defendants' most recent inquiries regarding
5 supplementation of those responses (*see* Exhibit 1); Plaintiff's counsel has previously agreed to
6 extend the deadline for Defendants' counsel to file a motion to compel regarding those
7 responses.

8 Dated: July 27, 2015

PROSKAUER ROSE LLP

10 By: *J. Jones / T.S.I.*
11 JENNIFER L. JONES
12 TRACEY L. SILVER
13 Attorneys for Defendants,
14 RADIANCY, INC. & PHOTOMEDEX, INC.
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EXHIBIT 1

Silver, Tracey L.

From: Jones, Jennifer L.
Sent: Friday, July 24, 2015 1:02 PM
To: 'Shawn Khorrami'
Cc: Silver, Tracey L.
Subject: RE: Cantley v. Radiancy

Mr. Khorrami:

It is now Friday, and I have not received a response since my Tuesday email below, nor have I received the template for the joint CMC statement. As I informed you on Monday 7/20, I have to travel for business on Monday 7/27. If I do not receive your template by 8am Monday for me to fill in my portion, I will be forced to file my own statement. Please advise whether you will provide it by that time.

Please also answer my question regarding Plaintiff's supplemental discovery responses.

Thanks.

Jennifer L. Jones
Attorney at Law

Proskauer
2049 Century Park East
Suite 3200
Los Angeles, CA 90067-3206
d 310.284.4509
f 310.557.2193
jljones@proskauer.com

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From: Jones, Jennifer L.
Sent: Tuesday, July 21, 2015 12:21 PM
To: 'Shawn Khorrami'
Cc: Silver, Tracey L.
Subject: RE: Cantley v. Radiancy

Mr. Khorrami:

I drafted and handled submission of the last CMC statement, and I had to make significant revisions to the prior CMC statement (which I also submitted to Court because Bevin said she could not at the last minute). If you want to write separate statements that is fine, but you should draft the template for me to fill in my paragraph and then you should handle submission to the Court. Please confirm you will provide the template by Thursday. Please also advise regarding the status of the supplemental discovery responses I inquired about.

Thanks.

Jennifer L. Jones
Attorney at Law

Proskauer
2049 Century Park East
Suite 3200
Los Angeles, CA 90067-3206
d 310.284.4509
f 310.557.2193
jljones@proskauer.com

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From: Shawn Khorrami [<mailto:SKhorrami@kbadvocates.com>]
Sent: Tuesday, July 21, 2015 12:08 PM
To: Jones, Jennifer L.
Cc: Silver, Tracey L.
Subject: Re: Cantley v. Radiancy

Jennifer, I would appreciate it if you draft your portion and I'll fill in mine.

On Jul 20, 2015, at 2:22 PM, Jones, Jennifer L. <jljones@proskauer.com> wrote:

Mr. Khorrami:

As you know, we have a joint submission due to the Court next Monday, 7/27. I am scheduled to be out of the office for business travel that day, and would appreciate receiving your proposed submission to the Court by Thursday of this week. Please confirm that you expect to be in a position to do that.

Please also let me know the status of Plaintiff's supplemental discovery responses.

Thank you.

Jennifer L. Jones
Attorney at Law

Proskauer
2049 Century Park East
Suite 3200
Los Angeles, CA 90067-3206
d 310.284.4509
f 310.557.2193
jljones@proskauer.com

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EXHIBIT 2

Silver, Tracey L.

From: Mark Ozzello <mozzello@mzclaw.com>
Sent: Monday, July 27, 2015 10:52 AM
To: Jones, Jennifer L.
Cc: Silver, Tracey L.; skhorrarni@kbadvocates.com; Sheila Benton
Subject: RE: Cantley

Jennifer-I sent it to you on Friday at 4:57-we will send it again as I just saw this

Mark A. Ozzello
Markun Zusman Freniere & Compton LLP
17383 Sunset Boulevard, Suite A-380
Pacific Palisades, CA 90272
Telephone: (310) 454-5900
Facsimile: (310) 454-5970
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Thank you.

From: Jones, Jennifer L. [<mailto:jljones@proskauer.com>]
Sent: Monday, July 27, 2015 9:54 AM
To: Mark Ozzello
Cc: Silver, Tracey L.; skhorrarni@kbadvocates.com
Subject: FW: Cantley

Mark,

When we spoke for the second time on Friday afternoon and I provided you the attached previous case management statements, you said that you would send me a draft joint statement over the weekend or first thing this morning. It's almost 10am and I haven't heard from you. As I've advised multiple times, I have to leave early today for business travel to Montana. If I don't receive the draft statement in the next 20 minutes, defendants will be forced to file a separate statement.

Please advise asap.

Thanks,

Jennifer L. Jones
Attorney at Law

Proskauer
2049 Century Park East
Suite 3200
Los Angeles, CA 90067-3206
d 310.284.4509
f 310.557.2193
jljones@proskauer.com

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greenspaces
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From: Jones, Jennifer L.
Sent: Friday, July 24, 2015 3:09 PM
To: mozzello@mzclaw.com
Cc: Silver, Tracey L.
Subject: Cantley

Mark,

As discussed.

Jennifer L. Jones
Attorney at Law

Proskauer
2049 Century Park East
Suite 3200
Los Angeles, CA 90067-3206
d 310.284.4509
f 310.557.2193
jljones@proskauer.com

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sender immediately.

EXHIBIT 3

Silver, Tracey L.

From: Jones, Jennifer L.
Sent: Monday, July 27, 2015 11:07 AM
To: Sheila Benton
Cc: Mark Ozzello; Silver, Tracey L.
Subject: RE: Cantley

Mark,

Upon a quick review of this statement, we will not be in a position to sign on to it. First, the events that you describe having happened since the last CMC happened *prior* to it. We have not met and conferred since the last conference. I have not heard from Mr. Khorrami in that entire time period, except for one email responding to an email from me about this joint CMC statement (which I have already forwarded to you). You are also setting forth positions that we have not had time to consider, and will not have time to consider before I have to leave for the airport and finalize a submission to the Court. Unfortunately, due to Plaintiff's counsel's failure to cooperate and provide defense counsel with a proposed joint statement in a timely fashion, defendants will be forced to file our own statement.

Please cc Tracey Silver on all correspondence going forward.

Sincerely,

Jennie

Jennifer L. Jones
Attorney at Law

Proskauer
2049 Century Park East
Suite 3200
Los Angeles, CA 90067-3206
d 310.284.4509
f 310.557.2193
jljones@proskauer.com

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greenspaces
Please consider the environment before printing this email.

From: Sheila Benton [<mailto:Sheila.Benton@ozzellolaw.com>]
Sent: Monday, July 27, 2015 10:56 AM
To: Jones, Jennifer L.
Cc: Mark Ozzello
Subject: Cantley

PROOF OF SERVICE

I declare that: I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is 2049 Century Park East, Suite 3200, Los Angeles, California 90067-3206.

On July 27, 2015, I served the foregoing document described as:

DEFENDANTS' SEPARATE CASE MANAGEMENT CONFERENCE STATEMENT

☒ by placing ☐ the original ☒ true copies thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

☐ (By Fax) By transmitting a true and correct copy thereof via facsimile transmission.

☒ (By U.S. Mail) I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service and the fact that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business; on this date, the above-referenced correspondence was placed for deposit at Los Angeles, California and placed for collection and mailing following ordinary business practices.

☐ (By Electronic Mail) By transmitting true and correct copies thereof by electronic transmission

☐ (By Personal Service)

☐ By personally delivering such envelope to the addressee.

☐ By causing such envelope to be delivered by messenger to the office of the addressee.

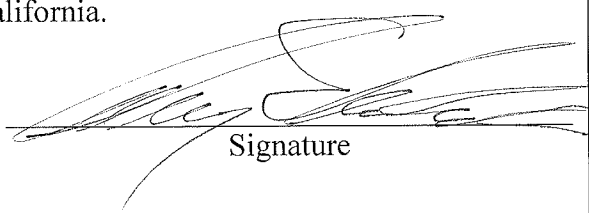
☐ (By Next-Day Delivery Service) By causing such envelope to be delivered to the office of the addressee by overnight delivery via FedEx or by other similar overnight delivery service.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 27, 2015, at Los Angeles, California.

Amy Richardson
Type or Print Name


Signature

SERVICE LIST

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Shawn Khorrami
Khorrami Boucher, LLP
444 S. Flower Street, 33rd Floor
Los Angeles, CA 90071

Mark A. Ozello
Jeffrey K. Compton
Markun Zusman Freniere & Compton
17383 Sunset Blvd., Suite A-380
Pacific Palisades, CA 90272



Superior Court of California
County of Kern
Bakersfield Department 17

Hearing Date: August 11, 2015

Time:
CANTLEY VS RADIANCY, INC.

8:15 AM - 12:00 PM

S1500CV281510

Honorable: BRUMFIELD, LORNA H.

Clerk: Linda K. Hall

Court Reporter: None (FTR)

Bailiff: Deputy Sheriff

Interpreter:

Language Of:

PARTIES:

APRIL CANTLEY, Plaintiff, not present	BEVIN PIKE, Attorney, not present
APRIL CANTLEY, Plaintiff, not present	SHAHIN KHORRAMI, Attorney, not present
APRIL CANTLEY, ON BEHALF OF ALL OTHERS	BEVIN PIKE, Attorney, not present
SIMILARLY SITUATED, Plaintiff, not present	
PHOTOMEDEX, INC., A NEVADA CORPORATION,	MICHAEL WEISS, Attorney, not present
Defendant, not present	
RADIANCY, INC., A NEW YORK CORPORATION,	MICHAEL WEISS, Attorney, not present
Defendant, not present	

court call

NATURE OF PROCEEDINGS: FURTHER CASE MANAGEMENT CONFERENCE

Hearing Start Time: 8:22 AM

The above entitled cause came on regularly on this date and time with parties and/or counsel appearing as reflected above.

- Counsel Jennifer Jones appeared via court call on behalf of Defendants.

The Court makes the following findings and Orders:

Further Case Management Conference set for 10/13/2015, at 8:15 a.m., in Department 17.

Counsel to file updated case management conference statements and/or joint letter 15 days prior to next court date regarding status of case and CMO.

Further noticed waived.

MINUTE ORDER

Page 1 of 2

CANTLEY VS RADIANCY, INC.

S1500CV281510

FUTURE HEARINGS:

October 13, 2015 8:15 AM Further Case Management Conference
Brumfield, Lorna H.
Bakersfield Department 17
Sheriff, Deputy

MINUTE ORDER FINALIZED BY: LINDA HALL

ON: 8/11/2015

MINUTE ORDER

Page 2 of 2



Superior Court of California
County of Kern
Bakersfield Department 17

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Time:
CANTLEY VS RADIANCY, INC.

8:15 AM - 12:00 PM

S1500CV281510

Honorable: BRUMFIELD, LORNA H.

Clerk: Linda K. Hall

Court Reporter: None (FTR)

Bailiff: Deputy Sheriff

Interpreter: Language Of:

PARTIES:

APRIL CANTLEY, Plaintiff, not present	BEVIN PIKE, Attorney, not present
APRIL CANTLEY, Plaintiff, not present	SHAHIN KHORRAMI, Attorney, not present
APRIL CANTLEY, ON BEHALF OF ALL OTHERS	BEVIN PIKE, Attorney, not present
SIMILARLY SITUATED, Plaintiff, not present	
PHOTOMEDEX, INC., A NEVADA CORPORATION,	MICHAEL WEISS, Attorney, not present
Defendant, not present	
RADIANCY, INC., A NEW YORK CORPORATION,	MICHAEL WEISS, Attorney, not present
Defendant, not present	

court call

NATURE OF PROCEEDINGS: FURTHER CASE MANAGEMENT CONFERENCE

Hearing Start Time: 8:22 AM

The above entitled cause came on regularly on this date and time with parties and/or counsel appearing as reflected above.

- Counsel Mark A. Ozzello appeared via court call on behalf of Plaintiffs.

Counsel Jennifer Jones appeared via court call on behalf of Defendants.

The Court makes the following findings and Orders:

Further Case Management Conference set for 10/13/2015, at 8:15 a.m., in Department 17.

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Page 1 of 2

CANTLEY VS RADIANCY, INC.

S1500CV281510

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October 13, 2015 8:15 AM Further Case Management Conference
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Bakersfield Department 17
Sheriff, Deputy

MINUTE ORDER FINALIZED BY: LINDA HALL

ON:

8/11/2015

MINUTE ORDER

Page 2 of 2

CANTLEY VS RADIANCY, INC.

S1500CV281510

1 *(Counsel and Parties Listed on Following Pages)*
2
3
4
5
6

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF KERN**
9

10 APRIL CANTLEY, individually and on behalf
11 of all others similarly situated,

12 Plaintiff,

13 v.

14 RADIANCY, INC., a New York corporation;
15 PHOTOMEDEX, INC., a Nevada corporation;
and DOES 1 through 100, inclusive,

16 Defendants.
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Case No. 2-1500-CV-281510

CLASS ACTION

JOINT STATUS REPORT

DATE: October 13, 2015

TIME: 8:15 a.m.

DEPT: 17

Action Filed: March 14, 2014

FAC Filed: May 13, 2014

Trial Date: March 13, 2017

PARTIES AND THEIR COUNSEL

COUNSEL FOR PLAINTIFF

Mark A. Ozzello (SBN 116595)
Jeffrey K. Compton (SBN 142969)
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& COMPTON LLP
17383 Sunset Boulevard, Suite A-380
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Co-Counsel and Attorneys for Plaintiff April Cantley,
Individually and on Behalf of All
Others Similarly Situated

COUNSEL FOR DEFENDANTS

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Tracey L. Silver, SBN 287745
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Los Angeles, CA 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193
jljones@proskauer.com
tsilver@proskauer.com

Attorneys for Defendants
Radiancy, Inc. and PhotoMedex, Inc.

//

//

1 Pursuant to the Court's request, Plaintiff April Cantley ("PLAINTIFF") and Defendants
2 Radiancy, Inc. and PhotoMedex, Inc. ("Defendants"), by and through their counsel, hereby
3 submit the following Joint Status Report in advance of the Further Case Management
4 Conference Scheduled for October 13, 2015.

5 The law firm of Markun Zusman Freniere & Compton LLP associated into the case as
6 co-counsel of record for Plaintiff on July 24, 2015.

7 **I. CLOSE OF FACT AND EXPERT DISCOVERY**

8 Fact discovery shall close on December 11, 2015; expert discovery shall close on March
9 11, 2016.

10 **II. CLASS CERTIFICATION MOTION DEADLINE**

11 Plaintiff's deadline for filing its Motion for Class Certification is April 13, 2016.

12 **III. DISCOVERY MATTERS**

13 Following the last Case Management Conference (held August 11, 2015), the parties
14 have been engaged in discovery, and a dispute has arisen regarding the timing of the parties'
15 production of documents. The parties' differing views on that dispute and what has transpired
16 during the course of discovery in this case are set forth further below.

17 **A. PLAINTIFF'S POSITION**

18 Counsels are currently engaged in a dispute regarding the timing of Defendant's
19 production of documents in response to Plaintiff's Requests for Production, Set ONE, which
20 was propounded on September 16, 2014. Plaintiff is also in the process of subpoenaing third
21 party documents relevant to this litigation.

22 Shortly after associating as co-counsel, in correspondence dated August 12, 2015,
23 Plaintiff's attempted to resolve an earlier discovery dispute between the parties by committing
24 to provide the following by Wednesday, August 19th, 2015: 1). Plaintiff's supplemental
25 responses to written discovery; and, 2) all documents in Plaintiff's possession which were
26 responsive to Defendants' Requests for Production, Set ONE. *See Exhibit 1* (8/12/2015 at 10:23
27 am). Defendants agreed to provide Plaintiff – on or before August 21, 2015 – with dates by
28 which Radiancy, Inc. would produce documents responsive to Plaintiff's Requests for

1 Production, Set ONE, which were propounded on September 16, 2014, over one year ago. *See*
2 *id.* On August 19, 2015, as promised, Plaintiff produced all responsive documents in its
3 possession. A limited set of additional responsive documents were received from Plaintiff on
4 August 24, 2015 and immediately produced to Defendants.

5 On August 21, 2015, Defendants failed to provide a deadline by which they would
6 produce responsive documents, as promised. In an e-mail dated August 26, 2015, Plaintiff's
7 followed up with Defendants with an additional request that they provide a definitive date by
8 which documents would be produced. *See Exhibit 2* (8/26/2015 at 3:24 pm). In response,
9 Defendants claimed Radiancy, Inc. would be in a position to commence document production
10 sometime in September. *See id.* Defendants further maintained that, at that time, they could not
11 estimate when document production would be complete. *See id.* After Plaintiff's made
12 additional efforts to obtain from Defendants a date by which its production of documents would
13 be complete, Defendants informed that they would finish their production by the end of
14 October, just over one month before the close of discovery. *See Exhibit 3* (8/29/2015 at 8:53
15 am).

16 In light of a quickly approaching discovery cut-off and deadline for Plaintiff to file its
17 Motion for Class Certification, Plaintiff notified Defendants of the need to have all documents
18 be produced by September 21, 2015 so that it could be afforded sufficient time to review
19 documents, notice depositions, settle any additional discovery matters that could arise and
20 prepare for filing its Motion for Class Certification. *See Exhibit 4* (9/3/2015 at 1:30 pm). In an
21 effort to resolve their discovery dispute, counsel for the parties met and conferred
22 telephonically on September 10, 2015. During their meet and confer, Plaintiff's proposed that
23 Radiancy, Inc. complete its document production by September 30, 2015. Defendants notified
24 Plaintiff via e-mail later that day that they could not accommodate Plaintiff's request and,
25 instead, offered to commence Radiancy, Inc.'s document production on September 15, 2015 and
26 complete its production by October 16, 2015. *See Exhibit 5* (9/10/2015 at 3:35pm).

27 Without offering Plaintiff any reason why Radiancy, Inc. could not complete its
28 production of documents by September 30, 2015, notwithstanding that it has had in excess of 9

1 months to do so, Plaintiff agreed to a rolling production of Radiancy Inc.'s documents to begin
2 on September 15, 2015 and end no later than October 16, 2015.

3 Radiancy, Inc. produced a set of documents on September 15, 2015 which consisted of
4 only 142 pages of materials, 141 of which were clinical studies that were largely duplicative of
5 one another.

6 It is Plaintiff's position that Defendant has had ample time in which to respond to
7 Plaintiff's Requests for Production of Documents, Set ONE, and should be compelled to
8 produce all responsive documents no later than September 30, 2015. Any alleged
9 communication delay of Plaintiff's prior counsel in this case neither frees Radiancy, Inc. from
10 its discovery obligations, nor justifies its production of only 142 pages of documents in over 9
11 months. Defense counsel has had ample time in which to collect, review, and produce
12 documents in this matter. By the time the Further Case Management Conference takes place,
13 Plaintiff should be in a better position to discuss the extent to which Defendants have fulfilled
14 their discovery obligations and Plaintiff's potential need to file a motion to compel discovery
15 and a motion seeking modification of the cut-off date for fact discovery.

16 Given the present dispute by the parties as to the formal discovery production, it may be
17 helpful to discuss the disputed discovery issues at the currently scheduled Further Case
18 Management Conference so that additional discovery delays of this nature can be prevented and
19 the Court can determine if a modification of the fact discovery cut-off date is necessary.

20 **B. DEFENDANTS' POSITION**

21 Radiancy is working diligently on its document production, which it expects to
22 complete by October 16, eight weeks in advance of the discovery deadline. That period will be
23 sufficient for completion of fact discovery, since the only deposition noticed is the deposition of
24 April Cantley, which Defendants noticed to proceed on November 3, 2015. Plaintiff has not
25 responded to Defendants' requests to confirm that date. Nor has Plaintiff served any deposition
26 notices. Defendants were surprised to read that Plaintiff is conducting third party discovery,
27 since no notice has been provided to Defendants.

28 Defendants reject Plaintiff's attempt to characterize them as impeding with her ability

1 to timely meet case deadlines. If Plaintiff is unable to meet the generous deadlines in this case,
2 it is as result of her own delay. Since this case was commenced over a year and a half ago,
3 Plaintiff has failed to act diligently with respect to discovery. Both parties responded to written
4 discovery several months ago, with Defendants responding on January 9, 2015 to Plaintiff's
5 written discovery, and Plaintiff responding on March 4, 2015 to Defendants' written discovery.
6 However, within weeks of receiving Plaintiff's discovery responses, Defendants' counsel began
7 to have trouble reaching Plaintiff's counsel, which culminated in all communication from
8 Plaintiff's counsel ceasing from May through July 2015.

9 Specifically, on March 20, 2015, counsel for Defendants attempted to contact then-
10 counsel for Plaintiff, Bevin Pike, and received an automatic response that Ms. Pike was no
11 longer associated with the Khorrami Boucher firm. Counsel for Defendants repeatedly reached
12 out to Plaintiff's firm to try to re-establish communication in an attempt to meet and confer with
13 Plaintiff's regarding her responses to discovery and particularly given the parties upcoming
14 obligation to submit a Joint Statement by April 27. Defendants' counsel was able to re-
15 establish communication on or about April 8, 2015, and the parties met and conferred regarding
16 Plaintiff's discovery responses on April 16, 2015. During that meet and confer, Plaintiff's
17 counsel promised to supplement Plaintiff's discovery responses to remedy the deficiencies
18 Defendants raised.

19 Beginning on April 22, 2015, Defendants' counsel tried to communicate with Plaintiff's
20 counsel regarding submission of the Joint Statement, which was due on April 27. Defendants'
21 counsel received no response to an April 22 email, or a follow up email sent April 24. Given
22 the fast-approaching deadline, Defendants' counsel drafted the Joint Statement and sent it to
23 Plaintiff's counsel in a third email the morning of April 27. Plaintiff's counsel responded only
24 to transmit back a signed copy, which Defendants submitted to the Court.

25 Defendants' counsel followed up with Plaintiff's counsel a few days later, on April 30,
26 to confirm an extension on Defendants' deadline to move to compel further responses to
27 discovery, which Plaintiff's counsel confirmed by email the same day.

28 For the next three months, Defendants' counsel did not hear anything from Plaintiff.

1 On July 20, 2015, Defendants' counsel again reached out to Plaintiff's counsel
2 regarding the upcoming deadline to submit a Joint Statement by July 27. The dispute that
3 ensued between counsel for the parties and led to the filing of a separate statement by
4 Defendants' counsel is set forth in Defendants' Separate Case Management Conference
5 Statement of July 27, 2015.

6 Following the last Case Management Conference, counsel for the parties engaged in a
7 telephonic meeting and conference regarding discovery on August 12, 2015. At that time,
8 Plaintiff *for the first time* raised the issue of exchange of documents. Specifically, Plaintiff
9 offered to produce documents by August 19 and inquired when Defendant would produce
10 documents. Defendants' counsel agreed to get back to Plaintiff regarding a date when Radiancy
11 would commence rolling production of documents. During that meeting and conference,
12 Plaintiff's counsel also promised to provide the supplemental responses to discovery that
13 Defendants had been promised to receive back in April. (*See Exhibit 6, which reflects the*
14 *parties full written email exchange following the August 12 meeting and conference.*)

15 On August 19, Plaintiff produced 40 pages of documents and three videos. Plaintiff
16 produced an additional 8 pages of documents on August 26. Despite repeated requests from
17 Defendants' counsel, Plaintiff's counsel has not confirmed a date by which production will be
18 complete. (During counsel's last meet and conference, on September 10, 2015, Plaintiff's
19 counsel advised that he could not represent that Plaintiff's production was complete because
20 Plaintiff might move and find additional responsive documents.)

21 On September 2, Defendants informed Plaintiff that Radiancy would commence rolling
22 production on September 15 and that Radiancy expected to complete production by the end of
23 October. (*See Exhibit 7.*) As promised, Radiancy did commence production on September 15
24 by producing several documents regarding various clinical studies related to the no!no! hair
25 removal treatment and a document regarding Plaintiff's purchase.

26 Over the past few weeks, Plaintiff's counsel has threatened to move *ex parte* to compel
27 Defendants to produce documents no later than September 21. In response, Defendants have
28 explained that while Radiancy is working diligently on document production, it is not in a

1 position to immediately produce documents because work must be done to collect, review and
 2 produce them, and Radiancy reasonably did not expend resources to do that work over the
 3 several month period when Plaintiff was out of communication and had not produced or even
 4 raised the issue of the exchange of documents.

5 Plaintiff has not explained how she will be prejudiced by production on October 16 – or
 6 for that matter October 31, the document production completion date originally proposed by
 7 Radiancy. Plaintiff claims that she needs time to take depositions, but she has not served a
 8 single deposition notice. In any event, there are several weeks left in the discovery period
 9 within which depositions may take place. Plaintiff now also claims that she needs sufficient
 10 time to prepare for her motion for class certification, but there is a generous schedule providing
 11 four months from the close of fact discovery and one month from the close of expert discovery
 12 to complete that work. Accordingly, Defendants' position is that Plaintiff has had ample time
 13 within which to conduct discovery, there is no basis to move to compel production of
 14 Radiancy's documents or for modification of the fact discovery deadline, and the only open
 15 items to discuss regarding discovery at the upcoming Conference are Plaintiff's completion date
 16 for her document production and confirmation that her deposition will proceed as noticed on
 17 November 3, 2015.

18 Respectfully submitted,

19 **MARKUN ZUSMAN FRENIERE & COMPTON LLP**

20
 21 Date: 9-28-15

By: 

22 Mark A. Ozzello, Esq.

23 Jeffrey K. Compton, Esq.

Co-Counsel and Attorneys for Plaintiff April Cantley

24 **PROSKAUER ROSE LLP**

25
 26 Date: 9/28/15

By: 

27 Jennifer L. Jones, Esq.

Tracey L. Silver, Esq.

Attorneys for Defendants

Radiancy, Inc. and PhotoMedex, Inc.

EXHIBIT 1

Ari Bassar

From: Mark Ozzello
Sent: Wednesday, August 12, 2015 10:23 AM
To: Jones, Jennifer L.
Cc: Jeffrey Compton
Subject: Radiancy, Inc

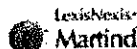
Jennifer

Thank you for the conversation this morning-it was enlightening. As I commented, I had an opportunity to review the discovery responses of Plaintiff and your march 26th correspondence, which outlined which discovery requests required a Supplemental response. As we discussed, those Supplemental responses were previously offered by Mr. Khorrami but were not forthcoming. As I indicated, I was pleased with the paucity of information that apparently was not previously provided. As we discussed however, I will provide Supplemental responses by next Wednesday, August 19th, and will also produce at that time all documents in the possession of plaintiff and which are responsive to your Request for production.

The discussion then turned to other housekeeping issues. First, as I indicated, our file does not have a copy of the PO and you were kind enough to send it over. That said, and as we discussed, your client had previously not produced documents pending the entry of the very PO we discussed. When I asked when your client would be in a position to produce documents that were apparently identified in the January 2015 responses of Radiancy, you were unable to give me a timetable. You agreed however, to inform me 'sometime next week' with a timetable by which Radiancy can produce the responsive documents. I look forward to the information.

Finally, we discussed the fact that, from our perspective, we would like to proceed to the taking of depositions. Why don't we see when all the responsive documents can be produced and circle back around on dates for depositions. I will talk to you next week

Mark A. Ozzello
Markun Zusman Freniere & Compton LLP
17383 Sunset Boulevard, Suite A-380
Pacific Palisades, CA 90272
Telephone: (310) 454-5900
Facsimile: (310) 454-5970
www.mzclaw.com



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For Ethical Standards and Legal Ability

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EXHIBIT 2

Ari Bassar

From: Mark Ozzello
Sent: Wednesday, August 26, 2015 3:24 PM
To: Jones, Jennifer L.
Cc: Silver, Tracey L.; Ari Bassar; Jeffrey Compton
Subject: RE: Cantley v. Radiancy

Jennifer

Pursuant to our agreements regarding discovery issues [1] we were to provide your office with Supplemental Responses and responsive documents by August 19th; and [2] no later than August 21st, you were to provide our office with a definitive date as to when your client would be producing documents. We complied with our portion of the agreement but I have not seen anything from your office [if I have overlooked an email I apologize]. When can we expect the production to take place?

Mark A. Ozzello
Markun Zusman Freniere & Compton LLP
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Pacific Palisades, CA 90272
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Thank you.

EXHIBIT 3

Ari Bassar

From: Jones, Jennifer L. <jljones@proskauer.com>
Sent: Friday, August 28, 2015 1:21 PM
To: Mark Ozzello
Cc: Silver, Tracey L.; Ari Bassar; Jeffrey Compton
Subject: RE: Cantley v. Radiancy

Mark, your email mischaracterizes our discussion. Regardless, I presently expect Radiancy will be in a position to commence document production sometime next month. I cannot currently estimate when document production will be complete.

Jennifer L. Jones
Attorney at Law

Proskauer
2049 Century Park East
Suite 3200
Los Angeles, CA 90067-3206
d 310.284.4509
f 310.557.2193
jljones@proskauer.com

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greenspaces
Please consider the environment before printing this email.

From: Mark Ozzello [<mailto:mozzello@mzclaw.com>]
Sent: Wednesday, August 26, 2015 3:24 PM
To: Jones, Jennifer L.
Cc: Silver, Tracey L.; Ari Bassar; Jeffrey Compton
Subject: RE: Cantley v. Radiancy

Jennifer

Pursuant to our agreements regarding discovery issues [1] we were to provide your office with Supplemental Responses and responsive documents by August 19th; and [2] no later than August 21st, you were to provide our office with a definitive date as to when your client would be producing documents. We complied with our portion of the agreement but I have not seen anything from your office [if I have overlooked an email I apologize]. When can we expect the production to take place?

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Pacific Palisades, CA 90272
Telephone: (310) 454-5900
Facsimile: (310) 454-5970
www.mzclaw.com

EXHIBIT 4


Ari Bassar

From: Mark Ozzello
Sent: Thursday, September 03, 2015 1:30 PM
To: Jones, Jennifer L.
Cc: Silver, Tracey L.; Ari Bassar; Jeffrey Compton
Subject: RE: Cantley v. Radiancy

1. We have produced all of the documents currently in our possession
2. 2 months-now almost 3 from when we first spoke is not appropriate. Look-you and I are just not going to agree-we want ALL the documents by September 21st so they can be reviewed with sufficient time to take depositions. Your timetable will not allow that to happen. You are not even producing documents that your client has already produced in other litigation. How hard is it to send those documents to us?

Mark A. Ozzello
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17383 Sunset Boulevard, Suite A-380
Pacific Palisades, CA 90272
Telephone: (310) 454-5900
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Thank you.

From: Jones, Jennifer L. [mailto:jjones@proskauer.com]
Sent: Thursday, September 03, 2015 1:25 PM
To: Mark Ozzello
Cc: Silver, Tracey L.; Ari Bassar; Jeffrey Compton
Subject: RE: Cantley v. Radiancy

Mark,

Please advise what you would propose regarding a date by when Radiancy's production should be complete, and why Radiancy completing production by the end of October is not sufficient, given that the discovery deadline is not until December 11.

Please also answer my question regarding whether Plaintiff intends to produce additional documents.

EXHIBIT 5

Ari Bassar

From: Jones, Jennifer L. <jljones@proskauer.com>
Sent: Thursday, September 10, 2015 3:35 PM
To: Mark Ozzello
Cc: Silver, Tracey L.; Ari Bassar; Jeffrey Compton
Subject: RE: Cantley v. Radiancy

Mark,

I have discussed with my client your request this morning that Radiancy complete its document production by September 30. Radiancy is working diligently to collect, review and produce documents in this matter. As I have previously advised, Radiancy's document production will commence on September 15, and Radiancy will continue to produce documents on a rolling basis as quickly as we are able to collect, review and prepare them for production. While we anticipate that we will be in a position to produce most of the documents by September 30, we do not believe that we will be in a position to finish production until October 16. If we can finish production earlier, we will do so.

Jennifer L. Jones
Attorney at Law

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From: Jones, Jennifer L.
Sent: Thursday, September 03, 2015 2:54 PM
To: 'Mark Ozzello'
Cc: Silver, Tracey L.; Ari Bassar; Jeffrey Compton
Subject: RE: Cantley v. Radiancy

Mark,

Your response regarding Plaintiff's production does not answer my question. Does Plaintiff intend to produce additional documents and if so, by when will Plaintiff's document production be complete? It is unreasonable for Plaintiff to make demands regarding a date by which Radiancy must produce all documents, but at the same time refuse to commit to a date by which Plaintiff will complete her production.

I have already informed you multiple times that Radiancy will commence production this month, but Radiancy is not in a position to complete production by September 21. You fail to note any way in which Plaintiff would be prejudiced by a final production date in October, when the discovery deadline is not until December 11. You

raise the issue of depositions, but Plaintiff has not noticed a single deposition in this case and there is a six week window in November and early December during which we should be able to schedule them.

Moreover, any delay in document production in this case is as a result of Plaintiff's lack of attention to this matter. It was completely reasonable for Radiancey not to expend the resources necessary to engage in document collection, review and production when Plaintiff essentially went silent, was ignoring communications from Defendant, had produced not one document, and did not even raise the issue of document exchange until August 12.

In any event, this dispute certainly does not present the exigent circumstances appropriate for ex parte motion practice.

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From: Mark Ozzello [<mailto:mozzello@mzclaw.com>]
Sent: Thursday, September 03, 2015 1:30 PM
To: Jones, Jennifer L.
Cc: Silver, Tracey L.; Ari Bassar; Jeffrey Compton
Subject: RE: Cantley v. Radiancey

1. We have produced all of the documents currently in our possession
2. 2 months-now almost 3 from when we first spoke is not appropriate. Look-you and I are just not going to agree-we want ALL the documents by September 21st so they can be reviewed with sufficient time to take depositions. Your timetable will not allow that to happen. You are not even producing documents that your client has already produced in other litigation. How hard is it to send those documents to us?

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Facsimile: (310) 454-5970
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EXHIBIT 6

Silver, Tracey L.

From: Jones, Jennifer L.
Sent: Wednesday, August 12, 2015 3:55 PM
To: 'Mark Ozzello'
Cc: Silver, Tracey L.
Subject: RE: Radiancy, Inc

Communication from Plaintiff's counsel began to taper off prior to April. And I note that although Plaintiff responded to our discovery requests on March 4, we have yet to receive a single document from Plaintiff and it is now August.

Please remember to copy Ms. Silver on correspondence.

Thanks.

Jennifer L. Jones
Attorney at Law

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From: Mark Ozzello [mailto:mozzello@mzclaw.com]
Sent: Wednesday, August 12, 2015 3:21 PM
To: Jones, Jennifer L.
Subject: RE: Radiancy, Inc

Thank you for the comments. But I do not see how the 'lack of communication' can be a reason for the non-production of documents when the Response from Radiancy is dated in early January, and the communications did not break down until April. But it makes little difference. We look forward to hearing from you.

We received the deposition notice and are checking our availability and that of our client. I will get a few notices out to you as well, and if the dates don't work they will be re-arranged

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Thank you.

From: Jones, Jennifer L. [<mailto:jljones@proskauer.com>]
Sent: Wednesday, August 12, 2015 2:30 PM
To: Mark Ozzello
Cc: Jeffrey Compton; Silver, Tracey L.
Subject: RE: Radiancy, Inc

Mark,

I look forward to receiving the supplemental discovery responses from Plaintiff, which we were promised in April but still have not received. As I indicated on the call, there has been an almost complete lack of communication from plaintiff's counsel for months in this case. Given the uncertainty of the status of this case, Radiancy has justifiably elected not to commence expending time and resources to produce documents for a case in which plaintiff's counsel has been completely absent and has not produced a single document. Thus, contrary to your email below, it is for this reason that defendants documents have not yet commenced production of documents, not because we were withholding documents pending the entry of a protective order. I will advise next week when we expect to be in a position to commence production of documents on a rolling basis.

With respect to depositions, no deposition notices have been served in this case to date. Attached is a deposition notice for Plaintiff, which is also being served by hand today.

Please copy Tracey Silver of this office on all correspondence.

Thank you.

Jennifer L. Jones
Attorney at Law

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From: Mark Ozzello [mailto:mozzello@mzclaw.com]
Sent: Wednesday, August 12, 2015 10:23 AM
To: Jones, Jennifer L.
Cc: Jeffrey Compton
Subject: Radiancy, Inc

Jennifer

Thank you for the conversation this morning—it was enlightening. As I commented, I had an opportunity to review the discovery responses of Plaintiff and your march 26th correspondence, which outlined which discovery requests required a Supplemental response. As we discussed, those Supplemental responses were previously offered by Mr. Khorrami but were not forthcoming. As I indicated, I was pleased with the paucity of information that apparently was not previously provided. As we discussed however, I will provide Supplemental responses by next Wednesday, August 19th, and will also produce at that time all documents in the possession of plaintiff and which are responsive to your Request for production.

The discussion then turned to other housekeeping issues. First, as I indicated, our file does not have a copy of the PO and you were kind enough to send it over. That said, and as we discussed, your client had previously not produced documents pending the entry of the very PO we discussed. When I asked when your client would be in a position to produce documents that were apparently identified in the January 2015 responses of Radiancy, you were unable to give me a timetable. You agreed however, to inform me 'sometime next week' with a timetable by which Radiancy can produce the responsive documents. I look forward to the information.

Finally, we discussed the fact that, from our perspective, we would like to proceed to the taking of depositions. Why don't we see when all the responsive documents can be produced and circle back around on dates for depositions. I will talk to you next week

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Thank you.

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EXHIBIT 7

Silver, Tracey L.

From: Jones, Jennifer L.
Sent: Wednesday, September 02, 2015 8:53 AM
To: 'Mark Ozzello'
Cc: Silver, Tracey L.; Ari Bassar; Jeffrey Compton
Subject: RE: Cantley v. Radiancy

Mark,

During our August 12th call, I was not requested to, nor did I promise to, provide a "definitive date" for production. You offered that Plaintiff would provide her supplemental responses and production by August 19th, and asked when defendant would produce documents. As my email that same day reflects, I agreed to advise when we "expect[ed] to be in a position to commence production of documents on a rolling basis." As I informed you on Friday, our production will commence in September on a rolling basis. I expect that the first tranche of documents will be produced by September 15. Production will continue on a rolling basis thereafter, and I further expect that we will be able to finish production by the end of October.

You continue to harp on the fact that Radiancy provided its discovery responses in January, but fail to take into account that Plaintiff has been ignoring this case for several months, including failing to respond to my emails and failing to produce any documents until August 19, despite the fact that her responses were served on March 4. And I note that with respect to Plaintiff's production, you did not produce by August 19 "all documents in the possession of plaintiff and which are responsive to your Request for production" as your August 12 email promised. Although we did receive on August 19 a small batch of materials, Bates stamped CANTLEY 1-43, we received additional documents by mail in the late afternoon of Friday, August 28, Bates stamped CANTLEY 44-52. (Curiously, those were accompanied by a certificate of service declaring that they were served on August 24, which contradicts two postmarks bearing the dates of August 25 and August 26.) Are these all of the documents that Plaintiff intends to produce, or are additional documents from Plaintiff forthcoming?

Jennifer L. Jones
Attorney at Law

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From: Mark Ozzello [mailto:mozzello@mzclaw.com]
Sent: Saturday, August 29, 2015 8:54 AM
To: Jones, Jennifer L.
Cc: Silver, Tracey L.; Ari Bassar; Jeffrey Compton
Subject: RE: Cantley v. Radiancy

Jennifer

Tell me how my email mischaracterized our agreement because obviously I do not think it does. Give me a date on which the production will take place-and one that is in the near future, or we will need to approach the court. We simply do not have the luxury of giving Radiancy weeks or months to make what is its first production from a Response provided in January 2015.

From: Jones, Jennifer L. [mailto:jljones@proskauer.com]
Sent: Friday, August 28, 2015 1:21 PM
To: Mark Ozzello
Cc: Silver, Tracey L.; Ari Bassar; Jeffrey Compton
Subject: RE: Cantley v. Radiancy

Mark, your email mischaracterizes our discussion. Regardless, I presently expect Radiancy will be in a position to commence document production sometime next month. I cannot currently estimate when document production will be complete.

Jennifer L. Jones
Attorney at Law

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From: Mark Ozzello [mailto:mozzello@mzclaw.com]
Sent: Wednesday, August 26, 2015 3:24 PM
To: Jones, Jennifer L.
Cc: Silver, Tracey L.; Ari Bassar; Jeffrey Compton
Subject: RE: Cantley v. Radiancy

Jennifer

Pursuant to our agreements regarding discovery issues [1] we were to provide your office with Supplemental Responses and responsive documents by August 19th; and [2] no later than August 21st, you were to provide our office with a definitive date as to when your client would be producing documents. We complied with our portion of the agreement but I have not seen anything from your office [if I have overlooked an email I apologize]. When can we expect the production to take place?

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Facsimile: (310) 454-5970
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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 17383 West Sunset Boulevard, Suite A380, Pacific Palisades, California 90272.

On, September 28, 2015, I served the documents described as:

JOINT STATUS REPORT

_____ on the interested parties in this action by sending [] the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] [] as stated on the attached service list:

PROSKAUER ROSE LLP

Jennifer L. Jones, Esq.
Tracey L. Silver, Esq.
2049 Century Park East, 32nd Floor
Los Angeles, California 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193
jljones@proskauer.com
tsilver@proskauer.com

KHORRAMI BOUCHER, LLP

Shawn Khorrami, Esq.
444 S. Flower Street, Third-third Floor
Los Angeles, California 9 0071
Telephone: (213) 596-6000
Facsimile: (213) 569-6010
skhorrami@kbadvocates.com

☒ **(BY MAIL):** as follows: I deposited the envelopes for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, the sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business, with postage thereon fully prepaid at Los Angeles, California.

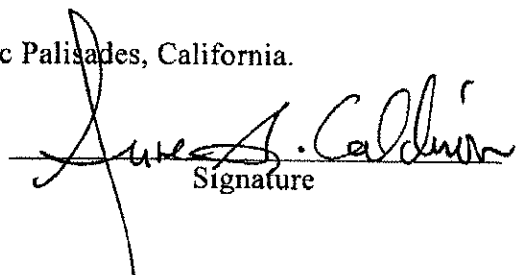
☐ **(BY OVERNIGHT DELIVERY):** as follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this September 28, 2015 at Pacific Palisades, California.

Anne S. Calderon


Signature



Superior Court of California
County of Kern
Bakersfield Department 17

Hearing Date: October 13, 2015

Time: 8:15 AM - 12:00 PM

CANTLEY VS RADIANCY, INC.

S1500CV281510

Honorable: Lorna H. Brumfield

Clerk: Linda K. Hall

Court Reporter: None (FTR)

Bailiff: Deputy Sheriff

Interpreter:

Language Of:

PARTIES:

APRIL CANTLEY, Plaintiff, not present	BEVIN PIKE, Attorney, not present
APRIL CANTLEY, Plaintiff, not present	SHAHIN KHORRAMI, Attorney, not present
APRIL CANTLEY, ON BEHALF OF ALL OTHERS	BEVIN PIKE, Attorney, not present
SIMILARLY SITUATED, Plaintiff, not present	
DAGLIAN LAW GROUP, APLC, Lien Claimant, not present	GARY DAGLIAN, Attorney, not present
PHOTOMEDEX, INC., A NEVADA CORPORATION, Defendant, not present	MICHAEL WEISS, Attorney, not present
RADIANCY, INC., A NEW YORK CORPORATION, Defendant, not present	MICHAEL WEISS, Attorney, not present

Court call

NATURE OF PROCEEDINGS: FURTHER CASE MANAGEMENT CONFERENCE

Hearing Start Time: 8:20 AM

The above entitled cause came on regularly on this date and time with parties and/or counsel appearing as reflected above.

- Counsel Mark A. Ozzello appeared via court call on behalf of Plaintiff.

Counsel Jennifer Jones appeared via court call on behalf of Defendant - Radiancy, Inc.

The Court makes the following findings and Orders:

Counsel and court agree to extend Close of Discovery from 12/11/2015 new date is 12/30/2015.

Court sets a Motion for Class Certification for 04/13/2016. Pursuant to the Joint Case Management Conference Statement dated 02/23/2015.

MINUTE ORDER

Page 1 of 2

CANTLEY VS RADIANCY, INC.

S1500CV281510

Further notice waived,.

FUTURE HEARINGS:

April 13, 2016 8:30 AM Motion (Pre-Disposition)
Brumfield, Lorna H.
Bakersfield Department 17
Sheriff, Deputy

MINUTE ORDER FINALIZED BY: LINDA HALL

ON:

10/13/2015

MINUTE ORDER

Page 2 of 2

CIVIL COVER SHEET

Case 1:15-cv-01649-LJO-JLT Document 1-2 Filed 10/29/15 Page 1 of 2

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

I. (a) PLAINTIFFS

APRIL CANTLEY

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Markun Zusman Freniere & Compton
Mark A. Ozzello; Jeffrey K. Compton; Ari Bassar
17383 Sunset Blvd., Suite A-380, Pacific Palisades, CA 90272
Telephone: 310.454.5900; Facsimile: 310.454.5970
Email: mozzello@mzclaw.com; jcompton@mzclaw.com; abassar@mzclaw.com

DEFENDANTS

RADIANCY, INC. and PHOTOMEDEX, INC

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

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

Attorneys (If Known)

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
KENT R. RAYGOR (SBN 117224); VALERIE E. ALTER (SBN 239905)
1901 Avenue of the Stars, Suite 1600, Los Angeles, California 90067-6055
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Email: kraygor@sheppardmullin.com; valter@sheppardmullin.com

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

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

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

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

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

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

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

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

VI. CAUSE OF ACTION

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

28 U.S.C. 1332(d)

Brief description of cause:

Plaintiff asserts a putative class action for violation of state consumer protection laws.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ TBD

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/29/2015

SIGNATURE OF ATTORNEY OF RECORD

/s Valerie E. Alter

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Case 1:15-cv-01649-LJO-JLT Document 1-2 Filed 10/29/15 Page 2 of 2
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.