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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 JANE DOE, individually and on behalf of
all others similarly situated,

13 Plaintiff,

14 v.

15 EGNYTE, INC. a Delaware corporation;
16 and DOES 1 – 10, inclusive,

17 Defendants.
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Case No. 8:15-cv-01828

CLASS ACTION COMPLAINT FOR:

1. VIOLATIONS OF CALIFORNIA’S
AUTOMATIC RENEWAL LAW
(BUSINESS AND PROFESSIONS
CODE §§ 17600-17604);
2. VIOLATIONS OF CALIFORNIA’S
UNFAIR COMPETITION LAW
(BUSINESS AND PROFESSIONS
CODE §§ 17200-17204); and
3. INJUNCTIVE RELIEF (BUSINESS
AND PROFESSIONS CODE § 17535)

21 DEMAND FOR JURY TRIAL
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1 Plaintiff Jane Doe¹ (“Plaintiff”), on behalf of herself and all others similarly
2 situated, complains and alleges as follows:

3 INTRODUCTION & OVERVIEW OF CLAIMS

4 1. Plaintiff brings this class action on behalf of herself and a class of others
5 similarly situated consisting of all persons in California who, within the applicable
6 statute of limitations period, purchased subscriptions for file sharing system products
7 from Egnyte, Inc. (“Egnyte” or “Defendant”). The class of others similarly situated to
8 Plaintiff is referred to herein as “Class Members.” The claims for damages, restitution,
9 injunctive and/or other equitable relief, and reasonable attorneys’ fees and costs arise
10 under California Business and Professions Code (hereinafter “Cal. Bus. & Prof. Code”)
11 §§ 17602, 17603, 17604, 17535) and 17200, et seq., and California Code of Civil
12 Procedure § 1021.5. Plaintiff and Class Members are consumers for purposes of Cal.
13 Bus. & Prof. Code §§ 17600-17606.

14 2. During the Class Period, Defendant made automatic renewal or continuous
15 service offers to consumers in and throughout California and failed to provide an
16 acknowledgment that includes the automatic renewal or continuous service offer terms,
17 cancellation policy, and information regarding how to cancel in a manner that is
18 capable of being retained by the consumer in violation of Cal. Bus. & Prof. Code §
19 17602(a)(3). As a result, all goods, wares, merchandise, or products sent to Plaintiff
20 and Class Members under the automatic renewal of continuous service agreements are
21 deemed to be an unconditional gift pursuant to Cal. Bus. & Prof. Code § 17603.

22 3. As a result of the above, Plaintiff, on behalf of herself and Class Members,
23 seeks damages, restitution, declaratory relief, injunctive relief and reasonable attorneys’
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25 ¹ *Does I Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1072-73 (9th Cir. 2000) (noting that
26 class is more likely to be resolved on the merits if where Plaintiff is permitted to file publicly available
27 documents anonymously). Moreover, until the Supreme Court clarifies the enforceability of pre-
28 certification “Rule 68” offers, as it is expected to do in the pending case of *Campbell-Ewald Co. v. Gomez*,
allowing Plaintiff to proceed anonymously will prevent Defendant from impermissibly attempting to thwart class-wide relief.

1 fees and costs pursuant to Cal. Bus. & Prof. Code, §§ 17603, 17203, 17204, and 17535,
2 and Code of Civil Procedure § 1021.5.

3 **JURISDICTION AND VENUE**

4 4. This Court has diversity jurisdiction over this class action pursuant to 28
5 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the
6 amount in controversy exceeds five million dollars (\$5,000,000.00), exclusive of
7 interest and costs, and is a class action in which some members of the class are citizens
8 of different states than Defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

9 5. This Court also has personal jurisdiction over Defendant because
10 Defendant currently does business in this state.

11 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
12 Defendant is subject to personal jurisdiction in this District and a substantial portion of
13 the conduct complained of herein occurred in this District.

14 **PARTIES**

15 7. Plaintiff purchased a subscription plan from Defendant in California
16 during the Class Period. Plaintiff and Class Members are consumers as defined under
17 Cal. Bus. & Prof. Code § 17601(d).

18 8. Defendant Egnyte, Inc. is a Delaware corporation with its principal place
19 of business located at 1350 W. Middlefield Road, Mountain View, California 94043.
20 Defendant operates in California and has done business throughout California at all
21 times during the Class Period. Also during the Class Period, Defendant made, and
22 continues to make, automatic renewal or continuous service offers to consumers in
23 California. Defendant operates a website offering secure file sharing and related
24 services on the cloud and on the premises of its subscribers.

25 9. The true names and capacities of the Defendants sued herein as DOES 1
26 through 10, inclusive, are currently unknown to Plaintiff, who therefore sue such
27 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is
28 legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of

1 Court to amend this Complaint to reflect the true names and capacities of the DOE
2 Defendants when such identities become known.

3 10. At all relevant times, each and every Defendant was acting as an agent
4 and/or employee of each of the other Defendants and was acting within the course
5 and/or scope of said agency and/or employment with the full knowledge and consent of
6 each of the Defendants. Each of the acts and/or omissions complained of herein were
7 alleged and made known to, and ratified by, each of the other Defendants (Egnyte, Inc.
8 and DOE Defendants will hereafter collectively be referred to as “Defendant”).

9 **FACTUAL BACKGROUND**

10 **California Business Professions Code §§ 17600-17606**

11 11. On December 1, 2010, sections 17600-17606 of the Cal. Bus. & Prof.
12 Code came into effect. The Legislature’s stated intent for this Article was to end the
13 practice of ongoing charges to consumers’ Payment Methods without consumers’
14 explicit consent for ongoing shipments of a product or ongoing deliveries of service.
15 *See* Cal. Bus. & Prof. Code § 17600.

16 12. Cal. Bus. & Prof. Code § 17602(a) makes it unlawful for any business
17 making an automatic renewal or continuous service offer to a consumer in this state to,
18 among other things, do the following:

19 Fail to provide an acknowledgment that includes the automatic
20 renewal or continuous service offer terms, cancellation policy, and
21 information regarding how to cancel in a manner that is capable of
22 being retained by the consumer. If the offer includes a free trial, the
23 business shall also disclose in the acknowledgment how to cancel
and allow the consumer to cancel before the consumer pays for the
goods or services.

24 13. Cal. Bus. & Prof. Code § 17601(a) defines the term “Automatic renewal”
25 as a “plan or arrangement in which a paid subscription or purchasing agreement is
26 automatically renewed at the end of a definite term for a subsequent term.”

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1 14. Cal. Bus. & Prof. Code § 17601(b) defines the term “Automatic renewal
2 offer terms” as “the following clear and conspicuous disclosures: (1) That the
3 subscription or purchasing agreement will continue until the consumer cancels. (2) The
4 description of the cancelation policy that applies to the offer. (3) The recurring charges
5 that will be charged to the consumer’s credit or debit card or payment account with a
6 third party as part of the automatic renewal plan or arrangement, and that the amount of
7 the charge may change, if that is the case, and the amount to which the charge will
8 change, if known. (4) The length of the automatic renewal term or that the service is
9 continuous, unless the length of the term is chosen by the consumer. (5) The minimum
10 purchase obligation, if any.”

11 **Defendant’s Business**

12 15. Defendant provides, on a monthly basis, subscriptions for secure file
13 sharing and related services at several different levels: 1. The “Office” level for 5-24
14 employees for \$8.00 per employee, per month; 2. The “Business” level for 25-100
15 employees for \$15.00 per employee, per month; and 3. The “Enterprise” level for
16 unlimited employees with monthly pricing to be discussed. Defendant’s product and
17 service plans constitute automatic renewal and/or continuous service plans or
18 arrangements for the purposes of Cal. Bus. & Prof. Code § 17601.

19 **Defendant Failed to Provide an Acknowledgment as Required by Cal. Bus. &**
20 **Prof. Code §17602(a)(3)**

21 16. After Plaintiff and Class Members subscribed to one of Defendant’s
22 subscription plans, Defendant sent to Plaintiff and Class Members documents entitled
23 “Invoice” and “Welcome to Egnyte,” but has failed, and continues to fail, to provide an
24 acknowledgement that includes the automatic renewal or continuous service offer
25 terms, cancellation policy, and information on how to cancel in a manner that is capable
26 of being retained by Plaintiff and Class Members in violation of Cal. Bus. & Prof. Code
27 § 17602(a)(3). Moreover, Defendant failed to provide Plaintiff and Class Members
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1 with an acknowledgement regarding how to cancel the subscription and allow Plaintiff
2 and Class Members to cancel before payment.



Invoice

5 Egnyte, Inc.
6 1350 West Middlefield Road,
7 Mountain View, CA: 94043

Date: [REDACTED]
Invoice: # [REDACTED]
Payment Method: Credit Card
Payment Term: Due Upon Receipt
Payment Due Date: [REDACTED]

8 Hello [REDACTED]
9 Thank you for using Egnyte. Your card has been charged by Egnyte, Inc. Below is your receipt of payment.

10 **Bill to** [REDACTED]
11 [REDACTED]

Description	Amount
Egnyte 1 Month Subscription [REDACTED] Office 5 Power Users 5 Standard Users 5.0 TB Total Storage	45.00
	Subtotal 45.00
	Tax 0
	Total 45.00

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20 Need to update your credit card? [Go to your account.](#)
21 Please contact us at billing@egnyte.com if you have any questions or concerns regarding the charges to your
22 account. Thank you for using Egnyte, your Cloud File Server.
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Welcome to Egnyte

Hi [redacted],

Thank you for choosing Egnyte to enable simple, intelligent and secure collaboration. This email provides you all the important information you need to get started with your new Egnyte solution. Please save it for future reference.

Website

[redacted].[egnyte.com](#)



Your Account Information

Username

[redacted]

Forgot Your Password?

You can reset it [here](#).

Domain

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Your Plan Information

Plan

Number of Power User Licenses: 5
Number of Standard User Licenses: 5

Plan Details

Please refer to the [Plan Details page](#) for specific features included in your contract

Type of Support

standard



Set Up Instructions for Admins

Here are some [quick start materials](#) to help you configure and roll out Egnyte for your company.

Admin Video

See how to get started with your account.

[Learn More](#)

Live Demo

Sign up for a live product overview.

[Learn More](#)

Egnyte Helpdesk

Get answers to your questions.

[Learn More](#)

If you run into questions or need something, don't hesitate to contact me. I am here to help!



Sincerely,
Steve Blaz
Vice President, Customer Service

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1 **CLASS ACTION ALLEGATIONS**

2 17. Plaintiff brings this action, on behalf of herself and all others similarly
3 situated, as a class action pursuant to Rule 23(a) of the Federal Rules of Civil
4 Procedure. The proposed Class (the “Class”) that Plaintiff seeks to represent is
5 composed of and defined as:

6 **“All persons within the United States that, within the applicable**
7 **statute of limitations period, purchased any product or service in**
8 **response to an offer constituting an “Automatic Renewal” as defined**
9 **by § 17601(a) from Egnyte, Inc., its predecessors, or its affiliates.”**

10 18. This action is brought and may be properly maintained as a class action
11 pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and 23(b)(1)-
12 (3). This action satisfies the numerosity, typicality, adequacy, predominance and
13 superiority requirements of those provisions.

14 19. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual
15 joinder of all of its members is impractical. While the exact number and identities of
16 Class members are unknown to Plaintiff at this time and can only be ascertained
17 through appropriate discovery, Plaintiff is informed and believes the Class includes
18 hundreds of thousands of members. Plaintiff alleges that the Class may be ascertained
19 by the records maintained by Defendant.

20 20. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all
21 members of the Class which predominate over any questions affecting only individual
22 members of the Class. These common legal and factual questions, which do not vary
23 from class member to class member, and which may be determined without reference to
24 the individual circumstances of any class member, include, but are not limited to, the
25 following:

- 26 i. Whether Defendant failed to provide an acknowledgement that
27 included the automatic renewal or continuous service offer terms,
28 cancellation policy, and information on how to cancel in a manner

1 that is capable of being retained by Plaintiff and Class Members, in
2 violation of Cal. Bus. & Prof. Code § 17602(a)(3);

3 ii. Whether Plaintiff and Class Members are entitled to restitution in
4 accordance with Cal. Bus. & Prof. Code §§ 17200, 17203;

5 iii. Whether Plaintiff and Class Members are entitled to injunctive relief
6 under Cal. Bus. & Prof. Code § 17535;

7 iv. Whether Plaintiff and Class Members are entitled to attorneys' fees
8 and costs under California Code of Civil Procedure § 1021.5; and

9 v. The proper formula(s) for calculating the restitution owed to Class
10 Members.

11 21. [Fed. R. Civ. P. 23(a)(3)] Plaintiff's claims are typical of the claims of the
12 members of the Class. Plaintiff and all members of the Class have sustained injury and
13 are facing irreparable harm arising out of Defendant's common course of conduct as
14 complained of herein. The losses of each member of the Class were caused directly by
15 Defendant's wrongful conduct as alleged herein.

16 22. [Fed. R. Civ. P. 23(a)(4)] Plaintiff will fairly and adequately protect the
17 interests of the members of the Class. Plaintiff has retained attorneys experienced in the
18 prosecution of class actions, including complex consumer and mass tort litigation.

19 23. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available
20 methods of fair and efficient adjudication of this controversy, since individual litigation
21 of the claims of all Class members is impracticable. Even if every Class member could
22 afford individual litigation, the court system could not. It would be unduly burdensome
23 to the courts in which individual litigation of numerous issues would proceed.
24 Individualized litigation would also present the potential for varying, inconsistent, or
25 contradictory judgments and would magnify the delay and expense to all parties and to
26 the court system resulting from multiple trials of the same complex factual issues. By
27 contrast, the conduct of this action as a class action, with respect to some or all of the
28 issues presented herein, presents fewer management difficulties, conserves the

1 resources of the parties and of the court system, and protects the rights of each Class
2 member.

3 24. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by
4 thousands of individual Class members would create the risk of inconsistent or varying
5 adjudications with respect to, among other things, the need for and the nature of proper
6 notice, which Defendant must provide to all Class members.

7 25. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by
8 individual class members would create a risk of adjudications with respect to them that
9 would, as a practical matter, be dispositive of the interests of the other Class members
10 not parties to such adjudications or that would substantially impair or impede the ability
11 of such non-party Class members to protect their interests.

12 26. [Fed. R. Civ. P. 23(b)(2)] Defendant has acted or refused to act in respects
13 generally applicable to the Class, thereby making appropriate final injunctive relief with
14 regard to the members of the Class as a whole.

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACKNOWLEDGMENT WITH**
17 **AUTOMATIC RENEWAL TERMS AND INFORMATION REGARDING**
18 **CANCELLATION POLICY**

19 **(CAL. BUS. & PROF. CODE§ 17602(a)(3))**

20 **(By Plaintiff, on her own behalf and on behalf of the Class, against All Defendants)**

21 27. The foregoing paragraphs are alleged herein and are incorporated herein
22 by reference.

23 28. Cal. Bus. & Prof. Code§ 17602(a)(3) provides:

24 (a) It shall be unlawful for any business making an automatic renewal or
25 continuous service offer to a consumer in this state to do any of the
26 following:

27 (3) Fail to provide an acknowledgment that includes the
28 automatic renewal or continuous service offer terms,
cancellation policy, and information regarding how to cancel in

1 a manner that is capable of being retained by the consumer. If
2 the offer includes a free trial, the business shall also disclose in
3 the acknowledgment how to cancel and allow the consumer to
4 cancel before the consumer pays for the goods or services.

5 29. Defendant failed to provide an acknowledgement that includes the
6 automatic renewal or continuous service offer terms, cancellation policy, and
7 information on how to cancel in a manner that is capable of being retained by Plaintiff
8 and Class Members.

9 30. As a result of Defendant's violations of Cal. Bus. & Prof. Code §
10 17602(a)(3), Defendant is subject to all civil remedies under Cal. Bus. & Prof. Code §
11 17604 that apply to a violation of Article 9, of Chapter 1 of Part 3, of Division 7 of the
12 Cal. Bus. & Prof. Code.

13 31. Plaintiff, on behalf of herself and Class Members, requests relief as
14 described below.

15 **SECOND CAUSE OF ACTION**

16 **VIOLATION OF THE UNFAIR COMPETITION LAW**

17 **(CAL. BUS. & PROF. CODE § 17200 *et. seq.*)**

18 **(By Plaintiff, on her own behalf and on behalf of the Class, against All Defendants)**

19 32. The foregoing paragraphs are alleged herein and are incorporated herein
20 by reference.

21 33. Cal. Bus. & Prof. Code § 17200, *et seq.* (the "UCL") prohibits unfair
22 competition in the form of any unlawful, unfair, or fraudulent business act or practice.
23 Cal. Bus. & Prof. Code § 17204 allows "a person who has suffered injury in fact and has
24 lost money or property" to prosecute a civil action for violation of the UCL. Such a
25 person may bring such an action on behalf of himself or herself and others similarly
26 situated who are affected by the unlawful, unfair, or fraudulent business practice.

27 34. Since December 1, 2010, and continuing to the present, Defendant has
28 committed unlawful, unfair, and/or fraudulent business acts and practices as defined by
the UCL, by violating Cal. Bus. & Prof. Code § 17602(a)(3).

1 35. As a direct and proximate result of Defendant's unlawful, unfair, and/or
2 fraudulent acts and practices described herein, Defendant has received, and continues to
3 hold, unlawfully obtained property and money belonging to Plaintiff and Class
4 Members in the form of payments made for subscription agreements by Plaintiff and
5 Class Members. Defendant has profited from its unlawful, unfair, and/or fraudulent acts
6 and practices in the amount of those business expenses and interest accrued thereon.

7 36. Plaintiff and similarly-situated Class Members are entitled to restitution
8 pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17208 for all monies paid by Class
9 Members under the subscription agreements from December 1, 2010, to the date of
10 such restitution at rates specified by law. Defendant should be required to disgorge all
11 the profits and gains it has reaped and restore such profits and gains to Plaintiff and
12 Class Members, from whom they were unlawfully taken.

13 37. Plaintiff and similarly situated Class Members are entitled to enforce all
14 applicable penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202.

15 38. Plaintiff has assumed the responsibility of enforcement of the laws and
16 public policies specified herein by suing on behalf of herself and other similarly-
17 situated Class Members. Plaintiff's success in this action will enforce important rights
18 affecting the public interest. Plaintiff will incur a financial burden in pursuing this
19 action in the public interest. An award of reasonable attorneys' fees to Plaintiff is thus
20 appropriate pursuant to California Code of Civil Procedure § 1021.5.

21 39. Plaintiff, on behalf of herself and Class Members, request relief as
22 described below.

23 **THIRD CAUSE OF ACTION**

24 **INJUNCTIVE RELIEF AND RESTITUTION**

25 **(CAL. BUS. & PROF. CODE § 17535)**

26 **(By Plaintiff, on her own behalf and on behalf of the Class, against All Defendants)**

27 40. The foregoing paragraphs are alleged herein and are incorporated herein
28 by reference.

1 41. Cal. Bus. & Prof Code § 17535 allows “any person who has suffered
2 injury in fact and has lost money or property” to prosecute a civil action for violation of
3 the UCL. Such a person may bring such an action on behalf of himself or herself and
4 others similarly situated who are affected by the unlawful, unfair, or fraudulent business
5 practice.

6 42. Since December 1, 2010, and continuing to the present, Defendant has
7 committed unlawful, unfair, and/or fraudulent business acts and practices as defined by
8 the UCL, by violating Cal. Bus. & Prof. Code § 17602(a)(3).

9 43. As a direct and proximate result of Defendant’s unlawful, unfair, and/or
10 fraudulent acts and practices described herein, Defendant has received and continues to
11 hold unlawfully obtained property and money belonging to Plaintiff and Class
12 Members in the form of payments made for a paid subscription to Defendant’s
13 protection plans by Plaintiff and Class Members. Defendant has profited from its
14 unlawful, unfair, and/or fraudulent acts and practices in the amount of those business
15 expenses and interest accrued thereon.

16 44. Plaintiff and similarly situated Class Members are entitled to injunctive
17 relief and/or restitution pursuant to Cal. Bus. & Prof. Code § 17535 for all monies paid
18 by Class Members under the subscription agreements from December 1, 2010 to the
19 date of such restitution, at rates specified by law. Defendant should be required to
20 disgorge all the profits and gains it has reaped and restore such profits and gains to
21 Plaintiff and Class Members, from whom they were unlawfully taken.

22 45. Plaintiff and similarly situated Class Members are entitled to enforce all
23 applicable penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202.

24 46. Plaintiff has assumed the responsibility of enforcement of the laws and
25 public policies specified herein by suing on behalf of herself and other similarly
26 situated Class Members. Plaintiff’s success in this action will enforce important rights
27 affecting the public interest. Plaintiff will incur a financial burden in pursuing this
28 action in the public interest. Therefore, an award of reasonable attorneys’ fees to

1 Plaintiff is appropriate pursuant to California Code of Civil Procedure § 1021.5.

2 47. Plaintiff, on behalf of herself and similarly situated Class Members,
3 request relief as described below.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff requests the following relief:

6 A. That the Court determine that this action may be maintained as a class
7 action under Rule 23(a) of the Federal Rules of Civil Procedure, and define the Class as
8 requested herein;

9 B. That the Court find and declare that Defendant has violated Cal. Bus. &
10 Prof. Code § 17602(a)(3) by failing to provide an acknowledgement that includes the
11 automatic renewal or continuous service offer terms, cancellation policy and
12 information on how to cancel in a manner that is capable of being retained by Plaintiff
13 and Class Members;

14 C. That the Court find and declare that Defendant has violated the UCL and
15 committed unfair and unlawful business practices by violating Cal. Bus. & Prof. Code §
16 17602(a)(3);

17 D. That Defendant be ordered to pay restitution to Plaintiff and the Class due
18 to Defendant's UCL violations, pursuant to Cal. Bus. & Prof. Code §§ 17200-17205 in
19 the amount of their subscription agreement payments;

20 E. That the Court find that Plaintiff and Class Members are entitled to
21 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17535;

22 F. That Plaintiff and the Class be awarded reasonable attorneys' fees and
23 costs pursuant to California Code of Civil Procedure § 1021.5, and/or other applicable
24 law; and

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1 G. That the Court award such other and further relief as this Court may deem
2 appropriate.

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4 Dated: November 6, 2015

NEWPORT TRIAL GROUP, APC

5 By: /s/ Scott J. Ferrell

6 Scott. J. Ferrell
7 Attorney for Plaintiff
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