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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

KYLE JOHNSON, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

DREAMBRANDS, INC., an Arizona  
corporation; and DOES 1 – 10, inclusive,

Defendants.

Case No.

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)

DEMAND FOR JURY TRIAL

1 Plaintiff Kyle Johnson (“Plaintiff”), on behalf of himself 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 himself 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 any products (such as assorted  
7 physical performance enhancement products) from DreamBrands, Inc. (“DreamBrands”  
8 or “Defendant”). The class of others similarly situated to Plaintiff is referred to herein  
9 as “Class Members.” The claims for damages, restitution, injunctive and/or other  
10 equitable relief, and reasonable attorneys’ fees and costs arise under California  
11 Business and Professions Code (hereinafter “Cal. Bus. & Prof. Code”) §§ 17602,  
12 17603, 17604, 17535 and 17200, *et seq.*, and California Code of Civil Procedure §  
13 1021.5. Plaintiff and Class Members are consumers for purposes of Cal. Bus. & Prof.  
14 Code §§ 17600-17606.

15 2. During the Class Period, Defendant made automatic renewal or continuous  
16 service offers to consumers in and throughout California and (a) at the time of making  
17 the automatic renewal or continuous service offers, failed to present the automatic  
18 renewal offer terms or continuous service offer terms, in a clear and conspicuous  
19 manner and in visual proximity to the request for consent to the offer before the  
20 subscription or purchasing agreement was fulfilled in violation of Cal. Bus. & Prof.  
21 Code § 17602(a)(1); (b) charged Plaintiff’s and Class Members’ credit or debit cards,  
22 or third-party account (hereinafter “Payment Method”) without first obtaining  
23 Plaintiff’s and Class Members’ affirmative consent to the agreement containing the  
24 automatic renewal offer terms or continuous service offer terms in violation of Cal.  
25 Bus. & Prof. Code § 17602(a)(2); and (c) failed to provide an acknowledgment that  
26 includes the automatic renewal or continuous service offer terms, cancellation policy,  
27 and information regarding how to cancel in a manner that is capable of being retained  
28 by the consumer in violation of Cal. Bus. & Prof. Code § 17602(a)(3). As a result, all

1 goods, wares, merchandise, or products sent to Plaintiff and Class Members under the  
2 automatic renewal of continuous service agreements are deemed to be an unconditional  
3 gift pursuant to Cal. Bus. & Prof. Code § 17603.

4 3. As a result of the above, Plaintiff, on behalf of himself and Class  
5 Members, seeks damages, restitution, declaratory relief, injunctive relief and reasonable  
6 attorneys' fees and costs pursuant to Cal. Bus. & Prof. Code, §§ 17603, 17203, and  
7 17204, and Code of Civil Procedure § 1021.5.

### 8 **JURISDICTION AND VENUE**

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

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

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

### 19 **PARTIES**

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

23 8. Plaintiff is informed and believes, and upon such information and belief  
24 alleges, that Defendant DreamBrands, Inc. is a corporation with its principal place of  
25 business located at 11645 N. Cave Creek Road, Phoenix, Arizona 85020. Defendant  
26 operates in California and has done business throughout California at all times during  
27 the Class Period. Also during the Class Period, Defendant made, and continues to  
28 make, automatic renewal or continuous service offers to consumers in California.

1 Defendant operates a website which markets assorted physical performance  
2 enhancement products.

3 9. 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  
8 (DreamBrands, Inc. and DOE Defendants will hereafter collectively be referred to as  
9 “Defendant”).

### 10 **FACTUAL BACKGROUND**

#### 11 **California Business Professions Code §§ 17600-17606**

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

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

- 20 (1) Fail to present the automatic renewal offer terms or continuous  
21 service offer terms in a clear and conspicuous manner before the  
22 subscription or purchasing agreement is fulfilled and in visual  
23 proximity, or in the case of an offer conveyed by voice, in temporal  
24 proximity, to the request for consent to the offer.
- 25 (2) Charge the consumer's credit or debit card or the consumer's  
26 account with a third party for an automatic renewal or continuous  
27 service without first obtaining the consumer's affirmative consent to  
28 the agreement containing the automatic renewal offer terms or  
continuous service offer terms.
- (3) Fail to provide an acknowledgment that includes the automatic  
renewal or continuous service offer terms, cancellation policy, and

1 information regarding how to cancel in a manner that is capable of  
2 being retained by the consumer. If the offer includes a free trial, the  
3 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.

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

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

17 14. Pursuant to Cal. Bus. & Prof. Code § 17601(c), “clear and conspicuous” or  
18 “clearly and conspicuously” means “in larger type than the surrounding text, or in  
19 contrasting type, font, or color to the surrounding text of the same size, or set off from  
20 the surrounding text of the same size by symbol ls or other marks, in a manner that  
21 clearly calls attention to the language.”

22 15. Section 17602(b) provides: “A business making automatic renewal or  
23 continuous service offers shall provide a toll-free telephone number, electronic mail  
24 address, a postal address only when the seller directly bills the consumer, or another  
25 cost-effective, timely, and easy-to-use mechanism for cancellation that shall be  
26 described in the acknowledgment specified in paragraph (3) of subdivision (a).”

27 16. Section 17603 of Cal. Bus. & Prof. Code provides: “In any case in which a  
28 business sends any goods, wares, merchandise, or products to a consumer, under a

1 continuous service agreement or automatic renewal of a purchase, without first  
2 obtaining the consumer's affirmative consent as described in Section 17602, the goods,  
3 wares, merchandise, or products shall for all purposes be deemed an unconditional gift  
4 to the consumer, who may use or dispose of the same in any manner he or she sees fit  
5 without any obligation whatsoever on the consumer's part to the business, including,  
6 but not limited to, bearing the cost of, or responsibility for, shipping any goods, wares,  
7 merchandise, or products to the business."

### 8 **Defendant's Business**

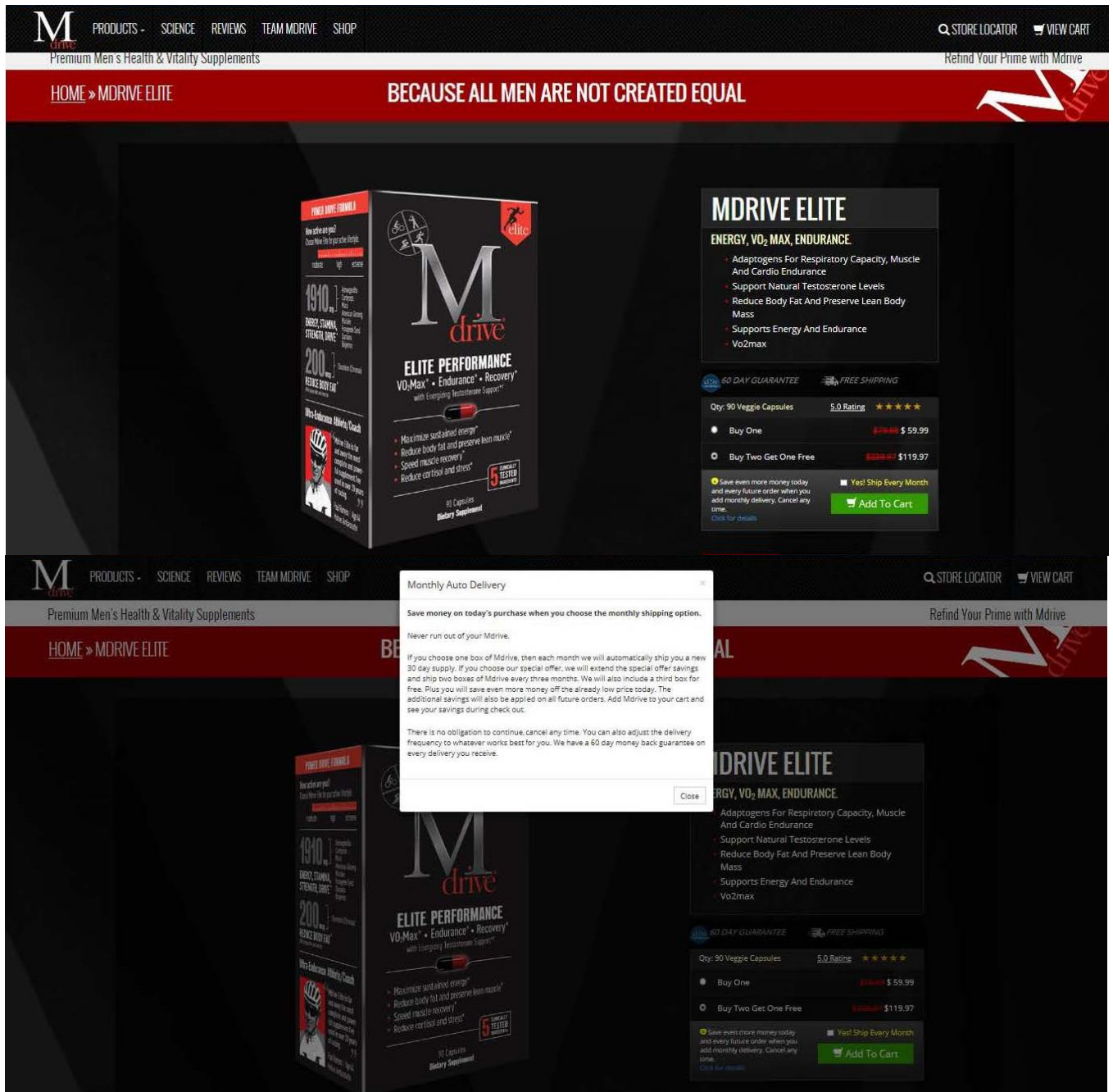
9 17. Defendant provides, at its website found at [www.mdriveformen.com](http://www.mdriveformen.com),  
10 subscriptions for energy, physical performance and joint relief supplements that may be  
11 purchased for delivery on a monthly basis. Defendant's product and services plan  
12 constitutes an automatic renewal and/or continuous service plan or arrangement for the  
13 purposes of Cal. Bus. & Prof. Code § 17601.

### 14 **Defendant Failed to Present the Automatic Renewal Offer Terms or Continuous** 15 **Service Offer Terms in a Clear and Conspicuous Manner Before the Subscription** 16 **or Purchasing Agreement was Fulfilled and in Visual Proximity to the Request for** 17 **Consent to the Offer in Violation of Cal. Bus. & Prof. Code § 17602(a)(1).**

18 18. During the Class Period, Defendant made, and continues to make, an  
19 automatic renewal offer for its products, whereby selected items are delivered and  
20 billed automatically each month to the subscriber. These webpages did not, and do not,  
21 contain automatic renewal offer terms or continuous service offer terms as defined by  
22 Cal. Bus. & Prof. Code § 17601(b). Specifically, while the webpages do reference the  
23 ability to cancel the subscription and a 60-day return policy, that information is not set  
24 forth on the page where the prospective subscriber is invited to complete the transaction  
25 and proceed with purchase of the subscription, and thus those pages did not, and do not,  
26 provide automatic renewal offer terms or continuous service offer terms in visual  
27 proximity to the request for consent to the offer as defined by Cal. Bus. & Prof. Code §  
28



17601(b). What is more, no specific mechanism for cancellation is provided, and a 60-day return policy is not the same thing as a subscription cancellation policy.



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23 19. As a result, prior to charging Plaintiff and Class Members, Defendant  
24 failed, and continues to fail, to obtain Plaintiff's and Class Members' affirmative  
25 consent to the automatic renewal offer terms or continuous service offer terms.

26 20. Because of Defendant's failure to gather affirmative consent to the  
27 automatic renewal terms, all goods, wares, merchandise, or products, sent to Plaintiff  
28 and Class Members under the automatic renewal or continuous service agreement are



1 deemed to be an unconditional gift pursuant to Cal. Bus. & Prof. Code § 17603, and  
2 Plaintiff and Class Members may use or dispose of the same in any manner they see fit  
3 without any obligation whatsoever on their part to Defendant, including, but not limited  
4 to, bearing the cost of, or responsibility for, shipping any goods, wares, merchandise or  
5 products.

6 **Defendant Failed to Provide an Acknowledgment as Required by Cal. Bus. &**  
7 **Prof. Code §§ 17602(a)(3) and 17602(b)**

8 21. Furthermore, and in addition to the above, after Plaintiff and Class  
9 Members subscribed to Defendant's subscription plan, Defendant sent to Plaintiff and  
10 Class Members confirmation acknowledgments of the shipping of Defendant's product,  
11 but has failed, and continues to fail, to provide an acknowledgement that includes the  
12 automatic renewal or continuous service offer terms, cancellation policy, and  
13 information on how to cancel in a manner that is capable of being retained by Plaintiff  
14 and Class Members in violation of Cal. Bus. & Prof. Code §§ 17602(a)(3) and  
15 17602(b). Moreover, Defendant failed to provide Plaintiff and Class Members with an  
16 acknowledgement regarding how to cancel the subscription and allow Plaintiff and  
17 Class Members to cancel before payment. Specifically, as with the information  
18 provided in the webpages, while the emails state that the subscriber may "cancel  
19 anytime" and details are provided regarding the 60-day return policy, no specific  
20 mechanism for cancellation is provided, and a 60-day return policy is not the same  
21 thing as a subscription cancellation policy.

Thank you for ordering.

RECEIPT

Order ID : [REDACTED]

Order Date: [REDACTED]

Bill To

Name

Address

City

State

Zip

Country

Email

Ship To

Name

Address

City

State

Zip

Country

Phone

Shipping Method: Standard Mail (Residential)

Item	Quantity	Description	Amount
MdrivePrime60r	1	Mdrive Prime with monthly auto-delivery. Cancel anytime.	24.99
		Subtotal	24.99
		Tax Rate	0.00%
		Tax	0.00
		Shipping/handling	0.00
		Total	\$24.99

Return Policy

We offer a 60 day risk free money back guarantee. If for any reason you are not satisfied with Mdrive within 60 days, please return remaining product with your order ID. Once product is received, we will issue a full refund to your payment method less shipping costs.

On [REDACTED], Mdrive Customer Service <[cs@mdriveformen.com](mailto:cs@mdriveformen.com)> wrote:



Dear [REDACTED],

Thank you for shopping with us. We have received your order and are processing it for shipment. You will be notified immediately by email when your order ships.

The charge will appear on your credit card as: DREAMBRANDS INC 888-300-9181 AZ

If you need further assistance, you may **reply** to this email.

#### Order Information

Order ID: [REDACTED]

Order Date: [REDACTED]

**Bill To**  
**Name:** [REDACTED]  
**Address:** [REDACTED]  
**City:** [REDACTED]  
**State:** [REDACTED]  
**Zip:** [REDACTED]  
**Country:** [REDACTED]

**Ship To**  
**Name:** [REDACTED]  
**Address:** [REDACTED]  
**City:** [REDACTED]  
**State:** [REDACTED]  
**Zip:** [REDACTED]  
**Country:** [REDACTED]  
**Phone:** [REDACTED]

**Shipping Method:** Standard Mail (Residential)

#### Purchased Items

Item	Quantity	Description	Amount
MdrivePrime50r	1	Mdrive Prime with monthly auto-delivery. Cancel anytime.	24.99
<b>Subtotal</b>			24.99
<b>Tax Rate</b>			0.00%
<b>Tax</b>			0.00
<b>Shipping/Handling</b>			0.00
<b>Total</b>			\$24.99

#### Return Policy

We offer a 60 day risk free money back guarantee. If for any reason you are not satisfied with Mdrive within 60 days, please return remaining product with your order ID. Once product is received, we will issue a full refund to your payment method less shipping costs.

For Customer Service inquiries, please email [cs@mdriveformen.com](mailto:cs@mdriveformen.com). Have a suggestion, comment, or general feedback? Please send an email to [feedback@mdriveformen.com](mailto:feedback@mdriveformen.com) to let us know.

#### Contact Information

Customer Care Team

**MdriveElite.com**

Phone: 1-888-300-9181

Email: [cs@mdriveformen.com](mailto:cs@mdriveformen.com)

Facebook: <http://facebook.com/mdrive>

Instagram: <http://instagram.com/mdrive>

YouTube: <http://bit.ly/mdrivemen>

On Sunday, [REDACTED], Mdrive Customer Service <[cs@mdriveformen.com](mailto:cs@mdriveformen.com)> wrote:

## DREAMBRANDS®

Dear [REDACTED]

Thank you for shopping with us. We have received your order and are processing it for shipment. You will be notified immediately by email when your order ships.

The charge will appear on your credit card as: DREAMBRANDS INC 888-300-9181 AZ

If you need further assistance, you may **reply** to this email.

#### Order Information

Order ID: [REDACTED]

Order Date: [REDACTED]

##### Bill To

Name: [REDACTED]

Address: [REDACTED]

City: [REDACTED]

State: [REDACTED]

Zip: [REDACTED]

Country: [REDACTED]

##### Ship To

Name: [REDACTED]

Address: [REDACTED]

City: [REDACTED]

State: [REDACTED]

Zip: [REDACTED]

Country: [REDACTED]

Phone: [REDACTED]

Shipping Method: Standard Mail (Residential)

#### Purchased Items

Item	Quantity	Description	Amount
AutoMdrivePrime60	1	Mdrive Prime with monthly auto-delivery. Cancel	24.99

anytime.

<b>Subtotal</b>	24.99
<b>Tax Rate</b>	0.00%
<b>Tax</b>	0.00
<b>Shipping/Handling</b>	0.00
<b>Total</b>	\$24.99

**Return Policy**

We offer a 60 day risk free money back guarantee. If for any reason you are not satisfied with Mdrive within 60 days, please return remaining product with your order ID. Once product is received, we will issue a full refund to your payment method less shipping costs.

For Customer Service inquiries, please email [cs@mdriveformen.com](mailto:cs@mdriveformen.com).  
Have a suggestion, comment, or general feedback? Please send an email to [feedback@mdriveformen.com](mailto:feedback@mdriveformen.com) to let us know.

**Contact Information**

Customer Care Team  
**MdriveElite.com**  
Phone: 1-888-300-9181  
Email: [cs@mdriveformen.com](mailto:cs@mdriveformen.com)

Facebook: <http://facebook.com/mdrive>  
Instagram: <http://instagram.com/mdrive>  
YouTube: <http://bit.ly/mdrivemen>

**CLASS ACTION ALLEGATIONS**

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

**“All persons within California that, within the applicable statute of limitations period, purchased any product or service in response to an offer constituting an “Automatic Renewal” as defined by § 17601(a) from DreamBrands, Inc., its predecessors, or its affiliates, for personal, family, and/or household purposes.”**

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

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

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

- 13                   i. (a) Whether Defendant failed to present the automatic renewal offer  
14 terms, or continuous service offer terms, in a clear and conspicuous  
15 manner before the subscription or purchasing agreement was  
16 fulfilled and in visual proximity to the request for consent to the  
17 offer in violation of Cal. Bus. & Prof. Code § 17602(a)(1);
- 18                   ii. Whether Defendant charged Plaintiff's and Class Members'  
19 Payment Method for an automatic renewal or continuous service  
20 without first obtaining the Plaintiff's and Class Members'  
21 affirmative consent to the Terms of Use containing the automatic  
22 renewal offer terms or continuous service offer terms in violation of  
23 Cal. Bus. & Prof. Code § 17602(a)(2);
- 24                   iii. Whether Defendant failed to provide an acknowledgement that  
25 included the automatic renewal or continuous service offer terms,  
26 cancellation policy, and information on how to cancel in a manner  
27 that is capable of being retained by Plaintiff and Class Members, in  
28 violation of Cal. Bus. & Prof. Code § 17602(a)(3);



- iv. Whether Defendant failed to provide an acknowledgment that describes a cost-effective, timely, and easy-to-use mechanism for cancellation in violation of Cal. Bus. & Prof. Code § 17602(b);
- v. Whether Defendant's Terms of Use contained the automatic renewal offer terms and/or continuous service offer terms as defined by Cal. Bus. & Prof. Code § 1760l;
- vi. Whether Plaintiff and the Class Members are entitled to restitution of money paid in circumstances where the goods and services provided by Defendant are deemed an unconditional gift in accordance with Cal. Bus. & Prof. Code § 17603;
- vii. Whether Plaintiff and Class Members are entitled to restitution in accordance with Cal. Bus. & Prof. Code §§ 17200, 17203;
- viii. Whether Plaintiff and Class Members are entitled to attorneys' fees and costs under California Code of Civil Procedure § 1021.5; and
- ix. The proper formula(s) for calculating the restitution owed to Class Members.

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

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

28. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome

1 to the courts in which individual litigation of numerous issues would proceed.  
 2 Individualized litigation would also present the potential for varying, inconsistent, or  
 3 contradictory judgments and would magnify the delay and expense to all parties and to  
 4 the court system resulting from multiple trials of the same complex factual issues. By  
 5 contrast, the conduct of this action as a class action, with respect to some or all of the  
 6 issues presented herein, presents fewer management difficulties, conserves the  
 7 resources of the parties and of the court system, and protects the rights of each Class  
 8 member.

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

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

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

### 21 **FIRST CAUSE OF ACTION**

#### 22 **FAILURE TO PRESENT AUTOMATIC RENEWAL OFFER TERMS OR** 23 **CONTINUOUS SERVICE OFFER TERMS CLEARLY AND** 24 **CONSPICUOUSLY AND IN VISUAL, PROXIMITY TO THE REQUEST FOR** 25 **CONSENT OFFER (CAL. BUS. & PROF. CODE§ 17602(a)(l))** 26 **(By Plaintiff, on his own behalf and on behalf of the Class, against All Defendants)**

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

33. Cal. Bus. Prof. Code § 17602(a)(1) provides:

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

(1) Fail to present the automatic renewal offer terms or continuous service offer terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer.

34. Plaintiff and Class Members purchased Defendant's assorted physical performance enhancement products for personal, family or household purposes. Defendant failed to present the automatic renewal offer terms, or continuous service offer terms, in a clear and conspicuous manner and in visual proximity the request for consent to the offer before the subscription or purchasing agreement was fulfilled.

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

36. Plaintiff, on behalf of himself and Class Members, requests relief as described below.

**SECOND CAUSE OF ACTION**

**FAILURE TO OBTAIN CONSUMER'S AFFIRMATIVE CONSENT**

**BEFORE THE SUBSCRIPTION IS FULFILLED**

**(CAL BUS. & PROF. CODE §§ 17602(a)(2) and 17603)**

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

37. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

38. Cal. Bus. & Prof. Code § 17602(a)(2) provides:

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

(2) Charge the consumer's credit or debit card or the consumer's account with a third party for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.

39. Plaintiff and Class Members purchased Defendant's assorted physical performance enhancement products for personal, family or household purposes. Defendant charged, and continues to charge Plaintiff's and Class Members' Payment Method for an automatic renewal or continuous service without first obtaining Plaintiff's and Class Members affirmative consent to the automatic renewal offer terms or continuous service offer terms.

40. As a result of Defendant's violations of Cal. Bus. & Prof. Code § 17602(a)(2), Defendant is liable to provide restitution to Plaintiff and Class Members under Cal. Bus. & Prof. Code § 17603.

41. Plaintiff, on behalf of himself and Class Members, requests relief as described below.

**THIRD CAUSE OF ACTION**

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

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

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

42. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

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

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

(3) Fail to provide an acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer. If the offer includes a free trial, the 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.

44. Cal. Bus. & Prof. Code§ 17602(b) provides:

“A business making automatic renewal or continuous service offers shall provide a toll-free telephone number, electronic mail address, a postal address only when the seller directly bills the consumer, or another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be described in the acknowledgment specified in paragraph (3) of subdivision (a).”

45. Plaintiff and Class Members purchased Defendant’s assorted physical performance enhancement products for personal, family or household purposes. Defendant failed to provide an acknowledgement that includes the automatic renewal or continuous service offer terms, cancellation policy, and information on how to cancel in a manner that is capable of being retained by Plaintiff and Class Members.

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

47. Plaintiff, on behalf of himself and Class Members, requests relief as described below.

**FOURTH CAUSE OF ACTION**

**VIOLATION OF THE UNFAIR COMPETITION LAW**

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

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

48. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

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

50. Since December 1, 2010, and continuing to the present, Defendant has committed unlawful and/or unfair business acts or practices as defined by the UCL, by violating Cal. Bus. & Prof. Code §§ 17602(a)(1), (2), and (3). The public policy which is a predicate to a UCL action under the unfair prong of the UCL is tethered to a specific statutory provision. *See* Cal. Bus. & Prof. Code §§ 17600, 17602.

51. Plaintiff has standing to pursue this claim because he suffered injury in fact and has lost money or property as a result of Defendant’s actions as set forth herein. Plaintiff purchased Defendant’s assorted physical performance enhancement products for personal, family, or household purposes.

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



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

54. Plaintiff and similarly situated Class Members are entitled to enforce all applicable penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202, and to obtain injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203.

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

56. Plaintiff, on behalf of himself and Class Members, request relief as described below.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests the following relief:

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

B. That the Court find and declare that Defendant has violated Cal. Bus. & Prof. Code § 17602(a)(1) by failing to present the automatic renewal offer terms, or continuous service offer terms, in a clear and conspicuous manner and the visual proximity to the request for consent to the offer before the subscription or purchasing agreement was fulfilled;

1 C. That the Court find and declare that Defendant has violated Cal. Bus. &  
2 Prof. Code § 17602(a)(2) by charging Plaintiff's and Class Members' Payment Method  
3 without first obtaining their affirmative consent to the automatic renewal offer· terms or  
4 continuous service terms;

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

10 E. That the Court find and declare that Defendant has violated Cal. Bus. &  
11 Prof. Code § 17602(b) by failing to provide an acknowledgment that describes a toll-  
12 free telephone number, electronic mail address, a postal address only when the seller  
13 directly bills the consumer, or another cost-effective, timely, and easy-to-use  
14 mechanism for cancellation.

15 F. That the Court find and declare that Defendant has violated the UCL and  
16 committed unfair and unlawful business practices by violating Cal. Bus. & Prof. Code §  
17 17602.

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

21 H. That the Court find that Plaintiff and Class Members are entitled to  
22 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203;

23 I. That Plaintiff and the Class be awarded reasonable attorneys' fees and  
24 costs pursuant to California Code of Civil Procedure § 1021.5, and/or other applicable  
25 law; and  
26  
27  
28

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

3  
4 Dated: January 19, 2016

NICHOLAS & TOMASEVIC, LLP

5  
6 By: /s/ Mei-Ying Imanaka

Mei-Ying Imanaka

7  
8 Attorney for Plaintiff

9  
10 **DEMAND FOR JURY TRIAL**

11 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Rule 201 of  
12 the United States District Court for the Eastern District of California's Local Rules,  
13 Plaintiff hereby demands a trial by jury.

14 Dated: January 19, 2016

NICHOLAS & TOMASEVIC, LLP

15  
16 By: /s/ Mei-Ying Imanaka

Mei-Ying Imanaka

17  
18 Attorney for Plaintiff

## CIVIL COVER SHEET

Case 2:16-cv-00119-WBS-CKD Document 1-1 Filed 01/19/16 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**

KYLE JOHNSON

**DEFENDANTS**

DREAMBRANDS, INC.

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_

(EXCEPT IN U.S. PLAINTIFF CASES)

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.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | 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 checked="" type="checkbox"/> 5 | <input 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	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <input 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  <b>LABOR</b> <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  <b>IMMIGRATION</b> <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  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <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))  <b>FEDERAL TAX SUITS</b> <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 checked="" 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
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <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 <b>Other:</b> <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

Brief description of cause:

Defendant made continuous service offers to consumers and failed to present offer terms.

**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$  
5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

01/19/2016

SIGNATURE OF ATTORNEY OF RECORD

s/ Mei-Ying Imanaka

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

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**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.