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

12 JARROD SECOLA, individually and on
behalf of all others similarly situated,

13 Plaintiff,

14 v.

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

17 Defendants.
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Case No.

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR JURY TRIAL

1 Plaintiff Jarrod Secola (“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 “Lord of
7 the Rings” products) from Turbine, Inc. (“Turbine” or “Defendant”). The class of
8 others similarly situated to Plaintiff is referred to herein as “Class Members.” The
9 claims for damages, restitution, injunctive and/or other equitable relief, and reasonable
10 attorneys’ fees and costs arise under California Business and Professions Code
11 (hereinafter “Cal. Bus. & Prof. Code”) §§ 17602, 17603, and 17604) and 17200, *et seq.*,
12 and California Code of Civil Procedure § 1021.5. Plaintiff and Class Members are
13 consumers for purposes of Cal. 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) and 17602(b). As a result, all goods, wares, merchandise, or products sent
20 to Plaintiff and Class Members under the automatic renewal of continuous service
21 agreements are deemed to be an unconditional gift pursuant to Cal. Bus. & Prof. Code §
22 17603.

23 3. As a result of the above, Plaintiff, on behalf of himself and Class
24 Members, seeks damages, restitution, declaratory relief, injunctive relief and reasonable
25 attorneys’ fees and costs pursuant to Cal. Bus. & Prof. Code, §§ 17603, 17203, and
26 17204, and Code of Civil Procedure § 1021.5.

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JURISDICTION AND VENUE

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

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

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

12 **PARTIES**

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

16 8. Defendant Turbine, Inc. is a Delaware corporation with its principal place
17 of business located at 117 Kendrick Street, Suite 100, Needham, Massachusetts 02492.
18 Defendant operates in California and has done business throughout California and
19 throughout the United States at all times during the Class Period. Also during the Class
20 Period, Defendant made, and continues to make, automatic renewal or continuous
21 service offers to consumers in California and throughout the United States. Defendant
22 operates a website which markets subscriptions for “Lord of the Rings” related
23 products.

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

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 (Turbine, 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)(3) makes it unlawful for any business
17 making an automatic renewal or continuous service offer to a consumer in this state to
18 fail to provide an acknowledgment that includes the automatic renewal or continuous
19 service offer terms, cancellation policy, and information regarding how to cancel in a
20 manner that is capable of being retained by the consumer. If the offer includes a free
21 trial, the business shall also disclose in the acknowledgment how to cancel and allow
22 the consumer to cancel before the consumer pays for the goods or services.

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

26 14. Cal. Bus. & Prof. Code § 17601(b) defines the term “Automatic renewal
27 offer terms” as “the following clear and conspicuous disclosures: (1) That the
28 subscription or purchasing agreement will continue until the consumer cancels. (2) The

1 description of the cancelation policy that applies to the offer. (3) The recurring charges
2 that will be charged to the consumer’s credit or debit card or payment account with a
3 third party as part of the automatic renewal plan or arrangement, and that the amount of
4 the charge may change, if that is the case, and the amount to which the charge will
5 change, if known. (4) The length of the automatic renewal term or that the service is
6 continuous, unless the length of the term is chosen by the consumer. (5) The minimum
7 purchase obligation, if any.”

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

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

18 17. Section 17603 of Cal. Bus. & Prof. Code provides: “In any case in which a
19 business sends any goods, wares, merchandise, or products to a consumer, under a
20 continuous service agreement or automatic renewal of a purchase, without first
21 obtaining the consumer’s affirmative consent as described in Section 17602, the goods,
22 wares, merchandise, or products shall for all purposes be deemed an unconditional gift
23 to the consumer, who may use or dispose of the same in any manner he or she sees fit
24 without any obligation whatsoever on the consumer’s part to the business, including,
25 but not limited to, bearing the cost of, or responsibility for, shipping any goods, wares,
26 merchandise, or products to the business.”

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1 **Defendant's Business**

2 18. Defendant provides, among other things, monthly subscription programs
3 for "Lord of the Rings"-related interactive games and related products. Defendant's
4 services plan constitutes an automatic renewal and/or continuous service plan or
5 arrangement for the purposes of Cal. Bus. & Prof. Code § 17601.

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

8 19. After Plaintiff and Class Members subscribed to one of Defendant's
9 subscription plans, Defendant sent to Plaintiff and Class Members an acknowledgement
10 regarding their payment method for their subscription, but has failed, and continues to
11 fail, to provide an acknowledgement that includes the automatic renewal or continuous
12 service offer terms, cancellation policy, and information on how to cancel in a manner
13 that is capable of being retained by Plaintiff and Class Members in violation of Cal.
14 Bus. & Prof. Code §§ 17602(a)(3) and 17602(b). Moreover, Defendant failed to
15 provide Plaintiff and Class Members with an acknowledgement regarding how to
16 cancel the subscription and allow Plaintiff and Class Members to cancel before
17 payment.

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1 From: newsletter@emails.turbine.com
2 To: [REDACTED]
3 Subject: MyAccount @ Turbine: Add Payment Method - Credit Card
4 Date: [REDACTED]



turbine

ADD PAYMENT METHOD - CREDIT CARD

Hello,

Thank you for updating your Turbine account information. This email confirms that the credit card payment method with the name of CreditCard01 has been successfully added to your account.

If you feel that this account update is in error, or you did not make this update, please log into your account to verify your settings. To manage your account, please visit:

<http://myaccount.turbine.com/> - MyAccount @ Turbine
<http://www.lotro.com/en/account> - LOTRO Account Home

If you feel that your account may have been compromised, please change your password and contact our [Support Center](#).

Sincerely,

The Turbine Team

Copyright (c) 2005-2013 Turbine, Inc. All trademarks are the property of their respective owners.
Turbine, Inc. 117 Kendrick St. Suite 100, Needham, MA 02494



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CLASS ACTION ALLEGATIONS

20. 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 Turbine, Inc., its predecessors, or its affiliates, via its website, www.lotro.com.”

21. 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.

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

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

- i) Whether Defendant failed to provide an acknowledgement that included the automatic renewal or continuous service offer terms,

1 cancellation policy, and information on how to cancel in a manner
2 that is capable of being retained by Plaintiff and Class Members, in
3 violation of Cal. Bus. & Prof. Code § 17602(a)(3);

4 ii) Whether Defendant failed to provide an acknowledgment that
5 describes a cost-effective, timely, and easy-to-use mechanism for
6 cancellation in violation of Cal. Bus. & Prof. Code § 17602(b);

7 iii) Whether Plaintiff and the Class Members are entitled to restitution
8 of money paid in circumstances where the goods and services
9 provided by Defendant are deemed an unconditional gift in
10 accordance with Cal. Bus. & Prof. Code § 17603;

11 iv) Whether Plaintiff and Class Members are entitled to restitution in
12 accordance with Cal. Bus. & Prof. Code §§ 17200, 17203;

13 v) Whether Plaintiff and Class Members are entitled to injunctive relief
14 under Cal. Bus. & Prof. Code § 17203;

15 vi) Whether Plaintiff and Class Members are entitled to attorneys' fees
16 and costs under California Code of Civil Procedure § 1021.5; and

17 vii) The proper formula(s) for calculating the restitution owed to Class
18 Members.

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

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

27 26. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available
28 methods of fair and efficient adjudication of this controversy, since individual litigation

1 of the claims of all Class members is impracticable. Even if every Class member could
2 afford individual litigation, the court system could not. It would be unduly burdensome
3 to the courts in which individual litigation of numerous issues would proceed.
4 Individualized litigation would also present the potential for varying, inconsistent, or
5 contradictory judgments and would magnify the delay and expense to all parties and to
6 the court system resulting from multiple trials of the same complex factual issues. By
7 contrast, the conduct of this action as a class action, with respect to some or all of the
8 issues presented herein, presents fewer management difficulties, conserves the
9 resources of the parties and of the court system, and protects the rights of each Class
10 member.

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

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

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

23 **FIRST CAUSE OF ACTION**

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

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

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

1 30. The foregoing paragraphs are alleged herein and are incorporated herein
2 by reference.

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

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

7 (3) Fail to provide an acknowledgment that includes the
8 automatic renewal or continuous service offer terms,
9 cancellation policy, and information regarding how to cancel in
10 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.

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

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

16 33. Plaintiff and Class Members purchased Defendant’s “Lord of the Rings”-
17 related products for personal, family or household purposes. Defendant failed to
18 provide an acknowledgement that includes the automatic renewal or continuous service
19 offer terms, cancellation policy, and information on how to cancel in a manner that is
20 capable of being retained by Plaintiff and Class Members.

21 34. As a result of Defendant’s violations of Cal. Bus. & Prof. Code §§
22 17602(a)(3) and 17602(b), Defendant is subject to all civil remedies under Cal. Bus. &
23 Prof. Code § 17604 that apply to a violation of Article 9, of Chapter 1 of Part 3, of
24 Division 7 of the Cal. Bus. & Prof. Code.

25 35. Plaintiff, on behalf of himself and Class Members, requests relief as
26 described below.

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SECOND 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)

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

37. 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.

38. 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)(3) and (b). 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.

39. As a direct and proximate result of Defendant’s unlawful, and/or unfair acts and 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 acts and practices in the amount of those business expenses and interest accrued thereon.

40. 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

1 profits and gains it has reaped and restore such profits and gains to Plaintiff and Class
2 Members, from whom they were unlawfully taken.

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

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

12 43. Plaintiff, on behalf of himself and Class Members, request relief as
13 described below.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff requests the following relief:

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

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

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

1 D. That the Court find and declare that Defendant has violated the UCL and
2 committed unfair and unlawful business practices by violating Cal. Bus. & Prof. Code §
3 17602.

4 E. That the Court award to Plaintiff and Class Members damages and full
5 restitution in the amount of the subscription payments made by them pursuant to Cal.
6 Bus. & Prof. Code § 17603, in an amount to be proved at trial;

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

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

12 H. That Plaintiff and the Class be awarded reasonable attorneys' fees and
13 costs pursuant to California Code of Civil Procedure § 1021.5, and/or other applicable
14 law; and

15 I. That the Court award such other and further relief as this Court may deem
16 appropriate.

17
18 Dated: May 20, 2016

NEWPORT TRIAL GROUP, APC

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20 By: /s/ Scott J. Ferrell

Scott. J. Ferrell

21 Attorney for Plaintiff
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CIVIL COVER SHEET

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

JARROD SECOLA, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Placer (EXCEPT IN U.S. PLAINTIFF CASES)

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

Newport Trial Group
4100 Newport Place Drive, Suite 800, Newport Beach, CA 92660
Telephone: 949-706-6464

DEFENDANTS

TURBINE, INC., a Delaware corporation; and DOES 1 - 10, inclusive,

County of Residence of First Listed Defendant Norfolk County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

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

Large grid of boxes for nature of suit, including categories like Personal Injury, Contract, Real Property, Labor Standards, and Securities/Commodities.

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 USC 1332
Brief description of cause: Violations of California Automatic Renewal Laws

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 05/20/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Scot J. Ferrell

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 2:16-cv-01086-TLN-KJN Document 1-1 Filed 05/20/16 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.