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GREAT HEALTHWORKS, INC.

9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 JEAN BOYER, individually and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 GREAT HEALTHWORKS, INC.,
a Nevada corporation; and DOES 1-50,
18 inclusive,

19 Defendants.
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Case No. **'17CV0734 JAH WVG**
(Removed from San Diego Superior
Court, Case No. 37-2017-00008453-
CU-MC-CTL)

CLASS ACTION

**GREAT HEALTHWORKS, INC.'S
NOTICE OF REMOVAL UNDER
THE CLASS ACTION FAIRNESS
ACT**

Complaint Filed: March 9, 2017

1 **TO THE HONORABLE JUDGES OF THE UNITED STATES**
2 **DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA,**
3 **AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**
4

5 **PLEASE TAKE NOTICE** that Defendant Great HealthWorks, Inc.
6 (“GHW”) provides notice that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, it
7 hereby removes to this Court the state court class action styled as *Jean Boyer v.*
8 *Great Healthworks, Inc.*, San Diego Superior Court, Case No. 37-2017-00008453-
9 CU-MC-CTL. Filed concurrently herewith is the declaration of Andrew LaBarbera
10 in support of removal (“LaBarbera Decl.”). The following is a listing of the
11 pleadings to date and a short and plain statement of the grounds for removal:
12

13 **STATE COURT COMPLAINT**
14

15 1. On March 9, 2017, Plaintiff Jean Boyer, (“Plaintiff”) filed a
16 putative class action complaint against Defendant GHW and Does 1-50, inclusive,
17 in the Superior Court for the State of California, County of San Diego, Case No. 37-
18 2017-00008453-CU-MC-CTL (the “Complaint”).
19

20 2. Plaintiff served the Complaint and Summons on GHW on
21 March 13, 2017. A copy of the Complaint and Summons are attached hereto as
22 **Exhibit A**, which contains all of the documents served on GHW by Plaintiff and the
23 entire state court file to date.
24

25 3. Plaintiff claims that GHW violated California’s Automatic
26 Renewal Law (“ARL”) (Cal. Bus. & Prof. Code § 17600, *et seq.*) (an alleged part of
27 California’s False Advertising Law), California’s Consumers Legal Remedies Act
28 (Cal. Civ. Code § 1761, *et seq.*) and California’s Unfair Competition Law (Cal. Bus.

1 & Prof. Code § 17200, *et seq.*) by, among other things, failing to provide her and
2 members of the putative class with the company's automatic renewal or continuous
3 service offer in a clear and conspicuous manner and charging consumers' credit or
4 debit cards for the automatic renewal without first obtaining their consent to do so.
5 *See* Exhibit A.

6
7 4. Plaintiff purports to act on behalf of "[a]ll individuals in
8 California who, within the statute of limitations period, have had a credit card, debit
9 card, and/or a third-party payment account charged by Defendants as part of an
10 automatic renewal program or a continuous service program."

11
12 5. GHW has not yet responded to Plaintiff's Complaint.

13
14 **THIS COURT HAS JURISDICTION UNDER CAFA**

15
16 6. Although complete diversity is not required under the Class
17 Action Fairness Act ("CAFA"), complete diversity is present in this case because
18 Plaintiff is a citizen of California and the only named Defendant, GHW, is a citizen
19 of both Nevada and Florida. LaBarbera Decl., ¶ 3.

20
21 7. Plaintiff's Complaint is a class action complaint. 28 U.S.C. §
22 1332(d)(2).

23
24 8. For purposes of determining diversity jurisdiction, Plaintiff is a
25 citizen of California. Complaint, ¶ 1. Further, she seeks to represent a class of
26 consumers who are "individuals in California." Complaint, ¶ 18.

1 9. GHW is not a citizen of California. GHW is a corporation,
2 incorporated in Nevada and registered to do business in the State of Florida, with its
3 principal place of business in Fort Lauderdale, Florida. Complaint, ¶ 2; LaBarbera
4 Decl., ¶ 3.

5
6 10. For purposes of determining diversity jurisdiction, the citizenship
7 of “Doe” defendants being sued under fictitious names is disregarded. *See* 28
8 U.S.C. § 1441(a).

9
10 **THE AMOUNT IN CONTROVERSY EXCEEDS \$5,000,000 AS PLED IN**
11 **PLAINTIFF’S COMPLAINT AND DEMONSTRATED BY THE**
12 **LABARBERA DECLARATION**
13

14 11. Jurisdiction under CAFA may exist when the amount in
15 controversy exceeds \$5,000,000.00, exclusive of interest and costs. 28 U.S.C. §
16 1332(d)(6). To determine the amount in controversy under CAFA, the Court must
17 aggregate the claims of all class members. *Id.* Here, the named Plaintiff, who
18 claims to be representative of the class members, alleges that GHW repeatedly
19 charged consumers’ credit or debit cards for its products under the company’s
20 automatic renewal program without first obtaining the consumers’ consent. *See*
21 Complaint, ¶ 16.

22
23 12. GHW has conducted a preliminary investigation of Plaintiff’s
24 claims and determined that California sales from the automatic renewal program
25 exceed \$5,000,000 for the last twelve months alone. LaBarbera Decl., ¶ 7.

26
27 13. Accordingly, the amount in controversy exceeds \$5,000,000.00,
28 exclusive of interest and costs. *Id.*

THIS NOTICE OF REMOVAL IS PROCEDURALLY PROPER

14. In accordance with 28 U.S.C. 1446(a), all copies of papers filed in the State Court action as of the filing of this Notice of Removal are attached to this Notice.

15. Pursuant to 28 U.S.C. 1446(b)(2)(B), GHW had 30 days from March 13, 2017—the date of service of the Complaint and Summons—to file its Notice of Removal, i.e. until April 12, 2017. Thus, GHW’S Notice of Removal is timely.

16. Venue in this Court is proper pursuant to 28 U.S.C. § 1446(a) because this action was removed from San Diego County Superior Court, located within the District and Division of the Court.

17. Pursuant to 28 U.S.C. § 1446(d), GHW is providing written notice to Plaintiff of the removal of this action.

18. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Clerk of the Superior Court of the State of California, County of San Diego.

19. GHW is the only named defendant in this action. GHW is not required to investigate the identity of the unnamed defendants or to obtain their consent for removal. *See Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-691 (9th Cir. 1998). In any event, no Doe defendant has been served. GHW is not required to obtain consent to remove from defendants who have not been served.

1 *See* 28 U.S.C. § 1446(b); *Salveson v. Western States Bankcard Ass’n*, 731 F.2d
2 1423, 1429 (9th Cir. 1984).

3
4 **CONCLUSION**

5
6 For all of the reasons set forth above, GHW removes the original action
7 brought by Plaintiff in the Superior Court of the State of California for the County
8 of San Diego to this Court.

9
10 Dated: April 12, 2017

11 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

12
13 By

s/Mark G. Rackers

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EXHIBIT A

Part 1

Complaint

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ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

03/09/2017 at 12:29:42 PM

Clerk of the Superior Court
By Patrick Gonzaga, Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

11 JEAN BOYER, individually and on behalf of
all others similarly situated,

12 Plaintiff,

13 vs.

14 GREAT HEALTHWORKS, INC., a Florida
15 corporation; and DOES 1-50, inclusive,

16 Defendants.

CASE NO. 37-2017-00008453-CU-MC-CTL

CLASS ACTION COMPLAINT FOR:

(1) FALSE ADVERTISING;
(2) VIOLATION OF THE CALIFORNIA
CONSUMERS LEGAL REMEDIES ACT;
(3) UNFAIR COMPETITION

DEMAND FOR JURY TRIAL

1 1. Plaintiff Jean Boyer ("Plaintiff") is an individual residing in San Diego County,
2 California.

3 2. Plaintiff is informed and believes and thereon alleges that defendant Great
4 Healthworks, Inc. ("Great Healthworks") is a Florida corporation that does business in San Diego
5 County.

6 3. Plaintiff does not know the names of the defendants sued as DOES 1 through 50
7 but will amend this complaint when that information becomes known. Plaintiff alleges on
8 information and belief that each of the DOE defendants is affiliated with the named Defendant in
9 some respect and is in some manner responsible for the wrongdoing alleged herein, either as a
10 direct participant, or as the principal, agent, successor, alter ego, or co-conspirator of or with the
11 named defendant. For ease of reference, Plaintiff will refer to the named Defendant and the DOE
12 defendants collectively as "Defendants."

13 4. Venue is proper in this Court because the liability arose in San Diego County.

14 THE CALIFORNIA AUTOMATIC RENEWAL LAW

15 5. In 2009, in response to the increasing number of consumer complaints about
16 unwanted charges to credit cards for products or services that consumers did not explicitly request
17 or know they were agreeing to, the California Legislature passed Senate Bill 340, which took
18 effect on December 1, 2010 as Cal. Bus. & Prof. Code § 17600 *et seq.* (the California Automatic
19 Renewal Law ("ARL")). By enacting the ARL, the Legislature sought to protect consumers from
20 *becoming enrolled without their consent in "automatic renewal" or "continuous service"*
21 subscriptions or programs.

22 6. The ARL seeks to ensure that, before there can be a legally-binding automatic
23 renewal or continuous service arrangement, there must first be adequate disclosure of certain terms
24 and conditions and affirmative consent by the consumer. To that end, Cal. Bus. & Prof. Code
25 § 17602(a) makes it unlawful for any business making an automatic renewal offer or a continuous
26 service offer to a consumer in California to do any of the following:

27 (1) Fail to present the automatic renewal offer terms or continuous service offer
28 terms in a clear and conspicuous manner before the subscription or purchasing agreement is

1 fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal
2 proximity, to the request for consent to the offer. For this purpose, "clear and conspicuous" means
3 "in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding
4 text of the same size, or set off from the surrounding text of the same size by symbols or other
5 marks, in a manner that clearly calls attention to the language." Cal. Bus. & Prof. Code
6 § 17601(c). In the case of an audio disclosure, 'clear and conspicuous' means in a volume and
7 cadence sufficient to be readily audible and understandable." *Ibid*.

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

12 (3) Fail to provide an acknowledgment that includes the automatic renewal or
13 continuous service offer terms, cancellation policy, and information regarding how to cancel in a
14 manner that is capable of being retained by the consumer. If the offer includes a free trial, the
15 business shall also disclose in the acknowledgment how to cancel and allow the consumer to
16 cancel before the consumer pays for the goods or services.

17 7. Cal. Bus. & Prof. Code § 17602(b) requires that the acknowledgment specified in
18 § 17602(a)(3) include a toll-free telephone number, electronic mail address, or other mechanism
19 for cancellation.

20 **PLAINTIFF'S EXPERIENCE WITH GREAT HEALTHWORKS**

21 8. In or about March 2013, Plaintiff, who is 89 years old, saw Defendants'
22 advertisement on television for Defendants' product, Omega XL. The advertisement was for a
23 "discounted" bottle of Omega XL. Plaintiff's husband, who is 93 years old, had recently returned
24 from the hospital, and Plaintiff was hopeful that Omega XL would help him feel better. Plaintiff
25 called the telephone number displayed on the television screen and ordered Omega XL for her
26 husband. After Plaintiff's husband took the product as indicated on the bottle, Plaintiff did not
27 notice any improvement in her husband's condition. Approximately one month after placing the
28 initial telephone order, Plaintiff received another bottle of Omega XL in the mail, and then noticed

1 that her credit card had been charged for the additional bottle without her knowledge or consent.

2 9. At the time Plaintiff placed her telephone order, Plaintiff was not informed nor was
3 she aware that Defendants had enrolled her in a automatically renewing monthly subscription of
4 Defendants' product. Plaintiff called Defendants to inform them that the product was not working
5 and that she wanted to return her remaining Omega XL for a refund, and that she wanted to cancel
6 any further shipments and automatically recurring charges to her credit card.

7 10. Unfortunately, Defendants make it very difficult for consumers to cancel auto-
8 shipments and to receive refunds for product that was not ordered. Plaintiff placed at least three
9 calls to Defendants to cancel further shipments and stop the charges to her credit card, but
10 Defendants' representatives refused to comply with those requests. Instead, Defendants'
11 representatives insisted that Plaintiff's husband should "take more pills" to achieve Defendants'
12 claimed effect. Defendants' representatives told Plaintiff stories about grandparents, parents or
13 other family members who took the product in a certain manner and, after doing so, (supposedly)
14 had their ailments cured. At one point, Defendants agreed to suspend shipments to Plaintiff for a
15 few months, but the shipments resumed thereafter. Eventually, after Plaintiff made numerous calls
16 to Defendants to try to cancel further shipments, Defendants finally relented and removed Plaintiff
17 from the auto-shipment program.

18 11. Defendants never obtained Plaintiff's consent to enroll Plaintiff in Defendants'
19 automatically renewing monthly subscription program. Neither the television advertisement or the
20 *customer service representative who took Plaintiff's order over the phone* informed her that upon
21 making the initial purchase, Defendants would enroll her in an automatically renewing
22 subscription that would result in monthly charges to Plaintiff's credit card.

23 12. Had Plaintiff been informed at the outset that Defendants intended to enroll her in
24 an automatically renewing monthly subscription, Plaintiff would not have provided her credit card
25 information, would have declined to be enrolled in Defendants' automatically renewing monthly
26 subscription program, and would not have incurred the credit card charges posted by Defendants.

27 ///

28 ///

DEFENDANTS' MARKETING PRACTICES

13. As explained below, Defendants engaged and continue to engage in deceptive business practices, including enrolling consumers in an automatically-renewing monthly purchase program without their consent and in violation of California law.

14. Defendants' television advertisements generally feature elderly celebrities (such as Dottie Peoples and Larry King) who claim that Defendants' products, such as Omega XL, cured them of ailments. The television advertisements display a toll-free telephone number for placing orders. However, the television advertisements do not disclose that a consumer who calls to place an order will be enrolled in an automatically-renewing monthly subscription.

15. The difficulty that Plaintiff experienced in trying to cancel her enrollment in the auto-shipment program and receive a refund, as described above, appears to be Defendants' standard way of doing business. For example, a former employee of Great Healthworks posted an employment review on the website www.great-healthworks.reviews that states, in part:

...During training, we all found out that this is hard core retention and not customer service...I was put on the sales floor and was told to stop people from canceling their automatic payments...I was told by my supervisor to just make up lies to get them off the phone and not to cancel their service or else I would be fired...

I was later fired during the fourth week because I requested a refund for a senior citizen who is on a fixed income who was never told about the reoccurring charge to her bank account.

A true and correct printout of that review is attached as Exhibit 1. A number of similar reviews and complaints posted by current or former employees of Great Healthworks appear on websites such as Glassdoor.com and Indeed.com, and describe similar business practices by Defendants.

16. An Internet website that specializes in consumer reviews and complaints reflects at least 109 reviews of Great Healthworks.¹ A review dated January 5, 2016, states:

Ordered arthritis supplement and saw nowhere either on the television commercial or website that you are signing up for

¹ "BBB Accredited Business Profile - Great Healthworks," available at <https://www.org.south-east-florida/business-reviews/health-and-wellness/great-healthworks-in-fort-lauderdale-fl/reviews> and complaints (last accessed March 7, 2017).

ongoing automatic orders! The website and TV commercial both say you get two bottles of Omega XL for the price of one, \$49.95 plus shipping and handling, that much is true. It says, if not completely satisfied your initial order can be returned within 90 days of purchase. NOWHERE does it say you are signing on for automatic continuing shipments...There were two bottles of 60 each, there hasn't even been enough time to use all those yet. This time they charge my debit card over 68 dollars. Shouldn't a company have to tell you if you are signing on for continuing charges?

A true and correct printout of that consumer complaint is attached as Exhibit 2.

17. Plaintiff is informed and believes and thereon alleges that, in connection with advertisements, marketing materials, and/or offers directed to California consumers, and with the use of information submitted by California consumers in response to such advertisements, marketing materials, and/or offers, Defendants have charged the consumers' credit cards, debit cards, and/or third-party payment accounts without authorization under the guise that the consumers were enrolled in memberships that automatically renew and/or provide for continuous service until cancelled by the consumer when, in fact, the advertisements, marketing materials, offers, and subsequent charges associated therewith were and are in violation of California law. Plaintiff is informed and believes and thereon alleges that Defendants engage in such practices knowingly and willfully.

CLASS ACTION ALLEGATIONS

18. Plaintiff brings this lawsuit as a class action under Code of Civil Procedure § 382. Plaintiff seeks to represent the following Class: "All individuals in California who, within the statute of limitations period, have had a credit card, debit card, and/or a third-party payment account charged by Defendants as part of an automatic renewal program or a continuous service program."

19. Ascertainability. The members of the Class may be ascertained by reviewing records in the possession of Defendants and/or third parties, including without limitation Defendants' marketing and promotion records, Defendants' customer records, and Defendants' shipment and billing records.

20. Common Questions of Fact or Law. There are questions of fact or law that are common to the members of the class, which predominate over individual issues. Common

1 questions regarding the class include, without limitation: (1) Defendants' policies, practices and
2 procedures for obtaining affirmative consent from customers before charging a credit card, debit
3 card, or third-party payment account for an automatic renewal or continuous service; (2) whether
4 Defendants presented the automatic renewal offer terms or continuous service offer terms in a
5 manner that is "clear and conspicuous" within the meaning of California law and in "visual
6 proximity" to the request for consent to the offer (or in the case of an offer conveyed by voice, in
7 temporal proximity to the request for consent to the offer); (3) Defendants' policies, practices, and
8 procedures for providing consumers with an acknowledgment that includes the automatic renewal
9 or continuous service offer terms, the cancellation policy, and information regarding how to
10 cancel, in a manner that is capable of being retained by the consumer; (4) Defendants' record-
11 keeping practices; and (5) the appropriate remedies for Defendants' conduct.

12 21. Numerosity. The Class is so numerous that joinder of all Class members would be
13 impracticable. Plaintiff is informed and believes and thereon alleges that the Class consists of at
14 least 100 members.

15 22. Typicality and Adequacy. Plaintiff's claims are typical of the claims of the
16 members of the Class. Plaintiff alleges on information and belief that Defendants enrolled Class
17 members in automatic renewal or continuous service offer programs without presenting the
18 applicable terms in the manner required by law, charged Class members' credit cards, debit cards,
19 or third-party accounts without first obtaining the Class members' affirmative consent, and failed
20 to provide the requisite acknowledgment in a manner capable of being retained by the Class
21 members. Plaintiff has no interests that are adverse to those of the other Class members. Plaintiff
22 will fairly and adequately protect the interests of the Class members.

23 23. Superiority. A class action is superior to other methods for resolving this
24 controversy. Because the amount of restitution to which each Class member may be entitled is
25 low in comparison to the expense and burden of individual litigation, it would be impracticable for
26 Class members to redress the wrongs done to them without a class action forum. Furthermore, on
27 information and belief, Class members do not know that their legal rights have been violated.
28 Class certification would also conserve judicial resources and avoid the possibility of inconsistent

1 judgments.

2 24. Defendants have acted on grounds that are generally applicable to the Class,
3 thereby making appropriate final injunctive relief and/or declaratory relief with respect to the class
4 as a whole.

5 FIRST CAUSE OF ACTION

6 False Advertising

7 25. Plaintiff incorporates the previous allegations as though fully set forth herein.

8 26. The California Automatic Renewal Law, Cal. Bus. & Prof. Code § 17600 *et seq.*,
9 became effective on December 1, 2010 as part of the California False Advertising Law.

10 27. Cal. Bus. & Prof. Code § 17501(a) defines the term "automatic renewal" as
11 meaning "a plan or arrangement in which a paid subscription or purchasing agreement is
12 automatically renewed at the end of a definite term for a subsequent term."

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

22 29. Cal. Bus. & Prof. Code § 17501(e) defines the term "continuous service" as
23 meaning "a plan or arrangement in which a subscription or purchasing agreement continues until
24 the customer cancels the service."

25 30. Cal. Bus. & Prof. Code § 17601(c) defines the terms "clear and conspicuous" and
26 "clearly and conspicuously" to means "in larger type than the surrounding text, or in contrasting
27 type, font, or color to the surrounding text of the same size, or set off from the surrounding text of
28 the same size by symbols or other marks, in a manner that clearly calls attention to the language.

1 In the case of an audio disclosure, 'clear and conspicuous' and 'clearly and conspicuously' means
2 in a volume and cadence sufficient to be readily audible and understandable."

3 31. Cal. Bus. & Prof. Code § 17602(a) makes it unlawful for any business making an
4 automatic renewal offer or a continuous service offer to a consumer in California to do any of the
5 following:

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

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

14 (3) Fail to provide an acknowledgment that includes the automatic renewal or
15 continuous service offer terms, cancellation policy, and information regarding how to cancel in a
16 manner that is capable of being retained by the consumer. If the offer includes a free trial, the
17 business shall also disclose in the acknowledgment how to cancel and allow the consumer to
18 cancel before the consumer pays for the goods or services.

19 32. In the case of a material change in the terms of an automatic renewal or continuous
20 service offer that has been accepted, Cal. Bus. & Prof. Code § 17602(c) makes it unlawful to fail
21 to provide the consumer with a clear and conspicuous notice of the material change.

22 33. Cal. Bus. & Prof. Code § 17603 provides: "In any case in which a business sends
23 any goods, wares, merchandise, or products to a consumer, under a continuous service agreement
24 or automatic renewal of a purchase, without first obtaining the consumer's affirmative consent as
25 described in Section 17602, the goods, wares, merchandise, or products shall for all purposes be
26 deemed an unconditional gift to the consumer, who may use or dispose of the same in any manner
27 he or she sees fit without any obligation whatsoever on the consumer's part to the business,
28

1 including, but not limited to, bearing the cost of, or responsibility for, shipping any goods, wares,
2 merchandise, or products to the business."

3 34. Plaintiff is informed and believes and thereon alleges that, during the applicable
4 statute of limitations period, Defendants have enrolled consumers, including Plaintiff and Class
5 members, in automatic renewal programs and/or continuous service programs and have (a) failed
6 to present the automatic renewal or continuous service offer in a clear and conspicuous manner
7 before the subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of
8 an offer conveyed by voice, in temporal proximity, to the request for consent to the offer;
9 (b) charged the consumer's credit or debit card or the consumer's third-party payment account for
10 an automatic renewal or continuous service without first obtaining the consumer's affirmative
11 consent to the agreement containing the automatic renewal offer terms or continuous service offer
12 terms; (c) failed to provide an acknowledgment that includes the automatic renewal or continuous
13 service offer terms, cancellation policy, and information regarding how to cancel in a manner that
14 is capable of being retained by the consumer; and/or (d) in the case of a material change in the
15 terms of the automatic renewal or continuous service offer, failed to provide a clear and
16 conspicuous notice of the material change and provide information regarding how to cancel in a
17 manner that is capable of being retained by the consumer, all in violation of Cal. Bus. & Prof.
18 Code § 17602.

19 35. As a result of Defendants' conduct, pursuant to Cal. Bus. & Prof. Code § 17603,
20 *Plaintiff and Class members are entitled to restitution of all amounts that Defendants charged to*
21 *Plaintiff's and Class members' credit cards, debit cards, or third-party payment accounts during*
22 *the four years preceding the filing of this Complaint and continuing until Defendants' statutory*
23 *violations cease.*

24 36. As a result of Defendants' conduct, pursuant to Cal. Bus. & Prof. Code § 17535,
25 Plaintiff and the Class members are entitled to an injunction enjoining Defendants from making
26 offers to California consumers that do not comply with California law, from making charges to
27 credit cards, debit cards, or third-party accounts without prior affirmative consent to an agreement
28 containing "clear and conspicuous" disclosures of the automatic renewal offer terms or continuous

1 service offer terms, and from failing to provide information regarding how to cancel in a manner
2 that is capable of being retained by the consumer.

3 **SECOND CAUSE OF ACTION**

4 **Violation of the Consumers Legal Remedies Act**

5 37. Plaintiff incorporates the previous allegations as though fully set forth herein.

6 38. Plaintiff and the Class members are "consumers" within the meaning of Cal. Civil
7 Code § 1761(d) in that Plaintiff and the Class members sought or acquired Defendants' goods
8 and/or services for personal, family, or household purposes.

9 39. Defendants' products and services are "goods" and "services" within the meaning
10 of Cal. Civil Code § 1761(a) and (b).

11 40. The purchases by Plaintiff and Class members are "transactions" within the
12 meaning of Cal. Civil Code § 1761(e).

13 41. Defendants have violated Cal. Civil Code § 1770, subdivisions (a)(5), (a)(9),
14 (a)(13), (a)(14), (a)(17), and (a)(19), by representing that Defendants' goods and/or services have
15 certain characteristics that they do not have; advertising goods and/or services with the intent not
16 to sell them as advertised; making false and misleading statements of fact concerning the reasons
17 for, existence of, and/or amounts of price reductions; representing that a transaction involves
18 rights or obligations which it does not have; representing that the consumer will receive a rebate,
19 discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur
20 *subsequent to the consummation of the transaction; and inserting an unconscionable provision into*
21 contracts.

22 42. Defendants' conduct alleged herein was undertaken by Defendants with
23 oppression, fraud, and/or malice, within the meaning of Cal. Civil Code § 3294(c).

24 43. Plaintiff, on behalf of herself and all other members the Class, seek an injunction
25 prohibiting Defendants from continuing their unlawful practices in violation of the Consumers
26 Legal Remedies Act, as described above.

1 **THIRD CAUSE OF ACTION**

2 California Unfair Competition Law

3 44. Plaintiff incorporates the previous allegations as though fully set forth herein.

4 45. The California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200
5 *et seq.*, defines unfair competition as including "any unlawful, unfair or fraudulent business act or
6 practice."

7 46. In the course of conducting business, Defendants committed "unlawful," "unfair,"
8 and/or "fraudulent" business practices by, inter alia, (a) failing to present the terms of automatic
9 renewal or continuous service provisions to consumers before a purchasing agreement is fulfilled,
10 and/or failing to present such terms to consumers in a clear and conspicuous manner before a
11 purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by
12 voice, in temporal proximity, to the request for consent to the offer, in violation of Cal. Bus. &
13 Prof. Code § 17602(a)(1); (b) charging the consumer's credit card, debit card, or third-party
14 payment account for an automatic renewal or continuous service without first obtaining the
15 consumer's affirmative consent to the agreement containing clear and conspicuous disclosures of
16 the automatic renewal offer terms or continuous service offer terms, in violation of Cal. Bus. &
17 Prof. Code § 17602(a)(2); (c) failing to provide an acknowledgment that includes the automatic
18 renewal or continuous service offer terms, cancellation policy, and information regarding how to
19 cancel in a manner that is capable of being retained by the consumer, in violation of Cal. Bus. &
20 Prof. Code § 17602(a)(3); (d) in the case of a material change in the terms of an automatic renewal
21 or continuous service offer, failing to provide a clear and conspicuous notice of the material
22 change and/or to provide information regarding how to cancel in a manner that is capable of being
23 retained by the consumer, in violation of Cal. Bus. & Prof. Code § 17602(c); (e) representing that
24 defendant's goods and services have certain characteristics that they do not, in violation of Cal.
25 Civil Code § 1770(a)(5); (f) advertising goods or services with the intent not to sell them as
26 advertised, in violation of Cal. Civil Code § 1770(a)(9); making false and misleading statements
27 of fact concerning the reasons for, existence of, and/or amounts of price reductions, in violation of
28 Cal. Civil Code § 1770(a)(13); representing that a transaction involves rights or obligations which

1 it does not have, in violation of Cal. Civil Code § 1770(a)(14); representing that the consumer will
2 receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on
3 an event to occur subsequent to the consummation of the transaction, in violation of Cal. Civil
4 Code § 1770(a)(17); and inserting an unconscionable provision into a contract, in violation of Cal.
5 Civil Code § 1770(a)(19). Plaintiff reserves the right to allege other violations of law that
6 constitute unlawful or unfair business acts or practices.

7 47. Defendants' acts and omissions as alleged herein are substantially injurious to
8 consumers, offend public policy, and are immoral, unethical, oppressive, and unscrupulous as the
9 gravity of the conduct outweighs any alleged benefits attributable to such conduct.

10 48. There were reasonably available alternatives to further Defendants' legitimate
11 business interests, other than the conduct described herein.

12 49. Defendants' acts, omissions, nondisclosures, and misleading statements as alleged
13 herein were and are false, misleading, and/or likely to deceive the consuming public.

14 50. Plaintiff has suffered injury in fact and lost money as a result of Defendants' acts of
15 unfair competition.

16 51. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff and the Class members are
17 entitled to an order: (1) requiring Defendants to make restitution to Plaintiff and the Class
18 members; (2) enjoining Defendants from charging Plaintiff's and Class members' credit cards,
19 debit cards, and/or third party payment accounts until such time as Defendants obtain the
20 consumer's affirmative consent to an agreement that contains clear and conspicuous disclosures of
21 all automatic renewal or continuous service offer terms; and (3) enjoining Defendants from
22 making automatic renewal or continuous service offers in the State of California that do not
23 comply with the California Automatic Renewal Law.

24 ///

25 ///

26 ///

27 ///

28 ///

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

On the First Cause of Action:

1. For restitution as alleged herein;
2. For injunctive relief as alleged herein;

On the Second Cause of Action:

3. For injunctive relief as alleged herein;
4. For reasonable attorneys' fees and costs pursuant to Cal. Civ. Code § 1780(e);

On the Third Cause of Action:

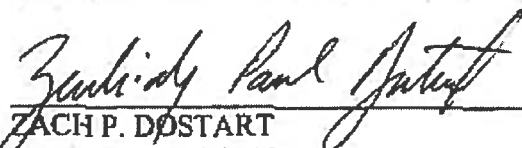
5. For restitution as alleged herein;
6. For injunctive relief as alleged herein;

On All Causes of Action:

7. For reasonable attorneys' fees pursuant to Cal. Code Civ. Proc. § 1021.5;
8. For costs of suit;
9. For pre-judgment interest; and
10. For such other relief that the Court deems just and proper.

Dated: March 9, 2017

DOSTART HANNINK & COVENEY LLP


ZACH P. DOSTART
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all claims so triable.

Dated: March 9, 2017

DOSTART HANNINK & COVENEY LLP


ZACH P. DOSTART
Attorneys for Plaintiff

801161.2

Exhibit 1

[All Reviews](#) > [Staff](#) > [Great Healthworks](#) > 76 of 78 reviews

Great Healthworks's reply to: Great Healthworks - Lies and deception from a former employee

📍 Hollywood, Florida Dec 06, 2011 599 views 2 comments

Great Healthworks' reply:

It is unfortunate that the loss of your position with us has been so difficult for you. However, the policies you describe do not correspond with those Great HealthWorks has in place.

Indeed, if our trainers behaved as described they would be disciplined – as you have learned. We would be glad to investigate the claims you have made, but you have chosen to remain anonymous.

Hide the review ^

I was contacted by Great Healthworks for for a customer service position with some up-selling. I passed the interview process and was hired. Training was incomplete and unorganized. Our class had 4 different trainers for less than 2wks. One of the trainers just got out of training the 4 days earlier. We were told that they hire about 17 employees and were only going to keep about 4 or 5. During training, we all found out that this is hard core retention and not customer service. At the 3rd week I was put on the sales floor and was told to stop people from canceling their automatic payments. Most of the calls were from people that were not told about the automatic payments and people who got sick from taking these super potent omega 3 capsules. I was told by my supervisor to just make up lies to get them off the phone and not to cancel their service or else I would be fired. I was told to lie about how well its working for my family and friends. Whenever a manager was requested, I was told to say they were not available and to transfer them to voice mail where they will never get a call back.

My supervisor says, "if you would just make stuff up you would do very well here."

I was later fired during the fourth week because I a requested a refund for a senior citizen who is on a fixed income who was never told about the reoccurring charge to her bank account.

I lost my unemployment compensation for accepting this job that was misrepresented to me.



This review is a subjective opinion of a user.

More Review Details

Product or service
Omegaxl

Review category
Staff

review #279577 [by downhatsrightman](#)

Share			Helpful?	No	9	Yes	20
	✓	1		✓	9	✓	20
			Had the same issue	Yes	1		
				✓	1		

Show comments  2

You May Also Like

Exhibit 2

3/7/2017

BBB Business Profile | Great HealthWorks, Inc. | Reviews and Complaints

BBB Accredited Business Profile

Great HealthWorks, Inc.

Business Information

(866) 449-9679

13 years in business

4150 SW 28th Way

Fort Lauderdale, FL 33312-5201

Additional Phone Numbers

- (800) 488-8082
- (800) 488-8082
- (866) 449-9676
- (954) 744-7400

Additional Email Addresses

- support@greathhealthworks.com
- mdupre@greathhealthworks.com

Additional Website Addresses

- <http://www.omegax.com/> (<http://www.omegax.com/>)

BBB File Opened: 06/19/2006

Business Started: 12/10/2003

Business Started Locally: 02/15/2006

Business Incorporated: 03/15/2006 in FL

Type of Entity

Corporation

Business Management

- Mr. Martin Gill, Cust. Advoc. Prof.

Contact Information

- Principal: Mr. Ken Meares, CEO
- Customer Service: Ms. Vickie Cercase, Director, Legal
- Mr. Miles Dupree, COO

Business Category

- Health & Wellness
- Health & Diet Products - Retail
- Herbs
- Health & Medical Products
- Business & Trade Organizations
- Business Consultants
- Business Services - General
- Health & Diet Food Products - Wholesale & Manufacturing

Alternate Business Names

- Great Health Works
- GHW Media

3/7/2017

BBB Business Profile | Great HealthWorks, Inc. | Reviews and Complaints

Comments

Comment from the Business:

May 5, 2016 BBB Complaint Department BBB of Southeast Florida & the Caribbean 4411 Seacon Circle, Ste. 4 West Palm Beach, FL 33407 Re: Review posted by ***** To Whom It May Concern: We are writing in reference to the review cited above. During Ms. ***** initial sales call on March 23, 2016, the agent (not named ***** offered the \$ 48.90 price she quoted. Unfortunately, while the customer made it clear that she was interested in receiving only one bottle a month, the agent mistakenly submitted an order for 2 bottles per month. This mistake is being addressed with the representative Ms. ***** second shipment was refunded in full to her Visa account in the amount of \$89.85 on April 25, 2016. Upon receipt of her review, today, we have also refunded her initial order in full in the amount of \$48.90, in accordance with our 90 Day Money Back Guarantee. We apologize to Ms. ***** for the misunderstanding and any inconvenience she may have experienced. Should you need further assistance with this matter please contact this office. Sincerely, ***** Customer Advocacy

by Business on May, 05, 2016

Was this review helpful? Yes No

01/05/16

Cynthia B.

Negative

Ordered arthritis supplement and saw nowhere either on the television commercial or website that you are signing up for ongoing automatic orders! The website and TV commercial both say you get two bottles of OmegaXL for the price of one, \$48.95 plus shipping and handling, that much is true. It says, if not completely satisfied your initial order can be returned within 90 days of purchase. NOWHERE does it say you are signing on for automatic continuing shipments. This is not at all fair to the consumer, if you haven't even tried this supplement how would you know if you would want to continue with it. Surely this is illegal. There were two bottles of \$50 each, there hasn't even been enough time to use all those yet. This time they charge my debit card over 68 dollars. Shouldn't a company have to tell you if you are signing on for continuing charges? Some months I don't even have an extra 55 dollars. I don't even have my bills automatically taken out of my bank account. I would never sign up for something like this. Shamefully underhanded way of doing business!!!

Was this review helpful? Yes No

1 2

Customer Complaints Summary

109 complaints closed with BBB in last 3 years | 35 closed in last 12 months

Complaint Type	Total Closed Complaints
Advertising / Sales Issues	12
Billing / Collection Issues	32
Delivery Issues	2
Guarantee / Warranty Issues	3
Problems with Product / Service	60
Total Closed Complaints	109

SUM-100

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**ELECTRONICALLY FILED**Superior Court of California,
County of San Diego**03/09/2017 at 12:29:42 PM**Clerk of the Superior Court
By Patrick Gonzaga, Deputy Clerk**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**GREAT HEALTHWORKS, INC., a Florida Corporation, and DOES 1-50,
inclusive**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

JEAN BOYER, individually and on behalf of all others similarly situated

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

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court
Central - Hall of Justice
330 West Broadway
San Diego, CA 92101

CASE NUMBER:

(Número del Caso): 37-2017-00008453-CU-MC-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

James T. Hannink (131747) / Zach P. Dostart (255071)

DOSTART HANNINK & COVENEY, LLP, 4180 La Jolla Village Dr., Ste. 530, La Jolla, CA 92037

Tel: (858) 623-4200 Fax: (858) 623-4299

DATE: 03/10/2017
(Fecha)Clerk, by
(Secretario)Deputy
(Adjunto)

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

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

[SEAL]

**NOTICE TO THE PERSON SERVED: You are served**

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☒ on behalf of (specify): Great Healthworks, Inc., a Florida corporation
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
- ☐ by personal delivery on (date):

Page 1 of 1

EXHIBIT A

Part 2

State Court File

SUPERIOR COURT OF CALIFORNIA
County of SAN DIEGO
Register of Actions Notice

Case Number: 37-2017-00008453-CU-MC-CTL
Case Title: Boyer vs Great Healthworks Inc [E-FILE]
Case Status: Pending
Case Category: Civil - Unlimited
Case Type: Misc Complaints - Other

Filing Date: 03/09/2017
Case Age: 33 days
Location: Central
Judicial Officer: Judith F. Hayes
Department: C-68

Future Events

Date	Time	Department	Event
09/08/2017	09:30 AM	C-68	Civil Case Management Conference - Complaint

Participants

Name	Role	Representation
Boyer, Jean	Plaintiff	Dostart, Zach P; HANNINK, JAMES T
Great Healthworks Inc	Defendant	

Representation

Name	Address	Phone Number
DOSTART, ZACH P	DOSTART HANNINK & COVENEY LLP 4180 La Jolla Village Dr 530 La Jolla CA 92037	(858) 623-4200
HANNINK, JAMES T	4180 La Jolla Village Drive 530 La Jolla CA 92037	

ROA#	Entry Date	Short/Long Entry	Filed By
1	03/09/2017	Complaint filed by Boyer, Jean. Refers to: Great Healthworks Inc	Boyer, Jean (Plaintiff)
2	03/09/2017	[A document for ROA# 2]	
2	03/09/2017	Civil Case Cover Sheet filed by Boyer, Jean. Refers to: Great Healthworks Inc	Boyer, Jean (Plaintiff)
3	03/09/2017	Original Summons filed by Boyer, Jean. Refers to: Great Healthworks Inc	Boyer, Jean (Plaintiff)
4	03/09/2017	Declaration - Other filed by Boyer, Jean. Refers to: Great Healthworks Inc	Boyer, Jean (Plaintiff)
5	03/10/2017	Summons issued.	
6	03/09/2017	Case assigned to Judicial Officer Hayes, Judith.	
7	03/10/2017	Civil Case Management Conference scheduled for 09/08/2017 at 09:30:00 AM at Central in C-68 Judith F. Hayes.	
8	03/10/2017	Case initiation form printed.	
9	03/29/2017	Proof of Service filed by Boyer, Jean; Boyer, Jean.	Boyer, Jean (Plaintiff); Boyer, Jean (Plaintiff)

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): James T. Hannink (131747) Zach Dostart (255071) DOSTART HANNINK & COVENEY, LLP 4180 La Jolla Village Dr., Ste. 530 La Jolla, CA 92037 TELEPHONE NO. (858) 623-4200 FAX NO. (858) 623-4299 ATTORNEY FOR (Name): Plaintiff		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 03/09/2017 at 12:29:42 PM Clerk of the Superior Court By Patrick Gonzaga, Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central - Hall of Justice		CASE NUMBER: 37-2017-00008463-CU-MC-CTL JUDGE: Judge Judith F. Hayes DEPT:	
CASE NAME: BOYER v. GREAT HEALTHWORKS, INC., et al.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

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

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|---|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|---|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): False Advertising; Violation of Cal. Consumer Legal Remedies Act; Unfair Competit.
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
- Date: March 9, 2017
 Zach P. Dostart

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

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

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

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

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

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

CASE TYPES AND EXAMPLES

Auto Tort

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

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

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

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (18)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36) Other Employment (15)

Contract

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

Real Property

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

Unlawful Detainer

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

Judicial Review

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

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

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

Enforcement of Judgment

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

Miscellaneous Civil Complaint RICO (27)

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

Miscellaneous Civil Petition

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

1 JAMES T. HANNINK (131747)
jhannink@sdlaw.com
2 ZACH P. DOSTART (255071)
zdostart@sdlaw.com
3 DOSTART HANNINK & COVENEY LLP
4180 La Jolla Village Drive, Suite 530
4 La Jolla, California 92037-1474
Tel: 858-623-4200
5 Fax: 858-623-4299

6 Attorneys for Plaintiff

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

03/09/2017 at 12:29:42 PM

Clerk of the Superior Court
By Patrick Gonzaga, Deputy Clerk

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10
11 JEAN BOYER, individually and on behalf of
all others similarly situated,

12 Plaintiff,

13 vs.

14 GREAT HEALTHWORKS, INC., a Florida
15 corporation; and DOES 1-50, inclusive,

16 Defendants.


CASE NO. 37-2017-00008453-CU-MC-CTL

**DECLARATION OF JEAN BOYER
PURSUANT TO CALIFORNIA CIVIL
CODE SECTION 1780(d)**

I, Jean Boyer, declare as follows:

1. I submit this declaration pursuant to Section 1780(d) of the California Civil Code.
2. Defendant Great Healthworks, Inc. ("GHW") has done and is doing business in San Diego County, including the marketing and selling of products on television and over the telephone. While in San Diego County, I purchased products from GHW, but without my authorization, consent, or knowledge, GHW entered me into an automatically renewing monthly membership program.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 9, 2017, at SAN DIEGO, California.



Jean Boyer

801346.1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7068	
PLAINTIFF(S) / PETITIONER(S): Jean Boyer	
DEFENDANT(S) / RESPONDENT(S): Great Healthworks Inc	
BOYER VS GREAT HEALTHWORKS INC [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2017-00008453-CU-MC-CTL

CASE ASSIGNMENT

Judge: Judith F. Hayes

Department: C-68

COMPLAINT/PETITION FILED: 03/09/2017

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	09/08/2017	09:30 am	C-68	Judith F. Hayes

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases or guidelines and procedures.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

***ALTERNATIVE DISPUTE RESOLUTION (ADR):** THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2017-00008453-CU-MC-CTL CASE TITLE: Boyer vs Great Healthworks Inc [E-FILE]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): Jean Boyer	
DEFENDANT(S): Great Healthworks Inc	
SHORT TITLE: BOYER VS GREAT HEALTHWORKS INC [E-FILE]	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2017-00008453-CU-MC-CTL

Judge: Judith F. Hayes

Department: C-68

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 03/10/2017

JUDGE OF THE SUPERIOR COURT

1 JAMES T. HANNINK (131747)
jhannink@sdlaw.com
2 ZACH P. DOSTART (255071)
zdostart@sdlaw.com
3 DOSTART HANNINK & COVENEY LLP
4180 La Jolla Village Drive, Suite 530
4 La Jolla, California 92037-1474
Tel: 858-623-4200
5 Fax: 858-623-4299

6 Attorneys for Plaintiff

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/29/2017 at 11:21:00 AM
Clerk of the Superior Court
By E. Filing Deputy Clerk

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10
11 JEAN BOYER, individually and on behalf of
all others similarly situated,

12 Plaintiff,

13 vs.

14 GREAT HEALTHWORKS, INC., a Florida
15 corporation; and DOES 1-50, inclusive,

16 Defendant.

CASE NO. 37-2017-00008453-CU-MC-CTL

PROOF OF PERSONAL SERVICE

Judge: Hon. Judith F. Hayes
Dept.: C-68

Action Filed: March 9, 2017
Trial Date: None set

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Zachariah Dostart, 255071 Dostart Hannink & Coveney LLP 4180 La Jolla Village Drive, Suite 530 Imperial Beach, CA 92037 TELEPHONE NO.: (858) 6234285 ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, San Diego County 330 W. Broadway San Diego, CA 92101-3409	
PLAINTIFF/PETITIONER: Jean Bover DEFENDANT/RESPONDENT: Great Healthworks, Inc.	CASE NUMBER: 37-2017-00008453-CU-MC-CTL
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No. 17120-1

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: **Class Action Complaint, Civil Case Cover Sheet, Summons, Declaration of Jean Boyer Pursuant to California Civil Code Section 1780(d), Notice of Case Assignment SD, Stipulation to Alternative Dispute Resolution Process SD, Notice to Litigants SD** **BY FAX**
3. a. Party served: Great Healthworks, Inc., a Florida corporation
- b. Person Served: Vickie Carcaise, Registered Agent - Person Authorized to Accept Service of Process
4. Address where the party was served: 4150 SW 28th Way
Fort Lauderdale, FL 33312
5. I served the party
- a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 03/13/2017 (2) at (time): 11:50AM
6. The "Notice to the Person Served" (on the summons) was completed as follows:

d. on behalf of:

Great Healthworks, Inc., a Florida corporation
under: CCP 416.10 (corporation)

7. Person who served papers

- a. Name: Sandra Quinones
- b. Address: One Legal - 194-Marin
504 Redwood Blvd #223
Novato, CA 94947

c. Telephone number: 415-491-0606

d. The fee for service was: \$ 249.95

e I am:

- (1) Not a registered California process server.

8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: 03/28/2017

Sandra Quinones
(NAME OF PERSON WHO SERVED PAPERS)

Sandra Quinones
(SIGNATURE)

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
SHANNON Z. PETERSEN, Cal. Bar No. 211426
3 MARK G. RACKERS, Cal. Bar No. 254242
LISA S. YUN, Cal. Bar No. 280812
4 501 West Broadway, 19th Floor
San Diego, California 92101-3598
5 Telephone: 619.338.6500
Facsimile: 619.234.3815
6 E mail spetersen@sheppardmullin.com
mrackers@sheppardmullin.com
7 lyun@sheppardmullin.com

8 Attorneys for Defendant
GREAT HEALTHWORKS, INC.

9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 JEAN BOYER, individually and on
behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 GREAT HEALTHWORKS, INC.,
17 a Florida corporation; and DOES 1-50,
18 inclusive,

19 Defendants.
20

Case No. **'17CV0734 JAH WVG**

(Removed from San Diego Superior
Court, Case No. 37-2017-00008453-
CU-MC-CTL)

CLASS ACTION

**DECLARATION OF ANDREW
LABARBERA IN SUPPORT OF
GREAT HEALTHWORKS, INC.'S
REMOVAL UNDER THE CLASS
ACTION FAIRNESS ACT**

21 I, ANDREW LABARBERA, state and declare that:

22 1. I am the Chief Financial Officer ("CFO") for Great
23 HealthWorks, Inc. ("GHW"). I am authorized to make this declaration on behalf of
24 Defendant GHW in support of its Notice of Removal.
25

26 2. In my capacity as CFO, I am responsible for overseeing financial
27 data relating to GHW. I am familiar with the procedures by which sales figures,
28

1 records and related documents are prepared and maintained. I regularly direct GHW
2 employees to conduct searches and craft financial reports and I regularly review
3 those reports. GHW'S sales figures, records and related documents referenced
4 herein were made either by persons with knowledge of the matters recorded or from
5 information supplied by persons with such knowledge, and were made at or about
6 the time of the event recorded. It is GHW's practice to maintain such sales figures,
7 records and related documents in the regular course of its business. The documents
8 and records referenced in this declaration are business records that are prepared,
9 produced and maintained in the above-described manner. I have reviewed the
10 records referenced in this declaration, and except as otherwise specifically stated in
11 this Declaration, the facts set forth herein are based on personal knowledge and/or
12 personal knowledge obtained from my review of GHW's documents and records
13 and, if called as a witness, I could and would be competent to testify to these facts.
14

15 3. GHW is a corporation, incorporated in Nevada and registered to
16 do business in the State of Florida, with its principal place of business in Fort
17 Lauderdale, Florida.

18
19 4. In Plaintiff Jean Boyer's complaint, she complains that GHW
20 failed to provide her and members of the putative class with information relating to
21 the company's automatic renewal program in a clear and conspicuous manner and
22 charged consumers' credit or debit cards for the automatic renewal without first
23 obtaining their consent.

24
25 5. Ms. Boyer asserts in her complaint that she is the class
26 representative of the following proposed class of similarly situated individuals: "All
27 individuals in California who, within the statute of limitations period, have had a
28 credit card, debit card, and/or a third-party payment account charged by Defendants

1 as part of an automatic renewal program or a continuous service program.”

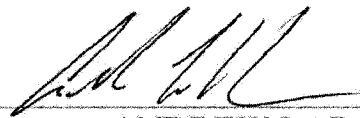
2 Complaint, ¶ 18.

3
4 6. Plaintiff alleges that she seeks restitution of “all amounts that
5 Defendants charged to Plaintiff’s and Class members’ credit cards, debit cards, or
6 third-party payment accounts during the four years preceding the filing of this
7 Complaint[.]” Complaint, ¶ 35; prayer for relief.

8
9 7. In response to Ms. Boyer’s allegations, I conducted a preliminary
10 investigation of Ms. Boyer’s claims and I directed GHW personnel to conduct a
11 similar investigation. As a result of our preliminary investigation and review of
12 GHW’S records, I have determined that California sales from the automatic renewal
13 program exceed \$5,000,000 for the last twelve months alone.

14
15 I declare under penalty of perjury under the laws of the United States of
16 America that the facts stated in this declaration are true and correct.

17
18 Executed on April 4, 2017, at Fort Lauderdale, Florida.

19
20 

21 ANDREW LABARBERA

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
SHANNON Z. PETERSEN, Cal. Bar No. 211426
3 MARK G. RACKERS, Cal. Bar No. 254242
LISA S. YUN, Cal. Bar No. 280812
4 501 West Broadway, 19th Floor
San Diego, California 92101-3598
5 Telephone: 619.338.6500
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6 E mail spetersen@sheppardmullin.com
mrackers@sheppardmullin.com
7 lyun@sheppardmullin.com

8 Attorneys for Defendant
9 GREAT HEALTHWORKS, INC.

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 JEAN BOYER, individually and on
behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 GREAT HEALTHWORKS, INC.,
17 a Nevada corporation; and DOES 1-50,
18 inclusive,

19 Defendants.
20
21
22
23
24
25
26
27
28

Case No. **'17CV0734 JAH WVG**

CLASS ACTION

PROOF OF SERVICE

Case No. _____)

1 *Boyer v. Great Healthworks*

2 U.S. District Court, Southern District of California

3 (Removed from San Diego Superior Court, Case No. 37-2017-0008453-CU-MC-CTL)

4 PROOF OF SERVICE

5 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

6 At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Diego, State of California. My business address is 501 West Broadway, 19th Floor, San Diego, CA 92101-3598.

7 On April 12, 2017, I served true copies of the following document(s) described as

8 **GREAT HEALTHWORKS, INC.'S NOTICE OF REMOVAL UNDER THE CLASS ACTION FAIRNESS ACT**

9 **CIVIL COVER SHEET**

10 **DEFENDANT'S NOTICE OF PARTIES WITH FINANCIAL INTEREST PER CIVIL LOCAL RULE 40.2 AND RULE 7.1 OF THE FEDERAL RULES OF CIVIL PROCEDURE**

11 **DECLARATION OF ANDREW LABARBERA IN SUPPORT OF GREAT HEALTHWORKS, INC.'S REMOVAL UNDER THE CLASS ACTION FAIRNESS ACT**

12 on the interested parties in this action as follows:

13 James T. Hannink, Esq.
14 Zach P. Dostart, Esq.
15 Dostart Hannink & Coveney LLP
16 4180 La Jolla Village Drive, Suite 530
17 La Jolla, CA 92037-1474

Attorneys for Plaintiff Jean Boyer
Tel 858-623-4200; Fax 858-623-4299
jhannink@sdlaw.com;
zdostart@sdlaw.com

18 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 12, 2017, at San Diego, California.

20 

21 PAMELA PARKER

JS 44 (Rev. 08/16)

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

JEAN BOYER, individually and on behalf of all other similarly situated

(b) County of Residence of First Listed Plaintiff San Diego County, CA

(EXCEPT IN U.S. PLAINTIFF CASES)

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

James T. Hannink, (131747); Zach P. Dostart (255071)

Dostart Hannink & Coveney LLP

4180 La Jolla Village Drive, Suite 530, La Jolla, CA 92037-1474

Tel 858-623-4200; Fax 858-623-4299

jhannink@sdlaw.com; zdostart@sdlaw.com

DEFENDANTS

GREAT HEALTHWORKS, INC., a Nevada corporation; and DOES 1-50, inclusive

'17CV0734 JAH WVGCounty of Residence of First Listed Defendant Broward County, Florida

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

Shannon Z. Petersen (211426); Mark G. Rackers (254242); Lisa S. Yun (280812)

Sheppard, Mullin, Richter & Hampton LLP

501 West Broadway, 19th Floor, San Diego, CA 92101-3598

Tel: 619.338.6500; Fax 619.234.3815

spetersen@sheppardmullin.com; mrackers@sheppardmullin.com;

lyun@sheppardmullin.com

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)☐ 1 U.S. Government Plaintiff☐ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☒ 4 Diversity (Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)Citizen of This State ☒ PTF 1 ☐ DEF 1

Incorporated or Principal Place of Business In This State

Citizen of Another State ☐ 2 ☒ 2

Incorporated and Principal Place of Business In Another State

Citizen or Subject of a Foreign Country ☐ 3 ☐ 3Foreign Nation ☐ 6 ☐ 6**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <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
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)☐ 1 Original Proceeding☒ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from Another District☐ 6 Multidistrict Litigation-Transfer☐ 8 Multidistrict Litigation - Direct File**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. Section 1332

Brief description of cause:

Plaintiff claims Defendant violated California's Automatic Renewal Law.

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 April 12, 2017s/Mark G. RackersEmail: mrackers@sheppardmullin.com

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RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____