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7 *Counsel for Plaintiff and all*
8 *others similarly situated*

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

12 ISABELLA JANOVICK, on behalf of
herself and all others similarly situated,

13 Plaintiffs,

14 v.

15 AMERICAN BREAST CANCER
16 FOUNDATION, INC., a Maryland
Corporation; and DOES 1-10, inclusive,

17 Defendants.
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Case No. **'13CV2697 DMS KSC**

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAWS ("FAL"); Bus. & Prof. Code §17500 et seq.; and
2. VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAWS ("UCL"); Bus. & Prof. Code §17200 et seq.

DEMAND FOR JURY TRIAL

20 Plaintiff Isabella Janovick on behalf of herself and all others similarly situated,
21 alleges the following upon information and belief based upon investigation of counsel,
22 except as to her own acts, which she alleges upon personal knowledge:

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PARTIES

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2 1. Plaintiff Isabella Janovick is a resident of California who donated money
3 to Defendant American Breast Cancer Foundation, Inc. (“Defendant ABCF”) in 2013.
4 Plaintiff donated to Defendant ABCF after reviewing Defendant ABCF’s website,
5 <http://www.abcf.org/>, and relying on the representations contained therein.

6 2. Plaintiff is informed and believes, and thereon alleges, that Defendant
7 ABCF is a Maryland corporation and a charitable organization subject to tax exemption
8 under section 501(c)(3) of the Internal Revenue Code of the United States. Defendant
9 ABCF’s mission statement is as follows: “to provide financial assistance for breast
10 cancer screenings and diagnostic tests for uninsured and underserved individuals,
11 regardless of age or gender.”¹

12 3. The true names and capacities of the Defendants sued herein as DOES 1
13 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such
14 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is
15 legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of
16 Court to amend this Complaint to reflect the true names and capacities of the DOE
17 Defendants when such identities become known.

18 4. At all relevant times, each and every Defendant was acting as an agent
19 and/or employee of each of the other Defendants and was acting within the course
20 and/or scope of said agency and/or employment with the full knowledge and consent of
21 each of the Defendants. Each of the acts and/or omissions complained of herein were
22 alleged and made known to, and ratified by, each of the other Defendants (Defendant
23 ABCF and DOE Defendants will hereafter collectively be referred to as “Defendant”).

JURISDICTION AND VENUE

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25 5. A Court has diversity jurisdiction over this class action pursuant to 28
26 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the
27 amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs, and is a

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¹ See <http://www.abcf.org/ABCF-Mission.htm> (last visited August 29, 2013).

1 class action in which some members of the class are citizens of different states than the
2 Defendant. *See* 28 U.S.C. §1332(d)(2)(A).

3 6. This Court also has personal jurisdiction over Defendant because
4 Defendant currently does business in this state.

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

8 **FACTUAL ALLEGATIONS**

9 8. Defendant ABCF, dubbed America's fourth worst charity by the Tampa
10 Bay Times, the Center for Investigative Reporting, and Cable News Network (*i.e.*,
11 CNN), is a tax exempt, 501(c)(3) Charitable Organization that claims to be dedicated
12 "to provid[ing] financial assistance for breast cancer screenings and diagnostic tests for
13 uninsured and underserved individuals, regardless of age or gender."² Defendant claims
14 to raise funds through donations "relentlessly" so it may "Continue to partner with
15 medical clinics across the nation to provide affordable breast cancer screening and
16 treatment services, especially for those who are usually not eligible to receive funding
17 assistance because of their age and gender"; "Further reduce screening and treatment
18 costs for those in need"; "Increase the number of persons who will receive funding
19 assistance toward the provision of vital screening and diagnostic testing"; and
20 "Continue its efforts to educate the public on the importance of breast self examinations
21 for early detection and treatment of breast cancer."³

22 9. Defendant ABCF claims to use the charitable donations collected from the
23 public to help people in need with breast cancer screenings and diagnostic tests;
24 however, *a mere fraction* of the donations received from concerned donors all over the
25 country actually reaches the people for which Defendant ABCF supposedly operates.

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27 _____
28 ² *Id.*

³ *See* <http://www.abcf.org/ABCF-What-We-Do.htm> (last visited August 29, 2013).

1 10. Indeed, it has been recently reported that an average of **only 5.3% of the**
2 **approximately \$80 million** raised by Defendant ABCF since its existence actually
3 made it to people in need in direct cash aid.⁴

4 11. Instead of the millions of dollars raised in the name of protecting
5 underserved populations from breast cancer, the vast majority of the millions raised
6 goes to Defendant ABCF's operators and the for-profit companies Defendant ABCF
7 hires to solicit donations, *i.e.*, corporate fundraisers. This means that **a mere fraction**
8 **from every dollar raised actually goes to people in need.**⁵ Defendant fails to disclose
9 this fact to its donors.

10 12. Aside from Defendant ABCF's payment of approximately \$59.8 million in
11 cash to solicitors and for-profit fundraisers, Defendant ABCF has collected
12 approximately \$21 million in cash which went directly to the charity but was not passed
13 on to the people they purportedly serve. Indeed, direct cash aid to those in need totaled
14 approximately \$4.2 million since its inception. Perhaps even more egregious, during
15 founder Phyllis Wolf's tenure with ABCF, corporate fundraisers received 75 cents of
16 every dollar raised and between 2003 and 2010, and Ms. Wolf's son's telemarketing
17 company was paid nearly \$18 million to raise donations for Defendant ABCF.⁶ It was
18 further reported by the Tampa Bay Times, the Center for Investigative Reporting, and
19 CNN that "In June 2010, after negative publicity about the Wolf contract, the charity's
20 board forced Phyllis Wolf to resign and terminated the contract with her son. Wolf
21 received \$126,500 in salary that year; her son's company got \$134,733. Cancer patients
22 got [only] \$20,000 in mammogram assistance that year."⁷

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26 ⁴ "America's Worst Charities" is a report created by the collaboration of the Tampa Bay Times, the California-based
27 Center for Investigative Reporting, and CNN. Available at www.tampabay.com/americas-worst-charities (last updated
June 22, 2013).

28 ⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

1 13. Based on the foregoing details, the Better Business Bureau has declared
2 Defendant ABCF's "Standards for Charity Accountability" not met.⁸

3 14. Plaintiff reasonably relied on Defendant ABCF's rhetoric about donors'
4 charitable gifts going to assist underserved populations' fight against breast cancer.
5 After reviewing Defendant ABCF's website, Plaintiff made a donation, expecting that
6 her contribution would directly aid those in need.

7 15. Defendant fraudulently induces consumers and donors in making sizable
8 charitable donations amounting to millions of dollars a year by misleading donors into
9 believing that their donations, or *at least a majority thereof*, are directly aiding
10 populations in need. In reality, Defendant uses the majority of donations to pay for-
11 profit companies hired by Defendant to solicit *more* donations, *i.e.*, corporate
12 fundraisers.

13 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

14 16. Plaintiff brings this action on behalf of herself and on behalf of all others
15 similarly situated as members of the class (referred to hereafter as the "Class") defined
16 as follows:

17 *"All persons who are citizens or residents of California who donated money to*
18 *Defendant American Breast Cancer Foundation, Inc. within the four years prior*
19 *to the filing of the initial complaint in this action through the date of trial in this*
20 *action."*

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

25 18. The Class is so numerous that the individual joinder of all of its members
26 is impractical. *See* Fed. R. Civ. P. 23(a)(1). While the exact number and identities of
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28 ⁸ *See* <http://www.bbb.org/charity-reviews/national/health/american-breast-cancer-foundation-in-baltimore-md-1394/conclusions> (last visited August 29, 2013).

1 Class members are unknown to Plaintiff at this time and can only be ascertained
2 through appropriate discovery, Plaintiff is informed and believes the Class includes tens
3 of thousands of members. Plaintiff alleges that the Class may be ascertained by the
4 records maintained by Defendant.

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

11 (a) Whether Defendant’s advertising, marketing and solicitation is false or
12 misleading;

13 (b) Whether Defendant has misled donors to profit therefrom;

14 (c) Whether Defendant’s conduct is “unlawful” under Bus. & Prof. Code
15 Section 17200;

16 (d) Whether Defendant’s conduct is “unfair” under Bus. & Prof. Code
17 Section 17200;

18 (e) Whether Defendant’s conduct is “fraudulent” under Bus. & Prof. Code
19 Section 17200;

20 (f) Whether, as a result of Defendant’s misconduct, Plaintiff and the Class
21 are entitled to damages, restitution, equitable relief and other relief, and the
22 amount and nature of such relief.

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

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1 21. Plaintiff will fairly and adequately protect the interests of the members of
2 the Class. *See* Fed. R. Civ. P. 23(a)(4). Plaintiff has retained attorneys experienced in
3 the prosecution of class actions, including complex consumer and mass tort litigation.

4 22. A class action is superior to other available methods of fair and efficient
5 adjudication of this controversy, since individual litigation of the claims of all Class
6 members is impracticable. *See* Fed. R. Civ. P. 23(b)(3). Even if every Class member
7 could afford individual litigation, the court system could not. It would be unduly
8 burdensome to the courts in which individual litigation of numerous issues would
9 proceed. Individualized litigation would also present the potential for varying,
10 inconsistent, or contradictory judgments, and would magnify the delay and expense to
11 all parties and to the court system resulting from multiple trials of the same complex
12 factual issues. By contrast, the conduct of this action as a class action, with respect to
13 some or all of the issues presented herein, presents fewer management difficulties,
14 conserves the resources of the parties and of the court system, and protects the rights of
15 each Class member.

16 23. The prosecution of separate actions by thousands of individual Class
17 members would create the risk of inconsistent or varying adjudications with respect to,
18 among other things, the need for and the nature of proper notice, which Defendant must
19 provide to all Class members. *See* Fed. R. Civ. P. 23(b)(1)(A).

20 24. The prosecution of separate actions by individual class members would
21 create a risk of adjudications with respect to them that would, as a practical matter, be
22 dispositive of the interests of the other Class members not parties to such adjudications
23 or that would substantially impair or impede the ability of such non-party Class
24 members to protect their interests. *See* Fed. R. Civ. P. 23(b)(1)(B).

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

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FIRST CAUSE OF ACTION

Business & Professions Code § 17500

(Violation of the False Advertising Law)

(By Plaintiff and the Class Against All Defendants)

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5 26. Plaintiff hereby incorporates the preceding paragraphs above as if fully set
6 forth herein.

7 27. California Business and Professions Code (the “Code”) § 17500 provides
8 that “[i]t is unlawful for any . . . corporation . . . with intent directly or indirectly to
9 dispose of . . . personal property or to perform services, professional or otherwise, or
10 anything of any nature whatsoever or to induce the public to enter into any obligation
11 relating thereto, to make or disseminate or cause to be made or disseminated before the
12 public in this state, or to make or disseminate or cause to be made or disseminated from
13 this state before the public in any state, in any newspaper or other publication, or any
14 advertising device, or by public outcry or proclamation, or in any other manner or
15 means whatever, including over the Internet, any statement . . . which is untrue or
16 misleading, and which is known, or which by the exercise of reasonable care should be
17 known, to be untrue or misleading”

18 28. Defendant intended to dispose of property, perform services, or induce the
19 public to enter into an obligation relating thereto, and misled consumers by making
20 untrue or misleading statements and failing to disclose what is required as stated in the
21 Code, as alleged above, with knowledge that the statements made were untrue or
22 misleading or which, by the exercise of reasonable care, should be known to be untrue
23 or misleading.

24 29. As a direct and proximate result of Defendant’s misleading and false
25 advertising, marketing, and solicitation, Plaintiff and the members of the Class have
26 each suffered an injury in fact and have lost money or property.

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1 30. The misleading and false advertising, marketing, and solicitation described
2 herein presents a continuing threat to Plaintiff and the Class in that Defendant persists
3 and continues to engage in these practices, and will not cease doing so unless and until
4 forced to do so by this Court. Defendant’s conduct will continue to cause irreparable
5 injury to consumers unless enjoined or restrained.

6 **SECOND CAUSE OF ACTION**

7 **Business & Professions Code § 17200, et seq.**

8 **(Violation of the Unfair Competition Law)**

9 **(By Plaintiff and the Class Against All Defendants)**

10 31. Plaintiff hereby incorporates the preceding paragraphs above as if fully set
11 forth herein.

12 32. California Business and Professions Code § 17200, *et seq.*, (the “Unfair
13 Competition Law” or “UCL”) authorizes private lawsuits to enjoin acts of “unfair
14 competition” which includes any unlawful, unfair, or fraudulent business practice.

15 33. Government Code § 12599.6 deems it unlawful to “misrepresent the
16 purpose of the charitable organization or the nature or purpose or beneficiary of a
17 solicitation.” Cal. Gov’t Code § 12599.6(a). Further, “A misrepresentation may be
18 accomplished by words or conduct or failure to disclose a material fact.” *Id.*
19 **“Regardless of injury**, the following acts and practices are prohibited in the planning,
20 conduct, or execution of any solicitation or charitable sales promotion:

21 “(1) Operating in violation of, or failing to comply with, any of the
22 requirements of this act...

23 (2) Using any unfair or deceptive acts or practices or engaging in any
24 fraudulent conduct that **creates a likelihood of confusion or**
25 **misunderstanding.**

26 (3) Using any name, symbol, emblem, statement, or other material **stating,**
27 **suggesting, or implying to a reasonable person that the contribution is**
28 **to or for the benefit of a particular charitable organization when that**
is not the fact.

1 (4) Misrepresenting or misleading anyone in any manner to believe that the
2 person on whose behalf a solicitation or charitable sales promotion is being
3 conducted is a charitable organization or **that the proceeds of the**
4 **solicitation or charitable sales promotion will be used for charitable**
5 **purposes when that is not the fact.**

6 ...

7 (8) Representing directly or by implication that a charitable organization
8 will receive an amount greater than the actual net proceeds reasonably
9 estimated to be retained by the charity for its use.”

10 Cal. Gov’t Code § 12599.6(f)(1)-(4), (8) (emphasis added).

11 34. The UCL imposes strict liability. Plaintiff need not prove that Defendant
12 intentionally or negligently engaged in unlawful, unfair or fraudulent business
13 practices—but only that such practices occurred.

14 35. The material misrepresentations, concealment, and non-disclosures by
15 Defendant as part of its marketing, solicitation and advertising for its charitable
16 practices constitutes unlawful, unfair, and fraudulent business practices prohibited by
17 the UCL. Indeed, Defendant’s conduct violates Government Code § 12599.6 as
18 detailed above as Defendant: (1) misrepresented the purpose of American Breast
19 Cancer Foundation, Inc. as well as the nature, purpose, and beneficiary of their
20 solicitation; (2) created an extreme likelihood of, and did cause, confusion amongst
21 Plaintiff and the Class about the nature, purpose, and beneficiaries of American Breast
22 Cancer Foundation, Inc.; (3) made material statements suggesting and implying to
23 reasonable persons, *i.e.*, Plaintiff and the Class, that their contributions were for the
24 benefit of a particular charitable organization when that is not the fact; (4) made
25 material misrepresentations that the proceeds of the solicitations would be used for
26 charitable purposes when that was not the fact; and (5) represented directly or by
27 implication that American Breast Cancer Foundation, Inc. will receive an amount
28 greater than the actual net proceeds reasonably estimated to be retained by the charity
for its use.

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1 36. In carrying out such marketing, advertising, and solicitation, Defendant has
2 additionally violated the False Advertising Law, and/or common law duties, which
3 necessarily violates the UCL. Defendant’s business practices alleged herein, therefore,
4 are unlawful within the meaning of the UCL.

5 37. The harm to Plaintiff and members of the public, the Class, outweighs the
6 utility of Defendant’s practices and, consequently, Defendant’s practices, as set forth
7 fully above, constitute an unfair business act or practice within the meaning of the UCL.

8 38. Defendant’s practices are additionally unfair because they have caused
9 Plaintiff and the Class substantial injury, which is not outweighed by any countervailing
10 limited benefits to consumers, and is not an injury the consumers themselves could have
11 reasonably avoided.

12 39. Defendant’s practices, as set forth above, have misled the general public in
13 the past and will mislead the general public in the future. Consequently, Defendant’s
14 practices constitute an unlawful, unfair, or fraudulent business practice within the
15 meaning of the UCL.

16 40. Pursuant to California Business and Professions Code § 17204, an action
17 for unfair competition may be brought by any “person . . . who has suffered injury in
18 fact and has lost money or property as a result of such unfair competition.”
19 Defendant’s wrongful misrepresentations and omissions have directly and seriously
20 injured Plaintiff and the Class by causing them to pay to Defendant ABCF what they
21 thought were charitable contributions because they relied on the false and misleading
22 marketing, solicitation and advertising statements of Defendant ABCF.

23 41. The unlawful, unfair, and fraudulent business practices of Defendant are
24 ongoing and present a continuing threat to members of the public because they will
25 continue to be misled by Defendant’s false and misleading marketing, advertising, and
26 solicitation statements.

27 42. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent
28 injunctive relief ordering Defendant to cease this unfair competition, as well as

1 disgorgement and restitution to Plaintiff and the Class of all of Defendant's revenues
2 associated with Defendant's unfair competition, or such portion of those revenues as the
3 Court may find equitable.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for relief
6 and judgment as follows:

7 1. For preliminary and permanent injunctive relief enjoining Defendant, its
8 agents, servants and employees, and all persons acting in concert with them, from
9 engaging in, and continuing to engage in, the unfair, unlawful and/or fraudulent
10 business practices alleged above and that may yet be discovered in the prosecution of
11 this action;

12 2. For certification of the putative class;

13 3. For restitution and disgorgement of all money or property wrongfully
14 obtained by Defendant by means of their herein-alleged unlawful, unfair, and fraudulent
15 business practices;

16 4. For an accounting by Defendant for any and all profits derived by
17 Defendant from its herein-alleged unlawful, unfair, and/or fraudulent conduct and/or
18 business practices;

19 5. An award of statutory damages according to proof;

20 6. An award of general damages according to proof;

21 7. For attorneys' fees and expenses pursuant to all applicable laws including,
22 without limitation, Code of Civil Procedure §1021.5 and the common law private
23 attorney general doctrine;

24 9. For costs of suit; and

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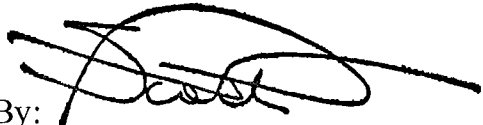
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10. For such other and further relief as the Court deems just and proper.

2 Dated: November 8, 2013

NEWPORT TRIAL GROUP

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By:

6 SCOTT J. FERRELL
7 RICHARD H. HIKIDA
8 VICTORIA C. KNOWLES
9 *Counsel for Plaintiff and all others similarly*
10 *situated*

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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Isabella Janovick</p> <p>(b) County of Residence of First Listed Plaintiff <u>San Diego, CA</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) NEWPORT TRIAL GROUP 4100 Newport Place Drive, Suite 800 Newport Beach, CA 92660 (949) 706-6464</p>	<p>DEFENDANTS American Breast Cancer Foundation, Inc.</p> <p>County of Residence of First Listed Defendant <u>Maryland</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p> <p style="text-align: center; font-size: 1.5em;">'13CV2697 DMS KSC</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <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	<p>PERSONAL INJURY - Product Liability</p> <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	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
<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	<p>PERSONAL INJURY - Product Liability</p> <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<p>LABOR</p> <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	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
	<p>REAL PROPERTY</p> <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	<p>CIVIL RIGHTS</p> <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	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <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	<p>SOCIAL SECURITY</p> <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))
		<p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District (specify)
 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332; 28 U.S.C. § 1331- Federal Question

Brief description of cause:
Class action for claims under California Consumer Remedies Act and for Unfair Business Practices

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: 11/08/2013 SIGNATURE OF ATTORNEY OF RECORD: Scott J. Ferrell, Esq.

FOR OFFICE USE ONLY

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

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.