

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**Alexa Bean, on Behalf of Herself and All  
Others Similarly Situated,**

**Plaintiff,**

**vs.**

**1-800 CONTACTS, INC.,**

**Defendant.**

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiff, Alexa Bean, by and through undersigned counsel, on behalf of herself and all persons similarly situated, complains and alleges as follows on personal knowledge, investigation of counsel, or information and belief:

**NATURE OF THE CASE**

1. This is a putative antitrust and consumer fraud class action seeking monetary damages and other relief from Defendant, 1-800 CONTACTS, INC. (“1-800 Contacts”), arising out of 1-800 Contacts’ anticompetitive, fraudulent, deceptive, and illegal scheme to suppress competition for, and artificially inflate the price of, online contact lenses.

2. Self-branded as “The World’s Largest Contacts Lens Store,” 1-800 Contacts is the largest online retailer of contact lenses in the United States, having filled more than 30 million orders for over 8 million customers.<sup>1</sup>

3. Companies that operate as online retailers, such as 1-800 Contacts, purchase advertising space from major online search engine companies (e.g. Google, Bing) to target and attract customers who use online search engines to identify desired products. The purchase of this ad space is often conducted through computerized auctions in which companies compete

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<sup>1</sup> See 1-800 Contacts, “Company Information,” at <http://www.1800contacts.com/the-company.html> (last accessed Nov. 2, 2016).

against one another for placement within these various search engines. Winning bidders receive more favorable placement in consumers' search results.

4. Beginning as early as 2003, 1-800 Contacts secretly began to enter a series of bilateral agreements between itself and numerous online sellers of contact lenses. Through these bilateral agreements, 1-800 Contacts and its direct competitors affirmatively agreed to refrain from competing against one another in certain online search advertising auctions.

5. Ultimately, 1-800 Contacts secured agreements with at least fourteen competing online sellers of contact lenses ensuring that the parties would not bid against one another in certain search advertising auctions (the "Bidding Agreements"). As a result, consumers searching to purchase contact lenses online have less options presented to them. This, in turn, has allowed 1-800 Contacts to charge higher prices for contact lenses that it would under normal, competitive market conditions.

6. Although 1-800 Contacts assures consumers "[o]ur large volume and central distribution facility help keep costs down—and we pass the savings on to you,"<sup>2</sup> the company's prices actually sit higher than those of many of 1-800 Contacts' competitors. 1-800 Contacts can safely price its contact lenses higher than it would under undistorted market conditions because its Bidding Agreements have artificially insulated the company from competitors' efforts to reach consumers searching for contact lenses online.

7. As direct horizontal agreements between competitors, 1-800 Contacts' Bidding Agreements – individually and in combination – constitute an unreasonable, *per se* restraint of trade under the federal antitrust laws. They also constitute an fraudulent, deceptive, and unfair method of competition which deprives consumers of the ability to ascertain even an adequate, let

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<sup>2</sup> See 1-800 Contacts, "Company Information," at <http://www.1800contacts.com/the-company.html> (last accessed Nov. 2, 2016).

alone fully informed depiction of the online contact lens marketplace, in violation of Pennsylvania law.

### **JURISDICTION AND VENUE**

8. This complaint is brought pursuant to, among other things, Section 1 of the Sherman Act, 15 U.S.C. § 1, *et seq.*, and Pennsylvania law.

9. This Court has subject-matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1331, 1332, and 1367, as well as 15 U.S.C. §§ 15 and 26. Alternatively, this Court has jurisdiction pursuant to 28 U.S.C. §§ 1332(d)(2) and (6) because the aggregate claims of the putative Class exceed \$5 million, exclusive of interest and costs, and at least one of the members of the proposed classes is a citizen of a different state than 1-800 Contacts.

10. Venue is proper in this district pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391 because 1-800 Contacts is subject to personal jurisdiction and regularly conducts business in this district, a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this district, and Plaintiff was injured and subjected to irreparable harm in this district.

### **THE PARTIES**

11. Plaintiff, Alexa Bean, is a resident and citizen of Pennsylvania.

12. Defendant 1-800 CONTACTS, INC. ("1-800 Contacts") maintains its principal place of business in Draper, Utah. 1-800 Contacts regularly and systematically conducts business throughout the Commonwealth of Pennsylvania, including in this district, among elsewhere. 1-800 Contacts is primarily engaged in the business of selling brand name contact lenses online to millions of consumers, including Plaintiff and members of the Class.

## **COMMON FACTUAL ALLEGATIONS**

### **A. Search Engine Advertising**

13. Internet search engines, such as Google, are able to provide their services to consumers for free thanks primarily to the revenue derived through the sale of advertisements. Search advertising refers to the paid advertisements that appear, in response to a search query, on the search engine results page above or adjacent to the unpaid, queried-for results.

14. Search advertising is valuable to advertisers because, unlike with other forms of advertising, an advertiser can deliver a message to a user at the precise moment that the user has expressed interest in a specific subject or product, and may be ready to make a purchase. For example, a seller of contact lenses (or any of a wide variety of products and services advertised online) can prominently display its advertisement to a user (and potential customer) who, milliseconds earlier, entered the search query “contact lenses” (or for another product or service).

15. However, search advertising is also beneficial to internet users in that by entering different search terms targeting particular brands or products, the user will be exposed to a correspondingly wide range of advertisements, offering a streamlined comparison of the wide range of prices and services available throughout a given industry.

16. Search engine companies sell advertising space on the search engine results page by means of automated auctions. A separate and automated search advertising auction is conducted each time a user enters a query.

17. For its ad to appear as a sponsored link when a user initiates a search, an advertiser must bid to reserve a particular word or phrase—known as a keyword—that would trigger the display of its ad. The advertiser specifies whether its ad should appear as the result of (1) a broad match—that is, whenever a search contains a phrase that is either similar to or a relevant variation of the keyword; (2) a phrase match—whenever the search contains the exact

keyword; or (3) an exact match—whenever the search contains the exact keyword and nothing more.

18. The advertiser may also use negative matching, which instructs the search engine not to display the ad when a certain search term was used. Negative matching allows the advertiser to filter out irrelevant searches. For example, if a seller of contact lenses had purchased the keyword “lenses,” it might want to exclude searches for “camera lenses.”

19. When a consumer enters a search query, an algorithm instantly evaluates the relevant bids based on an assessment of whether the advertisement will be relevant and useful to the user. The winner of the auction will have their advertisements displayed to the user. If the user clicks on an advertisement and visits the advertiser’s website, then the advertiser pays a fee to the search engine company.

#### **B. The Online Contact Lens Marketplace**

20. 1-800 Contacts has long been the largest online seller of contact lenses in the United States. The company is now privately owned, but for the last year in which it was public, the company reported approximately \$237 million in annual revenue. Third-party sources estimate the company’s revenue has grown to over \$250 million in annual revenue, representing the largest single-firm share of the online retail sales of contact lenses.

21. 1-800 Contacts essentially established the online contact lens market when they were founded in 1995. The company does not have a physical retail presence – all of its sales are online. This led 1-800 Contacts to quickly become the dominant online contact lens seller.

22. However, by the early 2000s, a number of competing online retailers began replicating 1-800 Contacts’ business model and moving in on their share of the online contact lens market. Online rivals invested in search advertising and competed directly against 1-800 Contacts in search advertising auctions, undercutting 1-800 Contacts’ prices in the process.

23. As early as 2003, 1-800 Contacts recognized that it was losing sales to lower-priced online competitors. However, 1-800 Contacts did not want to lower its prices to compete with these rivals, and devised a plan to avoid doing so – the company decided to coerce rivals into no-bid agreements (“Bidding Agreements”), according to which 1-800 Contacts’ competitors agreed not to compete in online advertisement auctions. As a consequence, 1-800 Contacts was able to prop-up its artificially high online contact lens prices, secure in the knowledge that numerous competitors would not be competing for the same valuable ad space and customers as itself. In fact, to this day, 1-800 Contacts’ prices for contact lenses remain consistently higher than the prices of its (remaining) online rivals.

**C. 1-800 Contacts’ Anticompetitive, No-Bidding Agreements**

24. In or around 2004, 1-800 Contacts began sending cease-and-desist letters to rival online sellers of contact lenses whose search advertisements appeared in response to user queries containing the term “1-800 Contacts” (or variations thereof).

25. 1-800 Contacts claimed that the mere fact that a rival’s advertisement appeared on the results page in response to a query containing a 1-800 Contacts trademark constituted infringement. This baseless accusation applied to competitors’ efforts to competitively advertise that their contact lens prices were less than 1-800 Contacts’ prices.

26. After sending its wave of frivolous cease-and desist letters, 1-800 Contacts proceeded to commence lawsuits against its rivals to coerce them into agreeing to refrain from competing in the online advertising auctions for contact lens searches. For instance, 1-800 Contacts sued the following rival online contact lens retailers. In each case, 1-800 Contacts quickly settled as soon as the rival acquiesced to 1-800 Contacts’ anticompetitive, non-compete terms; in many instances, settlement followed very shortly after the initial filing:

- a. Ezcontactsusa.com<sup>3</sup>
- b. Lensworld.com<sup>4</sup>
- c. Drugstore.com<sup>5</sup>
- d. Lensfast.com<sup>6</sup>
- e. Shipmycontacts.com<sup>7</sup>
- f. Discountcontactlenses.com<sup>8</sup>
- g. Lens123.com<sup>9</sup>
- h. Contactlensking.com<sup>10</sup>
- i. Replacemycontacts.com<sup>11</sup>
- j. Walgreens.com<sup>12</sup>
- k. Standardoptical.net<sup>13</sup>
- l. Webeyecare.com<sup>14</sup>
- m. 1800contacts-coupon.com<sup>15</sup>

27. The settlement agreements in each of the above-referenced cases are not publicly available.

28. As evident in the above referenced cases, rivals generally acquiesced to 1-800 Contacts' demands in order to avoid prolonged and costly litigation. Only one competitor,

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<sup>3</sup> *1-800 Contacts v. Premier Holdings*, 2:2007-cv-00946 (add court, e.g. "E.D. Pa.," "D. Utah", etc. to all parentheticals) (filed December 6, 2007, closed May 16, 2008).

<sup>4</sup> *1-800 Contacts v. Lensworld.com*, 2:2008-cv-00015 (filed January 8, 2008, closed September 9, 2008).

<sup>5</sup> *1-800 Contacts v. Drugstore.com*, 2:2008-cv-00157 (filed Feb. 26, 2008, closed August 12, 2008).

<sup>6</sup> *1-800 Contacts v. Lensfast*, 2:2008-cv-00984 (filed Dec. 23, 2008, closed Feb. 3, 2010).

<sup>7</sup> *1-800 Contacts v. Memorial Eye*, 2:2008-cv-00983 (filed Dec. 23, 2008, closed August 17, 2011).

<sup>8</sup> *1-800 Contacts v. Arlington Contact Lens Service*, 2:10-cv-00131 (filed Feb. 18, 2010, closed March 10, 2010).

<sup>9</sup> *1-800 Contacts v. Empire Vision Center*, 2:10-cv-00173 (filed Feb. 25, 2010, closed May 18, 2010).

<sup>10</sup> *1-800 Contacts v. Contact Lens King*, 2:10-cv-00205 (filed Mar. 8, 2010, closed April 8, 2010).

<sup>11</sup> *1-800 Contacts v. Tram Data*, 2:10-cv-00420 (filed May 6, 2010, closed July 28, 2010).

<sup>12</sup> *1-800 Contacts v. Walgreen*, 2:10-cv-00536 (filed June 8, 2010, closed July 20, 2010).

<sup>13</sup> *1-800 Contacts v. Standard Optical*, 2:10-cv-00643 (filed July 13, 2010, closed Feb. 7, 2011).

<sup>14</sup> *1-800 Contacts v. Web Eye Care*, 2:10-cv-00770 (filed Aug. 10, 2010, closed Sept. 13, 2010).

<sup>15</sup> *1-800 Contacts v. Harner*, 2:10-cv-00927 (filed Sept. 20, 2010, closed March 21, 2011).

Lens.com, refused to settle and proceeded to trial, where 1-800 Contacts' direct infringement claims were ultimately rejected by a federal court, and later affirmed on appeal.<sup>16</sup>

29. Upon information and belief, between the years 2004 and 2013, 1-800 Contacts entered into at least fourteen Bidding Agreements with rival online contact lens retailers as a condition of settling 1-800 Contacts' spurious infringement claims, restricting their rivals' ability to bid in future search advertising auctions, and thereby suppressing competition for online contact lens purchases. On information and belief, the Bidding Agreements have continuously remained in effect until today.

30. The nature of these Bidding Agreements, however goes well beyond merely prohibiting purportedly trademark-infringing conduct. Instead, they function to restrain a broad range of truthful, non-misleading, and non-confusing advertising.

31. The Bidding Agreements bar 1-800 Contacts' competitors from bidding in a search advertising auction for any of 1-800 Contacts' trademarked terms (e.g., "1-800 Contacts") or variations thereof (such as common misspellings).

32. The Bidding Agreements are all reciprocal, barring 1-800 Contacts from bidding for the competitors' trademarked terms or variations thereof. Notably, most of the competitors that entered into these Bidding Agreements had never raised trademark infringement claims or counterclaims against 1-800 Contacts.

33. Many of the Bidding Agreements also require a 1-800 Contacts' competitor to employ "negative keywords" directing the search engines not to display the competitor's advertisement in response to a search query that includes any of 1-800 Contacts' trademarked terms or variations thereof, even if the search engines' algorithms determine that the advertisement would be relevant and useful to the user. This undertaking is also reciprocal,

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<sup>16</sup> *1-800 Contacts, Inc. v. Lens.Com, Inc.*, 722 F.3d 1229 (10th Cir. 2013).



requiring 1-800 Contacts to employ its competitors' trade names and variations thereof as negative keywords in its own advertising campaigns.

34. Put simply, 1-800 Contacts targeted rivals whose advertisements appeared on the search engine results page in response to a user query for "1-800 Contacts" or variations thereof (e.g. "cheaper than 1-800 Contacts" or "compare to 1-800 Contacts"), without regard to whether the advertisements were likely to cause consumer confusion or infringed 1-800 Contacts' trademarks.

**D. Anticompetitive Effects, Market Power, and Interstate Commerce**

35. 1-800 Contacts' anticompetitive conduct has had, and continues to have, an injurious impact on the competition on a broad swath of product markets or lines of commerce, including on retail sellers of contact lenses, and search engines that facilitate the sale of search advertising by auction.

36. However, the most prominent effect on commerce as a result of 1-800 Contacts' challenged conduct is borne by consumers who patronize the internet marketplace for the purpose of identifying and purchasing contact lenses.

37. As horizontal agreements that restrain price competition and restrain truthful and non-misleading advertising, the Bidding Agreements are inherently suspect and *per se* unlawful under the federal antitrust laws.

38. As a result of its anticompetitive, fraudulent, and deceptive conduct, 1-800 Contacts has been able to charge supra-competitive prices for contact lenses purchased online. For instance, 1-800 Contacts charges higher prices than its competitors for the same contact lenses. The below chart shows how much 1-800 Contacts charges for some of its "most popular"

contact lenses in comparison to several of the competitors presumed to be engaged in the Bidding Agreements:<sup>17</sup>

	<b>1-800 Contacts</b>	<b>Discountcontact lenses.com</b>	<b>Ezcontactsusa.com</b>	<b>Contactlens king.com</b>
Acuvue Oasys w/ Hydraclear	\$140/6 months \$280/12 months	\$93.58/6 mo \$187.16/12 mo	\$107.80/6 mo \$215.60/12 mo	\$111.90/6 mo \$203.80/12 mo
Acuvue 2	\$111.96/6 months \$223.92/12 months	\$82.76/6 mo \$165.52/12 mo	\$87.80/6 mo \$175.60/12 mo	\$67.80/6 mo \$123.60/12 mo
Air Optix Aqua	\$179.96/2 boxes \$359.92/4 boxes	\$125.96/2 boxes \$251.92/4 boxes	\$119.80/2 boxes \$239.60/4 boxes	\$111.80/2 boxes \$207.60/4 boxes
Biofinity	\$191.96/2 boxes \$383.92/4 boxes	\$139.96/2 boxes \$279.92/4 boxes	\$119.80/2 boxes \$239.60/4 boxes	\$107/2 boxes \$214/4 boxes

39. Note that, in the above, a user attempting to identify and purchase contact lenses online with a query containing “1-800 Contacts” will not be able to find advertisements in popular search engines such as Google for the same contact lenses at cheaper prices because of the Bidding Agreements.

40. 1-800 Contacts has enriched itself at the Class members’ expense by suppressing the existence of cheaper alternatives through the Bidding Agreements, restraining competition, and deceiving consumers in the process.

41. Although 1-800 Contacts’ anticompetitive conduct constitutes a *per se* restraint, under the antitrust “quick look” rule or rule of reason, the relevant product markets would be (i) the market for the sale of search engine advertising by auction in response to user queries signaling the user’s interest in contact lenses, and (ii) the retail sale of contact lenses, including

<sup>17</sup> Costs reflect the prices of both a 6 month and 12 month supply for each eye; shipping charges and any applicable mail-in rebates excluded.

or comprising the online retail sale of contact lenses. In each product market, there may be one or more smaller relevant markets.

42. The relevant geographic market for each product market is the United States of America.

43. 1-800 Contacts' possesses substantial market power in the relevant product markets. Direct proof of 1-800 Contacts' market power include, but is not limited to, its forcing its competitors into the Bidding Agreements, and charging supra-competitive prices while maintaining it sizable market share. In addition, 1-800 Contacts has controlled a sizable share of the relevant product market, with a share well in excess of 50% and upwards of approximately 70%.

44. There is no legitimate, non-pretextual, procompetitive justification for the Bidding Agreements, individually or collectively, that outweighs the harmful effects alleged herein. Even if there was such justification, the Bidding Agreements, individually and collectively, are broader than necessary to achieve any procompetitive purpose. For instance, the Bidding Agreements exceed the scope of any property right that 1-800 Contacts may have in its trademarks and are not reasonably necessary to promote competition. Less restrictive alternatives are available to 1-800 Contacts to safeguard any legitimate interest the company may have under trademark law.

45. Significant barriers to entry insulate 1-800 Contacts in the relevant markets from any meaningful or vigorous competition. Online retailing requires substantial infrastructure, resources, and know-how, such that new competitors are unlikely in the foreseeable future to enter the relevant markets and become viable competitors of or alternatives to 1-800-Contacts. Existing competitors in the relevant markets also have not been able to expand meaningfully, or have contracted, due to 1-800 Contacts' market dominance and foreclosure.

46. In addition, traditional physical retailing (e.g., optometrists, drug stores, etc.) is not a substitute for online contact lens retailing. Consumers searching for and purchasing contact lenses online prefer the unique benefits and efficiencies of virtual shopping. As a result, online contact lens prices are price insensitive to physical retail outlets' contact lens prices, and vice versa. Similarly, bidding rates for online ad words are not constrained by physical advertising, and vice versa.

47. 1-800 Contacts' wrongful conduct alleged herein constitutes an ongoing, continuing conspiracy or pattern of conduct.

48. At all relevant times, 1-800 Contacts marketed and sold contact lenses purchased online across state lines including into Pennsylvania.

49. At all relevant times, in connection with 1-800 Contacts' advertisement and sale of contact lenses, communications were transmitted continuously and uninterrupted across state lines, including into Pennsylvania.

50. At all relevant times, various devices were employed to commit the illegal acts described herein, including U.S. mail, interstate travel, interstate telephone communications, and interstate commerce. Defendants' complained-of activities occurred within the stream of, and have substantially affected, interstate commerce.

51. Plaintiff and other Class members are direct purchasers of online contact lenses, and therefore have suffered injury as a result of 1-800 Contacts' anticompetitive conduct alleged herein.

**E. Plaintiff's Experience with 1-800 Contacts is Emblematic of That of the Classes**

52. Plaintiff Alexa Bean has purchased contact lenses online since at least 2009.

53. From time to time, starting at least as early as 2009 through the present, Ms. Bean would attempt to search the internet for contacts lenses available for online purchase. She would

use various search terms, strings or keywords (including search terms or strings that incorporated 1-800 Contacts) to locate which online retailers offered the best prices on contact lenses.

54. Plaintiff Bean purchased contact lenses online from 1-800 Contacts at least as early as 2009, and continued doing so to this day. She did so, in whole or in part, because her internet searches suggested that 1-800 Contacts offered the most competitive prices for contact lenses.

55. Since her initial purchase from 1-800 Contacts, Plaintiff Bean has periodically used internet searches to price-compare the contact lenses she usually purchases against the lenses available through competing online retailers.

56. Throughout all of her internet searches, Plaintiff Bean was unaware that competing online retailers charged less for the same contact lenses because those companies were not prevalent, or did not even appear, in her internet search results.

**F. FTC Investigation into 1-800 Contacts**

57. On August 8, 2016, the Federal Trade Commission filed an administrative complaint against 1-800 Contacts (the “FTC Complaint”).

58. The FTC Complaint alleges that 1-800 Contacts unlawfully orchestrated and currently maintains a web of anticompetitive agreements with rival online contact lens sellers that suppress competition in certain online search advertising auctions, resulting in consumers paying higher retail prices for contact lenses.

59. The FTC Complaint charges 1-800 Contacts with a violation of Section 5 of the Federal Trade Commission Act prohibiting “unfair or deceptive acts or practices in or affecting commerce.”

**G. Fraudulent Concealment and Tolling**

60. Upon information and belief, 1-800 Contacts (and its co-conspirators) each affirmatively concealed from Plaintiff and other Class members their unlawful conduct. 1-800 Contacts planned and implemented its unlawful scheme in private, and affirmatively strove to avoid discussing or disclosing the scheme, and took other actions to hide and conceal the unlawful conduct.

61. For instance, 1-800 Contacts negotiated and settled its baseless trademark infringement lawsuits in secret, the details and the true nature of which were concealed from Plaintiff, other Class members, and the public. 1-800 Contacts (and/or its co-conspirators) fraudulently concealed from the public and from Plaintiff the anticompetitive, fraudulent, and deceptive nature of each Bidding Agreement, which were disguised trademark lawsuit “settlements.”

62. Moreover, 1-800 Contacts made numerous misleading public statements about the purported robustness of competition in the market for the online retail sale of contact lenses. Indeed, just days before the FTC filed its complaint, 1-800 Contacts’ director of business development stated that “1-800 Contacts is dedicated to providing customers with more choice, greater, convenience, and lower prices.” Yet, at the same time, 1-800 Contacts was secretly abusing its market dominance to rob those same consumers of choice.

63. As another example, in July 2014, 1-800 Contacts’ General Counsel boasted in a Hearing before the Senate Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy, and Consumer Rights that the company “served over 15 million unique customers who value having choice in where they purchase their contact lenses.” Again, at this same time, 1-800 Contacts was secretly coercing competitors into the Bidding Agreements so 1-800 Contacts

could foreclose competition, reduce consumer choice, and charge higher prices for online contact lenses.

64. Because of the above, Plaintiff and other Class members did not discover, nor could they discover through reasonable diligence, 1-800 Contacts' (and/or its co-conspirators') anticompetitive, fraudulent, and deceptive conduct alleged herein. 1-800 Contacts' (and/or its co-conspirators') false and misleading statements or omissions lulled Plaintiff and other Class members into believing that the online identification and online retail prices paid for contact lenses were the result of competitive market forces rather than collusive or anticompetitive, fraudulent, or deceptive practices.

65. It was not until the filing of the FTC Complaint that Plaintiff and other Class members reasonably could have known of the unlawful conduct alleged herein; and yet, even details in the FTC Complaint are redacted.

### **CLASS ALLEGATIONS**

66. Plaintiff brings this action on behalf of herself and all others similarly situated pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Rule 23.

67. The proposed classes are defined as:

All persons in the United States who, within the applicable statute of limitations preceding the filing of this action through class certification, purchased contact lenses online through 1-800 Contacts (the "National Class"); and

All persons in the Commonwealth of Pennsylvania who, within the applicable statute of limitations preceding the filing of this action through class certification, purchased contact lenses online through 1-800 Contacts (the "Pennsylvania State Subclass").

The National Class and the Pennsylvania State Subclass are collectively referred to as the "Classes."

68. Plaintiff reserves the right to modify or amend the definition of the proposed Classes before the Court determines whether certification is appropriate.

69. Excluded from the Classes are 1-800 Contacts, its parents, subsidiaries, affiliates, officers and directors, any entity in which 1-800 Contacts has a controlling interest, all customers who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

70. Said definition may be further defined or amended by additional pleadings, evidentiary hearings, a class certification hearing, and orders of this Court.

71. The members of the Classes are so numerous that joinder is impractical. The Classes consist of many thousands of members, the identities of whom are within the knowledge of and can be ascertained only by resort to 1-800 Contacts' records.

72. The claims of the representative Plaintiff are typical of the claims of the Classes in that the representative Plaintiff, like all Class members, paid to purchase contact lenses online from 1-800 Contacts. The representative Plaintiff, like all Class members, has been damaged by 1-800 Contacts' misconduct in that they have been harmed by patronizing a service based on the same anticompetitive, deceptive, misleading, and/or fraudulent pretenses and practices. Furthermore, the factual basis of 1-800 Contacts' misconduct is common to all Class members, and represents a common thread of unfair and unconscionable conduct resulting in injury to all members of the Classes.

73. As set forth in detail below, common issues of fact and law predominate because all of Plaintiffs' claims are based on identical anti-competitive conduct.

74. Among the questions of law and fact common to the Classes are whether 1-800 Contacts:

- a. Unreasonably restrained price competition in certain search advertising auctions;



- b. Unreasonably restrained price competition in the market(s) for the online purchase of contact lenses;
- c. Deprived consumers of truthful and non-misleading information about the prices, products, and services offered by online sellers of contact lenses;
- d. Deprived consumers of the benefits of vigorous price and service competition among online sellers of contact lenses;
- e. Increased consumers' search costs relating to the online purchase of contact lenses;
- f. Caused consumers to pay higher prices for contact lenses than they would pay absent the agreements, acts, and practices of 1-800 Contacts;
- g. To the extent applicable, whether and how long 1-800 Contacts fraudulently concealed its past and ongoing wrongful conduct from Plaintiff and other members of the Classes
- h. Was unjustly enriched through the company's suppression of competitor's advertisements in online search results;
- i. Violated Section 1 of the Sherman Act;
- j. To the extent necessary, exercised market power in one or more relevant markets; and
- k. Violated consumer protection and other state laws.

75. Other questions of law and fact common to the classes include:

- a. The proper method or methods by which to measure damages; and
- b. The declaratory and injunctive relief to which the Classes are entitled.

76. Plaintiff's claims are typical of the claims of other Class members, in that they arise out of the same wrongful conduct committed by 1-800 Contacts as a result of their involvement in the Bidding Agreements. Plaintiff has suffered the harm alleged and has no interests antagonistic to the interests of any other Class member.

77. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Classes. Plaintiff is represented by experienced and able attorneys. The undersigned Class Counsel have litigated numerous class actions and complex cases and intend to prosecute this action vigorously for the benefit of the entire Classes. Plaintiff

and Class Counsel can and will fairly and adequately protect the interests of all members of the Classes.

78. 1-800 Contacts acted on grounds generally applicable to all Class members, thereby making final injunctive relief and/or corresponding declaratory relief appropriate with respect to the Classes as a whole. The prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for 1-800 Contacts.

79. Injunctive relief is necessary to prevent further anticompetitive conduct by 1-800 Contacts. Money damages alone will not afford adequate and complete relief, and injunctive relief is necessary to restrain 1-800 Contacts from continuing to engage in conduct which restrains, suppresses, and/or eliminates competition in the United States and Pennsylvania for the online retail sale of contact lenses.

80. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is small relative to the complexity of the litigation, and due to the financial resources of 1-800 Contacts, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members will continue to suffer losses and 1-800 Contacts' misconduct will proceed without remedy.

81. Even if Class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual

lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court.

**CAUSES OF ACTION**

**FIRST CLAIM FOR RELIEF**

**Unreasonable Restraint of Trade (Premised on Section 1 of the Sherman Act)**  
**(On Behalf of the National Class)**

82. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

83. 1-800 Contacts and the above referenced online retailers are direct competitors for consumers in the market of online contact lens sales. 1-800 Contacts and its co-conspirators entered into a series of naked anti-competitive Bidding Agreements, thereby reducing their ability and incentive to compete for customers. These agreements suppressed competition between 1-800 Contacts and its co-conspirators, thereby limiting consumers' ability to freely assess the market and make an informed choice.

84. 1-800 Contacts' Bidding Agreements, individually and collectively, are *per se* unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1.

85. The Bidding Agreements are bilateral agreements in which 1-800 Contacts and many of its primary competitors in the online contact lens market affirmatively agreed not to compete in auctions for the purposes of placing advertisements on the results page of certain online search engines. By engaging in the manipulation of these online advertising auctions, 1-800 Contacts restrained, suppressed, or eliminated truthful and non-misleading internet advertising to consumers.

86. The actual adverse effects of the Bidding Agreements, individually and collectively, include, but are not limited to:

- a. 1-800 Contacts' control of the online contact lens market; and
- b. Higher prices for brand name contact lenses.

87. Alternatively, 1-800 Contacts' conduct is also an unreasonable restraint of trade that is unlawful under an abbreviated or "quick look" or rule of reason analysis. The Bidding Agreements restrain competition and serve very little, if any, pro-competitive purpose. The purpose and effect of the Bidding Agreements and nature of the agreements themselves that 1-800 Contacts and its co-conspirators were aware that the agreements would have an anticompetitive effect and harm the competitive process.

88. Competitors, actual and potential, have been, and will continue to be, restrained from vigorously competing with one another for selling contact lenses online as a result of 1-800 Contacts' anti-competitive conduct.

89. Consumers (including Plaintiffs and members of the putative Classes), have been injured in their business and property because they have been deprived of choice, and have paid inflated prices for name brand contact lenses, which they otherwise would not have had to pay in the absence of 1-800 Contacts' anti-competitive conduct. Plaintiff's and other Class members' injuries flow from 1-800 Contacts' unlawful conduct.

90. There is and was no legitimate, non-pretextual, pro-competitive justification for the agreements, individually or collectively, that outweighs the harmful effects alleged herein. Even if there was such justification, the agreements, individually and collectively, are broader than necessary to achieve any pro-competitive purpose.

91. Because of 1-800 Contacts' violations of Section 1 of the Sherman Act, consumers (including Plaintiff and the Classes) were deprived of a less expensive product, and were instead forced to purchase a more expensive product. These are the types of injuries the Sherman Act seeks to prevent.

92. As a direct and proximate result of Defendants' violations of Section 1 of the Sherman Act, Plaintiff and the Classes have suffered a loss of money and suffered actual damages.

93. There is no federal or state law which affirmatively authorizes 1-800 Contacts to engage in the unfair conduct alleged throughout this Complaint.

94. In addition to actual and trebled damages, Plaintiff and the Classes are entitled to declaratory and injunctive relief as well as reasonable attorney's fees and costs.

**SECOND CLAIM FOR RELIEF**  
**Unlawful Monopoly (Premised on Section 2 of the Sherman Act)**  
**(On Behalf of the National Class)**

95. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

96. 1-800 Contacts violated Section 2 of the Sherman Act.

97. The relevant product markets include (i) the market for the sale of search engine advertising by auction in response to user queries signaling the user's interest in contact lenses, and (ii) the retail sale of contact lenses, including or comprising the online retail sale of contact lenses. In each product market, there may be one or more smaller relevant markets. In addition, to the extent necessary, 1-800 Contacts' market share in these markets (or sub-market) is in excess of 50%, and upwards to approximately 70%.

98. The relevant geographic market for each product market is the United States of America.

99. 1-800 Contacts has gained and exercised unlawful monopoly power over the relevant markets. But for 1-800 Contacts' exclusionary practices alleged herein, 1-800 Contacts would not have been able to maintain its unlawful monopoly power over the relevant markets.

100. 1-800 Contacts willfully and unlawfully maintained its monopoly power. The goal, purpose, intent, or effect of 1-800 Contacts' scheme was to foreclose competition and artificially inflate prices of online contact lenses. 1-800 Contacts has willfully acquired and/or maintained its unlawful monopoly power not through superior skill, product, or acumen, but rather through the anticompetitive and exclusionary conduct alleged herein.

101. There is no appropriate, pro-competitive, or legitimate business justification for 1-800 Contacts' monopolization.

102. 1-800 Contacts' conduct had and continues to have an anticompetitive purpose and effect, was not offset by any procompetitive benefits, and was not the least restrictive means of achieving any procompetitive benefits.

103. Competition, actual and potential, has been, and will continue to be, unreasonably restrained as a result of 1-800 Contacts' unlawful conduct.

104. As a direct and proximate result of 1-800 Contacts' continuing violation of federal antitrust law, Plaintiffs and other Class members have suffered injury and damages in an amount to be proven at trial.

105. There is no federal or state law which affirmatively authorizes 1-800 Contacts to engage in the unfair conduct alleged throughout this Complaint.

106. In addition to actual and trebled damages, Plaintiff and the Classes are entitled to declaratory and injunctive relief as well as reasonable attorney's fees and costs.

**SECOND CLAIM FOR RELIEF**  
**Unlawful Attempted Monopolization (Premised on Section 2 of the Sherman Act)**  
**(On Behalf of the National Class)**

107. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

108. 1-800 Contacts violated Section 2 of the Sherman Act.

109. The relevant product markets include (i) the market for the sale of search engine advertising by auction in response to user queries signaling the user's interest in contact lenses, and (ii) the retail sale of contact lenses, including or comprising the online retail sale of contact lenses. In each product market, there may be one or more smaller relevant markets. In addition, to the extent necessary, 1-800 Contacts' market share in these markets (or sub-market) is in excess of 50%, and upwards to approximately 70%.

110. The relevant geographic market for each product market is the United States of America.

111. 1-800 Contacts has unlawfully attempted to gain, and has come dangerously close to obtaining unlawful monopoly power over the relevant markets. But for 1-800 Contacts' exclusionary practices alleged herein, 1-800 Contacts would not have been able to maintain its unlawful monopoly power over the relevant markets.

112. 1-800 Contacts willfully and unlawfully attempted to achieve monopoly power. The goal, purpose, intent, or effect of 1-800 Contacts' scheme was to foreclose competition and artificially inflate prices of online contact lenses. 1-800 Contacts has willfully attempted to acquire and/or maintain its unlawful monopoly power not through superior skill, product, or acumen, but rather through the anticompetitive and exclusionary conduct alleged herein.

113. There is no appropriate, pro-competitive, or legitimate business justification for 1-800 Contacts' monopolization.

114. 1-800 Contacts' conduct had and continues to have an anticompetitive purpose and effect, was not offset by any procompetitive benefits, and was not the least restrictive means of achieving any procompetitive benefits.

115. Competition, actual and potential, has been, and will continue to be, unreasonably restrained as a result of 1-800 Contacts' unlawful conduct.

116. As a direct and proximate result of 1-800 Contacts' continuing violation of federal antitrust law, Plaintiffs and other Class members have suffered injury and damages in an amount to be proven at trial.

117. There is no federal or state law which affirmatively authorizes 1-800 Contacts to engage in the unfair conduct alleged throughout this Complaint.

118. In addition to actual and trebled damages, Plaintiff and the Classes are entitled to declaratory and injunctive relief as well as reasonable attorney's fees and costs.

**FOURTH CLAIM FOR RELIEF**  
**Conspiracy to Monopolize (Premised on Section 2 of the Sherman Act)**  
**(On Behalf of the National Class)**

119. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

120. 1-800 Contacts violated Section 2 of the Sherman Act.

121. 1-800 Contacts has conspired with one or more co-conspirators, as alleged herein, to unlawfully gain monopoly power. 1-800 Contacts specifically intended to conspire and/or to gain unlawful monopoly power.

122. 1-800 Contacts' conduct is *per se* unlawful. In the alternative, under "quick look" or rule-of-reason analysis the relevant product markets include (i) the market for the sale of search engine advertising by auction in response to user queries signaling the user's interest in contact lenses, and (ii) the retail sale of contact lenses, including or comprising the online retail sale of contact lenses. In each product market, there may be one or more smaller relevant markets. In addition, to the extent necessary, 1-800 Contacts' market share in these markets (or sub-market) is in excess of 50%, and upwards to approximately 70%.

123. The relevant geographic market for each product market is the United States of America.



124. 1-800 Contacts has gained and exercised, or attempted to gain and exercise, unlawful monopoly power over the relevant markets. But for 1-800 Contacts' exclusionary practices alleged herein, 1-800 Contacts would not have been able to gain or maintain its unlawful monopoly power over the relevant markets, or to attempt to do so.

125. 1-800 Contacts willfully and unlawfully maintained its monopoly power, or attempted to do so. The goal, purpose, intent, or effect of 1-800 Contacts' scheme was to foreclose competition and artificially inflate prices of online contact lenses. 1-800 Contacts has willfully acquired and/or maintained its unlawful monopoly power not through superior skill, product, or acumen, but rather through the anticompetitive and exclusionary conduct alleged herein.

126. There is no appropriate, pro-competitive, or legitimate business justification for 1-800 Contacts' monopolization.

127. 1-800 Contacts' conduct had and continues to have an anticompetitive purpose and effect, was not offset by any procompetitive benefits, and was not the least restrictive means of achieving any procompetitive benefits.

128. Competition, actual and potential, has been, and will continue to be, unreasonably restrained as a result of 1-800 Contacts' unlawful conduct.

129. As a direct and proximate result of 1-800 Contacts' continuing violation of federal antitrust law, Plaintiffs and other Class members have suffered injury and damages in an amount to be proven at trial.

130. There is no federal or state law which affirmatively authorizes 1-800 Contacts to engage in the unfair conduct alleged throughout this Complaint.

131. In addition to actual and trebled damages, Plaintiff and the Classes are entitled to declaratory and injunctive relief as well as reasonable attorney's fees and costs.

**FIFTH CLAIM FOR RELIEF**  
**Unjust Enrichment**  
**(On Behalf of the National Class)**

132. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

133. By means of 1-800 Contacts' wrongful conduct alleged herein, 1-800 Contacts knowingly provided services and/or products to Plaintiff and members of the National Class under unfair, deceptive, and/or oppressive circumstances.

134. 1-800 Contacts knowingly received and retained wrongful benefits from Plaintiff and members of the National Class. In so doing, 1-800 Contacts acted intentionally or with conscious disregard for the rights of Plaintiff and members of the National Class.

135. As a result of 1-800 Contacts' wrongful conduct as alleged herein, 1-800 Contacts has been unjustly enriched at the expense, and to the detriment, of Plaintiff and members of the National Class.

136. 1-800 Contacts' unjust enrichment is traceable to, and resulted directly and proximately from, the wrongful conduct alleged herein.

137. It is unfair and inequitable for 1-800 Contacts to be permitted to retain the benefits it received, and is still receiving, without justification, from the wrongful conduct alleged herein. 1-800 Contacts' retention of such benefits under the circumstances is inequitable.

138. The financial benefits derived by 1-800 Contacts rightfully belong to Plaintiff and members of the National Class, in whole or in part. 1-800 Contacts should be compelled to disgorge in a common fund for the benefit of Plaintiff and members of the National Class all wrongful or inequitable proceeds received from them. A constructive trust should be imposed upon all wrongful or inequitable sums received by 1-800 Contacts traceable to Plaintiff and the members of the National Class.

139. Plaintiff and members of the National Class have no adequate remedy at law.

**SIXTH CLAIM FOR RELIEF**  
**State Consumer Protection Law**  
**(On Behalf of the Pennsylvania State Subclass)**

140. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

141. This claim is asserted on behalf of the members of the Pennsylvania State Subclass under Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. § 201-1, *et seq.*

142. The UTPCPL, 73 P.S. § 201-3 prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."

143. 1-800 Contacts has engaged in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce by, *inter alia*:

- a. "Representing that goods or services have . . . characteristics . . . uses, [or] benefits . . . that they do not have . . .," *see* 73 P.S. § 201-2(4)(v);
- b. "Disparaging the goods, services, or business of another by false or misleading representation of facts," *see* 73 P.S. § 201-2(4)(viii);
- c. "Advertising goods or services with intent not to sell them as advertised," *see* 73 P.S. § 201-2(4)(ix);
- d. "Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions," *see* 73 P.S. § 201-2(4)(xi); and
- e. "Engaging in any other fraudulent or deceptive conduct which creates a likelihood or confusion or of misunderstanding," *see* 73 P.S. § 201-2(4)(xxi).

144. 1-800 Contacts violated the UTPCPL, including the above provisions thereof, by engaging in the conducted alleged herein.

145. Pursuant to 73 P.S. § 201-9.2, *et seq.*, Plaintiff and members of the Pennsylvania State Subclass purchased contact lenses from 1-800 Contacts that were used primarily for personal, family or household purposes.

146. 1-800 Contacts engaged in unlawful conduct, made affirmative misrepresentations or omissions, or otherwise violated the UTPCPL by, inter alia, knowingly, intentionally, recklessly, and negligently misleading consumers about the prices and availability of contact lenses available for online retail purchase.

147. To the extent applicable, 1-800 Contacts intended that Plaintiff and Pennsylvania State Subclass members would rely on the company's misrepresentations, or acts of concealment and omissions. Further, to the extent applicable, reliance can be presumed under the circumstances.

148. 1-800 Contacts' conduct caused Plaintiff and Pennsylvania State Subclass members to suffer ascertainable losses that would otherwise not have been incurred in whole or in part.

149. A causal relationship exists between 1-800 Contacts' unlawful conduct and the ascertainable losses suffered by Plaintiff and the Pennsylvania State Subclass.

150. As redress for 1-800 Contacts' repeated and ongoing violations of the UTPCPL, Plaintiff and the Pennsylvania State Subclass are entitled to, inter alia, damages, injunctive, and declaratory relief.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff and the Classes demand a jury trial on all claims so triable and judgment as follows:

1. Adjudging and decreeing that 1-800 Contacts' conduct alleged herein, including but not limited to the Bidding Agreements, constitutes an illegal restraint of interstate trade and commerce in violation of Section I of the Sherman Act;

2. Disgorgement of the ill-gotten gains derived by 1-800 Contacts from its misconduct;

3. Actual and treble damages in an amount according to proof;
4. That 1-800 Contacts be permanently enjoined and restrained from establishing any similar Bidding Agreement unreasonably restricting competition for search engine advertising auctions or the retail online pricing of contact lenses, except as prescribed by the Court;
5. Punitive and exemplary damages;
6. Pre-judgment and post-judgment interest at the maximum rate permitted by applicable law;
7. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees; and
8. Such other relief as this Court deems just and proper.

**Dated: November 3, 2016**

*/s/ DJS8892*

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Ruben Honik, Esquire  
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*Counsel for Plaintiff*

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.)

**I. (a) PLAINTIFFS**  
**Alexa Bean, on behalf of herself and all others similarly situated,**

**DEFENDANTS**  
**1-800 Contacts, Inc.**

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

County of Residence of First Listed Defendant SALT LAKE CITY  
 (IN U.S. PLAINTIFF CASES ONLY)

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

(c) Attorneys (Firm Name, Address, and Telephone Number)  
**DAVID J. STANOCH, ESQUIRE, GOLOMB & HONIK, P.C.,**  
**1515 MARKET STREET, SUITE 1100, PHILADELPHIA, PA**  
**19102, (215) 985-9177**

Attorneys (If Known)

**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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input checked="" 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 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	CIVIL RIGHTS	PRISONER PETITIONS			
<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	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. Sections 15, 26; and 28 U.S.C. Section 1332

Brief description of cause:  
Anticompetitive Conduct

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ 5,000,000.00    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE 11/03/2016    SIGNATURE OF ATTORNEY OF RECORD 

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.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**  
**CASE MANAGEMENT TRACK DESIGNATION FORM**

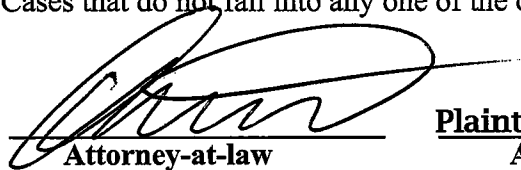
**ALEXA BEAN** : **CIVIL ACTION**  
v. :  
: **NO.**  
**1-800 CONTACTS, INC.** :

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (✓)

11/3/2016  
**Date**

  
**Attorney-at-law**

Plaintiff, Alexa Bean  
**Attorney for**

215-985-9177  
**Telephone**

215-985-4169  
**FAX Number**

dstanoch@golombhonik.com  
**E-Mail Address**



**Civil Justice Expense and Delay Reduction Plan  
Section 1:03 - Assignment to a Management Track**

- (a) The clerk of court will assign cases to tracks (a) through (d) based on the initial pleading.
- (b) In all cases not appropriate for assignment by the clerk of court to tracks (a) through (d), the plaintiff shall submit to the clerk of court and serve with the complaint on all defendants a case management track designation form specifying that the plaintiff believes the case requires Standard Management or Special Management. In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.
- (c) The court may, on its own initiative or upon the request of any party, change the track assignment of any case at any time.
- (d) Nothing in this Plan is intended to abrogate or limit a judicial officer's authority in any case pending before that judicial officer, to direct pretrial and trial proceedings that are more stringent than those of the Plan and that are designed to accomplish cost and delay reduction.
- (e) Nothing in this Plan is intended to supersede Local Civil Rules 40.1 and 72.1, or the procedure for random assignment of Habeas Corpus and Social Security cases referred to magistrate judges of the court.

**SPECIAL MANAGEMENT CASE ASSIGNMENTS  
(See §1.02 (e) Management Track Definitions of the  
Civil Justice Expense and Delay Reduction Plan)**

Special Management cases will usually include that class of cases commonly referred to as "complex litigation" as that term has been used in the Manuals for Complex Litigation. The first manual was prepared in 1969 and the Manual for Complex Litigation Second, MCL 2d was prepared in 1985. This term is intended to include cases that present unusual problems and require extraordinary treatment. See §0.1 of the first manual. Cases may require special or intense management by the court due to one or more of the following factors: (1) large number of parties; (2) large number of claims or defenses; (3) complex factual issues; (4) large volume of evidence; (5) problems locating or preserving evidence; (6) extensive discovery; (7) exceptionally long time needed to prepare for disposition; (8) decision needed within an exceptionally short time; and (9) need to decide preliminary issues before final disposition. It may include two or more related cases. Complex litigation typically includes such cases as antitrust cases; cases involving a large number of parties or an unincorporated association of large membership; cases involving requests for injunctive relief affecting the operation of large business entities; patent cases; copyright and trademark cases; common disaster cases such as those arising from aircraft crashes or marine disasters; actions brought by individual stockholders; stockholder's derivative and stockholder's representative actions; class actions or potential class actions; and other civil (and criminal) cases involving unusual multiplicity or complexity of factual issues. See §0.22 of the first Manual for Complex Litigation and Manual for Complex Litigation Second, Chapter 33.

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 5728 Tackawanna Street, Philadelphia, PA 19135

Address of Defendant: 66 E. Wadsworth Park Drive, Draper, UT 84020-7942

Place of Accident, Incident or Transaction: Pennsylvania

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes  No

Does this case involve multidistrict litigation possibilities?

Yes  No

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes  No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes  No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes  No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes  No

CIVIL: (Place  in ONE CATEGORY ONLY)

A. Federal Question Cases:

1.  Indemnity Contract, Marine Contract, and All Other Contracts
2.  FELA
3.  Jones Act-Personal Injury
4.  Antitrust
5.  Patent
6.  Labor-Management Relations
7.  Civil Rights
8.  Habeas Corpus
9.  Securities Act(s) Cases
10.  Social Security Review Cases
11.  All other Federal Question Cases  
(Please specify) \_\_\_\_\_

B. Diversity Jurisdiction Cases:

1.  Insurance Contract and Other Contracts
2.  Airplane Personal Injury
3.  Assault, Defamation
4.  Marine Personal Injury
5.  Motor Vehicle Personal Injury
6.  Other Personal Injury (Please specify)
7.  Products Liability
8.  Products Liability — Asbestos
9.  All other Diversity Cases  
(Please specify) \_\_\_\_\_

ARBITRATION CERTIFICATION

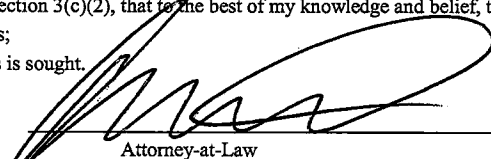
(Check Appropriate Category)

I, David J. Stanoch, Esquire

, counsel of record do hereby certify:

- Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- Relief other than monetary damages is sought.

DATE: 11/3/16

  
Attorney-at-Law

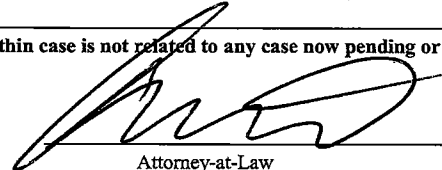
91342

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 11/3/2016

  
Attorney-at-Law

91342

Attorney I.D.#

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Consumer Hits 1-800 Contacts with Antitrust Class Action](#)

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