

1 ROBBINS ARROYO LLP
 2 GEORGE C. AGUILAR (126535)
 3 GREGORY E. DEL GAIZO (247319)
 4 STEVEN M. MCKANY (271405)
 5 600 B Street, Suite 1900
 6 San Diego, CA 92101
 7 Telephone: (619) 525-3990
 8 Facsimile: (619) 525-3991
 9 E-mail: gaguilar@robbinsarroyo.com
 10 gdelgaizo@robbinsarroyo.com
 11 smckany@robbinsarroyo.com

12 [Additional Counsel on Signature Page]

13 Attorneys for Plaintiff

14 UNITED STATES DISTRICT COURT
 15 SOUTHERN DISTRICT OF CALIFORNIA

16 DAWN COBBS, Individually and on)
 17 Behalf of All Others Similarly)
 18 Situated,)

19 Plaintiff,

20 v.

21 WALGREEN CO. and)
 22 WALGREENS BOOTS)
 23 ALLIANCE, INC.,)

24 Defendants.

25 Case No: '17CV1089 AJB JMA

26 CLASS ACTION COMPLAINT FOR:

27 (1) VIOLATIONS OF THE
 28 CALIFORNIA UNFAIR
 COMPETITION LAW;
 (2) VIOLATIONS OF THE
 CALIFORNIA CONSUMER LEGAL
 REMEDIES ACT;
 (3) UNJUST ENRICHMENT; AND
 (4) NEGLIGENT
 MISREPRESENTATION.

DEMAND FOR JURY TRIAL

21
22
23
24
25
26
27
28

1 Plaintiff Dawn Cobbs ("Plaintiff"), by his undersigned attorneys, individually
2 and on behalf of all others similarly situated ("Class," as defined below), based on
3 personal knowledge as to herself and upon information and belief and the
4 investigation of his counsel as to all other matters, brings this class action against
5 Defendants Walgreen Co. and Walgreens Boots Alliance, Inc. (collectively,
6 "Defendants" or "Walgreens"), and alleges the following:

7 **NATURE OF THE ACTION**

8 1. This action concerns Walgreens' deceptive and unfair pricing scheme to
9 overcharge customers with third-party health care plans on their purchases of generic
10 prescription drugs at Walgreens pharmacies.

11 2. Walgreens is the second largest pharmacy chain in the United States,
12 operating more than 8,000 retail pharmacies in all 50 states, the District of Columbia,
13 Puerto Rico, and the U.S. Virgin Islands. Walgreens interacts with ten million
14 customers in its stores and online each day, and approximately 76% of the population
15 of the United States lives within five miles of a Walgreens pharmacy.

16 3. In October 2015, Walgreens announced that it would be acquiring Rite
17 Aid Corp., one of its main rivals and the third largest pharmacy chain in the United
18 States. If that acquisition is consummated, Walgreens will become the largest
19 pharmacy chain in the United States with a significantly expanded geographic reach
20 through the operation of its over 13,000 pharmacy stores.

21 4. In fiscal year 2016, Walgreens filled over 928 million prescriptions on a
22 30-day adjusted basis and its United States retail pharmacy division earned
23 approximately \$83.8 billion in sales. Prescription drugs accounted for approximately
24 67% of those sales, and like other major retail pharmacies, generic drugs accounted
25 for the vast majority of the total prescriptions dispensed by Walgreens. According to
26 the Generic Pharmaceutical Association's *2016 Generic Drug Savings and Access in*
27 *the United States Report*, generic drugs accounted for 89% of prescriptions dispensed
28 in the United States.

1 5. A generic drug is a pharmaceutical drug that is the equivalent of a brand-
2 name drug in dosage, strength, route of administration, quality, performance, and
3 intended use. Generic drugs typically cost less than their brand-name counterparts
4 and have saved both consumers and health care plans hundreds of billions of dollars
5 over the last decade.

6 6. Approximately 90% of all United States citizens are enrolled in a private
7 or public health care plan that covers some or all medical and pharmaceutical
8 expenses. In almost every one of these plans, the cost of prescription drugs is shared
9 between the third-party payor (*i.e.*, the health insurance plan) and the actual user of
10 the drug (*i.e.*, the plan participant).

11 7. When a plan participant fills a prescription at a pharmacy under a third-
12 party health care plan, the plan pays a portion of the cost, and the plan participant
13 pays the remaining portion of the cost directly to the pharmacy, either as a
14 copayment, coinsurance, or contracted rate towards the plan's deductible
15 ("copayment"). Because of the potential cost savings associated with the purchase of
16 generic drugs, third-party payors incentivize plan participants to purchase generic
17 drugs (if available) instead of their brand-name drug equivalents by offering a lower
18 price, which in turn, results in a lower copayment.

19 8. Walgreens pharmacies collect the copayment from the plan participant at
20 the time the prescription is filled at a pharmacy. Importantly, by law, Walgreens
21 cannot charge a copayment that exceeds its "usual and customary" price, which is
22 generally defined within the pharmaceuticals industry as the cash price offered to the
23 general public by the pharmacy for the same drug.¹ Plaintiff alleges, however, that
24 Walgreens engages in a false, deceptive, and unfair pricing scheme that does exactly
25

26 ¹ The Seventh Circuit Court of Appeals recently affirmed this definition in the
27 case of *United States ex rel Garbe v. Kmart Corp.*, 824 F.3d 632, 643 (7th Cir. 2016)
28 ("*Kmart*").

1 what the law prohibits.

2 9. At bottom, this action concerns Walgreens' illegal practice of
3 overcharging customers enrolled in public or private health care plans for generic
4 prescription drugs by submitting to third-party payors claims for payment at prices
5 that Walgreens has knowingly and intentionally inflated above its "usual and
6 customary" prices. As a result, customers who purchase generic prescription drugs
7 through third-party plans pay copayments that are significantly more than Walgreens'
8 "usual and customary" prices for those same drugs.

9 10. The lynchpin of Walgreens' scheme is its Prescription Savings Club
10 ("PSC"), a prescription savings program that allows cash-paying customers – those
11 who pay for drugs without using insurance – to purchase certain prescription generic
12 drugs at discounted prices. Specifically, the PSC allows cash-paying customers to
13 purchase 500 of the most commonly prescribed generic drugs listed on Walgreens'
14 special formulary (attached hereto as Exhibit A) at tiered prices levels of \$5, \$10, and
15 \$15 for 30-day prescriptions and \$10, \$20, and \$30 for 90-day prescriptions (the
16 "PSC Prices"). The PSC Prices, however, are often significantly lower than the
17 "usual and customary" prices that Walgreens reports to health insurance companies,
18 and thus, the amounts that individuals using insurance must pay for the drugs in the
19 form of a copayment.

20 11. Any customer of Walgreens pharmacies, except for Medicare or
21 Medicaid beneficiaries, are eligible to participate in the PSC. Walgreens does not
22 otherwise limit eligibility for, or duration of the availability of, the PSC Prices for the
23 prescription generic drugs at issue – *other than prohibiting PSC participants from*
24 *using insurance when purchasing the drugs*. The Seventh Circuit's decision in
25 *Kmart* makes clear that under these circumstances the PSC Prices fit squarely within
26 the accepted industry meaning of usual and customary prices, and thus, represent
27 Walgreens' actual usual and customary prices for the drugs. *See id.* at 645.

28

1 12. Accordingly, Walgreens was required to report to third-party payors the
2 PSC Prices as Walgreens' usual and customary prices for the prescription generic
3 drugs. However, since the PSC was created in 2007, Walgreens has purposefully
4 disregarded the PSC Prices in setting its "usual and customary" prices for the drugs
5 when they are sold to customers using insurance for their purchase. Instead,
6 Walgreens has submitted falsely inflated "usual and customary" prices for the drugs
7 to third-party payors, and in the process, overcharged customers paying for the drugs
8 with insurance by collecting falsely inflated copayments.

9 13. Thus, using the PSC as its vehicle, Walgreens has effectively created a
10 discriminatory pricing scheme, whereby customers enrolled in the PSC who are not
11 using insurance when purchasing a prescription generic drug are able to pay the lower
12 PSC Price, while those customers using insurance must pay the higher and artificially
13 inflated "usual and customary" price.

14 14. Therefore, the PSC not only allows Walgreens to maintain and increase
15 its market share by fending off discounted prices from its competitors, but more
16 importantly, it provides a mechanism for Walgreens to hide its actual "usual and
17 customary" prices from third-party payors so that it can continue to collect higher
18 reimbursement payments from third-party payors and higher copayments from plan
19 participants who fill their prescription at Walgreens pharmacies.

20 15. By charging amounts for prescription generic drugs that are above the
21 PSC Prices for those same drugs, Walgreens is unlawfully overcharging plan
22 participants and third-party payors – in many cases by ***more than three or four times***
23 the actual "usual and customary" prices. Accordingly, Walgreens' misconduct has
24 caused Plaintiff and the other Class members to suffer significant monetary damages.

25 **JURISDICTION AND VENUE**

26 16. This Court has subject-matter jurisdiction over this action pursuant to the
27 Class Action Fairness Act of 2005, 28 U.S.C. §1332(d)(2), because at least one Class
28 member is of diverse citizenship from one Defendant, there are more than 100

1 putative Class members, and the aggregate amount in controversy exceeds
2 \$5,000,000, exclusive of interest and costs. The Court also has subject matter
3 jurisdiction over Plaintiff and the proposed Class' claims pursuant to 28 U.S.C.
4 §1367(a).

5 17. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b)-(d)
6 because a substantial part of the events or omissions giving rise to Plaintiff and the
7 proposed Class claims occurred in this District, Plaintiff is a residents of this District,
8 and Defendants are otherwise subject to personal jurisdiction in this District given
9 their significant contacts to this District.

10 **THE PARTIES**

11 18. Plaintiff Dawn Cobbs is, and at all times relevant hereto has been, a
12 citizen of and domiciled in San Diego, California. Ms. Cobbs purchased prescription
13 generic drugs from Walgreens pharmacies located in California. Ms. Cobbs carried
14 private health insurance at the times that she purchased the prescription generic drugs
15 from the Walgreens pharmacies at issue. The prescription generic drugs that Ms.
16 Cobbs purchased are contained on the PSC formulary attached as Exhibit A. Ms.
17 Cobbs purchased drugs contained under Tiers 1, 2, and 3 of the PSC formulary.
18 Walgreens charged its cash-paying customers its "usual and customary" prices of \$5
19 (Tier 1), \$10 (Tier 2), and \$15 (Tier 3) for a 30-day supply of the same prescriptions
20 that Ms. Cobbs purchased. However, because Walgreens submitted to Ms. Cobbs'
21 insurance a purported "usual and customary" price fraudulently inflated above its true
22 "usual and customary" price—the price Walgreens offers under the PSC – Ms. Cobbs
23 paid copayments that were substantially higher than the \$5 for a Tier 1 30-day
24 supply, and significantly more than the copayment would have been had Walgreens
25 reported the true "usual and customary" price for all the drugs to Ms. Cobbs'
26 insurance. As a result, Ms. Cobbs has been injured. Ms. Cobbs anticipates filling
27 future prescriptions for these generic drugs at a Walgreens pharmacy, and thus, faces
28 the prospect of paying additional inflated copayments in the future if Walgreens

1 continues its wrongful conduct.

2 19. Ms. Cobbs paid the above amounts on the reasonable assumption that
3 the "usual and customary" prices reported by Walgreens were the actual "usual and
4 customary" prices paid by customers that do not have any form of prescription drug
5 coverage from a third-party payor, and would not have paid those inflated amounts
6 but for Walgreen's wrongful conduct.

7 20. Defendant Walgreen Co. ("Walgreen Co.") is an Illinois corporation
8 with its headquarters located at 200 Wilmot Road, Deerfield, Illinois. Until
9 December 31, 2014, Walgreen Co. had no corporate parent; however, on December
10 31, 2014, Walgreen Co. became a wholly owned subsidiary of Walgreens Boots
11 Alliance, Inc. ("WBA") pursuant to a reorganization merger agreement
12 ("Reorganization").

13 21. Defendant Walgreens Boots Alliance, Inc. is a Delaware corporation
14 with its headquarters located at 108 Wilmot Road, Deerfield, Illinois. On December
15 31, 2014, WBA became the successor of Defendant Walgreen Co., pursuant to the
16 Reorganization, whereby WBA became the direct parent holding company of
17 Walgreen Co., which, in turn, became a wholly owned subsidiary of WBA.

18 22. WBA exercises complete control over Walgreen Co. and its business
19 operations. Immediately prior to the Reorganization, Walgreen Co. stockholders
20 became stockholders of WBA, through the automatic conversion of shares of
21 Walgreen Co. common stock into shares of WBA common stock on a one-for-one
22 basis. WBA's public filings report the financial and operational positions Walgreen
23 Co. and its subsidiaries for periods prior to December 31, 2014, and of WBA and its
24 subsidiaries, including Walgreen Co., for periods from and after the effective time of
25 the Reorganization on December 31, 2014. All WBA profits are derived from its
26 wholly owned operating subsidiaries, such as Walgreen Co., whose financial results
27 are reported in the Retail Pharmacy USA section of WBA's public filings. WBA's
28 Co-Chief Operating Officer ("COO"), Alexander W. Gourlay, is also the President of

1 Walgreen Co., and as WBA's COO, Mr. Gourlay is responsible for the day-to-day
2 operation and oversight of Walgreen Co.

3 **BACKGROUND**

4 **The Process for Paying for Prescription Drugs**

5 23. The majority of patients in the United States have a health care plan
6 (either private or public) that covers all or a portion of their medical and
7 pharmaceutical expenses, known as a third-party payor. Most plans require plan
8 participants to pay a portion of their drug costs out-of-pocket. These out-of-pocket
9 expenses include copayments, co-insurance, and/or deductibles.

10 24. Even though plan participants cannot and do not negotiate the price
11 charged by pharmacies such as Walgreens for prescription drugs, and further, do not
12 negotiate the copayment price for the drug in any given transaction, they are required
13 to pay to Walgreens a copayment amount in order to receive the prescription.

14 25. The National Council for Prescription Drug Programs ("NCPDP")² sets
15 the industry standards for the electronic transmission of pharmacy claims to third-
16 party payors.³ Walgreens follows this uniform process at their pharmacies for each
17 prescription drug transaction.

18 _____
19 ² NCPDP is a non-profit organization that develops industry standards for electronic
20 healthcare transactions used in prescribing, dispensing, monitoring, managing, and
21 paying for medications and pharmacy services. Its membership is made up of
22 approximately 1,500 stakeholders from across the pharmaceutical industry, including
23 pharmacies, pharmacists, health plans, and government agencies.

24 ³ Congress has codified and adopted the NCPDP standards through federal
25 legislation, including Health Insurance Portability and Accountability Act
26 ("HIPAA"), Medicare Modernization Act, Health Information Technology for
27 Economic and Clinical Health, and Meaningful Use. For example, HIPAA requires
28 uniform methods and codes for exchanging electronic information with health
insurance plans. These standards are referred to as the NCPDP Telecommunications
Standard. HIPAA also requires prescribers follow the NCPDP SCRIPT Standards
when prescribing drugs under Medicare Part D.

1 26. When a customer fills a prescription at a Walgreens pharmacy, anywhere
2 in the United States, the pharmacist or pharmacy technician enters the prescription
3 information and any applicable insurance or benefit information into Walgreens'
4 computerized claims. The pharmacist or pharmacy technician also enters in key
5 information about the customer, such as his/her name. This information is then sent
6 to the customer's third-party payor (or an agent of the third-party payor). Walgreens
7 charges the customer the copayment at the time the customer makes the purchase and
8 the third-party payor covers the remaining cost of the prescription.

9 27. NCPDP provides a standardized form for Walgreens pharmacies to fill
10 out and send to third-party payors when filing prescriptions. The form includes Field
11 No. 426-DQ, where Walgreens is required to report its "usual and customary" price of
12 the prescription being filled. NCPDP defines the term "usual and customary" as the
13 "[a]mount charged cash customers for the prescription exclusive of sales tax or other
14 amounts claimed." California Welfare and Institutions Code 14105.455 similarly
15 defines "usual and customary" as the lesser of either the lowest price reimbursed to
16 the pharmacy by other third-party payors in California or the lowest price routinely
17 offered to any segment of the general public.

18 28. Based on the data reported by Walgreens on NCPDP's standard forms,
19 third-party payors identify the copayment amount that the customer must pay to
20 Walgreens in a specific prescription transaction. The copayment amount is a portion
21 of the total drug price and cannot exceed the drug price. In addition, the copayment
22 cannot exceed Walgreens' "usual and customary" price of the drug. After the
23 copayment amount is paid by the customer, the remainder of the drug price is
24 reimbursed to the Walgreens by the third-party payor.

25 29. In some situations, however, the copayment may only be charged as a
26 percentage of the "usual and customary" price. For instance, if a third-party payor's
27 negotiated price for a specific drug is \$40 with the customer responsible for 25% of
28 the drug as his or her copayment, but the "usual and customary" price of the drug is

1 only \$20, the \$20 price would take the place of the negotiated rate and the customer
2 would only pay a copayment of \$5 (25% of \$20).

3 30. Walgreens is well aware of both the definition of usual and customary,
4 and how the "usual and customary" price of a particular prescription drug is
5 ascertained. Indeed, as late as 2011, Walgreen Co. owned Walgreens Health
6 Initiative Inc. ("WHI"), a pharmacy benefits manager ("PBM"),⁴ which defined
7 "usual and customary" in its manual as the "cash price [for the prescription drug]
8 including all applicable customer discounts, coupons or sale price which a cash-
9 paying customer would pay at the pharmacy." In addition, WHI directed the
10 pharmacies in its network to use the standard NCPDP form containing the "usual and
11 customary" field discussed above.

12 **Big Box Retailers Exert Substantial Price Pressure on Generic Drugs**

13 31. In 2006, large "big box" retailers with pharmacy departments began
14 offering hundreds of generic prescription drugs at significantly reduced prices. For
15 example, in September 2006, Wal-Mart began charging \$4 for a 30-day supply and
16 \$10 for a 90-day supply of the most commonly prescribed generic drugs. In
17 November of that same year, Target began charging \$4 for a 30-day supply and \$10
18 for a 90-day supply of such prescription generic drugs. Other retailers with pharmacy
19 departments soon followed suit.

20 32. Notably, in the wake of Wal-Mart's decision to substantially reduce the
21 prices of its prescription generic drugs, the Center for Medicaid & Medicare Services
22 ("CMMS") specifically stated that it would treat Wal-Mart's new lower prices as the
23 "usual and customary" prices for those drugs and use the prices as the basis for
24 paying claims for prescription drug benefits. Wal-Mart and Target properly reported
25 to third-party payors these reduced prices as their "usual and customary" prices for

26

27 ⁴ PBMs are basically middle men that go between the payors and everyone else in the
28 healthcare industry.

1 the prescription generic drugs.

2 33. On information and belief, in 2007, in response to the big box retailers'
3 decision to reduce the prices of many prescription generic drugs, Walgreens started
4 the PSC discount drug program. Walgreens charges individuals \$20 and families \$35
5 per year to join the PSC. In exchange, Walgreens, through the PSC, allows cash-
6 paying customers to purchase prescription generic drugs on their formulary list for
7 \$5, \$10, and \$15 for 30-day prescriptions and \$10, \$20, and \$30 for 90-day
8 prescriptions, depending on the drug's tier classification. There are over 500 generic
9 drugs on the formulary list and the list encompasses a number of the most widely
10 prescribed generic drugs.

11 34. The PSC is not a special, limited, or one-time offer. It is also not a third-
12 party plan, insurance, or a substitute for insurance. Rather, Walgreens has
13 continuously offered the PSC for multiple benefit years. Importantly, *any* cash
14 paying customer that is not on Medicare or Medicaid can join the PSC and avail
15 themselves of the discounted prices.

16 35. Accordingly, the price for prescription generic drugs that those enrolled
17 in the PSC pay is the price that Walgreens offers to their customers (i.e., the general
18 public). The CMMS Manual notes that "where a pharmacy offers a lower price to its
19 customers throughout a benefit year" the lower price is considered the "usual and
20 customary" price, rather than a one time "lower case price," even when a customer
21 uses a discount card to make the purchase.⁵

22 36. Accordingly, the PSC Prices are the "usual and customary" prices for the
23 prescription generic drugs on Walgreens' PSC formulary. Walgreens' own
24 explanation of the "usual and customary" price, as adopted by WHI, mandates this

25
26 ⁵ Centers for Medicare & Medicaid Servs., *Medicare Prescription Drug Benefit*
27 *Manual*, Ch. 14-Coordination of Benefits, at 19 n.1 (2006), [https://perma.cc/MW6A-](https://perma.cc/MW6A-H4P6)
28 [H4P6](https://perma.cc/MW6A-H4P6).

1 determination. So too does the NCPDP and California's Health and Welfare Code.
2 And as mentioned above, the Seventh Circuit agrees, even explaining that the "'usual
3 and customary' price requirement should not be frustrated by so flimsy a device as [a
4 pharmacy's] 'discount program.'" *Kmart*, 824 F. 3d at 645.

5 **WALGREENS ILLEGALLY INFLATES ITS**
6 **"USUAL AND CUSTOMARY" PRICE**

7 37. Although Walgreens sought to retain and attract cash-paying customers
8 by offering discounted prices on prescription generic drugs through the
9 implementation of the PSC program, it did not want to lose revenues by offering
10 those same discounted prices to customers using insurance to make their prescription
11 drug purchases.

12 38. Thus, under the guise that its PSC program was not available to the
13 general public, Walgreens unlawfully continued to report their previous higher "usual
14 and customary" prices to third-party payors. By reporting the artificially inflated
15 "usual and customary" prices to third-party payors, Walgreens was able to collect
16 artificially inflated copayments from consumers, as well as artificially inflated
17 residual amounts from third-party payors.

18 39. Walgreens knew that third-party payors calculate the price for
19 prescription drugs to be paid to the pharmacy based on whether the "usual and
20 customary" price submitted is less than or greater than the negotiated price between
21 Walgreens and the third-party payor. Walgreens also knew that if the "usual and
22 customary" price for a particular prescription drug is less than the negotiated price,
23 Walgreens could not charge third-party payors a drug price that was greater than the
24 "usual and customary" price. Walgreens' knowledge of these facts cannot be denied
25 given its prior ownership of WHI, who dealt extensively with this issue as Walgreens'
26 PBM.

27 40. Notwithstanding the knowledge garnered through its relationship with
28 WHI, Walgreens knew the prices it could charge to customers using insurance to

1 purchase their prescription medications from its dealings and contractual
2 relationships with the third-party payors themselves. Indeed, third-party payors'
3 pharmacy agreements and manuals state, in detail, how a plan participant's
4 copayment is determined. These agreements and manuals specifically contemplate a
5 situation where the "usual and customary" price is less than the negotiated amount,
6 and explicitly forbid Walgreens from charging a copayment in excess of the "usual
7 and customary" price under such circumstances. Walgreens is in possession of these
8 documents and is aware of their contents. Further, Walgreens' own transaction data
9 contain reimbursements adjudicated under the above formula and other rules imposed
10 by the third-party payors, all which reflect general industry standards.

11 41. Moreover, Walgreens need look no further than to its direct competitors,
12 such as Wal-Mart, Target, and Costco, who all, on information and belief, correctly
13 report the discounted prices offered through their respective prescription drug savings
14 programs as their "usual and customary" prices.

15 42. Walgreens tried to avoid their contractual obligations and accepted
16 industry standards (not to mention federal and state law as they concern Medicare and
17 Medicaid and their state equivalents) by implementing the PSC program, and instead
18 of reporting the lower PSC Prices to third-party payors, knowingly and intentionally
19 reported false and inflated "usual and customary" prices. In doing so, Walgreens
20 created a new category of cash-paying customers—those purchasing prescription
21 generic medications through the PSC—while avoiding the lowering of drug prices
22 charged to third-party payors and their plan participants.

23 43. As previously explained, however, the PSC Prices for the cash-paying
24 customers are the actual "usual and customary" prices charged by Walgreens for the
25 prescription generic drugs on the PSC formulary. Nonetheless, Walgreens conceals
26 the PSC Prices from third-party payors, and instead of submitting the PSC Prices as
27 its "usual and customary," continues to submit the higher prices as its purported
28 "usual and customary" price to third-party payors.

1 44. Walgreens' scheme is made possible because third-party payors are not
2 privy to the prices Walgreens charges their cash-paying customers, including those
3 using the PSC program to purchase their prescription generic drugs. Thus, third-party
4 payors have no way of determining on their own whether the price Walgreens
5 submits as its "usual and customary" price is actually the price offered to cash-paying
6 members of the general public, and therefore, are unaware that the price being
7 submitted by Walgreens is not the actual "usual and customary" price, but rather an
8 artificially inflated amount.

9 45. On information and belief, the majority of customers who purchase the
10 prescription generic drugs that are contained on the PSC formulary do so using the
11 PSC program, and thus, the majority of Walgreens' cash-paying customers pay the
12 PSC Prices for such drugs.

13 46. In failing to report the more common PSC Prices as its "usual and
14 customary" prices, Walgreens continues to report prices that are significantly higher
15 than the prices it offers to the general public.

16 47. Beginning in 2007, and continuing through the present, Walgreens has
17 reported to third-party payors artificially inflated "usual and customary" prices for the
18 same prescription generic drugs that Walgreens offers for lower prices under the PSC
19 program. Walgreens has thereby caused (and continues to cause) plan participants
20 (including Plaintiff and other Class members) to pay false and inflated copayments
21 for prescription generic drugs.

22 48. Importantly, the inflated "usual and customary" prices that Walgreens
23 reports to third-party payors do not vary based on any particular third-party plan. In
24 fact, for the same strength and quantity of a given drug, Walgreens reports the same
25 "usual and customary" prices to all third-party payors, despite any variations in their
26 respective plans.

27 49. As part of its scheme, Walgreens has reported "usual and customary"
28 prices for generic prescription drugs that more than double the "usual and customary"

1 prices reported by some of its most significant competitors and its own PSC Prices.
 2 The table below shows "usual and customary" prices submitted to California's
 3 Medicaid program for the purposes of claims adjudication.

Drug	Discounted Prices Near 92101 Zip Code (Downtown San Diego, CA) ¹					
	Vons	Walmart	Costco	Target	Walgreens	Walgreens (PSC) ²
Carvedilol 6.25 mg 60 Tablets	\$10.40	\$11.37	\$12.50	\$14.38	\$28.55	\$10.00
Lisinopril 20 mg 30 Tablets	\$7.94	\$6.84	\$7.92	\$8.58	\$14.00	\$5.00
Lisinopril/HCTZ 20, 12.5 mg 30 Tablets	\$8.41	\$7.54	\$8.63	\$9.48	\$14.25	\$10.00
Metformin HCL 1,000 mg 60 Tablets	\$11.18	\$8.63	\$9.73	\$10.88	\$24.53	\$5.00
Metoprolol Tartrate 50 mg 60 Tablets	\$8.72	\$9.04	\$7.96	\$8.63	\$13.65	\$10.00
Warfarin Sodium 5 mg 30 Tablets	\$9.19	\$9.70	\$9.96	\$9.45	\$14.56	\$10.00
Fluoxetine HCL 20 mg 30 Capsules	\$11.52	\$9.69	\$11.74	\$13.09	\$23.50	\$5.00

15
 16 50. As demonstrated above, the "usual and customary" prices submitted by
 17 Walgreens to third-party payors are undeniably and unlawfully inflated.

18 51. In fact, Walgreens highlights on its website the significant savings that
 19 members of PSC program receive – savings that are not available to those customers
 20 using insurance to purchase their prescription generic drugs.

Guaranteed savings. Risk-free membership.

If you don't save at least the cost of your prescription card membership fee in one year, we'll give you the difference.¹

Average Savings²	Tier 1 (\$10)	Tier 2 (\$20)	Tier 3 (\$30)
90 day supply of a value-priced generic	\$50.41	\$52.54	\$118.08

Sample Savings	Without Membership	With Membership	Annual Savings
FLUTICASONE Nasal Spray	\$42.00	\$15.00	\$324.00
LISINOPRIL Tablet	\$47.99	\$12.00	\$143.96

52. But, since the PSC Prices are, in fact, the "usual and customary" prices Walgreens charges, Plaintiff and the other members of the Class should have also received these reduced prices when purchasing the prescription generic drugs at issue.

53. Walgreens does not inform customers who use their insurance benefits to purchase generic prescription drugs (including Plaintiff and the other members of the Class) that, for the drugs, the PSC Prices Walgreens charges cash-paying customers, are lower than the copayments Walgreens charges. Walgreens either wrongly conceals or omits such information by failing to tell customers using insurance about the PSC program, or by misrepresenting to those customers that the PSC program would not apply to their purchases.

54. On information and belief, there have been millions of instances where Walgreens intentionally submitted fraudulently inflated "usual and customary" pricing information to third-party payors in connection with prescription generic drug

1 purchases made by Plaintiff and other members of the Class during the class period,
2 including the specific transactions by Plaintiff described herein.

3 **CLASS ALLEGATIONS**

4 55. Plaintiff brings this action pursuant to Federal Rules of Civil Procedure
5 23(b)(3), on behalf of himself and the following national Class and California state
6 Subclass:

7 **CLASS**

8 All persons or entities in the United States and its territories who, between
9 January 2007 and the present ("Class Period"), paid for, in full or in part,
10 a prescription generic drug included on the PSC formulary and were
insured for the purchase through a third-party payor.

11 **SUBCLASS**

12 All persons or entities in the state of California who, during the Class
13 Period, paid for, in full or in part, a prescription generic drug included on
14 the PSC formulary and were insured for the purchase through a third-party
payor.

15 The national Class and California state Subclass are collectively referred to
16 as the "Classes."

17 56. Excluded from the Classes are Walgreens, its officers, and directors.

18 57. The Classes consist of at least hundreds of thousands, and likely
19 millions, of individual Walgreens customers, making joinder impractical, in
20 satisfaction of Fed. R. Civ. P. 23(a)(1). The exact size of the Classes, and the
21 identities of the individual members thereof, are ascertainable through Walgreens'
22 records, including, but not limited to, its billing and collection records.

23 58. The claims of Plaintiff are typical of the Classes. The claims of Plaintiff
24 and the Classes are based on the same legal theories and arise from the same unlawful
25 and willful conduct, resulting in the same injury to the Plaintiff and the Classes.

26 59. The Classes have a well-defined community of interest. Walgreens has
27 acted and failed to act on grounds generally applicable to the Plaintiff and the
28 Classes, thus requiring the Court's imposition of uniform relief to ensure compatible

1 standards of conduct toward the Classes.

2 60. There are many questions of law and fact common to the claims of
3 Plaintiff and the Classes, and those questions predominate over any questions that
4 may affect only individual Class members within the meaning of Fed. R. Civ. P.
5 23(a)(2) and 23(b)(2).

6 61. Common questions of fact and law affecting members of the Classes
7 include, but are not limited to, the following:

8 (a) whether Walgreens artificially inflated the "usual and customary"
9 prices that it reported to third-party payors pursuant to the NCPDP reporting
10 standard;

11 (b) whether Walgreens omitted and concealed material facts from
12 their communications and disclosures with third-party payors and plan participants
13 regarding its pricing scheme;

14 (c) whether Walgreens has wrongfully overcharged and continues to
15 overcharge copayments to hundreds of thousands, and likely millions, of plan
16 participants (including Plaintiff and the Classes) who purchased a prescription
17 generic drug listed on Walgreens' PSC formulary at its pharmacies around the
18 country;

19 (d) whether Walgreens has engaged in, unfair methods of
20 competition, unconscionable acts or practices, and unfair or deceptive acts and/or
21 practices in connection with the pricing and sale of prescription generic drugs;

22 (e) whether, as a result of Walgreens' misconduct, Plaintiff and the
23 Classes have suffered damages, and, if so, the appropriate measure of damages to
24 which they are entitled; and

25 (f) whether, as a result of Walgreens' misconduct, Plaintiff and the
26 Classes are entitled to injunctive, equitable, and/or other relief, and, if so, the nature
27 of such relief.

28

1 62. Absent a class action, most of the members of the Classes would find the
2 cost of litigating their claims to be prohibitive and will have no effective remedy.
3 The class treatment of common questions of law and fact is also superior to multiple
4 individual actions or piecemeal litigation in that it conserves the resources of the
5 courts and the litigants and promotes consistency and efficiency of adjudication.

6 63. Plaintiff will fairly and adequately represent and protect the interests of
7 the Classes. Plaintiff has retained counsel with substantial experience in prosecuting
8 complex litigation and class actions. Plaintiff and her counsel are committed to
9 vigorously prosecuting this action on behalf of the other respective members of the
10 Classes, and have the financial resources to do so. Neither Plaintiff nor her counsel
11 have any interests adverse to those of the other members of the Classes.

12 **TOLLING OF THE STATUTE OF LIMITATIONS**

13 64. Plaintiff and the other members of the Classes had neither actual nor
14 constructive knowledge of the facts constituting their claims for relief until recently.

15 65. Plaintiff and the other members of the Classes did not discover, and
16 could not have discovered through the exercise of reasonable diligence, the existence
17 of the unlawful conduct alleged herein until recently.

18 66. Walgreens engaged in a secret scheme that did not reveal facts that
19 would have put Plaintiff or the other members of the Classes on inquiry notice that
20 Walgreens was charging inflated prices for prescription generic drugs.

21 67. Because Walgreens' scheme was kept secret, Plaintiff and the other
22 members of the Classes were unaware of Walgreens' unlawful conduct alleged herein
23 and did not know that they were paying artificially inflated prices for prescription
24 generic drugs during the Class Period.

25 68. Walgreens actively concealed its PSC prescription generic drug pricing
26 scheme from the public, including Plaintiff and the other members of the Classes (and
27 third-party payors), and failed to disclose the material fact that the prices Walgreens
28 reported to third-party payors for the prescription generic drugs included on the PSC

1 formulary were far higher than the PSC Prices, and thus, not the actual "usual and
2 customary" prices for those drugs. Walgreens charged Plaintiff and the other
3 members of the Classes copayments for the drugs they purchased that reflected
4 Walgreens' artificially inflated "usual and customary" prices. Walgreens also failed
5 to post drug prices in a clear manner and in a way that would alert Plaintiff and the
6 other members of the Classes to the artificially inflated prices charged by Walgreens.
7 Through its actions, Walgreens misled Plaintiff and the other members of the Classes
8 and caused them to pay to Walgreens inflated copayments for some of the most
9 commonly prescribed generic drugs.

10 69. Walgreens' affirmative acts alleged herein, including acts in furtherance
11 of its unlawful scheme, were wrongfully concealed and carried out in a manner that
12 precluded detection.

13 70. Walgreens' unlawful pricing scheme was inherently self-concealing
14 because it involved misrepresenting and falsely reporting the "usual and customary"
15 prices for some of the most commonly prescribed generic drugs. If Walgreens had
16 been open and notorious about its deceptive and unfair fraudulent pricing scheme, it
17 would never have succeeded.

18 71. Plaintiff and the other members of the Classes could not have discovered
19 the alleged unlawful activities at an earlier date by the exercise of reasonable
20 diligence because Walgreens employed deceptive practices and techniques of secrecy
21 to avoid detection of its activities. Walgreens concealed their activities by various
22 means and methods, including affirmative misrepresentations regarding the actual
23 "usual and customary" prices it charged for prescription generic drugs.

24 72. Because Walgreens affirmatively concealed its scheme, Plaintiff and the
25 other members of the Classes had no knowledge until recently of the alleged unlawful
26 activities or information which would have caused a reasonably diligent person to
27 investigate whether Walgreens committed the actionable activities detailed herein.
28

1 73. As a result of Walgreens' active concealment, the running of any statute
2 of limitations has been tolled with respect to any claims that Plaintiff and the other
3 members of the Classes have as a result of the unlawful conduct alleged in this
4 Complaint.

5 **COUNT I**

6 **Against Defendants, on Behalf of the Subclass, for Violation of**
7 **California Unfair Competition Law**

8 74. Plaintiff incorporates by reference and realleges each and every
9 allegation contained above, as though fully set forth herein.

10 75. Plaintiff brings this claim individually and on behalf of the members of
11 the Subclass.

12 76. Plaintiff and other members of the Subclass are "persons" within the
13 meaning of Cal. Bus. Prof. Code §17204.

14 77. Walgreens has unfairly obtained monies from Plaintiff and the other
15 members of the Subclass through Walgreens': (i) unlawful business acts and/or
16 practices; (ii) unfair business acts and/or practices; and (iii) unfair, deceptive, untrue
17 and/or misleading advertising (including violations of Cal. Bus. & Prof. Code
18 §17500, *et. seq.*), including, among other things:

19 (a) reporting to insurance companies, and state and federal health
20 care entities fraudulent "usual and customary" prices for hundreds of generic
21 prescription drugs;

22 (b) misrepresenting to insurance companies and state and federal
23 health care entities, Plaintiff, and the Subclass that the "usual and customary" price
24 was greater than their copayments;

25 (c) concealing from Plaintiff and the Subclass the true "usual and
26 customary" prices of generic prescription drugs; and

27 (d) wrongfully obtaining monies from Plaintiff and the Subclass as a
28 result of Walgreens' deception.

1 78. Walgreens willfully engaged in the unfair and/or deceptive acts and/or
2 practices described above and knew or should have known that those acts and/or
3 practices were unfair and/or deceptive.

4 79. The facts which Walgreen misrepresented and/or concealed, as alleged
5 in the preceding paragraphs, were material to Plaintiff and the Subclass' decisions
6 about whether to purchase generic prescription drugs from Walgreens, in that
7 Plaintiff and the Subclass would not have purchased generic prescription drugs from
8 Walgreens for more than the PSC Prices but for Walgreens' unfair and/or deceptive
9 acts and/or practices.

10 80. As a direct and proximate result of Walgreens' unfair and deceptive acts
11 and/or practices, Plaintiff and the Subclass were deceived into paying falsely inflated
12 prices for generic prescription drugs and have been damaged thereby.

13 81. Walgreens are therefore liable to Plaintiff and the Subclass for the
14 damages they sustained, plus statutory damages, penalties, costs, and reasonable
15 attorneys' fees to the extent provided by law.

16 **COUNT II**

17 **Against Defendants, on Behalf of the Subclass, for**
18 **Violation of California Consumer Legal Remedies Act**

19 82. Plaintiff incorporates by reference and realleges each and every
20 allegation contained above, as though fully set forth herein.

21 83. Plaintiff brings this claim individually and on behalf of the members of
22 the Subclass.

23
24 84. Plaintiff and other members of the Subclass are "consumers" within the
25 meaning of Cal. Civ. Code §1761(d).

26 85. The generic prescription drugs that Plaintiff and other members of the
27 Subclass purchased from Walgreens are "goods" within the meaning of Cal. Civ.
28 Code §1761(a).

1 86. Plaintiff and the other members of the Subclass" purchases were
2 "transactions" within the meaning of Cal. Civ. Code §1761(e).

3 87. Walgreens is a "person" within the meaning of Cal. Civ. Code §1770(a).

4 88. Plaintiff and the other members of the Subclass have been damaged by
5 Walgreens' unfair methods of competition, and/or unfair and/or deceptive practices,
6 in violation of Cal. Civ. Code §1770(a), *et. seq.*, which occurred in connection with
7 transactions which resulted in Class members' purchase of goods. These unfair
8 methods of competition, and/or unfair and/or deceptive practices, included, among
9 other things:

10 (a) reporting to insurance companies and state and federal health
11 care entities fraudulent "usual and customary" prices for hundreds of generic
12 prescription drugs;

13 (b) misrepresenting to insurance companies, state and federal health
14 care entities, Plaintiff, and the Subclass that the "usual and customary" price was
15 greater than their copayments;

16 (c) concealing from Plaintiff and the Subclass the true "usual and
17 customary" prices of generic prescription drugs; and

18 (d) wrongfully obtaining monies from Plaintiff and the Subclass as a
19 result of Walgreens' deception.

20 89. Walgreens willfully engaged in the unfair and/or deceptive acts and/or
21 practices described above and knew or should have known that those acts and/or
22 practices were unfair and/or deceptive.

23 90. Pursuant to §1782 of the California Consumer Legal Remedies Act, on
24 May 26, 2017, Plaintiff sent Walgreens in writing by certified mail notification of the
25 particular violations of §1770 described above and requested that Defendants rectify
26 their practices described above and give notice to all affected consumer of their intent
27 to so act.

28

1 91. The facts which Walgreens misrepresented and/or concealed, as alleged
2 in the preceding paragraphs, were material to Plaintiff and the Subclass' decisions
3 about whether to purchase generic prescription drugs from Walgreens, in that
4 Plaintiff and the Subclass would not have purchased generic prescription drugs from
5 Walgreens for more than the PSC Prices but for Walgreens' unfair and/or deceptive
6 acts and/or practices.

7 92. As a direct and proximate result of Walgreens' acts described above,
8 Plaintiff and the other members of the Subclass paid more for Walgreens' products
9 than they would have and/or purchased products they would not have purchased but
10 for Walgreens' deceptive conduct. Plaintiff and the other members of the Subclass
11 therefore seek injunctive relief pursuant to §1782(d) of the Act, to enjoin Walgreens'
12 ongoing wrongful acts described herein.

13 **COUNT III**

14 **Against Defendants, on Behalf of the Class and Subclass, for Unjust Enrichment**

15 93. Plaintiff incorporates by reference and realleges each and every
16 allegation contained above, as though fully set forth herein.

17 94. By means of Walgreens' wrongful conduct alleged herein, Walgreens
18 knowingly charge plan participants artificially high copayments for generic
19 prescription drugs included in the PSC program in a manner that is unfair and
20 unconscionable.

21 95. Walgreens knowingly received and retained wrongful benefits and funds
22 from Plaintiff and the Class and Subclass. In so doing, Walgreens acted with
23 conscious disregard for the rights of Plaintiff and the Class and Subclass.

24 96. As a result of Walgreens wrongful conduct as alleged herein, Walgreens
25 has been unjustly enriched at the expense of, and to the detriment of, Plaintiff and the
26 Class and Subclass.

27 97. Walgreens' unjust enrichment is traceable to, and resulted directly and
28 proximately from, the conduct alleged herein.

1 98. Under the common law doctrine of unjust enrichment, it is inequitable
2 for Walgreens to be permitted to retain the benefits it received, and are still receiving,
3 without justification, from the imposition of artificially inflated prices on Plaintiff and
4 the Class and Subclass in an unfair and unconscionable manner. Walgreens' retention
5 of such funds under circumstances making it inequitable to do so constitutes unjust
6 enrichment.

7 99. Plaintiff and the Class and Subclass did not confer these benefits
8 officiously or gratuitously, and it would be inequitable and unjust for Walgreens to
9 retain these wrongfully obtained proceeds.

10 100. Walgreens are therefore liable to Plaintiff and the Class and Subclass for
11 restitution in the amount of Walgreens' wrongfully obtained profits.

12 **COUNT IV**

13 **Against Defendants on Behalf of the Class and**
14 **Subclass for Negligent Misrepresentation**

15 101. Plaintiff incorporates by reference and realleges each and every
16 allegation contained above, as though fully set forth herein.

17 102. Under the circumstances alleged, Walgreens owed a duty to Plaintiff and
18 the Class and Subclass to provide them with accurate information regarding the prices
19 of its generic prescription drugs.

20 103. Walgreens misrepresented and/or concealed the true "usual and
21 customary" prices of generic prescription drugs that are included in the PSC program.
22 Walgreens made such misrepresentations by reporting artificially inflated "usual and
23 customary" prices for such drugs to third-party payors.

24 104. Walgreens had no reasonable grounds to believe that these
25 misrepresentations and/or omissions were true. The prices that Walgreens reported to
26 third-party payors were substantially (and unjustifiably) higher than the prices they
27 charged under its PSC program to cash-paying customers.
28

1 105. Walgreens intended to induce Plaintiff and the Class and Subclass to rely
2 on its misrepresentations and/or omissions. Walgreens knew that Plaintiff and the
3 Class and Subclass would rely on its misrepresentations and/or omissions regarding
4 "usual and customary" prices and, as a result, would pay copayments higher than the
5 actual "usual and customary" prices for those generic prescription drugs.

6 106. Plaintiff and the Class and Subclass justifiably relied upon Walgreens'
7 misrepresentations and/or omissions in that Plaintiff and the Class and Subclass
8 would not have purchased generic prescription drugs from Walgreens for more than
9 the PSC Prices but for Walgreens' misrepresentations and/or omissions. Plaintiff and
10 the Class and Subclass' reliance on Walgreens' misrepresentations and/or omissions
11 was, thus, to their detriment.

12 107. As a proximate result of Walgreens' negligent conduct, Plaintiff and the
13 Class and Subclass have been damaged because they paid copayments for generic
14 prescription drugs that were far higher than the prices they would have paid but for
15 Walgreens' misconduct.

16 108. Walgreens are therefore liable to Plaintiff and the Class and Subclass for
17 the damages they sustained.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for judgment against Walgreens, and request as
20 follows:

21 A. That all Class members are owed at least the difference between their
22 paid copayments and the "usual and customary" price offered to the general public for
23 all prescriptions purchased during the life of the PSC program;

24 B. That the Court certify this action as a class action, proper and
25 maintainable pursuant to Rule 23 of the Federal Rules of Civil Procedure, and
26 declare that Plaintiff is a proper Class representative;

27 C. That the Court grant permanent injunctive relief to prohibit Walgreens
28 from continuing to engage in the unlawful acts, omissions, and practices described

1 herein;

2 D. That the Court award compensatory, consequential, and general damages
3 in an amount to be determined at trial;

4 E. That the Court order disgorgement and restitution of all earnings, profits,
5 compensation, and benefits received by Walgreens as a result of its unlawful acts,
6 omissions, and practices;

7 F. That the Court award statutory treble damages, and punitive or
8 exemplary damages, to the extent permitted by law;

9 G. That the unlawful acts alleged in this Complaint be adjudge and decreed
10 to be a violation of the unfair and deceptive business acts and practices in violation of
11 the California Unfair Competition Law, and California Consumer Legal Remedies
12 Act;

13 H. That the Court award to Plaintiff the costs and disbursements of the
14 action, along with reasonable attorneys' fees;

15 I. That the Court award pre- and post-judgment interest at the maximum
16 legal rate; and

17 J. That the Court grant all such other relief as it deems just and proper.

18 **JURY DEMAND**

19 Plaintiff hereby demands a trial by jury on all issues so triable.

20 Dated: May 26, 2017

21 ROBBINS ARROYO LLP
22 GEORGE C. AGUILAR
23 GREGORY E. DEL GAIZO
24 STEVEN M. MCKANY

25 */s/George C. Aguilar*

26 GEORGE C. AGUILAR

27 600 B Street, Suite 1900
28 San Diego, CA 92101
Telephone: (619) 525-3990
Facsimile: (619) 525-3991

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E-mail: gaguilar@robbinsarroyo.com
gdelgaizo@robbinsarroyo.com
smckany@robbinsarroyo.com

ROBBINS GELLER RUDMAN
& DOWD LLP
DAVID W. MITCHELL
BRIAN O. O'MARA
ARTHUR L. SHINGLER III
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: (619) 231-1058
Facsimile: (619) 231-7423
davidm@rgrdlaw.com
bomara@rgrdlaw.com
ashingler@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
MARK J. DEARMAN
STUART A. DAVIDSON
JASON H. ALPERSTEIN
120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: (561) 750-3000
Facsimile: (561) 750-3364
mdearman@rgrdlaw.com
sdavidson@rgrdlaw.com
jalperstein@rgrdlaw.com

Attorneys for Plaintiff

1149427

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

Dawn Cobbs, Individually and on Behalf of All Others Similarly Situated

DEFENDANTS

Walgreen Co. and Walgreens Boots Alliance, Inc.

(b) County of Residence of First Listed Plaintiff San Diego County, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Lake County, IL
(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)
Robbins Arroyo LLP
600 B Street, Suite 1900, San Diego, CA 92101
(619) 525-3990

Attorneys (If Known)

'17CV1089 AJB JMA

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

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

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

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input 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	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<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 type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <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):
Class Action Fairness Act, 28 U.S.C. §1332(d)(2)(A)

Brief description of cause:
Consumer Class Action Complaint

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 05/26/2017 SIGNATURE OF ATTORNEY OF RECORD s/George C. Aguilar

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.